

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 28**  
(MONDAY 19 JULY 2021)

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

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Mrs Fiona Forbes-Vanterpool (Principal Crown Counsel), and Mr Niki Olympitis of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

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

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Clive Smith gave evidence.

Ms Lorna Stevens gave evidence.

Ms Carleen Jovita Scatliffe gave evidence.

Court Reporter:

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

Those present:

Session 1

Mr Bilal Rawat

Mr Clive Smith (attending remotely)

Mr Andrew King, Senior Solicitor to the Commission  
Mr Dame Peters, Audio-Visual Technician (attending remotely)

Session 2

Mrs Fiona Forbes-Vanterpool, Principal Crown Counsel (attending remotely)

Mr Bilal Rawat

Ms Lorna Stevens (attending remotely)

Mr Andrew King, Senior Solicitor to the Commission  
Mr Dame Peters, Audio-Visual Technician (attending remotely)

Session 3

Mrs Fiona Forbes-Vanterpool, Principal Crown Counsel (attending remotely)

Mr Bilal Rawat

Ms Carleen Jovita Scatliffe (attending remotely)

Mr Andrew King, Senior Solicitor to the Commission  
Mr Dame Peters, Audio-Visual Technician (attending remotely)

Session 4

Mr Niki Olympitis, Withers LLP (attending remotely)  
Mr Daniel Fligelstone Davies, Silk Legal (attending remotely)

Mr Bilal Rawat

Mr Andrew King, Senior Solicitor to the Commission  
Mr Dame Peters, Audio-Visual Technician (attending remotely)

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Good morning, Commissioner. Our first witness of today is Mr Clive Smith, who is giving evidence remotely.

BY MR RAWAT:

Q. Mr Smith, can I check that you can see and hear us?

A. I can see and hear you.

Q. Thank you.

A. Good morning.

Q. Thank you.

Thank you for coming to give evidence or making yourself available to give evidence this morning.

Can I check whether you want to swear an oath or make an affirmation?

A. I'll make an affirmation this morning.

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

A. I do. I'm pulling them up as we speak.

Q. If once you're ready, if you could read out the words of the affirmation, please, Mr Smith.

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

COMMISSIONER HICKINBOTTOM: Thank you, Mr Smith.

1 BY MR RAWAT:

2 Q. Can I confirm that you've received a bundle of  
3 documents which was provided to you by the Commission of  
4 Inquiry?

5 A. Yes, I have received those documents.

6 Q. Thank you. The only other matter to ask you to do is  
7 to keep your voice up and to speak slowly, please. We've found  
8 that during these remote hearings, sometimes myself and the  
9 Witness will speak across each other; and that's because there  
10 is a delay, but if we try to avoid that, that will be a good  
11 thing. If I do cut across you, I will try and stop myself and  
12 allow you an opportunity to finish you answer. All right?

13 A. Understood.

14 Q. Can we start by, if I could ask you, if you could just  
15 give an outline of your professional background before you  
16 became the Acting Managing Director of the BVI Airports  
17 Authority, please.

18 A. Okay. Before I became the Acting Managing Director of  
19 the Airports Authority, I worked for 12 years in the Operations  
20 Department at the BVI Airports Authority. Subsequent to that, I  
21 graduated from tertiary education Embry Riddle Aeronautical  
22 University.

23 Q. And when did you take up the appointment of Acting  
24 Managing Director?

25 A. It was back in July-August of 2019.

1 Q. And in brief, what does the role involve?

2 A. The role involves me liaising directly with the Board  
3 of Directors and carrying out the mandates of the Board,  
4 carrying out the Resolutions of the Board.

5 Q. Do you, yourself, sit on the Board, then?

6 A. Yes, sir, I do.

7 Q. And we know that Mr Bevis Sylvester is the Chairman of  
8 the Board. Could you just--there is no need to name names, but  
9 broadly just set out the makeup of the BVI Airports Authority's  
10 Board, please.

11 A. So, you have the Chairman, Mr. Sylvester, as you  
12 correctly identified. Then you have a Deputy Chair lady, Mrs  
13 Patsy Lake. And then you have a number of Board Members. I  
14 don't--I don't remember the exact figure of Board Members.

15 And we also have another executive Member which is  
16 Mr Keith Flax at this time.

17 Q. Do you have on the Board any ex officio Members, for  
18 example, a Member or a Public Officer who acts as an ex officio  
19 Member?

20 A. Oh, yeah. That would be the Financial Secretary, and  
21 the Permanent Secretary in the Premier's Office also sits on the  
22 Board. I'm not sure they are actually inducted as Board  
23 Members, but the Financial Secretary is part of the Board, but  
24 I'm not sure about the PS, if she actually votes on the Board.  
25 I do suspect she does, though.

1 Q. And do you have any--anybody on the Board who sits  
2 across or links to other statutory bodies, for example, the  
3 Tourist Board or the Ports Authority?

4 A. Yes, I do.

5 Q. And so, again, just briefly explain, who sits on your  
6 Board on behalf of the BVI Tourist Board?

7 A. That would be Mr--Clive McCoy.

8 Q. And is that an automatic appointment, that the Chair  
9 of the Tourist Board will also be a Member of the Airports  
10 Authority Board?

11 A. Yes.

12 So, you have the Chair, and the Chair also sits there  
13 as well, on my Board.

14 Q. And what about the Ports Authority? Is that the same  
15 situation where the Chair of the Ports Authority will also sit  
16 on your Board?

17 A. The Chair of the Ports Authority currently sits on my  
18 Board, yes, sir.

19 Q. If we could look at the Affidavit that you've prepared  
20 for the Commissioner, if you go to one in the bundle.

21 A. Page 1?

22 Q. Yes.

23 A. Okay. I'm at page 1.

24 Q. You should see that it's a Letter of Request for an  
25 Affidavit from the Commissioner, addressed to Mr Sylvester as

1 Chairman of the Board of the Airports Authority. Are you on  
2 that page?

3 A. Yes, I am.

4 Q. Why were you considered to be the better person to  
5 make the Affidavit rather than Mr Sylvester?

6 A. I--I'm probably the better person because a lot of the  
7 information has to do with, for example, activity that took  
8 place before 2019, but to be completely sure, that question  
9 should be directed to the Chair.

10 Q. So, did the Chair just tell you that it fell to you to  
11 make this Affidavit?

12 A. I received a letter--I received a letter. I read the  
13 letter. I looked at the contents of the letter, and what the  
14 letter wanting me to point out, and I thought I could answer the  
15 questions, and I replied back to the Commission and advised that  
16 I--I can and will answer the questions.

17 Q. But the question was about whether Mr Sylvester asked  
18 you or directed you to comply with the request for an Affidavit,  
19 in his place.

20 A. No, I didn't--I didn't speak to the Chairman about it.  
21 I received the letter, and I responded to the Commission of  
22 Inquiry.

23 Q. So, you volunteered to do it instead of the Chairman  
24 of the Board?

25 A. I received a better, and I responded to the

1 Commission. I had no conversation with the Chairman on the  
2 matter.

3 Q. So, did you ever find out whether the Chairman Bevis  
4 Sylvester intended to reply to a letter addressed to him from  
5 the Commission asking for an Affidavit?

6 A. No, I did not.

7 Q. Would you go, please, to page 16 in this bundle.

8 A. Page 16?

9 Q. It should be the first page of your Affidavit.

10 A. Okay.

11 Q. Is that right?

12 A. Page 16--yes, it is.

13 Q. Now, if I draw your attention to paragraph 2, it  
14 reads: "I make this Affidavit further to paragraph 1 of Order  
15 No. 10 of the Commission of Inquiry dated 14 June 2021, which  
16 directed that Affidavits be given regarding request for an  
17 Affidavit as to the completeness of the response to the COI".

18 You were, in fact, making this Affidavit in response  
19 to a Letter of Request for an Affidavit. Why did you include  
20 that paragraph 2 which speaks to an order that you were not the  
21 subject of?

22 A. I--this was a standard format letter that I used when  
23 we were putting the Affidavit together. That would have been an  
24 oversight.

25 Q. So, you were provided with a standard template--is



1 that right?--to fill in.

2 A. A standard Affidavit.

3 Q. Where did that standard come from?

4 A. Requests had been made by the Commission previously,  
5 and that was sent to our Board administrator, who used this  
6 format--this format, so this was likely transposed in error to  
7 this Affidavit.

8 Q. Well, look at paragraph 3, please, Mr Smith. You say  
9 that: "At the outset, I should further say that in this  
10 Affidavit, where I mentioned a document, that does not waive any  
11 privilege asserted in respect of it".

12 Which documents do you maintain privilege over?

13 A. It would be the document in the Affidavit--of the  
14 Affidavit, the responses and information that I give in  
15 request--sorry, in response to the letter.

16 Q. All right. So, what kind of privilege are you  
17 claiming?

18 A. Can you expound on that?

19 Q. Well, it's your Affidavit. In your Affidavit which  
20 you signed you said you don't waive any privilege asserted in  
21 respect of a document that you mention. You've now said that  
22 it's in respect of all the documents in your entire response.  
23 So, what kind of privilege are you claiming?

24 A. You're referring to question 3; correct?

25 Q. Yes, paragraph 3 of your Affidavit. You've asserted

1 privilege. I want to know what kind of privilege you are  
2 asserting?

3 A. I--

4 (Witness reviews document.)

5 A. Any document in the Affidavit, any document that I  
6 submitted in the bundle that I forwarded to the Commission.

7 Q. That--you've explained that already, Mr Smith. What  
8 I'm trying to understand or what I'm asking you about is what is  
9 the kind of privilege that you are asserting?

10 A. I don't know. I don't have an answer for that.

11 Q. Was this something that was in that standard Affidavit  
12 that was sent to you?

13 A. No, this was--we took this--this was taken from a  
14 previous document that was sent to the Airports Authority, the  
15 Board Administrator, and we used the wording, the exact wording,  
16 as the Affidavit for myself.

17 Q. So, just so that we're clear, paragraph 2 came from  
18 one document, which had been sent to the Administrator, and  
19 paragraph 3 came from another document which had been sent to  
20 the Administrator?

21 A. The same--the format that was used is the format that  
22 was used on a previous submission.

23 Q. I see.

24 So, you adopted the format from a previous submission?

25 A. Yes.

1 Q. Who had given you this form of words?

2 A. I'm not certain where the Administrator got the words  
3 from.

4 Q. Well, when you put in paragraph 3, did you appreciate  
5 what its purpose was?

6 A. No.

7 Q. Did you seek any advice as to what the purpose of  
8 paragraph 3 was?

9 A. No.

10 Q. If you turn over to the next page, please, and you see  
11 at the top there, there is point (c), where you say: "The  
12 documents in hard copies were scanned and e-mailed as  
13 attachments in PDF form to the Permanent Secretary".

14 Is that right?

15 A. That is correct, yeah--yes.

16 Q. And that's the Permanent Secretary in the Premier's  
17 Office; is that right?

18 A. Yes, sir.

19 Q. At 10, you say: "I confirm that all documents in  
20 their native form have been provided to the COI in relation to  
21 the request".

22 If something is--if you take an Excel spreadsheet, the  
23 native form is Excel. Can you confirm that--but if you scan  
24 something, you're changing the form, aren't you? You're going  
25 from hard copy to PDF.

1 A. That's correct.

2 Q. In this--

3 (Overlapping speakers.)

4 Q. --what is it you do with the documents that you  
5 collected for the purpose of this Affidavit?

6 A. Yeah, it wasn't--if it was an Excel spreadsheet, for  
7 example, it wouldn't be in its native form.

8 Q. Right.

9 But what you did was you have provided some documents,  
10 and to avoid confusion, they don't include a spreadsheet, so  
11 let's focus on the documents that you did provide. Because  
12 you've signed an Affidavit saying you've confirmed that all  
13 documents in their native form have been provided, so in what  
14 format were these documents written that you have provided?

15 A. The documents that I've provided originally would have  
16 been hard copies, either--yeah, hard copies or electronic PDF  
17 copies.

18 Q. Right.

19 And just to back to nine on the previous page,  
20 page 16, your paragraph 9, please.

21 A. I'm at 9.

22 Q. You see that you say you forwarded the request to Mrs  
23 Carolyn O'Neal-Morton, Permanent Secretary of the Premier's  
24 Office, and have been informed by her that the request was  
25 forwarded to the Inquiry Response Unit, for onward forwarding to

1 the COI.

2           When you're referring to the Request there, what  
3 exactly are you referring to?

4           A. I'm referring to the letter that I received from the  
5 COI.

6           Q. So, if we read it, what you did was you received the  
7 letter, you sent it to Mrs Carolyn O'Neal-Morton at the  
8 Premier's Office, who then told you that the letter from the COI  
9 had been forwarded to the Inquiry Response Unit to send back to  
10 the COI?

11          A. No. What happened was I sent a letter to Ms O'Neal.  
12 Then I didn't receive any response back from Ms O'Neal, and then  
13 Mrs Rhea Harrikissoon--I think she is your colleague in the  
14 COI--she reached out and said she hadn't received the document,  
15 and then I sent it to her.

16          Q. So, if you look at paragraph 9 of this Affidavit that  
17 you signed, that's inaccurate?

18          A. Yes, that would be inaccurate.

19          Q. I'm going to ask you some questions, Mr Smith, about  
20 your Affidavit. If as we go through you have a concern about  
21 the response being aired publicly, then what you should bear in  
22 mind is that this is a hearing which is being live-streamed but  
23 that there is a three-minute delay, so that gives you an  
24 opportunity, if you do have a concern to raise it with the  
25 Commissioner, and we can then pause the live stream. Do you

1 follow?

2 A. I do.

3 Q. Can I take you back to the Letter of Request, please  
4 which is at your page 1. If you go back to page 2.

5 Do you have that, Mr Smith?

6 A. I do.

7 Q. You'll see there that you were asked for an Affidavit  
8 that addressed nine matters including, and I'm not going to read  
9 them all out but details of all construction works that have  
10 taken place and will be taking place at the--Virgin Gorda, and  
11 that should be Taddy Bay Airport, since the beginning of 2018.  
12 And that the response should also make reference to the runway  
13 works announced in 2020 and the current status of the same.

14 It also at 5 asks you for the relevant framework, law  
15 policy and practice in relation to the procurement and  
16 management of any contracts and a detailed explanation of all  
17 stages of the procurement process for any contracts entered into  
18 in relation to such works.

19 Now, if you turn to page 3, what was also asked--and  
20 this was asked of Mr Sylvester but, of course, you stood in his  
21 shoes--was that the Affidavit should exhibit all relevant  
22 documents, including but not limited to relevant law, written  
23 policies and procedures; pre-contract correspondence; details of  
24 all documents upon which consider--and arrangements were  
25 considered and (drop in audio) contracts.

1           So, that was the context in which you were asked to  
2 provide the Affidavit. Could you go, please, to page 11 in the  
3 bundle.

4           A. I'm there.

5           Q. One of the questions that you were asked--and what  
6 you've done is you've--Mr Smith, you've set out, I suppose,  
7 either in a paper that accompanies the Affidavit, responses to  
8 the various questions, and one of those was "the relevant  
9 framework (law, policy and practice) in relation to the"--in  
10 this case--the Authority's procurement and management of any  
11 contracts entered into in respect of the construction work. And  
12 your first answer refers--says that the Authority's policy  
13 requires a minimum of two quotations for the procurements of  
14 goods and services under \$100,000. "Any works over \$100,000 is  
15 required to be undertaken by a tender process unless the waiver  
16 of tender is approved by the Board of Directors".

17           So, when you referred there to a "policy", is there a  
18 written policy within the Airports Authority that sets this all  
19 out?

20           A. No, there is not a written policy.

21           Q. So, where is the--where does it come from, this policy  
22 that if it's under 100,000 you only need--you need to obtain two  
23 quotations?

24           A. That's a--that's our general--that's how we operate  
25 generally. There is not a written policy as yet, but there is

1 one we are currently putting together.

2 Q. Well, how long has this unwritten policy been in  
3 place, Mr Smith?

4 A. As far as I'm aware, as far as back as--as I remember.  
5 As far as back as I can remember while I have been working with  
6 the Airport Authority.

7 Q. And you've been--I think you said you had been  
8 involved on the operational side for some 12 years; is that  
9 right?

10 A. Yes, sir.

11 Q. And why is it only now that the Airports Authority is  
12 getting around to putting that policy in writing?

13 A. I don't know. I don't have an answer for that.  
14 I can't speak for the previous administration.

15 Q. When you say "previous administration", what do you  
16 mean by "previous administration"? Are you saying the previous  
17 Board?

18 A. Previous Board, previous Managing Director.

19 Q. I see.

20 But, certainly, as far you--this policy of two  
21 quotations for anything under \$100,000 is one that you have been  
22 aware of for as long as you have been employed at the Airports  
23 Authority; is that right?

24 A. Yes.

25 Q. And the second half of your answer, "any works over



1 \$100,000 is required to be undertaken by a tender process", is  
2 that also an unwritten policy, Mr Smith?

3 A. It is.

4 Q. And as Managing Director, you can't point to the legal  
5 basis upon which that policy has been formulated, can you?

6 A. No, because the policy doesn't exist. We generally  
7 adopt the policy of Central Government, so I point them back to  
8 the shareholder, which is Central Government.

9 Q. Well, what's the basis--I mean, you say the policy  
10 doesn't exist. It does exist. It's just not been written down.  
11 That's the position, isn't it?

12 A. Correct.

13 Q. And as I understand it, you are in the process of  
14 writing it down at the moment?

15 A. Yes, I am.

16 Q. But your belief is that that is the policy in Central  
17 Government?

18 A. That's correct.

19 Q. What's that belief based on, Mr Smith?

20 A. Say again?

21 Q. What is that belief based on?

22 A. That belief is based on the modus operandi that I  
23 observed while I was working in the Operations Department.

24 Q. But did someone just tell you, That's how Central  
25 Government does it, so we're just going to do it this way? Or,

1 effectively, on Day 1 when you walked into your job over 12  
2 years ago, has that always been the approach that has been  
3 adopted in the Airports Authority?

4 A. That has been the--it has been my understanding that  
5 that's the general policy that the Airports Authority has  
6 adopted.

7 Q. And did you take it upon yourself to move from an  
8 unwritten policy to a written policy?

9 A. Upon myself, no. Internal discussion with my  
10 executive team and the way that we approached things, we thought  
11 it best, so that if--when I leave the seat or as, you know, as  
12 time goes on, there will be a framework for persons behind to  
13 follow.

14 Q. And you have been Acting Managing Director since 2019.  
15 When did you initiate this transition from unwritten policies to  
16 written policies?

17 A. I can't pinpoint a specific time frame. I can't--

18 Q. How long has it been going on for?

19 A. At least eight--eight months or so.

20 Q. And are there other--aside from this unwritten policy  
21 about goods and services under \$100,000 and tenders, the need  
22 for a tender over \$100,000, are there any other policies that  
23 operate within the Airports Authority which are unwritten?

24 A. There may be, but I can't pinpoint any at this current  
25 time.

1 Q. But are there possibly other unwritten policies that  
2 relate to the procurement and management and monitoring of  
3 contracts that could also be unwritten?

4 A. There could be. But once we complete the review in  
5 the--in the--of the policy, then we would be in a better--then  
6 that process should leave anything like that out.

7 Q. Given that it's unwritten, what is your source of  
8 information?

9 A. Source of information with regards to what, exactly?

10 Q. Well, let's take the example of two quotations for the  
11 procurement of goods and services under \$100,000. You can say,  
12 because you have been in the Airports Authority for a number of  
13 years, particularly on the operational side, that that was the  
14 policy from the moment that you arrived. But the risk with an  
15 unwritten policy is that you could have a colleague that says,  
16 "No, no, no, it's actually done in a different way".

17 So, who are going to be the sources for all these  
18 unwritten policies at the Airports Authority? Where are you  
19 going to get the information from?

20 A. Well, I would do it in close conjunction with the sole  
21 shareholder of the airport, which is Central Government.

22 Q. And is that what you're doing at the moment? It's  
23 been going on for eight months. Are you working in conjunction  
24 with the sole shareholder?

25 A. The sole shareholder has not seen a draft of the

1 policy.

2 Q. What's the title of the policy, Mr Smith?

3 A. It's the finance policy, the policy that we--I don't  
4 recall the exact title of the policy.

5 Q. Is there a draft presently available?

6 A. Yes.

7 Q. And, obviously, as Managing Director, you will have a  
8 number of roles. Is there someone in your executive team who is  
9 particularly charged with pulling this policy together?

10 A. Yes.

11 Q. Who is that, Mr Smith?

12 A. That would be the Director of Finance.

13 Q. Were you somewhat surprised, when you took on the role  
14 of Acting Managing Director, to discover that the policies by  
15 which you had been working had not been written down?

16 A. To a large extent, yes.

17 It was drafted. It was drafted, but it was never  
18 ratified by the Board.

19 Q. When had it been drafted?

20 A. It had been drafted--I can't--again, I can't give a  
21 particular time, but it had been drafted prior to me taking the  
22 seat.

23 Q. Taking on your present role?

24 A. Yes.

25 Q. And why isn't the Board able to ratify the draft

1 that's already available?

2 A. The draft--it was not presented to the Board. We're  
3 still--it hasn't been presented to the Board, as yet.

4 Q. And at the moment, your Director of Finance is working  
5 on a new draft; is that right?

6 A. We're reviewing the current draft; that's correct.

7 Q. And that's what you have been doing for the last eight  
8 months?

9 A. It has been brought to my attention within the last  
10 eight months, but it hasn't been brought to the Board, as yet.

11 Q. When is the plans to bring it to the Board?

12 A. I don't have a particular time frame.

13 Q. If you--sticking to page 11 that you should still have  
14 open in front of you, you'll see that, in the table, number (vi)  
15 is the "Runway rehabilitation project", which is the proposed  
16 surfacing of the entire Runway at Virgin Gorda; yes?

17 A. Yes.

18 Q. And at your second bullet point, you say that a  
19 request for proposal was published for the design and oversight  
20 of the project, and at the end of that process, an award of  
21 tender was made to Avia NG, a Canada-based company.

22 Given you were asked by the Commissioner in the Letter  
23 of Request to produce all pre-contract correspondence or  
24 documents on which the contract award was based and to explain  
25 the procurement process, why did you not exhibit the request for

1 proposal, the RFP document, to your Affidavit?

2 A. I don't have an answer for that.

3 Q. Well, did you consider whether it was necessary to do  
4 so?

5 A. Leading up to--while I was going through the document  
6 this weekend, I did find it necessary, yes.

7 Q. Sorry. This weekend you went through some documents.  
8 And what did you find necessary to do, Mr Smith?

9 A. While I was reviewing documentation that was submitted  
10 and reviewing the question, I did find it necessary that those  
11 documents should be submitted to the Commission of Inquiry.

12 Q. Because what you have also not produced was any  
13 tenders received from any other companies which were deemed  
14 unacceptable. And those should have been disclosed, shouldn't  
15 they?

16 A. Yes.

17 Q. Aside from Avia NG, did the Airports Authority, in  
18 relation to the Runway Project, receive any Expressions of  
19 Interest from any other company?

20 A. I honestly don't recall at this time. I don't want to  
21 say "yes"; I don't want to say "no". I don't recall.

22 Q. Well, is the Dexter Construction Company of Canada a  
23 name that you're familiar with?

24 A. Yes.

25 Q. Were they interested in working on this project?

1 A. Yes.

2 Q. What about Hertzal Caribbean Limited?

3 A. They, too, were interested on working on the Project.  
4 But Avia NG--there were two RFPs, so there was an RFP to design  
5 and manage the project, and then there was an RFP. Then there  
6 was a tender. Then Avia NG would produce a Tender Document that  
7 would go out globally to contractors throughout the world to  
8 tender or to tell us how much it would cost for them to actually  
9 do the project.

10 Q. But without getting into the detail, Mr Smith, the  
11 position is that there are now two RFPs that have not been  
12 disclosed to the Commissioner. There may be as well, mightn't  
13 there, pre-contract correspondence with Dexter, Hertzal, and  
14 Avia NG; is that right? That must exist, mustn't it?

15 A. There would be pre--there would be information. Yes,  
16 sir, there would be.

17 Q. And there may be tender proposals from various  
18 companies that would have been received by the Airports  
19 Authority; is that right?

20 A. Yes.

21 Q. And these tenders would have gone before the Board,  
22 wouldn't they? The Board would have been involved in deciding  
23 which tenders or which company to award the tender to; would you  
24 agree?

25 A. Which tender? The tender for design of the runway or

1 the tender for building the runway?

2 Q. Well, you were asked to produce information relating  
3 to the work that has taken place and will be taking place at  
4 Virgin Gorda Airport as from the beginning of 2018. What I'm  
5 suggesting to you is that that's going to be something that's  
6 going to cost a bit more than \$100,000, and so there would have  
7 been a tender process. In a tender process, some people are  
8 successful, some companies are not. But more than one company  
9 has expressed interest and submitted tender proposals in this  
10 case, haven't they?

11 A. Yes.

12 Q. And these are not matters that you decide on your own,  
13 are they, Mr Smith?

14 A. No, they're not.

15 Q. They're matters you would have put before the Board  
16 for a decision?

17 A. Right.

18 Q. And so, there will be minutes of the Board, won't  
19 there, where the Board has considered the runway rehabilitation  
20 project. Would you agree?

21 A. There will--there will be.

22 Q. But doesn't it follow, Mr Smith, that there is a  
23 tranche of documents that you ought to have provided to the  
24 Commissioner in response to this Letter of Request for an  
25 Affidavit? Would you agree with that?



1           A.    Yes, there are documents that I need to submit to the  
2 Commissioner. That is absolutely correct.

3           Q.    Could I ask you just to look at 14, please.

4           A.    Page 14?

5           Q.    Yes, please.

6           A.    Okay.

7           Q.    If you look at point (ii) on page 14, the "Runway  
8 overlay Project", you refer there to Systems Engineering and  
9 also AGS Construction. You've disclosed some material from AGS  
10 Construction.

11                   And then at point (iii), you refer to Brakham  
12 Aviation.

13                   Now, in terms of Systems Engineering, would the  
14 Airports Authority have been contracting with Systems  
15 Engineering since 2018?

16           A.    We--can you ask the question one more time?

17           Q.    Yes, of course.

18                   At point (ii)--

19           A.    Um-hmm.

20           Q.    --referring back to the letter because you were asked  
21 in the letter for information from the beginning of 2018, and  
22 taking Systems Engineering, is that a company that the Airports  
23 Authority would have contracted with from the beginning of 2018?

24           A.    It was a company that the Airports Authority had done  
25 business with prior to 2018.

1 Q. And after 2018?

2 A. Systems Engineering, as far as I'm aware, was not  
3 involved with the Virgin Gorda project as of 2018, as far as I  
4 can recall.

5 Q. Just clarify that for me, please, Mr Smith, because  
6 the Runway overlay Project that we're looking at on this page is  
7 a project that you've identified as relevant to the Virgin Gorda  
8 Airport, and you say: "Systems Engineering, a local engineering  
9 firm has in the past provided oversight on the Project".

10 To provide oversight on a project at Virgin Gorda  
11 Airport, they must have been involved with Virgin Gorda Airport,  
12 mustn't they?

13 A. Right. But the Affidavit asked for information from  
14 2018 onward.

15 Q. I see.

16 So, your evidence is that Systems Engineering have not  
17 been involved with Virgin Gorda after the end of 2017?

18 A. After in--from--right. From the end of--from  
19 January 1, 2018, Systems Engineering, as far as I can recall,  
20 did not have any involvement in the Virgin Gorda Airport.

21 Q. Do you think that's something that you might like to  
22 just check, Mr Smith?

23 A. Yes. Yes, I think it is.

24 Q. Let's look at point (iii) in the Runway rehabilitation  
25 project. You say there, the oversight for this project had been

1 provided by Avia NG and Brakham Aviation.

2 Who are Brakham Aviation, please?

3 A. Brakham Aviation is a company based in Atlanta,  
4 Georgia, that does airport consulting.

5 Q. And, presumably, they do that for you on a contract?

6 A. Yes.

7 Q. Was there any reason that you didn't disclose any  
8 documentation in relation to Brakham Aviation?

9 A. No. That's an oversight. And all of those documents  
10 will be submitted to the Commission.

11 MR RAWAT: Commissioner, could I just ask for a short  
12 break at this point. It's probably useful to give the  
13 Stenographer a break at this point anyway.

14 COMMISSIONER HICKINBOTTOM: Certainly.

15 MR RAWAT: Mr Smith, I've just asked the Commissioner  
16 for a short, five-minute break.

17 COMMISSIONER HICKINBOTTOM: Good. We will come back  
18 in five minutes, Mr Smith. Thank you very much.

19 THE WITNESS: Okay. Thank you.

20 (Recess.)

21 COMMISSIONER HICKINBOTTOM: We're ready, Mr Rawat.

22 MR RAWAT: Thank you.

23 COMMISSIONER HICKINBOTTOM: Are we back to  
24 live-stream, Mr Peters?

25 TECHNICIAN PETERS: Yes, Commissioner. We are ready

1 to go.

2 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
3 much.

4 Mr Rawat.

5 MR RAWAT: Thank you, Commissioner.

6 BY MR RAWAT:

7 Q. Mr Smith, I hope you can still see and hear us.

8 A. I can. Thank you.

9 Q. In your records of events, Mr Smith, I would have more  
10 questions for you about the detail that you've put in your  
11 Affidavit, but in the circumstances where you have acknowledged  
12 that there is additional material which you ought to have  
13 provided, what I'm going to do is rather than carrying on trying  
14 to question you today is invite the Commissioner to make an  
15 Order directing you within a specified period of time to file a  
16 Supplementary Affidavit that properly answers the questions that  
17 were put to you so that you provide the documents that you ought  
18 to have provided in the first instance. Otherwise, this will  
19 make for a much longer hearing.

20 MR RAWAT: So, Commissioner, if I could just invite  
21 you to make that Order.

22 COMMISSIONER HICKINBOTTOM: Yes. Thank you, Mr Rawat.  
23 Anything to say in response to that, Mr Smith?

24 THE WITNESS: No. I think I rushed, to be honest, the  
25 submission to meet the deadline, and there were documents that

1 were missing--I can acknowledge--and I think that it is fair,  
2 that in order to run a proper inquiry to take place that we make  
3 sure and with a fine-tooth comb to make sure all the proper  
4 documents are in place so we can have a proper inquiry. I would  
5 agree to that.

6 COMMISSIONER HICKINBOTTOM: Okay. Thank you,  
7 Mr Smith.

8 Mr Smith, you were asked for an Affidavit, directed to  
9 prepare an Affidavit, because the documents we were receiving  
10 from the BVI Government were not in a satisfactory state to  
11 understand what story they told, and so we've asked for these  
12 Affidavits so that we have a basis for a focused hearing to deal  
13 with some of the outstanding matters, including in this case  
14 contracts which have been entered into by a Statutory Board.

15 I think it's clear from this morning's hearing that  
16 your Affidavit is, to say the least, extremely disappointing  
17 because there are a lot of documents clearly relevant to the  
18 Requests--clearly falling within the Requests, which have not  
19 been produced, and your Affidavit is simply not complete. That,  
20 as far as the Commission of Inquiry is concerned, is really  
21 unhelpful because we have a timetable with which we're still  
22 endeavoring to comply with, and having incomplete information  
23 means that we cannot have focused hearings as I would like.

24 And, therefore, Mr Smith, I will make an Order that  
25 you prepare a full Affidavit in accordance with the letter that

1 was initially sent to the Chairman of the Airports Authority  
2 Board on the 14th of June of this year. Your Affidavit,  
3 Mr Smith, refers in paragraph 9 to the IRU. I think it says  
4 your requests had been forwarded to the IRU. It's unclear to me  
5 whether the IRU assisted you in any way with preparing the  
6 Affidavit. But certainly we know from other witnesses that the  
7 Airports Authority Board do have their own lawyers that have  
8 advised them in respect of some matters. And if you do need  
9 legal advice to assist you in preparing a full Affidavit, could  
10 you please obtain that advice as soon as possible.

11 I'll ask that--I'll direct that you serve a full  
12 Affidavit within the course of the next seven days; that is, by  
13 4:00 p.m. by next Monday, Mr Smith, please. Thank you very  
14 much.

15 THE WITNESS: Okay, thank you.

16 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?  
17 (Microphone off.)

18 MR RAWAT: All I wanted, Commissioner, is to conclude  
19 by thanking Mr Smith for making himself available today.

20 COMMISSIONER HICKINBOTTOM: Yes. And my thanks, too,  
21 Mr Smith. And you should get that Order later on today. Thank  
22 you very much.

23 THE WITNESS: Thank you.

24 (Witness steps down.)

25 COMMISSIONER HICKINBOTTOM: Mr Rawat?

1                   MR RAWAT: Well, our next witness was scheduled--is  
2 scheduled for 1:30, so if I could just ask you to rise until  
3 that time, and then we will be able to continue with another  
4 witness.

5                   COMMISSIONER HICKINBOTTOM: Certainly. Thank you very  
6 much.

7                   (Recess.)

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Session 2

COMMISSIONER HICKINBOTTOM: I think we're ready to carry on.

Mr Rawat?

MR RAWAT: Yes, we are.

COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Peters. We are. Thank you.

Good. Yes, we are ready to carry on. Mr Rawat.

MR RAWAT: Thank you, Commissioner.

Our next witness is Lorna Stevens.

BY MR RAWAT:

Q. Ms Stevens, can I check whether you can see and hear us, please?

A. I can see and hear you.

Q. Thank you very much.

And thank you also for making yourself available at relatively short notice to assist the Commission.

A. You're welcome.

Q. I should say that I think you are represented this afternoon by Mrs Fiona Forbes-Vanterpool from the Attorney General's Chambers; right?

A. Correct.

Q. Thank you.

Can I ask, is it Ms Stevens or Mrs Stevens?

A. Ms Stevens.



1 Q. Ms Stevens.

2 Do you want to swear an oath or make an affirmation?

3 A. Affirmation.

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

5 A. Yes, I do.

6 Q. Would you mind reading them out now, please.

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

10 COMMISSIONER HICKINBOTTOM: Thank you, Ms Stevens.

11 BY MR RAWAT:

12 Q. Can I also confirm, please, that you've received a  
13 bundle which the Commission of Inquiry sent to you and which has  
14 about 166 pages to it?

15 A. Yes, I did.

16 Q. Thank you.

17 The last thing I would like you--to just ask you,  
18 please, is just to keep your voice up and to speak slowly. One  
19 of the things we're discovering about remote hearings with  
20 witnesses is that sometimes we will end up talking across each  
21 other. If I do do that, I will stop and I'll give you a moment  
22 to finish your answer, all right?

23 A. Yes, sir.

24 Q. Thank you very much.

25 My first question is to ask you if you could give an

1 outline of your career in the Public Service, please.

2 A. Okay. I joined the Public Service in May of 1994,  
3 attached to the Department of Information Technology. I was  
4 transferred to the BVI High School in 1997. From there, I was a  
5 Computer Manager at the BVI Ports Authority until 2004. I  
6 returned back to the Public Service in 2005 at the Department of  
7 Information Technology. After that, I was transferred to the  
8 Ministry of Education in 2009, and I've been Assistant Secretary  
9 until present.

10 Q. So, it was in 2009 that you took on the role of  
11 Assistant Secretary?

12 A. Correct.

13 Q. And I understand that, in that role, you were involved  
14 in the Elmore Stoutt High School wall project?

15 A. At the beginning, I was involved in technology for  
16 schools, and in 2012 I think I had the role of Project Manager,  
17 yes.

18 Q. In that role as Project Manager, was it a specific  
19 role within the Ministry in relation to construction works?

20 A. To any type of projects under the Ministry of  
21 Education. It could include anything from construction to  
22 special events, to ceremonies, et cetera.

23 Q. And to fulfill that function of Projects Manager, were  
24 you given any training?

25 A. I was given training in 2015, where I spent a month in

1 the UK doing two short courses.

2 Q. Sorry, your voice dropped a little bit. Could you  
3 just repeat, which process was it, please?

4 A. Yes, in 2015, I attended a course in the United  
5 Kingdom, project-cycle management, and it was two short courses,  
6 and it was for a period of one month.

7 Q. And those courses in project-cycle management, was  
8 that the only training you'd received?

9 A. Correct.

10 Q. And by the time that you went to that training, were  
11 you already undertaking the role of Projects Manager?

12 A. Yes, I was.

13 Q. And have you continued in that role since then?

14 A. Yes, I have.

15 Q. Before the wall project itself, if we call it that,  
16 what kind of construction projects had you been involved in as  
17 the Ministry of Education's Project Manager?

18 A. Repairs to the public schools; the remodel of the  
19 Technical School, which is now part of Virgin Islands School of  
20 Technical Studies; undertaken several recreational facilities,  
21 including basketball courts.

22 I'm trying to think what else.

23 But mainly focus around schools.

24 Q. And we know that the Ministry of Education have an  
25 external Project Manager, which I will come back to that in a

1 moment. But from your perspective, what did your role--focusing  
2 on construction work, what did your role involve as the Internal  
3 Projects Manager?

4 A. As the Internal Projects Manager, making sure that  
5 there were quotations sought, if there were Cabinet papers to be  
6 done, issuing of contracts where the finance unit would draft  
7 the contracts. I would ensure that, if it was a Petty Contract,  
8 contractors had their documents. We would sign when the work  
9 was commenced, liaison with any Consultant in terms of project  
10 management, liaison with the contractors. Issuing of--well, not  
11 issuing, but making sure the various payments were paid based on  
12 the progress of the works, and that's about it. We prepare  
13 those reports during and after the project, et cetera.

14 Q. And were those skills that you developed on the job,  
15 so to speak? Did you learn as you went along?

16 A. Correct. A lot of self-training, a lot of training  
17 from the Consultants, Project Manager, other private Project  
18 Managers, true self-reading, self-taught, yes.

19 Q. Now, we understand that in relation to the high school  
20 and the wall--and I will call it the "wall project", if I may,  
21 the Ministry used SA Architects as its external Project Manager;  
22 is that right?

23 A. That's correct.

24 Q. Can you help the Commissioner with when SA Architect  
25 first started working for the Ministry of Education?

1           A.    That's a specific date and time I would not be able to  
2 provide right now.  What I know is he has been working with the  
3 Ministry for a number of years, before and after the  
4 construction of that wall.

5           Q.    And that's Mr Augustin, isn't it?  Was he working for  
6 the Ministry when you took on the role of Assistant Secretary in  
7 2009?

8           A.    I don't recall.  I don't recall as I was not involved  
9 in project management at that time.

10          Q.    I think you said you became involved in project  
11 management from 2012.

12          A.    Correct.

13          Q.    From that time, do you remember Mr Augustin and SA  
14 Architects being engaged by the Ministry of Education?

15          A.    Yes, in certain aspects, yes.

16          Q.    And do you remember, Ms Stevens, what the nature of  
17 the engagement was?  Was it a yearly contract, or is it a  
18 job-by-job agreement?  How were S.A.--how was that practice's  
19 services engaged by the Ministry?

20          A.    As far as I could recall, it was mostly job-by-job.

21          Q.    Do you remember whether they had a retainer or  
22 anything like that?

23          A.    No, I don't recall.

24          Q.    In terms of using the services of SA Architects, who  
25 decided whether those services would be used?

1           A.    The Minister would normally choose the contractor or  
2 consultancies.

3           Q.    And so, it would be down to the Minister to decide  
4 whether you needed an outside Project Manager or not?

5           A.    That was the process, yes.

6           Q.    And when that decision was made, were you asked for  
7 your views?

8           A.    Specifically as in terms of SA Architects?

9           Q.    Yes.

10          A.    Not that I could recall, no.

11          Q.    In relation to the wall project, were you asked for  
12 your views as to the use of SA Architect on that project?

13          A.    Not that I could recall, no.

14          Q.    If you go in the bundle that we've given you at  
15 page 18, please.

16          A.    Okay.

17          Q.    You see paragraph 89 under the heading "Focus Area  
18 (2014)"?

19          A.    Yes.

20          Q.    Now, if I explain, this is a page from the report  
21 produced by the Auditor General into the wall project, and this  
22 part of her Report she's discussing the initial phase of the  
23 project, which was commenced in December 2014. And it was just  
24 to deal with a relatively small section of the wall. Were you  
25 involved in that part of the project?

1           A.    Yes, I was.

2           Q.    If you see at paragraph 90, it says: "The plan  
3 submitted to the Town and Country Planning Department for this  
4 part of the project stipulated" 180-foot "block wall estimated  
5 to cost" \$156,000 odd.

6                   Now, can you remember who prepared that plan?

7           A.    That plan was prepared by SA Architects.

8           Q.    The Auditor General points out that, because of the  
9 cost, it would have to go through a tendering process or a  
10 Cabinet waiver, which wasn't--neither option of which was  
11 pursued, but then she goes on at paragraph 91 to say that the  
12 "works were scaled back from 180 feet to 120 feet"...

13                   Who made the decision to scale it back to 120 feet?

14           A.    I think at the time that was based on the available  
15 funding that we had. This section of the wall was taking place  
16 at the close of the Year 2014.

17           Q.    And was that what funding was available within the  
18 Ministry of Education's budget?

19           A.    Correct.

20           Q.    What the Auditor General also says is that Works  
21 Orders were issued to 11 contractors for the works.

22                   Do you know who decided to use Work Orders rather than  
23 a Petty Contract to do this work?

24           A.    Both Petty Contracts and Work Orders were used on the  
25 perimeter wall, and that came from the decision sought by

1 Cabinet, through Cabinet.

2 Q. We'll come back to that in a moment, but I'm just  
3 referring specifically to this first phase, which was in  
4 December 2014. It appears on the Auditor General's Report to  
5 have all been done by Work Orders, and so my question was, do  
6 you know--so, it wasn't done by a Petty Contract, this first  
7 phase. Do you know who decided to use Work Orders?

8 A. That would have been the Minister.

9 Q. I'm sorry, your voice dropped a little bit. I didn't  
10 catch your answer.

11 A. That would have been from the Minister. He would have  
12 given us the list of contractors to use on that site.

13 Q. So, on that first phase, it would have been the  
14 Minister's decision to use Work Orders?

15 A. Because of the amount of contractors, yes.

16 Q. Do you know if any consideration was given--I mean,  
17 the total amount of money that was spent on that first phase by  
18 way of Work Orders was \$96,727.40. You can see that at  
19 paragraph 92 on the page we're looking at.

20 Do you know whether at the time any consideration was  
21 given to using a Petty Contract to do this work?

22 A. No.

23 Q. And so just so that we're clear, your recollection is  
24 that the Minister decided to use Work Orders, and it was the  
25 Minister who decided which contractors would get those Work



1 Orders?

2 A. Correct.

3 Q. And you mentioned the decision of the Cabinet. I  
4 would like you just to go to page 115 in that bundle, please.

5 A. I'm there.

6 Q. Thank you.

7 Could I explain what this is. It is a document which  
8 has been provided to the Commissioner by the-then Minister for  
9 Education and Culture Myron Walwyn, and it's a draft Cabinet  
10 Paper. You should see at the top there is a date 19th of  
11 January, 2015?

12 A. Yes.

13 Q. And you'll see that there are some lines, for example,  
14 at paragraph 2, which are underlined. Now, that's how the  
15 document came to the Commission, so it wasn't--the underlining  
16 wasn't introduced by the Commission.

17 Now, what Mr Walwyn explained to the Commission was  
18 that this paper, which--and we will look at the final version  
19 that went to Cabinet in a moment--although it's a memorandum  
20 from the Ministry of Finance, the Ministry of Education would  
21 have had input into the paper. Did you have any involvement in  
22 preparing this Cabinet paper?

23 A. Yes, I did.

24 Q. And what was that involvement.

25 A. I pretty much--

1 REALTIME STENOGRAPHER: Could you repeat that, please?

2 BY MR RAWAT

3 Q. We just lost you.

4 A. I drafted a paper, and then the paper would have gone  
5 on to the PS for review.

6 Q. So, you would have drafted, just to talk us through  
7 the process, you drafted the paper. It then went to your  
8 Permanent Secretary and the Minister of Education for review.  
9 That was Dr Potter at the time, wasn't it?

10 A. Yes, it was.

11 Q. And from there, where would it have gone?

12 A. It would have gone on to the Minister for his review.  
13 Once everybody was comfortable with the paper, it would have  
14 gone to the Ministry of Finance.

15 Q. Do you know whether there was anyone at the Ministry  
16 of Finance who was particularly involved in finalising the  
17 paper?

18 A. I am not sure who finalised the paper, no. But it  
19 would have been sent, if I could remember correctly, it would  
20 have been sent to the FS at that time.

21 Q. That's the Financial Secretary at that time?

22 A. That's correct.

23 Q. Now, if I ask you to turn to page 145.

24 A. Yes.

25 Q. This is the final version of the paper as it went to

1 Cabinet, and you'll see at the top it's now got a reference put  
2 in, and it's got a date of the 29th of January 2015.

3 Do you have that?

4 A. Yes, I do.

5 Q. Would you have seen this final version before it was  
6 submitted to Cabinet?

7 A. No, sir.

8 Q. And so, do you think that the version that we were  
9 just looking at a few moments ago at page 115, was that the  
10 sort--once you drafted it and sent it to the Permanent  
11 Secretary, was that the last that you saw of it?

12 A. Yes.

13 Q. So, if other amendments were introduced, for example,  
14 by the Permanent Secretary or the Minister, would you have been  
15 privy to those amendments?

16 A. Before submitting to the Ministry of Finance, yes.

17 Q. I see.

18 Now, there are very few differences between the two  
19 versions, and in many--many of the attachments are the same.  
20 So, if I may, I would like to use this document that we have in  
21 front of us just because I think it's in bigger print, so it  
22 might be easier to read.

23 A. The one on page 145?

24 Q. 145, yes.

25 If you would like to prefer to have the version that

1 you worked on, I can take you to that, if you want.

2 A. That's okay. You can go ahead.

3 Q. The text that I'm going to take you to, Ms Steven, is  
4 the same in both documents. If you look at paragraph 2, please.

5 A. Um-hmm.

6 Q. You'll see that there is reference there to an  
7 increase in the alleged sale of illegal drugs on the campus, and  
8 that an increase in the number of fights and brawls on and off  
9 campus, which are school related, have been linked to these  
10 alleged illegal activities.

11 So, it would seem that the concern that was being  
12 expressed at the time and certainly in this paper, was over  
13 illegal drug activities and the consequences; is that right?

14 A. That's correct.

15 Q. Could you just say or help the Commissioner with where  
16 that information was coming from?

17 A. That information would have been from reports from the  
18 Royal Virgin Islands Police Force, reports from the principal,  
19 to--the appendices to remember what all the reports were, but it  
20 would have been various reports that were written to the  
21 Ministry of Education concerning the security breaches at the  
22 high school.

23 Q. Let's take a quick look at those reports. If we look  
24 at 161?

25 A. Go ahead.

1 Q. It's a report from the principal of the high school  
2 addressed to Mrs Jillian Douglas-Phillip, and she was the-then  
3 Acting Chief Education Officer; is that right?

4 A. Correct.

5 Q. And that report is dated the 6th of October 2014. If  
6 you need a moment to read it, please take it but it doesn't make  
7 any specific response to illegal drug activities. You'll see in  
8 the second paragraph there is a reference to growing safety  
9 issues, but there is nothing specific there.

10 I'll show you now, if I may, that the second letter  
11 that came, and this document was a document that was put before  
12 Cabinet, but if we go to 163, please.

13 A. I'm there.

14 Q. Again, it's a letter now dated November the 6th, 2014,  
15 from the principal again to the Chief Education Officer, and  
16 what it's talking about is reference to drugs being supplied to  
17 students. Was that where the source of the illegal drug dealing  
18 was from, that letter?

19 A. Yes, that was one of them.

20 Q. Well, I'll show you--and you will see that this is  
21 obviously--these documents have been stamped as being received  
22 by the department--by the Ministry of Education. Let me take  
23 you to the--to 157, please, in that bundle.

24 A. I'm there.

25 Q. This is a Royal Virgin Islands Police Force security

1 assessment on the high school dated 14th of November 2014,  
2 stamped as being received the 20th of January 2015 by the  
3 Ministry of Education. So, after that draft that we were  
4 looking at.

5 And it sets out recommendations in relation to the  
6 school. And in particular, you will see the recommendations on  
7 page 160.

8 A. Yes.

9 Q. Which includes remodeling or installing perimeter  
10 fencing around the entire campus (mesh wire). Now, that paper,  
11 that assessment does not specifically reference drugs at all.  
12 If we look at 153.

13 A. Yes.

14 Q. You now see a Safety and Security Assessment at Elmore  
15 Stoutt High School dated 5th of January 2015, addressed from the  
16 Commissioner of Police to the Governor. And that stamp, it has  
17 two Ministry of Education stamps, one January 13, 2015, one  
18 January 20th, 2015. But what it does is it sets out a schedule  
19 of reported incidents, and if you look at 154--

20 A. Yes.

21 Q. You will see in relation to cannabis, three incidents  
22 reported in 2012 but none in 2013 and 2014.

23 Does it follow from that, Ms Stevens, that the  
24 reference to illegal drug sales really comes from that second  
25 letter from the principal that we were looking at a few moments

1 ago?

2 A. Yes, it does, but illegal drug sales was not the only  
3 breach on the campus.

4 Q. I accept that. I suppose the point of my question was  
5 whether there was any other information that you received  
6 outside what was contained in these letters that then informed  
7 the paper that you drafted.

8 A. No. These are the attachments that I sent to the  
9 Premier.

10 Q. Now, in fairness to you, you quite properly point out  
11 that illegal drug sales was not the "other issues". What other  
12 issues did you have in mind, Ms Stevens?

13 A. There was trespassing, there was weapons, and I guess  
14 weapons of various types, student trips from outside. One of  
15 the people's listed the carwash that was located in close  
16 proximity on the adjacent side of the road, which posed a major  
17 threat to the school premises, and that was also located in the  
18 area where we started the works in 2014.

19 Q. Could I take you now to page 149, please?

20 A. I'm there.

21 Q. This is the quote or an estimate for the works that  
22 was obtained. In fact, if we put it in context, let's look at  
23 146, please.

24 A. Yes.

25 Q. You see paragraph 9 which is this is the final version

1 of the paper but it's also in the draft that Mr Walwyn provided  
2 to the Commissioner, it says there--and this is the third  
3 sentence in paragraph 9: "The Ministry of Education and Culture  
4 contracted a full time Project Manager who manages all our  
5 projects and ensures that we get value for money. He has  
6 provided with the Ministry with an estimate which is included as  
7 part of the attached appendices. We further sought an  
8 additional costing from a second source which assisted us in our  
9 decision making process by providing a cost comparable for our  
10 final decision". And I'll read the rest of it now: "We are  
11 prepared to accept the lower as the actual cost of the project  
12 and it is the intention of the Ministry to use Petty Contracts  
13 for the entire project".

14           So, the estimate that was provided is what we see at  
15 page 149?

16           A.    Correct.

17           Q.    Now, that was dated the 2nd of October 2014. You can  
18 see that just at the top next to the Q, and it's expressed as  
19 being a Bill of Quantities which is estimated and provisional.

20           A.    Yes.

21           Q.    If you go over to the next page, we will see the  
22 actual figures.

23           A.    I'm there.

24           Q.    Now, at the bottom it says Steve Augustin, Principal  
25 Project Manager, Quantum Management. And we've been speaking of



1 SA Architect. Do you know who Quantum Management was?

2 A. That is Mr Steve Augustin.

3 Q. So, is he--does he do his project managing as Quantum  
4 Management and his work as an architect as SA Architect?

5 A. Yes.

6 Q. Now, did you have any involvement in obtaining this  
7 estimate from Mr Augustin?

8 A. No, not in the initial stages, no.

9 Q. So, who asked him to provide this estimate that we see  
10 in front of us?

11 A. The Minister would have asked him.

12 Q. The Minister asked him?

13 A. Yes.

14 Q. Did you have any responsibility for verifying the  
15 accuracy of the quote?

16 A. Based on the specs and the quantities and the figures,  
17 calculations were run to determined that the figures were  
18 correct, but this is just from the figures that were provided.

19 Q. So, was it just checking that the maths was right?

20 A. Basically, yes.

21 Q. So, you see that the perimeter walls' length is given  
22 as 2,695 feet. Was it appreciated at the time that that  
23 referred to the entire circumference of the perimeter?

24 A. Yes.

25 Q. And was it envisaged at the time that that's what

1 would be built, a wall that would go entirely around the whole  
2 perimeter of the high school?

3 A. At that time, I would assume yes. At the time that I  
4 was seeing this, questions were raised in terms of that there is  
5 an existing wall at a certain location at the school, so that  
6 portion of wall would have to be taken out.

7 Q. At the time that this was submitted to Cabinet, 29th  
8 of January 2015--

9 A. Yes.

10 Q. --it was envisaged that a whole new wall would be  
11 built around the entire school?

12 A. Yes.

13 Q. What was it that made the Ministry consider that this  
14 was a realistic estimate?

15 A. Based on the relationship that we had with  
16 Mr Augustin.

17 Q. When you say that we had with Mr Augustin--

18 A. The Ministry.

19 Q. I'm sorry, your voice is dropping a little bit.

20 A. The Ministry. The relationship that the Ministry had.

21 Q. Right, that the Ministry had with Mr Augustin. But  
22 who in the Ministry had that relationship?

23 A. He worked for the Ministry, so it was everybody. It  
24 wasn't just that he worked with me.

25 Q. Was there anybody in the Ministry who was tasked with

1 looking at this and saying, This is a realistic estimate of the  
2 cost for a perimeter wall around the entire school?

3 A. Based on the second BQ that we had--

4 REALTIME STENOGRAPHER: I'm sorry, could you repeat  
5 what you just said.

6 THE WITNESS: Based on the second BQ that we had, we  
7 could have done a basic comparison.

8 BY MR RAWAT

9 Q. That was going to be my next question because what  
10 also went before Cabinet was what you've described as the second  
11 BQ, so that's the second Bill of Quantities, and we find that at  
12 page 151.

13 A. That's correct.

14 Q. And that's STO Enterprise's Bill of Quantities, isn't  
15 it?

16 A. Yes.

17 Q. Who decided to seek a Bill of Quantities from STO  
18 Enterprises?

19 A. Both Bill of Quantities initially would have been by  
20 the Minister.

21 Q. So the Minister sought these Bill of Quantities?

22 A. Yes.

23 Q. And why do you say that this was a good comparable?

24 A. Both of them have worked for the Ministry for some  
25 period of time, so we were pretty much comfortable with their

1 submissions.

2 Q. Could you just help me with one detail to understand  
3 the two Bill of Quantities, please.

4 If you look at the Quantum Management estimate, which  
5 is at 150, you will see that item 4 is recorded as "blockwork  
6 between columns" and the quantity is given as 1574 square yards.

7 Do you have that?

8 A. Yes, I do.

9 Q. And then again, if you go to the STO estimate, the  
10 item there is given as "construction of blockwork, including  
11 footing", and that's given as 1796 square yards.

12 Using that as an example, why do the two stand as good  
13 comparables if their figures are different?

14 A. There is a difference, yes, I would admit that, but  
15 initially I was not on-site when these two Bill of Quantities  
16 were done, so I cannot really confirm exactly what STO or SA  
17 Architect measured exactly on the ground.

18 Q. I mean, the reason is because if you look, for  
19 example, at line 5 on STO, or line 6, forgive me, the painting,  
20 that's given as 3593 square yards.

21 A. Um-hmm.

22 Q. Whereas when we go back to the Quantum Management  
23 estimate at number six under "paint works", that's given as 3148  
24 square yards, so they don't seem to be "like for like".

25 A. Right.

1           And I would add here that both Bill of Quantities  
2 would have been preliminary estimates based on at this time a  
3 physical drawing was not submitted to Town and Country Planning  
4 as yet.

5           Q.    I understand that, but if you're using them as cost  
6 comparables for each other, surely it would be sensible to ask  
7 them to cost for the same work?

8           A.    But I was not included in that discussion, so I cannot  
9 say exactly what at that time that they were told.

10          Q.    And as you understand it, it was the Minister that  
11 went out and got these two estimates?

12          A.    Correct.

13          Q.    And you were not involved, although you were the  
14 Internal Project Manager, you were not involved in that process  
15 at all, Ms Stevens?

16          A.    Not when it came to starting the work, no.

17          Q.    So, this information was given to you to draft the  
18 Cabinet paper?

19          A.    Correct.

20          Q.    Who ultimately made the decision that the SA Architect  
21 or the Quantum Management quote provided better value for money  
22 than the STO quote? Which is to say, who in the Ministry made  
23 that decision?

24          A.    Both estimates went to Cabinet, and that was decided  
25 in Cabinet. When they looked at the--when you look at the

1 figures from both Bill of Quantities, more than likely they  
2 would have gone with the lower bidder.

3 Q. The reason for my question was because, do you  
4 remember I took you to that paragraph 9 in the Cabinet paper,  
5 that refers to ensuring that the Ministry gets value for money,  
6 and said that the Ministry of Education was prepared to accept  
7 the lower as the actual cost of the project.

8 So, it suggests that there was internal discussions  
9 within the Ministry of Education as to which of these two  
10 estimates provided better value for money, and so my question  
11 was whether you knew who made that--who took--who reached that  
12 conclusion. I appreciate that Cabinet makes the final decision.  
13 But did anyone within the Ministry reach a view that SA  
14 Architect was to be preferred over STO Enterprises?

15 A. I--yes. Based on the discussion, yes, that decision  
16 would have been made.

17 Q. Was that your view?

18 A. I don't recall if it was in a group setting. I don't  
19 think I would have made that decision by myself, no.

20 Q. Who ultimately makes the decision?

21 A. That decision probably would have been in a meeting  
22 that included the Minister, Permanent Secretary, FPO, and  
23 myself.

24 Q. And the FPO, for the Transcript, is the Financial and  
25 Planning Officer; is that right?

1 A. That's correct.

2 Q. I'm sorry to make you jump around in the bundle, but  
3 could I ask you just to look up page 11, please.

4 A. Yes.

5 Q. Could you just look at--we're back to the Auditor  
6 General's Report, but just look at paragraph 38, please,  
7 Ms Stevens.

8 Now, there is no dispute that it was the SA Architect  
9 or Quantum Management quote of 828,000 that was accepted, and  
10 what the Auditor General records at paragraph 38 was, of that  
11 \$828,000, "The approved estimate for the wall construction part  
12 of the project was \$289,360", which meant that for the 71  
13 contracting sections, the cost was, when you add the contractor  
14 fee, \$4,483.

15 Do you see that?

16 A. Yes, I do.

17 Q. Now, as it turned out, and as the Auditor General  
18 explains at 39 and the table there, the actual cost per section  
19 was \$9,460-odd.

20 Now, if you look at 24.

21 A. Um-hmm.

22 Q. This is the Bill of Quantities for Wall Works prepared  
23 by--I'm going to--although it's recorded as Quantum Management,  
24 I'm going to just refer to it as SA Architects, but it's what  
25 the wall works would cost, and you see at the top it's dated the

1 20th of November 2014?

2 A. Yes.

3 Q. And you see at the bottom, the grand total per section  
4 is given as \$9,461.65.

5 A. Yes.

6 Q. If you go over to the next page, you've got a Bill of  
7 Quantities for the rail paint works, again dated the 20th of  
8 November 2014, and the costs there per section is going to be  
9 \$5,993.

10 Now, those figures were available--those Bill of  
11 Quantities would have been available on the dates before the  
12 Cabinet paper went in to Cabinet, which is in January 2015. The  
13 work that was being done was going to be done in sections.

14 Now, given that you had--you had an estimate of  
15 828,000, but you also had Bills of Quantities for wall works and  
16 paint works for over 9,000 and over 5,000, nearly 6,000.  
17 Doesn't it follow that the Ministry of Education had information  
18 available before the paper was submitted that showed that the  
19 cost would exceed 828,000?

20 A. From my knowledge, we did have the costing of the  
21 \$828,000 because when it was initially requested, it was  
22 requested as a preliminary cost with one contractor contracting  
23 the wall--working on the wall. Although these Bill of  
24 Quantities may have the date of 2014, I am not--they didn't form  
25 part of the Cabinet paper that went forward. The only thing



1 that formed part of the Cabinet paper was the wall in its  
2 totality.

3 REALTIME STENOGRAPHER: I'm sorry, was the what?

4 THE WITNESS: The wall, the perimeter wall.

5 REALTIME STENOGRAPHER: Yes.

6 THE WITNESS: In its totality.

7 BY MR RAWAT

8 Q. So, it just--I think the Stenographer is having a  
9 little difficulty hearing you, Ms Stevens, so if you can, try  
10 and speak up. I don't know whether if you have an external  
11 microphone, if you can bring it forward. Are you using the  
12 microphone in your computer?

13 A. Yes, I am.

14 Q. You have to try and make yourself shout a little bit,  
15 I think.

16 A. Okay.

17 Q. I'm sorry to say. But your evidence is that the  
18 \$828,000 estimate was based on the use of one contractor; is  
19 that right?

20 A. That's correct.

21 Q. If that's so, why then did the Cabinet paper say that  
22 it was the intention of the Ministry of Education to use Petty  
23 Contracts?

24 A. The total figure came in, yes, and then the decision  
25 was made to use Petty Contracts and Work Orders, so that simply

1 would have mean that it would have taken the whole figure, which  
2 was the \$800,000-plus, and that would have been divided up as  
3 the--between (unclear) orders and Petty Contracts--

4 REALTIME STENOGRAPHER: I'm sorry, divided up as the  
5 what?

6 A. --between what was Petty Contracts and what was Work  
7 Orders.

8 Q. I suppose my question is directed to the quality of  
9 information that's been given to Cabinet because what you've  
10 given Cabinet is a figure--or what the Ministry has given  
11 Cabinet is a figure based on the use of one contractor when your  
12 intention was to use Petty Contracts--we'll come back to Work  
13 Orders--but the intention in the paper was to use Petty  
14 Contracts, which would have the effect, wouldn't it, of  
15 increasing the cost?

16 A. Yes, and that was understood, that the costs would  
17 increase if the 820--\$1,200 was divided with several  
18 contractors. That was discussed.

19 Q. So, internally within the Ministry, you were aware  
20 that the costs would go over \$828,000, if you used Petty  
21 Contracts?

22 A. That's correct.

23 Q. And when you say it was discussed, who was involved in  
24 the discussion?

25 A. It would have been Minister, myself, FPO, PS. And

1 since we were using SA Architect estimates, I'm wondering if he  
2 was there.

3 Q. Again, your voice dropped on the last. I'll just  
4 recap your answer. I'm sorry. You said that in terms of who  
5 was discussing it, it was the Minister, yourself, the  
6 FPO--that's the Financial and Planning Officer--the Permanent  
7 Secretary. And then you said--I think that's where we lost you.  
8 Did you refer to Mr Augustin?

9 A. Yes. In some meetings he was there, yes.

10 Q. So, he was present at some meetings?

11 A. Yes.

12 Q. I suppose if I take you back, though, to the point  
13 that I was making, which is that where you had already, before  
14 you went to Cabinet, Bills of Work--Bills of Quantities in  
15 relation to wall works and paint works of 9.500 and nearly  
16 \$6,000 respectively, the Ministry would have been very well  
17 aware, wouldn't it, that the cost was going to go substantially  
18 over 828,000?

19 A. The Ministry would have been aware, yes.

20 Substantially, I can't say that, but it would have been aware  
21 that it would have increased based on the individual Bill of  
22 Quantities for walls and rails and painting. Those were not  
23 submitted at that time, although they bear the date of  
24 November 2014.

25 Q. But was a decision taken not to submit those details

1 to Cabinet?

2 A. Not that I know of, no.

3 Q. If you go to page 18, please.

4 A. Um-hmm.

5 Q. This is again back to the Auditor General's Report,  
6 and it relates to that first phase of work which was done in  
7 2014. Paragraph 91 refers to the Work Orders being issued. And  
8 for wall constructions those were \$9,989, and for rail  
9 installation and painting they were \$7,357.

10 So, that was yet again another detail where the  
11 Ministry would have known that the cost was going to be in  
12 excess of \$828,000, wouldn't it?

13 A. The \$828,000 does not include the works from 2014.

14 Q. I accept that, Ms Stevens. But my point is that you  
15 had information available to you, as the Ministry, that would  
16 have clearly showed to you all that the cost was going to be  
17 much, much greater than \$828,000, and that information wasn't  
18 included in the Cabinet paper, was it?

19 A. No.

20 Q. And taking you back, in circumstances where you've got  
21 the Bill of Quantities about what the wall would cost and also  
22 what the paint work would cost, to describe \$828,000 as a  
23 realistic estimate is a rather optimistic statement, isn't it?

24 A. That's why I said the 800 plus--the 800,000 plus was a  
25 preliminary figure.

1 Q. If you turn, please, to the very last page in your  
2 bundle.

3 A. That's 167?

4 Q. Yes. In fact, if you turn forward to 166.

5 Now, the Cabinet paper that we have been looking at  
6 does not include anywhere in it the phrase "Work Orders". This  
7 is an expedited extract, so this is the Cabinet's decision  
8 following receipt of that paper and consideration of it. Would  
9 you, as Assistant Secretary, have seen this expedited extract?

10 A. Not coming from the--no, not the extract itself, no.

11 Q. How would the decision of Cabinet have been  
12 communicated to you as Assistant Secretary?

13 A. It would have been communicated to the--if my  
14 knowledge serves me correctly, it would have probably come in to  
15 the Permanent Secretary in the form of a memo from the Ministry  
16 of Finance.

17 Q. Did you see that memo?

18 A. I don't recall seeing the memo. No, I can't recall if  
19 I saw the memo.

20 Q. If you look at (c), however, what Cabinet approves:  
21 "Approval be granted to execute the project utilizing petty  
22 contracts and different suppliers and contractors, and that the  
23 Ministry of Finance's Project Support Unit assists the Ministry  
24 of Education and Culture with the management of this project",  
25 taking the first half of that sentence, there is no mention, is

1 there, of Work Orders?

2 A. There is no mention of Work Orders, but it would be  
3 inferred that different suppliers and contractors is what we  
4 would have called "Work Orders", which would have included  
5 invoices.

6 Q. Well, when was it decided that you would use Work  
7 Orders? Was it after Cabinet had made their decision or had it  
8 already been decided?

9 A. The draft Cabinet Paper went from the Ministry as  
10 Petty Contracts.

11 REALTIME STENOGRAPHER: I'm sorry. Could you repeat  
12 that again? I'm sorry.

13 THE WITNESS: The draft Cabinet Paper went from the  
14 Ministry of Education as Petty Contracts. So any change in the  
15 Cabinet Paper from there would have been either at the Ministry  
16 of Finance or in Cabinet itself, which I was not privy to.

17 BY MR RAWAT

18 Q. But when that paper left the Ministry on its way to  
19 Cabinet, had a decision already been taken within the Ministry  
20 of Education that you would deal with this project by using  
21 Petty Contracts and Work Orders?

22 A. Yes.

23 Q. So, before January 2015, you were going to use--some  
24 portion of the work would be done by way of Work Orders?

25 A. Yes.

1 Q. Why is it that the Paper, then, doesn't refer to Work  
2 Orders?

3 A. I don't recall. No, at this time, I don't recall.

4 Q. But normally when you draft something and you're going  
5 to refer to the use of Work Orders, would you just call them  
6 "Work Orders"?

7 A. Not necessarily, no.

8 Q. What would you call them?

9 A. You could draft a paper that has Petty Contracts, and  
10 there could be some works that could be done via invoices, and  
11 what we term "Work Order" is just an agreement between a  
12 contractor and the Ministry for any work that is under the  
13 \$10,000 threshold.

14 Q. And what would you call them then?

15 A. We still call them Work Orders or invoices.

16 (Overlapping speakers.)

17 A. But it's not specific that that would have been in the  
18 Cabinet Paper, no.

19 Q. What's referred to is petty--the use of Petty  
20 Contracts. There is no reference in the Cabinet Paper to Work  
21 Orders, is there?

22 A. No. Not in the draft, no.

23 Q. Yes, that's a fair point, not in the draft that left  
24 the Ministry?

25 A. Yes.

1 Q. And again, there is no reference. I take your  
2 point about different suppliers and contractors, but there is no  
3 specific reference in the Cabinet Decision, is there, to Work  
4 Orders?

5 A. Not informing them.

6 Q. You've said that the decision that the Work Orders  
7 would be used had been made even before the matter was brought  
8 before Cabinet. The Ministry of Education and Culture made that  
9 decision?

10 A. And the Ministry made--it was a discussion, I would  
11 say.

12 Q. And who was involved in the discussion?

13 A. Same team: Minister, PS, myself, FPO.

14 Q. And what about Mr Augustin?

15 A. Mr Augustin was not involved in all of the meetings.  
16 He was only involved in some meetings.

17 Q. He was only involved in?

18 A. In some meetings, not all of the meetings.

19 Q. So, in a meeting involving yourself, the Minister, the  
20 Permanent Secretary, and the Financial and Planning Officer, it  
21 was decided that some portion of a project that would cost at  
22 least \$828,000 would be done by Work Orders?

23 A. It was discussed, yes.

24 Q. So, it was discussed. But who gets to make the  
25 decision?



1 A. That decision was made in Cabinet.

2 Q. Again, your voice dropped.

3 A. That decision was made in Cabinet.

4 Q. In Cabinet?

5 A. Yes.

6 Q. Well, the reason for my question was, earlier,  
7 Ms Stevens, you said that a decision had been made internally  
8 within the Ministry. Would you--

9 (Overlapping speakers.)

10 Q. Was the discussion in favor of using Work Orders?

11 A. It was discussed.

12 Q. But did you reach a view within the Ministry that you  
13 would use Work Orders?

14 A. I don't recall whether we reached a view or not, but I  
15 know it was discussed.

16 Q. And where did the discussion go to? What was the  
17 outcome of the discussion?

18 A. It was just a discussion.

19 Q. Cabinet also said that the Ministry of Finance Project  
20 Support Unit should assist the Ministry of Education. So what  
21 contact did you, as the Internal Project Manager, make with the  
22 Project Support Unit?

23 A. First of all, the Ministry of Finance doesn't carry  
24 the paper to Cabinet. So, from the get-go, the Ministry of  
25 Finance was aware of the papers. The Project Unit Section was

1 not involved to the extent that they are involved in today.  
2 From the Project Unit, I know they made several site visits to  
3 the site, so they have a basic working knowledge of the project.

4 Q. What Cabinet wanted them to do was to assist the  
5 Ministry of Education and Culture with the management of the  
6 project. Did they assist your Ministry with the management of  
7 this project?

8 A. Not really, no.

9 Q. As the Internal Project Manager, did you approach the  
10 Project Support Unit for assistance?

11 A. Not--only in terms of site visit. I came out for the  
12 site visit, and that was it.

13 Q. You approached them. And what assistance did you need  
14 in terms of site visits?

15 A. Like I say, they were not involved to the extent that  
16 they are right now. They were not responsible for reports,  
17 certifying work, certifying payments, nothing of that sort, no.

18 Q. Did you just invite them along for site visits?

19 A. I don't recall if I invited them or if they came out  
20 on their own. It could have been both.

21 Q. Did you not think it was useful to ask for their  
22 assistance in the management of the project?

23 A. No, because they weren't really functioning how they  
24 are now, so they weren't a major part of any of our projects  
25 that we did.

1 Q. You say they weren't functioning in the way they are  
2 now functioning.

3 A. Right.

4 Q. The Commissioner has heard evidence from Dr Drexel  
5 Glasgow, who is the current Director of Projects at the Ministry  
6 of Finance, and he says that what was then the Project Support  
7 Services Unit, and which became the Projects Unit, was already  
8 an established unit when he joined the Ministry of Finance in  
9 2014. So, in what way were they not functioning as they are  
10 now?

11 A. As they weren't responsible for the final works, they  
12 weren't responsible for the issuance of the Payment Certificate  
13 or requests made by contractors.

14 Q. Did you ask the Project Support Unit for a list of  
15 contractors to use?

16 A. No, because I'm not aware of any that is in existence.

17 Q. Well, if you'd asked them, they might have provided  
18 you with a list, mightn't they?

19 A. If there was a list, I'm assuming that they would  
20 have. But this is not the first project that I worked on, so  
21 I'm--I don't know of any such list that is--or any Department  
22 that has a list of qualified contractors, no.

23 Q. Did you ask the Ministry of Finance if they kept a  
24 list?

25 A. To my knowledge, not--not specifically for the wall

1 project.

2 Q. I'm sorry. Could you just give us that answer, again,  
3 please?

4 A. Not to my knowledge did I specifically ask them for a  
5 list of contractors for the wall project.

6 Q. Had you asked them for--had you asked the Ministry of  
7 Finance for a list of contractors prior to starting on the wall  
8 project?

9 A. Not that I'm aware of, no.

10 Q. Had you at any time, whilst once--from 2012 when you  
11 became the Internal Project Manager, asked the Ministry of  
12 Finance for a list of contractors?

13 A. Not to my knowledge, no.

14 Q. Did you ever ask the Public Works Department if they  
15 maintain a list of contractors?

16 A. No, because Public Works was not engaging in projects,  
17 in a sense. There was a time when Public Works was responsible  
18 for the Petty Contracts and works. But as far as I know, when I  
19 took over as the Project Manager in the Ministry, that was not  
20 the case. So, I only viewed Public Works as in certifying the  
21 plans.

22 Q. I'm--you have explained that you take on this role of  
23 Internal Projects Manager from about 2012. You're not given any  
24 training. You don't get your training in project-cycle  
25 management until 2015.

1           A.    Right.

2           Q.    And so, between 2012 and 2015, you have to learn on  
3 the job, don't you, Ms Stevens?

4           A.    Yes.

5           Q.    From experience, from speaking to others, from  
6 teaching yourself, that's how you strove to do your job; is that  
7 right?

8           A.    Yes, that's correct.

9           Q.    Wouldn't it have been sensible to go to the Public  
10 Works Department and ask them if they had a list of contractors?

11          A.    It might have been a good thing, yes. But as far as  
12 the information that I got--and I relied on information from the  
13 Ministry of Finance, from Public Works, from Town and Country  
14 Planning, from private consultants, and I have never heard of a  
15 list of contractors that no Ministry of Public Works has. I  
16 knew about Public Works as engaging in inspection works and the  
17 approval of plans to the building authorities.

18          Q.    Again, Dr Glasgow was the Director of Public Works  
19 Department from 2007 to 2012, and his evidence to the  
20 Commissioner was, certainly, whilst he was in the Public Works  
21 Department, they had a list of contractors which the Ministry of  
22 Finance would ask for from time to time. But that is not  
23 something that you were ever made aware of; is that right?

24          A.    No, I was not.

25          Q.    Did you--Dr Glasgow's evidence was also that the

1 Public Works Department would have had a list of agreed prices  
2 to be used in Bills of Quantities. Were you aware that the  
3 Department of Public Works had such a list?

4 A. No.

5 Q. Could you turn, please, to--back to the Auditor  
6 General's Report. If you go to page 16, please.

7 A. Um-hmm. I'm there.

8 Q. If you look at paragraph 71, the Auditor General  
9 writes as follows: "The contractors used on the project were  
10 selected by the Minister of Education and Culture. The  
11 Assistant Secretary who provided project liaison services within  
12 the ministry advised that the contracts and work orders sections  
13 and amounts were assigned to individuals based only on  
14 instructions received from the Minister".

15 Is that right?

16 A. That's correct.

17 Q. Again, your voice dropped a little bit.

18 COMMISSIONER HICKINBOTTOM: That's right.

19 THE WITNESS: That's correct.

20 BY MR RAWAT:

21 Q. If you go to page 109, please.

22 A. I'm there.

23 Q. This is a document again received from Mr Walwyn. But  
24 at the top of it, it says: "Comments with Senior Officers with  
25 Oversight of Project, MEC", which is the Ministry of Education

1 and Culture. This is a document used to respond to the draft  
2 Auditor General's Report. Did you have input into preparing  
3 this document?

4 A. Yes, I did.

5 Q. If you look at number 6, what's recorded is: "It is  
6 not the practice of the government/ministries to go through PWD  
7 for a list of contractors. Contractors are chosen based on  
8 previous work relations with the Ministry owner at the sitting  
9 minister's discretion".

10 So, in this case, did you put forward, for the  
11 Minister's consideration, contractors?

12 A. No.

13 Q. Did the Financial and Planning Officer put forward  
14 contractors to the Minister?

15 A. Not that I'm aware of, no.

16 Q. What about the Permanent Secretary?

17 A. Not that I'm aware of, no.

18 Q. So, was it just the Minister told you who would--you  
19 would contract with?

20 A. The Minister wrote the contractor down in terms of who  
21 would do walls, who would do rails.

22 Q. Where did the Minister get the names from?

23 A. I don't know. I was not privy to that information.

24 Q. So, did the Minister just tell you, "Assistant  
25 Secretary, these are the individuals that will get the

1 contracts"?

2 A. As he would normally do, yes.

3 Q. And you say "as he would normally do". Was that the  
4 Minister's approach on other contracts?

5 A. Yes, it was.

6 Q. You were the Internal Project Manager. Leaving the  
7 wall aside, you're the Internal Project Manager, do you have any  
8 say in the selection of contractors?

9 A. No, I didn't. I could give recommendations, but the  
10 ultimate decision was the Minister's.

11 Q. What did you--when you did give recommendations, what  
12 did you base your recommendations on?

13 A. Previous work.

14 Q. And that was your own assessment of a contractor's  
15 previous work, was it?

16 A. Correct.

17 Q. But in relation to the wall project, you didn't do  
18 that in this case?

19 A. Didn't do what?

20 Q. You didn't put people forward for the Minister to  
21 decide?

22 A. No, I did not.

23 Q. Now, one of the points that the Auditor General raised  
24 was the fact that, of 70 contractors used on the project, 40 did  
25 not have trade licences. What was your understanding of whether



1 a contractor working for your Ministry under a Work Order--what  
2 was your understanding of whether they needed to have a trade  
3 licence?

4 A. The understanding that I got was, if a contractor was  
5 working on a Petty Contract which is above the \$10,000  
6 threshold, they would require a trade licence and good standing.  
7 If they were working below that threshold, they would not  
8 require any of those documents.

9 Q. Now--so, above \$10,000, which is the Petty Contract  
10 threshold, they would have to have a trade licence and  
11 Certificates of Good Standing?

12 A. That's correct.

13 Q. Below it, they would need--not need those?

14 A. No.

15 Q. There is a difference between requiring a contractor  
16 to have those and requiring them to produce them to you. Was it  
17 your understanding that if--below the Petty Contract threshold  
18 you didn't actually even need to have a trade licence; you could  
19 just turn up and do the work?

20 A. They would not have to produce them as documents to  
21 back the Work Order, no.

22 Q. So, they wouldn't have to show them to you, as a  
23 Project Manager?

24 A. That's correct.

25 Q. Would they still have to have them, though?

1           A.    Any business operating in the Virgin Islands would  
2 have to have a trade licence.

3           Q.    Let me take you back to 16, please.

4           A.    I'm there.

5           Q.    Look at paragraph 75.  You see the Auditor General  
6 made reference to the Public Finance Management Regulations 189.

7                    Were you aware of the Public Finance Management  
8 Regulations yourself?

9           A.    Yes.

10          Q.    And what she says is that:  "Issuing of multiple work  
11 orders on the same job is prohibited by Regulation 189", and  
12 "The Cabinet waiver obtained for this project doesn't include  
13 execution by work orders".  Now, focusing on the 189 point, what  
14 was your understanding of what Regulation 189 allowed you to do  
15 in relation to Work Orders?

16          A.    Work Orders would be single--single jobs.

17          Q.    But the point that the Auditor General is making is  
18 that where you take a wall and then divide it up into Sections,  
19 you're doing one job but with multiple Work Orders, and that  
20 breaches Regulation 189.  Did you understand that that's what  
21 the regulation was intended to stop?

22          A.    Let me ask this question because this could be  
23 interpreted several ways:  If a contractor with a Work Order was  
24 given two section of, let's say, rails to do, that work was--if  
25 you have two section of rails, it was still considered as one

1 Work Order. He did not have a Work Order for each section that  
2 he gives--

3 (Overlapping speakers.)

4 A. --any other contractors.

5 Q. Just clarify that for us because the Bill of  
6 Quantities for wall work that we looked at is for just below  
7 \$10,000.

8 A. And that's why you use the one for rails and systems  
9 which was, if you look at 2015, some of the rails work were  
10 \$4,638.70. So, if a contractor was given two sets of rails to  
11 carry out, and you add those two together, you came to a total  
12 of about \$9,000 something, but he was not given two separate  
13 Work Orders for each rail section. He was given one Work Order  
14 totaling the \$9,000 plus.

15 Q. But isn't the other way to interpret what the Auditor  
16 General is saying is that, where you have multiple contractors  
17 working on the same job by way of Work Orders, that breaches  
18 Regulation 189? What I want--I'm asking you to explain to the  
19 Commissioner is just what was your understanding in 2014-2015  
20 about what Regulation 189 was intended to stop?

21 A. It was probably--it was intended to stop, let's say, a  
22 contractor having more than one Work Order on the Project.

23 Q. Now, we've been talking about Phase 1, which was the  
24 first bit of the wall built in December 2014.

25 A. Um-hmm.

1 Q. Who had overseen that project, that Phase 1, the first  
2 bit, before you went to Cabinet for \$828,000?

3 A. The architect and myself as the Internal Project  
4 Manager.

5 Q. And you're the Internal Project Manager; SA Architect  
6 is the External Project Manager. Which of the two of you had  
7 priority?

8 A. In terms of the relationship, it would be that  
9 Mr Augustin would report back to me, who would be the liaison  
10 person for the Ministry. I would report to the Minister or the  
11 PS.

12 Q. But did you have a role in, yourself, overseeing the  
13 works that were being undertaken at that time, or was that for  
14 Mr Augustin to do?

15 A. That was for Mr Augustin to do. I am not--I didn't do  
16 any studies in construction or engineering, so that would be up  
17 to Mr Augustin.

18 Q. And in terms of the second stage, which was obviously  
19 much more substantial, how was that overseen?

20 A. Same process.

21 Q. And so, given that you don't have any sort of training  
22 in construction, what was your role focused on at that second  
23 stage?

24 A. Second stage I would do--I did do site visits with  
25 Mr Augustin, made sure that the contractors had their documents

1 and everything, Petty Contracts were signed and administered,  
2 the works were being carried out. And the--once computed,  
3 payments would be issued.

4 Q. And in terms of checking whether SA Architect were  
5 doing a good job, was anybody monitoring their work?

6 A. I'm not sure to what extent, when they made a site  
7 visit, to what extent they reported. I'm not sure of that.

8 Q. Again, your voice dropped a little. You're not sure  
9 to what extent they reported?

10 A. No. What extent Project Support Unit from the  
11 Ministry of Finance, I'm not sure what the reporting mechanism  
12 is.

13 Q. But you weren't really aware of what the Project  
14 Support Unit was doing at all, were you?

15 A. In terms of coming up with checked projects, that was  
16 basically their involvement.

17 Q. Did the Project Support Unit send you any reports on  
18 the work at all?

19 A. No.

20 Q. Did you make any request to the Project Support Unit  
21 to check the quality of the work that was being done?

22 A. I answered that already. No.

23 Q. If you go, please, to page 17.

24 A. Um-hmm.

25 Q. I just want to draw your attention to 79 and 80.

1 "Management of the project was outsourced by the Ministry to an  
2 independent contractor in 2014 without competitive solicitation  
3 or vetting by any of the two government agencies named above".  
4 That's the project--what the Auditor General called the Project  
5 Management Unit and the Public Works Department.

6           And then at 80, the report continues: This  
7 arrangement was formalised in May 2016 with a petty contract for  
8 \$47,000 odd dollars after the project was stopped for lack of  
9 funds. An amount of \$43,000 was paid in September 2016 with the  
10 project still incomplete. And then the Treasury records  
11 indicate that the Project Manager was paid a total of \$265,000  
12 in 2016 for this project and others under the Ministry of  
13 Education and Culture.

14           Just focusing on the Petty Contract for \$47,000, can  
15 you just explain to the Commission why--why that payment was  
16 necessary?

17           A. That was the--that was the estimate that Mr Augustin  
18 submitted for his Auditors.

19           Q. So, that was the fee that he charged for his services  
20 on the wall project?

21           A. Correct.

22           Q. Now, in terms of site visits, you've obviously got  
23 Mr Augustin. You've got yourself. The Project Support Unit,  
24 you said, came on some site visits. Did anybody else from the  
25 Ministry make site visits?

1           A.    Not that I--not that I--not that I could remember--not  
2 that I could recall.

3           Q.    Well, once the Phase 2 got underway, once Cabinet had  
4 given its approval and the work began, how was the Minister kept  
5 up to date of what was going on?

6           A.    By oral or written communications from me.

7           Q.    I'm sorry. We again lost your answer there,  
8 Ms Stevens. Could you repeat that, please?

9           A.    By verbal or written communications from myself.

10          Q.    And how often would you send those communications to  
11 the Minister?

12          A.    That, I don't recall.

13          Q.    You if go over to page 18?

14          A.    Um-hmm.

15          Q.    If you look at paragraph 86, that's the section of the  
16 Auditor General's Report where she deals with planning approval.

17          A.    Um-hmm.

18          Q.    And she--the Auditor General's Report makes the point  
19 that, in relation to the--what we call Phase 1, the 2014  
20 construction in December 2014, and in relation to the Phase 2,  
21 the second phase, the plans or planning approval was sought  
22 after the event.

23                 Now, in this case, can you remember why planning  
24 approval was submitted late?

25          A.    I am not sure. I can only assume that at the time

1 when Mr Augustin was completed with the planning, he submitted  
2 it.

3 Q. Did you have any involvement--involvement in  
4 submitting the plans for approval?

5 A. I am not sure if he submitted them solely by his  
6 company or if we submitted them from the Ministry, which would  
7 include a stamp from the Ministry and from Town and Country  
8 Planning. I am not sure.

9 Q. Is there anybody else in the Ministry who would take  
10 responsibility for that, rather than yourself?

11 A. I mean, anybody could submit the--the plans to Town  
12 and Country Planning.

13 Q. The reason I asked was just because you're obviously  
14 the Internal Project Manager, and I just wondered whether that  
15 would have been part of your brief to deal with planning  
16 approval.

17 A. That would have been my duty, yes, to submit to Town  
18 and Country Planning.

19 Q. And given it was your duty--but can you remember why  
20 the process happened late?

21 A. No, I don't have any--that was seven years ago. I  
22 really don't recall. I can only assume that, at that point when  
23 we did, especially the piece in 2014, at the point of starting  
24 we had preliminary drawings, and when the preliminary drawings  
25 were completed we submitted to Town and Country Planning.



1 Q. Could you turn up page 26, please.

2 A. Um-hmm.

3 Q. And this is again part of the Auditor General's  
4 Report, and she set out some figures here in a table. And so,  
5 she says the cost estimate approved by Cabinet was \$828,000.  
6 The total cost of the wall to date was \$914,000, and the total  
7 work needed to finish the wall was \$251,000. So, the total cost  
8 is recorded there as \$1,166,000.

9 At what stage in the process, once you've got Cabinet  
10 approval, was it realized that you would be going over costs?

11 A. I don't recall exactly what stage or what date.

12 Q. I mean, to be fair to you, Ms Stevens, at the time  
13 that you were drafting that paper, you did anticipate, didn't  
14 you, that you would go over \$828,000?

15 A. Yes.

16 Q. But was there a point when you started--when the  
17 Ministry started to try to work out how much over you would go?

18 A. I am not sure, no.

19 Q. Can I deal with two final matters with you. And if  
20 you turn to page 34, please.

21 A. Um-hmm.

22 Q. This is a letter from the Permanent Secretary of the  
23 Ministry of Communication and Works, to the Permanent Secretary  
24 of the Ministry of Education and Culture. And it's from--it's  
25 in relation to a--or it's a submission on behalf of the Acting

1 Director of the Public Works Department. So, after the Auditor  
2 General's Report had been issued, it appears that there were  
3 meetings with the Public Works Department and your Ministry.  
4 Were you involved in that process at all?

5 A. Not that I could recall, no.

6 Q. Also--and you can see an example at page 91--estimates  
7 were obtained for costings of the wall from private entities.  
8 One was James Todman, and the other one was BCQS. Did you have  
9 any involvement in obtaining those estimates?

10 A. No, sir.

11 Q. Do you know who did?

12 A. No, sir.

13 Q. Could you give me a moment, please, Ms Stevens.

14 A. Certainly.

15 (Pause.)

16 MR RAWAT: Commissioner, I have reached the end of my  
17 questions. Can I conclude, first of all, by thanking Ms Stevens  
18 for making herself available at relatively short notice. It's  
19 much appreciated that she has done so. But also, can I conclude  
20 by thanking her for the way that she has given her evidence this  
21 afternoon.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 Thank you, Ms Stevens, both for your time and, as  
24 Mr Rawat said, giving evidence at reasonably short notice, but  
25 also for the clear way in which you've given your evidence,

1 which has been very helpful. Thank you very much.

2 THE WITNESS: Thank you. And thank you for your  
3 consideration, and my requests, all in which I stated that I was  
4 experiencing some difficult times with some deaths close to my  
5 family, so I do appreciate your consideration.

6 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much,  
7 Ms Stevens.

8 THE WITNESS: And on the last note, just for the  
9 record, I'm going to say here that this was strictly based on  
10 the Auditor's Report, and I find it strange that the Auditor's  
11 Report is specifically based on a draft Cabinet Paper and not  
12 the decision sought in Cabinet itself, and no interviews were  
13 done by Audit with--on-site with the external Project Manager.  
14 The interview that was done with myself on-site were basically  
15 have all walk around this campus, counting walls and rails, to  
16 me, it's not enough to base a report on, but I'll just state  
17 that for the record.

18 COMMISSIONER HICKINBOTTOM: Thank you very much,  
19 Ms Stevens. That's noted. Thank you.

20 THE WITNESS: You're welcome.

21 COMMISSIONER HICKINBOTTOM: Mr Rawat?

22 MR RAWAT: Commissioner, our witness is due shortly.  
23 Can I ask to rise for five minutes?

24 COMMISSIONER HICKINBOTTOM: Certainly.

25 THE WITNESS: Thank you.

1

COMMISSIONER HICKINBOTTOM: Thank you very much.

2

(Recess.)

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Session 3

COMMISSIONER HICKINBOTTOM: Yes, we're ready to go ahead. Thank you very much.

Mr Rawat.

MR RAWAT: Thank you, Commissioner.

Our next witness is Ms Carleen Jovita Scatliffe.

BY MR RAWAT:

Q. Ms Scatliffe, can you see us and hear us?

A. Yes, I can. Good afternoon.

Q. Good afternoon. Thank you very much for making yourself available to come and assist the Commissioner this afternoon.

Can I ask, do you want to swear an oath or make an affirmation?

A. Affirmation, please.

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

A. Yes, I do.

Q. Could you read those words out now, please.

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

Q. Thank you.

Can we begin, if I ask you just to give your full name to the Commissioner, please.

A. Carleen Jovita Rose Scatliffe.

1 Q. And can I confirm that you received a bundle which has  
2 been prepared by the Commission, which is about 167 pages long?

3 A. I did, yes.

4 Q. Could I ask you, as we're going through your evidence,  
5 just remember to keep your voice up, please, and to speak  
6 slowly. It may be that every now and then you or I cut across  
7 each other. If I do that, what I'll do is I'll stop and I'll  
8 let you finish your answer. Sometimes it's just a consequence  
9 of the fact that we're doing this remotely; all right?

10 A. Okay.

11 Q. Can we begin, if I just ask you this, please,  
12 Ms Scatliffe. Could you give the Commissioner an outline of  
13 your career in Public Service.

14 A. Okay. I joined the Public Service on July 12, 1999,  
15 as a Senior Accounts--Senior Executive Officer, sorry, and then  
16 I became the Accounts Manager I think in 2002 until about 2006  
17 when I became a Budget Officer II. After that, I was  
18 transferred to the Ministry of Education in April of 2011 as a  
19 Budget Officer, and then I was--I was appointed to Financing  
20 Officer in 2014 at the Ministry of Education. I am now at the  
21 Ministry of Transportation and Works as the Finance and Planning  
22 Officer from January 2020.

23 Q. So, 2014 you took on the role of Finance and Planning  
24 Officer at the Ministry of Education and Culture. What did that  
25 role involve?

1           A.    That role involved giving--I was at the Ministry of  
2 Education, just for clarity, from 2011, but I became--I  
3 was--officially became the Finance and Planning Officer in 2014.  
4 I was just clearing that up.

5           Q.    Okay.

6           A.    My role involved giving financial advice to the  
7 Ministry.

8           Q.    And would that financial advice cover all the  
9 activities that the Ministry was involved in?

10          A.    Financially, yes.

11          Q.    Now, in relation to the Elmore Stoutt High School Wall  
12 Project, how were you involved in that project?

13          A.    Well, I had that work under me, so those girls were  
14 the ones who actually prepared the documents and whatever, but I  
15 gave financial advice towards the project--

16                   (Overlapping speakers.)

17          Q.    And was that in relation to the costing of the  
18 project?

19          A.    No. That was not in relation to the costing of the  
20 project. The costing of the project was done by Mr Steve  
21 Augustin.

22                   REALTIME STENOGRAPHER: I'm sorry, by whom?

23                   THE WITNESS: Steve Augustin from SA Architects.

24                   BY MR RAWAT

25          Q.    I think your answer was that Steve Augustin of SA

1 Architect was responsible for the costing of the project?

2 A. That's correct.

3 Q. So, what sort of financial advice would you have been  
4 giving?

5 A. Well, my advice at the Ministry was to make sure that  
6 there was funding in the budget and to let them know whether  
7 there was funding or not. That was mine--my job.

8 Q. In relation to Mr Augustin and SA Architect--and tell  
9 us if you can't help with this, but do you happen to know when  
10 SA Architect first started working for the Ministry of  
11 Education?

12 A. I am not sure. I'm not sure.

13 Q. Were they a contractor or a consultant to the Ministry  
14 when you joined it in 2011?

15 A. I believe--don't quote this--I believe we were dealing  
16 at that time with STO Enterprise. I think so. I'm not sure.  
17 It could have been both of them was doing work. I'm not sure.  
18 I remember dealing with both of them at some point but to the  
19 extent of it, I can't tell you right now.

20 Q. And in terms of SA Architect, how were they engaged as  
21 consultants? Was it a job-by-job basis or did they have a  
22 contract of some sort?

23 A. They did not have a contract. It was a job-by-job.

24 Q. And who in the Ministry of Education would decide to  
25 use the services of SA Architect on a particular job?



1 A. The Minister.

2 Q. As Finance and Planning Officer, would you have had  
3 any input into that decision at all?

4 A. No.

5 Q. Could you turn up page 18 in the bundle.

6 A. 18 or 80?

7 Q. 18, one-eight, please.

8 A. Thank you.

9 I'm there.

10 Q. Now, if I just draw your attention, please,  
11 Ms Scatliffe, to paragraph 89.

12 What's summarized there is the first phase of the  
13 school wall project, which was conducted in December 2014. And  
14 it was in summary a--to build a wall which was originally going  
15 to be 180-foot block wall estimated to cost 156,000.

16 Now, in terms of that part of the wall project, did  
17 you have any involvement in it at all?

18 A. In the initial phase of it, no. Both making payments  
19 and whatever, yes, I think I had involvement in it at that  
20 point, yes.

21 Q. So, was your role to--in relation to paying on  
22 invoices?

23 A. What's my role, you said?

24 Q. Was your role focused on paying out on the invoices  
25 that were received?

1 A. Yes.

2 Q. So, you would have not been or would you have been  
3 consulted in relation to the choice of contractors or what work  
4 was going to be done?

5 A. No, I was not.

6 Q. Now, in relation to this part of the project, it was  
7 done using Work Orders. As Finance and Planning Officer, would  
8 you have had any input into whether the work was done by Work  
9 Orders or whether it was done by Petty Contracts?

10 A. I did not have any input into that, sir.

11 Q. Whose decision would that be?

12 A. The Minister.

13 Q. Could you go, please, to page 115, now.

14 A. I'm there.

15 Q. At the top you should see the date 19th of  
16 January 2015.

17 Do you have that?

18 A. Correct.

19 Q. Now, if I just explain what this is, Ms Scatliffe, it  
20 is a draft memorandum which has been provided to the  
21 Commissioner by Mr Walwyn, the former Minister for Education and  
22 Culture, and this is a memorandum, and your colleague,  
23 Ms Stevens, has already given evidence. She says that she  
24 drafted this.

25 A. Correct.

1 Q. --(drop in audio) finance.

2 Would you have had any input into the preparing of  
3 this draft memorandum?

4 A. No, I did not.

5 I believe when this memorandum was draft, I was on  
6 vacation at the time in January.

7 Q. The final version that went--actually went to Cabinet  
8 is dated the 29th of January 2015. Would you have been back  
9 from vacation by that time?

10 A. I should have been back, yes.

11 Q. But do you remember seeing that paper before it went  
12 to Cabinet?

13 A. No, sir.

14 Q. As Finance and Planning Officer, is that something you  
15 would have expected to see?

16 A. No, sir. Usually in the Ministry when they draft a  
17 paper, they just ask me for the budgetary head, the financial  
18 implication as to where it will be charged to, and if there is  
19 funding available there. That's what they usually ask me for.

20 Q. Perhaps you can help us with that. If you go to  
21 page 117, please.

22 Now, this is the draft paper that we're looking at.  
23 What it says is, under "FINANCIAL IMPLICATIONS", the project  
24 which has a total estimated cost of 828,000 is to be sourced  
25 from local funding, details which would be worked out by the

1 Ministry of Finance".

2 Can you help the Commissioner at all with what the  
3 reference to "local funding" means?

4 A. Okay. That financial implication there was actually  
5 written by the Ministry of Finance. Local for me--ask me the  
6 question again, what local funding means? Is that what you  
7 asked?

8 Q. Yes.

9 A. That means that it would come from the actual  
10 consolidated funds and not those funds.

11 Q. Right.

12 And what it says, "BUDGET IMPLICATIONS" is local  
13 funding allocated to the Ministry of Education and Culture for  
14 the maintenance of the said institutions under budget  
15 implication, so can you help us with what that means?

16 A. It's basically saying that local fundings would be  
17 placed under the Ministry of Education, maintenance for the  
18 execution of this work.

19 Q. All right. Let's go to 147, please.

20 A. I'm there.

21 Q. If you need it, you can turn back to 145, because that  
22 will show you this is the final paper. This is the one that  
23 went to Cabinet, all right? So, just help us with, if you go to  
24 146?

25 A. Yes.

1 Q. Under "FINANCIAL IMPLICATIONS", there's the reference  
2 to--you see that it's to be sourced from local funding. But if  
3 you go over to the next page and look at paragraph 12, it's the  
4 last sentence I wondered if you could help us with: "The  
5 Ministry of Education and Culture should consider their capital  
6 spending plan if Cabinet approves the decision sought".

7 And then if you look under "BUDGET IMPLICATIONS" at  
8 14: "The funding for the perimeter fencing of the Elmore Stoutt  
9 High School will be sourced from local funding allocated to Head  
10 325 Subhead 3250102...under the Ministry of Education and  
11 Culture for maintenance of the said institution".

12 Does that mean that the money was going to come from  
13 funds already allocated to the Ministry of Education?

14 A. That's what it should have meant, but to my  
15 recollection there was no funding head at the time.

16 Q. There was no funding at the time?

17 A. No, I think that's why the Cabinet paper states on  
18 page 145, it states somewhere there that all the additional  
19 finance--funding will be supplied by the Ministry of Finance. I  
20 saw that somewhere. I think it was in the Cabinet's decision.

21 Q. That was the draft. What I'm now showing you is the  
22 final version that went to Cabinet, so the final version we're  
23 looking at is what the proposal was, and I was hoping you might  
24 be able to help us with just explaining effectively where the  
25 money was going to come from.

1 A. Yes, it would come from that.

2 Q. It would come from money already given to the Ministry  
3 of Education and Culture, already allocated to it; is that  
4 right?

5 A. According to the Cabinet paper, the money should be  
6 there under that head, yes.

7 Q. And in terms of the phrase "the Ministry of Education  
8 and Culture should consider their capital spending plan", does  
9 that mean that the Ministry might have to look at how it was  
10 allocating its budget?

11 A. Yes. That statement seems so, yes.

12 Q. And is that the sort of thing that you would be  
13 expected to do as Finance and Planning Officer?

14 A. Yes. I would be expected to find funding if we have  
15 savings or not or capital we can move funding to other heads,  
16 yes.

17 Q. Can I come back to that in a little while, please?

18 A. Sure.

19 Q. Ms Scatliffe, if you turn, please, to 149, this is an  
20 estimate for the work that was provided by Steve Augustin. Did  
21 you have any involvement in obtaining that estimate from him?

22 A. No, I did not. No.

23 Q. If you go to 151, please.

24 A. I'm there.

25 Q. That's another estimate that went with the Cabinet

1 paper from STO Enterprise. Did you have any involvement in  
2 obtaining that estimate?

3 A. No, I did not.

4 Q. Now, I can take you to them if you need to see them,  
5 but Mr Augustin also provided Bills of Quantities for specific  
6 works, so works on the--for what he described as wall works and  
7 also paint work, so these were costings for that work.

8 Would you, as Finance and Planning Officer, have any  
9 involvement in obtaining those Bills of Quantities?

10 A. No, I did not.

11 Q. Could you turn up 166, please.

12 A. I'm there.

13 Q. This is the actual decision that was issued in this  
14 expedited extract of a decision that was issued by Cabinet  
15 following receipt of that paper and consideration of it.

16 Now, that sets out the decision that Cabinet actually  
17 made. Would you have been shown this expedited extract?

18 A. No, because the extract do not come to the Ministry.  
19 So, we check out the actual memo.

20 Q. So, is it a memo that comes to the Ministry?

21 A. That's correct.

22 Q. Do you remember seeing a memo at the time?

23 A. I'm not sure. I probably could have, yes, but I'm not  
24 quite sure.

25 Q. Now, this decision is in relation to the--it's in

1 relation to the second stage of the wall project, the more  
2 extensive stage.

3 Did you understand how that was going to be progressed  
4 in terms of contracts? What did you know?

5 A. My understanding was that it would have been Petty  
6 Contracts and Work Orders.

7 Q. And who--where did that understanding come from?

8 A. The Minister.

9 Q. And were you involved? Given you were Finance and  
10 Planning Officer, were you involved in drawing up Petty  
11 Contracts or drawing up Work Orders?

12 A. The young lady--did that.

13 Q. I'm sorry, could you just--

14 REALTIME STENOGRAPHER: Repeat that, please.

15 Q. --repeat your answer, please?

16 A. The young lady that worked with me, she did that.

17 Q. So, one of your members of staff prepared the Work  
18 Orders and the Petty Contracts?

19 A. Correct.

20 Q. Did you then review those Work Orders and Petty  
21 Contracts?

22 A. Some of them I did; some of them I did not.

23 Q. And once it's left your team, if you like,  
24 Ms Scatliffe, where do they go from there? Do they go to the  
25 Permanent Secretary or to the Minister, or do they just go out



1 of the door?

2 A. The contract is then signed by the contractor, and  
3 Ms Stevens, the Assistant Secretary for the project, she dealt  
4 with the contract at the time, signed them, and then the  
5 contract would actually go in to the Minister for his signature.

6 Q. They go in to the Minister for his signature?

7 A. Correct.

8 Q. And when your team is drawing up a Petty Contract or a  
9 Work Order, do you have a standard template that you use?

10 A. Yes, we do. So, that's why I told you earlier that  
11 some I looked at and some I didn't, so the template is standard.

12 Q. And so, are you, at your level, are you doing a sort  
13 of quality check? Is that it, really, rather than reviewing  
14 every single document?

15 A. Exactly.

16 Q. In terms of the contractors that were issued Petty  
17 Contracts and Work Orders, did you, as Finance and Planning  
18 Officer, have any involvement in choosing those contractors?

19 A. No, sir.

20 Q. Were you asked about--for your views as to which  
21 contractors should have a contract?

22 A. No, sir.

23 Q. Do you know who chose the contractors in this case?

24 A. Yes, I do.

25 Q. Who was that?

1 A. The Minister.

2 Q. And was that something that was routine in the  
3 Ministry, that it was up to the Minister to decide which  
4 contractors would get work?

5 A. It's the practice in every Ministry, yes.

6 Q. Now, one of the pieces of evidence that the  
7 Commissioner has received is that whilst there were 70  
8 contractors used on the contract, 40 of them did not have  
9 construction trade licences. Would it have befallen to you or  
10 any member of your team to check if people had trade licences?

11 A. Well, they have to bring in a trade licence once the  
12 contract amount is over \$10,001. They have to bring a trade  
13 licence and their good standing.

14 Q. So, what--

15 (Overlapping speakers.)

16 A. Sorry. The contract had to be signed on those  
17 documents, certainly. Valid documents for the year.

18 Q. So, once they're over the Petty Contract threshold,  
19 they have to bring those documents in to you; is that right?

20 A. Well, not to me, but to the Project Officer, that's  
21 correct.

22 Q. To Ms Stevens?

23 A. That's correct.

24 Q. So, your team, Finance and Planning, that's not part  
25 of your remit; is that right?

1           A.    It used to be before, but then, Projects were given to  
2 Ms Stevens, so I was just the financial part.

3           Q.    And in terms of the management of the project, how the  
4 work was being done, who monitored the work, did you have any  
5 involvement in that?

6           A.    No.   That was there at the Assistant Secretary.

7           Q.    So, did you have to--were you expected to take part in  
8 site visits?

9           A.    No, I was not.

10          Q.    So, as the project went through, what involvement did  
11 you have?

12          A.    My involvement was, basically, when the paperwork  
13 comes in, we make payment.

14          Q.    And you made payments from the Ministry of Education's  
15 budget?

16          A.    Correct.

17          Q.    And at the start of Phase 2, the phase that the  
18 Cabinet approved, it was going to be costed at--well, it was  
19 costed at \$828,000. As the work moved on and the costs  
20 increased, what impact did that have on the Ministry's budget?

21          A.    Well, it had a huge impact on the Ministry's budget  
22 because I had to request an additional \$250,000 to complete the  
23 work.

24          Q.    And where did you make that request to?

25          A.    The Ministry of Finance.

1 Q. And were you anticipating having to make that request?

2 A. No, I did not anticipate that.

3 Q. So, when that work started, were you, as Finance and  
4 Planning Officer, expecting to have to find \$828,000?

5 A. Correct.

6 Q. But then, as it went on, did you have to move money  
7 from other projects or--to pay the bills?

8 A. No. It had some funds in there that could cover the  
9 overage of up to the 9 and change, but then we needed an  
10 additional 250, and that was requested from the Ministry of  
11 Finance.

12 Q. Would you mind--we caught the last part of that, that  
13 you needed an additional 250. But before that, could you just  
14 repeat your answer, please?

15 A. In the Ministry's Head 325--which I'm not sure of the  
16 number right now--there was sufficient funds to cover up to the  
17 \$900,000--something before it was stopped.

18 Q. I see. So, this takes us back to page 147. If we  
19 look at paragraph 14, you had a Head 325 Subhead 3250102. You  
20 had sufficient funds to pay for the cost overrun of the project?

21 A. Right.

22 Q. But there came a point where you had to request  
23 \$250,000 from the Ministry of Finance?

24 A. Correct.

25 Q. And can you remember at what point you had to do that?

1           A.    I think it was coming down towards the end of the  
2 year.

3           Q.    So, the end of 2015?

4           A.    2015, yeah.

5           Q.    And how does the process work, Ms Scatliffe?  If you  
6 need to make a request for additional funds from the Ministry,  
7 how do you go about doing that?

8           A.    We fill out a form.  It's called a Schedule of  
9 Additional Provision form created by the Ministry of Finance.  
10 We have to fill that out.  It has to be signed by the Permanent  
11 Secretary and the Head of the Department, if it's a Department  
12 other than the Ministry, and the Minister, and then it's  
13 forwarded to the Ministry of Finance for their approval, on to  
14 the Minister of Finance for his final approval.

15          Q.    Can you turn up, please, 109?

16          A.    Okay.

17          Q.    This is a document headed "Comments from Senior  
18 Officers with Oversight of Project, MEC", which stands for  
19 Ministry of Education and Culture, and it's a response to the  
20 draft Auditor General's Report.

21                    Did you have any input into this document?

22          A.    The document was written by the Assistant Secretary.  
23 She might have asked us in the Accounts Unit for information  
24 pertaining to different Work Orders or different payments.

25          Q.    But was your focus really on ensuring that there was

1 enough money in the budget to pay for the project and then  
2 paying out on invoices that you were told to pay out on? Would  
3 that be a fair summary of the way--of the role your unit played  
4 in this project?

5 A. That's correct.

6 Q. And in terms of deciding whether to use Petty  
7 Contracts or Work Orders, were you consulted at all in terms of  
8 which ones to use?

9 A. No, I was not.

10 Q. Was it--were you just given an instruction that  
11 certain people would have a Petty Contract and certain  
12 contractors would have a Work Order?

13 A. Well, that was given to the Assistant Secretary, yes,  
14 and we processed them as we got them.

15 Q. So, your views weren't sought at all as to the best  
16 way to further this project in terms of contracts?

17 A. I don't recall it being sought.

18 Q. Now, after the issuance of the Auditor General's  
19 Report, there were meetings between the Ministry of Education  
20 and the Public Works Department. Were you involved in those  
21 meetings at all?

22 A. No, I was not.

23 Q. What has also been provided to the Commissioner are  
24 two estimates of the costs of the wall, one--prepared by private  
25 practices: One James Todman Construction Limited, and the other

1 one BCQS. Were you involved in obtaining those estimates at  
2 all?

3 A. No, I was not.

4 Q. Could you give me a moment, please, Ms Scatliffe.

5 A. Sure.

6 (Pause.)

7 MR RAWAT: Commissioner, I have reached the end of my  
8 questions, and so can I conclude by, first of, all thanking  
9 Ms Scatliffe, first of all, for making herself available at  
10 relatively short notice. We're very grateful to her for doing  
11 so; but also, secondly, for the way in which she has given her  
12 evidence to the Commission this afternoon.

13 COMMISSIONER HICKINBOTTOM: I can echo that. Thank  
14 you for your time.

15 (Microphone off.)

16 REALTIME STENOGRAPHER: I'm sorry, Commissioner. Your  
17 mic is muted.

18 COMMISSIONER HICKINBOTTOM: Sorry. My fault. I was  
19 on mute.

20 Can I echo that. Thank you very much for your time  
21 and thank you for the clear way in which you have answered the  
22 questions. That's been very helpful. Thank you very much.

23 THE WITNESS: Thank you.

24 (Witness steps down.)

25 COMMISSIONER HICKINBOTTOM: Mr Rawat.

1           MR RAWAT: The final matter that we need to deal with  
2 this afternoon is a short Directions Hearing which is scheduled  
3 for 4:00, so again if I could ask you to rise whilst we set up  
4 the various links that we need to set up.

5           COMMISSIONER HICKINBOTTOM: Good. Certainly. Thank  
6 you very much.

7           MR RAWAT: Thank you.

8           (Recess.)



1 Session 4: Directions Hearing

2 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

3 MR RAWAT: Good afternoon, Commissioner. I call this  
4 final part of today's hearing, just for the Transcript just to  
5 indicate who we have present remotely.

6 First of all, Mr Niki Olympitis attends on behalf of  
7 the Attorney General and the elected Ministers; and, secondly,  
8 Mr Daniel Fligelstone Davies is present on behalf of the  
9 remaining Members of the House of Assembly.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 MR RAWAT: The purpose of this afternoon is in  
12 relation to redaction and other issues concerning disclosure  
13 provided by the AG through the IRU in relation to Statutory  
14 Boards, and so it's a matter on which you may wish to hear from  
15 Mr Olympitis, but is not a matter that concerns Mr Fligelstone  
16 Davies.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 MR RAWAT: Just to give some background, Commissioner,  
19 on the 6th of July, the Commission wrote to the Attorney General  
20 and setting out some details in relation to letters that have  
21 been sent requesting Affidavits from Ministers in respect of  
22 Statutory Boards. But what it also did at the end of that was  
23 to indicate that at that time it was the intention to have the  
24 hearings on the topic of Statutory Boards in the week commencing  
25 19th of July, and set out there that you considered it would be

1 necessary to refer in evidence that a public hearing and further  
2 to documents that had previously been disclosed, so that was  
3 outside the Affidavits themselves. Those documents were then  
4 set out, and what was asked for from the Attorney was that, if  
5 any redactions were being sought, that they should be indicated.  
6 And that indication came through by an e-mail on Monday the 12th  
7 of July, which identified various redactions that were proposed  
8 in relation to items of personal data and also details over  
9 which our a legal professional privilege was asserted.

10           Subsequent to that, in relation to this material that  
11 also goes to Statutory Boards, the IRU, acting on behalf of the  
12 Attorney General, has also identified material over which they  
13 assert Cabinet Confidentiality. There was a response on the  
14 16th of July from the Commission which indicated in relation to  
15 the use of personal data, the position had been reached whereby  
16 you considered it was necessary to refer to some relevant  
17 personal information, for example, it might be necessary when  
18 considering an appointment to a Statutory Board to consider some  
19 details from an individual's CV.

20           In relation to legal professional privilege, the  
21 position that had been set out by the IRU was that IRU--was that  
22 the Attorney General would consider waiving privilege, if any of  
23 the redacted material was of specific importance or relevance to  
24 the Inquiry, and your position was it indicated that it was  
25 relevant and, therefore, the Attorney General was invited to

1 waive legal professional privilege.

2           Subsequent to that, in relation to Client-Cabinet  
3 Confidentiality, whilst that has been indicated, that is again  
4 an area where you considered that there is material that is  
5 relevant. And so I think the position, and I hope I set it out  
6 fairly, that has been reached is that in relation to personal  
7 data, an opportunity has been given to the Attorney General to  
8 make representations in terms of redactions, and you have  
9 reached a view that there is material that is relevant to your  
10 investigation of Statutory Boards.

11           In relation to Cabinet Confidentiality--

12           COMMISSIONER HICKINBOTTOM: Shall we take it in  
13 categories, Mr Rawat?

14           MR RAWAT: Yes.

15           COMMISSIONER HICKINBOTTOM: Would that be helpful?

16           MR RAWAT: Yes.

17           COMMISSIONER HICKINBOTTOM: Shall we deal with  
18 personal data first because I'm not sure that this is very  
19 difficult.

20           Mr Olympitis, you have identified in the schedule  
21 those parts of the disclosure which the Attorney General  
22 considers personal information, and you say that all of those  
23 should be redacted, as I understand it, and you don't seek--my  
24 understanding is that the Ministers do not seek to rely upon any  
25 of that information that you seek to have redacted; is that

1 correct?

2 MR OLYMPITIS: Well, no, I don't think it's quite as  
3 broad as that. The position that we take is that personal data  
4 has been used to decide. We're proposing redactions, and a  
5 majority of the redactions--I don't have them all obviously in  
6 front of me--but the majority of those redactions relate to  
7 personal information, fair number of addresses, that kind of  
8 thing.

9 Now, the Attorney General accepts that there is  
10 personal data in the form, for example, CVs that may have been  
11 sent in by an applicant, which clearly the CV wasn't intended to  
12 be looked at. And if you feel that that CV is important, we  
13 wouldn't have any objection to that.

14 So, really, what we're saying in some ways is we have  
15 proposed redactions in relation to personal information. If you  
16 think some of that personal information should be disclosed,  
17 we're not going to object to that. But we do say--and we did  
18 suggest in our letter yesterday--we do say that if you can, we  
19 think it would be appropriate for the individuals to be  
20 approached so they can give consent to their personal  
21 information being used.

22 COMMISSIONER HICKINBOTTOM: Thank you, Mr Olympitis.  
23 That's helpful to an extent.

24 Just to deal with those three categories of documents  
25 that you've referred to or three categories of information

1 you've referred to, in terms of personal data in the form of  
2 telephone numbers and e-mail addresses and all that, that  
3 firstly is personal data; and secondly, absent extraordinary  
4 circumstances, need not be disclosed and should not be  
5 disclosed.

6 In terms of the other two categories of documents,  
7 firstly, in respect of the CVs, the question I posed to you is,  
8 because, as you say, this is a matter ultimately for me, but it  
9 depends in part on what the Ministers may wish to rely upon. I  
10 cannot exercise my discretion properly without knowing what they  
11 want to rely upon.

12 My understanding is that they don't intend to rely  
13 upon any of the CVs; is that correct?

14 What I don't want them to do is in the middle of  
15 evidence suddenly decide that they want to refer to something  
16 and there isn't a waiver of confidentiality in respect of  
17 personal information because that has not been disclosed  
18 beforehand.

19 So, can you confirm that the Ministers do not intend  
20 to rely upon any of the CVs? If they intend to rely upon any of  
21 the CVs, could you please identify those CVs and let me know  
22 that--whether or not you have sought permission to rely upon the  
23 evidence you want to rely upon?

24 MR OLYMPITIS: Right, there is a bit of a  
25 chicken-and-egg situation because we also say that it would be

1 helpful if we knew that CVs were involved. So, as I say,  
2 chicken and egg. In principle, is that they don't, they don't  
3 rely on them.

4 COMMISSIONER HICKINBOTTOM: If they don't what,  
5 Mr Olympitis?

6 MR OLYMPITIS: In principle, they do not rely on the  
7 CVs. That's your question?

8 COMMISSIONER HICKINBOTTOM: Yes, I mean, in principle  
9 it might not be good enough. Because what, as I said, what I  
10 don't want to happen is--because this would be extremely  
11 disruptive of the timetable.

12 MR OLYMPITIS: I understand that.

13 COMMISSIONER HICKINBOTTOM: I don't want them to  
14 suddenly to say, well, we appointed Mr X because of his CV which  
15 said this, this, this and this, and that's personal information.  
16 Unless you tell me, I will assume that they do not intend to  
17 rely upon it, and I will not allow them to rely upon it, unless  
18 you have given us notice.

19 MR OLYMPITIS: I want to be in the position to give  
20 you notice.

21 COMMISSIONER HICKINBOTTOM: Right.

22 MR OLYMPITIS: I want to be in that position.

23 COMMISSIONER HICKINBOTTOM: Right. If you want to be  
24 in that position, then you will need to seek permission from the  
25 individuals whose personal information you want to rely upon,

1 whether you can rely upon it, whether you can disclose it.

2           Once you've done that, I can then come to a view as  
3 to--as to what inquiries the Commission need to make in respect  
4 of other information; yes?

5           MR OLYMPITIS: Yes.

6           I'm just thinking if there's another way, but--that's  
7 why I said chicken and egg. Maybe you could give us some  
8 indication of which--what you want your focus on, what your  
9 focused on, and maybe we could respond to that.

10           COMMISSIONER HICKINBOTTOM: I cannot give any  
11 indication as to information that the Ministers might want to  
12 rely upon.

13           MR OLYMPITIS: Okay. Let me take that away, then.

14           COMMISSIONER HICKINBOTTOM: So, if I can give a  
15 direction, that the attorney--the Ministers, through the  
16 Attorney, indicate which of the personal data that she has  
17 identified, the Ministers do or may wish to rely upon with  
18 confirmation as to whether an approach has been made to the  
19 relevant individuals, that, I think, is the first step, and  
20 hopefully that can be done within, what? By the end of the  
21 week?

22           MR OLYMPITIS: I think that's a tall order.

23           COMMISSIONER HICKINBOTTOM: How long would you like,  
24 Mr Olympitis?

25           MR OLYMPITIS: I think I will need 10 days.

1 COMMISSIONER HICKINBOTTOM: 10 days.

2 So, I'm just trying to work out a sensible--a sensible  
3 date based on that.

4 Shall we say the 30th of July?

5 MR OLYMPITIS: Yeah.

6 MR RAWAT: Yes, but my concern, as ever, is to--is the  
7 timetable, as always.

8 MR OLYMPITIS: We will do our best to do it earlier,  
9 given the facts--

10 MR RAWAT: No, I'm sure Mr Olympitis will make every  
11 effort, and it can be done in stages, in the sense that I think  
12 the first stage is the principle, whether, in fact--because if  
13 the elected Ministers are moving from no reliance on CVs to, in  
14 principle, reliance on CVs, that may assist the process, and  
15 then the detail may come forward, but I just ask him to bear in  
16 mind, of course, that redacting is time-consuming, so--

17 MR OLYMPITIS: We know. We know.

18 MR RAWAT: Yes. Well, that's then one thing that  
19 Mr Olympitis and I have found to agree on.

20 COMMISSIONER HICKINBOTTOM: Good.

21 Mr Olympitis, I can say, if I can direct that by  
22 4:00 p.m. on the 30th of July, the Attorney General indicates  
23 first, which personal data she wishes to rely upon, the  
24 Ministers wish to rely upon; and secondly, with confirmation  
25 that the relevant individuals have agreed that that information



1 is relied upon, I can then take it from there as to whether  
2 there is any other personal information that I think would be  
3 helpful to deal with.

4           The third category of documents is salaries, and I  
5 couldn't quite understand why salaries for public officials  
6 could possibly be personal information? We're not asking for  
7 earnings of the individuals; merely what earnings or stipends  
8 they received from public--

9           MR OLYMPITIS: Don't have problems with salaries, too.  
10 I thought that was the reason (unclear) that was left.

11           COMMISSIONER HICKINBOTTOM: So, the Ministers, what,  
12 don't consider that that is personal information.

13           MR OLYMPITIS: Don't consider that it can't be  
14 disclosed, shouldn't be disclosed.

15           COMMISSIONER HICKINBOTTOM: Right.

16           MR OLYMPITIS: It is personal information.

17           COMMISSIONER HICKINBOTTOM: Right. Thank you,  
18 Mr Olympitis.

19           Does that deal completely with personal data? I think  
20 it does.

21           MR RAWAT: I believe so.

22           COMMISSIONER HICKINBOTTOM: The next is LPP, I think;  
23 Mr Rawat.

24           MR RAWAT: Yes, I think what I would hope is that  
25 Mr Olympitis can give us some clarification here because

1 obviously we accept that the nature of the privilege that is  
2 LPP, but the request that we've made is whether the Attorney  
3 General would consider waiving LPP in this case.

4 Now, I think what would help also is firstly,  
5 clarification from Mr Olympitis as to on whose behalf LPP is  
6 being asserted. That's the first thing.

7 And then secondly, the question is whether there is  
8 any further movement on whether LPP would be waived.

9 I would put it in this context: The examination of  
10 Statutory Boards will involve decisions that have been made by  
11 the current administration as we go through. And if they are  
12 relying on LPP for redaction purposes, it's important that we  
13 know because again that does affect--that will affect how we  
14 deal with the Hearing.

15 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

16 And again, Mr Olympitis, the two points claimed by  
17 Mr Rawat are ones where it would be helpful to hear any  
18 submissions you have to make, but one of the focuses of the  
19 Hearing in relation to Statutory Boards will indeed be about  
20 appointment and removal from Statutory Boards, and this is not  
21 giving anything away--it's entirely hypothetical--but advice in  
22 respect of that from the Attorney General is either going to be  
23 positive, this appointment, this removal is fine; or not  
24 positive. And in either case, is the Attorney General actually  
25 going to rely upon privilege?

1           MR OLYMPITIS: Again, the letter makes it fairly clear  
2 that she would be amenable in principle to that kind of  
3 situation, waiving LPP in connection with an appointment or a  
4 removal, but she's not prepared to give a blanket waiver here  
5 and now, and we would like to actually look at what is being  
6 asked to waive. I don't think it's fair to simply ask her for a  
7 blanket waiver.

8           MR RAWAT: To put Mr Olympitis's mind at ease, we have  
9 not sought in the correspondence for a blanket waiver. That's  
10 why I started off with the 6th of July. The 6th of July  
11 identifies the material which is intended to be viewed and will  
12 form part of the hearings on Statutory Boards. And it makes  
13 clear there that the intention is to use that material.

14           And so, it's in relation to that material that  
15 Mr Olympitis's team have gone through it and have indicated  
16 those parts of the document on which they assert LPP, so we're  
17 not in any way near a blanket waiver point. What the Commission  
18 has asked is, well, in relation to those where you have asserted  
19 your LPP, can you now confirm whether or not you will agree to  
20 the Commission's request to waive LPP?

21           MR OLYMPITIS: I can say to you in principle, yes,  
22 that we want to consider each case. But I think the answer is  
23 going to be "yes" in every case, and I need to just reserve  
24 position and keep it as "in principle".

25           COMMISSIONER HICKINBOTTOM: What Mr Rawat says is

1 that--I think, with respect, rightly--that the COI have  
2 identified the advice that he is concerned. It's not a matter  
3 of you not knowing or giving a blanket waiver, and we simply  
4 want to know, in respect of that advice which we identified in  
5 that letter, is there any of it over which the Attorney wishes  
6 to rely upon privilege?

7 MR RAWAT: It comes down, Commissioner, to this: Is  
8 the Attorney maintaining her position as set out on the 12th of  
9 July, that she asserts privilege over specific bits of various  
10 documents as identified in the Schedule that was provided on the  
11 12th of July?

12 MR OLYMPITIS: The answer is yes, she is asserting it,  
13 but she's prepared to waive it if we need to consider each one.

14 MR RAWAT: We had, I'm--I understand, when  
15 Mr Olympitis--we had assumed that that consideration had already  
16 taken place. We had, therefore, made a request to waive.

17 MR OLYMPITIS: Well, let's be clear. Can we be clear  
18 about which ones we're talking about because I have got the  
19 index if we need it. The 12th of July; yes?

20 MR RAWAT: The index, as we go through it in relation  
21 to various documents, has, next to it, legal advice at various  
22 points.

23 MR OLYMPITIS: Yes.

24 MR RAWAT: Next is: Will the Attorney consider  
25 waiving the privilege that she has asserted in the 12th of July?

1 MR OLYMPITIS: I understand.

2 There are seven different requests, and then there is  
3 the separate--there is a separate one of the Schedule, the 16th  
4 of July, which we will talk about in a moment.

5 Now, in relation to these seven requests, I was saying  
6 to you that, in principle, she will be prepared to waive, but I  
7 need to examine each one to give that you confirmation in each  
8 case.

9 COMMISSIONER HICKINBOTTOM: How long will that take,  
10 Mr Olympitis?

11 THE WITNESS: That's--hopefully, I can do in a  
12 matter--this weekend.

13 COMMISSIONER HICKINBOTTOM: If we give you the same  
14 date--

15 MR OLYMPITIS: Yes, that's fine.

16 (Overlapping speakers.)

17 COMMISSIONER HICKINBOTTOM: --opinions--

18 MR OLYMPITIS: Yes.

19 MR RAWAT: --can we apply that both--to both  
20 schedules, the 12th of July Schedule and the 16th of July  
21 Schedule?

22 MR OLYMPITIS: The 16th of July 1 is, of course,  
23 large. I've got a 40-page index. So, in principle, yes, but  
24 there is a lot more work involved there, but I still get  
25 (unclear).

1 MR RAWAT: The 30th of July might be doable?

2 MR OLYMPITIS: Yes.

3 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
4 much, Mr Olympitis. That's very helpful, and I will make a  
5 direction to that--to that effect.

6 And then, well, it's PII, but, I think, really,  
7 Cabinet Confidentiality?

8 MR RAWAT: Yes. It is--the Schedule really refers to  
9 Cabinet Confidentiality. And again I think the position that  
10 the Commission has reached is that, where the--the interest in  
11 Cabinet Confidentiality is outweighed by the interest, public  
12 interest, in being able to use this material in the course of  
13 the Hearings and for the purposes of the COI.

14 And again, it might be that Mr Olympitis can give some  
15 further details as to what the position is, whether Cabinet  
16 Confidentiality--I mean, ultimately, it is a matter for you,  
17 Commissioner. But whether Cabinet Confidentiality is maintained  
18 or whether giving him an option of reviewing the material,  
19 perhaps, and deciding whether or not it is maintained might be a  
20 helpful process.

21 COMMISSIONER HICKINBOTTOM: Mr Olympitis, it's only--I  
22 mean, where there are Cabinet papers or minutes, we're only  
23 concerned with Statutory Boards. I appreciate that the Cabinet  
24 Minutes may include all sorts of other things, but we're only  
25 concerned with Statutory Boards.

1 MR OLYMPITIS: In that case, we could have a  
2 redaction, then, couldn't we, where the minute--for example, if  
3 the minute were redacted save for the section on Statutory  
4 Boards.

5 MR RAWAT: I mean, can I add one thing, which I would  
6 invite Mr Olympitis to bear in mind, is that in relation to some  
7 of the matters over which Cabinet Confidentiality--some of the  
8 papers over which Cabinet Confidentiality has now been claimed,  
9 were Cabinet papers that I have taken Ministers to.

10 MR OLYMPITIS: Yes, I appreciate that. I was going to  
11 say that Cabinet Confidentiality is being shot right through in  
12 this process. That doesn't mean it's not maintained.

13 MR RAWAT: Right.

14 COMMISSIONER HICKINBOTTOM: Well, if something has  
15 been referred to in public with a Minister, the decision whether  
16 that should be made public might be quite straightforward for  
17 me. But again, Mr Olympitis, would it be better if I simply  
18 directed the Attorney General to look at the parts of the  
19 Cabinet Minutes that relate to Statutory Boards with a view to  
20 confirming whether, if at all, any Cabinet Confidentiality in  
21 relation to those minutes is maintained?

22 THE WITNESS: In relation to the Statutory Board  
23 element, yes.

24 COMMISSIONER HICKINBOTTOM: Yes. I will check, but I  
25 think it's only the parts of the minutes--

1 MR RAWAT: May I just have a moment--

2 COMMISSIONER HICKINBOTTOM: --and documents relating  
3 to Statutory Boards.

4 MR RAWAT: May I check?

5 COMMISSIONER HICKINBOTTOM: We're just checking that,  
6 Mr Olympitis, before I make a direction.

7 MR RAWAT: What I should add, perhaps, is that what's  
8 obviously important is that what is not redacted is who was  
9 attending the meeting, the initial details of what the meeting  
10 was for, and the dates, et cetera, and who attended and who was  
11 absent, so very important to have.

12 MR OLYMPITIS: I have no problem with that. That's  
13 fine.

14 COMMISSIONER HICKINBOTTOM: Thank you very much,  
15 Mr Olympitis.

16 That deals then, I think, with PII.

17 MR RAWAT: Can I just address you, Commissioner, on  
18 the question of confidentiality which has been raised in  
19 correspondence. It may help that within the COI Rules, those  
20 make clear anyone who is involved in the COI, whether as  
21 participant or as witness or otherwise, does--is bound by an  
22 obligation of confidentiality to you as Commissioner. And so,  
23 we have been careful about what we provide to witnesses and what  
24 we provide to participants. Obviously, participants would  
25 perhaps be entitled to more disclosure, perhaps, than a witness



1 might be. But that may address the points--the point that  
2 Mr Olympitis has raised in his most recent letter about  
3 confidentiality.

4 What we, obviously, rely on is on participants. If  
5 they--if they do print off copies of documents that are provided  
6 to them, they bear in mind the obligation of confidentiality  
7 that they are under, and they are careful about who they give  
8 those documents to, and also careful as to how many copies they  
9 make, et cetera. So, I hope that gives--

10 MR OLYMPITIS: I wonder if there could be a direction  
11 or something at the end of a hearing so that a witness, for  
12 example, who has a bundle, electronic bundle particularly, is  
13 asked to leave it there and no one can look over--

14 COMMISSIONER HICKINBOTTOM: That seems to me to be a  
15 good idea, Mr Olympitis.

16 MR RAWAT: Yes. I mean, that may be subject to the  
17 questions that are put to that witness or what's provided to  
18 them. But I think we may not need a direction, but we can  
19 certainly remind a witness of their obligations. And if they  
20 don't need the material anymore, then we could ask them to  
21 delete it.

22 MR OLYMPITIS: I think as long as something is said,  
23 that could be something--

24 MR RAWAT: Yes. Again, to give Mr Olympitis comfort,  
25 we have--where witnesses were attending face-to-face hearings,

1 we did ask them to leave the bundles behind, something which  
2 most of them were very glad to do.

3 MR OLYMPITIS: Yes. No, I know that. But  
4 particularly in the electronic world that we're now in, I think  
5 that would be useful.

6 I have a request. Are you finished, Mr Rawat?

7 COMMISSIONER HICKINBOTTOM: Anything from you?

8 MR RAWAT: Nothing from me.

9 COMMISSIONER HICKINBOTTOM: Yes, sir?

10 MR OLYMPITIS: I have a request, Commissioner.

11 On the 12th of July, you granted the extension in  
12 relation to the Minister's response to the Governor's Position  
13 Statement, and you granted an extension to Monday, the 26th of  
14 July. And in the last week there have been a lot of unfortunate  
15 occurrences here with the COVID situation. And what I would  
16 like to do--and it obviously depends on your timetable, but what  
17 I would like to do is seek a further extension from the 26th of  
18 July until a date in August. But, obviously, that depends on  
19 your timetable.

20 COMMISSIONER HICKINBOTTOM: It also depends, to an  
21 extent, on the date in August, Mr Olympitis.

22 MR OLYMPITIS: I was thinking of the 16th. I was  
23 thinking of the 16th of August.

24 MR RAWAT: We're struggling to hear Mr Olympitis.

25 COMMISSIONER HICKINBOTTOM: The 16th.

1 MR RAWAT: 16th of August?

2 MR OLYMPITIS: 16th, yes, that's what I'm suggesting.

3 COMMISSIONER HICKINBOTTOM: And this is in respect of  
4 the Minister's response to the Governor's Position Statement?

5 MR OLYMPITIS: Yes.

6 COMMISSIONER HICKINBOTTOM: Mr Olympitis, firstly, let  
7 me say that I certainly understand the challenges that there are  
8 in responding, but that's an extra--extra three weeks.

9 MR OLYMPITIS: It is.

10 COMMISSIONER HICKINBOTTOM: I'm not quite sure how  
11 long the Ministers have had. But we do have to prepare, as  
12 does, of course, the Governor.

13 Could I suggest, Mr Rawat, the 9th of August? That's  
14 an extra two weeks, but I think it gives us a sort of--

15 Mr Olympitis, can we say the 9th of August, as long as  
16 the response does come in by then, because I think that will  
17 then give us a fair run at it, and the Governor a fair  
18 opportunity to consider it before he has to give his evidence?

19 MR OLYMPITIS: That's fine. Thank you.

20 COMMISSIONER HICKINBOTTOM: Thank you very much,  
21 Mr Olympitis.

22 MR RAWAT: I mean, if I can conclude in this way,  
23 Commissioner: We do appreciate that circumstances are very  
24 different at the moment, and we note the efforts that have been  
25 made by the IRU to provide information to the Commission. It

1 may be--we're obviously very keen to get matters, like  
2 Affidavits, in, in as complete a way as possible. It may be  
3 helpful--if issues do arise, we're very happy to discuss them  
4 with Mr Olympitis and his team to try and find a way around it  
5 all.

6 MR OLYMPITIS: As you know, we are providing you the  
7 documents, and we will keep doing that.

8 MR RAWAT: Thank you very much.

9 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

10 MR RAWAT: Nothing from me. Thank you, sir.

11 COMMISSIONER HICKINBOTTOM: Mr Olympitis, thank you  
12 very much for your submissions today.

13 My understanding is that attempts have been made to  
14 identify any other witnesses who we may be able to call in the  
15 next week or so, mainly, as I said in the last press statement,  
16 to tie up loose ends, as, for example, we have done today. But  
17 we have not identified any such witnesses, and so it's likely, I  
18 think, that this hearing will be the last hearing before we  
19 return at the end of August. In respect, can I just say one or  
20 two things in respect of that:

21 Firstly, in the Attorney General's letter of yesterday  
22 evening, Mr Olympitis--and I don't overemphasize this, but she  
23 said that she considered that deadlines generally may become  
24 less pressing as a result of the extension of time which the  
25 Governor has granted to the delivery of the Report. I'm afraid

1 that's simply not true. Deadlines are as pressing as ever  
2 because the timetable demands that they are pressing. And so,  
3 hopefully, the documents and Affidavits that we've sought will  
4 come in as quickly as possible so that we can have focused and  
5 well-prepared, by everybody, hearings when we return at the end  
6 of August-beginning of September. Our work will continue during  
7 this break in the hearings.

8           Secondly, can I just thank everybody who has  
9 contributed to the hearings over the last four months, including  
10 the participants and those who who've represented them;  
11 including the COI Team; the staff here at the International  
12 Arbitration Centre; Mr. Kasdan, who is our Realtime  
13 Stenographer, for whom I suspect we have been quite a challenge  
14 at times, particularly when we have been remote; and Mr Peters,  
15 our AV Technician, who has managed to keep live stream pretty  
16 well up and running all of the time, and when that's stopped  
17 running, he's got it running again very quickly. So, thank you,  
18 everybody.

19           And we will return for the remaining hearings at the  
20 end of next month. We will be here again at the International  
21 Arbitration Centre with the same team, the same Stenographer,  
22 and, thankfully, the same AV Technician.

23           Anything else, Mr Rawat?

24           MR RAWAT: No, thank you, Commissioner.

25           COMMISSIONER HICKINBOTTOM: Thank you all very much.

1 MR FLIGELSTONE DAVIES: Just one thing,  
2 Mr Commissioner.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 MR FLIGELSTONE DAVIES: I sent an e-mail to this  
5 effect, but there is an outstanding evidence from one of my  
6 clients, The Honourable Mr Smith. We are in possession of it.  
7 It's just a matter of sorting out and ensuring it's as easy as  
8 possible for the COI to go through and ensure it isn't--is sent  
9 to the COI in an understandable manner.

10 COMMISSIONER HICKINBOTTOM: Good.

11 MR FLIGELSTONE DAVIES: And so, I had asked for an  
12 extension until today, but as I said in my e-mail a few minutes  
13 ago, I'd just like an extension until tomorrow afternoon by  
14 4:00 p.m., and everything should be there in a palatable manner.

15 COMMISSIONER HICKINBOTTOM: Good. Well, thank you,  
16 Mr Fligelstone Davies. I will give that extension until 4:00  
17 tomorrow. Thank you very much.

18 MR FLIGELSTONE DAVIES: Grateful.

19 MR RAWAT: Thank you.

20 (Whereupon, at 4:36 p.m. (EDT), the Hearing was  
21 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