

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 37

(TUESDAY 21 SEPTEMBER 2021)

International Arbitration Centre
3rd 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 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.

Honourable Neville Smith gave evidence.

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Those present:

Session 1 & 2

Ms Lauren Peaty, Withers LLP (attending remotely)

Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Honourable Neville Smith

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

Session 3

Ms Lauren Peaty, Withers LLP (attending remotely)

Sir Geoffrey Cox QC, Withers LLP (attending remotely)

Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Honourable Neville Smith

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Andrew King, Senior 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

Sessions 1 & 2

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3 COMMISSIONER HICKINBOTTOM: Good. I think we're ready
4 to begin.

5 Good morning, everyone. Could I just raise two short
6 matters before we start the evidence.

7 First, Ms Peaty, we've had a request overnight--I
8 think it came in just before 5:00 this morning--for an extension
9 of time in relation to three Warning Letters on the topic of
10 Belongership. Just to put this into context, the COI made a
11 request for an Affidavit and disclosure on the topic of
12 Belongership on the 29th of July. That request was made to the
13 relevant Minister, The Honourable Vincent Wheatley, and it
14 requested that information by the 12th of August.

15 In fact, an Affidavit was provided by Mr Abbott-Smith,
16 the Permanent Secretary, on the 26th of August. An unsworn
17 draft had been provided a couple of days earlier.

18 The same day we wrote back to the IRU saying that the
19 Affidavit and disclosure were patently inadequate, and I
20 directed a new Affidavit to be prepared and lodged. That was
21 lodged on the 10th of September. Warning Letters went out on
22 the subject on the basis of the analysis such as we were able to
23 do it in the short period of time. Letters were sent to the
24 Premier, the Minister, and the Cabinet on the 15th and 16th of
25 September, asking for written responses by the 22nd and 23rd of

1 September, respectively, with a date for oral evidence for the
2 Minister of the 28th of September.

3 Ms Peaty, as you know, we received a letter at 5:00
4 this morning asking for a week's extension to that time.

5 Now, the position, Ms Peaty, as you know with regard
6 to the Premier, because the Premier won't be in the Territory,
7 and he kindly let us know that very quickly, we have rescheduled
8 his appearances, including his appearance in relation to this
9 topic, and they have been put off by a few days, and there will
10 be no problem with his written responses coming in by the date
11 you suggest, which is the 28th of September.

12 However, as you know, the Minister is due to give
13 evidence on the 28th of September, and it will be unhelpful if
14 his written response, as you suggest, comes in after he's given
15 his oral evidence. So I'm afraid, in respect of his request, we
16 simply cannot give him until the 28th. His request--in fact,
17 all of the requests in relation to this topic, are very narrow,
18 very short requests. He has one request in relation to one
19 policy, and it's a matter which really should not take him, with
20 the support of the IRU, very long to respond to.

21 So, Ms Peaty, I'm going to give him until 12:00 noon
22 this Friday to put in his response. That will give me and,
23 indeed, counsel to the Inquiry very little time to prepare, but
24 we will be prepared in time for the Minister to give his
25 evidence on Tuesday. Is that all right?

1 MS PEATY: Well, Commissioner, if I may--and you may
2 have already considered this, having considered, including with
3 legal counsel this morning, we wondered if the better course or
4 the fairer course would to be deal with the Minister's hearing
5 also around the same time as the Premier's hearing, so that we
6 are able to produce a better response, which is more helpful to
7 the COI because we realize that you're working to very tight
8 deadlines, but these events do go back some years, and the
9 recollections of Ministers and people involved have inevitably
10 faded, and they need to look at the documents.

11 COMMISSIONER HICKINBOTTOM: But in relation to this
12 Minister, the criticism goes to one policy. Some witnesses--I'm
13 not sure whether this included the Minister--it may have
14 done--this Minister, but some Ministers have already answered
15 the point that's raised in the criticism in relation to a
16 policy, which, on the face of it, is not consistent with the
17 statute. That's the only point. It really is a very narrow
18 point.

19 And the problem with, as you say, putting this off so
20 that the Minister's evidence can be dealt with at the same time
21 as the Premier's evidence, is lack of time. We have two days,
22 which we've notified the Premier about to take his evidence, and
23 we really want to make sure that we give the Premier a proper
24 length of time in which to give his evidence, and I don't think
25 it would be fair to him--and certainly not fair to us--to try

1 and restrict that in some way by having the Minister called on
2 the same day.

3 So, I see nothing unreasonable about asking the
4 Minister to respond to this point and give his evidence next
5 Tuesday, Ms Peaty.

6 MS PEATY: I understand, Commissioner.

7 And I'm grateful, Commissioner, also for the extension
8 for the Premier's--for the Premier's response. We will do
9 our--we will comply with the Friday deadline, and we will do our
10 best to put in the responses that can be most helpful to the
11 COI.

12 Inevitably with the Ministers, all of them in House of
13 Assembly and Cabinet today, it may be that they don't have quite
14 the full and fair opportunity to respond as fully as they would
15 like, so just to put that marker down.

16 COMMISSIONER HICKINBOTTOM: Ms Peaty, I understand
17 that both the House and the Cabinet are busy this week--I
18 understand that--and you've set out the timetable. We know from
19 Ministers that they delegate these responses to their officials,
20 and so I'm quite sure that the officials in relation to this
21 have been busy working on a response to this request, as I know
22 that they have been busy working on other things.

23 As I say, it's a narrow point. Friday should give the
24 Minister adequate time to look at the response which is being
25 prepared by, no doubt, by his officials, take any advice from

1 you that he wishes to and put in the response. It would be
2 helpful if the response is as full as it can be because the
3 Minister's giving evidence on Tuesday, and it will help us and
4 it will help him if the response is a full one.

5 Good.

6 MS PEATY: Yes, Commissioner.

7 If I may, just a separate matter--and it may be that
8 you're about to come on to this--we've had some e-mails with
9 your team about whether you will require oral submissions on
10 Sections 66 and 67 of the Constitution this afternoon, and I
11 just wondered if there was any decision yet on whether those
12 might be required, just for our own scheduling reasons here.

13 COMMISSIONER HICKINBOTTOM: Thank you very much,
14 Ms Peaty. A fair point.

15 I will ask Mr Rawat to make any observations he wants
16 to make. I would have thought we needed to hear the evidence
17 first.

18 The written submissions were very helpful, and I don't
19 say that lightly, as it were. They were very helpful. And it's
20 possible, Ms Peaty, that they will have covered everything that
21 we will need to cover, but I would just like--and I know it's
22 not perfect, but I would like, subject to anything that Mr Rawat
23 says, just to reserve the position until lunchtime, just to see
24 how matters go.

25 Mr Rawat, do you want to add anything to that?

1 MR RAWAT: I would agree with what you just said,
2 Commissioner. I think we do need to go through The Honourable
3 Smith's evidence first and then we can take a view.

4 (Overlapping speakers.)

5 MS PEATY: It's certainly all right, thank you.

6 May I just suggest if we can have a little bit of
7 notice, because I think it will be Sir Geoffrey who would be
8 giving those oral submissions and so we would need to request Mr
9 Chandler to try to link in or get him down to the Centre or
10 whatever. I hope that doesn't disrupt the proceedings to much
11 if we need a little bit of notice.

12 COMMISSIONER HICKINBOTTOM: That's a fair request,
13 Ms Peaty. We will do that. We will make sure that you have
14 enough notice, and it may well be that, as I say, it may be that
15 we won't need any oral submissions, and if we do, it may be that
16 we can make them very pointed, very focused, but thank you for
17 raising that.

18 MR FLIGELSTONE DAVIES: If I may, Commissioner, I
19 would also probably have either some further submissions or I
20 would like to make, whether it's oral or written, it will be a
21 matter for the Commission, but I would also like to make some
22 further submissions with respect to your request that was for
23 further submissions.

24 COMMISSIONER HICKINBOTTOM: Mr Fligelstone Davies,
25 we've got your oral submissions.

1 MR FLIGELSTONE DAVIES: Written.

2 COMMISSIONER HICKINBOTTOM: Sorry, your written
3 submissions.

4 What I was going to do is simply leave it until the
5 end of the evidence and then see whether the written submissions
6 that we've had leave any holes.

7 MR FLIGELSTONE DAVIES: Well, there are some further
8 parts that I would like to add to it. I've seen I was away at
9 the time these submissions were made, and I have reviewed them,
10 and I thought that perhaps it will be helpful for an additional
11 point of view to be given to the Commission as to how certain
12 things can be interpreted.

13 COMMISSIONER HICKINBOTTOM: Okay. What I will do is
14 let's hear the evidence and see where we are Mr Fligelstone
15 Davies, but don't let me forget that, and we will come back to
16 it.

17 MR FLIGELSTONE DAVIES: Grateful.

18 COMMISSIONER HICKINBOTTOM: I'm sorry, the other thing
19 I wanted to do is just to apologize to the witness, first, for
20 the delay this morning. I'm sorry, it was just something which
21 cropped up, but thank you for being patient with us.

22 THE WITNESS: No problem.

23 COMMISSIONER HICKINBOTTOM: And thank you for your
24 time.

25 THE WITNESS: Thank you.

1 COMMISSIONER HICKINBOTTOM: Mr Rawat.

2 MR RAWAT: Thank you, Commissioner.

3 Our witness today is The Honourable Neville Smith.

4 BY MR RAWAT:

5 Q. Honourable Smith, can I join in the Commissioner's
6 apologies for the delay that you have experienced today.

7 A. Thank you.

8 Q. But all said, thank you for returning to give further
9 evidence to the Commission.

10 I think you've given evidence once before some time
11 ago. On that occasion, you made an affirmation. You don't need
12 to take an oath or an affirmation again. You are still bound by
13 that previous affirmation.

14 Could I ask you just to remember to keep your voice up
15 and to speak slowly. The microphone that you see in front of
16 you will not amplify. So, if anything, I'd suggest that you
17 pull it a little closer to you.

18 The reason I make that request, of course, is we have
19 a remote Stenographer. It's important that the evidence that
20 you give today is accurately and clearly recorded.

21 One thing that both you and I will have to try and
22 avoid is speaking over each other. And if that happens, leave
23 it to me, and I will stop and allow you to finish your answer.

24 A. No problem.

25 Q. You will have on your left the Hearing Bundle, which

1 has previously been sent to you. It's in two parts, and we will
2 go to those as we go through your evidence.

3 You should also have on the desk with you some
4 additional loose documents, firstly a letter that was sent to
5 you there, but then also--and I think you brought your own--a
6 copy of a response that you have provided to the Commissioner.

7 A. Yes, I did.

8 Q. What you will see towards the far end, I think, are
9 copies of two resolutions from 2019, which you will be familiar
10 with. They were not in the bundle, but we've brought
11 them--something that we've discussed on the last time that you
12 came to give evidence. But in case it comes up again, they're
13 there for you.

14 Now, you will remember that you gave evidence to the
15 Commissioner on the 15th of June, earlier this year, and you
16 were asked then questions about the various business interests
17 that you had declared to the Registrar of Interests, and you had
18 by that date completed and submitted three Declarations of
19 Interests; that's right, isn't it?

20 A. Right.

21 Q. And that was for the three years that you had been a
22 Member of the House of Assembly?

23 A. Yes, Commissioner.

24 Q. Now, do you remember at that time you described
25 yourself at the Managing Director of Caribbean Security Limited?

1 A. Yes, Commissioner.

2 Q. And you also explained, didn't you, that you were also
3 the Managing Director of NS Cleaning and Imports?

4 A. Yes, Commissioner.

5 Q. I'm going to stop there, Mr Smith, because you do need
6 to keep your voice up a little more.

7 A. Okay, no problem.

8 Q. And you then confirmed that Frontline Sounds or also I
9 think sometimes described as Frontline Systems is a d/b/a of
10 which you are the sole owner?

11 A. Yes, Commissioner.

12 Q. And you then explained during the course of your
13 evidence on the 15th of June that you were the Managing Director
14 of International Construction Limited, which was a partnership
15 with Jerome McMillan?

16 A. Yes, Commissioner.

17 Q. You will remember also the trade licence company
18 called NNL Charter?

19 A. Yes, Commissioner.

20 Q. And you also had another d/b/a called NS Water
21 Services, and also a mixed d/b/a as well. I've forgotten the
22 name of the mixed d/b/a but I will remind myself of that in a
23 moment.

24 It's NS--yes, NS Water Services is the mixed d/b/a, I
25 understand?

1 A. Right.

2 Q. Now, when you attended, you also--that was the day
3 that you provided those two resolutions that I just drew your
4 attention to, and they're number 8 of 2019 and number 9 of 2019,
5 both of which were Gazetted on the 12th of August, and they
6 were, as you explained, in relation to two contracts that
7 Frontline Sounds, as we called it then, had entered into with
8 the Virgin Islands Festivals and Fairs Committee.

9 Now, what you also said was that because these
10 contracts with were a statutory body, it was your understanding
11 that you did not, in fact, have to seek an exemption under the
12 section 67 of the Constitution?

13 A. Yes, Commissioner.

14 Q. But you explained that you had done this--and this was
15 your word--you had done this because you wanted to be
16 transparent?

17 A. Yes, Commissioner.

18 Q. And your position on the 15th of June, from the
19 evidence you gave, was that that wish to be transparent was
20 going to be behind your decision that you would do it with every
21 contract, even if it was just for the Statutory Board?

22 A. I would not say that, Commissioner. What I said is I
23 brought it then because I was trying to be transparent, but
24 after being informed by Members and by the former AG, the
25 previous AG, that there is no need to do it, I decided I would

1 not do it anymore.

2 Q. Could we go to your evidence, please. If we go to
3 192. If you take the smaller bundle? It's page 191 in that
4 bundle.

5 A. 191?

6 Q. Yes, please.

7 Just to give you, this is part of the Transcript of
8 the 15th of June hearing, which is day 11 of the Commission's
9 proceedings, and you were the second witness of that day. Your
10 evidence begins actually in this bundle at page 132, but if you
11 just turn briefly to page 189, please.

12 A. Okay.

13 Q. You see, Honourable Smith, where at line 12, that's
14 when we started--I started asking you questions about the two
15 resolutions that you had brought that day to the Commission, and
16 we went through them, and you explained what they were for.

17 And if we go to page 191, and we go to line 8, please,
18 on 191.

19 A. I'm there.

20 Q. What I then asked you was: "So, but even though
21 because you're a director of the Company that wants to contract
22 with Government, unless you want to vacate your seat, you have
23 to get yourself exempted; is that right?"

24 And your answer was: "Correct, but can I make--can I
25 also say that Festivals and Fairs is a statutory body which I do

1 not have to bring this to the House of Assembly but I did it
2 because I want to be transparent."

3 I then asked you: "Now, that's very helpful,
4 actually, because you say it's a statutory body and, therefore,
5 you didn't have to bring it to the House of Assembly. What was
6 that based on"? And your answer was: "After speaking to the
7 past AG, I was told that statutory bodies do not have to come to
8 the House of Assembly to declare."

9 I then said: "I see."

10 And you then said: "The exemption from the past AG."

11 So I then asked: "So, if you could have as Director
12 of Frontline Systems entered into any number of contracts with
13 any number of statutory bodies and you wouldn't have had to seek
14 exemptions from the need to vacate your seat, is that what it
15 comes down to?"

16 And your answer, Honourable Smith was this: "I still
17 would have done it because I want to be transparent."

18 A. Right.

19 Q. And then I confirmed that whether it was your
20 understanding that you weren't obliged to do it, and you said
21 "correct" and I then asked: "So, you could have a contract with
22 any statutory body, you would not be obliged to disclose that to
23 the House of Assembly?"

24 And you said: "Correct".

25 Now, it would seem that even before you took the

1 decision to take the two Frontline contracts forward to a
2 Resolution, you were already aware from the previous AG that you
3 didn't actually have to do it?

4 A. Correct.

5 Q. But you made the decision to do it?

6 A. Correct.

7 Q. Now, your answer, "I still would have done it because
8 I want to be transparent", which was in response to a question
9 of well, you could have as many contracts with as many statutory
10 bodies as you like, and you wouldn't have to say a thing.

11 A. Correct.

12 Q. You said I still would have done it.

13 That suggests that your intent in June 2021 was that,
14 because it was important to be transparent, where you had a
15 contract with a statutory body, you would seek a Resolution.
16 Has that changed?

17 A. I would say it changed in a way, Commissioner, because
18 whatever I learned after I brought that contract to the House of
19 Assembly, the kind of backlash that I was given, knowing that it
20 wasn't supposed to come, I think you will see that a lot of
21 times you'll hear people talking that they shouldn't do this and
22 get it this way, so to avoid that kind of backlash, I left it
23 because it was not supposed to be the House.

24 COMMISSIONER HICKINBOTTOM: I'm sorry, backlash from
25 whom?

1 THE WITNESS: From the public because one would be
2 very judgmental, once you see somebody get a contract,
3 especially in that area, Frontline, they were saying that I
4 shouldn't have got a contract, I knew about the contract. So, I
5 avoided--for Frontline I didn't, but for others I avoided that
6 because it was--since it was not supposed to be there, why bring
7 it.

8 COMMISSIONER HICKINBOTTOM: Let me just get this
9 clear.

10 You disclosed two contracts with statutory bodies?

11 THE WITNESS: Correct.

12 COMMISSIONER HICKINBOTTOM: With Statutory Boards,
13 although you then knew because you had been advised that it
14 wasn't necessary. You did it because you wanted to be
15 transparent.

16 THE WITNESS: Correct.

17 COMMISSIONER HICKINBOTTOM: So all the advantages of
18 openness and transparency of governing.

19 As I understand it, because you were transparent, that
20 people--members of the public were concerned about these
21 contracts, that's what transparency is all about,
22 "transparency," and so you stopped being transparent?

23 THE WITNESS: Commissioner, it's not that I stopped
24 being transparent. What happened is that, you see, it is open
25 season to talk, and when you go to the House of Assembly and you

1 put this on the table and people do not know the full extent of
2 what took place, there's a lot of talk. There is a bidding
3 process in place, it goes through the same process you bid, and
4 if you win the bid, but still people will talk and say, well, he
5 knew about this, he got it this way, he got it that way. So, it
6 becomes frustrating as a businessperson to hear your name being
7 pulled in the mud when you knew you did the right thing. The
8 documents are there to be seen that it was transparent. I took
9 steps that it was transparent.

10 So, when I hear other Members say why should it come
11 to the House, when I hear other Members arguing, why are you
12 bringing this to the House and it's not supposed to be in the
13 House, you're wasting the House time.

14 COMMISSIONER HICKINBOTTOM: I understand that.

15 THE WITNESS: That's what I was being told because
16 it's not supposed to come to the House, because it's not--a
17 statutory body does not bring things to the House.

18 COMMISSIONER HICKINBOTTOM: I mean, that's a different
19 point.

20 THE WITNESS: So that's why I decided at this time not
21 to bring them to the House anymore.

22 COMMISSIONER HICKINBOTTOM: Okay, I understand that.
23 Thank you.

24 BY MR RAWAT:

25 Q. Just to clarify now, Honourable Smith, you said that

1 your backlash had--or the backlash had two aspects?

2 A. Right.

3 Q. Firstly, the backlash from the public as in how did he
4 get to that contract; is that right?

5 A. Correct.

6 Q. And then a backlash from other Members of the House of
7 Assembly for wasting House of Assembly time for bringing
8 something forward?

9 A. That is not--that is not supposed to be--come to the
10 House.

11 Q. If you turn to 194, please, in the bundle. Now, if
12 you look at the top in the answer you gave there at one, and I
13 can take you back if you need it, Honourable Smith, but what you
14 explained was that Frontline Systems had been bidding for
15 festival contracts, if I can say that, for 20 years.

16 A. Correct.

17 Q. And, in fact, it's right at the top there. And you
18 say that sometimes you win the bid, sometimes you lose the bid?

19 A. Correct.

20 Q. And that you had been doing that before you had
21 political aspirations.

22 And then I asked--I asked you this--I said: "That's
23 again an important point because what you chose to do was in
24 relation to one specific contract to seek an exemption from the
25 House of Assembly, and what your advice was--and what your

1 advice was that you wouldn't actually need to do that"? And you
2 said this: "Yes, but I did, because of the atmosphere in the
3 BVI, once you're a political Member, everybody looks at you as
4 corrupt somewhat, so I decided to avoid any sort of confusion,
5 any talk, let me just be transparent with it and get it out, and
6 that's why I did it".

7 Now, you took that step, you said then, to avoid
8 confusion and talk, but by now deciding that, in future, you
9 will not seek exemption on Statutory Board contracts, are you
10 not feeding the confusion and feeding the talk?

11 A. Commissioner, I will say no, in a way--I would have to
12 find another way of getting it out there when I bring it to the
13 House, so it may not--I'm always open to suggestions, but by me
14 bringing something to the House that does not need to be to the
15 House, I don't want to do that anymore. But we may find other
16 means and ways of getting out there so that people can see that
17 it's transparent. I have no problem with that, so I'm always
18 open to suggestions.

19 Q. Well, if we--

20 COMMISSIONER HICKINBOTTOM: Sorry to interrupt,
21 Mr Rawat.

22 I understand that answer completely.

23 Just to go back half a step, you had advice from the
24 Attorney that it was not necessary to get exemptions from the
25 House of Assembly in relation to contracts between you or

1 associated companies and entities, on the one hand, and
2 Statutory Boards?

3 THE WITNESS: Can you please repeat that?

4 COMMISSIONER HICKINBOTTOM: You had advice from the
5 Attorney General that you don't have to disclose, you don't have
6 to get exemptions from the House in respect of contracts between
7 you and various entities in which you're involved on the one
8 hand and Statutory Boards as opposed to the Government.

9 THE WITNESS: And Statutory Boards, yes.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: And Statutory Boards.

12 COMMISSIONER HICKINBOTTOM: Sorry, this isn't really a
13 question--it's just an observation--but that is fine in a sense
14 if--if--and the Attorney's written submissions on this make this
15 very clear--the Government, on the one hand, of which the House
16 is involved--in which the House is involved, and the Statutory
17 Boards with which you're contracting, are distinct and separate,
18 and the Statutory Boards are independent and autonomous.

19 THE WITNESS: Correct.

20 COMMISSIONER HICKINBOTTOM: Because that position is
21 really only justifiable, probably, on the basis that the
22 Statutory Boards don't form part of the Government. They are
23 independent and autonomous.

24 THE WITNESS: Correct.

25 COMMISSIONER HICKINBOTTOM: That seems to me to be

1 right.

2 THE WITNESS: Correct, Commissioner.

3 And if I may add, if this was to be clearly put, maybe
4 what should happen is it should be written that Statutory Boards
5 shouldn't bring things to the House, if that's the case, if
6 there is a contract with anyone. Maybe that needs to be put in
7 just to be clear.

8 COMMISSIONER HICKINBOTTOM: I understand that.

9 THE WITNESS: Okay.

10 COMMISSIONER HICKINBOTTOM: But if the Statutory
11 Boards are truly independent and autonomous and operating
12 outside the Government and without Government--I was going to
13 say "interference", but without the Government playing a part in
14 the Boards, an operational part in the Boards, that's fine,
15 isn't it, because the Boards make their own decisions in events
16 of government.

17 THE WITNESS: Correct.

18 COMMISSIONER HICKINBOTTOM: If they can track with
19 somebody in the House, well, there you are, they're just an
20 independent legal person contracting with a Member of the House.

21 I'm just trying to see the logic behind the Attorney
22 General's advice, and it seems to me that there is a logic, if
23 the Statutory Boards are truly autonomous and independent?

24 THE WITNESS: Independent. Thank you, Commissioner.

25 COMMISSIONER HICKINBOTTOM: Yes, thank you.

1 BY MR RAWAT:

2 Q. If we turn to the two resolutions of 2019, please,
3 Honourable Smith, and those are the two sheets we got in
4 loose-leaf. So, we went through those on the last occasion, but
5 they are both resolutions--the Resolutions No 8 and No 9 of
6 2019, and as I said, Gazetted on the 12th of August 2019. But
7 they came and were passed by the House of Assembly, as we see at
8 the bottom of each page, on the 25th of July 2019.

9 Can you remember--when did you first seek those
10 Resolutions?

11 A. Commissioner, I'm not too sure when. It was a long
12 time--I know I brought it to the attention of the Speaker but
13 I'm not too sure exactly when I brought them because, once
14 again, I was in between two--did not have to come to the House
15 but I insisted I wanted to bring them to the House but I'm not
16 too sure of the date they were brought.

17 Q. If we look at the--the Resolution No 8 concerns a
18 contract that Frontline Systems had with the Virgin Islands
19 Festivals and Fairs Committee for two periods, 25th of July to
20 5th of August 2019, and 6th of August to 7th of August
21 respectively.

22 And then the second resolution, No 9, concerned a
23 separate contract for the period of 9th to 10th of August.

24 Now, taking the earliest date of those, 25th of July,
25 that's when the contract was due to start.

1 Do you remember seeking the resolution after you
2 had--the contract had been accepted, immediately after it was
3 accepted?

4 A. It was accepted after. The contract was signed
5 before.

6 Q. Yes.

7 A. Yes.

8 Q. But you've got, basically, between March 2019 when you
9 come into the House of Assembly and 25th of July. Do you know
10 how long it took, as a process, from your decision to take this
11 to the Speaker and take this forward to it coming before the
12 House?

13 A. I'm not too sure when. But like I said to him, the
14 fact that it was not supposed to come to the House as I was
15 instructed--what happened with that is that it's like it was no
16 rush at the time because I knew it was not supposed to come to
17 the House. But because, like I said, the atmosphere in the
18 House, I decided to bring it. And I know I brought it sometime
19 after. I don't know whether it was a month or what, but I
20 brought it after the contract was signed, yes.

21 COMMISSIONER HICKINBOTTOM: I think the Speaker and
22 the evidence that you put in from the Speaker, said that it was
23 several times, but starting in January.

24 THE WITNESS: You're talking about a different thing.

25 (Overlapping speakers.)

1 COMMISSIONER HICKINBOTTOM: I'm sorry.

2 MR RAWAT: I might be able to--

3 COMMISSIONER HICKINBOTTOM: You're right.

4 BY MR RAWAT:

5 Q. If we go--if you take the larger--

6 A. We're leaving this?

7 Q. For the time being. But turn up page 1111.

8 A. 111?

9 Q. We're looking at a--so, we're looking at a resolution
10 made by the House in July 2019. You've now got a--

11 A. Excuse me. Is this one you mean?

12 Q. Yes, this one, but 1111.

13 A. 111?

14 Q. No, 1,111.

15 A. Sorry.

16 Q. What we've got is a document that you've disclosed to
17 the Commissioner, and it is a Frontline Systems contract
18 agreement which is between--it's recorded as between the Road
19 Town Festival Committee and Frontline Systems, but it's for the
20 period July 25th to August 5th, which seems to cover one of the
21 periods that's in that Resolution. The cost is \$268,000.

22 Now, would that, do you think, be the contract that
23 relates to one of the resolutions that you brought to the House?

24 A. Yes, Commissioner, that is the one for Road Town.

25 Q. Right.

1 And I think this was a point you made on the last
2 occasion. But given the price of it, would that have been
3 something that would have gone out to tender?

4 A. It would have.

5 Q. And what we can see is that the date of it, written in
6 the American style, is the 24th of June?

7 A. Yes, Commissioner.

8 Q. So, at some point between--we can at least narrow the
9 window down. So, at some point between the 24th of June and the
10 25th of July was when you made the decision to take the matter
11 before the House of Assembly to seek an exemption?

12 A. Yes, Commissioner.

13 Q. Before we leave Frontline Systems, if you turn up
14 1100, so 1,100, this is a second contract agreement, but it's in
15 relation to what's called the Carrot Bay Festival Committee.
16 It's not signed or dated. The full fee that's proposed is
17 \$58,000, and--but it gives us the dates that your Frontline
18 Systems was going to be engaged is between the 9th and the 10th
19 of August.

20 If you look at Resolution No 9, that speaks of hiring
21 out equipment to the Virgin Islands Festivals and Fairs
22 Committee for the period 9th to the 10th of August. Is that the
23 contract that relates to that resolution?

24 A. Yes, Commissioner.

25 Q. Now, if I may--and I think you can probably keep that

1 bundle open in front of you for the time being, please,
2 Honourable Smith. But if I just give some background to how
3 we've reached today: During your evidence on the last occasion,
4 you agreed to provide details of the Frontline contracts to the
5 Commission. And following the Hearing on the COI, the
6 Commission, on the same day, wrote to you asking for further
7 details in relation to all stages of the process of getting a
8 contract, whether that contract was between you and/or a company
9 or business that you were engaged in, but with the Government of
10 the Virgin Islands, and together with copies of any
11 documentation.

12 You subsequently provided that documentation through
13 your legal representatives on the 20th of July 2021. And on the
14 27th of July, the Commissioner asked you to provide an Affidavit
15 concerning various contracts that you had with the Government of
16 the Virgin Islands, and that Affidavit we can find in the
17 smaller bundle at page 57.

18 That's the first page, Honourable Smith. But if you
19 turn to the next page, can you confirm that that Affidavit
20 carries your name and signature?

21 A. Yes, Commissioner.

22 Q. Now, attached to it--and we will come back to them in
23 due course--are two resolutions, Resolution No 10 of 2021 and
24 Resolution No 11 of 2021, both Gazetted on the 12th of
25 August 2021, both passed by the House on the 29th of July 2021;

1 that's right, isn't it?

2 A. Yes, Commissioner.

3 Q. And they both concerned contracts that you, through
4 companies with which you're involved, entered into with the
5 Government of the Virgin Islands?

6 A. Yes, Commissioner.

7 Q. Now, Honourable Smith, on the 6th of September, the
8 Commission sent you what it describes as a "Warning Letter"
9 which, I think in the past has been known as a Salmon Letter.
10 "Warning Letter" is a term that's used in Inquiries, but its
11 purpose is to give the recipient notice of potential criticisms
12 that arise from the evidence that an Inquiry has gathered.

13 What I should stress, as I have done to others, is
14 that such a letter and the criticisms in it are not and should
15 not be taken as either the provisional or concluded view of the
16 Commission.

17 In turn, you provided a written response to go over
18 some additional documents, and I can see that you've brought a
19 copy with you.

20 Now, you provided that on the 13th of September, and
21 the Commission asked you, on the same day, to provide a version
22 signed with a Statement of Truth. Was there any reason that you
23 didn't want to sign the written response?

24 A. Sorry, Commissioner. Maybe I missed that because I
25 have not seen that because what I was given to me I made sure I

1 signed, and I did. So, if that was left off, I apologize. But
2 I have not seen that.

3 Q. Could I just break that down a little, please,
4 Honourable Smith?

5 A. Sure.

6 Q. If you just look at your written response--

7 A. Right.

8 Q. --the version that the Commission has is 10 pages.

9 A. My page? The one I sent to you?

10 Q. Yes. I'm looking at the version that you sent us.

11 A. Okay.

12 Q. Page 10 doesn't have a signature on it.

13 A. Well, I apologize for that. I did not put a signature
14 on that, so I do apologize for that.

15 Q. Were you made aware of the Commissioner's Protocol on
16 the provision of written evidence which asks for written
17 evidence to be signed?

18 A. Let me say, Commissioner, I think maybe I missed that.
19 I tried my best to do everything because I had no one to help me
20 do this. I did it on my own. I really thought I understood it.
21 If I misunderstood that, and I didn't sign it, I apologize for
22 that.

23 Q. No intention--I was just trying to clarify what
24 happened because the e-mail of 13th of September--

25 A. Right.

1 Q. --which asked for a signed version was copied to your
2 legal representatives. Did your legal representatives not draw
3 it to your attention?

4 A. No, Commissioner.

5 Q. Did you, in fact--are you happy to provide a signed
6 version in due course?

7 A. Is that this document I have signed?

8 Q. Yes.

9 A. I have no problem with that.

10 Q. And can I, as--again, can I ask you, for the purpose
11 of the Transcript, to confirm that you are content with that
12 written response that we've received to form part of the
13 evidence before the Commission?

14 A. From me?

15 Q. Correct.

16 A. I do.

17 Q. I think you've explained that you drafted this
18 yourself?

19 A. Correct.

20 Q. Could you just clarify one point for us, please. If
21 you go to page 3, do you see the paragraphs No 2 and No 3 in the
22 document? The paragraph No 2 begins "We note", and paragraph
23 No 3 begins "We further note". As you go through your response,
24 Honourable Smith, you deal with each potential criticism in
25 order, but that phrase or term "we note" and "we further note"

1 appears. I suppose the question is: Why did you decide to use
2 the royal "we"?

3 A. Just figure of speech from being working--working in
4 the legal firm for a few times. I get that same "we", same "I".
5 I guess I say "we". That's it.

6 Q. Thank you.

7 What I would like to do now, Honourable Smith, is just
8 take you through the criticisms.

9 Now, the letter that we have sent to you, the Warning
10 Letter, is a confidential document. It has not been published
11 by the Commission and it remains confidential. But the approach
12 that I have adopted with other witnesses is to summarise the
13 criticism and then to go through the written response with them.
14 Your written response forms part of the evidence; you accept
15 that, so I don't need to read it all out.

16 A. Thank you.

17 Q. But what I will do is I will ask you additional
18 questions but also summarise your response, if I may.

19 A. Correct.

20 Q. Now, if we turn the Warning Letter to the back, to the
21 appendix, please, there was a copy that was sent--

22 A. Okay.

23 Q. Thank you.

24 What it sets out on section 67--if you go to the
25 appendix at the end, it sets out, first of all, section 66 and

1 67 of the Constitution because--and that is, if I may clear the
2 reason we've asked you to return, and that is to ask you further
3 questions about how those provisions relate to you and
4 essentially how you go about complying with the requirements on
5 you, when seeking election, to declare contracts with
6 Government; and, once elected, when placed in a position where
7 you may have to seek exemption from the requirement to vacate
8 your seat. So, it sets that out.

9 But if you turn through the document, please,
10 Honourable Smith, to, I think, the page which begins "By way of
11 Resolution No 10 of 2021." Do you have that?

12 A. Yes.

13 Q. So, what that refers to is the resolution that's
14 appended to the Affidavit that you provided. But "By way of
15 Resolution No 10 of 2021 passed by the House of Assembly on 29th
16 of July, Honourable Neville Smith was exempted from vacating his
17 seat as an elected Member of the House of Assembly under
18 section 67 of the Constitution on a motion moved by Honourable
19 Andrew Fahie, the Premier and Minister of Finance. This was
20 stated to be in respect of his directorship of Caribbean
21 Security Limited, following the Government of the Virgin
22 Islands, through the Ministry of Finance, entering into a
23 contract with Caribbean Security Limited on the 8th of April,
24 2021."

25 And that contract, if I summarise, was essentially to

1 provide what we could call "security systems" in the Department
2 of Information Technology, Telephone Services Management, Inland
3 Revenue and Treasury Departments, and for additional
4 installation including building Wi-Fi systems at relocation
5 offices located at various points, and the total contract price
6 was \$72,917.56. So, that was the first resolution, Honourable
7 Smith.

8 A. Correct.

9 Q. There was a second resolution, which was Resolution
10 No 11 of 2021, again passed by the House of Assembly on the same
11 day, again exempting from you vacating your seat as an elected
12 Member, again moved by The Honourable Premier and Minister of
13 Finance. But this was in respect of a different contract that
14 Caribbean Security Limited had with the Government of the Virgin
15 Islands?

16 A. Correct.

17 Q. And that was a contract that was entered into on the
18 26th of November 2020, and to provide services for the
19 installation of ICT equipment for the Royal Virgin Islands
20 Police Force at various locations, and that was for a total
21 contract price of \$99,285.

22 What the Warning Letter then says is that: "The
23 Honourable Neville Smith obtained the section 67 exemptions on
24 29th of July 2021, despite the contracts being entered on the
25 29th of November 2020 and the 8th of April 2021. On the

1 available evidence, it appears that The Honourable Smith failed
2 to obtain an exemption under section 67 of the Constitution from
3 vacating his seat as an elected Member of the House of Assembly
4 prior to becoming a Party to such contracts or (if applicable)
5 as soon as practicable after becoming otherwise interested in
6 such contracts. Honourable Neville Smith acted contrary to
7 and/or was in breach of section 67 of the Constitution."

8 I'm going to pause there, Honourable Smith. If we
9 wish to remind ourselves of that part of section 67 of the
10 Constitution, you will find it in the smaller bundle at page 35.

11 A. Yes.

12 Q. Section 67(3)--section 67 deals with, amongst other
13 things, the circumstances in which a Member of the House of
14 Assembly has to vacate his or her seat, and section 67(3) at (e)
15 gives one of those circumstances, "if he or she becomes a Party
16 to any contract with the Government of the Virgin Islands for or
17 on account of the Public Service or if any firm in which he or
18 she is a partner, or any company of which he or she is a
19 director or manager, becomes a Party to any such contract, or if
20 he or she becomes a partner in a firm, or a director or manager
21 of a company which is a Party to any such contract".

22 Now, there is a caveat to that, which we find at (7),
23 subsection (7), which says that: "If, in the circumstances it
24 appears just to the House of Assembly to do so, the House may
25 exempt any elected Member from vacating his or her seat under

1 subsection (3) (e) if such a Member, before becoming a Party to
2 such contract as there described, or before, or as soon as
3 practicable after becoming otherwise interested in such contract
4 (whether as a partner in a firm or director or manager of a
5 company), discloses to the House the nature of such contract and
6 his or her interest or the interest of any such firm or company
7 in it".

8 So, as we've seen and as you've done, Honourable
9 Smith, if you become involved in a contract, you have to go to
10 the House to get a resolution exempting you from vacating your
11 seat. And, as you've explained to the Commissioner, if it's a
12 statutory board, your understanding is you don't have to do
13 that?

14 A. Correct.

15 Q. If we look at the two contracts involved with this
16 criticism, which were the subject of the resolution--

17 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat. Just
18 while we're on section 67--and this may be a matter for legal
19 submissions, so I don't want you to give any legal submissions.

20 THE WITNESS: Okay.

21 COMMISSIONER HICKINBOTTOM: But the structure of this
22 seems fairly clear.

23 Firstly, that, under 67(3), an elected Member of the
24 House shall also vacate his seat--so that's mandatory--in the
25 circumstances set out in subsection (3) including, leaving out

1 the irrelevant words, "if any company of which he is a director
2 becomes a Party to a contract with the Government".

3 THE WITNESS: Correct.

4 COMMISSIONER HICKINBOTTOM: And then there is an
5 exemption because the House of Assembly can exempt any elected
6 Member from vacating his or her seat under (3)(e) which we've
7 just looked at. "If such Member, before becoming a Party to
8 such contract as there described, or before or as soon as
9 practicable after becoming otherwise interested in such
10 contract, discloses to the House the nature of such contract."

11 Just pausing there. So, that's a condition. So, what
12 the Member has to do, if he doesn't do it before the contract is
13 signed, is, as soon as practicable disclose to the House the
14 contract. And then the contract--and then the House then is
15 able to exempt it. That's the structure as I see it.

16 THE WITNESS: Correct, Commissioner. But may I add
17 something to that? If, say, at a reasonable time, a "reasonable
18 time" meaning I know when it is as well, Commissioner, because--

19 COMMISSIONER HICKINBOTTOM: In this--

20 THE WITNESS: In this condition.

21 COMMISSIONER HICKINBOTTOM: But in respect of where?
22 In respect of (3)(e)? Or in respect to (7)?

23 THE WITNESS: (7), within a reasonable time.

24 COMMISSIONER HICKINBOTTOM: And where do you see that?

25 THE WITNESS: Same as practicable time. Reasonable is

1 the same, and I'm sure reasonable time is the same as that.

2 COMMISSIONER HICKINBOTTOM: That is a legal submission
3 which I'll hear from Mr Davies on.

4 But there is, in law possibly, a difference between "a
5 reasonable time" and "as soon as practicable". "As soon as
6 practicable" normally means "as soon as possible".

7 THE WITNESS: Commissioner, as I said, and as soon as
8 I know.

9 Commissioner, must I--can I say in regards to
10 Frontline and Caribbean Security, it's two different entities in
11 terms of, one I'm the sole ownership in Frontline. I know the
12 day-to-day stuff. I used to know the day-to-day stuff, which I
13 don't do now. But then I was in charge of the Frontline.

14 In terms of Caribbean Security, we have a business
15 partner who does the day-to-day running of Caribbean Security.
16 I am not privy to most of whatever are contracts. I submitted
17 evidence to you all as well because that's something that is
18 very serious. I pulled myself away from those entities since
19 being elected. The most I'm involved with the companies is
20 where, because I'm signatory of the check, I might sign the
21 checks and have my wife deal with the day-to-day running of that
22 part of it, the sending checks. But I don't know anything about
23 contracts. I'm not aware to when I ask a question or something
24 is given to me. That is why this contract, these contracts took
25 so long. I didn't know them at the time. I was not made aware.

1 COMMISSIONER HICKINBOTTOM: Mr Rawat may want to go
2 through some of this with you, because that was also--I think
3 you gave some evidence, as well, last time, to the same effect.

4 THE WITNESS: Correct.

5 COMMISSIONER HICKINBOTTOM: But just looking at the
6 statute, and as I say, it may be that I will need some further
7 legal submissions on this in due course, but as I said, the
8 structure is quite important.

9 But 67(3)(e) is a really draconian--and clearly a
10 really draconian section because, if you are a director of a
11 company which entered into a contract with the Government, you
12 must vacate your seat, full stop. So that's a really draconian
13 section. Yes?

14 THE WITNESS: Yes, Commissioner.

15 COMMISSIONER HICKINBOTTOM: And the only exemption is
16 subsection (7). But under (3)(e), there is no reasonableness,
17 or whether you know about it or anything like that. It's if you
18 happen to be a Director of a company which enters into a
19 contract with the Government, you have to vacate your seat.

20 THE WITNESS: At a reasonable time.

21 MR FLIGELSTONE DAVIES: If I may, I would like to go
22 off camera for a brief note.

23 COMMISSIONER HICKINBOTTOM: Not at the moment,
24 Mr Davies.

25 Is this--what you say may well be a matter for law,

1 and I deal with that with Mr Davies, and it may well be better
2 to do that, but that's your understanding, in any event?

3 THE WITNESS: Correct.

4 COMMISSIONER HICKINBOTTOM: Okay. Now, Mr Davies.

5 MR FLIGELSTONE DAVIES: Sorry, it's just that my
6 mother recently had surgery, and she's in town and she's not
7 feeling too well and I have to carry her home, so I was just
8 hoping we could go for lunch now or in a few minutes and then I
9 can bring her--

10 COMMISSIONER HICKINBOTTOM: Okay, Mr Davies.

11 Can we just stop the live stream while we deal with
12 this?

13 MR FLIGELSTONE DAVIES: Yes.

14 COMMISSIONER HICKINBOTTOM: Just one moment. Let Mr
15 Peters stop it.

16 (Live stream turned off.)

17 COMMISSIONER HICKINBOTTOM: Are we offline?

18 MR FLIGELSTONE DAVIES: I do apologize to the
19 Commission about that; it's that about a week ago, she had to
20 have emergency eye surgery, and she thought she could come down
21 to town today. But, unfortunately, she texted me a few minutes
22 ago saying that she's not really feeling that well, and she has
23 to get back home.

24 COMMISSIONER HICKINBOTTOM: From the--

25 MR FLIGELSTONE DAVIES: Well, she's in her shop at the

1 moment, but she's not feeling well at all.

2 COMMISSIONER HICKINBOTTOM: Is there anybody else who
3 can do that?

4 MR FLIGELSTONE DAVIES: I can call my partner, Mr
5 Richard Rowe, to do that.

6 COMMISSIONER HICKINBOTTOM: Could you, firstly, make
7 inquiries to see whether anybody else could do it. That's the
8 first thing.

9 Secondly, if you were to do it, how long would it
10 take, Mr Davies?

11 MR FLIGELSTONE DAVIES: 20 minutes.

12 COMMISSIONER HICKINBOTTOM: Okay. Can you just make
13 that call? We will stay here while you make the call, and then
14 we will come to a view.

15 MR FLIGELSTONE DAVIES: Thank you.

16 (Pause.)

17 COMMISSIONER HICKINBOTTOM: We'll just wait here,
18 Mr Fligelstone Davies. I will go online now to say what I'm
19 going to do, so that everybody knows, but I'll break until half
20 past 12:00, so that gives you 25 minutes.

21 MR FLIGELSTONE DAVIES: Thank you.

22 COMMISSIONER HICKINBOTTOM: You can go now. We won't
23 do anything else other than to say that.

24 MR FLIGELSTONE DAVIES: Very well.

25 (Live stream resumed.)

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 Just to let everybody know, Mr Fligelstone Davies has
3 been, unfortunately, called away urgently. He's likely to be
4 away until half past 12:00, so I'm going to adjourn now until
5 half past 12:00, particularly as there are one or two points of
6 law which appear to be arising, it's important that he's here
7 during Honourable Smith's evidence. So we'll break for about 25
8 minutes, until half past 12:00. Thank you very much.

9 (Recess.)

10 COMMISSIONER HICKINBOTTOM: I think we're ready to
11 proceed. Thank you very much.

12 MR FLIGELSTONE DAVIES: Thank you very much,
13 Commissioner.

14 COMMISSIONER HICKINBOTTOM: Thank you.

15 Mr Rawat.

16 MR RAWAT: Thank you, Commissioner.

17 BY MR RAWAT:

18 Q. Honourable Smith, if we could continue. I think
19 before we had to adjourn, we were dealing with the first
20 potential criticism that was put to you, and can I just ask
21 you--just take you to some of the documents relating to those
22 two contracts, if I may.

23 If you pick up the larger of the two bundles and turn
24 to page 852, please.

25 A. 852.

1 Q. This is the first of two contracts, which is the 26th
2 of November 2020 contract. So, I think you see a similar
3 document as something being exhibited to your bundle, but it's a
4 17th of January 2020 invitation from the Government of the
5 Virgin Islands to invite sealed bids for the installation of ICT
6 equipment for the Royal Virgin Islands Police Force.

7 Do you see that, sir?

8 A. Yes, I do.

9 Q. And if you just turn through just to 854, those bids
10 were due in by Tuesday the 18th of February 2020. As it turned
11 out, Caribbean Security put in a bid and was successful in that
12 bid; that's right, isn't it?

13 A. Correct.

14 Q. And that's the subject of the Contract that was then
15 signed on the 26th of November 2020?

16 A. Correct.

17 Q. But I imagine that, given what you said earlier
18 about--to the Commissioner, that you stepped back from that
19 company, you had no involvement in preparing the bid to this
20 contract; is that right?

21 A. Correct.

22 Q. And would it be fair to say that you may not even have
23 been aware of the Invitation to Tender?

24 A. Correct.

25 Q. I think, again, in fairness, if I just ask you to turn

1 up 823, please, in the same bundle. This is the Contract that
2 we see there at 823. You can see the front page, and it's dated
3 the 26th of November 2020.

4 And can you confirm for the purposes of the Transcript
5 that at 825 that the Contract was signed by the Honourable
6 Premier and Minister of Finance Andrew Fahie, but on behalf of
7 Caribbean Security Limited it was signed by your business
8 partner, Mr Dupree?

9 A. Correct.

10 Q. If you could just turn up 787, please., it should be
11 an e-mail exchange which you've provided, 787, and if you look
12 at 786, please, Honourable Smith, if you see at the bottom
13 there, there is an e-mail from Ms Sharleen Dabreo-Lettsome MBE,
14 who is the Permanent Secretary of the Office of the Deputy
15 Governor, at least at that time, and this is dated 22nd of
16 June 2021, addressed to you, and the subject is "Contracts
17 executed with Caribbean Security Limited from 2019 to present".

18 And would it be right that what you did, Honourable
19 Smith, was you were writing to the Deputy Governor's Office to
20 find out what contracts Caribbean Security had with the Deputy
21 Governor?

22 A. Correct.

23 Q. And was that inquiry made as a result of the
24 correspondence that the Commission of Inquiry had sent you
25 asking for disclosure of details?

1 A. Correct.

2 Q. And the Reply that Ms Dabreo-Lettsome sent you we see
3 on 787, and she notified you of two contracts, a 2019 Contract
4 which she told you was completed and paid in full, and the 2020
5 Contract we have been looking at; is that correct?

6 A. I'm noticing that there now, yes.

7 Q. Your voice dropped--

8 A. I'm noticing that there now, yes.

9 Q. So, would it--again, fair to you to say that June 22nd
10 of 2021 would have been the first notice you had that those two
11 contracts existed?

12 A. Well, to be honest, I know about the one because only
13 now even going through this e-mail I realise this, two she said
14 she had, and I knew of the one, yes.

15 Q. Break it down, please.

16 So, June 22nd, 2021, you're notified of--

17 A. Of the Contracts.

18 Q. Of two contracts?

19 A. Right.

20 Q. Before that date, which did you know of?

21 A. The bigger one.

22 Q. The November 2020 Contract?

23 A. Right, because that's when they start asking the
24 speaker to see if I can get this to the House. I thought about
25 it.

1 Q. Let's slow it down a little bit.

2 A. Okay.

3 Q. So, June 22nd, 2021, is the first time you say you
4 knew of the 6th of December 2019 contract; is that right?

5 A. When?

6 Q. So, if you look at the date of the e-mail at the
7 bottom there, you will see that it's sent on the 22nd of June at
8 2:32, and so you have notification of two contracts, a 2019
9 contract, which we will look at in a bit more detail in due
10 course, but the 2019 Contract, was that the first time you knew
11 of the existence of that contract?

12 A. The first contract?

13 Q. Yes.

14 A. I was aware, that's why I brought it up, I was aware
15 of it and I was trying to get it to the House from in January.
16 The second contract what you're talking about now that I'm
17 seeing here, to be honest, I didn't realise it was the second
18 contract until after you brought it to my attention and the last
19 thing as well.

20 Q. Okay. We may be slightly at odds, is that I'm calling
21 the first contract the 2019 Contract, and the second contract
22 the November 2020 Contract because, in Ms Dabreo-Lettsome's
23 e-mail, the 2019 Contract appears first. So, if we call it the
24 2019 Contract, when did you first become aware of that? Was it
25 this e-mail that drew it to your attention?

1 A. That's the first contract you're referring to now?

2 Q. Let's call it the 2019 Contract.

3 A. Okay. The first I'm aware of it is when you send
4 it--even I did not notice it on this e-mail.

5 Q. I see. I follow. So, you didn't pick it up from this
6 e-mail?

7 A. No, I did not.

8 Q. It was after we drew it to your attention?

9 A. Correct.

10 Q. Can I return to that, please.

11 A. Correct.

12 Q. The 26th of November 2020 Contract, was this e-mail
13 the first time that you were aware of that contract? That's the
14 bigger one.

15 A. That's the big are one?

16 Q. Yes.

17 A. Repeat the question again.

18 Q. So, the bigger contract which is the one that we're
19 looking at under potential criticism 1 is--

20 A. Right.

21 Q. --is a contract essentially to install ICT on behalf
22 of the Royal Virgin Islands Police Force. It is, as you rightly
23 say, a bigger contract, just short of \$100,000.

24 A. Correct.

25 Q. And you had made an inquiry with the Deputy Governor's

1 office. You had a reply back on the 22nd of June 2021 which
2 notified you that one of the Contracts that was still open was
3 the Police--Ms Dabreo-Lettsome describes as the Police ICT
4 project, which is the 26th of November 2020 Contract.

5 So, my question is: Was this e-mail from the Deputy
6 Governor's Office the first time you were really aware that this
7 Contract existed?

8 A. No.

9 Q. When did you first become aware of its existence?

10 A. Around January. Around January 2020.

11 Q. 2020?

12 A. 2021.

13 Q. Yes, because it's a November 2020.

14 A. Right.

15 When I first heard about it, I came to the Speaker and
16 I told him I have a contract I may need to bring to the House of
17 Assembly. That's when I first learned about it.

18 Q. Right.

19 Then take us back to before your conversation with the
20 Speaker. So, January 2021 is when you first become aware of
21 this contract. How did you first become aware of it?

22 A. That one I heard--my businessman asked me a question,
23 why someone with a contract with the Police and they asked me,
24 well, what contract and he told me well, the one we--apparently
25 we won the bid but the work is not moving forward, if I know

1 anything about it. Why? And I said to him no, I do not know
2 why. And then I asked him is the Contract signed? He said yes.
3 I said you cannot sign a contract, it have to come to the House
4 first.

5 So, then I started to try to get it to come to the
6 House of Assembly.

7 Q. All right. So, it was almost--it was prompted by him
8 asking you a question?

9 A. Right.

10 Q. And he had a query about the Contract--of a contract
11 performance rather than him telling you, by the way, I've just
12 signed a contract?

13 A. Correct.

14 Q. And by the time you first knew of it, contract was
15 already signed and work was being or at least work--he was
16 trying to get the work done?

17 A. Yes.

18 Actually trying to--the Contract was already signed,
19 and he was trying to see--I don't think the Contract was signed
20 when I first spoke to him. I'm not too sure. I don't want to
21 lie about that.

22 Q. Well, it was signed on the 26th of November 2020.

23 A. So that means it was already signed, right.

24 So, when he spoke to me, he was asking me why is the
25 holdup? If I knew why the holdup. And I asked him what

1 contract, and then when he explained to me, oh, I forget to tell
2 you, I signed a contract because we won the bid. That's when I
3 first knew about the Contract.

4 Q. So, prior to that conversation, did you know that he
5 had submitted a bid?

6 A. The bid, yes, I knew bid was submitted.

7 Q. So, you knew that on 18th of February 2020 he had
8 submitted a bid?

9 A. Yes.

10 Q. But some time you think around January 2021 was when
11 you learned that the bid had been successful--

12 A. Correct.

13 Q. --and the Contract had been signed?

14 A. Correct.

15 Q. I see.

16 So, I'll come back to your contact with the Speaker
17 when we go through your written response, if I may.

18 A. No problem.

19 Q. Now, just before we leave the Royal Virgin Islands
20 Police Force, amongst the material that you have disclosed to
21 the Commission are different types of invoices. So, if you look
22 at, please, page 810.

23 A. 810?

24 Q. 810.

25 So, if we--if you look, first of all, at 797, that's

1 an invoice that--from Caribbean Security Limited addressed to
2 the Financial Secretary in the Ministry of Finance, and it gives
3 the Project name as "Installation of ICT Equipment for the Royal
4 Virgin Islands Police Force", so, that invoice would appear to
5 relate, would it not, to the Contract that we've been looking
6 at?

7 A. Correct.

8 Q. But if you look at, for example, 810, that seems to
9 be--it says "ICT camera project". Is that the same project or
10 is it a different project?

11 A. I can't answer that question.

12 Q. You can't answer it?

13 A. No.

14 Q. All right. Well, try with 811, please.

15 Because 811 is to "replace physically broken door
16 release equipment." That appears to be for a completely
17 different job, doesn't it?

18 A. Commissioner, like I said, I do not do the day-to-day,
19 so these invoices I'm seeing here I think I answer questions to
20 them because I do not know most of them, to be honest with you.
21 You have to actually speak to my businessman when it comes to
22 those kind of stuff.

23 Q. The reason I asked the question is because--because
24 these invoices aren't easily relatable to the Contract that
25 you're aware of.

1 A. If you want to give me--if you want me to give you
2 insight how it actually operates, I could try to explain to you
3 in terms of invoicing.

4 Q. No, would you mind if I put my question first.

5 A. Okay, go ahead.

6 Q. And then if, hopefully, we're on the same page.

7 A. Okay.

8 Q. If not, then we can take it another way. But there
9 appears to be invoices that suggest that, aside from that ICT
10 contract, Caribbean Security Limited does other work for the
11 Police, and if it does other work for the Police, then that
12 raises the question, under what contractual terms is it going
13 that other work?

14 A. Now to answer your question. How the Company works,
15 Caribbean Security is a company that installs, do services, do
16 maintenance, so let's say, for instance, the Police might have a
17 door that's not working, and they may call a different company,
18 and maybe that company cannot get it fixed or didn't show up,
19 then they call Caribbean Security Limited. I wouldn't know
20 those calls. But then if they call them, we don't have a
21 service contract with them but it's on-call. So, you if call
22 them, they come out and fix the problem.

23 For example, this door here is not working and you
24 need a technician to come and fix the door because there's only
25 two-three technical companies in the BVI that does electronic

1 security, there's only three or four, it's only a handful. So,
2 they might call the next available server that they could find
3 to, hey, I have a door that's not working, can you come and look
4 at it. And I think from that invoice is where that may come
5 from. When you ask somebody to come and look at something and
6 they're going to fix a door. It's not a contract.

7 Q. Well, how does it get paid? What's the process?

8 A. The process would be by PO. They may give us a PO or
9 something saying they want something done without a contract.

10 Q. I mean, a PO is a Purchase Order?

11 A. Yeah, mostly it might be a Purchase Order for the
12 Government.

13 Q. Because they do things like that by ways of Works
14 Orders.

15 A. That I don't know.

16 Q. If you look at 808, for example, that's a 2020
17 invoice, 28th May 2020. It's billed directly to the Royal
18 Virgin Islands Police Force, and it appears to be for provision
19 of various and installation of various bits of security
20 equipment. I don't want to go too much into some of the details
21 of those invoices for reasons you would appreciate, Honourable
22 Smith, but that seemed to be for a total bill at the bottom
23 there of just under 8,000.

24 A. Watching this, this seemed to be part of the Contract,
25 watching this from here, from what I'm seeing. This is

1 equipments that came in. I'm not too sure, but watching it from
2 here, and what I'm seeing--but then again, I don't want to
3 assume, because like I said, I do not do the day-to-day running
4 of the companies. I cannot answer some the questions you're
5 asking me to answer you.

6 Q. That's actually the best answer to give. If you can't
7 answer, a guess is sometimes worse.

8 A. Yes.

9 Q. And so, if you don't know what it relates to, please
10 do say so.

11 A. No.

12 Q. But if we--I won't give up entirely on going through
13 the invoices with you.

14 A. No problem.

15 Q. But if you can't help, do say.

16 But if you look, Honourable Smith, at 798 in
17 particular, you'll see there, again, it's a contract or an
18 invoice directly to the Royal Virgin Islands Police Force from
19 Caribbean Security Limited. It's dated the--I think the 2nd of
20 December 2020, if it's using the American formulation--but it
21 refers there to an approved proposal, see at the end of the top
22 line? Eleventh or 10th of November 2020, "approved proposal".

23 So, do you know, can you give any context as to how an
24 approved proposal is generated?

25 A. That I cannot answer as well.

1 Q. Because if one pulls together the various
2 invoices--and I've shown you some examples--you have work being
3 done by Caribbean Security Limited for the Royal Virgin Islands
4 Police Force, which cannot be linked to that one contract we've
5 looked at.

6 A. Right.

7 Q. And that does suggest the possibility at least that
8 there could be other contracts that you--(a) other contracts or
9 (b) other types of contractual arrangements that Caribbean
10 Security Limited has, for example, directly with the Police?

11 A. Commissioner, how I'd answer that question is when I
12 asked my business partner if we had any contracts at all with
13 Government, whatever contracts we have with Government, please
14 send me whatever you have. Whatever you see me give you is what
15 this was there, contracts.

16 I'm not too sure if this was not done as a contract,
17 maybe it was done as--which I don't understand why--even if it
18 was done as a proposal bid--now we asked more than one company
19 can you give me a proposal, what are the same proposal--I mean,
20 same invoice, but the number is really the same proposal. It
21 appears, it was something that was done that was paid for. But
22 I'm not too sure whether this is involving the Contract, if it
23 related to the Contract. I cannot answer that. The only person
24 I think that can answer that question is my business partner.

25 COMMISSIONER HICKINBOTTOM: In terms of two contracts

1 were identify in the e-mail from the Deputy Governor's Office.

2 THE WITNESS: Correct.

3 COMMISSIONER HICKINBOTTOM: The 2019 one, a small one,
4 2021, but the larger one.

5 THE WITNESS: Correct.

6 COMMISSIONER HICKINBOTTOM: Where invoices are made in
7 respect of those agreements, it seems me that, as you'd expect,
8 on the face of the invoice, that agreement's referred to. So,
9 on, for example, page 807, there is a reference on that invoice
10 to the 2019 Agreement, and we've seen another example of a
11 reference of a first payment under the 2020 agreement.

12 So, it does seem, we'll come to the contractual
13 arrangements later, but it does seem that Caribbean Security is
14 doing quite a bit of work for the Government for which it's
15 being paid, not covered by those two contracts?

16 THE WITNESS: Commissioner, how I put that, in terms
17 of work being done before existing contracts with Government
18 before I was elected, there might be a contract that existed
19 before then, and what might happen is somebody might see you
20 as--they might call you in to upgrade or fix something, so I
21 don't think that would go in as a contract, it would be
22 continued based on what I had. That is the only way I can see
23 something like that happening if there was already a contract
24 that existed, so it just mean that you go in and you might say,
25 look, we need to upgrade this, we won't have a bid for that

1 because I'm already existed in a contract with them.

2 But like I said, do to what I'm saying here, I do not
3 recall--because like I said, I do not do the day-to-day, so I do
4 not recall whether or not we have other contracts with the
5 Police or not, I really do not know that. You could question me
6 all day on this. I cannot give you the answer you might be
7 looking. I will be honest with that.

8 COMMISSIONER HICKINBOTTOM: Can you answer this
9 question. We've heard evidence from others, both public
10 officials and Ministers, as to how suppliers of goods and
11 services are paid mechanically.

12 THE WITNESS: Right.

13 COMMISSIONER HICKINBOTTOM: And they're paid as a
14 result of Purchase Orders.

15 So, in respect of these payments, would there have
16 been Purchase Orders?

17 THE WITNESS: That I'm not too sure of. It all
18 depends, as I say--again, it all depends.

19 For example, Caribbean Security does a service,
20 monitoring and maintenance allowed under the Contract. Once the
21 Contract is signed with Caribbean Security, that I can recall I
22 remember.

23 What happens is you have a standard contract states
24 that we will do the monitoring, and we will do the service, so
25 once you sign the base contract, that's already embedded in

1 that. So, where you might see contracts say or something's
2 saying pay for maintenance contract, paying for monitoring
3 contract, is based on the first contract, and it's a continuous
4 monitoring with station and maintenance.

5 COMMISSIONER HICKINBOTTOM: So, some of these payments
6 may be in respect of contracts that pre-dated your election.

7 THE WITNESS: Yes, a lot of those. A bit. A lot of
8 those. Most of them that you're seeing there. There's always a
9 continuation of the Contract in terms of service and monitoring.

10 Q. If you go to 60, please, in the smaller bundle,
11 Honourable Smith.

12 COMMISSIONER HICKINBOTTOM: 60?

13 MR RAWAT: Sorry, 61, please.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 BY MR RAWAT:

16 Q. We're back to the Resolution No 11 of 2021, which
17 deals with this Contract in relation to the ICT equipment for
18 the police. The Contract is dated the 26th day of
19 November 2021.

20 So you've explained that, I think January 2021 is when
21 you first become aware of the existence of a contract.

22 A. Let me correct it. Something like that, if i give the
23 correct--

24 Q. Around 2021, around January 2021?

25 A. Right.

1 Q. Would that be a fair way of setting out your
2 recollection?

3 A. Something like that.

4 Q. And then it obviously ends up in front of the House in
5 July 2021.

6 A. Correct.

7 Q. How did you--how did you notify the House of the
8 existence of the Contract?

9 A. Commissioner, since I have been in the House and since
10 I have been sitting next to the Clerk and close to the Speaker,
11 I made it a practice that once I know something is there, I'm
12 going to speak to both of them. And say hey, look, I know I
13 have something to come to the House, I need to get it on paper,
14 but there was nothing put in writing. And that I have changed
15 since the last time where now once I bring something to the
16 House, I send an e-mail saying I have something, just to keep a
17 personal record, instead of word of mouth because at this time I
18 realise a word of mouth is not appropriate.

19 Q. So, 2019 we've gone through, that was word of mouth?

20 A. Word of mouth.

21 Q. What about this one?

22 A. Which, this one here?

23 Q. Yes. Was that word of mouth again?

24 A. Which one--no, this is the last one?

25 Q. Yes, this is the one that you put your Affidavit, so

1 this is the Contract where you told us you find out about it
2 around January--

3 A. That was word of mouth.

4 Q. Right. You just did it all by word of mouth without
5 an audit trail?

6 A. Correct.

7 Q. So, was it just--you've mentioned speaking to the
8 Clerk and speaking to The Honourable Speaker.

9 A. Correct.

10 Q. Was that the sum total of what you did?

11 A. Right. I spoke to both of them, I also spoke to the
12 AG, I had conversations with the former AG, the past AG as well,
13 because also it was a touchy, touchy topic because of the
14 content of what the Contract was in terms of the Police, so I
15 asked a lot of questions as well because security is supposed to
16 be security, not too much information getting out there, and I
17 asked questions, you know, is this something we should bring to
18 the House, is this something that should go to the National
19 Security Council? Because what they're asking here is thought
20 could get me in trouble because if somebody found out some
21 things about this Contract, I'm a target. And that's one of the
22 reasons why I said some things should not be even disclosed when
23 it comes to the security part, especially with the Police. And
24 that is why there was a back and forth with the Speaker, with
25 the Clerk, with the AG, with this here.

1 COMMISSIONER HICKINBOTTOM: But nothing in writing,
2 all spoken?

3 THE WITNESS: Nothing in writing. But if you go
4 through my evidence, there is evidence there that I spoke to the
5 Speaker, the AG is not here, the Clerk is there. She didn't
6 give written evidence but she is willing to come and testify if
7 she has to as well, Mr Commissioner.

8 BY MR RAWAT:

9 Q. Thank you.

10 Let's move on to the second contract that's the
11 subject of criticism 1. If you turn up in the larger bundle
12 now, please, Honourable Smith, just turn to page 509. I'm
13 sorry, give me one moment. Yes. it is the right page. It's a
14 page at the top there. You can see that it's headed "Proposal",
15 so what appears to have happened--and this is, as you go through
16 the successive pages through to 519, Caribbean Security around
17 June, I think, yeah--sorry, I'm not using the American
18 nomenclature, around October 2020. You see the date on the
19 document headed "proposal", put in a proposal for work, in
20 relation to installing security equipment in the Telephone
21 Services Management unit, the Inland Revenue, the Treasury, et
22 cetera.

23 Can you assist the Commissioner with this, how did
24 that come about that that proposal was put in?

25 A. Once again, I can answer that question, like I say, I

1 do not--

2 Q. You were not aware of it?

3 A. Commissioner, like I said, in all my statements--I
4 mean, I'm being truthful about this. When I said, after being
5 elected--after being elected, I choose to not play any part in
6 any of my companies just for transparency. I did it because I
7 did not want to be compromised, so I take myself away. The only
8 thing I did not do is take my name off of the companies, by I
9 pulled myself away from the companies. I have no day-to-day
10 runnings of any of the Companies.

11 Q. So, on that basis, you--and just to confirm for the
12 record, you were not aware that this proposal was submitted by
13 Caribbean Security Limited in October 2020?

14 A. I will be honest, I was aware of that because not then
15 but a lot of it after.

16 Q. How--how long is a "little bit"?

17 A. I don't want to lie. Original note of this is because
18 I think it's when I saw a check is when I think my wife was
19 making a deposit and I passed by and I saw a check from
20 Government and I took it up and I read it. That's how I knew
21 that this was actually being paid on.

22 Q. Right. So, that would have been, if you turn to 508,
23 sight of that check--we will see that at 508 the Ministry of
24 Finance responds to Caribbean Security Limited to confirm that
25 the quotation dated 6th of October 2020 has been accepted with

1 the price of \$72,917.56 as quoted. And then it says the
2 Project's unit will communicate with you regarding execution of
3 the Contract and other related matters.

4 Now, that would--you only became aware of this after
5 you actually started getting paid on the Contract; is that
6 right?

7 A. Basically, yeah. When I did find out about it--as I
8 found out about each item I tried to bring it to House. That's
9 what I did, as I found out about that.

10 Q. Can you give a date as to when you found out--

11 A. I can't remember.

12 Q. You can't remember?

13 A. I honestly can't remember the date.

14 Q. Now, that, as we've seen, and we don't need to look it
15 up, but that's the subject of the other resolution that came
16 before the House.

17 A. Right.

18 Q. Well, let's turn up your response, please, just so
19 that we can get that on the record. Some of what you say in
20 that response, Honourable Smith, you've touched on already, so
21 it's important that we're fair to you, but I'm just going to
22 briefly summarise it, if I may.

23 A. Okay.

24 Q. And if you need to add detail, I'm sure you will.

25 If we go to page 3, what you say there--and this is in

1 relation to those two Resolutions.

2 Firstly, that you refute the criticism made. You say
3 that, although you're a director of Caribbean Security Limited,
4 you're not involved in its day-to-day operations. You have had,
5 as you say at the bottom there, a limited role for over 10
6 years, and it's limited to occasionally signing checks and
7 making deposits. You don't correspond with clients, including
8 government departments or individuals with respect to any
9 services provided by that company, and you're not provided with
10 copies of contract or notification of each contract entered into
11 by Caribbean Security.

12 And you then produced the letter. You've mentioned
13 it, but it's at your Tab 1, a letter from Mr Dupree dated the
14 8th of September 2021, addressed to the Commission, and it
15 summarised your--if you like, it sets out this. I think I ought
16 to just read it out.

17 A. No problem.

18 Q. But the purpose--it reads as follows: "The purpose of
19 this letter is to shed some light on the day-to-day operations
20 of the Caribbean Security and responsibility for principals. It
21 is a fact since the inception of the company almost 20 years
22 ago, I, David Dupree have been responsible for those operations.
23 This is the agreement Neville and I had as part of the company's
24 establishment. Neville made it very clear that he was
25 enthusiastic about our endeavor, however, due to his full-time

1 responsibilities at Harnees, he did not have the time to be
2 involved other than when necessary. According, from sales to
3 installation, repairs to billing, all of these have been my
4 responsibility. I would either perform these myself or in the
5 case of installation and service, to schedule our service
6 technicians. Neville, on occasion, makes/made deposits and
7 signs checks when I was unable to do so.

8 "Furthermore, from time to time we would speak and I
9 would inform him in general how the Company was doing. Our
10 relationship work/works and there has never been a reason for me
11 to report to him other than an overview from time to time. I've
12 never informed him of ongoing sales efforts or sales themselves
13 except in passing. It's just not the way the business is run.
14 In respect to any contracts, the review and signing also have
15 always fallen within my responsibilities. However, on occasion
16 prior to Neville's election, he would sign if I was unavailable.
17 Since his election, he has been kept completely out of this
18 process."

19 And that is a letter which is notarized and which, as
20 I've said, you've produced to the Commissioner.

21 Now, Mr Dupree says that you have not been--you have
22 effectively not been involved in the Company since its
23 inception. He gives that as 20 years.

24 A. Right.

25 Q. You, yourself, say that your role was limited, or

1 became more limited about 10 years ago?

2 A. Right.

3 Q. Can you explain the difference in recollection to the
4 Commissioner?

5 A. Well, Commissioner, since I've been working with
6 Harnees, what happened is also my job became more--had more
7 responsibility as well in Harnees, and I could not have
8 performed the duties that I would have loved to do in terms of
9 some things like sales and stuff like that, so Dave took over
10 all of that, so I had nothing to do with looking for new jobs or
11 nothing like that.

12 And coming on to the election, I pulled myself
13 completely away from dealing with anything with the Company,
14 unless it had to be where I was signing his work permit or
15 workers' work permits. When terms of making deposits, I haven't
16 been doing deposits as well, I haven't done doing the checks,
17 maybe just sign a bundle of checks, and when he requests
18 information to checks for salary and stuff, it is done by my
19 wife, not me.

20 Q. My question was slightly different, Honourable Smith
21 because it's just that Mr Dupree says that you haven't been
22 involved in the business for 20 years. You say you have not
23 been involved in the business--your role has been limited for
24 over 10 years. Could you explain why you came up with 10 and he
25 came up with 20?

1 A. Well, I said he considered to be 20 because of
2 the--what I consider to be--I still was playing a role so to me.
3 I mean, he said that we'll do, but I still was involved in a
4 way, more than he may have known in terms of speaking to other
5 clients and trying to get business, but yes, he played a role.

6 So, when he said that my role was not 20 years, he
7 can't say that from the light and exception that we discussed,
8 yes, and he's the one involved in Companies, I send people to
9 him. I would not make decisions on the Company behalf over 20
10 years. He would be the one to say, hey, look, this is what
11 we're doing so I would be informed. But I was not the one to go
12 there and say, hey, look, this is what we're doing, and meet
13 with the clients. I never met with the clients for over 20
14 years. He's the one who met with the clients, so that's why he
15 say that.

16 COMMISSIONER HICKINBOTTOM: On all of the
17 invoice--there are hundreds of invoices here from Caribbean
18 Security. On all of them, and also on the proposal, the
19 proposal that we just looked at from October 2020, your mobile
20 phone number is on the proposal invoice.

21 THE WITNESS: I am part of the Company. I did not
22 take my name off the Company, so yes, my name's remained on the
23 Company.

24 COMMISSIONER HICKINBOTTOM: No, no, no, not in a
25 formal way. It's got--

1 THE WITNESS: Phone number.

2 COMMISSIONER HICKINBOTTOM: --office, Neville cell,
3 and your number.

4 THE WITNESS: Yes, it's on there because it's been on
5 there since in inception. We didn't take it off.

6 COMMISSIONER HICKINBOTTOM: Right.

7 THE WITNESS: If somebody call me, I either tell them
8 to call Adrian or call Dave.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you.

10 BY MR RAWAT:

11 Q. Mr Dupree, in his letter that we've read out,
12 explained that your minimal involvement was because of your
13 full-time role at Harnees. What was your role at Harnees?

14 A. At Harnees, I wear many hats, let's put it that way.
15 I work--I start off as an accountant doing accounts, and then I
16 turned to doing incorporations, and then I was dealing with
17 liquidations and services, and my last role was a manager doing
18 operations, dealing with company searches, dealing with premises
19 and stuff like that, as a manager.

20 Q. And you were full-time at Harnees for 20 years?

21 A. 30 years.

22 Q. 30 years?

23 A. Exactly.

24 Q. And did you find it somewhat troubling that if we look
25 at the bigger contract, Mr Dupree enters into a contract with

1 part of the Government or with the Government of the Virgin
2 Islands for just under 100,000 pounds--dollars, and he doesn't
3 tell you about it?

4 A. It is troublesome because upon the election, I asked
5 two of my business partners that, once you get any contracts, or
6 you sign any contracts, let me do it because I will have to ask
7 for exemption.

8 But, you see the thing about it is the nature of him
9 and me not being involved with parties before, I don't know if
10 he took--he understood the role that he had to play now by
11 getting contracts to me to bring to the House. So, I don't know
12 if he understood the impact of it, which I have been told from
13 him, I made changes from herein, any contracts that come to
14 Government, do not sign them. They must come to me first
15 because I have to bring them to the House of Assembly. I've
16 been telling him, so now almost every time he speaks--that's why
17 I said to him, any contract you get, you have to bring it to me.

18 So, I've made changes to make sure that I could fix
19 that so it won't happen again because that is two things that
20 happened. I either take my name off the Company or I have to
21 now play a more important role of making sure that when a
22 contract is done that I'm aware of it.

23 Q. And which option have you chosen to do?

24 A. To make sure I'm aware of it because I considered, as
25 a young man, I build what I have from the time I was a young

1 man, and to now take it and give it away, I just say hey, look,
2 because of politics I'm going to take my name off the Company.
3 I see that as being wrong because I will had to achieve what I
4 achieved in life. And what I achieve I want to make sure that
5 my children to benefit--my family could benefit from it.

6 And I don't want to take a chance where I remove my
7 name from my Company and something happens that they lose that.
8 That's hard. I have no problem making sure that it comes to the
9 House on time because we, as young people, we had to work hard
10 to get where we are, and I've done good to achieve what I have
11 achieved and I don't want to lose it because I did something
12 wrong, so I make sure I keep my eyes on that.

13 Q. If we go back to your written response, and we're at
14 page 4 now, Honourable Smith, and what you said, and again I'm
15 going to summarise, but you say that you have been transparent
16 and honesty in your dealings. You point to the evidence that
17 you gave to the Commissioner on the last occasion that you were
18 here, and you also make the point that the Contract that we were
19 looking at, the November 2020 Contract, went through a tender
20 procurement process. Why is the fact that it went through a
21 tender procurement process relevant to whether you need to get
22 an exemption or not?

23 A. Commissioner, like I said, had to be very--people have
24 a tendency of when they see you getting the world, and
25 especially--they have politician as corrupt. Everybody look

1 at--that's all over the world as corrupt. And if something now
2 goes through a tender, the first thing people are going to say
3 is because you're in Government it was handed to you, if you
4 understand.

5 I mean, so being a tender, being assure that it was a
6 process in place, it was nothing that was handed down to me or
7 the Company. It was a process that took place, there were
8 bidders, and the person who had the lowest bid or not even the
9 lowest bid, who maybe had the best system is who got the
10 Contract.

11 Q. The next point you make in response to this potential
12 criticism is that you say that, as soon as you became aware, you
13 made the appropriate application, and you--what you said--and I
14 will set it out: "I have requested a resolution and motion from
15 the Clerk and Speaker of the House for an exemption on contracts
16 entered into by Caribbean Security Limited with Government as
17 soon as was reasonably practicable."

18 And you make the point that the timing of when any
19 motion is heard is not within your power.

20 A. Correct.

21 Q. You've produced a letter from the Honourable Speaker.
22 Now, that's your Tab 3.

23 A. I have it.

24 Q. Before I go further with that letter, Honourable
25 Smith, it is stamped at the top "confidential". You shrug your

1 shoulders, but is there any issue with the Commissioner having
2 access to that document?

3 A. To read it now?

4 Q. No.

5 A. I have no problem.

6 Q. It's a fact it emanates from the Speaker's office.
7 It's stamped "confidential", and although it's addressed to us,
8 is there any issue about it being part of the evidence?

9 A. I do not.

10 Q. All right. Let's see what the Honourable Speaker
11 wrote.

12 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat,
13 before you do--

14 In terms of these motions, the motion is brought by
15 the Premier?

16 THE WITNESS: I'm assuming it's because the Premier is
17 the one who has to bring the motion, yes.

18 COMMISSIONER HICKINBOTTOM: So, how does it
19 mechanically work? How does it work? Just mechanically, just
20 generally.

21 THE WITNESS: How it work is that when I go to the
22 Clerk--to the Speaker, they will contact the Attorney General's
23 Office, and they will make up the resolution. Then I think what
24 happens is it would be--would be done by the Speaker--the
25 Attorney General, but I think you have to speak to the Premier.

1 I think only him can bring that motion because I cannot bring
2 the motion.

3 COMMISSIONER HICKINBOTTOM: I think the Premier brings
4 all the motions.

5 THE WITNESS: I think that's right.

6 COMMISSIONER HICKINBOTTOM: So, the mechanics, as far
7 as you're concerned, you speak to the Speaker.

8 THE WITNESS: Right.

9 COMMISSIONER HICKINBOTTOM: Clerk, rather, but you
10 speak to them.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: They then instruct the
13 Attorney General to draft the motion.

14 THE WITNESS: Correct.

15 COMMISSIONER HICKINBOTTOM: And then that motion goes
16 through to the Premier to--

17 THE WITNESS: It goes on the paper, and I guess goes
18 to him.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 Thank you, Mr Rawat.

21 MR RAWAT: Thank you.

22 BY MR RAWAT:

23 Q. Let's put it on the record, then.

24 On the 9th of September 2021, The Honourable Speaker
25 wrote as follows, and it's addressed to the Commissioner, and it

1 then continues: "This letter is to confirm that the Honourable
2 Neville A Smith brought to my attention a contract he signed in
3 November of 2020 with the Government of the Virgin Islands. The
4 Member, on four occasions between January 2021 and June 2021,
5 came to me asking that the Declaration be placed on the order of
6 the day. While I had every intention to place the Declaration
7 on the order of the day, I somehow allowed other issues of the
8 House to take precedence over this very important matter, and I
9 take responsibility for the omission.

10 "In addition, the 9th and 10th settings were going on
11 for a long time, and I allowed the questions posed from the
12 Opposition to take priority. It was not"--and the Speaker has
13 bolded the word "not"--"it was not the Member's fault as he does
14 not formulate the Agenda. The House of Assembly agenda is a
15 collaboration between the Speaker, the leader of Government
16 business, and the Clerk.

17 "In addition, most often when requests are made, we
18 still must wait on the Attorney General's Chambers to respond to
19 requests. That can take weeks, most often".

20 And the letter concludes, "Please be guided
21 accordingly."

22 That's, I think, the second, sort of, piece of
23 additional material you've provided to the Commissioner.

24 Now, it speaks to the November 2020 Contract. Just
25 help us a little further in relation to the April 2021 contract.

1 When did you first raise that?

2 A. April '21? Which one is that now?

3 Q. The one that we're--we have been looking at in
4 relation to--

5 A. The one to--

6 Q. For the Inland Revenue exemption.

7 A. When I learned about that, as I learned about it, I
8 raised it right away. But when I did learn of it, I brought it
9 up as well.

10 Q. But I think you said that this--this was the letter
11 that you--was this one that was brought to your attention by the
12 COI, and then you took it forward?

13 A. The one that was brought to my attention by the COI is
14 the last, last one.

15 Q. Right.

16 A. Do you want that now?

17 Q. The one that we're looking at. That is another
18 criticism, so we will come back to that.

19 A. Right.

20 Q. That is the one that you recognized?

21 A. That is the one we brought--that I didn't know nothing
22 about until they brought it to me.

23 Q. So we can be clear and you can have an opportunity to
24 answer this: In terms of getting these two resolutions in 2021,
25 in July 2021, were your actions in any way motivated by the

1 requests that were coming from the COI for disclosure of all
2 contracts you had with Government?

3 A. I will say no. I will say no because when I learned
4 of them is when I tried to move forward, and nothing to do with
5 the COI because, like I said before, and I've said this to the
6 Commission before, if there is one thing about me and what I try
7 to do, I try to be on the right side and live by the book and be
8 transparent as possible. I always try that, no matter what I do
9 in terms of even when I started to work for Harnees.

10 So, when I know stuff, I bring them. Once I'm aware,
11 I will bring whatever I had to bring.

12 Q. Let's go to the Contract that we did bring to your
13 attention. So, again, so that we can have the chronology in
14 mind, if you look in the larger file, please, at 812.

15 A. All right.

16 Q. So, that's the first page of the contract. It's
17 stamped, I think, by the Registrar's Office as December the 9th,
18 2019. If you look at the next page, please, Honourable Smith,
19 you will see that the contract is between the Government of the
20 Virgin Islands, and it's for a sum of \$15,918.24. If you go
21 through to 821, it's signed by Mr Dupree and by The Honourable
22 Premier.

23 Now, I think the date of that, I think, was supposed
24 to be August 2019. But if we go to 787, back to 787, we see
25 that the date of the contract was given by Mrs Dabreo Lettsome

1 as 6th of December 2019, and you were told in there that it was
2 paid in full. But I think your position was that, actually,
3 that just slipped through?

4 A. Yes.

5 Q. And you didn't pick up on the existence of that
6 contract at all?

7 A. Yes.

8 Q. So, it's sometime after June 2020 that you--that
9 you--so, let's put it this way: As of 22nd of June 2021, you
10 weren't aware of the existence of this contract?

11 A. I was only aware of the contract, actually, when I
12 went to the lawyers to go over the--what I had to go about, and
13 they brought it to my attention.

14 Q. I see.

15 A. And I said to them, "I submitted this already, I
16 already submitted this" because I was seeing "Police" again
17 because I was seeing "Police contract" for this contract. I
18 looked at it as the same contract and not go to the entirety.

19 At the same time, I call my business partner, at that
20 same given time, in front of my lawyer, and I asked him, "Do you
21 know of any other contracts besides--with regards to the
22 Police"?

23 He said "No".

24 I said, "Are you sure"?

25 He said, "You ask whatever you want, whatever you

1 needed, and I gave you everything, Neville. This is all I
2 have".

3 I said, "Dave, you need to check again because here is
4 Contract No. so-so-so-so, to the Police, so you need to look
5 into it".

6 So, he went back, checked, came back the next day and
7 said "I only have one contract for the Police".

8 I said, "Check again, Dave".

9 He come back and said--

10 Q. So, he spoke frankly to you?

11 A. --and said, "I made a mistake. Yes, I find it. It
12 must have fallen through the crack. I'm sorry".

13 Sorry don't cut it, but it's already happened.

14 And since then, I have made things to give to the
15 House of Assembly as well.

16 Q. Well, can I come back to that, please, Honourable
17 Smith because I quite like to take things in an orderly
18 sequence, and so we will come back to your written response in a
19 moment.

20 What I ought to put on the record, which I haven't
21 done, is the nature of the potential criticism that we're
22 talking about, which is criticism No 2.

23 A. Right.

24 Q. And that is that "Caribbean Security Limited entered
25 into a contract dated 6th of November 2019 for the sum of

1 \$15,980.24 with the Government of the Virgin Islands to purchase
2 and install items for the Royal Virgin Islands Police. On the
3 available evidence it appears that Honourable Neville Smith
4 failed to obtain an exemption from vacating his seat as an
5 elected Member of the House of Assembly under section 67 of the
6 Constitution in respect of this contract. The Honourable
7 Neville Smith acted contrary to and/or was in breach of section
8 67 of the Constitution."

9 Now, we've established that, certainly, June 2021 you
10 weren't aware of it. So, this Warning Letter is dated the 6th
11 of September 2021. Was that when you became aware of it?

12 A. Correct.

13 Q. So, it was when you had to meet with your legal
14 representatives to discuss your response to this Warning
15 Letter--

16 A. Correct.

17 Q. --that you first became aware of it?

18 A. Correct. Correct.

19 Q. Had you appreciated that the Commission of Inquiry was
20 able to formulate a potential criticism because you had, in
21 fact, disclosed documents relating to this contract to the
22 Commission?

23 A. Yes, I understand. And the thing about it, I give
24 you--I give you the information, not knowing that it was in this
25 bundle is what I'm saying. So, if I knew that this was here, I

1 get it and turn it in. So, it is clear I wasn't aware of that.

2 Q. You did, to be fair, hand over a large quantity of
3 paper. So, somewhere in there was a 15-Grand contract with the
4 Police?

5 A. That's correct.

6 Q. All right. Let's put your written response on the
7 record, please.

8 If we go to page 5 of that written response, again,
9 Honourable Smith, I will just summarize it because you make the
10 same points as you did in relation to criticism 1, which is
11 that, although you're a director, you're not involved in the
12 day-to-day. That's left to Mr Dupree. And you repeat what
13 limited role you have and that for the--you know, it's limited
14 down to, as you say, signing checks and making deposits.

15 And in relation to this contract, you say this:
16 "Unfortunately, as I'm not involved in the daily operations of
17 the company, it appears that this contract fell through the
18 cracks and I was not notified of the contract dated
19 6 December 2019 entered into by the Company until recently.
20 Upon receipt of the invoices and receipts from my business
21 partner to provide to the COI, I further inquired with my
22 business partner on the contract referred to on the invoice to
23 the Royal Virgin Islands Police Force. I have recently received
24 confirmation of the existence of the contract, and as such, I
25 have made arrangements to seek a section 67(7) exemption in

1 relation to it."

2 You then conclude that you will continue to always act
3 with honesty and transparency.

4 And "Once I am made aware of the contracts entered
5 into by Caribbean Security with Government departments, I will
6 make the relevant Declarations, seek consultation or legal
7 advice from the Attorney General, and request a resolution and
8 motion in accordance with section 67(7) of the Constitution as
9 soon as reasonably practicable".

10 If we break that down, the stage we got to is that, I
11 think, on your evidence, June 2021, when you have the e-mail
12 from the Deputy Governor's Office, you just did not pick up the
13 point that was made to you that there was a 2019 Contract?

14 A. Correct.

15 Q. When you received all and collated all of the
16 documentary material that you provided to the Commissioner,
17 which was in July 2021--and I will be corrected if that's wrong,
18 but--yes, 20th of July 2021, you provided that disclosure. At
19 that time you also were not aware of it?

20 A. Correct.

21 Q. But then, when you received the Warning Letter from
22 the Commission dated the 6th of September 2021, that's when
23 you--that's the first time that--

24 A. I was really made aware what--like I said, because the
25 fact that it was the same Police, I keep thinking that was the

1 same Police contract and stuff like that, so that's what
2 happened. I wasn't looking at the figure. I was like, this
3 contract--I did this already.

4 So, it was a simple, really, oversight.

5 Q. Just explain to the Commissioner that you say you have
6 taken steps to get a resolution. Just what steps have you
7 taken?

8 A. Well, what I have done is I spoke to the Clerk and the
9 Speaker again to get it on the Audit paper, which it is on the
10 Audit paper for tomorrow, I think actually in writing this time.

11 Q. So, you have an e-mail where you wrote to--

12 A. I think I did. I had my secretary send something. I
13 had my secretary do it by e-mail or something like that, so I
14 should have something on that now because I have decided to,
15 going forward, to make a paper trail of these events.

16 Q. If--if the Commissioner thinks it necessary, would you
17 be willing to provide that e-mail to the Commission?

18 A. I don't think--I see no problem in that. I could ask
19 my secretary to find it and try to get it to you. I don't see a
20 problem with that.

21 COMMISSIONER HICKINBOTTOM: Thanks.

22 BY MR RAWAT:

23 Q. Except the distinction you're now drawing between
24 Statutory Boards and Government--but three years into your time
25 as a Member of the House of Assembly, you have now benefited

1 from four resolutions of the House in relation to section 67.
2 Tomorrow--I'm not going to predict the outcome, but you might
3 benefit from a fifth. That's probably good a strike rate in
4 terms of getting resolutions in relation to section 67.

5 Have you taken any--or what steps have you taken to
6 put in a system for Mr Dupree or others in the other enterprises
7 in which you're involved to alert you to new contracts?

8 A. Well, what I have done--it's not in writing, but like
9 I said, what I have done, maybe I draft something and he may
10 need to send something to the Government itself, I mean, have to
11 send a letter to Government itself, saying that any contracts
12 that Caribbean Security entered into that from here in, it comes
13 to me first, so I may have to put something like that in place
14 so at least it triggers first to me before it goes to him.

15 So I think that's--and also, I'm open to opinions as
16 well because that's the only way I could see it working, where I
17 trigger that from Government, saying any contracts entered into
18 with Caribbean Security, it must come to--I don't want to be the
19 one to sign them, to be honest, but I would like to be notified
20 of them because, if you look at these contracts here, most of
21 these contracts, apparently what happened--they weren't sent to
22 me. They were sent to New York, to Mr Dupree, so that's why I
23 was not aware of them, and most, "Please sign and get back as
24 soon as possible because we want the work done right away".

25 So, I think that's really where the hiccup came. So,

1 if I create it where it must come to me first, not for signing
2 but at least for proofing, at least I could see it, namely--the
3 thing about it, I still have to bring the contracts to the House
4 of Assembly to give to the AG to make the resolution because I
5 can't--and that's--again, I cannot make a resolution until I get
6 a copy of what the contents of the--the content is as well
7 because I need to see the file.

8 COMMISSIONER HICKINBOTTOM: But no system in place
9 yet?

10 THE WITNESS: To get--not to the Government, but--

11 COMMISSIONER HICKINBOTTOM: To anybody?

12 THE WITNESS: To give to my partner, yes. I said to
13 my partner, "Don't sign any more contracts."

14 An example of that, if I know there is work pending on
15 a contract, that cannot be signed because the contract, he
16 brought it to me and I have it, I cannot sign it because it was
17 sent to the House. Every time I try to get it to the House,
18 it's not happening because they keep extending the House,
19 extending the House, it was not--so, in this Audit paper no.
20 So, I have made changes whereas any contracts from the
21 Government must come to me first, with him, and he accepted
22 that.

23 BY MR RAWAT:

24 Q. Because, looking backwards, certainly your time as a
25 Member of the House of Assembly, there have been a number of

1 contracts that you were not aware of.

2 A. Correct.

3 Q. And to take this example, this one you only became
4 aware of because the COI wrote to you.

5 A. Correct.

6 Q. How can you be sure that no other contracts have
7 fallen through the cracks?

8 A. That, I cannot say "yes" yet to. But based on the
9 information that he sent, I think at this time you will pick it
10 up.

11 Q. You're hoping that the COI--
12 (Overlapping speakers.)

13 A. No, no. I'm saying, at least for now, from what the
14 past, I can see apparently you went and see where this was
15 picked up. But on their end, I want to make sure that any
16 contracts that are being signed must come through me first. So,
17 I'm just talking about what's gone now. What I give you here is
18 all invoices that were done since I was elected. So, if
19 something else was there, you would find it.

20 Q. But what you yourself have done--it's not just
21 Caribbean Security, but have you yourself done an audit of the
22 documentation relating to all of your interests to confirm for
23 yourself or to be confident that there isn't a contract with
24 Government--

25 (Overlapping speakers.)

1 A. With any other--

2 Q. --Caribbean Security or Frontline Systems you may have
3 declared to the House?

4 A. What I have done is I tried to collectively go back in
5 my memory, especially Frontline, because Frontline is an
6 individual entity, so I went back there and checked to see who I
7 have with that. In terms of any other companies, contract-wise,
8 there are no contracts. Caribbean Security is the only Company
9 that mostly deals with Government because of what it relates in
10 terms of contracts in terms of business-wise, in terms of
11 security, because of what we do. The other companies that deal
12 with Government, they be like POs, like selling paper, but not a
13 contract. So, that I can remember for sure. But the only one I
14 know for sure is Caribbean Security because of the extent of
15 business that we do is where I see that happening.

16 Q. Because it presents difficulties for you, Mr Smith,
17 I'm going to suggest, because if you don't know what the
18 company's doing, how can you fulfill your role as a Managing
19 Director?

20 A. Let's put it this way: When the Company start, when
21 we started the Company at inception, this company was start
22 based on trust, based on what I want to see in the BVI in terms
23 of security, in terms of what was happening and how to help
24 other people. The Company did not start out to become to be
25 what we know today. I never in my life ever thought I would be

1 in politics. Never. I never intended to be in politics. But
2 because of me being a trustworthy person and people see me as
3 person they can trust and who help other people, I get involved
4 in politics. Come in here, I didn't know about being faced with
5 stuff like this, and I wasn't prepared for it. And now that I'm
6 here, I'm trying to make sure that I do the right thing.

7 So, by saying that I don't know what's going on, I
8 won't say I don't know what's going on. My company was based,
9 and we grew on trust. We grew a relationship. Me and my
10 business partner, we became best friends. There was two other
11 partners; one died, one passed. God rest his soul. And we grew
12 a relationship out of trust and out of the relation that we had,
13 doing business with other people. So, it's trust, something
14 that we had and we have, and we still have today. And like I
15 say, anyone's company might have that trusting relationship with
16 their business partner, but I have that with him, so I trust
17 him. It might not work that way some places in the world, but I
18 know the one I have is trustworthy.

19 Q. I think it may have been my question, but the point is
20 that you are the Managing Director of that company. You've
21 spoken about your wish to, if you like, preserve your legacy for
22 your children.

23 A. Right.

24 Q. You have spoken about how you came into politics. But
25 leaving your House of Assembly hat to one side, you are still

1 the Managing Director of the Company. And the question was,
2 really: You must have a role as a Managing Director of a
3 company, and how can you fulfill that role if you don't actually
4 know what the Company is up to?

5 A. Well, it depends on--I depend on my partner. At the
6 times when we do meet, he will give me suggestions and I give
7 him suggestions when we do meet, and like I said, any kind of
8 meetings. Like I said, the Company was based on trust
9 relationship.

10 At this point in time now, I think I'm open for
11 recommendations, (1); and maybe I need to take my name off as a
12 Director and maybe put it on as something else and not as
13 Director because stating on the Constitution, stating Director
14 and, I think, Shareholders as well, so my question I have to ask
15 how else or what else can I do with my name? Maybe I can put it
16 in trust or something, or put it in a different company. I will
17 have to find out.

18 But my thing that I have, when I listen to some people
19 saying what I should do, they say put it in your daughter's
20 name, put it in your father's name, put it in your mother's
21 name. The same is true, whether it's a mother's name or
22 father's name or sister's name, I'm still related to the people,
23 so I have an interest in the company.

24 So, we have to find a way that we could fix that
25 because, to me, that's not an answer. If I put it in my

1 daughter's name, I still have a say.

2 COMMISSIONER HICKINBOTTOM: But there is a fundamental
3 or overarching issue here, and that issue is, really, of
4 conflicts of interest. Under section 67 of the Constitution,
5 once you become an elected Member, the general rule is no
6 contracting with the Government as an individual or as a member
7 of a firm or as a director, full stop. That is the general
8 rule, and it's very clear. The exceptions--and I accept that
9 section 67(7) is not drafted as clearly as it might be--but the
10 exceptions are that before you enter into a contract, you get
11 the House of Assembly's approval, if they consider it to be
12 just.

13 But when you say, well, there are ways that we might
14 be able to get around this by me becoming something else in the
15 Company other than a director but still having a part in the
16 company, or transferring it to a close relation who would
17 effectively look after it for me while I'm in politics doesn't
18 seem to me to really address the fundamental issue here, and the
19 fundamental issue here is the potential conflict of interest
20 between an elected Member and contractor with the Government.
21 There is a fundamental conflict of interest there, and that's
22 the thing that section 67 is designed to address.

23 THE WITNESS: Commissioner, if I may.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 THE WITNESS: So, are you saying to me--if I'm reading

1 it wrong, I have to ask advice--that a private citizen who have
2 a business should not do--once that person come into Government,
3 doing business with Government before, should give up those
4 businesses?

5 COMMISSIONER HICKINBOTTOM: No.

6 THE WITNESS: That's it.

7 COMMISSIONER HICKINBOTTOM: No, I'm not saying that.

8 But under section 67, the general rule is "No". And it's up to
9 the House of Assembly, before the event, to say that, in certain
10 circumstances, it is just to allow you to trade with the
11 Government. It might be just. This is only an example. It's a
12 matter for the House as long as conditions of section 67 are
13 complied with.

14 They may consider it just if, for example, you have a
15 long-standing trading relationship with the Government. They
16 may. I don't know. It's a matter for them. But it's all done
17 beforehand, and it's not done, if I might say so, in the way
18 that it's been done here, which has been in less than an optimal
19 way.

20 And I don't say that it's all on your shoulders. The
21 Speaker says the Attorney General sometimes takes a long time to
22 draft the declarations.

23 THE WITNESS: Right.

24 COMMISSIONER HICKINBOTTOM: And he has taken--he has
25 shouldered the delay, in part, of six months, in getting a

1 Declaration through the House after you had spoken to him, that
2 he has said.

3 But looking at it from a governance point of view and
4 conflicts of interest, this is--does not look to me to be a
5 system that is working as it should be. I'm leaving aside
6 whether you have committed any infringement of section 67, but
7 this is not how it should work.

8 THE WITNESS: Okay.

9 MR RAWAT: Commissioner, I'm going to ask for a break.
10 But before I do, could I ask one more question and then move on
11 to a different topic?

12 COMMISSIONER HICKINBOTTOM: Yes.

13 BY MR RAWAT:

14 Q. Honourable Smith, I should have asked you this
15 earlier. But you remember that you explained to the
16 Commissioner that your discovery of the November 2020 Contract,
17 the big Police contract, was because Dave Dupree contacted you?

18 A. No. Because what I did, the same letter you see, I
19 asked--the same e-mail that was sent to Deputy Governor office,
20 I asked the question as well.

21 Q. Yes, but that--

22 A. I asked for a copy of the contract because I
23 knew-- after I learned about it, I even asked, I asked him if he
24 had a copy, and he said he didn't have a copy. So, I asked the
25 Deputy Governor Office if they could find me a copy that would

1 have--to every government entity.

2 Q. So, you--I see. So, if I break that down, so,
3 following inquiries made of you by the COI, you then contacted
4 every government entity--

5 A. That's what I said.

6 Q. --and said, "Caribbean Security, what contracts do
7 they have with you"?

8 A. Caribbean Security, Frontline, what contracts does any
9 one of the entities have with you.

10 Q. Now, as I understood your evidence, and we saw the
11 e-mail to the Deputy Governor's Office in June, you were saying
12 that that big Police contract you knew of in January 2021, and
13 you knew of it because they contacted you?

14 A. Asked me a question, yes.

15 Q. He asked you a question.

16 And that's what prompts my question.

17 A. Good.

18 Q. Because you're in elected politics, you've stepped
19 away from your companies and your businesses. In relation to
20 Cabinet security, you have not been involved at all.

21 A. Okay.

22 Q. So, why would they be asking you a question?

23 A. Because he thought that was something the Government
24 will know, why the contract was awarded to somebody, because he
25 wondered whether it was awarded. So, he had overheard something

1 that this was awarded to someone. So, he's asking me if it was
2 awarded because we had already changed our mind. So, I said
3 "It's not me. It's under the Deputy Governor's office. It's
4 not Government." It was under Deputy Governor's Office. So,
5 when he told me, that is when I was prompted about it as well.

6 COMMISSIONER HICKINBOTTOM: But that was after the
7 contract had been signed?

8 THE WITNESS: Yes, because I didn't know he signed.

9 COMMISSIONER HICKINBOTTOM: He couldn't have rung you
10 after the contract had been signed to ask you whether the
11 contract had been awarded to Caribbean?

12 THE WITNESS: Because what happened, the same as if
13 what happened, the contract was signed but no one was happening,
14 nobody was saying anything. So, he thought it was just crap,
15 just finished, because it went quiet.

16 COMMISSIONER HICKINBOTTOM: So, he wanted to know,
17 really, about the implementation of the Contract.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: If the works were going to
20 be done?

21 THE WITNESS: Yes.

22 BY MR RAWAT:

23 Q. If you look at 797 in the bundle, you appear to be
24 paid on the--or Caribbean Security Limited appeared to have been
25 paid on the contract--

1 A. I wouldn't know that. Remember--

2 Q. --in December?

3 A. But I wouldn't know that, as I explained.

4 Q. No, but Dave would?

5 A. Right.

6 COMMISSIONER HICKINBOTTOM: And again I'm sorry to
7 interrupt. But also you say he contacted you in January to see
8 whether the contract was still live. And if Caribbean had been
9 paid, there may have been--may have been less interest in
10 knowing whether the contract was still live. Payment is really
11 quite important for a supplier.

12 THE WITNESS: Commissioner, I can't answer the
13 question where he--why he felt the way he felt, that he felt he
14 had to call me ask me the question. I don't know why, but he
15 did. And as I said, it did prompt me to move with it.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 MR RAWAT: I'm getting ready to move to a different
18 topic, so perhaps we could have a short break.

19 COMMISSIONER HICKINBOTTOM: Yes. We need to have
20 break, in any event, for the Stenographer.

21 Are we moving on to section 66?

22 MR RAWAT: We're moving on to criticism 3, which is
23 still, I think, section 67, and then we will move on to
24 section 66.

25 COMMISSIONER HICKINBOTTOM: Right.

1 I was just thinking about the length of break. We
2 need to have a break anyway for the Stenographer. He only
3 needs, though, five minutes. Would a 20-minute break be
4 sensible? We will break for 20 minutes, and then we will come
5 back at half past 2:00. Thank you very much, Honourable Smith.

6 I'm sorry, just before you cut the link, I said I
7 would come back to Ms Peaty about whether we might want to hear
8 on behalf of the AG in terms of the law. I think, at the
9 moment, Ms Peaty, the answer is yes, I would, particularly on
10 section 67(7).

11 Mr Rawat, any observations on that?

12 MR RAWAT: No. But as you've noted, sir, I think
13 Mr Davies wishes to make submissions anyway.

14 COMMISSIONER HICKINBOTTOM: Yes, Mr Davies wants to
15 make some oral submissions anyway, which I will hear at the end
16 of the evidence. But section 67(7) at the moment seems to be,
17 in my mind, seems to be something that I will want to hear from
18 both Mr Fligelstone Davies and on behalf of the Attorney General
19 at the end of the evidence.

20 MS PEATY: I know this is always difficult, but might
21 it be possible for Mr Rawat to give us a heads-up as he thinks
22 he's coming towards the end of the evidence, because I will need
23 to find and extract Sir Geoffrey, so that he can have reasonable
24 time.

25 COMMISSIONER HICKINBOTTOM: Do you need half an hour?

1 Is half an hour--

2 MS PEATY: I think half an hour would do it, yeah.

3 COMMISSIONER HICKINBOTTOM: What we will do is we will
4 give you at least half an hour. Mr Rawat will give us an
5 indication, but in any event you will have your half an hour.

6 MS PEATY: I appreciate that. Thank you very much.

7 COMMISSIONER HICKINBOTTOM: Thank you very much.

8 Half past 2:00. Thank you.

9 (Recess.)

10 COMMISSIONER HICKINBOTTOM: Good. We're ready to
11 resume.

12 Mr Rawat.

13 MR RAWAT: Thank you, Commissioner.

14 BY MR RAWAT:

15 Q. Honourable Smith, thank you for returning. We are now
16 on potential criticism 3. And before we deal with it further,
17 can I just put the criticism encapsulated on the record. It is
18 that: "Caribbean Security Limited entered into a contract with
19 the BVI Ports Authority dated 22nd of September 2020 for the sum
20 of \$39,000--I'm going to read that again--for the sum of \$39,350
21 to purchase and install items for the Authority. On the
22 available evidence, it appears that The Honourable Neville Smith
23 has not been exempted from vacating his seat as an elected
24 Member of the House of Assembly under section 67 of the
25 Constitution in respect to this contract. Honourable Neville

1 Smith acted contrary to and/or is in breach of section 67 of the
2 Constitution."

3 Now, if we just look, please, at the large bundle, I
4 think it will be at 703, please, Honourable Smith.

5 Before we turn to your written response, just to set
6 some of the background to this contract, please.

7 What we have at the very bottom of the page, it
8 is--I'm going to be a little careful about referring to
9 specifics as we go through this, as we have been doing
10 throughout, but we have from Vance Lewis, who I understand, tell
11 me if I'm wrong, but is the CEO of Tortola Pier; is that right?

12 A. Correct.

13 Q. And it's dated July 15, 2020. It's addressed to you
14 at your gov.vg address but also cc'ing Dave Dupree, your
15 partner.

16 And it asks you--it's addressed "Dear Mr Smith", and
17 it asks you to provide a quotation in response to certain
18 specifications which are attached to the e-mail, and it would
19 suggest--it continues, I would suggest that you or your business
20 partner come to TPP to understand location runs, et cetera.

21 Now, do you often use your Government e-mail account
22 to conduct private business?

23 A. Commissioner, my e-mail address, I do not use the
24 Caribbean Security, but somebody know that I'm in Government,
25 they will send me something there, yes.

1 Q. You say somebody knows you're in Government, they will
2 send you something.

3 A. If they know I'm there how to reach me, and that's the
4 only address they have, they will send it to that address.

5 Q. In relation to Caribbean Security or in relation to
6 other private matters?

7 A. Anything. That's the only address I use at the
8 moment.

9 Q. So, you're saying that's the only e-mail you have
10 active at the moment?

11 A. That's what I use at the moment, right.

12 Q. I see. So you get, as well as e-mails concerning your
13 public functions, you might receive e-mails that relate to your
14 private affairs on that address?

15 A. At times, I'm sure.

16 Q. But even if that is right, and you're using--that's
17 your one e-mail address now, if you're not active in Caribbean
18 Security and you have never been active, you certainly on your
19 evidence haven't been active for--since March 2019 at all, why
20 are you getting e-mails concerning Caribbean Security?

21 A. Commissioner, once again, everybody who knows me knows
22 I'm in Caribbean Security Limited. If somebody have a question
23 for Caribbean Security who knows I deal with it, they will
24 contact me. In return what I'll do is I'll get that information
25 to David Dupree.

1 Q. Now, there is an invitation in this e-mail to come to
2 TPP, and the--Mr Dupree, I think, is based in the US, isn't he?

3 A. Correct.

4 Q. So, given that he was based, and we can see that
5 July 2020 obviously nobody could be traveling around anywhere.

6 A. Correct.

7 Q. Did you attend TPP to discuss locations?

8 A. No, I did not.

9 Q. Now, if we go to 699, please. In fact, if you go
10 to--yes, 696, please.

11 Right. What we have is this is sort of an exchange of
12 e-mails between Dave Dupree and the Ports Authority concerning
13 the Contract, and the detail is who has to sign the Contract.

14 A. Correct.

15 Q. And what the Executive Secretary writes to Mr Dupree
16 is that, he could sign it even though he was overseas. But then
17 it continues, in this particular circumstance, it might be
18 better for Mr. Smith to sign because the Contract is in a very
19 simple format, does not include signing in counterparts or
20 relying on copies, et cetera. The previous contract was signed
21 by Mr Smith, so we will proceed along those lines.

22 Now, can you just help, the reference to the previous
23 contract, what is that to?

24 A. That might mean that something before elections that
25 we did some sort of work over there maybe, and I signed that

1 Contract. That's a possibility of what that would mean.

2 Q. It's a contract that you're said to have signed, but
3 other than saying it might relate to something that happened
4 before the election, can you--

5 A. I'm not sure that before or during--actually before
6 the election or not, but we had other contracts with Port
7 Authority, so that's what they're referring to. Okay? We did
8 have contracts with Port Authority before that I knew about.

9 Q. Right. So, you were aware of other contracts with
10 Ports Authority, and you had signed other contracts?

11 A. Correct.

12 Q. If you go, then, to 683.

13 A. Yes.

14 Q. That's the Contract itself and that's the first page
15 of it, and if we go over, you can see that it says at the top
16 that it's made on the 22nd day of September 2020, and at
17 page 691, and you can see it as well on 688, first of all.

18 A. Correct.

19 Q. You signed the Contract for or on behalf of Caribbean
20 Security?

21 A. Correct.

22 Q. And then it was notarised by Commissioner--or
23 certified by Commissioner of oath on 691.

24 A. Correct.

25 Q. Now, that contract in November 2020. If you could

1 just turn to page 744, please.

2 A. I'm there.

3 Q. This is an invoice dated 13th of September 2019, and
4 it's in the standard Caribbean Security Limited template, so as
5 the Commissioner pointed out, it carries both your cell and
6 Neville's cell number--sorry, your cell number and Dave's cell
7 number. But what it refers to is work being charged to the
8 Ports Authority.

9 A. Yes.

10 Q. If you go back, Honourable Smith, to 719.

11 A. I'm there.

12 Q. Working back through 719 and working back to 707, you
13 will see that there are more invoices to the Ports Authority.
14 This one at 719 is for an annual service. You then have at 718
15 inspection of a system. Again at 717, we have another annual
16 service, again at 716 and annual service. 715, monitoring of a
17 system. And these it appears--I don't want to read out the
18 details, but it appears that Caribbean Security Limited are
19 doing different things at different port locations?

20 A. Correct.

21 Q. And then if we look, an example again at 714 of a door
22 release not working.

23 A. Um-hmm.

24 Q. And then if we go through again at 712, you have
25 monitoring of the system, which is written as a particular price

1 of \$100 per month billed quarterly in advance, so it seems to be
2 on a rolling basis.

3 Now, this is all invoices in 2019.

4 A. Correct.

5 Q. Covering right through, if we look at 707, through to
6 December 2019.

7 A. Yes.

8 Q. Now, those are obviously not part of that contract
9 that we just looked at.

10 A. No.

11 Q. So, in what context do those invoices arise?

12 A. Those are contracts based on--those are invoices that
13 were based on contracts before--

14 Q. Right.

15 A. --election.

16 The contracts to do monitoring and maintenance of
17 existing contracts that we had before I was elected, so that's
18 where that's from.

19 Q. Using the Ports Authority as the example, then, is the
20 way that Caribbean Security work is that you will come in and
21 you might install a system, a security system, to the client's
22 specification?

23 A. Right.

24 Q. And then you will offer also a monitoring and
25 servicing--

1 A. Commissioner, let me break it down for you.

2 Basically how it works, if I'm given a contract or
3 this is not a contract, let's say even if we are bid on a job
4 and it's not really a contract, they say they want to hire us,
5 it's not much, but let's say a door. I'll use the example this
6 building. When we give you that contract, the contract is
7 outlined what are we installing, and there is also a part that
8 will show you what the monthly cost would be for monitoring if
9 it's a burglar alarm or a fire alarm. If it's a CCTV, it will
10 only be--it would only be a yearly because that does not include
11 monitoring, so it's going to be yearly. If it's a burglar
12 alarm, it's monitoring and service. Every entity has a Service
13 Contract, so if it's burglar, keyless entry, fire or video is a
14 maintenance contract for those. Only fire and burg is a
15 monitoring contract because they're being monitored.

16 When we sign the original contract, there is a--at the
17 bottom of the proposal it states, once agreed to this contract,
18 you are also bound to the monitoring and to the maintenance and
19 we accept it. So once you accept it, it's a contract until you
20 break the contract. If you do not want it, you will not sign
21 that, then we will not monitor, and we will not maintenance.
22 That's how it works.

23 Q. Thank you, that's helpful.

24 So, if we look at what was going on in 2020, then, so,
25 if we look at 742, please, Honourable Smith, and we've then got

1 examples of the same monitoring/maintenance contracts rolling
2 over into 2020?

3 A. Correct.

4 Q. And I don't need to sort of go at them at length, but
5 they cover the points that you have just made to the
6 Commissioner, so at 746 we see a reference to burglar alarm
7 monitoring, 747 to fire alarm monitoring.

8 But if we go to, please, to 748, we don't need to give
9 the detail of this. It's about access to a building, it seems,
10 but it refers, do you see, to an approved proposal, and then it
11 gives a reference number?

12 A. Correct.

13 Q. So, again, in the context of the Ports Authority, how
14 do those approvals proposals arise?

15 A. Again, Commissioner, once you have existing contract,
16 once it's in the same building, like for instance, this is the
17 same building here again I used as an example, let's say they
18 want to add two new smoke detectors, there may be a pole
19 station, they will request us to come and look at that, and then
20 they will get an invoice. It wouldn't be a contract because
21 it's existing already. They're just adding on to what they
22 have. That's how that would arise.

23 Q. Right. But the reference to approved proposals
24 suggests that they--you make a proposal for work, and they
25 approve it?

1 A. Exactly.

2 Q. You then do it, and then they pay you?

3 A. Yes, Commissioner.

4 Q. Which, from your perspective, must be the most
5 important part?

6 A. Not really.

7 Q. But--and those are--are those kind of approved
8 proposals, do they come up in the work that Caribbean Security
9 do with a range of clients?

10 A. Yes, Commissioner.

11 If I may add, Commissioner, based on what you're
12 asking me as well, yes, other companies we do that as well, too,
13 but you see what happened is sometimes you might have a system
14 in your building and maybe say to put a partition off in the
15 building, so therefore, using the security code or fire code,
16 you may have to come and make adjustments to the system, and
17 what happened is we will come in and give them a proposal, this
18 is where the proposal come from, saying that this is what it
19 will cost to do that. They can either accept it or they can
20 refuse it.

21 And then most likely the building might be out of
22 code, but that would be up to them if they want to do that.

23 Q. I see. So, if they want to stay within the law, they
24 will have to--it's up to them. If they want to stay within the
25 law, they will have to--

1 A. Correct.

2 And Commissioner, that is not just Government. That
3 is every company that we do security for.

4 Q. We see another example now, we're moving into 2021 at
5 758, please. This seems quite--it's an approved proposal which
6 relates to, let's call it "network connection" because I think
7 thereafter it's what might be described properly as matters for
8 the technical folk.

9 But you see that the price of this was just over
10 \$8,000. And this is from the 15th of April 2021, so it's
11 obviously not the contract that we've been looking at.

12 A. Correct.

13 Q. So, it's described as an approved proposal, but
14 something like this, which is \$8,000-plus, I mean, how is
15 it--can you assist the Commissioner with understanding the
16 mechanics of how it's--contractually how does the process work?

17 A. Sure, Commissioner.

18 What would happen is that they will actually--and
19 speaking of what I knew in the past, I don't know if anything
20 has changed, like I said--but based on how it was before and how
21 it operates, what would happen is that, Port Authority will
22 contact Caribbean Security and say, hey, look, we have a
23 building we want to secure, we are seeking proposals, not just
24 from you, from different companies as well. And like I say,
25 there's only four or three security companies in the BVI that

1 does what I do.

2 So, when that happened, one of the technicians from
3 Caribbean Security will go across. It doesn't have to be David
4 Dupree and that's why I didn't bring it up because I realised
5 I'm part of the document--I realised that it said that either me
6 or David Dupree to visit the site. It doesn't have to be David
7 Dupree or myself, it could be any one of my technicians that we
8 had.

9 So, a technician will go look at the site, come back,
10 make all the different notes and pass it to David Dupree, who
11 will then, in turn, create a proposal. I will not say proposal
12 here at this moment, but it would be created and it will be sent
13 to the Port Authority, and the Port Authority would call us and
14 let us know whether we were accepted or they choose somebody
15 else. It was never that it was given to us by saying, hey, give
16 me a proposal and you have the job. Always had competitive
17 bidding as well.

18 Q. As in this case, you've got the job, the proposal was
19 approved.

20 A. Right.

21 Q. In terms of the mechanics, what do they send you, I
22 mean, what do they give you to show that--what is the
23 documentation so that you can get paid on?

24 A. That I do not know. I can't remember how that works,
25 in terms of the mechanics behind this. I know we send a

1 proposal, and then at the time they say you were accepted and
2 they may give us a down payment for the job. That's what's
3 supposed to happen.

4 In terms of a PO with the Ports Authority, I don't
5 know of such.

6 Q. Taking outside the Port Authority, then, it would seem
7 that you could do approved proposal work for others. Generally,
8 what happens? You put in an--an entity has approved the
9 proposal. You're ready to do the work.

10 A. Right.

11 Q. What's the next piece of paper in the chain?

12 A. The next piece of paper will happen, they will send us
13 a letter saying your job was approved, the same contract, we
14 draw up our own contracts and this and that, they will sign the
15 contract and say the job's approved, pay the 50% down payment,
16 then we'll commence Dave wants. That's how it is done. So,
17 even from private entities, you give a proposal, if they accept
18 the proposal, they call you back and say "yes," your proposal
19 has been accepted, when can you start? You can come and sign a
20 contract, you agree to sign the contract, they make the down
21 payment. The material is being ordered. Once we get the
22 document, we order the material. We commence work. Most likely
23 the company normally have most of the material on hand because
24 we always keep stock in inventory. So, they could start the
25 Project, so by the time the material is shipped, we're already

1 ahead on the Project.

2 Q. When you're using this as an example, this sort of,
3 you know, distinct job--

4 A. Right.

5 Q. --that's an approved proposal. What you need before
6 you want to put your service technicians there--

7 A. A signed proposal--once I get a signed contract.

8 Q. Yes, that's what you want. You want them to say to
9 you--

10 A. Accept it.

11 Q. We're already talking about obviously for today,
12 Honourable Smith, about how government bodies work?

13 A. Um-hmm.

14 Q. But what you want them to do is to say, we accept your
15 proposal, here is the contract, sign it.

16 A. Right.

17 Q. And then also what you want them to give you is a down
18 payment?

19 A. Sometimes not. I must say sometimes not. Depends
20 in--depends if you have a sales relationship with the client,
21 you may proceed without the down payment.

22 Q. And I think what can be said of Caribbean Security,
23 and this is something we might come to a little bit later, is
24 you have got established relationships with quite a few
25 government entities.

1 A. And private.

2 Q. And private.

3 A. Thank you.

4 Q. Let's turn to your written response, please, just so
5 that we can deal with that so that it's on the record.

6 I think this takes us to your page 7, Honourable
7 Smith.

8 A. Yes.

9 Q. So, again, I'm going to summarise, if I may. The
10 Commissioner will, of course, read the entirety of the response,
11 but in summary what you say is that you signed the contract, and
12 you recall signing the contract dated the 22nd of September 2020
13 on behalf of Caribbean Security Limited. At the request of
14 Mr Dupree because of his inability at the time to sign on behalf
15 of the Company, but you, importantly perhaps, make the point
16 that the BVI Ports Authority being a Statutory Board, your
17 position, and your understanding is that, you do not have to
18 seek an exemption because Statutory Boards are not part of
19 Government.

20 A. Correct.

21 Q. And you've explained to the Commissioner earlier today
22 that the backlash that you received when you sought an exemption
23 in relation to what was said to be Statutory Boards back in
24 2019, has caused you to shift your position, and your position
25 is now, if companies in which you have an interest contract with

1 a Statutory Board, you won't be seeking an extension on that
2 basis?

3 A. If I could comment more on that. I mean, I shouldn't
4 say I will not seek but I'll find some other way or mean of
5 getting it done because, if I'm not asked--if I'm told not to
6 bring it to the House, I don't bring it to the House, and I
7 don't want to take it to the House, so I'll have to find--and
8 I'm always looking for opinions, on maybe other ways that I
9 could get that done.

10 COMMISSIONER HICKINBOTTOM: It's not difficult to
11 publicise that. It's not difficult to publicise the fact that
12 you have a contract.

13 THE WITNESS: It's not difficult, but are you saying
14 to me, Commissioner, that every time I get a contract for a
15 Statutory Board I should make it public?

16 COMMISSIONER HICKINBOTTOM: You're saying to me that
17 that's what you proceed to do.

18 THE WITNESS: Well, what I'm saying--no, I'm not
19 proposing to do that. That's what I'm running from because,
20 like I'm saying, because it seems as if--it's a small place in
21 the BVI, and it seem as if every time you get a job or a
22 contract and because the kind of stuff that I'm dealing with,
23 security, you have to be very cautious as to how I put
24 information out there because I'm in breach as a security
25 company, once I start putting information out there to the

1 public, I will be in breach because I'm--for example, I'm
2 securing your home. If I put in the newspaper I'm securing your
3 home, I'm making you a target and me a target, because if I have
4 the codes for your house, which I will have, they will contact
5 me to get them, they could hold Neville as hostage and get
6 those.

7 So, we have to look at the context and look at what we
8 are talking about the element of what we're dealing with here,
9 which is security. I understand the whole agreement what we had
10 now, but we had to take this into serious context that security
11 is a risk assessment, is a trust something, and is also
12 something that is held in terms of protecting people's lives.

13 COMMISSIONER HICKINBOTTOM: I understand that, I
14 understand all of that, and I see the force of those points, but
15 in respect of contracts with the Government, you have the
16 obligation under section 67?

17 THE WITNESS: Correct.

18 COMMISSIONER HICKINBOTTOM: So, in a sense you don't
19 have any choice there. You have to get a Declaration in proper
20 form from the House of Assembly.

21 In relation to Statutory Boards, you got exemptions in
22 2019 in respect of two contracts, knowing that you didn't need
23 the exemption, but the Speaker and the Premier clearly thought
24 it was not inappropriate for you to obtain an exemption that you
25 didn't need. You decided, because of the response to that, not

1 to do that again, and your view is, I say the force of it, no
2 need to get an exemption.

3 But you say that you're now considering doing that in
4 some other way. That's all I was exploring.

5 THE WITNESS: Right, and I'm open for opinions on
6 that, Commissioner, if there are other ways it can be done, I'm
7 very much open to opinions as well.

8 COMMISSIONER HICKINBOTTOM: Okay, thank you very much.

9 BY MR RAWAT:

10 Q. And I think what can also be said, Honourable Smith,
11 is that in relation to the Resolutions that you obtained in
12 2021, which both related to Caribbean Security, you found a way
13 to--or a way was found to describe the nature of the contract
14 without compromising security?

15 A. Commissioner, I don't think so because, when it go
16 into debate, a lot has been said in the debate as well. I
17 cautioned the Government side and my side, please be careful how
18 this is being discussed and how--because we cannot review all
19 this stuff. But the fact that it even came out that here it is,
20 I have the contract for putting up around the BVI. That was a
21 breach.

22 Q. In your view?

23 A. In my view because now anybody who want to know where
24 Point A is or Point B is, who they going to look at?

25 COMMISSIONER HICKINBOTTOM: So, that's another

1 Conflict of Interest.

2 Yes, thank you, Mr Rawat.

3 THE WITNESS: If I might say, you said a "Conflict of
4 Interest", but I find it not that it's a Conflict of Interest,
5 even if I'm not a government entity, it should not be said. So,
6 even if I'm not a government--even if I wasn't in Government,
7 what I'm trying to say, that's something that should not be
8 revealed.

9 COMMISSIONER HICKINBOTTOM: But if you weren't in
10 Government, you wouldn't have the obligation under section 67.
11 That's why it's a Conflict of Interest.

12 THE WITNESS: Okay.

13 COMMISSIONER HICKINBOTTOM: If you're just a trader
14 and you do some, as it were--provide some service or really it's
15 a service, provide some service that's confidential, that's
16 confidential.

17 THE WITNESS: Right.

18 COMMISSIONER HICKINBOTTOM: But under section 67, it's
19 not that straightforward. If you're in--you're in the House of
20 Assembly because that requires you to disclose--and I appreciate
21 that there are difficulties, but the difficulties arise because
22 of the potential Conflict of Interest.

23 THE WITNESS: Gotcha.

24 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

25 BY MR RAWAT:

1 Q. I want to move on to the fourth potential criticism
2 that was raised in the letter, please, Honourable Smith. And
3 I'm going to just introduce it into the record. It's this:
4 "Honourable Neville Smith published two Declarations of
5 Interests in the Island Sun Newspaper on 2nd and 9th
6 January--February 2019 prior to the 2019 Election which took
7 place on 25th of February 2019, in purported compliance with
8 section 66 of the Constitution. The Declarations in both
9 publications were in identical terms and stated," and what's
10 then set out, and we'll look at the Declarations themselves, but
11 what the wording that you used in the Island Sun Newspaper.

12 What then also said is that the Affidavit, which is
13 the Affidavit that you provided to the Commissioner at an
14 earlier stage, which I think was on the 16th of August 2021,
15 that confirms that your business/companies had a business
16 relationship with the Government prior to your election, and
17 that's not something you dispute at all, is it?

18 A. No.

19 Q. The potential criticism that's set out in the letter
20 continues as follows: "On the available evidence, it appears
21 (1) from Honourable Neville Smith's disclosure to the COI on
22 20th of July 2021, and his Affidavit dated 16th of August 2021,
23 his businesses have entered--had entered into contracts whether
24 via contracts, Petty Contracts, Work Orders and/or Purchase
25 Orders with the BVI Government prior to his election as a Member

1 of the House of Assembly in 2019; (2), in particular, that
2 Caribbean Security Limited entered into a contract dated 16th of
3 November 2018, with the BVI Government to provide services and
4 supply/install items in the sum of \$43,000. This contract was
5 extant at the time of the Honourable Neville Smith's election in
6 2019. In the Declarations, The Honourable Neville Smith failed
7 to properly and/or at all set out the nature of the contracts
8 his company/business has had with the BVI Government.

9 Honourable Neville Smith acted contrary to or in breach of
10 section 66 of the Constitution." Now, that's just that.

11 Can I start off by just looking at the Declarations
12 themselves so we remind ourselves on what they are. You will
13 find them, Honourable Smith, in the smaller bundle at 63 and 64.
14 And they're in the same terms, Honourable Smith, so I'm just
15 going to read out the Declaration from the Island Sun of
16 Saturday the 2nd of February 2019. So, under the heading
17 Declaration of Interests, the notice reads as follows: "I,
18 Neville A Smith, declare interest in the undermentioned
19 companies," and you then list the companies as follows: "One,
20 Caribbean Security Limited," and you identify your role in
21 brackets as "Partner/Managing Director" and you say "supplies,
22 installs and maintains security systems. Two, NS Cleaning and
23 Imports", you identify your role as "Managing Director" and you
24 then say "supplies, cleaning services and products."

25 "Three, Frontline Sound System", where you identify

1 yourself as a "Managing Director", and you say "applies staging,
2 sounds, promotion and entertainments, et cetera."

3 "Four, International Construction Limited", you
4 identify yourself as "Managing Director", and you say it's
5 "building construction."

6 "Five, NN&L Charters", you identify yourself as
7 "Managing Director" and that deals with boat charters.

8 And then number six is "NS Water Services", where you
9 identify yourself as the "Managing Director", and that "delivers
10 provisioning and provides waste disposal".

11 And seven is "NS Services", again you identify
12 yourself as the "Managing Director", and that "supplies copy
13 paper and office supplies."

14 A. Correct.

15 Q. Now, and then it's recorded and signed Neville Smith.

16 Now, before we go further, I just want to just examine
17 a little the nature of the work that your various businesses
18 have and have had with Government.

19 If we start off with perhaps Frontline Systems, as
20 I've called it, sometimes you called it Frontline Sounds,
21 sometimes Frontline Systems, but we'll adopt the second today.

22 Now, we looked at the contracts that Frontline Systems
23 had with the Festivals Committee, and you've taken us to the two
24 contracts that you provided in your disclosure.

25 A. Correct.

1 Q. If you go, please, Honourable Neville, in the larger
2 file, lever arch file is go to page 1104.

3 So, what we see at 1104, Honourable Smith, right
4 through to 1110, are a series of invoices to the Ministry of
5 Transportation of Works and Utilities, so the two entities that
6 your disclosure shows that Frontline Systems dealt with, are the
7 Festival Committee, and am I right to say that the Carrot Bay
8 Festival Committee and the Road Town Festival Committee just
9 come under the umbrella of the Festivals and Fairs Committee?

10 A. Correct.

11 Q. Thank you. So, now, what we've got is a separate
12 entity which is a Government Ministry, Ministry of
13 Transportation and Works and Utilities. In relation to those
14 invoices, can you help the Commissioner at all just to
15 understand that the--how Frontline would have been contracted to
16 do that work? These are invoices in October and November of
17 2020.

18 A. Commissioner, once again, I do not do the day-to-day
19 runnings of Frontline as well, make that noted, but what would
20 happen is that somebody will contact Jason Frett, who is the
21 person that deals with Frontline at this moment. If you see the
22 signature, Jason Smith.

23 Q. Yes.

24 A. And he will give them a proposal based on what they
25 want, allowing something to bid as well, submit a proposal like

1 that, and they will be rewarded the job, if it's within the
2 realm that they want, and the price that they want to pay.

3 Q. So, is it similar to the process that we outlined
4 before, the whole approved proposal process?

5 A. Yes.

6 Q. They will contact--

7 A. They will contact Jason, he will do a proposal, and if
8 they accept it, they will tell him, okay, fine, we accept it.
9 Just like ports.

10 Q. And so you then end up with a contract, you do the
11 work?

12 A. It isn't a contract. It's a PO. It don't come as a
13 contract.

14 Q. So, it's a Purchase Order?

15 A. It's Purchase Order. It doesn't come under contract
16 as far as I recall. It don't need a contract for this.

17 Q. But for your own purposes you will have an audit trail
18 that says yes, we accept your proposal?

19 A. I wouldn't have that note. Like I said, Jason deals
20 with that.

21 Q. Yes.

22 A. But we're sure that it was signed off, like somebody
23 accept it, yes.

24 Q. Yes. I suppose when I was talking about the you, I
25 was talking about Frontline Systems?

1 A. Yes.

2 Q. So, Frontline Systems will, before it does any of this
3 work, will ensure that it has a written acceptance of the
4 proposal, an agreement as to the price that's going to be paid,
5 and that it gets paid for the job?

6 A. Correct.

7 Q. So, and then you submit your invoice and you get paid.
8 And that there are occasions when you don't get your proposals
9 accepted?

10 A. Correct.

11 Q. And there are occasions when, depending on who you're
12 dealing with, they might give you a down payment before you--

13 A. Correct.

14 Q. --start the work?

15 A. Correct.

16 Q. Thank you.

17 Now, NS Cleaning and Imports is a slightly more
18 complicated for--

19 COMMISSIONER HICKINBOTTOM: Before we get to the more
20 complicated, can I just ask one question about this. You don't
21 regard there as being any contract when Frontline Systems are
22 engaged as you have described.

23 THE WITNESS: I consider it as a contract once it's
24 over a certain amount of money, I guess they drop up a contract,
25 but once it's--for instance, we in this room here now, I will

1 use this room, and you needed a PA system and you know that
2 Frontline System provides quality system, quality sound. They
3 may call and ask Jason, do you have a PA system that you could
4 rent? And that's how we start.

5 COMMISSIONER HICKINBOTTOM: And he would say "yes".

6 THE WITNESS: We would say "yes."

7 COMMISSIONER HICKINBOTTOM: And how much it was?

8 THE WITNESS: Right.

9 COMMISSIONER HICKINBOTTOM: I would accept that.

10 THE WITNESS: Right.

11 COMMISSIONER HICKINBOTTOM: And then it would come.
12 There would be a contract because if he didn't come or didn't
13 work, I could sue him. And if I rejected it at the door, he
14 could sue me.

15 THE WITNESS: Well, you call it a contract, and there
16 is a part of the document that actually was a contract, but--

17 COMMISSIONER HICKINBOTTOM: You don't regard what has
18 been described as a contract for these purposes?

19 THE WITNESS: I do not call this a contract.

20 COMMISSIONER HICKINBOTTOM: Okay.

21 THE WITNESS: We don't consider that to be a contract,
22 that's how I look at it. When it comes to that, I don't
23 consider it to be a contract. I mean, I guess it's a contract
24 how you sign an agreement or something that was a contract.
25 Once you sign something it's considered a contract legally. I

1 see what you're saying, once you're saying something is legally
2 a contract. I get where you're getting at on that.

3 COMMISSIONER HICKINBOTTOM: But in any event, you do
4 not treat these as a contract?

5 THE WITNESS: As a contract.

6 COMMISSIONER HICKINBOTTOM: Okay.

7 BY MR RAWAT:

8 Q. NS Cleaning and Imports, the best starting place,
9 Honourable Smith, the reason is--I hope will become clear very
10 shortly.

11 A. I think I know what you're getting at. You have NS
12 Cleaning in the paper, selling paper but having NS Cleaning
13 Imports. Is that what you're getting at? That is--the name of
14 the Company is NS Cleaning and Imports; right?

15 Q. Yes.

16 A. But it doesn't clean. It sells paper.

17 Q. Right. Okay. Well, I'm sure it sells clean paper.

18 A. I hope so.

19 Q. But let's start with the index to the bundle. If you
20 go through the bundle, please, to--there is a section--it's the
21 larger bundle. You will need to open the larger bundle, take it
22 right back to the front, please, Honourable Smith. And if you
23 turn through the index, you will see a subheading reading "NS
24 Cleaning and Imports". It's probably the last but one page.

25 COMMISSIONER HICKINBOTTOM: If you go to the very last

1 page--

2 MR RAWAT: Of the index.

3 COMMISSIONER HICKINBOTTOM: --of the index, which is
4 just literally--

5 BY MR RAWAT:

6 Q. Just turn over that page, turn it back. You should
7 see a heading "Frontline Systems" on the top, and underneath is
8 "NS Cleaning and Imports".

9 I hope it will become clear why I've taken you here,
10 first of all, because you've pointed out that what NS Cleaning
11 and Imports does is sell paper. But what this index helpfully
12 tells us is that you sell paper to the Department of
13 Agriculture, the British Virgin Islands Ports Authority, the
14 Complaints Commission, the Department of Education, the
15 Department of IT, Elmore Stoutt High School, Facilities
16 Department, House of Assembly, Immigration Department, Inland
17 Revenue, and then--overleaf--the Land Registry, the Ministry of
18 Finance, the Ministry of Natural Resources and Labour, the
19 Premier's Office, the Supreme Court Registry, and the Survey
20 Department, Telephone Services, and the Treasury Department.

21 And is that--is selling paper the sole function of NS
22 Cleaning and Imports?

23 A. Yes, it is.

24 Q. If we go to the--if we take as an example, what you
25 have provided, although in terms of the documentation that

1 relates to NS cleaning and Import is just a set of invoices--

2 A. Correct.

3 Q. --which all look pretty much the same?

4 A. Correct.

5 Q. So, if we go just to an example, let's take 1193,
6 please, Honourable Smith.

7 So, just to explain for the Transcript what it is, it
8 is an invoice, and we're just using it as an example, but this
9 one is billed to the Premier's Office. It's dated the 24th of
10 November 2020. And we see that the invoice is for three units
11 of copy paper at \$58 per unit. And then there is--you're also
12 invoicing for three units of copy paper at \$75 per unit, and
13 then one unit of copy paper at \$75 a unit, and that's replicated
14 throughout these invoices. The common price that is invoiced is
15 \$58 for a unit of copy paper.

16 Now, what this looks like is that NS Cleaning and
17 Imports provide copy paper across a range of government
18 departments?

19 A. Commissioner, this has been done way before I was
20 elected as well. It's just a continuation. It's nothing new
21 that any of them--and actually, NS is not existing anymore, but
22 yes, it was done--all this was done before elected, established
23 already.

24 Q. So, this is pre-2019 as an arrangement. But can you
25 help the Commissioner with what is the nature of the

1 arrangement?

2 A. Commissioner, this wasn't an arrangement. What
3 happens in most companies and in government is everybody shop
4 around for the best price when it comes to stationery or paper,
5 and also somebody who would deliver the paper. The Company, NS
6 cleaning, what it does is they sell some of the cheapest paper
7 and they also make delivery of the paper on time. You don't
8 have to pick it up; we bring it to you.

9 So, what would happen is if any company, not just
10 Government, anyone want paper and they know of NS Cleaning and
11 Imports, they make a phone call and say, "I am interested in six
12 case of paper, five case of paper", and somehow we deliver the
13 paper to them. That's how that works.

14 Q. Here we were looking at the Premier's Office.

15 A. Correct.

16 Q. Did you have a contract with the Premier's Office to
17 supply paper?

18 A. I have no contract with no government entity when it
19 comes to paper. NS is just on a call basis. Somebody want
20 paper and they make a phone call and we sell paper. That was
21 always--that was never any contracts with Government for paper.

22 Q. So, they would phone you up, say "We need X number of
23 units of paper. What's the cost"?

24 A. Right.

25 Q. You tell them the cost. They will say "Right. We

1 will pay that cost. Can you deliver it"?

2 A. Correct.

3 Q. And that was the arrangement?

4 A. That is the only arrangement that I had.

5 Q. Thank you.

6 If we turn to Caribbean Security, which again I think
7 probably the best way to do it is to go back to the index,
8 because it's the swiftest way of doing it, and just turn back to
9 the first page of the index, please, Honourable Smith.

10 The way the index has been organized, Honourable
11 Smith, to explain to you, it's according to who was billed or
12 who the contract was with.

13 A. Okay.

14 Q. And so you have provided--and I hope we can establish
15 that you have provided documents in relation to the work of
16 Caribbean Security Limited that goes back three years, that
17 covers 2019 through 2021. That's right, isn't it?

18 A. Correct.

19 Q. And the documents you have provided are a mix of
20 contract details, e-mail correspondence, invoices, as we've
21 looked at. So, what you have sought to do is--is this
22 right?--once the COI put you on notice, to gather as much of the
23 documentation as you could and then to provide it to the COI?

24 A. Correct.

25 Q. And if we see that, it does show, does it not, that

1 Caribbean Security Limited has had extensive contracts with
2 Government that, as you've explained, some of which will
3 have--relate to contracts that were put in place before you were
4 elected to office?

5 A. Commissioner, the majority that you see here--

6 Q. Yes.

7 A. --that's what it--they were before, the majority.

8 Q. That's a fair point, Honourable Smith, because as
9 we've looked, we have identified the specific ones that perhaps
10 can be said to have come after your election.

11 A. Okay.

12 Q. But, certainly, what you were doing was contracting
13 with Government departments before you became an elected
14 politician?

15 A. Correct.

16 Q. And if we just go through the entities with which
17 Caribbean Security Limited does some work, you have the Archives
18 and Records Management unit, the Attorney General's Chambers,
19 BVI Airports Authority, BVI Health Services Authority, the
20 Central Statistics Office, the Court Reporting Unit, the
21 Department of Agriculture, BVI Electricity Corporation, Elmore
22 Stoutt High School, Financial Investigation Agency, Financial
23 Services Commission, Government Office Complex, HM Customs.
24 There is then named a Member of the House of Assembly, and there
25 is then named a second Member of the House of Assembly,

1 Immigration Department, Inland Revenue, Magistrate's Court,
2 Ministry of Finance, Ministry of Sports, Ministry of
3 Transportation and Works, Office of the Director of Public
4 Prosecutions, Office of the House of Assembly, Ports Authority,
5 Tortola Park, which is the matter that we went into in some
6 detail earlier?

7 A. Um-hmm.

8 Q. The Public Works Department; the Royal Virgin Islands
9 Police Force, which is again something that we've looked at; the
10 Social Development Department; the Supreme Court Registry; the
11 Telecommunications Regulatory Commission; the Treasury
12 Department; and Water and Sewerage.

13 So, that shows the range of government entities that
14 have you done work for. And I think, without descending into
15 technicalities or specifics, as you've explained, the work that
16 you do as Caribbean Security Limited spans the full range of the
17 work that might be necessary in relation to a security system?

18 A. Correct.

19 Q. And so you will install a system to the client's
20 specification?

21 A. Or design.

22 Q. Or design.

23 You will offer a monitoring and maintenance service?

24 A. Correct.

25 Q. You will also--for want of a better phrase, you

1 sometimes will fix problems?

2 A. Correct.

3 Q. We can pick anything at random, really, so--literally,
4 at random. If you go--well, if you go to page 627, please, and
5 perhaps that's the less sophisticated end of what work Caribbean
6 Security Limited does, but we see that on the 14th of
7 August 2020, one of your service technicians was called out
8 because the Speaker locked himself out of the office; is that
9 right?

10 A. Correct.

11 Q. And that's an example of--that would not--that might
12 be something that you might have to do because of a maintenance
13 contract?

14 A. Yes. As a security company, one of the force to be on
15 call if something goes wrong is admitting those guys.

16 Q. I would like to just look at some of the invoices with
17 you in relation to Caribbean Security. I appreciate that what
18 you've said about that you might not know some of the detail,
19 but if you could help, I would be grateful.

20 Could you turn up 371, please. Could I ask you,
21 though, to do this, Honourable Smith. I'm going to be careful
22 to avoid using people's names, and I hope you will be able to do
23 the same.

24 A. All right.

25 Q. And again, I'm also not going to refer to specifics.

1 But what we see at 371--and if you look through to 375--this
2 relates to the same individual. And if you go, for example, to
3 375 in particular, and indeed 374, what Caribbean Security were
4 doing--and these invoices relate to work done at the end of
5 2020--it seems to be installing security systems into the house
6 of--a private house of the Member of the House of Assembly.

7 You're nodding, but you need to say "yes" or "no".

8 A. Yes. I'm nodding because I can explain it; that's why
9 I'm nodding.

10 Q. And if we go to 377--again, please don't name names.

11 A. Sure.

12 Q. But--or, indeed, the detail. But we see at 377 and
13 378 that again, in mid-2020 this time, the Company is again
14 installing a security system at the home of a different Member
15 of the House of Assembly.

16 A. Correct.

17 Q. If you go to 630, please. This is now work done by
18 Caribbean Security at the beginning of 2020. This is a third
19 Member of the House of Assembly. It's again their private home,
20 and it's again--now, this is an invoice that relates to
21 maintenance of a system that has already been installed; is that
22 right?

23 A. Correct.

24 Q. If we look at 631, we're looking again--this is
25 beginning of 2020. This is, again, about--goes to the private

1 residence of a Member of the House of Assembly, but this is now
2 an example of a monitoring invoice.

3 A. Correct.

4 Q. And as the one we just looked at, this is billed to
5 the Office of the House of Assembly. If you turn, please, to
6 651, please, Honourable Smith.

7 A. I'm there.

8 Q. The--again, this is now an invoice relating to a
9 fourth Member of the House of Assembly that we're looking at.
10 This is a yearly service, essentially an invoice for a yearly
11 service of a system, obviously, that has already been installed,
12 and this is again Caribbean Security Limited billing the House
13 of Assembly.

14 The reason for taking you to those is, this is, from
15 the invoices, four examples of Caribbean Security having either
16 installed a security system and/or maintaining or monitoring
17 that system, and these systems are being installed in the
18 private homes of Members of the House of Assembly.

19 Now, that cost--and this is not intended as a
20 criticism of the amount that you charge or the work the Company
21 does, but that cost has to come out of the House of Assembly
22 budget, doesn't it?

23 A. Correct.

24 Q. Do you--can you say--and tell me if you can't, because
25 these are all the invoices in 2020--can you say whether that

1 work was done on one contract, or is it done in a different way?

2 A. It's basically--as I can recall because I know we sat
3 and we talked--as I can recall, this is done through the House
4 of Assembly. It's not done with individual Members. The bill
5 is to individual Members but it is to the House of Assembly.

6 Q. Yes. So the House ultimately pays the cost?

7 A. Yes.

8 Q. But has the House of Assembly contracted with
9 Caribbean Security Limited to do this?

10 A. They already have existing contract, so that again is
11 a continuation of what was going on.

12 Q. I see.

13 So, you had in place a contract before you came into--

14 A. Correct.

15 Q. --the House, to deal with security systems at the
16 private homes of Members of the House of Assembly?

17 A. I won't put it that way. What I would say is that,
18 seeing they have already existing contract with the House of
19 Assembly, it just continued to use the one security company they
20 have instead of going to six and seven different security
21 companies.

22 Q. And you were the one, the go-to company they had?

23 A. Correct.

24 Q. But do you--or did you recognize, or do you recognize
25 the potential for a conflict of interest here?

1 A. I would say no because it was something that was being
2 done before; it's the continuation of something. If I had just
3 come in to politics, and it was not existing, I can understand
4 that. But the fact I already had a relationship with the House
5 of Assembly before, I didn't consider it as a conflict. That
6 was my--

7 Q. Of course, your answer is important. But the
8 potential could manifest itself in this way, Honourable Smith,
9 that you, obviously, as a director of a company, you employ
10 people, you have a business, you want your business to be
11 successful, so you want to get the best price.

12 A. Um-hmm.

13 Q. And you want your company to be profitable.

14 A. Correct.

15 Q. That's on the one hand.

16 On the other hand, you are a Member of the House of
17 Assembly. You have to vote on budgets. You want to look for
18 value for money, don't you?

19 A. Correct.

20 Q. And those two desires, if you like, are where the
21 conflicts of interest could potentially arise. Will you accept
22 that?

23 A. I'm not going to accept that. I'm not sure what to
24 say, but I'm not going to accept that because, like I said from
25 the beginning, the prices that Caribbean Security may have done

1 is based on what we do as a security company. It doesn't matter
2 whether it's the Premier or whether it's me who are doing the
3 contract, so we have a base price based on what we're doing,
4 that we bid when we bid for prices.

5 What we try to do is actually--knowing if it's a
6 client that already exists, we will look at giving a better
7 price because it already exists. But to say that because I'm in
8 the Council--in Government, I would look at the budgeting, we
9 want to pay this price, I don't see those things.

10 I am part of the House of Assembly, not the Executive.
11 So, even when we get into the budget, yes, we may get--but I
12 don't have a say in those things.

13 Q. But, I mean, there must be an element of the House, of
14 the budget of Government that goes to the running of the House
15 of Assembly?

16 A. Correct.

17 Q. And part of that budget, the House of Assembly has
18 decided that it's not a Party or a political thing. But the
19 House of Assembly has decided that some of that budget will be
20 spent on security systems--

21 A. Correct.

22 Q. --at the private homes of Members of the House of
23 Assembly. And isn't that where the potential tension arises
24 because you vote on that budget?

25 A. Now I understand what you're trying to reach. So, now

1 I understand what you're saying, so go ahead.

2 Q. It's that tension between, as a Member of the House of
3 Assembly wanting, as you must do, to get better value, but then
4 on the other side, you obviously want your company to succeed?

5 A. But also remember, I'm not in the day-to-day runnings
6 of Caribbean Security. So, I do not engage my business partner
7 when it comes to negotiations, so I understand what you're
8 getting at. But I do not negotiate with Government or with no
9 one in the business anymore, so I will not know what prices are
10 being charged at this point.

11 Q. Thank you.

12 Could I turn to your written response to criticism 4,
13 please, Honourable Smith, and that is at page 9 of 10.

14 MR RAWAT: Commissioner, if this might help, this
15 might be an opportune moment to just tell Ms Peaty that if she
16 needs to extract Sir Geoffrey, now is the time to begin the
17 extraction.

18 MS PEATY: I think--sorry. I think he would be
19 attending remotely, so I think he will be ready as soon as you
20 and the Commissioner are ready, Mr Rawat. So, I don't know how
21 long you think that will be.

22 MR RAWAT: That's a hard question to answer.

23 COMMISSIONER HICKINBOTTOM: What we will do, Ms Peaty,
24 because Mr Rawat is unreliable in time estimates, or has been
25 known to be, can we say this, that once we finish the evidence,

1 we will see whether Sir Geoffrey's available immediately, and if
2 not, we will give you a few minutes to get him online; yes?

3 MS PEATY: Okay, thank you.

4 BY MR RAWAT:

5 Q. Again, if I can take it like this, Honourable Smith,
6 you, as you have done with the other criticisms, you make clear
7 that you refute the criticism. You point again to the limited
8 role that you've played with Cabinet--with--

9 A. Caribbean Security.

10 Q. --Caribbean Security, and over a number of years you
11 say that you're not involved as you have done to--its, in its
12 day-to-day operations and point to the experience of your
13 business partner, Dave Dupree, who lives in the United States,
14 has over 40 years of experience in the security industry.

15 You then say, and this is taking us back to
16 section 66, you say this: "However, prior to my election I
17 ensured that I briefly set out the nature of any contract which
18 may have been entered into by Caribbean Security Limited and the
19 Government of the Virgin Islands in accordance with section 66
20 of the Constitution. It was my intention in the declarations in
21 the Island Sun Newspaper on 2nd and 9th of February to briefly
22 set out the nature of the businesses. I clearly set out that
23 the contract entered into by Caribbean Security Limited and the
24 BVI Government was to supply, install and maintain security
25 systems. At the time I was not aware of each contract entered

1 into by the company. However, I was aware of the nature of
2 services/contract which would be provided to the Government of
3 the Virgin Islands, and my interest as Director of the Company,
4 which was in accordance with section 66 of the Constitution".

5 You then say that, as a newly elected official, you
6 had sought advice from Members of the House of Assembly on the
7 information required in the Declaration of Interests, and as
8 such my responses on the Declaration was in line with my
9 colleagues in the Island Sun Newspaper on 9th of February.

10 I'm going to pause there because I think what we need
11 to do is to look at quickly the contract that is cited in the
12 criticism, just so that we can take that through. So, what we
13 have, if we go to page 358 in that small bundle, please,
14 Honourable Smith.

15 A. I'm there.

16 Q. That is a contract that is specifically mentioned in
17 the criticism to--and drawn to your attention. It is between
18 the Government of the Virgin Islands and Caribbean Security
19 Limited, and it's stamped November 22nd, 2018. But we see if we
20 go to 359 that the contract is signed on--it is made on the 16th
21 of November 2018. And if you go, please, Honourable Smith, to
22 page 363, which is the tail end of the contract, we see there
23 it's signed on behalf of the Government by Dr The Honourable D
24 Orlando Smith, Premier and Minister of Finance, as he then was,
25 and yourself giving your title then as Manager.

1 There were three payments made under this contract.
2 If you go to 391, we will see that on the 21st of November 2018,
3 payment was approved by the Finance and Planning Officer of
4 32,284--\$32,844.55. That is the first one. Then at 397--in
5 fact, let's take it at 396. In March, there was a further
6 payment of \$25,827.65., and then if we go to 410, please,
7 Honourable Smith.

8 A. Four-one-zero?

9 Q. Four-one-zero, please.

10 A. I'm there.

11 Q. 2nd of December 2020, the Final Payment under that
12 contract, and again that's the amount due then, was \$6,456.90.

13 So, that's--and the point of drawing that contract to
14 your attention was obviously--and it's an example of a contract
15 signed before you went into office but then continuing, as the
16 potential criticism says, into 2020.

17 Now, you've addressed section 66. It might be
18 worthwhile us looking at that and your obligations under it. If
19 we go to page 35 in that small bundle, please.

20 A. I'm there.

21 Q. 66 says--it's headed "Disqualifications for elected
22 membership". This is section 66 of the Constitution, and 66(1)
23 records: "No person shall be qualified to be elected as a
24 Member of the House of Assembly who", and then it sets out there
25 as bases on which someone could be disqualified.

1 A. Mm-hmm.

2 Q. And at (f) (reading): "A person can be disqualified
3 who is a party to or a partner in a firm or director or manager
4 of a company which is a party to any contract with the
5 Government of the Virgin Islands for or on account of the Public
6 Service and has not within 14 days before his or her nomination
7 as a candidate for election published, in the Gazette or in a
8 newspaper circulating in the Virgin Islands, a notice setting
9 out the nature of the contract and his or her interest, or the
10 interest of such firm or company in it".

11 So, if we look at section--if we go back to your
12 declarations, and we can use the--if the copy of the Island Sun
13 that you attached to your written response because that's, I
14 think, in fairness, that's the one that you rely upon.

15 A. Yes, I do.

16 Q. And so, if we look at it, what you have declared is
17 interests in the undermentioned companies. But it's right,
18 isn't it, Honourable Smith, that you don't set out there the
19 nature of any contract with Government?

20 A. That's correct.

21 Q. You don't mention in your notice Government of the
22 Virgin Islands, do you?

23 A. That's correct, but can I explain?

24 Q. Of course.

25 A. Commissioner, when I was asked to come and serve the

1 people of the Virgin Islands, I was a private citizen doing
2 business. Knew nothing much about the Constitution but a full
3 of the Constitution. I solely--I solely depended on others to
4 explain who asked me to run, know who I was running with, who
5 was there before, how it works in terms of Declaration and
6 filing the stuff, Declaration.

7 Commissioner, I was told what you need to do business
8 with Government, and you list your companies and put them in the
9 newspaper. I was not told, even the ones was mentioned, that
10 you have to list a contract in the paper. I did not know of
11 that. I'm sorry for the--my ignorance in it but I did not know.
12 So, I only work off of what I was told to do by the Committee.

13 And plus, I mean, I find it strange, though, that the
14 election office, they didn't mention that because I'm now in my
15 third year, so it seems as if this would have never been picked
16 up.

17 COMMISSIONER HICKINBOTTOM: I'm sorry, but when you
18 say that you had told--who did--who told you?

19 THE WITNESS: The senior Member would have been--the
20 senior Member would have been the Premier at the time because he
21 was the only elected person at that time, because every one of
22 us was new Members coming to run for counsel, so we follow the
23 guidance from him and from whoever was involved in political
24 affairs before, to be fair.

25 If you look at the Notice, the Declaration of

1 Interests, most of us nearly did the same thing. I'm not too
2 sure that other Members have--Minister of Governments, I cannot
3 vouch for them, but I know I am with Government but--

4 COMMISSIONER HICKINBOTTOM: Some have put it in--some
5 Declarations are in the same form as yours--

6 THE WITNESS: Right.

7 COMMISSIONER HICKINBOTTOM: --but not all of them. If
8 you look at the one on the left of yours, I'm actually looking
9 at the Declaration of Interests in your file. The Declaration
10 of Interests by the Premier, Andrew Fahie, and he says--he's
11 certifies that he does have not any contract or business with
12 the Government of the Virgin Islands at present. That deals
13 with a contract point.

14 THE WITNESS: Right.

15 COMMISSIONER HICKINBOTTOM: And then he goes on to
16 say: "Nonetheless I hereby list all of my interests, businesses
17 and companies", and he does so. So some of that--that's not
18 unique, the one above him, Carvin Malone, at least refers to the
19 fact that he's got a contract but doesn't give the nature of
20 them, so there is a variety. There's no--

21 THE WITNESS: Correct.

22 COMMISSIONER HICKINBOTTOM: --there's no consistency
23 here.

24 THE WITNESS: Correct, Commissioner.

25 COMMISSIONER HICKINBOTTOM: So--but anyway, you sought

1 advice from--who did you seek advice from?

2 THE WITNESS: When we had political meetings and when
3 we were told that we had to file this stuff, it was brought up
4 in the meetings saying that this is what you need to do, you
5 need to file all the companies that you have that are doing
6 business with Government. So, therefore, I knew that my company
7 was doing business with Government, so that means I have to file
8 every company that I knew, just in case, I said let me not take
9 no chance. I file every company that I know that I have not
10 doing business. I was not aware that I had to sign or put on
11 that I have a contract 14 days before those. I was not aware of
12 that.

13 COMMISSIONER HICKINBOTTOM: So, you didn't look at
14 section 66.

15 THE WITNESS: I did not.

16 Like I said, because I was not in line with the
17 Constitution like because I just started in politics. I had
18 never reasons to really follow the Constitution in its entirety.

19 COMMISSIONER HICKINBOTTOM: I mean I understand that--

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: --and the Constitution is
22 a relatively long document, but if you're seeking elected
23 office, disqualification for elected membership--I don't say
24 this pejoratively--but that might be one of the sections that
25 you would look at.

1 THE WITNESS: I accept that now.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 Thank you, Mr Rawat.

4 BY MR RAWAT:

5 Q. May I just ask Honourable Smith, just going back on
6 one point, you--we were--I was asking you questions about the
7 arrangements in relation to security systems in the House of
8 Assembly.

9 A. Right.

10 Q. And you explained that--do you remember in the context
11 I was exploring with you whether that prompted in your mind a
12 conflict of interest. But you explained that that contract had
13 begun before you came into the House of Assembly, yourself.

14 A. Correct.

15 Q. Just try and help us with this, and if you can't,
16 please say so, but how long is that contract set to run?

17 A. I would assume that we stop once the Clerk, whoever
18 decided they wanted to use a different service, and that's how I
19 think it runs. If--or if, let's say, for instance, now that I
20 ran for politics if, a different government get in, because I
21 ran for politics, and they say, well, okay, he was with this
22 Government, so we don't want Caribbean Security anymore. But I
23 was also involved even before this Government, with the other
24 Government, so that's why I'm saying it's not--that's why I
25 didn't think of the political because when the other government

1 was in, I also did that as well.

2 Q. Well, we've seen an example of that--

3 A. Correct.

4 Q. --because of the--it's just that--I mean there is a
5 contract to let's--to provide security systems for the House of
6 Assembly, which encompasses the security systems in the private
7 home of Members of the House. That contract, you said, it
8 obviously started before 2019. The question was: When is it
9 due to end?

10 COMMISSIONER HICKINBOTTOM: I think the response is
11 that, and the Honourable Neville Smith will correct me if I'm
12 wrong, it's for an indeterminate period. It's open-ended.

13 THE WITNESS: It seems that way to me because once the
14 Clerk or the Speaker decide that it doesn't exist anymore,
15 because--see once--I think how it is laid out, once you're doing
16 work in the House of Assembly, as you have--use the security
17 person for the House of Assembly, I think this is how it's taken
18 in context--because I'm doing work with the House of Assembly as
19 a security person, they might then want to reach--venture out to
20 get a different security company and say we have what you're
21 doing and they use me to do that. That's how I look at it. I
22 mean, I can't get up and say that's why then, but I'll assume
23 it's because you want to keep your one company. You try to
24 stick with one company.

25 COMMISSIONER HICKINBOTTOM: And is that the case for

1 most of the contracts that you had with arms of Government
2 before 2019?

3 THE WITNESS: Commissioner, if I must say, if you're
4 doing a good service and you're doing a good security, people
5 will keep you.

6 COMMISSIONER HICKINBOTTOM: But isn't--

7 THE WITNESS: And I think that's the same thing--just
8 what they said. I think that is it, the fact that I was doing
9 things with them before and they were happy with what they had.
10 They continue.

11 COMMISSIONER HICKINBOTTOM: But in terms of this one
12 company, you've got other companies dealing with other arms of
13 government, Mr Rawat pointed out to the index where the
14 contracts are listed. There are over 30 arms of Government.
15 One or two, but literally one or two, are Statutory Boards, but
16 most are not. They are, without doubt, the BVI Government.

17 But in respect of those, say, 30 arms of Government,
18 you had contracts with them. Most of them were open-ended
19 contracts, but the nature of those contracts, even that there
20 were 30 contracts, was not something disclosed in the notice.

21 THE WITNESS: Correct.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 MR RAWAT: Thank you.

24 Commissioner, if I might have just one moment.

25 COMMISSIONER HICKINBOTTOM: Yes, certainly.

1 (Pause.)

2 MR RAWAT: Commissioner, I've reached the end of my
3 questions, but before I forget, could I ask Honourable Smith, or
4 just remind him, he may recall earlier that we asked if he could
5 produce some e-mail correspondence. I think the best way will
6 be that what we'll do is we'll write to him through his legal
7 representatives, setting out what correspondence we'd like, we'd
8 invite him to disclose to the COI.

9 THE WITNESS: Commissioner, can I make one correction?
10 I said e-mail but apparently my signature, it's not an e-mail.
11 It was a letter that she drafted.

12 MR RAWAT: A letter to--

13 THE WITNESS: Yeah.

14 MR RAWAT: --to the Deputy Governor's Office.

15 THE WITNESS: See, not the Deputy Governor's Office.
16 The letter was to the--you're talking about letter that I did to
17 the Clerk and to the Speaker?

18 BY MR RAWAT:

19 Q. Oh, yes, you're quite right. You're quite right.
20 That was the first thing, when he says, as I--

21 (Overlapping speakers.)

22 THE WITNESS: But you said (unclear).

23 MR RAWAT: What I can't promise, Honourable Smith, is
24 that we won't add to the homework list, so there may be a couple
25 of more requests for correspondence, but we will write to your

1 legal representatives, setting out what we need.

2 A. I will try my best to give you whatever you requested.
3 I have no problem. Thank you.

4 COMMISSIONER HICKINBOTTOM: No, thank you very much.

5 MR RAWAT: Thank you.

6 Can I conclude by thanking you, Honourable Smith, and
7 thank you not only for coming today but also for the way that
8 you've assisted the Commission.

9 COMMISSIONER HICKINBOTTOM: No, thank you very much.
10 Can I echo that. Thank you for your patience and the way you've
11 given your evidence in such a clear manner. Thank you very
12 much.

13 THE WITNESS: Thank you very much, Commissioner.

14 COMMISSIONER HICKINBOTTOM: I'm now going to hear
15 submissions from Mr Fligelstone Davies and from Sir Geoffrey
16 Cox. They're on section 66 and 67. You can stay or go as you
17 wish, but stay there if you wish to stay there.

18 THE WITNESS: I would like to hear it.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 MR RAWAT: Commissioner, but if I could before we do,
21 I just ask you to rise for five minutes. I think we've still
22 got to wait for Sir Geoffrey.

23 COMMISSIONER HICKINBOTTOM: No, I'll do that.

24 And we'll get Sir Geoffrey Cox linked in, Ms Peaty,
25 and then as soon as that happens, we'll continue.

1

Yes? Good. Thank you very much.

2

(Recess.)

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Session 3

COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I have reserved legal submissions to the end of the evidence, and we finished Honourable Neville Smith's evidence.

Firstly, I have done this already when you were not online, but I thank whoever drafted the submissions--there is no name of Withers on them--on Sections 66 and 67, because they were very useful. Certainly from my point of view--I think Mr Fligelstone Davies wants to make some more submissions on some other points, but the only thing which is causing me concern is the proper construction of section 67(7).

And what I'd suggest is, in particular because Sir Geoffrey's representing the Attorney, I hear from Sir Geoffrey first, Mr Fligelstone Davies, and then perhaps you next. I'm not cutting you out from making any other legal submissions, but all I'm focusing on is section 67(7), but I'll be glad to hear any submissions on any other points you want to add to the written submissions I have received from you and on behalf of the Attorney General, and then Mr Rawat can perhaps make any observations that he would like to make.

MR FLIGELSTONE DAVIES: Commissioner, in the ordinary course of things, Sir Geoffrey Cox would have to go first anyways, being a senior--most senior attorney to me.

COMMISSIONER HICKINBOTTOM: That's true, but he's going first today because I would like him to go first.

1 Sir Geoffrey, can I just run through section 67(7)
2 with you to explain where I would like some assistance.

3 We've got to start with section 67(3)(e), which reads:
4 "Any elected Member of the House of Assembly shall vacate his or
5 her seat in the House subject to subsection (7)", which we will
6 come back to, "if he or she becomes a party to any contract with
7 the Government of the Virgin Islands for or on account of the
8 public service, or if any firm in which he or she is a partner,
9 or any company of which he or she is a director or manager,
10 becomes a party to such contract, if he or she becomes a partner
11 in a firm, or a director or manager of a company, which is party
12 to such a contract".

13 So, there it is. It's--it's mandatory. You have to
14 vacate your seat if you fall within 67(3)(e), subject to
15 subsection (7).

16 And subsection (7) reads: "If in the circumstances it
17 appears just to the House of Assembly to do so", pausing there,
18 that means that the House has got a discretion if they have
19 jurisdiction, "the House may exempt any elected Member from
20 vacating his or her seat under subsection (3)(e), if", so there
21 is a condition, "such Member, before becoming a party to such
22 contract as they're described", pausing there, that's one way in
23 which the condition can be satisfied, "and secondly, or before
24 or as soon as practicable after becoming otherwise interested in
25 such contract, whether as a partner in a firm or director or

1 manager of a company", whatever that means, that is the second
2 way in which you can satisfy the condition, "discloses to the
3 House the nature of such contract and his or her interest or
4 interest of any such firm or company in it".

5 The first way in which the condition can be
6 satisfied--that is, before becoming a party that such
7 contract--seems to me to be self-explanatory. Where I would
8 like some assistance is what is meant by "or before, as soon as
9 practicable thereafter, becoming interested in such a contract".

10 What does that mean?

11 SIR GEOFFREY: Well, I would like to return,
12 Commissioner--good question. The truth is that one has to
13 wrestle with language that, by nature, is--has a degree of
14 imprecision, but I take it that it's all of that phrase that you
15 wish assistance with. So, if one to seize the words first "as
16 soon as practicable", it's difficult to make submissions on
17 that, and there are ones with which you will be--the nature of
18 any appropriate submission you will be more than well-aware of.

19 It's clearly a matter, we would submit, on the
20 question of "as soon as practicable" to the House, which has a
21 judgment to make on the specific facts of the notice and the
22 circumstances surrounding it as to whether it has been as soon
23 as practicable. That will depend on a range of factors easily
24 imaginable.

25 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey,

1 just pausing there for a moment.

2 SIR GEOFFREY: Yes.

3 COMMISSIONER HICKINBOTTOM: There may be a debate
4 about that. Although "as soon as practicable" means, pretty
5 well, as soon as possible. It's not "as soon as practicable" in
6 case it is practicable Just leave that to one side for a moment
7 because that's a subsequent issue. What I want to know is what
8 does this "as soon as practicable" govern? It governs after
9 becoming otherwise interested in such contract.

10 SIR GEOFFREY: That's the starting point for the gun.
11 That's when the gun goes off, and one has to identify what the
12 Constitution means by, as you say, becoming otherwise interested
13 in such contract.

14 The way I have interpreted it, sir, is this: A
15 company or a partnership in which the Member of the House of
16 Assembly occupies a role either as partner or director or
17 manager that enters a contract--in other words, becomes party to
18 it--means that that is the starting gun for the Member of the
19 House of Assembly who occupies one of those roles within such a
20 company or partnership to have to give notice.

21 And he could either do so before, as he would if he
22 entered into a contract in his own right, or--and I imagine the
23 purpose of the draft (sound interference) I submit for
24 provisional purposes at the moment--considered that a company
25 might conceivably enter a contract without the Member

1 immediately knowing because he's not in day-to-day charge
2 because another division of the company entered into it--a range
3 of factual situations, I suppose--and so gave the option to the
4 Member learning after the event to be able to do it "as soon as
5 practicable". Now, that might invoke his knowledge, so it might
6 not be practicable if he didn't know about it.

7 But it seemed to me, sir, with due deference to, no
8 doubt, your grappling with it, but it may have--and should be
9 interpreted at least as meaning--that if you are a partner and
10 your partnership enters into that contract, that you then become
11 interested in it. I'm not certain whether that's what your
12 grappling at, and if there is a more specific or fine-grain
13 point you want assistance on, I would be very happy to see what
14 I could do.

15 COMMISSIONER HICKINBOTTOM: That's the point I would
16 like some assistance on, but I just have some real problems with
17 the construction that you've suggested.

18 In terms of it being a director of a company, under
19 67(3)(e), that's enough. Knowledge isn't necessary or anything
20 like that. If you are a director of a company which engages in
21 a contract with the Government, then you shall vacate your seat,
22 subject to 7. That's the starting point.

23 Under 7, as I say, there are two limbs to the
24 condition. The first is if such Member, before becoming a party
25 to such contract, as they're described--that is the contract in

1 (3) (e), so we know what we're talking about there--it does
2 then--it does not go on without a break because there is a comma
3 there, it does not go on without a break to say "or as soon as
4 practicable after becoming otherwise interested in such
5 contract". What it says is, comma, "or above or as soon as
6 practicable after becoming otherwise interested in such
7 contract".

8 So, the "before" is a different "before". It's before
9 something different from the first part--the first limb, the
10 condition. It can only be read in that way because we can't
11 read the section before us as having no substance. And so,
12 we've got to construe "or before as soon as practicable" after
13 becoming otherwise interested in the contract, and so this way
14 of becoming interested is not by becoming a party to such
15 contract. That's dealt with in the first limb. It's becoming
16 interested in some other way. There may be other ways. There
17 may be ways, for example, about a company purchases another
18 company which has contracts with the Government or all sorts of
19 ways.

20 But I don't see how "as soon as practicable" can be
21 "as soon as practicable" after becoming a party to such
22 contract. I don't see how that's, with respect, even a proper
23 construction.

24 SIR GEOFFREY: I'm listening with interest to what
25 you're saying, Commissioner, because, of course, this is--I

1 haven't heard this point and this construction. All I can say
2 to you is that the words in brackets seem to have a relevance
3 whether a partner, so "or before or as soon as practicable"
4 after becoming otherwise interested in such a contract seems, to
5 some extent, to be influenced and governed by the phrase in the
6 brackets, "whether as a partner in a firm, or director or
7 manager of a company". It seems to be explicatory of the
8 foregoing phrase. How you become otherwise interested would be
9 as a partner in a firm or director or manager.

10 Now, if that's right, so you become--it may not be,
11 and there is--I completely accept the difficulty of construction
12 here, but if that's right, well, then how would you become
13 otherwise interested in such a contract whether as a partner,
14 firm, director or manager? Well, I agree with you, sir, that it
15 may well be that your company becomes a shareholder or otherwise
16 interested in a company or another entity which has that
17 contract.

18 So, I would agree provisionally with what you're
19 saying, if that is a correct assessment of it.

20 COMMISSIONER HICKINBOTTOM: And just to support that
21 that you have expressed, it would be strange and possibly
22 bizarre if the "second limb", as I'm calling it, excluded
23 individuals who have a contract with the Government because it
24 appears to be restricted to a partner in a firm or a director or
25 manager of a company. So, that means for any individuals they

1 have to, before becoming a party to a contract that's described
2 in (3)(e) disclose it to the House; otherwise, they have to
3 vacate their seat.

4 And if that's the case, which I think on the
5 construction as you've just outlined it would be, it would be
6 nonsensical, wouldn't it? Sorry, it's a question. Wouldn't it
7 be very strange if, although an individual had to do that, if
8 you're a partner in a firm or a director or manager of a
9 company, you didn't have to do that.

10 But in any event, just looking at the simple grammar,
11 "or before or as soon as practicable after becoming interested
12 in such a contract", it clearly seems to me, on the face of it,
13 it means something other than becoming a party to such contract,
14 which is the first limb.

15 It's obvious to you as to everybody else why this is
16 important, because if it is--if that construction is right, then
17 if a director of a company does not disclose a contract that
18 that company has with the BVI Government before it's entered
19 into, then he has to vacate his seat because there is no--there
20 is no exemption upon which he can rely.

21 You're on mute, Sir Geoffrey.

22 SIR GEOFFREY: I don't know why. I keep pressing
23 "unmute"--can you hear me now?

24 COMMISSIONER HICKINBOTTOM: Yeah, thank you.

25 SIR GEOFFREY: Forgive me. It's happening by itself.

1 I'm not actually putting the mute on, so it's a technical
2 glitch.

3 May I say, sir, I can quite see your concern. I can
4 quite see the construction that you are considering. It has not
5 been drawn to my attention up until now, and I would like a
6 little, if I may, time to consider, time possibly to make
7 further written submissions on it.

8 On the face of it, I can quite see the potency of the
9 argument that you make. It is not, of course, the way in which
10 it has been historically interpreted in these islands. It has
11 been interpreted, as I understand it, as mean that if you are a
12 director or a partner in a firm, it has granted to you the
13 ability to, as soon as practicable, after becoming interested in
14 it, to make your relevant notice to the House. And, of course,
15 the House has proceeded on that basis and has gone so for many
16 years.

17 One of the, no doubt, helpful contributions the
18 Commission will make is to point out any potential errors in
19 interpretations of this kind, but that it has historically been
20 so, I don't think there is any doubt--(drop in audio).

21 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.

22 Well, the first thing is--and I will hear from
23 Mr Fligelstone Davies and Mr Rawat in case they can shed any
24 illumination on this which casts aside all doubt, but if we
25 can't, then certainly this is something that I would like

1 further submissions on because it may be an important point not
2 simply for the purposes of the Commission of Inquiry. But
3 Honourable Neville Smith said that he thinks--I'm not sure this
4 is certain, but he thinks that as soon as tomorrow he has
5 another such motion before the House of Assembly; and it may be,
6 I would have thought, in the light of this conversation, that
7 the House may want to take the Attorney's opinion before they do
8 any motion.

9 So, it is not something that I want to rush, Sir
10 Geoffrey.

11 SIR GEOFFREY: I would be grateful because the
12 implications are significant.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 SIR GEOFFREY: And if a historic, which is what I
15 understand to be the case, practice has involved in connection
16 with the spectrum, and those who have relied on that practice
17 and relied on that understanding and successive Attorneys have
18 sat in the House when these motions are being debated, without
19 pointing out that there may be a flaw in the interpretation,
20 historically and traditionally, taken to it, it would, of
21 course, have significant implications, and they would have to be
22 thought of at the highest level, and with real and serious
23 consideration as to what the proper remedy was.

24 COMMISSIONER HICKINBOTTOM: Absolutely. I fully
25 understand that, and agree with it particularly, of course, as

1 we're here looking at the Constitution.

2 SIR GEOFFREY: Exactly.

3 COMMISSIONER HICKINBOTTOM: That enforces exactly what
4 you just made.

5 SIR GEOFFREY: Precisely, sir, which is why I would
6 like, if I may--while--may I say it once that the construction
7 you place I see the force of, and I'm not going to say I
8 necessarily disagree with it at this point. I would like to
9 consider very carefully both it and its implications, and that
10 will require a little time, as I'm sure you understand. I would
11 hope that this particular matter, if we could reserve it for a
12 later point because I wouldn't want to rush the very important
13 considerations and constitutional ones, you as well as you
14 rightly say, which gives rise.

15 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I will come
16 back to you in terms of timing and form once I've heard from
17 Mr Fligelstone Davies.

18 SIR GEOFFREY: Thank you for letting me know the
19 precise point that was in your mind. It will give me an
20 opportunity to reflect on it in more detail.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 And reflect, as you have identified, two points: One
23 is proper construction of the provision; and secondly, if the
24 construction I'd suggested is either right or has significant
25 force what perhaps should be done about it.

1 SIR GEOFFREY: That is the crux. That is the critical
2 point that may take, sir, longer than I'm afraid we have. I
3 mean, this is a significant issue which will require serious
4 consultations. I imagine at every level of the Government, not
5 merely the Executive, in considering it.

6 COMMISSIONER HICKINBOTTOM: Yes, thank you very much,
7 Sir Geoffrey.

8 I mean, in terms of Honourable Neville Smith's
9 evidence--and I think this is right. We've heard some evidence
10 on this, but what you said is that, the construction you
11 outlined was the construction that has been either presumed or
12 adopted for some time.

13 SIR GEOFFREY: Yes.

14 COMMISSIONER HICKINBOTTOM: And it may well be in
15 those circumstances that, for example, no personal criticism of
16 The Honourable Neville Smith can be made in the light of the
17 advice that he's received or the practice that's been. But in
18 any event, let me just put that to one side for one moment.

19 Is there anything else you would like to say at the
20 moment, Sir Geoffrey?

21 THE WITNESS: No. I'm here purely to assist you in
22 any points you raise with me, and I'm most grateful for this
23 one. It's clearly a points of considerable significance. If
24 there are others--I mean, there are one or two that occurred to
25 me, but it may be that they're not matters of important--of

1 relevance to you at the moment.

2 COMMISSIONER HICKINBOTTOM: I think that's right, Sir
3 Geoffrey.

4 If I can put it this way: It will have been clear, as
5 we've gone through the Inquiry, that the construction that
6 appears to have been routinely presumed or adopted in relation
7 to a number of statutory provisions is not a construction that I
8 necessarily agree with.

9 SIR GEOFFREY: Forgive me, I interrupted you. You
10 carry on.

11 COMMISSIONER HICKINBOTTOM: And in some cases it seems
12 to me to be patently wrong, but those are, I think, for another
13 day.

14 SIR GEOFFREY: But I agree with you. It's a matter
15 that where we are have that opinion, we're referring to the
16 Attorney, certain of the matters are under consideration now.

17 There is another issue in connection with this
18 statute, if I might briefly adumbrate it for you, and it may be
19 that you agree or disagree with it, but it does seem to us that
20 the consequences of a failure to disclose a contract under
21 section 66--what is it now? 66, I think, (d), (1)(d)--(1)(f),
22 may not have been fully understood in terms of the implications
23 in terms of its relationship with Section 67.

24 COMMISSIONER HICKINBOTTOM: Certainly, Sir Geoffrey,
25 if you stop there, I would agree with that, but that is another

1 point of some concern.

2 SIR GEOFFREY: And it's a matter I'm considering.
3 What I haven't done, I'm afraid, because I come to this issue
4 rather late, is grappled with, as you have, section 67(7). But
5 on any view, these interpretations have prevailed, and we need
6 to think extremely carefully about how they're to be dealt with.

7 COMMISSIONER HICKINBOTTOM: There seems to be some
8 lack of coordination as between sections 66 and 67, I think, but
9 that's the point you made.

10 SIR GEOFFREY: Yes.

11 COMMISSIONER HICKINBOTTOM: Thank you very much. Our
12 focus today has been really on section 67, and that's where the
13 point have I've raised has cropped up.

14 SIR GEOFFREY: I'm most grateful.

15 COMMISSIONER HICKINBOTTOM: Thank you, Sir Geoffrey.
16 I think, Mr Rawat, probably Mr Fligelstone Davies is
17 next, both on section 67(7) and any other submissions you want
18 to make on any other legal points. We've got the Attorney's
19 submissions, written submissions, and those put in by Silk
20 Legal.

21 MR FLIGELSTONE DAVIES: Well, if it should help,
22 Mr Commissioner, I think there are some points I can raise with
23 respect to assisting the Commission coming to an interpretation
24 of section 67 as a whole, and those really relate to, firstly,
25 whether or not the Constitution as we know it today,

1 Constitutional Order, should be construed as a statute per se
2 because it's a statutory instrument of the United
3 Kingdom's--part of the United Kingdom, or should it be
4 interpreted as a Constitution proper.

5 And I say that because there are a bit of differences
6 as it relates to how one interprets the Constitution. So, for
7 example, in the case of Attorney General of Trinidad & Tobago
8 and Whiteman--Whitman, it said that at page 5 of that judgment
9 it doesn't fall to be--you have to give it a very flexible
10 interrogation so it's not restricted in the same way as a
11 statute might be restricted.

12 This is also the Minister of Home Affairs and Fisher
13 where, similarly, at page 5, let's take it that constitutional
14 provisions should be interpreted more flexibly than ordinary
15 legislation. Rather, it should be interpreted in accordance to
16 the rules suitable to its own character.

17 Now, what that means for section 67(d) is something
18 that I, like Sir Geoffrey Cox, have to pay a lot more mind to,
19 but certainly those two rules of interpretation certainly jump
20 out at me as particularly when it comes to the term "contract"
21 because what we heard today from The Honourable Neville Smith
22 and no doubt what the Commission has heard from other
23 politicians--well, Members of the House of Assembly that has
24 talked on this point, if they have, is their understanding of
25 what a contract is substantially different to what we lawyers

1 understand contracts to be. And so, for us, a contract is
2 merely a promise to do a thing or to provide a particular thing
3 in exchange for consideration.

4 COMMISSIONER HICKINBOTTOM: It's a legally binding
5 agreement.

6 MR FLIGELSTONE DAVIES: It's a legally binding
7 agreement for us. Any legally binding agreement is a contract.
8 Now, as you heard from The Honourable Smith, and I think this is
9 probably a view that pervades in the House of Assembly, is that
10 a contract has additional requirement, albeit something written
11 and signed as opposed to--as opposed to--

12 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Fligelstone
13 Davies. I don't think that's what he said. What he said--I
14 think by Honourable Neville Smith but also other Members of the
15 House of Assembly, is that some do not accept that an
16 arrangement involving a purchase order is a contract.

17 Now, where I depart from your suggestion is, of
18 course, it is in writing. There is a purchase order, there is
19 an acceptance, but some people do not act on the basis that that
20 is a contract, some people here. The Attorney General, in her
21 submissions, says, "Well, it is a contract because it clearly is
22 a contract", but certainly some of those in Government do
23 not--have not traditionally recognized that as a contract.

24 MR FLIGELSTONE DAVIES: I entirely agree with the
25 Attorney General and yourself. As lawyers, we all know that it

1 is a contract. A purchase order, for us, is naturally a
2 contract, but I think the point is that, given that the
3 institution that is involved in enforcement of this provision is
4 the House of Assembly mainly composed of laypersons. It would
5 perhaps, in the absence of guidance from the Attorney General or
6 general guidance, I guess, issued by the FCDO or the Governor on
7 the issue as to what a contract actually is, I'm not sure a
8 criticism can be laid against them for not knowing a purchase
9 order is a contract, "I need to be declare it".

10 But this also raises another point where, as relates
11 to contracts because if it is a Member is supposed to declare
12 before they--declare the contract before they get involved with
13 it, let us imagine that we have a person that is a director of a
14 supermarket, and some government department decides that they're
15 going to buy some napkins or some groceries for some event for
16 their kitchen or what have you, from that supermarket. That
17 Director may not actually know that the contract even exists or
18 that they have been doing business with the Government in that
19 respect.

20 Yet, if we take--if we have the strict interpretation
21 of section 67, they would be mandated to vacate their seats, and
22 that would actually have an effect of--that should all have the
23 effect of essentially excluding a certain class of persons from
24 being able to pass in politics as a Member of the House of
25 Assembly, and that is something that I think the Commission

1 might have to grapple with, how can we weave these provisions
2 together because the Constitution has to be read as a whole.

3 COMMISSIONER HICKINBOTTOM: I understand that.
4 Thankfully, because my task is big enough, I don't have to
5 construe the whole of the Constitution, but there may be ways in
6 which that can be addressed by the use of the exemption under
7 section 67.

8 But the position I start from is that, where the
9 Constitution uses the word "contract", drafting it meant
10 contract and not something else. And if that has been
11 misconstrued by Members of the House of Assembly whose legal
12 advisor, the Attorney General, says that a contract is a
13 contract, well, that's something which may have to be addressed.

14 But the starting point must be that the words used in
15 section 67 of the contract mean what they say.

16 MR FLIGELSTONE DAVIES: That is naturally the starting
17 point, and that is why I was hoping to persuade yourself perhaps
18 if we could use in lieu of sui generis to perhaps say, well, a
19 contract--in absence of guidance, this is an acceptable
20 interpretation, albeit not an entirely correct interpretation,
21 of the word, and so that is a point I would start off with.

22 Now, as it relates to whether a person--the use of the
23 term "practicable", I would say that is largely a matter for the
24 House of Assembly to determine what is "practicable", taking
25 into account the considerations of--including knowledge, as Sir

1 Geoffrey Cox raised earlier, of the contract even existing,
2 because if you don't know that the contract exists, how can you
3 declare it?

4 The case in point again going to director of a
5 supermarket, they may not know that they are again--or a
6 director of a hardware store, maybe Public Works goes out and
7 purchases odd pieces of pipes just to make some repairs, and how
8 is that director to know that they have, indeed, entered into a
9 contract with the Government by nature, because if we take the
10 knowledge aspect outside of that provision, it would mean that
11 they would have to vacate their seat.

12 COMMISSIONER HICKINBOTTOM: The problem with that is
13 this: "As soon as practicable" does not given the phrase
14 "becoming a party to such contract". It governs after becoming
15 otherwise interested in such contract, which is clearly meant to
16 mean at least something else.

17 So far as "as soon as practicable" is concerned, I
18 accept that that requires an assessment by, in this case the
19 House of Assembly, possibly. But given that "as soon as
20 practicable" means, in ordinary language, almost as soon as
21 possible. The leeway that it can give to that interpretation
22 may be very restricted. As I say, my real concern is not what
23 "as soon as practicable" means but what it governs.

24 MR FLIGELSTONE DAVIES: I understand.

25 With respect to interpret--to the different ways of

1 interpreting counsel on the Commission may be interested in
2 calling on the Attorney General, which is these are Privy
3 Council cases, all I have mixed up the Privy Council cases that
4 are available but they've aged, but they're available
5 nonetheless, and Commissioner of Prisons and another, and
6 "Seposod" (phonetic), 21 U.K. PC 13, that may also provide some
7 guidance.

8 COMMISSIONER HICKINBOTTOM: As to what proposition?

9 MR FLIGELSTONE DAVIES: Just as to the way--just in
10 the way that the Constitutions are interpreted as distinct
11 from--as necessarily distinct from ordinary pieces of statute.

12 That is, if the Commission is of the view that it
13 should be actually interpreted as a Constitution or statute, the
14 other point on that I would seek to raise is section 11 of the
15 Eastern Caribbean Supreme Court Act, which essentially
16 allows--and this goes to all sorts of different things--so, in
17 civil proceedings, essentially, if there is absence or ambiguity
18 as to a certain provision, then generally what the Court will do
19 is use section 11 of the Eastern Caribbean Supreme Court Act or
20 even other bodies to see what the practice is in the United
21 Kingdom or specifically in England and Wales, actually, I should
22 say, and they would import that practice here because the Court
23 would obviously be obligated under that section to be in
24 conformity as much as possible.

25 COMMISSIONER HICKINBOTTOM: But in terms of the

1 principles of interpretation?

2 THE WITNESS: In terms of the principles of
3 interpretation, but obviously--sorry, not "obviously", but if
4 there is, for example, a practice of how to treat Members after
5 they have--if they become interested in the contract after--the
6 second limb, we call it the "second limb", how the second limb
7 would be treated in the United Kingdom, if they are so treated
8 or there is an equivalent.

9 COMMISSIONER HICKINBOTTOM: There may not be an
10 equivalent, but I understand the point.

11 MR FLIGELSTONE DAVIES: Yes.

12 And lastly is just in relation to section 66, and I
13 think this is a--this is a point that, what this seems to be as
14 a whole, I think the Commission would accept, is there is a lack
15 of guidance and--throughout the Government about private
16 citizens seem to want to interact or when they want to interrupt
17 or actually are interacting with the Government. And so, in
18 that vein, what I would say is usually the responsibility, the
19 intended responsibility of the supervisor of elections to ensure
20 that persons who are nominated comply fully with--

21 COMMISSIONER HICKINBOTTOM: Know what to do.

22 MR FLIGELSTONE DAVIES: Know what to do as well.

23 And in the absence of that guidance, that critical
24 guidance, and in absence of her actually enforcing--him or her,
25 I don't know, obviously it's now, but him and her, in absence of

1 him or her enforcing that provision, then section 66 practically
2 collapses because they've accepted a nomination, and that is the
3 only check, unfortunately.

4 I just have one more point to make. It was with
5 respect to the suggestion, not submission, is that especially
6 when it comes to contracts that involve national security that
7 should be declared before the House, and it's more a
8 recommendation, submission as a recommendation, is that the
9 Office of the Registrar of Interests clearly needs to be
10 expanded. It needs to be expanded to include a Registrar of
11 Contracts that Members are involved with. And if it is that
12 the--it is a national security contract, then that would be of
13 its own, but Members of the National Security Council could
14 act--

15 COMMISSIONER HICKINBOTTOM: No, I understand the
16 point. I understand the point.

17 MR FLIGELSTONE DAVIES: That's all I have to say.

18 COMMISSIONER HICKINBOTTOM: Do you want to make any
19 submissions on anything else? You have dealt with section 67.

20 MR FLIGELSTONE DAVIES: At this point, I think that's
21 the only thing I have to raise. The only other point would be
22 to question whether that part 67, whether a partner in a firm or
23 director is an exhaustive list.

24 COMMISSIONER HICKINBOTTOM: I'm sorry, where are we,
25 Mr Fligelstone Davies?

1 MR FLIGELSTONE DAVIES: In section 67(d), only thing--

2 COMMISSIONER HICKINBOTTOM: 67?

3 MR FLIGELSTONE DAVIES: (d), where it says whether as
4 a partner in a firm, director or manager of a company, whether
5 that is, indeed, an exhaustive list.

6 COMMISSIONER HICKINBOTTOM: Okay.

7 MR FLIGELSTONE DAVIES: It could also mean an
8 individual that just happened to have a trade licence, trade
9 person.

10 COMMISSIONER HICKINBOTTOM: That's in 67.

11 MR FLIGELSTONE DAVIES: Yes.

12 COMMISSIONER HICKINBOTTOM: Good.

13 And do you want to have an opportunity to put in
14 written submissions on the 67(7) point?

15 MR FLIGELSTONE DAVIES: I would definitely appreciate
16 that opportunity, Commissioner.

17 COMMISSIONER HICKINBOTTOM: Okay. I will come back to
18 that.

19 Mr Rawat, do you have anything to add at the moment?

20 MR RAWAT: Very brief observations, which may assist
21 my learned friends in terms of written submissions they wish to
22 make.

23 Focusing first on section 67 of the Constitution, the
24 starting point we're at is 67(3), and the first point which will
25 be an obvious one is that what 67(3) applies to is elected

1 Members. So, for someone to be caught by the provisions, they
2 must be already have been elected to the House of Assembly.

3 So, if we then move on to 67(3)(e), that, in my
4 submission, sets out all the circumstances in which an elected
5 Member might find himself or herself having to vacate the seat.
6 And those circumstances, in my submission, the provision--and
7 that is (3)(e)--encompasses a d/b/a. It also encompasses being
8 a partner of a firm or any company of which the person is a
9 director or manager.

10 That then takes us to 67(7), which applies the
11 exception. I would agree with your observations earlier,
12 Commissioner, in that there are two limbs to the provision. The
13 dividing line, which is one that no doubt will delight lawyers,
14 is the comma after they're described. So, what he have is the
15 first limb which might be described or called the (3)(e) limb,
16 because that limb, if we read it, the House may exempt any
17 elected Member from vacating his or her seat under
18 subsection (3)(e) if such Member, before becoming a party to
19 such contract as there described, and I say that the "there
20 described" points the reader back to (3)(e).

21 And the consequence of that first limb is that the
22 person--the elected Member who is caught by (3)(e) has to
23 disclose to the House the nature of the contract and his or her
24 interest in it before becoming a party to the contract.

25 The second limb follows afterwards, which is "or

1 before as soon as practicable after becoming otherwise
2 interested in such contract". One construction of that second
3 limb is that the reference to becoming otherwise interested is
4 to becoming otherwise interested as described in (3) (e). So,
5 the second limb could be called the "non-(3) (e) limb".

6 And then is intended to capture any other circumstance
7 outside (3) (e) in which an elected Member may enter into a
8 contract with the Government of the Virgin Islands. And in
9 those circumstances, the obligation on the Member who wishes to
10 take advantage of section 67(7) is that he or she has to either
11 disclose the nature of the contract in his or own interest
12 before entering it or as soon as practicable after becoming
13 otherwise interested in it.

14 Now, the final point I would like to make, or the
15 penultimate point I would like to make on section 67(7) is in
16 relation to Mr Davies's point about knowledge. That is
17 something that you might want to have submissions on,
18 Commissioner, because it seems to me, in my submission, that
19 becoming otherwise interested in such contract, so the
20 requirement is to disclose after becoming otherwise interested
21 in such contract, and that wording doesn't lend itself easily to
22 an argument that you can wait until you have knowledge of it
23 because you become otherwise interested in the contract because
24 you have an interest either through a company or through some
25 other arrangement, and that's what triggers it.

1 The final point I would make on 67(7) is the point
2 that Sir Geoffrey makes about the need for consideration at the
3 highest level. I would echo that because, clearly, there needs
4 to be a definitive view from the Attorney General on that, and
5 we see it's not something that is just a theoretical argument
6 because, as we have heard from The Honourable Neville Smith, he
7 is someone who is directly affected by it, and immediately so,
8 and he's directly affected by it in two ways:

9 Firstly, that there is a pending Resolution before the
10 House; but secondly, he has been in recent times--and that is
11 July 2021--the beneficiary of Resolutions. And if there is some
12 doubt, and that doubt does not in any way allow criticism of the
13 actions of The Honourable Neville Smith, but if there is that
14 doubt, it needs to be resolved.

15 The final point I would make--and this is more just as
16 an observation to my learned friends--is that if they are going
17 to address you on the operation of section 66(f) as it bites on
18 67, then you may wish some assistance on the operation of
19 67(3)(d), which, as I've read it, would be one of the
20 circumstances. What it does is explain that if an elected
21 Member is caught by a circumstance set out in section 66, then
22 that would lead to them having to vacate the seat. But the only
23 circumstance that doesn't apply is paragraph 66(f), which is the
24 one that we canvassed with The Honourable Neville Smith today.

25 But other than that, at this moment, I have nothing

1 further.

2 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

3 Sir Geoffrey, I think it's back to you, and I sort of
4 emphasize this because, as with everything I'm doing in the
5 Inquiry, it's my wish and intent to be as constructive as I can,
6 whatever my findings might be. And so, in relation to this
7 matter, it's important for all sorts of reasons, some extending
8 outside the terms of the COI, that this is sorted out. You will
9 no doubt report back to the Attorney, given The Honourable
10 Neville Smith's understanding is that he has got a motion for a
11 Declaration that is imminent, perhaps as imminent as tomorrow.
12 I think it's true to say he's waited for quite a while for his
13 Declaration, and he may have to wait a bit longer, but that's a
14 matter for the Attorney and the House.

15 But in respect of further submissions from you, Sir
16 Geoffrey, how long would you like to do them? It may be that
17 the submissions will fall short of setting out a definitive
18 opinion and route that is going to be taken, but how long would
19 you like to think about this, consider it, discuss it, no doubt,
20 with the Attorney and others, and come back to me?

21 SIR GEOFFREY: I'm not familiar with the Attorney's
22 schedule at the moment. It's always busy. I know from
23 experience that it is the busiest of all in many ways. And the
24 fact is that this is going to require a considerable amount of
25 very deep thought and indeed, I suspect, consultations

1 elsewhere. Well, I don't "suspect"--I'm certain of it.

2 The position, I think, if you could give me a week. I
3 don't want to hold up your Inquiry, frankly. It does seem to me
4 that there has been a traditional understanding of this section.
5 You have shed new light on it. We will have to consider, I
6 think, or the Attorney will no doubt with some advice as to
7 whether or not it's one that the Attorney should adopt, and in
8 those circumstances the question arises as to how the matter
9 might be dealt with.

10 So, on the points of law, could we say initially at
11 least, we are we now? On Tuesday, next Tuesday?

12 COMMISSIONER HICKINBOTTOM: No problem with that
13 because this is not on the Critical Path.

14 SIR GEOFFREY: That's what I imagine.

15 COMMISSIONER HICKINBOTTOM: So, I'm quite happy to
16 give you to, say, the end of next week to come back with some
17 submissions, and I appreciate quite a few people are doing quite
18 a lot at the moment. But if you could come back at the end of
19 next week to give a report on how--on what's happening and what
20 the current view is it, that would be helpful.

21 SIR GEOFFREY: I will do that. Thank you.

22 MR RAWAT: Commissioner, may I add one thing?

23 COMMISSIONER HICKINBOTTOM: Certainly, yes.

24 MR RAWAT: It may be that the Attorney General is
25 asked to give formal advice to the House of Assembly.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 MR RAWAT: In which case it's obviously a matter for
3 her, but it may be that that is advice that would be possible to
4 see.

5 COMMISSIONER HICKINBOTTOM: That was an observation,
6 Sir Geoffrey, and you heard what Mr Rawat said, but clearly you
7 will have to think about this and discuss it with the Attorney.

8 SIR GEOFFREY: With respect, unless I'm persuaded by
9 you or otherwise ordered by you, I would be reluctant at this
10 point to disclose any advice the Attorney gave on this subject.
11 It's a very sensitive issue. I appreciate that it wouldn't go
12 further than the Commission, but you can be certain that any
13 submissions I give you will be on the instructions of the
14 Attorney.

15 COMMISSIONER HICKINBOTTOM: What I would like to do,
16 Sir Geoffrey, is to see what you say a week from Friday.

17 SIR GEOFFREY: That's what I mean, really.

18 COMMISSIONER HICKINBOTTOM: We will take it there.

19 Mr Fligelstone Davies, a week from Friday for
20 submissions?

21 MR FLIGELSTONE DAVIES: Yes.

22 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

23 MR RAWAT: No.

24 COMMISSIONER HICKINBOTTOM: Anything else, Sir
25 Geoffrey?

1 SIR GEOFFREY: No. Thank you, Commissioner.
2 COMMISSIONER HICKINBOTTOM: Mr Fligelstone Davies?
3 MR FLIGELSTONE DAVIES: No.
4 COMMISSIONER HICKINBOTTOM: Thank you.
5 Mr Rawat? Tomorrow.
6 MR RAWAT: 10:00.
7 COMMISSIONER HICKINBOTTOM: Thank you very much.
8 (End at 4:58 p.m.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN