

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 30**

(TUESDAY 7 SEPTEMBER 2021)

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

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Mr Hussein Haeri of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Mr Richard Rowe 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.

Ms Tasha Bertie gave evidence.

Hon Carvin Malone gave evidence.

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Those present:

Session 1

Mr Hussein Haeri, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Bilal Rawat

Ms Tasha Bertie

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

Session 2

Mr Hussein Haeri, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Bilal Rawat

Hon Carvin Malone

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Yes.

MR RAWAT: Thank you, Commissioner, before we hear the evidence of Ms Tasha Bertie, who is our first witness today, can I introduce the representation that is present in the room and remotely. On behalf of the Attorney General and the elected Ministers, we have Mr Hussein Haeri, who is attending remotely; and Ms Lauren Peaty, who is here in person. And on behalf of other Members of the House of Assembly, we have Mr Richard Rowe, attending remotely as well.

COMMISSIONER HICKINBOTTOM: Good. Thank you.

BY MR RAWAT:

Q. Ms Bertie, thank you very much for making yourself available to give evidence to the Commission this morning. I understand that you would like to make an affirmation. Is that right?

A. Sure.

Q. You should have in front of you the words of the affirmation. There is no need to stand, but could you read the words of the affirmation out now.

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

Q. Thank you.

1           For the Commissioner, can you confirm your full name,  
2 please?

3           A.    Tasha Corine Bertie.

4           Q.    And is it right that your professional address would  
5 be Sea Meadow Building in Road Town?

6           A.    That's correct.

7           Q.    You will see just to your left there are four large  
8 file bundles there. There's no need for you to open any of  
9 them, but we will probably be looking at various documents  
10 within those bundles as we go through your evidence. All right?

11          A.    Sure.

12          Q.    The last thing, just to ask you to do, and that's just  
13 to remember to keep your voice up.

14          A.    Certainly. Thank you.

15          Q.    I think that you will notice that there is a  
16 microphone in front of you. That won't amplify your voice, and  
17 both you and I are going to have speak up because it's important  
18 that the Stenographer, who is also attending remotely, be able  
19 to hear both of us. And so, if you are speaking more loudly  
20 than usual is probably something he would welcome.

21          A.    Okay.

22          Q.    Could we start with a little bit of background,  
23 please.

24                    It's right, isn't it, that before taking up your  
25 current role as Acting Permanent Secretary, you were a Deputy

1 Secretary in the Ministry of Health and Social Development?

2 A. That's correct.

3 Q. Taking that into account, could you just give the  
4 Commissioner an outline of your career in Public Service up to  
5 the current date?

6 A. Okay. Certainly.

7 I have been employed as an employee of the Government  
8 of the Virgin Islands since December 10th, I think it would have  
9 been 1997. I've worked as a guidance counselor. I have worked  
10 in the Ministry of Education as Assistant Secretary. I've  
11 worked as Deputy Secretary. I've worked as Deputy Secretary to  
12 the Ministry of Health, as well as Acting Permanent Secretary in  
13 various instances over that period.

14 My service has been, I think, going on 25--24 years  
15 this year, since I have been in the Public Service.

16 Q. And so, have you taken on the role of Acting Permanent  
17 Secretary on more than one occasion?

18 A. Over the period, yes.

19 Q. And you're presently the Acting Permanent Secretary.  
20 When were you appointed Acting Permanent Secretary in the  
21 Ministry of Health and Social Development?

22 A. I was appointed on June 7th, 2021.

23 Q. And what does the role of being Permanent Secretary  
24 involve?

25 A. The Permanent Secretary acts as the administrative

1 advisor, lead advisor to the Minister of Health and Social  
2 Development providing policy advice and guidance in relation to  
3 matters of the Ministry or key subject areas, and also helps to  
4 coordinate and manage the overall functioning of the Ministry  
5 across Ministries as well as for the entire government service.

6 Q. Would a fair description of your role be that, as  
7 Permanent Secretary, it's your job to supervise the Ministry in  
8 the Department?

9 A. In essence, yes.

10 Q. But you do that, of course, under the direction and  
11 control of the Minister?

12 A. That is correct.

13 Q. Now, the reason that we are asking you to attend today  
14 to assist the Commissioner is in relation to Statutory Boards,  
15 which is the topic that the Commission is looking into at this  
16 point in time. And obviously, it's in relation to the Statutory  
17 Boards that fall under the Ministry of Health and Social  
18 Development, and there are matters that we need to put to you,  
19 Ms Bertie, because you're the present Permanent Secretary. I  
20 just wanted to give that some context.

21 Now, you have made in relation to Statutory Boards on  
22 behalf of the Minister for Health and Social Development, The  
23 Honourable Carvin Malone, you've made two Affidavits, and we're  
24 going to look at those each. If you pick up what should be  
25 marked as the "Part 1" bundle. I'm afraid they're all big

1 bundles, but if you could turn to page 254, please, you should  
2 see there the Second Affidavit that you have provided to this  
3 Commission. I think so that there's no mystery about it, the  
4 first Affidavit that you provided was not in relation to  
5 Statutory Boards. It was one that you provided when you were  
6 Deputy Secretary, and it was in relation to disclosure that was  
7 being made to the Commission.

8 A. Okay.

9 Q. It's not one that we're going to have to look at  
10 today?

11 A. Okay.

12 Q. But I just wanted for the purpose of the Transcript to  
13 explain why we're calling this the "Second Affidavit."

14 A. Certainly.

15 Q. If I just could you through to page 262, please.  
16 Could you just confirm for us that that's your signature?

17 A. That is correct.

18 Q. And we can see that it's dated the 18th of June 2021.  
19 The Affidavit was prompted by a letter dated the 4th of June,  
20 which was addressed to The Honourable Malone asking for an  
21 Affidavit concerning those Statutory Boards that fell under the  
22 control of his Ministry.

23 Why was it decided that you should be the one to make  
24 the Affidavit instead of The Honourable Malone?

25 A. From my understanding, I believe the information, as

1 the administrative lead at the time, would be better presented  
2 by the Permanent Secretary who would have had that information  
3 available.

4 Q. And who was it that came to that view?

5 A. Who was it that came to that?

6 Q. Yes.

7 I mean, the letter was addressed to The Honourable  
8 Malone?

9 A. Correct.

10 Q. It gave him the opportunity to put someone else  
11 forward to make the Affidavit instead of him. He suggested that  
12 his Permanent Secretary should do it. The Commissioner was  
13 happy with that. But I just wanted to know how it was that it  
14 came to be decided that it should be the Permanent Secretary?  
15 You've explained that--and you referred to the administrative  
16 element of the work, but was it yourself who offered to make the  
17 Affidavit, or did The Honourable Malone say I think it's better  
18 that the Permanent Secretary do so?

19 A. I don't believe we had sort of a discussion around who  
20 should do it. I believe given the nature of the matter and the  
21 information that would have been requested, it would have been  
22 better served from the Permanent Secretary.

23 Q. Thank you.

24 Let's take a quick look at the exhibits that you've  
25 had. We're not going to look at those in any detail now, but I



1 just want to kind of explain them for purposes of the record.  
2 So, obviously we're on page 262, which is the last page of your  
3 actual Affidavit, and then you've exhibited a number of  
4 documents, and if we go to 265, please.

5 A. 265?

6 Q. Please.

7 A. Certainly.

8 Q. That is the first page of the BVI Health Services  
9 Authority Act of 2004, isn't it?

10 A. That's correct.

11 Q. And you've exhibited the entire statute because it's  
12 that statute that deals with appointments and the operation of  
13 the BVI Health Services Authority Board?

14 A. That's correct.

15 Q. And that's a board that comes under the control of  
16 your Ministry?

17 A. That's correct.

18 Q. If we have go to 294, we see there the start, and you  
19 just leaf through the succeeding page, Ms Bertie, you will see  
20 that it's a table which has been prepared just listing stipend  
21 payments that have been made to Board Members.

22 A. Yes, sir.

23 Q. Just again for the record, is that information that is  
24 held electronically by the Ministry?

25 A. As far as I'm aware, yes, that is.

1 Q. So, was it compiled by officers under your direction  
2 for the purpose of--

3 A. That's correct.

4 Q. --from electronic records that they hold?

5 A. That's correct.

6 Q. If we go now to 396, and we don't have to name anyone  
7 here, but this is the page, and it runs through to 422, if you  
8 want to turn that up.

9 A. 422?

10 Q. Yes, please. I'll try and use your numbering system.

11 So, 422 is--396 is the first page of a set of CVs that  
12 you exhibit, and 422 is the last page of that set, and they're  
13 CVs of different individuals that came Members of the Board;  
14 that's right, isn't it?

15 A. Yes, sir.

16 Q. Thank you.

17 Let's turn back then to 254 in your Affidavit, and  
18 could I take you to paragraph 3, which reads: "At the outset, I  
19 should further say that in this Affidavit, where I mention a  
20 document, I do not waive any privilege asserted in respect of it  
21 unless I do so expressly."

22 So, the documents that we've looked at are a statute  
23 of the BVI Government, a table of stipend payments, and some  
24 CVs. Which of those documents, if any, are you asserting  
25 privilege over?

1           A.    Which of those?  I'm sorry.

2           Q.    You say that where you mention a document, you don't  
3 waive the privilege asserted in respect of it.  I just wanted to  
4 clarify which of those documents that we just looked at are ones  
5 that you assert privilege over.

6           A.    I have not asserted any privilege over any.

7           Q.    And when you refer to "privilege" in your Affidavit,  
8 what do you mean by "privilege"?

9           A.    As I understand, it's information that was requested  
10 in relation to the information put before us, and it helps to  
11 support what you have requested.

12          Q.    I see.

13                   How did you--in terms of making this Affidavit, how  
14 did you actually come to make it yourself?

15          A.    This was done in consultation with officers who work  
16 in the Ministry of Health providing administrative support in  
17 completing the information.  Research had to be conducted to  
18 gather the information in order to present the Affidavit.

19          Q.    In terms of the writing of the Affidavit, who was  
20 responsible for that?

21          A.    One of the Senior Administrative Officers assisted  
22 with that process.

23          Q.    I see.

24                   And everyone will know that the Government of the BVI  
25 is being assisted by the Inquiry Response Unit, which has been

1 set up by a firm called Withers.

2 A. Yes, sir.

3 Q. Were you provided with any assistance from the IRU?

4 A. The process in terms of the preparation of the  
5 Affidavit, that information would have been sent to the IRU  
6 during this process and feedback was sought and we received from  
7 them. So we may have gone over this Affidavit several times  
8 before the final submission was made.

9 Q. And in terms of paragraph 3, were you told to put that  
10 in your Affidavit?

11 MR HAERI: Mr Rawat, with respect, if I may, I take it  
12 you're not trying to get into a question of legal advice  
13 privilege in your line of questioning to the Witness; is that  
14 correct?

15 MR RAWAT: I'm not, but the privilege it asserts  
16 belongs to the Witness, not to anybody else, and the question I  
17 don't think is directed to legal-advice privilege. It's  
18 directed to understanding how a sentence appears in an Affidavit  
19 that this Witness has signed which the Witness is struggling to  
20 explain.

21 COMMISSIONER HICKINBOTTOM: Well, and in the  
22 circumstances, Mr Haeri, in which she's given evidence, that no  
23 privilege is asserted.

24 MR HAERI: Yes, Commissioner, but the content of her  
25 discussions with regards to lawyers in the context of the

1 specific points seems to be where Mr Rawat was going with his  
2 questioning.

3 COMMISSIONER HICKINBOTTOM: No, just one moment.

4 There is a sentence in paragraph 3 which the Witness  
5 can't explain but it asserts some privilege over something, and  
6 she now asserts no privilege. Are we to assume that she, off  
7 her own bat, put this sentence into the Affidavit?

8 MR HAERI: Commissioner, he doesn't assert privilege.  
9 She says that nothing she says would waive privilege. She's not  
10 authorized to waive a privilege of the Government over its  
11 documents. That's the point.

12 COMMISSIONER HICKINBOTTOM: Right.

13 So, what you're saying is that there's no privilege in  
14 any of these documents, but if there were hypothetically to be  
15 privilege, she doesn't waive it?

16 MR HAERI: She's not saying there is or there isn't  
17 privilege in these documents. She's just saying she's not  
18 asserted to waive it.

19 COMMISSIONER HICKINBOTTOM: She hasn't said that in a  
20 document. She said that today in her evidence, no privilege  
21 asserted.

22 It's just a mystery--should it remain a mystery,  
23 Mr Haeri?

24 MR HAERI: I believe the sentence is that she does not  
25 waive privilege. She's not authorized to waive the privilege.

1 It's the privilege of the government, and she simply said that  
2 she doesn't waive it.

3 COMMISSIONER HICKINBOTTOM: Right. Mr Haeri, are you  
4 claiming any privilege over any part of this Affidavit or the  
5 exhibits?

6 MR HAERI: It's a question of ultimately whether it's  
7 required to go through and deal with and get Cabinet approval  
8 for the waiver of any privilege that might apply.

9 As I explained yesterday, as a matter of priorities we  
10 focused on the 42 Affidavits that we've had to address, and so  
11 that exercise, given the time constraints, has not been done for  
12 this set of documents.

13 COMMISSIONER HICKINBOTTOM: Fine. I understand that.

14 And so, if there is anything to the privilege might  
15 attach to in these documents, Cabinet has not yet considered  
16 that. But is there any aspect of any of these documents in  
17 which privilege is raised?

18 MR HAERI: There may be.

19 COMMISSIONER HICKINBOTTOM: There may be?

20 MR HAERI: Yes.

21 COMMISSIONER HICKINBOTTOM: Over what part of the  
22 documents may there be privilege? Just point to one, and then  
23 I'll understand the point, Mr Haeri.

24 MR HAERI: As I've indicated, the analysis has not  
25 been done with respect to these specific documents, so I'm not

1 in a position--

2 COMMISSIONER HICKINBOTTOM: You're a lawyer. Which  
3 part--just point to any part of this in which there may be  
4 privilege; just may be privileged.

5 MR HAERI: I hate--I've explained the position. It's  
6 a general--it's a general position that she's not waiving  
7 privilege. It's not a statement that there is privilege in the  
8 document.

9 To be honest, I can't even actually open the document  
10 because it's so large right now, which is a source of  
11 frustration to many of us. We've pointed out that a document of  
12 this size is far in excess of the usual requirements of the  
13 Court in the British Virgin Islands of 100 megabytes. This is  
14 2,500-megabyte document. So, regrettably, I'm not in a position  
15 to even open it right now.

16 COMMISSIONER HICKINBOTTOM: With respect, Mr Haeri,  
17 that's not my fault or our fault, but we now have a position,  
18 and this is going to arise with other witnesses. That's why I'm  
19 pressing it now. We have a document. We do not know if and  
20 when you, on behalf of the Attorney General, are going to pop up  
21 and claim privilege over something. It would be helpful--

22 MR HAERI: Yes, I'm sorry, I'm corrected on this  
23 specific bundle. This is the bundle that Cabinet has approved,  
24 so there shouldn't be any other issue on this specific bundle.

25 COMMISSIONER HICKINBOTTOM: So, even if there were

1 anything in respect of which privilege could be claimed in these  
2 documents, this Witness says there isn't, but even if there  
3 were, it's been waived.

4 MR HAERI: For this bundle, yes.

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

7 MR RAWAT: Just to return to a point of concern,  
8 Mr Haeri has said he cannot even open the bundle. We understood  
9 from correspondence this complaint has been made by the IRU in  
10 correspondence that the bundle was too big but they also said  
11 that they then split up the bundle. I don't know whether  
12 Mr Haeri wants us to pause whilst he's provided with a split-up  
13 version of the bundle that Withers prepared, which that might  
14 allow him to follow proceedings more easily.

15 MR HAERI: Yes, I think it was corrupted, because even  
16 in the split-up version it was too large. But leave it with me  
17 and I will get a hold--I'll get access to it.

18 MR RAWAT: And perhaps if this is going to be an issue  
19 going forward, it may help if similarly Withers don't provide  
20 documents that are in excess of 100 megabytes.

21 Can we return to Ms Bertie.

22 MR HAERI: Does that mean that all documents will not  
23 be in excess of 100 megabytes?

24 MR RAWAT: Mr Haeri, I was just making a request.

25 MR HAERI: Not just for Withers.



1 MR RAWAT: Can I stop you there. I don't want to get  
2 into a side discussion about this. I would rather just limit  
3 the inconvenience that we caused to Ms Bertie in trying to get  
4 her through her evidence today.

5 COMMISSIONER HICKINBOTTOM: But Mr Haeri, you're  
6 content to carry on as you are, although you can't get to the  
7 documents?

8 MR HAERI: Yes, I think we ought to carry on.

9 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
10 much.

11 BY MR RAWAT:

12 Q. Can we just return to that page, Ms Bertie.

13 This Affidavit, then, at least that paragraph was not  
14 in your own words?

15 A. Paragraph 3?

16 Q. Yeah.

17 A. I cannot recall.

18 Q. Thank you.

19 You're now--I'm afraid I'm going to make you just  
20 going to pick up Part 4 of the bundle.

21 Thank you.

22 Now, you should, I will just check the first page. It  
23 should be 3310.

24 A. Sure. Correct.

25 Q. If you go to 3943, please. This should be the Third

1 Affidavit that you provided?

2 A. Yes, sir.

3 Q. And the reason you had to provide this Third Affidavit  
4 was because there was a misunderstanding over what was meant by  
5 "Statutory Boards" in terms of the bodies that fell underneath  
6 the Ministry.

7 A. That's correct.

8 Q. And so, you provided a Third Affidavit which deals  
9 with a second body, and that's the Public Assistance Committee,  
10 isn't it?

11 A. That's correct.

12 Q. Again, just to go through briefly what you've also  
13 exhibited to--before we do it, can you just go to page 3949,  
14 please.

15 A. Can you repeat that?

16 Q. 3949.

17 A. 49. I'm with you.

18 Q. Just confirm for us that that's your signature?

19 A. That is correct.

20 Q. It's an Affidavit dated the 3rd of September 2021.

21 You have at 3952 set out an index to the exhibits, and if we  
22 just summarise those, it comes to the statutes that relate to  
23 public assistance?

24 A. That is correct.

25 Q. And you've produced the Public Assistance Ordinance of

1 1957, and then the Public Assistance Act 2013, which repealed  
2 the ordinance?

3 A. That's correct.

4 Q. And then what you've also then put in is letters and  
5 instruments of appointments and CVs of persons appointed to sit  
6 on the Committee?

7 A. That is correct.

8 Q. I don't have to ask you the question about  
9 paragraph 3, which if we go back--go back to 3943?

10 A. Paragraph 3?

11 Q. The numbering in this one is different, actually, if  
12 you go to paragraph 1.4, we will see that the same sentence  
13 appears, but no issue arises because Mr Haeri has confirmed that  
14 there is no privilege being asserted over these documents, so we  
15 don't have to go into the detail of how that sentence appears in  
16 this Affidavit.

17 Can I just confirm, are you content that these  
18 Affidavits should stand as part of the evidence that you give to  
19 his Commission?

20 A. That is correct.

21 Q. That's helpful because it means that I will only need  
22 to ask you some questions about some parts of it rather than the  
23 whole thing.

24 Now, you were sent a letter as the Permanent Secretary  
25 which notified you of potential criticisms that may be made, and

1 you provided a written response to that; that's right, isn't it?

2 A. That is correct.

3 Q. And are you also content that that response be  
4 considered by the Commissioner for the purposes of this report?

5 A. Yes.

6 Q. To save you jumping around between documents, let's  
7 start off with the Third Affidavit and the Public Assistance  
8 Committee, please.

9 Again, just for the record, can you confirm that, in  
10 terms of autonomous bodies that come under the umbrella of the  
11 Ministry, it's just those two bodies, the Public Assistance  
12 Committee and the BVI Health Services Authority Board?

13 A. That is correct.

14 Q. I think as we go through, I'll probably call the BVI  
15 Health Services Authority Board, the Board, but I'll stick to  
16 calling this the Committee and hopefully we won't get the two  
17 mixed up.

18 A. Certainly. I agree.

19 Q. Now, other than that, there are no other bodies; yes?

20 A. Bodies in relation to?

21 Q. Yes. There is nothing else that comes under the  
22 Ministry that is a statutory body that you haven't given an  
23 Affidavit in relation to? It's just those two?

24 A. Just these two based on the information that was  
25 presented to us.

1 Q. In recent years, did the Ministry have any other  
2 bodies put underneath its umbrella?

3 A. Over years?

4 Q. Well, we understand that, and the Commissioner has  
5 evidence that ministerial portfolios change, so a statutory body  
6 can be moved from one Ministry to another.

7 A. Okay.

8 Q. And that has happened in the current administration,  
9 so there has been movement around different Ministries.

10 Did this happen in relation to the Ministry of Health  
11 and Social Development?

12 A. I suspect, but to say that I recall exactly what and  
13 when, I don't recall right now.

14 Q. Thank you. Let's go to page 3944, then.

15 And the first thing we need to ask you about is the  
16 process by which potential candidates for Committee membership  
17 are identified and selected. And if we just look at what you  
18 have written there, it comes--and please expand on this if you  
19 think it will help the Commissioner--but it comes to this,  
20 doesn't it, that potential Members of the Committee are  
21 recommended to the Minister by either the Permanent Secretary or  
22 the Desk Officer dealing with that subject or the Minister might  
23 make recommendations. And once recommendations have been made,  
24 the person is contacted by the desk officer or by the  
25 Administrator assigned to help, and the purpose of that contact

1 is to confirm if they wish to serve on the Committee. And at  
2 that point, they are asked to provide their CV.

3 Is that right? As the first step?

4 A. Yes.

5 Q. And then, what will happen is that a paper will be--or  
6 the CV will be reviewed, a paper will be prepared within the  
7 Ministry, which was then circulated to the Financial Secretary  
8 and the Attorney General, and then it then--does it then go to  
9 the Minister for final approval before it goes to Cabinet?

10 A. That is correct.

11 Q. So, appreciating the division between yourself as a  
12 Public Officer and the Minister, if you like, as an elected  
13 representative and an appointed Minister, is it the Minister  
14 that makes the final decision as to who is going to be  
15 recommended to Cabinet?

16 A. That is correct.

17 Q. Now, in this case and the Public Assistance Committee,  
18 you don't ask for written references in relation to prospective  
19 Members, do you?

20 A. "References" meaning the curriculum vitae are  
21 provided.

22 Q. Well, the CV is provided?

23 A. Right.

24 Q. Someone may provide a character reference or a  
25 reference from an employer about them. Do you seek references

1 from others about potential Members?

2 A. Not in this instance for these individuals.

3 Q. And what due diligence do you actually carry out?

4 A. With respect to this process, the Ministry of Health  
5 would usually, especially in instances where persons are being  
6 re-appointed, instances of facts or the Chief Social Development  
7 Officer would provide feedback in relation to persons who may  
8 have served on that Committee prior, and are able to then give  
9 support whether or not they should be reconsidered based on  
10 their attendance and participation in the process.

11 Q. Again, it's just so that any members of the public who  
12 may be following these proceedings understand, could you just  
13 explain what the Chief Social Development Officer's role is?

14 A. The Chief Social Development Officer is the Manager of  
15 the Department of Social Development. That's one of the  
16 Departments, key Departments under the Ministry of Health and  
17 Social Development.

18 Q. And that officer sits as an ex officio Member of the  
19 Committee?

20 A. That is correct.

21 Q. And so, that officer is in a position to report back  
22 to you as Permanent Secretary as to the degree of engagement of  
23 a Member on the Committee, how often they attend, what role they  
24 play, so whether they are, in fact, fulfilling the role of a  
25 Member of the Committee?

1           A.    That is correct.

2           Q.    And that could influence a decision to re-appoint  
3 someone to the Committee?

4           A.    That is correct.

5           Q.    But take it back, though, to not reappointments but a  
6 new appointment or a first appointment to the Committee. What  
7 due diligence do you carry out?

8           A.    In instances where an individual would be considered  
9 or nominated for possible inclusion on this Committee, the due  
10 diligence, from my perspective, would be carried out with the  
11 assessment of the current curriculum vitae that are provided.  
12 These individuals may very well be discussed informally with the  
13 officers who have responsibility for administering this whole  
14 process, and that information would then be shared with the  
15 Minister.

16                   COMMISSIONER HICKINBOTTOM:  Could I just ask a  
17 clarification, if I may, Ms Bertie.  If you look at  
18 paragraph 4.3 of your Third Affidavit, so it's the Affidavit  
19 that we're on, paragraph 4.3, which deals with this, what this  
20 says is that the recommended persons are selected from cadre,  
21 known and established professionals who work and operate in  
22 various sectors as noted in the Act, because the Act sets out  
23 the sectors from which a candidate should be selected.  So,  
24 these are the recommended persons so that we're ready to go.  
25 Then in compliance with the condition that persons must be fit



1 and proper for the role as stipulated in section 3(2)(b), it's  
2 standard practice for the Ministry to request persons to provide  
3 their curriculum vitae, contain background information on work  
4 history, professional and educational achievements for the  
5 purposes of drafting the Cabinet paper.

6 So, generally speaking, when do you ask for the CVs?  
7 When do you ask for the background information from a candidate?

8 This suggests--and this doesn't fit in with your  
9 evidence--and I think I may have got the wrong end of the stick  
10 from this--this suggests that the curriculum vitae are asked for  
11 quite late in the process when you're preparing the Cabinet  
12 paper.

13 THE WITNESS: It would be during that process, yes.

14 COMMISSIONER HICKINBOTTOM: Right.

15 THE WITNESS: We would usually--as this is outlined,  
16 individuals may be asked, once they're nominated, individuals  
17 would be asked to provide their curriculum vitae. At that  
18 point, as this suggested, the information would be reviewed  
19 based on the stipulated criteria in the Act to see how best  
20 these individuals, if they do fit the gamut of what's expected  
21 base on the Act.

22 COMMISSIONER HICKINBOTTOM: So, the curriculum vitae,  
23 they're asked of all of the candidates; is that right? Or only  
24 the candidates which--who are selected?

25 THE WITNESS: All the persons who may be nominated for

1 consideration are asked to provide their curriculum vitae.

2 COMMISSIONER HICKINBOTTOM: And that all goes into the  
3 process of the assessment of the candidate--

4 THE WITNESS: That is correct. That is correct.

5 COMMISSIONER HICKINBOTTOM: --to come up with the  
6 recommendations.

7 THE WITNESS: That is correct.

8 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

9 BY MR RAWAT:

10 Q. Can I take you back to 4.1(b).

11 A. 4.1(b)?

12 Q. Yes, please. If you look at (a) and (b), and we've  
13 summarised it, but the process there seems to be that you've  
14 used the word "nominated", but it's in your Affidavit, it seems  
15 to be "recommended". The recommendations are made before CVs  
16 are collected, so you only approach people who have been  
17 recommended and ask them first do you want to serve, and second,  
18 if you want to serve, can you show us your CV; that's right,  
19 isn't it?

20 A. I don't think that's what I'm saying.

21 Ask the question again, if you don't mind.

22 Q. Easier, I will just read out what it is you have  
23 written in the Affidavit.

24 "The process by which potential candidates for Board  
25 membership are identified and selected is described below, (a),

1 persons are recommended to the Minister by the Permanent  
2 Secretary or the Desk Officer for the subject or the Minister  
3 might make recommendations in accordance with section 3(2)(b) of  
4 the Act.

5           "(b), the persons recommended are contacted by the  
6 Desk Officer for the subject or the Administrator assigned to  
7 ascertain if they wish to serve on the Committee. They're  
8 provided with copies of the relevant legislation at this stage  
9 and are requested to provide their curriculum vitae if they  
10 consent to serve. The curriculum vitae is reviewed to satisfy  
11 the interests of the Ministry in filling vacancies on the  
12 Committee with persons possessing the requisite knowledge,  
13 experience and expertise in accordance with section 3(2) of the  
14 Act."

15           So, what I read that is that the first stage is  
16 identifying people to approach, and that's the recommendation  
17 stage?

18           A. Recommendation or nomination.

19           Q. Okay. Recommendation or nomination stage.

20           A. Okay.

21           Q. Let's agree. Those are your two words,  
22 "recommendation" is your word--"recommended" is your word. The  
23 next stage is to approach those people and ask them if they wish  
24 to serve. And if they say "yes", then you get the CV?

25           A. That is correct.

1 Q. So, people are nominated before you get to the CV?

2 A. People are nominated or recommended before we get the  
3 CV.

4 In the process of the nomination or recommendation, I  
5 could say, for example, if there--and there may be an instance  
6 where an individual is allowed to see or have seen the  
7 legislation, and after that process, they do not wish to be  
8 considered.

9 Q. What the effect is that you have a pool of people who  
10 are the recommended or nominated pool who you then approach.  
11 That pool can become smaller because some of them might say "I  
12 don't want to serve on the Committee".

13 A. That's correct.

14 Q. But those that do, give you their CV and it's from  
15 those CVs that you then continue with the process, isn't it?

16 A. That's correct.

17 Q. Now, my first question was directed to how, when I  
18 asked you what due diligence did you undertake, what is the  
19 process by which, or can you give more detailed process by which  
20 that first pool of people recommended or nominated is  
21 identified?

22 A. I would say going back again to the same section that  
23 the Commissioner mentioned in 4.3, if I may.

24 Q. Yes.

25 A. "Recommended persons are selected from a cadre of

1 known and established professionals who work in various sectors  
2 as noted in the Act."

3           So, from that information, we--of course, the Act  
4 would specify the particular areas whether Pastors, teachers,  
5 psychologists, counselors, there is a list of individuals or  
6 professionals that should be considered or can be considered for  
7 that role.

8           Of course, in the award selection process, as you've  
9 termed it, we can definitely find a cadre of individuals within  
10 the Virgin Islands community that may fit any of those areas.

11          Q. But it's an internal process, isn't it? The  
12 discussions between Public Officers and the Minister; is that  
13 right?

14          A. That would be correct, or between the Desk Officer and  
15 the Permanent Secretary.

16          Q. But it's wholly internal, within the Ministry?

17          A. That is correct.

18          Q. Taking you back to the 4.3, what is meant by "known"?  
19 Known to who?

20          A. A cadre of known and established professionals, yes.

21          Q. Let's split that down. What is meant by "known"? Who  
22 knows them?

23          A. You're aware of them.

24          Q. But who is the "you"?

25          A. That would be the Officers of the Ministry, the

1 Permanent Secretary, the Minister.

2 Q. And what is meant--what's the definition of  
3 "established"?

4 A. By my definition, I would say persons that are or have  
5 built a rapport in the particular areas over a period.

6 "Established" means working in the service, working in the  
7 various areas within the community for an extended period.

8 COMMISSIONER HICKINBOTTOM: Within the professions  
9 that are listed in the--

10 THE WITNESS: That's correct.

11 BY MR RAWAT:

12 Q. I think it's a good time just to look quickly at the  
13 Act at those various areas that you mentioned. It's at 3964 in  
14 that bundle, Ms Bertie. You should be at section 3. I think  
15 the section 3(1) establishes the Public Assistance Committee and  
16 subsection 2 then says it comprises not less than seven and not  
17 more than nine Members appointed by the Minister?

18 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,  
19 Mr Rawat.

20 Before we get to this, and these questions are  
21 important, but it would help me, Ms Bertie, if you just helped  
22 me to understand very briefly the system that we're talking  
23 about. The Committee is responsible for the Public Assistance  
24 Fund, but could you just briefly in a few sentences set out how  
25 that works? It's my understanding from the Ordinance and the

1 Act is that the Committee has been in existence in some form or  
2 another since--for a long time, since 1957 I think the Ordinance  
3 was, and then as it were, revamped by the Act. But the Act, as  
4 well as establishing the Committee which oversees all of this,  
5 that sets off a Public Assistance Fund, and also sets up the  
6 framework in which the Fund is distributed, if that makes sense.  
7 Obviously, there are regulations underneath it, but it sets out  
8 the sorts of hardship to which the Fund responds. Is that more  
9 or less right in terms of the scheme?

10 THE WITNESS: That is--a scheme of the public  
11 assistance programme?

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: Based on your understanding?

14 COMMISSIONER HICKINBOTTOM: Yes.

15 THE WITNESS: That is correct.

16 COMMISSIONER HICKINBOTTOM: So, it's a  
17 government-funded scheme, so, presumably, you get an allocation  
18 of funds.

19 THE WITNESS: The programme is set up where persons  
20 who are vulnerable--

21 COMMISSIONER HICKINBOTTOM: No, no. I'm sorry. We  
22 will come to that because that's where the money goes to. But  
23 where does the money come from?

24 THE WITNESS: From the Government.

25 COMMISSIONER HICKINBOTTOM: Yes. So, the Government

1 gives you the funds and for the programme an allocation each  
2 year?

3 THE WITNESS: That's correct. Budgeted every year.

4 COMMISSIONER HICKINBOTTOM: Budgeted every year, as to  
5 where the money comes from.

6 And then the Act, as I understand it, sets out a  
7 framework--it's only a broad framework--of where the money goes  
8 to, the sorts of--the sorts of hardship--

9 THE WITNESS: Qualifiers, yes.

10 COMMISSIONER HICKINBOTTOM: --to which the fund  
11 responds. And the Committee, then is--because of the  
12 requirement that an applicant puts in a reasonably detailed  
13 application form with income and needs and lots of other  
14 information, and then the Committee look at the application form  
15 and then respond to the application form if it falls within the  
16 criteria, and no doubt then exercises some discretion. Is that  
17 more or less right?

18 THE WITNESS: Okay. I'm not as intimate with the  
19 process, but I believe you've captured well--

20 COMMISSIONER HICKINBOTTOM: I mean, just the overall  
21 thing.

22 THE WITNESS: --the general consensus with that  
23 process.

24 COMMISSIONER HICKINBOTTOM: And the Public Assistance  
25 Committee oversees all of this, all of this process, the



1 mechanism?

2 THE WITNESS: The Committee would be a part of the  
3 process to evaluate applications and so forth. All processing  
4 of it would be done by the Department itself, headed by the  
5 Chief Social Development Officer.

6 COMMISSIONER HICKINBOTTOM: Right. So the Committee  
7 oversees that process, which is done by individuals within the  
8 Department?

9 THE WITNESS: Oversees, evaluates the applications  
10 that have come--that come into the Department.

11 COMMISSIONER HICKINBOTTOM: That's really helpful.  
12 Thank you very much.

13 Yes. Sorry, Mr Rawat.

14 BY MR RAWAT:

15 Q. If I take you back just your Affidavit, please, and if  
16 we go to 4.6.

17 A. So, we're finished with this section of the Act?

18 Q. I think we paused there. I've lost--

19 COMMISSIONER HICKINBOTTOM: This is my fault because I  
20 interposed with just some questions about the overall scheme.

21 MR RAWAT: Yeah, I've introduced it.

22 BY MR RAWAT:

23 Q. Thank you for that, Ms Bertie.

24 If you go to 3964.

25 A. 3964?

1 Q. Yes.

2 A. Okay.

3 Q. So, to recap, 3(2) says "the Committee shall not  
4 comprise no less than seven and not more than nine members  
5 appointed by the Minister, by instruments in writing, with the  
6 approval of the Cabinet as follows." And as you mentioned, the  
7 Chief Social Development sits ex officio on the Committee, and  
8 then have you not more than eight other persons from among  
9 persons with knowledge, experience, and expertise in medicine,  
10 law, accounting, nursing, social work, or persons representing  
11 academia, the religious community, or any other fit and proper  
12 person.

13 So, that seems to give scope to appoint someone who is  
14 a fit and proper purpose but doesn't come from any other  
15 categories; is that correct?

16 A. That's correct.

17 Q. If we go to 4.6 now, which is going back to your  
18 Affidavit, 3945, you were asked if you consider whether the  
19 candidates are of good character and/or a fit and proper person,  
20 and if so, how is this determined? And you responded: "The  
21 Ministry in good faith judges the credibility of persons based  
22 on the following criteria: Good standing, professional  
23 background, qualification, educational background, notable work  
24 and service within the community in compliance with section  
25 3(2) (b) of the Act." And that's the section we just read out.

1           Now, those appear to be the criteria that you apply.  
2 Where are those written down?

3           A.    Where are?

4           Q.    Yes.  You set out that when you're selecting people  
5 for the Committee--

6           A.    Um-hmm.

7           Q.    --and assessing a candidate, those are the criteria  
8 that you will consider?

9           A.    That's correct.

10          Q.    So, where are they written down?

11          A.    I would say it matches the stipulations outlined in  
12 the Act; they are guided by the Act.

13          Q.    The wording that you have here doesn't appear in the  
14 Act.

15          A.    I understand.

16          Q.    And you have that broader--you can, for example,  
17 appoint a fit and proper person who is not a nurse, not a social  
18 worker, not an academic.

19          A.    Okay.

20          Q.    And so my question is:  You've identified the criteria  
21 you write; you have a separate policy written down saying when  
22 we consider candidates, these are the benchmarks that we will  
23 consider them against.

24          A.    There is no--there is no written policy outlining that  
25 information.

1 Q. And so, where do those criteria come from?

2 A. Where does...

3 Q. Where do the criteria come from?

4 A. If we're looking at the stipulations outlined in the  
5 Act, "fit and proper person", this is just a matter of  
6 interpretation. It's relative based on my view. We are looking  
7 for good individuals, persons of good standing within the  
8 community, professional, qualified in whatever field or  
9 expertise they may have, have had some sort of interactions in  
10 certain areas within the community as community-minded  
11 individuals. And we simply look at individuals in good standing  
12 based on the information that they provide. We don't have it  
13 written anywhere in any policy. So, as you say, the Act is what  
14 we will be guided by.

15 But for the purpose of your question and our response,  
16 we have done that based on a number of available areas that we  
17 would look for: Persons in good standing; persons with outlined  
18 professional background and relevant qualifications, whether  
19 educationally or not; notable work experience; and very  
20 community-minded individuals.

21 Q. You've appreciated the difference in wording between  
22 what you've set out in your Affidavit and what's in the Act--

23 A. Right.

24 Q. --so that we can understand the criteria. Are these  
25 the criteria that you apply as the Acting Permanent Secretary?

1 A. This is what--I would say "yes".

2 Q. And is this the guidance that you give to your--to the  
3 Public Officers who work to you--

4 A. That's why I would say, "yes".

5 Q. --when they are assessing or considering candidates?

6 A. Right.

7 So, based on your question, it's not something that we  
8 have written anywhere. But if we are looking for a person, any  
9 other "fit and proper person", those are some of the things that  
10 we can look for in those individuals.

11 Q. The question is not as important as the answer.

12 A. Um-hmm.

13 Q. But the--it's trying to understand the process by  
14 which you, in practice, operate as the Ministry.

15 And is it the case, since have you taken on the role  
16 of Acting Permanent Secretary, that these are the kind of  
17 criteria you expect to be applied when candidates are being  
18 considered for the Public Assistance Committee?

19 A. I would answer that question by stating what I'm aware  
20 of in terms of what we do in the Ministry. And from my  
21 experience, the Ministry of Health has always attempted or made  
22 attempts to look at individuals in a cross-section across BVI,  
23 persons with notable work experience, professional  
24 qualifications, as well as good and regular standing within the  
25 community who can add to the elements of the importance of the

1 role that they are being selected for.

2 Q. And would you say that what you have identified at 4.6  
3 is what is--what the Ministry would use as the definition of "a  
4 fit and proper person"?

5 A. That is correct.

6 Q. You've referenced how important the Act is. So, is it  
7 the approach of the Ministry to treat the Act as setting out the  
8 framework for recruiting and appointing?

9 A. Can you repeat that? I'm sorry.

10 Q. Of course.

11 You've explained before--and you've referred to the  
12 Act and that what you do is refer--you're guided by the Act,  
13 aren't you?

14 A. That is correct.

15 Q. Does that give you the framework for how you should  
16 approach the recruitment and appointment of members of the  
17 Public Assistance Committee?

18 A. I believe that is the sole guidance tool that we  
19 should be using in all elements. The law is the law.

20 COMMISSIONER HICKINBOTTOM: Could I just ask one  
21 question? I think it's related to this. If you look at 4.4 of  
22 your Affidavit, just above where you've been looking.

23 THE WITNESS: 4.4, yes, sir.

24 COMMISSIONER HICKINBOTTOM: And this is about the  
25 criteria for appointing a person to the Board. And you said

1 that the criteria for appointing persons to the Committee is  
2 stipulated under section 3, which we've looked at. That's fine.  
3 This is supplemented with adopted practice implemented by the  
4 Ministry as described in the answer submitted to Question 9(a).  
5 This may be entirely me, but I can't find 9(a). It may be in a  
6 different document or a typographical error.

7 THE WITNESS: Yeah, typographical error...

8 It probably would be a typographical error.

9 MR RAWAT: I think I'd agree with Ms Bertie because I  
10 did check across to the Letter of Request that was sent to the  
11 Honourable Malone, and it doesn't have a Question 9(a), and I  
12 checked it again.

13 COMMISSIONER HICKINBOTTOM: It's not a trick question.  
14 I wondered what you were referring to there. I don't think it  
15 is 9. I think it's a typo.

16 THE WITNESS: Commissioner, I would have to do some  
17 quick skimming, but I really can't pinpoint exactly.

18 COMMISSIONER HICKINBOTTOM: In relation to your  
19 answers to 4.6, it may be a reference to 4.6. This is  
20 supplemented with adopted practices implemented by the  
21 Ministries described in the answer submitted--and 4.6, the way  
22 you've given your evidence, suggests that, in practice, although  
23 this isn't written down, in practice, these are the sort of  
24 criteria or characteristics that you personally look for, and  
25 the Ministry looks for.

1 THE WITNESS: I would accept that.

2 COMMISSIONER HICKINBOTTOM: Yes. I will actually come  
3 back--I will take it that's what it meant.

4 THE WITNESS: Certainly.

5 COMMISSIONER HICKINBOTTOM: That makes sense.

6 THE WITNESS: That would be supplemented. This was  
7 supplemented with adopted practice implemented by the Ministry  
8 as described in the answers submitted for Question 4.6.

9 COMMISSIONER HICKINBOTTOM: Exactly. And that makes  
10 sense.

11 So, you make sure the statutory criteria are complied  
12 with, but that's supplemented by the practice as set out in 4.6?

13 THE WITNESS: I can accept that.

14 COMMISSIONER HICKINBOTTOM: Thank you very much.

15 THE WITNESS: Thank you.

16 BY MR RAWAT:

17 Q. And, Ms Bertie, just for completeness, let's look at  
18 4.7 quickly, because what's taken into account--you were asked,  
19 are convictions/spent convictions taken into account? And you  
20 said convictions are taken into account in the process since a  
21 conviction disqualifies a person being a member, and again you  
22 cross-refer to the Act itself.

23 Does that refer to spent convictions as well?

24 A. I don't think the Act speaks to spent convictions.

25 Q. So, what guidance do you have as to what kind of



1 convictions you need to take into account?

2 A. Well, at least from my understanding or recollection,  
3 I don't know that we've ever had any instances where an  
4 individual who had been convicted, whether spent or not, has  
5 actually been considered.

6 Q. Yes, but the Act makes it clear that--what it says is  
7 that the Minister may, by written notice, remove a member, other  
8 than an ex officio member, from office if satisfied that the  
9 member had been convicted of an indictable offence or any  
10 offence involving--

11 A. What page are you referring to?

12 Q. 3966.

13 A. 380?

14 Q. That's what you referred us to, as the part of the Act  
15 that you relied on for your answer, which said that convictions  
16 are taken into account during the appointment process.

17 So, is it your understanding that if someone was bold  
18 enough to apply to you, having a--with a conviction, that would  
19 not mean--that would mean that they wouldn't succeed during the  
20 appointment process?

21 A. I--as I said, I don't see that ever happening. As it  
22 is, the legislation already disqualifies that individual. As  
23 far as I'm aware, we've never had any instance where an  
24 individual who had been convicted in any form would have been  
25 considered for this Committee.

1           COMMISSIONER HICKINBOTTOM: I certainly don't want to  
2 drag you into law--

3           THE WITNESS: Okay.

4           COMMISSIONER HICKINBOTTOM: --Ms Bertie, but it  
5 doesn't quite answer the point for this reason. Section 8.3  
6 concerns somebody in office, and these are the circumstances in  
7 which the Minister may remove that person.

8           THE WITNESS: Okay.

9           COMMISSIONER HICKINBOTTOM: So, if they commit, say,  
10 an offense involving dishonesty, then the Minister can remove  
11 them. So, spent convictions don't come into it.

12          THE WITNESS: Okay.

13          COMMISSIONER HICKINBOTTOM: Spent convictions or, as  
14 it were, old convictions.

15          THE WITNESS: Old convictions.

16          COMMISSIONER HICKINBOTTOM: And if this is--I think  
17 your response to Mr Rawat was that in terms of spent  
18 convictions, you haven't brought your mind to bear on that  
19 because it's never happened.

20          THE WITNESS: That is my position.

21          COMMISSIONER HICKINBOTTOM: Yes. Thank you.

22          BY MR RAWAT:

23           Q. You said, a few moments ago, Ms Bertie, referring to  
24 the importance of the Act in terms of this process, that the law  
25 is the law. The Act doesn't say, does it, that you can't

1 advertise for appointments to the Public Assistance Committee?

2 A. It does not.

3 Q. And you could advertise by setting out the criteria on  
4 the requirements of the role and inviting applications, wouldn't  
5 you?

6 A. I agree. That can be done.

7 Q. And it doesn't say that you're not allowed to ask for  
8 CVs before you make recommendations?

9 A. It doesn't say.

10 Q. So, you could ask for CVs at a much earlier stage; is  
11 that right?

12 A. We can ask for any CVs at any stage in the process.

13 Q. And you could, as part of your process, ask for  
14 references for those who expressed an interest?

15 A. That is certainly something that can be considered.

16 Q. Because what I assert is, if you took steps like that,  
17 wouldn't you widen the pool of suitable candidates?

18 A. It certainly would, I suppose. There might very well  
19 be persons who would consider and would like to be considered,  
20 as well as there might very well be persons who don't apply. It  
21 all depends. It's not something that we've ever done, so I  
22 can't speak to something that we have never done.

23 Q. Because what you're depending on is that someone  
24 exists within the knowledge of the Desk Officer or the Permanent  
25 Secretary or the Minister, and then that someone can be

1 described as "known and established", and that leads to the  
2 recommendation. What the system doesn't allow for is the  
3 person--member of the public who thinks they would like to give  
4 something back to the community, that would like to play a role,  
5 and they're not--but they perhaps don't know how to do it. And  
6 if you were to take that process, people could then--would  
7 then--might be more encouraged to come forward and play a part  
8 in the community?

9 A. I believe it is something that can be certainly  
10 thought about. As we've gone through these processes,  
11 especially in preparing this information, it's something that we  
12 recognize can be considered moving forward.

13 Q. Do you anticipate any downsides to adopting that  
14 course?

15 A. I have not given it much thought, but I can certainly  
16 see where there might be some disadvantages to it, where persons  
17 don't necessarily apply for consideration, if you understand  
18 where I'm coming from. If it's advertised and there are  
19 actually no applications that are submitted, what do we do then?

20 Q. You could readvertise?

21 A. And the same thing happens.

22 Q. And then you could--I mean, that's a hypothetical.

23 A. Right. That's what I'm saying.

24 Q. But the reason I put the proposition to you is that it  
25 is a way of which you could widen the pool.

1 A. I agree.

2 Q. You don't know whether it works until you try it.

3 A. I agree.

4 Q. Can I just take you quickly to 3947.

5 A. 3947.

6 Q. This is a table that you have provided as part of the  
7 Affidavit, and it's the composition of the Public Assistance  
8 Committee over the past three years. And we summarise it like  
9 this: Essentially the Committee has remained the same. The  
10 membership was re-appointed; is that right?

11 A. If we're going on the basis of the information  
12 presented, yes.

13 Q. Yes.

14 Well, I mean, it's your Affidavit, and you signed it.  
15 I'm asking you just to confirm the detail.

16 A. Based on the information presented, yes. They've all  
17 been re-appointed. They are all reappointments.

18 Q. If we go back to 3966--we've looked at this  
19 already--but it's the circumstances in which the Minister--and  
20 this is at Page 3--can remove a member. And I'm conscious the  
21 Commissioner makes the point that we shouldn't get you too much  
22 involved in too much law.

23 But what 3 sets out, doesn't it--and I just want to  
24 confirm your understanding of this--is that those are the  
25 circumstances in which the Minister could remove a member, other

1 than the ex officio member. If those circumstance arise, then  
2 the Minister has the power to remove that member, doesn't he?

3 A. Yes, based on the Act.

4 Q. And the circumstances are that if the member has,  
5 without the consent of the Committee, been absent from three  
6 consecutive meetings of which the member has had notice. And  
7 that information, presumably, would come from the Social  
8 Development Officer?

9 A. Yes.

10 Q. The second reason or basis on which the Minister could  
11 remove a member is if the person is adjudged bankrupt and has  
12 not been discharged.

13 The third is if they have been convicted, whilst a  
14 member, of an indictable offence or an offence involving  
15 dishonesty.

16 And the fourth is if they are of unsound mind or is  
17 certified by a medical practitioner to be so ill as not to be  
18 able to properly discharge his or her functions under the Act.

19 Those are the four stipulated bases on which the  
20 Minister could remove a member; is that right?

21 A. That is right, based on the information in the act.

22 Q. And the Act doesn't allow the Minister a general power  
23 to remove members from the Public Assistance Committee, does it?

24 A. I think the section is clear, the tenure of office and  
25 how persons can be removed. Those four points are listed there.

1           COMMISSIONER HICKINBOTTOM: So, you've referred to  
2 things about the Board and the Committee as being autonomous  
3 bodies and autonomous, presumably, from the Ministry,  
4 self-standing bodies?

5           THE WITNESS: Sorry. What is the question?

6           COMMISSIONER HICKINBOTTOM: You've referred to both  
7 the Board, I think, and the Committee as autonomous bodies.

8           THE WITNESS: Right.

9           COMMISSIONER HICKINBOTTOM: By "autonomous", I assume  
10 you mean autonomous from the Ministry, so they're self-standing  
11 bodies.

12          THE WITNESS: Okay.

13          COMMISSIONER HICKINBOTTOM: Is that right?

14          THE WITNESS: That's correct.

15          COMMISSIONER HICKINBOTTOM: Looking at this, this  
16 simply is part of the autonomy that the Board has, isn't it?  
17 The Minister can--the Minister can--let's put it in a more  
18 neutral way.

19                 An individual who is a member of the Committee has  
20 security of tenure for their period--two years, three years,  
21 whatever it might be--and can resign, but otherwise can only be  
22 removed in the circumstances of subsection (3). That's part of  
23 the autonomy, isn't it, of the Committee?

24          THE WITNESS: If you're saying that does not give them  
25 autonomy--

1 COMMISSIONER HICKINBOTTOM: No, no. I'm saying this  
2 does give them autonomy--

3 THE WITNESS: Oh, okay.

4 COMMISSIONER HICKINBOTTOM: --because it gives them  
5 security of tenure. The tenure is only for the period of their  
6 appointment, but if their appointment is for three years, they  
7 cannot be got rid of in any way other than in section 8(3).

8 THE WITNESS: I think that's correct.

9 COMMISSIONER HICKINBOTTOM: So, it reinforces the  
10 autonomy.

11 THE WITNESS: Certainly.

12 COMMISSIONER HICKINBOTTOM: Thank you very much.

13 MR RAWAT: Commissioner, unless you have any other  
14 questions in relation to the workings of--

15 (Overlapping speakers.)

16 COMMISSIONER HICKINBOTTOM: I think we should have a  
17 break. We will have the break primarily because the  
18 Stenographer needs a break from his work, just a five-minute  
19 break. We will break for five minutes and then come back,  
20 Ms Bertie.

21 THE WITNESS: Thank you, sir.

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 (Recess.)

24 TECHNICIAN PETERS: Mr Haeri, if you're with us, we  
25 are ready to resume.



1 MR HAERI: I am. Thank you.

2 (Pause.)

3 COMMISSIONER HICKINBOTTOM: Good. We are ready to  
4 resume.

5 Thank you, Mr Rawat.

6 MR RAWAT: Thank you, Commissioner.

7 BY MR RAWAT:

8 Q. Ms Bertie, thank you for coming back, and could I ask  
9 you now just to help us in relation to the BVI Health Services  
10 Authority Board, which I will call the "Board" from now on  
11 because it's a bit of a mouthful.

12 Now, you've dealt with that in the first Affidavit or  
13 the second one, to be fair.

14 If we look at 265, then, in that bundle, that's where  
15 you produced the Act, and you've exhibited the Act to your  
16 Affidavit. That's the governing legislation in terms of the  
17 process by which people are appointed to the Board or indeed  
18 removed from it. Is that right?

19 A. That's correct.

20 Q. Other than that, is there any written guidance or  
21 policy in the Ministry governing the recruitment, appointment,  
22 or removal of those appointed to that Board?

23 A. No, sir.

24 Q. And so, is it in the same way as we saw with public  
25 assistance, that you and those officers who worked through you

1 would look to the Act for guidance if you need it?

2 A. That is correct.

3 Q. Could you turn up please, go to page 269.

4 Just some questions about the appointment process.

5 Now, 269, if you want to just turn back to it, it's part of  
6 section 5 which starts on the proceeding page. And if we look  
7 at subsection 3(a), this deals with the appointment of people  
8 who are not ex officio Members, and that is that what the Board  
9 should have is no less than seven or more than nine Members  
10 appointed by the Minister, with the approval of, it says  
11 "Executive Council," but it's now taken to be Cabinet, "from  
12 among persons with knowledge, experience and expertise in  
13 medicine, law, accounting, nursing, insurance, social work or  
14 other professions and persons representing the BVI Chamber of  
15 Commerce and Hotel Association, academia, and the religious  
16 community."

17 So, does that mean that the membership of the Board  
18 has to reflect those specific fields that are set out in the  
19 Act?

20 A. I believe the stipulations are clear, yes.

21 Q. Would it be deficient, therefore, if the Board didn't  
22 have somebody on it with nursing experience?

23 A. It doesn't speak to any deficiency in those areas.

24 (Overlapping speakers.)

25 A. If we--sorry, if I may, if we were to count the

1 various areas here listed, it's probably more than nine, so you  
2 can very well have an individual that--not an individual. You  
3 may have instances where you don't have a person with that  
4 background based on this stipulations outlined here.

5 Q. And you can have a person who ticks more than one box?  
6 You can have--

7 A. Exactly--

8 (Overlapping speakers.)

9 Q. --in academia. But my question was just whether the  
10 expectation is that you should have the spread that's envisaged  
11 by the Act?

12 A. I don't believe that would have been the  
13 interpretation intended.

14 Q. Does that mean that you could have a Board that's  
15 entirely medics?

16 A. I don't believe that's the intention intended--

17 Q. What do you believe the intention of that provision to  
18 be?

19 A. It's about finding individuals with a cadre of  
20 specialties or areas that would lend to the process.

21 Q. But what mechanism is there, if any, in place to stop  
22 the Board ending up with a disproportionate number of Members  
23 with a particular background, for example, law?

24 A. I suppose the question would be what mechanisms is in  
25 place to stop that from happening?

1 Q. Yes.

2 A. I suppose it would be with the process that's entailed  
3 to select persons for that Board. So, in other words, if, based  
4 on the Minister, at his discretion, and the Cabinet, if they  
5 recognize that there are individuals across the selection  
6 process that, as you say, top-sided with just medical persons or  
7 just lawyers, then it's at their discretion to make that change  
8 or try to avoid such situations.

9 Q. So, you could have a situation where you have a Board  
10 that doesn't have somebody on it with some sort of nursing  
11 knowledge, for example?

12 A. I suspect--it could happen.

13 Q. Now, if we look at 5(5), just it's on the same page,  
14 it's subsection (5), and so what the Minister does is to  
15 recommend persons to be appointed to the Cabinet for approval;  
16 is that right?

17 A. Yes.

18 Q. And so, Cabinet will--the persons put forward, two of  
19 them are nominated by the leader of the opposition but the  
20 persons put forward are all the Cabinet can appoint ordinary  
21 Members of the Board and also the Deputy Chair, the additional  
22 detail in relation to the Chairman, that requires the approval  
23 of the House of Assembly. Is that a fair summary?

24 A. That is, correct.

25 Q. If you go to 7 at (c), which is on page--sorry, that's

1 not 7(c). It's back to your Affidavit, sorry, let me find the  
2 reference for you, page 255, please. And this is responding,  
3 Ms Bertie, to a number of questions about the operation,  
4 prefaced by which Members of the Board are recruited. You say  
5 at (c) that there is no requirement under the Act that posts on  
6 the Board be advertised. But it's right, isn't it, that neither  
7 the--the Act doesn't prohibit advertising, does it?

8 A. No, it does not.

9 Q. And again, the same way as I think you fairly accepted  
10 in relation to Public Assistance Committee, the use of  
11 advertising would also widen the potential pool of candidates  
12 that you might have for the Board?

13 A. I agree.

14 Q. And you can refer to both the Public Assistance  
15 Committee and this Board, if you like, but has the use of  
16 advertising been contemplated in the Ministry at any time?

17 A. I believe it is being contemplated now that we've  
18 really gone through this process, it has been contemplated, yes.

19 Q. Before then?

20 A. I can't speak to that.

21 Q. How long have you been in the Ministry?

22 A. Ministry of Health would be 2013, so--

23 Q. And in that time, you haven't come across a suggestion  
24 that posts for either the Board or the Committee should be  
25 advertised?

1           A.    Nothing in details.  It may have been a conversation,  
2 but not in any great detail.

3           Q.    Keeping to paragraph 7 on page 255, you deal at (e)  
4 with--

5           A.    At, sorry?

6           Q.    At subparagraph (e).

7           A.    (e).

8           Q.    Yes.

9                    And so, what we have got and we've discussed is the  
10 Minister making nominations, and you say at (e):  "Once  
11 candidates have been nominated, they are then requested to  
12 provide their curriculum vitae to the Ministry for submission to  
13 Cabinet and the House of Assembly accordingly."

14                   So, this seems to parallel what happens with the  
15 Public Assistance Committee, doesn't it?

16           A.    Yes.

17           Q.    It's after the nomination stage that you go and seek  
18 CVs?

19           A.    That's correct.

20           Q.    So, the choice of who is going to be nominated is made  
21 on information other than a CV?

22           A.    Based on the stipulations outlined in the Act,  
23 nominations are put forward in consideration of the Minister and  
24 the Permanent Secretary in their discussions.

25           Q.    So, again, it's an internal discussion within the

1 Ministry between a Desk Officer, a Permanent Secretary--and--

2 A. Or the Minister.

3 Q. And again, the Minister has the last word as to who  
4 will be nominated?

5 A. From my understanding--well, again, I was not  
6 necessarily involved in this process, but I believe at some  
7 point that is the final.

8 Q. Because it's the Minister that has under the--

9 A. Based on the--

10 REALTIME STENOGRAPHER: I'm sorry, there was a little  
11 too much overlap. Could you start the question and answer  
12 again, please.

13 BY MR RAWAT

14 Q. Yes. I will let Ms Bertie add any detail if she  
15 wishes and then I will ask my question.

16 A. Can you ask your question again?

17 Q. I will ask my question instead, that's fine.

18 I was putting to you, Ms Bertie, that the Act provides  
19 that it's the Minister that must make the recommendations, and  
20 so doesn't it follow that the Minister will have the last word  
21 as to who is going to be nominated to Cabinet for appointment.

22 A. I think that is a correct assumption, with the  
23 exception, of course, of the position for the Chairman which he  
24 must do in consultation with the leader of the Opposition.

25 Q. That was a fair point to make. But it also reflects,

1 doesn't it, the distinction between a Minister and yourself as a  
2 Permanent Secretary? There is a line that you cannot cross as a  
3 public official, isn't there?

4 A. I'm not certain--

5 Q. Well, there are certain types of advice that you can't  
6 give the Minister?

7 A. I'm not certain I understand the question.

8 Q. Well, you cannot, can you, as a Permanent Secretary  
9 and a public official give political advice to a Minister?

10 A. No.

11 Q. And so, there are certain things--there may be certain  
12 things that Ministers do or certain areas of policy they're  
13 interested in that you cannot assist with because it's  
14 political?

15 A. That is correct.

16 Q. I was just using that as an example, that there is a  
17 line between the role you play as Permanent Secretary or Public  
18 Officer and the role of a Minister.

19 A. Okay.

20 Q. But it takes us back to the point that it is under the  
21 Act, the Minister that makes the final decision?

22 A. That's correct, based on the Act.

23 COMMISSIONER HICKINBOTTOM: Broadly--and there are  
24 some differences. I mean, there are some differences, for  
25 example, in the list of professions or the list of expertise in



1 the Public Assistance Act and this Act, and also under the  
2 Public Assistance Act there's a sort of general catch-all  
3 category at the end, "fit and proper person" whereas in this  
4 Act, you have to fall in one of the categories, and be a fit and  
5 proper person under section 5(6). So there are little  
6 differences.

7 But in terms of the process adopted by you and the  
8 Ministry in identifying and putting forward individuals to fill  
9 memberships of the Committee and the Board, respectively,  
10 they're broadly similar, as I understand it?

11 THE WITNESS: I think that is a far assumption, and I  
12 would say not by me but by the persons in the post of Permanent  
13 Secretary.

14 COMMISSIONER HICKINBOTTOM: Yes, yes.

15 THE WITNESS: Okay.

16 COMMISSIONER HICKINBOTTOM: But it's--for whatever  
17 reason, the process is similar. That's not a criticism.

18 THE WITNESS: I believe that is a fair assumption.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

20 BY MR RAWAT:

21 Q. What you said, and we are still on page 255, is that I  
22 think (g), where you say "there exists a practice based on the  
23 candidate's known standing in society, for example, whether he's  
24 employed, good standing in the community, good reputation, et  
25 cetera, that is used informally when recommending nominations."

1           And is that--it's the same situation as we discussed  
2 with the Public Assistance Committee. This isn't criteria that  
3 is written down so that there is a listed set of criteria by  
4 which you all operate?

5           A. I agree.

6           Q. These are factors that you would keep in mind when  
7 deciding what nominations in your case to put to the Minister?

8           A. I agree.

9           Q. And again, would it be fair to say that phrases such  
10 as "known standing in society, good standing in the community,  
11 good reputation" are the factors that go to the definition or  
12 the working definition that you have of "fit and proper person"?

13          A. I think in some way they do, yes.

14          Q. I'm sorry, I didn't catch your...

15          A. I think in some way they do.

16          Q. Yes. If there is anything there you want to add, so  
17 what criteria you used to define a "fit and proper person" and  
18 to decide a nominee, please do so.

19          A. Okay.

20                 COMMISSIONER HICKINBOTTOM: But in any event, these  
21 are the criteria and characteristics that are looked for?

22                 THE WITNESS: That is the general approach used by the  
23 Ministry, yes.

24                 COMMISSIONER HICKINBOTTOM: Thank you.

25                 BY MR RAWAT:

1 Q. And it's open to the Minister, isn't it, to reject any  
2 nomination that you might put forward as Permanent Secretary?

3 A. Again, I agree. That is the position. At the end of  
4 the day, the law allows the discretion of the Minister with any  
5 appointee.

6 The Minister also has powers to recommend, and as it  
7 says there in the legislation.

8 Q. I accept it's not just down to the Public Officers to  
9 come up with names. The Minister can put a name forward as  
10 well?

11 A. Yes.

12 Q. And this is all just part of the internal and informal  
13 process that goes on?

14 A. Yes.

15 Q. As to that process, there is nothing, is there, in the  
16 Act to stop the Minister from changing it. The Minister could  
17 ask for CVS before names are put to it?

18 A. I agree, yes.

19 Q. He could decide that, even before names or individuals  
20 are put before Cabinet, they should be interviewed?

21 A. I agree.

22 Q. He could decide that there could be adverts made?

23 A. I think we've established that those are things that  
24 could be done, and it's all part of our observation having gone  
25 through this process that, it would very well be something that

1 would be useful moving forward.

2 Q. Can you clarify one thing, and that's at your  
3 subparagraph (e).

4 A. Subparagraph...

5 Q. (e), on that page?

6 A. (e), okay.

7 Q. You will see there it says in relation to the  
8 requests, provide a curriculum vitae to the Ministry for  
9 submission to Cabinet and the House of Assembly. That would  
10 refer, obviously, to the Chairman. You say they're screened by  
11 the Ministry against information held by the Ministry to verify  
12 that they do not breach section 1 subsections 1, 2, and 3 under  
13 schedule 1 of the Act.

14 If we look at what that section says, if you go to  
15 page 286, please. Page 286. Please. Section 1 of Schedule 1  
16 says that the appointment of the Chairman shall be for a term  
17 not exceeding three years.

18 Subsection 2 makes the same point in relation to the  
19 Deputy Chairman and any other Members of the Board.

20 And three says someone can be reappointed but not for  
21 more than three consecutive terms.

22 So, when you say they're screened against information  
23 held by the Ministry to verify they don't breach section 1, what  
24 are you--what are you trying to verify?

25 A. To ensure that they are not--there wouldn't be any

1 breaches in relation to the sections that you've outlined, so in  
2 the event, for example, a person who is the Deputy Chair or a  
3 person who was appointed under section 3 of the schedule one,  
4 they're eligible for reappointment for three consecutive terms,  
5 so we have within the Ministry a process where we call it our  
6 "top paper", which outlines the process that would have been  
7 sitting on various Boards over the period, and it would show the  
8 periods under which they would have been there.

9           So if a person is--let's suppose one of the Board is  
10 up for reappointment and the Minister wishes or the team  
11 considers to reappoint an individual to the Board, we would have  
12 to ensure based on schedule 1, section 3, any of the persons  
13 that are being reappointed under this section 5(3)(a) is  
14 eligible based on the fact that they have not served for three  
15 consecutive terms. That's what--

16           Q. That's what that comes down to; isn't it?

17           A. That's what--

18           Q. That's what you've got to look out for?

19           A. Exactly.

20           So, that's what that section (g), as you've  
21 outlined--is it (g)? Not (g).

22           Q. (e).

23           A. (e), sorry. That's what that is making reference to.

24           Q. Because a new candidate or new appointee?

25           A. A new appointee wouldn't be--

1 Q. Wouldn't be checked--

2 A. Checked against this because they're new--

3 REALTIME STENOGRAPHER: I'm sorry, please. There's  
4 overlap. Start again.

5

6 BY MR RAWAT

7 Q. I'm as guilty of that--I'm more guilty of that than  
8 you are, I think.

9 COMMISSIONER HICKINBOTTOM: He is.

10 BY MR RAWAT:

11 Q. Ms Bertie, let's clarify it this way. It doesn't  
12 apply to new appointees?

13 A. No, it doesn't.

14 Q. What it applies to, what you have to check in terms of  
15 reappointing, I mean, the two things you have to look out for is  
16 to make sure that someone doesn't exceed their term, and  
17 secondly, that if they're being reappointed, they don't go for  
18 the three term limit?

19 A. That's correct.

20 Q. At your (f), you say that Cabinets and the House of  
21 Assembly have the discretion to request interviews and stipulate  
22 the appointment process. Could you just add a little bit more  
23 about that, please.

24 Is that written down at all, that they have that  
25 discretion?

1 A. If we go to section 6 of the Act, again I'm--

2 Q. Page 270.

3 A. 270.

4 Q. I think that may be a typo. Actually, I think you're  
5 thinking of section 5(6). It starts at 269.

6 A. Okay.

7 So, what was your question?

8 Q. This relates to the first line of that subparagraph,  
9 whether it's written down anywhere that either Cabinet or the  
10 House of Assembly have discretion to request interviews and  
11 stipulate the appointment process.

12 A. It's not written--any way in my estimation I have not  
13 seen it written anywhere.

14 Q. What--so, where does it come from, that they have this  
15 discretion?

16 A. I, again, Cabinet and the House of Assembly can  
17 dictate however they wish for a matter to be handled. It may  
18 not necessarily come in written form in this way. It might be  
19 after they've had discussions in the Cabinet setting and wish to  
20 have a matter returned to the Ministry for further review or  
21 additional considerations for them to be able to make a  
22 decision.

23 Q. In your experience, has Cabinet ever asked for  
24 interviews?

25 A. In my experience, since June 7th, no.

1 Q. Or since 2013? You've been there since 2013?

2 A. Not based on my experience, no.

3 Q. And we're talking about the--

4 (Overlapping speakers.)

5 Q. And obviously the House of Assembly has to approve the  
6 Chairman of the Board?

7 A. Right.

8 Q. To your knowledge, has the House of Assembly ever  
9 asked that the prospective Chairman of the Board be subject to  
10 an interview?

11 A. Not to my knowledge, sir.

12 Q. You go through to now your paragraph 12, which is at  
13 page 262, please.

14 A. Page 262.

15 Q. You're dealing now with Declarations of Interests, and  
16 you say "there is no written guidance given to members appointed  
17 to the board, except as provided in the Act," and then you  
18 explained that they are given copies of the Act when they first  
19 come to sit on the Board.

20 What guidance does the Act give in terms of  
21 Declarations of Interests?

22 A. I'm not certain which specific sections may speak to  
23 that.

24 Q. Go to--

25 A. Maybe within schedule 1 of the functions of the Board.



1 It may very well be implied in some of those areas.

2 Q. I haven't been able to find it, but can we put it this  
3 way.

4 A. Um-hmm.

5 Q. As far as you're aware, there is no--other than the  
6 Act, there is no written guidance that would assist a Member of  
7 the Board in terms of declaring an interest?

8 A. As far as I'm aware.

9 Q. And you go on, and this is at your paragraph 13 to say  
10 that there are no written standards for monitoring or assessing  
11 the performance of Members of the Board. Are they monitored in  
12 any way?

13 A. Again, from my knowledge, I suspect it is--the  
14 authority would have log in relation to attendance to meetings,  
15 so I suppose the Minutes of the Meetings would be a measuring  
16 tool by which they are monitored in terms of their attendance  
17 and participation in meetings.

18 Q. But it's not--it seems to be a distinction that you  
19 draw in this Affidavit with the Board and the Public Assistance  
20 Committee because you explained in relation to the Committee  
21 that when considering reappointment you will effectively get  
22 feedback from the ex officio Member of the Committee.

23 A. That's correct.

24 Q. In this case, there doesn't seem to be any process at  
25 all by which you, as the Ministry, with oversight of the Board,

1 get any feedback as to how the Board is functioning?

2 A. In this instance, not to my knowledge.

3 Q. Is that a consequence of the degree of autonomy that  
4 this Board enjoys from the Ministry?

5 A. I suspect yes, it is.

6 Q. Now, I've asked you--and you've answered me about the  
7 possibility of advertising, obtaining CVs earlier, and  
8 interviewing candidates.

9 Leaving the Board and the Committee aside, is it right  
10 to assume that there are other processes or other areas of the  
11 Ministry's business where you do that, where you advertise  
12 posts, you ask for CVs, and you interview candidates?

13 A. That would be for vacant positions within the  
14 Ministry, yes.

15 Q. So--

16 A. For employee positions.

17 Q. Yeah, but it's a process that presumably Permanent  
18 Secretaries--

19 A. Yes, it's something that we do have to do.

20 Q. And you're familiar with?

21 A. Yes.

22 Q. Can I now just ask you to look at 286, please. This  
23 is taking us back to schedule 1 of the Act. And if you go over  
24 to 287, section 3, please. You will see there that it says:  
25 "The Minister with the approval of," and here it's the Cabinet,

1 "may, by instrument in writing, remove a Member of the Board,  
2 other than an ex officio Member, from office if satisfied that  
3 the Member (a), has, without the consent of the Board, been  
4 absent from three consecutive meetings of the Board or for  
5 periods exceeding one-third of the regular meetings held in a  
6 year; (b), is or becomes disqualified from being appointed as a  
7 Member of the Board under section 5(7; (c), is unable or unfit  
8 to discharge his functions as a member of the Board; or (d), is  
9 in breach of any condition imposed upon his appointment."

10 Section 5(7), if you want to look at that, is at 279  
11 and it says that a Member is disqualified for appointment to the  
12 Member of the Board if he is a Member of the House of Assembly,  
13 is in undischarged bankrupt or has compounded with his  
14 creditors, has been convicted of an indictable offense or any  
15 offense involving dishonesty, has after being previously  
16 appointed as a Member been removed in accordance with schedule 1  
17 or has been certified by a psychiatrist to be of unsound mind.

18 Now, although the wording is different, it is  
19 comparable to the Public Assistance Act, isn't it, because  
20 what's set out there is the basis on which a Minister can remove  
21 a Member from the Board?

22 A. I agree that's a fair assumption.

23 Q. And what there isn't is any other discretionary basis  
24 on which a Minister can remove someone from the Board?

25 A. I think that is fair.

1 Q. Now, if you go back to your 257, please, you've set  
2 out again the composition of the Board over the past five years.  
3 There has been a bit more change with this Board than there was  
4 with the Committee, but if we focus on those who are the most  
5 recent composition of the Board, we will see that with the  
6 exception of the very first person, the others--and it runs over  
7 into page 258, have terms of office--sorry, it's with the  
8 exception of Mr Hodge and Ms Smith, but everyone else on the  
9 Board, their term of office finishes on the 21st of June 2021.

10 What has happened to the majority of the Board?

11 A. What has happened? I don't understand the question.

12 Q. Well, it's now the 7th of September 2021. So, if you  
13 take the first person, they will cease to be a Member of the  
14 Board on the 21st of June. That's Dr Venzen.

15 A. I believe this Board has been--a new Board was  
16 recently constituted.

17 Q. Was it recently constituted before the 21st of June?

18 A. Not to my recollection. No.

19 Q. Is there power in the Act to allow people to continue  
20 after their term has expired?

21 A. I would have to verify within the Act right now, but I  
22 don't have that information off the cuff.

23 Q. Well, I want to be fair to you, so could I ask you  
24 just that you check two things, please, and if you can, you can  
25 give an answer to the Commissioner via your legal

1 representatives, and that is firstly whether the Act allows a  
2 Member to continue beyond the term that they are set to serve,  
3 so effectively outside the instrument of appointment.

4 And secondly, does the Act allow the Ministry to  
5 extend the time at which someone sits without going through the  
6 process that you've outlined.

7 A. I can--I believe I can say the answer is "no" to both  
8 questions, but I can't speak to that right now from the Act  
9 directly.

10 Q. Well--

11 A. I'm aware, though, that this Board was recently  
12 constituted, so there is a new Chairman, and Deputy Chairman and  
13 some new Members within this Board but I don't have that  
14 information.

15 Q. Whatever information you can give us as to the timing  
16 of that would be very helpful?

17 A. It would have been after this submission.

18 Q. Yes. Which I think was the 18th of June 2021.

19 A. Okay.

20 Q. I mean, we want the best evidence that you can give,  
21 Ms Bertie.

22 A. Certainly, certainly.

23 Q. If you need time to think about those questions, I'm  
24 sure the Commissioner will give it to you.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 BY MR RAWAT:

2 Q. Can I take you now to a different bundle, please, and  
3 that's Part 2 of the--sorry, Part 3.

4 A. 3?

5 Q. Correct.

6 Would you turn up, please, page 3238.

7 Do you have the page?

8 A. Sure, I'm with you.

9 Q. Thank you.

10 What we should have is a memorandum prepared by the  
11 Ministry. It's dated the 7th of May 2019, and the name at the  
12 top is Mrs Natalie Fahie-Smith, which I assume is a Member of  
13 your team at the Ministry?

14 A. That's correct, sir.

15 Q. But if you go to the last page of this paper at 3248?

16 A. 3241 would be the last page.

17 Q. You're right. Yes, 3242, in fact. Thank you.

18 A. Okay.

19 Q. The 8th of May 2019 appears as the date, and that's  
20 together with The Honourable Carvin Malone's name.

21 I just wanted some clarification from you just with  
22 how a paper like this would be prepared, so would it be right to  
23 say that--it would have been prepared by Ms Fahie-Smith as a  
24 draft which then goes to the Minister for approval?

25 A. I would say there is information--there would be

1 discussions, informal discussions, regarding the appointment of  
2 the Board and the fact that memberships may have been expired or  
3 on their way to being expired, and discussions would be had with  
4 the Minister informally as well as possibly in writing whether  
5 via e-mail to him for consideration as to having reappointments  
6 or new Members appointed. Once the recommendations are put  
7 forward by the Minister, whether by the officer submitting names  
8 for consideration or by the Minister given recommendations or  
9 nominees for consideration, once that is done, then the officer  
10 would begin the process of preparing the paper.

11 Q. So, not--I'm using this paper as an example of the  
12 process.

13 A. Right.

14 Q. So, you've discussed and you've given the Commissioner  
15 evidence about how the process works, so the next stage is to  
16 prepare this paper, if that's what you've explained just now.

17 A. Yes.

18 Q. But my question is that, although it is Ms Fahie-Smith  
19 or "Ms FOY-SMITH" (phonetic) who prepares it, it's the Minister  
20 who signs this paper?

21 A. That is correct.

22 Q. So, it becomes the Minister's paper?

23 A. That's correct.

24 Q. And the Minister--so the Minister has to approve the  
25 contents of the paper. That's the point, isn't it?

1           A.    Yes.

2           Q.    And then the Minister then takes that paper to  
3 Cabinet; is that right?

4           A.    Right.

5                    So, what I outlined just now would be the process even  
6 before it gets to this draft.

7           Q.    Yes. I think we've understood the process, that  
8 there's an internal nomination process, there is then a process  
9 of obtaining consent, and obtaining CVs. There is then a review  
10 of the CVs, and then that's at the point at which this  
11 preparation of this paper may begin?

12          A.    I think we were speaking from the same song sheet.

13          Q.    Very good of you to say that, Ms Bertie.

14                    If I ask you, though, to go to 3271 in the same  
15 bundle. To put it in context, if you turn up 3249?

16          A.    3249?

17          Q.    Yes.

18                    That's the first page of a Minutes of a Cabinet  
19 meeting number 14 of 2019.

20                    Do you see that?

21          A.    Yes, sir.

22          Q.    Now, I accept that as a Permanent Secretary in the  
23 Ministry of Health and Social Development, you would not  
24 ordinarily see Cabinet Minutes?

25          A.    No, sir.



1 Q. You would--I think you might either see an expedited  
2 extract or you might see a memorandum that emerging from  
3 Cabinet; is that right?

4 A. I will see an expedited extract or a memorandum,  
5 that's correct.

6 Q. Now, if you turn to 3271--are you okay to carry on?

7 A. Yes, sir.

8 Q. This is where a paper, it's not the paper we were  
9 looking at but it's a paper dealing with appointments of Members  
10 to the BVI Health Services Authority Board. Do you see that at  
11 the top there?

12 A. Yes, sir.

13 Q. And if you go over to the next page, 3272.

14 A. Yes, sir.

15 Q. We see that the decision, and it is a decision that is  
16 made by Cabinet, was that six people--six potential candidates  
17 would be appointed to the Board, with effect from the 19th of  
18 June 2019, with one person being deferred. We see that at (b),  
19 and that was the prospective Deputy Chair.

20 Were you aware that--this is in May 2019--were you  
21 aware that shortly before that, in April 2019, the appointments  
22 of two of the six listed in that--on that page had been revoked?

23 A. I was aware while preparing the Affidavit, yes. I  
24 became aware while preparing the Affidavit.

25 Q. Because the circumstances you have, in April 2019, the

1 Minister revoking two Members from the Board and removing them,  
2 and that's before their term is up, and then reappointing them  
3 later on, can you help the Commissioner to understand the  
4 circumstances in which that arose? Because it's two decisions  
5 separated by weeks.

6 A. I was not intimate with that process. I suspect this  
7 may have been a part of the--let me look to the Affidavit to  
8 find that.

9 Q. Is this your first Affidavit, Ms Bertie?

10 COMMISSIONER HICKINBOTTOM: Page 254 is your Affidavit  
11 concerning the health--

12 THE WITNESS: 254 in this one?

13 COMMISSIONER HICKINBOTTOM: 254 in bundle 1.

14 THE WITNESS: Okay.

15 What was your question again? I can't recall exactly.

16 BY MR RAWAT:

17 Q. Let me try and help you with it--not least because  
18 you've explained that this was something that you became aware  
19 of during the course of--

20 A. The preparation of the Affidavit, yes.

21 Q. If you look at 3303, which is in the same bundle?

22 A. 3303?

23 Q. Yes.

24 COMMISSIONER HICKINBOTTOM: 3303.

25 Okay.

1 BY MR RAWAT:

2 Q. So, that's a ministry memorandum headed "Revocation of  
3 Appointments", and it's dated 30th of April 2019. And signed  
4 7th of May 2019 by The Honourable Malone.

5 A. Yes, sir.

6 Q. And that's the memorandum that deals with--which went  
7 to Cabinet and lead to revocation of the Board, members of the  
8 Board, and two of those Members were Dr Yvonne Renee Venzen and  
9 Mrs Kishelle Blaize-Cameron. So, they were revoked in May 2019.

10 If we go back, then--

11 COMMISSIONER HICKINBOTTOM: Just pausing there.

12 Did you have anything to do with this part of the  
13 exercise, the revocation?

14 THE WITNESS: No, sir.

15 COMMISSIONER HICKINBOTTOM: So, did you know anything  
16 about it? At the time.

17 THE WITNESS: No.

18 COMMISSIONER HICKINBOTTOM: So, you learned about this  
19 when you came to the appointments process?

20 THE WITNESS: To the appointments?

21 COMMISSIONER HICKINBOTTOM: To the process of  
22 appointing the new Board after the revocation.

23 THE WITNESS: Not necessarily either.

24 At that time when this was done, I was a Deputy  
25 Secretary in the Ministry having oversight for a different area

1 of the Ministry, so I was not intimate with this process.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 BY MR RAWAT:

4 Q. So, the events that we're talking of, you had no  
5 direct involvement at all?

6 A. No.

7 Q. And if memory is right, it was the 7th of June of this  
8 year that you took on the role of Permanent Secretary; is that  
9 correct?

10 A. That's correct.

11 Q. So, any information that you can help the Commissioner  
12 with has come as a part of preparing the Affidavits for the  
13 Commission?

14 A. That is correct.

15 Q. Which would have involved, as you've explained,  
16 discussing matters with your--with colleagues in the Ministry?

17 A. In preparing the Affidavits, yes, that's correct.

18 Q. Hopefully and we can try and take it shortly, and if  
19 you can't help us, just tell us. So just to orientate you,  
20 there is a decision in May 2019 to revoke people from the Board?

21 A. Okay.

22 Q. And when we go back to the document that we were  
23 looking at--

24 A. Which is the Minutes?

25 Q. Yes.

1           --there is then reappointment to the Board, which is  
2 at 3271, and that's 19th of June 2019. So, at 3272, we see that  
3 six individuals are appointed to the Board with a period of two  
4 years or terms of two years, and that includes Ms Kishelle  
5 Blaize-Cameron and Dr Yvonne Renee Venzen, both of whom had been  
6 revoked in May. So, in one month they are revoked, and in  
7 another one they are reappointed.

8           A.    Okay.

9           Q.    Now, this will have come from discussions you may have  
10 had in the course of preparing your Affidavit. Did you find out  
11 any information about how this state of affairs arose?

12          A.    No.

13          Q.    If we deal then with the matters that were put to you  
14 as potential criticisms, I want to give the advantage to you,  
15 Ms Bertie, to give you an opportunity to deal with those  
16 potential criticisms as much as you want to, all right? So, you  
17 have your written response with you, do you?

18          A.    Response to the Affidavit--to the criticisms?

19          Q.    Yes.

20          A.    Yes, I do.

21          Q.    Now, I don't necessarily need to read it all out  
22 because you've accepted that the Commission take the content of  
23 the written response as part of the evidence, but we have seen  
24 with the dates just a moment ago is that you had a situation  
25 where membership of the Boards was revoked and then new

1 appointments were made, and you've obviously looked at this so  
2 that in the course of preparing your Affidavit, the criticisms  
3 are not directed at you, Tasha Bertie, but directed to Permanent  
4 Secretary?

5 A. That's correct.

6 Q. And we should make that clear to you.

7 A. I understand.

8 Q. But it's this, that when one looks at this and the  
9 process that was gone through to appoint the individuals that we  
10 just looked at, the first point was that no competency profile  
11 was compiled, and that's right, isn't it? You don't have a  
12 written document that says these are the criteria and the  
13 competencies that we need Members to have?

14 A. With the exception of what is stipulated in the Act,  
15 there is no written profile outlining that information.

16 Q. And it's right that none of the posts were advertised?

17 A. That is correct.

18 Q. And the consideration of candidates is entirely  
19 internal, isn't it?

20 A. That is a fair assumption, yes.

21 Q. What you don't have is any sort of independent process  
22 by which you've identified and select candidates?

23 A. That is a fair assumption.

24 Q. And because it's internal, it's not a transparent  
25 process, is it?

1           A.    That becomes relative based on an individual's  
2 interpretation.

3           Q.    Well, transparent--just to make it clear for you,  
4 what--it is a process where it's carried out within the  
5 Ministry. The details are not recorded because it's an informal  
6 discussion that goes on within the Ministry, and members of the  
7 public don't know what's going on.

8           A.    By that definition, yes.

9           Q.    And no--no candidate of the six in this process that  
10 you've been looking at, none of them were interviewed at all,  
11 were they?

12          A.    Not as far as I'm aware.

13          Q.    What's also raised as a criticism is that no due  
14 diligence was carried out in respect of these appointees?

15          A.    Again, I see that as being relative determining what  
16 you determine due diligence and the Ministry. There is a  
17 process that is guided by or the Ministry is guided by in  
18 relation to the Act and how that is stipulated, and I would say  
19 that the process is followed based on the information provided  
20 and guided by in the Act.

21          Q.    I don't want to go over ground that we've already  
22 discussed, but I do want you to have fair opportunity to tell  
23 the Commissioner as much as you think is important.

24          A.    Okay.

25          Q.    Now, if I try and summarise it, and add or tell me if

1 I'm wrong, but it's that firstly, from your perspective, the Act  
2 is where the guidance is to be found.

3 A. Yes.

4 Q. The process that you've described, the internal  
5 process that you've described, is one that involves discussion  
6 between various Board people; is that right?

7 A. That is correct.

8 Q. Now, in terms of using that process about--as the due  
9 diligence that the Ministry does, is there anything else you  
10 want to add about that process that you haven't already said to  
11 the Minister--to the Commissioner?

12 A. I would add that I don't think any reference has been  
13 made to the fact of the process providing their CVs, which again  
14 would provide some guidance and some information as to their  
15 background and their interactions or their expertise that they  
16 would bring to the particular role, so I would estimate that  
17 that is a form of due diligence in relation to persons being  
18 proposed for candidacy to these Boards.

19 Again, due diligence being relative based on your  
20 interpretation as well as mine.

21 Q. Well, due diligence is a heading.

22 A. Right.

23 Q. And underneath it is what steps did you take.

24 A. And that is a part of the due-diligence process.

25 Q. I'm inviting you to tell the Commissioner, is there



1 any other steps that you took or the Ministry took in relation  
2 to these candidates that were appointed in 2019 that he should  
3 know about?

4 COMMISSIONER HICKINBOTTOM: Just to pause, so as  
5 Mr Rawat says, due diligence can be seen as a heading under  
6 which steps that have been taken are listed, and I think under  
7 the "due diligence" head, you have listed firstly, the  
8 requirements of the Act, whatever they are, you say that they  
9 have been complied with.

10 THE WITNESS: That's correct.

11 COMMISSIONER HICKINBOTTOM: Secondly, that CVs were  
12 obtained and considered before the paper goes to Cabinet?

13 THE WITNESS: That's correct.

14 COMMISSIONER HICKINBOTTOM: Anything else?

15 THE WITNESS: That is it.

16 COMMISSIONER HICKINBOTTOM: All right. Thank you very  
17 much.

18 BY MR RAWAT:

19 Q. We've look at the Cabinet paper--we've been looking at  
20 the Cabinet paper, which deals with appointments, and do you  
21 want go back to that?

22 A. No, you--

23 Q. I'm sorry, my voice dropped. I was introducing my  
24 question by saying that we've already looked at this.

25 A. Right.

1 Q. And a point that arises from it, which I want you to  
2 have an opportunity to answer is that no mention was made in the  
3 paper that went from your Ministry to Cabinet or in the Minute  
4 of Cabinet to the fact that, as we've said, two prospective  
5 appointees, two people that were up for appointment, had had  
6 their appointment revoked less than a month before.

7 A. So the paper does not speak to--

8 Q. The paper makes no--

9 (Overlapping speakers.)

10 Q. --mention of the fact that--so, you have essentially  
11 two papers and two events. You have the revocation which  
12 involves two people, and then you have the reappointment, and  
13 they're separated by less than a month, and those two people  
14 were reappointed.

15 A. They were reappointed?

16 Q. Yes.

17 A. Okay.

18 Q. Now, when that matter went back in Cabinet for the  
19 reappointment--for appointment, when the appointments were put  
20 before Cabinet, the memo that went to Cabinet from the Ministry  
21 did not mention the fact that two of the people being put  
22 forward for appointment had had their appointments previously  
23 revoked, nor did Cabinet Minute make any mention of it.

24 A. I would have to familiarize myself with the papers. I  
25 am not--I wasn't aware of that in that--

1 Q. If you--

2 A. If you are saying that is what's evidenced in the  
3 paper, I can't confirm because I have not read it, but--

4 Q. If you look at your written response, please.

5 A. Certainly.

6 Q. If you look at point 7 on the first page, just remind  
7 yourself of that.

8 A. Exhibit of my--

9 Q. Of your written response.

10 COMMISSIONER HICKINBOTTOM: No, no, no. I think it's  
11 point 7 of the criticisms.

12 BY MR RAWAT:

13 Q. The criticisms are set out first, and then underneath  
14 in bold is Ms Bertie's written response. And you're right,  
15 Commissioner, it's criticism 7.

16 A. Okay.

17 Q. Unless there is any objection, I can read out the  
18 criticism, if it will assist Ms Bertie.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 BY MR RAWAT

21 Q. No mention was made in the relevant Cabinet paper or  
22 Minutes of the fact that Dr Venzen and Ms Blaize-Cameron's  
23 appointments were revoked less than a month earlier.

24 A. Okay.

25 Q. That was the criticism. I accept you filed a written

1 response.

2 But is there anything else you want to say in relation  
3 to that criticism?

4 COMMISSIONER HICKINBOTTOM: I think, in fairness to  
5 Ms Bertie, unless there is any objection to this being read out,  
6 the paragraph at the bottom of that page which is Ms Bertie's  
7 response, the one beginning "the reappointment of," should be  
8 read out because that's her response to--

9 THE WITNESS: I can read it, if you'd like me to.

10 COMMISSIONER HICKINBOTTOM: Yes, there is no problem  
11 with you reading that out as far as I can see.

12 THE WITNESS: So, "the reappointment of Dr Yvonne  
13 Renee Venzen and Ms Kishelle Blaize, Members, was consistent  
14 with achieving a balance of expertise in the new Board."

15 Should I continue?

16 COMMISSIONER HICKINBOTTOM: Yes, please.

17 THE WITNESS: "The Cabinet Paper specifically  
18 mentioned that each of them had served on the HSA Board until  
19 16 May 2019. No confusion or misapprehension was likely to be  
20 caused by the fact that the Cabinet Paper did not specifically  
21 mention that those appointments had been revoked."

22 COMMISSIONER HICKINBOTTOM: So, that's your answer,  
23 really, to paragraph 7.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: Do you have anything to

1 add to that?

2 THE WITNESS: No, sir.

3 COMMISSIONER HICKINBOTTOM: Thank you very much.

4 BY MR RAWAT:

5 Q. If you could just help us, though, in that context,  
6 just with this, please. If you go to 3303 in that bundle.

7 A. Yes, sir.

8 Q. And 3304, so that's a memorandum from the Ministry  
9 concerning revocation of appointments. If you go to the next  
10 page, and look at paragraph 4, it then lists the present Board  
11 at the time.

12 Paragraph 5 says: "Three of the aforementioned  
13 Members"--I'm sorry, I'm going to pause for a moment because in  
14 listing the current membership, it then continues at  
15 paragraph 4, that three vacancies were created upon the  
16 expiration of the appointments of Ms Ayana Liburd, which was the  
17 Chairman, Mr Kenneth Hodge, the Deputy Chairman, and  
18 Mr Wellington Romney, the leader of the Opposition's nominee on  
19 the 19th of March 2019. And then it continues through the  
20 aforementioned members, Dr Venzen, Ms Blaize-Cameron, and Mr  
21 Romeo Frett, were appointed to the Board in January 2019 by the  
22 then Minister of Health and Social Development now the leader of  
23 the Opposition. At present, the leader of the Opposition is  
24 entitled to appoint two persons to serve on the Board. As such,  
25 in an effort to conform with section 5(3) of the Act, revocation

1 of these appointments is necessary to allow for the balance  
2 envisaged by the Act.

3 Now, the reason I draw your attention to that because  
4 it appears to link with the part of your written response that  
5 you just read out. So, could you just explain, I appreciate  
6 that you didn't draft this, and you weren't Permanent Secretary  
7 at the time, but just explain what that paragraph 5 actually  
8 means.

9 A. From my understanding, I believe this would have been  
10 at around a period when there was a transition within  
11 Government, so the Minister of Health at the time would have put  
12 forward his recommendations.

13 COMMISSIONER HICKINBOTTOM: I'm sorry, by the time,  
14 are you meaning January 2019?

15 THE WITNESS: So, the Minister of Health in January of  
16 2019 was not the Minister of Health in--

17 COMMISSIONER HICKINBOTTOM: Whenever it was later on?

18 THE WITNESS: Later on.

19 COMMISSIONER HICKINBOTTOM: Because of the change of  
20 administration.

21 THE WITNESS: Exactly.

22 COMMISSIONER HICKINBOTTOM: So, the Minister of Health  
23 in 2019, you were saying, put forward these appointments?

24 THE WITNESS: Right.

25 So, these--the three mentioned, Dr --

1           COMMISSIONER HICKINBOTTOM: Venzen, Ms Blaize-Cameron,  
2 and Mr Frett.

3           THE WITNESS: Were appointed to the Board in  
4 January 2019 as it's stating here.

5           COMMISSIONER HICKINBOTTOM: Yes.

6           THE WITNESS: By the then Minister of health.

7           COMMISSIONER HICKINBOTTOM: Yes.

8           THE WITNESS: Who had now become the leader of the  
9 Opposition.

10          COMMISSIONER HICKINBOTTOM: Yes.

11          THE WITNESS: So, I suppose in an attempt to ensure  
12 that that balance was still maintained, the reconstitution, in  
13 essence, was done to create that balance.

14          COMMISSIONER HICKINBOTTOM: Balance of what? What's  
15 being balanced?

16          THE WITNESS: So, the persons who would have been  
17 nominated by the leader of the Opposition would not necessarily  
18 be the same as the persons who were nominated by the Minister of  
19 Health.

20          COMMISSIONER HICKINBOTTOM: Yes, the individuals  
21 nominated by the Minister of Health under the previous  
22 administration--

23          THE WITNESS: Right.

24          COMMISSIONER HICKINBOTTOM: --might not be the same.  
25 It's a balance of what is sort of political balance.

1 THE WITNESS: Well, I wouldn't say "political  
2 balance."

3 COMMISSIONER HICKINBOTTOM: Yes.

4 THE WITNESS: It speaks on the nominations of the  
5 persons at the time.

6 COMMISSIONER HICKINBOTTOM: Right.

7 THE WITNESS: So, in essence, the persons nominated by  
8 the Minister of Health in January of 2019 not necessarily be the  
9 persons who would have been nominated by the Minister of Health  
10 in May or April of 2019.

11 COMMISSIONER HICKINBOTTOM: Yes. Okay. Thank you.

12 THE WITNESS: You're holding your head.

13 BY MR RAWAT:

14 Q. So, is the balance, as you understand it, between how  
15 many nominations can come from the current Minister as opposed  
16 to how many can come from the leader of the Opposition?

17 A. That's where I believe the balance lays, yes.

18 Q. All right.

19 A. So, based on the--I think the Act speaks to--

20 COMMISSIONER HICKINBOTTOM: The Act--and we can look  
21 at it if necessary--the Act requires two Members to be nominated  
22 by the leader of the Opposition?

23 MR RAWAT: Yes, nominated but not appointed.

24 COMMISSIONER HICKINBOTTOM: Correct.

25 THE WITNESS: And two--by the--yes, two by the leader



1 of the Opposition.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: The Chairman by the Minister in  
4 consultation--

5 COMMISSIONER HICKINBOTTOM: Correct.

6 THE WITNESS: --with the leader of the Opposition.

7 COMMISSIONER HICKINBOTTOM: Yes, that's correct.

8 BY MR RAWAT:

9 Q. The Minister makes all of the recommendations, but two  
10 of those can come from the leader of the Opposition?

11 A. That's correct.

12 Q. When we get to the Chairman, there has to be  
13 consultation--

14 A. With the leader--and the leader of the Opposition.

15 Q. --and it goes to the House of Assembly in any event?

16 A. Yes.

17 Q. So, if you, leaving aside the Chairman, in effect it  
18 means that however big or small the Committee is and it has to  
19 be a minimum of seven, there will be two people on there who  
20 have been nominated by the leader of the Opposition?

21 A. That's correct.

22 Q. And so, was it your understanding of this  
23 decision--this is obviously from discussions and researches  
24 you've made for the purposes of preparing your Affidavit--was  
25 that it was to reduce the numbers that had been put forward by

1 the previous Minister who is now the leader of the Opposition?

2 A. I wouldn't say to "reduce". I would say to ensure  
3 that it was in keeping with the stipulations of the Act.

4 Q. Which are that no more than two people on the Board  
5 can be nominated by the leader of the Opposition?

6 A. That's correct.

7 Q. I want to again--let's go back to your written  
8 response and just offer you fair opportunity to respond to  
9 everything.

10 The last one which is number eight, which is a  
11 compendious potential criticism, is that, following from the  
12 various matters that I've put to you is that no reasonable  
13 effort was made to identify and select the most suitable and  
14 qualified candidates for membership of the Health Services  
15 Authority Board. Is that something that you accept, or was  
16 there--

17 A. I don't see--I don't see it as a fair assumption, and  
18 a fair assertion, either. Reasonable effort again becomes  
19 relative based on how an individual would determine that because  
20 the efforts were not necessarily done on account of the  
21 assertions put forward before does not mean that there was not  
22 reasonable effort.

23 Q. And is that the particular part of the criticism that  
24 you would take issue with, that there wasn't reasonableness?

25 A. Yes.

1 Q. And that's reasonableness by Public Officers within  
2 the Ministry?

3 A. That's correct.

4 Q. You explained, and we've asked you about the internal  
5 process that goes on. I just--can I just ask you a couple of  
6 questions about the response itself, please, Ms Bertie.

7 A. As far as Question 8?

8 Q. Yes.

9 It follows down underneath. It's a response to all of  
10 the matters, but it's just that what you say is officials  
11 researched, considered and discussed with the Minister the known  
12 credentials of possible appointees in the light of the functions  
13 they were to exercise. Now, you've explained that CVs come  
14 later on in the process--

15 A. Sorry, where are you reading from?

16 Q. I'm looking at your response.

17 A. Second paragraph?

18 Q. Second paragraph.

19 A. Okay.

20 Q. Which you've got.

21 And if you can see I think seven or eight lines up.

22 A. Yes.

23 Q. Do you have it?

24 A. Yes, I'm with you now.

25 Q. Now, you've explained the process, nominations,

1 checked for consent, and then asked for CVs.

2           So, how did officials research the known credentials  
3 of possible appointees?

4           A. Their CVs would outline that information.

5           Q. But the CVs don't come at that stage?

6           A. So the question is...

7           Q. Well, the process is, as you've explained it, is  
8 nominations are made--

9           A. Recommendations are made.

10          Q. Right. I switched to "nominations" because that was  
11 your word.

12          A. Okay. Any of them could be utilized.

13          Q. But Permanent Secretary or the Minister can come up  
14 with nominations?

15          A. Yes.

16          Q. That creates the pool of candidates.

17                 What then happens is that you will contact  
18 candidates--

19          A. Um-hmm.

20          Q. --ask if they consent to serve?

21          A. Yes.

22          Q. And then get CVs?

23          A. Yes.

24          Q. So, my questions is directed at that first part?

25          A. Okay.

1 Q. You haven't yet got the CVs, so, what researches do  
2 you make to identify the known credentials of possible  
3 appointees?

4 A. I would add the element of consideration based on the  
5 nominees put forward, the individuals may very well discuss or  
6 have an understanding as to a basic background on these  
7 individuals that are being considered. For example, are they  
8 fit and proper individuals of the community, good upstanding  
9 citizens. Those are things that are considered in that light.

10 Q. But how do people come up with names?

11 A. How do they?

12 Q. How do you come up with names? I mean, just imagine  
13 you're in a room with Carvin Malone, and he says I want some  
14 names for nominations for the Board?

15 A. Well, within our--within the Ministry of Health, what  
16 we've done is look at, for example, individuals who may have  
17 retired from the Public Service, having had senior roles within  
18 Government, those sort of individuals may be considered or may  
19 be put forward for consideration.

20 We've also again looked at individuals who have  
21 necessarily been active in the community, whether doing  
22 community service or being involved in key agencies or rotary  
23 clubs, different organisations--different organisations under  
24 the ambit of committee service within--within the Territory.

25 Q. The second criticism that was made was that no

1 conflict checks were carried out.

2 A. No...

3 Q. Conflict checks were carried out.

4 A. Okay.

5 Q. So, that's the last page of your written response.

6 You will see that it's set out there.

7 Now, what checks are made of candidates to identify  
8 any potential conflict?

9 A. What checks are made?

10 Q. Yes.

11 So, you've got a suitable--a potential pool of  
12 candidates.

13 A. Yes.

14 Q. That reduces when you get CVs, possibly. It's at the  
15 stage before it goes to Cabinet. At that stage, do you make any  
16 check or is there any informal part of the discussion where you  
17 discuss conflicts of interest?

18 A. Possibly more informally.

19 Q. What factors would have you in mind in trying to  
20 identify a potential conflict of interest?

21 A. I really can't confirm what that would be. What--

22 Q. Let me try and help you this way. Go to 3271.

23 COMMISSIONER HICKINBOTTOM: 3271?

24 MR RAWAT: Yes, please.

25 BY MR RAWAT:

1 Q. Now, that's taking us back to the Cabinet Minute and  
2 it's back to the Minute that dealt with the appointments and as  
3 you'll see at paragraph 59, there is a reference to Mr Lemuel  
4 Smith being currently employed as a the Manager of Caribbean  
5 Basin Enterprises/CBE Engineering, a private company owned by  
6 the Minister for Health and Social Development. And what it  
7 concludes is the Cabinet was content to proceed with the paper  
8 and the recommendation.

9 Now, that's at the end of the process when Cabinet is  
10 dealing with a potential conflict that arises. You're obviously  
11 more involved at the beginning of the process as Permanent  
12 Secretary, but when you are, how do you--when you're trying to  
13 find candidates, how do you identify potential conflicts of  
14 interest?

15 A. Again that, in my estimate, would be very relative  
16 based on our knowledge, and more so the knowledge of the  
17 officers concerned with the matter.

18 Q. But do the officers have any guidance given to them?

19 A. No.

20 Q. Do they ask--are they given any advice about what to  
21 look out for as potential conflicts of interest?

22 A. No.

23 Q. In relation to these appointments from the work that  
24 you did preparing the Affidavit, did you come across any record  
25 of the stage that you would have been involved in or the

1 Minister officials would have been involved in, of the  
2 discussions being about a conflict of interest?

3 A. Not to my knowledge, no. I haven't.

4 Q. What was also said was that the procedure set out a  
5 paragraph 6.8 of the Cabinet Handbook were not followed, and  
6 you've responded there is no basis for the assertion that the  
7 steps contemplated at paragraph 6.8 of the Cabinet Handbook were  
8 ignored. Candidates were asked at the time they were approach  
9 to ascertain their willingness to serve and Officials are  
10 mindful of the need to avoid such conflicts when considering the  
11 suitability of a candidate. The Cabinet memorandum sets out the  
12 information required by the handbook and that considerations 6.8  
13 mandates were part of the informal process of discussion and  
14 decision-making that led to the proposals to the Cabinet.

15 Now firstly, going back to the point I just canvassed  
16 with you, you say Officials are mindful of the need to avoid  
17 such conflicts when considering the suitability of a candidate,  
18 given there is no guidance, no advice, you couldn't--to your  
19 knowledge, there was no discussion in relation to the points  
20 that we're considering. What's the basis for saying that  
21 officials are mindful of the need to avoid such conflicts when  
22 considering the suitability of a candidate?

23 A. Again, I would base this on an individual's knowledge  
24 of the persons being considered or any issues that may result on  
25 account of them being a part of the Board under consideration.



1           So, in essence, if I were to use an example, there may  
2 be an instance where an individual may very well have had--I  
3 want to use this example of using the Committee, for example,  
4 the Public Assistance Committee, persons being considered for  
5 that, given an individual's intimate involvement with the, I  
6 suppose, having knowledge of the Departments' functioning and so  
7 forth, that might seem as a positive element that can support  
8 the work of the Committee.

9           So, someone else may view it as a conflict, and on  
10 account that this individual may have too much information or  
11 too much working knowledge. Again, it could be looked at in a  
12 different light under another spectrum in that they have  
13 experience and information that would be useful to that process.

14           COMMISSIONER HICKINBOTTOM: I understand that that's  
15 an assessment that has to be made by somebody.

16           THE WITNESS: Exactly.

17           COMMISSIONER HICKINBOTTOM: On information that--

18           THE WITNESS: Exactly.

19           COMMISSIONER HICKINBOTTOM: But where does the  
20 information of that link come from, other than--

21           THE WITNESS: Personal knowledge.

22           COMMISSIONER HICKINBOTTOM: So, just up to the officer  
23 that the person is looking at the application or the nomination,  
24 having knowledge of that link?

25           THE WITNESS: That's basically where it is.

1 BY MR RAWAT:

2 Q. Putting it into context, the criticism is--or  
3 potential criticism is made in relation to the 2019  
4 appointments. Given what you have said about that, you're not  
5 in a position, are you, to say that the officials involved in  
6 that process in 2019 were mindful of the need to avoid such  
7 conflicts when considering the suitability of a candidate?

8 A. That could be a fair assumption. And again, it could  
9 very well be something that they may not have been aware of.

10 COMMISSIONER HICKINBOTTOM: Because there are no  
11 records?

12 THE WITNESS: There is no record, there is no  
13 stipulated guideline that provides all that should be done, it  
14 is based on what we call--I forget the term, where you ask for a  
15 background check, how would that be detailed, how would that be  
16 required in these processes?

17 COMMISSIONER HICKINBOTTOM: That's as if it were a  
18 question. No background checks are done at the moment?

19 THE WITNESS: As far as I'm aware, no.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 THE WITNESS: So, that is something that we could say  
22 should be a part of the due-diligence process, as we've  
23 outlined, again, it would be certainly something that could be  
24 considered and put as a part of our process to put forward  
25 nominations for consideration.

1 BY MR RAWAT:

2 Q. You also refer to an address, paragraph 6.8 of the  
3 Cabinet Handbook, in your written response, are there any  
4 particular aspects of that paragraph--section, rather--that you  
5 want to draw the Commissioner's attention to?

6 A. I would have to look for that section to see if there  
7 is anything in particular.

8 COMMISSIONER HICKINBOTTOM: Yes, where can we find the  
9 section--the paragraph?

10 MR RAWAT: Paragraph 2786, I hope, in the same bundle.

11 THE WITNESS: 2786?

12 COMMISSIONER HICKINBOTTOM: It is the right page,  
13 Ms Bertie.

14 BY MR RAWAT:

15 Q. Starts on 2785.

16 A. This stipulates how appointments should be made by  
17 Cabinet Members.

18 Q. Yes.

19 A. This guides the Cabinet Members in the process.

20 Q. Procedures for recommending appointments.

21 A. Okay.

22 Q. The potential criticisms put to you as Permanent  
23 Secretary is that procedures set out at paragraph 6.8 of the  
24 Handbook were not followed, and you've responded saying that no  
25 basis for the assertion, that steps contemplated in

1 paragraph 6.8 of the Cabinet Handbook were ignored. And my  
2 question was directed whether there was any particular part of  
3 6.8 that your response was directed?

4 A. I have no formal--no additional points to make in  
5 relation to that.

6 Q. Can you elaborate further, though, on your response?

7 A. From my understanding, the 6.8 section noted in 6.8,  
8 speaks to Cabinet arrangement in the appointment of persons to  
9 Boards and Committees, so I believe as is stated, it speaks to  
10 how they would manage that process, Cabinet meeting, the Members  
11 of Cabinet.

12 Q. I may have misunderstood the response because it's  
13 obviously a response directed to the Permanent Secretary of the  
14 Ministry, and you seem to be saying there that the  
15 considerations of 6.8 mandates, and you do say were part of the  
16 informal process of discussion and decision-making that led to  
17 the proposals to the Cabinet. And so, you seem to be saying  
18 that the points that are made in 6.8 were points that the  
19 Ministry had in mind before the matter went to Cabinet, and I  
20 just wondered were there any specific points, specific  
21 considerations in 6.8 you wanted to draw to the Commissioner's  
22 attention?

23 A. No, sir. I don't have any further attention to draw  
24 to any of those particular points. I think they're clear.

25 COMMISSIONER HICKINBOTTOM: And there are no records

1 of any consideration of the paragraph 6.8 criteria?

2 THE WITNESS: No, sir.

3 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

4 MR RAWAT: Commissioner, may I have a few minutes?

5 COMMISSIONER HICKINBOTTOM: Yes.

6 (Pause.)

7 MR RAWAT: Commissioner, those are my questions. Can  
8 I conclude by thanking Ms Bertie for making the time to come and  
9 give evidence today, but also for the way in which she's given  
10 that evidence.

11 COMMISSIONER HICKINBOTTOM: Yes, thank you very much,  
12 Ms Bertie.

13 THE WITNESS: Thank you, sir.

14 COMMISSIONER HICKINBOTTOM: As Mr Rawat said, the time  
15 and the gracious, clear and helpful way that you've given your  
16 evidence is much appreciated.

17 THE WITNESS: Thank you.

18 MR HAERI: Commissioner, may I just note as well that,  
19 what was said to be potential criticisms of Ms Bertie all relate  
20 to a period before she was actually the Permanent Secretary.

21 COMMISSIONER HICKINBOTTOM: Yes. I think Mr Rawat  
22 made that clear, that she's being asking these questions as the  
23 Acting Permanent Secretary, but we're very well-aware and  
24 sensitive to the fact that she did not become the Acting  
25 Permanent Secretary until June of this year.

1 MR HAERI: Thank you.

2 COMMISSIONER HICKINBOTTOM: Thank you. Yes?

3 MR RAWAT: Our next witness is due at 2:00,  
4 Commissioner.

5 COMMISSIONER HICKINBOTTOM: We've got--it's really  
6 outstanding business from the Hearing up for directions  
7 yesterday concerning the redactions to the elected Minister's  
8 response to the Governor. Can that be dealt with at 2:00?

9 MR RAWAT: Yes, it should be.

10 COMMISSIONER HICKINBOTTOM: In that case, and I don't  
11 think it will take very long, but we can certainly put the  
12 Minister off until quarter past 2:00, if that helps him.

13 Mr Haeri, we will deal with the outstanding matters on  
14 the redactions in respect of the elected Ministers' response to  
15 the Governor's Position Statement at 2:00 because we need to  
16 knock that on the head so that we can make some progress. I  
17 don't think it will take very long. But you probably heard what  
18 I said to Mr Rawat, if it helps the Minister to come at quarter  
19 past 2:00 rather than 2:00, that's absolutely fine.

20 MR HAERI: Noted. Thank you. I will convey that  
21 message.

22 COMMISSIONER HICKINBOTTOM: Otherwise, 2:00. Thank  
23 you very much.

24 MR HAERI: Thank you.

25 (Recess at 12:47 p.m.)

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Session 2

COMMISSIONER HICKINBOTTOM: Mr Rawat, we are ready to resume.

MR RAWAT: Thank you, Commissioner.

Before our next witness, who will be The Honourable Carvin Malone, there are just some matters which you intimated before we had the lunch break that we could usefully deal with at this point in time. Before I do so, can I just introduce the representations this afternoon. We have in the hearing room Ms Lauren Peaty for the Attorney General, elected Ministers, and she appears along with Mr Hussein Haeri and Mr. Edward Risso-Gill, who are both attending remotely.

Mr Rowe, who was here this morning for the other Members of the House of Assembly, does not appear to be present at this afternoon's session.

COMMISSIONER HICKINBOTTOM: And the particular thing we had to deal with before the Witness doesn't concern him?

MR RAWAT: It doesn't.

COMMISSIONER HICKINBOTTOM: No.

MR RAWAT: It doesn't.

If I can return to that, you'll recall, Commissioner, that yesterday, at the Directions Hearing that we held yesterday morning, one of the issues that's canvassed with Mr Haeri was the need to progress the Application for Redaction to the response that the elected Ministers had provided to the

1 Governor's Position Statement. You directed that what they  
2 should be is a covering letter which identified those parts of  
3 various documents that would be redacted together with the  
4 reason for the redaction being sought. Of course, as has been  
5 said and everybody is aware, ultimately redaction is a matter  
6 for you. But what we anticipate, therefore, would be an  
7 informed redaction application.

8 We did receive a response. It was in a form that was  
9 not what was expected and was not the conventional way of doing  
10 these things. It's not entirely clear what the basis of  
11 redactions is, but we have been able to consider the material.  
12 And taking care not to refer to matters specifically for reasons  
13 that I hope will become clear as I go through my submissions,  
14 they can be divided into three parts:

15 Firstly, that what has been sought by the Attorney  
16 General is the redaction of various e-mails and telephone  
17 numbers.

18 COMMISSIONER HICKINBOTTOM: E-mail addresses?

19 MR RAWAT: Yes.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 MR RAWAT: That's right.

22 Mr Rowe has joined us.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 MR ROWE: My apologies. Apologies, Commissioner, I  
25 left it on by luncheon break, and I'm--I was hearing you all,



1 but could not make the connection.

2 COMMISSIONER HICKINBOTTOM: We barely started, Mr.  
3 Rowe, and this particular matter doesn't concern you or your  
4 clients.

5 MR ROWE: Indeed, I appreciate.

6 MR RAWAT: But in terms of redaction of e-mail  
7 addresses and telephone numbers, those are redactions that we  
8 can accept.

9 The next category of redactions sought causes more  
10 difficulties, and that is redaction to a Cabinet document. I  
11 will come to an example in a moment, but the reason we don't  
12 accept it is what the IRU were asked to do was to provide a  
13 redacted version of the document with the redaction sought  
14 blanked out so they were not visible and a shaded version which  
15 allowed the material sought to be redacted to be still visible.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 MR RAWAT: They have done that. But there is a  
18 difficulty in assessing the redactions being sought because the  
19 translucent version and the blanked out version do not match.

20 A second issue is that redaction is now being sought  
21 in relation to matters which were canvassed at hearings and,  
22 secondly, which relate to points that are made in the response.  
23 You will remember, Commissioner, that yesterday, Mr Haeri  
24 confirmed to you that no redaction of the response was being  
25 sought. What was being sought was redaction of the annexes, but

1 the difficulty, of course, is that the response does not  
2 correspond to what is being sought in terms of the annexes.

3           And to give two example of matters that were canvassed  
4 at hearings--and I'll explain--and which are relied upon, and  
5 I'll give this more context. You'll remember that we, during  
6 private hearings, asked questions of Members of the Joint Task  
7 Force in relation to EZ Shipping and the purchase of radar  
8 barges. Those were at that time private hearings, but the  
9 Attorney General was given time by you, Commissioner, to  
10 consider the Transcript and seek any redactions that she wanted,  
11 including on the grounds of national security. The Hearings  
12 Transcripts were then published, and they have been on the COI's  
13 website for some considerable time.

14           From those Transcripts, it will become clear that I,  
15 on behalf of the Commission, asked questions of Customs  
16 Officials, of the former Police Commissioner, the Chief of  
17 Immigration that related to the radar barges issue, and they  
18 gave answers, and we went into it in some considerable detail.  
19 But yet we find ourselves now in the position where what is  
20 being sought--and I can give these two examples because they've  
21 actually been publicly referred to and, in one case, they are  
22 actually a matter of public record, but there was concern  
23 expressed particularly by Customs Officers over the use of  
24 smaller vehicle--

25           COMMISSIONER HICKINBOTTOM: Yes.

1 MR RAWAT: --or vessels--

2 COMMISSIONER HICKINBOTTOM: Yes.

3 MR RAWAT: --and that was used as a justification for  
4 moving into the radar barges contract. That was ventilated at  
5 the Hearing. It is on the Transcript.

6 Similarly, the offer of assistance from the UK,  
7 military assistance from the UK, was also something that was  
8 canvassed. These are matters which are relied on in the  
9 position and the response of the elected Minister, and we'll see  
10 that at paragraph 103 of that response; yet, at the same time,  
11 redaction of the underlying detail is being sought, so the left  
12 hand is not speaking to the right.

13 The third category is in relation what may be  
14 described as National Security Council/Joint Task Force  
15 documents. Again, that raises the same issue in that what is  
16 being sought is redaction of material or information that has  
17 already been aired in the course of our hearings with witnesses  
18 closer to the information than the elected Ministers are. It is  
19 also material, as I've indicated, that the elected Ministers  
20 appears to rely on in their own response.

21 There is an ancillary issue which it might be said is  
22 not a matter for the Commission but does bear on the application  
23 which, in my submission, the Attorney General needs to make and  
24 needs to get on with making, and that is it is not entitled, as  
25 a point I raised yesterday, who owns this NSC material? The

1 response has been provided on the part of the elected Ministers.  
2 What he said is that the material, because it is National  
3 Security material, attracts Public Interest Immunity. That has  
4 been said in previous correspondence from the IRU. The  
5 difficulty which I highlighted yesterday is the unwillingness of  
6 the IRU to go further than that. That's a point I'll come back  
7 to.

8           But if they are raising these issues in relation to  
9 NSC material, you, in my submission, will be assisted by clarity  
10 as to the basis on which the Attorney General now represents the  
11 NSC because the NSC is a separate entity under the Constitution  
12 and--just like the Cabinet is, but you had an Application for  
13 Participant Status from the Cabinet. You haven't had such from  
14 the NSC.

15           The reason I ask who owns the material--and I hope  
16 it's not a rhetorical question--is because the NSC may have a  
17 legitimate concern as to how this material is being handled. If  
18 it is--or contains information of such sensitivity that it  
19 attracts PII, then the question may arise: Why do elected  
20 Ministers, who are not sitting on the NSC, have access to it?  
21 It may also arise as to what security measures have been put in  
22 place by the lawyers representing the Attorney General, some of  
23 whom are based in London, some of whom are based in the BVI, not  
24 all of whom use a secure e-mail, to ensure that this material is  
25 properly being taken care of.

1           And I add at this point--and I don't want any  
2 confusion over this--that every member of the COI Team has been  
3 cleared to the highest level.

4           Now, the reason I say it has relevance is because the  
5 time has come to stop saying this is Public Interest Immunity  
6 and to actually make an application. As I tried to explain  
7 yesterday, a party cannot just simply raise Public Interest  
8 Immunity. As a category of exclusion, it falls to be determined,  
9 and what's needed is a proper application. What's needed now is  
10 a proper application that says, for example: The following  
11 parts of this documents, redaction is being sought because it is  
12 not relevant.

13           But, if it is being sought on grounds of Public  
14 Interest Immunity, the starting point is the concession is that  
15 it is relevant but sensitive, and what it then falls to you as  
16 Commissioner to do is to determine where the balance lies. But  
17 in order to do that, you have to have a properly set-out  
18 application that sets out the categories of national security  
19 that you're engaged, that is presented in such a way--and it's  
20 known as the "Part A Part B" process, such that Part A can be  
21 published and circulated to other participants if necessary, and  
22 Part B contains any submissions or information that is argued  
23 cannot be made to the public. That's where we are.

24           So, it comes down to this: We cannot accept the  
25 redactions that are being sought because there is no coherence

1 to them, and if PII is being asserted, we really must stop just  
2 running around with the phrase. The time has come to make a  
3 proper application.

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

5 Mr Haeri, no problem over the e-mail addresses and  
6 telephone numbers. I mean, I've obviously looked at all of this  
7 material. It seems to me that some of the e-mail address have  
8 been left in. I can't see any reason for them being left in  
9 where others have been taken out, but there is certainly no  
10 problem with the redactions that you claim over e-mail addresses  
11 and telephone numbers, so those redactions are fine.

12 But in relation to the other two categories, the  
13 Cabinet documents and the NSC and the JTF documents, what do you  
14 say about those?

15 I mean, just before you say anything, to obtain  
16 redactions, you obviously will need to make an application, but,  
17 in that context, where are we?

18 MR HAERI: Thank you, Commissioner.

19 Well, I think--I mean firstly, on the discrepancy  
20 point that Mr Rawat mentions, I think if there's a discrepancy  
21 between the translucent and opaque versions, then by all means  
22 we'll be grateful just to be pointed to it, and I'm sure we can  
23 readily reconcile that where we're looking at it anyway, so that  
24 shouldn't, I don't think, take up too much time.

25 I mean, I think in terms of the position on the

1 Cabinet paper, I mean, the approach that's been taken is to  
2 redact where there are issues of national security. That's a  
3 particular type of Public Interest Immunity to be weighed in.  
4 Of course, what we've done is given you, Commissioner, full  
5 versions to be able to see the information, and of course  
6 relevance is for you so as to determine if it's considered that  
7 certain passages which are currently redacted are relevant;  
8 then, by all means, you know, we can take that away and have a  
9 look at it and revert to you on that. So I think--

10 COMMISSIONER HICKINBOTTOM: Sorry, Mr Haeri, to  
11 interrupt. Just to pause for a moment. You've mixed apples and  
12 oranges there. Relevance is, of course, for me, but as Mr Rawat  
13 said, there's a difference between relevance and PII. That's  
14 the first question. At the moment, we don't know what--why you  
15 want these parts redacted.

16 MR HAERI: Because of national sec--because of PII,  
17 which--of which a subset is national security, as I was just  
18 explaining, so that's the reason why the redactions have been  
19 given.

20 If, however, you consider they're relevant, then, in  
21 the weighing of the public interest, you may determine that it  
22 becomes appropriate, nonetheless, to have them publicly  
23 disclosed, and if it could be indicated which passages in  
24 particular are considered by you to be relevant and you would  
25 wish to disclose, then it may well be that there isn't any point

1 of divergence on the ultimate issue.

2           COMMISSIONER HICKINBOTTOM: If you're relying upon  
3 PII, then you accept relevance, and you're relying upon PII,  
4 which is fine in a conceptual way. But you do have to put  
5 forward a justification for why you're claiming PII over this  
6 material. It's not sufficient. I'm afraid I'm old enough to  
7 remember when it was sufficient to--simply for a government to  
8 say "national security", but it's not now. You have to put  
9 forward justification.

10           And further, again a point made by Mr Rawat, that when  
11 you say that "we consider this", who is within the scope of  
12 "we"? Are you representing the NSC?

13           MR HAERI: I'm sorry, I thought we were talking about  
14 Cabinet papers right now. I wasn't on to the third point of NSC  
15 yet.

16           COMMISSIONER HICKINBOTTOM: Okay, fair enough.

17           In terms, then, of the Cabinet papers, you are able to  
18 put forward an application indicating precisely why you think  
19 that these parts should be redacted.

20           MR HAERI: Well, I mean, if an application is  
21 considered a good use of time and proportionate in the  
22 circumstances--this was raised yesterday, and we've responded on  
23 the issue, you know, within hours--but if an application is  
24 necessary and proportionate, we will put in an application.

25           COMMISSIONER HICKINBOTTOM: With respect, Mr Haeri,



1 that's not fair. You have responded, and you responded within  
2 hours of the Hearing, but you've only responded after a  
3 considerable amount of chasing from the COI Team.

4 But let's move on to the NSC material. What do you  
5 say about that?

6 MR HAERI: Well, we have had correspondence on the  
7 point, and I absolutely agree that there is correspondence back  
8 and forth.

9 The other thing I would just mention, still, on the  
10 Cabinet issue, is that it's one thing to make mention of a  
11 point, and it's another thing to publish it in its complete,  
12 unredacted form. But again, as I say, we're prepared to  
13 take--and those that instruct me--a constructive approach on it.  
14 So, if there are any particular issues, we can certainly take  
15 that away. I'll come on to the NSC point.

16 So, I think NSC documents are, of course, highly  
17 confidential; of course, they are highly sensitive; and they  
18 relate to issues of national security, and so that is the reason  
19 for, again, the reduction of material. That is not relevant in  
20 the first instance for the Commission of Inquiry. Of course,  
21 again, you see the material in unredacted form. Nothing is  
22 being withheld from you, sir.

23 And if you take a different view, then, again, I can  
24 take instructions and the NSC can consider whether to consent to  
25 the publication of the material, which is what they have done in

1 this context. So, the NSC has approved it formally and it's  
2 been submitted to the COI on a confidential basis, of course,  
3 relying on that framework and assurances, but the formal  
4 approval for it to be published has also been given by the NSC,  
5 and it's on that basis that you have the documents both in  
6 redacted and unredacted form.

7 But again, if there are specific issues where it's  
8 considered by you that redactions ought not to have been made,  
9 again, I can take instructions, and I can assure you that the  
10 approach of the NSC is not to withhold anything that's relevant  
11 to the particular points, similarly, as with the approach of  
12 Cabinet.

13 COMMISSIONER HICKINBOTTOM: So, you are representing  
14 the NSC, because they aren't a participant, you see.

15 MR HAERI: No, I'm not representing NSC, but what I  
16 can say is I'm aware of the NSC's approval, their consent to the  
17 publication of the material which has been shared. So, in that  
18 sense, I'm able to convey what it is they have approved, which  
19 hopefully should be of assistance to you.

20 COMMISSIONER HICKINBOTTOM: I'm not sure that you've  
21 allayed my concerns.

22 But, Mr Rawat, what do you say in response to those  
23 two areas? We're not worried about the e-mails and the  
24 telephone numbers.

25 MR RAWAT: The first point to make is that it's

1 difficult to understand the argument that relevance is not  
2 engaged here in circumstances when what we are considering is  
3 material that the elected Ministers chose to put before you.  
4 This is not material that came in by other means and which the  
5 COI has wanted to use. This is material that the elected  
6 Ministers positively say you need to consider.

7           And the second point I would make is that the NSC  
8 includes the Governor, and it might be important for Mr Haeri to  
9 confirm whether or not the correspondence he has had has  
10 included the Governor.

11           I'll pause there.

12           COMMISSIONER HICKINBOTTOM: Before he does--and my  
13 memory is struggling--but isn't the Chief--isn't the Police  
14 Commissioner also on NSC?

15           MR RAWAT: Yes. Again, from memory, it's the Premier,  
16 the Deputy Premier, the Attorney General, the Police  
17 Commissioner, both, I think, are non-voting. Then it's chaired  
18 by the Governor.

19           COMMISSIONER HICKINBOTTOM: Yes, okay.

20           MR HAERI: And this has been--yeah, and that has been  
21 approved. I don't think you're wrong in terms of members of the  
22 NSC. This has been approved by the NSC.

23           There are important, sensitive issues of national  
24 security to deal with, and if we wish--if you wish, we--to get  
25 into detail, perhaps it'd be more appropriate to have a private

1 hearing at least on this specific matter so that I can give some  
2 illustration. I would have thought it was not beyond the realms  
3 of consideration that the NSC would be dealing with sensitive  
4 issues of national security and that they would not wish those  
5 to be published. I would have thought that was relatively  
6 uncontroversial, but maybe I'm wrong.

7 COMMISSIONER HICKINBOTTOM: Well, no, I think it is  
8 probably uncontroversial.

9 Does that mean that within the IRU team, all--who have  
10 access to this document, all are security-cleared? Don't answer  
11 if you don't know.

12 MR HAERI: I can answer that all of IRU have access to  
13 this document have given an oath and a suitable undertaking to  
14 the satisfaction of the Attorney General.

15 COMMISSIONER HICKINBOTTOM: Do I take it that they  
16 have not been security-cleared by that answer?

17 MR HAERI: My answer is with regards to the oath that  
18 they have given with regards to confidentiality, I don't believe  
19 I could add anything further to that point.

20 COMMISSIONER HICKINBOTTOM: Okay. Well, I take it  
21 that they're not security-cleared.

22 MR RAWAT: Could I just come back on one point--

23 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

24 MR RAWAT: With--where I struggle with Mr Haeri's  
25 submissions is that his proposal doesn't fit in with the normal,

1 conventional approach to PII application.

2           The starting point, if you're going to make a PII  
3 application, is that you're saying that the material is relevant  
4 but sensitive and, therefore, must be redacted. So, an argument  
5 that the Commission has seen it in un-redaction form is  
6 irrelevant because if PII is upheld, it cannot be used.

7           The second point to the process is that it is not  
8 enough to say "national security". It's not enough to say  
9 "Public Interest Immunity". You have to say what interests are  
10 engaged specifically under PII.

11           And Mr Haeri speaks of a private hearing. We can have  
12 a private hearing but we--in order to have a private hearing, we  
13 need a properly set out PII application.

14           MR HAERI: Mr Rawat, if you genuinely want a  
15 constructive way forward to remove the redactions that you think  
16 need to be removed so that the Minister's response can be  
17 published as soon as possible, then I suggest that the most  
18 efficient way of doing that is to set out those passages that  
19 you think ought to be published, and we can get back as soon as  
20 possible. That would avoid any delay. And I'm sure it's in the  
21 interest of all to have this published as soon as possible, so  
22 we're in, in a sense, you know, tell us what you have an issue  
23 with on the specifics and we'll be glad to take it away and come  
24 back as soon as possible so we can remove that rather than  
25 creating one that we say we can't get around.

1           MR RAWAT: That's just not how it works. If you want  
2 it redacted, apply for it to be redacted.

3           COMMISSIONER HICKINBOTTOM: Mr Haeri, we have a  
4 witness waiting, and I'm anxious to get on with the evidence,  
5 but this must be dealt with, firstly, properly and, secondly,  
6 promptly. The proper way of dealing with it, as you know, is to  
7 make a formal and proper application to me for the redactions  
8 that you seek. I will then make a ruling on those redactions.

9           What I'll direct is that that application is made by  
10 4:00 p.m. on Thursday, and I will hear the application at 9:30  
11 on Monday. We simply cannot go around in circles, but the  
12 circle is broken by you making the conventional, the usual  
13 application in relation to a PII claim based on national  
14 security. It's not for me or for Mr Rawat or for anybody else  
15 to get at these matters. That's the way we'll proceed.

16           Can I just, I think, correct one point that Mr Rawat  
17 made. It's only a small point. He said the team have been  
18 security-cleared to the highest level. I think I probably have,  
19 but I think he meant being cleared to a sufficiently high level.  
20 There are, in fact, quite high levels of security clearance that  
21 are relevant. But in any event, we have been all  
22 security-cleared, which gives me some comfort, but you can't  
23 confirm that those who have had this document are  
24 security-cleared does not give me--

25           MR HAERI: When you say "this document", I'm referring

1 to an expedited extract of an approval so...

2 COMMISSIONER HICKINBOTTOM: I was referring to the NSC  
3 documents. Yes?

4 MR HAERI: And if you were referring to the NSC  
5 documents.

6 COMMISSIONER HICKINBOTTOM: Good.

7 Mr Haeri, is that okay? Is that clear?

8 MR HAERI: Commissioner, if you would like an  
9 application, then we shall--an application we shall make.

10 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
11 much.

12 MR RAWAT: Can I just--

13 COMMISSIONER HICKINBOTTOM: Yes.

14 MR RAWAT: --one final matter was while we have  
15 Mr Haeri with us.

16 On the 3rd of September, the COI wrote to the Attorney  
17 General in relation to Government leases, and the letter  
18 explained that, on the 7th of June 2021, we had written  
19 requesting an Affidavit from the Premier and the Minister of  
20 Finance in relation to this topic. That Affidavit has not yet  
21 been received.

22 We also wanted to have a response in relation to  
23 redactions and the use of--disclosure that we have received on  
24 the topic of leases at a hearing, and that--your direction was  
25 that the Attorney General do so by this afternoon. So, I would

1 just welcome if Mr Haeri could confirm firstly whether we are  
2 going to be given the proposed redactions on this material by  
3 4:00 p.m. today, and that's the material in relation to leases.

4 And secondly, when are we going to get the Affidavit  
5 that was requested on the 7th of June 2021?

6 COMMISSIONER HICKINBOTTOM: Mr Haeri, these requests  
7 are not made randomly. We are anxious to timetable our  
8 hearings. And you've asked us to prioritize. We have here  
9 prioritized. We just need to--a confirmation that we can go  
10 ahead on this topic with a firm foundation.

11 MR HAERI: Yes, I believe things are moving forward  
12 for Cabinet to approve a waiver, part with regard to the leases  
13 bundle, so that is in train. I don't know about whether  
14 4:00 p.m. today is going to be feasible, but I think it is in  
15 train, certainly.

16 COMMISSIONER HICKINBOTTOM: I mean, with respect,  
17 Mr Haeri, quite a lost things are in train.

18 MR HAERI: They are, sir.

19 COMMISSIONER HICKINBOTTOM: And the Cabinet do have a  
20 great deal to consider. What we want to know is, when are we  
21 going to get the Affidavit, and when are we going to get the  
22 redactions?

23 MR HAERI: Yes. And as I mentioned yesterday, sir,  
24 with--dealing with 59 Affidavits, there is a lot--there is lots  
25 to consider in addition to the very small public officials, the



1 Public Service running the jurisdiction, running the Territory.  
2 But having raised that Affidavit in particular today, that is  
3 helpful because it'll enable me to put a laser-like focus on  
4 that specific Affidavit that you just mentioned.

5 COMMISSIONER HICKINBOTTOM: Yes, the Affidavit was  
6 requested on the 7th of June. But are you able to confirm that  
7 we are going to get these by 4:00 p.m. today? Are you able to  
8 give us any indication of when we might get them? We are--we  
9 want to put this into the timetable, this topic into the  
10 timetable. It's difficult without any response from the  
11 Government.

12 MR HAERI: Yes, sir. I don't think it's no response  
13 from the Government. We've responded to three deadlines between  
14 yesterday's hearing and today. This one is moving, I can assure  
15 you. I can't give you an exact time right now, but I can tell  
16 you that all effort is being made to expedite it in the  
17 best-efforts way that is possible. We have been given--and the  
18 Government has been given--multiple, very tight time frames.  
19 Some may consider in some cases unreasonably short timeframes.  
20 And we appreciate, of course, that you have a timetable that is  
21 being set, and you wish to make it, and we're doing all that we  
22 can, and the Government is doing all that it can to assist you  
23 in full expedition towards that time frame that you have, sir.

24 COMMISSIONER HICKINBOTTOM: But you have no idea when  
25 we might get this information.

1 MR HAERI: I mean, I think to say "no idea" is  
2 probably overstating it. I mean, I'm not sure that I can say  
3 it's going to be in by 4:00 p.m. today. I can undertake to  
4 revert with an indication of timing in the course of today, if  
5 that would be helpful.

6 COMMISSIONER HICKINBOTTOM: Yes, please, by 4:00 p.m.  
7 today because I suspect that it's not going to appear by  
8 4:00 p.m. today. By 4:00 p.m. today, if you could please write  
9 to us setting out precisely when the Affidavit is going to  
10 arrive and when the response on redaction is going to arrive.

11 MR HAERI: So, that's in half an hour. In half an  
12 hour.

13 COMMISSIONER HICKINBOTTOM: By 4:00 p.m. today.

14 MR HAERI: I believe that's half an hour your time.  
15 Is that--oh, no. Maybe that's an hour and a half your time.

16 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr. Haeri, I  
17 simply don't know where you are.

18 MR HAERI: I'm in London. So it's--yeah.

19 (Overlapping speakers.)

20 MR HAERI: I think it's an hour-and-a-half.

21 Well, I'll be online with you at the Hearing and I'll  
22 visit the team, as well, but we will--alongside that--we will  
23 manage just to get you the response.

24 COMMISSIONER HICKINBOTTOM: Thank you very much.

25 And, as I say, just to put it into context, the

1 initial request was made on the 6th of March, the disclosure on  
2 this topic. The disclosure was what might be described as "bad,  
3 wholly disorganized and incomplete". That is why we asked for  
4 the Affidavit on the 7th of June, and it's now the 7th of  
5 September.

6 Good, thank you, Mr Haeri.

7 I think we're now in a position to move on to the  
8 evidence?

9 MR RAWAT: Yes.

10 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
11 much.

12 Thank you, Mr Haeri.

13 MR HAERI: Thank you.

14 (Discussion off the record.)

15 COMMISSIONER HICKINBOTTOM: Secondly, you have given  
16 evidence before.

17 THE WITNESS: Thank you.

18 COMMISSIONER HICKINBOTTOM: That oath still applies.  
19 We needn't swear you again.

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: Mr Rawat.

22 MR RAWAT: Thank you, Commissioner.

23 BY MR RAWAT

24 Q. Honourable Malone, thank you for returning to give  
25 further evidence to the Commission today.

1           A.    Yes.

2           Q.    You will see that just to your left there are a set of  
3 bundles, you don't need to open those immediately, but I may  
4 need to take you to some of the documents in there as we go  
5 through your evidence?

6           A.    Thank you.

7           Q.    Could I ask you, just as the Commissioner has done,  
8 just to remember please to keep your voice up. I need to  
9 remember the same thing, but you will see that there is a  
10 microphone in front of you. It's not--won't amplify your voice,  
11 so what we do need to do, it's important to hear you.

12                   And the lesson I've learned from this morning, the  
13 Witness this morning, was that we should both try and avoid to  
14 speak over each other, so hopefully we can do that.

15                   Can I just begin just by asking your view as a  
16 Minister as to your role. In section 56 of the Constitution  
17 describes that a ministry is under the direction and control of  
18 a Minister. Is that something that you agree with?

19           A.    Yes.

20           Q.    And obviously that direction and control extends to a  
21 Permanent Secretary who you will have supervising the Ministry  
22 on your behalf?

23           A.    That's correct.

24           Q.    Now, as I'm sure you'll be aware, the topic that the  
25 Commission is looking at at the moment is that of Statutory

1 Boards. Could you just confirm, which are the bodies that come  
2 under your Ministry?

3 A. Which are the Boards?

4 Q. Yes. Which Statutory Boards come under your Ministry?

5 A. Health Services Authority.

6 Q. What about the Public Assistance Committee?

7 A. I heard it being referred to today as a statute body.

8 It is under the Ministry. I thought Social Security and Health  
9 Services Authority were the two, but I understand that--that you  
10 had instructed the Ministry that it is deemed to be a statutory  
11 body.

12 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,  
13 Mr Rawat.

14 It's--because I don't think there is anything in  
15 this--

16 THE WITNESS: No, sir.

17 COMMISSIONER HICKINBOTTOM: It's a Body established by  
18 a statute. But I understand that you regard Boards such as the  
19 Health Board, as not exactly the same as the Committee, which is  
20 a Statutory Committee, but they're both under your umbrella.

21 THE WITNESS: They are.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 THE WITNESS: So, too are a number of other Boards,  
24 but those are in terms of statute body because even those who  
25 were in the Ministry 40 years and 25 years, they had to revert

1 back to--to the fact that that was under the--under the  
2 statutory body designation.

3 BY MR RAWAT:

4 Q. We heard evidence from Ms Tasha Bertie this morning,  
5 who is your Acting Permanent Secretary, and she explained that  
6 the two bodies, if you like, that she'd identified as coming  
7 under the Ministry are the Public Assistance Committee and the  
8 BVI Health Services Authority Board, which I'm going to refer,  
9 if I may, just as the Board?

10 A. Yes.

11 Q. Other than that, you mentioned the Social Security  
12 Board, that doesn't come under your remit?

13 A. Not anymore. It was before, and then it was reverted  
14 back to--sorry, it was moved to the Ministry of Natural  
15 Resources.

16 Q. That was actually going to be my next question because  
17 we're aware that when your administration came into Government,  
18 there was a reorganizing of ministerial portfolios. Was that at  
19 the time that the Social Security Board moved to another  
20 Ministry?

21 A. Yeah. It was moved months after, but yes, it was  
22 moved subsequently.

23 Q. Ms Bertie has helpfully provided two Affidavits to the  
24 Commissioner setting out the process by which--this is  
25 non-Government Members--are recruited to either the Board or the

1 Public Assistance Committee. She explains that they were made  
2 on your behalf. You received a Letter of Request from the  
3 Commission.

4 Have you been able to read those Affidavits?

5 A. Of hers?

6 Q. Yes.

7 A. Well, yes. Because once you--once we--once you had  
8 them approved by the particular lawyers and so forth, they came,  
9 and they were--they basically took it based on their positions  
10 in terms of in the office having prepared all the documents,  
11 they were able to prepare the Affidavits.

12 Q. Did you, yourself, have any input--

13 A. No, I wasn't able to read it or input on it.

14 Q. I don't want you to be caught about or be surprised  
15 but have you had a chance to look at those Affidavits?

16 A. No, because I know of what they were said, but the  
17 answers to them, no, because they were empowered to go ahead  
18 and--to answer them.

19 Q. I see.

20 Well, I think where we are is that you've had an  
21 opportunity to look at them, so--but if you need any help--

22 A. Sure.

23 Q. --in relation, do ask and I will try and do so.

24 What is clear from Ms Bertie's evidence is that--and  
25 I'm going to summarise the process in terms of recruiting or

1 selecting new appointees to either the Board or the Committee,  
2 and it's very much a summary, but it's going--within the  
3 Department, within the Ministry, there is an internal  
4 discussion, which will involve Permanent Secretary, Desk  
5 Officer, and yourself as a Minister.

6 A. Yes.

7 Q. Names are put forward, which are people are nominated.  
8 Once that pool of candidates is identified, at that point  
9 someone in the Ministry will go to them and say, "Are you  
10 willing to serve, and if so, give us your CV".

11 A. That's correct.

12 Q. And then that ultimately leads to a paper that is then  
13 put before Cabinet, because ultimately, you as Minister  
14 recommend to Cabinet, and Cabinet does approval, there is some  
15 difference there because, for example, the Chairman of the, I  
16 think it's of the Health Board has to be approved by the House  
17 of Assembly, but broadly, that's the detail. Would you accept  
18 that?

19 A. Yes. There are some times in the middle where you  
20 said that I would give to Cabinet and they approve. They will  
21 review. And then if--if agreed, they will approve.

22 Q. Fair enough.

23 But the point is that that--

24 A. Process?

25 Q. --the end of that process before it goes Cabinet, you



1 are at the end of that. You as the Minister can decide, well,  
2 I'm not going to recommend this person to Cabinet or I don't  
3 accept this nomination. Ultimately, it's your decision what  
4 goes in that paper and goes to Cabinet--

5 A. As the way it should.

6 Q. Now, you were sent a letter notifying you of potential  
7 criticisms.

8 A. Yes.

9 Q. And you helpfully provided the Commissioner with a  
10 written response to those potential criticisms.

11 A. Yes.

12 Q. And it's important that I refer to them as "potential  
13 criticisms".

14 A. Yes.

15 Q. Because the reason they are being put, Honourable  
16 Malone, is because the Commissioner wants to ensure procedural  
17 fairness to you.

18 A. Yes.

19 Q. So, they don't represent any concluded or provisional  
20 view of the Commissioner, as the letter explained to you.

21 A. Yes.

22 Q. Can I just, because we will want to look at some of  
23 the details of your response that we can put your evidence in  
24 proper context.

25 A. Sure.

1 Q. But can you confirm that you're content that that  
2 written response formed part of the evidence before the  
3 Commissioner?

4 A. That's correct.

5 Q. Thank you.

6 Now, if you could look, please, I'm afraid we will  
7 jump around the bundles a little bit. Part 4 bundle.

8 A. Part 4.

9 Q. If you go, Honourable Malone, please, to the back of  
10 the bundle to page 3962.

11 A. 3962.

12 Q. You should, if we're both on the right page, be at the  
13 Public Assistance Act of 2013?

14 A. That's correct.

15 Q. And that, as Ms Bertie explained, is the Act that  
16 underpins and creates the Public Assistance Committee?

17 A. Yes.

18 Q. And it also deals with a lot of matters in relation to  
19 the Committee, but it includes the process by which Members of  
20 that Committee--and if I explain, as we go through, when I'm  
21 referring to "Members," I'm going to be referring to anyone who  
22 is not an ex officio Member.

23 A. Yes.

24 Q. But Members, how they are appointed and, indeed, how  
25 they can be removed from the Committee.

1 A. Yes.

2 Q. And if we look at 3964, please, do you see section 3  
3 there?

4 A. "Establishment of Public Assistance Committee"?

5 Q. If I direct you to section 3(2), that I'm going to  
6 suggest to you shows the role that the Minister plays.

7 A. Sure.

8 Q. And that is that it falls to you to, with the approval  
9 of Cabinet, appoint not more than eight other persons that we  
10 see at (b), to the Committee, so these are the non-Government  
11 Members, and there are various categories of, if you like,  
12 criteria that are required.

13 Ms Bertie's evidence was that when the Ministry is  
14 looking for suitable candidates for the Public Assistance  
15 Committee, this is what they will have regard to. Is that a  
16 provision that you were aware of?

17 A. Yes, as it is with the other--with the other  
18 Board--with the other body, Health Services Authority.

19 Q. Just to reassure you, Honourable Malone, I will take  
20 you to that as well just so that we can have a look at it.

21 COMMISSIONER HICKINBOTTOM: But it's in similar form,  
22 you're right.

23 THE WITNESS: Yes.

24 BY MR RAWAT

25 Q. And then what it does is also say, and this is at

1 3966, if you could turn that up, please, Honourable Malone, at  
2 8, do you see there that there's a section that deals with  
3 tenure of office?

4 A. Yes.

5 Q. And the first one says that a "Member of the Committee  
6 can hold office for a period not exceeding three years but is  
7 eligible for reappointment."

8 A. Yes.

9 Q. At (2) it says the Member of the Committee can resign.  
10 But then at (3), we say, "the Minister may, by written  
11 notice, remove a Member, other than an ex officio Member, from  
12 office if satisfied that the Member has," and then it sets out  
13 four categories of things that the Member could--where the  
14 Members may need to be removed. So, the first one is absence.  
15 The second is bankruptcy. The third is conviction of an  
16 offense, including one of dishonesty. And the fourth is loss of  
17 mental capacity.

18 Now, Ms Bertie explained to the Commissioner her  
19 understanding was that those are the categories on which a  
20 Minister can remove, and there is no other power in the Act for  
21 the Minister to remove.

22 A. Based on how she explained it?

23 Q. Yes.

24 A. Yes.

25 Q. But is that what you understand the Act to give you as

1 power?

2 A. Well, this is the bone of interpretation, yes.

3 Q. Well, I want to take it in stages. It may be that  
4 you'll suggest in due course to the Commissioner there is  
5 another power or another statute or another basis on which you  
6 can remove Members?

7 A. On that I rely, yes.

8 Q. Yes. May I come back to that because I will give you  
9 a chance to explain that to the Commissioner, but just looking  
10 at this Act by itself, it does seem clear, doesn't it, that  
11 unless you can put someone into one of those four categories,  
12 you cannot remove them?

13 A. Based on the 3(a), (b), (c), and (d), yes, they're  
14 four distinct areas.

15 Q. And what it doesn't have is an (e) that says a Member  
16 of the Committee, the Minister can remove a Member of the  
17 Committee if he finds there's reasonable justification or it  
18 doesn't say the Minister can remove a Member of the Committee at  
19 his own discretion.

20 A. Well, as I'm saying, it is an area where the  
21 particular interpretation, but there are other areas in which  
22 this will come up for discussion, and we will get to that.

23 Q. So, I think we're at the same place, though, that the  
24 Act doesn't--it is what it is. If you can get someone into  
25 those four categories, you can act, but if you can't, you have

1 no power to do so.

2 A. Well, I wouldn't say I haven't any power under this,  
3 but there are other areas.

4 Q. You mentioned the BVI Board, and having told you I was  
5 going to call it the "Board," I haven't changed the name.

6 A. We call it the HSA, the Health Services Authority.

7 Q. I think I would like to stick to "the Board" because  
8 that's how I described it to Ms Bertie, which is a little bit  
9 more straightforward.

10 If you could put that bundle away, please.

11 A. I'm sorry, which bundle?

12 Q. Part 1. If you turn up, please, Honourable Malone,  
13 page 265. That's the first page of the BVI Health Services  
14 Authority Act, and it's the Act that, in part, establishes the  
15 Board.

16 A. Yes.

17 Q. If you turn, please, to page 269, this is the point  
18 that you made a few moments ago to the Commissioner, Honourable  
19 Malone. What's on that page is section 5(3) of the Act which  
20 sets that out you, as Minister, appoint again with the approval  
21 of the Cabinet, you can appoint no less than seven or more than  
22 nine Members to the Board, and it continues that--and I won't  
23 read it out, but it looks--points to knowledge and experience in  
24 various areas as indicative of the kind of person that you need  
25 to have serving on the Board.

1 A. Sure.

2 Q. That's right, isn't it?

3 Now, before we go on, again, you've got two bodies,  
4 two statutory bodies under the umbrella of your Ministry, both  
5 operating under two different statutes. Have you read both of  
6 those statutes?

7 A. Well, I did read it, yes, both of them, in fact, the  
8 number as I said, number of the Legislation. Our body has about  
9 25--25 Acts under the Health and Social Development.

10 Q. But obviously because we're interested in Statutory  
11 Boards--

12 A. The answer is yes.

13 Q. --these are the two Acts that I'm going to ask you  
14 about.

15 When did you first read them?

16 A. Well, we were elected 25th of February, and the Boards  
17 were coming up for review come, I think, the first set of Boards  
18 were being viewed by the Cabinet in March, and the HSA Board  
19 came up in April, so we were looking in terms of all Boards, so  
20 we had a chance to look through all of these. Sorry, under my  
21 Ministry, the one with Social Security, the one with HSA.

22 Q. I will just break that down a little because,  
23 obviously, you have, if you like, you wear more than one hat,  
24 and in this context you are the Minister but you're also a  
25 Member of Cabinet?

1 A. That's correct.

2 Q. So, if we break your answer down a little bit, as  
3 Minister, you're responsible for two bodies, Public Assistance  
4 Committee and the Board?

5 A. That's correct.

6 Q. And you've explained that one of those came up before  
7 Cabinet in March 2019. Before that to date, between your  
8 appointment and the Board to come up before Cabinet, when had  
9 you read these two statutes?

10 A. So, between election--

11 Q. Yeah.

12 A. --my point as Minister--

13 Q. Yes.

14 A. --and when it came up?

15 Q. Yes?

16 A. Well, it was after the appointment because I could  
17 have been appointed to any of the four Ministries.

18 Q. But, once appointed, how soon after that did you read  
19 these two statutes?

20 A. So many events that came between, but it was clearly,  
21 after we knew that we were looking at the Social Security Board,  
22 we were looking at the HSA, and we were looking at the other  
23 particular bodies, then they were read.

24 Q. So, certainly, when your bodies came before Cabinet  
25 and in public assistance, in the case of the Public Assistance



1 Committee there was a--

2 A. Accumulated, yes.

3 Q. But by then you were familiar with those statutes?

4 A. Well, I read it in terms of getting familiar with it  
5 because there is a very big Ministry, but the answer is yes, it  
6 was read as it relates to appointments and the others because  
7 there were some concerns in terms of how we move forward.

8 Q. Now, you spoke about Cabinet because you referred to  
9 all Boards, and so as a Member of Cabinet, you were involved in  
10 also looking at other Boards that were not under your Ministry;  
11 is that right?

12 A. That's correct.

13 Q. And when you were doing that, did you also take the  
14 opportunity to familiarise yourself with the statute that  
15 governed those other boards?

16 A. Well, only as it relates to the matters that came  
17 before the Cabinet at the particular time because, as you  
18 would--as you will appreciate, there are a number of other  
19 Boards and bodies, but the items that came before, specifically  
20 before Cabinet, then we had to familiarise ourselves with the  
21 papers that were being brought before us.

22 Q. If you turn up page 286, Honourable Malone.

23 A. 286.

24 Q. You've explained that, and I think it was March or  
25 April, that the Board came before Cabinet. It was April--wasn't

1 it?--and there was then I think Cabinet Decisions in relation to  
2 revoking some Members from the Board and also appointing new  
3 Members to the Board.

4 I just wanted to draw your attention to page 286 which  
5 is also part of the Act that regulates the Board, and it's  
6 schedule 1, and we're looking at section 1 of schedule 1, which  
7 relates to tenures of office, so it makes the point which we've  
8 seen in other statutes that the maximum appointment is three  
9 years, but someone can be appointed for less than three, can't  
10 they?

11 A. Yes.

12 Q. And then if we go over, please, to the next page 287,  
13 and look at number 3 there, that deals with how you, as  
14 Minister, with the approval of Cabinet, you can remove a Member  
15 of a Board, if you're satisfied that, and again I will  
16 summarise. Firstly, absence is one of them; secondly, is that  
17 they are disqualified under section 5(7) of the Act, and that  
18 section deals with circumstances such as somebody becoming a  
19 Member of the House of Assembly or becoming bankrupt or being  
20 convicted or being certified to be of unsound mind. And then  
21 the last two that you also have is that someone is unable or  
22 unfit to discharge his functions as a Member of the Board or is  
23 in breach of any condition imposed upon his appointment.

24 Now, first question is: Were you familiar with the  
25 statutory basis on which you, as a Minister, with the approval

1 of Cabinet, could remove a Member of the Board?

2 A. Yes. And further advice was sought, were sought.

3 Q. I think that's again something if we could come back  
4 to that, but I will allow you an opportunity to explain that  
5 further advice that was being sought, but certainly can we just  
6 confirm that you were familiar with these provisions before you  
7 started getting involved into decisions about the Board?

8 A. Well, the answer is yes, and as I said, being familiar  
9 with it, further advice was sought.

10 Q. I'm going to take you, as we go through, Honourable  
11 Malone, to the Cabinet papers that deal with the Board and the  
12 decisions that were made. That will be the point at which I  
13 will ask you, if I may, just to explain the basis of the context  
14 of further advice being sought. Okay. But again, it's right,  
15 isn't it, that when you look at that provision on its own it  
16 doesn't give you, under this Act, any other power to remove a  
17 Member from the Board?

18 A. Well, for the fifth time again, we knew exactly what  
19 it says, 3(1)(a), (b), (c), and (d), and as a result of that,  
20 further advice was sought, so that we can then get to the--

21 COMMISSIONER HICKINBOTTOM: So, again, I'm sorry I'm  
22 being pedantic or Mr Rawat is being pedantic, but you sought  
23 further advice because you were aware that paragraph 3 of this  
24 schedule did not allow the removal of a Member other than for  
25 those four reasons. That's why you sought further advice, as I

1 understand it. As I understand your answer.

2 THE WITNESS: Yeah.

3 COMMISSIONER HICKINBOTTOM: Thank you very much.

4 BY MR RAWAT:

5 Q. If you could turn now to take up--put that bundle away  
6 and if you could take part 3, please, Honourable Malone. If you  
7 turn up, please, page 2928.

8 A. 2928.

9 Q. This is a memorandum from the Premier's Office, and  
10 it's headed "Revocation of Membership of Statutory Boards under  
11 the Premier's Office." And I just want to draw your attention  
12 to some parts of it. If you could turn to the next page and we  
13 look at paragraph 4, please.

14 A. 2929?

15 Q. That's it. Thank you.

16 At least in that page it looks like double numbering  
17 of the paragraphs but it's number 4.

18 What's written there in this memorandum is: "With  
19 each new government administration it is common practice that  
20 some or all current Board membership is dissolved and new  
21 Members appointed to the respective Boards. The manifesto of  
22 the new government administration calls for innovative, forward  
23 and progressive ideas, initiatives and action from each  
24 Government Ministry, Department, and agency during this recovery  
25 period. For those initiatives that must be implemented through

1 a statutory body, the same principles for innovative, forward,  
2 and progressive initiatives and action will be required."

3 Paragraph 5 reads: "The manifesto of the new  
4 government administration places heavy emphasis on youth  
5 involvement in every aspect of the development of the Territory.  
6 As such, the intention is also to appoint a youth representative  
7 on each Statutory Board and Committee. In addition,  
8 recommendations will be forthcoming for a new policy to amend  
9 the membership terms of each Board to not extend beyond the  
10 terms of the sitting administration that appointed the Board."

11 The next paragraph reads: "As such, Cabinet's  
12 approval is being sought to revoke the membership of the current  
13 Statutory Boards under the Premier's Office portfolio to allow  
14 for the right mix of new innovative and progressive minded  
15 Members to be appointed that would include representation of  
16 youths on each Board."

17 And then if we take you through just to nine, please,  
18 that reads under the heading "Financial Implications", "I have  
19 noted the comments of the Attorney General when he stated", 'I  
20 have not had the opportunity to review the removal provisions of  
21 all the Boards (statutory cooperation or otherwise)'. To this  
22 end, it is critically important that Cabinet satisfies itself  
23 that even in the cases of the BVI Ports Authority and BVI  
24 Electricity Boards wherein there is express provision for the  
25 removal of Statutory Board Members and as cautioned by the

1 Attorney General, the discretionary powers of Cabinet must be  
2 exercised reasonably."

3 "In light of the above, before Cabinet takes the  
4 decision to remove any Board Director of a Statutory Board,  
5 Cabinet must satisfy itself that it not only has the power to do  
6 so as per the respective statutes establishing the Boards, but  
7 that in removing the Directors amass that this will not easily  
8 be construed by any arbiter as acting/behaving unreasonably. To  
9 act otherwise in these circumstances may expose Government to  
10 claims of unreasonable dismissals which in turn could result in  
11 huge financial liabilities being attached to Government."

12 I'm going to stop there, Honourable Malone, because I  
13 just wanted to draw your attention to the generality of this  
14 memorandum. I appreciate that it relates to Boards that fall  
15 under the Premier's umbrella, if you like, and not the Board  
16 specifically fall to you. But can I take you now, which I hope  
17 is in the same bundle, to 2737.

18 A. 2737.

19 Q. You should have, Honourable Malone, the first page of  
20 the Cabinet Minutes of a meeting on 27th of March 3029. It's  
21 meeting no. 2 of 2019. Do you have that?

22 A. I see Cabinet meeting no. 2, 2019. That's the heading  
23 on top?

24 Q. Yes.

25 A. Okay, fine.

1 Q. Thank you.

2 If you turn through now, please, to page 2739, we will  
3 see there where the memorandum of--that we have just been  
4 looking at was discussed by Cabinet. And again, I apologise,  
5 Commissioner, it might take a little time, but I think it's  
6 important if we just read some of the details of this part of  
7 the Minute into the record.

8 A. This is with the Board, HSA Board?

9 Q. No, again, do you remember the memo that I showed you  
10 just a few moments ago? I can take you back to it?

11 A. No, I remember.

12 COMMISSIONER HICKINBOTTOM: Just to clarify, the memo  
13 was just about the Boards under the Premier's umbrella.

14 THE WITNESS: Right.

15 COMMISSIONER HICKINBOTTOM: And this is the  
16 deliberations of that paper.

17 THE WITNESS: I know, but I will think that the  
18 Premier will come to go through this particular part except that  
19 you're saying that it has specific relevance to the Board, HSA.

20 COMMISSIONER HICKINBOTTOM: Correct.

21 BY MR RAWAT:

22 Q. And it also has relevance to you as a Cabinet Member  
23 and your reference earlier to the role--the fact that you were  
24 reviewing all Boards, and so before we get into that detail and  
25 indeed the detail about the Board or the HSA, it's important to

1 give it some context.

2 Under the heading "deliberations", it begins, and this  
3 is at paragraph 3:

4 "The Premier presented this paper.

5 The Chairman stated that specific reasons or a  
6 reasonable justification should be given to remove persons as  
7 Members of a Board. He asked if there were sufficient reason in  
8 this regard.

9 "The Attorney General confirmed that the BVI Tourist  
10 Board Ordinance does not reference removal of Members from the  
11 Board; therefore, in this instance, removal of Members can be  
12 carried out on the basis of discretion.

13 "The Chairman reiterated that there is no specific  
14 removal power in the ordinance and that he understands from the  
15 Attorney General that such a clause is included in the  
16 Interpretation Act.

17 "The AG said in cases where any powers are conferred  
18 by the Legislature, one should provide reasons for removal of  
19 persons and suggested that it better to provide reasons. The AG  
20 advised that if this administration wants to be a Government  
21 consistent with Public Administration, then reasons must be  
22 given for removal of Members of Boards.

23 "Members asked if there were any precedence of  
24 unreasonable exercise.

25 "The Minister for HSD"--that's Health and Social



1 Development--"commented that given its national mandate and that  
2 tourism is an economic pillar, it should be deemed reasonable  
3 that the Tourism Minister be comfortable with the membership of  
4 the BVI Tourist Board to move the sector forward and therefore  
5 should be mindful to appoint a Board that reflects his  
6 administration's mandate."

7 I'm going to pause, Honourable Malone, because that's  
8 a contribution by you. You seem to be saying--and, please,  
9 correct me if I'm reading this wrong--that--and this--obviously  
10 the debate is in relation to the BVI Tourist Board. The  
11 ordinance of that Tourist Board is different from the Acts that  
12 you had as Ministers because it didn't give specific basis on  
13 which you can remove someone, and the point you seem to be  
14 making here is that, if a Minister, a Minister has to be  
15 comfortable with the Board, and if the Minister isn't  
16 comfortable with the Board and the Board doesn't reflect the  
17 Ministry's mandate or the Administration's mandate, then that  
18 was a perfectly good reason to remove the Board. Was that your  
19 view?

20 A. Well, it goes in context in terms of the  
21 administration because it ran a particular campaign on making  
22 sure that we were able to deliver to the people of the Virgin  
23 Islands and whether it's going to be statute or otherwise, we  
24 were going to be able to have an inclusive body that would have  
25 the use, as we actually spoke about earlier, we were also, not

1 listed here, but we were going to have someone representing the  
2 sister islands.

3           Number two, we were going to have a number of other  
4 criterias based on the Act, in terms of how you appoint them,  
5 but you want to make sure, that there were areas covered within  
6 the reconstruct of the Boards to reflect so we can get it out.  
7 So, it is one in which it is not only for good feeling of the  
8 Minister but in terms of making sure the mandate that was  
9 promised to the people could be carried out.

10           Q. You don't in that intervention at paragraph 9 mention  
11 either youths or sister islands?

12           A. Well, it's--

13           Q. What you seem to be saying is if the Minister decides  
14 that the Board isn't in accord with the administration's  
15 mandate, then the Minister is perfectly justified in removing  
16 the Board?

17           A. As I'm saying, it's not just a feel but feeling. It  
18 is one in which was taken in a broader context of what we had.  
19 You read--you read earlier what the particular--from the memo of  
20 103 of 2019, that the manifest of the new Government  
21 administration calls for innovative, formal and progressive  
22 particular ideas, and this was in concert with that.

23           Q. So, your comment should be read in the context of that  
24 part of Memorandum 103 of 2019?

25           A. Yes.

1 Q. Let's read on, because the Minute continues. This is  
2 at paragraph 10.

3 A. May I?

4 COMMISSIONER HICKINBOTTOM: Certainly, yes.

5 THE WITNESS: What you will appreciate is that this  
6 was a total sum of one or two months being first elected to  
7 office, so we were basically--we were basically being--looking  
8 at the manifesto, looking at what the Government's agenda was  
9 and how best we can help this forward. So, we might well after  
10 21 months now, well, 31 months we can then have a better  
11 appreciation even for other areas that might need to be adjusted  
12 so that we can then get this done.

13 BY MR RAWAT

14 Q. May I come back to that point when we look at the  
15 decisions that were made in relation to your Board as well,  
16 please.

17 A. Exactly.

18 Q. Let's continue with the next part of this Minute:

19 "The Chairman stated that there should be an avoidance  
20 of risk of targeting people. He voiced his concern about the  
21 captioned paper," that's a reference to the memo, "and that he  
22 was not against its intention but he wanted to ensure that there  
23 was a demonstration of good governance procedure. The Chairman  
24 reiterated that justifiable reasons should be given to remove  
25 Members from a Board."

1           The next paragraph reads: "The Minister for Natural  
2 Resources, Labour, and Immigration mentioned that the decision  
3 was not for the removal of one person but the entire Board  
4 membership.

5           "The Minister for Health and Social Development asked  
6 the AG if Board Members had a legal recourse for being removed.  
7 The AG responded that anyone can go to court whether they have  
8 legal recourse or not.

9           "The Chairman asked if there was any operational  
10 liabilities or risk to revoking the appointments of the Members  
11 of the BVI Tourist Board or BVI Ports Authority.

12           "The Premier responded that there were no risks to  
13 either entity if they operated without a Board at this time.

14           "The Premier stated that his decision to revoke the  
15 membership of the Boards is on the basis that a new Government  
16 has assumed office with a new mandate, and as a result, he has  
17 decided to reassess the membership of all Boards in a manner  
18 that will allow the mandate given by the people to be expedited  
19 in a transparent and accountable manner.

20           "Furthermore, the Premier stated that he would be  
21 recommending a policy that the membership on Boards would extend  
22 for the duration of the administration's term in office."

23           The next part of the Minute is headed "action by", and  
24 that continues:

25           "The Premier would instruct his office to prepare a

1 Cabinet paper that the periods of appointments of Members  
2 serving on Boards would be commensurate with the  
3 administration's term in office, in consultation with the  
4 Attorney General's Chambers.

5 "In support, the Minister for Education, Culture,  
6 Agriculture, Fishery, Sports and Youth Affairs agrees that  
7 Boards should not exceed the tenure of an administration because  
8 it can prove to be challenging. The Minister said that despite  
9 the possibility of exposing the Government to certain levels of  
10 risks, when he weighs the potential for Boards to interfere with  
11 the Government's mandate, as a Member of the Cabinet, he was  
12 willing to be exposed to that risk. He stated that commitment  
13 to the current government's mandate from the people must be  
14 paramount because incorrect actions of the past and/or an  
15 association with a former party or administration could have a  
16 real impact on how matters progress.

17 "The Minister for Communications and Works voiced his  
18 agreement in support of the sentiments expressed with respect to  
19 the revocation of the membership of the captioned Board.

20 "Voicing his concerns, the Chairman said that the  
21 Cabinet has wide discretionary powers which should be used in  
22 accordance with principles of administration and not without  
23 justifiable reasons. This he said risks undermining the  
24 Cabinet's commitment to good administration and good governance.

25 "The Premier thanked the Chairman for noting his

1 concern on the matter but pointed out that the Chairman's  
2 definition of justifiable reasons differed from theirs."

3           The last part of this part of the Minute, which I will  
4 summarise, was--is headed the "Decision Sought," and it records  
5 that Cabinet approved the revocation of the appointments of all  
6 Members, except the ex officio Members of the following Boards  
7 with immediate effect, and that's the BVI Tourist Board and the  
8 BVI Ports Authority, and it then decided on an expedited extract  
9 being issued so that it could be acted upon.

10           Now, that's--you made the point that the two documents  
11 that we've looked at arose at a very early stage of your  
12 administration's tenure in office, but it's important to ask you  
13 to look at these because what I want you just to outline,  
14 please, is just you have spoken about mandates, and you've  
15 spoken about being innovative. What was, when you came into  
16 office, what was your administration or the administration that  
17 you were a part of, what was the policy in relation to Statutory  
18 Boards?

19           A. It was one in which, as we said again, and I think it  
20 was outlined in the earlier Minutes, in the earlier Cabinet  
21 Paper that you had, the manifesto of the new Government calls  
22 for innovative, forward and progressive ideas, innovative, and  
23 action from each Government, Ministry, Department or agency  
24 during the recovery period. For those initiatives that must be  
25 implemented through a statute body, the same principle of

1 innovation, forward and progressive initiatives and action would  
2 be required, and the manifesto for the new Government  
3 administration placed heavy emphasis on youth involvement. So,  
4 those same recounting of the particular paragraphs that you read  
5 earlier, and also in terms of making sure that we had.

6 Q. But isn't--can we simplify that a little bit more  
7 by--even particularly when we look at the decision that was made  
8 at this Cabinet meeting. The Policy of the Government of which  
9 you are a part of is to replace the membership of Statutory  
10 Boards, isn't it?

11 A. No. It's to reconstruct. I wouldn't--because, in my  
12 Board, you will see that some of the Members were reappointed,  
13 so it was a reconstruction to make sure that it fell in line  
14 with the particular Act and what was intended by the Act.

15 COMMISSIONER HICKINBOTTOM: So, when you said  
16 "reappointed," their appointments were revoked.

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: They were reappointed.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: And there was a  
21 reappointment process?

22 THE WITNESS: Yes. Because they were each considered  
23 together with any other new considerations.

24 BY MR RAWAT:

25 Q. Did you share the concern of the Minister for

1 Education, Culture, Agriculture, Fishery, and Sports and Youth  
2 Affairs when he said that commitment to the current Government's  
3 mandate that from the people must be paramount because incorrect  
4 actions of the passed and/or an association with the former--

5 A. You're reading from paragraph 19?

6 Q. Yes. Could have a real impact on how matters  
7 progressed.

8 A. Sorry. Repeat that reading?

9 Q. Right. We will both get a telling off from the  
10 Stenographer if we talk over each other, Honourable Malone.

11 A. Okay, sorry. So, I don't talk over you.

12 Q. And I won't talk over you, either.

13 A. Okay.

14 Q. So, if we look at paragraph 19, I've read it out  
15 twice, so I will try and summarise it this time.

16 But the Minister for Education--I will shorten his  
17 title--explained that he was prepared to take the risk of  
18 Government being exposed to certain levels of risks when he  
19 weighs that against the potential for Boards to interfere with  
20 the Government's mandate.

21 Do you agree with that, and are you prepared also to  
22 take that risk?

23 A. Well, my view is a status. I'm sure that you will  
24 call the Minister and have him explain exactly what all--what  
25 all they were.



1 Q. I'm sorry, could you just clarify that answer.

2 A. What I'm saying is there is not a "yes" or "no" answer  
3 to that particular question. What I'm saying is that my views  
4 were clearly expressed here in the note, and I'm going to  
5 express them to you as we move, so I'm not going to--I wouldn't  
6 be able to.

7 Q. Do you have a--did you or have you and do you have a  
8 concern that if you don't reconstruct Boards they can interfere  
9 with the Government's mandate?

10 A. No.

11 In terms of the reconstruction of the reapplication of  
12 the Board, they were done consistent--in my view, they were done  
13 consistent with what the two paragraphs in 103, paragraphs 4 and  
14 paragraph 5, and there were some additional one to make sure  
15 that we had also the sister island coordination of the persons  
16 involved in that.

17 COMMISSIONER HICKINBOTTOM: Did you have a concern, as  
18 the Minister for Education did, that Association of Board  
19 Members with a former party or administration could have a real  
20 impact on how matters progressed?

21 THE WITNESS: As I'm saying, in the context of the  
22 reorganisation of the Boards, I'm not sure if it was a matter of  
23 risks. We were looking in terms of fulfilling the mandate  
24 given. And in so doing, they were, as you will see in the case  
25 of the Health Services Authority, we were able to have some

1 reappointments of bodies and the particular stuff.

2           So, I'm not characterising risk or risks taken. I  
3 take different risks. I'm not sure if this could be categorised  
4 in terms of a risk in that which I, myself, would call on myself  
5 to actually go into section 19.

6           The Minister for Education will come, and he would  
7 actually support his argument.

8           COMMISSIONER HICKINBOTTOM: But just repeat the  
9 question. Were you concerned that an association of a current  
10 Board Member with a former party or administration could have a  
11 real impact on how matters progressed?

12           THE WITNESS: Well, it is a reality that there are  
13 Members who have been chosen could have that particular  
14 occurrence, but I was more concerned in terms of having a  
15 reorganisation of the Board to fit our particular concept of  
16 moving the Government's mandate and so forth.

17           So, there were specific criterias to be done, and it  
18 was not a narrow view that I held that the mandate could not be  
19 taken out, but we wanted to--we wanted to make sure that we had  
20 the youth involved, we wanted to make sure that the talent  
21 persons were involved, and persons who--who basically could have  
22 been reviewed in their larger context of the particular Act as  
23 to exactly what--how they were chosen because each of these Acts  
24 have a number of persons to be chosen by the leader of the  
25 Opposition. Each of them have specific professions that they

1 might have, and there are other important bodies that are  
2 specific, who are lawyers, who are medical persons, who are  
3 different actually professions, so they have a wide scope.

4 BY MR RAWAT:

5 Q. But, given your reliance on the Premier's memo, is a  
6 fair characterisation of your position that you were concerned  
7 to ensure that the Boards that you were responsible for as a  
8 Minister and also the Boards that were under the Government of  
9 which you were a Cabinet Member, were in line with the  
10 Government's mandate and did not seek to frustrate it?

11 A. Well, that's a reasonable thought, I would say.

12 Q. I told you we would get on to the Board, and let's get  
13 on to it now, please. If you could turn up page 3303,  
14 Honourable Malone.

15 A. 33?

16 Q. It should be in the same bundle that we've been  
17 looking at.

18 What I'm going to do, Honourable Malone, I'm going to  
19 take you through a number of documents just so that we have an  
20 understanding, and you have an understanding, of the chronology  
21 of events in relation to the Board.

22 So, what we see here is a memorandum from your  
23 Ministry. The very last page is at 3308, and it carries your  
24 name and the date 7th May, and if we go back to 3303, it sets  
25 out in the background information the role of the Board. And

1 then at 3, it gives you section 5(3) of the Acts that we've been  
2 looking at which summarises the membership and the categories of  
3 people that from whom Members ought to be drawn. And if we look  
4 at 4 on 3304, we see there that the memorandum records, "in  
5 addition to its ex officio Members, the present Board is  
6 comprised of Professor Joseph Frederick, Ms Marlene Alva McCall,  
7 Mrs Helen Frett, Dr Yvonne Renee Venzen, Mrs. Kishelle  
8 Blaize-Cameron and Mr Romeo Frett." It explains that three  
9 vacancies were created because there had been the expiration of  
10 appointments of three people.

11 So, at that time, the Board was only six people, and  
12 the statute, as we can see, mandates that it must be actually  
13 seven.

14 It goes on at 5 to say: "Three of the aforementioned  
15 Members, Dr Yvonne Renee Venzen, Mrs Kishelle Blaize-Cameron,  
16 and Mr Romeo Frett, were appointed to the Board in January 2019  
17 by the then Minister for Health and Social Development, now the  
18 leader of the Opposition. At present, the leader of the  
19 Opposition is entitled to appoint two persons to serve on the  
20 Board. As such, in an effort to conform with section 5(3) of  
21 the Act, revocation of these appointments is necessary to allow  
22 for the balance envisaged by the Act."

23 Could you assist the Commissioner, please, with just  
24 explaining the last part in particular of that paragraph that  
25 revocation of appointments was necessary to allow for the

1 balance envisaged by the Act.

2 A. Yeah, to get to the last part we have to get to the  
3 first part. Elections were held in February of 2019. The  
4 Minister for Health made these three appointments knowing that  
5 30 days later elections would be held.

6 And he was also, as leader of the Opposition, entitled  
7 to get another two as leader of the Opposition. It would not  
8 have given the same construct, in my mind, in terms of a  
9 balanced view in terms of--envisaged by the Act, number one, and  
10 would not be consistent with what we spoke about, making sure  
11 that there were a specific construct of the Board.

12 COMMISSIONER HICKINBOTTOM: A political construct?

13 THE WITNESS: Not at all.

14 COMMISSIONER HICKINBOTTOM: I don't understand the  
15 observation then.

16 THE WITNESS: Well, the observation is is that we  
17 wanted to make sure that we had a youth, we had a sister island  
18 coordinator, we had two Members that were going to be selected  
19 by the Opposition, and we had the other Members selected by the  
20 Minister.

21 In this, in that, leader of the Opposition, the  
22 Minister upheld in January of 2019 were all the same person.

23 COMMISSIONER HICKINBOTTOM: No, I understand that the  
24 Minister of Health in the last administration was the leader of  
25 the Opposition by April 2019. I understand that.

1 THE WITNESS: Yeah.

2 COMMISSIONER HICKINBOTTOM: But so what?

3 THE WITNESS: So--no, there would be five persons in  
4 the particular view that would be selected--

5 COMMISSIONER HICKINBOTTOM: By whom?

6 THE WITNESS: Well, the same person being the Minister  
7 of Health in January, and the leader of the Opposition in May or  
8 April of 2019.

9 COMMISSIONER HICKINBOTTOM: I understand that, but  
10 they were chosen by the Minister of Health in January?

11 THE WITNESS: Yes. And who happened to be in the  
12 Ministry of Health and the leader of the Opposition. All in one  
13 and one at all.

14 COMMISSIONER HICKINBOTTOM: Not at the same time. He  
15 was the Minister of Health in January 2019 when he made the  
16 appointments?

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: So, that's fine. He  
19 wasn't the leader of the Opposition then.

20 When it came--

21 THE WITNESS: The elections would come in 30 days.

22 COMMISSIONER HICKINBOTTOM: Okay. But as I say--I  
23 don't say this pejoratively, but that's what the Act said. So,  
24 I don't understand the point at the moment. I don't understand  
25 the point, if you could explain it.

1 THE WITNESS: Well, I'm trying to. I'm saying that it  
2 would have been a Board in which there were basically--we have  
3 earlier by the same readings that Mr Rawat had said, say we were  
4 going to look at all the Boards to make sure that they fit all  
5 the criterias in terms of getting the innovations in terms of  
6 doing it--and doing it in a--doing it in a matter that were  
7 consistent with what the Ministry were doing because we couldn't  
8 come in and change up what the Ministry itself how they had  
9 looked in terms of Board Members.

10 So, it was fitting that the Permanent Secretary or the  
11 Acting Permanent Secretary explained and expressed exactly how  
12 the Members for the Board were looked at and how they were  
13 chosen.

14 BY MR RAWAT:

15 Q. I mean, this is--it's your concern, isn't it,  
16 Honourable Malone, your concern is you come into office. If you  
17 look at paragraph 4, you come into office and you inherit a  
18 Board which has--well, in fact, it's got eight Members, hasn't  
19 it? So, when you come in in February 2019, 9 people are still  
20 on the Board, aren't they, because Mr Hodge, Ms Ayana Liburd and  
21 Mr Wellington Romney who was recorded as the leader of the  
22 Opposition's nominee, were still in post. Their time on the  
23 Board did not expire until the 19th of March. That's right,  
24 isn't it?

25 A. Yes.

1 Q. So, you inherit a Board that has a full complement.  
2 By the time you start getting ready to take this back to  
3 Cabinet, you've lost three people through the expiration of  
4 their terms, so your Board is now down to six, isn't it?

5 A. Yes.

6 Q. And you will have to make appointments as Minister to  
7 bring it up. You would have to at least make one appointment,  
8 wouldn't you, because you need seven Members under the Act?

9 A. That's correct.

10 Q. But your concern is that the three--three of the  
11 people still on the Board had been appointed in January 2019,  
12 shortly before the election by someone who became the leader of  
13 the Opposition?

14 A. Well, it was that, number one, because that was  
15 clearly stated in the text in number--in no. 5, so what we're  
16 saying is that, consistent with the decision that was made from  
17 the text that you read earlier, we were looking in terms of  
18 making sure that the Board was reflective of all of the  
19 initiatives and all of the items that the Government had put  
20 forward, so we were looking in terms of the construct of it.

21 And in that, these new persons, because at the time  
22 they could not meet the Board because the particular Chairman's  
23 tenure was done, the Deputy Chair was done, and the Board itself  
24 couldn't meet, so it was at least three new persons who would  
25 not have had--who would not have met as yet. It was even more



1 appropriate and fitting to relook. And as I said before, there  
2 are Members of this Court that were reappointed.

3 COMMISSIONER HICKINBOTTOM: But your concern was that,  
4 if you didn't act in this way by revoking all of them, the  
5 Members, and then relooking, is that you would have a Statutory  
6 Board that would not fulfill your mandate.

7 THE WITNESS: Well, it was actually consistent with  
8 what we said here in terms of what the Government as a whole,  
9 Cabinet as a whole, had actually decided.

10 COMMISSIONER HICKINBOTTOM: No, I understand that.

11 THE WITNESS: I know.

12 COMMISSIONER HICKINBOTTOM: This is not a personal  
13 view. This was driven by Cabinet.

14 THE WITNESS: Well, it was a collective view in terms  
15 of looking at all the Boards.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 THE WITNESS: To make sure that we have in terms of  
18 the mandate of a particular government and because there were  
19 ways in which the particular Boards would have to be reaffirmed,  
20 and most of the Members here who are placed back on the Board.

21 COMMISSIONER HICKINBOTTOM: Sorry, I absolutely  
22 understand that, and I'm sure Mr Rawat will come to it.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: But the reason for the  
25 revocation because their membership was revoked, the reason for

1 the revocation, according to paragraphs 4 and 5 is, it seems to  
2 me, is that you were concerned that if you did not revoke them  
3 and relook at them, you would end up with a Board that would not  
4 pursue your administration's mandate.

5 THE WITNESS: The entire--

6 COMMISSIONER HICKINBOTTOM: There is no reference here  
7 to youths or sister islands. Here, and this is the Cabinet  
8 Paper--

9 THE WITNESS: But it has to be taken as a whole,  
10 doesn't it?

11 COMMISSIONER HICKINBOTTOM: The paper does because  
12 it's your paper.

13 THE WITNESS: Yeah, but he took me through others. He  
14 took me through the ones with the Premier and was trying to get  
15 me to confirm what the Minister of Education was saying and what  
16 the Minister of Natural Resources was saying.

17 So, I'm saying is that it was all--we're in  
18 Government, we're in Government 45 days and 60 days and so  
19 forth. There was a decision made to look at the  
20 construct--reconstruct of the Boards, and those persons that,  
21 even though they were on the Board were going to  
22 basically--Mr Ken Hodge, he returned to the Board, Yvonne  
23 Venzen, she returned to the Board.

24 COMMISSIONER HICKINBOTTOM: But you didn't revoke  
25 Mr Hodge. Because he had gone anyway by the fluctuation of time

1 on the 19th of March.

2 THE WITNESS: Yeah, but he was actually--he was  
3 actually--no, he was not revoked, but he was actually appointed.

4 MR RAWAT: I don't think he was.

5 THE WITNESS: Mr Hodge?

6 COMMISSIONER HICKINBOTTOM: We're looking at the  
7 rev--we're looking at the revocations, and I know that some  
8 these were--some of these people were reappointed.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: But paragraph 5 comes over  
11 as strongly suggesting that the driver here was a concern, that  
12 the Board, if you didn't take action, the Board would not  
13 pursuit the new administration's mandate.

14 THE WITNESS: Well, we were less concerned on that,  
15 and to the point that we had a mandate, I was looking at the  
16 positive view of it. We had a particular--we had a new  
17 government. We had some specific innovative, forward,  
18 progressing and the persons there.

19 So, you're saying the glass is half empty, I'm seeing  
20 it as half full, and I was breaking it up, too.

21 COMMISSIONER HICKINBOTTOM: So, we're both right.

22 THE WITNESS: Well, right, okay, fine. We could be  
23 deemed as both right.

24 COMMISSIONER HICKINBOTTOM: Mr Rawat. Sorry.

25 BY MR RAWAT:

1           Q.    Trying to keep it simple but before we move on,  
2 though, Honourable Malone, this paper does not reference the  
3 matters that you've pointed to, and we've looked at it in the  
4 Premier's paper. It doesn't refer to the--if you could let me  
5 finish--it doesn't refer to the need for innovation, et cetera.  
6 What it comes down to is that what your concern was that three  
7 appointees still on the Board had been appointed by the person  
8 who was now the leader of the Opposition, and the leader of the  
9 Opposition would, according to this paper, be able to appoint  
10 two more people. The result would be that, on that Board, when  
11 it had its full complement, particularly if you went up to  
12 seven, would actually have a majority of people on the Board who  
13 had been appointed by the leader of the Opposition. That was  
14 your concern, wasn't it?

15           A.    You correctly took me through all of the other  
16 readings as to exactly what framed our minds in terms of the  
17 Board's revocation.

18                   In addition to that, yes, the particular areas  
19 because, if you have five of them nominated, five persons  
20 nominated by the very same leader of the Opposition, who was  
21 then the Minister, then that will be not consistent with what  
22 the Act was.

23           Q.    And that's--what you're saying is that the reference  
24 to the balance envisaged by the Act is that only two people on  
25 that Board can be--can come from the leader of the Opposition.

1 A. Well, sure, yes.

2 Q. And so, even though he might have appointed them when  
3 he was a Minister, because he was now the leader of the  
4 Opposition, your view was that he effectively had more than what  
5 he was allowed under the statute?

6 A. Yes.

7 Let's actually agree on that.

8 Q. And your assumption at the time of drafting this--I  
9 know you're going to tell me that people were reappointed, but  
10 the assumption of this phrase is that because the three Members  
11 had been appointed by the person who became the leader of the  
12 Opposition, they would inherent--

13 A. 30 days earlier.

14 Q. They would be inherently be against your mandate?

15 A. 30 days earlier. I didn't--

16 (Overlapping speakers.)

17 A. My mandate was not the overriding criteria here. I'm  
18 not sure--I'm being asked this about 12 times now. Being  
19 against the mandate was not the overriding criteria. I was  
20 trying to say to you that the glass--my glass is half full, so  
21 we look at it in terms of having the Government's particular  
22 manifesto. I know it doesn't fit your narrative but at the end  
23 of the day, this is what I'm saying. It's my narrative.

24 COMMISSIONER HICKINBOTTOM: It doesn't fit  
25 paragraph 5. That's the problem.

1 THE WITNESS: I know, but if you look at the earlier  
2 readings in terms of--

3 COMMISSIONER HICKINBOTTOM: I understand that.

4 THE WITNESS: You said look at this, because on a sum  
5 total--

6 COMMISSIONER HICKINBOTTOM: I'm terribly sorry, and I  
7 didn't mean to be rude.

8 You're saying that this paragraph 5 has to be read in  
9 the context of everything including that which Mr Rawat has read  
10 out, and possibly some other things?

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: Is that fair?

13 THE WITNESS: Yes. It has to be read in context with  
14 what we, as a Government and new Government, seven out of eight  
15 and seven the first time and only one Member serving for more  
16 than one term. So, I'm saying that at the end of the day, this  
17 was what was sought, and most of the folks I know, so  
18 it's--there is no--there is no--it doesn't go in context with  
19 what you are purporting. That's your context and not mine.

20 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, can I  
21 just ask one more question, putting this into context because I  
22 understand that point.

23 I don't think it's in this paper, somebody will tell  
24 me if I'm wrong, and somebody will tell you and me if I'm wrong.  
25 I don't think that this is a point mentioned in this paper, but

1 in other papers about other Boards, and I think in the Premier's  
2 paper, there was an additional provision which was agreed by  
3 Cabinet, that the appointment should be until the end of the  
4 administration.

5 THE WITNESS: Yes. It was written here.

6 Sorry, not in this paper, but it was read out by  
7 Mr Rawat.

8 COMMISSIONER HICKINBOTTOM: So, that's part of the  
9 context.

10 THE WITNESS: Yes, this part here, in terms of this,  
11 yes.

12 COMMISSIONER HICKINBOTTOM: Thank you very much.

13 BY MR RAWAT:

14 Q. I will move on, if I may.

15 Before I do, Honourable Malone, I just want for the  
16 record to say I'm not--I don't have a particular narrative to  
17 put to you. My role is to explore the evidence with you and to  
18 ensure that you are treated fairly, and I do that by putting  
19 propositions to you that give you an opportunity to answer and  
20 explain to the Commissioner.

21 COMMISSIONER HICKINBOTTOM: Mr. Rawat, just pausing  
22 only because of the Stenographer.

23 MR RAWAT: Yes.

24 COMMISSIONER HICKINBOTTOM: As you know, we have a  
25 Stenographer, and I think he's been going an hour and three

1 quarters, which is quite a long time. Is now a convenient time  
2 to have a break?

3 MR RAWAT: Yes, it is.

4 COMMISSIONER HICKINBOTTOM: We will have a five-minute  
5 break and then come back. Thank you very much.

6 THE WITNESS: Sure.

7 (Recess.)

8 COMMISSIONER HICKINBOTTOM: Good. Thank you,  
9 Mr Rawat. We are ready to go again.

10 MR RAWAT: Thank you, Commissioner.

11 BY MR RAWAT:

12 Q. Honourable Malone, just staying with the document that  
13 we were looking at before the short break, we are going to try  
14 to summarise it rather than read it out now, but what we see is  
15 that paragraph 5 had dealt with three Members of the existing  
16 boards, and at paragraph 6, in relation to Professor Joseph  
17 Frederick, it was noted that he was stationed overseas and  
18 unable to physically attend meetings, and it was noted that the  
19 preference is to have Members to physically attend meetings and  
20 actively participate in the various committees of the Board.

21 And then at 7, in relation to Ms Alva McCall, that it  
22 notes that she's now working as a Public Officer in a capacity  
23 where decisions are made that could impact the Health Service  
24 Authority, and therefore it would be best she no longer serve as  
25 a Member of the Board.



1           Now, pausing there--and I hope keeping it short, but  
2 the reasons that are set out there--and I will come on to the  
3 wider context with my next set of questions--that you've got at  
4 5 appointment by the leader of the Opposition as an issue; at 6,  
5 the fact that one Member can physically attend; and at 7, the  
6 fact that another Member was working as a public authority. But  
7 it's right, isn't it, when we go back to the Act and the basis  
8 on which you as Minister could remove people from the Board,  
9 none of those are--come within the scope of the Act, do they?

10           A.    Except for the advice received otherwise.

11           Q.    Yes. I accept that your point is that there is a  
12 wider context.

13           A.    Yes.

14           Q.    But my question is directed to the Act. The Act  
15 doesn't give you a basis to remove the people discussed in this  
16 paper for the reasons that you're giving?

17           COMMISSIONER HICKINBOTTOM: Another way, Minister, if  
18 I may, the power that you had to remove these people does not  
19 come out of this Act?

20           THE WITNESS: Well, yes, because the Act doesn't look  
21 in terms of the other--the other advice on which we actually  
22 relied.

23           COMMISSIONER HICKINBOTTOM: But the power may have  
24 arisen from somewhere else--I understand you said that it did,  
25 but it didn't arise out of this Act?

1 THE WITNESS: No.

2 COMMISSIONER HICKINBOTTOM: Thank you very much.

3 BY MR RAWAT:

4 Q. If we turn to 3305, then, which is in the same paper,  
5 and the reading is "Legal Implications," and it says that no  
6 specific provision in the BCI Health Services Authority Act for  
7 removal or revocation of the appointment of Members of the  
8 Board, but section 20 of the Interpretation Act gives any person  
9 the power of that authority of discretion to remove the  
10 appointee. And it continues, as I pointed out in previous  
11 Cabinet papers there and subject to revocation of appointments,  
12 the exercise of the discretion to revoke, appointments must be  
13 in good faith, reasonably, and for the purpose of the Act. The  
14 reason provided in the Cabinet paper would appear to be a good  
15 basis for the exercise of the discretion to revoke.

16 Was that the further advice that you were--

17 A. Yes.

18 Q. Now, it seems to be inconsistent with the wording of  
19 the Act itself because the wording of the Act does provide a  
20 specific provision for the removal of people appointed to the  
21 Board, doesn't it?

22 A. Well, that's a legal sentence that you--that my  
23 legal--

24 Q. But, with respect, it's not a legal sentence. It's  
25 what the Act says.

1           A.    Okay, fine.  I'm saying, but we relied on the advice  
2 given, and that's what you do?

3           Q.    Let's take it in stages.  Do you accept that that's  
4 what the Act says?

5           A.    That what?

6           Q.    That this piece of advice is wrong because the Act  
7 does offer you a basis--

8                   (Overlapping speakers.)

9           A.    Well, I can't go and say the Act, the legal advice on  
10 which I rely is wrong.  I am--I relied on this by the Attorney  
11 General.

12                   COMMISSIONER HICKINBOTTOM:  Can I be just absolutely  
13 clear, because in the letter to which you very kindly responded  
14 in terms of criticisms, it said if there was a legal proposition  
15 that you relied upon, then you must provide legal submissions  
16 and none has been provided.  But what you're saying is you had  
17 legal advice--you must correct me if this is wrong, but as I  
18 understand it, you're saying you had legal advice from the  
19 Attorney General that there was no specific provision in the Act  
20 for removal or revocation of appointment of Members of the  
21 Board, and consequently section 20 of the Interpretation Act  
22 applied.

23                   THE WITNESS:  Yes.

24                   BY MR RAWAT:

25           Q.    You were, by then, as you said, familiar with the Act

1    itself because you--

2                   (Overlapping speakers.)

3           A.    As much as--45 days will give me, yes.

4           Q.    Earlier, the impression you gave, Honourable Malone,  
5 is you that were a diligent Minister who would read papers and  
6 you made sure that you knew the basis on which you--

7           A.    The narrative in terms of what I was saying again  
8 because I'm saying that I said we had a--we were just elected in  
9 February. We weren't sworn in to the office until March 15, and  
10 here we are a few days later in terms of having this comes. But  
11 we read, in between that time, selected as Minister for Health,  
12 yes, we had to become familiar not only with this but all the  
13 other authority. So, I am--I'm much more versed in the  
14 different Acts in the Ministry than I was 45 days into the  
15 Ministry.

16                   COMMISSIONER HICKINBOTTOM: I understand that.

17                   Can you just help me with this: This is obviously  
18 your paper that we're looking at, and the policy decision--the  
19 policy decision is we're going to revoke the Board and start  
20 again, to put it fairly bluntly, but that is the policy  
21 decision. You then come on to legal implications of that  
22 decision, the decision is--the recommended decision you've set  
23 out, and then you come on to the law.

24                   THE WITNESS: Yeah, because we had to make sure that  
25 legally--there was some legal--there was some legal basis on

1 which it could be done.

2 COMMISSIONER HICKINBOTTOM: Okay. That's a fair  
3 point. Thank you.

4 BY MR RAWAT:

5 Q. The memo is dated, under your name, the 7th of May  
6 2019. My understanding of your earlier evidence was that, by  
7 then, you were familiar with your powers under the Act.

8 A. As much as 60 days can give me. The--there were--we  
9 read it in terms of this specific provision because boards were  
10 up as a subject.

11 Q. Did you at any time question, or did anyone question  
12 or raise with the Attorney General or draw the Attorney's  
13 attention to the provisions in the Act by which you could remove  
14 a Member of the Board?

15 A. Well, I think that the legal implications were clearly  
16 stated here. He says that section 20 of the Interpretation Act  
17 Cap 136 is what we relied on in this particular instance.

18 COMMISSIONER HICKINBOTTOM: But that--well--

19 THE WITNESS: No, I'm saying I agree it's a legal  
20 point.

21 COMMISSIONER HICKINBOTTOM: I was going to say  
22 something, and I do understand your view.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: You or possibly Mr Rawat  
25 could help me with this. You said you relied on the Attorney

1 General's advice. Do we have an advice or--

2 MR RAWAT: Not as far as I'm aware.

3 COMMISSIONER HICKINBOTTOM: Okay. No written advice,  
4 as I understand it?

5 THE WITNESS: Sir, sorry. The Attorney General in  
6 number 12 of this paper, 160/2019, when asked because the  
7 readings that we've had earlier stated to some concerns that  
8 were posed by the Members of the Cabinet, and the legal basis,  
9 when asked, he says--because I think you read it out  
10 earlier--that the Interpretation Act was actually relied upon--

11 COMMISSIONER HICKINBOTTOM: In relation to the Tourist  
12 Board?

13 THE WITNESS: Well, all of the particular Acts because  
14 it says it gives the Authority which appoints any person, so I'm  
15 saying it is--it is actually repeated here.

16 COMMISSIONER HICKINBOTTOM: But it's repeated from the  
17 Premier's memo about the Tourist Board; is that what you're  
18 saying?

19 THE WITNESS: Yes.

20 BY MR RAWAT:

21 Q. I see. Thank you.

22 Can we move on, then, just to another memo, and it's  
23 dated the 8th of May, but it starts at page 3238.

24 A. 3238.

25 Q. 3238.

1           It's a memo concerning the appointment of the Chairman  
2 to the Board. Do you have it?

3           A. Yes.

4           Q. And we look at paragraph 4.

5           A. On 3239?

6           Q. Yes, please.

7           The proposal, in summary, was that Dr Joel Stevens, a  
8 Virgin Islander who currently serves as an attending surgeon at  
9 Providence Hospital in Washington is recommended to be appointed  
10 as Chairman of the Board, and you then go on in the memo to set  
11 out Dr Stevens's professional background, and also notes that,  
12 in previous years, the last being December 2018, he had served  
13 as a Member of the BVI Health Services Authority Board.

14           What it doesn't say in this memo is whether you had  
15 taken account of the fact and of your view, your preference  
16 expressed in the memo we were looking at, that Members should be  
17 in a position to physically attend the meeting and actively  
18 participate on the various committees of the Board, so that was  
19 a concern about Professor Frederick. This memo seeks to appoint  
20 someone who lives in Washington, D.C., as Chairman of the Board,  
21 but it doesn't address, does it, how that person can be  
22 physically present?

23           A. Well, maybe not in the Board but it is widely known  
24 that, for years, because if you look in number 7, he was on the  
25 Board there also, and what happens is that he is here every

1 month--every month of the year because he's on contract and  
2 otherwise in the Virgin Islands, so maybe it isn't--it should be  
3 more clearly stated, but he has physical presence here in the  
4 Virgin Islands every month.

5 Q. It doesn't say it anywhere, does it?

6 A. Well, it may not be known to you and it doesn't say  
7 it, and I'm saying at the end of the day, it was brought out--it  
8 should have been brought out more clearly. So, on that, we  
9 agree, it doesn't say it, but it is clearly known that he is in  
10 the Virgin Islands every month on assignment, and he has  
11 physical presence. He has physical presence.

12 Q. On assignment to what extent?

13 A. Well, to the--because in the--in the transplant  
14 business, he actually--he actually--he actually provides--he's a  
15 surgeon--he provides access to all the persons requiring--what  
16 is it? Blood transfusion.

17 Q. Transfusion?

18 A. Yes.

19 Q. I see.

20 In terms of you say it was widely known that  
21 Dr Stevens was in the Territory. Widely known to who?

22 A. Well, the entire population, and many--and too many  
23 persons that have to have dialysis.

24 Q. Okay. Well, can we move on to 3243, please, which is  
25 another paper, and we're taking them chronological order.



1           This is now a memorandum from your Minister dated the  
2 6th of June 2019, Honourable Malone, and again it sets out the  
3 powers that are available to appoint the membership.

4           And then if we go to 4, what's said is that: "In  
5 addition to its ex officio members, the board is comprised of  
6 Dr Joel Stevens, Chairman, and Mrs Helen Frett. Vacancies were  
7 created on the Board following Cabinet's decision of 15th May  
8 via memo number 160 of 2019 to revoke the appointments of  
9 members of the board."

10           It then puts forward seven persons recommended for  
11 appointment as Members of the Board, all of whom have expressed  
12 their willingness to serve. As and you pointed out at 6 and 7,  
13 two of those being put forward were Members whose appointments  
14 had been revoked very shortly before.

15           So, can you just explain, please, to the Commissioner,  
16 and just clarify the context, the process that was then  
17 undertaken. You had revoked five out of six Members, all of  
18 whom had not reached the end of their terms, and you're now  
19 re-appointing even people. Focusing on the two who had been  
20 revoked, and that's Dr Venzen and Ms Kishelle Blaize-Cameron.  
21 What were the circumstances in which you came to re-appoint  
22 them?

23           A. Well, when you look at because, in each of the persons  
24 there are some specific criterias that you have to examine when  
25 you're looking at Board Members. Is a person dedicated and

1 committed to the particular cause or vision, and leadership of  
2 the person; their ability to influence others; straightforward  
3 and impartial; knowledgeable and quick learners; and dealing  
4 with discretion and confidentiality--all taken into context in  
5 terms of when you look at Board Members.

6           So, here looked in terms of the résumés of these  
7 particular persons because those persons who served before,  
8 their résumés are on file. You can look at them and you can see  
9 them. The other persons, the--although there was no "formal"  
10 interview, but they would have been called, they would have been  
11 asked in terms--well, they would have been known in most  
12 circumstances in terms of the different profession, the Ministry  
13 itself would make recommendations. I would flag persons, we  
14 would debate them within the Ministry, and you will see whether  
15 or not the persons that fit the overall mandate that the  
16 Government had actually set forth.

17           COMMISSIONER HICKINBOTTOM: Again, I'm sorry to  
18 interrupt. You've rightly pointed out that the leader of the  
19 Opposition could nominate two Members.

20           THE WITNESS: Yes.

21           COMMISSIONER HICKINBOTTOM: Under section 5(5). Were  
22 Dr Venzen and Mrs Blaize-Cameron his two nominations?

23           THE WITNESS: One of them were, and he had another  
24 nomination, so Dr Venzen was mine, Dr--Blaize-Cameron was his.

25           BY MR RAWAT:

1 Q. Did he have a second nomination?

2 A. Yes.

3 Q. Who went through? Who was that?

4 A. I can't remember. I think it's Andrea Walters in  
5 3247.

6 Q. You have explained the exercise that you went through  
7 to--as the process of reappointment, and you have explained the  
8 consideration that was given, for example, to Dr Venzen and  
9 Mrs Blaize-Cameron. Why couldn't you have done that before  
10 revoking? If you had their résumés on file, why couldn't you  
11 have done the exercise rather than going through the process of  
12 drafting a memo, taking it to Cabinet, revoking their  
13 appointments, and then reconsidering it all again?

14 A. Well, again, it is a matter of style, is it? So we  
15 looked in terms of doing it in that particular fashion, and look  
16 afresh at everyone.

17 COMMISSIONER HICKINBOTTOM: You used the word "we". I  
18 think that was the Policy, wasn't it, revoke everybody on the  
19 Board.

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: And then, as it were, have  
22 another look at the constitution of the Board?

23 THE WITNESS: Sure.

24 COMMISSIONER HICKINBOTTOM: Thank you.

25 BY MR RAWAT:

1 Q. And to give it its context, look at--we looked at memo  
2 103 of 2019, and the context there as to what your  
3 administration wanted to do.

4 A. Sure.

5 Q. That provided you the framework with which to assess  
6 who you would then put forward again for appointment or  
7 reappointment?

8 A. That's correct.

9 Q. The last part of this, if we just--just to complete  
10 it, if you go to 3249, please.

11 A. 3249. That is the begin.

12 Q. That is a beginning of a Cabinet Meeting No. 14 of  
13 2019.

14 A. Yes.

15 Q. And 3271, if you could do that. We will see there  
16 that the paper that we just looked at was then taken by you to  
17 Cabinet.

18 A. Yes.

19 Q. Part of the deliberations begin in paragraph 59, if we  
20 look: "Cabinet noted that the proposed Member Mr Lemuel Smith  
21 is currently employed as the Manager of Caribbean Basin  
22 Enterprise/CBE Engineering, a private company owned by the  
23 Minister for Health and Social Development. However, the  
24 Cabinet was content to proceed with the paper and the  
25 recommendation."

1           And what happens if we look at 3272, the upshot of  
2 what happened was it was decided that six people would be  
3 appointed, there was a deferral of Mr Cline who was proposed not  
4 just as a Member but Deputy Chairman. That was deferred for two  
5 weeks, but essentially your recommendations were approved by  
6 Cabinet; that's right, isn't it?

7           A.    Yeah, save for the one, yeah.

8           Q.    Mr Cline. Was that after two weeks, was he--did he  
9 ultimately become the Deputy Chairman?

10          A.    No.

11          Q.    What--what happened there?

12          A.    Mr Ken Hodge did.

13          Q.    I see.

14                Right. I've checked back across the table provided by  
15 Ms Bertie.

16          A.    That's right.

17          Q.    So, would that then require a new process by which you  
18 then had to produce a new paper and put Mr Hodge before--before  
19 Cabinet again?

20          A.    I'm trying to remember the process there.

21                May have, but I would have to confirm that. But his  
22 résumé was on file, and his--all of his details were there.

23          Q.    The purpose is not to delve into why Mr Hodge was a  
24 better candidate than Mr Cline--

25          A.    Sure.

1 Q. Or why Mr Cline didn't, but it's just whether Mr Cline  
2 is no longer going to be the Deputy Chairman or a Member, you  
3 need another Member. Does that still require you, as a process,  
4 to ultimately take it back to Cabinet?

5 A. Yes, yes, yes, yes.

6 Q. Just again to touch on Mr Lemuel Smith, Cabinet--you  
7 had made the recommendation, and presumably when you made the  
8 recommendation you knew that Mr Smith worked for a company that  
9 you owned.

10 A. Yeah.

11 Q. So, at that point, in considering his nomination and  
12 making the recommendation, did you see any conflict of interest  
13 arising?

14 A. No. He was the best man for the job. He has served  
15 on the Board prior. And from all of the interactions with the  
16 persons that he had served under, he was doing a remarkable job,  
17 and they were yearning for him to be back.

18 Q. Who were yearning for him to be back?

19 A. The executive and the persons at the HSA.

20 Q. I see.

21 So, the people behind the scenes, the Secretariat, if  
22 you like--

23 A. Yes.

24 Q. --looked forward to Mr Smith coming back on the Board?

25 A. That's correct.

1 Q. And again, was he--he would be someone that you,  
2 having done that process, concluded was someone who was--who  
3 fell within the framework of, let's call it, the "Premier's  
4 memo", the intention of what you wanted to do in terms of your  
5 programme as a--as an administration?

6 A. Yeah. They--they--they were quite pleased of him  
7 coming back on the Board.

8 Q. The--I think I asked you a different question, or you  
9 have given an answer to an earlier question. I take the point  
10 you say that people were pleased that Mr Smith was returning to  
11 the Board, and he had last been a Member of the Board in 2016.

12 A. Yeah. I think--

13 Q. It's in your memorandum?

14 A. Yes.

15 Q. Your paper has to summarise--

16 A. Right.

17 Q. --people's CVs and produced them.

18 My question was, did you see someone--the answer must  
19 be "yes"--

20 A. Yes, quite clearly.

21 Q. --you have gone through this assessment process, and  
22 part of the assessment process looked at where people sat within  
23 the framework identified in the Premier's memo; that's right,  
24 isn't it?

25 A. Yes.

1 Q. Thank you.

2 Now, again, it's something that I may well have asked  
3 you this you came the first time, Honourable Malone, but at 59,  
4 there is a potential conflict identified because Cabinet is  
5 voting to approve someone, and that someone is--happens to be  
6 employed by you. How did you deal with the conflict in this  
7 circumstance?

8 A. Well, it all depends on what you call the "conflict".  
9 The conflict was in terms of family members and so forth. I'm  
10 not sure in any writing anywhere at any time it says a person  
11 happened to be employed by you they cannot be considered.

12 Q. That's a fair point in terms of the Cabinet Handbook,  
13 but there is--my question goes to a wider point. Here you are  
14 recommending someone to be on a board that sits under your  
15 Ministry. That person will be paid a stipend. He will make  
16 decisions that would involve the use of public money, and he  
17 works for a company--he works for you. Now, that, in the  
18 public's eye, may create a potential conflict of interest.

19 Did you not appreciate that it might be a potential  
20 conflict of interest?

21 A. Well, for the purpose of which he was going to be  
22 employed here--and I'm saying it is, as you would clearly state  
23 later, there was nowhere in which states that someone who is  
24 employed by you cannot be engaged, especially in persons  
25 best-suited for the job, and Mr Smith was better suited for that



1 task.

2 Q. From your perspective, no conflict even arose because  
3 he wasn't a family member. He was just an employee?

4 A. Yes.

5 Q. Thank you.

6 A. And tomorrow, he could--he could be not an employee  
7 also.

8 Q. Last bundle we need to go to this afternoon,  
9 Honourable Malone, and that's back to 1, please.

10 A. Sorry, this is bundle 1?

11 Q. Bundle 1, please.

12 If you just turn up 257.

13 A. Bundle 1, 257.

14 Q. It's really to just ask for an update, please,  
15 Honourable Malone. 257 is a table that forms part of the second  
16 Affidavit Ms Bertie has provided. You will see from there it  
17 gives a composition of the Board, and the Board that we have  
18 been speaking about, the appointees we have been speaking about  
19 are listed there, so you will see Mr Smith. And as you  
20 rightfully pointed out and I wrongly tried to correct, Mr Hodge  
21 is there as the Deputy Chairman.

22 A. Sometimes you're wrong.

23 Q. Very rarely.

24 (Laughter.)

25 Q. But if we go then further--

1 MR HAERI: But always fair.

2 MR RAWAT: I'm not sure. It might be Mr. Haeri  
3 assisting--

4 MR HAERI: But you're always fair to the Witness.  
5 That's the important thing.

6 MR RAWAT: I'm grateful for that.

7 BY MR RAWAT:

8 Q. If you could just update the Commissioner, please,  
9 Honourable Malone. You will see aside from Mr Smith and  
10 Mr Hodge, the other Members of the Board, including Mr Smith we  
11 have been talking about, had appointments for two years, and  
12 those appointments expired on the 21st of June 2021.

13 A. Yes.

14 Q. So, what is the current position in relation to the  
15 Board?

16 A. The Board is fully filled now. I think the new  
17 Chairman was brought before Cabinet first.

18 Q. On what date? Can you remember?

19 A. I would have--let's see. Best I can bring that  
20 forward. I would have to get that. I think it was--he was  
21 brought before Cabinet, he was carried before the House of  
22 Assembly and all that.

23 Q. What--I wouldn't ask you to guess, Honourable Malone.

24 A. I will get the date.

25 Q. One thing we learned from our hearings is that we

1 ought to try and give people as little homework to do as  
2 possible.

3 A. Yes.

4 Q. But if you could give the Commissioner the current  
5 composition of the Board and the dates on which they were  
6 appointed--

7 A. Sure.

8 Q. --that would be helpful.

9 COMMISSIONER HICKINBOTTOM: And, please, the length of  
10 the appointments.

11 THE WITNESS: Yes. It's three years now. The new  
12 ones are for three years, but we will get the exact. We will  
13 get the exact--let's see. None of them are here.

14 COMMISSIONER HICKINBOTTOM: No, no.

15 BY MR RAWAT:

16 Q. In fairness to Ms Bertie, her Affidavit was actually  
17 prepared on the 18th of June--

18 A. Yes.

19 Q. --so changes haven't been put in place.

20 A. So, you have--they asked. Okay, fine.

21 COMMISSIONER HICKINBOTTOM: Thank you very much.

22 BY MR RAWAT:

23 Q. If you're happy to make a note of it--

24 A. Yes.

25 Q. --that's new Board, when they were appointed and terms

1 of the what--the lengths of their appointment is, we won't then  
2 write to the Attorney General to remind her, but thank you very  
3 much for doing that, Honourable Malone.

4 Can I turn to the last matter that we need to go  
5 through today, and that is the written response you have  
6 provided to the potential criticisms that were raised in a  
7 letter from the Commission.

8 A. Yes.

9 Q. It should be--unless you have it in the file of papers  
10 that you brought with you, there is a copy on the table.

11 A. I'm not sure where it is, but I will use the copy. I  
12 will make sure it is the same.

13 Q. Use whichever copy you find you're most comfortable  
14 with, Honourable Malone.

15 What I'm going to try and do is take you through it  
16 without--without repeating too much of the evidence that we have  
17 gone through with you because you will have answered some of  
18 these criticisms already in your evidence, but I think it's  
19 important to get it on the record, in fairness to you.

20 The response helpfully sets out, first of all, that  
21 potential criticism, and then underneath it sets out the  
22 response in bold.

23 Do you see that, Honourable Malone?

24 A. Yes.

25 Q. Now, the first one deals with the revocation issue,

1 and we've gone through the detail; and so, if you're  
2 comfortable, I won't set out that detail, but I'll take you  
3 to--just signpost some of it as we go through, and that's, if  
4 you look on second page, what's said is that it appears from the  
5 evidence that the reasons given for immediate revocation of the  
6 membership of the Board was insufficient, firstly because the  
7 Act deals with the possibility of changing governments through  
8 the imposition of term limits, meaning that the revocation on  
9 the basis of the three Members had been appointed by the leader  
10 of the Opposition when he was in Government is unnecessary.

11           And also it notes that section 5(5)(1) of the statute  
12 does not say that the leader of the Opposition is entitled to  
13 have two people on the Board. It says is the leader of the  
14 Opposition is entitled to nominate; whereas, just to remind you,  
15 your paper said the leader of the Opposition is entitled to have  
16 two people.

17           The second point--

18           A.    If I may.

19           Q.    Yes. Yes, in fairness to you, you can answer on that  
20 point.

21           A.    Are you saying we are quite generous in making sure  
22 that they have two persons? I think it's fair and proper to do.

23           Q.    I'm not criticizing your decision to read the Act as  
24 allowing the leader of the Opposition to appoint two people to  
25 the Board. What was being pointed out to you in the letter was

1 that the Act, on its wording, allows the leader of the  
2 Opposition to nominate, not to appoint.

3 A. I see.

4 Q. What's also said at point 2 is the reference to--the  
5 reason given for Professor Frederick, which is that he could not  
6 be physically present, was at odds with the fact that Dr Stevens  
7 was appointed despite working overseas in Washington. I think  
8 that's a point that you dealt with.

9 A. Sure.

10 Q. And the third one is that, which again is a point that  
11 you dealt with and we've looked at, is the revocation of the  
12 Members of the Board was not for any of the reasons set out in  
13 schedule 1, section 3 that we looked at.

14 A. Sure.

15 Q. So, the criticism that's made is, by firstly by  
16 revoking the membership of the Board effectively removing all of  
17 the Members with one exception, that failed adequately to  
18 provide for independent expertise and oversight of the Board.

19 Second is that the policy of revoking membership of  
20 the Statutory Boards with every new administration, which is  
21 something that you explained to the Commissioner, failed  
22 adequately to provide for independent expertise and oversight of  
23 all such boards.

24 Now, I think if I develop that a little bit, would you  
25 accept this, as a consequence, if you remove every Member of the

1 Board, you lose the cumulative expertise of that Board and you  
2 have to start all over again?

3 A. If they are not reappointed.

4 Q. Yes.

5 A. If they are re-appointed.

6 Q. If you re-appoint some people, that you ameliorate  
7 that, but that's a risk, isn't it?

8 A. Yes, one can assume.

9 Q. And, in this situation, was this a risk that you  
10 considered worth taking?

11 A. Well, no, I didn't take it because I re-appointed  
12 those that were there.

13 Q. Was it a risk in your mind, then, at the time?

14 A. Not necessarily. I said, in my mind, there were those  
15 that were re-appointed, so it's a risk that I did not take.

16 COMMISSIONER HICKINBOTTOM: Yes, and I mean, with  
17 respect to the question, these Members that we're talking about  
18 were only appointed in January.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: And I think you said that  
21 they possibly haven't even been to a meeting by the time of the  
22 election. I mean, it doesn't matter, but their experience was  
23 very short, is the only point I was making.

24 In terms of the proposition Mr Rawat was putting,  
25 which is loss of cumulative experience, at least in respect of

1 those who were appointed in January, the loss was relatively  
2 small.

3 THE WITNESS: Well, it could have happened, but in the  
4 circumstances, no, only because Dr Stevens had served before,  
5 Romeo Smith had served before, cannot--was it his very first?  
6 But there were a number of persons. Venzen had served prior, so  
7 there were a number of persons. So, I did not fall into that  
8 risk category.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 BY MR RAWAT:

11 Q. If I just then summarise your response, and I hope  
12 that you're okay with that, Honourable Malone, because as you  
13 confirmed, you are content for the Commissioner to consider the  
14 whole of the response and he will do so, but what you've answer  
15 there is it was government policy to reinvigorate board  
16 appointments generally. You go on to say that the Board  
17 illustrates the flexible approach taken with that policy as  
18 demonstrated by the reappointment of some Members to the Board,  
19 and you then refer to the memo--and this is one that we looked  
20 at--changes were made in an effort to maintain an effective and  
21 well-balanced Board in furtherance of the aims of the Act, and  
22 you point to the Attorney General's advice.

23 COMMISSIONER HICKINBOTTOM: Can we pause there for a  
24 moment on that last sentence because this is one ion which at  
25 the moment is concerning me a bit. My understanding of your



1 evidence, Minister, is that the Attorney General advised in  
2 respect of this Board--let me give you an open question.

3 How did the Attorney General advise in respect of this  
4 Board? In writing, or how did--

5 THE WITNESS: No, because when the Premier's paper  
6 came up earlier, it was raised.

7 COMMISSIONER HICKINBOTTOM: But that was in respect to  
8 the Tourist Board.

9 THE WITNESS: No, I'm saying all this Board because he  
10 said a number of boards because in the particular paper with the  
11 Premier, there were two or three boards, I think, that were, I  
12 think, so there were some boards that were earlier, and  
13 this--and this was a matter of concern.

14 COMMISSIONER HICKINBOTTOM: So, was the advice that  
15 the Attorney General gave that advice, the advice that found its  
16 way into the Premier's paper? He didn't advise specifically on  
17 this Board.

18 THE WITNESS: No, because once it was given, just  
19 like--just like every--well, even on this particular Act, this  
20 COI Act, precedence goes a long way, doesn't it?

21 COMMISSIONER HICKINBOTTOM: No, no, I understand the  
22 point, but your evidence is that the Attorney advised before the  
23 Premier's paper, if we could put it like that, and what's set  
24 out in the Premier's paper is set out in the Premier's paper.  
25 My recollection--we could go back to it, if necessary--is that

1 that advice was given with respect to the Tourist Board where  
2 there was no express provision in the Act for removal of  
3 Members.

4 And just before you respond to that, that seems to be  
5 reflected in your memo to Cabinet--we have been through it a  
6 number of times, paragraph 12 of page 3305, which starts:  
7 "There is no specific provision in the BVI Health Services  
8 Authority Act 2004 for the removal or revocation of the  
9 appointment of Members of the Board. My understanding was that  
10 that was a premise of the advice the Attorney gave in respect of  
11 the Premier's memo.

12 THE WITNESS: Okay, yes.

13 COMMISSIONER HICKINBOTTOM: Yes?

14 Where I struggle because, as you say, you all--I think  
15 you--took that advice and applied it to the Health Board.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: Is this: The Act, which  
18 is a short Act, has a section headed "Removal from Office,"  
19 which that's paragraph 3 of the schedule, which sets out the  
20 provisions by which a Member can be removed; and, therefore, the  
21 premise of the advice, the earlier advice, which there was no  
22 specific provision in the 2004 Act for removal of Members, the  
23 premise of that advice is not met.

24 THE WITNESS: Well, I'm not sure how many ways I can  
25 say this except for the, you know, legal arguments can be made.

1 But at the end I am saying that it came up as it relates to  
2 boards, and the Interpretation Act gave a premise on which it  
3 can be viewed. Whether that was right or wrong will have to be  
4 argued with the Attorney.

5 COMMISSIONER HICKINBOTTOM: That's fine. And this  
6 isn't a criticism.

7 THE WITNESS: Sure.

8 COMMISSIONER HICKINBOTTOM: But no legal submissions  
9 have been put in on that point.

10 THE WITNESS: Well, maybe they should.

11 COMMISSIONER HICKINBOTTOM: I'm not sure it matters  
12 because whatever the advice was--

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: --it was based on the  
15 apparent premise that there was no specific provision in the  
16 mother statute because that's what you say in your note. There  
17 is no specific provision in the BVI Health Services--

18 THE WITNESS: But that's not a complete  
19 sentence--sorry, not a complete paragraph, is it? However.

20 COMMISSIONER HICKINBOTTOM: There is no specific  
21 provision in the BVI Health Services Authority Act of 2004 for  
22 the removal or revocation of the appointment of Members of the  
23 Board.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: However, subject to

1 interpretation.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: But you say you simply  
4 took the advice of the Attorney and adapted it and applied it to  
5 the circumstances of this Act.

6 MR HAERI: Commissioner, if I may possibly help on  
7 this, I think maybe the process of how the paper is compiled and  
8 who drafts the legal implications section, I believe maybe the  
9 Attorney General that drafted that specific provision, but  
10 perhaps the Witness may shed light on that question in terms of  
11 how the document is prepared.

12 COMMISSIONER HICKINBOTTOM: Well, certainly, if it  
13 would help.

14 Minister, can you tell us how this part of the  
15 document was prepared?

16 THE WITNESS: Look--sorry, this here or in terms of  
17 160? Memo 160?

18 COMMISSIONER HICKINBOTTOM: Paragraph 12.

19 THE WITNESS: Yes.

20 BY MR RAWAT:

21 Q. You need to go back to part--your Part 3.

22 COMMISSIONER HICKINBOTTOM: 3305. I'm sorry--

23 THE WITNESS: 3?

24 COMMISSIONER HICKINBOTTOM: Part 3.

25 THE WITNESS: As you're aware, legal arguments I

1 always leave to legal scholars.

2 COMMISSIONER HICKINBOTTOM: Quite right, but at the  
3 moment this isn't--

4 THE WITNESS: It's not legal?

5 COMMISSIONER HICKINBOTTOM: It's not legal.

6 THE WITNESS: I see.

7 COMMISSIONER HICKINBOTTOM: But, firstly, Mr Haeri  
8 suggests that it would be helpful if you told me--

9 THE WITNESS: We're up to where now?

10 COMMISSIONER HICKINBOTTOM: Page 3305. I will let you  
11 get there first.

12 THE WITNESS: Yes.

13 The entire paragraph has to be read, and this is what  
14 I'm doing.

15 COMMISSIONER HICKINBOTTOM: Before you do that, I  
16 don't want to stop you doing that. Mr Haeri suggested it might  
17 be helpful--

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: --if you told me how this  
20 paragraph in your note came to be produced.

21 THE WITNESS: Well, what I remember--this would be 29  
22 months ago--we had a new government. We had a specific mandate.  
23 We were looking in terms of making sure that we look at the  
24 particular boards, those Members who were--who had all the  
25 criterias we set out both in the Act and in the terms of their

1 particular commitment, their vision, all the other stuff that we  
2 could bring this to this, including the youth part of it, the  
3 sister island part of it.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 THE WITNESS: And it says, like in the Tourist Board,  
6 what reliance legally would you have in terms of revocation of  
7 any of the Members.

8 COMMISSIONER HICKINBOTTOM: What power do you have to  
9 revoke the Members?

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 THE WITNESS: And number 12 could not be more clear.  
13 There is no specific provisions in the Act. However,  
14 section 20. So, if--if the legal scholar was wrong, then I was  
15 wrong, but I don't know if he was wrong.

16 COMMISSIONER HICKINBOTTOM: But it is clear, but it's  
17 clearly wrong, not--sorry, not as a matter of law, not as a  
18 matter of law. The sentence. There is no specific provision in  
19 the Act for the removal of Members--that's what the first  
20 sentence says--where there is paragraph 3 of the schedule is  
21 headed "Removal from Office." How can that not be wrong? I  
22 just don't understand it. Because the advice you're given,  
23 frankly, is only as good as the instructions that are given to  
24 the Legal Adviser.

25 THE WITNESS: Well, one can say that, but at the end

1 of the day, we were--those are legal points. You might say  
2 they're not legal, but to me they're legal in terms of what we  
3 relied on. I can only tell you what relied on.

4 In fact, he finished it up the reasons for writing the  
5 Cabinet paper would appear to be a good basis for the exercise  
6 of discretion to revoke.

7 COMMISSIONER HICKINBOTTOM: So, if the Cabinet had  
8 discretion, it might be right. It might be right.

9 THE WITNESS: Fine. But I'm saying--

10 COMMISSIONER HICKINBOTTOM: But you say it's a legal  
11 point?

12 THE WITNESS: Yeah.

13 COMMISSIONER HICKINBOTTOM: The letter that was sent  
14 to you saying that if you're going to raise any legal point,  
15 they had to be put into legal submissions with your response.  
16 No legal submissions have been received.

17 THE WITNESS: Okay, well, I guess there will be  
18 homework number two on that one and so forth in making sure that  
19 that be done.

20 COMMISSIONER HICKINBOTTOM: Not homework for you.  
21 That's homework for the Attorney General.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: But I want--I would like,  
24 please, any legal submissions that the Attorney wants to make on  
25 this proposition, that in the face of paragraph 3 of the

1 schedule to the 2004 Act--that's the BVI Health Services  
2 Authority Act 2004--which is side-headed "Removal from Office,"  
3 that is Members of the Board, that, as a matter of law, it can  
4 be said there is no specific provision in the Act for the  
5 removal or revocation of the appointment of Members of the  
6 Board. And as you say, if you say that's a legal point, then we  
7 will get a legal submission on it.

8 MR HAERI: Commissioner, may I comment on that,  
9 please? Because I believe what The Honourable Minister was  
10 saying is, as a factual matter, he relied on the advice of the  
11 Attorney General as a matter of law for the Attorney General to  
12 advise on. And as per his submissions, the Cabinet is entitled  
13 to place reasonable reliance on that legal advice.

14 So, with respect, I'm not sure it's so much a legal  
15 point that was being made as a factual one as reliance on the  
16 Legal Officer and their advice.

17 COMMISSIONER HICKINBOTTOM: Well, Mr Haeri, can we  
18 come back to that at the end because that may mean that I'll  
19 review the direction, but shall we finish with the Minister's  
20 evidence first and come back to that and then we can do with  
21 that one way or another? But thank you for raising.

22 Yes, Mr Rawat.

23 BY MR RAWAT:

24 Q. Let's come back to the written response you have  
25 given.



1 A. Which response?

2 Q. It's just the letter on its own.

3 COMMISSIONER HICKINBOTTOM: That's a very good  
4 question.

5 BY MR RAWAT:

6 Q. We were on--I think I can summarise the point that you  
7 make in the response, Honourable Malone, because have you  
8 developed them, so--and as you say, this is the point the  
9 Commissioner asked you about, you rely on the fact that the  
10 Attorney General had given advice. You then point out to the  
11 fact that you say that because Dr Venzen and Mrs Blaize were  
12 re-appointed, the practical effect was that--of that  
13 reappointment was that the BVI HSA Board was not revoked on a  
14 wholesale basis but you say rather particular Board Members'  
15 appointments were revoked as set out in the Cabinet paper.

16 And you then conclude that the reappointment of the  
17 existing Members was consistent with achieving a balance of  
18 expertise on the new Board. You have given the Commissioner  
19 further context about that process anyway.

20 You then, if we turn over to the next page, again we  
21 turn to the Attorney General's advice and you conclude, as  
22 Mr Haeri has pointed out, the Cabinet was entitled to place  
23 reasonable reliance on that advice. And you then say no reason  
24 to suppose that new Members with the inclusion of some of those  
25 who had previously served or otherwise could not provide

1 effective and independent oversight of its management of  
2 activities, and you refer there to the fact--and give two  
3 examples, that's Dr Stevens and Mr Smith, they had previously  
4 served on the Board.

5           You say there is no evidence that any of the  
6 appointees are not independent, although they lack expertise.  
7 Their résumés were exemplary, and it's not understood from the  
8 potential questions to be suggested that any nominees are not  
9 well-qualified to carry out the role.

10           And the final point you make is the point you've  
11 already explored today, and that is the availability of  
12 Dr Stevens to attend meetings.

13           If I then go on to criticism number two, and this is  
14 something that we have explored with Ms Bertie as a--as the  
15 Acting Permanent Secretary, and I hope if I just try and  
16 summarise it, the criticism was in effect of the process, so  
17 matters were not done; like, you didn't have a competency  
18 profile, you did not advertise the positions. The process was  
19 entirely internal. There was no candidate interviews. And the  
20 point was also made that the conclusion was that no reference  
21 was made when appointments came back to Cabinet to the fact that  
22 Dr Venzen and Mrs Blaize-Cameron's appointments had been revoked  
23 less than a month earlier.

24           And the concluding compendium point was made it  
25 follows that no reasonable effort was made to identify and

1 select the most suitable and qualified candidates for membership  
2 of the Board. Again, if I try and summarise, I hope fairly,  
3 your response to that, you point out, Honourable Malone, that  
4 it's not been the practice of successive governments over many  
5 years to advertise vacancies on Statutory Boards or to hold a  
6 formal interview process. What you say is that ministries and  
7 departments have invariably applied the criteria that is  
8 specified in the relevant statute. I pause there.

9 We looked at the two statutes for the Board that sit  
10 under your Ministry, and I have taken you to the provision that  
11 describes the relevant experience and expertise that you as  
12 Minister must have regard to.

13 You point out that the small size of the Virgin  
14 Islands and of the suitable pool of possible candidates, you  
15 rely on those, and you say that then Desk Officers and Permanent  
16 Secretaries and Ministries and Departments have been used to  
17 holding informal discussions to identify willing candidates of  
18 appropriate standing and then discussing them with you as  
19 Minister. And you would discuss them with your colleagues; is  
20 that right?

21 A. Yes.

22 Q. Do you, yourself, approach potential candidates?

23 A. Yes, sure.

24 Q. And is that--for what purpose would you approach a  
25 potential candidate?

1           A.    Well, first of all--well, first, in terms of their  
2 willingness to serve, number one.  And number two, in terms of  
3 any potential areas of--that might cause them not to be able to  
4 serve, and I've had--in filling other committees and boards,  
5 I've had situations where I may have--well not "may have".  I  
6 brought forward the name and officers said, "Look, this person  
7 served two or three times before, number one.  They said that  
8 this person may not be--you might want to reconsider looking at  
9 this person because of Point A, B, and C.

10                So, it was not everyone going forward that was  
11 accepted, so too even at the Cabinet level as with Mr Cline, you  
12 will see he was brought forward all through the ranks because he  
13 too had served before, but--you know, but--it goes through this.  
14 And when it goes to the House of Assembly, again it is  
15 another--well, for the Chairman, it's another checkpoint for  
16 this.

17                So, these appointments are not come off the street,  
18 here you go, and this is it.  It goes through a number of checks  
19 and points, and so forth.

20                And I would like to state something clearly that,  
21 especially with this section, it was quite difficult to fully  
22 appreciate only because, as I had mentioned--and I might want to  
23 invoke or put into the record the statement that I read when I  
24 first came here because I am of the opinion again that the total  
25 review of governance in the BVI for the past 70 years may not

1 well--is not a bad thing, but in the context of a Commission of  
2 Inquiry, I still have my views on it.

3 But these processes that we looked at is what has  
4 been--what has attained since 1967. So it's the institution of  
5 ministerial government. These are how boards are chosen. These  
6 are how it is done. I can say the same thing for the 1880 Act  
7 that the Commission of Inquiry is operating under. They all  
8 need to be reviewed. We have brought monies in to have this  
9 done.

10 So, this particular review is good in that context,  
11 and I think it should be looked at, as the Attorney General will  
12 tell you, that monies have been put in place, to have a review  
13 of all of these Acts. And in fact, in the Ministry of Health we  
14 made two specific posts available. The substantive Permanent  
15 Secretary, she's now advisor to bring all of the acts and laws  
16 and regulations and statutory instruments for the social  
17 development side of it, of the part. The other one is done in  
18 terms of the health advisor. There is a post that I will fill  
19 to bring all of the Health Acts up to date because most of them  
20 are too old, so we have to get them up to date.

21 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

22 BY MR RAWAT:

23 Q. If we move on, then, again to summarise it, what you  
24 point, to the potential criticism was about the process and what  
25 you point to and rely on is the fact that there is--was there

1 informal discussions there was a formal process--

2 A. Sure.

3 Q. If I take you over to the next page, you then say  
4 that--

5 A. Which section?

6 Q. It's same one.

7 A. Okay, fine. Good.

8 Q. I just want to try to summarise your response for the  
9 record.

10 A. Sure you.

11 Q. You say it's always lain within the responsibility and  
12 power of the Government to instigate change and standard  
13 practice of public officers and the advice given to Ministers on  
14 such a subject. And you then say that the newly elected and  
15 appointed Cabinet was not then advised by the Attorney General,  
16 the Governor or the Deputy Governor's appointments should be  
17 advertised and candidates interviewed, or that the long-standing  
18 approach of the Public Service being inherited and the advice to  
19 Ministers in making such appointments should be replaced by a  
20 whole new system.

21 You then go on to say that it was only May 2020 that  
22 the Governor was well-aware of the existing practice and  
23 suggested a shift to a more transparent process, but you say  
24 then it was a point that suggestion was in relation to  
25 leadership posts such as the Chairman of the Boards.

1           You then say that the Government fully accepts that  
2 the appointment process requires modernization, and you point to  
3 measures that have been brought in or encouraged to develop a  
4 process of advertising, interviewing and ranking candidates for  
5 the membership of the Board. And then you return to the  
6 reappointment of Dr Venzen and Mrs Blaize-Cameron as consistent  
7 with achieving a balance of expertise.

8           If I take you to the third potential criticism that  
9 was raised, and this points not just to Mr Smith but it's that  
10 no conflict checks were carried out and that the procedures set  
11 out at paragraph 6.8 of the Cabinet Handbook were not followed.  
12 I won't take you to the Handbook unless you need. I'm sure it's  
13 something that you're very familiar with.

14           What you say there is that the steps contemplated by  
15 paragraph 6.8 were not ignored; that candidates were asked at  
16 the time they were approached to ascertain their willingness to  
17 serve, and officials were mindful of the need to avoid such  
18 conflicts when considering the suitability of the candidate.

19           When you say the officials are mindful of the need to  
20 avoid such conflicts when considering the suitability of the  
21 candidate, are you speaking there specifically about the  
22 May 2019 process?

23           A. Well, in terms of--in terms of the Ministry's staff,  
24 when they look at this, the candidates themselves in terms of  
25 areas of where they may not by virtue of some of the

1 conversations that we have not be able to serve as a matter of  
2 conflicts, then that is more in line with that. The officials  
3 here will be the officials of the Ministry.

4 Q. Yes.

5 A. Yes.

6 Q. I accept that. But the question was specific--the  
7 potential criticism put was in relation to the 2019 appointments  
8 that we've looked at, Mr Smith, and Dr Venzen, et cetera.

9 A. Right.

10 Q. My question was just that when you say that officials  
11 are mindful of the need to avoid such conflicts when considering  
12 the suitability of a candidate, did you have that particular  
13 process in mind or were speaking more generally?

14 A. It was more generally in terms of--in terms of what  
15 creates the conflict of interest.

16 Q. You then continue to say that the Cabinet  
17 memorandum--and we've looked at that--sets out the information  
18 that would be required by the Handbook and the considerations  
19 that paragraph 6.8 mandates, so you say that when one looks at  
20 the Cabinet memorandum and considers the informal process that  
21 was operating in the Ministry, that the procedures set out in  
22 paragraph 6.8 were satisfied.

23 And then you return, I think, Honourable Malone, to  
24 the question of Mr Smith, which is something that you already  
25 addressed to the Commissioner, but perhaps it's important just



1 to kind of make the point that you make at the end there where  
2 you say his appointment was on the basis of his exemplary  
3 services rendered on previous BVI HSA Boards?

4 A. Yes.

5 Q. I'm sorry.

6 A. Again, in addition to all of this, we must take it in  
7 context. We were elected in February, appointed as Ministers in  
8 March, and the first thing and all and coming through with  
9 getting all of this pulled up to date.

10 If I may be assertive enough to say, as opposed to  
11 looking at only the areas of criticisms, would the Commission be  
12 minded to look at areas in which we did good?

13 COMMISSIONER HICKINBOTTOM: Yes, of course. But in  
14 terms of--yes, of course. But in respect of Statutory Boards  
15 where all of the Members I think in all of the Boards pretty  
16 well their memberships were revoked, and then there was a very  
17 big process to replace them all, albeit with some  
18 reappointments. That was of course a burden which you  
19 shouldered.

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: It was a Government policy  
22 to sack all of the Members of all of the Boards.

23 THE WITNESS: Reconstitute.

24 COMMISSIONER HICKINBOTTOM: Reconstitute is a better  
25 word.

1 THE WITNESS: Same effect.

2 COMMISSIONER HICKINBOTTOM: Same effect. Yes,  
3 Mr Rawat.

4 MR RAWAT: Commissioner, I hope I have taken  
5 through--The Honourable Malone through his written response.  
6 And I think we've got to the end of that, and he will no doubt  
7 be relieved that we have also got to the end of my questions for  
8 him today.

9 So, can I conclude firstly by thanking The Honourable  
10 Malone for making time to come to the Commission and give his  
11 evidence, but also for the way in which he has given his  
12 evidence.

13 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.  
14 Could I just ask one more question, if you will  
15 forgive me.

16 Ms Bertie referred to both the Board and the Committee  
17 as autonomous bodies, i.e. autonomous from the Ministry,  
18 stand-alone bodies, and she accepted that that autonomy is  
19 reflected in things like the tenure of office, which means that  
20 Members can only be removed on specific grounds. Do you agree  
21 that they're autonomous bodies?

22 THE WITNESS: Yes, sir.

23 COMMISSIONER HICKINBOTTOM: Thank you. Minister,  
24 thank you very much for your evidence, which has been very, very  
25 helpful, and thank you also for your--particularly for your

1 time. I know that you have many, many other obligations, and  
2 your time is very much appreciated. I've got the one point to  
3 deal with Mr Haeri. You can go or stay, as you wish, but thank  
4 you very much for your time and evidence this afternoon.

5 THE WITNESS: Well, thank you very much also in terms  
6 of this.

7 The question--well, in terms of the statement I made  
8 on the first thing being a part of this record, is that asking  
9 too much?

10 COMMISSIONER HICKINBOTTOM: I'm sorry?

11 THE WITNESS: I had made a statement, a written  
12 statement, when I first appeared.

13 COMMISSIONER HICKINBOTTOM: We've got everything that  
14 you've--

15 THE WITNESS: Okay.

16 COMMISSIONER HICKINBOTTOM: We will take everything  
17 that you've said and sent in into account.

18 THE WITNESS: Thank you very much.

19 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.  
20 Did you want to stay or go, Minister?

21 THE WITNESS: Mr Haeri, do you need some help?

22 MR HAERI: Minister, please, by all means, take your  
23 leave, you if need to. I will respond to the issue as it  
24 arises.

25 THE WITNESS: I will leave otherwise. Thank you very

1 much.

2 COMMISSIONER HICKINBOTTOM: Thank you very much,  
3 Minister. I will just let The Honourable Malone go, and then I  
4 will just deal with this last point.

5 THE WITNESS: Okay, thank you very much.

6 (Witness steps down.)

7 COMMISSIONER HICKINBOTTOM: Mr Haeri, it's a sort of  
8 narrow point, but it may be an important one, and that's the  
9 point that arises out of paragraph 12 of the Cabinet memo on  
10 page 3305.

11 My understanding of the Minister's evidence which I  
12 think you indicated might be wrong, my understanding was that he  
13 said that that the whole of this paragraph, including the first  
14 sentence was advice. But my understanding from your  
15 intervention was that you considered that the second sentence  
16 was--the second and third sentences were advice and the first  
17 sentence was a factual matter, but what submissions do you want  
18 to make on that, Mr Haeri?

19 MR HAERI: Yes--no, thank you for the opportunity to  
20 clarify because I think that might have been a misunderstanding  
21 of what I was intending to say.

22 What I was intending to say is that, as I understood  
23 the Minister's evidence, it was that, as a matter of fact, he  
24 relied on the Attorney General's legal advice with regards to  
25 the lawfulness of the revocation, and that is a different point,

1 of course, from the issue of law, whether the Attorney General  
2 necessarily got it right or not.

3 So, I think that the point that was made is that he  
4 and Cabinet were reasonably entitled to rely on the Attorney  
5 General's advice. It was not for them to advise the Attorney  
6 General of them, and they did rely on the point--on his advice.

7 COMMISSIONER HICKINBOTTOM: All right. I fully  
8 understand that, but that wasn't--that wasn't the point that I  
9 was niggling at, and that is the first sentence of paragraph 12  
10 says: "There is no specific provision in the Act for the  
11 removal or revocation of the appointment of Members of the  
12 Board."

13 My understanding of the Minister's advice was that  
14 that was legal advice that he received from the Attorney  
15 General. Is that right?

16 MR HAERI: I believe--I have no reason to disagree  
17 with that. That is the advice that was given, so it would seem.

18 COMMISSIONER HICKINBOTTOM: So, the Attorney General  
19 advised that there was no specific provision, despite the fact  
20 that, in the Act, there was a provision headed "removal from  
21 office"?

22 MR HAERI: That's what the document says.

23 COMMISSIONER HICKINBOTTOM: No, no. That's not--

24 MR HAERI: That's how--that's how certainly I read the  
25 document. And I believe that's how the Minister understood it.

1           COMMISSIONER HICKINBOTTOM: Okay. Final point, just  
2 before we let you off your homework, Mr Haeri, because I am  
3 anxious not to give you work that is unnecessary, but do you  
4 accept that the first sentence is patently wrong?

5           MR HAERI: I mean, I think we have been through  
6 several times today, Mr Rawat has gone through the provisions A,  
7 B, C, and D, so there are provisions in the Act that address the  
8 issue of revocation of appointments. I think that the  
9 Interpretation Act is also something that the Attorney General  
10 had referred to. I think it wasn't pulled up by Mr Rawat today,  
11 but it was referred to by the Minister.

12           And I think that, yeah, in the context of that  
13 provision, the advice was given. The Attorney General may, in  
14 giving the advice with regards to specific provisions in the  
15 statutory--in the statute may not have been correct, but it does  
16 seem that that's the advice that was--that was given alongside  
17 the Interpretation Act reliance point.

18           COMMISSIONER HICKINBOTTOM: Can I just repeat the  
19 question, Mr Haeri. I'm sorry to do so.

20           Do you accept that the first sentence is patently  
21 wrong, that there is no specific provision in the Act for the  
22 removal of Members of the Board, given that the Act has a  
23 paragraph in the schedule headed "removal from office" in  
24 respect of Members?

25           If you think that (drop in audio) opposition under any

1 circumstances--

2 REALTIME STENOGRAPHER: I'm sorry, Mr Commissioner,  
3 could you start your question again. There was overlapping.

4 COMMISSIONER HICKINBOTTOM: If you consider that there  
5 is any possible legal basis for the first sentence in that  
6 paragraph, then I'm afraid I'm going to have to ask you in  
7 writing to set out what it might be. I simply as a matter of  
8 fact I cannot understand it. That's my problem.

9 MR HAERI: Yes, and no, I understand, Commissioner,  
10 the point that you're making. There are provisions in the  
11 Act--we have seen them--that deal with the revocation, so I  
12 don't disagree with--I don't disagree with that. I think that  
13 the advice was what it was, but I don't disagree with what you  
14 say and the provisions we've look at, I take them on their own  
15 terms.

16 COMMISSIONER HICKINBOTTOM: Thank you very much,  
17 Mr Haeri.

18 Nothing else from you?

19 MR RAWAT: We will reconvene tomorrow at 10:00.

20 COMMISSIONER HICKINBOTTOM: Yes. Thank you, Mr Rawat.  
21 Thank you, Mr Haeri. We will stop now until 10:00 tomorrow.

22 MR RAWAT: Thank you.

23 COMMISSIONER HICKINBOTTOM: Thank you.

24 MR HAERI: Thank you.

25 (End at 5:04 p.m.)

## 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", positioned above a horizontal line.

DAVID A. KASDAN