

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 45
(FRIDAY 8 OCTOBER 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Mrs Fiona Forbes-Vanterpool (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Counsel to the Commission Mr Bilal Rawat also appeared.

Dr Carolyn O'Neal-Morton gave evidence.

Mr Glenroy Forbes gave evidence.

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Those present:

Session 1

Mrs Fiona Forbes-Vanterpool, Principal Crown Counsel (attending remotely)

Mr Bilal Rawat

Dr Carolyn O'Neal-Morton

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Just before we start, if I might raise one very short point with Ms Forbes-Vanterpool.

Ms Forbes-Vanterpool, we're due some legal submissions on section 66 and section 67 today. Sir Geoffrey Cox, when he asked to make those submissions, said that he would get them to us by a week last Tuesday. I gave him extra time anyway until last Friday, and that's been extended until today. Could I just confirm that they are coming in because we obviously have to organize any oral submissions in relation to them that might be necessary?

MS FORBES-VANTERPOOL: Good morning, Commissioner.

As far as I'm aware, yes, counsel is working on those submissions, and they should be submitted today at least by 4:00 p.m.

COMMISSIONER HICKINBOTTOM: Thank you very much, Mrs Forbes Vanterpool. That's very helpful.

Mr Rawat.

MR RAWAT: Good morning, Commissioner.

Can I, for the record, confirm the legal representation present today. We have Ms Fiona Forbes-Vanterpool, who is here attending remotely on behalf of the Attorney General and the elected Ministers. The Representatives of the remaining Members of the House of

1 Assembly are not assistance, either remotely or in person.

2 Our first witness today, Commissioner, is Dr Carolyn
3 O'Neal-Morton.

4 BY MR RAWAT:

5 Q. Dr O'Neal-Morton, thank you for coming back to give
6 further evidence to the Commissioner. Much of what I'm going to
7 say by way of instruction you will have heard already. But it's
8 always worthwhile repeating it. On the first occasion you gave
9 evidence you made an oath. No need to take that again; you are
10 still bound by it.

11 You will see on the desk that you have two lever-arch
12 files there which we will have to go through as we go through
13 your evidence and also there's some loose paper that we may need
14 to look at.

15 As I reminded you, not so long ago, do remember please
16 to keep your voice up. It's easy, I think, to forget, but if
17 you can, that will be enormously helpful.

18 A. I will do my best.

19 Q. Thank you.

20 Could, just by way of background, could you confirm
21 this or as a starting point. As Permanent Secretary in the
22 Premier's Office, you hold the position or were also as
23 Accounting Officer; is that right?

24 A. That is correct.

25 Q. Now, the Commissioner has taken evidence concerning

1 the COVID-19 Stimulus Grant Programme that the Government of the
2 BVI put in place at the start of the pandemic.

3 As Permanent Secretary in the Premier's Office, you
4 were involved in that process, were you not?

5 A. Yes, I was involved. I am still involved, as a matter
6 of fact.

7 Q. Now, you were sent a Warning Letter on the 24th of
8 September, and again, Dr O'Neal-Morton, we have been through
9 this before, but the Warning Letter set out potential criticisms
10 that may be made of you on the basis of the evidence that has
11 come before the Commissioner. Now, that arises because you are
12 the Permanent Secretary in the Premier's Office.

13 A. Um-hmm.

14 Q. As I mentioned to you and to others, it is just a
15 notice of potential criticisms.

16 A. Okay.

17 Q. It is not and does not form the provisional or
18 concluded view of the Commissioner. The purpose of it is to
19 give you an opportunity to respond to those criticisms to ensure
20 that you have been treated fairly.

21 You have, in fact, provided a Written Response to the
22 Commissioner, and I ask you just to turn to that, first of all,
23 please.

24 You have a copy, Dr O'Neal-Morton?

25 A. Yes, I do, Mr Commissioner.

1 Q. Could we start off with--could you just explain to the
2 Commissioner how that Response was prepared, please.

3 A. The Response was prepared basically as Permanent
4 Secretary I drafted the contents and forwarded them to the IRU
5 for vetting and to make sure everything was legally all right.
6 We did the composition at the Premier's Office, IRU vetted, sent
7 it back to make sure it had conveyed exactly what was conveyed
8 by the Permanent Secretary, and then it went to the COI.

9 COMMISSIONER HICKINBOTTOM: So, this is your evidence,
10 and do you adopt this evidence into the record?

11 THE WITNESS: Yes, Mr Commissioner.

12 COMMISSIONER HICKINBOTTOM: Thank you very much.

13 BY MR RAWAT:

14 Q. And we see just for the record, Dr O'Neal-Morton, that
15 it's signed by you and dated the 4th of October 2021?

16 A. That is correct, Mr Commissioner.

17 Q. Now, you refer in your Written Response to a document
18 entitled "Response of the Office of the Premier to the evidence
19 of the Auditor General and the Internal Auditor concerning the
20 farmers and fishers and schools and Grants Programmes" which was
21 submitted to the Commission on the 7th of September 2021, and
22 you've called that the "PO Response".

23 Now, again, can you confirm that that is something
24 that you wish to adopt as part of your Written Response to the
25 Commissioner?

1 A. Yes, Mr Commissioner.

2 Q. The Commissioner, when this document was submitted,
3 made an Order confirming that you agreed with or asking for
4 confirmation that you agreed that the contents of that Response,
5 and can I confirm that you do agree with the contents of it?

6 A. Yes, Mr Commissioner.

7 Q. And are you in a position, Dr O'Neal-Morton, to answer
8 questions on that Report?

9 A. Yes, sir, Mr Commissioner. I'll do my best.

10 Q. The other matter to draw your attention to is the
11 Response of the Premier. He, too, has been sent a Warning
12 Letter. The Premier hasn't attended to give evidence on these
13 topics yet?

14 A. Okay.

15 Q. But he has submitted a Written Response. Have you
16 seen that?

17 A. I don't recall seeing that, Mr Commissioner.

18 Q. One of the points that he's made in that Written
19 Response is that, overall, the Premier's position is that he
20 wasn't involved in the process of designing or administering the
21 schemes that came under the umbrella of the stimulus grant
22 programmes. That was a matter left entirely to Public Officers,
23 and that is detailed in what you've called the "PO Response".
24 And is that something that you would agree with?

25 A. Yes, Mr Commissioner. There were various committees

1 working on the various schemes, and most of the work was left up
2 to the Committees. If there were any difficulties or
3 challenges, it would be directed to the Premier for advice, he
4 would give advice, and then we would--we would move forward.

5 Q. Given the focus of today's Hearing, I would like to
6 start off, Dr O'Neal-Morton, by just looking at some documents
7 and trying to establish some of the chronology with you.

8 A. Yes.

9 Q. If you could please pick up the bundle number 1,
10 please, which will be of those two bundles.

11 A. This one? The one that says part 1?

12 Q. Yes, please.

13 A. Okay. Where do I go?

14 Q. If you turn up, please, page 263 in that bundle.

15 Page 263 is a--if you're there?

16 A. I'm there, Commissioner.

17 Q. Thank you.

18 It's a memorandum 117 of 2020 issued by the Ministry
19 of Finance on the first of April 2020, and it refers under
20 "background information" to the Premier establishing on the 11th
21 of March 2020 the Coronavirus Economic and Fiscal Stability Task
22 Force, which was I think chaired by the Financial Secretary,
23 Mr Glenroy Forbes.

24 Were you a Member of that Task Force?

25 A. Mr Commissioner, incidentally, that is the same week

1 that I had come into the Premier's Office as a Permanent
2 Secretary. I was not an initial Member of the Task Force, but I
3 attended some of the meetings. I recall attending some of the
4 meetings.

5 Q. Did you attend as somebody who was designated to be a
6 Member of the Task Force or somebody who was invited to
7 meetings?

8 A. It would have been as a PS in the Premier's Office.

9 Q. So, therefore, a designated Member of the Task Force?

10 A. As the PS, I don't know exactly how the ramifications
11 go, but as a PS, I was invited to attend the meetings. I would
12 have gone to some of them, not necessarily all of them.

13 Q. Well, what did you understand the purpose of the Task
14 Force to be?

15 A. The--it was to do a situation analysis of the economic
16 situation in the Territory so to determine where we are and in
17 terms of economic status, how do we move forward. That was, in
18 a nutshell, the basic premise behind the Task Force.

19 Q. And did you have a time frame in which to submit your
20 analysis?

21 A. I don't recall.

22 As I said, this was--and you also said as well, this
23 was led by the Ministry of Finance. They might have been the
24 ones taking the lead and having the deadlines to meet.

25 Q. If you turn up, please, Dr O'Neal-Morton, page 273 in

1 the same bundle. This is an expedited extract which is from the
2 Cabinet Secretary to the Ministry of Finance, and with the
3 Financial Secretary copied in, and it's dated the 20th of
4 March 2020. And you can see that it concerns the economic
5 stimulus for farmers and fishermen.

6 A. Let me see.

7 Q. Do you have it?

8 A. I have it, but it's very--

9 Q. It's hard--

10 A. It's very blurry to read.

11 Q. Yes.

12 I think it's the best copy that we have.

13 A. All right.

14 Q. If I can--if you give me a moment, I will see if I can
15 find another copy?

16 A. Okay, if you have one.

17 (Pause.)

18 Q. I don't think--I think that is the copy, I'm afraid,
19 but if I read out to you one part of Cabinet's decisions. It
20 was that a Working Group with technical persons from the
21 Premier's Office, Ministry of Education, et cetera, Department
22 of Agriculture and the Ministry of Finance be established to
23 develop the criteria for grants under the stimulus programme for
24 farmers and fishermen, and it was decided that the Permanent
25 Secretary in the Premier's Office would Chair of the Working

1 Group and the Chairman would then select the Recording
2 Secretary, and that that group should then furnish a progress
3 report on a monthly basis.

4 So, that is Cabinet, it seems, deciding to establish
5 at least in relation to that stimulus programme a Working Group.
6 Were you the Chair of that group?

7 A. Yes, Mr Chairman, I would have been the Chair of that
8 group.

9 Q. Do you recall the group submitting monthly progress
10 reports to the Cabinet?

11 A. I do not recall monthly submissions because there was
12 a bit of a confusion in the beginning because I think the former
13 FS had written to us and said that he was the one to submit the
14 Report, so we had to get that clarified as well.

15 Q. What was the outcome of that?

16 A. The outcome was we would submit them to Internal Audit
17 or whatever--sorry, not to Internal Audit, to Cabinet, we would
18 submit them to Cabinet.

19 Q. So, the confusion would have resolved in your favor in
20 that the Committee, the Working Group, be the ones submitting
21 reports to Cabinet?

22 A. The Committee would have had to submit the Reports
23 instead of the FS.

24 Q. And did the Committee do so on a monthly basis?

25 A. I don't recall anything being submitted on a monthly

1 basis. There might have been periodic reports to the Cabinet,
2 but I can't recall if there were on a monthly basis.

3 Q. There was obviously more than one stimulus programme?

4 A. Correct.

5 Q. And therefore, more than one Working Group?

6 A. Correct.

7 Q. Did you sit on more than one Working Group?

8 A. I sat on about three Working Groups, farmers and
9 fishermen, the churches and religious organizations and schools,
10 and the transportation. I did not sit on the business Board.

11 Q. Did you chair the three groups that you did sit on?

12 A. I chaired the three, and I sent a representative to
13 the fourth one, to the business group.

14 Q. And in terms of submitting reports, we've spoken of
15 the farmers and fishermen Working Group. I'm calling it
16 "Working Group" because of this extract. I think the documents
17 also referred to a "Committee", don't they?

18 A. Yes, they were called committees, committees.

19 Q. I'm happy to use Committee.

20 A. All right.

21 Q. But did the other two groups that you chaired also
22 submit progress reports to Cabinet?

23 A. They would have to had to submit them through our
24 office, but Mr Commissioner, during that time, everything was
25 practically--lots of things going on with COVID, managing the

1 stimulus, meeting the demands of the public. And also as a new
2 PS in the office getting, like, orientation as a PS, finding my
3 bearings around the office.

4 So, there were a lot of things that perhaps went amiss
5 at that time because of the current situation.

6 Q. Focusing on the farmers and fishermen, on the 28th of
7 May 2020, the statement--the Premier made a statement in
8 relation to the COVID stimulus programmes, and if you turn up
9 page 29 in that bundle, please.

10 A. This?

11 Q. Yes, the same bundle.

12 A. 29?

13 Q. Yes. Page 29, please.

14 A. Okay. I'm there.

15 Q. This is part of the Auditor General's Report on
16 stimulus grants to farmers and fisherfolk, and she records there
17 that on the 28th of May 2020, the Premier stated that the
18 funding for farmers would be used for cutting access to farms,
19 fencing property as well as other means to increase and support
20 food production.

21 A. Mr Commissioner, just a second, which paragraph are
22 you on?

23 Q. Seven, sorry, at the top. I think I mistakenly told
24 you two.

25 A. Yes.

1 Q. If you see there what's recorded is that announcing
2 the Programme on the 28th of May 2020, the Premier stated that
3 the funding for farmers will be used for cutting access roads to
4 farms, fencing properties, as well as other means to increase
5 and support food production. For fishermen, the funding was to
6 be used to purchase engines, nets and other equipment needed to
7 help them increase that production.

8 As a policy statement, does that accord with your
9 recollection of what the Premier announced on the 28th of
10 May 2020?

11 A. Seems about right, Mr Commissioner, for the reasons
12 for the funding for the farmers and fishermen, it seems about
13 right.

14 COMMISSIONER HICKINBOTTOM: Yes, thank you.

15 BY MR RAWAT:

16 Q. Sorry, we're going to jump around the bundle a little
17 bit, but if you go to page 138. What we're looking at now,
18 Dr O'Neal-Morton, is, and we'll come back to this, but it's the
19 Preliminary Report on the expenditure of COVID-19 stimulus funds
20 by the Premier's Office which followed on from the finalizing of
21 the Auditor General's Report, page 138 deals with the farmers
22 and fishermen. And if we see at paragraph 3.2.1.1, it sets out
23 there the criteria by which somebody applying for support as a
24 farmer could succeed in an application. And on page 139 notes:
25 "Any level of agriculture below small commercial was considered

1 as backyard farming. Farmers who did not meet the criteria as
2 stipulated for commercial farming could not benefit from the
3 Stimulus Package".

4 And in relation to fishermen, you have their criteria
5 which include that they have to have been an existing licenced
6 commercial fisher as defined under the Fisheries Act, all have
7 held a commercial fishing licence within the past three years or
8 have a notarized letter from a fit and proper person verifying
9 that the fisherman has been engaged in fishing for the past
10 three years that they don't have a commercial fishing licence.

11 COMMISSIONER HICKINBOTTOM: Just before Mr Rawat asks
12 his question about that, this is the Preliminary Report of the
13 Premier's Office in response to the Auditor General's Report. I
14 assume, but is this assumption right, that you were instrumental
15 in preparing this Report?

16 THE WITNESS: Yes, sir. Yes, Mr Commissioner.

17 COMMISSIONER HICKINBOTTOM: Thank you. Sorry,
18 Mr Rawat.

19 BY MR RAWAT:

20 Q. Can the Commissioner also assume this, that in
21 relation to the farmers and fishermen programme, it was directed
22 at those who were engaged either as a farmer or as a fishermen
23 on a commercial basis?

24 A. That was the initial thought--that was the initial
25 idea, um-hmm.

1 COMMISSIONER HICKINBOTTOM: And a commercial basis, as
2 it were the smallest commercial basis, that's in the table at
3 the top of page 139, and that defines it by numbers of animals
4 or square feet of crops; yes.

5 THE WITNESS: That is correct.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 THE WITNESS: That was the initial basis that was
8 formed, that is correct.

9 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

10 BY MR RAWAT:

11 Q. And in terms of the period that was--for that stimulus
12 programme, the application period ran from the 5th of June 2020
13 to the 10th of July 2020. Does that recall with your
14 recollection?

15 A. Thereabouts, um-hmm.

16 Q. And then payments started being made from
17 October 2020?

18 A. Around that September-October, it was around that
19 time.

20 Q. I can take you to it. Those are the details that are
21 in the Auditor General's Report.

22 A. All right.

23 I would have to recollect the dates because, as you
24 realized, we were running four stimulus' concurrently, so it was
25 quite--quite a busy office and quite a bit for myself.

1 COMMISSIONER HICKINBOTTOM: But October 2020 sounds
2 about right.

3 THE WITNESS: Last quarter, yes, would have been.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 MR RAWAT: If I could have a moment, please,
6 Commissioner.

7 (Pause.)

8 BY MR RAWAT:

9 Q. In fact, in your PO Response, that we will look at in
10 due course, what's recorded--and this is at page 228 in that
11 bundle, Commissioner, is that on 18th of October 2020, the first
12 payments to applicants commenced. If you want to look it up,
13 Dr O'Neal-Morton, it's at paragraph 54 in that document.

14 A. Yes, I see that, Commissioner.

15 Q. I just want to, again working through the chronology,
16 just now ask you to focus on correspondence between yourself and
17 the Auditor General's Office. If you go to 1069 in the same
18 bundle, please.

19 You have a memorandum dated the 13th of July 2020 from
20 the Auditor General to yourself headed "COVID-19 Stimulus
21 Grants", and it explains that the audit office will be
22 performing ongoing reviews of the administration and application
23 of the stimulus programmes. And then it refers to the need for
24 controls to be put in place to ensure accountability,
25 transparency and fairness in the application of these funds, and

1 then advises that the control should include a number of
2 measures, including application forms, a process of vetting and
3 approval, the use of a database. And then concludes that an
4 Auditor will be contacting the Premier's Office within the
5 coming weeks to review the controls currently in place and asks
6 for some documents such as guidelines and application forms.

7 The Auditor General's memorandum concludes whilst it
8 is imperative that persons needing assistance are expeditiously
9 provided with relief, we must continue to maintain public
10 accountability and transparency in the application of all
11 Government funds and ensure that the business of the Government
12 is at all times carried out at the highest standards.

13 Now, did you, Dr O'Neal-Morton, disagree with any of
14 that?

15 A. Mr Commissioner, I do not disagree with the Auditor
16 General, not a rule out of the Auditor General Office, but I
17 want to put a situation of the Premier's Office into
18 perspective. It was at that time that we were--worked for the
19 delivery of these stimulus programmes. Lots of people did not
20 work. People were desperate to pay their bills. They were
21 demanding to get on the stimulus programmes running.

22 It was not a normal time in terms of public funds
23 management, not to say that we wanted to disobey any of the
24 rules, so to speak, but the priority was getting the funding out
25 in a rapid state to the people of the Virgin Islands. That was

1 a priority, and we always to go back to Cabinet or whomever to
2 get those measures--to deal with those measures afterwards. It
3 wasn't that we didn't disrespect the office but just that--it
4 was a situation that we had in dealing with COVID.

5 As you recall, I came in on the same world was
6 declared a pandemic. It was not an easy task dealing with, and
7 we're still dealing with it. As a matter of fact, the stimulus
8 programme is still ongoing. As you can see from the Report,
9 there are some farmers and fishermen who have not been paid as
10 yet because of certain challenges we have encountered.

11 COMMISSIONER HICKINBOTTOM: Can I just focus on one
12 thing. The priority was to get money out as quickly as
13 possible.

14 THE WITNESS: Yes, Commissioner.

15 COMMISSIONER HICKINBOTTOM: And everyone understands
16 the dramatic impact that COVID had on the economy generally but
17 also to individual people within the economy. I understand
18 that.

19 THE WITNESS: Correct.

20 COMMISSIONER HICKINBOTTOM: You said the priority was
21 to get money out as quickly as possible, and to go back to
22 Cabinet afterwards. What do you mean by that?

23 THE WITNESS: Of course, whatever we would have done
24 in terms of the controls because we realize in retrospect some
25 of the controls are very ambitious. In retrospect, we realize

1 it was a pandemic. And in retrospect, when you look at other
2 jurisdiction, they didn't have all of those controls when they
3 were distributing stimulus. I think we were perhaps too
4 ambitious with our controls, so the idea was to, of course,
5 report back to Cabinet what measures we had to do in the quest
6 for getting the funds out immediately to the public, which was
7 the priority at that time.

8 COMMISSIONER HICKINBOTTOM: So, again, I just want to
9 be absolutely clear before we move on because Mr Rawat is taking
10 this chronologically.

11 THE WITNESS: Okay.

12 COMMISSIONER HICKINBOTTOM: At this stage, the Cabinet
13 had set up the Programmes, made decisions in relation to the
14 Programmes.

15 THE WITNESS: That is correct.

16 COMMISSIONER HICKINBOTTOM: My understanding of your
17 evidence, I'm sure we are going to this in more detail, is that
18 some of the controls, you say--these are controls imposed by
19 Cabinet.

20 THE WITNESS: They were, most them.

21 COMMISSIONER HICKINBOTTOM: So, some of the controls
22 imposed by Cabinet, you say you didn't regard them as what?
23 Possible? Practical?

24 THE WITNESS: In the climate of the situation with the
25 pandemic--

1 COMMISSIONER HICKINBOTTOM: Okay.

2 (Overlapping speakers.)

3 THE WITNESS: Commissioner, these would have been
4 possible in normal times. But these were not normal times at
5 all, and those were not and they continue to not be normal
6 times.

7 COMMISSIONER HICKINBOTTOM: So, was your plan--Cabinet
8 had made decisions that imposed conditions on the Programmes.
9 You didn't regard the conditions as practical, given the general
10 climate and therefore what? You were--what did you do?

11 THE WITNESS: I wouldn't put it that way. After going
12 through the actual stimulus, where, of course, we have the
13 information and when we were actually going through the
14 stimulus, the demands from the community, we realized that some
15 of the controls that existed, we couldn't go through them, for
16 example, given the suppliers, the monies, people were reluctant
17 to take Purchase Orders in that time because Government may have
18 taken longer than actually giving the money to the person and
19 the person going to the supplier, so all of those controls like
20 that that we were talking about would not have been practical
21 after going through to implement the actual stimulus.

22 COMMISSIONER HICKINBOTTOM: And that's an example, but
23 how did you deal with those issues, then?

24 THE WITNESS: Whenever we came up on a challenge, I
25 would go and ask the Premier verbally, we would discuss it and

1 we would see, you know, whatever it is, the main idea is to get
2 the funds out in an emergency way, and then we would have to
3 deal with Cabinet to--we would have to deal with Cabinet, we
4 would have to write to Cabinet. Once information, once the
5 stimulus is over, and as I say, the stimulus is still on the
6 farmers and fishermen, and the churches, it is still ongoing, it
7 has not been completed as yet. The process is still ongoing.

8 COMMISSIONER HICKINBOTTOM: Thank you very much. That
9 just give a general picture. I'm sure that you will have some
10 specific questions.

11 BY MR RAWAT:

12 Q. Dr O'Neal-Morton, frankly, what I'm going to try and
13 do is just deal with some aspects of your events on a
14 chronological basis and look at what you were writing at the
15 time in e-mails, et cetera, so I hope, as we go through, that
16 will give you an opportunity to draw the Commissioner's
17 attention to particular concerns that were prevalent at the
18 time, some of which you've referred to. But, I mean, can we
19 take it that, going back to that memorandum that I showed you,
20 that if one calls on the sort of principles that the Auditor
21 General was alluding to, the need to maintain public
22 accountability and transparency, to ensure that the Government's
23 business is carried out at the highest standards, those are not
24 points that you would disagree with, are they?

25 A. Not at all, Mr Commissioner.

1 Q. Slightly jumping forward in time, but if you then move
2 to 170, which is the next--

3 COMMISSIONER HICKINBOTTOM: 1070?

4 MR RAWAT: 1070, yes.

5 If I can just have a moment, please.

6 (Pause.)

7 Q. Sorry, 1071. 1070 tells us how that memorandum that
8 we've looked at was sent, it was by e-mail, but if you go to
9 1071, you get to an e-mail from the Auditor General's Office to
10 yourself requesting interviews with key personnel who can
11 provide information about the stimulus programmes that fall
12 under the Premier's Office, and asking for electronic copies of
13 all the Contracts issued under the Ministry for those
14 programmes.

15 Now, did you--do you recall replying to this request?

16 A. I don't recall replying, Mr Commissioner, but when I
17 look at the request, I don't know if I could have replied to it
18 because it asks for electronic copies of all contracts issued.
19 The Ministry had issued no contracts. I don't recall, but that
20 would have been something we would not have been able to have
21 fulfilled.

22 Q. I mean, if we look at the PO Response, the Premier's
23 Office Response, which has been submitted into the Commission,
24 which is at page 247, you see paragraph--

25 A. Just a minute, Mr Commissioner.

1 247? Um-hmm.

2 Q. Yes. That's part of the Response, and I will ask you
3 some questions generally about the Response in due course, but
4 at paragraph 1073 there is reference to that e-mail that we were
5 just looking at because the Audit Manager then had suggested
6 that an interview date of the 3rd of December 2020 notified
7 yourself as to who the lead auditors were going to be. Now,
8 that Response doesn't appear to record--or doesn't record any
9 acknowledgement of the e-mail or any response followed from your
10 office, so we would suggest, wouldn't it, you didn't, in fact,
11 reply to that e-mail? Would you accept that?

12 A. I can't be sure. I cannot be sure of that.

13 COMMISSIONER HICKINBOTTOM: This is your document.

14 THE WITNESS: Um-hmm, but the question is asking,
15 Commissioner, I cannot be sure of that, if a response, it could
16 have been a phone call. I cannot be sure. So I cannot answer
17 "yes" exactly to that.

18 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

19 BY MR RAWAT:

20 Q. But when you make phone calls, I mean, do you put a
21 file note down or do you record it in any way? I mean, what
22 you've had is a request from the Auditor General's Office (a)
23 for information, (b) to make personnel available by the 3rd of
24 December for interview and (c) that you've been told that lead
25 Auditors will be turning up to your office. When you've

1 confronted with that kind of request, even if you deal with it
2 by telephone, would it be your practice, as a very senior Public
3 Officer to make a note of the content of the phone call
4 somewhere?

5 A. I may or may have not. I can't recall.

6 COMMISSIONER HICKINBOTTOM: Dr O'Neal-Morton--

7 THE WITNESS: I would have to search.

8 COMMISSIONER HICKINBOTTOM: Hold on a minute.

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: This is your Response that
11 we're looking at.

12 THE WITNESS: Yes, sir.

13 COMMISSIONER HICKINBOTTOM: It is in total getting on
14 for 1,000 pages long with the attachments.

15 THE WITNESS: Um-hmm.

16 COMMISSIONER HICKINBOTTOM: And I take it that had
17 there been a response that you could recall, or any documents in
18 relation to any response, that it would have been included in
19 this enormous response of yours. Or are you saying that there
20 might be further documents that we haven't yet seen?

21 THE WITNESS: I'm not saying--I'm not saying either of
22 those. I'm saying that I cannot recall if maybe if was a phone
23 call. That is what I'm maintaining because I'm not saying there
24 might be further documentation because I know I searched all of
25 my e-mails, and I produced all of the stuff, but I cannot say

1 definitively what you're saying.

2 COMMISSIONER HICKINBOTTOM: Is this true, then, but
3 tell me if I'm wrong, that you can't recall any response, but
4 one may have happened, if it happened, it would only have been
5 by telephone?

6 THE WITNESS: It might have been. Might have been. I
7 can't say definitely.

8 BY MR RAWAT:

9 Q. But the point you made earlier, Dr O'Neal-Morton, was
10 that in relation to the requests for electronic copies of all
11 the Contracts, you were not at that point, which is
12 November 2020 in a position where you had any contracts; is that
13 right?

14 A. We never had any, and we don't even have any up to
15 now. We don't have any contracts at all.

16 Q. Under the stimulus programme?

17 A. Under the stimulus programme.

18 Q. Did you convey that to the Auditor General's team?

19 A. Mr Commissioner, I already said I can't recall if I
20 did. I cannot recall if I did.

21 And I want to put it back in perspective, it was quite
22 a busy time that I was going through. So, if some things
23 slipped my mind, I think that can be regarded as normal.

24 Q. Just stepping outside the Programme. So, if you do
25 have contracts as the Premier's Office, do you hold them

1 electronically?

2 A. All contracts are held electronically and in hard
3 copy.

4 Q. If we move, then, forward in the chronology to page in
5 the same bundle 213, please.

6 So, we're now on the 10th of December 2020. The
7 Auditor General sends an e-mail to you as PS and says that: "As
8 you're aware the Audit Office is undertaking an ongoing review
9 of the Territory's application of its COVID-19 stimulus funds.
10 This review will require an examination of all related
11 documents, files and records at the Premier's Office as well as
12 interviews with individuals who were instrumental in
13 administering and assisting the COVID-19 relief process".

14 The e-mail then identifies the lead Auditor and asks
15 for the name of an individual who will serve as liaison to
16 provide assistance, information required by the audit staff.

17 The Auditor General then says in the e-mail: "I am
18 enclosing excerpts of the Constitution and the Audit Act which
19 addresses the Audit Office's mandate to access public property
20 and information. You may share this with your staff".

21 Now, the beginning of that e-mail says "as you are
22 aware". Would you accept that that must be a reference to the
23 30th of November e-mail that we looked at, or had you learned
24 about the Audit Office undertaking an ongoing review in a
25 different way?

1 A. That is my view, and that also led me as new PS coming
2 into the office, this is my first audit, and I had two Auditors
3 simultaneously communicating with me that were requiring
4 information. So, for me, it was quite confusing, very much
5 confusing. And as you will probably see later on I requested
6 advice from the Attorney General on the matter because it was my
7 conception that the Internal Audit will normally work with the
8 Office or Offices while the initiative is ongoing, and at the
9 end of the process, the Auditor General will come in. That was
10 my initial conception of audit and auditing.

11 Q. If we can try and take it in stages. I will take you,
12 as we go through the chronology, to that request for legal
13 advice.

14 A. Um-hmm.

15 Q. We are now in December 2020. You say that your
16 initial concept was that the Internal Audit would work with the
17 Office. By that you mean your Ministry?

18 A. Yes, the Premier's Office or whichever department--

19 Q. And then once their work had finished and only then
20 would the Auditor General be able to come in?

21 A. Um-hmm. That was my conception.

22 Q. We've seen the e-mail of the 30th of November 2020 but
23 we're now in the 10th of December 2020.

24 Between those two dates, did you have any other kind
25 of discussion with the Auditor General's Office?

1 A. I can't recall if I had any discussion. I know there
2 were e-mails that she had probably sent, and I see the Response
3 where I tell her I acknowledge--there is no date on this one
4 here.

5 Q. I will take you through those e-mails because these
6 are all e-mails that are annexed to the Premier's Office's
7 response.

8 A. Um-hmm.

9 Q. And as we will go through, we will look at them. And
10 you've explained to the Commissioner that you have gone through
11 all of your e-mails to see if there is anything relevant.

12 A. That's correct.

13 Q. And did you then just hand all of those over to the
14 IRU?

15 A. Yes, I did. All of those, I went on my in-box and I
16 found all of the e-mails that were related. All of those that
17 came from Ms Webster or anybody. Putting in the key words
18 "Auditor General" and all of those in all of the e-mails and
19 forwarded them to the IRU.

20 Q. So, you have undertaken an exercise of identifying all
21 e-mails that you received from the Auditor General's Office and
22 from the Internal Auditor?

23 A. This is correct. And also my Deputy Secretary did the
24 same, my PA did the same, as well.

25 Q. Well, that's helpful because they are obviously

1 mentioned in some of the e-mails.

2 So, I mean, as far as you're aware, does this
3 Response, which you have adopted, but does it contain all of the
4 e-mails that you identified and passed to the IRU?

5 A. As far as I'm aware, yes, it does.

6 Q. So, there isn't an e-mail between the 30th of November
7 and the 10th of December between yourself and the Auditor
8 General's Office. Do you recall between those dates having any
9 telephone conversations with the Auditor General's Office?

10 A. I don't recall.

11 Q. Again, leaving aside the means of communication, do
12 you remember whether there was any other kind of communication
13 between yourself and the Auditor General between those two
14 dates?

15 A. No, I cannot recall.

16 Q. The Auditor General took the step of enclosing
17 excerpts of the Constitution and the Audit Act. Did you take an
18 opportunity to read those?

19 A. Yes, Commissioner, I scanned them. To be honest, with
20 my workload, I had no opportunity to read them in their
21 entirety, so I did a scan of them, so I could become aware of
22 the requirements.

23 And as I said, I respect the Offices, but the
24 constraints that the Offices were under did not permit me to do
25 a lot of things at that point, so I was able to scan and not

1 thoroughly read. I scanned them to get a general idea, the gist
2 of what the document contained.

3 Q. Did you--perhaps as suggested in this e-mail, did you
4 share with your staff the Constitution and the Audit Act
5 extracts?

6 A. I don't recall if I did, but I know early on I might
7 have sent out something that came from the DGO on it, but I
8 don't recall sending out her e-mail.

9 Q. You received some information from the Deputy
10 Governor's Office on this issue?

11 A. I think it was during a Heads of Departments' meeting
12 where all of the Heads of Departments got information about
13 their roles and everything. That information would have
14 probably been passed down to the staff members via their
15 Departments.

16 Q. But just to clarify your two answers because your
17 first reference to the DGO suggests that you received something
18 from the DGO about the role of the Auditor General, which you
19 then shared with your staff.

20 A. I believe it was--how do you call those? It was
21 information that was shared to all of the Heads of the
22 Departments that went out about audits and so forth. I don't
23 think the Act was in there, but I believe, perhaps--I'm not
24 sure. I cannot recall now, I know that that went out quite some
25 time ago.

1 Q. But was it about the time that you were having this
2 correspondence with the Auditor General?

3 A. I can't recall. I would have to search and see. I
4 can't recall.

5 Q. That isn't amongst the documents that have been
6 disclosed--

7 A. No, because that was about the DGO. It wasn't
8 relevant to the Auditor General, in my estimation.

9 Q. But since it referred to audits, it was relevant--it
10 must have been relevant to either the Auditor General's work or
11 the Internal Auditor's work?

12 A. I didn't--at that time, I didn't think--I didn't think
13 that.

14 Q. Now, what's also recorded in the papers was that, in
15 terms of the farmers and fisherfolk, there was an increase in
16 the allocation from 2 million to 3.5 million, and that was on
17 the 15th of December 2020; is that right?

18 A. The amount of money that was required had to be
19 increased because initially we didn't capture all of the farmers
20 and fishermen because we using an application process in the
21 Office that could not reach everyone. There was some legitimate
22 farmers and fishermen that we didn't reach, and the deadline has
23 passed, and some of them were complaining that they didn't meet
24 the deadline. So, in order to--because the main idea was to
25 improve food production, so in order to keep with that

1 imperative, we allowed some of the HOE Members forwarded
2 information to the Premier and to the Office, people were
3 meeting you, telling you about names who are fishermen, and some
4 of them did an application, others were used their names to put
5 forward the information so that they could be included. They
6 were legitimate farmers, and we felt that if we had left them
7 off, we would have been doing an injustice to the farmers and
8 fishermen, and also defeating our purpose of improved food
9 production.

10 Q. But going back to the question, just increased to
11 3.5 million or was it increased to 3.5 million on the 15th of
12 December 2020?

13 A. I can't remember the exact dates, Mr Commissioner.

14 COMMISSIONER HICKINBOTTOM: But it was increased at
15 some point?

16 THE WITNESS: Yes, it was increased at some point but
17 the exact date I cannot recall.

18 COMMISSIONER HICKINBOTTOM: Thank you.

19 BY MR RAWAT:

20 Q. The Auditor General gives her figure for the total
21 spend as of the 21st of May 2021 under this stimulus programme
22 was 5,140,000. Is that the figure that sort of sits in with
23 your recollection of how much had been distributed by then?

24 A. I--I would have to refer to notes. I cannot agree
25 with that figure because I'm not certain. That is her figure.

1 That is not my office figure. I will have to check with my
2 office figure.

3 Q. Well, you've submitted a Preliminary Report which was
4 a response to the Auditor General's Report?

5 A. Preliminary. It was not final.

6 Q. Yes.

7 A. And as I said, Mr Commissioner, we are still--we still
8 have some farmers and fishermen that have been--that are unpaid.

9 Q. I accept that, and we will look at the Preliminary
10 Report, but as of the date of that Preliminary Report, how much
11 had been spent?

12 A. Mr Commissioner, I don't have that in my head. I
13 would have to refer to my notes.

14 Q. Do you have your notes with you?

15 A. No, I don't have. If I knew that you wanted exactly,
16 I could have gotten that from my Finance Officer. That can be
17 gotten.

18 Q. The--

19 A. Sorry, what date did you say?

20 Q. Well, at the date of your Preliminary Report which is,
21 I think, the 28th of June 2021.

22 If we carry on through the chronology, what appears to
23 then have happened--and we see this on page 212--is that the
24 Auditor General e-mailed yourself, Dr O'Neal-Morton, and
25 referring to her earlier e-mail of 10th of December 2020, and

1 said: "As we await your assignment of a contact person for this
2 Audit, please provide us with the following", and she then asked
3 for a number of different documents, including copies of
4 contracts, guidance and criteria being used, and then she asked
5 you to send it to a particular Audit Manager.

6 In response, on the 29th, and it's just at the top of
7 the same page, which is on the 29th of January, you replied, and
8 you said that "with reference to the Stimulus Packages, all of
9 the Programmes within the Premier's Office are still ongoing.
10 We have been and are in contact with the Internal Audit
11 Department, and they are currently in communication with us,
12 advising and guiding us during the process". And you have
13 highlighted in bold the words "ongoing" and "during the
14 process".

15 You then say that, "as I indicated to" and you give
16 the name of the Audit Manager, "whenever the process is
17 complete, the reports will be sent to your office".

18 By that time, how long had the Programmes been running
19 for?

20 A. That would have been from September, October, until
21 January, and hence because, as you notice, as I told you before,
22 "ongoing" and "during", those are my key words to understand
23 that this process might have been dealt with the Internal
24 Auditor for now and then later on the Auditor General. So that
25 would be my perception of it still. This was in January.

1 Q. And what process were you being guided through by the
2 Internal Auditor?

3 A. She was asking some questions about information to
4 supply which my FPO did. It was about eight items my FPO
5 supplied to, and there were some remaining which we promised to
6 supply once we had gotten the information.

7 Q. The Internal Auditor's evidence to the Commissioner
8 was that what she had been asked by Cabinet to do was monthly
9 audits. And, in fact, the Cabinet Decisions reflect that, the
10 expedited extracts do. Had there been monthly audits by the
11 Internal Auditor in your Ministry?

12 A. No, Mr Commissioner. And as I said before, these were
13 not normal times--normally, I would imagine that would be the
14 procedure, that would be the sequence, that would be the timing,
15 but these were not normal times.

16 COMMISSIONER HICKINBOTTOM: Dr O'Neal-Morton, I
17 understand--I understand that there may have been reasons for
18 that.

19 THE WITNESS: Um-hmm.

20 COMMISSIONER HICKINBOTTOM: But the evidence at the
21 moment is that the Internal Audit Department had been mandated
22 by Cabinet to produce monthly audits. They were not produced,
23 as I understand it.

24 THE WITNESS: Because, Mr Commissioner, we are given
25 them--they sent a list, if I recall correctly, I think it was

1 initially sent to the FS and then it came to us for eight items.
2 We supplied inasmuch as we could at that time, because recall we
3 were also dealing with four Stimulus Packages, in addition to
4 our regular duties, a short staff, Mr Commissioner. So, if we
5 put it all in perspective, the Ministry, we had a lot of
6 challenges at that time in terms of satisfying normal and
7 regular practices, not to say we weren't doing them but we had
8 challenges in doing them because of the pace of the work and the
9 need to get the Stimulus Packages out as soon as possible for
10 public consumption.

11 COMMISSIONER HICKINBOTTOM: Thank you.

12 BY MR RAWAT:

13 Q. And you say that the Reports will be sent to your
14 office. Which reports were you referring to?

15 A. Once we finish with the process, we would send to the
16 Internal Audit, and at the end of the exercise the reports would
17 go to the Auditor General. That was in January at that time.

18 COMMISSIONER HICKINBOTTOM: I'm sorry, what reports,
19 Dr O'Neal-Morton?

20 THE WITNESS: The Reports on the stimulus.

21 COMMISSIONER HICKINBOTTOM: From whom?

22 THE WITNESS: Mr Commissioner, I don't understand. I
23 am the one that's speaking and I represent the Premier's Office
24 so it would be reinforced from the Premier's Office.

25 COMMISSIONER HICKINBOTTOM: Thank you very much.

1 BY MR RAWAT:

2 Q. The Auditor General seems to be asking you for access
3 to, if you like, what could be called raw data. She wants
4 access to applicant database, she wants criteria and guidance,
5 she wants to see contracts.

6 Was it your intention that--to let the Internal
7 Auditor do her work, you would then prepare some reports that
8 you would then submit to the Auditor General?

9 A. Because as I said before, my concept was Internal
10 Audit and then Auditor General after the process is over. That
11 was my idea of audits before I got a response from the Attorney
12 General's Chambers, which was in June of this year.

13 Q. We will come back to that.

14 A. Um-hmm.

15 Q. I'm just trying to understand what you in January 2021
16 thought the role of the Internal Auditor was or the Auditor
17 General, forgive me. You have someone who is asking you for
18 documents, and your stance seems to be that in, due course, you
19 had been in position to give the Auditor General Reports, which
20 suggests that either that you would--there would be work done by
21 the Internal Auditor that would be passed on to the Auditor
22 General or there would be work done by your office that would
23 then be passed on to the Auditor General. But that in either
24 situation, the Auditor General needn't look at the underlying
25 information?

1 A. No, that was not the impression that I have given.

2 As I said before, Commissioner, my concept of Audits,
3 was that the ongoing process, while the process is going on, the
4 Internal Auditor will work with the Ministry, Department, agency
5 or whatever. And at the end the exercise, the information will
6 then be transmitted to the Auditor General. That was my
7 concept, so because I felt--I felt quite confused with both
8 audits at the same time writing and requesting information, so I
9 got confused. And that is why I know the counsel said he will
10 go to it. That was the underlying factor here of submissions,
11 Internal Auditor first and then Auditor General second. That
12 was my interpretation before I got the Attorney General's
13 advice.

14 COMMISSIONER HICKINBOTTOM: Just so I've got that
15 absolutely clear as to what was in your mind in January which
16 was when this e-mail was--

17 THE WITNESS: Um-hmm.

18 COMMISSIONER HICKINBOTTOM: --you thought the Auditor
19 General didn't come in to the picture until the entire process
20 was complete.

21 THE WITNESS: Yes, that was my--

22 COMMISSIONER HICKINBOTTOM: And so, if that were
23 right, she wouldn't be in the picture yet, because the process,
24 as I understand it, was ongoing.

25 THE WITNESS: No, it was quite a challenge to have

1 experienced it because you're getting questions and requests
2 from both sides.

3 COMMISSIONER HICKINBOTTOM: We'll come to that, but
4 anyway, in terms of the Auditor General, you thought Ms Webster
5 doesn't come in to the picture until the whole process is
6 complete.

7 THE WITNESS: Um-hmm.

8 COMMISSIONER HICKINBOTTOM: In relation to the
9 Internal Auditor, you understood that the Internal Auditor may
10 have a role to play during the process.

11 THE WITNESS: Correct.

12 COMMISSIONER HICKINBOTTOM: But as I understand it,
13 although the Internal Auditor was required to do monthly audits
14 by Cabinet, she was--she did not have the data to do those.

15 THE WITNESS: She didn't have it, Commissioner,
16 because there was a list--a list that was sent out with I
17 recollect about eight items. At that given time we only had
18 about two items ready for her. Those were sent to her, and the
19 others, I think she even sent me reminders asking about her,
20 about them, and I told her that we were working on that. So, it
21 wasn't a matter of withholding it. It was that we didn't have
22 the information ready because whenever the Internal Auditor
23 would remind me about it, I told her that we were working on it
24 still.

25 COMMISSIONER HICKINBOTTOM: Okay.

1 THE WITNESS: And I want to refresh the memory,
2 Commissioner, this is not the only item we were working on in
3 the Ministry.

4 COMMISSIONER HICKINBOTTOM: No, no, I'm just trying to
5 get a picture in January, and I think I've got that picture now.
6 Thank you very much.

7 THE WITNESS: Okay.

8 BY MR RAWAT:

9 Q. But taking you back to, sorry, I'm into January, at
10 that time, when did you anticipate that the process would be
11 complete?

12 A. The which process for--

13 Q. You speak in your e-mail of an ongoing process.

14 A. Um-hmm.

15 Q. You're being guided through the process by the
16 Internal Auditor Department--Internal Audit Department. I mean,
17 you then conclude is that whenever the process is complete, the
18 Reports will be sent to your office.

19 So, when did you anticipate the process would be
20 complete?

21 A. I didn't have any idea of when it would be completed,
22 so I couldn't give a ballpark time.

23 Q. At that time--

24 A. Because, as a matter of fact, this is not even
25 completed now.

1 Q. Yeah, but at that time--

2 A. So we're still going through it, it's still ongoing.

3 Q. You were still up and running with the Programme?

4 A. Yes, Commissioner.

5 Q. You could not at that--in January 2021, you could have
6 not given a definitive date as to when the Programme would come
7 to an end?

8 A. No, Commissioner, I could not have done that.

9 Q. But how would--you've just spoken a moment ago about
10 providing information to the Internal Auditor. This e-mail
11 speaks of being in communication with Internal Auditor and being
12 guided by her.

13 How would providing the access sought by the Auditor
14 General, which is to be given access to databases and electronic
15 copies, how would that have prevented your Ministry from
16 continuing its work on the stimulus programmes?

17 A. Mr Commissioner, we don't have any databases in the
18 Premier's Office relating to the stimulus and applications that
19 fee-holder--the farmers and the fishermen applications, the ones
20 that we were requested this week, they were all in hard copy
21 because the farmers and fishermen submitted their applications
22 in hard copy. They weren't online. So we had electronic
23 copies. Nor do we hold any databases with applications.

24 Q. But none of that is explained in an e-mail to the
25 Auditor General. What--going through the e-mails, what you

1 don't see is you explaining to the Auditor General there are no
2 electronic copies of all contacts, there are no databases, that
3 any material would be in hard copy. You don't explain that.
4 But even if one accepts--firstly, it says if the information
5 doesn't exist, then there's nothing for the Auditor General to
6 look at. But even if the Auditor General wanted to look at
7 material that was only held in hard copy, how would at that
8 time, January 2021, giving her that access have prevented you
9 and your staff from continuing to administer the stimulus
10 programme?

11 A. Because, Mr Commissioner, that is in January. That is
12 a time when I'm still not certain of how the sequence should go.
13 I'm not certain of what I should do at that time. I'm still not
14 certain. That is January 27th, I'm not certain.

15 COMMISSIONER HICKINBOTTOM: No, I'm sorry, there are
16 two different questions here, Dr O'Neal-Smith. The first is,
17 and we've dealt with this, what was in your mind as to sequence,
18 and you considered that the Auditor General didn't come onstream
19 until the end of the process, an indefinite period but certainly
20 a long way off.

21 But the question Mr Rawat asked was a different
22 question, and that is how would giving this information to the
23 Auditor General have interrupted the flow of the Programme? The
24 answer may be, well, it wouldn't have done, but I thought that
25 the Auditor General didn't get this stuff until the end of the

1 process. But would delivering this information to the Auditor
2 General have been detrimental to the execution of the Programme?

3 THE WITNESS: I don't think it would have,
4 Mr Commissioner.

5 COMMISSIONER HICKINBOTTOM: Very good. Thank you very
6 much.

7 BY MR RAWAT:

8 Q. If you go to page 211, please, Dr O'Neal-Morton, we
9 see what's the next in e-mail in the chain because on the 29th
10 of January 2021, the Auditor General e-mailed you, and the
11 Auditor General explained to you that--she says (reading): "We
12 understand the Programmes are ongoing. This does not preclude
13 our office from examining the Government's activities, all of
14 which fall within our purview". She explains that Internal
15 Auditor in the Auditor General's office perform different
16 functions and have different mandates with different reporting
17 lines.

18 And then adds (reading): "Please note that we plan
19 our work to ensure that it does not interfere with the processes
20 of your offices. Our access is on the databases' 'view only'
21 which preserves the integrity of the information. If there are
22 specific concerns you can address these to me. Please advise
23 when we can receive the information requested below. Our
24 request involves Government information. This is within our
25 Constitutional mandate".

1 Did you find that e-mail reassuring at all?

2 A. In terms of...?

3 Q. Well, explaining, firstly, the role of the Auditor
4 General, explaining that it's different from the role of
5 Internal Auditor, reassuring that their work would not interfere
6 with the processes in your offices. Did that bring any comfort
7 to you, Dr O'Neal-Morton?

8 A. Not at that time because I was still uncertain. I'd
9 prefer to have gotten the legal advice on the matter. That
10 would have been reassuring to me.

11 Q. I see.

12 What did you understand by the phrase at the end of
13 that e-mail "within our Constitutional mandate"?

14 COMMISSIONER HICKINBOTTOM: The word, Dr O'Neal-Morton
15 also appears on page 213, which is a document we've already
16 looked at. That's the e-mail from Mrs Webster of the 10th of
17 December, where in the penultimate paragraph she encloses
18 excerpts of the Constitution and the Audit Act which addressed
19 the Audit Office's mandate to access public property and
20 information.

21 THE WITNESS: I don't--what is the question,
22 Mr Commissioner?

23 BY MR RAWAT:

24 Q. What did you understand, if anything, by the phrase
25 "within our Constitutional mandate"?

1 A. It means the Constitution asks--requires that this
2 should be done, but the Constitution, I don't think, doesn't
3 address the sequence, does it?

4 Q. Did you at that time go back and look at the
5 Constitution?

6 A. No, Mr Commissioner.

7 And one thing I must note in regards to the Auditor
8 General, I note in the e-mails they come directly to me rather
9 than myself and my secretary, so maybe that's perhaps why
10 sometimes the response is often late, because I may not have
11 checked my in-box. My in-box is very--is a busy in-box.

12 Q. If we turn to 216, please. This is the request for
13 legal advice that you submitted to the Attorney General's
14 Chambers, and which you've mentioned before, so it's on the 9th
15 of February 2021. You ask for advice of the sequential process
16 for providing information to the Auditor General, in particular,
17 whether the laws of the Virgin Islands allows the Auditor
18 General to act prior to the Government's Internal Auditing
19 process being complete".

20 And you conclude by asking for your most timely
21 response.

22 Now, by that stage--we're now in 9 February--what
23 stage had the Internal Audit reached?

24 A. In February, we were still waiting on collecting
25 information from our client in order to send to the Internal

1 Auditor. We were still in the collection stage of
2 information--our office, that is, Premier's Office.

3 Q. Now you, Dr O'Neal-Morton, are obviously a Public
4 Officer of long-standing, and you explained before that you
5 actually came back, having retired from Public Service, you then
6 returned to a Permanent Secretary role, but that you have held
7 the post of Permanent Secretary in other Departments before,
8 haven't you?

9 A. Yes, I had, but it was a different experience.

10 Q. But as a Public Officer, have you encountered Internal
11 Audits before?

12 A. No. That was--this was my first and is my first time
13 going through an audit.

14 Q. Either involving the Internal Auditor or the Auditor
15 General.

16 A. That is correct. This was my first time with the
17 stimulus, but then while we are doing the Internal Auditor
18 request, I think it's either two or three audits of subjects in
19 our Ministry, which we have to facilitate because the
20 information was readily available, and that was supplied to the
21 Internal Auditor's office.

22 Q. That's a request to--for audit information outside the
23 stimulus programmes? Is that--

24 A. That is correct, Mr Commissioner.

25 Q. I think the one example that springs to mind from the

1 PO Response is the Cabinet directed the Internal Auditor to do
2 an audit of Prospect Reef.

3 A. Prospect Reef, but then the internal office initiated
4 one of hotel aid and pioneer status, and we complied with all of
5 those.

6 Q. But this was your first audit experience, so to speak.

7 A. That is correct, Mr Commissioner.

8 Q. Given if you had some--if there was some confusion in
9 your mind as to the proper procedural process, could have you
10 also gone to the Deputy Governor for assistance?

11 A. At that time I thought the one that will perhaps give
12 me the quickest response and the legal response would have been
13 the AG Chambers. That would have been my first go to, and that
14 is when I did that.

15 Q. One of the following submissions of your Written
16 Response, the Response to the Warning Letter itself, the
17 Commission asked for a copy of this memorandum in its native
18 form, and then the e-mail in its native form, which sent the
19 memorandum to the Attorney General.

20 On your behalf, the IRU responded (reading): "Please
21 find attached a copy of the memorandum dated 9th of February
22 2020", and the e-mail that was prepared and sent by your
23 personal assistant to the Attorney General on her behalf of 9th
24 February 2021. We note you've asked to receive the files in
25 native forms--native format. However these are not available.

1 The documents attached are the official documents from the
2 Premier's Office as provided by Dr O'Neal-Morton.

3 Can you help with why they're not available in their
4 native form?

5 A. The native formats, when you refer to that, what do
6 you mean by that? You wanted the Word document?

7 Q. In their original format.

8 A. We don't send those Word documents. We normally send
9 out PDFs. In the original--in a Word document it wouldn't have
10 been signed, so we normally send out PDFs. We don't send only
11 word, actual Word document.

12 Q. And then how do you hold the document?

13 (Overlapping speakers.)

14 A. Sorry. As you hold a draft?

15 Q. How do you hold the document?

16 A. It--the final, the PDF, it would be sent
17 electronically. It will also be on file, as well.

18 Q. A hard-copy file?

19 A. Yes, Mr Commissioner.

20 Q. The e-mail itself doesn't adopt the sort of normal
21 look at the e-mail. This is the e-mail from your personal
22 assistant. Who would it have been sent to? You send it to the
23 Attorney General's Chambers and also to the Attorney General's
24 PA.

25 A. Mr Commissioner, I--my PA might have sent it to the

1 Attorney General's PA. I know she sent it from the PS to the
2 Attorney General. And the second--sorry, the second one, we
3 wouldn't have the electronic copy because the Response was
4 delivered in hard copy. It was hand-delivered to the Premier's
5 Office. The Response from the AG Chambers.

6 Q. I see.

7 A. So, we wouldn't have the electronic copy of that. We
8 would have actually have to scan that and then send an
9 electronic copy.

10 Q. I see.

11 Well, let's keep on the chronology, and we'll come and
12 look at that, the advice that you received at the appropriate
13 time.

14 But keeping on this, the--your response was submitted
15 to the Commissioner describes you as being uncertain of your
16 obligations.

17 You have spoken of not having a view, a concept of
18 what the sequence should be.

19 A. Um-hmm.

20 Q. And writing to the Attorney General for legal advice
21 on sequence. We have seen that.

22 A. Um-hmm.

23 Q. Other than that, in what way were you uncertain of
24 your obligations?

25 A. The sequence, because I thought one would come first

1 and then the other one would come after, so that was what I was
2 uncertain about, to me.

3 Q. Could you not have discussed it directly with the
4 Auditor General?

5 A. In retrospect, perhaps, but I didn't think of that
6 because I actually and told her that this ongoing and we are
7 discussing with the Internal Audit--we're communicating with
8 Internal Audit Office.

9 Q. That was the e-mail we've looked at.

10 A. Um-hmm, that was the e-mail that we looked at, so...

11 Q. Could you have discussed it with the Internal Auditor?
12 I mean--

13 A. I thought it would be most appropriate to discuss it
14 with the Attorney General which would have been a third view and
15 outside of the two that were concerned with the Audit itself,
16 that I would have been best to get someone outside of the
17 actual process, and I think the Attorney General fitted the
18 bill. She was the--that office would have been, in my mind, the
19 best office to give advice.

20 Q. If you turn to page 210, please.

21 What follows is that on that, if we look at the bottom
22 of the page, on 17th of February 2021, the Auditor General sends
23 you an e-mail, a follow-up e-mail, asking when her office will
24 receive requested information and the name of the liaison.

25 Now, between those two days or as of 17th of

1 February 2021, had there been any further communication
2 between--with the Auditor General?

3 A. After February?

4 Q. Well, you're--the last communication we saw was the
5 January the 21st--29th of January 2021--

6 A. Mm-hum.

7 Q. --when the Auditor General had replied to one of your
8 earlier e-mails, and then she sends you another e-mail in 17th
9 of February 2021. In those two dates, had there been any
10 communication between yourself and the Auditor General or her
11 officers?

12 A. Between February and when did you say?

13 Q. Between January 29th--

14 A. Mm-hmm.

15 Q. --which you can see at page 221, and February 17th,
16 had there been any communication of any sort between yourself or
17 the Attorney General or hear officers?

18 A. I cannot recall, because there was one on the 27th of
19 January, but the--I can't recall.

20 Q. She also asks for the name of the liaison. Would it
21 have been possible to identify somebody who could be the liaison
22 by that time?

23 A. Mr Commissioner, I'll go back to the situation. I was
24 still confused as to the process. This is February, where I've
25 already asked for advice from the AG, so, of course, I would

1 have still been confused, so I wouldn't have known what to do at
2 that stage.

3 Q. If we look at page--just sticking to page 210, on the
4 same day you respond to the Auditor General, you signal your
5 appreciation of her having said that she didn't want the process
6 to be disruptive to your office. You point out that you're
7 working with Internal Audit and focusing on getting queries
8 addressed, that that office has requested. You say that you
9 want to cooperate, but it will be quite challenging and unusual
10 to deal with two audit bodies simultaneously.

11 And then you say (reading): "As I previously stated,
12 all reports will be sent to you and meetings will be organized".
13 And you conclude that: "I hope along with our regular schedule,
14 that we'll be able to finalise the Stimulus Packages very
15 shortly so that we can conclude this exercise".

16 What did you mean by--at that time, in what way were
17 you working with the Internal Auditor?

18 A. In the case, as I said before, the Internal Auditor
19 posed a number of questions, items that it wanted fulfilled. We
20 did about two, and we had some outstanding, and we were still
21 working on those. And as a matter of fact, we are still working
22 on those.

23 COMMISSIONER HICKINBOTTOM: So, the Internal Auditor
24 was waiting for data from you.

25 THE WITNESS: That is correct.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 BY MR RAWAT:

3 Q. And what did you mean when you referred,
4 Dr O'Neal-Morton, to "finalise the Stimulus Packages"?

5 A. When it is completed, Mr Commissioner.

6 Q. As in completely finished as a programme.

7 (Overlapping speakers.)

8 (Unclear)--everything is clear out on the notes that
9 an auditor passed on to the requisite agencies that require
10 them.

11 Q. Now, you say, in February 2021, you are able to
12 finalise the packages very shortly. So, what time period did
13 you have in time when you wrote "very shortly"?

14 A. Mr. Commissioner, that was a hope that was not
15 realised. That was very optimistic of me, and unfortunately we
16 didn't get to realise it.

17 Q. If you turn over, Dr O'Neal-Morton, you'll see that at
18 page 209, on the 20th of February, the Auditor General replied
19 to you and said that--

20 A. The Commissioner, sorry, which--

21 Q. 209, at the very bottom of the page. Do you see
22 there's an e-mail from the Auditor General to yourself. 22nd of
23 February.

24 A. Yes, Mr Commissioner.

25 Q. And the Auditor General replies, explaining that her

1 office can receive the same information, access to databases and
2 files afforded to the Internal Audit. And your response, just
3 above, which is on March 10, 2021, apologising for the delay in
4 responding, you say (reading): "We will supply the information
5 once it is ready".

6 But why was it not possible just to provide whatever
7 information you were providing to the Internal Audit to the
8 Auditor General at the same time?

9 A. Because it goes back to the same thing. This is
10 February. I'm still uncertain of the sequence; I haven't gotten
11 that sorted out as yet, so that was still waiting in terms of
12 the response.

13 COMMISSIONER HICKINBOTTOM: But, Dr O'Neal-Morton, I
14 understand that point because you've made it very clearly, but
15 from your e-mail of the 17th of February, which we looked at on
16 page 210, by this time, you had asked the Attorney General for
17 advice, and what you do not say to the Auditor General is "I'm
18 confused" or "I don't understand the sequence" or "I think that
19 you shouldn't get any of this stuff until after the Internal
20 Auditor is finished". You said it would be--to do this
21 simultaneously, which you had at that point no intention of
22 doing, that would be quite challenging and unusual. Why didn't
23 you say, "I'm very sorry, but my understanding is that we do
24 this sequentially. The Internal Auditor at the moment is
25 dealing with an Internal Audit. We will let you have the data

1 at the end of the process"?

2 And again, on the 10th of March, when you're still in
3 this phase, you don't say that. You say: "We will supply the
4 information once it is ready".

5 THE WITNESS: Once it is ready. Well one, of course,
6 I'm still under the belief that you deal with Internal Audit and
7 then we go to Auditor General once it is ready.

8 COMMISSIONER HICKINBOTTOM: So, when you say, just for
9 clarification--

10 THE WITNESS: Mm-hum.

11 COMMISSIONER HICKINBOTTOM: --"we will supply the
12 information once it is ready", you didn't mean you'd supply
13 information when you gathered it together. You meant you'd
14 supply the information once the entire process was over.

15 THE WITNESS: Exactly because that was--remember that
16 is still my idea of how it should be done.

17 COMMISSIONER HICKINBOTTOM: But you kept that to
18 yourself. You didn't share that with the Auditor General.

19 THE WITNESS: Well, it was quite usual--unusual to
20 deal with two audit bodies simultaneously.

21 BY MR RAWAT:

22 Q. This was your first experience. Despite all the years
23 in Public Service, this was, you told the Commissioner, the
24 first time that you had actually had to deal with either
25 Auditor.

1 A. That is correct. At the same time I will say it was
2 quite a challenge. It was very confusing.

3 Q. What was the basis for it to be unusual? If it had
4 never happened to you before, why did you think it was an
5 unusual situation?

6 A. Because based on what I hear the practice--because
7 that is where I got my concept from about regarding the
8 practice, that the practice is that Internal Audit, while it's
9 ongoing, Auditor General when it is finished. That information
10 I gathered from practice from other Officers who were in the
11 service as well.

12 Q. And you gathered that in December 2020, January 2021.

13 A. I can't recall when I got it, but I know I got it once
14 the Audits were--the two Audits were requesting information.

15 COMMISSIONER HICKINBOTTOM: Mr Rawat, I note that the
16 time--is it convenient time to break?

17 MR RAWAT: It is.

18 COMMISSIONER HICKINBOTTOM: Dr O'Neal-Morton, we--you
19 may remember this from last time, but we have to break after
20 about an hour or so, it's been more than that this morning, for
21 the Stenographer just to have a rest.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: So we'll have a
24 five-minute break now.

25 THE WITNESS: Okay, Mr Commissioner.

1 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

2 (Recess.)

3 COMMISSIONER HICKINBOTTOM: Good. Thank you.

4 Mr Rawat, we're ready.

5 MR RAWAT: Thank you, Commissioner.

6 BY MR RAWAT:

7 Q. Dr O'Neal-Morton, we were in the e-mail trail on
8 Wednesday the 10th of March 2021 at page 209 in the bundle, and
9 the Commissioner had referred you to your response to the
10 Auditor General, and on the same day we see at the top of the
11 page the Auditor General said (reading): "Thank you your
12 e-mail" and then said: "Can you please provide access to the
13 trade and/or other database"--sorry, I will read that again.

14 "In the meantime can you please provide access to the
15 trade (and other) databases as these do not need preparation.
16 The Auditors can commence working with these immediately".

17 What did you understand as to be meant by "trade
18 databases"?

19 A. The trade? I'm not sure. She meant the Trade
20 Department; I'm not certain. If it refers to trade and other
21 databases, as we don't house databases at all on the stimulus.

22 Q. Did you--it doesn't seem from the documents that have
23 been disclosed to the Commission or, indeed, the contents of
24 the--what we'll call the "Premier's Office response to the
25 Commissioner". This--you replied to this e-mail. Do you recall

1 any discussion at around this time with the Attorney General or
2 her offices?

3 A. I don't remember because my e-mail was at 1:00, while
4 hers is at 4:30. I don't recall--

5 Q. Right.

6 A. --her response (unclear)--

7 (Overlapping speakers.)

8 Q. But subsequent to it, not on that date necessarily,
9 but subsequent to it, do you recall having any discussions with
10 her?

11 A. I don't recall, Mr Commissioner.

12 Q. If we go to the Premier's Office response, at page
13 250?

14 A. 250?

15 Q. 250, please.

16 This is--we'll look at this response in total in due
17 course, but you'll see that at paragraph 184, there's a
18 reference to 25th of May 2021, which is when the Auditor General
19 sent you a draft report, and we'll look at as we go through the
20 sequence chronologically. But in support of a point made in
21 this Response that the Auditor General had not given you any
22 indication of the need for expedition or indication she's
23 working on any timetable, at paragraph 185, the Response states
24 (reading): "The terms of the Auditor General's Chambers
25 response to the PS's e-mail of 10 March 2020, in which she had

1 assured the Auditor General the information would be supplied
2 once it was ready, had been to suggest in the meantime the PS
3 should let her have access to the 'trade (and other databases)'.
4 That, it is suggested, must clearly have indicated that the
5 Auditor General was willing to wait. However, there were no
6 databases in connection with the Farmers and Fishers or the
7 Schools and Churches Grants Schemes".

8 Leave that last sentence aside, but did you read that
9 e-mail of the 10th of March from the Auditor General as one
10 which indicated that she was willing to wait?

11 A. No, Mr Commissioner, I didn't interpret it as that
12 because she was still pressing forward, asking for information
13 when, in my estimation, I was going to deal with Internal Audit,
14 as I said, my consult that I had, and then deal with the Auditor
15 General.

16 So, while I didn't get the impression that she was
17 willing to wait but we would have liked her to have waited on us
18 for the information. We didn't--we never said we won't give it.
19 We asked if she could wait for it. I don't think pressing and
20 asking for things continuously in the case that you're willing
21 to wait because, as I said, how I knew it? How I knew it before
22 it was clarified was that you'll deal with Internal Auditor and
23 then with the Auditor General.

24 COMMISSIONER HICKINBOTTOM: But that was still not
25 shared with the Auditor General. Your thoughts of the

1 sequential approach, that was not shared with the Auditor
2 General.

3 THE WITNESS: I would assume from my letter
4 about--about my e-mail, sorry, about simultaneously having two
5 audits on the office would have been clarification enough to
6 know that they--

7 (Overlapping speakers.)

8 COMMISSIONER HICKINBOTTOM: You said that was
9 challenging.

10 THE WITNESS: Mm-hum.

11 COMMISSIONER HICKINBOTTOM: You didn't say it was
12 never going to happen, which was in your thought.

13 THE WITNESS: I guess--

14 COMMISSIONER HICKINBOTTOM: Yes, that it was going to
15 happen but it might be challenging. That's the way I read the
16 e-mail.

17 THE WITNESS: Oh, well, that's not mentioned.

18 COMMISSIONER HICKINBOTTOM: But you didn't. Okay.

19 BY MR RAWAT:

20 Q. And you--what you didn't convey to the Auditor General
21 was that your understanding from other Public Officers of the
22 practice was that Internal Auditor finishes first, and then and
23 only then can the Auditor General come in.

24 A. No, I didn't convey it, but from her responses there
25 was an implication that she was--she didn't agree with what I

1 said but I wanted a clarification from the AG.

2 (Overlapping speakers.)

3 Q. I accept that totally.

4 A. Mm-hmm.

5 Q. We'll come to the memorandum that gave you that
6 clarification. But what you told the Commissioner is that your
7 understanding from other Public Officers was that what you
8 understood to be sequence, that was the conventional practice.

9 A. Correct.

10 Q. So, in effect, the Auditor General was trying to buck
11 the conventional practice. She was trying to go against the
12 practice within the Public Service.

13 A. I wouldn't use those words. I never used those words.

14 Q. But--

15 A. I'm not using those words.

16 Q. She was going contrary to what you understood to be
17 practice in the Public Service in terms that it's--in that it's
18 sequential.

19 A. I'm not making that summation, Mr Commissioner.

20 Q. But did you tell her at any time that your belief that
21 it was a sequential process came from--

22 A. From what I said about having the audits
23 simultaneously, I would gather that would give the idea that
24 that they should not be at the same time. That would have been
25 my impression. I would have gathered that she would have

1 realised from that that I was thinking it should not be at the
2 same time.

3 Q. So, but certainly, what you took from the e-mail that
4 we're looking at at the moment, page 209--

5 A. Um-hmm.

6 Q. --it was not your impression that the Auditor General
7 was willing to wait. Quite the opposite.

8 A. I don't think that she was willing to wait, and that
9 is all we wanted, for her to wait, wait until we had finished
10 with the processes, with the information.

11 Q. But you see what's said in the response that you have
12 adopted and what the Attorney General said on your behalf is
13 that you agree its contents and had nothing to add to it.
14 What's said at paragraph 105 is that that e-mail must clearly
15 have indicated that the Auditor General was willing to wait.

16 So, is that paragraph wrong?

17 A. Who made that--who made that declaration?

18 COMMISSIONER HICKINBOTTOM: You did, in the Premier's
19 Office Response, Dr O'Neal-Morton.

20 THE WITNESS: Can we go back to that, please?

21 BY MR RAWAT:

22 Q. Of course.

23 Perhaps, Dr O'Neal-Morton, if I take it this way.

24 A. Um-hmm.

25 Q. If you go to page 220.

1 A. 220.

2 Q. Yeah.

3 A. Um-hmm.

4 Q. That's what I'm going to call the "Premier's Office's
5 response", and the reason I'm calling that is because in your
6 Written Response to the Warning Letter, first paragraph, you
7 adopt it, and you then--and you have confirmed that to the
8 Commissioner. The Attorney General has also confirmed in
9 writing to the Commissioner that you agreed with the contents of
10 this Response.

11 A. Um-hmm.

12 Q. And you had nothing to add to it.

13 Now, the peculiarity of this is that if we go to
14 page 253--

15 A. Okay.

16 Q. --it's not signed at all. It's not dated, it's not
17 signed.

18 Can you help, before we go back to paragraph 185, with
19 how it came to be prepared?

20 A. Two, is it Commissioner?

21 Q. 253.

22 A. Um-hmm. What--

23 Q. That's the last page of the document.

24 A. Um-hmm, correct.

25 Q. It's not signed, it's not dated. Can you help with

1 how it came to be prepared?

2 A. This is a response from the Premier's Office, um-hmm,
3 correct?

4 Q. Yes.

5 A. The information was gathered from the Premier's Office
6 itself. I can't verify why it has not been signed.

7 Q. But who wrote it?

8 A. What do you mean, "Who wrote it"?

9 Q. Well, somebody has to types all of these words into a
10 computer--

11 A. Um-hmm.

12 Q. --and produce the document. Who was responsible for
13 doing that?

14 A. Information was given to our team, both in-house and
15 the legal team, and they put it all together. I can't say who
16 specifically who did a typing. I can't verify that, who did the
17 actual typing of the document.

18 Q. Who put it in front of you and said, do you agree it?

19 A. What do you mean who put it in front of me? It was
20 sent to me via e-mail.

21 Q. But who sent is to you via e-mail?

22 A. The IRU.

23 Q. Who in then IRU sent it to you?

24 A. The IRU has an e-mail address that comes IRU. That is
25 their address. I can't recall who's the exact person because

1 they have many members. I can't recall who's the exact person.

2 Q. Okay. Well, let's go back to paragraph 185, because
3 what that says at paragraph 185 is the opposite of what you're
4 now telling the Commissioner because it says that that e-mail
5 must clearly have indicated that the Auditor General was willing
6 to wait.

7 A. But how--

8 Q. But you don't agree with that paragraph. Does it come
9 to that, Dr O'Neal-Morton?

10 A. But yes, I might say it was indicated that she was
11 willing to wait, "willing" means you have a desire but she--did
12 she--action willing to wait.

13 Q. Well--

14 A. No, because she didn't actually because she kept
15 asking for information--

16 Q. So--

17 A. --because this was the 10th of March, and she kept
18 asking for information, so that was--she was maybe willing to
19 wait, but she didn't action the willing to wait.

20 Q. But--so this is the paragraph you can no longer agree
21 with.

22 A. No, I cannot say I no longer agree with it. It would
23 have indicated at that moment that she might have been willing
24 to wait based on the response, but action and a willing to wait
25 that had not happened post this declaration here.

1 COMMISSIONER HICKINBOTTOM: So, can we put it like
2 this: That it was clear from her pressing you for information
3 that she was not willing to wait?

4 THE WITNESS: You might say that.

5 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

6 BY MR RAWAT:

7 Q. What it also says at the end is that there were no
8 databases in connection with "Farmers and Fishers or the Schools
9 and Church Grant Scheme". The databases that the Attorn--the
10 Auditor General asked for was trade and other databases. If you
11 go in the same document to paragraph 52, which is on page 228,
12 you see at paragraph 52 that the Premier's Office's response
13 refers to the Department of Trade, under the Premier's Office,
14 confirming that it had afforded the Internal Audit to access its
15 electronic databases of small business grant applicants, and
16 that happened on the 29th of September 2020.

17 If you--the actual e-mail--there's no reference given,
18 but the--it seems to be at page 702. You see at 702 there's an
19 e-mail from the Director of the Trade, Investment Promotion and
20 Consumer Affairs, responding to the Internal Audit Department
21 and copying you in, and it confirms that access has been given
22 to not only applications via an on-line platform but policy--a
23 policy which includes eligibility and approval criteria,
24 evaluation guidelines, and then it says (reading): A final
25 listing of approved applicants will be forwarded shortly.

1 If the Trade Department was able in September 2020 to
2 give the Internal Auditor access, why couldn't you facilitate
3 access for the Auditor General to that department's databases?

4 A. I don't understand the question.

5 The Accounting Officer for Trade gave the Internal
6 Auditor access. I don't know if she went--did--I don't--I'm not
7 sure if she went to Internal--sorry, Trade Department. I'm not
8 sure.

9 Q. But what was--this is your own response, the Premier's
10 Office Response confirms that that's what the Department of
11 Trade had done. That's the paragraph I showed you.

12 A. Um-hmm.

13 Q. It says that it confirmed it afforded the Internal
14 Auditor access electronic databases of small business grant
15 applicants. The reason for showing you the actual e-mail is
16 because--

17 A. Um-hmm.

18 Q. --you will then have clear--more clarity as to what
19 was actually provided.

20 A. Because they had a database to afford them
21 opportune--the Internal Audit opportunity to access.

22 Q. Yes.

23 A. Um-hmm.

24 Q. But my point is that they sit under the Premier's
25 Office. The reference in the Auditor General to trade databases

1 might be possibly taken as a reference to the Trade Department,
2 and it's a bigger question. It just comes down to this: If
3 that was--if it was possible in September 2020 to facilitate
4 that kind of access for the Internal Auditor, why couldn't it
5 have been facilitated for the Auditor General?

6 A. The Director of Trade is Accounting Officer. She can
7 direct anything under her remit. She's the one responsible for
8 that Department.

9 Q. But could you--did you draw that to the attention of
10 the Auditor General?

11 A. Mr Commissioner, I don't--I don't know if that's a
12 fair question to me, to ask me. I don't think it is. The
13 Director of Trade is an Accounting Officer for trade, and I
14 would believe the Auditor General knows that.

15 COMMISSIONER HICKINBOTTOM: But if you're asked about
16 trade databases, did you think, well, those may be the
17 Department of Trade databases and direct the Auditor General
18 there? Or didn't you think about--you may not have thought
19 about it at all.

20 THE WITNESS: Mr Commissioner, it's certainly not on
21 my mind at all because I was thinking of my databases, which at
22 that point they did not and they do not currently exist as well.
23 I was thinking of my databases and not anyone else's.

24 BY MR RAWAT:

25 Q. Your database is--

1 A. Because it don't exist. I'm just saying databases but
2 that's not what was used.

3 Q. So if they existed, they would relate to farmers and
4 fishermen--

5 A. The churches and the schools.

6 Q. The churches and schools, and then the transportation.

7 A. Perhaps, yeah. Those are the three that--

8 (Overlapping speakers.)

9 A. --(unclear) managing.

10 Q. You were overseeing.

11 Fine. Thank you.

12 If you then turn to 208, then, if we go back to that,
13 the last communication between yourself and the Attorney General
14 that we looked at--

15 A. Just a minute, Mr Commissioner, just a minute.

16 Okay, I'm there now.

17 Q. The last communication that we'd looked at is from the
18 10th of March 2021. We're now on the 25th of May, and what is
19 sent to you is the Draft Audit Report on Stimulus Grants to
20 Farmers and Fishermen.

21 Now, between 3rd of March--or 10th of March 2021 and
22 25th of May, had there been any correspondence between you and
23 the Auditor General?

24 A. No, Mr Commissioner. I didn't even know that a Draft
25 Audit Report would have been forthcoming at that point.

1 Q. Now, by this point, had you made any information
2 available to the Auditor General?

3 A. Mr Commissioner, if we look at the date, it's the 25th
4 of May. Okay, I had not heard back from the Attorney General as
5 yet, so I was still--

6 Q. So, you had neither communicated with the Attorney
7 General nor heard back from the Attorney General.

8 A. That is correct.

9 Q. Had you followed up at all with the Attorney General,
10 given that you'd asked for a most timely response?

11 A. I did afterwards, and I think the communication should
12 be somewhere in here where I asked for a response, and then I
13 got one, I think, on the 25th of June or some whereabouts, like
14 that.

15 COMMISSIONER HICKINBOTTOM: Was this,
16 Dr O'Neal-Morton, after you got the 25th of May e-mail, so you
17 got the draft report.

18 THE WITNESS: Um-hmm.

19 COMMISSIONER HICKINBOTTOM: And then you "chased" at
20 least the Attorney General?

21 THE WITNESS: Yes, because at that point I didn't
22 realise that this draft report was coming, so I could not, as a
23 matter of course, let me reach out to the Attorney General and
24 see, you know, the Response that we were looking for.

25 COMMISSIONER HICKINBOTTOM: Just to put everything

1 into proper context--

2 THE WITNESS: Um-hmm.

3 COMMISSIONER HICKINBOTTOM: --you were communicating
4 with the Internal Audit Department. And had the data been given
5 to the Internal Auditor by this stage, or was she still waiting
6 for data from you?

7 THE WITNESS: It's still waiting, still waiting on--
8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: And is she still waiting?

10 THE WITNESS: Yes, because we are still in the
11 process, as well, because the information she asked for, there
12 was some--there was some payments that we had to pay back in, so
13 we had to get information from Treasury and to compile a report,
14 so all of that is going on.

15 As I said before--I'm going to repeat it--my staff, we
16 have staffing issue at the moment. I have one person in my
17 finance unit. It's quite difficult to do all of the
18 coordination of the financial transactions for our office as
19 well as the stimulus.

20 COMMISSIONER HICKINBOTTOM: But as at the 25th of May,
21 which we're focusing on at the moment--

22 THE WITNESS: Um-hmm.

23 COMMISSIONER HICKINBOTTOM: --the data hadn't been
24 supplied to the Internal Auditor nor had any data been supplied
25 to the Auditor General, and I understand you've set out the

1 reasons for that.

2 THE WITNESS: Um-hmm.

3 COMMISSIONER HICKINBOTTOM: But that was the factual
4 position?

5 THE WITNESS: Yes, Mr Commissioner.

6 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

7 BY MR RAWAT:

8 Q. I'll take you to the advice shortly, Dr O'Neal-Morton,
9 but the--if we go to 206, we see the next step in the sequence
10 which is where you sent a rather lengthy letter to the Auditor
11 General, and this is on the 31st of May 2021; that you
12 refer--you begin by referring to the e-mail of the 25th of May
13 and then to a telephone conversation on the 27th of May.

14 And then if I summarise--and if I miss out anything
15 that you think important, Dr O'Neal, bring do draw it to the
16 attention of the Commissioner--but just to summarise it, what
17 you do is, first of all, that you make clear that no discourtesy
18 has been intended to the Auditor General, her office.

19 A. Um-hmm.

20 Q. That you--the Premier's Office, you say, is
21 unreservedly committed to assisting your office and fulfilling
22 your statutory and constitutional responsibilities, and you
23 acknowledge that there had been shortcoming in providing a
24 timely response.

25 You then go on to refer to the impact of having to

1 deal with requests for information from the Commission of
2 Inquiry. You draw attention--the Auditor General's attention to
3 the gravity of the inquiry, and you say that it's such that the
4 reputation of the Virgin Islands, its Government and its
5 governance systems are under close scrutiny before the
6 international media and the world audience. There are
7 potentially negative effects of failing to efficiently and
8 effectively assist the Commission. Errors and oversights and
9 submitted documents and other avoidable and unavoidable errors
10 can have deep implications for governance and the economy. And
11 that you say--you explain why there is--the Commission of
12 Inquiry has to have priority over matters--other matters.

13 You mentioned that you acknowledged that the Audit of
14 the stimulus programme is an important and commendable
15 initiative, and that your Office wishes to cooperate, but you
16 then continue to say that you will need a three-week extension
17 of time in order to study the contents of the Draft Audit Report
18 and to provide a meaningful response to it.

19 You then add that, even on a cursory scan of the
20 draft, you had detected some items of information which, to your
21 knowledge, are inaccurate, and you want your technical officers
22 to thoroughly review the document so its contents can be
23 properly verified and corrected where necessary.

24 And then you add that the programmes are ongoing, and
25 the Internal Audit is ongoing.

1 And just to ask you some questions about this,
2 firstly, the telephone conversation of the 27th of May 2021, did
3 you make a note of that telephone conversation?

4 A. That it occurred?

5 Q. Did you make a note of the content of the
6 conversation?

7 A. I have to have a--I probably made a note in my diary
8 because I also wrote it in the letter, and so I have a note in
9 my diary.

10 Q. Of it having occurred or of the content in it?

11 A. That it hadn't occurred. Not of the content. I might
12 have said it. I might have spoke to the Auditor General re:
13 about the draft audit reports.

14 Q. No more than that?

15 A. Not necessarily more than that because I know that I
16 would have followed up with a letter, in which the letter would
17 basically say exactly what we were--probably converse and other
18 things as well.

19 Q. Thank you. Now the--

20 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.
21 In the letter, I presume also in the conversation because the
22 letter reflected the conversations--

23 THE WITNESS: Um-hmm.

24 COMMISSIONER HICKINBOTTOM: --there is still no
25 reference to your belief that the Auditor General should not be

1 conducting an audit until the process was over and should be
2 conducting an audit only sequentially. There is no reference to
3 that in the letter, is there?

4 THE WITNESS: Mr Commissioner--that's--that's way past
5 bedtime because the Draft Audit Report was already submitted, so
6 I don't think that would have had any value at that time to
7 mention that.

8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: Well, I mean--

10 THE WITNESS: I don't think it would have had--the
11 draft report was sent, so...

12 COMMISSIONER HICKINBOTTOM: But, in any event, you
13 didn't mention it.

14 THE WITNESS: No, I didn't mention it because there
15 was the Report, so I think it wouldn't have had any value.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. You point to, as I've said, the Commission of Inquiry.
19 Now, the Commission of Inquiry was set up on the 19th of
20 January. The first letters requesting information from the
21 Premier's Office, was sent on the 8th of March.

22 In what way would that have prevented you from
23 complying with a request for information that was made, as we've
24 seen, on the 10th of December 2020 and repeated on the 27th of
25 January 2021?

1 A. Well, as I said before, Commissioner, yes, at this
2 time, in May, it might have been the COI, but previously
3 remember we were working on four stimulus at that time and doing
4 our regular job. I'm a new PS, without orientation, so it
5 was--it would have been quite difficult. Staffing was a serious
6 issue. All of those were variables that we had to consider in
7 terms of complying with the requests, and those were mentioned.

8 COMMISSIONER HICKINBOTTOM: But, Dr O'Neal-Morton, I
9 understand those things.

10 THE WITNESS: Um-hmm.

11 COMMISSIONER HICKINBOTTOM: But my understanding of
12 your evidence here today is that the reason you didn't send data
13 to the Auditor General is because you believed that the Internal
14 Auditor and the Auditor General acted sequentially, and the
15 Auditor General did not come onstream until after the process
16 was completed; and, therefore, in a sense--I appreciate there
17 were other things going on--

18 THE WITNESS: Those were added as well, Mr
19 Commissioner, and I emphasize that, for the whole of the session
20 about the sequence and other operational matters in the
21 Ministry. Those were the main things that would have been the
22 challenge.

23 COMMISSIONER HICKINBOTTOM: Thank you.

24 BY MR RAWAT:

25 Q. Where you say that you're committed to assisting the

1 Auditor General's Office in fulfilling statutory and
2 constitutional responsibility, what statutory and constitutional
3 responsibilities did you have in mind?

4 A. The requests of the Auditor General.

5 I never, ever, ever, ever indicated that I won't. I
6 just needed more time to do so. I needed clarity, as
7 Commissioner just noted, on the sequence, as well. It was never
8 the intent to dishonor the Auditor General's Office and to
9 willfully, as I think I saw somewhere stated, to obstruct the
10 operations of the Auditor General's Office.

11 I have been a Public Officer for over 30 years and
12 most people who from my professional life know that I love to
13 say, "I live by the Book of Rules" and I like to carry them out.
14 Circumstances sometimes permit, as in the case of the stimulus
15 and other operations out of the COI that prevented us and the
16 sequence of audits, all of those things, those were unique
17 circumstances. Those are not regular circumstances.

18 Q. Well, isn't the only non-unique circumstance that you
19 understood the practice to be that it had to be sequential? I
20 mean, you've explained to the Commissioner, Dr O'Neal-Morton,
21 that--

22 A. Um-hmm.

23 Q. --despite your length of service, you had not
24 encountered an audit before.

25 A. No, Mr Commissioner, I never had an audit before then.

1 Q. And what you understood to be the conventional
2 practice came from what you've been told by other Public
3 Officers.

4 A. That is correct.

5 Q. And so, even when the best of times, you would have
6 still been questioning whether that conventional practice was
7 being followed by the Auditor General because the Auditor
8 General was wanting information, your understanding you say you
9 understood it to be, the Auditor General was requesting
10 information prior to the point in the sequence when she should
11 have been requesting information. That's right, isn't it?

12 A. My confusion and my concern with the sequence, I
13 expressed that, and that is why I wrote the Attorney General.

14 COMMISSIONER HICKINBOTTOM: And is this fair--again,
15 tell me if it's not.

16 THE WITNESS: Um-hmm.

17 COMMISSIONER HICKINBOTTOM: But it seems to me that
18 the--because you had a belief that the Auditor General and the
19 Internal Auditor had roles which are sequential, when the
20 Auditor General asked you for information, when the Auditor
21 General asked you for information, you didn't attempt to comply
22 with it. You didn't set somebody on the task because you
23 thought it's Internal Auditor, and you took steps--you
24 explained, you took some steps to get data to the Internal
25 Auditor. But as I understand it, you didn't take any steps to

1 get data to the Auditor General because you thought Mrs Webster
2 doesn't come onstream until after the process.

3 THE WITNESS: Because I was still of that belief until
4 I had gotten the legal advice.

5 COMMISSIONER HICKINBOTTOM: I understand that and--

6 THE WITNESS: Um-hmm.

7 COMMISSIONER HICKINBOTTOM: But am I right in thinking
8 that that explains why you didn't try? I mean, with the
9 Internal Auditor, you took steps to get data to her. You didn't
10 get manage to get data to her, but you did take steps to do it.
11 But with the Auditor General, it's true, isn't it, that you
12 didn't take any steps to get data to her because you were of the
13 belief sequential, Mrs Webster doesn't get anything until after
14 the process.

15 THE WITNESS: That was my belief.

16 COMMISSIONER HICKINBOTTOM: No, I understand that.
17 Yes. Thank you.

18 BY MR RAWAT:

19 Q. If we move on in time, page 203, you will see,
20 Dr O'Neal-Morton, that the Auditor General agreed to an
21 extension of the deadline for a response to the 15th of
22 June 2021. But then, if we go to page 1109, on the 3rd of June,
23 you were one of a number of Permanent Secretaries that received
24 a draft report, and this is the draft report in relation to
25 religious organisations, civic groups, private schools, and

1 daycares, and that asked for a response by the 19th of June.

2 So, you now have two reports to respond to; is that right?

3 A. That is correct, working on two of them at the same
4 time.

5 Q. If we then go to 201, you e-mail the Auditor General
6 June the 14th, and you ask her for a telephone conversation to
7 discuss the matter of submitting feedback to the Auditor
8 General, and this is--you refer specifically to "Farmers and
9 Fishermen stimulus".

10 Now, at that time you've had the Report for a couple
11 of weeks, but what did you mean by "feedback"?

12 A. The Response to the Report.

13 Q. So, we'll look at the Response in a moment, but were
14 you planning to draft--already making steps to draft the
15 Response that was--

16 (Overlapping speakers.)

17 A. I had a team organised to work on it, but it was
18 reported that they won't be ready for the particular time,
19 because I e-mailed the Auditor General on--twice on the same day
20 to let her know that we wouldn't have been able to comply with
21 the set deadline.

22 Q. Which was the 15th.

23 A. Um-hmm, because of what the team had reported, because
24 we're working on it as a team.

25 Q. I mean, you can see what--the Auditor General then

1 responded was that you could send the Response via e-mail, and
2 on the same day, as you've explained, you then--and this is at
3 page 200, you then say that you need more time to submit the
4 Response. You're asking for an extra week, and you point to a
5 number of factors that we've looked at, that you're dealing with
6 requests from the Commission of Inquiry, that you are short
7 staffed, and that's--and that you're dealing with now two
8 reports or two draft reports from the Auditor General.

9 The Auditor General then, although I think the next
10 step in the sequence, if we look at page 202, you send a
11 memorandum to the Auditor General on the 15th of June 2021, and
12 you refer to your letters of the 31st of May. We've looked at
13 that. A letter of the 14th of June which I don't think we have,
14 but then an e-mail of the 14th of June, and we've looked at two
15 e-mails from the 14th of June.

16 You referred to a capacity issue not only in terms of
17 manpower but because of demands from the Commission of Inquiry.

18 And you also say that you have requests from the House
19 of Assembly to furnish detailed information and, therefore, you
20 asked for an extension of one week for each request, which are
21 then by now due, one on the 15th and one on the 19th.

22 Now, in terms of just the requests from the House of
23 Assembly to furnish detailed information, what does that refer,
24 to please, Dr O'Neal-Morton?

25 A. Those would have been questions, and we normally get

1 quite a lot of those from the House of Assembly, question from
2 Members to the Government.

3 Q. So individual Members in the House.

4 A. Mainly Opposition Members would send questions to the
5 Ministers; and, when those are directed to the Premier would
6 come to us, and we would have to deal with them in terms of
7 giving the answers. And at that time I indicated that we had
8 staffing issues. My DS is normally the person that takes care
9 of those, and she was--she would have been in and out at the
10 same time, so...

11 Q. So, House of Assembly Members can table questions to
12 Ministers.

13 A. Yes, sorry.

14 (Overlapping speakers.)

15 Q. If they do so, it comes to the--

16 A. Most of the Minis--

17 Q. --Public Officers within the relevant Ministry to
18 draft the answers for the Ministers?

19 A. To draft the answers.

20 Q. Thank you.

21 It's this point that you--and if we look at 215 in the
22 bundle, you then write to the Attorney General on the 15th of
23 June 2021, and you attach a copy of your correspondence of the
24 9th of February 2021. Now, how would this have--maybe there,
25 but how would this have been sent to the Attorney General?

1 A. Mr Commissioner, it might have been an e-mail,
2 perhaps. I am not sure. I'm not sure.

3 COMMISSIONER HICKINBOTTOM: This was the 15th of June.
4 That was actually the day the--any comments on the farmers and
5 fishermen report was due, due on the 15th of June.

6 THE WITNESS: First of--if we go back to 198--

7 COMMISSIONER HICKINBOTTOM: No, page 202. Page 202.
8 This was your e-mail of the 15th of June.

9 THE WITNESS: 202, okay.

10 COMMISSIONER HICKINBOTTOM: This is your
11 e-mail--sorry, this is your memo to the Auditor General of the
12 15th of June when you say that the deadlines for the two
13 reports, farmers and fishermen 15th--

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: --and the other, the
16 religious institutions, the 19th. So the--it's just an
17 observation. The--your chaser to the Attorney General was on
18 the day that the--your response was due.

19 THE WITNESS: Okay, um-hmm.

20 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

21 BY MR RAWAT:

22 Q. But in there, in that request for legal advice what
23 you do say is that the legal opinion is now urgent as the
24 Auditor General draft report is stating the Premier's Office has
25 refused to furnish information, when, in fact, the Premier's

1 Office was under the notion that the Internal Audit, upon
2 completion of the monthly audits, is directed by Cabinet would
3 suffice until the initiative is closed off. Subsequently, the
4 Auditor General would then proceed to do a post-audit.

5 Now, just to clarify this for us, please,
6 Dr O'Neal-Morton, because you seem to be saying something
7 slightly different from what you said to the Commissioner thus
8 far, 'cause what you've said is that you understood that
9 the--the understanding that you're sequential was based on what
10 you'd learned from other Officers as to the usual practice, but
11 here you seem to be saying that it actually derives from the
12 fact that Cabinet had directed the Internal Auditor to be doing
13 monthly audits, and that would be sufficient until the
14 Programme's ended--

15 A. Um-hmm.

16 Q. --and it was only then that the Auditor General could
17 come in and do an audit.

18 So, you seem to now be speaking of a circumstance that
19 directly relate to the--related to the COVID stimulus
20 programmes.

21 A. Mr Commissioner, I'm uncertain about what you're
22 saying. Can you repeat, please?

23 Q. Of course.

24 Your evidence so far has been that your understanding
25 of a sequential process--

1 A. Um-hmm.

2 Q. --came from other Public Officers.

3 A. Correct.

4 Q. But that was, as you understand it, the standard
5 practice. Irrespective of the situation and circumstance,
6 that's what should happen.

7 A. Correct, um-hmm.

8 Q. Here, because you are referring to the Internal Audit
9 that you say the Premier's Office is under notion that the
10 Internal Audit, upon completion of the monthly audits, as
11 directed by Cabinet would suffice until the initiative is closed
12 off.

13 A. "Closed off" means finished.

14 Q. Yes, of course.

15 A. Um-hmm.

16 Q. What you seem to be saying is that it's because of the
17 direction of Cabinet that the Internal Audit Department should
18 be doing monthly audits, so it's because of the circumstances
19 you found yourself in in 2021 rather than a standard practice.

20 A. I don't see how that changes my--what I said about
21 sequence. My--what I said about sequencing in the Internal
22 Audit, it's ongoing. Once it is completed, that the information
23 goes to the Auditor General. I don't think this paragraph here
24 changes that notion.

25 COMMISSIONER HICKINBOTTOM: But Mr Rawat's point is

1 this: Was that because of the general practice that you
2 understood was in place, or was it because in the particular
3 circumstances of this case, Cabinet had directed monthly audits
4 by the Internal Audit Department? So, was it a general practice
5 or was it because of the Cabinet direction?

6 THE WITNESS: The Cabinet direction wouldn't change
7 the concept of the sequence.

8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: So--

10 THE WITNESS: --because the sequence says goes to one
11 while it's ongoing; when it's finished, it goes to another. The
12 Cabinet direction would not change the sequence.

13 COMMISSIONER HICKINBOTTOM: Thank you.

14 So, as it were, a general principle, yes.

15 Mr Rawat, I see the time, but break where is
16 convenient.

17 MR RAWAT: I will do.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

19 BY MR RAWAT:

20 Q. The next response, and we don't necessarily need to go
21 to the e-mails, but your request for a--for more time was met by
22 an e-mail from the Auditor General on the 16th of June.

23 MR RAWAT: Commissioner, this is at your page 199.

24 BY MR RAWAT:

25 Q. And what the Auditor General said was that (reading):

1 "The response period for a draft report such as this is two
2 weeks. We need to complete assignments in a timely manner to
3 allow us to proceed with our work programme. Please let us have
4 your response to both Reports by Monday the 21st of June. After
5 that date, the Reports will be finalised".

6 You then wrote--

7 MR RAWAT: And this is at page 199, Commissioner.

8 BY MR RAWAT:

9 Q. You wrote on the following day, June the 17th,
10 thanking the Auditor General for the extension, but again
11 pointing to that, given current capacity and responsibilities,
12 you're not in typical times.

13 And the Auditor General the same day then said the
14 Report will be finalised at the end of 21st of June 2021.

15 You subsequently--and this is on page 198--then raised
16 an issue as to what was meant by the 21st of June, and the
17 Auditor General then responded that the final dates would
18 be--the final date for these two reports would be the 21st of
19 June and your response should be received no later than that.

20 If I were to take you just to one e-mail, 196, please.

21 On the 21st of June 2021, Dr O'Neal-Morton, you wrote
22 again down to the Auditor General; I think it was a lengthy
23 e-mail, and you made the following points, and so again, if I'll
24 summarise, but if I miss something, please tell the
25 Commissioner. You pointed to the importance of the accurate

1 reporting figures.

2 You said that substantial progress has been made on a
3 meaningful response notwithstanding factors such as staffing,
4 other responsibilities in dealing with the COI.

5 You then also said that the normal and prescribed
6 auditing process had not yet been concluded, and so your staff
7 were working on unaudited records, and you then said--point out
8 that the deadlines that the Auditor General was working to were
9 not reasonable.

10 And you concluded by saying that you--your office
11 would require until the 28th of June 2021 to provide a proper
12 and comprehensive response that would address the errors that
13 you had detected in the Report and provide additional
14 information, which was, as you pointed out, consistent with the
15 initial extension you'd sought.

16 You conclude by emphasising that no discourtesy was
17 intended to the Auditor General, her officers but you are trying
18 to do your best with limited resources.

19 Now, just breaking this down, what you referred to is
20 the normal and prescribed internal auditing process. What did
21 you mean by that phrase?

22 A. The Internal Auditors--their work.

23 Q. And that goes back to your belief that there is a
24 sequence.

25 A. Um-hmm, it goes back to that.

1 Q. You say that the data that your offices were having to
2 work on was unaudited. I mean, the--there was, as you described
3 it, an ongoing seq--ongoing work by the Internal Auditor.
4 Doesn't that mean that some of the data at least must have been
5 audited by then?

6 A. By who? Because if the Auditor General has
7 information, where did it come from?

8 Q. Well, she's obviously got it from sources other than
9 the Premier's Office. She hasn't told you at that time what her
10 sources are.

11 A. But how reliable is it?

12 Q. Except in her Report. But my question is not about
13 the reliability of her data. It's whether--

14 A. Well, Mr Commissioner, sorry to interrupt you, but
15 that goes to auditing and reliability because, as I state in one
16 of my correspondence, that a cursory look showed that it was
17 inconsistent and incorrect details for some parts of it.

18 Q. I'll come back to that. What I'm asking you about,
19 Dr O'Neal-Morton, is this.

20 A. Um-hmm.

21 Q. You're referring to your own offices having to use
22 unaudited data, but given, as we have seen through the sequence
23 of e-mails--

24 A. Um-hmm.

25 Q. --the Internal Auditor is working with you,

1 undertaking an audit, and you're telling the Auditor General
2 once that is done then I will give you information, to what
3 extent was the information, the data available to your own
4 offices unaudited?

5 A. Because we're up to June 21st. We are still working
6 on information. Because of the deadline that was put in, I had
7 a staff put in extra time, overtime, weekend time, to make sure
8 that we were going to meet the deadline; and once that was done,
9 the information would have gone to Internal Audit to have a look
10 at it, and have an audit of the information before it goes to
11 the Auditor General.

12 COMMISSIONER HICKINBOTTOM: Can I just break that down
13 slightly, Dr O'Neal-Morton.

14 THE WITNESS: Sorry, um-hmm.

15 COMMISSIONER HICKINBOTTOM: First, five--we're now on
16 the 21st of June 2021.

17 THE WITNESS: Um-hmm.

18 COMMISSIONER HICKINBOTTOM: And so the Programme had
19 been running for the best part of nine months, eight or nine
20 months.

21 Secondly, the Internal Auditor, who had been required
22 by Cabinet to provide monthly audits, as I understand it, had
23 still not been provided the data by the Premier's Office in
24 which to conduct any of those audits.

25 And thirdly, you considered that the Auditor General,

1 Mrs Webster, should sequentially await the outcome of the entire
2 process. So, on the 21st of June, no auditing had taken place
3 at all, as I understand it; is that true?

4 THE WITNESS: No, because we were still--June 21st,
5 the stimulus was still going on. To date it's still going on,
6 Mr Commissioner.

7 COMMISSIONER HICKINBOTTOM: No--

8 THE WITNESS: It is. It is. It is, indeed.

9 COMMISSIONER HICKINBOTTOM: But no auditing had been
10 done by the Internal Auditor or the Auditor General. As a
11 matter of fact, I understand that you've given us the reasons--

12 THE WITNESS: Um-hmm.

13 COMMISSIONER HICKINBOTTOM: --but that was so, wasn't
14 it, in June?

15 THE WITNESS: It was so in June because we were trying
16 to put the thing to go beyond all exhaustion, sacrifice, come in
17 and work extra to put information together.

18 COMMISSIONER HICKINBOTTOM: I understand that. I
19 understand that.

20 THE WITNESS: Uh-huh.

21 COMMISSIONER HICKINBOTTOM: Can I just put this last
22 proposition to you?

23 THE WITNESS: Okay.

24 COMMISSIONER HICKINBOTTOM: An auditor audits the data
25 that he or she has.

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: That's their job. And you
3 get lots and lots of incomplete audits in corporate spheres and
4 all sorts of spheres.

5 THE WITNESS: Um-hmm.

6 COMMISSIONER HICKINBOTTOM: But they can only work on
7 the data that they have. So the Auditor General, who was
8 conducting an audit--

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: --that worked on the data
11 that she happened to have.

12 THE WITNESS: Mr Commissioner, may I answer, and so
13 that I believe an Auditor must work on accurate information.

14 COMMISSIONER HICKINBOTTOM: No--

15 THE WITNESS: And that is what we realised. In this
16 initial report, there was inaccurate information by the Auditor
17 General's Office.

18 COMMISSIONER HICKINBOTTOM: Obviously, ideally, an
19 Auditor would work on complete and accurate in--

20 THE WITNESS: But I think it's unethical to put wrong
21 information in the public sphere. I think that's unethical, Mr
22 Commissioner.

23 COMMISSIONER HICKINBOTTOM: I know, but in au--

24 THE WITNESS: I believe so.

25 COMMISSIONER HICKINBOTTOM: But an Auditor can only

1 act on the data that she has.

2 THE WITNESS: But then, Mr Commissioner, wouldn't you
3 agree that if you get information, you need to verify that
4 before it's put out in the public sphere?

5 COMMISSIONER HICKINBOTTOM: Well--

6 THE WITNESS: I think that is a responsibility that
7 all of us have.

8 COMMISSIONER HICKINBOTTOM: I mean, it may depend.

9 THE WITNESS: Depend?

10 COMMISSIONER HICKINBOTTOM: Yes, because the Auditor
11 General had asked for the data, and you had not given her any
12 data.

13 THE WITNESS: Because, Mr Commissioner, let me go
14 back. That is sequence, and that is also Cabinet as well.

15 COMMISSIONER HICKINBOTTOM: I know, I know but--I
16 understand that.

17 THE WITNESS: Because I didn't want to be
18 irresponsible, and I know I think in one of the e-mails you
19 asked to say give her what you have. I didn't feel comfortable
20 doing that. I did not feel comfortable doing that. I thought
21 that that would have been irresponsible to do, to submit it to
22 her, and I wasn't sure as yet. I thought that would have been
23 responsible.

24 The same thing with the Internal Auditor. I wanted to
25 make sure we had the information for the team to gather, gather

1 information, make sure what we have is verified as far as we
2 know, and then the Auditor will go and do further verification
3 before the information goes in the public sphere, because once
4 it is out there, which is what I think is happening, the public
5 is the judge, jury, and executioner and use incorrect
6 information to make that judgment on the Premier's Office, which
7 is quite unfair to us.

8 COMMISSIONER HICKINBOTTOM: Very well. I mean I've
9 got to make of the evidence what I can, but I certainly
10 understand what you say, Dr O'Neal-Morton.

11 BY MR RAWAT:

12 Q. Following on from that, Dr O'Neal-Morton, I mean, you
13 had a different approach to the two Auditors, didn't you?
14 Because, in relation to the Auditor General, your rationale for
15 not giving her information was that she was asking for it too
16 soon in the process.

17 A. Based on the sequence and I had imagined also.

18 Q. Yes. But in relation to the Internal Auditor--

19 A. Um-hmm.

20 Q. --you didn't want to give the Internal Auditor
21 information until--

22 A. That we didn't have.

23 Q. --(a) that you didn't have--

24 A. Um-hmm.

25 Q. --but (b) until your staff had verified it.

1 A. I felt comfortable for them to also do that, but I
2 didn't want them to give the Internal Auditor incorrect
3 information.

4 Q. But you--

5 A. So, as I said--sorry--if you'll excuse me--so, as I
6 said, there were some monies that were paid back in. I didn't
7 want, for example, if they said John Brown got \$50, and we sent
8 it to the Internal Auditor, but in truth of the fact we were
9 working on doing a refund with the money, so because that would
10 have been inaccurate information going out there.

11 Q. Well, the accuracy just depends on the timing of the
12 Audit.

13 A. Um-hmm.

14 Q. And what you want--what you said is that until
15 your--what you wanted to happen was that your staff would verify
16 the information, and the purpose of the Internal Auditor was to
17 do another level of verification.

18 A. Well, I think the responsible thing is whenever we
19 send in information, even within or outside of the office, it is
20 your responsibility to ensure that it is accurate. That is a
21 given responsibility of any office or any officer.

22 COMMISSIONER HICKINBOTTOM: For me, that seems clear.

23 MR RAWAT: Can I just quickly run through the sequence
24 before--

25 COMMISSIONER HICKINBOTTOM: Yes.

1 BY MR RAWAT: --literally one minute.

2 We're on page 195 now.

3 BY MR RAWAT:

4 Q. Having written that long e-mail on June the 21st,
5 Dr O'Neal-Morton, the--you've got a shorter e-mail from the
6 Auditor General, who asked you to forward the response
7 with--(reading) "please forward your response with the
8 information already compiled", and that was on the 21st of June
9 as well.

10 You responded on the same day saying that (reading):
11 It would be professionally inappropriate to provide incomplete
12 information, especially when dealing with unaudited data. This
13 is a recipe for chaos that I would very much like to avoid."
14 And you then say (reading): "We are quite optimistic that the
15 Responses will be completed by June 28th, 2021.

16 On the 21st, however--

17 A. Okay, but you left out the last sentence (reading):
18 "However, if we are able to finish before that date, we will
19 kindly submit the Response to your good office".

20 Q. Thank you for that.

21 What then happened, though, is if we look at 194, the
22 Auditor General, on the evening of the 21st of June, submitted
23 her final reports on fishers--farmers and fishfolks and
24 religious organisations and private schools to the Governor,
25 copying in The Honourable Premier, yourself, and the--another

1 Permanent Secretary.

2 MR RAWAT: So, Commissioner, that's a good point if we
3 want to stop.

4 COMMISSIONER HICKINBOTTOM: Excellent.

5 Thank you very much, Dr O'Neal-Morton. Can we come
6 back about quarter past 2:00? Half an hour?

7 THE WITNESS: Okay. That should be fine.

8 COMMISSIONER HICKINBOTTOM: Thank you very much.

9 MR RAWAT: Thank you, Doctor.

10 (Recess.)

11 COMMISSIONER HICKINBOTTOM: Good. Thank you,
12 Mr Rawat.

13 BY MR RAWAT:

14 Q. Thank you.

15 Dr O'Neal-Morton, thank you for returning to continue
16 your evidence.

17 MR RAWAT: And, Commission, for the record, can I
18 confirm that for this afternoon's session, the Attorney General
19 and the elected Ministers continue to be represented by Ms Fiona
20 Forbes-Vanterpool.

21 BY MR RAWAT:

22 Q. Mrs--Dr O'Neal-Morton--sorry--could we turn up now,
23 please, I think we're at the 25th of June now, so I think when
24 we broke for lunch, we got to the point in the timeline when the
25 Auditor General had submitted her final drafts to the Governor.

1 And if you turn up page 1107, I'm just taking you now to the
2 response from the Attorney General, which is a memorandum,
3 responding to your request for legal advice.

4 MR RAWAT: Commissioner, for your note there is a
5 redacted version of this advice, which was how it was first
6 served, at 217 in the same bundle.

7 COMMISSIONER HICKINBOTTOM: Thank you.

8 BY MR RAWAT:

9 Q. You have that page, Dr O'Neal-Morton?

10 A. Yes, yes, Commissioner, I have that.

11 Q. On the 25th of June 2021, the Attorney General
12 responded to your earlier request for legal advice. If you
13 see--and this is something you noted before the break--can you
14 see in the handwriting in the top right-hand corner, and it's
15 recorded as having been received by hand.

16 Do you see that?

17 A. Yes, Commissioner.

18 Q. Now, the advice is from is Mrs Forbes-Vanterpool
19 Principal Crown Counsel on behalf of the Attorney General, and
20 the advice refers to the memoranda of the 9th of February and
21 the 15th of June and says that the--its purpose is to advise on
22 the sequential process for providing information to the Auditor
23 General, in particular whether the laws of the Virgin Islands
24 allows the Auditor General to act prior to completion of the
25 Internal Audit process.

1 What the advice then does is to review the duties and
2 powers of the Auditor General under the Constitution and under
3 the Audit Act 2003. And as I'm sure you will have seen, Dr
4 O'Neal-Morton, you were referred to section 109(2) of the
5 Constitution, which outline the duties of the Auditor General,
6 and note that that involves auditing and reporting annually, for
7 which purpose the Auditor General or only personnel authorised
8 by him or her shall have access to all books, records, returns,
9 and other documents relating to such accounts.

10 You are then taken to the Audit Act, which--section 11
11 of which provides that the Auditor General has all the powers
12 necessary to enable him to perform his function, including power
13 to require a Public Officer to conduct on behalf of the Auditor
14 General an inquiry, examination or audit and to report his
15 findings; to give the Auditor General access to property that's
16 in the Public Officer's possession or under his control; to
17 search and provide extracts from Government records or records
18 to which the Government has access; or finally, to give or
19 provide to the Auditor General any explanation or information
20 the Auditor General considers necessary to enable him to perform
21 his functions.

22 COMMISSIONER HICKINBOTTOM: I'm sure it--isn't that
23 section 19 of the Act?

24 MR RAWAT: Let me--I'll check.

25 COMMISSIONER HICKINBOTTOM: Not that it matters a

1 great deal.

2 MR RAWAT: But yes, sorry, I should have checked
3 across.

4 COMMISSIONER HICKINBOTTOM: Page 222 of the
5 Authorities clause.

6 MR RAWAT: The Act of 2003.

7 Yes, you're right.

8 COMMISSIONER HICKINBOTTOM: I mean, I don't think it
9 matters--

10 MR RAWAT: No.

11 COMMISSIONER HICKINBOTTOM: --for any purpose other
12 than for the record but--

13 MR RAWAT: Yes. Yes.

14 COMMISSIONER HICKINBOTTOM: And it's the same in the
15 last--in the penultimate paragraph, where there's a reference
16 to--again, it should be 19, subsection (3) Public Officers shall
17 comply with the requirements.

18 MR RAWAT: Yes.

19 COMMISSIONER HICKINBOTTOM: Yes. Okay.

20 MR RAWAT: Yes. There's a typo in the advice where
21 references to section 11 are intended to be a reference to
22 section 19.

23 BY MR RAWAT:

24 Q. But what is set out, as I've summarised,
25 Dr O'Neal-Morton, are the powers of the Auditor General, which

1 allows her to require Public Officers to produce documents.

2 The advice informs you that there is no specific
3 provision in the Act which subjects the exercise of the Auditor
4 General's functions or powers to process. It's noted that the
5 absence of such a provision is unsurprising given the
6 recognition of the independence of the Auditor General in
7 section 1094/10(94) of the Constitution, which expressly states
8 that, in the exercise of his or her functions, the Auditor
9 General shall not be subject to the direction or control of any
10 other person or authority.

11 For completeness, the advice reviewed the Internal
12 Audit Act, which governs the Internal Auditor's work, and noted
13 that the powers of the Director of Internal Audit largely mirror
14 those of the Auditor General, and Director has a power to access
15 any Government asset or property and to inspect any premises,
16 search or inspect any document or record or information of the
17 public authority and requests from any Public Officer or
18 employee of a public authority information or document including
19 electronic data.

20 And it's noted that there are similar reporting
21 obligations on the Director of--as on the Auditor General.

22 And what's noted is that there is nothing in either
23 the Audit Act or Internal Audit Act requiring the conclusion of
24 Internal Audit prior to the commencement of an audit by the
25 Auditor General.

1 And what's the concluding piece of advice to you, Dr
2 O'Neal-Morton, is that section 19(3) of the Act specifically
3 provides that a Public Officer "shall comply" with the Auditor
4 General's request for documents or information. The Act does
5 not provide any exception for the completion of an Internal
6 Audit. Accordingly, the Premier's Office should take immediate
7 steps to comply with the Auditor General's Request for
8 Information.

9 Now, that's the advice recorded as having received at
10 3:02 p.m. by hand on the 25th of June.

11 Subsequent to that, did you, having received that
12 advice about your obligations towards the Auditor General, did
13 you contact the Auditor General's Office?

14 A. Did I contact her?

15 Q. Yes.

16 A. No, I did not.

17 Q. Did you take any steps to comply with her previous
18 requests for information?

19 A. Information for the Report? But the Report was
20 already submitted at that point.

21 Q. So, did you conclude that because she'd already
22 submitted her Report--

23 A. Already submitted so--

24 Q. --the time had passed.

25 A. I don't think it would have been necessary to submit

1 anything after the draft report. I didn't think that was
2 necessary.

3 Even in asking for the extra time, she was saying that
4 that was it, the time would have been cut off, so in my mind
5 there was no sense of submitting anything after that time,
6 anyway.

7 COMMISSIONER HICKINBOTTOM: Well, I understand that.
8 But did you read the Attorney General's memorandum?

9 THE WITNESS: Yes, I did.

10 COMMISSIONER HICKINBOTTOM: And where was there a
11 limitation on the Auditor General's powers to require a Public
12 Officer to provide information?

13 THE WITNESS: I never said that there was any
14 limitation, Mr Commissioner. My only inquiry up until the time
15 that I got that advice was a sequence, because I thought it
16 would have been very challenging, as I said in my prior
17 correspondence, two have two audits going on simultaneously.

18 I always respect any office in Government, anything
19 that's under the Constitution is constitutionally advanced. I
20 respect that. My only challenge was the sequence because, I
21 think in the normal scheme of things, well, this was abnormal;
22 but in the normal scheme of things, more so to have two audits
23 going on at the same time. That was my concern.

24 COMMISSIONER HICKINBOTTOM: I understand that, because
25 you've made that very clear, Dr O'Neal-Morton.

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: But you had a request from
3 the Auditor General to provide data, and I appreciate that she
4 produced her Report, finalised her Report by this time, but you
5 have the request. It's a request that you are bound to comply
6 with under section 19(3), despite the fact the Report had been
7 finalised. You still didn't think it was appropriate to comply
8 with the request, although there's no limitation.

9 THE WITNESS: We sent in, Mr Commissioner, our Report
10 and asked it to be made an addendum, and it was not.

11 COMMISSIONER HICKINBOTTOM: No, no, no, there's a
12 diff--I'm sorry, that's a different point.

13 THE WITNESS: They--no, I disagree because we
14 submitted the information that we had in our possession. I post
15 this letter.

16 COMMISSIONER HICKINBOTTOM: I appreciate that you
17 submitted a draft report after the memorandum from the Attorney
18 General.

19 THE WITNESS: Um-hmm.

20 COMMISSIONER HICKINBOTTOM: But the Auditor General
21 had asked for data, not your Report--the data. Didn't it occur
22 to you that you should still provide the data?

23 THE WITNESS: Mr Commissioner, we didn't have any data
24 basis to provide because as--we got a request from IRU which
25 they say came from COI, this week for information from the

1 applicants. It's--it was still in a box, so what we do is we
2 scanned that information, sent it to IRU to pass on to the COI,
3 so we had no databases to pass on.

4 COMMISSIONER HICKINBOTTOM: I understand that there
5 was no electronic databases, but section 19(2)(b) is not
6 restricted to databases. It's--you have to provide access to
7 the Auditor General for property that is in your possession and
8 control. The documents were in your possession and control, but
9 it didn't--after the Auditor--after the Attorney General's
10 memorandum, which said that you should take immediate steps to
11 comply with the Request for Information, you didn't think you
12 should comply with the Request for Information. If you didn't,
13 that's the answer.

14 THE WITNESS: I'm not saying that, but,
15 Mr Commissioner, if you would appreciate, once the Report had
16 gone in, the Auditor General, in my estimation, the Report was
17 completed. That was her final doing. I didn't think that she
18 wanted anything more because previously she had asked for, we
19 told her to do with until we are finished, but she didn't ask
20 for anything more and she sent the Report to the Governor's
21 Office and copy to our office.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 BY MR RAWAT:

24 Q. We may need to come back to that because--when we deal
25 your--the Premier's Office response.

1 But if we move to page 189 in the bundle. We're now
2 on the 28th of June 2021, Dr O'Neal-Morton, and what you have
3 now, you're doing, is that you, under cover of this letter,
4 provide to the Auditor General a copy of what you say is the
5 "Preliminary Report on the expenditure of COVID-19 stimulus
6 funds by the Premier's Office July 2020-May 2021". You explain
7 that it serves as an addendum to the two Reports that the
8 Auditor General has submitted, namely the Reports on farmers and
9 fisherfolk and on religious institutions, civic groups, private
10 schools, and daycares. You say that you had, in previous
11 correspondence, indicated that significant issues were found
12 with those Reports, hence the comprehensive response was needed.

13 And then you point to the impact that there had been,
14 which is a point that you made previously about other demands,
15 but you reiterate that, if we go to the next page (reading):
16 The Internal Audit process had not yet had the opportunity to
17 run its normal and prescribed course at the time of your Draft
18 Report. The situation remains the same until now. Hence, the
19 figures quoted in the Preliminary Report are unaudited, as is
20 the case with the two Audit Reports by your office mentioned
21 above". I have the Preliminary Report on the expenditure. So
22 you then conclude by saying you hope the Report that you're
23 attaching is useful to the Auditor General's purpose. That
24 sentence on that page about the Internal Audit process had not
25 yet had the opportunity to run it's normal and prescribed course

1 at the time of your Draft Report, why were you--did you think it
2 important to make that point?

3 A. Because that was the case. What we did is we rushed
4 the things to give because we had gotten the letter from the
5 Attorney General that said we comply with the Auditor General.
6 There is no sequence indicated. So we decided okay, they read
7 my concept of the sequence, we will just go ahead and give her
8 whatever we had in terms of our Report, which we requested for
9 it to be added to the Report that the Auditor General had.

10 COMMISSIONER HICKINBOTTOM: But not the data that
11 she'd requested.

12 THE WITNESS: Commissioner, I'm not certain of how you
13 want me to answer that. I'm not certain of that.

14 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

15 BY MR RAWAT:

16 Q. It's described as a Preliminary Report. In what way
17 is it--was it a Preliminary Report?

18 A. Because the exercise is not completed, so it has to be
19 preliminary. It's not a final report, and neither is the one
20 that was put out in the public domain by the Auditor General.
21 Neither is that because it's not a final report.

22 Q. When did you formulate the intention to produce such a
23 report?

24 A. When did I formulate that?

25 Q. When did the Premier's Office decide that they would

1 be issuing a report about COVID stimulus funds?

2 A. You mean this--the one that's referred to in the 28th
3 of June memorandum?

4 Q. Yes.

5 A. Well, that would have had to been after we had gotten
6 that advice from the AG, combined with the fact that a Report
7 was already released and by the Auditor General to the Governor
8 without our input.

9 Q. Well, may I break it down a little bit, please,
10 Dr O'Neal-Morton.

11 A. Um-hmm.

12 Q. You have advice on--you got a report after
13 correspondence we've been through. You've got the Auditor
14 General publish, sending her Reports in final form to the
15 Governor and others. You have advice on the 25th of June from
16 the Attorney General. Three days later you produce your Report,
17 which is--we'll look at it in a moment. It's 96 pages long.

18 A. Because remember, Commissioner, we were working on
19 this, and this was the exact date that we had asked for the
20 extension to go to to the Auditor General, not knowing that it
21 would have been published before the 28th of June. That was
22 actually the date we asked for it to be extended to.

23 Q. I appreciate that, but how long--

24 A. --it would all been--

25 (Overlapping speakers.)

1 Q. How long before that?

2 A. I can't recall, Mr Commissioner. That's a long time
3 ago.

4 Q. But when did you decide, as a ministry, that you would
5 be preparing such a report?

6 A. When did we decide? Well, as I said, a report was
7 sent to the Governor. There was no input from us. Of course,
8 we would have been working on--behind the scenes all the time to
9 put something together. Nothing was sent from our Ministry, so
10 the Auditor General was asking for information, and she wanted
11 this Report. We were working on it. We asked for the deadline
12 to be extended to the 28th of June, which was not, and it was
13 published before. So we--while she had extended it until I
14 think it was the 15th, we had started to work on it.

15 Q. So, was this Report prepared, the intention that it
16 would be a response to the content of the draft reports that had
17 been sent to you?

18 A. In essence, yes, and that's why we asked for it to be
19 an addendum because, Commissioner, with all due respect, the
20 Report that went out to the public is one-sided. It doesn't--it
21 does not convey the accurate information that transpired within
22 the Premier's Office, and we are not pleased at the Premier's
23 Office with that--

24 COMMISSIONER HICKINBOTTOM: Because you hadn't
25 provided it.

1 THE WITNESS: Because, Commissioner, I explained all
2 of that--

3 (Overlapping speakers.)

4 COMMISSIONER HICKINBOTTOM: No, no. I'm sorry, I
5 understand the explanation, Dr--

6 (Overlapping speakers.)

7 THE WITNESS: Um-hmm.

8 COMMISSIONER HICKINBOTTOM: But that's the reason--

9 THE WITNESS: I'm not O'Neal-Smith. I'm O'Neal-Morton.

10 COMMISSIONER HICKINBOTTOM: I'm sorry. I'm terribly
11 sorry.

12 You've explained why, but she didn't have the data
13 from you.

14 THE WITNESS: But then she can't make a final report
15 because what was the accuracy of the data? Where is the origin
16 of that data? From where or from whom did that data from, that
17 the Auditor General released to the public?

18 COMMISSIONER HICKINBOTTOM: You're saying she should--

19 THE WITNESS: What is the source?

20 COMMISSIONER HICKINBOTTOM: She should have stayed her
21 hand. She'd been--she was doing this Audit Report. She should
22 have stayed her hand until you provided the data.

23 THE WITNESS: Mr Commissioner, we only asked for until
24 the 28th of June. That was not quite far from--I think she had
25 said 21st. That is only seven days.

1 COMMISSIONER HICKINBOTTOM: But, Dr O'Neal-Morton, you
2 didn't provide her with the information she requested. You
3 provided her with the Response to her Draft Report, and that's
4 different.

5 THE WITNESS: That had information in the Report.

6 COMMISSIONER HICKINBOTTOM: It had some information--

7 THE WITNESS: Our report, in our report.

8 COMMISSIONER HICKINBOTTOM: --but not the information
9 that she wanted.

10 THE WITNESS: But she wanted databases which we did
11 not have, Mr Commissioner. We did not have those.

12 BY MR RAWAT:

13 Q. Let's try and take it in stages, Dr O'Neal-Morton.
14 The reason for my question is--and let's turn up
15 page 90.

16 COMMISSIONER HICKINBOTTOM: 19?

17 MR RAWAT: 90.

18 If you go to page 888.

19 BY MR RAWAT:

20 Q. This is the front cover of the Preliminary Report,
21 and, in fact, in true format. It's actually a color photo, a
22 set of color images put together.

23 Now, when you read this Report in isolation, you could
24 see it as having been drafted as a stand-alone report. Against
25 the background of the correspondence that we went through, it

1 could be said to be a response to the Auditor General's Report.
2 It's not entirely clear, and that's why I'm asking the question.

3 Was it produced after the Auditor General had sent you
4 her draft reports and with the intention that there should be a
5 response to those draft reports?

6 A. I'm not sure. It might have been, but this is--this
7 ends May 2021. A report might have been done, but, of course,
8 you'd of had to go through it as a team and make any
9 corrections, so I'm not certain about that. I cannot answer
10 that.

11 Q. You either, as the Premier's Office, intended to
12 publish a report like this whether or not there was an Auditor
13 General's Report pending, or you drafted it as a response to her
14 Report, which would have meant that when she sent you her draft,
15 that's when you started work on this, on these 96 pages because
16 the alternative is you were already doing it, and then you
17 decided to use it to say, well, you have to have this as an
18 addendum.

19 A. Mr Commissioner, I can't search the recesses of my
20 mind to answer that question because that happened quite a while
21 ago, so I cannot quite accurately answer that.

22 COMMISSIONER HICKINBOTTOM: Does page--and I respect
23 that, Dr O'Neal-Morton.

24 But does page 92 help you? Page 92 sets out the
25 purpose of the Report. The purpose of the Report, it says, is

1 to provide a preliminary account for the funds disbursed under
2 the supervision of the Premier's Office with regard to the
3 following programmes, and it lists--that's the small enterprise,
4 farmers and fishermen, religious organisations, and transport.

5 And it simply says this Preliminary Report also serves
6 as an addendum to the Special Audit reports prepared and
7 published by the Auditor General on the 21st of June.

8 THE WITNESS: But how it was that going to ever mesh
9 with the date because this date is May 2021, and they cannot be
10 speaking to something that happened in June 2021.

11 BY MR RAWAT:

12 Q. But your date on the front cover of this is 28th of
13 June 2021.

14 A. So--but Commissioner is speaking about it being in
15 sync with what is listed here, but then this date is before
16 this, so then that can't be in synchronization.

17 COMMISSIONER HICKINBOTTOM: It may not matter. I
18 don't understand that, Dr O'Neal-Morton, but I just wanted to
19 know whether the purp--whether that helped you with the--when
20 the Report started.

21 THE WITNESS: No, it isn't because it says special
22 reports prepared and published by the Auditor General 21st of
23 June 2021. May comes before June.

24 COMMISSIONER HICKINBOTTOM: But not before the 28th of
25 June, which is the date on the front sheet.

1 THE WITNESS: No, but I'm saying that if this date or
2 if this information in here is correct, then it says July 2022,
3 May 2021, and then it makes reference here to the response to
4 the--a certain addendum to the Auditor General on 21st of
5 June 2021. May comes before June, so this couldn't be a
6 response to something that was--

7 COMMISSIONER HICKINBOTTOM: Okay. So--

8 (Overlapping speakers.)

9 THE WITNESS: --in June 2021.

10 COMMISSIONER HICKINBOTTOM: So, the Premier's Office
11 was preparing this anyway, irrespective of the Auditor General's
12 Report.

13 THE WITNESS: That's what I said, Commissioner. I
14 know that we were doing stuff in draft, keeping--getting ready
15 for making reportings to whomever.

16 COMMISSIONER HICKINBOTTOM: Okay.

17 THE WITNESS: So, rather than waiting until the last
18 minute, we had things in draft. And, of course, before sending
19 them out, the team would have had to look at it. Because in
20 real situations, I might compile a report, but I would probably
21 ask three or four persons to also look at it, as well.

22 COMMISSIONER HICKINBOTTOM: No, I absolutely
23 understand that, that these are team efforts in that respect.
24 But can I take it from your evidence that this Report was
25 drafted initially on the basis that it would be a free-standing

1 report simply to set out how the funds were disbursed?

2 THE WITNESS: I can go along with that, but I can't go
3 along with this. I don't know that is probably a mistake in
4 terms of the dates because that can't be correct.

5 BY MR RAWAT:

6 Q. Okay. If you turn up page 191, please,
7 Dr O'Neal-Morton. The next stage in sequence is on the 29th of
8 June. You write to the Auditor General, and so what you say
9 is--and this letter, you explain, is intended to be a further
10 addendum to her Report. So, you've asked the previous day for
11 your Preliminary Report to become an addendum to the two reports
12 she's finalised, and you asked for this letter to be a further
13 addendum.

14 And what you take issue with in this letter is the
15 evidence that the Premier's Office refused to cooperate with the
16 Auditor General's Office in preparation of her Reports, and you
17 specifically cite the evidence that the Auditor General gave to
18 the Commissioner on the 28th of June.

19 And you then set out that--effectively it comes down
20 to this, doesn't it, Dr O'Neal, and you say this in the letter
21 itself. You say that the statements that the Premier's Office
22 was uncooperative with your office are untrue--with the Auditor
23 General's office are untrue, and you point to the
24 correspondence, and we've gone through this correspondence you
25 rely on. And you continue then by saying that on the 9th of

1 February you'd written for legal advice to the Attorney General,
2 had followed up on the 15th of June and received a reply on the
3 25th of June. And you asked, as I said, for this to be
4 published as an addendum.

5 Before I ask you some question, is there anything else
6 that you'd like to draw to the Commissioner's attention from
7 this letter?

8 A. The same issue with the dates over there. The present
9 dates are quoted here, so I don't know what I have sent around,
10 but it's outdated. July 2020 to May 2021, that was not there
11 corrected.

12 Q. Yeah, it's July 2020 to May 2021--

13 A. Um-hmm.

14 Q. --is the date on your Preliminary Report.

15 A. Yeah, that would--

16 Q. But the Report itself, at the--I'll take you to it in
17 a moment--

18 A. Um-hum.

19 Q. --I'll show you it carries a date of the 28th of June.
20 So, what appears to have happened is that Auditor General's sent
21 her Reports in; you, then, on the 28th of June send your Report
22 to her and asked for it to be an addendum; she gives evidence on
23 that same day to the Commissioner; you followed up with this
24 letter, where you point out that there has been correspondence
25 between the two; and you take issue with the suggestion that

1 your office has been uncooperative.

2 A. Yes, I did very much so, Mr Commissioner.

3 Q. And then you also make the point that there are
4 numerous factual inaccuracies observed in the two reports that
5 the Auditor General has prepared, and you say--and this is
6 page 192--that these would be most efficiently clarified in a
7 report that was being prepared by the Premier's Office on the
8 COVID-19 economic programmes which will be provided to you on
9 completion, and this is, you say, a point that you had made in
10 previous correspondence, but can I--we've gone through the
11 correspondence. This appears to be the first time that you told
12 the Auditor General that you had sought legal advice.

13 A. Where is it, the last minute--last question about many
14 times. Why would it have been important for me to tell the
15 Auditor General that I have sought advice? Let me know,
16 Mr Commissioner.

17 Q. Well, Dr O'Neal-Morton, if your answer is that you
18 didn't consider it to be important--

19 A. No, no, no, I'm curious because the question was posed
20 on more than one occasion, so--

21 Q. Because you've drawn it to her attention now--

22 A. --I want to know.

23 Q. --in a letter that you're asking to her to--you
24 conclude the letter, this letter--

25 A. Um-hmm.

1 Q. --of the 29th of June by saying (reading): It's
2 unfortunate that it has come to my having to publish the
3 correspondences between us. However, I'm left with no
4 alternative given the erroneous contents of your two Special
5 Audit Reports and the inaccurate statements you've made in--to
6 the COI in your testimony". And you say it will injure the
7 repu--if you don't take issue, that would injure the reputation
8 of the Government of the Virgin Islands, the Premier's Office,
9 and the Public Officers.

10 So, it's clear that you take--you considered this
11 seriously and--but this letter, which you asked to be published,
12 appears to be the first time that you mentioned that you had
13 sought legal advice. So my question is, you know, why hadn't
14 you mentioned it before?

15 A. Why did I have to let her know that I was seeking
16 legal advice? It was--was that a requirement? I'm curious
17 because if you ask it--the question has been posed on more than
18 one occasion.

19 COMMISSIONER HICKINBOTTOM: No, it--

20 THE WITNESS: What is the importance of that?

21 COMMISSIONER HICKINBOTTOM: Well, I'm afraid I'll have
22 to consider the importance in due course, Dr O'Neal-Morton. But
23 looking at all of the communications between yourself and the
24 Auditor General, which we have, because you confirmed that we've
25 got everything that there is, and we've been through it all

1 today, at no time do you say to the Auditor General before she
2 finalises her Report and sends it to the Governor under
3 section 20, "Look, it--I think that this--that you and the
4 Internal Auditor should be sequenced and you should come after
5 the Internal Auditor. That's the reason I'm not giving you any
6 data". What you said is you'll give the data when it's ready.
7 But you didn't tell the Auditor General that at any time, and
8 you didn't tell her that you were concerned about sequencing and
9 had sought the Attorney General's advice on it. That's all.

10 THE WITNESS: I see, I did convey that I was concerned
11 with sequencing because I said about two audits going on
12 simultaneously. That speaks to sequencing.

13 COMMISSIONER HICKINBOTTOM: Was un--you said it was
14 unusual, but you didn't say, "It's not happening here because
15 you're going to come onstream after the Internal Auditor".

16 THE WITNESS: Um-hmm.

17 COMMISSIONER HICKINBOTTOM: But that--we've been
18 through that and I'll make of that evidence what I can, but
19 that's the only--

20 (Overlapping speakers.)

21 THE WITNESS: But I also have a question as well,
22 Mr Commissioner. I don't know if you're the one that can answer
23 it. Is it typical for the Auditor General to just go ahead and
24 bring a Preliminary Report, a special report, and just land it
25 in your in-box without warning, without notice, without even

1 having an interview with you?

2 COMMISSIONER HICKINBOTTOM: Well--

3 THE WITNESS: Is that typical, (1)?

4 COMMISSIONER HICKINBOTTOM: Well--

5 THE WITNESS: (2), is that all right? Is that legal
6 to put information in the public sphere that right now the
7 Premier's Office is really naked in terms of the information
8 concerning the stimulus as far as the Auditor General's Office
9 is concerned. That side is out. Ours is not. And I think it's
10 quite unfair to the Premier's Office.

11 COMMISSIONER HICKINBOTTOM: Well, I can't give
12 evidence and our witnesses, the witnesses who come here can give
13 evidence and I'll hear evidence from them. But as the
14 Auditor--Attorney General said clearly in a memorandum to you,
15 you have an obligation to provide the information requested by
16 the Auditor General immediately. You haven't provided that
17 information for one reason or another, and she had proceeded to
18 produce her Report, having given you an opportunity to respond.
19 You didn't put in a response. Again, you've explained why. And
20 that's her Report on the data she had.

21 As I understand it, neither she nor the Internal Audit
22 Department have still yet got data. They've got some reports
23 which you put together which you say are not complete and are
24 unaudited, but they do not have the data that they seek. That's
25 the evidence.

1 THE WITNESS: But, Mr Commissioner, what is the rush?
2 What is the rush? We have not gone through audit before. This
3 is our first time. This is very extensive. So, do you think in
4 the interests of the public it is fair to only put one side out
5 in the public, Mr Commissioner? I put that question to you.

6 COMMISSIONER HICKINBOTTOM: I'm just going to look at
7 all of the evidence, but this is with the backdrop, that when
8 Cabinet approved these schemes, they asked for the Internal
9 Auditor to prepare and send them monthly reports, which, as
10 we've been told, has not been done. So, I will look at all of
11 the evidence. But as we've said--I know you don't accept
12 this--but the Auditor General produced her Report on the data
13 that she had because, for one reason or another, she has not
14 been provided data by the Premier's Office. That's the
15 position.

16 THE WITNESS: But, Mr Commissioner, then with regards
17 to that, the Premier's Office is the one that is responsible for
18 these initiatives. Wherever this information was sourced, how
19 can the Auditor General rely on that as being valid and
20 credible? How can she?

21 COMMISSIONER HICKINBOTTOM: Well, I mean, we can't go
22 back to deal with--

23 THE WITNESS: No, but I'm putting the question. And
24 in fairness to us, this information that the Auditor General put
25 out is in the public domain. We are getting licks of them,

1 Mr Commissioner. We are getting licks because the public domain
2 is judging one side. That is my office. I have to bear that.

3 COMMISSIONER HICKINBOTTOM: No, but this is--we're
4 collecting evidence, not conducting a debate Dr O'Neal-Morton.

5 THE WITNESS: Mr--

6 COMMISSIONER HICKINBOTTOM: But I have to consider the
7 evidence, and I'm listening to your evidence, and I will take it
8 all onboard, and we'll hear the Auditor General again. But the
9 Auditor General had a--she was preparing a section 20 report.
10 As the Attorney General has told you, you had an objection to
11 provide data. You did not provide the data.

12 THE WITNESS: No, in June--

13 COMMISSIONER HICKINBOTTOM: You have still not--you've
14 still have not provided the data, and those are parts of the
15 evidence which I'll have to consider.

16 Mr Rawat?

17 THE WITNESS: Yes, if I may, Mr Commissioner, my--what
18 I'm saying is not directed to you. It is that this information
19 is in the public sphere, and that means judge, jury, and
20 executioner have, for want of a better word, one-sided evidence,
21 and I don't think it's unfair to--I don't think that it is fair
22 to the Premier's Office. It's quite unfair.

23 COMMISSIONER HICKINBOTTOM: Well, that's a point
24 you've made, Dr O'Neal-Morton.

25 THE WITNESS: And I would like you to weigh that very

1 much so, Mr Commissioner.

2 COMMISSIONER HICKINBOTTOM: And I will weigh that with
3 everything else in the balance. Thank you.

4 THE WITNESS: I appreciate that.

5 BY MR RAWAT:

6 Q. I mean, if we can perhaps take that point a little
7 differently, Dr O'Neal-Morton. The--one of the points you've
8 raise in the final letter that we've looked at to the Auditor
9 General 29th of June letter, which you asked to be--yet to
10 be--also to be an addendum, is that you say that there are
11 significant errors in the Auditor General's Reports.

12 Now, those Reports are in the bundle that's in front
13 of you. We also have your Report. If you go to page 88.

14 The tenor of the e-mail exchanges between yourself and
15 the Auditor General is about the Premier's Office having an
16 opportunity to respond to what she has written in her Reports,
17 so to tell her where, in fact, she has gone wrong.

18 Now, can you just direct the Commissioner because it's
19 not--it doesn't appear straightforward. Where in this Report
20 from the Premier's Office, this Preliminary Report, does it set
21 out what the errors in the Auditor General's Report are?

22 A. I would have to go through the Report, but I know I
23 recall some instances of information that was given in regards
24 to the fishermen receiving stimulus. There was an instance
25 where it was reported that captain and crew got the same things

1 for the same boat. That is incorrect.

2 Q. That is something that's mentioned in the Premier's
3 Office Response that's been submitted to the COI, drafted by who
4 knows who, but this Report which--

5 A. What do you mean by "drafted by who knows who"?

6 Q. Because nobody knows who drafted it, Dr O'Neal-Morton.
7 Nobody will tell--

8 A. It had to drafted by a team member of the Premier's
9 Officer.

10 Q. Well--

11 A. It's not relevant to say Mary did it, Jane did it.
12 Whatever comes out of the Premier's Office is a team effort, is
13 the Premier's Office.

14 Q. We'll look at this, and you can explain that to me
15 when we get to it.

16 This document, who drafted this document? Who drafted
17 your Preliminary Report? Is that another team effort?

18 A. Mr. Chairman, everything that comes out of the
19 Premier's Office is a team effort that comes under the umbrella
20 of the Premier's Office.

21 Q. Now, on the 29th of June, you're writing to the
22 Auditor General saying this Report needs to be an addendum
23 because--and your letter needs to be an addendum, and all the
24 correspondence needs to be an addendum because of the errors in
25 her Report and the errors in her evidence to the Commissioner.

1 So, we've gone through all the correspondence, and we've seen
2 the exchanges between you and the Auditor General.

3 But leave aside the Premier Office Response because
4 that's not been drafted yet. We're in June 2021. And just
5 looking at the table of contents, the page 98, where in that
6 does it identify the errors that the Auditor General had made in
7 her Report?

8 A. Mr. Commissioner, I'll have to go and read that
9 Report. This was done quite a long time ago. I don't remember
10 exactly. I cited one example--

11 COMMISSIONER HICKINBOTTOM: But that's not in this
12 Report, though. Just give us one or two examples from this
13 Report, Dr O'Neal-Morton.

14 THE WITNESS: Mr Commissioner, I'll have to go and
15 look at the Report. I think, asking me that like that I don't
16 recall. This was quite a while. I have to look at the actual
17 report and see what it says in terms of the inconsistencies. I
18 would have to read it.

19 BY MR RAWAT:

20 Q. And the Report itself, you explain, is based on
21 unaudited data, and I think it's a criticism you make of the
22 Auditor General, that she is using unaudited data and then
23 putting it into the public domain. Is that right?

24 A. That is correct.

25 Q. But in what way is your office's use of unaudited data

1 more reliable than the Auditor General's Office?

2 A. We didn't say our data was audited because our data
3 could not be audited by ourselves. It would have to be audited
4 by the Internal Auditor Department, but because of the fact that
5 the Auditor General put that Report out, we felt we had to give
6 a response to that because we didn't want that information going
7 out there. We weren't aware that the Auditor General was going
8 to come to the COI and then information would be made publicly.
9 We didn't realize that.

10 And we didn't see the information that's going to
11 Cabinet, nor the House of Assembly as yet, which I think is the
12 normal procedure because I don't think that Auditor General's
13 Report has even reached the House of Assembly. I've not seen it
14 in any other paper.

15 Q. But the thrust of my question was that you are--you
16 say to the Auditor General there are errors in your Report, and
17 we want an opportunity to respond to them. You produce a report
18 which, if you read it, Dr O'Neal-Morton--

19 A. Um-hmm.

20 Q. --doesn't read like a response to the Auditor
21 General's Report. It reads like a stand-alone report itself.

22 A. Yes, if that's your impression.

23 Q. Well, I'll take you to some examples in a moment, and
24 you can--

25 A. Well, I maintain that that is your impression. That

1 is your belief. I cannot change that.

2 Q. But my point is that why is--if you're questioning the
3 use of unaudited data, why is your use of unaudited data more
4 reliable than anybody else's?

5 A. Mr Commissioner, we--this information would have gone
6 to Auditor, the Internal Auditor, who would of course, have
7 information Audit, would have sent it to the Audit Committee,
8 which I understand does not exist, so all of that is a flaws
9 within the system.

10 COMMISSIONER HICKINBOTTOM: So this--but this--what
11 you're saying this would never see the light of day because it
12 would have gone to the Internal Auditor, no data has gone to her
13 yet, as I understand it.

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: But if the data would have
16 gone to the Internal Auditor, the Internal Auditor, when she got
17 the data, at some point in the future, would have prepared an
18 Internal Audit. That then would have gone to the Internal Audit
19 Committee which doesn't exist, so the process would have stopped
20 there. This would never have gotten to the Auditor General.

21 THE WITNESS: Well, Mr Commissioner, that is not my
22 fault. Number one, I mean, yes, we had challenges in terms of
23 getting information out; and number two, I'm not responsible for
24 the non-existence of the Audit Committee. I'm not responsible
25 for that.

1 COMMISSIONER HICKINBOTTOM: Okay. In terms--have you
2 got--are you going to take Dr O'Neal-Morton to some examples
3 from this Preliminary Report?

4 MR RAWAT: Well, I'm going to ask for her assistance
5 to explain some parts of it.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 BY MR RAWAT:

8 Q. The first question is obviously, because it's a
9 report, in terms of the underlying information that you used,
10 Dr O'Neal, where is that held, and how is that held?

11 A. What's the question, Mr Commissioner?

12 Q. If you look at the Report, it has tables and graphs
13 and pie charts. All of that information must have come from
14 data. You need information in order to draw a graph or
15 construct a table. Where was that information held in the
16 Premier's Office?

17 A. The information--as I said before, the information for
18 the farming and fishing and also the churches, et cetera, the
19 information is in hard copy. We do not have it on a database,
20 so they have to label and go into the hard copy information and
21 extract this information with the assistance of the team
22 members.

23 Q. Okay. If you go to page 133, please. This is a
24 section on "Economic Stimulus for Farmers and Fishermen" so, it
25 sets out the--what the funding presently will be used for,

1 speaks to the establishments of a Working Group to be chaired by
2 yourself. We've already discussed that.

3 At the bottom there it sets out that Cabinet-approved
4 criteria document to assess ability those qualifying for the
5 assistance, Cabinet approved an application form and other
6 documents. And it then sets out on payment 134 the results of a
7 survey which then continues through when we get to fishermen,
8 page 138, then return on page 138 back to qualifying criteria
9 for the two categories, farmers and fishermen.

10 You then have under Heading Accountability and
11 Transparency Framework reference to the auditing being done on a
12 monthly basis by an Internal Auditor. It then deals with the
13 application process, the assessment process, how payments were
14 to be made. It notes at the top (reading): Payments were made
15 directly to suppliers and contractors on behalf of the farmer or
16 fishermen subject to the submission of proforma invoices; then
17 speaks of a basic formula; and then there is a section on
18 consideration of--for exceptional cases; and then, as we go
19 through from page 142, you then have a set of tables which
20 summarise disbursements that were made.

21 So, in total across the nine districts, it tells you
22 that \$2,881,500 were disbursed to farmers, and there's then a
23 breakdown by District of the grants, and that continues, is put
24 in a different way. So, there are different ways, it seems, of
25 representing how the awards were distributed; and when we get to

1 page 145, you have the same thing with fishermen, and how many
2 across each District were paid, and that's then shown in a
3 table, in a bar chart, again in a second bar chart, then
4 it's--there's a comparison to the survey.

5 A. Um-hmm.

6 Q. And then there's a--you know, there's a breakdown of
7 how many got each level of award.

8 Now, that's a quick whistle-stop tour through that
9 section. But one concern that arises when you look at the--or
10 the big concern that arises when you read the Auditor General's
11 Report was that in relation to farmers and fishermen, people
12 were being paid who were not eligible.

13 A. What does that mean, Mr Commissioner?

14 Q. Well, on what the Internal Auditor published in her
15 Report, she says that there were people who were not registered
16 as commercial farmers or commercial fishermen who received an
17 award under the scheme.

18 A. But that was not the only criteria to receive an award
19 under the scheme. You have to be registered or somebody can
20 certify that you have been engaged in fishing or farming.

21 Q. Yes.

22 A. But there were two ways of being eligible for the
23 scheme.

24 Q. Just take me to where in this Report it says that all
25 of the farmers and fishermen were vetted and were found to be

1 entitled under the qualifying criteria.

2 A. Mr Commissioner, there was a--before we go to that,
3 let me go to 130.

4 No, let me answer that first.

5 As the Auditor General said, the Agriculture
6 Department said they were not in a position to do any
7 assessment, to go out in the field and assess them to see if
8 they were qualified. So, we depended on they're being
9 registered. Those who weren't registered, you had to bring a
10 certification, because Agriculture said they didn't have
11 the--neither the manpower nor the equipment. As a matter of
12 fact, the Agriculture applied for stimulus. They applied for
13 four vehicles and an engine, which we refused because we told
14 them that you have to get that from your budget request. They
15 were unable to assist the Premier's Office in that regard.
16 There were Member of the Committee, and that was said in the
17 Committee.

18 Q. Is that minuted in the Committee?

19 A. It was probably--I can't remember exactly where it is,
20 but what the Auditor General also mentioned it as well in her
21 Report, and in her Report isn't mentioned.

22 Q. But it's just where--if you just deal with--

23 A. I can't point to exactly where it is. I know I have
24 the image--

25 (Overlapping speakers.)

1 Q. The point--

2 A. Because you must--

3 Q. The point--

4 A. --you must appreciate it's quite a lot to remember
5 exactly where it is--

6 Q. Well, no--

7 A. --because I know it exact.

8 Q. --the point about Agriculture, Dr O'Neal-Morton, that
9 appears in the Premier's Office's response to the Commissioner.
10 It's just this is the document that your Office wanted to put as
11 an addendum because you were concerned over the errors that you
12 had identified. It's difficult when reading this Report to find
13 out where you highlight those errors and also where you give
14 what you say is the correct picture.

15 A. Because you're stating that, and if the Auditor
16 General felt that way, nothing was communicated and saying,
17 okay, you are not referring to X, Y, and Z. We never received
18 anything back to say that what you are saying now on the data.

19 (Overlapping speakers.)

20 COMMISSIONER HICKINBOTTOM: I'm sorry, we mustn't go
21 around in circles, Dr O'Neal-Morton.

22 THE WITNESS: No, we're not going around in circles.

23 COMMISSIONER HICKINBOTTOM: No, we are. We just need
24 to guard against it.

25 In this Report, which is your Report that you wished

1 to have appended to the Auditor General's Report, it said in
2 some places, although it's now not clear, but this was a
3 response to the Auditor General's Report. At the moment I can't
4 see any response element to it, but that's something--

5 THE WITNESS: But the--

6 COMMISSIONER HICKINBOTTOM: --that's something which,
7 if you say that there are matters where there is a response, you
8 can come back to us later; otherwise, this doesn't seem to me to
9 offer any response.

10 But it does set out--your Report sets out the
11 qualifying criteria for farmers and fishermen on pages 138 and
12 139, as Mr Rawat said. It sets out the documentation required
13 for submission with the application, which includes an estimate
14 of materials, works to be done or equipment required with photos
15 where possible, because the idea of the scheme was to recompense
16 actual expenditure. That's all fine. It's got payments being
17 made directly to suppliers and contractors. All of this is in
18 accordance with the Cabinet requirements.

19 But then it says, in a paragraph which springs from
20 nowhere, that the--a basic formula applied was \$13,000 for small
21 farmers and \$22,500 for large-scale farmers and so on, with
22 these farmers. There's no--there's no connection between what's
23 gone before in the requirements and the bands, and what the
24 Auditor General says is, well, there's nothing to suggest that
25 the criteria were applied at all or certainly applied properly.

1 There's nothing in this Report which suggests that they were.

2 THE WITNESS: Mr Commissioner, are you referring to
3 the bands, the bands?

4 COMMISSIONER HICKINBOTTOM: No, we've got the
5 criteria, which is set out for farmers at paragraph 3.2.1.1, and
6 the documentation and these estimates for actual work. So,
7 where do we see that the basic formula was the application of
8 the qualified criteria that you've set out? That was the
9 Auditor General's criticism.

10 THE WITNESS: We have that in our response, as well,
11 because it was realised that, as I indicated before, the
12 controls by Cabinet, they were quite ambitious, and so we had to
13 make a decision on that.

14 COMMISSIONER HICKINBOTTOM: Are you saying that those
15 appear in the later response?

16 THE WITNESS: Um-hmm, those are in the later.

17 COMMISSIONER HICKINBOTTOM: Okay. We'll come on to
18 that.

19 THE WITNESS: Um-hmm.

20 COMMISSIONER HICKINBOTTOM: But in this document, in
21 this document, which was a response which you wanted appended to
22 the Auditor General's Report, there's nothing of that in here.

23 THE WITNESS: Well, Mr Commissioner, at the same
24 token, the Auditor General said nothing like that, so...

25 COMMISSIONER HICKINBOTTOM: The Auditor General said

1 that there's no evidence that the criteria were applied. Your
2 response--

3 THE WITNESS: That's prior to the Report. That's
4 prior to our preliminary that we sent as--to be an addendum.
5 That is prior to that.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 THE WITNESS: As what was given here as testimony.

8 COMMISSIONER HICKINBOTTOM: But in the Preliminary
9 Report--

10 THE WITNESS: Um-hmm.

11 COMMISSIONER HICKINBOTTOM: --where do we--this is
12 Mr Rawat's question--where do we see a response to the criticism
13 of the Auditor General that there was no vetting against the
14 eligibility criteria? Where do we see it?

15 THE WITNESS: Mr Commissioner, I can't quote the
16 Report because I would have to go through it again because, as I
17 said, it was quite a while.

18 With the same token, the Auditor General received it,
19 and she didn't write back and said, "Okay, you haven't provided
20 sufficient information for me to add it as an addendum".
21 Everything went flat. We didn't get any response.

22 COMMISSIONER HICKINBOTTOM: But is that your response
23 to Mr Rawat's question as to where the evidence is in here?

24 THE WITNESS: Is that a fair question to me, Mr
25 Commissioner.

1 COMMISSIONER HICKINBOTTOM: Okay. Thank you very--

2 THE WITNESS: Is that a fair question to me?

3 Shouldn't that be directed to the Auditor General: Did you
4 respond to the Premier's Office and say, Where are the
5 allegations of the evidence that you made? Nothing came after
6 that.

7 COMMISSIONER HICKINBOTTOM: Okay.

8 BY MR RAWAT:

9 Q. It's a question that can be put to the Auditor
10 General, but the reason for my questions, Dr O'Neal-Morton, was
11 just simply because this is the time the Premier's Office answer
12 to reports that they felt caused concern, as you told the
13 Commissioner, you feel did not give the full story, and was it
14 one-sided and put the reputation of your Office in bad light.
15 And that's why I was asking whether there was somewhere in there
16 that actually just highlights this is where the Auditor General
17 got it wrong. But let's try and move on.

18 Can I just ask you about one part of the Report, which
19 is at 140, please.

20 This is--you've got under "Assessment Process" that
21 each applicant who satisfied the criteria prior to approval by
22 the Premier's Office, were assessed and verified by the
23 Department of Agriculture and Fisheries or any other entity
24 vested and approved by the Premier's Office. Each applicant who
25 satisfied the criteria and who requested repairs or physical

1 structures, amongst other works, were to be assessed by Public
2 Works Department or a licensed contractor or quantity surveyor
3 vetted and approved by the Premier's Office, who would further
4 determine the needs and costs to repair structure, cut access
5 roads to farmlands or any other works or material resources that
6 may be required.

7 Now, this was the position in June 2021. You've been
8 making payments since October 2020. So that suggests that
9 applicants were--there was a vetting process for applicants; is
10 that right?

11 A. In terms of the Agriculture Department, well, those
12 who weren't registered, you will bring your notarized letter
13 certifying that you in the practicing of either farming or
14 fishing. But in terms of the actual assessment going concern,
15 which we mentioned in our confidential response, there were--the
16 Agriculture Department said they were unable to actually go out
17 and vet the farms, which also the Auditor General I think
18 included in her Reports, which I imagine she got from the
19 Agriculture Department, because that is what they said in the
20 Committee meeting, that we were unable to do that.

21 Q. And when did they say they were unable to do that?

22 A. That was early on in the process.

23 Q. So, is that a sort of--

24 A. It's in our second report--

25 (Overlapping speakers.)

1 Q. We will come back to that.

2 A. --in our confidential report. It's in our Report.

3 Q. But that's not the Report. That's the Report you
4 wanted the Commissioner to see. It's not the Report that you
5 wanted addended to the Auditor General's Report.

6 A. That's correct.

7 Q. So, is it wrong what's written at 140?

8 A. Which--what were they talking about?

9 Q. Well, you say that in terms of being able to assess
10 people or, you know, the Department of Agriculture and Fisheries
11 being able to verify people or possibly even Public Works
12 Department being able to do anything, that that was just not
13 possible. There wasn't--essentially people didn't have the
14 resources to do those things.

15 A. No. Public Works, not the Agriculture Department.

16 Q. And you would have known that before you wrote this.
17 That's why I'm asking you whether it was an error.

18 A. I'm not sure. I'm not sure. You are asking me about
19 things back in time. I'm not sure about that. I'm not sure
20 about that.

21 Q. You know, if you to want to see, I mean, we'll--if you
22 go to page 32 in the bundle, just whilst we're on this point--

23 A. Um-hmm.

24 Q. --I know this is a point that you've made in your
25 subsequent response, but since you raise it now, at 26, the

1 Auditor General writes that audit staff did--do site inspection
2 of farms to verify the existence of a sample of persons
3 receiving the farmer's stimulus grant, and that was done with
4 the assistance of the Department of Agriculture and Fisheries,
5 whose responsibility involves assessing and assisting commercial
6 farmers.

7 They selected 22 properties for site visits. 11 could
8 not be located by the Agriculture staff, and we therefore--we
9 were therefore unable to verify the existence of these farms.
10 11 farms were located, seven on Government property leased out
11 to farmers, and four others on private lands. Two of those
12 visited on private lands showed farming activity which didn't
13 meet the scale-of-operations criteria for commercial farming.
14 Now that harks back to the point that's in your preliminary--

15 A. Well, this is quite strange because is this question
16 because Agriculture Department were Members of the Committee,
17 the Permanent Secretary was, the Director, and the Assistant
18 Secretary in the Ministry, and they told us they didn't have the
19 resources.

20 Q. To do this kind of assessment.

21 A. To do the assessment.

22 Q. I see.

23 A. Because that was the original plan, but as for any
24 purse strings that they assisted the Auditor General and they
25 didn't assist the Committee, I find that strange.

1 Q. And very early on you say in the process--

2 A. That's what I said because, as I said before, they
3 even requested four vehicles and an engine to assist with the
4 assessment because they said they were unable to do so.

5 Q. Let's turn up page 176, please. I just want to ask
6 you about something.

7 What you append to your Preliminary Report is a set of
8 Cabinet Decisions about the stimulus grants, so it's a set of
9 either extracts or expedited extracts as Cabinet's decisions.
10 The appendices are not mentioned, though, and they don't appear,
11 as far as I can establish, have been disclosed to the COI. Is
12 that something that we can ask you just to do, to check whether
13 or not they have been disclosed?

14 A. I can check that.

15 Q. Thank you.

16 A. Yeah, and I will make a note.

17 Q. If you turn back to one--

18 A. Just a minute. Let me get a memo now.

19 (Pause.)

20 A. There is no A listed here. I only see B, C, D, E, F.

21 Q. If you turn back, Dr O'Neal-Morton, please, to 150.

22 It's worth looking at this part of your Preliminary Report
23 because it's the part of the Report that touches upon the second
24 draft report that the Auditor General had produced, and that's
25 churches, daycares and private schools. So here what the

1 Preliminary Report does is set out the qualifying criteria.

2 Page--there's a reference to a survey questionnaire
3 which had a slow initial response rate.

4 Is that survey available?

5 A. That was done by the Ministry of health--sorry,
6 not--Ministry of education.

7 Q. I see.

8 A. They would have--that would be Health did that, not
9 us.

10 Q. Now if you just help me with this, though, at the
11 bottom of page 150, based on--you say (reading): "Based on the
12 types of questions asked and documents requested, the Committee
13 recommended that a separate application process for churches and
14 religious organisations would not be necessary for the purpose
15 of administering this aspect of the stimulus programme. In
16 keeping with the already established criterion that was set out
17 by the established Committee, the formula shown in the table
18 below was applied to churches", and then you just give a banding
19 rate.

20 When you say "already established criterion", what are
21 you actually referring to?

22 A. Well, then based on the survey for--that was sent over
23 to Ministry of Education, and it was felt that it was--it
24 wouldn't be applicable to churches and religious organisations
25 because they would have had different needs, perhaps 'cause--we

1 didn't administer the survey. That was done by Education.

2 Q. I appreciate that. So Education come up with the
3 survey.

4 A. Um-hmm.

5 Q. Now, tell me if I've got this wrong, but as I
6 understand it, what you've got is, from your perspective at
7 least, is three different committees. You have a committee for
8 farmers and fisherfolk, which as you know you chaired.

9 A. Um-hmm.

10 Q. You've got the Churches, Daycares, Private Schools
11 Committee, and then you've got the Transportation Committee.

12 A. Correct.

13 Q. Small Business, somebody else is dealing with, but you
14 send someone to it. But it's just--this reference to the
15 already established criterion that was set out by the
16 established Committee, can you just shed any light on what
17 criteria is being referred to, and, indeed, what is the
18 established Committee that's being referred to?

19 A. Because the schools and the daycare would have been
20 based on need: Do you need chairs, do you need whatever is to
21 open up the preschools. Their need would have been different to
22 the churches and religious organisations. So that is--based on
23 the survey, the survey asked the different schools and civic
24 organisations what do you need so that you can be stimulated to
25 open again.

1 COMMISSIONER HICKINBOTTOM: So--

2 A. The churches would be a different--

3 THE WITNESS: Sorry?

4 COMMISSIONER HICKINBOTTOM: No, no, I'm sorry to
5 interrupt. I just want to make sure I got that right.

6 So, the survey was in respect of needs that these
7 various organisations had to reopen.

8 THE WITNESS: Um-hmm, you would--

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: They send the survey out and people
11 would answer and say what--

12 COMMISSIONER HICKINBOTTOM: We need these things to be
13 able to reopen.

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

16 BY MR RAWAT:

17 Q. And just going through what's--it's set out, then, in
18 a similar format to farmers and fishermen, as we've seen.
19 There's a reference to the Internal Auditor's "The
20 Accountability and Transparency Framework", and then "Summaries
21 of Disbursements" set out as a series of table and charts, so
22 it's presented in different ways how the money was distributed.
23 But again, what it doesn't seem to do is engage directly with
24 the issues that flow from the Auditor General's Report, so it
25 may be something--

1 MR RAWAT: I don't think we can take it much further
2 today, Commissioner, it may be something Dr Morton is going to
3 have to look at to try and help us identify where in this Report
4 it said the errors in the Auditor General's work were
5 identified.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 And can we leave it like this, Dr O'Neal-Morton/

8 THE WITNESS: Because I think I recall that it was
9 intimidated that the organisation of the payment was done in an
10 ad hoc and irresponsible way. I'm using my paraphrasing, so
11 this would contradict that because it specifically set; for
12 example, the churches were done by membership; the daycare
13 centers, schools, et cetera were done by schools, staff and
14 other needs, so it was not an ad hoc manner.

15 COMMISSIONER HICKINBOTTOM: Well, there's--as far as I
16 can see, there is no reference to the Attorney--the Auditor
17 General's criticism in this Report, but if you rely upon
18 anything in this Report to controvert anything the Auditor
19 General said, then could you please let us know. Otherwise,
20 I'll work on the basis that there is nothing.

21 THE WITNESS: I think, no, we have covered--the stuff
22 that we are probably missing are preliminary, we covered in the
23 confidential report that we sent to the COI. Those things are
24 covered in there.

25 COMMISSIONER HICKINBOTTOM: So, but are you content

1 for me to proceed on the basis that this particular Preliminary
2 Report doesn't respond directly to any of the Auditor General's
3 responses but you rely upon the later report that's been
4 prepared for the COI?

5 THE WITNESS: Consider them in combination, please,
6 Mr Commissioner, because, the Auditor General didn't even
7 respond to what we had sent anyway so--

8 COMMISSIONER HICKINBOTTOM: I--

9 THE WITNESS: --so that was disregarded anyhow.

10 COMMISSIONER HICKINBOTTOM: But--but.

11 THE WITNESS: It wasn't paid attention to.

12 COMMISSIONER HICKINBOTTOM: But the--

13 THE WITNESS: Don't you agree with that?

14 COMMISSIONER HICKINBOTTOM: No, I'm afraid--

15 THE WITNESS: It's wasn't--

16 COMMISSIONER HICKINBOTTOM: No, I don't.

17 THE WITNESS: --there was no acknowledgement of it.

18 COMMISSIONER HICKINBOTTOM: But--but--

19 THE WITNESS: It was there.

20 COMMISSIONER HICKINBOTTOM: But for this re--I mean,
21 why that doesn't seem to me to have force, but I'm willing to be
22 corrected if you go through it and show me where I'm wrong. The
23 Auditor General set out in her Report criticisms of the way that
24 this had been implemented, designed and implemented. You then
25 send--you then produce a report which doesn't respond to her

1 criticism, so it's just a freestyle report. So, there's nothing
2 for her to come back on.

3 THE WITNESS: But she could have come back and said
4 this does not directly correspondence to my criticisms. I'm
5 lost.

6 COMMISSIONER HICKINBOTTOM: But it doesn't respond to
7 any of them.

8 THE WITNESS: Well, then the Auditor General could
9 have said that then, that the Report that you sent does not
10 address my Report. That was not--nothing was sent. It was as
11 if, though, the Auditor General, the Report was done, and that
12 is it, it's final.

13 COMMISSIONER HICKINBOTTOM: But can I leave it like
14 this, that I'm going to proceed on the basis that this
15 particular report doesn't contain any direct responses to the
16 Auditor General, but if you think it does, then you can write to
17 the COI and let me know?

18 THE WITNESS: I would like you to consider our Second
19 Report because, for example, we didn't get any feedback on the
20 first, anyway, so I don't know if that should even be
21 considered. I think the predominant and overruling one should
22 be our Second Report.

23 COMMISSIONER HICKINBOTTOM: We'll come on to the
24 Second Report, but that's the way I propose to deal with the
25 Preliminary Report.

1 THE WITNESS: Well, I'm not going to go over that,
2 Mr Commissioner. I think this one is wrong. Conclusive the one
3 that we would like to be considered.

4 COMMISSIONER HICKINBOTTOM: The one you did for the
5 COI.

6 THE WITNESS: Yes, the response.

7 COMMISSIONER HICKINBOTTOM: We'll deal with that. We
8 will deal with that in--

9 MR RAWAT: Very shortly.

10 COMMISSIONER HICKINBOTTOM: A short question.

11 MR RAWAT: Can I just ask one more question on this
12 and then, Commissioner, I'm go to suggest a break for five
13 minutes.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 BY MR RAWAT:

16 Q. In terms of preparing the Preliminary Report,
17 Dr O'Neal-Morton, did you have any external assistance?

18 A. What do you mean "external assistance"?

19 Q. As in external to the Premier's Office.

20 A. The team from the Premier's Office would have done it.
21 We don't have any external--what do you mean by "external
22 assistance"?

23 Q. Well, you could have used, for example, the assistance
24 of an external accountant to put it together--

25 A. No--

1 Q. --or a lawyer to put it together.

2 A. No. The only lawyer we use in anything is the IRU
3 people.

4 Q. So, you didn't use the IRU people for this one.

5 A. No, because they won't confirm with that as yet; I
6 don't think so.

7 MR RAWAT: Okay. Commissioner, if I could suggest a
8 five-minute break--

9 COMMISSIONER HICKINBOTTOM: No--

10 MR RAWAT: --and then we will move on to the Response.

11 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

12 Mr Rawat, I've got in mind Mr Forbes.

13 MR RAWAT: Yes.

14 COMMISSIONER HICKINBOTTOM: When?

15 MR RAWAT: I'll have a word with the rest of the team.

16 COMMISSIONER HICKINBOTTOM: Yes. Could we just get a
17 message--I know he's joining us remotely.

18 MR RAWAT: He is.

19 COMMISSIONER HICKINBOTTOM: Could we give him a time
20 so that he's not waiting for us.

21 MR RAWAT: Will do.

22 COMMISSIONER HICKINBOTTOM: Excellent. Thank you very
23 much. Five minutes.

24 (Recess.)

25 COMMISSIONER HICKINBOTTOM: Good. Thank you,

1 Mr Rawat.

2 MR RAWAT: Thank you, Commissioner.

3 BY MR RAWAT:

4 Q. Dr O'Neal-Morton, can we now look at this Response. I
5 think I've asked you questions about it and how it came into
6 being. As I understand, the position is a product of the work
7 of a number of Public Officers and the IRU. But if you go to
8 page 220, that's the first page of the document, and you then
9 have--it's a 34-page document together with 853 pages of
10 material that follows, some of which we've looked at. I'm not
11 proposing to go through all of it with you, but could I ask you
12 some clarification, please, because it comments both on the work
13 of the Auditor General and the Internal Auditor.

14 If we look at page 223, this is a section where it
15 said that the Internal Auditor shows insufficient appreciation
16 of the policy context. And if you go overleaf at page 224,
17 having set out parts of the Internal Auditor's Report which we
18 went through when she came to give oral evidence to the
19 Commissioner, at paragraph 24 it says: "While it may be
20 implicit in her summary of the aims of such a policy,
21 insufficient emphasis is expressly accorded to the fact that
22 there may be an inherent tension between the factors that she
23 cites as relevant to the design and delivery of such a
24 programme".

25 The factors that the Auditor General--Internal

1 Auditor, rather, cited at the beginning of her Report was that
2 provisions concerning fiscal Government policy in terms of
3 economic downturn should be timely, targeted, and temporary. I
4 just wanted your help with this. Just if you can expand on
5 paragraph 24 a little bit more, how is it that the failure to
6 record something as expressly or to emphasize it expressly which
7 the authors of this Response appears to accept may have been
8 said implicitly, how does that undermine the Internal Auditor's
9 findings?

10 A. Can you repeat that? We are on 24?

11 Q. You're at 24.

12 A. Um-hmm.

13 Q. What's set out is that it quotes from the Internal
14 Auditor, so essentially her--an introduction, really, to her
15 Report where she refers to the focus of Government fiscal policy
16 in times of economic downturn has been to ensure that the
17 provisions are timely, targeted, and temporary, and that's then
18 analyzed. And at paragraph 24, and part of the analysis, it
19 says, while it may be implicit in her summary of the aims of
20 such a policy, insufficient emphasis is expressly accorded to
21 the fact that there may be an inherent tension between the
22 factors she cites as relevant to design and delivery of such a
23 programme.

24 So, this is an economic relief programme. What is
25 being criticized is a failure to put sufficient emphasis on the

1 fact that there may be an inherent tension. I just wanted to
2 draw your assistance on this because what seems to be is the
3 failure to record something expressly whilst being accepted as
4 might have been said implicitly appears to be taken a point that
5 undermines the work of the Internal Auditor, and I just want to
6 understand how it does that.

7 A. I think generally it was somebody's--Internal Auditor
8 did not appreciate--what must I say?--the climate of what was
9 going on at that time. I think that is--

10 Q. How does that undermine her findings which ultimately
11 are about how the Premier's Office managed the funds?

12 A. Because, as I said before, these were not the typical
13 or normal times, so managing the funds, yes, we have financial
14 management regulation, of course, and we look at value for money
15 and all of those things. But the overriding factor in the
16 distribution of the funds was the to stimulate the economy, get
17 the funds out in an emergency manner.

18 Q. So, was it appreciated at the time you were doing that
19 because the value for money was to take a backseat to getting
20 funds out of the door?

21 A. I wouldn't say a "backseat", but I would say that it
22 was a depressing time, people needed stimulation, people hadn't
23 been paid, people had mortgages, owed utilities, people were out
24 of work. So, the priority at that time was getting immediate
25 relief to the public. That was a priority at that time.

1 Q. Under this--

2 A. Nothing backseat to value for money because then we're
3 making a direct comparison and saying that's not important.
4 That's not how we felt.

5 Q. Never mind how it's less important how you felt. Is
6 what you're saying the Internal Auditor should have said in this
7 that I'd asked for your help on, because you said that what is
8 intended to say is that the Internal Auditor failed to give
9 sufficient weight to some factors, but my question is: How does
10 that failure, if that is what it is, undermine her findings
11 about how the Premier's Office managed money?

12 A. Well, because the overriding and main factor, the main
13 priority was to distribute the funds in an immediate fashion,
14 and there were no--to me, that should have been first and
15 foremost, yes, the Regulations are there, and we did plan to
16 come back and also make people account for what they spent, and
17 also do an assessment and evaluation.

18 Q. So, was the approach that was adopted that you would
19 pay out the money and essentially do a later review to make sure
20 that the person who had been given the money was entitled to it;
21 if they weren't entitled to it, then you get the money back.

22 A. Um-hmm--

23 (Overlapping speakers.)

24 A. We even took a paper to Cabinet which was approved for
25 the monitoring and evaluation of the stimulus programmes, and we

1 would evaluate whether--you would have to respond--of course, we
2 sent the letter previously and said you have to account for the
3 money that was given to you. We know it might be slow in
4 coming, but we also sent the Cabinet Paper to emphasize that.
5 You have to account for the money also, and we would do
6 assessments of the various stimulus programmes by the respective
7 Ministries and agencies, Cabinet did--

8 (Overlapping speakers.)

9 Q. When was that paper put before Cabinet?

10 A. It was in August. I can't remember the date, but it
11 was done in August, and it was approved.

12 Q. I mean, I don't believe it's a paper that has been
13 disclosed to the COI.

14 A. I'm not sure.

15 Q. It has been approved.

16 A. Um-hmm.

17 Q. And in terms of the assessments that are going done by
18 the Ministries, is that something that's going to be done in due
19 course?

20 A. Yes. It's going to be done in due course. We have
21 various committees of which the Permanent Secretary is going to
22 chair that Committee, and we have the other--the Ministry of
23 Transportation, Ministry of Education and Agriculture, and all
24 of those working with the subcommittees in order to help with
25 the assessment and the evaluation of the stimulus programmes.

1 COMMISSIONER HICKINBOTTOM: Including accounting for
2 where the money has gone?

3 THE WITNESS: Of course.

4 COMMISSIONER HICKINBOTTOM: I mean, let's just take as
5 an examine, if he's a fisherman who has been paid out money and
6 could for it by saying, "I bought this engine, and it cost
7 \$10,000" or whatever.

8 THE WITNESS: Because when they got the money, the
9 letter stated they have to give account, so we did a reminder,
10 we sent out online a request for you to go online and fill in
11 the information. We realized that some people were having
12 difficulty, so we had to extend the deadline, and we also are
13 going to have to actually call up some persons and even visit
14 their sites in order to get information because not everybody
15 get it into kit on-line.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. I don't want to conflate applying for a grant and
19 applying for it. There was a period where people could apply
20 for the money, submit--if they met the qualifying criteria, they
21 get the money.

22 A. Um-hmm.

23 Q. But what you're now instituting is a process by which
24 you will go back over that and check?

25 A. Yes, because some persons have already submitted

1 information that they have--they will spend the money, sent in
2 written form instead of spending money on X, Y, Z, where we want
3 to get everyone to submit, so not everyone because most of the
4 times we may get as many as possible that are out there because
5 some people may not have spent all the money, and they are
6 probably waiting to spend all of it, but we want to have an
7 account for it.

8 COMMISSIONER HICKINBOTTOM: I think you said as well,
9 but again correct me if I'm wrong.

10 THE WITNESS: Um-hmm.

11 COMMISSIONER HICKINBOTTOM: But when an applicant made
12 the application--

13 THE WITNESS: Um-hmm.

14 COMMISSIONER HICKINBOTTOM: --they would at that stage
15 have given an assurance they spent it on whatever--

16 THE WITNESS: Of course, but it's just a check to make
17 sure that they spend it. They may ask it for a boat engine,
18 then we expect to see a receipt for a boat engine coming back to
19 us. Of course, if there was any misappropriation or anything,
20 we would have to get the assistance from the Attorney General's
21 Office to deal with that matter.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 BY MR RAWAT:

24 Q. If you go--look at paragraph 26. What's said is
25 that--I mean, the point that's made about this is the need for

1 time limits may be at odds with the important and desirable
2 goals of money for value and targeting, and there may be
3 occasions where the value proposition cannot be maximized.
4 That's said at paragraph 25.

5 But then what is said is ultimately the relevant but
6 competing factors the Internal Auditor are matters of policy, the
7 balance of priority which is for elected Ministers to decide.

8 Now, that's--is the point being made there that the
9 Internal Auditor failed to give deference to the fact that
10 policy is a matter for Ministers?

11 A. Number 27?

12 Q. 26, please.

13 A. Okay. Ultimately, the relevant but competing factors
14 she discusses are matters of policy, the balance of priority of
15 which is for elected Ministers to decide.

16 What is the question there?

17 Q. Is the argument that's being made against the Internal
18 Auditor that she failed to give proper deference in the fact the
19 policies are for Ministers?

20 A. And what are you asking me?

21 Q. Is the argument being made in this paper, which is the
22 paper that you've adopted--

23 A. Um-hmm.

24 Q. --that the Internal Auditor failed to give proper
25 deference to the fact that the policies are for Ministers?

1 A. I would agree.

2 I don't know what you expect me to answer because if
3 this was my paper, this was my position.

4 Q. I'm just asking you to clarify your position,
5 Dr O'Neal-Morton.

6 A. What's your--you're confusing me because if this is my
7 paper, this is my position. What clarity do you seek?

8 Q. That was the question. I don't think I can put the
9 question any better. As you say, it's your paper, so you
10 drafted it.

11 A. So I accept whatever is in my paper.

12 Q. Yes, apart from, of course, paragraph 185, which you
13 no longer accept.

14 A. Paragraph 185?

15 COMMISSIONER HICKINBOTTOM: That's already on the
16 Transcript. We don't need to go back.

17 BY MR RAWAT:

18 Q. The point is that I'm just trying to understand--

19 A. No, because I don't know he's referring to. Remind me
20 what you're referring to.

21 Q. That's where you said that it showed that the Auditor
22 General was willing to wait, but today you said that you never
23 took the Auditor General as willing to wait. We went through--

24 A. Willing to wait, but I said she did not action the
25 willing to wait. That's different. And I want that to be

1 noted.

2 Q. All right. Let's go back to this. I'm trying to
3 understand what the criticism that has been made of the Internal
4 Auditor is because it seems to be that reading this is what's
5 said is she has not paid proper attention to the fact that
6 policies for Ministers.

7 COMMISSIONER HICKINBOTTOM: Or if there is no
8 criticism--it seems to me that this does criticize the Internal
9 Auditor because you say that she discusses matters of policy,
10 and it goes on to say the balance of priority is for elected
11 Ministers to decide. That suggests that she is not sufficiently
12 sensitive to the fact that policies are a matter for elected
13 Ministers, for the Cabinet.

14 THE WITNESS: The policy is for Cabinet.

15 COMMISSIONER HICKINBOTTOM: So, that's the criticism?

16 THE WITNESS: That is correct. Matters of policy are
17 for Cabinet, and Cabinet comprises Ministers.

18 BY MR RAWAT:

19 Q. Why is it permitted--permissible, then, for a paper
20 that is produced by Public Officers to opine about where the
21 Policy balance lies?

22 A. Because they're preparing that paper for a Minister.

23 Q. No, this is the paper. We will call it "the
24 Response".

25 A. Oh, you mean this one?

1 Q. This one.

2 Why if policies are for Ministers and Public Officers
3 should never cross that line?

4 A. This is from the Premier's Office of which the Premier
5 was the head of the Minister, so this is his paper. This is
6 also his paper.

7 Q. I see.

8 So, this is the Premier's paper as well?

9 A. It is the Premier's Office paper, and the Premier is
10 the head of the Premier's Office. The Minister is the head of
11 the Ministry.

12 Q. So--

13 A. Because if the Ministry of Agriculture brings a paper
14 in here it, it belongs to the Minister of Agriculture as well.
15 And the Ministry's staff. The Ministry's staff includes the
16 Minister.

17 Q. I see.

18 So, we should take this Premier's Office Response is
19 actually emanating as well as from the Premier?

20 A. You should ask the Premier that question, but in my
21 estimation, the Premier's Office, the head of the office is the
22 Premier.

23 Q. I see.

24 So--

25 A. But when the Premier comes, you can ask him the same

1 question.

2 Q. All right.

3 A. And then you could perhaps get his angle.

4 Q. But let's get your angle. Why is it appropriate for a
5 Public Officer to opine on policy?

6 A. Why is it appropriate?

7 Q. Yes.

8 A. Or inappropriate?

9 Q. Appropriate or inappropriate. You say it's
10 inappropriate.

11 A. Anybody can opine on anything, but if the Minister
12 directs the team or the individual implementing the Policy, so
13 be it.

14 Q. Well, I think I will move on, if I may.

15 You've seen Cabinet Decisions that are appended to the
16 Preliminary Report. There are attached to this some memoranda,
17 but beyond the Cabinet Decisions that are appended to that
18 Preliminary Report of June 2021, have there been other Cabinet
19 Decisions concerning the operation of the stimulus programmes?

20 A. I do not recall, only the one that I just spoke about,
21 the August one, the one in August.

22 Q. That's the one?

23 A. That's the only one that I can recall.

24 Q. If you go and look at paragraph 31--

25 A. The submissions that were made to increase the

1 amounts, other than that, but that was before this.

2 Q. That was to increase the amounts total, in total of
3 the awards?

4 A. Because some of them, I think, in September--in
5 September we went back for an increase, but after that I can't
6 recall any papers. I can always check and see, but I don't
7 recall any.

8 Q. The paper describes--and we can see that at
9 paragraph 31--that the Public Services are unmodernised. You
10 agree that the Public Services are modernized?

11 A. I agree.

12 Q. And it said for that reason it's decided the Premier's
13 Office would take the lead in administering these programmes
14 because it's best position to coordinate and command
15 cross-Ministry cooperation and compliance. Was that the basis
16 on which the Premier's Office was designated as the lead
17 Ministry?

18 A. Because in Central Government, the Premier's Office is
19 the coordinating Ministry.

20 Q. Right.

21 A. It would be most logical for the Premier's Office to
22 be the coordinator.

23 Q. And in designing the systems that you put in place at
24 the beginning to deal with the stimulus programmes--and we
25 looked at some of those: use of qualifying criteria, surveys,

1 and things like that--presumably those systems took into regard
2 the criticisms that are made in this Response about the Public
3 Service?

4 A. I am not so sure because, as I said earlier, I think
5 the controls that were put in were quite ambitious. They were
6 quite ambitious in terms of achieving what was the ultimate
7 goal.

8 COMMISSIONER HICKINBOTTOM: Those were controls put in
9 by the Cabinet?

10 THE WITNESS: Well, they were forwarded to Cabinet,
11 and Cabinet approved it, so it was quite ambitious, in
12 retrospect.

13 BY MR RAWAT:

14 Q. And in terms of how that works, and we might take this
15 up when we get to your response, but the process was that
16 Cabinet agreed the size of the Budget for the--each stimulus
17 programme--so, for example, farmers and fishermen started off at
18 2 million--is that right?

19 A. I think that's about right, um-hmm. They start with
20 the sum, um-hmm.

21 Q. And the Cabinet then voted for the sum to increase?

22 A. Yes, because it was sent back and asked for an
23 increase.

24 Q. And then Cabinet agreed eligibility criteria
25 documents.

1 A. That was previously.

2 Q. Yes.

3 A. Um-hmm.

4 Q. But in terms of process, Cabinet made all of these
5 decisions; is that right?

6 A. Yes, Cabinet has made a decision.

7 Q. Now, the Auditor General, in her Report, said that
8 the--that when she looked at it in May 2021--and this is farmers
9 and fishermen--that the agreed size of the Budget was
10 3.5 million; but by that date, just over 5 million had been
11 distributed. Is that right? That more money was distributed
12 than Cabinet had agreed to?

13 A. I can't quote exact amount, but as I said previously,
14 more farmers and fishermen were identified--people who were
15 genuine farmers and fishermen, they were identified--because
16 there were individuals, mainly some representatives who were
17 fully aware of the people in their Districts who were actually
18 farmers and fishermen, and that information came in.

19 Q. Yes.

20 A. That's why the Budget--

21 Q. I accept that you said that before, but it's this:
22 Cabinet sets a cap of 3.5 million, and you spend 2 million over
23 that. Did that happen?

24 A. As I said before, I'm not sure the exact amount
25 breakoff, but I know that they would have had--if we didn't go

1 and ask for more, we would then have to go back and clean it up,
2 so to speak, and ask Cabinet retroactively to approve that
3 money.

4 Q. Which one--how did it happen?

5 A. I am--I don't have the documentation in front of me,
6 so I don't want to answer you without looking at exactly what it
7 is in terms of the amount of money and the process. I don't
8 want to answer without the benefit of that.

9 Q. I mean, that's something that emerges from your
10 Auditor General's Reports that Cabinet agreed a sum but the
11 Premier's Office spent more than that.

12 A. It was because, as I said, it was because more farmers
13 and fishermen being eligible to receive the grant. That is
14 plain and simple what had happened.

15 COMMISSIONER HICKINBOTTOM: I mean, the way you put it
16 in paragraph 89, Dr O'Neal-Morton--I think this is the
17 point--that in retrospect, once the number of those who wished
18 to apply was fully known because we're far away now from the
19 original eligibility criteria, it became apparent that the bands
20 were set too high because there was change during the course of
21 the implementation of the Programme from expenses to a
22 calculation based on bands, and they were calculated on a
23 hypothetical basis on the number of employees that a particular
24 farmer or fisherman may have had, the number of hours they would
25 have done and so on, and it became apparent that the bands were

1 set to high, s what this--and this submission was made to
2 Cabinet to approve further funding.

3 What we suggest is there was a Figure X, there was--

4 THE WITNESS: Um-hmm.

5 COMMISSIONER HICKINBOTTOM: --there was a calculation
6 of bands so that X was spent, but unfortunately when it came to
7 dispute those funds on those bands, we ended up with 2X or
8 nearly 2X. Is that what happened?

9 THE WITNESS: That is what happened.

10 And bear in mind also that payments would have been
11 made, and we would have had to continue with the bands. We
12 couldn't change it at that point.

13 COMMISSIONER HICKINBOTTOM: No, no, it says the bands
14 were set too high.

15 THE WITNESS: Yeah, but they were already set and
16 payments were made, so we couldn't change it.

17 COMMISSIONER HICKINBOTTOM: You couldn't change it.

18 THE WITNESS: We had to do the best we could in that
19 situation to go back and ask for money from the stimulus
20 programme.

21 COMMISSIONER HICKINBOTTOM: Thank you.

22 BY MR RAWAT:

23 Q. If we go to paragraph 40--and this is sort of
24 consideration or response to the Internal Auditor, but what's
25 said in terms of Internal Auditor is what was needed was a

1 flexible, informal and collaborative approach that gave support
2 to the Ministry's severely underpowered resources in the rapid
3 construction of the schemes. They needed urgent support and
4 guidance in policy formation, development and evaluation.

5 Is what's intended to be said here that this was the
6 job of the Internal Auditor?

7 A. Are you asking me about the last line?

8 Q. Yes, please.

9 COMMISSIONER HICKINBOTTOM: You have to read it in the
10 context of the whole paragraph, Dr O'Neal-Morton. I'm sure you
11 read the whole paragraph.

12 THE WITNESS: Yes, I did, but I know that the last
13 part was not done.

14 COMMISSIONER HICKINBOTTOM: I'm sorry, that wasn't the
15 question.

16 The paragraph starts by saying that the role of the
17 Internal Audit Department was originally conceived by the
18 Cabinet as leading consultative policy formation support and
19 advice to the Ministers and so on, a different function from
20 assurance audits. And then it said what was needed in this
21 crisis was effectively a formal and collaborative approach that
22 gave support to the Ministry's severely underpowered resources
23 in the rapid construction of the schemes. They needed urgent
24 support and guidance in policy formation, development and
25 evaluation.

1 The question was: Is it suggested that that was the
2 function of the Internal Auditor in this case?

3 THE WITNESS: It should have been.

4 COMMISSIONER HICKINBOTTOM: That's why she was brought
5 in.

6 THE WITNESS: But should have been, I'm saying that.

7 COMMISSIONER HICKINBOTTOM: Yes, okay.

8 BY MR RAWAT:

9 Q. What did you as Permanent Secretary in the Premier's
10 Office to facilitate that?

11 A. To facilitate what?

12 Q. Well, the ability of the Internal Auditor to be there
13 to give guidance in policy formation, development and
14 evaluation?

15 A. Well, in terms of policy formation, that would have
16 been done by the Committee before the Internal Auditor came into
17 play.

18 Q. Right.

19 So, this is not for the Policy formation, it's not for
20 the Internal Auditor?

21 A. It is, I'm saying in this regard it was not done by
22 the Internal Auditor, which I imagine it should normally be
23 done, but it wasn't done.

24 Q. What did you do to try and get it done?

25 A. What did I do?

1 Q. Um-hmm.

2 A. I just simply read Cabinet instructions. Cabinet
3 didn't instruct me to do that.

4 Q. Right.

5 So, Cabinet did not instruct you to try and foster a
6 flexible and informative and collaborative approach?

7 A. I didn't say that part.

8 Q. So, what did you do to foster a flexible and
9 informative and collaborative--

10 A. I would say Cabinet did not instruct me how to do
11 consultative policy formation supports and advice to the
12 Ministry or Cabinet didn't instruct me to do that. I couldn't
13 have done that.

14 COMMISSIONER HICKINBOTTOM: They didn't instruct you
15 to do that?

16 THE WITNESS: No, they didn't instruct me to do that.

17 BY MR RAWAT:

18 Q. So, how did the Premier's Office work with the
19 Internal Auditor?

20 A. How do you mean--I don't understand your question.

21 Q. Well, when we looked back to the e-mails with the
22 Auditor General, you were--you speak of an ongoing process with
23 the Internal Auditor. Here, there seems to be a criticism being
24 made of the Internal Auditor that her role had been lending
25 consultative policy formation support and advice, but that

1 wasn't delivered upon.

2 A. Which is normal, but all she did was ask questions,
3 give me information. That was all that was asked of us. She
4 knows her role. I don't know her role.

5 COMMISSIONER HICKINBOTTOM: I mean, to be fair to you,
6 Dr O'Neal-Morton, paragraph 41 says that the consultative role
7 of the Internal Audit is infrequently used, and it is apparent
8 that there was no experience or understanding in the Ministry of
9 Finance and the Premier's Office as to how to Internal Audit
10 could effectively and urgently integrated into this process.

11 So--I mean, this is your document, so you seemed to
12 accept that you had no understanding of how to do this?

13 THE WITNESS: I have an understanding of lots of
14 things, Mr Commissioner.

15 COMMISSIONER HICKINBOTTOM: Yes, I understand that.

16 BY MR RAWAT:

17 Q. Could I ask one detail, please. Paragraph 42 refers
18 to a telephone call between the--your DPS, your Deputy Permanent
19 Secretary, and the Internal Audit Department on or around
20 22nd of July 2020, which--and it's then cited, the reference is
21 given as Annex 17. Annex 17 is page 591, which is an e-mail
22 exchange between the--your Deputy PS, Mrs Smith-Maduro, and I
23 think the PA to the Financial Secretary. There isn't--it
24 doesn't appear, and there is no evidence, it seems, of a
25 conversation with the Internal Audit Department. Can you shed

1 any light on that?

2 A. Because, Mr Commissioner, if you follow the 21st, the
3 same on 591, Teshonda is sending an e-mail to--sorry about the
4 calling the names. The PA of the FS was sending an e-mail to
5 the DS in the Premier's Office noting that the Financial
6 Secretary from the Director of Internal Audit had questions and
7 queries which would make your assistance with answering.

8 And then the DS answered and said, "I will do my best
9 to respond by stated date".

10 Q. Yeah.

11 It's the last line of paragraph 42 says that the--that
12 your DS then spoke to the Internal Audit Department on the
13 telephone in July 2020, and this is given as the reference to
14 support that piece of evidence.

15 A. I know that it is somebody in Internal Audit, but I
16 don't know if this is the correct reference. I can't swear to
17 that.

18 Q. All right. Let's move on, then, and we will see if we
19 can deal with this in a different way.

20 If you go to--look at paragraph 55, please. What's
21 said--and this is in terms of the provision of information to
22 the Internal Auditor, is the Government's position, and I'm
23 going to pause there because, although this document is headed
24 "Response of the Office of the Premier", what it does, as we go
25 through it, is it refers to "the Government". So, is it

1 intended to be more than the Response of the Office of the
2 Premier?

3 A. No, it is not. The Premier's Office is part of the
4 Government's position.

5 Q. Right. So, the Premier is the Government?

6 A. I didn't say that. I said it's part of the
7 Government.

8 Q. But the reason I ask, Dr O'Neal-Morton, is because the
9 elected Ministers are also represented, so this has been--so
10 far, this document has been said to be the response of the
11 Premier's Office. It is said to be agreed by yourself and the
12 Premier. It's said to be prepared by Public Officers and
13 members of the IRU.

14 A. Um-hmm.

15 Q. But it refers to the Government, so is it a document
16 that is also agreed to by the elected Ministers?

17 A. Well, it speaks to the Government position. The
18 Government position encompassed the Premier's Office's position.
19 I don't know why you're splitting hairs on that. I'm not sure.

20 Q. All right. It says on officials to provide all the
21 information requested up to that date, and that's the 18th of
22 October 2020, and this is information that the Internal Auditor
23 had sought. Is first unlike an assurance audit, no formal audit
24 notice and entrance meeting had been initiated. Secondly,
25 officials in the relevant Ministries were not familiar with the

1 Internal Audit Department acting in a consultative role and did
2 not see them either as a resource they could use to help them or
3 as carrying out a formal audit with familiar procedural steps.

4 And then at 56 it says the compelling priority to
5 deliver the immediate relief package with overstretched
6 resources and under great pressure do not give scope to Public
7 Officers to provide timely answers to inquiries and requests for
8 information that were not seen to be of immediate relevant help
9 in the tasks they faced during the crisis.

10 And thirdly, which is the you point you made, and key
11 personnel were at home, not in daily communication, and it
12 conclude there was under the constraints faced poor
13 communication and coordination between the officials.

14 Now, this is the conclusion of your response having
15 set out a sort of line of requests from the Internal Auditor for
16 information. I'm just trying to understand this.

17 Presumably, you were aware that Cabinet had asked the
18 Internal Auditor to carry out monthly audits of the Programme?

19 A. Yes, um-hmm.

20 Q. And presumably--and you've said this--your job as a
21 Public Officer is to carry out the wishes of Cabinet. You
22 complied with the decision of Cabinet?

23 A. Yes, um-hmm.

24 Q. So, if the Internal Auditor tasked by Cabinet to carry
25 out monthly audits seeks information, is there any proper basis

1 on which a Public Officer can refuse that information?

2 A. I do not know to whom you're referring when you say
3 "refuse". I didn't refuse, Mr Commissioner.

4 Q. Let's use your words of the--

5 A. I didn't refuse.

6 Q. Can you admit--

7 A. Sorry?

8 Q. The Government's position on the omission of officials
9 to provide all the information requested up to the 18th of
10 October is as follows, and it then gives three reasons that I've
11 read out. What I'm asking is, if Cabinet had mandated, as you
12 agree, Internal Audit to carry out monthly audit, what was the
13 basis--there is no basis, is there, on which you can either
14 admit to provide all the information or refuse to do so?

15 A. No, but please don't use that word "refuse" to me
16 because that is offending me because I didn't refuse, and that
17 is accusatory. I do not accept that.

18 COMMISSIONER HICKINBOTTOM: Without using the word
19 "refused", Cabinet mandated monthly audits by the Internal
20 Auditor?

21 THE WITNESS: Correct, um-hmm.

22 COMMISSIONER HICKINBOTTOM: And that was in, I forget
23 precisely, September 2000. As I understand it, the Internal
24 Auditor has yet to do an audit because she hasn't been provided
25 with the data, and we're a year on.

1 THE WITNESS: But she set up the entrance meeting like
2 she did with Prospect Reef, which Cabinet mandated. She set up
3 like one with hotel aid and pioneer status, that was done.

4 BY MR RAWAT:

5 Q. Did you--

6 A. I don't have to tell Internal Auditor her job. That's
7 not my remit.

8 Q. If it's not your remit to tell her your job, why is
9 the question of whether she set up an entrance meeting are not
10 relevant?

11 A. Because that is what might--should have happened.

12 Q. No, what should have happened, according to Cabinet's
13 decision, is the Internal Auditor carried out monthly audits.

14 A. But Internal Auditor also has steps to follow as well.

15 Q. So, because she didn't--

16 A. I never said that. I never said that because, if you
17 will recall, I said from this morning, we supplied information,
18 and we're waiting on the rest, so I don't appreciate that
19 everything is thrown on the Premier's Office. I don't
20 appreciate that.

21 Q. The reason it's thrown on the Premier's Office--

22 A. And someone with responsibility should go and swear
23 because it falls short.

24 Q. Dr O'Neal-Morton, the reason it has to be on the
25 Premier's Office is because this is the Premier's Office's

1 response, so this is what you're saying: You're saying that
2 there was an omission of officials to provide all of the
3 information requested by the Internal Auditor. What precedes
4 that point is a line of e-mails in which the Premier's
5 Office--of which the Premier's Office is aware, so the starting
6 point is that the Premier's Office concedes that there was an
7 omission to provide information.

8 My question is--

9 A. All of the information--

10 (Overlapping speakers.)

11 Q. All the information, but it wasn't enough, it seems,
12 for the Internal Auditor to do what she set out to do, what she
13 wanted to do. And the question is: If Cabinet has told you
14 that's what should happen, is there any proper basis on which
15 you can omit all of the information that's been requested?

16 A. We never omit all the information.

17 Mr Commissioner, as I said before, we submitted what
18 we had in hand, and we promised to submit it. I said that
19 perhaps a hundred times today.

20 Q. Just look at 55. Is that wrong, then, the
21 Government's position on the omission of officials to provide
22 all the information requested up to date is as follows? Is
23 that--do you--is that wording that you're not comfortable with?

24 A. Mr Commissioner, this is not submitted to the COI. I
25 have to--I said that before, if it was submitted on behalf of

1 the Premier's Office, it is our document.

2 COMMISSIONER HICKINBOTTOM: So, you're content with
3 paragraph 55?

4 THE WITNESS: And it was true that we were not
5 familiar with the Internal Audit Department process as well. We
6 are not familiar. As I said before, this was my first, very
7 first audit that I did, very first. This was my very first
8 audit.

9 BY MR RAWAT:

10 Q. Did the Prospect Reef Audit happen quite late in the
11 day, or were you already in dialogue with the Internal Auditor
12 about the Stimulus Packages?

13 A. Yes, we were because that was after.

14 Q. And Prospect Reef came--the Cabinet's request that
15 Prospect Reef be audited?

16 A. Um-hmm.

17 Q. Came sometime down the line?

18 A. Yes.

19 And they sent an e-mail asking to set up the meeting
20 and ask to interview personnel, that was done. We also did
21 hotel aid and pioneer status within the Internal Audit
22 Department.

23 Q. Right. I think left we're going to go around in
24 circles, I'm just going to move on.

25 A. No, I just said--it appears as though there is thought

1 that there was obstruction of the audit process, and that can't
2 be further from the truth because there were three audit
3 processes that we went through while the stimulus was going on,
4 so I can't see how they could say we didn't cooperate. We
5 cooperated with three requests. We did that. One is still
6 ongoing, and I think we got some more information from another
7 one last week, so--

8 COMMISSIONER HICKINBOTTOM: The data requested by the
9 Internal Auditor in respect of this, for one reason or another,
10 was not provided?

11 THE WITNESS: Because we didn't have it,
12 Mr Commissioner. We can't provide what we don't have.

13 If I had it, I would have given it up.

14 BY MR RAWAT:

15 Q. That doesn't feature as a reason.

16 A. Sorry?

17 Q. In this paragraph. "We didn't have it" isn't given as
18 the reason. "The lack of familiarity" is given as the reason.
19 "The need to deliver relief package" is another reason, and "the
20 impact of the pandemic in terms of staffing and availability"
21 the third.

22 What it comes down to is that--

23 A. They all feed into the fact that we didn't have it
24 because had we had staff or we were aware of certain things,
25 perhaps the information would have been available.

1 Q. It's not a big point, Dr O'Neal-Morton.

2 A. No, but, Commissioner, with all due respect--

3 Q. It's just what I'm pointing out is you're making--what
4 you're saying, your evidence today is actually, no, if we had
5 had the information, we would have given it. It doesn't matter
6 that whatever else was going on, it was--the reason that the
7 Internal Auditor didn't get all of the information is because
8 all of the information wasn't available. That's it. So, if
9 you're--

10 A. There were more reasons than you read just now.

11 Q. The one reason that doesn't feature is the one reason
12 you're now giving. That's the only point I'm making, drawing to
13 your attention.

14 A. Commissioner, all of this relates to the information
15 not being available. All of them do.

16 COMMISSIONER HICKINBOTTOM: You said that these three
17 reasons all relate to the fact that the information wasn't
18 available to give over?

19 THE WITNESS: That is correct, particularly one with
20 the staff because if staff were available, it would have been a
21 different story.

22 BY MR RAWAT:

23 Q. Help me with something else, please, Dr O'Neal-Morton.
24 Could you turn up page 790, which is one of the appendices to
25 the Response.

1 A. 790?

2 Q. Yes, please.

3 Do you have it?

4 A. I have it.

5 Q. It's a document that's in the index to the response,
6 it has the same title, "Expected Impacts of COVID-19 on the
7 Agricultural and Fishing Industry of the Virgin Islands." It's
8 not dated. I just wonder whether you could assist us further by
9 saying--explaining just where who produced this document, who
10 prepared it, where is it from?

11 A. Mr Commissioner, you're asking an unfair question. I
12 can't just look at a document. There are hundreds of thousands
13 of documents that I looked at. I would have to--I'm sure the
14 Commissioner would know where this document came from.

15 COMMISSIONER HICKINBOTTOM: It came from your
16 documents.

17 THE WITNESS: Which one of the documents?

18 BY MR RAWAT:

19 Q. Well, Dr O'Neal, the Response has--and you can see it
20 at page 254--it has a long index of annexed documents.

21 A. The Response we were just going through?

22 Q. Yes.

23 A. It was done by the team at the Premier's Office and
24 the IRU.

25 Q. Yes.

1 And their position and your position is that you have
2 read it, have you seen it, you agree its contents.

3 A. That is correct.

4 Q. And I'm just asking you to assist the Commissioner--

5 A. You're asking me who did this, and I already answered
6 that question. I said both teams did it.

7 Q. So, this document--

8 A. This is correct that both teams did it, but I don't
9 see--

10 Q. Is this a document that's prepared--it can't be a
11 document prepared by the IRU or your office for the purposes of
12 this Response--it must predate it--but it's a document that
13 has--it doesn't show that it emanates from a particular
14 Ministry. It might be an extract from a document. It doesn't
15 carry anybody's name. All I'm asking is just where it came
16 from.

17 A. You're--I didn't put the document in there. You would
18 be the best one to know where it came from. I don't--I can't
19 answer that question because I'm not sure. I'm not sure because
20 my document is not someone else's document. I don't know.
21 Weren't you the one to receive this? I don't know where it came
22 from.

23 Q. The first time that we've seen this is when it's
24 annexed to your document, it's annexed to your response. Your
25 response contained a number of documents that had not previously

1 been disclosed.

2 A. That's strange because my document had page numbering,
3 and I don't see--this is your page numbering.

4 Q. Yes, it is.

5 A. Um-hmm. I don't see my page number in there.

6 Q. If you look in the right-hand corner at the bottom you
7 will see your page number.

8 COMMISSIONER HICKINBOTTOM: Your page no. 533.

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: Anyway, you can't help us
11 with that?

12 THE WITNESS: I'm unable to help with that paper.

13 BY MR RAWAT:

14 Q. Can you help us with this, then. If you go to
15 page 793, this is a Cabinet memo from the Ministry of Finance,
16 "Economic Stimulus-Farmers and Fishermen". If you go through to
17 paragraph 8 on page 795, we have reference to the Working Group
18 having developed--paragraph 8, "following documents for Cabinets
19 review and approval", and that includes the criteria and
20 eligibility document, application form, priority listing,
21 updated farmers' and fishermen's listed templates and production
22 logs. Now, I think those were all approved by Cabinet, weren't
23 they?

24 A. It's in extract, you see it, so it should be here as
25 well.

1 Q. Subsequent to that, subsequent to your criteria and
2 these forms being established, did Cabinet amend them at any
3 time?

4 A. I don't see the extract for this paper, so I can't
5 answer that because a paper might go forward, but the extract
6 will tell exactly what was approved. I don't see the extract of
7 this. There is an extract, but I don't see it there, so I can't
8 answer that.

9 Q. So, it may be that there are other papers around these
10 decisions that are not part of this Response?

11 A. No, I'm just saying that I can't answer if from the
12 actual paper--

13 Q. I see.

14 A. The paper goes to Cabinet, once Cabinet discusses it,
15 they may not have approved everything that was asked for in this
16 decision. The extract would be able to give me a better idea.
17 I don't see that.

18 Q. You can see it at 176, actually.

19 COMMISSIONER HICKINBOTTOM: 176?

20 MR RAWAT: Yes.

21 BY MR RAWAT:

22 Q. The question is: So Cabinet approves these things,
23 and we could see they approved the criteria document, approved
24 the application form, approved the priority areas, noted the
25 updated list, approved templates and production logs, and

1 approved the initiative be audited on a monthly basis.

2 So--but my question is: Subsequent to that, did any
3 of those get amended by Cabinet at any time?

4 COMMISSIONER HICKINBOTTOM: Yes--sorry, just to
5 confirm that these were approved, you confirmed that they were
6 approved, Dr O'Neal-Morton, in paragraph 77 of the Premier's
7 Office's Response. You say that the Working Group proposed
8 eligibility criteria which the Cabinet then approved, so these
9 were--the eligibility criteria were approved.

10 We have the eligibility criteria, they were approved.
11 Were they ever changed? We don't seem to have any documents
12 that suggest they were changed, but do you know of any change in
13 the eligibility criteria?

14 THE WITNESS: Other than what was there in terms of
15 the registration and the notarized statement, I think those were
16 the two main eligibility criteria.

17 BY MR RAWAT:

18 Q. That was the evidence you had to prove, wasn't it?

19 A. Um-hmm.

20 Q. To be eligible.

21 A. Um-hmm.

22 Q. You had to either show--for example, if you were a
23 fisherman, you had to show you had a licence or you had to show
24 that you had a notarized letter?

25 A. Um-hmm, correct.

1 Q. But subsequent to Cabinet agreeing eligibility
2 criteria, for example, did Cabinet ever amend those criteria?

3 A. I don't recall. I don't recall it being amended.

4 Q. At paragraph 70, Dr O'Neal-Morton, you say that--and
5 this is an issue. We are moving on to farmers and fishers now.

6 A. Which page are we on, please?

7 Q. 231, please.

8 What's said at 70 is--we had better look at 16(9), that
9 the farmers and fishers programme was intended to be an
10 emergency response to an immediate need to inject money into
11 particularly vulnerable sectors of the economy, and that
12 stimulus would generate urgently needed economic activity in a
13 low wage--very low-wage industries, create employment and
14 increase local food production at a time when there was a real
15 risk that food imports might be interrupted.

16 For this reason, contrary to the impression that might
17 be created by the Auditor General's Report, the Programme was
18 never intended to be confined to those who appeared or had
19 appeared on the Commercial Register of farmers and fishermen or
20 who were licensed to fish but to reach quickly and as widely as
21 possible throughout the farming and fishing sector.

22 I just want to understand what's meant by "intended to
23 reach more widely". Was it intended to catch anyone--or to
24 capture anyone who was not farming or fishing commercially?

25 A. No, no, no. It was meant to--because I think when we

1 started to realise that a registration, much people were not
2 registered and I think even the Auditor General who pointed to
3 it, a number of persons had started to register once the
4 applications went out, and we were aware there were person who
5 were fishing or farming but they weren't registered, so that is
6 where that second criteria came in, with a notarized letter.
7 So, they could get either the Department of Agriculture or
8 somebody to verify that you are, indeed, a farmer or a
9 fisherman.

10 Q. On a commercial basis.

11 A. Um-hmm.

12 Q. I mean, the point that's made is that, in the Auditor
13 General, it's not about people being registered. The Auditor
14 General's Report is that, if you take the example of farmers on
15 the list that was in Cabinet, the Cabinet list, the--those were
16 checked against a database in the Department of Agriculture, and
17 you had 203 farmers being paid nearly \$3 million, and of those,
18 103 were unregistered.

19 So, the point she makes in that Report is that
20 49 percent of the total who received funding were unregistered,
21 that on the list of commercial farmers, you had about--so yes,
22 so of 203 farmers to nearly 3 million was paid, 103 were
23 unregistered with the Department of Agriculture. Almost half of
24 the persons on the Cabinet list of commercial farmers were not
25 registered farmers. There were 164 other payments totaling

1 again nearly 3 million made to individuals who were not
2 registered.

3 So, the point is not so much about--one point that
4 flows from the Report is not about the fact that you had people
5 who were registered and you knew about--

6 A. Um-hmm.

7 Q. --and there were people who were coming in and
8 registering, but it was that payments were made to people who
9 were just not registered.

10 A. But those were the ones who had to been notarised that
11 in order get a stimulus. If you weren't in the Registry, you
12 had to get a notarised letter, and we did receive letters from
13 the Department of Agriculture from various persons saying that
14 Mr John is a fisherman who fishes commercially, et cetera, et
15 cetera. We did receive those. They're all in a box.

16 Q. So that's a point where you say the Auditor General is
17 wrong.

18 A. Quite correct because--

19 Q. So, everyone that she identified as unregistered was,
20 in fact, someone who was the beneficiary of a notarised letter.

21 A. Because she only focused on those who might have been
22 in the Registry. But based on the initial criteria, you could
23 have either been registered or have a notarised letter to say
24 that you had been in food production.

25 Q. And who held the notarised letter? If someone came

1 along--

2 A. It came in with the application. They had to submit
3 it with the application.

4 (Overlapping speakers.)

5 Q. It would come into the Department of Agriculture.

6 A. No. It would come into the Premier's Office. That
7 was where applications would come in. But some people would
8 have gone to the Department of Agriculture. That, might have
9 been their stop to get an authorisation letter, and all of those
10 were appended to their application form.

11 Q. And so, would you say the same point is good in
12 relation to fishermen, that--

13 A. It's the same. It's the same.

14 Q. --where the Intern--Auditor General is saying you're
15 making payments to people are unlicensed. She hasn't--all of
16 those people were legitimate because they would all have had a
17 notarised letter.

18 A. The notarised letter, yeah, um-hmm.

19 And in the final analysis, the--we encountered
20 persons--and I don't want to call it production because it would
21 be known--there was an individual, was a farmer that was
22 well-known that produced a certain crop, and he did not register
23 or he--he was not registered, and he didn't fill in an
24 application when it was discovered by one of the representatives
25 that he is a commercial farmer and he has acres of land

1 producing crops, so he was encouraged to put in an application
2 because it was evident that he was a farmer.

3 COMMISSIONER HICKINBOTTOM: But all of the farmers and
4 fishermen, then you then say, who have been paid were either
5 registered for farmers, licenced fishermen--

6 THE WITNESS: Um-hmm.

7 COMMISSIONER HICKINBOTTOM: --as a commercial fisher
8 all produced a notarised letter.

9 THE WITNESS: Or they might have been identified by
10 other individuals.

11 COMMISSIONER HICKINBOTTOM: Or identified by other
12 individuals.

13 THE WITNESS: Um-hmm, because there are lots of
14 persons, Commissioner, that are popularly known. Everyone here
15 knows all of the fishermen and basically all the farmers,
16 basically outside of our office. We may not have knowledge of
17 all the fishermen. I was given an example of a farmer just now,
18 that he was well-known. If I call his crop, people will
19 recognize it, but he missed out and he was not in a position to
20 do certain things, so he was assisted in doing his application.

21 COMMISSIONER HICKINBOTTOM: So, is it right to say
22 that some of the farmers and fishermen, but we don't know how
23 many, but some of them were neither registered or licenced nor
24 did they produce a notarised letter?

25 THE WITNESS: We may say that, once we are finished

1 cleaning up the results. We haven't done that as yet.

2 COMMISSIONER HICKINBOTTOM: No, we can't say how many
3 because you haven't looked--I mean you haven't look at the--

4 (Overlapping speakers.)

5 THE WITNESS: We haven't finished as yet, so--

6 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

7 THE WITNESS: --we have to do a summary once we're
8 finished, and also in terms of the reporting that we ask Cabinet
9 to let us do the monitoring and evaluation. That would also
10 help us to identify--

11 (Overlapping speakers.)

12 COMMISSIONER HICKINBOTTOM: But that hasn't started,
13 as I understand it yet.

14 THE WITNESS: Yeah, we put information out on the
15 internet, where we had to do an extension until the 15th of this
16 month because people were having difficulties signing on and so
17 forth.

18 MR RAWAT: Could I just ask you one question
19 about--there are a couple of documents, Dr O'Neal in
20 the--O'Neal-Morton, sorry, which are annexed, which appear
21 incomplete, but I think, Commissioner, we'll just have to write
22 about those.

23 COMMISSIONER HICKINBOTTOM: Yes, that's right.

24 BY MR RAWAT:

25 Q. Can I just ask you one question about paragraph 172?

1 COMMISSIONER HICKINBOTTOM: Are you going to deal with
2 any of the paragraphs between those two paragraphs?

3 MR RAWAT: I wasn't going. I was just looking at the
4 time but I can...

5 COMMISSIONER HICKINBOTTOM: Could I just raise a
6 couple of queries about the paragraphs 83, 84. The first--I
7 mean the first thing we may not take this much further but
8 paragraph 83 says that the Working Group who provided the
9 criteria which had been approved by Cabinet had overlooked the
10 fact that it claimed to make direct to suppliers, which Cabinet
11 instructed they should be if possible, which cumulatively exceed
12 \$10,000, it would have been necessary to execute Petty
13 Contracts, and that suppliers would be reluctant to accept
14 Purchase Orders because of the time taken for the Government to
15 pay them.

16 THE WITNESS: Um-hmm.

17 COMMISSIONER HICKINBOTTOM: So, is that--that's
18 presumably what you say about that.

19 THE WITNESS: Yes. That is also the fact about the
20 Certificate of Good Standing because even up to now there was
21 difficulty in getting those issued, and no, the Treasury will
22 not pay a Purchase Order if there's not a Certificate of Good
23 Standing from the supplier, so that would have been a hindrance.
24 That would have been a hindrance, a kickback in terms of
25 processing of payments.

1 COMMISSIONER HICKINBOTTOM: It was a Cabinet
2 requirement to focus on payments to suppliers, where possible,
3 for obvious reasons. You didn't think that it would be wise to
4 go back to Cabinet who could, for example, have waived some of
5 these requirements.

6 THE WITNESS: No. What I did, I went and I told the
7 Premier of our challenge.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 THE WITNESS: And he said, We will go ahead and you do
10 that, and at the end we will write to Cabinet and inform them
11 about the controls and how we were not able to handle it so--

12 COMMISSIONER HICKINBOTTOM: So, in respect of this
13 control, and I think possibly others--

14 THE WITNESS: Um-hmm.

15 COMMISSIONER HICKINBOTTOM: --you spoke--that had been
16 imposed by Cabinet, you spoke to the Premier, and he said, We'll
17 go ahead and we'll take it to Cabinet after the event.

18 THE WITNESS: And yeah, we'll deal with it afterwards.

19 COMMISSIONER HICKINBOTTOM: And just before I go on to
20 paragraph 84--

21 THE WITNESS: Um-hmm.

22 COMMISSIONER HICKINBOTTOM: --and has anything been
23 taken back to Cabinet yet?

24 THE WITNESS: No, not as yet.

25 COMMISSIONER HICKINBOTTOM: Okay. Thank you very

1 much.

2 The other thing is on paragraph 84, it says by about
3 mid-September 2020, without any progress being made, officials,
4 it says--I mean public officials is widely defined
5 here--concluded that for ease and speed of delivery, it would be
6 necessary to adopt a banded system of standard grants and to pay
7 applicants directly, obliging them to verify their expenditure
8 retrospectively, and that then refers to Annex 43, which I'll
9 need to find just in a second, page--yes, it's page 921. We
10 don't know what this is.

11 MR RAWAT: It was actually going to be one of my
12 questions. It's listed in the index as extract from SSAC
13 report, but I don't know what that stands for. It
14 appears--extracts from this Report appears more than once in the
15 material. It's an SSAC report and it's undated.

16 COMMISSIONER HICKINBOTTOM: I mean, if you're going to
17 ask Dr O'Neal-Morton--

18 MR RAWAT: Well, it was simply to ask her what the
19 SSAC was, but I think we're best off writing someone.

20 COMMISSIONER HICKINBOTTOM: We can write to you about
21 that.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: But in any event this sets
24 out--we're not quite sure where from--but this sets out how the
25 bands were arrived at for the farmers and fishermen; yes? So,

1 this is in your document, so you'll know this.

2 THE WITNESS: Okay.

3 COMMISSIONER HICKINBOTTOM: So, for example, for the
4 fishermen, the band was worked out as--well, the farmers might
5 be easier. No, in fact, they're all the same. It's 25 weeks,
6 which is the length of the--whatever you want to call it--the
7 subsidy, times the minimum--times the number of employees, which
8 is just given as a number, times the minimum wage to give an
9 estimated earnings, and then three-quarters of it provides the
10 amount of the grant.

11 So, for small farmers, it's 25 weeks times three
12 employees times the minimum wage of £6, which is £
13 18,000 for the period--

14 THE WITNESS: Three-quarters.

15 COMMISSIONER HICKINBOTTOM: --times three-quarters--

16 THE WITNESS: Um-hmm.

17 COMMISSIONER HICKINBOTTOM: --which is \$13,500. And
18 the same for large farmers, but the number of employees for
19 large farmers is--

20 (Overlapping speakers.)

21 THE WITNESS: --be five.

22 COMMISSIONER HICKINBOTTOM: --five.

23 THE WITNESS: Um-hmm.

24 COMMISSIONER HICKINBOTTOM: So, the bands are worked
25 out on this basis.

1 In fact, underneath it's set out in an arithmetical
2 way, which is clearer.

3 So, that's the way that bands were assessed.

4 So--but what happened in mid-September 2020, you say,
5 is that the applications were coming in. And, as I understand
6 it, the applications required a farmer or a fisherman to say,
7 What I want is I want a new fence and barbed wire or whatever it
8 was or a new engine for a boat--

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: --and it's going to cost
11 \$6,000 or \$15,000 or whatever it would cost. And that was the
12 basis of the application. The application form, as I understand
13 it, said that--had to assure you at the Premier's Office that
14 the money would be spent on items to do with the farming or
15 fishing, and that's what came in.

16 But giving money for--based on those estimates was
17 scrapped in favor of this banded system--

18 THE WITNESS: Um-hmm.

19 COMMISSIONER HICKINBOTTOM: --which wasn't based upon
20 need or expenditure at all. It was based upon an estimated
21 number of employees, which was just taken as a figure, together
22 with the minimum wage, together with an eight-hour day, a
23 six-day week times three-quarters, and that ended up with a sum;
24 that's how it was calculated.

25 But also this says, in paragraph 84, although that's

1 how it was calculated, the beneficiaries of the grants were
2 obliged to verify expenditure retrospectively, so that goes back
3 to actual expenditure.

4 Now, this was the scheme that was implemented, and
5 you've explained that. At the moment I just can't see any logic
6 in this scheme.

7 THE WITNESS: In the banding?

8 COMMISSIONER HICKINBOTTOM: Yes.

9 THE WITNESS: Okay.

10 COMMISSIONER HICKINBOTTOM: For this reason.

11 THE WITNESS: Um-hmm.

12 COMMISSIONER HICKINBOTTOM: The applications were
13 based on expenditure. The individuals who get the money have to
14 account for expenditure. But in the middle. There was a
15 calculation as to how much they got, which is based not on
16 expenditure or need or anything, except a hypothetical
17 calculation.

18 THE WITNESS: Because, Mr Commissioner, we had some
19 anomalies underneath. For example, there was a farmer who
20 wanted to do some planting and asked for money just for the
21 coconut trees, but the farmer sent in a photograph, and we
22 realised based on that, the money that she requested would not
23 have been enough, so she didn't really--she was not in a
24 position to really assess her needs. That was the first one.
25 That's an anomaly below. The one above, one of the farmers

1 asked for a grant of \$400,000. Had he gotten his grant, that
2 would be like 25 percent of what the amount was, so had we given
3 him what he needed based on his request, what would we have done
4 with the last person? He wouldn't have had sufficient money.
5 So we thought it would have been fair to at least create a
6 banded system, working about number of person, calculating using
7 minimum wage, how much times per day that you might work and
8 come up with a reasonable figure.

9 COMMISSIONER HICKINBOTTOM: But--

10 THE WITNESS: Now, bearing in mind now, Commissioner,
11 they have to account for whatever monies that we give them.

12 COMMISSIONER HICKINBOTTOM: I understand that. But
13 there's a number of steps in this process which I find not quite
14 rational. One is to have a banding system which is based upon
15 hypothetical income, and highly hypothetical because we know
16 from your Report that two-thirds of farmers have other jobs,
17 which means that farming is not their main source of income and,
18 therefore, to work out farming income on the basis of them
19 working an eight-hour a day, six days a week is not a
20 hypothetical. It's simply not a correct basis on any view.

21 But it also, to work out the bands on the basis of
22 hypothetical work as opposed to expenditure, which goes in for
23 the application, and at the end they have to account for seems
24 to me to be very odd.

25 What it does, and it explains some of the examples

1 which, on the face of it appear inexplicable and appeared
2 inexplicable to the Auditor General, if a farmer says, Yes, I do
3 have some needs, I need to put up a fence and some barbed wire,
4 it will cost under 500--it'll cost \$500. So he puts in an
5 application for \$500. What does he get? He gets \$13,500 worked
6 out on a hypothetical basis which has absolutely nothing to do
7 with his particular circumstances, and he's given \$13,500, which
8 doesn't reflect his need, which is for \$500, at all. And so,
9 that's another irrationality.

10 And the other which is not really--well, it may be
11 irrational, but it's certainly optimistic, he gets given a year,
12 18 months ago, \$13,500. You haven't yet started the exercise of
13 him accounting for his \$500, and you're then going to ask for
14 \$13,000 back. It's just possible that this man or others in his
15 position may have spent the \$13,000 and you're not going to get
16 them back, so it just--the scheme seems to me to be full of
17 rational flaws.

18 THE WITNESS: But you mentioned a point about farmers
19 not working full time. I don't know if the Internal Auditor is
20 aware, some people who have farms and not the actual work
21 because it's a business, so that's why we came up with three,
22 and five, and two persons because we are fully aware that there
23 are persons who--I might have a farm, I have two workers working
24 on the farm, but I go to my job in the day. They're a farmer
25 still. They're a business farmer, but people work--they have

1 farm hands working for them, so I don't think it's so farfetched
2 and hypothetical.

3 COMMISSIONER HICKINBOTTOM: So--

4 THE WITNESS: And, Commissioner, if they were given
5 too much money and they cannot account for it, they have to pay
6 back. You don't think they'll pay back?

7 COMMISSIONER HICKINBOTTOM: I don't know.

8 THE WITNESS: Well, they will have to pay back.

9 COMMISSIONER HICKINBOTTOM: Okay, so--

10 THE WITNESS: They're hearing you talk about it now.
11 They might get scared.

12 COMMISSIONER HICKINBOTTOM: But what's the--what was
13 the logic or rationale of giving somebody who wanted
14 £500--dollars, \$13,500, what was the rationale for that?

15 THE WITNESS: Just as I said before, some people
16 expressed a need, but the need in the absence of an assessment,
17 which Agriculture wasn't able to do, we have to do some
18 superficial assessment based on photographs and based on our
19 prior knowledge.

20 COMMISSIONER HICKINBOTTOM: No, I understand that.

21 So, if somebody, as they did--

22 THE WITNESS: Um-hmm.

23 COMMISSIONER HICKINBOTTOM: --because you told us
24 this, made a claim for \$400,000, that's fine, it can be--he or
25 she can be capped at whatever the cap is, that's fine. But for

1 people who claim less, I simply don't see the logic of giving
2 them more.

3 THE WITNESS: Well, we couldn't cap at 400. Why do
4 you suggest we cap at 400? We couldn't have capped him because
5 he would have taken the lion's share. He wouldn't have any
6 money left.

7 COMMISSIONER HICKINBOTTOM: But for an individual who
8 applied for \$500--

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: --he gets a letter saying,
11 You applied for \$500, here's \$13,500 but obviously we would be
12 asking for \$13,000 back in a few years' time. I mean, it just
13 seems to me to be a very odd way of going about it. But you
14 don't think that's odd.

15 THE WITNESS: I don't think it's odd, and I can't
16 relate to exactly \$500. I would have to look at the--

17 (Overlapping speakers.)

18 COMMISSIONER HICKINBOTTOM: It was less than \$500 in
19 the example I'm thinking about, but that doesn't matter. There
20 were quite a lot of people who were paid more than they said
21 they needed.

22 THE WITNESS: They have to come to submit evidence of
23 either using the money or they have to pay back.

24 COMMISSIONER HICKINBOTTOM: Okay. And in any event,
25 that's the scheme that you thought was a good scheme, and you're

1 now doing the assessment and getting the verification with a
2 view to--

3 THE WITNESS: And even some people submitted
4 information even before we sent out the call for--to note the
5 information of what you spend the money on, so we receive
6 something for it.

7 COMMISSIONER HICKINBOTTOM: And have people paid money
8 back?

9 THE WITNESS: Not as yet. Not as yet because some
10 people have not--based on what they said, some people have not
11 spent all of their money because after the pandemic, there
12 was--some of the individuals who went to secure materials, et
13 cetera, there was a lull in terms of getting certain--

14 (Overlapping speakers.)

15 COMMISSIONER HICKINBOTTOM: Shortages.

16 THE WITNESS: So people had more delays, so you have
17 to give them a chance, as well.

18 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat.

19 MR RAWAT: No, no.

20 BY MR RAWAT:

21 Q. I mean, so it's possible though, isn't it--is it,
22 Dr O'Neal-Morton, that if someone had applied for \$500 to spend
23 on fencing and then actually been given more than that, if they
24 can--when they're asked to account for it in due course, if they
25 can give a proper justification for it, they can say, Well, I

1 spent the 13,000 on other things to do with the farm.

2 A. If they have receipts for it.

3 Q. They would be allowed to keep it.

4 A. Um-hmm, of course, because that would be the evidence.

5 Q. So--

6 A. Because sometimes we might make an application for
7 something and then we--they probably started and realized,
8 "Well, okay, I've done this, but maybe I need to do that".

9 Q. So long as they could justify that the money was spent
10 but for the purpose of their commercial business--

11 A. Correct.

12 Q. --they're not at risk of it being--

13 A. If they have not spent it on that, then they must pay.

14 Q. If they spend on a non-farm, non-fishery purpose--

15 A. Correct.

16 Q. Then you would have--

17 A. Then they would be owing Government monies.

18 COMMISSIONER HICKINBOTTOM: Mr Rawat, you might be
19 able to help me with this, but I can't find it at the moment. I
20 think in the--I think in the appendices to the Premier's
21 Office's Response, there is some letters anonymised, I think,
22 but some letters which were sent to individuals informing them
23 they had been--that they got a grant.

24 MR RAWAT: If you give me a moment, Commissioner.

25 (Pause.)

1 MR RAWAT: If you start at 182 or 181.

2 COMMISSIONER HICKINBOTTOM: So, just looking at 182 in
3 the same form, that's in a standard form for a farmer or a
4 fisherman, and it says that the acceptance of the money by the
5 individual signifies an acknowledgment that they agreed to
6 furnish the Premier's Office with a full account of the
7 expenditure that the fund's being granted.

8 Yes, there we are. That's a letter from you,
9 Dr O'Neal-Morton.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: Thank you very much for
12 your help on that.

13 BY MR RAWAT:

14 Q. Could I take you back to page 232, please,
15 Dr O'Neal-Morton. Just help us with 77 and 78. I think we've
16 looked at the extract. It says an extract of a Cabinet Decision
17 in May 2020 shows that although a budget of 2 million had
18 previously been approved and the Working Group proposed
19 eligibility criteria for the award of the grants, which the
20 Cabinet then adopted, no firm proposals were made to the Cabinet
21 and no decision was taken as to how the amounts to be awarded to
22 each applicant would be determined. The Programme was again to
23 be intended to be audited by the Internal Auditor. This is the
24 farmers and fishermen scheme.

25 A. Yes.

1 Q. It goes--says: "These details appear to have been
2 left to the Working Group and the lead Ministry.

3 Were these details, in fact, left to the Working Group
4 and the lead Ministry?

5 A. Because they were in the Cabinet Decision.

6 Q. Your position is they were, in fact, left?

7 A. Yes, they were because Cabinet didn't decide to--they
8 usually do X, Y, Z. That wasn't the case there.

9 COMMISSIONER HICKINBOTTOM: So, the banding scheme
10 was--didn't come out of the Cabinet Decision. It came out of--

11 THE WITNESS: It came out of the office, Premier's
12 Office.

13 COMMISSIONER HICKINBOTTOM: It came out of the
14 Premier's Office, thank you.

15 BY MR RAWAT:

16 Q. Just explain--if you look up, it's page 811.

17 Now, this is--I think this has been produced to
18 support the evidence of someone claiming \$400,000, but would you
19 just explain--sorry, I will wait until you're there.

20 A. Just a second.

21 Oh, the chart? A table?

22 Q. It's a table, "Farmers and Fishermen Economic Stimulus
23 Grant".

24 So, was it a spreadsheet that was held--that is in the
25 Premier's Office? Just help with any information you can give

1 on it. It would be helpful.

2 A. They seem the same.

3 Q. It's one of the documents annexed to the Premier's
4 Office's Response.

5 A. Okay. It seems an early table. You see that because
6 I see "incomplete", because I know in the early stages there
7 were--a lot of them came in with applications, and we had to
8 make calls to the individuals in order for them to complete
9 their application. But when I go to 822, you see the number for
10 the "incompletes", we had to make calls to individuals, so I
11 believe this might be an earlier--an earlier list.

12 But I did send a later one on the request of the IRU,
13 COI wanted one, so I did send in a later farmers and fishermen
14 list.

15 Q. I see, all right.

16 A. It's much earlier list--

17 Q. It's an earlier list?

18 A. When I say "incomplete", I realize that some of these
19 names are, indeed, paid because we had called them and they were
20 able to complete the information and the application because
21 they were still missing parts.

22 Q. I understand.

23 So, it's basically an early schedule?

24 A. Yes, this was in an earlier one.

25 COMMISSIONER HICKINBOTTOM: Just--I'm sorry, just one

1 last about the banding, which you have been very helpful in
2 explaining that, the Premier's Response to the one on this topic
3 said that he was not involved in the process of the design or
4 administration of schemes which he entirely left to the Public
5 Officers. So, in respect of the adoption of the banding scheme,
6 was that something approved by the Premier?

7 THE WITNESS: He knew of it because we told him the
8 difficulty we were having in placing the amount, so he was told
9 about it. And like I said, with the other information, as a
10 policy person, he would have to take it back to Cabinet and see
11 if this was done.

12 COMMISSIONER HICKINBOTTOM: No, I understand that, and
13 that hasn't been done yet.

14 THE WITNESS: No.

15 COMMISSIONER HICKINBOTTOM: I just wonder--

16 THE WITNESS: If he was aware the banding?

17 COMMISSIONER HICKINBOTTOM: No. You say he's aware of
18 it, but did he approve it?

19 THE WITNESS: Yes, he did approve it. I wouldn't have
20 gone ahead without his approval.

21 COMMISSIONER HICKINBOTTOM: Okay.

22 BY MR RAWAT:

23 Q. I won't go into it just to save time, but one of the
24 points to make--and this is at 235, and you say this in your
25 response, I think you reject the suggestion that's made in the

1 Auditor General's Report of the Premier's Office being involved
2 in either falsifying or modifying sums that were paid out; is
3 that right?

4 A. I totally reject that, Mr Commissioner.

5 Q. And sorry if I'm going over the same point, but is the
6 point that it was for the Premier's Office to come up with the
7 banding system, and that's what you were ultimately applying?

8 A. That's what we did.

9 Q. So, Cabinet made a decision, Premier's Office came up
10 with a banding system, and you then--going forward, that's how
11 you allocated sums?

12 A. Correct.

13 Q. So, it was then--it was not driven by somebody saying,
14 "I need X amount", but the Premier's Office deciding which band
15 they would fit into?

16 A. Um-hmm.

17 Q. And ultimately then having this backup system where
18 you would go back to people and ask them to account for the
19 system?

20 A. Correct.

21 Q. For the amounts they had been paid.

22 A. You see, Commissioner, I'm very discontented with
23 these words floating around, "inflated", "falsifying". They're
24 not nice terms to speak about our office. I'm very disappointed
25 in those terms. This puts us in a bad light, a very bad light,

1 and that's what's out there.

2 COMMISSIONER HICKINBOTTOM: But--I understand that.
3 This simply reflects that some farmers and fishermen were
4 granted more, sometimes far more, than they needed or applied
5 for.

6 THE WITNESS: But, Commissioner, "falsifying", that is
7 a very accusatory word, "falsifying, "inflating", these are not
8 complimentary words. Those are not words people accept. And
9 for the Premier's Office to carry that shame, because that's a
10 shame, without being justified, I don't think that is fair.

11 COMMISSIONER HICKINBOTTOM: You've explained why
12 people got a lot more than they applied for.

13 THE WITNESS: Yes, those words, they've very offensive
14 to our office.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 BY MR RAWAT:

17 Q. You do accept, though--and this is at your 97--that
18 there were--what's said is the Government accepts for reasons
19 that are given in the Response that some of the controls
20 envisaged by the Cabinet were not adopted, and that what it said
21 is the Committee didn't adopt some of them because they were
22 impracticable, but that was ultimately the decision of the
23 Committee, so Cabinet decided on that they should be certain
24 controls, but as the Committee got to work and as you got to
25 work--

1 (Overlapping speakers.)

2 Q. --such controls wouldn't work, so with the agreement
3 of the Premier--

4 A. The controls were impracticable, and we wanted to get
5 the funds immediately to be released to the public, and that
6 would have been kicked back.

7 Q. And if I just take you to 99, this is part of the
8 Report where you're responding to the Auditor General. This is
9 one of the findings of the Auditor General, is that more than
10 half of the fisherman stimulation grant recipients were not
11 licensed.

12 A. I'm sorry, I was on page 99.

13 Q. Sorry, 236. Paragraph 99. I'm sorry,
14 Dr O'Neal-Morton.

15 A. 236, 99 um-hmm.

16 Q. It's a point that's made that unlicensed fishermen
17 received money under the scheme, and what's said is the
18 Government considers that, in exceptional circumstances of great
19 urgency of need, the objectives and benefits of the Policy it
20 pursued, amongst which were to encourage unlicensed and
21 unregistered fishermen to become registered and increasing local
22 food production, justified the Policy of their inclusion.

23 Just help us with who is being included here. Is it
24 unlicensed fishermen that are being included, or unlicensed
25 fishermen who are then encouraged to become licensed so that

1 they can be included?

2 A. That includes both of them.

3 Q. So, you did, indeed, the scheme operated so that
4 unlicensed fishermen could obtain monies under the scheme?

5 A. With an authorization or some were identified.

6 Q. So, you had a verification scheme--

7 A. Correct.

8 Q. --so they could do that?

9 A. Um-hmm.

10 Q. And--

11 A. And we also have a back-checking scheme in terms of
12 accounting for the money as well.

13 Q. Okay. This is the point where, which you mentioned
14 before, if I take you to 100 to 102 on the same page, and where
15 you say that this is--you know, the grants--the Auditor General
16 says that payments were made to both vessel owners and crew
17 members resulting in multiple payments on the same vessels
18 receiving grants. This included grants awarded to vessel
19 members requesting assistance for the same equipment.

20 And what's said is the Government doesn't accept the
21 premise of the Auditor General's conclusion, which is based on
22 the assumption those registered to its crew must therefore only
23 fish or have an interest in the vehicle.

24 Just help me with that. I mean, how else can you be
25 registered as crew?

1 A. Okay, there is a situation from 2017, after the
2 Hurricane, some of the captains, they lost their boats; and in
3 order for them to go out and fish, they had to go on another
4 person's boat but they had to be registered as a crew because
5 you just can't go work on a boat without being registered as
6 captain or crew. In instance of the boat we have highlighted
7 here, that was the situation. There were three persons on the
8 boat, two are registered as crew, one as captain, but the other
9 two were actually captains of boats that were not working after
10 the Hurricanes.

11 So, in their own right, they have--they had the right
12 to apply for the stimulus so they could repair their boats so
13 they could go back on their own boats once again, so there was
14 no check to realize this here, in order to go out on a boat you
15 must be registered as either a captain or a crew. Two of the
16 members of this boat, they were crew members but they actually
17 captains, they have their own boats but their boats are broken
18 at the moment, so they get stimulus so they can repair them and
19 then go out on their own boats.

20 COMMISSIONER HICKINBOTTOM: So, their claim was not in
21 respect of--

22 THE WITNESS: The boats that is claimed--

23 COMMISSIONER HICKINBOTTOM: --they claimed in respect
24 of another boat?

25 THE WITNESS: No, they claimed it for their own boat

1 because they're not captain of that boat. They're not a
2 captain.

3 BY MR RAWAT:

4 Q. So, what you're summing--if we put it in context for
5 the Transcript, so the Auditor General gave an example of a case
6 where three individuals, one the master owner or captain and two
7 crew members were all awarded grants, and it appears grants in
8 relation to the same boat. You say that was wrong--

9 A. That's correct.

10 Q. --because, in fact, the two crew members were not
11 given grants because they were crew numbers on that boat.

12 A. Um-hmm.

13 Q. They were given grants because they were captains of
14 their own boats which at the time were not capable of putting to
15 sea?

16 A. Um-hmm. So, they got stimulus fund for their own
17 boat, not the boat where they were crew member and not what they
18 worked on.

19 Q. Right.

20 You say that it appears that the Auditor General
21 didn't carry out any basic checks. She carried--I will read
22 that out.

23 She appears to have carried out no basic tests to see
24 whether her assumption is accurate, and that's the assumption
25 that those who were registered as crew to a vessel, therefore,

1 only fish or have an interest in that vessel.

2 What basic checks can you carry out?

3 A. You can call the licensing agency. You can call the
4 captains themselves. And based on the application, we verify
5 that. We called them again to verify that, but the same names
6 of the vessel that was listed here, we called the captain
7 ourselves personally and verified that. And a basic check with
8 licensing would have shown that these persons are captains as
9 well, but working on currently as crew members on that
10 particular vessel. The licensing agency would have that
11 information.

12 COMMISSIONER HICKINBOTTOM: But in terms of auditing,
13 these three individuals made a claim in respect of the same
14 boat. The two crew members who you say own other boats didn't
15 make a claim in respect of the other boats. They didn't say,
16 "I'm the master of this other boat." They said, "I'm a crew
17 member of boat A".

18 So, in terms of--

19 THE WITNESS: They made it in their name, but they're
20 not--they're not the official crew member of that boat.

21 There are other crew members in order to fish on that
22 boat, but they're captain of their own boats.

23 COMMISSIONER HICKINBOTTOM: But in respect--I
24 understand that, I do understand that, but their claim was in
25 respect of the boat in respect of which they're a crew member,

1 not in respect of another boat of which they may be master.

2 THE WITNESS: That is not what I verified with us. We
3 verified, and we know for a fact these two individuals owned
4 their own boat, but it's broken.

5 COMMISSIONER HICKINBOTTOM: But that's not on the
6 documents--well, as I say, it seems they made a claim as a crew
7 member of boat A, not in respect of being captain of boat B.

8 THE WITNESS: Because, actually, it's probably where
9 they put what they're doing on the profession, where they put
10 the crew member, and that was the misleading part, but
11 nothing--no check was done to verify if they're actually crew
12 members of the boat.

13 COMMISSIONER HICKINBOTTOM: So--

14 THE WITNESS: Because you're making a claim that this
15 was--this was a faulty claim, so to me she should verify--

16 COMMISSIONER HICKINBOTTOM: But as a matter of audit,
17 the Auditor just looks at the document.

18 THE WITNESS: Really, okay. But it's--

19 COMMISSIONER HICKINBOTTOM: But you've checked, and
20 the documents are not right.

21 THE WITNESS: I have checked, and the individuals are
22 only crew members on the boat. They have their own boats.

23 COMMISSIONER HICKINBOTTOM: As crew members of boat A,
24 they're not entitled. But as master--

25 THE WITNESS: As master of the boat, they are.

1 COMMISSIONER HICKINBOTTOM: --boat B, they are.

2 THE WITNESS: They are.

3 BY MR RAWAT:

4 Q. And you received applications from them as master of
5 their own boats?

6 A. I cannot tell you exact. It was an applicant, we
7 called them.

8 (Overlapping speakers.)

9 Q. And did you call them after this detail had come into
10 the Report?

11 A. We called them after that, yes.

12 Q. But at the time that you were processing the
13 application, I mean, do you have an application from someone who
14 says, "I'm a crew member of boat A", or is it, "I'm applying as
15 captain of boat B"?

16 A. You've got to remember the persons on this boat,
17 they're well-known to us.

18 Q. I appreciate that, Dr O'Neal-Morton, and I--

19 A. So we wouldn't have to check anything because we
20 already knew they own their own boat, so we just verify it.

21 Q. It's about what you did before you gave the money out,
22 so did you receive a document which--because you could have
23 received three documents from three people, all of whom say they
24 associate themselves with one boat, in which case that's the
25 basis on which they get their money. If, in fact, there were

1 other documents at the time before the money came in but linked
2 each of them they were all saying, no, they weren't telling the
3 Premier's Office they worked on the same boat. They were
4 actually saying they were captains of three boats, then that
5 supports what you later discovered after the Report.

6 So, at the time when you were looking at it, did
7 you--I mean, do you have three pieces of paper from three men
8 for three different boats?

9 A. Three pieces of paper. I could check, but we know
10 from personal knowledge that there were three different boats.
11 We know that from personal knowledge, and we would have three
12 different pieces of paper because there were three different
13 applications.

14 COMMISSIONER HICKINBOTTOM: That doesn't respond to
15 the questions, but I think I understand. It seems what happened
16 is that these three individuals claimed as master and two crew
17 members of boat A. In fact--and that's how the Auditor audited
18 it because she audits what she sees.

19 In fact, the crew members were master of boats B and C
20 respectively, and therefore had a claim in respect of a
21 different boat from the one they claimed for, and you have now
22 confirmed that that's the case. But, of course, we haven't seen
23 the documents. It makes things very difficult.

24 BY MR RAWAT:

25 Q. Could I just move on quickly, Commissioner, to the

1 question about the--because the Response deals with the Auditor
2 General's response, and we can all read it. If I could ask you,
3 please, just go to page 240, please.

4 Now, this is part of the section of your response,
5 Dr O'Neal-Morton, where you have set out the Government's
6 response or your office's response to the Auditor General's
7 Report in relation to schools, daycares, and religious
8 organisations. What's said at paragraph 126 is that the Auditor
9 General at paragraph 8 of her Report does not fully reflect the
10 Government's policy in respect of grants to churches by
11 characterizing it as to assist daycares, preschools, private
12 schools, and religious organisations with the costs relating to
13 reopening in compliance with health protocols. In fact, the
14 broad policy objective of the grants was to support the
15 continued operation of the churches in maintaining the important
16 contribution to social cohesion that they are known to perform
17 within Virgin Islands society.

18 And you then refer us back to paragraph 109, which
19 sets out that churches are a valued and essential part of Virgin
20 Islands society. None of the references, I think--there is any
21 one which is to an e-mail--sort of really explained the position
22 at paragraph 127. If I could ask you to look at page 926,
23 please. This is a Cabinet Paper from the 16th of June 2020.

24 If we go through to paragraph 4, what's said is to
25 assist to bring back some sense of normalcy for residents to be

1 able to attend church services, funerals, weddings. To allow
2 schools, preschools and daycare centers to open, a number of
3 social distancing measures will need to be put in place at these
4 establishments.

5 And then it says--it continues, it then refers to
6 private schools, preschools, and daycare centers struggling to
7 keep their staff on full-time pay because there is no income
8 being generated. It says, to assist private schools,
9 preschools, daycare centers, churches and religious
10 organisations to prepare themselves to receive students,
11 participants and parishioners once more, the Government seeks to
12 establish a COVID relief fund to support them in the amount of
13 \$1 million.

14 If you look at 933--

15 COMMISSIONER HICKINBOTTOM: And just--in the same
16 documents as 927 that Mr Rawat focused on, on 929, it said that
17 it's important to apply the criteria to be established for the
18 costs of reopening so they could be included in the application
19 form, and they were included in the application form because an
20 assurance had to be given that the costs would be used only for
21 reopening the establishment.

22 And then at 930, it said, again in line which--what is
23 said earlier, that the Premier's Office head of expenditure is,
24 and it gives the number, and the subhead with another number,
25 "coronavirus prevention exercise". So, this all has to do with

1 the direct costs of reopening, social distancing and all of that
2 sort of stuff.

3 Mr Rawat.

4 BY MR RAWAT:

5 Q. We see the same point in a paper at 933, please,
6 Dr O'Neal-Morton, because this is--and again, it's a paper from
7 the Premier's Office, but 8th of September 2020, the purpose is
8 to give as to inform Cabinet the Committee's work towards the
9 development of the policy document for the implementation of the
10 COVID-19 Economic Stimulus Package for daycares, preschools,
11 private schools, et cetera, to assist them to reopen and operate
12 safely in the COVID-19 era.

13 And then the second, it then speaks--the second
14 paragraph speaks to the absolutely vital role in our community
15 that these organisations play; their closure is a major setback
16 to the social well-being of society. And it concludes: "It is
17 hoped that the stimulus will help these institutions in the
18 Virgin Islands that have been adversely affected by the COVID-19
19 pandemic crisis to prepare themselves for reopening".

20 Now, the--certainly, if we look at page 19, the
21 reference there--this is the Internal Auditor's Report, but she
22 speaks of government, through its economic response initiative
23 seeking to provide some assistance to organisations such as
24 churches, daycares, and private schools, to defray the costs of
25 implementing social distancing and health requirements required

1 for reopening. So, it's just against that background,
2 Dr O'Neal-Morton, can you point the Commissioner to the evidence
3 that supports that there was either a change in policy or a
4 widening of the Policy beyond it being just about preparing for
5 opening?

6 A. Okay, when you just read on page 933 Cabinet Paper for
7 the purpose number two.

8 Q. Sorry. Give me a moment.

9 A. 933.

10 COMMISSIONER HICKINBOTTOM: Paragraph 2.

11 THE WITNESS: Paragraph 2.

12 Daycares, preschools, private schools, churches s and
13 religious organisations play an absolutely vital role in our
14 community, and their closures due to COVID-19 pandemic crisis is
15 a major setback to the social well-being of the society. All of
16 these institutions play critical role in the social well-being
17 of our society. Churches have a huge critical role.

18 COMMISSIONER HICKINBOTTOM: You've got to go on and
19 read the next sentence, Dr O'Neal-Morton: "It is hoped that
20 this stimulus"--it's not really a stimulus.

21 THE WITNESS: We open--sorry.

22 (Overlapping speakers.)

23 COMMISSIONER HICKINBOTTOM: --will help these
24 institutions that have been adversely affected to prepare
25 themselves for reopening. This has to do reopening costs.

1 THE WITNESS: Yeah, but they're closed. They don't
2 have a social impact anymore. That is what I really wanted to
3 focus on. That is why I read that as a major setback--their
4 being closed to the social well-being of the society. So, once
5 they are closed, the society cannot benefit from all of these
6 institutions, particularly the church. The church plays a
7 critical--played and plays a critical role. The church pays
8 people, the church gives people clothes. There are several of
9 these programs. The churches are the bedrock of society.

10 COMMISSIONER HICKINBOTTOM: It's important to get them
11 open again?

12 THE WITNESS: It is very important, Mr Commissioner.

13 COMMISSIONER HICKINBOTTOM: So--but the papers, as
14 we've seen, focused on the costs of reopening.

15 THE WITNESS: Well, reopening triggers the social
16 well-being once more.

17 COMMISSIONER HICKINBOTTOM: Getting them open gives--I
18 mean, it's actually called "societal protection" for some of
19 these people as opposed to economic stimulus which is farmers
20 and fishermen, so this is all focused on the cost of getting
21 them reopened.

22 THE WITNESS: For the well-being, the social
23 well-being.

24 COMMISSIONER HICKINBOTTOM: Yes, for all of the
25 benefits that flow from being reopened.

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: Mr Rawat's question is:
3 Is there any--was there any policy change from paying whatever
4 it was, \$1 million was allocated, paying \$1 million to get these
5 important vital institutions reopened? Was there any--was there
6 ever a policy change?

7 THE WITNESS: A policy change? You mean after
8 September 8?

9 COMMISSIONER HICKINBOTTOM: Yes.

10 BY MR RAWAT:

11 Q. Or at any time, because what your response suggests is
12 that the Auditor General didn't really reflect the government
13 policy. What she says is that the Policy was to assist
14 organisations such as churches with the costs relating to
15 reopening and compliance with health protocols.

16 So, it's not clear in what way she doesn't echo what's
17 said in the papers that we've looked at, and so my question was
18 just at some stage in the process did the policy widen? Did it
19 change in some way? Or was it always about allowing churches,
20 for example, to be able to open safely so they could continue to
21 serve--

22 (Overlapping speakers.)

23 A. Churches, schools, religious organisations, that
24 was--that was the main goal, and that consists of many things,
25 so I don't know if the Policy want to change because that was

1 their main role.

2 Q. The Policy was--using funding to be able to open,
3 allow churches, schools, to open safely?

4 A. For the social well-being of the community.

5 COMMISSIONER HICKINBOTTOM: That was the consequence
6 of them reopening.

7 THE WITNESS: But that was the reason why we wanted
8 them to reopen.

9 COMMISSIONER HICKINBOTTOM: I understand that. I
10 completely understand that.

11 THE WITNESS: So let's not forget that.

12 COMMISSIONER HICKINBOTTOM: No, no--

13 THE WITNESS: That's the most important part.

14 COMMISSIONER HICKINBOTTOM: I understand that.

15 THE WITNESS: Um-hmm.

16 COMMISSIONER HICKINBOTTOM: But in terms of where the
17 money's going, the Policy was to give the money to get them
18 reopened.

19 THE WITNESS: For that reason.

20 COMMISSIONER HICKINBOTTOM: For that reason. Point.
21 Yes.

22 BY MR RAWAT:

23 Q. Paragraph 130, please.

24 Paragraph 130. It's page 241, please.

25 What's set out there is one of the conclusions of the

1 Auditor General in relation to religious organisations,
2 daycares. Grants award recommended by the Working Committee
3 were adjusted in the Premier's Office without any effort to
4 maintain the apportionment within the available budget. And
5 what's said is that the Government does not accept that this
6 conclusion is pertinent to matters that lie properly within the
7 scope of the Auditor General's functions. The decision to
8 adjust the grant awards and to increase the budget for the
9 scheme within the overall sum set aside for the COVID-19 Relief
10 Package was a policy decision that was submitted to the Cabinet
11 was wholly a matter for it to decide.

12 If you could just shed some light on that answer
13 because it doesn't seem to actually respond to the point that's
14 made in the Auditor General's Report. Were grants awards
15 recommended by the Working Party adjusted in the Premier's
16 Office?

17 A. Mr. Commissioner, what was that question again?

18 Q. The Auditor--you will see there that the Auditor
19 General has made a particular conclusion, and this is part of
20 what's said to be the Government's response to those
21 conclusions. Paragraph 130 doesn't really say why the
22 conclusion is wrong. It says that it's not relevant to--it's
23 not within the scope of what an Auditor General can do. It's a
24 policy decision and, therefore, not for the Auditor General.

25 But it's two questions: Firstly, you say that--or the

1 response says that the Budget scheme for the overall sum set as
2 a policy decision that was submitted to Cabinet and was wholly a
3 matter for it decide, so the first question is: Did Cabinet
4 decide it?

5 A. Which one are you on? 130?

6 Q. 130.

7 A. Yeah.

8 COMMISSIONER HICKINBOTTOM: I'm sure,
9 Dr O'Neal-Morton, you remember the background to this, but the
10 Working Committee in relation to the to religious institutions,
11 et cetera, were given a million dollars by Cabinet, allocated a
12 million dollars by Cabinet, and they worked out on the basis of
13 the applications that they received, which religious
14 institutions, et cetera, should get money and to come in at a
15 million dollars. That's what they did.

16 That then went to the Premier's Office because you
17 were the account holder, and the money was not distributed in
18 that way. The money was increased from the £1 million that
19 Cabinet had allocated to whatever it was, \$6 million plus, on
20 the basis again of bands irrespective of--apparently in respect
21 of need.

22 The first question is--that relates to whether Cabinet
23 did approve that change in policy.

24 THE WITNESS: It might have been. I would have to
25 look for the Cabinet Paper, but I am aware, and I recall that

1 just like with the farmers and fishermen, there were some
2 churches that were not--that were not included in the survey
3 because a survey was done. Some of the churches were not
4 included.

5 So, in response from the Ministry of Health, which had
6 a register of non-profit organisations, there were a number of
7 churches that were omitted and that were in various areas in the
8 community, and we thought it would only be fair to include them
9 because we know the critical and vital role of churches. So,
10 that also increased the number. That variable was increased.

11 COMMISSIONER HICKINBOTTOM: But did they--did they
12 have a need for funds to reopen?

13 THE WITNESS: They would have had a need,
14 Mr Commissioner, because basically all of the people from the
15 churches, even from 2017, some churches had received damage;
16 they couldn't open. If you go around now, you will see there
17 are some churches that are still not in their own place. Some
18 of them are worshiping elsewhere, and there was a need to bring
19 all the churches back on track. There was a need, a basic need,
20 a community need.

21 COMMISSIONER HICKINBOTTOM: Did the churches who you
22 said were added to the list that were--that was provided by the
23 Working Committee, did those churches need money to reopen to
24 be, as it were, COVID-compliant?

25 THE WITNESS: Yes, they needed money to reopen and

1 also do outreach, which is one of the main things the churches
2 had to do outreach to the community.

3 COMMISSIONER HICKINBOTTOM: That's not COVID-related.
4 That's simply part are their function.

5 THE WITNESS: That's part of their well-being as well
6 because some of them feed people, and during that period that
7 wasn't happening with some of the churches.

8 COMMISSIONER HICKINBOTTOM: So, this change in policy
9 from money to reopen because of COVID, that was the original
10 policy approved by Cabinet, to giving churches money to enable
11 them to do more generally good and charitable works. That
12 change of policy, was that a change in policy approved by
13 Cabinet? We haven't, I don't think, seen any documents related
14 to that change in policy.

15 THE WITNESS: No, but for the social well-being, that
16 covers a gamut of things.

17 COMMISSIONER HICKINBOTTOM: But there is--I'm not
18 saying that this--

19 THE WITNESS: Cabinet wouldn't have had to change that
20 because that was already there.

21 COMMISSIONER HICKINBOTTOM: I'm not saying that the
22 money was not spent on good works. I'm not saying that. What
23 I'm asking is: Was there a change in Cabinet policy, from here
24 is \$1 million to allocate to churches and schools to enable them
25 to reopen in a new COVID world? That's a particular project to

1 a completely different project, completely different policy, to
2 supplement the income of these establishments generally to
3 enable them to do generally good works--for example, outreach;
4 for example, other charitable works. It's a different policy.

5 THE WITNESS: I wouldn't say that, Commissioner,
6 because when we look at the Cabinet Paper, it talks about the
7 social well-being. All those variables fit into the social
8 well-being of the community.

9 COMMISSIONER HICKINBOTTOM: Agreed. But it says that
10 as important background, but as we've seen, the money was to
11 reopen, to get these establishments reopened, to enable the
12 benefits to their community to arise.

13 But in any event, you know of no change of policy by
14 Cabinet? We haven't seen any.

15 THE WITNESS: I don't know about a change of policy
16 because it's already there in the paper. It's already there in
17 the paper.

18 MR RAWAT: Commissioner, could I ask for a short break
19 for the Stenographer.

20 COMMISSIONER HICKINBOTTOM: Yes, certainly.

21 How long will you be with--

22 THE WITNESS: Not much longer.

23 COMMISSIONER HICKINBOTTOM: Good.

24 MR RAWAT: I'm sure Dr O'Neal-Morton is relieved.

25 COMMISSIONER HICKINBOTTOM: Okay. We will have a

1 five-minute break--quite right, Mr Rawat--and we will come back
2 and conclude your evidence, Dr O'Neal-Morton. Thank you very
3 much.

4 (Recess.)

5 COMMISSIONER HICKINBOTTOM: Thank you very much,
6 Dr O'Neal-Morton.

7 Can I just raise one thing, and we will write to you
8 about these so you don't have to remember.

9 THE WITNESS: Okay.

10 COMMISSIONER HICKINBOTTOM: But in relation to the
11 fishing boats that we were discussing where there were three
12 applications, perhaps in respect of one vessel, and you
13 explained that that was checked and there were other vessels.
14 In respect of those three applicants, could you please send us
15 the applications.

16 THE WITNESS: I think those were sent to the IRU. I
17 don't know if they've gotten them. We sent--we scanned them,
18 but I will double-check.

19 COMMISSIONER HICKINBOTTOM: The applications.

20 MR RAWAT: (Off microphone.)

21 COMMISSIONER HICKINBOTTOM: And we will, but it would
22 be helpful if we could just have those applications on Monday
23 morning, that would be very helpful, thank you. But we will
24 write to you to confirm--

25 THE WITNESS: All right.

1 COMMISSIONER HICKINBOTTOM: --the bits and pieces.

2 Yes, Mr Rawat.

3 BY MR RAWAT:

4 Q. Yes, could I ask you, please, Dr O'Neal-Morton, to
5 turn up page 242, and you see at paragraph 138 it starts setting
6 out some correspondence which is between the Internal Auditor
7 and your Deputy and then yourself, and it ends--and do you see
8 at 140 where it said the Internal Auditor has come back to you
9 to ask for more information, this is in November 2020, and it
10 concludes with you saying to the--your Deputy, this is confusing
11 to me because you thought the Financial Secretary had indicated
12 to you he was responsible for reporting on these Stimulus
13 Packages, and you asked the Deputy to confirm the situation with
14 the Financial Secretary.

15 I think a while ago you said, if I remember rightly,
16 that what was resolved was that it was for the Premier's Office
17 to report on the--

18 A. Yes, it was later resolved because I do not--I believe
19 maybe FS because the Ministry of Finance took the paper, I don't
20 know, maybe he thought it was him and causing them, he had
21 written and said that he needed to do the Reports, and I know he
22 said it was confusing, but it was clarified. It was clarified.
23 Should have been the Premier's Office.

24 COMMISSIONER HICKINBOTTOM: Could we just go very,
25 very quickly to paragraph 132.

1 THE WITNESS: 132?

2 COMMISSIONER HICKINBOTTOM: Please, Dr O'Neal-Morton.

3 And this is about religious institutions, et cetera.

4 And what you say here is: "In interests of expeditious
5 distribution of the grants at a time of great crisis and need, a
6 standardized system of banded awards was adopted". And again,
7 how was that done? Again, you got the applications in from
8 churches saying "to reopen we need X dollars", but you went to a
9 standardized banding system, and who did that? Who formed the
10 system?

11 THE WITNESS: That was in the Premier's Office because
12 what we did was we looked at the population of the various
13 groups, and that was how the banding was decided.

14 COMMISSIONER HICKINBOTTOM: Okay. So, just so I got
15 this right, you had the applications in saying "we need X
16 dollars to reopen".

17 THE WITNESS: Um-hmm.

18 COMMISSIONER HICKINBOTTOM: And you effectively put
19 those to one side and you had calculated what had? You did the
20 calculation, but the calculation presumably was not based on the
21 \$1 million that you had from Cabinet.

22 THE WITNESS: Um-hmm.

23 COMMISSIONER HICKINBOTTOM: How was the calculation
24 done? Working--Committee's calculation was done by taking a
25 million dollars and splitting it up, but your calculation

1 wasn't.

2 THE WITNESS: Because, as I said previously, the
3 number had expanded from the Working Committee, and we needed to
4 get the money out quickly, so the number of the institutions had
5 increased, so the amount of money that was delegated would not
6 be the same anymore since we added more institutions to it.

7 COMMISSIONER HICKINBOTTOM: But the new institutions,
8 some of them hadn't even made applications based upon
9 applied-for need--it was based on your banding--so how did the
10 banding come about?

11 THE WITNESS: It wasn't based on the--our bonding was
12 based on--as I said before, when we approached Health because we
13 had to see--the churches are non-profit organisations. We had
14 to check the Registry to make sure they were functioning.

15 So, for example, if we had gotten 20--20 applications,
16 when we went to the Health Ministry or we realised there might
17 have been 50 registered, so we said okay, we are providing a
18 need for the churches, et cetera, so let us get them organized,
19 and we will provide for them--for them as well.

20 COMMISSIONER HICKINBOTTOM: I understand that.

21 THE WITNESS: Um-hmm.

22 COMMISSIONER HICKINBOTTOM: But what the Working
23 Committee did is, they started with a million dollars, which
24 Cabinet had allocated, and looked at the applications, and they
25 split the million dollars up between the applicants. You found

1 some more applicants.

2 THE WITNESS: Um-hmm.

3 COMMISSIONER HICKINBOTTOM: But you didn't, as I
4 understand it, say, "Well, we have got 30 or 50 applications
5 rather than 20 to split the million dollars up between". You
6 didn't start with the million dollars that had been allocated,
7 so how was the calculation done? What were the parameters of
8 the calculation?

9 THE WITNESS: We did it--we had found that based on
10 the number of the population and the churches and schools and
11 daycare center, et cetera, that's how we worked it.

12 COMMISSIONER HICKINBOTTOM: But--carry on.

13 THE WITNESS: At that stage, yes, if we were in
14 ordinary times we could have gone back to the Committee, but
15 that then was September, schools should have been reopening
16 quite soon, and we wanted to fulfill that need of having the
17 schools up and running for opening so, so a decision was made
18 based on the population. You have X, you get this amount of
19 money; you have Y, you get this amount of money.

20 COMMISSIONER HICKINBOTTOM: I understand that.

21 But when you add up all the sums of money you came up
22 with, you didn't end up with a million dollars--

23 THE WITNESS: It was more than that.

24 COMMISSIONER HICKINBOTTOM: --that the Cabinet had
25 identified, you ended up with something like over \$6 million.

1 So, why in the algebraic formula you're working out didn't the
2 \$1 million appear at the bottom line?

3 THE WITNESS: Because then someone wouldn't have
4 gotten anything at all.

5 COMMISSIONER HICKINBOTTOM: But they would have got
6 less, but they would have got the \$1 million the Cabinet had
7 allocated to them.

8 THE WITNESS: But then the money might not have been
9 sufficient because there were quite a lot of churches, we
10 discovered, and there were daycare centers, private schools, et
11 cetera, there was quite a lot of them, so the \$1 million would
12 not have been feasible to have them open again.

13 COMMISSIONER HICKINBOTTOM: But Cabinet presumably
14 knew how many establishments were involved, and they allocated
15 \$1 million. Why did you decide in the Premier's Office that it
16 shouldn't be 1 million, it should be 6 million?

17 THE WITNESS: Cabinet doesn't have the exact number
18 because, as I recall, I think the number of schools that was
19 given was an incorrect figure, so we had to adjust that figure
20 also.

21 COMMISSIONER HICKINBOTTOM: Yes, but anyway, Cabinet
22 allocated \$1 million, and the Premier's Office--you, I
23 think--I'm not sure the Premier--did the Premier approve this,
24 too?

25 THE WITNESS: All of those things we let him know what

1 was going on, and he told us we will deal with them now because
2 of the urgency of getting the money out, and we will have to--

3 COMMISSIONER HICKINBOTTOM: So again, we have been
4 through this, I know, with farmers and fishermen.

5 THE WITNESS: Um-hmm.

6 COMMISSIONER HICKINBOTTOM: But just to confirm, so
7 Cabinet allocated \$1 million for direct reopening costs. The
8 Premier's Office increased that sum by a banding system to
9 whatever it was, \$6 million-plus, on the basis that the Premier
10 would go back to Cabinet at some later stage and seek approval.

11 And has--I'm sorry. Is all of that correct so far?

12 THE WITNESS: No. We didn't increase it only by the
13 banding system. The variables changed, the amount of
14 institutions increased, so that affected the sum total, the
15 bottom-line total, the amount of the--

16 COMMISSIONER HICKINBOTTOM: Yes, because the bottom
17 line was a function--

18 THE WITNESS: It would have affected the banding as
19 well.

20 COMMISSIONER HICKINBOTTOM: Okay. I understand that.
21 But in any event, the sum went up from 1 million to
22 \$6 million-plus. And the Premier approved that on the basis it
23 would go back to Cabinet. Has that gone back to Cabinet?

24 THE WITNESS: Not as yet. Not as yet.

25 COMMISSIONER HICKINBOTTOM: Okay. Thank you very

1 much.

2 MR RAWAT: Thank you.

3 I think if, Commissioner, I can move on to just
4 something else--

5 COMMISSIONER HICKINBOTTOM: Yes, thank you.

6 BY MR RAWAT:

7 Q. Dr O'Neal-Morton, I just want to make sure that you
8 have an opportunity to give the Commissioner your position, and
9 we've--as we have gone through, we have dealt with aspects of
10 the Preliminary Report, which the Commissioner has read and will
11 read again. He also has the full detail of the Response that
12 has been specific for the COI together with all the exhibits to
13 it. What I want to just make sure you have an opportunity to do
14 is to just make sure you set out your position in relation to
15 the Warning Letter.

16 If you go to that--do you have that with you, please,
17 Dr O'Neal-Morton?

18 A. Just a moment.

19 (Pause.)

20 Q. I don't need to read out all the Preamble to it, but
21 if you turn up page 11.

22 COMMISSIONER HICKINBOTTOM: Page 11?

23 MR RAWAT: Yes.

24 COMMISSIONER HICKINBOTTOM: Page 11 or paragraph 11?

25 BY MR RAWAT:

1 Q. Page 11.

2 A. I don't have page 11.

3 Q. If you don't have--there should be, I hope, a page
4 number in the--

5 A. Okay, yes.

6 Q. Do you have it?

7 Do you see the paragraph that begins--

8 A. Um-hmm.

9 Q. Sorry, just give me one moment.

10 COMMISSIONER HICKINBOTTOM: Page 8 I think it starts.

11 MR RAWAT: It starts, I'm sorry.

12 COMMISSIONER HICKINBOTTOM: Go to page 8,
13 Dr O'Neal-Morton. At the bottom of page 8, bottom of page 8, it
14 should start "On the available evidence, it appears that", and
15 then paragraphs 1 and 2.

16 BY MR RAWAT:

17 Q. So, this is dealing with the position in relation to
18 stimulus grants to farmers and fisherfolk, and so what's noted
19 is that the total amount paid under that programme was
20 5.14 million as against the budget of 3.5 million, and what's
21 said is that it appears as a failure--I'm go to summarise--to
22 adequately assess plan and budget for the stimulus grant
23 programmes aimed it's farmers and fisherfolk, a failure to put
24 into place adequate measures to ensure payments made through the
25 Programme were, in fact, made to eligible commercial farmers and

1 fisherfolks as intended; that payments issued to farmers were
2 inflation, and in particular almost three times great than the
3 amounts requested; a failure to involve two key agencies, the
4 Ministry of Education and Culture, et cetera, and the Department
5 of Agriculture and Fisheries, which contributed the failures;
6 and failure to adopt Cabinet's mandated implementation and
7 monitoring of the Programme.

8 Now, in terms of those, on the failure to assess and
9 failure to put in adequate measures to ensure payments made
10 through, would it be fair to say that you would rely on in
11 particular the contents of the Premier's Office's response?

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

13 Q. And again, the potential criticisms that payments to
14 farmers were inflated is one that you would robustly reject?

15 A. I reject that entirely.

16 Q. In terms of the failure to involve other agencies, was
17 this a programme that was--I think the answer may be "yes"--that
18 was led by the Premier's Office?

19 A. Yes, it was, but I don't understand that claim
20 because, on the Committee were members of these agencies.

21 Q. I see.

22 So--I mean, it's not something we have really
23 canvassed, so the point you would make is the Working Committee
24 would have had representatives--

25 A. As mandated by Cabinet. It's in the Cabinet Paper,

1 which would show Members of the Committees.

2 Q. Now, the failure to adopt Cabinet's mandated
3 procedures, I think you just explained--you have explained the
4 position to the Commissioner is that--and in the paper you would
5 say that there is, as everyone got to work, there was a
6 difference in terms of what Cabinet had asked for and what could
7 be achieved, and ultimately the Premier will be taking changes
8 back to Cabinet.

9 A. Um-hmm, because idealistically, when the controls are
10 put together to submit the Cabinet Paper, they were ideal; but
11 once you start implementing, you realize that in the interest of
12 time and getting the monies out to stimulate the economy, those
13 controls were not practical. They were not practical. They
14 were not workable.

15 Q. Now, the next set of potential criticisms related to
16 religious institutions, civic groups, private schools, and
17 daycare, and we have gone through that in some detail, but again
18 what they said, what the potential criticisms arises is a
19 failure--and this is at page 11, Dr O'Neal-Morton.

20 A. Okay.

21 Q. --failure to adequately assess plan and budget for the
22 Programme. Grants were awarded without any regard to any
23 defined or published criteria and without any assessment to
24 financial need, and a failure to put into place adequate
25 measures to ensure that payments made through the Programme was

1 on the basis of need as was the intent of the scheme. The funds
2 were provided--that funds were provided as per the intentions of
3 the scheme and that public money was probably safeguarded.

4 I think--and please, just, if you want to add more
5 detail to assist the Commissioner, please do so, but again, this
6 is something you would point to the Commissioner this is the
7 Response?

8 A. Yes.

9 COMMISSIONER HICKINBOTTOM: Your response is similar
10 to the farmers and fisherfolk response?

11 THE WITNESS: Correct, um-hmm.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 BY MR RAWAT:

14 Q. I think the reason we're taking you to the Warning
15 Letter, in particular, though, Dr O'Neal-Morton, is the last set
16 of criticisms, and that is at page 11, that there was a failure
17 to cooperate with the audit process conducted by the Auditor
18 General, and this was in breach of section--it should be section
19 109 of the Virgin Islands Constitution as well as section
20 19(2)(d) of the Audit Act. This failure to cooperate was
21 deliberate with the intention either of delaying or impeding the
22 audit process. This failure meant that information in relation
23 to Government's spending of public money was wrongfully withheld
24 resulting in an absence of transparency and accountability.

25 COMMISSIONER HICKINBOTTOM: My understanding of your

1 evidence--I want you to add anything that you want to add--

2 THE WITNESS: Okay.

3 COMMISSIONER HICKINBOTTOM: --is that, following the
4 advice of the Attorney General, you accept that there was--I was
5 going to say "may have been", but you accept that there was a
6 breach of section 109 of the Constitution and section 19(2)(d)
7 of the Audit Act of 2003 because the Attorney has confirmed that
8 you ought to have complied immediately with the request. But
9 you don't--you don't--can I just go on? I want to hear from
10 you, but you say, going on to the second sentence, that failure
11 was not deliberate and there was no intention to delay or impede
12 the audit process. It was a result of your understanding that
13 the Internal Auditor and the Auditor General were sequential
14 exercises; and, therefore, the Auditor General was not onstream
15 at that time.

16 THE WITNESS: And also a matter of having the
17 information in addition to that.

18 So, a breach implies that a person intentionally set
19 out to break the rules, and I cannot accept that because that is
20 not what I did.

21 COMMISSIONER HICKINBOTTOM: No--no, I understand that.
22 I understand it wasn't--I understand your evidence that it
23 wasn't intentional.

24 THE WITNESS: Um-hmm.

25 COMMISSIONER HICKINBOTTOM: But section 19(2)(d) say

1 that you have an obligation to comply with the Request for
2 Information and for one reason or another--and you have
3 explained this sequential point again, really, that's the reason
4 you didn't do it--but your main point is, I think, is that any
5 failure was not deliberate, and you have no intention of
6 delaying or impeding the audit process.

7 THE WITNESS: I have no intention, Mr Commissioner, of
8 doing that.

9 COMMISSIONER HICKINBOTTOM: Is there anything else you
10 want to add in respect of this potential criticism?

11 THE WITNESS: No, you summed it because the criticism
12 was that this failure to cooperate was deliberate, which it was
13 not, it was not deliberate, and intention of delaying or
14 impeding the audit process. I totally disagree with that.

15 My experience in the Public Service, I have not had
16 any difficulty with following any rules in the Public Service.
17 I'm a stickler for rules. Anybody that works with me can tell
18 you that.

19 So, to insinuate or even indicate that I would be a
20 Public Officer that would blatantly break the rules is outside
21 of anything that I stand for. I would never do that. I love my
22 country, I love to follow rules, I'm a law-abiding citizen. I
23 would never do that.

24 COMMISSIONER HICKINBOTTOM: Thank you very much.

25 BY MR RAWAT:

1 Q. Dr O'Neal-Morton, can I take you to the last one
2 because it's in the same vein, which is that there was a failure
3 to cooperate with the audit process conducted by the Internal
4 Auditor, this included failing to provide monthly reports with
5 respect to the stimulus programme, failure to provide any (drop
6 in audio) as to the implementation of these programmes. Both
7 the--and you will be familiar with their Reports--basically both
8 the Auditor General and the Internal Auditor explained that they
9 sought for or did not receive information when they sought it.

10 But again, you will have seen from the advice you
11 gave--you received from the Attorney General's Chambers that
12 again there is an obligation on Public Officers to comply with
13 requests from the Internal Auditor. But would your position be
14 similar to that as with the Auditor General, firstly that there
15 was no intent on your part--

16 A. Um-hmm.

17 Q. --not to assist; and secondly that there were other
18 factors at play, including the availability of information?

19 A. And because in this number 10 "and failing to provide
20 any documentation", that is totally untrue. I may have--I
21 provided, as I said before, numbers 1 and 2, there were eight
22 items, and promised as soon as we had gotten them, we would have
23 given them. We are still not completed with the information, so
24 we weren't in a position to provide them.

25 So, saying we did not provide any is totally untrue,

1 and I totally reject that.

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

3 Other than that, is there any other point on those--in
4 particular those two potential criticisms that you wish to draw
5 the Commissioner's attention to?

6 A. Commissioner, I want to say the criticisms that are
7 levied, it must also be borne in mind that, as a Public Officer,
8 this is the first time I experienced an audit; that's number
9 one.

10 Number two, the climate under which I was operating,
11 working on for stimulus trying to get the money out into the
12 community. I came into the Premier's Office as a PS in March.
13 No orientation. I'm still doing my self-orientation because I
14 didn't have any time. I was baptized by COVID. COVID is still
15 continuing. We are still working on efforts because, as a
16 coordinating ministry, we have to coordinate certain reopenings.
17 We are now coordinating for return of the cruise ships, so I
18 have to deal with that, after that we coordinate with Customs,
19 Immigration, Port Authority, Airport Authority, and Health. So,
20 it's still constant work, so it's not negligence. That is not
21 the kind of person I am, and these criticisms do not reflect
22 Carolyn O'Neal-Morton at all. Not at all.

23 COMMISSIONER HICKINBOTTOM: And you have given
24 explanations as to why things happened, and, you know, I
25 understand your evidence, Dr O'Neal-Morton.

1 BY MR RAWAT:

2 Q. May I conclude just in terms of your actual response,
3 Dr O'Neal-Morton. If you got that to hand, please.

4 A. My response, Commissioner?

5 Q. Yes.

6 Which is the--not the Premier's Office's response but
7 the shorter four-page response.

8 Do you have that?

9 A. I have that.

10 Q. Thank you.

11 It's some additional details.

12 You explained there that the--on receipt of the
13 Auditor General's Reports and after her evidence to the Inquiry
14 and that of the Internal Auditor you facilitated in this
15 position carried out by Public Officers assisted by the IRU to
16 look into how the two schemes had been designed and administered
17 to collate information to consider and respond to the Auditor
18 General's Reports for the purpose of the Inquiry, that's the
19 Premier's Office response that we have been looking at.

20 You say the Cabinet--this is at 3--having taken
21 decisions in respect of the schemes, their design and
22 implementation were carried out wholly by personnel in the
23 Premier's Office with some assistance from the Ministry of
24 Finance. I recall that after the Cabinet Decision, the Premier
25 had instructed me and other Public Officers that monies approved

1 by the Cabinet to be distributed urgently.

2 Now, the Commission raised a question about that
3 paragraph with the IRU, which was whether you could provide
4 copies of any disclosure in relation to the Premier's
5 instruction to you and other Public Officers, and the Response
6 that came back was as follows: Dr O'Neal-Morton has confirmed
7 that the information complained to her by The Honourable Premier
8 was not via memorandum or other document. This information was
9 directed to her in the course of meetings of which minutes are
10 not available.

11 Is that right?

12 A. That is correct.

13 Q. So, just in general, minutes--minutes or meetings with
14 The Honourable Premier are not minuted?

15 A. No, not at all. It might have been a situation where
16 we say, Premier, we need to do X, Y, Z, and having gone into his
17 office, we had an issue we need to do not only for this but for
18 other things as well, you need to do X, Y, Z, and he would
19 instruct me as what to do.

20 Q. So, he would just give you a verbal instruction?

21 A. Yes, that would happen.

22 Q. Do you make a record of the instructions, or does
23 anybody--

24 A. Sometimes I do, and sometimes I don't. It depends on
25 the pace of the date, and the pace during this time was very

1 quick.

2 Q. You then deal with the farmers and fishers scheme, and
3 this is paragraph 4. I explained--one of the conditions that
4 you--was put in place was payment of grants to suppliers of
5 equipment and materials sought by applicants for their
6 businesses. You say: "I explained this problem to the Premier
7 and asked whether he would agree to the payments being made to
8 the applicants rather than to the suppliers", and you say he did
9 agree to the proposal.

10 And this Commission asked you, through the COI, to
11 provide copies of any disclosure in relation to the proposal and
12 Premier's agreement to the same, and you--the answer was
13 Dr O'Neal-Morton has confirmed that the information conveyed to
14 her by The Honourable Premier was not via memorandum or other
15 document. Information was directed to her in the course of
16 meetings of which minutes are not available, so this was another
17 situation where it was just you went and spoke to the Premier,
18 and he gave you a verbal direction.

19 A. Correct.

20 Q. At 5, you say that you had in September 2020 informed
21 the Premier that the sums allocated for churches was
22 insufficient after monies had been allocated to schools, to
23 fulfill the purpose of the Cabinet in approving the grants, and
24 you suggested that a paper be put to Cabinet to approve an
25 increase in the amounts to the church, and he agreed to that

1 suggestion that papers approved by Cabinet on 28th of
2 September 2020.

3 And you were asked again by the Commission to provide
4 copies of any disclosure where the Premier was informed in
5 September 2020 that sums allocated was insufficient, and the
6 answer back from the IRU was exactly the same terms as I just
7 read out. And so, again, it was a verbal agreement from the
8 Premier.

9 A. Well, the proof was in the paper.

10 Q. I see.

11 A. It was put in the paper.

12 Q. At 6, what you say is: "As far as I recall, I did not
13 consult Premier further on any of the details of the scheme.
14 These were left to the Public Officers and personnel in the
15 Premier's Office to design. The grants were then made by the
16 Finance Planning Officer who worked with Treasury in the usual
17 way to make the payments. In the case of farmers and fishers,
18 each applicant was required to sign a statement agreeing to be
19 liable for proving to the Government how the money had been
20 used.

21 Now, the Commission then asked for copies of any such
22 statements signed by applicants. The Response from the IRU was
23 that Dr O'Neal-Morton has confirmed that the information
24 conveyed to her by The Honourable Premier was not via memorandum
25 or other document. This information was directed to her in the

1 course of meetings of which minutes are not available. That
2 seems, as a response, not to fit in with the query that the--or
3 the request that the Commission made, which was to see the
4 signed statements.

5 A. Number 6?

6 Q. Yes.

7 A. Because, actually, what happened is that when there
8 was somebody came to collect their cheques, they received the
9 letter, of course, we say they're supposed to make a claim as to
10 what they're spending the money on, and they do on the sign-out
11 sheet, of course, with their ID, so that's why they were signing
12 the sheet to say they received the money. Signing the statement
13 might have been incorrect. Probably could sign a sheet, a
14 statement would have been--publishing that to sign a sheet
15 agreeing to be liable, because once you sign the sheet, you say
16 that you have collected the cheque, and the letter with the
17 cheque say you have to provide the information.

18 Q. I suppose my point was more directed towards the--the
19 request of the Commission was to see statements that were signed
20 by applicants, whether those statements or sheets but to see the
21 documentation, but the Response that the IRU provided was that
22 you had not minuted a discussion with the Premier which didn't
23 seem to make much sense.

24 A. Whatever it is, if you send a request, we can have
25 that--we can have this sheet, but the sheets without the

1 sample--are you interested in a sample and a sheet?

2 Q. Probably the best way forward is for us--what you're
3 saying, Dr O'Neal-Morton, is that the applicant would sign on a
4 sheet and be given--it's signed for the cheque and that be given
5 a letter which would tell them--

6 A. They account for it.

7 Q. But they don't sign a statement or a document that
8 says "I agree to be liable"?

9 A. No, they would sign a sheet because when you sign a
10 sheet you say "I received the cheque", but the cheque was a
11 letter saying you were liable for providing some information, so
12 maybe the semantics will probably--

13 Q. What they don't sign is a piece of paper saying "I
14 agree to be liable"?

15 A. You sign the sheet saying you have accepted the cheque
16 and the letter that says you're liable, so it's semantics; that
17 is what actually transpired.

18 Q. Given the letter saying you will be liable?

19 A. They are.

20 Q. But they don't sign any kind of piece of paper that
21 says "I agree to be liable"?

22 A. No, but when you sign the sheet that says you've
23 collected the cheque, and the letter is in there, and the letter
24 says that by collecting this cheque you will agree you are
25 liable.

1 COMMISSIONER HICKINBOTTOM: Did the Attorney General
2 look at that letter to make sure the money was recoverable?

3 THE WITNESS: I can't say. I will have to find out--I
4 will have to double-check that, Mr Commissioner.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 BY MR RAWAT:

7 Q. If I could just have a moment, please, Commissioner.

8 A. If you can write that in the--

9 COMMISSIONER HICKINBOTTOM: Yes. We will write it,
10 Dr O'Neal-Morton.

11 THE WITNESS: Okay.

12 (Pause.)

13 MR RAWAT: Commissioner, I think I have reached the
14 end of my questions.

15 Can I conclude by thanking Dr O'Neal-Morton for her
16 time today. It has been a longer-than-usual day, and she's been
17 patient with the Commission, and we're grateful for the time
18 that she's afforded us.

19 And can I also thank her for the way in which she has
20 given her evidence today.

21 THE WITNESS: You're welcome.

22 COMMISSIONER HICKINBOTTOM: Yes, and can I echo that,
23 Dr O'Neal-Morton. It has been a long day. Thank you for your
24 patience.

25 THE WITNESS: You're welcome.

1 COMMISSIONER HICKINBOTTOM: Thank you for your
2 patience.

3 THE WITNESS: You're welcome.

4 COMMISSIONER HICKINBOTTOM: Thank you for the way in
5 which you have given your evidence.

6 THE WITNESS: You're welcome.

7 COMMISSIONER HICKINBOTTOM: It's been very useful and
8 helpful. Thank you very much.

9 THE WITNESS: Okay. You're welcome. Thank you, too.

10 (Witness steps down.)

11 MR RAWAT: We resume on Monday with one witness.

12 COMMISSIONER HICKINBOTTOM: At half past 9:00, I
13 think.

14 MR RAWAT: We're planning to sit early at half past
15 9:00.

16 COMMISSIONER HICKINBOTTOM: Okay, good. Thank you
17 very much. Thank you again.

18 (End at 6:39 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 dark ink, appearing to read "David A. Kasdan", is written over a horizontal line.

DAVID A. KASDAN