

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 33

(TUESDAY 14 SEPTEMBER 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Sir Geoffrey Cox QC and Ms Lauren Peaty 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.

Hon Andrew A Fahie gave evidence.

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Those present:

Sir Geoffrey Cox QC, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Bilal Rawat

Hon Andrew A Fahie

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

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2
3 COMMISSIONER HICKINBOTTOM: Good. We're ready to
4 start.

5 Just before we start with the evidence, could I just
6 raise one point, Ms Peaty, and that concerns the
7 Telecommunications Regulation Commission, which is one of the
8 Statutory Boards which is under the Premier's umbrella, and one
9 of the Boards that we'll be looking at today.

10 Under the Act, the Telecommunications Act, there is a
11 requirement on Members to make a Statutory Declaration dealing
12 with the matters set out in Section 75, and those Statutory
13 Declarations should have been disclosed in general disclosure,
14 they should have been disclosed in the Affidavit we asked for,
15 and they should have been disclosed in response to the Warning
16 Letters that we sent.

17 In respect of them, we have been sent a copy of the
18 Statutory Declaration of Vance Lewis. We have not got Statutory
19 Declarations in respect of three other Members: Vincent
20 Wattley, Joycelyn Murraine, and Bevis Sylvester. We have been
21 told that steps have been taken to look for the Statutory
22 Declaration of Mr. Wattley. We need those Statutory
23 Declarations, Ms Peaty. Could I ask for them to be produced by
24 2:00 p.m. today? If they can't be produced by 2:00 p.m. today,
25 could you please let me have an explanation, together with, if

1 this is necessary, if this proves necessary, the name of the
2 individual who I should summons to produce them, together with
3 an e-mail address at which the summons can be sent and
4 confirmation that service of the summons will be accepted at
5 that e-mail address. Obviously, we would send any summons we'd
6 copy to you.

7 Can you do those things by 2:00? We may have some
8 questions to the Premier in respect of those Statutory
9 Declarations today.

10 MS PEATY: Yes, sir. I'll just speak to the team, and
11 I don't see any reason we can't have those searches done, at the
12 latest, this afternoon.

13 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.
14 As soon as you've got them, let's have them, but by 2:00.

15 MS PEATY: Yes.

16 COMMISSIONER HICKINBOTTOM: That's very good. Thank
17 you.

18 Mr Rawat.

19 MR RAWAT: Good morning, Commissioner. Before we
20 continue with the evidence of The Honourable Premier, could I
21 just introduce the legal representatives. We have in person in
22 the hearing room Ms Lauren Peaty, and attending remotely Sir
23 Geoffrey Cox QC, both of whom represent the Attorney General and
24 the elected Ministers. Mr Richard Rowe is present remotely on
25 behalf of a number of Members of the House of Assembly.

1 BY MR RAWAT:

2 Q. Honourable Premier, thank you very much for returning
3 to assist the Commission with further evidence.

4 When you first gave evidence on the 18th of May 2021
5 to this Commission you chose to affirm. There is no need to
6 take that affirmation again. If you look to your left, you will
7 see four bundles. They will contain some of the documents that
8 we will need to refer to as we go through your evidence.

9 To your right, you should also see some
10 correspondence, and in particular there is--and I will go into
11 this in more detail shortly--Warning Letters and written
12 responses on behalf of yourself as Premier and Minister of
13 Finance and also on behalf of the Cabinet.

14 Can I, as I do everyone, remind you, please, to
15 remember to keep your voice up. The microphone that you see in
16 front of you will not amplify. And if anything, I'd suggest
17 that you pull it closer to you as you go through the day.

18 The reason I ask for that is that it's important that
19 our remote Stenographer be able to hear you and take an accurate
20 record of your evidence.

21 A. Commissioner, I just want to say thank you, and before
22 we begin this, my religious belief.

23 Q. Premier--

24 A. It is my religious belief before we begin,
25 Commissioner, with your kind permission and is known fact where

1 we go, I believe in my brief prayers I say, Holy Spirit take
2 full control of this environment that your will for the people
3 have been, and led likely when you fed the multitude that you
4 feed this country and feed the Commission with the truth so that
5 your will for the Virgin Islands will come through and your will
6 from you come through and each of us as persons. So bless today
7 in Jesus's name, Amen.

8 COMMISSIONER HICKINBOTTOM: Thank you, Premier.

9 Thank you, Mr Rawat.

10 BY MR RAWAT:

11 Q. Could we start with some background, please, Premier.

12 A. Yes, sir.

13 Q. Could you just remind us of the date of the 2019
14 Election?

15 A. It was February 25th, 2019.

16 Q. And following the victory of your party in that
17 election, on what date did you name other Members of your
18 Cabinet?

19 A. It was around 12 March, if I'm not mistaken, in March
20 time.

21 Q. And just by Cabinet, I'm meaning those who sit in
22 Cabinet rather than the two junior Ministers that you also can
23 appoint?

24 A. Right. That would have been the Ministers would have
25 been I think in March, somewhere around in March.

1 Q. Sorry to say this so soon, but I think your voice is
2 dropping a little bit.

3 A. I didn't realize that. I think it would be in March.

4 Q. Thank you.

5 And once--it's the process that once you name your
6 Cabinet, they then have to be formally appointed by an
7 instrument of appointment from the Governor?

8 A. That is correct.

9 Q. And when was that done? Can you remember?

10 A. I don't want to misquote the dates. I know that there
11 was a delay in getting me sworn in by the Governor because I was
12 trying to be sworn as Premier, and there was a delay where,
13 after being told the one day that I couldn't swear in, and the
14 second day I insisted I be sworn in, and the Governor, then
15 Augustus Jasper, told me that he couldn't find the writ from the
16 election office, so that threw us off about a day or two before
17 I was sworn in. And then after that we went back and we decided
18 among ourselves, the Minister--who will be the Ministers in the
19 Cabinet, and that--I don't want to say the dates, but I know it
20 was all in March for sure.

21 COMMISSIONER HICKINBOTTOM: All sort of in early
22 March?

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: First couple of weeks in
25 March.

1 THE WITNESS: For sure.

2 COMMISSIONER HICKINBOTTOM: Okay, thank you.

3 THE WITNESS: Close going into the second week closer.

4 BY MR RAWAT:

5 Q. And was your first Cabinet meeting also in that--in
6 March?

7 A. The first Cabinet Meeting would have been around that
8 time, yes.

9 Q. And now, as you'll be aware, the topic of the
10 Commissioner is currently looking into Statutory Boards.

11 A. Yes, sir.

12 Q. We have heard recently from two of your Ministers, The
13 Honourable Malone and The Honourable Wheatley, and also three
14 Permanent Secretaries, Tasha Bertie, who is the acting Permanent
15 Secretariat to the Minister of Health and Social Development;
16 Mr Joseph Smith-Abbott, who is the acting Permanent Secretary to
17 the Honourable Wheatley's Ministry; and then your own Permanent
18 Secretary, Dr Carolyn O'Neal-Morton, who is the Permanent
19 Secretary to the Premier's Office. All of them, all five,
20 agreed with this proposition, and that is that the role of a
21 Permanent Secretary is to supervise a Ministry subject to a
22 Minister's direction and control. Is that a proposition with
23 which you agree?

24 A. Right, to supervise and to advise also the Minister.
25 Because they would be the ones with the institutional knowledge

1 because, you know, Boards come and go, elected officials come
2 and go, but a Public Service is the one constant, so they will
3 be the ones with the institutional knowledge to help guide,
4 advise Ministers indeed.

5 Q. So, but they do so under the direction and control of
6 the Minister, do they not?

7 A. They do so in terms of the Policy direction, yes,
8 where the Minister would like to go.

9 And I need to correct for the record, when I said
10 Boards come and go, I mean the Members, Board Members come and
11 go, and the Ministers as individuals come and go, just in terms
12 of being specific.

13 Q. Now, we know from Dr O'Neal-Morton that, under your
14 administration, there are 11 Statutory Boards which fall under
15 the Premier's Office.

16 A. Yes.

17 Q. Do you agree with that number?

18 A. I think that that is a correct number, yes.

19 Q. You say "think". Are you not sure?

20 A. Well, I'm sure one day I can name them, but if you
21 count them, I would say "yes," it's 11. I deal with them every
22 day, so I would agree that there is 11.

23 Q. Again, Premier, you need to keep your voice a little
24 bit up, please.

25 A. Okay. I will try, usually when I speak loud, people

1 think that I'm speaking aggressive, but I will try so it doesn't
2 come across that way. But I will try. I will try to keep it
3 this tone.

4 Q. Now, Dr O'Neal-Morton, in relation to Statutory Boards
5 and those 11 Boards, has made two Affidavits--

6 A. Yes.

7 Q. --to the Commission.

8 Have you read those Affidavits?

9 A. Yes, I did.

10 Q. The Financial Secretary, Jeremiah Frett, has also made
11 two Affidavits in relation to the Statutory Boards that fall
12 under the Ministry of Finance.

13 A. Yes.

14 Q. And he confirms that there are 10--

15 A. Right.

16 Q. Have you read Mr Frett's Affidavits?

17 A. Yes, I did.

18 Q. Now, of the two Affidavits from Dr O'Neal-Morton and
19 Mr Frett concerning Statutory Boards, the second of those was
20 only served very recently and after the Commission had sent
21 Warning Letters out, and so what I want to do today is
22 concentrate on the issues that arise from Dr O'Neal-Morton's
23 first Affidavit, in particular.

24 Now, you were sent a Warning Letter setting out
25 potential criticisms that may be made of you as Premier. Can I

1 stress at this point for the record that those are just
2 potential criticisms that arise from the evidence that the
3 Commission has obtained; and, secondly--

4 A. I didn't get the first one--that they are potential
5 you said or are not?

6 Q. Potential.

7 A. They are potential.

8 Q. I'm the one now dropping his voice.

9 A. Yes.

10 Q. So let me repeat that again because it's important to
11 make it clear to you, Premier.

12 The other thing I should mention before I do so,
13 that's what's also important for the Stenographer is that the
14 two of us don't speak over each other.

15 A. Okay.

16 Q. I will now--my turn, and I will just go back to that.

17 A. Thank you.

18 Q. The Warning Letter that was sent to you sets out
19 potential criticisms, and that is important. They are just
20 potential criticisms. But equally important is that those
21 criticisms are--do not represent either a provisional or
22 concluded view of the Commission. They are put to you because
23 they arise from the evidence and out of fairness to you.

24 Now, in relation to that, you have provided a
25 warning--a written response, and we will need to look at that as

1 we go through, but before we do so, can you confirm that you're
2 content that that written response from you as Premier and
3 Minister of Finance, should form part of the evidence before the
4 Commissioner?

5 A. It should form part of the evidence.

6 Q. A Warning Letter was also sent to Cabinet. In its
7 content, it overlaps with matters set out in the letter to you,
8 but also set out in Warning Letters that were sent to The
9 Honourable Malone and The Honourable Vincent Wheatley. Now,
10 both of them have attended, as I explained, to give evidence, as
11 to their letters, both of them accepted that their written
12 responses could go into the evidence and then were asked
13 questions about it. But can I ask you whether you can confirm
14 on behalf of Cabinet that the written response supplied on
15 behalf of Cabinet that you are content that it forms part of the
16 evidence before the Commissioner?

17 A. I'm content that it can form part of the evidence from
18 Cabinet, that Cabinet produced.

19 Q. Focusing first on the written response provided for
20 you as Premier, which should be on the table in front of you,
21 should you need to look at it, but can you just explain to the
22 Commissioner how this was prepared?

23 A. How the response was prepared?

24 Q. Yes, please.

25 A. Well--let me make sure I'm very clear. That's

1 the--okay, this one says written from--for the response from the
2 Premier or from the Cabinet.

3 Q. I'm looking at the one addressed to you.

4 A. Okay.

5 Q. So, it's the document headed "Written Response of The
6 Honourable Andrew Fahie, Premier and Minister of Finance to
7 Warning Letter dated 24th of August 2021." Do you have that?

8 A. Yes.

9 This was--if I may--if I may?

10 Q. Yes.

11 A. Okay. This was done in collaboration with the
12 Permanent Secretary and the IRU unit, where we sat and read it
13 and give our input into what we see as the correct answers.

14 Q. When you say "we", who is the "we" that gave you--

15 A. In terms of myself and then I will discuss with the
16 Permanent Secretary, and we would pass it through the IRU unit,
17 which is what it's there for based on what it was set up to do.

18 Q. The reason I ask the question is because the wording
19 that has been used in this document matches in close degree
20 wording that appears in the written responses, for example, from
21 The Honourable Malone, The Honourable Wheatley, and also
22 Dr O'Neal-Morton and, in fact, the other two Permanent
23 Secretaries. Both Dr O'Neal-Morton and The Honourable Wheatley
24 suggested that they put responses in their own language, and
25 then it was turned, to borrow Honourable Wheatley's words, into

1 "legalese". Is that what happened in this case?

2 A. I can't answer how it acts. All I can say is I had my
3 input in it and what I put into it. When I finalise it, I give
4 it just for proofing. It came back. I agreed with what was in
5 it, and it was moved forward.

6 Q. Well, does that mean that the content of this is in
7 your words?

8 A. The contents of it is in my words, my thoughts, and
9 based on how I see the answers.

10 Q. Could you now look at the written response from
11 Cabinet.

12 Now, again, how was that prepared?

13 A. Well, it was in the same vein. The only thing that
14 the Cabinet--there was a Warning Letter against the Cabinet,
15 which would have only included the five Ministers to respond, so
16 it would have been a discussion among the five Ministers because
17 it wouldn't have been reflected in the Chair, so we would have
18 had to discuss it among ourselves and agree with the wording
19 which we did. And again, we passed it through the IRU, the
20 Attorney General with the IRU unit, and it was forwarded, so all
21 of us in Cabinet do agree what's there, at least we should
22 because we did agree.

23 Q. The wording of that, again, mirrors sometimes word for
24 word, often word for word, the wording that we find in the
25 written response from you, and indeed the wording we find in the

1 written response from Honourable Malone and Honourable Wheatley
2 in their individual Warning Letters. How did that come about?

3 A. Well, that's reasonable. We govern, we are going to
4 discuss it, and we're going to collaborate about what we think
5 about the answers because it is a Warning Letter against the
6 entire Cabinet, and the entire Cabinet should have one voice
7 coming forward.

8 And the potential criticism that was set out also from
9 the COI's was similar in nature, just deviated based on the
10 Boards, so our answers were the same because the mindset behind
11 what we were doing with the Boards and the policy that we were
12 trying to implement was known from the inception, so it wasn't
13 difficult for us to have the same answer and similar in most
14 respect because it was based on our policy and not also as
15 individuals.

16 Q. Can I come back to policy in due course.

17 A. Yes.

18 Q. I think it's important that we take this in a
19 structured way.

20 But the point is that, you--given that you have said
21 that your response was your words, your thoughts, and those
22 words and thoughts appear in the response from the Cabinet, does
23 it follow that it's your words and your thoughts in the response
24 from Cabinet as well?

25 A. That--my screen--oh, it's still up. My screen went

1 black. Sorry about that.

2 Could you repeat that? Because the screen just went
3 black in front of me, so I was looking for something.

4 Q. Yes.

5 Given that--you've explained that your written
6 response as Premier was your words, your thoughts--

7 A. Yes.

8 Q. --and those same words and thoughts appear in the
9 written response from Cabinet. Does it not follow that it was
10 your words and your thoughts that prevailed in that written
11 response?

12 A. Not at all.

13 Q. So everybody uses the same words as you?

14 A. No, no, we used the same words together, not as me.

15 All policy dictates how we respond, so we were clear
16 from the inception with or without a COI what we wanted to do
17 with Boards, so to answer any questions from the COI whether it
18 is potential criticism or otherwise was very, I don't want to
19 say "simple" but easy for us because we're going to be
20 consistent. And if you ask Honourable Malone at midnight, he
21 will give you the same answer. If you ask Honourable Wheatley
22 at midnight, he will give you the same answer because it was
23 clear what we wanted to do with Boards. So, it was not a matter
24 of my words, a matter of all words together as a group, as a
25 Cabinet.

1 Q. If you go to--I'm afraid your written response wasn't
2 paginated, which is not helpful, but if you go 10 pages in,
3 please, Honorable Premier.

4 COMMISSIONER HICKINBOTTOM: Could you describe where
5 we should be, Mr Rawat?

6 MR RAWAT: We should be at a section which is headed
7 "BVI Airports Authority."

8 THE WITNESS: They're not numbered, so let me see.

9 COMMISSIONER HICKINBOTTOM: Premier, the top of the
10 left-hand page should be headed "BVI Airports Authority".

11 THE WITNESS: BVI Airports Authority. My numbers are
12 somehow off--

13 BY MR RAWAT:

14 Q. Let's start together, Premier, at the beginning.
15 Let's start on the first page.

16 A. First page.

17 Q. The first page should be headed--there's a box, BVI
18 Electricity Corporation.

19 A. That's correct.

20 Q. If you go through to the next page, and then overleaf
21 you'll see at the bottom "response".

22 A. Right.

23 Q. And that goes through to the next page. And if you go
24 to the fourth page, you see the number two in the top left-hand
25 corner.

1 A. Okay.

2 Q. Go on to the next page, and it's a response in bold.
3 And over that response continues. Go through to the next page,
4 and you should come to BVI Tourist Board.

5 A. BVI Tourist Board, that's--it starts in July 2019?

6 Q. It starts on March 27, 2019.

7 COMMISSIONER HICKINBOTTOM: Could I just pause--could
8 I just pause for a moment. What I suggest, this is going to
9 take two or three minutes. I suggest we each paginate this
10 document because we're going to take the Premier to other parts
11 of it--

12 MR RAWAT: Yes.

13 COMMISSIONER HICKINBOTTOM: --and it's going to take
14 us a long time.

15 Is that best done by one person or all of us? What's
16 the quickest way, Mr Rawat?

17 THE WITNESS: Probably the quickest way is for one
18 person to do it. But we also need to do is we should paginate
19 the Premier's written response as well because that will help
20 him get through it.

21 COMMISSIONER HICKINBOTTOM: Can that be done? I know
22 it's tedious, but I think it will save a lot of time.

23 MR RAWAT: It will. We're taking a long time to get
24 to what will actually be a short question.

25 COMMISSIONER HICKINBOTTOM: Exactly. I will stay

1 here, but can somebody make sure that the pagination is the same
2 and paginate our respective responses, our respective documents.

3 MR RAWAT: Perhaps if we briefly adjourn.

4 COMMISSIONER HICKINBOTTOM: I think that's probably
5 the best thing to do.

6 And put a copy of the Cabinet's response again, in my
7 bundle, the responses. Thank you very much.

8 Premier, I'm sorry that this has happened so early,
9 but we're just going to break for two or three minutes.

10 THE WITNESS: No problem.

11 COMMISSIONER HICKINBOTTOM: And then come back, but it
12 will save quite a lot of time during the course of today.

13 THE WITNESS: No problem at all.

14 (Recess.)

15 COMMISSIONER HICKINBOTTOM: Thank you, Premier. I
16 know this is your document, but I think it will save time in the
17 long run to have it numbered, and I think we will get through it
18 more quickly.

19 Yes, Mr Rawat.

20 MR RAWAT: Commissioner, thank you for the time.
21 Hopefully now that the Premier now has a paginated copy of the
22 Cabinet's written response and a paginated copy of his own
23 response. And that may help us to get through things more
24 quickly.

25 BY MR RAWAT:

1 Q. Before I continue, Commissioner, can I just make
2 mention of one thing, which I ought to have perhaps mentioned at
3 the beginning, and that is, if--I should have remembered that
4 everyone should have their mobile phones turned off and put
5 away.

6 Could I ask you just to turn to the Cabinet's
7 response, please. If you turn to what is now page 10?

8 A. Yes, sir.

9 Q. The--do you see just above the box captioned "BVI
10 Airports Authority" there is a response which is a response to a
11 criticism that arises in relation to the Tourist Board. And
12 what's written is reference is made to the Attorney General's
13 earlier responses.

14 So, what inputs did the Attorney General have in
15 preparing the Cabinet's response?

16 A. You said the response or the Cabinet--

17 Q. Yes, at beginning it says "Written Response of
18 Cabinet". You've explained that the elected Ministers came
19 together and decided what the responses should be.

20 A. Right.

21 Q. And we see, for example, at page 7--

22 A. Page 7.

23 Q. --that you've made--that reference is made to the
24 Cabinet's earlier responses.

25 A. Um-hmm.

1 Q. But at page 10 you say reference is made to the
2 Attorney General's earlier responses.

3 And the reason for my question is--goes to this, why
4 was it considered that the ex officio Member of Cabinet who
5 doesn't have the vote should be involved in preparing the
6 response?

7 A. Well, why not? Because it's an ex officio Member of
8 Cabinet, but is also the post of Attorney General. So the post
9 of Attorney General, who would have been in Cabinet, also does
10 carry some weight for us to sit as Ministers if we have
11 questions to ask the Attorney General. That is part of the post
12 of Attorney General.

13 Q. But you didn't mention that at the beginning, so is
14 the Attorney General also involved in the process of preparing
15 this?

16 A. The Attorney General didn't give us the response, but
17 we collaborated with the Attorney General to make sure that we
18 were answering within the line of any legal parameter because
19 these response, once they're made public, defines us as a
20 Cabinet, so it was a express safety layer that we were using as
21 a Cabinet.

22 Q. Reference is made to the Attorney General's earlier
23 responses. So which of the earlier responses in this document
24 are attributable to the Attorney General?

25 A. Well, in terms of--I'm trying to see if we documented

1 it or if it was--I think it was dealing with Attorney General's
2 orders talking about not so much the Attorney General now, but
3 more so the Attorney General's response in terms of what they
4 give us before when we're doing the Boards. That's what I was
5 reminded it was about.

6 Q. I'm sorry, Premier, I didn't understand that answer.
7 Could you just direct the Commissioner, please, to which--having
8 said reference is made to the Attorney General's earlier
9 responses at page 10, which of the earlier responses are
10 attributable to the Attorney General?

11 A. The Attorney General, in general, was asking
12 about--the questions seemed to have moved towards questioning
13 the procedure. So, when we were writing the response, one of
14 the things we were cognizant of is to a reference, what advice
15 was given by the Attorney General when we were doing Boards et
16 cetera, when we were handling those matters, so that is the
17 reference that we were trying to refer to. So, it's probably
18 seen in a different light and not so much saying that this
19 Attorney General give us any response because I was--we give the
20 response to ourselves.

21 COMMISSIONER HICKINBOTTOM: Can I just pause to make
22 sure I've got this clear.

23 If you look at the previous page which is, as it were,
24 the criticism to which you're responding, the response being
25 reference is made to the Attorney General's earlier responses,

1 the criticism is, in July 2019, a new Board membership was
2 recommended to Cabinet to come into effect on the 1st of
3 August 2019. It appears from the evidence that, and then there
4 is a long list of things that arguably are defects in procedure
5 and things which good governance perhaps requires to occur.

6 Now, the evidence to date is that none of these things
7 happened. There was general agreement, that there was no
8 competency profile compiled; that none of the Board positions
9 were advertised; that there was no independent or transparent
10 process by which a suitable pool of candidates of identified, et
11 cetera. That was the general position. One or two caveats from
12 some witnesses on one or two of the headings but generally
13 they're agreed that none of these things happened.

14 In that context, and I at the moment can't understand
15 what reference is made to "the Attorney General's early
16 responses" means, if it refers to Attorney General's advice and
17 guidance given to you at the time as opposed to earlier
18 responses within this document.

19 THE WITNESS: No, advice that was given previously. I
20 think we are saying the same thing but probably there is a
21 barrier when it comes to how I'm putting it, but I'm talking
22 about earlier. I can't say that none of those things didn't
23 happen in terms of that's--I don't know if I misunderstood you,
24 Commissioner, but based on what was asked and what we answered,
25 we did a general answer or I did a general answer, and that

1 included any advice from the Attorney General that would state
2 that some of those things were not done according to some of
3 what was set out.

4 So, that is in the vein of what we were answering
5 about. I'm not saying that the Attorney General of the day gave
6 us any answer. So, rather than writing it over and over again
7 because it's literally all true, the document that the Attorney
8 General's advice on the constitutionality of the policy was also
9 equivocally and in any event the implication was not
10 discriminatory or unconstitutional. Then we have other parts of
11 the response, the Attorney General did not advise otherwise, he
12 advised that it would be better to give individual reasons and
13 the Cabinet should do so if wished to be.

14 And if we go through the entire documents for the
15 response in the earlier part, it was littered with responses
16 from the Attorney General. So, rather than responding in latter
17 questions in totality of what the Attorney General was saying,
18 instead it falls to the responsibility of the Attorney General
19 from earlier because it was a refrain that the Attorney General
20 did in most of the papers.

21 COMMISSIONER HICKINBOTTOM: I understand that
22 reference to the Attorney General might be relevant in relation
23 to the 2019 policy--I understand that--but here it's got to do
24 with appointments made.

25 THE WITNESS: Correct.

1 COMMISSIONER HICKINBOTTOM: And none of these--none of
2 these matters of good governance were done. And I just don't
3 understand how the Attorney General's advice in relation to that
4 is applicable. I mean, the advice isn't set out, but how can it
5 be applicable? These things weren't done.

6 THE WITNESS: Well, I can't say that they weren't
7 done, Commissioner, with due respect. I think that when we go
8 through them one by one, I would show--and I will be able to
9 give evidence to this August body what was done, and how it was
10 done, based on what Ministers had to deal with when they came in
11 just a couple of weeks old.

12 COMMISSIONER HICKINBOTTOM: We will obviously take
13 that evidence.

14 THE WITNESS: Right.

15 COMMISSIONER HICKINBOTTOM: All I'm saying at the
16 moment is we've had two Permanent Secretaries and two Ministers
17 whose evidence is different. They accepted that none of these
18 things happened in relation to their competitions, their
19 appointment, including your own Permanent Secretary, agreed
20 these things did not happen.

21 THE WITNESS: With respect, you said none of these
22 things were done, so we have to look at them Board by Board
23 because in some of them were done probably not in the formal
24 sense of what you may measure me by in what is through the lens
25 of probably the UK or other bigger countries, but some of them

1 were done based on our cultural makeup that has been the impetus
2 for which Government has functioned on for the last 71 years
3 since we had the Legislative Council. So it depends on which
4 lens you look through that you would say that they weren't done.
5 And even if they were done, it depends on which lens you looks
6 through to say how they were not done, that's what I mean.

7 So, it's not to contradict or even to go in any way
8 against whether the Ministers or Permanent Secretaries. I just
9 want to complement what they're saying in a different way.

10 COMMISSIONER HICKINBOTTOM: I understand that, and no
11 doubt we will go through what other witnesses have called the
12 "informal process," but what has the Attorney General got to do
13 with it?

14 THE WITNESS: Well, there were areas where when a
15 Cabinet Paper, as a new government, and of course, not being a
16 lawyer, and we were talking with--this is a time frame when we
17 just came into office, and we were relying on the Attorney
18 General, the Government Cabinet Chair, and the Deputy Government
19 law offices and the Permanent Secretaries and the Public
20 Officers to guide Ministers because when you take office, really
21 and truly the only thing that you would have is the statutory
22 acts. The informal process over the years which we are now
23 working on to formalize, but given our culture of the informal
24 process that went on in total selection of persons for Boards,
25 there was never something truly documented on how to go about

1 certain procedures.

2 So, with it--now, once those informal procedures are
3 done, given the pace that Ministries work on--work at the
4 Cabinet Papers, there is only one area that you're working on in
5 a given week, so those go in the ExcoTrack, and then they are
6 sent to usually two entities through the ExcoTrack through the
7 Public Service. One is the Attorney General, and one is the
8 Financial Secretary.

9 Now, that would be the extra litmus test to make sure
10 that if anything is missed by the Public Officers and Minister
11 at the time to ensure that that is looked over and, of course,
12 to check the X, and to see, we do not have in the Virgin
13 Islands, as yet, like a Cabinet Office, which we are aspiring to
14 make sure that we work towards, where there is a Conflict of
15 Interest Unit, where there is a litmus test to see if all of
16 these things are done before it reaches to the Cabinet, and this
17 is something that we have recommended in our Position Paper that
18 we are working on to have implemented because we're a young
19 country still building.

20 So, if you see through my lens, we were of the clear
21 opinion, as a young Government, that once it reaches these
22 layers, whatever was missed or whatever was misinterpreted or
23 misunderstood because we won't know it until they point it out,
24 you may think as a Minister that you read some--one way and it's
25 interpreted another.

1 Chair, if I may, we have passed laws in the House of
2 Assembly with one spirit of it, and when we cite and implemented
3 and it got into the courthouse, it was permitted in our spirit,
4 which is not where we intended for it. So, that's what I mean
5 that for us as a young Government it's putting yourself in that
6 time frame of 2019.

7 So, saw the Attorney General's Office as that last
8 layer that would advise and secure us from doing anything that
9 would be deemed unlawful. And to this date what we are saying
10 is that all the advice received never indicated unequivocally
11 that there was something unlawful happening. And we could go
12 through, as we will, the section of the Cabinet Paper that says
13 legal opinion. We rely on that heavy when we see it. If the
14 Attorney General's Office flags something that needs drilling
15 down on, then that paper is taken back out of the ExcoTrack, and
16 whatever areas that are stated clearly that this needs to be
17 done, are usually addressed.

18 COMMISSIONER HICKINBOTTOM: So, is the short answer
19 that in respect to these appointments made in July 2019, the
20 Attorney General did not advise that they were unlawful or that
21 were in any way deficient? Normally, that's it.

22 THE WITNESS: The short answer is no. If at any stage
23 the Attorney General had warned that there was no lawful way
24 which could have worked appointments have a deal to that.

25 COMMISSIONER HICKINBOTTOM: We're just on at the

1 moment the appointments made--

2 THE WITNESS: Right.

3 COMMISSIONER HICKINBOTTOM: --here in July 2019.

4 THE WITNESS: That's correct.

5 COMMISSIONER HICKINBOTTOM: But that you say is the
6 intent of the response.

7 THE WITNESS: That's the intent of the response.

8 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
9 much.

10 BY MR RAWAT:

11 Q. Premier, you've conflated the process that is--you've
12 described as the informal process which is a term that other
13 witnesses have used which what we find at page 10 in that
14 letter, and if you look at what is set out at page 10, and in
15 fact, if you look at page 9, what is put is that in relation to
16 a particular recruitment process to a Board, a number of steps
17 were not taken; for example, that there was no advertisement,
18 there was no independent process.

19 Now, just to orientate ourselves going forward,
20 both--all three Permanent Secretaries were taken through the
21 Boards, and their Warning Letters mirror in terms of Boards
22 identified, those that were sent to you. Similarly the internal
23 formal process was canvassed with Honourable Malone and
24 Honourable Wheatley.

25 What there isn't is two things: Firstly, there isn't

1 evidence, looking at page 9, as the Commissioner has pointed out
2 to you, that any of the steps set out at page 9 were followed,
3 and that means that--and that was agreed with by Witnesses.
4 Secondly, in the informal process, even when we come down to
5 individual Boards, witnesses could not show and have not
6 produced evidence to the Commissioner to show how those
7 particular groups were exercised, even though they used the
8 informal process, were conducted.

9 Now, I set out that context, but we will come on to
10 the Boards in due course, but if you look at page 4, please;
11 page 4 at no. 2 at the top is dealing with a separate
12 recruitment exercise to a different Board. Some of the points
13 are made there again of steps that were not taken, and there
14 follows a long response starting at the bottom of page 4 and
15 going on over to 5 and 6.

16 Now, that response was a response which we've seen
17 mirrored in other written responses from the Permanent
18 Secretaries and also--but in particular from Honourable Malone
19 and Honourable Wheatley. When you go to 3 on page 6 in relation
20 to the recruitment of one individual, the same criticism was
21 made, and the response is: "Reference is made to Cabinet's
22 earlier responses."

23 So, when we come--and that would appear to be a
24 response to the follow-up response that we see at 2, and we
25 come, therefore, back to page 9, and the same points are made,

1 the difference is reference is made to the Attorney General's
2 earlier response.

3 And so, your evidence, just so that we're clear to the
4 Commissioner, is, in that answer, you were, the Cabinet were
5 wanting to add an extra level of detail in relation to advice
6 given by the Attorney General to you in relation to that
7 particular exercise; is that right?

8 A. Well, I would say Attorney, this--these questions
9 earlier, and after we've answered them, after reliance on them
10 and look them over after, most of the questions were similar.

11 So rather--you're saying that the questions that came
12 later we started to reference the Attorney General's response,
13 and wanting to make sure that the deadline that has--was put on
14 me as Premier, given all that I was doing, wanted to make sure
15 that after a while answering all these questions going straight
16 through to be as clear as you can be for the Commissioner to
17 help. And rather than rewriting the same thing for the Attorney
18 General, we just added the "see Attorney General's response"
19 from earlier, to reference the same thing. So, that's how I see
20 it.

21 Q. The difficulty, Premier, which you have not been able
22 to assist the Commissioner with, is that one, we get through the
23 first 10 pages, it is just impossible to identify a response
24 which is attributable to the Attorney General.

25 A. Um-hmm.

1 Q. If you had said at the beginning which you have
2 specifically not said, is sorry, that was a typo, and it should
3 say reference is made to the Cabinet's earlier responses. That
4 would have made sense. But what you cannot do in this written
5 response is identify the specific earlier response of the
6 Attorney General, can you?

7 A. I don't think that we're seeing each other through the
8 same eyes from probably a cultural language point of view. When
9 I say that reference is made to the Attorney General, I'm
10 meaning that the advice that they would give on each one of
11 those peoples for each one of the Boards. So I don't know if
12 it's being looked at, Commissioner, in a different light, but
13 that is how I look at it when I was responding to the questions.
14 So, I didn't--I didn't like to assist--I thought that I was
15 assisting, so I just needed to point that out.

16 COMMISSIONER HICKINBOTTOM: If that's what you meant
17 by that response, then a similar response is given later on to
18 the--in respect to the Social Security Board. If that's what
19 you meant by that response, where are the earlier responses?
20 One would have expected in a document like this for those
21 earlier responses, the documents you're relying upon, to be
22 referred to.

23 THE WITNESS: If I may?

24 COMMISSIONER HICKINBOTTOM: Yes.

25 THE WITNESS: What I'm referring to is in the earlier

1 response, it was highlighted in the earlier responses as I read
2 it before that the Attorney General did not point out any legal
3 issues, for example, on page 6, it says "advised by the Attorney
4 General that the outcome that that all appointments should be
5 advertised, the newly elected appointment of Governor was not
6 then in March and April advised by the Attorney General, the
7 Governor or The Deputy Governor, that all appointments should be
8 advertised." That's one reference there to the Attorney
9 General.

10 Then there are some other references as littered
11 through the entire document stating clearly the Attorney General
12 did not advise otherwise, he advised that it would be better to
13 give individual reasons and the Cabinet should be--should
14 be--should do so if it wishes to be consistent with the Public
15 Administration.

16 And then when we look at other areas, the Attorney
17 General--I quoted some of the things that the Attorney General
18 stated or quoted or paraphrased. Some of the areas the Attorney
19 General certainly did not advise the Cabinet that there was no
20 respectable argument that this policy was unlawful--

21 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
22 but can I just get this absolutely clear.

23 We're talking--in the response that we're focusing on
24 on page 10--

25 THE WITNESS: Right.

1 COMMISSIONER HICKINBOTTOM: --it's the response to a
2 potential criticism that various steps in relation to the
3 appointments, various steps were not taken, and that's a
4 potential criticism.

5 THE WITNESS: Right.

6 COMMISSIONER HICKINBOTTOM: Where that criticism is
7 dealt with on page 6, which you referred to, it's not--there is
8 no response by the Attorney General. That simply says that the
9 Cabinet was not advised by the Attorney General, that the
10 appointments should be advertised and candidates interviewed, et
11 cetera.

12 At the moment, I'm sort of lost in your answer, but it
13 may simply be that we'll need to press on. How I read this--

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: --Premier, when I first
16 read it, was that the reference there on page 10 to the Attorney
17 General's earlier responses, and I think there is a similar
18 response later in respect of the Social Security Board on
19 page 22, reference is made to the Attorney General's earlier
20 responses. That was simply a typographical error for the other
21 responses in this document.

22 THE WITNESS: Um-hmm.

23 COMMISSIONER HICKINBOTTOM: That's how I understood
24 it.

25 THE WITNESS: Okay.

1 COMMISSIONER HICKINBOTTOM: But, as you say, these are
2 in your words, and you understood it in a different way.

3 THE WITNESS: I understood it in different way,
4 Commissioner. With due respect, I understood that once I was
5 answering most of the questions, save one or two words or one or
6 two deviations, were the same for nearly all the Boards.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 THE WITNESS: In my reading of it.

9 COMMISSIONER HICKINBOTTOM: But the answer on this
10 Board is different from the answers in respect--your answers in
11 respect of the other Boards.

12 THE WITNESS: Right. But at the same time the gist of
13 the--the basis of my response saying that we referred to the
14 Attorney General's response earlier means that the advice given
15 even for this Board was similar to the others, which was that
16 there was nothing unlawful or there was--unequivocally stating
17 that this way cannot be done. So, that is in the vein in which
18 I was responding.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.
20 I understand that.

21 Thank you, Mr Rawat.

22 BY MR RAWAT:

23 Q. If we could move on, Commissioner. Honorable Premier,
24 you've referred to the "informal process", which is a term that
25 other witnesses, as I've explained, have used, and they have

1 given the Commissioner quite a lot of evidence about how their
2 understanding of that process. So, what I want to do is just
3 lay it out and summarise it for you. And the sources that we
4 have for that are the written responses of the three Permanent
5 Secretaries and also the two Ministers.

6 And when one looks at the written responses, there are
7 strikingly similar descriptions of the informal process by which
8 it is said appointments to Boards are currently made and have
9 been made in the past; and that wording finds its echo in the
10 Cabinet's response and in your own response. The Witnesses as
11 I've said, also confirmed the process in their oral evidence,
12 and it comes to this:

13 Firstly, there is an informal process by which
14 individuals are recommended to a Minister for membership of a
15 statutory board. Those recommendations can come from a Desk
16 Officer or from a Permanent Secretary or from the Minister
17 himself or herself.

18 The Minister may take informal soundings. So, for
19 example, Honourable Wheatley gave the example of when he needed
20 to find representatives of employers and representatives of
21 employees. He went out into the street to people he knew and
22 asked them who would make a good representative. Other
23 Ministers may make recommendations. But what was agreed was
24 that this was essentially an internal process. Certainly, it
25 doesn't involve any element of advertising, et cetera.

1 Once the recommendations come in, the Minister decides
2 who will be nominated to the Board. The next step is then that
3 pool of nominees are approached, and they are asked if they are
4 willing to serve and, if so, they are then asked to provide a CV
5 or a résumé to the relevant Ministry.

6 As to a conflict check, it appears to go no further
7 than asking the candidate if they considered that there might be
8 a conflict if they were appointed to the Board. Once the CVs
9 come in, the next part of the process is that a Cabinet Paper is
10 then prepared, and that will ultimately be signed off for the
11 Minister who is going to take that paper to Cabinet.

12 Now, during that process, CVs and résumés received
13 might be considered further. And Dr O'Neal-Morton pointed out
14 that, at least in your office, convictions and spent convictions
15 are taken into account, and she said when she was asked about
16 this and how that process worked when she gave oral evidence
17 last week to the Commissioner, she said that most people in what
18 is a small community will know if someone has a spent conviction
19 or, indeed, a conviction. It's a matter of common knowledge,
20 and that's what's relied upon.

21 The Minister has the final say as to who goes--which
22 names go into the paper. That that was agreed by everyone. And
23 the paper, as I understand it, goes on to ExcoTrack, there is a
24 date on the front, which will be the date on which it goes into
25 ExcoTrack. The two other Ministries, absent any need for

1 cross-Ministry consultation, the two other Ministries that will
2 be involved routinely are firstly, the Ministry of Finance to
3 look at financial implementations, and secondly, the Attorney
4 General's Chambers to look at legal implications. The paper is
5 then taken to Cabinet.

6 That paper may be amended during the course of Cabinet
7 discussions. Cabinet may delete a letter, a line from the
8 paper. But what we see at the end of the paper is the name of
9 the Minister who has taken it to Cabinet, so in your case it
10 will be your name and your title and the date. And sometimes
11 that date mirrors the date of the Cabinet Meeting. But what it
12 tells us is that's the date on which, if you like, the Minister
13 having agreed to take a set of names to Cabinet also signs off
14 the paper.

15 Now, that's, I hope, a fair summary of the evidence.
16 Do you agree broadly that that's the informal process?

17 A. That broadly the informal and the formal process put
18 together because ExcoTrack is a clear policy of how things would
19 move after the paper is done.

20 Q. Yes. That's the procedural point, but in terms of the
21 steps that are taken, that is what the evidence shows, and you
22 don't dispute that evidence as to the process by which people
23 end up--their names end up in a Cabinet Paper; that's right,
24 isn't it?

25 A. Yes, they would be notified before.

1 Q. Well, as we go through, I can show you some examples
2 of people being notified before, if we need to look at that.

3 Now, Dr O'Neal-Morton also explained to the
4 Commissioner that The Honourable Dr Natalio Wheatley, when
5 acting Premier, made a policy decision on the 1st of June 2021
6 to advertise vacancies in relation to Boards that fall under the
7 umbrella of the Premier's Office and exhibited to her Second
8 Affidavit are examples of vacancies being advertised. Dr O'Neal
9 made two further points:

10 Firstly, that it's her hope that--and she described
11 your office, in effect, as the lead Ministry--but it's her hope
12 that by taking or beginning to take these steps, that would
13 encourage other Departments to adopt a similar, more formal
14 process.

15 The second point that Dr O'Neal made was that it
16 hasn't moved as quickly as she would have hoped. There is a
17 procedural manual still in preparation, and at the time she gave
18 evidence, which was last Thursday, that manual has not been
19 provided to the Commissioner. It was subsequently. It says at
20 the top: "This manual is a working draft that is still being
21 edited, proofread, and tested, and should not in any way be
22 considered or referred to as a final document".

23 So, you will agree that, before you can take that
24 formal process much further, that manual needs to be in a more
25 finalised form? Would you agree with that?

1 A. Yes, Attorney, but if I may. We have reached the end
2 of us recognizing something that we need to--I need to be
3 allowed to go to the beginning of because I listened to the
4 Attorney being able to bring his point across very eloquently.

5 The culture of any place has to be also factored in
6 when you're doing the laws. I'm not a lawyer, but I know this
7 from being in the House. Meaning that if the United Kingdom is
8 considering a law to be passed or a new policy, they will not
9 base it on the culture in the Virgin Islands or in Afghanistan
10 or anywhere else. It would have to be based on the United
11 Kingdom. And if the BVI is doing a new policy in law, they will
12 have to base it on what the culture is--

13 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
14 the culture and the circumstances.

15 THE WITNESS: And the circumstances.

16 COMMISSIONER HICKINBOTTOM: The circumstances are
17 different.

18 THE WITNESS: And also bearing in mind to recognize
19 what's happening internationally. That is key.

20 I shudder to say that the impetus that we must have
21 inside of the Commission of Inquiry to be considered is the
22 culture of the Virgin Islands of how it was being dealt with
23 over the years and how did it get to the informal state because,
24 that's where it started. The BVI started with the Legislative
25 Council 71 years ago. There was only about 5-6,000 people.

1 Everyone knew each other. And over time, persons basically know
2 each other in the BVI. Commissioner, if you stay here long
3 enough, they will know where you have lunch, they know where you
4 go to church. You know each other, so that's the culture of it.

5 So, with it now, the informal process was still one
6 yet of which it wasn't that you didn't know these persons at
7 all. Now that has been practiced over the 71 years. What we
8 recognize in the Premier's Office as--long before the COI
9 staffing--that this now is evolving because our population has
10 moved from 5-6-7,000, from 12-14,000 now up to 35,000 and
11 counting. Some say 30, some say 35. So we recognise now that
12 although what got us here has merit in our eyes and needed some
13 adjustment in our eyes also, we have moved towards that stage
14 and prompted ourselves to move towards what has just been
15 described, and with advertising now for Boards.

16 So, Commissioner, you have to excuse me, but when I
17 receive a question from the Commission, why wasn't the post
18 advertised? That is a legitimate question coming from your lens
19 of the UK or bigger country. For us, most of that was not even
20 part of most of the Acts.

21 And I guess we get into it later on because I do agree
22 that Boards are good, but we also have to look and see if that
23 is the best way to get the best candidates with some other ways
24 that we can have working in tandem.

25 So, I want to state that with using the word in terms

1 of having it advertised as the key for being the flag bearer to
2 allow good governance or to allow the best candidate, that would
3 not be the only way given the dynamics of this culture--and I
4 will get into that more as we give evidence.

5 COMMISSIONER HICKINBOTTOM: It might not be the only
6 way because there are a number of ways to have good governance.
7 I certainly accept that. But the evidence to date--and your
8 evidence--is that the procedures, the "informal procedure", as
9 it's been called, was an internal procedure. And so nominations
10 were identified internally by the Minister, by the Permanent
11 Secretary, by the Desk Officer, anybody else who happened to
12 feed a potential candidate in.

13 THE WITNESS: Right.

14 COMMISSIONER HICKINBOTTOM: But it wasn't an entirely
15 internal procedure, as this isn't entirely to do with numbers,
16 although I see that that's a compounding factor. But even if
17 you knew everybody in the Territory, there may be somebody in
18 the Territory who would be willing and able to serve on a
19 particular Board that has the right qualifications and
20 experience, but he is not identified by this internal mechanism.
21 He can only be identified by some mechanism which has an
22 external element.

23 We will come on to the new process, the more formal
24 process in a while, but that must be right, mustn't it, as a
25 proposition? Even if you knew everybody, which, as you say, you

1 may not now because there are so many people here, but to
2 maximize the possibility of getting the best people on Boards,
3 the procedure has to have some external element.

4 THE WITNESS: Yes. I would say "yes" but in tandem.
5 You're correct, Commissioner, but in tandem.

6 And if I may, for example, we came in with a mandate
7 of change, and we were going into the Boards. And if I may be
8 allowed to give my evidence to help with your report--

9 COMMISSIONER HICKINBOTTOM: We're coming on to the
10 2019 policy in any event.

11 THE WITNESS: Okay.

12 COMMISSIONER HICKINBOTTOM: What I'm particularly
13 interested now in is the informal process.

14 THE WITNESS: Right.

15 Well, the informal process is one in which all that
16 has been described is one that you usually do, but at the same
17 time to--when you give it to the Attorney General or even when
18 you reach the Cabinet, if there are any issues that come up
19 legally, then you would have them addressed. For example, it
20 was stating that if someone has a conviction, as one of the
21 areas that I heard the Attorney mention, but in all laws, there
22 is also a section that if the person serves, nothing is beyond
23 six months and their record is expunged, then it cannot be
24 referred to, and it's like it didn't happen in terms of layman
25 terms. So you cannot legally hold them to it. In our culture,

1 in a Christian religion, it's called God's Grace and Mercy, but
2 in legal it exists. So in any case where that came into
3 question, the Attorney General was referred to, and the Attorney
4 General's acts could give us your legal interpretation of any
5 person who that may happen to or be can fit on a Board. And he
6 came back and also said based on whatever circumstances that are
7 represented, the answer is yes, they can go on the Board because
8 there is another issue based on how the law is phrased and based
9 on records being expunged. I have never had a case where he
10 said otherwise because we'll try to gather that before it even
11 reaches the Cabinet by trying to check with certain laws, et
12 cetera.

13 Now, also remember that when it goes to the Attorney
14 General, the comments on the paper is one thing but there is
15 discussions that happened on the form between the Attorney
16 General's Office and the respective Ministry, so there will be,
17 what we will call again, an informal process that's happening,
18 could you tell me why this is here or whatever the case may be.
19 So, there's some checks and balances even in the informal path
20 of speaking with the Attorney General's Office, and the
21 sponsoring Ministry of the paper for wherever the Board is
22 coming from, or whatever paper is coming from, whether it is a
23 Board or otherwise.

24 So, it is hoped that in the past that those areas
25 would be ironed out. However, we do recognize that the country

1 is evolving. So, in evolving now, we have moved towards,
2 without being prompted by anyone, we have moved not just to have
3 a Chairman advertised, we're moving towards having all the
4 Members advertised.

5 But I want to also say that, in moving towards that,
6 there are some areas that came up as challenges because it calls
7 for some amendments to some of the Legislation to allow some of
8 what we need to do to get done.

9 And also, we are discussing if we can bring up all
10 statutory Board amendments, Act, of how we want to do over all
11 Statutory Boards, so that also is in discussion because that
12 might be a mop-up exercise for all of them one time to fall
13 under that these are the measures that will be in place.

14 So, we're evolving as a Territory over the 71 years'
15 history, and now we're moving to another paradigm shift where
16 the UK would have been already because it is much older than us,
17 now that we recognize that this is one of the areas we want to
18 go.

19 But can I say, Commissioner, that advertising
20 different posts for Board, a membership is noble course of
21 action but I would say also that it's not a silver bullet.
22 Because you advertise doesn't necessarily mean that you're
23 automatically going to get the best candidate. I will give you
24 this: We have had posts in the Public Service that I've seen
25 over and over advertised and only one person applied. And

1 sometimes you would say, well, all right, you don't think that
2 one person is the strongest but you went through the
3 advertisement and one person applied. We would ask for it to be
4 reapplied--readvertised, sorry. It would be readvertised. I
5 have saw where one person still come back and applied.

6 So, it comes down to where the informal process would
7 be that let me see or anyone who is involved if they can nudge
8 someone and say, well, in the interest of the public, which is
9 the country, would you consider applying? Would you consider
10 serving in the interest of the public?

11 So, that's just one example of where advertising
12 sometimes doesn't reach the best candidate. Not saying that the
13 methodology is incorrect and not needed, but it cannot be done
14 in isolation to prompting and other means of processes to help
15 us to see if we can get some of the best candidates.

16 COMMISSIONER HICKINBOTTOM: But to go back to my
17 question, an entirely internal process reduces the chances of
18 getting the best candidates. That's the proposition. My
19 understanding of your answer--but correct me if I'm wrong--is
20 that you accept that. You that say just taking one element,
21 advertising, that may not be sufficient, people may need a prod.
22 They may need a prod in other jurisdictions, too. Other
23 jurisdiction only have one or indeed no responses to an advert,
24 but at least advertisement or other ways in which the process is
25 made external and open and transparent.

1 In terms of governance, that's good. And in terms of
2 the chances of obtaining better candidates, they are increased.
3 You may not get the best candidate. You may get the best
4 candidate by walking out into the street and putting your hand
5 on somebody's shoulder, but by having an external process, do
6 you accept--this is the proposition Mr Rawat put--that the
7 chances of obtaining better candidates increases?

8 THE WITNESS: Oh, by far because, as earlier to the
9 informal one.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: It adds.

12 COMMISSIONER HICKINBOTTOM: It adds people into the
13 greater potential pool.

14 THE WITNESS: But what I would not be able to accept
15 is that the informal process did not produce some good and
16 proper persons or--

17 COMMISSIONER HICKINBOTTOM: Oh no, no.

18 THE WITNESS: Or good candidates.

19 COMMISSIONER HICKINBOTTOM: So far as I'm concerned
20 and so far as the other evidence is concerned, that's an open
21 door. We are not saying--there are no criticisms that any
22 particular candidate in any particular--any particular Board
23 Member on any Statutory Board is not a fit and proper person to
24 do that job because we don't know. We might know it's the
25 governance who's better, but we don't know. That's not a

1 criticism. The criticism is about the process and about
2 increasing the pool of candidates for particular posts. That's
3 all.

4 THE WITNESS: I agree, Commissioner, and I really like
5 how you put it. But may I graciously add?

6 COMMISSIONER HICKINBOTTOM: Yes.

7 THE WITNESS: The--the putting together of the Board,
8 when you say that the process is the issue, first of all, in the
9 areas where there is no statute and there is just regular
10 policies, then the question is if it was deemed as one of the
11 legal things to do, to advertise, so to hold the Government's
12 71-year history of not advertising, because it was something
13 that was never done across the board, so it cannot be a
14 systematic failure in the current government. It has to be
15 another failure, but it has to be something that was just an
16 understanding, and we need to involve which we are doing now.

17 But in that process of selecting the person, there is
18 a lot that goes into it, and a lot of informal discussions that
19 go into it.

20 COMMISSIONER HICKINBOTTOM: I'm sorry again to
21 interrupt, but again, you're maybe making a proposition with
22 which I agree. The evidence to date is that a good deal of
23 effort went into identifying people to take on these Board
24 posts; that the criticism is not phrased in terms that nobody
25 made any effort to do anything. The criticism is that effort

1 was not made in the best way to obtain better--or the best
2 candidates, and because it was an external process. And that is
3 a proposition, that seems to me limited though it may be, to be
4 a good one.

5 THE WITNESS: Can I add a little word to criticism?

6 COMMISSIONER HICKINBOTTOM: Yes.

7 THE WITNESS: To further increase the ability to get
8 potential.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: I would add those words in it.

11 I think we're together with just a few words that were
12 missing.

13 COMMISSIONER HICKINBOTTOM: No, I think we are. It's
14 to increase the chance of getting better candidates.

15 THE WITNESS: Yeah. Further increase. That would
16 further be good.

17 (Overlapping speakers.)

18 SIR GEOFFREY: If you would permit me just to point
19 out that throughout the Warning Letters, generally, there is a
20 paragraph 9 in the enumeration of defects in good governance
21 which reads "it follows that no effort was made to identify and
22 select the most suitable and qualified candidates". That is not
23 consistent, of course, with the analysis you've just provided.
24 An effort was made. It may not have been the best effort. And
25 I think the Premier has that in mind.

1 MR RAWAT: I insist on it.

2 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat. Let
3 me just deal with this point.

4 Sir Geoffrey, firstly, welcome back. Thank you for
5 your intervention.

6 Because I think I fully understand the Premier's
7 position on this. In reference to paragraph 9, for example on
8 page 9 of the Cabinet document that we're looking at, it reads:
9 "It follows that no effort was made to identify and select the
10 most suitable and qualified candidates for memberships of" in
11 this case, the Tourist Board. And the important thing is the
12 "most suitable". Efforts were not made to find the most
13 suitable. The efforts was made to find fit and proper people.
14 And as I say, I accept that in some cases, certainly the
15 evidence is considerable, internal efforts were made, but
16 internal efforts, alone, as the Premier accepts because it's
17 right, internal efforts alone do not go to finding the most
18 suitable and qualified candidates.

19 SIR GEOFFREY: Forgive me. It's not for me now to
20 debate, it's your Commission of Inquiry, but I think that the
21 language could be interpreted as meaning that no sincere effort
22 was made; in other words, as you said, the Public Officers made
23 a great effort to try to find suitable people.

24 If what you're saying is they couldn't find the most
25 suitable unless they advertise, well, of course, the Premier has

1 just accepted that.

2 But with respect, I just think it's a matter of
3 linguistics here. It does say "no effort was made". There was
4 an effort made. There was a lot of effort made. Now, they may
5 have needed to improve their systems, and they would have
6 thereby found better people perhaps or not.

7 That's I think all that I wanted to--forgive me, but I
8 do think this is the way it's been interpreted up to now is that
9 somehow--and I'm grateful for what you just said because I think
10 it will help with the departments affected, that in some way the
11 inquiry was suggesting that really they weren't going to any
12 effort at all. That it was--but as you've said, a lot of effort
13 was put in. It should have been improved, no doubt, with the
14 systems that the Commissioner is suggesting.

15 COMMISSIONER HICKINBOTTOM: Well, Sir Geoffrey, that's
16 a submission, and at the moment we're taking evidence. But my
17 focus in that paragraph is on the most suitable and qualified
18 candidates, and that was merely to (drop in audio) some external
19 element. The chances of finding the most suitable and qualified
20 candidates are restricted. The Premier and, I think, all of the
21 witnesses have agreed.

22 SIR GEOFFREY: Agree.

23 Forgive me for extending this, but as you say, it's a
24 discussion for later. I see what you mean. I was just anxious
25 that the Premier--I know what his concern will be having

1 discussed matters with him, and I wanted just to put it before
2 you, that it wasn't just that no sincere efforts were made to
3 find good people.

4 COMMISSIONER HICKINBOTTOM: As has been clear from the
5 previous evidence, efforts were made to find fit and proper
6 Board Members.

7 I'm sorry, Mr Rawat, for firstly, interrupting and
8 then stopping your question.

9 SIR GEOFFREY: So am I.

10 MR RAWAT: Can I just make three points.

11 I think as you've indicated, Commissioner, it's very
12 important not to stray into submission at this stage.

13 Secondly, to reassure Sir Geoffrey, in his absence,
14 this was canvassed with the Permanent Secretaries and with the
15 two Ministers who have given evidence. And the point was
16 clarified with them that the thrust of the criticism was about a
17 process that does not recruit the most suitable and qualified
18 candidates.

19 But also--we may see this if we get into the detail on
20 individual Boards with the Premier--the informal process, with
21 limited, for example, does generate evidence. The difficulty
22 has been, as the Permanent Secretaries in particular
23 acknowledged when we were looking at individual recruitment
24 exercise, they could not find any evidence as to how those
25 recruitment exercises had been undertaken, and so they always

1 fell back to the general, and the general is the form of words
2 that the Premier uses in his response, the Cabinet uses in their
3 response and indeed The Honourable Ministers and the Permanent
4 Secretaries do and which I have just outlined.

5 But perhaps, if I could move on to the next topic.

6 COMMISSIONER HICKINBOTTOM: What is the next topic?

7 MR RAWAT: The next topic is--I was going to deal with
8 the new policy with the Premier.

9 COMMISSIONER HICKINBOTTOM: Could I just raise one
10 question, and if you're going to come to this later, Mr Rawat,
11 we can deal with it then. Because it's something Mr Rawat said
12 in setting out how the informal process had been adopted and how
13 it had been changed, and he said that--I think he said on the
14 1st of June there was a policy decision made by the Deputy
15 Premier that vacancies for Boards within the Premier's Office
16 would be advertised, and I think there were five Boards,
17 possibly more posts, but five Boards that were then advertised.

18 And I think what the evidence was from
19 Dr O'Neal-Morton was that that was the day that he made an
20 announcement, no doubt it being a policy decision, it would have
21 been a policy decision firstly that you were involved in,
22 Premier; and secondly, no doubt a policy decision of Cabinet.
23 But she said that the policy decision was made on or about the
24 1st of June. Is that correct? We will come on to the detail of
25 the new regime, but is that correct in terms of timing?

1 THE WITNESS: Commissioner, I would say roughly it
2 should be because I don't like to quote dates and I'm not
3 accurate. But I keep hearing this section of where the Deputy
4 Premier introduced, but there was a Cabinet Paper that was an
5 Information Paper that was taken to Cabinet that was stated on
6 that this is where we would like to go and start with what you
7 would call a pilot of it, so that we can then make the changes.
8 So, that was--we couldn't do it as a Decision Paper as yet
9 because the Decision Paper would call for us to have to review
10 all the statutes and many other areas, so we wanted to start as
11 a pilot project inside the Premier's Office. So, that I just
12 needed to add in. That was produced before.

13 COMMISSIONER HICKINBOTTOM: And that was shortly
14 before the 1st of June. I think it was from a media article.

15 MR RAWAT: We can look at it. It's in bundle 4. It's
16 a government Press Release.

17 COMMISSIONER HICKINBOTTOM: Unless you're going to
18 deal with this later, Mr Rawat?

19 MR RAWAT: I wasn't intending to.

20 If we turn up, first of all, bundle 4, Premier, it's
21 Part 4 bundle, page 3313.

22 THE WITNESS: 3313?

23 COMMISSIONER HICKINBOTTOM: Right at the beginning,
24 yes.

25 MR RAWAT: Thank you.

1 BY MR RAWAT:

2 Q. And 4.11.

3 COMMISSIONER HICKINBOTTOM: Okay. It does say "make a
4 policy decision".

5 BY MR RAWAT:

6 Q. And the Press Release you had in mind, Commissioner is
7 at 3551.

8 COMMISSIONER HICKINBOTTOM: Let me just read this out
9 for the record.

10 MR RAWAT: Yes.

11 COMMISSIONER HICKINBOTTOM: It says Dr O'Neal-Morton's
12 Affidavit.

13 MR RAWAT: Yes, her Third Affidavit.

14 COMMISSIONER HICKINBOTTOM: Third Affidavit.
15 Paragraph 4.11. As stated in paragraph 4.11: "The acting
16 Premier, Dr The Honourable Natalio D Wheatley, via a Press
17 Release dated the 1st of June, 2021, made a policy decision to
18 advertise vacancies that become available on Statutory Boards
19 that fall under his portfolio." Yes.

20 And the Press Release is--

21 MR RAWAT: 3551.

22 BY MR RAWAT:

23 Q. And you can see Commissioner, at 3552, the vacancies
24 were advertised were for Boards that had come under the
25 Premier's Office, specifically the BVI Airports Authority, the

1 BVI Ports Authority, Prospect Reef Resort, the Gambling, Gaming
2 and Betting Control Commission, and the Virgin Islands Trade
3 Commission.

4 COMMISSIONER HICKINBOTTOM: That's it.

5 And again, Mr Rawat, just to remind the Premier, I
6 think when the Premier last gave evidence--or on one occasion
7 the Premier gave evidence, he referred to this; is that correct?

8 MR RAWAT: I will need to double-check. It would be--

9 COMMISSIONER HICKINBOTTOM: On May.

10 MR RAWAT: 18th of May, day 6.

11 COMMISSIONER HICKINBOTTOM: You said that this was on
12 its way.

13 So, it's sort of the second half of May anyway, a
14 policy decision was made and then announced by the Deputy
15 Premier on the 1st of June.

16 THE WITNESS: Agreed.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: Well, the Deputy Premier would have
19 announced it because I had been out of the country as acting
20 Premier, of course.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 THE WITNESS: But it came from a Cabinet
23 Paper--Information Paper, might I add, that this is what we're
24 going to do as a pilot project. But to be fair to the Public
25 Officers, you would agree that between May and, now we were

1 dealing with a spike that went up 1,600 cases, so a lot of
2 persons were out of office and that created a problem.

3 COMMISSIONER HICKINBOTTOM: We made this very clear to
4 Dr O'Neal-Morton, nobody could criticize any delay from then to
5 now. I think the first interview or something is just
6 happening.

7 THE WITNESS: Right.

8 COMMISSIONER HICKINBOTTOM: But we understand that
9 that's for very good reason.

10 BY MR RAWAT:

11 Q. And Dr O'Neal-Morton has explained the context to the
12 Commissioner when we were dealing with this.

13 A. Okay. Beautiful.

14 COMMISSIONER HICKINBOTTOM: Is that all on that? Do
15 you want to move on to another--

16 MR RAWAT: Yes, I do want to move on to another topic.

17 COMMISSIONER HICKINBOTTOM: Is now a good time--

18 MR RAWAT: I was going to suggest that we do.

19 COMMISSIONER HICKINBOTTOM: Premier, we have a break
20 because the Stenographer, robust as he is, needs a break after
21 about an hour. He's there doing his work, just a five-minute
22 break and then we'll come back.

23 THE WITNESS: Okay.

24 COMMISSIONER HICKINBOTTOM: Could I just remind you--I
25 needn't remind you because Sir Geoffrey Cox and the others who

1 are with you fully understand this, but obviously don't discuss
2 your evidence during these breaks with any of the legal
3 advisors. Do you understand that?

4 THE WITNESS: Yes. very much.

5 COMMISSIONER HICKINBOTTOM: Thank you very much.

6 Good. Anything else?

7 MR RAWAT: Thank you.

8 COMMISSIONER HICKINBOTTOM: Five minutes. Thank you.

9 (Recess.)

10 COMMISSIONER HICKINBOTTOM: We are ready to resume.

11 Just before we move on to the next topic, Premier, you referred
12 to an Information Paper, I think you called it, that went to
13 Cabinet.

14 THE WITNESS: Yes, sir.

15 COMMISSIONER HICKINBOTTOM: I think shortly before the
16 1st of June when the announcement was made at the change of
17 policy in relation to appointments process to Statutory Boards.

18 I'm not sure that I've seen that. Could we identify a
19 copy of that? That's something perhaps Ms Peaty can do, if we
20 can identify that and send it through to us.

21 THE WITNESS: This was the Information Paper.

22 COMMISSIONER HICKINBOTTOM: Yes an Information Paper.
23 And that will be helpful in substance and also give us a date
24 when it was taken to Cabinet.

25 THE WITNESS: Um-hmm.

1 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

2 MR RAWAT: Thank you.

3 BY MR RAWAT:

4 Q. Premier, could you take up Part 3 of the bundles,
5 please. Page 2928, please.

6 You should have in front of you, Premier, a paper from
7 your office with the date 19 of March 2019 at the top. It's
8 memo number 103/2019.

9 A. Right.

10 Q. It's headed "revocation of membership of Statutory
11 Boards under the Premier's Office."

12 A. Right.

13 Q. It begins with an explanation about what Statutory
14 Boards do in the Virgin Islands, and that paragraph, which is
15 paragraph 1, it explains that "they fulfill the requirement from
16 operational independence from the Government. However, funding
17 arrangements are dependent on the annual appropriations
18 processes in most instances for those statutory bodies who
19 receive their Annual Budget allocation by way of a subvention
20 from Government."

21 Paragraph 2 then lists a number of Statutory Boards
22 under your portfolio.

23 And if we go then to 4--there is some misnumbering of
24 paragraphs, but it's paragraph 4. If I just read that out. It
25 says: "With each new government administration, it is common

1 practice that some or all current Board membership is dissolved,
2 new Members appointed to the respective Boards. The manifesto
3 of the new government administration calls for innovative,
4 forward and progressive ideas, initiatives and action from each
5 Government Ministry, Department and agency during this recovery
6 period. For those initiatives that must be implemented through
7 a statutory body, the same principles for innovative, forward
8 and progressive initiatives and action will be required."

9 Paragraph 5 reads as follows: "The manifesto of the
10 new government administration places heavy emphasis on youth
11 involvement in every aspect of the development of the Territory.
12 As such, the intention is also to appoint a youth representative
13 on each Statutory Board and Committee. In addition,
14 recommendations will be forthcoming for a new policy to amend
15 the membership terms of each Board to not extend beyond the term
16 of the sitting administration that appointed the Board."

17 As such--this is paragraph 6, which reads: "As such,
18 Cabinet approval is being sought to revoke the membership of the
19 current Statutory Boards under the Premier's Office's portfolio
20 to allow for the right mix of new innovative and
21 progressive-minded Members to be appointed that would include
22 representation of youths on each Board."

23 And if we go, it's under "financial implications" but
24 I think it's, in fact, referring to comments of the Attorney
25 General, but at paragraph 9, what's written is: "I have noted

1 the comments of the Attorney General when he stated 'I have not
2 had the opportunity to review the removal provisions of all the
3 Boards (statutory corporation or otherwise).' To this end, it
4 is critically important that Cabinet satisfies itself that even
5 in the cases of the BVI Ports Authority and BVI Electricity
6 Boards, wherein there is express provision for the removal of
7 Statutory Members and as cautioned by the Attorney General, the
8 discretionary powers of Cabinet must be exercised reasonably."

9 This is 10: "In light of the above, before Cabinet
10 takes the decision to remove any board Director of a Statutory
11 Board, Cabinet must satisfy itself that it not only has the
12 power to do so, as per the respective statutes establishing the
13 Board, but that in removing the Directors amass that this will
14 not be easily construed by any arbiter as acting/behaving
15 unreasonably. To act otherwise in these circumstances may
16 expose Government to claims of unreasonable dismissals which in
17 turn could result in huge financial liabilities being attached
18 to Government."

19 And then under legal implications, at 11 it reads:
20 "May I note further that there is no provision for revoking the
21 appointment of Members of the Tourist Board, but that is cured
22 by section 20 of the Interpretation Act, which authorizes an
23 appointing authority to remove an appointee at its discretion.
24 This of course entails compliance with the rule of law
25 requirement that I previously made reference to."

1 Pause there, because if we go to page 2737 in the same
2 bundle.

3 COMMISSIONER HICKINBOTTOM: Just before we do,
4 Mr Rawat, it seems to me that, to be fair to the Premier,
5 paragraph 7 as well, paragraph 7 which is headed "purpose," the
6 purpose of this was to dissolve current Board membership and
7 appoint new Board Members.

8 MR RAWAT: Thank you.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 BY MR RAWAT:

11 Q. Premier, if we turn to page 2737, please. You will
12 see we're now at the Cabinet meeting number 2 of 2019, and these
13 are the Minutes, the 27th of March 2019, a meeting of Cabinet
14 which was chaired by the Governor.

15 If you go to 2739, please, Premier, you will see that
16 this paper was then put before Cabinet by yourself on that date.
17 And if I just read out some parts of the deliberations, which
18 begin at paragraph 3: "The Premier presented this paper. The
19 Chairman stated that specific reasons or a reasonable
20 justification should be given to remove persons as Members of a
21 Board. He asked if there was sufficient reason in this regard."
22 And whilst the paper was in relation to all Statutory Boards
23 under your portfolio, of particular interest was the Ports
24 Authority and the Tourist Board, but the Attorney General then
25 continues at 5: "The Attorney General confirmed that the BVI

1 Tourist Board Ordinance does not reference removal of Members
2 from the Board; therefore, in this instance, removal of Members
3 can be carried out on the basis of discretion. The Chairman
4 reiterated that there is no specific removal power in the
5 Ordinance but that he understands from the Attorney General that
6 such clause is included in the Interpretation Act. The AG said
7 in cases where any powers are conferred by the Legislature, one
8 should provide reasons for removal of persons and suggested that
9 it is better to provide reasons. The AG advised that if this
10 administration wants to be a government consistent with Public
11 Administration, then reasons must be given for removal of
12 Members of Boards. Members asked if there was any precedents of
13 unreasonable exercise."

14 We're now at point 9, "The Minister for Health and
15 Social Development commented that given its national mandate and
16 that tourism is an economic pillar, it should be deemed
17 reasonable that the Tourism Minister be comfortable with the
18 Membership of the BVI Tourist Board to move the sector forward
19 and therefore should be mindful to appoint a Board that reflects
20 his administration's mandate."

21 10 reads as follows: "The Chairman stated that there
22 should be an avoidance of risk of targeting people. He voiced
23 his concern about the captioned paper, and that he was not
24 against its intention but that he wanted to ensure that there
25 was a demonstration of good governance procedure. The Chairman

1 reiterated that justifiable reasons should be given to remove
2 Members from a Board."

3 At 11, we have this: "The Minister for Natural
4 Resources, Labour and Immigration mentioned that the decision
5 was not for the removal of one person but the entire Board
6 membership."

7 12 continues: "The Minister for Health and Social
8 Development asked the Attorney General if Board Members had a
9 legal recourse for being removed. The Attorney General
10 responded that anyone can go to court, whether they have legal
11 recourse or not. The Chairman asked if there were any
12 operational liabilities or risks to revoking the appointments of
13 the Members of the BVI Tourist Board or BVI Ports Authority.
14 The Premier responded there were no risks to either entity if
15 they operated without a Board at this time."

16 15 reads: "The Premier's stated that his decision to
17 revoke the membership of the Boards is on the basis that a new
18 government has assumed office with a new mandate, and as a
19 result, he has decided to reassess the membership of all Boards
20 in a manner that will allow the mandate given by the people to
21 be expedited in a transparent and accountable manner."

22 "Furthermore, the Premier stated that he would be
23 recommending a policy that the membership on Boards would extend
24 for the duration of the Administration's term in office."

25 The next section is headed "action by" and the actions

1 that followed were: "The Premier would instruct his office to
2 prepare a Cabinet Paper that the periods of appointment of
3 Members serving on Boards would be commensurate with the
4 Administration's term in office, in consultation with the
5 Attorney General's Chambers. In support, the Minister for
6 Education, Culture, Agriculture, Fisheries Sports and Youth
7 Affairs agrees that Boards should not exceed the tenure of an
8 Administration because it can prove to be challenging. The
9 Minister said that, despite the possibility of exposing the
10 Government to certain levels of risks, when he weighs the
11 potential for Boards to interfere with the Government's mandate,
12 as a Member of Cabinet, he was willing to be exposed to that
13 risk. He stated that commitment to the current government's
14 mandate from the people must be paramount because incorrect
15 actions of the past and/or an association with a former party or
16 administration could have a real impact on how matters
17 progressed."

18 At 20 we have this: "The Minister for Communications
19 and Works voiced his agreement in support of the sentiments
20 expressed with respect to the revocation of the membership of
21 the captioned Board. Voicing his concerns, the Chairman said
22 that the Cabinet has wide discretionary powers which should be
23 used in accordance with principles of administration and not
24 without justifiable reasons. This, he said, risks undermining
25 the Cabinet's commitment to good administration and good

1 governance."

2 "The Premier thanked the Chairman for noting his
3 concern on the matter but pointed out that the Chairman's
4 definition of 'justifiable reasons' differed from theirs." And
5 the decision sought firstly that "Cabinet approved the
6 revocation of the appointments of all Members, except the ex
7 officio Members of two Boards, the British Virgin Islands
8 Tourist Board and the British Virgin Islands Ports Authority,
9 and then decided on the issuance of an expedited extract."

10 Now, this is--

11 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
12 just to put this into context, Premier, although I'm sure you
13 fully grasp this, the Policy expressed appears to be a general
14 policy, but the two Boards involved, the Tourist Board and the
15 Port Authority were both Statutory Boards where there were no
16 express provisions in the mother statute for revocation of
17 appointments and, hence, the interpretation. They were both in
18 the same position.

19 Sorry, Mr Rawat. Yes.

20 BY MR RAWAT:

21 Q. The passages I've read out to you, Premier, are a
22 convenient starting point and a basis on which to ask you about
23 the Policy of your administration in relation to Statutory
24 Boards, and the reason I say that is because, it was something
25 that I also canvassed with Honourable Malone and Honourable

1 Wheatley.

2 Taking what they said and using this as a foundation,
3 there are other documents that we may look at as we get into
4 more specific Boards which echo this policy.

5 COMMISSIONER HICKINBOTTOM: To interrupt, I can't
6 recall any earlier documents than this. I can't recall any
7 Information Paper or any paper to Cabinet before this.

8 MR RAWAT: No, I don't believe we have seen anything
9 before this.

10 COMMISSIONER HICKINBOTTOM: The answer to this may be
11 obvious but I would still like to hear it.

12 This paper is dated as a draft, not when you approved
13 it, but as a draft, on the 19th of March, and you said your
14 administration came in at the end of February, appointed your
15 Ministers in the first couple of weeks of March, so this was
16 very early on in the Administration.

17 But is there any another--was there was any other
18 policy paper before this that we should be looking for?

19 THE WITNESS: Not a policy paper, but when I get
20 chance to respond, I will explain everything.

21 COMMISSIONER HICKINBOTTOM: Okay, thank you very much.

22 BY MR RAWAT:

23 Q. But if I summarise the Policy--and I draw on the
24 assistance that was given by Honourable Malone and Honourable
25 Wheatley to the Commission, it comes to this:

1 Firstly, that Boards should have a membership that
2 show a commitment to an Administration's programme;

3 Secondly, that Boards should have--in terms of their
4 representation, should have youth representation; and.

5 Thirdly, that the tenure of a Board should match the
6 tenure of an administration. I've said "an administration" in
7 all of those rather than "your administration." Because I
8 think, in fairness to you, the effect of that policy would,
9 unless a successor administration were to change it, would
10 persist even if you did not form the Government.

11 Now, the first step is, as a summary in terms of the
12 principal elements of the Policy, do you agree with those?

13 A. In terms of the principal element, if I agree in terms
14 of what section?

15 Q. Of those three points, those three headlines that I
16 have given you, firstly, that a commitment to an
17 Administration's programme; secondly, youth inclusion; and
18 thirdly, the point about tenure.

19 A. Right. And reconstituting them to bring forth their
20 energy would be one of the areas of them.

21 I would state, if I may, I don't know if I can
22 answer--

23 Q. Yes. Before you do, Premier, your voice dropped--

24 A. I was saying that that along with some other areas
25 that we were looking at, but as an important ingredient that

1 needs to be added in, but when I get to respond I will put it
2 in.

3 Q. We didn't catch--you said to reconstitute them and
4 then you said something--

5 A. Reconstitute--

6 Q. Referred to energy.

7 A. Yeah, energy.

8 Q. If you could just give that answer again for the
9 Tribunal?

10 A. New energy in it, we wanted to bring on and still want
11 to bring on a youth representative, sister island
12 representative, we wanted to make sure that we get as much
13 cross-section as possible, but the challenge with that, as we
14 went on, because you can appreciate that you're talking about
15 just a few weeks into office, a young government with the desire
16 and the mandate, accumulate mandate of change, came in with a
17 mandate that we wanted to push ahead all in the public's
18 interests. I want to state that, in terms of with the Attorney
19 General, denies advice with any clarity that anything unlawful
20 was being done because that was one of the main areas that we
21 keep trying to drill down in the conversations that probably
22 wasn't fully captured in this, but was part of Cabinet's full
23 discussion.

24 And as a new government and not being lawyers, which I
25 wouldn't pretend to be, we were relying on the Attorney General,

1 the Cabinet's Chair, the Deputy Governor's Office, the Permanent
2 Secretary and Public Officers to guide us because again,
3 Commissioner, you would know this from your long, successful
4 career, that one's interpretation of reading the law to the
5 layman is different from one who's a lawyer, and even two
6 lawyers may interpret it differently. So, we depended heavily
7 on the Attorney General because we're not lawyers, and our
8 Cabinet people as we rightfully went through to the Attorney
9 General for legal implications.

10 But then the AG would have been presumed to have read
11 the relevant Cabinet Papers and put his comments into the
12 ExcoTrack with his legal views, which he has done. And if at
13 any stage--any stage from these what you're presenting me that
14 the Attorney General had warned that there was no--absolutely no
15 lawful way by which our Government could have--could revoke the
16 appointments of these Board Members on the basis of the new
17 government's policy, of what I will call "reinvigoration",
18 that's the word I was looking for, reinvigoration, and the
19 shaking up the Boards and aligning them with the new values of
20 the government. And when I say values, I mean like young
21 people, sister islands, what I've mentioned before, create a
22 cohesiveness and greater energy. We would have asked them to
23 advise us on how to proceed--

24 COMMISSIONER HICKINBOTTOM: But you didn't--

25 THE WITNESS: --to achieve the Government's policy and

1 follow the advice.

2 And I need to stick a pin in there because I listened
3 very carefully to Attorney Rawat, but I need to stick a pin here
4 in this. When we took office, just in those few weeks, we were
5 faced with two urgent matters that help us to even accelerate
6 the need to get this paper. One was that we had a budget that
7 didn't have much time left to pass. The second one was that we
8 were losing our grounds in the cruise ship industry, and we had
9 to go to the renowned conference stone as the--we were going to
10 it soon in terms of sea trade, we call it sea trade. Sorry
11 about that, senior moment, sea trade. When we went to hold a
12 meeting with the Boards at that time to speak with them, the
13 Tourist Board, we called a meeting with the Tourist Board, we
14 called a meeting with the Ports Authority, we called a meeting
15 with the Airports Authority, and we recognized there and then
16 because being in the Opposition I saw something happen for
17 years. The Tourist Board went to sea trade with their own boats
18 promoting the BVI. The Ports Authority went to the sea trade
19 with their own boat to promote the BVI. And so if they oppose
20 Authority and they went with their own, and there was a fourth
21 one which was a National Parks Trust.

22 What we were trying to establish is that there were
23 too many duplications of efforts in what we will call monies
24 that could be--could hit the target better if they were
25 amalgamated. To my surprise, we were told that that's the first

1 time that all the Boards met in any time that they could
2 remember, the Members that were there, in the Boards stated that
3 to us.

4 So we--first of all, the list of sea traders was too
5 huge, so we had to cut it down. And we had to get a oneness and
6 purpose of why we are going to Miami to the sea trade and we
7 come under one umbrella. But it's in that meeting I recognized
8 listening that each of them had a different goal to achieve, and
9 that didn't reflect what we wanted to achieve.

10 So, we made a decision at that time to save money,
11 bring focus or product as a country, and also to allow for
12 cohesiveness among the Boards to have the Chairperson of the
13 Tourist Board automatically be a Member of the Board of the
14 airports and the Ports Authority Board so that they can know
15 what is happening up front.

16 Likewise, the Chairman of the Ports Board we said now
17 would have to serve on the airports and also the Tourist Board
18 and likewise the other Board, so we created a triangle for all
19 three.

20 So, you would find where persons were saying that one
21 person serve so many Boards, but it wasn't the person, but
22 legally why I say that is that when we went to do that legally,
23 we were told that we have to put them by name for now because
24 the Attorney General told us we have to make amendments to allow
25 that to be reflected in each one of the Boards, whether on

1 policies or laws or statute. So, do it by name. That has saved
2 us significant savings and put us in a better direction.

3 And that's why I said to my understanding was for the
4 AG to advise us in any other case that what is lawful and what
5 is not to advise of any statutory amendments or requirements
6 which you said there, to legally achieve the Government's policy
7 and vision, which was to save money, bring us a oneness of
8 purpose, and also allow for these other energizing areas of
9 youth, a sister island coordinator--sorry, a sister island
10 person because our sister islands were left off of most of
11 these.

12 The issue that we had is up to now, until we make the
13 legal changes, we can only put the person there by name in terms
14 of if they're from a sister island, they're not there as a
15 sister island, and some of our laws that are not being changed
16 as yet. There is a person--the head of the Tourist Board is on
17 the airports as person, the person and on the post, are really
18 supposed to be the post. So, we did it that way for expediency
19 to come with the revisions of the law. That was the first
20 behind what we were doing with Boards, tried to amalgamate some
21 of them and allow us to be able to move in a better direction.

22 Which, Commissioner, as I listen, I will just end this
23 part with this and I will state that it's important for the
24 record to see that the Board appoint appointees to know that,
25 despite it all they performed well. That is not the question

1 right now. Hence, the choices made have proven over the years,
2 not just now under our Government, to be well, and I strongly
3 recommend as a caveat to what you're doing to request even from
4 this Government and other governments what has been the progress
5 of the Boards given the appointments so that one can see that
6 the processes and the way forward was in the public interest and
7 not in a political party interest because we now have started to
8 try and build more towards institutions so that it will last and
9 stand the test of time.

10 So, I think I needed to point that out in terms of the
11 thrust behind the decision of where we were going with the
12 Boards, and that the AG merely consistently stated that the
13 interpretation applied. But we asked specifically are we
14 violating any laws, and at no time were we given a definitive
15 answer by the Attorney General yes.

16 So, in Cabinet, you would appreciate this,
17 Commissioner, that every decision you make is a risk. A person
18 would quote to anything, so some risks are higher than the
19 others, so that is the vein in which that was said.

20 Now, the Chair spoke about political parties, but that
21 wouldn't also be accurate because time would show that there are
22 persons who ran against us politically that made it to the
23 Boards, so that factor never weighed out to be accurate. It was
24 something new and innovative that was not welcome in some
25 quarters, but we had to do it to shake up things to start to try

1 to diversify the economy even more.

2 And I would say, Chair, even more innovative was
3 rotating Deputy Premiers. We decided that every three months
4 each one of the Ministers as Premier would have a chance to act
5 in a role as Deputy Premier. Some people don't agree at the end
6 the day, but some thought it was innovative. But now, I am
7 confident that my other four Ministers can hold the helm of
8 Premier if God forbid something happened because the experience
9 that they harness for that three months also was part of our
10 campaign for change and unprecedented moves, as we call
11 ourselves, you know, one of the Government--unconventional
12 Government.

13 So, I would just like to put that backdrop in there to
14 add some flavor on what was the impetus behind why we were
15 making some of these moves. So, it was also financial.

16 COMMISSIONER HICKINBOTTOM: Thank you for that,
17 Premier, and that may in due course answer some of the questions
18 but to go back to the question that Mr Rawat put, he put, based
19 on evidence that we've had from other Ministers, three
20 propositions as to this policy: One is that Members of the
21 Board must have a commitment to your programme.

22 Secondly, this youth, which is mentioned in
23 paragraph 6.8 of the Cabinet Handbook in any event but the
24 prominence of youth was increased by having a youth, however
25 that is defined, on each Board.

1 And to have the tenure on Statutory Boards exactly
2 coincident with the tenure of the Administration.

3 Those three propositions, do you accept that those are
4 behind the Policy?

5 THE WITNESS: Those are three, with some of the others
6 I named, yes.

7 COMMISSIONER HICKINBOTTOM: Thank you very much.

8 Mr Rawat.

9 BY MR RAWAT:

10 Q. You've explained to the Commissioner that, prior to
11 this March paper and then the discussion in Cabinet on the 27th,
12 there was no preceding policy paper, so there is no other
13 document where your policy was written down, is there?

14 A. No, no, other than--other than what was in a manifesto
15 in terms of change and making some of these unprecedented moves.

16 Q. Of the three points that both I and the Commissioner
17 has put to you, the only thing that is specifically referred to
18 in your manifesto in relation to Statutory Boards is youth
19 inclusion.

20 A. Right.

21 Q. But the point is that also, when we look at those two
22 documents, the paper you took to Cabinet and the deliberations,
23 the first thing is that there is no reference in any of the
24 discussion to sister island representation, is there?

25 A. No, there wasn't any discussion about sister island

1 representation.

2 Q. Can I pause you there for a moment, please.

3 I need to also correct one thing. If you go to 2741,
4 please, Premier, and you look at 19, in the course of your
5 answer earlier to the Commissioner, you referred to the Chair,
6 and by that I took to mean the Chairman as in the Governor in
7 this discussion referring to political parties. But if you look
8 at paragraph 19, it's right, isn't it, that it's the Minister
9 for Education, Culture, Agriculture, Fisheries, Sports, and
10 Youth Affairs that's referring to political parties, because as
11 I've read out, that Minister states that commitment to the
12 current government's mandate from the people must be paramount.
13 Incorrect actions of the past and/or in association with a
14 former party or administration could have a real impact on how
15 matters progressed.

16 This was--this was from one of your own Ministers, not
17 from the Governor; is that right?

18 A. Yes, but the--let us look at the--the Chair's response
19 from what you read earlier. Earlier, you referred to what the
20 Chair said--

21 COMMISSIONER HICKINBOTTOM: I think is it paragraph
22 21, Premier, page 2471. "Voicing his concerns, that Chairman
23 said that"--

24 THE WITNESS: Right.

25 COMMISSIONER HICKINBOTTOM: --"the Cabinet had wide

1 discretionary powers which should be used in accordance with the
2 principles of administration, principles of good administration,
3 and not without justifiable reasons. This he said risks
4 undermining the Cabinet's commitment to good administration and
5 good governance."

6 When you gave your long answer, I understand what you
7 said there, but that is not an endorsement by the Governor of
8 this policy?

9 THE WITNESS: No, no. We--the Governor endorsement of
10 the policy, what we are coming with you in terms of what we have
11 said the three areas, is that what you mean?

12 COMMISSIONER HICKINBOTTOM: Well, that's a good
13 question.

14 The Policy was not or not simply we are going to
15 reinvigorate Statutory Boards.

16 THE WITNESS: Um-hmm.

17 COMMISSIONER HICKINBOTTOM: An understandable quality.
18 It wasn't that. And that's why I took you to the purpose of the
19 Cabinet Paper. The purpose of the Cabinet Paper was to remove
20 the membership, all Members of all Statutory Boards except ex
21 officio Members. It was an integral part of your policy to
22 remove all Members, all Boards.

23 THE WITNESS: Right. But that does not--that did not
24 mean--it did not mean one, that it was unlawful because the AG
25 has not stated that; and two, it did not mean that persons who

1 were on them were not going to return. It was going to be a
2 fresh look at it because there are persons on some of the Boards
3 that returned.

4 COMMISSIONER HICKINBOTTOM: The Attorney General
5 you've referred to, and Mr Rawat read out the relevant parts of
6 the deliberations, but in paragraph 7 on page 2739, this is what
7 the AG said. "The Attorney General said in cases where any
8 powers are conferred by the Legislature, one should provide
9 reasons for removal of persons and suggested that it is better
10 to provide reasons. And the Attorney General advised that if
11 this administration wants to be a Government consistent with
12 Public Administration, then reasons must be given for removal of
13 Members of Boards." It doesn't say so expressly, but it seems
14 to me to be read in there that the Attorney General did have
15 some concerns about this policy.

16 THE WITNESS: Well, the Attorney General had some
17 concerns about the process, but when asked as straight and clear
18 could be, is it unlawful the Attorney General never give us a
19 direct answer that yes, it is. Had the Attorney General stated
20 to us that at any stage that one, that there was no lawful way
21 by which we could have revoked the appointments of these Boards
22 on the basis of the new policy, we would have asked them to
23 advise on how to achieve the Government's policy and follow that
24 advice. The Attorney General's job would have been you would
25 have to bring back up a paper to revoke statutory bodies or the

1 Measures on which statutory bodies will be appointed and
2 revoked, et cetera, so we were asking him what is your advice?
3 Do you see it as unlawful, and we were never given a clear
4 answer as, yes, it is unlawful, and I cannot support it and this
5 is where you need to go. We're not lawyers.

6 COMMISSIONER HICKINBOTTOM: I fully understand that
7 answer, but Premier, you know lawyers.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: And lawyers very rarely
10 will tell you, look, this is definitely unlawful, this is an
11 exercise of discretion. Doing it, it's definitely unlawful or
12 it's definitely lawful because there's a scale. It comes
13 through the papers that the Attorney General was concerned about
14 this policy and the way it was being implemented.

15 THE WITNESS: Right, but Chair, with the utmost
16 respect, he was asked what was the legal risk? And he said that
17 there was some legal risk that persons may go to court and can
18 they have legal recourse.

19 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.
20 That's not what he was asked. It was put to him legal recourse,
21 individuals--

22 THE WITNESS: Put to him.

23 COMMISSIONER HICKINBOTTOM: --where they sat, will
24 they have legal recourse.

25 THE WITNESS: Right.

1 COMMISSIONER HICKINBOTTOM: But that's not the only
2 question where the answer is concerned.

3 THE WITNESS: That is not the only question.

4 The issue here, as you said, we are not lawyers.
5 Today, I must say that Mr Rawat and yourself, being in the legal
6 field, are here to find out if the law was broken, so you're
7 looking to me for a "yes" or "no." So, we were asking the
8 Attorney General the same thing. Have we broken the law? "Yes"
9 or "no". And if he said "no", it would have taken on a
10 different nomenclature. But we kept pressing and it seemed like
11 an on-the-fence answer.

12 So, he had come in the way you have come to see
13 whether it is violated or not, we would have taken a different
14 stand because we would have had the respect of the Attorney
15 General that you said that this is a case and we would have to
16 adjust ourselves, the one or two times we had to. But for the
17 most part, with most of these Boards, the answer was never
18 forthcoming as "yes," you are violating the law or "no."

19 So--and some the persons that were on before, after we
20 started to assess--and we're even assessing some Boards, one or
21 two Boards and one of them not be reconstituted as yet, because
22 we had to change our thinking as time passed, meaning young
23 government, you know, any person as time evolved you would say,
24 well, all right, I need to reassess my decision here. As you
25 get going you realize that in the Public Service structure,

1 things don't move as fast as you were thinking, so to make sure
2 that things are going, I have to reassess and reanalyze.

3 But the Attorney General's duty is to advise us
4 legally. It is either "yes" or "no" we're violating the law.
5 And if it is "yes," tell us how to go about achieving a policy.
6 If it is "no," well, then fine. But if you stay on the fence
7 and allow any politician to make his decision they're going to
8 make a decision because that is what you got elected to do, to
9 make decisions.

10 So, I cannot state that at any time from what I was
11 seeing and listening to the Attorney General that there was
12 advice that was either on the left of the fence or the right.
13 It always seemed like it was always on the fence. So, with due
14 respect, because like the former Attorney General, but I must
15 say, that it always seemed like it was on the fence and left it
16 up to the discretion of Ministers.

17 Now, the Chair raised clear concerns which caused us
18 to go to the Attorney General, who is the legal advisor and
19 said, well, all right, can you clear this up for us legally,
20 because the Chair can have his preference of whether he agreed
21 with the policy or not. But there should be no one with a
22 preference whether it is legal or not. That's all I'm saying.

23 COMMISSIONER HICKINBOTTOM: The Policy, though,
24 because it might be very difficult not to support the policy of
25 an elected Cabinet to reinvigorate Statutory Boards or indeed

1 reinvigorate anything. That's fine. And the Governor in the
2 papers makes it clear that he had no concerns about that--that
3 as a policy. But that wasn't your policy. Your policy was to
4 revoke all the membership of all Statutory Boards. That was
5 your policy. And that was the point that was put--that was the
6 Policy that drew concerns from the Governor and on the basis of
7 his true concerns, given the reasons that you're putting forward
8 from the Attorney General, and your response was to the
9 Governor, that the Governor's concerns I think reflected those
10 of the Attorney General, the Premier thanked the Governor for
11 noting his concern on the matter but pointed out that the
12 Chairman--the Governor's definition of justifiable reasons
13 differed from theirs, and immediately the appointment of all of
14 the Board Members was revoked.

15 THE WITNESS: Thank you so much, Chair.

16 Chair, there were discussions with the Attorney
17 General in Cabinet, some captured in this Minute, some would not
18 have been.

19 COMMISSIONER HICKINBOTTOM: I accept that.

20 THE WITNESS: And even before. And it was clear that
21 the intent of the Government was given as a new government to
22 put some energy--some new energy into the Boards, sister island
23 representative, youth, et cetera. But what caused us to move in
24 this direction? What caused us to move? The Attorney General
25 was clear to us that you cannot put posts inside some of these

1 Boards saying youth representative, you will have to change the
2 nomenclature of what mix of the Board. You cannot put a person
3 there in terms of being a youth. You have to change the
4 nomenclature of how--whether it be the law, the Policy or
5 whatever, the statute, whichever one was governing the Board, so
6 you just can't do it like that.

7 So, when we asked what has to be done, they said,
8 well, you would have to change the law for each Board so that
9 you can do that. Later on, we learned with experience that we
10 got overall Statutory Board legislation to go on Boards and
11 rescind some of them. We do that almost a year-and-a-half
12 later.

13 But given that we could not do that and we were told
14 also the added extra area that we wanted to put Chairpersons of
15 certain Boards on other Boards. He stated to us that we cannot
16 do that neither because, in our conversations, because the
17 nomenclature of the Act or the Policy or the statute doesn't
18 allow.

19 So, we told him, well, okay, so that now cause us to
20 bring to the conclusion that the one thing to do is to revoke
21 the Members from the Board and then put the persons on by name
22 rather than by post, so you will find someone on that is from a
23 sister island but we couldn't name sister island representative
24 because the legal framework didn't allow for those wordings. Or
25 you'll find someone from the Tourist Board on the Chair on the

1 other one but we couldn't put them by post because the legal
2 structure didn't allow for it.

3 So, we wanted to reconstitute the Board based on what
4 we were doing, but the advice that was coming forward was
5 telling us what all we couldn't do, and what we asked is tell us
6 what we can do so that we can get to this part. But we were
7 never given that advice. We were left on the fence, even when
8 we revoked the Members, I understand clearly that there were
9 concerns. I might be concerned over something, Commissioner, or
10 you may be concerned over something, but the question is the
11 concern that your reason is it a legal concern or a preference,
12 one of preference.

13 Well, all that we were asking the Attorney General of
14 the day is it a legal issue, is it unlawful to do what we are
15 asking him to do, or is it lawful, and all we needed was a "yes"
16 or a "no" because we would not do anything knowingly, especially
17 even now as we mature more and even then, that would have
18 violated the law. That's never our intent.

19 COMMISSIONER HICKINBOTTOM: But even that the
20 statutes, as it were, the mother statute, as they stood, they
21 did not prohibit you from putting youths on, they did not
22 prohibit you from putting the Chairman of one Board onto another
23 Board. They didn't mandate it, they didn't require it, but they
24 didn't prohibit it.

25 THE WITNESS: Right.

1 COMMISSIONER HICKINBOTTOM: So that, on any board,
2 when there was a vacancy, you could look at the vacancy, look at
3 the Board, is there a youth on the Board already? If not, then
4 favor a youth for that particular position. But there is
5 nothing wrong with that. Sacking the entire Board doesn't put
6 you in any better position, does it? How can it put you in a
7 better position?

8 THE WITNESS: Well, it wouldn't, and that--the second
9 Board is a really strong word, I can't use those words--I would
10 say reconstituting the Board is what we are about.

11 COMMISSIONER HICKINBOTTOM: Sorry, I appreciate that
12 you don't like the word "sacking", but this policy was to revoke
13 the membership of all of the Boards except the ex officio
14 Members who we can leave out of it.

15 THE WITNESS: Right.

16 COMMISSIONER HICKINBOTTOM: And then of course there
17 were Boards, so you had to reconstitute the Board then, but the
18 Policy was not simply to jiggle around with the Constitution of
19 the Boards. It was to get rid of the Boards. That was the
20 Policy.

21 THE WITNESS: No, no. The Policy was to reconstruct
22 the Board, reconstitute the Boards to reflect what we wanted to
23 do, and I explained it because some persons have the
24 mindset--and it's noteworthy that you should not remove the
25 entire persons from the Board because you would lose the

1 knowledge and also the--what you would call the balance over
2 time.

3 But we have to remember that institutional knowledge
4 is with the Ministries. You have the ex officio Members there
5 for a reason. The ex officio Members would be the Permanent
6 Secretary or whoever his or her designate which were the Public
7 Officer that would attend. And they would have minutes, and you
8 cannot underestimate the institutional knowledge that lie within
9 the Public Service. The Ministry, with the Minister are the
10 ones to do the Policy, but the Board helped to flesh it out.

11 And when Ministers come into office, no matter who the
12 Government of the day is, they rely on the institutional
13 knowledge which comes from the Public Service and Government
14 because that is the only sector that is continuum. Memberships
15 and Boards come and go, Members come and go, elected officials
16 come and go, but the Public Service remains constant. So, it's
17 the one continuum.

18 So with that, those are the ones who are going to have
19 all the record, those are the ones who are going to have all the
20 Minutes, those are the ones who have all the institutional
21 knowledge to guide Ministers which, of course, would also come
22 by the same Governor and Deputy Governor and Permanent
23 Secretaries and even the Attorney General Office as guide
24 Ministers.

25 So, if Ministers come, no matter what or who the

1 Government is, with a Policy that I want to reconstitute the
2 Board in a different nomenclature, then the foundation of the
3 Board which is the institutional knowledge, would be available
4 to whoever takes up the post. What was missing which is now
5 being work on by the Premier's Office as a pilot project, is in
6 terms of what are known as your responsibilities as a Board
7 Member, what it is that once you say "yes," what are you saying
8 "yes" to? That is why we're evolving from the informal stage
9 now to reach the next level which people are working on to add
10 in the advertising, add in clearly what each Board Member is
11 expected of you, so that when you take up or consider the post,
12 what do you have.

13 But the institutional knowledge is in the Ministries.
14 It is with the Public Officers, and that's why they are so
15 valuable to us, and that we have to continue to work towards,
16 and evolve also, why we're walking together now with the Deputy
17 Governor's Office with the transformation of the Public Service
18 because the country now is evolving into a next level, we're
19 moving into a new paradigm shift. Some of these areas were not
20 done because of how our culture was going through the years of
21 71 years of Legislative Council. But our population has grown,
22 and therefore, how we institutionalise things and how we deal
23 with things have to evolve. And that's what we are doing now.

24 So, when we came in, we were trying to jump-start that
25 because when I came as Minister, there is also a speech, and I

1 show that within the model, it is somewhere there, where it's
2 stated clearly that we inherited a Public Service that's not
3 nice to deal with the modern events and chain of events that we
4 have to deal with, nothing against the Public Officers, but we
5 recognize that they weren't given that expertise. We were told
6 in a 2012 White Paper that the training for a Public Officers
7 would have happened by the UK. It never happened, so we
8 continued to train ourselves.

9 And over the years we recognized where we need to
10 improve, but we also recognize the areas where we haven't
11 improved. And now going out to advertisements and other areas
12 where we are proposing which, in terms of certain legal help for
13 each Ministry, also the ethics units for the Cabinet Office,
14 these are things that we're proposing that should have been in
15 place from 2015, 20 years ago of our existence by the same
16 Governor's Office and those that were helping us and by the
17 White Paper could move forward, but they were not there.

18 So, we build ourselves. Now we are building ourselves
19 to go into a new level with our Public Officers how also had to
20 get us there. So that's what I mean by or shift was one that I
21 cannot say that the Governor would have approved but at the same
22 time two policies of a government might not get approval of a
23 governor. But at the same time to the question is--is the
24 Policy in the best interest of the public? The question is--the
25 question is--is it--and the other question is is it lawful or is

1 it not? And the only person can answer that for any sitting
2 Government is the Attorney General. And if we cannot get a
3 "yes" or a "no," then you leave the sitting Government, whomever
4 they are, in a quandary to decide on their own.

5 So, you cannot wait until we decide and then come and
6 tell us well, there is an error because we asked you before we
7 decided.

8 So, we're not lawyers, and the reason I'm here today,
9 Commissioner, is because you want to know if we acted
10 unlawfully, and I'm here to tell you, as far as I'm seeing we
11 didn't because we were given--were not given advice that we did.

12 COMMISSIONER HICKINBOTTOM: It's to ask the questions
13 posed by the Terms of Reference. But my difficulty is, before
14 the Attorney General's involved in this, you, within days of
15 coming into office, had a policy to sack or remove all Members
16 of all Boards except ex officio Members. And I'm struggling to
17 see what you consider the public benefit was in that, in doing
18 that. If you wanted to reinvigorate the Boards, there were a
19 number of ways of doing it, but that did not include sacking all
20 Members of all Boards.

21 THE WITNESS: Thank you, Commissioner, I really have
22 to thank you for your view of it because you're probably looking
23 at it from a different lens, most likely. "Sack" is a heavy
24 word. It wasn't "sack," it was "reconstitute." We look at it,
25 and the evidence of what has happened can only be borne out by

1 looking now at what the Boards did, because we have a three-year
2 history now. And that achievements of the Board would have to
3 bear out whether or not it was in the public's interest or not.
4 That is the only measuring stick that any one of us would have
5 because the actions have to speak louder than the word.

6 COMMISSIONER HICKINBOTTOM: With respect, and again
7 I'm sorry to interrupt, that may be an indicator, of course, but
8 don't we have to look at the decision you made--you made, your
9 Cabinet made--

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: --the policy decision to
12 revoke the membership of all of the Boards?

13 THE WITNESS: Exactly.

14 COMMISSIONER HICKINBOTTOM: And I'm struggling to see
15 why you made that policy decision and why you didn't make a
16 policy decision to reinvigorate the Boards and then investigate
17 how best that could be done.

18 THE WITNESS: Well, I would say--I would say to you,
19 sir, Commissioner, through the lens of a Public Officer, you
20 have 25 years before pension. Through the lens of elected
21 officials, you have four or five. So, you have to make your
22 mark in the public's interest in the best way that you see fit,
23 not personal towards anyone. You will see as we get to other
24 Boards that persons that supported parties that ran against us
25 on those Boards, so obviously it was not a political decision.

1 COMMISSIONER HICKINBOTTOM: Not a Party political
2 decision?

3 THE WITNESS: Not a Party political decision or
4 political at all. It was one in which we wanted to rejuvenate
5 the Boards and also to try to get Boards to think differently in
6 terms of paradigm shifts and to save monies.

7 We were faced where each Board was acting in a silo,
8 and if you ask each of them--

9 COMMISSIONER HICKINBOTTOM: I understand.

10 THE WITNESS: --each of them where the BVI was going,
11 each have a different answer.

12 So, we wanted to shake up things and get us moving as
13 a country in one direction, and some of the Members that were on
14 there before, did return.

15 COMMISSIONER HICKINBOTTOM: Thank you very much,
16 Premier.

17 I'm sorry, Mr Rawat.

18 BY MR RAWAT:

19 Q. Premier, you have taken us into areas which are some
20 distance away from the issue that we're concerned with, which is
21 the Policy of Revocation.

22 If you go back to 2930, as part of your long
23 disquisition to the Commissioner, you have touched back on the
24 recruitment process; you have touched on transforming the Civil
25 Service. What I would really like to get back to is the

1 question that I was putting to you. If you look at paragraph 7,
2 the purpose of this paper--and it's an important paper, Premier,
3 because this is the first intimation of the Policy. There is
4 nothing before that? Nothing has been provided to the COI to
5 show anything before that. And what you say is that the purpose
6 is to "dissolve current Board membership and appoint new Board
7 Members." There is no rejuvenate, there is no reconstitute.

8 And when one looks at other decisions--and we will
9 look at--may need to look at them when we go to individual
10 Boards, again, the word "reconstitute" does not appear. The
11 word "remove" does, the word "revoke" does. And this paper is
12 headed "Revocation".

13 A. Right.

14 Q. So, that's what we are concerned with.

15 Now, I just want to take you back to 2739, please,
16 because both in the written response from yourself and indeed
17 The Honourable Malone and Honourable Wheatley and the Cabinet,
18 there is what must be identified as criticism as to the conduct
19 of the Attorney General, former Attorney General. Now, if we
20 look at this 2739, you started off saying that the Attorney
21 General was pressed by the Cabinet as to whether the Policy--and
22 we've given the three headings of that policy--was unlawful.
23 Could you just direct the Commissioner's attention to which
24 paragraph from paragraph 3 through to paragraph 22 you rely on
25 as evidence of the Cabinet pressing the Attorney General in

1 March 2019 for clarification.

2 A. Could you show me where he didn't clarify, where he
3 did clarify?

4 Q. No, Premier, your evidence was that the Cabinet, not
5 just yourself, all five Members of the Cabinet, pressed the
6 Attorney General for clarity. I would just like you to point
7 the Commissioner's attention to where you did that.

8 A. Commissioner, that's one of the things that I need to
9 make clear. In a Cabinet Meeting the gist of the conversation
10 is what's captured, but there's not much more that's discussed
11 that is not inside of these. So there was a long discussion on
12 are we acting lawful or unlawful. That is what precipitated the
13 Attorney General to say, the Attorney General, the Chairman
14 stated a specific reason--in 4--all reasonable justifications
15 should be given to remove persons as Members of a Board. He
16 asked if there was official reason in this regard.

17 The Attorney General didn't respond just like that.
18 The Chairman after he said that, my recollection was there was
19 some discussions about it. We would not capture all of that in
20 the Minutes.

21 Q. Pause there for a moment.

22 Is it your evidence, Premier, that this long
23 discussion about the legality of a policy that subsequently
24 informed decisions you made about a number of Statutory Boards,
25 not just under your umbrella, that this long discussion where

1 you and Fellow Cabinet Members pressed the AG for clarification
2 was not recorded on this day?

3 A. Well, I'll put it this for you. It wasn't recorded in
4 the paper. You're taking me to the end. But in preparation of
5 the paper, Attorney, with due respect, we're not lawyers. When
6 we do these Cabinet Papers, we send them to the Attorney
7 General's Office through the Public Officers, requesting to make
8 sure that all the areas, whatever box needs to be checked is
9 checked. If this is flagged at that time by the Legal Officials
10 of the Government, which is the Attorney General, you cannot
11 move forward because this is unlawful. The paper would not even
12 reach to the Cabinet because the adjustments would have to be
13 made.

14 And if we decide that we're going to push it towards
15 Cabinet, then we understand the risks that we are up against.

16 For most of these--most of these papers, this has been
17 the case where no adverse legal thing would have been cited, or
18 if they're cited, it was one in which that you would ask, call
19 and ask, Andy, what do you mean by this? Are you saying it's
20 lawful or are you saying it's not? And at that time we got that
21 clear answer. There's nothing else I could say.

22 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, but
23 if you look at page 2930, this is the--this is your Cabinet
24 Paper.

25 THE WITNESS: Um-hmm.

1 COMMISSIONER HICKINBOTTOM: As you say, we've seen
2 many Cabinet Papers and the legal implications, although this is
3 headed financial implications, this is clearly (drop in audio),
4 but the legal implications section simply says no adverse
5 implications of this proposal foreseen or something like that.

6 But this, without saying in terms this is definitely
7 going to be unlawful, clearly indicates that it's a risk.

8 The Attorney General, when he gave this opinion, knew
9 the basis of the Policy because it's in the paper so far as it
10 exists in the paper, and he has obviously got a considerable
11 concern about the Cabinet exercising its discretion in the
12 manner it proposes to do.

13 THE WITNESS: Commissioner, that is clear for anything
14 that you do in Cabinet that they're going to have risks, whether
15 by the Attorney General saying so or otherwise. But what we are
16 asking is clear. I'm here today for a specific reason, and your
17 reason is clear to me. Did we act lawfully or unlawfully in our
18 actions with removing persons from the Board? That is clear.

19 So, the Attorney General, two years ago, who should
20 have advised us when we asked, clearly even in the informal
21 conversations, are we acting lawful or unlawful with this?

22 Look at one of the notes from the Attorney General.
23 "May I note further that there is no provision for revoking the
24 appointment of Members of the Tourist Board." This is at 2931,
25 "but that it is cured by section 20 of the Interpretation Act

1 (Cap 136) which authorizes an appointment authority to removing
2 remove an appointee at his discretion. This of course entails
3 compliance with the rule of law requirement I had previously
4 made reference to."

5 This is tantamount to going to the Doctor and asking
6 him how do I get cure, and he said all right, well, go and look
7 up a few tablets and the one that you see that matches what I
8 feel then use it. Doctor, will this help me? Is this going to
9 cure me? "Yes" or "no."

10 I like, when we're dealing with these kind of matters,
11 to give me a concrete answer. You're my lawyer. My lawyer left
12 me leaving to interpret this.

13 May I note further there is no provision for revoking
14 the appointment of Members of the Tourist Board. Well, if there
15 is no provisions for revoking the appointment, that's means it's
16 open. That is my interpretation because you know you didn't
17 interpret it from me. But that is cured by section 20 of the
18 Interpretation Act (Cap 136) which authorizes an appointing
19 authority to remove an appointee at his discretion. I went and
20 I checked that, I still didn't find from my momentum anything to
21 state, well, you cannot move in this direction because I didn't
22 get a clear answer.

23 This, of course, entails compliance with the rule of
24 law I had previously made reference to.

25 Now, Commissioner, you being a lawyer would understand

1 this legal language, but I made in the sense is I just want are
2 we acting illegal, are we acting legal? It's a "yes" or "no".
3 This one here is on the fence, is that is what I'm saying, that
4 most of the legal thing in the past where we regard them were
5 just basically saying well, there were no adverse legal
6 implications and then we go in Cabinet if the Chair raises
7 something, it becomes a discussion, but what do I do if my
8 lawyer don't give me a "yes" or "no"? And when he gives it to
9 me, give me how do we move forward and run the country? How do
10 we move forward if it's yes, tell me how do we get it done.
11 This is what we want.

12 I would say, Mr Rawat, you do have a good point.

13 BY MR RAWAT:

14 Q. Can I take you back to the paragraph before we lose
15 it, it's that paragraph that you pointed out, at 2931, is that
16 your example of what you had earlier described to the
17 Commissioner as the Attorney General's on the fence answer? Is
18 that the on-the-fence answer?

19 A. This one to me?

20 Q. Yes.

21 A. Is.

22 Q. That's the on-the-fence answer?

23 A. This is one of them.

24 Q. Let's go back to the deliberations because, with
25 respect, all respect to you, Premier?

1 A. Yes.

2 Q. Your answers are inconsistent. Because, first of all,
3 you described a Cabinet Meeting where the AG is pressed by all
4 five of you for clarification.

5 A. Right.

6 Q. But you cannot point to a single paragraph which shows
7 any one of you pressing him for clarification.

8 A. Um-hmm.

9 I would say--

10 Q. So, what the Commissioner has to conclude on your
11 evidence is that this discussion about a policy right at the
12 beginning of your administration, which was going to have
13 wide-ranging impact, was not recorded in the Cabinet Minute; is
14 that right?

15 A. Well, Mr Rawat, I would say that my answer
16 inconsistent, you just don't like my answer.

17 Q. No, the reason it's inconsistent is because
18 subsequently, and so you moved from a discussion of the Cabinet,
19 you referred to the (drop in audio), and that's what I need to
20 break down.

21 A. No. I'm clear, and I would say 50 times, the basis of
22 moving forward a Cabinet Paper is the legal implications that's
23 given to you. If--this is before you reach the Cabinet.

24 Q. Are you now saying that Cabinet, all five of you,
25 pressed the Attorney General for clarification of the position

1 prior to the submission of that paper to Cabinet?

2 A. Not pressed, but joined--in the Cabinet we had
3 discussions about it.

4 Q. Right. Well, this is where the confusion is arising?

5 A. Yes.

6 Q. And we need to break it down.

7 A. Yes.

8 Q. So, prior to the submission of the Cabinet Paper,
9 there was no discussion with the Attorney General, save for what
10 we see in the Cabinet Paper itself; is that right?

11 A. The discussion, no, we wouldn't have had a discussion
12 of all five of us.

13 (Overlapping speakers.)

14 A. You state and you're going on. Why would you have
15 other discussions that something is illegal when the comments
16 posted on the paper does not leave you to say, all right, we
17 shouldn't do this at all. That is your impetus to move forward.

18 Q. Premier, you've given that answer. I just want to get
19 the evidence clear.

20 A. Yeah.

21 Q. So, you've given the answer. The Commissioner has
22 seen the paper.

23 A. Right.

24 Q. He's drawing your attention himself to the advice that
25 the AG put into that paper and you commented on it.

1 A. Um-hmm.

2 Q. Let's move to the Cabinet Meeting. The Cabinet
3 meeting is at 2739.

4 Is it your position that, in that Cabinet
5 meeting--because that's what I understood your evidence to be
6 earlier--five Members of the Cabinet pressed the Attorney
7 General with one simple question: Is it lawful or unlawful?

8 A. I can't say with one simple question, it was a series
9 of discussion.

10 Q. That was earlier--

11 A. Yes, but I asked--

12 (Overlapping speakers.)

13 Q. I asked--

14 A. We had that clearly. We had that clearly.

15 Q. --in terms.

16 A. Right.

17 Q. That isn't recorded anywhere in these paragraphs.

18 A. But, Mr --

19 Q. So, does that mean that this important discussion was
20 simply not recorded in the Cabinet Minutes?

21 A. Mr Rawat, I can't recall whether or not based on
22 what's here. All I could tell you--let me phrase it correctly.

23 You can't capture everything that happens in the
24 Cabinet meeting in the Minutes. That's impossible anywhere in
25 the world. The discussion that ensued after (interfering sound)

1 of what he said caused a flurry of discussions. What the
2 Cabinet's Secretary will do is capture the essence of it, inside
3 of it and put it up.

4 COMMISSIONER HICKINBOTTOM: I understand that.

5 THE WITNESS: That's all I'm saying.

6 COMMISSIONER HICKINBOTTOM: But if I understand your
7 evidence, just to go back half a step, the Policy was to revoke
8 the membership of the Statutory Boards and then reconstitute.
9 That was the Policy.

10 THE WITNESS: That is the Policy we tried to work
11 from.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 My understanding is that that was the Policy that you
14 were going to pursue unless the Attorney General said that is
15 unlawful, full stop.

16 THE WITNESS: Right.

17 But in spite of there also that wasn't all the way
18 captured because we worked for a long time on this. We could
19 not get the reconstituting of the Board in the manner that we
20 were saying because the Attorney General--that's not captured
21 here, but I assure you get any Minister they will tell you this:
22 The Attorney General stated clearly that some of those things
23 that you want would cause for you to have to reconfigure whether
24 the law or statute--

25 COMMISSIONER HICKINBOTTOM: Sorry, I understand that

1 point.

2 THE WITNESS: Great.

3 COMMISSIONER HICKINBOTTOM: But in terms of
4 revocation, that was the stance of you and the Committee. And
5 the concern that was expressed both by the Attorney General and
6 the Governor was that for the reasons you'd given to take this
7 step, which I have to say you say it's not obvious, it seems to
8 me to be on the face of it a fairly odd and curious step but to
9 take this step that the reasons that were being given did not or
10 may not pass muster. That's their concern.

11 And so, I mean, analogies always fall apart certainly
12 in my hands, but it's the equivalent of you going to a doctor
13 and saying you should take these pills but you're not
14 taking--you go back--(drop in audio) the analogy does not work.
15 In these circumstances, you were going to do something you say
16 innovative, and I would say that it was certainly curious, and
17 the Attorney General and the Governor expressed concerns about
18 the reasons, some of the reasons that were being relied upon in
19 the Cabinet to take this decision.

20 THE WITNESS: Commissioner, I hear you--the aim of all
21 of this was deeply vested in a positive move of public interest,
22 and I thank you for the analogy of the doctor because if the
23 doctor gives you some tablet and tell you to take this or
24 chances are that you might die. If you don't, I think that the
25 doctor is saying take it.

1 Here now, we're saying all we needed as a young
2 government is not to receive what I would call our most standard
3 response, not to receive assumptions about some Boards being
4 applied--that were being applied across Boards or whether
5 persons agreed with the Policy. If persons don't agree with
6 policy, that's democracy. That's the right to democracy, but
7 the question is, is it lawful or not. That's all we needed to
8 know.

9 And whatever else I say, I'll always have to stick
10 with that because if we were told otherwise, we would have had
11 other conversations. I just don't know how else to put it. A
12 lawyer's job is to tell his client if it is right or not. We
13 have got cases now with our Attorney General that we have no
14 issues that clear up, this is where I stand, this is what it is.
15 It is then at that time up to the Government to decide what they
16 will do because you were given a clear stance by opinion, legal
17 opinion, by the Attorney.

18 COMMISSIONER HICKINBOTTOM: And the Cabinet for then
19 to take the risk.

20 THE WITNESS: And it's for the Cabinet then to decide
21 if they're taking a risk. That's all I'm saying.

22 COMMISSIONER HICKINBOTTOM: I understand that.

23 But can you see this, that there could be a perception
24 that a new government, a new administration coming into power
25 and within days of doing so, "sacking", which is a word I do use

1 now, that all of the Members of all Statutory Boards which are
2 set up to be independent, autonomous, and to do the functions
3 that the House of Assembly has assigned to them, could be
4 construed as a political act?

5 THE WITNESS: Not at all.

6 COMMISSIONER HICKINBOTTOM: I use the word
7 "perception". I understand your evidence that it was not.

8 THE WITNESS: It would seem so to some but as you move
9 forward, it does not bear out to be a political action because
10 some of the very persons who had political differences ended up
11 on the Boards. Some of the very persons for some or all of
12 these Boards on the Government and right back up on the Board.

13 So, the evidence in the long run or even in the short
14 run, after persons are appointed does not bear out for it to be
15 political it was one in terms of shaking up things and getting
16 things moved. You know, I know you say the analogy, I know
17 about a case where a judge said I will give myself six months.
18 That was letting the whole atmosphere know where I'm standing
19 today when it comes to anything right or wrong.

20 So, we were sending a clear message that we want to
21 rejuvenate--re-energise, bring more dynamics to the Board given
22 that we have a short window to diversify the economy.

23 COMMISSIONER HICKINBOTTOM: I understand that,
24 Premier. Thank you very much.

25 Mr Rawat, firstly, it's quarter past 1:00. That

1 doesn't mean I'm going to stop you immediately. Are we near the
2 end of this topic?

3 MR RAWAT: Yes, just a couple question just on this.

4 BY MR RAWAT:

5 Q. Premier, on some what you said about discussions that
6 you recall taking place that were not recorded in the Cabinet
7 Minutes. But if we go to 2739 and look at 7, please. The AG's
8 advice in Cabinet was "one should provide reasons for removal of
9 persons", and then at the end, "reasons must be given for
10 removal of Members of the Board."

11 Now, the decision that Cabinet took on that day was to
12 revoke all Members except the ex officio Members of two Boards,
13 and that was with immediate effect, the BVI Tourist Board and
14 the BVI Ports Authority.

15 So, there aren't, as I can see in there, the reasons
16 that are recorded for that removal of those two Boards, so we
17 must take it, mustn't it, that it is based on that policy as
18 outlined in the Cabinet Paper that you brought forward?

19 A. That is one of the thrusts behind of it. The other
20 thrust behind of it was that we were moving towards having to
21 look about going away to sea trade and some other things that
22 were coming up, and those two Boards and the airport were
23 crucial for us to get done, so those are reasons those were
24 moved on first.

25 Q. You've explained, about sea trade. The difficulty is

1 that there is no mention of sea trade in the Cabinet Minutes as
2 recording this part of the reasons for it; and secondly, there
3 is no mention of sea trade in the Cabinet Paper. All that the
4 Cabinet Paper helps us with, and when we look for reasons why
5 you and the Cabinet took these decisions is that it is based on
6 your policy which I've outlined three elements of that policy,
7 and that was the--that was the reasoning, wasn't it, for this
8 decision?

9 A. Yeah.

10 Mr Rawat, I understand you're trying to ask me that
11 direct question, but please allow me, Chair, Commissioner, to
12 say something.

13 All Public Officers are involved in the writing of
14 Cabinet Papers, and as a young government, you come in, and yes,
15 the purpose is a revocation, if I had it to do over again,
16 watching it, knowing as you mature into these Ministries and the
17 importance of setting the Policy up and why that you would move
18 in this course of action because of the policy setting at the
19 top, the papers would have been written differently and advice
20 to be written differently. But that's not the fault of the
21 Ministers. That's what I'm saying from 2012 when the White
22 Papers said that they're going to strengthen our people in the
23 areas that were weak, we never received that help, so we had to
24 do it on our own.

25 So, with that in mind, some of the things that I see

1 now, we would have phrased them differently, knowing that if
2 someone take it up, this is what we would be looking for because
3 we even, as we mature, recognize that we would send back certain
4 Cabinet Papers and say, it doesn't reflect exactly what you are
5 saying.

6 A young government, they just want to see the paper,
7 it's as a turn, well, all right, well, let's pass it and let's
8 move on. So it wasn't done out of any bad intentions. Only the
9 public interest. It wasn't done definitely to violate any laws.

10 But in answering the Attorney, yes, the Attorney
11 General said that, but again, at the same time too, we read
12 where he said that there was no--there was no law for
13 revocation.

14 So you see one thing one way and one thing the next by
15 the Attorney General. And all we want is a "yes" or "no".
16 Sorry to be redundant but that's all I wanted, a "yes" or "no".

17 BY MR RAWAT:

18 Q. Premier, I was trying to move the questions of the
19 topic forward. It was about trying to identify. My questions
20 are focused to you on the basis to which the decision was taken
21 on the 27th of March 2019.

22 A. Um-hmm.

23 Q. And it's trying to--identify that from the
24 contemporaneous documents. The contemporaneous documents that
25 we have are the Cabinet Paper and the Cabinet Minutes.

1 A. Right.

2 Q. They record, what we can identify from those is what
3 the Attorney General asked you to do, which was to give reasons.
4 And when we go to the decision that is made by Cabinet, one
5 cannot see the reasons, and all I'm putting to you is, does it
6 not follow that the basis on which these two Boards were revoked
7 was that the policy as enumerated in that paper?

8 A. But the Attorney General didn't said to give reasons.
9 Again, let us read what the Attorney General said. The Attorney
10 General said in cases where any powers are conferred by the
11 Legislature, one should provide reasons for removal of persons
12 and suggested that it is better to provide reasons; so he
13 suggested that it would be better to provide reasons. That
14 ensues another discussion as you can see, the AG advised if this
15 administration wants to be a government consisting of Public
16 Administration, then reasons must be given for removal of Boards
17 or Board Members. Members asked if there were any precedent of
18 unreasonable exercise, and you already read all of that, and we
19 went through all of that.

20 All of that ensued a discussion. Are we acting
21 lawfully or not.

22 Q. Premier, all I'm asking you, please, is just to
23 confirm the reasons that the Cabinet applied to this decision
24 were those set out in your Cabinet Paper, namely the three heads
25 of your policy? You referred to those Boards--

1 A. Yes.

2 Q. --if you wanted to have--going forward to have Boards
3 that had a membership that showed a commitment to the
4 Administration's programmes, Boards that had a youth
5 representative on it at least, and Boards that had a tenure that
6 matched your administration. And in order to take that policy
7 forward, that was the reason you made the decision in respect of
8 those two Boards on the 27th of March. That is, please, a "yes"
9 or "no" question.

10 A. I don't think that you can ask me--tell me how to
11 answer it, with due respect. The impetus on it was that, but
12 there was more discussions. Because if I come to give witness
13 for evidence on something that we have been accused, I have to
14 bring everything to the table to clear my name. We had a
15 lot--we're doing a lot of work on a daily basis. There is a lot
16 of meetings that didn't fall within the confines of this paper
17 that help us to reach here, so I'm bringing context to the text
18 that you asked me to read. There is a lot of context with
19 meetings with Boards, et cetera, that things are not going good
20 where you recognize that you have to shake up things.

21 So, to just state those are the only reasons, yes,
22 those are some of the reasons, but there are also some
23 background information that, yes, you do not have, but I have
24 it. And when I'm testifying, I have to bring it to the table
25 and put it on the record that these are some of the areas that

1 we're looking at. So the answer is yes, those are some of the
2 areas, but it came as a result of some of the Measures.

3 Q. You have given that context more than once.

4 A. For a reason.

5 Q. Please, from paragraphs 3 to 22, identify the reasons
6 that the Cabinet, they've recorded on the Cabinet Minute for
7 making its Decision.

8 A. From paragraph 3.

9 Q. Through to 22--going to 23, that's the entirety of the
10 recorded Minutes about this topic. Where are the reasons
11 recorded for Cabinet's decision?

12 A. Attorney, if I had this part to do over, I would
13 have--and we were guided as young Ministers, I would have put
14 some other things in the paper. So, I'm telling you as truthful
15 could be. I'm seeking truth to power and I'm speaking power in
16 the truth. The reasons I've stated over and over, should there
17 have been more performed in the paper? Yes. But in the
18 archives of what's happening in the Ministry, the thrust behind
19 why we were doing it was what I told you.

20 So, yes, it would have been removal of the Members but
21 it wasn't just a blanket removal. There was something happening
22 before why we were moving in that direction, which I've
23 explained. I just want that on the record because I do not want
24 to answer something that when the Report comes out and they said
25 I answered yes, and the reasons that it is did not make it.

1 COMMISSIONER HICKINBOTTOM: A couple of points,
2 Premier, before we break.

3 Firstly, I well understand the limitations of Cabinet
4 Minutes, and one has to read Cabinet Minutes with caution
5 because they cannot capture every single thing that was said.

6 On the other hand, in terms of reasons for making the
7 decision, we have to look at what's in, really, the Cabinet memo
8 and the reasons are as Mr Rawat set out. No other reasons are
9 added in the deliberations. Some of the reasons in the paper
10 are reiterated by you, for example, in paragraph 15, and it was
11 those reasons which were relied upon by the Cabinet. Those
12 reasons which the Attorney expressed concern about, and those
13 reasons which the Governor expressed concern about.

14 Your evidence is that you took those concerns into
15 account. You took the risks into account and determined that in
16 respect of these two Boards all of the Members should go.

17 THE WITNESS: Yes, Commissioner, but we also took into
18 account that the Attorney General did not give us a clear
19 answer.

20 COMMISSIONER HICKINBOTTOM: The Attorney General did
21 not say in terms that if you proceeded with this it was unlawful
22 in any circumstances--

23 THE WITNESS: Exactly.

24 COMMISSIONER HICKINBOTTOM: --said that.

25 Is that a convenient time for a break, Mr Rawat?

1 MR RAWAT: Yes, Commissioner, I think it is.

2 SIR GEOFFREY: I wonder, Commissioner, if I might just
3 intervene because I shan't be here this afternoon. Will you be
4 inviting submissions on these matters? A lot has been said
5 about the proper way in which an Attorney General should advise
6 the Cabinet, and a lot has been said about legal risks. I mean,
7 Ministers, as you know, Commissioner, take legal risks all the
8 time in the decisions that they make, either singly or
9 collectively.

10 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I don't need
11 submissions on that.

12 SIR GEOFFREY: There may be other matters, and I
13 wondered whether, for example, the Attorney General might well
14 be expected to tell his colleagues that there was no respectable
15 argument that something was lawful. And indeed I would have
16 expected an Attorney General to do so if that's what he thought.
17 But that isn't reflected anywhere here, so I think it would
18 be--I mean, it may be that you don't wish to help, but it might
19 be helpful to supply some submissions on these questions. I
20 mean, it is the case that an Attorney General will tell the
21 Cabinet if he thinks there is no respectable argument that
22 something is lawful, and if he doesn't, frankly he's not
23 carrying out his duty.

24 I mean, these are matters that are important because
25 they supply context. Your inquiry at the moment has Mr Rawat to

1 ask questions that may or may not be open and balanced. And,
2 frankly, the discussions you've had this morning seem to me to
3 require a degree of balance, Commissioner, and I would invite
4 you to consider submissions at the end.

5 COMMISSIONER HICKINBOTTOM: Well, first, I certainly
6 don't accept that any of the questions have been--

7 SIR GEOFFREY: I'm not asking you to accept it. Nor
8 am I making a submission. I said they may or may not be, but
9 certainly what would be helpful, I would submit to you, would be
10 a perspective--it may well be, sir, that you have that
11 perspective well in mind. Frankly, I would be pretty confident
12 that you do, but just in case, it might--I'm asking whether you
13 would wish to hear submissions or indeed to receive them in
14 writing at some later stage.

15 COMMISSIONER HICKINBOTTOM: Well, that's something
16 dealing with each topic, Sir Geoffrey, that I always have in
17 mind.

18 SIR GEOFFREY: Great, thank you.

19 COMMISSIONER HICKINBOTTOM: And this may well be a
20 topic where--

21 SIR GEOFFREY: You would be helped.

22 COMMISSIONER HICKINBOTTOM: --if you wish put in
23 submission, and they may be helpful. We obviously want
24 submissions (drop in audio) but yes. Let me give that some
25 thought.

1 SIR GEOFFREY: If you would, sir. It's simply that
2 there are certain matters here that I wonder whether wouldn't
3 benefit. A witness in the box, particularly not a lawyer, can
4 have questions fired at them, perfectly reasonable questions,
5 and I will say no other, but where errors could be made, with a
6 degree of reflection perhaps a better picture could be put
7 before you.

8 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I understand
9 that, what you say is that you may want to make submissions to
10 put the Premier's evidence into context, and you may (drop in
11 audio). Let me give that some thought.

12 SIR GEOFFREY: If you would be so kind. I would be
13 most grateful.

14 And would you forgive me for not being present this
15 afternoon? I'm afraid I have compelling other commitment's, but
16 Ms Peaty will be here.

17 COMMISSIONER HICKINBOTTOM: Yes. And that was
18 explained this morning.

19 SIR GEOFFREY: I'm most grateful. Forgive my absence
20 during some of the morning.

21 COMMISSIONER HICKINBOTTOM: Thank you very much. Can
22 we break to 2:00, Premier? That doesn't give us very much time.

23 THE WITNESS: What happens if I say "no"?

24 COMMISSIONER HICKINBOTTOM: I always take that into
25 account, Premier, but if half an hour is enough time? I know

1 that you have other things to do. And we'll come back at 2:00.

2 Premier, thank you very much.

3 (Recess.)

4 COMMISSIONER HICKINBOTTOM: Yes, we're ready to
5 resume. Thank you.

6 MR RAWAT: Thank you. Thank you, Commissioner.

7 BY MR RAWAT:

8 Q. Premier, thank you for returning.

9 Can we just go through the Warning Letters now. You
10 should have to your left a paginated copy of the Warning Letter
11 to you as Premier and a paginated Warning Letter to Cabinet.

12 MR RAWAT: Commissioner, with your permission, what I
13 propose to do is use the letter to the Premier because some of
14 the criticisms--or potential criticisms made against the Office
15 of Premier are also made to Cabinet. The answers are the same.
16 So, what I propose to do, for the record, just cross-refer to
17 the Cabinet letter as and when it appears necessary to do so.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 BY MR RAWAT:

20 Q. Premier, if you turn to the letter to you, please, at
21 page 1. You should have a box headed "BVI Electricity
22 Corporation." Do you have that?

23 A. Yes, sir.

24 Q. The way the response is laid out is that it first sets
25 out a potential criticism, and then each criticism it deals with

1 the response. So, if there is quite a lot of detail in the
2 response, and I would like just to try and avoid going into too
3 much detail unless it's necessary because this does form part of
4 the evidence already before the Commissioner.

5 The way I will do it is to try and take Board by Board
6 and just ask you some additional questions on it.

7 If we take the BVI Electricity Corporation which comes
8 under your portfolio, there are four criticisms made.

9 MR RAWAT: And for the record, Commissioner,
10 criticisms one to three appear in the Cabinet letter.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MR RAWAT: And the responses there are the same.

13 BY MR RAWAT:

14 Q. The first criticism, Premier, goes to the decision to
15 revoke the membership of the Board of the BVI Electricity
16 Corporation which was made on the 25th of March, 2019 and was
17 effective on the 22nd of April 2019. The effect of that
18 decision was that with the exception of one person, all other
19 Members of the Board, which is five individuals, had their
20 appointments revoked. And by "revoked" I mean prior to the
21 expiry of their term of appointment, and that was effective from
22 the 29th of April, it should be from the 29th April 2019.

23 If we look at the background, if you go, you should
24 have Part 3 with you, Premier. If you go, please, to
25 page 2020--2820, forgive me.

1 A. Which part?

2 Q. 2820, Part 3. The part that we were looking at before
3 the lunch time break. 2820, please.

4 A. 28?

5 Q. 2820.

6 A. Okay, thank you. 2820.

7 Q. We have a paper dated the 25th of March 2019 that is a
8 paper that was taken to Cabinet headed "revocation of
9 appointments of Board Members-British Virgin Islands Electricity
10 Corporation".

11 Do you have that, Premier?

12 A. Yes, sir.

13 Q. Now, at that time, it's a paper coming from the
14 Ministry of Transportation and Works and Utilities because it
15 wasn't, as Dr O'Neal-Morton's Second Affidavit confirms, until
16 the 3rd of September 2019, that this Statutory Board was
17 transferred to your portfolio.

18 The background information sets out the law. There is
19 an Electricity Corporation Ordinance which stipulated in part
20 that membership and Constitution of the Corporation, and if you
21 look at (2), what section 5 of the Ordinance states is that "the
22 Chairman and/or any appointed Member of the Corporation may
23 resign his office by notice in writing addressed to Cabinet, and
24 may be removed from office by Cabinet in its discretion at any
25 time".

1 So, Cabinet has a discretionary power to remove a
2 Board Member. If you go through to 2822, 7: "The purpose of
3 the paper was recorded as to revoke the appointment of appointed
4 Board Members of the British Virgin Islands Electricity
5 Corporation", and what we see at 2823 under 'legal implications'
6 is the advice from the Attorney General's Chambers, which notes
7 that "there is no expressed provision in the Act for the
8 dissolution of the Board of the Corporation. The Cabinet has a
9 discretion to revoke."

10 And then it continues: "However, in exercising its
11 discretion to revoke the appointment of the Members of the
12 Board, Cabinet must comply with one of essential requirement to
13 the rule of law identified by Lord Bingham, namely that a
14 discretion conferred by constitutes on 'Ministers and other
15 public officials, must be exercised reasonably (rationally), in
16 good faith, and for the purpose for which the power was
17 conferred and without exceeding the limit of such powers.'"

18 It continues: "The concept of reasonableness is
19 defined by its opposite; namely Wednesbury unreasonableness." A
20 decision is said--and there should be a 'by' there--by Lord
21 Diplock to be unreasonable (irrational) if 'it is so outrageous
22 in it defiance of either logic or morals that no sensible person
23 could arrive at that conclusion on proper application of his
24 mind."

25 Now, that was the background to the paper. If you go

1 to 2827, please. We see there the Cabinet Minute. It's an
2 extract from Cabinet Minutes of that day dealing just with this
3 paper. And as it says at 45, it was presented by "the Minister
4 for Transport, Works and Utilities," and it continues at 46,
5 "regarding the captioned paper, the Premier reminded the Cabinet
6 that he would introduce a policy stipulating that no Members of
7 the Board would be appointed for a duration beyond the
8 terms/tenure of this administration." At 47, "the Chairman
9 reminded the Premier that justifiable reasons should be given to
10 revoke the appointment of Members of a Board."

11 48, the AG said that discretion is given to Cabinet to
12 revoke and appoint, therefore a decision should be reflected
13 about why the appointment itself is being revoked.

14 49: "In response to the Chairman's comment about
15 providing justifiable reasons for revoking appointments, the
16 Premier reiterated his position that he would establish a new
17 policy that the terms of the Board would not extend beyond the
18 term of the Government."

19 At 50: "The Chairman reiterated his position on the
20 importance of having justifiable reasons to revoke memberships."

21 At 51: "The Premier reiterated his Government's
22 position that new policy was established that reflects the term
23 of a Board Members would not extend beyond the term of spoke of
24 the need to look at things holistically and that Members
25 appointed to Boards should represent who recommends their

1 appointment."

2 At 52: "The Minister for Health and Social
3 Development stated that it will be deemed as counterproductive
4 to have Board Members who publicly participated in political
5 campaigns contrary to the Code of Conduct they aspired to
6 continuously serve on Boards during this administration."

7 At 53: "The AG said that based on statutory--and then
8 it just reads--re: the AG said that the policy would have some
9 challenges because some legislations stated that revocation is
10 made based on specific reasons."

11 "The Premier said that all Board Members sign up to a
12 Code of Conduct not to participate in political activity. Those
13 would have violated the"--and there's a typo, but it should
14 read--"the Code of Conduct."

15 And then, Cabinet then decided in its discretion that
16 the appointments of a number of Board Members of the Corporation
17 would be revoked. And as it says effective 22nd of April.

18 And those Members were five in total, leaving just one
19 Member left on the Board.

20 That's the background to this if we return, please,
21 Premier, to the Warning Letter and the criticisms and your
22 answers, if we can look at those relatively quickly. And just
23 perhaps an additional detail in response on the response in
24 terms of clarification.

25 What was set out was the justification for the

1 revocation, which is that the Corporation had achieved a goal of
2 completing Phase V Development and divesting to renewable
3 resources of energy. The Government now has a new mandate which
4 necessitates revamping the Board membership coupled with a new
5 strategic goal of ensuring that there is adequate and consistent
6 supply of electricity for homes and businesses 24/7. Cabinet
7 Members are asked to consider and concur with the decisions
8 sought. That was in the paper we looked at.

9 And then it refers to a broader policy set out in the
10 following terms by you, as Premier, "a new government has
11 assumed office with a new mandate and as a result he has decided
12 to reassess the membership of all Boards in a manner that will
13 allow the mandate given by the people to be expedited in a
14 transparent and accountable manner. Furthermore, the Premier
15 stated that he would be recommending a policy for the membership
16 on Boards would extend for the duration of the administrative
17 term of office."

18 The criticisms that are made, and I will paraphrase,
19 firstly, that the reasons that were recorded for immediate
20 revocation were insufficient. Secondly, that there was
21 insufficient or no regard to section 4(b) of the ordinance which
22 says that when making appointments, they should be made having
23 taken into account the desirability of such interests as are
24 affected by the corporation's activities being represented.

25 Third, that the revocation of membership failed to

1 adequately provide for independent expertise and oversight of
2 the Board.

3 Fourth, that the Policy of revoking membership with
4 every new administration fails adequately to provide for
5 independent expertise and oversight of all such Boards.

6 And the last one is that the decision to replace all
7 of the Members of the Board failed to take into account legal
8 advice indicating that the Policy of replacing the membership
9 with Statutory Boards with every new administration may be
10 unconstitutional.

11 Now, your response, if we can try to break it down a
12 little, you start off by saying there was nothing to stop the
13 Cabinet from adopting the Policy.

14 Now, again, when we refer to "policy" here, are we
15 referring to the Policy that we summarized before the lunchtime
16 break, the new policy that your administration brought in when
17 it came into office?

18 A. At that time, that is what we was kept stating and
19 asking for the direction to help us legally to get to it.

20 Q. And you continue, if we see, the legal advice was
21 couched in equivocal terms and referred to a risk of conflict
22 with the Constitution. Which particular legal advice were you
23 referring to?

24 A. Well, from the Attorney General. The Attorney General
25 did not come out--we're going to go back into the same thing.

1 The decision to replace all Members of the Board
2 failed adequately to take into account legal advice indicating
3 that the Policy of replacing the membership of Statutory Boards
4 with every new administration may be unconstitutional. The
5 Attorney General never told us that it is unconstitutional.
6 Again, and I go back into it because you're talking about a very
7 young Government that's coming in, that's relying on the advice,
8 a "yes" or "no" from the Attorney General and also the expertise
9 of the Public Service to guide them.

10 So, the one thing that is the common thread through
11 all of this is that with the response is that we are craving to
12 get our new policy adjusted and we're just asking for the
13 guidance. This is a common thread through all the response.

14 Q. So, again, that's helpful to know because hopefully it
15 will shorten things as we go through, Premier. But is your
16 point reiterating again, and we've gone from, if you like, the
17 greater policy now to looking at individual Boards as we go
18 through, but your point here is again that, you rely on the fact
19 that you said that the Attorney General of the day did not
20 advise you in terms that this policy was unlawful?

21 A. He did not unequivocally say that there was not an
22 issue that was either lawful or not. There were certain things
23 implied, again, remember Minutes, whether we want to admit or
24 not, Minutes won't capture everything, and as a person coming to
25 give evidence, I would have to bring the background of some of

1 what was happening.

2 The question continue all the time is Attorney General
3 is it lawful or is it not lawful? And if it is or action is
4 unlawful, how do we go about it? And if it is lawful, then we
5 have no issue.

6 But with due respect, I'm not a lawyer, so when I get
7 an answer with the utmost respect to the legal profession
8 stating, "however, in exercising its discretion to revoke the
9 appointment of the Members of the Board, Cabinet must comply
10 with one essential requirement of the rule of law identified by
11 law and Lord Bingham bringing him namely that the discretion
12 conferred by statutes and administered and other public
13 officials must be exercised reasonably, rationally and good
14 faith and for the purpose for which the power was conferred and
15 without exceeding the limit of such powers." "And the concept
16 of reasonableness, as defined by its opposite, namely Wednesbury
17 unreasonableness, a decision is said--a decision is said Diplock
18 to be unreasonable irrational. If it is so outrageous in its
19 defiance of either logic or morals and no sensible person could
20 arrive at the conclusion on proper application of his mind."

21 Mr Rawat, with due respect I'm not a lawyer. All
22 we're asking the Attorney General is it lawful or is it not? I
23 don't want to seem difficult, but that's all you're asking, and
24 I even asked it now and now with more experience with a hand or
25 certain things differently, but experience teaches wisdom, but

1 at that time a young Government, is it lawful or not, it's a
2 simple "yes" or "no."

3 Q. I think we now understand that point, so hopefully we
4 can--as we go through the Boards take that point shortly.

5 The advice that the Attorney General has given from
6 the Sections of the papers that I've read out, is that you have
7 a discretion, you have to exercise that discretion reasonably.

8 A. Um-hmm.

9 Q. And therefore, you have to give defensible reasons for
10 your decision.

11 A. Um-hmm.

12 Q. And it comes down to this, doesn't it, that your
13 position is that--and it takes us back to that first discussion,
14 that looking at your policy, you say that that policy justified
15 a decision in this case to revoke in greater part the membership
16 of the Corporation.

17 A. Well, your sum of the Corporation now what--for us it
18 was a gamut policy across the board, so we didn't look at it as
19 Electricity Corporation, we didn't look at it as BVI Ports, it
20 was just an overall policy we were looking at. And when it came
21 to individual peoples, it remained the same, individual votes,
22 it remained the same.

23 COMMISSIONER HICKINBOTTOM: I'm sorry, but you accept
24 in the answer on page 2 that we're looking at, the legal advice
25 was captioned "equivocal terms", you've emphasised that, and

1 then referred to a risk of conflict with the Constitution. So,
2 you accepted that you were advised that the Policy may be
3 unconstitutional.

4 THE WITNESS: Yes, that is stated in may be
5 unconstitutional, but then, Commissioner, you know the question:
6 Is it unconstitutional or is it not?

7 COMMISSIONER HICKINBOTTOM: But before you make
8 decisions which may be unconstitutional, wouldn't you proceed
9 with caution?

10 THE WITNESS: Of course, by action, the Attorney, is
11 it constitutional or is it not unconstitutional? It's either
12 "yes" or "no". If a Police stops you and you're speeding, you
13 were either speeding which means you were over the limit that
14 was allowed by law, or you weren't speeding. It can't be that I
15 stopped you because you may have been speeding. You had to be
16 either speeding or not. So, the questions that we're asking as
17 a young Government coming in with the advice you're giving us,
18 we're more confused when we get the advice because these case
19 studies, lawyers rightfully use them all the time, but for us,
20 not law persons, we now have to go and look up--we have to go
21 and look with all due respect to the Lord Diplock and all of
22 them for the cases that they're referring to to see what is the
23 context behind what they were saying. That's not what you have
24 a lawyer for. It's either you're telling us now is our action
25 constitutional or unconstitutional.

1 If a sitting Government is told unconditionally that
2 your action is unconstitutional, then you increase the risk if
3 you decide to move against that, but at least now we have a
4 clear picture and it would be something very difficult for
5 governments to say that they weren't told, but there is no clear
6 answer by the Attorney General here in his post for the paper
7 normally when he's speaking about it, and that was consistent
8 for all the papers with all the Boards, most of the Boards.

9 COMMISSIONER HICKINBOTTOM: So, you're content, the
10 Cabinet was content that to proceed with a course of action
11 which the Attorney General advised may be contrary to the
12 Constitution?

13 THE WITNESS: I cannot say that we were satisfied. It
14 may be contravened and constitutional. We were satisfied
15 because he did not tell us that it was contravened in the
16 Constitution.

17 COMMISSIONER HICKINBOTTOM: So, you would have only
18 stopped if he said for sure this is contra to the Constitution?

19 THE WITNESS: We would have stopped. Most likely we
20 would have stopped. I don't think that I get the votes. Either
21 one of us wanted to move ahead.

22 COMMISSIONER HICKINBOTTOM: But in fact, you made the
23 decision there and then because in each of these cases--that may
24 not literally be true but in the cases we've looked at so far,
25 there has been a discussion, we have been through that, in

1 respect of one Board, and you've made the decision.

2 THE WITNESS: Yes. There is only one Board that's
3 under me where it's going to come up that there was some
4 legal--legal opinion given, and after a while we adjusted it
5 accordingly, and we come to that, which would be the Climate
6 Change.

7 COMMISSIONER HICKINBOTTOM: With respect, the Attorney
8 General gave a legal opinion, his opinion was this may be
9 unconstitutional.

10 THE WITNESS: May.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 THE WITNESS: But you know, Commissioner, telling
13 someone that a kettle may be hot does not mean that the kettle
14 is hot. It's either the kettle is hot or the kettle is not.
15 So, when you have an attorney--

16 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
17 but along that analogy, it's like you then putting your hand on
18 the kettle, you would proceed with caution because the kettle
19 may be hot. Here, the Policy may be contrary to the
20 Constitution. That seems to me to be pretty important.

21 THE WITNESS: But as a lawyer, I know that you
22 wouldn't--you would see how to hold on that point, but look at
23 it from different lens. If you say something may, it means also
24 that it may not. So, and respectfully, I'm not a lawyer but
25 that's how we viewed it. As a person not a lawyer, I expect the

1 lawyer to tell me I could take it if they tell me you may win
2 the case because no one knows what happens when you go to court.

3 But if something is constitutionally correct or not
4 constitutionally--within the Constitution, that's supposed to be
5 clearly articulated to Ministers. May or may not leaves any
6 government anywhere in the world up to decide on their own.

7 COMMISSIONER HICKINBOTTOM: Okay. That answer is
8 clear. Thank you.

9 BY MR RAWAT:

10 Q. If you look at, again going back to your response, one
11 of the points that was made was that, insufficient regard was
12 given or no regard was given to section 4(b) of the Electricity
13 Ordinance.

14 Now, section 4(b) says, and it deals with the
15 composition of the Board but it says that when Members are
16 appointed and that the Ordinance speaks of Governor in Council,
17 that's Cabinet, what has to be taken into account is that
18 Members shall be appointed by the Cabinet having taken into
19 account the desirability of such interests as are affected by
20 the Corporation's activities being represented.

21 So that, when Cabinet appoints, that is a factor that
22 they have to--it has to take into account.

23 Now, you say that Cabinet wasn't advised--and this is
24 a revocation Decision--Cabinet was not advised that this section
25 was relevant to its consideration, and in any event, it was not

1 relevant to the revocation of the appointments.

2 But would you accept this, Premier, that a decision to
3 revoke here the greater majority of a Board has the effect of
4 removing expertise and experience from that Board, doesn't it?

5 A. I can't agree with that, and I'm going to explain to
6 you very clearly what I said before. If you pole that
7 50 percent that say "yes" and 50 percent say no, there are those
8 who have strong feelings that if you remove everyone off of a
9 Board that you have moved the experience, you removed the
10 ability to roll over things to persons, and that has its place.

11 But I also know that there is a flip side to this
12 where there is an institutional knowledge which has--which is
13 captured, as I said before, by the Public Service.

14 (Overlapping speakers.)

15 A. What I'm saying here, is that you asked me, so I have
16 to explain. So I have to put this down on record.

17 So, the Permanent Secretary being an ex officio
18 Member, would be the one, even if the Members return to put on
19 the table for each person when they come to--no even before, to
20 give them what the criterias are, the Board Members would not be
21 the ones doing that, and also to let them to know this is what
22 the Board would be expected, this is what your roles will be as
23 a Board Member. In our informal dealings of the Government in
24 these Board matters over the 71-year history, they want those
25 things formally written down.

1 So, even on the Electricity Board, although it says
2 there 4(b) of affairs of the electricity, you try to pick
3 businesspeople and rationally-thinking people, but the full
4 explanation or description of what was expected was not there,
5 and that's what we are moved towards now and are working
6 towards. So the answer is that the institutional knowledge lies
7 in the Public Officers, so the records are there so that if all
8 persons are new they can get a full picture captured that this
9 is what was taking place, these are the areas that you see that
10 would want to concentrate on based on the Government's policy,
11 and this is how we're going about it. Because a Public Officer
12 would have the Minutes, they would have all that is happening
13 and the institutional knowledge that lies within the Public
14 Service cannot be underestimated at all, so both help to flesh
15 those things out in terms of the policy which would come from
16 the sitting Government, but the Board now will flesh those areas
17 out and see how things go.

18 May I add, Chair, because I have given evidence, a
19 Board's job--and I honestly believe this and don't agree to any
20 Board that tries to override or run the establishment because if
21 that's the case then the Government could revoke the statute and
22 rely on themselves. But the Board's job is to act like a Board.
23 In any business environment, bring the situations to the Board,
24 and they are supposed to rely on the technical ability of the
25 day-to-day operations of the institution to come and say these

1 are the technical areas, these are also what we're looking at
2 financially or otherwise, and put all this situation in front of
3 the Board Members and then they supposed to be able to be fit
4 and proper to say we will review it and make an independent
5 decision in the best interests of the public and the
6 Corporation, et cetera. That's how I see that Board is run in
7 terms of even if you move everyone off a board.

8 I would say in retrospect we would agree to leave on a
9 few more persons, but if you ask for me to explain in terms of
10 if you remove everyone that's the end of the institutional
11 knowledge, I cannot agree with that theoretically because there
12 is a continuum inside of the Public Service.

13 COMMISSIONER HICKINBOTTOM: Yes, thank you.

14 BY MR RAWAT:

15 Q. Take you back though, Premier, to what we are actually
16 discussing, which is a decision taken on the 25th of March 2019,
17 and it's very important if I could ask you to do that. If you
18 could assist what I'm asking your assistance for is on the
19 circumstances in which that decision was made, not how one might
20 make it today or what future changes made, but just looking at
21 the circumstances of that decision because it's out of that that
22 the criticisms arise.

23 Now, you've said that institutional knowledge is
24 preserved by the fact that you have ex officio Members. The ex
25 officio Members are appointed because of their position, so a

1 Permanent Secretary will have to sit on the Board if the statute
2 prescribes it. The Members, the ones that you've revoked, are
3 appointed having regard to the interests of the Corporation, but
4 you're saying that no loss of expertise arose because any new
5 Member would be able to read the Minutes that were preserved by
6 the ex officio Members.

7 A. I'm saying that in any well-oiled machine of the
8 Government, the ex officio is the linkage between any old Board
9 Members or new, or all new Board Members or some new some old
10 because they would have all the institutional knowledge of what
11 took place, and they are the ones now to furnish it to the new
12 Members.

13 Commissioner, let's say that you left one Member on,
14 which in this case I think one Member was left on. It would be
15 unreasonable to ask that one Member that continues to bring the
16 rest of the Board with new Members up to speed, even if there
17 was two Members. That has to be the job of the institution, to
18 bring the Board Members up to speed, to make them aware of any
19 statutes or any act that they might not have been aware of, to
20 make them aware of the position financially and otherwise of the
21 institution, and to make them aware of all the policies and
22 guidelines that run the institution. That's not a job for a
23 Board Member. That's a job for the institution.

24 Now, when persons get that information and with also
25 their expertise, they would be able now to make an informed

1 decision as a new Board Member or even some Board Members that
2 were there before because sometimes Board Members that were
3 there before never asked certain questions, and it's not until
4 the new Board Members come that they recognize that there were
5 other things that was happening or they should have been looking
6 into because somebody new came and started to be a little more
7 aggressive and asking questions and checking on certain things.

8 So, the bridge for institutional knowledge is the ex
9 officio officer. Yes, having some persons hang on was good
10 because they may be able to tell you, you know, I would keep an
11 eye on this or I would keep an eye on that, but it's not etched
12 in stone that having new Members will drop down any institution.

13 It is wise to carry over some experience. I agree
14 that, in retrospect, while two or three is good to do that, but
15 in the time when we came into office, I maintain that we needed
16 to re-energise these Boards, we needed to re-energise the
17 Territory. I mean we have some setbacks with COVID-19 but we
18 had the diversified economy, so it cannot be looked outside of
19 the context of that.

20 Q. Let's move on to criticism 2, please, Premier. Again,
21 that is something that appears in the Cabinet letter and the
22 response is the same. Now, the response there is something if
23 we start at page 4, please. If I summarise the criticism
24 because it is a criticism that has been--it reappears elsewhere
25 in relation to other Boards, and it has been addressed in the

1 same terms by other witnesses in their Warning Letters and by
2 yourself and by Cabinet. In short, it is that in terms of
3 recruitment for new Members of the Electricity Corporation,
4 which was done on the 7th of November 2019, that's when
5 appointments were made, that on the evidence available to the
6 COI, there wasn't, and I summarise for the reasons set out, an
7 independent and transparent process.

8 And so what's said is that what--the outcome was that
9 there was the process did not select--did not identify and
10 select the most suitable and qualified candidates for membership
11 of that corporation.

12 Now, that's in essence that. We see at 4 your
13 response. Now, as I said, it's the response of a number of
14 other witnesses, but it's essentially that what you rely on is
15 the use of the informal process, isn't it?

16 A. Yes, sir.

17 Q. Now, I just want to make clear that in relation to all
18 of these Boards, and this is Dr O'Neal-Morton's Affidavit, but
19 there is no evidence certainly in relation to the Corporation of
20 the process by which the appointments that led to the
21 appointments on 7th of November 2019, so what reliance is placed
22 on is the generality of that informal process, this is how it
23 works in the past.

24 Do you accept that?

25 A. For the last 71 years of our history with Legislative

1 Council, that is our--it has been until we have been shifting in
2 a new direction.

3 Q. Now, what you go on to, and this is at page 5, you go
4 on to address a point that was made that no conflict checks were
5 made, and the criticism is made is that the Handbook,
6 paragraph 6.8 in particular, was not followed. Now that, at
7 page 5 says that there's no basis for the assertion that the
8 steps contemplated in paragraph 6.8 of the Cabinet Handbook were
9 ignored. Cabinets are asked at the time they're
10 approached--candidates are asked at the time they're approached
11 to sustain their willingness to serve, if they might have any
12 Conflicts of Interest and officials are mindful of the need to
13 avoid such conflicts.

14 And essentially the point that's made some respects is
15 that you challenge any suggestion that there was no compliance.
16 But in the absence of any evidence to show that what conflict
17 checks were actually made and how this was assessed, how can you
18 properly say that--challenge the fact that there was no
19 compliance?

20 A. Well, first of all, when you say "Conflicts of
21 Interest" in this scenario, what do you mean?

22 Q. A conflict that might prevent someone from working on
23 or being a Member of a Board and acting in an open and
24 independent manner.

25 A. Which would mean that they would--the owner of

1 Electricity Corporation?

2 Q. No. Secondly, the second one is that a process--the
3 other point is that the process that is designed to identify
4 whether conflicts or potential conflicts might arise. Now, that
5 goes to a public perception. If, for example, some Minister
6 appoints someone who happens to be his or her brother, public
7 perception might be that that person has been appointed because
8 of a family relationship. The public will only know about that
9 once the appointment is done under your informal process.

10 There may be very good reason why that person is the
11 best man for the job, but it goes back to the fact that if you
12 don't have an open and transparent process, public perception
13 might tend to show otherwise.

14 But your question begs this, doesn't it, Premier, if
15 you can't even tell me what Conflicts of Interests are being
16 identified, how can you say, as you do in your response, that
17 they are asked if they might have any Conflicts of Interest?
18 What Conflicts of Interest were you referring to?

19 A. Well, you asked me, so I was asking you which one you
20 meant. I'm clear which one I know.

21 COMMISSIONER HICKINBOTTOM: Can we divide this up.

22 The initial question was based upon the premise that
23 there are no records of Conflicts of Interest, and that, I
24 think, is true. Nobody suggested that there were any records of
25 Conflicts of Interest.

1 THE WITNESS: As far as we know because the Cabinet
2 Handbook talk about immediate family.

3 COMMISSIONER HICKINBOTTOM: No, no. We will come on
4 to that.

5 The first question is: Are there any records of
6 Conflicts of Interest? Answer: No.

7 THE WITNESS: The informal process would only involve
8 the CVs and in terms of any other information that our persons
9 would know in the office when they're doing their checks,
10 whatever checks they do, but that process there is one of the
11 areas that we're improving upon, but--

12 COMMISSIONER HICKINBOTTOM: No, no, I understand that
13 things may have changed.

14 THE WITNESS: Right.

15 COMMISSIONER HICKINBOTTOM: But I think the answer to
16 the question is no, there is no records of Conflicts of
17 Interest, and I think the other part of your answer reflects the
18 other evidence that we've had, and that is the chances are that
19 the people considering the possible nominee, the Desk Office of
20 the Permanent Secretary of the Minister, the chances are that
21 they would probably know of any Conflict of Interest, any
22 relationship--

23 THE WITNESS: Because of the size of our society and
24 the cultural--background of how small we are.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 THE WITNESS: If someone puts their brother on it or
2 their wife or their children, that's a clear--that's a clear
3 conflict unless, as the Attorney rightfully says, that there is
4 a specific need in the country that that person has to fulfill.
5 So, that would be one that would be flagged right away.

6 COMMISSIONER HICKINBOTTOM: But in terms of the
7 process, it seems to me that the evidence we've heard from other
8 witnesses, your evidence is the same, there is no records of
9 conflict but the chances are that one of the people involved in
10 the process would know of any conflict in terms of relations and
11 so on?

12 THE WITNESS: Commissioner, that's correct because of
13 our size, most persons--

14 COMMISSIONER HICKINBOTTOM: I understand that.

15 Yes, Mr Rawat.

16 THE WITNESS: If one worked in a bigger country and we
17 have to evolve from, but that's the answer.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 BY MR RAWAT:

20 Q. If we move on into the next point that's made in your
21 response at page 5, which is a point that I canvassed with The
22 Honourable Malone. You say it's always lain within the
23 responsibility and power of the Governor to instigate a change
24 in the standard practice of Public Officers and advice given to
25 Ministers on the subject. And you then continue to say that

1 your appointment to Cabinet was not at the time of these
2 decisions March-April 2019 advised, although the decision we're
3 concerned with is actually 7th of November 2019, you were not
4 and had not been advised by the Attorney General, the Governor
5 or the Deputy Governor that a particular system should have been
6 pursued. So for example that, you know, there should be
7 interviews or appointments should be advertised.

8 So, just to understand, your position and the position
9 of Cabinet is that it lies--or it is within the responsibility
10 and power of the Governor to set out what procedures should be
11 followed in terms of recruitment to individual Statutory Boards.

12 COMMISSIONER HICKINBOTTOM: I'm sorry to break in.
13 Just to make sure that the question is a fair one.

14 What this says is that the newly appointed Cabinet was
15 not advised by the Attorney or the Governor or the Deputy
16 Governor, so this suggests that, I think--they're you're
17 words--that this appears to say that the Attorney or the
18 Governor or the Deputy Governor, could have advised in respect
19 of a particular process.

20 THE WITNESS: Commissioner, that's well said. That's
21 exactly what I meant.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 BY MR RAWAT:

24 Q. Just to clarify on the first part of that answer,
25 which is that it's within the responsibility of the power of the

1 Governor to instigate a change in the standard practice of
2 Public Officers. So, there seems to be two elements to the
3 answer: Firstly, that the advice element, and then secondly,
4 the response of the empower element. So, I just want to
5 understand, what you say, this sort of ambit of the Governor's
6 response to empower is that the Governor could come in and say
7 to Public Officers, in relation to this Statutory Board, there
8 has to be advertisements, there has to be an interview process,
9 it has to be done in this way, these are the criteria that must
10 be followed.

11 A. In conjunction with the Public Officers and the
12 Government of the day, from years ago, not just now, this is
13 something that should have been taken care of from years
14 ago--I'm not passing any blame, but I'm just saying we were
15 evolving in certain--certain procedures and processes didn't
16 evolve as yet. And I would say that in this, when the election
17 is held anywhere in the world, whether in the UK or in the BVI
18 or in anywhere in the world, it is up to the sitting Governor or
19 whoever is over the Public Service to prepare, hand over notes
20 because you could end up just like we're saying with Boards, you
21 could end up with totally new persons in Government that were
22 never there before.

23 The guiding light for them is going to be the hand
24 over notes. The guiding light for them is going to be brought
25 up to speed with whatever policy, whatever laws, whatever was

1 being worked on because no matter what Government goes in there
2 with whatever policy they want, no matter what programmes they
3 want, there are certain international obligations or certain
4 obligations that Government would have had that's a continuum
5 that they cannot break. So, they would have to be advised
6 accordingly.

7 So, the same would have to be for Boards. Now I see
8 that as a function that we're all going to participate in now,
9 we have had cooperation now with the Deputy Governor and it's
10 moving forward, and the Governor, with that and the
11 transformation because we are on one accord that this was going
12 to be done, but this could have been something that we had come
13 to agreement with from the last Governor but it's only in
14 May 2020 is when he started to raise concerns, and it was a
15 young Government that could have been brought up from 2019 and
16 let's work together to get it done, but now that is the road
17 that we are on.

18 BY MR RAWAT:

19 Q. Let's go back to the start of your answer, what we
20 should add to the text where you says it has always lain within
21 the responsibility and power of the Governor to instigate a
22 change in the standard practice of Public Officers and the
23 advice given to Ministers on the subject. We need to add the
24 words "it is always lain within the responsibility and power of
25 the Governor in conjunction with Public Officers and the

1 Ministers of the day to instigate a change in the standard
2 practice of Public Officers and the advice given to Ministers on
3 the subject".

4 A. I wouldn't know if it's in conjunction because under
5 the Constitution the Governor is in charge of Public Service.

6 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
7 Mr Rawat. I just want to get this clear in my mind.

8 In this paragraph, and as I say, these are your words.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: Although they're reflected
11 in identical words by other Ministers and Public Officials, but
12 in this paragraph it says: "It's always lain within the
13 responsibility and power of the Governor", and then it goes on,
14 "to instigate a change in the standard practice of Public
15 Officers".

16 Well, that concerns how the, what we would call the
17 Civil Service, your Public Officials are run as a Body. That
18 doesn't--that doesn't include the appointment by Ministers of
19 Statutory Board Members, it seems to me. But you then go on,
20 "and the advice given to Ministers on the subject."

21 So, am I right in thinking that this means that the
22 Government could have advised Ministers, could have told
23 Ministers the process to adopt, that he could have advised them
24 as to the process to adopt? Is that the correct--

25 THE WITNESS: Yes, he could advise Ministers and also

1 could have held seminars to help guide--

2 COMMISSIONER HICKINBOTTOM: Yes, so there could have
3 been advice and training and all that sort of stuff.

4 THE WITNESS: Yes, exactly.

5 COMMISSIONER HICKINBOTTOM: But what the Governor
6 couldn't do, as I understand it--but correct me if I'm wrong--he
7 couldn't mandate the process.

8 THE WITNESS: No, he couldn't mandate the process.

9 COMMISSIONER HICKINBOTTOM: Because that's a matter
10 for the Ministers.

11 THE WITNESS: The matter for the Ministers, the ones
12 they were guiding to do that.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 THE WITNESS: But chair, I want to bring context to
15 our text again. When you come in and you're elected--and this
16 is why we were trying to make sure in the future this doesn't be
17 a problem for anybody who is elected again, the--we are an
18 evolving community, and a lot of things will not be written, so
19 we relied on the institutional knowledge of those that were
20 there before and what was on the file, not that it was wrong in
21 depending on which lens you look through, but now we are
22 recognizing that you can't just ask someone to serve on a board.
23 You have to have the criterias written down, approved criterias
24 that this is what each Board Member and Chair will be doing, so
25 that is the paradigm shift that Government is now making so that

1 these concerns will not be so--

2 Again, might I also add that's why we're working with
3 the Cabinet Office include an Ethics section because that's
4 important. A Minister is so busy on a given day that to ask him
5 to keep an eye on all these things would be quite unfair to any
6 Minister, whether it's this Government or who. But having the
7 institutions in place to make sure that is done is what we as a
8 people are working on so we can make sure we avoid any
9 perception of negativity that may be arising how things were
10 done before because this is now on trial, our whole culture over
11 our last 71 years, so we were making adjustments, so I just want
12 to point that out as clarity.

13 COMMISSIONER HICKINBOTTOM: Thank you.

14 Mr Rawat.

15 BY MR RAWAT:

16 Q. Just for clarity, and the reason I use the word
17 "conjunction", Premier, is that is the first answer to me when I
18 put this to you.

19 A. Um-hmm.

20 Q. So that sentence that begins "it's always lain within
21 the responsibility." Is the responsibility and power to the
22 Governor alone, or is it responsibility and power that
23 incorporates Public Officers and Ministers of the day? Because
24 that's what you said earlier.

25 A. I said that, based on a constitutional way, it would

1 incorporate everyone into a partnership role.

2 Q. So, the Governor, in taking these steps, would have to
3 involve Public Officers and the Ministers of the day?

4 A. For sure, you're correct.

5 Q. If we move on criticism 3, which is at your page 6,
6 now that relates to what happened in the next stage to the
7 Corporation, so having revoked on the 29th of April, which I
8 think was a number of Members, there was one person left,
9 Mr Skelton, who then sadly died, and then there was a process
10 put forward so that, on the 18th of May, Violet de Castro was
11 recommended to Cabinet, and then appointed on the 3rd of June
12 effective from 25th of May.

13 A. Right.

14 Q. And that was to take over Mr Skelton's role on the
15 Cabinet.

16 A. Right.

17 Q. Now, the same criticism was made in relation to that
18 process of appointment, and I think what you simply did was to
19 rely on the earlier answer that had been given, which we'd just
20 discussed; is that right?

21 A. Except for the first part.

22 Q. Yes. Well, the first part, I think, may relate to
23 criticism 4. If you look at the response--

24 A. Yes, criticism 4.

25 Q. Criticism 4 proceeded on the basis that you had a

1 family relationship with Ms Violet de Castro.

2 A. Yes.

3 Q. But you said that there is no such family
4 relationship.

5 A. Yes, because the criticism said that Violet de Castro
6 was my aunt.

7 Q. Yep.

8 A. And they put her on, knowing that she was my aunt, but
9 that was not so.

10 Q. Well, I think what it strictly said was that you had a
11 family relationship, and you failed to declare it, not that you
12 appointed her, but you failed to declare a potential conflict of
13 interest.

14 A. Criticism 4?

15 Q. Yes.

16 A. It said--if I may, it says it is understood that
17 Ms Violet de Castro is your aunt.

18 Q. Yes.

19 A. One in proposing Ms Violet and in her subsequent
20 appointment to the BVI Electricity Corporation, you failed
21 formally to declare your association with her and failed to
22 bring to the attention of the Cabinet a potential conflict of
23 interest.

24 So, if I may clear myself, one, she's not my aunt.
25 And two, the question would have been couple-fold if she was my

1 aunt. The first--and this shows that mistakes can be made, but
2 that doesn't question anyone's integrity. That is honest
3 mistake having Violet de Castro in a public document as my aunt.

4 Now, what we're looking at is the Declaration--the
5 Cabinet Handbook, if I may, because this has come up for
6 question and possible criticism, I was a young Minister in 2007
7 that, when we were in Government--and that was at the time the
8 Constitution came into being. I happened to hop and hobbled my
9 way in because I was shot in a bank robbery, so I actually
10 hobbled my way in as a Minister, and we were able to then work
11 with the then-Cabinet Secretary to come up with a Cabinet
12 Handbook. I was younger then, but I was involved in the Cabinet
13 Handbook's makeup.

14 And when the Cabinet Handbook was done, one of the
15 areas of concern or discussion was what do we mean by "immediate
16 family" and what do we mean by "close relative"? Because it was
17 a heavy discussion--most of the Ministers are now deceased, but
18 it was a heavy discussion over what is the definition of these?
19 Because we knew then what it is we are answering for now. That
20 is such a small community based on our makeup and how the BVI
21 has evolved from 1834 right up to now where it's one set of
22 people that were landed here. We were concerned, so we--at that
23 time it was known that it would not stretch beyond your wife,
24 your daughter, or your sisters, mother, father. That was my
25 understanding back then.

1 So, coming into the Government now years later and
2 hearing some of the definition, it definitely differs from that
3 spirit of what that Cabinet Handbook had brought forward because
4 we worked out of the original Cabinet Handbook, and I was part
5 of the then-Cabinet that passed the Handbook.

6 So, I did not see, even if she was my aunt, based on
7 my knowledge of being part of putting the Handbook together and
8 the discussions that ensued as a result would have seemed that,
9 given how our culture is as a big issue because that doesn't
10 mean that she's a close relative, although by blood she's your
11 aunt. I know that may sound different to someone coming through
12 a different lens, but that was the thinking back then when he
13 passed the Handbook, but she was not my aunt.

14 And also the issue is the normal course of action
15 here, Mr Commissioner, is that persons would leave the room.
16 But again when we did the Handbook in 2007, a question came up
17 that is arising now: How does the Premier leave the room?
18 Because, under the Cabinet Handbook and the Constitution,
19 Cabinet needs a quorum to function and not only the need the
20 quorum to function, one of the quorum of Ministers must be the
21 Premier. But is also needs compulsory to function the Governor
22 by post, Attorney General by post, and the Premier. Even if you
23 have a quorum and the Premier is not part of that quorum, they
24 cannot proceed.

25 So that, again, was a concern of can the Premier by

1 law, one of the anomalies inside the Constitution leave because
2 the only two times a Deputy Premier can act as Premier is if the
3 Premier is sick or he's out of the country. Those were very
4 deep discussions in 2007, and I see them coming forward again
5 now where it was known then, well, once it's not your wife or
6 children or your sisters or your father or your mother or your
7 mother-in-law, you would state--or father-in-law. So, those
8 were precedent set back then for me coming forward and I brought
9 forward.

10 Now if these are going to be interpreted differently,
11 then again we would have to have some clear distinction on
12 these, given the nomenclature, as a Territory, everyone knows
13 each other and everyone is related, and we don't know until the
14 decision is finished that someone comes and say that's your
15 family. That's how our country is.

16 So, I just needed to put that piece of evidence inside
17 there as part of the evidence there with that, and just to
18 confirm she was not my aunt, and the reason for all the other
19 actions as stated.

20 COMMISSIONER HICKINBOTTOM: The fact of your answer
21 doesn't end the criticism because that's the premise upon which
22 it is based. But do you accept that somebody in the Territory
23 might perceive that there is a conflict of interest, that if a
24 Minister were to be fully involved in the appointment of an aunt
25 or an uncle to one of these posts?

1 THE WITNESS: If you go to aunt and uncle, I would
2 stretch it and say "yes" because I was also part of the
3 discussion.

4 But the criticism, with due respect, Commissioner,
5 ends here, but the public document went out--that's one of my
6 criticisms--Violet de Castro is my aunt. So, what I'm saying is
7 that certain perception when the hit the public are irrevocable
8 or irreplaceable because persons who don't know this will only
9 hear this when I give evidence, but there were already persons
10 in the public domain that say I put my aunt there, and then--you
11 know, whatever reasons that were stated. So, sometimes these
12 things do political damage, but we are here for the law, but
13 legal issue is not my aunt, and I didn't see anything that was
14 violated.

15 What I do know is what I put there. She has a long,
16 distinguished career in the Public Service specializing in
17 accounting and administration, and is imminently qualified to
18 fulfill the role to which she was appointed. She worked at not
19 only in this Government, she was retired already but in the last
20 Government and other Governments, and is known for her
21 professionalism.

22 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

23 BY MR RAWAT:

24 Q. Just to be clear, Premier, you said that this is a
25 public document. It isn't. The Warning Letter was sent to you

1 with a section at the end which explains the confidentiality of
2 the process.

3 A. Right.

4 Q. So, your written response doesn't become part of the
5 public record until we go through it.

6 A. Exactly.

7 Q. And in fairness to you, the reason for going through
8 it is because you've made clear in your response that there is
9 no family relationship.

10 A. Right.

11 Q. That's why we have done that.

12 If we move on to the next page--

13 A. If I may, it's not a public document in terms of this
14 paper out, but remember there were only sections of it that
15 are--that you read, and you didn't read that, but the other
16 parts that are missing in controversial light or read, but that
17 part was not an accurate bit of information that was given out
18 that I needed to say publicly, so now it's out public, so I had
19 to explain what I had to say because it was part of the
20 criticism that was beyond--potential criticism that was laid on
21 me, so I just need to make that clear for the record.

22 Q. You have done so, Premier.

23 A. Thank you so much.

24 Q. The point I'm trying to--the reason I'm trying to take
25 things shortly is first because the entirety of the written

1 response will be considered by the Commissioner.

2 A. Okay.

3 Q. What I want to do is, where I can and with your
4 assistance, is add some detail to some of that written response.

5 A. Okay.

6 Q. Also because we appreciate how busy you are, and we do
7 need to get through this.

8 A. No problem.

9 Q. Let's to page 7, please.

10 A. Page 7? Right here.

11 Q. So, now we're right on to the criticisms that arise in
12 relation to the BVI Tourist Board.

13 Now, we have looked at the background to this already,
14 and so if I deal with it this way: Criticisms that are made to
15 you in relation to the Board, the first one is also one that is
16 made to Cabinet, and the response is the same, so I will just
17 deal with both through you.

18 That criticism--and we've looked at all of this
19 because we went--the paper that it's based on is that memorandum
20 that we were looking at from the 27th of March, and we've looked
21 at the decision.

22 Now, what you've set out there, and I think we've--

23 MR RAWAT: Commissioner, unless you tell me otherwise,
24 I think we have canvassed this in detail with the Premier, and
25 he set out his response there, but when we went through the

1 memorandum itself, the Premier gave an explanation as to what
2 the--or his view of what the Attorney General did advise, and
3 his concerns over that advice.

4 COMMISSIONER HICKINBOTTOM: I mean, this is Cabinet
5 memo 103/2019, which we have been through, Premier. The
6 criticisms which are at the bottom of page 7, there are four
7 them, and I think we've dealt with all of them. That is the
8 reasons for the immediate revocation of the membership of the
9 Tourist Board and the advice that the Attorney General; we have
10 certainly been through that. The revocation of Members failed
11 to provide adequately for the independent expertise and
12 oversight of the Board; you've dealt with that in your evidence.
13 The policy of revoking the membership of Boards with every new
14 administration again fails adequately to provide for independent
15 expertise and oversight of such Boards; again, I think you've
16 dealt with that. And the decision to replace all Board Members
17 tailed to take into account properly the legal advice. Now,
18 we've certainly dealt with those.

19 Is there anything you want to add to that? We've got
20 your written response.

21 THE WITNESS: Right.

22 COMMISSIONER HICKINBOTTOM: In a standard form--I
23 don't mean that pejoratively, but in the consistent form and
24 consistent with your evidence.

25 THE WITNESS: No, as Attorney Rawat told us we could

1 speed along with that one because the answer would be the same,
2 so...

3 COMMISSIONER HICKINBOTTOM: Yes.

4 I assume the answers to the same questions arise in
5 relation to different Boards.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: Will be consistent,
8 Premier.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: Thank you, Premier.

11 BY MR RAWAT:

12 Q. That's helpful, Premier.

13 If we look now at criticism 2 under the BVI Tourist
14 Board, and if you, first of all, look at the response that you
15 gave--can I, before we do that, Commissioner, if you'll note, if
16 you go down to page 9 you will see that there's a reference
17 there to Bevis Sylvester.

18 A. Yes.

19 Q. That is a typographical error introduced into the
20 written response. It doesn't appear actually in the Warning
21 Letter, and so I think from the words beginning "you have stated
22 to" to the end of that just needs to be struck through.

23 A. You mean when the criticism said that you have stated
24 evidence?

25 Q. Yes, because that is actually a different criticism,

1 which I'll come up to in a moment.

2 A. Yeah. That one was given--that was given under the
3 BVI Tourist Board.

4 Q. Yeah, but it's been typed out twice by someone.

5 A. No. You mean that be typed by you?

6 Q. No, it isn't, because it doesn't appear in the Warning
7 Letter.

8 A. So, what do you mean in terms of typing out--I mean
9 twice, oh, yeah, that's--

10 Q. I'll explain it--

11 (Overlapping speakers.)

12 Q. --when we get to it.

13 A. Yes, okay.

14 Q. So, can we deal with this one quickly, again--

15 A. Yeah.

16 Q. --because this one--

17 A. Yes.

18 Q. --is about--

19 A. That would be on page 7 now?

20 Q. We're on page 9.

21 A. Nine, okay. All right.

22 Q. Premier, so this now what happens is obviously in
23 March 2019--

24 A. Um-hmm.

25 Q. --you revoke--or Cabinet revokes the membership of the

1 BVI Tourist Board. What then happens is that, on the 26th of
2 July 2019--

3 A. Um-hmm.

4 Q. --a new Board is appointed, and the points set out at
5 criticism 2 are the same points, in broad terms, as were--and
6 this is about the process that was applied. Again, we have no
7 evidence of this particular process, but what you have said is
8 reference is made to the Premier's earlier response, so that we
9 canvassed already. We need to just, mostly for the
10 Commissioner's note, look at the Cabinet letter, on page 9 of
11 the Cabinet letter.

12 COMMISSIONER HICKINBOTTOM: Which page?

13 MR RAWAT: Page 9 of the Cabinet letter.

14 COMMISSIONER HICKINBOTTOM: Right. Sorry. Yes.

15 MR RAWAT:

16 Q. We see the criticism set out again there, but there is
17 a different answer in that, if we go to page 10, that's where we
18 see reference is made to the Attorney General's earlier
19 responses; and right at the beginning, when the Premier started
20 giving his evidence, that's the evidence that he canvass--we
21 canvassed with him at that point.

22 COMMISSIONER HICKINBOTTOM: Yes. We've done that,
23 yes.

24 MR RAWAT: So we don't need to deal with that.

25 BY MR RAWAT:

1 Q. Let's go back to your letter, please, and what should
2 be--again, it's a typo at page 10; it should be criticism 3.

3 A. You mean, it says "to continue"?

4 Q. The one that refers to Mr Sylvester.

5 A. Um-hmm.

6 Q. So...

7 A. That's page 10?

8 Q. Yes. Do you have it, Premier?

9 A. Yes, sir.

10 Q. So, this is a criticism that rises--

11 A. Um-hum.

12 Q. --in response to your--you alone rather than Cabinet.

13 A. Um-hmm.

14 Q. And it's--again it's a conflict-of-interest one. So,
15 the point is made that you referred to Mr Sylvester when you
16 gave evidence on the 18th of May 2021, that Mr Sylvester, you
17 described him as a good friend; and, therefore, what's put to
18 you as a potential criticism is again there was a failure to
19 declare a potential conflict of interest, given that you are
20 appointing an individual to a board that is under your
21 portfolio. So, it's the same--in the same terms as we looked at
22 before.

23 And your response is that there has been a
24 misunderstanding of your use of the phrase "good friend", that
25 you are using that in the same way as "everyone is my good

1 friend", so you're described as a leading politician and that
2 you would see everyone as your good friend. But you--what it
3 said is that you were not indicating that you had any special
4 relationship with Mr Sylvester that would give rise to an
5 obligation to declare an association with him.

6 So just--so that we're clear for the record, Premier,
7 and, you know, you set out--to summarise it--but you set out
8 some additional detail:

9 One is that, when you were an Assistant Principal,
10 Mr Sylvester was a pupil at school, but you did not teach him.

11 Two is that his family are well-known and respected in
12 the community, and you have attended his father's funeral, but
13 also the Leader of the Opposition did the same thing.

14 Three, that you only very infrequently meet
15 Mr Sylvester which is invariably at public functions.

16 And then you point to the fact that he has established
17 himself as a Regional Manager for Delta Petroleum over many
18 years, and though he has--that has brought him a certain
19 reputation.

20 Now--and then you point out, finally, that the Cabinet
21 Handbook does not mention friends as the sort of relationship
22 that would need--give rise to an obligation to declare a
23 conflict.

24 So, again, just so that we bring it within that
25 context, what you are not then is you don't have a close

1 personal association with Mr Sylvester.

2 A. Well, Mr. Rawat, I thank you for that long prelude
3 before we got to the end path, because I would understand that
4 the public could understand what all of that was for. But let
5 me be very clear. The last time that I was here, Commissioner,
6 you will remember that I said everyone I referred to as "my good
7 friend". If I even write in a letter or put in a text, I always
8 tell them "my good friend".

9 So, this has been taken so far out of context that
10 it's difficult for me to even elaborate on it because I do not
11 live a life having enemies. If they want to hold me as one,
12 that's up to them. I consider everyone as my good friend. I
13 stated that when I sat here and if the records of the COI would
14 bear me out, it would show that I stated, when I came here the
15 last time, that I said "everyone is my good friend". I even
16 started by saying the in the earlies--before I even was asked,
17 "Mr. Rawat, my good friend, how are you?" I remember that.

18 COMMISSIONER HICKINBOTTOM: But that's what your
19 response is.

20 THE WITNESS: Yes, but that's what my response is.
21 But what I'm saying is that it was one of the--what you call it
22 again?--the potential criticism that was put in the paper to
23 take out of context what I said and just attach it to Bevis
24 Sylvester, and why was it attached to him and not anybody else?
25 Because anyone else on that could have been my good friend,

1 also, and they are.

2 And it goes back to state that that was taken out of
3 context. I do not know how it was there. I know, outside the
4 legal realm how it got there and what their attempt is, but at
5 the same time, too, he has no other special place in my heart
6 for him on the Board as my good friend and any other one of them
7 that's there is my good friend. It is something that I use
8 wherever I go. I never thought that I had to be legally--come
9 in to sit down to explain that, but that is something culturally
10 that I do.

11 But I'll say this, too. That goes back to what I said
12 earlier. Mr Sylvester is the name that has been used. What we
13 could have also used Ms Kenisha Sprauve. She is the Chairperson
14 of the Tourist Board, and she's also, because of that, on the
15 Airports Authority Board, and also on the Ports Board, and I
16 could have used the Chairman of the BVI Ports Authority, who is
17 now on the Airports Board and also on the Ports Board because
18 that is the triangle that I was talking about.

19 So, it was not a matter of Mr Bevis Sylvester going on
20 these Boards for any good friend of close relationship has been
21 purported here and in many other quarters because today I come
22 and speak truth to power and the power in the truth. The Lord
23 above in Heaven know that the reason that they were on these
24 different Boards was because of our policy that I was
25 explaining.

1 COMMISSIONER HICKINBOTTOM: No, no, I understand that.
2 Yes, thank you.

3 BY MR RAWAT:

4 Q. Premier, the point needs making again, the Warning
5 Letter is not a public document.

6 A. No, but you read a whole paragraph of Bevis Sylvester.
7 I'm in this 22 years, Mr Rawat. I understand what you did.

8 Q. What I read--

9 A. So, I had to give you the context--the text of the
10 context.

11 Q. You have indeed done that.

12 A. Um-hmm.

13 Q. What I read was actually a summary of your answer.

14 A. Right.

15 Q. But the point--

16 A. That's not public, either.

17 Q. No. But the point for doing--for putting potential
18 criticisms to you--

19 A. Um-hmm.

20 Q. --is because they arise from the evidence.

21 A. Um-hmm.

22 Q. The potential criticisms, given that the Commission is
23 investigating Statutory Boards, and one of the issues that has
24 come up and evidence has been gathered, is who is appointed to
25 where.

1 Now, in the context of that, on day 6, the 18th of
2 May, you came along and you described Mr Sylvester as a good
3 friend. Now, you've put that into your context.

4 A. No, no, no. No, Mr Rawat.

5 Q. No--

6 A. No, Mr Rawat. No, no, no.

7 Q. Let me finish my point, and you can respond, Premier.

8 The point about that is that all that does is give
9 rise on the evidence to potential criticism which has properly
10 to be put to you in fairness and which you have properly been
11 able to answer.

12 A. I thank you, Mr Rawat, but I put other person and a
13 good friend, and it didn't come up in the criticism.

14 Q. Well--

15 A. So, everyone is my good friend. So, any name on any
16 one of those come have come up. Why was it just Mr Bevis
17 Sylvester? That is a question that I have to ask but I know the
18 answer. But at the same time, too, as we say we have dispose of
19 it, but I had to bring some context to the text that was raised.
20 I'm just saying that, and please forgive my way. That's why I
21 didn't want to speak loud, you know, as I might be perceived
22 wrong.

23 COMMISSIONER HICKINBOTTOM: But you've responded to
24 that--

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: --potential criticism.

2 THE WITNESS: I thank you.

3 COMMISSIONER HICKINBOTTOM: And I understand the
4 response.

5 THE WITNESS: Thank you.

6 BY MR RAWAT:

7 Q. Could you just help us, though, with--I mean, just to
8 return to Mr Sylvester, and again, it's important to give it
9 context, so you've said you--he's not someone you hold close in
10 your heart, but you've also never been involved in any kind of
11 commercial transaction with Mr Sylvester at all.

12 A. In terms of finalising transactions?

13 Q. No, in terms of any kind of business, any kind of
14 activity of any sort with Mr Sylvester. He--your position is
15 he's someone you just have always met infrequently at public
16 functions.

17 A. Mr Sylvester's relationship and mine is no different
18 than most of the persons in the country. He's a good friend,
19 and all of them are my good friends. I maintain that. I'm not
20 going to run from--all of them are good friends in the context
21 of what I mean in our culture.

22 Q. I appreciate your--

23 A. So I want (unclear)--

24 (Overlapping speakers.)

25 Q. --evidence is that everyone who gets appointed to

1 every Board or indeed removed from it under your administration
2 remains your good friend.

3 A. With God's help.

4 Q. But, just to clarify in relation to Mr Sylvester, so
5 we're totally clear, you said there's no personal association,
6 but there was never at any point--you've never had any other
7 kind of involvement with Mr Sylvester at any point in the past
8 at all.

9 A. Well, I would never answer that out right like that
10 because of this--this country, you never know what all you had
11 with anyone else because it's small, so I don't want to say
12 "yes" or "no", and if you said yes, then you come back and tell
13 me, "Well, what about this?"

14 So I know right now I don't recall, so I do not want
15 to answer that outright whether it was Sylvester, whether it was
16 Violet de Castro, whether it was anybody. I don't believe in
17 tying myself like that; I'll have to make sure, because our very
18 small community and politics for 22 years, you never know, and I
19 don't want to entrap myself like that.

20 Q. If turn up part 2, please, to 1273.

21 A. At.

22 Q. So I think the bundle we've been looking at mostly is
23 Part 3.

24 A. What is the number?

25 Q. Keep Part 3 open, just on the table.

1 A. Okay.

2 Q. Just grab Part 2 quickly.

3 COMMISSIONER HICKINBOTTOM: 1273.

4 MR RAWAT: Yes, please.

5 THE WITNESS: Um-hmm.

6 BY MR RAWAT:

7 Q. If you--1273, Premier, if you're there, is a page from
8 a table prepared by Dr Carolyn O'Neal-Morton, and it is--sets
9 out the composition and--of the various Boards under the
10 Premier's Office portfolio and the change in composition over
11 the past few years.

12 Now, one of those who is identified as on the BVI
13 Tourist Board in the past, and it's--and who had his appointment
14 revoked on the 5th of April 2019, is a Mr Mike Rowe.

15 Now, when one looks at the actual decision, of
16 Mr Rowe, and that's at Part 3, page 2937 and -38, Mr Rowe
17 doesn't appear in the list of people who were revoked, and we
18 can find no other record suggesting that you--that he was
19 revoked at the time.

20 To your recollection, was Mr Rowe a Member of the BVI
21 Tourist Board?

22 A. I only know that I've seen it here because all policy
23 were blanket, so, when the paper was prepared, I wasn't really
24 involved in that part. I didn't know who all--I didn't even get
25 involved in that until afterwards, so I can't tell you that I

1 knew before, but whoever was on, it was a--it was just a blanket
2 of how we are going to reconstitute.

3 Q. Well, I won't take that any further.

4 MR RAWAT: Commissioner, if I could just explain,
5 that--when Dr O'Neal-Morton attended on Thursday, during the
6 course of her evidence, there were potential discrepancies
7 identified in these schedules, and they're schedules in both of
8 her Affidavits. Dr O'Neal-Morton has provided amended
9 schedules, but those still contain errors. This is one that I
10 hope the Premier might be able to clarify. I won't explore the
11 others with him, but I think it's something we might need to go
12 back to Dr O'Neal-Morton about.

13 COMMISSIONER HICKINBOTTOM: Okay, thank you.

14 BY MR RAWAT:

15 Q. Premier, let's move on to another Board, and this is
16 now the Airports Authority, which is at your page 12.

17 MR RAWAT: Again, if I could just have a moment,
18 Commissioner.

19 BY MR RAWAT:

20 Q. Now, the first criticism is one, Premier, that was
21 also put to Cabinet, and the response there is the same in your
22 written response as well as in Cabinet, and it goes to the
23 circumstances in which there were reappointments to the Airports
24 Board. So, what happened was that the previous Board had eight
25 Members, and they all resigned, and Dr O'Neal-Morton explained

1 that.

2 And the potential criticism that's made, which is one
3 that that has been set out before, is again to the process.
4 Again, we have no evidence--but the appointments were made on
5 the 23rd of May 2019--we have no evidence as to specifics of
6 that process. But--and what's pointed out again is that, as
7 we've said, for various reasons, a failure to have a process
8 that identified the most suitable and qualified candidates, and
9 your response, we see at bottom of page 12 and Cabinet's
10 response, is to rely on the earlier responses, what we've gone
11 through.

12 A. Yes, sir.

13 Q. Thank you.

14 If you go to 13, criticism 2, which is also made to
15 Cabinet and which was--gets the same answer as you give, is the
16 appointment of Nathaniel Isaac.

17 Now, Mr Isaac had been appointed, as we'll see, to the
18 Ports Authority, and as you've explained, there was a decision
19 that what should happen is that there should be cross
20 representation of the Airports Authority, the Tourist Board and
21 the Ports Authority on different Boards, and so Mr Isaac
22 appeared to--sorry, give me a moment, please.

23 (Pause.)

24 Q. What's said is that it was--it appears from the
25 evidence that Mr Isaac was appointed to the Airports Board

1 retroactively, and the fact that, pending his appointment, he
2 was acting as a Board Member was--and therefore making decisions
3 without being properly appointed--was not--was inconsistent with
4 good governance, and you said that there was an oversight that
5 meant he was left off the list of recommended candidates, but
6 his status was well-known to the Board, and there's no evidence
7 that he voted or exerted influence inappropriately over the
8 Board and then his appointment was made on 7th of January 2021.

9 Could I just ask you just--to just assist, though,
10 with some of the details around Mr Isaac's appointment to the
11 Board. If you go to 3064.

12 A. 3064?

13 Q. In Part 3, please. You can Part 2 away, Premier.

14 A. Okay.

15 Q. This is an e-mail. If we look at the bottom, it's an
16 e-mail from--dated the 6th of May 2019--from your then Permanent
17 Secretary to Mr Isaac, and it informs him that The Honourable
18 Premier has nominated him to be a Member of the BVI Ports
19 Authority Board, sets out its function, provides a copy of the
20 Act, and then at bottom says: "Please indicate your acceptance
21 of this invitation to serve as Chairman of the BVI Ports
22 Authority Board and provide us a copy of your résumé so we can
23 complete the approval process".

24 What it doesn't say is can you tell us if there's any
25 conflict of interest that may prevent you serving on the Board.

1 But what we see nonetheless at the top, and the date on the top
2 is the 5th--is the 8th of May 2019--is that Mr Isaac then
3 responds and he provides the--he confirms that he's essentially
4 happy to serve and provides his résumé.

5 If you go over to 3066, please, Premier, you see there
6 that, in terms of background and we see it at the summary, the
7 professional summary--is that Mr Isaac is a successful
8 professional in landscaping and pool maintenance with over 30
9 years' experience. He has a strong background in agriculture as
10 an arborist, gardening, landscaping, and pool maintenance
11 especially in the area of quantity control and standards,
12 research and training.

13 If you go to 2794, in the same bundle, please...

14 COMMISSIONER HICKINBOTTOM: What number is that?

15 2794.

16 MR RAWAT: 2794, please.

17 COMMISSIONER HICKINBOTTOM: Thank you.

18 BY MR RAWAT:

19 Q. This is a minute from a Cabinet meeting on the 15th of
20 May 2019, and if you go to 2801, you'll see there at the bottom,
21 that's the decision. We see the decision of Cabinet is to
22 appoint Mr Isaac as Chairman for a period of three years,
23 effective from the 16th of May 2019. So, his appointment would
24 take him through to 2022.

25 If you go, please, to 3082, this is again a minute

1 from a Cabinet Meeting on the 6th of May 2020. If you go to
2 3084, you'll see that in relation to a memorandum brought to
3 Cabinet by yourself, Cabinet accepted the resignation of
4 Mr Isaac as Chairman of the Ports Authority and then decided to
5 appoint Mr Kelvin Hodge as the new Chairman for a period of
6 three years, with effect from 13th of May 2020.

7 Now, we know that Mr Hodge--and I can take you to the
8 page if you need it--was already a Member of the Airports Board.

9 If you go to 3004.

10 A. 30--

11 Q. 004, please.

12 A. Um-hmm.

13 Q. This is a Cabinet Extract. It's dated the 13th of
14 May 2021, but it confirms, as we can see, that, by reference to
15 the expedited extract and the date that it went to Cabinet, that
16 on the 7th of January--

17 A. Um-hmm.

18 Q. --cabinet approved the membership of Mr Isaac as a
19 Board Member to the BVI Airports Authority Board, with effect
20 from the 1st of July 2020 for a period of three years. It was
21 backdated by a number of months.

22 Now, the two points that arise--and I take you back to
23 your response at page 13, is firstly that there was never any
24 real proper appointment of Mr Isaac to the Airports Board, at
25 least until the 7th of January.

1 And second, if we look at your response, the basis of
2 the response was that the need for Mr Isaac to be on the
3 Airports Board was that he was Chairman of the Ports Authority.
4 But when you came to regularise his status, he was no longer the
5 Chair. Kelvin Hodge was the Chair, and he was already on the
6 Airports Board.

7 So, what was the need to allow Mr Isaac to continue on
8 the Airports Authority in circumstances where he was no longer
9 on the Ports Authority?

10 A. Thank you so much, Mr Rawat.

11 The--and the question will be--with due respect, what
12 was the reason not? Because the--he would have been serving on
13 the Airports Board, or should have been, because he was the head
14 of the Ports. So, there were some anomalies that were
15 recognised so the makeup of the Board would remain the same just
16 mean a lot of person from the Board would have been now
17 the--that's already on the Airports Board would not have to be
18 added because they were already on the BVI Ports Authority; that
19 they were already on the Airport, so they would now be the head
20 of BVI Port Authority.

21 So, it was anomaly recognized by the technical persons
22 and by the Board to--that would have needed to be regularised.
23 So that is something that--coming from me alone, it was
24 something that was brought to our attention. So, that's how I
25 remember that, now that you're stating that, so that was

1 regularised.

2 Q. Your response gives the justification was that the
3 need--that the impetus was to ensure that Chairmen of the
4 Various Boards sat as Members of each other's Boards.

5 A. Right. So he should have been on the Board from on
6 the onset.

7 Q. But--

8 A. But remember now his position, because I also said
9 earlier in my testimony that we couldn't put them on by post.
10 They were on by person because the Attorney General said that we
11 would have to change laws and different things to put them on by
12 position. So, he was never on the other Boards by post,
13 although it was our understanding, until we got the amendments
14 to the Act and different things done, so they were all on,
15 knowing that the Chairman, yes, and that they are on other
16 Boards, but by law we couldn't put a post on none of them saying
17 Chairman of the BVI Airports.

18 COMMISSIONER HICKINBOTTOM: I absolutely understand
19 that--

20 THE WITNESS: Yeah.

21 COMMISSIONER HICKINBOTTOM: --Premier. But on the 7th
22 of January 2021--

23 THE WITNESS: Um-hmm.

24 COMMISSIONER HICKINBOTTOM: --when Mr Isaac was
25 appointed to the Airports Authority, his appointment was made on

1 the basis that he was Chairman of the Port Authority, but he
2 wasn't.

3 THE WITNESS: No, no. That day when he went on, but
4 he was there from before. There was an anomaly that happened--I
5 would have the source of records. I remember there was an
6 anomaly that happened. He should have been there from the
7 original appointment of everything.

8 COMMISSIONER HICKINBOTTOM: Fine. So, he was
9 accidentally not appointed.

10 THE WITNESS: Exactly.

11 COMMISSIONER HICKINBOTTOM: But when he was appointed,
12 why was he appointed?

13 THE WITNESS: As a Member.

14 COMMISSIONER HICKINBOTTOM: But...

15 THE WITNESS: There was an error somewhere there, and
16 I don't want to misquote from it, but I know that there was an
17 error because it was an anomaly that we were regularising.

18 COMMISSIONER HICKINBOTTOM: But when you were
19 regularising it on the 7th of January 2021--

20 THE WITNESS: Right.

21 COMMISSIONER HICKINBOTTOM: --that's when he was
22 appointed.

23 THE WITNESS: Right.

24 COMMISSIONER HICKINBOTTOM: At that point he was not
25 the Chairman of the Port Authority.

1 THE WITNESS: He had resigned suddenly, yes.

2 COMMISSIONER HICKINBOTTOM: So, that wasn't the reason
3 because that was a policy, this crossover.

4 THE WITNESS: Right.

5 COMMISSIONER HICKINBOTTOM: What was the reason?

6 THE WITNESS: As a Member. There was--has to be as a
7 Member now.

8 COMMISSIONER HICKINBOTTOM: But why? Why was he--

9 THE WITNESS: To meet the Constitution of the number
10 of persons completed.

11 COMMISSIONER HICKINBOTTOM: So I understand, but why
12 was he appointed on the 7th of January? What were the reasons
13 for his appointment?

14 THE WITNESS: There is something that we need to get
15 out of the Ministry because there was irregularity with him not
16 being officially appointed to Cabinet prior. There was
17 irregularity that I know that the files can bear it out. I
18 don't remember it offhand, but I know they can.

19 COMMISSIONER HICKINBOTTOM: Well, that's included in
20 your answer, then.

21 THE WITNESS: I know.

22 COMMISSIONER HICKINBOTTOM: But on the 7th of January,
23 I'm still struggling to know why he was appointed. He wasn't
24 appointed as the Port Authority Chairman.

25 THE WITNESS: Um-hmm.

1 COMMISSIONER HICKINBOTTOM: So why was he appointed?

2 THE WITNESS: Because he would have already helped to
3 make up the composition of the Board. Whether he was
4 there--well, he couldn't be there by post because it wasn't a
5 legal term. It was just a misunderstanding. So as a person, he
6 would have been the next person on the Board.

7 COMMISSIONER HICKINBOTTOM: So--but he was sitting
8 with the Board when they met.

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: Under the mistaken
11 understanding that he was a Member.

12 THE WITNESS: Right.

13 COMMISSIONER HICKINBOTTOM: But he wasn't a Member.
14 So, when it came to his appointment, what were you--I don't
15 understand what you were regularising.

16 THE WITNESS: No, he was sitting on the Board
17 from--the Board was formed originally, as you can see on the
18 date, when the Board originally formed, so that would have fall
19 along the lines of at that time when he should have been the
20 Chairman of one Board and the others.

21 COMMISSIONER HICKINBOTTOM: I understand that.

22 THE WITNESS: That is clear.

23 COMMISSIONER HICKINBOTTOM: So, if he had been
24 appointed on the 23rd of May 2019, I fully understand that.

25 THE WITNESS: Right.

1 COMMISSIONER HICKINBOTTOM: But he wasn't.

2 THE WITNESS: But he wasn't appointed at that time.

3 So, when the time came now, this was already in
4 training for it because he did--what?--the date he resigned was
5 what again? The date he resigned from the Ports--resignation
6 that he resigned. The date is important. I will find that in
7 the bundle.

8 COMMISSIONER HICKINBOTTOM: I think it's on 3084.

9 THE WITNESS: 3084.

10 COMMISSIONER HICKINBOTTOM: And that's the minutes of
11 the 6th of May 2020.

12 THE WITNESS: Right.

13 It doesn't say the date, but--

14 COMMISSIONER HICKINBOTTOM: Top of the note, which was
15 on 3082, it's the 6th of May.

16 THE WITNESS: Right.

17 So, that was the 6th of May in--

18 COMMISSIONER HICKINBOTTOM: 2020.

19 THE WITNESS: In 2020, and he got on there in 6th of
20 May in 2020.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 THE WITNESS: Right.

23 But the Airport Board was constituted before that.

24 COMMISSIONER HICKINBOTTOM: Yes, without him.

25 THE WITNESS: Without him.

1 So, that was the anomaly that--he resigned then, but
2 knowing when he was Chairman, whoever was Chairman, he was told
3 that you would be on other Boards. So, he would have started to
4 attend those Board meetings, so it would be a matter of
5 regularising him because he was already attending those
6 meetings, albeit under the auspices of Chair, but that after he
7 resigned, he would have lost that Chair, but still he would have
8 been part of the composition of that Board, so it was a
9 regularisation.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 MR RAWAT: Commissioner, could I ask for a five-minute
12 break because just for the Stenographer?

13 COMMISSIONER HICKINBOTTOM: Yes. Certainly, yes.
14 Certainly.

15 Just as to where we've got to and where we're going,
16 Mr Rawat, there is a little bit to do on the Airports Authority,
17 but I think only one further criticism in respect of that.
18 We've then got the Ports Authority and--

19 MR RAWAT: Yes.

20 COMMISSIONER HICKINBOTTOM: --we've been over that to
21 a large extent because I think it's in the same position as the
22 Tourist Board, but there may be some other points there.

23 MR RAWAT: And then we've got Telecommunications
24 Regulatory Commission, and then, finally, the Climate Trust--

25 COMMISSIONER HICKINBOTTOM: Yes.

1 MR RAWAT: --Climate Change Trust Fund, so we do have
2 quite a bit to go through, I'm afraid.

3 COMMISSIONER HICKINBOTTOM: We'll certainly try and
4 get through it.

5 Let's have a five-minute break, and then see how
6 quickly we can move.

7 Thank you, Premier.

8 (Recess.)

9 COMMISSIONER HICKINBOTTOM: Thank you, Premier.

10 We've have been discussing this with Mr Peters and,
11 indeed, with you, Premier. We still have three-and-a-half
12 Boards, I think, to go.

13 MR RAWAT: Yes.

14 COMMISSIONER HICKINBOTTOM: We have to finish off the
15 Airports Authority and deal with three more Boards. And what I
16 propose to do--and Premier, you can say if this is convenient
17 for you--is we will finish off Airports Authority, we will do
18 the Telecommunications Regulatory Commission today, which should
19 take about three quarters of an hour, and then you've kindly
20 agreed to come back on Thursday at 3:00, when we will deal with
21 the other Boards. Thank you very much.

22 Mr Rawat.

23 MR RAWAT: Thank you, Commissioner.

24 BY MR RAWAT:

25 Q. Premier, before we broke, we had looked at the second

1 criticism which you've canvassed. Can I just ask you to go to
2 page 2961.

3 This is taking us back slightly to criticism 1, but
4 it's a memo from the 6th of May 2019. It's actually said to be
5 issued by the Ministry of Finance. I think that's an error
6 because the Airports Authority sits under the Premier's Office,
7 doesn't it?

8 A. Yes.

9 Q. And what you've got is you've got the appointment of
10 new Board Members following the resignation of the entire
11 Airports Authority Board. And if you look at 2961, what is
12 noted is a list of the proposed membership and the CVs received
13 thus far of the BVI Airports Authority Board is attached. We're
14 still awaiting CVs for Mr Marlon Choucoutou, Theodore Burke, and
15 Raul Sprauve. However, they have already accepted.

16 So, this paper at the back is then, on 2963, carries
17 your name, the date; and we see at 2964, that's the Cabinet
18 Decision. So, it appears, Premier--and this takes us back to
19 the use of the informal process--that in this instance at least
20 three individuals were appointed to the Board without their CVs
21 having been received because we haven't been provided with their
22 CVs, so there is no evidence that before the appointments were
23 made those CVs were received and considered.

24 And I'm right in thinking, this goes back to the
25 point, when these papers, when they go to Cabinet, can be

1 amended by Cabinet?

2 A. Yes, Cabinet does have the right to amend.

3 Which three Members may I ask?

4 Q. If you look at 2961, please. We are still awaiting
5 CVs. Do you see at the top?

6 A. Okay.

7 Q. Let's then take--now those--

8 A. Which ones? Marlon Choucoutou, Theodore Burke, and
9 Raul Sprauve?

10 Q. Yes.

11 A. Okay.

12 Q. Now, the point is a short one, they were appointed on
13 this paper and without Cabinet having seen their CVs or the
14 Ministry having received them.

15 Now, on the BVI Airport Authority, if I take you back
16 to the Warning Letter, the third criticism is directed to you as
17 Premier, and it relates to Declarations of Interests again, and
18 it's--the potential criticism is in the same terms we have seen
19 already: Firstly, that there is an association with an
20 individual; secondly, that you failed to formally declare an
21 association; and, thirdly, you failed to seek advice as to the
22 conflict arising.

23 Now, in relation to one of those individuals, you've
24 referred to comments/responses earlier given. In relation to
25 second, you say this--you explain the nature of the

1 relationship; you explained the person involved is well-known.
2 And just to be fair, I mean, you gave evidence to this when you
3 first came to give evidence, Commissioner, and you confirmed
4 that Patsy Lake was your first cousin. Mrs Lake was on the
5 appointees to the Airport Authority, and you had given her
6 details of her background. But it begs a wider question,
7 Premier, and one that you've touched upon in your evidence.

8 A. Yes.

9 Q. If one looks at the evidence that has been canvassed
10 with Ministers so they come at various points, you can point to
11 examples where, for instance, a Minister has recused themselves
12 because a sibling is being proposed for a position. There are
13 situations where a mother-in-law is proposed, and somebody
14 recuses themselves.

15 Now, your position is that, you know--and you make the
16 point that the Cabinet Handbook does not specify what immediate
17 family or close relative is for purpose of giving rise the
18 obligation to declare, and you made the point to Mr Sylvester it
19 doesn't refer to good friend.

20 Isn't it the case that there is no consistent
21 approach, at present, on the part of any Member of Cabinet as to
22 when and when not to declare?

23 A. That would be a fair statement in that the terms of
24 these have to be more defined, which is what we're working
25 towards now, given that this is an evolving situation, and that

1 is part of what our proposal was in terms of our statement that
2 we mean in terms of good governance and added in that layer
3 inside the Cabinet office for the Cabinet Secretary. It's known
4 that some of these things come into the question, and also the
5 country is evolving more and more to see all of us. So, those
6 are the areas we're going towards and more safeguards inside of
7 each Ministry because this has been long-standing practice, as I
8 said, for the 71-year history of the Territory--more than 71 now
9 since we've had Legislative Council, so it's not an action we
10 have done just like that.

11 And as I stated in my response, even to the first
12 cousin part, in this country, for example, I have more 75 first
13 cousins. And not because first cousins mean they have close
14 relationship. I have at least 75 of them. Mrs Lake is, as I
15 mentioned, 25 years older than me, so I need to put it in
16 context. I growing up with her because we never went to the
17 same nightclubs or same friends, and we did not grow up at all.
18 We have a respectful relationship but not in the sense of being
19 close personally, and she'll be considered extended family.

20 And she is a national personality. In fairness to why
21 would you appoint someone like that? She's a successful
22 entrepreneur and businesswoman, and far back the Wikomsky lands
23 for the BVI people and the Positive Action movement with Louie
24 Lloyd years before I was born. Because of these efforts, a lot
25 of Virgin Islanders have land and Wikomsky today, and she was a

1 celebrant of the Emancipation Day in 2015, was under the
2 previous Government. So, this is a national figure that's
3 known, and the Cabinet Handbook, as I stated already, those
4 areas are making sure those are more defined. In modern day
5 terms is what we are working on right now, in the revision of
6 the Cabinet Handbook which is minutes of Cabinet would bear me
7 out that we have already requested that comments.

8 Q. Take it back to this, then: What was there to stop
9 yourselves, as an incoming administration, sitting down and
10 saying, "These are the lines for us? If anyone feels that they
11 are crossing a line, this is where a conflict could arise?" I
12 mean, there is nothing to stop the five of you sitting down and
13 drawing up a policy by which you were trying to consistently
14 identify conflicts of interest, was there?

15 A. Well, hindsight is always 50:50--I mean, 20/20. I
16 said 50/50 for other reasons scientifically, but it's always
17 20/20, that at that time we were trying to pass a budget, and it
18 might not seem much now because of what we had to go through,
19 that time frame; it should have been passed by the end of the
20 time. That was the legal time for the budget to be passed. So,
21 we were dealing with a lot of things at that time in terms of
22 many areas.

23 And we also wanted to get a jump-start in
24 re-energising the different Boards, so we did not move into that
25 direction at that time, and then we didn't even get this

1 covered.

2 But even in the midst of all of that now, the evidence
3 is there that that is where we have a move towards, and that is
4 before we have to come to the Commission of Inquiry, so we
5 recognized that, after a while, we had to further strengthen
6 good governance to the Territory in many areas. We have moved
7 not only in that area we passed; the whistleblower legislation,
8 the general contractor legislation; we had done in the past
9 Integrity in Public Life. So, we recognize that we have to
10 further strengthen our institutions of good governance, and also
11 to put the ethics unit inside our Cabinet Office to put more
12 reporting layers of accountability inside all of the Ministries
13 and create a Policy Unit within the Premier's Office to also
14 transform the Public Service, eventually the Public Service
15 transformation in the Agreements with the Governor and
16 record-keeping to improve upon that. So, all that we are
17 working together in some of those areas with the Governor, with
18 the other Ministers with the Government Member.

19 So, we're a young government, the only person that was
20 appointed before was myself, and so I was premier and spent
21 quite some years in opposition. So, when you come into these
22 offices, what we recognize now is make sure that anyone who
23 comes again doesn't face these things; that it is
24 copied/documentated what all is expected, what all is needed,
25 based on our modern-day standards and also some international

1 standards that we were now raising about even more towards, not
2 saying that what was done humbly and respectfully was done in a
3 bad faith, all that was done, all governments in good faith in
4 the public interest.

5 If you research costs all past governments, you will
6 see that action was the same, so it was just the culture of how
7 things were operating inside of the service, so now we are
8 trying to put it down the next level.

9 So the answer would be, in hindsight it is easy to say
10 that. At that time, it's not something we fathomed to do
11 because we thought with the advice that we would have received
12 from the Attorney General and others that that would suffice
13 because we have to recognize, too, that's why we rely on
14 Financial Secretary, we relied on all the technical persons, the
15 AG and everybody, at that time. That was so important for us
16 because if we didn't rely on them and also trying to read up as
17 much as we could, as a young government to make sure we push
18 everything forward and diversify the economy.

19 Commissioner, I want to point out that by saying I'm
20 asked to give a "yes" or "no" answer at times respectfully
21 because I know Mr Rawat is doing his job, but now he didn't give
22 us a "yes" or "no," and I go into because it's germane and so
23 on. I know at times you are getting frustrated when you see
24 us--when you see me not giving you a "yes" or "no", well, maybe
25 now you can understand what Cabinet Ministers felt when they

1 asked the Attorney General for a "yes" or "no", I get the
2 impression that there seems lack of "yes" and "no" answer is
3 inadequate, but Cabinet Ministers had to accept an answer from
4 AG that lacks "yes" or "no".

5 And once you are in this leadership role, something
6 that all leaders would know, you're as good as the aide that's
7 assisting you and also the turnover those that you meet. And if
8 it is void of certain things, only your experience after a while
9 would tell you that this needs to be improved upon.

10 So, Mr Rawat--Attorney Rawat--sorry, let me answer you
11 directly, Attorney Rawat--that is my answer. Given my
12 experience now, we recognize what needs to be done and is
13 working on.

14 COMMISSIONER HICKINBOTTOM: So, the answer to the
15 question, which is "yes", that there is an inconsistent approach
16 to conflict of interest, and you're doing something about it.
17 And I appreciate a lot has happened in the last two-and-a-half
18 years, but when did you start to address this particular issue
19 of conflicts of interest? When did you--are there papers now to
20 address the issue about conflicts of interest and the degrees of
21 relationship or how conflicts of interest are to be defined?

22 THE WITNESS: Those are ongoing. Some of them are in
23 the present legislation of the Integrity in Public Life. It's
24 already had its first reading in the House of Assembly, and next
25 week it will have its second reading. So, these are not just

1 things that I'm saying. And once passed, I will take care of
2 quite a bit of those areas.

3 I was also trying to remember the date, but I know
4 that in the 6th of April 2021, which I would ask the office to
5 get that information paper, it was a paper done on the new era
6 of accountability and transparency, the Information Paper that I
7 was talking about, that started to list out what we wanted to do
8 with Boards and how we wanted to move forward.

9 So, with that, and also what we're trying to do with
10 the transformation of the Public Service, with what we're trying
11 to do also with the Cabinet Office and other legislations that
12 have already been passed--in many respects quite a few of
13 them--to further strengthen good governance, shows our
14 commitment to help this evolution to get to the next level,
15 while at the same time maintaining the economy to make sure that
16 we strengthen our economy and diversify our economy, which is
17 crucial.

18 COMMISSIONER HICKINBOTTOM: But in terms of the Policy
19 Paper, that was the 6th of April this year, the New Era of
20 Transformation Policy Paper?

21 THE WITNESS: Yes.

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

24 Mr Rawat.

25 BY MR RAWAT:

1 Q. Returning to conflicts of interests, Premier, and your
2 answer was rather more wide-ranging, you've referred in your
3 response to the Cabinet Handbook at paragraphs 2.23 and 2.24,
4 but it's also important to bear in mind 2.35, which, if you need
5 to look it up, is at page 2769 in the bundle.

6 2.25 says: "Ministers or Members having doubts or
7 uncertainty about their interests in the Cabinet matter should
8 inform the Premier in advance of the matter coming up for
9 Cabinet discussion."

10 And so, what that says it sets a low threshold, so the
11 Minister, having doubt about the interests, and it could--it
12 doesn't necessarily need to be a family interest because 2.23
13 says if you attend meetings in relation to matters which you
14 have an interest must declare their interests or Members of
15 their family's interests, interests where the private pecuniary
16 or non-pecuniary of Ministers' and their immediate family must
17 be declared prior to discussions, and Declarations of Interests
18 at 2.24 should be recorded.

19 So, it doesn't necessarily restrict as guidance
20 Ministers to declaring family interests or family connections.
21 They might have, for example, an interest in a business or
22 historical interest or association with someone who is bidding
23 for a contract.

24 But ultimately--so the first point it appears to be
25 read narrowly to just refer to family interests, but ultimately

1 the person who should be in a position to advise Ministers or
2 Members, according to the Handbook, is the Premier. And if you
3 have uncertainty, despite having served in a previous
4 administration and, as you say, been involved in the
5 promulgation of this Handbook, if you have uncertainty about
6 what this means, what hope is there for the other Ministers?

7 A. Legal, under these auspices, as we grow the Virgin
8 Islands, it should not be on the Premier's shoulder to decide
9 those things. That's where the Ethics Unit of the Cabinet
10 Office comes. That should not be up to any elected official to
11 do because the Premier now would only interrupt whoever the
12 Premier is, not saying it's me; will interpret these to the best
13 his ability. If he's not a lawyer, it might not be interpreted
14 in the way that Attorney Rawat interpreted it.

15 There must be systems in place to handle these
16 concerns. That is why in our Position Paper on Good Governance,
17 we stated that this arm of the Cabinet must come into force so
18 that Ministers have that layer of protection even from
19 themselves on misinterpreting the law, so there is great hope
20 because we are already moving in the direction to further
21 strengthen good governance in this area.

22 Q. The question is directed to not the future, but what
23 has been going on since March 2019.

24 And aside from you as Premier, would you agree with
25 this--and it comes from The Honourable Rymer's evidence on day

1 11 where I asked him about conflicts of interest, and he says
2 when one arises if he has a concern. He didn't--and I'm sure he
3 meant no disrespect, he didn't mention the Premier. He said he
4 would raise it with either the Cabinet Secretary or with the
5 Attorney General. So, there is already in place that recourse,
6 isn't there, for advice?

7 A. Once you feel that there is a conflict of interest or
8 if you recognize a conflict of interest, but what I'm saying is
9 it should not be up to any Member's interpretation. It should
10 be clear what all is expected of you not only in conflict of
11 interest, declaring of interest and the whole gamut of it, and
12 there should be a unit that is the litmus test to serve for
13 that.

14 Might I add that's not since March 2019. This has
15 been common practice over the years of not being clear all the
16 years of the history of the country, so we are now evolving to a
17 point to get it fixed.

18 Q. Okay. Let's go to page 21, please, in the Warning
19 Letter.

20 A. Page?

21 Q. 21.

22 A. In this bundle?

23 Q. No, Premier, in your Warning Letter.

24 A. Warning Letter, all right. I misunderstood. Thank
25 you.

1 Yes.

2 Q. Now, we should be at the Telecommunications Regulatory
3 Commission, and there are, I think if I've counted correctly,
4 six criticisms that are set out there. Criticisms 1 to 5 are
5 also set out in the Cabinet letter, and the response to the
6 Cabinet letter is in the same terms as your response. Criticism
7 6 we can deal with very quickly, and it relates to a potential
8 conflict of interest, and you've dealt with that by referring to
9 an earlier answer.

10 So, let's look at 1 to 5, please.

11 Now, what was raised--and hopefully we can take it
12 shortly--the potential criticisms, Premier, are advanced on the
13 basis of the evidence that has been obtained by the COI; and, in
14 relation to potential criticism 1, that related to the
15 appointment of Mr Vance Lewis as a Commissioner of the TRC and
16 Chairman for a period of three years in effect from 1st of
17 February 2020; and Mr Vincent Wattley as Commissioner and Deputy
18 Chairman of that Commission again for the same period. And the
19 point is made that--two points, essentially, about this
20 criticism: Firstly, failure to follow an open and transparent
21 process, and same points are made in relation to other
22 recruitment schemes. And again, I stress that we have no
23 evidence of the process through which this was done.

24 And secondly, the failure to obtain a Statutory
25 Declaration from either person to show that they had complied

1 with section 7(5) of the Telecommunications Act 2006. And that
2 section sets out various bases on which someone can be
3 disqualified.

4 Now, what's said is that both Mr Lewis and Mr. Wattley
5 made the necessary Statutory Declarations and, therefore, their
6 appointments were consistent with the Act, and a copy of
7 Mr Lewis's Statutory Declaration was enclosed. Now, that was
8 the first that the Commission had seen that Statutory
9 Declaration, so that deals with that point. As you will have
10 heard the Commissioner say this morning, Mr. Wattley's Statutory
11 Declaration was still outstanding. That has now, as I
12 understand it, been provided, and so that deals with that point.

13 The second criticism is that there is no evidence that
14 has been produced to the COI to show that there has been a
15 resolution tabled before the House as required by the
16 Telecommunications Act dealing with these appointments, and the
17 response was the resolution was laid before the House and
18 approved on 27th of February 2021. A copy of the House record
19 of the House of Assembly is being sought from the Clerk and will
20 be furnished to the Inquiry. We can't take that any further
21 with you today, Premier, because there is--I think that point is
22 still yet to be provided proof of that resolution.

23 In terms of 3, it again takes us back to a point that
24 we have just been discussing, which was in relation to this
25 process, there is no evidence of conflict checks being carried

1 out, and there the procedures in paragraph 6.8 of the Cabinet
2 Handbook were not followed. And you respond back, reference is
3 made to earlier responses. We've discussed those. You say that
4 both Mr Vance and Mr Lewis were consulted about any possible
5 conflicts of interest, and there is no basis for the assertion
6 that there was no compliance with the Cabinet Handbook
7 requirements in the submission of candidates to Statutory Board
8 appointments to the Cabinet.

9 Now, did you have any requirements specifically in
10 mind in 6.8?

11 A. In terms of conflicts?

12 Q. Yes.

13 A. One of the things was to make sure that none were
14 involved in the telecommunications companies, and that would
15 impede their judgment to be impartial when making decisions.
16 So, there was concern that we needed to make sure that because
17 that's one of the key areas because you have some decisions to
18 make that may--that definitely would influence how
19 telecommunications would operate in the Territory, so that was a
20 key one that persons were looking for to make sure that they are
21 around them close enough had that kind of relationship, so that
22 didn't pan out that way. I know we are waiting for the
23 transcript, you said, from the Clerk. We did put it to the
24 House, and there was a heavy debate on it.

25 Q. Go to 2785, please, in part 3.

1 If you look at 2784, what paragraph 6.5 of the Cabinet
2 Handbook warns Cabinet Members to do is to be mindful of
3 approaching potential Board Members so not to preempt the
4 Cabinet Decision, and limit the kind of contacts you can have.

5 2785 sets out 6.8, which is what's raised on the
6 potential criticism.

7 My question is whether there were any specific aspects
8 of 6.8 that you had in mind for when responding that there was
9 no basis for the assertion that there was no compliance with the
10 Cabinet Handbook?

11 A. In terms of--there was now--repeat that for me,
12 please.

13 Q. Well, what was set out to you in the potential
14 criticisms that procedures in paragraph 6.8 were not followed.
15 The response was reference was made to earlier responses. Both
16 were consulted about any possible conflicts of interest. There
17 is no basis for the assertion that there was no compliance with
18 the Cabinet Handbook requirements for the submission of
19 candidates for Statutory Board appointments to the Cabinet.

20 Now I stress, Premier, that where you say both were
21 consulted about any possible conflicts of interest, COI hasn't
22 been provided with any evidence of the extent to the
23 consultation, but it's this bit, which bit of 6.8 do you rely on
24 to say the requirements were met?

25 A. Well, in terms of those areas, as I read them through

1 even back then, we tried to make sure that they fit the bill as
2 much as possible, but that was not the exercise I would have
3 been doing. That was the exercise that the technical officers
4 would have been doing to make sure that when they move forward
5 they would see they could be met as close as possible.

6 But again, the--if you look--and I must stress
7 this--through the lens of a bigger country like the UK or you
8 come down in certain areas, but in our culture it is different,
9 so it's going to be tough to agree us on that because the
10 informal process which we recognize as we evolve more as to
11 continue to be strengthened in areas that would allow us to be
12 able to say we advertise or whatever the case may be in other
13 areas, but we cannot divorce what it is we have been doing over
14 the years, not this Government alone has been consistently
15 checking all the files even outside Government. We have
16 informal--an informal community.

17 You know, you hire someone, sometimes you don't even
18 have a contract. You just tell him, I need a tiling, and they
19 come and give you a price and they work.

20 So, we have informal society of our size, and I don't
21 want this thrown out when it's being analyzed how we operate.
22 Yes, we are evolving to be more what we will call "formal" in
23 proceedings with the Government or otherwise the answer is
24 "yes". Have we made some strides? Yes. Do we have more to
25 make? Yes.

1 So, we try to cover as many as we can, given what is
2 written, but I want to stress that no matter how many times you
3 ask me that, Mr Rawat, I'm still going to go back--Attorney
4 Rawat, and come back and states that a lot to ask a Minister of
5 any government at any time in any era to be the one to policing
6 these areas. That is why we have to continue to strengthen the
7 structures around us to make sure that they're done and done for
8 the Ministers, done with Cabinet before time. Before, we were
9 just relying on the Attorney General's input so they could here
10 that they saw we had not adhered to before we reached Cabinet,
11 so that is the best I can answer that because it's a lot to ask
12 the Minister or pose to the Premier--I don't say it has to be
13 me--to monitor all these things. It's quite a lot.

14 COMMISSIONER HICKINBOTTOM: But the bottom line is, I
15 think--and subject to your correcting me--there are no records
16 of conflict checks, there are no records of anyone meeting the
17 requirements in paragraph 6.8.

18 THE WITNESS: Meeting the requirements proposal for
19 recommendation--

20 COMMISSIONER HICKINBOTTOM: There are no--there is no
21 record of any of this. That's an integral part of the informal
22 process. There are no records of anything.

23 THE WITNESS: There are records of different things,
24 but if you are talking about how Boards in certain parts of the
25 Governments are operating that would be a challenge, if you

1 weigh this in the balance of the scale of looking at how things
2 are done in the UK. Sometimes it's done informally,
3 Commissioner, in terms of you know that you're very good in this
4 area, and then after a while you will be known to the community,
5 and in formal way you will say all right, this person has skill
6 based on what you know.

7 Even if you look at the Commission of Inquiry as we
8 have here, no offense to anyone, I didn't read the advertisement
9 for any other posts, but because of your reputation before, I
10 read Mr Rawat in other inquiries, he was selected based on his
11 experience and the knowledge of everyone, unless I don't know.
12 But even here more formal than that where we would be selecting
13 persons that you know that this person is good in the--in the
14 business field or they have carried their company like in
15 Mr "Bokia's" (phonetic) family business on another level. So,
16 we go on the premise we know each and we see how persons are
17 progressed in their life and actually their CV, so now they're
18 advertising in all the areas that we are evolving, we start to
19 complement and also clean up those areas that need scrubbing
20 from our own in the past, but it was not done in bad faith or
21 done in the mindset of not being transparent and not
22 comfortable. I need to highlight that.

23 BY MR RAWAT:

24 Q. Let's move on a little bit, Premier, and just deal
25 with criticism 4.

1 Before we do, just to give you context, if we go to
2 3116, so that's the paper from your office going to Cabinet to
3 appoint Mr Lewis and Mr. Wattley. And if you look at 3117, that
4 notes that the TRC has been without a Chairman since August 2019
5 and without a Deputy Chairman after resignation of Mr Ian Smith
6 on 16th of February 2016, and the point that is made is at
7 criticism 4, that in effect that meant that there was no quorum,
8 and so it was unable to perform its statutory function for
9 approximately six months.

10 To give more detail, if we look at 3119, at 13, the
11 Attorney General point that was raised that there was a need to
12 establish that the two appointees are not disqualified having
13 regard to provisions of section 7(5) of the Telecommunications
14 Act of 2006, and that's usually achieved by having the proposed
15 nominee execute such a declaration to such effect. But the
16 paper, the AG says, doesn't allude to this provision having been
17 satisfied at all.

18 Now, the matter, if we go to 3122, the paper went to
19 Cabinet, and we have the decision being made on the 5th of
20 February 2020 to appoint Mr Lewis and Mr. Wattley. As I
21 explained, we had received a copy of Mr Lewis's Statutory
22 Declaration, and if you go to the very last page in the bundle,
23 Premier, 3309, you have a Declaration dated the 5th of
24 February 2020, so the date on which Cabinet actually made the
25 decision is the date of the Statutory Declaration. And just

1 checking, as I indicated, Mr. Wattley's Declaration is actually
2 dated the 6th of February 2020.

3 Now, in terms of the TRC not having a quorum, what you
4 say is appointment to the senior post at the TRC required
5 knowledge of the telecommunications industry. As is often the
6 case where the roles are warranted, a level of technical or
7 professional expertise, it was difficult to find suitable
8 persons willing to take on the onerous responsibilities. Once
9 individuals are found, there must be consultation with the
10 Leader of the Opposition. In addition, no advance succession
11 planning had been undertaken in anticipation of the expiry of
12 the former Chairman's tenure on 12th August 2019.

13 Does it follow from that, Premier, that the search for
14 Commissioners really began in August 2019?

15 A. There was a search for a Commissioner for then, but,
16 you know, in 2020, there was quite a--we had to things to deal
17 with, so they didn't get dealt with as soon as we would like to
18 in certain areas.

19 Q. Sorry, if I may, the reason for my question was just
20 because your answers seem to point to the fact that it's
21 difficult when you're looking for, if you like, specialist
22 knowledge, it's difficult to find people, and so it was just
23 simply search began in August 2019 and took you to February 2020
24 to find the right two people to put before Cabinet.

25 A. Not only difficult based on the knowledge but also one

1 of the key areas to make sure that they're not involved in any
2 other telecommunications company, given the small megawatt
3 territory, that's easier said than done, so we wanted to make
4 sure.

5 Q. So, what you need is, firstly, people who have
6 knowledge of the telecommunications industry because it's a
7 role, as you say, that warrants a level of technical and
8 professional expertise but also that they don't have an ongoing
9 connection with a particular telecommunications provider.

10 A. Yes.

11 And also in terms of making sure that the--as
12 analytical-minded as possible and business-minded because you do
13 not need persons with only the skills on any board to be able to
14 guide the board, meaning that if it is a planning board you only
15 need architects. You always need some persons with different
16 skill sets to balance because different points of view helps.
17 It doesn't--if you choose to major in architecture or
18 telecommunication, and I don't, it doesn't make me less
19 intelligent than you. It just means we majored in different
20 things in the university.

21 But when it comes to managing and also giving input or
22 input could very well be as valuable as a person who has the
23 expertise in that technical area, so it helps to have one or two
24 persons with that expertise. But it also is good to have a
25 balance of persons, whether it be business, even some layman

1 because our country was built on farmers, fishers, and even taxi
2 operators and many of them serving on these Boards early and
3 brought us to where we are, and we continue to evolve and be
4 able to have more personal qualifications, but we count out
5 experience also because it brings--it brings an added dimension
6 to any board that helps significantly because--you know, like we
7 said, book sense without common sense is nonsense, so we need
8 that balance.

9 Q. The reason for the question, Premier, was that, given
10 the response places such a weight on knowledge of the
11 telecommunications industry and roles that warrant a level of
12 technical and professional expertise, why was it that you in
13 Cabinet appointed three people, namely Mr. Wattley, Mr Bevis
14 Sylvester, and Ms Joycelyn Murraine who appear on their CVs not
15 to have any knowledge of the telecommunications industry or the
16 required level of technical or professional expertise?

17 A. I just stated. It's not just the technical areas. I
18 didn't know you were going at that angle, but it's not just
19 those technical areas. When you look at someone like
20 Ms Joycelyn Murraine, who has been one of our leading bank
21 managers--I don't know her personally; I want to state that very
22 clearly--but a good friend in terms of learning for me, my good
23 friend, but brought the bank to a different level in the eyes of
24 the public, and is known by many for her professionalism, her
25 independent thinking, and not being able to be swayed by any

1 political direction and going and upgrade all systems that she's
2 worked on to another level.

3 So, those are things that are known throughout and no
4 different from Mr Sylvester, who created and improved Delta from
5 just here in the Virgin Islands to a leading what they call it,
6 a petroleum giant. And then have you Mr. Wattley who is known
7 for having his knowledge in the field of telecom and
8 electronics.

9 So, these are things known by any person who resides
10 in the BVI over the years. It's not something that's not known.
11 So, in terms of our processes that involve that informal sense,
12 it still had some ethics in it and to making sure you get
13 persons who are going to be progressive, who are going to be
14 proactive, and who are also going to help us to move the Board
15 not just with the technical knowledge but also with the
16 progressive mind of knowledge in the energy to get us--to get
17 our telecom companies, although some will be listening to get us
18 to the next level and get us consistent internet, and it has
19 been a challenge, and also to collect any outstanding fees, and
20 you need a process that would not be contaminated by being in
21 any relationship or in any business dealing with any other
22 telecom companies.

23 And I would say that--I would dare to say that the
24 record has shown that if there were any concerns of the line of
25 whether or not they would be functional, the record is showing

1 that they are functional, and in the middle of renegotiating
2 right now the new telecom licenses that are coming up that will
3 give us a more stable internet that is the next crucial to our
4 mixed economies in the Virgin Islands, a stable and fast
5 internet, and they're working towards that.

6 So, their reputation and professional and
7 progressive-wise speaks for itself.

8 Q. That's helpful because we can put your response to
9 criticism 4 in the context of the answer that you have just
10 given.

11 Can I turn to criticism 5.

12 Now, that relates to a decision that was taken on 16th
13 of February 2020 to appoint Joycelyn Murraine and Mr Bevis
14 Sylvester as Commissioners. Now, what's set out as the
15 criticisms, the early criticisms, in terms of the nominating
16 process, in terms of the need for resolution and in terms of
17 conflicts apply equally to these later appointments, and you
18 have--as well as referring to Ms Murraine's background, which
19 you also have just done in oral evidence, relied on your earlier
20 responses. I don't think, therefore, I need to go through that
21 again. The only point to make, Commissioner, is just to update
22 you, is that you obviously asked for assistance in terms of
23 Statutory Declarations in connection with Ms Murraine and
24 Mr Sylvester; I understand they are not available.

25 COMMISSIONER HICKINBOTTOM: And will not be available.

1 MR RAWAT: That appears to be the case. I am looking
2 to Ms Peaty.

3 MS PEATY: As far as I understand it, they are not on
4 record.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 MS PEATY: It would be in your hands if you want
7 confirmation another search is undertaken, but it's a matter of
8 return.

9 COMMISSIONER HICKINBOTTOM: I simply accept that there
10 aren't any.

11 MR RAWAT: Commissioner, I think I have reached a
12 sensible point to--

13 THE WITNESS: May I add something before we close to
14 add clarity?

15 In terms of--if I could just go back one minute; this
16 is very important for the record--I was trying to remember what
17 happened with the situation with Mr Isaac, and the reason that
18 he was on the Board before is that we were taking some time to
19 get the paper done, and understanding all the chairs would have
20 been on the Board, but under the Act of the BVI Airports
21 Authority, which you, of course, will check, it does allow them
22 to appoint certain persons themselves because, as a corporate
23 body, the BVI Airports Authority, so they went ahead and did
24 that until the Central Government regularized the appointment,
25 so I think that was important to point out for the record with

1 the Act.

2 And the last part in terms of this TRC with no
3 Declaration, I don't know if it has been perceived as
4 Declaration also one to go to the House of Assembly, but I would
5 say that from the time the Telecommunications Act has been in
6 place, I have never seen or heard of the other Members come into
7 the House for the Declaration for debate. I have always been
8 the Chairman and persons speak about the Deputy Chairman, so
9 again we go into making sure that we get those entities in place
10 in Government to make sure that whatever it is lacking based on
11 certain things written that we do not miss those, but they're
12 not being missed when they are intentionally. It just is a lot
13 to consume for a Public Service that's in the public officers
14 that are working hard to deal with so many matters. We're
15 focusing on the areas there may be some concerns, is it
16 following the law down to the T. But at the same time, too, I
17 must recognize they had working in their Reports because there
18 was a lot on the daily basis in the Territory, but we do
19 recognize there are areas to improve. And we're working on them
20 with that, and it's clear.

21 COMMISSIONER HICKINBOTTOM: Could I ask one question
22 before we finish, Premier.

23 THE WITNESS: Um-hmm.

24 COMMISSIONER HICKINBOTTOM: I know it's going back.

25 THE WITNESS: Before we pause coming back, but yes.

1 COMMISSIONER HICKINBOTTOM: And it's this: We went
2 through--you went through--in some detail about the policy to
3 revoke the membership of Statutory Boards--I mean, we've dealt
4 with that--but there was another element of the Policy, and that
5 was to make the membership of Statutory Boards coterminous with
6 the period of the administration.

7 THE WITNESS: At the time, yes.

8 COMMISSIONER HICKINBOTTOM: Can you explain that.
9 That just seems to emphasize that it's a political appointment,
10 perhaps, but could you just explain the thinking behind that.

11 THE WITNESS: Well, thank you, Commissioner. I
12 don't--I think with time I will be able to shift your mind out
13 of being political because even on the Airports Authority, if
14 you look at the makeup of it with the Members, there is one
15 person named Penn. He's on the membership. He actually ran
16 against my Deputy Premier in our Party. So, if it was political
17 for us in terms of what is said here and in our quarters, he
18 would not have made a cut.

19 So, we were looking for energetic-minded persons and
20 to shake up the Boards. No offense to who had been there
21 before. Some persons were placed back on some of the Boards and
22 some persons on those Boards were put on other Boards because we
23 thought that their strength would be better for that. For
24 example, Chairman of the BVI Ports Authority. He was--you know,
25 he resigned but with the same Government put him now as Chairman

1 of the BVI Immigration Board. And we can point to any other
2 areas.

3 So, it was not anything of mine that was political.
4 It was with the view of public interest and energize it.

5 COMMISSIONER HICKINBOTTOM: I understand that, but the
6 whole thrust of this was to ensure that the Boards had energized
7 people that were committed to your policy programme. I
8 understand that. But if that's right, why bring their
9 appointments to an end at the end of your administration?
10 They're independent Boards, they're independent of the
11 Executive.

12 THE WITNESS: Independent of executive, yes,
13 Commissioner, but at the same time the Government's policy is
14 one that has to be carried out, and that was our thinking at
15 that time.

16 Now, as we do the Policies, we have since then
17 pivoted, and we are free to do so. A man that cannot change his
18 mind is not a man at all, as Leo Tolstoy said. What we have
19 pivoted allows some of the appointments to stagger over, but at
20 the same time to allow for some of them not to stagger over into
21 a new government because the charge of any board is to carry out
22 a mandate of the sitting administration.

23 If you look even at the news, if it's done
24 differently, you will find it. The processes may look a little
25 scrubbed, but even I saw President Biden had to change some

1 Boards. Now, the language would sound sophisticated, but we
2 know what is happening there. And even in the UK you see how
3 it's done, it's not done in terms of this informal way, so it
4 seems a little cleaner. But in actuality, what it's saying is
5 to get fresh, innovative persons that will allow themselves to
6 identify themselves with the core values of what you're trying
7 to achieve in the public interest so they can happen much
8 faster.

9 You may be on a border selected by any government and
10 the Government loses, and then the new government comes in. In
11 my opinion, you should voluntarily resign, if you do not intend
12 to serve, to allow the Policies of the new administration to be
13 done so it can be done in the public's interest. This is true
14 for no matter what government is in place. I'm not speaking
15 about my government. This is just how I see it. Because if
16 you're not convinced that the Government that took over, if
17 you're back in Tory and Labour got in, you would have to make a
18 decision, can I support the Labour's agenda? And if I can't
19 support it, why stay there and frustrate the Labour's agenda for
20 the people?

21 So, at the end of the day now, it was that kind of
22 thinking to allow persons who can say, "Well, all right,
23 although I didn't support you, I support your values, support
24 what you're trying to get done for the people," and that is
25 obvious with some of the persons we put on the Board who ran

1 against us in the elections, and who didn't support us and we
2 knew were open with it, and they are on some of the Boards that
3 we do have. Why? Because they have an open mind, they are
4 progressive-thinking, and they want what is best in the public
5 interest of the people, and that's what the Government was about
6 from the onset. Some may agree or disagree with that. It was
7 our intent then and now. We are doing things slightly different
8 now that we mature more into Government. Yes, as you get older
9 you bottom wiser and you should also adjust what you're doing.
10 The Bible says, you get older, you put away childish things.
11 But you should not be child-like because the hunger is being in
12 child-like. Hunger is the desire to get things done for the
13 people and keep it in the public interest.

14 So, I hope I capture in a capsule form as best I can,
15 being here in 22 years in the capsule form why we were looking
16 at it in this vein, so--

17 COMMISSIONER HICKINBOTTOM: But a member of a
18 statutory board has to do the functions that are in the Act.

19 THE WITNESS: Exactly.

20 COMMISSIONER HICKINBOTTOM: And that's what the House
21 of Assembly has assigned them to do. That's their job.

22 THE WITNESS: Exactly.

23 COMMISSIONER HICKINBOTTOM: Uninterfered with by the
24 executive.

25 THE WITNESS: Exactly.

1 But may I add, if our intention and is--I don't want
2 to use "or". If any government's mandate is to bring 6G, for
3 example, to the telecom, we have 5G, you know, we are going to
4 end up with 6G, but for the better choice 5G, and that is placed
5 on the TRC Board. But the Members do not feel that we need to
6 get to 5G. But the Government of the day needs it because, for
7 example, for us we need to get there and beyond because we're
8 now going into the digital economy.

9 So, for us, the modern-day internet use being adequate
10 and consistent is as good to us as our lands in the past because
11 through the internet we now can generate new economies. But if
12 the Board Members there were and didn't have that as a mandate
13 before, and the time comes with a new government, whoever they
14 may, has that as a new mandate and they do not intend to carry
15 that out, that frustrates the public interest.

16 So, it is best for persons, in my humble opinion--and
17 this is my opinion now--to when a government change, even if
18 your time is over, to offer your resignation. If you know that
19 you're not going to work as seriously as you are working before
20 to allow the new policies or not all will be new but allow that
21 new direction to move--and Commissioner, if you were given a
22 Terms of Reference, and if you find Mr. Attorney Rawat is not
23 going in that collection to help you with your mandate, as much
24 as you love him, you will have to I wouldn't say "sack",
25 reconstitute the nomenclature of what you have. It's just the

1 nature of what your assignment is, whether it's elected or
2 technical. That's the way I see it, and I must be honest.

3 COMMISSIONER HICKINBOTTOM: You divide between elected
4 and technical, "elected" being the Ministers.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: The "technical" being the
7 Statutory Boards, as I understand you.

8 THE WITNESS: Well, technical also being technical in
9 the private sector, because if you're in the private sector,
10 Commissioner, and you have persons hired or you take over a
11 business and the employees are there, and the old employees have
12 decided that they're not going to conform to the new
13 ownership--nothing illegal about what they're doing, they prefer
14 what the old ownership was doing--then you're going to stifle
15 the business progress; you are going to stifle the financial
16 viability of the business.

17 So, if you put that in a government capsule in terms
18 of context is the same thing not looking at whether a person is
19 MPVI or PVIM or some of the Parties we have, but is a person
20 ready to make sure that they support and forward the cause of
21 whatever policy has been brought forward.

22 COMMISSIONER HICKINBOTTOM: In your example, telecoms
23 example, the 5G or whatever it is, and I don't know whether it's
24 a legitimate example, but I understand it's a hypothetical
25 example, but in your example, the policy of the Government would

1 be we need internet that supports a digital economy.

2 THE WITNESS: Exactly.

3 COMMISSIONER HICKINBOTTOM: Then isn't it for the
4 Telecoms Board to determine how that's going to be done?

5 THE WITNESS: And it should be.

6 COMMISSIONER HICKINBOTTOM: But that wasn't your
7 example. Your example was that it was the Government's policy
8 to introduce 5G.

9 THE WITNESS: Well, I don't know if--sometimes how I
10 put in a lawyer, I'm in science, this exactly what you say is
11 what I mean. This is the Government's policy, you get it done.

12 COMMISSIONER HICKINBOTTOM: But the Government's
13 policy in that example, we--the policy of the Government is a
14 legitimate policy, is to have internet which supports the
15 digital economy, and then it may be for, I don't know, the
16 telecommunications authority to determine how that policy can be
17 implemented.

18 THE WITNESS: Exactly, but in reasonable timing.

19 COMMISSIONER HICKINBOTTOM: No, no, in
20 reasonable--absolutely--I understand that you only have a
21 mandate for a limited period, and you want to get on with
22 things--I understand that--but just to bring it back to this
23 case, what happened here is not--I don't want to go over the
24 ground that we have been over today, but to go over it again,
25 but here you say that the government policy was to reinvigorate

1 the Statutory Boards. Fine. But that wasn't the Government's
2 policy. The Government's policy was to revoke the Boards and
3 then to reconstitute them.

4 THE WITNESS: No, re-energise them, but one of the
5 ways to do that based on if you didn't have--if you had to
6 change the law.

7 Can I add that Mr Vance Lewis, assure he was not
8 political, and I dare to say this even in the public domain, was
9 not a supporter of our Government. He was known to support the
10 former Government. But he had the skills that is needed. And
11 when you get the records from the House, it will be clear where
12 I said that you were on the other side, but that's no problem.
13 Once you come and fulfill the mandate of the people so the
14 economy can move forward, then you're good. You have no problem
15 with this Government. We need your skills.

16 So, we have him and many other examples of persons to
17 show that it was not political, and we also have--which must be
18 taken into account. We also have the track record over the two
19 years now. Yes, we're looking at the Constitution--how it was
20 constituted, but at the same time we do have a track record.
21 So, if the concerns that were being levied were ones that had to
22 wait, then two years later then they should have shown their
23 ugly face there was cronyism, there was this, there was that,
24 there was the other.

25 But the point about it is it does not exist, and the

1 accomplishments of each Board should form part of this
2 discussion so that we can see the informal process, although it
3 needs tweaking, if it worked not only with our Government but
4 even in the past governments where we have come up over the
5 years to benefit from a lot of these decisions made by the
6 Boards.

7 COMMISSIONER HICKINBOTTOM: Yes. I mean, I'm not
8 saying that the track record is irrelevant, but you have to look
9 at decision-making at the time the decision was made. I mean,
10 just hypothetically if--and this is a hypothetical example; it's
11 not based on anything where I have seen evidence--but, for
12 example, if a Minister were to appoint his brother to a
13 particular post solely on the basis he was his brother--solely
14 on the basis he was his brother--it may be coincidentally that
15 his brother is very good at doing what the post is, but that
16 would still not be a decision that is proper, not a decision
17 that is made in the public interest because he's taking into
18 account, in my example only, an irrelevant factor.

19 THE WITNESS: Well, if you put that example that way,
20 but if his brother was only head surgeon in the country--

21 COMMISSIONER HICKINBOTTOM: No, no, that's different.

22 THE WITNESS: Every example we can shift to the other
23 one.

24 COMMISSIONER HICKINBOTTOM: Of course.

25 THE WITNESS: I'm not saying brothers are being

1 appointed. I agree you with.

2 COMMISSIONER HICKINBOTTOM: Of course.

3 THE WITNESS: Did I say brothers being appointed.

4 COMMISSIONER HICKINBOTTOM: I understand, but the fact
5 there is a relationship may not be the only factor. An
6 overwhelming factor may be that is the only, I don't know,
7 surgeon in a particular field in the Territory and, therefore,
8 has got to do that job because there is nobody else. I
9 understand that. That's why I cadged the example as I did. But
10 as I said, it's not to say that track record is not relevant to
11 the issue.

12 THE WITNESS: Well, I hear and I thank you,
13 Commissioner, and hear what you're saying, but the other part I
14 understand is a little too close.

15 And the challenge that the BVI have is there was a
16 very in terms of--you were given your Terms of Reference, which
17 I do respect and I know you have to carry out a mandate, but if
18 you see through at least my lens and some lens that challenge
19 that the BVI has is there was a very negative narrative that was
20 voiced in the House of Commons by the Foreign Secretary and even
21 by the immediate past Governor that painted a bleak picture that
22 has a potential of portraying the BVI in a manner that I cannot
23 agree.

24 And that's why we have to make sure that the line of
25 questioning, as you have rightfully been done, to probe to make

1 sure that all sides of the story is told, and we say in our
2 culture every story has three sides: Your side, my side, and
3 the truth. And I believe and you, Commissioner, when you
4 finish, we will have the truth to a just outcome, and I thank
5 you for how you have been operating it.

6 COMMISSIONER HICKINBOTTOM: Thank you, Premier.

7 And thank you for your time. Thank you for agreeing
8 to come back on Thursday. That's much appreciated.

9 THE WITNESS: For sure, I will be right here.

10 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

11 MR RAWAT: No, Commissioner, just to join in with your
12 thanks to the Premier for giving the Commissioner his time
13 today.

14 COMMISSIONER HICKINBOTTOM: Could I just deal with
15 three things very shortly with Ms Peaty.

16 THE WITNESS: Commissioner, before I leave, one thing
17 I would like to be clear, when I return is on Thursday, and what
18 are the sections are you dealing with at that time?

19 MR RAWAT: The remaining parts of the Warning Letter.

20 COMMISSIONER HICKINBOTTOM: Port Authority, Climate
21 Change.

22 THE WITNESS: Port Authority and Climate Change.

23 MR RAWAT: And you made two points about the Airports
24 Act.

25 THE WITNESS: You will look for those for sure.

1 MR RAWAT: And also the TRC. I will check those for
2 you then.

3 THE WITNESS: I know that you will. That's why I
4 mentioned it.

5 MR ROWE: Commissioner, Thursday, Julian Fraser is for
6 10:00. Do we have just that time?

7 COMMISSIONER HICKINBOTTOM: Julian Fraser at 10,
8 Premier at 3.

9 MR ROWE: At 3? Thank you very much.

10 COMMISSIONER HICKINBOTTOM: Sorry, Mr Rowe.

11 Ms Peaty, very short points. Firstly, thank you for
12 dealing with the Statutory Declarations as quickly as you did.

13 Secondly--and I apologize if this information is in
14 Dr O'Neal-Morton's Affidavit--I don't think it is--but could I
15 have a simple list of transfers of Statutory Boards into the
16 Premier's Office and the Ministry of Finance if there are any,
17 but I think most of them came into the Premier's Office after
18 the Premier--after the Premier's administration started in
19 February.

20 And thirdly, Sir Geoffrey referred to submissions,
21 firstly, you, he, the IRU, the AG will want to wait obviously
22 until the end of the Premier's evidence to make those. But I'm
23 minded to allow those submissions to be made. They're to be
24 submissions and not evidence. I just do not want to see
25 evidence, and I certainly do not want to see further documents

1 produced at this stage, if we can possibly help it. And they
2 will be limited to a number of pages. Let's see how we get on
3 with the evidence before I give a limit, whether it be five or
4 ten pages.

5 And what I'll do, Ms Peaty, is give some thought, if I
6 think if I put this in an inelegant way, I think Sir Geoffrey
7 wants to go freestyle to make submissions, or the IRU wants to
8 make submissions on whatever everyone wants to make submissions
9 on, but I will also give some thought as to whether any
10 particular issues upon which the AG may be able to assist, and
11 we can deal with that perhaps at the end of the Premier's
12 evidence on Thursday.

13 MS PEATY: Thank you, Commissioner.

14 COMMISSIONER HICKINBOTTOM: Very good.

15 Premier, thank you very much.

16 THE WITNESS: Thank you, my good friend.

17 COMMISSIONER HICKINBOTTOM: Good.

18 (End at 5:19 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