

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 38**

(WEDNESDAY 22 SEPTEMBER 2021)

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

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

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

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Wade Smith gave evidence.

Ms Lorna Stevens gave evidence.

Ms Carleen Jovita Scatliffe gave evidence.

Mr Steve Augustine gave evidence.

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Those present:

Session 1

Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Mr Wade Smith

Mr Steven Chandler, Secretary to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

Session 2

Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Ms Lorna Stevens

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

Session 3

Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Ms Carleen Jovita Scatliffe

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

Session 4

Ms Lauren Peaty, Withers LLP (attending remotely)

Mr Bilal Rawat

Mr Steve Augustine

Ms Juienna Tasaddiq, Assistant Secretary to the Commission  
Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

1  
2  
3 COMMISSIONER HICKINBOTTOM: Mr Rawat, we are  
4 ready.

5 MR RAWAT: Good morning, Commissioner.

6 Commissioner, before I begin, can I introduce the  
7 representation on behalf of the participants here today.  
8 We have Ms Lauren Peaty here on behalf of the Attorney  
9 General and the elected Ministers. The other participants,  
10 as you know, are remaining Members of the House of  
11 Assembly, there is no legal representative attending on  
12 their behalf today.

13 Our first witness of today is the Commissioner of  
14 Customs, Mr Wade Smith.

15 BY MR RAWAT:

16 Q. Mr Smith, thank you for coming back to give  
17 evidence today to the Commission. You have given evidence  
18 a number of times before, most recently on the 7th of July,  
19 and so there is no need for you to either take an oath or  
20 an affirmation.

21 On the 7th of July, you and your colleague,  
22 Tamisha Martin, attended, and we dealt with you both on  
23 that date with the reports that had been issued by the  
24 Auditor General and the Internal Auditor in relation to the  
25 Customs Department.

1           Now, we went through those reports in some detail  
2 and the recommendations that had been made in those  
3 reports, together with the steps that Customs have taken in  
4 response. On the 6th of December 2021, the Commission sent  
5 to you, as Commissioner of Customs, what we term a "Warning  
6 Letter", which is a term that's used in Inquiries. It's  
7 historically--

8           A. I'm sorry, Commissioner, what date that was?

9           Q. On the 6th of September 2021.

10          A. Okay, I thought you said December.

11          Q. Sorry, my voice may have dropped. But the  
12 purpose of that letter which is historically known as a  
13 Salmon Letter was to set out potential criticisms that bear  
14 upon Customs and which arise from the evidence that the  
15 Commission has collected. The letter itself is  
16 confidential, it has not been published. And what I should  
17 make clear, as I have done with others, is that the  
18 potential criticisms it contains do not represent either  
19 the provisional or the concluded views of the Commissioner.  
20 The purpose is to put you on notice so that you have a  
21 proper opportunity to respond to them, and that way you are  
22 being treated fairly.

23           The criticisms themselves concern two programmes  
24 or processes. The first was the Partial Payment Programme,  
25 which has operated for some time within the Customs

1 Department, and the second is Courier Clearance Processes.  
2 Now, those were matters, as I said, which are the subject  
3 of reports from 2015 and 2020 issued by the Auditor General  
4 and the Internal Auditor. And again, as I've said, we went  
5 through them in some significant detail with you and  
6 Ms Martin in July and the extent of your responses  
7 included, as I said, the recommendations and how Customs  
8 had responded, and so you were able in July to give the  
9 Commissioner an up-to-date account of where things were in  
10 relation to those two reports.

11           You have, as you are invited to do in the Warning  
12 Letter, provided a written response. Before we look at  
13 that response, Mr Smith, can you confirm for the  
14 Commissioner that you are content that the written response  
15 itself and the documents that you have appended to it form  
16 part of the evidence before the Commission?

17           A.     That's correct, sir.

18           COMMISSIONER HICKINBOTTOM: Thank you.

19           BY MR RAWAT:

20           Q.     There are matters of law that are linked to this  
21 on which the Attorney General has on your behalf provided  
22 written submissions. Those are not matters that I need to  
23 canvass with you. There may be a need to canvass them with  
24 Ms Peaty at the conclusion of the evidence, but that's a  
25 matter for the Commissioner to decide at that point. What

1 I don't want to do today, as well I should make clear is, I  
2 don't want to sort of go back over old ground, particularly  
3 the evidence that you and Ms Martin gave on the 7th of  
4 July, which was very detailed.

5 A. Okay.

6 Q. What I would like to do is to--really the primary  
7 purpose of today is to make sure that we get the--we don't  
8 need to read the entirety of your written response out but  
9 to get the gist of your written response on to the record  
10 in a formal hearing.

11 A. Commissioner, you mentioned that the Attorney  
12 General or counsel had been making--or have made  
13 submissions with regards to the legal aspect. Would I be  
14 able to further elaborate on those, Commissioner?

15 COMMISSIONER HICKINBOTTOM: Well, those are the  
16 legal submissions.

17 THE WITNESS: Right.

18 COMMISSIONER HICKINBOTTOM: How do you want to  
19 elaborate on legal submission, Mr Smith?

20 THE WITNESS: No. Elaborate on or speak to  
21 further in regards to legal authority or that I was  
22 operating under with regards to the partial payment.

23 BY MR RAWAT:

24 Q. I mean, this is something, if I explain,  
25 Commissioner, that I think Mr Smith does highlight in the

1 written response, and it was a point that I was going to go  
2 to first. So you can't make submissions of law, Mr Smith,  
3 but you can give additional evidence of fact.

4 A. Oh, okay. Maybe the terminology--maybe the  
5 terminology is incorrect, but that's what I--

6 COMMISSIONER HICKINBOTTOM: I think the thing is,  
7 Mr Smith, is this: Mr Rawat will ask you questions,  
8 really, on the basis of your response. I've read your  
9 response, very helpful, and full, but he's going to ask you  
10 some questions to make the key points--summarise the key  
11 points in your response.

12 THE WITNESS: Okay.

13 COMMISSIONER HICKINBOTTOM: And also ask for any  
14 clarification that he thinks will be helpful. And as I  
15 say, at the end, if there are any issues of law which I  
16 need to hear from, I can get further submissions from  
17 Ms Peaty.

18 But in between that, if there is anything that  
19 you want to add in relation to the law as you applied it,  
20 then you can have an opportunity to do that, but it may  
21 come out in the questions that Mr Rawat asks.

22 THE WITNESS: Okay. And if it doesn't, I would  
23 like the opportunity to do so.

24 COMMISSIONER HICKINBOTTOM: Understand that.  
25 Thank you.



1 THE WITNESS: Thank you.

2 BY MR RAWAT:

3 Q. Can we go to page 2 of your written response,  
4 please, Mr Smith.

5 A. I'm there.

6 Q. Yes. You can use that, I think it will be--

7 A. Page 2 or Tab 2?

8 Q. Page 2.

9 I think the written response is behind its own  
10 tab.

11 A. Page 2, yes.

12 Q. Yes.

13 Now, you have a heading there "Legal Submissions  
14 to be Advanced by the Attorney General". Because what the  
15 Commission raised with the Attorney General was that legal  
16 questions as to the operation of the Partial Payment Plan,  
17 and as you note at your 1.1, those are matters that are  
18 left to your legal representative to address.

19 A. And that was outlined in the Warning Letter--

20 Q. Yes.

21 A. That--that the Attorney General should respond.  
22 Correct?

23 Q. Yes.

24 A. Yes.

25 Q. That's the proper way for it to be done.

1           A.    Okay.

2           Q.    Now, what you do, however, try to assist with is  
3 a matter of fact, which is the research that you have  
4 undertaken in relation to when the Partial Payment  
5 Programme was introduced in the Customs Department. And  
6 what you say, and this is at 1.2 is that the Programme was  
7 one which you inherited effectively, or you came across  
8 first when you joined the Customs Department in  
9 December 2000, so you don't have any personal knowledge as  
10 to when it was introduced, but you have spoken to Deputy  
11 Commissioner of Customs, Leslie Lettsome, who began his  
12 Customs career in 1977, and his recollection is that, "in  
13 1978, the charter industry was in its embryonic stages and  
14 duty of 5 percent plus 1 percent wharfage was assessed on  
15 each vessel. That amount/tax was very difficult for the  
16 companies to pay at once. The then Comptroller of Customs  
17 therefore allowed customs duties to be amortized to  
18 facilitate the development of the charter industry to  
19 facilitate trade. Initiatives such as this, Mr Lettsome  
20 believes, allowed the BVI to develop to a point that it is  
21 now referred to as the sailing capital of the world. As  
22 time passed and other industries evolved, your written  
23 response records, the practice of permitting payments and  
24 installments continued in respect of goods associated with  
25 other industries and was extended to local residents".

1           And so, what you say is that, based on  
2 Mr Lettsome's institutional knowledge, the suggestion in  
3 the Auditor's Report is incorrect where it states that the  
4 Partial Payment Programme started less than two decades  
5 ago; rather, it has been in place since--well, for upwards  
6 of 40 years. And what you say at 1.5 is, again relying on  
7 Mr Lettsome's recollection, is that the Programme was  
8 implemented to provide relief to persons and businesses.

9           And you continue: "Must be set in the context of  
10 the realities of the Virgin Islands where 99 percent of  
11 goods are imported due to the virtual lack of a  
12 manufacturing sector. The commencement and continuation of  
13 the Partial Payment Programme has therefore always been to  
14 assist residents of the Virgin Islands who, in large  
15 measure, have to rely on imports".

16           Now, it's right to say that that set of  
17 paragraphs that I've read out is Mr Lettsome's recollection  
18 rather than your own?

19           A. That's correct, Commissioner.

20           Q. And if we look at 1.3 in particular, given that  
21 it was, as Mr Lettsome told you, focused on the charter  
22 industry and to facilitate the development of the charter  
23 industry and to facilitate trade.

24           Is it your understanding from Mr Lettsome that it  
25 was initially, first of all, directed towards commercial

1 enterprises before then being extended to what you've  
2 described as "local residents"?

3 A. Commissioner, based on what Mr Lettsome said, I  
4 don't think that it says that it was specifically directed  
5 in place for commercial operations only. I think what  
6 Mr Lettsome was referring to was a segment of the trade. I  
7 don't know if he was referring specifically or only to that  
8 segment of the trade and no one else.

9 Q. When you say "the trade", which trade are you  
10 referring to?

11 A. When I say "the trade" I'm referring to any  
12 importer, whether it's commercial importers or individual  
13 importers or retail importers, the different entities or  
14 different industries within the trade.

15 Q. If we look, please, at where the Auditor General  
16 said in her Report about when the Partial Payment Programme  
17 started, this is in the first bundle. You've got two  
18 bundles there, the Part 1 bundle, please. Turn up page 1,  
19 please.

20 You will see there that this is the Report of the  
21 Auditor General dated 18th of April 2015, and it is on what  
22 she has described as the Import Duty Partial Payment Plan.  
23 And she explains in the Report, if we turn to page 4, that  
24 the Partial Payment Plan, in effect, allows beneficiaries  
25 of the Programme to use a payment plan, so they don't have

1 to pay import duty at the start of it; they can pay in  
2 installments.

3 Now, at paragraph 8 at the bottom there.

4 What the Auditor General has written is "the  
5 system of partial payments for import duty was introduced  
6 in 1998 by the Department--that is Customs--to facilitate  
7 individuals and companies with demonstrated difficulties in  
8 meeting the full amount of duties assessed on imported  
9 items. The Customs Department was unable to provide any  
10 official authorization, supporting legislation or  
11 regulation legitimizing the practice. The files, however,  
12 point to directives from the Financial Secretary and the  
13 elected representatives instructing the Department to  
14 provide this assistance to named individuals."

15 I think the point you take issue with is the  
16 conclusion of the Auditor General that the system was  
17 introduced in 1998. You say, on the basis of Mr Lettsome  
18 it came in--was introduced two decades before 1998.

19 A. That's correct, Commissioner.

20 Q. But can you explain this, please, Mr Smith: Why,  
21 in 2015, was the Customs Department unable to provide any  
22 official authorization supporting legislation or regulation  
23 legitimizing the practice to the Auditor General?

24 A. Commissioner, I don't recall. That information  
25 was asked of the Customs Department with regards to

1 providing the legislative framework with regards to partial  
2 payment.

3 Q. Doesn't it follow, if the Auditor General has  
4 written the Customs Department was unable to provide any  
5 official authorization that the Auditors must have asked  
6 for some authorization?

7 A. You may assume that, but I--I really don't recall  
8 that being the case, at least not to me.

9 Q. Were you involved directly in this Audit?

10 A. No, usually I'm not directly involved in the  
11 audits. Usually, they would communicate with junior staff,  
12 subordinate--my subordinates, other managers, but direct  
13 involvement, no.

14 Q. Well, has any of your subordinates told you that  
15 the Auditor General did not ask for official authorization  
16 or supporting legislation or regulation?

17 A. Repeat that question, Commissioner?

18 Q. You responded by suggesting that the Auditor  
19 General's staff may not have actually asked for this  
20 information?

21 A. No, I'm suggesting that they did not ask me.

22 Q. Right.

23 But do you know whether--have any of your  
24 subordinates who are more directly involved in this process  
25 than you were, Mr Smith, told you that the Auditor General

1 did not ask the Customs Department to provide official  
2 authorizations, supporting legislation or regulation  
3 legitimizing the practice?

4 A. That was not communicated to me by any of my  
5 subordinates.

6 Q. As a result of preparing your written response,  
7 have you been able to find any explanation for why there  
8 was within the Customs Department files no information to  
9 show the official authorization, supporting legislation or  
10 regulation, even though that system had been operated by  
11 your Department since 1978?

12 A. Well, Commissioner, in my opinion, there  
13 was--there is information within the Customs files that  
14 will show where the Programme could have been operated or  
15 was operated under legislation. And if you--if I may,  
16 Commissioner, if I may be given the opportunity?

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: Commissioner, in addition to what  
19 was submitted by counsel Attorney General with regards to  
20 section, I think it was, 51 and--

21 COMMISSIONER HICKINBOTTOM: 103.

22 THE WITNESS: And 103 of the Customs Management  
23 and Duties Act, Commissioner--Commissioner, under CAP 104,  
24 section 17 and 18 respectively, and section--and CAP 103,  
25 section--I'm sorry, CAP 105, section 3 and 4 respectively.

1 Under section 17 of CAP 104, subject to such conditions as  
2 may be prescribed by way of bond--and this is in regards to  
3 the movement of Customs goods, this legislation are not  
4 enforced currently, the new legislation that we're  
5 operating under is the Customs Management and Duties Act,  
6 and you will see, Commissioner, where this is transformed  
7 and expanded in the Customs Management and Duties Act. The  
8 movement of Customs goods, subject to such conditions as  
9 may be prescribed by way of bond or otherwise, Customs may  
10 give an importer permission to move un-customs goods within  
11 an area of any port or from any port to any specified place  
12 within the Virgin Islands.

13 Section 18 of 104 speaks to the release of goods  
14 on port of arrival.

15 And section 18, subject to the provision of  
16 section 17, imported goods shall not be released from the  
17 port of the arrival until such goods have been entered,  
18 security has been given in a prescribed form.

19 Commissioner, I then take you directly to  
20 section 64 of the same Act that is on repeal, section 64  
21 which speaks to bonds, and whenever a payment of any duty  
22 or other Customs charge in respect of any goods is for any  
23 reason deferred, deferred upon any condition, the  
24 Commissioner may, or comptroller, may put in place, or the  
25 happening of any event--which the happening of an event



1 that would come to mind is 2017, the floods, the Category 5  
2 Hurricane, et cetera--Customs may require from the importer  
3 or owner of such goods, delivery of a bond in such a form  
4 as may be prescribed, securing the payment of such duty or  
5 charge upon the same becoming payable. The law gives the  
6 Commissioner the authority or the powers to have goods  
7 moved from within the ports to any other place outside of  
8 the ports.

9 I take you to CAP 105, Commissioner, section  
10 3(1), section 3(1). And you will see where this is also  
11 expounded on in the Customs Management and Duties Act, and  
12 this is a collection of duty. They shall be raised--and I  
13 will elaborate on the term "raised"--levied, collected, or  
14 appeared into the general revenues of the Territory, duty  
15 at a set rate, at the rate set forth in the schedule at the  
16 time of first importation.

17 And I take you to section 4, duties shall be  
18 payable by the owner of the goods subject to such duty and  
19 shall be paid either--and shall be paid either at the time  
20 of making an entry or at such other times as may be  
21 prescribed.

22 Commissioner, I would also like to direct your  
23 attention to the Customs Management and Duties Act,  
24 specifically section 21, section 51, section 54,  
25 section 58, section 60, section 72, and section 103 of the

1 Customs Management and Duties Act number 6/2010. And  
2 section 20 again speaks to the control of movement of  
3 uncleared goods--and this is a new legislation that we're  
4 currently operating with.

5 And the Commissioner may give general or specific  
6 directions as to the manner, conditions, and restrictions  
7 that goods to which this section applies are to be moved  
8 within the limits of a Customs port, approved wharf,  
9 Customs airport or Customs area between any of them or  
10 between any of them and any other place. And this section  
11 applies to goods chargeable with duty, which duty has not  
12 been paid. Any other goods which have not yet been cleared  
13 out of Customs charge.

14 Commissioner, I will now take you to section 51  
15 of the Customs Management and Duties Act.

16 COMMISSIONER HICKINBOTTOM: We've got section 51  
17 because section 51 is a section relied upon in your legal  
18 submissions.

19 THE WITNESS: And the Attorney General's legal  
20 submissions.

21 COMMISSIONER HICKINBOTTOM: And they're your  
22 legal submissions, yes.

23 THE WITNESS: Yes. Okay, so you have 51. And I  
24 direct you then to section 58, Commissioner.

25 Section 58, Commissioner--I'm sorry, I will take

1 you to section 54 before we go to section 58.

2           Section 54 is a collection of duty, and 54,  
3 section 54, subsection (1), says the Commissioner shall  
4 raise, levy, or collect on goods. As I mentioned earlier,  
5 this came directly from CAP 105, section 3(1), and the  
6 Commissioner shall raise levy or collect on goods, and we  
7 will recognize that "raise" is not used in its ordinary  
8 sense of the word to increase, but raise in accounting  
9 principles where, under section 5 of the Customs Management  
10 and Duties Act, the Commissioner has the responsibility for  
11 revenue collection and accounting. So rears is an  
12 accounting principle meaning to take action or to raise a  
13 journal, raise an entry. And the Commissioner shall raise  
14 levy or collect on goods imported into the Territory for  
15 home use, (a), (b) remove from bond for home use at the  
16 rate set out in schedule 4 at the time of first  
17 importation. And as you will see, Commissioner, that's  
18 taken directly from CAP 105, section 3(1).

19           In addition, Commissioner, I will also--and it  
20 says section 2, except as permitted on--permitted by or  
21 under this Act or any other enactment relating to Customs,  
22 imported goods shall not be moved or delivered except--and  
23 there is an exception there--on importation until importer  
24 has paid to their proper officer duty chargeable on goods.

25           Commissioner, I direct you to Section 58 of the

1 Customs Management and Duties Act, which speaks to 58(1),  
2 which speaks to the owner of goods subject to duty shall  
3 (a) in the case of goods of which entry is made, pay the  
4 duty payable at the time of making the entry. And,  
5 Commissioner, that takes you back to section 54.

6 Commissioner, I would direct you--I would take  
7 you to section 60 where there is a recovery of amounts due,  
8 and section 60, subsection (1), an amount due and not paid  
9 to the Commissioner under customs enactment may be  
10 recovered by the Commissioner in a court of competent  
11 jurisdiction.

12 Commissioner, if there was no opportunity for  
13 this type of programme, there would be no need to recover  
14 customs, customs duties, because duties would have been  
15 paid in full at the time.

16 Commissioner, I take you to section 72, again  
17 where it sets out that where, under any provision of a  
18 Customs enactment, goods are subject to a condition or  
19 restriction, and those are conditions or restrictions by  
20 the Commissioner of Customs relieved from duty chargeable  
21 on them and that condition or restriction is contravened,  
22 or not complied with, the duty relieved shall become  
23 payable by the person who but for that relief would have to  
24 pay that duty and the goods in respect of which the relief  
25 was granted or liable to forfeiture. Again, that's actions

1 to recover.

2 Commissioner, I will now take your attention to  
3 section 103, which you already have that.

4 COMMISSIONER HICKINBOTTOM: We have that because,  
5 in your Warning Letter, we asked you to make submissions on  
6 any legal matters through the Attorney General because she  
7 is your legal representative in the COI.

8 THE WITNESS: Right.

9 COMMISSIONER HICKINBOTTOM: Those submissions we  
10 have. We did that so that law would not suddenly pop up  
11 during the course of a Hearing to do with evidence.

12 The legal submissions that you have made is that  
13 the legal basis for the Programme since the 2010 Act are  
14 sections 51 and 103, full stop. That's the basis upon  
15 which you rely.

16 If there is any difference in legal basis and the  
17 Attorney says, in terms, that, in her view, that is an  
18 adequate basis, but if there is any additional legal  
19 submissions, then I need to receive those from the  
20 Attorney. She will have to make an application, and we  
21 will have them. But at the moment, you rely upon sections  
22 51 and 103 because that's what your legal representative  
23 says.

24 In terms of what you've said, though, a couple of  
25 things--

1           THE WITNESS: Commissioner, if I may, before you  
2 go, there is one more point that I would like to bring to  
3 your attention, if I can have that opportunity to do so.

4           COMMISSIONER HICKINBOTTOM: But is it a legal  
5 submission?

6           THE WITNESS: It's in relation to the  
7 Legislation, that's correct.

8           COMMISSIONER HICKINBOTTOM: Well, make it,  
9 Mr Smith.

10          THE WITNESS: In addition to what was mentioned  
11 with those sections of the various legislation,  
12 Commissioner, in the Virgin Islands when considering powers  
13 granted under the enactment, it's always important to  
14 consider the provisions of the Interpretation Act.  
15 Commissioner, the Interpretation Act is section 19,  
16 subsection 3, states that where an enactment empowers any  
17 persons or authority to induce any act or thing, in this  
18 case the power to collect, Commissioner, which includes  
19 duties, all powers shall be deemed to be also given as are  
20 reasonably necessary to enable that person or authority to  
21 do that Act or thing or acts or things that are incidental  
22 to doing--to the doing thereof.

23          Commissioner, in this regard, which makes it  
24 reasonably necessary for the Commissioner of Customs in  
25 performing the function of collecting and accounting of

1 Customs revenue to implement a payment plan, to not  
2 implement a payment plan with importers otherwise unable to  
3 meet their customs duties or other financial  
4 responsibilities in terms of Ports Authority charges, et  
5 cetera. To do that or not to have a payment plan, the  
6 products will be impounded until the customer is able to  
7 pay. While the products are impounded the storage fees  
8 continue to raise, which adds to the existing fees that are  
9 due and owing and cannot be paid by the importer. The  
10 goods can then become a liability to the Ports Authority  
11 and Customs. And if a product is not removed within a  
12 timely manner, the products would have to be auctioned. In  
13 most cases, these products are not auctioned and will be  
14 the burden on the Customs Department to then transport and  
15 destroy. Considering all of the above, Commissioner, it is  
16 reasonably necessary to take the action outlined above and  
17 covered by section 19(30) of the Interpretation Act, and on  
18 this premise, the sections of the Customs Management and  
19 Duties Act and prior and previous legislation,  
20 Commissioner.

21 COMMISSIONER HICKINBOTTOM: I hear what you say,  
22 Mr Smith. The response is the same, I'm afraid, that the  
23 Attorney has not relied upon the Interpretation Act. She  
24 may well have considered it's unnecessary to rely upon the  
25 Interpretation Act, given section 51 and section 103. She

1 may have decided that in construing a power to collect  
2 customs duty, it may not lie under the Interpretation Act  
3 not to collect the duty. But what we have is, we have your  
4 legal submissions. These are submissions made by you. I  
5 would have expected the Attorney to have liaised with you,  
6 so far as she considered it necessary, and those are the  
7 legal submissions that I propose to take into  
8 consideration.

9 I'm afraid, Mr Smith, although you have been in  
10 Customs a long time and know a great deal about the  
11 Legislation, I'm going to rely upon the submissions so far  
12 as what the law is on the legal submissions made on your  
13 behalf, as requested by the Attorney. She says those  
14 powers are adequate and I will consider those. If the  
15 Attorney wishes to make any further legal representations  
16 on powers, then I'm certainly open to receiving those.

17 But what you say raises two matters, which  
18 relates to evidence which you're here to give: Firstly, is  
19 there any evidence that any of these legal provisions which  
20 you have referred to are or were relied upon when these  
21 powers, that you say you have and you may have, were being  
22 exercised? Is there any document which says, well, this  
23 scheme is being set up under sections 20, 51, 54, 58, 60,  
24 72, and 103 of the CMDA?

25 THE WITNESS: Commissioner, like I said, it was



1 the Programme was established before. I inherited the  
2 Programme.

3 COMMISSIONER HICKINBOTTOM: These provisions only  
4 came in in 2010.

5 THE WITNESS: Under the CMDA, that's correct, but  
6 you're saying was there anything that was established, and  
7 like I said, it was established before I inherited the  
8 program, so these were already there.

9 So, prior to that, there was no documentation  
10 that outlined that, that I know of, that I'm aware of.

11 COMMISSIONER HICKINBOTTOM: Of course. And after  
12 that, is there any documentation?

13 THE WITNESS: The only documentation that we  
14 relied on at the time, Commissioner, would be the Customs  
15 Management and Duties Act.

16 COMMISSIONER HICKINBOTTOM: No, no.  
17 Documentation.

18 Is there any documentation relating to this  
19 scheme which says, "Look, under the 2010 Act, this scheme  
20 is being--is being adopted under the following sections of  
21 the 2010 Act"? The previous provisions, of course, having  
22 been repealed.

23 THE WITNESS: There is no--

24 COMMISSIONER HICKINBOTTOM: There isn't any.

25 THE WITNESS: Yeah, there is no documentation

1 that says that.

2 COMMISSIONER HICKINBOTTOM: The second point in  
3 respect of evidence is that there is no evidence that any  
4 of this--any of these provisions were referred to by the  
5 Customs Officers or others because there is a reference to,  
6 for example, the Ministry of Finance and the Premier's  
7 Office, no one, when the Auditor General asked them,  
8 because she clearly did from this Report, but not you--I  
9 understand that--they weren't referred to her, and there is  
10 no evidence that there were, is there?

11 THE WITNESS: If the sections of the Legislations  
12 were referred to her, like I said, Commissioner, I do not  
13 know because I don't know what was communicated.

14 COMMISSIONER HICKINBOTTOM: Exactly. All you can  
15 say is that you weren't asked, you didn't provide any  
16 information on this?

17 THE WITNESS: That's what I said, correct.

18 COMMISSIONER HICKINBOTTOM: The final thing but  
19 related to that, we understand from earlier evidence that  
20 the Auditor General's Report, when they are in draft form,  
21 are sent to appropriate people in the relevant department,  
22 put it that broad. In respect of this Report, did you see  
23 the draft before it was finalised, and do you know who did  
24 or would have seen the draft before it was finalised?

25 THE WITNESS: Commissioner, I don't recall seeing

1 a draft. And if the draft--I know there was another  
2 draft--another draft document from another department where  
3 there is a required signature, and this one I don't recall  
4 that one. And I've asked my staff if they recall seeing  
5 the draft.

6 COMMISSIONER HICKINBOTTOM: And none do?

7 THE WITNESS: None recall seeing the draft. But  
8 I don't recall.

9 COMMISSIONER HICKINBOTTOM: Thank you very much,  
10 Mr Smith.

11 Mr Rawat.

12 MR RAWAT: Thank you, Commissioner.

13 BY MR RAWAT:

14 Q. If we move on then, Mr. Smith. Can I just pick  
15 up one more general point in relation to the Partial  
16 Payment Programme, if you go to the second bundle,  
17 page 1738, please.

18 A. I'm sorry, 17...

19 Q. 38.

20 This is, if I explain, in December 2020, the  
21 Internal Auditor did a report which covered Courier  
22 Clearance Operations and the Partial Payment Programme.

23 MR RAWAT: Commissioner, for your note that's at  
24 1710 in this bundle, that's where it starts but it was  
25 split into essentially two halves in that the first part

1 dealt with Courier Clearance Operations, and then the page  
2 we're looking at is the part that deals with the Partial  
3 Payment Programme, and the date of it is October 7th, 2019.

4 BY MR RAWAT:

5 Q. And if you go through to 1750, please.

6 A. Yes.

7 Q. That's the beginning of the Management Response.

8 So, in relation to this, and we looked at this on  
9 the 7th of July in some detail, but Customs responded on  
10 both aspects of the Internal Auditor's work with  
11 indications as to whether they agreed or disagreed with  
12 recommendations and where they agreed an action plan. And  
13 if we look at 1768?

14 A. Okay.

15 Q. This is the recommendation in relation to the  
16 Partial Payment Plan, and the overall recommendation, you  
17 see that at 1767, in fact, the overall recommendation from  
18 the Internal Auditor was that the Partial Payment Programme  
19 be discontinued.

20 Now, when you came to give evidence, Mr Smith, on  
21 the 7th of July with Ms Martin, you told the Commissioner  
22 then, that the Programme had been suspended; that's right,  
23 isn't it?

24 A. That's correct.

25 Q. Does it remain suspended?

1           A.     Commissioner, it was--we have since received--we  
2 have since received correspondence. Initially, it was  
3 supposed to be suspended, and then we received  
4 correspondence from the Ministry, stating that suspended  
5 but not for commercial or civil servants, I think is what  
6 was said.

7           COMMISSIONER HICKINBOTTOM: I'm sorry, not the  
8 commercial?

9           THE WITNESS: Commercial businesses or civil  
10 servants they would allow--they would allow that. But  
11 again, for the approval of the Financial Secretary.

12           COMMISSIONER HICKINBOTTOM: So, the Ministry, the  
13 Ministry of Finance?

14           THE WITNESS: That's correct. The Ministry of  
15 Finance.

16           BY MR RAWAT:

17           Q.     Give me a moment, please.

18                     This is a document we may have to come back to as  
19 we go through your written response, Mr Smith, but if you  
20 turn up Tab 13 to your written response.

21                     Now, this is a memorandum from the Ministry of  
22 Finance, from the Financial Secretary to the Commissioner  
23 of Customs, dated 31st of August, 2020. And it's headed  
24 "The General Moratorium Partial Payments", and that seems  
25 to have followed the Internal Audit Report that we're

1 looking at or follow--well, not follow it because it  
2 predates it, but it's a response to an exit interview that  
3 the Internal Audit Department did in August 2020. And what  
4 was directed was ceasing any further granting of partial  
5 payments, and Customs initiated an effort to collect and  
6 chase as much outstanding revenues as possible, using its  
7 existing record.

8 Now, what's said is that: "Notwithstanding the  
9 above, for the avoidance of doubt I'm now stating that in  
10 fulfillment of (I) above"--which is the ceasing of the  
11 granting of partial payment--"Customs should only refer to  
12 my office, any person(s) requesting partial payment who  
13 they deem as a worthy risk. With respect to Civil  
14 Servants, they should only receive partial payment once  
15 they agree to a direct deduction from salary."

16 Is this the correspondence you had in mind,  
17 Mr Smith, or was there subsequent correspondence which is  
18 subsequent to July 2021 when you gave evidence to the  
19 Commissioner?

20 A. No, Commissioner, this is the only  
21 correspondence. There was one prior to that, to my  
22 now-Deputy who at the time was acting Commissioner. But  
23 also I must bring attention to what you just read,  
24 Commissioner and which you referred to as No (I). And it  
25 says "We ceased any further granting of partial payments."

1 And what isn't mentioned is, unless or until my office  
2 gives instructions as to specific release, and on what  
3 terms. It wasn't stated there, but I thought I would  
4 mention that.

5 COMMISSIONER HICKINBOTTOM: I'm sorry to  
6 interrupt, Mr Rawat, but this is the guidance that's  
7 currently being followed.

8 THE WITNESS: This is the guidance currently  
9 being followed. This is the last--this is the last  
10 correspondence of this sort from the Ministry.

11 COMMISSIONER HICKINBOTTOM: Thank you.

12 THE WITNESS: Which was August a year ago.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 BY MR RAWAT:

15 Q. That's helpful because that then allows to us put  
16 1768 into perspective because what the Internal Auditor  
17 recommended in December 2020 was: "In the event that it is  
18 determined that the programme serves a legitimate business  
19 or service delivery objective for the Government of the  
20 Virgin Islands, we offer the following recommendation that  
21 would strengthen, control the environment, improve the  
22 overall administration of the Programme".

23 And the recommendation was--or: "It is  
24 recommended that Her Majesty's Customs develop and document  
25 policies and procedures for the administration of payment

1 for customs duties by partial payment. Policies and  
2 procedures should govern the approval, monitoring,  
3 enforcement and closeout. Further, criteria should be  
4 developed to guide approvers in making decisions on  
5 applications which should also bring some level of  
6 transparency to the decision-making process. This criteria  
7 should also address the required information that should be  
8 collected and assessed before approval is given".

9 Now, the Customs did not agree with that  
10 recommendation, said that it would develop and document  
11 policies and procedures for administration of partial  
12 payments by the end of January 2021.

13 Just, if you can clarify, the system--the  
14 Programme seems to be continuing in a specific way, perhaps  
15 limited by the letter of August 2020 that we saw. But have  
16 Customs now got in place policies and procedures for  
17 administering the Partial Payment Programme?

18 A. Commissioner, as was stated--and this is  
19 important--as was stated by the FS, the Financial  
20 Secretary, unless or until my office give instruction to  
21 specific release and on what terms, there has been--since  
22 August 31st, there has been, I believe, Commissioner, one  
23 or two. I believe it's one. There was a payment plan that  
24 was authorized. There was one that was done at the request  
25 of the Financial Secretary.



1 Q. But you haven't developed any procedures?

2 A. No, I didn't say that. I said there was only one  
3 that was done.

4 There is an application that has been developed  
5 but it hasn't been utilized as yet, an application where  
6 applicants would make the application and get approval by  
7 the Financial Secretary; that has been developed. There is  
8 the contract agreement which the importer would sign, I  
9 think, as referenced in my Statement.

10 And policies in regards to that, no other  
11 policies haven't been developed other than the form which  
12 is to be submitted to the Financial Secretary, approval  
13 granted, Customs will administer the Programme or implement  
14 the Programme.

15 COMMISSIONER HICKINBOTTOM: Again, just to make  
16 it clear, what was envisaged were policy and procedures  
17 that govern the scheme. What you're saying is that hasn't  
18 been done, but instead, a form has been developed, which--

19 THE WITNESS: Application form.

20 COMMISSIONER HICKINBOTTOM: An application form  
21 has been developed, which an importer fills in. That then  
22 goes to the Financial Secretary who says "yes" or "no".

23 THE WITNESS: Who approves the partial payment.

24 COMMISSIONER HICKINBOTTOM: But that doesn't help  
25 in terms of this recommendation, does it? This is a

1 recommendation concerned with governance as to the policies  
2 and procedures which should govern the process. It is not  
3 a policy as to what the criteria are and so on, simply to  
4 go around the Customs and get the Financial Secretary to  
5 make a decision on the basis of an application form.

6 THE WITNESS: Well, the application,  
7 Commissioner, is specific, and it outlines--the application  
8 is probably a policy, outlines what needs to be done, how  
9 the checks will be done, credit checks in terms of debt,  
10 similar to that as you would do in a bank, in a banking  
11 situation. And we have the systems in place in terms of  
12 monitoring. Those systems are already in place.  
13 Monitoring and enforcement and closeout, those systems are  
14 already in place.

15 COMMISSIONER HICKINBOTTOM: Is there a document  
16 which sets out the criteria on which the Financial  
17 Secretary will determine an application?

18 THE WITNESS: No, there's no document that sets  
19 that out.

20 COMMISSIONER HICKINBOTTOM: Thank you very much.  
21 Mr Rawat.

22 BY MR RAWAT:

23 Q. And you say there are systems in place for  
24 monitoring, enforcement, and closeout. Were those systems  
25 in place before January 2021?

1           A.     That's correct.

2           Q.     Were you using an application form before  
3 January 2021?

4           A.     No.   Application form to receive the partial  
5 payment, no.   That was recently developed initially.   There  
6 will be correspondence.   The importers would request an  
7 amortization programme from the Ministry of Finance, and  
8 once approved, correspondence will be coming to the Customs  
9 Department.

10          Q.     So, the only thing you had to develop and  
11 document, when you agreed with the Internal Auditor and  
12 said HM Customs will develop and develop policies and  
13 procedures for the administration of partial payments, the  
14 only thing you had to do was the application form?

15          A.     The application and--basically, that's it.   In  
16 terms of the approval, that process goes to the Ministry of  
17 Finance.   They should be the ones having to put process in  
18 place to approve that.   But we assisted in the development  
19 of the form, and we will be in communication with them  
20 going forward.   There may be room for tweaking, and we will  
21 do that with them going forward.

22          Q.     Mr Smith, would it be possible for you to provide  
23 the Commissioner with a blank application form, please?

24          A.     Commissioner, I don't know if it's within the  
25 bundle--

1 Q. If it is, as we will go through the documents  
2 you've produced, if it is, then you can point it out to us,  
3 and that will solve the issue.

4 A. If not, then I will--

5 Q. But in terms of the policies that were already in  
6 place before January 2021, for monitoring, enforcement, and  
7 closeout, are those on-line policies, or are they actually  
8 written down?

9 A. Those are on-line policies. We have a unit, our  
10 Internal Audit Unit monitors the partial payment, monitors  
11 the dates that the payments are due. If importers haven't  
12 paid, they will reach out to the importers, whether by  
13 phone or whether by visit to the importer's premise to  
14 remind of this. Once the payment is made, then it's closed  
15 out.

16 Q. That was in place since January 2021?

17 A. It was always in place.

18 Q. Why did the Internal Auditor think it necessary  
19 for you, as Customs, to develop and document policies and  
20 procedures for the administration of the payments plan,  
21 including monitoring, enforcement, and closeout?

22 A. I don't know why it was--I don't know why it was  
23 necessary for her to do that. When this Audit took place,  
24 I think it's important to note that I wasn't in the  
25 Department at that time, so I didn't have any communication

1 with the Internal Auditor regarding that.

2 Q. Do you know why Customs then agreed to do so?

3 A. Why they agreed to do so?

4 Q. She recommended that have you policies for  
5 monitoring, enforcement and closeout, and Customs agreed  
6 they should have policies?

7 A. Well, a number of--a number of these things  
8 that's written already has already been discussed with  
9 Customs, by Customs Internal Audit Unit. These are things  
10 that we would have agreed to because we have already  
11 started the motion on a number of things that are outlined  
12 in this document.

13 Q. There is a difference, Mr Smith, with telling the  
14 Internal Auditor "we have already done this" and then  
15 saying "yes, we agree, we need to do this, and we shall do  
16 it".

17 A. Yes. But Commissioner, I didn't say that we told  
18 the Auditor General or the Auditor that we've done this. I  
19 said there were some of these things that they communicated  
20 here, and some of these things were already in the process.  
21 You go through the document, it speaks to a centralized  
22 location for couriers. Those things have already been in  
23 discussion in Standing Finance as far back as 2008 with  
24 regards to courier declarations.

25 It's been discussed as far back as 2007-2008

1 because we recognized the growth of the industry, and the  
2 industry being the courier service. At that time, it was  
3 approximately 20-25 percent of imports, and we recognized  
4 that it would grow substantially.

5 We've also made recommendations to have a  
6 specific facility built for just the couriers, process all  
7 couriers at that specific location, have all the necessary  
8 security systems in place, and have the Customs automated  
9 processing system functioning directly from that  
10 centralized unit. Those things have already been  
11 addressed.

12 Q. Do you have a centralized unit?

13 A. Currently, we do have not a centralized unit.

14 Q. Do you have a single location where couriers are  
15 being processed?

16 A. No, we do not have a single location.

17 And those--that was recommended at the time  
18 because of the limited size of the ports of entries in  
19 terms of storage, so that was recommended then.

20 Q. When you say "then", Mr Smith, when precisely do  
21 you mean "then"?

22 A. That was as far back as 2008.

23 Q. 2008 these recommendations were being raised?

24 A. Raised and discussed in Standing Finance.

25 Q. And Standing Finance is a committee of the House

1 of Assembly?

2 A. Standing Finance is a committee, that's where you  
3 go and you present your budget annually. When that was  
4 raised, those things were raised, at the time,  
5 Commissioner, like I said, there was limited space at the  
6 various ports of entries. Cargo could not be stored at the  
7 various port of entries, and these are the seaports.

8 Since Hurricane Maria, which we've seen  
9 80-90 percent destruction, there's no facilities at the  
10 ports for the couriers to operate.

11 Q. Before the Hurricanes--

12 A. Yes.

13 Q. --between 2008 and 2017, those recommendations or  
14 discussions about--we've moved on to couriers and we've  
15 moved on from partial payments now--but those discussions  
16 haven't borne fruit? You haven't actually put structures  
17 in place?

18 A. Put structures in place where, Commissioner?

19 Q. You said there were discussions--before the  
20 Internal Auditor published her Report in December 2020, you  
21 said that long ago, back in 2008, there were discussions  
22 about courier processing, a central location for courier  
23 processing, so CAPS would work from one place, courier  
24 processing would take place in one place. You say that's  
25 been going on since 2008, as a discussion?

1           A.    I would change that term, Commissioner, from  
2 "discussion" to a "presentation".

3           Q.    Discussion and presentation. The point is,  
4 between 2008 and 2017, did that happen?

5           A.    Between 2008? No, it didn't materialize.

6           Q.    So, when we get to December 2020 when the  
7 Internal Auditor is reporting, it still hasn't happened?

8           A.    No, it hasn't happened.

9           Q.    So, in terms of the recommendations that the  
10 Internal Auditor made, they were valid recommendations  
11 because, actually, the steps that she was recommending had  
12 not actually happened?

13          A.    They have not actually happened, but they were  
14 already planned for. Hence, during the Standing Finance of  
15 2020--2020, funding were put in place to have the  
16 Department get a space for courier declaration, and it's  
17 called--will be called "Her Majesty's Courier Declaration  
18 Center".

19                   COMMISSIONER HICKINBOTTOM: Just to go back, at  
20 least momentarily, to partial payments, what we've got on  
21 partial payments is that, following an Internal Audit  
22 Department's exit interview with the Minister of Finance on  
23 31st of August, as we've said, the Minister of Finance  
24 simply said "stop this scheme", if you will. They said  
25 "stop this scheme". And then he--and start chasing the



1 outstanding half a million dollars. That's what the  
2 message is here.

3           And then the Financial Secretary says, in respect  
4 to Civil Servants, how they should be dealt with, only  
5 where there was a deduction from salary and then over a  
6 period of time. And secondly, where persons--it doesn't  
7 say commercial persons, any persons requesting partial  
8 payment, refer them to the FS, and he will determine the  
9 risk. So, that was the position then.

10           Then we get the Internal Auditor's Report, and  
11 she asks for a few things. One is that criteria be  
12 developed to guide approvers in making decisions on  
13 applications. You've said that that hasn't been done.

14           Criteria should also address the required  
15 information that should be collected and assessed before  
16 approval is given. I'm not sure whether that's been done.

17           And then policies and procedures should govern  
18 approval, monitoring, enforcement and closeout. But that's  
19 understandable, isn't it, the lack of those policies and  
20 procedures resulted in the Financial Secretary bringing the  
21 scheme--to suspending the scheme?

22           THE WITNESS: Commissioner, as I would recall, it  
23 comes back to me that those policies were developed with  
24 regards, number one, as I mentioned, the application;  
25 number two, within that application, I think it outlines a

1 time frame for which application must be made.

2 Normally, what you would see happening in the  
3 past is, once the goods arrive and someone may be in  
4 financial trouble, they would seek out for help. But in  
5 our policies, we're asking--I think we're asking, I  
6 believe, two weeks' notice prior to the arrival of the  
7 goods, which would give the Financial Secretary and the  
8 Customs Department enough time to evaluate the application  
9 or the applicant to make sure they can--

10 COMMISSIONER HICKINBOTTOM: Where are the  
11 criteria for that evaluation?

12 THE WITNESS: Can I--can I--Commissioner, can I  
13 send that? It's in draft form. When I go back to the  
14 office, can I have that sent to you?

15 COMMISSIONER HICKINBOTTOM: Yes.

16 So, at the moment, there are no criteria in  
17 place?

18 THE WITNESS: Well, at the moment, Commissioner,  
19 there is really not--the system is not in place right now  
20 as we speak.

21 COMMISSIONER HICKINBOTTOM: Okay. I understand  
22 that. Thank you.

23 THE WITNESS: Unless otherwise directed by the  
24 Financial Secretary.

25 COMMISSIONER HICKINBOTTOM: Yes. At the moment

1 what happens is, if somebody wants to use partial payments,  
2 it really sort of bypasses you, goes to the Financial  
3 Secretary, and he decides?

4 THE WITNESS: He approves, if he--

5 COMMISSIONER HICKINBOTTOM: He approves.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: Yes. But if you  
8 could send those draft criteria, that would be useful.  
9 Thank you.

10 BY MR RAWAT:

11 Q. If I could turn to the potential criticisms now,  
12 please.

13 Mr Smith, could you turn up page 3 of your  
14 written response, please.

15 Do you have it, sir?

16 A. Yes.

17 Q. Thank you.

18 The first potential criticism that's raised in  
19 the Warning Letter relates to the Partial Payment Plan, and  
20 you've helpfully set it out in your written response, if I  
21 just quickly summarise. What's explained is that--and you  
22 have explained this today--is that the Customs Management  
23 and Duties Act of 2010 provides a tariff under which all  
24 imports fall, and duties under the Act must be paid to Her  
25 Majesty's Customs before items are released to the

1 importer.

2           What the Partial Payment Programme allows is that  
3 goods can be released by Customs to the importer without  
4 paying the full amount of duty assessed. And under the  
5 programme, importers are allowed to pay duties assessed in  
6 installment plans.

7           What the Warning Letter then says is that on the  
8 available evidence--and it then sets out a number of  
9 points, and you have dealt with those in turn, so we'll go  
10 through them in turn if we may.

11           The first was that the Programme was introduced  
12 without any legislative or regulatory authority. Customs  
13 may, therefore, be acting unlawfully as ultra vires the  
14 Customs Management and Duties Act 2010 or otherwise. Now,  
15 that obviously crosses over into questions of law which the  
16 Attorney General has addressed the Commissioner on in  
17 written submissions.

18           What you say, though, at your 1b, is that during  
19 your tenure, the legal authority of the Partial Payment  
20 Programme was discussed with former counsel of the Attorney  
21 General's Chambers to advise that the programme was  
22 supported under the provisions of the Customs and Duties  
23 Management Act, as well as the former Customs legislation,  
24 that is the Customs Ordinance at Chapter 104.

25           And you then say: "To be transparent and for

1 reporting purposes, the Partial Payment Amortization  
2 Programme is one that is approved by the Financial  
3 Secretary".

4 If we could break that down, please. In terms of  
5 the advice that you got from Attorney General's Chambers,  
6 when did you get that advice?

7 A. Commissioner, I don't know the exact date, but we  
8 always have meeting with Chambers from time to time  
9 whenever a matter raises I will run across. We have seen  
10 many counsels over the years, so I don't know the exact  
11 time when that was--when that was done, the exact date, but  
12 I can say that during the--that discussion raised because  
13 we wanted to see, number one, how it could be incorporated  
14 into the Customs automated processing system. We didn't do  
15 it under the Customs Act, the processing system, and I  
16 think it's been done through the JD Edwards system of  
17 payment.

18 Q. Can you remember when the Customs automated  
19 system was introduced?

20 A. Somewhere around 2013.

21 Q. In the Internal Auditor's Report that we were  
22 looking at--

23 MR RAWAT: Commissioner, if you'll note, it's at  
24 page 1724.

25 BY MR RAWAT:

1 Q. The Report writes: "Customs Automated Processing  
2 System. On November the 1st, 2016, HM Customs rolled out  
3 the implementation of the Customs Automated Processing  
4 System".

5 So, that's 2016, and that may help us in terms of  
6 deciding--because you've said that you would have gone to  
7 speak to the Attorney General's Chambers because you wanted  
8 to incorporate or use the CAP System to deal with partial  
9 payments.

10 It follows, doesn't it, that you must have gone  
11 for this advice sometime after 2016?

12 A. No, I wouldn't say that, Commissioner. I didn't  
13 say that.

14 And so, what is it, Commissioner? Is it 2016 or  
15 2013 was the establishment of Customs Automated Processing  
16 System?

17 Q. Well, 1724, that gives us the date on which that  
18 system was rolled out by the Customs Department. I  
19 understood your earlier evidence was that the reason you  
20 went to see the Attorney General about the Partial Payment  
21 Programme was to see whether you could use the CAPS to deal  
22 with it.

23 A. Right.

24 Q. So, given that you rolled it out in November  
25 2016, what I was putting to you is: Does that help you to

1 decide--to tell the Commissioner the date when you sought  
2 that advice?

3 A. No.

4 Commissioner, the system wasn't rolled out in  
5 2016, in November. That's inaccurate. That's not correct.

6 Q. All right. Your recollection is it was rolled  
7 out in 2013?

8 A. That's correct.

9 Q. So, it was after 2013 that you went to see the  
10 Attorney General's Chambers?

11 A. No, it was prior to that. That could have been  
12 before 2010.

13 Q. What was it that prompted to you go and see?

14 A. Because, during the development stages of  
15 CAPS--remember, CAPS is a system that's designed  
16 specifically to meet the needs and the demands of the  
17 trading environment in the British Virgin Islands. It's  
18 not an off-the-shelf system. It's a system tailor-made to  
19 the BVI. And these were different things that we were  
20 encountering. And whatever we were encountering in the  
21 Department, we wanted to ensure that they could be  
22 incorporated into the system. And if it could be  
23 incorporated into the system, there would have had to be a  
24 legal basis for it to be incorporated into the system.

25 Q. It can't have been before 2010, Mr Smith, because

1 what you say in your response is that you were advised that  
2 the Programme was supported under the provisions of the  
3 Customs and Duties Management Act 2010.

4 A. Yeah, but also I mentioned earlier that a  
5 substantial amount of information that I read out with  
6 regards to section CAP 104, CAP 105, and the various  
7 sections were transferred over to Customs Management and  
8 Duties Act.

9 Q. The advice you were given related to the Act,  
10 that's what you said in your written response?

11 A. Yes.

12 Q. If you look at your written response?

13 A. Yes, through the Legislation.

14 Q. So, the Legislation must have existed for you to  
15 have been given the advice, which means it must have  
16 happened after 2010?

17 A. Maybe I'm not clear on the dates. It could have  
18 been after 2010. It could have been before 2010.

19 Q. If you look at your own--what you have written to  
20 the Commissioner, it can't logically be before 2010 because  
21 the Act didn't exist before 2010.

22 A. We spoke about other Acts that existed before  
23 2010, which are now in the Customs Management and Duties  
24 Act.

25 Q. Could you just help me with one point which you



1 made about CAPS?

2 If you look at 1760, please.

3 If we look at 1760, at point 4, the Internal  
4 Auditor had recommended that HM Customs work with the  
5 developers of CAPS to improve the reporting capabilities of  
6 CAPS. And that was something with which Customs disagreed.  
7 And Customs disagreed "because the reporting feature was a  
8 shelf product, the reporting capabilities did not meet the  
9 requirements of HM Customs." And so, that suggests to the  
10 reader that CAPS was an--was not a bespoke system created  
11 for Customs. But you seemed to suggest a few moments ago  
12 that it was created just for the BVI. Can you just clarify  
13 what it is?

14 A. Okay.

15 Commissioner, it was stated that it was  
16 recommended that Customs work with the developers of CAPS  
17 to improve the reporting capabilities of CAPS. But there  
18 is more to that statement, Commissioner, and it was  
19 speaking specifically to a reporting system within CAPS.  
20 And the reporting system within CAPS did not meet the  
21 requirements of our end-users in terms of getting the  
22 information needed to share with our Central Statistics  
23 Office. There were still manual functions that had to be  
24 completed.

25 With the new system, or the new reporting system,

1 which is CADMUS, that provides more opportunities for the  
2 users of CAPS, internal users, not external users. It  
3 gives officers an opportunity to gather information for  
4 risk-based enforcement for monitoring of goods.

5 So, that reporting system that is spoken about  
6 here is not--is different from what was being read by you,  
7 Commissioner.

8 Q. But my question, Mr Smith, was just whether or  
9 not CAPS was a bespoke system designed specifically for  
10 Customs in the BVI or whether it is one, as suggested here,  
11 that you buy off the shelf?

12 A. No. CAPS is not an off-the-shelf system,  
13 Commissioner. CAPS was designed--actually, there are two  
14 user in the Caribbean that utilize CAPS; that is Bermuda  
15 and BVI. It's not--it's not an off-the-shelf system.

16 Q. If we could just go back then to 1b, please, in  
17 your written response. I think you can't really assist  
18 further in relation to dates on which you spoke with the  
19 Attorney General's Chamber. But how was the advice given  
20 to you? Was it in writing, or it was verbally?

21 A. It was verbal--it was verbal discussion,  
22 Commissioner.

23 Q. Now, at the end of that paragraph, you say that  
24 the system is one which is approved by the Financial  
25 Secretary. What do you mean by "approved by the Financial

1 Secretary"?

2 A. The Partial Payment Programme, Commissioner? Are  
3 we referring to the Partial Payment Programme?

4 Q. Yes.

5 A. Well, the Partial Payment Programme, a request is  
6 made to the Financial Secretary. And as stated in this  
7 letter, they should be referred to the Financial Secretary  
8 Office unless otherwise, and he will give a written  
9 approval if we should implement or utilize a system for any  
10 specific or particular importer.

11 Q. So, what that comment is directed to is the fact  
12 that the Financial Secretary will approve individual  
13 requests?

14 A. Where that accounts to, Commissioner, is that the  
15 requests will be--someone would write to the Financial  
16 Secretary or visit the Financial Secretary's office, and he  
17 will give authorization.

18 COMMISSIONER HICKINBOTTOM: I understand that  
19 that's now the--what happens because of the Moratorium.

20 THE WITNESS: Commissioner, not now. That's  
21 always been the case, Commissioner.

22 COMMISSIONER HICKINBOTTOM: Okay. So--but even  
23 before the Moratorium, it went through Customs and then  
24 went to the Financial Secretary for approval.

25 THE WITNESS: No. Before the Moratorium, if

1 someone is receiving any challenge and they are seeking a  
2 partial payment, they will--if they show up for Customs, we  
3 will encourage them to go to the Ministry of Finance and  
4 make an application. If they--if they call, we'll tell  
5 them "you have to write to the Ministry of Finance".

6 In some cases, they go directly, but those who  
7 don't know, they will come to Customs, and Customs will  
8 redirect them.

9 BY MR RAWAT:

10 Q. At 1c, you've taken a point. You say the Audit  
11 Report indicated that it appeared that Customs may be  
12 acting unlawfully in respect of this programme.

13 In fairness, I think, to the Auditor General, it  
14 is the Warning Letter that says that, rather than the  
15 Auditor General, and that flows from the fact that there  
16 was a legitimate question to be asked about the legal basis  
17 on which the Programme was being operated. But you  
18 have--and let's--just for purpose of the record, you point  
19 to, and you've put at your Tab 1, a letter from 2004 from  
20 the Governor--I'm not going to read out the details, and  
21 certainly not the name, but about the standards to be  
22 followed by Auditor.

23 If we go on, the--if I could have a moment.

24 MS PEATY: Commissioner, Mr Rawat, are you about  
25 to move off 1b and 1c?

1 MR RAWAT: Yes.

2 MS PEATY: So, there was just a point to raise on  
3 1b, if I may.

4 I think it is apparent from Mr Smith's evidence  
5 so far that we haven't identified a document of advice, and  
6 Mr Smith said it was oral advice, and so we haven't had the  
7 opportunity, really, to consider a waiver, and we are  
8 content for Mr Smith to give his advice. But were we to  
9 turn up any advice, we would then need to consider waiving.  
10 As you have seen so far, we have been waiving privilege in  
11 Attorney General's advice.

12 COMMISSIONER HICKINBOTTOM: Ms Peaty, at the  
13 moment there is no document--

14 MS PEATY: Yes.

15 COMMISSIONER HICKINBOTTOM: --because it was  
16 oral.

17 And secondly, Mr Smith said that the oral was, to  
18 put it bluntly, and as set out in 1b, that the Programme  
19 was allowed under the 2010 act.

20 MS PEATY: Yeah.

21 COMMISSIONER HICKINBOTTOM: You're unlikely to  
22 want to waive privilege on that.

23 MS PEATY: It's just the--I suppose it's just a  
24 procedural point that we haven't seen a document; were one  
25 to turn up, we would have to take advice.

1           COMMISSIONER HICKINBOTTOM: I understand that,  
2 but at the moment, no document.

3           THE WITNESS: Yes. It's a collateral waiver  
4 point, really.

5           COMMISSIONER HICKINBOTTOM: And I think it's  
6 very, very unlikely that a document will turn up.

7           MS PEATY: Mr Smith said yes. Sorry. It's a  
8 technical point, but just before we move off that.

9           COMMISSIONER HICKINBOTTOM: Thank you.

10           Moving on to 1.2, I see the time. Do you want to  
11 break here, Mr Rawat, or do you want to--

12           MR RAWAT: No, that's a good time to break.

13           COMMISSIONER HICKINBOTTOM: I mean, some of these  
14 points, and this isn't to say that we shouldn't, indeed we  
15 might have to go through some of the responses, but some of  
16 this ground has been covered previously.

17           MR RAWAT: It has been.

18           COMMISSIONER HICKINBOTTOM: For example, the  
19 safeguards within the terms of the Programme.

20           MR RAWAT: Yes.

21           COMMISSIONER HICKINBOTTOM: We will break now for  
22 the Stenographer, Mr Smith. We will just have a  
23 five-minute break so that the Stenographer has a break, but  
24 we'll come back, hopefully, at half past 11, if that's all  
25 right.

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: Thank you very much.

3 (Recess.)

4 COMMISSIONER HICKINBOTTOM: We're are ready to  
5 continue.

6 BY MR RAWAT:

7 Q. Turn to page 5, 1.2, of your response. The  
8 second point that's made under potential criticism 1 is  
9 that the Partial Payment Programme was set up without  
10 adequate/appropriate/effective processes, procedures,  
11 controls and safeguards.

12 And to summarize your response, you explain that  
13 you were not attached to the Customs Department at the time  
14 of the Programme's inception, and so you can't say what  
15 processes and procedures were initially put in place. But  
16 you do speak, as you say you can, to measures implemented  
17 during your time, and you say that processes have been  
18 refined and improved when shortcomings, difficulties or  
19 challenges have been identified, and that has come from  
20 recommendations from former management members of the  
21 Department, the Internal Audit Unit of Customs, and  
22 external auditing organisations. And they, you say, were  
23 adopted to better secure and collect outstanding duties.  
24 You point to some of the initiatives, which include, and  
25 you have given examples of that, so you have the use of a

1 formal written application form-you produced one of those  
2 at Tab 2 to your bundle. When we were looking earlier at  
3 the--and we were talking about the application process, is  
4 that the form that you had in mind, Mr Smith?

5 A. That's correct, Commissioner.

6 Q. So, that's the one that would have been  
7 introduced after the Auditor's Report of December 2020?

8 A. That's correct.

9 Q. You then say that there is the use of formal  
10 written agreements detailing the manner in which duty would  
11 be paid and permitting the seizure of imported duties,  
12 imported goods should only payment be outstanding, and you  
13 have given examples of that.

14 So, at Tab 3, we have an example of a form blank  
15 which, as you can see at the bottom, has a payment  
16 schedule, doesn't it?

17 A. Yes.

18 Q. You confirm that.

19 A. Yes, Commissioner.

20 Q. And it makes clear that customs has the authority  
21 to seize the items mentioned or take other reasonable  
22 actions.

23 And you've got Tab 4, given, actually a completed  
24 example, for obvious reasons I won't read any of the detail  
25 out, but that shows how that works.



1           Now, that's a form from 2017. If you go, please,  
2 to the second bundle at 1770.

3           A. Yes.

4           Q. One of the recommendations that the Internal  
5 Auditor made was that you should implement a draft  
6 agreement provided by the Attorney General's Chambers to  
7 govern partial payment relationships going forward, and we  
8 can see that draft agreement is at 1748.

9           Now, what Customs said in response to that  
10 agreement was that it would implement the draft agreement  
11 immediately. So, is that the form that you now use?

12          A. Commissioner, no. That's not the form that's  
13 currently being used. As I said--as I said, the Programme  
14 has been suspended unless in accordance with that letter  
15 from the Financial Secretary August 2020. But no, this  
16 form is not being used at this time.

17          COMMISSIONER HICKINBOTTOM: I'm sorry, it's been  
18 suspended, but if the Financial Secretary approves the  
19 partial-payment scheme for an individual, there has to be  
20 an agreement.

21          THE WITNESS: Right.

22          COMMISSIONER HICKINBOTTOM: But this is not the  
23 form--

24          THE WITNESS: This was not the form that was  
25 lastly used.

1 BY MR RAWAT:

2 Q. So, it's a form that you--the form that you've  
3 produced is the one that you used?

4 A. The last one, Commissioner, is the form that was  
5 produced is the last form.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 BY MR RAWAT

8 Q. The third example of an initiative you give is  
9 imposing conditions to secure the outstanding balance such  
10 as automatic deductions on the salaries of government  
11 employees. And the fourth one is recording Customs'  
12 interest in motor vehicles under the Programme with the  
13 Department of Motor Vehicles and we can see examples of  
14 that at Tab 6 and Tab 7. So, there's a blank record of  
15 interest at Tab 6 to your written response, and a completed  
16 example at Tab 7.

17 Just to go back to the deducting--or deducting  
18 from the salaries of Government employees. When was that  
19 introduced by yourself?

20 A. Commissioner, to the best of my knowledge, I  
21 believe that was before 2012. It was quite a while back,  
22 to the best of my recollection, Commissioner.

23 Q. If you could turn up again in the second bundle,  
24 please, page 1738.

25 A. 1738?

1 Q. Yep. This is--we're going back to the  
2 Auditor--the Internal Auditor's Report on partial payments,  
3 which is we turn up to 1739 and look at paragraph 3, the  
4 Internal Auditor there points out "to further illustrate  
5 the lack of due diligence carried out on request for  
6 partial payment, our sample revealed that an employee who  
7 left the Government's employ in 2017 and defaulted on  
8 significant outstanding balances for both vehicle and  
9 personal loans was approved for partial payment in 2019 of  
10 which he only made the down payment."

11 If you go to the next page at 6, 1740, the Report  
12 there records: "Varying formats of partial payment  
13 agreements were found in the review of the files".

14 Sorry, give me a moment.

15 If I could just have a moment, please,  
16 Commissioner.

17 (Pause.)

18 BY MR RAWAT:

19 Q. Sorry, if I take you to 1742, please. 1742, what  
20 the Internal Auditor Report noted at D, was that again,  
21 that Government employees who had entered into agreements  
22 for the payment of customs duties by partial payment, left  
23 the service with unpaid balances.

24 But then at E that, it was observed the payments  
25 were made for some Government officers via salary

1 deductions. Whereas others were allowed to make direct  
2 payment to the Customs Department.

3 So, despite you introducing that system in 2012,  
4 can you explain why in 2019 there was a variability in  
5 approach?

6 A. Commissioner, I cannot speak to that. I wasn't  
7 there in 2019.

8 Q. I see.

9 What you also say in your written response was  
10 that the initiatives that you had introduced stand apart  
11 from safeguards that are there in the Customs Management  
12 and Duties Act or through the courts. You say that Customs  
13 legislation provides for mechanisms to facilitate the  
14 recovery of outstanding sums.

15 And is that sort of--as you say in there,  
16 Mr Smith, that there are provisions within the Act that  
17 would allow you to seize goods if duty hasn't been paid on  
18 them?

19 A. That's correct, Commissioner.

20 Q. You also say that you've held discussions over  
21 the last few years with counsel attached to the Attorney  
22 General's Chambers with the view to exploring other  
23 options, including pursuing court proceedings, but because  
24 of the demands of the--on the Chambers and their limited  
25 resources, that is not something that has been pursued so

1 far.

2 So, just so that we're clear, you haven't, in  
3 your tenure, initiated court action against somebody who  
4 has defaulted under the Partial Payment Plan?

5 A. No.

6 As mentioned, Commissioner, there has been  
7 communication with the Chambers with regards to initiating  
8 court actions against persons who may be in default. In  
9 communicating with one of my managers, they've indicated  
10 that they've reached out to Chambers in my absence, they've  
11 reached out to Chambers, they've contacted to Chambers to  
12 get assistance in moving matters to the Court, advancing  
13 matters to the Court. That hasn't happened.

14 Q. When did they reach out to the Chambers?

15 A. Commissioner, that was--I was--I wasn't there at  
16 the time. From what they--from what they told me, I was  
17 absent at that time.

18 Q. The next point that you address--

19 A. And, frankly, Commissioner, there were  
20 discussions on it, but they never--it didn't happen prior  
21 to that.

22 Q. But can you give the Commissioner any idea of the  
23 date of when these discussions were happening, Mr Smith?

24 A. Probably around--after 2015, around 2015 or  
25 thereabouts.

1 Q. The next point that's under the potential  
2 criticism which you address is that there is a significant  
3 risk to the public purse in that import duties have not  
4 been properly and/or fully collected and accounted for  
5 under the Programme. You say that it's incorrect to say  
6 that import duties have not been accounted for because the  
7 Customs Department has always maintained comprehensive and  
8 accurate records of all duties which are payable on  
9 imported goods, even where permission is granted to defer  
10 payments. And you say, we've always been able to provide a  
11 full and proper account of the sums--

12 A. Which page are you on, Commissioner?

13 Q. Page 6 of your written response, please.  
14 Despite the existence of the Programme.

15 Just--this is something that you have gone into  
16 detail in July 2021, Mr Smith, but you have the CAPS  
17 system, as well as the CAPS system, Customs uses the  
18 JDEdwards system; is that right?

19 A. That's correct, Commissioner.

20 Q. And do the two systems speak to each other, or do  
21 you use them--do they operate independent of each other?

22 A. They operate independent of each other,  
23 Commissioner.

24 Q. What you also say, Mr Smith, and this is  
25 something you did--

1           A.     But Commissioner, if I may, Commissioner, I  
2 thought you were making a point with regards to  
3 accounting--accounting of records, or accounting of revenue  
4 or duties, and you weren't finished, but I would like to  
5 say that's where a number--that's where this information  
6 came from, our records. And that information was provided  
7 to audit, so that's where they got this information.  
8 That's how they were able to perform the Audits,  
9 Commissioner.

10           COMMISSIONER HICKINBOTTOM: Yes, I think the  
11 criticism needs to be read as a whole, that import duties  
12 have not been fully collected and accounted. I think  
13 that's a whole phrase, I think.

14           THE WITNESS: Right.  
15           Not fully collected but not fully--not fully  
16 accounted for.

17           COMMISSIONER HICKINBOTTOM: I understand your  
18 point. You know the amounts that haven't been collected  
19 and from whom they have not been collected?

20           THE WITNESS: That's correct. So, it's accounted  
21 for.

22           COMMISSIONER HICKINBOTTOM: No, I understand that  
23 point.

24

25           BY MR RAWAT

1 Q. You make the point, and this is at seven, that  
2 whilst import duties have not been always fully collected--

3 A. Where are you?

4 Q. Your page 7.

5 A. Okay. Commissioner.

6 Q. You say, while you acknowledge that the import  
7 duties have not always been fully collected, but you don't  
8 agree with the proposition that that presents a significant  
9 risk to the public purse, and this is a point that you made  
10 in July 2021, and the point comes to this: That when you  
11 compare the amount that may be owed under the Partial  
12 Payment Programme, against the amount of tax that is  
13 actually--or of duty that is actually collected by the  
14 Customs Department, then the former is a very small amount  
15 of that?

16 COMMISSIONER HICKINBOTTOM: It's a very small  
17 proportion.

18 MR RAWAT: Yeah.

19 COMMISSIONER HICKINBOTTOM: I think on any view,  
20 Mr Smith, half a million dollars is quite a lot of money,  
21 but I understand your point and that is, as a proportion of  
22 the total Customs, it's a small proportion?

23 THE WITNESS: Um-hmm.

24 COMMISSIONER HICKINBOTTOM: Yes?

25 THE WITNESS: Yes.



1 BY MR RAWAT:

2 Q. Now, on the last occasion, in July 2021, what I  
3 canvassed with you and Ms Martin was the issue of how much  
4 of the monies owed you would have to write off because the  
5 Internal Auditor's Report, which was dated October 2019,  
6 noted that Customs may be statute-barred from recovering  
7 about 265,000 and recommended a meeting with the Attorney  
8 General's Chambers. And in evidence, Ms Martin explained  
9 that that meeting hadn't happened as yet.

10 Have you had a meeting since July 2021?

11 A. No, Commissioner, not with regards to--not with  
12 regards to this particular item.

13 Q. And if we take Mr Lettsome's 40-year lifespan of  
14 this programme, over that time, how much has Customs  
15 actually been able to recover?

16 A. Commissioner, respectfully, I don't know. I  
17 don't have that figure. I don't have the figure.

18 COMMISSIONER HICKINBOTTOM: Nor the amount that  
19 it's had to write off?

20 THE WITNESS: The amount that was written off?

21 COMMISSIONER HICKINBOTTOM: Yes.

22 THE WITNESS: I don't recall any being written  
23 off as yet, but I do--what I do know is there has  
24 been--there may have been some deaths--I mean, passing of  
25 individuals, and the family members have been honoring some

1 of them. The others may be uncollectible.

2 But we will have to review the system, review the  
3 names and then we'll make an assessment.

4 COMMISSIONER HICKINBOTTOM: And obviously at the  
5 meeting with the Attorney General.

6 THE WITNESS: Absolutely.

7 COMMISSIONER HICKINBOTTOM: As to what is legally  
8 recoverable?

9 THE WITNESS: Absolutely, and the Financial  
10 Secretary.

11 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

12 BY MR RAWAT:

13 Q. The fourth point, Mr Smith, that is made under  
14 this potential criticism is that--and it harks back to  
15 something that's said in the Auditor General's Report in  
16 2015, and it is that the Financial Secretary and elected  
17 representatives appear to have authorized or otherwise  
18 instructed the Commissioner of Customs, either directly or  
19 indirectly by the Financial Secretary in the case of  
20 elected representatives to allow named individuals to use  
21 the Programme.

22 And in response to this, you point out, firstly,  
23 that the Partial Payment Programme is one that is  
24 administered in conjunction with the Financial Secretary  
25 for the purposes of transparency. And you have--we've

1 looked at this briefly, but you've produced as examples  
2 some documents, and let's just go through those.

3           The first of those is a correspondence--I'm going  
4 to be careful--it's at Tab 8.

5           A.     Okay.

6           Q.     I don't want to mention any names but it's a  
7 letter from the 30th of July 2021, addressed to the  
8 Financial Secretary from the Managing Director of a  
9 business in the BVI, which seeks assistance, but is the  
10 purpose of producing this to the Commissioner that this is  
11 an example of someone in July 2021 who was intending to use  
12 the Partial Payment Programme?

13           A.     Who was--Commissioner, who was seeking the  
14 opportunity to use it, and this person would have written  
15 to the Financial Secretary, which I explained earlier, and  
16 the Financial Secretary, by utilizing his authority, may or  
17 may not grant the Programme.

18           Q.     We can see the Financial Secretary's response at  
19 tab 9, but just so that I'm clear, this was being done  
20 under the head of the Financial Payment Programme?

21           A.     Amortization, correct.

22           Q.     You also produce at tabs 10 and 11,  
23 correspondence from 2008, which again is with the  
24 then-Financial Secretary from a business based in the BVI,  
25 again, please don't mention names, but I just have one

1 question for you. If you look at the document at tab 10,  
2 please. There is reference there to Pioneer status.

3 A. Um-hmm.

4 Q. Can you explain what pioneer status refers to?

5 A. Pioneer status is a concession that is approved  
6 by--that is approved by Cabinet. An importer may make an  
7 application to the Permanent Secretary, Premier's Office,  
8 requesting pioneer status. Pioneer status should be  
9 utilized for first in the industry or first--first type of  
10 business in the BVI. Under the pioneer status exemptions  
11 from customs duty, normally once approved, there's  
12 exemptions from customs duty. Probably I have seen them  
13 for five years, eight years or 10 years. I haven't seen  
14 any for 10 years as of late. It's mainly been between five  
15 and eight years.

16 Q. Do you have to have pioneer status in order to  
17 make use of the Partial Payment Programme?

18 A. No, Commissioner. If you have pioneer status,  
19 you don't need a Partial Payment Programme because you're  
20 exempt from customs duties. And that's based on--that  
21 depends on the approval by the Minister, the Premier's  
22 Office will take the matter to Cabinet, and once approved  
23 by Cabinet--

24 COMMISSIONER HICKINBOTTOM: Once the status is  
25 approved.

1 THE WITNESS: Once the status is approved by  
2 Cabinet.

3 COMMISSIONER HICKINBOTTOM: Exemption?

4 THE WITNESS: Exemption, yes.

5 COMMISSIONER HICKINBOTTOM: I understand. Thank  
6 you.

7 BY MR RAWAT:

8 Q. You say, as we've looked at that, the system--the  
9 programme is administered in conjunction with the Financial  
10 Secretary for the purposes of transparency. Has that  
11 always been the case?

12 A. With the Partial Payment Programme?

13 Q. Yes.

14 A. Has it always gone to the Financial Secretary?

15 Q. Has it always been administered in conjunction  
16 with the Financial Secretary?

17 A. There--there may have been cases where the  
18 Financial Secretary may not have been able to be reached at  
19 the time, and the officers will start the process and then  
20 consult with the Financial Secretary after.

21 COMMISSIONER HICKINBOTTOM: When you say "for the  
22 purposes of transparency", transparency there is used in a  
23 very, very narrow sense, isn't it? Because you have no  
24 criteria of assessment of application, neither did the  
25 Financial Secretary, so it wasn't a transparent process in

1 the sense that the importer knew what was going on.

2 THE WITNESS: Right.

3 COMMISSIONER HICKINBOTTOM: But it was simply  
4 that it wasn't entirely Customs' internal process because  
5 the FS knew what was going on?

6 THE WITNESS: The FS knew what was going on, and  
7 the FS would have known.

8 And basically to not have anyone in the  
9 Department or officers just--

10 COMMISSIONER HICKINBOTTOM: Just signing them  
11 off?

12 THE WITNESS: Just signing them off.

13 COMMISSIONER HICKINBOTTOM: I understand that. I  
14 see that. Thank you.

15 BY MR RAWAT:

16 Q. And you've set out, and we don't need to go into  
17 this, but we're crossing over into law, but you say that  
18 there is a power within the Customs Management and Duties  
19 Act that would allow the Financial Secretary to give  
20 express or to have express authority to reduce or remove  
21 duties payable. You also go on, Mr Smith, to say that,  
22 during your time as Commissioner of Customs, you've never  
23 received any directive from elected representatives  
24 concerning the Partial Payment Programme?

25 A. No, I have not, Commissioner.

1 Q. What the--this came from the Auditor General's  
2 Report, and the Auditor General's Report found information  
3 on the files to suggest that.

4 A. Right.

5 Q. I could take you to it, if you need to see it  
6 again.

7 A. Sure.

8 Q. It's Bundle 1 at page 5. The first bundle?

9 A. Bundle 1.

10 Page 5?

11 Q. Page 5, the numbering is at the bottom center of  
12 the page. Right at the top it should say internal  
13 numbering is page 4 at the top right-hand corner.

14 A. Okay.

15 Q. And you see there what the Auditor General's  
16 Report recorded was "the files however point to directives  
17 from the Financial Secretary and elected representatives  
18 instructing the Department to provide this assistance",  
19 which is the Partial Payment Programme.

20 A. I'm not seeing--

21 COMMISSIONER HICKINBOTTOM: Top of the page.

22 THE WITNESS: It says page 5.

23 COMMISSIONER HICKINBOTTOM: No, at the top the  
24 page it says page 4, bottom of the page 5.

25 THE WITNESS: Right, okay.

1 COMMISSIONER HICKINBOTTOM: It's the first three  
2 lines, Mr Smith.

3 THE WITNESS: Okay.

4 Commissioner?

5 BY MR RAWAT:

6 Q. Well, you say that you never received directly  
7 any directive from an elected representative, but the  
8 Auditor General's Report suggests that the Auditors found  
9 such directive within the files.

10 A. Okay.

11 Q. Did you check the files again for the purposes of  
12 this written response?

13 A. No, I haven't seen this response, were we're  
14 supporting legislation or regulation legitimizing the  
15 practice; is that where we are?

16 Q. Yes, but it's sentence.

17 A. "The files however point to directives from the  
18 Financial Secretary and elected representatives issuing the  
19 Department to provide this assistance to named  
20 individuals."

21 Do we have a copy of the document?

22 Q. No. My question is: You've said in your written  
23 response--

24 A. Yeah.

25 Q. --that you never received a directive from an



1 elected representative?

2 A. I never received a directive from an elected  
3 representative.

4 Q. The Auditor General appears to have found such  
5 directives--

6 A. Right.

7 Q. --in files of the Customs Department.

8 A. And I understand--I understand that--I understand  
9 what you say, Commissioner, but I'm asking, can I see it,  
10 if you have it? I haven't seen it.

11 COMMISSIONER HICKINBOTTOM: They're your files,  
12 Mr Smith.

13 THE WITNESS: They're my files, but I haven't  
14 seen it. So, if it's there, I would like to see it, but I  
15 haven't seen it.

16 COMMISSIONER HICKINBOTTOM: Mr Rawat's question  
17 is narrow: Have you checked?

18 THE WITNESS: Have I checked? Yes. We went  
19 through all the files.

20 BY MR RAWAT:

21 Q. Okay. The next point that's made, and it's one  
22 we covered, Government employees have been permitted to  
23 participate in the Programme, and a number have delinquent  
24 balances, and what you say in response to that is that the  
25 Partial Payment Programme was available to any individual

1 who applied and was approved for this, and that included  
2 Government employees but it was recently restricted to  
3 Government employees and commercial importers. And if we  
4 look at Appendix 12, tab 12.

5 A. Yes, Commissioner.

6 Q. That's an e-mail of 12th of December 2019 from  
7 the then-Financial Secretary to Mr Lettsome who was the  
8 acting Commissioner of Customs at the time, and it says:  
9 "I'm advising further to the Director of Internal Auditor's  
10 memorandum dated October 7th, 2019" which is what we've  
11 been looking at, "with the exception of Civil Servants and  
12 commercial importers, the system of Partial Payment should  
13 be discontinued until further notice." That gives us a  
14 date of discontinuance. And Mr Lettsome responded, "I  
15 would adhere to your directive. Further clarification is  
16 needed as to who I'll consider to be commercial importers".

17 Do you know whether such clarification was ever  
18 given to the Customs Department?

19 A. No, I'm not aware of that. I'm aware of the memo  
20 because I saw it, but I'm not aware of any clarification.

21 Q. And we've looked at this, but you also produced  
22 in relation to this the memorandum of the 31st of  
23 August 2020?

24 A. Correct.

25 Q. So, effectively, from December 2019, the

1 Programme was suspended except for Civil Servants and  
2 commercial importers?

3 A. That's correct.

4 Q. And then more detail followed to Customs in  
5 August 2020?

6 A. Repeat, Commissioner?

7 Q. If you look at your tab 13.

8 A. Okay. Yes.

9 Q. That's the 31st of August 2020 memorandum which  
10 is longer, the e-mail from the Financial Secretary of  
11 December 2019.

12 A. Right.

13 Q. So, I'm just suggesting that that gave more  
14 detail as to how the Partial Payment Programme was to  
15 operate from that?

16 COMMISSIONER HICKINBOTTOM: More detail and more  
17 restrictive?

18 THE WITNESS: That's correct.

19 COMMISSIONER HICKINBOTTOM: Thank you.

20 BY MR RAWAT

21 Q. And it's clear, isn't it, that the decision of  
22 the Financial Secretary was prompted by an Internal Audit  
23 Report of 2019, wasn't it?

24 A. Well, it's stated--it states that in the opening  
25 sentence, Commissioner.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 BY MR RAWAT:

3 Q. Now, you've explained--and we've already explored  
4 this--that under your leadership you arranged for  
5 deductions to be made directly from Government employees'  
6 salary, and you say this was implemented approximately 10  
7 years ago.

8 A. I think within that time frame, Commissioner. I  
9 don't have the exact date.

10 Q. Since it had been running since 1978, on  
11 Mr Lettsome's recollection, why did it take so long to  
12 implement such an initiative?

13 A. Commissioner, I can only--I can only speak to the  
14 time frame of when I was there, when I took over. So, I  
15 don't know why it took so long. I would like to--I would  
16 like to say that--and I initiated it. I don't want to give  
17 myself any self-praise, but it was something that we  
18 discussed, and we thought that it should be done to  
19 secure--get direct payments rather than having people come  
20 to the office to make payments.

21 Q. But we have seen, after the initiative, that was  
22 still happening, that people were--not every Government  
23 employee was having deductions from their salary, were  
24 they?

25 A. Commissioner, you made reference to something

1 that happened in 2019. You made reference to that, which I  
2 stated earlier, I cannot speak to that. I was not there at  
3 that time.

4 Q. But your--the point, Mr Smith, is that, in  
5 approximately 2011, you say there was an initiative under  
6 your leadership for deductions to be made directly from the  
7 salaries of government employees. And as we saw in the  
8 Internal Auditor's Report of 2019, that wasn't working very  
9 well because there were still Government employees who  
10 weren't having deductions made from their salaries. So  
11 that suggests, doesn't it, that the system wasn't working  
12 very well?

13 A. I'm sorry? That suggests what, Commissioner?

14 COMMISSIONER HICKINBOTTOM: It suggests that not  
15 all Public Servants who were paying under the scheme were  
16 having deductions made from their salary--

17 THE WITNESS: Right.

18 COMMISSIONER HICKINBOTTOM: --because that  
19 was--that was the directive in 2020.

20 THE WITNESS: That's a directive in 2020 from the  
21 Financial Secretary.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 THE WITNESS: But we're speaking about prior to  
24 that.

25 COMMISSIONER HICKINBOTTOM: Prior to that, you

1 said that there was an initiative for deductions to be made  
2 in salary.

3 THE WITNESS: Correct.

4 COMMISSIONER HICKINBOTTOM: It seems that,  
5 between then, which is 10 years before, approximately, and  
6 2020, something must have gone wrong if the initiative was  
7 that employees could only use the scheme--

8 THE WITNESS: For payroll deduction.

9 COMMISSIONER HICKINBOTTOM: --for payroll  
10 deduction because that actually became compulsory under the  
11 directive in 2020. That's the only point.

12 THE WITNESS: Right.

13 BY MR RAWAT:

14 Q. If we could move on to the potential criticism,  
15 please--

16 COMMISSIONER HICKINBOTTOM: Before we do, very  
17 briefly, Mr Rawat, we have got two witnesses at 2:00, one  
18 at 3:00.

19 MR RAWAT: Yes.

20 COMMISSIONER HICKINBOTTOM: I understand some  
21 material may have come in this morning that we need to look  
22 at before we see these witness, and it's twelve o'clock.

23 Do we--should we put the Witnesses off until  
24 3:00?

25 MR RAWAT: That may be a good idea.

1           COMMISSIONER HICKINBOTTOM: Because I don't want  
2 Witnesses to be waiting here unnecessarily, and I don't  
3 think we are going to begin those Witnesses much before  
4 3:00 after we've finished Mr Smith's evidence and dealt  
5 with anything new that's come in. We will arrange for  
6 that, please. Thank you.

7           BY MR RAWAT:

8           Q. The second potential criticism that's raised in  
9 the Warning Letter, Mr Smith, and which you have addressed,  
10 is that the system Customs has in place for the collection  
11 of import duties lacks adequate/appropriate/effective  
12 processes, procedures, controls and safeguards because, as  
13 it says: "On the available evidence it appears that there  
14 is a high probability that fraud has occurred in respect of  
15 missing payments of import duties in the sum of  
16 approximately \$265,000."

17           Now, that relates to a specific report that we've  
18 looked at again on the last occasion. But I think what we  
19 need to do--

20           A. Commissioner, what page are you on?

21           Q. I'm at page 10 of your written response.  
22 Apologies. I should have mentioned that.

23           I ask that, as we are going through this, you  
24 don't mention any names.

25           A. Page 10.

1 Q. And it relates to a specific investigation that  
2 was done in 2015 by the Internal Audit Department, which  
3 gives rise to this potential criticism.

4 A. Commissioner, if I may, which Internal Audit  
5 Unit?

6 Q. By the Government's Internal Audit Department.  
7 I'm--your--you have an Internal Audit Unit.

8 A. You said--Commissioner, if I may, you're  
9 referencing--you're saying that the investigation was done  
10 by Internal Audit, but I would like to state that the  
11 investigation--

12 Q. I'm about to come to that, Mr. Smith.

13 A. What you are about to come to?

14 Q. I'm about to set out the details as we go through  
15 your written response--

16 A. I thought you were going to say what I had in  
17 mind because I--

18 Q. Yes.

19 A. You're going to say what I had in mind?

20 Q. Yes.

21 (Overlapping speakers.)

22 A. --commented?

23 Q. Very.

24 If we go to page 10, what you say is that that is  
25 a suggestion that you wholeheartedly disagree with, and you



1 point to your position statement, that the systems that the  
2 Customs Department has in place are, in your words,  
3 adequate, appropriate, and extremely effective. And you  
4 say that it was the very adequacy of these systems which  
5 allows the Customs Department to detect, investigate, and  
6 report the fraud in question. You say that it's safe to  
7 say that systems and processes are hardly ever foolproof,  
8 but what you rely on is the ability to detect a potential  
9 breach in short order and then take any necessary actions.

10           And in relation to this process, what happened  
11 was that--and you point to this--you point to the work of  
12 the Internal Audit Unit of the Customs Department as being  
13 unearthing suspicious activities and investigating it and  
14 reporting on it, and that was what underpinned other  
15 reports, and that included the Internal Audit Department's  
16 Report, which you say was a verbatim copy of the Customs  
17 Report.

18           So, it's all down to, essentially, the work of  
19 the Internal Audit Unit, and that's the basis for why  
20 Customs should not be the subject of criticism.

21           If we look at the Internal Audit Department's  
22 Report, that's in Bundle 1 at page 15.

23           A. Page 15 at the bottom?

24           Q. Yes.

25           So, that's the Report, the 2015 Report of the

1 Internal Audit Department into particular fraud. And as  
2 you've pointed out, if we turn through to page 25 or 23,  
3 please, we have there a Customs Report, also dated 2015, to  
4 the Financial Secretary. And so, that Report then details  
5 there is, over the course of the two pages, an  
6 investigation into possible revenue loss.

7 Do you have that, Mr Smith?

8 A. Yes, on page 25?

9 Q. Yes.

10 A. Yes.

11 Q. And at the bottom of page 25 we see that that  
12 Report is being sent by the Commissioner of Customs not  
13 only to the Financial Secretary, who is the immediate line  
14 manager for you as Commissioner of Customs, he or she; is  
15 that right? In the chain of responsibility, you would  
16 report to the Financial Secretary?

17 A. Yes. Correct.

18 Q. But what you've done is that it's also been sent  
19 to the Attorney General?

20 A. Correct, yes.

21 Q. Just to give us context, if we turn back to  
22 page 19, please, and paragraph 3.1, if you look at 2.8, the  
23 Internal Audit Department's Report sets out how it came to  
24 be involved, which was to be called to a meeting with the  
25 Deputy Financial Secretary and informed about a matter

1 surrounding the possibility of missing revenue at Her  
2 Majesty's Customs.

3 At 3.1, your Report records that because of the  
4 sensitive nature of the matter, to avoid jeopardizing any  
5 evidence, audit findings were limited to an interview with  
6 management of the Treasury Department, review of their  
7 revenue reports from January to June 2015, and receipt  
8 distribution logbooks to determine if the revenue that was  
9 paid as indicated on receipt was deposited into the  
10 Government's account--Government's account.

11 So, it seems that the Internal Audit Department  
12 was being asked to do something distinct from what you had  
13 already done as the Customs Internal Audit Unit.

14 Now, what you say at 2.5 on page 11 is that when  
15 the missing revenue--

16 A. I'm sorry?

17 Q. In your written response. I'm sorry. I should  
18 have been more specific.

19 A. Okay.

20 Yes, Commissioner.

21 Q. You explained that the matter was discovered by  
22 Customs. It was investigated and forwarded to the Internal  
23 Audit Department. But it does appear--would you agree with  
24 this?--that it was the Financial Secretary that brought in  
25 the Internal Audit Department, from what we have just seen?

1 A. Yes.

2 Q. What you point to was that the Internal Audit  
3 Department had the responsibility, under the Internal Audit  
4 Act, to submit it to the Commissioner of Police for  
5 investigation. But what the Internal Audit Act, as you set  
6 out--and this is section 16 of the Internal Audit Act--what  
7 that states is that the Committee shall submit all  
8 information that has been submitted it to by the Director  
9 to the Commissioner of Police for investigation. So that's  
10 not the Internal Audit Department; it's the Internal Audit  
11 Committee--

12 A. Okay.

13 Q. --which is set up and is made up of, I think,  
14 from memory, individuals--and we could look at it, if you  
15 want--but it's individuals that are nominated by a  
16 Minister.

17 So, it would seem that it was the Committee that  
18 didn't do it, and the reason you have given is that the  
19 Committee wasn't actually established at the time. That's  
20 right, isn't it?

21 A. Correct.

22 Q. But you did, in any event, take the matter up, as  
23 Customs, with the Commissioner of Police; is that right?

24 A. That's correct.

25 Q. And it was investigated, wasn't it, by the

1 Commissioner of Police?

2 A. The Police Department.

3 Q. Yes.

4 A. Yes.

5 Q. And that's, we can see, at your tab 14?

6 A. Yes.

7 Q. There is a memorandum to you dated September 13,  
8 2021, which sets out--and it says: "As requested during  
9 the month of July 2021, please find below a synopsis  
10 detailing the role of the Royal Virgin Islands Police  
11 Force's investigation of the Report made"--I think that  
12 should be--"to the Commissioner of Police in November 2015,  
13 and the outcome". And it then sets out the outcome, which  
14 includes--begins with you filing a report concerning  
15 possible loss of revenue.

16 And we see the ultimate outcome on the second  
17 page of that, which was that it did go to the Director of  
18 Public Prosecution, and the decision was taken to take no  
19 further action; is that right?

20 A. That's correct.

21 Q. Now, you point out--and this is at your--going  
22 back to your written response at page 12, please, you make  
23 the point that no system is perfectly foolproof, but that  
24 in this instance--and we've looked at the  
25 documentation--the Customs Department was able to detect

1 the infraction, investigate, and then make every effort to  
2 have the perpetrators prosecuted and that you have now  
3 implemented certain measures which would prevent the  
4 recurrence of the same. Now, that includes a verification  
5 process, separation of duties, inspection and release of  
6 cargo to be completed by warehouse officers who go through  
7 another verification process, authentication of receipts  
8 and inspection of cargo prior to Customs releasing it, and  
9 also the issuance of gate passes by BVI Ports Authority.

10 Now, I think this is something that we did go  
11 through, I think, in some detail with both you and  
12 Ms Martin. But just help us with this, though. Firstly, I  
13 mean, it follows, doesn't it, from the steps that you took  
14 in 2015, Mr Smith, that your view was that there was a high  
15 probability that fraud had occurred?

16 A. In 2015?

17 Q. Yes.

18 A. Yes.

19 When we look at what appeared to be the reduction  
20 of revenue shortfall in a particular heading, we  
21 investigated the matter. And what--what--Commissioner,  
22 what made it the possibility that revenue may have--not  
23 revenue, fraud may have occurred is the fact that there was  
24 a particular sequence, Commissioner, a sequence. The  
25 number was a sequence number from a previous matter.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: Trying not to--

3 COMMISSIONER HICKINBOTTOM: No, I understand  
4 that.

5 BY MR RAWAT:

6 Q. But, I mean, I would suggest that it's indicative  
7 that conclusion flows from the steps you took because not  
8 only did your Internal Audit Unit investigate, a report was  
9 produced that was sent to the Attorney General and the  
10 Financial Secretary.

11 A. Correct.

12 Q. And then you, yourself, as Commissioner, followed  
13 up with the Police?

14 A. That's correct, Commissioner.

15 Q. So, you--and once you had done that, there was  
16 nothing more that you could do because it's then for them  
17 and the DPP to decide what steps to take?

18 A. I believe that, Commissioner--

19 Q. But you would not have done that unless you were  
20 of the view that there was a high possibility that a fraud  
21 had taken place?

22 A. No, Commissioner. I would follow the steps in  
23 order to secure Government revenue, and I would have taken  
24 whatever steps necessary to ensure that there is no  
25 appearance or there is no actual fraud taking place under

1 my watch. So, whatever necessary could be done, I would  
2 have done it. And it was copied to the Attorney General to  
3 get advice, if need be, and also the Financial Secretary.

4 Q. Now, in terms of the changes that you've made,  
5 which you've set out in your written response at page 12,  
6 which you explained there, are the--as you say--the  
7 hallmarks of a properly functioning system, when were these  
8 implemented?

9 A. Those were implemented several years ago,  
10 after--after this--after this actually took place.

11 Q. So, the events that we're talking about are late  
12 2015. How soon after that did you implement the changes  
13 that you set out there?

14 A. That was within the--that was within a six-month,  
15 eight-month period, Commissioner. In the past, because  
16 what was happening as well, the cashiers, which are  
17 Treasury cashiers; they're not Customs--the Treasury  
18 cashiers were--in the past, Officers may have issued  
19 receipts, but now Treasury cashiers are responsible.  
20 Whether the system is functioning or they have to go  
21 manual, it's Treasury cashiers.

22 Q. But of the changes that you imposed, or put in  
23 place, Mr Smith, don't just relate to the use of Treasury  
24 cashiers. They also relate, I take it from what you've  
25 responded, to what Customs Officers can do?



1           A.    Repeat that, Commissioner, please.

2           Q.    Reading the changes that you put in, in terms of,  
3 for example, inspection and release of cargo,  
4 Customs--verification--inspection of cargo prior to Customs  
5 releasing it, the steps that you put in after 2015 do  
6 not--are not just limited to having Treasury cashiers in  
7 place; they are steps that affect how Customs Officers  
8 work?

9           A.    That operate at the various port of entry.

10          Q.    Is that right?

11          A.    Yes.

12          Q.    Now, that's since 2015.  But have those steps  
13 evolved at all?

14          A.    Yeah, those steps--those steps, those steps  
15 evolved--those steps have evolved, and they're functioning  
16 pretty well.

17          Q.    Well, how do you--you say they are functioning  
18 really well.  And you described them as the hallmarks of a  
19 properly functioning system.

20          A.    Yes.

21          Q.    How do you measure the effectiveness of your  
22 functioning system?

23          A.    Well, the officers are evaluated annually.  They  
24 have an appraisal system that they to go through things to  
25 make sure they are doing what they are supposed to do.  The

1 supervisors perform the evaluation. The supervisors are  
2 evaluated. Regular meetings with the supervisors, to  
3 ensure that officers are carrying out their necessary  
4 functions.

5           What we do see, though, and we mentioned earlier  
6 with regards to the limited facilities at all these ports  
7 of entries since Hurricane Irma, which is actually quite a  
8 bit challenging for the officers, so what we have done is,  
9 like I said, we now have a place that we're going to make  
10 the--in terms of couriers--the Courier Declaration Center  
11 for all courier, and that will actually assist in ensuring  
12 that this type of activity does not happen again.

13           Q. One of the aspects of the events of 2015 was that  
14 Customs Officers may have been involved. But if you can  
15 help the Commissioner with, please do, but if you cannot,  
16 please say. But how much was lost through fraud--or how  
17 much was lost in 2015 through fraud involving Customs  
18 Officers?

19           A. Commissioner, I could only speak to this  
20 particular incident that occurred, and in terms of the  
21 receipts that we have, shows with this particular sequence  
22 of receipts and not reconciling with Treasury, shows, I  
23 think--was it 265?

24           COMMISSIONER HICKINBOTTOM: Yes.

25           THE WITNESS: \$265.000.

1           And, Commissioner, without getting too specific,  
2 I think in the Report they mention--there was mention that  
3 receipt to another matter, Commissioner.

4           So, based on that, Commissioner, the amount that  
5 you're looking at, based on that one incident thus far,  
6 which appears to have been in the vicinity of \$265,000.

7           BY MR RAWAT:

8           Q.    This, as you explained, falls within the work of  
9 the Internal Audit Unit of the Customs Department.

10          A.    Which page are you on, Commissioner?

11          Q.    No particular page.  It's just--

12          A.    Oh, okay.

13          Q.    But you have been speaking of the work of the  
14 Internal Audit Unit, rather.

15                Since 2015, have there been instances of fraud  
16 involving Customs Officers discovered by the Internal Audit  
17 Unit?

18          A.    Commissioner, since 2015, there is a matter that  
19 we're currently investigating.  It's only--it's only  
20 allegations thus far, but there's a matter that we're  
21 currently looking at, but nothing proven, Commissioner,  
22 since 2015.

23          Q.    So that is the one matter that you're  
24 investigating currently.  When did that investigation  
25 start?

1           A.     That investigation began probably within the past  
2 month or two, so it's fairly recent.

3           Q.     So, it's the first investigation of that sort  
4 since 2015?

5           A.     Yeah--not that sort. Not that sort,  
6 Commissioner. Well, it may involve a receipt, but it's--

7           Q.     It's more involving an allegation of potential  
8 fraud--

9           A.     Correct.

10          Q.     --by Customs Officers?

11          A.     Correct, Commissioner.

12          Q.     So, since 2015--you had an allegation in 2015.  
13 Since 2015, there have been no others that you've had to  
14 investigate apart from this one that you've had to do.

15          A.     No. Just this one, Commissioner, which, probably  
16 about--like I said, about two months ago.

17          Q.     So, you have not, therefore, logically, had to  
18 discipline or dismiss any Customs Officers in relation to  
19 that type of allegation of fraud on the job?

20          A.     Commissioner, discipline, taken before the  
21 courts?

22          Q.     Yes.

23          A.     I've done that. I have had officers terminated  
24 because of fraud.

25          Q.     Since 2015?

1           A.     Since 2015? No. I think, severely--severely  
2 reprimand. And those are not--those are--these matters  
3 would be referred to Department of Human Resources, and  
4 these officers would have to go through the process of the  
5 Public Service Commission, et cetera. But they have had  
6 officers severely reprimanded.

7           Q.     In relation to possible fraud whilst working as a  
8 Customs Officer?

9           A.     In relation to breach of trust, fraud, yeah.

10          Q.     So, obviously, some officers have had to go  
11 through that process which involves other arms of the  
12 Government.

13          A.     That's correct.

14          Q.     Have any--you've said "severely reprimanded".  
15 Have any actually--and some have been terminated, have  
16 they?

17          A.     Correct.

18          Q.     Have you reported any such incidents, since 2015,  
19 to the Police?

20          A.     Since 2015, no. Prior to 2015, yes.

21          Q.     Could we turn to page 13, please.

22          A.     Well, Commissioner, I would say not to the Police  
23 but to the DPP.

24          Q.     I see. I mean, the reason I didn't mention the  
25 DPP is because I assumed that it would have gone to the

1 Police, and then the Police would have taken it to the DPP.  
2 But you have, on occasion, gone directly to the DPP?

3 A. I have gone to the DPP direct.

4 Q. Since 2015?

5 A. No. This was shortly before 2015.

6 Q. And you say "shortly before 2015", but not  
7 in--obviously, not in connection with the matter that we've  
8 been looking at?

9 A. In connection with a receipt which is--

10 Q. I see.

11 So an associated matter?

12 A. Right.

13 Q. Thank you.

14 Let's go to page 13, please.

15 COMMISSIONER HICKINBOTTOM: We have been going an  
16 hour, Mr Rawat. Is now a convenient time to break? I'm  
17 not sure we will get through criticism 3 without giving the  
18 Stenographer a break, and it may be the most convenient  
19 time to do it now, for five minutes, and then we'll come  
20 back to complete your evidence, Mr Smith.

21 MR RAWAT: Yes.

22 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
23 much.

24 THE WITNESS: Thank you.

25 (Recess.)

1           COMMISSIONER HICKINBOTTOM: Mr Smith, are we  
2 ready to continue?

3           Mr Rawat.

4           MR RAWAT: Thank you, Commissioner.

5           BY MR RAWAT:

6           Q. Mr Smith, can I turn to the last criticism, the  
7 potential criticism that's set out in the Warning Letter,  
8 and it's this, Customs' administration of its operations  
9 related to courier clearance/trader declaration  
10 procedures--which we called "the system" in the  
11 letter--lacks adequate/appropriate/effective processes,  
12 procedures, controls and safeguards. And the letter then  
13 goes on to set out a number of points that arise from the  
14 available evidence, and you've dealt with those in turn.  
15 And if I may, I would like quickly to go through them with  
16 you.

17           The first one was that there's a significant risk  
18 to the public purse in that import duties are not being  
19 properly and/or fully collected and accounted for under the  
20 system. In particular, imports/cargoes is released without  
21 full payment for customs duties in circumstances where the  
22 standing deposit balances are not properly monitored.

23           Now, the point you make here is a point that you  
24 made before in your written response, that it's not  
25 accurate to say that the system--the import duties under

1 the system are not properly or fully accounted for. You  
2 say that the Customs Department can maintain comprehensive  
3 and accurate records of all imports duties, including the  
4 total sum, payable, the amount paid and any outstanding  
5 balance.

6 Can I pause there, in terms of the way it does  
7 that, does Customs do that under the JDEdwards system or  
8 does it do it under the CAPS system?

9 A. The payment is done through the JDEdwards system,  
10 Commissioner. Customs monitor--everything else is  
11 monitored through the custom automated processing system.

12 Q. Do you have any other systems that are involved  
13 in this?

14 A. No, Commissioner. That's--that's it.

15 Q. And then you turn to the collection of customs  
16 duties under the system, and you explained that there's an  
17 initiative within the Customs Department, which is known as  
18 the Trusted Trader Programme, also known as the Authorized  
19 Economic Operators Programme, which allows a standing  
20 deposit system to be utilized. So, trusted traders can  
21 import goods and have them released on bond, and you  
22 explain--give an example that most of the Territory's major  
23 supermarkets participate in the program and the bond is  
24 usually a cash bond or a bank or financial guarantee, and  
25 you've produced--and this is, I think, at your tab 5, if



1 you could confirm this, please, Mr Smith?

2 A. Yes, Commissioner.

3 Q. That's the example of bond agreement; is that  
4 right?

5 A. That's correct, Commissioner.

6 Q. And you've explained, as I won't go into the  
7 detail, but you explain then how the system works. But  
8 just so that we can be clear, when was the Trusted Trader  
9 Programme brought in?

10 A. Commissioner, I would say--it's an informal  
11 Programme, but I would say it was probably around 2012,  
12 2013.

13 And as I speak to the Trusted Trader Programme,  
14 in some countries it's known as the Authorized Economic  
15 Operator Programme, and when you have importers that are of  
16 pretty high compliance, you tend to facilitate or put  
17 measures in place so they can receive their goods faster to  
18 put on the shelves faster so consumers can have their goods  
19 at a faster pace.

20 Q. You said a moment ago, Mr Smith, that it's an  
21 informal programme, but what criteria do you apply when  
22 deciding whether to give someone Trusted Trader status?

23 A. What we normally look at is the compliance rate.  
24 Have they been penalized in the past, what they were  
25 penalized for. Are they a company that's in good standing

1 with Customs in terms of outstandings or late on payments,  
2 et cetera.

3 Q. Is that part of a written policy that relates--

4 A. That's--no, I don't have that. That's not  
5 written at this time.

6 Q. So, where are the--I mean, are the criteria  
7 written down at all? Or are these just the ones that you  
8 apply as Commissioner?

9 A. These are the ones that I apply with my  
10 management team, but I will check and see if we have a  
11 draft procedural manual in our draft procedural manual, if  
12 that's actually documented before I say it's not. So,  
13 that's another thing that I will, if I can get a note on  
14 that, a reminder of that, Commissioner.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 BY MR RAWAT:

17 Q. So, you're in the course of preparing a draft  
18 procedures manual?

19 A. Correct. Yes. That's been in the makings over a  
20 year, trying to get all our policies and procedures in  
21 line.

22 Actually, it's almost completed, and I can submit  
23 a copy to the Commissioner, if you'd like.

24 Q. Okay.

25 A. For your review.

1 Q. Just link, though, that the Trusted Trader  
2 Programme to the Internal Auditor's Report, which prompted,  
3 in part, or part of the evidence that founds this potential  
4 criticism, and that Report was something that we were  
5 looking at, but it is--if you look at it, it's at page 1710  
6 in the second bundle.

7 If you go through, please, to 1714?

8 A. 1714, yes.

9 Q. Okay. What the Internal Auditor was auditing was  
10 Courier Trader Declaration Processing?

11 A. Correct.

12 Q. Does it follow given that you were referring to  
13 the Trusted Trader Programme that to be involved in  
14 courier-traded declarations, you have to be a Trusted  
15 Trader?

16 A. No, not to--the Trusted Trader is not  
17 specifically for the courier. It's not specifically for  
18 retail. It can be--anyone can fall into a trusted-trader  
19 category.

20 Number one, we look at the volume of business,  
21 the volume of the imports--the volume of import duty in a  
22 two-month period. Once you have that volume or that amount  
23 of import duty in a two-month period, then the importer's  
24 encouraged to get a bond or a standing deposit. Standing  
25 deposit could be in the form of cash.

1           Most importers today, we've had standing deposits  
2 in the amount of 50-\$75,000 cash. Most importers now are  
3 opting to have a financial institution guarantee bond,  
4 which will free up the cash, and they could use the cash  
5 for inventory, et cetera.

6           Q.    Just so that we're clear, when the Internal  
7 Auditor was looking at the use of Customs Trader  
8 Declarations?

9           A.    Courier.

10          Q.    Courier.

11                That's a separate programme, if you like, from  
12 the Trusted Trader Programme?

13          A.    No. It's not a separate programme. Anyone--any  
14 importer can fall in the Trusted Trader Programme. Whether  
15 it's retail, like I said, marine, anyone can fall into  
16 that.

17                COMMISSIONER HICKINBOTTOM: If you're a--these  
18 couriers, these fell within the Trusted Trader Programme.

19                THE WITNESS: The ones that has--the ones that  
20 has bonds?

21                COMMISSIONER HICKINBOTTOM: Yes.

22                THE WITNESS: Those without bonds, well, they  
23 will pay as they go.

24                COMMISSIONER HICKINBOTTOM: Yes. So, this  
25 investigation was really into a subset of the Trusted

1 Trader Programme.

2 THE WITNESS: Yes. This is the couriers,  
3 correct.

4 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

5 BY MR RAWAT:

6 Q. Thank you.

7 If we go to page 14 of your written response,  
8 please, you've explained what--and you've done it again  
9 today--what CAPS is as an electronic system and the way  
10 it's used, but you then go on to say it has to be placed in  
11 its proper context, and that is that--and that context  
12 includes that, in relation to the Trusted Trader Programme,  
13 that has to be seen as a programme that conforms to  
14 international best standards and practices as developed by  
15 the World Customs Organization.

16 But then you go on, however, to explain the  
17 impact on the use of the system from Hurricanes Irma and  
18 Maria in 2017 because the effect of those was that Customs  
19 infrastructure was completely destroyed or severely  
20 affected, and so your headquarters suffered total  
21 destruction, your communication systems were down and,  
22 therefore, no proper facilities as a Department to conduct  
23 your operations, but also you were unable electronically to  
24 administer or monitor the Trusted Trader Programme in the  
25 customary fashion.

1           You go on then to say, Mr Smith, that it wasn't  
2 feasible at that time to abandon the Trusted Trader  
3 Programme. You mentioned that the Virgin Islands ports,  
4 99 percent of its goods, and there was a real need in the  
5 aftermath of the Hurricanes to bring goods into the Virgin  
6 Islands, especially when you had some of the participants  
7 involved in the Programme being the largest supermarkets.

8           And the consequences, you go on to say, was that  
9 the Customs Department resorted or had to resort to using  
10 manual processes which posed a challenge because those  
11 processes are not as quick, perhaps, as electronic systems  
12 might be.

13           And you go on then to say that, during this time  
14 there were instances where the bonds, and that's the bonds  
15 that Trusted Traders would put in, were exceeded. There  
16 was occasioned by the need to adopt a softer approach as  
17 the Territory was in crisis, as explained above, and  
18 eventually the use of manual processes led to a substantial  
19 backlog which impacted on how efficiently the system could  
20 be monitored. It was restored as soon as electricity was  
21 restored and the capability to return to the Department.  
22 And as indicated, all accounts under the Trusted Trader  
23 Programme are now up to date with the bonds no longer being  
24 exceeded. So, when you say "now", is that in 2021, you've  
25 managed to get all your Trusted Trader Programme

1 participants up to the mark, so to speak?

2 A. Yes.

3 And I must say, Commissioner, that even though  
4 there is a bond and the bond has an amount of, say,  
5 \$10,000, at any given time, that bond alone may be or what  
6 has been used in that bond amount, may be--will always  
7 be--there will always be a balance because goods are  
8 continuously coming in, and there is a time frame where the  
9 importer has to bring their account current, but there will  
10 always be an amount outstanding in the file.

11 COMMISSIONER HICKINBOTTOM: I understand that.  
12 Yes. Thank you.

13 BY MR RAWAT:

14 Q. Just to complete the picture on this point,  
15 Mr Smith, you say in your written response that you want to  
16 make it abundantly clear that you're unaware of any duties  
17 going entirely unpaid under the Trusted Trader Programme,  
18 even when you were having to use manual systems, all duties  
19 assessed have been paid, and the amounts deemed payable  
20 have consistently been recovered. So, it's therefore on  
21 that basis you say not fair or accurate to state that the  
22 system--and the Warning Letter described it as the  
23 "operations related to courier clearance/trader clearance  
24 procedures". You say it's not fair to say that the system  
25 possess a significant risk to the public purse, and you

1 also point then to that there are measures in place to  
2 safeguard against the inherent risk that may be associated  
3 with the Trusted Trader Programme, and which are in line  
4 with best practice, and those you point to, for example,  
5 the use of a bond, electronic processing and monitoring,  
6 post-audits being conducted by the Internal Audit Unit,  
7 standardisation and simplification of processes, using  
8 templates for bond agreements for example, and we looked at  
9 the bond agreement, stipulating that bonds expire  
10 simultaneously with trade licences to facilitate easy  
11 monitoring and the fact that you can actually suspend bond  
12 facilities in respect of accounts which are past due.

13           Again, just help the Commissioner with this: In  
14 terms of those measures, how long have they been in place?

15           A. The use of the bond has been in place--actually  
16 been in place before I--actually been in place before I  
17 joined--before I came to the Department, so, in excess of  
18 20 years. A number of companies, like I said, use the cash  
19 deposit. It was during my tenure that I gave the option to  
20 have a financial institution guarantee bonds as opposed to  
21 cash deposits.

22           Electronic processing and monitoring of the  
23 Programme that went in in 2013. The conduct of post-audit  
24 as Internal Audit Unit of the Customs Department, that was  
25 implemented during the Customs Reform and Modernisation



1 Programme of 2001. The unit is now properly staffed. In  
2 the past we have been short in terms of staff within that  
3 unit.

4 The standardisation and simplification of  
5 processes such as standard templates being used for bond  
6 agreements, the standardisation and simplification of  
7 processes, we're actively doing that to simplify the  
8 trading environment for traders. The bond agreement  
9 probably came into place, again, probably within the last  
10 10 to 12 years. I stipulated this year that the bonds  
11 expire simultaneously with the trade licences for easier  
12 monitoring, and that would be at the end of the Year  
13 December 31st.

14 And the ability to suspend a bond, that's within  
15 the agreement that they sign currently. Again, the  
16 Commissioner, has that authority under the Customs  
17 Management and Duties Act.

18 Q. And how long has that been in place as an actual  
19 safeguard? How long have you been using it?

20 A. Since implementation of the bond. Like I said,  
21 that had to be more than 10 years ago, but this particular  
22 type of bond that we're using now, but in the past, cash  
23 deposits, I can't speak to that--cash bonds, I can't speak  
24 to that.

25 Q. In July, when you gave evidence with Ms Martin,

1 we went through the Internal Auditor's Report in relation  
2 to the CAP system. And that audit had identified certain  
3 deficiencies in the use of the system, and it had made--the  
4 Internal Auditor made recommendations which, in greater  
5 part, the Customs Department accepted, and you explained in  
6 July 2021 that you were taking action and what action you  
7 had taken.

8 Does it remain the case that you still accept the  
9 recommendations that were made in that Report?

10 A. Like I said, Commissioner, the recommendations,  
11 we agreed to the recommendations because a number of those  
12 things we were already aware of and we were actually  
13 putting things in place.

14 The allegations, some the allegations, I do  
15 not--I do not agree with some of the allegations--but in  
16 terms of--and we're looking at the courier, number one, it  
17 was stated that this CAPS rolled out in November of 2016.  
18 That's not correct. CAPS was rolled out before.

19 Now, in 2016, what I believe that they are  
20 referring to that it was rolled out at the substation or  
21 the outer station, which would have been the airport in  
22 dealing with the courier services. Like I said, that was  
23 November 2016. And in September 2017, less than a year  
24 later, we were struck with the disaster, which made it  
25 basically impossible to perform the functions--fully

1 perform the functions of CAPS because, number one, the  
2 storage facility where cargo is deposited was severely  
3 damaged, so cargo couldn't be deposited there, so you would  
4 have challenge in terms of inspecting and releasing  
5 on-site. And to this day, it has not been totally  
6 repaired. It's still compromised, Commissioner.

7 Q. Now, can we look at page 16, please, of your  
8 written response.

9 The second point that is made under this  
10 potential criticism heading is that the system, and that's  
11 the system of Courier Clearance Trader Declaration  
12 Procedures, has promoted an environment where inappropriate  
13 relationships may be fostered where Customs Officers can  
14 offer preferential treatment to importers in the processing  
15 of their declaration which may include the offer of gifts  
16 and/or payments.

17 Now, that's based on the Audit Report that we  
18 just mentioned which found inadequacies in the way that  
19 CAPS was being used, and that was, for example, the data on  
20 CAPS was incomplete, there was insufficient training in  
21 relation to using it, and you accepted those  
22 recommendations.

23 Now, you say in your written response: "I'm not  
24 of the view that the system lends itself to inappropriate  
25 relationships. As to whether the importers participating

1 in the Trusted Trader Programme are given preferential  
2 treatment, a necessary distinction, an important  
3 distinction, must be made between preferential treatment  
4 which is acceptable and that which is unacceptable and thus  
5 inappropriate."

6 And you go on to set out instances in examples  
7 and you say it's within the context of Customs operations  
8 the world over where preferential treatment can be deemed  
9 acceptable. And you say the Trusted Trader Programme, for  
10 example, is an internationally recognized and accepted form  
11 of preferential treatment which is encouraged.

12 But would you accept that for that to be  
13 legitimate, as a programme, it would have to operate by  
14 defined criteria, wouldn't it?

15 A. Commissioner, no, that's not--that's not correct.  
16 There are defined criterias. I don't know if you're  
17 referring to written criterias but there are defined  
18 criterias for the Trusted Trader Programme to work.

19 In actuality, Commissioner, we're probably one of  
20 the few jurisdictions or countries that are not--that are  
21 somewhat slow in terms of facilitating legitimate trade.  
22 And I say that most countries are moving away to--moving to  
23 the form--and this is in keeping with the World Customs  
24 Organization's guidelines and best practices and in line  
25 with the Kyoto Convention, goods are released prior

1 to--once an entry is submitted, goods are released, and  
2 then there's a function where the Customs organisations  
3 through their internal audit or post-audit go and review  
4 submissions--review submissions of entries to ensure that  
5 goods are--that full duty is actually received. In some  
6 cases you may have incorrect classifications but the goods  
7 are released. Import specialists will get a review of  
8 entries if they're incorrect classifications, which can  
9 affect the rate of duty, then import specialists will do  
10 what you call a rate advance, notify the importer, again  
11 part of the Trusted Traders, notify the importer, and the  
12 importer will then make their submission or their  
13 adjustments to correct or rectify the misclassification  
14 which may lead to a reduced duty rate.

15 COMMISSIONER HICKINBOTTOM: But just to get back  
16 to Mr Rawat's question. The Trusted Trader Programme, of  
17 course gives a preference, it gives preference to trust  
18 traders. That's the whole point of it.

19 THE WITNESS: Correct.

20 COMMISSIONER HICKINBOTTOM: Because Trusted  
21 Traders can properly be given preference. Mr Rawat's  
22 question was the important point, therefore, for these  
23 purposes is to ensure that those that fall within this  
24 privileged category, that the criteria to get into this  
25 category, there are criteria that are transparent and open

1 to get into this category. I think your response to that  
2 is there are criteria, but they're not written down.

3 THE WITNESS: Initially, Commissioner, my  
4 response was that there is a draft--a draft procedure  
5 manual, which I stated once I returned to the office I will  
6 have it sent.

7 COMMISSIONER HICKINBOTTOM: I understand that. I  
8 don't say this pejoratively, it's a draft.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: So, that's not in  
11 place at the moment.

12 THE WITNESS: It's not in place at the moment.

13 COMMISSIONER HICKINBOTTOM: So, at the moment,  
14 there may be one on the way but at the moment there are  
15 criteria, you say, but not written down?

16 THE WITNESS: Correct.

17 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

18 BY MR RAWAT:

19 Q. The concern over inappropriate relationships  
20 arises from the Internal Auditor's Report, which made a  
21 number of recommendations, as I said, most of which you  
22 accepted, but--and I can take you to the precise place  
23 where it says it--but the concern was that you didn't have  
24 a system whereby agreements and bonding mechanisms were  
25 continuously monitored, and that's what gives rise to the

1 risk of an inappropriate relationship. But in  
2 circumstances where you appear to have accepted that the  
3 system wasn't being used as it was intended and that there  
4 were gaps in the system, the data was incomplete, how can  
5 you say that there isn't a risk of inappropriate  
6 relationships forming, or preferential treatment being  
7 given?

8 A. Those are broad statements, Commissioner.

9 Where are the facts--and I'm one where if an  
10 officer that needs to be disciplined, I have no fair  
11 reservation in recommending disciplinary action.

12 COMMISSIONER HICKINBOTTOM: But Mr Rawat's  
13 question didn't go to that. What his question was aimed at  
14 was the risk. In the absence of processes, et cetera,  
15 doesn't the risk of inappropriate relationships arise?

16 THE WITNESS: Commissioner, I don't agree with  
17 that.

18 And to make--Commissioner, I must bring it to  
19 Appendix A because to make broad statements such as that,  
20 and this is from the Government in 2004, and it says if  
21 allegations are made, he expect them to be backed up by  
22 hard evidence. And if officers are misbehaving, you expect  
23 to see them identified and dealt with. But broad  
24 generalisations risk being damaging to innocent officers  
25 and the organisation as a whole.

1           COMMISSIONER HICKINBOTTOM: But the point of good  
2 governance is to reduce risk, that's the point of good  
3 governance. And Mr Rawat's question goes to risk. In the  
4 absence of these processes and procedures, et cetera, the  
5 risk is higher. Whether that risk comes to fruition is a  
6 different question, but the risk is higher. That was his  
7 question, isn't the risk higher?

8           THE WITNESS: Commissioner, repeat that question,  
9 please, Commissioner?

10           BY MR RAWAT:

11           Q. Let me do it this way, please.

12           A. Yeah, do it this way.

13           Q. If you go to 1715?

14           A. 1715?

15           Q. In the second bundle.

16           A. Okay.

17           Q. Now, this was in a section of the Internal  
18 Auditor's Report which is headed "Findings and  
19 Recommendations", and 1714 what the heading was "Courier  
20 Trader Declaration Processing General Findings", and then  
21 when we go to recommendation one, Courier Trader  
22 Declaration Processing, what's recommended is that "HM  
23 Customs ensure that written agreements and bonding  
24 mechanisms are in place for all courier services utilizing  
25 the standing deposit scheme. It is further recommended



1 that the Department implements a system whereby these  
2 agreements and bonding mechanisms are continuously  
3 monitored to ensure that they are kept current." As a  
4 finding, the Internal Audit Department or the Auditor's  
5 Report, says that "the Department--that's Customs--has not  
6 established documented guidelines for the processing of  
7 declarations. As a result, there is no consistent approach  
8 to the processing of declarations within CAPS from officer  
9 to officer and from station to station.

10 "Furthermore, officers are allowed to select on a  
11 discretionary basis which declaration they process. The  
12 Auditor's concern that this situation exposes the  
13 Department to two significance risks."

14 So, the first risk is identified, which is  
15 informed the Warning Letter to you is "preferential  
16 treatment being given to importers in the processing of  
17 declarations which can include, therefore, the offer of  
18 gifts and payments", and second, that, "given that it is  
19 alleged that a number of Customs Officers provide brokerage  
20 services, whether legitimately or illegitimately, as a  
21 private interest for supplemental income, that then gives  
22 rise to a significant conflict of interest because those  
23 officers may be reviewing and releasing declarations for  
24 which they have a direct involvement in the preparation or  
25 at least may have significant influence in the processing

1 of such declarations. Absence of appropriate controls to  
2 monitor, manage, and minimize this conflict, the current  
3 process is ripe for fraud."

4           So, what the Report had flagged up was there's a  
5 lack of process in the system gave rise to two risks:  
6 Inappropriate preferential treatment, and a conflict of  
7 interest. And if you look at 1753 in the same bundle, in  
8 relation to this recommendation, in your Management  
9 Response as Customs and--you said that, "in response to  
10 this finding, it is recorded that bonds can be cash or a  
11 guarantee from approved financial institution or insurance  
12 companies. All Couriers utilizing a financial institution  
13 or insurance company bond have a file with the details  
14 outlined, details included outlining the terms and  
15 conditions, Cash bond holders were recorded in a Cash Bond  
16 Register", which you explain was destroyed in Irma, Maria.  
17 "Attempts have been made to retrieve information from the  
18 Treasury Department and importers and couriers as a last  
19 resort.

20           "This Department--you say--has been feverishly  
21 trying to vacate cash bonds and encourage the guaranteed  
22 bonds."

23           But then you continue, "we must agree that the  
24 Department has fallen short in monitoring and ensuring  
25 files are kept current. These shortcomings were also

1 identified by the Department, and we are implementing  
2 measures and controls to correct shortcomings", and then  
3 you set out a Corrective Action Plan which includes better  
4 utilization of the CAPS features fear, assigning officers  
5 on a rotational basis, ensuring all bonds agreements are  
6 reviewed and updated.

7           So, it would seem to be that you, at least as  
8 Customs in 2020, late 2020, acknowledged that you had  
9 fallen short in monitoring, and so you acknowledged that  
10 your system wasn't working. And if your system isn't  
11 working and properly functioning, that does give rise,  
12 doesn't it, to the risks that were identified?

13           A. Okay. Commissioner, once the risks--and that's  
14 why we go back to 2016 and 2013, when the system was  
15 implemented, and it's important to note, in 2016, what they  
16 are referring to is at the airport, and the filing system,  
17 because of the damage to the area, was very challenging.  
18 That was manual. That system was manual, the officers were  
19 monitoring the bonds system manually.

20           And yes, there were challenges at that facility.  
21 Those challenges have been--most of those challenges--not  
22 all--have been rectified. Officers, in terms of training,  
23 and if you read the Auditor's Report, it spoke to very  
24 veteran or senior officers not utilizing the system,  
25 criticizing the system. Those officers are no longer in

1 that particular location, and they're not a hindrance to  
2 the system anymore. So, there were challenges there. And  
3 I think that's when they said 2016, Commissioner, they are  
4 referring to the location at the airport.

5           However, the CAP System utilized in the CAPS  
6 Declaration Center, those measures are in place. Officers  
7 review--receive, review, validate workload distributed by  
8 the seniors, and the release is done at the port facility.

9           At CAPS at the airport now, the major airport,  
10 those functions are in place now.

11           Q.    Just so that we're clear in terms of date,  
12 obviously this is a management response that goes out to  
13 you in December 2020, and that's when you deal with your  
14 Management Response, and then you start, as we've looked  
15 through, and we looked on the last occasion, you set  
16 yourself deadlines for your action plan. What the Internal  
17 Auditor had identified is that in using CAPS there was a  
18 variability from officer to officer and station to station.  
19 So, in terms of the changes you put in for CAPS, so you  
20 pointed to this one center, one location for couriers, et  
21 cetera. Are those measures in place now?

22           A.    Yes, Commissioner, those measures are in place  
23 now.

24                   And it's important to note that in 2016 November,  
25 I think that's when they referred to--

1 Q. No, I think the November 2016 reference,  
2 Mr Smith, is to when in the Report it said CAPS comes  
3 online. This is referring to a review of, as I understand  
4 it, of the system in 2019?

5 A. Correct.

6 So, Commissioner, as I was saying, in 2020--'16  
7 with the rollout and then you're hit with these hurricanes,  
8 remember after the hurricanes, you couldn't use the system,  
9 there was no electricity, no internet connectivity in  
10 September until--some time in September 2017 until some  
11 time in early 2018, so the system could not be fully  
12 utilized, everything was manual.

13 So, during this time period between 2018 and  
14 2019, there was a backlog. The system had to go manual in  
15 terms of monitoring the bonds because, for obvious reasons,  
16 there is no electronic system to be utilized.

17 So, at this point in time, your manual, you're  
18 catching up, and then you have officers who are, as they  
19 rightfully identified in the Auditor's Report, that refused  
20 to utilize the system, and those situations have now been  
21 remedied.

22 COMMISSIONER HICKINBOTTOM: But the thrust of the  
23 criticism was not that there was a backlog and it was not  
24 that the systems were manual because obviously the Internal  
25 Auditor would have appreciated the catastrophic effect of

1 the 2017 Hurricanes.

2 The criticisms were that there was no established  
3 documented guidelines for processing declarations. And  
4 consequently, there was no consistent approach.  
5 Consequently, there was a subjective element in which  
6 Declarations were processed, and that gave rise to the two  
7 risks.

8 The criticism here is not you've got a backlog,  
9 because the answer to that may well have been well, yes,  
10 because of 2017, and we just lacked the processes--we  
11 lacked the ability to do things, but this is purely about  
12 guidelines.

13 THE WITNESS: Commissioner, I must agree, it's  
14 about guidelines, and we do have guidelines. There are  
15 guidelines for the processing of entries, and this is in  
16 our handbook.

17 COMMISSIONER HICKINBOTTOM: And this is the draft  
18 that's going to be--

19 THE WITNESS: No, this is not the draft. This  
20 was actually implemented--this was actually completed and  
21 implemented many years ago.

22 BY MR RAWAT:

23 Q. When you say "many years ago", Mr Smith, are you  
24 saying before the Audit?

25 A. Before the Audit, correct.

1 Q. So, before 2019--

2 A. That's correct.

3 Q. --you had a handbook implemented?

4 A. That's correct.

5 Q. Doesn't the Audit show that the handbook wasn't  
6 being followed?

7 A. Does the Audit show it wasn't being followed?  
8 I'm not aware of.

9 Q. What does it show?

10 A. I'm sorry?

11 Q. You've got a handbook that sets out your  
12 processes?

13 A. Um-hmm.

14 Q. The Auditor identifies that the processing of  
15 declarations within CAPS is varying from officer to officer  
16 and station to station.

17 COMMISSIONER HICKINBOTTOM: And it says that the  
18 Department has not established documented guidelines for  
19 the processing of declarations, and the response on 1753 is  
20 not "yes, we have".

21 THE WITNESS: Commissioner, from station to  
22 station, and officer to officer--

23 COMMISSIONER HICKINBOTTOM: No, no. Mr Rawat has  
24 read this out on page 1715. If the Department has not  
25 established documented guidelines for the process of

1 declarations, as a result, the lack of guidelines, there is  
2 no consistent approach to the processing of declarations  
3 within CAPS from officer to officer and from station to  
4 station. That's the result of there being no guidance.

5 Furthermore, officers are allowed to select on a  
6 discretionary basis which declarations they process, and  
7 that gives rise to the two risks.

8 But the response is not yes, we've got  
9 guidelines, here they are. That's not the response.

10 THE WITNESS: Right. But we have guidelines,  
11 here they are, and these guidelines, like I said,  
12 Commissioner, they go back--the guidelines in terms of  
13 clearing goods by sea and air, they go back to pre-2010.

14 COMMISSIONER HICKINBOTTOM: But the Internal  
15 Auditor does her work. She sends a draft report, I think,  
16 to you before it's published. The Management Response  
17 comes in. But her work is nearly fundamentally undermined  
18 if you don't raise these things with her. This is based on  
19 there being no documented guidelines, you say now there  
20 have been documented guidelines for years.

21 THE WITNESS: For years.

22 And when the Internal Auditor met--I wasn't in  
23 the Department at the time. The draft response--the draft  
24 response would have been sent to--I could find the acting  
25 Commissioner of Customs at the time, yes, I did see it, and



1 we went over it together, yes.

2 COMMISSIONER HICKINBOTTOM: But in those  
3 circumstances, why didn't one of you say, well, the answer  
4 to this is that there isn't any guidelines is, there are  
5 guidelines, here they are? I just don't understand it.

6 THE WITNESS: Right.

7 COMMISSIONER HICKINBOTTOM: Anyway, there we are.  
8 Have we got those guidelines?

9 MR RAWAT: We don't, but I'm making a list of  
10 thing we might need to ask Mr Smith for, so will set that  
11 all out for him.

12 COMMISSIONER HICKINBOTTOM: But when the  
13 Auditor--when the Auditor General or the Internal Audit  
14 Department audit something, the relevant department has to  
15 engage with them properly because otherwise the Audit is  
16 not as helpful in terms of audit and governance as it might  
17 be. And it's very unfortunate that after this Management  
18 Response was given to which you had input, and it was given  
19 a few months ago, that it doesn't portray the proper  
20 picture.

21 Yes, thank you.

22 THE WITNESS: Commissioner, if I may, during the  
23 time and number of documents which was requested or number  
24 of information which was requested, the Department--and I  
25 was not there, but in discussing with management, the

1 Department was in the process of--they moved from one  
2 location after the hurricane, and then they move to another  
3 location during the Audit, and then they were in the  
4 process of moving back to the original headquarters.

5 And I think there's mention in the Audit Report  
6 that there was only two companies that had bond agreements,  
7 when in actuality most of the companies operating under the  
8 courier service, most of them would have bond agreements in  
9 place. And I asked why, and it was explained that they  
10 were in the process of moving. Documents were in the file,  
11 they couldn't get to certain documents, but there were more  
12 companies that have bonded than what was in the Report.

13 But I see your point.

14 COMMISSIONER HICKINBOTTOM: I understand that,  
15 but in terms of these guidelines where Customs had input  
16 into the original report and then made a management  
17 response literally just a few months ago from now to say  
18 that there weren't any guidelines when there were, is odd.

19 BY MR RAWAT:

20 Q. And it takes us back to your earlier evidence  
21 about institutional knowledge. It might be expected that  
22 somebody in Customs might be able to tell the Internal  
23 Audit team, well, you're wrong when you say there are only  
24 two companies because we know that there are more.

25 A. Right.

1 Q. And that there would be that knowledge within the  
2 organisation, irrespective of whether documents are in one  
3 location or the another. Would that not be the case?

4 A. That should have been the case.

5 COMMISSIONER HICKINBOTTOM: But also, if the  
6 Commissioner and the Acting Commissioner did not pipe up to  
7 say that there were guidelines for processing declarations,  
8 it strikes me as being perhaps unlikely that officers who  
9 were processing declarations knew anything about the  
10 guidelines. It's just a really, really odd position.

11 THE WITNESS: Commissioner, if the questions with  
12 regards to the number of companies bonded, again, depends  
13 on who the Auditor would have been asking that question.  
14 Normally whenever the Auditors come, they can--they  
15 interview whoever they choose. Maybe they may have asked  
16 the wrong person how many bonds--

17 COMMISSIONER HICKINBOTTOM: No, no, sorry, I  
18 understand that, but just in terms of the guidelines, as  
19 you say, they'll have seen a number of people, but  
20 including the acting Commissioner and no doubt officers,  
21 and none of them said there are guidelines when asked.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: And nobody said that  
24 there were the guidelines when this Report was produced.

25 THE WITNESS: Yeah.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 THE WITNESS: Commissioner, when you see the  
3 guidelines, you will see that the Legislation referred to  
4 in the guidelines are the Legislation prior to 2010.

5 COMMISSIONER HICKINBOTTOM: So, the guidelines  
6 are old.

7 THE WITNESS: Yeah, yeah.

8 COMMISSIONER HICKINBOTTOM: Right. Okay.  
9 But again--

10 (Overlapping speakers.)

11 COMMISSIONER HICKINBOTTOM: We will add it to  
12 Mr Rawat's list, and we will see them.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: Thank you very much.  
15 Yes.

16 MR RAWAT: Thank you.

17 BY MR RAWAT:

18 Q. Mr Smith, let me take you back, please, to 17 in  
19 your written response.

20 At 3.2d, you refer to an initiative you say you  
21 hoped to bring on stream within the Customs Department  
22 which is called "port account management", which the effect  
23 of that initiative would be, to summarise it, is that  
24 importers would have a designated Customs Official to  
25 liaise with when dealing with Customs matters, so it's

1 analogous, you say, to the concept of Desk Officers that  
2 one sees in various Government Ministries in the Virgin  
3 Islands, and you say that that may be classified as  
4 acceptable preferential treatment.

5 But in terms of that initiative, when is it due  
6 to come on stream?

7 A. Actually, Commissioner, it began a couple of  
8 months ago, and what is usually done in that process, a  
9 Customs Officer, along with the assistant Commissioner in  
10 charge of audit, will make a list, get an opportunity to  
11 tour the facility of the various importer, get to see their  
12 business operations, get to see how they're processing  
13 entries, and get a complete overview of the organisation.

14 Then they would assign an officer from within the  
15 Audit Unit to be a direct link to that importer. If that  
16 importer has a challenge with an entry, needs assistance in  
17 terms of communicating with teams to come and inspect  
18 containers, they will have a direct person to contact, as  
19 opposed to being probably bounced around through the system  
20 until they get a Customs Officer.

21 That system has begun. We've met thus far with  
22 two importers, and we're looking at major importers to  
23 begin the Programme. It's not just for major importers  
24 alone. It's for all importers.

25 Q. At 3.2e, you turn to the concept of preferential

1 treatment that's entirely unacceptable and simply cannot be  
2 condoned, but you make the point that you've already made  
3 to the Commissioner, that in relation to the way that this  
4 arises, there is no evidence to support a criticism or a  
5 concern that inappropriate relationships may have arisen or  
6 could arise.

7 But I think the point that has been put to you  
8 already is that when one looks at the basis of the  
9 criticism, it's about a risk arising.

10 Now, as we looked at, what the Auditor General's  
11 Report--Internal Auditor's Report pointed out was, firstly,  
12 an environment--a risk of an environment that allows  
13 inappropriate relationships to develop, and secondly, a  
14 risk of a conflict of interest.

15 Now, following the receipt of the Report in  
16 December 2020, did you initiate any kind of investigation  
17 to see whether, in fact, inappropriate relationships had  
18 developed or conflicts had arisen?

19 A. Commissioner, not in December 2020. That is  
20 always ongoing to see if there is any possibility of  
21 inappropriate relationships that may be taking place. So,  
22 we're always monitoring that, we're always looking at being  
23 vigilant to make sure that that doesn't happen or the  
24 appearance of it happening. And if there is any appearance  
25 of it happening, it's investigated.

1 Q. That immediately takes us to page 18 of your  
2 written response because there, you have, as you say, for  
3 completeness, set out that there are several safeguards  
4 which you say appear to have served as a deterrent thus  
5 far. And if any infraction is committed, could be deployed  
6 to adequately address the same, and you include in the  
7 examples the possibility to initiate disciplinary offenses  
8 or even pursue criminal charges against a Custom Officer,  
9 that you have policies to mitigate risks associated with  
10 programmes such as performing internal audits, rotating  
11 officers, supervising staff, and internal processes at, if  
12 you like, detecting wrongdoing, which you've set out and  
13 you refer--you cross refer to the Position Statements you  
14 provided to the Commissioner earlier.

15 But your conclusion on this point, Mr Smith, is  
16 that the existence of the system--and that's the Courier  
17 Trader Declaration Procedures, does not and cannot without  
18 more, lead to inappropriate relationships or unacceptable  
19 preferential treatment.

20 A. Does not what, Commissioner?

21 Q. You say, and I'm just quoting your written  
22 response, it does not and cannot, without more, lead to  
23 inappropriate relationships or unacceptable preferential  
24 treatment.

25 A. Correct.

1 Q. That's what you say at 3.2g.

2 A. 3.2g.

3 Q. Now, the last point under this potential  
4 criticism is the brokerage services point, which I read out  
5 earlier so I won't read out again. What you say in  
6 response to that is--and this was something that we  
7 canvassed with you and Ms Martin in some detail in July  
8 2021.

9 MR RAWAT: And, Commissioner, just for your note,  
10 you will find that at page 862 in today's bundle.

11 BY MR RAWAT:

12 Q. You make the point in your written response that  
13 you're unaware of a scenario where Customs Officers may be  
14 reviewing and releasing Declarations for which they had a  
15 direct involvement, and you've asked for evidence of such  
16 allegations so they could be fully investigated, and I'm  
17 going to pause there.

18 Firstly, I think--I won't repeat it at length,  
19 but the point that arises from the potential criticism is  
20 that the concern is giving rise to a risk, but you--

21 A. That actually happens.

22 Q. Well, that it gives--that--well the--

23 (Overlapping speakers.)

24 A. (Unclear.)

25 Q. --the way the system was operating in



1 December 2019, when it was audited gives rise to these  
2 risks.

3 A. Okay.

4 Q. And the point is that it does--and it's set out  
5 in the criticism--it does lead to if you have Customs  
6 Officers as these accepted providing brokerage services, if  
7 there is a private interest and they have a private  
8 interest in a private declaration, that does pose a  
9 significant risk of conflict, doesn't it?

10 A. It can.

11 Q. But just to pick up your point is that you say  
12 you've asked for evidence so they--the allegations can be  
13 fully investigated. Who did you ask for the evidence from?

14 A. When--we've asked for evidence of these  
15 allegations so they could be fully investigated. And when  
16 we're doing the exit--I think you refer to it as an "exit  
17 interview" with Audit, and they were--they made reference  
18 to these allegations, and I asked for evidence, if there is  
19 no evidence of that--of that, then initially in the draft,  
20 Commissioner, it wasn't allegations. It was stated, and  
21 then I asked for evidence. If there is evidence, then  
22 produce it. If they couldn't produce it, then change the  
23 term to "allegations". Maybe that's where that term comes  
24 from, but that's what I asked in the exit meeting.

25 Q. But, I mean, as we say, we canvassed this, but

1 you're aware that--and you say this in the written  
2 response, you say that Customs Officers can have trade  
3 licence and have side interests, if you like, but are you  
4 aware of Customs Officers providing brokerage services?

5 A. No, I'm not aware of Customs Officers providing  
6 brokerage services.

7 And, like I said, I'm aware that not just Customs  
8 Officers but Civil Servants have trade licenses for  
9 whatever type business, so you equate it to even, say,  
10 officers have security trade licences, and I think I  
11 mentioned to that--

12 (Overlapping speakers.)

13 Q. Yes, you did.

14 A. --(unclear) as well.

15 Q. --a little later on in your written response.

16 COMMISSIONER HICKINBOTTOM: And Government tax  
17 assessors providing Tax Services.

18 THE WITNESS: And Government tax assessors  
19 providing Tax Services, yes.

20 Is there another one?

21 COMMISSIONER HICKINBOTTOM: Yes. Lawyers,  
22 Government lawyers, providing legal services outside the  
23 employer's remit.

24 THE WITNESS: I didn't--did I say Government?

25 COMMISSIONER HICKINBOTTOM: Well, I assumed it

1 must be Government because that's the point of the example.

2 THE WITNESS: No, I didn't say Government  
3 lawyers. I said or lawyers providing legal services  
4 outside of their employer's remit.

5 COMMISSIONER HICKINBOTTOM: What--any lawyers?

6 THE WITNESS: Yeah, maybe--any lawyers. I'm just  
7 making an example that I didn't say Government lawyers.

8 COMMISSIONER HICKINBOTTOM: Okay.

9 BY MR RAWAT:

10 Q. But if we just go through it quickly, I mean,  
11 your point is that you have no knowledge of any officers  
12 under your leadership who offer brokerage services.

13 A. Not now.

14 Q. And no allegations that they may have been doing  
15 so and that raises a conflict of interest have ever been  
16 brought to you.

17 A. As I mentioned to you before, there was one  
18 incident where not an officer but a manager would have been  
19 doing brokerage services--or a company that does brokerage  
20 services--whether it's him or not, I don't know--but a  
21 company, and that matter was referred to Director of the  
22 Department of Human Resources because what was explained is  
23 under General Orders, if anything that is done that may  
24 bring the organisation of the Government into disrepute, it  
25 would be sent to the HR Department, and that was--that was

1 probably sometime in mid-December of 2017 or maybe early  
2 2018.

3 Q. If we move on through the written response at  
4 3.3b on page 19, which is the point you've touched upon,  
5 people do offer--engage in multiple professions for which  
6 they have trade licences, but you point out that, within  
7 the Public Service, there are policies and approvals to  
8 address potential conflicts of interest which arise in such  
9 situations.

10 And you say: "Such policies can only be  
11 activated if we are directed to actual or potential  
12 breaches which, I repeat, we have not been".

13 But who would direct you to a potential or an  
14 actual breach?

15 A. I was reading--where are you, where are you?

16 Q. Just if you look at 3.3b on page 19, please,  
17 Mr Smith.

18 A. Yeah.

19 Q. The last paragraph of that--or the last sentence  
20 of that paragraph refers to policies, and direc--you need  
21 to be directed to actual or potential breaches of those  
22 policies. Who is it that would direct you to a breach?

23 A. If there is a breach of the policies, that's our  
24 Internal Audit Team or Enforcement Team. If there is a  
25 breach that is brought to my attention, then I refer it to

1 the appropriate agencies.

2 Q. But how do people pick up on--how does Customs  
3 pick up on a potential and actual breach that needs to be  
4 investigated?

5 A. How do they pick up on a breach that needs to be  
6 investigated?

7 If--Commissioner, if someone is doing--if someone  
8 is engaged in doing brokerage, not that it's illegal, but  
9 if they're involved in doing brokerage and there is a  
10 discrepancy with the entry submitted which leads the  
11 Department to investigate the matter, then if they're a  
12 breach, then we refer the matter--or penalize the importer  
13 and refer the matter to the Human Resources Department.  
14 But there is no--under our legislation, there is no  
15 violation for an officer engaging in customs brokerage.

16 However, if the officer is performing an act or  
17 something on behalf of the Commissioner, they must disclose  
18 if there is any interests in the trade, whether it's  
19 customs brokerage, whether it's a vessel engaged in trade,  
20 et cetera.

21 Q. You go on at 3.3c to direct the Commissioner's  
22 attention to built-in mechanisms which the Customs  
23 Department has which safeguard against any one individual  
24 having significant influence over the process, and you say  
25 it's a multi-pronged manner in which import duties are

1 assessed and goods released which prevent a single  
2 individual or entity from being able to corrupt or  
3 improperly tamper with same. The process, you say,  
4 involves preparation, review, validation and release as now  
5 briefly explained. And then you set out some quoted--or  
6 text in italics which refers to the CAPS Declaration  
7 Center, and that's--is that the Declaration Center that has  
8 been recently set up?

9 A. No. The CAPS Declaration Center has been--as I  
10 mentioned, it's been rolled out since 2012, 2013.

11 Q. So, the text in italic, where does that come  
12 from?

13 A. Where does it come from? That's the process that  
14 we--

15 Q. But are you quoting from a document?

16 A. No, no. That's not a quote from a document.  
17 They--

18 Q. Did you just put it in italics for emphasis?

19 A. For emphasis, and so that you would see it. Any  
20 know you--

21 Q. I see.

22 A. -- wouldn't miss it but I wanted--

23 Q. So these are the words of Wade Smith, so to  
24 speak?

25 A. Yes, these are the words of Wade Smith.

1 Q. Thank you. Right.

2 What you also point to, and you do--and this is  
3 how you conclude your response on this potential criticism,  
4 is by referring again to the impact of the hurricanes,  
5 which impacted on facilities and the availability of  
6 facilities but also obviously meant that your Human  
7 Resources work were lessened because, as you say, everyone  
8 had suffered severe devastation, and this caused many  
9 officers to migrate with their families, which then  
10 impacted on the approach, the multi-pronged approach that  
11 you set out, but you say the situation has long since been  
12 rectified and the said safeguards thus restored.

13 So, I think you've previously given evidence to  
14 the Commissioner about the current manning levels within  
15 Customs and the issues, in terms of resources, that you're  
16 confronted with.

17 If we conclude this by just looking at the last  
18 paragraph that you put under the potential criticism, it's  
19 this--

20 A. 3b?

21 Q. 3.3e on page 20, please.

22 A. Okay.

23 Q. You say (reading): Whilst the Trusted Trader  
24 Programme was adversely affected in the post-hurricane  
25 period, there's simply no evidence that same presents a

1 significant risk to the public purse, can foster  
2 inappropriate relationships or unacceptable preferential  
3 treatment with some of its processes. I therefore disagree  
4 with the notion that Customs has acted inconsistently with  
5 good governance and reiterate that--I'm sorry--that no  
6 evidence whatsoever has been presented and thus there is no  
7 evidence that may amount to information that corruption,  
8 abuse of process or serious dishonesty in relation to  
9 officials may have taken place.

10 Now, the--I think the point I need to just pick  
11 up on before we leave this is that, in your response, you  
12 speak about developing a code of ethics. What point has  
13 that reached in terms of development?

14 A. That's--Commissioner, that's probably about  
15 95 percent completed. It was reviewed--it was reviewed by  
16 counsel, and we have to make sure that it's reviewed and  
17 it's in line, so that's just about completed.

18 Q. You also speak, Mr Smith, about having a  
19 Declaration of Interests form and that is--

20 A. Yes.

21 Q. --part of--that's a new development, you say.  
22 What stage is--

23 A. That form is completed.

24 Q. That's--that's--

25 A. That's completed, Commissioner.



1 Q. Is it in use at the moment?

2 A. It's in--the form is not in use, but officers  
3 have declared their interests, not on the form. It's going  
4 to be renewed every year, so come January, this will be the  
5 new form.

6 Q. I see. So, January 2020, all officers will have  
7 to fill in--all officers will have to fill in the new form.

8 A. The new form, 2022.

9 Q. But you've required them to declare their  
10 interests. Have you created a Register of Interest, then?

11 A. No. Once they declare their interest, it will be  
12 kept on their file.

13 Q. But have you required them to declare--all  
14 officers to declare interests in 2021 or is it the  
15 Declaration they make when they come in to the job?

16 A. Well, Commissioner, I don't know if I have the  
17 Authority to make them declare their interests, but this  
18 will be in regards if they're engaged in brokerage or if  
19 they have a vessel or any type of equipment used in the  
20 trade, I will ask for them to complete their interest form.

21 Q. And is that going to be part--is that explained  
22 on the interests form, this is what you've got to do?

23 A. That's correct.

24 Q. I see.

25 A. Yes.

1 Q. So, just remind me of this, though. What is the  
2 current system in terms of declaring interests?

3 A. The current system in terms of declaring  
4 interests, I believe, Commissioner, that would be recorded  
5 with the Human Resources Department, where if an officer is  
6 going to engage in something that may bring the Government  
7 into disrepute or has the potential or the risk, they will  
8 have to make a declaration or seek permission from Human  
9 Resources Department.

10 Q. What if--I mean, up until obviously the system  
11 that comes in place in January 2022.

12 A. The Declaration--

13 Q. The declaration system. Up until now, I mean,  
14 how often are officers, Customs Officers, required to  
15 declare their interests?

16 A. There hasn't been a requirement up until probably  
17 about two or three years ago.

18 Q. And since that came in. So, if we take  
19 Mr Lettsome as the veteran example, I think my recollection  
20 of his evidence--I think we might have asked him about  
21 this--is that when you can come in as a Customs Officer,  
22 you make--when you're first recruited, you may make a  
23 declaration, but thereafter you're not. But obviously it  
24 changed two to three--you say two to three years ago. How  
25 often since two to three years ago do they have to declare

1 interests?

2 A. I don't know--Commissioner, I don't know if--I  
3 don't know if Mr Lettsome said he had to declare his  
4 interest because I'm looking at--in my situation, when I  
5 came, and I don't think I was asked to declare any  
6 interests when I came in to the Government, so I don't know  
7 if that was done, but I encourage officers to declare their  
8 interests if they're--whatever business they're going to be  
9 into, declare their interests. Is it mandatory under the  
10 Customs legislation, it's not.

11 Q. But since you say there has been a change two to  
12 three years ago, just explain what that change is and what  
13 its impact is?

14 A. No, well, the change--can I--are we finished with  
15 this?

16 Q. Yes, I think so.

17 A. We're done, okay.

18 To answer, Commissioner, like I told you, I'm not  
19 aware of any officers engaging in brokerage. I was aware,  
20 as several years ago of an officer that had a company that  
21 was engaged in brokerage. Since then, several years ago, I  
22 have asked officers to make a declaration if they're going  
23 to engage in any type of business activity like that.

24 Q. So, I'm sorry to just labour the point, but so  
25 about two or three years ago, you initiated a policy of

1 asking officers if they're going to be involved in some way  
2 in the trade--

3 A. Yes.

4 Q. --then they should make a declaration.

5 A. They should make a declaration.

6 Don't say two years ago, Commissioner, because  
7 Mr Rawat reminded me that I wasn't there two years ago, so  
8 we might have to go back.

9 Q. Two to three years ago. I think your words were  
10 two to three years ago, Mr Smith.

11 A. Yeah, prior to me--prior to--

12 COMMISSIONER HICKINBOTTOM: Prior to 2019.

13 THE WITNESS: Yeah.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 BY MR RAWAT:

16 Q. Right.

17 The one last couple of things is that, when you  
18 were here in July--

19 A. But you said I could close the book,  
20 Commissioner.

21 Q. No, no, you can close the book.

22 But the Commissioner asked you and Ms Martin to,  
23 and you agreed do this, that you would obtain a list of  
24 people who hold licenses to provide brokerage services and  
25 check them against employees in the Customs Department.

1 A. Right.

2 Q. Did you manage to do that exercise?

3 A. Did you receive it, Commissioner? I sent the  
4 e-mail.

5 Q. Well, I think we received an e-mail which said  
6 that you were endeavoring to do so. But did you--what was  
7 the outcome of your--did you identify anybody who did offer  
8 brokerage services?

9 A. Who have trade licences?

10 Q. Yes.

11 A. Yes.

12 Q. And who are in Customs?

13 A. And who are in Customs.

14 Q. Offering brokerage services?

15 A. Offering licence and access to the system to do  
16 brokerage service.

17 Q. All right.

18 A. And so, you have two names. You have two  
19 positions: Licence and authorised to use the system. You  
20 can be licensed and not enrolled in the system or you could  
21 be licensed and enrolled in the system. So, that I thought  
22 I sent it to Chandler. If not, I can e-mail along with--

23 COMMISSIONER HICKINBOTTOM: And from  
24 recollection, my recollection isn't very good, but I think  
25 you did, but we can check, Mr Smith.

1 MR RAWAT: We will do that.

2 THE WITNESS: You think I did send it?

3 MR RAWAT: Yep.

4 COMMISSIONER HICKINBOTTOM: I think you did send  
5 it.

6 THE WITNESS: Thank you, Commissioner.

7 COMMISSIONER HICKINBOTTOM: But we'll check,  
8 because my memory is not good.

9 THE WITNESS: Don't say it.

10 COMMISSIONER HICKINBOTTOM: I might have  
11 remembered something which never happened, but we'll check.  
12 I think you--

13 (Overlapping speakers.)

14 THE WITNESS: And sometimes I send stuff, and I  
15 would have to call the Secretary and--

16 COMMISSIONER HICKINBOTTOM: No, but I--

17 THE WITNESS: And it never comes through, and we  
18 go through that exercise so...

19 COMMISSIONER HICKINBOTTOM: I think we've got  
20 that, but we'll check.

21 THE WITNESS: And I'll check as well. And if you  
22 don't--

23 MR RAWAT: We're going to have to write to  
24 Mr Smith anyway so--

25 THE WITNESS: --we'll make the list.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: Good.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 BY MR RAWAT:

5 Q. Could I just ask one more question, and that is  
6 that you're obviously going to have this system of getting  
7 officers to declare interests as from January 2022.

8 A. Yes.

9 Q. How--will you have a system in place to verify  
10 the contents of the Declaration?

11 A. Well, Commissioner, once the information is  
12 received, we are looking primarily at trade licences,  
13 assets, and then we'll do individual investigations, even  
14 if we need to contact our colleagues over in the RVIP and  
15 ask for assistance.

16 Q. I think the final point to make, of course, is  
17 that we've gone through the Warning Letter and your written  
18 response, and I hope, in fairness to you, Mr Smith, you  
19 feel that we've done the written response justice, but I  
20 think the point to put on the record is that you, on behalf  
21 of Customs, do not accept any of these criticisms; that's  
22 right, isn't it? You don't accept--

23 A. On behalf of Customs, I do not what?

24 Q. You don't accept the criticism. As Commissioner  
25 of Customs, you don't accept the criticisms.

1           A.    No, Commissioner, I don't accept the criticisms.

2           MR RAWAT:   That, Commissioner, is the last point  
3 I wish to make to Mr Smith, but can I conclude by thanking  
4 him for giving us his time today and for the way he's given  
5 his evidence.

6           COMMISSIONER HICKINBOTTOM:   And can I thank you,  
7 Mr Smith, for your patience and the clear way in which  
8 you've given your evidence, which has been very helpful.

9           THE WITNESS:   Thank you, Commissioner.

10           (Witness steps down.)

11           COMMISSIONER HICKINBOTTOM:   Could I just, before  
12 we break, go back to the law, very briefly, Ms Peaty.  And  
13 I think this is a fair assessment, not looking at  
14 construction, which I'll come to in a moment, but I think  
15 it's fair to say that no warning, including, I think,  
16 Mr Smith, albeit focused very carefully on the legal power  
17 under which this scheme has been adopted.  In the, I think  
18 it was the Internal Auditor's Report, there was a sort of  
19 vague reference to section 103 of the 2010 Act, which, on  
20 its face, simply gives the Commissioner the power to  
21 require security, which doesn't really seem to give him any  
22 power to form a payment-installment scheme.

23           But is it fair that no one--there's no evidence  
24 that anyone really thought about this because the evidence  
25 from Mr Smith today is that, and I think actually in his



1 written response, was that he raised it with the Attorney  
2 at some point, and she said that there were powers under  
3 the 2010 Act and under the earlier Act, CAP 104, but there  
4 was no dissent to any detail anywhere as far as the  
5 evidence is concerned.

6 MS PEATY: I think that's a fair summary. We  
7 have not found--

8 COMMISSIONER HICKINBOTTOM: Any document?

9 MS PEATY: The documents.

10 COMMISSIONER HICKINBOTTOM: And--

11 MS PEATY: I can check with the Attorney  
12 General's Chambers whether a further search can be--

13 COMMISSIONER HICKINBOTTOM: Well, I mean, I think  
14 I'm going to proceed on the basis there are no documents--

15 MS PEATY: Yes.

16 COMMISSIONER HICKINBOTTOM: --unless somebody  
17 produces some.

18 And the second point, I certainly don't say this  
19 pejoratively, but the Attorney's legal submissions, I  
20 think, amount to this: That there's an argument that there  
21 is a lawful basis for the scheme, and I don't think she  
22 puts it any higher than that, and that's fine because there  
23 are certainly some difficulties with the pre-2010  
24 provisions, which say in section 18 of the--of CAP 104 that  
25 imported goods shall not be released from the port at their

1 arrival until "such goods", it should be, have been entered  
2 and seized, the relevant one, security has been given in  
3 the prescribed form.

4 Well, under the scheme, there is no security.  
5 So, there seems to me to be--it's not a straightforward  
6 construction.

7 And then in the post-2010, I'm not sure 103 which  
8 is the section relied on helps at all, but section 51  
9 might, section 51 which enables the Commissioner to  
10 authorise the removal of goods from a warehouse subject to  
11 any conditions and restrictions the Commissioner may see  
12 fit to impose without payment of duty, and then the goods  
13 are liable to forfeiture if the conditions--so you may be  
14 able to put it under section 51 on the basis of the  
15 conditions are that the installments are paid.

16 But it's not straightforward, but I think the  
17 Attorney says it's that there's an arguable power there.

18 MS PEATY: May I add as well, Commissioner, it  
19 became clear from Mr Smith's evidence that he considers  
20 that there may be some other sections in the Act. He  
21 mentioned section 54, I think, 58, 61, and also the  
22 Interpretation Act.

23 In fairness to Mr Smith, I haven't checked with  
24 the person who specifically drafted these--

25 COMMISSIONER HICKINBOTTOM: That's Ms Forbes.

1 MS PEATY: --whether she had considered those and  
2 decided not to include them or whether we ought to, to be  
3 fair to Mr Smith, just see if we should take a look at  
4 those because it strikes me that, as an experienced  
5 Commissioner of Customs, actually his view on the contents  
6 of the legislation that he operates under may be relevant  
7 to you.

8 COMMISSIONER HICKINBOTTOM: Well, it may be. I  
9 mean, it may have been better if the Attorney or someone  
10 had asked Mr Smith, who has got many years' experience, of  
11 these things.

12 But can we leave it like this, that those two  
13 propositions that I've put, both with regard to the focus  
14 that there appears to have been on where the power comes  
15 from, there wasn't a focus, no evidence of any focus; but  
16 secondly, in terms of whether this is actually a lawful  
17 scheme, that the Attorney says that--the Attorney's  
18 submission is that there is arguably power somewhere or  
19 another. But certainly if, after hearing Mr Smith, the  
20 Attorney wants to put in further legal submissions that, as  
21 it were, reinforce the arguably of the power based on the  
22 other sections which she's referred to, obviously put them  
23 in.

24 MS PEATY: We'd be grateful. Thank you. I mean,  
25 if the Attorney decides to do that, I think they'll

1 probably be very short and--

2 COMMISSIONER HICKINBOTTOM: Yes.

3 MS PEATY: Shall I take it that we have  
4 permission, then, to put those in or--

5 COMMISSIONER HICKINBOTTOM: Yes, yes, please,  
6 short.

7 Anything else, Mr Rawat?

8 MR RAWAT: Just one point. What you may be  
9 assisted on from the Attorney General is just the power of  
10 the Financial Secretary--

11 COMMISSIONER HICKINBOTTOM: Oh, yes.

12 MR RAWAT: --to--so, as I understand Mr Smith's  
13 evidence, it is that, and certainly it's--the position at  
14 the moment is there's the Financial Secretary, it is giving  
15 approval, and that could work in two ways. I suppose one  
16 is that the line manager of the Commissioner of Customs  
17 giving approval could be "I direct you to exercise your  
18 powers", but alternatively it could be that, is there a  
19 power under the 2010 Act that allows the Financial  
20 Secretary independently to allow someone to pay on an  
21 installment.

22 COMMISSIONER HICKINBOTTOM: Exactly. In a sense,  
23 can it be delegated or will it be a delegation upwards?

24 MR RAWAT: Yes.

25 COMMISSIONER HICKINBOTTOM: Can the powers be

1 delegated because all the powers are those of the  
2 Commissioner. Although I've assumed that the agreement,  
3 when the agreement, former agreement when it's made, will  
4 be signed and endorsed by the--by Mr Smith as the  
5 Commissioner. So the Financial Secretary may say "yes",  
6 but I assume, Mr Smith, that when the agreement is made,  
7 the name of the importer and your name as the Commissioner  
8 will be on the agreement.

9 THE WITNESS: That's correct, Commissioner.

10 COMMISSIONER HICKINBOTTOM: And that may be the  
11 answer to that.

12 MR RAWAT: Yes.

13 COMMISSIONER HICKINBOTTOM: Good.

14 Anything else, Mr Rawat?

15 MR RAWAT: Nothing from me, sir.

16 COMMISSIONER HICKINBOTTOM: Anything else,  
17 Ms Peaty?

18 MS PEATY: The only other matter was--and this  
19 may be nothing to do with the Attorney General, but you  
20 mentioned that there may be more material arising over the  
21 lunch break, and I wondered if that was something that we,  
22 as on the Attorney General's team, needed for after.

23 COMMISSIONER HICKINBOTTOM: No, it's not.

24 MS PEATY: Thank you.

25 COMMISSIONER HICKINBOTTOM: And I mean there's no

1 sort of secret about this, when Mr Walwyn gave evidence, we  
2 asked him to identify any areas that he thought questions  
3 might usefully be asked of the three witnesses this  
4 afternoon, and he has responded this morning, and so we  
5 will have a look at those to--and then make sure that any  
6 questions which I consider should be put are put to the  
7 three witnesses. There's no--

8 MS PEATY: It was only if we needed to get to a  
9 printer, a practical--

10 COMMISSIONER HICKINBOTTOM: No. And there's no  
11 material, then, in the sense that you meant it.

12 MS PEATY: Thank you.

13 COMMISSIONER HICKINBOTTOM: Good.

14 Thank you again, Mr Smith.

15 THE WITNESS: Thank you, Commissioner.

16 COMMISSIONER HICKINBOTTOM: And we start again at  
17 3:00.

18 THE WITNESS: Thank you.

19 COMMISSIONER HICKINBOTTOM: Yes, thank you.

20 (Recess.)

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Session 2

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

Could I thank both Ms Stevens and Ms Scatliffe for coming to give evidence at such short notice. But one, two matters arose from evidence that we heard on Monday on which you may be able to help us. We will try not to keep you too long. Thank you both very much.

Mr Rawat.

MR RAWAT: Thank you, Commissioner. Our first witness this afternoon is Ms Lorna Stevens.

BY MR RAWAT:

Q. Ms Stevens, can I first of all, start off by thanking you for agreeing to come at short notice. You've already given evidence to the Commission, and so there is no need for you to affirm or take the oath again.

What I should direct your attention to is there's a bundle just there to your left which we may need to look at some of the documents there if you need to remind yourself of anything.

A. Okay.

Q. Could I ask you this, though, just remember to keep your voice up. You will see that there's a microphone in front of you. It doesn't amplify your voice, so you may want to pull it a little closer towards you. It's there to

1 record.

2           And the one thing that we must both do is try and  
3 avoid speaking over each other. If that happens, I will  
4 stop and I'll let you finish your answer.

5           Now, the reason we asked you to give evidence in  
6 the first place was because of your involvement as a Public  
7 Officer in what we call the School Wall Project or the Wall  
8 Project, and that's the building of a perimeter wall at  
9 Elmore Stoutt High School. And you gave evidence then  
10 because at the time, as you are now, you were Assistant  
11 Secretary in the Department of--or the Ministry of  
12 Education, and you had--in that role, you had a role as an  
13 Internal Projects Manager; is that right?

14           A. That's correct.

15           Q. I know you want to wear your mask, but please  
16 feel free to shout a little bit, it's very important that  
17 we do hear you.

18           If you take the bundle up and you turn to page 18  
19 in the bundle, if I just draw your attention, Ms Stevens,  
20 to paragraph 89. I think this is a report that you're very  
21 familiar with?

22           A. Yes.

23           Q. It's the Auditor General's Report into the School  
24 Wall Project issued on the 24th of August 2018. And I  
25 think you were involved in drafting a response to that



1 Report--to the draft of that Report, were you not?

2 A. Yes.

3 Q. Now, paragraphs 89 through to 94 deal with what  
4 the Auditor General described as the Focus Area. We have  
5 been calling that Phase 1, and that is the portion of the  
6 wall that was built over December 2014, and I just want to  
7 start by just asking you some additional questions about  
8 that.

9 Now, you will see there--and I'm going to  
10 summarise--that when there were plans to build that part of  
11 the wall, Phase 1, the plan submitted to Town and Country  
12 Planning Department stipulated a 180-foot block wall  
13 estimated to cost just over \$156,000. And that was, as the  
14 Auditor General notes, would have required a tendering  
15 process or a Cabinet waiver.

16 In any event, the works were scaled back from  
17 180 feet to 120 feet, and Work Orders were used to do the  
18 work. So, as you see at paragraph 92, the total cost in  
19 2014 was \$96,727.40.

20 Now, the first question just to ask you here  
21 is--I think on the last occasion you said that it was--it  
22 would have been your duty as Internal Project Manager to  
23 submit plans to Town and Country Planning Department.

24 A. Um-hmm, that's correct.

25 Q. Thank you.

1           And I took you to a part of the report which  
2 noted that the plans were submitted late. I don't know if  
3 you could assist then as to why they were submitted late  
4 but can you help with this: Why was it decided to submit a  
5 plan with an estimated cost of \$156,000 when the true cost  
6 was going to be 96,000?

7           A. The plan submitted was based on the 180 feet, and  
8 he costed at 180 feet, so it was submitted based on that  
9 estimation.

10          Q. Now, the "he" there, is Steve Augustine,  
11 Architect?

12          A. Correct.

13          Q. And Mr Augustine was the External Project Manager  
14 on this, wasn't he?

15          A. That's correct.

16          Q. And I think you, Ms Scatliffe, and Mr Augustine  
17 formed, in effect, the Project team?

18          A. Pretty much, yes.

19          Q. But you had different roles within the team, did  
20 you not?

21          A. Yes.

22          Q. Because I think you told us on the last occasion  
23 that, although you had about a month's training in project  
24 management, you don't have a background in construction, do  
25 you?

1 A. No, I don't.

2 Q. And so, Mr Augustine wasn't asked to then draw up  
3 new plans when the decision was taken to scale back to  
4 120 feet?

5 A. Not necessarily a new plan. It would be the same  
6 plan architecturally designed, but what was reconsidered  
7 was based on the amount of funding that was in the budget  
8 at that time that we would do the wall from--and there is  
9 an entrance gate, from the entrance gate back down to the  
10 second entrance gate, which would be 120 feet. The  
11 180 feet would have taken it to the other side of the  
12 entrance gate.

13 Q. I see.

14 In fact, we can see a drawing of the site at  
15 page 4.

16 The work that was done in 2014 was from the west  
17 side exit gate running down the photograph.

18 A. Yes.

19 Q. Along the sort of rectangular building that we  
20 see?

21 A. That's correct.

22 Q. And the intention was--was the intention to carry  
23 across to the other side of the gate?

24 A. 180 feet would have taken it to the other side.

25 Q. Across--I see.

1           A.    Across ways to the sign that says "west side of  
2 gate".

3           Q.    Yes.

4                    So, you would have had a wall on both sides of  
5 the gate?

6           A.    Yes.

7           Q.    I see.

8                    Now, if you look at--if you go over to page 19,  
9 please. You see there a table that the Auditor General has  
10 put in her Report where she records the cost of Phase 1, so  
11 the 96,000-odd was Work Orders issued.

12          A.    Um-hmm.

13          Q.    There was then a one section of rail straight  
14 painting which was not issued, so that was for just over  
15 \$7,000. And then excavation costs of just over 4,000 were  
16 paid in 2015.

17                   Can you help with why payment was delayed?

18          A.    In terms of the rail and the painting section--

19          Q.    If we take it in stages, firstly, you paid the  
20 excavation costs late.

21          A.    Um-hmm.

22          Q.    The work was done in 2014, and it was paid in  
23 2015. Do you know if there was any reason for doing that?

24          A.    Not necessarily, only maybe that was for the end  
25 of the Fiscal Year, and was probably already closed off,

1 and it would have taken it back over to Phase 2.

2 Q. Back over to Phase 2?

3 A. It would have been included in our Phase 2.

4 Q. And the extra--there was one section of work that  
5 wasn't done. There was one Work Order that wasn't issued  
6 and that's the Work Order for rail painting?

7 A. Again, when we reached to the column of the one  
8 side of the entrance, we would have stopped there.

9 Q. I see.

10 A. So, if there was an additional person, it would  
11 have gone to the other--to the further side.

12 COMMISSIONER HICKINBOTTOM: My understanding--we  
13 might just have to look at the Report a bit more  
14 deeply--the works--11 Works Orders were issued.

15 THE WITNESS: Um-hmm.

16 COMMISSIONER HICKINBOTTOM: Six for construction  
17 of the wall and the railings.

18 THE WITNESS: Um-hmm.

19 COMMISSIONER HICKINBOTTOM: But only five for  
20 painting.

21 THE WITNESS: Um-hmm.

22 COMMISSIONER HICKINBOTTOM: So, that meant that  
23 you had five Works Orders--five sets of Works Orders for  
24 constructing a wall and rails and painting them, and then  
25 one section for constructing the wall and rails but not

1 painting it.

2 THE WITNESS: Um-hmm.

3 COMMISSIONER HICKINBOTTOM: Why was that? It  
4 seems that that part of the wall was constructed but simply  
5 not painted.

6 THE WITNESS: It was constructed and not painted.

7 What happened is, once we put in the horizontal  
8 iron bars, I think something came up with the community or  
9 with the school where it was not esthetically pleasing to  
10 the site, it probably reminded them as if the students were  
11 in a jail. So, consideration was given to changing the  
12 design of the iron bars along with running samples for the  
13 paint colors of the wall.

14 So, we ran several samples of the paint colors,  
15 and no decision was made in December on how we would  
16 address how it looked with the horizontal bars. So, it  
17 might have been something where we might have had to remove  
18 those bars, and that's where the design for the second  
19 phase of the wall came in, and the bars were changed to  
20 vertical bars.

21 COMMISSIONER HICKINBOTTOM: I understand that  
22 there was some concern about the horizontal bars, and I  
23 think in Phase 2 they were made into vertical bars for  
24 Phase 2.

25 THE WITNESS: Um-hmm.

1           COMMISSIONER HICKINBOTTOM: But what I still  
2 can't quite understand is why 11 Works Orders were issued  
3 for constructing six panels and only painting five, so  
4 there is one panel that was built but not painted. And it  
5 may well be that the design was an issue and it may have  
6 all had to be taken down, but I just don't understand why  
7 there was one panel that was constructed without being  
8 painted.

9           THE WITNESS: None of them were painted.

10          COMMISSIONER HICKINBOTTOM: Sorry?

11          THE WITNESS: None of them were painted.

12          COMMISSIONER HICKINBOTTOM: That may, as a matter  
13 of fact, be right, but Works Orders were issued for them to  
14 be painted, but only for five, not six.

15                 And why it's quite important in contractual terms  
16 is that, had a Works Order been issued for each of the six  
17 panels to construct them and to paint them, it would have  
18 taken the Project over \$100,000 and into a new procurement  
19 regime.

20          THE WITNESS: I understand that, but you have to  
21 look at it in terms of where the wall started and where it  
22 ended. If the wall ended where the corner for the entrance  
23 is, that's where that extra one might have gone over to the  
24 other side. And we were not opening up the other side of  
25 the entrance just for one because it would mean that that

1 side would have been opened up and the students would have  
2 traversed in and out or whoever in and out, so the decision  
3 was made to stop it where the column for the entrance  
4 stopped, was existing.

5 COMMISSIONER HICKINBOTTOM: And I understand  
6 that--and that's what reduced it from 180 to 120 feet.

7 THE WITNESS: Right.

8 COMMISSIONER HICKINBOTTOM: I certainly  
9 understand that, but I still can't--

10 THE WITNESS: So the cost was between where it  
11 started and where it ended was the 96,000.

12 COMMISSIONER HICKINBOTTOM: Yes, but it included,  
13 as I understand it--correct me if I'm wrong--it included  
14 one panel that was constructed but not painted.

15 THE WITNESS: That's the only explanation that I  
16 have.

17 COMMISSIONER HICKINBOTTOM: Yes. Okay. That's  
18 fair enough. Thank you.

19 MR RAWAT: Thank you.

20 BY MR RAWAT:

21 Q. If we look, now, at Phase 2, which is obviously  
22 the more substantial phase, that probably took up a great  
23 deal of your time and a great deal up to 2015.

24 Now, prior to that--and we will look at the paper  
25 that you drafted in a moment, but prior to dealing with



1 Phase 2, how often had you been involved in a tender  
2 process, a tender waiver process, I should say?

3 A. I was involved in one with the Technical School.  
4 Not coming to mind any other, but the Technical  
5 School would have been a tender process.

6 COMMISSIONER HICKINBOTTOM: Was it sort of one or  
7 two, rather than many more?

8 THE WITNESS: No, not many.

9 COMMISSIONER HICKINBOTTOM: Yes, okay. Thank  
10 you.

11 BY MR RAWAT:

12 Q. If you turn up page 115 in that bundle.

13 A. Um-hmm.

14 Q. You will see there that this is the draft Cabinet  
15 Paper that I think it goes from the Ministry of Education  
16 to the Ministry of Finance, and it's through the Ministry  
17 of Finance that it's formally put before Cabinet.

18 A. That's correct.

19 Q. Now, I think on the last occasion you told us  
20 that you were the person who did most of the drafting on  
21 this.

22 A. Yes.

23 Q. But in doing that drafting, who did you liaise  
24 with?

25 A. The supporting document would have come from the

1 CU at the time. Those were the reports in terms of the  
2 security breaches on the campus.

3 Q. You said CU?

4 A. The Chief Education Officer.

5 Q. I see.

6 A. So, I would have got that information from the  
7 Chief Education Officer. The principal reports would have  
8 gone to the Chief Education Officer also.

9 And in terms of the costing. I would have gotten  
10 those from--I think Steve Augustine would have e-mailed  
11 them to me in terms of the costing.

12 Q. I think when you last gave evidence, what we can  
13 see in terms of the documents that you annexed to the  
14 Report, if we look at page 121.

15 A. Okay.

16 Q. You had an estimate from, it's Quantum but it's  
17 actually Steve Augustine as well.

18 A. Yes.

19 Q. But that--you told us on the last occasion that  
20 the Minister, Mr Walwyn, went and got that.

21 A. Correct.

22 Q. And so you were then provided with it.

23 At 123 we have an estimate from STO, and that  
24 again you told us on the last occasion, Mr Walwyn obtained.

25 A. That's correct.

1 Q. And then as you say, what then follows is there's  
2 some documentation which is from the Police and from the  
3 principal of Elmore Stoutt.

4 A. Um-hmm.

5 Q. But that would have come--the letter--those were  
6 addressed from the principal to the Chief Education  
7 Officer, and so it's through her that you would have got  
8 the information.

9 But when you were preparing the draft, did you  
10 speak, for example, to someone in the Ministry of Finance?

11 A. No, not that I can recall, no.

12 Q. So, in terms of when we look at it, there is a  
13 section on background information, there is a  
14 section--there is a business case. Was that down to you to  
15 put together?

16 A. Yes.

17 Q. If you look on page 115 at Decision Sought?

18 A. Um-hmm.

19 Q. And obviously we must remember this is a draft,  
20 but at (c), what's sought is "approval be granted to  
21 execute the project utilizing petty contracts and then the  
22 Ministry of Finance's Project Support Unit assists the  
23 Ministry of Education and Culture with the management of  
24 this project."

25 A. Um-hmm.

1 Q. So this is--before this paper goes to Cabinet in  
2 its final form, it's dated the 19th of January, 2015. But  
3 who came up with the idea of involving the Project Support  
4 Unit?

5 A. Project Support Unit, from the existence, I guess  
6 would provide--

7 Q. You need to speak up a little bit.

8 A. They provided support in a limited sense, they  
9 would normally call and find out what projects we were  
10 doing, when they were starting, and they would perform  
11 duties such as site visits during those projects. Now it's  
12 a more vigorous relationship where they are actually  
13 certifying the works. At the time, they were not  
14 certifying the works.

15 Q. I see.

16 A. So, that's where we would--that's where the  
17 Ministry went and hired an External Project Manager to do  
18 that.

19 Q. But in terms of did somebody tell you we've got  
20 to involve the Project Support Unit, or was that your idea,  
21 or was it a group agreement within the Ministry to do that?

22 A. They pretty much, like I say, in a limited sense,  
23 oversee projects in--throughout Government, in all  
24 Ministries.

25 Q. I see.

1           If you turn up 908, please, Ms Stevens.

2           A.    I'm there.

3           Q.    Thank you.

4           Now, I'm taking you to a part of the Transcript  
5 of your evidence from the last occasion that you were  
6 before the Commissioner, and can you see at line 17, I've  
7 asked this question: "Your evidence is that the 828,000  
8 estimate, which is the estimate that Mr Augustine put in  
9 his document, was based on the use of one contractor; is  
10 that right"?

11           And you answered: "That's correct".

12           And then I asked: "If that's so, why, then, did  
13 the Cabinet Paper say that it was the intention of the  
14 Ministry of Education to use Petty Contracts"?

15           You answered: "The total figure came in, yes,  
16 and then the decision was made to use Petty Contracts and  
17 Work Orders so that simply would have mean that it would  
18 have taken the whole figure, which was the 800,000 plus,  
19 and that would have been divided up as the--between--the  
20 next word is unclear--Orders and Petty Contracts".

21           The Stenographer intervened with a question, and  
22 you then clarified, "between what was Petty Contracts and  
23 what was Work Orders".

24           I then asked this: "I suppose my question is  
25 directed to the quality of information that's been given to

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

8           And you answered: "Yes, and that was understood  
9 that the costs would increase if the 821--820,000 was  
10 divided with several contractors. That was discussed".

11           And I asked: "So, internally within the  
12 Ministry, you were aware that the costs would go over  
13 828,000 if you use Petty Contracts"?

14           And you answered: "That's correct".

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

17           Answer: "It would have been Minister, myself,  
18 Financial and Planning Officer, and Permanent Secretary.  
19 And since we were using SA Architect estimates, I'm  
20 wondering if he was there".

21           And then I said: "I will just recap your answer.  
22 You said that in terms of who was discussing it, it was the  
23 Minister, yourself, Financial Planning Officer, the  
24 Permanent Secretary".

25           And then you said: "I think"--and I then

1 explained that your voice had dropped.

2 I asked: "Did you refer to Mr Augustine'?"

3 And you confirmed that he was present at some  
4 meetings.

5 The impression from that evidence was that at the  
6 time that the estimate was obtained of 828,000, at the time  
7 that the paper was drafted, it was appreciated within the  
8 Ministry that if you use Petty Contracts, you would go over  
9 828,000.

10 A. Yes.

11 Q. And your evidence that you gave on the last  
12 occasion was that that was discussed with the Minister?

13 A. Yes, it was.

14 Q. Now, when Mr Walwyn gave evidence on Monday, he  
15 said that was not his recollection. He said that's your  
16 recollection, it's not his, because he said that neither he  
17 nor the Permanent Secretary would have agreed to the  
18 submission of a paper that quoted a figure of \$828,000 if  
19 the price was going to be different. He said it wouldn't  
20 make sense, and there would be no reason to do that.

21 Is it still your recollection that there was such  
22 discussion?

23 A. Yes, it is.

24 Q. And can you tell the Commissioner a little bit  
25 more about the nature of that discussion?

1           A.     Okay, based on the paper with the Petty  
2 Contracts, the gist of that was we did not know the number  
3 of Petty Contracts or Work Orders that would have been used  
4 at the time. It was to take a look at the \$800,000 and  
5 divide it down into Petty Contracts, yes.

6                     I can't say how much over it would have gone at  
7 that point because we were not aware of how it would be  
8 divided up. I know it was discussed, yes, because we had  
9 several factors to it including why the costs would  
10 increase based on if you were dividing it up among several  
11 different contracts or Work Orders, you would have to be  
12 splitting the cost of the farm work, the cost of the  
13 trucking. Each individual would have to now get those  
14 specific sums in their individual contract or Work Order,  
15 so it was discussed that the costs would increase if we  
16 split it up in huge numbers.

17                    COMMISSIONER HICKINBOTTOM: Just, again, in  
18 fairness to you, Ms Stevens, as well, on page 910, which is  
19 I think probably the page you're on, at line 16.

20                    THE WITNESS: Um-hmm.

21                    COMMISSIONER HICKINBOTTOM: Mr Rawat asked you,  
22 the Ministry would have been very well aware, wouldn't it,  
23 that the cost was going to be substantially over 828,000?

24                    And you said: "The Minister would have been  
25 aware, yes, substantially I can't say, but it would have



1 been aware that it would have increased based on the  
2 individual Bill of Quantities for walls and rails and  
3 painting".

4 But I mean, what you've explained today is that  
5 the increase in costs would depend upon how many contracts  
6 it was put into. It might have been split into two--

7 THE WITNESS: Exactly.

8 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

9 BY MR RAWAT:

10 Q. And I think the thrust of your evidence is that  
11 the more you split it--

12 A. The higher--

13 Q. The higher the costs.

14 A. (Witness nods.)

15 Q. And was that based on previous experience?

16 A. I wouldn't say "yes". I've had projects already  
17 where it was split with Petty Contracts, but I wouldn't say  
18 a significant increase was in that case, no.

19 Q. But what is in the case and what you were aware  
20 of, and this is discussions before Cabinet has made its  
21 Decision, but you were aware that there was a possibility  
22 that the more you divide it up, the more the cost is going  
23 to increase?

24 A. Common sense, yes, that could be, yes.

25 COMMISSIONER HICKINBOTTOM: Because there are

1 bits of the Contract, you mentioned trucking, but there are  
2 bits of works that would have to be done, which would  
3 be--have to be done times the number of contracts.

4 THE WITNESS: Right.

5 COMMISSIONER HICKINBOTTOM: Each contractor would  
6 have had his own trucking element, yes.

7 Okay.

8 BY MR RAWAT:

9 Q. And what you've got is, when we looked at that  
10 draft paper--and we can go back to it, at 115--what you've  
11 got is there are two things that it refers to. The first  
12 is you've got a wish to use the estimate of 828,000, which  
13 is based on one contractor, but you have references  
14 certainly to Petty Contracts. Did anyone, before the paper  
15 left the Ministry, did anyone--Minister, Permanent  
16 Secretary--query the fact that you had an estimate based on  
17 one contractor but a paper that referred to the use of  
18 Petty Contracts?

19 A. Not to my knowledge, no.

20 Q. And the discussions that you were having were  
21 with the Minister?

22 A. Correct.

23 Q. Can you explain why the decision was taken to use  
24 Mr Augustine's estimate? Because it was based on one  
25 contractor.

1           A.     So, it was based on one contractor, and I would  
2 assume that--and bear in mind that, in the initial stage of  
3 acquiring the two estimates, I was not involved, so I'm  
4 not--I wasn't privy to what was discussed in terms of the  
5 Scope of Work, whether it was to just go and measure or...

6           COMMISSIONER HICKINBOTTOM:   Or what?

7           THE WITNESS:   Or whatever.   I was not privy to  
8 that information.

9           So, I would assume that because it was a lower  
10 bid that that would be the cost--

11          COMMISSIONER HICKINBOTTOM:   It was the lower of  
12 the two?

13          THE WITNESS:   The lower of the two.   That would  
14 be the cost of choosing SA Architects.

15          BY MR RAWAT:

16          Q.     And was there a sort of impetus to try and get on  
17 with this Project?

18          A.     Especially, yes, especially in 2014.   It  
19 was--started in December, and that we tried as much as  
20 possible to finish during that break when students were not  
21 on campus.

22          Q.     So, in that December, they would not have been  
23 around?

24          A.     Up until probably within the--before the 15th,  
25 they would have been gone on break, would have been on

1 break.

2 Q. Now, one of the matters that was canvassed with  
3 Mr Walwyn was whether in deciding to do Phase 1, which you  
4 did by Work Orders, there was any consideration of a cost  
5 analysis, so as in looking at whether it would cost more if  
6 you did it with work, 11 Work Orders or one Petty Contract,  
7 for example.

8 Is it customary to do that sort of analysis when  
9 you're deciding whether how to--how to break up a project?

10 A. Let me explain breaking up a project. We might  
11 have, let's take for example, a school, and we might get an  
12 estimate for painting the school, doing roof repairs,  
13 fixing windows, and all of them would form the basis of a  
14 project for repairing the school. If you're going to pick  
15 it apart, let's say one contractor would get the painting,  
16 one contractor would get the roof, one contractor may get  
17 windows and doors, but it all is included in the total  
18 price of that estimate.

19 So, in some instances, it's not that the price  
20 would increase; it would just be those three different  
21 items, let's say equal to \$10, but the roof might have been  
22 seven, the painting might have been three, and so on. So,  
23 in that case it's not necessary that all projects would  
24 increase because you would take it apart.

25 In this case, the difficulty was, although it

1 said "Petty Contracts", the number of Petty Contracts was  
2 not identified at the time of that paper.

3 Q. And that didn't happen until much later in the  
4 process?

5 A. Correct.

6 COMMISSIONER HICKINBOTTOM: I mean, much later in  
7 the process. As we understand the evidence so far, that  
8 the matter went to Cabinet and Cabinet approved Petty  
9 Contracts and possibly Work Orders. That's certainly how  
10 it was construed. And only after that the number of Petty  
11 Contracts was determined.

12 THE WITNESS: Right.

13 But I remember my draft paper did not include  
14 Work Orders or--

15 COMMISSIONER HICKINBOTTOM: Correct.

16 THE WITNESS: --Purchase Orders. That was  
17 changed after it left from the Ministry.

18 BY MR RAWAT:

19 Q. And so, at the time that your draft paper left  
20 the Ministry, your understanding was--would be that Phase 2  
21 was going to be done through Petty Contracts?

22 A. Correct.

23 Q. And so, your assessment of how much over 828 it  
24 might go would have been on the basis of Petty Contracts  
25 rather than Work Orders because, if you have Work Orders as

1 well as Petty Contracts, you've got to be increasing the  
2 number of contractors involved, haven't you?

3 A. Correct.

4 Q. But when you're--so, because you didn't know the  
5 numbers of contractors that might be involved, you didn't  
6 do any kind of cost analysis for Phase 1 or Phase 2; is  
7 that right?

8 A. No.

9 Q. And have you ever done that sort of cost  
10 analysis?

11 A. Not really, no. We normally will get two  
12 estimates from two different surveyors for projects.

13 Q. If you take, for example, Phase 1, you've got 11  
14 Work Orders. It's funded out of the Ministry of  
15 Education's budget.

16 A. Um-hmm.

17 Q. I think you said it was the Minister that decided  
18 to use Work Orders.

19 A. Um-hmm.

20 Q. You need to speak up a bit.

21 A. Yes.

22 Q. At that time, was there any discussion about  
23 whether it might be cheaper to do it by a Petty Contract as  
24 opposed to Work Orders?

25 A. I think the discussion pretty much was centered

1 over Petty Contracts and not a comparison in terms of if it  
2 would have been cheaper or how significant the increase  
3 would have been because, like I say, we still didn't know  
4 how much contractors would be involved in the Project--

5 Q. And that's for Phase 2?

6 A. --because we could do an analysis at any point.

7 Q. That's for Phase 2. When you were setting up on  
8 Phase 1, did you have any discussion about doing Phase 1 by  
9 Petty Contract because it might be cheaper than doing it by  
10 way of 11 Work Orders?

11 A. Not that I can recall, no.

12 Q. If you could turn up page 14, please.

13 A. 14?

14 Q. Yes, please.

15 A. Um-hmm.

16 Q. This is paragraph 51 of the Auditor General's  
17 Report, and this is focusing on Phase 2, so that's building  
18 the rest of the wall around the school.

19 A. Um-hmm.

20 Q. And what the Auditor General records is there was  
21 one variation to the design adopted after the commencement  
22 of the Project. This involved modifying the rear entrance  
23 facing FedEx along the West Exit Gate to Lower Estate  
24 Superette perimeter to accommodate a dropoff area for  
25 school buses. The work was done by one contractor on a

1 Petty Contract, to the cost of about \$53,000, and this  
2 Project amount was accommodated by the Project's approved  
3 contingency estimate of \$75,000.

4 Does that accord with your recollection?

5 A. The lay-by, yes.

6 Q. And so the lay-by was the one change to the  
7 Project?

8 A. Yes, it was.

9 Q. And the cost of it was accommodated within the  
10 contingency that you had for the Project?

11 A. Not within \$251,000.

12 Q. Well, we will come to the \$251,000 in a moment,  
13 if I may. But what seems to be suggested is that on  
14 the-- within the 828 figure, there was a contingency  
15 element, and that contingency element was used to  
16 accommodate paying the lay-by?

17 COMMISSIONER HICKINBOTTOM: We can go back to it,  
18 and it's probably best we do go back to it, but on the  
19 Steve Augustine estimate there was a line for contingency  
20 which was about 10 percent.

21 Can we go back to that, Mr Rawat?

22 MR RAWAT: Yes. I'm trying to find a good  
23 version of it.

24 COMMISSIONER HICKINBOTTOM: A copy?

25 MR RAWAT: Yes.



1           The best one is at page 149.

2           COMMISSIONER HICKINBOTTOM: 149.

3           MR RAWAT: In fact, at 150, please, line 11.

4           COMMISSIONER HICKINBOTTOM: So, I couldn't have  
5 done the math, but the 828,000 is 752,000 with an extra  
6 10 percent for contingency.

7           THE WITNESS: Um-hmm.

8           COMMISSIONER HICKINBOTTOM: And so the Auditor  
9 General's Report said that the lay-by came out of that  
10 contingency?

11          THE WITNESS: I don't know if I can put it that  
12 it came from that contingency.

13          COMMISSIONER HICKINBOTTOM: Can I put it this  
14 way, which is a different way: We've got--we've got the  
15 estimate here.

16          THE WITNESS: Um-hmm.

17          COMMISSIONER HICKINBOTTOM: The lay-by wasn't  
18 included as a specific item in the estimate.

19          THE WITNESS: Right.

20          COMMISSIONER HICKINBOTTOM: Were any further  
21 funds sought for the lay-by, over and above the funds that  
22 had been allocated, granted by the--by Cabinet in the 828?  
23 So, was there any more funds that were used in respect to  
24 the lay-by?

25          THE WITNESS: I would safely have to pose that

1 question over to my STO. One, I was--when that lay-by was  
2 discussed or even constructed, that was during the time  
3 when I was in training in the UK. So, when I came back, I  
4 then picked up the figure on my spreadsheet that the lay-by  
5 was already done, so that's why I can't safely say that it  
6 came out of the contingency--

7 COMMISSIONER HICKINBOTTOM: Or whether there were  
8 further funds from somewhere?

9 THE WITNESS: Yes.

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

12 BY MR RAWAT:

13 Q. This--so, what we've got at moment is you've got  
14 a wall being built, and once the Project gets started, a  
15 lay-by being introduced. Was there other work  
16 contemplated?

17 A. Not based on the figure for the perimeter wall,  
18 but other works were contemplated in the fact that we were  
19 looking at an entire Master Plan for the site, and a  
20 separation of the junior and the senior school. But other  
21 works were being contemplated, yes.

22 COMMISSIONER HICKINBOTTOM: But in respect--I'm  
23 sorry, Mr Rawat, but in respect to the Wall Project--

24 THE WITNESS: Um-hmm.

25 COMMISSIONER HICKINBOTTOM: --were there any--

1 THE WITNESS: In respect to the Wall Project, we  
2 also would have been looking at the entrances.

3 COMMISSIONER HICKINBOTTOM: Okay.

4 THE WITNESS: And that would have been the  
5 entrance at the western side that we identified in terms of  
6 making it wider so that vehicular traffic would have a more  
7 comfortable time turning into that entrance. And we also  
8 looked at the entrance at the front of the school, where  
9 the House of Assembly building is, and that was discussed.  
10 But in terms of that cost or works with those entrances  
11 being in the 800-something thousand, no, that was not  
12 included.

13 BY MR RAWAT:

14 Q. The additional works that fell outside the  
15 original plan--

16 A. Um-hmm.

17 Q. --you have spoken of changes to gates. How was  
18 that going to be funded?

19 A. It was not included here, so it would have been  
20 the Minister asking for money in his budget, maybe the next  
21 year or whatever, to fund those.

22 Q. You can help with--I mean, in terms of the actual  
23 physical construction of the wall--

24 A. Um-hmm.

25 Q. --until works were stopped, how much of 2015 did

1 this occupy as a project?

2 A. The wall?

3 Q. Yes.

4 A. In terms of time?

5 Q. Yes.

6 You've got--the Cabinet said "yes" in  
7 February 2015.

8 A. Um-hmm.

9 Q. And then you obviously had to start the Project,  
10 recruit contractors, and get on with it.

11 A. Right. So, it immediately began. It went  
12 through--all the way up through August or--it was beyond  
13 August. I came back in September. And if my memory serves  
14 me right, by the time I came back, Treasury, I think, had  
15 put, pretty much, payments on hold, and that would have  
16 been until the official memorandum came from the Ministry  
17 of Finance stopping all projects.

18 Q. I see.

19 And so, was the plan the additional works, the  
20 beginning, if you like, of the Master Plan to transform the  
21 school, was the anticipation that that would have to come  
22 out of the 2016 budget?

23 A. Or beyond, yes.

24 COMMISSIONER HICKINBOTTOM: When you--when you  
25 say that when you came back, payments were on hold, is this

1 right--tell me if it's not right--the 828,000 you had--

2 THE WITNESS: Correct.

3 COMMISSIONER HICKINBOTTOM: --and so, no stop was  
4 made on the 828,000; is that right?

5 THE WITNESS: No.

6 COMMISSIONER HICKINBOTTOM: It was getting more  
7 money over the 828--

8 THE WITNESS: No. When I say payments were on  
9 hold, I think, through the entire system.

10 COMMISSIONER HICKINBOTTOM: So, even payments  
11 that may have come out of the 828,000 were stopped?

12 THE WITNESS: At that time, pretty much all of  
13 the payments were made to the contractors on the wall.

14 COMMISSIONER HICKINBOTTOM: So, it had all gone?

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: The 838,000 was gone?

17 THE WITNESS: It was already over 828,000.

18 COMMISSIONER HICKINBOTTOM: Yeah. So, it doesn't  
19 matter which way you look at it. the money would have been  
20 additional money over the 828,000, and that's what had been  
21 stopped? That was stopped?

22 THE WITNESS: Clarify that again.

23 COMMISSIONER HICKINBOTTOM: Sorry?

24 THE WITNESS: Can you--

25 COMMISSIONER HICKINBOTTOM: Yes.

1           So, the 828,000 had actually been spent, that had  
2 been paid out.

3           THE WITNESS: Right.

4           COMMISSIONER HICKINBOTTOM: And so, when you came  
5 back, whether it was payments of allocated money or  
6 non-allocated money, you couldn't go over--you couldn't get  
7 any more money?

8           THE WITNESS: No.

9           COMMISSIONER HICKINBOTTOM: Because the 828,000  
10 had gone and there was a stop.

11          THE WITNESS: Yes.

12          COMMISSIONER HICKINBOTTOM: I understand that.  
13 Thank you very much.

14          BY MR RAWAT:

15          Q. Could I just move on to another topic, please,  
16 Ms Stevens, and that's how the contractors were selected.

17          A. Okay.

18          Q. So, the draft paper goes in. I think, on the  
19 last occasion, you said that once you drafted it, it would  
20 have gone to the Permanent Secretary and the Minister.

21          A. Yes.

22          Q. And then it would go to the Ministry of Finance?

23          A. Yes.

24          Q. And at that point, that's the last involvement  
25 you have with this paper?

1 A. Yes, sir.

2 Q. And then Cabinet makes a decision. In the  
3 Ministry of Education, do you receive a memorandum that  
4 tells you what the decision is?

5 A. Yes.

6 Q. And the decision, we've seen the wording, it's  
7 "Petty Contracts and different suppliers and contractors".

8 And what then happened, of course, that was  
9 contractors were selected.

10 A. Um-hmm.

11 Q. You explained, when you last gave evidence, that  
12 you had no involvement in that process; is that right?

13 A. That's right.

14 Q. But just--I mean, what information, if any, did  
15 you give the Minister when it came time to choose the  
16 contractors?

17 A. What information in terms of which  
18 contractor--which contractor?

19 Q. Did you give him any information in relation to  
20 the Project when it came time to choose the contractor?

21 A. At that point--I'm trying to remember the steps.

22 I think, at that point, we would have named the  
23 sides for the wall to be constructed, so the sides would  
24 have been from Bobby's to Beamish, or Bobby's to Evans, and  
25 Mr Augustine would have then separated those lengths into

1 sections. So, what I did was created a spreadsheet to show  
2 how many sections would be along a particular length,  
3 and--or--I'm not sure if that spreadsheet was given to the  
4 Minister or it was verbally that they had 10 sections on  
5 this length, so he would give 10 names, the 10 sections.

6 COMMISSIONER HICKINBOTTOM: Again, sorry to  
7 interrupt. I understand that evidence. The Cabinet  
8 Decision didn't mention numbers of contractors.

9 THE WITNESS: No.

10 COMMISSIONER HICKINBOTTOM: I mean, it was just  
11 Petty Contracts and Works Orders.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: So, you may not know  
14 the answer to this, but you say you had no involvement in  
15 selection of the contractors. Did you have any involvement  
16 in identifying the number of contractors? Because, just  
17 mathematically, the whole project could have been done  
18 using nine Petty Contracts, nine contracts under \$100,000.  
19 In fact, it used whatever it was, 69, I think, altogether.  
20 But did you have any part to play in that?

21 THE WITNESS: Not in the numbers, no. Like I  
22 said, the lengths were divided into the sections. And from  
23 my standpoint, I knew there were 10 sections along this  
24 length, and that was it.

25 COMMISSIONER HICKINBOTTOM: So, the whole wall,



1 eventually, was divided into sections? I think the wall  
2 was in three section, but--

3 THE WITNESS: Different areas.

4 COMMISSIONER HICKINBOTTOM: Different areas.

5 THE WITNESS: Right.

6 COMMISSIONER HICKINBOTTOM: And then each area  
7 was divided up into sections of wall.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: And so, everybody  
10 would know, then, the number of sections. And then the  
11 contractors were identified, but you had no part in that.

12 THE WITNESS: Not in identifying the contractors,  
13 no.

14 COMMISSIONER HICKINBOTTOM: Great. Thank you.

15 BY MR RAWAT:

16 Q. And once the Minister has given you the names of  
17 the contractors, as Mr Walwyn said, it was down to him to  
18 select the contractors?

19 A. Um-hmm.

20 Q. What do you do then?

21 A. We would have given the contractors, if they were  
22 getting one piece or five piece or however much, it was my  
23 duty then to contact the contractors. If it was in the  
24 form of a Petty Contract, they were advised they were  
25 required to produce trade licence in good standings. And

1 if it was in case of one section, which was--which would  
2 have been a Work Order, they were not required to produce  
3 them to the Ministry. The contract--once the documents  
4 were in, the contracts would be signed, the Work Orders  
5 were then signed by the contractor and the Permanent  
6 Secretary, and we had several meetings with them on-site.  
7 We detailed the specifications of the Bill of Quantities  
8 for each contractor, and they would begin to work from  
9 there.

10 Q. So, do you have--is it within your role to tell  
11 the Minister "you can't give part of this Project to this  
12 Contractor"?

13 A. Yes, I could have made recommendations based on  
14 prior knowledge of subcontractors.

15 Q. Even after he had selected them?

16 A. Yes.

17 Q. And did that happen in this case?

18 A. I think it happened probably in maybe one or  
19 two--not many, not many of the contractors.

20 Q. And where would you have said "I don't recommend  
21 you use this Contractor"?

22 A. I would have raised that issue if I knew  
23 something from the past, yes.

24 Q. And would that have just come from information  
25 you'd have gathered yourself from the past, your own

1 experience?

2 A. Yes.

3 Q. Not from any records that the Ministry  
4 maintained?

5 A. None, no.

6 Q. Does the term "contract-splitting" mean anything  
7 to you?

8 A. Yes.

9 Q. What does it mean?

10 A. Where you would take a project and split it among  
11 many contractors.

12 Q. And it was a term that you were familiar with  
13 before 2014-2015, when you were dealing with the Wall  
14 Project?

15 A. I wouldn't put a time frame on it, but I can't  
16 say when I was introduced to the term, no.

17 Q. Can you say who introduced you to the term?

18 A. It could have been the STO in terms of the  
19 Regulation.

20 Q. Your voice is dropping.

21 A. It could have been the STO or it could have been  
22 somebody from finance in terms of dealing with the  
23 financial regulations.

24 Q. And so, this was a term that other Public  
25 Officers would have used in conversation with you?

1 A. Yeah. Yes.

2 Q. Do you remember ever discussing  
3 contract-splitting with the Minister and using the term  
4 "contract-splitting"?

5 A. I can't recall if the exact term was used, but I  
6 would say "yes," in terms of maybe how works are being  
7 split up on one particular project, yeah, but I don't  
8 recall if it was the exact term that I used.

9 Q. But it was--the act was--

10 A. Pretty much, yes.

11 Q. Yes.

12 In your experience, Ms Stevens, was it common for  
13 a project the size of Phase 1, which--what Phase 1 ended up  
14 being was a 120-foot wall. Was it common for a project of  
15 that size and that cost, 96,000, to be done by way of Work  
16 Orders?

17 A. I can't--no.

18 Q. In relation to Phase 2, you've got a wall where  
19 your starting estimate is 828,000.

20 A. Um-hmm.

21 Q. In your experience, is that the kind of project  
22 that utilizes Work Orders?

23 A. No.

24 Q. As in, no, it's not the kind of project that  
25 utilize--

1           A.    It's not on most projects, no.  That was the  
2 first project that I had so many Work Orders.

3           Q.    So, I think the information we have is 64 Work  
4 Orders and 15 Petty Contracts, and that wasn't something  
5 that you'd encountered before?

6           A.    No.  Not that many, no.

7           Q.    And from your perspective as Internal Project  
8 Manager, was it more difficult to have to deal with that  
9 number of contractors?

10          A.    Of course it was.

11          Q.    And what kind of particular difficulties did you  
12 experience?

13          A.    You would have had 64 different contractors.  All  
14 64 had not been on the Project at the same time, but you  
15 would have had a number of contractors plus their workmen  
16 on the Project at the same time, so you were pretty much  
17 going from one site to the next, working out issues with  
18 different contractors, keeping track of all the different  
19 sections, so it was difficult.

20          Q.    You've touched on this, but I just to want to  
21 clarify this.  My recollection of your evidence on the last  
22 occasion--and I think you've said it again today--was that,  
23 as Internal Project Manager, part of your role does  
24 involve, where someone has a Petty Contract, checking they  
25 produce the right documents?

1 A. Yes.

2 Q. And is this right, that your understanding is  
3 that, as a matter of practice, there is--if you're engaging  
4 someone on the basis of a Work Order, you do not--they do  
5 not have to produce a trade licence to you?

6 A. That's correct.

7 Q. They didn't have to produce any documents to you  
8 at all?

9 A. No.

10 Q. And so--and has that--I think you have been--you  
11 have taken on the role of Internal Project Manager since  
12 2012.

13 A. Um-hmm.

14 Q. But, in your time, either completely in Public  
15 Service or certainly since being an Internal Project  
16 Manager, has that always been the practice?

17 A. Yes, up until today. If it's a Work Order, we  
18 don't require them to produce trade licence or good  
19 standings.

20 Q. And how did you come to know of that practice?

21 A. Internal training.

22 Q. So, it's common knowledge within the Ministry?

23 A. It is, yes.

24 Q. For any Work Order you don't require any  
25 documents?

1           A.    No.   Some Work Orders may require an invoice to  
2 go along with the Work Order, but not in terms of a trade  
3 licence or good standings.

4           Q.    And so, giving an assessment of qualities of work  
5 that someone might be able to do that has been handed a  
6 Work Order, would, if we use the Wall Project as an  
7 example, that would depend on your past knowledge, wouldn't  
8 it?

9           A.    Correct.

10          Q.    Because you wouldn't be advised to check whether  
11 they have a constructor's licence or anything?

12          A.    No.

13          Q.    But if, for example, from past experience, you  
14 thought "that person that has just been allocated a Work  
15 Order didn't do a very good job; I will raise that".

16          A.    Um-hmm.

17          Q.    But it's just dependent on you having that  
18 knowledge, isn't it?

19          A.    Yes.

20          Q.    Well, aside from yourself in your job as Internal  
21 Project Manager, was there anyone else who was responsible  
22 for checking the contractors' credentials?

23          A.    If--in my absence, I would say, our Accounts team  
24 would prepare the contracts. If, in my absence, one of the  
25 employees in the unit could have done the same thing.

1 COMMISSIONER HICKINBOTTOM: But they're just  
2 standing in your shoes, if you're not there.

3 THE WITNESS: Pretty much, yes.

4 COMMISSIONER HICKINBOTTOM: I see that. Thank  
5 you.

6 BY MR RAWAT:

7 Q. But--I mean, obviously, by the time you went off  
8 to the UK, probably all the contractors had come on board,  
9 had they?

10 A. Not all of them. There would have been some that  
11 would have been processed during my absence. Before I left  
12 to go for the training, I turned my--I turned that Project  
13 in terms of preparing the contracts, preparing the Work  
14 Orders, that was turned over to one of the Accounts Unit,  
15 yes.

16 Q. In terms of Mr Augustine's role--

17 A. Um-hmm.

18 Q. He's the External Consultant?

19 A. Um-hmm.

20 Q. He has the construction experience?

21 A. Correct.

22 Q. Was there any expectation placed on him to check  
23 the credentials of individual contractors?

24 A. No. That was the internal process.

25 Q. I see. Did you--did the Ministry place any



1 obligation on him to ensure that Contractors could do the  
2 work that they had been asked to do?

3 A. Well, in his project management duties, that  
4 would have been covered. That was his job to ensure that  
5 they were doing their works in accordance with the--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: So the--

8 A. --and to his satisfaction.

9 COMMISSIONER HICKINBOTTOM: So, he was primarily  
10 on-site to make sure the contractor on the part of the wall  
11 was doing it properly.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: Thank you.

14 MR RAWAT: Commissioner, I have reached the end  
15 of my questions. Can I conclude by thanking Ms Stevens for  
16 making time for the Commission, and also for the assistance  
17 that she's given today.

18 THE WITNESS: Thank you.

19 COMMISSIONER HICKINBOTTOM: Thank you very much,  
20 Ms Stevens. Thank you again for coming in with very little  
21 notice, and thank you for your evidence, which has been  
22 very helpful.

23 I think what we will do is I will rise for five  
24 minutes. We will stop for five minutes so that a number of  
25 things can happen. The Stenographer needs a break, in any

1 event, but we can then also prepare for the next witness.

2 MR RAWAT: Thank you.

3 COMMISSIONER HICKINBOTTOM: Thanks very much.

4 THE WITNESS: Thank you.

5 COMMISSIONER HICKINBOTTOM: And go or stay as you  
6 wish to do.

7 THE WITNESS: Thank you.

8 (Witness steps down.)

9 (Recess.)

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Session 3

COMMISSIONER HICKINBOTTOM: Good. Thank you. I think we're ready to resume.

Mr Rawat.

MR RAWAT: Thank you, Commissioner.

Our next witness is Carleen Jovita Scatliffe.

BY MR RAWAT:

Q. Ms Scatliffe, thank you for coming and again, thank you very much for coming at short notice as well. Again, you have already given evidence, so there is no need to ask you to affirm or take an oath again.

You will see that the bundle's there. As I asked Ms Stevens, could I ask you just remember to keep your voice up.

A. Sure.

Q. Thank you.

Now, at the time of the building of the School Wall, you were a Financial and Planning Officer in the Ministry of Education?

A. That's correct.

Q. I think from memory, you moved into that role in 2014; is that right?

A. I became--I became confirmed in the role. I was in the Ministry from 2011. I was acting but became confirmed in 2014.

1 Q. Thank you.

2 As Financial and Planning Officer, what are your  
3 lines of reporting?

4 A. To the Permanent Secretary and the Financial  
5 Secretary.

6 Q. So, you've got two lines of--

7 A. That's correct.

8 Q. --of reporting?

9 In terms of reporting to the Financial Secretary,  
10 what sort of areas do you have to report to the Financial  
11 Secretary on?

12 A. Well, we haven't really had to report to him like  
13 that because, before they used to keep Financial and  
14 Planning Officer meetings, but then they stopped, so it's  
15 not something that we do regular, so--sorry--

16 (Overlapping speakers.)

17 A. You have discussions with him if something--we  
18 need additional funding or if something is not going  
19 correctly because we have discussion with him, but it's not  
20 something that happened regularly.

21 Q. So, on a daily basis it would be the Permanent  
22 Secretary?

23 A. Permanent Secretary, correct.

24 Q. But you would go to the Financial Secretary if  
25 there was an issue with--

1 A. Correct.

2 Q. --with the Ministry's budget?

3 A. Correct.

4 Q. Would it be right to say that part of your job  
5 was just overseeing the Ministry's budget?

6 A. Correct.

7 Q. If you take that bundle now, please, and just  
8 turn to page--I think it's page 18. This is part of the  
9 Auditor General's Report that I've already shown  
10 Ms Stevens, and it's a section that deals with what we've  
11 called "Phase 1", which was the 2014 build of the school.

12 A. Um-hmm.

13 Q. Which was costed by Mr Augustine on the basis of  
14 180-foot block wall at \$156,000 but what was spent or paid  
15 for was 120-foot wall, and the total spending in 2014 was  
16 \$96,000, just over \$96,000.

17 Now, that phase was funded from existing monies  
18 within the Ministry's budget; is that right?

19 A. That's correct.

20 Q. And were you at that time, December 2014, is that  
21 the end of the Fiscal Year for you?

22 A. That's correct.

23 Q. And you can see, if you look at paragraph 91 in  
24 particular, the execution of the 2014 works was scaled back  
25 from 180 feet to 120 feet.

1 Do you remember why the work was scaled back?

2 A. I am not sure why it was scaled back, but I could  
3 remember, I believe, that there was only a little bit over  
4 \$100,000 in the budget. I don't think we had that much  
5 money to do the whole 180 feet at the time, to my  
6 recollection.

7 Q. Sorry to interrupt you. You finish, please.

8 A. To my recollection, I don't think we had enough  
9 money to complete the 180.

10 Q. Were you involved in any discussions about what  
11 would happen next, once it was discovered that you had just  
12 a little over 100,000 and not the full 156?

13 A. I can't remember being in any further discussion.

14 Q. Now, if you turn up--and I'm taking you right  
15 towards the other end of the bundle, page 950, please. If  
16 you look at line 17, please, Ms Scatliffe, I'm taking you  
17 to the Transcript of the evidence you gave when you last  
18 gave evidence to the Commissioner, which was on the same  
19 day as Ms Stevens, and this is a part of it.

20 I asked you this: "And at the start of Phase 2,  
21 the phase that the Cabinet approved, it was going to be  
22 costed at--well, it was costed at \$828,000. As the work  
23 moved on and the costs increased, what impact did that have  
24 on the Ministry's budget"?

25 And your answer was: "Well, it had a huge impact

1 on the Ministry's budget because I had to request an  
2 additional \$250,000 to complete the work".

3 I then asked: "Where did you make that request  
4 to".

5 And you answered: "The Ministry of Finance".

6 And I asked: "And were you anticipating having  
7 to make that request"?

8 You said: "No. I did not anticipate that".

9 My question was: "So, when that work started,  
10 were you as Finance and Planning Officer expecting to have  
11 to find \$828,000"?

12 You said: "Correct".

13 And then I asked: "But then as it went on, did  
14 you have to move money from other projects or to pay the  
15 bills"?

16 You said: "No, it had some funds in there that  
17 could cover the overage of up the nine and change but then  
18 we needed an additional 250. And that was requested from  
19 the Ministry of Finance".

20 I then asked you to repeat your answer because  
21 you were giving evidence remotely, and your voice dropped,  
22 and you then answered this: "In the Ministry's head 325,  
23 which I'm not sure of the number right now, there was  
24 sufficient funds to cover up to \$900,000 and something  
25 before it was stopped".

1 "I see".

2 So, I then took you to a page in the bundle we  
3 were using and showed you a paragraph which referred to  
4 head 325, subhead 3250102. I asked: "You had sufficient  
5 funds to pay for the cost overrun of the Project"?

6 You said: "Right".

7 And I then asked: "But there came a point where  
8 you had to request \$250,000 from the Ministry of Finance"?

9 You said: "Correct".

10 I then asked: "Can you remember at what point  
11 you had to do that"?

12 And your answer was: "Towards the end of 2015".

13 And we then asked you how the process worked, and  
14 you explained that you fill out a schedule of additional  
15 provision form created by the Ministry of Finance, which is  
16 signed by the Permanent Secretary and the Head of the  
17 Department, which is a Department other than the Ministry  
18 and the Minister. And then it's forwarded to the Ministry  
19 of Finance for their approval or to the Minister of Finance  
20 for his final approval.

21 And that's just reminding you of some of your  
22 evidence. When you were requested that \$250,000, were you  
23 told what it was intended for?

24 A. It was for--to finish the wall.

25 Q. If I take you, please, to page 14, this is back



1 to the Auditor General's Report, and you will see on this  
2 page that the Auditor General deals with the wall taken in  
3 three areas, so there is area one from west exit gate to  
4 Lower Estate Superette, and then at 55, the Report records  
5 that the Ministry estimates that an amount of just over  
6 102,000, \$102,000 will be needed to complete the work in  
7 that area.

8 Area two, which is recorded as Bobby's Cineplex  
9 to Evans House. At 59, it's recorded that the Ministry's  
10 estimate to complete this area is just over \$60,000.

11 And if you go over the next page, the Report then  
12 turns to area three, Lower Estate Superette to Evans House.

13 And at 63, it records that the Ministry has  
14 estimated the cost to complete this area at \$89,000.

15 And at 64, it records, in total, the Ministry  
16 estimates that an amount of \$251,411.05 is needed for  
17 completion of the entire perimeter wall project.

18 Were you involved at all in providing those  
19 estimates to the Auditor General?

20 A. No, sir.

21 Q. But does that accord with your recollection of  
22 needing to request \$250,000 for completing the wall?

23 A. I don't know about the actual areas. I just know  
24 I got an amount saying that this is the amount that we  
25 needed, 251,000, but there was enough to cover the 1,000,

1 so I only requested the 250.

2 Q. I see.

3 And in terms of making that request, you've  
4 explained about the schedule of additional provision. Is  
5 it a request that just goes to the Minister of Finance, or  
6 does it have to go back to Cabinet?

7 A. Well, in this case, I requested the money, that  
8 didn't have to go back to finance, but I wanted them to go  
9 back to--not finance. Sorry. I wanted them to go back to  
10 Cabinet to get approval on this amount because we already  
11 expended the 828.

12 So, in order to spend this amount, which was  
13 already approved, we needed to go back to Cabinet because  
14 now we're over the 820,000 that we said the wall would  
15 cost, so we needed Cabinet approval to spend the 250, but  
16 the 250 didn't have to go back to Cabinet. So now, when  
17 the Cabinet Paper is written, we would say that we already  
18 had the money because it was already approved, but we need  
19 approval now to continue because we're now over the  
20 original amount.

21 Q. I see.

22 Could you turn to page 26, please. This is a  
23 sort of summary of the costings that have been prepared by  
24 the--or is prepared by the Auditor General's team which is  
25 included in the Report, and so you have at the first line

1 the estimate approved by Cabinet just over \$828,000.

2 The total cost of the wall to date, which is  
3 given as \$914,971.61.

4 And then at the bottom, the total estimate for  
5 the remaining wall is 251,000.

6 So, before requesting the 251,000, on this table,  
7 the Ministry had already spent close to over an extra  
8 100,000.

9 Do you remember having to allocate extra funds  
10 from the Ministry's budget to the Wall Project?

11 A. No, we did not. Only the 250,000.

12 Q. All right. So, you spent up to 828, and then you  
13 put in a request?

14 A. No. We spent up to the 914 because it had  
15 additional money in the head, because it was not just the  
16 828, it had additional funding there because the head was  
17 not just for Elmore Stoutt High School, it was the  
18 secondary school, so it had money in there to cover other  
19 works if we needed to do works at other secondary school.  
20 So, there was funding there.

21 The only additional funding we needed was the  
22 250,000 to complete the balance of the wall.

23 Q. I see.

24 So, you had a head in your budget which allowed  
25 you to spend on projects for secondary schools?

1 A. Yes.

2 Q. And from that head, you took the 828. And as it  
3 went over the budget, you had enough to go up to 914?

4 A. Correct.

5 Q. But once you hit 914--\$914,000, that was the  
6 point where you had to go back to Cabinet or back to the  
7 Ministry of Finance--

8 A. Right.

9 Q. --to ask for an extra 250?

10 A. Correct.

11 Q. But by then, that was about the time that there  
12 was this stop put on all works?

13 A. There was--it was two things happened in 2015. I  
14 think it was late August-September that the Accountant  
15 General put a freeze on spending, so all the payments and  
16 whatever had to be done through the Ministry of Finance.  
17 We had to go to the Ministry of Finance to do processing of  
18 vouchers and everything. Those were sent to Treasury. It  
19 wasn't really a stop that Treasury put on it. They just  
20 minimized the amount of spending, so some stuff was just,  
21 you know--how shall I put it?--we wasn't spending like  
22 before because they had kind of like a "freeze" on it, for  
23 lack of a better word.

24 And then later in the day, the Ministry of  
25 Finance put a hold on projects. I don't know if it's

1 because they had a cash flow problem and it led up to the  
2 actual hold on projects but that's what happened.

3 Q. I see.

4 But by then anyway, you needed extra money?

5 A. Yes, I requested--requested the extra funding.

6 Q. But that money didn't come through?

7 A. The money came through, the money was approved.

8 Q. I see.

9 A. But the balance of the project was not approved  
10 because we already spent 828,000, we need Cabinet approval  
11 now to say that okay, we're over the 828 that we originally  
12 said that the Project cost, so I need approval now from  
13 Cabinet to finish the works. The funding was there, but  
14 the Cabinet approval was not there.

15 Q. I see.

16 So, it's almost two processes?

17 A. In this case, yes.

18 Q. You put in your schedule for additional  
19 provision?

20 A. Just waiting for them to do additional Cabinet  
21 Paper to get the approval to move on with the...

22 Q. So, the \$251,000 was sitting in your--in the  
23 head?

24 A. Correct.

25 Q. But you couldn't spend it until Cabinet

1 approved--

2 A. Correct.

3 Q. --pending completing of the works on the wall?

4 A. Correct.

5 Q. This is a question I asked Ms Stevens, but does  
6 the term "contract-splitting" mean anything to you?

7 A. Yes, it does.

8 Q. And what does it mean?

9 A. Contract-splitting, to me, it means two things.  
10 It means that you're either splitting a Major Contract into  
11 Petty Contract amounts or you're splitting a Petty Contract  
12 into Work Order amounts.

13 Q. And prior to 2014 when the School Wall Project  
14 started, had you encountered contract-splitting?

15 A. They did never really look at contract-splitting.  
16 I think contract-splitting came into effect when they  
17 signed--I can't remember the name of the document, in 2012.  
18 April of 2012 is when it came into effect. But I don't  
19 think the Government actually has a set definition of  
20 "contract-splitting" because one person might say so, what  
21 I'm saying they might not agree to what I'm saying. So,  
22 there is nothing in law across the board to say, okay, this  
23 is contract-splitting.

24 Q. But is it a term that you were familiar with--

25 A. Yes.

1 Q. --in conversation within the Ministry?

2 A. Um-hmm.

3 Q. And with what other Public Officers--

4 A. It's--I don't know that it's--in the Ministry,  
5 actually had conversations, maybe one or two conversations,  
6 I'm not sure, but nothing in depth, like that.

7 Q. But in this case, you've got two phases to the  
8 School Wall Project. Were you involved at all--I think I'm  
9 just confirming your evidence you gave on the last  
10 occasion. You had no involvement at all in deciding  
11 whether Phase 1 would be done by way of a Petty Contract or  
12 Work Order?

13 A. No, sir.

14 Q. Is that something that just doesn't fall within  
15 your role as Finance and Planning Officer?

16 A. No, sir.

17 Q. And in terms of Phase 2, did your role at all  
18 involve advising whether to do it by way of Petty Contract  
19 or Work Orders?

20 A. No, hm-umm.

21 Q. And you have spoken of your familiarity with the  
22 term "contract-splitting". Remind me, where did you learn  
23 that term from?

24 A. I really don't know. I don't recall where I  
25 learned it from. I think it's common sense to me.

1           COMMISSIONER HICKINBOTTOM: I mean, you just  
2 heard it from conversations with people? There was no sort  
3 of--

4           THE WITNESS: Yeah, but that's my definition. My  
5 definition is that, that's my definition. Like I say, I  
6 don't think there's a set definition--

7           COMMISSIONER HICKINBOTTOM: This is a term you've  
8 heard being used by other Public Officials.

9           THE WITNESS: Yeah.

10          COMMISSIONER HICKINBOTTOM: Yes?

11          THE WITNESS: Um-hmm.

12          BY MR RAWAT:

13          Q. And you've got obviously Phase 1 as a project  
14 cost that what you paid out on it was \$96,000, the first  
15 part of the role in 2014.

16          A. Okay.

17          Q. Was it common in your experience for a project  
18 costing \$96,000 to be done by way of Work Orders?

19          A. No. No, sir.

20          Q. It wasn't something you had encountered before?

21          A. Not in so many Work Orders, no.

22          Q. And if you take Phase 2, you're now--from your  
23 perspective as Financial and Planning Officer, you're  
24 expecting to spend \$828,000.

25          A. Correct.



1 Q. It was done by way of 64 Work Orders and 15 Petty  
2 Contracts. In your experience, was a project of that size,  
3 was it common to do it by way of so many Work Orders?

4 A. Never done it before.

5 Q. How--if you've had experience of dealing with a  
6 project of that size before, how was it usually done?

7 A. I never had experience, but it would either be  
8 done by tendering or, if you break it up, it wouldn't be  
9 that much Work Orders or Petty Contract. Maybe each  
10 segment, like from one segment to the other segment, that  
11 would probably be one Petty Contract or something like  
12 that.

13 Q. As--I mean, as Financial and Planning Officer,  
14 was it within the role that you have to advise the Minister  
15 as how to deploy contracts? I mean, could you have advised  
16 him that it was unusual to have done it in this way?

17 A. Yes, I could have, but I don't think I did since  
18 we had the Cabinet approval, and it was at his discretion  
19 to use how much. I don't recall having that discussion  
20 with him.

21 Q. I think, on the last occasion you gave evidence,  
22 you explained that you wouldn't actually see the Cabinet  
23 Decision per se?

24 A. No. It will come from the Ministry of Finance.

25 Q. Your recollection was that you were told by the

1 Minister that this would be done by way of Petty Contracts  
2 and Work Orders?

3 A. Actually, that comes from--the Ministry of  
4 Finance mirrors the actual decision. So, it was stated,  
5 the actual decision, in the Petty Contract, Work Orders,  
6 and whatever.

7 Q. Now, one of the questions that we explored with  
8 Mr Walwyn was the use of cost analysis. So, you've heard  
9 Ms Stevens's evidence that if you divide up a contract or  
10 divide up a project, there is a chance that the costs will  
11 increase. Was that something that you were aware of, that  
12 that possibility exists?

13 A. Yes, that's something I'm aware of. But like  
14 we--we never thought it would be involving so many pieces.  
15 And when it was divided, there was never a bottom line.  
16 So, it was just divided in segments, but there was never a  
17 total or whatever to see. So, now, when you look at it,  
18 you think that it will go back to the 828. But if you  
19 actually did the calculation, which I didn't do at the  
20 time, it will give you the true--it will give you the true  
21 picture.

22 Q. But--and it was ultimately--was it ultimately the  
23 decision of the Minister as to how it was to be divided up,  
24 and whether to use X number of Petty Contracts--

25 A. Yes.

1 Q. --or--

2 A. Yes, that was the Minister's Decision. Yes.

3 Q. You said you never totaled it up. But when  
4 you're considering a tender waiver, which is what the  
5 Ministry applied to Cabinet for--

6 A. Um-hmm.

7 Q. --is it the practice within the Ministry, or any  
8 Ministry, to do a cost analysis to see whether, if you--if  
9 you don't go by way of a tender, your costs might increase?

10 A. To be honest with you, no, I don't recall ever  
11 doing that because this Project--this Project was special.  
12 This Project--never done a project like this before with so  
13 many, so that was the first--that was a first for us doing  
14 a project with so many contractors, so that was not done.

15 Q. Ms Stevens's evidence was that she was involved  
16 in the Technical School Project beforehand.

17 A. That was tendered.

18 Q. That was tendered?

19 A. Yes.

20 Q. And so, were you involved in that Project as  
21 Financial and Planning Officer?

22 A. Yes.

23 Q. And what was your role in that Project?

24 A. Just making sure the funding was in the budget  
25 and whatever. But that's one of the Projects that we

1 actually had a cost--I don't know if it was from Public  
2 Works or somewhere. She actually had a BQ to compare. And  
3 that one, it was over the figure that Public Works granted.  
4 So, even though it went out to tender, it came in higher.  
5 It came in higher than Public Works estimate.

6 Q. I see.

7 So, in that Project, the Technical School, can  
8 you remind us when the Technical School, when that Project  
9 come online?

10 A. I think 2014, 2013-2014.

11 Q. So, just within the year before you did the  
12 School Wall?

13 A. Correct, um-hmm.

14 Q. So, in that Project, you had, obviously, a tender  
15 process and a Bill of Quantities by the successful  
16 tenderer. But you also had a Bill of Quantities from  
17 Public Works?

18 A. I'm not sure it was Public Works, but we did have  
19 a Bill of Quantity.

20 Q. From a government body?

21 A. Um-hmm.

22 Q. I see.

23 Just give me one moment, please.

24 A. Okay.

25 Q. Just taking you back to the point you made about

1 the fact that there wasn't a total bill, what it was all  
2 going to cost, if you look at page 11, please. You see  
3 there that, if you look at Table 2--we're back in the  
4 Auditor General's Report. But in Table 2, the Auditor  
5 General breaks down the various components of the approved  
6 estimate of 828,000, and one was Wall and Column  
7 Construction.

8 Now, we know that the wall was divided up into  
9 sections, in 71 sections. And if you see that what, at  
10 Table 3, the Auditor General's Report calculates, is that  
11 if you take each section, the cost of each section will be  
12 just over \$4,000 for wall construction.

13 Do you see that?

14 A. Yes, sir.

15 Q. Now, if you turn, please, to page 24,  
16 Ms Scatliffe, this is a Bill of Quantities for wall works.

17 Do you have it?

18 A. Yes, I do.

19 Q. It's dated the 20th of November 2014, and you  
20 just see that at the top, and it's a Bill of Quantities  
21 prepared by Quantum, and that's Mr. Augustine. We just  
22 need to go right to the bottom, at the line Z5 at the  
23 bottom.

24 A. Okay.

25 Q. And the total cost per section is given as

1 \$9,500. Now, was it ever drawn to your attention that  
2 there was a specific Bill of Quantities relating to the  
3 individual parts of the wall?

4 A. As in this?

5 Q. Yes.

6 A. Yes. These had to come in in order to attach to  
7 the Contract. But what I saw was the spreadsheet that  
8 Ms Stevens did with the figures and the section. That's  
9 what I saw.

10 Q. I see.

11 A. It was what was used to prepare the contracts and  
12 Work Orders.

13 Q. And that was once Cabinet has made its Decision?

14 A. Yeah.

15 Q. One last matter. You have, obviously, the  
16 Phase 1, but particularly Phase 2, which is the phase  
17 approved by Cabinet, that those are the two phases of the  
18 Wall Project. Did anyone from the Ministry of Finance, or  
19 any related body, advise you that the process of doing it,  
20 which was by way of Petty Contracts and Work Orders, was  
21 contract-splitting?

22 A. No.

23 Q. But if you had told someone "we're doing this  
24 Project with Petty Contracts and Work Orders", would you  
25 have been surprised if they had said that's

1 contract-splitting?

2 A. I wouldn't have been surprised if they said it,  
3 if Cabinet did not waive the tender process. My thinking  
4 was, once Cabinet waived the tender process, it's okay to  
5 divide it however you want.

6 Q. And however you--

7 A. Not you, but yes.

8 Q. The Minister?

9 A. Yes.

10 Q. It's not the job of the Financial and Planning  
11 Officer--

12 A. No. However the Minister wants.

13 Q. So, once Cabinet has made its Decision, it's just  
14 down to the discretion of the Minister?

15 A. To divide it how he wants, yes.

16 Q. And you weren't involved at all in advising the  
17 Minister as to how to divide it up?

18 A. No, sir.

19 Q. I see.

20 Or which contractors would get which jobs?

21 A. No, no.

22 Q. I see. Thank you.

23 MR RAWAT: Commissioner, I have reached the end  
24 of my questions with Ms Scatliffe, but can I conclude by  
25 thanking her and not only just for coming today but also

1 for the way in which she's given her evidence.

2 THE WITNESS: You're welcome.

3 COMMISSIONER HICKINBOTTOM: Again, thank you from  
4 me as well, Ms Scatliffe, and thank you for coming at such  
5 short notice--

6 THE WITNESS: You're welcome.

7 COMMISSIONER HICKINBOTTOM: --and dealing with  
8 the evidence so clearly. Much appreciated.

9 THE WITNESS: Thank you.

10 (Witness steps down.)

11 COMMISSIONER HICKINBOTTOM: I think, Mr Rawat, we  
12 will break again just so that everything can be  
13 reconstituted, and then we will deal with the final Witness  
14 for today.

15 MR RAWAT: Thank you, Commissioner.

16 (Recess.)



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Session 4

COMMISSIONER HICKINBOTTOM: We're ready to resume.

Mr Augustine, could I say, first, thank you for coming, and I know it's been very short notice. But thank you for coming. The last two witnesses, I think, answered most of our questions, but we just have a few questions for you. Thank you very much.

THE WITNESS: Okay, thank you.

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

BY MR RAWAT:

Q. Can I echo the Commissioner's thanks, Mr Augustine, and can I just first of all deal with some formalities.

I understand that you would like to take the affirmation; is that right?

A. That's fine.

Q. Do you have the card with you?

A. Yes, I do.

Q. Would you mind, you don't need to stand but just read out the words of the affirmation, please.

A. Okay.

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

1 Q. Thank you very much. You can put that to one  
2 side.

3 Just start again, if you could just give the  
4 Commissioner your full name, please?

5 A. My name is Steve Augustine.

6 Q. And your professional address?

7 A. My professional address is Road Town, Lower  
8 Estate, Road Town, Tortola, British Virgin Islands.

9 Q. Thank you.

10 Now, we understand from evidence that the  
11 Commissioner has received that you were, in 2014-2015 an  
12 External Consultant to the Ministry of Education and  
13 Culture?

14 A. That's correct.

15 Q. And how long had you been in that role?

16 A. The truth is I had worked with the Ministry at  
17 the time but I would have been employed through different  
18 administrations over the years, with the Ministry of  
19 Education contractually at times to take on various  
20 projects, so it wasn't that I was just working with this  
21 Minister at this present time. I had done works with  
22 previous Ministers, and as Government changed, I was kept  
23 on periodically to take on works.

24 Q. And you say periodically, does that mean you were  
25 engaged on a job-by-job basis?

1 A. Yes.

2 Q. Rather than on an annual contract?

3 A. I was not on an annual contract.

4 Q. Thank you.

5 If I could just ask you just to look at that  
6 bundle. If you turn up, please, page 16 of it. The  
7 pagination is in the bottom in the middle.

8 A. Page one-six?

9 Q. Page one-six, please.

10 A. Yes.

11 Q. If I explain what this document is--in fact,  
12 sorry, it's one-eight that I need to take you to.

13 A. One-eight.

14 Q. One-eight, yes. So, this is part of a report  
15 prepared by the Auditor General into the building of the  
16 perimeter wall at Elmore Stoutt High School?

17 A. Yes.

18 Q. I think it's a report you have some familiarity  
19 with?

20 A. Yes.

21 Q. Because I think you may have assisted--I think  
22 you did assist the Ministry with its response to the draft  
23 report?

24 A. I provided comments to the Ministry based on the  
25 report.

1 Q. I see. Thank you.

2 Now, the Report and the project itself had two  
3 stages.

4 A. Yes.

5 Q. What the Auditor General describes as the Focus  
6 Area in 2014, which we have in this Inquiry, called  
7 Phase 1?

8 A. Yes.

9 Q. And then the larger Phase 2 project which began  
10 in 2015.

11 A. Yes.

12 Q. So, if I could just ask you some questions about  
13 Phase 1, first of all, please, by reference to this part of  
14 the Report.

15 A. Sure.

16 Q. And please confirm if this is right, that Phase 1  
17 essentially occupied the month of December 2014?

18 A. Yes.

19 Q. And if you look at paragraph 90--

20 A. Yes.

21 Q. --there is a reference to a plan being submitted  
22 to the Town and Country Planning Department stipulating  
23 180-foot block wall estimated to cost just over \$156,000.

24 And can you confirm that you were asked to draw  
25 up that plan?

1           A.    Yes.  We did put the plans together, yes.

2           Q.    And were you responsible for submitting that plan  
3 to Town and Country Planning?

4           A.    At that time, my duty was to prepare the  
5 drawings, prepare the application forms, have the packet  
6 sent to Ms Stevens at the Ministry, and Ms Stevens would  
7 take care of the submission, so the submission wasn't made  
8 directly by us, though it did come from my office.

9                    So, I do believe Ms Stevens would have had to get  
10 the stamp from the Ministry, make sure it got its proper  
11 checks before it was physically submitted.

12           Q.    And was that the same case in relation to  
13 Phase 2, that you would have prepared the documents--

14           A.    Yes.

15           Q.    --but then the Ministry would have been  
16 responsible for taking it forward?

17           A.    There would have been no difference.

18           Q.    Now, what, in fact, happened, as we know, was  
19 that the works was--the 2014 works were scaled back from  
20 180 feet to 120 feet, which meant that the cost that was  
21 expended in 2014 was just over \$96,000.

22                    Now, can you explain to the Commissioner why it  
23 was scaled back from 180 feet to 120?

24           A.    Well, it was very simple, from my standpoint.  We  
25 met physically at the school.  We spoke about the area that

1 needed to be addressed and the concerns why it needed to be  
2 addressed. We would have returned to our office, did some  
3 aerial mapping over land on the high school plans, the  
4 cadastral plans, and we would have depicted the area that  
5 we were intending on focusing on, which, in its entirety,  
6 may have gone up to 180 feet.

7 But the truth is, once we were at the point where  
8 we were physically ready to start, it put me in a position  
9 where I could physically take a rolling tape out to the  
10 site and identify the specific area where the wall was to  
11 be built. And based on the feedback that we got from  
12 officials at the school, based on the area of concern, that  
13 area was a distance measured from the existing security  
14 booth to an existing column that was at the gate of the  
15 entrance.

16 COMMISSIONER HICKINBOTTOM: So, it  
17 was--Ms Stevens explained, but you can confirm if it's  
18 right, it was from the front entrance--

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: --to the western  
21 entrance?

22 THE WITNESS: I would say--well, we're facing the  
23 western side, so, under the lower--if you're facing the  
24 area focused on the lower side on the security booth that's  
25 there or an entrance, there is an entrance there.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: A smaller entrance, so we were  
3 going from that entrance to an existing column, so the  
4 dimension between those two points, that's fixed. There is  
5 nothing you can do to change that, and that dimension,  
6 which is where they really wanted to put the wall, equated  
7 to 120 feet.

8 BY MR RAWAT:

9 Q. I see.

10 And so, you then continued on that basis?

11 A. Yes.

12 So, once we measured it out, we knew exactly  
13 where those two points were. That's where the work was  
14 focused.

15 COMMISSIONER HICKINBOTTOM: And you said I think  
16 earlier, Mr Augustine, that that, as it were, was because  
17 there was a particular issue, a particular security issue  
18 in that part of the perimeter of the school.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: And between the booth  
21 and the column that you've identified, which happened to be  
22 120 feet, that, as it were, was the main area.

23 THE WITNESS: The true Focus Area.

24 COMMISSIONER HICKINBOTTOM: The Focus Area of the  
25 particular problem.

1 THE WITNESS: Yes.

2 And if I may add, to compound the issue, I do  
3 believe at the time there were a number of food vending  
4 stations located in that specific area, so what would  
5 happen or what was happening, based on my understanding, is  
6 that the front of those food vending stations is where the  
7 students would go and buy food. The rear was almost like a  
8 blind spot in the high school, so persons on the outside  
9 and students on the inside sneak in through the back of  
10 those vendor stations. There was no control whatsoever as  
11 to what took place between that space.

12 COMMISSIONER HICKINBOTTOM: Because it was a wire  
13 fence with--

14 THE WITNESS: It was a wire fence, and then there  
15 was a building in front, so there was a blind spot, you  
16 couldn't see what was happened there.

17 Without getting into the specifics, if I need, to  
18 I will say. But without getting into the specifics--

19 COMMISSIONER HICKINBOTTOM: That's fine. What  
20 you said is fine. I understand that.

21 THE WITNESS: Okay.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 BY MR RAWAT:

24 Q. And what the Commissioner has understood is that,  
25 at the time when you started this work, it was essentially



1 a wire perimeter fence around the school?

2 A. Yes, there was.

3 Q. And so this was the first element of building a  
4 block wall?

5 A. Yes.

6 Q. This Focus Area?

7 A. Yes.

8 Q. Now, you said that the first thing that you did  
9 was to meet, and you said "we met", who did you meet with  
10 when you started that Project--2014 Project?

11 A. That list is long and exhaustive. We would have  
12 met first and foremost with the principal, and then we  
13 would have met with the principals, we would have met with  
14 the Department heads, who would have met with the teachers,  
15 we would have met with the Parent Teachers Association.  
16 That was a very big meeting. Of course, the Ministry. I  
17 can't recall if there was security personnel involved,  
18 there may have been somewhere along the line. And these  
19 weren't just one-off meetings. So, we would meet, I would  
20 go back to the drawing table, quote-unquote, and I would  
21 come back and then we would--so I would have met with the  
22 principal on numerous occasions, I would have met with the  
23 assistant principals on many occasions, and I definitely  
24 would have met with the teachers on many occasions because  
25 one of the things you must realize with this Project is

1 that, when it started, it started as we need to secure the  
2 premise of the school, but built inside securing the  
3 premise of the school was the fact that the Ministry at the  
4 time wanted to look at separating the school. So, it was  
5 all in one conversation.

6 So, it wasn't that we were working on a wall and  
7 a wall alone; there were a number of different components  
8 driving the need for the wall and the need for further  
9 investigations to be placed on what could really become of  
10 the school as far as separating the students. From the  
11 information that I gathered, there was a student population  
12 issue, and that was creating some problems for the school  
13 staff, the principal, anyone else in between.

14 So, yes.

15 Q. The evidence that the Commissioner has received  
16 is that at that time--and it was concerns that were raised  
17 by the Principal of the school--again not descending into  
18 specifics.

19 A. Yes.

20 Q. But there was an issue about security.

21 A. Yes.

22 Q. There was an issue about drugs coming on to the  
23 site. There was an issue about weapons coming on to the  
24 site.

25 A. Right, yes.

1 Q. Trespassers coming on to the site.

2 A. A number of reasons.

3 Q. But it was all--we can, I suppose, lump it around  
4 the word "security"--

5 A. Yes.

6 Q. --and the safety of the students and staff?

7 A. Yes.

8 Q. But in those--the conversations that you were  
9 having, did those conversations start in 2014 and then  
10 continue on?

11 A. So, those conversations would have definitely  
12 started before the Project was implemented. So yes, we  
13 would have met at the school, met at the principal's  
14 office, met with the teachers.

15 Everyone was given--everyone at the school wanted  
16 to come and give input, was given a fair chance to voice  
17 their concerns and opinion. I do remember one particular  
18 Assistant Principal, a guy--I don't know if I should call  
19 names, but he was very keen on ensuring that that area was  
20 immediately addressed.

21 COMMISSIONER HICKINBOTTOM: The Focus Area?

22 THE WITNESS: Yes, the Focus Area.

23 COMMISSIONER HICKINBOTTOM: Just on the Focus  
24 Area, I'm sorry to go back half a step, but you did the  
25 plans which showed 180 feet of wall.

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: And then you sent  
3 those off to the Ministry.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: And then when did you  
6 then go back and actually say, well, this is the real focus  
7 of the wall? And was the 180 feet that you'd estimated on  
8 the plan between the same points, or how--

9 THE WITNESS: It would have gone further. It  
10 would have exceeded the column that we actually stopped at.

11 COMMISSIONER HICKINBOTTOM: I see.

12 So, on the plan there was a wall from the booth  
13 to somewhere beyond the column?

14 THE WITNESS: Yeah. It would have gone slightly  
15 beyond.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 THE WITNESS: But the intention of the officials  
18 at the school was to at least get it up to the column.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 THE WITNESS: And there were other plans to deal  
21 with the entrances into the high school.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 THE WITNESS: And at the time, until the  
24 funding--funding was not provided for the entrances as yet,  
25 so there was no need or no intention at the time to

1 continue to work with the walls of the entrances because  
2 that would have been a different project, so the aim was to  
3 get the wall built from the security booth or the one  
4 entrance to the existing column.

5 COMMISSIONER HICKINBOTTOM: And so, when you went  
6 and measured it--

7 THE WITNESS: Yes.

8 COMMISSIONER HICKINBOTTOM: So, you've got the  
9 focus, you've got the measurements. Did you then cost the  
10 wall for the 120 feet?

11 THE WITNESS: No, we wouldn't have done that  
12 because what we would have done was costed the wall by  
13 sections, so we simply would have said X amount of sections  
14 based on what you're asking.

15 COMMISSIONER HICKINBOTTOM: So, once you've done  
16 that, costed the 180-foot wall, it was easy--

17 THE WITNESS: It was sections, so you just divide  
18 it by the sections.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 BY MR RAWAT:

21 Q. What's the rationale with dividing it by  
22 sections?

23 A. Well, from our standpoint, we wanted to make sure  
24 that the block work in between was as rigid as it could be,  
25 so the closer we stuck to 10-foot increments, in this case

1 it was 11-foot increments, the easier it would be for  
2 durability. So when we designed the wall, I think it was  
3 11-foot segments, short wall, tall wall, but 11-foot,  
4 11-foot, 11-foot. And we would have--to put the pricing  
5 together, we would have simply coupled a short wall and a  
6 tall wall because that's what it was as a 22-foot segment.

7 COMMISSIONER HICKINBOTTOM: With columns at each  
8 end and then a footing?

9 THE WITNESS: Right. Yes.

10 BY MR RAWAT:

11 Q. If we move on now to the Phase 2.

12 A. Yes.

13 Q. Now, if you go to page 150 in the bundle.

14 Actually turn up 149 first, please, Mr Augustine.

15 A. Yes.

16 Q. Now, this is--we've got this in a number of  
17 places in the bundle, but this is the best copy that we  
18 have.

19 A. I have a slightly better one.

20 Q. We may ask you to leave that with us.

21 But this is your--this is not Steve Augustine,  
22 Architects, but it is as Quantum, which I think is the--

23 A. It's a vehicle--

24 Q. It's the vehicle by which you do your--

25 A. Estimation.

1 Q. --your cost estimations.

2 And this is your cost estimate--

3 A. Yes.

4 Q. --for the Phase 2 of the Project, which and when  
5 we go to page 150, it comes to just over, very little over  
6 \$828,000.

7 A. Yes.

8 Q. And the question first is: How did you--firstly,  
9 how did you come to be asked to produce this estimate?

10 A. The asking to produce the estimate would have  
11 come to my attention by way of the Minister.

12 Q. And was that the first contact that you had with  
13 the Minister in relation to the Wall Project?

14 A. Yes.

15 I think it was a phone call simply expressed his  
16 desire to enclose the high school campus.

17 I don't think at the time that there was a clear  
18 directive or decision to make it a block wall or I think we  
19 were speaking about a number of different things as to what  
20 the wall could be, but it was a general call. He wants to  
21 look at closing it. I think there might have been some  
22 works that was done before with a fence, but he had some  
23 concerns about enclosing it with a galvanized fence because  
24 of the concerns he was already having with the chain-link  
25 fence. So, at the time he had opted, well, let's look at

1 doing this with concrete blocks and just give me a cost.

2           And while you're asking that, counsel, I just  
3 want to point out something that has been overlooked for  
4 quite some time. At the bottom of the estimate, it is an  
5 estimate, but when this document was submitted, it was  
6 submitted more as a projection. This document is more  
7 preliminary than anything else.

8           And I think when I read the note at the bottom.

9           Q. Please do?

10          A. I think on your copy, it's a little bit blurry.

11          Q. Please do?

12          A. So, at the bottom of the document that was  
13 submitted to the Ministry, I made a note, and the note  
14 says: "More detailed pricing will be provided upon  
15 completion of all working drawings. Prices as quoted are  
16 general and are intended to provide an indication of  
17 general cost projections. The listed works are all in a  
18 drawing stage of concept development".

19           So, what it essentially says, counselor, is that  
20 at the time when this document was prepared, we wanted a  
21 very preliminary stage of development of the drawings. I  
22 didn't realize that the Ministry seemingly wanted to move  
23 very aggressively on it, but we were not at the stage where  
24 full construction documents were completed. And to ensure  
25 that we protected ourselves based on what we were



1 submitted--submitting, we felt it necessary to add that  
2 footnote on the costing because there is no way that we  
3 could have guaranteed that, by the time the construction  
4 documents were finished, this would be the price.

5           And if I may add, counsel, just to make sure. I  
6 want to make sure you're fully knowledgeable.

7           Q.    Yes.

8           A.    During the construction documents development  
9 stage, I hired an engineer to do the engineering of the  
10 wall for the drawings because of previous experience that I  
11 had had working at the Town and Country Planning  
12 Department. I knew taking a conventional approach in  
13 designing this wall would delay this Project significantly,  
14 and that is because the Planning Department requires you to  
15 gain permission from your adjacent parcels if you're  
16 developing on their site, in the sense that where typically  
17 when a wall is built, you have the footing and you have the  
18 wall in the middle, the intention with the enclosing of the  
19 campus was to ensure, yes, that the campus is secured, but  
20 we didn't want to make the campus any smaller.

21           So, essentially, I needed to devise a way to get  
22 the wall, the physical flat surface of the wall, on the  
23 boundary of the site, the school site, that meant if I took  
24 a conventional approach, the footing, which is, if you can  
25 imagine, the wall and then the footing. So, if I put the

1 wall on the bottom, it means that the footing would be on  
2 person A's, person B's, and person C's property, and the  
3 truth is the law requires that you gain permission if  
4 you're going to develop someone else's site.

5           So, I called the engineer, because based on what  
6 was being asked, it started to push an envelope a little  
7 bit of how do I do this. Some additional engineering  
8 beyond my skills was definitely going to be needed, so I  
9 consulted with an engineer who provided me with a design  
10 that allowed a face of the wall and the footing to be one  
11 continuous flat surface.

12           Now, in doing so the reasoning behind the wall  
13 typically being in the middle and the footing extending on  
14 either side is to avoid overturning and things of that  
15 nature. So, based on my discussions with him because I  
16 wanted to understand what was being proposed, I figured  
17 he's going to give me something that's going to withstand  
18 overturning, especially, lo and behold, the hurricanes did  
19 come, and it did not overturn, which was a big plus. But  
20 what resulted in that is the fact that as opposed to one  
21 with a typical small footing, the footing was very robust.  
22 A lot bigger than anything that I would have envisaged at  
23 the start. But, as history would prove, we had two very  
24 disastrous hurricanes, and there was no part of the wall  
25 that overturned or was blown down. I can't say the same

1 for a lot of other walls throughout the Territory.

2           Okay, so I just wanted to add that because you  
3 were asking about that.

4           Q.    Thank you for drawing our attention to that.

5           A.    Yes.

6           Q.    Then the other point, perhaps, to make is that  
7 this is dated the 2nd of October 2014.

8           A.    Yes.

9           Q.    Now, you've explained how you came with--you  
10 produced that figure, so that's--just help us with this,  
11 though. The perimeter wall--

12          A.    Yes.

13          Q.    --you've put at the top, and this is at F on our  
14 page 150. I hope you can see it.

15          A.    Yes.

16          Q.    But you put the wall at 2,695 feet.

17          A.    Yes.

18          Q.    The Auditor General measured the wall at  
19 considerably less than that.

20          A.    Yes.

21          Q.    Just over--I think just over 1600 feet.

22          A.    Yes.

23          Q.    Can you explain the discrepancy or the  
24 difference?

25          A.    Right.

1           So again, this was at a very preliminary stage,  
2 so the workings that we had developed at the time would not  
3 have been the construction documents, so again, general  
4 aerial overlaying on the cadastral plans and just taking a  
5 quick take-off, what is it.

6           Q.    So, how much time were you given to produce this  
7 estimate?

8           A.    This particular one?

9           Q.    Yes.

10          A.    Not a whole lot because it's preliminary. They  
11 were--at the stage when this is produced, there's not a  
12 whole lot of information that you really can use to derive  
13 it. You just kind of take general information and put your  
14 figures together.

15          Q.    And so, is your point about the fact that you  
16 have got over 2,600 feet of wall--

17          A.    Yes.

18          Q.    --does that take us back to the 180-foot point,  
19 that that's a first estimate, and--

20          A.    Yes.

21          Q.    --then when you actually measure it out, it's  
22 different?

23          A.    By the time we got to the implementation stage, I  
24 remember very well, I remember people watching me at times  
25 wondering what I was doing. I got me one of those wheels

1 that you push, and we would physically run the tape on the  
2 sites that we get actuals but just to keep things moving,  
3 we projected it.

4 Q. I'm just going to take you back to the Auditor  
5 General's Report and just ask for your help with something.

6 A. Yes.

7 Q. If you just go to page 11, first of all.

8 A. Yes.

9 Q. If you see there, Mr Augustine, that there's a  
10 table--

11 A. Yes.

12 Q. --which she's headed Table 2.

13 A. Yes.

14 Q. And she breaks down your estimate at \$828,000.

15 A. Yes.

16 Q. Into different elements.

17 A. Yes.

18 Q. One of those is wall and column construction.

19 A. Um-hmm.

20 Q. And then at paragraph 38, the Audit Report refers  
21 to the fact that there was going to be 71 contracting  
22 sections, and so each section would cost just over \$4,000.  
23 That's for wall construction.

24 A. Ah.

25 Q. And you can see how the Auditor General has come

1 to that figure in the table at Table 3.

2 Now, if you turn to page 24.

3 A. Yes.

4 Q. This is an attachment to the Report, and it's an  
5 estimate or a bill of quantities from Quantum.

6 A. Yes.

7 Q. Which is dated the 20th of November 2014. So, a  
8 few weeks after the first estimate is produced.

9 A. Yes.

10 Q. And it relates to work of the wall, and if you  
11 see the second table at A, it's costings segmented  
12 quantities per 22-foot.

13 A. Right.

14 Q. And that's--so you kept the approach that you  
15 kept in Phase 1 in that you were having segments of  
16 22 feet, 11-foot low wall, 11-foot high wall; is that  
17 right?

18 A. Right.

19 So the idea is when you--the wall is 1,600 or  
20 whatever the figure was, length of wall. That's a very  
21 long wall. So, from an architectural standpoint, it's not  
22 actually going to, you know, draw 1,600 and X square feet  
23 of wall on paper. You probably won't--if you fit it all on  
24 one sheet, you probably won't see nothing but a black blob;  
25 and if you did it, you'd just probably have just pages and

1 pages and pages of the same thing.

2 So what we would have done was just taken a  
3 segment, because it's typical, it's short wall, tall wall,  
4 short wall, tall wall. So--yeah, so what we would have  
5 done is taken a segment, measured it, and again, as I had  
6 stated when we first started to speak, the 22-foot distance  
7 came because they were all 11-foot increments, yes.

8 Q. But the costing at the bottom, if you look at  
9 your last line on there, Z5, is given as the total budget  
10 cost is going to be 9,500.

11 A. Yes.

12 Q. And so, there's obviously a difference there.

13 A. Yes.

14 Q. If one takes the earlier estimate and splits it  
15 up.

16 A. Right.

17 Q. And the later estimate, which is just over, as  
18 I've said, 9,500.

19 A. Right.

20 Q. Can you just explain to the Commissioner how  
21 that--from your perspective as an architect how that  
22 difference arises?

23 A. Well, you know, as we got further into the  
24 project, which is something that I've continued to state  
25 along the way, when we started to speak about the project,

1 especially with officials from the school, well, they  
2 wanted to maintain a distance of--it was 8-foot measured  
3 from the outside of the school, and that's a very important  
4 connotation there, the word "outside".

5           So, you know, when you say that, what you  
6 envision is, okay, it's an 8-foot wall, 8-foot wall around  
7 the school. And then as we continued to do our  
8 walk-throughs at the school, you start to realise that the  
9 sidewalk elevation and the internal elevations are for the  
10 most part two different things. That varies two to  
11 three feet at times.

12           So the wall, if you built in, as the Auditor  
13 General did in their report, and I've said the wall that's  
14 depicted in this report is not the wall that I drew because  
15 the wall that I drew gave an absolute dimension above the  
16 sidewalk measuring 8 feet. On the inside of the wall that  
17 I drew, there's no dimension because you can't dimension  
18 that because that's going to vary 8 feet, 9 feet, 10 feet,  
19 11 feet, and the truth is the wall is there, and you can  
20 measure it. You can physically go there today and you can  
21 measure, you can see that some sections--see some sections,  
22 sorry, are very high.

23           So, in that sense the more we got into the  
24 project, the more we started to understand the intent of  
25 building an 8-foot wall is only a height that you can



1 measure from the outside, where the sidewalks are at,  
2 because of the elevation on the inside is 8 feet, and you  
3 build an 8-foot wall from the elevation on the inside, it  
4 means that when you stand on the sidewalk on the outside,  
5 that wall only measures 5 feet. That would have been a  
6 disastrous outcome to the security prevention measures that  
7 was intended at the school, so we had to approximate the  
8 original height.

9 COMMISSIONER HICKINBOTTOM: So, what did you do  
10 in terms of the footings--so, was the--were the footings  
11 put at the--

12 THE WITNESS: Regardless of the height of the  
13 wall, the footings were embed into the ground, to put it in  
14 layman's terms.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 THE WITNESS: It just meant that there was  
17 additional height on the wall.

18 COMMISSIONER HICKINBOTTOM: So, the wall had to  
19 vary in height.

20 THE WITNESS: It did.

21 COMMISSIONER HICKINBOTTOM: To ensure that, as it  
22 were from the outside, it was 8-foot.

23 THE WITNESS: We just--and that was the aim. The  
24 aim was simply to ensure on the outside that it's 8 feet.

25 So, in some cases, like at the start of the wall

1 and the area by Bobby's, it may measure pretty close to the  
2 same, both on the inside and outside, but especially the  
3 area that leads from Engruli's (phonetic) to the softball  
4 field, which is a very long expanse of area, it was  
5 definitely a problem, so we realised and recognised that we  
6 had to assume for additional height to maintain the 8 feet  
7 on the outside.

8 COMMISSIONER HICKINBOTTOM: And what--

9 BY MR RAWAT:

10 Q. Please finish.

11 A. You're asking about--sorry, go ahead yes.

12 Q. No, no. Well, if we go back to the--just the  
13 original--

14 (Overlapping speakers.)

15 A. Right. So, when we did the preliminary estimate,  
16 the 828, we would have simply ran that at the 8-foot  
17 height, just assume an 8 feet--

18 COMMISSIONER HICKINBOTTOM: For the 828  
19 projection stage--

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: --did you appreciate,  
22 as the architect, that the wall footings were going to be  
23 as they were, i.e., not as it were conventional?

24 THE WITNESS: No.

25 COMMISSIONER HICKINBOTTOM: Okay.

1 THE WITNESS: No. At that stage, it was just a  
2 lot of information coming in.

3 COMMISSIONER HICKINBOTTOM: But at the 828 stage,  
4 firstly, the wall, as it was built, was a completely  
5 different length.

6 THE WITNESS: Right.

7 COMMISSIONER HICKINBOTTOM: I mean a completely  
8 different length from the--

9 THE WITNESS: The final, which is the more pre--

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: Secondly, the  
13 footings were--

14 THE WITNESS: Differed.

15 COMMISSIONER HICKINBOTTOM: I mean--

16 THE WITNESS: Yes, that is correct.

17 COMMISSIONER HICKINBOTTOM: Substantially  
18 different.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: And substantially  
21 more sophistic--

22 THE WITNESS: More robust.

23 COMMISSIONER HICKINBOTTOM: Yes, yes. But also  
24 more sophisticated, if that's the right word.

25 THE WITNESS: Yes, yes.

1           COMMISSIONER HICKINBOTTOM: And, thirdly, that  
2 the height of the wall--

3           THE WITNESS: Yes.

4           COMMISSIONER HICKINBOTTOM: In layman's terms,  
5 had to vary.

6           THE WITNESS: We would have had a better  
7 appreciation at that stage.

8           COMMISSIONER HICKINBOTTOM: Yes. So--but the  
9 height of the wall from 828 stage, the height of the wall,  
10 it turned out, had to effectively vary so that the outside  
11 height was--

12          THE WITNESS: To maintain the 8-foot.

13          COMMISSIONER HICKINBOTTOM: Now, and again I  
14 apologize to Mr Rawat, who was going to ask this question,  
15 but when we come to page 24, which is the 20th of November,  
16 this is the estimate for a segment, which is two panels,  
17 one high, one low.

18          THE WITNESS: Yes.

19          This is very fuzzy but...

20          COMMISSIONER HICKINBOTTOM: It is.

21          THE WITNESS: It would appear so.

22          COMMISSIONER HICKINBOTTOM: Yes.

23          THE WITNESS: Yes.

24          COMMISSIONER HICKINBOTTOM: So, between the  
25 beginning of October, when the 828 estimate was--or

1 projection was put in--and the 20th of November, you had  
2 got a lot more information and--

3 THE WITNESS: Yeah--well, yes. Time definitely  
4 would have allowed for that. We would have had more  
5 meetings. We would have done more walk-throughs. So you  
6 had a better appreciation for the Project at that stage.

7 COMMISSIONER HICKINBOTTOM: And it was page 24,  
8 the 20th of November estimate, was that based upon the  
9 footings as they ended up being?

10 THE WITNESS: Yeah.

11 COMMISSIONER HICKINBOTTOM: The variable height?

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: All right. So this  
14 was--I mean--

15 THE WITNESS: This is when we would have had  
16 more--ideally, I mean, if you could go back in time--I  
17 mean, this would have been the ideal document to--for the  
18 Ministry. I don't get involved in their internal  
19 processes--

20 COMMISSIONER HICKINBOTTOM: No, but--

21 THE WITNESS: Yeah.

22 COMMISSIONER HICKINBOTTOM: --but this was closer  
23 to an estimate than the 828.

24 THE WITNESS: Yeah. This would have resulted  
25 more where we had today.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: Well, this is why we're here today  
3 because we have the more detailed pricing.

4 BY MR RAWAT:

5 Q. You've got the 20th. It's 20th of November 2014.  
6 Would that be a document that you would have provided to  
7 the Ministry at the time?

8 A. Yeah, whatever I had, I probably did.

9 Q. Because presumably--

10 A. Sometimes--yeah. I mean, it's hard for me to sit  
11 here today and say it was provided on 20th of November.  
12 I'm not sure.

13 Q. But at some point you were--

14 A. Yeah, I definitely would have passed this on  
15 because what--at some point in the--during the Project, I  
16 was asked to provide figures based on a 22-foot section, so  
17 that's the directive I was given, and that is what I  
18 produced.

19 Q. And is that--that's what the document we see at  
20 page 24, is what you responded with to that directive  
21 with...

22 A. Yeah, it would seem so.

23 Q. And if we go through--so, I mean, obviously,  
24 we've got--we're treating Phase 1 almost as a stand-alone,  
25 but you're now on Phase 2. So--

1 A. Yes.

2 Q. --even before you've built Phase 1, you've  
3 provided, as you've described it, a preliminary estimate  
4 for the wall, and that was for the whole wall.

5 A. For the 828.

6 Q. Yeah.

7 A. Yes.

8 Q. So, the 828 was your provisional estimate--

9 A. Estimate, yeah.

10 Q. --of an entire wall around the school.

11 A. That was a call made by the Minister in  
12 appreciation for what we're working at. I figure maybe he  
13 may have wanted to figure out what type of funds he would  
14 have needed internally. I don't know. It was a question  
15 that he would have to ask, but he did ask me to do so, and  
16 I do believe he had asked someone else to do the same.

17 Q. And then as you're going through the Project--I  
18 mean, you would have needed those costings, the more--the  
19 more detailed costings that you have at page 24. Would  
20 you--those--I mean that was done before you started  
21 building the Focus Area, because it's November 2014--

22 A. Yeah, so--

23 Q. --and you built the Focus Area in December.

24 A. Yeah. I have some costings that we did for the  
25 focus areas.

1 Q. I see.

2 A. And those would be the costings that were used  
3 for those parts, yeah.

4 Q. But as you're going along through the process,  
5 you're producing drawings, you're having meetings.

6 A. It was a very reactive-type project because the  
7 Focus Area, you know, we're there, and we're working and  
8 we're meeting and we're going back to the office and we're  
9 reviewing thing, and somewhere along the way I got the  
10 phone call or the directive: We need to have this done in  
11 December. So it wasn't at Phase 1.

12 COMMISSIONER HICKINBOTTOM: Phase 1.

13 THE WITNESS: Phase 1. It wasn't that we were  
14 sitting in November, October, knowing that, no,  
15 December 19th or whatever date we're going to start the  
16 specific area. It was just that schools are about to  
17 close, there is a window of opportunity here to get this  
18 critical area in, and make it happen.

19 BY MR RAWAT:

20 Q. Right.

21 A. So, at that stage we react.

22 Q. But in terms of what you're expected to provide  
23 to the Ministry for information, presumably you are  
24 expected to--if you update your estimate or, as you say,  
25 you got a directive to say give us figures for a 20-foot



1 section--

2 A. Yeah.

3 Q. --you would have responded and provided that  
4 information.

5 A. We'd definitely provide it, so they would have  
6 had those.

7 Q. I see.

8 And pulling some of the threads together, you  
9 have a wall which--and I've just found the measurement that  
10 the Internal Auditor came with, but it's--for the 2015  
11 continuation, it was 150,062. That's at paragraph 31,  
12 so--but you're building a long wall.

13 A. Yes.

14 Q. It's a wall that requires you to bring in an  
15 engineer to assist you?

16 A. Yes.

17 Q. It's a wall that, as you start working on the  
18 Project, you realise that if you're going to maintain the  
19 8-foot front part of the wall, it's going to require some  
20 creative thinking for the other side of the wall.

21 A. Yeah. By then we had already figured that out--

22 Q. Yes.

23 A. --that, yes.

24 Q. You would have presumably appreciated that--

25 A. Yes.

1 Q. --when you were doing Phase 1.

2 A. Yes.

3 Q. But all of that together, it's not a  
4 straightforward architectural project, is it, this one?

5 A. It's--I mean, it's a wall, so it's going to bring  
6 along the complications that a wall would bring along on a  
7 site that looks flat but is not flat.

8 COMMISSIONER HICKINBOTTOM: I mean, you know,  
9 it's not a hospital--

10 THE WITNESS: Right, exactly.

11 COMMISSIONER HICKINBOTTOM: --which is very  
12 sophisticated. But in terms of a wall, it's not, if I put  
13 it this way, any old wall. It's a--

14 THE WITNESS: With complexity.

15 COMMISSIONER HICKINBOTTOM: Yes, yes, I know  
16 exactly.

17 THE WITNESS: Yes.

18 BY MR RAWAT:

19 Q. And you've explained the meetings that you had  
20 with various members of the school community.

21 A. Yes.

22 Q. What meetings did you have with Ministry  
23 officials?

24 A. With Ministry officials, I think somewhere along  
25 the line, project commencement, a presentation was done at

1 the Ministry.

2 COMMISSIONER HICKINBOTTOM: So this is Phase 2.

3 THE WITNESS: This is--it's difficult to say  
4 whether it was Phase 1--I know it was at the beginning of  
5 the Project, when we were envisioning the wall. So we  
6 would have done our preliminaries? We'd have got our  
7 elevations and different things together, and we would have  
8 done a presentation at the Ministry. I recall because I  
9 remember the day we went. I think there were some issues  
10 with the projector, but we did do a presentation for the  
11 Ministry.

12 COMMISSIONER HICKINBOTTOM: And can you remember  
13 who was there or some of the people who were there?

14 THE WITNESS: The Minister would have been there.  
15 I want to believe the PS might have been there, Ms Stevens.  
16 I'm not sure if Jovita may or may not; I don't recall,  
17 sorry, if she was there but--

18 COMMISSIONER HICKINBOTTOM: And to try and--not  
19 to pinpoint the date but to put it into chronological  
20 context, we're got quite the--I mean the quite important  
21 document at 24, which is the 20th of November estimate for  
22 the segments.

23 THE WITNESS: Yeah.

24 COMMISSIONER HICKINBOTTOM: Are we talking about  
25 the presentation before or after that was available?

1 THE WITNESS: Commissioner, I don't want to give  
2 information I can't verify, so my memory is not allowing me  
3 to recall whether it was right before Phase 1 or directly  
4 as we started Phase 2, but it was definitely somewhere.

5 COMMISSIONER HICKINBOTTOM: But the 20th of  
6 November was pre-Phase 1?

7 THE WITNESS: Yes. So I'm not--

8 COMMISSIONER HICKINBOTTOM: No, which is--

9 THE WITNESS: I'm just not--I know that we had  
10 the meeting but I'm not sure.

11 COMMISSIONER HICKINBOTTOM: No, that's--

12 THE WITNESS: But we did have--

13 COMMISSIONER HICKINBOTTOM: --perfectly fair,  
14 yes.

15 THE WITNESS: So, we would have done that, met  
16 with the Ministry.

17 I know at some point--this would have been during  
18 Phase 2 now, Commissioner--I had met with officials at the  
19 site. This is venturing over a little because what we had  
20 done with the--this--the wall was just one part of the  
21 overall project. There was the need to build the wall.  
22 There were intentions to divide the campus, which would  
23 have included a center wall, and we had developed that.

24 I know this goes outside, but I'm trying to bring  
25 everything in context so you understand--

1 COMMISSIONER HICKINBOTTOM: Of course.

2 THE WITNESS: --where I'm going with my answer  
3 to--my second answer to your question.

4 There was a center wall with almost a "high  
5 school drive" where extracurricular activities could take  
6 place that would form the division but would be functional  
7 as well.

8 There were a desire to build an auditorium that  
9 would be shared by both campuses, if it was split.

10 And then there were the intent of putting some  
11 prefabbed classrooms at the site.

12 So, and with all this, there was also the need,  
13 before I forget, to revamp the entrances. Those entrances  
14 were causing havoc on the public roads.

15 So, at one point I met on-site with the Minister  
16 for Works, who had officials from the Public Works  
17 Department present at the site. I believe the Director was  
18 there as well. And what--because we're working. We're  
19 working aggressively to try and keep things moving; you  
20 know, the Minister wants to make sure that he can deliver  
21 based on what is being asked of him, and we're trying our  
22 best in the office to try to keep, you know, keep up with  
23 the things that he expects to receive or the directives we  
24 were given as far as the improvements for the high school.

25 So, at one point we met with Public Works

1 Department. I had done some revisions internally to  
2 improve the entrances, not knowing at the time that Public  
3 Works were working on a plan on the outside of the high  
4 school for some improvements at the very same time.

5 So, at that meeting I was asked to bring my  
6 drawings. The Public Works Department brought their  
7 drawings. We looked at both drawings, and we saw that the  
8 two could work in tandem, just that they were on different  
9 pages, of course, with some slight modifications--sorry,  
10 slight modifications to both drawings.

11 So, following that site meeting on the site, I  
12 was asked to meet with officials at the Public Works  
13 Department; I think I did that maybe a day or two after.  
14 We met on the roundtable, a conference table, and we kind  
15 of marked and said what would work. And then the question  
16 was posed, Well, how do we get this on one plan? And I  
17 opted, Well, I'm fine doing it because we're already  
18 working on it, so just give me your drawings, and I'll go  
19 back and I'll adjust mine. We did do that. Provided  
20 copies back to the Public Works Department. They were fine  
21 because now the two plans meshed.

22 And at some point--this was during Phase 2, not  
23 during Phase 1., during Phase 2, we submitted those  
24 drawings to the Chief Planner, and those plans were  
25 subsequently approved.

1 BY MR RAWAT:

2 Q. And that was part of the, if you like, the wider  
3 project for remodeling the school campus.

4 A. Yeah.

5 Once the wall was finished, it was going to  
6 evolve into fixing the gates and the center wall, and,  
7 yeah, so it was all part of the bigger project.

8 Q. If we--if I just sort of ask you something else  
9 about Phase 1 and Phase 2. I mean, firstly, in terms of  
10 your role across both Phase 1 and Phase 2--

11 A. Yes.

12 Q. --we know in Phase 1 there were, I think it's 11  
13 contractors--

14 A. Yes.

15 Q. --were used.

16 A. Um-hmm.

17 Q. In relation to Phase 2, 70 contractors were used.

18 A. Yes.

19 Q. Now, did you have any involvement in choosing  
20 contractors?

21 A. I never did.

22 Q. And did you have any--did your role encompass in  
23 any way advising as to how they should be engaged, on what  
24 type of contractual basis?

25 A. No. I was provided with a list with contact

1 numbers, and that was it.

2 Q. And in terms of--I mean, we've been, I think,  
3 calling you the External Consultant sometimes--

4 A. That's fine.

5 Q. --Mr Augustine.

6 A. That's fine.

7 Q. But does your role envisage at all checking the  
8 credentials of contractors?

9 A. Not at all.

10 Q. So, it's just simply you're told these are the  
11 people who are going to work on this job, and you then have  
12 to liaise with them.

13 A. And I'm very proud to say, regardless of who was  
14 on that list, Commissioner, I treated them with the utmost  
15 respect, invited them to morning meetings so we can get  
16 status updates, answer questions, provide copies. I think  
17 we even walked the site and looked at the locations, so I  
18 made sure I did my groundwork with all the contractors.

19 And while I recognized during the process that  
20 some needed more assistance and direction than others, it  
21 was part of my job, so I didn't discriminate was sent or  
22 what they were sent to do. I had one--my intention or my  
23 reasoning then for being there is to ensure that they  
24 finished what they were asked, and that's what I did.

25 Q. But it wasn't part of your job--role to check if,



1 for example, they had trade licences.

2 A. Not at all, no.

3 Q. And in--we've--the Commissioner has heard from  
4 Ms Stevens, the Ministry's Project Manager. We've heard  
5 from Ms Scatliffe, who was the Financial and Planning  
6 Officer, and the two of them with you have been described  
7 as the project team. Would you agree with that?

8 A. Yeah.

9 Q. We've also heard from the then-Minister for  
10 Education, Myron Walwyn.

11 A. Yes.

12 Q. But within the project team--

13 A. Yes.

14 Q. --what was your role?

15 A. My role on the Project team was I was the guy  
16 that physically on the site. So, once all the internal  
17 processes had taken place and names were provided to me, it  
18 was my job to ensure that those names that were provided,  
19 executed the works that they were asked to execute. That's  
20 it.

21 Q. And had you ever--I mean, had you ever dealt  
22 with--I mean, you are dealing with in Phase 2 a project  
23 which is at least provisionally at the start costed sort of  
24 \$828,000, which is a significant sum.

25 A. Yes.

1 Q. With reasons you've explained, that there are  
2 peculiarities about this wall that you had to take into  
3 account.

4 A. Right.

5 Q. Had you ever had to deal with a project where  
6 you're handling 70 contractors?

7 A. 70 contractors?

8 Q. Yes.

9 A. I don't think there's a handful of people in the  
10 world that could say "yes". I can.

11 It was not an easy task, I'll tell you that. 70  
12 contractors is what you say because that's information you  
13 were provided with, but you must realize that these 70  
14 contractors perhaps had seven, eight, nine workmen per day  
15 working with them. This then--I mean, granted, I'm not  
16 saying that they were all on the site at the same time.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: But the numbers were large.

19 And I recall, and, you know, I've said this to so  
20 many persons, as a project team we worked really, really  
21 hard on that project because I can tell you about the days  
22 when I would go first thing in the morning, meet with the  
23 guys, sometimes you meet guys on sites, sometimes there's  
24 guys coming to the site. Sometimes there are not guys  
25 working on a particular area until midday because they're

1 doing--you know, it's so many different things that you run  
2 across, and sometimes you would answer a question at point  
3 A, and then the same question would arise at point Z.

4 COMMISSIONER HICKINBOTTOM: With a different  
5 contractor?

6 THE WITNESS: With a different contractor, and I  
7 would make my way over to point Z, and, lo and behold,  
8 contractor B is concerned about the very same thing.

9 COMMISSIONER HICKINBOTTOM: So, it was a  
10 professional challenge.

11 THE WITNESS: It definitely was. It  
12 definitely--yeah, this was unique.

13 But I saw it as a challenge. The numbers here,  
14 it may faze some people, but I knew it was something that,  
15 with Ms Stevens behind of me and Jovita in the background,  
16 I was not fearful this is a project that we can't complete,  
17 providing that they do what they needed to do.

18 I knew that I had the ability to work with  
19 whomever they were provided--whoever was provided on the  
20 list, provided that they were forthcoming in ensuring that  
21 you bring your workmen, you bring your materials, and you  
22 come prepared to work.

23 So, it was a challenge. There's a lot that I  
24 learned just working with people, and sometimes you sit and  
25 speak to people and you--because we would have a kick-off

1 meetings; once I got the list, I would call a meeting and I  
2 would speak to every--because it's easier that way. I  
3 would call 10, 15, whatever amount of people I was provided  
4 with, and we would have a kick-off meeting. I would answer  
5 any question. And I would be very remedial at times, the  
6 wall is 11-foot segments, 8 foot high, measured on the  
7 outside and footing is X by Y by and Z, and I would go  
8 through it all just to make sure that--because when we  
9 started, I mean, you're kind of--you have a general idea as  
10 to what you want to do, but everything solidifies once a  
11 project starts, and then you started to realize, okay, if I  
12 do things this way, rather than going on the site and then  
13 lining the guys up, let's just have a meeting before we  
14 start and make sure everyone is knowledgeable as to what  
15 needs to be done. That way, the first day, I'm not running  
16 all around, expressing the same desires for the wall when  
17 they start.

18           So it--you know, it got smoother as we got  
19 further along because then we were more comfortable with  
20 the process that we would have to engage to make this  
21 happen. Okay.

22           BY MR RAWAT:

23           Q. If you turn up, please, page 14.

24           A. Yes.

25           Q. And taking you back to the Auditor General's

1 Report, if you look at paragraph 51, what the report  
2 records is that you start off with this project, and by  
3 this stage it's Phase 2. And it says that (reading): "One  
4 variation to the design was adopted after commencement of  
5 the Project, which involved modifying the rear entrance  
6 facing FedEx along the west Exit Gate/Lower Estate  
7 Superette perimeter to accommodate a dropoff area for  
8 school buses".

9 A. Yes.

10 Q. And that was accommodated within the approved  
11 contingency estimate, and that's the contingency estimate  
12 on your 828 estimate.

13 Do you--is that--does that accord with your  
14 recollection that the one variation to Phase 2, the Wall  
15 Project, was to have to accommodate a dropoff area for  
16 school buses?

17 A. Yes.

18 As to--part of your question speaks about where  
19 the money came from. I definitely can't speak to that  
20 account because that is outside of the scope that I operate  
21 within, but yes, when we were continually developing the  
22 Project, the wall was being built, there were some concerns  
23 about the pickup and dropoff, which we were trying to  
24 address with the entrances being revamped. And then there  
25 were also suggestions about how to improve the bus pickup

1 and dropoff areas. It was suggested--I can't say which  
2 meeting it was, but it was definitely--it definitely would  
3 have been an instance where I was perhaps meeting with the  
4 teachers and the principals and whatnot, where I identified  
5 that there's an opportunity here that we can capture  
6 because the rate that we were going with the wall was  
7 pretty fast. So I made the suggestion, if there is  
8 concerns about the current way and the buses line up  
9 outside of the existing pickup and dropoff or the entrance,  
10 we have an opportunity on the Lower Estate and facing Fed  
11 Ex where we can get a lay-by so that you can get the pickup  
12 and dropoff areas done in a much more safer environment, in  
13 the sense that once the students exits the campus, they  
14 don't have to cross the road to get to the bus to leave.  
15 The specific location allowed for persons to enter the  
16 existing gate that faced the softball field, walk on the  
17 sidewalk, so there's no crossing of traffic, so the traffic  
18 continues to flow, and safely enter or exit the buses.

19 And then with that, because we were developing  
20 the "Master Plan" as to what could become of the school if  
21 it was separated. There was also an opportunity, well, if  
22 the lay-by is going to be located in that location, we can  
23 have an entrance there, so that is where that came about.

24 It was supported heavily by the principal and the  
25 teachers and persons who were concerned, and that that

1 suggestion was brought to the Ministry's attention at that  
2 time.

3 Q. If we look at page 26, please, Mr Augustine.

4 A. Yes.

5 Q. You see it's a table. It's summary of the  
6 costs--

7 A. Yes.

8 Q. --put together, and I appreciate your point that  
9 you would have not been involved in budgetary elements of  
10 this project at all, would you?

11 A. That's correct.

12 Q. So, this table, which is again in the Auditor  
13 General's Report, starts off with the original estimate of  
14 828,000--

15 A. Right.

16 Q. --which is recorded there as approved by Cabinet.  
17 Did you--were you told that Cabinet had approved  
18 that figure?

19 A. I was not aware as to what was happening  
20 internally, so when papers were written or sent or  
21 approved, no.

22 Q. What the Auditor General gives is the total cost  
23 of the wall to date is just under \$915,000.

24 A. Right.

25 Q. And that includes, she records, the cost of

1 constructing the bus lay-by at the Lower Estate entrance.

2 A. Right.

3 Q. And repairs and installation of the iron--of Iron  
4 Gate.

5 A. Yes.

6 Q. Is that what you were talking about as the sort  
7 of additional element of the Wall Project, if you like?

8 A. Yeah, well, the lay-by.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: Yes.

11 BY MR RAWAT:

12 Q. But, I mean, separate to that, I appreciate there  
13 was, if you like, ongoing discussions about the wider  
14 redesign of the school campus.

15 A. Yes.

16 Q. I see.

17 Now, what is given at the bottom there--

18 A. Yes.

19 Q. --is a figure "Total of remaining wall" just over  
20 251,000.

21 A. Yes.

22 Q. Now if I show you where the Auditor General got  
23 that from, I take you back, please, to page 14.

24 A. Yes.

25 Q. The wall was divided into three areas--



1 A. Yes.

2 Q. --at least in the Auditor General's Report, and  
3 there came a point when work on the wall was stopped.

4 A. Yes.

5 Q. And it hadn't been completed by then.

6 A. Yes.

7 Q. And in relation to the first area, which ran from  
8 the west exit gate to Lower Estate Superette, at 55, it's  
9 recorded that the Ministry estimates that an amount  
10 of--it's just over \$102,000 were what they needed to  
11 complete that area. And the if you go down to 59 which is  
12 page 14, if you need to look it up.

13 A. Okay.

14 Q. For the Area 2, Bobby's Cineplex to Evans House,  
15 it's recorded there that the Ministry's estimate was--to  
16 complete that area was 60,000, just over \$60,000.

17 And then the last area, Area 3, Lower Estate  
18 Superette to Evans House, at 63, the Report records that  
19 the Ministry's estimated the cost to complete this area  
20 just over \$89,000.

21 Now, when you add those three figures up, you get  
22 the figure that's given at 64, which you just looked at,  
23 which is for completion of the entire perimeter Wall  
24 Project you need another 251,000.

25 A. Um-hmm.

1 Q. Now, my question to you is, do you know or do you  
2 have any additional information that you can give to the  
3 Commissioner as to where that figure of 251,000 came from?

4 A. No. I think the information listed on the  
5 summary on page 26 seems conclusive.

6 Q. So, although you were having discussions about  
7 the wider development--

8 A. Yes.

9 Q. --which--additional changes to the school, how  
10 far had those gone?

11 A. The additional developments?

12 Q. Yes.

13 A. We were in the concept development, design  
14 development stage. The auditorium had progressed, but--at  
15 this time, those--no, at this time, those additional  
16 workings would have been primarily concept development-type  
17 drawings.

18 Q. And for the lay-by--

19 A. It would have been preliminary drawings, sorry.

20 Q. Yes. So, without being dismissive of the term,  
21 this would have been--you would have been working up  
22 drawings to show how it could look like.

23 A. Yeah, we would have been doing sketches, a lot of  
24 hand sketches so that, you know, as far as making revisions  
25 it's really easy with tracing paper on top of tracing paper

1 and--

2 Q. But not certainly at the stage where you might  
3 have been estimating costs or...

4 A. At this stage? No. Maybe later on, yes, but not  
5 at this stage.

6 Q. I see.

7 Now, going back to Phase 1, you've got Phase 1  
8 done in a month, as we've seen, using 11 contractors. You  
9 then got Phase 2, which is obviously more extensive.

10 A. Yes.

11 Q. Were you asked to develop an implementation plan  
12 for either phase? And by that I mean a plan showing stages  
13 with which the work would go through?

14 A. To say that we sat and wrote out an  
15 implementation plan, I can't say "yes" to that. It would  
16 be wrong for me to say "yes" to that.

17 But what I will say is that Ms Stevens and I  
18 would meet very regularly, and, as a matter of fact, the  
19 sections that you speak about, because when I started to  
20 think about how do we implement this project, it would be  
21 reasonable to say we'll start at point A and finish at  
22 point Z, but the truth is there was an opportunity there to  
23 start different segments at the same time. So, to say that  
24 we wrote an implementation plan, no, but we sat and we  
25 strategized how to implement the project that we can get as

1 many segments of the wall being built at the same time  
2 and--

3 COMMISSIONER HICKINBOTTOM: Could--just--I think  
4 it's on the same point, I think, but going back to page 24,  
5 which is the--

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: --this is your 20th  
8 of November document.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: This is an estimate.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: For a segment.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: It's very small but I  
15 can just about read the--what's in the top box.

16 THE WITNESS: Okay.

17 COMMISSIONER HICKINBOTTOM: Hopefully you can.  
18 But does the top box--so this is the segment--but does the  
19 top box mean that this has to be read--it says this has to  
20 be read in conjunction--in junction with the instructions  
21 to bidders, general and special conditions of contract, et  
22 cetera. These are estimated quantities, and to give a  
23 common basis for bidding, general directions and  
24 descriptions of work and materials are not necessarily  
25 repeated or summarised in bill of quantities. But was this

1 produced with a view to obtaining bids for the wall as a  
2 whole or what was anticipated when you produced this?

3 THE WITNESS: What I understood--

4 COMMISSIONER HICKINBOTTOM: Yes.

5 THE WITNESS: --is that this document was going  
6 to be used to select contractors to build segments of the  
7 wall.

8 COMMISSIONER HICKINBOTTOM: Right.

9 And I think the evidence states that that's  
10 exactly how it was used.

11 So, did you appreciate at this stage that there  
12 were going to be lots of contractors?

13 THE WITNESS: At a stage when I developed  
14 quantities for 22-foot segment, yes. Yes.

15 COMMISSIONER HICKINBOTTOM: So, on the 20th of  
16 November, the splitting up of the Project was in your mind,  
17 because otherwise, I--this is really a question, but  
18 otherwise I would have assumed that this would have been  
19 done in a different way because the--you would have had a  
20 Tender Document or something.

21 THE WITNESS: I would have simply been responsive  
22 to the directives that were given to me. So, if I  
23 developed a quantity or quantities for a segment of wall  
24 for 22 feet, I wouldn't have been doing that on my own, I  
25 would have requested to do just so, and I would have

1 responded in favor of providing what was being asked.

2 COMMISSIONER HICKINBOTTOM: But is it the case  
3 that--I mean, this was a big project, it was a million  
4 dollars, more or less.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: If this had gone out  
7 to tender, as a Major Contract, the Bill of Quantities  
8 would not have been like this; it would have been a pretty  
9 different conceptual thing, wouldn't it?

10 THE WITNESS: If it had gone out to tender? When  
11 you say it would be a separate thing, explain to me a  
12 little bit more what you mean.

13 COMMISSIONER HICKINBOTTOM: If, instead of  
14 splitting the contract up into segments and then having--

15 THE WITNESS: Oh, yeah, small contracts.

16 COMMISSIONER HICKINBOTTOM: If you had one main  
17 contractor in the whole thing.

18 THE WITNESS: Yes, right, it would have been  
19 different.

20 COMMISSIONER HICKINBOTTOM: The whole--the Bill  
21 of Quantity would have been a different conceptual Bill of  
22 Quantities.

23 THE WITNESS: Would have had.

24 COMMISSIONER HICKINBOTTOM: Different things in  
25 it, put in a different way.

1 THE WITNESS: Right.

2 COMMISSIONER HICKINBOTTOM: And so, it looks as  
3 though this is aimed, as you say, at enabling this to be  
4 attached to contracts and to do it in that way.

5 THE WITNESS: Let me just add because I want to  
6 be clear, yes, we did the quantities for the 22-foot  
7 segments, but I would not have known whether those 22-foot  
8 segments would have been multiplied for 15 sections, 10  
9 sections, two sections, one section. I just knew that, if  
10 you're asking for 22-foot segments, then there must be a  
11 logical reason why--

12 COMMISSIONER HICKINBOTTOM: Exactly, because if  
13 it was going to be one contract for a 1500-foot wall, it  
14 would have been a different thing?

15 THE WITNESS: Yes. What the 22-foot segment  
16 allowed is for you--for incrementally multiplying the  
17 segments--

18 COMMISSIONER HICKINBOTTOM: One or two or 10?

19 THE WITNESS: It could be a hundred, I don't  
20 know. It could be anything, but because it was a  
21 typical--typical wall, the 22-foot segment made it very  
22 easy to decide what you want to do.

23 BY MR RAWAT:

24 Q. And can you remember, the November 2014 estimate,  
25 who asked you to produce that?

1           A.     Whatever I was asked to produce would have come  
2 from Ms Stevens, so my directive always came from  
3 Ms Stevens.

4           Q.     I see.

5           COMMISSIONER HICKINBOTTOM:   I'm sorry to  
6 interrupt.

7           If there had been one Major Contract--one major  
8 contractor to build a 1500-foot wall--

9           THE WITNESS:   Right.

10          COMMISSIONER HICKINBOTTOM:   --but with the same  
11 design that you had--

12          THE WITNESS:   Yes.

13          COMMISSIONER HICKINBOTTOM:   --would you have  
14 expected the total cost to be less?

15          THE WITNESS:   It would be less.

16          COMMISSIONER HICKINBOTTOM:   I mean, perhaps for  
17 obvious reasons.

18          THE WITNESS:   Yeah.

19          COMMISSIONER HICKINBOTTOM:   But yes.

20          THE WITNESS:   It would be, yes.

21          COMMISSIONER HICKINBOTTOM:   Okay.

22          THE WITNESS:   Yeah.

23          MR RAWAT:   We should say, Commissioner, if you go  
24 to 149.

25          COMMISSIONER HICKINBOTTOM:   Thank you.



1 MR RAWAT: Just that the wording you pointed out  
2 to Ms Stevens--Mr Augustine appears on the original  
3 provisional estimate he'd provided.

4 BY MR RAWAT:

5 Q. But the point is that when you were asked to  
6 produce that segmented estimate in November 2014, in your  
7 mind, as the architect, your rationale was--your rationale  
8 was that this must be on the basis that more than one  
9 contractor is going to be involved in this job?

10 A. Yeah. It could be presumed that that was going  
11 to be the reality.

12 Q. And when you were doing--I mean, this is  
13 November 2014, so it's even before you start Phase 1 in  
14 December, physically start it, were you--did you anticipate  
15 before starting Phase 1, was it your expectation that you  
16 would see more than one contractor on Phase 1?

17 A. I--at the time with Phase 1, I was just open to  
18 whatever. I wasn't anticipating or expecting. I mean, it  
19 would be whatever it is. I was simply just waiting to  
20 receive--

21 COMMISSIONER HICKINBOTTOM: Phase 1 was,  
22 certainly compared to Phase 2, a relatively modest project.

23 THE WITNESS: Small, yeah, yeah.

24 BY MR RAWAT:

25 Q. You've got two phases. What was the involvement

1 of the Minister in those two phases?

2 A. In the phases? I would figure that the  
3 directives that I got from Ms Stevens would have come from  
4 him.

5 Q. How often were you meeting during the course of  
6 this project?

7 A. With Ms Stevens?

8 Q. How often were you meeting with the Minister?

9 A. Oh, very seldom.

10 And let me add, there were times when Ms Stevens,  
11 Jovita--Ms Scatliffe, if I may call her by her surname--the  
12 Minister. I want to say PS, but I don't want to say "yay"  
13 or "nay", but I know those three for sure. I'm not sure if  
14 they would be having status update meetings in their  
15 office, but occasionally I would get a phone call, and he  
16 would always say, "We're in a meeting," he would say who's  
17 there. He would say, "I have you on speakerphone, and we  
18 are going through," and he may have asked about the  
19 progress, Ms Stevens would have been given an update and he  
20 would expect me to--when we calls, he would expect me to do  
21 the same, but sometimes he would call not necessarily about  
22 the wall but he may have additional concerns about the  
23 Master Plan and where we were going and wanted to know  
24 where things were progressing.

25 But to say that I left my office or left the site

1 to meet with the Minister, no, I did that on a weekly  
2 basis, met with Ms Stevens at her office on a weekly basis,  
3 and we met a lot more than once a week on-site with  
4 Ms Stevens.

5 Q. Did the Minister ever come on-site?

6 A. No, no.

7 Q. In terms of the--and focusing specifically on the  
8 Wall Project--

9 A. Yes.

10 Q. --and particularly Phase 2, what involvement, if  
11 any, was there from Public Works Department?

12 A. Public Works Department? So, the plans would  
13 have obviously been something with the Public Works  
14 Department, they would have been approved by the Public  
15 Works Department. When we started the Project, I had  
16 reached out to inspectors at the Department to come and  
17 visit the site, and they did inspections, but it was so  
18 much because typically you would call if you're building a  
19 House, I can pour and insist I come. The project was an  
20 ongoing project. So, after the first one or two or three  
21 times--I don't want to give an exact number--I said, "You  
22 know, guys, this is ongoing, so just periodically come and  
23 check," and they would. Sometimes they would meet with me,  
24 sometimes they would meet with the contractors because the  
25 contractors would tell me that they're there.

1           But I would call--I called, and they would come  
2 and inspect just to make sure that the details and  
3 especially in the footings and things like that where it  
4 gets a little complicated, they would come in and they  
5 would carry out periodic inspections.

6           And there were cases where people had to go, and  
7 I remember there was one time, before you pour, you should  
8 call to get your inspections, and there was one guy--I  
9 guess he was pushing--before I could get there, the  
10 inspectors had gone, and I remember the one the inspector  
11 specifically called me and said, "Well, he needs to get the  
12 steel up off of the ground because the space wasn't there  
13 at the time".

14           And again, those were periodic inspections  
15 throughout the construction.

16           Q.    We heard evidence about a unit within the  
17 Ministry of Finance called the Project Unit.  Are you  
18 familiar with Project Unit?

19           A.    Yes.

20           Q.    And were you asked by anybody at the Ministry to  
21 get in touch with the Projects Unit?

22           A.    No, I was not.

23           Q.    And during the course of the Project,  
24 particularly Phase 2, did you have any interaction with the  
25 Projects Unit?

1           A.    My memory is a little bit faded on that, but I  
2 believe that there was a male and a female from that  
3 Department that visited the site. There was one person in  
4 particular that--this was the female individual, that  
5 Ms Stevens would tell me would call again to check on the  
6 progress, check how things were going. And one particular  
7 male that works at the site. I can't say how often he was  
8 there because it's been a while, but I do know that maybe  
9 not as much as it would be if the Project was taking place  
10 now because I've worked with that unit, and they're very,  
11 very much operational now.

12                   I know there was some queries about how  
13 operational they were then, but there was a particular  
14 individual, male individual, that did, from what I can  
15 recollect, visit the site. I can't say he was there every  
16 day, but there was some involvement--may not all be there,  
17 but there definitely was.

18           Q.    Are you familiar with the term  
19 "contract-splitting"?

20           A.    I became more familiar with the term  
21 "contract-splitting" in more recent years through  
22 Government.

23           Q.    So, at the time of this project, 2014- 2015, was  
24 it a term that you were familiar with?

25           A.    I want to maybe--if you had asked me to describe

1 what the process was, maybe I would not have used  
2 "contract-splitting". I probably would have say  
3 project-dividing or something of that type. Through media  
4 you have heard more recent times you heard about effective  
5 financial management, I think, is where I really got the  
6 grasp of that term.

7 But at the time I simply would say they were  
8 dividing the Project, or something like that.

9 Q. And taking you back to that time and leaving the  
10 phrase aside, was dividing the Project something that you  
11 had encountered before?

12 A. Before--I mean, you work with Government,  
13 different administrations, and it's something that--it's  
14 not uncommon. On a project I worked on with the  
15 Government, it's not uncommon I worked with more than one  
16 contractor. In this case, 70, I can't say that I have ever  
17 been, you know, to that extent, but it's very uncommon, you  
18 show up at the site, not even show up at the site but you  
19 get your directive, and there is more than one person on  
20 the site. I've done that many times before. It's  
21 something that's not--not--that was not done particularly  
22 by just this Ministry. It's something that, over the  
23 years, that I have seen that's done quite regularly.

24 Q. What was different here is 70 was unusual?

25 A. Yeah, the numbers hadn't gone pretty far.

1 Q. I think--in an early stage of your career, had  
2 you been in Public Service as well?

3 A. Yes.

4 Q. And during your time in Public Service, did you  
5 also encounter Ministries on projects dividing up the  
6 Project?

7 A. My role in all my years in the Public Service  
8 would not have been--although we did--I was employed at the  
9 time in the Town and Country Planning Department in my  
10 previous years as Deputy Chief Planner, so it's not an  
11 execution agency per se, although I would say, when I was  
12 there in particular, you know, I did do some projects that  
13 were implemented.

14 So, my involvement with project execution from a  
15 public standpoint would have been almost nil because we  
16 weren't an Executing Agency, so I can't say that I would  
17 have been familiar from being a Public Servant with  
18 contract-splitting because that was not what the Town and  
19 Country Planning Department does on a daily basis.

20 Q. But going back again to the Wall Project, at the  
21 time--at any time during the Project did anyone tell you  
22 what's going on here is contract-splitting or is dividing  
23 up the Project?

24 A. No, no.

25 Q. But even in 2015, that was a concept--dividing up

1 the Project was a concept that you were familiar with?

2 A. At the time I just figured that this was  
3 something that governments do. In this case, I'm just  
4 taking a directive as to, you know, I'm literally sitting  
5 at my desk waiting for the directive as to how this is  
6 going to be done.

7 So, yeah, it's just the environment you are in.  
8 This is just what you would expect.

9 MR RAWAT: Commissioner, I have reached the end  
10 of my questions.

11 Can I conclude, Mr Augustine, thank you very much  
12 for making yourself available at extremely short notice,  
13 but also for the assistance that you have provided this  
14 evening.

15 COMMISSIONER HICKINBOTTOM: Yes. And can I echo  
16 that. Thank you for coming at short notice, and for your  
17 evidence, which explains some things which certainly  
18 haven't been explained as clearly and possibly at all  
19 before, so it's been very helpful. Thank you.

20 THE WITNESS: I did make some notes perhaps some  
21 venture further out of the discussion of what we were  
22 discussing.

23 If I can just--I probably won't go through it  
24 all, but I want to say a few things I have listed here.

25 Over the years I have worked with Ms Stevens and



1 I more recently came to know Ms Moses-Scatliffe, and  
2 everything I know about those two individuals I want it  
3 make sure it goes on record because this project has been a  
4 scarring process, for lack of a better term, and it's been  
5 lingering round, in my opinion, for far too long with, in  
6 my opinion, too much on factual information, more gossip  
7 and more fictional than anything else, which definitely  
8 scars the character, including mine, because I have always  
9 held myself as a person that, once given the task of  
10 executing a job, I will do it, and I will do it to the best  
11 of my ability.

12           And I do believe that is the reason why I was  
13 able to mesh with Ms Stevens and Ms Moses because they  
14 uphold the very same principles. They are devoted, they're  
15 dedicated, and--you know, there is a lot that's been said,  
16 this has been through an election cycle where I can  
17 only--if I started to tell you, you know, the far-reaching  
18 angles that a lot of what's been said about this project  
19 and a lot about what has been written about this project,  
20 when you start to look at the facts and what's  
21 true--industry standard rates and different things like  
22 that--it puts a damper on your daily workings and  
23 undertakings because it's a cloud that follows you no  
24 matter where you go.

25           The Auditor General did her Report much to the

1 absence of my involvement. I don't want too deep into  
2 things, but I just want to make sure that I put a few  
3 things on record, much to--well, not include my  
4 involvement, so there is a lot that was written there that  
5 is very much debatable.

6 And based on--I did some analysis based on some  
7 of the estimates that persons like myself who are on the  
8 outside provide to Government or to private sector, one in  
9 particular--I won't go too much into detail, just bear with  
10 one or two minutes, I will wrap up quickly.

11 For instance, a lot have spoken about the price  
12 of the wall. And yes, it's very easy to appreciate and  
13 understand, once you divide a project, you're going to  
14 incur some additional costs. That's as simple as it gets.  
15 Very little there to debate. But, you know, in the Report,  
16 Auditor General speaks about costs. And a simple  
17 comparison on block work by my company, we used \$80 a  
18 square foot, and you have Public Works Department using \$55  
19 a square foot. And the Report--it doesn't give their  
20 figure, but it alludes to the fact that the costs used in  
21 that report was even less than the \$55 per square  
22 foot--square yard they use.

23 But I say that to say \$55 Public Works, I want  
24 you to know the names the companies that provided that  
25 additional estimate, so I won't call their names, but one

1 of the two actually uses \$90 a square foot. That's--square  
2 yard, sorry. That's a cost estimate even higher than  
3 mine's, and that is very reputable and large,  
4 well-established and company that does a wealth of work for  
5 Government. And another company here that uses \$105 a  
6 square yard, and I'm almost--at least my company and  
7 myself--almost crucified for using \$80 a square foot  
8 because of mere reason that Public Works used 55, but these  
9 companies like myself are readily doing business with the  
10 Government using square-yard rates that it's there, that's  
11 higher than what I use.

12           And I think that's unfair. It's definitely what  
13 was done there was unfair. I will leave it there because I  
14 don't want to dwell on that, but Mr Commissioner, the  
15 Report was done, I just give you a general insight into my  
16 take on it. Following the Report, letters were written,  
17 never got a response, and by all indication, there is  
18 nothing in that Report that changed based on the submission  
19 of those letters, which was done years ago to this date.

20           Following that, there was a lengthy Police  
21 investigation. You know--and I read all the comments, I  
22 saw all the comments that were made. Some of them scarred  
23 me pretty deeply, but what I want to put on record is that,  
24 while some people sat back and said let's get the popcorn  
25 out, what they were not aware of is that I was grabbing my

1 popcorn myself because the one good thing about the police  
2 report that I figure would happen is that the truth had to  
3 come out, had to be revealed. That Report was done almost  
4 two years ago. It was highly publicised when it started.  
5 It was highly publicised midway, and it was highly  
6 publicised when it was finished. But nothing has been said  
7 of it since then. And now we are here.

8           So, I really look forward to the point where this  
9 Project and the cloud that it has had we're able to move  
10 forward because it's just been a very long time. You know,  
11 it's a small country, the people that read the truthful and  
12 the untruthful information, those are my clients, you know.  
13 The population is small, and I have to survive, like  
14 everyone else like yourself, I have a family, they look  
15 forward to the very same things that you look forward to,  
16 so I'm glad of the process. I hope that we get to the  
17 point where this is put behind and we can move on.

18           It doesn't change the fact that I'm still very  
19 much interested just continuing to do good works. I have  
20 over the years, and I don't want to intend to change, and I  
21 don't want to let anyone say, especially untruthful  
22 information and deter me from being the person that I know  
23 and people know that I am.

24           I spoke about Ms Stevens and Jovita about their  
25 characters. They work well. They have principles.

1           And lastly, I worked with the Minister, this  
2 Minister and the previous. I know that in this case  
3 because we're on this particular topic, is a dedicated  
4 individual, and I know that deep down inside he really  
5 wants for the better of the country and its people.

6           I just wanted to put that on the record, so I  
7 won't dwell on that.

8           COMMISSIONER HICKINBOTTOM: Can I just make two  
9 comments on that:

10           Firstly, the Inquiry is focusing upon, as you  
11 know, on governance and dishonesty in public office, so  
12 we're focusing on public officials.

13           THE WITNESS: Okay.

14           COMMISSIONER HICKINBOTTOM: And that is our  
15 focus--

16           THE WITNESS: Okay.

17           COMMISSIONER HICKINBOTTOM: --in relation to this  
18 particular project.

19           THE WITNESS: Okay.

20           COMMISSIONER HICKINBOTTOM: But the second point  
21 is that I thought it was important to hear from the three  
22 witnesses that we have heard from this afternoon,  
23 Ms Stevens, Ms Scatliffe, and yourself--

24           THE WITNESS: Yes.

25           COMMISSIONER HICKINBOTTOM: --so that in terms of

1 any criticisms that might have been suggested, particularly  
2 in respect of Ms Stevens and Ms Scatliffe--

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: --they had an  
5 opportunity to be asked questions about those and to make  
6 their position clear.

7 THE WITNESS: Okay. I appreciate the fact  
8 that--I actually smiled when I received a call, so I  
9 appreciate the fact that I was called and had a fair chance  
10 to aid in the process and help clarify some of the  
11 questions that we have not been clarified prior to me being  
12 here.

13 COMMISSIONER HICKINBOTTOM: You have.

14 THE WITNESS: Thank you.

15 COMMISSIONER HICKINBOTTOM: Good, Mr Rawat.

16 MR RAWAT: We're not sitting tomorrow,  
17 Commissioner, but we resume on Friday.

18 COMMISSIONER HICKINBOTTOM: 10:00.

19 MS PEATY: Mr Rawat--sorry, Commissioner, just  
20 very quickly on scheduling, we're not sitting here and no  
21 hearing on Friday. Could it be possible to have a list for  
22 the following week of hearings? Because I don't think we  
23 have one yet, and we just received a request for  
24 documentation on the basis that it needs to be for a topic  
25 for next week so we know that topic is up next week.

1           MR RAWAT: As soon as the list is available, it  
2 will be published.

3           MS PEATY: Okay. Thank you.

4           COMMISSIONER HICKINBOTTOM: Thank you, Ms Peaty.  
5 Good. Thank you again, Mr Augustine.

6           THE WITNESS: Thank you.

7           (Witness steps down.)

8           (End at 6:32 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