

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 46

(MONDAY 11 OCTOBER 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Solicitor General Mrs Jo-Ann Williams-Roberts and Geoffrey Cox QC of Withers (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Glenroy Forbes gave evidence.

Hon Andrew A Fahie gave evidence.

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Session 1

Ms Jo-Ann Williams-Roberts, Solicitor General (attending remotely)

Mr Bilal Rawat

Mr Glenroy Forbes (attending remotely)

Mr Steven Chandler, Secretary to the Commission
Mr Andrew King, Senior Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

Session 2

Mr Geoffrey Cox QC, Withers LLP (attending remotely)

Mr Bilal Rawat

Hon Andrew A Fahie

Ms Juienna Tasaddiq, Assistant Secretary to the Commission
Mr Andrew King, Senior 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: Good morning, Mr Forbes.

THE WITNESS: Good morning, Commissioner.

COMMISSIONER HICKINBOTTOM: I think we're ready to start.

Mr Rawat.

MR RAWAT: Good morning, Commissioner.

Our first witness today is Mr Glenroy Forbes.

BY MR RAWAT:

Q. Mr Forbes, can I, before we start, just apologize to you because you were scheduled to give your evidence Friday afternoon and unfortunately, the hearing overran, so we couldn't take your evidence on that day, but we're very grateful that you were able to make yourself available for this morning.

MR RAWAT: Commissioner, can I just for the record state that at the moment the participants--no participant is legally represented in the hearing at present.

COMMISSIONER HICKINBOTTOM: Yes, thank you.

BY MR RAWAT:

Q. You will be used to the way we do things, Mr Forbes, in terms of various--the approach, but can I just check that you've received the relevant bundles today?

A. Yes, sir.

Q. Thank you.

1 And can I ask you just to remember always to keep your
2 voice up. If the two of us speak over each other, don't worry,
3 I will stop, and I will let you finish your answer.

4 A. Okay.

5 Q. Can I ask you a general question first to begin with,
6 and that is about--it's in part a follow-up from the evidence we
7 took from you in relation to the Contracts that Grace Consulting
8 entered into with Government. But we saw there that that was a
9 situation where a consultant was working on a contract before it
10 had been signed, and so there was a lag. In two contracts,
11 there was a lag of two months where the--which meant that the
12 Consultant was working and then the Contract was essentially
13 backdated.

14 What is the processes that allows Government or what
15 are the processes that allow Government to pay a contractor
16 before the Contract has been signed?

17 A. Commissioner, I am not aware of any formal procedure
18 per se, but there had been--during my time at the Ministry of
19 Finance over the years, there have been a number of incidences
20 where a contractor would have embarked on consulting, would have
21 embarked on a project before the formality of a contract was
22 signed, and in those cases, the Accounting Officer or the head
23 of the agency would always intervene and seek the approval of
24 the Financial Secretary. Well, they would have sat with the
25 Accountant General normally, and then the Accountant General

1 would usually contact the Financial Secretary and ask whether or
2 not a payment can be made.

3 Speaking from a personal standpoint, when that
4 was--when something like that is put to me, I try and make sure
5 that I'm satisfied that the work that was being--that the work
6 that was--that is set to being done is actually being done, and
7 there was no attempt to, you know, circumvent any of the
8 procedures. It's a matter of, you know, things not proceeding
9 the way they're supposed to proceed, and there was a delay.

10 I mean, two months is quite a long time, but, I mean,
11 there are known to be delays. And once I was satisfied the
12 person that entered into the Contract in good faith, there was
13 no attempt to circumvent any of the procedures, I would normally
14 approve it or indicate to the Accountant General that she can
15 make the payment.

16 Q. Is it down to the--I mean, could the Accountant
17 General make the payment without referring the matter to the
18 Financial Secretary or does it require the Financial Secretary's
19 sign-off?

20 A. Well, the law as it relates to the Accountant
21 General--right?--it says that she must satisfy herself that any
22 charge against the public purse is a correct or a right charge,
23 and without a signed contract in those instances, she cannot be
24 totally satisfied that, you know, our requirements have been
25 met. So, the practice has been to refer the matter up to the

1 Financial Secretary.

2 And of course, in my case, I would always have a
3 conversation with the agency, whether it be Permanent Secretary
4 or Head of Department to find out exactly what was some of the,
5 you know--some of the difficulties or the hurdles that could not
6 be scaled that prevented the signing of a formal contract.

7 Q. What about a situation where the contractor begins
8 work and doesn't put in any invoices until the Contract is
9 signed? Is that presumably would not require the input of the
10 Financial Secretary?

11 A. No, it will not, no.

12 It's only those instances where the contractor or the
13 Consultant is agitating or asking to be paid.

14 Q. The main topic that I would like to ask you questions
15 about today is the Government's COVID Stimulus Programmes which
16 you were involved in setting up. You have previously given some
17 evidence to the Commissioner about this, and you explained that
18 you chaired a task force that was set up by the Premier which,
19 in turn, led to the setting up of an Implementation Committee.

20 Could you just clarify one detail, please, Mr Forbes,
21 and that is: Was more than one Implementation Committee set up?

22 A. Not from my end, sir. I only set up one
23 Implementation Committee, and it was an ad hoc Committee,
24 actually.

25 Q. The reason I asked is we've seen Cabinet Decisions in

1 relation to individual strands of the Programmes, so, for
2 example, in relation to the farmers and fishers programme and
3 the SME programme, that Cabinet decided that there would be a
4 committee of Public Officers set up to take responsibility for
5 each programme, and that has either been described as a
6 committee or a working group. It's not clear whether there was
7 one working group/committee covering all strands--all parts of
8 the Programmes or there was a committee for each programme, but
9 were those distinct from the Implementation Committee that you
10 set up?

11 A. Yes, Commissioner, they were, I believe.

12 Commissioner, the Implementation Committee that I set
13 up was on my own volition. I did not consult with Cabinet or
14 anyone for that matter. I just figured that if we are going to
15 be rolling out these initiatives that there needs to be
16 some--some grouping with the inputs from persons like in the
17 Ministry of Finance to say how these things should be done, and
18 that is what I did.

19 Q. You have the first bundle with you, please.

20 A. Um-hmm.

21 Q. If you could turn up page 428, please.

22 This is a document from April 2020, and it's headed
23 "BVI Government's Policy Response to the Coronavirus Crisis",
24 and it carries at the bottom the line "Coronavirus Economic and
25 Fiscal Stability Task Force", so that's the Task Force that you

1 set up, isn't it?

2 A. No. That's the Task Force that the Premier/Minister
3 of Finance set up and asked me to chair it. And this was the
4 Policy coming out, the policy recommendation coming out of that
5 particular Task Force.

6 There was a task force that the Premier had set up,
7 and then I found sort of a working group which I called a "Focus
8 Group" within that Task Force that basically did the secretarial
9 work and, you know, most of the research and what have you. It
10 was a gathering of information. And this Report, this was
11 the--which was sent to Cabinet as Government response to the
12 COVID virus crisis.

13 Q. When you speak of your Focus Group, who was involved
14 in your Focus Group? Was it just drawn from officers within the
15 Ministry of Finance, or did you go Government-wide?

16 A. No, there were a number of persons--well, the Task
17 Force itself had a number of persons from all walks of life I
18 should say, public and private, including the Statutory Boards,
19 but in the Focus Group, there were no one from the private
20 sector, at least for that little core group, I don't think
21 anybody was from the private sector but from different
22 departments are not only the Ministry of Finance.

23 Q. I think you, on the last occasion, gave evidence about
24 the Stimulus Programmes, you mentioned that it was a struggle to
25 submit documents to Cabinet as required and that the Task Force

1 may have submitted only one report, and you described that as an
2 "interim report". Was this the Report that you had in mind,
3 Mr Forbes?

4 A. No, this was not--this is not a report. This
5 particular report went to Cabinet, and Cabinet endorsed this
6 Report, all right? I don't have access to the papers, you know,
7 the Cabinet Decision, but I think Cabinet endorsed this
8 particular report.

9 And then there was another report which was the
10 immediate--I can't remember the name of the Report, so it was
11 immediate relief.

12 Q. Can I pause you there. I think I might be able to
13 take you to that Report in a moment, but before we leave this
14 one, could you turn up page 454.

15 A. Yes.

16 Q. This is a table in that Task Force Report. And before
17 I ask you about it, who would have been responsible for drafting
18 this Task Force Policy Paper?

19 A. I said we had--we had a Focus Group, and within that
20 group, a number of persons took turn drafting sections of the
21 Report.

22 (Overlapping speakers.)

23 Q. Go on. Please finish.

24 A. No, I was about to say I believe one of the main
25 scribes of the particular report was a concern, actually, to

1 Government Ms "Pat Leanne" Johnson (phonetic).

2 Q. Thank you.

3 If we look at this, there is a table there where it's
4 summarizing the policy description and costing it and then
5 giving funding sources, so this is obviously at a time before
6 there has been a decision to or the arrangement with the Social
7 Security Board has been finalized, isn't it?

8 A. Yes, Commissioner, this was before.

9 Q. If we turn up, then--well, if you just look at the
10 penultimate entry which is assistance to Agriculture and
11 Fisheries sector, economic stimulus for COVID-19 crisis, and
12 that's estimated as 2 million coming from the consolidated fund.
13 It's on page 454, Mr Forbes.

14 A. Yes.

15 Q. Would it be fair to say that, even at this stage, the
16 focus or the intent was to assist commercial farmers and
17 fishermen?

18 A. From the Task Force standpoint, yes, that was the
19 idea, that there need to be some assistance to fisherfolks and
20 farmers.

21 Q. But to those who were operating commercially rather
22 than somebody who was--I think there's a phrase in one of the
23 Reports to "backyard farming", but this was for those who were
24 doing it on a commercial level, wasn't it?

25 A. Commissioner, I cannot be--I cannot be certain about

1 that because the whole idea was that there was the issue of food
2 security had reared its head, and we were looking as a group,
3 how we're looking at areas that were mostly impacted by the
4 closure of the cruise pier, the lockdown that was coming or
5 about to happen. Those were the things that we were looking at
6 and we're seeing that these people need immediate relief in that
7 area.

8 So, the way the economy in the BVI works sometimes is
9 very hard to say who were commercial and who were not
10 non-commercial, but my advice, my consistent advice to the
11 Minister of Finance during this entire period was that wherever
12 possible, all the initiatives should have some element of
13 employment retention. In other words, anyone who had the job
14 should be assisted or encouraged to keep that job or some
15 semblance of that job because that's the only way we would be
16 able to restart our economy, and that was my advice throughout
17 this entire thing, I think it's advice that's still solid--or
18 "relevant", I should say.

19 Q. If you turn up page 466, please.

20 A. Um-hmm.

21 Q. This is a document headed "Implementation of the
22 Immediate Relief Package Update Report", and it says: "Primary
23 objective of this bi-monthly report is to facilitate the
24 Financial Secretary in providing an update to the Minister of
25 Finance on the implementation of the Immediate Relief Package by

1 the Ministries, Departments and Statutory Bodies as approved by
2 Cabinet 14th April 2020".

3 Is this what you were thinking of?

4 A. Yeah, okay. There was--there was a report that says
5 "immediate relief"; right? A Report that recommended or
6 suggested immediate relief to certain sectors of the economy.

7 And this Report here was actually reporting the
8 Implementation Committee that was set up, was now reporting on
9 their work or their activities in assisting the various agencies
10 in packaging and ruling out the Stimulus Packages or the
11 Immediate Relief Packages that the overall Focus Group or the
12 Task Force had recommended.

13 Q. So, do you think that, prior though this, there was an
14 earlier report or an earlier document of some sort?

15 A. There was a document. There was--there was maybe, if
16 my memory is slipping me, but in the Policy Response, that
17 Response must have recommended certain relief that Government
18 should consider, and this Report that you brought me to on
19 page 466 is actually reporting on the Implementation Committee
20 efforts and actually implementing those relief measures.

21 Q. So, you think that this Report is responding to the
22 earlier Policy Paper that we looked at?

23 A. Yes, it has to be that, yeah, I guess.

24 Q. Thank you.

25 If you could turn up, please, just before we turn up

1 the next document but just take you back to this because your
2 evidence on the last occasion was that, in terms of reports from
3 the Implementation Committee or from the Task Force about only
4 one report found its way to Cabinet--

5 A. Um-hmm.

6 Q. --I have shown you two documents now. Can you shed a
7 little more light on how easy it was to get reports to the
8 Cabinet?

9 A. Commissioner, the entire exercise in terms of for us
10 assessing the impact of COVID-19 on various sectors of the
11 economy was really a difficulty because there is no collation,
12 there is no collection, central collection of data--well, I
13 shouldn't say there is "no". There is some by the Central
14 Statistics Office say so, but it's not comprehensive. So one of
15 our greatest staff was to gather information.

16 The Task Force or the Focus Group working within the
17 Task Force set up a number of--they had a number of
18 questionnaires, they did interviews with various persons, trying
19 to gather information in order to produce a report on what was
20 happening or what should have--was about to happen.

21 And then I think when it was made to establish the
22 Task Force, I had a requirement to report to Cabinet on a
23 monthly basis. I remember I had asked for extensions on more
24 than one occasion of the Premier because it was almost
25 impossible to deliver on the task that I was sat.

1 But the Report I talked about the last time, there was
2 a draft report that was put together by the Task Force, and I
3 don't have a copy of that draft report. It must be somewhere in
4 the Ministry of Finance, but I don't think that that Report was
5 ever taken in its entirety to Cabinet. Maybe sections were
6 taken, but I don't know--I don't think the entire report,
7 unlike, say, the Policy response, which was taken to Cabinet in
8 its entirety. I don't think that last report by the Task Force
9 was taken to Cabinet as a whole.

10 Q. Can you give an approximate date for that draft
11 report?

12 A. I can't. I can't, but if the record--if one were to
13 search the records, you will see that I was given a date to
14 submit the Report, and I asked for an extension. I don't
15 remember if that was two weeks or what the case might be. So,
16 it would have been like two to three weeks after the original
17 deadline for the Report was given to us.

18 Q. If you turn up, please, page 526.

19 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Forbes, just
20 before you do, could you just help me, Mr Forbes, on one page in
21 the document that we have been looking at, and that's 476. 476,
22 which is about the Agriculture and Fisheries sector relief
23 package, and down the right-hand side of the page there is a
24 description of the Policy which is being implemented, and that's
25 described as--the Policy is (reading) provide a stimulus for

1 fishers and farmers as a mitigative measure against food
2 shortages because of the rapid spread of COVID; second,
3 commercial farmers and fisherfolk are the recipients of the
4 stimulus; and third, assistance would take the form of provision
5 of materials and equipment.

6 Does that--it's obviously a summary, but does that
7 summarise the Policy accurately?

8 THE WITNESS: Commissioner, before I give you a "yes"
9 or "no" answer, I need to put something in context.

10 I think earlier I was taken to a page that shows the
11 Government Policy response to the coronavirus crisis. When that
12 was done, and we were thinking about coming up with various
13 packages, the various initiatives, I had instructed the
14 Implementation Task Force--the Implementation
15 Committee--right?--along with the Focus Group, that for each
16 initiative that was coming forward, we would have to prepare a
17 Policy Paper for each one that would fall within the overall
18 policy statement that was approved by Cabinet.

19 And this that you're seeing here now as you refer me
20 on page 476 is one of those--is one of those policy documents
21 that were designed for this particular stimulus package
22 initially; right?

23 But I must go on and say again, Commissioner, that the
24 Task Force made recommendation for these immediate relief
25 matters, and we were busy working on that, I mean, internally

1 the Task Force with the Implementation Committee, we were
2 working on that at the time but at some--at one point--I can't
3 remember the exact date but I saw--know from one of these
4 documents I saw it--the Premier announced his stimulus package;
5 right?

6 And then my focus was then turned to making sure that
7 that package was implemented as best as we could in the
8 circumstances, okay? So, what I'm saying in a very long-winded
9 way is that the matters that were in the Premier's stimulus
10 package, there was not a one-to-one correlation with those as
11 were with the Immediate Relief Package that the Task Force had
12 produced.

13 COMMISSIONER HICKINBOTTOM: I understand.

14 So, this document was prepared before the Premier's
15 announcement and after the announcement that was the Programme
16 that you focused on in terms of implementation?

17 THE WITNESS: Yes, Commissioner.

18 This is what we envisaged when we first put forward
19 our recommendation, okay? And after the Premier announced his
20 stimulus package--right?--we obviously did a little trick here
21 and there, but I don't think that these policies in here--I
22 don't think they mirror exactly what was eventually implemented.

23 COMMISSIONER HICKINBOTTOM: I understand that. That's
24 very helpful. Thank you, Mr Forbes.

25 Mr Rawat.

1 BY MR RAWAT:

2 Q. If you turn up, please, Mr Forbes, just page 526.
3 This is called a Pre-Report to the Minister of Finance, it's
4 dated 30th of April 2020, and it seems to have been prepared by
5 the Task Force because if we look at page 530, you can see under
6 "Next Steps", it says: "The Task Force will complete a full
7 report on the impact of COVID-19 on the economy for submission
8 on 11th of May 2020 to accompany Reports by the Financial
9 Secretary/Ministry of Finance on implementation of the Immediate
10 Relief Package".

11 So, if you turn back to 529, I just want to ask you
12 one question on that page?

13 A. Um-hmm.

14 Q. If you look at small letter (i), one of the--and this
15 is a section of the paper that's headed "scoping of economic
16 stimulus package, one of the points is provide incentives to
17 drive investment in agrobusiness to support food production in
18 Agriculture and Fisheries". And what's noted is the "support
19 can be provided through Technical Assistance and funding from
20 International Organizations". And you say "engagement has
21 already commenced with these agencies. Discussions will
22 continue to further define exact Technical Assistance needs".

23 Could you assist the Commissioner a little further
24 with explaining a little more the reference to agrobusiness?
25 What was the intent behind this proposal?

1 A. Commissioner, I'm afraid I can't be very--I cannot be
2 very helpful on that, but I know that--because the Task Force
3 itself had some technical people on it, and they had all ideas
4 about how we could stimulate the economy and what have you, and
5 I guess this is one of the things that they put forward, but I
6 cannot give any details as to how this agrobusiness would work.
7 I'm not sure.

8 Q. If you turn up--if we just quickly, as we go through,
9 if we just look at 534, just sort of get ourselves orientated in
10 terms of chronology, this is a paper dated 15th of May 2020
11 submitted by yourself as Chairman of the Task Force on the
12 economic stimulus package, so that seems to be on the papers
13 that we have, the next step in the sequence.

14 But if we then go, please, to 559.

15 A. Um-hmm.

16 Q. This is a letter you write on the 25th of May 2020 to
17 the Director of the Social Security Board, and it's in relation
18 to obtaining funding or a grant from the Social Security Board.
19 You write that the Premier has further directed that I, as
20 Financial Secretary, work with your Board to ensure the proper
21 accountability, transparency, and good governance for all funds
22 that are so granted. And then you say the intended use purpose
23 of the grants broadly outlined in the below table, and we then
24 see how the grant sought is broken up, so you have food
25 production, loans to local businesses, stimulus grants, hotels,

1 social needs, transportation, all broken down there.

2 And in terms of what we see at 2 in that table, that
3 must be, mustn't it, in terms of food production, Agriculture
4 and Fisheries Grant, directed to those who are going to work
5 commercially as farmers and fishermen; would you agree?

6 A. As I said, Commissioner, using the term "commercial",
7 I'm not 100 percent certain that if it's just meant for
8 commercial fishing, fisherfolks.

9 Q. What was it meant for, then, do you think, Mr Forbes,
10 because this is your letter. You're better able to assist than
11 I would be.

12 A. Yeah, but, Commissioner, that particular table, if we
13 were to check--I believe it did--I would have--if you checked
14 the information, the record, you will see that that table
15 basically replicated the Premier's announcement of his stimulus
16 package.

17 Q. Is that the announcement that was made on the 28th of
18 May, 2020?

19 A. Yes, Commissioner, I believe it would have been that
20 announcement, yes.

21 Q. Could I ask you about one more detail, then, and that
22 we find it at 562. This is a letter written on the same day by
23 The Honourable Premier, this time to the Chairman of the Social
24 Security Board, and it sets out again a table which mirrors the
25 one in your letter. But if we go to page 563?

1 A. 563, uh-huh.

2 Q. Under the Table, The Honourable Premier notes, "please
3 note that these priority areas were arrived upon based on the
4 policy report and plan submitted to the Government by the
5 coronavirus economic and fiscal stability Task Force".

6 The letter then continues: "Additionally,
7 accountability, transparency and good governance are of utmost
8 importance. The Government has set an overall objective that
9 funds applied in the Territory's COVID-19 response strategy,
10 regardless of the source, must reach the core of our people and
11 businesses in the BVI who are in need and should, as far as
12 possible, have a meaningful impact on the economy. The Ministry
13 of Finance is also charged with ensuring that the funding
14 received is properly managed based on all financial regulations
15 and laws that apply to public funds.

16 Also to ensure accountable and transparent application
17 of these funds, the Policy position is that, except in the case
18 of the business grant, all checks must be paid directly to the
19 providers of the relevant goods or services, not to the
20 recipient of the grant. In the case of business grants, there
21 must be clear guidelines for due diligence and monitoring to
22 ensure that these businesses make reasonable efforts to sustain
23 employment in this COVID-19 era".

24 And then it says: "The Financial Secretary, who is
25 copied here, will ensure that the aforementioned approach is

1 adhered to".

2 So, again, develop that, please, for the Commissioner.
3 What approach was The Honourable Premier referring to?

4 A. Let me just explain. The \$40 million grant from the
5 Social Security Board were the subject of Grant Agreement
6 between Central Government and the Social Security Board. One
7 of--one of my tasks was to advise the Minister of Finance on
8 entering into that particular agreement, that Grant Agreement,
9 which I did. Subsequent to signing the initial or the original
10 agreement, there were--there were proposals or there were
11 movements to switch monies around from one programme to the
12 next; and, as Financial Secretary, I liaised with the Social
13 Security Board to make the amendment, necessary amendment, to
14 the Grant Agreement in order to comply with the agreement itself
15 because the agreement said that the monies need to be spent as
16 agreed to be spent because there were specific areas that you
17 could use the Social Security money for because we had agreed on
18 those areas.

19 So, if you check the record again, you will see that
20 there were at least two different amendments, on two different
21 occasions to that original grant agreement. Okay?

22 Now, I believe what the Premier was saying is that the
23 Ministry of Finance we are tasked with ensuring that our public
24 funds are spent in accordance with the Appropriation Act, and in
25 this case, that particular grant would form part of a subsequent

1 Appropriation Act.

2 So, he was basically just reminding me, I guess, that
3 I need to ensure that all of the monies that are spent or to be
4 spent, including those from the Social Security Board, are spent
5 in accordance with the existing laws.

6 Q. And that includes, doesn't it, because the Premier
7 makes specific reference to it, that they're spent in a
8 manner--that there is a system in place to ensure that the use
9 of these funds is accountable, transparent, and in keeping with
10 good governance?

11 A. Yes.

12 Q. Could I just take you forward in time now to
13 June 2020. If we could turn up page 558, please.

14 Give me a moment, please.

15 A. I'm sorry, I'm sorry.

16 Okay. Yeah.

17 Q. 588, please.

18 A. 588. All right.

19 Q. This is a memorandum from the Director of Internal
20 Audits to yourself dated the 24th of June 2020, and she writes
21 to acknowledge your correspondence of 18th of June 2020, to seek
22 clarification on the initiative that her office is now charged
23 with auditing. And if I explain that the memo itself relates to
24 the farmers and fishermen programme.

25 She asks for assistance identifying the objectives and

1 outcomes for the initiative, and then clarifications to
2 provide--some clarification in order to provide an accurate
3 assessment of the initiative and then asked to set out a number
4 of questions in relation to farmers and fishermen.

5 If you turn over to 590, we see that having received
6 it on the 24th of June, you then send that correspondence to
7 the--your Deputy, Mr Frett, and ask him to liaise the Premier's
8 Office.

9 A. Yes.

10 Q. If you then look at 591--in fact, if you look at 592
11 first, please. At the bottom of 592, there is an e-mail but
12 it's sent on behalf of Mr Frett to the Permanent Secretary in
13 the Premier's Office on July 16th attaching what's called an
14 "Audit Report" but it's that memorandum, and asking the
15 Premier's Office to respond to the inquiries outlined in it.

16 And then if we turn back to 591, it seems to be that
17 the note is then sent again by your PA on the 21st of July to
18 Mrs Smith-Maduro, who is the Deputy Permanent Secretary in the
19 Premier's Office asking for answers by close of business Friday,
20 the 24th of July 2020.

21 Rather long-winded process, Mr Frett--Mr Forbes,
22 forgive me, but can you refresh the Commissioner what happened
23 after this? Do you recall a response being provided to the
24 Internal Auditor?

25 A. No, I don't recall because I had asked that it be

1 copied to me or I get a copy of it.

2 I know that the Commissioner has taken evidence from a
3 number of persons. I have not been listening to these sessions,
4 so I don't know all that went along, but I want to explain from
5 my standpoint, from my Office's standpoint what I thought may
6 have happened or what I think happened.

7 Remember going back now, Task Force is set up, I put
8 in place--I established this Implementation Committee, whose
9 primary role was to work with the various agencies who would
10 have been implementing the various initiatives; right?

11 Now, what I think has happened with the case of the
12 farmers and fisherfolks programme is that, first, I believe it
13 began with the Agriculture Department because that was what we
14 envisaged that they would be the lead agency in implementing it
15 because the subject was theirs; right? But by this time,
16 apparently the Premier's Office had taken over the lead for that
17 particular programme.

18 So, when I got the request from the Internal Auditor,
19 who by the way, is supervised by myself or as Financial
20 Secretary, the Internal Auditor submits the Reports to the
21 Financial Secretary administratively. I then, in speaking with
22 Mr Frett, my Deputy at that time, who was a part of the
23 Implementation Committee, and he informed me that that programme
24 was now being run through the Premier's Office.

25 So, I sent--I gave instruction for the request to go

1 to the Premier's Office. But I wanted to get a copy of it
2 because I was tasked--as Financial Secretary, I was tasked with
3 reporting to Cabinet on the impact of the implementation of
4 those measures, those immediate relief measures. So, if I had
5 that information, then it would assist me in preparing my
6 reports.

7 A very long-winded answer, but I wanted to make things
8 quite clear, Commissioner.

9 Q. It's helpful because one of the issues--is just the
10 reporting lines. I am going to put some things to you and tell
11 me if I have misunderstood, but once these packages were in
12 place and they were approved by Cabinet at different points in
13 time, but as part of the approval, Cabinet would ask or
14 stipulated that the Internal Auditor should do monthly audits,
15 but also stipulated that there should be a committee of Public
16 Officers overseeing a particular programme.

17 The Permanent Secretary of the Premier's Office has
18 given evidence, and she's explained that three out of four
19 programmes fell under her Ministry. The one that didn't was the
20 small to medium enterprise programme.

21 Now, those committees would presumably have to report
22 on progress. Who would they be reporting to? Was it intended
23 that their Reports would come to you so that you could then take
24 that information to Cabinet?

25 A. When it was first envisaged by myself in terms of how

1 are we going to implement these programmes, the thought
2 that--even before the Premier made his announcement to the
3 Territory as to a stimulus package that he would implement, my
4 thoughts were that the Implementation Committee would be
5 reporting back to me.

6 As a matter of fact, I was the, what we call the
7 "Substantive Chair" of the Implementation Committee, but I had
8 my Deputy actually chairing the meetings on my behalf and
9 dealing with that. But with the way the Programmes was actually
10 implemented and especially the one talking about the farmers and
11 fishers, those persons could not have been reporting to me.
12 They would have to report to the Premier's Office or to the
13 Permanent Secretary or whoever in the Premier's Office because
14 that was not what was envisaged by myself.

15 Q. And post that change, just to avoid confusion, we have
16 an Implementation Committee that you established.

17 A. Um-hmm.

18 Q. You then have at least one committee or possibly four
19 committees that the Cabinet mandates, three of which were
20 chaired by the Permanent Secretary of the Premier's Office. So,
21 those committees or the reality was that those committees would
22 report directly back to Cabinet as necessary; is that right?

23 A. Back to the Cabinet or to the Permanent Secretary and
24 then on to Cabinet, I really can't say because what I envisaged
25 is not what actually developed. It's not what developed on the

1 ground, so...

2 Q. Once that had developed like that on the ground, what
3 was your role in the process as Financial Secretary?

4 A. The--I was desperately trying to get information so
5 that I can fulfill my obligations to Cabinet because Cabinet
6 made a decision that the Financial Secretary was supposed to
7 report on the impact of this stimulus package, and there is only
8 one way I would be able to do that is to get the information so
9 I can report.

10 But if I was consulted--I mean, I have read posts--the
11 particular decision, Cabinet Decision, about the Internal
12 Auditor auditing the various packages or the individual
13 packages--now, in truth in fact--and I'm saying this,
14 Commissioner, because I have a pretty good idea as to what the
15 Internal Auditor should be doing because not blowing my own
16 trumpet, but I was the officer who actually introduced Internal
17 Auditor function to the Government of the Virgin Islands, so I
18 know what the Internal Audit is all about. What the Internal
19 Auditor should have been doing with these Packages, if someone
20 had asked me, I would say, they should have been working along
21 with the various agencies, helping them put in place all those
22 checks and balances that will need to be there to ensure
23 transparency and accountability.

24 So, when the Internal Auditor is writing to me and
25 asking for information, I couldn't give her any information

1 because I didn't know what was in place. I didn't put anything
2 in place.

3 And the only thing, Commissioner, with all due
4 respect, Commissioner, has gone per ship and the reason for that
5 is that have been a lot of cross-working with the two Audit
6 Units because the Internal Audit would be a tool to management.
7 Internal Auditor should be working with management in
8 establishing what our programme they are establishing saying
9 what should be in those programmes to ensure accountability and
10 transparency and good governance--call it what you may.

11 Then post the event, the Auditor General, who
12 performed the post-audit, comes in and conduct an audit. And
13 interestingly, I listened to some of the debate at the time. I
14 didn't really weigh in on it, at least not in writing--I don't
15 think I did--but there was a lot of confusion being introduced
16 in the whole system because persons were--were cross-working
17 basically. The Auditor General, there are claims that any
18 information that she asks for, she should get, and I agree. I
19 couldn't agree more. 100 percent. That's what the law says and
20 that's what should happen. So, any time she asks me for
21 anything, I'll give it to her.

22 However, if a programme is ongoing and an Auditor
23 General goes in and audit, one of the things that comes out of
24 any audit, Commissioner, aside from the Intrinsic Value of any
25 audit is that the Auditor General post-audit will make

1 recommendation that will cite certain infractions or certain
2 problems, and then they would make recommendation, which is
3 extremely important for management, to make such a
4 recommendation as to how it could be fixed.

5 But, if the Auditor General gets into a programme
6 where it's still running, it's still being put in place, she
7 does an audit, the Programme is still ongoing. She makes
8 recommendation as to what should happen, and those
9 recommendations are implemented, at the end of the day, who is
10 the Auditor General auditing? She's auditing herself. That is
11 the problem that has been created in Government, is that the
12 Internal Auditor started auditing something while it was still
13 ongoing. That could create a problem at the end because she can
14 be conflicted out at the end because she would have put her
15 input in and at the end come and audit herself because she made
16 a recommendation. And that's the problem.

17 I'm sorry to sound like I'm giving a lecture, sir, but
18 I think I need to say that just so that the Commissioner can
19 understand certain things.

20 COMMISSIONER HICKINBOTTOM: But, Mr Forbes, you say
21 there was cross-working between the Internal Audit Department
22 and the Auditor General, but what was actually happening is that
23 nobody was doing any audit because neither the Internal Auditor
24 nor the Auditor General wasn't given any information. The
25 Internal Auditor wasn't given any information to do anything.

1 So, in her Report, these sections are simply, effectively blank
2 because she says I was not given the information. We've been
3 told she still hasn't been given any information, and as I
4 understand it, there's no proposal to give her any information
5 until the last cheque or refund has been made, and that's the
6 Internal Auditor, not the Auditor General.

7 So, as you say, something clearly went with wrong, but
8 what did not go wrong was that the Internal Auditor and the
9 Internal Auditor were working at the same time because neither
10 of them were working because neither of them had any data or
11 information.

12 A. And perhaps the reason for that, with 20/20 hindsight,
13 Commissioner, is that Cabinet, in detailing or instructing that
14 the Internal Auditor audit the books, perhaps that was not
15 supposed to happen. What Cabinet should have said, and I said
16 if I was consulted as a face on the matter, I would
17 have--because I saw the paper--but the paper didn't have that--I
18 said the draft paper, I should say, but that draft would have
19 not have in it, at the time when I saw it, that the Internal
20 Auditor was going to audit the books, because I would have said
21 that the Internal Auditor is supposed to work along with the
22 agencies, work with the Departments, put the systems in place,
23 and then she wouldn't be asking for information because she
24 would have been in on the ground floor. She wouldn't know what
25 the information was. That's the problem.

1 COMMISSIONER HICKINBOTTOM: Yeah, I understand that,
2 but the information she was asking for were things like guidance
3 for the distribution of funds. I mean, she was asking for the
4 information that--to which she may have been able to contribute
5 if she got it, information as to checks and balances. She
6 wasn't doing the exercise, which you say--I mean, and I
7 understand the point--that the Auditor General might have done
8 at the end the day, and that is, is it where to look at where
9 all the money had gone and look at how the books balanced. She
10 was asking for information about checks and balances. She was
11 given, as I understand it, in respect of these programmes, such
12 as the farmers and fishermen, nothing at all, and still hasn't
13 been given anything.

14 So, whatever--I understand you're saying that the
15 Cabinet weren't as clear as they may have been in respect to the
16 role the Internal Auditor should have been playing--I understand
17 that--but whatever that role was, she couldn't have done it,
18 could she, because she didn't--she wasn't given anything? And
19 I'm afraid even Auditors need some straw in which to make some
20 bricks.

21 THE WITNESS: Commissioner, I am not arguing against
22 the point that you're making, so I'm just saying that I believe
23 the way things proceeded was not the proper or correct way.

24 The--if you go back, when I established the
25 Implementation Committee, my thinking and my reason for doing

1 that, that Committee bringing the finance skills to that
2 Committee, they would be the ones who would actually try to
3 outline what procedure should be followed, what should be the
4 criteria for making distribution, and all that would have
5 happened. But for some reason that did not happen, and we are
6 in a not too good place right now because that did not happen.

7 COMMISSIONER HICKINBOTTOM: I understand that, and
8 it--the unhappiness about it not happening, Mr Forbes, seems to
9 me to be compounded by the fact that you, because you were
10 effectively in control at this particular stage, but you and the
11 Ministry of Finance said to the SSB, when they took the grant,
12 "We will ensure good governance. We will ensure transparency.
13 We will ensure checks and balances". And for one reason or
14 another, you felt vindicated, made some observations on why this
15 happened, but those checks and balances were not in places as
16 they should have been, it seems to me.

17 THE WITNESS: I am not going to--I'm not going to
18 argue against that point because the record is what it is,
19 Commissioner and something I ask myself, what else could I have
20 done, you know.

21 COMMISSIONER HICKINBOTTOM: Well, I mean, Mr Forbes,
22 you explained, and this is completely consistent with the
23 evidence we've already heard from those in the Premier's Office,
24 but the Premier's Office took this over, and so, although you
25 were involved in the--in setting up the Implementation

1 Committee, it seems on the evidence fairly clear that the
2 Premier's Office took over responsibility for implementing this.

3 Yes.

4 BY MR RAWAT:

5 Q. Could I just ask you to turn up page 178, please.
6 This is just an example of a Cabinet Decision. This is a
7 Cabinet Decision in relation to the transportation stimulus
8 package, but you'll see at (e) that Cabinet decided that this
9 programme will be administered and monitored by a coordinating
10 committee inclusive of--and then it's the Permanent Secretary of
11 the Premier's Office or designate, and someone from the Ministry
12 of PS from Ministry of Transport and Works, and then various
13 statutory body members, directors, but this is--I mean, it's
14 just trying to make clear the distinction between your
15 Implementation Committee, Mr Forbes, and the committees that
16 were set up to administer and monitor individual programmes.
17 This goes to the Commissioner's point. I mean, these were
18 committees that were essentially chaired by the--or overseen by
19 the Premier's Office; is that right?

20 A. It would appear so, sir.

21 Q. So, am I right to say this, that at the beginning of
22 this process, and in particular before the Premier's
23 announcement of the 28th of May, the Implementation Committee
24 may have been playing a significant role, but certainly after
25 that date or on or after--around that date, in terms of the--how

1 individual packages or programmes were being administered and
2 monitored, that was down to other committees, not one involving
3 yourself.

4 A. Yes, Commissioner, that was the case.

5 Q. I mean, did you send anybody from the Ministry of
6 Finance to those committees?

7 A. No, I did not instruct anyone directly. I know when
8 things began with the farmers and fishermen, the whole
9 Implementation Committee was assigned to that particular
10 programme, as I figured or envisaged what happened with all the
11 individual programmes, but even with that one, that one was
12 taken over and led by the Premier's Office.

13 I know the one with the SME, I know the Implementation
14 Committee played a critical role with that one because they were
15 at those meetings throughout, basically, and I know they're
16 definite along the lines that we had envisaged, that we would
17 deal with every single stimulus programme.

18 Q. But again, just taking you back to the point that the
19 Commissioner made about the role that the Financial Secretary
20 plays in ensuring accountability, if the Internal Auditor--well,
21 if the Internal Auditor reports to you, if the Internal Auditor
22 cannot access information from various Departments or
23 Ministries, that undermines your ability as Financial Secretary
24 to understand what's going on, doesn't it?

25 A. Yes, it does.

1 Q. And the document we were looking at, at 178 where it
2 is, that document refers to a monthly audit.

3 Now, you've spoken about the--your view of the two
4 roles of Internal Auditor and Auditor General with the latter
5 doing a post-audit, but what did you understand the Internal
6 Auditor was going to be asked to do in those monthly audits?

7 A. I could not square that circle, Commissioner.

8 I said earlier in the same interview that if I was
9 consulted that that is what, you know, Cabinet wanted, I would
10 have advised differently, that it would be phrased differently
11 or ask the Internal Auditor to do an audit because what was
12 needed there--and it's quite clear in that note to the--the
13 Premier note to Social Security Board that, you know, it need to
14 be transparent and accountable. In order for that to happen, he
15 has to put the systems in place for that to happen, and the
16 systems were not in place.

17 Q. Were you asked for your advice or view as to what
18 systems should be put in place?

19 A. No, I was not.

20 Q. And is your evidence, had you been asked, then you
21 would have advised using the Internal Auditor's Department in a
22 different way.

23 A. That would be one of the things I would have done.
24 And my preference would have been for the same Implementation
25 Committee that was established to go and work with all the

1 agencies that were implementing the stimulus packages, including
2 the Premier's Office. The Premier Office is a coordinating
3 Ministry, and, you know, they could take over any programme they
4 wished to take over, but at the same time the Programme need to
5 have that finance component in it so that Finance can advise
6 what should happen if you're talking about spending public
7 funds.

8 Q. And you've spoken about the, as I said, the benefit of
9 the Auditor General doing a post-audit. But is it right that
10 the Auditor General can decide whenever she wants to carry out
11 an audit?

12 A. Yes, that's correct, she can do that. I'm just giving
13 you an example as to some problem that can occur, you know. She
14 can do an audit any time she wants to do an audit, but I'm just
15 saying if she's going to do an audit and she's going to make
16 recommendation, the Programme is still ongoing, and at the end
17 of the day, if those Recommendations are implemented according
18 to what she says, when she comes to audit, she'll be basically
19 auditing herself to a certain extent, and that can't be right.

20 Q. If you--and you've said that the law requires--if the
21 Auditor General asks for information that, under the law, a
22 Public Officer is required to hand it over; is that right?

23 A. Yes, Commissioner.

24 Q. And what's the position in relation to the Internal
25 Auditor? If the Internal Auditor seeks information from a

1 Public Officer, what's the responsibility on that officer?

2 A. The internal--I haven't read the--I haven't read the
3 Internal Audit Act in recent times, so I can't remember exactly
4 what it's about. One would think that she has similar powers.
5 And if she doesn't, the thing is to report it to me. And the
6 FS, under the Audit Financial Management Act, any information if
7 it's asked for he should get it once its--one public
8 information--or concerning the public finances.

9 Q. You said that had you been asked, you would have given
10 advice as to the way that the Internal Audit Department can be
11 utilized, but you said that was one of the measures you would
12 have advised. What other measures would you have suggested?

13 A. One of the things is that--advised in terms of what?
14 Let me get some clarity on that, sir. In terms of what? In
15 terms of the packages themselves? There were other packages
16 themselves, or in terms of the rule of the Audit?

17 Q. Well, I think you've spoken of the role of the Audit.

18 A. Um-hmm.

19 Q. Including advice to have the Internal Auditor there on
20 the ground as matters were ongoing, giving advice.

21 A. Um-hmm.

22 Q. With which, as I understand it, what you're saying is
23 that that would have afforded, if you like, immediate--that it
24 be an immediate source of advice to ensure that the process was
25 accountable and transparent and keeping in line with the

1 principles of good governance.

2 A. Yes, sir.

3 Q. But you're saying that would be just one measure you
4 would have advised.

5 A. Um-hmm.

6 (Overlapping speakers.)

7 The overriding thing that I wanted to happen is that
8 the same Implementation Committee that I established, that that
9 Committee was actually involving an entire process in terms of
10 designing the delivery of the stimulus and at the same time
11 putting things in place so that you can actually report on what
12 has happened, and later on all the audit trails would have been
13 in place, and the Auditor coming along after that would have all
14 that she needed to audit the Programme, each programme.

15 Q. Given that that's the advice that you would have
16 given--I mean, once matters were being handed over to the
17 Premier's Office, what role was there for the Implementation
18 Committee?

19 A. It hardly existed. Reports were coming back to me,
20 mostly oral reports, coming back to me and saying that they are
21 not--the advice that they are giving, at least in my office--an
22 officer in my office who was on the Implementation Committee,
23 was coming back and telling me the advice that they're
24 giving--that they're trying to give is not being taken on, you
25 know, that--

1 Q. Not taken on by who?

2 A. By the Premier's Office.

3 Q. And did that officer reporting backing to you give any
4 reason why the Premier's Office was not taking advice?

5 A. Well, the only thing--the only thing that--the
6 recurring statement or sentiment was that, you know, there was a
7 lot of pressure from the expected recipients in the public to
8 get some relief. This is understandable. And there were
9 general feelings that it was taking too long, and I guess we at
10 the Ministry of Finance, you know, we're taking too long to get
11 this thing moving and need to get--get out to the people. That
12 was the real current scene that was happening.

13 Q. And was that what the--was that what the officer
14 reported back to you, or was that just the general impression
15 you got?

16 A. That's what officer reported back to me that there was
17 quite, you know, there was quite a great push to move things
18 around--along quickly or more quickly. And they, themselves,
19 were frustrated because they weren't getting--they were asking
20 for certain information so they could make informed decisions,
21 and they were not getting information--you know, it's--you know,
22 it was--

23 Q. I'm sorry to talked across you, Mr Forbes.

24 A. No, no.

25 Q. When you say were (overlapping speaker) getting

1 "frustrated", who are you referring to?

2 A. The officers who were on the Implementation Committee.
3 They were saying that, you know, because one of the things, I
4 said earlier in these proceedings that it was envisaged that
5 each individual programme to be implemented would have a policy,
6 a policy position or policy paper, for each one and not a policy
7 fall within the overall policy that Cabinet had approved in
8 terms of the implementation of the stimulus packages.

9 So, I was sent to office--people should not start
10 distributing monies or what have you until they have an
11 overarching policy that they are following, and that policy
12 would indicate what are the criteria for distribution, who can
13 or could be eligible, what amounts based on some of the
14 measurable factors--

15 (Phone rings.)

16 A. Sorry about that.

17 Yeah--

18 (Pause.)

19 A. Commissioner, I'm sorry--I'm sorry about that,
20 Commissioner.

21 Commissioner, can I have two minutes, please? Two
22 quick minutes, a break?

23 MR RAWAT: Certainly, we'll give you a break.

24 COMMISSIONER HICKINBOTTOM: We'll have a five-minute
25 break, Mr Forbes, if that will help.

1 THE WITNESS: Thank you very much, though, because I
2 appreciate it.

3 (Recess.)

4 COMMISSIONER HICKINBOTTOM: Thank you, Mr Forbes.
5 Mr. Rawat.

6 MR RAWAT: Thank you, Commissioner.

7 BY MR RAWAT:

8 Q. Mr Forbes, just to pick up on the last piece of
9 evidence that you were giving, you said that officers on the
10 Implementation Committee were coming back to you and raising
11 concerns about advice not being taken. Did you raise that with
12 the Permanent Secretary in the Premier's Office?

13 COMMISSIONER HICKINBOTTOM: You're on mute, I think,
14 Mr Forbes.

15 THE WITNESS: Sorry about that.

16 I don't recall doing so in writing. I may have
17 mentioned it to her, but I can't say definitely I did.

18 BY MR RAWAT:

19 Q. If you turn up, please, 983.

20 Now, this was a set of e-mails that you were not
21 copied into, but essentially on the 3rd of November 2020, the
22 Internal Audit Department e-mails Mrs Smith-Maduro, Deputy PS in
23 the Premier's Office, seeking information in relation to farmers
24 and fishermen. The Deputy Permanent Secretary then e-mails the
25 Permanent Secretary who at the top writes "Dear DS" and this is

1 on the 3rd of November as well--this is confusing to me, I
2 thought that the FS had indicated that he is responsible for
3 reporting on these stimulus packages.

4 Now, when I asked Dr O'Neal-Morton about this on
5 Friday, she said that she had spoken to you subsequent to this
6 e-mail, and it was agreed that it was the Premier's Office that
7 was responsible for reporting on the stimulus packages.

8 My first question is this: Up until November 2020,
9 were you under the impression that it was for you as FS to
10 report on the stimulus packages?

11 A. I think--I think I said earlier all along, based on
12 Cabinet Decision, I need to report about the impact of the
13 stimulus packages under the Territorial economy, I was under the
14 impression that I had to do that, nonetheless.

15 But as I said earlier, after the Implementation
16 Committee had basically lost its way or was no longer as
17 effective as I thought it should have been, I realized that I
18 could not report because I didn't have the information, so I
19 remember now that you refresh my memory, I remember that PS
20 Morton probably had a conversation with me about that same
21 programme.

22 But what I actually remember is I remember my Deputy
23 at the time, Jeremiah Frett, he was on one--he had some meeting
24 with that same group that our team that PS Morton was heading
25 up, to implement the fisherfolks and farmers packages. That's

1 what I do remember that because initially Jeremiah was working
2 with agriculture, and when it moved to the Premier's Office, I
3 think that Jeremiah also went and was working with them for some
4 period of time, I don't know for how long, but he did say that
5 he went to a couple of meetings at the Premier's Office.

6 Q. But the--this is e-mails from November 2020 after the
7 Premier's announcement in May 2020, were you trying to obtain
8 information about what was happening with the stimulus packages?

9 A. Of course. I said we were working in the Task Force
10 that the Premier set up; right? It dawned on me, given after he
11 had secured the monies from the Social Security, and given the
12 commitment the Government had, it dawned on me that I need to
13 make sure that these packages are implemented according to
14 certain--you know, based on a certain standard; right? So, I
15 went about trying to get the same Implementation Committee to go
16 and work with the various agencies because I thought or I
17 advised that the agencies themselves, in the case Agriculture,
18 should have been the agency that was implementing the particular
19 programme because agriculture would have the data, they would
20 have the information of who the farmers are, they would know who
21 are registered, who do backyard gardening, and what have you.
22 That was my thinking.

23 Similarly, with the Programme that Social Security was
24 doing on behalf of government, the employment, the unemployment
25 insurance, I think, yes, the Social Security Board would

1 actually implement the same, because they are the agency that
2 has all the data, that database was there, and then the only
3 reference they would have to us is if they needed to get
4 something about accounting for the funds and the Implementation
5 Committee will work along with the Social Security Board, and
6 that was my impression all along.

7 So, even when the Premier announced his stimulus
8 package, I still thought that I would be need to be able to
9 report back to Cabinet because Cabinet made a decision earlier,
10 and I wasn't aware that they had rescinded that decision.

11 So, I wanted to work along with the agencies through
12 the Implementation Committee.

13 Q. Were you ever told that you were no longer required to
14 report back to Cabinet?

15 A. No, I was not told that, other than--other than when
16 the PS was speaking to me, he said that that particular
17 programme that they are taking the lead on it, if I can recall
18 what she said to me, that they are leading on that particular
19 thing.

20 Q. And they would, therefore, report to Cabinet?

21 A. I believe--I don't know if she said that to me, but I
22 believe that would have been the take away.

23 Q. But was your ultimatum impression, then, as Financial
24 Secretary, you no longer had an obligation to report on the
25 stimulus packages to Cabinet?

1 A. That--that particular one, that particular one.

2 Q. Right.

3 So, you seem to be saying to the Commissioner that you
4 had struggled as FS to obtain information about how these
5 packages were being administered and monitored.

6 A. Um-hmm.

7 Q. Leaving farmers and fishermen aside, did you have
8 better luck with the other stimulus packages?

9 A. I had better luck with the SME programme.

10 Q. And was that one that you did report on to Cabinet?

11 A. I don't think I did. I don't think I did a formal
12 report. I didn't submit it. Maybe it was there, but I don't
13 remember submitting it.

14 COMMISSIONER HICKINBOTTOM: But the SME programme,
15 Mr Forbes, that wasn't taken over by the Premier's Office, was
16 it? That was the one strand that was not taken over from the
17 Premier's Office, from recollection. I may be wrong.

18 THE WITNESS: Yes.

19 (Overlapping speakers.)

20 THE WITNESS: That one was done--the agency that deals
21 with the sector in that sense, that's the agency that dealt with
22 that particular programme.

23 COMMISSIONER HICKINBOTTOM: Yes, thank you.

24 THE WITNESS: And again, that agency is where Finance
25 had input into that programme.

1 MR RAWAT: Could I have a moment, Commissioner.

2 (Pause.)

3 BY MR RAWAT:

4 Q. If you could turn up, please, 172. This is an
5 expedited extract from--well, it carries the date of 8th of July
6 2020, but then notes that "further to the decision made by
7 Cabinet on 11th September 2020", and then it sets out various
8 decisions in relation to the SME programme. But if you look at
9 c, "noted that payments will be made from the Premier's Office",
10 which suggests some Premier's Office involvement in the
11 Programme. The Department of Trade, under which Ministry would
12 it sit at the time?

13 A. Premier's Office.

14 Q. So, whilst it may not have been administered directly
15 by the Premier's Office, it was administered by a Department
16 sitting within the Premier's Office?

17 A. Yes, Commissioner.

18 Q. Thank you.

19 Mr Forbes, can I just turn--do you have the Warning
20 Letter with you?

21 A. I don't think I have it readily available, but I've
22 read it.

23 Q. I'm not going to read all of it out, but I just--I
24 think it's important to get your answers to the key potential
25 criticism on the record, if we may. And as I've done with

1 others, I would make clear that these are potential criticisms
2 and they don't form the provisional or concluded view of the
3 Commissioner, but can I just go through it with you and if you
4 can assist with the Response, that would be helpful.

5 A. Sure.

6 Q. It makes the point that you were, as you've accepted,
7 the official Chair of the Implementation Committee which had a
8 role in providing guidance and oversight to agencies which had
9 responsibilities for implementing the various stimulus
10 initiatives. These are the potential criticisms that arise on
11 the available evidence, and, of course, what I should make
12 clear, it also depends on whether the Commissioner accepts that
13 evidence.

14 But there was a failure adequately to assess plan and
15 budget for the farmers and fisherfolk and religious
16 institutions, civic groups, private schools, and day care
17 programmes because, as is noted, the initial budget for farmers
18 and fisherfolk was 2 million which was then extended to
19 3.5 million but the total spend was--and this is as of
20 May-June--was over 5 million.

21 Were you aware that the cost of that programme or the
22 spend on that programme had gone over 5 million without a return
23 to Cabinet?

24 A. No, Commissioner, I wasn't aware. What I do know but
25 I cannot recall the exact amount. I think in part of the grants

1 from Social Security, there was an amount of money that was
2 going towards the farmers and fisherfolks programme. And when
3 Cabinet made a decision to increase the amount, I had to, in
4 turn, get in contact with the Social Security Board and have
5 them agree to the increase or the shifting of money from one
6 programme to the next, and that was one of the amendments to the
7 original agreement.

8 Now, the amounts I don't know. I can't recall the
9 amounts, but I know that did happen.

10 Q. What's also in the evidence, what the evidence also
11 points to, was that for the religious institutions and schools
12 programmes, the initial budget was 1 million, which was then
13 extended to 2.39 million. But the total expenditure again went
14 over that to 2.5.

15 Now, were you aware that that's--that spend had gone
16 over the allocated budget?

17 A. The amount--I'm--well, let me put it two ways: I know
18 that there was more than was originally allocated for that
19 particular budget because a Member of the Implementation
20 Committee had said that the recommendation that they were trying
21 to put forward wasn't acceptable, was not accepted, and chances
22 are--chances were that they would increase the actual allocation
23 that was there for churches. I remember that, about churches in
24 particular, I got that Report. By how much, I don't know. That
25 would have come later when we got the Report as to--by how much

1 it was exceeded.

2 Q. If--just so we're clear, there was an agreement with
3 the Social Security Board, that meant that certain sums were
4 going to particular parts, and if Cabinet wanted to redistribute
5 those sums, it would first have to make a decision, and you, as
6 Financial Secretary, would have to obtain the agreement of the
7 Social Security Board; is that right?

8 A. Yes, Commissioner.

9 Q. And that--is that the way it could be done, this
10 redistribution? It would have to be a Cabinet Decision with the
11 agreement of the Social Security Board?

12 A. Only if the funds that were being reallocated or moved
13 around concerned the part that came from the Social Security
14 Board, the \$40 million; right? Because the entire stimulus
15 package was funded not only by Social Security, there were other
16 funds that were in the package, the overall package.

17 So, if Cabinet decided to move monies around that was
18 money coming from the consolidated fund at the time, once--once
19 Cabinet agreed for it to be done, that would be all that would
20 be required--I mean, later on, there would need to be what I
21 would call a reallocation--I don't want to say a budget, but a
22 reallocation warrant would need to be issued to say you move
23 funds around that was already approved but not necessarily for
24 that particular area--

25 (Overlapping speakers.)

1 Q. At a later stage?

2 A. Yes. We can't--well, okay.

3 Let me try to be quite clear, if I can to try and
4 simplify things a bit, I hope I don't oversimplify. If it was
5 money within the Social Security pot, then based on the
6 agreement the Government entered into with Social Security, we
7 would have to get Social Security Agreement to move the funds
8 around, okay? And that could have come after Cabinet made a
9 decision, so Cabinet could make a decision that they're gonna
10 move--they want to move the funds around, and after they made
11 the decision to move those funds around, it behooves me now to
12 go to Social Security and have them agree.

13 Now, my preference for it would have been to first
14 have a discussion with Social Security, tell them what Cabinet
15 was hoping to do, and if Social Security didn't have problems
16 with, then I could advise Cabinet, yes, you can--you can make a
17 decision rather than me having a fight after Cabinet statutory
18 body made a decision and I have to go and try to get Social
19 Security agree to a Cabinet Decision based on whether or not I
20 agree to it. Some money is Government money now, from the
21 consolidated fund.

22 If the Government wanted to switch around money within
23 the umbrella, the one budget--not over the Budget but within the
24 Budget, then first Cabinet has to make a decision that it want
25 to move the money around, and what they initially approved, and

1 then later on, if it went over and above the original budget,
2 then you could do a reallocation, have a reallocation warrant
3 that the Minister would sign off on. I would put it to the
4 Minister, the Minister would sign off on it, and that would be
5 at the end of the year, I would put all the reallocation
6 warrants together, and have one reallocation schedule, and
7 that's it. Sometimes later it's tabled up there in the House,
8 not have debate but just be laid in the House of Assembly;
9 right?

10 Now, if they wanted to increase the overall budget
11 from local funding from the consolidated fund, then there would
12 be need for a supplementary budget, once Cabinet agreed to
13 advise the colleagues in the House that it needed additional
14 monies, what we popularly call a "SAP," Schedule for Additional
15 Provision, we have to have that submitted to the House of
16 Assembly for approval.

17 Commissioner, I hope I have not confused you.

18 COMMISSIONER HICKINBOTTOM: No, that was clear enough,
19 thank you.

20 BY MR RAWAT:

21 Q. You separated the distinction between the grant from
22 the Social Security Board--

23 A. Yes.

24 Q. --whilst Cabinet could make a decision to move those
25 funds around would require the agreement of the Board

1 ultimately, whereas decisions in relation to the consolidated
2 funds were matters for Cabinet?

3 A. Yes.

4 Q. Let's go back to the Warning Letter because another
5 potential criticism that there was a failure to put in place
6 adequate measures to ensure that payments made through the
7 Programme were, in fact, made to eligible commercial farmers
8 and/or fisherfolk as was the intent of the scheme. That funds
9 were provided as per the intentions of the Programme and public
10 money was properly safeguarded.

11 And the examples that it had given of this failure are
12 that a total of 1.4 million appears to have been paid to
13 unlicensed farmers, 1.2 million to unlicensed fisherfolk. Some
14 individuals received both farming and fishing stimulus grants.
15 Some individuals received grants from multiple COVID Stimulus
16 Programmes.

17 Now, in relation to that potential criticism, is there
18 anything you want to say, Mr Forbes, to assist the Commissioner?

19 A. Commissioner, I just have to reiterate and repeat what
20 I have been saying all along because these are some of the
21 things that anyone who was his or her served in finance would
22 know that once we're talking about spending public funds, you
23 need to have certain checks and balances in place and it appears
24 that all I had to advise on putting checks and balances in
25 place, I think I have done that. When you say that no adequate

1 measures are put in place, I think it may be--it may be a bit of
2 a stretch to say no, it was not adequate or not sufficient, but
3 I believe there was some people who are far from sufficient.

4 I've said before that it was my intention as I've
5 established the Implementation Committee, that they were to
6 bring those skills or that component of public financing to bear
7 on the work of the various agencies in distributing the funds,
8 but that did not happen in all cases, so if that's a criticism
9 of me, so be it, but it was not because I didn't know what
10 needed to happen or I didn't try to make it happen.

11 COMMISSIONER HICKINBOTTOM: Mr Forbes, in relation to
12 this potential criticism of you, you've already made it clear
13 that there came a point when this passed out of your hands or
14 out of the FS's hands and moved to the Premier's Office.

15 (Overlapping speakers.)

16 COMMISSIONER HICKINBOTTOM: I mean, you have given us
17 some helpful evidence today that the Premier's Office took these
18 things over, and you, after they have taken them over, the
19 Implementation Committee and you had--well, little role to play
20 in it, in these programmes.

21 THE WITNESS: That is my evidence, sir.

22 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

23 BY MR RAWAT:

24 Q. And is it your evidence, Mr Forbes, that there was, in
25 terms of the administering and monitoring of these Stimulus

1 Programmes, once the lead agency had become the Premier's
2 Office, there wasn't a role for the Ministry of Finance?

3 A. The Ministry of Finance was not as active as it should
4 have been in rolling out the Programmes. Let me put it that
5 way. And there were a number of reasons for it. I'm aware of
6 some of the pressures that were being placed on the Premier's
7 Office to get this programme running because persons were
8 clamoring for assistance for relief. And from where I sat at
9 the time, I was insulated from all of that because, you know,
10 the elected officials and stuff, they were--they had front seats
11 to the pressure coming from the general populace for assistance.
12 I didn't get it in that sense. I don't in any way underestimate
13 or belittle the problems or the urgency that was originally
14 under the Premier's Office to deliver and deliver swiftly on the
15 Programmes.

16 Q. And from where you sat, what, if anything, can you say
17 about the sufficiency of the checks and balances that were in
18 place in those programmes?

19 A. Based on--based on the record--I mean, the way it has
20 been presented, it would appear that whatever measures were in
21 place, they were not sufficient to avoid, assuming that the
22 record is correct, that what has happened perhaps could have
23 been avoided or most of it could have been avoided if there were
24 adequate measures put in place.

25 Q. Did anyone raise concerns with you at the time as FS?

1 A. Not--if you know--Commissioner, if you know the BVI, a
2 lot of things had done informally, I cannot say that I didn't
3 hear someone saying, you know, it is being proposed that this
4 person get this or this person get that and that type of thing,
5 but I didn't get anything official to me and say, you know, "FS,
6 the horse has bolted, can you get it back in the barn"? I
7 didn't get that officially.

8 Q. If we move on to the next potential criticism, it's
9 this, Mr Forbes, that there was a failure to utilize the
10 expertise of the Ministry of Education and the Department of
11 Agriculture in the implementation of the farmers and fisherfolk
12 programme. Not trying to put words in your mouth, but would
13 this be--would you seek to rely on your earlier evidence that
14 this wasn't a matter for you because you were not overseeing
15 these programmes?

16 A. I am not--Commissioner, let me make this clear: I'm
17 not recoiling from my responsibilities as Financial Secretary
18 back then. It is the job of the Financial Secretary to ensure
19 that our public funds are spent in accordance with, first, the
20 Appropriation Act, and then with all due consideration to
21 accountability, transparency, and good governance. I'm not
22 trying to relief myself of that responsibility. What I'm saying
23 is that the way I had envisaged this thing happening and what
24 the Programme that I was setting up to take care of these things
25 did not work out that way. I want to be crystal-clear on that.

1 I'm not trying to absolve myself of any responsibilities as
2 Financial Secretary at the time.

3 I'm just saying that I think I did what any reasonable
4 competent Financial Secretary would have done in terms of trying
5 to ensure that the money was spend in accordance with the
6 existing rules and regulations, but for some reason that did not
7 materialize. And the Commission can make its--come to its
8 conclusion as to why that didn't happen after you have taken all
9 the evidence.

10 COMMISSIONER HICKINBOTTOM: Thank you, Mr Forbes.

11 BY MR RAWAT:

12 Q. If we move on quickly to the next potential criticism,
13 Mr Forbes, there was a failure to put in place effective
14 measures of control and monitoring to ensure that funds granted
15 under the farmers and fisherfolk and under the religious
16 institutions programmes were applied within the intention of the
17 Programmes and that value for money was achieved.

18 Do you wish to say anything on that to the
19 Commissioner?

20 COMMISSIONER HICKINBOTTOM: Well, anything else,
21 Mr Forbes? It may be that the evidence you have given in the
22 last few minutes covers that as well, but add anything else that
23 you want to add?

24 THE WITNESS: Commissioner, I don't have any to add.
25 I think I've said my peace, sir.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 BY MR RAWAT:

3 Q. If I can just deal quickly, then, with the last
4 potential criticism, and it's that, under the religious
5 institutions, civic groups and daycares programme, there were
6 excessive amounts awarded without clear evidence of need.
7 80 percent of religious institutions did not apply for
8 assistance but were nonetheless approved to receive grants
9 totaling 1.6 million. Was that something that you were aware
10 of, Mr Forbes?

11 A. No, sir--no, Mr Commissioner. I learned it after the
12 Report came out, and I've learned it from person on the street,
13 even when I was a private citizen, people would say, you know,
14 because the--I understand there was some leak, I didn't see the
15 papers but I understand there was some leak, and persons were
16 privy to what a number of persons received by way of grants, all
17 right?

18 But again, I remember--and I said it earlier, that
19 persons on the Implementation Committee had reported that they
20 had made certain recommendations and they were not accepted or
21 they weren't willing to accept those recommendations as to how
22 we come up with an objective criteria or criterion to distribute
23 the funds to daycares and churches.

24 Q. The Commissioner has received evidence that a banding
25 system was introduced for the Programmes. Were you consulted at

1 all about that banding system?

2 A. No, Commissioner.

3 MR RAWAT: Commissioner, I have reached the end of my
4 questions. Can I conclude, once again, by thanking Mr Forbes
5 for making himself available, but also for thanking him for the
6 way that he has given his evidence today.

7 Thank you, Mr Forbes.

8 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Forbes,
9 for particularly on Friday, but also as Mr Rawat said, for your
10 helpful evidence this morning. It's very much appreciated.
11 Thank you.

12 THE WITNESS: All right. Thank you, Commissioner.

13 (Witness steps down.)

14 MR RAWAT: Commissioner, can I ask you just to rise
15 briefly whilst we set up the room for our next witness.

16 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

17 (Recess.)

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Session 2

COMMISSIONER HICKINBOTTOM: Good. Mr Rawat, I think we are ready to resume.

Just before we do, I see that Sir Geoffrey is here to assist the Premier.

Sir Geoffrey, firstly, thank you for the submissions that you sent on behalf of the Attorney General on section 67, and what I've said I will do is to hear oral submissions in respect of those written submissions next week on Tuesday at 10:00.

There are one or two questions arise, not really on the law as such, but how the law has been applied in the past, and I think the best thing to do is probably to write to the Attorney General so that those can be addressed before next Tuesday. But, for example, the way in which Works Orders and Purchase Orders have been addressed under section 67--66 and 67 in the past and the way that Statutory Boards have been addressed under those provisions in the past. But I think it's probably better if we wrote to the Attorney and then you can deal with those before we have the further legal submissions on Tuesday, Sir Geoffrey. Thank you.

SIR GEOFFREY: Thank you.

COMMISSIONER HICKINBOTTOM: Mr Rawat.

MR RAWAT: Good afternoon, Commissioner.

Commissioner, for the record, can I note that Sir

1 Geoffrey Cox QC joins us for this session, and as you've said,
2 he represents the Attorney General and the Ministers.

3 Our next witness is the Premier and Minister of
4 Finance, The Honourable Andrew Fahie.

5 BY MR RAWAT:

6 Q. Premier, thank you for returning once again to assist
7 the Commission with further evidence.

8 As I told you since you first came on the 18th of May,
9 on that occasion you chose to make an affirmation, and there is
10 no need to take the affirmation again. You're still bound by
11 it.

12 You are by now familiar with the process of how the
13 COI is conducting its hearings. We will be looking, as we go
14 through the day, a certain number of bundles, but it only
15 remains for me to ask you, as I do everyone, to keep your voice
16 up and to speak slowly.

17 You have been asked to return today to deal with a
18 number of distinct subjects.

19 MR RAWAT: And if I may, Commissioner, I propose just
20 to take them each in turn.

21 BY MR RAWAT:

22 Q. The first, Premier, is the Virgin Islands Neighborhood
23 Partnership Project. Now, when you first gave evidence on the
24 18th of May, you told the Commissioner that you had been
25 Minister for Education from 2007 to 2011?

1 A. One thing before we go, Commissioner, anywhere I go
2 everyone know and you know every time I come is no different
3 wherever I go because of my religious belief I will say a
4 prayer.

5 So, Holy Spirit, I give you full authority and control
6 over these proceedings to the will of this Country and overall
7 for these proceedings be done and that only what is your will
8 come out of each of us so that we all be aligned to your will,
9 so take full control now, Holy Spirit, Amen.

10 COMMISSIONER HICKINBOTTOM: Thank you, Premier.

11 Thank you, Mr Rawat.

12 BY MR RAWAT:

13 Q. Thank you, Premier.

14 Now, your time as Minister for Education or Minister
15 of Education coincided with the period during which the
16 Neighborhood Partnership Project was active, and as you're aware
17 the Commissioner had evidence from the Auditor General in
18 relation to that project.

19 Following that evidence, you were sent a Warning
20 Letter dated the 16th of September 2021, and you should have a
21 copy of that on the desk with you. I see you brought your own
22 copy, have you, Premier?

23 A. Yes.

24 Q. Now that raises a number of potential criticisms, and
25 they were put to you, in fairness, given your role as then

1 Minister of Education.

2 I will explain, and I think I will just make this
3 explanation once today if I may, and that is--it's one that
4 you've heard before, Premier, but it's that the letter which I
5 think historically is known as a Salmon Letter, sets out just
6 potential criticisms. These are not the provisional or
7 concluded views of the Commissioner, and they simply arise
8 because of the evidence that the Commission has received.

9 You have also provided a Written Response to that.

10 Do you have a copy of that with you, Premier?

11 A. Yes, I do. I brought my copy.

12 Q. Thank you.

13 Before we look at it, could you explain how it was
14 prepared, please?

15 A. Based on my recollection, because, you know, based on
16 my recollection with myself and the IRU team because--recent
17 years this is a programme that was done for quite a few more of
18 my years, and as I stated in the inside of the Report, if I may,
19 I might--I may have to refer to my notes just like you would,
20 Mr Rawat. I do have to say that I cannot say that this was the
21 easiest one to come to the COI with because it was quite some
22 years ago, and I cannot remember ever receiving a copy of the
23 Auditor General's Report, which appears to be a no deed--

24 Q. Can I pause you there, Premier. I just need to deal
25 with the formalities and then I will come back to that.

1 A. Yes.

2 Q. Because you have set out these points in your Written
3 Response, and it's important that we get them on the record.

4 COMMISSIONER HICKINBOTTOM: I assume by your notes,
5 you mean your response to the Warning Letter?

6 THE WITNESS: Well, response and other areas that I
7 would like to highlight because one thing is clear that I would
8 like to know is when was this Report made public? When was this
9 Report forwarded to Cabinet? When was this Report forwarded to
10 the House of Assembly? I can never remember receiving a copy of
11 this Auditor General's Report. That's the first of which I am
12 saying.

13 I haven't seen the Ministry's response, if any, to the
14 Report, although I do recall hearing of--reading of different
15 parts of it in the press.

16 So, in which the Auditor General is quoted as stating
17 that immediately after the election in November 2011 she had
18 prepared such a report and sent it to the Ministry for comment
19 after she was intended to transmit it to the Cabinet, but I have
20 checked the Cabinet, and they have no record of it. I have
21 checked the House of Assembly; there is no record of it.

22 So, it is difficult for me to comment on a report that
23 never made it to the public.

24 COMMISSIONER HICKINBOTTOM: Well, as you know, this is
25 the Auditor General's Report, Premier, so you know what the

1 procedure is: She refers her draft report to the relevant
2 Ministry, and that Minister then has an obligation to lay it
3 before the House of Assembly. That's the procedure. But we
4 understand--

5 THE WITNESS: But, Commissioner, if I may?

6 COMMISSIONER HICKINBOTTOM: Yes.

7 THE WITNESS: In our Constitution, under 109, it says
8 there shall be an Auditor General whose office shall be a public
9 office. The Counsel of the House of Assembly and all government
10 departments and officers including the Public Service
11 Commission, the Teacher Service Commission, the Police Office
12 Commission, and such other body as may be designated by law,
13 shall be audited and reported on annually by the Auditor General
14 and for the Auditor General or any person authorized by him or
15 her shall have access to all books, records, returns, and other
16 documents relating to such accounts. Subsection (3) says that
17 Auditor General shall submit his or her Reports made under
18 subsection (2) to the Minister who shall within three months of
19 the receipt of the Reports cause them to be laid before the
20 House of Assembly. In the exercise of his or her functions
21 under this section, the Auditor General shall not be subject to
22 the direction or control of any other person or authority.

23 So, that would mean that this Report either was
24 stopped by the Auditor General, by the Minister or by the
25 Governor because the record shows that this Report never went to

1 Cabinet. The record shows that this Report never went to the
2 House of Assembly, so it was never public.

3 So, I'm asked to now come--I recall hearing nothing
4 more, and I do not recall the Public Accounts Committee which I
5 was sitting on being able to give this to be examined, although
6 if it was done I would have had to not participate as a former
7 Minister, but this is a report that just has appeared since the
8 COI has appeared. It has never been public, nor has the Auditor
9 General given evidence to the Inquiry that her Report had been
10 published in January 2013--

11 COMMISSIONER HICKINBOTTOM: I'm sorry, just hang on a
12 minute, Premier, because quite a few things you say are not
13 necessarily right, and it may be better, if, as usual, Mr Rawat
14 deals with these in terms of questions.

15 But first, section 109 of the Constitution refers to
16 Annual Reports; yes?

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: This is not an annual
19 report.

20 THE WITNESS: Right.

21 COMMISSIONER HICKINBOTTOM: This is a report under the
22 Audit Act.

23 THE WITNESS: Right.

24 COMMISSIONER HICKINBOTTOM: So, section 109 doesn't
25 cover this.

1 The Audit Act, as you will know, requires the Auditor
2 to deliver her Report to the Minister, and then it is for the
3 Minister to lay it before the House of Assembly. And we will
4 come on to that. We will come on to how if, at all, this Report
5 was made public.

6 And in reference to what you say about the Auditor
7 General in her evidence saying that she had published this in
8 January 2013--and that's a formal criticism which has been made
9 on behalf of the elected Ministers--doesn't quite reflect the
10 evidence that she gave. Mr Rawat asked her a question on the
11 basis that the Report had been produced or published in
12 January 2013. And although she initially said that that was
13 correct, she then said that she wanted to go back and check it.

14 But the production of the Report, of course, because
15 of the statutory scheme, doesn't mean that she publishes it. We
16 know that the Auditor General doesn't publish a report in that
17 way. She produces it. She gives it to the Minister in
18 accordance with the statutory provisions, and then the Minister
19 has an obligation to put it before the House of Assembly.

20 But I think we will come to these as Mr Rawat goes
21 through his questions.

22 THE WITNESS: Mr Commissioner, I just wanted clarity.
23 So, you're saying that once there is a special report, it is
24 presented to the Minister and it's the Minister's duty to make
25 it public?

1 COMMISSIONER HICKINBOTTOM: Well, Mr Rawat may well
2 take you to the relevant statutory provisions.

3 THE WITNESS: Okay. I just want to make sure--

4 COMMISSIONER HICKINBOTTOM: The statutory provision is
5 not section 109, I believe, but Mr Rawat, will no doubt, take
6 you to the provisions.

7 THE WITNESS: Um-hmm.

8 COMMISSIONER HICKINBOTTOM: And then ask you questions
9 about when you came to know about the Report and so on.

10 THE WITNESS: I do want to say that I respectfully
11 differ that what I'm saying is not accurate in that I did make
12 checks with the Cabinet because I'm in the Cabinet now to keep
13 the records of when it came to Cabinet, and there is no record
14 of it. I did check with the House of Assembly to find out when
15 it was given to the House of Assembly to be leading the House on
16 the table. There is no record of it.

17 And one would bear in mind that we're talking about an
18 event that happened all the way in 2008 and all the way back
19 there, so that wouldn't be recent years, so I would do my best,
20 Commissioner, to help, but I think that I do not believe that
21 her Report was, in fact, laid before the House or ever made
22 public for reason which I'm unaware, but I stated my research.
23 And if, as I assume, must have been the case, the Auditor
24 General would have carried out as a special report under
25 section 20 of the Audit Act (2003) and I cannot understand why

1 as that section requires it was not as it appeared the Auditor
2 General or is not originally intended submitted to the Governor
3 and the Cabinet as is a practice or if it was, why, as that
4 section mandatory--

5 (Overlapping speakers.)

6 COMMISSIONER HICKINBOTTOM: I'm sorry, Premier, I know
7 you're reading something out--

8 THE WITNESS: But that's what I submit.

9 COMMISSIONER HICKINBOTTOM: I know.

10 THE WITNESS: But I come to you say, Commissioner, I'm
11 being asked to--I'm going to be asked as your base--your
12 foundation for this today about the Auditor General's Report
13 that was never made public.

14 COMMISSIONER HICKINBOTTOM: But just one or two
15 observations--

16 THE WITNESS: In 2008.

17 COMMISSIONER HICKINBOTTOM: Just one or two
18 observations on that.

19 Firstly, we know because we've had evidence that the
20 Auditor General produces reports which are required to be laid
21 before the House of Assembly. Not all of them are. They are
22 retained for some reason by the Ministries--or by the Minister,
23 the Ministry.

24 Secondly, you say that whenever the Report was
25 produced, 2011-2012, it does not concern matters which are in

1 respect of recent years. Firstly, as Sir Geoffrey will advise
2 you, what is covered by recent years is a matter for me. But in
3 any event, recent years only applies to paragraph 1 of the Terms
4 of Reference, not, for example, to paragraph 3, and therefore,
5 in terms of governance, that may not be a forceful submission.

6 We can't ask you to remember things which you don't
7 remember, but this is a matter which we have asked other
8 Witnesses about, that they have given evidence, and we would
9 certainly like your assistance, Premier, on this matter so far
10 as you're able to give it.

11 THE WITNESS: Well, I thank you, Commissioner, but I
12 want to state from the onset that there are certain things that
13 the Auditor General's Report must have. They will have some
14 draft notes. Those are not attached, from what I managed to get
15 my copy. I don't see those. The persons that were interviewed
16 have not been named, so we cannot get any cross-reference.

17 The Ministry's response, which is needed because
18 obviously it hasn't become public as yet, the Ministry's
19 response would have been needed--

20 COMMISSIONER HICKINBOTTOM: I'm sorry, but
21 again--again, I think Mr Rawat will go through this with you,
22 Premier, but that's not right. As we know, the procedure, which
23 you will know because you have been a Minister for some time,
24 the procedure is that the Auditor General asks on the basis of a
25 draft report for a response from the Ministry.

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: If she gets that Response,
3 then she takes it into account as she thinks fit. If she
4 doesn't get that Response, then she produces the final report
5 and hands that as a final report to the relevant Minister.
6 That's how it works. And then it goes on to be laid before the
7 House.

8 THE WITNESS: So, we're saying the same thing,
9 Commissioner, but the question is, where was that--was a final
10 report done, or was the draft report still left as draft and
11 never come forward as a final report? So I need to know if I'm
12 answering to a draft report or if I'm answering to a final
13 report. And if it is a final report, where is the Ministry's
14 response to the final report so that the due process could have
15 been allowed? Because this Report, as far as all records in
16 Government that I can have access to cannot recall it ever been
17 public?

18 So, we're asking persons to come now, and if they
19 wanted to give evidence before and then resources I can't be
20 held accountable for other witnesses, but my resource shows that
21 this was never public. So now we have to come to answer based
22 solely on the Auditor General's Report, which my memory, you
23 know, is strained with remembering what I did last week and have
24 to go all the way back into 2008. I do not know if that is the
25 case because what we did after 2013 because I remember a

1 newspaper could have been--that seeped out something in 2011, I
2 think it was the Beacon, and then I remember just before this
3 election something else came out in 2019 hinting that there was
4 a report. I have never seen this Report in my life until the
5 COI has come.

6 So, the persons being accused in this Report have
7 never been given the opportunity to get due process. That is
8 one.

9 And two, we do not have any information from the
10 relative Ministry that was involved who may have lost the files
11 due to Hurricane Irma, who may have misplaced them or can't get
12 to them or they don't exist anymore because of the same
13 hurricanes, but the Ministry would have had to respond to say
14 "yay" or "nay".

15 Now, I will try to help based on my best recollection,
16 but this has to be part of the Report when it comes out because
17 we cannot stand on this Report as a solid foundation based on
18 how the chain of events have occurred. We do not know if this
19 is a final report or if this is a draft report. And if it is
20 final, the question will be, did the Ministry respond? If they
21 didn't respond, the question will be why? And if they didn't
22 respond, why was the move forward to Cabinet and it was final
23 and then to the House.

24 I think that those are the procedures that I want to
25 lay out clear because it puts witnesses to come to give evidence

1 in a very peculiar position, I must say.

2 COMMISSIONER HICKINBOTTOM: Well, we no doubt,
3 Premier, from the evidence we've received and from your own
4 knowledge that firstly, when the Auditor General sends draft
5 reports to a Minister for a response, sometimes--not
6 infrequently, she doesn't get a response.

7 And secondly, we know again from the evidence that
8 we've had--and you'll know from your own knowledge--that once
9 the Auditor General has finalised the Report and sent it to the
10 relevant Minister, the Report does not always, as it should be,
11 get laid before the House of Assembly. We know that. This is
12 not--if that happened in this case, it would not be unique.

13 But what we have is we have the Report that you say
14 that there are challenges in respect of the evidence because the
15 evidence--the underlying evidence now may be limited, but we
16 have her Report. That is evidence. Other witnesses have kindly
17 responded to questions about it, and we would like you to do
18 your best in terms of responding to the questions that Mr Rawat
19 has, and all of the caveats that you've made certainly I will
20 take those into account.

21 THE WITNESS: Yes, sir, but I don't mean to be
22 difficult, but I have to stress, I find it difficult in the 21st
23 century with my rights as a human being, forget Premier for a
24 little while, that I'm being asked to comment on a report that I
25 cannot be told if it's completed because what I have heard thus

1 far and seen, it's an incomplete report. And the Auditor
2 General does not include the Response from the Ministry or
3 saying that I did not receive the Response I move forward.

4 So, having that in mind, I was not the Minister
5 whenever this Report came, I had already left. So the Minister
6 that was there, or whoever else, PSs, that were there, some are
7 dead, some are moved away, some memory have faded them, and only
8 a few of us are around. Now the Auditor General was there, then
9 left and came back and it's no offense to the Auditor General,
10 it's not a post, but what I'm saying is something's wrong with
11 the procedure for me to answer on a report today that will leave
12 a revocable and irreparable damage on person's character, in
13 some persons' minds, when this was done, they were not given the
14 opportunity at that time to respond, and now years later--

15 COMMISSIONER HICKINBOTTOM: I'm sorry, who do you
16 mean, Premier?

17 THE WITNESS: Well, there are certain things that I
18 have seen since I've received this Report that (1) there is no
19 response inside the Report as addendum report from the Ministry
20 saying that this is not so.

21 COMMISSIONER HICKINBOTTOM: But we know from the
22 evidence that that's not what the Auditor General does.

23 THE WITNESS: Well, I can't--as we go through this, I
24 will point out some of them.

25 COMMISSIONER HICKINBOTTOM: But if the Auditor General

1 gets a response to a draft, she certainly isn't obliged to
2 attached that as an appendum--as an appendix to the Report.

3 THE WITNESS: But, Commissioner, if you are accusing
4 me and you did the research, it has always been standard
5 practice that the addendum is placed, and if not placed, then
6 allow that some other time because there are three sides to
7 every story: Your side, my side, and the truth. And everyone
8 is allowed due process.

9 Now, reading this Report, I recognize why things were
10 seeping out in the media over the last few years as leaks, and
11 got a leak on a Report. And I keep asking what report is this?
12 I do not know about the Report? And just a couple of days
13 before election, I went online it leaked out that 500 some
14 thousand dollars unaccounted for, and those things put scare on
15 people's reputations without anyone being able to say, all
16 right, allow me to give the other side to it. Now in the middle
17 of a Commission of Inquiry, the first we have seen this Report
18 is what we call prime time television with the whole world
19 watching, and you're going to be asked about a report that you
20 never seen, it was never made public, and you never had an
21 opportunity to respond to it from back then so that when we are
22 asked for this Report, attached to it or accompanying it would
23 be the other side to the story so we could match and say well,
24 this is what was told here or this is what I was told there,
25 because this is what alarms me about it. My research has not

1 shown where this Report has been made public.

2 So, it's either the leaks had to come from somewhere
3 that the newspapers got the leak over the years because the
4 first time I saw something in the newspaper was 2012, and I
5 remember from the Beacon newspaper they said that it was
6 something that was in the Auditor Report that they got wind of
7 that was done in 2011, in late 2011. Then there was a leak in
8 2019, a couple of days before election stating about things
9 about the same programme that was not placed in a good light,
10 and if you ask me it was done in such a way that could have
11 influenced the election, and nobody came out and said all right,
12 let me bring this report public and allow due process.

13 I was in the Opposition a very long time. A very long
14 time. And I have not seen this come forward to the Public
15 Accounts Committee to be deliberated. And, of course, as I said
16 rightfully, Commissioner, I would have had to excuse myself,
17 because I was a Minister but not even to the Public Accounts
18 Committee did I see come forward.

19 So, these are the areas why I have to flag this as
20 concern about the lack of due process for the persons being
21 accused and also lack of due process in terms of how this has
22 been handled based on the same act and based on the same
23 Constitution because, if those leaks were happening, then it
24 either would have been the Auditor General, the Governor or the
25 Minister who were leaking it, and it were never made public

1 because it never came to the public to allow. And it's not fair
2 for the Consultant who was involved, his reputation. It's not
3 fair for the former Minister, the former PS. It is not a fair
4 situation. And then now some 2008, we're in 2021, we're asking
5 for 13 years later now that this mysteriously has popped up and
6 we must now come and answer when I don't have any records to the
7 Ministry to verify now if this is so. I don't have access to
8 the Public Officers. I don't have access to many people to get
9 to see if this is so.

10 So, I have to sit today, with respect, because I have
11 to defend myself, to listen to Attorney Rawat question me, and I
12 have to go on recollection, and the only thing that is in
13 writing that is going to go down as act of history is a report
14 that was never made public until now in the public and me being
15 asked about it to give remarks--to give my side of the story.
16 And there is no attached notes to the Auditor General's Report.
17 Where are the e-mails? Where are all the paperworks that she
18 spoke about? I do not see them attached there to say well, all
19 right, this was signed by so, this is so, or this is not.

20 So, I'm concerned about the void that's around this
21 whole subject, and Commissioner, with due respect, I have to
22 state it for the record but I will try my best.

23 COMMISSIONER HICKINBOTTOM: That you very much,
24 Premier.

25 In relation to the Consultant that you mentioned,

1 that's not--you've read the Report now, yes, because you've sent
2 in a five page response to it, the Consultant, as you'll see
3 from the Report, was asked to cooperate with the Report and did
4 not cooperate with the Auditor General at all, did you see that
5 in the Report? So, he was given an opportunity.

6 THE WITNESS: Was given an opportunity for the Report
7 given to him now?

8 COMMISSIONER HICKINBOTTOM: He was given an
9 opportunity for his input into the Report.

10 THE WITNESS: I can't speak for the Consultant at all,
11 but I can speak for me.

12 COMMISSIONER HICKINBOTTOM: I'm sorry, I've got the
13 points that you've made, Premier--

14 THE WITNESS: But first I saw the Report had to be the
15 same time as the Consultant because when I was asked based on
16 the criticism, I'm being potentially criticized about a report
17 that I have never seen and actions that I don't even remember
18 taking place.

19 COMMISSIONER HICKINBOTTOM: But you've seen it now.

20 THE WITNESS: Because you've criticized me on it and
21 sent it and I had to make sure I get this Report. But I had to
22 before dealing with the COI when this thing came up, I had to
23 jump through hula hoops to get this Report because it was never
24 made public, and this is alarming. This is serious allegations
25 being levied against someone with a report that was never made

1 public. This would not stand the light of day in any Court
2 House. It was never made public.

3 COMMISSIONER HICKINBOTTOM: But it's public now.
4 You've read it, and thank you--

5 THE WITNESS: But is it accurate? Is it complete?

6 COMMISSIONER HICKINBOTTOM: What do you mean by
7 "accurate?"

8 THE WITNESS: Well, there is no documents in here to
9 compare to.

10 COMMISSIONER HICKINBOTTOM: It's an audit report.

11 THE WITNESS: But it's an audit report done 13 years
12 ago, for a programme 13 years ago. Since then we've had
13 hurricanes, where the Ministries probably have lost their files,
14 and there is no balancing to say that the Ministry responded (a)
15 the Ministry responded to this one saying (b), or there is no
16 report by the Ministry afterward, and there is no report of it
17 being public. It is almost as this report was a ghost, and it
18 just appeared. And now I must answer for something that just
19 appeared.

20 This is a far stretch, Commissioner, but I will do my
21 best.

22 COMMISSIONER HICKINBOTTOM: Good. Thank you. We can
23 ask--

24 THE WITNESS: But if you fail to put it in the Report
25 when you're doing it, but this raises a red flag.

1 COMMISSIONER HICKINBOTTOM: We cannot ask you to do
2 any more than your best. Thank you, Premier.

3 THE WITNESS: Yes, but what I'm saying is that you're
4 going to base me on this Report, and that has to be done with
5 asterisk.

6 COMMISSIONER HICKINBOTTOM: Well, you know that the
7 criticisms are only potential criticisms, and when Mr Rawat asks
8 you these questions, things may become clearer for me. Thank
9 you.

10 Mr Rawat.

11 BY MR RAWAT:

12 Q. Premier, can I take you back to your Written Response.

13 A. Yes, sir.

14 Q. The question I asked you which may be down to my
15 phrasing, but what I think your answer, I asked you how was it
16 prepared, and I think your answer is that you set it out. It
17 sets out your recollection which you've prepared with the
18 assistance of the IRU; is that right?

19 A. Mr Rawat, could I understand the relevance of why you
20 ask me how it was prepared?

21 Q. The reason why, Premier, is because when these were
22 first sent in by the IRU, they were unsigned?

23 A. Um-hmm.

24 Q. The first time, the first sets of warning--written
25 responses that came from Ministers and Permanent Secretaries

1 often repeated the same wording so that's why I ask it.

2 Because--

3 A. So--

4 Q. No, let me finish.

5 What the Commissioner has encouraged people to do is
6 to set out things in their own words, and that's what I'm asking
7 for because what I'm also going to ask you is whether you wish
8 this to form part of the evidence before the Commissioner. And
9 in order to do that--

10 A. May I--

11 Q. May I finish.

12 In order to do that, what the Commissioner needs to
13 know is whether it is, indeed, your document or whether it has
14 been prepared by someone else for you.

15 A. This is my document, as I said, with, of course, you
16 have the IRU to give you certain assistance here and there, but
17 this is my document.

18 COMMISSIONER HICKINBOTTOM: This is your response and
19 your words?

20 THE WITNESS: There is my response and my words.

21 COMMISSIONER HICKINBOTTOM: Thank you very much.

22 BY MR RAWAT:

23 Q. If you go to the last page, then, Premier.

24 A. You see, Commissioner, these "yes" and "no" questions,
25 we can answer to them.

1 Mr Rawat, I have to go back. You are asking me if
2 this is my response, and I have to answer today or I will be
3 seen in contempt, and I am asking a question that i would like
4 you all to answer me, and I can't get the answer for that.
5 You're basing today's proceedings on an audit that I have never
6 seen, and the Commission must be able to tell me, if this is
7 what you're using, when this was prepared, when did it go to the
8 Ministry, when did it go to the Cabinet, and when it went to the
9 House?

10 Why this is important is because, without that, the
11 only person would know about this is the Auditor General.

12 COMMISSIONER HICKINBOTTOM: Premier, with respect,
13 this is not right. This is an audit report. Whatever its
14 provenance, this is an audit report. I will hear evidence about
15 the questions that you have raised but whatever it is, it's an
16 audit report. Whatever it is, it's evidence. The questions
17 you've raised may well give rise to issues as to the weight I
18 should give to the Report, but it is an audit report. And I
19 will make of that evidence what I can, what I will. I will take
20 into account all of the matters that you have raised in respect
21 of this document, my understanding is that this is your
22 document, your response, your words.

23 Mr Rawat.

24 MR RAWAT: Thank you.

25 BY MR RAWAT:

1 Q. Premier, can I ask you just to turn up page 5 of your
2 Written Response, please.

3 A. Yes.

4 Q. At nine, you have signed the document and dated it on
5 the 28th of September 2021; is that right?

6 A. Yes, yes.

7 Q. It's signed with a Statement of Truth. Can I ask why
8 you chose not to use the Statement of Truth set out in the
9 Commissioner's Protocol on the Provision of Written Evidence?

10 A. The Statement of Truth meaning the facts and matters
11 set out in the Response are true to the best of my recollection,
12 knowledge, and belief.

13 Q. Yes.

14 A. Can you tell me what is wrong with that?

15 Q. Nothing's wrong with it, but the Commissioner's
16 Protocol recommends a different form of Statement of Truth.

17 A. Yeah, but a statement from the Commissioner--with due
18 respect, Commissioner--state, if I can remember--could you read
19 it for me, the one that the Commissioner had?

20 Q. Of course.

21 A. I don't want to misquote the Commissioner on that.

22 (Pause.)

23 Q. It's: I, insert statement maker's name, believe that
24 the facts set out in the statement are true. I understand that
25 proceedings for perjury may be brought against a witness who

1 willfully gives false evidence concerning the subject matter of
2 the Commission of Inquiry.

3 A. Can you repeat that for me, please? I'm trying to
4 digest it.

5 Q. I, insert statement maker's name, believe that the
6 facts set out in this statement are true. I understand that
7 proceedings for perjury may be brought against a witness who
8 willfully gives false evidence concerning the subject matter of
9 the Commission of Inquiry.

10 A. Great. Thank you.

11 I couldn't sign that because, in this case, I couldn't
12 sign it at all, Commissioner, with due respect. You are asking
13 me to scrape every corner of my memory to respond to a Report
14 that was never made public and asking me to give my best
15 recollection of it without any information from the Ministry or
16 access to the Ministry where this was done. With respect, that
17 would be incriminating myself if something pop up that I didn't
18 remember or never knew about and seemed like I had known about
19 it. And as a witness, I cannot be here incriminating myself
20 because the facts and matters set out in this Response are true
21 to the best of my recollection, knowledge, and belief. I see
22 that legally to be true because this is a 13-year-old project,
23 that I'm being asked about without access to the files. So, I
24 cannot emphatically just say that that is true and sign off to
25 that. It is to the best of my knowledge.

1 Q. So, it's because of the particular circumstances of
2 this Warning Letter that you chose to use that Statement of
3 Truth?

4 A. I think it needs to be used at all times.

5 Q. Okay. Right.

6 Well, moving on then, are you content that this
7 Response forms part of the evidence before the Commissioner?

8 A. This Response, yes, all five pages of it.

9 Q. I want to go through it without reading it all out.
10 You have already given quite a lot of detail about it anyway,
11 helpfully.

12 The first point you make which the Commissioner has
13 addressed is that you question whether this Project, the
14 Neighborhood Partnership Project comes within the Commissioner's
15 Terms of Reference.

16 The second, and again which is a point that you have
17 elaborated on already, Premier, is you point the facts, that
18 available facts are based solely on the content of the Report
19 from the Auditor General which you cannot verify by reference to
20 the underlying documents. You've referenced more specifically
21 than you have done in the comments you've made earlier in that
22 you say those documents you understand were destroyed by
23 Hurricane Irma.

24 So, how do you know that they were destroyed by
25 Hurricane Irma?

1 A. Because I have been asking and doing my own research.

2 Q. So, has someone confirmed to you that the documents
3 related to this have all been destroyed by Hurricane Irma?

4 A. When I asked the Ministry, I called the Ministry and I
5 asked the PS about this Report and if they ever responded, and
6 they say as far as they know it was most likely destroyed by
7 Irma, or they stored it down in the basement with the mold that
8 is there.

9 Q. So, it's not entirely clear what's happened to it, but
10 it's their view that it's most likely destroyed?

11 A. But you see, Mr Rawat, with due respect, you're trying
12 to corner me. I told you from the onset that I'm going to be
13 put in a difficult position, impossible position here today with
14 this Report. It was not made public, so to defend myself in
15 here, I had to go to see if there was any evidence of how it
16 went public, and I didn't know or if there is any supporting
17 document that could help shed some light that would be factual
18 in this matter.

19 So, I did my best to do my homework like you have
20 done, and it's not ever been made public.

21 Q. I understand that, Premier. If we just focus on just
22 what happened in Hurricane Irma and I wasn't trying to corner
23 you. What I was trying to understand was exactly what you had
24 been told by the Ministry?

25 A. I can't answer any further. I can't help you any

1 further. That's all I know. I got no help no matter where I
2 got. Where I went I got no response that could give me any
3 evidence. The Cabinet Office said they have no record of it.
4 The House of Assembly said they have no record of it. The
5 Ministry said that as far as they know, those records may have
6 been destroyed or were destroyed by Hurricane Irma, and if any
7 resemblance of it is of no use because it's distorted with mold
8 or whatever the case may be.

9 Those are the answers I got from all corners, so I
10 have nothing other than my memory which has been feeding me from
11 13 years ago on this matter.

12 Q. So, in terms of what the Ministry told you, the
13 Permanent Secretary, the current Permanent Secretary of the
14 Ministry told you that it's most likely that if there was any
15 records in relation to this Report, they have been destroyed by
16 Hurricane Irma--or they are in a basement in mold?

17 A. You asked me the same question already and I answered
18 that. So, I think my answer before would suffice. I don't have
19 anything else to add.

20 Q. Thank you, Premier.

21 Now, you go on to say that you've not had an
22 opportunity to speak to Public Officers who supervised and ran
23 the Ministry of Education at the relevant time, and you've
24 pointed out in your response that many of them are--some of them
25 may be dead or have left the Public Service.

1 Would it be right to assume that key amongst those
2 Public Officers would be whoever was Permanent Secretary at the
3 time?

4 A. I would guess who would be Permanent Secretary, but I
5 really don't know who were Permanent Secretary at that time. I
6 didn't check that one.

7 Q. Well, have you discussed it with Dr O'Neal-Morton who
8 is your current Permanent Secretary?

9 A. No, I didn't discuss it with her because I then
10 realized who were the PS because I had four PSs when I was
11 Minister of Education, so I didn't remember which one was which.

12 Q. Well, she confirmed when--that she was Permanent
13 Secretary for some of the period that you were Minister of
14 Education.

15 A. Um-hmm. That is true.

16 Q. Well, would she not have been a useful person to have
17 a conversation with?

18 A. Well, I didn't ask her about this here at all. I
19 really and truly didn't ask her. Like I didn't know which
20 section she was in. I had about four Permanent Secretaries. I
21 didn't know which section she was in at the time, that I recall.

22 Q. Just so that I'm clear, did you have--you wouldn't
23 have had four Permanent Secretaries overlapping with each other,
24 would you?

25 A. Well, they came one after the other.

1 Q. Yes, because I think when you gave evidence on day 6,
2 which was the 18th of May, Dr O'Neal-Morton was also there on
3 that day. She said that she had been Permanent Secretary until
4 2013 in the Ministry of Education?

5 A. '13?

6 Q. Yes. So, at least for some of the period that you
7 were Minister of Education and some of the period that this
8 Report was there, she would have been in the Ministry. But
9 maybe that's something we can follow up with her if we need to?

10 A. Yeah. My memory doesn't help me with that at all.

11 Q. In terms of when Dr O'Neal-Morton was a PS in the
12 Ministry of Education?

13 A. Yes. I don't remember who all--who was what or when.
14 I know who all they were, but the time frames I don't remember.

15 Q. If I could then move on in terms of your recollection
16 of events, you've made a number of points, and that's if we pick
17 that up at page 2 of your Written Response.

18 The first is that you say that in terms of progressing
19 this Project, it was the then-Premier, the late Honourable Ralph
20 T O'Neal, who referred the Project to your Ministry and it was
21 his decision that it should go forward. Could I ask you just to
22 clarify something in paragraph 2 of your Written Response. You
23 say "I recall attending a presentation given by Mr Claude
24 Skelton-Cline who was then unknown to me in the Premier's Office
25 or at about the summer of 2008".

1 Just so that we're clear, are you saying firstly that
2 you did not know Mr Skelton-Cline at that point in time? That
3 was the first time you came across him?

4 A. Under the Project?

5 Q. No. I just want to make sure that we understand that
6 part of your response.

7 A. Which paragraph are you referring to?

8 Q. Paragraph 2, please, Premier.

9 A. What it starts with?

10 Q. It starts--it's just under the heading "the Project"
11 and it starts "The Neighborhood Partnership Project".

12 A. The Neighborhood Partnership Project.

13 Q. On your page 2.

14 A. Okay. Thank you.

15 I want to also state that I--I was to state earlier,
16 before we go to that, paragraph 1.3 says, as I was speaking
17 about it, that I have been afforded only seven working days to
18 respond to the potential criticisms which given the matters
19 above, it was inadequate for me to prepare a full response,
20 especially based on my memory. In the circumstances I believe
21 it would be wrong for the Commissioner to reach a conclusion on
22 these matters. However, consistent with the Government's
23 approach, I will assist in the Inquiry as set out below what I
24 can remember of these events, some of which is inevitably and
25 substantially applicable to the passage of time. I'm simply

1 unable to respond to the specific potential criticism because I
2 have said--I have neither had access to the contemporary records
3 and documents nor to the Public Officers who supervised and ran
4 the Ministry 13 years ago.

5 Now I go into this one, it says the Neighborhood
6 Partnership Project that you're asking me about was, in fact,
7 referred to the Ministry of Education, the Ministry, by the
8 then-Premier, the late Honourable Ralph T O'Neal. I recall
9 attending a presentation given by Mr Claude Skelton-Cline, who
10 was then unknown to me, in the Premier's Office. I went in the
11 Premier's Office in about the summer of 2008.

12 COMMISSIONER HICKINBOTTOM: And the question relates
13 to that sentence, Premier.

14 BY MR RAWAT:

15 Q. Premier, can I ask you just to keep your voice up. I
16 think it's dropping.

17 A. I usually don't keep my voice up because people feel
18 that I'm being aggressive or shouting but I will keep it up, but
19 do not take it that way. It that's the case because that's my
20 nature where I come out of my culture we speak loud, so I try
21 not to do that and be misunderstood.

22 Q. It will delight the Stenographer if you do speak loud.

23 A. Okay.

24 Q. It's just to clarify that sentence, please, because it
25 may not be clear. Firstly, are you saying there that, until you

1 went to the presentation in the Premier's Office, you had not
2 then met Mr Skelton-Cline?

3 A. I don't know how it's not clear, Commissioner. It
4 says here that the Neighborhood Partnership Project was, in
5 fact, referred to the Ministry of Education, which is a Ministry
6 by the then-Premier, the late Honourable Ralph T O'Neal. I
7 recall attending a presentation given by Mr Claude
8 Skelton-Cline, who was then unknown to me. That's clear.

9 Q. So, you'd never met him before?

10 A. Who was then unknown to me. That's clear.

11 COMMISSIONER HICKINBOTTOM: The answer is yes?

12 THE WITNESS: The answer is he was unknown to me up
13 until that point.

14 BY MR RAWAT:

15 Q. Did you know before you attended that he would be
16 making this presentation?

17 A. No. I was called to the then-Premier's Office, and
18 when I went, this is what happened.

19 Q. And once the Premier had directed Mr Skelton-Cline to
20 your Ministry and a decision had been made that Mr Skelton-Cline
21 was to work in connection with the NPP, the Neighborhood
22 Partnership Project, did you have any meeting with Mr
23 Skelton-Cline?

24 A. Well, first of all, in fairness to the late Premier,
25 who is not here to clear his side of what happened, I must put

1 in context that I can recall why he would want to move in this
2 direction. During that time we had a lot of issues with young
3 people, with gangs beginning to form in the country, and we were
4 having a lot of gang fights in schools, and we even had formed
5 an alliance with the United States Virgin Islands because they
6 had also helped by sending over some of their expertise over
7 here to speak to the children and help us to start to get to
8 deal with some of the problems that we were experiencing.

9 So, it was the--the climate at the time was one in
10 which there was a need to address some of the concerns that were
11 happening in the Territory where our young people, especially
12 the males, were going down in the wrong direction, so I just
13 wanted that to be in the context for that for me, please,
14 because it wasn't in isolation that the Premier wanted to get
15 something done, something done.

16 COMMISSIONER HICKINBOTTOM: That's set out in the
17 Auditor General's Report.

18 THE WITNESS: Yes.

19 BY MR RAWAT

20 Q. But did you, upon Mr Skelton-Cline being directed to
21 your Ministry, have any meeting or meetings with
22 Mr Skelton-Cline?

23 A. Let me read for you what I have here to refresh my
24 memory because you would appreciate that it's 13 years ago.

25 COMMISSIONER HICKINBOTTOM: I'm sorry, not since you

1 drafted this.

2 THE WITNESS: No, no, no, but it took me a while to
3 draft it, because I had to scrape my mind 13 years ago, and
4 remember that I turned this in in September. And given that
5 you're putting so much things on my mind, I tried to refresh my
6 mind over the last few days, but I don't want to make any
7 mistakes, so I'm sticking to the script.

8 So, Commissioner, if you bear with me here, the
9 presentation concerned two possible projects, and I have to go
10 through it so I can bring the context to what I have been asked.
11 The first was a prisoner rehabilitation project. The second was
12 what became the Neighborhood Partnership Project. The
13 presentation was then repeated for Government Members of House
14 of Assembly.

15 All I remember from that presentation was that
16 Mr Skelton-Cline appeared to have considerable and impressive
17 experience in the United States of America in initiating and
18 managing projects in the turning around the lives of alienated
19 and vulnerable young people. At that time, the Virgin Islands
20 was experiencing just such a growing problem with our youth, and
21 it had become a permanent political issue. The Premier, which
22 is the then-Premier, the late T O'Neal, subsequently informed me
23 that he wished the services of Mr Skelton-Cline to be retained
24 in connection to the NPP, and since the responsibility for youth
25 and education laid with the Ministry, which would be the

1 Ministry of Education, he informed me directly Mr Skelton-Cline
2 there having informed me of his wishes. I believe that the
3 Ministry officials then negotiated and drew up the contract.
4 Those officials knew that the initiative for the engagement had
5 come from the Premier and they would report directly to the
6 Premier's Office about it. I had very little, if any,
7 involvement in those negotiations. I believe that all the
8 details of the Contract were submitted to the premier's Office
9 then for approval. I did not sign the Contracts, and I left the
10 matter entirely to my officials.

11 Once the Contract was signed by the then-Premier, I
12 was called upon in the initial stages to help publicise the
13 Project to the churches, and I attended one or two early
14 meetings for that purpose. In the early periods of the
15 Contracts, I do not recall gaining any impression that the
16 Project had encountered problems, but we will get to that part.
17 But I said that there because I want to make sure that I refresh
18 my memory of this 13-year-old project, and although I wrote this
19 in September, to refresh my memory on it because you would
20 understand that there was quite a lot in my head, and that is
21 what I recall, and those are the only interactions I could
22 recall at that time.

23 Q. Was it the practice at the time that the Premier would
24 sign all contracts?

25 A. At that time, the Premier would have signed all

1 contracts but not only signing, he would have made sure that
2 they would have been explained to him at that time. It was not
3 just about the signing. It would be explained to him. And he
4 would approve projects also, not just sign. In my capacity, I
5 signed because that's what we do being in finance but I don't go
6 and approve projects. He approved every project at that time.

7 Q. Break that down, Premier. I think you are going a bit
8 too fast.

9 A. Um-hmm.

10 Q. Firstly, there are four contracts between 2008 and
11 2010.

12 A. Right.

13 Q. With this consultancy.

14 A. Yes.

15 Q. So, the Premier, the then-Premier, would have signed
16 all four contracts?

17 A. Most likely. I cannot recall if he would have signed
18 off, but if it wasn't him, he would have given the Authority to
19 the Permanent Secretary, but not the Minister.

20 Q. But it's the practice at the time that I'm asking you
21 about.

22 A. Yes.

23 Q. Because different administration have different
24 practices?

25 A. Right. He signed and approved projects, not only

1 signed but approved the projects.

2 Q. But he would also delegate to a Permanent Secretary
3 from time to time?

4 A. He would delegate to the Permanent Secretary as far as
5 my memory recalls, but that would have been rare, but that would
6 happen now and again.

7 Q. And the then-Premier would sign whether it was a Petty
8 Contract or a Major Contract?

9 A. He would sign all contracts that--Ministers never sign
10 any contracts under the Government or approve the Projects.

11 Q. In terms of--you then sort of said but your voice
12 dropped at this point, that that's not your practice. Were you
13 referring to your practice at the time or were you referring to
14 your practice now?

15 A. I don't approve projects.

16 Q. What do you do?

17 A. Finance does all the vetting with the Ministries, and
18 they would just bring it to the Minister of Finance to sign.

19 Q. I see.

20 So, your Ministry will work in conjunction with the
21 subject Ministry--

22 A. Ministry of Finance.

23 Q. --to do any vetting?

24 A. Yes.

25 Q. And you just sign on the dotted line?

1 A. By the time it gets to me, all the checks and balances
2 would have been done. It's not for me to decide the Project or
3 anything.

4 Q. Now the--according to your Written Response, the first
5 time that you became aware of problems with the Project was in
6 mid-2010, so you explained that you didn't form the impression
7 nor was it brought to your attention that there were problems
8 with it. That only arose in mid-2010 when you began hearing
9 from social and church contacts and also Members of the House of
10 Assembly that there was some dissatisfaction. So, that was some
11 time into the Project, given that I think the first contract was
12 signed in late 2008, and I think it finished sort of some time
13 in late 2010, so it was only in the very last part of the
14 Project you began hearing these rumors of dissatisfaction; is
15 that right?

16 A. Well, allow me to clear my memory, Commissioner,
17 because I want to be as helpful as I can, so if I could go back
18 to my notes because they are my notes, and it says in the early
19 periods of the Contracts, I do not recall gaining any impression
20 that the Project had encountered problems. Certainly the
21 Permanent Secretary and senior Public Officers did not draw my
22 attention to any, and I picked up no discontent or unhappiness
23 among the churches that were involved. On the contrary, these
24 organisations seemed enthusiastic about it. I played the organ
25 and keyboard for church services, and so I was then and I remain

1 in touch with many of our churches in the Territory. However, I
2 recall that after about 18 months, we should have been in about
3 mid- to late-2010 I began to learn informally through my social
4 and church contacts when I attended social and religious events
5 of a level of frustration with the Project. Also, I recall
6 about the same time one or two Members of the House of Assembly
7 were expressing similar concerns in the House. I cannot now
8 recall the details of this dissatisfaction, but it prompted me
9 to speak to my Permanent Secretary who, as far as I can recall,
10 assured me that, although there were criticisms, many churches
11 had expressed their great satisfaction with the Project.
12 However, the frustrations expressed and the hostile political
13 scrutiny prompted me to ask to see the progress reports and we
14 see all of the rest of that go on. So, what I wrote here is
15 exactly how I remembered.

16 Q. Finish reading the paragraph, please, Premier.

17 A. Okay, I will. Please allow me to do that all the
18 time.

19 As I can recall, now I was told that the Ministry had
20 not received any for some time. I directed the Permanent
21 Secretary request such reports, which would include that use of
22 allocated funds. Mr Skelton-Cline's consultancy to be delivered
23 to me as soon as possible. Some weeks later the Permanent
24 Secretary informed me that despite requests--that despite the
25 requests, the Reports had not been forthcoming. I expressed my

1 dissatisfaction with the situation, and I believe that the
2 Ministry continued to seek the Reports for some months without
3 success. Eventually I recall I spoke to the late Premier to
4 explain that given the absence of lack of compliance with the
5 Ministry's requests and the increase in political Opposition on
6 the Project, I would have no choice but to terminate the
7 Contract. It was a difficult conversation with the Premier, who
8 was reluctant to accept the conclusion that I had reached.

9 COMMISSIONER HICKINBOTTOM: Just pausing there,
10 Premier, just before we come on to any questions about this part
11 of the Project, which is from 18 months in in 2010, we know that
12 the Contracts were for 12 months, and so the Contracts that
13 began toward the end of 2008 would have finished towards the end
14 of 2009. There were then second contracts, both consultancy and
15 implementation contracts. There is nothing in your note about
16 how the second contracts, the renewed contracts, came into
17 being. Can you remember anything about that?

18 THE WITNESS: No, I can't recall because I never had
19 any dealings with the Contracts.

20 COMMISSIONER HICKINBOTTOM: So, you had no dealings
21 with the renewal of the Contracts?

22 THE WITNESS: None.

23 COMMISSIONER HICKINBOTTOM: Although they're under
24 your Ministry, you had no dealings with them?

25 THE WITNESS: Like I say, it was a project that was

1 given to the Ministry of Education by the Premier but he paid
2 particular attention to this Project himself.

3 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

4 BY MR RAWAT:

5 Q. Given that, why was it for you to decide whether or
6 not to terminate the Contract?

7 A. Well, that's the way I felt. It still wasn't up to
8 me. It was up to the Premier.

9 Q. It's just that the reason I ask is you say that you
10 spoke to the late Premier to explain that, given the absence of
11 compliance with the Ministry's request and the increasing
12 political Opposition to the Project, I would have no choice but
13 to terminate the Contract?

14 A. Right. Those are strong words, but I don't have the
15 power to do it, but what I meant is that it would have to be
16 terminated. I didn't have the legal power to terminate a
17 contract. So, what I put in there is more saying that I want as
18 a recommendation--

19 (Overlapping speakers.)

20 Q. What you went and spoke to the Premier about--

21 A. The absence of the Report--

22 SIR GEOFFREY: Mr Commissioner, I wonder whether
23 counsel would read the final sentence in paragraph 5, which may
24 shed a little light on it.

25 COMMISSIONER HICKINBOTTOM: It's been read already.

1 MR RAWAT: It's been read already.

2 SIR GEOFFREY: Forgive me if I didn't hear it but the
3 fact is--

4 MR RAWAT: --read it for Sir Geoffrey. It is as
5 follows: It was a difficult conversation with the Premier who
6 was reluctant to accept the conclusion I had reached.

7 SIR GEOFFREY: Yeah. Correct.

8 BY MR RAWAT:

9 Q. But the point, Honorable Premier, is this, isn't it,
10 is that what you're saying now is that what you were saying to
11 the then-Premier was this is what I would recommend?

12 A. Well, that's the conclusion I had reached, but I must
13 state clearly--I must state clearly that this programme
14 concerns, from what I can recall, had nothing to do with the
15 performance of the Programme, it just came up--what do they call
16 it, football, because if we--to allow me to be able to expound
17 on this, it goes on to say at that time all I knew was that some
18 of the churches had become frustrated with the Administration of
19 the Project, which appeared to be reflected by Members of the
20 House of Assembly. That's how I was hearing it. And I was not
21 aware of the details set out in the Auditor General's Report if
22 they're accurate because when I read it, she named certain
23 things I don't know if they were accurate. I received from
24 various resources numerous accounts of young people whose lives
25 had been improved by the Project. And I still believed, as I

1 had been told by the Ministry Officials, that there was yielding
2 valuable benefits. I recall I answered questions in the House
3 of Assembly on the subject to this effect. My recollection is
4 that it was the failure of Mr Skelton-Cline's consultancy to
5 produce the full reports I requested it was some months, and not
6 any substantive concerns about the benefit of the Project but
7 ultimately convince me that I should speak to the Premier about
8 curtailing it. I cannot recall that I had any personal
9 discussions at this stage with Mr Skelton-Cline but the Project
10 and my involvement, such as it was, was entirely through the
11 Officials in the Ministry. I recall that I gave instructions
12 that Mr Skelton-Cline should be informed that the Ministry was
13 in the Project. I cannot now remember how the matter was
14 finally resolved, but at some point I became aware that
15 Mr Skelton-Cline had claimed the Members of the House of
16 Assembly criticised the Project for political reasons because he
17 was intended to stand for the main Opposition party in the
18 forthcoming general election and the constituency of one of
19 those Members of the House of Assembly voicing criticism as he,
20 indeed, later did.

21 So, that was my recollection of it, that it was mired
22 by more politics than performance.

23 COMMISSIONER HICKINBOTTOM: Can I just break that down
24 a bit, Premier, so I understand it. Firstly, you have explained
25 that this was really the Premier's initiative.

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: But it was under your
3 Ministry, for example, it was your Permanent Secretary who was
4 the Accounting Officer, for example; yes?

5 THE WITNESS: Well, yes--I don't want to go to "yes"
6 or "no", I find that I get trapped by them.

7 COMMISSIONER HICKINBOTTOM: So, you don't know. You
8 don't know whose budget this came out of?

9 THE WITNESS: I would state very clearly that the
10 Premier was the one, the then-Premier, who was keeping a very
11 keen eye on this Project, I can't remember if whether it came
12 out of his budget or my budget in the Ministry, but he was
13 keeping a very keen eye on it and he had a right to because the
14 environment was not good at that time with all the young people
15 with them all fighting gangs that were happening, so it was not
16 something that was being done in isolation and just being done
17 willy-nilly, so to speak.

18 COMMISSIONER HICKINBOTTOM: I appreciate that.

19 You said in your response that it was you who
20 responded to questions about the Project in the House of
21 Assembly presumably as the responsible Minister.

22 THE WITNESS: Right.

23 COMMISSIONER HICKINBOTTOM: But, in any event, the
24 Premier, you say, was driving this initiative, although through
25 your Ministry.

1 THE WITNESS: Well, Commissioner, if I may insert
2 this, any Minister that served under Ralph T O'Neal would tell
3 you that he signed all contracts and he approved all projects.

4 COMMISSIONER HICKINBOTTOM: No, no--

5 THE WITNESS: I want to make that clear, but if it
6 came a question about this subject matter, of course, the
7 Minister has to go to the House to answer--

8 COMMISSIONER HICKINBOTTOM: Because it's your
9 responsibility.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: And just in terms of the
12 reason that this Project after 18 months was closed down, I
13 understand you say that it was political, but when these
14 criticisms first came to your attention in 2002, you asked the
15 Permanent Secretary, you say, to request progress reports,
16 including the use of allocated funds, because these have not
17 been coming in. Some weeks later, the Permanent Secretary
18 informed you that, despite the requests, the Reports had not
19 been forthcoming. And you say the Ministry continued to seek
20 the Reports for some months without success.

21 So, I understand you say that it was political. I
22 understand that you had anecdotal reports about the Project, but
23 the fact of the matter is that the progress reports, which you
24 as the responsible Ministry in the sense that you have
25 identified, have not got progress reports. You requested them,

1 none were forthcoming, including where the money had gone to.

2 That must have been a matter of some concern?

3 THE WITNESS: Slightly because there was a project
4 that the Premier kept a keen eye on. And although it was not my
5 Ministry, he would have been more knowledgeable about it because
6 he actually had--that Project as one of those that he see that
7 can help save the young people from a lot of what was happening.
8 So, all the Report was being done by him, but when, of course,
9 that being the Minister, you become concerned, and he would ask
10 for things in that time when I asked.

11 So, I cannot say anything negative towards Mr O'Neal
12 at all, the late blessed memory of Ralph T O'Neal, it was
13 something that at the time that any leader would have done to
14 try to save the young people.

15 COMMISSIONER HICKINBOTTOM: I'm sorry, I understand,
16 and as I say, the background to the Project is set out in the
17 Auditor General's Report. That's, as it were, a given. But
18 what we're looking at is things like governance, and this was a
19 project which, upon which hundreds of thousands of dollars of
20 public money was spent. You, through your Permanent Secretary,
21 part of a progress report which had not been lodged, you asked
22 them over weeks, you asked them over months and they were not
23 forthcoming. That must have been--sorry, it's a question--that
24 must have been a source of some concern to you, wasn't it? Or
25 wasn't it?

1 THE WITNESS: Well, in the time frame that I asked for
2 it, not too long after that I was no longer Minister. I lost
3 the election not too long after.

4 COMMISSIONER HICKINBOTTOM: Not before this Project
5 was pulled.

6 THE WITNESS: Yeah, but what I'm saying is that, over
7 the course of the Project, the Report was done to the Premier,
8 so I--I didn't receive when I asked, but I can't tell you that
9 they didn't exist--I didn't receive, I don't know if the Premier
10 received, he was the one monitoring. And he's the only one you
11 can ask.

12 COMMISSIONER HICKINBOTTOM: So, you're saying the
13 Premier's Office was monitoring the progress.

14 THE WITNESS: With strict things with the PS reporting
15 to the Premier at that time.

16 COMMISSIONER HICKINBOTTOM: I'm sorry, I'm--

17 THE WITNESS: The PS under that programme reporting to
18 the Premier because how delicate it was to him for the country
19 trying to help be a more positive environment.

20 COMMISSIONER HICKINBOTTOM: I understand that.

21 So, your Permanent Secretary was reporting to the
22 Premier?

23 THE WITNESS: Well, he's the one that brought the
24 Project, so he was spearheading the whole thing.

25 COMMISSIONER HICKINBOTTOM: So, progress reports, had

1 they existed, should have come into your Permanent Secretary,
2 and then she would have sent them on to the Premier?

3 THE WITNESS: I can't remember how they did it because
4 that was long ago. All I know is that the Premier was the main
5 one that was monitoring this Project.

6 COMMISSIONER HICKINBOTTOM: And you didn't monitor it?
7 I'm sorry, that's again a question.

8 THE WITNESS: Well, it's a question asking the same
9 thing, I just said the Premier is the one who was doing the
10 monitoring of that program because it was very dear to his
11 heart.

12 COMMISSIONER HICKINBOTTOM: And so you did not monitor
13 it?

14 THE WITNESS: The Premier was the one doing the
15 monitoring because it was very dear to his heart, the most I
16 would do as Minister is, our function is you would promote it,
17 you would do your part as Minister, but it was dear to his heart.

18 BY MR RAWAT:

19 Q. How were you able to answer questions on it without
20 cite of the progress reports?

21 A. The same way the Public Service operates. The
22 progress reports--that's what I'm saying, it's very difficult to
23 answer these questions because that's a very good question, and
24 I answered it for you very clearly. Any Minister that gets a
25 question from the House of Assembly relies on the technical

1 expertise to give him the answer. If you go in and you are as
2 good as the answer you received from your technical people, that
3 they are the ones who are going to be dealing with it.

4 Q. And you say that the Premier was the person monitoring
5 it, and then you went to the Premier and said, this needs to be
6 terminated because there haven't been progress reports?

7 A. I asked for.

8 Q. Okay. You now explain that you asked the Premier to
9 terminate it because there hadn't been progress reports?

10 A. Um-hmm.

11 Q. But it must follow that, given that it was terminated
12 that there can't have been progress reports?

13 A. I can't conclude that because, at least they weren't
14 given to me, but I cannot conclude that because we also state
15 that this was littered with political issues and concerns that
16 was rocking the very core of the then-Government of Ralph T
17 O'Neal.

18 COMMISSIONER HICKINBOTTOM: But we can say this, can't
19 we, that you believe the Ministry continued to seek the Reports
20 for some months without success?

21 THE WITNESS: Well, based on what I was told, that's
22 what I was told--

23 COMMISSIONER HICKINBOTTOM: Yes.

24 THE WITNESS: --in terms of that.

25 COMMISSIONER HICKINBOTTOM: Because--

1 THE WITNESS: But I don't know.

2 COMMISSIONER HICKINBOTTOM: Because that--

3 THE WITNESS: I don't know what--

4 COMMISSIONER HICKINBOTTOM: That's what's in your
5 response.

6 THE WITNESS: That's what's in there.

7 COMMISSIONER HICKINBOTTOM: So you believe that the
8 Ministry continued to seek the Reports for some months--

9 THE WITNESS: Yeah.

10 COMMISSIONER HICKINBOTTOM: --without success.

11 THE WITNESS: But I can't answer all those other
12 questions. The only person could answer those is going to be
13 the then-Premier, and you'll have to ask him.

14 Q. You say at page 3 good morning of page 6 it was?

15 BY MR RAWAT:

16 Q. But you do say at the bottom of page 3, paragraph 6
17 (reading): My recollection is that it was the failure of
18 Mr Skelton-Cline's consultancy to produce the four progress
19 reports I had requested some months and not any substantive
20 concerns about the benefit of the Project but ultimately
21 convinced me that I should speak to the Premier about curtailing
22 it.

23 A. Yes.

24 Q. (Reading): I cannot recall that I had any personal
25 discussions at that stage with Mr Skelton-Cline about the

1 Project, and my involvement, such as it was, was entirely
2 through the officials in the Ministry. I recall that I gave
3 instructions that Mr Skelton-Cline should be informed that the
4 Ministry was ending the Project. I cannot now remember how the
5 matter was finally resolved, but at some time I became aware
6 Mr Skelton-Cline had claimed the Members of the House of
7 Assembly had criticised the Project for political reasons
8 because he was intending to stand for the main opposition party
9 in the forthcoming general election in the constituency of one
10 of those Members of the House of Assembly voicing criticisms as
11 he did, indeed, later did.

12 So, separating the political circumstances from the
13 question of reports, the best that you can do, Premier, is to
14 say your recollection was the absence of reports when you raised
15 the issue that led to the curtailment of the Project, not, for
16 example, anyone expressing dissatisfaction to you, but within
17 the context of what you described as sort of political
18 hostility.

19 A. Well, I didn't want to describe it--it was what it
20 was; it was quite a time--but what I would say is that--to your
21 question--it only could have been about the Reports, and--and I
22 will explain very briefly why.

23 The questions in the House of Assembly required
24 answers and you got the answers from the technical people. And
25 then when you go to the churches, as I play the keyboard in any

1 churches, they will tell you that they felt the Programme was
2 going good. The majority that I spoke with is one or two that
3 you would have heard over the years as I remember that that
4 would have certain dissatisfaction but not total
5 dissatisfaction.

6 Q. Were these churches in Tortola or were you going to
7 churches in Virgin Gorda as well and hearing that?

8 A. Well, I can't remember 13 years ago which church was
9 which. I remember more was for them which was not.

10 Q. But how many churches were you getting this feedback
11 from?

12 A. I can't remember that. That's 13 years ago. That's
13 why I was saying if this was done earlier, I could give you more
14 accurate answers. That's a good question to asked 13 years ago,
15 but 13 years later, that's a hard one to answer. That's a hard
16 one.

17 COMMISSIONER HICKINBOTTOM: So, what you're saying,
18 Premier, I think, is that you had anecdotal evidence that
19 churches were enthusiastic about the Project, but you didn't
20 have any progress reports.

21 THE WITNESS: That I didn't have the progress reports
22 when I asked, but yes, the churches have for the most part I
23 could remember, that I can recollect, the majority of them felt
24 that they were able to benefit from this programme.

25 COMMISSIONER HICKINBOTTOM: Thank you.

1 BY MR RAWAT:

2 Q. Just to turn to the politics, the--Mr Skelton-Cline,
3 when he was asked about this, which was on the 4th of October,
4 before the Commissioner, described the notion that the Project
5 was terminated because of a failure to provide reports as
6 "absolute nonsense. That's bogus".

7 A. That's what he said?

8 Q. Yes.

9 He said, however, that it was politics.

10 A. Yeah.

11 Q. That he was essentially, as a private citizen, caught
12 in a political storm, and I will quote you what he said. He was
13 "caught up in a political fight between two party Members of
14 which me in my private capacity as a citizen and a tremendous
15 amount of lies and innuendos was told with the intent of
16 tarnishing my reputation".

17 Now, you've explained, Premier, that there was, if you
18 like, political opposition going on at the time, but that did
19 not play--that was not--that did not play a part in the decision
20 to terminate the Contract. It was the absence of reports that
21 was the pivot; is that right?

22 A. Well, I think you're asking me the same question
23 again.

24 Q. Yes.

25 A. And I gave the answer already.

1 Q. But could you--would you mind repeating it again?

2 A. No, I think I've done as much as I could do that.

3 Well what--

4 COMMISSIONER HICKINBOTTOM: It was the absence of
5 reports.

6 THE WITNESS: What I would say is that--did Mr Cline
7 say he turned in reports?

8 BY MR RAWAT:

9 Q. He described the notion that the Project was
10 terminated because of failure to provide reports as "absolute
11 nonsense, that's bogus".

12 A. But he did he say that he ret--I just.

13 Q. I think--

14 A. --genuinely I'm asking.

15 Q. Your best off referring to his evidence, yourself.

16 A. Mm-hum.

17 Q. My recollection, which may be imperfect, is that his
18 position was that he complied with the Contract, so he complied
19 with the requirements under the Contract.

20 A. Well--

21 Q. Essentially his position is that he was a victim of
22 politics.

23 A. And he--with the politics' part he's correct. The
24 Programme didn't suffer because of politics. I still think that
25 they--

1 (Overlapping speakers.)

2 Q. Was that politics from the opposition?

3 COMMISSIONER HICKINBOTTOM: I'm sorry. Just let
4 Mr--the Premier--

5 THE WITNESS: Yeah, both sides. It came from both
6 sides, from the lead--well, from the lead side and the other
7 side, and I still firmly believe, from what I could remember
8 that the Programme was a good programme, and as far as I was
9 concerned, once you got the Reports in, I--that's all I would
10 have wanted to continue, but I never heard any overwhelming or
11 concern about a Programme not performing the way it should, as
12 far as my recollection told me. A lot of persons got help from
13 this programme.

14 COMMISSIONER HICKINBOTTOM: But the Reports never came
15 in. You don't suggest in your note that any Reports came in.

16 SIR GEOFFREY: Now if you'll forgive me, Commissioner,
17 that is not correct. What he said was at the time he asked his
18 officials, he was told that they hadn't received any for some
19 time. Paragraph 4. Very important, with respect, that the
20 Witness should be given correct facts on which to comment. I
21 mean no disrespect, but it is clear that what the Premier said
22 in writing is that the Ministry had not received any for some
23 time. That's not to say they had none.

24 COMMISSIONER HICKINBOTTOM: No, Sir Geoffrey, you're
25 absolutely right. I was actually focusing more on paragraph 5

1 where the Premier says that he believes the Ministry continued
2 to seek the Reports for some months.

3 SIR GEOFFREY: Yes. There's a period of a few months,
4 perhaps whatever the Premier said it is, when they didn't have
5 it, and when he'd first inquired, as I understand the position
6 that he set out in writing, he was told there hadn't been some
7 for a while, but that isn't to say there weren't any, and I do
8 think it's important, with respect, that we should get the facts
9 correct. What they were clearly missing is nobody had followed
10 up on them for some time.

11 COMMISSIONER HICKINBOTTOM: Well, that--get the
12 evidence correct, Sir Geoffrey. You're absolutely right, and
13 that's what the Premier says both in relation to what he was
14 told in respect of past reports and what he was told in respect
15 of reports--

16 (Overlapping speakers.)

17 SIR GEOFFREY: Yes. Not only--

18 (Overlapping speakers.)

19 COMMISSIONER HICKINBOTTOM: Yes, thank you.

20 MR RAWAT: Commissioner, I've noticed the time, and I
21 wonder if we could have a break now.

22 COMMISSIONER HICKINBOTTOM: That may well be sensible.
23 Have you many more questions on...

24 MR RAWAT: Not hugely. I was just going to take the
25 Premier just to the evidence of the Auditor General in relation

1 to date.

2 COMMISSIONER HICKINBOTTOM: Well, do you want to do
3 that--

4 MR RAWAT: I can do that now.

5 COMMISSIONER HICKINBOTTOM: And then we can break
6 after you've completed the NPP, Mr Rawat.

7 THE WITNESS: The NPP?

8 COMMISSIONER HICKINBOTTOM: This.

9 THE WITNESS: Okay.

10 MR RAWAT: Not the NDP.

11 COMMISSIONER HICKINBOTTOM: Oh, no, no, not the NDP.
12 (Overlapping speakers.)

13 BY MR RAWAT:

14 Q. Premier, you've got the bundle there.

15 A. Mm-hum.

16 Q. If you turn up, I think it's page 113.

17 A. Which one?

18 Q. The one that's--what's "Neighborhood Partnership
19 Project".

20 A. Yeah.

21 Q. 113, please.

22 A. 113.

23 Q. So, if you look at line 12, this is part of the
24 Transcript of the evidence of the Auditor General, and I've
25 taken her at line 12 to the front page of a Report from your

1 office, as I say, on the Virgin Islands Neighborhood Partnership
2 Project. She confirms that, and I say reading): And then--and
3 that I think was produced in or published in January 2013.

4 Answer is correct.

5 I then go--now if I take you to, and I'm about to take
6 the Auditor General to another page in the Report, and she
7 responds (reading): That date that you mentioned as a matter of
8 fact I'm not seeing that date on the Report.

9 I say: I wasn't able to find a date on the Report
10 itself.

11 She answers: I think the date might have been a
12 little earlier than that, so let me verify that date.

13 I say: Thank you.

14 And then we move on. So that's, I think, the context.
15 The position on the Auditor General is that she would need to
16 verify the date. So she didn't either accept or indeed confirm
17 or say that the Report had been published in 2013, but in any
18 event, as you have explained to the Commissioner, you, having
19 made investigations, don't believe that this Report was ever
20 made public or put before the House of Assembly. As I
21 understand your evidence, you've checked with the Cabinet's
22 office, you've checked with the House of Assembly, and you've
23 checked with the Ministry, and there's no evidence that you've
24 been able to discover to show that it was published; is that
25 right?

1 A. As far as my efforts have revealed, it has never been
2 made public.

3 Q. No. Can I--can you just help us with this: Was it
4 the 7th of November 2011 that the election happened?

5 A. I know it was in 2011 because we lost. I tried not to
6 remember the date, but it was in 2011, but I can't remember and
7 it was--

8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: It was November. I can't
10 remember--

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: --the precise date.

13 THE WITNESS: Yeah.

14 COMMISSIONER HICKINBOTTOM: But I think Mr Rawat
15 probably--

16 SIR GEOFFREY: It was the 7th.

17 MR RAWAT: Yeah.

18 (Overlapping speakers.)

19 BY MR RAWAT:

20 Q. It was confirmed by Sir Geoffrey.

21 A. Um-hmm.

22 Q. Now the--and so once you leave the Ministry, you're
23 no--you no longer would have access to Ministry papers; is that
24 right?

25 A. Neither papers, the door, the window, everything,

1 keys, everything gone. Access to nothing.

2 Q. Right. The door was shut in your face, so to speak.

3 A. And it didn't slam on my way out.

4 Q. You also refer, and this is at your paragraph 8, to
5 Mr Skelton-Cline, and it's a point you made earlier in the day
6 as standing. You say (reading): I would point out that
7 Mr Skelton-Cline would indeed stood as a candidate for the
8 winning NDP in the November 2011 general election, had as far as
9 I can recall soon afterwards been appointed to advisor; that's
10 the Minister of Telecommunications and Works, and then you go on
11 to speak of his recruitment as the Managing Director at the Port
12 Authority, where he remained for some years.

13 It was just--what was the relevance of
14 Mr Skelton-Cline having stood as a candidate and then been
15 appointed as an advisor?

16 A. Well, it was the Transcript. My memory is to make
17 sure that whatever information I could produce for the COI that
18 was produced.

19 Q. I see.

20 So, it wasn't--it's not relevant to the circumstances
21 in which the Contract was terminated.

22 A. I wouldn't--I would say what is relevant to--in
23 addition to many other things would be that it is sure that he
24 did run for election and the concerns of the political side
25 manifests itself through this.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, I don't
2 understand that.

3 THE WITNESS: Well, he ran for the NDP at the same
4 time. Remember earlier we were talking about concerns of
5 political--political concerns of those and the late Ralph T
6 O'Neal aside because, you know, people--it's a small town. We
7 would hear things and they were concerned about his political
8 choice, which is his. So, this just showed at the end that he
9 did run. That's all, just to show that he did run as a
10 candidate.

11 COMMISSIONER HICKINBOTTOM: But if that has any
12 relevance, it's passed me by. Is that relevant to this topic?

13 THE WITNESS: Well, in terms of that he did run and
14 that he went on to work with the--let me read it for safety.

15 Has already called and soon after the election--soon
16 was called--has been appointed by the Minister. Yes, he went to
17 be appointed as a Minister and then he went to be a Managing
18 Director of the ports.

19 It is totally relevant to the Auditor General's Report
20 because if there was a major concern--if there was a major
21 concern like has been cited, it would have been cited then.

22 COMMISSIONER HICKINBOTTOM: Somebody would have voiced
23 it.

24 THE WITNESS: Yes.

25 And the Minister, where the Report is, is in the

1 Government where he was appointed. So, that is why all those
2 factors concern me.

3 COMMISSIONER HICKINBOTTOM: Okay.

4 BY MR RAWAT:

5 Q. Sorry, break that down a little bit.

6 A. Um-hmm.

7 Q. The first time you answered, you said, well, that's
8 reflective, the sort of concerns that were expressed, so let's
9 go back a little bit in time about the concerns.

10 A. Explain to me what you're saying. I don't understand.

11 Q. That your first--well, the first time I asked you why
12 it was relevant--

13 A. Yeah.

14 Q. --you said, well, it speaks to the earlier part of
15 your Written Response where you--

16 (Overlapping speakers.)

17 A. "Among other things" is the words I used.

18 Q. It speaks about the early part of your Written
19 Response where you were speaking about physical hostility,
20 so--and you specifically reference Ralph T O'Neal's side. So
21 what concern--at the point in time when Mr Skelton-Cline did
22 have this Contract and it was ongoing, what concerns--did the
23 concerns arise from your side of the political divide because of
24 his intention to run for election?

25 A. It was a concern that he was going to run for

1 election, and there was very much a huge rumor that he was going
2 to run for election for one of the persons on our side, so it
3 was a rumor that--

4 (Overlapping speakers.)

5 Q. --stand against somebody on--from your side.

6 A. No--yes, stand with us against someone that would have
7 been on our side.

8 Q. I see. So he--

9 A. That was a rumor.

10 Q. --he was going to compete for the same seat against
11 some--he was going to stand for the Virgin Islands Party--

12 A. The rumor was--

13 (Overlapping speakers.)

14 Q. --the same seat?

15 A. To get to the political things so can get it out of
16 the way, the rumor was that he was going to replace a person on
17 our ticket and be running on our side. That was a rumor, but it
18 was not true, but some Members believed it.

19 Q. And that then led to hostility against him.

20 A. Well, anyone traveling a political--are we there?
21 Anyone traveling--any elected official anywhere in the world
22 when they hear persons threatening their seat, they become
23 concerned.

24 Q. Right. So, I think--because that's slightly different
25 from what you said at the top of page 4, because what you said

1 at top of page 4 is because he was standing--intending to stand
2 for the main opposition party--

3 A. Yes.

4 Q. --in the coming general election.

5 A. That is what I remember. But you're asking me what
6 caused the political thing. There were those who, although that
7 was known, believed that it was not so. They believed that that
8 was just a front, that he really was going to run in the space
9 on one of them.

10 Q. So, there were two things going on.

11 A. Yes.

12 Q. First, the belief you've spoken to, that he would
13 remerge as a Virgin Islands Party candidate?

14 A. Exactly.

15 Q. And second, that you then became aware of
16 Mr Skelton-Cline's claim that he had been criticised or that the
17 Project had been attacked for political reasons because he was
18 intending to stand for the Opposition. And then if we go back
19 to the second explanation you gave for adding paragraph 8, it's
20 that if there had been any concerns over him, he would not have
21 been allowed to run for the NDP or indeed become an advisor to
22 the Minister of Telecommunications and Works. Have I understood
23 that right?

24 A. Well, let me say what I understand, and I hope I make
25 it abundantly clear that what I said before in the paragraph

1 stands. That is clear, but other Members in the Virgin Islands
2 Party at the time was hearing differently. So they believed
3 what they were hearing, but I heard in my sources that it would
4 have been for the opposition party, but there were persons on
5 our side who you could tell them nothing other than it is going
6 to be one of them he's going to replace to run, so there
7 were--you could see where the conflict came in. A man believes
8 what he believes no matter what you would tell him. But the
9 truth doesn't need any one belief.

10 But what I'm saying in the paragraph 8, I would point
11 out Mr Skelton-Cline, who had indeed stood as a candidate for
12 the winning NDP in November 2011 general election had, as far as
13 I can recall, soon afterwards been appointed as an advisor to
14 the Minister of Telecommunications and Works and then, within a
15 few months, recruited by that Government as a Managing Director
16 of the port where he remained for several years. Since the
17 draft report which had been compiled while I was in Opposition
18 had not been published, it would have lain in the hands only of
19 the sitting Government, the Auditor General, and possibly the
20 Governor. That is clear.

21 If this Report existed like it is saying that it
22 exists and if this Report had concerns that it--like it said it
23 had, then the Minister who would have been in charge would have
24 been the one with the Report.

25 So, if it was--it is one way of evidence I would only

1 figure that inside the Ministry alarmed him or her, whoever it
2 was, they would have told their side that it would not be
3 adequate or appropriate to hire Mr Skelton-Cline, so that's why
4 I'm saying that there might have very well been information in
5 the Ministry to have cleared all of this up because the sitting
6 Government had no problem with the employment of Mr Cline, which
7 he went on and did some fine work with the ports, but if they
8 didn't have any problem with it, in hindsight, and this Report
9 never came to the public, well, obviously, it was--it had to
10 have some kind of information there to keep them of a sound mind
11 that they were moving in the right direction. That's all I'm
12 saying.

13 BY MR RAWAT:

14 Q. Thank you, Premier.

15 MR RAWAT: Commissioner--

16 COMMISSIONER HICKINBOTTOM: Does that finish--

17 MR RAWAT: Yes.

18 COMMISSIONER HICKINBOTTOM: --this as a topic?

19 MR RAWAT: Yes.

20 COMMISSIONER HICKINBOTTOM: Good.

21 SIR GEOFFREY: Sir Gary, I wonder if I might just
22 correct one matter that you raised at the outset--

23 COMMISSIONER HICKINBOTTOM: Yes.

24 SIR GEOFFREY: --on a point of evidence.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 SIR GEOFFREY: I've reviewed the evidence of the
2 Auditor General on the relevant day, and I've not been able to
3 find a passage in which she stipulated that she had any doubt
4 that the Report had, in fact, been published. What she
5 expressed was doubt that the date may be correct, but she was in
6 no doubt that the Report had been published. This is at page 94
7 of the relevant Transcript at lines 16 to 22. It would appear
8 pretty clear that the Auditor General was of the firm view that
9 it had been published.

10 COMMISSIONER HICKINBOTTOM: I'm sorry, I was looking
11 at the--it's my fault. I was looking at the bundle number, not
12 the page number in the Transcript.

13 SIR GEOFFREY: I do beg your pardon. It's the
14 Transcript number that I'm talking about.

15 COMMISSIONER HICKINBOTTOM: No, and I've got that.
16 But we've been through that, Sir Geoffrey.

17 What the Auditor General was responding to was
18 Mr Rawat, he first raised this, and he said, it was, I think was
19 produced in or published in January 2013, and she said correct,
20 and then she went on to say but it might not have been
21 January 2013.

22 SIR GEOFFREY: Correct.

23 COMMISSIONER HICKINBOTTOM: So, what she was saying
24 "correct" to was that it was produced in or published in
25 January 2013, but we--the Auditor General, Sir Geoffrey, as you

1 know, does not publish these.

2 SIR GEOFFREY: Well, let us just take it a step at a
3 time, if I may, Commissioner.

4 First, the Auditor General was clear in evidence to
5 you that it had been published. All that she was not certain
6 about was the date. She said I think the date might have been a
7 little earlier so let me verify the date. She was not casting
8 any ambiguity over the fact it had been published.

9 It is a curiosity, therefore, if it hasn't been
10 published, and doubt the Inquiry will want to establish more
11 clearly whether it has or hasn't, but that, the evidence before
12 the Inquiry is that it had been published is, in my submission,
13 pretty clear.

14 COMMISSIONER HICKINBOTTOM: I'm sorry, is that based
15 solely on her saying that it was correct when Mr Rawat said that
16 it was produced in or published in January 2013?

17 SIR GEOFFREY: No, no. What it's based on is the
18 entire exchange. All that she goes back to verify is the date,
19 not whether it was published.

20 COMMISSIONER HICKINBOTTOM: But--

21 SIR GEOFFREY: --she explains to Mr Rawat earlier that
22 these reports ultimately end up being public, as she puts it on
23 line one, and all that is in question in that passage--these are
24 matters of submissions, so forgive me for taking up your time
25 now, but the reality is that in my submission, what appears to

1 be questioned in her mind is the date, not the fact.

2 Now, when you come to the question of publication, I
3 think perhaps we ought to submit to you submissions on this, and
4 it may well be it forms part of our application to
5 cross-examine. I appreciate that you don't like the expression,
6 but it's the section 12 that actually uses that expression. The
7 reality is that section 20 requires the Auditor General to be
8 clear to have satisfied herself there is a matter that needs to
9 be drawn to the attention of the Governor, not the Minister,
10 although I appreciate it may very well be that the Minister is
11 intended now under the current Constitution, but the actual Act
12 reads the Governor. Once the Governor has it, he's under a
13 legal obligation to publish it.

14 So, if it hasn't been published, I mean by laying it
15 before the House of Assembly, if it hasn't been published, then
16 in my submission at first glance--and I've only been looking at
17 this while we've been online, then it will raise real questions
18 about lawfully why not? Section 20 reads: May at any time
19 prepare and submit a report if satisfied there's a matter that
20 should be brought, so plainly she has to--

21 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, and this
22 isn't to--

23 SIR GEOFFREY: Yes.

24 COMMISSIONER HICKINBOTTOM: --cut submissions off, but
25 we may need to hear these submissions--

1 SIR GEOFFREY: Yes.

2 COMMISSIONER HICKINBOTTOM: --but that relates to a
3 section 20 report. Are you saying--

4 SIR GEOFFREY: It is--

5 COMMISSIONER HICKINBOTTOM: --are you saying that was
6 a section 20 report?

7 SIR GEOFFREY: Well, arguably. Arguably, yes.

8 COMMISSIONER HICKINBOTTOM: All right. Well--

9 SIR GEOFFREY: It wasn't an annual report.

10 COMMISSIONER HICKINBOTTOM: It wasn't an annual
11 report, but what I asked is if it's a special report under
12 section 20.

13 SIR GEOFFREY: Well, what else would it be, with
14 respect?

15 COMMISSIONER HICKINBOTTOM: Well, it could be a report
16 that's attached--it could be a report that's supplementary to an
17 Annual Report. I don't know. But does the Report itself say
18 that it is a section 20 report?

19 SIR GEOFFREY: Well, it doesn't say what it is.

20 COMMISSIONER HICKINBOTTOM: Oh, okay.

21 SIR GEOFFREY: It bears no date, which is why the
22 Premier has been saying that he's concerned that it was never
23 published and was only in draft.

24 COMMISSIONER HICKINBOTTOM: But the date on the Report
25 wouldn't be the date that it was published in the sense you

1 mean. It would be the date that it's sent to whomever it's got
2 to be sent to.

3 SIR GEOFFREY: Well, I--

4 COMMISSIONER HICKINBOTTOM: And I accept that that is
5 different, depending on what sort of report it is.

6 But, Sir Geoffrey, I understand--

7 (Overlapping speakers.)

8 COMMISSIONER HICKINBOTTOM: No, I understand that
9 there are submissions to be made in respect of this
10 and--well--and I think this is right, forgive me if it's not
11 right, but I think we're still waiting to hear from the Attorney
12 General and you in response to, as it were--

13 SIR GEOFFREY: You are. The draft is in preparation.
14 I hope you'll have it very soon. I've got to review it
15 overnight and perhaps tomorrow, but I'm very much hoping to have
16 it with you as quickly as possible.

17 COMMISSIONER HICKINBOTTOM: Good because these are
18 issues and--

19 SIR GEOFFREY: I know.

20 COMMISSIONER HICKINBOTTOM: --this may be an issue to
21 raise then, but these are issues that will need to be canvassed
22 at some point.

23 THE WITNESS: Yes, I'm most grateful. Forgive me for
24 raising it now and delaying the--Mr. Kasdan's need for a break.

25 COMMISSIONER HICKINBOTTOM: No, no. It's a point, Sir

1 Geoffrey, this is properly raised and it's one that we'll need
2 to deal with at some point.

3 SIR GEOFFREY: Yes, I'm most grateful. Thank you.

4 COMMISSIONER HICKINBOTTOM: Good.

5 Premier, shall we say quarter past two, half an hour.

6 THE WITNESS: Okay.

7 COMMISSIONER HICKINBOTTOM: And we'll come on

8 under--move on to a different topic, I think.

9 Good.

10 THE WITNESS: What's the next topic?

11 MR RAWAT: Belongership.

12 THE WITNESS: Belongership.

13 (Recess.)

14 COMMISSIONER HICKINBOTTOM: Good. I think we're ready

15 to start again.

16 Premier, just two things before we start the evidence.

17 Firstly, you're due to give evidence today and tomorrow. Thank

18 you very much. Just in terms of timetable, what we propose to

19 do, hopefully, subject to how quickly or slowly go, is to break

20 at about half past 4:00 wherever we are, and then recommence

21 tomorrow, but if you're free at 9:00 with the view, then,

22 hopefully to finishing by lunchtime.

23 THE WITNESS: Could it be 9:45, please?

24 COMMISSIONER HICKINBOTTOM: If you have other

25 commitments, yes, is the answer.

1 THE WITNESS: 9:45, please.

2 COMMISSIONER HICKINBOTTOM: Yes. 9:45 it will be.

3 THE WITNESS: Perfect.

4 COMMISSIONER HICKINBOTTOM: The second thing is, this
5 morning when you gave evidence, you referred to the Report, the
6 production of which and the publication of which we may need to
7 have further evidence about because there has been a certain
8 amount of speculation about it, but you said that the Report was
9 leaked twice, once I think in about 2012 or once in 2019, and
10 we've identified, I think, the 2019 leak, not the 2012 leak.
11 But the 2019 leak, which was where we have it from, was in BVI
12 News on the 12th of February, and just the first section reads:
13 "The Virgin Islands Neighborhood Partnership Project desired and
14 introduced by former Education Minister Andrew Fahie back in
15 2008 yielded virtually no results, despite his Ministry paying
16 more than half a million fees to consultancy firm called Claude
17 Ottley Consulting Limited over the course of several months.
18 This was the conclusion of an official report that has been
19 leaked to local media after years of being withheld from the
20 public. The report also cited a number of questionable expenses
21 paid under the Project. The report, which bore the official
22 seal of the Office of the Attorney General but did not have the
23 date, said the consultancy firm was contracted to coordinate and
24 mobilize churches, schools, other organisations and community
25 groups, participating centers, to provide assistance and

1 guidance to some of the most fragile and volatile youths across
2 the British Virgin Islands.

3 But at the end of the programme which ran from 2009 to
4 2010 under a VIP Administration, the Ministry paid out a total
5 of \$571,800 over several installments without any real work
6 being done. The report said 'the information received while
7 conducting the audit indicates the performance was either
8 non-existent or lacking in a number of years stipulated under
9 the contract. Although the consultancy firm was paid to
10 coordinate the programme on Tortola, Virgin Gorda and Anegada,
11 the report said the programme was executed in limited sessions
12 on Tortola. Participating centers on Virgin Gorda, separate
13 representatives of Claude Ottley Consulting, which was supposed
14 to coordinate the programme only visited the location once."

15 And so the article goes on quoting parts from the
16 Report as well as making comments about it.

17 That's the leak to which you're referring in 2019,
18 Premier; is that right?

19 THE WITNESS: Yes, Commissioner, but I just want to
20 understand one thing, if I may. The significance of bringing
21 this up is to let me know that what? Let me make sure I
22 understand.

23 COMMISSIONER HICKINBOTTOM: You raised this morning--

24 THE WITNESS: Right.

25 COMMISSIONER HICKINBOTTOM: --that the Report was

1 leaked on two occasions, once you thought in 2012--

2 THE WITNESS: Um-hmm.

3 COMMISSIONER HICKINBOTTOM: --once in 2019.

4 THE WITNESS: Right.

5 COMMISSIONER HICKINBOTTOM: We have not been able to
6 find the 2012 leak in the media. I just wanted to confirm that
7 this was the leak in 2019 to which you were referring.

8 THE WITNESS: Yes, Commissioner, but if I may?

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: The one in 2000--they only come up
11 during election times. I'm going to be very blunt to you, I
12 guess, to put feed to the public a couple of days to try to see
13 whoever it is doing this, whether BVI News or wherever, to sway
14 the election. But the Report never came public.

15 Look at this Report here that you rightfully read,
16 which is what I did see. It is--it is dated February 12, 13
17 days before the general election. The only reason that this was
18 released, in my mind, is to try to see if they could
19 damaged--damage me during the election not to win.

20 Now, let me explain something here why this concerns
21 me. These things keep popping up and creating scars on people's
22 reputation and character, and how do you respond to something
23 like this that comes out in the media 13 days before election,
24 accusing you of things with a report that when you went to look
25 for it then and now was not public? And the only three people,

1 based on the Act, that could have the Report would have been the
2 Minister, the Auditor General, or the Governor. So, someone of
3 the three had to leak this Report coming up to election. There
4 is no other way to put it. The other one was in the Beacon, I
5 think it was, and that was in 2012 or '11 or somewhere around
6 there.

7 So, how come if the Report was made public and it was
8 publicized and went throughout processes that the newspaper
9 continues in both editions, 2011 or '12 and 2019 using the word
10 "leak"? It could not say "leak". It should be saying that this
11 Report was made public, so this is information.

12 That's why I was saying earlier, that to base any
13 questions on this Report and to form any conclusions on it would
14 raise a red flag, and I will leave it there because this Report
15 has not gone through the processes in the procedures that it
16 should go through to allow for due process not only from the
17 Ministry involved but all the persons involved because there is
18 three sides to every story. With due respect--and I respect the
19 Office of the Auditor General, and I will never disrespect--that
20 it is crucial to a democracy in a country, but there is your
21 side, my side, and the truth. And all three sides must always
22 be allowed to be told expressly in the public domain when it's
23 dealing with person's character.

24 So, this is one of the areas, but this was 12 days
25 before election, and it says in the first word of the article

1 that you read, Commissioner, correctly, it say "leaked".
2 Therefore, it is safe to conclude that this Report was never
3 made public.

4 SIR GEOFFREY: Sir Gary, I wonder might just point out
5 that the article, in fact, accuses somebody of suppressing the
6 Report. You will see in its text that it actually says in terms
7 that the Report has been withheld until the newspaper got its
8 hands on it.

9 COMMISSIONER HICKINBOTTOM: No, no, as I said to the
10 Premier, Sir Geoffrey, the issues about production to whom and
11 possible publication, they're issues we may have to consider
12 with other witnesses. The Premier, I think, has taken that as
13 far as he can. All I want to establish is that this was the
14 leak that the Premier was referring to--

15 (Overlapping speakers.)

16 SIR GEOFFREY: If I can assist with the other, my
17 recollection is that it is January 2012. So, if there is a
18 search done of the Beacon for January 2012, I think you will
19 find the article.

20 COMMISSIONER HICKINBOTTOM: Well, that's very--that's
21 very helpful, Sir Geoffrey. We haven't had that from anyone
22 else. That's very helpful.

23 Good, Mr Rawat. Any other questions in relation to
24 NPP?

25 MR RAWAT: No, thank you.

1 COMMISSIONER HICKINBOTTOM: Good. Thank you.

2 MR RAWAT: I will move on to a different topic,
3 please, Premier, and that is the question of Belongership.

4 BY MR RAWAT:

5 Q. Now, in relation to this topic, the Commissioner has
6 now received evidence from a number of sources, including the
7 Internal Auditor. Joseph Smith-Abbott, who is the acting
8 Permanent Secretary of the Ministry of Natural Resources, Labour
9 and Immigration; and also the Honourable Vincent Wheatley, who
10 is the current Minister in that Ministry.

11 You have again been sent a Warning Letter which raises
12 two aspects in relation to Belongership--a similar letter was
13 sent to Cabinet--and you've produced a Written Response. Can I
14 take you to that Written Response now, please, and you confirm
15 that it has your date and--your signature on the date of the
16 20th of September 2021?

17 A. Yes, that's my signature, and date.

18 Q. And can you confirm that its content--you're content
19 for it to form part of the evidence before the Commissioner?

20 A. I'm content that--this one as well.

21 MR RAWAT: Just one moment, please, Commissioner.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 (Pause.)

24 MR RAWAT: Thank you.

25 BY MR RAWAT:

1 Q. If I take you to the Written Response, please,
2 Premier, and can I check as well that this is the Response that
3 stands on behalf of Cabinet; is that right?

4 A. If it doesn't?

5 Q. This Response also stands as the Response from
6 Cabinet.

7 A. As far as my memory recollects.

8 Q. I mean, the reason I ask is because you will see at
9 the top your page 1 it says "Of Premier WL No. 2 and Cabinet WL
10 No. 2", so I assumed it's made on behalf of yourself and the
11 Cabinet?

12 A. Yes. This is the Response from the Cabinet in 2011,
13 yeah, so during this, I believe at this time, yes.

14 Q. Well, as you'll know at the beginning the Commission,
15 submissions were made that Cabinet should be able to have
16 participant status, and so that's why a letter went to Cabinet.
17 If I look--if I take you to the first aspect of the Warning
18 Letter, and as you've indicated it relates to events and
19 decisions made in Cabinet in 2011.

20 Now, as we understand the evidence, the system of
21 considering Belonger applications in 2011 was similar, if not
22 the same as today, in particular applications were considered by
23 the Immigration Board, who would make recommendations to
24 Cabinet, and Cabinet was the decision-making body. That we know
25 because the Commission has received it, but there was a report

1 issued by the Internal Auditor in 2012. Have you had an
2 opportunity to read that Report?

3 A. Yes, since I received it.

4 Q. And have you read it--the follow-up report of 2014?

5 A. I have read it in 2014. I have to remember, but yes,
6 it was some time ago.

7 Q. I see.

8 Now, from that Report, what that Report highlighted
9 was that Cabinet has granted Belonger Status to 224 individuals
10 for whom the Board had not considered an application or made a
11 recommendation, and that comprised 190 people who had not
12 submitted an application, 32 who still had applications pending.
13 One person already had Belonger Status, and one who only applied
14 after the status was granted.

15 Now, that sets out--that detail is set out in the
16 Warning Letter, but it then raises the potential criticism that
17 in taking those steps, the Cabinet of which you were part,
18 acted ultra vires--that is unlawfully--because it had not
19 complied with the Immigration and Passport Act.

20 Now, if I take you to page 3 of your Written
21 Response--you have that?

22 A. Yeah.

23 Q. Thank you.

24 --you say as follows: "The events described in the
25 Warning Letter took place over ten years ago between April and

1 October 2011. As with the Neighborhood Partnership Project
2 which commenced 13 years ago, I must respectfully question
3 whether they can truly be said to have taken place within
4 'recent years', and that's properly formed part of the
5 Commissioner's Terms of Reference.

6 "I also wish to record that I have not had an
7 opportunity to attempt to recollect and establish events that go
8 back 10 years by reference to documents and records, or to
9 consult other surviving members of the Cabinet and senior
10 officials at the time. Nevertheless, I set out below the limited
11 amount of what I can remember of the events to which the Warning
12 Letter refers, although my recollection has been substantially
13 affected by the passage of time.

14 "3. In 2011, I was the Minister of Education. As far
15 as I can recall, the then Premier, the late Ralph T O Neal, had
16 been concerned that the slow processes of the Immigration Board
17 had resulted in a very large backlog of persons who were
18 frustrated and complaining that they were unable to be
19 considered for Belonger status by the Immigration Board. The
20 then Premier informed the Cabinet that he intended to bring
21 before it the cases of persons so affected before the end of his
22 term of office and invited members of the Cabinet to bring such
23 persons to his attention. I cannot recall if I brought any names
24 to the attention of the Office of the then Premier.

25 "4. As with any meeting of the Cabinet, even in those

1 days, the Attorney General would have been present, and the
2 Governor would have acted as its chairman.

3 "5. On the submission of a paper to the Cabinet by the
4 late Premier, it decided to grant the status to various persons
5 between April to October 2011. The Papers in those days were
6 not in the same form as those we submit now but to my
7 recollection, they did not indicate the views of the Attorney
8 General nor did he at those meetings advise that the grants were
9 unlawful. I do not recall that the Governor registered his
10 objections. I am quite confident that if, which I do not
11 believe it could, such a thing had happened now, the Attorney
12 General would have made and recorded her unambiguous advice to
13 that effect long before the matter reached the Cabinet.

14 "6. However, sometime after the Cabinet's
15 consideration of those persons, I believe the AG did advise that
16 the grants were unlawful and as far as I can recollect, the
17 decisions were not confirmed. I understood that these persons'
18 applications were then later processed by the Immigration Board
19 in the normal way. However, by then, I was out of government.

20 "7. It is suggested this decision might have been for
21 electoral reasons. That is simply not true. As I understand
22 it, the Cabinet decision to grant Belonger status to 190 of
23 these persons was made on 19 October, confirmed on 26 October
24 and the extract is dated 1st of November. The House of Assembly
25 was dissolved on 13 September 2011. Section 6(3) of the

1 Elections Act 1994 (as amended) provides that unless an
2 application to be registered as a voter is made by the 2nd day
3 after the House is dissolved, the Supervisor of Elections shall
4 reject the application. There was, therefore, no prospect of
5 these persons voting in the election.

6 "8. Even if that had not been the case, the time
7 available for those affected to register for the general
8 election as voters was one week. It is impossible that they
9 could have been issued with a Belonger card, even if they had
10 then been notified, and applied and been entered onto the
11 electoral roll in time to vote in the election.

12 "9. Therefore, I reject the suggestion. The decision
13 was not taken for any such reasons but because, as I recall the
14 events, the then-Premier was acutely concerned about the
15 injustices that a prolonged backlog of applications had caused
16 and wanted to remedy some of those injustices before the end of
17 his term of office".

18 Could I ask you just to pick up Volume 1 of the bundle
19 and if you turn, please, to page 417.

20 A. Page?

21 Q. 417, please.

22 A. I know you told me to turn to page 417, but,
23 Commissioner, and I do not know the impetus behind what will be
24 the questions, but you would bear me out that this was 2011, and
25 you would--do agree that it was in the tenure of the leadership

1 of now-late Honourable Ralph T O'Neal. I just need to clear a
2 few matters.

3 And Honourable Ralph T O'Neal, now deceased, was a
4 stalwart citizen in our community, and he was one of the most
5 celebrated sons in the Virgin Islands with a lifetime service to
6 the people of the Territory, and I need to put this on the
7 record, and he was bestowed with the title of I think it was
8 Member Emeritus--yes, it is Member Emeritus--for his
9 contributions to the development of the Virgin Islands in and
10 many years politically, economically, and socially.

11 And Honourable Neil T Neil, Member Emeritus, left an
12 unblemished legacy in the Virgin Islands, and that's why in my
13 humble view I felt it was unfortunate now that the now-deceased
14 Honourable Ralph T O'Neal Emeritus cannot come before this
15 Commission of Inquiry and defend his good name for himself
16 against any accusations or inferences or insinuations against
17 his judgment or his stewardship and leadership country of us
18 both in which he spent his life serving.

19 It is also unfortunate that none of the other members
20 of his Cabinet in 2011 who are still alive, the few that are
21 alive, have been called upon to testify on this matter. I'm the
22 only one selected to answer, as far as I have seen in my
23 research.

24 But what I can say and what I can recall is that when
25 Cabinet discussed this issue before I go into the bundle, I must

1 say that when the Cabinet did discuss this issue regarding
2 granting Belonger Status, at no time was there any
3 categorically--categorical statement or advice from the
4 then-Attorney General that what Cabinet was contemplating and
5 doing was unlawful at the time of the meeting. This was just
6 according instance in which I give evidence previously regarding
7 the reconstitution of the Boards, whether it be Climate Change
8 Trust Fund Board, the BVI Tourist Board, Ports Authority Board
9 and so forth. At no time did the Attorney General make any
10 clear, unequivocal, or categorical statement or advice that the
11 Cabinet would be acting unlawful or illegal.

12 So, in the Belongership issue here in 2011 that we are
13 now discussing, just as with the Climate Change Trust Fund Board
14 and the other Boards, when we sought to reconstitute them, there
15 was no clear definitive statement from the Attorney General that
16 Cabinet would be in breach of any law before or during. And in
17 the absence of any such clear direction and advice from the
18 respective Attorneys General at the time, Cabinet acted in the
19 belief and was acting within the law and within the public
20 interest,

21 But, Commissioner, I must register that, therefore,
22 the Cabinet of which I was a Member and a part of then and now
23 did not broke the law nor was advised during Cabinet that such
24 accord based on any advice from the Attorney General, and I said
25 that in previous advice that I--that we did not broke the law

1 with the Climate Change Trust Fund Board nor the Tourist Board
2 and the Ports, and I say the same here. We were not advised,
3 and therefore we did not proceed in that vein.

4 But, Commissioner, I must register observation on this
5 topic because, as I reflect on it, I must humbly bring this as I
6 give my evidence. I must reflect on this topic of Belonger
7 Status. It is very dear to my heart and the people of this
8 Territory's heart because it's the topic of the UK Government,
9 the UK Parliament seems to be bent on casting a cloud on, and
10 you can see it in the House of Commons Foreign Affairs Committee
11 15 Report of Session 2007-2019 entitled "Global Britain--British
12 Overseas Territories Resetting the Relationship", and for
13 reference is on page 26 and in particular paragraph 67, and I
14 reference that because those are talking about taking all 66
15 persons who--million 66 or to 70 million persons who are
16 British--and no problem with that; nothing against anyone--that
17 they must or should be able to be given status on all OTs, be
18 able to register to vote and also hold office.

19 Why I bring that up is that this brings the question
20 of Belonger Status that we--that I'm hearing a lot on, but we
21 have concerns that this must be balanced with--and I must ask
22 you, Commissioner, to put it as part of your Report. For
23 example, the British Nationality Act, while some officials in
24 the UK believe Belonger Status in the Virgin Islands is a mortal
25 sign, they cast a blind eye to the double standards that exist

1 in the UK's own statute of the British Nationality Act (1981),
2 and even recent UK government policy, and let me state why
3 because I did my research on this, and I have been speaking on
4 this quite a while, so it is germane to Belonger Status.

5 Because under the British Nationality Act, we have
6 seen more stateless children have been created. A child or
7 person born in the UK can only apply for and seek to claim
8 British citizenship if their mother or father is already a
9 British citizen, settle in the UK or one of the qualifying
10 Territories. So, further provisions are made if the child is a
11 new one and formed abandoned and if the parent is serving in the
12 armed force and so forth, they are qualifiers--qualifications,
13 condition, obstacles put in place by the UK Parliament to limit
14 and exclude persons born in the UK from automatically becoming
15 UK citizens.

16 Why do I mention that? Because some Members of the UK
17 Parliament and others are fine with that, but they have issues
18 with the Virgin Islands seeking to do similar to citizenship
19 policy with Belongership in our legislation. And why is the UK
20 seeking to hold the Virgin Islands to a standard that the UK
21 itself refuses to adhere to?

22 Let me explain for the Commissioner, and I will do so
23 respectfully. Most children that are not born of British
24 descent or OT descent by a mother that is not from those areas,
25 when they get their child or children in the British or in the

1 OTs cannot get a passport. They are stateless. And this has
2 gone on for years, and thousands of children have gone and have
3 just moved other places, and all policies seek to find how to
4 help with some balance on this because everyone asks why can't
5 we get a passport? Well, it's because of the British
6 Nationality Act, which is a legal document but highly, if I do
7 say, lacks some balance in terms of equity.

8 I also, Commissioner, do ask that when you do weigh us
9 against what we are hearing with Belongers Act in terms of those
10 who feel it's lawful or unlawful not only to balance it against
11 the British Nationality Act but also with respect with Windrush
12 because, Commissioner, just in 2018, the world was shocked to
13 hear the Windrush scandal, what became known as the Windrush
14 scandal was an official act of the Government of the UK where
15 people were wrongfully detained and denied legal rights and
16 threatened with deportation and even wrongly deported from the
17 UK by the home office. Many of those affected had been born
18 British subjects and had arrived in the UK before 1973,
19 particularly from Caribbean countries, my Caribbean brothers and
20 sisters as members as Windrush generation. These are persons
21 who contributed to development of the UK and its economy as well
22 as those who were deported and honourable members were detained,
23 lost their jobs or their homes, had their passports confiscated
24 or denied benefits or medical care to which they were entitled.
25 A number of long-term UK residents were refused re-entry to the

1 UK, a large number were threatened with immediate deportation by
2 the Home Office.

3 So, the UK comes to tell us in the Virgin Islands
4 about immigration and the rights of persons who are living on
5 islands and contributed to society but the UK was at the same
6 time assaulting the rights of my Caribbean brothers and sisters
7 with similar claims in their own jurisdiction, and we cannot
8 held to a different standard, and the Windrush policy was part
9 of something called the "Home Office hostile environment
10 policy", which was a set of administrative and legislative
11 measures designed to make staying in the UK as difficult as
12 possible for the people without leave to remain in the hope that
13 they may voluntarily leave. It has been cited as one of the
14 harshest immigration policies in the history of the UK, and has
15 been widely criticized as inhumane and ineffective and unlawful.

16 And I may, Commissioner, if I may, reinforce the point
17 that when my administration took office in 2019 we took this on
18 as a major area for urgent action, and we recognised over a
19 thousand applicants--applications and long-standing persons that
20 were inherited--that we inherited, sorry, and that,
21 Mr Commissioner, may I add I have ancestors that were affected
22 by Windrush.

23 And we also have the VI Constitution and Article 73 of
24 the UN Charter, where the Belongership is being treated in such
25 a scandalous way by UK politicians when the unique Virgin

1 Islanders' identity to Virgin Islands's history, cultural values
2 and way of life is a human right and identified as something
3 worthy of protection under Article 73 of the United Nations
4 Charter, something that is placed in the Preamble of the Virgin
5 Islands Constitution.

6 And when talk about obedience to laws and the sanctity
7 to international obligations, how come it seems to conveniently
8 not apply for the UK but seems to always be an issue for the UK
9 when it comes to the Virgin Islanders? The answer is simple,
10 Commissioner, with due respect, and pardon me if I'm passionate
11 about this: Notwithstanding the UK's refrain that we're all one
12 family, the fact is that we are not viewed equally. We are not
13 treated equally. After we are treated as second class and none
14 are afforded the full--and not afforded the full measure of
15 respect, we are subject to double standards, and Belongership is
16 just one issue where this happens.

17 And it is wrong to scandalise the Virgin Islands and a
18 Virgin Islander for having an immigration and citizenship policy
19 when we're not the only country in the world to have one and
20 especially where the UK's policy has its own built-in barriers
21 because the UK does not want a floodgate on its shores.

22 And the last I would like to say, Commissioner, and
23 I'm passionate about--and I brought this up in
24 correspondence--I'm already to the different I think it was
25 Baroness Sugg, which is something that the last Governor went on

1 the media here and spoke about, and I do not take it lightly
2 when we talk about Belongership and/or immigrate--immigration
3 policies, the last I would like to bring out on Windrush in the
4 Virgin Islands Constitution and Article 72 of the UN Charter
5 would be slavery and reparations.

6 Commissioner, I remind you--and I keep my
7 composure--that the indigenous Virgin Islanders and of
8 descendants who were once slaves on the plantation then owned by
9 British entrepreneurs, our ancestors were exploited and abused
10 in ways unimaginable during this time for the enrichment of
11 British planters and economy of Great Britain. They got no pay
12 for their labour. They were abandoned on these islands to fend
13 for themselves when the bottom fell out of the colony, the
14 colonial plantation economy and emancipation. The UK has
15 refused to apologize for this heinous crime against humanity,
16 even up until recently. We asked for an apology, and we were
17 told there was none to come. The UK refuses to address the
18 topic of reparations.

19 In another case of double standards, history students
20 would know that after emancipation, the British Government
21 entered into debt in 1833 to the tune of 20,000 pounds which
22 represented 40 percent of the UK Government's income in those
23 days and which is calculated to be equivalent to \$300 billion in
24 today's value to compensate themselves of loss of income and
25 opportunity costs by having to discontinue the practice of

1 slavery in their plantations, and the UK saw no problem with
2 carrying this erroneous debt for 182 years having only repaid it
3 in 2015. And again, not a cent was given to the descendants of
4 slaves neither here nor anywhere else in the Caribbean or the
5 world, but those who enslaved them were paid.

6 Where the UK sees fit to dictate the Virgin Islands
7 people how they should met dictators, how they should manage
8 their patrimony and rights to their land and how Belonger Status
9 be managed, and this is why the UK doesn't want anyone to tell
10 you it how it should regulate the granting of British
11 citizenship. Does that really sound fair to you, Commissioner?

12 And when I say this as Premier of this country, I
13 don't speak this language because I came here to speak on
14 Belongership. I came here to defend what we are doing for our
15 people and what we're doing for our Caribbean brothers and
16 sisters who have been unfairly treated through Windrush, who
17 have been unfairly treated even our ancestors through slavery,
18 and have not been through reparations.

19 So, forgive me if we are on target here with this
20 Commission of Inquiry to only look at where we seem off-target,
21 but we have seen a lot of stateless children run around here in
22 the British Virgin Islands in the Turks & Caicos and Caymans,
23 wherever there is an OT because they cannot get a passport.
24 Governments have lost from governing where people blame the
25 Government when it's a British Nationality Act. Today, someone

1 asked me about that. And we now have been here, with due
2 respect, Commissioner, because it's part of your Terms of
3 Reference so it's nothing with you, but we are going to be now
4 chastised for how we are handling a matter where all the other
5 matters that have named have not been handled in any one's
6 interest to ensure that all children, generations of our
7 ancestors who were not treated fairly by the UK, by Windrush,
8 slavery, reparations, the United Nations Article 73 up to now
9 cannot be dealt with.

10 And before this Commission of Inquiry, I will send
11 letters off concerned about the last Governor's statements he
12 made in the media about the same reparation, the last Governor,
13 Governor Jaspert, and I will send back a response, and this is
14 something that I hold dear to my heart.

15 So, maybe the Virgin Islands didn't get it all correct
16 and probably that's the aim here today, but excuse me if I rant
17 and excuse me if I had to get it out, but I will not apologize
18 for trying to make sure that we balance our indigenous Virgin
19 Islands and make a home for Caribbean brothers and sisters who
20 have been lost and not have them experience what happened to
21 their ancestors and Windrush, et cetera.

22 And on that I will turn to whatever page you want, but
23 no, Commissioner, that that has to form part of the impetus of
24 your foundation for this--when the goose and the gander are in
25 two different tables, there will always be injustice.

1 So, as a citizen of the BVI and an OT, I am looking
2 for parity from not only the Commission of Inquiry when it does
3 its Report but from the very UK those who still have that
4 mentality.

5 And may I add that not all in UK have that mentality,
6 I must add, but those who are doing some of these laws and
7 putting them in that are affecting us and causing us to have to
8 do things to protect our rights must be told this, and it must
9 be sound loud and clear.

10 Mr Rawat, I will now proceed in the manner that you
11 want, and see how far we get based on the foundation that I
12 needed to lay.

13 COMMISSIONER HICKINBOTTOM: Premier, it's obviously
14 something you feel passionate about, and I think a lot of people
15 who live in the BVI feel passionate about those things which you
16 will mention. You will appreciate that my Terms of Reference
17 are, in that respect, very narrow. In terms of Belongership,
18 I'm looking at process--that's what we're looking at--and these
19 wider issues which are sensitive. Some of them are very
20 difficult, but I understand that you feel very passionate about
21 them. But they fall entirely outside my Terms of Reference.
22 That doesn't mean to say I'm not sensitive to them. They may be
23 relevant background to the Report, but what I'm doing in the
24 Report is looking at two things, as you know:

25 Firstly, governance, the way that State decisions are

1 made and implemented--Belongership falls into that category--and
2 also in relation to serious dishonesty in public office.

3 Neither of those two things are borne upon by the very important
4 things that you've raised. But what I need to do is to focus on
5 my Terms of Reference. Modest as they are compared with some of
6 the things you've raised, perhaps, but I'm going to focus on my
7 Terms of Reference, and Mr Rawat's questions will be limited and
8 focused on those Terms of Reference.

9 Do you understand?

10 THE WITNESS: I fully understand what you have said,
11 but that's my point. You have been commissioned by the Governor
12 to do a Commission of Inquiry on Terms of Reference that are
13 specific. So, Gary Hickinbottom, you have to do what you're
14 commissioner to do, but who do we commission for reparation?
15 Who do we commission for slavery? Who do we commission for
16 Windrush? Who do we commission? We don't have any rights to
17 commission anyone to have these things done. These are
18 century-old debates, and we cannot do it because the entity that
19 sent you is larger than us, and there is no law that allows us
20 to look into areas that concern us with them.

21 So, now, when this is finished--yes, you will have
22 completed your Terms of Reference, and I do respect that you
23 have given them, and while I'm concerned about the tenets of the
24 Terms of Reference, but that's nothing for you--who is going to
25 look out for us?

1 COMMISSIONER HICKINBOTTOM: Premier, I understand. I
2 understand what you say, but you understand that my limited
3 remit--and it's important that I focus on my remit because,
4 firstly, most of the matters you mentioned fall clearly very far
5 outside it.

6 And secondly, it's important that, in terms of my
7 Terms of Reference, I do the job, and I report on those Terms of
8 Reference as quickly and as efficiently as I can.

9 THE WITNESS: I appreciate that.

10 COMMISSIONER HICKINBOTTOM: But, Premier, that does
11 not mean to say that I and my team are not sensitive to these
12 other matters, which are quite clear that people here in the BVI
13 feel just as passionately as you do about them.

14 THE WITNESS: Right, but, Sir Hickinbottom, we know
15 this is not a court, and this is Inquiry, but based on when you
16 go through our laws, you will say what you see, to you, based on
17 the evidence, what is lawful or what is unlawful--that's your
18 Terms of Reference--and you do the Report. And the very entity
19 that you have turned the Report into will now have a decision to
20 make whether to implement some of your recommendations from that
21 Report.

22 But how can we have the entity implementing to make us
23 adjust to what they see in the Report when we have been violated
24 by some of those same entities and have nobody to turn to? That
25 is what I mean that the goose and gander is on two different

1 tables.

2 I do crave your indulgence, as you say in your Report,
3 to ask them to bring a balance before they bring condemnation.
4 There's all I ask.

5 COMMISSIONER HICKINBOTTOM: But I was appointed--I'm
6 conducting this Inquiry in the public interest and for the
7 benefit of all people who live in the BVI. That is where I
8 start from, that's my starting point, and that will be my
9 finishing point.

10 THE WITNESS: I agree.

11 And I was selected by the people of the Virgin Islands
12 to act in their best interest, in the public's interest. That's
13 where I start with, and that's where I'm going to finish. And
14 there are times that the mission that the people of the Virgin
15 Islands has in this respect and some others and your Terms of
16 Reference, with due respect, sir, are not mutually aligned.
17 This happened to be one of those areas. We cannot have this
18 topic be discussed just merely come in and look at the laws.
19 Yes, everything can be approved, and then no one is allowing us
20 to be able to look into those other areas.

21 I happen to be in the ancestry history--lineage of
22 persons with Windrush and still slavery and reparation. Through
23 my lens, I don't see balance. Through my generation lens, I
24 don't see that big in fairness, through my generation lens I
25 cannot see that the Terms of Reference can be placed on us on

1 this, even though they want to seek the laws, and we have no way
2 to bring closure to my ancestors, to my grandparents and great
3 grandparents for what has been done to them. We have to find a
4 balance, and COI Terms of Reference like this cannot be the way
5 because, after that, nothing else is going to happen
6 unless--unless uprising comes that would make us to have the
7 other side of the partnership look at it.

8 We're talking about the mutual partnership in a modern
9 times. We cannot have a mutual partnership in modern times and
10 one side have all the parts look into the one side and one side
11 that is looking into this has done so many things to our
12 ancestors, and we cannot bring balance. It cannot be. It
13 cannot be right. And I'm asking, Commissioner, to serve and
14 search your soul to bring a balance to this because it's easy to
15 look into this and pronounce us guilty, it's easy, but who will
16 be held for all that has happened in Windrush? Who will be held
17 for what has happened with the slavery? Who will be held for
18 what will happen in reparation? Who will be held for not
19 keeping us in line with Article 73 of the United Nations?
20 Who--how will we do it? There is no Constitution that allows us
21 to say we do a Commission of Inquiry into the Governor? There
22 is no Commission--no Constitution say we do a Commission of
23 Inquiry on how we are treated, and bring closure to this. We
24 have to spend much money with lawyers. The Constitution doesn't
25 allow for the balance. That is what I'm saying.

1 Excuse me if I get passionate with it, but I know
2 about a lot of persons from the Caribbean here in the BVI who
3 has been disenfranchised because of this, and sometimes we blame
4 each other rather than going to the hub of it.

5 So, I will try my best to help with Belongership, but
6 no, Commissioner, with due respect, I do it with asterisk, I
7 have never been the kind to be shy to say what I feel, and I'm
8 doing this today with asterisk on it because I cannot believe
9 that the great, great, great, great, great grandson of somebody
10 was affected by Windrush will now have to come and answer for
11 doing something in the Territory against a very entity that did
12 it to my fore parents. That is wrong, and I pray to God that
13 you find a way to bring a balance on it, but I will do my best.

14 COMMISSIONER HICKINBOTTOM: And Premier, you will
15 understand that I will do my best to look at the Terms of
16 Reference and respond to those Terms of Reference.

17 Mr Rawat.

18 BY MR RAWAT:

19 Q. Premier, could you turn up page 417, please, in the
20 bundle. Do you have it, Premier?

21 A. Yes, I have it.

22 Q. You will see there that it's a Cabinet Paper dated the
23 7th of April 2011, number 139 of 2011. It's headed
24 "Applications for Belonger Status". The memorandum lists 19
25 names, and Cabinet has asked for approved granting of Belonger

1 Status to these persons listed in accordance with section 16 of
2 the Immigration and Passport Act.

3 If we turn over, please, and through to page 419, you
4 will see there--if you turn to page 420, there is the Cabinet
5 Decision on that memorandum, and it's a decision made on the
6 13th of--20th of April 2021. You have the 19 names listed
7 there, but on page 419 what records is that Cabinet has noticed
8 the Attorney General's advice in respect of section 16 of the
9 Immigration and Passport Act, and added the names of Eligible
10 Persons to the list of Belonger Status as follows, and there
11 then follows a list of 30 names.

12 If you go, please, to page 421 of the bundle, we have
13 a second Cabinet Paper this time dated the 19th of October 2011.
14 It's number 430 of 2011, and it's headed "Belonger Status". As
15 with the previous paper, it's headed "Memorandum by the
16 Premier", decision sought is that Cabinet is asked to decide
17 following persons should be granted Belonger Status in the
18 Territory.

19 And what's noted is: The Cabinet Meeting held on
20 28th September 2011, it was agreed that the names of persons
21 recommended for Belongership should form a separate paper and
22 brought back to Cabinet for consideration. Each Member of
23 Cabinet would submit their names to the Premier who would, of
24 course, be responsible for presenting the Cabinet Paper.

25 There then follows over that page and succeeding

1 pages, you go to page 423, a list of total of 119 names.

2 The conclusion is the above-named persons who lived in
3 the Territories in some cases over 30 years, in some cases over
4 20 to 25 years, and in other cases they have made their
5 contributions to the Territory by practicing their professions
6 for several years and have no intention of leaving the
7 Territory.

8 And then have, if you go through to page 426 of the
9 Cabinet Decision itself, 19th of October 2011, the date at the
10 top, and you then have a list of what's recorded Cabinet
11 deciding the following persons be granted Belonger Status, and
12 all 119 names then appear. And there is additional people
13 added, so a total of 215 added in total.

14 Now, that's the factual background in terms of what
15 available documentary evidence there is that has been disclosed
16 to the Commission of Inquiry.

17 Prior to 2011, as a Member of Cabinet, had you been
18 involved in approving Board recommendations on Belonger Status?

19 A. Repeat the question? Let me understand.

20 Q. Prior to 2011, as a Member of Cabinet, had you been
21 involved in approving Board recommendations for Belonger Status?

22 A. I really don't understand the question as--as--when
23 you say "prior to 2011"--

24 Q. Yes.

25 A. --are you saying that, as a Member of Cabinet during

1 that tenure of the Ralph T O'Neal Government? Is that what you
2 mean?

3 Q. 2007?

4 A. Between 2007 and 2011?

5 Q. Prior to these events that you set out in your Written
6 Response, had you, as a Member of Cabinet, been involved in
7 approving Board recommendations for Belonger Status?

8 A. Well, my recollection being substantially affected by
9 the passage of time, but if there was any that came in at that
10 time I was part of the Cabinet, I don't remember what came in
11 then.

12 Q. In relation to your own Written Response, you have
13 pointed out that neither the Attorney General nor the Governor
14 objected to the course that was taken by Cabinet.

15 A. As far as I recall.

16 Q. Can you raise any concerns?

17 A. No. As I recall, didn't recall any meetings. I was a
18 young politician at the time, so I was--I was proud to continue
19 to do what I had to do in the public interest.

20 Q. Were you aware of the powers of Cabinet under the
21 Immigration and Passport Act at the time?

22 A. If I was aware of them? I can't say that I was aware
23 of them at the time because I was not a Minister for the subject
24 because when you're not a Minister for the subject, you don't
25 check--we ask if it should be, but you would be aware that the

1 general census of them. Would you depend on the Attorney
2 General like I do now to make sure that they clear any paper
3 that comes in. So, if they have any issues, they would raise
4 it, and you will stop.

5 Q. The--as we understand the way the legal process works,
6 someone makes an application to the Immigration Department for
7 Belonger Status, that then goes through the process, part of the
8 process, as it was in 2011 when the Internal Auditor carried out
9 an audit.

10 A. Um-hmm.

11 Q. There was an interview process, point systems applied,
12 a cultural questionnaire is applied, I think more modern times
13 referred to as a cultural test.

14 The Board can recommend; it cannot decide. Cabinet is
15 the deciding-making body.

16 Surely, if you are required to decide on something
17 such Belongership Status, you would have been familiar, and you
18 must be familiar now with what the law is.

19 A. I don't even know on a regular basis, and you would
20 appreciate that if you--no matter that you are a lawyer, there
21 are some laws you don't deal with all the time. If you are
22 going to deal with them, you brush up on the Minister for that
23 subject, so I--I was never the Minister of Immigration; the
24 former Premier was. And even now I wouldn't be or feel I would
25 be able to read up and rely on the Attorney General. That's how

1 I operate.

2 Q. And did you do that now? Do you read up when you're
3 dealing with Belonger Status?

4 A. I do as much as I can, and then rely on the Attorney
5 General to let us know if there is something going wrong because
6 I don't deal with processes.

7 Q. Can we turn to your point about the whether it was
8 made for electoral reasons or not.

9 A. For sure.

10 Q. That's something obviously that you reject, and your
11 point is, as I understand it, you would have to within two days,
12 so your point is that these events were after--after--I mean,
13 after the House of Assembly was dissolved.

14 Just explain the way the mechanics work. The House of
15 Assembly is dissolved on the 13th of September 2011. How does
16 Cabinet continue working? When does it stop working?

17 A. It doesn't stop working under our laws.

18 Q. Right.

19 A. If Cabinet used--whatever date Cabinet--is assigned
20 for Cabinet, which is usually Wednesdays, depending on how--what
21 date is, but example, if it's Wednesday and the Cabinet by law
22 could still sit up.

23 Q. In terms of processes, when the House of Assembly is
24 dissolved, you effectively stop being a Member of the House of
25 Assembly because there is no House of Assembly to sit, but you

1 could continue to sit in Cabinet until a new Cabinet is
2 appointed?

3 A. Well, that's one of the unique areas of it, yes,
4 you're appointed as a Minister, and the House of Assembly is
5 dissolved but you are still appointed as a Minister, so under
6 the law you still carry out your duties.

7 Q. The Internal Auditor's Report of 2011 identified that
8 190 people had been given Belonger Status had not even applied
9 for it. How do you reduce a backlog by giving Belonger Status
10 to 190 people who haven't applied for it?

11 A. I can't answer that at all. You will have to ask
12 Ralph O'Neal who was dealing with it. I was a Minister. That
13 was not a subject under me, and I just came to Cabinet. In
14 those days it wasn't electronic. You get your papers a few days
15 before in a big bundle, and so looks something like this, and it
16 was in an envelope, and you try your best to reach through all
17 of them because it used to be quite a bit, but it was not--it
18 was not something that was around my portfolio or my purview.

19 Neither was any other Ministries because, when you're
20 a Minister, you're very busy, and most of the times you focus on
21 the area where you're at, so very rare you cross over unless
22 there is some major issue try to resolve, but this was never
23 highlighted during the time as far as I could recall, issue it
24 during the Cabinet time of the Cabinet.

25 Q. So, when you say "this was never highlighted" as an

1 issue, what the "this" what you're referring to?

2 A. The same status that you're talking about.

3 Q. The Cabinet being able to grant Belonger Status
4 without someone going through the process?

5 A. Whatever process that was being considered. I don't
6 know whether--when two persons or not but the two names that
7 were being considered.

8 Q. I didn't quite understand the answer.

9 A. The names are being considered. I don't know who
10 all--I can't answer all of these questions. I was a young
11 Minister. I'm doing my best. This was nearly 10 years ago.
12 I'm trying my best to answer for our Government where I wasn't
13 the Premier, where immigration was under the Premier. I can't
14 answer all these things, I really should--I really don't--I have
15 trouble remembering what I did last week.

16 My memory--to be honest with you, my memory--my
17 recollection has been substantially affected by the passage of
18 time with this. I didn't even know that there was a situation
19 until I got the--I'm being criticized, potentially criticized,
20 for--for--for a subject that was not on me, and the Minister who
21 was on it is dead.

22 COMMISSIONER HICKINBOTTOM: Premier, I understand
23 that. I understand the difficulties sometimes that time leads
24 to, but joint Cabinet Responsibility, collective Cabinet
25 Responsibility, you are as responsible as the next Cabinet

1 Minister for the decision.

2 My understanding of your evidence is in relation to
3 the 190 people who had not made an application, you were not
4 aware that they didn't--haven't made an application. Is that
5 true?

6 THE WITNESS: My understanding is that my recollection
7 has substantially affected the passage of time--has been
8 affected by the passage of time, and I cannot remember what all
9 took place then. I am only now relying on what you are showing
10 me here, and I am not going to testify anything to put a cloud
11 over the legacy of Ralph T O'Neal without the facts, so I can't
12 answer because I don't recall.

13 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

14 BY MR RAWAT:

15 Q. The--if you turn up the second bundle, please,
16 Premier. And go, please, to page 1328.

17 A. Page what?

18 Q. 1328, please.

19 A. Thank you.

20 Q. This is the Seventh Affidavit of Joseph Smith-Abbott,
21 who is the current Acting Permanent Secretary for the Ministry
22 of Natural Resources, Labour, and Immigration, and
23 Mr Smith-Abbott has attended to give evidence on this Affidavit
24 to the Commissioner.

25 He and Ian Penn, the Chief Immigration Officer, took

1 the Commissioner through the process that relates to the way
2 Belongership Status is applied for, considered, and granted.

3 And if you turn, please, to page 1341, you will see
4 that, at 17.4, Mr Smith-Abbott writes of his awareness of the
5 contents of the Internal Auditor's Report of 2012, and the
6 evidence she has given with respect to the Year 2011, including
7 the fact that 224 people received Belonger Status from Cabinet
8 without passing through the process I have described. He then
9 sets out some details about that and concludes that 190 persons
10 were added at Cabinet level based on personal representations by
11 individual Members of Cabinet. The paragraph ends (reading):
12 "We are aware of the need to ensure that such situations do not
13 recur and we make every effort to see that they do not".

14 Are you aware of what safeguards are currently in
15 place to prevent this recurrence?

16 A. The Minister for the subject is coming in to give
17 evidence. He'd have to give that. I do not deal with that on a
18 daily basis, so I cannot answer.

19 Q. The Internal Auditor, in her Report at the time, which
20 was issued in June 2012, is in the first bundle at page 16?

21 A. Page what?

22 Q. 16, one-six.

23 If you go look at 11.3, it's the concluding paragraph
24 to the Report, and says (reading): In addition, we found that
25 Cabinet, by taking it upon themselves to approve persons who

1 were not vetted by the Board or did not even submit an
2 application, removed from the Board the ability to scrutinise
3 the applicants, thereby rendering the Board's role null and
4 void. Furthermore, it is our opinion that the practice whereby
5 Cabinet approves status for individuals who were not vetted by
6 the established process creates an environment in which
7 favouritism, cronyism, and corruption can flourish.

8 Would you agree with that conclusion?

9 A. Categorically not, and I will explain to you why.

10 It's always amazing when you're reading some of these things.
11 The systems of government has been non-functional in some areas
12 because of the lack of capacity for quite a while. And rather
13 than going to the root of the problem, we reached the section of
14 where persons respectfully would write something like that.
15 What is the problem in here that we are seeing?

16 First of all, I am a firm believer, and I stated when
17 I got elected, if you don't want someone in your country after a
18 certain amount of year, tell them so. You can't have somebody
19 in your country 20, 25, 30, 35 years and you can't tell them,
20 well, whether you have status or not, and we do have some
21 persons who is strong and who would be listening to me right
22 now. Virgin Islanders would get angry with this statement. But
23 I believe in process help build a country like they didn't with
24 Windrush and other areas that they--and they have not done
25 anything illegal, we have to focus on the root of how do we get

1 our systems in place to deal with it more speedily.

2 COMMISSIONER HICKINBOTTOM: But, Premier, as you said,
3 these are your systems. They're systems set out--

4 THE WITNESS: But in my system--

5 (Overlapping speakers.)

6 COMMISSIONER HICKINBOTTOM: --in the Immigration and
7 Passport Act.

8 THE WITNESS: Yeah, but a Government, getting a
9 functional Public Service is not my system, and that's getting a
10 bite to the bullet of this Commission of Inquiry. If we get a
11 floor plan, which lately I must say that we have moved towards
12 the--getting towards with this Governor, just is the draft of
13 the transformational plan of the Public Service with the
14 Governor now and the Deputy Governor, but from my tenure, where
15 was that? Where was the help in the 2012 White Paper what says
16 that we're going to help build the Virgin Islands in the areas
17 of capacity-building that's needed? I will even send them to UK
18 to train.

19 So, the system we were left to build ourselves, and
20 now wherever areas of concerns that are going to be highlighted
21 are the very entity that didn't help us to build it is now
22 launching a COI to help us to kill it.

23 COMMISSIONER HICKINBOTTOM: But with respect, the
24 Immigration and Passport Act--

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: --that's an Act originally
2 of the Legislative Assembly, and it's been amended several
3 times, I think mainly by the Legislative Assembly. I don't
4 think there's been any--no, there has, so both the Legislative
5 Assembly and the House of Assembly. That sets out how
6 Immigration applications are to be dealt with. It's a statute.

7 Now, I understand that you may think, the Cabinet may
8 think, that this does not deal with things expeditiously enough.
9 I understand that. But aren't you bound by the processes set
10 out in this statute?

11 THE WITNESS: Well, what I'm saying here to you is
12 that the process, in fairness to the Public Officers, cannot
13 move any faster because we have a 18th Century Public Service in
14 a 21st Century, and there's no hit on any current Public
15 Officers. They're very good. They're doing all they can. But
16 there's an entity that was in put--in charge of the Public
17 Service for years upon years upon year, and this entity is being
18 given up by in the COI. It cannot be given up by because if we
19 saw in these areas that it needed to be beefed up to deal with
20 these areas, well, then we forgot, but no entity is coming to
21 evaluate did you do it right, and this is Auditor, creating
22 favoritism, cronyism, and corruption. Won't be any corruption.

23 Commissioner, you have persons in here, from what I'm
24 reading, that were based on the readings 30 years, 25 years, and
25 we need to tell a board and anybody down there to go deal with

1 this?

2 And on top of that, where is the manpower for them to
3 get all of them dealt with, and then, on top of that, some
4 persons put on cap per year.

5 You--whether I--persons may take this at me
6 politically for the next election. If you don't want somebody
7 in your country after a certain amount of years and they have
8 developing what they have to do, tell them, go and do your work,
9 but to put here now that when the late R T O'Neal who was trying
10 to, in my sight, in 20/20 hindsight, right a wrong, where these
11 persons couldn't even vote because it was too late to get on a
12 board on this. He was a man that was trying to right an
13 injustice, and as I saw some of the names there that he put on
14 in 2011, who know how their status have contributing persons of
15 society while granting here, this is nothing against all people
16 because they're ours.

17 But how can now, whenever Mr O'Neal or the former
18 Premier or anybody move in that direction to deal with this
19 because there seem to be a bottleneck, and the politicians
20 don't--do not--they do not control the Public Service--so--

21 BY MR RAWAT:

22 Q. If you--I'm sorry. Premier, if you go back to what's
23 said there--

24 A. Um-hmm.

25 Q. --it's actually about Cabinet, and it's about the

1 ability of Cabinet to make a decision without going through the
2 pro--let me finish, please.

3 A. Yeah.

4 Q. That's what's said there.

5 So, what my question was about, was about this, that
6 what's raised--the concern that is raised by the Internal Audit
7 Department is that Cabinet being able to sidestep the process by
8 ignoring the Board and Cabinet being able to give status to
9 people who are not vetted by the proper process creates "an
10 environment in which favoritism, cronyism, and corruption can
11 flourish".

12 So, your evidence is that if you had a 21st Century
13 Civil Service, they could stop Cabinet behaving like this.

14 A. That's you're words. I'm saying if you have a 21st
15 Century Public Service, then expediency would be the order of
16 the day. We will help the--help those Public Services who were
17 working here not to be burnt out because they will have the
18 help. We don't have 100 and something, 200 or something person
19 walking up and down like--

20 Q. No Public Officer did this.

21 A. --like 10--like Number 10 Downing Street.

22 Q. Premier, no Public Officer did this.

23 (Overlapping speakers.)

24 A. No, no, but they're talking about the Cabinet. It is
25 an attack on the Cabinet. But how do you know what Cabinet did?

1 The late Ralph is not here to speak for himself.

2 Q. But you were in that Cabinet.

3 A. Yeah, but I wasn't a Minister for it. So, how come
4 you're holding me for a dead man?

5 Q. Because--

6 (Overlapping speakers.)

7 A. I cannot be held for him no matter how collective
8 responsible--

9 Q. (Unclear.)

10 (Overlapping speakers.)

11 A. I don't know what all he did.

12 Q. Just clarify what you're saying there, Premier,
13 because you seem to be saying two things because--

14 A. No, you understanding two things.

15 Q. Well, that's a talent I have.

16 A. Well, I know it's a talent, but you understand two
17 things.

18 Q. You are saying I'm quite confident that if--which I do
19 not believe it could such a thing had happened now, the Attorney
20 General would have made and recorded her ambiguous advice to
21 that effect, long before the matter reached Cabinet.

22 A. Yes.

23 Q. You also say that, at the time in relation to the
24 ones--that the applications that are being considered that the
25 Attorney General did subsequently step in, and it's all

1 rendered--Premier, this is in your Written Response.

2 A. I listened to you. I said--

3 (Overlapping speakers.)

4 Q. Just--

5 A. --after the Attorney General in my responses right
6 here.

7 Q. Yes.

8 A. I'll read it. Let's read it together.

9 Q. No, no, I can even show you the page where--
10 (Overlapping speakers.)

11 A. Yes, but let's read it together. Let's read it
12 together.

13 Q. You sound much nicer than I do?

14 A. Yeah, yeah.

15 Q. Go ahead.

16 A. So it says that--first of all, in my criticism it said
17 I reject the suggestion the decision was not taken for say such
18 reason because, as I recall the events, s the then-Premier was
19 actually concerned about the injustices that prolonged backlog
20 applications had caused and wanted to remedy some of those
21 injustices before the end of his term of office because he
22 seemed to have knew--know he was on the way out. That's one.

23 Now, when you are speaking about that, it's afterward
24 is when the Attorney General--afterward is when the Attorney
25 General is speaking.

1 Q. November 2012.

2 A. And these meetings are what date? Before?

3 Q. No, I understand that, Premier.

4 A. Yes. So, how could I be held accountable if Attorney
5 General come afterwards?

6 (Overlapping speakers.)

7 Q. I'm trying to ask you questions. It's not about your
8 view of the process. What is said about the process in the
9 Internal Auditor's conclusion--

10 A. Mm-hum.

11 Q. --is that if you have a situation where Cabinet can
12 add names, any Cabinet can add names. The consequence is, the
13 risk is you undermine the process; and secondly
14 you--because--particularly because you're adding names of people
15 who haven't even applied, you create an environment in which
16 favouritism, cronyism and corruption can flourish. That's not a
17 concern. It's not a concern about that. It's a concern that
18 could apply to any Cabinet that does the same thing.

19 A. I do not accept that.

20 Q. So, you wouldn't accept that if any Cabinet does
21 that--

22 A. I can't tell you about any Cabinet--

23 (Overlapping speakers.)

24 Q. --then that would create an environment.

25 A. You are concluding how you want. I--this is

1 indictment against the Cabinet of which I was a young Minister
2 in and the late Ralph T O'Neal was the head and that is not the
3 Ralph O'Neal I know, and I will not accept that. I will not
4 accept that on his record. May his soul rest in peace. I'll
5 not accept it. The root of this problem is not there, and I'll
6 not accept it.

7 COMMISSIONER HICKINBOTTOM: You accept, I think, that
8 the Attorney did advise that the grants that were made were
9 unlawful except after the event?

10 THE WITNESS: After the event, yeah, but that is
11 typical. I wouldn't have asked him on a call and then he'll
12 have the championship, and three weeks later he said I made a
13 mistake, but you have the championship. In this case, they did
14 what I want because he left Government afterwards and all
15 happened, but in the meeting that was not announced. That was
16 not stated by the Attorney General, so how could we be held
17 liable for that? Hindsight is always 20/20.

18 BY MR RAWAT:

19 Q. If we move on, Premier, to the next aspect of the
20 Written Response, and that is the 2004 Executive Council policy,
21 that is a decision taken in 2004 by the Executive Council--

22 A. If I could say something, Mr Rawat.

23 Q. Yes.

24 A. Since we are now looking at the governance part of
25 those in charge of the Public Service, during this Inquiry,

1 Commissioner, will you be asking about the training that's
2 afforded to them by the establishment, the training person that
3 deal with these things?

4 COMMISSIONER HICKINBOTTOM: Deal with what things?

5 THE WITNESS: The training of dealing with the status
6 and the reviewing of how they are trained so that they can be
7 given the skills set to move even faster by the Public Service?
8 Will that be passed in the Terms of Reference?

9 BY MR RAWAT:

10 Q. I'm not sure I un--is the question--is the COI asking
11 what training is given to Public Officers who have to process
12 applications?

13 A. Process applications and to see where it can
14 strengthen those areas so that things can move more efficiently
15 because it's not an office for--most person in the service come
16 to the Public Service, Commissioner, they have no training.

17 COMMISSIONER HICKINBOTTOM: This is the administration
18 of what? The Board or the Department? Or both--

19 THE WITNESS: Or who is over the Public Service.

20 COMMISSIONER HICKINBOTTOM: But are you talking about
21 the administration of the Department or the Board or both?

22 THE WITNESS: Right, there must--it has to be the
23 administration in terms of yes, you are head of Department, but
24 it is also the Public Service. The Public Service is under
25 someone.

1 So, if there are areas of concern, it can't always be
2 that the only road being led to is the Cabinet and the elected
3 officials to see they're corrupt--

4 COMMISSIONER HICKINBOTTOM: Well--

5 THE WITNESS: --because that's what it seems to me.

6 COMMISSIONER HICKINBOTTOM: If this is part of the
7 broader issue, which the elected Ministers have raised, that the
8 Governor and through him, the Deputy Governor, is responsible
9 for at least some of the poor governance because they are in
10 charge of either governance or the Public Officers, that is
11 obviously something that we are going to deal with. But--

12 THE WITNESS: Good. Well, I thank you there because
13 this--I must say with this Governor, he has taken time for us to
14 sit down with the Deputy Governor and myself to look through the
15 transformation of the Public Service and how to go about it,
16 along with the Code of Ethics for behavior, the Integrity in
17 Public Life which is in the House right now, and some other
18 areas. So, we may have differences in certain areas, but at
19 least this Governor, I must say, has had the professionalism
20 about him to sit and let us look at the real core of the
21 problems with the present Deputy Governor.

22 But I can't say that was the case for most of the time
23 I was in politics. So, if this Governor and Deputy Governor
24 could do that now and we are on the verge of getting the
25 transformation to Cabinet and having that approved, and I look

1 forward to that and getting the funds for the Budget that's
2 upcoming, because, for the first time in my life, for the 22
3 years that I'm in politics, I know exactly the amount of money
4 that's looked for in the transformation document that is needed
5 to transform the Public Service. I never had it. A plan
6 detailed like that before? I've never had the amounts put in
7 front of me before. Granted that I was in Opposition for quite
8 a while and in Government for short periods, but I've never seen
9 it and I never heard of the Governor seen it because it has to
10 come from the fountain where this is generated in terms of the
11 Public Service of it.

12 COMMISSIONER HICKINBOTTOM: No, but I understand that,
13 because that's a point that has been made on behalf of the
14 elected Ministers time and again during the course of the COI.
15 I understand that.

16 What we're dealing with here, though, is governance in
17 relation to quite a narrow matter.

18 My understanding of your evidence, but correct me if
19 I'm wrong because I might be wrong, is that in relation to
20 Immigration, there is, in the Act, a procedure involving the
21 Board which has gone through to come up with Recommendations
22 which then Cabinet either approve or don't approve. But in
23 2011, as I understand your evidence, you consider it was
24 appropriate to go--to bypass that scheme in the statute because
25 of other factors which you've related.

1 THE WITNESS: Well, Commissioner, that's your
2 conclusion.

3 COMMISSIONER HICKINBOTTOM: No, no, no. It's your--

4 THE WITNESS: Well, but--because you said I found
5 it--I found--your wording, the last part was slightly not what I
6 said that--what I'm saying.

7 COMMISSIONER HICKINBOTTOM: What are you saying?

8 THE WITNESS: I'm saying that my memory--my memory
9 escapes me for what all happened during that time, but I haven't
10 touched that at all in essence. What I'm saying here is that
11 the root of the problem is not being touched, and we--there's no
12 Government, Commissioner, could survive a Commission of Inquiry
13 that--and come out unblemished with a Terms of Reference like
14 what you have been given. None. Neither BVI, the UK, Turks and
15 Caicos, Grenada, St. Vincent, Antigua because this one, Terms of
16 Reference, is so wide that you basically--you can pick on any
17 line in the country and see if you are consistent or
18 inconsistent with it, and there's no government that could come
19 out unblemished.

20 COMMISSIONER HICKINBOTTOM: So, you're saying that
21 every Government has serious dishonesty in public office.

22 THE WITNESS: I didn't say that.

23 COMMISSIONER HICKINBOTTOM: Well, that's paragraph 1.

24 THE WITNESS: That is far from what I'm saying.

25 COMMISSIONER HICKINBOTTOM: That's paragraph 1.

1 THE WITNESS: That is how you look at it from your
2 legal training.

3 COMMISSIONER HICKINBOTTOM: No--

4 (Overlapping speakers.)

5 THE WITNESS: What I'm saying is that it--Government
6 sometimes may not be as consistent to every single policy or--

7 SIR GEOFFREY: With respect, Commissioner--

8 COMMISSIONER HICKINBOTTOM: Yes.

9 SIR GEOFFREY: --your criticisms or potential
10 criticisms go far wider than paragraph 1. You're effectively
11 carrying out a broad scale judicial review of every decision in
12 these five topics that this Government has taken over the last
13 15 years. It is not only paragraph 1, with respect. You're
14 looking at ultra vires decisions, the dismissal of Statutory
15 Boards, the granting of Belongership Status. These things occur
16 in parallel or analogous situations in the administrative court
17 every day of the week, so it's not just paragraph 1, I would
18 submit.

19 COMMISSIONER HICKINBOTTOM: Well, Sir Geoffrey, you're
20 right because there is paragraph 3 as well. Paragraph 3 goes to
21 governance.

22 SIR GEOFFREY: And you've been making criticisms on
23 the basis of governance or potential criticisms, and that is
24 what the Premier is suggesting. He's not seeking to justify
25 corruption. He's simply saying that when you sit in criticism

1 on questions of governance, no other Government, no Government
2 in the world, and certainly not the United Kingdom Government,
3 would emerge with a clean bill of health, partly because your
4 colleagues for many years have sat quite rightly in the
5 administrative court bringing these things to light and quashing
6 decisions.

7 You shake your heads, but I'm sorry, Commissioner. I
8 know that those that I represent feel extremely strongly about
9 this. Paragraph 1 behavior is one thing, but inquiries into
10 governance and the leveling of potential criticisms about
11 defects of governance is part of your Inquiry.

12 COMMISSIONER HICKINBOTTOM: It is.

13 SIR GEOFFREY: That is why this Premier is extremely
14 concerned about it because he thinks, well, yes, we may well
15 have been able to improve, and we may be found to be ultra vires
16 in many respects, but which Government wouldn't? But he meant--

17 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, that's
18 elides or even confuses my tasks under paragraph 1 and 3. My
19 paragraph un--my task under paragraph 3 is to consider
20 governance and then the full system of--the justice and law
21 enforcement systems, and make any recommendations I consider
22 appropriate. It's simply wrong to say that we are investigating
23 every project and every contract over the last 10 years.

24 SIR GEOFFREY: You selected to the Inquiry.

25 COMMISSIONER HICKINBOTTOM: No. We said at the outset

1 that the only way of being able to do this is to select some
2 illustrations, and we've drilled into those the best we can.

3 SIR GEOFFREY: But you've been leveling criticisms on
4 the basis of governance. You've been--your criticism letters
5 make it abundantly plain that part of your criticisms is ultra
6 vires behavior, and you have cross-examined--forgive
7 me--examined witnesses on whether or not they've behaved ultra
8 vires. What is that if it's a judicial review?

9 COMMISSIONER HICKINBOTTOM: Well, but it--but before,
10 if I make any criticisms of Public Officers for acting as you
11 say, ultra vires by way of an example, shouldn't that be
12 something I should hear evidence about?

13 SIR GEOFFREY: Well, yes, but you've also leveled
14 criticisms on this business.

15 For example, on the Belongership, you're not alleging,
16 as I understand it, or the potential criticism don't cover
17 paragraph 1; certainly they didn't in relation to the last
18 matter, the Virgin Islands Neighborhood Project. These are
19 criticisms potentially leveled on governance issues, as I
20 understand them.

21 COMMISSIONER HICKINBOTTOM: Well, the--

22 SIR GEOFFREY: Is that not right? Forgive me, because
23 it would be very helpful to know in representing them.

24 COMMISSIONER HICKINBOTTOM: With respect, Sir
25 Geoffrey, you do know because the Warning Letters make it

1 absolutely clear in--

2 (Overlapping speakers.)

3 SIR GEOFFREY: Yes, they make it clear that you're
4 alleging ultra vires and enact unlawful policies and the like.

5 COMMISSIONER HICKINBOTTOM: The criticisms that go to
6 governance go to governance.

7 SIR GEOFFREY: Right.

8 COMMISSIONER HICKINBOTTOM: And if I find that
9 governance is very poor then--on the basis of the evidence and
10 the examples that we've drilled down to--that and the nature of
11 the poor governance--will inform any recommendations I make.

12 But it would be wholly wrong, in my view, Sir
13 Geoffrey, if I was to make criticisms in relation to governance
14 in the Report without giving the relevant Public Officers an
15 opportunity to respond to them and--

16 SIR GEOFFREY: And if may say so, I don't demur from
17 that for a minute. If I may so, you've acted there exactly as
18 one would expect. The problem is that I'm trying to point out
19 to you that the way the Government sees it is they are under
20 criticism for defects in governance, and all that the Premier, I
21 think, is saying is that when looking at--the criticisms are not
22 just confined to paragraph 1, wherever you may find it, if you
23 can possibly find it, but they are criticisms of them in the way
24 they've administered their systems, in the way they brought in
25 laws, and what the Premier is--or observed laws, and what the

1 Premier is simply saying is these things have been--are matters
2 of governance that have been embedded for years and the
3 administering State has a responsibility.

4 It has sat in Cabinet. The Governor has sat for 20-30
5 years in Cabinet, seeing these decisions go past him. What have
6 they done? Until--until last year when you were called in in
7 the midst of an obviously quite bitter and heated dispute
8 between a Governor and a Premier.

9 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, isn't
10 that a submission?

11 SIR GEOFFREY: Well, it is, and I shall certainly make
12 it if you'll permit me.

13 But the reality at the moment is that I'm worried
14 that--you know this is getting a late hour. I don't know what
15 it is there, and the Premier has been kept very late on previous
16 days, and I just don't want him to be misinterpreted, and I
17 noticed that you commenced this by saying is what you're saying
18 this. It wasn't quite, and I'm anxious that that shouldn't be.

19 COMMISSIONER HICKINBOTTOM: It was--in an attempt to
20 help, Sir Geoffrey, because some the Premier's answers have been
21 quite long, and I wanted to distill what his answer was.

22 SIR GEOFFREY: Even lawyers are sometimes long-winded,
23 and politicians are even worse, so I'm going to shuts up now, if
24 I may.

25 COMMISSIONER HICKINBOTTOM: But with great respect, I

1 think the Premier knows what he wants to say, and we're going to
2 let him say it.

3 As I said at the beginning of this session, we
4 proposed to break at about half past 4:00 and continue tomorrow.
5 We do not want to keep the Premier late this evening because I'm
6 afraid he's going to have to come back tomorrow no matter how
7 late we might try and keep him this evening, and so we're going
8 to break, but I think it would be helpful if we moved on with
9 the questions.

10 SIR GEOFFREY: But can I just finally just say to you,
11 Sir Gary, the reason for this intervention is that you put it to
12 the Premier that he was suggesting or was he suggesting, and I
13 have to say the way it was put was not entirely open, but you'd
14 find corruption in any government that was investigated, and I
15 simply wanted to point out that is not what the Government--what
16 the Premier is saying. What he's saying is you'd find
17 governance defects in any government that you chose to examine
18 with this--in this detail. There's all it would start--stem
19 from, I think.

20 COMMISSIONER HICKINBOTTOM: There we are. It may have
21 been helpful for the Premier to tell me what he was saying
22 rather than you, Sir Geoffrey, but I understand from you what
23 the Premier meant.

24 Mr Rawat, it's 4:00. I know we're going to break at
25 some point. I mean, we are going to stop at some point. Is now

1 a good time to break--

2 (Overlapping speakers.)

3 MR RAWAT: If I could just ask that we do that at half
4 past four because it will allow me to finish this topic
5 completely and then--

6 COMMISSIONER HICKINBOTTOM: Can I just check that the
7 Stenographer is content with that?

8 REALTIME STENOGRAPHER: Yes, I am. Thank you.

9 BY MR RAWAT:

10 Q. Premier, before we went off on a tangent, I was going
11 to just deal with the second aspect of your written response,
12 which I hope we can deal with relatively shortly, which is that,
13 and the Commissioner has heard evidence on this, that in 2004,
14 the Executive Council approved a number of administrative
15 guidelines for the Board of Immigration in the processing of
16 applications of residents and Belonger Status which included
17 that once the backlog of those identified at B and this was in
18 relation to outstanding applications, has been cleared, the
19 Board should make Recommendations as applicants reached the 20th
20 anniversary of their arrival in the Territory after the normal
21 screening process. The effect was--and this is evidence that
22 has--from Mr Smith-Abbott and indeed from others, that there has
23 been a benchmark in effect adopted which is that it appears that
24 this policy has been applied by Cabinet since its promulgation,
25 and what's said as a potential criticism is in adopting the

1 Policy, the Cabinet has actually unlawfully and/or had acted
2 ultra vires the Act or otherwise as an individual applied for
3 Belonger Status would have a legitimate expectation. That's
4 once they had attained 10-years residence in the Territory, they
5 could make an application which would be considered in
6 accordance with the Act.

7 So, once that is said, that Cabinet is, therefore,
8 acted inconsistently with the principles of good governance.
9 The point is that, since 2004 that, benchmark has been in place.
10 The effect is that, although someone can apply once they've had
11 residence of not less than ten-years, they're not considered
12 until they have established 20 years. Now, you have in response
13 referred you say, I refer to and adopt the response of The
14 Honourable Vincent Wheatley dated 24th of September 2021,
15 together with the supporting submissions of the Attorney
16 General.

17 Now, The Honourable Wheatley came and gave evidence on
18 this and I asked questions about that. The Commissioner also
19 has the written submissions of the Attorney General. The only
20 two matters, therefore, I need to ask you is this: When you
21 were previously in Government, were you aware of this policy
22 that there was a benchmark of 20 years?

23 A. I can't recall.

24 Q. Are you aware that it has never been published or
25 publicised so that applicants know of it?

1 A. It was--that's quite a while.

2 Q. Are you now aware, Premier?

3 A. Well, are you trying to say if I'm now aware as when
4 the matters come, I tried to become familiar with them,
5 Mr Rawat, because it's not my subject. The Premier's Office
6 have a lot of subjects and I'm the Ministry of Finance. I do
7 not cross over in other Ministers' areas. There is a lot of
8 laws I have to read, a lot of things that I have to do, and I
9 also have to be a First District Representative and to bring a
10 balance of that and family. I let the Ministers run the
11 Ministries, and when they come with anything that's dealing with
12 law, I try to be as fair as I can because I don't know where the
13 question is leading because I have done in advance of all that I
14 can on that.

15 COMMISSIONER HICKINBOTTOM: So, we will rely on
16 Honourable Vincent Wheatley's evidence.

17 THE WITNESS: Based on this and this particular one,
18 you'll have to ask the Minister because he's the one who deals
19 with the subject daily. I don't.

20 COMMISSIONER HICKINBOTTOM: Yes, thank you.

21 BY MR RAWAT:

22 Q. If you turn up, please, page 608 in Part 1 of the
23 bundle. Part 1?

24 A. Which one?

25 Q. 608, please.

1 This is an example of one of a number of memorandum
2 from 2019 prepared by the Ministry of Natural Resources, Labour
3 and Immigration. And dealing with what we have been calling
4 fast-track process for Belonger Status.

5 We don't--and not all of the memoranda have been
6 disclosed to the Commission or the decisions. But if we look at
7 the background information, it says: "On the 3rd of June 2019,
8 the House of Assembly passed a Bill entitled Immigration and
9 Passport (amendment) Act 2019, which was assented to by the
10 acting Governor on 12 of June 2019. This amendment allowed for
11 a special fast-track process to be developed for those residing
12 in the Territory for a period of 20 years or more, without
13 gaining status to be able to do so. These persons had the
14 opportunity to apply for Residence and Belonger Status, or
15 Belonger Status only depending on their preexisting qualifiers.

16 "Under this expedited process, a timeline of three
17 weeks was allotted to allow persons to submit the required forms
18 and documents. The time within which persons were eligible to
19 apply ended on 16th of August 2019. Applicants were required to
20 pay upon submission of all applications a fee of \$1,510 for both
21 Residence and Belonger Status.

22 "The clear path to Regularisation, Residency and
23 Belonger Status Programmes, a special project initiated and
24 driven by the Premier and Minister of Finance and does not
25 require a deliberation of the Board of Immigration for

1 applications received, but is approved by Cabinet pursuant to
2 the Act. The process specifically requires applicants to submit
3 their applications and make payment up front, complete a written
4 examine and submit all of the same documentation that persons
5 which have originally submitted through the normal process of
6 the Immigration Department. Following the receipt of completed
7 forms, documents and payments, persons were profiled for
8 submission to the Cabinet", and then it just refers to the
9 profiles being appended to this paper for Cabinet's
10 deliberations.

11 And it concludes: "It should be noted that
12 applications are available at the Department of Immigration if
13 the Cabinet wishes to obtain further information on each
14 applicant".

15 Now, first question is: Given that Immigration was
16 for another Minister as you've just explained, why was this
17 policy initiated and driven by your Ministry?

18 A. It wasn't driven by my Ministry.

19 Q. It says "initiated and driven by the Premier and
20 Minister of Finance".

21 A. Yeah, but not the Premier's Office.

22 Q. I see.

23 A. There is a difference.

24 This is a very touchy topic in our country.

25 Q. Pause there.

1 A. I have to explain--

2 Q. Explain this to me so that I can understand.

3 A. Yeah.

4 Q. You have the Immigration sits under the Minister
5 Wheatley.

6 A. Yes.

7 Q. You've explained that you let him get on with his job?

8 A. Yes.

9 Q. So, what his paper says--

10 A. Yes.

11 Q. --is the clear path to Regularization, Residency and
12 Belonger Status Programmes, a special project initiated and
13 driven by the Premier and the Minister of Finance, so does that
14 mean it wasn't held within the Premier's Office or the Minister
15 of Finance?

16 A. No.

17 Q. But you initiated it and asked the Minister to take it
18 forward?

19 A. Exactly.

20 Not ask him to take it forward. If I may because I
21 was attentively listening. There are persons who are strongly
22 against persons from other Caribbean islands who are getting
23 status in this country, period, and there are those in terms of
24 indigenous and there are those who see us as something that
25 should be done. It's a very, very, very, very, very volatile

1 political topic. And when we got into office, given the backlog
2 that we were told again that occurred, it came a question of
3 what do we do?

4 I'm in a Government where none of my Members were ever
5 in a government before. And when we discuss this as a
6 government we decided we wanted to move forward with it, there
7 was a sense of fair amongst some of them to mention to go and be
8 the one to talk on this, but I told them that I would go ahead.
9 I would announce it because I'm the Premier, I'm the head of the
10 country, and I feel strongly about the matter, and I would
11 announce it but it belongs to the Ministry of Natural Resources
12 and Labour and Immigration. I wasn't going to put a young
13 politician like the Minister now to go announce something as
14 heavy as this, this is a heavy topic, for you coming in, it may
15 not seem so, Commissioner, but this is a heavy topic, and there
16 are persons up to now who meet me and tell me we will not
17 re-elect you again because you give status away.

18 But I sleep good at night knowing that we did the
19 right thing.

20 Now, when we did it we had the--I launched it, I paved
21 the way, and the Minister came and he did what he has to do
22 because I didn't want him in the front. There was too much
23 political pressure for a newcomer to have announced that.
24 That's the only reason that I gave this speech. I did not get
25 involved in the processes. I did not get involved in the

1 process. I didn't get involved in anything else after that. I
2 announced it, kept it out there, and I, of course, became the
3 face but not by no means or stretch of the imagination was I the
4 body of our Government. It stayed under the Minister of
5 Immigration.

6 Q. What exactly did you announce then?

7 A. I announced the fast-track programme. We had a
8 launching of it.

9 Q. Did you just announce in general that there will be a
10 fast-track?

11 A. In general, I didn't go into details.

12 Q. So the mechanics of it, whether it would be a written
13 exam, the fact that the Immigration Board wouldn't take part,
14 that came after?

15 A. I wouldn't go into all of that, what you said
16 Mr Rawat, that's a small trap trying to get me into what the
17 processes are at. I don't know what they are. What I told them
18 is whatever needs to be done under this fast-track programme to
19 fast-track it, let that be done. Those who have dealt with it
20 will have to answer that. All I did is make sure that when it
21 came to Cabinet we did our part. I did not get involved.

22 Q. The reason for my question, Premier, is so I can
23 understand--

24 A. I can allow you--

25 Q. --who it is who is those who have dealt so that they

1 can answer the question.

2 A. Yes.

3 Q. But it wasn't your proposal, then, for the Immigration
4 Board to not play a part in this process?

5 A. The whole policy thing was done by the Immigration
6 under the Ministry of Natural Resources and Labour, and they
7 could answer that when they come.

8 Q. I see. So, I can ask Honourable Wheatley about the
9 design of the scheme?

10 A. You could ask him about the design of the scheme
11 because his Ministry dealt with it. I never dealt with one
12 application, not even half an application, only a quarter.

13 Q. So, he remains the body and the organs whilst you're
14 still the face?

15 A. Yes, I'm still the face. But he's the face now, for
16 two years and change, so he will come in the front but I took
17 the blow for that one because I still feel it is the right thing
18 to do without compromising the Indigenous People what he had
19 been fair to persons who help build our Territory. It's not a
20 right but at the same time, too, they help build our Territory,
21 and I feel that God is seeing my action, and if not, well, I'll
22 pay the consequences for it, but I don't think I would because I
23 did what was right.

24 COMMISSIONER HICKINBOTTOM: I'm sorry, this is a
25 repetition, so I apologize, but in terms of the process, that's

1 for Honourable Vincent Wheatley.

2 THE WITNESS: Yes. Well, his Ministry because I don't
3 think he dealt with any applications, as Minister he would be on
4 a high level but that Ministry is who dealt with that.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 BY MR RAWAT:

7 Q. Thank you. Commissioner, I have reached the end of my
8 questions on this topic, so that will be a convenient time, if--

9 COMMISSIONER HICKINBOTTOM: Shall we break now for the
10 day?

11 MR RAWAT: Yes.

12 COMMISSIONER HICKINBOTTOM: So, we--

13 THE WITNESS: So we finished with Belongers?

14 BY MR RAWAT

15 Q. Yes.

16 A. Because I know I had some other criticisms. So those
17 don't need to come up?

18 Q. Well, I dealt with the two that are in that Warning
19 Letter.

20 A. Okay.

21 Q. I will check again overnight in case, but I don't
22 think there is.

23 A. I don't want to fill up my bag. I usually work
24 with--I do a lot of research when I'm potentially being
25 criticized, so if not, I want to leave home anything to deal

1 with Belongers so I could have room for the other topics, so if
2 we're finished with Belongers, let me know.

3 Q. I think we are finished with Belongers, Premier.

4 A. Thank you so much. I do appreciate that part there
5 with it.

6 What's the next topic now?

7 Q. Tomorrow, we will be dealing with consulting contracts
8 and COVID.

9 A. Okay. Which contract?

10 Q. Those relating to Mr Skelton-Cline.

11 A. Okay, we're back with Skelton-Cline. Okay. Thank you
12 so much. 9:45?

13 COMMISSIONER HICKINBOTTOM: 9:45.

14 THE WITNESS: Beautiful.

15 (End at 4:07 p.m.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN