

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 36**

(MONDAY 20 SEPTEMBER 2021)

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

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Ms Lauren Peaty of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

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

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Myron Walwyn gave evidence.

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Session 1

Ms Lauren Peaty, Withers LLP (attending remotely)

Mr Richard Rowe, Silk Legal

Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Mr Myron Walwyn

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Good morning, everyone.  
Mr Rawat.

MR RAWAT: Good morning, Commissioner.

Commissioner, before we commence with our witness today, could I introduce the representation which is entirely remote. On behalf of the Attorney General and the elected Ministers, we have Ms Lauren Peaty, and on behalf of a number of Members of the House of Assembly we have Mr Richard Rowe and Mr Davis of Silk Legal.

Our witness today is Mr Myron Walwyn.

BY MR RAWAT:

Q. Mr Walwyn, thank you for returning to give further evidence to the Commissioner this morning. As you will recall, this is, I think, your third occasion on which you've given evidence to the Commissioner. You previously took, I think, I can't remember if it was an oath or an affirmation, but there is no need for it to be done again.

Could I ask, though, that you, as we go through you're evidence today, just remember please to keep your voice up and to speak slowly. It's important that the Stenographer record your answers, and the microphone doesn't amplify, so you may want to just make sure that it's close to you as you speak.

I should also ask you--and it's a caution to both of

1 us--if we try and avoid speaking across each other. That will  
2 suit the Stenographer.

3 You should have on the table a bundle, which is the  
4 bundle for the Hearing today, but I think looking at what you  
5 came in with, you brought your own copy of that Hearing bundle;  
6 is that right?

7 A. That's correct.

8 Q. Thank you.

9 Now, the reason for asking you to return today is just  
10 to deal with further matters in relation to a building--of a  
11 building of a perimeter wall at Elmore Stoutt High School, which  
12 is subject for special report issued by the Auditor General on  
13 the 24th of August 2018, and you previously gave evidence about  
14 that project on Day 21 of the Commission's proceeding, which was  
15 the 1st of July.

16 Now, as you'll be aware, at the direction of the  
17 Commissioner, you were sent what the Commission has called a  
18 "Warning Letter". I should explain that that is, I think, the  
19 modern term used in Inquiries for what was used to be known as a  
20 "Salmon Letter". It is different to the term that may be used  
21 in other aspects in the BVI. It has a special meaning within  
22 the context of Inquiries. And its purpose, even if you want to  
23 call it a "Salmon Letter", is to fulfill the function of  
24 notifying you of potential criticisms of you but in your  
25 capacity as the then Minister for Education and Culture.

1           It's important to emphasize for the record that the  
2 letter itself is a confidential document--it has not been  
3 published--but also that it contains just potential criticisms.

4           As I have been careful to remind other witnesses,  
5 those potential criticisms do not represent either the  
6 provisional or the concluded view of the Commissioner, but  
7 rather they are a means by which the Commissioner can ensure  
8 that you are treated fairly.

9           Now, the letter invited you to provide a written  
10 response, which you have done. You have also provided with that  
11 response a number of further documents, which are before the  
12 Commissioner.

13           Before we continue, can you confirm that you are  
14 content that your written response, together with the  
15 accompanying documents that you have provided, should form part  
16 of the evidence before the Commission?

17           A.    I am.

18           Q.    Thank you.

19           (Technical pause.)

20           COMMISSIONER HICKINBOTTOM: We have a slight problem  
21 with the audio, which Mr Peters is going to try and fix, so we  
22 will break now and we'll come back as soon as we can. Thank you  
23 very much.

24           (Off the record.)

25           COMMISSIONER HICKINBOTTOM: Good. I understand we are

1 ready to resume.

2 Mr Rawat.

3 MR RAWAT: Thank you, Commissioner, and I also  
4 understand from Mr Peters that the technical issue that arose  
5 has meant that the recorded sound for that portion of the  
6 Livestream to YouTube which did go out, does not appear on that  
7 recording. And so, if I may, I just want to summarise what we  
8 went through with Mr Walwyn.

9 COMMISSIONER HICKINBOTTOM: Certainly.

10 Just to make it clear for everyone who didn't have the  
11 audio, no evidence, but you've given some background to the  
12 Hearing today.

13 MR RAWAT: Exactly.

14 COMMISSIONER HICKINBOTTOM: Thank you.

15 MR RAWAT: What I did by way of background,  
16 Commissioner, was to explain to Mr Walwyn that he's being asked  
17 to return to give further evidence in relation to the building  
18 of the perimeter wall at Elmore Stoutt High School. That was  
19 the subject of a special report issued by the Auditor General in  
20 August 2018. Mr Walwyn has already given evidence in relation  
21 to that project to this Commission.

22 I also explained that Mr Walwyn has been sent, as have  
23 others, a Warning Letter. The term "Warning Letter" has a  
24 specific meaning within the context of an Inquiry. It may have  
25 a different meaning in other contexts in the BVI, but it has a

1 very specific purpose within an Inquiry. It used to be called a  
2 "Salmon Letter". Its purpose is to notify the recipient of  
3 potential criticisms that may be made of that person. In  
4 Mr Walwyn's case, it is in his capacity, as he once was, as  
5 Minister for Education and Culture.

6 What I should also emphasize is that the potential  
7 criticisms are just that, "potential criticisms". They do not  
8 represent either the provisional or concluded view of yourself  
9 but they are a means by which you ensure, Commissioner, that  
10 individuals are treated fairly.

11 Mr Walwyn has actually provided you with a written  
12 response on the matters which were set out in the letter to him  
13 and provided further documents with that response. And before  
14 we had to briefly adjourn, he confirmed that he was content that  
15 that written response, and its accompanying documents, form part  
16 of the evidence before the Commission.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 And I would like to thank you, Mr Walwyn, for your  
19 written response, which has been very helpful to set out what  
20 your view on these matters is. It's very helpful. Thank you.

21 THE WITNESS: You're welcome.

22 COMMISSIONER HICKINBOTTOM: Yes?

23 BY MR RAWAT:

24 Q. Mr Walwyn, what I propose to do today, given that you  
25 have already given evidence in relation to the school project,

1 and I think on the last occasion you also produced additional  
2 documents for the Commissioner, which were helpful and which  
3 have been considered. I would like to focus on the written  
4 response, primarily, and if I may, I don't intend to read it all  
5 out but I do want to take you through it so that the  
6 Commissioner has an understanding of your position and that we  
7 make sure that what's on the record is the detail of it. It  
8 does, of itself, form a piece of evidence before the  
9 Commissioner.

10 Now, if I take you to page 3 of your written response,  
11 you there set out concerns with what you describe as the  
12 "Preliminary Narrative" and which perhaps for the Transcript I  
13 should explain, is the Preamble that's set out in the Warning  
14 Letter that was sent to you. Those concerns can be broken down  
15 into five elements, and I would like just to take you through  
16 them:

17 The first is the role of a Minister, and you have  
18 referenced and set out Section 56(5) of the Virgin Islands  
19 Constitutional Order of 2007. We canvassed this on the last  
20 occasion. I asked you about it, and we don't need to look it  
21 up, but it is in the bundle.

22 MR RAWAT: Commissioner, for your note, it's a page  
23 573 of the Hearing Bundle.

24 BY MR RAWAT:

25 Q. Now, you point out in your written response that a



1 Minister does exercise direction and control over a Ministry but  
2 a Department is under the supervision of a Permanent Secretary.

3 Now, just to be clear, do you agree that the  
4 supervision that a Permanent Secretary exercises is subject to  
5 the direction and control of the appointed Minister?

6 A. Providing what he's saying to her is within the  
7 confines of the law, yes.

8 Q. And obviously a Permanent Secretary cannot act  
9 unlawfully?

10 A. We want to make that very clear.

11 Q. Yes.

12 Nor, I would say, can a Minister?

13 A. He should not--he should not.

14 Q. He should not. He or she should not.

15 A. Yeah.

16 Q. And this is perhaps drawing on your experience as a  
17 Minister, but can I take you--and it's in your response, the  
18 first part of Section 56(5). You say where a Minister has been  
19 assigned responsibility under the section for the  
20 "administration of any Department of Government", so what did  
21 you take that to mean--to be meant by "responsibility for the  
22 administration of a Department of Government"?

23 A. The ultimate responsibility from the perspective of an  
24 organizational chart, but it in no way means that the Minister  
25 has sole responsibility, the other and the Constitution

1 continues or the section continues to somewhat show somewhat of  
2 an additional charge that the Minister has overall  
3 responsibility, yes, but then the Department is under the  
4 supervision of the Permanent Secretary, and it speaks to  
5 Departments as well which have Department Heads and so forth,  
6 that have their responsibilities as well that flow from the  
7 Permanent Secretary. I think it's important to make that  
8 distinction.

9 Q. Could I take you just--could you look up page 573,  
10 please.

11 A. 573?

12 Q. Yes, please.

13 Now, I think we're in part of the Transcript of your  
14 evidence from the 1st of July. I put to you, and you'll see at  
15 line 9, I read out Section 56(5) to you.

16 A. Yes.

17 Q. I asked whether you agree that the effect of that  
18 section is to give any Minister overall responsibility for his  
19 or her Ministry, and you agreed with that.

20 Then if you go overleaf to 576, to summarise, I put to  
21 you the response of The Honourable Mark Vanterpool.

22 A. Can you point me to the line?

23 Q. Just line 1, please.

24 A. Okay.

25 Q. Do you see at the top I had asked Mr Vanterpool

1 whether in his view the buck stops with the Minister. He'd  
2 answered "yes", and then I asked: "Is that a view you would  
3 share"? And you said: "I wouldn't share that view entirely  
4 because that's subject to a number of things".

5 And if we look at line 8, you said that the: "The  
6 policy, direction and the control of the Minister has in his  
7 day-to-day running of his Ministry, of course, is subject to the  
8 powers that the Governor as well has, as it relates to the Civil  
9 Service".

10 A. Where are you reading from?

11 COMMISSIONER HICKINBOTTOM: Page 574.

12 THE WITNESS: You're back to 574 now?

13 BY MR RAWAT:

14 Q. 574. Sorry, I said 576. I apologize.

15 COMMISSIONER HICKINBOTTOM: It's 574, at line 8.

16 THE WITNESS: Can you read it again?

17 BY MR RAWAT:

18 Q. Do you see it, line 8?

19 A. Yes.

20 Q. You qualified the direction and control that a  
21 Minister can exercise by reference to the powers of the  
22 Governor.

23 A. Yes.

24 Q. My question is this: Which powers under the  
25 Constitution did you have in mind?

1           A.    Well, the powers that give the--essentially the  
2 control of the Civil Service to the Government.

3           Q.    If we look at the Constitution--

4                    COMMISSIONER HICKINBOTTOM:  We need to look at the  
5 Constitution.

6                    Do you mean the powers reserved to the Governor in the  
7 Constitution?

8                    THE WITNESS:  No.  I meant in relation to the power,  
9 for instance, that the Deputy Governor exercises on behalf of  
10 the Governor, being in charge of the Civil Service.

11                   COMMISSIONER HICKINBOTTOM:  I think it would be  
12 helpful to look at the Constitution, Mr Rawat, first because  
13 that must be the starting point, even if it's not the only place  
14 we need to go.

15                   BY MR RAWAT:

16           Q.    There is on the table--unfortunately, that's too small  
17 to be the bundle but you should have a bundle that's headed "Law  
18 and Constitution".  "Constitution and Legislation Bundle".

19           A.    Yes.

20           Q.    If you turn to page 2, we will see that that's the  
21 first page of the Constitutional Order of 2007.

22           A.    Yes.

23           Q.    And if we go through to--if we stick to the index, if  
24 you go through, Mr Walwyn, to page 4.  There is reference there  
25 to section 92, which we will find at page 48?

1 A. Makes reference to what?

2 Q. Section 92.

3 A. Um-hmm.

4 Q. That was to a point of the public office.

5 A. Which you'll find on page?

6 Q. 48--46, sorry.

7 Now, 92.1 says, "subject to this section and the other  
8 provisions of this Constitution, power to make appointments to  
9 Public Officers and to remove and to exercise discipline and  
10 control over persons holding or acting in such offices shall  
11 vest in the Governor acting in accordance with the advice of the  
12 Public Service Commission"--

13 A. Yes.

14 Q. "But the Governor, acting in his or her discretion,  
15 may act otherwise than in accordance with that advice".

16 A. Um-hmm.

17 Q. Is that what you had in mind as a sort of starting  
18 point or the source for the Governor's powers over the Civil  
19 Service?

20 A. Yes.

21 Q. We've heard from--I think at the beginning when we  
22 first started hearings--a number of Permanent Secretaries who  
23 explained that the Deputy Governor is the de facto head of the  
24 Civil Service in the BVI.

25 A. In practice, yes.

1 Q. In practice.

2 A. Yes.

3 COMMISSIONER HICKINBOTTOM: But I think also, unless  
4 you're going to go there, Mr Rawat, section 60(1)(d), which is  
5 on page 33, these are the Governor's special responsibilities,  
6 as it were, the reserve responsibilities, and they include that  
7 "the Governor shall be responsible for the conduct of any  
8 business of the Government of the Virgin Islands with respect to  
9 the following matters, (d) the terms and conditions of service  
10 of persons holding or acting in public offices without prejudice  
11 to section 92". So the Governor, no doubt the Deputy Governor  
12 acting on his behalf, is responsible, as it were, for the terms  
13 and conditions of the public officials in the Public Service.

14 Yes.

15 BY MR RAWAT:

16 Q. So, we've looked at the constitutional position. If  
17 we move that to practice and what you had in mind, can you  
18 elaborate further, Mr Walwyn, as to how that then operates in  
19 practice in terms of, as you seem to see it on the last page and  
20 placing a fetter on what you can do as a Minister?

21 A. Well, as I said, the reporting line somewhat is  
22 twofold. The way I've seen it in terms of the Minister's  
23 responsibility, that responsibility has to do, to a large  
24 extent, with the--using the term "overall management", but in  
25 terms of the actual control of the individuals working within

1 the Ministry, his powers are somewhat limited. For instance, a  
2 Minister can't--is run by discipline and he can't terminate. He  
3 can make--perhaps can make recommendations for increases but he  
4 doesn't have any powers to do that, really.

5 So, that's what I'm talking about in terms of the--and  
6 the response that you showed me in the Transcript was in  
7 response to what you said Honourable Vanterpool indicated, that  
8 the powers were very wide, and I'm saying that they're not as  
9 wide as would have been--rather than hear what he said--I'm  
10 taking your word for it, but they wouldn't have been as wide as  
11 he would have indicated when he was before you, at least in my  
12 opinion. There are limitations to that power.

13 Q. Because you do not exercise complete control over  
14 everyone who works in your Ministry?

15 A. You do not.

16 COMMISSIONER HICKINBOTTOM: But all of the examples  
17 you gave, Mr Walwyn, I think, fall within section 61(d), can't  
18 terminate, discipline--

19 THE WITNESS: Um-hmm.

20 COMMISSIONER HICKINBOTTOM: Salary--

21 THE WITNESS: Yes.

22 COMMISSIONER HICKINBOTTOM: All of that falls in the  
23 terms and conditions of the official--

24 THE WITNESS: Yes.

25 BY MR RAWAT:

1 Q. Which it might be argued preserve the independence of  
2 the Public Service?

3 A. Well, one can look at it from that view, too, but it  
4 can also be a hamper as well. If you can't discipline me, then  
5 I, perhaps, wouldn't be as likely to listen to directions or  
6 instructions from you because you can't do anything to me,  
7 essentially. So, it actually depends on what side you look at  
8 it from.

9 Q. So, from a ministerial perspective, it could be  
10 frustrating?

11 A. It could be at times. It could be at times.

12 Q. Now, bringing it back, though, to what I think we've  
13 called the "Wall Project", in what way did the--the powers that  
14 the Governor has under the Constitution bear on the management  
15 of the Wall Project?

16 A. No, I didn't say it did in any way.

17 Q. And in terms of the--did the fact that you have, if  
18 you like, this separation of responsibility--

19 A. Um-hmm.

20 Q. --in that the Permanent Secretary supervises a  
21 ministry under direction and control of the Minister, did that  
22 in any way--was that in any way relevant to the management of  
23 the Wall Project?

24 A. No.

25 Q. The second, I think, concern that you've raised,



1 Mr Walwyn, relates to--I mean, the role of individual officers,  
2 and I think in fairness I think you're not raising a concern  
3 about the manner in which individuals carried out their  
4 function. What you were pointing out was that different people  
5 have different functions within the Ministry?

6 A. That's correct.

7 Q. So, I think it's properly say, because I have called  
8 it a "concern", that you were not making a criticism--

9 A. It was not a criticism. I was just seeking to correct  
10 or to give my views on parts of the Preamble.

11 Q. Yes.

12 Now, I think it's helpful anyway to look at what the  
13 two officers who, at least from a Ministry perspective, were  
14 involved in this project, and they have both given evidence to  
15 the Commissioner, and that's Ms Lorna Stevens, who was Assistant  
16 Secretary responsible for Projects and also Ms Carleen Jovita  
17 Scatliffe, who was the Finance and Planning Officer at the time.

18 A. Yes.

19 Q. And I understand--I think they're both still in post.  
20 If we take Ms Stevens's evidence, and you will find that at  
21 page 885, if we go there. If we go, Mr Walwyn, to line 10,  
22 first of all, I just want to give it some background.

23 So, because it may be relevant to further questions as  
24 we go through the issues.

25 At line 10, Ms Stevens pointed out that she took on

1 the role of Assistant Secretary in 2009. She then at line 15  
2 says that she thought it was in 2012 that she had the role of  
3 Project Manager. And I asked her: "In that role as Project  
4 Manager, was it a specific role within the Ministry in relation  
5 to construction works"? And she answered: "To any type of  
6 projects under the Ministry of Education. It could include  
7 anything from construction to special events, to ceremonies, et  
8 cetera". I then asked then: "To fulfill that function of  
9 Project Manager, were you given any training"? And Ms Stevens  
10 explained that she had been given training in 2015 when she  
11 spent a month in the UK doing two short courses.

12 And then she clarified, and this is at line 4 on the  
13 next page that, in 2015, she had attended a course in the United  
14 Kingdom, project-cycle management, and it was two short courses,  
15 and it was for a period of one month. She confirmed that that  
16 was the only training she'd received, by which time she was  
17 already undertaking the role of Projects Manager.

18 If we go down on that page, which is 886 to 915, I  
19 asked Ms Stevens, "before the Wall Project itself, if we call it  
20 that, what kind of construction projects had you been involved  
21 in as the Ministry of Education's Project Manager"? And she  
22 answered: "Repairs to the public school, the remodel of the  
23 technical school, which is now part of Virgin Islands School of  
24 Technical Studies, undertaken several recreational facilities,  
25 including basketball courts", and then she added "mainly focus

1 around schools".

2           On the next page and this is, I think, the portion  
3 that you drew specific attention to, Mr Walwyn, but we're on  
4 page 887, line 2, I asked, "what did your role involve as the  
5 Internal Projects Manager", and Ms Stevens answered: "As the  
6 Internal Projects Manager, making sure that there were  
7 quotations sought, if there were Cabinet Papers to be done,  
8 issuing of contracts where the finance unit would draft the  
9 Contracts. I would ensure that if it was a Petty Contract,  
10 contractors had their documents. We would sign when the work  
11 was commenced, liaison with any Consultant in terms of project  
12 management, liaison with the contractors. Issuing of--well, not  
13 issuing but making sure the various payments were paid based on  
14 the progress of the works, and that's about it. We prepared  
15 those Reports during and after the Project, et cetera".

16           And I then asked, "and were those skills that you  
17 developed on the job, so to speak? Did you learn as you went  
18 along"?

19           And she answered, "correct. A lot of self-training, a  
20 lot of training from the Consultants, Project Manager, other  
21 private Project Managers, true self-reading, self-taught, yes".

22           So, that's the background. But turning, if we can, to  
23 Ms Scatliffe. If we go, please, to page 938,  
24 that's--Ms Scatliffe gave evidence on the same day as  
25 Ms Stevens. She followed on from Ms Stevens, and we're now in

1 this bundle at page 938, line 3. And she explained that she  
2 became the Finance and Planning Officer in 2014. If we go on to  
3 line 6, Ms Scatliffe said: "My role involved giving financial  
4 advice to the Ministry".

5 And I asked, "would that financial advice cover all  
6 activities that the Ministry was involved in"?

7 Ms Scatliffe answered: "Financially, yes".

8 I asked how she was involved in the Wall Project, and  
9 at line 13 she answered: "Well, I had that work under me, so  
10 those girls were the ones who actually prepared the documents  
11 and whatsoever, but I gave financial advice towards the  
12 Project".

13 I asked whether that advice was in relation to the  
14 costing of the Project, and Ms Scatliffe explained that that  
15 costing was done by Steve Augustine, who we've also described as  
16 Steve Augustine Architects.

17 A. Yes.

18 Q. And if we go over to page 939 at line 5, at that point  
19 when I asked Ms Scatliffe what sort of financial advice would  
20 you have been giving, and she answered: "Well, my advice to the  
21 Ministry was to make sure that there was funding in the budget  
22 and to let them know whether there was funding or not. That was  
23 my--my job".

24 And if we go to 940, at line 16, I asked, having  
25 explained at line 12 by way of background referencing the first

1 phase, which is also known as the focused area, which was done  
2 in December 2014, I asked whether in relation to that part,  
3 Ms Scatliffe had any involvement in it at all, and she answered:  
4 "In the initial phase of it, no. Both making payments and  
5 whatever, yes, I think I had involvement in it at that point,  
6 yes". I asked her was your role in relation to paying on  
7 invoices? And I then asked again, was your role focused on  
8 paying out on the invoices. And on the next page, Ms Scatliffe  
9 answered "yes".

10 Now, one additional detail you've given, Mr Walwyn, in  
11 your response is to say that the Finance and Planning Officer,  
12 though positioned in a particular Ministry, is under the direct  
13 supervision of the Financial Secretary and the Ministry of  
14 Finance and the Permanent Secretary of that particular Ministry.  
15 Could you just clarify that. By "Permanent Secretary", do you  
16 mean the Permanent Secretary--

17 A. Yes.

18 Q. --in your Ministry, for example, as well as the  
19 Financial Secretary?

20 A. That's correct.

21 Q. And so, a Financial Planning Officer would essentially  
22 have two lines of management?

23 A. Yes.

24 Q. And you say it's important to note this, but why do  
25 you say it's important to note that?

1           A.     Because it's important to show that there has always  
2 been, in relation to financial matters, a direct link to the  
3 financial--the Ministry of Finance through the Financial  
4 Secretary. So, even though the Financial Officer, Planning  
5 Officer is placed within the Ministry, she's not acting on her  
6 own volition or she's not acting on direct instructions per se  
7 from the Ministry or the Minister. She's tied into the  
8 Financial Secretary or really for financial matters, is the  
9 person who is really her boss technically from that aspect.  
10 That's the way the system is set up.

11           COMMISSIONER HICKINBOTTOM: Her job is--as the job  
12 title suggests, and also her management line to the Financial  
13 Secretary suggests, seems to me to be twofold, it seems to come  
14 out of her evidence. The first is to make sure that the money  
15 for any project is there in the budget so, the money is, as it  
16 were, available in budgetary terms.

17           And secondly, to make sure that it's paid out in a  
18 proper way?

19           THE WITNESS: Yes.

20           COMMISSIONER HICKINBOTTOM: When and as the work  
21 progresses?

22           THE WITNESS: Yes.

23           COMMISSIONER HICKINBOTTOM: That's her job?

24           THE WITNESS: Yes.

25           COMMISSIONER HICKINBOTTOM: Yes, thank you.

1 BY MR RAWAT:

2 Q. If we go over to the next page, please, your page 4.  
3 The third point that you raise is you take issue with the cost  
4 that was quoted in the Preamble--

5 A. Yes.

6 Q. --in relation to Phase 1 of the Project, which we've  
7 called it Phase 1, the Auditor General called it the Focus Area,  
8 and that's the work undertaken--the first tranche of work  
9 undertaken over one month in December 2014.

10 A. Yes.

11 Q. Now, you give a number of references. We don't need  
12 to go to it. This is at the bottom of your page 4, where the  
13 figure of 96,727.40 is used.

14 Could I take you, please, to page 19 in the  
15 bundle--sorry, page 18, please.

16 If you look at paragraph 92, first of all, you're  
17 right to say that a figure for the total--for Works Orders  
18 issued in 2014 for the phase and paid out was in 2014, was  
19 \$96,727.40, but what the Auditor General's Report points to is  
20 other costs that were not paid until the following year. And if  
21 you go over to the next page, 19, you see a table headed  
22 "Table 5", which summarises the total cost of the Focused Area,  
23 or Phase 1, which included rail--a Work Order which was not  
24 issued for 7,000-odd and excavation which was paid for in 4,400.  
25 So that's where that figure comes from as the total sum.

1           A.    But it's important for me to note that--the Minister,  
2 for instance--and that's why I went at length to explain the  
3 roles of other persons--I would not know how to respond to this  
4 in relation to additional costs being put. And I don't think it  
5 was put in evidence to Ms Stevens or Ms Scatliffe to find out  
6 really what that was because yes, I may have written that, but  
7 there might be a reason or something behind that, and I'm not in  
8 a position to assist with it. As far as I'm aware the cost was  
9 always 96,000.

10                   The reason why I raise the issue is because if the  
11 cost had gone over 100,000, it would have had to have been  
12 tendered or go to Cabinet for approval. And that's the reason  
13 why I raised issue with it.

14           Q.    Yes.

15                   And if you go back to page 18--

16           A.    Yes.

17           Q.    --this may be why the Auditor General flagged this up.  
18 If you look at paragraph 90, Mr Walwyn, the plan that was  
19 submitted--

20           A.    Um-hmm.

21           Q.    --to the Town and Country Planning Department costed  
22 that first phase at just over \$156,000.

23           A.    Okay.

24           Q.    So, on that plan, if it had gone forward, you would  
25 have had to put it to tender?



1           A.    You would have to put it to tender and you had to get  
2 the permission of Cabinet to waive the tender process.

3           Q.    Because, as I understand it, although the only way you  
4 could--you had authority from the Premier as a Minister to deal  
5 with work that came in under \$100,000, didn't you?

6           A.    Yes.

7           Q.    So, the only way you could have kept it within the  
8 Ministry and use your existing budget without going to Cabinet  
9 would be if you had--if you had, in fact, kept it below  
10 \$100,000?

11          A.    That's correct. But if you notice the evidence of  
12 Ms Stevens indicated what happened--

13          Q.    Speaking of the circumstances, the reason she  
14 give--gave--for why--

15          A.    She indicated that--

16          Q.    Can I pause you? I will come back to that as we go  
17 through.

18          A.    Yes.

19          Q.    So that we will--I appreciate that that's a point that  
20 you rely on?

21          A.    Okay.

22          Q.    So, it's important that we get it on the record, and I  
23 will do that.

24          A.    Okay.

25          Q.    But what I really wanted to do was just to explain

1 where the figure comes from--

2 A. Yeah.

3 Q. --so that that's given context, but perhaps if I move  
4 on. What you've also, I suppose, raised a question over, and  
5 this is the fourth point you make, is in relation to the cost of  
6 the Project.

7 A. Um-hmm.

8 Q. And I just again, so that we have this going forward,  
9 want to draw your attention to where those figures come from,  
10 and we need to go to the Executive Summary of the Auditor  
11 General's Report which, on the last occasion you and I spent  
12 some time over, and we see that at page 5, paragraph 9.

13 A. Okay.

14 Q. When one adds the figures that are quoted there,  
15 looking at total expenditure on the Phase 1 and Phase 2,  
16 together with the additional payment to the external Project  
17 Manager, Mr. Augustine, that's where you get the total sum spent  
18 on the Project. By the time it was stopped was  
19 \$1,125,000--sorry, I will start that again. \$1,125,710.44, and  
20 the letter to you actually had a typo in it because what as  
21 paragraph 11 doesn't tell us, the additional costs that was  
22 required or estimated necessary to complete the work was going  
23 to be an additional \$251,411.

24 A. Yes.

25 Q. Now, you make the point in your response--and I would

1 like to get this on the record--you say that the actual sum of  
2 \$828,000--and you and I both know what we're talking about, and  
3 for the Transcript, that's the amount that was approved for  
4 Phase 2 by Cabinet.

5 A. Yes.

6 Q. You say that was only for the clinical wall around the  
7 school.

8 A. Yes.

9 Q. And that there were consequently additional changes.

10 A. Yes.

11 Q. For example, a lay-by pull-off for school buses that  
12 had not been factored in the original planning.

13 A. Yes.

14 Q. Now, just explain to me for the Commissioner, what did  
15 you mean by "clinical wall"?

16 A. The actual wall itself. There were additional things  
17 that happened in between the construction.

18 And perhaps this might be a very important point,  
19 Commissioner, if you would just allow me to just raise it, that  
20 there were three--ostensibly three persons who were--who formed  
21 the technical team for this project. Ms Stevens, was the  
22 Internal Project Manager, the Financial Planning Officer and  
23 Mr Steve Augustine. Mr. Steve Augustine was the Chief Technical  
24 person on this matter. I'm interested to understand why hasn't  
25 he been called before the Commission because, for instance, here

1 I'm now answering a question on lay-bys and other things which I  
2 was not involved in, but the main person who has more  
3 information about this project than even the two technical  
4 persons in the Ministry have not been called by the Commission  
5 to ask any questions. I find that very interesting. Why is  
6 that the case? I can't tell the Commissioner who to call, but I  
7 would imagine if you want to get to the crux of the matter,  
8 somebody as important and this should have been called before  
9 you.

10 COMMISSIONER HICKINBOTTOM: What we're doing, because  
11 you've mentioned a number of people, a considerable number of  
12 people in your response that you consider it may be useful to  
13 call, but it's important that we only call people who are  
14 necessary. Some of the individuals that you have named we are  
15 calling. Others, I suspect, will certainly not be necessary  
16 because the points that you make I will accept without any  
17 further evidence, so it's important I think that we take your  
18 evidence first and then see whether there are any other  
19 witnesses that--who will need to be called.

20 THE WITNESS: I understand that Commissioner, but you  
21 must also bear in mind how difficult it is for me as a policy  
22 person to be answering technical questions.

23 COMMISSIONER HICKINBOTTOM: I understand.

24 THE WITNESS: And even on the last occasion, I was  
25 reading information from a report or response that was given by

1 Mr Augustine to the Commission. That is not the best form of  
2 evidence. The best form of evidence would be to have  
3 Mr Augustine in front of you.

4 And here it is again, I'm only picking up issues as I  
5 remember them, discussing the lay-by because I know the lay-by  
6 for instance was one of those things that was not initial  
7 involved or part of the planning that went to Cabinet. I know  
8 that there may be other things but I can't tell you all what  
9 they are.

10 And the concern that I had about the additional  
11 \$250,000 was that that additional sum included additional things  
12 outside of the actual wall itself. Again, those are things that  
13 Mr Augustine would be able to help the Commissioner as to what  
14 this actual additional sum was because, if you take it as a  
15 whole, you would take it believe that this was in addition to  
16 the actual work that was approved by Cabinet when, in fact, it  
17 was not so. It was part of a plan to develop a secured--a more  
18 entrance at the school that required more construction, and that  
19 is what I believe is involved in this 250.

20 But he managed the Project in addition with the two  
21 other young ladies, one having more responsibility than the  
22 other. I am not--I am not in a position to help you as much as  
23 he would have been in a position to help you.

24 COMMISSIONER HICKINBOTTOM: I understand that.

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: But we've heard evidence,  
2 some of it from you from last time, Mr Walwyn--

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: --that there were a number  
5 of reasons why there is a difference between the sum approved by  
6 Cabinet of \$828,000--

7 THE WITNESS: Yes.

8 COMMISSIONER HICKINBOTTOM: --and the total amount  
9 that the wall cost or would have cost had it been completed of  
10 something like \$1.4 million. One was, as you say, there may  
11 have been extra works.

12 Secondly, I think you accepted last time, but no doubt  
13 Mr Rawat will come to it, the 828,000 was based upon a single  
14 contractor.

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: So, there are a number of  
17 reasons why the amount is larger.

18 THE WITNESS: Yeah.

19 COMMISSIONER HICKINBOTTOM: But the fact is that the  
20 amount sought from the Cabinet was 828,000, and it cost  
21 1.4 million.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 BY MR RAWAT:

25 Q. And I think also, Mr Walwyn, I think--

1           A.    It didn't cost 1.4 because remember there's 200 and  
2 something thousand, we were seeking approval for that.

3           COMMISSIONER HICKINBOTTOM:  I'm sorry, you're  
4 absolutely right.  It didn't cost 1.4 because it wasn't  
5 completed.

6           THE WITNESS:  Yes.

7           COMMISSIONER HICKINBOTTOM:  Had it been completed--

8           THE WITNESS:  It would have been there.

9           COMMISSIONER HICKINBOTTOM:  I understand that.  Fully  
10 understood.

11          Q.    And if I could add, Mr Walwyn, we're not calling you  
12 to give technical expertise.  The reason for putting questions  
13 to you is because of your position as the then Minister.

14          A.    Yes.

15          Q.    Now, if we take the example of the lay-by that was  
16 done--and I think this is something I will come back to.  Within  
17 your evidence on the last occasion, you explained that they were  
18 other things being done on that school campus?

19          A.    Yes.

20          Q.    Not just a wall, there were plans for other things.

21                But tell me if I'm wrong about this:  If a--there is  
22 going to be building of a lay-by to allow school buses to stop,  
23 that is something that a Minister would know about?

24          A.    Yes.

25          Q.    The costing of it--and--I mean, you said on the last

1 occasion that your job was to make sure there was funding.

2 A. Yes.

3 Q. So, the costing of that--you might not know or need to  
4 know how high the curb needs to be.

5 A. Um-hmm.

6 Q. Or the particular dynamics or dimensions of the  
7 lay-by.

8 A. Um-hmm.

9 Q. But you would want to know, as Minister, how much is  
10 this going to cost us?

11 A. Well, certainly, certainly I would want to know how  
12 much it is going to cost.

13 Q. Because the reason you'd want to know for it, if it  
14 comes out of your budget, your allocation, that may mean that  
15 there are other things that you cannot do.

16 A. That's possible, yes.

17 Q. Or if it is something that is going to cost you over  
18 \$100,000, it's something you are going to have to take to  
19 Cabinet anyway? You're going to have to use a different  
20 process, aren't you?

21 A. You have to use a different process, not necessarily  
22 Cabinet entirely but you may have to seek--but I think this  
23 sought to do was to seek the approval of the Minister of  
24 Finance.

25 Q. Yes.



1           A.    Yes.

2                    But it would have been for monies that were already  
3 allocated for the Ministry.  So, had the money not been  
4 allocated in the Ministry, we would not have been asking for any  
5 additional sums.

6           Q.    Again, that's a point you make further on in your  
7 written response, and we will pick it back up at that point.

8           A.    Yes.

9           Q.    But the general point is you would not, I assume, want  
10 convey an impression of your Ministry as one where you had  
11 Project Managers building things that you, as Minister, were  
12 simply unaware of--

13          A.    Not necessarily.

14          Q.    --completely?

15          A.    Well, I mean, there are some things that they will  
16 probably do as a matter of their own judgment.  They wouldn't do  
17 certain thing.  I mean, if something was an astronomical cost, I  
18 don't think that they would do it without advising the Minister  
19 of it.

20          Q.    What's the level at which something becomes an  
21 astronomical cost?

22          A.    I can't say.  I think it's probably for their  
23 discretion.  But certainly I would say, perhaps, doing the  
24 lay-by would have been run by me.  I can say that.

25          Q.    I mean, you say that you would leave it to their

1 discretion. Whose discretion?

2 A. The Project Manager and the Financial Accounting  
3 Officer, depending on what it is.

4 Q. We've got two Project Managers that--

5 A. I'm talking about the Internal Project Manager.

6 Q. So, you would leave it to the discretion of the  
7 Internal Project Manager and the Finance and Planning Officer--

8 A. Depending on what it is.

9 Q. --to decide when use of your budget, your Department's  
10 budget--

11 A. If--sometimes during construction there are things  
12 that come up that you didn't anticipate. Unless those things  
13 are major, I would trust those persons to make the decision  
14 because they can be trusted.

15 Q. Can you assist the Commissioner, what do you mean by  
16 "major"?

17 A. A lay-by, for instance, that would have been something  
18 they would have run by me because I know where that idea came  
19 from. They would have said to me, "Minister, perhaps it would  
20 cost a lot less if we incorporate it now as opposed having to  
21 build a wall and break it down", and I would say "Okay. Yes, do  
22 the lay-by".

23 Q. But that's the distinction, isn't it? For example, in  
24 the course of building a project--and let's take the wall as an  
25 example--something arises that means you have to do something

1 slightly different.

2 A. Yes.

3 Q. You can't build a wall in a particular section  
4 because--in the way envisaged because there is a tree there that  
5 can't be moved or whatever.

6 A. Yes.

7 Q. That's the sort of detail that you would say can  
8 legitimately be left to the Project team?

9 A. Yes.

10 Q. But where you have a situation--what you seem to have  
11 used the example of the lay-by of is as an additional project, a  
12 separate project that was then brought in within the ambit of--

13 A. I wouldn't deem it as a separate project. I would  
14 say, at the time it was being done, perhaps enough thought  
15 wasn't given to the lay-by, to the dropping off of students, and  
16 the thought was raised at the time--I think it came from the  
17 School Principal--that perhaps it might be wise to incorporate  
18 it here. And I think that was one of the things that was  
19 incorporated.

20 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.  
21 The \$251,000, which is in paragraph 11 of the Executive Summary,  
22 comes from various paragraphs in the main part of the Report,  
23 paragraphs 55, 59, and 63--

24 MR RAWAT: Pages 14 and 15.

25 COMMISSIONER HICKINBOTTOM: --pages 14 and 15, which

1 set out the estimate that the Ministry has given for the  
2 completion of the wall, so that is the wall and the railings--

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: --not the lay-by. The  
5 lay-by doesn't seem to be here at all.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: So, it may be that it was  
8 intended to build the lay-by, but the lay-by doesn't seem to be  
9 in any of these costings.

10 THE WITNESS: But it's there.

11 COMMISSIONER HICKINBOTTOM: Right.

12 THE WITNESS: It's on the Project right now. It's  
13 been constructed.

14 BY MR RAWAT:

15 Q. But what your evidence is, Mr Walwyn, is that when one  
16 looks in this figure of 251,000-odd, you have to take it in the  
17 context that it incorporates, for example, the building of a bus  
18 lay-off?

19 A. No. I'm saying you have to see what the request  
20 entailed because in order to get additional funding, you have to  
21 send a request for it, and within that request you have to  
22 itemize what it is you are asking the additional money for, and  
23 it is when you get that you will see, actually, what this  
24 \$250,000 was for.

25 COMMISSIONER HICKINBOTTOM: I know. But if you look

1 at paragraph 55--

2 THE WITNESS: Of where?

3 COMMISSIONER HICKINBOTTOM: This is on page 14.

4 And for these purposes, the Auditor General split the  
5 wall into three parts.

6 THE WITNESS: Um-hmm.

7 COMMISSIONER HICKINBOTTOM: On the first part the  
8 Ministry estimated that the amount of \$100,000-odd will be  
9 needed to complete the rails and painting for this area.

10 Paragraph 59, second area, the Ministry estimate to  
11 complete this area for rails and painting, \$60,000 and 63. The  
12 Ministry has estimated the cost to complete this area at  
13 \$89,000. This is to cover cost of wall construction and  
14 painting, no lay-by. And it's those figures that add up to  
15 \$251,000.

16 So, in completing the Project, no lay-by.

17 THE WITNESS: But the lay-by was built. There's a  
18 lay-by there.

19 COMMISSIONER HICKINBOTTOM: The lay-by may well have  
20 been built. But in terms of the figures that the Auditor  
21 General used, no lay-by is included. On the face of the report,  
22 there is no lay-by included in these figures, simply the  
23 building of the wall and the railings.

24 THE WITNESS: Um-hmm.

25 BY MR RAWAT:

1 Q. If I could move on, please, to the next point you  
2 make, and it's in the penultimate paragraph on your page 5. You  
3 point out that the Wall Project was not stopped because it went  
4 over budget.

5 A. Yes.

6 Q. You say "all government projects being funded by local  
7 funds were stopped at this time due to cash flow challenges that  
8 the Government was apparently experiencing at that time".

9 So, who made that decision to stop all government  
10 projects?

11 A. The Ministry of Finance.

12 Q. And can you remember when that was made?

13 A. I can't remember, but it was around the same time that  
14 that project was happening, and there were a number of other  
15 projects happening within the Government that the Ministry of  
16 Finance asked them to halt for a while.

17 Q. And was that towards the end of 2015, would you say?

18 A. Remember Phase 2 that we were discussing?

19 Q. Yes.

20 A. No. That was not towards the end.

21 Whatever date it was that this project didn't  
22 continue, it was around that date. I can't remember.

23 COMMISSIONER HICKINBOTTOM: Certainly paragraph 9 of  
24 the Auditor General's Report says the works were stopped late  
25 2015.

1 THE WITNESS: Okay. Well, whatever time it was.

2 COMMISSIONER HICKINBOTTOM: That was the time?

3 THE WITNESS: It was around that time because a number  
4 of other projects had stopped, even within the Ministry as well.

5 COMMISSIONER HICKINBOTTOM: Thanks. Got it.

6 BY MR RAWAT:

7 Q. The reference to "local funds", is that reference to  
8 funds held within an individual Ministry's budget?

9 A. That do not come from loan funding.

10 Q. Say that again, please.

11 A. Local funds held in the Ministry's budget that does  
12 not come from loan funding, so monies that would come directly  
13 from the consolidated fund.

14 Q. I see.

15 So, monies that you have been allocated for specific  
16 purposes?

17 A. Yes.

18 Q. And so, you were allowed--if we take this example, you  
19 had been approved by Cabinet to spend from local funds \$828,000?

20 A. Yes, of the money that we had in the budget, yes.

21 Q. Money that you already had in your budget?

22 A. Yeah.

23 Q. I see.

24 So, you get an allocation from the consolidated fund,  
25 your Cabinet approved that you spend \$828,000--

1 A. Of that money, yes.

2 Q. --of that money.

3 But then Cabinet essentially paused any further  
4 spending of that money?

5 A. The Minister of Finance--

6 Q. Minister of Finance.

7 A. --asked me to--

8 Q. Thank you for that correction.

9 COMMISSIONER HICKINBOTTOM: What's the difficulty?  
10 You got the \$828,000, in effect.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: We know from the Auditor  
13 General's report that by late 2015 the expenditure on this  
14 project was \$985,000. What you couldn't get--you couldn't go  
15 and get more money over and above the 828,000 from the  
16 consolidated fund.

17 THE WITNESS: The money was there. But because of the  
18 procedure, you needed permission. So, you could have done that  
19 either going back to Cabinet or with the approval of the  
20 Ministry of Finance.

21 COMMISSIONER HICKINBOTTOM: So, you got the \$828,000--

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: --in the bag, but it was  
24 going above that, where this bar stopped you.

25 THE WITNESS: Yes. Yes--well, yes. And we made--we



1 made--we sent something forward for additional funding.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 And that was where the--

4 THE WITNESS: Well, it was around that same time. I  
5 can't say exactly--

6 COMMISSIONER HICKINBOTTOM: No, no. That was why the  
7 thing stopped.

8 THE WITNESS: Well, that wasn't why. As I said, there  
9 was a reason why the--from my knowledge, it seemed like the  
10 problem was the government was experiencing cash-flow issues at  
11 around that same time.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: And so, the Minister of Finance asked  
14 for all projects in all Ministries to stop. That was the point  
15 I was making. It wasn't that the project was stopped because of  
16 funding. All Ministry projects, all projects in all Ministries  
17 were halted.

18 COMMISSIONER HICKINBOTTOM: I understand that more  
19 general point. But if--I understand that it didn't. But if the  
20 project had come in under \$828,000, it would have been  
21 completed?

22 THE WITNESS: It would have been completed, yes. Yes,  
23 sir.

24 COMMISSIONER HICKINBOTTOM: Got it. Thank you very  
25 much.

1 BY MR RAWAT:

2 Q. And the point, just so I can understand it, Mr Walwyn,  
3 you get an allocation from the consolidated fund.

4 A. Yes.

5 Q. That's your budget from different heads?

6 A. Yes.

7 Q. The approval that you had from Cabinet was to spend  
8 \$828,000 of what you had already been given to build the wall?

9 A. Yes.

10 Q. And that's what you were doing?

11 A. Yes.

12 Q. If you wanted to spend more of what you were given,  
13 you would have to go back to Cabinet?

14 A. You would have to go back to either Cabinet or, most  
15 times, the Ministry of Finance because the Ministry of Finance  
16 would approve it and then take it to Cabinet and then take it to  
17 the House of Assembly.

18 Q. But, in effect, what you weren't allowed to do, or any  
19 Ministry was allowed to, you say, is towards the end of 2015,  
20 from the decision of the Ministry of Finance, no Ministry was  
21 allowed to continue spending on projects which had been funded  
22 by monies from the consolidated fund?

23 A. Yes. There was a halt for a period of time.

24 Q. Okay. Could we--turning to the sort of actual  
25 potential criticisms, you have broken them down, and I wanted to

1 take them slightly out of order, but to keep the chronology, if  
2 I may. So, could I just take you, please, to Criticism 2, what  
3 you called Criticism 2, which is at page 7, please.

4 If I can, just to try and give context to the  
5 potential criticism, just remind you of some of the evidence or  
6 the evidence that sort of goes to it. If you go in your bundle  
7 to page 18, please, and if we look at paragraphs 89 to 94,  
8 that's where we find the summary, and 94 goes on to the next  
9 page. We find the summary of the work done on the Focus Area,  
10 and I should say that the point that is made in Criticism 2 is  
11 that the Phase 1 was scaled down so that the total value fell  
12 below 100,000, and that was deliberate, so that the procurement  
13 process would not apply.

14 So, what the Auditor General's Report records is that  
15 the plan that was submitted costed building a 180-foot wall at  
16 \$156,000-odd, which would, as you've accepted a few moments ago,  
17 require a tendering process or a Cabinet waiver--

18 A. Um-hmm.

19 Q. --and that wasn't pursued.

20 But then what happened was that the work was scaled  
21 back so that, instead of it being a 180-foot wall, it was going  
22 to be 120-foot, and it was done by way of Work Orders to 11  
23 contractors. And if you look over to the next page, there is a  
24 table there, and we have gone through the figures before, but  
25 the Work Orders that were issued came to \$96,727-odd. There was

1 one Work Order which was outstanding, and that was for the  
2 painting of a section--railing and painting of a section, which  
3 was not done. And additionally, there were excavation costs  
4 paid in 2015. So, at the time the work was stopped, the entire  
5 project was stopped, the Auditor General points out that the  
6 work on Phase 1 had still not been completed.

7 If you go to paragraph 100 on page 20--

8 A. Okay.

9 Q. --page 20, please.

10 Now, at paragraph 100(a), the Auditor General Report  
11 reads as follows: "The scaling down of the 2014 works from  
12 180 feet to 120 feet, non-issuing of the final rail contract to  
13 avoid major contract regulations that would come into play with  
14 the project reaching \$100,000".

15 And she gives that as an example of an agency seeking  
16 to avoid procurement requirements because the effect of scaling  
17 back was that you could do the work from the Ministry budget  
18 because you wouldn't hit \$156,000, which would be outside of  
19 what you could sign off.

20 A. Um-hmm.

21 Q. Secondly, paying excavation works in 2015 meant you  
22 weren't going over 100,000. And delaying issuing the last Work  
23 Order also meant that you didn't go over 100,000.

24 Now, that's the context from the Attorney--the Auditor  
25 General's Report. We have already looked at the evidence of

1 Ms Scatliffe, where she said that her role in Phase 1 was  
2 essentially focused on paying invoices.

3 A. Um-hmm.

4 Q. Could I ask you to look at 890 in that bundle, please.  
5 If I pick it up at line--

6 COMMISSIONER HICKINBOTTOM: Who is this evidence,  
7 please?

8 MR RAWAT: This is the evidence of Ms Stevens.

9 BY MR RAWAT:

10 Q. If I pick it up, please, at line 1, you see the answer  
11 there is "Yes, I was". Ms Stevens had confirmed that she was  
12 involved in Phase 1.

13 I then put to her paragraph 90 of the Auditor  
14 General's Report, which relate to the fact that the plan had  
15 been for a 180-foot wall, costing \$156,000-odd. She confirmed  
16 that was prepared by SA Architect.

17 I asked then, at line 13, "Who made the decision to  
18 scale it back to 120 feet"? And I think this is the point that  
19 you've drawn out in your written response, Mr Walwyn, and I will  
20 read out the answer into this Transcript. At line 14,  
21 Ms Stevens said: "I think at the time that was based on the  
22 available funding that we had. This section of the wall was  
23 taking place at the close of the Year 2014".

24 And I asked: "And was that what funding was available  
25 within the Ministry of Education's budget"?

1           And she answered: "Correct".

2           I then asked, or drew to Ms Stevens's attention that  
3 the works had been undertaken by issuing Work Orders to 11  
4 contractors, and I asked: "Do you know who decided to use Work  
5 Orders rather than a Petty Contract to do this work"?

6           Ms Stevens answered that both Petty Contracts and Work  
7 Orders were used on the perimeter wall, and that came from the  
8 decision sought by Cabinet, through Cabinet.

9           I then, on the next page, 891, explained that I was  
10 referring specifically to the first phase, and asked again:  
11 "Who decided to use Work Orders on that first phase"?

12           And Ms Stevens responded--and this is, we see, at  
13 11--"that would have been from the Minister. He would have  
14 given us the list of contractors to use at--on that site".

15           Now, you have, in your written response, rejected the  
16 criticism. It is one you say that is unsupported by evidence  
17 and is unwarranted.

18           A.    Um-hmm.

19           Q.    And you rely on the following, if I could summarise:  
20                Firstly, the answers that Ms Stevens gave in oral  
21 evidence, which I hope you would agree I've read out now.

22           A.    Um-hmm.

23           Q.    That's the entirety of those answers.

24                Secondly, you point out that the question was not put  
25 to Ms Scatliffe, who might have also been able to support the

1 answer that Ms Stevens gave.

2 Third, you also said that you made the request for  
3 Phase 1 to be done urgently, based on correspondence that you  
4 received from the then-school principal of Elmore Stoutt High  
5 School, and you point out that, in terms of the technical  
6 decision to scale back from 180 to 120, that is something you  
7 could not, in your role as Minister, assist with.

8 Can I just clarify one detail, please, just because if  
9 we look at your 2.1, Mr Walwyn--

10 A. Um-hmm.

11 Q. --you see where you reference the name of the School  
12 Principal?

13 A. Yes.

14 Q. You've referred to a letter, and there is, I think, a  
15 typo just introduced there. Can you just confirm that the  
16 letter that you're referring to is the letter at Tab 4 of the  
17 bundle that you've provided to the Commissioner? And it's a  
18 letter dated November the 5th, 2014.

19 A. Yes.

20 Q. Now, this is a letter from the Principal to Ms Jillian  
21 Douglas-Phillip, who was then the Acting Chief Education  
22 Officer; is that right?

23 A. That's right.

24 Q. If you just turn up 134, in the Hearing Bundle,  
25 please.

1 REALTIME STENOGRAPHER: The number again, please?

2 MR RAWAT: 134.

3 BY MR RAWAT:

4 Q. This is a letter. We can see at the top that it  
5 carries--it's been labeled "Appendix G".

6 A. Um-hmm.

7 Q. It's dated November the 6th, 2014.

8 A. Yes.

9 Q. And this was a letter that was appended to the draft  
10 paper that was prepared by your Ministry--

11 A. Yes.

12 Q. --and which then went to the Ministry of Finance--

13 A. Um-hmm.

14 Q. --who then took the final paper, as you explained on  
15 the last occasion, to Cabinet.

16 A. Um-hmm.

17 Q. Can you confirm, looking at the two letters, it  
18 appears, doesn't it, that the contents of both letters are the  
19 same?

20 A. The last one that I was looking at.

21 Q. It's your Tab 4.

22 A. My Tab 4; right?

23 Q. Yes.

24 A. Yes. Um-hmm.

25 Q. And the only difference appears to be there is one of



1 date?

2 A. Yeah.

3 Q. Now, is that something you can explain? You are  
4 copied into this correspondence.

5 A. Yes.

6 Q. You're copied into both letters?

7 A. Yes.

8 Q. Do you know why--did you receive the same letter on  
9 two days? Can you remember?

10 A. I don't remember. I don't.

11 I know sometimes when you're depending on systems that  
12 you use, when you print letters, sometimes the date, there are  
13 some things sometimes that are on these computers that the date  
14 of when you print the letter, the letter changes dates, but--

15 COMMISSIONER HICKINBOTTOM: It's made even more  
16 intriguing, Mr Walwyn. On page 135--

17 THE WITNESS: Um-hmm.

18 COMMISSIONER HICKINBOTTOM: --there is a receipt stamp  
19 on it. I'm not quite sure--I think it's CA--yeah, CO.

20 THE WITNESS: 135?

21 COMMISSIONER HICKINBOTTOM: 135. It's the date stamp  
22 on the letter dated 6th of November. The received date stamp is  
23 the 5th of November.

24 THE WITNESS: Yeah. Which coincides with my date of  
25 the letter that I--

1 COMMISSIONER HICKINBOTTOM: Yeah.

2 THE WITNESS: But the thing is that the contents of  
3 the letter are the same.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 BY MR RAWAT:

6 Q. There is an alternative version of the letter at  
7 page 163 in the bundle.

8 A. 163?

9 Q. Yeah. If you look at 164, I think you see received  
10 stamp which I think it was received on the 6th?

11 A. I can't account for that because the date--the letters  
12 were always sent--hard copies would come, but e-mail would come  
13 as well. So, they'll come via e-mail and then the hard copy  
14 would come down after. That's why you see the electronic  
15 signature. It's on the letters.

16 Q. So, it may be that you received mail in two days and  
17 received the same letter and it was changed over.

18 A. I can't--but I think what is important is really the  
19 content.

20 Q. Yeah, of course.

21 A. I can--

22 Q. I think there is no dispute that this was the letter  
23 that was used--

24 A. This is one of them.

25 Q. --in support of--but it was the letter that was used

1 in support of the tender waiver application?

2 A. Yes.

3 Q. Could I ask some questions, though, about Phase 1?

4 A. Yes.

5 Q. Was the intent to complete Phase 1 before students  
6 returned back to school?

7 A. I don't think that students were on break at that  
8 time.

9 Q. So, you were doing the work, I think, for the month of  
10 December?

11 A. Yeah. Yes. Whenever it started--I'm not sure--I  
12 don't think that the return date of the students was on the  
13 minds of the Ministry. I think what was on the minds of the  
14 Ministry was so let's try to get the situation sorted out  
15 because it was something we knew about for a long time.

16 COMMISSIONER HICKINBOTTOM: When you embarked on--when  
17 Phase 1 was embarked on--and this was on the western side of the  
18 school perimeter because there was a particular issue there?

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: I understand that, and  
21 that's why there was a Phase 1 to do that most urgently.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: But when Phase 1 was done,  
24 Phase 2, the rest of the perimeter fence, was, as I understand  
25 it, contemplated?

1 THE WITNESS: It was contemplated, but it didn't go  
2 anywhere yet because, if you notice, the Cabinet paper was dated  
3 in January, so that shows you how far behind we were. It was  
4 contemplated but we didn't act on it until the new financial  
5 year, we just couldn't.

6 COMMISSIONER HICKINBOTTOM: Because of money?

7 THE WITNESS: Because of money, and because you had to  
8 plan it out.

9 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

10 BY MR RAWAT:

11 Q. Were you undertaking this work at the end of the  
12 budgetary year?

13 A. It was the end of the budgetary year, as Ms Stevens  
14 was saying. She indicated that obviously it was scaled back. I  
15 wouldn't know about that.

16 Q. So, what was the extent of your involvement in the--

17 A. My involvement would have been that we need to see  
18 what monies we have available, if we can get this done, and that  
19 would have been the extent of my instructions. They would have  
20 gone and seen again if monies were available, engage  
21 Ms Scatliffe to work along with us getting a drawing done of  
22 what needed to get done, get a costing of it done. And then we  
23 move from there.

24 What I've always done with the staff in the Ministry  
25 is, I trust them to do their work, and if there's an issue that

1 they have that they can't overcome on their own, then you come  
2 to me on it because I'm not one of those Ministers who want to  
3 be involved in every single thing. Don't call me on everything  
4 because there are so many things that Ministers have to do, and  
5 some of the responsibilities have to rest on you to make certain  
6 decisions.

7           And I believe that was what was in the mind of  
8 Ms Stevens when she got the initial costing. Maybe what she  
9 did, probably trying to preempt the whole process would have  
10 been--she got the reports from the costing, she probably wanted  
11 to engage Town and Country Planning as quickly as possible, but  
12 then probably didn't get back to them and say "Look, we scaled  
13 the plans down" based on whatever she said was what was in the  
14 budget at the time.

15           I don't believe, speaking for those people that I  
16 worked with, I don't believe that they would have deliberately  
17 just done that for the sake of trying to avoid the procurement  
18 process. I don't think they would do that.

19           COMMISSIONER HICKINBOTTOM: But the two of them are  
20 inextricably linked on it. We know the plan was to build 180  
21 foot of wall at \$150,000. That was the plan that was submitted  
22 to the Planning Authority.

23           THE WITNESS: Yes.

24           COMMISSIONER HICKINBOTTOM: But somehow that was  
25 reduced to 120 feet, which coincidentally came in, in terms of

1 costing, just below \$100,000, and that meant no Major Contract,  
2 no engagement with the ESHS, no engagement with Cabinet. It  
3 could be done by Work Orders. And you said it was to be done by  
4 Work Orders--

5 THE WITNESS: Work Order, but let's say--let's say if  
6 it had gone to Cabinet and the Cabinet paper had indicated it  
7 would have been done by Work Orders and Petty Contracts, it  
8 would have been the same result at the end.

9 What, perhaps, I am struggling to understand is how  
10 you cut back from 180 feet to 120 feet but the wall still fits  
11 within the space that we were concerned about. That is the part  
12 that's in my mind. So, I'm saying that there has to be  
13 something more because I do remember, for instance, when that  
14 wall went up, if you notice--and I don't know if you ever  
15 visited the site, but the finish of that wall was different from  
16 the finish of the main wall because the rails were going in a  
17 sort of a horizontal way, and they looked differently, and  
18 people were complaining in the community that we are--the place  
19 looked like we put the students behind bars, and I think a  
20 change was made somewhere along the line.

21 But the part of how we get from 180 to 120 but it  
22 still fits within the same site doesn't make any sense to me  
23 because the area that we were concerned about was, in fact,  
24 addressed. So, maybe there is something else going on there  
25 that we don't--that we don't know, because that wouldn't make

1 any sense. If it's 180 feet, it's 180 feet. How can you scale  
2 it back to 120 but still have the same coverage?

3 And the wall was joining on to a wall that existed on  
4 the front of the school that was part of a different project.  
5 And the exact area that we had concerns were addressed in the  
6 way it was done. So, there is something else there that perhaps  
7 we need to drill down on and find out what happened there.

8 BY MR RAWAT:

9 Q. But in terms of the process--leaving technical  
10 specifications, et cetera, aside--you're at the end of your  
11 budget year.

12 A. Yeah.

13 Q. A School Principal approaches you about an issue that  
14 has arisen.

15 A. Yes.

16 Q. And we will ask the questions more specifically. But  
17 following that correspondence from the principal, you must have  
18 been the one, as the Minister--

19 A. Absolutely.

20 Q. --saying action must be taken?

21 A. Yes, because that is only one letter. There were  
22 many--

23 Q. I'm not disputing that.

24 A. Yes.

25 Q. I think we're not going to necessarily need to go

1 through them all, Mr Walwyn, but we can certainly put it on the  
2 record that you have produced a number of different letters and  
3 correspondence. And again, you may not know this, but the  
4 Commissioner has taken evidence from others as to the history of  
5 events at Elmore Stoutt High School--

6 A. Okay.

7 Q. --in terms of security.

8 A. Yes.

9 Q. So, you must be the one that then decides we are going  
10 to take action and we're going to build--we're going to do  
11 something about the immediate problem?

12 A. Yes. I would speak to staff and ask them to look at  
13 it and see if it could be done.

14 Q. Right.

15 And the first question that they would have to satisfy  
16 you on is, do we have money to take action?

17 A. Yes.

18 Q. Because if someone turns around and says, actually,  
19 there is no money in the pot until the next budget year starts,  
20 however how much you want to do something you cannot.

21 A. You cannot, or you can go and seek the assistance of  
22 the Minister of Finance.

23 Q. Yes. You'd have to go outside.

24 A. Which I would have had no issues doing.

25 Q. Right.



1           And then, what happens after that in terms of  
2 decisions that in relation to a project that is going to cost  
3 156,000, to scale it back down so that it cost less than  
4 100,000, and therefore can be paid for out of your existing  
5 budget, those are matters that you were not consulted about--

6           A.    Yes.

7           Q.    --as Minister?

8           A.    No.

9           If you go, because as Ms Stevens indicated and you  
10 will see from evidence of the financial advice that Ms Scatliffe  
11 says she gives, Ms Stevens would have gone to Ms Scatliffe, "how  
12 much money do we have"? If the figure came in higher than what  
13 we have, she would scale it back to what we have. I believe  
14 that's what she would have done. But certainly that didn't come  
15 to me. I didn't have any input, really, on that. My advice was  
16 just to--my instructions were just to see how we can get this  
17 done.

18           If it couldn't be done and additional monies were  
19 needed, then that would be for me to decide how shall we address  
20 the matter, whether we don't do it or we wait until the next  
21 financial year starts when we know we're going to have the  
22 money, or I go up to the Minister of Finance to seek permission  
23 or approval for money by way of a supplement.

24           COMMISSIONER HICKINBOTTOM: I mean, the timing of  
25 this, the chronology of this is still curious. Clearly, there

1 was a plan for a 180-foot block wall. The wall was constructed  
2 from the 1st of December, and I assume that that was a wall of  
3 120 feet. So, there is--

4 THE WITNESS: And it covered the entire spot that we  
5 had concerns about.

6 COMMISSIONER HICKINBOTTOM: We will come to that. We  
7 will come to that.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: The wall was started, I  
10 assume, a 120-foot wall. And a 120-foot wall will not fill a  
11 180-foot gap. And we will come back to it, but it was then that  
12 the application for the 180-foot wall was submitted. It wasn't  
13 submitted until halfway through construction, and it wasn't  
14 approved until after the construction was completed and the  
15 contractor's paid.

16 THE WITNESS: Again, Commissioner, that's not  
17 something that I would know. I wouldn't get into those  
18 technical things.

19 COMMISSIONER HICKINBOTTOM: Were you informed at the  
20 beginning, when the plan was for a 180-foot wall, that it was a  
21 180-foot wall and that it would cost more than \$100,000?

22 THE WITNESS: From my memory, no, absolutely not.

23 BY MR RAWAT:

24 Q. Isn't that information you would need as Minister  
25 because once you're over the \$100,000 threshold, you're going to

1 have to--if you still accept the urgency of the issue, you are  
2 going to have to find an alternative way to deal with it, aren't  
3 you?

4 A. The--Ms Stevens and the staff would have known the  
5 reason behind getting this done. The ultimate thing was to  
6 prevent what was coming into the school from coming into the  
7 school. If that could be achieved as quickly as possible  
8 without having to go through asking for additional money, I  
9 imagine they would have probably made a decision.

10 COMMISSIONER HICKINBOTTOM: I see that. I see  
11 that--we haven't got any evidence because, as you say, you can't  
12 give this evidence.

13 THE WITNESS: I can't.

14 COMMISSIONER HICKINBOTTOM: But I see that if there  
15 was urgency for this wall in this place, and that could be done  
16 by avoiding the procurement process and by having a slightly  
17 shorter wall, then--

18 THE WITNESS: I think, Commissioner, about the  
19 procurement process, I would say, I can't get past the fact of  
20 the--60 feet is a lot of difference. And the wall that was  
21 constructed fits smartly into the area that we had the concerns  
22 about, where the wire mesh was. So, the dimension sounds a bit  
23 off to me. It just doesn't sound right. There is no gap. If  
24 you go and you look at where that wall starts and ends, it ends  
25 exactly right next to the gate of opening the school, so it fits

1 right there. There is something wrong somewhere along the line  
2 with those numbers. It doesn't make any sense.

3 If the wall--you can adjust height, but you can't  
4 adjust width. And if you leave a 60-foot gap in that wall, you  
5 would not have fixed the problem because you're just giving 60  
6 feet more for the guys to come and do exactly what you are  
7 trying to avoid. So, it doesn't make any sense is what I'm  
8 saying. Somebody with technical expertise needs to come in and  
9 explain this because it just doesn't make sense. You can't  
10 leave 60 feet out of the wall, out of that wall. It doesn't  
11 solve the problem.

12 COMMISSIONER HICKINBOTTOM: But nobody suggested that  
13 the Planning Commission was not for a 180-foot wall.

14 THE WITNESS: But do we have anything before us to  
15 see--

16 COMMISSIONER HICKINBOTTOM: The Auditor General--

17 THE WITNESS: But that can't be the Authority. Do we  
18 have planning documents? Do we have anything else more?

19 COMMISSIONER HICKINBOTTOM: Nobody's put them in.  
20 We're working from the evidence of the Auditor General.

21 THE WITNESS: But the evidence of the Auditor General  
22 is words on a paper, and I'm not bringing to her--her reputation  
23 into anything. But I'm saying, when something doesn't make  
24 sense, somebody's word has to be backed up with something else,  
25 and then there has to be another view to show you because I

1 don't understand how you could have a 60-foot gap.

2 I drive that wall every day. There is no 60-foot gap  
3 there. It comes smack right next to the gate, so where is the  
4 60 feet? Because that would make entirely no sense. We were  
5 trying to prevent marijuana from coming in the school through  
6 the mesh fence. That's why the wall was built quickly. If you  
7 leave a 60-foot gap, then you're perhaps even compounding the  
8 problem even more because a 60-foot gap, you know how wide that  
9 is?

10 COMMISSIONER HICKINBOTTOM: Of course.

11 THE WITNESS: That doesn't make any sense.

12 COMMISSIONER HICKINBOTTOM: And I don't say this  
13 pejoratively, but your--I think your evidence is that the fact  
14 that the first phase contract was just under \$100,000 was purely  
15 a happy coincidence.

16 THE WITNESS: I believe, if I were to make--hazard a  
17 guess, these folks were doing the best they could with the money  
18 they had. If I had to hazard a guess on the--to try to  
19 prevent--the ultimate objective, get rid of that wire-mesh  
20 fence, that marijuana and stuff coming into the school for our  
21 students. In thinking that way, I don't see how they could  
22 leave a 60-foot gap in the wall. That makes no sense. I drive  
23 that wall every single day. There is no 60-foot gap in that  
24 wall. None.

25 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

1 BY MR RAWAT:

2 Q. Help us with this, though. In terms of your  
3 saying--speaking of wire-mesh fence, was that the only area  
4 around the school where there was this wire mesh?

5 A. It was around the entire school. And people would cut  
6 out the wire mesh, take up pliers, cut it out, bodies would come  
7 into the school and put the wire mesh back, and then we have all  
8 kind of strains on the government compound, putting teachers and  
9 students in danger.

10 Q. So why it was specifically that that area was--

11 A. Because that was the area--

12 Q. Was that the area where there was the carwash?

13 A. Well, Commissioner, we have to be careful about  
14 certain things because we live in a small place; right?

15 COMMISSIONER HICKINBOTTOM: But that was the area  
16 about which there were particular security concerns?

17 THE WITNESS: There were some issues there, yes.

18 COMMISSIONER HICKINBOTTOM: And as I understand it,  
19 the wire-mesh fence went more or less down the perimeter of the  
20 school.

21 THE WITNESS: That was the perimeter, the wire-mesh.

22 COMMISSIONER HICKINBOTTOM: But there was a particular  
23 problem in that particular area?

24 THE WITNESS: That was the most urgent area we were  
25 facing at the time.

1           COMMISSIONER HICKINBOTTOM: But there is nothing to  
2 say that the--it was what appears to have been the case, that  
3 the original plan was to replace 180 feet of that fence with a  
4 wall, and for some reason that was reduced to replacing 120-foot  
5 of the same fence with a wall. There is no gap. The mesh fence  
6 will carry on from where the wall ends--

7           THE WITNESS: Yes.

8           COMMISSIONER HICKINBOTTOM: --either way.

9           THE WITNESS: Yes.

10           The wall was here. This was the entrance to the  
11 school where the security guards would be. And then the rest  
12 will adjoin with the wire mesh all around the edges of the  
13 school.

14           COMMISSIONER HICKINBOTTOM: Yes, I see that. Thanks.

15           MR RAWAT: Commissioner, I'm going to move to another  
16 topic, so I wonder if we could just give the Stenographer a  
17 short, five-minute break.

18           COMMISSIONER HICKINBOTTOM: Yes. Mr Walwyn, you may  
19 remember this from last time, we need to have a short break to  
20 give the Stenographer a break, so we will break now for five  
21 minutes. Thank you very much.

22           THE WITNESS: Yes.

23           (Recess.)

24           COMMISSIONER HICKINBOTTOM: Good. Thank you,  
25 Mr Rawat. We are ready to continue.

1 MR RAWAT: Thank you, Commissioner.

2 BY MR RAWAT:

3 Q. Mr Walwyn, we're now at page 7 in your written  
4 response, and I'm just going to move on to what you've called  
5 criticism 3, and if I summarise what that was, the potential  
6 criticism was that Phase 1 was executed using only Works Orders,  
7 Petty Contracts which may have provided better value for money  
8 do not appear to have been considered. There was no  
9 differential or indeed any cost analysis or implementation plan.

10 Now, I think--you accepted this on the last occasion  
11 that you were here that Phase 1 was executed by way of Works  
12 Orders to 11 contractors. So I don't think we need to look  
13 particularly at any pieces of evidence. If we look at your  
14 response to that potential criticism, and you begin by setting  
15 out section 189 of the Public Finance Management Regulations of  
16 2005, which, as you explained, states that a contract for work  
17 or a service not exceeding \$10,000 in value may be entered into  
18 without the execution of a specific contract document by Works  
19 Orders signed by an officer authorized to do so by the Minister  
20 or person designated by him.

21 MR RAWAT: And commissioner, for your note, that is at  
22 page 1004 in the Hearing Bundle.

23 BY MR RAWAT:

24 Q. And so, you say that that gives a Minister authority  
25 to use Work Orders, and you then explained that it is common



1 practice in terms of how the BVI Government operates, to use  
2 Work Orders, and that continues to be the case. And I think at  
3 3.4 you've given the example that the Cabinet of the Virgin  
4 Islands has recently improved the use of Petty Contracts and  
5 Work Orders for the demolition of office space, corridors and  
6 ceilings at the Ralph T O'Neal Administration Complex in the  
7 amount of \$246,000 odd, and you point out that by virtue of that  
8 amount, that would be classified as a Major Contract.

9           Before I move on through your response, can I ask you  
10 just to clarify paragraph 3.3 of your response. I just want to  
11 make sure that there wasn't a typo in it.

12           What you said is: "As can be seen from section 1891  
13 which is set out above, Work Orders can be entered into without  
14 the execution of a specific contract or document signed by an  
15 officer so authorized to do or the Minister or person designated  
16 by him. The Regulations therefore gave the Ministry the  
17 authority to do Work Orders, and based on the practice over  
18 years, the building of a wall, which does require major  
19 skills"--

20           A. Does not.

21           Q. Yes, "falls within"--I will finish the sentence,  
22 "falls within the usual types of work that Works Orders will be  
23 used for. And what you're saying is actually there is just a  
24 missing "not" from that 3.3?

25           A. Thank you very much for that. Thank you very much.

1 Q. Your point, and I think it is a point that you made on  
2 the last occasion as well, Mr Walwyn, but that you don't  
3 consider that the work that was going to go into the School Wall  
4 was something that required, as you described here, "major  
5 skills"?

6 A. No.

7 Q. We know--and we've look at it; we don't need to look  
8 at it again, and you confirmed it, 11 Work Orders were issued.

9 A. Um-hmm.

10 Q. Both Ms Stevens and Ms Scatliffe said that they were  
11 not involved in determining whether Phase 1 was going to be done  
12 by way of a Petty Contract or Work Orders.

13 A. No.

14 Q. They said that was your decision alone?

15 A. Yes.

16 Q. If you had to move quickly as before the short break  
17 you explained you had to, why would you make the job more  
18 complicated by using multiple contractors rather than one?

19 A. Well, I mean, there is nothing to show that the work  
20 would have been more complicated by having more contractors than  
21 one. There is nothing to do--

22 COMMISSIONER HICKINBOTTOM: Well, it requires 11  
23 contracts rather than one contract?

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: It requires finding 11

1 contractors, which the evidence from Ms Stevens was you  
2 identified.

3 THE WITNESS: Yeah.

4 COMMISSIONER HICKINBOTTOM: Wouldn't it be easier and  
5 cheaper to find one contractor?

6 THE WITNESS: It--it would have been probably easy,  
7 yes, just to put one person's name on the contract, but if the  
8 contracts are already pre-done contracts--

9 COMMISSIONER HICKINBOTTOM: Are--

10 THE WITNESS: Pre-done, in terms of the whole  
11 structure of the contracts were already in place. Placing 11  
12 names on different arrangements, pretty much is the same thing.  
13 It doesn't bother in terms of time too much.

14 But one of the things that I want to bring out, as I  
15 said before, is that the Government's--and this is not just our  
16 Government, this is of specific Governments--tried to allow  
17 other persons to participate in the development of the country,  
18 and I believe that is the reason why the Work Order structure  
19 was put in place, certainly it's one that predates me as  
20 Minister.

21 And if you have work that is not as sophisticated work  
22 and you can have other persons who might have the skills, but  
23 may not be able to operate at a certain level, if given an  
24 opportunity to participate, that is what you do when you use  
25 Work Orders.

1           COMMISSIONER HICKINBOTTOM: Okay. I think the statute  
2 is designed to have three levels of projects, not three levels  
3 really of contract, and so Works Orders look, from the face of  
4 the statute, to be designed to deal with what used to be called  
5 "small works".

6           THE WITNESS: Yes.

7           COMMISSIONER HICKINBOTTOM: This is a Major Contract  
8 because it was for \$150,000 for almost \$100,000 in any event.  
9 But are you saying that it was the policy of successive  
10 governments, but including the one you served in, to use Works  
11 Orders which would be more expensive but would engage small  
12 contractors because obviously a Petty Contract would have people  
13 building a wall, but they wouldn't be working for themselves.

14           This policy, it's not written down anywhere?

15           THE WITNESS: It's not written down anywhere, but it's  
16 at the discretion that the Government would have, to utilize  
17 Works Orders or Petty Contracts in any event.

18           But to say that if you use Petty Contracts on a  
19 project that it's going to be cheaper, it's not always true  
20 because if you look at where the figures start and stop, as I  
21 indicated here, I think, at .3.5 in my document, that Petty  
22 Contracts are used for the procurement of goods and services  
23 from \$10,001 to \$100,000. A Petty Contract issues for  
24 hundred--for \$10,001 compared to a Works Orders issued for 9,999  
25 would make no difference with respect to the value for money on

1 a project.

2 COMMISSIONER HICKINBOTTOM: Why do you say that? A  
3 Petty Contract has a different governance regime designed to  
4 ensure, amongst other things, value for money?

5 THE WITNESS: Yes, but the question put to me was why  
6 did I use Work Orders instead of Petty Contracts. And to  
7 suggest that it would have saved money, and it doesn't necessary  
8 follow that. It depends on what the value of the Petty Contract  
9 really is.

10 COMMISSIONER HICKINBOTTOM: I'm sorry, I agree with  
11 that.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: But, here, the Project,  
14 even the reduced project, was for nearly \$100,000. It was split  
15 into, I think, 11 Works Orders.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: The savings come by, for  
18 example, having due set-up costs.

19 THE WITNESS: Yeah.

20 COMMISSIONER HICKINBOTTOM: If you have 11 Works  
21 Orders you've got 11 sets of set-up costs. If you have one  
22 Petty Contract, you've got one set.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: So, we're not here talking  
25 about whether there should be two Petty Contracts for \$5,001

1 each.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: We're talking about 11  
4 Works Orders for a reasonably big project.

5 THE WITNESS: But as I said before, that successive  
6 governments that use the Work Order schemes to allow more  
7 persons to participate in the economy, and that is what was  
8 done.

9 COMMISSIONER HICKINBOTTOM: You say "participate", but  
10 even if there'd been a Petty Contract, you would have still  
11 needed people, perhaps working for one company or one firm,  
12 building the wall, it's just that you wouldn't have split the  
13 number of contracts, but you would still had people building the  
14 wall, possibly more efficiently than 11 different firms of  
15 people, but how does it benefit the economy, and where is the  
16 background data or document which assess the benefit of  
17 proceeding in this way?

18 THE WITNESS: The thing is, Commissioner--and we  
19 probably can debate this all day, but certainly it was--it was a  
20 device available in law, to use Work Orders or Petty Contracts  
21 for the contract, and as Minister I used the discretion and used  
22 Work Orders. I didn't do anything that was wrong. I did  
23 something that was empowered by the law.

24 COMMISSIONER HICKINBOTTOM: But there was no  
25 assessment, for example, to say, well, look, if we have a

1 deal--if we have one Petty Contract, it's going to \$600,000.

2 THE WITNESS: I can't say that because again, I was  
3 not--I'm not involved in the technical part of assessing numbers  
4 and so on on projects. That's not my responsibility.

5 COMMISSIONER HICKINBOTTOM: Well, the Auditor General  
6 found none. So, I think we can work with--

7 THE WITNESS: I'm not sure. Again, if we can say  
8 that, because again, as I indicated, Steve Augustine, who is the  
9 Chief technical person, has not been called before you, you have  
10 not heard a word from him on this matter. So, just to use the  
11 word of the Auditor General, I don't think it's fair.

12 COMMISSIONER HICKINBOTTOM: But the decision to use  
13 Works Orders, according to the evidence--

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: --was your decision?

16 THE WITNESS: Yes, it was.

17 COMMISSIONER HICKINBOTTOM: So, you made the decision  
18 not to have one Petty Contract but have 11 Works Orders.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: What did you base that on?  
21 Did you base it upon any assessment if there have been an  
22 assessment that it was going to cost--

23 THE WITNESS: No assessment was done for me in  
24 relation to that.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 THE WITNESS: But to say whether or not there was an  
2 assessment at all or costs implementation plan, as says here, I  
3 can't say that's entirely true.

4 BY MR RAWAT:

5 Q. But you didn't ask for it before making the decision?

6 A. No, I wouldn't say I asked for it. What would  
7 normally happen, the process of these things would be that the  
8 costing is done on the Project. If we're going to use Petty  
9 Contracts or are we going to use Work Orders, the Sections are  
10 created for the Minister, and then the Minister puts the names  
11 of persons in the various segments. That's the way it's done.

12 Q. But what you have is you have a team that involves an  
13 External Project Manager who on Ms Stevens's evidence is really  
14 concerned with the construction side of things?

15 A. And the costings.

16 Q. And costings. And this project he costs at \$156,000,  
17 which is what is actually ultimately sent to Town and Country  
18 Planning.

19 So, internally, the decision is made to spend up to or  
20 spend less than \$100,000 on building Phase 1. The decision  
21 about how that money is spent is yours alone. You decide--

22 A. The decision at the time when the decision is made as  
23 to how we're going to go forward, in the details of what you're  
24 discussing here of what went on, even from the Transcript, I was  
25 not a part of those discussions.



1 Q. But the evidence of Ms Stevens and Ms Scatliffe is  
2 that they were not involved in deciding how Phase 1 was going to  
3 be carried out.

4 A. No.

5 Q. Whether it was a Petty Contract or a Work Order. That  
6 was your decision. So, when you were making--and you've  
7 explained to the Commissioner it's a discretion that you  
8 consider you could have as a Minister.

9 So, when you were exercising that discretion, you did  
10 not have before you any document that assisted you to decide  
11 whether it would be better value for money to go for a Petty  
12 Contract or Work Orders?

13 A. I can't say I had anything before me. I can't say  
14 that. What I would say, as I said to you before, is that, the  
15 Sections on the Project would be pre-done, and then the  
16 Ministers would put the names to the various sections that they  
17 will put from, in my case from a list that I had already kept in  
18 the Ministry. So, if you're asking if I did an assessment  
19 myself as to was value for money more on one or the other, I  
20 would say I didn't do that.

21 Q. You said that the Sections were already done. What do  
22 you mean by the Sections?

23 A. For instance, if a project is done, is being  
24 contemplated, you would have various sections made up by  
25 the--the staff would normally do this, Ms Stevens would be the

1 one doing it. A number of things are taken into consideration  
2 in terms of the Sections because you want to make sure that you  
3 don't just split it up in any old way, but you do it in a way  
4 where it is structured and organized. I think she would have  
5 probably gotten assistance from the External Project Manager in  
6 relation to that. The sections would come to me, as Minister,  
7 on a paper costed out, this is what this is going to do, this is  
8 what this costs, and then you put your names, the various names  
9 on the various--

10 Q. Various names of contractors who will do pieces of  
11 work?

12 A. Yes. Sometimes you give two persons or three  
13 persons--two persons, two sections, depending on the history of  
14 working with the Government before and how they do work and  
15 sometimes you could do it with one person.

16 Q. But if you're doing that, when you're doing that,  
17 you're deciding that you're going to go by way of Works Orders  
18 or a Petty Contract, and when you were doing that in  
19 December 2014, Mr Walwyn, you had not called for any kind of  
20 cost benefit analysis that would help you exercise your  
21 discretion?

22 A. I was labouring under the intention of the thought  
23 that if the contract is \$100,000, and I said this in my evidence  
24 before, that was one of the things, for instance when we were  
25 doing the Phase 2 of the perimeter wall, I did not appreciate at

1 that time, not being somebody, of course, who was an architect  
2 or a contractor, that increasing the amount of persons on the  
3 Project would have necessarily increased the cost. I was  
4 thinking clinically. If I have something that's costing \$80, if  
5 I give it to 10 persons, each section will cost \$8. That is  
6 where my mind was at the time, and I imagine that was the  
7 mindset that I would have had at that time.

8 Q. So, keeping it to December 2014, did you know that  
9 your options were to do it by way of a single Petty Contract?

10 A. I knew that was an option available to me.

11 Q. Another option was to do it by way of a number of  
12 Works Orders?

13 A. Or Petty Contracts, yes.

14 Q. Yes, that's fair enough. You could have done two  
15 Petty Contracts?

16 A. Yes.

17 Q. You could have done Work Orders?

18 A. Yes.

19 Q. But what you did not consider was that the--either  
20 approach--you thought that either approach would result in the  
21 same cost?

22 A. Yes.

23 Q. So that if I have 11 people doing the work, it would  
24 still come out--

25 A. Because when the information would come to me, it

1 would come with the final figure which is the cost of the  
2 Project. So, if the Project was going to cost in this case  
3 95,000 or \$96,000, whatever came to me in terms of various  
4 Sections for my approval would have equaled actually the cost at  
5 the end.

6 Q. Did you have a piece of paper put in front of you?

7 A. I would--no--most times, yes, I do.

8 Q. I will let you finish.

9 A. Most times they would do that. Sometimes, for  
10 instance, if a project is a big project like, for instance, when  
11 the perimeter wall was being done, I had it structured that way.  
12 In the other instances, they would bring--in a smaller project  
13 they would just bring the Work Orders with the section and the  
14 amount for the section and ask me, Minister, put the name on the  
15 Project of the person you want to do the project. That's the  
16 way it was done.

17 Q. Sorry to press on it because what my questions are  
18 intended to do are to try and understand how you exercised the  
19 discretion that you considered you had in December 2014.

20 And did you have a document in front of you, for  
21 example, that said this is be costed by Steve Augustine to  
22 \$156,000?

23 A. I never saw that document, no.

24 Q. Did you--did you have a document that told you how  
25 much Phase 1 would cost?

1           A.    Whatever Phase 1 would have cost would have been  
2 whatever the final cost was at the end. That is what would have  
3 been brought to me, which is \$96,000.

4           Q.    Well, that's \$96,000--

5           A.    Or 95,000.

6           Q.    --if you don't pay one Work Order?

7           A.    Sorry?

8           Q.    That's--it's \$96,000 if you don't pay one Work Order?

9           A.    No, that was \$96,000. There was no analysis given to  
10 me about Work Order versus Petty Contracts.

11          Q.    No, that's not--I'm sorry, you may have misunderstood  
12 the question. The figure of \$96,000 is what was paid out on the  
13 Work Orders.

14          A.    Yes.

15          Q.    But the cost of--that's if you exclude the \$600,000  
16 that was out in 2014, provided you defer your excavation costs  
17 to 2,050--

18          A.    I had no knowledge. As I said before, I had no  
19 knowledge of that.

20          Q.    And you don't complete the Project?

21          A.    I had no knowledge of that, as I said.

22          Q.    So your best memory is that when you were deciding how  
23 to do it, it was on the basis that it was going to cost about  
24 \$96,000?

25          A.    Yes.

1 I would even go beyond that, not just my best memory,  
2 conclusively I had no knowledge of that.

3 COMMISSIONER HICKINBOTTOM: I'm sorry, to interrupt,  
4 Mr Rawat, but if the Auditor General makes clear, to get it  
5 below £100,000--

6 THE WITNESS: Dollars.

7 COMMISSIONER HICKINBOTTOM: Sorry, dollars, yes. I  
8 apologize.

9 To get it below \$100,000, one section of painting did  
10 have not a Works Orders issued at all?

11 THE WITNESS: Again, Commissioner, as I said to you  
12 before, I cannot assist with that. I don't have any knowledge  
13 of that. That is not something that I would know as a Minister.

14 COMMISSIONER HICKINBOTTOM: But you say--well, you say  
15 you may have had--I'm not quite sure what the document was--

16 THE WITNESS: I will repeat it again, Commissioner.  
17 If a project is going to cost \$96,000, segments of the contracts  
18 are brought to me as Minister or the Work Orders, and they all  
19 total whatever that figure is.

20 COMMISSIONER HICKINBOTTOM: And it was £96,000?

21 THE WITNESS: Yes.

22 And I would put the names on the individuals on it or  
23 sometimes, as I said, if it's a Contractor whose name is on the  
24 list who has more experience, you'd probably give him two or  
25 three sections. If it's somebody who doesn't have as much

1 experience or perhaps in terms of being an established  
2 businessperson, give them one section to give them a try to see  
3 how they do with it so you can literally use them for future  
4 works.

5 COMMISSIONER HICKINBOTTOM: But when you have that  
6 paper, and I realize that you're trying to remember something  
7 which happened some time ago. But when you received that paper,  
8 did you spot the fact that the number of walls that were being  
9 constructed, which were six, and the number of walls that were  
10 being painted were five, one section was not being painted.

11 THE WITNESS: No, no.

12 COMMISSIONER HICKINBOTTOM: Okay, thank you. Because,  
13 had that Works Order been issued, it would have gone over  
14 \$100,000?

15 THE WITNESS: Again, Commissioner, none of this I can  
16 verify.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: I'm not helpful to you on it.

19 COMMISSIONER HICKINBOTTOM: Thank you.

20 BY MR RAWAT:

21 Q. And you've explained that--and this is just trying to  
22 understand this section side of things, one way of interpreting  
23 that is you had a document that showed you work that needed to  
24 be done.

25 A. Yes.

1 Q. And you then allocated contracts?

2 A. Yes. Based on the total cost of the works.

3 Q. Could you have at that point said, actually, no, I'm  
4 going to decide to do it by way of a Petty Contract, and this is  
5 the contractor who is going to get the Petty Contract?

6 A. I could have done that, but I had the discretion to do  
7 it the other way as well.

8 Q. And again now, to go back to actually bottom out the  
9 reason why you exercised that discretion in that way, you've  
10 spoken about the policy of successive governments in terms of  
11 utilizing Work Orders to, if you like, spread the benefit?

12 A. Yes, to give other people a chance to be involved.

13 Q. To give other people--

14 A. And put their best skills to get better.

15 Q. And I can take you, if you need to Mr Walwyn, to what  
16 you said on the last occasion, because you explained this as  
17 well.

18 A. Yes, I believe it's consistent.

19 Q. Yes. No, it is. And the Commissioner has that  
20 evidence.

21 A. Yes.

22 Q. You pointed out that you appreciated that that policy  
23 might result in an increase in cost--

24 A. Subsequently.

25 Q. --but there were other benefits?



1           A.    Yes.  I subsequently realized that because, as I said  
2 to you before, when I was--at the time when the Phase 2 was  
3 being done, I had no appreciation for that.

4           Q.    So, neither when you were making decisions in relation  
5 to Phase 1 or Phase 2 did you appreciate that using Work Orders  
6 could increase costs?

7           A.    At that material time because I have to speak at that  
8 time.

9           Q.    Of course.

10          A.    Yes.  At that time whatever came to me would have been  
11 equivalent to what the actual cost of the overall project would  
12 have been.  It was an--it was done on open-ended costs.  If it  
13 cost me--if it cost \$95,000, whatever came to me for me to sign  
14 off on in terms of documents would have been equal to \$95,000.

15          Q.    And had you signed off on other contracts before?

16          A.    Yes.

17          Q.    So, in your time as a Minister, you had signed off on  
18 other construction contracts in relation to schools?

19          A.    Yes, bearing in mind, of course, this was--when  
20 Phase 1 was done, this was probably about two years in as a  
21 Minister.

22          Q.    And was that, then, the rationale?  Your rationale  
23 was, I'm going to use Work Orders because it means more people  
24 can get involved in the work?

25          A.    No, not necessarily that.  It was--it was, of course,

1 the work was not as sophisticated as a Major Contract, like  
2 building something, and so, yes, you wanted to give other people  
3 an opportunity, not necessarily in terms of numbers but just  
4 want to give people an opportunity to be a participant.

5 Q. I mean, you described it as sort of not a work that  
6 requires major skills and not sophisticated. Where does that  
7 come from? Where did that information come from that it wasn't  
8 sophisticated work?

9 A. We've built walls. We build walls here all the time.

10 Q. I see.

11 A. And I believe that is the reason why, for instance,  
12 the Work Order scheme came in because you don't have to  
13 necessarily be somebody to be deemed a major contractor to do  
14 something as simple as well as somebody else who might be a  
15 major contractor can do it.

16 Q. Were you concerned at the time that you made the  
17 decision in 2014 to ensure that you actually did have a quality  
18 wall built?

19 A. The way that we do things is that persons indicate  
20 their interest. Those persons as screened by the technical team  
21 for various reasons. Skills is one. Maybe they had work in the  
22 Ministry maybe before I came as Minister and didn't do it very  
23 well.

24 And then, of course, you had Mr Augustine there  
25 monitoring them. One of the things I understood recently when I

1 had looked into the Project because I must be on the future have  
2 done more digging into the Minutes of the findings of these  
3 contracts when I was Minister, Public Works would have come then  
4 they pouring concrete to make sure that the steel is tied  
5 properly and so on. All of those details I didn't appreciate  
6 until over the weekend when I was asking a few questions.

7 So, even when you have persons who don't have the  
8 skills or may not be a major contractor--I shouldn't say don't  
9 have the skills, have the skills but may not be a major  
10 contractor, there's enough safeguards within the Ministry and  
11 the systems to make sure that they do the work to  
12 specifications.

13 COMMISSIONER HICKINBOTTOM: By doing it by Works  
14 Orders, my understanding is that they didn't even have to show a  
15 trade licence, a constructor's licence.

16 THE WITNESS: Again, Commissioner, at that time to my  
17 knowledge you didn't have to have a contractor's licence or  
18 didn't have to have a trade licence. I heard now from the  
19 Commission and evidence coming out that you have to have the  
20 trade licence or have to have something but not show it or  
21 something or another. I think I may have heard before. It was  
22 the first time I'm ever hearing that.

23 COMMISSIONER HICKINBOTTOM: Well, I certainly think  
24 that the evidence shows that it has been common practice that,  
25 for Works Orders, people are employed without trade licences,

1 let's put it that way.

2 THE WITNESS: And that is the practice that I meant,  
3 and that is the practice I believe that's happening now. So, if  
4 it's being done the wrong way, I think it's a way of just making  
5 sure that the folks who carry out those responsibilities know  
6 exactly what needs to happen.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 THE WITNESS: Because I don't think the technical  
9 folks and finance officers and so on would have brought  
10 documents to me to sign fully well knowing that they weren't  
11 doing the right thing. I don't believe they would conduct  
12 themselves in that way.

13 COMMISSIONER HICKINBOTTOM: But I'm assuming this--and  
14 you must tell me if this is right--I assume that the chronology  
15 was somebody comes to you to say, well, this contract is going  
16 to cost under \$100,000, \$95,000. You then say--because this is  
17 the evidence that you made this decision--Works Orders, not  
18 Petty Contracts, and they then go off--

19 THE WITNESS: No, it comes the other way around.

20 COMMISSIONER HICKINBOTTOM: Okay.

21 THE WITNESS: I wouldn't say Work Orders or Petty  
22 Contracts. They would go out and do their costings, come back  
23 and say the work costs is this, and they divide the sections up  
24 to me, so they give me sections that come to under 10,000, and  
25 under 10,000 sections, and sometimes I would give one person one

1 section, sometimes I will give you two or three that will take  
2 you all the way through your contract.

3 COMMISSIONER HICKINBOTTOM: That wasn't their  
4 evidence. Their evidence was that you made the decision to--

5 THE WITNESS: I would have made the decision,  
6 regardless of what I made the decision because if they give me  
7 the section divvied up, I could have divided--I could have said  
8 that I want to use two sections, which would be a Petty Contract  
9 of over 10,000. So, by the end of the day, it's still my  
10 decision if I'm still in your chronology. It's not that I said  
11 before, "I'm going to take the decision to do it this way  
12 first". They always bring the costing information in to me with  
13 the sections divvied up, and I decide how I'm going to do it.

14 But at the end, at the bottom figure here, it's always  
15 been that one figure.

16 COMMISSIONER HICKINBOTTOM: So they come and, say the  
17 section is going to cost \$8,000.

18 THE WITNESS: It's 8,000 to 9,000.

19 COMMISSIONER HICKINBOTTOM: Or whatever it is.

20 THE WITNESS: And if I want to give one person one  
21 section, I can give it. If I want to give an experience  
22 contractor two sections, then he would have a contract with--

23 COMMISSIONER HICKINBOTTOM: Or a petty contractor or  
24 whatever.

25 THE WITNESS: Yes. That's the way it was done.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 THE WITNESS: All right?

3 COMMISSIONER HICKINBOTTOM: Yes, thank you.

4 BY MR RAWAT:

5 Q. Just like if I may, Mr Walwyn, before we move on, just  
6 to try and summarise your evidence as to how you took your  
7 decision in December 2014 so that we've just got it. And tell  
8 me if I've misunderstood this. Firstly is that, in deciding to  
9 use Work Orders over Petty Contracts in December 2014, you  
10 were--you were exercising a discretion that you believe was  
11 afforded to you as a Minister, under the law?

12 A. And it is. It is.

13 Q. At the time that you made that decision, you were not  
14 aware that Contractors needed to have a trade licence?

15 A. It was not my responsibility for that.

16 Q. But that's not--you were not actually aware that they  
17 needed to have a trade licence. You assume that people--

18 A. I see what you're saying, but I'm also adding that on  
19 because, as you will see from the evidence, the screening of  
20 those persons are done by the technical folks.

21 Q. We will come back to that, if I may.

22 A. Yes.

23 Q. But do you accept that that was your understanding,  
24 you did not know that people needed to have a trade licence?

25 A. For Work Orders?

1 Q. For Work Orders.

2 A. No.

3 Q. The approach was that, if you like, a costings  
4 document was brought to you, and it was then to you to decide  
5 who was going to be allocated certain pieces of work and on what  
6 basis, so you could decide to give someone a Petty Contract, and  
7 you can decide to give someone a Work Order?

8 A. Yes, with the total costs remaining the same.

9 Q. Your understanding at the time, in December 2014, was  
10 that whichever route you adopted--Petty Contract, Work Orders,  
11 or a mix of both--the outcome would be the same, there would be  
12 no change to the overall cost?

13 A. That's correct.

14 Q. In exercising your discretion in December 2014, you  
15 did not have in front of you any other type of analysis to help  
16 you decide what was the better course?

17 A. The information that I had before me at the time I  
18 thought was sufficient because it was done based on the costings  
19 and the cost of the project would have remained the same.

20 Q. But you did not have, for example, a document saying  
21 if you use Work Orders rather than a Petty Contract--

22 A. No.

23 Q. --there was a risk that--

24 A. That was not--that was not presented for me.

25 Q. You didn't have, for example, any document telling

1 you, well, if we use 11 contractors as opposed to one, it's  
2 going to be harder to manage?

3 A. No.

4 Q. And these were not factors that you independently took  
5 into account yourself?

6 A. No. At no time that I was ever doing a project did  
7 that sort of information ever come.

8 Q. Now, just to complete the picture on this criticism,  
9 at 3.6 in your written response, you disagree with the statement  
10 that there was no differential cost analysis or implementation  
11 plan, and you draw attention to the evidence of Ms Stevens,  
12 which evidence we've actually looked at already.

13 MR RAWAT: Which is, Commissioner, at page 890.

14 BY MR RAWAT:

15 Q. Mr Walwyn, could you look that up, please, for a  
16 moment?

17 A. Where are we, please?

18 Q. 890 in the Hearing Bundle, please.

19 A. 890, I'm right here.

20 Q. We're back into the evidence of Ms Stevens.

21 A. Yes.

22 Q. And I just want to confirm that, what you say in your  
23 written response is assistance--I cannot agree with the  
24 statement there was no difference--

25 A. What section are you reading from? What line are you



1 from?

2 Q. I'm going to take you to line 14.

3 A. Okay.

4 Q. Or line 30. I just want to confirm what you're  
5 relying on at 3.6.

6 A. Yes.

7 Q. So, at 3.6, you say: "I cannot agree with the  
8 statement there is no differential cost analysis or  
9 implementation plan." Assistant Secretary Lorna Stevens, at  
10 page 39 of her Transcript, speaks to the plan and the decisions  
11 "taken to ensure that the plan was implemented within the  
12 funding left in the Ministry at the end of the Financial  
13 Year 2014."

14 Now, you've referred here to the internal pagination  
15 of her Transcript, which is at page 819, the bundle. I just  
16 want to confirm, when you're referring to this evidence, are you  
17 referring again to the answer given at line 14?

18 A. Yes.

19 Q. Right.

20 So, what makes you say that that's indicative of a  
21 cost analysis, a differential cost analysis or an implementation  
22 plan?

23 A. Well, I probably should ask you, what are you calling  
24 an "implementation plan".

25 Q. A plan that says this is how we're going to implements

1 the Project?

2 A. Mr Augustine would have that. That's his  
3 responsibility.

4 Q. Well, leave aside Mr Augustine, you say that at--all  
5 my question is asking you is that why at page 819 do you say  
6 that Ms Stevens speaks to the plan?

7 A. Well--

8 (Overlapping speakers.)

9 A. Clearly there had to have been a plan because if she  
10 mentioned that she had to make certain decisions based on the  
11 funding, she must have been doing some sort of analysis to  
12 arrive at that because, if you're saying here that the Project  
13 was estimated at 156, and then she says here "I think at the  
14 time"--this is at line 14, "I think at the time that was based  
15 on the available funding that we had". Because you asked the  
16 question who made the decision to scale it back to 120. So, it  
17 means that she was doing some measure of analysis at least to be  
18 able to see what money she had in the budget and whether or not  
19 the monies that she had could have achieved the objective that  
20 she was trying to achieve, so there had to have been some sort  
21 of planning and cost analysis going on there to arrive at that  
22 decision.

23 COMMISSIONER HICKINBOTTOM: The reference is to a  
24 differential cost analysis, so that's a cost analysis.

25 THE WITNESS: But you indicated--

1           COMMISSIONER HICKINBOTTOM: Sorry, one way of doing it  
2 compared to another way of doing it.

3           THE WITNESS: Yes, but as I said, Commissioner,  
4 whenever the documents came to me, the total was always the  
5 value of the Project. There could have also been too that some  
6 of those individuals probably didn't appreciate the fact of the  
7 cost implications of Work Orders versus Petty Contracts as well  
8 because the total was always done the--the very first thing that  
9 was always done was that the project was costed to see whether  
10 or not we had the money to go ahead with the Project, because if  
11 you don't have the money, it doesn't make any sense engaging  
12 anybody to look at it.

13           COMMISSIONER HICKINBOTTOM: I understand that. So,  
14 what you had in one form or another or what was done in one form  
15 or another was the, I think it was six sections were taken, they  
16 were costed in terms of construction, (1); (2), painting and  
17 hence the 11 Works Orders because one Works Order was not issued  
18 because it would have taken over \$100,000.

19           And so, once you got this, you knew exactly how much  
20 the Project was going to cost.

21           THE WITNESS: Yes.

22           COMMISSIONER HICKINBOTTOM: Because however you did  
23 it, to do each section, an individual is going to be paid more  
24 or less \$10,000 for building that section.

25           But there was no differential cost analysis, so you

1 didn't have another piece of paper that said this is how--this  
2 is how it could be done, but, in fact, if you get one  
3 contractor, it's only going to cost 7,000--

4 THE WITNESS: I indicated earlier that I didn't have  
5 that information. I said that before.

6 COMMISSIONER HICKINBOTTOM: So, again, not to be  
7 pedantic, but you say there must have been some cost analysis  
8 but no differential cost analysis.

9 THE WITNESS: The differential cost analysis, I would  
10 say that probably didn't happen but there had to have been some  
11 level of cost analysis.

12 COMMISSIONER HICKINBOTTOM: I see. To arrive at--

13 THE WITNESS: To arrive at where we arrived at.

14 COMMISSIONER HICKINBOTTOM: Exactly. Okay.

15 I'm sorry to interrupt again, but in terms of the  
16 implementation plan, and again, correct me if I'm wrong, you say  
17 that doesn't matter very much because you were signing off to  
18 have each section done for whatever it was, \$10,000, whatever it  
19 was, and whether that was done by one person or two people or  
20 six people, that would still be the cost, so the implementation  
21 plan in that sense, in a financial sense, didn't matter very  
22 much?

23 THE WITNESS: I wouldn't say it didn't matter very  
24 much. I would say at the time I didn't appreciate it, and now I  
25 do appreciate that perhaps something like that needs to be done,

1 now having the knowledge that I have, but before then I had no  
2 knowledge, and it's probably silly, we can't think of  
3 everything. I didn't appreciate at the time that if you divvy  
4 up a contract that it's going to affect it that gravely.

5 And as I said whenever they came to me, whenever the  
6 numbers came to me, the end figure for the project was always  
7 the same.

8 COMMISSIONER HICKINBOTTOM: But in relation to  
9 Phase 1, you say that they gave you a costing for each section.

10 THE WITNESS: Yes, that totaled the value of the wall.

11 COMMISSIONER HICKINBOTTOM: Yes, but--yes, you simply  
12 added them up to get the total value of the wall.

13 THE WITNESS: Yeah.

14 COMMISSIONER HICKINBOTTOM: But that's how it was  
15 done?

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: Yes.

19 BY MR RAWAT:

20 Q. Could we move on to the fourth criticism, please,  
21 Mr Walwyn, at page 9. If I set out what that is, it is that the  
22 information--we're moving on now to Phase 2.

23 A. Yes.

24 Q. The information provided to Cabinet in respect of the  
25 waiver of the procurement process presented an artificial case

1 for the likely cost of the Project. The Minister knew or  
2 alternatively deliberately shut his eyes to the fact that the  
3 figure was artificial.

4           Again, if I just take you to--just so that we can have  
5 it in context--various pieces of evidence, if you could go to,  
6 please, to page 149 in the bundle. This is, if you can see,  
7 it's headed Appendix B.

8           A.    Um-hmm.

9           Q.    It's from an organisation called Quantum.

10          A.    Yes.

11          Q.    Which is actually Mr Augustine.

12          A.    Yes.

13          Q.    And it's dated 2nd of October 2014. It was--this was  
14 the estimate, if we can call it that, that was obtained from him  
15 and that was one of the appendices to the Cabinet Paper.

16          A.    You're taking 149 and 150 together?

17          Q.    Yes.

18          A.    Okay.

19          Q.    Well, 150 is his as well, yes.

20          A.    One--I don't have any numbers on it.

21          Q.    Sorry?

22          A.    149 doesn't have any numbers on it.

23          Q.    Yes, it's the first page.

24          A.    Okay.

25          Q.    But we'll go to 150 in a moment. But the point is,

1 just so that we can keep it on the record that this document was  
2 attached to the draft Cabinet Paper--

3 A. Okay.

4 Q. --that left your Ministry?

5 A. Yes.

6 Q. But this is the version--the only reason for referring  
7 to this page is it's a bigger print, so it's easier to read.  
8 But as you say at page 150, there is a figure of \$828,000-odd,  
9 which is based and you've identified and confirmed you recognize  
10 it as--you describe it as an error, but it's based on one  
11 contractor doing the work. You agreed that?

12 (Internet connection problem.)

13 Q. This is Appendix A. It's Appendix A of the business  
14 case as drafted, as it stands in the draft paper. But it found  
15 its way--it was put forward by the Ministry of Finance with  
16 little, if any, change. But if you look at paragraph 3--

17 A. Um-hmm.

18 Q. --what's said there is that, in relation to  
19 Mr Augustine's estimate, it is described as an estimated final  
20 cost of \$828,004.10.

21 A. Estimated.

22 Q. Yes.

23 Now, in her evidence, Ms Stevens confirms that it was  
24 recognized that this quote that Mr Augustine had provided was  
25 for the entire perimeter wall, and it gives a measurement of

1 2,695 feet. Now, that doesn't account for the fact that you'd  
2 built part of the wall in Phase 1. It doesn't account for the  
3 fact that the Auditor General measured the wall at 1,562 feet,  
4 like as you have done. And if we go, please, to page 909 now in  
5 the bundle. We're going back to Ms Stevens's evidence.

6 COMMISSIONER HICKINBOTTOM: 909?

7 MR RAWAT: Yes.

8 BY MR RAWAT:

9 Q. What--this is Ms Stevens. I asked Ms Stevens about  
10 this figure, because, as she explained, she was pivotal in  
11 putting the draft Cabinet Paper together. And I asked her at  
12 line 8: "My question is directed to the quality of information  
13 that has been given to Cabinet because what you've given to  
14 Cabinet is a figure, or what the Ministry has given the Cabinet  
15 is a figure based on the use of one contractor when your"--

16 A. Where are you reading from?

17 Q. Line 8.

18 A. From 908?

19 Q. From 909?

20 A. Nine?

21 Q. 909.

22 (Overlapping speakers.)

23 A. Go ahead.

24 Q. "So, I suppose my question is directed to the quality  
25 of information that has been given to Cabinet because what you



1 have given Cabinet is a figure, but what the Ministry has given  
2 Cabinet is a figure based on the use of one contractor when your  
3 intention was to use Petty Contracts. We will come back to Work  
4 Orders. But the intention in the paper was to use Petty  
5 Contracts which would have the effect, wouldn't it, of  
6 increasing the costs"?

7 And she answered: "Yes. And that was understood that  
8 the costs would increase if the 828 was divided with several  
9 contractors. That was discussed".

10 I asked, then: "So, internally within the Ministry  
11 you were aware costs would go over 828,000 if you use Petty  
12 Contracts"?

13 "That's correct", was the answer.

14 And then I asked: "When you say it was discussed, who  
15 was involved in the discussion"?

16 "It would have been Minister, myself, STO, PS. And  
17 since we were using SA Architect estimates, I'm wondering if he  
18 was there."

19 Now, perhaps that is a long way of taking you to it.  
20 The point is that that's a piece of evidence to show, according  
21 to Ms Stevens, that even before that figure went in, it was  
22 appreciated within the Ministry, because of the reference to  
23 Petty Contracts in the draft paper, that costs would be  
24 increasing above 828.

25 A. Am I to respond now?

1 Q. Well, what I'm trying to do is set out the evidence.

2 A. When you make it so long, Counsel--

3 Q. Yes.

4 A. --you lose me.

5 Q. All right.

6 A. You can't make questions that long.

7 Q. They're not questions. I'm reminding you of evidence.

8 A. Do it in bits and pieces. That's fairer to me because  
9 I lose a lot of information that way.

10 Q. All right. Let's do it bits and pieces to assist you  
11 then.

12 A. That's an appropriate question for me to answer now.

13 Q. Firstly, do you accept the figure of \$828,000 based on  
14 one contractor doing the work?

15 A. That was my knowledge at all times. You would have to  
16 ask Ms Stevens further.

17 And what is also interesting--

18 Q. Pause there. Your voice dropped. You said that was  
19 your knowledge at all times?

20 A. At all times the figure of 828. I did not appreciate  
21 at that time what Petty Contracts would have--how they would  
22 have affected that. At all times I was of the view that that  
23 828 figure, of course, was perhaps one person doing the  
24 contract.

25 But as I said, within the same vein, we had--we hadn't

1 mentioned that it was going to be done by Petty Contracts,  
2 which, now that I know better, it should have been thought that  
3 it would have affected the contract. But at that time, thinking  
4 that the figure would have gone over that, I had no knowledge of  
5 that, because even myself and even the PS being in that  
6 conversation, we would not have sent that paper for 828 if we  
7 had that knowledge. That would not have been right to do.

8 Q. The portion of Ms Stevens's evidence that I've taken  
9 you to suggests that there were discussions within the Ministry.

10 A. That is Ms Stevens's recollection. It is not mine.

11 Q. You do not recollect being involved in discussions  
12 within the Ministry that the risk of using Petty Contracts would  
13 take you over 828?

14 A. Or else it would not have been done. It wouldn't have  
15 made any sense. It would be no sense to do that because the  
16 money was available in the Ministry. We had already had our  
17 monies allocated for 2015, so there would have been no need to  
18 misrepresent the figure. If we had--because of the money that  
19 we had in the budget--and I showed you further down here what  
20 our budgets were for capital expenditure for three years in  
21 succession. The least amount of money we got was in 2015, which  
22 is a point that I'll raise later on, but we had \$1,600 in  
23 capital spending in 2015.

24 Q. \$1,600--

25 A. 1.6 million, sorry. Thank you.

1           There was--there would have been no need to  
2 misrepresent a figure here when the money in the budget would  
3 cover it. That doesn't make any sense.

4           Q.    The question is not about misrepresenting. It's about  
5 whether the figure is artificial or not.

6           A.    But there would be no need to put an artificial figure  
7 because the money would not have been an issue because you would  
8 have more than that allocated for your Ministry, so there would  
9 have been no need to put an artificial figure. What sense would  
10 that be?

11           COMMISSIONER HICKINBOTTOM: I understand that you say  
12 that your recollection differs from Ms Stevens's recollection,  
13 but Ms Stevens gave her evidence as to what she recollected, and  
14 that is that there were discussions.

15           And I know that, as a general proposition, you didn't  
16 appreciate that if you used 70 contractors as opposed to one, it  
17 would cost more money. But just on simple mathematics because  
18 the Auditor General has done this, just, for example, in terms  
19 of the construction under Phase 1, each segment was to cost  
20 almost \$10,000--I mean, literally, 9,989.65; whereas under the  
21 \$828,000 estimate, each section was going to cost \$5,000 off.  
22 There is a huge difference.

23           So, it was very clear, just on the sums, that to split  
24 this contract up would cost a lot more.

25           THE WITNESS: That is technical areas there,

1 Commissioner, because when you say look at the sections on  
2 the--when you look at the wall at Phase 2, you're looking at the  
3 sections how? In terms of railing and painting versus the  
4 actual construction?

5 COMMISSIONER HICKINBOTTOM: No, no. That's just  
6 construction, not the painting. The painting of each section  
7 cost \$7,357 under Phase 1, and the estimate was just under  
8 \$6,000 on Phase 2.

9 THE WITNESS: Okay.

10 COMMISSIONER HICKINBOTTOM: A lot less because it was  
11 a big contract.

12 THE WITNESS: Um-hmm.

13 COMMISSIONER HICKINBOTTOM: Big contracts cost a lot  
14 less.

15 BY MR RAWAT:

16 Q. The evidence of Ms Stevens is that the draft paper  
17 that left your Ministry to go to the Ministry of Finance would  
18 have been prepared by her--

19 A. Yes.

20 Q. --under the Permanent Secretary and would have gone to  
21 you--

22 A. No.

23 Q. --before it left?

24 A. Well, I would have seen it.

25 Q. Explain what you mean by "seen."

1           A.    I would have seen it.  It doesn't have to be approved  
2 by me because I'm not the final--

3           Q.    But you would have read it?

4           A.    I would have looked at it.  If the Permanent Secretary  
5 looked at it, I would have probably been aware.  I can't say if  
6 I sat down and read it in its entirety because it was not a  
7 paper that was coming under my hand.  It's different because if  
8 it was a paper coming under my hand, I would have spent more  
9 time with it.  It has to go through the Ministry of Finance.  
10 That's the way it's vetted and the way other things are worked  
11 out.

12          Q.    But you were going to propose to Cabinet that they  
13 approve nearly--just over 800,000 pounds of expenditure from  
14 your budget.  You said that you had 1.6 million, so half your  
15 budget was going to be building a wall the next year.

16          A.    Yes.

17          Q.    That's what you were going to do?

18          A.    Yes.

19          Q.    And it wasn't going to come from the Ministry of  
20 Finance funds; it was going to come from your budget?

21          A.    Yes.

22          Q.    And so, when you're about to spend close to a million,  
23 don't you sit down and read the paper carefully?

24          A.    I would have probably read through it, as I said.  But  
25 as I said to you before, I would not have appreciated at that

1 time what the implications were. It is only after I read the  
2 Auditor General's Report that I recognized that there has to  
3 be--that there was an error somewhere because if we're thinking  
4 it's 800 something--and I can see how I arrived at that thinking  
5 because that's how we did it before. Whenever, as I said, a  
6 project came to me in the Ministry, the figure would come to me  
7 and it would have been divvied up.

8 I did not appreciate--

9 COMMISSIONER HICKINBOTTOM: Again I'm sorry to  
10 interrupt, but I just want to make one concern clear.

11 You say that that was how it was done before, but it  
12 wasn't. On Phase 1, your evidence is that you were presented a  
13 paper with each section--each section is going to cost this  
14 amount of money. Whoever does this, it's going to cost this  
15 amount of money. And that's why I said that the implementation  
16 plan, in terms of pure money, didn't matter very much. It  
17 didn't matter whether one person did it or 11 people did it  
18 because this was a fixed sum for each section. This estimate  
19 was completely different. This estimate was the whole wall was  
20 going to cost an estimated \$828,000. It did not say, look, if  
21 you use 70 contractors it's going to cost \$828,000 because this  
22 is the breakdown. But they're not alike.

23 THE WITNESS: They are alike because, if you go in  
24 using my thinking, Commissioner, that the cost of  
25 eight-something was for one person doing the wall, meaning--when

1 I say one person doing the wall, that's the cost of it. If  
2 you're going to apply that same reasoning, it would mean you  
3 divide that eight-something up into how many persons you're  
4 going to be using, and the figure remains the same at the end.  
5 It's the same.

6 (Overlapping speakers.)

7 THE WITNESS: This is my mind.

8 COMMISSIONER HICKINBOTTOM: Because you didn't  
9 appreciate--your evidence is you didn't appreciate that there  
10 would be any difference.

11 THE WITNESS: I did--

12 COMMISSIONER HICKINBOTTOM: But there is a difference,  
13 at least in form, between a proposal that's put in front of you  
14 for Phase 1 saying that each section, however it's done, is  
15 going to cost \$10,000 or whatever it is, and, therefore, the  
16 bottom line, it doesn't matter how this is done because each  
17 section has got a price. That is different from Phase 2 where  
18 the estimate was for \$828,000 for the job, not for each segment,  
19 but for the job.

20 THE WITNESS: Yes.

21 But if do you it in segments, like you have done it  
22 before, my understanding would have been the number of 828 would  
23 have remained the same.

24 COMMISSIONER HICKINBOTTOM: I understand that. I do  
25 understand that--



1 THE WITNESS: So, to me, it means technically the same  
2 thing.

3 And I'll even go even further. Cabinet itself did not  
4 appreciate that would happen either, because the problem got  
5 further compounded by Cabinet because then the Cabinet decided  
6 not to do it by Petty Contract and Work Orders, so you've  
7 further broken it down.

8 So, again, somewhere along the line, the kind of a  
9 technical advice that you needed to deal with certain things was  
10 not there because it passed through two Ministries.

11 COMMISSIONER HICKINBOTTOM: I'm sorry, again, to point  
12 this out. That's on your evidence. That was not Ms Stevens's  
13 recollection.

14 THE WITNESS: Which part?

15 COMMISSIONER HICKINBOTTOM: That it somehow was not  
16 thought about. Her recollection was it was thought about and  
17 discussed with you.

18 THE WITNESS: I'm saying to you categorically,  
19 Commissioner, that was not discussed with me.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: And if it was discussed with me, that  
22 paper would not have been at eight-something. If it was  
23 discussed with the Permanent Secretary, who I know and hold in  
24 very high regard, she would not have allowed that paper to go  
25 forward, fully well knowing that would it cost that much.

1           So, I am not--Ms Stevens would have to speak about who  
2 she spoke to about this. But there was no conversation with me  
3 on this.

4           And I'm saying to you categorically that--

5           BY MR RAWAT:

6           Q. It did not happen?

7           A. It did not happen.

8           Q. There was not a meeting where--

9           A. We had several meetings.

10          Q. --what you allowed out of your Ministry was a paper to  
11 go to the Ministry of Finance that said two things that are  
12 relevant to this conversation: One is \$828,000, and the second  
13 one is Petty Contracts.

14          When asked, Ms Stevens's evidence was that prior to  
15 that paper leaving, there was discussion that using Petty  
16 Contracts would make you go over 828,000.

17          A. I heard you the first time.

18          Q. And that didn't happen?

19          A. Saying it the second time doesn't make any difference  
20 to me, Counsel. I said to you, categorically, no.

21          Q. With respect, Mr Walwyn, being rude to me won't stop  
22 me asking you questions.

23          A. I wasn't being rude to you.

24          Q. So, can we break it down? Your evidence is that  
25 conversation did not happen?

1           A.    It did not happen.

2                    And I apologize if you thought I was being rude.  I am  
3 not being rude.  I'm sorry about that, if that's what you think.

4                    COMMISSIONER HICKINBOTTOM:  Can I just ask this other  
5 question?  I think you've answered it, and if you have, you must  
6 forgive me.

7                    THE WITNESS:  No problem.

8                    COMMISSIONER HICKINBOTTOM:  But I want to be clear.  
9 If you had appreciated that the 828--the 828 figure was for one  
10 contractor.  We know that.

11                   THE WITNESS:  Yes.

12                   COMMISSIONER HICKINBOTTOM:  You say you didn't  
13 appreciate that it would rise, possibly significantly, if there  
14 were lots of contractors.  But you said that if you had known  
15 that, if you had known that, the paper would not have gone to  
16 Cabinet in the form that it did, and that is because--this is a  
17 question--because the 828 figure would have been--well, the  
18 criticism said "artificial", but would have been wrong?

19                   THE WITNESS:  Yes.  Yes.

20                   BY MR RAWAT:

21           Q.    If you go to page 11 in the bundle--

22                   THE WITNESS:  At least based--sorry, Counsel.

23                    At least based on what was being carried there at the  
24 time.  I remember I did indicate that certain things changed  
25 along the lines; right?

1 COMMISSIONER HICKINBOTTOM: Absolutely.

2 THE WITNESS: Right.

3 COMMISSIONER HICKINBOTTOM: The evidence of  
4 Ms Stevens--and I think it's your evidence--for this--for  
5 Phase 2, Petty Contracts certainly were being considered. That  
6 was what I think was in the Cabinet paper.

7 THE WITNESS: That was in the draft.

8 COMMISSIONER HICKINBOTTOM: In the draft paper--

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: --when it eventually went  
11 to Cabinet. And then Cabinet--and we heard your evidence on  
12 this. Mr Rawat may come back to it today. But it was during  
13 the Cabinet, Work Orders came in as well, as a partial way of  
14 dealing with it?

15 THE WITNESS: Yes.

16 BY MR RAWAT:

17 Q. If you go to page 11--

18 A. Of my--

19 Q. This.

20 If you look at paragraph 39.

21 A. Paragraph 39?

22 Q. Now, in that Table 3, if you look under the part that  
23 says "Approved Estimates Section"--

24 A. Um-hmm.

25 Q. And that's in relation to the wall, so the proposal

1 was that the wall would be divided up into 22-foot sections, and  
2 on 828 that's costed at just over \$4,000. Do you see that?

3 Now, that wasn't, obviously, a detail that went to  
4 Cabinet. What we have is what we've looked at. But if you turn  
5 to page 24.

6 A. Say that point again, Counsel, in relation to 39. I  
7 didn't grasp that point.

8 Q. The point is, as I understand the Auditor General's  
9 Report--

10 A. Um-hmm.

11 Q. --is that when you take a figure of the \$828,000, and  
12 you can look at it if you look at 37--

13 A. Um-hmm.

14 Q. --she says, explains at 38, so the approved estimate  
15 for the wall construction part of the Project was just over  
16 \$289,000.

17 A. Yes.

18 Q. This results in segmented costs of the Project, 71  
19 contracting sections of just over 4,000 per section.

20 A. Okay.

21 Q. So, that's--the Auditor General's analysis is that if  
22 you break it down, that's how much each wall should cost you.

23 A. Okay.

24 Q. All right. Now, if you go to 24.

25 A. Page 24?

1 Q. Yes, please.

2 This is an attachment to the Auditor General's Report.  
3 It's a Quantum Bill of Quantities headed "Bill of Quantities for  
4 Wall Works". And it's dated the 20th of November 2014.

5 And if you look at the very bottom of it, the total  
6 value she's given, at 25, is given at just under \$9,500.

7 Now, that wasn't as a Bill of Costs before Cabinet.  
8 Were you aware of that at any time before Cabinet made its  
9 decision?

10 A. No.

11 Q. Because, upon that figure, for a wall that  
12 Mr Augustine measured at 2,695 feet long, you would have had a  
13 cost that was significantly over 828, wouldn't you?

14 A. I would imagine so.

15 Q. Well, I think, if my math is right, if you divide a  
16 wall of 2,695 feet--

17 A. That's the difference, Counsel. You're doing maths on  
18 this stuff now; right? That is not the job of a Minister of  
19 government.

20 Q. And you didn't look at it with--

21 (Overlapping speakers.)

22 A. That is not my--you have technical persons within the  
23 Ministry that does this work, particularly the fact that it is  
24 going now to the Minister of Finance, who is the chief technical  
25 financial ministry. This is not something that a Minister sits

1 down and digs through. We don't have time for that.

2 COMMISSIONER HICKINBOTTOM: This would be before the  
3 Finance and Planning--

4 THE WITNESS: The Finance and Planning Officer.

5 COMMISSIONER HICKINBOTTOM: The PS--

6 THE WITNESS: The PS to some extent. But here it is  
7 now going to the Ministry of Finance who have to carry this  
8 paper. That is really where the rubber hits the road in terms  
9 of analysis, in that Ministry. It's not for me to sit down here  
10 and--it just doesn't happen in practice.

11 BY MR RAWAT:

12 Q. We will compare the two papers in due course when  
13 you--because you speak of the Ministry of Finance having a  
14 vetting role. But when one reads them, it looks as if,  
15 essentially, your paper was taken, the Ministry of Education's  
16 paper was taken, some small changes made to it, but essentially  
17 the detail adopted.

18 A. Yes, but the details could have also been changed,  
19 Counsel.

20 Q. But they weren't.

21 A. And that--and that I cannot help with.

22 Q. You can help with this, can't you, Mr Walwyn: The  
23 rationale for doing this on a tender waiver basis came from your  
24 Ministry, didn't it?

25 A. That was only a suggestion from the Ministry. The

1 Ministry can suggest whatever it wants to suggest.

2 Q. The rationale, which is the rationale that you relied  
3 upon, came from information that had come to you as Minister?

4 A. That's correct. But if you look, as well, at the  
5 Cabinet results, you would have seen what was the basis of  
6 Cabinet's decision. Cabinet based its decision on the  
7 evidence--and it's in the Cabinet Paper--that came from the  
8 Police Commissioner and the principal of the high school.

9 Q. Which found its way from your Ministry?

10 A. Which was foremost under mine. Of Cabinet was more so  
11 a security issue as opposed to the costing issue.

12 Q. May I come back to that, though, because--I will deal  
13 with that because that's something that you relied upon.

14 A. Yes.

15 Q. But the point is, if we stick to--let's stick to the  
16 criticism that we're dealing with.

17 A. Yes.

18 Q. That you're saying that the level of detail in terms  
19 of what you would have seen before that paper goes out is, at  
20 most, limited to the attachments of the draft paper.

21 A. Pretty much, yes.

22 Q. You would not have seen any additional pieces of  
23 paper?

24 A. I cannot say if there was additional pieces of paper.  
25 Bear in mind this was almost a decade ago.



1 Q. Yes.

2 A. I cannot say if there were additional pieces of paper.

3 But what I can say is I'm not a technical person. I  
4 rely on the technical folks in the Ministry to advise when  
5 things are not right.

6 COMMISSIONER HICKINBOTTOM: Could I just ask two  
7 follow-up questions to that, Mr Walwyn. Again, you made your  
8 evidence clear, so forgive me if you have, but I just want to  
9 make sure it is clear.

10 You were going to Cabinet for \$828,000.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: That's what the payout  
13 was. But I think you said, in terms of the figure being wrong  
14 or artificial or whatever, had the figure been higher, had it  
15 been 1.2 million or whatever it was, that would not have, in  
16 your view, been a difficulty because you had that money--

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: --already?

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: Okay. So that's helpful.

21 Thank you.

22 THE WITNESS: There would be no need to put a false  
23 figure.

24 COMMISSIONER HICKINBOTTOM: I understand. I just  
25 wanted you to confirm that, so I understand that.

1           Secondly, if you look at the figures that Mr Rawat has  
2 taken you to--and you can either look at the section in  
3 paragraph 39, or for the whole construction costs, these aren't  
4 all the costs, but these are just constructing the wall, in  
5 paragraph 41. The approved estimates of building the wall was  
6 289,000 of the 828,000; whereas the actual contracted amount,  
7 the amount that you've put contract out for to build the wall,  
8 to do these works, was \$652,000. That's way over twice as much.

9           Now, I understand that you said this wasn't for you  
10 because this was for your technical people. But that would be a  
11 schoolboy error, wouldn't it? This is a big contract, and  
12 building the wall by splitting up--by splitting it up would cost  
13 twice as much?

14           THE WITNESS: I had no understanding of that.

15           COMMISSIONER HICKINBOTTOM: Sorry. I understand that.  
16 But for those people--and you've indicated who might have been  
17 responsible for looking at this. But that would be a schoolboy  
18 error in splitting one contract up into Petty Contracts and Work  
19 Orders if it was to cost over twice as much.

20           THE WITNESS: Again, Commissioner, I can see, looking  
21 back now, that yes, we should have paid more attention to it.  
22 But what's interesting, and that probably shouldn't miss you, is  
23 sometimes when things happen, it's not that somebody did  
24 something wrong. Sometimes the administrative and management  
25 things were overlooked because this is a paper that left the

1 Ministry of Education where it says that wall would cost  
2 \$800,000 and something.

3           We are thinking that that's one person doing it. But  
4 within the body of the Petty Contract, within the body of the  
5 document it says by Petty Contracts. It then goes to the  
6 Ministry of Finance, the headquarters of the Government's  
7 finances, if you will, and it leaves in the very same state,  
8 nobody picking up the error that we would have made in the  
9 Ministry. It goes to Cabinet that further compounds it by  
10 saying Petty Contracts and Work Orders. It then goes back to  
11 the Ministry of Finance before it comes to us. And nobody can  
12 write back and say that these are the cost implications based on  
13 the decision of Cabinet.

14           So, I mean, for somebody like myself who is neither a  
15 technical person nor a finance person--and that would have gone  
16 through all of those hands--it doesn't mean that something did  
17 something wrong. It just means that sometimes within these  
18 things, you have capacity issues, and this is one of these  
19 things that I would say is a capacity issue, because had it not  
20 been for this exercise, I would not, up to this day, appreciate  
21 that breaking that the contract up would have done that because,  
22 in my mind, not being a technical person at all, I'm thinking,  
23 if it's \$828,000, but I'm using 15 people for it, each person  
24 gets an equal section, and that is the cost of the contract. It  
25 may be silly now, but that's the knowledge I had at the time.

1           COMMISSIONER HICKINBOTTOM: Thank you. Now I  
2 understand.

3           BY MR RAWAT:

4           Q. According to Ms Stevens, the estimates that were  
5 attached to the draft paper from Quantum or Steve Augustine  
6 Architects, and also from STO, were obtained by yourself; is  
7 that right?

8           A. When you say obtained by me, I probably would have  
9 been the one to ask Steve to go and do it, but to say whether  
10 they came to me directly, I don't think they would because those  
11 two worked closely together.

12          Q. Which two are you speaking of?

13          A. The External Project Manager and the Internal Project  
14 Manager.

15                 So, it wouldn't have been something that we asked, or  
16 Steve would have brought the documents to me. No, he would have  
17 gone directly to Ms Stevens because they know that's the way it  
18 is.

19                 So, for me to simply ask him to go and do it doesn't  
20 necessarily mean anything because when he comes back, he will go  
21 straight to Ms Stevens with the documents and they would have  
22 worked out how it was going to be done and so on.

23          Q. Did you go and ask Quantum or Steve Augustine to  
24 provide you an estimate for building the wall?

25          A. I probably did.

1 Q. But you--

2 A. I can't remember conclusively, but I probably did.

3 And if I didn't, the fact is he was asked to do it and I  
4 sanctioned it. I can't remember I picked up the phone and asked  
5 him to do it.

6 Q. But did you ask the STO to do the second one?

7 A. I can't recall. I can't recall if I spoke to STO.

8 Q. We will take you to it, but Ms Stevens' evidence was,  
9 when she was asked: "Was it the Minister that went out and got  
10 these two estimates"? And she answered--

11 A. Can you direct me to it?

12 Q. Do you want me to take you to it?

13 A. If you can, please.

14 Q. 904, please.

15 Now, can I, in the context in which that question was  
16 put--

17 A. Sure.

18 Q. --what was put to--

19 A. Can you tell me where you're starting from?

20 Q. 904.

21 A. Yes.

22 Q. I'll tell you where I'm starting from in a moment; I'm  
23 just giving you the background. When one looks at the STO quote  
24 and looks at the Quantum quote, they appear different. They  
25 appear--the measurements are different. So, when STO are

1 quoting for construction of block work, they're quoting for a  
2 different square footage to Quantum.

3 And so the questions that were put to Ms Stevens was:  
4 "In what way could they be described as comparable because  
5 that's what would have been useful"?

6 A. Okay.

7 Q. Then went to 904. I asked her, at line 5: "If you're  
8 using them as cost comparables for each other, surely it would  
9 be sensible to them to cost for the same work"?

10 Her answer: "But I was not included in that  
11 discussion, so I cannot say exactly at what time they were  
12 told".

13 I then asked: "And as you understand it, it was the  
14 Minister that went out and got these two estimates"?

15 Answer: "Correct."

16 "And you were not involved? Although you were the  
17 Internal Project Manager, you were not involved in that process  
18 at all, Ms Stevens"?

19 And she answered: "Not what it came to starting the  
20 work, no".

21 Question: "So this information was given to you to  
22 draft the Cabinet paper"?

23 Answer: "Correct".

24 So, her recollection was, you went out, you got quotes  
25 from these two for the purposes of having a cost comparable for

1 the draft Cabinet paper.

2 A. The only--I would have asked those two gentlemen or  
3 those two companies to do that because you would have been  
4 required to do that. That information I would have probably  
5 gotten from the technical folks, either the PS or somebody in  
6 the Ministry who would have that information--

7 Q. Quotations--

8 (Overlapping speakers.)

9 A. --that you needed to have two quotations.

10 So, I would have asked--I can see myself asking for  
11 them, even though I don't remember doing it. I can see myself  
12 asking them to go and do it.

13 Now, asking them to do that, I don't know what bearing  
14 that has because when they come back with information, the  
15 information goes to Ms Stevens who drafts the paper. So, I'm  
16 not sure--I'm not sure what the issue is in terms of me asking  
17 versus if she asked.

18 Q. Well, it's two things: One is that it's confirming  
19 whether there are areas of Ms Stevens's recollection that you  
20 don't agree with.

21 Secondly, it's a baffling picture of what you were  
22 doing as Minister because you are--according to Ms Stevens,  
23 you're out there going off and getting estimates from--you're  
24 directly approaching companies to get estimates. You're not  
25 telling the Public Officers "we need to do this in order to have

1 a draft Cabinet paper up and running." But, simultaneously,  
2 you're not actually drilling down into the Cabinet paper that  
3 you're--

4 (Overlapping speakers.)

5 A. But to simply ask somebody to go and do an estimate of  
6 something, it has to come back to the Ministry to the technical  
7 people for analyzation and for them to draft a paper. There is  
8 nothing technically wrong with that. Ministers do that all the  
9 time. If I'm trying to get a project done and I call a  
10 project--somebody to do an estimate of it, it's only asking to  
11 do an estimate. That's all it is. When the estimate comes in,  
12 it is analyzed, and the data is looked at by the technical  
13 folks. There is nothing--nothing wrong with that.

14 (Overlapping speakers.)

15 Q. --the technical folk, what level of analysis they did?

16 A. If it's given--if it's given to the technical folk,  
17 they know what their responsibilities are. If they have two--if  
18 they have two documents in front of them, they have to analyze  
19 the documents and see which one they're going to recommend.

20 I'm not the type of person that would sit down  
21 and--that's not my responsibility. If I called--

22 Q. What was your responsibility?

23 A. My responsibility--first of all, I'm a policy-maker  
24 within the Ministry. And yes, I have the overall responsibility  
25 for the Ministry. But there are people within the Ministry who



1 have technical responsibilities.

2 Q. What policy did you make in relation to the wall?

3 A. The decision that we are going to make this matter a  
4 priority for us in terms of security based on the advice of  
5 the--on the information coming from the principal, that yes,  
6 we're going to seek permission to get it down. That's a  
7 decision that the Minister would have to make. Nobody can make  
8 that decision but the Minister.

9 Q. In order to make that decision, why do you have to get  
10 involved with obtaining estimates?

11 A. There is nothing wrong with the Minister picking up  
12 the phone and calling someone who normally works and say go and  
13 do this--and we don't even know the reason why it happened, if  
14 in fact it did. I can't remember doing it, but I'm saying to  
15 you it is not something farfetched that I would not have done.

16 Q. How does it help you formulate the policy to do that?

17 A. To go and see what the cost of it is, so I know how  
18 much money I have in the budget. If you call up with the  
19 estimate and the estimate says X amount of dollars, then we know  
20 what we are dealing with.

21 Q. But if you're not--and your evidence seems to be that  
22 you didn't particularly read the draft Cabinet Paper with any  
23 great scrutiny because there are matters in it that you leave  
24 with the technical people--

25 (Overlapping speakers.)

1           A.    Yes.  And I knew it was going to the Ministry of  
2 Finance.

3           Q.    You did not even question--you did not spot the  
4 one-contractor point.  You didn't have any issue with Petty  
5 Contracts possibly increasing costs.  You weren't aware of that?

6           A.    No.

7           Q.    But at the same time you pick up the phone and just  
8 ring someone and ask for an estimate?

9           A.    What is wrong with that?  If you pick up the phone as  
10 a Minister--because I'm the one now who has to find the money,  
11 so if I ask somebody to give an estimate for something, I need  
12 to know what the estimate is to know whether it is doable or  
13 not.  That is something that a normal Minister would do.

14          Q.    So, if you need to know whether it's doable or not,  
15 and you've gone to the trouble of actually picking up the phone  
16 and asking--

17          A.    That was no trouble to me.

18          Q.    Why don't you sit down and look at them, then?

19          A.    And we have technical people to look at it.

20          Q.    And what did you instruct those technical people to  
21 do?

22          A.    To do their jobs.  They're the ones who looked through  
23 the documents.  They're the ones to see which document makes  
24 sense or what doesn't make sense.  And they put their business  
25 cases together, and the document goes on to the Ministry of

1 Finance for further scrutiny.

2 Q. So, at no point were any of the issues that were  
3 highlighted by the Auditor General or have been put to you in  
4 questions today are matters that figured in your mind in  
5 January 2015, when this paper was being produced?

6 A. What was your question, again, Counsel?

7 Q. At no point, on January 2015, the matters that were  
8 highlighted from the Auditor General's Report--

9 A. There were a number of matters--

10 Q. --were not--well, in relation to the quote--

11 A. Um-hmm.

12 Q. --were not drawn to your attention?

13 A. Yes--no.

14 Q. And the matters that have been put to you today--and  
15 so, for example, the fact that there is a discrepancy between a  
16 section costing 4,000 and there being available a Bill of  
17 Quantities that says it's going to cost 9,000. These were  
18 matters not known to you at that time?

19 A. Not at all, Commissioner.

20 Q. The sum total of your knowledge in January 2015 was:  
21 I've asked for a couple of estimates from two companies, my  
22 technical people will deal with it, and I then will read the  
23 paper when it comes on my desk?

24 A. I will read the paper, yes, but I'm not going to go  
25 through the analysis because I depend on the folks who do the

1 analysis.

2 Q. So, how did you approach the paper?

3 A. It was a highly technical paper, Commissioner.

4 Q. How does it--

5 A. It has a lot of technical figures in there. I'm not a  
6 technical person. I'm not ashamed to say it.

7 Q. We've established that, Mr Walwyn, but in what way it  
8 was technical?

9 A. It dealt with a lot of numbers. I'm not a numbers  
10 person. That is not my area.

11 So, the folks in the Ministry who give financial  
12 advice, the Internal Project Manager, the External Project  
13 Manager, the Ministry of Finance, that is their role. A  
14 Minister has--especially in a small country, Commissioner, there  
15 are a number of things that fall under their portfolio. A  
16 number of things. And even with an at-large Member of the House  
17 to deal the constituents, you don't have time to sit down and go  
18 through numbers. That's the job of other people.

19 COMMISSIONER HICKINBOTTOM: Mr Rawat, I see--

20 MR RAWAT: This is a good point.

21 COMMISSIONER HICKINBOTTOM: Is this a good point to  
22 break?

23 MR RAWAT: Yes.

24 COMMISSIONER HICKINBOTTOM: Mr Walwyn, we'll break for  
25 lunch now.

1 THE WITNESS: Okay.

2 COMMISSIONER HICKINBOTTOM: Shall we come back at  
3 quarter to 2:00? 35 minutes? Is that fine with you?

4 THE WITNESS: That's convenient.

5 COMMISSIONER HICKINBOTTOM: We'll come back at quarter  
6 to 2:00. Thank you very much, Mr Walwyn.

7 (Recess.)

8 COMMISSIONER HICKINBOTTOM: Good. Welcome back,  
9 Mr Walwyn.

10 Mr Rawat, we're ready to continue.

11 BY MR RAWAT:

12 Q. Mr Walwyn, we were on, before we had a pause, on the  
13 fourth criticism, and I think we've gone through that in some  
14 detail, but what I need to do, if I may, is just put on the  
15 record in summary an outline of your written response.

16 Obviously, the detail will be available to the Commissioner.

17 Some of this you have expanded upon, but if we just  
18 summarise it, firstly, you say that there was no benefit to be  
19 gained by the Ministry of Education providing an artificial  
20 figure for the Project. You've explained further the reasons  
21 for that.

22 Secondly, you say that the paper was brought to  
23 Cabinet by the Acting Minister of Finance after full vetting and  
24 approval of the Ministry of Finance. Could you just explain to  
25 the Commissioner what does that vetting involve?

1           A.    I'm not sure.  But they would have to analyze the  
2 paper, make sure that it makes sense, that all the i's are  
3 dotted, t's are crossed.  And I would imagine because it's a  
4 Finance Ministry, that they will be checking to make sure that  
5 all the financial things, regulations are adhered to, and that  
6 the numbers make sense in terms of what we're doing.

7           Q.    But what do you base that on?

8           A.    I just imagine that is what they would be doing.

9           Q.    So, it's a supposition on your part?

10          A.    Yes, yes.

11          Q.    That they don't simply pass the paper on, that they  
12 conduct a review of it?

13          A.    Yes, because there have been times when I know, for  
14 instance, they have sent back asking for more information and so  
15 on.  I've heard about that.  I don't think they did that in  
16 relation to this particular project, but I do know that they vet  
17 through the documents--pretty keenly, they should.

18          Q.    Where you--when one compares the draft that left your  
19 Ministry to the draft that went--the version that went before  
20 Cabinet, that essentially they're the same.  Did you notice that  
21 at the time?

22          A.    No, because I wouldn't get--the paper wouldn't come  
23 back.

24          Q.    I'm assuming that when you are in the guise of a  
25 Cabinet Minister and you're attending Cabinet, you will see the

1 paper?

2 A. You will see the paper, yes.

3 Q. Yes.

4 A. Yes.

5 Q. And at that point, did you appreciate that what was  
6 before you, albeit under the heading "Ministry of Finance" was  
7 essentially--

8 A. It was virtually the same.

9 Q. Yes, but did you notice that at the time?

10 A. When we were going through Cabinet Paper, when I read  
11 it, yes, from home, before the Cabinet Meeting is I realised it  
12 was materially the same.

13 Q. So, in effect, what--they were the vehicle by which  
14 your paper was going to Cabinet?

15 A. Well, the vehicle, yes, but with the responsibility of  
16 making sure that things were in order and it had a higher level  
17 of oversight.

18 Q. You also say in your response that you had enough  
19 money, as a ministry, allocated in your budget for 2015 to cover  
20 the entire cost of the Wall Project, including the additional  
21 sum requested in the amount of 251,000-odd?

22 A. Yes.

23 Q. And we looked where that came from?

24 A. Yes.

25 Q. And then you go on to say that approval would have

1 been needed for that amount because it was in addition to what  
2 was already approved, and we've looked at that?

3 A. Yes.

4 Q. But can you just help the Commissioner with your--the  
5 point at 4.3 because you have set out there the estimated  
6 capital budgets for the Ministry of Education in 2013, '14, and  
7 '15, and you've produced documents in support of that. Could  
8 you just briefly--

9 A. I just put it forward because, remember what the  
10 Ministry--what the Premier would have done or what would have  
11 happened I think in 2015 was that if the budget was not passed  
12 in time, a warrant is done to allow you to spend for the first  
13 three months of operation. It's only at the end of the budget  
14 process that you would know exactly how much money you were  
15 getting, so I put these numbers here to show that, even at the  
16 time of planning, if we had the number of 828, based on the  
17 historical numbers that we would have gotten for the Ministry,  
18 it would have been more than sufficient for us to do the wall  
19 without having to produce any artificial numbers for the wall  
20 because, over the previous years, we got double what we were  
21 getting in that particular year, so it would have been a fair  
22 assumption to make that there would have been no need to do  
23 anything artificial to get any additional funding because the  
24 funding level was always pretty efficient.

25 COMMISSIONER HICKINBOTTOM: Once you've got the



1 capital budget and you've got the \$828,000 to come out of it,  
2 anything over that \$828,000 would mean that you could not spend  
3 your capital budget on something else?

4 THE WITNESS: No, not necessarily. The way the budget  
5 was written is that if there was specific areas that you had in  
6 the budget itemized, figures were put to that, but even if it  
7 didn't do that project and you wanted to spend it on somebody  
8 else, you would write to the Minister of Finance, that's  
9 something that the Financial Planning Officer would do and ask  
10 for a reallocation of the budget. That has never been denied at  
11 the time that I have been there as Minister. There is also a  
12 line item called Development Projects that allow you to dip into  
13 that if sometimes you might budget a particular figure for a  
14 particular budget but it might run over that. You can go to the  
15 Development Projects and add that on or it allows you to add in  
16 new projects that you probably didn't envisage at the time when  
17 the Project was being done.

18 COMMISSIONER HICKINBOTTOM: Yes, thank you.

19 BY MR RAWAT:

20 Q. Just so that we can understand the documents that you  
21 have provided so that we don't lose sight of them once we've  
22 finished your evidence today.

23 A. Yes.

24 Q. And I think the first one is at Tab 9 in the material  
25 you've provided.

1 A. Yes.

2 Q. So, it's a summary of budgets and forward estimates at  
3 the top.

4 A. Yes.

5 Q. Is that for 2013?

6 A. Yes. This is 2013.

7 Q. And when you say it's headed as sort of "national  
8 sectors goal" we see at the bottom there, it's say--and you've  
9 highlighted it--total capital expenditure. So, was that the  
10 actual amount of money that was in your budget in 2013?

11 A. No, for capital projects only.

12 Q. For capital projects only.

13 A. Do you see where it says development projects towards  
14 the end?

15 Q. Yes.

16 A. Yes. It says capital acquisitions, rather.

17 Q. Yes.

18 A. From right there all the way down.

19 Q. Right.

20 A. That is the money you would have just for capital  
21 projects alone.

22 Q. I see.

23 A. And it's in that area that the wall would fall, as a  
24 capital project.

25 Q. Right.

1           Now, help us with this, you see under "development  
2 projects, local funded" so that's from money that you're  
3 allocated?

4           A.    Yes.

5           Q.    The head is 325, and there are two that you  
6 specifically draw attention to, so school rehabilitation and  
7 design and Ministry of Education and Culture development  
8 projects, because the other two on that year, are specific,  
9 aren't they, one's to a recreation ground and one's for playing  
10 fields?

11          A.    Yes, those are specifics, but as specific as again I  
12 said, though, that if you needed to change those.

13          Q.    You could do that?

14          A.    You could write to the Minister of Finance for  
15 permission.

16          Q.    Leaving aside the specifics, which you could move--

17          A.    Yes.

18          Q.    --you also have a more general budget for school  
19 rehabilitation and design?

20          A.    Yes.

21          Q.    And a budget for development project?

22          A.    Yes.

23          Q.    So, that was the amount in 2013?

24          A.    2013, yes.

25          Q.    And then the next tab is the amount in 2014?

1 A. Yes.

2 Q. Again, you've got--you've got three specific projects  
3 that time, but you got again school rehabilitation design and  
4 development projects?

5 A. Yes.

6 Q. And then 2015, which is the year in which Phase 2 was  
7 being undertaken, your total capital expenditure is given as  
8 1,600--1,600,000.

9 A. 1,600,0000.

10 Q. So, 1.6 million?

11 A. Yeah.

12 Q. And again, a mix of specific projects and those under  
13 schools rehabilitation and design?

14 A. Yes.

15 Q. And your point is that if one takes that you had  
16 350,000 for schools rehabilitation and design and 900,000 for  
17 development projects, there was sufficient funds--

18 A. Yes.

19 Q. --available to your Ministry at the beginning of 2015?

20 A. Yes.

21 Q. Even with the warrant point--

22 A. Yes.

23 Q. --to allow you to cover the cost of the wall?

24 A. Yes.

25 Q. You continue. If we go back to the summary of your

1 response to criticism 4, but--actually before we do, can I just  
2 draw your attention to one piece of evidence linked to money.  
3 If we go, please, to page 950 in the Hearing Bundle.

4 A. Nine-five-zero?

5 Q. Nine-five-zero.

6 A. Um-hmm.

7 Q. Now, we're in Ms Scatliffe's evidence. And if you see  
8 at line 17, Mr Walwyn, I asked this: "At the start of Phase 2,  
9 the phase that the Cabinet approved, it was going to be  
10 costed--well, it was costed at 828,000. As the work moved on,  
11 the costs increased, what impact did that have on the Ministry's  
12 budget"?

13 And what Ms Scatliffe responded was, "well, it had a  
14 huge impact on the Ministry's budget because I had to request an  
15 additional 250,000 to complete the work".

16 I asked, "where did you make that request to"?

17 And she answered "the Ministry of Finance".

18 And overleaf the next page I asked, then, "and were  
19 you anticipating having to make that request"?

20 She answered, "no, I did not anticipate that".

21 The next question was: "So, when that work started,  
22 were you as Finance and Planning Officer expecting to have to  
23 find \$828,000"?

24 Answer, "correct".

25 "Then, as it went on, did you have to move money from

1 other projects to pay the bills"?

2 Answer: "No, it had some funds in there that could  
3 cover for the overage of up to nine and change", that's 900,000,  
4 "but then we needed an additional 200,000, 250, and that was  
5 requested from the Ministry of Finance".

6 And then I asked again because Ms. Scatliffe was  
7 giving me evidence remotely and her voice dropped. And she then  
8 answered: "In the Minister's Head, 325, although I'm not sure  
9 of the number right now, there was sufficient funds to cover up  
10 to 900,000 before it was stopped". And we went through it.

11 So I asked, "You had sufficient funds to pay for the  
12 cost overrun of the Project"?

13 "Right".

14 "But there came a point when you had to request  
15 250,000 from the Ministry of Finance"?

16 "Correct."

17 When I asked her at what point it was, she said  
18 towards the end of 2015.

19 So, the summary of Ms Scatliffe's recollection was  
20 that, in terms of the budget, there was funds to go up to  
21 900,000.

22 A. Okay.

23 Q. But when it came to that additional 250, which was  
24 identified in the Auditor General's as necessary to complete the  
25 works, then you had to go back to the Ministry of Finance to ask

1 for money, not to ask for permission to use the money but to  
2 actually ask for the money.

3 Now, that seems to differ from your recollection of  
4 events; is that right?

5 A. Not substantially.

6 Q. I would imagine the \$900,000 that she's referring to  
7 is the standard \$900,000 that we see here in development  
8 projects. If we look at 2016.

9 A. Which tab are you in?

10 Q. I'm in Tab 2. So that's--

11 A. Tab 11.

12 Q. Tab 11, the last tab?

13 A. Yeah.

14 You see the \$900,000 Minister of Communication and  
15 Works on the projects, 900.

16 Q. Yes.

17 A. But then you would also look at the top, you will see  
18 \$350,000 for school rehabilitation and design.

19 Q. Yes.

20 A. Which that would also fall into.

21 The reason why we would need to go back and ask for  
22 additional monies is because Cabinet approved \$828,000 on that  
23 section of the Wall Project. If you're going to go over that,  
24 you would need to get Cabinet's approval to do that, either  
25 Cabinet or the Ministry of Finance, those are the two. I may be

1 wrong but it might be either the Cabinet or the Ministry of  
2 Finance.

3 Q. For that piece of work?

4 A. For the additional sum above that amount, even though  
5 it exists in your budget. So, it wasn't as if we were asking  
6 them for new money, it would have been that we were asking him  
7 to go above what they had approved.

8 COMMISSIONER HICKINBOTTOM: But Ms Scatliffe said that  
9 it was done on a schedule of additional provision.

10 THE WITNESS: Yes, SAP. That's how it's done.

11 COMMISSIONER HICKINBOTTOM: Even it--

12 THE WITNESS: Because sometimes a SAP could be when  
13 you do the supplementarily monies, it could be done two ways.  
14 It could be that you're asking for fresh monies or it could be  
15 that you're asking to move money that was otherwise allocated  
16 elsewhere.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 BY MR RAWAT:

19 Q. Just explain to me, we know from the Auditor General's  
20 Report, that even before you got to the \$250,000, you had gone  
21 over--

22 A. We had gone over--

23 Q. The minute you go over 828--I mean, you went over by  
24 about 100,000. Do you have to then go back to Cabinet or to the  
25 Ministry of Finance?



1           A.     Well, you have to do--you have to do something in the  
2 process which I would not know because the way the system is set  
3 up, you can't pull a voucher to do anything unless the money is  
4 there to do it, so I'm not sure what process would have happened  
5 in between that time, but I know for sure if you don't have the  
6 requisite permission, the system is going to shut you down from  
7 accessing additional moneys, so something would have happened in  
8 between that time in terms of the additional amount that you're  
9 talking about, Counsel.

10                   And then from my recollection, I think, as I said,  
11 that 250 had some other things in it besides what's in the  
12 Auditor General's Report. I know that from my recollection we  
13 were looking at entrances for the school because the wall was  
14 just a wall around the school itself. The entrance was another  
15 area that we had to address. And I know that 250 had some other  
16 issues in there besides just this.

17                   COMMISSIONER HICKINBOTTOM: Certainly the Auditor  
18 General's evidence is that it was only the wall.

19                   THE WITNESS: I don't think that that is correct  
20 information and I would ask you to probably check a bit further  
21 on that.

22                   COMMISSIONER HICKINBOTTOM: In terms of the SAP in  
23 this case, whether it was to get new money from the Ministry of  
24 Finance or whether it was to allocate money that you had already  
25 got in in your part of the budget, would depend on what you've

1 got left in your budget.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: Say the 350,000.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: We don't know, you may not  
6 know as to whether any of that had already been used on other  
7 projects?

8 THE WITNESS: I'm not sure. I can't say.

9 COMMISSIONER HICKINBOTTOM: No, no. No, I see that,  
10 yes.

11 BY MR RAWAT:

12 Q. But I think, is your point this, Mr Walwyn, that you  
13 can spend away your 828,000--

14 A. Not in that way. Not spend away.

15 Q. But you can use it?

16 A. You can use it, yes.

17 Q. But once that finishes, to spend more on a project,  
18 that's when some mechanism would have to be--

19 A. Some mechanism, yes. And you would not be able to  
20 raise any additional funding on that particular project without  
21 approval.

22 Q. Because a system--

23 A. It would shut you down.

24 Q. The system would tell you you have no more money--

25 (Overlapping speakers.)

1 REALTIME STENOGRAPHER: I'm sorry, there's a little  
2 bit of overlap. Can you go one at a time, please.

3 BY MR RAWAT

4 Q. It comes out that because once you have used up the  
5 allocated amount, until you have got permission--

6 A. Yes.

7 Q. --be it from the Cabinet or the Ministry of Finance,  
8 to devote additional sums to that project--

9 A. Yes.

10 Q. --the system will tell you there is nothing left for  
11 you to pay out with.

12 A. Yes, you have to have approval to it--you have to be  
13 able to raise a voucher to do something. If you don't have the  
14 money, you can't do it.

15 COMMISSIONER HICKINBOTTOM: Otherwise the payment  
16 would not be made.

17 THE WITNESS: It won't be made from the Treasury.

18 BY MR RAWAT:

19 Q. Just to pick up on the point you made about the  
20 250,000, some of it must be going towards the bus layoff?

21 A. Well, not just that, not just the bus, not just the  
22 lay-by.

23 Q. Yes.

24 A. But I'm saying the entrance and so forth. There was a  
25 real elaborate plan to make the entrances more safe and so on,

1 for security purposes.

2 Q. We better look at page 14 in the Hearing Bundle,  
3 paragraph 51 of the Auditor General's Report. She refers there  
4 to one variation to the design. This is the Phase 2 design.

5 A. Which number is it?

6 Q. 51.

7 A. Okay.

8 Q. After variation--after the Project started, it was  
9 varied to allow modification of a rear entrance to accommodate a  
10 drop-off area for school buses.

11 A. Yes.

12 Q. The work was done by one contractor on a Petty  
13 Contract in the amount of 53,000-odd. The amount was  
14 accommodated by the Project's approved contingency estimate of  
15 75,000.

16 A. Okay.

17 Q. So, it seemed to be that that was encompassed within  
18 the available funds.

19 A. Okay.

20 Q. So, in terms of the 250, the Commissioner's made a  
21 point about how the Auditor General has come to that. Your  
22 recollection is that the need to go back to the Ministry of  
23 Finance for additional funds was not just connected to the Wall  
24 Project but to wider projects being contemplated--

25 A. Yes.

1 Q. --in relation to the school?

2 A. That's my recollection.

3 Q. And aside from the drop-off area for buses--

4 A. Yes.

5 Q. --what was there--

6 A. There was also another--there was a drop-off area as  
7 well as the front of the school because this drop-off area is at  
8 the back of the school. So, we had two gates because we were  
9 trying to see how we can avoid traffic congestion on the main  
10 road. So, that lay-by was at the back of the school where that  
11 gate was, that Phase 1 was a part of. And then the other one  
12 would have been in the front because what usually happened is  
13 that when the school buses were dropping their kids off, they  
14 were dropping them off in the road, and that would hold the  
15 traffic up as well, and of course it's a danger. So part of  
16 that plan would have been to also do something similar in the  
17 front and then build a grander entrance with security huts and  
18 different things to make it easier for us to manage people  
19 coming in and off the campus. I remember that clearly. I don't  
20 know what the amounts attributed to that was, but I do strongly  
21 believe that that was part of the additional funding that we  
22 were requesting.

23 Q. Thank you.

24 If we go back to your criticism again to summarise  
25 your responses, the other points you make you respond firstly,

1 although the lowest quote was chosen of comparing STO and the  
2 Quantum quote, the decision was based on safety concerns.

3           You also say that as a Minister--and this is a point  
4 you've given in oral evidence--you rely on your Project Team,  
5 and point out again something that you discussed that no one,  
6 either at Ministry Level, Ministry of Finance level, or Cabinet  
7 picked up on the error caused by the reference to one  
8 contractor.

9           And you also add that Cabinet's allowed--and this is  
10 at 14.7--Cabinet decided that the project be executed utilizing  
11 Petty Contracts and different suppliers and contractors. And  
12 this, you say, included the use of Work Orders.

13           At 14.8 which is what I would like to ask you a little  
14 bit about. You say that the decision of Cabinet--and this is  
15 something you touched on--would have caused further implications  
16 because the decision--and this is the decision reflects a  
17 proposal put forward in the draft paper and certainly in the  
18 final paper--but all charges related to the Project will be  
19 secured from local funds and details to be worked out by the  
20 Ministry of Finance.

21           And you say that the Ministry of Finance, based on  
22 this, should have been able to identify the cost implications of  
23 Cabinet's decision and so advise on it. That did not happen.

24           And you then say, I would submit these are systemic  
25 errors that occurred with this project and not interfered as

1 plans by the Ministry of Education or the Minister for  
2 Education.

3           What is the systemic errors or error in particular  
4 that you identify here?

5           A. Well, if, in fact, the Ministry made an error in terms  
6 of one contractor and it says "Petty Contracts", which obviously  
7 now looking back in hindsight, you would have known that perhaps  
8 you would have increased the costs of it, then I figured--I  
9 think the Ministry of Finance should have picked that up as well  
10 when they were looking at the Cabinet Paper, vetting it and  
11 approving it.

12           And then when it came to Cabinet and Cabinet decided  
13 for it to be done using Purchase Orders, Work Order, and Petty  
14 Contracts, that if the same holds true, then that would also  
15 further cause an implication of costs. The paper then went back  
16 to Cabinet, went back to Ministry of Finance before it comes  
17 back to us. The potential costs implications, nobody picked  
18 that up along the way. I'm saying that that can be a systemic  
19 error of the system itself because if we made an error, somebody  
20 should have been able to pick it up or at least realise that  
21 certainly these things would have caused an implication of  
22 costs.

23           Q. But at the time, what did you understand as details to  
24 be worked out by the Ministry of Finance?

25           A. Whatever details that it has in relation to the

1 contract, to the Project to make sure that financing is going  
2 right, that things are in order.

3           And even within the paper itself, it also spoke to the  
4 Project Management Unit being a part of assisting with the  
5 management of the Project, that was also in the approval, so I  
6 thought it meant all of those things.

7           Q.    So, the--you envisaged at the time--on the last  
8 occasion you told the Commissioner that you remembered the  
9 Cabinet Decision vividly.

10          A.    Yes.

11          Q.    At the time, on the 4th of February when Cabinet met  
12 to discuss this--

13          A.    Um-hmm.

14          Q.    --you understood that the reference to details to be  
15 worked out by the Ministry of Finance was that the Ministry of  
16 Finance would review the contract or would be involved in how  
17 the matter was taken forward?

18          A.    Yes.

19                I would assist--would assist--is says all charges  
20 related to the project would be secured and details to be worked  
21 out, so I took it to mean looking at the cost implications,  
22 looking to ensure that the funding was secured and that things  
23 were going to run in the way in which Cabinet wanted it to run.

24                COMMISSIONER HICKINBOTTOM:  But in terms of the  
25 Ministry of Finance, which was many concerned, I would have



1 thought, that the finance was in place to finance the Project.

2 THE WITNESS: Yes, it was.

3 COMMISSIONER HICKINBOTTOM: The fact that all charges  
4 related to the Project would be secured from local funds.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: That meant that there  
7 would not be a call on central funds at all.

8 THE WITNESS: No, that's not what it means. It means  
9 "local funds", it means--it's to differentiate it from loan  
10 funding.

11 COMMISSIONER HICKINBOTTOM: But local funds--

12 THE WITNESS: That's what the term is "local funds".

13 COMMISSIONER HICKINBOTTOM: But local funds means,  
14 doesn't it--

15 THE WITNESS: It means money coming from the  
16 consolidated fund. That is not laws.

17 COMMISSIONER HICKINBOTTOM: Yes, but funds that have  
18 already been allocated.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: To the Ministry.

21 THE WITNESS: Yes.

22 COMMISSIONER HICKINBOTTOM: Yes. So, so far as the  
23 Ministry of Finance is concerned, you've got the \$828,000.

24 THE WITNESS: And more, yes.

25 COMMISSIONER HICKINBOTTOM: No, so far as they're

1 concerned they have a paper, it's going to cost 828.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: And so what they're  
4 primarily concerned with, isn't it, is that you've got the 828.  
5 You've got it, no further financing implications.

6 THE WITNESS: Well, one can take that approach.

7 COMMISSIONER HICKINBOTTOM: But you don't know what  
8 they're vetting--nor do I.

9 THE WITNESS: No, I don't know.

10 COMMISSIONER HICKINBOTTOM: You don't know what  
11 they're vetting comprised?

12 THE WITNESS: No, I don't.

13 COMMISSIONER HICKINBOTTOM: No.

14 BY MR RAWAT:

15 Q. If you go to page 147, in the Hearing Bundle, please.

16 A. 147?

17 Q. 147.

18 What we're looking at is the final paper, the paper  
19 that the Minister of Finance presented to Cabinet, it's  
20 paragraph 12, which is part of the financial implications  
21 section, so this is where there is input from the Ministry of  
22 Finance.

23 And it's one of those few paragraphs where one can see  
24 a difference between the paper as it left your Ministry and the  
25 paper that was put into Cabinet in particular. You will see

1 that the last two--in paragraph 12, the Ministry is addressing  
2 waiver of the tender process, and it says at the end, though,  
3 the last sentence is: "The Ministry of Education and Culture  
4 should consider their capital spending plan if Cabinet approves  
5 the decision sought," and the decision sought was a tender  
6 waiver. What did you understand was required of you as Minister  
7 in terms of considering a capital spending plan here?

8 A. I'm not sure what they mean. And that would have been  
9 a note, obviously, that would have had to go to the Finance and  
10 Planning Officer.

11 Q. So far as we've understood it, I think this was--and I  
12 will check it, but the decision emerges from Cabinet.

13 A. Yes.

14 Q. And in terms of what Cabinet issues, it's a decision  
15 that goes--and we can see the decision at 166.

16 A. Um-hmm.

17 Q. But that decision--and correct me if I'm wrong, but  
18 that decision will go to the Department that's brought the paper  
19 to Cabinet?

20 A. Um-hmm.

21 Q. Your Ministry, your Public Officers in your Ministry,  
22 don't see the Cabinet Decision in that form. They receive a  
23 memorandum.

24 A. Yes.

25 Q. Now, you've said that, in relation to paragraph 12

1 that we were just looking at, it will go to the Financial and  
2 Planning Officer.

3 A. Yes.

4 Q. But what is it that actually goes to the Financial and  
5 Planning Officer?

6 A. I'm not sure it would go with her. I'm not sure what  
7 exactly would go to her. Remember I indicated that there's a  
8 direct line between the Finance Planning Officer and the  
9 Ministry of Finance. So, I'm not sure it would go in there.  
10 And I'm not really sure what they mean by that, that the  
11 Minister of Education and Culture should consider their capital  
12 spending plan if Cabinet approved the decision. So, I don't  
13 know what that means.

14 Q. Was it something that you noted at the time?

15 A. No.

16 Q. And so it wasn't only that you were involved in  
17 following up at all?

18 A. No.

19 Q. Thank you.

20 Now, you indicated earlier that, prior to  
21 December 2014, when the first phase started, you had--you had  
22 been in post for just a little over two years--

23 A. Yes.

24 Q. --as Minister.

25 A. Yes.

1 Q. You'd been involved in other capital projects--

2 A. Yes.

3 Q. --set around schools?

4 A. Yes.

5 Q. In any of those projects or did any of those projects  
6 go over-budget?

7 A. I'm not sure. And if any did, I don't think it would  
8 have been substantial.

9 Q. But do you remember any time having to query a project  
10 that was looking as if it wasn't going to be within budget?

11 A. I had a concern one time with the technical school  
12 that we had in--that we were doing in.

13 Q. Because presumably this contract or the Wall Project  
14 wasn't the first time you had used Petty Contracts and Work  
15 Orders?

16 A. Well, it depends on what it is. I mean, we use Petty  
17 Contracts and Work Orders for things in schools all the time.

18 Q. Yes.

19 A. Um-hmm.

20 Q. But on a capital project, had you used Petty Contracts  
21 and Work Orders before?

22 A. I can't recall. I can't recall that. I can't recall  
23 doing that.

24 Q. All right. Well, let's move on to the fifth  
25 criticism, if I may.

1           A.    I mean, as I said, the only reason why we would have  
2 considered Work Orders and Petty Contracts I imagine for a  
3 project like that was because of the fact that the work is not  
4 really sophisticated work.  If you were doing a building,  
5 certainly there would be no--there's no way to split that up.  
6 That would not even be a matter for consideration.

7           Q.    Doesn't it come down to that there were two things in  
8 your mind at the time that you made these decisions, and you  
9 made two sets of decisions as a Minister, the first was an  
10 internal one, if you like, December 2014, to use Work Orders.

11          A.    Okay.

12          Q.    The second one was once the Phase 2 had gone through  
13 Cabinet, and that was the allocation of Petty Contracts and Work  
14 Orders.

15                    But those decisions were--the matters on your evidence  
16 were in your mind at the time of firstly that you did not  
17 consider this to be a sophisticated construction project?

18          A.    The nature of the work itself is not sophisticated,  
19 no.

20          Q.    It does not, to quote your response, require major  
21 skills?

22          A.    It does not.

23                    And whatever challenges there might be can be  
24 mitigated by the supervision that's done.

25          Q.    And the second aspect of it was that there was an

1 opportunity by doing this, by adopting this approach, to widen  
2 the pool of people who would access the work?

3 A. I can only say that in relation to the first part of  
4 the contract because the decision to do that was within my  
5 purview. The second part was of Cabinet and not that of the  
6 Minister.

7 Q. I see.

8 And you were a Member of the Cabinet that took that  
9 decision?

10 A. One of five.

11 Q. Well, actually on that day, you were one of three?

12 A. There were only three Members?

13 Q. Yes, Dr Smith and Dr Pickering were away?

14 A. Okay, well, Cabinet was properly constituted.

15 Q. Yes, I'm not suggesting that. But I'm just suggesting  
16 that as a fact there were three of you that made the decision?

17 A. Yes. So, one of three.

18 Q. Yes.

19 A. Yes.

20 Q. Okay. Well, let's go on to five.

21 COMMISSIONER HICKINBOTTOM: Just a point, Mr Rawat.

22 The Cabinet Paper 145, 146, sets out--and this Cabinet  
23 Paper was obviously generated by your Ministry, and then it went  
24 through the Ministry of Finance in the usual way.

25 THE WITNESS: Yes.

1           COMMISSIONER HICKINBOTTOM: But I think you said  
2 earlier in your evidence there wasn't any great change made by  
3 the Ministry of Finance?

4           THE WITNESS: Not that I can recall.

5           COMMISSIONER HICKINBOTTOM: But paragraph 9 sets  
6 out--this is set out as a reason for waiver, that history has  
7 shown that where project estimates received by the Government  
8 were sent out to tender, the cost significantly increases based  
9 on bids received. We're of the view that the very same will  
10 exist in this case. The Ministry contracted a full time project  
11 manager who manages all our projects and we get value--and  
12 ensures that we get value for money. He's provided an  
13 estimate--this is Mr Augustine--we've heard the sort and  
14 additional costing. We're prepared to accept the load of the  
15 actual cost of the project and it's intention of the Ministry to  
16 use Petty Contracts for the entire project. That was the  
17 justification.

18          THE WITNESS: Yes. That was one of them.

19          COMMISSIONER HICKINBOTTOM: But that was the  
20 justification. There is no other justification in the paper.

21          THE WITNESS: No, in relation to moving the paper  
22 along?

23          COMMISSIONER HICKINBOTTOM: Well, the justification  
24 for waiver of the tender.

25          THE WITNESS: No, that's not the only reason. If you



1 look at seven as well. Seven is also justification. Seven,  
2 eight, and nine all together, because that is where the urgency  
3 factor came in in terms of the safety of the students because  
4 Cabinet would waive--Cabinet would waive on the basis of  
5 urgency.

6 COMMISSIONER HICKINBOTTOM: I see.

7 THE WITNESS: Not the basis of costs.

8 COMMISSIONER HICKINBOTTOM: So--

9 THE WITNESS: And if you look at the Cabinet Decision,  
10 that is really what they based their decision on.

11 COMMISSIONER HICKINBOTTOM: I understand.

12 Just a question on paragraph 9, was not regarded as  
13 sufficient by the Attorney General, that's on 165, but in fact  
14 in paragraph 13 of the paper at page 147, you are right, it says  
15 notwithstanding the legal opinion of the Attorney, it's felt  
16 that the urgency of the situation demanding quick action, and  
17 thus we consider the decision to be warranted.

18 So, the ultimate justification was urgency?

19 THE WITNESS: Urgency, yes.

20 COMMISSIONER HICKINBOTTOM: Okay. Thank you very  
21 much.

22 BY MR RAWAT:

23 Q. If I summarise criticism 5, that is as follows.  
24 Phase 2 was always going to be implemented--

25 A. We're on to five now?

1 Q. Yes.

2 A. Okay.

3 Q. --other than by way--I'll read that again.

4 "Criticism 5 is, Phase 2 is always going to be  
5 implemented other than by way of a Major Contract procurement  
6 process. There was no differential or, indeed, any cost  
7 analysis or implementation plan."

8 Now, we've touched on the evidence in relation to the  
9 reasons for waiver, which--of the justification for waiver which  
10 you've drawn the Commissioner's attention to in the final  
11 Cabinet Paper, the finalised Cabinet Paper. If we look at the  
12 version of the paper that left your office or the Ministry,  
13 forgive me, it's at page 116.

14 A. Page 116?

15 Q. Yes.

16 A. All right.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 BY MR RAWAT

19 Q. And so 7 is unchanged.

20 A. Um-hmm.

21 Q. The reference to the lengthiness of the tendering  
22 process and the urgency of this matter.

23 A. Yes.

24 Q. 9 is unchanged. The reference to historical issues  
25 around costs increasing when matters go out to tender. What is

1 added is what the Commissioner drew your attention to at  
2 paragraph 13, which isn't there in this version.

3 A. Yeah, but that wouldn't be there.

4 Q. No, no, but the point is that the reasoning for the  
5 waiver of the tender process must have come from your Ministry,  
6 mustn't it?

7 A. Yes.

8 Q. Now, the point that is made is that or can be made, is  
9 that the argument for a waiver is not based solely on security  
10 but is also based on the lengthiness of the tender process and  
11 the risk of more expensive bids coming in as a result of that  
12 process.

13 Now, I think--look at the business case that was set  
14 out in the draft, which is at page 118, what's said there is at  
15 3, "Minister of Education has weighed its possibilities and due  
16 to financial constraints and looking at a cost benefit analysis  
17 and decided it is more viable to go with the option of  
18 constructing a block perimeter fence with iron rails at an  
19 estimated final cost", and that's the \$828,000.

20 And then it goes on to say that consideration has been  
21 given to other--use of other materials, including wire-mesh,  
22 wire fencing, and the conclusion is that the construction of the  
23 block fencing will be a less costly measure in the long run.

24 But what there isn't in the business case is any  
25 attempt to analyse why a tender process would increase costs,

1 and this was a view that you expressed on the last occasion that  
2 you were here, Mr Walwyn, that that was an observation you had  
3 about the use of a tender process. There is no evidence based  
4 for the argument, and there is no plan in this business case for  
5 how the work would be undertaken if there was to be a waiver.  
6 The only aspect of the plan that there is is an intent to use  
7 Petty Contracts. That's specifically mentioned?

8 A. Um-hmm.

9 Q. But that's it. But other than that, what we don't  
10 see--and this is the thrust of the criticism--what we don't see  
11 on the papers that emanate from your Ministry is any attempt to  
12 consider what the cost implications are of using--not using a  
13 Major Contract, waiving the tender process and having a Major  
14 Contractor in place, using Petty Contracts alone or using a mix,  
15 as you ended up doing, a mix of Petty Contracts and Work Orders,  
16 there is no analysis undertaken, is there, as to the cost  
17 implications of that--

18 A. Again, those are systemic issues in terms of Cabinet  
19 Paper drafting and also in terms of drafting business cases and  
20 so forth for Cabinet Decisions.

21 Q. So, again, from a ministerial level, that's something  
22 you don't get involved in?

23 A. No, that's not for me.

24 Q. It's something for the technical people in your  
25 Ministry?

1           A.    Not just--not just in my Ministry, but also within  
2 other Ministries because one has to assume that whatever can  
3 happen in the Ministry of Education or happens in one Ministry  
4 can also happen in the other Ministry.  If for any reason the  
5 paper was deemed insufficient in terms of information, it should  
6 have been sent back to the Ministry of Finance with those  
7 notions to the Ministry of Education to redo or improve upon.  
8 And if the Cabinet papers are not drafted with sufficient  
9 information for Members to make decisions in Cabinet, that's  
10 also the areas we're aware more information or perhaps more  
11 education can be given to people drafting Cabinet Papers.

12           COMMISSIONER HICKINBOTTOM:  It's not simply the  
13 drafting, is it?  I mean, the drafting would be at fault if a  
14 full analysis was done but wasn't recorded in the paper.  But  
15 there is no evidence here that any--

16           THE WITNESS:  When I say drafting, I mean--I mean  
17 including all the necessary considerations and analysis.  That's  
18 what I meant.

19           COMMISSIONER HICKINBOTTOM:  In terms of analysis, this  
20 paper says, without anything to support it that I've seen, that  
21 the tender process required under the PFMA and the regulations,  
22 that tender process results in higher costs whereas tender  
23 processes are normally adopted because they result in lower  
24 costs.

25           THE WITNESS:  That doesn't happen here, Commissioner,

1 and perhaps if you had put the question to perhaps other  
2 Ministers who were here or the technical people who were here,  
3 they would have told you the same thing.

4 COMMISSIONER HICKINBOTTOM: But--I'm sorry to  
5 interrupt, and I will let you finish. If that's true, I think  
6 that's the first time we've heard that in evidence.

7 If that's true, then you're still required to do it  
8 under the Act. You're required to do it under the new Act,  
9 except in exceptional circumstances. And it's not exceptional  
10 circumstances, if, as a general rule, you're not going to have a  
11 tender process because it's generally more expensive.

12 THE WITNESS: But with all due respect, Commissioner,  
13 we have already established that was not the basis for Cabinet's  
14 decision. Yes, there may have been an additional thing put in  
15 the Cabinet paper, but that was not the crux of the reasoning  
16 for Cabinet's decision to waive the tender process. And I can't  
17 say much more than that on it.

18 But I will say that in my experience here in the BVI,  
19 when you put something out for tender, when it's Government  
20 work--and this is local knowledge. People will tell you that in  
21 the bars and on the street. You don't have to have a degree to  
22 know this--the cost of the Project goes up two- and threefold  
23 because they hate Government. That has been the experience.  
24 And I think that is the experience that the writer of the  
25 business case is trying to put forward. Granted that that was

1 not the reason, or not the sole reason, for her asking for it to  
2 be waived; she asked for it to be waived on the basis of the  
3 urgency of the situation. And it was upon that urgency,  
4 particularly, as it says in the Cabinet Paper, the words of the  
5 Commissioner of Police and the words of the principal is what  
6 Cabinet relied on as the basis because it mentions clearly in  
7 the Cabinet Decision. It says at (b)--

8 Q. Which page are you on, please?

9 A. 140. 140, at the Decision itself, 0175.

10 Q. Yes.

11 A. At (b): "Approval be granted, exceptionally waive the  
12 tender process with respect to the construction of perimeter  
13 fencing at Elmore Stoutt High School on the basis of the urgency  
14 of the situation, taking into account the security concerns  
15 outlined by the Commissioner of Police and the principal of  
16 ESHS."

17 That tells you that that was the consideration, and  
18 perhaps the only consideration, that Cabinet had at that time  
19 because it doesn't mention any other consideration. As a matter  
20 of fact, it doesn't even mention anything that might have been  
21 said by the Minister in Cabinet. They relied strictly on what  
22 the Commissioner of Police and what the principal of Elmore  
23 Stoutt High School said to make their decision. That's very  
24 clear there.

25 Q. But taking a step back, and just looking at the--your

1 point about issues with drafting papers, and focusing on this:  
2 Step 1 is, you have a paper drafted in the Ministry, and that's  
3 one stage where there is an analysis or scrutiny undertaken. On  
4 your evidence, that paper then goes to the Ministry of Finance  
5 who, you suppose, should also subject it to a degree of  
6 scrutiny.

7 A. Yes.

8 Q. It then goes to Cabinet.

9 A. Yes.

10 Q. And the point you made was that a question will need  
11 to be raised if there is--is there enough evidence, enough  
12 information reaching Cabinet to enable Cabinet to take a  
13 decision?

14 A. Yes.

15 Q. That begs this question, doesn't it? Where do the  
16 Ministers fall, and where does Cabinet fall? Because there  
17 might be an expectation that you, as the Minister, have a role  
18 that before that paper leaves the Ministry to go to the Ministry  
19 of Finance, you also subject it to a level of critical scrutiny,  
20 and you also ask questions. And the Cabinet, when it gets the  
21 paper in final form from the Ministry of Finance, gets the same  
22 thing. Does that not also fall within--

23 (Overlapping speakers.)

24 A. That is not practical, with due respect, Counsel,  
25 because during the time when I hear you ask questions, even this



1 morning, it's almost subjecting--not subjecting a battery, but  
2 requiring the Minister to get really down into the weeds of  
3 matters. Cabinet papers are drafted by the Cabinet, by the  
4 relevant persons in the Ministry, and they are reviewed by the  
5 Permanent Secretary in that Ministry before they move onwards.  
6 Why would a Minister have to turn around, after having it  
7 drafted by one officer, looked over by the Permanent Secretary,  
8 still get down and drill down to every single detail of the  
9 Cabinet paper? That is not practical.

10 Q. It's not about getting down and drilling down. It's  
11 just simply, just about asking a question.

12 A. If--if something is brought to your attention that  
13 you're asked a question about, then, yes, that's another matter.  
14 But the point that I'm making is that there seems to be an  
15 expectation that Ministers get down. It doesn't happen anywhere  
16 in the world, not even in the United Kingdom. It doesn't  
17 happen. And if any Minister sits down and is reading through  
18 every Cabinet Paper, and with a calculator, punching every  
19 figure, then it's estimated that the Minister doesn't know his  
20 job.

21 If the Cabinet Paper is drafted by a competent person,  
22 who is always a senior person in the Ministry, and is overlooked  
23 by the Permanent Secretary, I don't see why, as a Minister, I  
24 have to go back and do the same thing that the Permanent  
25 Secretary just did.

1 Q. You said the point of this letter is--or the paper was  
2 full of technical details.

3 A. Your questions that you asked--you asked the question  
4 in relation to whether something should not have been in the  
5 paper.

6 Q. No, no.

7 A. You're asking another question?

8 Q. No. What my question was directed to is the level of  
9 scrutiny that a Minister is expected to subject a Cabinet Paper  
10 such as this to. And your answer is "none."

11 A. I didn't say "none". But I'm saying certainly not to  
12 the point of picking up some of the rudimentary things, some of  
13 the detailed things inside the Cabinet paper. This Cabinet  
14 paper, or any Cabinet paper that leaves any Ministry for over  
15 \$100,000 goes to two Ministries, two Ministries, the actual  
16 Ministry that drafts it, the Public Secretary overlooks it, and  
17 then it goes to the Ministry of Finance.

18 Q. So, ultimately, you are relying on your Permanent  
19 Secretary--

20 A. You have to rely on them because you won't get  
21 anything done. When you come into an office, particularly in a  
22 very small country, Commissioner, you have five and six  
23 different things. In bigger countries you probably have one or  
24 two things under your portfolio. Because it's a small country  
25 that we have--we have the same needs that a big country has--but

1 because our legislation or our Legislature and our Cabinet is  
2 smaller, Ministers have more responsibilities in a smaller  
3 country than in bigger countries. They can't possibly look at  
4 everything. That can't happen. So you wouldn't find me going  
5 down and reading every little minutiae of a Cabinet paper. That  
6 would be insane.

7 Q. But this is your paper leaving your Ministry?

8 A. Am I to--after the technical people have done their  
9 work, who have been properly trained in their respective roles,  
10 and a Permanent Secretary who had been properly trained in her  
11 role looks through that, should the Minister come with the same  
12 level of scrutiny that the Permanent Secretary comes with again?

13 Q. Not necessarily the same level, but some level of  
14 scrutiny.

15 A. But who's to say I didn't have some level of scrutiny?  
16 Because I didn't pick up what you think I should pick up, you  
17 think that I didn't scrutinize the paper?

18 Q. Tell us what you did pick up.

19 A. That was almost a decade ago. That's an unfair  
20 question. That's a very unfair question, counsel.

21 Q. Would the fair question be that you can't have picked  
22 up anything because otherwise you would have pointed it out?

23 A. That is unduly prejudicial and suggesting that you  
24 have a predisposed thought in your mind, Counsel. That is  
25 disrespectful.

1 Q. Not at all.

2 A. You shouldn't say that to me.

3 Q. Not at all. Did you pick--

4 (Overlapping speakers.)

5 A. Counsel, do you want to speak and then I will speak  
6 after--

7 Q. Please finish. I will let you finish.

8 A. That was unduly prejudicial, and that shows that you  
9 have a predisposed thought in your mind. I'm an officer of the  
10 law, just like you are. And for you to suggest that I would  
11 deliberately see something that is not right in a Cabinet paper  
12 and let it go forward is not fair. I take great offense to  
13 that.

14 Q. With respect, you've misunderstood the question.

15 A. No, I did not misunderstand the question.

16 Q. If you picked up on something, would you--

17 A. Absolutely I would have. I have a duty to do it.

18 Q. Does it follow that, since we have--there is no  
19 indication of any great difference between the paper that left  
20 your Ministry and the one that reached Cabinet, that you didn't  
21 pick up on anything?

22 A. I didn't. And I said that before to you. Had I  
23 picked up on something that was off or wrong, I would have said  
24 something.

25 Q. That was what the question was directed to, Mr Walwyn.

1 But it's just trying to understand--

2 A. I know that, but have you to be careful--

3 (Overlapping speakers.)

4 Q. --the Cabinet.

5 A. But you also have to be careful, Counsel, because  
6 people have reputations as well. You can go back to the United  
7 Kingdom. I have to live here. When you make a prejudicial  
8 statement like that, it's not as if I deliberately did not look  
9 at the Cabinet paper because there was something that I did not  
10 want to see. That is not right.

11 COMMISSIONER HICKINBOTTOM: Your evidence, Mr Walwyn,  
12 concerned the important point about the 828,000 estimate being  
13 based on one contractor, and had there been--had it been done  
14 through Petty Contracts and/or Work Orders, it would have cost a  
15 substantial amount more. You say that was not a point that you  
16 had identified.

17 THE WITNESS: Not at all, Commissioner.

18 COMMISSIONER HICKINBOTTOM: I understand that.

19 THE WITNESS: Until--and until we went through this  
20 process here now, and even when the Attorney General wrote it, I  
21 had no appreciation for that point. And that is the absolute  
22 truth.

23 BY MR RAWAT:

24 Q. If we go back just to your response quickly, I think  
25 the one point that we need to put on the record in relation to

1 criticism 5 is that you make the point that a Major Contract has  
2 to be implemented with the approval of Cabinet.

3 A. That's correct.

4 Q. And, therefore, you say that what intentions a  
5 Ministry or a Minister may have in relation to the use of a  
6 Major Contract is irrelevant?

7 A. That's correct.

8 Q. Let's go to criticism 6. That is as follows:  
9 "Contract-splitting for both phases, including the extensive use  
10 of Work Orders, resulted in increased costs and the undermining  
11 of the quality of work undertaken. The Minister knew or,  
12 alternatively, deliberately closed his eyes to the fact that  
13 would be the case. There was no check on whether contractors  
14 who were working under Works Orders had constructor trade  
15 licences required for those involved in the construction trade.  
16 In the event, 40 of the 70 contractors did not have trade  
17 licences."

18 Firstly, what do you understand by the term  
19 "contract-splitting"?

20 A. It is not a term that, at that time, I'm familiar  
21 with--I was familiar with. Or even, if I can say now, I'm not  
22 entirely--it's a very technical financial term. I imagine it  
23 means that when you--when a contract is broken up into very  
24 small pieces.

25 COMMISSIONER HICKINBOTTOM: When a project, single

1 project--

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: --such as the wall is  
4 broken up into a number of contracts--

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: --that's  
7 contract-splitting.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: And what--what  
10 contract-splitting does, it avoids the procurement provisions  
11 that would otherwise apply to the Project.

12 THE WITNESS: Yes.

13 BY MR RAWAT:

14 Q. And would you accept that that is what happened on  
15 this project?

16 A. I can't say that--I tell you why I can't say that--for  
17 a number of reasons. And if you're suggesting--and if it did  
18 happen, then we have to then examine how it happened or where it  
19 happened. If the contract was done by Petty Contracts, would  
20 that be contract-splitting?

21 COMMISSIONER HICKINBOTTOM: What contract? We've got  
22 to be fairly clear.

23 (Overlapping speakers.)

24 BY MR RAWAT:

25 Q. Let's take it in Phase 1. Phase 1 was 96,000. Let's

1 accept your figure. That was the figure that was placed in  
2 front of you--

3 A. Yes.

4 Q. --as the cost of Phase 1?

5 A. Is this criticism in relation to Phase 1 or Phase 2 or  
6 both?

7 Q. Well, it says "contract-splitting" for both phases.

8 A. Okay. For both.

9 Q. So, Phase 1--your recollection is that you had a  
10 document in front of you that was ultimately costed at Phase 1  
11 at \$96,000?

12 A. Yes.

13 Q. And that was done by way of 11 Work Orders?

14 A. Yes.

15 Q. So, that could have been done by way of one Petty  
16 Contract, couldn't it?

17 A. It could have been done that way, but--but the Public  
18 Finance Management Regulations give powers for Ministers to  
19 submit by Work Orders. So, if the power resides in the Public  
20 Finance Management Act and the Regulations, and the Minister  
21 uses that power, then to call that contract as if something is  
22 wrong is not right because, then, that power should not exist in  
23 the law.

24 Q. But just--I mean, the Commissioner has explained what  
25 contract-splitting is.



1           A.    I understand.

2           Q.    You take one contract and you split into smaller  
3 contracts?

4           A.    Yes.

5           Q.    So, the effect of giving it 11 Work Orders was  
6 splitting into smaller contracts?

7           A.    Yes, but the connotation as given to contracts within  
8 this term access, if you want, presupposes or things or signify  
9 that you may have done something that was wrong.

10           COMMISSIONER HICKINBOTTOM: Well, what it does is  
11 accepted, Mr. Walwyn, because it's right. Contract-splitting  
12 gets round, avoids the procurement provisions for the Project.  
13 For the 96--for a project of \$96,000, the procurement provisions  
14 are Petty Contracts. You could have a Major Contract that  
15 could--

16           THE WITNESS: That is not true, Commissioner.

17           COMMISSIONER HICKINBOTTOM: You could have--it falls  
18 within the Petty Contract range.

19           THE WITNESS: But it falls--Commissioner, that is not  
20 true. That is not so. It falls within the range of Work Orders  
21 and Petty Contracts. It falls within the range of both.

22           COMMISSIONER HICKINBOTTOM: So, if the contract had  
23 been for \$105,000, that would fall within the range of a Major  
24 Contract, Petty Contract, or Work Orders?

25           THE WITNESS: If the contract was Work Orders, if it

1 was \$105,000, it would have had to go to Cabinet.

2 COMMISSIONER HICKINBOTTOM: A project--

3 THE WITNESS: A project, yeah.

4 If the Project was 105,000, it would have to go to  
5 Cabinet. Cabinet would decide how the Project is done.

6 COMMISSIONER HICKINBOTTOM: Because it falls above  
7 \$100,000?

8 THE WITNESS: That's correct, yes.

9 COMMISSIONER HICKINBOTTOM: But under \$100,000, you  
10 say that Work Orders or Petty Contracts can be used  
11 indiscriminately?

12 THE WITNESS: And that is in the law.

13 BY MR RAWAT:

14 Q. And was that your understanding of the law in  
15 December 2014?

16 A. Yes.

17 Q. So, if we then move on to Phase 2--

18 A. Which page? Sorry.

19 Q. We're not on any page.

20 A. Sorry.

21 Q. It's again, just--

22 (Overlapping speakers.)

23 Q. Where we are on contract-splitting.

24 A. Yes.

25 Q. So, Phase 2 is, you have a contract, you have a tender

1 waiver that is granted by Cabinet, you can spend 828,000; yes?

2 A. Um-hmm.

3 Q. And you choose to do it by way of Work Orders and  
4 Petty Contracts.

5 So, again, you've split the contract, haven't you?  
6 You've split the contract up into a series of smaller--

7 A. I haven't split the contract. Cabinet decided the  
8 Project in a particular way. And as I pointed out to you as  
9 well, in a section of the Constitution, that the Minister has  
10 the responsibility to exercise Section 56.6 of the Constitution.  
11 As a matter of fact, it says that a Minister assigned  
12 responsibility for any matter under this section can exercise  
13 his or her responsibility in accordance with the policy of the  
14 Government of the Virgin Islands as a Member of the Cabinet and  
15 according to the collective responsibility of the Members of the  
16 Cabinet for policy decisions of the Government.

17 So, in relation to Phase 2, that is no decision of  
18 mine as Minister. That's a decision of Cabinet in Section 56.6,  
19 and the Ministry just carried out what act Cabinet asked for it  
20 to carry out.

21 Q. Help us with this, then. So, your position is that  
22 what issues from Cabinet is a decision, and consistent with your  
23 obligation under 56.6, you're assigned responsibility for that  
24 matter?

25 A. That the Decision must be carried out, yes.

1 Q. And you exercised your responsibility in accordance  
2 with policies of the Government?

3 A. Yeah.

4 Q. Which policies?

5 A. The Government made a policy decision to have the wall  
6 built, and the Government also made a decision for it to be done  
7 by Petty Contracts, Purchase Orders, and Work Orders. That is a  
8 policy decision from the Government through Cabinet, so the  
9 Ministry of Education, therefore, has the responsibility to  
10 carry out that policy.

11 So, to say that the Minister did contract-splitting is  
12 not fair, and quite inaccurate, as a matter of fact. That was a  
13 decision of Cabinet.

14 Q. What you had was approval granted to execute the  
15 Project utilizing Petty Contracts and different suppliers and  
16 contractors.

17 A. Yes.

18 Q. You explained on the last occasion that your position  
19 is that the phrase "different suppliers and contractors" were  
20 deemed Work Orders?

21 A. That's what it meant.

22 Q. But did Cabinet tell to you use 64 Work Orders and 15  
23 Petty Contracts?

24 A. I don't think that Cabinet would tell a Minister how  
25 much Work Orders and Petty Contracts to use. I don't think that

1 Cabinet would do that.

2 Q. And that was your decision alone, then, wasn't it?

3 A. Pursuant to the decision of Cabinet to use Petty  
4 Contracts, Work Orders, and Purchase Orders, yes.

5 COMMISSIONER HICKINBOTTOM: It was in the draft paper  
6 from the Ministry, your Ministry, to use Petty Contracts?

7 THE WITNESS: Commissioner, I would have had no issues  
8 using Petty Contracts, absolutely none. There was no benefit  
9 for me had by doing that. That was a decision of Cabinet. I  
10 would have had no issue with that.

11 COMMISSIONER HICKINBOTTOM: But that was your proposal  
12 that went through the Ministry of Finance ending up in Cabinet.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: We see in the document,  
15 and saw this in the documents last time. No reference to having  
16 a Major Contract--

17 THE WITNESS: Well--

18 COMMISSIONER HICKINBOTTOM: --one contract--

19 THE WITNESS: Well, there was no reference to having a  
20 Major Contract in terms of one person; right?

21 COMMISSIONER HICKINBOTTOM: Yes.

22 THE WITNESS: But nothing prevented Cabinet itself  
23 from deciding that.

24 COMMISSIONER HICKINBOTTOM: But, no. Cabinet did what  
25 Cabinet did, and as you said, they made the ultimate decision.

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: But in your paper that you  
3 put to Cabinet, the proposal was Petty Contracts?

4 THE WITNESS: That was the proposal from the Ministry.

5 COMMISSIONER HICKINBOTTOM: But there was no  
6 consideration by the Ministry for a Major Contract. We know it  
7 would be cheaper; we know now it would be cheaper. You didn't  
8 know then, you say, but it would have been a lot cheaper. But  
9 no consideration of that?

10 THE WITNESS: Well, I mean, I would--I don't know--I  
11 don't know what to say in relation to that, whether there was a  
12 consideration or not.

13 COMMISSIONER HICKINBOTTOM: No evidence of any  
14 consideration. Had there been a consideration, it would have  
15 resulted in somebody twigging that it would cost a lot less  
16 money, but there's no evidence of any consideration. So, why  
17 Petty Contracts?

18 THE WITNESS: Commissioner, that question I can't  
19 answer.

20 COMMISSIONER HICKINBOTTOM: You say the decision was  
21 Cabinet's. But was the decision to put the Petty Contracts into  
22 the proposal yours?

23 THE WITNESS: I can't recall.

24 COMMISSIONER HICKINBOTTOM: Right.

25 THE WITNESS: I cannot recall that. But even if it

1 was, even if it was, which I said I cannot recall, Cabinet makes  
2 the final decision.

3 COMMISSIONER HICKINBOTTOM: Sorry. I understand that.

4 THE WITNESS: Whatever happens before that paper gets  
5 to Cabinet, for Cabinet to say yay or nay, is irrelevant. The  
6 Cabinet makes the decision. That's what it is.

7 COMMISSIONER HICKINBOTTOM: It is not irrelevant in  
8 this sense. The Cabinet--for instance, what we've already gone  
9 through and maybe we'll actually go through it again--Cabinet  
10 had a paper to say this is going to cost \$828,000. They were  
11 under the impression, because you were under the impression and  
12 there was nothing in the paper to suggest otherwise, that it  
13 would cost that much using Petty Contracts, which was the  
14 proposal.

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: That was what they--that's  
17 what they decided upon.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: But, anyway, you can't  
20 remember where the idea of having--

21 THE WITNESS: I cannot. And if it was--if I could  
22 have recalled, I would have said to you I did.

23 BY MR RAWAT:

24 Q. Did you, as Minister, in January 2015 when this paper  
25 was being drafted, consider using a Major Contract?

1 A. I can't recall.

2 Q. You may have already answered this--

3 A. I can't recall.

4 As I said earlier in my evidence, Commissioner, I did  
5 not appreciate at the time, if, for instance, the Project was  
6 828 and we said we were going to use Petty Contracts, in my  
7 head, if I'm using 50 Petty Contracts, it's 828 divided by 50,  
8 and each contractor gets an amount, so the portion of the  
9 Project contract does not increase. Those would have been the  
10 thoughts in my mind, consistent with what I said in evidence  
11 before.

12 Q. However, your thought at the time was, however the  
13 Project cost was divided up, it would not--it would not have any  
14 impact on the budget?

15 A. That was the thought in my mind because that was the  
16 practice I've used before.

17 Q. In terms of dividing up--

18 A. In terms of--yeah, once a figure doesn't go above the  
19 expected figure, I'm okay.

20 Q. And I think you don't have any recollection as to why  
21 Petty Contracts were referred to in the paper--

22 A. No.

23 Q. --and were not recorded?

24 A. I don't.

25 Q. So, it's once you get to Cabinet that that is



1 introduced?

2 A. That conversation came up in Cabinet, yes.

3 Q. Now, for you, accepting that your evidence is you  
4 didn't see any budget implications of subdividing up the  
5 contracts, would it be fair to say you went to Cabinet ready  
6 with the idea that you could do all this by Petty Contracts?

7 A. Sorry?

8 Q. When you went to Cabinet, when that paper went to  
9 Cabinet, was it in your mind that this is a project that the  
10 Ministry can properly deliver by way of Petty Contracts?

11 A. I didn't have any issues with the use of Petty  
12 Contracts.

13 Q. Were you going to positively argue for Petty  
14 Contracts?

15 A. I wasn't going to argue one way or another. I was  
16 going to answer the questions that Cabinet asked me in the terms  
17 of assisting the Minister of Finance. I really didn't have any  
18 argument one way or another. If Cabinet said Petty Contracts, I  
19 would have been perfectly fine with it. If I had any thoughts  
20 of doing anything different, it would have been in the Cabinet  
21 Paper draft that came from my Ministry. I had no interest  
22 either here nor there.

23 COMMISSIONER HICKINBOTTOM: No, I understand the no  
24 interest. But the proposal was Petty Contracts?

25 THE WITNESS: Yes.

1 BY MR RAWAT:

2 Q. If Cabinet had said that we'll do it entirely by Work  
3 Order, would have you had any concerns then?

4 A. I'm not sure because, as I said to you, when the  
5 Project came in, I was a Minister two years in. There are  
6 things in the Government system that you don't even know after  
7 being in there for eight years. I must say that perhaps the  
8 greatest learning experience I've had is since we've had the  
9 Commission, that you are able to drill down and read and  
10 understand some of the things and even look for some of the  
11 things that you didn't even know existed in the law. So, if  
12 that decision was made two years on, I don't know, with more  
13 experienced persons in the room, whether or not I would have  
14 been able to say yay or nay to it because I don't think I would  
15 have known about the system.

16 Q. But at that time, January 2015, what you knew, use of  
17 Work Orders--anything below--essentially, anything below 100,000  
18 or subject of a tender waiver, your understanding was that, you  
19 know, it could be used in--it could be delivered in a number of  
20 different ways through different contract vehicles.

21 A. Under 100,000?

22 Q. Yes.

23 A. Yes.

24 Q. So--but, so, under 100,000, you could do Petty  
25 Contracts or Work Orders--

1 A. Yes.

2 Q. --whichever was cheaper?

3 A. Yes.

4 Q. In this case, you've got a tender waiver and your  
5 800,000. You can still, once you've got the tender waiver in  
6 hand, you could still do Petty Contracts?

7 A. Depends on what Cabinet says.

8 Q. If Cabinet agrees, you can do Petty Contracts or Work  
9 Orders?

10 A. In keeping with 56.6 if Cabinet said Work Orders,  
11 that's what the Ministry would have to do because Cabinet is the  
12 one that makes that decision.

13 COMMISSIONER HICKINBOTTOM: I don't think that's quite  
14 right. The Cabinet decision allowed you to do Petty Contracts  
15 and Work Orders. It didn't require to you do Work Orders.

16 THE WITNESS: Sorry?

17 COMMISSIONER HICKINBOTTOM: The Cabinet decision  
18 enabled you, gave you the power to implement this project by  
19 using Petty Contracts and Work Orders. It didn't require you to  
20 use Work Orders.

21 THE WITNESS: Well--

22 COMMISSIONER HICKINBOTTOM: It allowed you to use Work  
23 Orders. You chose to use Work Orders.

24 THE WITNESS: I don't understand your question,  
25 Commissioner, because the decision mentioned Petty Contracts,

1 Work Orders, and different suppliers. It didn't say that it  
2 preferred this one over that one.

3 COMMISSIONER HICKINBOTTOM: Quite.

4 THE WITNESS: It didn't say that.

5 COMMISSIONER HICKINBOTTOM: So, it was up to you as to  
6 whether to use Petty Contracts or Work Orders--

7 THE WITNESS: No, not for me, but it's for Cabinet to  
8 say to do this, so it wasn't a decision for me. The decision  
9 from Cabinet says--

10 BY MR RAWAT:

11 Q. 140, if we look at that?

12 A. 140?

13 Q. Yeah.

14 A. It says, at C: "Approval to be granted to execute the  
15 Project utilizing Petty Contracts." It didn't say "all". It  
16 says "and different suppliers"--it didn't say "all"--"and  
17 contractors." So, Cabinet is making a very clear direction:  
18 Use Petty Contracts and different suppliers and the contractors.  
19 So, there is no "all" there. So, there's the discretion for me  
20 to decide whether I want to use Petty Contracts.

21 COMMISSIONER HICKINBOTTOM: You were required to use  
22 some Work Orders?

23 THE WITNESS: I was required. That's clear.

24 COMMISSIONER HICKINBOTTOM: No, you were required by  
25 Cabinet to use both Petty Contracts and Work Orders.

1 THE WITNESS: That's correct, and different suppliers.  
2 And different suppliers in the Government context would mean  
3 Purchase Orders as well.

4 COMMISSIONER HICKINBOTTOM: I understand. I  
5 understand your interpretation of that.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: The alternative would be a  
8 construction which meant that Petty Contracts can be used, but  
9 you can't have Petty Contracts using the same suppliers. But I  
10 understand your interpretation of that.

11 THE WITNESS: Okay.

12 COMMISSIONER HICKINBOTTOM: But the--so, you had some  
13 Works Orders, but you could have used two or any number above  
14 two.

15 THE WITNESS: I could have, but there was no limit on  
16 how much I could use.

17 COMMISSIONER HICKINBOTTOM: Exactly.

18 THE WITNESS: If Cabinet had said to me "use 50 Petty  
19 Contracts and Work Orders", I would have done what Cabinet said  
20 to do because that's what I'm required to do.

21 BY MR RAWAT:

22 Q. And just so we're clear for the Transcript, your  
23 reading of the phrase at 140 is that "different suppliers"  
24 refers to the use of Purchase Orders?

25 A. Yes. In case you have to purchase anything because

1 sometimes you have to go past and pick up sometimes. Sometimes  
2 you may have situations where perhaps you need to buy cement for  
3 somebody to move the Project along or something, so it kind of  
4 was wide enough to help you to be able to get the Project done.

5 COMMISSIONER HICKINBOTTOM: So, just to pick up on  
6 Mr Rawat's point: "Different suppliers" refers to Purchase  
7 Orders?

8 THE WITNESS: That is my understanding.

9 COMMISSIONER HICKINBOTTOM: Yeah. And different  
10 contractors--leaving suppliers out for a moment--you say that  
11 "different contractors" means Work Orders?

12 THE WITNESS: Because there is no other contractor  
13 that the law recognizes besides Petty Contractors and contracts  
14 by Work Orders.

15 COMMISSIONER HICKINBOTTOM: Major Contractors?  
16 "Contractors" covers all three?

17 THE WITNESS: Well, couldn't be--well, it depends on--

18 COMMISSIONER HICKINBOTTOM: I'm sorry, just the word  
19 "contractors".

20 THE WITNESS: It depends on what you call a "major  
21 contractor" because a major contractor--if it was a Petty  
22 Contract, it would go under 100,000.

23 COMMISSIONER HICKINBOTTOM: Contractors--the word  
24 "contractors" applies to Major Contracts, Petty Contracts--

25 THE WITNESS: That was--that was not what Cabinet was

1 thinking.

2 COMMISSIONER HICKINBOTTOM: No, no. I understand that  
3 Cabinet didn't have Major Contracts in mind--

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: --and also accepted Work  
6 Orders.

7 THE WITNESS: Yes.

8 BY MR RAWAT:

9 Q. But in deciding how to allocate the Petty Contracts  
10 and the Work Orders, why it was that you ended up with 64 Work  
11 Orders and 15 Petty Contracts?

12 A. I don't have a reason for that.

13 Q. But in deciding to allocate the work on that basis,  
14 which is contract-splitting, once you've got that approval, even  
15 if you had done it by way of Petty Contract alone, you would be  
16 splitting the contract up?

17 A. That ties into the point I have been raising, that if  
18 something goes wrong, it doesn't necessarily mean that somebody  
19 did something nefarious. If using Petty Contracts is  
20 contract-splitting, then that is a system overhaul that needs to  
21 be done.

22 And if, in fact, with Cabinet making the decision to  
23 do Petty Contracts, Work Orders, and Purchase Orders in its  
24 Decision, and that is also contract-splitting, first that should  
25 be laid at the feet of the Cabinet, not at the feet of the

1 Minister or the Ministry.

2           Secondly, if it's something that's being done wrong,  
3 that's a systemic issue because I don't believe that if Cabinet  
4 knew that doing what it did might have been wrong, that it would  
5 have done it. I believe that if the paper--even if the Ministry  
6 of Education erred in putting Petty Contractors in there, and it  
7 would have been Contracts, by the time it came to the Ministry  
8 of Finance, they should have picked it up.

9           Additionally, Commissioner, at no time during this  
10 contract, this project was being done, did I hear the used the  
11 term "contract-splitting", that the Ministry was  
12 contract-splitting. Never. It never came back to Cabinet that  
13 they were. It never came back to the Ministry of Finance or to  
14 me as Minister, and it never came to my Ministry. The only time  
15 contract-splitting ever came up was in the Auditor General's  
16 Report.

17           So, it says there are systemic challenges we have  
18 within the Government because if, in fact, there was  
19 contract-splitting and it was so bad, somebody, somewhere along  
20 the line, should have been able to raise a red flag and say  
21 something. It certainly can't be a Minister. We're the least  
22 experienced in the Ministries. We come and go. We're a bird of  
23 passage.

24           Q. And in terms of the systemic issue that you're  
25 raising, Mr Walwyn, that is because this is an established



1 practice that contracts will be divided up in this manner, that  
2 you can deliver a project through the use of Work Orders or--

3 A. It's more than a practice; it's the law. It's in the  
4 Public Finance Management Regulations. It gives the authority  
5 to use Work Orders and Petty Contracts. So, that is not--it's  
6 more than a practice. It's derived from the actual law.

7 Q. So, you would say it's a legally justified practice  
8 that is common?

9 A. I would say it's the law. That's what I would say.  
10 It's the law.

11 Q. But--so, you were required not only by Cabinet but by  
12 law--

13 A. Yes.

14 Q. --to use a mixture of Work Orders and Petty  
15 Contracts--

16 A. It's right here. It's right here.

17 Q. Did you appreciate that--I think when you gave  
18 evidence on the last occasion, that in terms of trade licences,  
19 your understanding was that someone didn't need a trade licence?

20 A. That was my personal understanding.

21 Q. At the time?

22 A. At the time, and even up until recently. But as was  
23 indicated earlier--and I think in the evidence given-- and one  
24 of the technical folks, they indicated that their responsibility  
25 was to look at some these things, including looking at licensing

1 and so on. That's not something that a Minister would do.

2 I would, for instance, if a contract comes up, I have  
3 a list of names of contractors that I rotate. I don't care who  
4 they are, those guys. The folks at the Ministry pick them.  
5 Sometimes they'll come back and say "no, this one has not done  
6 good work in the past".

7 COMMISSIONER HICKINBOTTOM: In terms of this list,  
8 this is a list of whom?

9 THE WITNESS: It's a list of individuals who expressed  
10 interest in getting work in the Government or in the Ministries;  
11 right?

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: And, as Minister, I kept a list of those  
14 things.

15 COMMISSIONER HICKINBOTTOM: These are people who may  
16 never have built a wall before.

17 THE WITNESS: No. We don't pick up people who would  
18 have never done stuff. That's not what we do.

19 COMMISSIONER HICKINBOTTOM: But the trade licence  
20 would at least be--a constructor's licence would at least  
21 indicate they are in the construction trade.

22 THE WITNESS: That is part of the systemic challenge  
23 that I think exists because when you read the law in relation to  
24 Work Orders, I think when it says--if you can give me a quick  
25 moment on something.

1 I don't know if you have a copy of the Public Finance  
2 Management Regulations. Do you have a copy of it?

3 BY MR RAWAT:

4 Q. What section are you looking at?

5 A. I'm looking at Section 189.

6 Q. You will find that in the bundle.

7 A. In the bundle as well?

8 Q. Yes. At 1004.

9 A. With me?

10 COMMISSIONER HICKINBOTTOM: That's Section 189.

11 THE WITNESS: Yes. It says work Orders: A contract  
12 for work or service not exceeding \$10,000 in value may be  
13 entered into with execution of a specific--may be entered into--

14 REALTIME STENOGRAPHER: I'm sorry. Could you slow  
15 down and read that again.

16 THE WITNESS: Work Orders, Section 189. "A contract  
17 for work or a service not exceeding \$10,000 in value may be  
18 entered into without the execution of a specific contract  
19 document by a Works Orders--by Works Orders signed by an  
20 authorized officer to do so or by the Minister or person so  
21 designated".

22 I believe what happens is that persons within the  
23 service, perhaps when they look at that, they probably think  
24 that you don't need any documents at all. I think perhaps--and  
25 this is me just thinking--that that is what--that's the way it's

1 interpreted. That's why, for instance, perhaps some of them  
2 might not have had trade licences and so on.

3 But I say this to you, Commissioner: If this happens  
4 in my Ministry or in the Ministry I was involved in, it happens  
5 in the other Ministries, too, because if, in fact, you are  
6 required to have these documents to be able to sign--to do  
7 particular work, you shouldn't get paid from the Treasury.

8 BY MR RAWAT:

9 Q. The evidence, Mr Walwyn, is that the Auditor General,  
10 as with everyone, you're required by law to have a trade  
11 licence. If you're going to do a particular--whatever  
12 profession, trade you have, you're required by law to have a  
13 trade licence.

14 A. In practice, that doesn't happen.

15 Q. But that's the law?

16 A. I understand.

17 Q. The practice--and this is what Ms Stevens's evidence  
18 was--was that, in relation to Work Orders, the contractor is not  
19 required to produce to the Ministry the trade licence or  
20 indeed--

21 A. Can you show me where she said that?

22 Q. Yes.

23 A. Specifically where she said that.

24 Q. Hold on two seconds. Let me find it for you.

25 Go to page 924, please.

1 A. 924?

2 Q. 924, please. I asked--

3 A. What line are you on?

4 Q. Line 15, please.

5 A. Yes.

6 Q. There's a difference between requiring a contractor to  
7 have those--that's a trade licence, Certificates of Good  
8 Standing--and requiring them to produce them to you. Was it  
9 your understanding that if below the Petty Contract threshold  
10 you didn't actually even need to have a trade licence? You  
11 could just turn up and do the work?

12 And the answer was: They would not have to produce  
13 them as documents to back the Work Order, no.

14 So they wouldn't have to show them to you as a Project  
15 Manager?

16 That's correct.

17 Would they still have to them, though?

18 Any business operating in the Virgin Islands would  
19 have to have a trade licence.

20 So, the documents that, I think, Ms Stevens said she  
21 would have to check would be in relation to a Petty Contract.

22 A. Yes.

23 Q. So, once the Ministry has awarded a Petty Contract,  
24 that person, to be able to get on with it, would have to  
25 show--in this case it would be Ms Stevens, as the Project

1 Manager, the required documentation. When you go Work Orders  
2 level, they are not required to produce it to you. You don't  
3 have to ask to see it.

4 A. If that doesn't smack of a systemic error or systemic  
5 issue, I don't know what does--

6 Q. But--

7 A. --because if I can give somebody works, they could  
8 just easily lie to me and say I have the documents, and I give  
9 them work. That's not helpful.

10 Q. But you didn't know that at the time.

11 A. I had no idea.

12 Q. Right.

13 So I wanted make--we have to kind of find--draw the  
14 line between what you knew in 2014 to 2015?

15 A. In 2014, actually I didn't know that.

16 Q. Right.

17 A. And if I had known this now, I would have raised some  
18 issues on that, even from a Cabinet level, because you're  
19 putting people in trouble because if I--if your name is placed  
20 to do work and you receive a contract fully well knowing you  
21 don't have the requisite documents because you don't have to  
22 produce them, then all they have to do is sell you a lie and say  
23 I have the documents. That doesn't make any sense.

24 So, if that exists in the document system that is  
25 totally senseless. If somebody has documents, why shouldn't

1 they be made to produce them?

2 COMMISSIONER HICKINBOTTOM: The results of the steps  
3 that were and weren't taken on this wall was that 70 Contractors  
4 were used on the project. 40, over half, did not have  
5 construction trade licences.

6 THE WITNESS: But--

7 COMMISSIONER HICKINBOTTOM: So, 40 had no trade in  
8 constructing anything.

9 THE WITNESS: Well, that may not be a fair statement,  
10 Commissioner.

11 What I would say is that, from my understanding now,  
12 those that did not have the requisite documents did not have the  
13 trade licences that were required, so those that got-the 40 that  
14 you're talking about, who would have--would have prob--who had  
15 documents would have probably had their trade licences and their  
16 contractor's licence. The others who didn't have them would  
17 have probably not--probably notwithstanding whether or not they  
18 could have done them, and I don't think we'd have gotten people  
19 on the work on the job who couldn't do work because their  
20 job--their work was scrutinized by Public Works and also by  
21 Steve Augustine. So, I don't think skills is an issue.

22 I think the issue came in with the trade licences  
23 because, again, they were probably operating on this premise  
24 that we just understood here, because if you ask somebody to  
25 have a trade license and they want a job and you don't have to

1 produce it, how many persons are going to be honest and say to  
2 you I don't have a trade licence. If you say I don't have a  
3 trade licence, I mean you're not getting the job.

4 So, whether this--wherever this policy came from, it's  
5 designed--it's going to get people in trouble. If you're  
6 asking--people should be required to have their documents and  
7 produce them; and if that is--if this is something in the  
8 Government system, that is not the fault of no civil servant who  
9 does their work, because you're setting people up for failure.  
10 People are going to tell you lies.

11 Q. Remind me how long you were a Minister in Government?

12 A. Eight years.

13 Q. Eight years.

14 And was it only once you saw the Auditor General's  
15 Report in 2018 that it--that issue came--

16 A. Even after that I didn't believe it until I  
17 was--listened to some of the--I think some witness came here and  
18 said something about not producing them, and when I heard that,  
19 I said to me--I said to myself, that's the most ridiculous thing  
20 I ever heard.

21 Q. So, you went through entire--

22 A. Yes.

23 Q. --two terms as a Minister--

24 A. -- without knowing--without knowing that.

25 Q. --that issue ever--



1           A.    --and clearly--and I'm not sure how many civil  
2 servants would know this because I--knowing the folks in my  
3 Ministry, I do not think that any of them would have allowed  
4 people to work who didn't have the documents. They wouldn't do  
5 that. They would not do that.

6           And who--I would like to know--and I've been searching  
7 for--to see where the source of this law came from, that they  
8 don't have to produce the documents.

9           COMMISSIONER HICKINBOTTOM: Well--

10          A.    --where it came from.

11          COMMISSIONER HICKINBOTTOM: That's not the law. The  
12 law is you have to--

13          (Overlapping speakers.)

14          THE WITNESS: If the law says you must have the  
15 documents then you must also produce the documents, how is it  
16 you're going to do--that they have the documents and they won't  
17 produce them?

18          COMMISSIONER HICKINBOTTOM: The law is that you have  
19 to have a construction trade licence.

20          THE WITNESS: And a trade li--and it said that--it's  
21 saying a trade licence as well.

22          COMMISSIONER HICKINBOTTOM: Yes. The policy is--the  
23 policy or practice is that for Works Orders, they do not have to  
24 be produced.

25          THE WITNESS: But they--but you must have them.

1           COMMISSIONER HICKINBOTTOM: Yes, the law is that you  
2 have to have them.

3           THE WITNESS: Yes.

4           COMMISSIONER HICKINBOTTOM: The practice is they are  
5 not required to produce them for Works Orders. It's a practice.

6           THE WITNESS: Commissioner, you know that--I know it's  
7 a practice, but that's ridiculous, though.

8           BY MR RAWAT:

9           Q. Well we--I mean--

10          A. It's not on you. I'm just saying it's a systemic  
11 thing that we have to fix now.

12          Q. But the point--I mean--Ms Stevens was--I mean, her  
13 evidence was clear about what she had to check and what she  
14 didn't have to check. So, in relation to those who were engaged  
15 on Work Orders, she wouldn't have had to check their documents,  
16 and that's a substantial proportion of the contractors used.

17          A. Yes. But is it slim but who--where do you rest the  
18 blame, if you're resting blame?

19          Q. Well, we're not looking at blame at the moment,  
20 Mr Walwyn. We're just trying to understand and trying to drill  
21 down into your response to this criticism.

22          A. Yes.

23          Q. Because the consequences that flows is, as happened  
24 here, you have 40 people who start on a job without the  
25 requisite documentation, as it turns out, and, therefore, you

1 have a--because you don't have that check, you have a risk that  
2 your quality of work is undermined and you have a risk that  
3 you're not getting value for money. Would you accept that?

4 A. Was she asked, though, whether or not, counsel, the  
5 people actually had those documents that you--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: Yes, they did. It's  
8 paragraph 72 on page 16.

9 THE WITNESS: Paragraph what?

10 COMMISSIONER HICKINBOTTOM: 72 on page 16.

11 THE WITNESS: Page 16?

12 COMMISSIONER HICKINBOTTOM: Yeah. Of the 70  
13 contractors used on the project--

14 THE WITNESS: No, no, I meant Ms Stevens when she was  
15 here.

16 COMMISSIONER HICKINBOTTOM: Oh, I'm sorry.

17 THE WITNESS: Yes, because the question seems to stop  
18 a bit halfway to me.

19 BY MR RAWAT:

20 Q. What was it that you think she should have been asked?

21 A. She should have been asked if people had the  
22 contracts--if the people had the licenses because you've asked  
23 her, they would ha--they would not have had to produce those  
24 documents to back their work. That was her response. Your  
25 question was, so, they wouldn't have had to show them to you, as

1 a project manager, and you said that's correct.

2           Would they still have to have them, though? And then  
3 you--and then she said any business operating in the Virgin  
4 Islands would have to have a trade licence. That's a di--that's  
5 different from asking did they have the documents.

6           COMMISSIONER HICKINBOTTOM: But you know because it  
7 was the practice not to ask for them--

8           THE WITNESS: No but--

9           COMMISSIONER HICKINBOTTOM: --so she wouldn't know  
10 whether they had gotten them or not.

11          THE WITNESS: Sorry?

12          COMMISSIONER HICKINBOTTOM: She wouldn't know because  
13 the practice was not to ask for them.

14          THE WITNESS: Well, not to ask or not to produce?

15          COMMISSIONER HICKINBOTTOM: Well, I don't understand  
16 the difference.

17          THE WITNESS: I think--the difference because it says  
18 here the answer is they would not have to produce them.

19          COMMISSIONER HICKINBOTTOM: Yes.

20          THE WITNESS: But to produce and to ask are two  
21 different things. I could ask you if you have documents or not.  
22 It's different from me asking to produce the documents. So, I'm  
23 saying that it would have been important to find out whether or  
24 not--if the practice is that you can't--you have--that you don't  
25 have to produce them, then the onus now goes on the contractor,

1 Did you have the documents? And if they said yes to you and you  
2 proceeded to give them the contract, then...

3 COMMISSIONER HICKINBOTTOM: But how does that  
4 help--that suggests that of the 40 contractors who didn't have  
5 construction trade licences, some of them may have  
6 misrepresented the point to your Ministry.

7 THE WITNESS: I'm saying that that could be possible.  
8 Because I find it hard to believe that she would have given them  
9 work without them having the documents.

10 BY MR RAWAT:

11 Q. But she didn't give them the work. You did.

12 A. I didn't give them--I--that's not what happened,  
13 again, counsel. I placed the names on the contracts. The  
14 process is vet--it's for--when it goes to them, as Ms Stevens  
15 indicated in her evidence, she said here at page 887, line 4  
16 (reading): As Internal Project Manager--do you have it?--887,  
17 line 4: As Internal Project Manager, making sure that there  
18 were quotations sought, if there were Cabinet Papers to be done,  
19 issuing of contracts where the finance unit would draft the  
20 contracts, I would ensure that if it were a Petty Contract,  
21 contractors had their documents. We would sign the work, was  
22 commenced, liaison with the consultant in terms of the project  
23 management liaison with the contractors.

24 So, it means that once I give the names forward, then  
25 her job is to do the vetting to make sure that they have the

1 various documents here, show that's part of her  
2 responsibilities. But to say that I gave them work, the work  
3 given to them is contingent upon them having the requisite  
4 things that they need to have.

5 Q. I'll take you in a moment to other parts of the  
6 evidence of Ms Stevens and Ms Scatliffe about how contractors--

7 A. You can't--

8 (Overlapping speakers.)

9 A. --possibly be suggesting that a Minister must go now  
10 to check to see who all have contractor licences and trade  
11 licences.

12 Q. Shall we look at it, because I think we've dealt with  
13 criticism 6. Let's go to criticism 7 and go--if I show  
14 you--take you to 921.

15 Now, at 921, at the bottom, line 23, I took Ms Stevens  
16 to a document which you had provided to the Commission as to  
17 when you came to give evidence on 1st of July, and that's the  
18 comments for senior officers with oversight of the project, MAC  
19 document. It's in the bundle, but it's the document that was a  
20 response to the Auditor General's Draft Report.

21 And on the next page--

22 A. Counsel, could I ask one thing?

23 Q. Yes.

24 A. Can you introduce the criticism to refresh my memory,  
25 please?

1 Q. Yes.

2 A. Because you just took me straight here.

3 Q. No.

4 A. I think--

5 (Overlapping speakers.)

6 Q. I'll do that. Criticism--we're on criticism 7, which  
7 is as follows: Honourable Myron Walwyn selected all the  
8 contractors who worked on the School Wall Project. The way he  
9 did so, particularly given that 2015 was an election year,  
10 suggested he had a deliberate and improper political motive to  
11 these decisions.

12 So, now let's look at the evidence in terms of  
13 selection. So we're at 921; yeah?

14 A. Um-hmm.

15 Q. So we've got to the document. I then took it line 5  
16 on 922. A response that was written to the Auditor General's  
17 Draft Report is as follows: It is not the practice of the  
18 Government/Ministries to go through--

19 A. Where are you now, where is--

20 Q. Line 5.

21 A. Line 5 on 921?

22 Q. Line 5 on 922. A--

23 A. Line 5.

24 (Overlapping speakers.)

25 Q. Do you want me to take you back to--

1 A. Yes.

2 Q. --921?

3 A. Please do that because I think--

4 Q. 921, we--I introduced at the bottom, at line 23, a  
5 document which you produced to the Commissioner, and that was a  
6 document headed "Comments with senior officers with oversight of  
7 project MEC."

8 A. Yes.

9 Q. And that was the response to the draft report.

10 A. Yes.

11 Q. If we go over to 922--

12 A. Yes.

13 Q. --Ms Stevens confirmed that she had input into  
14 preparing this document, and I then took her to number six on  
15 it, where the response that was recorded to the Auditor  
16 General's draft is as follows: It is not the practice of the  
17 Government/Ministries to go three--through PWD--that is the  
18 Public Works Department--for a list of contractors. Contractors  
19 are chosen based on previous work relations with the Ministry or  
20 at the sitting Minister's discretion.

21 I then asked: So, in this case, did you put forward  
22 for the Minister's consideration contractors?

23 Answer: No.

24 Did the Financial and Planning Officer put forward  
25 contractors to the Minister?



1           Answer: Not that I'm aware of.

2           What about the Permanent Secretary?

3           Not that I'm aware of, no.

4           Question: So was it just the Minister who told you  
5 who would--you would contract with?

6           Answer: The Minister wrote the contractor down in  
7 terms of who would do walls, who would do rails.

8           Where did the Minister get the names from?

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

10          Question: So, didn't the Minister just tell you,  
11 Assistant Secretary, these are the individuals that will get the  
12 contracts?

13          Answer: As he would normally do, yes.

14          And you say, as he would normally do. Was that the  
15 Minister's approach in other contracts?

16          Yes, it was.

17          Question: You were the Internal Project Manager.  
18 Leaving the wall aside you're the Internal Project Manager. Do  
19 you have any say in the selection of contractors?

20          No, I didn't. I could give recommendations, but the  
21 ultimate decision was the Minister's.

22          Question: What did you--when you did give  
23 recommendations, what did you base your recommendations on?

24          Answer: Previous work.

25          And was that your own assessment of a contractor's

1 previous work, was it?

2 Answer: Correct.

3 Question: But in relation to the Wall Project, you  
4 didn't do that in this case?

5 Answer: Didn't do what?

6 Question: You didn't put forward people--you didn't  
7 people forward for the Minister to decide.

8 Answer: No, I did not.

9 So, that's Ms Stevens's recollection of the  
10 recommend--of the contractor selection process in the Wall  
11 Project.

12 Ms Scatliffe, if you need me to take you to her  
13 evidence, but comes out and said she was not involved at all in  
14 the process.

15 Your evidence, when you gave on the last occasion,  
16 which I can take you to, if you need to see it--

17 A. Um-hmm.

18 Q. --was that it was selected from a list but that names  
19 could then be rejected by the Public Officers.

20 A. Yes.

21 Q. Right.

22 So, it might be said that the evidence of Ms Stevens  
23 and Ms Scatliffe does not support your recollection of the  
24 process by which contractors were selected.

25 A. How is that so?

1 Q. Because they said they had nothing to do with it.

2 A. That doesn't mean--and I can't say--I don't think I  
3 understand your question and your reasoning, to be quite frank.

4 Q. Well, Ms Stevens--

5 A. If I put forward names--

6 (Overlapping speakers.)

7 A. If I put forward names for somebody to do something  
8 and they have not performed well in the past, the Public  
9 Officers--and it has happened before--would have said, Minister,  
10 we can't use this person or we shouldn't use this person because  
11 we did work with them in the past and they did not perform well.

12 Even when you're going, you look for her evidence, it  
13 says she would--in the same evidence of Ms Steven-- what you  
14 just read out.

15 Q. Yes.

16 A. Where she indicated that she would use information  
17 based on people would have done work in the Ministry before.  
18 So, that's a failure that, of course, even though the Minister  
19 puts the names on the contracts, those contracts are subject to  
20 scrutiny or else she would not have indicated in her job  
21 description that part of her responsibility is to make sure that  
22 various contractors have their paperwork. That is her  
23 responsibility to do.

24 Q. But that's--that occurs--Mr Walwyn, you're taking  
25 things out of sequence. That happens after you have decided

1 that X will get a (unclear)--

2 (Overlapping speakers.)

3 Q. --contract.

4 A. No, no, I have--no, no, no, no, no. Placing  
5 somebody's name on a contract is not the decision. The decision  
6 is subject to, one, they having all the requisite documents that  
7 they need to have. That's the way it's done. It's not that you  
8 get your name on a contract and you don't have the documents and  
9 you go and do the work. That doesn't work.

10 Q. What you have on the evidence is financial and  
11 planning--you have a project team of three.

12 A. Um-hmm.

13 Q. Right. You have an External Project Manager.

14 A. Yes.

15 Q. Who is not involved in this process.

16 A. No.

17 Q. You have a Financial and Planning Officer whose  
18 evidence is she was not involved in this process.

19 A. In selecting names?

20 Q. Yes.

21 A. But they don't--

22 (Overlapping speakers.)

23 A. --but they--

24 Q. She was not involved at all in selecting contractors  
25 to work on Phase 2 of the work--

1           A.    But they never do.  In fact, if I'm to turn you to  
2 949, you raised it a while ago.

3                    And if you look at the evidence of Ms Scatliffe--

4           Q.    Which line are you at, please?

5           A.    I'm at 949, but I'm going to jog your memory from 937,  
6 at line 14.

7           Q.    937.

8           A.    Yes, line 14.

9                    Ms Stevens joined the Public Service, she has  
10 indicated here, on July 12, 1999.  She worked as a Senior  
11 Accounts Executive Officer, and then she moved on to a Finance  
12 and Planning Officer, and she came to the Ministry of Education  
13 in 2014.

14                   At 949, when you put the question to her, if we can  
15 start at 948, line 16, 948, line 16 (reading):  In terms of the  
16 contractors that were issued Petty Contracts and Work Orders,  
17 did you, as Finance and Planning Officer, have any involvement  
18 in choosing those contractors?

19                   No, sir.

20                   You asked her:  Were you asked about for your views as  
21 to which contractors should have a contract?

22                   No, sir.

23                   You asked:  Do you know who chose the contractors in  
24 this case?

25                   Her answer was:  Yes, I do.

1           Your question: Who was that?

2           She said the Minister.

3           Your question: And what was--what was that something  
4 that was routine in the Ministry that it was up to the Minister  
5 to decide which contractors would get work.

6           She said: It's the practice in every Ministry, yes.  
7 That was her response. The practice in every Ministry of  
8 Government is that the Minister is the ones who puts names on  
9 contracts, so it is nothing nefarious with not have--

10           COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.  
11 That's not what she said. She said that the Minister decided  
12 which contractors got work.

13           THE WITNESS: Not--where are you reading from,  
14 Commissioner?

15           COMMISSIONER HICKINBOTTOM: Page 949, what you've just  
16 read.

17           THE WITNESS: She said--

18           COMMISSIONER HICKINBOTTOM: 949, line 2. The question  
19 was:

20           THE WITNESS: Yes.

21           COMMISSIONER HICKINBOTTOM: --I know it was something  
22 that was routine in the Ministry but it was--

23           THE WITNESS: Yes.

24           COMMISSIONER HICKINBOTTOM: --up to the Minister to  
25 decide which--

1 THE WITNESS: Which contractors would get work. But  
2 it's the same thing as putting the names on a contract.

3 COMMISSIONER HICKINBOTTOM: Well--

4 THE WITNESS: It's the same thing.

5 COMMISSIONER HICKINBOTTOM: Well, certainly other  
6 witnesses have drawn a distinction, but we're focusing up on who  
7 decides--

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: --which contractors get to  
10 work.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: She said nothing to do  
13 with me. It was the Minister.

14 THE WITNESS: And she said it is a practice in every  
15 Ministry.

16 COMMISSIONER HICKINBOTTOM: Sorry, I understand that.

17 THE WITNESS: Mm-hmm.

18 COMMISSIONER HICKINBOTTOM: But I don't think that was  
19 the premise of the question.

20 THE WITNESS: I know, but I was trying to say to  
21 the--to counsel that, giving--that me putting names on contracts  
22 in the Ministry of Education was nothing different from what  
23 normally obtains.

24 COMMISSIONER HICKINBOTTOM: But--well--

25 BY MR RAWAT:

1 Q. The point is that--

2 But who is going to put the names on the contracts?

3 (Overlapping speakers.)

4 BY MR RAWAT:

5 Q. No, I'm sorry. You chose the contractors.

6 A. I chose the contractors.

7 Q. So you chose, in Phase 1, the 11 contractors who would  
8 get Work Orders.

9 A. Yes.

10 Q. You chose, in Phase 2, the 64 who will get Work Orders  
11 and the 15 who will get Petty Contracts.

12 A. Subject to them being vetted and making sure they have  
13 the requisite documents to do the work, yes.

14 Q. The sort of issues that arise is you say it's subject  
15 to them being vetted.

16 A. Yes.

17 Q. But you rely for that upon Ms Stevens's description of  
18 her role.

19 A. And that's the way it's always been.

20 Q. Well, who vets the 64 Work Orders?

21 A. What do you mean who vets the 64 Work Orders?

22 Q. Well, you've given 64 Work Orders out in Phase 2?

23 A. Yes.

24 Q. Then, according to Ms Stevens, they're not required to  
25 produce any documents. So, who vets them?



1           A.     That's what I'm saying to you: That's a systemic  
2 issue because if they're require--if you're saying--if the  
3 practice is that they must have the documents but not produce  
4 them, then who is going to vet them? What can you do? They  
5 consider her that they had the documents and they don't have  
6 them.

7           COMMISSIONER HICKINBOTTOM: So, in respect to the 64  
8 for the Work Orders, you put the names forward. There was no  
9 vetting.

10          THE WITNESS: As I said to you, Commissioner, this,  
11 what I've just read in terms of not producing documents, was not  
12 something that I had any inclination of before.

13          COMMISSIONER HICKINBOTTOM: I understand that.

14          THE WITNESS: Right?

15          COMMISSIONER HICKINBOTTOM: But there was, in fact, no  
16 vetting.

17          THE WITNESS: There should have been a vetting?  
18 Because that is the responsibility of the technical team, to  
19 make sure that people have the documents that they're supposed  
20 to have.

21                 So, what would happen is that if we're doing a  
22 project--remember I talked about earlier, about them producing  
23 the contract information for me?--they put on a chart and they,  
24 okay, this the--these are the work and they divvy it up. I put  
25 somebody's name towards the work based on the list that I have.

1 They go back and they check to make sure the person has all the  
2 requisite documents that they're required to have to produce the  
3 work. If they do not have the requisite documents to produce  
4 the work, to go forward with the work, they should know be given  
5 any work.

6 COMMISSIONER HICKINBOTTOM: But now--I appreciate that  
7 you may not have known this then, but now you know no documents  
8 are asked for.

9 THE WITNESS: Right.

10 COMMISSIONER HICKINBOTTOM: So, there is--there was no  
11 vetting. In fact, there was no vetting.

12 THE WITNESS: But I--but that's not a question I can  
13 answer because I don't know to what extent Ms Stevens would have  
14 interrogated them and realize--in relation to those documents.

15 COMMISSIONER HICKINBOTTOM: So you rely upon Ms--

16 THE WITNESS: I have to.

17 COMMISSIONER HICKINBOTTOM: Sorry, I understand that.

18 THE WITNESS: It can't go any further without the  
19 persons having the requisite documents, so all I do is basically  
20 place your name as somebody who said to me, I want to have faith  
21 and work in the Ministry. That is as far as it goes. If you  
22 have what you're supposed to have, if there are no red flags  
23 coming up with you--about you, then you are a go. If you don't  
24 have the document that you are supposed to have, they're  
25 supposed to come back, which has happened before, Minister this,

1 person does not have all their good-standings information.

2 COMMISSIONER HICKINBOTTOM: Or whatever.

3 THE WITNESS: Yes. And we've taken their names off  
4 the list; we have taken the names off the list of many persons  
5 who could not produce their good-standing reports and so on.  
6 But that is technical work. That's not for me, as Minister, to  
7 do. I wouldn't know who has--somebody comes to me--I represent  
8 them as a--as the Representative in the Government--if they come  
9 to me and say, Minister, I want to practice? What I'm going to  
10 say? I got to put your name down?

11 COMMISSIONER HICKINBOTTOM: No--so yes, and that's  
12 what you do.

13 BY MR RAWAT:

14 Q. The process from your perspective is you put the names  
15 on the contract.

16 A. Yes.

17 Q. And I'm taking you back to 2015, taking you back to  
18 your time as a Minister, your entire time as a Minister. You  
19 would put names on contracts. Your expectation was that the  
20 technical people would then go and do the necessary vetting.

21 A. Because the persons--before the people come in and  
22 sign those contracts, because my signature is the last one that  
23 would go on, their names would only get--those contracts would  
24 only be written up and their name, provided they have passed  
25 what the requirements are.

1 Q. So, then they've passed the scrutiny of the Public  
2 Officers--

3 A. That's correct.

4 Q. Right.

5 A. And it's only after they signed then I would sign. If  
6 they sign on it, then it therefore means that they have passed  
7 the requirements.

8 Q. Just to clarify for the Transcript, when you say "they  
9 have signed," are you talking about the contractor?

10 A. The contractor.

11 Q. Right.

12 A. Once the contractor has signed off on it, then it  
13 comes back to me.

14 Q. Right.

15 So, stage 1 is you put a name on a contract?

16 A. Yes.

17 Q. As you understood it, stage 2 was vetting for  
18 everybody.

19 A. That's what it was.

20 Q. Right.

21 A. For everybody--

22 Q. So, whether you gave a Work Contract, a Petty  
23 Contract, whatever--

24 A. What--

25 Q. --you assumed throughout the eight years of your

1 Minist--time as a Minister that every single person was being  
2 vetted.

3 A. Yes.

4 Q. That name--that person's name, your assumption was  
5 once they successfully passed through vetting, that person's  
6 name ends up back on a contract, that contract ends up back in  
7 front you, and you're the last person to put a signature on--

8 (Overlapping speakers.)

9 A. After the person has signed on it, yes. If that  
10 officer brings back that contract to me, to sign it means that  
11 all things are in order, and that's why they move forward.

12 Q. I understand that process in relation to a Petty  
13 Contract, but were you actually signing the document in relation  
14 to Work Orders?

15 A. I can't remember, but the process would have been the  
16 same.

17 Q. Right.

18 A. Even if there was no document produced, the process  
19 would have been exactly whatever it needed to be. The thing is,  
20 as I said, granted, no, I did not know about this policy, which  
21 I think is very silly, that people, they must have the documents  
22 but not produce it. That's a recipe for disaster. You're going  
23 to get people in trouble with that kind of policy. I never knew  
24 that that policy existed.

25 Q. But--and do you have a recollection of signing off

1 Work Orders in relation to Phase 2?

2 A. I don't know. I may have. I don't know. I--whatever  
3 they brought to me, if they said people are okay, they require  
4 my signature, I will sign on it. I may have very well done so.  
5 I don't know. I can't remember.

6 Q. Do you have a recollection of either any of the Public  
7 Officers in that team--so it would just mean Ms Stevens or  
8 Ms Scatliffe--coming back to you and going, You've put someone's  
9 name on this contract, we think there is a problem with that a  
10 person.

11 A. I'm sure it has happened, perhaps, in that--but I  
12 know--

13 Q. In relation to the Wall Project--

14 A. I--

15 Q. --did you have any recollection of any--  
16 (Overlapping speakers.)

17 A. --I cannot recall, but I know they have come back to  
18 me on several occasions about names of persons that have placed  
19 on--to give work and they have not done a good job.

20 Q. So, in relation to other projects?

21 A. Yes. I don't know if it happened with the wall  
22 specifically. I'm not sure.

23 Q. Well, the tenor of the wall is that they  
24 had--they--the tenor of the evidence in relation to the Wall  
25 Project is they had nothing to do with it. It's all down to

1 you.

2 A. In terms of what?

3 Q. In terms of who got the contracts or not and whether  
4 it was a Work Order or a Petty--

5 (Overlapping speakers.)

6 A. But the evidence doesn't--but the evidence does not  
7 bear that out, counsel. I've just said to you that I placed the  
8 names on the contracts. I have not shied away from that.  
9 Ms Stevens, in her evidence, indicated what her responsibilities  
10 are in the Ministry and also in relation to the Project. She  
11 vetted the contractors. She made sure that they had their  
12 requisite documents. So--

13 Q. That's at the Petty Contractors.

14 A. But she also--you didn't ask about Work Orders. She  
15 meant everything.

16 Q. She didn't get--she didn't have--nobody has to produce  
17 anything to her on a Work Order.

18 A. Well, again, as I said, at this time, at that time I  
19 had no knowledge of what this policy was.

20 Q. Well--

21 A. So whatever--

22 Q. --Ms Stevens, to be fair to her, did have knowledge.  
23 Her evidence, Mr. Walwyn, comes to this.

24 A. Well, if--

25 (Overlapping speakers.)

1           A.    If Ms Stevens had knowledge, then she should have used  
2 her knowledge.

3           Q.    Well, her evidence comes to this. Her evidence of  
4 Ms Stevens is you were the person who picked Steve Augustine to  
5 do the job. You were the person who got those two quotes.

6           A.    That is not what she--that is not the evidence of  
7 Ms Stevens. What you just said is incorrect. Ms Stevens--and  
8 the evidence bears out that two documents went to Cabinet for  
9 approval. Something was done by Mr Augustine something was done  
10 by SDO. Cabinet chose the lower of the two. That is what the  
11 evidence is.

12          Q.    No, but the evidence was that you went and got to  
13 those two quotes.

14          A.    I got the two quotes from the two gentlemen.

15          Q.    That's what I put to you.

16          A.    And which is perfectly fine for me to do as Minister.  
17 There's nothing wrong with that.

18          Q.    The evidence was also that she had no involvement in  
19 selecting contractors.

20          A.    And she never will. She doesn't have any  
21 contract--any involvement. As Ms Stevens said in--the Finance  
22 and Planning Officer said that in her years of working in  
23 Government, it's the Ministers who put names on contracts.

24          Q.    And her evidence was she also had nothing to do with  
25 the process.



1           A.    Because Ministers normally put that on. That is what  
2 she said in her evidence. So, why are you suggesting that--

3           Q.    The inference that flows from the evidence that these  
4 two Public Officers it was all down to you.

5           A.    That is not--you're misrepresenting the evidence.  
6 With the highest level of respect to you, sir, that is not what  
7 is being said.

8           Q.    With great respect, Mr Walwyn, the inference that can  
9 be drawn--I put it very carefully--the inference that can be  
10 drawn is that neither Public Officer was involved in this  
11 process and it was all down to you.

12          A.    Oh, boy, counsel, counsel--

13          Q.    If you don't accept it, you just have to say you don't  
14 accept it.

15          A.    Not only do I not accept it, the evidence does not  
16 support what you're putting to me.

17          Q.    Can you explain how you decided to allocate 64 Work  
18 Orders and 15 Petty Contracts to build a wall that was costed at  
19 828,000?

20          A.    I placed the names on the contracts, as I said before.  
21 I've said--I've not shied away from it. I said in the first  
22 time when you called me on the wall, and I said it the second  
23 time.

24          Q.    So, were you presented with 64 Work Orders and 15  
25 Petty Contracts?

1           A.    If I was presented with them?

2           Q.    Yes.

3           COMMISSIONER HICKINBOTTOM:  I mean, I think to be fair  
4 to Mr Walwyn, what he said is he chose the contractors.

5           And I think this is right, Mr Walwyn--correct my if  
6 I'm wrong--

7           THE WITNESS:  Yes.

8           COMMISSIONER HICKINBOTTOM:  --you don't actually  
9 remember whether you physically put the names on the Works  
10 Orders or somebody else did.

11          THE WITNESS:  No, the Work Orders, I would have put  
12 the names on them, too.

13          COMMISSIONER HICKINBOTTOM:  Yes.

14          THE WITNESS:  I'm not at issue with that.  I'm not  
15 shying away from that.  So I'm not understanding why counsel  
16 believes that he has a point in relation to me putting my name  
17 on--putting contractors' names on documents.  That is the usual  
18 fashion.

19          BY MR RAWAT:

20          Q.    But the question is it's--the evidence is that you  
21 were the person who chose who would get a Work Order and who  
22 would get a Petty Contract.

23          A.    Like every Minister of Government does before me and  
24 after me.

25          Q.    So, why did you choose to execute this project with 64

1 Work Orders and 15 Petty Contracts?

2 A. Because Cabinet gave me the permission to use Petty  
3 Contracts, Work Orders and Purchase Orders.

4 Q. Yes. But why did you settle on 64 Work Orders and 15  
5 Petty Contracts?

6 A. So, if I settled on 15, we would have been here today  
7 or not? It's a discretion of the Minister. If Cabinet gives me  
8 permission to do something, I'm going to do it.

9 Q. You've made that point, Mr Walwyn.

10 (Overlapping speakers.)

11 A. So I'm not--

12 Q. --Cabinet gave you permission--

13 A. But with all due respect, counsel, I don't understand  
14 what your argument is.

15 Q. The decision doesn't refer to the number 64 and 15.  
16 How did you come to make that decision?

17 A. I came to make that decision based on the information  
18 and the segments that were placed in front of me.

19 Q. What do you mean by segments?

20 A. Every time we do a contract, as I said to you, the  
21 contract is divvied up into various segments, and sometimes you  
22 put--you put one person's name, depending on the level of  
23 experience that they have, on one segment; that would be a Work  
24 Order. If the person has more experience and then you make a  
25 Petty Contract out of more segments to give them a Petty

1 Contract, and that's the way it was done.

2 Q. The criteria you applied in selecting who would get  
3 what was based on information you had about the level of  
4 experience--

5 (Overlapping speakers.)

6 A. Sometimes, because some of the persons who got work  
7 under Petty Contracts were actual companies, actual construction  
8 companies.

9 Q. And how did you come to have this pool of potential  
10 contractors?

11 A. I kept, as I said, and the practice before me and the  
12 practice is now, that people who are interested in participating  
13 in government contracts make contact with the Minister that they  
14 feel comfortable with. The Minister puts their names down--and  
15 this is what I would do--put their names down in a book, and I  
16 would take those names in an orderly fashion.

17 Q. I see.

18 A. And the--once I put a name on the work, it is up to  
19 the team now to make sure that person have all the requisite  
20 documents that they're supposed to have. Once a document comes  
21 back to me for signature, it therefore means that the person has  
22 passed the test, and they are somebody who can properly carry  
23 out the work based on the law.

24 Q. So, we've gone through the stages, but preliminary to  
25 that is that you, as a Minister, would be approached by

1 individuals going, I'd like to do work for your Ministry.

2 A. Um-hmm.

3 Q. You would keep a note of those individuals?

4 A. Yes.

5 Q. You would rotate work accordingly.

6 A. Yes.

7 Q. The only time that someone--or someone could come off  
8 your list if, for example, as a result of the vetting process, a  
9 Public Officer came to you and said, We have a query over that  
10 individual.

11 A. And that has happened numerous times before.

12 Q. Right. And then you would just take them off.

13 A. Their name will have to come off because I'm not going  
14 instruct nobody to give any work to anybody who have not done  
15 good work before or have not completed their task.

16 Q. I see.

17 COMMISSIONER HICKINBOTTOM: Mr Rawat, we've been going  
18 over two hours. In fact--

19 MR RAWAT: We can pause there.

20 COMMISSIONER HICKINBOTTOM: We'll pause for the  
21 Stenographer, Mr Walwyn.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: Yes, five minutes. Thank  
24 you very much.

25 THE WITNESS: I hope you come back on number seven

1 because there's a lot more to flesh out there.

2 MR RAWAT: Certainly.

3 (Recess.)

4 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat. We are  
5 ready to carry on.

6 MR RAWAT: Thank you, Commissioner.

7 BY MR RAWAT:

8 Q. Mr Walwyn, I want to draw your attention to one more  
9 piece of evidence, and that's at page 21 in the Hearing Bundle,  
10 and that's part of the Auditor General's Report. It's in the  
11 "Conclusions" section. Just draw your attention to  
12 paragraph 106, which she says: "The subjective manner with  
13 which contractors were selected and assigned introduces issues  
14 of inappropriate political influence into the procurement  
15 process."

16 Now, in relation to this, I just wanted to summarise  
17 your response to criticism 7, so we've touched on some of this  
18 already, but again to summarise it, of course, you point to the  
19 fact that you had what you described as "implied permission"  
20 from Cabinet to issue the various contracts.

21 A. Um-hmm.

22 Q. And this is your point that, as a matter of law, you  
23 can use Work Orders and Petty Contracts, which we've canvassed.  
24 You have explained--not in your written response, but in  
25 evidence today--that you were acting in accordance with standard

1 practice in government, and that is that the Minister chooses.

2 Now, the point you make that we need to just get on to  
3 the record, this is 7.2 and 7.3 of your written response, is  
4 firstly Phase 1 began in December 2014.

5 A. Um-hmm.

6 Q. Cabinet approved Phase 2 on the 4th of February 2015.

7 And that you explained that elections for House of  
8 Assembly sworn into office in December the 8th, 2011, following  
9 an election on November the 7th, 2011, would have been due in  
10 the first quarter of 2016; and that in taking this project  
11 forward, you had no indication at any point prior to Phase 1 or  
12 Phase 2 being approved that the then-Premier, Dr Orlando Smith,  
13 would call elections as he did on the 8th of June 2015, and you  
14 say that no one in Government would have had any  
15 indication--none of the Ministers would have had any indication  
16 of that intent.

17 Could you just qualify--just clarify, please, for the  
18 Commissioner, you have a four-year term--

19 A. That's correct.

20 Q. --which starts at the end of November 2011?

21 A. Yes.

22 Q. Why would it result in an election--why wouldn't it  
23 result in an election in 2015 but result in one in early 2016?

24 A. Because that's when the four-year term would have  
25 ended.

1 Q. Well, does the four-year term start on the day that  
2 you're elected, which is the 7th of November 2011--

3 A. Yes.

4 Q. --which would then take you to the 7th of  
5 November 2015?

6 A. Yes, but then you have up until two months after the  
7 time when you call elections, after the time we are sworn in  
8 because it's not--the time doesn't start to run from when you  
9 got sworn in. The time starts to run from when the House of  
10 Assembly is sworn in.

11 Q. I see.

12 So, in this case, the House of Assembly was sworn in  
13 on the 8th of December 2011?

14 A. Yes. That's when it runs.

15 Q. So, that's when the four years start to run?

16 A. Yes.

17 Q. So, that would still take us to 8 December 2015?

18 A. The Premier would have had--would have, I think,  
19 within two months of that time to call an election.

20 Q. I see.

21 So, under--in the BVI, you have a four-year term?

22 A. Um-hmm.

23 Q. And you could, as an administration, take up your  
24 entire four years?

25 A. And then you have two months within which to call--



1 Q. And then you have two months after expiry of a  
2 four-year term in which to call an election?

3 A. That's correct.

4 COMMISSIONER HICKINBOTTOM: Or is it that you have to  
5 call the election before the four years end but the election  
6 could take place in those two months?

7 THE WITNESS: You could call it, but in terms of time,  
8 they work out to be the same thing.

9 COMMISSIONER HICKINBOTTOM: You've got to have an  
10 election within four years and two months?

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: I see. Thank you.

13 BY MR RAWAT:

14 Q. Thank you.

15 Now, as a criticism, you make the point--and this is  
16 on the record--you consider it to be serious because it goes to  
17 your character and integrity, not only as an individual but as  
18 an officer of the Court.

19 You also say that it is a potential criticism which as  
20 a Virgin Islander that you feel insulted by because to say a job  
21 on a school wall would be enough to cast a vote for a particular  
22 government or minister. There are far more important things you  
23 say "we consider essential to enjoying a proper standard of  
24 living for ourselves and our children".

25 Just to be clear, this is a process where the outcome

1 of Phase 2 is the selection of 70 contractors to build a wall  
2 which ultimately ends up costing over a million, if it were  
3 built. The criteria--as an approach, that's difficult to  
4 justify on a "value for money" basis; and the criteria by  
5 which--a methodology by which subcontractors are selected seems  
6 opaque. Taking that into account, would you accept that it does  
7 justify what the Auditor General said, that it introduces issues  
8 of inappropriate political interference into the procurement  
9 process?

10 A. No, it doesn't. I don't support that.

11 Q. Would you like to tell the Commissioner why you do  
12 not?

13 A. Where--where would the list of contractors come from?

14 Q. Well, you've explained it's from you.

15 A. Yes, but in the general sense of Government service.  
16 As you heard from the evidence of Ms Lorna--Ms Scatliffe,  
17 Ministers have always, from the time she's been in the service  
18 in 1999, placed the names of contractors in the Ministries.  
19 What happened in 2014 with that wall was nothing--was absolutely  
20 nothing new. Where would the names have originated from? Who  
21 would put the names on? It would have to be the Ministers.  
22 Where is it going to come from?

23 COMMISSIONER HICKINBOTTOM: I'm sorry, just to go back  
24 one step. What you said is people contact you and, unless as it  
25 were, good reason for not putting on this, you put them on to a

1 list.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: So, what the Auditor  
4 General said is that that is a subjective assessment, which it  
5 is, as you say it's the Minister that does it.

6 THE WITNESS: Where else would it come from?

7 COMMISSIONER HICKINBOTTOM: I--

8 THE WITNESS: Where else would the names for contracts  
9 come from?

10 COMMISSIONER HICKINBOTTOM: Well, you could, for  
11 example, have a list of those with constructor trade licences.

12 THE WITNESS: How would you know unless they're  
13 vetted? So you have a list that you have, and remember I said  
14 it's a vetting process. People would only get work if they have  
15 the requisite documents based on the assessments that are done  
16 by the technical people. I do not believe that any of those  
17 technical folks would give anybody work unless they had the  
18 requisite documents because it puts them in trouble. They were  
19 the ones who have to make sure everything is in order. That's  
20 their responsibility.

21 COMMISSIONER HICKINBOTTOM: Those technical people do  
22 not choose who goes on to the list or who goes on to the  
23 contracts?

24 THE WITNESS: They don't choose who goes on initially,  
25 but the people only get on to those contracts provided they have

1 the requisite documents to do the work.

2 COMMISSIONER HICKINBOTTOM: But you made it very  
3 clear, your evidence is very clear: The Minister chooses the  
4 names that go on the contracts.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: There is a vetting  
7 process.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: We've dealt with that.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: It seems that, in respect  
12 of Works Orders, at least, there is probably no vetting, but  
13 anyway you have explained that.

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: But the names that go on  
16 to the contracts, the Minister chooses those names.

17 THE WITNESS: And that has been the process from time  
18 immemorial.

19 COMMISSIONER HICKINBOTTOM: And--I understand that. I  
20 understand that.

21 THE WITNESS: Yes.

22 COMMISSIONER HICKINBOTTOM: But why is that--the  
23 Minister, an elected Minister, in the Executive Government that  
24 chooses which names go on contracts?

25 THE WITNESS: Unfortunately, that is not a question

1 you can put to me. That has to be put to the Minister of  
2 Finance. That cannot be put to me. That is a system that I met  
3 when I came in as Minister, and I know the system still operates  
4 now.

5 COMMISSIONER HICKINBOTTOM: Okay.

6 THE WITNESS: What I would say as well, in response to  
7 you, counsel, the only thing I had in my mind at that time was  
8 the security of that school and the teachers. I sent you a  
9 number of letters.

10 BY MR RAWAT:

11 Q. We will come to those in a moment.

12 A. They are part of my argument, counsel. You have to  
13 allow me to answer the question the way I want. You can still  
14 raise them later on, if you wish.

15 I sent you a letter--I sent you a letter dated the  
16 27th of September 2014 from Ms Sandy Underhill, the Principal of  
17 the school. I sent you one dated the 1st of October 2014. I  
18 sent you one dated the 4th of November 2014. I sent you one  
19 dated the 5th of November 2014. I sent you one dated the 8th of  
20 November 2014. I sent you Elmore Stoutt High School 2014 Advent  
21 Term Report. I sent you the Elmore Stoutt High School 2015 Lent  
22 Report. And I sent you a letter from Mr Arthur Selwood, the  
23 School Governance Officer, dated October 2014. Those were all  
24 letters saying you must--we must address the matter of safety  
25 and security at the Elmore Stoutt High School campus.

1           We had people utilizing our students to sell drugs to  
2 others. We had children coming back to school who were high.  
3 We found one of the letters indicated a knife, a kitchen knife  
4 was brought to school to stab a child. That was the only  
5 motivation, in my mind, in relation to getting that perimeter  
6 wall fixed.

7           The greatest concern--election was the least of my  
8 worries. If I lose the election, I go back into my business to  
9 work, which is what I did when I lost. There is no issue there  
10 for me. What I could not live with is somebody losing their  
11 life on that campus after having written over seven letters by  
12 the School Principal about that issue.

13           COMMISSIONER HICKINBOTTOM: But two points in relation  
14 to that, Mr Walwyn. As I understand that--we have read the  
15 evidence, including those letters--firstly, we have evidence  
16 that security at the school was an issue going back to about  
17 2000--it's been an issue for a long time--so there is plenty of  
18 evidence about the security at the--

19           THE WITNESS: So, how can the issue of election--

20           COMMISSIONER HICKINBOTTOM: Just one moment.

21           So, it's that point.

22           The second point is--because there were clearly  
23 drivers in relation to the security of the school. The second  
24 point is why those drivers affect the way in which the  
25 contractors are chosen, and they're chosen by an elected

1 Minister?

2 THE WITNESS: But that is not my fault. That is a  
3 system I met and a system that goes on still.

4 And, Commissioner, it goes into what I'm saying, that  
5 some of the things that you're raising are systemic things that  
6 need to improve, yes. But it doesn't mean somebody is doing  
7 something nefarious. Where would the names come from on a  
8 contract?

9 COMMISSIONER HICKINBOTTOM: I'm sorry, you're right.  
10 Because everybody does it, it doesn't mean that any one person  
11 is doing anything nefarious. It may mean that there is a system  
12 of politicization of procurement in contracts. But you say  
13 that's the system--

14 THE WITNESS: That may very well be. I mean, it's up  
15 to the independent Minister as to how they want to conduct  
16 themselves. I'm not conducting myself doing things for votes.  
17 That's not me as a Minister. That might have been--that might  
18 be somebody else, but it's certainly not the way that I did  
19 things.

20 COMMISSIONER HICKINBOTTOM: But you understand where,  
21 as I think you accept, the way in which contracts are given to  
22 contractors, some of whom have no experience in construction  
23 work, but the way in which contractors are given work by elected  
24 Ministers on a subjective basis subject to some vetting from the  
25 evidence--very limited vetting--may give rise to a perception

1 that that is politicization? They're doing it for political  
2 reasons.

3 THE WITNESS: No, but the letter dated 2013, that wall  
4 would have been done--probably would have been done in the very  
5 same way, what would the argument be, what would argument would  
6 have been. I act when the information is available for me act.  
7 The Principal started to write letters in the latter part of  
8 2014. What was I supposed to do?

9 You had a whole year, Commissioner, before elections.  
10 Elections would have been due to--Premier would have called it,  
11 it would have been due in the first quarter of 2016. Was I to  
12 sit on my hands and do nothing?

13 COMMISSIONER HICKINBOTTOM: But is it--is your  
14 evidence--and do correct me if this is wrong because this is  
15 important--is your evidence that, as a system because, as you  
16 say it's a system which has been in existence before, during,  
17 and after your time as a Minister, the system of subjective  
18 assessment of contractors for contracts that come up from time  
19 to time is, because it's subjective, open to abuse, but in this  
20 particular case you did not abuse it?

21 THE WITNESS: I did not pursue it that way. People  
22 got work on that contract who would never vote for me. That's  
23 no problem. People vote whoever they want at the end of the  
24 day.

25 COMMISSIONER HICKINBOTTOM: But do you accept the



1 first part of the premise, that is that the system--

2 THE WITNESS: The system has an issue because where  
3 else--

4 COMMISSIONER HICKINBOTTOM: Is open to abuse.

5 THE WITNESS: It's open to abuse--I agree with  
6 that--but the other point is where else would those names  
7 originate from? There is nowhere else.

8 COMMISSIONER HICKINBOTTOM: Well, I'm not sure that  
9 that's right. I don't think that the Minister has to select  
10 contractors.

11 THE WITNESS: How would they be selected,  
12 Commissioner? In our system as it is now.

13 COMMISSIONER HICKINBOTTOM: There are others who can  
14 keep lists.

15 THE WITNESS: Who?

16 COMMISSIONER HICKINBOTTOM: Except there are public  
17 officials.

18 Indeed, the Act requires some lists to be kept by  
19 public officials.

20 THE WITNESS: Where is the list? No--in the evidence  
21 of Ms Stevens and also--who is the Internal Project Manager and  
22 the evidence of Ms Scatliffe, no list exists.

23 COMMISSIONER HICKINBOTTOM: I'm sorry, that's dealing  
24 with a different point. You said that, in your opinion, there  
25 was no way to do it other than the Minister's on a subjective

1 basis.

2 THE WITNESS: Yes, but where is the list?

3 COMMISSIONER HICKINBOTTOM: But there are other ways.  
4 They're not done here. I accept that.

5 THE WITNESS: Yes.

6 And I would agree with that, so perhaps that needs to  
7 be introduced. We're in the context of what we're dealing with  
8 now, for a Minister in the context of BVI at this part of our  
9 development, even though yes, it might appear as if it might  
10 have political issues with it, based on where we are politically  
11 as a country. If there is no other list or no other way that  
12 exists who could look as if I put the names on the list I would  
13 have done something wrong, where would I have gotten the names  
14 from again? Who would have gotten the list? It falls on the  
15 Minister. It's a systemic issue.

16 BY MR RAWAT:

17 Q. When you--so, the system you inherited when you  
18 started as a Minister and which you continued with during your  
19 time as a Minister is you had to compile your own list?

20 A. And that is the system now.

21 Q. That continues?

22 A. Yes.

23 Q. And so it was left to you, as Minister, to decide how  
24 you would then operate that list?

25 A. And I said to you I rotated the list.

1 Q. You rotated?

2 A. Yes.

3 And the persons will be vetted, and--

4 Q. And if you heard something negative about someone, if  
5 were you told this person didn't actually do a good job--

6 A. They can't get any more work.

7 Q. They come off of the list?

8 A. They would have to come off because I'm not going to  
9 get myself into trouble for anybody.

10 Q. But that was--that was your decision about how to  
11 operate your list?

12 A. Yes.

13 I don't know what other Ministers do.

14 Q. Other than inheriting a system that says, "It's up to  
15 you, Minister; you've got to do it", you had nothing else to go  
16 on?

17 A. No.

18 Q. Right. I understand.

19 Can I clarify one detail--

20 A. Sure.

21 Q. About--so, we know Phase 1, which you've explained,  
22 you know 120 feet, done in a month. I think when you gave  
23 evidence on the last go-round, I may have misunderstood your  
24 evidence, but you said that Phase 2 was a phased project, and it  
25 was not intended to be completed in one year. Could you

1 clarify, when you set off from Phase 2--so February 2015 you've  
2 got the go-ahead from Cabinet--was the intent for the rest of  
3 the wall to be built by the end of 2015?

4 A. The clinical part of the wall. When I say the  
5 "clinical part", I mean the actual structure of the wall itself.  
6 The additional things that I was talking about were additional  
7 things in that--terms of the interests in different things  
8 because, in my mind, I separate the wall from the entire project  
9 itself.

10 Q. Right.

11 A. The entire project was not intended to finish all at  
12 once.

13 Q. And when we say the "entire project", are those the  
14 upgrading to the campus that you had spoken on the last time--

15 A. Yes.

16 There were a number of things that were--that were  
17 needed to be--this project would have in terms of updating a  
18 campus probably would have taken about two years or so.

19 Q. But what you expected by the end of 2015 was  
20 that--obviously there may have been areas where changes would  
21 have been made, you might have had to put, you said, a bus drop-  
22 off point at the front, there was a gate, but what you expected  
23 to have by the end of 2015 was a perimeter wall?

24 A. Yes.

25 Q. Block perimeter wall with railings painted?

1 A. Ostensibly, yes.

2 Q. Yes.

3 A. Yes.

4 Q. I understand. Thank you.

5 I think if I could take you, please, to criticism 1  
6 now.

7 A. 1?

8 Q. Yes, please.

9 I think what I can do because I think some of the  
10 evidence that underpins criticism are--the reasons I take you  
11 now out of sequence, Mr Walwyn, is because it relates to--I  
12 think it covers matters in relation to Phase 1 and Phase 2, and  
13 let's just put on the record what it was. It's this. The  
14 potential criticism is: "From the outset the school project was  
15 progressed in a manner which circumvented the procurement  
16 processes for a Major Contract. That circumvention was  
17 intentional and indeed premeditated by the Minister in the sense  
18 that using the procurement process was not seriously  
19 contemplated".

20 Now, in terms of the response, what you emphasize in  
21 relation to criticism 1, you say that it is an unwarranted  
22 criticism, and the evidence doesn't support it.

23 COMMISSIONER HICKINBOTTOM: Sorry to interrupt,  
24 Mr Rawat. I appreciate that one is put in terms of a criticism  
25 and you don't accept that it's a criticism but it's literally

1 true, isn't it? I'm not saying it's a criticism; I'm not saying  
2 it's anything bad, but the school project was progressing in a  
3 manner that would circumvent the procurement process for a Major  
4 Contract. Well, that's true. Well, this is an eight--

5 THE WITNESS: Circumvented.

6 COMMISSIONER HICKINBOTTOM: But why?

7 THE WITNESS: Because it's--

8 COMMISSIONER HICKINBOTTOM: You think it's--

9 THE WITNESS: Taken on the whole, it gives the feeling  
10 because you have to read--you have to read the first sentence in  
11 conjunction with the second sentence; right? And the way that  
12 circumvention is used is to suggest that you deliberately or  
13 premeditated doing the project in a particular manner, which is  
14 not true.

15 COMMISSIONER HICKINBOTTOM: This is not to stop you  
16 saying what you want to say about it, but it is true, isn't it,  
17 because not on your evidence in a bad way, but you  
18 considered--and the Cabinet considered it, as far as I can  
19 see--that to use the procurement process for a Major Contract in  
20 circumstances of this wall would be inappropriate--hence the  
21 waiver--because of urgency?

22 THE WITNESS: Yes.

23 But--in the way you say it, I would say "yes".

24 COMMISSIONER HICKINBOTTOM: Yes.

25 THE WITNESS: The way it's written, I can't accept it.

1 Because when you read the criticism on the whole, it gives a  
2 particular--a different tenor and tone from what you have just  
3 said.

4 COMMISSIONER HICKINBOTTOM: I appreciate that.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: And it's different in  
7 tenor and tone because it lacks the explanation that you have  
8 given. I mean, you have given the explanation as to why the  
9 procurement process--

10 THE WITNESS: Listen to the second part, that  
11 circumvention was intentional.

12 COMMISSIONER HICKINBOTTOM: It was.

13 THE WITNESS: And premeditated.

14 COMMISSIONER HICKINBOTTOM: It was.

15 THE WITNESS: That's not correct.

16 COMMISSIONER HICKINBOTTOM: Well, then perhaps not  
17 premeditated; I accept that.

18 THE WITNESS: That's serious over-reach--serious  
19 mental over-reach here, you know?

20 COMMISSIONER HICKINBOTTOM: But the procurement  
21 process was not seriously contemplated?

22 THE WITNESS: Well, we can't say that. I mean, what I  
23 would say, Commissioner, in relation to Phase 1, I would say I  
24 accept responsibility for Stage 1, Phase 1, by issuing the Work  
25 Orders.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: I have not shied away from that.

3 And I said to you that I think somebody needs to  
4 inspect or develop in relation to what the Auditor General said  
5 because there is no 60 feet.

6 COMMISSIONER HICKINBOTTOM: I'm sorry?

7 THE WITNESS: There is no 60 feet space in Phase 1. I  
8 don't know where that came from.

9 COMMISSIONER HICKINBOTTOM: I'm sorry. To get the  
10 Report right, it doesn't say there is a 6 feet gap. What she  
11 says is the plan was for 180-foot wall, it ended up as a  
12 120-foot wall. What is at the other end of the wall is a fence.

13 THE WITNESS: That's not true, either.

14 COMMISSIONER HICKINBOTTOM: But it is true, isn't it?  
15 There is a 120-foot wall now.

16 THE WITNESS: Wherever the wall was removed, wherever  
17 the fence was removed, the wall was replaced.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 THE WITNESS: Entirely.

20 COMMISSIONER HICKINBOTTOM: 120 feet.

21 THE WITNESS: If it's 180 and it's scaled back to 120,  
22 then where is the extra 60 feet is?

23 COMMISSIONER HICKINBOTTOM: That's fence.

24 THE WITNESS: You probably have to see for yourself.

25 COMMISSIONER HICKINBOTTOM: We have been through that,



1 but I absolutely understand that point.

2 THE WITNESS: In relation to Phase 2, that was  
3 considered by Cabinet.

4 COMMISSIONER HICKINBOTTOM: I know that.

5 THE WITNESS: So, to say the Ministry intentionally  
6 and premeditated went around the procurement process, it's  
7 false. Based on the evidence alone, the Minister, in his own  
8 right, can't approve any project. The Project went to Cabinet.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: And whether or not the Minister had any  
11 premeditation is absolutely irrelevant to the point because he  
12 could premeditate whatever he wants.

13 COMMISSIONER HICKINBOTTOM: You say whatever happened  
14 with you and your Ministry, it was washed clean by the Cabinet  
15 Decision?

16 THE WITNESS: Yes. Cabinet approved it.

17 COMMISSIONER HICKINBOTTOM: And I don't want to stop  
18 Mr Rawat asking any questions he wants to ask, but your response  
19 to one you have already given, haven't you?

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat.

22 MR RAWAT: Yes--no, I think that's right.

23 THE WITNESS: I have given it, and I have indicated  
24 the reason for the decisions--again, the letters were given to  
25 the principal and what gave rise to the urgency of the situation

1 in my opinion. And whether this contract was in 2013 or 2012, I  
2 would have been putting forward for it to be done because that  
3 was something that would have rested on my conscious if somebody  
4 got injured at that school and I knew that the Principal wrote  
5 to me repeatedly to it.

6 BY MR RAWAT:

7 Q. You read out the correspondence that you have attached  
8 to your written response, and as you explained, the point you  
9 make is that the steps you took were justified on the basis of  
10 urgency.

11 Now, there were other--were there any other steps that  
12 you took at that time to improve security at the school?

13 A. There were a number of--if you read through the  
14 letters of the Principal, you would see there were a number of  
15 things that she does--that she did.

16 Q. No, but that you took.

17 A. No, I wouldn't take--the Principal had the authority  
18 to do best she could have done under the circumstances, and I  
19 know she wouldn't have come to us unless the matter was out of  
20 our hands now.

21 The Police was called repeatedly. I remember speaking  
22 to the Police Commissioner on several occasions about this  
23 delay--the school campus. The Commissioner, in one of the  
24 letters, indicated that the Police don't have the manpower to  
25 keep coming to the campus every time you call, and we're calling

1 about fights, we're calling about marijuana. We had come up  
2 with a system of putting some patrol officers, internal patrol  
3 officers.

4 COMMISSIONER HICKINBOTTOM: They have been there since  
5 2001?

6 THE WITNESS: Yes, and it stopped for a while, and  
7 this new principal, when she came in, had implemented it again.

8 BY MR RAWAT:

9 Q. The reason that the Commissioner mentions that is  
10 because we heard evidence recently from Dr Drexel Glasgow about  
11 the history of the security at the school.

12 A. Then perhaps one should be on trial is why wasn't it  
13 done before?

14 Q. Well, the--

15 A. Because if you have all that information, know that  
16 this stuff comes to me directly. As a Minister properly  
17 carrying out my duty, I can't sit on my hands and say, "Oh, the  
18 election is coming in a year-and-a-half". I can't do that.  
19 What if somebody gets killed in a year-and-a-half?

20 Q. The--if I just take this in two stages, in relation to  
21 Dr Glasgow's evidence, what he said was that, by, I think--well,  
22 from 2001, there was some form of security on the site. By, I  
23 think from memory, it's about 2008, you had both security at the  
24 gates in what we will called "block cordons", internal security  
25 guards, and there came a point where that was being provided by

1 just one company, All Security.

2 And in terms of the spend which was coming out of the  
3 Ministry of Education's budget, in December 2014, it was just  
4 over \$350,000 in security, and in 2015 it was again just about  
5 \$364,000.

6 Now, the--obviously, that's a significant cost to the  
7 Ministry, but what was recommended and what was behind my  
8 question, what was recommended by Police security assessment,  
9 which is part of the material that went to Cabinet, was the  
10 repairing or replacing of CCTV cameras that monitoring and  
11 recording cameras undertaken by security officers rather than  
12 teachers, introducing permanent metal detectors and scanners.  
13 There were a number of other things, including giving power to  
14 security staff to able to restrain disruptive students and  
15 powers to search.

16 Parallel to what you were doing in relation to the  
17 wall, which we've spent a good part of the day talking about,  
18 were you taking any other steps in relation to other  
19 recommendations?

20 A. There were other steps because, for instance, security  
21 cameras, you wouldn't be able to properly mount those security  
22 cameras on the perimeter of the campus. We're not having a wall  
23 from which you could erect them from.

24 As I say, taken as a whole, because there were a  
25 number of things we were going to do with that site, dividing

1 the junior section into the senior section because a lot of the  
2 older folks were preying on the younger children, and they  
3 wanted to be able to differentiate between the two areas, have  
4 the juniors on one side, have the seniors on another, because  
5 that was also part of the issue.

6 Yes, we highlighted marijuana and different things,  
7 but there were other issues as well that were going on at the  
8 time of the campus.

9 Q. Just to go back to what the Police recommended, you  
10 said you need a wall to mount CCTV cameras?

11 A. That was the plan. They were going to mount the wall  
12 with CCTV cameras.

13 Q. Were the CCTV cameras in the site itself?

14 A. If there were? I don't think--I'm not sure if there  
15 were. They may have been, but if they were, they were  
16 insufficient. There were, but they were very insufficient.

17 Q. Did you replace the steps to repair and replace those  
18 one within the site in 2015?

19 A. I think the ones we had were the best that we could  
20 have had at the time basad on the locations, but we did it to  
21 expand it. And the biggest issue was, really, once we secured  
22 the perimeter of the school, we think we would have had the  
23 problem at least 75 percent under control because part of the  
24 problem was stuff getting into the campus and intruders coming  
25 in. Once we were able to get that out of the way, I think about

1 75 percent of the problem would have been solved. Once we would  
2 have developed, as I say, if we're going to do with additional  
3 monies that we requested, so that at least the main gates coming  
4 into the school would have been at the front, you wouldn't have  
5 been able to get in unless--and that's why the wall went as high  
6 as 10 feet because then you would have to do some serious  
7 scaling to get to the top of the wall.

8 Q. Did you introduce permanent metal detectors and  
9 scanners at entrances and exits introduce?

10 A. No.

11 Q. They were there?

12 A. Yes.

13 Q. But it seems to me that, in 2015 nor '14, they were  
14 not? Was there a recommendation to introduce them? Did you  
15 introduce them?

16 A. Metal detectors were being used at the schools. They  
17 were there before, and at one point we were having a lot of  
18 fights and so on. I think the Principal asked security officers  
19 to bring them back.

20 Q. So, that bit of the Police's security assessment is  
21 wrong?

22 A. I haven't seen--I haven't seen that report you're  
23 reading from.

24 Q. It's at 160.

25 A. Page 160?

1           Metal detectors and scanners were being used. They  
2 were being used before I came there as Minister.

3           Q. I mean, the report--I mean, it's easy to read at 160,  
4 but it's also--it was attached to the draft Cabinet Paper.

5           A. Okay.

6           Q. But if we look at it at 160, there seems to be  
7 recommendations being made as to steps to take. The  
8 recommendation that was made in relation to fencing was one that  
9 you didn't accept because they--the Police recommended mesh  
10 wire, and you wanted to go for a block--

11          A. I don't know how they recommended, having regards to  
12 the fact that the marijuana was being passed through the mesh.

13          Q. In terms of--in terms of sort of other--leave the  
14 steps that the Police recommended. Did you, in 2015, take any  
15 of those steps? We have dealt with CCTV cameras.

16          A. Yes. Recording of cameras taken, that was being done.

17          Q. Permanent sections you say were always there?

18          A. Yes, they were there.

19          Q. Hours of security staff?

20          A. To restrain unruly--no, that related to some of the  
21 issues that we had.

22                   And a lot of the security officers were women, so  
23 that's not something we would have done.

24                   COMMISSIONER HICKINBOTTOM: But the bedrock--there was  
25 an issue with security at the school--there isn't any doubt

1 about that--and this sort of bedrock, the foundation of your  
2 policy to deal with it was to put a wall around it.

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: There were other things--

5 THE WITNESS: That was the strongest recommendation  
6 coming from the school.

7 COMMISSIONER HICKINBOTTOM: And that's what you  
8 decided?

9 THE WITNESS: That's what we decided because about  
10 75 percent of the problems would have been eliminated by simply  
11 doing that, because the problem was not just what all was  
12 happening within the school with students. It had to do also  
13 with people coming on the school campus.

14 COMMISSIONER HICKINBOTTOM: No, I understand that.  
15 That's clear from the letters.

16 THE WITNESS: Yeah.

17 BY MR RAWAT:

18 Q. And that was--that 75 percent, was that your  
19 assessment, or was that based on any evidence--

20 A. That's just my assessment, and I believe I'm right.

21 COMMISSIONER HICKINBOTTOM: In your view, it would  
22 have resolved a lot of the problems?

23 THE WITNESS: Significantly, yes.

24 BY MR RAWAT:

25 Q. Could we go, then, to criticism 8, which is at



1 page 14, which is that the Minister or Ministry failed to  
2 maintain oversight and control of the Project with the result  
3 that there was a significant and unjustifiable compounded  
4 overspend.

5 Now, your response to that, if I summarise it, comes  
6 to this: That it's not for a Minister to maintain oversight.  
7 That's what the technical folk are for, and that includes, you  
8 say, the External Consultant. And you also say that  
9 Cabinet--you say it's important to note that Cabinet asked for  
10 the Ministry of Finance Project Unit to assist with the  
11 management of the Project, and that unit falls under the  
12 Ministry of Finance, and so the Ministry of Financing being  
13 requested to work out the details of the project would include  
14 ensuring the management assisted by the Project Support Unit.

15 I think to be absolutely clear, if we go to look at  
16 the draft that went to--if we go to 115, please.

17 A. 115?

18 Q. Yeah.

19 That's the draft paper. We looked at it a number of  
20 times, but if we look at (c), approval be granted to execute the  
21 Project utilizing Petty Contracts, and that the Ministry of  
22 Finance Project Support Unit assist the Ministry of Education  
23 and Culture with the management of this Project.

24 A. Yes.

25 Q. So, it would seem that, even before the paper reached

1 the Ministry of Finance, it was within the contemplation of the  
2 Ministry of Education that the Project Management Unit would be  
3 involved?

4 A. Yes.

5 Q. Can you help--you may not be able to, but can you help  
6 the Commissioner at all with what the thinking was within the  
7 Ministry about involving the Project Management Unit?

8 A. I'm not sure, but if I was to hazard a guess, I think  
9 it would have been for additional oversight and assistance given  
10 the size of it. But, from my memory, at that time, the unit was  
11 at very embryonic stages, very, very early. I think it was just  
12 getting its footing. And I think that--I'm not sure when  
13 Dr Glasgow would have come to it, but I would have come to that  
14 Ministry I believe it would have been around 2014 itself.

15 Q. February 2014?

16 A. Yes.

17 So, the unit was not really that much up and running,  
18 but we would have been happy for the assistance because it was a  
19 big project.

20 Q. It was Dr Glasgow who gave evidence to the  
21 Commissioner corrected the name of the unit because he explained  
22 it was the Projects Unit rather than I think Project Management  
23 Unit was not what it's called, but he said that when he joined  
24 in 2014 it was already an established unit.

25 A. It wasn't. From my knowledge, it wasn't. It didn't

1 have its--it didn't have its--I think Ms Stevens tried her best  
2 in her evidence to explain--I think she's bearing me out--I'm  
3 bearing her out as well.

4 Q. Yeah. I mean, her evidence, Mr Walwyn, was that they  
5 were we not doing what they could do now.

6 A. Yeah, they couldn't do certain things because they  
7 didn't have the authority to do certain things. So, I think it  
8 was an embryonic idea, and they didn't have any footing to do  
9 anything, really. And by the time this Project came off, they  
10 weren't anywhere closer because if he came to the Project--if he  
11 came to the Ministry in February, to the unit in February, this  
12 Project probably would have probably started by February--before  
13 February because the Cabinet Paper came in January, so you can  
14 see the point that we're making in terms of--

15 Q. He came in February 2014, so he was there a year  
16 before--

17 A. A year before. Well, something along the lines that  
18 wasn't fully up and running at the time.

19 Q. So, your recollection of what we call the Project Unit  
20 in 2015 was it was not--it was still in its early stages?

21 A. Yes, it wasn't full--it wasn't fully functional at the  
22 time.

23 Q. But I think from the evidence we got--if I take it  
24 shortly--first, you did have an overspend on this Project,  
25 didn't you?

1           A.    They also have a spend for the Ministry, yes.

2           Q.    I mean, you have--and we don't need to go over it  
3 again, but you have explained, because you presented a number of  
4 alternative estimates on the last occasion that you attended,  
5 and you explained--and it's on the Transcript about which you  
6 considered to be what can legitimately be described as the  
7 overspend and what that could be attributed to.

8           A.    I had to do it, yes, in terms of the fact that was  
9 broken down into two different contracts that I know now. I'm  
10 sure there are other things that would have added to that, but  
11 some of the things, again because they are of a technical  
12 nature, I don't think I would be able to assist you.

13          Q.    Your point at the time, you did not appreciate that  
14 using, for example, Work Orders or Petty Contracts would have an  
15 impact on the costs--on the budget?

16          A.    I didn't think I appreciated anybody else in the  
17 system appreciated that either because if I had appreciated  
18 that, that change would have been made even at the Cabinet level  
19 as well.

20          Q.    Ms Stevens's evidence was that, during the course of  
21 the Project she would have updated you verbally and in writing.  
22 Is that your recollection?

23          A.    I wouldn't say "writing". Very seldom wrote like  
24 that. She would have updated me, I imagine, verbally on some  
25 the things. If we operate, if you have a challenge, let me know

1 you have a challenge. If it's a problem you can solve, it's  
2 your job to solve it. If you need me, then you come to me.  
3 That's the way I operated.

4 Q. You--I mean, your point is that you--without being  
5 specific, it wasn't your role as a Minister to get involved in  
6 the minutiae of the Project?

7 A. I don't think it was my role to get down to that, when  
8 you have senior officers to carry out their responsibilities.

9 Q. And how did you expect to be updated as to the  
10 progress or the use of a budget, if you got 828,000 dedicated to  
11 a project? At what point would you have expected to be told  
12 it's going to go over?

13 A. I would imagine, if you are running into challenges  
14 that you could not solve, that you come to me.

15 The thing is, as I indicated before, if 828 was the  
16 figure that was approved by Cabinet and you were able to spend a  
17 little under a million dollars outside of that, then something  
18 would have had to happen in between that time. For instance, I  
19 see in the Auditor General's Report she mentioned a discretion  
20 that you have--the Finance Officer has, I think, to overspend by  
21 a certain amount, that was a figure that she alluded to, I  
22 think, in her Report.

23 So, if there was an issue where they were stopped  
24 somewhere financial-wise, I imagine they would have come and  
25 told me about it.

1 Q. As you understand it, within the lay-by at the back  
2 gate was within the contingency--

3 A. Yes.

4 Q. --828?

5 A. That's what I was referring to the content.

6 Q. Yes.

7 So, that was incorporated within the 828?

8 A. I used that only as an example.

9 Q. But once money has to be--once money--let's say you  
10 actually are hitting the 900 mark, so internally money has to be  
11 moved around within the Ministry?

12 A. It--it would have to have been.

13 Q. But it's at the points when someone should be knocking  
14 on your door saying, "Minister, it's going over budget", or  
15 should you be notified of it at an earlier stage?

16 A. As I said, Commissioner, I'm not sure what happened  
17 because it's almost a decade ago.

18 COMMISSIONER HICKINBOTTOM: I know, but as soon as the  
19 first contract went out, the person sending out that contract  
20 who'd looked at the contract price would know that the 828 was  
21 simply not going to happen.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: Because each contract was  
24 for a lot more money per segment than the 828. I appreciate  
25 that you didn't know about that, but you wouldn't have to wait

1 until 827,000 had been spent before you knew that this was going  
2 to overrun.

3 THE WITNESS: But then the overrun, as I said--I said  
4 the overrun is about 175, which would include the contingency of  
5 75,000 for the lay-by that was accounted for.

6 The 250 additional sum, as I indicated, in my memory,  
7 that is for additional works, and we have to relook to  
8 see--well, it would have to have been done by paperwork. I want  
9 to encourage you to take a look at what it actually says  
10 because, to the best of my knowledge, that was to do additional  
11 works in terms of doing another lay-by in the front and also  
12 building up the security section for entrance to the school.

13 So, I mean, I don't have--the funny thing about it is  
14 that I'm no longer Minister, so I don't have access to this  
15 stuff; right? So I have to rely--

16 COMMISSIONER HICKINBOTTOM: We have been through this,  
17 but the Auditor General identified through the paperwork that  
18 the 250,000--

19 THE WITNESS: It will be helpful to look at the  
20 paperwork.

21 COMMISSIONER HICKINBOTTOM: Was to complete the wall  
22 and rails.

23 THE WITNESS: I understand what you're saying,  
24 Commissioner, but the Auditor General is a just one--is a human  
25 being like myself; right?

1           COMMISSIONER HICKINBOTTOM: But a human being that has  
2 looked at the documents.

3           THE WITNESS: But somebody has to see what she looked  
4 at.

5           COMMISSIONER HICKINBOTTOM: Okay.

6           THE WITNESS: That's important, I think. Because my  
7 recollection is--it's slightly different from that.

8           BY MR RAWAT:

9           Q. The--I think what I would like to do is just read into  
10 the record, Mr Walwyn, the final comment you make in relation to  
11 the Wall Project, and it's this: "The only interest that I had  
12 as Minister was to ensure the safety and security for teachers  
13 and students at Elmore Stoutt High School. The last thing that  
14 I wanted to happen was for someone to be seriously injured or  
15 even killed on that school campus when the school principal  
16 repeatedly wrote to the Ministry about the safety issues. That  
17 would have been a serious indictment on the Ministry, and it  
18 would have been a well-deserved one".

19          A. Yes.

20          Q. And I think, in fairness to you, that that is your  
21 point, is that both in relation to Phase 1 and in relation to  
22 Phase 2, as the then-Minister for Education and Culture, your  
23 motivation was the concerns that were being raised to you by the  
24 Principal of the school?

25          A. Only motivation.



1 Q. Could I just ask this, then: If you needed to acted  
2 with urgency and Phase 1 was completed within a month--we will  
3 get into how long the wall was supposed to be and how long it  
4 ended up to be--Phase 2, as you have explained in terms of the  
5 clinical wall was to be completed within--by the end of that  
6 year at the latest. It was going to be done with--what was the  
7 benefit of doing Phase 2 when you do Phase 1 by using a  
8 significant number of Work Orders?

9 A. Cost benefit of--

10 Q. Yes.

11 How did you achieve--how did you better achieve your  
12 goal of acting with urgency by issuing 11 Work Orders for  
13 Phase 1 and 64 for Phase 2?

14 A. I'm not sure that's--I'm not sure how to answer or to  
15 answer that question in terms of urgency. I mean, the more  
16 hands we have on the Project I see at one time the quicker  
17 things--things move along. I don't think that there is anything  
18 at least before me or based on my knowledge that suggests if you  
19 had one contractor and he had 11 persons working on it, that it  
20 would have moved any faster than if you had 11 Work Orders. I  
21 think it's just a matter of how you have to work, construct it  
22 and planning and so on that has to move the work faster along.

23 COMMISSIONER HICKINBOTTOM: We don't know because  
24 there was no assessment, but I would have thought that purely in  
25 terms of oversight, set-up costs, et cetera, that having, I

1 think it was, 69 contractors building one wall may not possibly  
2 have been the optimal way of doing it in terms of speed or  
3 costs.

4 THE WITNESS: I tend to disagree because if you  
5 give--and this is again based on the nature of how things--I  
6 mean, granted different parts of the world it's a little  
7 different, but what I have noticed here is that if you give  
8 somebody a contract to do and you say this is the value of the  
9 contract, and that's perhaps one of the reasons why the  
10 petty-contract system came up as well, is that people will work  
11 day and night to get that work done. If you--if you do it--if  
12 it's done in the normal course of contracts with one contractor  
13 and he has his workmen, they work from 7:00 in the morning until  
14 probably 3:00 in the afternoon. If you gave that same job to  
15 petty contractors, they work from 7:00 in the morning until  
16 12:00 at night because their thinking is to get this work done  
17 as quickly as I possibly can get it down so that way I can hold  
18 on to much more of the money.

19 So, if this is 75,000 and it can take those guys three  
20 days to get that \$7,000 to work around the clock, they will work  
21 around the clock to get that done. It might take--it might take  
22 a regular contractor who works on a regular 7:00 to 3:00 shift  
23 with workmen probably twice or three times in that time to get  
24 it done.

25 So, in my experience on what I have seen, given all

1 the contracts that we get the work done quicker, the key is to  
2 make sure there is good oversight. That is the key. If you can  
3 get the oversight right--and we did have the oversight because  
4 I--again, I learned lately I didn't know because before when you  
5 were asking me earlier on in the first time I came, there--I  
6 didn't know Public Works came to the site. I only learned that  
7 subsequently, that when they had to tie the steel and  
8 everything, Public Works came, and Public Works came at  
9 different times throughout the building of the wall to make sure  
10 things were going well. So, we did have the oversight not only  
11 of the External Project Manager, Public Works also came and did  
12 oversight of the work at the wall, and so did--based on the  
13 evidence are Ms Stevens, there was about two or three visits  
14 from Mr Drexel Glasgow, Dr Glasgow, from the Planning Unit.

15 But yes, I think the other way around is faster from  
16 what I have seen here in BVI.

17 COMMISSIONER HICKINBOTTOM: But there is no  
18 assessment, and as you say, you're not a technical person.

19 THE WITNESS: I'm not a technical person. This is how  
20 I have seen it, but even personally as well.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 BY MR RAWAT:

23 Q. The point is the two may not be mutually exclusive.  
24 You could--on the evidence you have given, you could intend to  
25 fulfill a project to satisfy the need for urgency and also

1 achieve the desire to have as many people getting work as  
2 possible.

3 A. I wouldn't say to get as many people to have work as  
4 possible.

5 Q. That was badly phrased.

6 Earlier, you said that one--and you said this on the  
7 last occasion, you said it's a benefit--

8 A. Tried to get.

9 (Overlapping speakers.)

10 Q. I will start this way.

11 Can I borrow your term, Mr Walwyn, and that is a  
12 policy to get as many people to participate in the Project as  
13 possible?

14 A. Reasonably possible, yes.

15 Q. Now, that is not mutually exclusive from a desire to  
16 get something done quickly, so you could have--in this case, you  
17 could have moved with urgency whilst also using the authority  
18 that was given to you by Cabinet to get as many people to  
19 participate as reasonably possible? And was that something that  
20 you considered in January 2015 when you--or February 2015 when  
21 you began to choose who would get what contracts?

22 A. At that time, I was only carrying out the wishes of  
23 the Cabinet, but certainly in terms of speed, I would say that I  
24 don't believe that we would have gotten it that quickly done if  
25 we had just given it to one contractor, given my general

1 knowledge of what I just explained to you. I have seen it  
2 happen over and over again that you get more manpower, you get  
3 more man time, and the work is done quicker because people want  
4 to hold onto as much of that money as they possibly can. And  
5 so, if they can do the work in three days and get it done  
6 properly, of course with the oversight and getting certificates  
7 and so on in terms of getting the Project done quicker, it  
8 has--that has been something that I've noticed is a benefit.

9 COMMISSIONER HICKINBOTTOM: But that wasn't the driver  
10 behind--

11 THE WITNESS: No, it wasn't certainly the driver. The  
12 driver behind it, of course, was still the Cabinet. If the  
13 Cabinet had said it would be by Petty Contracts, it would have  
14 been done by Petty Contracts.

15 BY MR RAWAT:

16 Q. Thank you.

17 MR RAWAT: Commissioner, I believe I have reached the  
18 end of my questions. Might I finish finally by thanking  
19 Mr Walwyn for coming today and for the time that he has given to  
20 the Commission today but also for the way in which he has given  
21 his evidence today.

22 COMMISSIONER HICKINBOTTOM: Thank you, Mr Walwyn.  
23 Thank you for your time and your patience with us.

24 THE WITNESS: No problem.

25 COMMISSIONER HICKINBOTTOM: And thank you for your

1 evidence.

2 THE WITNESS: No problem.

3 COMMISSIONER HICKINBOTTOM: It's been very useful.

4 Yes.

5 MR RAWAT: We'll have another witness tomorrow at  
6 10:00.

7 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

8 (Witness steps down.)

9 (End at 5:01 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, appearing to read "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN