

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 27
(THURSDAY 15 JULY 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Mr Stephen Daniels of Capital Law & Associates appeared for Mr Wendell Gaskin.

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Wendell Gaskin gave evidence.

Court Reporter:

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Those present:

Mr Stephen Daniels, Capital Law & Associates (attending remotely)

Mr Bilal Rawat

Mr Wendell Gaskin (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

1
2 COMMISSIONER HICKINBOTTOM: Just before we start with
3 the witness evidence, I would just like to make a very short
4 statement, given recent press coverage.

5 Various media articles have been brought to my
6 attention which speculate on findings or recommendations which I
7 might make in my final report. Insofar as these suggest that I
8 have come to any conclusions in relation to findings or
9 recommendations, even on a provisional basis, they are simply
10 wrong. I have neither made any such findings nor drawn any such
11 conclusions, and will not do so until I've heard all relevant
12 evidence and considered all relevant submissions.

13 Thank you very much.

14 Mr Rawat.

15 MR RAWAT: Good morning, Commissioner.

16 Our witness today is Mr Wendell Gaskin.

17 WENDELL M GASKIN, COMMISSION WITNESS, CALLED

18 MR RAWAT: Before we start his evidence, can I
19 introduce the representation here today.

20 COMMISSIONER HICKINBOTTOM: Yes, thank you.

21 MR RAWAT: Mr Gaskin has been afforded representation,
22 upon your application and your determination, as a witness
23 today, and he is represented here by Mr Stephen Daniels, who
24 appears remotely. There is no representation at the Hearing on
25 behalf of the Attorney General and the elected Ministers nor on

1 behalf of the seven Members of the House of Assembly represented
2 by Silk Legal.

3 COMMISSIONER HICKINBOTTOM: Yes, thank you.

4 BY MR RAWAT:

5 Q. Mr Gaskin, I hope you can see and hear me.

6 A. I can see and hear you.

7 Q. Thank you.

8 Can I thank you for making yourself available to give
9 evidence to the Commission today. I know you were scheduled for
10 yesterday, but the timetable issue has meant that we didn't
11 reach your evidence, and you very kindly agreed to return today.

12 Are you going to give your evidence on oath or by
13 affirmation?

14 A. Affirmation, sir.

15 Q. Do you have the copy of the affirmation--

16 TECHNICIAN PETERS: I'm sorry, Commissioner. It
17 appears that Mr Gaskin's camera view is frozen, and his audio
18 seems to be coming through intermittently.

19 COMMISSIONER HICKINBOTTOM: Okay. Is that an issue
20 that you can deal with remotely, Mr Peters?

21 TECHNICIAN PETERS: Unfortunately not. It may be that
22 Mr Gaskin is having challenges with his internet connection.

23 COMMISSIONER HICKINBOTTOM: Is it best if we just stop
24 for a few minutes, Mr Peters, while you try and sort that out
25 with Mr Gaskin?

1 TECHNICIAN PETERS: Yes, that will be helpful,
2 Mr Commissioner. Thank you.

3 COMMISSIONER HICKINBOTTOM: We will stop altogether
4 then, and we will restart once Mr Gaskin is properly linked in.
5 Thank you very much.

6 TECHNICIAN PETERS: Thank you.

7 (Pause for technical problems.)

8 COMMISSIONER HICKINBOTTOM: Good, Mr Gaskin. We can
9 certainly see you, and you're not frozen. Can you hear and see
10 us, and can we hear you?

11 THE WITNESS: Yes, I can hear you.

12 COMMISSIONER HICKINBOTTOM: Good. Now that's good.
13 Thank you, Mr Gaskin.

14 And thank you, Mr Peters, for sorting that out.

15 Mr Rawat.

16 MR RAWAT: Thank you.

17 BY MR RAWAT:

18 Q. Mr Gaskin, just before we had the pause, you indicated
19 that you would wish to affirm before giving evidence today. Do
20 you have the words of the affirmation with you?

21 A. I do, sir.

22 Q. Would you mind reading them out now for the
23 Commissioner.

24 A. I do solemnly, sincerely and truly declare and affirm
25 that the evidence I shall give shall be the truth, the whole

1 truth, and nothing but the truth.

2 COMMISSIONER HICKINBOTTOM: Thank you very much.

3 BY MR RAWAT:

4 Q. Thank you.

5 Could you start by confirming your full name to the
6 Commissioner, please.

7 A. My name is Wendell M Gaskin.

8 Q. Now, you should have been sent a number of documents
9 by the Commission in advance of today. There are a number of
10 documents that I would like to take you to, and can I just
11 confirm that you have those with you.

12 The first--you were about to say something.

13 A. I don't--I don't know--I had gotten some documents
14 from my Attorney because I made three different requests to your
15 secretary, Rhea, to let her know that the bundles that they keep
16 referring to I didn't get, so I have documents from my Attorney.

17 As a matter of fact, I was able to go up--when you
18 sent me the summons on the 2nd of July, I have that information
19 from the Auditor General, and my Attorney made some additional
20 documents available to me.

21 Q. Just give me a moment, please.

22 (Pause.)

23 COMMISSIONER HICKINBOTTOM: Could we just make sure,
24 Mr Gaskin, through Mr Rawat, that you have all of the documents
25 that you should have, that you will need today? Just to check.

1 MR RAWAT: Those sitting behind me have confirmed that
2 Mr Daniels, your attorney, was given the same documents that
3 were also sent directly to you, so there should be no problem.

4 BY MR RAWAT:

5 Q. But the ones that I would like to take you to are an
6 Internal Audit Unit Report of May 2009, which relates to the
7 Assistance Grants Programme operated by the House of Assembly.

8 Do you have that?

9 A. Hold on. I'm going through my documents.

10 (Pause.)

11 Q. Page 16.

12 A. May 2009?

13 Q. Yes.

14 If you see some pages, numbers at the bottom, look for
15 number 60.

16 A. Oh, okay. I have that. I have that.

17 Q. Okay. That's one.

18 There was then a follow-up Audit Report on the same
19 programme, which was in March 2011.

20 A. I have that.

21 Q. Thank you.

22 And then the next document that I want to take you to
23 is the Auditor General's Report of the 31st of January 2013 on
24 the Port Development Project.

25 A. I have that.

1 Q. And the last thing, which is probably the largest
2 document, was a bundle related to the Public Accounts
3 Committee's final report on the Cruise Ship Port Development
4 Project.

5 A. That I don't have.

6 The Public Accounts?

7 Q. Public Accounts Committee.

8 A. Yes, I have--I have excerpts.

9 Q. Right. Well, we will see how we get on. Hopefully,
10 Mr Daniels has provided you with all the documents that we have
11 sent to him. I see him nodding, so--

12 A. Point of information--

13 (Overlapping speakers.)

14 Q. Sorry, you were saying something, Mr Gaskin.

15 A. Yes, as I said, I sent three requests to your
16 secretary, Rhea, and then when I didn't get any response, I sent
17 to Mr Chandler, asking him to send me whatever necessary
18 documentation. But I think I have--my Attorney assisted me in
19 getting.

20 Q. I understand that the requests that you sent were
21 responded to, but in any event, it doesn't matter because the
22 documents that were sent to you were also sent to Mr Daniels,
23 and he confirmed he's provided them to you.

24 A. Another point of clarification. When I did send the
25 information, as to my e-mail, I realized that they were sending

1 them to an e-mail that doesn't exist, so I did make corrections
2 and ask them to send to the proper e-mail. That is also noted
3 in an e-mail--several e-mails from me.

4 Q. I understand that that was received, the correction
5 was noted, and the documents were then resent to the right
6 e-mail address. But as I've said, you've received them, so
7 shall we will try to see how we can get on, shall we?

8 A. No problem, sir.

9 Q. Thank you.

10 Could we start by asking--if I could ask you just to
11 give an outline of your professional career in Public Service,
12 please, Mr Gaskin.

13 A. I started my Public Service career with the
14 Electricity Department which later became the Electricity
15 Cooperation.

16 I was able to obtain a scholarship and went off to
17 study accounting, came back and started to work at the
18 Electricity Cooperation as the Management Accountant; and, at
19 some time later, I was seconded to the Ministry of Finance as
20 the Internal Auditor.

21 I was at the Ministry of Finance, and I got an offer
22 and went to the US Virgin Islands as a Director of Business
23 Affairs at the Legislature, on a leave of absence. I came back,
24 went back to the Ministry of Finance in the same position, and
25 got promoted up through the Ministry of Finance to the Director

1 of Internal Audit, a position which I served in for quite some
2 time.

3 Then I got promoted again to Deputy Financial
4 Secretary, and I served in that position until I retired, and in
5 2018 took a job in St. Thomas as CFO, and I'm now back in the
6 British Virgin Islands.

7 Q. How long were you Director--or when were you made
8 Director of the Internal Department?

9 A. I can't remember the exact date. I know it was
10 after--in 2002 or '3 we had several incidents in the Ministry of
11 Finance; and, at that time, under the Internal Audit, we didn't
12 have any legislation, so therefore all the powers that the
13 Internal Audit had came from the powers of the Financial
14 Secretary. And so, therefore, at some point after that
15 investigation, they made recommendation to upgrade the position,
16 and I became a Director of Internal Audit, and they made it also
17 a separate department, so I had a separate department.

18 Q. We take--give me a moment. Sorry.

19 (Pause.)

20 Q. Just starting with the first of the Reports that I
21 directed you to earlier, the Assistance Grants Programme, that's
22 the Internal Audit Units Report of May 2009, if you go to
23 page 65 in that, please.

24 A. Yeah, page 65.

25 Q. That's the front page.

1 A. The cover.

2 Q. Yes.

3 Now, this was an audit of the Assistance Grants
4 Programme run by the House of Assembly. Could you just clarify
5 for us why your Internal Audit logo has it addressed to the
6 Premier's Office?

7 A. Well, what had happened is the Government had changed,
8 and instead of reporting to the Ministry of Finance, we were
9 then reporting to the Premier's Office.

10 Q. Right.

11 Now, I have gone through this Report in detail with
12 the current Director of the Internal Audit Department. But in
13 May 2009, were you then in the position of Director?

14 A. Yes, I was.

15 Q. If I just take you through to page 75.

16 A. I'm there at 75.

17 Q. You will see there that the Internal Audit Unit that
18 you were leading makes--it's a total of 10 recommendations
19 overall--well, 12, in fact--no, 10 recommendations about the
20 programme.

21 And, in short, the Internal Audit Unit was critical of
22 the control framework that was in place at the time for the
23 assistance programmes. One of the points you made, if you turn
24 back to 73, page 73.

25 A. Yeah. Go ahead.

1 Q. You will see that the point is made--the Clerk to the
2 House of Assembly is the Accounting Officer for the House but
3 lacks in relation to this programme the necessary authority to
4 make expenditure from this subhead without the express consent
5 of the Elected Representative. And what's written is this:
6 "This begs the question, as the Accounting Officer for the House
7 of Assembly, where does the Clerk's responsibility and
8 accountability end".

9 Now, you also--and this is just to give you the
10 context of my questions, Mr Gaskin. If you go to 78.

11 A. Page 78?

12 Q. Yeah.

13 Do you have it?

14 A. I'm trying to get there. 78.

15 Yes, I have it.

16 Q. There, what the Internal Audit Report does is set out
17 the Guidelines that were in place at the time that you did the
18 Audit in 2009, and it critiques the Guidelines. And overall,
19 the Internal Audit Unit raised concerns over each guideline.

20 Now, first thing is, it wasn't the job of the Internal
21 Audit Unit to determine the merits of the programme, was it?

22 A. No.

23 Q. But what you were looking at was whether
24 processes--the processes were robust enough? Would that be a
25 fair way of putting it?

1 A. Commissioner, you have to forgive me because this has
2 been so long. I have to wrap my memory around the circumstances
3 of and put this in context.

4 So, I believe we can safely assume that.

5 Q. All right. Well, let me ask your help with one part
6 of that report, and that is at page 83.

7 A. 83.

8 I'm at 83.

9 Q. It's a table which shows the actual disbursement by
10 District and Territorial Representatives between 2006 and 2009.
11 At that time, a District Representative had \$60,000 a year
12 allocated as part of the Grants Programme, whereas a Territorial
13 Representative had \$75,000. And what the appendix shows is
14 that, in the Years 2006 through to 2008, there was an overspend
15 by Representatives, and they would exceed the allocated amount.

16 Now, in those circumstances where they had exceeded
17 the amount--the budget, if you like--do you know--and this is
18 perhaps drawing also on your experience as Deputy Financial
19 Secretary--do you know how that shortfall was made good?

20 A. I suppose that would be made in a Supplementary
21 Appropriation from the House of Assembly.

22 Q. So, if the grants--

23 A. At some later stage.

24 Q. So, if the grants had gone over budget, the mechanism
25 to rectify it would be for the House to make a resolution for a

1 Supplementary Appropriation to effectively put back the sums so
2 that it was back in credit?

3 A. To rectify whatever the issue is.

4 Q. Thank you.

5 A. But I believe--I must say that I spent a number of
6 years as the Auditor, the Internal Auditor, and then the
7 Director of Internal Audit, and I must indicate that during my
8 tenure, the Legislation that we had to depend on was the
9 Legislation from the Ministry of Finance and the Public Finance
10 Management Act, so what we would do is to look at whether or not
11 the entity that we were auditing had any legislation and to see
12 whether or not they were in breach of their legislation as well
13 as the Public Finance Management Act.

14 Q. Presumably you also kept in mind the Public Finance
15 Management Regulations of 2005?

16 A. 2004, 2005.

17 Q. Yes. The Act is 2004, isn't it?

18 A. Yes, and Regulations 2005.

19 Q. Now, if you have the full document, you should have
20 page 129.

21 A. Yes, I have 129. That's the cover?

22 Q. That's the front cover of the follow-up audit?

23 A. Yes, it is.

24 Q. What your unit did in March 2011.

25 A. Yes.

1 Q. If you go through to page 131, if you turn over to
2 130, you will see from the Table of Contents--

3 A. 130?

4 Q. Yeah.

5 --you will see that all 10 recommendations that had
6 been made back in 2009 by your unit had not been implemented.

7 Do you see that in the index?

8 A. Trying to find it.

9 (Pause.)

10 A. Yes, I have it.

11 Q. All right. If you look at 130, you will see it's a
12 Table of Contents.

13 A. Yes, I have it.

14 Q. And that it shows that all of the recommendations that
15 were made by the Internal Audit Unit in May 2009 had not been
16 implemented.

17 Do you see that?

18 A. I see that.

19 Q. Now, if you go to 131.

20 A. Yeah, I'm at 131.

21 Q. Can you see the paragraph that begins "In performing
22 our follow-up engagement"?

23 A. I see that.

24 Q. It then continues: "Meetings were held separately
25 with the Clerk (the Accounting Officer) and the Deputy Clerk of

1 the House of Assembly and other Members of staff. The Clerk
2 noted the attempts were made to address the weaknesses
3 discovered in the current guidelines. However, this is not
4 accomplished due to lack of cooperation for some members of the
5 Assembly. It's imperative also to note that the Clerk in her
6 Management Response to the Report, stressed on the importance of
7 adopting clearly defined guidelines that would allow for
8 transparency and consistency in administering the programme with
9 an anticipated completion of 10 months after the issuance of the
10 report". And as you then note, none of the 10 recommendations
11 were implemented.

12 If you go through to 133.

13 A. I'm there.

14 Q. The Internal Audit Unit made follow-up
15 recommendations, including at (1): "It's highly recommended
16 that the recommendations provided in the original report be
17 implemented expeditiously".

18 I'm going to pause there. As the Internal Audit Unit,
19 you've made follow-up recommendations. Once you've done that,
20 do you have any other power, or did you have any other power at
21 that time in 2011, to try and encourage or enforce
22 recommendations?

23 A. The answer to that question is no, but I must say
24 something here, Mr Rawat. Again, this information, to me, is
25 very old, but it brings me back to the point that I would like

1 to get on the record.

2 The Internal Audit and the Internal Auditor was a
3 child of the Ministry of Finance. It first was implemented to
4 take care of all the revenue departments, and it subsequently
5 grew. The issue here is that I found that, over the years in my
6 position as the Internal Auditor and then Director of Internal
7 Audit is that nobody liked having to deal with the Auditors,
8 that position. But what I recognize was that the Internal Audit
9 Unit was set up as a management tool to help Accounting
10 Officers, and so we made sure that what we tried to do is to
11 build trust and a relationship with those Accounting Officers.
12 So, hence, we always try to make sure that our Audit Reports had
13 what is called a "Management Report". Once we send a report to
14 the agency, we allow them time to follow-up and correct whatever
15 is stated in those things.

16 So, therefore, we recognized that our role wasn't just
17 to go around and hit people over the head with a big stick. Our
18 role was to assess and to continue to assist because, once you
19 build trust, that is what you're going to get.

20 So, I believe that I can safely say at that time we
21 depended on what we had, and so, therefore, until 2011, I was
22 able in 2011 to be successful in getting legislation passed,
23 using all the tools that was around me at the time. I depended
24 heavily on the FCO website, especially the National Audit
25 Office. We got information from them as to how to correctly

1 conduct audits, the standards to use, all those things.

2 But again, as I said, I believe that our job was to
3 assist in any way that we can; and so, therefore, once we stated
4 the facts, all we were really interested in promoting is the
5 facts; and once we stated the facts, the facts would go
6 someplace else.

7 Q. If you look at the second recommendation that was
8 made, it was that the advice of the Attorney General be sought
9 in relation to a perceived conflict between--which arose--and
10 this is what I drew your attention to earlier--where the
11 Accounting Officer, although responsible for the budget, didn't
12 have authority over the Assistance Grants subhead. So, I think
13 the difficulty that the Internal Audit Unit had identified was
14 that it was the Members that decided how the budget should be
15 spent, but it was the Clerk to the House that was, as the
16 Accounting Officer, that had the statutory responsibility.

17 Following that recommendation, do you know whether any
18 advice was sought from the Attorney General? Can you--

19 A. I'm not sure.

20 Q. Another--the third recommendation to deal with is you
21 recommended that the Clerk--you drew effectively attention to
22 the obligations under the Public Finance Management Act of 2004
23 and the Regulations of 2005, and that was presumably again
24 because of the importance of the role of the Accounting Officer.
25 Would you agree?

1 A. Yes, sir.

2 Q. Now, if you go back to 63 in that--right at the start
3 of it.

4 A. Yeah, I have it. I have it.

5 Q. You should have a letter. It should be a letter dated
6 the 19th of May 2011.

7 A. I do have it.

8 Q. And it's from the Speaker, the then-Speaker, of the
9 House, Roy Harrigan, addressed to you, and it relates to the
10 Assistance Grants Programme and your follow-up audit, and I will
11 try and summarise:

12 Firstly, that Mr Harrigan expressed concern that the
13 Internal Audit Unit had conducted an audit of the accounts of
14 the House of Assembly rather than the Auditor General, and the
15 point was raised that your unit didn't have authority to do what
16 it had done.

17 The second was--and this was that--what's recorded is
18 that: "In 2005, the Assistance Grant Programme was expanded to
19 include persons experiencing certain hardships. Along with this
20 expansion, Members felt they had a good idea of what happens in
21 the community. Members reported that they use their discretion
22 to give funds after hearing from the applicants. Their resolve
23 is that this discretion must be left to the Elected Members.
24 Furthermore, Members said they are at a loss to perceive what
25 mischief is being corrected by the recommendations in the

1 report".

2 And the next paragraph reads: "There is a general
3 sentiment among Members that there is no impropriety as far as
4 they're concerned, and that the Assistance Grants Programme is
5 being handled the way they want it done. According to Members,
6 the Assistance Grants Programme must be kept simple and not
7 complicated or encumbered by a lot of paperwork. However,
8 Members are aware that there will come a time when the Programme
9 will have to be overhauled, but until that time they will
10 continue to have the allowances and give assistance in the usual
11 way".

12 Now, you replied, and your reply is at page 60.

13 A. I have that.

14 Q. It's a lengthy reply, and it's dated May 27th, 2011.
15 And again, I'm going to try and summarise it, but if I take it
16 too shortly and there is a point you wish to draw to the
17 attention of the Commissioner, please do so, Mr Gaskin. But if
18 we start at the beginning, the first point you make is that--and
19 you say you respectfully point this out, the letter written to
20 you should be written by the Clerk of the House rather than the
21 Speaker because the Speaker doesn't have any constitutional or
22 legal responsibilities relative to those matters.

23 So, your point was that this was a programme where,
24 because the Clerk to the House was the Accounting Officer, it
25 was for the Clerk to the House to deal, for example, with the

1 Management Response as, indeed, she did, and any follow-up
2 correspondence; is that right?

3 A. Yes, sir.

4 Q. You then go on to explain the establishment of the
5 Internal Audit Unit, explaining that it was established
6 over--since 1991; and in the absence of legislation, had been
7 operating under the authority of the Minister of Finance, the
8 Chief Minister, and at the time the Audit was conducted, the
9 report authored, The Honourable Premier.

10 And you go on, on the next page, to set out that your
11 Department now had a statutory basis because, by then, the
12 Internal Audit Act of 2011 had come into force. And for that
13 reason, what you do is you explain that actually the purpose of
14 the Audit was not to audit the accounts of the House of
15 Assembly, but rather that what you were doing was auditing this
16 particular programme. That was the task that was set to the
17 Internal Audit Unit, wasn't it?

18 A. Commissioner, the Internal Audit Unit had what is
19 called an Audit Committee and had--what we would normally do is
20 to draw an Audit Plan. An Audit Plan would decide all the areas
21 in which we would audit, take it to the Audit Committee, and
22 then the Audit Committee would then decide. I believe that my
23 letter is clear, having gone back to those times that my letter
24 is clear, took some time sitting down to try to put this
25 together at that time.

1 And I also want to indicate to the Commissioner that
2 when I was doing this job, I felt that the reason why I was
3 chosen for this job is because I had certain level of
4 independence. I did not allow, when I was a government minister
5 or--any politician or anybody to decide what we would work on.
6 We worked fairly independently, looking at trying to protect the
7 interests of the Government.

8 COMMISSIONER HICKINBOTTOM: Mr Gaskin, the Internal
9 Audit Act was passed at the beginning of 2011. It's referred to
10 at the top of page 61, the date.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: Were you sort of
13 instrumental or a pressure in getting that Act passed?

14 THE WITNESS: I was--I was instrumental in getting
15 that Act passed. I followed--I nursed that Act like a baby,
16 like someone was carrying a pregnancy. I had several attempts,
17 and I want to say, if my memory serves me right, that I had the
18 assistance of the then-Chief Minister, Honourable Ralph T
19 O'Neal, in ushering this piece of legislation to fruition.

20 The problem that we were having is that people were
21 questioning whether or not we had the authority, and so I found
22 that we could no longer survive by just using the Financial
23 Management Act and the powers of the Financial Secretary; so,
24 therefore, we had to have our own piece of legislation, and I
25 followed through that piece of legislation just like when a

1 mother was carrying a child.

2 COMMISSIONER HICKINBOTTOM: I understand. I
3 understand. Thank you very much.

4 BY MR RAWAT:

5 Q. Just picking up on that, you would have been the first
6 Director of the Internal Audit Department; is that right,
7 Mr Gaskin?

8 A. Yes, sir.

9 Q. And you obviously led the unit and then the Department
10 for a number of years. One other point that Ms Corea, when she
11 gave her evidence--she's the current Director--one of the points
12 she made in evidence was that it was not unusual to encounter
13 resistance from the Department or bodies that you were auditing,
14 and by that she meant that the people were slow to provide
15 evidence. Was that--or provide the documents that you needed as
16 an Auditor to see. Was that also your experience during your
17 time as the Internal Audit Director?

18 A. Yes, Commissioner. But as I said before, one of the
19 things that I realized is that, no matter where we go, people
20 are not going to like the Auditors. As a matter of fact, we had
21 such times when the Auditors were resented. We had to find
22 another strategy in which to deal with those agencies, so what
23 we did, we offered our services to assist in any way that we
24 can. We assist them with trying to put systems in place to help
25 them do their work properly because what you have is people, as

1 Accounting Officers, may have very good administrative skills,
2 but they don't have financial skills. So, what we did, we
3 made--we made the Internal Audit Unit and later Department
4 available to any accounting officer that was having any problem.

5 Again, our job--what I found in my role as the
6 Director of Internal Audit is that my job wasn't to hit people
7 over the head and to have a gotcha moment. That's not what an
8 auditor is about. Audit is to make sure that people are doing
9 what they're supposed to do, but if we can help, we used to
10 help.

11 That's why I said to you before, every audit that we
12 have done, Internal Audit, you will find that there is a
13 Management Response. Sometimes it took a while. When we found
14 that it took several months and we could no longer--the year was
15 coming to a close and we could no longer put up with such
16 action, we wrote back and finalised the Audit Report. We are
17 always going to have resistance because nobody--I don't care who
18 it is, nobody--likes the Auditors. The problem that you have is
19 you have to build trust; and so, when you build trust, then
20 people start to give you information and they start to respond.

21 Remember that we are a small country, and a lot of
22 things are new to us. The Internal Audit experience was a new
23 one. I had the distinct pleasure of being the first Internal
24 Auditor in the BVI. I said to myself it was a lonely experience
25 and I took on the tasks.

1 But one of the things that I declare, I can remember
2 that a senior Civil Servant said to me one day, "Mr Gaskin,
3 nobody is interested in your opinions. What we are interested
4 in is the facts". I took that as my learning, and I went back
5 to my office, and I spoke with my officers, and I said, "All
6 we're going to be interested in is the facts. We are not going
7 to put our opinion in these documents. We just want the facts".

8 COMMISSIONER HICKINBOTTOM: Yes, thank you.

9 BY MR RAWAT:

10 Q. If we look at--we're still on page 61, just look at
11 the third paragraph.

12 A. 61?

13 Q. It's still your letter.

14 What you say at the third paragraph is: "Contrary to
15 the Members' assertion that disbursements from the funds are
16 discretionary, this assertion is invalid since disbursements
17 should be guided by the guidelines produced by the House of
18 Assembly, please refer to the note provided in the Appropriation
19 Act. Another misconception that must be addressed is that the
20 Members are of the stance that the report was produced to
21 highlight the 'mischief' being perpetrated by them through the
22 programme. As a practice, this office endeavors to conduct its
23 engagements objectively and unbiased, report the facts as found
24 and offer recommendations that adds value or improve the
25 process(es). Furthermore, this office have not and will never

1 attempt to dictate to any accounting officer how to manage their
2 finances, what we do is offer sound advice on the effective
3 management of such, in compliance with our Financial Management
4 laws. We have again reviewed our Reports and are too at a loss
5 as to how the Members deduced from their consents that we are
6 making recommendations to correct some 'mischief' being
7 perpetrated by them".

8 I'm going to pause. I just want to go back to that
9 reference to the note provided in the Appropriation Act. Could
10 you just clarify what that refers to, please.

11 A. Sir, again, I'm--I am lost because I don't have that
12 information. So, whatever the note was, we cited that note.

13 Q. But can you help us in general terms? Does that mean
14 that, in terms of the Assistance Grants as an aspect of the
15 budget, that would be dealt with in the Appropriation Act?

16 A. Yes, it would be in the Appropriation Act.

17 And the--it would come under the budget for the House
18 of Assembly, and then the Speaker--the Clerk of the House of
19 Assembly would be the Accounting Officer.

20 And again, I believe, if my memory serve me right,
21 that would set the purpose of what the grant is supposed to be
22 for.

23 Q. And so that would be a note that accompanies the Act
24 would set out the purpose.

25 A. The purpose.

1 Q. You then go on in your letter: "The most troubling
2 aspect of your letter is that the Members believe that the
3 'Assistance Grant Programme is being handled the way they [the
4 Members] want it done'. We staunchly disagree as the
5 disbursement of public funds is governed by the Public Finance
6 Management Act and Regulations. Although the law does not
7 explicitly binds Members of the House, the Accounting Officer of
8 the House of Assembly who approves the disbursement is bound by
9 the standard set forth therein. Section 21(2) of the Public
10 Finance Management Act 2004 expressly states that 'Accounting
11 Officers' are personally accountable for public funds received,
12 collected or disbursed from monies appropriated. In addition,
13 the Accounting Officer, according to Section 73 of the Public
14 Finance Management Regulations 2005, as amended, must certify
15 the accuracy of disbursements in addition to ensuring that they
16 are adequately supported. We are at a quandary to comprehend
17 what is meant when you said that the Assistance Grant Programme
18 must be kept simple and not complicated or encumbered by a lot
19 of paperwork. We are not suggesting that the process be overly
20 complicated or cumbersome, what we are advocating is that there
21 should be a minimum standard of documentation to support
22 disbursements from public funds. We are just asking that the
23 House of Assembly, in administering the programme, maintain
24 sufficient documentation to promote transparency and
25 accountability, which are fundamental principles of good

1 governance, a responsibility for which the Members should lead".

2 Are you not there, though, Mr Gaskin, highlighting
3 that a fundamental difficulty with the way the programme was
4 being operated, and that is this tension between the fact that
5 the Members had control over the budget but it was the Clerk to
6 the House as the Accounting Officer who was legally responsible
7 for accounting for that budget?

8 A. Yes, sir.

9 Q. And she, despite having the title "Accounting Officer"
10 was not the person that would decide how--how sums would be
11 spent. That was for somebody else, but she just had to account
12 for them.

13 A. Sir, the--neither the Director of Internal Audit or
14 even the Clerk, for that matter, can dictate to the Members of
15 the House of Assembly how they want monies spent when that money
16 is given to them. It is up to them. That's their prerogative.
17 They're the ones that are elected to office. Those are the
18 same--those people have to give account back to their
19 constituents.

20 What we are supposed to do is to do our part which,
21 from the Internal Audit standpoint, is to make all the
22 necessary--make sure that all the necessary procedures are
23 followed, and the focus--the House of Assembly is to verify
24 those documents before they go to the Treasury for payment.

25 Q. And let's finish with the last paragraph of your

1 letter to the then-Speaker, Mr Harrigan: "In closing, it would
2 be enlightening to know what conditions must exist that would
3 warrant an overhaul of the Assistance Grant Programme. Would it
4 not be more prudent to correct the issues as identified by being
5 proactive rather than reactive? We hope that this letter is
6 received with the sentiment in which it is sent and that it
7 clarifies any misconception that the Members may have as it
8 relates to our authority and to the Audit of the Assistance
9 Grants Programme. It is our hope that the recommendations
10 provided will now be accepted and implemented".

11 I take it that there wasn't any further correspondence
12 because you would have attached it to the reports; is that
13 right?

14 A. Yes, sir.

15 Q. And once--once it has reached that point, from the
16 point of view of the Internal Audit Department, you move on to
17 the next audit and you would only perhaps come back to this
18 programme if it were part of your Audit Plan.

19 A. At some later stage, sir.

20 Q. But stepping back from that and drawing on your time
21 as Director of the Internal Audit Department, did you see the
22 work of that Department as being critical to good governance?

23 A. Yes, sir.

24 I always thought that the Internal Audit--again, as I
25 said, it was a management tool, and it is a management tool; and

1 part of the responsibility in a growing society such as ours is
2 to try to help build capacity where there's none.

3 Q. In order to perform that task, is it important that
4 you be seen as independent?

5 A. It is very important that you be seen as independent.

6 Q. Could we turn to a different topic, please, and that
7 is the Port Development Project.

8 A. No problem.

9 COMMISSIONER HICKINBOTTOM: Where is that, Mr Rawat?

10 MR RAWAT: That's in the Auditor General's Bundle Part
11 1 at page 619.

12 THE WITNESS: Which one you want me to go to?

13 BY MR RAWAT:

14 Q. Have you got the Auditor General's Report, firstly?

15 A. Yes, I have that.

16 I must tell you, the first time I'm seeing this Audit
17 Report was July 2nd, 2021.

18 Q. Yes.

19 I think when you--in 2014, when you appeared before
20 the Public Accounts Committee, you made the point that you
21 hadn't seen the report at that time.

22 A. And again, as I said before, the first time I'm seeing
23 the Report was July 2nd, 2021.

24 Q. What we will do is probably move between that Report
25 and the Public Accounts Committee Bundle that we sent you

1 because that bundle contains not just a Public Accounts
2 Committee's Report but also the record, the minute of the
3 evidence that you gave to the Public Accounts Committee.

4 A. No problem, sir.

5 Q. So, just--the reason for asking you about this is
6 that, at the time--and as--and this is a process that was going
7 on between 2011--from 2011 through to 2013, that was at a time
8 when you were Deputy Financial Secretary, wasn't it?

9 A. I became the Deputy Financial Secretary, I think, in
10 November of 2011; I'm sure.

11 Q. And as--in that role, according to what was recorded
12 by the Public Accounts Committee--and this was in evidence
13 before them--you were identified as chairing the Central Tenders
14 Board; is that right?

15 A. That is correct.

16 Q. And also one of the roles you had as Deputy Financial
17 Secretary was to sit on the BVI Ports Authority Board as the ex
18 officio representative of the Ministry of Finance.

19 A. Let me clarify something first. The--any powers that
20 I had as Deputy Financial Secretary was powers delegated to me
21 by the Financial Secretary, the Financial Secretary or his
22 designee. I became Chairman of the Public Tender Committee
23 because the losses--if you look at the Public Finance Management
24 Act 170, Part 27, it gives you the whole rundown there. It
25 tells you that the Financial Secretary is a member of the Public

1 Tender Committee or his designator. That's how I became. So
2 any powers that I had was delegated to me.

3 Also, on the--in regards to sitting as--on the port
4 meetings, it was--I would go when the Financial Secretary could
5 not go.

6 Q. Just breaking that down, you've said that you chaired
7 the Public Tenders Committee. One of the features of the Public
8 Accounts Management Report is that terms seem to be used a
9 little interchangeably. Is the Public Tenders Committee the
10 same as the Central Tenders Board?

11 A. It is.

12 Q. Now, the reason I asked you about whether you were an
13 ex officio Member--and I can take you to the page if you
14 want--but during--in the minute of your evidence before the
15 Public Accounts Committee, you were asked whether you attended
16 Board Meetings at the BVI Ports Authority on behalf of the
17 Financial Secretary, who is an ex officio member of the Board,
18 and you were recorded as responding in the affirmative and
19 stating that, at the Ministry of Finance, there was split
20 representation on Statutory Boards. So, while the Financial
21 Secretary sits on the BVI Airport Authority Board, you represent
22 the Financial Secretary on the BVI Ports Authority Board, and
23 you indicated that you had attended approximately 90 percent of
24 the Ports Authority Board Meetings.

25 Now, that's what you said back in 2014. So does

1 that--obviously, your memory was probably much clearer about
2 what you were up to then, but that would seem right, wasn't it,
3 that you would have been the lead representative for the
4 Ministry of Finance on the Ports Authority Board?

5 A. Yes.

6 Q. Now, if you look at that Report from the Auditor
7 General and go to page 622, please.

8 A. 622. Mine don't have those numbers.

9 Q. I think you're looking at the wrong report, Mr Gaskin.
10 You're looking at the Public Accounts Committee Report. There
11 is a separate report from the Auditor General on the Port
12 Development Project.

13 A. I have the public--oh.

14 Q. Yes.

15 So if you--you'll need to keep that close by, and then
16 you'll need to find the Port Development Project Report which is
17 from the Auditor General, and that has a--if I put up the front
18 cover, you'll see what that looks like.

19 A. This is what I have.

20 Q. Right. That--you need--you need a second Report.

21 A. I don't have the second Report. I have this.

22 Q. Well, if I could just ask Mr Daniels whether that
23 second--that Auditor General's Report was sent to you.

24 MR. DANIELS: What happened, Mr Rawat, is that you
25 would have indicated to Mr Gaskin that you would be dealing with

1 the Public Account Committee's Final Report on the Cruise Ship
2 Port Development Project. That was the first matter that you
3 would have sent to him.

4 THE WITNESS: Yes.

5 MR. DANIELS: And then, subsequently, you sent two
6 other matters that you wish him to assist you with, which are
7 the Assistance Grants Programme between 2006 to 2008--that is
8 found at page 60--and the House of Assembly Assistance Grants
9 Programme Follow-up Audit Review; that is found at page 554.

10 So, no mention was made to Mr Gaskin with respect to that Ports
11 Authority matter that you have indicated to him a moment ago.

12 MR RAWAT: My understanding from those who sit behind
13 me was that the last thing to be sent to Mr Gaskin and to
14 yourself was the Public Accounts Committee Report, because that
15 is a substantial document because it's not just the Report. All
16 the Minutes of the Committee were sent that have been provided
17 to the Commission were also provided as well as other documents.

18 In advance of that being sent, the Port Development
19 Project Report was also sent as well as the two reports that
20 you've received. But, I mean, the point is we are where we are,
21 Mr Daniels, and it's a question of making sure that Mr Gaskin
22 has a report that we need to take him to.

23 MR. DANIELS: (Unclear) --sure what he would have
24 said, because we would have restricted our bundles to the three
25 items that you would have mentioned.

1 COMMISSIONER HICKINBOTTOM: Well, he hasn't got it.

2 MR RAWAT: He hasn't got it, so we need to find a way
3 of getting it to him.

4 COMMISSIONER HICKINBOTTOM: Can that be sent to him?

5 MR RAWAT: Yes.

6 MR. DANIELS: It could be sent to him directly now,
7 please--

8 COMMISSIONER HICKINBOTTOM: Yes. I mean, what I
9 suggest is--we've been going an hour, Mr Rawat.

10 MR RAWAT: Yes.

11 COMMISSIONER HICKINBOTTOM: We have a Stenographer who
12 is working away. What I suggest is we have a five-minute break,
13 Mr Gaskin and Mr Daniels.

14 MR. DANIELS: That will be (unclear)--

15 COMMISSIONER HICKINBOTTOM: During that five minutes,
16 we'll send the Report to both of you, but also that will also
17 enable the Stenographer to have a break too; yes? And we'll
18 come back in five minutes.

19 MR. DANIELS: Thank you.

20 THE WITNESS: No problem.

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

23 (Recess.)

24 MR RAWAT: Mr. Daniels, I appreciate your audio is
25 quite muffled, but can I just confirm that what the Inquiry team

1 have done is extract that Report from the full bundle that was
2 made available to you electronically and sent it by e-mail to
3 yourself and Mr Gaskin? Have you received it?

4 MR. DANIELS: Yes. I have received it. This would be
5 the first time I have been in receipt of this, but I have it in
6 my possession.

7 COMMISSIONER HICKINBOTTOM: I mean, the whole thing is
8 available to you electronically via I think it's called--it's
9 called "GoAnywhere", a file-sharing process.

10 MR. DANIELS: I have that entire bundle here, but I
11 only extracted for the purposes of what was requested from
12 Mr Gaskin, if you understand what I'm trying--

13 MR RAWAT: Oh, okay. I'm glad you have it now, and if
14 Mr Gaskin can confirm he has it, then we can carry on.

15 MR. DANIELS: Yes.

16 I just spoke to Mr Gaskin. That e-mail that you would
17 have sent it to recently is not in operation, but I have
18 forwarded it to Mr Gaskin.

19 So, just bear with him for two more minutes because I
20 personally forwarded it to Mr Gaskin.

21 MR RAWAT: Thank you very much.

22 (Pause.)

23 COMMISSIONER HICKINBOTTOM: Good. I think we're ready
24 to continue, Mr Peters. Thank you.

25 Good. Mr Gaskin, can you just--could you just confirm

1 that you now have the Auditor General's Report?

2 THE WITNESS: I have it dated 31 January 2013.

3 BY MR RAWAT:

4 Q. That's the one.

5 COMMISSIONER HICKINBOTTOM: That's it. Thank you very
6 much, Mr Gaskin.

7 Mr Rawat.

8 BY MR RAWAT:

9 Q. You if turn to page 622, Mr Gaskin.

10 Do you have it?

11 Mr Gaskin, can you hear me?

12 A. I can hear you.

13 Q. I think your screen froze for a moment.

14 If you look at 622 at paragraph 11--

15 A. Paragraph 11.

16 Q. --this is a part of the Auditor General's Report where
17 she's setting out the history of efforts that were made to
18 develop the Cruise Ship Pier on Wickham Cay, and paragraph 11
19 is--just appears under a heading of "Disney Proposal", so
20 discussions with Royal Caribbean and Disney for the expansion of
21 the pier in 2009, which then followed in 2011 with further talks
22 with Disney and ultimately a non-binding agreement.

23 At the time that these discussions were going on with
24 Disney, were you attending BVI Ports Authority Board Meetings?

25 A. No, sir.

1 Q. So, if you look at the bottom, paragraph 15, Heads of
2 Terms was signed on 11 October 2011, so that was before you came
3 and took on the role of Deputy Financial Secretary; is that
4 right?

5 A. That is correct.

6 Q. So, we see at paragraph 17 that the non-binding
7 agreement was subsequently terminated, and what that happens--if
8 you go through to paragraph 19--

9 A. Yes.

10 Q. --was that the Ministry of Communication and Works
11 took on the Project, and they began to take forward the project.
12 This was in 2011.

13 Now--and obviously after the termination of the Disney
14 discussions and the Disney agreement. From the time that you
15 were Deputy Financial Secretary, did you then begin to attend
16 Board Authority meetings--Port Authority Board meetings, rather?

17 A. I can't recall that, Commissioner, because--again, I
18 think it's kind of unfair to ask me--the first I'm seeing this
19 document. That's number one.

20 Number two, the cruise pier that we presently have out
21 there, out there has nothing to do, to me, with what is
22 happening here because it was three phases from my
23 understanding.

24 The first phase was an unsolicited proposal, I think
25 that's where they're talking about Disney.

1 The second phase was where there was an Expression of
2 Interest.

3 And then third phase is where the Government actually
4 took control of and decided to finance and build this cruise
5 pier, so I am, you know, at a loss. I can't say.

6 Q. Well, the reason I asked you was that you--firstly,
7 you confirmed that--you said earlier that this Report from the
8 Auditor General, that the first time you had seen it was on the
9 2nd of July 2020.

10 A. 2021.

11 Q. 2021, of course, yes.

12 A. Yes.

13 Q. So, you confirmed that you had received it before this
14 Hearing.

15 You also, as you will appreciate from the Public
16 Accounts Committee Report and its findings, previously gave
17 evidence to a committee of Parliament about this project. You
18 were on the Board at the time that this project happened, and
19 you were, once we go through the reports, also involved in the
20 process. That's why you've been called and that's why we're
21 asking for your help.

22 TECHNICIAN PETERS: It appears again, Commissioner,
23 that Mr Gaskin is frozen.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 TECHNICIAN PETERS: I will get him on the phone to see

1 if we could get this rectified quickly.

2 COMMISSIONER HICKINBOTTOM: Thank you very much,
3 Mr Peters.

4 (Pause.)

5 THE WITNESS: Is it better now?

6 TECHNICIAN PETERS: Yes, we have you back, Mr Gaskin.

7 COMMISSIONER HICKINBOTTOM: Yes, it is, Mr Gaskin. We
8 can see and hear you again. Thank you very much.

9 Mr Rawat.

10 BY MR RAWAT:

11 Q. So, my question was whether you were, having been
12 appointed Deputy Financial Secretary in November 2011, were you
13 sitting or attending Board Meetings at the time that the project
14 was taken over by the Ministry of Communication and Works?

15 A. Commissioner, to be quite fair, I don't remember. I
16 know that part of my responsibilities as Deputy Financial
17 Secretary and the responsibilities delegated to me by the
18 then-Financial Secretary. I don't know when I started to attend
19 those Board Meetings. I don't think it was right after I got--I
20 got there.

21 Q. Was it during the course of 2012?

22 A. I would believe so.

23 Q. If you look at 625 in the Auditor General's Reports--

24 A. 625?

25 Q. Yeah.

1 --the concern that is raised by the Auditor General's
2 Report in relation to the actions of the Ministry of
3 Communication and Works is that the Board was excluded from the
4 process and reduced simply to endorsing decisions that had been
5 made by the Ministry, and then they were given instructions to
6 take certain steps, and you will see that conclusion at
7 paragraph 40, which is at 626.

8 A. 40.

9 Q. So, the Auditor General says: "In effect, the role of
10 the Port Authority was reduced to endorsing decisions already
11 made by the Ministry. In excluding the authority from the
12 decision-making process the Ministry failed to avail itself of
13 the experience and knowledge residing in the management and
14 Board of the Authority".

15 And if you go back to 36--

16 A. 36.

17 Q. --you will see there that the Auditor General sets out
18 instructions that were given to the Board from the Ministry.
19 For example, requiring it to enter--issue a resolution of the
20 Authority to enter into agreement with Tortola Port Partners,
21 requiring it to execute an agreement for a credit of \$3 million
22 for purchasing piles.

23 Now, you'll see that, at 36(iii), there is a reference
24 to July 2012 there.

25 So, if I take you to the PAC Report, do you have

1 page 401 of that?

2 A. Which PAC Report? You mean the Minutes of the
3 Meeting?

4 Q. Yes.

5 A. I don't have my pages numbered that way. What I
6 have--what I have is the meeting held on Wednesday the 15th of
7 2014.

8 Q. Is that the one where you--when you say 15th of
9 January 2014, where you attended before the Committee?

10 A. Yes, I have that.

11 Q. Right. Okay.

12 Well, if you go to Line 37 on that.

13 A. 37.

14 Yeah, line 37.

15 Q. So it begins "The Deputy Financial Secretary
16 indicated".

17 A. I'm seeing that, sir.

18 Q. Right.

19 Can I take you to the middle of it. You said to the
20 Committee that the Ministry of Finance became involved in the
21 project long after it had begun and that the Ministry of
22 Communication and Works were the ones who had been dealing with
23 it, and it continues. "He", and that's you, "indicated that on
24 the 23rd of April 2012, the Government of the British Virgin
25 Islands signed the Protocols for Effective Management which I've

1 outlined the process for how capital projects, including
2 Public/Private Partnerships should be handled. He explained
3 that, at the time, the Ministry of Communications had gone 'full
4 speed ahead' with the Project and did not adhere to the process
5 outlined in the Protocols. He further explained that, in
6 August 2012, the Foreign and Commonwealth Office stepped in and
7 it was then that the project came to the Ministry of Finance for
8 procurement. He indicated that Requests for Proposals had been
9 sent to persons of interests and that these RFPs had been sent
10 out to ask persons to bid on the project when the information
11 had been put together".

12 I will come back to that last point, but if you go
13 through then to 40 and 41.

14 COMMISSIONER HICKINBOTTOM: Which page is this in the
15 bundle, Mr Rawat?

16 MR RAWAT: That's at page 402.

17 THE WITNESS: 40 and 41.

18 BY MR RAWAT:

19 Q. Do you see that? You were asked at 40 by the Chairman
20 of the PAC "whether the Ministry of Communications and Works had
21 been 'full speed ahead' with the Project without consulting with
22 the BVI Ports Authority", and you stated at 41, and I will quote
23 this, "he was unsure if that had been the case and noted that he
24 was just saying that the Ministry of Communications and Works
25 had been handling the project".

1 So--

2 A. Yes.

3 Q. Taking what I've read to you from the Auditor
4 General's Report, her concern that the Board had not been
5 properly involved, and the evidence that you gave about the
6 Ministry of Communication and Works being "full speed ahead",
7 does it follow or is it right that the Ministry of Communication
8 and Works did, in fact, take over the project from the Port
9 Authority?

10 A. Can you repeat your question?

11 Q. I've taken you to the Auditor General's Report where
12 she raises--

13 A. Yeah, where she raised those concerns.

14 Q. I then took you to the explanation you gave to the
15 Committee, the synopsis you gave of what you could remember.
16 And then you were asked by the Chairman about whether there had
17 been consultation with the Ports Authority, and I have taken you
18 to your answer.

19 A. And I said I was unsure if that's what the document is
20 saying.

21 Q. Well, let's break that down a little because I think
22 you gave your answer before I had taken you to everything.

23 A. Oh.

24 Q. So, looking at everything, you were the--you were the
25 person from the Ministry of Finance attending Board Meetings.

1 Is it your recollection that the Ministry of Communication and
2 Works effectively took over the project from the Ports
3 Authority?

4 A. I can't recall that.

5 Q. What you do say is that the Ministry of Communications
6 and Works had not adhered to the process outlined in the
7 Protocols, and that's the Protocols for Effective Management.

8 Can you remember in what way that Ministry had not
9 adhered to the Protocols?

10 A. Commissioner, this is a long time. This is the
11 process that I am trying to go back in the recesses of my
12 memory, so I don't misquote, given false information. So, as to
13 this point, I can safely say, based on the information that is
14 here in front of me, at that time, that was the information that
15 I gave in regards to what is here in the Minutes. I can't
16 recall the circumstances or anything around that.

17 Q. So, all you can confirm is that, in 2014, you told the
18 Public Accounts Committee that the Ministry had not adhered to
19 the Protocols but you cannot now remember in what way they had
20 not adhered?

21 A. I can't remember the context, sir.

22 Q. If you look at, sticking with the Minutes of your
23 evidence, if you look at 43.

24 MR RAWAT: Which, Commissioner, is on your page 402.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 BY MR RAWAT:

2 Q. You told the Public Accounts Committee that the BVI
3 Port Authority Board had been asked to do certain things with
4 regard to the project. One of which had been to purchase piles
5 and had been approved by the Board.

6 You further stated that when the new government took
7 office, the Chairman of the Board had resigned and a new
8 Chairman Mr Gregory Adams had been appointed. You indicated
9 that you were unsure what had been discussed but disclosed that
10 on several occasions the Board had been asked to pass
11 resolutions for certain things relating to the project. And you
12 indicated that the Board did not handle the project yourselves.

13 If you go back to--if you go back to--we will leave
14 that.

15 What you also say, and this is at--if you carry on, I
16 will find it, and I will give you the paragraph.

17 If you go to 273--

18 MR RAWAT: Which is, Commissioner, at your 433.

19 BY MR RAWAT:

20 Q. This is, again, still in the evidence that you gave.
21 Do you have that, Mr Gaskin?

22 A. Yes, but I'm trying to find where you are, sir.

23 Q. Where I am is still in the Minute?

24 A. Yes.

25 Q. It's page 39 and Point 273.

1 A. 273.

2 Yes, I'm at 273.

3 Q. At 273, the Member for the First District asked
4 whether the Board had been the ones to decide that they wanted
5 to move ahead with obtaining the piles or if the Board had been
6 told that the piles should be obtained and had to ensure that
7 the parameters were in place to protect the Government.

8 You then said and what's recorded in 274: "In
9 reference to the Member's question, the Deputy Financial
10 Secretary indicated that it was the latter and noted that the
11 Board had wanted to ensure that everything was in place to
12 ensure that the Government had been getting value for money. He
13 stated that the piles would have had to be made to certain
14 specifications".

15 If we go to the next page, in the Minute of your
16 evidence to the Public Accounts Committee at 281--

17 A. 281.

18 Q. --you refer to a briefing that had been held by the
19 Permanent Secretary of the Ministry of Communication and Works.

20 Now, I had taken those hopefully to try and assist
21 your recollection, Mr Gaskin. I appreciate it is some time ago,
22 but the reason to refer you to reference to the piles is because
23 that also appears in the Auditor General's Report, and I took
24 you to that earlier. But it does seem, doesn't it, firstly,
25 that from what you told the Public Accounts Committee in 2014

1 was that the Board was receiving briefings from the Permanent
2 Secretary of the Ministry of Communications and Works, and
3 that's right, isn't it?

4 A. Yes, sir.

5 Q. And secondly, at least in relation--

6 A. The Permanent Secretary, in my recollection is also an
7 ex officio Member of that Board.

8 Q. But was those briefings being given by the Permanent
9 Secretary as a Member of the Board or as the Permanent
10 Secretary?

11 A. I can't recall that, sir.

12 Q. And in reference to the purchasing of piles, which was
13 for \$3 million, according to the Auditor General, it does seem
14 from what you've said to the Public Accounts Committee was that
15 that was effectively an instruction to the Board, wasn't it?

16 A. Which number are you referring to?

17 Q. 273, please.

18 A. 273. Yes.

19 Q. This is a question that you were asked by the Member
20 for the First District, and that was whether the Board had
21 wanted to move ahead with obtaining the piles or if the Board
22 had been told the piles should be obtained, and what you said
23 was you indicated it was the latter, so you indicated to the
24 Member for the First District that the Board had been told the
25 piles should be obtained, which would suggest, wouldn't it, that

1 the Board had been given an instruction to pay for the piles?

2 A. Commissioner, I am not sure how we deduce that, but
3 that probably would be because the Minister for the subject had
4 the authority to make those decisions.

5 Q. Again, given the passage of time, is the position,
6 Mr Gaskin, that you can't add any more detail?

7 A. I can't add any more detail.

8 Q. All right.

9 COMMISSIONER HICKINBOTTOM: But is it fair to say from
10 your last answer, Mr Gaskin, because I understand it was a long
11 time ago and you can't give any more detail, but it wouldn't
12 surprise you because the Minister had the authority to make that
13 decision?

14 THE WITNESS: It wouldn't surprise me.

15 COMMISSIONER HICKINBOTTOM: Thank you very much.

16 BY MR RAWAT:

17 Q. If you could--I'm sorry to make you jump around in
18 this document, Mr Gaskin, but if you go back in the Minute to
19 item 45.

20 A. 45?

21 MR RAWAT: Your page 403.

22 THE WITNESS: No problem.

23 COMMISSIONER HICKINBOTTOM: But paragraph 45?

24 MR RAWAT: Paragraph 45, yes.

25 THE WITNESS: 45.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 THE WITNESS: Yes. I'm there.

3 BY MR RAWAT:

4 Q. What you said there, and to give it context, what
5 paragraph 44, which is on the previous page says is that: "The
6 Member for the First District inquired about whether it had been
7 a breach of the Statutes/Acts that governs the BVIPA Board for
8 them not to be the ones handling the project".

9 And what you said was: "The Deputy Financial
10 Secretary stated that, under the Ministry of Communications and
11 Works, all of the BVIPA capital projects had to be approved by
12 Cabinet through the Ministry. He further stated that, based on
13 the financing and the way the project was supposed to go and
14 especially with it being a Public/Private Partnership, the
15 project would have had to be a Central Government project
16 because the outside parties could not have made a deal within
17 the BVIPA by themselves. He indicated that the BVIPA is a
18 statutory body within the Central Government".

19 I just wondered whether you could clear out and
20 develop that response and just give some further explanation to
21 what you were referring to when you said that to the Public
22 Accounts Committee?

23 A. I believe I was referring to the fact that the
24 Protocols that were signed in April of 2012 indicated that when
25 you have a Public/Private Partnership, that it would have to be

1 the Central Government put in all the necessary stuff in place
2 rather than to deal with the Statutory Board.

3 Because remember, if my memory serves me correct, the
4 Protocols for effective management indicated to us the
5 responsibility of the Central Government to the Statutory
6 Boards. The Port Authority is one of those Statutory Boards
7 that, based on the--I think it was the weighted average or
8 whatever it was--that the Central Government would have to be
9 the one making all those necessary arrangements. I think that
10 was the context. I am not sure. I don't want to, again,
11 mislead anybody or give any false information because I believe
12 that everybody wants to make sure that we follow the Rules of
13 the COI, but I don't want to give any false information, but I
14 believe that was the context in which I was making those
15 statements.

16 Again, my memory doesn't allow me to elaborate any
17 further.

18 Q. Well, Mr Gaskin, that's helpful, and what's important
19 is that you don't speculate or guess.

20 A. No.

21 Q. If you can't develop an answer or you can't answer a
22 question, it's better for the Commissioner if you make that
23 clear rather than--

24 A. That's no problem.

25 Q. --rather than guess or speculate.

1 We are going to jump between documents. If I take you
2 back to the Auditor General's Report at 626, please.

3 A. One second, please.

4 626?

5 Q. Yes.

6 A. I'm there.

7 Q. Can you see the heading "Independent Legal Review"?

8 A. Yes, sir.

9 Q. And what's said by the Auditor General is that:
10 "Throughout the process", and the process we're at now is that
11 period of time when the Ministry of Communication and Works is
12 dealing with the project "the Attorney General's Chambers was
13 consulted for clarification and legal advice with respect to the
14 Government's interests".

15 Now, whilst you were sitting on the Board, do you
16 recall being aware that advice was being taken from the Attorney
17 General's Chambers?

18 A. I can't recall, sir.

19 Q. What you'd said, remember when we were looking at that
20 paragraph 45 in the Minute, one of the points you made to the
21 Public Accounts Committee was that, "outside parties could not
22 make a deal with the Port Authority by themselves".

23 If you look at 43 in--or just look at 42--42 in the
24 Attorney General's Report--the Auditor General's Report--I do
25 this all the time--the Auditor General's Report refers to that:

1 "In June 2012 the Financial Secretary sought independent legal
2 advice from specialists in the field of Public/Private
3 Partnerships. A team of lawyers from Baker & McKenzie reviewed
4 the project--the proposed Project Development Agreement, the
5 Heads of Understanding, and the Ground Lease that had been
6 drafted for execution by the authority", that's the Ports
7 Authority, "and the Developer".

8 At 43, what's set out is that that: "Review raised a
9 number of concerns", including at (vi): "Failure of the
10 agreements to give the Authority approval rights for the initial
11 design and any changes". And then on the next page, if you go
12 over, at (xiii): "Failure to make provision for the Authority
13 to be a Party to the berthing agreement".

14 Now, that appears to suggest that it was contemplated
15 that the Ports Authority would need to enter into legal
16 agreements with the Developer. Was that your understanding at
17 the time, that there might be some legal agreements that the
18 Port Authority itself would have to enter into?

19 A. Again, sir, I'm not sure.

20 Q. Now, the next sort of big event in this project was
21 that the Ministry of Finance took over from the Ministry of
22 Communications and Works and I can take you to this, if you need
23 to see it, but if you go back to the Minute that we were looking
24 at, and you go to paragraph 35, that's at 401, Commissioner.

25 A. 35?

1 Q. Yeah.

2 What you told the Public Accounts Committee at 35 was
3 that you had been very familiar with the Cruise Pier Project,
4 and you informed the Committee that, within the Ministry of
5 Finance, you had responsibility for the Cruise Pier Project
6 whereas the Financial Secretary had responsibility for the
7 Airport Project.

8 Now, in terms of the sort of responsibility you were
9 exercising over the Cruise Pier Project, once the Ministry of
10 Finance took over, what was your role at that point?

11 A. My role would have been, sir, any responsibilities
12 that were delegated to me by the Financial Secretary, and that's
13 where I fit in. I had no authority of my own. Again, this 35
14 says--stated that the Committee that it had the responsibility.
15 That was a delegated responsibility to me to sit in on--with
16 this Cruise Pier Project because the Financial Secretary was
17 handling another project at the same time, I believe.

18 Q. I mean, you say it's delegated responsibility.

19 A. Yes.

20 Q. And I can understand that, but what was your role?
21 What was your job? What did you do in relation to the project?

22 A. Attend the meetings and to make sure that I state
23 finance position when the opportunity--when the opportunity
24 arrive.

25 Q. In your evidence to the Public Accounts Committee, you

1 referred to being on a Steering Committee. Was that
2 Committee--that was the Committee that was set up to take the
3 project forward once the Ministry of Finance took over?

4 A. What Section are you referring to, sir?

5 Q. If you go to paragraph 47 in your--

6 A. In the Minutes?

7 Q. 403.

8 Do you see where you say--

9 A. Yes, 47.

10 Q. You're aware of when the Ministry of Finance has been
11 involved and of what is happening currently is you're a Member
12 of the Steering Committee. I just wanted to know whether you
13 remember what the Steering Committee was for.

14 A. If you look--I am not sure because if you read 46 or
15 48, the Member of the Second said that they definitely knew
16 whether the decision to continue with the project had been made,
17 so it appears to me there that something is missing, whether the
18 project was stopped or--and then on 49 again, said the Deputy
19 Financial Secretary stated that he was unsure if a decision had
20 been made to continue the project.

21 So, I'm totally at a loss here.

22 Q. What my question was was whether you remember what the
23 Steering Committee was for.

24 A. No, sir.

25 (Pause.)

1 Q. If I take you back to the Auditor General's Report,
2 please, Mr Gaskin, at page 628.

3 A. 628. Yes, sir.

4 Q. This is the portion of the Report dealing with the
5 procurement process that was initiated by the Ministry of
6 Finance, so can you see at 47 there is reference to execution of
7 Heads of Understanding and commencement of preliminary activity
8 on the development project being halted? That was the point at
9 which the involvement of the Ministry of Communication and Works
10 ended.

11 And then at 48 it says: "The Ministry of Finance then
12 published on its website a request for 'Expression of Interest'
13 dated 31 of July". And the paragraphs then set out what that
14 request wanted.

15 But if you look at 51, you will see that there was an
16 initial Closing Date for the Expression of Interest of
17 16th August 2012, which was then extended twice, first to the
18 28th of August 2012 and then later to the 12th of
19 September 2012. What the Auditor General records is: "Aside
20 from it being published on the Ministry of Finance's website,
21 the request for Expression of Interest was published" firstly in
22 a Canada-based publication, and then in three local
23 publications.

24 If you go to 52, the last part of 52, the Auditor
25 General notes that: "No evidence was found to support

1 assertions that the tender was also advertised in The Wall
2 Street Journal".

3 And that observation is proceeded by this, that "the
4 publications above provided a submission period of less than two
5 weeks for a project envisaged to cost between 50 million and
6 \$75 million". And this process, as we see at 54, resulted in
7 three submissions, and it was a process of which the Public
8 Accounts Committee was also critical.

9 Can you remember now why such a short period was
10 allowed for potential tenderers to make submissions or what on
11 any view would have been a complex, long-term and high value
12 project?

13 A. No, sir, I can't recall.

14 Q. Was there any reason at all that you can remember as
15 to why the Ministry of Finance considered it necessary to set
16 such a short period?

17 A. I believe that would be a question that you would have
18 to ask the Financial Secretary. I believe that was above my pay
19 grade.

20 Q. And just to explain that a little bit more, please,
21 you've explained--you operate as someone designated by the
22 Financial Secretary.

23 A. Yes, sir.

24 Q. You also say that you were taking the lead on the
25 Cruise Pier Project whilst the Financial Secretary was involved

1 in the Airport Project.

2 So, do you have any recollection yourself as to what
3 your thoughts were at the time as to the period that was
4 applied?

5 A. No, sir.

6 Q. If you go to 57 in the Auditor General's Report.

7 A. I'm there.

8 Q. What the Auditor General notes is that the intention
9 was to have the process expedited to accommodate an early
10 construction schedule. "However, the provisions in the
11 invitation for Expression of Interest mirrored the previously
12 accepted proposal from Tortola Port Partners to a considerable
13 extent which may have created an unfair advantage".

14 To give you context, Mr Gaskin, when the Ministry of
15 Communication and Works were running the project, they had
16 reached a point when they had effectively entered into an
17 agreement with Tortola Port Partners, and the concern that is
18 raised by the Auditor General is that this
19 creates--adopting--seeking submissions which mirror--based on an
20 invitation that mirrors a previously accepted proposal would
21 have given that company an unfair advantage, and it was a
22 criticism that was also made by the Public Accounts Committee,
23 who said that it created an unfair bias and rendered other
24 prospective tenderers at an immediate and severe disadvantage.

25 Can you remember now why the invitation was formulated

1 in such a way?

2 A. No, sir, I can't remember.

3 Q. The process, if we look at 54 and 55 in terms of the
4 response to the invitation for Expressions of Interests was
5 firstly that, as it says at 53, you had three proposals
6 received. "These came from GLF Construction Corporation,
7 Tortola Port Partners, and Royal Caribbean Cruises
8 Limited/Decco". They "were reviewed for responsiveness by a
9 committee chaired by the Deputy Financial Secretary and
10 comprising of representatives from the Ministry of Natural
11 Resources and Labour, Ministry of Communication and Works and
12 the Public Works Department. After which all three developers
13 were invited to submit tenders by 11 October 2012, of which two
14 were subsequently received".

15 Again, just stopping there, so that's a committee
16 where which you appeared to have chaired. Can you explain what
17 process was used to put together that Committee?

18 A. Sir, I believe this is making reference to the Public
19 Tender Committee.

20 Q. Before you confirm that, look at 55, Mr Gaskin.

21 A. Yes.

22 Q. Because you're now at a stage where the Committee you
23 chaired have reviewed submissions in responding to an invitation
24 of interests.

25 At 55, you receive three submissions, two then submit

1 tenders, and the tenders--the tenderers are "invited to make
2 presentations to a Committee formed for the purpose of
3 negotiating the terms of a PPP agreement. The Committee's
4 membership included the Financial Secretary, Baker & McKenzie as
5 a law firm, Baker & McKenzie, PricewaterhouseCoopers of Trinidad
6 and Tobago, together with the Chairman of the BVI Port Authority
7 and representatives of the Attorney General Chambers and the
8 Ministry of Communication and Works". There is no reference to
9 you there?

10 A. Because again, sir, as I said, all the authority that
11 I had in regards to this project came when the Financial
12 Secretary could not attend. I attended in his stead. So,
13 therefore, there is no reference to me there because I wasn't
14 there.

15 Q. Yes, but there is obviously, as I said, there is a
16 reference to you in 54. I'm just trying to ask you if you can
17 remember how that Committee came about?

18 A. No, sir.

19 Q. If you go to--go back to your Minute of the evidence
20 that you gave to the Committee, Public Accounts Committee.

21 MR RAWAT: And Commissioner, it's at page 407.

22 COMMISSIONER HICKINBOTTOM: Which paragraph?

23 MR RAWAT: Paragraph 79, please.

24 THE WITNESS: Paragraph 79.

25 79? I'm there.

1 BY MR RAWAT:

2 Q. What you said there is you indicated you had been
3 involved in the phase of the project where Mr Claude
4 Skelton-Cline had been appointed to be the Managing Director of
5 the BVI Ports Authority. You stated "the Cabinet had made a
6 decision to appoint a Negotiation Committee and noted that the
7 Financial Secretary had been appointed the Chairman. He further
8 stated that he could not be on the Committee because he had
9 already been the Chairman of the Public Tenders Committee. He
10 explained that at times the Financial Secretary is absorbed in a
11 number of matters and noted that the decision had been made to
12 have Mr Claude Skelton-Cline act in his place whenever he could
13 not make it".

14 Just breaking that down, do you remember--what we have
15 on the basis of the Auditor General's Report is two committees,
16 don't we? One to consider the submissions, which you chaired,
17 and the second one which considered that the tender--had two
18 tenders, which was chaired by the Financial Secretary.

19 Is that second Committee chaired by the Financial
20 Secretary the Negotiation Committee that you're referring to
21 there?

22 A. Can you repeat your question? Are you asking me if
23 that second Committee was chaired by the Financial Secretary?

24 Q. Well, linking the two together, you have two
25 committees, don't you, according to the Auditor General. That's

1 what--

2 A. According to the Auditor General.

3 Q. There's two committees. You're not on the second
4 Committee, are you?

5 A. No, sir.

6 Q. And what you told the Public Accounts Committee in
7 2014 was that there was a Negotiation Committee chaired by the
8 Financial Secretary which you could not be on because you were
9 Chairman of the Public Tenders Committee. And my question is
10 whether the Negotiation Committee, whether you agree that the
11 Negotiation Committee is the Committee, the second Committee,
12 that the Auditor General is referring to?

13 A. Based on the information here, sir.

14 Q. And it seems that Claude Skelton-Cline, when the
15 Financial Secretary wasn't available, Claude Skelton-Cline as
16 Managing Director of the Ports Authority would Chair that
17 Negotiation Committee; is that right?

18 A. Again, I'm trying to understand your question. The
19 Financial Secretary is observed in a number of matters and noted
20 a decision had been made to have Mr Claude Skelton-Cline act in
21 his place wherever he could not make it.

22 Those are my statements.

23 Q. Yes.

24 A. And what are you asking me now, sir?

25 Q. Well, I'm asking you to confirm whether it's right

1 from what you said in 2014 that your evidence in 2014 was that
2 when the Financial Secretary was not available to Chair the
3 Negotiation Committee, Claude Skelton-Cline would do so.

4 A. Based on the information here, I would have to
5 conclude that--that--that is what happened.

6 Q. Could you go to the Report itself, please.

7 A. Which one?

8 Q. The Public Accounts Committee Report.

9 A. Public Accounts Committee Report. This document, sir?

10 Q. Paragraph 44, please.

11 A. I'm there.

12 Q. Now, I'm taking you to the conclusion or one of the
13 conclusions that was reached by the Public Accounts Committee,
14 and what they say is the procurement engaged by the Ministry of
15 Finance for the development of the Cruise Pier Project was
16 flawed as it created an unfair bias towards TPP submittal and
17 rendered other prospective tenderers at an immediate and severe
18 disadvantage.

19 And if we go over, it excluded the Port Authority
20 Board which is largely kept out of the process.

21 At 45 the Committee records that it also concluded
22 that the Ministry of Finance infringed on the Authority's
23 independence by engaging and controlling the tender process for
24 a project which is properly under the control of the BVI Port
25 Authority.

1 Now, were those conclusions that the Ministry of
2 Finance was prepared to accept?

3 A. Commissioner, as I said to you before, the first time
4 I'm seeing this document was the 2nd of July. I am not in a
5 position to give a statement as to what the Ministry of
6 Finance's position would be at this time. I think it would be
7 unfair to me to answer your question. I want to try to be as
8 helpful as possible, but I find it very difficult for me. I
9 think your question somewhat is--somewhat misleading to me, so--

10 (Overlapping speakers.)

11 A. I can't say what the Ministry of Finance's position
12 was. The Ministry of Finance's position would have to be
13 articulated by the Financial Secretary, not by the Deputy
14 Financial Secretary.

15 Q. Well, let's break it down, Mr Gaskin, and put it this
16 way: You gave evidence to the Public Accounts Committee.

17 A. Yes.

18 Q. The Public Accounts Committee published--

19 (Overlapping speakers.)

20 Q. Can I finish, please, Mr Gaskin.

21 A. No problem, sir.

22 Q. The Public Accounts Committee published its Report on
23 the 13th of June 2014. That report made criticisms of you as
24 the Deputy Financial Secretary?

25 A. Those criticisms were aired in the House of Assembly.

1 Q. Are you saying that you didn't, at that time, see a
2 copy of the Report on which you were criticized?

3 A. Sir, the answer is "yes".

4 Q. And you were still at the time of publication of the
5 Report in June 2014, Deputy Financial Secretary, were you not?

6 A. Yes, sir.

7 Q. And are you saying that you were not privy to any
8 internal discussions within the Ministry of Finance about the
9 content of this Report?

10 A. No, sir.

11 Q. You took no part in any such discussions?

12 A. I took no part in any such discussion.

13 Q. Even though you had told the Public Accounts Committee
14 that you had been the person that had led on the Cruise Pier
15 Project?

16 A. Can you repeat your question?

17 Q. I read out to you a little earlier--

18 A. Yes, you did.

19 Q. --you evidence where you explained to the Public
20 Accounts Committee that you had been the person leading on the
21 Cruise Pier Project whilst the Financial Secretary (drop in
22 audio) the Airports Project. So, even though that was your role
23 after this Report was published, you were not privy to any
24 internal discussions?

25 A. No, sir, I was not.

1 Q. So, we just looked at two significant criticisms that
2 were made of the Ministry of Finance and the way to procure a
3 project worth between 50 and \$70 million. And are you saying
4 that the Financial Secretary did not ask for your view on those
5 criticisms?

6 A. I can't recall that, sir.

7 Q. Well, if--doesn't it follow from your earlier answer,
8 that if you were not privy to those discussions, that the
9 Financial Secretary must not have asked you about--about--for
10 your view about how to respond to these criticisms?

11 A. Sir, as I said to you before, the first I became aware
12 of this document was July 2nd of 2021. I cannot at this time
13 recall the Financial Secretary asking me any question in regards
14 to what--the conclusion of the Public Accounts Committee.

15 Q. Were you aware that the Report had been published?
16 The Report's dated 13th of June 2014. At about that time, did
17 you become aware that the Report was published?

18 A. No, sir.

19 Q. The report was debated in the House. Did you become
20 aware that it was debated in the House?

21 A. I became aware that it was debated in the House when
22 it was debated in the House, and that was in, whenever. And so
23 therefore, again, in a small country like this where we live in
24 a fish bowl, I don't wish to take my family and myself back
25 through the court of public opinion. And so, the matter was

1 debated in the House of Assembly which I have no privilege
2 there, none whatsoever, and that's what I can recall. But
3 otherwise than that, there was no discussion with me.

4 Q. And did you at any time ask to see a copy of the
5 Report?

6 A. No, sir.

7 Q. I do have more questions on it, Mr Gaskin, but to
8 assist the Commissioner--

9 A. No problem.

10 Q. --if given what you just said about what access you
11 had to the Report and the extent that you were able to input
12 into any response to it, which seems to be you were not invited
13 to, if that--can you make that clear to the Commissioner as we
14 go through so that we do know what you were involved in and what
15 you were not involved in at the time. All right?

16 A. Go ahead.

17 Q. Okay. If you go in the Report to paragraph 46.

18 A. I'm there.

19 Q. This is the Public Accounts Committee criticizing the
20 Ministry of Finance for not being efficient because it says that
21 the Ministry of Finance procurement process, after a year of
22 assessment and negotiations, resulted in a failure to execute a
23 contract for the project and a liability for the Port Authority
24 in excess of \$1.7 million.

25 Now, we have gone through the different stages in

1 which you were involved and when the Financial Secretary were
2 involved. Can you help the Commissioner at all to understand
3 why, after a year of assessment and negotiations, there was a
4 failure to execute a contract?

5 A. Sir, I can't recall that, so I would be no help to you
6 at all.

7 Q. If you go through the Report, please, to paragraph 58.

8 A. 58?

9 Q. Sorry, paragraph 55.

10 MR RAWAT: Page 16, Commissioner.

11 THE WITNESS: I'm there.

12 BY MR RAWAT:

13 Q. One of the issues that the Public Accounts Committee's
14 report highlighted was that there was a growing use of
15 consultants over a two-year period, and this is a criticism made
16 of the Ministry of Communication and Works as well as the
17 Ministry of Finance and they say that there was a lack of
18 transparency about the process. If you look at 57, the
19 Committee noted that the Protocols for Effective Financial
20 Management required projects to take the form--which take the
21 form of Public/Private Partnerships to undergo an appraisal
22 process before the Procurement step and be subject to external
23 and independent specialists advice in areas such as accounting,
24 legal, financial, and environmental implications.

25 Now, can you remember at least from the point of view

1 in which the Ministry of Finance took over the project, at what
2 stage that appraisal process occurred?

3 A. I cannot recall that, sir. You're asking me to go
4 back in the recesses of my memory. I can't recall that.

5 Q. That's a fair point. I was hoping, if you can't
6 remember, you must say so, Mr Gaskin. I was hoping that because
7 it was such a large project that there may be some things about
8 it that stayed in your memory.

9 But if you look at 58 on that page, what the criticism
10 is is there were effectively too many consultants engaged, and
11 they list the number of consultants involved over into the next
12 page.

13 And obviously it's not just in relation to the
14 Ministry of Finance, but focusing on the Ministry of Finance, in
15 the aftermath of this project, did you, as the Ministry of
16 Finance, look back and think that there were too many
17 consultants involved in this process?

18 A. Commissioner, Commissioner. Let us get real here.
19 The BVI Government is trying to get involved in a project that
20 they have no knowledge of, so they went out and seek all the
21 help that they could to develop this project. It simply means
22 that nobody was going to come and do it for free. I can't make
23 that assumption.

24 Q. You don't agree with the Public Accounts Committee--

25 A. No, I don't. I don't.

1 Q. Just--you make the point that this is the kind of
2 project where you need to go out and get assistance.

3 A. You need to get capacity.

4 Q. In getting the capacity, I mean, we have here Baker &
5 McKenzie lawyers specializing in Public/Private Partnerships,
6 PricewaterhouseCoopers as accountants, and BDO accountants and
7 auditors were also retained.

8 Do you remember whether when seeking these
9 specialists, the matter was put out to competitive tendering?

10 A. I can't recall that, sir.

11 Q. Do you remember how they became involved at all? How
12 did Baker & McKenzie get selected?

13 A. Commissioner, I can't recall how any one of them got
14 selected. All I can say is, Commissioner, the BVI Government
15 was embarking on a Major Project. You made it clear, a project
16 that's supposed to be either 50 to \$75 million. I'm not sure
17 where you got that figure from, but if we don't have the
18 capacity on island, I think it would be very prudent of the BVI
19 Government to go and seek those people who can assist them with
20 such a project.

21 And I think while that may come off as a criticism, I
22 don't look at it as a criticism. I look at the Ministry of
23 Finance was acting prudently and making sure that we try to do
24 whatever is required to make sure that all the people who were
25 involved had some knowledge about what they were doing.

1 Q. My question, Mr Gaskin, was not related to whether it
2 was a prudent step to get (drop in audio) but whether in doing
3 so the Ministry of Finance decided to invite more than one
4 specialist to bid for the work, but that's something you can't
5 remember--

6 A. No.

7 Q. --whether it happened or not?

8 A. No.

9 Q. Could you take a look, please, at 68 in the same.

10 A. 68.

11 I'm there.

12 Q. One of the points, and it's under the heading
13 "conclusion", but can you see B?

14 A. The payment of success fee?

15 Q. Yeah.

16 So, and this was in relation to loan funding. So, the
17 payment of a success fee to PricewaterhouseCoopers was an
18 unnecessary expense and a burden to the Authority, and what it
19 says is: "Sourcing of loan funding for the development is the
20 one aspect of the process which should properly have been
21 assisted or overseen by the Financial Secretary or his designate
22 on the Board who are ordinarily armed with a mass of reports
23 from the various consultancies previously engaged".

24 Now, in terms of sourcing of loan funding, was that
25 ever a task that was assigned to you?

1 A. I can't recall that, sir.

2 Q. Can you recall having any involvement with sourcing of
3 loan funding at all?

4 A. I can't recall, sir.

5 Q. Was that something that, given your professional
6 background and your experience that you could have dealt with?

7 A. Sir, I thank you for the compliment, but at this level
8 I would not have indicated that was my area of specialty.

9 Q. And so, as the person who is sitting on the Board, is
10 your evidence effectively that it would have been a justifiable
11 use of PriceWaterhouse?

12 A. To me it would have been, sir.

13 Q. Thank you.

14 If you go, please, to paragraph 84.

15 A. 84.

16 I'm there, sir.

17 Q. Ultimately, as it says, the tender and negotiation
18 process administered by the Ministry of Finance extended for
19 more than a year with the selection of a proposal from the
20 Tortola Port Partners of \$74 million, \$74.5 million.

21 But then you--what's recorded by the Committee is the
22 company's failure to meet preconditions would lead to
23 termination of the process in September 2013 and return of the
24 project to the BVI Port Authority.

25 Can you remember now at all, Mr Gaskin, why or how it

1 came about that TPP failed to meet preconditions?

2 A. Sir, I'm not in a position to recall that at all.

3 Q. By then, as part, and it's just the process that
4 involves the Ministry of Finance, would there have been
5 expenditures of costs?

6 A. Again, as I said, I can't recall.

7 Q. If you go through, then, to--firstly let's take it to
8 paragraphs 108 in that report.

9 A. 108?

10 Q. Yeah.

11 A. 108.

12 I'm there.

13 Q. This is a section headed "Ongoing and Recurring
14 Parties' Alliances and Interests", but hopefully I can try and
15 summarise it, that what the Public Accounts Committee raised as
16 a concern was that there were ongoing associations with--between
17 private parties and Public Officers who served in multiple
18 capacities on this project, and they give Consultant, Managing
19 Director, Board Members, Tender Committee, Negotiation Committee
20 amongst them, and they say that lent--those associations were
21 lending themselves and the process to the possibility corrupting
22 the decision-making process and improperly influencing the
23 project's outcome.

24 Their conclusion at 111 is: "Impartiality in
25 decision-making can be compromised or otherwise adversely

1 affected when individuals are allowed to serve in multiple
2 capacities at various stages of the projects. This presents
3 potential conflict of interests and motivation particularly if
4 the association between the parties is ongoing as was the
5 situation with the Cruise Ship Port Development Project".

6 Now, distilling that down--and you can--it comes to
7 this, Mr Gaskin--and that's taking you back, I know, in time,
8 but there you were, the Ministry of Finance representative on
9 the Board, the person attending Board Meetings. When the
10 Ministry of Finance took over the project, you had a role, you
11 were involved, as we've seen from the Auditor General's Report,
12 not only in sitting on the Board but also in overseeing at least
13 the first committee involved in it. At the time, how were you
14 dealing with potential conflicts of interest?

15 A. Sir--Commissioner, I only can speak for Wendell M
16 Gaskin at this point. I am not aware of any conflict of
17 interest, being a party to myself or anybody else. I can't
18 recall those, so I only can speak for Wendell Gaskin at this
19 time.

20 I am a Certified Fraud Examiner, and I try to stay
21 away from anything that may have issues in regards to those kind
22 of issues. I have been a Certified Fraud Examiner for 20 years.
23 I wish to let the record show that I don't agree with those
24 conclusions.

25 COMMISSIONER HICKINBOTTOM: But as I understand your

1 evidence, Mr Gaskin, you didn't recognise any potential
2 conflicts of interest in this, either you or, indeed, anybody
3 else.

4 THE WITNESS: No, sir.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 BY MR RAWAT:

7 Q. In terms of the extract that's been printed out for
8 you, Mr Gaskin, from the PA's--the Public Accounts Committee
9 bundle, is it just the Report and the minutes of your evidence?

10 A. It's--yes, sir, that's it, the Minutes of my evidence
11 and the Report.

12 Q. I just--

13 A. And then you sent me this other one this morning.

14 Q. All right. Well, I want to read to you from the
15 minutes of the evidence of the--Sonia Webster, the Auditor
16 General, which was on Wednesday the 15th of January 2014.

17 MR RAWAT: And, Commissioner, that's at your page 39;
18 it starts at 37 and if I take you through to 39.

19 COMMISSIONER HICKINBOTTOM: And which paragraph number
20 is it?

21 REALTIME STENOGRAPHER: I didn't hear the paragraph
22 reference.

23 MR RAWAT: The paragraph reference is paragraph 10.

24 THE WITNESS: Paragraph 10?

25 BY MR RAWAT:

1 Q. We printed it up for you. Have you got Ms--the
2 Auditor General's minute, the minute of her evidence?

3 A. No.

4 Q. Right. Well, let me read it out to you because I want
5 to--

6 A. Uh--

7 Q. --it's to give you context for something in the report
8 that I want to take you to.

9 A. No problem.

10 Q. Paragraph 10 reads as follows: "The Member for the
11 First District inquired about which senior officer at the
12 Ministry of Finance was assigned to deal with the staff of the
13 Office of the Auditor General and also inquire as to whether
14 they were cooperative or not". The Auditor General indicated
15 that the senior officer was the Deputy Financial Secretary,
16 Mr Wendell Gaskin.

17 At 12, it reads as follows: "The Member for the First
18 District asked if she had found him to be cooperative".

19 13: "The Auditor General stated that Mr Gaskin's
20 demeanor was not welcoming to her staff and that he had
21 instructed his staff that the Ministry of Finance that they
22 should not give anything to the Office of the Auditor General
23 unless it goes through him. The Auditor General further stated
24 that the Auditor General staff was not well received at the
25 time. The Member for the First District asked, if in the view

1 of the Auditor General, the uncooperative behaviour of the
2 Ministry of Finance required disciplinary action seeing that
3 similar concerns were raised in the Royal Caribbean Cruise's
4 limited correspondence to the Governor. The Auditor General
5 indicated she was not sure if there was a provision anywhere
6 that stated that disciplinary action was required. She further
7 stated she had written to the Financial Secretary and had
8 complained about the lack of cooperation. She noted that he was
9 aware that the Deputy Financial Secretary was not fully
10 cooperative with the audit being done on the project".

11 I'm going to pause there. If I take you now with that
12 context to paragraph 47 in the report itself.

13 A. 47?

14 Q. Yes.

15 A. I'm there.

16 Q. Now, I'm not going--

17 A. Excuse me, sir. This, one or the other one?

18 Q. No, the other one. The Public Accounts Committee
19 Report, please, Mr Gaskin.

20 A. Okay. I'm there.

21 Q. I won't read it all out, Mr Gaskin, but to summarise
22 it at 47, the Public Accounts Committee speaks of the process as
23 having consistently lacked transparency in its processes and
24 decision-making. And they then go at 50, they record that the
25 Auditor General Reported that in her examination of the project

1 her office encountered a lack--an absence of transparency
2 withholding of information and lack of forthrightness from the
3 Ministry of Finance when sourcing information on the Cruise Ship
4 Port Development.

5 If you go to their conclusions at 52...

6 A. I'm there, 52.

7 Q. It records there: "The Committee found that there was
8 a concerted effort on the part of the Minister, whether by
9 intention or through lack of knowledge of government processes,
10 and later the Ministry of Finance, to obscure information
11 regarding the processes undertaken on this project".

12 Now, what is suggested there is that--this is by the
13 Public Accounts Committee--that there was a failure on the part
14 of the Ministry of Finance to cooperate with the Auditor
15 General. Was that--were you aware of that allegation being made
16 or that criticism being made of you and others in the Ministry
17 of Finance at the time?

18 A. No, sir. And I don't accept that criticism.

19 Q. So, you are a former Auditor yourself.

20 A. Yeah, we would have made all the necessary arrangement
21 to give the Audit the information that she requested.

22 Q. So, is your position that you would have cooperated
23 with the Auditor General?

24 A. Yes.

25 Q. Now, Mr Gaskin, you've spoken of the passage of time

1 and how that affects memory.

2 Just to make it clear, despite that passage of time,
3 is it your position that you did cooperate with the Auditor
4 General?

5 A. It is my position that I--that the Ministry of Finance
6 cooperated with the Auditor General.

7 Q. And it's--but the point that is made is that you were
8 the person assigned to liaise with the Auditor General and you
9 instructed staff not to cooperate except through you.

10 A. What are you asking me, sir?

11 Q. Well, the reason I want to be clear about your
12 evidence is because you're named by the Auditor General as being
13 uncooperative.

14 A. Sir, once again, I think that it is safe to say that,
15 again as I only saw this Report on July 2nd, 2021, I am not sure
16 the context in which that assertion was made. But again, my
17 position is that the Ministry of Finance would have done all
18 necessary to cooperate with the Auditor General.

19 Q. I can take you back to the Report, if you want, but
20 one concern that was--and this is the Auditor General's
21 Report--one concern that she raised, and this is at paragraph 59
22 of her Report, so it's not the PAC, it's the other one.
23 Page 629.

24 A. 629? Yes, go ahead.

25 Q. Now, if you find paragraph 59, please, Mr Gaskin.

1 A. I'm there.

2 Q. What--the point that's made there--and this is at the
3 stage at which the Ministry of Finance is overseeing the
4 procurement process--is that part of the invitation request to
5 potential tenderers was that there should be opportunity for at
6 least 20 percent of local partnership--local ownership in the
7 venture; and so, any potential tenderers had to indicate in
8 their proposal who the local partners were.

9 If you go over to the next page, you will see
10 that--and it's the last line of paragraph 59 on page 630 that:
11 "The submission by Tortola Port Partners named the BVI
12 Investment Club as its local partner, and the Auditor General
13 raised that as potentially giving rise to an issue of conflict
14 of interest.

15 Now, if you go back to 629.

16 A. 629.

17 Q. At paragraph 54, the process in which you were
18 involved, do you remember we were talking about the two
19 committees?

20 A. 59 or 69?

21 Q. No, 54.

22 A. 54? I'm there.

23 Q. Now--

24 A. The submission were reviewed?

25 Q. Yes.

1 So, there seems to be a staged process. Invitations
2 are requested, submissions are received, a committee you chair
3 review it, and subsequently to that there is a second committee
4 chaired by the Financial Secretary.

5 Now, at the time that you were chairing that committee
6 and considering the submission, including one from Tortola Port
7 Partners, were you aware of this link to the BVI Investment
8 Club?

9 A. Sir, I can't recall that, sir.

10 A point, though. I am here answering questions that
11 the Auditor General--are testimony, and my Attorney is sitting
12 here and can't cross-examine.

13 COMMISSIONER HICKINBOTTOM: I'm sorry--

14 THE WITNESS: So that puts me at a disadvantage
15 because the Auditor General have already gave testimony. I am
16 here today to try to assist in the matter.

17 I am telling you that the question that you are asking
18 me, I am--I can't recall whether there was conflict of interest.
19 I indicated to you from before, I am not a party to any conflict
20 of interest that--knowingly that I know of. My lawyer is
21 sitting here, he can't ask a question because of the Rules of
22 the Commission. So, therefore the Auditor General had already
23 given her testimony. He can't cross-examine because I see no
24 evidence to point out those things.

25 BY MR RAWAT:

1 Q. Well, can we break that down a little, please,
2 Mr Gaskin.

3 A. No problem, sir.

4 Q. Firstly, I'm not suggesting that you were an investor
5 in the BVI Investment Club.

6 A. No, I'm not.

7 Q. Well, and I'll take you in a moment to the part of the
8 Public Accounts Committee Report that will explain--I hope will
9 clarify for you why I drew your attention to this.

10 Secondly, there is no dispute that the Tortola Port
11 Partner--Port Partners were--had local partners in the BVI
12 Investment Club. My question to you was: At the time that you
13 were chairing the Committee, were you aware of that local
14 connection between--

15 (Overlapping speakers.)

16 Q. --and the BVI Investment Club?

17 A. And my answer is that I cannot recall whether or not
18 that is so.

19 Q. In terms of your lawyer being able to cross-examine,
20 he can't cross-examine you. If he wishes to ask questions, he
21 can make an application under the Rules, and if you wish to say
22 that there are other matters to be put to the Auditor General,
23 then that is a matter that you can make an application to the
24 Commissioner for.

25 But can I take you to why I drew your attention to

1 this, and it's at paragraphs 114 to 117 of the Public Accounts
2 Committee's Report.

3 A. 114?

4 Q. Yes.

5 A. No problem. 114.

6 I'm there.

7 Q. Right. I'm not going to read it out, Mr Gaskin, but
8 I'm going to invite you to read it to yourself. If you want me
9 to read it out, I will.

10 A. Which one do you want me to read?

11 Q. Well, read from 114 down to 119.

12 A. 114 to 119?

13 Q. Yes.

14 (Witness reviews document.)

15 A. And your question is, sir?

16 Q. Well, my question was, and you may be able to answer
17 it, but in relation to the BVI Investment Club, do you remember
18 any discussion that they were named as the prospective local
19 partner for Tortola Port Partners?

20 A. I can't recall that, sir, but based on what it's
21 saying here, it is saying on 115 the Deputy Financial Secretary,
22 Mr Gaskin, who served on--for the port procurement process was
23 asked by the members of the public, and he replied in the
24 negative and stated that there was nothing to suggest a
25 connection.

1 Q. And the--if you read on--

2 A. Yes.

3 Q. --the Committee was critical of that answer, weren't
4 they?

5 A. Yes, they were critical of that answer.

6 Q. And, in fact, they--

7 A. It--in 18, in a conclusion, they are concluding that
8 my--I was deliberate and knowingly furnished false information.
9 Again, I don't see the evidence.

10 Q. Well, that was a conclusion of the Committee. It's
11 not a--

12 A. Yes.

13 Q. --conclusion of the Commission.

14 A. No, I know. I--

15 Q. That was the--Mr Gaskin--

16 A. I am--go ahead, sir.

17 Q. That was the reason why I phrased my question in the
18 way that I did. What my--

19 A. Yes, sir.

20 Q. --question was: Was whether at the time you were
21 sitting on that first Committee, you were aware of the BVI
22 Investment Club?

23 A. I cannot recall, sir.

24 Q. Now, what the Committee called for was disciplinary
25 action against you, didn't it?

1 A. I am seeing that in the document, sir.

2 Q. Well, were you aware, whether aside from the Report,
3 there were any other calls for disciplinary action?

4 A. No, sir.

5 Q. So, do you recall if--when the Report was debated in
6 the House of Assembly there were any calls for action to be
7 taken against you?

8 A. I can't recall that, sir.

9 Q. Were you, in fact, as a result of this Committee's
10 report, subject to any such action?

11 A. No, sir. Not that I'm aware of, sir.

12 Q. Well, hopefully you, if you had been a subject to it,
13 someone might have made you aware of it. But did you then
14 subsequently continue in your role as Deputy Financial
15 Secretary?

16 A. Until I retired in 2018.

17 Q. And since retiring, have you occupied any other roles
18 in the public sector, for example, working or serving on a
19 Statutory Board?

20 A. Since I retired?

21 Q. Yes.

22 A. I think--when I retired, I became the Chairman of the
23 Port Authority. That's the--I was--before I retired, I was--I
24 think I was a member of the College Board, and I became Chairman
25 of the Port Authority.

1 Q. Can you help us with this: When you're on the College
2 Board, is that again as an ex officio member because you're
3 still in Public Service?

4 A. No. I think that I was a member in my own right.

5 Q. But certainly in relation to, as we've discussed
6 earlier, the Ports Authority Board, you started off as an ex
7 officio Member.

8 A. No--once again, the only person that's an ex officio
9 member would be the Financial Secretary. I would sit in in
10 those meetings in his stead when he could not make it.

11 Q. I see.

12 So, you served up until retirement on the Port
13 Authority Board as the proxy for the Financial Secretary.

14 A. Yes, sir.

15 Q. And then having retired at that point, you were able,
16 having left Public Service, to take on the role of Chair of the
17 Ports Authority.

18 A. For a short while, sir.

19 Q. The Commission is aware of public reports that you are
20 returning to a role in the Ministry of Finance; is that right?

21 A. As a consultant, sir.

22 Q. And how did that come about?

23 A. When you say "how did that come about", what do you
24 mean, sir?

25 Q. Who approached you to become a consultant in the

1 Ministry of Finance?

2 A. Nobody approached me on becoming a consultant in the
3 Ministry of Finance. I believe that the Ministry of Finance,
4 which I worked for a number of years, could use my services, and
5 I wrote to them, asking them--I wrote several proposals to--not
6 only to the Ministry of Finance, I wrote to the Deputy Governor,
7 I wrote to the Port Authority, I wrote to the Airport Authority,
8 I wrote to the Tourist Board, I wrote to everybody and offering
9 my services.

10 Q. As a consultant.

11 A. As a consultant.

12 Q. And in relation to--you're going to be a consultant to
13 the Ministry of Finance, I mean, who approves your role as
14 Consultant? I mean, are you--

15 (Overlapping speakers.)

16 A. The Financial Secretary.

17 Q. So it's the Financial Secretary that determines you
18 should be--you would get a consultancy contract.

19 A. No, I'm not sure who will determine that, but I know
20 that the Ministry of Finance, the Accounting Officer is the
21 Financial Secretary.

22 Q. Okay.

23 MR RAWAT: Just give me one moment, please, Mr Gaskin.

24 THE WITNESS: No problem.

25 (Pause.)

1 MR RAWAT: Commissioner, I have reached the conclusion
2 of my questions. Can I conclude firstly by thanking Mr Gaskin
3 for his time today and, secondly, for the way in which he has
4 given his evidence.

5 Thank you, Mr Gaskin.

6 COMMISSIONER HICKINBOTTOM: Yes, Mr Gaskin, can I echo
7 that. Thank you very much for your time. Thank you for your
8 patience in giving evidence today rather than yesterday, when it
9 was first planned, and thank you for the way--the clear way in
10 which you've given your evidence. It's much appreciated. Thank
11 you very much.

12 THE WITNESS: Thank you, sir.

13 MR RAWAT: And thank you, too, to Mr Daniels.

14 COMMISSIONER HICKINBOTTOM: Thank you, Mr Daniels.

15 MR. DANIELS: Take my leave, please?

16 COMMISSIONER HICKINBOTTOM: Mr Rawat?

17 MR RAWAT: That actually concludes the business for
18 the day, Commissioner. We are hoping that we may be able to
19 schedule a further hearing on Monday. That's still being
20 arranged at the moment. So, as soon as we have a firm position,
21 we will then publish the details on the Inquiry's website.

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

24 (Whereupon, at 12:28 p.m. (EDT), the Hearing was
25 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