

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 26

(WEDNESDAY 14 JULY 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

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

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

Counsel to the Commission Mr Bilal Rawat also appeared.

Hon Julian Fraser RA gave evidence.

Mrs Phyllis Evans gave evidence.

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Those present:

Session 1

Mr Daniel Fligelstone Davies, Silk Legal (attending remotely)

Mr Bilal Rawat

Hon Julian Fraser RA (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)

Session 2

Ms sara-Jane Knock, Withers LLP (attending remotely)

Mr Bilal Rawat

Mrs Phyllis Evans (attending remotely)

Mr Steven Chandler, 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

HON JULIAN FRASER RA, COMMISSION WITNESS, RECALLED

COMMISSIONER HICKINBOTTOM: Good, Mr Peters. Are we ready to go?

MR PETERS: Yes, we are, Commissioner.

COMMISSIONER HICKINBOTTOM: Good. Thank you very much.

Mr Rawat.

MR RAWAT: Thank you, Commissioner.

Can I first of all just begin by explaining the delay in starting this morning. We were scheduled to start at 9:00. Unfortunately, The Honourable Julian Fraser, who is our first witness of the day, experienced some technical difficulties, and that's taken some time to sort out.

Just again for the Transcript, in terms of representation, there is no one attending today on behalf of the Attorney General and the elected Ministers, but Mr Daniel Fligelstone Davies attends on behalf of Mr Fraser and also other Members of the House of Assembly.

BY MR RAWAT:

Q. Honourable Fraser, can you see and hear me?

A. Yes, I can.

Q. Thank you.

And thank you also for making yourself available to

1 give further assistance to the Commissioner.

2 You are still bound by your oath or affirmation that
3 you gave on the previous occasions, so there is no need for you
4 to do that again. If I explain that the primary purpose of
5 asking you to assist further is just in relation to the Auditor
6 General's Report on the Sea Cows Bay Harbour Development Project
7 which was published in August 2014, and on--as to which the
8 Auditor General has given evidence to the Commissioner.

9 Can I check what you have in front of you in terms of
10 documents? You provided to the Commissioner an annotated
11 version of the report which contains various comments that
12 you've made, and you've also provided an additional marked map.
13 Do you have copies of those documents with you?

14 A. Yes, I do.

15 Q. They are to assist you, and I think they have been
16 paginated by the Commission for you, and the pagination number
17 appears at the bottom center corner. So, if I refer to that
18 document, I will take you through on that pagination.

19 Separate to that--

20 A. I'm sorry, but let me see if I--if I can--well--

21 Q. Don't worry. What I'll do, Honourable Fraser, is I'll
22 just refer to it by paragraph numbers, and that should be an
23 easier way to work through the document.

24 A. Okay.

25 It is paginated. The Auditor General's Report is

1 paginated. I have the paginated numbers for that.

2 Q. And that starts at 721, doesn't it?

3 A. Pardon me?

4 Q. It should start at 721.

5 A. It does.

6 Q. All right. That's fine. That's what I was also going
7 to check with you, that you had a copy of that document as well.

8 A. Yes, I do.

9 Q. Thank you. Again, just to slightly revisit the period
10 in which you've held ministerial office but just so that we have
11 it on the Transcript again. Is it right that from May 1999 to
12 May 2002 you were the Minister for Natural Resources and Labour?

13 A. I don't have the dates in front of me, but it sounds
14 correct.

15 Q. And you then moved to head the Ministry for
16 Communication and Works, and that was from May 2002 to
17 July 2003?

18 A. Again that, sounds correct.

19 Q. Then there was a period in Opposition, but in
20 August 2007 you returned to Government and to ministerial
21 office, and you again returned to the Ministry of Communication
22 and Works, and you remained in that post until, I think,
23 November 2011?

24 A. Until 2011. I don't remember exactly the month, but
25 it sounds correct.

1 Q. Well--

2 MR FLIGELSTONE DAVIES: If I may be of assistance,
3 that would be correct. The elections happened in November 2011.

4 Q. There you have it.

5 A. We got a confirmation now. I have no reason to doubt
6 what the numbers are.

7 Q. You were in office as the Minister until the election;
8 is that right?

9 A. Correct.

10 Q. So, just give ourselves some background in relation to
11 the report, if you look--and we can use your version, if you
12 like or--

13 A. Yeah, let's use my version.

14 Q. All right. If you go to--take a look at paragraph 4--

15 A. Sure.

16 Q. What that explains is that, in 1991, the Ministry of
17 Natural Resources established a Steering Committee to consider a
18 Reclamation Plan for the Sea Cows Bay Harbour area, and what
19 came out of that process wasn't a detailed plan but a proposal
20 that any future reclamation in Sea Cows should be bulkheaded,
21 and that proposal, and we can see that if you go through to
22 paragraph 15 of your version, which is on internal 5, that
23 proposal led to a compromise that Government would work with
24 local Developers to ensure that bulkheads were constructed but
25 not at costs to the community, and that the costs would then be

1 passed on to the Developers in a subsequent lease between the
2 parties. That's between governments and the Developers.

3 Now, those decisions, in terms of the establishments
4 of the Steering Committee, the Reclamation Plan, the discussions
5 about the costing of bulkheading, they were decisions, were
6 they, that were made before you came into politics; is that
7 right?

8 A. I can't speak to that. That was '92.

9 Q. Yes. So, effectively, you inherited those decisions?

10 A. I'm not sure that I did.

11 Q. If you look at paragraph 16--

12 A. Yes.

13 Q. --"September 2001, the Ministry of Natural Resources
14 under the administration of The Honourable Julian Fraser engaged
15 Smith Arneborg Architects Limited to produce a conceptual
16 development plan of the Sea Cows Bay Harbour".

17 So, that's--is that right, that your Ministry then
18 commissioned a plan in September 2001?

19 A. Yes, we did.

20 Q. And the last page is a document that you provided to
21 the Commission which you've labeled--which has been labeled M-1.

22 A. Okay.

23 Q. It's the marked version of the concept Development
24 Plan. Have you got--

25 (Overlapping speakers.)

1 A. Yes.

2 Q. And--

3 A. Yeah, this is it.

4 Q. Yes. And what you have marked on that for the
5 Commissioner is the extent of bulkheading that was anticipated;
6 is that right?

7 A. Right. That red line, just where that red line is
8 only, that's what it indicates, that's where the bulkheading is
9 at the project.

10 Q. And it's essentially between the two arrows, the
11 heads--

12 A. Between the two arrows. Nothing but the red line.

13 Q. Yeah. So, running across from the head of the first
14 arrow, running across to the head of the second arrow; is that
15 right?

16 A. Yeah, that's right.

17 Q. Thank you.

18 And sticking with your document, Honourable Fraser,
19 it's recorded there that you then presented to that, that
20 concept, to the Executive Council in October 2002, and the
21 Executive Council then adopted that; is that right?

22 A. That's right.

23 Q. And what we see--and this is at paragraph 18--and I
24 just want to confirm whether you agree with this--what's
25 recorded is that the Executive Council (drop in audio) four

1 matters: The "tendering process was to be waived to allow the
2 Ministry of Communications and Works--which, by this time, you
3 were leading--to engage contractors to procure materials for
4 bulkheading the harbour at Sea Cows Bay".

5 A. Yes.

6 Q. "The Ministry of Communications and Works proceed to
7 carry out further dredging and to bulkhead the harbour through a
8 series of petty contracts and, if necessary, by major contract
9 provided that the Executive Council's approval be sought before
10 any major contract is awarded".

11 "Works were to commence on this project immediately by
12 use of funds already appropriated under the Ministry of Natural
13 Resources and Labour".

14 And fourth, "further development of the harbour be
15 done through funds to be provided under the Ministry of
16 Communications and Works by 2003 estimates or by prior
17 supplementary appropriations".

18 Do you agree that those were four points that the
19 Executive Council did adopt?

20 A. Agree.

21 Q. And was it in effect that what happened was that
22 whilst there had already been funds allocated to the Ministry of
23 Natural Resources and Labour, the Ministry of Communications and
24 Works was now taking over the project and would, therefore, take
25 over those funds--

1 (Overlapping speakers.)

2 A. Yes, provided they were transferred to the subhead
3 that was allocated, yes.

4 Q. If additional funds were required--we're now in
5 2002--your Ministry would then have to either do it by--within
6 their budget estimates for 2003 or by seeking a
7 supplementary--an advance--in advance a Supplementary
8 Appropriation; is that right?

9 A. That's right.

10 Q. So, what your Ministry couldn't do was, if you like,
11 incur those costs and then deal with the shortfall via a
12 Supplementary Appropriation?

13 A. The Ministry couldn't--the Ministry couldn't incur the
14 costs without the approval of the Ministry of Finance.

15 Q. And effectively the funds would have to be there
16 before you could incur the costs?

17 A. Approval would have to be given in order to incur any
18 costs.

19 Q. Thank you.

20 Now, one of the points you've made in relation to this
21 paragraph and these four points, is the approval--and that's the
22 approval of the Executive Council--is what was used to execute
23 all works to date, and I wondered whether you could assist the
24 Commissioner with a little more detail about what you meant by
25 that. When you refer to "works to date", what are you referring

1 to?

2 A. You see that note? Where is that note?

3 Q. If you look on your document.

4 A. I'm looking at it.

5 Q. At page 6.

6 A. Okay. I said this approval by the Executive Council
7 is what was used to execute all works to date.

8 Q. Yes.

9 A. Up until--up until--up until the date when I left the
10 Ministry, the funds that were used were executed on the works
11 that were approved by Executive Council and nothing else.

12 Q. So, you left the Ministry in 2011, and is your point
13 that the way the project was progressed from 2002 through to
14 2011 was under--

15 A. I can't speak--unfortunately, I can't speak for what
16 happened between 2003 and 2007. That was under a different
17 administration.

18 Q. That's a fair point, Honourable Fraser, and I should
19 have phrased the question a little better, and I will do it this
20 way: Is your point that the approval that was given or the
21 adoption of the plan, the Concept Plan, in 2002, with the four
22 points that the Executive Council agreed, is it your evidence
23 that that was the basis on which you, when you were the Minister
24 responsible, progressed this project?

25 A. Absolutely.

1 Q. And at no point did you then go back to Cabinet or the
2 Executive Council or Cabinet, as it then became later on, to
3 alter the terms of the project or seek the use of a Major
4 Contract or a different sort of contractual arrangement, is that
5 right?

6 A. Right. We had not progressed to that point. We
7 hadn't gotten to that point.

8 The only thing that was done, in one, 18.1, where it
9 says "procure material for bulkheading", that's the only thing
10 that was done.

11 Q. I see.

12 So, your point is that, in the time that you were the
13 Minister in charge, and yes, that period is broken by a gap, the
14 only--the only steps that were taken was procuring material for
15 bulkheading?

16 A. Yes, absolutely.

17 Q. If you look at 19--

18 A. Yes.

19 Q. --there is reference there to a contract with AR
20 Potter & Associates to prepare design development documents.

21 A. Yes.

22 Q. And the project construction costs--this was in
23 February 2003, so shortly before you stopped being the Minister,
24 which happened in July 2003, so the project construction was
25 estimated at \$1,350,000. The question which arises again from

1 the note--the comment that you've put in the document you've
2 provided to the Commissioner, "the contract was authorized by
3 Honourable Fraser as District Representative and signed by the
4 Permanent Secretary", and you said who authorized it. But if it
5 was a contract that your Ministry--

6 A. Let me just ask the question: The contract was
7 authorized by Honourable Julian Fraser District Representative.
8 That's ridiculous. A District Representative cannot authorize a
9 contract. It is just--it's just an attempt to make sure that
10 the District Representative's name is in there somehow, but as a
11 District Representative, you have absolutely no authority to
12 authorize a contract.

13 Q. I see.

14 Would you have, given it's a contract that was entered
15 into by your--by the Ministry of Natural Resources and Labour,
16 would it have been--

17 A. Where was I at that time?

18 Q. You were in Communication and Works.

19 A. Okay. So, it's not from Ministry of Labour and not
20 Communications and Works and not the representative for the
21 Third District or the Minister.

22 Q. It raised two questions, doesn't it, Honourable
23 Fraser: Firstly is why is the Ministry of Natural Resources and
24 Labour entering into this contract when the Ministry of
25 Communication and Works had taken over the project?

1 A. If I--if I was to guess, it's basically the same
2 question I have, but I know we would have been working in
3 communication with each other, but if I were to guess, I would
4 say that because--since the monies for--there were still
5 monies--there was still monies in Ministry of Natural Resources
6 and Labour for the project. It was a means of using that money
7 from that location as opposed to having the monies transferred
8 over to the Ministry of Communications and Works. That's my
9 best guess at this particular time.

10 And I have no problems with the fact that the contract
11 was executed through that Ministry because I'm sure we were
12 working together.

13 COMMISSIONER HICKINBOTTOM: Looking at paragraph 19,
14 that refers to a contract with AR Potter to prepare the design
15 development documents.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: There's a reference then
18 to the contract was authorized by you, Honourable Fraser, as
19 District Representative and signed by the Permanent Secretary at
20 Natural Resources and Labour. I understand the point you've
21 made about the District Representative, but the contract, is the
22 contract with AR Potter, isn't it?

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: And that was in
25 February 2003 when you were the Minister of Natural Resources

1 and Labour, and that contract would have been signed by the
2 Permanent Secretary of that Department, wouldn't it? So, all of
3 that Ministry--all of that is correct, isn't it, other than as
4 District Representative? You as the Minister would have
5 authorized the contract, and it would have been part of--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: --wouldn't it?

8 THE WITNESS: When you say why would I have to
9 authorize the contract? As Minister?

10 COMMISSIONER HICKINBOTTOM: No, no, I'm sorry, it was
11 a question.

12 THE WITNESS: Oh, well, simply put, a contract was
13 issued to AR Potter by the Ministry of Natural Resources and
14 Labour. I don't understand why the constant reference to Julian
15 Fraser. That's my problem. I don't understand the constant
16 reference. Contracts are issued regularly, all the time, by the
17 Ministry and whoever signs it, it's never the Minister who signs
18 a contract, and the Minister never had to authorize the
19 contract.

20 BY MR RAWAT:

21 Q. Does your evidence come to this: You accept that the
22 Ministry of Natural Resources and Labour entered into a contract
23 with AR Potter?

24 A. I accept that.

25 Q. That was in February 2003?

1 A. Yes.

2 Q. (drop in audio) time when you were--were you then the
3 Minister for Communication and Works?

4 A. Again, I would have to look at those dates that you've
5 been referring to. Have we agreed that at that time I was over
6 in Communications and Works, February 2003?

7 COMMISSIONER HICKINBOTTOM: I think it's fair to say,
8 Mr Fraser, that you weren't sure about the dates, but the dates
9 Mr Rawat put to you were that you became the Minister of
10 Communications and Works in May 2003.

11 THE WITNESS: Okay, so I wasn't--I was Minister of
12 Natural Resources in February; yes?

13 COMMISSIONER HICKINBOTTOM: Yes.

14 MR RAWAT: I think, Commissioner, just to sort of
15 clarify my understanding of the dates, it's that--and if I just
16 put it on this that, The Honourable Fraser was Minister of
17 Natural Resources and Labour from May 1999 to May 2002.

18 COMMISSIONER HICKINBOTTOM: 2002, okay.

19 MR RAWAT: So I apologize if the error is mine. From
20 May 2002 to July 2003, he was Minister for Communication and
21 Works, and then August 2000 to November 2011, so August 2007 to
22 November 2011, he was again Minister of Communication and Works?

23 COMMISSIONER HICKINBOTTOM: Thank you.

24 THE WITNESS: So, when the contract--when the contract
25 was entered into with AR Potter, I was not in Natural Resources

1 and Labour. That was 2003.

2 BY MR RAWAT:

3 Q. What I want to do is just to make sure we properly
4 understand your evidence on this point, Honourable Fraser. If I
5 can put sort of hopefully a series of short propositions to you
6 and you tell me whether you agree with them or not. So, you
7 accept that the Ministry of Natural Resources and Labour entered
8 into this contract in February 2003?

9 A. I accept that.

10 Q. You were not, it seems, on the information we have, at
11 that point the Minister of Natural Resources and Labour. You
12 had taken over another Ministry; is that right?

13 A. Right, sir.

14 Q. The contract, as recorded there, is signed by the
15 Permanent Secretary of Natural Resources and Labour.

16 A. If that's what you said, that's what I believe, that
17 it was signed by the Permanent Secretary.

18 Q. And that's in keeping with your understanding of who
19 signs contracts anyway?

20 A. Well, I--

21 Q. You said (drop in audio) contracts?

22 A. To be honest, I believe the Permanent Secretary may
23 have signed the contract, I'm not sure. But if that's what it
24 says, I believe it.

25 Q. And this contract was entered into after you had

1 presented the Concept Plan to the Executive Council?

2 A. Sure.

3 Q. And--

4 A. This is all progression of the Executive Council's
5 Decision.

6 Q. There was, it seems, then, a period where your
7 Department, Ministry of Communication and Works and the Ministry
8 of Natural Resources and Labour who held--who held monies
9 already allocated for this project were working in conjunction
10 on it; is that right?

11 A. That's what--that's what this particular issue
12 suggests, and I accept that.

13 Q. Right.

14 Did you have any input of any sort into the contract
15 or the negotiations for entering into a contract with AR Potter
16 or the decision to engage AR Potter, any aspect of that
17 contract? Did you have any involvement with it at all?

18 A. I would--I would imagine that discussions were had,
19 and I probably was involved. I would doubt that I wasn't
20 involved. I would not distance myself from that.

21 Q. Would you have expected to be involved as the Minister
22 for Communication and Works or--

23 A. Where the projects is, yes.

24 Q. --or as the District Representative or both?

25 A. It hadn't--it hadn't filtered down to the District

1 Representative level as yet. I think it would have been at the
2 Minister's level, the Minister.

3 Q. Given that this was a significant development
4 occurring within your District, would you have been
5 expected--would you have expected to have been consulted as the
6 District Representative?

7 A. I have--I have--from 2003 to 2007, I had never had any
8 discussions with the Ministry or Government about the project,
9 and I noticed that things had happened.

10 So, yes, I would expect to have been consulted in one
11 way, shape or form, but it depends.

12 Q. My question's directed to a time. This is
13 February 2003, so you have not yet left Government?

14 A. No.

15 Q. That happens in July 2003, so at this point when the
16 contract is entered into in February 2003, so at that stage
17 you're in Government. You're a Minister and a District
18 Representative?

19 A. Yes.

20 Q. I think you said that you might--you would expect that
21 you would have been consulted as a Minister--

22 A. As District Representative.

23 Q. And would you have expected to have been consulted as
24 District Representative as well?

25 A. Absolutely.

1 Q. So--

2 A. Not in the design stages necessarily, but when it
3 comes to construction, definitely. But that never happened from
4 2003 to 2007. But for the purposes of this discussion regarding
5 AR Potter, I am saying--I would say to you that I knew about our
6 engagement. There is no denying that I knew about her
7 engagement. How she progressed with the job, I'm not sure that
8 I had ever had any contact with her, but I knew she was engaged.

9 Q. But the point is that you would have known she was
10 engaged at the time when you were in Government. It comes down
11 to this, doesn't it: The phrase that you take issue with in
12 this paragraph is that the contract was authorized by Honourable
13 Julian Fraser as District Representative?

14 A. Absolutely.

15 Q. My question is whether, in the lead up to that
16 contract being signed in February 2003, would you have been
17 consulted as District Representative? I think your evidence is
18 "yes", and so would--would, in effect, your authority have been
19 sought in (drop in audio) February 2003?

20 A. I am not saying--I'm not saying that I was consulted
21 as District Representative in the design at this early stage as
22 far as engaging a consultant. I'm not saying yes, I would be
23 engaged as District Representative but as the Minister who was
24 actively involved in the project, I would have been consulted as
25 the Minister. And I'm not denying that I was consulted as

1 Minister with The Ministry for Natural Resources and Labour.
2 That is something that I would agree, that I knew about as a
3 Minister for Communications and Works.

4 Q. Thank you.

5 If we move on--

6 A. Well, if you're going to move on, but the point that
7 is listed--that is written here, I'm saying, is incorrect.

8 Q. Well, I think the reason I suggested we move on is
9 that I think the Commissioner understands your--that you take
10 issue with paragraph 19.

11 A. Absolutely.

12 Q. And the basis on which you say it. And if I summarise
13 it, your position is that you do not accept that you would have
14 been--(a) that you don't accept that you authorized it as the
15 District Representative. Your evidence is that you had not been
16 consulted in the lead-up to this contract being entered into--

17 (Overlapping speakers.)

18 A. As District--right.

19 Q. You would have been consulted as a Minister?

20 A. Because--because I was involved with the project in
21 another Ministry.

22 Q. Yes, as Minister of Communication and Works?

23 A. Yes.

24 Q. So, I think that there is nothing further I need to
25 canvass with you on that point, so I just wanted to move on to

1 something new.

2 A. The point--the point about authorization is not
3 acceptable. Notification, okay, as Minister, I was notified,
4 but authorized, authorized, no.

5 Q. If we look, then, at paragraphs 20 and 21, again in
6 your document--

7 A. Yes.

8 Q. --what's said there is that--and this is the
9 assessment of the--an assessment by the Public Works Department,
10 is that the works or the design drawings submitted were not
11 completed in terms of bulkhead design. It didn't go very far
12 because, as we see at the end of 21, "a full geotechnical study
13 would be required".

14 A. Can I just ask one question?

15 Q. Of course.

16 A. On 19, the project construction costs was estimated at
17 \$1,350,000. I want to enter into--I want to enter into the
18 record that that figure is impossible. How could someone who
19 was--who was--who was commissioned to do a design development,
20 which is basically turning schematic drawings, which is what
21 Arneborg did, just schematic drawings, into dimensional
22 drawings; in other words, making sure that the objects that you
23 see on the drawing are dimensioned, they're scaled, and that
24 include the buildings and all that, come up with a figure for
25 bulkheading, which is a heavily engineered project, and they

1 don't have any engineering background, they don't have
2 engineering--engineering consultants, it was not their forte.
3 It wasn't their commission.

4 So, that figure--I don't know where that figure came
5 from, how it was arrived at. And as a professional myself, I
6 know that it's out of the realm of design development scope.

7 Q. Well, the assumption that can be taken from the
8 Auditor General's Report is that the effect of the work of AR
9 Potter & Associates was that they estimated the project
10 construction costs to be \$1,350,000. They had a fee of just
11 over \$47,000 on which they were paid just under 25,000 on the
12 contract, so that's as far as it can be taken.

13 A. And as you would note and I would note as well,
14 throughout this report it talks about insufficient
15 documentation. Somewhere along the line, there is no
16 documentation to substantiate this \$1,350,000. Where is the
17 documentation for it?

18 Q. When you returned to office in 2007, Honourable
19 Fraser.

20 A. Yes.

21 Q. And you returned to the Ministry of Communication and
22 Works on that date.

23 A. Yes.

24 Q. Now, what we see is that there was a hiatus in the
25 project, and effectively, if you look at paragraphs 22 to 25 of

1 your document, sticking with that one, there appears to be
2 little progress to be made until we get into 2006 and beyond,
3 but when you returned in 2007, did you query this estimate of
4 \$1,350,000?

5 A. I don't recall--I don't recall ever seeing those
6 documents, to tell you the truth. Those documents were prepared
7 in the Ministry of Natural Resources and Labour, when I returned
8 in 2007 in the Ministry of Communication and Works, those
9 documents I don't recall seeing them.

10 Q. So, did you take things back to the original plan that
11 you had commissioned in September 2001? That was your starting
12 point when you returned to office?

13 A. As I said, I don't recall seeing them. Maybe the
14 Consultant, who was hired when I was in Communications and Works
15 to do the bulkheading, maybe they had access to those drawings
16 that AR Potter presented--prepared, in order to get the
17 dimensions. I'm not sure who had access to them.

18 Q. Have you ever seen the AR Potter contract?

19 A. No, I have never seen the contract.

20 Q. Have you ever seen the design drawings that were
21 submitted by AR Potter & Associates?

22 A. No, I have never seen them.

23 Q. Okay. If you go to paragraph--over--we look at
24 paragraph 23 to 25, and we're talking about events here that
25 happened whilst you were in Opposition?

1 A. 23 to 25?

2 Q. Yes.

3 A. Go ahead. Government administration changed in June
4 2003--yes.

5 Q. So, what there is, if you look at 24, is the Sea Cows
6 Bay Development Plan being slated as a capital projects for
7 advancement in 2006. In 25, "the Permanent Secretary in the
8 Ministry of Communication and Works commissioned a meeting with
9 the Director of Public Works and the Chief Planning Officer in
10 July 2006. Coming out of this meeting, eight steps were
11 identified as a way forward for the project", and those eight
12 steps are then listed out.

13 Now, and that's in terms of progressing the
14 development as a project, which is: "Securing approval for the
15 project from the Planning Authority; engaging a consultant to
16 prepare detailed plans and specifications for the works;
17 preparing those plans in accordance with Planning Authority
18 approval; submitting the plans for approval to the requisite
19 authorities; engaging a project manager to oversee
20 implementation of the project; engaging contractors to perform
21 the work; executing the works; and then closure and handover of
22 completed project".

23 The Terms of Reference for a consultant to design the
24 bulkhead were prepared in April 2006, and Geotech Associates Ltd
25 of Trinidad were engaged to conduct a geotechnical survey.

1 Now, this was obviously something that occurred whilst
2 you were in Opposition, but as a plan, in terms of what was
3 intended for the Sea Cows Bay Harbour, would you agree that this
4 approach was an appropriate way forward?

5 A. That was appropriate, yes, I would agree it was an
6 appropriate way forward, not necessarily in the order that it's
7 presented.

8 Q. But in terms of a plan to deliver a major piece of
9 work, those are the sort of things you would expect to see?

10 A. Those are the things that you can see to have it done,
11 you can do to have it done.

12 Q. Now, the one issue that you identify is in relation to
13 paragraph 27, which says that--and this is after November 2006:
14 "No further progress was made on the project during this period,
15 and some of the funds were used for road paving and drainage
16 works within the Third District".

17 And you say--point out that this happened whilst you
18 were in Opposition.

19 I mean, were the funds used for other purposes in the
20 Third District?

21 A. And that's where I would like for you to go to the
22 other exhibit that I submitted to you. This one.

23 Q. It's right at the back, the penultimate page which I
24 think we've paginated as page 30.

25 A. Okay. Yes. And that's the one with the notes on it,

1 if you look.

2 This is the page from the budget estimates back in
3 that time--

4 (Overlapping speakers.)

5 Q. Pause there, Honourable Fraser. It's the page that
6 has 218 written at the top of it? It's got the number 218;
7 right?

8 A. Yes, that's the page.

9 Q. And you marked--you marked two items; is that right?

10 A. I marked two items for demonstration purposes as far
11 as budgeting is concerned, and that would--that would elucidate
12 what you're reading in this paragraph 27.

13 Q. Okay.

14 A. Now, across the top, the first row across the top has
15 a series of headings for each column. The first heading is "Sub
16 Head No"., then the next column is "Details of Expenditure", the
17 next column says "Total Local Costs" and then you have
18 "Estimated Expenditure for the Year", for the different years,
19 and then you go all the way across, and it says the last one
20 written it says "Revort 2004", happens to be 2004 looking at,
21 and then it says "Notes".

22 Okay. Let's look at those columns. Where I have the
23 first checkmark 85139, that's the subhead number. Then it says:
24 "Chalwell/Sea Cows Bay Road". Are you following me?

25 Q. Yes.

1 A. Chalwell/Sea Cows Bay Road. Then it says "\$730,000",
2 that's a total local cost for this project, Chalwell/Sea Cows
3 Bay Road. And then it says "572,096". That was the estimated
4 expenditure for the year.

5 Then you go all the way over to the right-hand side on
6 the Report, it says "\$32,904".

7 Now, I said all of this to bring to you the point
8 where the notes are written. If you start reading the notes, it
9 says "Roadworks in the Third District".

10 Now, what that's telling you is that the monies that
11 you see in this subhead doesn't necessarily go towards the
12 Chalwell/Sea Cows Bay Road, but it's to be used to adapt plus
13 roadworks in the Third District, I can use exclusively for the
14 roadworks in the Third District. The purpose for that is, in
15 the budgeting process, sometimes in order to appropriate funds
16 for works, you do that through notes under a different subhead
17 and any subhead you put it in there. But once the notes tells
18 you that you can do it, that's how it works.

19 If you go to the one below, the last one that I have,
20 85156, it says "Road Works - Sea Cows Bay", and then the total
21 local cost is \$1,270,000, and then the figures continue, and
22 I'll get all the way back to the notes again. The note says:
23 "Continuation of concreting sections of the main road". Now,
24 that would suggest that it's for the concreting of section of
25 the main road in Sea Cows Bay. However, it continues to say

1 "includes Mannuel, Duffs Bottom, Pleasant Valley and Albion".
2 Now, all that money can be spent and you can go to look at that
3 continuation of the main road in Sea Cows Bay and nothing is
4 done, but the monies were spent in Duffs Bottom and Pleasant
5 Valley which is not in Sea Cows Bay.

6 So you have to--in understanding the budgeting
7 process, you have to know how the budget is prepared, so I don't
8 know if it is--if you see things like this appearing in this
9 report out of willfulness or out of ignorance of the budgeting
10 process, but whatever it is, it's wrong, what's showing up here
11 in this report, and that's what I'm trying to point out in 27.

12 Q. Mannuel, Duffs Bottom, Pleasant Valley and Albion, are
13 they in the Third District?

14 A. They're in the Third District.

15 Q. So, if you look at the bottom of the second item
16 you've highlighted, is an allocation for roadworks in Sea Cows
17 Bay, and the notes show, if I've understood you correctly, is
18 that that allocation was used not just in relation to Sea Cows
19 Bay but in relation to other parts of the Third District; is
20 that right?

21 A. For those things that are listed, because it says
22 "includes Mannuel", you can't put it anywhere but there. It
23 says "Duffs Bottom, Pleasant Valley and Albion". Only those
24 other areas, monies listed under this subhead can go. It can't
25 go anywhere else.

1 Q. Right. It can't go outside the Third District, and it
2 can't go to other areas in the Third District?

3 A. Right.

4 Q. So, that one--that allocation can be used for
5 roadworks in Sea Cows Bay, Mannuel, Duffs Bottom, Pleasant
6 Valley, and Albion?

7 A. Yes.

8 Q. And if we go back to the first item where you've got
9 Chalwell/Sea Cows Bay Road--

10 A. Right.

11 Q. --where it says "road works in the Third Districts",
12 does that mean that the allocation there is not limited to
13 Chalwell/Sea Cows Bay Road but can be used for other roadworks
14 in the Third District?

15 A. Yes.

16 Q. So, could you just clarify what you particularly take
17 issue with in paragraph 27 then, because it says "some of the
18 funds were used for road paving and drainage works within the
19 Third District".

20 A. Well, that was meant--that was meant particularly to
21 confuse you and give you the impression that monies were taken
22 from the Sea Cows Bay Development Project and used elsewhere.
23 That's what--that's what this whole report is built on. It's
24 built on misleading people.

25 Q. Is your evidence that, and if we look at 27, we're

1 talking about a period of time between 2004 and 2007?

2 A. Yes.

3 Q. And your evidence is that, of the monies in that
4 period allocated to the Sea Cows Bay Harbour Development, none
5 of those monies was used for road paving and drainage works
6 within the Third District?

7 A. No, I'm not saying that none of it was used. I'm
8 saying that if it was used for that purpose, then it's giving
9 the impression as you go through the report that somehow there
10 is no accountability, and these are the reasons there are no
11 accountability because the funds are being used all over the
12 place, and evidently it seems--and it seems as if there is no
13 authorization for doing so, and I'm telling you that it's
14 absolutely perfectly legitimate and authorized for the funds
15 that have been used in the way they have been used, here and
16 elsewhere in this report.

17 COMMISSIONER HICKINBOTTOM: But paragraph 27 is
18 correct; isn't it?

19 THE WITNESS: Paragraph 27 is correct. I'm just
20 saying to you that there has been--this report has been written
21 from the back to the front. It has been written from the
22 conclusion where a narrative was created, and it went all the
23 way up through the Executive Summary from creating a story to
24 support the narrative, and these are the kind of things that
25 pops up repeatedly in the report. I didn't ask you too--I

1 didn't ask for this particular exhibit to be a part of this
2 discussion this morning because of paragraph 27, but because of
3 the prevalence of that kind of reporting toward the report,
4 that's why I asked for it, but this is the first time you came
5 across it, so that's why I asked you to look at it. But there
6 are several times, several instances in the report where that
7 particular demonstration that I just gave will become necessary
8 and appropriate.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 BY MR RAWAT:

11 Q. If we look now at paragraphs 29 to 30, please.

12 A. Yes.

13 Q. Those deal with your return to the position of
14 Ministry of Communication and Works.

15 A. Yes.

16 Q. And it then records in paragraph 30, "two petty
17 contracts were issued by the Ministry of Communications and
18 Works to Systems Engineering Ltd in December 2009. The first
19 was to provide 'Engineering services for the Sea Cows Bay
20 Harbour Development' in the amount of \$68,100, and the second to
21 provide 'Structural Design Services for Sea Cows Bay Harbour' in
22 the amount of \$27,500. A total of \$123,000 was paid to Systems
23 Engineering on these two contracts".

24 Did you--did your Ministry engage in these contracts?

25 A. I would--I would say "yes", in conjunction with the

1 Public Works Department, yes.

2 Q. Was the contract signed by your Ministry or signed by
3 your Ministry and the Public Works Department?

4 A. I believe the Ministry is the one trying--I believe
5 the contract was signed by the Ministry, I believe. I'm not
6 sure.

7 Q. Obviously--well, at the time, would you, as the
8 Minister, would you have been aware of the contracts being
9 signed?

10 A. I would be aware that the contracts were issued, but
11 the mechanics of putting it together and signing it, I
12 wouldn't--I wouldn't know.

13 Q. So, you wouldn't have expected to see the contract
14 before it was signed?

15 A. No.

16 Q. And it wouldn't have been your responsibility to
17 actually sign the contract?

18 A. No.

19 Q. When you were the Minister for Communication and Works
20 between 2007 and 2011, who in your Ministry would sign
21 contracts?

22 A. It depends--it depends on the kind of contract. I
23 believe a contract like this would have been signed at the
24 Ministry, but when it comes to Petty Contracts, they would be
25 signed by the Ministry of Finance.

1 This is a consultancy that the Ministry had. I don't
2 get involved in that area because that's budgeting, and the
3 Accounting Officer exclusively is responsible for that. The
4 Minister has nothing to do with budgeting.

5 Q. But you've mentioned the Ministry of Finance might
6 have been involved because it was Petty Contracts?

7 A. No. It definitely when it's Petty Contracts the
8 Minister of Finance is where it's signed. The Minister of
9 Finance signs Petty Contracts.

10 Q. The four points that we looked at from the Executive
11 Council which was at paragraph 18, Point 2 says: "The Ministry
12 of Communications and Works proceed to carry out further
13 dredging and to bulkhead the harbour through a series of petty
14 contracts". Just so that we can understand it, does that mean
15 that your Ministry might have been responsible for identifying
16 who you would contract with but because they were Petty
17 Contracts, ultimately it's signed by the Ministry of Finance?

18 A. The Minister of Finance.

19 Q. The Minister of Finance?

20 A. Yes.

21 Q. So, your Ministry, if we take Systems Engineering Ltd
22 as an example, your Ministry may have taken it as far as the
23 contract being ready to sign.

24 A. Right.

25 Q. But then (drop in audio) the Minister of Finance to

1 sign it?

2 A. Right.

3 Q. Can you remember how Systems Engineering Ltd was
4 selected?

5 A. I think when the project was about to be executed, the
6 Public Works Department was asked to provide an engineer to do
7 the work, and they said that they didn't have anyone capable of
8 doing that kind of work, but they recommended Systems
9 Engineering.

10 Q. Did your Ministry seek any other potential candidates
11 for that kind of work?

12 A. No, because--because it was in the Petty Contract
13 range. The fees were in the Petty Contract range.

14 Q. Why was there a need, though, for two contracts with
15 Systems Engineering Ltd?

16 A. I'm not sure. I believe what happened is--I don't
17 know if the scope was extended, that's probably what happened,
18 why there were two contracts, why the two separate fees. Maybe
19 the scope was extended.

20 Q. There doesn't appear to be very much difference
21 between the services requested under the two contracts. One is
22 for engineering services for the Sea Cows Bay Harbour
23 Development, and the other one is for structural design services
24 for Sea Cows Bay Harbour.

25 A. I can't tell you with any degree of certainty at this

1 point what the defences were and why.

2 Q. You pointed out that they were under the Petty
3 Contract threshold.

4 A. Yes.

5 Q. And the sum total of the two contracts is 95,600. Can
6 you remember how it was that Systems Engineering ended up
7 receiving \$123,000?

8 A. Again, I don't deal with money. Absolutely no idea.
9 Whether there was a variation or whatever the case is, I
10 didn't--that's above my pay grade. I don't deal with the
11 finances.

12 Q. So, in terms of how your Ministry worked between 2011
13 and--2007 and 2011, and you say it was above your pay grade,
14 whose pay grade did it fall within?

15 A. That's the Accounting Officer, which is--who was the
16 Permanent Secretary.

17 Q. And who was your Permanent Secretary at this time?

18 A. I'm--I'm not sure. I had about three or four
19 Permanent Secretaries for the time I have been there, so I'm not
20 sure who it was.

21 But those are things--what happens is the Public Works
22 Department would do the assessments and approve the assessments,
23 file them to the Ministry, and the Ministry would make the
24 payments. The assessments are not done within the Ministry.
25 They're done by the professionals--the technical professionals.

1 Q. What's said at 31 was that the works that were
2 envisaged by Systems Engineering would build on the design
3 details developed by AR Potter, "which set out the bulkheading
4 to be done in two phases. The first at the West side of the bay
5 and the second eastward".

6 Then it goes, "the Bill of Quantities produced for the
7 project and dated September 2010 estimated the project cost at
8 \$6,650,000".

9 Were you aware of that Bill of Quantities?

10 A. The Bill of Quantity--I know of Bill of Quantities. I
11 don't know about all of the Bill of Quantities, but some of
12 them. I don't think that those--the ones that I know of are the
13 ones that are in this--mentioned in this report for seven
14 contracts. Those are the only Bill of Quantities that I know
15 about.

16 Q. But you've got a situation. You've said that you
17 didn't see the AR Potter contract, you didn't know about the AR
18 Potter contract. That had estimated the project construction
19 costs of 1.3 million. You now--and that was in 2003--you're now
20 in 2010, and the project cost is now 6.6 million. Did no one
21 draw that to your attention as the Minister?

22 A. No.

23 And if they did, like I said before, the AR
24 Potter--it's impossible for AR Potter to have come up with an
25 estimate for the project because the engineering for the project

1 was never done.

2 And if you look at 25, the eight steps that are
3 outlined here to be taken, one of them is preparation of the
4 plan in accordance with Planning--engage a consultant, prepares
5 specification, yes, this one talks about the bulkheading and
6 getting the consultant to prepare a detailed plans and
7 specification for the works. "Engage a consultant to prepare
8 detailed plans and specifications for the works".

9 Now, I would imagine that within that would be the
10 bulkheading, detailed plans and specifications. Without those
11 detailed plans and specifications, your estimates--I would have
12 to see how she came out--how she came up with those figures,
13 that low figure.

14 Q. But the point is this, isn't it, Mr Fraser, is that,
15 by the time we get to September 2010, AR Potter, which you
16 didn't know about, has been overtaken by events. What has
17 happened in September 2010 is that you now have Systems
18 Engineering Ltd's estimate, and their estimate is 6.6 million.

19 So, put aside AR Potter. You're the Minister. There
20 is now a project at Sea Cows Bay that is being costed by an
21 outside body, an outside consultant at \$6.6 million. Did no one
22 bring that to your attention?

23 A. Could you repeat that? You said it was costed by an
24 outside consultant?

25 Q. Well, Systems Engineering Ltd is not a government

1 body, is it?

2 A. No, but they're not the ones who costed it.

3 Q. Well, that's how I read paragraphs 30 to 32.

4 A. No, no, no, they didn't cost the project. The project
5 was cost by Public Works.

6 Q. All right. So, you're saying that paragraph 32, the
7 Bill of Quantities produced for the project and dated 2010
8 estimated the project cost at \$6,653,469.15 was a Bill of
9 Costs--Bill of Quantities provided by the Public Works
10 Department?

11 A. That's--that's the only people I would imagine who
12 would have done that because the Bill of Quantities for all
13 these Petty Contracts, some of the Petty Contracts that's listed
14 here, they were prepared by the Public Works Department, so they
15 are the only ones who are preparing costs.

16 Q. So, whether it's Systems Engineering Ltd that produced
17 the Bill of Quantities or the Public Works Department, you still
18 have a project cost now at over 6 million. Was that drawn to
19 your attention as the Minister for Communication and Works?

20 A. No.

21 Q. Would you not have expected to have been told if the
22 project costs had increased so substantially?

23 A. I would--I would consider the project costs done by
24 Public Works to be the realistic cost as opposed to any project
25 costing that was done by some preliminary drawings.

1 Q. But that's a reference to AR Potter, and that's now in
2 the past. The point is, we're in September 2010.

3 A. Um-hmm.

4 Q. The cost for the project is now over \$6 million; and
5 you, as the Minister overseeing that project, did not know and
6 were not told that that was what the cost was going to be of the
7 project?

8 A. I can't say that I have ever seen this \$6 million
9 figure, \$6 million figure. But if I did, I would have at the
10 same time seen where the material--the drawings that produced
11 that figure came from.

12 Like I said, the figures that I've seen are the ones
13 that I see here now for the seven contracts, I see--I saw those
14 Bill of Quantities, and I know where they came from, so I can't
15 speak to the ones that I haven't seen.

16 Frankly, I'm not telling you that I know where the
17 \$6,653,000 came from because it doesn't say here in the paper,
18 but I believe that if there is any Bill of Quantities that were
19 produced, they were produced by the Public Works Department.

20 Q. So, the only information you were given about costs
21 was in relation to seven Petty Contracts?

22 A. Exactly.

23 Q. No one came to you and said, "Minister, we've now got
24 a Bill of Quantities for this project. It's going to be over
25 \$6 million"?

1 A. No.

2 Q. And if you go back to what you said was, if you like,
3 the guiding framework for the way you approached this project,
4 it's those four points that arose from the plan that you put
5 before the Executive Council in October 2002, isn't it?

6 A. Can you say that again now that I'm looking at
7 these--the four principles?

8 Q. Yes. Those four principles, as I understand your
9 evidence, was the framework within which--

10 A. Yes, that's correct.

11 Q. --which you realized this project?

12 A. That's correct.

13 Q. And if you had been told that the actual total costs
14 of the project was now going to be over \$6 million, you might
15 have wanted to take it back to Cabinet, wouldn't you?

16 A. No. What I would want--the first thing I would want
17 to know is where the original figure came from. I would want to
18 see how that was derived at.

19 Q. But my question was if you had been told. Because the
20 point is that that framework relates to--it's now eight years
21 before this figure arises. It relates to an assessment of costs
22 that would have been considerably lower.

23 When you're dealing with sums of \$6 million, you're in
24 the realms of Major Contracts, aren't you, Honourable Fraser?

25 A. Absolutely.

1 Q. And that's the sort of thing where Cabinet needs to be
2 consulted; doesn't it?

3 A. If you enter into a Major Contract, but remember those
4 four points, it did say that the projects--the projects shall be
5 executed through a series of Petty Contracts except for when you
6 enter into a Major Contract you must come back to Cabinet, to
7 Executive Council. That's what the Executive Council Decision
8 said. It's not that someone was going to build this project at
9 \$6 million in a Major Contract without going back to the
10 Executive Council.

11 Q. But who would--but nobody did go back to the Cabinet?

12 A. For what? Why would you go back to the Cabinet?

13 Q. Because--

14 (Overlapping speakers.)

15 Q. --project over \$6 million?

16 A. You're still dealing with Petty Contracts for the
17 bulkheading.

18 Q. I think we will get on to the bulkhead in a moment.
19 But my question is you now have a project that is over
20 \$6 million. Surely, your point is that, as the Minister, you
21 weren't even aware of that sum.

22 A. Right.

23 Q. But it's the sort of situation where people should be
24 thinking we might need to consider Major Contracts and we might
25 need to consider going back to Cabinet?

1 MR FLIGELSTONE DAVIES: If I may just consult with my
2 client for one minute, I would be grateful, Mr Commissioner.

3 COMMISSIONER HICKINBOTTOM: Yes, Mr Fligelstone
4 Davies, if you wish.

5 MR FLIGELSTONE DAVIES: Thank you.

6 (Counsel and witness conferring.)

7 THE WITNESS: I'm back.

8 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

9 THE WITNESS: What I said is, if this project entered
10 into a Major Contract phase, it would go back to Cabinet. As it
11 is, dealing with what Cabinet has or the Executive Council has
12 outlined, to procure materials for the bulkheading, that's the
13 stage it was at, that's where it was, procuring materials for
14 bulkheading. If the time came for it to go back to Cabinet for
15 Major Contracts, as a Cabinet, the Executive Council did
16 mandate, that's when it would happen.

17 COMMISSIONER HICKINBOTTOM: Can I just make sure I've
18 got this clear, Honourable Mr Fraser. By September 2010,
19 according to paragraph 32, Bills of Quantities have been
20 produced for the whole project where the estimated project cost
21 was something over \$6.5 million, and you think and I understand
22 this that, those Bills of Quantities were probably prepared by
23 the Public Works Department on the basis of the design done by
24 Systems Engineering, but in any event, that's what the total
25 costs were.

1 Part of the costs--

2 THE WITNESS: May I interrupt for a second?

3 COMMISSIONER HICKINBOTTOM: Certainly.

4 THE WITNESS: It says--I said based on the documents
5 produced by Systems Engineering. I'm not--I'm not--at this
6 point I'm not sure if that's what--the only documents that were
7 used. I don't know what AR Potter produced, if it produced some
8 buildings or something else, I'm the sure, but I'm not sure who
9 produced these figures.

10 COMMISSIONER HICKINBOTTOM: No, no, a fair point, but
11 the Bill of Quantities was for something over \$6.5 million for
12 the whole project. Part of the project was the bulkheading, and
13 you said that the bulkheading could be done by way of Petty
14 Contracts.

15 THE WITNESS: That's procuring--just procuring the
16 materials for the bulkhead by Petty Contracts.

17 COMMISSIONER HICKINBOTTOM: You're just procuring the
18 materials.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: But that was the first
21 step.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: Those costs were being
24 expended in respect of the project, which was worth--which was
25 valued at \$6.5 million, but you didn't think it was appropriate

1 to go back to Cabinet with regard to the \$6.5 million sum for
2 the project when proceeding with the Petty Contracts for the
3 bulkheading materials.

4 THE WITNESS: Did the Cabinet--was the \$1.35 million a
5 part of a Cabinet Decision? Was that taken to Cabinet?

6 COMMISSIONER HICKINBOTTOM: Well, according to the
7 report, which is what we've got, probably not because, after the
8 Cabinet decisions are set out at the top of page 6 of the
9 report, we then go on to paragraph 19 to advance the project,
10 the Ministry entered into a contract with AR Potter. So, on the
11 basis of this, I have assumed that the Potter contract was after
12 the Cabinet Decision?

13 THE WITNESS: Correct.

14 COMMISSIONER HICKINBOTTOM: My only point is that the
15 purchase of the bulkheading materials, that was the first step
16 in quite a long road of a \$6.5 million project.

17 THE WITNESS: That would be correct.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

19 Yes, Mr Rawat.

20 MR RAWAT: Thank you.

21 BY MR RAWAT:

22 Q. If we look now, please, Honourable Fraser, at 33 and
23 34 in your document, those two paragraphs, please.

24 Now, what's said is that between December 2010 and
25 November 2011, two events related to the development unfolded

1 concurrently. The first was an application from Mr Earl Fraser
2 of Hannah Reclamation Limited to lease a seabed in the western
3 end of the Harbour adjacent to Parcel 105 block 2736C. Second
4 was the Government's engaging of seven Petty Contractors for
5 bulkheading for the west side of Sea Cows Bay Harbour at the
6 request of the Minister/District Representatives, The Honourable
7 Julian Fraser.

8 Now, that's--and you might want to have--just turn up
9 729 of the Auditor General's Report? The actual report itself.

10 A. I've got that.

11 Q. So, you've got both documents in front of you?

12 Now, in relation to that, that--it seems to me
13 paragraph 33 is a paragraph that you take issue with.

14 A. Yes.

15 Q. And what you take issue with is that the bulkheading
16 was not for the western end of Sea Cows Bay Harbour; is that
17 right?

18 A. Right.

19 Q. And that's--that's the point that you take issue with?

20 A. Yes.

21 Q. Perhaps if you could just help the Commissioner in
22 terms by reference to that marked plan that you produced, just
23 why you say that the--saying the bulkheading was for the west
24 side of Sea Cows Bay is wrong.

25 A. Okay. The western end of the project, that's where

1 the first arrow, if you look at the map, that's exactly where
2 the first arrow is.

3 Q. So, that's the shorter arrow, isn't it?

4 A. Yes. The shorter arrow. That's the western end.

5 And if you move from that point where that--where that
6 arrow is into about the middle between those two things that
7 look like parking lots, those are jetties, piers.

8 Are with me?

9 Q. Yeah.

10 A. Move along the bulkhead. 200 feet. Only 200 feet
11 belongs to Earl Fraser, Hannah Reclamation. 200 feet of
12 bulkheading, the contracts that were issued, as it says here,
13 and the Government engaged--engaging of Petty Contracts to
14 provide bulkheading for the western end of Sea Cows Bay and that
15 Earl Fraser, Hannah Reclamation Limited, to lease the seabed on
16 the western end, suggests that those Petty Contracts that were
17 issued, were issued to do that portion of the harbour, that
18 western end. When, in fact, as I pointed out before, the
19 contracts were issued to do the entire bulkhead which is
20 1,520 feet of bulkhead, not 200 feet of bulkhead.

21 So it was for all--the front--and that side of the Bay
22 is the north side, really. It was to do the entire bulkheading
23 on the north side of the bay.

24 Q. I see.

25 A. 1,520 feet of bulkheading, not just 200 feet where the

1 property owned by Hannah Reclamation is located.

2 Q. So, does it come to this, I mean, firstly, you accept
3 that Hannah Reclamation made an application to lease the seabed
4 on the western end of the harbour?

5 A. And I take exception because I'm wondering what does
6 that have to do with anything.

7 Q. Well, it may be something we need to come back to as
8 we go through the report, but that's right, isn't it, Hannah
9 Reclamation did make an application--

10 A. Yes.

11 Q. --of the seabed.

12 And it's also right that your Ministry engaged with
13 seven--engaged in seven Petty Contracts to provide bulkheading
14 in Sea Cows Bay Harbour?

15 A. For the entire north side of the Sea Cows Bay Harbour.

16 Q. Yeah, but you used seven Petty Contracts to do that,
17 didn't you?

18 A. Right.

19 Q. And you did it, on your evidence, for the area that
20 you've marked on your plan, between the two arrows?

21 A. Exactly.

22 Q. And so the issue that you have with this paragraph is
23 that it gives the impression that the contractors were engaged
24 only to provide bulkheading in an area that was--that was
25 encompassed by the area leased by Hannah Reclamation?

1 A. That's exactly what--that's exactly what the report is
2 trying to do.

3 And it's even more vivid in a later stage in the
4 report. It says it's--it explicitly said it.

5 Q. Which paragraph is that?

6 A. I have to find that now. Oh, goodness. That the
7 activity was being focused on developing the area. Okay. If
8 you look at paragraph 79, 738, 738 and you will check the point.

9 Q. Yeah.

10 A. 79.

11 Now, you're looking at my document; right?

12 Q. Yeah, but this is also--there is a difficulty that we
13 can tackle with now in relation to your document, Mr Fraser, and
14 it's this: If you look at that date of your document, it's 25th
15 of August 2014.

16 A. Yes.

17 Q. If you look at the date of the report that was
18 submitted by the Auditor General, it's 27th of August 2014.

19 A. Sir, that--that's a point that I have to make as well.
20 How could the 25th of August have one thing and the 27th of
21 August have another thing in it, but I want to raise this
22 particular issue with you now, then we can deal with the dates
23 later.

24 Q. Well, isn't it--isn't--the first question is where did
25 you get hold of the report dated the 25th of August 2014, and it

1 is your report provided it to the Commission?

2 A. I have to--this is now back in 2014. I have to say
3 that this is probably the same report that we debated in the
4 House of Assembly.

5 Q. But what appears to have happened is that--and it's
6 some of the concerns that you raise on that report did not find
7 their way into the final report, so it appears that where you
8 have raised queries--and I can show you an obvious example, if
9 you want--

10 A. Let's--can we just deal with this before and then go
11 back to your point?

12 Q. Well, that's what I'm trying to do, Honourable Fraser.
13 The point is that between the 25th of August--on the 25th of
14 August 2014 document, you raised a number of queries. They
15 don't appear in the 27th of August 2014 document, which might
16 suggest that the Auditor General took your concerns on board and
17 amended the report accordingly, and so the report that the
18 Commissioner has been considering is the report that the Auditor
19 General says she submitted. You appear to have an earlier
20 version.

21 A. And this earlier version is exactly the story that
22 they were creating. If someone--how did they get this
23 information the first time--in the first case? Where did this
24 information come from? It goes to show how erroneous the report
25 is. And I think that you owe it to truth and fairness to look

1 at the report, how it was generated, where the facts are, and
2 where the facts are not. And I'm looking at the report that was
3 created as it was created, and I'm showing you where it says
4 here in 79: "The project activity was being focused on the
5 development area--on developing the area owned/leased by Mr Earl
6 Fraser, who was the brother of The Honourable Julian Fraser".
7 That's what it says.

8 Q. Look at 79 in the document that was actually submitted
9 by the Auditor General. Does it say that at 79?

10 A. "The above transaction, because of their materiality
11 and the relationship between Mr Fraser, Earl Fraser and Kenneth
12 Fraser and Honourable Julian Fraser", that one is talking about.

13 COMMISSIONER HICKINBOTTOM: But, Mr Fraser, what
14 appears to have happened is that the report upon which you've
15 put comments was an earlier report. It was clearly a draft
16 report. It is not the published report. The comments that
17 you've made in your square boxes, some of them appear to have
18 been taken into account by the Auditor General when she
19 completed her final report because, for example, in
20 paragraph 33, you say with some force that the reference to
21 bulkheading for the western end of Sea Cows Bay Harbour is wrong
22 because it was the whole side of the bay, that has been taken
23 into account in the published version. There is no reference in
24 the published version to--well, the wording has changed. There
25 is a reference there to the west side of the harbour, not the

1 western end, so your point has been taken into account.

2 THE WITNESS: Commissioner, the wording has been
3 changed because the Auditor General has been caught fabricating
4 the story to suit her narrative.

5 COMMISSIONER HICKINBOTTOM: But--no, but that's an
6 extra step. But do you accept that, on the basis of the
7 comments that you made to the Auditor General, she changed her
8 Report?

9 THE WITNESS: Cosmetically, but the substance of what
10 she's trying to project is still there, which is false.

11 MR FLIGELSTONE DAVIES: If I may just have a second
12 with my client again, maybe I can see if I can assist. I
13 apologize.

14 COMMISSIONER HICKINBOTTOM: But are you assisting with
15 legal advice, Mr Fligelstone Davies?

16 MR FLIGELSTONE DAVIES: Um...

17 COMMISSIONER HICKINBOTTOM: What you can't do is you
18 can't assist in the evidence. The evidence is Mr Fraser's
19 evidence, not Mr Davies's evidence.

20 MR FLIGELSTONE DAVIES: Well, perhaps it would be
21 useful because you said this is the one that was published but
22 the Auditor General says that she had published, and so the
23 question is is whether or not the one that the Auditor General
24 says she's published is the one that was, in fact, debated in
25 the House of Assembly. I think maybe that could

1 assist--gathering that information could assist the Commission
2 in inquiring as to whether--as in addressing The Honourable
3 Mr Fraser's concerns, I should say.

4 MR RAWAT: With respect to Mr Davies, the Auditor
5 General's Reports have been with Silk Legal for some time.
6 Honourable Fraser was--his attention was drawn to the fact that
7 questions would be asked about that report. It's somewhat
8 surprising that this is coming--being raised so late in the day
9 as something that now needs to be checked.

10 COMMISSIONER HICKINBOTTOM: But also as a matter of
11 process, what happens, according to the evidence before us,
12 Mr Fligelstone Davies, is that the Auditor General produces a
13 draft report. She allows what I will call "interested parties"
14 an opportunity to respond to that report. She then produces a
15 final report which is then laid on the table in the House of
16 Assembly.

17 If, as a result of the debate, any corrections are
18 appropriate, then that's done not by changing the final report,
19 because it's the final report, but by producing an addendum to
20 that report. No addendum has been produced in respect of this
21 report. This is the Auditor General's Final Report. This
22 report--and I think Mr Fraser accepts--takes into account some
23 of the comments that he has made. He--I think he questions the
24 motives of the Auditor General, but they do take into account
25 some of the comments.

1 So, it looks as though, at least some of the comments
2 in the boxes, perhaps all of them, were presented to the Auditor
3 General who took them into account before she produced a final
4 report.

5 MR FLIGELSTONE DAVIES: And certainly that would be a
6 good question for The Honourable Fraser.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 Well, let's resume Mr Rawat's questions to The
9 Honourable Fraser.

10 THE WITNESS: Commissioner? Commissioner?

11 COMMISSIONER HICKINBOTTOM: Yes, Mr Fraser. Go ahead.

12 THE WITNESS: If the report that I'm looking at is
13 dated the 25th and the Auditor General's Report is the 27th,
14 you--first of all, you said interested parties would have been
15 given the opportunity to look at the draft report. Certainly I
16 wasn't given that opportunity. No one sent me the report.

17 The other thing is if I'm looking at the draft report
18 dated the 25th and the Auditor General final report of the 27th,
19 how did these comments make it over to the Auditor General in
20 such a short time and have the report published in two days?

21 COMMISSIONER HICKINBOTTOM: Mr Fraser, I can't answer
22 those questions, of course. All I'm saying is that in terms of,
23 say, your comment on paragraph 33, the comment that you have
24 made on that paragraph on the version of the report that you've
25 provided appears to have been taken into account in the

1 published version that we have in the bundle. There's all I can
2 say.

3 Anyway, let's try and make some more progress,
4 Mr Rawat.

5 BY MR RAWAT:

6 Q. And if I could explain as well, Honourable Fraser,
7 what I--the focus of my questions are really on your role as the
8 Minister of Communication and Works in relation to this project.
9 Can I take you just to paragraph 34.

10 A. Yes.

11 Q. Now, the--you've accepted that there was an
12 application from Hannah Reclamation Limited, and I think your
13 evidence is is that the lease application was for jetties. But
14 was it an application to lease the seabed?

15 A. I can't recall which--what the applications were for.

16 Q. At this time, you don't--you can't remember what the
17 application was for.

18 A. Whether it was for seabed or jetties. It could have
19 been either one. I believe maybe it was--I don't know which
20 application is--was for what.

21 Q. Now, the--at that time, it looks that such an
22 application would not have been made to your Ministry but to the
23 Ministry of Natural Resources and Labour; is that right?

24 A. That's right.

25 Q. And if we look at paragraph 36--

1 A. Yes.

2 Q. --you'll see that the application is recorded as
3 having been approved by Cabinet on the 18th of May 2011 with 13
4 conditions, which I won't read out. But when it came before
5 Cabinet, did you recuse yourself?

6 A. I don't know if "recuse" is the word, or "declare" or
7 whatever it was. Something happened.

8 Q. Well, if--

9 A. I'm not sure.

10 Q. Would you have declared an interest?

11 A. Declared--I would have declared an interest--not my
12 interest but the interest of someone else, a related party.

13 Q. Someone else?

14 A. Yes.

15 Q. As I understand the report, Hannah Reclamation Limited
16 is your brother?

17 A. Hannah Reclamation is--he--I believe that he's the
18 Shareholders in that company.

19 Q. But--so, because your brother is involved in that
20 company, would you have declared that interest when his
21 app--when the application came before the Cabinet?

22 A. I would have declared his interest.

23 Q. And as a result of declaring that interest, would you
24 have stepped out of the meeting and not voted on the
25 application, or would you have voted on the application?

1 A. Again, I can't say exactly what happened in that
2 meeting because there are options. Once you've made a
3 declaration, there are options. I don't know what option--which
4 option were exercised.

5 Q. But what openings were available to you in
6 September 2011 when you're declaring you have an interest as a
7 Minister?

8 A. Okay. Let me get it for you.

9 (Pause.)

10 A. Yeah. Okay. If you look--if--if--I'm looking at--I'm
11 looking at--I'm looking at the Cabinet--I'm looking at the
12 Cabinet Handbook on Declaration of Interests. It says:
13 "Ministers and Members of Cabinet attending meetings in relation
14 to matters in which they have an interest must declare their
15 interests or Members of their family interests".

16 Now, there is an ambiguity in that statement, but I
17 didn't have an interest, so there was no interest for me to
18 declare. But it goes on to say "or Members of their family
19 interests", and I would have declared that.

20 Now, the options are following the Declaration of
21 Interests, it is then for the Cabinet to excuse the Minister or
22 Member from the--for that--or Member--for that Minister or
23 Member to excuse himself or for the Cabinet to allow that
24 Minister or Member to participate in the discussions thereafter.

25 So, I can't tell you exactly what option. I don't

1 have the minutes to say what I did. Anything I said might most
2 likely be, you know, a guess on my part.

3 Q. I see. So you can't remember at this--at this time
4 what you did in relation to this application.

5 A. Right. And I'm saying that because--because I'm
6 seeing it here--where is that written in the report that I
7 recuse myself? Does it say it in the report?

8 Q. We're looking at 36 at the moment.

9 A. Pardon me?

10 Q. We're looking at 36 at the moment.

11 A. 36. That speaks to recusal.

12 I'm looking at 36, myself, and I don't see the word
13 "recusal" in there. Okay, 35.

14 COMMISSIONER HICKINBOTTOM: I don't think there's
15 any--there's no reference to you recusing yourself, Mr Fraser.

16 THE WITNESS: Okay. Well, if there's no reference,
17 then I don't know where that came from.

18 BY MR RAWAT:

19 Q. If you look--look at paragraph 78.

20 A. 78.

21 Q. The Auditor General's Report.

22 A. Hm-umm.

23 Q. Which is at page 738.

24 A. Okay. 78: "The record indicates that in two prior
25 instances where Cabinet considered applications made by Hannah

1 Reclamation Limited/Earl Fraser for lease" of "the seabed on"
2 June 11 and June 18, "Hon Julian Fraser declared his interest",
3 which is wrong--I don't have any interest to declare--"and
4 recused himself from the matter. Cabinet Extract for the
5 18 May 2011 does not indicate whether the same occurred when
6 Hannah Reclamation Limited's application" was made.

7 Now, that is the one for the jetties.

8 Q. That's the ones that were being considered at the time
9 when you were the Minister responsible for the project, and
10 that's why I asked the question.

11 A. I was--I was Minister for the project on both cases,
12 both cases, 2011 and 2008.

13 Q. But we know from the report, which I appreciate that
14 you have serious concerns over, but the Auditor General has been
15 able to confirm that you recused yourself in 2008. The
16 question--

17 A. Correct.

18 Q. --the question is what did you do in 2011. Do you
19 remember?

20 A. I don't remember what happened, and I don't know. If
21 you said I recused myself, and I'm saying I don't know if that's
22 the case, she said I declared my interest. I didn't declare my
23 interest. I don't have any interest, but recusing myself I
24 don't know if that's what I did or I exercised the options.

25 Q. Well, let's try and move on. Let's move on to

1 paragraph 39.

2 A. Yes.

3 Q. Now, what's said there is that you were arranging for
4 Petty Contracts to be issued on the project, seven contracts if
5 we look at the next page were issued with work to commence
6 January 2011. Now, you have seven contractors there. How were
7 they chosen?

8 A. Usually--usually what happens is they'll have a--I'll
9 have a meeting in the District; District representatives will
10 have a meeting in the District, informing people of works that
11 are coming up, and that--the requirements to qualify for a
12 contract. And if such people make representation that they're
13 interested, then they are considered for the Petty Contracts.

14 Q. Why is it limited to contractors in your District?

15 A. Well, here is the beauty in the District system. In
16 the District system, each representative is given a fair amount
17 of work, equivalent amount of work, within his District, and he
18 is expected to make sure that the people in his district
19 benefits from work in his District. And that's happening--that
20 happens across the Territory. If I get \$250,000 to do some
21 roadworks, the guy in the seventh and the eighth and the ninth
22 would get \$250,000 for some roadworks in his District, or
23 something equivalent, and he's supposed to make that sure that
24 the maximum benefits are derived by his constituents, and that's
25 why it's within the District.

1 Q. Just clarify this a little further. You were entering
2 into contracts as the Minister for Communication and Works, not
3 as the District Representative.

4 A. The District Representative would recommend who should
5 do the work, based on the response given by the constituents to
6 do work and their qualifications. The District Representative
7 would recommend.

8 Q. Is that sort of policy or approach written down
9 anywhere?

10 A. It's not--it's not written, but it's practice.

11 Q. And how long has it been the practice for?

12 A. Oh, from ever since we had District--the District
13 system.

14 Q. So-

15 A. You go into any District and you see work taking
16 place, unless it's a Major Contract, 99.9 percent of the time
17 the people working on those projects are from the District.

18 Q. So--

19 A. You'd get crucified if it were different.

20 Q. If you have--say if you have a project, if a Ministry
21 is running a project within a District, then the District
22 Representative is invited to make recommendations as to suitable
23 contractors.

24 A. That's--that's the basic norm, and depends--and it
25 also depends on the administration. Some administrations,

1 if--if your administration is in the Government and the District
2 Representative is not one of your Members, sometimes you don't
3 talk to him, you don't consult him. But normally that's the
4 case. When there is work happening in your District, the
5 Ministry would tell you about it, and if it's eight Petty
6 Contracts, they might hold five and tell you give them five
7 names or something to that effect.

8 Q. And in this case, you put your District Representative
9 hat on, had a meeting in your District and--

10 A. Yes.

11 Q. --invited contractors to come forward.

12 A. Right.

13 Q. And what process was used to ensure that those
14 contractors would provide best value for money?

15 A. Well, their experience based on work that they've
16 done. In the past, usually they have all done work before--

17 Q. And who made the assessment in this case?

18 A. Familiarity with their work between the Representative
19 and the Public Works Department would know that these people are
20 capable.

21 Q. But ultimately it's the Minister that decides on who
22 gets the contract, isn't it?

23 A. No.

24 Q. So who decides--

25 A. No.

1 Q. --who gets the contract?

2 A. The person who signs the contract.

3 Q. So, in this case, you would have put forward--you
4 stopped being the Minister for Communication and Works. You put
5 forward names as recommendations as to who should get the work
6 in your District. Then there would have been--you would have
7 explained why you thought these people were--these contractors
8 were suitable to do the work. The Public Works Department may
9 have had input, and then someone else in the Ministry of
10 Communication and Works would have made the decision.

11 A. The decision to issue the contract to that individual,
12 the decision to issue the contract to that individual or the
13 company comes to--comes from the Minister of Finance. He makes
14 the decision. He's the one who signs the contract.

15 Q. So, when it goes--once the seven individuals or seven
16 companies were--individuals/companies were selected, how does it
17 go from your Ministry to the Minister of Finance?

18 A. It's taken there. Someone takes it there. What
19 happens is the--once the Bill of Quantities comes to the
20 Ministry and the names are attached, they go to Public Works to
21 prepare the contract, Public Works would get in touch with the
22 name--the persons named, get their information whether it's
23 trade licence and good standing certificates, prepare the
24 documents. They would come back--prepare a contract--prepare a
25 contract. They would come back to the Ministry, and the

1 Accounting Officer would raise a Purchase Order for it. Once a
2 Purchase Order is raised, it's then sent to the Minister of
3 Finance for signature. And then it goes--I think it goes
4 back--after the Minister of Finance signs it, it goes back to
5 Public Works where the contractor goes to sign it, so the two
6 signatures that mean anything on the contract is done by the
7 Minister of Finance and the contractor.

8 Q. In this case, if you look at paragraph 42, the seven
9 contractors who were engaged were paid an initial 10 percent
10 deposit of their respective contract amounts, and their
11 respective contracts amount between \$96,000 and \$97,000.

12 A. Yes.

13 Q. Only two of them completed the job and were paid in
14 full.

15 A. Right.

16 Q. Can you remember what was done in respect of the
17 uncompleted work?

18 A. What was done in respect for the uncompleted work?

19 Q. Yes. Well, you have five contractors out of seven who
20 get 10 percent of their deposit and don't complete the job.
21 Were they asked to repay the deposit?

22 A. Well, let's go to the first part as to what took place
23 before we get to repaying the deposit.

24 Q. Well, could you just deal with that question, please,
25 Honourable Fraser: Were they asked to repay the deposit?

1 A. Oh, I don't know. I wouldn't know.

2 Q. Was it something that you ever became aware of whilst
3 Minister of Communication and Works that seven contractors that
4 had been given Petty Contracts, of the seven, five did not
5 fulfill the contract?

6 A. And the reason they didn't fulfill contract is because
7 the Government stopped the work. So the Government of the day
8 is--was responsible for making sure that they complete the job
9 or if they stop the work, terminate the contracts.

10 Q. That wasn't the question I asked you. You've given
11 the reason why they didn't complete the work. Were you ever
12 told that they hadn't completed the work?

13 A. I wouldn't be told because I'm on the street at this
14 time. At this time I'm on the street. I'm not the Minister
15 anymore. If I was the Minister, they would have completed the
16 work.

17 COMMISSIONER HICKINBOTTOM: Mr Rawat, I see the time.
18 We have a Stenographer, Honourable Fraser. We have a
19 Stenographer, and we have been going about an hour and three
20 quarters, I think, and he simply needs to have a five-minute
21 break.

22 THE WITNESS: No problem. No problem, Commissioner.

23 COMMISSIONER HICKINBOTTOM: So, shall we have a
24 five-minute break now, Mr Rawat? Is that--

25 THE WITNESS: No problem.

1 MR RAWAT: Thank you.

2 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Fraser.

3 THE WITNESS: Yes.

4 (Recess.)

5 BY MR RAWAT:

6 Q. Mr Fraser, are you ready to recommence?

7 (Pause.)

8 COMMISSIONER HICKINBOTTOM: Mr Fraser, Mr Fligelstone
9 Davies, are you back with us yet? They're just coming.

10 (Pause.)

11 COMMISSIONER HICKINBOTTOM: Yes, Honourable Mr Fraser.
12 Are you ready to continue? Are we ready to continue? He uses
13 his headphones.

14 (Pause.)

15 COMMISSIONER HICKINBOTTOM: Good. Honourable
16 Mr Fraser, are you ready to continue?

17 THE WITNESS: Yes, I'm back.

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

20 And you can hear and see us; yes?

21 THE WITNESS: I can hear and I can see.

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

24 Mr Rawat.

25 MR RAWAT: Thank you, Commissioner.

1 BY MR RAWAT:

2 Q. Honourable Fraser, just to pick up on the last piece
3 of evidence that you gave before we had the short break, if
4 you're looking at paragraph 41 of the--and it's probably better
5 to look at it in the Auditor General's Final Report, 731.

6 A. Yes.

7 Q. The table of the seven contractors who received Petty
8 Contracts.

9 Now, you said that you weren't aware that only two of
10 those contractors had completed the work, and were paid, paid in
11 full, and you didn't know whether any steps were taken to
12 recover monies from the others.

13 A. Right.

14 Q. Two of those contractors are your brothers, aren't
15 they?

16 A. Yes.

17 Q. That's Kenneth Fraser and then Fraser Incorporate is
18 Earl Fraser.

19 A. Right.

20 Q. Were you not aware from them that they had not
21 completed the work?

22 A. I know the work wasn't completed by five of the
23 contractors. I know that.

24 Q. Yes, but--

25 A. As far as paying back the money, I don't know. I know

1 that because I had that problem throughout the District. It's
2 not the only project that the Government stopped the works on.
3 They stopped the work on every project that was going on in my
4 District.

5 Q. Could I come back to that?

6 A. So I don't know.

7 Q. Can I come back to that a little later.

8 The point that I just wanted to just clarify with you
9 is that, two of your brothers received contracts to do the work.

10 A. Um-hmm.

11 Q. Did they tell you at the time that they hadn't
12 completed the work? I know you've told us the reason, but did
13 they tell you that they hadn't completed the work?

14 A. Why would they tell me and not the other four?

15 Q. All right. Did any of them tell you?

16 A. Nobody told me. Nobody came to me and told me that
17 they didn't complete the work. They told me that the Government
18 stopped them from working.

19 Q. Okay. All right. Look at paragraph 43, then:

20 A. Yes.

21 Q. In addition to the use of--in addition to the seven
22 Petty Contracts, day-workers were also used to prepare the
23 stages area. And a total amount of just over £335,000 was spent
24 on contractors for the bulkheads and day-workers in 2011. One
25 of the points you made was that the land--the point that's made

1 in this paragraph is that the staging area included fencing
2 reclaimed land owned/leased by Earl Fraser and James Fraser in
3 Hannahs where the bulkhead slabs were fabricated. Now, this is
4 a point that you had taken issue with in your comments on the
5 earlier dated report, if you look at your 43, and it's an
6 example, isn't it, of those comments being taken on board
7 because what you added was that--you added "and leased by Earl
8 Fraser, James Fraser in Hannah", and what we see there is that
9 it's written as "owned/leased by".

10 A. 43, owned/leased?

11 Q. Yes.

12 A. Okay. Yes.

13 Q. And if we look at Appendix 4, you look at it in your
14 version, so in your version it's at internal page 24.

15 A. I got it. My version and her version.

16 MR RAWAT: Commissioner, for your note, the page
17 number in--

18 COMMISSIONER HICKINBOTTOM: 745, yes.

19 MR RAWAT: Is 745, yes.

20 BY MR RAWAT:

21 Q. But what you've marked on there, if you look at the
22 second part of Appendix 24, which gives a summary of actual
23 expenditure by year, you say these items were done during other
24 administrations. Check the actual date. But do you accept that
25 when you were Minister for Works, and overseeing this project,

1 there was expenditure whilst you were the Minister?

2 A. On the Project, yes.

3 Q. And the sum that's given for--save for in 2007,
4 \$463,000 was the actual expenditure, and the next largest one
5 was \$211,335. And between 2007 and 2011, you were the Minister
6 responsible?

7 A. What was the money spent in 2007? Not necessarily I
8 was the Minister because I got into office in 2007. What monies
9 were spent on this project during the period of 2007 when I was
10 not the Minister?

11 Q. So, you're saying that some monies may have been spent
12 in 2007 before you took office?

13 A. Not may have. I can't recall if it was spent--if any
14 money was spent on this project in 2007. I cannot recall any
15 monies being spent on this project, the Sea Cows Bay Harbour
16 Project in 2007, not by me. If monies came from the subheads
17 that we were looking--what I pointed out to you how monies are
18 spent for subheads, if monies were spent from any of the
19 subheads, it wasn't on this project, it would have been on
20 something else.

21 Q. In 2007?

22 A. In 2007, yes. Because when I--when I became--I only
23 became active on this project since the time Systems Engineering
24 was commissioned, and it wasn't 2007.

25 Q. So, although sums seemed to have been expended in

1 2008, the date that you say you became active was when Systems
2 Engineering Ltd were engaged?

3 A. Yes. And working on--working on their designs, the
4 works that have designed--they designed.

5 Q. So, what they were issued for their contracts in
6 December 2009, so is your evidence that, even though you were in
7 office from 2007, you did not actually get involved at all in
8 this project until December 2009?

9 A. And Sea Cows Bay Harbour proper where the bulkheading
10 is done, so we need to find out what those monies are spent on.
11 Because there are certain things, they talk about dredging and I
12 don't know when the dredging took place. I don't know when the
13 geodesic surveys were done.

14 Q. Between 2007 and 2009 when Systems Engineering Ltd
15 became or were engaged and that's late 2009, what was your
16 Ministry doing in relation to the Sea Cows Bay Harbour project?

17 A. Nothing.

18 Q. Was it the Ministry that was doing nothing or was it
19 the Minister that was doing nothing?

20 A. I can't recall the Ministry itself doing any work on
21 the harbour. Until the time--

22 (Overlapping speakers.)

23 Q. The way that you've described the arrangements which
24 are the Permanent Secretary signs contracts, when you're dealing
25 with Petty Contracts it has to go through the Ministry of

1 Finance. Was there actually a role for you as Minister in this
2 project?

3 A. In the project, yes, of course.

4 Q. Well, what was the role that you played? You didn't
5 sign the contracts, you couldn't sign the contracts on your
6 evidence. You weren't aware of some of the details, for
7 example, Bill of Quantities, so what role did you actually play
8 as Minister for Communication and Works on this project?

9 A. You actually would direct the policies of the Council,
10 direct the policies of the Council. That is your--making sure
11 that they say that the execution of the Bill of Quantities were
12 taken care of by Public Works, somebody would do that. Making
13 sure that the works that were prepared by Systems Engineerings
14 got converted into contract documents and all that stuff, and
15 making sure that the project moved forward.

16 Q. Is that just a matter for you as Minister to simply
17 ask whether these things are being done, or did you get involved
18 in some of the details?

19 A. Getting involved in the details, no, that's not my
20 job.

21 Q. And you have spoken about your background as an
22 architect.

23 A. Yes.

24 Q. Did you, because of that professional background, feel
25 able to get more involved in this project than you might have

1 done?

2 A. No. I was not--I was no more involved in this project
3 than I was involved in any other project that came through my
4 Ministry from being a District Representative and being a
5 Minister.

6 But I don't--but I don't understand the question why
7 you ask what I did because I said that during the period 2007
8 and up and to the point where Systems Engineers got involved in
9 the project, the Sea Cows Bay Harbour proper, no work was done
10 through my Ministry. It's only after Systems Engineering got
11 involved in the design, and they were completing the design that
12 Public Works was able to convert the design into Contract
13 Documents--not Contract Documents but into Bill of Quantities
14 and create contracts so that people can go ahead and procure the
15 material for the bulkheading.

16 Q. So, in effect--I mean, between 2003 and 2009, nothing
17 was really done on this project?

18 A. I see where there were some--there were some dredging
19 in the harbour and some geodesic survey was carried out by the
20 administration between my time and--my two times serving in the
21 Ministry. I see that other administration did some work.

22 Q. Right. But, in terms of when--I suppose when you came
23 back into office and took it forward, that as you said, starts
24 in late 2009--

25 A. Yes.

1 Q. --when Systems Engineering get involved?

2 A. Right.

3 Q. Okay. Look at paragraph 44, please.

4 A. Yes.

5 Q. What is pointed out there by the Auditor General is
6 that: "In moving forward with the project, there were important
7 omissions in the planning and approval process. Many involved
8 requirements stipulated in the Eight Step Implementation Outline
9 that had been developed by the Ministry in 2006 as indicated
10 below", and she then sets out in the report that eight step plan
11 that we looked at a while ago and which you said was something
12 that you didn't--you were happy to accept, and she says that
13 some of the steps were not taken.

14 Now, what she then points out at paragraph 45, the
15 Auditor General, is that plans hadn't been submitted to the
16 Development Control Authority, contrary to the Physical Planning
17 Act.

18 Now, you say that wasn't necessary because the only
19 work being carried out was fabrication; is that right?

20 A. Just the procurement, and at that stage you don't need
21 to be--to have planning approval for procurement purposes.
22 Those panels could have been manufactured in India, they could
23 have been manufactured in China. You could have bought
24 them--they could have been manufactured anywhere. We didn't
25 physically touch the soil, didn't touch the landscape.

1 Q. The--so, your position is that entering into contracts
2 to fabricate bulkhead panels is not something that you need to
3 take to the Development Authority?

4 A. Absolutely not.

5 Q. The fabrication themselves of the bulkheads is not
6 something you need to take to the Authority?

7 A. The fabrication of the panels for the bulkhead. Not
8 fabricating the bulkhead, just the panels. You don't have to do
9 that because like I said, those panels could have been
10 fabricated right outside your building and brought down to Sea
11 Cows Bay at a later stage. They didn't have to be done on-site.

12 Q. What about paragraph 43 and the day-workers being
13 engaged to prepare the staging area?

14 A. Okay, what about those? Yes, go ahead. What about
15 those?

16 Q. Isn't that the sort of work? If you're preparing the
17 staging area, and you've got heavy equipment operators,
18 truckers, day-workers, aren't you then in a situation where you
19 need to be consulting the planning authorities?

20 A. No, because all they were doing is fencing and
21 clearing the site. They didn't physically alter the site or
22 anything like that. No preparation for building was being
23 carried out. It's a staging area. When you start excavating
24 the site and start pouring concrete or start digging holes and
25 driving piles and all that stuff, that's when you need to get

1 the planning stage. But it's not--the fact that it wasn't taken
2 to the Planning Authorities yet doesn't mean it wasn't going to
3 be done. Of course it had to be done. We knew that.

4 Q. But the situation you're then in, after 2009,
5 Mr Fraser, is that you have agreed to pay between 96,000 and
6 97,000 to seven contractors, and the contracts were entered into
7 between 2010 and 2011, and they're going to use--they're going
8 to supply sheet piles bulkheads. That's what they're contracted
9 to do.

10 A. Yes.

11 Q. You then in 2011 spend a total of 335,000 on
12 contractors for the bulkheads and day-workers, and that's money
13 you're happy to spend, but was the plan then what to stop and
14 then just go off to the Planning Authority at that point, having
15 spent \$335,000?

16 A. Well, that's what--the process would continue. You go
17 to the Planning Authority, along with--how long would it take to
18 complete that process.

19 Q. I assume that's a rhetorical question?

20 A. No, yeah, that's for you to answer.

21 Q. Why couldn't the two steps have been done in parallel?

22 A. It could have, it could have been done in parallel.
23 But who is saying it wasn't being done in parallel? At what
24 stage were we to make a submission to the Planning Authority?
25 Maybe it was just about ready to be done.

1 Q. With respect, Honourable Fraser, the difficulty I have
2 is that I'm not you. I'm not the Minister who is in charge.
3 And you've said that, you know, part of your job was to make
4 sure the project was progressed?

5 A. Yes.

6 Q. You're in a better position than I am to say why,
7 parallel to entering into Petty Contracts and engaging
8 day-workers and truckers, it appears--

9 (Overlapping speakers.)

10 Q. --planning aspect of it wasn't progressed?

11 A. I wouldn't go that far as to say that. It's just that
12 it hadn't made its way to the Planning Department.

13 Q. But do you actually know what was happening with the
14 planning part of the process?

15 A. Well, those documents that Systems Engineers produced
16 would have been part of that submission, and that's all it was,
17 to make a submission with the documents produced by Systems
18 Engineering. That's all--

19 Q. Do you actually know that that was a submission?

20 A. Excuse me?

21 Q. Do you actually know whether they were submitted and
22 was there a submission to the Planning Authority?

23 A. No, no, no, no, no. I don't think there was a
24 submission to the Planning Authority. What I'm saying is that
25 the documents that were produced by Systems Engineering are the

1 documents that would have gone to the Planning Authority. It's
2 just a matter of putting the application together and taking it
3 to the Planning Authority. The same documents that were
4 produced by Systems Engineering because that's what the physical
5 changes to the landscape would have been, based on that design
6 by Systems Engineering. It's not that we have to go and produce
7 some new documents.

8 COMMISSIONER HICKINBOTTOM: But Mr Fraser, you've
9 entered into contract, you'd entered into seven Petty Contracts
10 for the bulkheading for about \$700,000, so you were contracted
11 to pay for that. But without planning approval, you didn't know
12 what the planners were going to say. The planners may have
13 said, "well, no, you can't go ahead with this on planning
14 grounds".

15 THE WITNESS: May I--may I enlighten you--enlighten
16 you to something that you may not know, but it doesn't--it
17 doesn't come down to that because we have millions of examples
18 of developments taking place along the water--along the water's
19 edge in Tortola and approvals were granted, and to say that the
20 planning stages were left out and permitted, overlooked or
21 forgotten is not true because, like I said, the same documents
22 that we have produced by Systems Engineers are the ones that
23 were going to the Planning Department.

24 But the point I was going to make when I was going to
25 say this to you, is that the same--the same Minister of Finance

1 and the Premier who signed those Petty Contracts has the
2 ultimate say in whether a planning approval is denied or
3 granted.

4 COMMISSIONER HICKINBOTTOM: So, are you saying that
5 the planning permission was a foregone conclusion because the
6 Premier override any views of the Authority?

7 THE WITNESS: No, I'm not saying that. I'm saying
8 that--you're saying--you're suggesting to me that the Planning
9 Authority could have--could have denied approval, and I see no
10 grounds for such a denial unless there is something that I don't
11 know about or anyone doesn't know about, and I'm saying to you
12 that, if there was an irrational or what I would consider
13 something that's out of the ordinary, that they would deny an
14 approval, then they would have to talk to him, and he very
15 much--is very much aware by signing those contracts that work is
16 being carried out on the project.

17 COMMISSIONER HICKINBOTTOM: Thank you.

18 BY MR RAWAT:

19 Q. But--I mean, is the reality, Honourable Fraser, is
20 that you cannot say, one way or the other, whether any
21 submission was made to the Planning Authority?

22 A. I would--I would say that there was none made, and I
23 would be surprised if there was any made because I don't think
24 that anyone in the Ministry of Public Works would have made that
25 submission unless I had known about it. But I'm saying to you

1 that we were in a good place for making a submission because we
2 had all the documents necessary for making that submission. The
3 only thing that was necessary to make that submission is the
4 paperwork, filling out the application and what the
5 logistic--those logistics. But it's not that we have to go out
6 and hire someone to prepare documents again. We had the
7 documents to go to the Planning Authority.

8 Q. If you look, please, at paragraph 46.

9 A. If you don't mind--if you don't mind, Commissioner, I
10 just want to make a point because we talk about these Petty
11 Contracts, these seven Petty Contracts. I just want to make a
12 point. If you go back to 41 where the contracts are listed, and
13 you asked about the process for getting these contracts? I want
14 you to know that, in certain instances, in order for someone to
15 get Petty Contracts, they have to go directly through the
16 Premier himself, who is going to sign the contracts, to make
17 sure that he's okay with them working on the project, and that
18 was the case--that was the case with all Fraser and Kenneth
19 Fraser. They made the representation to the Premier himself.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 BY MR RAWAT:

22 Q. Let's go back, then, to 46.

23 A. Yes.

24 Q. Because it's another point made by the Auditor
25 General. It's at 732 in her final report. She says: "Although

1 the preliminary conceptual design and overall principle was
2 approved by the Executive Council (Cabinet) in 2002, the
3 detailed plan has not been presented to this body for
4 consideration and approval. This is essential as the estimated
5 cost of the budget has expanded", and then she gives a figure of
6 \$6,600,000-odd, which is more than four times the 2011 budget
7 for the project of 1,489,000.

8 Now, on the--either the Public Works Bill of
9 Quantities or Systems Engineering Ltd's Bill of Quantities, and
10 you suggested it's most likely to be the former, you have had a
11 much expanded project, haven't you? Was there any reason why,
12 now that you have a detailed plan from Systems Engineering Ltd,
13 you have a Bill of Quantities that is over 6 million, the matter
14 wasn't taken back to Cabinet?

15 A. This matter was never taken to Cabinet on a matter of
16 cost, and it would have gone to Cabinet had any portion of it,
17 as the Cabinet stated. The Cabinet is clear as to when the
18 projects should come back to them. Should--in case there is a
19 Major Contract, then it comes back to Cabinet or Executive
20 Council, their clear on that.

21 And they're also clear on the--the issue of
22 issuing--making Petty Contracts for the projects.

23 Q. And you're referring back to those four points that we
24 looked at before we had the short break; is that right?

25 A. Yes, indeed.

1 Q. But isn't the point this, Honourable Fraser: You now
2 have in 2010 a multi-million pound project? You don't have a
3 project that you're going to be able to deal with by Petty
4 Contract alone, do you?

5 A. It never was intended to be dealt with by Petty
6 Contracts alone. It was never intended to be that way.

7 Q. Why not take it back to Cabinet?

8 A. When--when the time comes to issue Major Contracts, it
9 goes back to Cabinet.

10 Q. And so what you have a situation, then, isn't it, and
11 this is what the Auditor General's Report makes the point at 49,
12 that you have this situation now. You have entered into Petty
13 Contracts, you've engaged day-workers, you've got a Bill of
14 Quantities that is for a significant sum but you don't have
15 approval by anybody. You don't have approval by the Planning
16 Authority, you don't have approval by the Cabinet. You don't,
17 as it's made out--as set out at paragraph 49, have "a government
18 appointed project manager to ensure that the public interest is
19 safeguarded and public funds applied to the project are duly
20 certified and performed within the scope of the project". When
21 was all that going to happen?

22 A. It's going to happen in due course. We only at
23 Stage 1 from the Cabinet Decision right now. That's all we're
24 doing. Save one from the Executive Council Decision, tendering
25 process was to be waived to allow for the Ministry of

1 Communications and Works to engage contractors to procure
2 material for bulkheading the harbour at Sea Cows Bay. Major
3 Communications and Works proceeded to carry out further dredging
4 and bulkheading the harbour through a series of Petty Contracts,
5 and if necessary, by Major Contract providing that the Executive
6 Council's approval be sought before any Major Contract is
7 awarded.

8 Q. And even though you've got a contract that's now four
9 times--the estimate of the project appears to have increased
10 four-fold.

11 A. You can say that--you can say that all day. My
12 position is still the same.

13 Q. So, until you entered into a Major Contract, you would
14 not take the matter back to Cabinet?

15 A. I'm not saying that. I'm saying that I didn't have
16 to. I could have taken it back at any time, but I'm saying I
17 didn't have to. As you're suggesting that I had to.

18 Q. Why didn't you take it back at any time?

19 A. Because it wasn't necessary.

20 Q. So, it wasn't necessary to take it back to Cabinet
21 even though you're now dealing with a project worth over
22 \$6 million?

23 A. That's what you're saying, that the project is worth
24 \$60 million. I'm telling you--

25 (Overlapping speakers.)

1 A. You can't tell me where those figures came from.

2 Q. They appear to come from the Bill of Quantities that
3 you say is most likely to have been prepared by the Public Works
4 Department?

5 A. Yes, compared to--from Bill of Quantities that were
6 prepared by some schematics, or a person who I don't know where
7 those figures came from, either. But the fact--the bottom line
8 is, as I said to you before, when the time came for it to go to
9 Cabinet, it would have gone to Cabinet.

10 Q. If we look, please, at--

11 MR RAWAT: Sorry, if I could have a moment, please,
12 Commissioner.

13

14 BY MR RAWAT

15 Q. The table in your document, please, Mr Fraser, it's
16 at--if you find paragraph 56 for yourself?

17 A. Yes, I do, I have it.

18 Q. And in fact, if you turn up--it's easier to turn up
19 734 as well?

20 A. This is--okay, 734.

21 I've got it.

22 Q. So, in your version, the document that you commented
23 on, you pointed out that--and this is in relation to areas that
24 the approved--that were approved for reclamation.

25 A. Yes.

1 Q. You pointed out in your document that James A Fraser
2 and Glanville Fraser, James Fraser & Associates had the same
3 lot, not as the table shows two separate lots.

4 Do you see that?

5 A. Yes.

6 Q. In the version that the Auditor General, it's in the
7 Auditor General's Final Report, 734, that's been corrected?

8 A. Yes, I noticed that.

9 Q. And what's also corrected and changed is, if we look
10 at it, paragraph 56 and 57 of the version that you commented on,
11 have been, in fact--

12 (Overlapping speakers.)

13 A. Yes.

14 Q. --from the final report.

15 The question I wanted to ask though, is picking it up,
16 in your comments at this stage, you say that the developments
17 involved all nine Developers. Just looking at that list there
18 in that table at 734, who are the nine Developers you're
19 thinking of?

20 A. I'm thinking that some of these Developers don't
21 exist, and then there are some whose name is not on--are not
22 listed.

23 Do you want to go through it?

24 Q. So, there were others who were Developers?

25 A. You want me to eliminate the ones who don't exist for

1 you?

2 Q. So, you're saying that some of the people listed in
3 that table don't exist?

4 A. They don't exist, not only--not because they are
5 deceased or anything, but they don't exist as far as physical
6 presence is concerned around the west--the north shore of the
7 Sea Cows Bay Harbour. I can point them out to you, and now and
8 tell you the ones that do exist are not here.

9 Q. What paragraph 55 of the Auditor General's Report says
10 is that the: "The approved reclamations for the Sea Cows Bay
11 Harbour area as provided by the Ministry of Natural Resources
12 are summarized in the table that follows and detailed further in
13 Appendix 3 of this report". And that (drop in audio) what the
14 table is.

15 So, this is information from--that the Auditor General
16 appears to have obtained from the Ministry of Natural Resources
17 and Labour, but you say that that information is wrong?

18 A. Absolutely.

19 Q. But you don't appear to have commented--made that
20 comment in the draft--in your draft comments?

21 A. No. Appendix 3 discharges this meeting--you're
22 looking at--I'm speaking specifically about the chart now.
23 You're saying that I didn't make that comment?

24 Q. You're comment on Appendix 3?

25 A. On the chart.

1 The chart at 734, 55, 56.

2 Q. Yeah.

3 That's the information that's come from the Ministry
4 of Natural Resources and Labour.

5 A. And I'm saying to you that it's incorrect.

6 Q. And did you raise that in 2014?

7 A. It's in my--it's in my Report. That information is in
8 my Report.

9 COMMISSIONER HICKINBOTTOM: The top of the page on
10 page 16, there's a box at the top of the page above the table.

11 BY MR RAWAT:

12 Q. But are you saying that--I understood that box at the
13 top of the table to say that amongst the list were people--list
14 of people who don't own a lot, but are they people who also
15 don't lease a lot?

16 A. Well, that's what I mean. Yes, they don't lease, they
17 don't own.

18 Q. So, amongst this list that was provided to the Auditor
19 General of people who don't either lease a lot or own a lot in
20 the Sea Cows Bay Harbour?

21 A. Yes.

22 COMMISSIONER HICKINBOTTOM: But the two boxes which
23 deal with your brother's ownership on page 734 of the bundle,
24 they do own those lots.

25 THE WITNESS: My brothers?

1 COMMISSIONER HICKINBOTTOM: Yes, Earl Fraser 1.215
2 acres and James Fraser/Glanville Fraser/James Fraser &
3 Associates, 1.5 acres, they do own those lots, do they?

4 THE WITNESS: No. If you're--are you looking at mine
5 or the Auditor General's Report, which report are you looking
6 at? Mine? James Fraser doesn't own a lot.

7 COMMISSIONER HICKINBOTTOM: I'm looking at the
8 published report because the published report takes into account
9 your comments.

10 THE WITNESS: Okay. So, this is more correct, the
11 published report is more correct now than the one before.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: However, it's still not correct. It's
14 not correct because it doesn't address those two lots that were
15 listed as separate.

16 COMMISSIONER HICKINBOTTOM: Exactly, yes. Thank you.

17 THE WITNESS: But it's still incorrect. Because it
18 has people on there that doesn't exist, and it omits people who
19 do exist. And when I say that it includes all nine lot owners,
20 there are nine lot owners, and they're not all on this list.

21 COMMISSIONER HICKINBOTTOM: Yes, thank you.

22 BY MR RAWAT:

23 Q. Go to 59, though--57.

24 A. Got it.

25 Q. You can do it in the Auditor General's Report.

1 What the Auditor General says--and this is obviously
2 the Auditor General writing in 2014 but: "The development of
3 the area still lacks adequate management and control, and this
4 is seen in the following: Persons continue to reclaim areas
5 before securing approval, lease agreements not pursued by
6 persons who've completed reclamations and are actively using the
7 property. Individuals fail to report and register the size of
8 the area reclaimed. Individuals exceed reclaimed areas without
9 penalty or correction. Applications are allowed to languish
10 without adequate information and feedback to the applicants".

11 Now, during your time as Minister of Communication and
12 Works, did you put in any management or control in relation to
13 Sea Cows Bay?

14 A. Now, if it's in relationship to what you just read,
15 this is a matter exclusively for Natural Resources and Labour,
16 what you just read, that whole Section 57. If you're talking
17 about the project--now, what are you talking about, the project?

18 Q. No, I'm talking about 57. So, I just wanted to
19 confirm this is outside your area of control; is that right?

20 A. Right. However--however, I must state, in fairness to
21 these people, that once the Executive Council had taken its
22 Decision and you would have seen that in the decision itself,
23 that all development in the harbour should conform to the
24 decision that was taken, so some people had reached the point
25 where they just stopped doing whatever they were doing. Most of

1 them had done that, stopped whatever they were doing, and
2 waiting for Government to make the next move.

3 Q. And which arm of Government was to make the next move?
4 Was it the Ministry of Communications and Works or was it the
5 Ministry of Natural Resources and Labour?

6 A. Communications and Works.

7 Q. But in terms of monitoring whether, for example,
8 someone had reported and registered the size of the area that
9 was reclaimed, that's a matter for Natural Resources and Labour?

10 A. Yes, it was--it is.

11 Q. And at least in your time as Minister 2007 to 2011, if
12 the Natural Resources and Labour had been undertaking those sort
13 of steps, would they have let your Ministry know?

14 A. It would have gotten to me one way or the other. As
15 District Representative, someone might have come to me and said
16 they got a letter from the Natural Resources and Labour saying
17 so and so, and I would have known. One way or the other, I
18 would have known, somebody in Natural Resources and Labour would
19 have consulted also the Ministry of Communication and Works and
20 saying that someone made an application for something and what
21 should they do, there was coordination and cooperation between
22 us.

23 Q. And so, in terms of the information reaching you, it
24 would have come either to you as a District Representative
25 or--the two are not mutually exclusive--to you as Minister?

1 A. Yes.

2 Q. Could we just go through to 63, please--well, 62,
3 first of all.

4 A. Yes.

5 Q. One of the points that the Auditor General's Report
6 raises is about the fact that, firstly, she notes that the total
7 spend from the account set up to finance the Sea Cows Bay
8 Harbour Development Project was \$1,157,000. But if you look at
9 62 onwards, the point that's made is that the money was coming
10 from different accounts and different subheads.

11 A. Yes.

12 Q. And if you look at 63, what the Auditor General says
13 there in the report is: "The use of multiple accounts across
14 recurrent and capital budgets will create challenges in
15 determining the overall cost of the project. This will be
16 compounded by the fact that none of the accounts were used
17 exclusively for this project. In 2007 the Sea Cows Bay Harbour
18 Development account, created to facilitate and finance the
19 project, was used for a retaining wall, sidewalks and road works
20 within the Third District. Projects which had no direct
21 association to the harbour development".

22 And what she refers to there is there is an issue of
23 non-transparent accounting.

24 Now, when you returned to office--and you've
25 explained--your evidence is you gotten engaged with this project

1 when Systems Engineering Ltd came on board, but as far as you're
2 aware, were any steps taken to try and improve the way that
3 monies were being paid for this project?

4 A. To improve--I had no problems with the way it was
5 being done because the budget is clear on how the monies are
6 spent. If you look at 66--64 in the Auditor General's Report
7 where it says--I'm not coming off your point, I'm just trying to
8 reinforce the point I'm trying to make to answer your question.
9 It says "adding to the issue of non-transparent accounting is
10 the manner in which payments were recorded in the Ministry of
11 Communications and Works expenditure records. Details of the
12 expenditure were omitted both from the manual (vote book) and
13 electronic (computerized) records that feed into the Treasury's
14 accounting system. The accounts only referred to an invoice or
15 contract number".

16 Now, when you take a voucher and you're expected to
17 write the entire project description on that in two lines, it's
18 insane. If I give you the project, the contract number or the
19 invoice number, what you are supposed to do is look for that
20 contract because when a Petty Contract is issued, for instance,
21 it's done in multiple copies like eight, and they go all over
22 the place, including the Auditor General's Office. So, that
23 tells you what the monies were expended for. There's a certain
24 amount of work involved. And no matter how the Ministry of
25 Finance would try to locate a particular subhead for a project,

1 those notes are going to make a difference because somewhere
2 along the line someone is going to say I'm going to put \$600,000
3 in this subhead for you to use it for so-and-so, instead of
4 creating a new subhead. I don't know exactly what else can be
5 done.

6 Q. Can you, just if you can take yourself back to 2011,
7 Honourable Fraser, and just to clarify just how the project was
8 being funded at this point, so in terms of entering into
9 contracts, that fell to your Ministry, but in terms of signing
10 those contracts, that fell to the Minister of Finance. But did
11 at that time, was there--was there an account that the Ministry
12 of Works had access to which held monies that could be spent on
13 this project?

14 A. All the monies were coming from the Ministry. Because
15 the Minister of Finance signed the contract doesn't mean the
16 money wasn't coming from the Ministry, but he just has to sign
17 the contract.

18 Q. But that's my point, did you hold a budget? Did you
19 actually have an amount of money to spend on the Sea Cows Bay
20 Harbour Development?

21 A. The Ministry did, yes.

22 Q. And given that the project had costs over \$6 million
23 and you have a spend of over a million in 2000--how much was
24 your budget in 2011 to spend on Sea Cows Bay?

25 A. I--I don't have the budget before me, so I can't tell

1 you what the budget figure was at the time.

2 Q. But in terms of--can you tell me--obviously, there was
3 an election looming, but if the project had continued after
4 that, after 2011, if that was the intent, would it mean that the
5 Ministry of Communication and Works would have to go back--would
6 have to put in a budgeted estimate and ask for more money?

7 A. Absolutely. If that's what--it was necessary, that's
8 what would have happened.

9 I know for a fact that if the contract--if contracts
10 were issued--if those seven contracts were issued, it means that
11 that much money was there in the budget.

12 Q. You need to pay them?

13 A. Yes. According--you can't issue a contract unless you
14 don't have a Purchase Order, and you can't raise a Purchase
15 Order unless you have the money and those contracts were funded.

16 Q. Then going forward, there were other elements of the
17 project that would become necessary, on your evidence?

18 A. Absolutely.

19 Q. But to fund those, you would then have to go back--you
20 would have to make a bid for more money?

21 A. And that was the total understanding for the project
22 because from the time the Executive Council approved it, there
23 was never enough money there to do the work, and that's probably
24 one of the reasons they allowed the project to go ahead through
25 the use of Petty Contracts because they know they couldn't go

1 out for a Major Contract, they didn't have the money for a Major
2 Contract at the time, but in order to keep--in order to keep
3 progress going.

4 One of the things you have to understand about the Sea
5 Cows Bay Harbour, is that if nothing is done, the harbour keeps
6 getting smaller and smaller because people keep increasing the
7 size of their reclamation, as is pointed out here by the Auditor
8 General. And one day, if you don't put a stop to it, they will
9 have no--you will have no harbour, so the Government had to
10 move. It's not a matter of whether they were just doing it for
11 the exercise or they were doing it because it was necessary.
12 It's necessary that something gets done.

13 Q. Could I take you, please, to paragraph 68, Honourable
14 Fraser.

15 A. Yes.

16 Q. This comes under a heading in the Auditor's Report,
17 which is "Management and Administration of the Development". If
18 you look at 68 it says this--or I will read 67: "The audit
19 exercise was severely hampered by the absence of complete
20 information regarding this project".

21 68, the Auditor General writes: "In particular, for
22 the period 2007 to 2011, the Ministry of Communication and
23 Works' files reflect little to no information regarding the
24 development. The Auditors were advised by the Ministry's staff
25 that the project was handled by the subject Minister, who

1 liaised directly with the consultants, contractors and the
2 Public Works Department on plans, contracts and progress. A
3 schedule showing the status of the Ministry's projects in
4 February 2010 listed the Sea Cows Bay Harbour Project as
5 assigned to R George, who was a contracted consultant in the
6 Ministry of Communication and Works".

7 And then at 69, the report notes: "Notwithstanding,
8 the absence of information, the Finance Officer and the
9 Permanent Secretary in the Ministry facilitated and approved
10 payments on this project in excess of \$300,000 in 2011".

11 Now, can you explain why the Auditor General found so
12 little information or little to no information about this
13 development in your Ministry's files?

14 A. What year was this that she was looking for? 2014?

15 Q. If you look at 68, the report there is speaking of the
16 period 2007 to 2011, which is when you were the Minister, and
17 what's said is that the files of your Ministry reflect little to
18 no information regarding the development, and my question was
19 whether you could assist the Commissioner with understanding why
20 that had arisen?

21 A. No, I'm going--I'm going to try--I'm going to attempt
22 to assist him, but the question I was asking is when did she
23 look for these files.

24 Q. I'm sorry, your voice dropped a little bit.

25 A. I'm asking--let me make sure my battery doesn't go

1 dead on me. I'm asking when it was that she was looking for
2 these files? Is it 2014 when she was looking for these files or
3 2011?

4 Q. Well, it would have been at the time of the Audit.

5 A. Right. 2014.

6 Now, I can't speak to that. I could only tell you
7 this: I left the Ministry in 2011. Whatever I had stayed in my
8 office. And I learned--I was to learn that just about everyone
9 who was associated with this project was summarily removed from
10 the office to somewhere else and whatever the case might be, and
11 if they left their documents in their office, whoever took over
12 probably didn't see the need to hold on to them or whatever the
13 case might be, but after 2011 to 2014, that's clearly three
14 years, and I can't answer that.

15 I could tell you this. In trying to be helpful, I can
16 tell you this. When I look--when I look at the comments that
17 were made by the Auditor General, I could only have--I could
18 only reflect on my days when I first became a Minister, and the
19 mindset of the Public Service towards Ministers--and I don't
20 know if this is a good time for me to segue into reflecting just
21 to--just to create context to the answer that you need for me to
22 give you.

23 When I got elected in 1999, it was the night of that
24 election that we formed the Government basically, and we got
25 appointed the following day. Before I went to the Ministry,

1 which I was assigned to, I made a call and asked for the
2 credentials of the people serving in the Ministry, and what
3 stood out to me is that the credentials for the person who
4 served as a personal assistant to the Permanent Secretary had
5 college credentials while the person serving as the Assistant to
6 the Minister was high school-credentialed. And from that moment
7 I began to realize what I was facing.

8 I went to the Ministry. When I got to my office,
9 there was--I got a cellphone, a cellular phone, it was obviously
10 a used phone, presumably used by my predecessor, and I took
11 office and while I'm sitting at my desk, files would show up for
12 my signature. These are files--at the time I was dealing with
13 non-Belonger and holding licence, I would get about 11 of those
14 to take to Cabinet Executive Council each week. And I would go
15 to the Cabinet with them, speaking about them, you can't speak
16 intelligently because you didn't interview the applicant or
17 anything, and the Governor says to me one day, Minister, the
18 papers are yours. Minister, these are your papers. And it
19 opened my eyes to what is going on.

20 And out of that came the request, and we got a two-day
21 overnight retreat in Virgin Gorda at Biras Creek, but senior
22 civil servants, Permanent Secretaries in particular, and all the
23 Ministers and the Governor, and we went through that two-day
24 retreat detailing the responsibilities of the Minister versus
25 those of the Permanent Secretary. And out of that--out of that,

1 you would notice if you look at the Constitution, you would
2 notice that Section 56(1) of the Constitution states: "The
3 Governor shall act in accordance with the advice of the Premier
4 by directions in writing assigned to any Minister responsibility
5 for the conduct, subject to the Constitution, and any other law
6 of any business of the Government of the Virgin Islands,
7 including responsibility for the administration of any
8 Department of Government".

9 So, the Minister is clearly responsible for the
10 administration of the--of his Department, and anyone who doesn't
11 like this, they find themselves writing all these different
12 things, Section 56(5) goes on to say: "Where a Minister has
13 been assigned responsibility under this Section for the
14 administration of any Department of Government, the Minister
15 shall, subject to this Constitution, and any other law, exercise
16 direction and control over that Department, including directing
17 the implementation of government policy as it relates to that
18 Department, and subject to such direction and control the
19 Department shall, unless otherwise agreed between the Governor
20 and the Premier, be under the supervision of a Permanent
21 Secretary, who shall be a public officer".

22 Supervising--supervising the Ministries is not by
23 invitation. It's a constitutional right for the Permanent
24 Secretary to provide the staff in the Ministry, so it isn't a
25 situation where a Minister can take away the functions of a

1 Permanent Secretary, and it isn't a situation where a Minister
2 can be denied its constitutional right to manage the affairs and
3 direct the policies of the Ministry.

4 So, these are the things that you see creeping in to
5 this report, and if the files cannot be found, then somebody is
6 responsible for that. You couldn't prepare, like I said, the
7 Public Works Department could not prepare those Bill of
8 Quantities for the contracts that were issued unless they had
9 the information, and neither can the Ministry issue payments.

10 Now, this is where the Ministry does issue the
11 payments now. They prepare the vouchers for the payments. They
12 wouldn't prepare vouchers for payments unless they had proper
13 documentation from both Public Works and wherever in order to do
14 so. Those are areas that are exclusively out of my domain.

15 Q. Does that mean that you cannot help the Commissioner
16 with an explanation as to why the Auditor General found so
17 little information relating to the Years 2007 to 2011 in the
18 Ministry of Communication and Works's files?

19 A. Exactly. I can't.

20 And I could tell you this also, at some point I must
21 have raised this with the Auditor General when I saw that note.
22 I said that the document have to be somewhere, did you ask
23 Public Works. She told me that she doesn't have to do that.
24 There is a process that she goes through, if it's not there,
25 it's not there. The Permanent Secretary should know where the

1 documents are. I said Systems Engineering has the documents,
2 get them from them. No, I don't do that.

3 So, I can't help you.

4 Q. In fairness to the Auditor General, I should draw your
5 attention to paragraph 70 where she says: "Similarly, the file
6 reviewed from the Public Works Department did not provide any
7 details of the project or its progression during the
8 implementation phase". So, it does appear that the Auditor
9 General did go and make inquiry to the Public Works Department.

10 If you look, though, back at 68, the Ministry staff
11 advised the auditors that the project was handled by the subject
12 Minister, which given the reference to 2007 to 2011, appears to
13 be you, who liaised directly with consultants, contractors and
14 the Public Works Department on plans, contracts and progress.
15 Is that the approach that you adopted to the project? Were you
16 there liaising directly with consultants, contractors, and the
17 Public Works Department?

18 A. Contractors, no. I had nothing to do with
19 contractors. As far as Public Works is concerned, yes, I did
20 speak to people at--the person handling the project at Public
21 Works.

22 Q. Just clarify--so sorry to speak across you, Honourable
23 Fraser, but just clarify, what we have in this project now is we
24 have consultants which appears--I will come to another
25 consultant, to Mr George in a moment, or Ms George.

1 You obviously have Systems Engineering Ltd involved.
2 You have the contractors that we have spoken about, and you have
3 the Public Works Department. What was the role of the Public
4 Works Department in this case, in this project?

5 A. They're the ones who prepared the Bill of Quantities
6 for the seven contracts that were issued. They're the ones who
7 put the contracts together.

8 Q. And you liaised with them in relation to that?

9 A. Yes.

10 Q. And in terms of System Engineering Ltd, you said that
11 you came on--you got engaged with the project at the time that
12 they came on board. Did you have--were you liaising directly
13 with Systems Engineering Ltd?

14 A. I didn't. And I didn't have to. I would have spoken
15 to them, seeing how they were doing on the Project, but as far
16 as the contract that they got to do the work and all that stuff,
17 wasn't something--of course, I would have seen their documents,
18 no question about that, I would have seen the documents, and
19 that was open to anyone who wanted to see them at the Ministry.

20 Q. Anyone in the Ministry could see those documents.

21 A. Of course. The Permanent Secretary, who is
22 responsible for paying the Bills and supervising whoever is
23 working in the Ministry could always see the documents.

24 After all, if I issue you a contract--if I issue a
25 contract to you, and I call you, you can't very well tell me

1 something that you can't come or you're not coming or something
2 to that effect. You answer to me if I issue a contract to you.

3 Q. The name that is mentioned as an additional consultant
4 is R George, a Contractor Consultant in the Ministry of
5 Communication and Works. What was the role of R George?

6 A. Frankly, he came to work in the Ministry as a
7 consultant because he was not a straight-up employee but he
8 performed the functions of an employee. And he was--if I assign
9 him anything on the project, which I can't recall what exactly
10 he was assigned, it wasn't--it wouldn't have been anything to do
11 with the bulkheading. Maybe there was some land issues or
12 something that needed to be looked at, maybe he would have done
13 that. But as far as this bulkheading and where the monies were
14 spent on that, he wouldn't have been involved in that.

15 Q. But you said you wouldn't have assigned him to the
16 bulkheads. Did you assign anybody to the bulkheads?

17 A. The public Works was doing the bulkhead, and in the
18 Ministry, the only thing that was being done at the Ministry
19 level was that--the payments.

20 Q. So, in terms of having a--going back to the point at
21 49, having a Government Project Manager, having someone involved
22 to--as a Government-appointed Project Manager to ensure there
23 was value for money and the public interest was preserved, who
24 is fulfilling that role whilst you were the Minister?

25 A. Well, I would imagine that "value for money" portion

1 that comes in through the accountant.

2 Q. When you say the accountant, do you mean the Permanent
3 Secretary as Accounting Officer?

4 A. Right. If anything comes to them for payment, they
5 would verify that it was something that was done, it was
6 legitimately done, and all legitimacy--all legitimacy would come
7 through the evaluation of the Public Works Department.

8 Q. As I understand it, I mean the role of a project
9 manager is to oversee the project, not just simply to check the
10 sort of--what was being spent. It was to see how the project
11 was progressing, to take part in the planning of the project.

12 Did you have a Government-appointed Project Manager in
13 place?

14 A. Not that I know of.

15 Q. Because--

16 A. Not that I know of.

17 Q. The--what was told to the Auditor General was that you
18 were the person liaising directly with consultants, contractors
19 and Public Works Department, leads us to paragraph 72.

20 A. Yeah, but that statement is incorrect.

21 Q. The one I just read out to you.

22 A. About liaising with these people. That's not--that's
23 incorrect.

24 Q. So that's not something you accept because--

25 A. Absolutely not.

1 Q. What it leads to is the project was being executed
2 without any significant involvement of the Accounting Officer,
3 the Permanent Secretary, who has ultimate responsibility and can
4 be held personally accountable for public expenditures applied
5 from accounts under his or her control. Without any real
6 knowledge or involvement, the Accounting Officer is not in a
7 position to assert that the Ministry received value for money
8 on--value on the monies that were spent.

9 That seemed to be a factual situation that, in effect,
10 the Permanent Secretary is Accounting Officer--

11 A. Right.

12 Q. --a real say in how this project was progressed. Is
13 that something that you accept?

14 A. No.

15 Q. Why don't--

16 A. (Unclear)--

17 (Overlapping speakers.)

18 A. Because I just--I just read to you that the position
19 of the Permanent Secretary--any Accounting Officer is not one
20 that is given. It's a constitutional responsibility to
21 supervise, to do--to make sure that monies spent--that monies
22 are being spent; you can ascertain what it's being spent on, and
23 you get value for money. And when Public Works Department
24 creates--creates Bill of Quantities for work to be carried out,
25 that's why--that's why Public Works does it, and that's not a

1 private entity because can you trust what Public Works do. All
2 the works--all the monies that were spent was based on Bill of
3 Quantities that were prepared by the Public Works Department.

4 Q. But Public Works were not exercising overall project
5 management, were they? You've got Public Works to draw up the
6 Bill of Quantities in the contracts. You had Systems
7 Engineering Ltd to draw up your designs. You had a contracted
8 Consultant in R George, but your evidence is that you don't
9 think you used him or you can't remember using him for anything
10 on this project.

11 The Petty Contracts were--was a--were dealt with as a
12 separate matter. You were involved as a District
13 Representative, and then ultimately the sign-off was from the
14 Ministry of Finance, although the monies were then paid out from
15 your budget. So there doesn't seem to have been anybody within
16 your Ministry who had overall control or overall oversight of
17 the project, was there?

18 A. Well, that's the people who are spend--were paying the
19 bills. The people who are paying the Bills are the ones who
20 have--who have to make sure that whatever they're paying the
21 money for you get the value for it.

22 Q. But doesn't the point that--or one point that can
23 arise from the--paragraphs 68 to 72 of the Auditor General,
24 isn't it this: That where you have a Minister who wants to get
25 directly involved in a project wants to liaise with consultants,

1 contractors, and the Public Works Department, then it is very
2 difficult for a Permanent Secretary, as you say, to exercise the
3 constitutional role under Section 56. It's very difficult,
4 basically to say "no" to a Minister, isn't it?

5 A. No, no--about what? Getting involved in the project
6 to do your duty?

7 Q. Well, disagreeing with what you want to do as the
8 Minister.

9 A. Disagreeing? There was nothing that I wanted to do
10 that wasn't part of the Executive Council mandate to execute the
11 project. I can't--I wouldn't--I have no problems with anybody
12 getting involved, putting it together and oversight. I had no
13 problems with that. I would imagine that all the Bill of
14 Quantities produced by Public Works Department came to the
15 Ministry for payment, the Ministry would know what they're
16 paying, and who gave them this these Bill of Quantities.

17 I had, like I said, talking about this--this came
18 about me liaising with contractors. I had nothing to do with
19 the contractors, absolutely nothing.

20 Q. Well, you must have had something on your earlier
21 evidence, Honourable Fraser, because you said, as a District
22 Representative, you would have held a meeting.

23 A. Yes.

24 Q. And--

25 A. There's a limit--there's a limit to where you go.

1 After--once these contracts are issued, that's the cut-off
2 point.

3 Q. But in terms of identifying people who may be suitable
4 contractors, making recommendations that they are suitable
5 contractors, that's what you see your role as a District
6 Representative, isn't it?

7 A. Well, the privilege was extended--is extended to
8 District Representatives to make recommendations as to who
9 should be given a Petty Contract, and that's what I did. I made
10 a recommendation, and that's it. After that, I am out of the
11 picture as far as contractors are concerned.

12 Q. Go, please, to 73 in the Auditor General's Report. I
13 just want you to have an opportunity to respond to that
14 paragraph. It reads as follows: "The manner in which this
15 project was implemented, with the general absence of information
16 in the Government's records, the substantive exclusion of the
17 Accounting Officer from the process created the impression of a
18 private undertaking that was being financed by the Government.
19 This is further exacerbated by related party issues that were
20 present in the development". I'll come back to that last
21 sentence, but please respond on the first, because what's
22 effectively said is that--and it goes back to the point
23 that--effectively that you were directly involved in this
24 project and, therefore, essentially treated it as your own
25 project. Is there any substance to that?

1 A. No.

2 That's why--that's exactly why I asked you to look at
3 that N-1 plan, which--you said--I tell you that the Auditor
4 General created a narrative, and all she was doing is creating a
5 story. So, when you see those adjustments made to her final
6 report, it's all because--it's she got caught in this big story
7 that she was creating.

8 But what private development? First she's saying that
9 all the money was concentrated on the one lot, 200 feet wide,
10 and then once that's debunked, you start softening up your
11 report. And now you come back with the same report here talking
12 about a private development. Tell me which development--which
13 private development was benefiting from this project. Tell me
14 which one was benefiting from it.

15 Q. Well, one of the lucky things about my job is I don't
16 get to give evidence, but--

17 A. No, if you're--you're the one who--you're the one
18 presenting this information as if it's gospel.

19 Q. Wait--

20 A. And I'm saying to you--

21 (Overlapping speakers.)

22 Q. --let me just--

23 A. --I'm saying to you that it is--it is ridiculous.

24 Q. Right. Well--

25 A. No, which private development was benefiting from this

1 public fund?

2 Q. What--focus on the words that are in the document,
3 please. What it says is it created the impression of a private
4 undertaking that was being financed by the Government. I wanted
5 to give you an opportunity to respond to that, and what you've
6 said in effect is it's a ridiculous suggestion.

7 A. Well, don't you see the same thing?

8 Q. Well--

9 (Overlapping speakers.)

10 A. All the--all nine--all nine lots are basically owned,
11 leased are prospective owners or private citizens. And back in
12 1992, when the private citizens got together in a community
13 meeting, the Government agreed the bulkhead--the harbour. So I
14 don't understand why all of a sudden you're focusing on one
15 person who has one small reclamation among nine and talking
16 about this private development being a--benefiting from public
17 expenditure. It's ridiculous.

18 Q. I don't--

19 A. And I want you to see it as being ridiculous.

20 Q. It hasn't--the one way of reading paragraph 73 is not
21 that it's focusing on one of the individuals who held a lot, but
22 it's focusing upon your conduct.

23 A. Oh, my conduct. So my conduct suggests that I'm a
24 private citizen?

25 Q. No.

1 (Overlapping speakers.)

2 Q. That your approach to the project in that there is no
3 information available in the files, the Permanent Secretary's
4 Accounting Officer was not involved to the extent that he or she
5 should be, and that you had liaised directly with consultants,
6 contractors, and the Public Works Department, create--

7 (Overlapping speakers.)

8 A. And I am saying--

9 Q. --impress--

10 A. --and I'm say--I'm saying to you--I'm saying to you
11 that, as the Minister responsible for the subject and based
12 on--based on the constitutional responsibility to--to exercise
13 direction and control over that Department including directing
14 the implementation of government policy as it relates to that
15 Department, I have done nothing that was not my constitutional
16 role on the project. If someone else didn't do their
17 constitutional role, you can't blame me for that.

18 Q. And so, just to be clear, what you did not do was
19 treat the Sea Cows Bay Harbour Project as your own private
20 project.

21 A. Of course not. Of course not.

22 Q. Then let's move on to paragraph 74, please.

23 A. 74?

24 Q. Yes.

25 And we'll stick with the Auditor General's Final

1 Report.

2 A. Okay.

3 Q. Now, 74 links to the last sentence of 73,
4 party--"related party disclosure".

5 A. Yes.

6 Q. And the point that is made we see at 76 to 78:
7 "During the implementation period"--so that's the period when
8 bulkheads were being fabricated--"project activity was being
9 controlled by the Minister Honourable Julian Fraser. All of the
10 funds applied in 2011"--which come to \$335,000, just a bit
11 over--"were focused on bulkheading the west end of the harbour,
12 which included but was not limited to, an area owned/leased by
13 Mr Earl Fraser of Hannah's Reclamation".

14 "The contractors who were engaged to provide the
15 bulkheads included Mr Kenneth Fraser and Fraser Incorporated (a
16 company owns by Mr Earl Fraser): Both Contractors are brothers
17 of the Minister. Both received a 10 percent deposit prior to
18 the commencement and neither completed the task".

19 At 78, it then says: "The records indicate that in
20 two prior instances where Cabinet considered applications made
21 by Hannah Reclamation Limited/Mr Earl Fraser for leasing of the
22 seabed in June 2008, the Honourable Julian Fraser declared his
23 interest and recused himself from the matter. Cabinet Extract
24 for the 18 May 2011 does not indicate whether the same occurred
25 when Hannah Reclamation Limited's application to lease the

1 seabed for Jetties and Moorings in 2011 was considered and
2 approved".

3 The above transaction, because of their materiality
4 and the relationship between Mr Earl Fraser, Mr Kenneth Fraser
5 and the Honourable Julian Fraser, represent related party
6 transactions as defined by IPSAS 20 5(c), and accordingly
7 require disclosure"".

8 It comes down to this, I would suggest, Honourable
9 Fraser, and that is that when you became involved in this
10 project, and we'll take it from 2009, the date Systems Engineer
11 Limited became involved, were you aware of the potential for
12 conflict of interest?

13 A. No, I saw no--I saw no conflict of interest as far as
14 this is concerned on this project.

15 Q. Though the fact that your brother--you've explained a
16 shareholder in Hannah Reclamation Limited was leasing a lot in
17 Sea Cows Bay that would be part of the project wasn't--didn't
18 give rise in your mind to a potential conflict of interest.

19 A. No conflict of interest.

20 Q. The fact that two of your brothers were amongst those
21 who received Petty Contracts did not give rise in your mind to a
22 potential conflict of interest.

23 A. Like I said, I had no dealings with contractors, and I
24 don't know where the conflict comes in.

25 Q. Now, I told you that I would return to this point, and

1 it's the last point I want to deal with you, and it is, if you
2 look at 83 in the Auditor General's Report--

3 A. Yes.

4 Q. --he begins that last paragraph: "At the time of
5 writing the project was at a standstill. Sheet piles that had
6 been prepared in 2011 remained on the property owned/leased by
7 Hannah Reclamation Limited, and there is no record that deposits
8 paid to the five Petty Contractors who did not provide bulkheads
9 were recovered".

10 Now, you left office in 2011.

11 A. Yes.

12 Q. You've ment--

13 (Overlapping speakers.)

14 Q. --that things happened in relation to the contracts
15 that had been entered into at that time. Can you just add some
16 more detail for the Commissioner, please, and just explain what
17 you--what did happen after 2011?

18 A. I missed a part of your question. You said I
19 mentioned that things happened?

20 Q. Yes. What you said in the course of your evidence
21 that in 2011 there was a change of Government.

22 A. Yes.

23 (Overlapping speakers.)

24 Q. --was canceled. Work was stopped.

25 A. Yes.

1 Q. I just wanted to ask you just to add some more detail
2 for the Commissioner, please, as to what exactly happened at
3 that point.

4 A. Well, as soon as the elections were had and our
5 Government changed, all the projects in my District were
6 discontinued. All the contractors who had--people who had
7 contracts had their contracts stopped. I expected them to
8 restart at some point but it never happened. I noticed that
9 some of the contracts were issued to new contractors, and I
10 noticed, as far as I know, because no one said anything to me, I
11 know that nothing happened after that, and I've--I don't even
12 recall if I ever asked the Minister or the Premier why he
13 stopped the project. I never--I don't recall asking. I just
14 figure that they knew what they were doing. I made noise,
15 though. I was out in the street making noise about the fact
16 that they stopped the projects but nothing changed.

17 Q. And so, was that every single project that was ongoing
18 in your District?

19 (Overlapping speakers.)

20 A. I agree.

21 Every project (overlapping speaking)--every project
22 except maybe they have--maybe they had some belief that the
23 person who--that one of the persons or something, maybe one of
24 their friends or something that are supporters--I should say,
25 not "friends". We don't have friends like that--but maybe one of

1 their supporters or potential supporters, but I know that every
2 project that I had in the District--and there were quite a few
3 that got stopped, and some of them, the contracts were re-issued
4 to people. I got bad name for it because people think that I
5 wasn't paying attention to them. I had to go and assure them
6 that, listen, this contract was issued. So-and-so is the
7 contractor, but talk to that person who said I did issue--I had
8 a contract issue to help you out with whatever you're doing.
9 But nothing happened.

10 Q. And were you ever given--it seems to me that your
11 evidence is that you were not given an explanation for that
12 decision.

13 A. Never.

14 Q. And was that--you are then in opposition, 2011. Going
15 back to your earlier point about the role of a District
16 Representative, were you subsequently invited as a District
17 Representative to make recommendations to put contractors
18 forward?

19 A. Sure. All the time. It has never stopped.

20 (Overlapping speakers.)

21 Q. So, even after going into opposition, you were still
22 able to do that?

23 A. Yes.

24 Q. Okay. If I could just have a moment, please,
25 Mr Fraser.

1 A. Sure.

2 (Pause.)

3 MR RAWAT: Commissioner, I've reached the ends of my
4 questions.

5 Can I conclude, first of all, by thanking The
6 Honourable Fraser for make himself available today to give
7 evidence to the Commission, and I think originally we might have
8 listed him for a different day and we brought him forward, and
9 we're grateful to him for making himself available.

10 But secondly, also, can I thank him for the way in
11 which he has given his evidence to the Commission today?

12 COMMISSIONER HICKINBOTTOM: And can I echo that,
13 please, Honourable Mr Fraser. Thank you both for your time and
14 your patience, including the adjustment with the time of you
15 giving evidence, and also thank you for the clear way in which
16 you've given your evidence. It's much appreciated. Thank you
17 very much.

18 THE WITNESS: Commissioner, I want to say I am
19 much--very much surprised and in a thankful way, the way we were
20 able to go through this report. I did not think that I would
21 have been afforded that privilege to go through this report page
22 by page, and I thank you for doing that.

23 But, Commissioner, you had other things for me to do.
24 What happened?

25 COMMISSIONER HICKINBOTTOM: Sorry?

1 THE WITNESS: There were other things for me to look
2 to go through, Internal Audit Report and non-Belonger and
3 holding licence, all those things.

4 MR RAWAT: Not--

5 THE WITNESS: Not (unclear) holding licence but (audio
6 drop).

7 COMMISSIONER HICKINBOTTOM: It's all for today,
8 Mr Fraser. Thank you.

9 THE WITNESS: Okay. Okay. Thank you.

10 MR RAWAT: Thank you very much for your time.

11 THE WITNESS: Right. Thank you very much. Bye-bye.

12 COMMISSIONER HICKINBOTTOM: Mr Rawat. The next
13 witness.

14 MR RAWAT: I think is scheduled at 2:00, so if we
15 could have a short break for lunch and we'll resume then.

16 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
17 much.

18 (Recess.)

19 COMMISSIONER HICKINBOTTOM: Good afternoon, everybody.
20 Just before we hear the next witness, I would just
21 like to make a short statement following the Governor's
22 statement of this morning.

23 As you're all aware, in January, I was appointed by
24 the then-Governor to conduct a Commission of Inquiry to
25 establish whether there is information that corruption, abuse of

1 office, or other serious dishonesty in relation to public
2 officials may have taken place in recent years; and, if
3 appropriate, to make independent recommendations with a view to
4 improving the standards of governance and the operation of the
5 agencies of law enforcement and justice in the British Virgin
6 Islands. I would like to thank the people of the BVI for their
7 continuing assistance and support in this task. In particular,
8 I'm acutely aware that much of the work to provide evidence to
9 the COI has fallen on the shoulders of public servants for whose
10 continued efforts I repeat my thanks.

11 On the 2nd of July, I gave a statement detailing the
12 COI hearings I propose to hold to cover the following particular
13 topics:

14 First, the interests held and declared by Members of
15 the House of Assembly and elected Ministers;

16 Second, questions arising from the Position Statements
17 submitted by participants and others on governance and law
18 enforcement and justice;

19 Third, the work of the Auditor General and the
20 Internal Auditor and the Complaints Commissioner;

21 Fourth, the composition and function of Statutory
22 Boards;

23 Fifth, the purchase and leasing of Crown Land; and

24 Sixth, the system under which the BVI Government
25 enters into contracts both in general and in relation to

1 specific contracts.

2 Given that witnesses would likely be taking holidays
3 during August, I did not propose having hearings that month in
4 any event, but I hoped that we could complete all of the above
5 topics before the end of July, and I set a timetable to that
6 end. Despite the many challenges we have had--primarily in
7 evidence from the BVI Government being delayed--we have kept up
8 with that timetable to date. We are due to complete
9 registration of interests, governance and the law-enforcement
10 and justice systems, and the work of the Auditor General,
11 Internal Auditor, and Complaints Commissioner by the end of this
12 week, with very few loose ends left to tie up. We have also
13 done a good deal of work on contracts.

14 It was proposed that we would cover Statutory Boards
15 next week and Crown land in the final week of July before
16 breaking for August. To avoid a disjointed approach, I was keen
17 to deal with each of these topics in one go. Regrettably, we're
18 not currently in a position to proceed with either topic.
19 Requests were made for evidence from Ministers some weeks ago;
20 but, despite extensions of time in respect of each, there is a
21 good deal outstanding. Some evidence has not yet been lodged at
22 all; that some of the evidence that has been lodged is patently
23 incomplete. In the last week or so, the necessary restrictions
24 in relation to COVID-19 have no doubt made the task of
25 collecting and submitting the necessary evidence more

1 challenging. In any event, and despite the efforts that have
2 been made by all, the Attorney General, through her Inquiry
3 Response Unit, has been unable to give me any confident
4 prediction as to when we will have all of the relevant material
5 in relation to these topics. Even when we do receive it, the
6 COI Team will need time to analyze it and prepare for the
7 Hearings.

8 I reiterate that I'm determined to complete this
9 Inquiry expeditiously. However, given the current circumstances
10 with regard to the evidence, it will be impossible to have
11 focused hearings on these topics now. They will be rescheduled.
12 This means that there will be no hearings concerning Statutory
13 Boards next week or Crown land in the week commencing the 26th
14 of July. However, if, and so far as we're able to call
15 witnesses to high tie up loose ends on the topics we have done,
16 then we shall do so. As usual, details of the Witnesses to be
17 called will be published on the COI website.

18 The rescheduling of these hearings does not, of
19 course, mean that the work of the COI will stop. Far from it.
20 We will continue to liaise with the Attorney General, her IRU,
21 and the public servants involved with the view to obtaining the
22 outstanding evidence we've requested, and we will continue to
23 analyze the information that we have to ensure that future
24 hearings remain focused. However, this work need not be done in
25 the BVI, and indeed can most efficiently be dealt with in the

1 UK; and therefore, the COI team propose returning to the UK
2 during the course of next two weeks or so.

3 It is our intention to return to the BVI in late
4 August, when, hopefully, we will be able to resume hearings with
5 witnesses appearing in person at our hearing room here at the
6 International Arbitration Centre. In the event that in-person
7 hearings are not possible, we will then continue with remote
8 hearings.

9 In my statement of the 2nd of June, I said that, it
10 being clear that I would be unable to deliver my Report to His
11 Excellency the Governor by the 19th of July, I had requested an
12 extension of time, and the Governor had kindly indicated his
13 willingness in principle to grant such an extension. But before
14 identifying a new date, he asked me to report on progress in
15 mid-July. I have given the Governor that report and, on the
16 basis of it, he has granted an extension to the 19th of January.
17 That is, I hope, out of an abundance of caution; but, in
18 circumstances in which the Hearings are now unlikely to be
19 complete until October, I am particularly grateful for the
20 extension that has been granted. The Governor, and all those
21 who live in the BVI, may rest assured that my team and I will
22 continue to work tirelessly to deliver the report as soon as
23 possible.

24 Good. Thank you, Mr Rawat.

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Session 2

MR RAWAT: Thank you, Commissioner.

Commissioner, to start with, if I can just for the Transcript just record the representation that is present here at this afternoon's hearing.

COMMISSIONER HICKINBOTTOM: Yes.

MR RAWAT: There is no representation from Silk Legal, but Ms Sara-Jane Knock appears on behalf of the Attorney General and the elected representatives.

We were scheduled to have two witnesses. One was Mr Wendell Gaskin, and the other is Mrs Phyllis Evans. Mr Gaskin, his evidence is going to be put off hopefully to tomorrow, so our witness this afternoon is Mrs Phyllis Evans.

If I could just confirm with Mrs Evans if she can see and hear me?

THE WITNESS: I can.

PHYLLIS EVANS, COMMISSION WITNESS, CALLED

BY MR RAWAT:

Q. Mrs Evans, first of all, thank you for coming to give evidence. I understand that you are going to make an affirmation?

A. Yes, sir.

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

A. Just a second.

Q. If it's easier, I have the words here, and I could

1 read them out, and if you can--

2 A. Okay.

3 Q. --that will be a more straight way of doing it.

4 A. Thank you.

5 Q. The words are, and I will start now, but: I do
6 solemnly--

7 A. --I do solemnly--

8 Q. --sincerely and truly declare--

9 A. --sincerely and truly declare--

10 Q. --and affirm--

11 A. --and affirm--

12 Q. --that the evidence I shall give--

13 A. --that the evidence I shall give--

14 Q. --shall be the truth, the whole truth, and nothing but
15 the truth?

16 A. --shall be the truth, the whole truth, and nothing but
17 the truth.

18 Q. Thank you.

19 COMMISSIONER HICKINBOTTOM: Thank you, Mrs Evans.

20 THE WITNESS: You're welcome.

21 BY MR RAWAT:

22 Q. If we could start, Mrs Evans, with some formalities,
23 and the first one is can I ask you just to confirm your full
24 name to the Commissioner, please.

25 A. My name is Phyllis Evans.

1 Q. And can I just confirm that you have you with some of
2 the documents we drew your attention to. First, do you have
3 your Second Affidavit that you made for the Commissioner?

4 A. I do.

5 Q. And then do you have the Internal Auditor's Reports on
6 the Assistance Grants Programme? The one is dated May 2009.
7 There is another one dated March 2011. And then the Third
8 Report that I want to show you is the Internal Auditor's Draft
9 Audit Report on the COVID-19 stimulus of October 2020.

10 A. Yes, I do.

11 Q. Thank you.

12 The next thing I want to ask you to do is just to
13 remember to keep your voice up, please, and to speak slowly.
14 When giving evidence remotely, it may be that either myself or
15 you, Mrs Evans, speak across each other. If we try and avoid
16 it, it probably makes life easier for the Stenographer. If I
17 do, I will stop, and I will allow you an opportunity to finish
18 your sentence, all right?

19 A. Will do.

20 Q. Could we begin, first of all, if you could just give
21 the Commissioner an outline of your professional career in
22 Public Service before you became Clerk to the House of Assembly.

23 A. Sure.

24 I joined the Public Service on the 1st of May 1978 as
25 a Clerk in training; and I worked in several Departments,

1 including the Deputy Governor's Office, the Office of the
2 Governor.

3 I spent 15 years at the then-BVI High School as the
4 Office Manager.

5 I spent eight year--eight months and--eight-and-a-half
6 months as private secretary to the then Minister of Education,
7 The Honourable Andrew A Fahie.

8 I was appointed Clerk on the 2nd of February 2009.

9 Q. And you've held that role ever since; is that right?

10 A. Yes, I have.

11 Q. What does the role of the Clerk to the House of
12 Assembly involve?

13 A. A myriad of things. My job profile speaks to the
14 coordination of official functions, and I will just give a
15 brief, if you don't mind, serving as the Accounting Officer for
16 the Department; preparing and managing the annual budget, the
17 Department's annual budget.

18 I ensure that the preparation and submission of
19 performance planning and Appraisal Reports for staff.

20 I manage the Office of the House of Assembly,
21 including supervising and training and disciplining staff, to
22 ensure the well-functioning and efficiency of the office.

23 I oversee the maintenance and upkeep of all buildings.
24 We use the--we actually--the office is actually in the Richard C
25 Stoutt Building, and then there is the House of Assembly, so

1 they're two separate buildings in two separate locations, so I
2 manage those, including the grounds, equipments, and the
3 vehicles.

4 I manage and coordinate all arrangements for the
5 holding of sittings and other meetings such as Committee
6 meetings and also the CPA, meaning the Commonwealth
7 Parliamentary local branch meetings.

8 I prepare for each sitting and order paper which
9 contains the business of the day for that sitting.

10 I advise the Speaker on financial matters of the House
11 of Assembly.

12 I also advise the Speaker on matters as it relates to
13 the House.

14 I record and prepare the minutes of proceedings of the
15 House and of the Committees of the House of Assembly.

16 I maintain custody of all votes--records, I'm sorry,
17 Bills, and other documents that's laid before the House of
18 Assembly.

19 I serve as Secretary to the BVI branch of a
20 Commonwealth Parliamentary Association. I said that already.
21 I'm sorry.

22 I coordinate the deliberations of the annual Standing
23 Finance Committee, which is the Committee leading up to the
24 budget.

25 And I perform other duties that's assigned to me.

1 That's basically my job profile that's done basically
2 on a daily basis over a period of time.

3 In addition to when I sit in the House as the Clerk in
4 the House, I am responsible for ensuring that whatever is needed
5 to support Members there as well as the Speaker, I also advise
6 the Speaker in the House in terms of proceedings within the
7 House.

8 Q. And in terms of reporting lines, if we go to the
9 Internal Audit Unit's Reports, the ones concerning Assistance
10 Grants as operated by the House of Assembly, if you look at the
11 2009 one, it has a logo on it which is headed "Premier's
12 Office". The evidence that the Commissioner has received in
13 relation to reporting lines for the Clerk of the House of
14 Assembly is that you would fall under the Deputy Governor's
15 group; is that right?

16 A. Yes, it is.

17 Q. And in terms of--so, from a financial perspective,
18 would that involve you liaising with the Ministry of Finance?

19 A. As it relates to...

20 Q. The financing of the House.

21 A. In terms of the budget?

22 Q. Yes.

23 A. Yes.

24 Q. If you could go to your Affidavit, the Second
25 Affidavit, that you produced, which is dated 25th of June 2021--

1 A. Yes.

2 Q. --you have exhibited some documents to that. Can I
3 just take you to your paragraph 4. You say there: "At the
4 outset, I should further say that in this affidavit where
5 mention a document that does not waive any privilege asserted in
6 respect of it", is there any document over which you do wish to
7 assert privilege?

8 A. I need to find that Section.

9 Q. First page, paragraph 4.

10 A. I see that. I'm looking for "waiving any privilege
11 asserted in respect of it" exactly.

12 I'm not really sure of the question. I'm not really
13 sure when I did that at the time, what my mind frame was.

14 Q. When you--did you prepare this Affidavit yourself?

15 A. I sure did.

16 Q. So, when you put that sentence in, was it explained to
17 you what "privilege" meant?

18 A. At the time I don't remember. I was doing many things
19 at the time. The time frame was tight and when I was preparing
20 this, so I was back and forth trying to meet the deadline with
21 this, so my memory don't take me back. Sorry.

22 Q. Thank you.

23 Well, can we just deal with the process of the
24 Assistance Grants. I'm going to call it the "Assistance Grants
25 Programme", if I may, and you explained at paragraph 7 of that

1 Affidavit that it's existed for over 20 years. And there are a
2 number of guidelines that are issued to Members of the House of
3 Assembly. When you look at your exhibits to that, they're found
4 in the first two pages of the exhibits.

5 Now, those guidelines, is it right that they were
6 available and had been produced before you took up your role as
7 Clerk of the House of Assembly?

8 A. Yes, they were.

9 Q. And what you've also--and if you turn to your
10 exhibits, the application form that has to be completed, how
11 long has that application form been in existence?

12 A. You meant the application form as well?

13 Q. Yes.

14 A. The only thing that--sorry. The only thing I added
15 was the--to attach the photograph, but the application form was
16 here along with the Guidelines.

17 Q. So, the only change that you've made to that
18 application form is to ask for a photo ID?

19 A. Yes.

20 Q. Thank you for that.

21 If you could, I'm going to put it this way. As I or
22 we understand the process from the evidence that the
23 Commissioner has received so far which includes evidence from
24 Members of the House of Assembly, the submitted application goes
25 to a Member of the House of Assembly, and an applicant can

1 submit an application to their District Representative or to a
2 Territorial At-large Representative. And the Member then
3 considers the application and makes a decision. And if they
4 want to approve the application, it's that application that then
5 makes its way to you as Clerk of the House of Assembly; is that
6 right?

7 A. It does, yes.

8 Q. And in terms of considering the application, what is
9 your role, Mrs Evans?

10 A. If I may give you the stages or the steps?

11 Q. Yes, please.

12 A. When the application comes to the office, they're
13 stamped and recorded in a register, and they're sent to me in a
14 mail folder. So, at that point, I go through the applications
15 and I make any amendments or any changes if I need to. I would
16 sign them off. There is a section in the back of the
17 application for my signature once the Representatives have
18 signed off theirs, and the application goes back to--through the
19 office, it goes to my Deputy, and then it goes to the Accounts
20 Unit.

21 Q. And do you have a role in considering the merits of
22 the application?

23 A. I do. I do look at the applications in depth, and if
24 there are anomalies or there are certain things that has been
25 missing or maybe the representative did not sign the application

1 or the applicant did not sign the application, then it goes
2 back. I would have it sent back to the Ministry or the
3 Department or to the Member because, of course, there are
4 Members that sit at this office where I'm at, and then their
5 secretaries would pass them on to them, whichever here or in the
6 Ministries wherever they're sitting.

7 Once that's done, it comes back to me, the corrections
8 would be made, and it comes back to me. And in most cases, the
9 original that was sent to the respective Ministries would come
10 back to me with the new amended copy. That's what usually
11 happens in most cases.

12 Q. What the evidence from Members has been is that they
13 have given examples of an application that they have approved
14 may be returned to them if, for example, there is a necessary
15 document missing or something hasn't been signed.

16 Is that the sort of thing that you would look out for
17 when you're reviewing the applications?

18 A. Yes. I would see if--like I said before, if the
19 Representative did not sign, if the applicant did not sign, if
20 there are documents that are required and not attached, that's
21 where they would go back.

22 Q. The--but did you--when you get--as I understand your
23 Affidavit, when you receive the application, the Member will
24 have considered its merit and will have decided that the
25 individual applicant should be supported in some way.

1 Do you make your own assessment of the merits? Do you
2 say to yourself, "I'm going to now decide whether this is an
3 application that should receive assistance", or do you just
4 accept the Member's view?

5 A. Well, first of all, I do not meet with the applicants.
6 I am not--I am not a person that meets with the applicants, but
7 sometimes there are information that's missing, and so I would
8 have to send them back for that reason because I do not
9 personally meet with the applicants for the Members.

10 The Member gets--sorry, the Member gets the form,
11 meets with the applicant or whatever. Every detail cannot go
12 into the Affidavit, I might add, so there are times when the
13 application is also collected from the receptionist area, and
14 the applicant would take it back, come back, see the Member or
15 they would probably leave it at the reception area. I do not
16 get in that part of it. My job is to go through the
17 applications, look at them, see if they are missing any
18 signatures, see if the relevant information that needs to be
19 attached is attached. And once that's done, I would wrote the
20 e-mail back to the Deputy Clerk. In turn, she--sometimes she
21 looks them over and then she passes them through to the Accounts
22 Unit.

23 In the Accounts Unit as well, sometimes if I missed
24 something, my Deputy will have picked it up. And also in the
25 Unit, the Accounts Unit, they pick up if there are errors and

1 they would draw them to my attention, and then I would instruct
2 them, of course, because they would ask me for my input or my
3 comment, and I would instruct them to send them back to the
4 respective secretaries who would then give or discuss with the
5 Members.

6 Q. So, your role is essentially to seek--to check whether
7 the documents that justify the application are all there?

8 A. Yes.

9 Q. And does that tie in with your role as Accounting
10 Officer?

11 A. It sure does.

12 Q. If we just turn through your exhibits--it's not
13 paginated, but if you go through just to the first page where
14 there is a spreadsheet which is headed "Number of Granted
15 Assistance Grants 17th June to 31st December 2018".

16 A. Yes.

17 Q. Now, am I right to assume that this table is generated
18 from information that you keep yourself within your office?

19 A. No. I don't keep this in my office. This is kept on
20 the JDE Oracle in the accounting section, in the Government's
21 JDE Oracle accounts system, and this is actually the Accounts
22 Officers access this system here. I don't have that in my
23 office, so I don't have direct access to it.

24 (Overlapping speakers.)

25 A. I'm sorry.

1 Q. --your Accounting Unit would have that access?

2 A. I'm sorry?

3 Q. Your Accounting Unit that would have that access?

4 A. Yes, they do.

5 Q. You may not be able to help us with this, but you can
6 see the different subheads that are there.

7 A. Yes.

8 Q. The last one is given as "Other Individuals/Family
9 Asst", and that seems to be a subhead which a lot of grants are
10 given under or recorded under.

11 Do you know what "Other Individuals/Family Asst"
12 covers?

13 A. It covers financial hardships and stuff of that
14 nature, so there would be more requests from individuals, other
15 individuals/family assistance from this particular subhead
16 versus the others.

17 Q. If we could look at the first Internal Audit Report on
18 the Assistance Grants Programme, please, Mrs Evans, it should
19 be--the document that I'm taking you to should be--is dated
20 May 2009 and carry the--I think the first page you will have is
21 probably page 60--is that right?--at the bottom.

22 A. 65.

23 Q. 65.

24 If you go to 65, then. That's the first page of the
25 report itself.

1 A. Yes.

2 Q. Now, this was an audit done shortly after you took on
3 the role of Clerk to the House, and it covers the period before
4 your taking on that role 2006 to 2008. But if you go through,
5 please, to 69--

6 A. Yes, I'm there.

7 Q. --you will see at 7.1.3: "The Internal Audit
8 Department has recorded based on the assistance offered by these
9 already established programmes", and that's programmes run by
10 Ministries, "the Audit Team is at a loss as to what necessitated
11 the evolution of this programme", that's the one you're involved
12 in, "from its original intent of facilitating minor District
13 projects to one whereby elected Members are solely responsible
14 for deciding who is granted funds from the programme".

15 When you joined or became Clerk to the House, were you
16 aware as to what the original intent of the Assistance Grants
17 Programme had been?

18 A. I was not. I learned about it some years down. I was
19 not aware what the intent was, but I learned that it was
20 basically District projects.

21 And then it changed, I'm told--I'm told it's been
22 changed between the Years 2003 to 2007.

23 Q. And was it, as far as you were told, a gradual change
24 over time, or was there a decision made that it would go from
25 minor District projects to something a bit wider in its ambit?

1 A. No, I was not told that, and neither did I ask the
2 question.

3 Q. If you go through the document, I want to just take
4 you to page 78. It's something I'm going to come back to, but I
5 just want to draw your attention to it as we go through. At
6 page 78, what the Internal Audit Report does is set out the
7 Guidelines that were made available to them in May 2009, and
8 they've commented on each guideline essentially critiquing what
9 the guideline--the guidance was for.

10 If you turn to page 123 in this document--let me know
11 when you have it, Mrs Evans.

12 A. Yes, I'm there.

13 Q. Thank you.

14 123 is the Management Response, and so it's the
15 response that came from yourself as Clerk of the House of
16 Assembly with the recommendations made in that Audit Report, and
17 the first recommendation was that consideration be given to
18 transfer the funding from this subhead to agencies that have
19 already established similar programmes such as Social
20 Development, hardship, Ministry of Education for educational
21 assistance, that can give the needed transparency and
22 consistency needed to administer these funds.

23 Now, there the response was: "Clearly defined
24 guidelines that would allow for transparency and consistency in
25 administering must be developed and implemented. Also the above

1 must be done allowing monitoring to be done consistently and
2 transparently". And the response said that--set a sort of
3 anticipated Completion Date of 10 months.

4 What was then at 8.2, the second recommendation was:
5 "It's recommended that an appropriate budget be prepared for the
6 programme with the view of returning it to its original purpose
7 of providing assistance to finance minor District response", and
8 that was indicated as a recommendation with which there was
9 disagreement.

10 Now, in terms of disagreeing with it, was there a
11 reason why you disagreed with that recommendation?

12 A. If I might--I need to say something here,
13 Commissioner. The report came here shortly after I was
14 appointed, and if you noticed that there was--I think there was
15 a letter from the then-Speaker--

16 Q. Is that the letter that we see at page 63?

17 A. Yes.

18 Q. Could I--would you mind, Mrs Evans, if I deal with
19 that letter a little later because what I want to do is firstly
20 ask you about the Management Response. I will then take you up
21 to the follow-up audit and then come to the letter? Because
22 that will deal with things chronologically.

23 A. Okay.

24 Q. So, would it--if it helps you to answer the particular
25 question I've asked, please do refer to the letter, but is the

1 position that, in terms of the disagreement,
2 returning--returning the Assistance Grants to its original
3 purpose of being limited to minor District projects was not
4 something with which the Members of the House of Assembly were
5 in agreement?

6 A. And that's why I was going to the letter because I
7 know that when it came, I actually took it to the informal
8 meeting, when I asked the Speaker if it could have been placed
9 on the agenda, and this is where that information came from. Of
10 course, that's--that's--that's back then, you know.

11 I can't remember every detail, but I remember that
12 this was done from one of those informal meetings--that's what I
13 was about to say--leading up to the letter.

14 Q. If we look at 124, please, the third recommendation
15 that was made was that the present guidelines--and those are the
16 ones that I drew your attention to--"be revised by an
17 independent body to eliminate any inconsistencies which may
18 exist. It's further recommended that such guidelines be
19 formally adopted by Cabinet to better regulate the use of this
20 subhead in the long term".

21 And the Management Response, with you identified as
22 the person responsible for corrective action, was to agree with
23 that, to give a Completion Date of four months, and the plan was
24 that "it was discussed in informal meeting of the House of
25 Assembly to get recommendations on the prudent way forward in

1 selecting an independent body to do such".

2 And when one looks at the Management Response, with
3 the exception of the 8.2 that I drew your attention to, that
4 returning it to its original purpose, there seems to have been
5 overall general agreement with some of the recommendations.

6 But if you go to 131, please--

7 A. I'm there.

8 Q. --what we have there at 131 is the follow-up audit
9 that the Internal--what was then the Internal Audit Unit did in
10 March 2011, and you'll see that what's noted in the
11 fourth paragraph down, the line just above the title
12 "Recommendation 1", was that 10 recommendations had been
13 provided in the Internal Audit Report, but unfortunately none
14 had been implemented. And what's written above that is: "In
15 performing our follow-up engagement, meetings were held
16 separately with the Clerk, the Accounting Officer, and the
17 Deputy Clerk of the House of Assembly and other members of
18 staff. The Clerk noted that attempted were made to address the
19 weaknesses discovered in the current guidelines. However, this
20 was not accomplished due to lack of cooperation from some
21 Members of the Assembly".

22 "It is imperative also to note that the Clerk in her
23 management response to the Report stressed on the importance of
24 adopting clearly defined guidelines that would allow for
25 transparency and consistency in administering the programme with

1 an anticipation Completion Date of 10 months after the issuance
2 of the report". That's by March 2010.

3 Now, where you were then in terms of the position in
4 March 2011 was that things had not changed. There were no new
5 guidelines, you were almost two years on from the first report,
6 and the system was operating without any change.

7 Was the reason there had been no change fundamentally,
8 what's said there about a lack of cooperation from some Members
9 of the House of Assembly?

10 A. Yes.

11 Q. Were there any particular concern that Members voiced
12 to you at the time over changing the Guidelines?

13 A. Back in 2011, that's quite a while, like my mind
14 doesn't take me back there, but I did find an informal Meeting
15 Minutes where Members did express their reasons for not doing
16 much, and that's as much as I can say for that. I can't tell
17 you in details, but yes, I did find something.

18 Q. If you turn over to the 133, please. Can you see the
19 heading "Follow-Up Recommendation"?

20 A. Yes.

21 Q. The first one was: "It's highly recommended that the
22 recommendations provided in the original report be implemented
23 expeditiously".

24 Now, that didn't happen, did it?

25 A. No.

1 Q. But what is then recommended is: "It is recommended
2 that the advice of the Attorney General be sought in relation to
3 the perceived conflict that exists where the Accounting Officer
4 may not have authority over the Assistance Grants subhead as
5 outlined in the description of the budget estimate".

6 Now, that links back to a concern that was raised in
7 the first report which was that, although you're the Accounting
8 Officer, it is the Member that essentially decides whether the
9 amount should be paid.

10 Now, was--do you remember--were there any advice taken
11 about a conflict issue?

12 A. I can't remember that. I can't remember.

13 Q. And what was also, if we look at the third
14 recommendation, Mrs Evans, it is recommended that the Clerk
15 become formalised and guided by the following clauses of the
16 Public Finance Management Act 2004 and the Public Finance
17 Management Regulations of 2005. Now, those are provisions that
18 relate to your role as an Accounting Officer.

19 But subsequent to these two Audit Reports, were you
20 given any further training yourself as to your role as
21 Accounting Officer?

22 A. No.

23 Q. The concern--and if you turn up page 73, you will see
24 how it's worded there.

25 A. I'm there.

1 Q. Look at 7.14. The concern that's voiced is: "The
2 Clerk is the Accounting Officer for the House of Assembly.
3 However, the Clerk lacks the necessary authority to make
4 expenditure from this subhead without the express consent of the
5 elected representative. This begs the question as the
6 Accounting Officer for the House of Assembly where does the
7 Clerk's responsibility and accountability end?"

8 You have, as an Accounting Officer, obligations under
9 the law, don't you, in terms of you are--any Accounting Officer
10 is under the Regulations, you could be personally liable for any
11 expenditure from a subhead or a head that you are responsible
12 for; isn't that right?

13 A. Yes.

14 Q. And what's essentially being suggested in these Audit
15 Reports is that the Clerk to the House of Assembly is in a
16 difficult position because you don't have the final word in
17 terms of deciding whether or not monies will be paid out.
18 You're dependent on--the approval comes from the Member of the
19 House, your role is to check that there are the necessary
20 documents.

21 Do you see the same tension in what you're being asked
22 to do in terms of managing this process?

23 A. I would say "yes".

24 Q. Have you, during your time as Clerk to the House,
25 raised that tension with anyone?

1 A. I have raised it, yes, in informal meetings--not with
2 this administration, but prior to. Yes, I have.

3 Q. And what response did you get when you raised it, Mrs
4 Evans?

5 A. The same response as we go back to--well, like I said,
6 to refresh my memory, I have found an informal Meeting Minutes,
7 and it spoke to the Clerk--even though she's the Accounting
8 Officer responsible for the funds, the Clerk does not dictate
9 what I do with my money. Basically, that's what it said.

10 Q. And one of the points that you raised in your
11 Management Response--and you recognized--was that the Guidelines
12 needed reform.

13 A. Yes.

14 Q. Now, the Commissioner has had this evidence, and in
15 effect with changes--the only changes that have been made is
16 where there has been a reference to the Legislative Council it
17 has become the House of Assembly, but in substance, the form is
18 the same as the form that you inherited when you took on your
19 role. It hasn't changed.

20 So far as you're aware, have there been any attempts
21 to revise the form at all since you've been Clerk to the House
22 of Assembly?

23 A. Not an attempt to revise the form, but I remember in a
24 recent informal meeting of 2013, there again I had asked to
25 bring it to the floor, and it had to do with one of the reports

1 that I received, and I spoke with her at that point. It did
2 come to the meeting, and there were different conversations
3 about it. Members--some Members said they would have taken it
4 away and returned, and a meeting would have been set to--a
5 particular meeting would have been set to go through guidelines
6 and different things that needed to have done in order for us to
7 have a proper--have proper guidelines as it relates to the fund,
8 distribution of the funds, but that was never held as well. So,
9 they were basically the same things that were said prior to when
10 we had--whenever we had a few meetings back as it relates to the
11 funds, so it's the same thing, I guess.

12 Q. Would a fair summary of the position that you are in
13 as Clerk to the House of Assembly is that Members have, over the
14 years, seen the Assistance Grants as their budget for them to
15 handle as they see fit?

16 A. Well, if I can explain, the funds are--the funds are
17 placed there for Members to assist their constituents where they
18 can, and it's assigned. I mean, I'm responsible to assure that
19 Members do not go over their allotted amount that's afforded
20 them, but in terms of them assigning--I mean, administering the
21 funds to their respective, you know, persons, that's theirs
22 because when the funds are placed in the budget and it's put in
23 the respective ledgers, each Member knows what he or she gets,
24 and so it's calculated until, you know, we get towards the end
25 of the year when it's exhausted.

1 So, the funds are actually placed in ledgers,
2 subledgers, and every Member knows what he or she gets or what
3 is assigned to them, and so they're quite aware of that. I
4 would say that the only thing I really would do in terms of the
5 funds is to basically manage because the Members don't have
6 access, they don't have access to the system, but they know that
7 they have funds, so that's--that's where the buck stops.

8 Q. And in terms of the system, once the form has gone
9 through your review and you've confirmed that all--all the
10 necessary documents are there, the signatures are where they
11 should be, once it goes through your Account Unit, then the last
12 part of the process is for it to go to the Treasury Department
13 to issue the check; is that right?

14 A. Yes. Once it goes through the system, and there is a
15 purchase order that is raised, there is a voucher that is
16 raised, it comes back to me, I sign them off, and then they're
17 copied and taken to the Treasury for processing. That's where
18 the check is being done.

19 Q. And then--the checks then come back to your office and
20 they're issued or can be collected from your office?

21 A. The checks come back to our office. They're--they're
22 recorded, and then they are disseminated to the respective
23 secretaries or the reception at my office here, and they're
24 distributed to the respective applicants, and they would sign
25 for their checks.

1 Q. Could you turn up page 83, Mrs Evans.

2 A. I'm there.

3 Q. If we're both on the same page, you should see a
4 table, and it's headed "Table 1" showing actual disbursement by
5 District/Territorial 2006-2008.

6 A. Yes.

7 Q. And this is an appendix to the Internal Audit
8 Department's Report of May 2009.

9 Now, obviously, this relates to disbursements that
10 took place before you took on your role.

11 Now, at that time, the District Representatives had an
12 allotment of 75--well, I think the--I think it was \$75,000 and
13 \$60,000 that they had, but if we look at that table, it seems to
14 show that there was Members who would go over their allotment.

15 Now, you referred a few moments ago that, you know,
16 you control or at least monitor the funds. What happens in a
17 situation where--and we understand that Members receive the
18 funds on a quarterly basis, but if a Member goes over their
19 allotted amount of, say, \$125,000, what happens in that
20 instance?

21 A. I'm not sure what happens in that instance because
22 that has never happened since I managed the funds,, so we don't
23 have those high figures. I have never seen it happen since I'm
24 here, so I am not sure what happened then, but I try my best to
25 ensure that Members do not overspend.

1 We actually ensure that Members are told when they're
2 nearing the end of their budget. They would be informed that
3 you only have a certain amount allotted or left, and would work
4 within that amount. Other than that, we try not to.

5 If you have ever gone over, it has not been much, that
6 I can remember. But to this vast amount, no.

7 Q. What--what we--or the Commissioner heard evidence
8 yesterday from the Acting Financial Secretary, Jeremiah Frett,
9 and he--he explained that there was a process by which
10 additional sums could be added by way of a schedule of
11 additional provision to the Assistance Grants, and so the
12 process was that the matter would come before Cabinet, Cabinet
13 would agree to draft Resolution that would go to the House, and
14 the House would pass the draft Resolution.

15 And the evidence of Mr Frett was that that was a way
16 of being--a way one could make good a shortfall in the
17 Assistance Grants Programme. So, if the Assistance Grants
18 Programme had gone over the budget, essentially the House could
19 resolve to then give it additional funds so that the shortfall
20 could be cleared. But your understanding--your evidence is that
21 that never happens. Everybody sticks to their limits; is that
22 right?

23 A. I ensure that that happens.

24 Q. And although if you look at paragraph 12 of your
25 Affidavit, you refer there to specific amounts that have been

1 given to Members by way of additional sums. But other than
2 those situations, during your time as Clerk, have there been
3 other occasions when additional sums have been allocated to this
4 programme?

5 A. Not to my knowledge. It usually happens towards the
6 end of the year. I'm not aware of it happening before. My
7 memory don't take me there. I can remember towards the end of
8 the year, you know, they might get additional funds but not
9 prior, not that I can remember.

10 Q. Now, you have specifically mentioned an additional sum
11 of \$390,000 allocated to all Members for 2019. Was that a
12 decision of Cabinet, or was that a decision of the House? Do
13 you remember?

14 A. I am not sure what happens in Cabinet. What I do know
15 is that I would get a memorandum from the Ministry of Finance
16 stating that there is an additional amount that has been
17 approved for Members. I am not--I am not sure of the
18 intricacies that happens in the Ministry, in Cabinet, so I can't
19 speak to that.

20 This 390,000 that I spoke about--and that was in
21 2019--and that was an additional 30,000 per Member that year.

22 Q. And was that a one-off? I mean, I suppose it's
23 difficult to say because, obviously, 2020 was a very different
24 year, a very abnormal year, so--but it didn't stay at that same
25 level in terms of the Assistance Grants--we'll get on to COVID

1 from a moment, but it didn't stay at that increased level in
2 2020; it had dropped back down?

3 A. Well, in 2020, the same amount would have been
4 applied, 125 and the 150, and the additional one would have been
5 given as well, and I have here in November of 2020 an additional
6 100,000 each would have been given in November of 2020.

7 Q. I see. Thank you.

8 Could we turn to the COVID Stimulus Assistance
9 Programme that was administered through the House of Assembly,
10 and that's--if you look at the COVID-19 stimulus Audit Report
11 from the Internal Audit Department, do you have that?

12 A. Yes, I do.

13 Q. Thank you.

14 Now, this report--although it's dated October 2020,
15 during her evidence, the Internal Auditor confirmed that it's
16 May 2021--it deals with more than one stimulus programme. And
17 if I take you to 3064, please--

18 A. Yes.

19 Q. --what we've got there is the House of Assembly
20 COVID-19 Assistance Grants Initiative.

21 So--and this was an initiative whereby Members had an
22 additional \$300,000 to distribute by way of assistance to their
23 constituents; that's right, isn't it?

24 A. That is correct.

25 Q. So, that was above the usual or distinct from the

1 usual Assistance Grants Programme that you have been
2 administering or overseeing since becoming Clerk to the House?

3 A. Yes. A very unusual year.

4 Q. Now, part of the process of setting this programme up
5 was a policy document. Were you involved at all, as Clerk to
6 the House, in establishing the programme or deciding the
7 criteria?

8 A. No.

9 Q. If you look at 3064, in terms of your role as Clerk to
10 the House, what did it involve?

11 A. It took the same principle as the regular Assistance
12 Grants. The only thing that changed was they were given, you
13 know, much more funds because of the situation of COVID in 2020,
14 but basically the same results.

15 Q. So, in terms of your role, it was again still
16 reviewing the forms, making sure that documents had to be signed
17 where they were had to be signed, et cetera?

18 A. Yes.

19 Q. And it was, as I've understood this report--and tell
20 me if I've misunderstood it--the decision as to whether or
21 not--what's said if we look at 3064 is: "The programme was
22 structured in a manner that allowed Members of the House of
23 Assembly to be directly involved in the awarding of grants to
24 their constituents".

25 So, it was down to the Member of the House to decide

1 who would get what?

2 A. There again, yes, the Members.

3 Q. Could I ask for your help, please, with 3065, if you
4 turn to that page.

5 A. I'm there.

6 Q. If you look at Point 1, it's under the heading
7 "Observations" for the period, but what the Internal Audit
8 Department noted was that: "Although the programme policy
9 document requires each applicant to provide evidence of the type
10 and amount of support being requested, approximately one-third
11 of applications approved and paid were not supported by any
12 evidence of the type and amount of the awarded assistance".

13 I was hoping, Mrs Evans, you might be able to give the
14 Commissioner some context to that observation in terms of were
15 there any particular difficulties at that time in terms of
16 processing applications?

17 A. Yes, there was. I was short-staffed. I was the only
18 person dealing with this going through the applications. There
19 were myriad of things happening. People were frustrated,
20 Members were hollering. I was the only person going through
21 each application. I couldn't see everything. We were just very
22 overwhelmed with the situations.

23 I'm seeing here the evidence of the type--of amount of
24 awarded assistance--sorry. Approximately one-third of
25 applications approved and paid not supported by any evidence of

1 the type and the amount awarded. I don't know what the
2 percentage was.

3 I know that, yes, there were persons that did not have
4 the evidence. It was a trying time for us here in the BVI and
5 persons who were desperate. I tried to assist the best I could,
6 given with the resources for Members and to assist persons who
7 were really in dire need of assistance.

8 And yes, I recognize that there were persons that did
9 not have the documents attached for the COVID-19--all the
10 documents, yes--but there were--there were--I would use the word
11 they were "hurting", the people were hurting, and I tried my
12 best to be humane and to ensure that persons get--you know, got
13 assistance.

14 So, on that basis, I am aware. Yes, I am aware.

15 Q. But just taking you back to that time, were you--in
16 terms of the numbers of applications that were landing on your
17 desk to review, was there an increase in the numbers that you
18 were seeing?

19 A. Or, definitely, yes. Yes, there were.

20 Q. A little while ago you said you had Members hollering
21 at you, so were they Members pressing you to process the
22 applications as quickly as possible?

23 A. Yes, they were because the applicants and the
24 constituents--I guess everybody was, you know, just on the brink
25 of collapsing, no job, can't pay their rent and stuff like that.

1 It's a small community, Commissioner, and for a lot of
2 that, we know of a lot situations, and sometimes you recognize
3 names, you recognize faces, and there were--those applications
4 that you could have spoken to yourself in terms of when they
5 arrive at your desk.

6 So, I think they were Members just trying to help
7 persons in dire need because it was a trying time, it was very
8 crucial, and people were hurting.

9 Q. And as you said, did it ultimately end, it was--you
10 were the person having to deal with all of this because you were
11 short-staffed?

12 A. I was short-staffed for a while, and it was just
13 overwhelmed sometimes, like I said. There were only two
14 persons--well, they only have two persons in the Accounts Unit,
15 and having to deal with all of this from Saturday to Saturday or
16 Sunday to Sunday, it was--it was a lot, and this took us down to
17 the 31st of December 2020. It was a trying time.

18 Q. I think you've candidly said to the Commissioner that
19 there would have been instances where an application would have
20 been approved and paid out, and there wasn't the necessary
21 evidence. Was that something that you noticed at the time, Mrs
22 Evans, that there were some applications arriving on your desk
23 which didn't really have the evidence that you--that was
24 expected?

25 A. And I would say "yes".

1 Q. And in those instances, what--did you point that out
2 to Members, that applications had--approved applications were
3 reaching you that did not have the evidence that it was supposed
4 to have?

5 A. Yes, I did point out to some Members where that
6 occurred.

7 Q. And did you--I appreciate the circumstances in which
8 you were working at the time, but were there instances where you
9 did return applications to Members so evidence could be
10 obtained?

11 A. I did. I did--I did return applications to some
12 Members, yes.

13 Q. Now, could I just ask you now just a slightly more
14 general topic.

15 You've got--we've got the Guidelines that we were
16 looking at by which the normal Assistance Grants scheme
17 operates. Sorry, I shouldn't call it a "scheme".

18 A. Thank you.

19 Q. And in terms of your role as Clerk of the House, when
20 new Members arrived, so when there is a new House ready to sit,
21 what, if any, is the sort of induction package that you can
22 offer as Clerk of the House?

23 A. Yes. I usually do that. However, in this particular
24 administration, I was not--I was not able to do that for this
25 particular administration for the new Members.

1 Q. What does your normal induction cover, or what would
2 you want it to cover, if you were able to provide it?

3 A. It usually covers the Assistance Grants Programme, it
4 covers the Standing Orders and the Constitution and what happens
5 in the House. Those are the basic things.

6 Q. There is--obviously, the new House convened in 2019.
7 Was there a reason that you couldn't provide the induction at
8 that time?

9 A. There were many setbacks, and I was not able to do
10 that.

11 Q. And have you--were you able to do that obviously
12 before--I mean, obviously, the pandemic will have changed the
13 way you work, but was there a time when you were able to offer
14 an induction at a later point in 2019?

15 A. No. I had setbacks, and so I was not able to, you
16 know, have the orientation done for them--for the new Members
17 coming in for this administration.

18 Q. Thank you.

19 MR RAWAT: Commissioner, I have reached the end of my
20 questions for Mrs Evans. Can I conclude by thanking Mrs Evans
21 for taking this time to attend remotely to give her evidence,
22 but also certainly for the way in which she has given evidence
23 this afternoon?

24 COMMISSIONER HICKINBOTTOM: Yes. Mrs Evans, can I
25 echo that. Thank you both for your time and the way in which

1 you have given your evidence, which has been very helpful.

2 Thank you very much.

3 THE WITNESS: You're very welcome.

4 (Witness steps down.)

5 COMMISSIONER HICKINBOTTOM: Mr Rawat.

6 MR RAWAT: That concludes our evidence for today. We
7 are hoping to schedule a witness for tomorrow morning.

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

10 THE WITNESS: Thank you.

11 MR RAWAT: Thank you.

12 (Whereupon, at 3:14 p.m. (EDT), the Hearing was
13 adjourned.)

CERTIFICATE OF REPORTER

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

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

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

DAVID A. KASDAN