

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 32

(THURSDAY 9 SEPTEMBER 2021)

International Arbitration Centre
3rd 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.

Dr Carolyn O'Neal-Morton gave evidence.

Court Reporter:

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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

Dr Carolyn O'Neal-Morton

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Good morning, everyone.

Good morning, Ms O'Neal-Morton.

Could I just raise one very short point with Mr Haeri before we start.

Mr Haeri, yesterday you said you would submit the redactions, any redactions you sought from the Premier's Office's response to the reports on the COVID stimulus. Thank you for doing that. That was done later yesterday. As I understand it, the redactions are sort of only personal data. Just three points on the personal data that have been redacted:

Firstly, whilst in the Schedules, the names of individual applicants have been redacted--absolutely no problem with that--the establishments have not been redacted. And given the community here, that could easily lead to the identification of the applicants.

Secondly, there are some instances where the names of applicants have not been redacted from the text of e-mails, as opposed to the Schedules.

And, thirdly, you haven't sought redaction of any of the personal data such as e-mail addresses or telephone numbers of public officials, as you have in the past.

Rather than asking you to do that again, because I know the IRU have a lot to do, and rather than us doing the work

1 that perhaps should have been done, how I propose to proceed is
2 this: We will leave the documents as they are; and, when we
3 come to deal with this in a hearing, those dealing with
4 it--notably, really, Mr Rawat--will take his usual care and
5 caution to ensure that no personal data are revealed. But
6 certainly, as a matter of principle, of course, no difficulty at
7 all in the personal data being redacted and not referred to.

8 Good. Thank you very much.

9 Mr Rawat.

10 MR RAWAT: Good morning, Commissioner.

11 Our witness today is Dr Carolyn O'Neal-Morton.

12 BY MR RAWAT:

13 Q. Dr O'Neal-Morton, thank you for coming back to give
14 further evidence to the Commission.

15 I understand you indicated outside that you would like
16 to affirm.

17 A. Yes.

18 Q. There is actually no need for you to affirm because
19 when you gave evidence on the 18th of May, you gave that on
20 oath, and that oath still binds you, so there is no requirement
21 that you take any kind of oath or affirmation again.

22 Can I just direct you to your left. You will see some
23 bundles.

24 COMMISSIONER HICKINBOTTOM: Don't be overwrought by
25 them. You don't have to look at all of them or even the

1 majority of them.

2 BY MR RAWAT:

3 Q. We will just be taking you to different parts of the
4 bundles in due course.

5 A. Thank you.

6 Q. Could I ask you, first thing is, can you pull that
7 microphone a little closer to you.

8 A. No problem. Is that good?

9 Q. Yes, it won't amplify your voice. What it's there for
10 is to record because we have a Stenographer who is going to take
11 a Transcript of today's proceedings.

12 A. Okay.

13 Q. So, can I ask you as well just to remember to keep
14 your voice up. You're quite softly spoken.

15 A. I will try my best.

16 Q. So, if you can, that will be really helpful.

17 And what both you and I will have to try so that we
18 can please the Stenographer, is just not to speak across each
19 other.

20 A. Okay.

21 Q. It happens sometimes.

22 A. Okay.

23 Q. If does, I will ask my question again.

24 A. All right.

25 Q. Thank you.

1 A. You're welcome.

2 Q. Now, you became Permanent Secretary in the Premier's
3 Office in March 2020?

4 A. Correct.

5 Q. And when you gave evidence previously to the
6 Commissioner, you outlined your career in Public Service for
7 him, but just to summarise it, you were previously Permanent
8 Secretary in the Ministry of Education and Culture, and that was
9 up to 2013; wasn't it?

10 A. Correct, um-hmm.

11 Q. And then you took a break from Public Service but
12 returning to Public Service in 2020?

13 A. I was retired from the Public Service at that point,
14 and then I came back last year, 2020.

15 Q. And that was specifically to be Permanent Secretary?

16 A. Yes.

17 Q. In the Premier's Office?

18 A. Yes, Commissioner.

19 Q. Now, the reason we've asked you to return to give
20 further evidence is because the Commission needs your assistance
21 in relation to the Statutory Boards that fall under the
22 Premier's Office, and there are matters that we need to put to
23 you because you're the Permanent Secretary of the Premier's
24 Office.

25 You have provided, in total, three Affidavits to the

1 Commission. The first one related to an issue around
2 disclosure. It's not one that we're going to need to look at
3 today.

4 A. Okay.

5 Q. Two subsequent Affidavits that you have provided deal
6 with Statutory Boards.

7 Can we look at the first one of those. If you pick up
8 the Part 2 bundle.

9 A. Commissioner, I'm trying my best, understanding that
10 all of these pre-date myself, so I had to ask for permission
11 from IRU for assistance in compiling the information.

12 Q. If I can reassure you, Dr O'Neal-Morton, you're not
13 the first Permanent Secretary who has given evidence to the
14 Commissioner on Statutory Boards, and all of them have
15 explained--and I will go through that with you--

16 A. Okay.

17 Q. --how the Affidavit was put together, and they have
18 explained that other Public Officers were involved in the
19 process.

20 A. Okay.

21 Q. As we go through it, you can give that explanation in
22 context to the Commissioner.

23 A. Certainly, Commissioner.

24 Part 2?

25 Q. Part 2, please.

1 If you turn to page 1263, Dr O'Neal-Morton.

2 A. I'm there.

3 Q. Now, this is your Second Affidavit to the Commission,
4 but it is the first which deals with Statutory Boards and those
5 that fall under the Premier's Office. And looking at those, the
6 Boards that you dealt with--and just confirm this for the
7 Commissioner--you deal in this Affidavit with the BVI Ports
8 Authority, the BVI Tourist Board, the BVI Electricity
9 Corporation, the BVI Recovery and Development Agency, and the
10 BVI Airports Authority.

11 A. Correct.

12 Q. You have exhibited--and if I explain for the
13 Transcript--you made the Affidavit on behalf of The Honourable
14 Premier in your role as Permanent Secretary in response to a
15 letter that was sent to him dated the 4th of June.

16 A. Yes.

17 Q. That letter asked for responses to a number of
18 questions concerning Statutory Boards. And what you've done is
19 to set out, also partly in text and partly in tabular form, the
20 responses to that question--to those questions.

21 If we look, first, though, just quickly at the
22 Affidavits that you have provided, if you turn just to
23 page 126--yes, 1285.

24 A. I'm there.

25 Q. The first part of the exhibit is the law that relates

1 to the Statutory Boards that fall under the Premier's Office,
2 and you set out the various acts--haven't you?--exhibited to the
3 Affidavit.

4 A. Correct.

5 Q. And they go through to 1457.

6 And once we get there--

7 A. I'm there.

8 Q. --then the remainder of the exhibits are the CVs of
9 those who were appointed to various Boards.

10 A. Yes, Commissioner.

11 Q. And that ends at 1608.

12 If I could take you, then--can I ask you two questions
13 about those exhibits. The first one is, you have obviously
14 addressed the law also in the Affidavit, but have you endeavored
15 to set out the law as it is currently now insofar as you
16 understand it to be?

17 A. Commissioner, the information I saw came from the
18 records. So, in my estimation, they were accurate and current
19 records of these Boards.

20 Q. And in terms of the CVs, are those the ones that were
21 available on file in the Premier's Office?

22 A. Yes, Commissioner, those are the ones that were
23 available.

24 Q. You need keep your voice up a little bit,
25 Dr O'Neal-Morton.

1 A. Let me come forward.

2 COMMISSIONER HICKINBOTTOM: The answer is yes.

3 THE WITNESS: Yes, Commissioner.

4 COMMISSIONER HICKINBOTTOM: If you keep your voice up,
5 that would be very helpful. Thank you.

6 THE WITNESS: Okay.

7 BY MR RAWAT:

8 Q. Let's take you back to page 1282, please.

9 A. 1282.

10 Okay.

11 Q. Can you confirm, Dr O'Neal-Morton, that that is your
12 signature?

13 A. That is my signature, Commissioner.

14 Q. And the Affidavit is sworn on the 2nd of July 2021?

15 A. That is correct, Commissioner.

16 Q. Now, we're probably going to spend a bit of time with
17 this bundle, bit I just need to ask you to just confirm the
18 contents of your Third Affidavit, which you'll find in Part 4.

19 A. Lots of bundles.

20 Q. Your Affidavit should be on the first page, which
21 should start on the first page of that bundle.

22 Do you have it?

23 A. Yes, I do, Commissioner.

24 Q. For the Transcript that's 3310.

25 A. Correct.

1 Q. Now, in this Affidavit which was made in
2 September 2021, 5th September 2021, you dealt with an additional
3 six Statutory Boards that come under the Premier's Office. They
4 are the Telecommunications Regulatory Commission, Prospect Reef,
5 the Appeals Tribunal, the Building Authority, the Planning
6 Authority, and the Climate Change Trust Fund. That's right,
7 isn't it?

8 A. Correct, Commissioner.

9 Q. So, is it right that that present, at least as at
10 September 2021, that the Premier's Office has 11 Statutory
11 Boards sitting under it?

12 A. That is correct, Commissioner.

13 Q. Now, paragraph 2.3 of that Affidavit explains why you
14 had to make this additional Affidavit dealing with additional
15 Statutory Boards, and that was just an unintentional oversight?

16 A. Yes, Commissioner.

17 Q. Which you had omitted to deal with these six Boards;
18 is that right?

19 A. Yes, Commissioner. That was an oversight.

20 Q. Now, it is a 12-page Affidavit, and it has, as your
21 previous Affidavit had, a table which sets out--and this is at
22 page--you will see it at page 3315, the composition and role of
23 the various Statutory Boards.

24 A. Correct, Commissioner.

25 Q. And it's accompanied, if you could confirm, by--it's

1 402 pages of exhibits, and if we just confirm what they are,
2 please.

3 If you go to 3324, please.

4 A. I'm there.

5 Q. So 3324 to 3550 are the statutes that govern the
6 Statutory Boards?

7 A. Correct, Commissioner.

8 Q. So, that reflects what you also did with your Second
9 Affidavit where you also provided those?

10 A. That's correct.

11 Q. At 3351 or 3353--

12 A. 3353--

13 Q. 51, if go to 51, please.

14 A. I'm there.

15 Q. There is a press release dated the 1st of June, 2021.

16 A. 3351? Sorry.

17 Q. 3551. I'm sorry, my apologies.

18 A. All right. I'm there.

19 Q. And there is a press release there which relates to
20 the Government seeking members for Boards and Commissions.

21 And then if we go to 3563?

22 A. 3563?

23 Q. That's the start of a set of CVs that you also exhibit
24 which are of members of those appointed to Boards?

25 A. That is correct, Commissioner.

1 Q. And that's the entirety of the rest of the exhibit?

2 A. Yes.

3 Q. So, again, those are the ones that you hold on file,
4 aren't they?

5 A. Yes, Commissioner, that's correct.

6 Q. If you turn back to 3321, please?

7 A. 3321? I'm there, Commissioner.

8 Q. Dr O'Neal-Morton, can you confirm that that is your
9 signature?

10 A. I confirm, Commissioner.

11 Q. And it's sworn on the 5th of September 2021?

12 A. That is correct, Commissioner.

13 Q. And now, are you content that those two Affidavits
14 should stand as part of your evidence on this topic to the
15 Commission?

16 A. I confirm.

17 Q. You were also sent a letter, a Warning Letter, as
18 we've called it, to you in your capacity as Permanent Secretary,
19 and you've provided a written response to that letter?

20 A. Yes, Commissioner.

21 Q. There is, I think, I hope, a copy of that on the table
22 because we're going to look at that in due course.

23 A. Yes, Commissioner.

24 Q. Can you also confirm in relation to that written
25 response that you're happy that that should form part of the

1 evidence before the Commissioner?

2 A. Yes, Commissioner.

3 Q. Thank you.

4 You can put Part 4 away. And if I take you back to
5 your First Affidavit, Part 2, 1263, please.

6 A. I'm there, Commissioner.

7 Q. As I've explained, Dr O'Neal-Morton, that actual
8 letter requesting an Affidavit was addressed to The Honourable
9 Premier directly. Could you just explain to the Commissioner
10 how it came about that you were the person selected to make
11 these Affidavits?

12 A. I was selected to make the Affidavit on behalf of the
13 Premier as his Permanent Secretary.

14 Q. And was there any particular reason it was thought you
15 were a better person to do so than the Premier?

16 A. I'm not sure of what you're asking. I'm not sure.

17 Q. Well, the letter was addressed to him--

18 A. Um-hmm.

19 Q. --because he is the Minister in charge of these
20 Statutory Boards, and he's the person who appoints people to
21 Statutory Boards, except with additional input from the Cabinet
22 and other circumstances.

23 A. Um-hmm.

24 Q. You're the Permanent Secretary. Why was it considered
25 that you were--it was more appropriate that you do it than the

1 Premier himself?

2 A. Because the Permanent Secretary is responsible for the
3 operational activities of the Ministries. So, by way of that,
4 the Permanent Secretary would be the one who would be the holder
5 of the records in the operational aspect of the Ministry. So,
6 by that virtue, I think it automatically become the
7 responsibility of the Permanent Secretary.

8 Q. Thank you.

9 Now, picking up on the point you said about the role
10 of the Permanent Secretary--

11 A. Um-hmm.

12 Q. --you referred to responsibility for the operational
13 aspect.

14 A. Correct.

15 Q. This is something I've put to other Permanent
16 Secretaries, and I would welcome your answer. In summary, would
17 a fair summary be that the role of the Permanent Secretary is to
18 supervise the Ministry, subject to the direction and control of
19 the Minister?

20 A. That is correct. The Ministry gives policy direction,
21 and the Permanent Secretary is operational coordinator of the
22 Ministry, Commissioner.

23 Q. Now, in terms of answering the Letter of Requests and
24 the various questions in Affidavit form, how did you go about
25 that task?

1 A. In terms of--the information was gathered with a team
2 in the Ministry, and then we solicit the assistance of the IRU
3 in formulating the information. When we put the information
4 together and had the input; it was a collaborative effort
5 between the Premier's Office and the IRU.

6 Q. I see. And who was responsible for drafting the
7 Affidavit itself?

8 A. For the actual drafting? In terms of the text? I
9 don't know--

10 Q. Yes.

11 A. Could you be more specific?

12 Q. Well, just in terms of the text from the page 1 of the
13 Affidavit to the very end. I mean, who drafted it? Was it
14 your--was it in your words, or was it--was there input from
15 other people?

16 A. My word as the Permanent Secretary alone?

17 Q. As the person who signed the Affidavit?

18 A. I have to get the records, of course, so other Members
19 of staff had to assist me, because most of the records are from
20 hard-copy files, so I had to get assistance from the Members of
21 staff. They put it together, and then we send it to IRU to
22 address this and formulated it.

23 COMMISSIONER HICKINBOTTOM: That really deals just
24 looking at page 1264, the second page of your Affidavit, with
25 the table of legislation. I understand that.

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: But who drafted
3 paragraphs 1 to 4 and paragraphs 7 to 22? That's, as it were,
4 the text of the Affidavit.

5 THE WITNESS: We made our declarations, and the IRU
6 would have fixed them up in the appropriate legal language,
7 because we are not the legal persons. They would have fixed
8 them in the legal language.

9 COMMISSIONER HICKINBOTTOM: Thank you very much.

10 BY MR RAWAT:

11 Q. Now, you've confirmed in your Affidavits, do you, that
12 the Premier's Office oversee a significant number of Statutory
13 Boards. I think if my math is right, you have 11?

14 A. That is correct, Commissioner.

15 Q. That's significantly more than any other Ministry; is
16 that right?

17 A. I'm not too sure how many other Ministries have at
18 this point. I'm not too sure.

19 Q. We know from other evidence that when the new
20 administration came in in 2019, there was a portfolio
21 rearrangement, and so some Boards moved between different
22 Ministries. Are you aware whether any moved from the Premier's
23 Office to the other Ministries?

24 A. I'm not sure. I'm not sure, Commissioner.

25 Q. What we can see from your table, though, is that the

1 Ports Authority was transferred to or came, as you say, under
2 the control of the Premier's Office in March 2019.

3 A. That's correct.

4 Q. The Electricity Corporation on the 3rd of September
5 2019, the Recovery and Development Agency on the 12th of
6 April 2018, and the Airports Authority in March 2019.

7 Do you know the reasons why those came under the
8 control of the Premier's Office?

9 A. I'm not certain why they came under control. I'm not
10 certain. I'm not certain.

11 Q. And when a Board is transferred to a different
12 Ministry, does that mean all the files come over to your
13 Ministry?

14 A. I think that usually happens. I believe it usually
15 happens.

16 Q. And it must have happened, actually, thinking about
17 it, in this instance because you were able to access hard-copy
18 files to get CVs relating to some, for example, to the Ports
19 Authority and the Airports Authority, weren't you?

20 A. We were able to access most, but for some of them we
21 had to ask the previous Ministry holder to supply certain
22 information.

23 COMMISSIONER HICKINBOTTOM: Just to go back half a
24 step?

25 THE WITNESS: Um-hmm, Commissioner.

1 COMMISSIONER HICKINBOTTOM: You say that you don't
2 know why these three Boards are transferred to the Premier's
3 Office. I understand that. I mean, the movement of Boards
4 between departments--I mean, not unusual, particularly at the
5 start of an administration. Really, it's a policy decision.
6 But do you know of any--so, it is a policy decision, a matter,
7 as it were, for the Ministers. But do you know of any advice
8 that was given with regard to the transfer?

9 THE WITNESS: No, no, Commissioner, not that I'm
10 aware.

11 COMMISSIONER HICKINBOTTOM: Thank you very much.

12 BY MR RAWAT:

13 Q. If I ask you just to turn to page 1265, please.

14 A. I'm there.

15 Q. You set out there, Dr O'Neal-Morton, a summary of the
16 processes that apply in relation to appointing Members to
17 individual Boards, and I appreciate that each Board has its own
18 statute, but before we get into any detail--and I'm going to
19 call it an "informal process" because that's what your written
20 response describes it as.

21 A. Yes, Commissioner.

22 Just a moment, please.

23 (Pause.)

24 Q. Could you, therefore, just give the Commissioner an
25 outline of how that process operates within the Premier's

1 Office.

2 A. The informal process?

3 Q. Yes, please.

4 A. Regrettably, I've only experienced one of those
5 informal process because we have changed the process, we have
6 evolved the process to a more formal one since my entry in the
7 Ministry, and the Policy has changed from the prospective of the
8 Government as well.

9 COMMISSIONER HICKINBOTTOM: Can we do it in this way,
10 if this is acceptable to Dr O'Neal-Morton and indeed to
11 Mr Rawat.

12 THE WITNESS: Okay.

13 COMMISSIONER HICKINBOTTOM: We've heard evidence about
14 the informal process.

15 THE WITNESS: Yes, Commissioner.

16 COMMISSIONER HICKINBOTTOM: It's also clear from your
17 Affidavits that there's been a change in the process this year.
18 We can come on to that.

19 THE WITNESS: Okay.

20 COMMISSIONER HICKINBOTTOM: But in terms of the
21 informal process, perhaps Mr Rawat could briefly outline the
22 steps of the informal process that we have been told about by
23 the previous two Permanent Secretaries who have been witnesses,
24 and then, if anything there strikes you as wrong or right, you
25 can say so. Is that a fair way of dealing with it?

1 THE WITNESS: Certainly, Commissioner. I accept that.

2 COMMISSIONER HICKINBOTTOM: Could you do that,
3 Mr Rawat? I think that would help.

4 MR RAWAT: Yes.

5 BY MR RAWAT:

6 Q. What we've heard, we've heard evidence from Ms Tasha
7 Bertie who is the Acting Permanent Secretary in the Ministry of
8 Health and Social Development, and we've also heard from
9 Mr Joseph Smith-Abbott, who is the Acting Permanent Secretary in
10 the Ministry of Natural Resources and Immigration.

11 And to summarise--and they obviously both have
12 different Boards under their Ministry with different statutes,
13 but the process that they have outlined to the Commissioner, the
14 informal process, is this that: A Desk Officer--when
15 appointments to a Board are being considered, a Desk Officer or
16 a Permanent Secretary can make recommendations to a Minister
17 for--for potential candidates for the Board. The Minister may
18 make recommendations.

19 We've also heard from The Honourable Wheatley, for
20 example, he said that he may have recommendations from--there
21 may be recommendations from other Ministers or from others.

22 Mr Smith-Abbott explained that, in relation to the
23 National Parks Trust, recommendations may come from that Board,
24 but it is essentially an internal process whereby
25 recommendations are made to the Minister.

1 That results in a pool of people who will then be
2 approached, and they will be asked two questions. First is
3 whether they agree to serve on that Board, and the second, which
4 is conditional and them saying "yes" is that they then supply
5 the CV.

6 When the CV comes in to the Ministry, it will then be
7 considered, and it will then, if that person is going to go
8 forward, be included or details of it will be included in a
9 Cabinet Paper. That Cabinet Paper will be drafted with a date
10 on the front by an officer in the Ministry, sometimes by the
11 Permanent Secretary, but if one goes to the back of that
12 document, it will have a different date and the name of the
13 Minister, and that will be when the Minister adopts the paper.
14 And essentially it's down to the Minister, ultimately, what
15 names go into that paper, and that's the paper that Minister
16 then takes to Cabinet. And it's the paper that, I think the way
17 you compile it is on ExcoTrack, isn't it?

18 A. Yes, ExcoTrack, yes.

19 Q. And when the Minister takes it to Cabinet, then it's
20 for Cabinet to make a decision. So, that's the broad outline of
21 the process.

22 What we were also told is that there is no--the
23 process doesn't involve advertising, it doesn't involve
24 interviewing, it doesn't involve obtaining references. The only
25 document that is obtained is a CV or the résumé. So, broadly,

1 does that accord with what the information you've gathered to
2 put into your Affidavit, Dr O'Neal-Morton?

3 A. Basically, yes, it does, Commissioner.

4 COMMISSIONER HICKINBOTTOM: And, in fact, the reason I
5 thought it might be appropriate to deal with the matter in that
6 way is that your response to the Warning Letter, which we will
7 come to, is in similar terms to the responses of the other
8 Permanent Secretaries in respect of the informal process.

9 REALTIME STENOGRAPHER: I'm sorry, can we get a verbal
10 answer, please? I heard an "um-hmm."

11 THE WITNESS: That's what it was.

12 COMMISSIONER HICKINBOTTOM: Yes, I think the response
13 is "yes".

14 THE WITNESS: Yes, Commissioner.

15 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr. Kasdan,
16 that's our fault. I'm afraid we have to speak so that
17 Mr. Kasdan, who is the Stenographer--

18 THE WITNESS: My apologies. I was looking at the
19 Commissioner. I was looking at you and communicating.

20 COMMISSIONER HICKINBOTTOM: No problem at all.

21 THE WITNESS: Sorry about that.

22 REALTIME STENOGRAPHER: That's fine. Thank you.

23 BY MR RAWAT:

24 Q. It's always better to be slightly louder, if you feel
25 comfortable doing that, Dr O'Neal-Morton.

1 Can I just--having got your agreement that that is the
2 informal process in outline--just get some details in relation
3 to dealing with, let's say, all 11 Boards. But none of
4 the--you've said in your Affidavit, if you look at 1265,
5 paragraph 8, that based on each individual Board legislation, no
6 requirements in the legislations of the Boards to advertise
7 Board positions. But it's also true, isn't it, that none of
8 these statutes prohibit advertising?

9 A. That is correct. That is correct, Commissioner.

10 Q. And you--as we've discussed, you agreed that there is
11 no interview as part of the process, but you mention that an
12 interview process has recently been adopted as a policy decision
13 by the Premier.

14 When exactly did that policy come or become adopted?

15 COMMISSIONER HICKINBOTTOM: Just, before you answer,
16 Paragraph 4.11 of your Third Affidavit--there is no need to turn
17 to it yet; that's your other Affidavit, but we will turn to it
18 if needs be--does actually deal with this point. And it says
19 that the policy was made by announcement by the Deputy Premier
20 on the 1st of June this year. It may be fair to look at that,
21 but I just didn't want you to--

22 THE WITNESS: Yes. Yes, Commissioner.

23 COMMISSIONER HICKINBOTTOM: --forget that you had
24 given that evidence in the other Affidavit.

25 THE WITNESS: Yes, Commissioner, I do recall it, and

1 it was when the Deputy Premier was acting as Premier. That was
2 the point that that declaration was made.

3 COMMISSIONER HICKINBOTTOM: Paragraph 21 of this
4 Affidavit on page 1266 at the top--

5 THE WITNESS: Um-hmm.

6 COMMISSIONER HICKINBOTTOM: --says, understandably,
7 that The Honourable Premier has taken a policy decision to
8 advertise vacancies that become available in the Boards that
9 fall under his portfolio.

10 Given that evidence and the evidence from the other
11 Affidavit, can I take it that the policy decision by the Premier
12 was on or about the 1st of June of this year?

13 THE WITNESS: Early June. I don't recall. It's early
14 June.

15 COMMISSIONER HICKINBOTTOM: I think--yes, I think the
16 press conference of the Deputy Premier was on the 1st of June,
17 but anyway, at about that time.

18 BY MR RAWAT:

19 Q. I think the Press Release is--

20 A. The Press Release is in one of the bundles.

21 Q. Yes. If you go to Part 4.

22 A. Is it in this one that I have?

23 Q. Not in that one. It's in the Part 4 bundle, at 3351.

24 COMMISSIONER HICKINBOTTOM: Again, I'm sorry to
25 interrupt, Mr Rawat, and also to change the direction of your

1 finding a page. But if you look first, perhaps, at 3313, but
2 keep your finger in that page if you've found it, right at the
3 beginning, Paragraph 4.11, just to be sure that the evidence
4 that you've given is on the record and you remember.

5 THE WITNESS: Certainly, Commissioner.

6 COMMISSIONER HICKINBOTTOM: 4.11 says the Acting
7 Premier, via a press release dated the 1st of June 2021, made a
8 policy decision to advertise vacancies that become available on
9 the Statutory Boards that fall under his portfolio. And then
10 that leads into the page to which Mr Rawat's referred.

11 BY MR RAWAT:

12 Q. It was accompanied by a number of vacancies or vacancy
13 advertisements with a closing date of the 25th of June 2021?

14 A. That's correct. I see that here.

15 Q. Given that since the 1st of June there has been, at
16 least within your Ministry, a move to an interview process,
17 could you just outline what the current interview process
18 involves?

19 A. Well, initially, as you see here, 3352, Commissioner,
20 you see vacancy notices. We received them, acknowledged them,
21 and we set up a panel headed by myself as a Permanent Secretary
22 in the Ministry. We had a team. We looked at the CVs, and we
23 looked at applications, so we went through them with a
24 fine-toothed comb. We went through them to see if these people
25 are competent and qualified for the various Boards that we were

1 advertising for.

2 After we had done that, we then invited each person
3 who applied for an interview. We're in that period now. We're
4 in the interview process.

5 Q. I see.

6 So, have you actually conducted any interviews?

7 A. Actually, I had one scheduled for today, but
8 unfortunately I couldn't do that one, Mr Commissioner, because I
9 had to be here.

10 Q. Was that the first one that you've got scheduled, or
11 had you done other interviews?

12 A. No. That was the first one we were planning to do.

13 I want to put it in perspective, Commissioner. My
14 office was severely affected by the recent spike in COVID-19,
15 that our office had to be closed down for about three to four
16 days. We had to clean the office because we were directly
17 affected with some members of staff.

18 And we then created a system, a shift system so that
19 we had some members in the morning, some in the afternoon. In
20 case something happened--in case something happened with a
21 member in the morning, then we could easily identify that and
22 adjust the system accordingly.

23 Last week, we returned to the full complement in the
24 Premier's Office.

25 COMMISSIONER HICKINBOTTOM: Nobody is going to

1 criticize you for the--

2 THE WITNESS: No, no.

3 COMMISSIONER HICKINBOTTOM: --nobody is going to
4 criticize you for the delay between the implementation of the
5 policy and the first interview. I can only apologize to you,
6 and particularly to the applicant, but we've put that off.

7 Yes, Mr Rawat.

8 BY MR RAWAT:

9 Q. Can I add to that, Dr O'Neal-Morton. My question was
10 directed to how the process works. We've explained the informal
11 process, and it's just seeking your assistance in how you intend
12 the new, if you like, the new process that involves an interview
13 to work, rather than the timing of interviews.

14 A. Commissioner, I just wanted to put it on the record,
15 Commissioner, so we are not slouching. We had factors that
16 affected our performance.

17 COMMISSIONER HICKINBOTTOM: That's a very fair point.

18 BY MR RAWAT:

19 Q. But in terms of that interview process, you explained
20 who oversees it, which is yourself as Permanent Secretary. Do
21 you have--has any guidance been produced for those who will be
22 involved in the interview process?

23 A. We have done that.

24 And what we have done is, for each of the Boards we
25 have selected persons who are--who are of expertises that are

1 related to the subject matter of the particular Board, and we
2 will send them information of what we're looking for in a
3 particular person, and we schedule interviews based on that.

4 Q. Now, you explained also--and this is back at your
5 first Affidavit--

6 A. Um-hmm.

7 Q. --what I'll--it's your paragraph 10. You say that an
8 interview process was conducted for the members of the recently
9 appointed RDA Board. The interview panel included the Premier,
10 Governor, Deputy Premier, leader of the Opposition, the
11 Permanent Secretary of the Premier's Office--that's
12 yourself--and interviews were conducted after the Premier
13 consulted and agreed to a list of candidates with the Governor
14 and the leader of the Opposition.

15 So, was there a sort of initial sift of potential
16 applicants which was then put to the leader of the Opposition
17 and the Governor for consultation? Was that how it worked?

18 A. Whatever preceded that portion of the interview
19 section, but we were invited at the final stage to interview the
20 short list and to rank them in order of our scoring.

21 Q. I see.

22 And who compiled that short list?

23 A. As you read before, it's the Premier, the Governor,
24 and the leader of the Opposition have been persons that they
25 nominate for that Board.

1 Q. I see.

2 Now, in terms of just going back now, slightly, to the
3 informal process, in terms of--and you might be assisted by
4 looking at your first Affidavit.

5 Under the heading of "Appointment criteria," you refer
6 in paragraph 13 and say that the Legislation that governs each--

7 A. I'm sorry, Commissioner, where are you reading from?

8 Q. 1265, please.

9 A. 1265?

10 Q. Yes. I'm sorry, I'm going too fast.

11 A. Um-hmm. 1265, I'm there.

12 Q. It's your paragraph 13, Dr O'Neal-Morton. You explain
13 that the legislation that governs each individual Board guides
14 the appointment of members. So does it follow that in terms of
15 identifying appointment criteria, what you rely on is the
16 particular piece of legislation?

17 A. That is correct.

18 I can speak in particular to two of the Boards that we
19 are advertising for. For example, the Trade Commission; it
20 seeks various persons in certain occupations to be on those
21 Boards.

22 And I think the one, the RDA, they also have
23 specifications as well.

24 The Gaming Commission, they have individuals that
25 would have to have specific competencies in terms of the areas

1 that they work, so that Legislation will automatically tell us
2 we need a person who has this competency in order to qualify for
3 applying for that Board.

4 Q. But other than the Legislation--and again, focused on
5 the informal process--you don't have any other written policy or
6 guidance in the Premier's Office; is that right?

7 A. No, no, no, Commissioner.

8 COMMISSIONER HICKINBOTTOM: In respect, I think there
9 are five--there were five Boards or Commissions advertised in
10 June with the press statement that we have seen. Were they all
11 under your umbrella, under the Premier's umbrella?

12 THE WITNESS: Yes, Commissioner, the five that were
13 advertised.

14 COMMISSIONER HICKINBOTTOM: They were?

15 THE WITNESS: They were all under the Premier's
16 Office.

17 COMMISSIONER HICKINBOTTOM: Thank you.

18 BY MR RAWAT:

19 Q. You explain also that the Premier's Office doesn't
20 assign roles. How someone is assigned a role, be it as a Member
21 or a Chair or a Deputy Chair, it will depend upon the
22 Legislation itself?

23 A. That is correct, Commissioner.

24 Q. Now, under the heading "good character/fit and proper
25 person," you said applicants' résumés/CVs are used to review

1 each prospective applicant to consider if they are of good
2 character and fit for the role.

3 Now, what other Permanent Secretaries have told us is
4 that the CVs are obtained--and you've confirmed this--at a late
5 stage, in the sense that you will already have the pool of
6 people that you will want to approach for confirmation that they
7 will serve, and it's at that point you get the CVs.

8 So, prior to making that approach, what criteria do
9 you measure good character and fit and proper person against?

10 A. Good character, we look at, for example, the person's
11 presence in the community, if they are a civic organisation,
12 if--depending on the--if they're good businessman or good
13 businessperson, we look at all of that information.

14 And it's a small community, so you basically know most
15 of the persons who are being considered or whose names are
16 brought to the table.

17 Q. And once you've got the CV, what does that add for
18 you? If you've already done that assessment, even before you've
19 approached the person, what does the CV add?

20 A. Well, the CV might have information that we perhaps
21 didn't know offhand, so it might be--it might be a complement to
22 that person's information.

23 Q. And in terms of criteria by which you assess
24 individuals, either before or after you've received their CV, is
25 any of that written down at all?

1 A. In the informal? No, no.

2 Q. You don't have a document that says, "when we are
3 looking at whether a person is a fit and proper person."

4 A. No, sir, we don't have that.

5 Q. So, just to clarify, Dr O'Neal-Morton, how do you use
6 a CV or a résumé to assess if someone is of good character and
7 fit for the role?

8 A. Well, the CV will contain several elements. It has
9 their academic qualifications, it has their community efforts,
10 it has all of items in there, so we could look at that and see
11 whether that person may be competent and fit to carry out the
12 role of a Board Member. And they might have other interests
13 indicated there, or sometimes even in the CV they have interests
14 that may be related to the particular Board. So, we may
15 consider whether that person is excellent because they already
16 have experience in aviation and they want to be a member of the
17 Airport Board, so things like that we look for.

18 Q. You've said at paragraph 16 that convictions and spent
19 convictions aren't taken into account when appointing members to
20 Boards. How do you do that?

21 A. Once we become aware of it--we first have to be aware
22 of it, and in order to take it into account, if it exists, we
23 must take it into account.

24 Q. But how do you become aware of it?

25 A. I don't know what has transpired in the past but I

1 know in particular, some of the Boards, you have to do a
2 declaration.

3 Q. But that would be after you had been appointed?

4 A. That is true.

5 Q. We're looking at the stage at which you're considering
6 if somebody's suitable--whether it's suitable--it's a stage at
7 which a Minister is going to decide to take someone to Cabinet.
8 And as part of this informal process--

9 A. Um-hmm.

10 Q. --how do you--how do you make yourself aware if
11 someone you're considering has, for example, a spent conviction?

12 COMMISSIONER HICKINBOTTOM: It seems to me there may
13 be at least three ways; there may be other ways.

14 One is, you do a formal check of convictions.

15 Secondly, you can ask the applicant, but I understand
16 you don't ask the applicant at that stage, so that goes.

17 And, thirdly, you may be aware of it because you, as
18 it were, happened to know it; it's a relatively small community.

19 Do you do a formal check? Is a formal check made?

20 THE WITNESS: I can only answer for myself. I'm just
21 supposing what might have transpired. The third one,
22 Commissioner, that you said, because I believe most people would
23 know of convictions or spent convictions in the Territory.

24 COMMISSIONER HICKINBOTTOM: To the best of your
25 knowledge--and I understand that your experience is quite--is

1 fairly short in that--

2 THE WITNESS: Um-hmm.

3 COMMISSIONER HICKINBOTTOM: --but you think a
4 conviction will probably be known in respect of an applicant,
5 but no formal check is made, to the best of your knowledge? Is
6 that fair?

7 THE WITNESS: To the best of my knowledge. I can't
8 swear for others. But to the best of my knowledge, I believe
9 that's how it is done.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 MR ROWE: To assist the Commissioner, can we request a
12 police report?

13 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rowe.
14 Firstly, you're not allowed to give evidence. And secondly, at
15 the moment Dr O'Neal-Morton is giving evidence.

16 MR ROWE: I don't think you were either, sir, but
17 you're suggesting other ways, and I'm giving you an additional
18 way. Not giving evidence, suggesting. I don't think you give
19 evidence either, Commissioner.

20 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rowe. I'm
21 simply completely lost. What's the point you're making?

22 MR ROWE: That another way to that you were
23 suggesting, Commissioner, could be to ask for police reports.
24 That's assisting the Commission.

25 COMMISSIONER HICKINBOTTOM: Oh. Well, thank you for

1 trying to assist the Commission, Mr Rowe. I think that was
2 probably covered by the formal checks that I mentioned, which
3 are usual in similar jurisdictions. But thank you very much,
4 Mr Rowe.

5 Mr Rawat.

6 BY MR RAWAT:

7 Q. I think what you've confirmed--I mean, I appreciate,
8 Dr O'Neal-Morton--and tell me if I misunderstood this
9 Affidavit--what you must have done in order to prepare this
10 Affidavit is seek information from your officers within your
11 Ministry--

12 A. That's correct.

13 Q. --to compile the information that you've put into
14 there?

15 A. That's correct, Commissioner.

16 Q. And so, what you're able to say is that the approach
17 of the Ministry is to take account of convictions and spent
18 convictions where you are aware of them?

19 A. I don't want to--to add on that--

20 (Overlapping speakers.)

21 Q. Right.

22 A. --I'm speaking now of myself and my experience. I
23 don't know if other PSs might have had a different--

24 Q. Well, it's the experience of the Ministry that we're
25 interested in, and this Affidavit reflects the experience of the

1 Ministry. And so the Premier's Office, as the Ministry, you
2 say, does take into account of convictions and spent
3 convictions. But what you cannot say, that you make background
4 checks on individuals? You don't, do you?

5 A. Uh-huh--I don't want to commit myself to that.

6 COMMISSIONER HICKINBOTTOM: Is that because you don't
7 know? Which is perfectly--

8 THE WITNESS: Exactly, Commissioner. I don't want
9 to--

10 (Overlapping speakers.)

11 COMMISSIONER HICKINBOTTOM: That's fine.

12 So far as you're aware, they're not made, you have no
13 evidence that they are made, but we can ask, perhaps, others as
14 to whether they are made. At the moment, I will proceed on the
15 basis that they're not made until I see some evidence that they
16 are.

17 Thank you very much, Mr Rawat.

18 MR RAWAT: Thank you.

19 BY MR RAWAT:

20 Q. Moving slightly on, we have heard, both from other
21 Permanent Secretaries and, in fact, from Ministers, that when
22 the new administration came in, it had a specific policy in
23 relation to Statutory Boards. What was your understanding of
24 what the administration wants to do in relation to Statutory
25 Boards?

1 A. My understanding, based on what I was told, is that
2 they want to reinvigorate the Boards to bring in new persons in
3 the Board, and in the interest of the public, to have innovative
4 ideas, bring fresh faces, younger persons into the Boards, to
5 have a new perspective, so to speak.

6 Q. If we look at Part 3, please--if you turn up Part 3.
7 It is a different bundle, Dr O'Neal-Morton.

8 A. 3, um-hmm.

9 Q. Just give me a moment, please.

10 (Pause.)

11 If we go to 2960, this is a paper, a memorandum dated
12 the 6th of May 2019, issued from the Ministry of Finance and
13 concerning an appointment to the BVI Airports Authority. But if
14 we look at paragraph 3, it reads: "The Members of the BVI
15 Airport Authority Board resigned. The manifesto of the new
16 government administration calls for innovative, forward and
17 progressive ideas, initiatives and actions from each government
18 ministry, department, and agency during this recovery period.
19 For those initiatives that must be implemented through a
20 statutory body, the same principles for progressive, forward and
21 progressive initiatives and activities will be required".

22 It then goes on, at paragraph 4, to say that: "The
23 BVI Airport Authority Board shall consist of a non-executive
24 Chairman, two executive directors, one of whom shall be the
25 Managing Director, and at least two non-executive directors.

1 However, in keeping with the new government policy for
2 inclusions, the desire is also to include appointment of youth
3 to each board. In addition, the new policy of the new
4 administration is for the terms of each board should not extend
5 beyond the tenure of the Government administration that
6 appointed them".

7 Does that sort of summarise your understanding of what
8 the Government's policy was, or is, in relation to Statutory
9 Boards?

10 A. Yes, Commissioner.

11 Q. And it comes to this, doesn't it? I mean, the
12 evidence is--and this is the word of The Honourable Malone and
13 The Honourable Vincent Wheatley--that what the new
14 administration wanted to do was reconstitute the Statutory
15 Boards, and secondly, what they wanted to do was to have the
16 boards--their terms of office to match the terms of the
17 administration.

18 Would you accept both of those?

19 A. Well, based on what I see in the Cabinet papers about
20 matching the administration, I would agree with that.

21 Q. I mean, it's not wanting a bit more from you than the
22 Cabinet paper. It's really trying to make--get at, from you,
23 your understanding, as Permanent Secretary, as to what that
24 policy is, because it's a policy that you are required, as you
25 explained, to implement.

1 A. Um-hmm.

2 Q. So, it's just trying to understand what you see the
3 policy that you have to implement as.

4 A. What was the question again, Commissioner?

5 Q. I will put this to you that--and this is based on
6 evidence from Ministers and from other Permanent Secretaries.
7 But the Policy of the--of this administration is, firstly, that
8 they wish to reconstitute Statutory Boards to ensure that those
9 Boards have a commitment to the Government's mandate.

10 Secondly, they wish to see the inclusion of youth on
11 the Board.

12 A. Um-hmm.

13 Q. And thirdly, that they considered it important that
14 the term of the Board should match the term of an
15 administration.

16 A. Yes. I see--I agree with that. I agree with that.

17 Q. But when you say that you agree with it,
18 Dr O'Neal-Morton, are you agreeing with me, or does that reflect
19 your understanding of the policy that you have to implement?

20 A. You said you were summarizing the policy,
21 Commissioner. And I said I agree with the summary of the
22 policy, Commissioner.

23 Q. Does that summary reflect your understanding as
24 Permanent Secretary?

25 A. Basically, Commissioner, yes, it does.

1 Q. So, that reflects the policy that you are required to
2 try to implement?

3 A. Basically, yes, Commissioner.

4 COMMISSIONER HICKINBOTTOM: And those are the policies
5 that are being implemented. Are they--so this is a question.
6 In the five current exercises to find members of those five
7 boards, because you're involved in those--

8 THE WITNESS: Yes, Commissioner.

9 COMMISSIONER HICKINBOTTOM: And so, those policies,
10 are they being implemented in the exercises that are currently
11 being done?

12 THE WITNESS: Commissioner, the one that speaks to
13 tenure, that would have to be a decision by Cabinet, once it
14 goes to Cabinet. We cannot say tenure.

15 COMMISSIONER HICKINBOTTOM: Okay. As it were, the
16 length of time that the post should be held for.

17 THE WITNESS: Yes, Commissioner.

18 COMMISSIONER HICKINBOTTOM: I see that. Yes. Thank
19 you.

20 BY MR RAWAT:

21 Q. Can I just pick up on the tenure question? You make
22 the point to the Commissioner that you, as a Public Officer,
23 cannot decide tenure.

24 Now, the Cabinet paper--and we can look at some
25 examples if we need to, but the Cabinet paper will set out the

1 names of those who it's recommended by the Minister should be
2 appointed, and it will set out the tenure.

3 So, that's at least before Cabinet--it gets to
4 Cabinet, the person who has to make that decision whose names go
5 into the Cabinet paper and for how many years, that's down to
6 the Minister; is that right?

7 A. That is correct.

8 Q. And what role, if any, would a Public Officer play?
9 We've talked about the names that go to the Minister, but would
10 you advise at all as to tenure?

11 A. We can--well, the role of the Permanent Secretary is
12 one of advice--is an advisory role, so the Permanent Secretary
13 can advise, but it would go down to the Minister and ultimately
14 to the Cabinet to decide a tenure.

15 Q. I mean, there is examples of legislation where it is
16 prescribed that the membership has to be staggered.

17 A. Correct, Commissioner.

18 Q. That may be something that you--is proper for you as
19 Permanent Secretary to point out to the Minister?

20 A. Correct, Commissioner.

21 Q. Can you consider any other instances in relation to
22 tenure that it would be proper to give advice on to a Minister?

23 A. I can't think of any right now, Commissioner.

24 Q. Okay.

25 MR RAWAT: Commissioner, we have been going for an

1 hour and a bit. I'm moving on to a new topic. If you--it might
2 be a good time to give Mr. Kasdan and, indeed, Dr O'Neal-Morton
3 a break.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 Dr O'Neal-Morton, we have to have a break because we
6 have got a Stenographer, and he needs only about a five-minute
7 break every now and then, so we will break now for five minutes.

8 THE WITNESS: Okay. And I do need a break as well.

9 COMMISSIONER HICKINBOTTOM: Feel free to leave the
10 room and do whatever you need to do. Thank you very much.

11 THE WITNESS: Okay.

12 COMMISSIONER HICKINBOTTOM: We will come back in five
13 minutes also.

14 THE WITNESS: Okay. Thank you.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 (Recess.)

17 COMMISSIONER HICKINBOTTOM: I think we're ready to
18 resume.

19 Mr Rawat.

20 MR RAWAT: Thank you, Commissioner.

21 BY MR RAWAT:

22 Q. Dr O'Neal-Morton, thank you for coming back.

23 Can I just--before we move on to our next topic, just
24 ask you a couple of questions about paragraphs 9 and 10 at
25 page 1265 of your Second Affidavit.

1 At 10--

2 A. Which bundle are you in?

3 Q. It's part 2 that we're in.

4 A. Two?

5 Q. Yes, please, Dr O'Neal-Morton.

6 A. Which page, Commissioner?

7 Q. 1265, please.

8 A. Okay. I'm there.

9 Q. We were looking at before the short break.

10 If you look at paragraph 10, you speak of the
11 interview process that was conducted for the Members of the
12 recently appointed RDA Board.

13 Before the short break, you were responding to
14 questions from the Commissioner about the process by which you
15 could do a check in terms of a spent conviction or a conviction.
16 Were any such checks done in relation to that process appointing
17 the RDA Board?

18 A. For the RDA Board, Commissioner, I'm not too sure,
19 Commissioner.

20 Q. From the work that you did for this Affidavit, did
21 that produce any evidence that any checks of any sort or any
22 inquiries had been made into whether those appointed or possibly
23 to be appointed to the RDA Board were checked to see whether
24 they had any convictions or unspent convictions or spent
25 convictions?

1 A. I cannot recall. I cannot recall, Commissioner.

2 Q. And in terms of the interview process that you're
3 embarking on now for the vacancies that were advertised in June,
4 you've obviously had candidates put in CVs and résumés and
5 applications, and you've sifted those to then come up with a
6 pool of people to be interviewed, and you've explained why it's
7 taken longer than you would have hoped to progress that for
8 understandable reasons. But in relation to those candidates,
9 are there any such checks being made?

10 A. We have not reached to that as yet, but we will do
11 that. We will make checks.

12 Q. And what kind of checks will you make?

13 A. We will have to do formal--of course, we will have to
14 check with the Police Forces to see if there are any things on
15 their records there. And we might have some that are overseas,
16 they might have to submit those as well.

17 But like I said, Commissioner, we are still in the
18 process. We are young, and we are learning.

19 Q. You also need to speak up a little bit.

20 A. Oh, I'm sorry, Commissioner.

21 I said that we are young in the process, and we're
22 still learning, and we will have to do the checks, of course.

23 We will start with the Royal Virgin Islands Police
24 Force, which is our local contact, and to see if--because I
25 think all of the persons reside here, so it would be easy to get

1 a record from them or ask them to submit one on their behalf,
2 because I'm not too sure if we can ask for them directly, but we
3 will ask the participants to do that.

4 COMMISSIONER HICKINBOTTOM: I think it's just to
5 confirm--you may have answered this question, so I apologize if
6 I'm asking it again, but in terms of the new procedure, which
7 includes advertisement and interviews--

8 THE WITNESS: Um-hmm.

9 COMMISSIONER HICKINBOTTOM: --and you say criminal
10 checks, is there a written procedure for this?

11 THE WITNESS: Yes, Commissioner. We have decided
12 because--realizing that informal process there was not--the
13 record-keeping, in our estimation, was not up to par because,
14 for example, I am coming in new, and I won't have a record, so
15 to speak, so I wanted to be that when I'm gone and somebody
16 comes in and picks up the mantle that they can have the record
17 to follow the process whether they want to keep that process and
18 add to it or take away from it.

19 So, we are, indeed, keeping our records during this
20 new process that we are starting.

21 COMMISSIONER HICKINBOTTOM: Can I just break that into
22 two. Is there, as it were, a manual or a guidance document
23 which says, well, these are the steps we're going to take,
24 advertise, sift or whatever the steps are. Is there a document
25 like that?

1 THE WITNESS: We have them on the file, and each--each
2 Board has its particular file with all--all of these things that
3 we're doing in terms of our steps, and information that came
4 from each participant--each candidate, sorry.

5 COMMISSIONER HICKINBOTTOM: Two different things. I
6 just want to make sure that I'm not confused between them.
7 First, if there is an interview, there may be a record of the
8 interview, and that would produce a document.

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: But is there a document
11 which says you've got to have an interview, there's got to be a
12 sift, you've got to have an interview, there's got to be
13 advertisement? Is there a policy guidance document of that
14 sort?

15 THE WITNESS: We do have that document in our office,
16 a separate document, and then we cross-reference it on each file
17 that we are creating for the new Boards that we are doing right
18 now.

19 COMMISSIONER HICKINBOTTOM: Mr Rawat will correct me
20 if I'm wrong. I'm not sure that we have seen any of that.

21 MR RAWAT: We haven't.

22 THE WITNESS: No, no, because that's going on right
23 now. We didn't submit any of that. But we can, in the future,
24 if that is what the Commissioner would like, we can supplies
25 those later on.

1 BY MR RAWAT:

2 Q. I think, and the Commissioner will correct me if I'm
3 wrong, what I think the Commissioner's interest would be in
4 seeing the overarching Protocol or guidance that you have
5 developed.

6 COMMISSIONER HICKINBOTTOM: Yes. Not the documents
7 relating to an individual. I don't want to see the interview
8 record with a particular interviewee or anything like that.
9 It's any policy document, any Policy Guidance or Protocol which
10 sets out how you're doing things.

11 THE WITNESS: Yes, Commissioner. I gather you're
12 referring to a manual on the process?

13 COMMISSIONER HICKINBOTTOM: Exactly, yes.

14 THE WITNESS: We can sort it out of that supply.

15 COMMISSIONER HICKINBOTTOM: If that can be sent in,
16 that would be helpful, thank you.

17 BY MR RAWAT:

18 Q. Thank you.

19 As I've understood your answer, Dr O'Neal-Morton,
20 that's your starting point, and then you cross-refer in to each
21 Board as necessary?

22 A. Um-hmm, correct, Commissioner.

23 Q. And so, you might need to adapt the process for a
24 particular Board, but that starting manual--

25 A. The general process.

1 Q. --will give you, as you say, it will give you and your
2 successors a route through, and it will be the key indicators of
3 what you need to achieve in order to have a more open process?

4 A. Yes.

5 COMMISSIONER HICKINBOTTOM: And if that could be sent
6 to us sort of today. I say that--I say that because you're due
7 to come back on Monday, Dr O'Neal-Morton, and if we have any
8 questions about it, we can then put them to you then.

9 THE WITNESS: I can't guarantee today, but I will try
10 my best, Commissioner.

11 COMMISSIONER HICKINBOTTOM: No, I don't want to put
12 impossible burdens on you.

13 Is there--is there currently a document which sets all
14 of this out?

15 THE WITNESS: This would be the Ministry. I don't
16 know if it's in a presentable state to give to the Commission,
17 but we do have it set out.

18 COMMISSIONER HICKINBOTTOM: Yes. I would just like--I
19 don't want you to create anything. I would just like
20 whatever--whatever you've got, whatever you're working from.

21 THE WITNESS: We do have that. We do have that.

22 COMMISSIONER HICKINBOTTOM: All right.

23 THE WITNESS: Like I said, Commissioner, we may not
24 have it in the state to give it to you today, but we will try
25 our best to see if we can get it formulated.

1 COMMISSIONER HICKINBOTTOM: Either today or if not,
2 tomorrow, that would be very helpful.

3 THE WITNESS: Certainly. We will do our best.

4 COMMISSIONER HICKINBOTTOM: Thank you. Thank you very
5 much.

6 BY MR RAWAT:

7 Q. Thank you, Dr O'Neal-Morton. Could I just ask you
8 just to now have your written response to the Warning Letter to
9 hand.

10 What the written response does is that it reproduces
11 from the Warning Letter a potential criticism that is being put
12 to you as Permanent Secretary. And it's important that I
13 explain that it is only a potential criticism. It's being drawn
14 to your attention out of fairness, and what the Warning Letter
15 does is it identifies the potential criticism and the supporting
16 evidence that goes to that potential criticism, but it doesn't
17 reflect either a provisional or concluded view on the part of
18 the Commissioner.

19 The Warning Letter gives you the opportunity which you
20 have taken to put in a written response, and we can see that
21 there are a number of potential criticisms, and to each, in
22 bold, there is the response.

23 My first question is: How did you put together the
24 written response?

25 A. Well, I will preface it by reminding that I took up

1 the role in March 2020, when I got the information, I contacted
2 IRU and told them not I'm not in a position to respond
3 accurately to the criticisms because it pre-dated my time, and I
4 know that there was a warning not to share the contents with
5 anyone else. We would have then sought the permission, and I
6 got the permission for the Deputy Secretary to assist with the
7 information since she was in the Ministry before myself, so that
8 is how we went about getting the information.

9 Q. And did you draft this yourself?

10 A. Yes, we did. Of course, again, with the collaboration
11 of the IRU, we put it in our language and, of course, the IRU
12 would have put it in the legal terms for us.

13 Q. I see.

14 And the reason is, a point that the Commissioner has
15 made, is that the wording that appears in your written response
16 matches exactly the wording that appears in other written
17 responses from other Ministries. But you put it in your words,
18 and then it was reconstituted by others; is that right?

19 A. We put it all together, both teams worked together on
20 it, and this is what came out. I'm not certain of what the
21 other Ministries would have had, so, I can't, you know, talk to
22 that, but I know how we came up with our responses.

23 Q. I see.

24 But, in any event, it was a response that you
25 approved?

1 A. Yes, Commissioner.

2 Q. Now, if I just deal with the point that you've quite
3 properly made that you were not in post at the time of the
4 events that formed the potential criticism, if I could just--I
5 hope to reassure you the reason it was put to you was because
6 you are the current Permanent Secretary, and this goes to the
7 workings of the Ministry.

8 Now, I think you've said that, in preparing your
9 Affidavit, you had the assistance of other Public Officers to
10 put together the information that went into the Affidavit, and
11 so you were able to review all the available information held
12 within the Ministry that went to the answers or the questions
13 you were asked to answer for the Affidavit. That's right, isn't
14 it?

15 A. Correct, Commissioner.

16 Q. And in terms of producing a response to these
17 potential criticisms, you again, had the assistance of a
18 colleague who had been there at the time, as well as you had
19 access again to the information within the Ministry; is that
20 right?

21 A. My colleague, the DS, was really the one that was
22 working along with me on the responses for the criticisms. As I
23 was told, I can't reveal it to anybody else, I got the
24 permission, she worked along with me on it to help me to come up
25 with the information since I wasn't present with either part.

1 Q. Thank you very much for that.

2 Now, the first potential criticism related to the BVI
3 Electricity Corporation, which is one of the corporations that
4 came under the umbrella of the Premier's Office. And that
5 was--give me a moment--on the 3rd of September 2019.

6 Now, do you--would it assist you if we went through
7 some of those underlying documents that are set out in the
8 Warning Letter as evidence? Or are you familiar with those?
9 Are you familiar with the background?

10 A. Not all of them, Commissioner. Not all of them.

11 Q. I mean, the point that's made is that on the 25th of
12 March, the membership of the Board of the BVI Electricity
13 Corporation was revoked by Cabinet Decision that became
14 effective on the 22nd of April 2019.

15 A. Um-hmm.

16 Q. Now, as your Affidavit makes clear, after that date,
17 3rd September 2019, the Corporation was transferred to the
18 Premier's Office.

19 On the 7th November 2019, save for the position of
20 Chair, the Cabinet then approved the appointment of new Members
21 of the BVI Electricity Corporation Board.

22 Now, do you dispute any of those facts?

23 A. Those are the facts that were given to me.

24 REALTIME STENOGRAPHER: I'm sorry, could you repeat
25 that, please?

1 COMMISSIONER HICKINBOTTOM: Those are the facts that
2 were given to me.

3 THE WITNESS: Are you asking if I disputed them? I'm
4 not certain of what you're asking me.

5 BY MR RAWAT:

6 Q. Are those, having looked at the underlying documents,
7 do you agree those dates?

8 A. The information that is written here--

9 Q. Yes.

10 A. --was given to me.

11 Q. But what was also referenced and provided was the
12 underlying papers. I can take you to them, if that will help
13 make you feel more comfortable.

14 A. I might want to do that.

15 Q. All right. Let's do that.

16 We need to go to the Part 3 bundle, and let's turn up
17 page 2820.

18 A. Okay. I'm there.

19 Q. I will take you through the chronology.

20 Now, this is a paper that comes from the Ministry of
21 Transport, Works and Utilities, so not emanating from your
22 Ministry. You see that it is dated at the top 25th of
23 March 2019?

24 A. Yes, I see that, Commissioner.

25 Q. So, that's what gives rise to that first date that we

1 see in the Warning Letter, but to make it more specific so you
2 can understand and read through it, this is the paper, the
3 Cabinet Paper that is put before Cabinet recommending revocation
4 of appointments of Board Members and this is Board Members of
5 the BVI Electricity Corporation. Do you see that?

6 A. Yeah, I see that, Commissioner.

7 Q. All right. If you go to 2827.

8 A. 2827. I'm there.

9 Q. You will see, then, that there is a Cabinet Decision
10 which will have been taken sometime after--sometime after the
11 25th of March, but Cabinet then decides to revoke. And if you
12 go over to 2828, at 55, you will see the Cabinet decided, in its
13 discretion, that the appointments of the following Board Members
14 of the British Virgin Islands Electricity Corporation be revoked
15 effective 22nd of April 2019, and then it lists the Members who
16 will be revoked.

17 A. Yes, Commissioner. I see that.

18 Q. If you then turn, please, Dr O'Neal-Morton, to page
19 2831.

20 A. 2831, I'm there.

21 Q. Now, can you see at the top, that's dated 23rd of
22 October 2019?

23 A. Yes, Commissioner, I see that.

24 Q. It's from the Premier's Office, and it's headed--the
25 author is Mrs Elvia Smith-Maduro. Now, is she the Deputy

1 Secretary or is she your predecessor as Permanent Secretary?

2 A. 2019, I'm not certain. Maybe she was the Deputy
3 Secretary at the time.

4 Q. You need to speak up a little bit?

5 A. I'm not certain, Commissioner. I think she was
6 probably the Deputy Secretary at that time. I will have to
7 double-check.

8 Q. I don't think any really turns on it, it's just I've
9 come across her name in the papers before, and I just wondered
10 what her particular role was. But in any event, she's putting
11 together this document which is recommending certain individuals
12 to be appointed as Board Members.

13 A. Okay.

14 Q. Now, by then, 23rd of October 2019, as your Affidavit
15 confirms, the Corporation, Electricity Corporation, is now under
16 the umbrella of the Premier's Office, isn't it?

17 A. That is correct, based on the information there,
18 Commissioner, yes.

19 Q. Now, if you turn to the last page, 2837, you will see
20 that that memorandum then carries The Honourable Premier's name
21 and the date of 7 November 2019.

22 Now, what the evidence that we've had from other
23 Permanent Secretaries is that that's the operative date. That's
24 the date at which it's approved by the Minister concerned.

25 A. I understand the date of the extra, but I'm not sure.

1 I can't see there from here, Commissioner. I see the certain--

2 Q. So, what you have, you have two dates on these
3 memoranda?

4 A. I don't see the extract because the extract may
5 be--have a different date to the actual paper.

6 Q. I'm not showing you the extract. Go to 2837.

7 A. Commissioner, it's saying on the 7th of November it
8 was approved. I don't see the extract and the extract would
9 give that information.

10 Q. I will give you the extract in a moment.

11 A. Okay. All right.

12 Q. I just want to take you through stages,
13 Dr O'Neal-Morton.

14 A. All right.

15 Q. So, what I'm doing is the memorandum--and it's a side
16 question, which is perhaps a little bit cheeky but it's picking
17 up on your experience as a Permanent Secretary, that's why. So,
18 that memorandum carries two dates. The first date at the top is
19 2831. Page 2831 carries the date of the 23rd of October 2019,
20 and the last page of the memorandum is 2837, and that carries
21 the date 7th of November 2019.

22 And what we've--the evidence from other Permanent
23 Secretaries is that that's the date at which the Minister will
24 sign off the paper, and so adopts the paper as his or her own.

25 A. Okay.

1 Q. That's not your understanding how it works?

2 A. The paper is the Minister's own from the time it goes
3 out the track. I don't understand what you're saying,
4 Commissioner.

5 Q. Well, the paper is prepared in draft.

6 A. Um-hmm.

7 Q. It is sent--

8 A. Correct.

9 Q. --the draft is sent to the Ministry of Finance and the
10 Attorney General so that they input on financial implications
11 and legal implications.

12 A. That is duly circulated to them.

13 Q. Yes.

14 If there is cross Ministry consultation needed, it
15 might be circulated--the draft might be circulated to other
16 Ministries?

17 A. Correct.

18 Q. But then there comes a point in time when it has to be
19 adopted by the Minister, the Minister has to take that paper to
20 Cabinet, the final version goes to Cabinet under the name of the
21 Minister concerned.

22 And my understanding from other evidence is that
23 that's why it's dated the 7th of November. That's the date a
24 Minister adopts it?

25 A. Well, I know from my experience and previously, the

1 first date is perhaps the date when the paper was authored.

2 Q. I see.

3 So, you take the first date as the more important
4 date?

5 A. Because--

6 Q. And is that the date--

7 (Overlapping speakers.)

8 A. I'm just saying, Commissioner, because I wasn't in
9 play for this. I'm just assuming but I know based on my
10 experience and what I see, from the date the paper's authored,
11 that is the very first day it appears.

12 Q. On ExcoTrack?

13 COMMISSIONER HICKINBOTTOM: Yes, and that's the date
14 on page 2831?

15 THE WITNESS: Yes, Commissioner.

16 COMMISSIONER HICKINBOTTOM: So, it goes on to--it goes
17 on to ExcoTrack obviously before it's circulated to the Attorney
18 General's Chambers or wherever, that have to have input.

19 THE WITNESS: Yes. It has to go in in order to be
20 circulated.

21 COMMISSIONER HICKINBOTTOM: Exactly.

22 But Mr Rawat's point is it goes on there, and there is
23 input from the Financial Secretary or there is input from the
24 Attorney General's Chambers. But at some point, the Minister
25 who is going to take this to Cabinet, has to approve the paper

1 that goes to Cabinet.

2 And is that not, in this case, the 7th of November,
3 which is the date under the Premier's name on page 2837? 2837.
4 That's at the foot of this document there is the Premier's name,
5 Premier, and the date 7th of November 2019.

6 Have you got that?

7 THE WITNESS: Correct.

8 COMMISSIONER HICKINBOTTOM: Now, isn't that the date
9 because this is the evidence we've had from other Permanent
10 Secretaries--

11 THE WITNESS: Um-hmm.

12 COMMISSIONER HICKINBOTTOM: --that the Minister says,
13 "I approve this, and this is the paper I'm taking to Cabinet."

14 THE WITNESS: Okay, yes, Commissioner, because my
15 estimation is once the paper is on ExcoTrack, it has gone to
16 Cabinet. That's what I'm thinking, so maybe that's why we're
17 perhaps thinking differently.

18 COMMISSIONER HICKINBOTTOM: Yes, because the paper
19 that does go to Cabinet won't be that paper. It will be the
20 paper that has input from the Attorney General and so on, and is
21 approved by the Minister.

22 THE WITNESS: Okay. It's approval.

23 COMMISSIONER HICKINBOTTOM: So, but the paper which
24 Cabinet considers in Cabinet is the paper that's got the 7th of
25 November date at the foot of it?

1 THE WITNESS: Um-hmm, okay.

2 COMMISSIONER HICKINBOTTOM: Is that right?

3 THE WITNESS: I guess based on what is here on the
4 pages, yeah, that would be correct.

5 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

6 BY MR RAWAT:

7 Q. And you wanted to see an extract. If you go to 2838?

8 A. 2838, Commissioner?

9 Q. Yes.

10 2838 should be headed "Cabinet paper record & extract
11 from the Minutes of the meeting of the Cabinet,
12 7th November 2019."

13 Do you have that?

14 A. Yes, Commissioner.

15 Q. And if you turnover leaf, you'll see the decision, so
16 there was a decision to take forward a resolution to the House
17 of Assembly seeking permission to appoint for Mrs Rosemarie Flax
18 as Chairman of the Electricity Corporation.

19 A. Um-hmm.

20 Q. And then at C that the appointments of the following
21 persons be approved, and that was Mr Wayne Robinson, Ms Pearl
22 Smith, Mr Hyman Husein, Mr Jasen Fahie, Mr. Leroy Abraham, and
23 then also a Permanent Secretary, it shows yourself as an ex
24 officio member.

25 So, that's the record of Cabinet's decision on the 7th

1 of November to appoint new Members to the BVI Electricity
2 Corporation. Do you have that?

3 A. Yes, Commissioner.

4 Q. Before we turn back to that point, can I just show you
5 some additional documents, because both relate to the
6 Electricity Corporation, and it might make it easier when we
7 turn to the Warning Letter if you could just have the
8 chronology.

9 Now, you will see that the extract refers to Mr Oliver
10 Skelton.

11 A. Yes, Commissioner.

12 Q. Sadly, Mr Skelton subsequently died--passed away.

13 So, if you go to 2918, we now have a second paper
14 dated 18th of May at the top 2020. We won't worry about what
15 the last date means, but for the record it's actually 21st of
16 May 2020 on page 2922. But you can see background information,
17 Dr O'Neal-Morton, it lists there the Members of the Electricity
18 Corporation had just been appointed. It makes reference to
19 Mr Skelton, and then it goes on, and we can see that at 2120 to
20 say that the purpose of this paper is to appoint Ms Violet de
21 Castro as a Member of the Electricity Corporation to replace
22 Mr Oliver Skelton who passed away on 23rd November 2019. So,
23 that's the paper that goes to Cabinet.

24 And if you look at 2923?

25 A. 2923. I'm there.

1 Q. You'll see that again, we've got the Cabinet Paper
2 record and extract, prepared by Ms Sandra Ward, the Cabinet
3 Secretary, it's dated on the next page 8th of October 2020, but
4 it shows that Cabinet met on the 3rd of June 2020 and approved
5 the appointment of Ms de Castro as a Member of the Electricity
6 Corporation.

7 Do you have that?

8 A. Yes, Commissioner, I have that.

9 Q. So, that's the sort of factual background that
10 underpins the potential criticism in your--if you look at your
11 written response at number one under BVI Electricity
12 Corporation, and also if you turn over to the third page at
13 number two where there is reference to Ms de Castro.

14 Do you see that?

15 A. Yes, Commissioner, I see that.

16 Q. Right. If I could just then take you back to the
17 parts of the criticism on the first page, your response--and
18 you've already given evidence about this--is that you have
19 referred to the informal process, haven't you?

20 A. Yes, Commissioner.

21 Q. And what I want to ask you, then, is just let's go
22 through the various elements of the potential criticism that was
23 put to you as Permanent Secretary.

24 The first we can put it as a question: When--and from
25 the work that you did preparing for the Affidavit and preparing

1 for this written response--did you, in relation to the
2 appointments that Cabinet made in April 2019 following that
3 memorandum that we looked at, was there a competency profile for
4 those posts?

5 A. No, Commissioner, it appears not.

6 Q. And it follows, doesn't it, from the evidence you've
7 already given to the Commissioner that neither when we come to
8 those posts or the appointment of Ms de Castro, that those posts
9 were advertised?

10 A. No, Mr. Commissioner, they were not.

11 Q. And going back one step, to be absolutely clear, when
12 it came to appointing Ms de Castro as a Member of the Board to
13 take over for Mr Skelton, again, that process didn't involve a
14 competency profile, did it?

15 A. No, Mr Commissioner, because, as stated, they were
16 still in the informal stage, so that was not done.

17 Q. I want to be fair to you, Dr O'Neal-Morton, and I want
18 to make sure that we get all of your evidence on this issue.

19 A. Um-hmm.

20 Q. And you can put your answers in proper context.

21 A. Okay.

22 Q. You've referred--if we look at Point 3 under potential
23 criticism, would you accept that Point 3 must be right, then,
24 that you were relying on the informal process? There was no
25 independent or transparent process by which a suitable pool of

1 candidates was identified?

2 A. There is no definition because, although the process
3 was informal, I--I believe it had some merit because the
4 discussions had been told--were held between the Desk Officer,
5 the PS, the Minister, et cetera, and people in the office who
6 discussed the possibilities of filling these roles, so I don't
7 know if we can totally dismiss it as not being transparent.

8 Q. Well, can I put it this way. I accept the detail you
9 have given of this informal process.

10 A. Um-hmm.

11 Q. But it is an internal process, isn't it? So, it
12 doesn't involve bringing in members of the public to sit on an
13 interview panel or having somebody from outside coming in and
14 helping with the process at all, does it? You had no evidence
15 of that, do you?

16 A. No, it doesn't, but I don't think it takes away
17 from--that is my--that is my position.

18 Q. Can we deal with it this way, Dr O'Neal-Morton?

19 A. Um-hmm.

20 Q. As we go through these questions, I think there's one
21 where you would be the better one for you to respond on that
22 because, and I hope you will understand why I say that in a
23 moment, but it's not independent in that sense. And it's not
24 transparent, is it, because you don't keep an audit trail, you
25 haven't got any paper records of either the process by which in

1 April 2019 a number of individuals were appointed to the
2 Electricity Corporation or by which Ms de Castro was appointed
3 in what was October 2020.

4 A. Okay. I can read to that point.

5 Q. And you don't use written criteria, do you? You
6 didn't have at that time, I appreciate--

7 A. No.

8 Q. --you've got a different manual now, but at that time
9 and even in 2020 when Ms de Castro was appointed, you didn't
10 have written criteria?

11 A. No, I don't think so, Commissioner.

12 Q. You didn't, for example, either when appointing in
13 2019 new people to the Electricity Corporation or Ms de Castro
14 in the following year, you didn't have open sessions to tell
15 people about the role so that you could invite a wide arrange of
16 people to come in and apply for those posts?

17 A. No, Commissioner.

18 Q. So those are examples, aren't they, of why it wasn't a
19 transparent process?

20 A. All right.

21 Q. And as you've said, you didn't at the time conduct
22 interviews, did you?

23 A. No, Commissioner.

24 Q. And what's put--and this is at point 6--

25 A. Um-hmm.

1 Q. --that there was no due diligence carried out in
2 respect of any of these candidates, and that includes Ms de
3 Castro, who has dealt with it at potential criticism number 2 on
4 the Warning Letter, because you don't take up references, do
5 you? You ask for a CV and a résumé, but you don't actually ask
6 for referees, do you?

7 A. No, no.

8 Q. And you have seen--you have, in fact--and I appreciate
9 the position you're in, Dr O'Neal-Morton, but you are in effect
10 a fresh pair of eyes going back over the record looking at what
11 was done, and you have spoken to people who were directly
12 involved in this process, haven't you?

13 A. Correct, Commissioner.

14 Q. And what you don't have is any evidence to put before
15 the Commissioner about how this process was undertaken?

16 A. That is correct.

17 Q. And that relates, not just to the appointment of--I
18 can't remember how many people it is--six people to the Board
19 but also of Ms de Castro?

20 A. That is correct, in terms of the documentation, that
21 is correct.

22 COMMISSIONER HICKINBOTTOM: It goes slightly further
23 that documentation, doesn't it, Dr O'Neal-Morton, because in
24 respect of interviews, it's true that there is no record of an
25 interview, but one reason for that is there was no interview.

1 So, it's not simply that there are no records, which, of course,
2 is a governance issue, but these steps weren't taken because the
3 informal process did not include these steps.

4 THE WITNESS: Relatively informal process, in terms
5 of--I would want to think of Mrs de Castro's situation. Mrs de
6 Castro is a well-known--was a well-known Public Officer, and her
7 reputation preceded her, so I would think she would be--she
8 would be a credible person to bring on a Board, and I would
9 imagine in their discussions they would have discussed where she
10 had worked previously and her ability in her various Public
11 Officer positions. So, I think that that will--

12 COMMISSIONER HICKINBOTTOM: So, the people concerned
13 with the process would have known in this case Ms de Castro.

14 THE WITNESS: Yes. I am very sure. I am very sure,
15 Commissioner.

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

18 BY MR RAWAT:

19 Q. Now, if you look at your response itself, and you look
20 at the third page of your written response, do you see at the
21 top that begins "and Ministers sought"?

22 A. Ministers sought in good faith. Yes, Commissioner.

23 Q. Do you see that the last sentence says, "all
24 candidates were asked to submit their CVs prior to the decision
25 of the Cabinet."

1 Now, that links across to Point 7 in criticism one
2 which is that none of the candidates appeared to have been asked
3 to submit their résumés, CVs prior to the Cabinet Meeting. But
4 were you able to confirm that that had, in fact, occurred?

5 A. If they were submitted, Commissioner, they would have
6 been in the bundle, so I cannot confirm or deny that at this
7 point. I will have to look at the bundle to refresh my memory.

8 Q. Can we deal with it this way?

9 A. Okay.

10 Q. In terms of the process that you're outlining here,
11 does it not come to this, Dr O'Neal-Morton, that what you're
12 able to do is set out, in general terms this is the informal
13 process that Ministries have always used?

14 A. In general terms, yes, Commissioner.

15 Q. And what you're unable to do, despite the work that
16 you have done, is to speak to the specifics of this particular
17 recruitment?

18 A. I cannot speak to neither of those that preceded me,
19 Commissioner.

20 Q. But you also can't speak to it because you haven't
21 found any written records that you can use to understand what
22 happened nor having spoken to those who were directly involved,
23 have you got any further information?

24 A. I can speak, Commissioner, in the presence of
25 documents that would have been found related to these Boards.

1 That I can speak to because I have that evidence. For example,
2 if they submitted a CV, and they're on a file, those we would
3 have reproduced, and sent forward.

4 Q. I mean, the CVs certainly have been--there are CVs
5 that have been produced to the Commission, and they're annexed
6 to your Affidavit. I think the Commissioner will no doubt be
7 ready to accept that you will have made every effort to make
8 sure that all relevant CVs were provided when you were preparing
9 your Affidavit.

10 A. Correct.

11 Q. The question that's seven in brackets on the second
12 page, is more directed to when the CVs were received. Were you
13 able to establish that the CVs were received before the
14 paper--before going to Cabinet?

15 A. I can't--I can't answer that with any certainty. I
16 can't verify that, Commissioner. I'm sorry about that.

17 Q. We will leave it there.

18 Now, in relation to the Electricity Corporation, if we
19 look at your Affidavit, because we can see that the Legislation
20 attached to your Affidavit, and it's at Part 2, please, 1359.

21 A. 1359, Commissioner?

22 Q. Yes, please.

23 A. I'm there.

24 Q. If you look at 1359, Dr O'Neal-Morton, that's the
25 start of the Ordinance, the British Virgin Islands Electricity

1 Corporation Ordinance. If you go through to 1360, and look at
2 paragraph 4.

3 MR RAWAT: Commissioner, for your note, can I say that
4 this Ordinance has been amended in 2015 and 2018.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 MR RAWAT: But the amendments don't affect the
7 sections that will be of interest. The amending acts have been
8 provided by Dr O'Neal-Morton. They're at pages 1380 and 1398
9 respectively.

10 BY MR RAWAT:

11 Q. If we look at Section 4, Dr O'Neal-Morton, it says
12 that "the corporation shall consist of a Chairman appointed by
13 the Governor in Council after prior approval for such
14 appointment has been obtained by a Resolution passed by the
15 Legislative Council, not less--being not less than three but not
16 exceeding five Members who shall not be Public Officers and such
17 Members shall be appointed by the Governor in Council."

18 Now, that's the composition of the Board appointed by
19 the Governor in Council. Section 5 on the other side then says
20 that, "the chairman and any appointed Member of the corporation
21 may resign his office by notice in writing addressed to the
22 Governor in Council and may be removed from office by the
23 Governor in Council in his discretion at any time."

24 So, there's a discretionary power to remove by the
25 Governor in Council.

1 Now, can you help us with what is meant by Governor in
2 Council now? If you can't, just do tell me, Dr O'Neal-Morton,
3 and we can work it out somewhere else.

4 A. I'm not certain, Commissioner.

5 Q. But is it your understanding that what approval had to
6 be given by Cabinet for appointments to the Electricity
7 Corporation.

8 A. That is my understanding, Commissioner. That's my
9 understanding.

10 COMMISSIONER HICKINBOTTOM: Yes, thank you.

11 BY MR RAWAT

12 Q. And we know that now the Legislative Council has
13 become the House of Assembly, so the process is that when you
14 have a Chair of the Electricity Corporation, and we're seeing
15 that from the documents, there has to be a Resolution of the
16 House of Assembly, but the Members are appointed directly, at
17 least now, by Cabinet; is that right? That's your
18 understanding.

19 A. That's my understanding, Commissioner.

20 Q. Now, there isn't any assistance from the Legislation
21 as to what skills or qualities a Member of the Electricity
22 Corporation need have. Were you able to ascertain how, when
23 performing the recruitment exercise in March-April 2019, new
24 Members to the Corporation Board, and then in 2020 from Ms de
25 Castro how the "fit and proper person" test was used?

1 A. Well, Commissioner, it would have been basically the
2 same thing for all of the other Boards as well. They look at
3 the credentials of the individuals that are being considered.

4 As I stated before, for example, their qualifications
5 in terms of being businesspeople, good businesspeople, their
6 business acumen. If they are, for example, served in civil
7 society and the various Rotary, Lions, or those organisations,
8 those things that are--might have been considered. This is the
9 informal process of--

10 Q. Yes. This is the point that's made at eight on the
11 second page, eight in brackets is that no "fit and proper" test
12 was applied, and it's right, isn't it, there isn't a test
13 that--or guidance that anyone--a Desk Officer, Permanent
14 Secretary or a Minister--is given as to what test to apply when
15 assessing someone's CV?

16 A. Test, I guess the word you can substitute test is with
17 evaluation. When we talk about credentials, we are evaluating
18 the person. Based on that, we're saying, okay, this person is
19 fit because X, Y, Z, based on what we see on the CV or what we
20 personally--I say we, what one might personally know about a
21 person, so that's an evaluation, that's a test also.

22 Q. That's a fair point. I'm quite happy to call this an
23 evaluation.

24 A. It's a test also.

25 Q. Dr O'Neal-Morton, the point is what you didn't have

1 and what you haven't been able to turn up in research that
2 you've undertaken, you haven't been able to turn up--and it
3 might link to the competency profile--a set of benchmarks by
4 which people are being assessed because it becomes a subjective
5 assessment, doesn't it? One person might evaluate someone on
6 one basis and another one on a different basis, and what you
7 don't have is a set benchmark by which to measure every CV or
8 résumé against.

9 A. Yes. We have that--we had that situation under
10 progress. We have a new date, we're looking at a different
11 process, so yes, that existed. And we are progressing, we are
12 evolving, we are going through better days having documentation,
13 having standard benchmark, information that we can look at, we
14 can measure. And we can look at the future and refer to
15 whenever we have situations like these come in again. That's
16 what we thought.

17 COMMISSIONER HICKINBOTTOM: I think this is your
18 evidence just summarized, that there was--there were no
19 benchmarks, if we want to use that--

20 THE WITNESS: Formally written, Commissioner.
21 Formally written. In formal discussion, I don't want to swear
22 that they were not because I wasn't privy to that.

23 COMMISSIONER HICKINBOTTOM: There is no evidence of
24 benchmarks before, say, the 1st of June this year but since then
25 new regime with benchmarks. Is that fair?

1 THE WITNESS: It certainly is. That is fair to say,
2 Commissioner.

3 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

4 BY MR RAWAT:

5 Q. The reason I'm going through it in some detail, Dr
6 O'Neal-Morton, is that it's important to make sure that we've
7 canvassed everything with you so that you had an opportunity to
8 fully answer, and that's why I'm taking it through in a little
9 bit of detail.

10 But what I want to make clear it that these criticisms
11 or these potential criticisms are directed at specific events,
12 so we're looking at events in 2019 and 2020 in relation to
13 recruitment to the Electricity Corporation Board.

14 COMMISSIONER HICKINBOTTOM: The other thing that I'd
15 suggest as well, although perhaps it's obvious, we're looking at
16 process, so we're looking at the tests or the evaluation or the
17 benchmarks that were applied. None of these questions suggest
18 that any candidate was not a "fit and proper person" for the
19 job.

20 Yes.

21 BY MR RAWAT:

22 Q. If you look at the second page, Dr O'Neal-Morton, now,
23 you will see that number nine is worded in this way. It
24 follows, and that means it follows from one to eight, and I
25 think you've answered--you've accepted one to eight--one to

1 seven--no, one to eight. But it follows that no effort was made
2 to identify and select the most suitable and qualified
3 candidates for membership to the BVI Electricity Corporation
4 Board.

5 The thrust of this, Dr O'Neal-Morton, is not that no
6 effort was made at all, but that the effect of using, what you
7 called an informal process, the effect of not being able to say
8 "yes" to these questions, is that you were not in a position to
9 find--make sure that you found the most suitable and qualified
10 candidates.

11 A. So, Commissioner, I would have to disagree with that.
12 The line follows that "no effort", and I disagree with that.
13 Effort was made.

14 COMMISSIONER HICKINBOTTOM: No, no, no Mr Rawat made
15 it clear that effort was made. There is no doubt that efforts
16 were made. But the efforts were made in a way not directed to
17 finding the most suitable and qualified candidate because the
18 process had the deficiencies we've been through, there may be
19 candidates out there who didn't know anything about the post.

20 THE WITNESS: That would be true, Commissioner.

21 COMMISSIONER HICKINBOTTOM: And they may be as good or
22 better than the candidates that were successful. That's the
23 point of this. As I say, it's not to suggest that no effort was
24 made at all. Because we know from what you said and from what
25 other PSs have said, that there were extensive internal steps

1 taken to identify candidates to go forward.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: And, secondly, we don't
4 say that the candidates that were found were not fit and proper
5 for the job. It's very particular that these defects may have
6 missed other better candidates. That's the only point of this.

7 THE WITNESS: I guess that's true. That is true also,
8 and also we might have a flawed process, so to speak, but we
9 have an excellent product.

10 COMMISSIONER HICKINBOTTOM: Yes, I know, but that may
11 be coincidence but the points of having good process is, as the
12 Premier's Office has now accepted, is to get better candidates
13 appointed because--

14 THE WITNESS: Correct.

15 COMMISSIONER HICKINBOTTOM: --the process is designed
16 to do that. No process is perfect, we know that.

17 THE WITNESS: I accept that.

18 COMMISSIONER HICKINBOTTOM: But the process that's now
19 adopted is intended to find better--better candidates.

20 THE WITNESS: That is correct, Commissioner. And we
21 expect to extend that to all of our Boards.

22 COMMISSIONER HICKINBOTTOM: No, I understand.

23 BY MR RAWAT:

24 Q. Before we come back to the rest of the Warning Letter,
25 Dr O'Neal-Morton, can I ask you this: I mean, obviously, the

1 work that you are doing in terms of a new process is directed
2 towards your Ministry and the Boards that fall under your
3 Ministry, and they are a significance number. I think--I think
4 no one will disagree with me, I think you are well ahead in
5 terms of the number of Boards you have to oversee as a Permanent
6 Secretary.

7 A. Um-hmm.

8 Q. But if that exercise that you are doing in terms of
9 now having a new manual, moving to advertisements and an
10 interview process, has that been replicated in other Ministries?

11 A. I am not certain, but we do encourage it. As the
12 coordinating ministry, we do encourage it in the other
13 ministries because we are trying to set the example, set the
14 pace at the Premier's Office. We have moved ahead and put out
15 in the public square for advertisement. We are encouraging of
16 others. Now, our other Boards may not be in a position to
17 advertise, they may not have Boards that the persons have
18 expired, so they may not want to advertise at this time, but
19 they are encouraged to advertise and go through the process of
20 recruitment. The formal process.

21 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.
22 Does that mean that the Policy that we've seen from 1st of June
23 or thereabout to have this more formal process, which, as you've
24 explained, is being applied in the five competitions, the five
25 exercises that are currently taking place, all of which are

1 under your umbrella, the Premier's Office's umbrella? That
2 policy is a policy of the Premier's Office. It's no doubt
3 encouraged. Other Ministers are encouraged to adopt it, but
4 ultimately it's a matter for those other Ministers.

5 THE WITNESS: It's a policy of the Government.
6 Government means all the Ministries.

7 COMMISSIONER HICKINBOTTOM: No, that's very helpful.
8 So, that policy applies to all of the Ministries?

9 THE WITNESS: Yes, sir.

10 COMMISSIONER HICKINBOTTOM: Thank you. That's
11 helpful. Thank you.

12 BY MR RAWAT:

13 Q. Now, if we go back to the written response and we
14 stick to the second page, and the reason it's important to that
15 is because actually the rest of the responses that you have
16 given you've just referred to the response that we are
17 considering.

18 What's also said is that it appears from the documents
19 that have been disclosed that there was no compliance with the
20 procedures in the Cabinet Handbook, in particular no conflict
21 checks were carried out, number one. And number two, procedures
22 in paragraph 6.8 of the Handbook were not followed.

23 Now, remembering, Dr O'Neal-Morton, that we're looking
24 at the BVI Electricity Corporation, we're looking at two events,
25 appointments in April 2019, and then following that the next

1 year, the appointment of Ms de Castro to the Corporation.

2 A. Um-hmm.

3 Q. Now, your answer is that there is no basis for the
4 assertion that the steps contemplated by paragraph 6.8 of the
5 Cabinet Handbook were ignored. You say candidates are asked at
6 the time they're approached to ascertain their willingness to
7 serve, if they might have any conflicts of interest, and
8 officials are mindful of the need to avoid such conflicts when
9 considering the suitability of a candidate. The Cabinet
10 memorandum sets out the information required by the Handbook and
11 the considerations in paragraph 6.8 mandate were part of the
12 informal process of discussion and decision-making that led to
13 the proposals to the Cabinet.

14 If we break that down, is in reality the only check
15 that the informal process contains for conflict of interest is
16 to ask someone if they might have a conflict of interest?

17 A. They were asked--they were asked.

18 Q. They were asked if they envisaged a conflict of
19 interest?

20 A. Um-hmm, in the informal process, yes, um-hmm.

21 Q. But internally, is there any discussion of potential
22 conflicts of interest?

23 A. You are asking me in the present tense about the past,
24 I don't know.

25 Q. Well--

1 A. They might have discussed--I would imagine it would
2 have been discussed if there were any conflicts. If there were
3 any conflicts, I think they would have been discussed.

4 Q. Can I put it this way?

5 A. Um-hmm.

6 Q. In the course of preparing your Affidavit and in the
7 course of preparing for this written response, did you come
8 across any written records showing that conflict checks had been
9 undertaken?

10 A. No written records.

11 Q. And if you're looking, you say you envisaged that it
12 might have been discussed in the circumstances as part of your
13 informal process. What sort of conflicts do people discuss?

14 A. For example, I think relationships, and I think that
15 is probably the main one that people might discuss.

16 Q. And what sort of relationships?

17 A. Close relationships, I guess people discuss that. But
18 that's the conundrum because we're baffled with the word
19 "close", we don't know how to defined that. So that has to be
20 defined.

21 Q. Well, would you consider a first cousin close?

22 A. I personally might not. You may.

23 Q. And isn't that the difficulty?

24 A. Yes, that's the difficulty.

25 Q. Because I could say--I could rule out someone on the

1 basis that I see a particular family relationship as a conflict,
2 and you might take a different view and say there isn't any
3 clear guidance, is there, about how one should approach
4 conflicts of interest?

5 A. That is correct. I think work needs to be done on
6 that in terms of defining what is guidance, for example, for me,
7 close family might be my husband and my daughter, and I cut it
8 off there. For somebody else, first and second cousin in large
9 might be close families.

10 COMMISSIONER HICKINBOTTOM: No, exactly.

11 So, the circumstances of the family may be relevant in
12 that sense.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: Because different families
15 have different relationships in a family.

16 THE WITNESS: Correct.

17 COMMISSIONER HICKINBOTTOM: They may have different
18 levels of closeness.

19 But there is also a perception, isn't there? I mean,
20 if someone doesn't believe that their cousin is a close relative
21 for these purposes, for the purposes of appointment, there may
22 be a public perception or a perception in some of the public
23 that that is a close relationship, and so that's--sorry, it's
24 not really a question. It just complicates the picture in which
25 conflicts of interest have to be considered?

1 THE WITNESS: I don't know what is held true for other
2 jurisdictions, but that is--that is quite a dilemma because
3 close, in defining the word "close".

4 COMMISSIONER HICKINBOTTOM: Yes, it's not
5 straightforward?

6 THE WITNESS: No, it's not, so that has to be worked
7 on.

8 BY MR RAWAT:

9 Q. What about other conflicts, other potential conflicts
10 of interest?

11 A. I mean, that is usually the first one that is thought
12 about.

13 Q. But another potential one is employer-employee. If a
14 candidate for a Board happens to be employed by a company that
15 is owned by a Minister, would that be a potential conflict of
16 interest?

17 A. Hmm. I can give up the answer for that because I
18 don't know the circumstances beyond the hypothetical question--

19 (Overlapping speakers.)

20 Q. I was giving it as a general question.

21 A. Um-hmm, um-hmm.

22 Q. And I said it's a potential conflict of interest.

23 A. Um-hmm.

24 Q. So, does it have potential to be identified as a
25 conflict of interest?

1 A. I--I would have to get more information because--it's
2 a very small community, and if you sort of eliminate people
3 based on that premise, then you may not have anybody on your
4 Board.

5 So, just giving me that employ--employer-employee
6 statement, I don't know if I would be able to make a judgment on
7 that. Perhaps if I had more details, I could probably say that,
8 but right away I will say "yes" or "no", it would create a
9 problem for me.

10 Q. The question is not intended to take you to the point
11 where you say I'm going to rule someone out. The issue is about
12 whether you, as part of the process, you actually considered
13 these, and the difficulty, as you've explained is that, in
14 responding to these potential criticisms, all that you can give
15 is a general answer, and it is no criticism of you, Dr
16 O'Neal-Morton. You have to go on what information you have been
17 able to gather and been given, and you have to go on your
18 experience, which I accept is significant as a senior Member of
19 the Civil Service. But the point is, is that it is an
20 assumption, on your part, isn't it, that in relation to what
21 happened in April 2019 and in May 2020, conflict checks were
22 undertaken?

23 A. What was the question again? Put the question you
24 asked me.

25 Q. You have to, because you have insufficient

1 information--

2 A. Um-hmm.

3 Q. --you are assuming that conflict checks were
4 undertaken, based on what you know of a general informal
5 process.

6 A. Um-hmm.

7 Q. Just on your past experience, you're assuming that
8 they were undertaken in these two cases, but you cannot be sure,
9 can you?

10 A. Well, because, as was said, there is no written
11 evidence of it. I have to rely on what was said to me that was
12 done, and that's what I have to go forward with.

13 Q. But did someone tell you "I did conflict checks"?

14 A. In the situation for the Boards--

15 Q. If you look at one, it's April 2019, and
16 appointments--sorry, November 2019, and appointments of new
17 Members to the Corporation Board in May-June 2022, it's the
18 appointment of Ms de Castro. Those are the two events we're
19 discussing.

20 A. I can't recall. I can't recall.

21 Q. As part of your answering this written response, did
22 someone tell you, "when I was involved in undertaking conflict
23 checks in relation to these two events"?

24 COMMISSIONER HICKINBOTTOM: Well, I would assume--I
25 would assume from the written response that nobody did because I

1 would assume that, given the joint effort of you, the Deputy
2 Secretary, and the IRU, that if there had been that evidence, it
3 would have appeared in the response.

4 THE WITNESS: That's correct.

5 BY MR RAWAT:

6 Q. And if we go to how one approaches conflicts of
7 interest, it's--I'm not suggesting that because someone has a
8 family relationship they have to be excluded, and you've given
9 evidence to the Commissioner about what does "close" mean.

10 A. Um-hmm, correct.

11 Q. But it's about having, if you like, a sort of list of
12 things to look out for. One would be family relationships, and
13 another one, I'm suggesting to you, would be whether someone is
14 employed. Because, as the Commissioner said, it's about the
15 public perception. If I give a job to my employee or I give a
16 job to my cousin or my mother-in-law, there might be a public
17 perception that I have done it for a bad reason rather than a
18 good. Do you follow?

19 A. Well, suppose your relative, whether it be your
20 distant relative, is meritorious of getting that position,
21 should that person be slighted because they happen to be related
22 to you, Commissioner?

23 Q. You're taking us back to the end result,
24 Dr O'Neal-Morton. My question is I'm taking you to the
25 beginning. Are these--it's actually what is the working

1 definition of "conflict of interest" used in the Ministry? Do
2 people think about family relationships. I think you've said
3 yes. My question is would they also think about
4 employer-employee relationships?

5 A. I don't think I have any recollection of that. I know
6 the first one that people normally think of and the Ministry
7 would have thought of is the family relationships.

8 Q. What about political affiliation?

9 A. Political affiliation, it's hard to tell because, for
10 example, we don't have a register to say I belong to this party,
11 you belong to that Party, you don't know. We can only go by
12 what we think, and that is unfair to the person.

13 I can know if you ran on a political party, then I
14 might assume of your affiliation. That I can assume, but in
15 terms of party affiliation, we can only guess. We don't know
16 for sure.

17 Q. Now, in relation to the individuals that were
18 appointed--could I have a moment, please, Commissioner.

19 COMMISSIONER HICKINBOTTOM: Certainly.

20 (Pause.)

21 BY MR RAWAT:

22 Q. Because the stage at which the Ministry would be
23 involved, if you're looking at conflict of interests of
24 Interest, you would have to look for conflicts of interest
25 with--potentially with Ministers appointing them all with the

1 Cabinet approving them, wouldn't you?

2 A. Accepted, um-hmm.

3 Q. And in relation to the persons involved, which
4 were--the ones appointed were Wayne Robinson, Pearl Smith, Hyman
5 Husein, Jasen Fahie, and later on Violet de Castro. Were any of
6 them, to your knowledge, identified as people who might have
7 links to Ministers at all?

8 A. No, the only one I can exactly say is the deceased who
9 was the brother of a former Minister of Health. That's the only
10 one I can say for sure.

11 Q. Right.

12 A. Because I know that to be a fact.

13 Q. Right.

14 But is that a question that you asked of candidates?

15 A. If they're related to any, where do they go?

16 Q. No. You've said family relationships are the ones
17 that would be uppermost in people's minds, and that people would
18 be contacted and asked if they envisaged any conflicts of
19 interest. How are they actually asked?

20 A. Understanding that fact about the Member that was
21 deceased and that was previously on the Board?

22 Q. Yes.

23 A. So, I don't know they asked--I don't think they asked
24 anybody about that with regards to this Board. I don't think
25 they did.

1 Q. You don't think they asked any--

2 (Overlapping speakers.)

3 Q. --in relation to the Board we're talking about,
4 whether they had any connection to Ministers?

5 A. No, I don't think so because that wasn't told to me.

6 Q. Right. If we take it to the general level, what
7 you've said in your response is that candidates are asked if
8 they might have any conflicts of interest. How are they
9 actually asked?

10 A. As I said before, the main issue would have been
11 family relationships.

12 COMMISSIONER HICKINBOTTOM: But how are they asked, is
13 that in writing, orally? Just, how are they asked?

14 THE WITNESS: That's the informal process,
15 Commissioner, so that would have been orally.

16 BY MR RAWAT:

17 Q. If I ring you up and I say, "Dr O'Neal-Morton, I would
18 like to appoint you to a Board," do you think you might have any
19 conflicts of interest? You might think well, is that a
20 conflicts of interest of just with other Members of the Board
21 that I'm going to be sitting on or is it a conflict of interest
22 with the Minister that's appointing me or the Cabinet that's
23 approving me? Are people asked, "do you have a family
24 connection to the Minister who is seeking to appoint you or a
25 Member of Cabinet," or is that back to the informal process and

1 you're just dependent upon the internal knowledge within the
2 Ministry of individuals?

3 A. Because you're asking me about internal process now;
4 right?

5 Q. Yes.

6 A. Right, um-hmm.

7 Q. Your informal process, how you actually go
8 about--because you've explained how the Premier's Office is
9 taking matters forward?

10 A. Um-hmm.

11 Q. And you're encouraging others to do it, but the
12 informal process is still there. So, when you ring someone up
13 and say "do you think they might have a conflict of interest,"
14 what exactly are you asking them about? I mean, if it's a
15 conflict with the Board, it arises after they have been
16 appointed.

17 A. Okay. Well, I'm aware that we had a previous Board,
18 TRC, where you had to do a declaration. There is a systematic
19 order for that, there is a declaration that says "I'm not a
20 Member of the House of Assembly, I'm not bankrupt," and it goes
21 on and on to state other things, so something like that you have
22 to incorporate in our new process. But in the past I can't say
23 for that.

24 Q. So, the informal process--

25 A. In written, written format.

1 Q. But even oral. The informal process, I mean, you
2 can't--you can't tell us, really, how conflict of interests are
3 canvassed within the informal process?

4 A. Because, as I said before, most of the conflicts
5 automatically assume it is family, and you normally ask people
6 about, you know--and some that you wouldn't even have to ask
7 because I might know that you're not related to me, you're not
8 related to a Minister. I would know that already so, I may not
9 even have to ask that question. And I think that is the main
10 conflict that was dealt with in the past.

11 Q. Can I ask you just, if you've got Part 3 in front of
12 you, please, Dr O'Neal-Morton. Just look at page 2756.

13 A. Okay, I'm there.

14 Q. That's the Cabinet Handbook.

15 A. Um-hmm.

16 Q. And that's referred to specifically in the response,
17 firstly in the potential criticism that is made and in the
18 response, and I wanted to show you the parts of the Cabinet
19 Handbook that are relevant because what's said is there's no
20 compliance with the procedures in the Cabinet Handbook.

21 Now, if you go to 2784.

22 A. 2784?

23 Q. It's the section of the Handbook that deals with
24 Board, Committees, Working Groups and Appointments. Now, if you
25 look at 6.55, it says, "Cabinet has a collective responsibility

1 in the establishment of units in the appointments of their
2 membership. Therefore, Cabinet Members should be mindful of the
3 approaching potential Members so as not to preempt the Cabinet's
4 decision. It is therefore expected that contact with potential
5 Members should be limited to (a) ascertain the potential
6 Member's willingness to serve with an identified list of
7 potential Members, (b) whether the potential candidate knows of
8 any potential conflicts of interest, and (c) whether there are
9 any other conditions that might legally prevent the potential
10 Member from serving in the position in which he might be
11 appointed to serve." So that's about the process that we have
12 been discussing, appointment to a Board. It's directed, yes, at
13 Cabinet Members, but it also, when one expands it, could, in
14 terms of an approach, could apply to a Public Officer acting on
15 behalf of a Minister.

16 But the most immediate question is, again, in your
17 research for the Affidavit and for the written response, in
18 relation to the April 2019 appointments and also the May 2020
19 appointment of Ms de Castro, did you find any records to show
20 what approaches the Minister may have made to potential
21 candidates?

22 A. Any reason or cause? No, Commissioner.

23 Q. And if you turn over--and you will see at 2785--the
24 reference to paragraph 6.8 that you've addressed in your
25 response, so presumably you looked at this paragraph before

1 compiling your part of your written response. If you look, Dr
2 O'Neal-Morton, just at point (e) on 2786, it says: "Cabinet
3 Members proposing persons to be appointed are to ensure that
4 those persons being proposed met the requisite qualifications
5 and experience." And (j) says: "In appointing Members to
6 Boards of Enterprises and Commissions, Cabinet Members must be
7 consistent with provisions of the relevant or guiding law."

8 Now, we looked at the memoranda that had been
9 prepared, and you've explained how it goes on to ExcoTrack.

10 A. That's correct.

11 Q. That contains at its beginning a summary of the
12 statutory power, doesn't it? It will tell the Minister this is
13 the Act under which you can appoint people to a particular
14 Board?

15 A. Um-hmm.

16 Q. And that's--that's the only written record there is of
17 advice given to the Minister in this instance about the power
18 that he has to appoint people.

19 In relation to April 2019 and May 2020, you didn't
20 find any other details of advice given to The Honourable Premier
21 in relation to these appointments?

22 A. No, Commissioner.

23 Q. And the point--at point (e) and 6.8 really goes back,
24 doesn't it, to that point that we discussed a little bit earlier
25 about finding the most suitable and qualified candidates because

1 using the informal process doesn't give you, as the Commissioner
2 has put to you, the ability to find the most suitable and
3 qualified candidates, does it?

4 A. Yeah, if we agree they are suitable, and that's why
5 we're changing our mode of operation in that regard.

6 Q. And so, if you step back and think about it, I accept
7 that you take issue with the words "no effort"; and, as the
8 Commissioner has explained, it's not been suggested that nothing
9 was done because on the papers it's quite clear something was
10 done.

11 A. Um-hmm.

12 Q. It's quite clear that, for example, Public Officers
13 prepared a Cabinet Paper, so work must have gone into that.

14 A. Correct.

15 Q. So, it's not being suggested. But if one steps back
16 and you look at the answers that you have fairly given today, Dr
17 O'Neal-Morton, in relation to this aspect of your criticisms,
18 the criticisms that were put to you, would you accept that the
19 informal process that was adopted does not allow you--and did
20 not allow you--in April 2019 and May 2020 to find the most
21 well-qualified and suitable candidates?

22 A. I can't tell you that totally.

23 Q. You need to keep your voice up.

24 A. I can't agree with that totally, Commissioner.

25 Q. Would you like to explain the reasons why you can't

1 agree to that?

2 A. Because even though we did an informal process, I
3 think we might have found the best-suited candidates. I
4 understand Commissioner say that some might have gotten omitted
5 with that process, but then I can dispute and automatically
6 claim that we didn't get the best-suited candidate because I
7 think we got some good Board Members.

8 COMMISSIONER HICKINBOTTOM: But the problem with the
9 process, Dr O'Neal-Morton, is this, isn't it: You might,
10 coincidentally--not just coincidentally because some work did go
11 into it, but you might have got the best candidate. That's
12 possible. But that's a pure guess because, firstly, there is no
13 audit trail, there are no written records of the process.

14 And secondly, the lack of openness and transparency in
15 the process. It means that some people may have been missed
16 out, and so we can't say that, as it were, the best effort was
17 made to get the most suitable and most qualified candidate?

18 THE WITNESS: Okay. That was then, and of course, you
19 know--

20 COMMISSIONER HICKINBOTTOM: Now I understand.

21 THE WITNESS: We've learned from that.

22 COMMISSIONER HICKINBOTTOM: Well, certainly the
23 process that has been adopted now is designed better to get the
24 most qualified and most suitable candidate.

25 Of course, given that no process is perfect.

1 THE WITNESS: Correct, Commissioner.

2 COMMISSIONER HICKINBOTTOM: Yes, thank you.

3 BY MR RAWAT:

4 Q. Now, if I take you through other parts of your written
5 response, please. I'm going to summarise them because--if we
6 look at the fourth page, that's in relation to the BVI Tourist
7 Board.

8 Now, if I explain, Dr O'Neal-Morton, what I'm going to
9 do, is I'm going to just quickly summarise the rest of the
10 written response because--and I'll explain why I'm doing that.
11 The next section of it is in relation to the BVI Tourist Board,
12 and it's a potential criticism which arises from the fact that
13 March 27, 2019, the Cabinet decides to revoke the entire
14 membership of the Tourist Board with immediate effect, save for
15 ex officio members.

16 And then in July 2019, a new Board membership was
17 recommended to Cabinet to come into effect on August 1st, 2019.

18 What the potential criticism then sets out as
19 appearing from the evidence that has been provided to the
20 Commission thus far, is a series of Steps which mirror what was
21 being--what was put to you in relation to the Electricity
22 Corporation.

23 Do you follow that?

24 A. Yes, Commissioner.

25 Q. And in fact, in answer to that, you've relied on your

1 earlier response?

2 A. Yes, Commissioner.

3 Q. And if I take you to the next page.

4 A. Um-hmm.

5 Q. We then have the BVI Airports Authority, and the
6 potential criticism there arises out of this: That in
7 April 2019, all of the previous Members of the BVI Airports
8 Authority Board apart from ex officio members, resigned. And on
9 the 23rd of May 2019, Cabinet decided to appoint new Members of
10 the BVI Airports Authority Board.

11 And what's then put to you, based on the evidence the
12 Commission has received is again a series of Steps which mirror
13 what was put in relation to the Electricity Corporation. And
14 you've responded again, essentially--so different wording by
15 relying on your earlier response of the detail of that--we then
16 have a potential criticism arising out of the BVI Ports
17 Authority and that arises in this way: That on March 27, 2019,
18 Cabinet decided to revoke the entire membership of the BVI Ports
19 Authority Board, save for ex officio members, with immediate
20 effect at the instigation of the Premier.

21 In May 2019, prospective Members of the BVI Ports
22 Authority Board were contacted to be informed that they had been
23 nominated for membership of the Board.

24 And what's then set out again is that it appears from
25 the evidence--and again, we go through Steps such as the absence

1 of a competence profile, lack of advertising, lack of an
2 interview, and again you rely on your earlier responses.

3 A. Correct.

4 Q. The next response is or the next part of the Warning
5 Letter deals with the Telecommunications Regulatory Commission,
6 and that potential criticism arises in this way, that on 5th of
7 February 2020, Cabinet decided that (a) Mr Vance Lewis be
8 appointed as Commissioner and Chairman of the TRC for a period
9 of three years with effect from 1st February 2020, and (b)
10 Mr Vincent Wattley be appointed as Commissioner and Deputy
11 Chairman of the Board, also for a period of three years with
12 effect from 1st February 2020.

13 And what's then set out is yet again the same points
14 that have been made previously in relation to the process that
15 was used, including that no Steps were taken to establish that
16 Mr Lewis or Mr. Wattley were not disqualified for appointment
17 under section 7.5 of the Telecommunications Act 2006, despite
18 this apparently being standard practice and despite legal advice
19 to this effect.

20 You then rely in your response to the earlier
21 responses about the informal process, and you add this, that
22 both Mr Lewis and Mr. Wattley were consulted about the terms of
23 section 7.5 of the Telecommunications Act and made the necessary
24 statutory declarations. Their appointments were not ultra vires
25 the Act.

1 And you say then--and this is evidence that you're
2 producing--that a copy of Mr Lewis's Statutory Declaration is
3 enclosed, and a search is underway for a copy of Mr. Wattley's
4 Statutory Declaration. This will be provided to the COI Team,
5 if found.

6 And what's also then said at the next point is that,
7 in relation to the appointments of Mr Lewis and Mr. Wattley,
8 again, it's the reliance on the failure to make conflict checks
9 and the procedures in paragraph 6.8 of the Cabinet Handbook not
10 being followed.

11 And you say that--you refer to the earlier responses,
12 and you say both were consulted about possible conflict of
13 interests of Interest, and there is no basis for the assertion
14 that there was no compliance with the Cabinet Handbook
15 requirements for the submission of candidates for Statutory
16 Board appointments to the Cabinet.

17 I'm going to leave the third point perhaps to be dealt
18 with in a little while, and I'm not trying to shortcut you, Dr
19 O'Neal-Morton, but in relation to all of those Boards, which is
20 the Tourist Board, the Airports Authority, the Ports Authority,
21 the Telecommunications Regulatory Commission, is it right that
22 again you have found--and that's with the exception of the
23 Statutory Declarations for Mr Lewis and Mr. Wattley, you have
24 not found any written evidence as to the process that was
25 adopted in relation to those specific recruitment exercises?

1 A. That is correct. No written evidence.

2 Q. What you are relying on and pointing back to is the
3 general evidence that you can give about the informal process?

4 A. Correct, Mr Commissioner.

5 Q. And I think if I were to put it all over to you again,
6 I think we would end up in the same place, wouldn't we, which
7 was about--I think you have at least are prepared to accept that
8 the informal processes is flawed?

9 A. Well, we've changed it, so that is a part of accepting
10 that it is flawed because we've changed it and we're moving on
11 to a more formal process, so we've accepted that in the informal
12 process so we move on to the formal.

13 Q. All right.

14 MR RAWAT: Commissioner, I've just seen the time. I
15 wonder, however, if I could just ask for a short five-minute
16 break just to--I just need to speak to our members of the COI
17 Team to see how we go forward.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 And then do you want, Dr O'Neal-Morton to stay during
20 the five minutes?

21 THE WITNESS: Yes, please. And then we can just see
22 how--Dr O'Neal-Morton is due to give evidence today and on
23 Monday, but I would like to just--

24 COMMISSIONER HICKINBOTTOM: See how you're going?

25 MR RAWAT: Yes, exactly.

1 THE WITNESS: I'm here all day. Give me some lunch?

2 COMMISSIONER HICKINBOTTOM: We will give Mr Rawat five
3 minutes.

4 Mr Rowe, just before we break for this five-minute
5 break, could I raise one short point with you only because, if
6 necessary, then you can come back with an answer in five
7 minutes, if you can't give me an immediate answer.

8 One of those you represent, Mr Rowe, Honourable
9 Neville Smith is due to give evidence on the 21st of September;
10 and, in his evidence, because it's in respect of a Warning
11 Letter, there are legal issues raised concerning Sections 66 and
12 67 of the Constitution. In the letter sent to him and to you on
13 the 6th of September, I asked for legal submissions on those
14 sections by 4:00 p.m. today. I just wanted confirmation that we
15 were going to get those submissions by 4:00 p.m. today?

16 MR ROWE: Before 4:00 p.m. today.

17 COMMISSIONER HICKINBOTTOM: That's it.

18 MR ROWE: Not by, before.

19 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rowe, I
20 didn't hear that.

21 MR ROWE: You will get them before 4:00 p.m. They're
22 prepared. We are simply looking for any typos or other errors.
23 You will get them before 4:00 p.m.

24 COMMISSIONER HICKINBOTTOM: That's very good. Thanks
25 for that confirmation, Mr Rowe. That's all I ask for.

1 MR ROWE: Certainly, Commissioner.

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

4 So, we will break for five minutes and then I will
5 come back, and we'll see where we are. Good. Thank you.

6 (Recess.)

7 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

8 MR RAWAT: Commissioner, thank you for that time.

9 Can I tell you where I'm at. In light of the answers
10 that Dr O'Neal-Morton has given, particularly in relation to the
11 BVI Electricity Corporation and that part of her response, there
12 is no need for me to go into the detail of the other responses
13 that she's given. We've covered that, and like as not I will
14 also be able to deal with the last criticism shortly.

15 There are some additional matters that I would like to
16 cover with Dr O'Neal-Morton after the lunchtime adjournment, but
17 I would welcome if we could have an extended lunchtime break so
18 that I can just gather my thoughts in order to hopefully make
19 for a shorter day for everyone, including Dr O'Neal-Morton.

20 So, could I ask if we could adjourn now until 3:00,
21 and then I will be able to pull my notes together and hopefully
22 have a more focused and shorter hearing for the end of the day.

23 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

24 Now, Dr O'Neal-Morton is due to come back on Monday?

25 MR RAWAT: Shy is.

1 COMMISSIONER HICKINBOTTOM: Do we know whether she's
2 going to be--do we know whether she's going to be needed on
3 Monday? Are you going to try and complete her evidence today?

4 MR RAWAT: I will make every effort to, but I think it
5 still remains a possibility that we will need Dr O'Neal-Morton
6 back on Monday.

7 COMMISSIONER HICKINBOTTOM: Okay. But perhaps not for
8 the whole day, if we need her?

9 MR RAWAT: Yes, if we can make her time shorter.

10 COMMISSIONER HICKINBOTTOM: Okay. Dr O'Neal-Morton,
11 we will break now until 3:00.

12 THE WITNESS: Yes, Commissioner.

13 COMMISSIONER HICKINBOTTOM: We won't be that long
14 after 3:00, say, perhaps for an hour.

15 MR RAWAT: Yes.

16 COMMISSIONER HICKINBOTTOM: Mr Rawat is going to
17 consider what other questions, if any, he needs to ask you, and
18 then we will contact you over the weekend if you're not required
19 on Monday. But if you are required, it will be 10:00 and not
20 for the whole day.

21 THE WITNESS: Okay.

22 COMMISSIONER HICKINBOTTOM: If that helps.

23 THE WITNESS: Yes, Commissioner.

24 COMMISSIONER HICKINBOTTOM: I will break now until
25 3:00.

1 MR RAWAT: Thank you.

2 COMMISSIONER HICKINBOTTOM: Thank you very much.

3 (Recess at 1:12 p.m.)

4 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

5 MR RAWAT: Thank you, Commissioner.

6 Commissioner, before I continue with my questioning of
7 Dr. O'Neal-Morton, can I deal with one matter that I neglected
8 to deal with this morning, and that was to introduce the
9 representation of who is here today.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 MR RAWAT: And I apologize to counsel for that error.

12 Firstly, we have Mr Hussein Haeri and Ms Lauren Peaty,
13 who are here on behalf of the elected Ministers and the Attorney
14 General; and also Mr Richard Rowe here on behalf of the
15 remaining Members of the House of Assembly.

16 The legal representatives are all attending this
17 afternoon's session remotely. Ms Peaty was here in person this
18 morning.

19 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

20 BY MR RAWAT:

21 Q. Dr O'Neal-Morton, thank you.

22 Can I take you back to the written response, please,
23 if we could deal with a few small matters to cover in slight
24 more detail. If I could ask you just to go through the page
25 that is headed "Telecommunications Regulatory Commission".

1 A. I'm there, Commissioner.

2 Q. Thank you.

3 Now, as I have explained, the Commission put forward
4 these potential criticisms on the basis of the information that
5 it has received, and if you see that at point 9 in relation to
6 Mr Vance Lewis and Mr. Vincent Wattley, the point is raised
7 whether they had--steps had been taken to establish that either
8 one or both were not disqualified for appointment under
9 section 7(5) of the Telecommunications Act of 2006. Now, we
10 don't need to look at that Act, but in your response, what
11 you've said is that they were both--both had made the necessary
12 statute declarations, which are declarations that they don't
13 come under various parts of that provision which would
14 otherwise, for example, being a Member of the House of Assembly,
15 which would otherwise have disqualified them from the
16 Commission.

17 You say a copy of Mr Lewis's statutory declaration is
18 enclosed for your written response, and I can confirm for the
19 Transcript that we have received that. It is dated the 5th of
20 February 2020, which is the same day which--as when Cabinet made
21 the decision to appoint Mr Lewis to the TRC.

22 As to Mr. Wattley, you said that that is--a search is
23 underway for a copy of Mr Wattley's statutory declaration. This
24 will be provided to the COI, if found.

25 Can you update the Commissioner with the position?

1 A. It has not been recovered as yet, Commissioner.

2 Q. Your search is still ongoing?

3 A. Still ongoing, because I asked the Deputy Secretary,
4 who was assisting with this, because she believes that she saw
5 it, but she needs to search for it. She's looking for it, but
6 she has not discovered it yet, but we will provide it to the
7 Commissioner.

8 Q. Thank you.

9 Now, the last matter under the Telecommunications
10 Regulatory Commission, the last potential criticism put is at
11 number 3, and that was one we had not covered before adjourning
12 for lunch.

13 A. Okay.

14 Q. Now that, if I set it out, relates to the appointment
15 16th of February 2020 of Ms Jocelyn Murraine and Mr Bevis
16 Sylvester to be appointed as Commissioners for a period of two
17 years commencing 20 February 2020, and what's said is that the
18 criticisms that have previously been made apply to these
19 appointments, and we have gone through those criticisms. They
20 are the ones that we dealt with in detail in relation to the
21 Electricity Corporation.

22 You set out some details of both individuals'
23 backgrounds, which I don't need to read out but will be before
24 the Commissioner because your written response will be before
25 the Commissioner. But can I confirm or can you confirm that, in

1 terms of that recruitment process, as with every other
2 recruitment processes canvassed in this written response, that
3 would have been undertaken through the informal process that
4 you've talked about?

5 A. I would suspect so, Commissioner.

6 Q. But you don't have any evidence to suggest otherwise?

7 A. Nothing written to suggest that it was not done
8 either, as well.

9 Q. But you don't have any evidence to suggest that it was
10 advertised or--

11 A. No, it was not advertised previously. They weren't
12 advertised previously, Commissioner.

13 Q. So, it's more likely than not, isn't it, that taking
14 the generality of these--these appointments went through the
15 informal process?

16 A. Yes, Commissioner, because advertisement process is a
17 new one, so...

18 Q. Right.

19 Now, can we turn to your Third Affidavit, please.
20 This is in the Part 4 bundle.

21 Now, as we explained this morning, you, having set out
22 and dealt with five statutory bodies in your first Affidavit,
23 you then in your second dealt with a further six of these.

24 Now, we know that, in relation to the Climate Change
25 Trust Fund, that's in effect inactive and doesn't at the moment

1 have a membership or anybody on its Board. But in relation to
2 the others, I'm going to look briefly at the membership with
3 you. Before I do, can I just check, you mentioned the Gambling
4 Commission during your evidence, is the gambling Commission
5 something that also falls under the Premier's Office?

6 A. Yes, the Gambling Commission, yes, we're working on
7 that. That has not been constituted as yet. It's not an active
8 board.

9 Q. I see.

10 So, that's why you haven't dealt with it?

11 A. No, it's not an active board.

12 Q. Total of 11 boards, is the total number of boards that
13 you currently have?

14 A. Boards that are currently under.

15 Q. Thank you for that clarification.

16 Now one point to ask you which has been put to other
17 witnesses who come to give evidence about Statutory Boards, do
18 you accept that these Statutory Boards, constituted as they are
19 under individual statutes, are autonomous bodies?

20 A. Yes, I agree.

21 Q. Now, this Affidavit, as you know, arrived at the--with
22 the Commission on the 5th of September, so its contents, because
23 it was so shortly before you were due to give evidence, that
24 they have not been--they weren't part of the Warning Letter
25 process. But what I want to do, if I may, is just take you to

1 page 3315, please.

2 And of these six boards, you've looked at the
3 Telecommunications Regulatory Commission first when looking at
4 the composition and roles of the Board, and you explained we
5 have--and we touched on this--Vance Lewis, Vincent Wattley,
6 Bevis Sylvester, and Jocelyn Murraine appointed as
7 Commissioners, with Mr. Wattley as Deputy Chairman and Mr Lewis
8 as Chairman, and they were first to Mr Lewis and Wattley were
9 appointed on the 1st of February, and then Mr Sylvester and
10 Ms Murraine were appointed on the 20th of February.

11 So, I think this is the one that I think you accept is
12 probably those appointments were informal process?

13 A. That is correct.

14 Q. If we go to Prospect Reef, which is on the next
15 page--and tell me if I've misunderstood the position in relation
16 to Prospect Reef--it has at present a Chairman, Ms Tamara Maduro
17 appointed on the 1st of June 2021 for two years, and then
18 Ms Kenisha Sprauve is the Director appointed on the same day for
19 two years, on the same date, 1st of June 2021, for two years.

20 Now, would Ms Sprauve be the--as the Director, is she
21 employed by Prospect Reef, or is she somebody who's--

22 A. She's a board Member. The one that is employed, the
23 Executive Director, the Managing Director below.

24 Q. I see.

25 But they are all appointment-expired, so it seems

1 Prospect Reef at the moment only has two active Members on its
2 Board; is that right?

3 A. No, that's not correct. Mr Isaac and Ms Evans have
4 just been re-appointed. That is an error, though.

5 Q. All right.

6 A. Mr Isaac and Ms Evans were just recently appointed as
7 well. That's an error.

8 Q. All right.

9 A. That was a typo. Sorry.

10 Q. You say they were just recently appointed.

11 A. Yes. 1st of June.

12 Q. On the 1st of June 2021.

13 A. Yes.

14 Q. So, would they--you may need to check this, but were
15 they--were their appointments of Mr Isaac and Ms Evans--they
16 wouldn't have been through the new process because that only
17 started on the 1st of June 2021?

18 A. No, no, it would have been the informal--the old
19 process.

20 Q. I see.

21 If you go 3317, you then have the Appeals Tribunal,
22 and that would seem to, at the moment, have no membership at
23 all.

24 A. Um-hmm. Yeah, that looks like it's correct here,
25 um-hmm.

1 Q. So, is that a temporarily inactive board or--

2 A. It's temporarily inactive. Perhaps the transactions
3 were not completed at that point. Could be the issue of--

4 Q. What do you mean by "transactions", Dr O'Neal-Morton?

5 A. Redoing their membership.

6 Q. I see.

7 A. So it might--that might be the issue.

8 Q. Do you know what's going on with the Appeals Tribunal
9 at the moment?

10 A. I can't answer that right now. I can't answer that.
11 I would have to do a check. But it might mean that a paper is
12 prepared but it has not been acted upon.

13 Q. I see.

14 A. I would have to do a check.

15 Q. If you could do that, and if when doing that you could
16 perhaps inform the Commissioner what process is being used to
17 re-appoint or appoint--

18 A. Whatever was done previously would be the old
19 method, of course.

20 Q. Right.

21 So, it's possible that it's gone through the process,
22 but it's the last part of the process that needs to be done,
23 which is the Cabinet paper, et cetera; is that right?

24 A. Yes, so it would be the old informal process.

25 Q. The old informal process. Okay. If we look now at

1 the Building Authority, which is still at the bottom of that
2 page, am I right that that has now just two Members, Mr Dion
3 Stoutt and Mr Antonio Quammie? Because if you go on to the next
4 page--

5 A. I'll have to recheck this one as well. I'll have to
6 recheck this one as well.

7 Q. Okay, thank you.

8 The next Board that you deal with in this table, at
9 3318, and that's the Planning Authority. And what we have there
10 is Mr. Charles Cooper, Mr. Lucien Thomas, Mr. Edward Freeman,
11 Mr. Keith Malone, Mr Clifton Thomas, and Mr Elvis Harrigan as
12 Board Members?

13 A. Yes, they're the current ones.

14 Q. They're the current ones?

15 A. Um-hmm.

16 Q. Your voice is dropping a little bit.

17 A. That is correct. Sorry, I would say that is correct.

18 Q. And what we have is that all of them were appointed on
19 the 1st of July 2019, with the exception of Mr Harrigan who was
20 appointed on the 1st of September 2019?

21 A. That is correct.

22 COMMISSIONER HICKINBOTTOM: And three of those, the
23 time expired now, Mr Lucien Thomas, Mr Clifton Davis, Mr Elvis
24 Harrigan.

25 THE WITNESS: Okay. I'll have to check that.

1 COMMISSIONER HICKINBOTTOM: Is that something you will
2 need to check?

3 THE WITNESS: Yes, I will have to do that.

4 COMMISSIONER HICKINBOTTOM: Thank you very much.

5 THE WITNESS: I will have to correspond with the Chair
6 on the final as well.

7 BY MR RAWAT:

8 Q. Thank you.

9 The last Board that you have in this table is at 3319,
10 and that's the Climate Change Trust Fund Board, and you've noted
11 that, in relation to all of them, their appointment expired.
12 I'm going to show you the document in a moment, but the evidence
13 that the Commissioner has is that those appointments were
14 not--did not expire but were revoked by Cabinet.

15 A. Um-hmm.

16 Q. Maybe just to help you--

17 A. Uh-huh.

18 Q. --Dr O'Neal-Morton, if you could take up Part 3. Just
19 turn up 3138.

20 A. 3138?

21 Q. Yes.

22 A. Okay. I'm there.

23 Q. And if I just read out some of the detail of this
24 meeting of the Cabinet, so under "deliberations", "the Premier
25 presented a paper" which was memorandum number 122, 2019 from

1 the Premier's Office, and it was revocations of the appointments
2 of the membership of the Virgin Islands Climate Change Trust
3 Fund Board. The meeting Minute records firstly, "the Premier
4 presented this paper. Referencing the captioned paper, the AG
5 cautioned the Cabinet that the reasons for the removal of
6 Members from the Virgin Islands Climate Change Trust Fund Board
7 are clearly stated in the respective law. The Premier
8 reiterated this administration's new policy that Board
9 memberships would not extend beyond the term of this
10 administration. Premier informed Cabinet that he had asked the
11 membership to resign from the Board. The AG expressed his
12 concern that in revoking the appointments of Members of the
13 Virgin Islands Climate Change Trust Fund Board that the
14 conditions for the removal listed in section 16.2 of that
15 legislation has not been demonstrated to exist."

16 And if you turn over, what you see is that Cabinet
17 decided that the membership of the following Board Members of
18 the Virgin Islands Climate Change Trust Fund Board be revoked
19 effective 24th April 2019. We've heard from other evidence, it
20 was everyone on the Board with one exception was revoked.
21 That's excluding any ex officio officers.

22 So, six people had their memberships revoked. And it
23 would follow, wouldn't it, that--and it's all of those who are
24 listed by you at 3319. So, in that sense it would suggest,
25 wouldn't it, that the table is in error in recording that they

1 were appointment-expired; would you agree?

2 A. I guess the table was just following the timing, from
3 2017, it would have expired, I guess is what the table was
4 following the calculation of that time.

5 Q. Yes, I appreciate that.

6 A. But now this would--of course, the revocation would be
7 recorded--would have to be recorded here that they were revoked.

8 Q. Yes, because it raises a question as to whether there
9 were others listed in this table where you've noted them down as
10 appointment-expired but, in fact, they're appointment-revoked?

11 A. Not that I can think of. Not that I can think of. If
12 you go through them, I can't think of any others like that,
13 but--

14 Q. There is obviously a few things that we've picked up
15 that need to be checked in this table.

16 A. Of course.

17 Q. And we can't--we can't ask you to do that now--

18 A. No.

19 Q. --Dr O'Neal-Morton.

20 MR RAWAT: So, I think, Commissioner, if you are in
21 agreement, that maybe the best thing to do would be to ask
22 Dr O'Neal-Morton if she and her officers could review the
23 contents of this table. I would suggest it doesn't necessarily
24 need another Affidavit, but if she could submit a revised table
25 under cover of a letter, that would be sufficient.

1 COMMISSIONER HICKINBOTTOM: Yes. If you please do
2 that, Dr O'Neal-Morton, just checking the table because there
3 appear to be one or two errors in it.

4 THE WITNESS: Okay.

5 COMMISSIONER HICKINBOTTOM: Some of which may be
6 important. But if you could check that, and perhaps do that by
7 Monday morning? Because you're coming back, and then the
8 Premier is going on Tuesday to answer questions on this same
9 general area.

10 THE WITNESS: Okay.

11 COMMISSIONER HICKINBOTTOM: So, we would simply like
12 to have the correct information for Monday and Tuesday, if we
13 may.

14 THE WITNESS: That's the Third Affidavit; right?
15 Okay. I will have that checked.

16 BY MR RAWAT:

17 Q. Thank you, Dr O'Neal-Morton.

18 Now, keeping with the--if you could stick with Part 3
19 and the Climate Change Trust Fund Board, can I just--you will
20 see that there was reference in the part that I read out to the
21 AG referring to section 16 of the Act. You'll find that in that
22 Part 3 at 3158.

23 And if you look at 16(2), that's section 16(2), what
24 that lists, and for the record this is the Virgin Islands
25 Climate Change Trust Fund Act that we're looking at, but it

1 lists the circumstances in which a Minister with the approval of
2 Cabinet can revoke the appointment of a Member of the Board, and
3 those are, and I'm going to paraphrase, if the Member is guilty
4 of misconduct, if the Member fails to attend four consecutive
5 meetings of the Board, if the Member knowingly fails to notify
6 the Board of a conflict of interest, if the Member no longer
7 fulfills conditions of appointment as set forth in Section 12.
8 And Section 12, to assist you, Dr O'Neal-Morton, is a section
9 which sets out what experience--and this is at 12(3)--the
10 experience that and functions that Members of the Board need to
11 deal with, which includes no conflict of interest in regards to
12 their position on the Board, including related to political
13 affiliation.

14 And the last one--

15 A. I'm sorry, Mr Commissioner, where are you reading
16 from?

17 Q. Do you see I have been taking you to 16.2, and turn
18 back to page 3155?

19 A. 3155, um-hmm.

20 Q. 16.2(d) refers the reader to Section 12.

21 A. Um-hmm, correct.

22 Q. If look at Section 12, it's about the establishment of
23 the Board of Trustees, and what it says is who will make up the
24 Board in 12(1) and (2).

25 If you go to 12(3), it says that in appointing

1 persons, the Ministry shall be satisfied that such persons have
2 necessary experience and involvement in the sector. No conflict
3 of interest in regards to their position on the Board, including
4 related to political affiliation. And the capacity to do one or
5 more of the following, and then it sets out attract financial
6 support, ensure effective financial management, provide sound
7 and effective decision-making, and provide effective leadership
8 and direction.

9 So, if someone doesn't fulfill those conditions, then
10 they can--or, indeed, perhaps, if we look at 12(2), the
11 conditions that are required to be a Member in the first place,
12 for example, being a private sector representative in the
13 tourism industry. If they don't fulfill the conditions set out
14 in section 12, that's a basis on which they can be removed.

15 Now--

16 A. Okay--sorry, just a clarification, I see you have
17 section 12(3)(b), no conflict of interest in regards to their
18 position on the Board including related to political
19 affiliations.

20 Q. Yes.

21 A. But I see a number here that's politically affiliated
22 of the past Board.

23 Q. Well, that doesn't--

24 A. It doesn't--it's a very small community, and certain
25 things we are able to realize.

1 Q. Yes, I appreciate that, and you will see, of course,
2 that the Act takes us back to the discussions we've had about
3 political affiliation as an identifying mark of conflict of
4 interest.

5 A. Um-hmm.

6 Q. But the reason I've taken you to this is to give you
7 context to the questions that are going to follow.

8 A. Yes.

9 Q. Because I showed you the Attorney General's advice in
10 that Cabinet Meeting because if you turn to page 3140, that is
11 the paper that was being discussed, "Revocation of the
12 appointments of the membership of the Virgin Islands Climate
13 Change Trust Fund Board," and you'll see that, if you turn over
14 to 3141, what's said at (2) is, "as a result of the recently
15 concluded general elections, there was a change in the
16 Government's administration and a reshuffling of the portfolio
17 subjects across Ministries." And it then makes the point that
18 the Board has moved across to the Premier's Office. It
19 continues at (3): "With each new Government administration, it
20 is common practice that some or all memberships of Boards are
21 revoked, and new Members appointed to the respective Boards.
22 The manifesto of the new government administration calls for
23 innovative, forward, and progressive ideas, initiatives and
24 actions from each Government Ministry, Department, and agency
25 during this recovery period. For those initiatives that must be

1 implemented through a statutory body, the same principles for
2 initiative, forward and progressive initiatives and action will
3 be required. In keeping with the new government policy for
4 inclusions, the desire is also to reshuffle the membership of
5 each Statutory Board to include the appointment of a youth to
6 each Board. In addition, the new policy of the new government
7 administration is for terms of each Board should not extend
8 beyond the tenure of the Government administration that
9 appointed them. As such, Cabinet's approval is being sought to
10 revoke the appointment of each Board Member of the Virgin
11 Islands Climate Change Trust Fund Board with the exception of
12 the ex officio members, to allow for the right mix of new,
13 innovative, and progressive minded Members to be appointed to
14 include representation of youth on the Board."

15 If you go to the bottom of that page, it makes clear
16 "the purpose of this paper is to seek the approval of Members to
17 revoke the appointments of the current Board to make way for the
18 appointment of new Members at a later stage."

19 And if you go to 3142, please, Dr O'Neal-Morton, under
20 "Legal Implications," what I assume is the Attorney General's
21 Chambers, has set out section 16(2), which we've been looking
22 at, and the provisions of that section, and it then says at 3143
23 at 8, "it therefore appears from this section that justifiable
24 reasons have to be provided for the removal of Members of that
25 Board."

1 Now, the Commissioner heard evidence on Monday from
2 Mr Edward Childs, who was the Chairman of the Board, and his
3 evidence was that, in regards to him, and in regards to as far
4 as he's aware other Members of the Board, they were not revoked
5 for one of the reasons set out under section 16(2).

6 Now, the question for you, and I appreciate that this
7 relates to a time when you were not in the Ministry, but in
8 terms of advising the Premier at the time that this decision was
9 being taken--and this is April 2019--from the Ministry's
10 perspective, the Premier's Office, who would have given the
11 Premier advice?

12 A. Mr Commissioner, I can't answer that. I'm not able to
13 supply that information. I'm not aware of that. I'm not
14 factually aware who did that, so I don't want to say who did
15 that because I don't know.

16 Q. Okay. Since your return to the Premier's Office, have
17 you been involved in any discussions about the Climate Change
18 Trust Board?

19 A. I'm aware that there is a move to make some amendments
20 to the Act, et cetera, but that is all I'm aware of. In the
21 past, I won't be aware of anything like that. But I know that
22 before they actually do the reconstitution, they were thinking
23 of making some amendments to the Act. I know the Premier is
24 working on that. That I'm aware of.

25 Q. If you turn to 3178, this is another paper dated the

1 3rd of May 2019, so another memorandum for Cabinet, and you will
2 see it relates to the Trust Fund Act and the Board.

3 If you go through to 3180, it says that one of the
4 purposes of this paper is "to amend section 16(2) of the Climate
5 Change Trust Fund Act to give Cabinet discretionary powers to
6 revoke the appointment of any Member of the Board of Trustees."

7 Is that the amendment that you're thinking of?

8 A. Well, it must not have been that, Commissioner,
9 because this was in 2019, and I would have only had a
10 conversation like that with the Premier 2020 and onwards.

11 Q. I see.

12 A. So it's perhaps not this. It's perhaps another
13 amendment. He didn't discuss it in detail, but I know that he
14 wants to reconstitute it, but he wanted to make some changes to
15 the law.

16 Q. I see.

17 To be clear, your answer to this may also be that
18 you're also not aware of a list. Let's try it out. 3183,
19 please. Because at the time that the amendment that we were--we
20 have just been looking at was being considered, the advice of
21 the Attorney General was that I would strongly advise against
22 the amendment. No reason has been advanced for the proposed
23 amendment, in summary.

24 So, just to be clear, up until--since your return to
25 the Premier's Office, save for the brief discussion with the

1 Premier about what he intends to do, you have not been involved
2 in any other kind of discussions around this Act?

3 A. No, I have not, because even this memorandum was
4 addressed in 2019, I wouldn't have been aware of that.

5 Q. So, you haven't had occasion to go back into the
6 records and look at previous proposals to amend this Act?

7 A. No, I have not.

8 Q. And in terms of the discussions with the Premier about
9 reconstituting the Board but before doing so needing some
10 changes to the law, when did those conversations take place?

11 A. That might have been earlier this year. I can't
12 pinpoint exactly when, but it would have been after I went--

13 Q. Sorry, your voice dropped.

14 A. After I went into place, it would have been either
15 late '20 or early 2021 or something like that, since I've been
16 there.

17 Q. And in terms of when a Minister wants to do that, is
18 thinking of a policy initiative, let's call it, is the next step
19 to then ask the Permanent Secretary to begin work on it?

20 A. That's the usual step, but admittedly there are lots
21 of things on the Premier's plate; I admit that. And with COVID
22 and all of those things, he has a lot on his plate. I know he
23 has the intention, but I think he has not gotten around to it
24 because once he gives an instruction and says I want X, Y, and Z
25 done, let's prepare a Cabinet Paper so it can be taken to

1 Cabinet, and then subsequently to the House, we will do that.

2 Q. But so far you haven't been asked to do anything in
3 relation to the Climate Change Trust Fund?

4 A. Not as of yet, Commissioner.

5 Q. Excuse my ignorance, but does it all go through the
6 Permanent Secretary? Can a Minister decide to ask a Deputy
7 Secretary to work on something or must the Permanent Secretary
8 know what's going on?

9 A. Well, in our case, the Permanent Secretary would have
10 to know, and the Permanent Secretary may assign it to somebody
11 else, what the Permanent Secretary does know and does the
12 assignment to sometimes a Desk Officer or another officer that
13 might be available who is assigned to ExcoTrack.

14 Q. I see. Because not everybody can get on to ExcoTrack?

15 A. No, not everyone is assigned to ExcoTrack.

16 Q. Thank you very much.

17 MR RAWAT: Commissioner--

18 MR HAERI: Commissioner, sorry, Mr Rawat, if it's a
19 good moment for you, I have a question, Commissioner, for you,
20 because there are three names of attendees on the Zoom hearing
21 that I don't recognise, and one I can't tell the name of the
22 person either. It's an Akneebone is one person who's been
23 attending. The second person is Sophie Holmes, and the third
24 person is Alexandra Tampakopoulos, and I just wondered who these
25 people were. Are they part of the COI Team? Because I don't

1 recognise any of those names.

2 COMMISSIONER HICKINBOTTOM: We're just checking here
3 who's on.

4 MR HAERI: I think Akneebone, I took a note of it,
5 seems to have since dropped off, but the other two, Sophie
6 Holmes and Alexandra, are still on.

7 COMMISSIONER HICKINBOTTOM: They have been working on
8 the analysis I think. Both of them have been working on the
9 analysis of the documents that we're receiving, Mr Haeri.

10 MR HAERI: They're part of the COI Team?

11 COMMISSIONER HICKINBOTTOM: They are.

12 MR HAERI: Are they seconded from institutions or in
13 what capacity, if I may ask?

14 COMMISSIONER HICKINBOTTOM: It doesn't matter,
15 Mr Haeri, but if you have any queries about them, you can write
16 in, but they are legitimately here.

17 MR HAERI: Okay. And Akneebone, who was the other
18 name that was on. Do you recognize that? Do you know who that
19 would be?

20 MR RAWAT: No, but we can check into that.

21 MR HAERI: I think it would be helpful because I can't
22 tell who that name would even be, but we will write you about
23 it.

24 COMMISSIONER HICKINBOTTOM: Write about it, Mr Haeri,
25 because it's sure and we think we know who it is, but write to

1 us.

2 MR HAERI: Thank you. We will do so.

3 COMMISSIONER HICKINBOTTOM: Good. Anything else,
4 Mr Rawat?

5 MR RAWAT: No. I have reached the end of my
6 questions. I hope that by tomorrow we will be in a position to
7 inform Dr O'Neal-Morton whether we will need her to come on
8 Monday, but we will do that as quickly as we can, of course.

9 THE WITNESS: Of course.

10 MR RAWAT: But other than that, can I conclude,
11 Commissioner, by thanking Dr O'Neal-Morton for coming today and
12 also for the way in which she has given her evidence to the
13 Commission.

14 THE WITNESS: You're welcome, Commissioner.

15 COMMISSIONER HICKINBOTTOM: Can I echo that, please.
16 Dr O'Neal-Morton. Thank you very much for your time and thank
17 you very much for the way you have given your evidence. Very
18 helpful. Thank you.

19 THE WITNESS: You're welcome, Commissioner.

20 (Witness steps down.)

21 COMMISSIONER HICKINBOTTOM: Good, that's it for
22 today--

23 MR RAWAT: It is.

24 COMMISSIONER HICKINBOTTOM: --Mr Rawat? Thank you.

25 (Pause.)

1 COMMISSIONER HICKINBOTTOM: Did somebody try and say
2 something?

3 MR ROWE: Commissioner, the document has been sent to
4 you.

5 COMMISSIONER HICKINBOTTOM: Thank you very much,
6 Mr Rowe.

7 MR ROWE: Who are here in the Virgin Islands regarding
8 the parties, or here on the site?

9 MR RAWAT: Your sound is a little bit--

10 MR ROWE: My apologies.

11 When you mentioned that these parties that Mr Haeri
12 referred to, that they were here on the site as distinct from in
13 the Virgin Islands?

14 COMMISSIONER HICKINBOTTOM: I'm not quite sure of the
15 question.

16 Mr Rowe, you know the COI Team that are in Territory.

17 MR ROWE: Okay, sir. I appreciate it.

18 COMMISSIONER HICKINBOTTOM: Thank you very much.

19 MR ROWE: Please enjoy your weekends. Sorry about all
20 the work.

21 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rowe. Is
22 that it, Mr Rawat?

23 MR RAWAT: Yes. Thank you.

24 THE WITNESS: You're welcome.

25 (End at 3:41 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", is written above a horizontal line.

DAVID A. KASDAN