

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 49
(FRIDAY 15 OCTOBER 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Ms Martha Eker-Male 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 Ian Penn gave evidence.
Ms Dorea Corea gave evidence.
Ms Sonia Webster gave evidence.

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Session 1

Ms Martha Eker-Male, Withers LLP

Mr Bilal Rawat

Mr Ian Penn

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

Session 2

Ms Martha Eker-Male, Withers LLP

Mr Bilal Rawat

Ms Dorea Corea

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

Session 3

Ms Martha Eker-Male, Withers LLP

Mr Bilal Rawat

Ms Sonia Webster

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

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3 COMMISSIONER HICKINBOTTOM: Good. Mr Rawat, we are
4 ready to begin, I think.

5 MR RAWAT: Good morning, Commissioner.

6 Can I just introduce the representation this morning.
7 We have on behalf of the Attorney General and the elected
8 Ministers, Ms Martha Eker-Male, who is attending remotely. The
9 other Members of the House of Assembly who are separately
10 represented do not have legal representation present in hearing
11 today.

12 COMMISSIONER HICKINBOTTOM: Just before we start,
13 Mr Rawat, we have three witnesses today, Mr Penn, who is here;
14 the Internal Auditor, who is coming this morning; and the
15 Auditor General is coming this afternoon. We had a
16 fourth witness, Mr Sylvester. He is not in the Territory, and
17 he's indicated that he is unavailable to give evidence today, as
18 we'd hoped, so he will not be giving evidence today, and we will
19 be in touch with his Legal Advisers to make sure that he can
20 give evidence on some other occasion in perhaps some other
21 forum.

22 Yes. Thank you.

23 MR RAWAT: Thank you.

24 Our first witness this morning is Mr Ian Penn, the
25 Chief Immigration Officer.

1 BY MR RAWAT:

2 Q. Mr Penn, this is not the first time you have given
3 evidence to the Commissioner, so you're familiar with the
4 process.

5 A. Yes.

6 Q. No need to either affirm nor take an oath. You'll be
7 familiar that we make Bundles available to you.

8 The only thing to remind you of, which I always do, is
9 please do try and keep your voice up as we go through your
10 evidence.

11 A. Okay.

12 Q. We've asked you just to return just to assist further
13 on the issue of Belongership, and in particular on the issue of
14 the fast-track programme that was introduced in 2019. You
15 should have in front of you two small sets of papers, loose-leaf
16 papers.

17 Do you have those, sir?

18 A. Yes.

19 Q. If I just explain, one is headed "Disclosure Request
20 to Honourable Wheatley", and it contains documents that
21 subsequent to yourself and Honourable Wheatley recently giving
22 evidence were disclosed to the Commission. And the second is a
23 bundle of e-mail correspondence which also includes attached to
24 it again further correspondence and disclosure.

25 You will also see that on the desk you will have the

1 bundles that contain material relevant to Belongership.

2 But if I could ask you just to pick up the documents
3 which are headed "Disclosure Request to Honourable Wheatley",
4 please.

5 Now, by way of background, we know--we've heard
6 evidence from yourself and Mr Smith-Abbott about this that
7 Government in 2019 introduced the fast-track programme, which
8 involved two things: Firstly, a change in the legislation, so
9 there was for a time-limited period a new section 16(4) and
10 section 16(5) introduced into the Immigration Passport Act. And
11 secondly, a process introduced by which the Immigration Board
12 were not involved in the process.

13 Now, if we look at page 1 of the documents, we'll see
14 the summary of that process in this document which is a Cabinet
15 Memorandum from 19th of November 2019, and at paragraph 3 it
16 says: "The clear path to regularisation, residency and
17 Belongership Status programme is a special project initiated and
18 driven by the Honorable Premier and does not require a
19 deliberation of the Board of Immigration for applications
20 received but is approved by Cabinet pursuant to the Act. The
21 process specifically required applicants to submit their
22 application and make payment up front, complete a written exam,
23 and submit all of the same documentation that persons which have
24 originally submitted through the normal process at the
25 Immigration Department. Following the receipt of completed

1 forms, documents, and payments, persons were profiled for
2 submission to Cabinet. The profile of each applicant which
3 summarises the application of each applicant is attached for
4 Cabinet's deliberation. It should be noted that full
5 applications are available at the Department of Immigration if
6 Cabinet wishes to gather further information on each applicant".

7 So, that was--we had the legal framework, and we had
8 the mechanics of it. The Honorable Premier explained that
9 whilst he was the face of this programme, the body and organs,
10 to quote the Honorable Premier, were Honourable Wheatley, and so
11 I asked Honourable Wheatley yesterday if he could give the
12 Commissioner some details about how this programme was set up,
13 and he said it was a question better for the technocrats. And
14 so, since I think you fall into the category of technocrat, it's
15 my turn to ask you that question.

16 So, just if you can, just in terms of the process and
17 what you were able to tell us on the last occasion was that, for
18 the written exam, people had to come in to sit for the written
19 exam. Can you give any further details as to how this system
20 was set up and how it operated, to the Commissioner, please.

21 A. Well, first I would say that--that after the--after
22 the Premier initiated the Programme--

23 Q. Please keep your voice up as well.

24 A. After the Premier initiated the Programme, then the
25 Programme was handed to the Ministry of Natural Resources,

1 Labour and Immigration to make sure that, you know, it was
2 followed through. Therefore, all the support was given from the
3 Ministry level. However, the Immigration Department facilitated
4 the process, meaning that all applications came to the
5 Department and was vetted. Persons come--came to the Department
6 to do their written exams. And, you know, after everything was
7 done, then the paperwork, all the paperwork, was sent back to
8 the Ministry, where the--where the Ministry assisted in helping,
9 you know, formulate the Cabinet Paper to go before Cabinet.

10 Q. We see that there is--so, all of the applications come
11 in to your Department.

12 A. Yes.

13 Q. And is it down to the applicant to collect the
14 information that's required?

15 A. Yes, because the application form is self-explanatory.
16 It tells the applicant all that they need to submit along with
17 the application form and, therefore, even though it comes into
18 the Department, we still have a duty to vet it and make sure
19 that all the documents were submitted along with the
20 application.

21 Q. So, even under the fast-track process, you--your
22 Department would review the application and accompanying
23 documents to make sure that an applicant had provided all
24 necessary information?

25 A. That is correct.

1 Q. And once you'd done that, you would then pass the
2 information on to the Ministry?

3 A. No. Well--no, the process entails more. After--after
4 the vetting had took place and those persons--and those persons
5 who--who fit the category for the fast-track, then they were
6 called in to do the written exam, the test, and all of those
7 things. And once that was done, then--then they had to make the
8 payment, make the payment. And once the payment was made, then
9 the collation of the documents, putting it together for Cabinet
10 was done with the Department along with the Ministry to send to
11 Cabinet.

12 Q. I see.

13 A. For final approval.

14 Q. Well, if you turn through to page--in the same bundle,
15 turn up page 23. It's a--I think these are the profiles that
16 would go to Cabinet, and each profile is headed "fast-track
17 application for Residence and Belonger Status", and it gives a
18 summary of each applicant, and so it confirms whether or not
19 the--gives the name, place of birth, physical address, date of
20 residence in the Territory, employment status, occupation,
21 Immigration status, application date, date of birth, marital
22 status, police record, trade licence, cultural test, whether the
23 person has investments in the Territory, whether the person is
24 absent--has been absent from the Territory. Because I think as
25 we canvassed on the last occasion--there--you need to be

1 ordinarily resident and there are only certain specific reasons
2 that would allow you to be absent from the Territory without
3 compromising or ordinary residence, such as Government service
4 or study.

5 Now, from Minister Wheatley's evidence, these are that
6 profiles that Cabinet would see, so would your Department be
7 involved with the Ministry in preparing these profiles?

8 A. Yes, that is correct.

9 Q. And we have seen that in the first instance at least
10 that is what goes to Cabinet to allow Cabinet to make their
11 decision; is that right?

12 A. Yes, that is correct.

13 Q. Because under in process, and in fact under the
14 standard process, the Immigration Department doesn't either make
15 decisions or indeed make recommendations. It's the Immigration
16 Board that would normally make?

17 A. Right, exactly, the Board, not the Immigration
18 Department, the Board.

19 So, under the ideal process, these profiles are still
20 done, but the Board--the Board makes a recommendation to
21 Cabinet.

22 Q. And when the Board makes that recommendation, would
23 the Board, I think you said last considers the entirety of the
24 documents?

25 A. Yes.

1 Q. One feature of Minister Wheatley's evidence yesterday
2 afternoon was that he recalled that on seeing these profiles, he
3 was able to spot errors in them based on things he knew about
4 the individual, and that he would, having spotted errors, he
5 would come to the Immigration Department and say you've got to
6 get this right, you've got to make sure that these details are
7 accurate. Do you recall having any conversation with Minister
8 Wheatley of that sort?

9 A. No, I cannot recall.

10 Q. What process did you have in place to make sure that
11 the details were accurate?

12 A. Well, normally, these profiles would be done up by my
13 Department. However, as I stated before, we had the assistance
14 of the Ministry, personnels from the Ministry, who was there
15 assisting and making sure that the profiles were done and names
16 and everything that had to be submitted to Cabinet was done in a
17 correct manner, and we had that assistance.

18 COMMISSIONER HICKINBOTTOM: When you say had that
19 assistance, Mr Penn, you gave evidence last time that, before
20 the fast-track programme, you were understaffed, your Department
21 was understaffed in terms of getting applications moving, and I
22 think quite a number of people came in to assist to prepare the
23 documents for the fast-track programme.

24 So, was it those people who came to assist, were they
25 from the Ministry or some of them from the Ministry?

1 THE WITNESS: No. Those--those persons--those persons
2 were persons that were brought in from the Ministry of the
3 Premier's Office.

4 COMMISSIONER HICKINBOTTOM: Right.

5 THE WITNESS: Those persons were paid on a temporary
6 basis.

7 COMMISSIONER HICKINBOTTOM: They were just brought in
8 to assist?

9 THE WITNESS: Yes, to assist.

10 COMMISSIONER HICKINBOTTOM: I mean, quite a number of
11 them, I think you said.

12 THE WITNESS: Yes, yes, yes. Quite a number of them.

13 And they assisted with the vetting of the forms and
14 stuff like that.

15 COMMISSIONER HICKINBOTTOM: Okay.

16 THE WITNESS: But the--but the actual--but the actual
17 preparing the forms for Cabinet was done by my office and
18 assistants from the Ministry of Natural Resources, Labour and
19 Immigration.

20 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

21 BY MR RAWAT:

22 Q. But in terms of preparing material for Cabinet, there
23 are two things that you have to do primarily with the
24 fast-track. One is obviously prepare the Cabinet Memo, which we
25 looked at at the beginning, which would have the list of names,

1 and the other one is to prepare these profiles; is that right?

2 A. Yes.

3 Q. And one feature of this process that we've seen--and
4 Minister Wheatley confirmed this--was that you have--names were
5 being put forward to Cabinet in batches, and more often than
6 not, they were substantial batches of names. It's common to
7 have 100 people being put through on one Cabinet Memo at a time.
8 So, does that reflect the pace of the process, that you had a
9 lot of material to get through in a relatively short space of
10 time?

11 A. Yes, they were put forward in batches, batches
12 because--there was a number of applications, a number of
13 applications to go through and therefore, for the process to go
14 through to go to Cabinet and for Cabinet to absorb all those
15 names, I think it was determined that if they are put forward in
16 batches it would be easier for Cabinet to go through them
17 relatively quickly and, you know, deal with them as they come.

18 COMMISSIONER HICKINBOTTOM: I think there were about
19 1,000 applicants, and they were put in normally in batches of
20 100. I think there were 11 batches.

21 THE WITNESS: Yes.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 BY MR RAWAT:

24 Q. And if we look at--if you're still at page 23, just
25 looking at the profile, do you see where it says "cultural

1 test"?

2 A. Yes.

3 Q. Is that the reference to the written exam?

4 A. Yes, it is.

5 Q. We also see "Police Record". Who would obtain the
6 Police Record?

7 A. The applicant was responsible to go and obtain their
8 Police Record from the Territory, and that would form part of
9 the application to the Department, so the Police Record is one
10 of the components, of the requirements, that has to be submitted
11 with the application.

12 Q. If you keep that open and turn up, please, on the
13 little bundle that you're in, page 32, and then if you take the
14 other bundle, Mr Penn, please, the one that begins with a piece
15 of e-mail correspondence, and you just turn up page 27.

16 Now, this isn't a document that you would routinely
17 see because I have taken you to a Cabinet Minute from the 22nd
18 of November 2019, and it's dealing at page 32 with a number of
19 Belonger applications under the fast-track programme.

20 And I should add that the effect of the change to
21 16(5) was that Cabinet could, if someone were--excuse me.
22 Cabinet could, in the exceptional circumstances of any case, if
23 they considered it fit to do so, grant a Certificate to someone
24 who had been ordinarily resident in the Territory for a period
25 of at least 20 years. And these applications seemed to

1 have--when we look at the memoranda, been put through on the
2 basis that someone has resided within the Territory for a period
3 exceeding 20 years, so that was the threshold that was being
4 used.

5 Now, in this case you will see, when we're looking at
6 page 27 on the other bundle, that here the applicant raised the
7 case of one individual who had been sentenced for, if you look
8 at 36, for a significant and serious offense that resulted in a
9 long sentence of imprisonment in another jurisdiction.

10 Do you have that at 36?

11 A. 36?

12 Q. Right. In that page, if you go to page 27 in that
13 bundle. Tell me when you're there.

14 A. Yes.

15 Q. You see at the top, the document is headed
16 "Deliberations"?

17 A. Yes.

18 Q. Now, don't read anything out, but if you look at 36,
19 you have Cabinet Meeting to discuss Belongership applications.
20 It's a batch of 100. At 36, the Attorney General raises the
21 issue of one person, and I've canvassed this with Honourable
22 Wheatley at an earlier hearing, and that person was imprisoned
23 in another jurisdiction serving a long sentence for an offense
24 of sexual violence. So, that's what the Attorney General is
25 there. And the upshot there is that Cabinet decides, if you

1 look at 42, to defer the application for three weeks.

2 Now, if you turn back to the other bundle and look at
3 32, the profiles, that's the profile of the individual that
4 Cabinet was discussing. And on cultural test it says
5 "unavailable". On absence from the Territory it records
6 nothing. And on Police Record it records "clear".

7 Now, it could be suggested that firstly, that some of
8 the details here are inaccurate because this person must have a
9 Police Record. Was the approach to just ask people to just
10 declare or provide evidence that they had a clear record in the
11 Territory?

12 A. We ask persons to provide a clear record in the
13 Territory meant that they have been ordinary resident here for
14 20 years or more, so which meant that if they are residing in
15 the Territory, it means that the Police Record must come from
16 the Territory and, therefore, that's where the Police Record
17 would, you know--you know, would come from.

18 So, if they don't have any record here in the
19 Territory, then as it would say on the profile "clear", then
20 what we--then information we get on the Police Record from the
21 Police station, that's what it is.

22 COMMISSIONER HICKINBOTTOM: Could I just break that
23 down into two, Mr Penn.

24 THE WITNESS: Sure.

25 COMMISSIONER HICKINBOTTOM: I think I understand it.

1 So, the applicant is required to provide--to obtain
2 and provide to you Police Record from the BVI, and that's what
3 happens.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: But the earlier part of
6 your answer which referred to the requirement that the applicant
7 needs to have been resident here for 20 years. Were you
8 suggesting that that means that they couldn't have spent any
9 significant length of time in prison abroad because otherwise it
10 would have been reflected in their responses to the 20-year
11 requirement? Or did I read too much into your answer?

12 THE WITNESS: Well, what I would say to that is that,
13 if somebody has been residing here for 20 years, and after 20
14 years for some reason, you know, they have been--may have been
15 in prison elsewhere or committed an offense somewhere else,
16 unless we have intimate knowledge of that, of that, then we
17 wouldn't know--we wouldn't know of it, okay, and therefore, you
18 know, we would not be able to, you know, to--you know, to say
19 anything about the matter. However, if that information is
20 known to us, is known to us, then--then we would make a decision
21 not to send this application to Cabinet because of, you know, of
22 what is there.

23 COMMISSIONER HICKINBOTTOM: Okay. But we haven't seen
24 any of the underlying documents to what goes to Cabinet because
25 we haven't been provided with them.

1 In respect of the application, you've told us that the
2 application requires the production of a Police Record from
3 here.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: Does it raise any
6 questions about any offenses anywhere else? Does it say have
7 you committed a serious offense in the last 20 years or any
8 question about offenses in other jurisdictions?

9 THE WITNESS: The form does not--the form does not say
10 that, but if some--if an offense is committed elsewhere in any
11 jurisdiction or other jurisdiction, then they would not be
12 qualified for Belongership Status.

13 COMMISSIONER HICKINBOTTOM: No, quite. But you're
14 right because they wouldn't be of good character, so they
15 wouldn't qualify. But do you ask them--you've got the Police
16 Record from here, which may be clear, but is there any question
17 in the application, are you of good character? Have you
18 committed any offenses in other jurisdictions, or do you simply
19 rely upon the production of the Police Record from the BVI?

20 THE WITNESS: We rely--we rely on--we rely on the
21 Police production from the BVI. If we know of persons who are
22 out of the Territory or who have been out of the Territory or
23 out of the Territory while making an application, then yes, we
24 would see it fit to ask such questions.

25 COMMISSIONER HICKINBOTTOM: Now I understand.

1 So, the application form doesn't require--as a
2 standard question, it doesn't have that as a standard question,
3 but if you're aware that somebody is not in the jurisdiction or
4 has not been in the jurisdiction for a while, then you may ask
5 that question?

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: Is that fair?

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 BY MR RAWAT:

11 Q. But can I take you back to, I don't know whether
12 you've got 16(5) in front of you. As it was under the
13 fast-track.

14 MR RAWAT: Commissioner, if you need to look at it, it
15 will be in the Part 2 of the Belongership bundle, page 1348 of
16 Mr Smith-Abbott's Affidavit.

17 COMMISSIONER HICKINBOTTOM: 1348?

18 MR RAWAT: Yes.

19 I will just wait for Mr Penn to turn it up.

20 BY MR RAWAT:

21 Q. This is--you remember this Affidavit when
22 Mr Smith-Abbott attended to give evidence, you came along,
23 Mr Penn, as his designated expert, but can you see at 33.4, what
24 the Affidavit helpfully does is set out what changes were made
25 by the 2019 amending act, and so if you look at 16(5), the 16(5)

1 that existed for a time limited period, "wherein the exceptional
2 circumstances in any case the Cabinet considers it fit to do so,
3 it may in its own discretion grant a Certificate referred to in
4 subsection (1) to any person who applies for same in the
5 prescribed manner who, in its opinion", and we now need to go to
6 (b), "has been ordinarily resident in the Territory for a period
7 of at least 20 years".

8 So, under that amended provision, good character
9 wasn't a feature.

10 So, if we return to this application as an example,
11 what your requirements are for an application, any applicant, to
12 produce evidence that they have a clear record in the Territory;
13 is that right?

14 A. Mr Rawat, what you've just said there, first of all,
15 that the amendment for 16--16(5), it doesn't mention "character"
16 there. That's what you said; right?

17 Q. Yes.

18 A. It doesn't necessarily mean that when persons were
19 submitting their applications for the fast-track that they had
20 to submit a character reference in connection with the Police
21 Certificate, which they all did, because it was a requirement.

22 Q. I'm not disputing that you didn't make it a
23 requirement. What I'm suggesting is that, on the law, when
24 Cabinet is considering whether to grant a Certificate under the
25 fast-track programme, the key issue was whether the person had

1 been ordinarily resident.

2 A. Yes.

3 Q. Now--and as I understand your process, on the
4 application form, someone would have to--when they put in the
5 application, they would have to put in a Police Record?

6 A. Yes.

7 Q. And you and your team would be able to check that.
8 And when it came to completing the profile, you would be able to
9 say to Cabinet the record is clear or the record is not clear.

10 A. Exactly.

11 Q. And in the memo you might then give details about the
12 circumstances in which someone may have committed an offense,
13 but that would be an offense in the Territory?

14 A. Exactly.

15 Q. Now, in this case, or in other cases where you have
16 someone who has committed offenses outside the Territory, asking
17 for a Police Record from within the Territory will not pick
18 those up, will it?

19 A. No.

20 Q. So, you are then dependent on them declaring that to
21 you?

22 A. Yes.

23 Q. But in any event, what you also want from an applicant
24 is they have to show you that they have been ordinarily resident
25 in the Territory for at least 20 years, don't they?

1 A. Yes.

2 Q. So--and we've discussed this.

3 So, if you have an applicant who spent two years
4 studying in the US, that would not count against them, would it?

5 A. No.

6 Q. If you have someone who was on BVI Government service
7 in London for four years, that wouldn't count against them?

8 A. No.

9 Q. But if someone had spent a certain period of time
10 outside the Territory in prison, that would count against them,
11 wouldn't it?

12 A. Yes, it would.

13 Q. And you would expect them to declare it?

14 A. Yes.

15 Q. Now, in this case, if you look at the particular
16 profile, where it says "absence from the Territory", no
17 information is given. So, would that mean that you would take
18 that as an indication that the person had not had any absence
19 from the Territory?

20 A. Mr Rawat, I don't know the reason why the--that
21 information is missing from that profile, and I really can't
22 speak to it.

23 Q. I'm not speaking about the particular profile, just
24 how the profiles are compiled because, if you look elsewhere--

25 A. Right.

1 Q. --if you look on the same page--

2 A. Yes.

3 Q. --in some instances, someone will be recorded as one
4 month away, and the reason is given. If you look at the very
5 bottom, we have someone who says they're away for two years,
6 school/university.

7 A. Yes.

8 Q. If it's empty, does that mean that when--if any
9 profile is empty, so absence from the Territory is blank, does
10 that mean your Department would have recorded--does that mean
11 that shows that the person was never absent from the Territory,
12 or does it show missing information?

13 A. I really can't answer that question because I have
14 never seen a profile where that area was empty.

15 COMMISSIONER HICKINBOTTOM: Can we look at it through
16 the other end of the telescope, Mr Penn. I have looked
17 obviously through these profiles and they're probably
18 anonymised, but in terms of the absence from the Territory, what
19 was filled in to the profiles is here, and I think all of them,
20 understandably, have got some length of time in terms of months
21 or weeks sometimes years and then a reason for it, vacation or
22 school or whatever it might be.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: So, when these profiles
25 are being filled in by your Department has assisted, if somebody

1 had said that they had during the relevant period never been
2 absent from the Territory, would you have expected the box be
3 filled in virtually none, N-O-N-E, or would you expect it to be
4 left blank? I'm not sure that there has been any case here
5 where it is none.

6 THE WITNESS: No, I have never seen any case where it
7 was blank, that's what I said before, and if persons were absent
8 for vacation, because you wouldn't expect somebody to, you know,
9 to be residing and living here for 20 years straight. I'm sure
10 persons would have taken a vacation to go back to their home
11 country or travel on vacation or something.

12 COMMISSIONER HICKINBOTTOM: So, does that--does that
13 mean that you've not come across an applicant who has said in
14 the application form in terms of absence from the Territory,
15 none, I have never been absent from the Territory in the
16 relevant period.

17 THE WITNESS: No, I have never come across a profile
18 like that.

19 COMMISSIONER HICKINBOTTOM: I understand that.

20 BY MR RAWAT:

21 Q. Just before we leave that page, you will see there is
22 another application which is summarized, and it's at the very
23 bottom of that page, page 32, where under "cultural test", it's
24 recorded as "exempt/unavailable". What does that signify?

25 A. It means that this application was in--was in to be

1 dealt with. But however, that person was away from the
2 Territory at that particular time.

3 Q. So, he couldn't sit through an exam?

4 A. No.

5 Q. Does that mean--are you saying "no" to disagree with
6 me or "no" to say "yes," it does mean that they weren't there to
7 sit through an exam?

8 A. No, they are--well, they were not in a position to sit
9 their exam because they were out of the Territory.

10 COMMISSIONER HICKINBOTTOM: I'm sorry, does that
11 answer also cover the cultural test for the applicant above the
12 one we're looking at, the one where it's got "cultural test
13 'unavailable'?"

14 THE WITNESS: If that person was not in the Territory,
15 then they wouldn't have been here to sit the exam.

16 COMMISSIONER HICKINBOTTOM: So, "unavailable" is, is
17 it, a flag that this individual was not in the Territory to take
18 the test?

19 THE WITNESS: Yes, that could have been the--

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: --the situation, yes.

22 BY MR RAWAT:

23 Q. And taking test was part of the process?

24 A. It is part of the process.

25 Q. And in fact, in other instances, you actually give

1 people marks, don't you...

2 A. Yes.

3 Q. ...to Cabinet.

4 Could we--in the same bundle, please, Mr Penn, turn up
5 to the very last page.

6 A. Page 55?

7 Q. Yes.

8 You should see a letter dated the 17th of
9 December 2020?

10 A. Yes.

11 Q. And it's from yourself.

12 And it's written to that individual that we have been
13 looking at.

14 A. Mr Rawat, before you continue, you see my name there,
15 yes, but it is not my signature.

16 Q. I see.

17 Well, try and see if you can help us because just to
18 understand how the process works. And just to help you, if you
19 go to the other bundle and turn up page 11 of the other bundle.

20 And just to give it some context, you saw from the
21 Cabinet Minute that the application was deferred by Cabinet for
22 three weeks, and then this letter was disclosed to the
23 Commission, which says that the applicant was informed that the
24 application was not successful because the applicant had not met
25 the 20-years residing period in the Territory that is specified

1 in the 2004 Immigration Policy, and that is over year after it
2 had first gone to Cabinet.

3 The Commission raised with the Attorney General one
4 question which is both how is the application determined if it
5 hasn't gone back to Cabinet because, under the process, Cabinet
6 decides everything? And the answer came back and that's at that
7 page 11: "Due to the length of time since the end of the
8 fast-track scheme in relation to Belongership, the Department of
9 Immigration determined that the letter should be issued and the
10 application fee returned. This procedure was followed with
11 other unsuccessful applicants".

12 So, I just wanted--if you could just lend some more
13 detail to that. Because if the Immigration Department can't
14 make decisions what was the legal basis on which you could
15 determine the application and decide that it was unsuccessful?

16 A. Commissioner, I cannot lend much support to the
17 question asked because I was not intricately involved into that
18 decision-making, nor had I had so much knowledge of what took
19 place surrounding that particular matter.

20 Q. It's not just this individual because it was--it
21 was--what's the information that's being given to the Commission
22 is that that was the process adopted in relation to more than
23 one unsuccessful applicant.

24 And so, what there appears to be is that there was a
25 number of applications which were still hanging around long

1 after the fast-track scheme had ended, and then the Department
2 of Immigration made the decision to issue letters saying your
3 application is unsuccessful. And so, there appears to have been
4 a process in place to determine those remaining applications.

5 You're the head of the Immigration Department. Can
6 you just explain how that process--who decided that the
7 Immigration Department could determine applications?

8 A. Under normal circumstances, if an applicant comes back
9 from Cabinet where it has been denied, then the Immigration
10 Department would write and inform that applicant.

11 COMMISSIONER HICKINBOTTOM: Because the Cabinet would
12 have made a decision?

13 THE WITNESS: Yes.

14 Okay. Immigration--Immigration has no power--have no
15 power to inform someone that his application is denied--his
16 application is denied outside of what I've just explained.

17 COMMISSIONER HICKINBOTTOM: So, does that--and I will
18 appreciate that this letter, although literally in your name,
19 was not signed by you, it's pp'd on behalf of you?

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: But you can't explain this
22 letter?

23 THE WITNESS: No.

24 COMMISSIONER HICKINBOTTOM: And not that it matters
25 very much, but it struck me as slightly odd because at the top

1 of the--I don't even know if I'll be able to explain this, but
2 at the top of the letter where it's got "reference" which is to
3 the file number, the R number, that's simply blank, which is
4 just, I thought it odd, given that that's the file number, the
5 file that the letter should end up on. But in any event, you
6 can't help with us this letter?

7 THE WITNESS: No.

8 COMMISSIONER HICKINBOTTOM: Can you also, and again,
9 I'm afraid the answer may be that you can't help us, but in
10 respect of page 32 which is the profile that we've been looking
11 at--

12 THE WITNESS: Yes, Commissioner.

13 COMMISSIONER HICKINBOTTOM: --in terms of the--in
14 terms of at least the absence from the Territory, which is
15 blank, that is either wrong because the blank means no absences,
16 and this individual certainly was absent, or alternatively it's
17 blank. It just means that--you know, it's just blank.

18 But can you explain how this individual's application
19 went to Cabinet to be approved in either of those circumstances?

20 THE WITNESS: Commissioner, with all due respect, I
21 cannot explain that because I did not handle it personally, I
22 did not see it personally.

23 COMMISSIONER HICKINBOTTOM: I understand.

24 THE WITNESS: So, I really can't explain.

25 COMMISSIONER HICKINBOTTOM: I understand that.

1 But in either of those circumstances, whether it means
2 "none"--i.e., it's incorrect because this individual clearly has
3 been absent from the Territory--or it's blank, do you accept
4 that this shouldn't have gone to the Cabinet in a batch of 100
5 for approval?

6 THE WITNESS: I accept--I accept that because, as I
7 said before, I have never seen a profile with blank information
8 in that manner before.

9 COMMISSIONER HICKINBOTTOM: No, no, and I don't think
10 we have in the ones that have been produced.

11 Thank you very much, Mr Penn.

12 BY MR RAWAT:

13 Q. Mr Penn, just take you back to 11, I appreciate that,
14 as you've explained, you didn't have any dealings with this
15 particular case.

16 A. Commissioner, before Mr Rawat continues on--

17 Q. Yes.

18 A. --I'd just like to make it clear for the record that
19 although I'm the Chief Immigration Officer, you know, where all
20 these matters were facilitated, I do have, you know, competent
21 staff in the Department who oversees and look at these things,
22 and it doesn't necessarily mean that, you know, they come
23 through my fingers or my eyes because it's hundreds of
24 applications.

25 Q. Of course.

1 A. Okay?

2 COMMISSIONER HICKINBOTTOM: To put it very bluntly,
3 you're responsible because you're the head of the Department.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: But you obviously don't do
6 everything yourself.

7 THE WITNESS: No.

8 COMMISSIONER HICKINBOTTOM: Because you have staff.

9 THE WITNESS: Exactly.

10 I just want to make that clear for the record.

11 BY MR RAWAT:

12 Q. Understood, Mr Penn, but hopefully what my questions
13 are directed to are not individual applications but how the
14 system was working, and it's just taking you back to page 11 and
15 the information that has been provided by the Attorney General
16 through the IRU about why this--what happened to unsuccessful
17 applicants because, on the information that was provided--that
18 has been provided to the Commissioner, there are--there's one
19 application which was deferred by Cabinet. The Cabinet deferred
20 its decision. We see that there are another four applications
21 where Cabinet made a decision not to approve the grant of a
22 Certificate of Belongership, and that's out of all of the
23 applicants that are coming through. I'll come back to those
24 numbers in a moment.

25 But it's just this decision that the Department of

1 Immigration determined that the letter should be issued and the
2 application fee returned, and that's in relation to the person
3 being deferred. This procedure was followed with other
4 unsuccessful applicants.

5 And it's just, firstly, you are the Head of the
6 Department of Immigration. Was a decision taken that the
7 Department of Immigration could determine some applications, or
8 was it always down to Cabinet?

9 A. It was always down to Cabinet.

10 Q. And in terms of the procedure being followed with
11 other unsuccessful applicants, where Cabinet did not approve an
12 application, would your Department have written back to people
13 saying, "You haven't met the 20-year residing period. Here's
14 the fee back"?

15 A. I am certain of that, that that's a procedure and that
16 would have taken place, yes.

17 Q. So, you may not be able to help with this, but where
18 it's deferred, where Cabinet has said "we're going to think
19 about it" or "it'll bring it back to Cabinet", that's what
20 should happen. It should always go back to Cabinet to make the
21 decision?

22 A. Yes, because, if it's deferred, it means that--and
23 there's a time period to go back to Cabinet, then yes, it should
24 go back to Cabinet within that time period.

25 Q. Thank you.

1 Sticking with the numbers that were refused under the
2 fast-track process, if you just turn up, please--and it's in the
3 bundle of e-mail correspondence--if you just turn up page 5,
4 please.

5 Now, the Commission asked the IRU--or asked for a list
6 of all of those who were refused or were not granted
7 Belongership Status during the 2019 fast-track programme, and we
8 received a list of 46 applicants who were not so granted.

9 MR RAWAT: I think yesterday, Commissioner, I said
10 that that had come from the IRU. I think, properly, what I
11 ought to say that it came via the IRU.

12 BY MR RAWAT:

13 Q. But as I understand it, and what we see the list,
14 Mr Penn, at page 8 in the same bundle, if you turn it up. It's
15 in the other bundle. Go to page 8. It's a list of 46 names.
16 We don't need to read any of them out, but they were persons who
17 did not qualify under the 2019 fast-track programme. And as I
18 understand, that was actually prepared by your Department for
19 the Commission.

20 A. Yes.

21 Q. And were--was everyone on that list refused because
22 they did not meet the 20-year period?

23 COMMISSIONER HICKINBOTTOM: Well, I mean, just to
24 be--make sure that we get this right. What is said in this
25 e-mail is not literally the applications were refused. What is

1 said in the e-mail is that the applications were unsuccessful.
2 There may be no difference, but that's a difference in
3 terminology.

4 Mr Penn, if--forget about the individual. But if
5 somebody applied under the fast-track scheme and it was clear to
6 you or those who assist you that they had not been ordinarily
7 resident in the BVI for 20 years but for some reason or another,
8 how would that applicant be dealt with? Would you deal with it?
9 Would it go to Cabinet to be refused? Just how would it--how
10 would that be dealt with?

11 THE WITNESS: No, those applications were weeded out
12 at the Department level.

13 COMMISSIONER HICKINBOTTOM: Right.

14 And so, you've got a bundle of applications which
15 don't comply with the 20 years, so what happens to those? Are
16 those the ones that get a letter and their money back?

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: All right. Okay. Thank
19 you. That's helpful. Thank you.

20 BY MR RAWAT:

21 Q. If I could just ask you on the back of that, if you
22 get bundle part 1 up, please, and if you turn to page 724. This
23 is one of the batch memoranda being sent to Cabinet, and so it's
24 December 2019. It gives the same detail that we looked at when
25 you first started your evidence, Mr Penn, about the reason for

1 the fast-track process. At 725 under "purpose" it says
2 (reading): "To allow for persons who have resided within the
3 Territory for a period exceeding twenty (20) years to be granted
4 Residence and Belonger Status".

5 If we go through to--if you go through to page 727,
6 this is the decision sought, so Cabinet is invited to review and
7 approve the grant of 46 applicants, and their names are then
8 listed down.

9 If we go to 729--

10 A. What page is that?

11 Q. 729.

12 Right, so let me, if you're in--you should be in the
13 part 1 bundle, and if you start at 724--that's the document. If
14 you go through to 727, that's the decision that Cabinet is being
15 invited to make.

16 A. Yes.

17 Q. And so it's a batch that involves 46 applicants, and
18 they are--they're named, and Cabinet is told--you decide to
19 approve these applications.

20 But at 729, Cabinet is then told to decide not to
21 approve four applications, and those four names are listed.

22 COMMISSIONER HICKINBOTTOM: Not to approve them, and
23 the Ministry referred these applicants to the normal process, so
24 they moved them from the fast-track process into the normal
25 process.

1 BY MR RAWAT:

2 Q. And we can confirm that Cabinet did make that decision
3 when we go through to page 731, and we have the expedited
4 extract. And if you go to the last page, 734, Cabinet does
5 that. They decide not to approve the following four applicants
6 and to move them to the normal application process.

7 So, just so that we get the picture right, fast-track
8 process, applications are made, payment in advance, no
9 Immigration Board, the job of your Department working with
10 Ministry colleagues is to collate the information, vet, and
11 prepare the profiles.

12 A. Yes.

13 Q. At that stage, if there were people who didn't meet
14 the 20-year qualifying process, they would be weeded out.

15 A. Yes. Those applications would not go forward.

16 Q. And that's if they had made it on that basis, if
17 they'd said we want to--our application is on the basis, so we
18 hasn't met--made 25 years--20 years, rather.

19 A. 20 years, yeah.

20 Q. And those people would then be sent a letter and also
21 told that--and their fee returned to them; is that right?

22 A. Yes.

23 Q. So, we've seen that there are others who do make it to
24 Cabinet, but Cabinet are invited to decide that they should be
25 considered under the normal process. In what circumstances

1 would those individuals be put forward to Cabinet?

2 A. I'm not clear of your question.

3 Q. What I just showed you in the memorandum was that
4 there were people who didn't qualify under the fast-track
5 process who were put forward to Cabinet, essentially with the
6 recommendation that Cabinet should decide to transfer them to
7 the normal process. So, in what circumstances was that
8 recommendation being made to Cabinet?

9 A. I can't give an answer to that, as well, because,
10 Commissioner, again, all applications that went forward or that
11 were collated in the Department that went to Cabinet, if some
12 applications who did not make the 20-year or more ended up into
13 Cabinet Paper going to Cabinet, I am not aware of that, you
14 know, taking place.

15 COMMISSIONER HICKINBOTTOM: I mean, I can't give you
16 an example either, Mr Penn, but if the criteria for the
17 fast-track scheme and the normal scheme were different, so that
18 if you didn't comply with the fast-track scheme, you would
19 might, for example, fall within the normal scheme.

20 THE WITNESS: Right.

21 COMMISSIONER HICKINBOTTOM: That would be a reason for
22 not approving them under the fast-track scheme and saying we'll
23 simply treat them as normal-scheme applications.

24 THE WITNESS: Yes, because--I mean, this is a
25 fast-track. We, you know, we invite in persons who reside in

1 the Territory for 20 years or more.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: Any application coming under the 20
4 years, I don't know of any criteria of how they will have, you
5 know, gotten in the mix; and if it did, I certainly was not the
6 one that approved it, and I don't know about it, so I can't
7 speak about it.

8 COMMISSIONER HICKINBOTTOM: That's fair. Thank you.

9 BY MR RAWAT:

10 Q. And in terms of the 46, those are individuals who
11 should have been weeded out and not gone to Cabinet.

12 COMMISSIONER HICKINBOTTOM: Well, in respect--yes, we
13 might want to refer to look at 46, but in respect of those who
14 you saw were--did not comply with the 20 years, they should not
15 go to Cabinet.

16 THE WITNESS: Yes, as far as I'm concerned, yes.

17 BY MR RAWAT:

18 Q. Could I ask you one final matter, please, Mr Penn. If
19 you go back to that page 1348, which--in the Affidavit, so the
20 part 2 bundle, page 1348.

21 I'm just trying to understand the changes, the
22 legislative changes, that the Government introduced in the 2019
23 Act.

24 So, in 16(4), what Cabinet was able to do was in the
25 exceptional circumstances of any case or for any other reason,

1 the Cabinet considers it fit to do so, it may, in its own
2 discretion, grant a Certificate to any person who applies for
3 the same in the prescribed manner and who (a) is of good
4 character, (b) is at the date of making the application for such
5 a certificate ordinarily resident in the Territory, and (c) has
6 been so ordinarily resident for the period of not less than
7 seven years immediately prior to his or her application.

8 Now, that was one route where you needed to be of good
9 character and ordinarily resident for not less than seven years.

10 Did the fast-track process encompass people making
11 applications on that basis?

12 A. Again, I cannot answer that question in the
13 affirmative because that policy in the law was not made clear to
14 the fact that persons under the 20--or some persons or persons
15 under the 20 years could make an application because of this
16 law. And if it was, then, you know, it mean that all those
17 persons under the 20 years, you know, would have had a special
18 criteria to be vetted in some form or the other, if you're
19 understanding what I'm trying to say.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: And, therefore, you know, those who met,
22 you know, that criteria, I guess, would have, you know, would
23 have made it there. But--

24 COMMISSIONER HICKINBOTTOM: So the 20 years would not
25 necessarily be a knockout blow to the application.

1 THE WITNESS: What I'm trying to say is that there was
2 no set policy or there was nothing that came to the Department
3 to say, or to myself, to say to my staff that certain
4 application under the 20 years could be submitted, so I don't
5 know of that.

6 COMMISSIONER HICKINBOTTOM: So, all of the fast-track
7 applications--I think all the ones we have seen but all of the
8 fast-track applications that your Department submitted to
9 Cabinet as far as you can recollect were all on the 20-year
10 basis.

11 THE WITNESS: Well, Commissioner, what I would say is
12 that the amended law stated--stating that persons who have been
13 residing in the Territory for 20 years or more is eligible for
14 the fast-track.

15 COMMISSIONER HICKINBOTTOM: And all of the fast-track
16 applications that you recollect went to Cabinet would have--were
17 on the 20-year basis.

18 THE WITNESS: I would expect that they would have gone
19 on the 20-year basis, yes.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 BY MR RAWAT:

22 Q. And was that your understanding of the purpose of the
23 fast-track process and how it was run, that it was to allow
24 people who had met the 20-year threshold to make applications?

25 A. Yes, that was the understanding.

1 COMMISSIONER HICKINBOTTOM: And the joint residency
2 Belongership applications?

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: That was another aspect of
5 the whole fast-track system.

6 THE WITNESS: Well, no. Well, actually it was part of
7 the fast-track system.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: That was another strand of
11 the fast-track system.

12 THE WITNESS: Yes, yes.

13 MR RAWAT: Commissioner, can I invite you to ask
14 Mr Penn to do two things? One is provide us with a copy of the
15 application form for the fast-track process.

16 BY MR RAWAT:

17 Q. And secondly, given, Mr Penn, that you were not the
18 author of the letter that we looked at of 17th December 2020, I
19 would invite the Commissioner to ask if you could make further
20 inquiries to confirm who was the author of that letter because
21 you said it's not your signature.

22 A. There are senior managers in my Department who can
23 sign on certain matters leaving the Department in my name.

24 COMMISSIONER HICKINBOTTOM: If you could make
25 inquiries as to who signed this letter, that would be helpful,

1 thank you. And the application form, Mr Penn, obviously a blank
2 application form would be helpful as well to inform how the
3 application progressed.

4 THE WITNESS: Sure.

5 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

6 BY MR RAWAT:

7 Q. And one last thing, subsequent to this--I mean, we've
8 heard that Minister Wheatley told the Commissioner yesterday
9 that he spotted errors and communicated that to staff. Was an
10 audit ever done of the fast-track process?

11 A. If Mr Wheatley spotted errors in the fast-track
12 process, he may have communicated with the Ministry--with the
13 Ministry personnel. Those personnels, some of them who sat in
14 Immigration Department as well, and at the Ministry. He may not
15 have--I don't think he would have communicated directly to
16 myself.

17 Q. But subsequent to his ending, have either the Ministry
18 Department sat down and run a check of the applications to make
19 sure that there weren't errors that went through unspotted?

20 A. Yes, that was part of their mandate, but it doesn't
21 mean that, you know, a fresh eye would, you know, pick up on,
22 you know something; pick up on something, it doesn't necessarily
23 mean that they have not, you know, done their checks and
24 balances correctly.

25 COMMISSIONER HICKINBOTTOM: But was there an audit

1 done at the end of the exercise to check? I appreciate that as
2 the applications were going through to Cabinet, they were
3 checked. But after the event, was there an audit done? I don't
4 think we know of any audit, but was there any audit done?

5 THE WITNESS: No. No audit was done.

6 COMMISSIONER HICKINBOTTOM: I understand.

7 MR RAWAT: Commissioner, I've reached the end of my
8 questions. Can I conclude by thanking Mr Penn for returning,
9 making himself available at relatively short notice, but also
10 for the assistants he has given today.

11 COMMISSIONER HICKINBOTTOM: Thank you very much, Mr
12 Penn, if I can echo that.

13 THE WITNESS: Thank you.

14 COMMISSIONER HICKINBOTTOM: Thank you again for your
15 time and thank you again for your helpful evidence.

16 THE WITNESS: Thank you.

17 (Witness steps down.)

18 COMMISSIONER HICKINBOTTOM: Yes?

19 MR RAWAT: Could I ask the Commissioner to rise for
20 five minutes whilst we can get the room ready for our next
21 witness.

22 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

23 (Brief recess.)

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Session 2

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

Just before we do, Ms Eker-Male, can I just raise one issue with you. I understand--I haven't obviously had time to look at them in any shape or form, but I understand that this morning during the course of the Hearing, a large amount of documents relating to COVID-19 stimulus grants have been sent to the COI. They have been sent in a form of split PDFs which will make it a labourious exercise even to download them, and I understand that they have been sent on the basis that in any event we cannot use most of them, or I think possibly any of them in the course of a public hearing. Of course, we haven't had an opportunity to look at these documents; they're enormous.

Firstly, can you confirm that all of these documents have previously been disclosed?

MS EKER-MALE: Good morning, Commissioner. I will need to double-check that with the team and get back to you with a written answer, and I will do that as soon as I can.

COMMISSIONER HICKINBOTTOM: Well, the next question is, obviously if they haven't previously been disclosed, we will want to know why, but I do need an answer, and I need an answer from you now, I'm afraid, Ms Eker-Male, on the next question. I assume because they haven't been used by--any documents which have not been disclosed previously have not been referred to or

1 relied upon by the elected Ministers in relation to the COVID-19
2 stimulus, so I assume that none is relevant to the questions
3 that we have today to put to the Director of the Internal Audit
4 Department and the Auditor General. Can you confirm that to be
5 the case? If not, I shall be extremely unhappy, given the
6 timing of this late disclosure.

7 MS EKER-MALE: Commissioner, so that I can be clear,
8 please could you confirm exactly which documents we're talking
9 about just so that we're on the same page? Were these documents
10 uploaded to Relativity this morning?

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MS EKER-MALE: They were? Okay.

13 Commissioner, could I just be given a few minutes to
14 confer with the team and get back to you later on this, please?

15 COMMISSIONER HICKINBOTTOM: No, because we can't start
16 until I have confirmation that these are not relevant. It would
17 be wrong if these bore upon the criticisms that the elected
18 Ministers, whom you represent, have made in respect of the
19 Director and the Auditor General. So, if you want time, we will
20 break, and I will give you five minutes, but we obviously, for
21 obvious reasons, need an answer now, that we can proceed fairly
22 with putting the criticisms that the elected Ministers have made
23 to the Director and to the Auditor General later today.

24 MS EKER-MALE: I do understand, Commissioner. If you
25 wouldn't mind us breaking just for a few minutes so I can take

1 instructions, that would be most appreciated.

2 COMMISSIONER HICKINBOTTOM: We will break for five
3 minutes. Thank you very much.

4 MS EKER-MALE: Thank you, Commissioner.

5 (Recess.)

6 MS EKER-MALE: I'm sorry for the delay of the
7 proceedings.

8 At first blush, the answer is no. The documents don't
9 have a bearing on the criticisms. However, we would like to
10 reserve the position just because leading counsel hasn't yet had
11 the opportunity to review these documents.

12 COMMISSIONER HICKINBOTTOM: I just missed that last
13 sentence.

14 MS EKER-MALE: I'm sorry if there is a connection
15 issue, Commissioner. We would like to reserve the position on
16 the basis that leading counsel hasn't yet had the opportunity to
17 review these documents. However, at first glance, the answer is
18 no.

19 COMMISSIONER HICKINBOTTOM: So, you, on behalf of the
20 Attorney General, are assuring me that so far as you're aware,
21 there would be no unfairness to either of these witnesses by
22 proceeding without anyone having an opportunity, even apparently
23 your own leading counsel, to have considered these documents.

24 MS EKER-MALE: Sir, that is correct. We were asked to
25 disclose these documents, I believe, on Monday, these documents

1 were provided to us only yesterday. We provided them to the
2 Commission as soon as we possibly could but that short time
3 frame has meant that no one has had the opportunity to properly
4 review them yet.

5 COMMISSIONER HICKINBOTTOM: But I assume that they're
6 relevant documents and they should clearly have been disclosed
7 much earlier. It is not the Commission's fault that these only
8 came to our attention as a result of the oral evidence that we
9 have been receiving. They are relevant documents. They should
10 have been disclosed much earlier. Many, many other documents
11 relating to this topic have been disclosed. We can go into
12 perhaps why these relevant documents weren't disclosed earlier
13 at a later time, but thanks for assurance, it means that we can
14 get on.

15 MS EKER-MALE: Commissioner, if I may just respond to
16 that point, thank you. You have asked me to check with the team
17 whether these documents were previously disclosed to you, and if
18 not the reasons why not, and of course we will check that.
19 Until we have done that, I can't answer whether previous
20 Commission requests has dealt with these documents. So, we will
21 get back to you on that in writing.

22 COMMISSIONER HICKINBOTTOM: So, the IRU at the moment,
23 for the reasons you've set out, don't know whether these
24 documents have been disclosed earlier or not?

25 THE WITNESS: We will review that position,

1 Commissioner.

2 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

3 Thank you. Mr Rawat.

4 MR RAWAT: Thank you, Commissioner.

5 Commissioner, our next witness is the Director of
6 Internal Audit, Mrs Dorea Corea.

7 BY MR RAWAT:

8 Q. Mrs Corea, you gave evidence on the 6th of July, and
9 you did so remotely, and on that occasion you made an
10 affirmation. There is no need for you to do so again. You're
11 still bound by that, but can I begin by thanking you for
12 returning to give further evidence to the Commissioner today.

13 You will see that there are a couple of bundles on the
14 table. We will need to or we may need to look at some of the
15 documents as we go through your evidence.

16 Can I ask you, though, as I do everyone, just to try
17 ask keep your voice up. You will notice there is a microphone
18 in front of you. It won't amplify; it records. And if
19 anything, speaking loudly is probably better than anything else.

20 The topic on which we've asked for your further
21 assistance is the programme of stimulus grants, which the
22 Government implemented during the course of the COVID-19
23 pandemic. And as we heard on the last occasion, your Department
24 was tasked by Cabinet to undertake monthly audits of those
25 programmes; is that right?

1 A. That is correct.

2 Q. And if you pick up the first bundle that you see on
3 the table.

4 A. The one that says Part 1?

5 Q. Yes, please.

6 If you turn up page 1 of that bundle, please, we will
7 see the first page of your Audit Report. And although it's
8 dated October 2020, on the last occasion you clarified that that
9 was just a typo.

10 A. Correct.

11 Q. And, in fact, the Report--your final report was in
12 May 2021.

13 A. That is correct.

14 Q. And in terms of that Report, although you were tasked
15 with doing monthly audits as a department, that was the only
16 report that you were able to produce; is that right?

17 A. That is correct.

18 Q. And subsequent to this Report, have you prepared--have
19 you prepared any further reports?

20 A. No, we have a not.

21 Q. We may need to go into the audit work that you did at
22 an earlier stage in 2020 and 2021, but since May 2021, have you
23 been trying to undertake further audits of the Stimulus
24 Programmes?

25 A. Yes, we have.

1 Q. And what success have you had in undertaking those
2 audits?

3 A. Well, we have requested information from the Premier's
4 Office since that time, but we have not received any.

5 Q. So, is the position as far as you're aware still very
6 much as you outlined it in your May 2021 report?

7 A. That is the case.

8 Q. Just turn up page 4, please. This is part of the
9 introduction to the Report, Mrs Corea, and at page 4, the Report
10 reads as follows: "To promote transparency and accountability
11 in the distribution of these funds, the Premier charged the
12 Internal Auditor, Director of Internal Audit, to provide monthly
13 reports to the Minister of Finance for transmission to Cabinet.
14 This directive from the Premier did not provide any scope,
15 limitations, or expectations to inform the Internal Auditor's
16 work, and as such, the Internal Auditor exercises full
17 discretion in the assessment of the Programmes".

18 And you then go on to explain that, in carrying out
19 that assessment, you decided to limit yourself to five
20 programmes in particular, and you detailed what you were able to
21 audit in relation to those five programmes in the Report.

22 But can I ask you this--and I can take you to a
23 Cabinet record or Cabinet Decision if you need it, but we know,
24 and we've heard evidence on this that at different times,
25 Cabinet decided in relation to specific programmes that your

1 Department should carry out monthly audits. But you write here
2 of--that the directive didn't provide any scope, limitations, or
3 expectations.

4 Can you just clarify, if at all, what instructions
5 were you given?

6 A. The only instructions we were given were to monthly
7 audit the Stimulus Programmes, and that came by way of public
8 domain, like I indicated in my Report previously, the Premier,
9 in his statement, indicated that the Internal Audit Department
10 would be doing monthly audits of the Stimulus Programmes.

11 Q. So, was the first time that you learnt that this was
12 going to fall to your Department when the Premier made a public
13 statement?

14 A. Correct.

15 Q. And was that the statement that he made on the 28th of
16 May 2020?

17 A. Correct.

18 Q. Can you just help us with reporting lines. As I
19 understand it, the Internal Audit Department sits under the
20 Ministry of Finance, but would you have a reporting line to the
21 Financial Secretary?

22 A. That is correct. We report administratively and
23 functionally to the Ministry of Finance, Financial Secretary at
24 the time of this exercise.

25 Q. But in other times--I think we canvassed with you this

1 before--but in other times, would your functional reporting be
2 to the Audit Advisory Committee?

3 A. It would be, to the Internal Audit Advisory Committee.

4 Q. But at the time that Committee wasn't in place; is
5 that right?

6 A. That is correct, sir.

7 Q. And so, in terms of any guidance or direction you may
8 have been given in terms of the monthly audits you were tasked
9 to carry out, would any of that have come from the Financial
10 Secretary?

11 A. Yes, it came from the Financial Secretary.

12 Q. And can you recall, Mrs Corea, what guidance or
13 direction you were given from the Financial Secretary?

14 A. Well, I can recall when the Premier made the
15 statement, we--well, my team and I, we met with the Financial
16 Secretary, who indicated to us the decision by Cabinet to have
17 these stimulus programmes audited. He did not provide any
18 directive per se because, of course, I think we appreciate our
19 role, but he indicated that once he get the documentation from
20 Cabinet, he would send it to us.

21 Q. And what--and it was Mr Forbes at the time, wasn't it?

22 A. It was Mr Forbes.

23 Q. What did--what did you understand Mr Forbes to mean by
24 documentation from Cabinet?

25 A. Well, the extracts would have information as to what

1 the Programmes would have been, and I would assume that they
2 would have been formulated with some kind of policy document, so
3 that would accompany the Cabinet Decision.

4 Q. If you turn to page 588 in that same bundle, please.

5 If I have taken you to the right place, you should see
6 a memorandum from yourself to the Financial Secretary of
7 June 24, 2020?

8 A. Correct.

9 Q. And in there you say: "I write to acknowledge your
10 correspondence of June 18, 2020, and to seek clarification on
11 the initiative that this office is now charged with." And I
12 should explain the heading of the memorandum is the "Economic
13 stimulus-farmers and fisherman--memo number 179/2020". So, that
14 was one of the first programmes or if not the first that your
15 Department was tasked with auditing, wasn't it?

16 A. It was the first one that we received.

17 Q. Thank you.

18 And you ask a number of questions in terms of policy
19 descriptions and eligibility criteria about the initiative, and
20 you conclude that "I look forward to your timely response given
21 the urgent nature to have this programme initiated".

22 So, does that help you at all to firstly explain to
23 the Commission what role you were expecting the Internal Audit
24 Department to play in these programmes?

25 A. Because the COVID stimulus is somewhat new, it was

1 driven by the pandemic, funding for the Programme at that time I
2 don't think was formulated and approved. So, when we got the
3 extract and the information from the Ministry of Finance we
4 started to do some research as to how really would a Stimulus
5 Programme be administered, and with doing that, we figured that
6 from our vantage point, it would be necessary to look at it from
7 a consultative approach as opposed an assurance approach. And
8 those are the different--the two different forms of auditing in
9 our function.

10 Q. Can I pause you there. You speak of two different
11 types of audit, an assurance audit and a consultative audit.

12 A. Right.

13 Q. But are those recognised forms of audits?

14 A. They are.

15 Q. I see.

16 So, were you deciding as a director, well, which type
17 of audit do I need to initiate?

18 A. Yes, we did.

19 Q. And the second question that arises from this
20 memorandum is why were you communicating with the Financial
21 Secretary at that time?

22 A. Well, we report to the Financial Secretary. We got
23 directions from the Financial Secretary at that point, so we
24 needed to communicate back and forth with him in order to
25 establish exactly what needed to be done from our Department.

1 Q. We know from Mr Forbes and from other evidence that
2 the Commissioner has heard that at least a task force was
3 established to deal with COVID, which brought in Public Officers
4 from different Departments, chaired by Mr Forbes. And as he
5 explained to the Commissioner, he then set up an Implementation
6 Committee underneath the umbrella of that Task Force.

7 But that subsequently, the Premier's Office took the
8 lead on these Stimulus Programmes as a coordinating Ministry,
9 and they were what I'm calling "Working Groups" to distinguish
10 them, but Working Groups chaired in greater part by Permanent
11 Secretary of the Premier's Office.

12 Did there come a time when you started liaising
13 directly with the Permanent Secretary of the Premier's Office,
14 or did you always have to go through the Financial Secretary?

15 A. No. Once we had--once we had the conversation with
16 the Financial Secretary and the same Task Force that you speak
17 about, the Internal Audit Department was a part of that Task
18 Force or--I'm not sure Implementation Commitment that was
19 developed by the Financial Secretary. So we did have some input
20 by that stage where the Financial Secretary was actually trying
21 to put in place some parameters in which the Programmes would be
22 administered on us. So, to lend some accountability and
23 transparency in the administration process. So that was like an
24 overarching Committee that was set up to probably lead the
25 charge on those Stimulus Programmes.

1 Q. And was it internally recognised that there was
2 importance, accountability and transparency despite the
3 emergency situation, was still important?

4 A. It still was important. The Premier said that in his
5 statement as well.

6 Q. I see.

7 A. And if I must say, in addition to reporting to the
8 Financial Secretary, remember the Minister of Finance is also
9 responsible for the Ministry of Finance, so we report to the
10 Financial Secretary who then reports to the Minister of Finance,
11 so that would lead--give you all reporting lines to that--the
12 Minister of Finance.

13 Q. Thank you.

14 Would you turn up, please, turn back to page 220.

15 A. And before you go on, Mr Rawat, I don't think I
16 answered your one question. Were we speaking with the Premier's
17 Office at some point? Yes, when we realized that the Programmes
18 somewhat shift from being administered under the Ministry of
19 Finance to the Premier's Office, we were asked to submit all our
20 questions and queries to the Premier's Office, so at that time
21 we then engaged a Permanent Secretary in the Premier's Office.

22 Q. And since that point, has that been your line of
23 dialogue?

24 A. That has been our line since that time.

25 Q. You have--

1 A. What page?

2 Q. Go on. Before we turn to that page, it's just a
3 follow-up question.

4 We've seen in your Report that you identified five
5 programmes that you wanted to audit as a way of monitoring the
6 COVID Stimulus Packages. How many of those came under the
7 umbrella of the Premier's Office?

8 A. All with the exception of the transportation, which
9 came under the Ministry of Transportation, Works and Utilities.

10 Q. I see.

11 A. The SME, even though it was under the direct charge of
12 the Trade Department, the Trade Department still functions under
13 the Premier's Office, so I would say the Premier's Office was
14 intricately involved in that one as well.

15 Q. Thank you.

16 I want to take you to page 220, please.

17 Mrs Corea, I've taken you to a document which is
18 headed "RESPONSE OF THE OFFICE OF THE PREMIER TO THE EVIDENCE TO
19 THE REPORTS OF THE AUDITOR GENERAL AND THE INTERNAL AUDITOR
20 CONCERNING THE FARMERS AND FISHERS AND SCHOOLS AND CHURCHES
21 GRANT PROGRAMMES".

22 Now, if I explain how this Report arose, it was
23 prepared or provided directly to the Commissioner. It was not
24 something that the Commissioner asked for, but it was submitted
25 by the Attorney General to the Commissioner.

1 If you turn up page 253, you will see that it is
2 undated and unsigned, but what I can tell you is this, that it
3 came in on the 7th of September 2021 to the Commissioner, and
4 that subsequently in evidence, Dr Carolyn O'Neal-Morton, as you
5 will appreciate, the Permanent Secretary to the Premier's
6 Office, has explained that this document was prepared by
7 Officers within her Ministry, together with members of the IRU.

8 But as you will also be aware, the Commissioner having
9 reviewed this document considered that it was something that
10 ought to be disclosed to you as Internal Auditor because it
11 speaks to the work that you did, and specifically speaks to the
12 Report that you provided and on which you gave evidence to the
13 Commissioner at an earlier point in time. And that we have
14 heard evidence from it particularly from Dr O'Neal-Morton as to
15 its contents and its detail, so it forms part of the evidence of
16 the Commission--before the Commissioner and would have done from
17 the time it was submitted unsolicited.

18 In light of that, the Commissioner directed that you
19 be sent a Warning Letter. Do you have a copy of that on the
20 desk in front of you?

21 A. I do, sir.

22 Q. The letter is dated 29th of September 2021, and if I
23 explain, we've called it a "Warning Letter" because that's the
24 modern term that an Inquiry would use for such a letter, but
25 historically it's been known as a "Salmon Letter". The purpose

1 of it is to give an individual notice of potential criticisms,
2 and the term "potential criticisms" is important because the
3 criticisms of you, as Internal Auditor, that are set out in this
4 document do not form either the provisional or concluded view of
5 the Commission or the Commissioner.

6 But, in fairness to you given the contents of the,
7 what I'm going to call the "Premier's Office Response", what was
8 considered important was to give you an opportunity to be able
9 to respond to some of those criticisms. That is an opportunity
10 that has been given to other witnesses. The Warning Letter
11 itself is confidential. Witnesses are invited to submit a
12 Written Response, and many others have done so, and you have
13 also done the same; is that right?

14 A. That is correct.

15 Q. And can I just take you to that Written Response, and
16 can you confirm that it's dated the 7th of October 2021?

17 A. That is correct, sir.

18 Q. And the covering--it comes under the cover of a letter
19 which carries your signature; is that right?

20 A. That is correct, sir.

21 Q. And can I ask you to confirm that you're content that
22 this Written Response form part of the evidence before the
23 Commissioner?

24 A. Commissioner, I am content.

25 COMMISSIONER HICKINBOTTOM: Thank you.

1 BY MR RAWAT:

2 Q. Before we look at those criticisms, and I ask you to
3 deal with them, can I ask you this: When you submit a report,
4 an Audit Report, either after an assurance audit or a
5 consultative audit, which Department will it go to? Presumably
6 it goes to the Department that you are auditing.

7 A. The Report would go in draft form, and it would go
8 directly to the client. So, if the client is the Ministry, it
9 would go to the Ministry. If it's the Department, it would go
10 to the Department.

11 Q. And in this case where you are tasked by Cabinet to
12 undertake monthly audits, who is your client?

13 A. We termed our client as the Premier's Office because
14 that's the person we were having conversation with in relation
15 to the different programmes.

16 Q. And--

17 A. We also--if I may say, we also send a copy to the
18 Ministry of Finance as well.

19 Q. As the Department under which you sit--

20 A. Correct.

21 And the Department that we got the initial direction
22 from with regards to the Stimulus Programmes.

23 Q. We've actually seen this when we've looked at Internal
24 Audit Reports relating to the Customs Department because an
25 opportunity is given to the client to respond to the Report; is

1 that right?

2 A. That is correct, sir.

3 Q. Is there a standard format in which responses may
4 come?

5 A. There is. We would ask the client to look at the
6 document and see if it's accurate and give them an opportunity
7 to sit and discuss it with us before they actually respond to
8 it.

9 Q. Looking at what we've got at page 220, does that look
10 like the kind of response that you're used to receiving as
11 Director of the Internal Audit Report?

12 A. No, that's not the kind of response.

13 Q. Whilst I can't help you beyond what I have done with
14 who drafted it, do you have any general observations on this
15 document?

16 A. Anything specific, sir?

17 Q. I mean, what I wanted to ask you is, having received
18 it and reviewed it, what position did you feel left in?

19 A. An awkward one because (1) I realise that the response
20 was written toward the Auditor General and myself jointly when
21 we provided individual reports, so I didn't expect that the
22 Premier's Office would respond to us in a joint document.

23 (2) the language that has been used seemed to be of a
24 legal nature and not particularly common language where you have
25 a client responding to what is written in your Report.

1 And (3) that appendices just blew me out of the water
2 in terms of how many and the nature of them, so it left me
3 really in an awkward position.

4 Q. We don't need to turn it up, but looking at the Report
5 that you prepared, that has gone to your client?

6 A. It has.

7 Q. And have you separately to this, have you received a
8 response to that document from the client?

9 A. No, I have not.

10 Q. What I'm going to do, I'm not going to read out the
11 entirety of your Written Response. It will form part of the
12 evidence before the Commissioner--but what I want to try and do
13 is to summarise the criticism and then invite you to respond to
14 it.

15 So, if I ask you just to turn up, if we go to page
16 paragraph 22, page 223?

17 A. Mr Rawat, just before you go ahead.

18 Q. If you could just keep your voice up a little bit?

19 A. Sorry. Just before you go ahead, I know you just
20 asked me my general observations of the document, and I think I
21 expressed it in my cover letter. I don't know if it is
22 necessary to have it lodged in evidence.

23 COMMISSIONER HICKINBOTTOM: You can refer to it and
24 read it out if you think it's relevant to the point, Mrs Corea.
25 Which part of the covering letter are you referring to?

1 THE WITNESS: The second paragraph in particular.

2 BY MR RAWAT:

3 Q. Is that the one that reads "I find myself"?

4 A. "I find myself".

5 MR RAWAT: Would it assist, Commissioner, if I were to
6 read it into the record?

7 COMMISSIONER HICKINBOTTOM: Just read that into the
8 record, Mr Rawat, yes. Thank you.

9 BY MR RAWAT:

10 Q. If I could also explain, Mrs Corea, I've taken this as
11 part of your Written Response to the Commissioner, so it does
12 form part of the evidence. But you write this: "I find myself
13 in a peculiar position responding to criticisms that were, in my
14 opinion, prepared by legal functionaries on behalf of the
15 Premier's Office. In addition, from my reading, the majority of
16 the issues raised in the Premier's Office Response are largely
17 of a subjective nature as the Response has yet to dispute the
18 findings in the Report. What the Response does imply is that
19 there was some inherent unfairness in my reporting due to what
20 the Premier's Office considers to be insufficient appreciation
21 for policy and environmental context and deficiency in process".

22 A. Correct.

23 Q. Is there anything else that you want to draw the
24 Commissioner's attention to?

25 A. I think that would substantiate the rest of the

1 Report.

2 Q. Well, if I just deal then with the criticisms that
3 emerged from this Report of you which, in fairness to you, has
4 been put to you via a Warning Letter, the first point which you
5 just touched upon is this, that there is insufficient
6 appreciation of policy context, and that is that when carrying
7 out the Internal Audit, you failed to give sufficient or any
8 sufficient appreciation to the policy context in which these
9 packages were developed and operated and are operating.

10 In your Report, you discussed criteria which you
11 identified as a need for a package to be timely, targeted, and
12 temporary, and what's pointed out in this document is that you
13 failed to recognise that there may be occasions where what's
14 described as the "value proposition" cannot be maximised. And
15 that also--and this goes to the point of your failure to
16 appreciate matters--is that ultimately these are matters of
17 policy which are for elected officials to determine, and you
18 failed when you were making this assessment in carrying out the
19 Audit to appreciate that in particular the nature of the
20 pandemic, and including that the purpose of the stimulus package
21 was, "to keep the economy's heart beating".

22 And this is we've heard this in evidence from others,
23 but the impetus behind these stimulus packages was to deliver an
24 immediate relief package, and what's suggested also is that, in
25 your approach, you were dismissive of certain sectors of the

1 economy, for example, DJs, entertainers, and vehicle rental
2 companies who were or would be assisted by these programmes.

3 Now, that's a short summary of the criticism that's
4 set out in the Warning Letter. And you've set out in your
5 response, and it starts at page 1 of your Written Response, what
6 you say to that, but is there any particular aspect of--before I
7 ask you any questions on it, but is there any particular aspect
8 of that response that you want to draw the Commissioner's
9 attention to?

10 COMMISSIONER HICKINBOTTOM: I'm sorry, Mrs Corea, to
11 interrupt, and I will certainly let you answer that question in
12 a moment, but you've drawn--you've drawn our attention to the
13 covering letter, which obviously sets the scene for the detailed
14 response that you have given us. And really, this is a matter
15 for you, but it may help to set the scene for your detailed
16 response, if Mr Rawat were to read out the two paragraphs after
17 the paragraph he's read out.

18 THE WITNESS: Okay.

19 COMMISSIONER HICKINBOTTOM: Because this sets out your
20 view of what and who's function it is, which seems to me to be,
21 as it were, an overriding factor here.

22 So, Mr Rawat, could you just read out those two
23 paragraphs, the one that starts--the one immediately after the
24 one you read out, "I also find".

25 BY MR RAWAT:

1 Q. So, this is the second substantive paragraph of your
2 response, your covering letter responding to the Warning Letter.
3 You say this: "I also find it difficult to quantify such
4 qualitative issues. What I can say is that Internal Audit is an
5 independent and objective function. The International Standards
6 for the Professional Practice of Internal Auditing requires that
7 Internal Auditors identify, analyze, evaluate, and record
8 sufficient information on which they can draw reasonable
9 conclusions. The Standards also require that Auditors exercise
10 due professional care in carrying out their duties. This means
11 that 'Internal Auditors must apply the care and skill expected
12 of a reasonably prudent and competent Internal Auditor, due
13 professional care does not imply infallibility'. The standards
14 place the burden on the Internal Auditor to determine what
15 information is relevant, the sufficiency of the information
16 collected, and the means of analysis. That is the only way that
17 the Auditors can maintain their independency and objectivity.
18 Therefore, there will always exist the inherent conflict between
19 Auditor and client on these areas".

20 Your next paragraph is this: "What I can attest to is
21 that, in the conduct of this engagement, the Auditors reviewed
22 all relevant and available information, exercised sufficient
23 care in analyzing the information, and arrived at what I believe
24 were reasonable and supported conclusions. If our judgment in
25 these areas were subjected to the influences and opinions of

1 others, it would erode the very foundation on which the
2 profession sits. I find that it will be unproductive and
3 unhelpful to engage in a debate about matters of opinion and
4 judgment on a subject that is left entirely to me as the
5 Internal Auditor". And you then say that "my response will try
6 to set out, hopefully in sufficient detail, the considerations
7 and thought process used in conducting this engagement. I hope
8 that you find it helpful in completing your objectives and
9 mandate".

10 COMMISSIONER HICKINBOTTOM: And that's really the
11 background to the detail that you provide, but in respect of
12 that detail, Mr Rawat has asked you a question about the first
13 criticism, and that is that you insufficiently appreciated the
14 policy context of the Stimulus Programmes when carrying out the
15 Internal Audit, and we have now in evidence your response to
16 that, and either by reference to that or by reference to
17 anything else that you want to say. That's the first criticism.
18 I will obviously take into account everything you've said in
19 your response.

20 THE WITNESS: Well, when it says "insufficient
21 appreciation", like I said, it begs me to question what they
22 really meant as "insufficient appreciation" because even before
23 the Stimulus Programmes were rolled out, we as a team went and
24 we did some research as to how a programme of this kind is
25 supposed to be administered, so we appreciated the fact that we

1 may not have had all the information at that time, but we needed
2 to understand the Administration of such type of programmes, so
3 we did some research and some background work.

4 So, I think that constituted for the first and
5 foremost our appreciation for even looking at the Programmes on
6 a monthly basis so you could give us the baselines in terms of
7 the targeted and temporary and the timely measures that we can
8 put in place.

9 COMMISSIONER HICKINBOTTOM: And you've explained that
10 this wasn't an assurance audit, it was a consultative audit. So
11 what was--I mean, you've gotten down to this already, but what
12 was going to be your input? What was going to be your value in
13 being a "Consultant" in the process? What did you hope to bring
14 to the Party?

15 THE WITNESS: Well, first and foremost, the
16 consultative process means that we would be working along with
17 each other. No one is going ahead or behind. So, if I'm able
18 to look at what they have as policies and procedures in place, I
19 can at that point identify any control measures that they have
20 that needed to be reworked, so that would be one good example,
21 so we would be consulting as you go.

22 Just as I said they were developing the Programmes as
23 you go, I think all value would have added at that point when
24 they were actually creating those programmes, policies, and
25 procedures, so that we can identify control processes so that we

1 can mitigate any different deficiencies that may arise, and that
2 would add value to the whole administration process.

3 COMMISSIONER HICKINBOTTOM: Thank you.

4 Thank you.

5 BY MR RAWAT:

6 Q. In terms of consultative audits, has your Department
7 sort of undertaken consultative audits in the past?

8 A. We have.

9 Q. Dr O'Neal-Morton mentioned in evidence that, despite
10 her long years of service in Public Service, this was actually
11 the first time she'd had to deal with audits, and she had not
12 come across them, but your Department had worked and done
13 consultative audits with various Government Ministries in the
14 past; is that right?

15 A. We have.

16 Q. And so--and by "the past", is that the recent past?

17 A. Recent.

18 We haven't done much consultative audits because I
19 don't think in good judgment that they understand the role.
20 It's quite new to Internal Audit function, so I don't think a
21 lot of the Public Officers understand the role in that capacity,
22 but we have reached out in a consultative role to other
23 Ministries and Departments before, and on such type of audits.
24 And I believe that it was found helpful for them.

25 Q. One of the points that's made in this section is that

1 it describes the Public Service as unmodernised. You will see
2 that at paragraph 31. Now, now you are Director of the Internal
3 Audit Department. You and your team presumably go in to
4 different Government Ministries and Departments to look at the
5 processes by which they work, so would it be fair to say that
6 you have direct and recent experience of how Public Officers in
7 the BVI work on a daily basis?

8 A. I would say that, sir.

9 Q. And do you--and I forget, Mrs Corea, but how long have
10 you, yourself, been in Public Service?

11 A. 25-plus years.

12 Q. And how long have you been Director of Internal Audit?

13 A. The last 13. The last nine.

14 Q. Would you describe the Public Service of the BVI as
15 unmodernized?

16 A. No, I would never do that.

17 Q. And why wouldn't you do that?

18 A. Because, in my experience over the years, I would say
19 it has been developed by far with a lot of training, a lot of
20 Officers attaining tertiary education and coming back, and I
21 think that the skill sets have vastly and enormously been
22 upgraded over the years. We have moved from a lot of paper to a
23 lot of technology, so it would have been imperative for officers
24 to upgrade their skills. So, to say that we are unmodernised, I
25 would not attest to that.

1 The Public Service also have a lot of technical areas,
2 and if you look at some of the staff that are involved in those
3 areas, they have a lot of skill sets. They actually need
4 certification, certification of their roles, so I wouldn't say
5 that they are unmodernised.

6 In all fairness, I would take that as an insult.

7 COMMISSIONER HICKINBOTTOM: That's very helpful.
8 Thank you.

9 The other issue raised in paragraph 31 but it's been
10 raised by quite a lot of other Public Officers, is that the
11 Public Service is stretched. Is that something you've got any
12 observations on? I mean stretched in terms of numbers, I think.

13 THE WITNESS: I can't relate to that. It is stretched
14 because--and from my experience--this is my personal opinion--we
15 have a lot of Officers with some administrative skills that are
16 placed in technical roles, so you have square pegs in round
17 holes. That can be one factor. But there are some areas that
18 really don't have sufficient staff; a prime example is my
19 Department. I only have one Auditor currently. And I'm
20 expected to carry out a mandate of this size.

21 COMMISSIONER HICKINBOTTOM: And just to go back to
22 numbers, at the moment it's just you and one Auditor. I'm sure
23 you've given evidence to us before on this. How many should you
24 have in terms of--

25 THE WITNESS: Well, I have--I have six Auditor

1 positions but I only have one Auditor assigned to my Department
2 currently.

3 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

4 BY MR RAWAT:

5 Q. Are there--I mean, obviously we know the Auditor
6 General, but there are Auditors placed elsewhere within the
7 Ministries, or is the role of Internal Audit distinct and
8 limited to your Department?

9 A. Yes, it is central--I mean, it is distinct to my
10 Department, so I would carry out all the Internal Audit
11 functions across Ministries and Departments.

12 There are a few agencies that do have their own, but
13 that's specific to their organisation.

14 Q. I slightly took you off your train of thought, but
15 what I had done was summarized the criticism which comes down to
16 insufficient appreciation of policy context which is the
17 heading, but is there anything else that you want to draw the
18 Commissioner's attention to in the Written Response that you
19 have given?

20 A. I think one of the challenges that we had that I
21 mentioned in my response as well is that the fact that when we
22 were given the directive to do the Audit, we had a--we had a
23 challenge in terms of stimulus as opposed to immediate relief,
24 and I know that the Minister, in his statement, identified both.
25 He claimed or stated, I should say, in his statement the one

1 that he asked about or he directed for the Audit was the
2 stimulus packages, but there was also an immediate relief
3 component within.

4 And we had some challenges trying to identify, and
5 that is where the consultative role would have come in with the
6 Premier's Office so that we could actually identify those and
7 separate them according--we separated them in our Report but we
8 didn't get the response that we were looking for.

9 COMMISSIONER HICKINBOTTOM: When you say "immediate
10 relief", do you mean sort of welfare--welfare relief? Economic
11 stimulus, we understand what that is, but by "immediate relief",
12 what--

13 THE WITNESS: Correct, so there would have been
14 situations, for example, I think we looked at the churches and
15 the schools, even though they were treated as stimulus, they
16 actually provided relief for the schools and the churches, not
17 necessarily to stimulate the economy.

18 COMMISSIONER HICKINBOTTOM: Yes, yes. Thank you.

19 BY MR RAWAT:

20 Q. I mean, if one steps back, though, from the details of
21 this criticism, another question that flows from it is this:
22 Insofar as your Report can be seen to be critical of other
23 Public Officers and the efforts that they were making, you
24 failed to give weight to the fact that it's for politicians to
25 decide where the balance should lie. So, if politicians want to

1 just deal with immediate relief and ensure that money is going
2 into the economy immediately, then that is a matter for them,
3 and you didn't really--that wasn't something that you bore in
4 mind when drafting your Report and conducting your audit.

5 A. Because we understood that because Ministers would
6 make those kind of policy decisions so we wouldn't have to query
7 them, but if they're not made, it still leaves us in the balance
8 as to weigh which are stimulus and which are immediate relief,
9 so that we can identify them and address them accordingly in
10 that vein.

11 Q. So, is your evidence of what you needed to do is to be
12 able to look at a programme and go "that's a stimulus
13 programme", but another programme is an immediate relief
14 programme, and so it has a welfare dimension to it?

15 A. Right, and that would give us an opportunity to
16 actually look at what the procedures would have been, what the
17 parameters and eligibility criterias would have been played out,
18 and consult with the Premier's Office to identify any control
19 mechanism that needed to put in place so that they can
20 administer in a transparent way.

21 Q. Just explain--I mean, what's the evidence that's come
22 out of the Programme now from, particularly Dr O'Neal-Morton has
23 explained this, so what these packages now are is that they are
24 banded packages, so it's less about specifics and applicants
25 fall into different bands and are given certain sums of money,

1 but also that there is now a system of what's been called "back
2 accounting", so at the time that funds were given, for example,
3 to farmers and fishermen, the letter went to the individual and
4 they were told you're going to have to account for the use of
5 this money in due course, and there is now a committee and
6 process that has been set up to check that people can account
7 for it and how they've spent the money.

8 As a control mechanism, why isn't that a legitimate
9 control mechanism?

10 A. It would be a legitimate control if it's put in place
11 at the right time. You can disburse funds to persons not
12 knowing what their statutory requirement would be until later
13 on. If it was done at the time that the Policy was being
14 developed and those are the procedures that were going to be in
15 place, then it would have been an excellent control because then
16 persons who received the funds would have known what their
17 responsibility would have been with regards to reporting back.

18 But how I understand it, it was done after the funds
19 were already disbursed.

20 Q. And where did that understanding come from?

21 A. Well, based on when I heard it was implemented in
22 talking with some of the employees.

23 Q. And when you say "employees", are you speaking of
24 Public Officers or are you speaking of--

25 A. Public Officers, Public Officers.

1 Q. So, your understanding is as the Director of Internal
2 Audit is that funds were disbursed and then subsequent to that--

3 A. And they're now--right.

4 Q. --a programme has now been put in to essentially--

5 A. Correct.

6 Q. --check that any funds that are disbursed have been
7 properly used?

8 A. Correct.

9 COMMISSIONER HICKINBOTTOM: If I've understood your
10 evidence correctly, Mrs Corea, as an auditor with this
11 consultative role, your real concern is that you didn't have an
12 opportunity at the time to have input into this--I mean,
13 whatever controls were in place or are now in place, as a
14 consultative Auditor, that was your role, and you weren't
15 allowed to play it, you weren't allowed to play that role.

16 THE WITNESS: Correct, sir.

17 BY MR RAWAT:

18 Q. Is the reality, Mrs Corea, that you--firstly, you
19 haven't been able to do monthly audits, have you?

20 A. No, I have not.

21 Q. And secondly, have you been able to carry out a
22 consultative audit in the way that you would want to?

23 A. No, I have not.

24 Q. And what has been--what you say has been the chief
25 difficulty in doing--in establishing a consultative audit

1 process?

2 A. Well, you can only do a consultative audit when you
3 have access to the information that's being used to carry out
4 the Programme or the processes. If you don't have that, there
5 is nothing to consult on.

6 COMMISSIONER HICKINBOTTOM: And it's--you have
7 explained this, but the consultative audit role is sort of
8 inherent in the Programme, isn't it? Does that mean that at the
9 end of the Programme--I mean, I know the--these programmes are
10 still being rolled out in some form or another, at some stage or
11 another, but the consultative audit has to take place as part of
12 the Programme, not at the end of the Programme, which is too
13 late. I mean, you do an assurance audit then.

14 THE WITNESS: That's correct.

15 COMMISSIONER HICKINBOTTOM: But that's a different
16 kettle of fish, but the consultative audit process, as I
17 understand it, is part of a--it's inherent--it's got to be
18 inherent in the programme.

19 THE WITNESS: Correct because consultative is what's
20 happening now and developing as you go into the future.

21 COMMISSIONER HICKINBOTTOM: Yes. Okay. Thank you
22 very much.

23 BY MR RAWAT:

24 Q. Could I just ask you--and stop me if there are details
25 that you want to draw the Commissioner's attention to--you

1 say--and this is in response to what's said by the Premier's
2 Office: "While I do agree that there are inherent tensions
3 during the factors, timely, targeted and temporary, I contend
4 that the maximization of the value proposition must still be the
5 primary consideration within these constraints. The issue at
6 hand as I see it is not whether the value proposition cannot be
7 achieved, but rather how we can achieve the maximum benefit
8 given the constraints".

9 Could you just develop that a little.

10 A. Okay, they were speaking about the timely and the
11 temporary and the targeted parameters that we spoke about in our
12 Report, and if you're going to do a stimulus, you have to look
13 at those different parameters direct to the areas that you're
14 actually going to stimulate.

15 For example, the SMEs, when they started out the
16 Programme, they had a number of criterias that they had put in
17 place to assess the applicants. So, based on certain parameters
18 like the number of employees that you have, what was your
19 profit-loss, and some other--and the different sectors. They
20 were looking at those in terms of stimulating the economy.

21 But then when you just disregard all the parameters
22 that you put in place, you tend to lose your target. For
23 example, if you're looking at stimulating, say, the tourism
24 sector, you have to ensure that those businesses are targeted,
25 and we find targeting was one of the areas that we considered in

1 our consultative approach to look at those businesses that were
2 surrounding the tourism sector in order to boost the tourism
3 sector.

4 When it spoke in particular say about DJs and rental
5 companies, we're not saying that they should not stimulate
6 those, but for example DJs--this is just a primitive example--at
7 that time you had, like the Premier indicated, lockdowns,
8 curfews, different constraints and restraints on the time of
9 being able to have those kind of functions, so not saying that a
10 DJ should not have gotten but how we understood it was going to
11 be a phased approach, so those businesses that would have been
12 impacted directly should have been given the stimulus first and
13 then it would be tailed off to those different other businesses.

14 COMMISSIONER HICKINBOTTOM: So, in terms of
15 value--it's obvious that the circumstances in which these
16 programmes are rolled out were quite extraordinary, completely
17 unprecedented with the pandemic.

18 THE WITNESS: Um-hmm.

19 COMMISSIONER HICKINBOTTOM: But what you say in your
20 response is that that doesn't mean to say that value for money,
21 as it were, goes out of the door.

22 THE WITNESS: Right.

23 COMMISSIONER HICKINBOTTOM: It may be applied in a
24 different way, but value for money is still a concept that was
25 there.

1 THE WITNESS: Right.

2 COMMISSIONER HICKINBOTTOM: It was still a criteria.

3 THE WITNESS: You get the best value at the time, so
4 you have to go in to refine targeting to make sure that your
5 best value for the stimulus will be obtained or achieved.

6 COMMISSIONER HICKINBOTTOM: With all of the
7 constraints.

8 THE WITNESS: With all of the constraints.

9 COMMISSIONER HICKINBOTTOM: Which is temporary--

10 THE WITNESS: Right.

11 COMMISSIONER HICKINBOTTOM: --and targeted and so on.

12 Thank you.

13 BY MR RAWAT:

14 Q. Just one more detail just on the actual response to
15 this criticism. You say that the Response from the Premier
16 takes your use of the words "historically" and "economic
17 downturn" out of context because they were taken from the
18 overview of the Report provided to give insight as to how such
19 crises are usually addressed, and you point to a preceding
20 sentence that shows that you did appreciate the Nation was
21 struggling to respond to the economic crisis by COVID-19.

22 You say (reading): If by my use of the word
23 "historically" the Premier's Office is saying this crisis is
24 such that our BVI approach to stimulus cannot be informed by
25 historically proven approaches, whether it be monetary or fiscal

1 policy, then I cannot agree with that proposition. In
2 conducting the review of these programs, it was difficult not to
3 keep the condition at the forefront. However, from an audit
4 perspective, I have a duty to not only consider the nature of
5 the crisis the Government was trying to mitigate, but equally
6 consideration must also be given to the inherent approach,
7 resource, and knowledge constraint, how long the pandemic would
8 ensue. For example, 6.5 million was allocated to the MSME
9 Programme. From the outset it was known that these monies would
10 be insufficient. Therefore the question at hand would be how to
11 best utilize this limited resource to achieve the maximum
12 benefit towards the desired results".

13 Firstly, by whom was it known that the 6.5 million
14 would be insufficient?

15 A. Well, we were looking at the number of businesses that
16 they had because this was primary to the SME Programmes. The
17 number of businesses that were applying, the number of
18 considerations that they had put in place to assess the
19 different businesses, and when you look at 6.5, even though it
20 can be stretched across the broad domain, you have to make sure
21 that it's targeted to those persons who were giving their best
22 value.

23 6.5 million, of course, is a lot of money, but to
24 inject it into our current economy given COVID times and knowing
25 that you had these lockdowns because you want to consider too

1 what businesses would have been able to operate. There were a
2 lot of businesses closing because they weren't allowed to
3 operate. So, if you're going to give it to businesses that
4 cannot operate, then you don't get the best value from that.
5 There's some businesses that had one employee that will have
6 gotten more money than those that had maybe 20 employees. So,
7 you have to weight against all those different parameters that
8 the business community was actually given in their application
9 process.

10 Q. Thank you.

11 I just move on to the second criticism, please,
12 Mrs Corea, and it is this, and again it's based on this, but in
13 relation to your Department's involvement, so I will start that
14 again.

15 The criticism breaks down as follow, firstly, that in
16 relation to your Department's initial involvement, there was no
17 formal audit notice and entrance meeting initiated. I'm going
18 to pause there.

19 Is that right, that your Department, when it first
20 became involved, did not do, as might be expected, or did not
21 provide a formal audit notice or an entrance meeting?

22 A. Which criticism are you at, sir?

23 Q. It's the second one, so it's your page 5. If you
24 look.

25 A. I'm not seeing that one.

1 Q. Right. Have you got your Written Response?

2 A. Yes.

3 Q. If you go to your page 5 of your Written Response.

4 A. Okay.

5 Q. You should see the Internal Auditor's initial
6 involvement, and that's, if you want to look at it in the
7 bundle, it's at page 227.

8 And so, what's set out there is a number of matters
9 which have been distilled in the Warning Letter, and the first
10 point that arises is that when you got involved initially as the
11 Internal Audit Department, you didn't give a formal audit notice
12 and you didn't have an entrance meeting. Did you send an audit
13 notice at any time?

14 A. No, we didn't because there was not an assurance
15 audit: Usually for assurance audits we would send
16 correspondence to the client to have a meeting with them, we
17 call it an "entrance interview", when we'd sit down and discuss
18 the audit exercise, what the areas are we would be looking at,
19 and get their feedback as to what objectives they wanted covered
20 in the Audit. But we didn't do that for this because again we
21 were looking at it in a consultative role, to be working along
22 with each other.

23 Q. So, just that I understand your evidence, an assurance
24 audit might be something--you might come in at the end of a
25 project, and I hope I'm not being--oversimplifying it, but it's

1 to give the client comfort.

2 A. Right.

3 Q. With the consultative audit, you will be in plates
4 looking at information as the Project is running?

5 A. That is correct, sir.

6 Q. And so, in those circumstances, you don't either send
7 a formal audit notice.

8 A. No, we wouldn't. But we would have a conversation and
9 engagement at some point where we actually sit down and look at
10 the information that you have, and then we'd have that back and
11 forth in terms of looking and reviewing and elaborating on the
12 information.

13 Q. Now, you deal with some of this in your response
14 because you explained that you didn't think--consider it
15 necessary to send a notice on each request because the intended
16 approach that you'd communicated was clear, and then you say:
17 "In the interest of time, Auditors identify key personnel for
18 each year it was reviewing", and you intended to review five
19 areas. We've mentioned that already, which you then set out.

20 And you then identified individuals within the various
21 ministries or essentially within the Premier's Office, isn't it?

22 A. Correct.

23 Q. Who would be the source from which you would ask for
24 information; is that right?

25 A. That is correct, sir.

1 Q. And I mean obviously COVID makes it difficult for
2 anybody to work alongside anyone else, but was the approach that
3 you intended to take that you would have access to information
4 people were using.

5 A. Correct.

6 Most of our communication at that time was by e-mail,
7 so they would sent us the e-mail, and even conversation and
8 virtual meetings, so they would send us the information. We
9 would look at it. If we have a query, we would send the query
10 by e-mail and then further discuss it by telephone. So we would
11 have that consultative back-and-forth engagement with them while
12 they're actually working on the policies and the procedures of
13 the Programme.

14 So, even though we couldn't meet face-to-face and have
15 that discussion and sit down and talk about, we did most of our
16 work by e-mail, by virtual meetings, and by telephone
17 conversations.

18 Q. Now, the next aspect of the criticism in the Warning
19 Letters that there was a failure to appreciate there was no
20 experience or understanding in the Ministry of Finance or the
21 Premier's Office as to how the Internal Audit Department could
22 be effectively and urgently integrated into the consultative
23 process.

24 Is that a criticism with which you would accept?

25 A. No.

1 Q. And--

2 A. I would not accept that because the Ministry of
3 Finance is responsible for our Department. At some point the
4 Premier's Office was responsible for our Department as well, and
5 having both of them as the leading Ministries for our Department
6 over the course of the year, someone had to have had that
7 information to share with, I would assume, the Permanent
8 Secretary in facilitating the Audit, so they should have known
9 what our role is and what our function is.

10 However, had it been that they don't is a simple
11 question: I don't understand what you're going to do, let's
12 have a discussion about it.

13 From my vantage point, I would have never imagined
14 that they weren't sure what the Audit function is responsible
15 for doing. Yes, it might have been a different role, but if
16 there is some misunderstanding, then we could have a
17 conversation about it.

18 Q. But--I mean, this was the circumstances in which the
19 Premier's Office would function. Firstly, you've got a
20 pandemic. Secondly, you have a Permanent Secretary who arrived
21 on the day, essentially, I think, the first curfew was put in,
22 she came into post on the 11th of March it all happened. The
23 consequence of the pandemic is you have--short staffed, not
24 everybody can be there. People may have to be out, I mean, and
25 you'll appreciate this because you may well have experienced

1 this in your own Department--

2 A. Um-hmm.

3 Q. --that people have to step out because they have to
4 home school their children, they're concerned about the health
5 of their loved ones, so it's a very different time.

6 A. Um-hmm.

7 Q. And would you accept that there was, in those
8 circumstances, integrating Internal Auditors into a process
9 where it was essentially emergency situation would have
10 presented real difficulties for the Premier's Office?

11 A. I can concur to some degree because when we spoke
12 initially with the Permanent Secretary, while she understood
13 what we needed to get done, we didn't expect her to be the
14 primary person to relate to, and with that she actually gave us
15 Liaison Officers to work with.

16 So, when we were engaged with the Liaison Officers, I
17 would have thought that if the information was not available,
18 they would have told us that instead of saying to us "you will
19 get it just wait", then it just put us in waiting mode in
20 anticipation that it would come sooner than later.

21 But if you don't have it and, like I said in my
22 evidence as well, it is never the intention of the Auditors to
23 request information that is not there. If it is not there, you
24 just indicate, well, we don't have that, and you move to the
25 next stage, and that was something that we indicated to the

1 Liaison Officers as well.

2 COMMISSIONER HICKINBOTTOM: But I mean, firstly, and I
3 think this is uncontroversial, but everybody I think knew that
4 this was a consultative audit. I mean, I think probably simply
5 by virtue of the fact that you had to report every month meant
6 that it--I'm not sure how that could have been an assurance
7 audit, which looks back and sees how things have been done.

8 So, during the consultative audit, it seems to me that
9 the Auditor is never going to have all of the information that
10 will ever be available. You can only ever have the information
11 that's available up until--

12 THE WITNESS: Correct, sir.

13 COMMISSIONER HICKINBOTTOM: --the month, and you put
14 your input into that. I mean, it's a very different process
15 from the assurance audit.

16 THE WITNESS: It is.

17 And I don't intend for it to be debatable, but I'm
18 just saying that persons who were provided first to speak with,
19 and in speaking with them, I find that perhaps the communication
20 was not clear, but--and I will accept that if that's the
21 situation, but if the information is not there, just say it's
22 not there, and then we'll move on to the next stage.

23 COMMISSIONER HICKINBOTTOM: But you can say this
24 information is here, here it is, this information isn't
25 available.

1 THE WITNESS: Correct.

2 COMMISSIONER HICKINBOTTOM: But that's a--given the
3 nature of this type of audit, isn't that an ongoing process?

4 THE WITNESS: It is.

5 COMMISSIONER HICKINBOTTOM: The next month, the
6 information will be different; the available information will be
7 different.

8 THE WITNESS: I will consider that, Commissioner,
9 because we realised this was something new to all of us in terms
10 of the issue at hand, the COVID-19.

11 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

12 BY MR RAWAT:

13 Q. Mrs Corea, just so I can try and bring it together, so
14 you set out in your Written Response the different, as you say,
15 the different points of contact you had for the five programmes
16 that you were--decided to audit, and one of them, which we take
17 out of the equation perhaps, is the House of Assembly Assistance
18 Grant Programme which would have required a separate contact.

19 But focusing on the Premier's Office so--and take you
20 back to your Report, but in your Report when we looked at it in
21 July, I mean, the point that comes through is that on some these
22 programmes you did get some information; that's right, isn't it?

23 A. That is correct, sir.

24 Q. But on others like farmers and fishermen, you were
25 given no information.

1 A. That is correct, sir.

2 Q. Now, you say that in an ongoing conversation that you
3 had with Liaison Officers, have I understood this correctly,
4 that no one ever told you the information is not available.
5 They just told you to wait.

6 A. That is correct, sir.

7 Q. And how long were you asked to wait for?

8 A. Well, we didn't have a time frame. We allowed them
9 the opportunity to get their information together because I know
10 it was a difficult time. Persons were in office, and they
11 claim--and they told us that, and when they would get in--they
12 would look at the information and then they would submit it to
13 us.

14 But when we wait and we don't get anything, we just
15 send reminders and they would respond and say, "I know, I'll get
16 it for you as soon as I can". I saw that "as soon as I can"
17 don't necessarily have a timetable to it, so...

18 Q. But in--what is the position now? I mean has it--are
19 you still waiting for information?

20 A. Well, the last time I sent an e-mail to the Permanent
21 Secretary, I think, was August 27th, and I reminded her that
22 we're still waiting for this information for the COVID Stimulus
23 Programmes, and she said thanks for the reminder.

24 COMMISSIONER HICKINBOTTOM: And you haven't had any
25 information--

1 THE WITNESS: Didn't have it.

2 COMMISSIONER HICKINBOTTOM: You had some information,
3 but you had no information on the, for example, the farmers and
4 fishermen which--

5 THE WITNESS: Right, farmers, fishermen, churches,
6 schools.

7 COMMISSIONER HICKINBOTTOM: Yes, yes. So, there are a
8 number--so, you haven't been given any more information anyway--

9 THE WITNESS: No, sir.

10 COMMISSIONER HICKINBOTTOM: --since August.

11 Yes. Thank you.

12 BY MR RAWAT:

13 Q. If I move through the other criticisms--the potential
14 criticisms we've put to you in the Warning Letter, and perhaps a
15 degree of overlap with what you've given already in evidence,
16 but the next one is that there was a failure, and it's a failure
17 on your part as Director of Internal Audit, to appreciate that
18 the proprietary was to deliver the Immediate Relief Package with
19 overstretched resources. Now, I've set out the evidence for you
20 of the difficulties that were confronting the Premier's Office.
21 I mean you would accept, wouldn't you, that this was a classic
22 situation of the Public Service having to work with resources
23 that were stretched?

24 A. I will accept that, sir.

25 Q. And you've recognised, haven't you, that there

1 is--priority was an Immediate Relief Package?

2 A. That is correct, sir.

3 Q. And to what extent, then, did that factor into your
4 work?

5 A. In what way? Could you--

6 Q. Well, your evidence to the Commissioner is that--and
7 it's not disputed but your tasked by Cabinet to undertake
8 monthly audits of the. It's a general view that it's going to
9 be a consultative audit and--but what you're confronted with is
10 an overstretched Premier's Office with an emphasis on getting
11 essentially the money out of the door, and that those were
12 factors that you didn't take into account in drafting your
13 Report. Would you accept that?

14 A. That is true, correct. That is correct. I would
15 accept it.

16 Q. But then why are those not the kind of factors for you
17 to take into account as an auditor, or are they the kind of
18 factors that you should be taking into account?

19 A. Would you repeat that question again, sir?

20 Q. I think where we've reached here is that I think
21 you've recognized that the Premier's Office had overstretched
22 resources. You've recognised that there was, if you like, a
23 policy imperative to get money out of the door. When you're
24 doing your audit and you're tasked by Cabinet to do your audit--

25 A. Uh-huh.

1 Q. --are those factors that you should be taking into
2 account when you're drafting your Report?

3 A. We would in circumstances where we find that it played
4 a very, very instrumental role in what we received from the
5 client, but at the same time there was never indication that
6 being overstretched permitted them from not providing the
7 information or that the information was not available to be
8 provided. If the information was not available, we would--cases
9 like that we would put it in our Reports that it was not
10 available, and because of the overstretched resources that they
11 were experiencing did not permit them to provide the
12 information.

13 If it wasn't readily available, for example, not that
14 it was unavailable because there are instances where you have
15 information that is not readily available in a form that can be
16 produced to the Auditors, so you may have a number of
17 documentation that you have, but because you find that it's not
18 in a document per se, that we cannot provide it to the Auditors.

19 COMMISSIONER HICKINBOTTOM: But the--

20 THE WITNESS: If you understand what I'm--

21 COMMISSIONER HICKINBOTTOM: No, I think I do,
22 Mrs Corea.

23 The information that you really need--I mean, 'm sure
24 there is some overlap, but the information that you need for a
25 consultative audit is somewhat different from the information

1 you use for an assurance audit.

2 THE WITNESS: It is, sir.

3 COMMISSIONER HICKINBOTTOM: I mean for obvious reason.

4 And for an assurance audit, I mean, I don't understand
5 that you may have to wait until the process has run its course
6 or more or less run its course so that you can give an assurance
7 audit--

8 THE WITNESS: Correct, sir.

9 COMMISSIONER HICKINBOTTOM: --the process or part of
10 it. But a consultative audit seems to me again very different.

11 THE WITNESS: However, if, say, for example, you have
12 a policy document and then you have to put procedures in place.
13 We ask for the policy document, but we don't get that, all the
14 way you're putting the procedures in place. So, we may be able
15 look at the policy document and assist you with putting the
16 procedures in place to make sure that they're transparent.
17 That's what I mean in terms of information being readily
18 available. So, you may have the policy, you may not have the
19 procedures, but I think for the most part they had anticipated
20 that they would do policy, procedures and everything and then
21 give us the information afterwards, and we needed not that role.
22 We needed to work along with them to make sure that the
23 processes are administered as they indicated to achieve their
24 objective.

25 COMMISSIONER HICKINBOTTOM: Because there'll come a

1 point as it were where you're--it's too late for your role,
2 really--

3 THE WITNESS: Exactly.

4 COMMISSIONER HICKINBOTTOM: --on a particular part of
5 the project because it will be a done deal.

6 THE WITNESS: Exactly.

7 COMMISSIONER HICKINBOTTOM: And that will mean that
8 your consultative role, your input will be lost effectively.

9 THE WITNESS: Will be lost.

10 COMMISSIONER HICKINBOTTOM: Yes. No, I understand. I
11 understand that.

12 BY MR RAWAT:

13 Q. And just in terms of the information that was being
14 provided to you, Mrs Corea, so you were never told it's not
15 available. You were told wait and it will be provided.

16 A. That is correct, sir.

17 Q. Were you ever told in terms we're going to put it all
18 in place and then we will give it to you?

19 A. No, sir, I was not told that.

20 Q. Was that the impression you formed, that all of these
21 processes were happening and you were going to be told about
22 them at the end?

23 A. Well, we figured that at point we realised that
24 payments were being made that they had to have had something in
25 place, but we never received any information. So, at the end of

1 the day, we can form that opinion based on payments being made
2 but we don't know. We still don't know if they had a process.
3 We still don't know if the process was transparent. We still
4 don't know if--who was involved in the process. We don't know
5 how the applications were assessed. To some extent we don't
6 even know even if they received applications. We can assume
7 that's what happened, but we don't have the information, and we
8 weren't told that there were these types of informations
9 available.

10 Q. Isn't the effect of that, then, that you've moved now
11 from a consultative role to an assurance audit? That's what
12 you'll end up having to do, isn't it?

13 A. Eventually, that will be the case, Commissioner.

14 COMMISSIONER HICKINBOTTOM: But that's a different
15 role.

16 THE WITNESS: But that's a different role.

17 COMMISSIONER HICKINBOTTOM: Mr Rawat, I note the time.

18 MR RAWAT: Yes. There's a bit more to go, so I'd
19 suggest it would be a convenient time to have a break.

20 COMMISSIONER HICKINBOTTOM: Mrs Corea, as you probably
21 know from previous hearings, we have to have a break in any
22 event for the Stenographer. What I would propose to do now is
23 to have the lunch break, and can we come back by 2:00? That's
24 half an hour.

25 THE WITNESS: Okay.

1 COMMISSIONER HICKINBOTTOM: Great. Thank you very
2 much.

3 MR RAWAT: Thank you.

4 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.
5 (Brief recess.)

6 COMMISSIONER HICKINBOTTOM: Good. Mr Rawat, we are
7 ready to continue. Thank you.

8 MR RAWAT: Thank you.

9 BY MR RAWAT:

10 Q. Mrs Corea, before we had the short lunch break, I was
11 going through the second set of potential criticisms that were
12 set out in the Warning Letter, and I think if I just summarise
13 the last two because, as I've said, I think--indeed the last one
14 we covered this ground, but the last one was that there was a
15 failure to appreciate that due to the constraints of the
16 COVID-19 pandemic, there was poor communication and coordination
17 between the officials to respond to the Internal Audit
18 Department. Is there anything you want to say in particular
19 about that before I return to the generality of your response?

20 A. No, sir.

21 Q. Before we move on to the next criticism, this
22 is--we're now at page 5 of your Written Response. I just want
23 to say--ask you if there is anything in particular that you
24 wanted to draw the Commissioner's attention to, and by all means
25 if you want to read something out, do so.

1 A. Okay.

2 (Pause.)

3 COMMISSIONER HICKINBOTTOM: Yes.

4 THE WITNESS: I know we spent a lot of time with
5 regards to the involvement of the Premier's Office and the
6 Ministry of Finance with the Internal Audit Department on these
7 particular programmes, and I just wanted to read this statement
8 that starts with where it says "Internal Audit Department
9 initially learned of".

10 COMMISSIONER HICKINBOTTOM: Yes. Do you want to read
11 that into the record?

12 THE WITNESS: Please.

13 COMMISSIONER HICKINBOTTOM: Do you want Mr Rawat to do
14 that?

15 THE WITNESS: Please.

16 COMMISSIONER HICKINBOTTOM: Yes, certainly.

17 BY MR RAWAT:

18 Q. We're at page 7.

19 "The Internal Audit Department initially learned of
20 this particular audit exercise and the manner in which audits
21 were expected to be completed, on a monthly basis, through the
22 public domain. This suggested that the consultancy approach
23 would be more suitable to facilitate the needs of the client
24 (Cabinet). Additionally, the stimulus exercise was one that was
25 new, there were no established guidelines and the policies were

1 being developed on an ongoing basis, which too would require
2 some consultative assessment from the Audit perspective.

3 "Communication with the Financial Secretary was held,
4 and thereafter this discussion along the additional submissions
5 from the Ministry of Finance settled that greater value would be
6 derived through the consultative approach. During initial
7 discussions with the team, the Financial Secretary indicated
8 that he would forward the information to the Department as it
9 was received, and perhaps involve an Internal Auditor's part of
10 the Project team, which eventually was done.

11 "Furthermore, an Auditor was first invited to be a
12 Member of the immediate relief implementation Committee, under
13 the Ministry of Finance on April the 27th, 2020. This Committee
14 was responsible for coordinating the implementation of the
15 Immediate Relief Package. This was the starting point for the
16 Ministry of Finance to be introduced to the consultative service
17 of the Department.

18 "The Premier made his announcement on phase two of the
19 Economic Stimulus Response Plan 'Social Protection and Economic
20 Stimulation on COVID-19' on May 28, 2020.

21 "The first documented communication received from the
22 Financial Secretary was on June 18, 2020 pertaining to the
23 Fishing and Farming Assistance Grants Programme. We immediately
24 reached out to the Ministry of Finance because the Financial
25 Secretary was responsible for ensuring that this stimulus

1 initiative was properly funded and managed during the execution
2 of the phases. At that time, the Department was informed that
3 the Premier's Office was the agency responsible for executing
4 the Programmes.

5 "Initial communication concerning the engagement was
6 made to the Premier's Office on July 1st, 2020, specifically
7 relating to the information we had at hand concerning the
8 stimulus for fishermen and farmers. This first communication
9 outlined the need for information, liaison persons, programme
10 documentation, and the need for further communication. Request
11 was also made for the Premier's Office to notify the Department
12 once the Programme documents were finalised and the process
13 commenced for the evaluation phase of the Programme. Mrs Elvia
14 Smith-Maduro, Deputy Secretary in the Premier's Office, was
15 assigned as a point of contact.

16 "After we had reviewed the documents that were
17 submitted by the Ministry of Finance in July 2nd, 2020, further
18 contact, via telephone, was made with Mrs Smith-Maduro to inform
19 and discuss the approach of the engagement and general knowledge
20 of the Programmes to be executed. This discussion was followed
21 up with an e-mail of the same date requesting additional
22 documents to aid in understanding the Programmes and expressing
23 our commitment to working collaboratively. However, it seemed
24 at this stage the administrating entity pulled back
25 communication with the Department, when in fact this was the

1 ideal time when the consulting engagement of the office and the
2 Department should have cohesively taken effect.

3 "The Report noted"--and this is a reference to your
4 Report, Mrs Corea, when you say--is that a reference to your
5 Report?

6 A. Yes, it is.

7 Q. So, that's the Report of the Internal Audit
8 Department, "noted that 'the review could not establish
9 definitive reasons for the delays, however, it is highly likely
10 that the process was constrained due to inadequacies and
11 resources to execute the volume of works required to properly
12 administer each programme'. As such there was an expressed
13 appreciation regarding the administrating resources. The Audit
14 team realised and documented the fact that there were inadequate
15 resources.

16 "While this may be the perspective of the Premier's
17 Office and the Ministry of Finance that there was a failure to
18 appreciate that due to the constraints of the COVID-19 pandemic,
19 there was poor communication and coordination between the
20 officials to respond to the Internal Audit Department, I beg to
21 differ. This exercise was one that was requested by the Cabinet
22 and not commissioned by the Internal Audit Department. This we
23 thought would have made it easy to gain access to information
24 and provide an open door for dialogue on the Programmes.
25 However, it became extremely difficult to communicate during the

1 process, perhaps because the information was unavailable.
2 Notwithstanding, if the information is unavailable, it should
3 have been communicated. The audit process never requires the
4 client to develop documents because they were requested; and
5 because this exercise was one that was expected to be
6 consultative, it would have provided Additional Resources to the
7 executing entity, with administrative alternatives."

8 COMMISSIONER HICKINBOTTOM: Thank you.

9 BY MR RAWAT:

10 Q. Could you just assist us with just that last bit where
11 you say "because the exercise was one that was expected to be
12 consultative, it would have provided Additional Resources to the
13 executing entity, with administrative alternatives"? Who is the
14 "it" that would have provided Additional Resources?

15 A. We, we as the Audit team would have provided
16 Additional Resources because we would have been going through
17 the Policy, the procedures and would give them direction as to
18 how it can be alternatively resolved in going forward.

19 Q. So, if you had had the opportunity to be there on the
20 ground--

21 A. Correct.

22 Q. --you would have supplemented what the premier's
23 Office had, and you would have been able to come up with ideas
24 to suggest how they could better manage and use their resources?

25 A. That is correct, sir.

1 Q. I see. Thank you.

2 If I could move on to the last criticism, Mrs Corea,
3 that is set out in the Warning Letter, and this again goes to
4 the manner in which you did your audit and the manner in which
5 you drafted your Report, but it is this, that there was a
6 failure on your part to appreciate the international context of
7 the COVID-19 pandemic, and this takes us, if you need to see it,
8 to paragraph 57 at 229 because there what the Premier's Office
9 has done is used the comparator of the UK Government, and it is
10 suggested that the UK Government showed a limited, or if not
11 poor, ability to respond to the COVID pandemic, and that's the
12 international context. And in particular the point is made
13 that, in the United Kingdom, the Government, in effect,
14 suspended the applicable rules for the proper management of
15 public money to support the economy in the first four months of
16 the pandemic crisis.

17 And again what the criticism goes to, as I said, is
18 the regard, if any, that you should have had to the fact that
19 this was not just a BVI problem. It was one where Governments
20 around the world of all sizes were struggling.

21 Is there anything you want--you've dealt with this in
22 your written response, but is there anything you want to
23 particularly draw to the Commissioner's attention?

24 A. Well, I think in our Report he did identify that it
25 was a Global situation, and no nation or no jurisdiction had it

1 correct because everything was changing as time go by, and we
2 mentioned that in our Report, and I wanted to underscore that,
3 even though we did not apply or correlate BVI Government to an
4 international jurisdiction, that we had some sentiment as to
5 what was going on around the world.

6 Q. So, in terms of when you're doing a consultative audit
7 and without--I hope I don't sound specific, but would it be
8 right to say that, as Auditors, you have precise functions?

9 A. We do, yes.

10 Q. And so in terms of the situation you find yourselves
11 in where Cabinet has asked you to do a monthly audit and you're
12 doing a consultative audit of stimulus packages that are being
13 deployed in a unique situation, a pandemic, but what standards
14 do you have to work to?

15 A. Well, we utilize our own international standards as
16 Auditors in terms of practice. However, there is nothing--no
17 other standard that we can relate to yet as to the work, because
18 it's a unique situation but we would always go back to our
19 international standards in terms of our practice.

20 Q. So, those would not change, depending on the situation
21 with which you are--

22 A. Those would not change.

23 Q. --confronted?

24 A. No, those will not change.

25 Q. Returning to the Response that you've given on this

1 issue, is there again any particular part of this that you would
2 want in particular to draw to the Commissioner's attention?

3 COMMISSIONER HICKINBOTTOM: The last two paragraphs of
4 your Response, as it were, I think summarize your response to
5 this particular criticism.

6 THE WITNESS: Correct.

7 COMMISSIONER HICKINBOTTOM: It may be helpful,
8 Mr Rawat, if you read those into the record.

9 BY MR RAWAT:

10 Q. I will do so.

11 You conclude in this way, Mrs Corea, you say: "The
12 mere fact that the Premier's Office is justifying that foregoing
13 controls and normal public Financial Standards to achieve speed
14 and urgency, signals that there may be a breakdown in the
15 understanding of Government's fiduciary responsibility and
16 stewardship in managing the public purse.

17 "What the Internal Audit Department sought to do was
18 not to pronounce failure on the Government's response to the
19 pandemic, but to evaluate what was done with the hope of
20 offering recommendations that would reduce risks, inform future
21 decision and improve programme outcomes".

22 A. Correct.

23 MR RAWAT: Unless you have any questions,
24 Commissioner, can I just move on to a different topic?

25 COMMISSIONER HICKINBOTTOM: Certainly, yes, thank you.

1 BY MR RAWAT:

2 Q. Again, it's more just to ask some assistance with
3 timelines, please, Mrs Corea, because if you turn through to
4 page 244, and if I draw your attention to paragraphs 151 and 152
5 of the Premier's Office's response, what's said is that under
6 the heading "Other Internal Audits" is that, "in parallel to
7 these contacts, and those are the contacts that you would have
8 been having with the Premier's Office in relation to the
9 stimulus packages, the Internal Auditor was engaged in frequent
10 correspondence and dialogue with the Premier's Office in respect
11 of the assurance audits of which she had received formal notice.

12 "On 5th October 2020, the Internal Auditor had
13 e-mailed the Financial Secretary and the Permanent Secretary
14 seeking information about monies disbursed in respect of the
15 Prospect Reef Management Company, which the Cabinet had decided
16 should be audited", and if refers us to a document which we will
17 find in the same bundle at page 998.

18 It's an e-mail from yourself, 5th of October 2020, to
19 the Financial Secretary at the time Mr Forbes and
20 Dr O'Neal-Morton as the PS, and you've headed it with a
21 memorandum number, so that's a reference to a Cabinet
22 Memorandum, isn't it?

23 A. It is, sir.

24 Q. And you make inquiries or ask for information about
25 the Prospect Reef Management Company.

1 So, just so that I understand it, parallel with--so,
2 at an earlier stage of 2020, June or from May 2020, you know you
3 have to do audits of the stimulus packages, but in October 2020,
4 what's added to your workload is Cabinet deciding that you
5 should do an audit of the Prospect Reef Company?

6 A. Correct, sir.

7 Q. And that's an assurance audit?

8 A. That is an assurance audit.

9 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
10 Mr Rawat.

11 Looking at the bottom of page 998, which is I think
12 this may have been the first time you knew about this, this was
13 on the 18th of September, and this is the decision being sent to
14 you, the Cabinet Decision, which requires the Audit.

15 THE WITNESS: Correct, sir.

16 COMMISSIONER HICKINBOTTOM: So, it's the 18th of
17 September.

18 Yes, thank you.

19 BY MR RAWAT:

20 Q. And if you turn through to 1037 because the other
21 mention that is made is of the Hotel Aid and Pioneer Status
22 audits. So, at 1037, we see a memorandum from yourself to the
23 Permanent Secretary of the Premier's Office dated the 16th of
24 February 2021, and this is an audit notice, isn't it?

25 A. It is, sir.

1 Q. So, when you're doing an assurance audit, that's the
2 first step that you would take?

3 A. That is the first step.

4 Q. And it's an audit of select concession programmes,
5 Hotel Aid and Pioneer Status, and you say: "In accordance with
6 our 2021 Annual Audit schedule, the Internal Audit Department
7 will perform an audit of select concession programmes, namely
8 Hotel Aid and Pioneer Status, jointly administered between your
9 office," that's the Premier's Office, "and Her Majesty's
10 Customs," and you then set out further details of what the Audit
11 would take place, and what sort of information you would need.

12 Now, we've seen the Cabinet tasked you to do Prospect
13 Reef. You refer here to an annual audit schedule. Who would
14 have determined that you ought to have done Hotel Aid and
15 Pioneer Status in 2021?

16 A. Well, it came from the previous audits we did with the
17 Customs Department. That was actually a spin-off audit from
18 doing the Audit through Customs Department with courier
19 processes, so that was a joint--well, not joint, but an
20 additional area that we decided to look at given the processes
21 and the deficiencies that we saw in that particular audit to
22 look at this one as well, since it was incorporating another
23 department with the Customs Department to see how the
24 functionalities actually related and were executed.

25 Q. So, this isn't a Cabinet Decision but flows from the

1 audit work that you're undertaking anyway?

2 A. Right, correct.

3 Q. I see.

4 And in respect of Prospect Reef and also in regulation
5 to Hotel Aid and Pioneer Status, so one you kick off in
6 October 2020, and the second one in February 2021, you're
7 liaising then with the Premier's Office, did you experience any
8 difficulty in obtaining information for those two audits?

9 A. Not necessarily, because again, we were given persons
10 to work along with as Liaison Officers, and we were able to meet
11 with them and get the information that we had requested from
12 them for that particular--for the Hotel Aid--for the Hotel Aid
13 and--

14 Q. Pioneer Status?

15 A. Pioneer Status.

16 So, we were able to get that information and review it
17 while I'm doing the Audit assignment. With regards to Prospect
18 Reef, we got that information from the Permanent Secretary
19 herself, so we actually got information that we were able to
20 work from for those two assignments.

21 Q. I see. Thank you.

22 MR RAWAT: Commissioner, I think I've reached the end
23 of my questions. Can I conclude, firstly, by thanking Mrs Corea
24 for coming along today and giving evidence but also importantly,
25 for the way in which she's done so.

1 COMMISSIONER HICKINBOTTOM: Can I echo that,
2 Mrs Corea, thank you very much for your time but also your
3 helpful evidence on these matters. It has been very useful.
4 Thank you.

5 THE WITNESS: You're welcome.

6 (Witness steps down.)

7 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

8 MR RAWAT: If I could ask you just to rise so that we
9 can then reset the room for our next witness.

10 COMMISSIONER HICKINBOTTOM: Certainly. Thank you very
11 much.

12 (Recess.)

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Session 3

COMMISSIONER HICKINBOTTOM: Mr Rawat, I think we are ready to continue. Thank you.

MR RAWAT: Thank you, Commissioner.

Our next and last Witness today is Sonia Webster, the Auditor General.

BY MR RAWAT:

Q. Auditor General, thank you for returning to give further evidence to the Commissioner. Can I apologize for the delay in hearing your evidence today. I think we were scheduled at 2:00. It's a little after that, but thank you for your patience.

You previously gave evidence and you made an affirmation on that day, so there's no need to do so again. you're bound by that.

As you will have noted, there are a number of bundles on the desk around you. We may need to look at some of them as we go through the course of your evidence.

The only matter that I would mention, finally, is just to ask you, please, to keep your voice up as loud as you can. It's perhaps important just to speak more loudly than usual, I think that would be my recommendation.

Can I start off just by--it's something that we did cover with you when you were last here, but just to ask you to explain the types of report that you have to produce as Auditor

1 General.

2 I'm going to just bring--your work, as I understand
3 it, is governed by the Audit Act of 2003; is that correct?

4 A. Yes, that's correct, yes.

5 Q. And we can show you a copy, if you need it? Do you
6 need a copy? There should be--

7 A. Very briefly, the types of audits that we perform, our
8 primary audit would be the Audit of the Financial Statements.
9 Those are the Treasury Accounts that we receive, annual
10 statements that we receive that cover the entire Public Service.
11 Those are just regular Financial Statements that any
12 organisation or Government would have to produce, so that is our
13 primary duty, to audit the Financial Statements.

14 Other audits we perform, other main audits we perform
15 would be what we call "Special Audits" or "value for money"
16 audits, basically. The "value for money" audits are done on
17 projects and programmes that we consider might have issues where
18 there might be factors that might be an issue to government's
19 spending Government's monies. So, "value for money" audits
20 focus on three things: Economy, efficiency, and effectiveness.
21 Where we think that any of those three are likely to be
22 compromised, we will go in and look at the Programme or the
23 Project.

24 The third type of audit that shows up in the Audit Act
25 refers to audit that we are asked by His Excellency to perform,

1 Special Audits that the Governor may ask us to perform. And
2 those normally take the same format as the "money for value"
3 audit. The other types of audits, we audit Statutory Boards,
4 for instance, and those are normally financial audits, similar
5 to the trivial accounts audits. And basically those are it.

6 And we also do investigations of their losses, for
7 instance, but primarily these are done by Internal Audit, but we
8 also do those because they're relevant to our work. And when
9 Internal Audit does it, it's referred to us as well because it's
10 relevant to our work.

11 So, if I've missed any, I will come back and correct
12 it, but those are the main types of audits that we perform.

13 COMMISSIONER HICKINBOTTOM: Just to help me,
14 Ms Webster, and I am looking at the Act, and we can take you to
15 the Act if you need it--I certainly need it-- but of the four
16 audits, the primary audit and annual statement, what section is
17 that under?

18 THE WITNESS: The Audit of the Financial Statements.

19 Can you point me to a bundle?

20 BY MR RAWAT:

21 Q. Yes, you should have on the bench a copy of The
22 Constitution and Legislation Bundle.

23 A. Yes. It's all the way on the bottom.

24 Q. Sorry about that. It's the first volume that you
25 need. And then if you turn up page 224, please.

1 COMMISSIONER HICKINBOTTOM: Are these annual--the
2 primary audit annual statements, that's under section 11, which
3 is on page 228?

4 THE WITNESS: Section 11--okay.

5 Yes, this is actually referring to the audit of the
6 Financial Statements.

7 COMMISSIONER HICKINBOTTOM: So, the first one you
8 mentioned was section 11?

9 THE WITNESS: That's correct.

10 COMMISSIONER HICKINBOTTOM: Now, the "value for money"
11 audits--were--under what section do they come?

12 MR RAWAT: Section 12.

13 THE WITNESS: The "value for money" audits come under
14 Section 12. In fact, Section 12(c) where it refers to,
15 Section 12(c)(iii), actually, where it speaks to whether
16 resources are being used in proper regard to economy, efficiency
17 and effectiveness.

18 COMMISSIONER HICKINBOTTOM: I've got it. So the VFM
19 audits are under section 12, and that's the relevant
20 term--provision--

21 THE WITNESS: Right.

22 COMMISSIONER HICKINBOTTOM: --that relates to the
23 value for money.

24 Special Audits required by the Governor, I assume that
25 that's section 20?

1 THE WITNESS: Yes, that is section 20.

2 COMMISSIONER HICKINBOTTOM: And then I suspect the
3 Audit Financial Audit of the Statutory Boards, is that under
4 some more general power or is that under a specific power?

5 THE WITNESS: That's 21.

6 COMMISSIONER HICKINBOTTOM: Oh, yes, okay. That's
7 helpful. Thank you. Good. Thank you very much.

8 BY MR RAWAT:

9 Q. But in terms of who you submit these reports to, I
10 remember on the last occasion when we took you through your
11 Annual Reports because I think there has been a lag in terms of
12 producing those.

13 A. Right, there has been a lag.

14 Q. And, in fact, I think--I think catching up with the
15 Reports was one of the reasons that you came back to the Office
16 of Auditor General?

17 A. That's correct.

18 Q. So, the Annual Audits under section 11, who would you
19 submit those to when they're completed?

20 A. They're submitted to the Minister of Finance.

21 Q. And is the Minister then responsible for putting them
22 before the House of Assembly?

23 A. Yes.

24 Q. And as I've understood it then, the section 12
25 reports, the value-for-money reports, sit under the section 11

1 report?

2 A. The section--section 12 Audits actually are to be
3 forwarded to the Minister as well, but in a number of cases, the
4 Reports are not--reports are not actioned, they're not taken
5 before the House, so the Policy, the general policy is that once
6 the Financial Statements that relate to that particular audit
7 has been tabled then the reports themselves can be made public,
8 and we will publish them. And when I say "we will publish
9 them", I mean on our website. They will go on to the website.

10 COMMISSIONER HICKINBOTTOM: So, under Section 12
11 reports, you submit the Report to the Minister, that's the
12 Minister of Finance.

13 THE WITNESS: That's correct.

14 COMMISSIONER HICKINBOTTOM: Under section 12(iii). He
15 then is under an obligation to lay the Report before the House
16 of Assembly under 12(iv), and then you've explained that once
17 it's laid before the House, you put it on your website.

18 THE WITNESS: Once the table--once it is tabled, we
19 will put it on our website, but if it's not tabled and the
20 Financial Statements to which that particular audit relates are
21 tabled, we will put the Report on the website, provided, of
22 course, there isn't anything that--there is nothing in the
23 Report that tends towards security issues or confidentiality we
24 put on our website.

25 COMMISSIONER HICKINBOTTOM: I understand that.

1 So again, just to make sure I've got that clear--

2 THE WITNESS: To go back on this, the Reports, based
3 on the Act, the Reports are to be sent to the Minister, but
4 where there is a special request, they normally will be sent to
5 the Ministry. The Ministry then takes steps to have the Reports
6 tabled, and that is actually the process notwithstanding the
7 Reports actually go to the Ministry, the Ministry gives us
8 feedback, and when they're finalised it goes back to the
9 Ministry.

10 COMMISSIONER HICKINBOTTOM: Does it go to the Minister
11 of Finance as well?

12 THE WITNESS: It's copied to the Minister of Finance.

13 BY MR RAWAT

14 Q. But the in-practice--

15 A. And the Financial Secretary.

16 Q. But the in-practice process would be that, if your
17 value-for-money report concerns a project in a particular
18 Ministry, the draft goes to that Ministry?

19 A. Yes.

20 Q. The Ministry has an opportunity to respond to you?

21 A. Yes.

22 Q. Do they always respond?

23 A. No, they do not always respond.

24 Q. But you then finalise your Report?

25 A. Yes. The Report will be finalised.

1 And actually asking the Ministry to comment on a
2 report is a courtesy that we do to them. We don't have to do
3 that. There is no requirement that says that we have to ask
4 them to vet the Report. But in the interest of ensuring that
5 the contents are actually reflective of the process, of the
6 Programme, we do give them a chance to look at the Report.

7 COMMISSIONER HICKINBOTTOM: If they don't respond,
8 though, the Report is finalised in whatever form you formalise
9 it in.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: And then it's sent to the
12 Ministry and/or the Minister of Finance?

13 THE WITNESS: And to the Minister of Finance, because
14 a Special Audit is sent to the Governor.

15 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

16 BY MR RAWAT:

17 Q. And the Ministry then has the responsibility for
18 putting it before the House?

19 A. Yes. And that doesn't always happen.

20 Q. That doesn't always happen.

21 And with the Special Reports to the Governor, it's the
22 Governor that takes responsibility for taking that Report
23 forward and tabling it before the House?

24 A. That's correct, yes.

25 COMMISSIONER HICKINBOTTOM: You mentioned where a

1 Section 12 Report is not tabled before the House. Did you say
2 that--did I hear you say that in those circumstances you put
3 those reports on your website if the relevant Annual Report has
4 been tabled?

5 THE WITNESS: That's what I said. That's correct.

6 COMMISSIONER HICKINBOTTOM: Okay. So, whatever the
7 Annual Report is, when that's tabled because the Section 12
8 report is sort of associated with attached to the annual--

9 THE WITNESS: It's a sub of the Annual Report. It's
10 actually a part of examining those figures really, and examining
11 how the money is allotted in that year were spent. That's
12 actually a part of the Report.

13 COMMISSIONER HICKINBOTTOM: So, it's a sort of
14 sub-report to the Annual Report?

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: I understand.

17 But once the Annual Audit report has been tabled, then
18 any sub-reports which haven't been tabled--

19 THE WITNESS: You can publish those.

20 COMMISSIONER HICKINBOTTOM: You put those on to your
21 website?

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: That's very helpful.

24 Thank you.

25 BY MR RAWAT:

1 Q. Thank you.

2 Can I ask you to turn to one of the Reports, and you
3 previously gave evidence about it, you should have--you can put
4 the Act away. You should have a small bundle which is headed
5 "Neighborhood Partnership Project" on the front of it.

6 If you turn to page 1, please, Auditor General, this
7 is the Report of your office on the Virgin Islands Neighborhood
8 Partnership Project.

9 A. Yes.

10 Q. Which I asked you questions about when you came on the
11 last occasion.

12 You can see that there is no date to the Report on the
13 front of it, and if I ask you just to turn in this bundle to
14 page 113?

15 A. 113?

16 Q. Yes, please. 113 is part of the Transcript of the
17 evidence that you gave on the last occasion when you came before
18 the Commissioner.

19 A. Okay.

20 Q. And if you look at line 12, I take you to the front
21 page of this Report, and you confirm that's where we are. And
22 then I say--

23 A. You say we move from 113, can we have that actually
24 looked at again because I think that what I said at the time is
25 that I think it was earlier.

1 COMMISSIONER HICKINBOTTOM: Line 23.

2 THE WITNESS: Line 23.

3 COMMISSIONER HICKINBOTTOM: Line 23 on page 113.

4 THE WITNESS: Okay.

5 BY MR RAWAT:

6 Q. So, if I just read that out, I asked this: And that I
7 think--I will start again.

8 I say, "if you have the right page, you should see the
9 first page, the front page of a report from your office on the
10 Virgin Islands Neighborhood Partnership Project". You answer,
11 "that's right, yes". And I then asked, "and that I think was
12 produced in or published in January 2013". You answer,
13 "correct".

14 A. Okay.

15 Q. I then say, "Now, if I take you to a page", you then
16 answer, "that date that you mentioned, as a matter of fact, I'm
17 not seeing the date on the Report". I say, "I wasn't able to
18 find a date on the Report itself".

19 A. Okay.

20 Q. And you say, "I think the date might have been a
21 little earlier than that, so let me verify that date". And I
22 say, "thank you".

23 And then we move on in the questions to dealing with
24 the substance of the report.

25 Now, there are two things that arise from this. The

1 first is the date of the Report.

2 A. Okay.

3 Q. You may have on the desk, and it's probably sitting
4 under your file, a loose-leaf extract from the Beacon Newspaper.

5 A. Yes.

6 Q. If you would turn to the second page, Auditor General,
7 and you see a subheading "Government Audit". If I explain, what
8 this is is a report by the BVI Beacon on the Neighborhood
9 Partnership Project which does not utilize your Report but
10 utilize a copy of a packet of information about the Project
11 which had been provided by the Minister of Education and Culture
12 to the House of Assembly and which the Beacon obtained.

13 But if we look on the second page, you see the heading
14 "Government Audit" and if you go to the two paragraphs down,
15 what's written is: "Since then, the Auditor General's Office
16 has audited the Programme. The Cabinet mandated the Audit when
17 approving the Programme according to a record of Cabinet
18 proceedings included in the NPP reports obtained by the Beacon.
19 Auditor General Sonia Webster said Friday that her office had
20 delivered the Audit Report to the Ministry of Education and
21 Culture last month and is currently awaiting for response for
22 inclusion in a final report to be sent to Cabinet. Attempts to
23 reach MEC--that's the Minister of Education and
24 Culture--officials willing to comment on the Audit in recent
25 days was unsuccessful. Education and Culture Minister Myron

1 Walwyn responded to a Friday Facebook message to say he was off
2 island and unavailable this week".

3 Now, this Report is published in January 2012. You
4 are reported by the Beacon to say that you had submitted the
5 Audit Report to the Ministry in what would be December 2011.

6 Does that help you at all in assisting the
7 Commissioner as to what date you did provide the draft of the
8 Report to the Ministry?

9 A. If you look at this particular Report, you will notice
10 that it's written in a different--in a different tone than the
11 others. And when I say that, there are several areas, I think,
12 it's stated that information is insufficient and we think that
13 they should go back and get more. I'm looking for--I'm looking
14 for where it's actually quoted in the Report.

15 And this has to do in particular with the amount. It
16 says here, and this is on paragraph--at the end of paragraph 68,
17 "the payment of 29,000 is being called into question and further
18 information is required", and I think I used that same phrase in
19 a number of areas. In 60, 'this expenditure is therefore being
20 called into question and requires further explanation", and
21 that's repeated throughout this Report. And if you look at some
22 of the other Reports that we have done, you're not going to find
23 that.

24 The reason why this was done this way is that this
25 Report, based on our research and based on going through the

1 files, was actually sent out in this format, and it was not sent
2 out in draft but it was sent out in a way to allow them to come
3 back to us with answers.

4 So, basically, you're asking me when did the draft
5 report go out, and I'm saying that this is the Report that went
6 out. This is the only report that went out based on our
7 information, and based on going back into the files and looking.

8 I think I communicated to you earlier that we were
9 trying to find the cover memo that went out with this, but there
10 wasn't an initial draft that went out. This Report went out as
11 it did because we had been through the files. We started this
12 Audit almost a year prior. We had been through the files, and
13 all we could find was a proposal, a two-page proposal, on the
14 files, and several contracts following this two-page proposal,
15 and everything else on that file was payments to this
16 individual. There was nothing to verify that the programmes
17 were happening, that the Programmes were successful to justify
18 these payments.

19 And because of that, this Report kept--this Project
20 kept showing up in the press, I think The Honourable Fraser
21 would frequently ask questions in the House about it. And at
22 this stage sending the draft Report and asking for information
23 that we know that they didn't have was kind of pointless. And
24 after spending months on this, the intention was to bring it to
25 closure and get them to do more in terms of getting information.

1 And so, this is why we don't have the draft report and then the
2 final report. This was sent out as a final report to encourage
3 the Ministry to go back and get answers to the information
4 because there were--the discrepancies in this were so
5 substantial, and we spent so much time trying to find out why
6 the discrepancies were so substantial. At that stage, it was
7 for them to go to the Consultant, find out how he spent the
8 money; and, if he didn't spend it, then try to recoup it. That
9 was my intention when we issued our Report at that time.

10 If they could come back to us and say well, this is
11 what we have on how the money was spent and actually the figures
12 that he submitted are correct and then that would be
13 satisfactory, but we hadn't been able to come up with that, and
14 this is--the only way forward that would have gone out on this
15 particular programme.

16 So, to answer your question, the short answer to that
17 question is that there was no previous draft sent out.

18 Q. So, this is the Report in final form?

19 A. This is the Report in final form.

20 Q. And can you help with in terms of the date that you
21 therefore submitted the Report to the Ministry?

22 A. As I said, we were trying to find the covering--it was
23 sent out by e-mail, and we're trying to find the covering
24 e-mail. And the only thing I can tell you in terms of the date
25 is that it went out in December 2011.

1 Because we were--thus is actually the only dated
2 report on this that I could find and the date on this is 18th of
3 February 2011. And I know that we made changes to the Report
4 since then, and again this is--the date on this is
5 February 2011. That's an indication of how long we were working
6 on this and how much time we spent actually trying to get
7 information to validate the figures that were being sent to us
8 as legitimate.

9 Q. And you had been working on this Project for a year
10 before December 2011?

11 A. Almost a year.

12 This wasn't the only Project that we were working on,
13 but this was one that sat there waiting for information that we
14 could not receive, it was not forthcoming.

15 COMMISSIONER HICKINBOTTOM: Another example--you
16 referred to a couple of examples, Ms Webster, where you've said
17 that there's just no support for a figure. But at the end of
18 paragraph 72, which concerns 2010, and I forget the exact
19 figures, but I think contract payments that were due that year
20 were something over £300,000 and about \$200,000-odd dollars
21 were, in fact, paid. But you say the only supported expenditure
22 for 2010 were the payments totaling \$400,000-odd, and then you
23 say at the end "this does not preclude the possibility of other
24 legitimate expenditure. Full examination of the Project could
25 not be achieved because of the Consultant's failure to submit

1 additional records requested".

2 So, that's the same point, isn't it?

3 THE WITNESS: It is.

4 And I think you asked me the last time I was here
5 whether there are times we don't issue reports, and I said if
6 I--sometimes I don't have sufficient information or I'm not
7 satisfied that it's sufficiently supported. In this case, we
8 had sufficient information to say that these figures are not
9 right. But we didn't have sufficient information to actually
10 know what the correct figures might be, and we were asking the
11 Ministry to go back and get information from the Consultant that
12 we couldn't get from them.

13 COMMISSIONER HICKINBOTTOM: And when you say we were
14 going back to the Ministry, and you've referred to one of the
15 drafts, I think, which was dated February 2011.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: So, was this process of
18 going back to the Ministry and asking for further information
19 during the course of 2011, given that this Report is December
20 2011?

21 THE WITNESS: Yes, it was during the course of 2011
22 that we went back and we were trying to get information, and I
23 think a lot of the interviews that were done with the
24 participants are actually done later in the year,
25 November-December 2011, but before we issued the Report.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 BY MR RAWAT:

3 Q. Once you've issued it, it goes to the Ministry of
4 Education and Culture.

5 A. This went to the Ministry of Education and Culture.

6 Q. And what happens to it after that?

7 A. Well--and I think the Permanent Secretary, I may have
8 mentioned that this particular, just an indication of how long
9 this programme and how long the Audit was done on this, this
10 particular Programme went through three Permanent Secretaries.
11 I think Sheila "Pratt" (phonetic) was the initial Permanent
12 Secretariat when the Programme started, and Dr. Morton.
13 Dr Carolyn Morton then was the Permanent Secretary during the
14 course of the Programme while it was being executed.

15 And at the very end, there was Dr Potter, who I think
16 just came in when the Programme was pretty much being wrapped
17 up, and she didn't have very much involvement in the Programme,
18 but she was the one who received the Report at that time because
19 she was the person in the Permanent Secretary's seat at that
20 time.

21 Q. Can I just ask whether that's right, Dr O'Neal-Morton
22 gave evidence and--at an early stage of the Commissioner's
23 proceedings, and she told the Commissioner that she had been
24 Permanent Secretary until 2013.

25 A. Perhaps not in the same Ministry, but I do believe

1 this Report went to Dr Potter, and I'd have to verify that.

2 Q. My understanding from the document is that
3 Dr O'Neal-Morton would have been Permanent Secretary in the
4 Ministry of Education and Culture from about 2010 through to
5 2013.

6 A. Okay. All right. I'll have to verify that. But I
7 can't recall in Standing Finance, I think it was Dr Potter who
8 was commenting on the Report. And again, let me verify that.

9 Q. But just picking up on the last point you said, you
10 said that Dr Potter commented on the Report in Standing Finance,
11 so it's gone to a Permanent Secretary in the Ministry of
12 Education and Culture. How does it get to Standing Finance?

13 A. I think--this has always been a bit topical, and in
14 Standing Finance, the questions can come from anywhere on
15 anything. Because of the high level of interest, this would
16 have been a programme that she was probably asked about at that
17 time.

18 And the same Beacon report mentions that the Report--I
19 was asked about it in Standing Finance so--because in Standing
20 Finance there's a lot of latitude, and the Ministers--the
21 Members actually will ask questions about things that they
22 consider to be relevant, especially where money is involved and
23 where a lot of money is involved, as in this particular case.

24 COMMISSIONER HICKINBOTTOM: Just a couple of questions
25 arising out of that, Ms Webster.

1 First, this Report went to the Ministry of Finance--it
2 went to the Ministry of Education, but would a copy have gone to
3 the Ministry of Finance, too?

4 THE WITNESS: No, I don't think a copy was sent to the
5 Ministry of Finance.

6 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
7 much.

8 And secondly--

9 THE WITNESS: And let me just say--

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: --that again because I don't have the
12 cover memo that went with it, I cannot verify that completely.
13 And the reason why we don't have this is because the
14 Government's e-mail platform has changed, I think, three or four
15 times, so we can't go back and check our e-mails to see what was
16 sent and went, but I do not believe it went to the Ministry of
17 Finance.

18 COMMISSIONER HICKINBOTTOM: Okay. So, it went to the
19 Ministry of Education. And you said that it was questions were
20 raised in Standing Finance, I think, for both you and Dr Potter.
21 And when would that have been about?

22 THE WITNESS: That would have been--Standing Finance,
23 normally, if it's on track, it would occur late in the year.
24 So, based on this, it would likely have been in December 2011.

25 COMMISSIONER HICKINBOTTOM: In December 2011.

1 THE WITNESS: And again, I'm guessing that, but if
2 it's on track, it's going to be around December 2011. Sometimes
3 it's early in the year, sometimes it's--sometimes earlier in the
4 next year or earlier in the current year--

5 COMMISSIONER HICKINBOTTOM: But it would be in that
6 sort of--

7 THE WITNESS: It's in that time frame.

8 COMMISSIONER HICKINBOTTOM: It's in that time frame.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 Yes?

12 BY MR RAWAT:

13 Q. So, if it went to the Ministry in final form, there
14 wasn't that--there wasn't anything for the root Ministry to
15 respond to.

16 A. We considered that there was.

17 Q. There was action for them to take. They had to--

18 A. There was action for them to take, yes.

19 Q. But it wasn't perhaps the more usual situation where
20 they could suggest or respond to particular paragraphs and ask
21 you to take other information into account.

22 A. No. It wasn't a normal draft-and-response procedure
23 that we normally have.

24 Q. Now, the reason for taking you to page 113 and the
25 answer and question that we had which was where I said I think

1 it was produced in or published in January 2013. What has been
2 put to the Commissioner is that whilst you may have wanted to
3 correct the date, what you didn't want to correct was your
4 confirmation that the Report had been produced in or published
5 and, in particular, that you--confirmation that it was
6 published, and what's said to the Commissioner is that you were
7 wrong in that evidence.

8 A. Um, that Report is currently published on our website.

9 In terms of the date that it's published, we--because
10 we didn't have a website, it's not something that we actually
11 would send to the press, per se. We don't send the reports to
12 the press.

13 Q. So, at the time--

14 A. It was--

15 Q. --in 2011, you would not have had a website anyway.

16 A. No, we did not at that time.

17 COMMISSIONER HICKINBOTTOM: We'll come back to this
18 particular report, but just on the general programme of these
19 that you've outlined, what should have happened, I think--but
20 you'll correct me if I'm wrong--is the Report went to the
21 Ministry of Education, and so it would have been for the
22 Minister, that Minister, to lay it before the House; and then
23 either when he laid it before the House or when the Annual
24 Report was completed, to which this was sort of subsidiary, then
25 you would have published it or you would have felt able to

1 publish it at least--

2 THE WITNESS: Right.

3 COMMISSIONER HICKINBOTTOM: --in some way; is that
4 correct?

5 THE WITNESS: That's correct.

6 What I would--the only correction I would--the only
7 adjustment I would make to that, sir, is not--it goes to the
8 Ministry, and it's for the Minister, that Minister, to take
9 steps to be sure that it's tabled.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: Because the Act actually says that the
12 Minister of Finance is responsible for tabling these.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 THE WITNESS: So, whether it's tabled by that
15 particular Ministry or the Ministry of Finance, it's for that
16 Minister to take steps to ensure that the Report is, in fact,
17 tabled.

18 And in a case like this where Cabinet had requested
19 it, then I think the obligation is even greater on the Ministry
20 to ensure that it was taken back to Cabinet and tabled.

21 COMMISSIONER HICKINBOTTOM: And under Section 12, that
22 has to be done within three months.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: I mean that's what that
25 says.

1 I know you've told us in previous evidence that that
2 doesn't always happen but that's what the Act says.

3 THE WITNESS: No, it doesn't always happen--

4 COMMISSIONER HICKINBOTTOM: Yes.

5 THE WITNESS: --all the time.

6 COMMISSIONER HICKINBOTTOM: Thank you.

7 BY MR RAWAT:

8 Q. Just again, you say it's published--now published on
9 your website. When was it published on the website?

10 A. When we got our website up and running. That would
11 have been earlier this year, I think.

12 We had a website previously that didn't last very long
13 because the administrator left and went to London.

14 But we currently have a website, and all those Reports
15 are on the website. The only ones that are not right now on the
16 website are the two COVID reports which we intend to put up
17 within a reasonable time so that the public could have access to
18 those. Well, I think they already do.

19 COMMISSIONER HICKINBOTTOM: But your website this,
20 website, has only been up and running for less than 12 months.

21 THE WITNESS: Less than 12 months. It was actually
22 designed and set up by my Administrative Officer, and she's the
23 one who manages it, so yeah.

24 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

25 BY MR RAWAT:

1 Q. And in terms of it being--because The Honourable
2 Premier, when he gave evidence to the Commissioner, said that he
3 had made efforts to try and confirm whether this Report was ever
4 put before the House of Assembly, made inquiries with the House,
5 made in inquiries with the Ministry itself.

6 A. Um-hmm.

7 Q. And he could find no record of it ever having been
8 published.

9 A. I believe he actually did make inquiries as to whether
10 it was published because I was contacted and asked that question
11 that was sent to the House, and I was given the impression that
12 was information that was needed for this sitting--for this, so I
13 do believe that he made those inquiries.

14 Q. Were you able to assist at all with whether it was, in
15 fact, after you had submitted to the Ministry what happened to
16 it?

17 A. I think what I said--and this wasn't to the Premier's
18 Office; it was to another office that contacted me, was that we
19 didn't have any records of it being tabled, any records of it
20 going to the House.

21 Q. In terms of the--you've explained that sometimes
22 reports don't go to the House, but because they are sub-reports
23 of the Annual Audit, when the Annual Audit is published, you
24 will then publish the associated reports.

25 A. On our website, now that we have one, yes.

1 And I think it's important that the work doesn't just
2 get done and is sitting on somebody's desk because then the
3 public is not aware that this has happened, and these--we had
4 issues in these areas. And since we are all working for the
5 public, they should know.

6 And one of our concerns was that--and I keep saying
7 this to my staff--you know, when we go back and we look at some
8 of the Reports, you know, this is some good stuff that never got
9 out. It's like as if we only know this information, other
10 people also need to know it, and which is why I have been
11 putting them on the website.

12 Q. And how--prior to having a website and being able to
13 publish it in that way, how were you, if at all, able to issue
14 the Reports that were associated with an Annual Audit?

15 A. Only through the House. Basically--and the thing is
16 people--if you don't know that the Report exists, you're not
17 going to ask for it, basically, and one of the reasons that we
18 went ahead and set up a website is that the Government does have
19 a website, and it doesn't include everybody, all the
20 Departments, all the Ministries.

21 And the issue I had with that is that the
22 Administrator determines what goes on to the website, so I
23 didn't have any control over what goes on for the Audit Office,
24 and I thought that was not satisfactory. I didn't have any
25 control over what goes on, and I wouldn't have any control over

1 what comes down. Whether, you know, I could ask them to put
2 something up and somebody objects, and it comes back down,
3 so--which is why we went ahead and decided that we needed our
4 own independent site, so we could have--be able to put
5 information out as we saw fit.

6 Q. Thank you.

7 The other points that The Honorable Premier made in
8 evidence to the Commissioner, and this I think was on Monday,
9 but he said that--he described this Report as incomplete because
10 his evidence was that you would expect with a report to see
11 e-mails, associated records, and a response from the Ministry.
12 Is that the norm when--

13 A. E-mails from whom? And I'm not sure what process the
14 Honourable Premier is referring to.

15 We norm--the norm is that we usually we do send a
16 draft report, and we invite people to come back with comments.
17 For instance, with COVID, sorry, with the COVID reports we sent
18 a draft to the Ministry, but we also sent to the Department of
19 Agriculture, for instance, because we thought they were relevant
20 to that process, and we sent to a couple of the offices that we
21 considered to be relevant to that process.

22 So, yeah, and as I said earlier, that's a courtesy we
23 do. We want their involvement. And if we have a recommendation
24 in there that they see is impractical, then they could come to
25 us and say, "well, you know, this might not work" or "we think

1 something else might be better".

2 So, it's a whole collaborative efforts in terms of
3 completing the Report.

4 The processes of--could you run that through again,
5 e-mails and attachments?

6 Q. That you would effectively see that it wasn't entirely
7 clear, but that you--when you have a report, you would see--you
8 should see the response from the Ministry, you should see the
9 associated papers, and that then allows for a complete picture
10 of the Project to emerge.

11 A. And that would be a big no.

12 In terms of while we do invite comments back,
13 we--there is no obligation to add the comments to our Reports,
14 and there is a reason why we don't do it. I think in the past
15 we would incorporate some of the comments with the Acting--the
16 Permanent Secretary said X, Y, and Z. In the past we did that.
17 What we've been getting back is these long comments that were
18 verbose that are only marginally relevant to the Report.

19 And if I issue a report that's 30 pages long and get
20 back a response that's 70 pages long, and most of that isn't
21 relevant to what's in the Report and there is an expectation I
22 would take that and add this to my Report. That's not going to
23 happen.

24 We go through a lot of processes and a lot of vetting
25 to make sure that the Reports are--that they're relevant and

1 that they're concise, that they're factual. At the end of the
2 Reports, we--after we've done this, we go back through, and we
3 check line by line against the documents that we have to see
4 whether or not we can support it, what's in the Report.

5 And we get comments back, making statements,
6 making--giving a different version of the facts that are
7 possibly there but--and no evidence. If you can send me your
8 comments and send me the evidence or point me to the evidence,
9 that we can go and look at that and verify that is the case,
10 then we are in a position where we can make an amendment to the
11 Report.

12 But if I say that our records indicate or the records
13 from the Ministry indicate that the file was blue and you come
14 back and say, "No, in fact, it wasn't blue, it was red," and
15 there is no evidence that it was red, I am not going to change
16 it in the Report. I need some sort of evidence that I can go
17 back to and verify. If I say there were a hundred farmers and
18 you said, "No, in fact, there were a thousand", I need evidence
19 to show that that was the case.

20 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat.

21 In terms of this sort of suggestion that the Report
22 was in some way "incomplete", what you said, I think, is that
23 the information that you had toward it was incomplete in this
24 sense that it didn't show where all the money had gone.

25 THE WITNESS: Yeah.

1 COMMISSIONER HICKINBOTTOM: But the Report was
2 complete in this sense, as I understand your evidence, that it
3 dealt with everything that you had. It was complete in that
4 sense but it obviously--

5 THE WITNESS: Correct.

6 COMMISSIONER HICKINBOTTOM: --didn't deal with things
7 that you didn't have. Is that--

8 THE WITNESS: That is correct. There was some
9 information that we couldn't have, that we couldn't get, even
10 though we had been requesting it, and if there is a project, a
11 programme where something is so blatantly false, so blatantly
12 wrong, we can't sit on it because we can't get all of the
13 information. We can't just leave it on the side of our desks
14 simply because somebody doesn't provide the information. That
15 serves their purpose, and that completely destroys the
16 transparency and accountability factors.

17 So, if a person or entity is refusing to give
18 information, that to us is a red flag. That says that something
19 is wrong, and that is a really potent reason for us to go ahead
20 and issue the Report, because something is wrong, and if we
21 can't get the answers, then somebody else should be able to get
22 the answers, especially the people who have been making the
23 money, they should be able to get the answers, and that was the
24 Ministry.

25 And we got the file from the Ministry. There was a

1 two-page proposal, and several contracts based on this two-page
2 proposal, up to, I think, it was \$600,000.

3 And in addition to that, there were just the payments
4 that were being sent to the Treasury on a monthly basis. There
5 was nothing in the Ministry to show that somebody was actually
6 going through and making sure that these programmes were
7 happening, and that they were getting value for money on all of
8 these payments that were going out. There was nothing.

9 And I think at the time Honourable Fraser just kept
10 this whole thing in the House. He kept it live which was good
11 because it didn't need that kind of coverage, and it kept the
12 Ministry, I guess, on their toes--well, let's hope. But the
13 bottom line is that we couldn't get the full information on this
14 Project. And because we couldn't get full information on this
15 Project, we couldn't--having waited this long with it, we
16 couldn't just leave it as incomplete because it was important.
17 The amounts were substantial.

18 And if what the Government had paid for wasn't
19 happening, the Government then, to me, was obligated to take
20 steps to get--to recover some of this money. And it was left to
21 the Ministry, the Ministry that had been making the payments.

22 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

23 BY MR RAWAT:

24 Q. But ultimately the decision as to what to do next is
25 for the Ministry and not for you. You can make recommen--

1 A. For this particular project, if I thought it needed to
2 go back and find out from the Consultant how the money was spent
3 because, based on the interviews that we had done, the
4 individuals were saying, Well, we didn't get--we didn't get the
5 curriculum. We didn't get the support. We didn't get the
6 resources.

7 Yet the Ministry received, I think, a Report, a very
8 brief Report that said that all of this money had been spent on
9 the programmes, when it appeared not to be the case.

10 Q. But it's--I mean, you can recommend that the Ministry
11 should go and find further information, but that's a matter for
12 the Ministry whether they do so or not.

13 A. That's right, I can't make them do it.

14 Q. Moving away from this, though, in terms of the--where
15 a Ministry has an opportunity to make a draft response, in
16 circumstances where there's been a change of administration, and
17 so there's a new Government and a new Minister, would they take
18 steps to consult the former Minister?

19 A. That's something that I cannot speak to.

20 With, for instance, this BVI Airways, when we issued
21 the Report, it was a different Minister. It went to the
22 Ministry of Finance. That draft report went to the Ministry of
23 Finance. We also sent a copy of the draft report to the former
24 Financial Secretary, who was in the Ministry, and I'm trying to
25 remember who else. I think to the Attorney General was also

1 involved in the process, but I cannot say whether I'm not--the
2 Ministry of Finance then sent it to the former Minister. I
3 cannot speak to that.

4 Q. And did you ever send it to former Ministers, send
5 your Reports to former Ministers for comment?

6 A. I--no, we would send it to the Ministry. I'm trying
7 to remember how I would have dealt with this with The
8 Honourable--the former Premier. I think I would have told him
9 that the Report is actually in draft. I'm not completely sure,
10 but I wouldn't have sent the draft report to him. It's for the
11 Ministry to consult with him.

12 Q. Thank you. Could I move on just to another topic,
13 please, Auditor General.

14 If I just have a moment.

15 REALTIME STENOGRAPHER: May we take a short break,
16 please?

17 MR RAWAT: Yes, certainly.

18 COMMISSIONER HICKINBOTTOM: Certainly, Mr. Kasdan.
19 Yes, certainly.

20 Ms Webster, we have a Stenographer, and he has to have
21 a break every now and then.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: So, we'll take a
24 five-minute break before carrying on. Thank you very much.

25 (Recess.)

1 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

2 We're ready to continue.

3 MR RAWAT: Thank you.

4 BY MR RAWAT:

5 Q. Auditor General, if I could just move on to a
6 different topic, and that is the Warning Letter that was sent to
7 you on the 29th of September 2021. So, Warning Letters are
8 issued by the Inquiry as notices of potential criticisms of
9 individuals or entities that may arise from the evidence that
10 has been collected by the Commission. They are confidential,
11 and I should stress that they don't represent either the
12 provisional or concluded view of the Commissioner. Their
13 intent, and historically, they are known as "Salmon Letters",
14 but their intent is to give notice of potential criticisms so
15 that in fairness you can have an opportunity to respond.

16 Now, the letter that was sent to you as Auditor
17 General set out certain criticisms or potential criticisms that
18 arose from the evidence that had been heard by the Commissioner
19 and also in two regards: Criticisms that were submitted of you
20 by a co-participants, specifically the Attorney General and the
21 elected Ministers.

22 In addition to that, the Premier's Office submitted on
23 the 7th of September, a document which was--and we will look at
24 it in due course, but it was a response to the two reports that
25 you had issued on COVID Stimulus Packages, and given the content

1 of that and the criticisms it made of you as Auditor General,
2 the Commissioner directed that that be sent to you and you be
3 given an opportunity to respond to it.

4 So, taking these two matters in stages, the Warning
5 Letter allows you to provide a Written Response to the potential
6 criticisms, and can I confirm that you have, in fact, provided
7 such a Written Response?

8 A. I have, yes.

9 Q. And can you confirm that you are content that it
10 should form part of the evidence before the Commissioner?

11 A. I am, yes.

12 Q. And in relation to the document, the Response of the
13 Premier to the evidence in your COVID-19 Reports, you have also
14 provided--and it's dated the 4th of October--a response to that;
15 is that right?

16 A. That's correct.

17 Q. And can you confirm that you are content that should
18 form part--

19 A. I am.

20 Q. --of the evidence?

21 We will come back to that shortly can I deal with the
22 criticisms, your response to the criticism.

23 If you could just give me one moment, please.

24 (Pause.)

25 Q. You have that Written Response in front of you?

1 A. I do.

2 Q. Now, there are set out in it five criticisms. I'm
3 going to take them slightly out of order. If I could ask you
4 just to turn to Criticism 4, please, Potential Criticism 4.
5 That deals with what we've called the "School Wall Project", and
6 what I should explain is that the criticisms I'm going to
7 outline arise from evidence that other witnesses have given, so
8 the first of those is that you, as Auditor General, failed to
9 consider responses received from the relevant Ministry in your
10 Report.

11 And what you've said is that "all the responses
12 received were reviewed in the context of the Report's contents.
13 Where necessary amendments were made".

14 The second criticism, potential criticism, that's made
15 of you is that in your Report on the School Wall Project, you
16 are necessarily focused on the draft Cabinet Paper rather than
17 the Cabinet Decision itself, and you've said: "This is an
18 inaccurate statement. The Report focused on the Project's
19 compliance with the established Government's regulations and
20 budgetary controls in conjunction with the Cabinet Extract
21 received by this office".

22 Now, can you remember where you received that Cabinet
23 Extract from, Auditor General?

24 A. The Cabinet Extract would have been in the files that
25 we reviewed. And where I received it from? No, I do not

1 exactly remember where it came from.

2 Q. But in terms of the files that you would have
3 reviewed, would those have been files in the Ministry?

4 A. For this particular project, I don't think the
5 Ministry after the Hurricane had very many files.

6 I would have to actually go back and look at this. We
7 may have gotten the extract directly from the Cabinet's office
8 or it may have been sent to me from information that we received
9 from His Excellency. I'm thinking that it's from either of
10 those two sources.

11 Q. Thank you.

12 A. But I would have to verify, and we do have copies of
13 that, of the extract.

14 Q. The third is that--the third potential criticism that
15 arises in relation to the School Wall Project, is that you
16 failed to carry out any on-site interview with the External
17 Project Manager. Now, the evidence that we have is that there
18 was a project team of three, in effect, so there was an
19 Assistant Secretary within the Ministry who was the Internal
20 Project Manager; the Finance Planning Officer; and then an
21 External Project Manager, all three of whom have given evidence
22 to the Commissioner.

23 A. Correct.

24 Q. You say: "The office participated with an on-site
25 inspection of the Project with the Ministry's project officer Ms

1 Lorna Stevens on 24 July 2018.

2 "Further clarifications were received from the Project
3 Manager Mr Augustine during a telephone interview on
4 27 July 2018. The wall structure did not change between those
5 two dates."

6 But would it not have been beneficial to actually, as
7 we understand it, Mr Augustine was the person who was, firstly,
8 an architect by training; secondly, provided the Bill of
9 Quantity, and thirdly, was the person overseeing the Project,
10 would it have not been beneficial to your work to have been able
11 to speak to him?

12 A. We spoke to him. We actually had an interview with
13 him, as mentioned here, on the 27th of July. I think what
14 Ms Stevens is suggesting is that we should have actually gone
15 on-site with him and look at the wall again. The wall was the
16 same structure that we had looked at when the Auditors went with
17 her three days earlier, and took her back out there with him.
18 I'm not sure what would have been gained because it's a wall.
19 And we did actually have an interview with him. We were able to
20 ask him questions, he was able to provide clarifications. At
21 the end of that interview, I actually said to him well, we're
22 going to be sending a report to the Ministry, they will contact
23 you, and you should assist them in responding to the Report.
24 And that was said to him at the end of the telephone interview.
25 I sat through that with the Auditor.

1 Q. Just to press you a little bit on this because the
2 difference is that Ms Stevens was a Project Manager, her
3 training had come on the job?

4 A. Um-hmm.

5 Q. She had had, I think, from memory, possibly two weeks'
6 to one months' training in the UK, and that was at a relatively
7 late stage. But what you had in Mr Augustine was the person who
8 had designed it and overseeing the Project.

9 A. Right.

10 Q. A point that Myron Walwyn made in both outside the
11 hearing and to the Commissioner was that what your office lacks
12 is expertise in Quantity Surveying or architecture or
13 engineering.

14 A. That's right.

15 Q. With Mr Augustine, you would have had the opportunity
16 to speak to the person who actually designed the wall. Again,
17 would that not have been beneficial to your work?

18 A. It was a wall. The Report itself is not technical:
19 As Mr Walwyn said, we are not architects. We are not quantity
20 surveyors, but Quantity Surveying--sorry--Quantity Surveying is
21 math, so if you put a bunch of figures on a piece of paper, I
22 can look at them and see whether they make sense. But we're not
23 architects. And the Report doesn't actually try to determine
24 how much cement was actually put into the wall because that
25 wasn't--that wasn't our objective. There are certain basic

1 things that you can check with a tape measure. We checked
2 those. Is the wall actually satisfying a certain height, yes,
3 it is, no, it's not, that sort of thing.

4 Mr Augustine provided some information about the
5 footings, which was relevant, and I think that would have
6 impacted the costs, but not to the extent that it would take it
7 over to--take the Project over the Budget the way it did. It
8 would have had some sort of impact but not the kind of impact
9 that he's suggesting.

10 At that stage, I can't say that it would have been
11 really beneficial to go back up there.

12 And in fact, when we sent the draft and responded to
13 it, I think at that stage--give me a second.

14 (Pause.)

15 A. When we sent the draft and he responded to it, at that
16 stage, there might have been concerns, but he didn't respond.
17 The Permanent Secretary did. And I should be clear on this: We
18 did not get a response from Mr Augustine, we did not get that
19 detail that he sent to the Ministry. What we got was an e-mail
20 from the Permanent Secretary, a letter from the Permanent
21 Secretary, and at the bottom of that letter she put extracts of
22 what Mr Augustine would have sent to her. That's what we got in
23 terms of his submission.

24 And she didn't make a great deal of the detail that he
25 sent. But if I thought it was going to be beneficial to go out

1 there with him, we would have done that. At that stage, we
2 would have been on the site several times, and we would have
3 gone that morning to identify some of the things that we thought
4 we needed clarifications on. We did that. I think one of the
5 things that we needed to find out and really had a difficult
6 time getting from them was how many sections this wall was
7 supposed to be, and that was an important piece of information.
8 And she was able to eventually provide that when we went
9 on-site, the Auditor went on-site with her.

10 The discussion that we had with him had to do more
11 with how he--how the contractors themselves were positioned, how
12 they worked per se. One of the things he said, and I think he
13 said it here as well, was that, you know, he basically the
14 Project didn't go as was intended. If someone was ready to
15 start their section, ready to start, he would put them on the
16 job as opposed to putting it and waiting for--waiting for--it
17 wasn't sequential as was intended. If contractor three wasn't
18 ready, and contractor seven was ready, he would put contractor
19 seven to continue the Project basically. So, that's the long
20 way around. But I didn't think it was beneficial to go back out
21 there at that time. We were able to get whatever clarifications
22 we needed from Mr Augustine on the Project for the Audit at that
23 moment, and it would not have been beneficial.

24 Q. That leads on to the fourth potential criticism, which
25 is that you failed to consider responses from the architect,

1 Mr Augustine.

2 And you say that no correspondence was received from
3 him directly; is that right?

4 A. No, we did not receive anything from Mr Augustine.

5 What I understood later on--and in fact, during this
6 session--is that he actually sent--he sent his response to the
7 Ministry, which is proper procedure. He should send it to
8 Ministry, and the Ministry then extracted whatever they thought
9 to be relevant and sent that on to us. And he responded to
10 that. We took that into consideration.

11 A lot of what he said here and afterwards actually was
12 not in the Response that came to us. But again, like I said,
13 his main point about the footings being different would have had
14 some impact, but not to the extent that they are actually
15 suggesting.

16 Q. That takes us on then, it's a linked point to the
17 Airways Project because the Commissioner has heard evidence on
18 this from--

19 A. Before we go on--and I know I'm going to be childish
20 on saying that it would not have had the same effect. I
21 consider this based on the examination of the detailed Quantity
22 Surveying that was done by Public Works, whether they considered
23 the footing at the higher level that Mr Augustine suggested, and
24 we were able to look at that and compare it to what it might
25 have been. Which is why I can say it would not have had the

1 same impact that they are suggesting in terms of costs.

2 Q. I see.

3 Just moving on to what's number five on the schedule
4 of potential criticisms that arises out of the Airways Project,
5 which again, the Commissioner has taken evidence on, and it's a
6 point that Neil-Smith made. He was then the Financial
7 Secretary, and he was involved in that Project.

8 But again, you, as Auditor General, failed to give
9 proper weight to the Written Responses submitted to your Report.
10 And your response is Mr Smith-Abbott's submission was reviewed
11 and resulted in amendments and rewording of pertinent sections,
12 including, and here you gave E11, paragraphs 4, 5, 63, 69, 85,
13 and Appendix 4.1, which you note are all references from the
14 draft document. You say the Audit Report is not intended to be
15 a vehicle for individuals to voice opinion or restate facts.
16 Every effort is taken to ensure that the contents are accurate
17 without being verbose. Does that take us back to the point you
18 made that you might produce a 30-page report but get a 70-page
19 response?

20 A. That's correct, yes.

21 Q. And in this case, you don't accept that this potential
22 criticism?

23 A. No, I don't accept the criticism because his
24 submission actually did result in some changes to the Report but
25 a lot of what was submitted didn't because it wasn't supported,

1 we didn't get any information and it actually conflicted with
2 the information that we had.

3 So, in that respect, we are not going to change
4 something because someone says that it's different without
5 having evidence, without providing evidence to the contrary.

6 Q. If I take you back to criticism--Potential
7 Criticism 3, which arises out of another project which the
8 Commissioner has heard evidence on, and that's the Sea Cows Bay
9 Harbour Development Project, you produced an audit report on
10 that, which the Commissioner has heard from The Honourable
11 Julian Fraser on. And The Honourable Julian Fraser submitted a
12 response following your giving evidence in which--to which he
13 gave evidence, and he had--it was a draft version of your
14 Report, and he had various comments on it. And subsequently he
15 was a recipient of a Warning Letter, made a Written Response and
16 was called to give evidence.

17 But the potential criticism that's set out in the
18 Commissioner's Warning Letter to you is that the tone of your
19 Report was unnecessarily focused and biased towards The
20 Honourable Fraser's brother's involvement in the Project. And
21 you say: "It would be a fair statement to say that the Report
22 focuses on the relationship between Mr Earl Fraser, his company
23 (Hannah's Reclamation), and its relationship/involvement with
24 this Public Sector development.

25 "The Report attempts to explore the extent of Mr Earl

1 Fraser's financial engagement with this Project. The reasons
2 for this are clear.

3 "The subject Minister was embarking on a project to
4 expend public funds to develop property owned by in part by
5 immediate family members.

6 "This potentially represents issues of both conflict
7 of interest and a related party activity. It would be negligent
8 for the Audit Office not to examine and report on this activity.

9 "The other reason was that the public records for this
10 Project were virtually non-existent in the Ministry executing
11 the Project and the Department of Public Works that were charged
12 with overseeing it.

13 "In a matter such as this where potential conflicts
14 exist, it is imperative that there is full transparency on every
15 aspect of the Project. The Project failed in this regard."

16 Taking that forward, where you have limited records as
17 in this instance you say you had, is it not incumbent on the
18 Audit Office, on your office, to be careful about the conclusion
19 that it reaches?

20 A. Where we have limited--in this case, where we have
21 limited information from the Ministry and from Public Works, we
22 are then forced to get information from elsewhere, and I think
23 in such cases as this, it's incumbent on the office to actually
24 make an effort to put out the information, and ensure that--to
25 try to ensure that there is some sort of transparency on the

1 Project. To allow a project such as this to occur and not have
2 any kind of accountability or transparency, I think, would be a
3 travesty because the ordinary man on the street would be looking
4 at this and thinking that--look at the Minister using public
5 money on his family's property. And if we can look at the
6 Project and say, okay, everything was done, yes, perhaps part of
7 it was family property, but there was full transparency and
8 everything was above-board, that would say a lot about the
9 Project. But in this case, we have a Ministry that's making
10 payments on a project, and the people who were making the
11 payments can't tell us anything about the Project. The files in
12 the Ministry don't tell us anything of the Project.

13 The main report, the Technical Report upon which this
14 is based, the Ministry does not have a copy of this but they're
15 still making payments on this Project. That's an issue.

16 Q. But just to be clear, when you refer to the main
17 technical project, Technical Report, did you see that Report?

18 A. We requested it, and the Ministry didn't have it.

19 Q. But, I mean, the point I'm making to you is that, if
20 you--if your point is that transparency is important and the
21 public should understand what is going on, doesn't it mean that
22 you do have to take care because if something is made public, it
23 affects reputations?

24 A. Well, in a case like this, we can always say what we
25 know, and I can say to you we didn't get that Report and the

1 Ministry didn't have it because that's what we know. I can't
2 tell you what is in the Report because I don't know what was in
3 the Report.

4 I can say to you that certain sections of the
5 dock--the Project were being handled by Hannah's Reclamation
6 because that's what we know, the Treasury Records say this.

7 And I think one of the corrections I made to the draft
8 report was where I had Mr Fraser's name in the Report and
9 Honourable Member said it shouldn't be Mr Fraser, it should be
10 Hannah's Reclamation, and I made that change. But the Treasury
11 Records I show making payments to Mr Fraser and not Hannah's
12 Reclamation, but I took his point and I made the change in the
13 Report. That was one of the changes.

14 So, in cases like this, to answer your question, where
15 there are lapses in accountability and transparency, we can only
16 report what we know and comment on the fact that we don't have
17 this other information which is pertinent and that it should
18 actually be in the Ministry, it should actually be with the
19 Government because the Government has actually paid for this
20 Report, a substantial amount of money for this Report.

21 Q. But it's also right, isn't it, that it's not the job
22 of the Auditor General to make things public?

23 A. It is the job of the Auditor General to make things
24 public. That's why we have an Auditor General.

25 Q. But your job is--I'm not disputing--

1 A. It's about accountability. Our job is about
2 accountability and transparency. Those two things are making
3 things public.

4 Q. But under the statute, when you produce a "value for
5 money" report, your task is to submit it to the Minister.

6 A. Yes.

7 Q. Where you produce a Section 20 Report, your task is to
8 submit it to the Governor?

9 A. Right.

10 Q. It is not part of the role of the Audit Office to
11 decide what to do next?

12 A. This Report actually went to the Ministry and was
13 tabled.

14 Q. But the point I'm raising with you is that where--when
15 you speak of the Audit Office being involved in letting the
16 public know is that not an example of you over-reaching your
17 office?

18 A. It is not. That is oral. Oral is to let the public
19 know. We put the information in the Reports, and the
20 Reports--there's a process to which reports are to be made
21 public. I think by not putting the information in the Reports
22 or not doing report, then that's where the whole transparency
23 and accountability thing falls apart.

24 Q. Can I ask you, if we turn to--I think I'm going to ask
25 you to look at the--you should have a COVID bundle. It will

1 be--I think if you look to your left, Auditor General.

2 Before we finish with the Warning Letter, we might be
3 going over this ground again as we get into the Response, but to
4 give the context, the Commissioner has a protocol by which
5 co-participants can make potential criticisms of witnesses, and
6 the Attorney General and the Auditor General did so in respect
7 of you, and the Commission has determined that, in fairness, you
8 ought to be given an opportunity to respond.

9 So, if you look--if you look at--give me a moment.

10 (Pause.)

11 Q. Page 235, Auditor General, this is part of the
12 Response of the Premier's Office, to, not just your Reports on
13 the COVID Stimulus Packages, but also a Report prepared by the
14 Internal Auditor. And at page 235, in paragraphs 93 to 95, the
15 Response is critical of your use of language in your Report, and
16 specifically, in the Report that you produced on stimulus grants
17 to farmers and fisherfolk, which is June 2021, what's said, and
18 what you said--and this was I think in your executive
19 summary--"funding requests submitted by farmers were inflated by
20 the Ministry, Premier's Office, prior to payment. This resulted
21 in individuals receiving payments that were substantially
22 greater than what they had requested".

23 And what's said, and I'm going to summarise it--the
24 use of that wording was irresponsible, unwarranted, and
25 pejorative.

1 Now, we're going to look at your full response to this
2 document in due course, but I just wanted to give you an
3 opportunity to respond directly to that before we get into the
4 detail.

5 A. The use of the word "inflated"?

6 Q. Yes.

7 A. The use of the word "inflated" in this particular
8 instance is actually very deliberate because what we saw and
9 were quite alarmed at were statements that went to the Treasury
10 that had the farmers listed and the amounts appended to their
11 names different to the amounts that the farmer had actually
12 requested.

13 Substantially inflated in many cases, the farmer would
14 ask for \$300 or \$350 to buy soil or to buy material, and we have
15 in their bundle you would see where the actual requests were
16 made, \$350 to buy materials, and the statement that went to the
17 Treasury had that farmer listed as \$13,000 to buy materials,
18 \$13,000 to buy soil. He might have asked for \$75 to buy, well,
19 700--I think I made an example here of one who asked for some
20 money to buy a weed-whacker. Just to clarify, I'm not sure
21 exactly where it is in this, but someone would have asked for
22 \$300 to buy a weed-whacker. The documents that went to the
23 Treasury listed this person as asking for \$13,000 to buy a
24 weed-whacker. How is that not inflated? Where can we buy a
25 weed-whacker for \$13,000?

1 And if I were the Accountant General, I would have
2 some questions on those.

3 And I understand afterwards that they had some sort of
4 banded system, but the way this was done, the way it was sent to
5 the Treasury, I think that somebody needs to answer for that.
6 The amounts were actually inflated and were misleading in terms
7 of what we were making payments for.

8 And since nobody was forthcoming on how the amounts
9 were derived, this is what the Treasury was receiving: Somebody
10 wants to buy a weed-whacker for \$13,000, \$13,500.

11 Q. The second criticism that's made arises in relation to
12 your other report of June 2021 to--which was on religious
13 institutions, civic groups, private schools and daycares. And
14 what's said is--and we can see this at paragraph 130, which we
15 are going to find that at page 241. If you look down at the
16 bottom, a line from your Executive Summary is set out there, and
17 what the criticism is is that your Report exceeded the scope of
18 the matters properly within the Auditor General's functions by
19 stating the issuing of unsolicited and extravagant public grants
20 to religious institutions presents a threat to the political
21 independence of these entities. And what's said is that--and
22 this is said in the Response--is "the Government does not accept
23 this conclusion which is gratuitous, misconceives the policy
24 context and rationale, and essentially amounts to a statement of
25 the Auditor General's political opinion of the Policy.

1 "In unique circumstances of acute social privation and
2 hardship, the alleviation of which churches are widely
3 acknowledged to carry out an important role, the Government does
4 not accept that validity of that opinion for which no evidence
5 is cited".

6 And I should add to that that one of the points that
7 The Honorable Premier made was of the importance that churches'
8 role--that churches play in terms of the social fabric of the
9 BVI and that they have done so historically and they continue to
10 do so. And so, can you justify your use of such language?

11 A. This is 130?

12 Q. Yes. Paragraph 134, if you look--

13 A. 134. Okay.

14 And I think what happened here is the Premier's Office
15 is their response is taking things out of context, and the Audit
16 statement actually speaks directly to--first of all, I would
17 agree that churches do play an important role in our society,
18 but this Audit statement speaks directly to--

19 (Phone rings.)

20 A. --the churches who did not apply, who didn't show any
21 interest in being a part of this programme, and what happened is
22 the Government then took \$1 million and gave it to these
23 individuals, even though they expressed no interest, no need,
24 and no requirement for this.

25 So, in looking at this, we were looking at whether

1 this was actually a good--whether it met the requirement of
2 economy for the Government because if you have an entity that
3 doesn't have a need, then why are you giving them \$1 million?
4 What is the purpose of that? What is the behind--what is
5 potentially behind that? And how is that going to be perceived?

6 And these are things that you have to look at in a
7 real-world situation, this money was unsolicited. They didn't
8 ask for it, and we are giving it to them, and this is the whole
9 point of this particular query, audit query. We have all of
10 these churches who didn't ask for assistance, who probably
11 didn't need the assistance, but we're giving them a million
12 dollars for a reason that wasn't stated in the Policy based on
13 what the Premier is saying.

14 And this is it--it's as if the Policy migrated without
15 anybody knowing that it had migrated.

16 Q. When you say a policy migrated, what do you mean by
17 that phrase?

18 A. Well, my understanding of how policies work is that
19 they're established in Cabinet. The Policy us established in
20 Cabinet and the Ministers are then required to carry out that
21 policy in accordance with the intentions of Cabinet, so you have
22 a policy that says that we're going to give churches and schools
23 money to assist them with their re-opening costs, and then a few
24 months down the road we're hearing that oh, we changed the
25 Policy, Cabinet didn't change it. I cannot--I have not received

1 anything from Cabinet that says that they have changed the
2 Policy. But the Ministry is saying that the Policy was changed,
3 and it was not to provide a social function.

4 But then you had application forms going out, and no
5 one was asked whether or not they actually provided this
6 function. Why are we giving away money to institutions who may
7 or may not be actually performing this function. We haven't
8 asked them if they'd do it. We haven't asked them if they do,
9 in fact do it, how many people they are catering to. Instead,
10 we're just distributing grants without any kind of supporting
11 information to say that this is actually necessary.

12 And this is what this comment was getting to. It
13 wasn't attacking the churches. It wasn't attacking their role
14 that they play in the society. We all acknowledge that they do
15 play a role. But it was looking at the application of the
16 money, whether the Government funds were properly applied, and
17 whether it was applied within the confines of the Policy that
18 was set out, and that was publicised. This is why we're going
19 to be issuing stimulus funds. And if that policy had changed,
20 then that change should have been made known to everyone so that
21 they would know what the possibilities are.

22 Q. Can I take you, please, to page 208 in this bundle.

23 Now, we went through your two COVID Reports when you
24 gave evidence on the 28th of June. We have gone through the
25 chronology with Dr O'Neal-Morton when she gave evidence

1 recently. I just want to show you some of that chronology very
2 quickly.

3 You have here an e-mail dated the 25th of May 2021
4 from yourself to a number of Permanent Secretaries, Permanent
5 Secretary of the Premier's Office, Permanent Secretary of
6 Agriculture and Fisheries and the Director of Agriculture and
7 Fisheries, copying in the Financial Secretary. And you set out
8 your draft report on farmers and fisherfolk, you attach it, and
9 you say, "Please let me have your comments on the contents of
10 the same by the 8th of June".

11 If you go through to 206, you have a letter from
12 Dr O'Neal-Morton dated the 31st of May 2021, and it says--it
13 refers to that e-mail we just looked at and the telephone
14 conversation on Thursday the 27th of May and then the letter
15 continues to acknowledge there that there had been shortcomings
16 in from the Premier's Office in providing a timely response but
17 refers to the impact of dealing with requests from the
18 Commission of Inquiry and that that has priority over other
19 matters, recognizes that your audit is a commendable exercise
20 and explains that Dr O'Neal-Morton wishes to cooperate, but says
21 that she needs three weeks to respond to the Draft Audit Report
22 on farmers and fishermen, but adds also that on the review, on
23 what she describes as a cursory scan of the Draft Audit Report
24 that she has detected some items and information which, to her
25 knowledge, are ongoing. And the letter adds that the Programmes

1 are ongoing, and there is an Internal Audit process which is
2 also ongoing.

3 If we go to page 203, the top there, Auditor General,
4 you say, and this is in response, I think, to Dr O'Neal-Morton's
5 personal assistant, you confirm that you are willing to extend
6 the date for a response to your draft to the 15th of June 2021.
7 If we go through to--have you--sorry to jump around, but if we
8 go forwards in the bundle to 1109, which is towards the back,
9 what we see there is that again to--this time--again to the
10 Permanent Secretary at the Premier's Office, Permanent Secretary
11 of Education, Culture and Youth Affairs and the Permanent
12 Secretary of Health and Social Department, copying the Financial
13 Secretary in. You now provide your Draft Audit Report on
14 stimulus grants to religious institutions, civic groups, private
15 schools and daycares and you asked for a response on that by the
16 19th of June 2021.

17 Again, moving back into the start of the bundle, if
18 you go to page 201, we see there on 14th of June 2021 that--and
19 in relation to farmers and fishermen, Dr O'Neal-Morton writes to
20 you to discuss the matter of submitting feedback to you. On the
21 same page you explained to Dr O'Neal-Morton that she can send a
22 response via e-mail.

23 And if you go to page 200, which is the next page. On
24 the same day, so we're still on June the 14th, 2021,
25 Dr O'Neal-Morton explains by e-mail, that she's tried to contact

1 you, and I think she's requesting of you more time because she's
2 currently fulfilling several requests from the COI. She also
3 refers and says she's indicated to you previously that they're
4 short-staffed. She does not have either of her Deputy
5 Secretaries in office, other senior staff have taken annual
6 leave.

7 She explains that the Premier's Office is working on
8 the Response, but it would not be possible to put it in for
9 tomorrow, the 15th of June, and points out that it's proving a
10 challenge because her office now has to respond to a second
11 request from yourself.

12 And then if we go to page 202, we see that
13 Dr O'Neal-Morton now writes to you and says--explains the
14 significant capacity issue that the Premier's Office is
15 confronted with in meeting your deadlines of 15th and 19th of
16 June, not just in terms of manpower but in terms of high demands
17 of requests from the Commission of Inquiry, and also dealing
18 with requests from the House of Assembly. And she asks for an
19 extension of one week.

20 If you go back to 200, what you say--and this is on
21 June the 16th, is that the typical response time allowed for
22 draft reports is two weeks. You say: "We need to complete
23 assignments in a timely manner to allow us to proceed with our
24 work programme. Please let me have your response to both
25 Reports by Monday the 21st of June 2021. After that date the

1 Reports will be finalised".

2 There is then some further correspondence and you
3 confirm that the Reports have to be in by the 21st of June.

4 And if you go, please, Auditor, to 196, this is a long
5 e-mail on the 21st of June to yourself with respect to your
6 deadline for responding to your Draft Audit Reports on farmers
7 and fishermen and the COVID economic support to daycares,
8 preschools, private schools, churches and religious Programme
9 Reports. Dr O'Neal-Morton points out that her office has been
10 working assiduously to provide a meaningful response to these
11 draft documents, and she highlights the importance of accurate
12 reporting of figures, makes the point there's been substantial
13 progress on a meaningful response not withstanding factors such
14 as staffing, other responsibilities in dealing with the COI.
15 Explains that the normal and prescribed auditing process had not
16 yet been completed and staff are working, therefore, on
17 unaudited records, and says that the deadlines are unreasonable.
18 This is the deadlines that you've set, and that she will need
19 until the 28th of June to complete the Response.

20 At 195, you acknowledge receipt of that e-mail, and
21 you say: "Please forward your response with the information
22 already compiled".

23 Dr O'Neal-Morton responds to say, "as you would be
24 aware, it is professionally inappropriate to provide incomplete
25 information, especially when dealing with unaudited data. This

1 is a recipe for chaos that I would very much like to avoid. As
2 I indicated, we're quite optimistic that the Responses will be
3 completed by June 28th, 2021.

4 "If we are able to finish before that date, we will
5 kindly submit the Response to your good office".

6 And on the 21st at 9:15 p.m., you submit your final
7 versions of those two Reports to the Governor--because I think
8 they're section 20 reports--aren't they?--you've been asked to
9 do them by the Governor--copying in Dr O'Neal-Morton and the
10 Premier and another Permanent Secretary.

11 Now, I wanted to take you through the chronology, and
12 I haven't taken you through the correspondence that related to
13 you trying to obtain information but it all leads to this
14 question because which is really, why the rush? The first point
15 that the evidence that the Commissioner has heard from
16 Dr O'Neal-Morton and from others, including Glenroy Forbes, is
17 that the perception was that the role of the Auditor General is
18 to do a post-audit, and so what Dr O'Neal-Morton explained to
19 the Commissioner, was that her understanding was that whilst the
20 Internal Auditor--the Internal Auditor goes first, the Auditor
21 General follows, and so that's the first element of why the
22 rush.

23 In these circumstances, why was there a need for you
24 to report by the 21st of June?

25 A. There wasn't a need for that particular date but there

1 was a need for us to do the Audits at this time because it was
2 considered to be--this type of audit is considered to be high
3 risk because it's largely discretionary. And for us, where you
4 have a high-risk situation, it's better to get in early and have
5 a look at it rather than to come in afterwards and to basically
6 be alarmed at what happened. And by actually being involved in
7 the process, you're actually able to make recommendations early
8 and possibly get improvements early.

9 And in fact, there is no rush here because from the
10 beginning, from the time the Programmes were announced, I sent a
11 letter to everyone, all the Permanent Secretaries that we're
12 going to be doing--we're going to be auditing this, send us the
13 Policies, send us whatever we will need, the databases to look
14 at, we will be looking at this.

15 And the whole point of putting that out there is to
16 let them know that this is going to be--this is going to be
17 under the microscope, and that we expect that the Programmes
18 will be carried out with a certain level of responsibility and
19 due care and insure that government spending was completely
20 above--above line, above-board.

21 So, from the beginning, everyone was told that we were
22 going to do this Audit, they were all told that we were going to
23 be doing this Audit. In fact, Dr O'Neal-Morton responded to
24 that e-mail, that letter that we sent out at the beginning,
25 saying that she was going to cooperate and that she would send

1 the information, something to that effect.

2 And it's not the first time that we've gotten involved
3 in the process early, and sometimes it's actually just necessary
4 to get involved early. In this case, with \$7 million being
5 broken down in all kinds of ways, it just made sense for us to
6 get an early look at it early and have a report ready possibly
7 to be able to assist the Ministries, the Departments that were
8 working on this.

9 Q. Go on, please finish.

10 A. And so, I am surprised that they're acting surprised
11 that we are--that we actually did this Audit, because they were
12 told that it was happening. They were told from the beginning
13 that it was happening.

14 Q. The timing--I mean, where you have a section 20
15 request from the Government, does that affect the timing of the
16 Report or the timing of the work that you can do?

17 A. It does because if the Governor is making a request,
18 then you would expect to give it some priority. Why? Because
19 he would have his own concerns aside from us having concerns
20 about how the Programmes might be run, he probably would have
21 his own concerns for wanting it to do that.

22 Q. You've described this as high-risk spending because
23 it's discretionary. Where does the phrase "high-risk spending"
24 come from?

25 A. It's a phrase that's common in audit actually.

1 Q. But going back to this and taking it in a different
2 way, you see that Dr O'Neal-Morton is asking for more time. You
3 would surely have appreciated the circumstances in which she was
4 working?

5 A. Um-hmm.

6 Q. And I accept it's probably common--it would have been
7 common across the--every Ministry, every Department because you
8 have Public Officers working under enormous pressure in the
9 midst of a pandemic, short-staffed for all sorts of good
10 reasons. Doesn't that all lend itself to a decision that you
11 should go more slowly?

12 A. No, it lends--it puts us in a position where--you have
13 seen two reports. There are other reports that we have to
14 finish, and it puts us in a position where we have to get these
15 out of the way so that we can proceed with the others. And if
16 we have a number of reports just pending and not being able to
17 complete those, then we--not being able to complete them, not
18 being able to issue them, then we have achieved nothing. So,
19 our objective is actually to finish the Report within a
20 reasonable amount of time, and then move on to the next.

21 In terms of giving additional time, I actually did
22 give additional time to Ms--Dr Morton a couple of times. It was
23 extended, I think, twice. And I think if she--if we had gotten
24 some good faith in her response where she's saying that she has
25 compiled--made some substantial process--progress in compiling

1 this, if she was able to send me part 1 of whatever she's
2 compiled, for instance, then I can see, well, she's acting in
3 good faith. But saying to me, Down the road, I need more time.
4 And then when you get more time saying again to me, I need more
5 time we're working on this, and I need more time.

6 And after a period of almost a year, not getting any
7 information from her, there is this--there is an absence of good
8 faith because I don't know that I can put any weight on her
9 words that I'm going to get this in a week or I'm going to get
10 this in the next week when I extend it or the next week after
11 that.

12 So, I think she has her job to do, and I have mine to
13 do, and for us it's to finish the Audits within a reasonable
14 amount of time, and to give people a chance to respond, and this
15 was the only chance to respond. And to date, I think she said
16 there were issues in the Reports, we have not received what
17 those issues are.

18 Q. Well, can I take on--take you to that because if you
19 look at page 189, you, Auditor General, having submitted your
20 Reports to the Governor, are sent a letter on the 28th of
21 June 2021 by Dr O'Neal-Morton, and that she copies in the
22 Governor, the Financial Secretary, the Director of Internal
23 Audit, and the Attorney General, and she explains in that letter
24 that she's providing to you a copy of the Preliminary Report
25 prepared by the Premier's Office on the expenditure of COVID-19

1 stimulus funds, July 2020 to May 2021.

2 A. Um-hmm.

3 Q. Explains that it serves as an addendum to the final
4 Special Audit Reports prepared and circulated by your office and
5 makes the point that from prior communications, that she had
6 indicated that significant issues were found with your Reports,
7 hence a comprehensive response was needed, and she adds
8 (reading), You would also recall that I indicated in our various
9 communications that the Premier's Office had been in the process
10 of preparing our Preliminary Report on the various COVID-19
11 stimulus reports that were implemented by the Premier's Office.
12 However, due to resource constraints, the demands placed on
13 these limited resources to comply with requests from the ongoing
14 Commission of Inquiry, the Preliminary Report could not have
15 been completed before today's date, the 28th of June.

16 And she returns to the fact there was an internal
17 audit process which had not had the opportunity to run its
18 course and that the figures, therefore, in the unaudited report
19 are--in the Preliminary Report are unaudited, as she points out
20 is the case with your Audit Reports.

21 A. Before that, if we issue a Report, it's audited.

22 Q. Well, add a little bit more to that.

23 A. Yes.

24 Q. In what way is it audited?

25 A. It has undergone an the Audit review and the figures

1 that we have in there are the figures that we were able to
2 verify against the records that were available. In that way,
3 it's been audited. We have been able to--we then can trace
4 whatever we have in our Report back to documents that we looked
5 at.

6 Q. Now, if we look at that Report, it's at page 90--

7 COMMISSIONER HICKINBOTTOM: Just before we move on,
8 Mr Rawat, yes, if we look at page 195, Ms Webster, I mean, we've
9 looked at this already. This is an e-mail from Dr O'Neal-Morton
10 to you of the 21st of June, and what she says here is (reading):
11 As you'll be aware, it's professionally inappropriate to provide
12 incomplete information, especially when dealing with unaudited
13 data.

14 So, this suggests that Dr O'Neal-Morton isn't
15 providing you with the information because it isn't audited, but
16 you are the Auditor. I know that we had the Internal Auditor as
17 well doing a consultative audit, but I just found that
18 difficult--conceptually difficult.

19 THE WITNESS: I cannot--Commissioner, I cannot explain
20 that phrase to you because I don't understand it, either.

21 COMMISSIONER HICKINBOTTOM: Okay. No--thank you very
22 much.

23 BY MR RAWAT:

24 Q. If we turn up page 90, please, Auditor General. This
25 is the first page of the Report from the Premier's Office. 28th

1 of June 2021, it's dated.

2 If you turn through to page 92, you'll see what it's
3 written as--in its purpose is that it should serve as an
4 addendum to your Reports and should accompany them whenever
5 they're circulated or referenced.

6 Now, just to return to the practice, I think when you
7 gave evidence on the last occasion, you explained if new
8 information came to light after you had finalised and issued a
9 report, then you would issue an addendum.

10 A. Yes.

11 Q. If you considered it appropriate; is that right?

12 A. That's correct.

13 Q. Have you--have you ever done--adopted the practice
14 that Dr O'Neal-Morton is suggesting, of annexing--

15 A. No, we have not.

16 Q. And why would you not do that?

17 A. Because we have not verified any of the information in
18 here, and, first of all, we decide what is attached to the
19 Report. We can't have some outside entity deciding what will be
20 attached to an Audit Report. That would be irresponsible.

21 But for us to put anything in as an addendum, we would
22 have to go through and verify everything and satisfy that it's
23 up to a certain standard.

24 And we looked at this, and it didn't address the
25 points that we were making in the Report. There was no efforts

1 to actually look at the issues that we highlighted and address
2 those or even explain them. This is just a Report, their Report
3 of what they saw their programme to be. At least that's how I
4 saw this.

5 Q. Can I break that down in two ways, please: Firstly,
6 that it's this point: You say that it's not your practice to
7 append other material to your Report if you haven't had an
8 opportunity to verify it. But isn't there a benefit in that, I
9 mean, to quote the Premier, there are three sides to a story--

10 A. Um-hmm.

11 Q. --your side, my side, and the truth. And his--

12 A. Actually, my side is actually the truth.

13 Sorry.

14 Q. Well, it's the Premier's phrase, but the point that
15 he's making is that if you had appended this document to your
16 Report, then it gives a fuller picture, and the members of the
17 public are better able to understand what is going on.

18 A. Well, the Premier and the Premier's Office, they have
19 lot more leeway in terms of being able to make their information
20 public. And if this is their Report on the programme, then I
21 think they should use that Report and make it public and
22 certainly as much as they want, as much as they can, and use it
23 as their explanation of the Project. But it's not something
24 that is going to be appended to an Audit Report because it
25 doesn't address the issues that are in the Audit Report.

1 And, in fact, if you're going to send me something to
2 address the issues in the Audit Report, it should be specific.
3 It should refer to what you're addressing, why the information
4 is off, and provide me with evidence. This is not evidence.
5 This is simply not something that we can append to our Report.

6 Q. I mean, did you give this Report proper scrutiny?

7 A. I went through it, and I didn't see it as something
8 that satisfied a response to the issues that we based on the
9 Report. The issues that are raised are specific.

10 And this is an example of what I was referring to when
11 I said to you we would issue a report, and we would get back
12 something--issue a draft and get back something that is vaguely
13 related, and in a lot of cases it's just something completely
14 tangential--off on a tangent, and people expect that we would
15 just take this information and put it into our Report, and it
16 doesn't serve any purpose.

17 They have the wherewithal to put this information out,
18 say, This is what our Programme did. It might be different from
19 what we have but, you know, it's their prerogative. They can
20 put this information out, but it's not a part of my Report.

21 COMMISSIONER HICKINBOTTOM: And just picking up a
22 point that I made earlier, Ms Webster, on page 92, which is the
23 front page, the notes at the bottom say: "This is a Preliminary
24 Report. The figures contained in this Report are unaudited and
25 are subject to revision pending the internal auditing process

1 and final audit".

2 So, it seems to me that there's sort of a conceptual
3 mismatch. You produced an audit report; I mean, for good or
4 will, that's what your Report was. But this is a report which
5 is not an Audit Report. I mean the figures are not audited.
6 Your figures were audited.

7 THE WITNESS: We can support our figures based on the
8 information that we got from the Treasury, information that we
9 got from other sources. This was not an adequate response to
10 the Audit Report. And possibly, I'm not sure why this was done.
11 I don't know whether it was the intention was to simply attempt
12 to overshadow the issues that were in--I do not understand why
13 this was done this way.

14 And this is probably why it was unable to--the
15 Ministry was unable to meet the deadlines that were set for the
16 Response. If they had actually addressed the issues that were
17 in the Audit Report, they could have saved a lot of time and
18 actually possibly get a Report that they thought was more to
19 their liking, possibly. But spending a lot of time doing a
20 report and then expecting us to add this to our work when we
21 haven't checked the figures is completely misguided. This
22 is--so that's the best word I can use for this. This is
23 misguided.

24 BY MR RAWAT:

25 Q. But shouldn't it have given you pause for thought,

1 though, Ms Webster because if, for example, you go to
2 page 139--141, for example, actually, this is a section of the
3 Preliminary Report from the Premier's Office where it's dealing
4 with farmers and fishermen, and it makes the point at 141 where
5 it says basic formula applied, and that gives you the fact that
6 there is a banded process being used.

7 A. Right.

8 Q. So isn't that--

9 A. Where are you reading from?

10 Q. I'm on page 141. You've got, I think, four paragraphs
11 down beginning "The basic formula applied".

12 A. Yeah, but we have that in our Report. We actually
13 said that payments were made in these various bands. This does
14 not explain what the bands were or how they came at the amounts,
15 and this is what I mean.

16 If you're going to put this in here, why not say--in
17 fact, that's what we would expect to get back in terms of a
18 response to our Report: information as to how they got to these
19 bands, why they use the criteria that they did, and how this was
20 beneficial. That's what we would get back. Saying exactly the
21 same thing as we have in our Report isn't helpful.

22 Q. So, your position is that this didn't add essentially
23 to the knowledge that you could use or the information that you
24 could use to produce a report.

25 A. It didn't add to what we had, and it didn't address

1 the issues that were brought forward.

2 COMMISSIONER HICKINBOTTOM: So, are you really saying
3 that whatever value this document may have in other contexts, it
4 sorts of passed like a ship in the night with your Report? It
5 didn't really engage with the--

6 THE WITNESS: It didn't. It's as if they didn't read
7 the Audit Report and they simply went ahead and did something
8 completely separate and then asked us to add this to our record.

9 But they have the wherewithal and the means to
10 actually write their Report and put it out the same way that we
11 would put out our Report. I don't understand why there is this
12 need to add this other report when it doesn't address what we
13 brought forward in ours, which is what I really would have
14 liked, if they had looked at issues and say, okay, that might be
15 the case but it's because of this or because of that. Give us
16 explanation, and this is the supporting information we have for
17 that particular issue that you highlighted there.

18 BY MR RAWAT:

19 Q. And if you had been given such explanations, what
20 would you then have done?

21 A. We could incorporate some of those explanations if, in
22 fact, we could verify that that was the case.

23 If you said to me the policy was changed, then the
24 Policy must have been changed in Cabinet. Do you have a copy of
25 that Cabinet Paper? Send it to us. Then we can make that

1 change in our Report.

2 COMMISSIONER HICKINBOTTOM: So, just on this example
3 that Mr Rawat has referred to about the banding for the farmers
4 and fishermen, putting together the various strands that you
5 referred to, what, as I understand your evidence, what you would
6 have found helpful in response to your Report would have been
7 things like, firstly, as you just said, the--any document,
8 Cabinet Decision or other document, setting out the change in
9 policy--

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: --so that instead of so
12 that you had a banded scheme as opposed to a scheme based upon
13 applications--

14 THE WITNESS: That's right.

15 COMMISSIONER HICKINBOTTOM: Secondly, the criteria on
16 which the--well, how the bands were calculated, the criteria on
17 which they were calculated and how they were calculated.

18 And as I understand your evidence, if you'd received
19 those, that sort of further information, then that is something
20 which you may have wished to incorporate in the Report.

21 THE WITNESS: That's something we could have
22 incorporated into the Report, but I should add that that
23 information was actually presented in all of the bundles--in the
24 bundles that came afterwards, Commissioner, and we had some
25 issues with--we had some issues with how it came about the

1 criteria because we didn't understand some of those, and even if
2 I hadn't gotten those, I wouldn't--I would actually need
3 additional clarification because the logic behind how they came
4 up with these bands, I think that needs to be explained.

5 COMMISSIONER HICKINBOTTOM: So, having seen the
6 explanation on how the bands were arrived at, you--on what
7 you've seen, you still remain unconvinced.

8 THE WITNESS: I would still need further
9 clarifications.

10 COMMISSIONER HICKINBOTTOM: You still need further
11 clarification and evidence.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: Thank you very much. I
14 understand.

15 BY MR RAWAT:

16 Q. Aside from this--and I know we've referred to what I'm
17 calling the Premier's Office's Response, but aside from this
18 Preliminary Report, have you had any further evidence or
19 information submitted to you directly as Auditor General?

20 A. From the Premier's Office, no.

21 Q. But can I now take you to page 191 in the bundle,
22 please. On the same day that the Preliminary Report from the
23 Premier's Office was sent to you, you appeared before the
24 Commissioner to give evidence on a number of the Reports that
25 you had issued on various projects, and this is a letter sent to

1 you on the 29th of June from Dr O'Neal-Morton, and it's headed
2 "Further Addendum to the Auditor General's Special Audit
3 Reports", and this letter takes issue--it's something I'll come
4 back to, if I may, but it takes issue with the evidence that you
5 gave at--on the 28th of June to the effect--and we see
6 that--that the Premier's Office was uncooperative with your
7 office. And Dr O'Neal-Morton doesn't mince her words. She says
8 that your statements were untrue, and she then evidences e-mail
9 exchanges between your office and her office.

10 She explains that she had sought the advice of the
11 Attorney General because it was her understanding that the
12 initiatives would be--this is on page 192--would be audited by
13 the Internal Audit Department, and that should be--and what she
14 was seeking advice on from the Attorney General's Office
15 was--Attorney General's Chambers--forgive me--was whether the
16 Internal Audit procedure should not--should be completed before
17 a post-audit was done because she was confronted with
18 simultaneous audit requests from both the Director of Internal
19 Audit and the Auditor General, and that advice wasn't
20 forthcoming until the 25th of June, some four days after you
21 finalised your Reports and submitted them to the Governor.

22 And so, what Dr O'Neal-Morton again repeats is that
23 there were numerous factual inaccuracies observed in your
24 Reports, and that these would be more efficiently clarified in
25 the Report being prepared by her office which is the Report

1 we've just looked at. And so, in total, she asks that this
2 letter form a second, a further addendum to your Report.

3 Now, we'll come back to the question of cooperation in
4 a moment, but it's this, it's a question of timing, Auditor
5 General, because 21st of June you submit your Reports to the
6 Governor. 28th of June, you're appearing in front of the
7 Commissioner to speak to those Reports; and, in the course of
8 that you say--and this is something that Dr O'Neal-Morton in her
9 own evidence has explained to the Commissioner she disputes
10 strongly--you say that the Premier's Office was uncooperative
11 with you.

12 It might be suggested to the Commissioner that the
13 timing of your completion of your Report was quite convenient,
14 and that you essentially rushed to complete your Reports on the
15 21st of June so that they would be ready for you to use in front
16 of the Commissioner.

17 A. I would find it difficult for anyone to even suggest
18 that.

19 My understanding of this process is that the
20 Commissioner can ask for any information, whether or not it's
21 complete or otherwise, and I think we received the request
22 asking which reports were complete, and this was among those
23 that were completed and they were forwarded. This together with
24 a number of other reports, and I think this was only --these
25 reports were only two of many that were discussed.

1 If there were other COVID reports that had been
2 completed by our office, those probably would have been sent as
3 well, but as the case may be, these were the only two.

4 I actually do not understand that. I can't say that I
5 understand that, why they would say that, that we rushed the
6 reports so that it could be ready for the COI.

7 The normal amount of time for a draft report is two
8 weeks. We gave her--we extended that twice, and she had, I
9 think, almost a month to respond to these reports. A month.
10 And instead of responding, we just got this thing where it was
11 just being kicked down the road further and further, and nothing
12 was coming back to us.

13 And, I mean, based on that, I could be still sitting
14 here waiting for a response from the Ministry, from the
15 Premier's Office on these Reports because of the number of
16 excuses that I was getting, and that's not satisfactory. The
17 whole point of doing the Report is so you can finish it and
18 issue it.

19 COMMISSIONER HICKINBOTTOM: Could I ask you a slightly
20 different question. We now know--because we've seen the Report
21 that we've looked at, this is the Report from the Premier's
22 Office--we now know what you were going to get as a response to
23 the Report. You'd asked for a response to the Report. We now
24 know what you would have got. Had you got that earlier, would
25 that have affected the Report that you issued?

1 THE WITNESS: No, it would have raised some additional
2 questions because it doesn't answer--well, basically my next
3 question for them would have been: Can you please address the
4 issues that were made in the Report? Because this doesn't. I
5 can't use this information. I can't--it goes back to people
6 saying the Auditor General doesn't take our responses seriously.
7 There isn't anything in there that I could take and add to the
8 Report that would add value to it. And there is no evidence
9 that's been sent to us to address the issues that we made in our
10 Report so that we could actually consider making changes. If
11 you send us evidence that contradict what we have, then
12 certainly I'm open to looking at that, and I think I said that
13 to her a couple of times, kindly send us your response and
14 supporting evidence so that we can, where necessary, make the
15 changes.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 MR RAWAT: Commissioner, I wonder if I could ask for a
18 short break at this point.

19 COMMISSIONER HICKINBOTTOM: I was thinking that
20 probably we should have a short break for the Stenographer.

21 Yes, five minutes, Mrs Webster, if we may. Thank you.

22 (Recess.)

23 BY MR RAWAT:

24 Q. Thank you.

25 Page 220. I'm taking you back to something that we

1 have looked at but I haven't properly introduced to you, and
2 that's the Response of the Office of the Premier to the evidence
3 to the Reports of the Auditor General and the Internal Auditor
4 concerning the farmers and fishers and schools and church grant
5 programmes.

6 Now, this document, its last page is at 253. And it
7 was undated and unsigned, but our understanding, and this is on
8 the evidence of Dr O'Neal-Morton, is that it was prepared by
9 Officers within the Premier's Office, together with the IRU,
10 which is a unit from Withers which assists the Attorney General.

11 It has been prepared specifically for the
12 Commissioner, although it wasn't prepared at his request, but it
13 deals with your two reports and endeavors to respond directly to
14 those Reports.

15 Now, there are, as I've indicated previously,
16 criticisms of you in this Report, as Auditor General, and you
17 have responded to that. And you've responded in the way that or
18 in accordance with the approach that the Commissioner sets out
19 four Written Responses, and you have responded to the criticisms
20 but also produced additional documents.

21 Now, the Commissioner will have read all of the
22 material you provided, so I don't want to read it out too much,
23 but there are some points that I'd like to take through with
24 you, and if you can have to hand your Response and the Premier's
25 Office's Response, and we can deal with it this way.

1 If you turn through, please, to page 231, if I draw
2 your attention to paragraph 70 and 71, where the Premier's
3 Office's Response is speaking about the Policy objectives behind
4 farmers and fishers behind the scheme at 69 and 70, and it
5 explains that this programme, farmers and fishers was part of
6 the Government's package of immediate fiscal relief intended to
7 be an emergency response where there was an immediate need to
8 inject money into particularly vulnerable sectors of the economy
9 to generate urgently needed economic activity, create
10 employment, increase local food production.

11 And then it says that, for this reaction, contrary to
12 the impression that might be created by your Report on farmers
13 and fishermen, the Programme was never intended to be confined
14 to those who appeared or had appeared on the commercial register
15 of farms and fishermen or who were licensed to fish, but to
16 reach quickly and as widely as possible throughout the farming
17 and fishing sector.

18 Now, you've responded to that in this way: First, you
19 say that "in emergency situations, there are systems, processes
20 and instruments to protect Government's resources, ensure
21 transparency, reduce maladministration. For the farmers and
22 fishermen stimulus programme, these instruments included the
23 approved policy and criteria, and the articulated processes for
24 administering a Programme in awarding grants. These were all
25 intended to ensure that the targeted individuals benefited and

1 to reduce the risk of misapplication and misuse of public
2 funds".

3 Now, where you refer to the approved policy and
4 criteria, firstly, did you see a Policy Paper on farmers and
5 fishermen?

6 A. We saw the criteria document of farmers and fishermen,
7 and the Policy because some of the information that--the
8 criteria actually was drawn from the policy, and to answer that
9 question of the policy, I cannot recall seeing a policy, but
10 definitely we have the criteria, and the criteria was what was
11 publicised and what was in the Cabinet Extract that we saw that
12 we received.

13 But policy document--and I would have to go back, but
14 I can recall actually going through this document and actually
15 revising it in terms of the statement of policy here, and this
16 might have been an oversight but the approved criteria
17 definitely showed what the processes should be, who should
18 apply, who would qualify for this. And that's actually what was
19 used in this particular audit.

20 Q. So, you had evidence of the criteria that were to be
21 applied to this programme?

22 A. We had the criteria, yes.

23 Q. And you, indeed, explained that the Auditor's Reports
24 are based on the criteria advanced by the Premier's Office and
25 approved by Cabinet. There's no authority for a Ministry to

1 unilaterally change or vary a Cabinet Decision. It should be
2 done in the proper manner in Cabinet with reasons and full
3 transparency. The approved and promulgated criteria required
4 applicants to be commercial farmers and fishermen who were
5 either registered, licensed for fishermen with the Department of
6 Agriculture and Fisheries or could provide a notarised letter of
7 referral, verifying their engagement in farming or fishing for
8 the past three years.

9 Did you take account of when you were looking--don't
10 need to go into the detail of your findings, but when you were
11 looking, for example, when you said that a certain number of
12 farmers who had received grants were not registered, did you, in
13 reaching those figures, take account of the fact that some of
14 the farmers who had received grants may have been the recipients
15 of notarised letters?

16 A. Yes, we did, actually, and I think that's mentioned
17 further on that we didn't receive any copies of these notarised
18 letters that the Ministry might have had, so--because they
19 didn't submit any information that we requested.

20 So, based on this, we were working with information
21 that we had, which was the Registers, but we did take into
22 consideration the fact that there was the possibility that there
23 might be notarised letters that the Ministry didn't forward.
24 And you asked me what I would expect in terms of a response,
25 that's the sort of thing I would expect in terms of a Response

1 from the Ministry. These are the notarised letters for the
2 farmers that didn't have--that were not registered. That's the
3 sort of, the way we expect the Ministry to come back and address
4 the contents of the Report.

5 Q. At paragraph 71, the Premier's Office Response refers
6 to a preliminary survey carried by the--out by the Department of
7 Agriculture because it was well-understood the Registers did not
8 reflect current reality of those who were currently farming or
9 carrying on commercial fishing activities or those who had been
10 doing so but whose activities had ceased or reduced because of
11 the 2017 hurricanes.

12 You've responded in this way: If it was
13 "well-understood that the Registers did not reflect current
14 reality, the stimulus grant process should have been used as an
15 opportunity to update public records for legitimate commercial
16 farming activity, and thereafter support these individuals to
17 further develop the industry. Not updating the records is one
18 of the major failings of the Stimulus Programme". You say,
19 "There is nothing in the Department of Agriculture records to
20 support that 49 percent of persons receiving farming grants are
21 farmers. A similar statement can be made for 56 percent of
22 persons receiving fishing grants. This accounts for a total of
23 2,672,000 or 52 percent of the moneys issued in grants. This
24 cannot be deemed acceptable", and you set out some detail there.

25 But one of the points that is made in evidence is

1 that, in fact, the approach of the Premier's Office did
2 encourage people to come forward, and you did have farmers who
3 were--who had not registered but were, in fact, farming did come
4 forward and get themselves registered. Would you accept that
5 that happened?

6 A. I would accept that that might have happened, but
7 again saying so, just simply saying that isn't enough. You have
8 to come with evidence that this is, in fact, the case. It's
9 more useful to say that this is a list of farmers that we
10 verified, priority farmers that are not on the list and received
11 grants, rather than saying that people came forward and they
12 were farmers. And as far as we know, there were a lot of people
13 who came forward that were not. That's also a possibility.

14 And the other thing is that saying that people came
15 forward and they were farmers and they're not actually ensuring
16 that these people became registered, then that was a lost
17 opportunity. We don't know who they are. Are they going to
18 come forward again the next time we have another Stimulus Grant
19 Programme for farmers? Will that be acceptable? Are they only
20 farmers when there are grants that are being issued?

21 So, if we know that we have these people out there,
22 this would have been the perfect opportunity to capture who they
23 are, and try to assist the legitimate farmers in actually
24 building their--building their farms, building their--owners or
25 practice, but building their activity so that, you know, they

1 can become more sustaining, and I think in that respect the
2 Programme really missed the ball. There was a real opportunity
3 to help people who were legitimate farmers and to bring them
4 into the system and to work with them, and it didn't do that.

5 Q. What the Premier's Office also say, and I'm calling it
6 the Premier's Office's Response, you will have seen from it that
7 sometimes it refers to the Government, and I think

8 Dr O'Neal-Morton explained that it's an all-encompassing phrase
9 and says this is on behalf of Government, but it said that it
10 was recognised that there were Virgin Islanders whose
11 livelihoods had traditionally been wholly or partly derived from
12 fishing and farming who were not and may never have been
13 registered, and this is the point I've made.

14 One the benefits of the scheme was perceived to be the
15 encouragement it would offer to those farmers and fishermen to
16 register, which is it then goes on to say you appear to have
17 implicitly acknowledged that and you have acknowledged it today.

18 It then continues to say that the scheme was
19 advertised on the radio and on-line--

20 A. Okay. This is what I was saying with respect to this
21 here is that there is perhaps the suggestion because there was
22 an increase in the numbers of people registering after the
23 Programme was announced, but a lot of the people who actually
24 received grants still were not in the Register, so--and I guess
25 I'm belaboring the point, but the Premier's Office at that stage

1 where they were having people coming in and collecting checks
2 could have gotten information and gotten those people to
3 actually get into the database, and, you know, that didn't
4 happen.

5 Q. As I understand your evidence, I mean, whatever
6 databases they were in the Premier's Office, you didn't have
7 access to?

8 A. No, I didn't. I did not.

9 COMMISSIONER HICKINBOTTOM: Are you saying,
10 Mrs Webster, that there could have been a sort of condition that
11 if you want a grant, you have got to get registered. We'll give
12 you some time to do it, I don't know, a month or two months or
13 whatever it is to do it, but unless you're registered, no grant.

14 THE WITNESS: That should have been one of the
15 conditions, Register as a commercial farmers, give us your
16 information, and then the Department of Agriculture would have
17 this information, they would know who the farmers are, they
18 would know where the farms are, and they would be in a better
19 position to assist.

20 I mean, this would be a really great opportunity to
21 help the industry if we had this information. This is saying
22 that there are farmers out there who depend on farming but we
23 don't know who they are, but they came in and they got money.
24 Why didn't we register them?

25 BY MR RAWAT:

1 Q. What you do say is that--and this is responding to
2 paragraph 72 and 73 of the Premier's Office's Response is
3 that--and at 73 the Response had said that the scheme was
4 advertised on the radio and on-line, help of all District
5 Representatives was enlisted to try and identify Eligible
6 Persons but it was recognised that some of those who might be
7 potential applicants wouldn't have the skills, for example
8 computer skills, that would help them make an application.

9 But what you say is this: "The application process
10 was undertaken by the Premier's Office without sufficient
11 involvement of the Department of Agriculture and the subject
12 Ministry. Thereby eliminating the opportunity for those key
13 industries to obtain pertinent information to update the
14 relevant Registers with data, such as location of farms, size of
15 operation, types of produce, and whether how the farming
16 activity had been impacted by the 2017 hurricanes.
17 Agriculture's records indicated that a spike in farmers
18 registrations occurred with 174 additions in the immediate
19 period after the grant programme was announced. Only 34 of the
20 174 newly registered individuals received grant awards".

21 Now, is that conclusion based on evidence you obtained
22 from the Department of Agriculture?

23 A. It's based on the--yes, evidence we received from
24 Agriculture in terms of their Register comparing that with the
25 payments that were made from the Treasury and the list that we

1 got from--the list that we actually got from the Treasury
2 Department and elsewhere, also Agriculture.

3 So, basically we were able to look at Agriculture's
4 records and see that there were actually really significant
5 spike of registrations after it was announced that farmers would
6 be getting grants. But then when we looked at that 174 and
7 compared those to the payments that actually occurred in the
8 period where the grants were issued, only 34 of those
9 individuals actually got paid, so only 34 of those might have
10 been farmers, some of them may have been backyard farmers,
11 others may have been thinking of becoming farmers, we don't
12 know, because nobody actually went through the process of
13 finding out who they were and exactly what type of farming they
14 did.

15 Q. And the point you make that there was insufficient
16 involvement of the Department of Agriculture and the subject
17 Ministry, what evidence is that actually based on?

18 A. Well, that's based on the interviews that we performed
19 with the Department of Agriculture and the subject Ministry.

20 Initially, my understanding is that initially both the
21 Department of Agriculture and the Ministry of
22 Education--Ministry of--Ministry's names have changed, I'm
23 sorry. Ministry of Agriculture and Fisheries, it's a much
24 longer name.

25 Q. Education, Culture, Youth Affairs, Fisheries and

1 Agriculture, I think.

2 A. The subject Ministry were actually involved initially,
3 and I think the point that was made earlier is that they
4 actually did--they did a survey to try to establish who the
5 farmers were.

6 In fact, a number of the people that they identified
7 as farmers were not paid, either. The list that they came up
8 with, we compared that list against the payments and a number of
9 those people were not paid. And these are people who were
10 identified as legitimate farmers by the Ministry and by the
11 Department.

12 Q. Now, at paragraph 74 of the Premier's Office Response,
13 they refer to the initial list--

14 A. Yes.

15 Q. --of farmers who were potentially eligible for relief,
16 which is a list that you refer to. That's the Cabinet list,
17 isn't it?

18 A. Yes.

19 Q. And it's compiled--it's explained that it's compiled
20 from the survey that was done by the Department of Agriculture.

21 You say this, though: "The initial Cabinet list
22 contained 95 persons identified by the subject Minister in the
23 Department of Agriculture as *bona fide* commercial farmers. Only
24 39 of these, or 41 percent, received stimulus aid. To put this
25 in context, 203 persons received farm grants, 39 were on the

1 list submitted to Cabinet, 164 were not".

2 And then you say, "to add further perspective, in the
3 Cabinet Paper, which is annexed to the Premier's Office
4 Response, it was estimated that there were between 40 and 60
5 commercial farmers in the Territory. Grant payments were made
6 to 203 persons. With respect to fishermen, there were 208
7 payments, at least 25 went to persons on the Cabinet list, 183
8 persons receiving payments were not".

9 And what the Response says is that--and this is at 75,
10 is the Premier's Office point out, though, is that, as of the
11 date that that list was prepared, the Programme hadn't even
12 opened for applications, and it wasn't then envisaged that it
13 would likely represent the total of those who would apply. You
14 said that the point being made in your Report is that, "a
15 significant number of people whose names were submitted to
16 Cabinet as commercial farmers were not registered as farmers
17 with the Department of Agriculture. The list of registered
18 commercial farmers and fishermen was submitted to Cabinet on
19 27th of April 2020. The published application process closed in
20 July 2020. The farmers and fishermen Registers examined in the
21 audit process were updated to November 2020 and October 2020,
22 respectively. There should be no discrepancy between these
23 records and the names on the Cabinet list". For clarification,
24 the four fishermen referenced in paragraph 75, and this is that
25 acknowledgment that the Cabinet list of 36 fishermen contained

1 four who were registered but not licensed. You say that they
2 were actually neither licensed nor registered; is that right?

3 A. That is correct.

4 Q. Is the point, Auditor General, that when you came to
5 examine the list, the Cabinet list, that went in April 2020, you
6 were examining it against records held by the Department of
7 Agriculture that were current up to November 2020 and
8 October 2020?

9 A. That's correct.

10 Q. What's also said--and this is paragraph 78--at 77 and
11 78, the point is made that whilst Cabinet adopted proposed
12 eligibility criteria, no firm proposals were made to the
13 Cabinet, no decision taken as to how the amounts to be awarded
14 to each applicant will be determined. Those details appear to
15 have been left to a Working Group into the lead Ministry, which
16 is the Premier's Office, to work out. And so it's not correct
17 to assume as you appear to do, that it was the Government's
18 intentions that the amounts awarded should exactly equate to the
19 demonstrated need for specified work for equipment.

20 I won't read it out but could you just elaborate on
21 your response that you say and the point you make in response to
22 that to the Commissioner.

23 A. Okay. I think what the Premier's Office is saying is
24 that, notwithstanding the fact that they got farmers to go out,
25 farmers and fishermen to go out and get quotes for their--for

1 their needs or whatever they might need to improve their
2 properties, improve their farms, it was never the intention
3 to--that the Government would actually pay them--give them money
4 to cover those needs.

5 And our response was that, you know, that seems
6 logical, given the fact that the Cabinet Extract actually tells
7 people that you need to go out and get estimates, and you need
8 to bring those estimates with supporting information, and in
9 some cases Public Works would have to go out and check--Public
10 Works was, that's a different thing--but Cabinet Extract was
11 saying to individuals you have to go out, get your invoices and
12 bring them in for them to be considered.

13 And then the Press Release said the same thing, if you
14 want to get a grant, you have to go out, get an estimate, bring
15 your invoices in and submit them with your application.

16 In addition to that, the criteria document, as we said
17 that farmers and fishermen would be required to get information,
18 and then all of these farmers, fishermen went out and got this
19 information, and it was compiled into a document saying what
20 everybody wanted and how much it would cost by the Ministry.
21 They have this database that they said that they didn't have,
22 but they have a database of applicants with all their needs
23 listed and how much each person would need in order to make
24 improvements in their respective areas.

25 And having done all of this work, then we get in the

1 Premier's Office saying well, it was never our intention to use
2 any of that information, so it's wrong for the Auditor General
3 to say that our plan was in getting people to get this
4 information, our plan was to actually use it, which is
5 illogical.

6 So, we based the Audit based on the criterias that
7 were set out by the Ministry, and our findings are based on that
8 criteria. And the fact that the Premier's Office actually
9 applied the criteria by taking information in and compiling it
10 and then something else happened where the amounts were inflated
11 and people were paid a lot more money than they actually asked
12 for.

13 Q. You made reference to a database that the Premier's
14 Office has. Our understanding from Dr O'Neal-Morton was that
15 there were no databases.

16 A. The database that didn't exist was actually appended
17 to their submission that they sent to the--well, appended in
18 part because it's not the complete database that's here based on
19 our assessment, but it's there, it's a database of the
20 applicants, the applicants were farmers and fishermen. It's a
21 part of the bundle, and it's 40. That's the farmers and
22 fishermen database, application database that we requested.

23 Q. It's at, I think, 811.

24 A. That's the database for farmers and fishermen.

25 Q. So, it's a spreadsheet--

1 A. It's a spreadsheet, yes. And maybe he should have
2 said the spreadsheet, but this is what it is.

3 Q. So, it shows the names of applicants, whether they
4 were farmers or fishermen or both, their locations, what their
5 requested need was, the cost of each one, which I think you say
6 would have meant that given that they would have had to obtain
7 quotes for those costs?

8 A. That was their assignment, get quotations and invoices
9 and bring them in.

10 Q. Sorry, your voice dropped there a little bit, Auditor
11 General.

12 A. Yes, that was the requirement that individuals were to
13 get quotations and statements where possible, and photos, if you
14 could, and bring those in.

15 Q. Now, what the Premier's Office's Response points out,
16 though--is that, as the number of applications increased in the
17 period for their submission, it became apparent that it would
18 not be possible to award the grants based on a demonstrated need
19 which would, in itself, lead to substantial inequities. And it
20 points out one case, and this is a case that both the Honourable
21 Premier and Dr O'Neal-Morton drew to the Commissioner's
22 attention, that an application was made for over \$400,000,
23 20 percent of the available budget.

24 And what it continues is, "if an individual evaluation
25 of a Project and proposed purchases was to be made for each

1 applicant, it would have required far greater resources and time
2 than was available to the Government".

3 You've responded in this way: "It is unreasonable to
4 use an anomalous submission to make an argument of
5 reasonableness. The expectation is that this and all Stimulus
6 Grant Programmes would have to be executed with grant ceilings".

7 Could you just clarify this a little bit. Why do you
8 say it's anomalous?

9 A. Because we saw the \$400,000 submission made by one of
10 the farmers, and my first question was, did they--my first
11 reaction was that this was an error, he must have added too many
12 zeros to this.

13 But then the next question was did anybody actually go
14 out and check to see what his needs were? Because it may have
15 been an error.

16 But the Response really is saying that the expectation
17 is that, if you're going to do something like this, you will
18 have people who will try to take advantage of the Programme,
19 especially since it's Government money, and putting ridiculous
20 submissions just to test to see whether they would actually get
21 the amounts, not necessarily that they need it, but just to test
22 to see whether they will get it.

23 And, you know, something like this, you go and you
24 check, you make a call, you ask somebody, is this what you want,
25 and why? And no, we actually cannot give you this, so you need

1 to go back and have a look and see what exactly you really need
2 so that we can address that particular need.

3 It's like having a grant programme at the House of
4 Assembly and someone saying, well, can you pay me \$300,00 so I
5 can build a house? You know, that's the level of ridiculousness
6 that this is here. We know that that's not going to happen.
7 You know, I can't pay my rent, so I'm putting in a rent
8 application for \$300,000 to build a house.

9 So, I find it strange that they would actually pick
10 this up and use this as an example because when we start, we
11 just thought it was an error, and that somebody needed to go
12 back and check to make sure that it was an error, and probably
13 give this person some guidance to understand what the process
14 was about because the Government isn't in the business of
15 building farms for people, they just were offering to assist
16 them in developing their operations.

17 Q. I'm going to summarise the next two points because
18 what's made--and this is a point that Dr O'Neal-Morton made in
19 evidence as well, was that the Department of Agriculture
20 reported that it was incapable of executing responsibilities
21 assigned to it to assess commercial activities of applicants
22 because it lacked both the personnel and the equipment such as
23 vehicles and fisheries vessels. And indeed, what's pointed out
24 is that the Department even requested monies from the stimulus
25 package to purchase vessels--or vehicle, rather. And it then

1 goes on to say that the Ministry of Works, Public Works lacks
2 surveyors to evaluate each of the hundreds of applications all
3 made at the same time to service the demands of the Ministry of
4 Health, which was then leading the effort to contain the virus.

5 What you said is that, "if the goal of the Programme
6 was to improve food security, then the starting point has to be
7 ensuring that the Government is in a position to monitor and
8 assist that process.

9 Paragraph 18 demonstrates the failure of the
10 Government to recognise the needs presented by the Agriculture
11 Department, and a missed opportunity to assist the process by
12 providing this key Department with the Request resources".

13 You go on to say that, "the Public Works Department
14 has advised that it was never asked to perform any evaluations.
15 Only they are able to assess whether their resources are
16 accurate".

17 A. That is correct.

18 Q. But just go back to the Agriculture Department point.
19 I think in your Report you speak of going out with the
20 assistance of the Department of Agriculture to visit sites, you
21 visited 11 out of 22, I think, that were identified to see
22 whether they were working commercial farms.

23 Were you aware, through your contact with the
24 Department of Agriculture that they were having resource
25 difficulties?

1 A. We were, yes. That was one of the things that they
2 said, that they needed equipment and they need staff.

3 Q. But then isn't that the point a valid one that has
4 been made by the Premier's Office, that in order to be able to
5 implement the Programme, you need to be able to monitor, and if
6 you can't monitor, then you need to do something different?

7 A. No.

8 I think, again, the Department didn't say that it
9 wouldn't participate, they said that we need help in actually
10 doing this, which is why they're putting an application to get
11 certain resources. And at the same time we were in the middle
12 of the COVID situation where you have a number--well, and after
13 the hurricane situation, we have a number of people who have
14 been displaced, but this was an opportunity to see whether any
15 of those people could have assisted in this particular process
16 with the whole monitoring, even with the grant process, checking
17 to see who needed what. There are a lot of Public Servants
18 right now who are displaced.

19 But the point that's made here is yes, the Department
20 of Agriculture needs resources, but also if you are going to do
21 this, if we are actually going to build an industry, you have to
22 start by building the Department so that they are in a position
23 to actually get out there and help farmers see what they need
24 and make recommendations.

25 And just giving people money and saying go farm and

1 not having any kind of follow-up, that's--that's not the way it
2 should happen.

3 Q. And you say Public Works Department is advised it was
4 never asked to perform any evaluations, where does that come
5 from?

6 A. We asked them--we actually sent an e-mail and asked
7 whether they had done any evaluations and what those were.

8 Q. What the Premier's Office go on to say is that, by
9 late July 2020 it was apparent that even if Ministries could
10 have undertaken that burden of verifying and assessing, they
11 couldn't do it within the time scale that would conform with the
12 Government's objective of delivering a rapid physical relief
13 stimulus to the sector, which as the economic effects of the
14 measures taken to contain the virus deepened, was becoming an
15 even more urgent and pressing priority.

16 Your response to that is, "no attempt was made to
17 comply with the Cabinet Decision to have the Public Works
18 Department or a licensed contractor perform assessments. It's
19 therefore not known what delay, if any, would have resulted".

20 Again, is that based on your contact with the Public
21 Works Department?

22 A. That's based on us asking them whether they had been
23 contacted to do assessment and they responded no, and then
24 pointing out that, you know, the Cabinet Decision, actually
25 says, Public Works Department or licensed contractor, so perhaps

1 it was done by a licensed contractor because it wasn't done by
2 us, and we haven't seen any indication that a licensed
3 contractor was, in fact, there indicating that it didn't happen.

4 Q. Help us with this, though, at 83, and this is a point
5 again made in evidence, is that one of the things that had been
6 overlooked, and it refers to the Working Group, which is the
7 group within the Premier's Office assigned to monitor and
8 implement the Programme, a point that had been overlooked is
9 that if payments were made direct to suppliers which
10 cumulatively exceeded \$10,000, it would have been necessary to
11 execute Petty Contracts, and once you're getting into executing
12 Petty Contracts, you need Certificates of Good Standing, which
13 can take several weeks to obtain, and might have been even
14 longer in the pandemic.

15 And also at that time, and this was a point The
16 Honourable Premier and Dr O'Neal-Morton made, suppliers were
17 reluctant to accept a Purchase Order, which would have been the
18 way to pay suppliers if the original idea of payments to
19 suppliers rather than individuals were followed up.

20 Can you just explain your response to that because you
21 start off by saying Petty Contracts cover public procurement
22 between 10,000 and \$100,000, but then just develop what your
23 response is for the Commissioner, please.

24 A. Well, the first point that is made here is that most
25 of the farmers' requests were below the Petty Contract

1 threshold, so a Petty Contract would not even come into play.
2 They would not require Petty Contracts, and this is for most of
3 the individuals.

4 And then we look at Central Government where
5 Departments routinely buy stuff. Each individual Departments
6 buy stuff for their Departments. They buy necessary equipment.
7 They buy supplies, and so on, but at no time do you find that
8 Departments combine their purchases in order to issue a Petty
9 Contract to get their supplies. And if it's not being done in
10 Central Government, why are we even discussing the possibility
11 of that, you know, you're going to do this for grants? It's an
12 inefficient process. For something like this, it would be an
13 inefficient process. It's actually done for vehicles. The
14 Ministry of Finance actually combines the requests for vehicles
15 and does one procurement request, but for regular minor things,
16 Departments service their own needs.

17 And the, of course, at what--what we are thinking in
18 terms of only where there are large-scale works where somebody
19 needs to get maybe a chicken coup that's going to cost \$15,000
20 you might actually consider a Petty Contract, you might consider
21 it, and this would after Public Works would have done, or
22 somebody else, done an assessment.

23 But by and large, most of the requests that came in
24 would not require a Petty Contract, and I'm not sure where it
25 even came up. And when we looked at the House of Assembly

1 grants, for instance, where all the representatives were able to
2 issue grants to their constituents and to individuals, some of
3 the Representatives actually just issued grants in large sums to
4 various people. One or two actually made payments directly to
5 the suppliers, and the Representatives who made the payments
6 directly to the suppliers were able to service a lot more
7 people, and they were able to also be able to have a better
8 accounting of how their money was spent because, you know, an
9 individual wouldn't do that, use our money to pay electricity
10 for 15 people, then use some money to pay off the mortgage or to
11 assist with rent for another 10.

12 So, the people who actually made--the Representatives
13 who actually made direct payments actually got more value for
14 the money that they got. They have a longer list of people that
15 they helped.

16 At no stage in doing that were they required to issue
17 Petty Contracts. For instance, I know one person paid a lot of
18 electricity bills. She then combined them and said, I'm going
19 to issue a Petty Contract to electricity to pay all these bills.
20 You know, that would have been a nonsense.

21 Q. But is there validity in the point that if you are a
22 Government Department and you've embarked on a programme where
23 the plan is to pay suppliers--

24 A. Mm-hmm.

25 Q. --but you're in a pandemic and suppliers turn around

1 and go, We don't want Purchase Orders. You have to think of a
2 way around it.

3 (Overlapping speakers.)

4 A. I have to say that our office does not have that
5 problem with suppliers, and I don't know if other Departments
6 do; maybe they do, but we've never had a vendor say, We don't
7 take Government money, sorry. We've had vendors say, Well, you
8 know, Government takes a long time to pay, and that might be the
9 case, but we haven't had people saying that we're not going to
10 take a Government check.

11 Q. And is it right the Government does take a long time
12 to pay?

13 A. Sometimes. Sometimes it does. I don't know what the
14 situation is right now as we speak, but Government is one of the
15 biggest suppliers, one of the biggest clients on this island.
16 It is the biggest client, and for people to say, We ain't taking
17 Government checks, to me is cutting out a whole lot of
18 potential. And you have contractors who are constantly vying to
19 get Government contracts, so this is--it seemed strange me
20 that--you know, to say that Government--vendors are not taking
21 Government vouchers, because our experience has been different.

22 Q. Can I just ask you to just go to page 234, please.
23 This is where taking each of your summary findings, the
24 Government responds. I won't take you through E-1 for the
25 time being--or E-2 that is, but we'll come back to that. But in

1 looking at your responses, which are at--start at page 9, it's
2 right to say that you don't accept at least many of the points
3 that the Premier's Office makes. Is there anything that in
4 particular that you want to draw the Commissioner's attention
5 to?

6 A. I'm not sure that we're looking at same thing here.

7 Q. Right. So we're at page 234 in the Premier's Office
8 Response.

9 A. Right.

10 Q. And in your response, your Written Response, you're at
11 page 9.

12 A. Which paragraph are you referring to?

13 COMMISSIONER HICKINBOTTOM: Paragraph 90.

14 THE WITNESS: Nine-zero.

15 BY MR RAWAT:

16 Q. Yeah.

17 A. Oh, okay.

18 Q. So, that first one, 90 we can return to, but in terms
19 of the others, which is--this is your findings in relation to
20 farmers and fishers or your conclusions relating to farmers and
21 fishers.

22 I just trying to take you shortly. Is there any
23 particular point in terms of your response to the Premier's
24 Office that you want to draw out to the Commissioner?

25 COMMISSIONER HICKINBOTTOM: I've got your Written

1 Response, Ms Webster, so I'll obviously take all of that into
2 account. But is there anything in particular that you want to
3 emphasise or add to?

4 THE WITNESS: Well, I think 91 speaks to the fact this
5 office is saying that they never intended to restrict the
6 Programme to commercial farmers.

7 BY MR RAWAT:

8 Q. What you had said in terms of a finding was that a
9 total of 1.4 million was paid in stimulus grants to persons were
10 not registered as farmers.

11 A. Right.

12 Q. And what the Premier's Office pointed out is that it's
13 accepted that payments in approximately that sum was paid to
14 such person, but the purpose of the scheme was never intended to
15 be so confined, so it wasn't intended to be confined to people
16 who were just registered farmers, and it was well-understood
17 that the agricultural databases were not maintained.

18 A. Right.

19 Q. And didn't reflect a true picture.

20 You have--

21 A. Right. What I've said to that is that the issues with
22 the Registers cannot be used as an excuse for simply--for
23 unsupported distribution of public funds. And registration
24 could have been made a part of the grant process--and I think we
25 discussed this before--and it would have ensured that the

1 records were updated and provided the Department of Agriculture
2 with information.

3 I think a lot of those responses in here are probably
4 repetitive because the statements that were being made are
5 somewhat repetitive.

6 COMMISSIONER HICKINBOTTOM: And I mean some of them
7 such as paragraph--your response to paragraph 93 which is the
8 word "inflated" we've already dealt with that.

9 THE WITNESS: Right.

10 BY MR RAWAT:

11 Q. If we--if I take you to page 12, what's said is that
12 there, it's paragraph 94, but you have made a mistake in your
13 concept of Cabinet's policy because you appeared to assume--and
14 it said without evidence to support your assumption--that
15 Cabinet's policy was to allocates monies originally set aside
16 for the scheme in the sums requested, provided that the need for
17 the money which you do not define but is presumably that which
18 is needed to pay for the Project contemplated, could be
19 demonstrated. And what's said it was not Cabinet's intention
20 necessarily that grants should be made in that way.

21 So, I think the question--

22 A. I think we addressed--I addressed earlier, did we?

23 Q. Yes.

24 COMMISSIONER HICKINBOTTOM: Yes, I think we did, and
25 that's all to do with the Cabinet Paper and the requirement for

1 estimate, they're required to put forward, as it were, capital
2 expenditure, really, with estimates and eventually invoices.

3 THE WITNESS: Right, have an individual go out and get
4 the estimates and invoices--

5 (Overlapping speakers.)

6 BY MR RAWAT:

7 Q. And so, your point is that--your starting point has
8 been Cabinet's policy.

9 A. Right.

10 I think what the Premier's Office is trying to avoid,
11 seems to not be embracing is the fact that the Audit is actually
12 based on the Cabinet criteria that was set out. This is what we
13 know to be the guiding--actually the approved process for the
14 grant distribution. Cabinet's policy, this is what we used in
15 doing the Audit. There isn't anything else that we can go by
16 unless there was an approved change to that policy. If there
17 wasn't an approved change to that policy, then again, if they
18 are addressing our Report, they should send us a copy of that
19 approved change. That would make all of the difference. Send
20 us the Cabinet Paper that changed the policy and changed how the
21 amounts were to be distributed. And--

22 COMMISSIONER HICKINBOTTOM: So, you simply audited
23 against the Cabinet policy and the Cabinet criteria.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: If there had been a

1 change, an authorised change by Cabinet or--some authorised
2 change, then you would have audited against that new policy.

3 THE WITNESS: Exactly.

4 COMMISSIONER HICKINBOTTOM: But there was nothing
5 there that you were given.

6 THE WITNESS: There was nothing provided. And even in
7 the Response that we got there, it's not provided. There's
8 nothing in there to say that Cabinet changed the Policy. And,
9 you know, there was a free-for-all for everybody who thinks that
10 they're a farmer. They can come and this is important because
11 if the policy was changed, then this should have been made
12 public. The change policy should have been made public so that
13 other people who might have--now qualify will know that and then
14 be able to apply. They can change a policy and--well, there's
15 no indication that it has been changed, but you can't change it
16 and keep it secret. If it's going to be changed, it has to be
17 publicised so that people would know what it is, and that has
18 to--that information has to be shared with everybody, including
19 people like me and Internal Audit so that they would know what
20 the Policy is. When we're looking at this, we would know that
21 the Policy has changed.

22 BY MR RAWAT:

23 Q. If you go do page 13 and paragraph 95, and this
24 relates to--it's the inflation point again, and what's said is
25 that the adoption of standardised grants, which is what we know

1 happened, was a legitimate approach to a difficult problem which
2 all governments have to grapple. There's no evidence at all
3 upon which so grave an allegation or falsification could or
4 should have been made. And you repeat here the example of
5 the--someone purchasing a weed-eater.

6 A. Someone who brought in the estimate for a weed-eater,
7 yes, and this is the amount here, \$285.99. He said he needed
8 money to buy a weed-eater. And then the information that
9 actually went to the Treasury says that this person needs
10 \$4,085.99 to purchase a weed-eater. So it went from \$285 to
11 \$4,085.

12 Q. And so, that's the point you're making, that when one
13 examines the records, I mean if one keeps a hypothetical, if I
14 come in and ask, I'd like--I have a quote for \$300 to buy
15 fencing and I get \$13,000, I'm not getting \$13,000 for being a
16 farmer. I'm getting 13,000--on the records I'm getting \$13,000
17 to buy fencing.

18 A. The information sent to the Treasury says that we're
19 paying this person \$13,000 to buy fencing.

20 Q. And so, what the Accounting Officer is doing at the
21 end of it all is saying it's legitimate to spend \$13,000 on
22 fencing.

23 A. Or \$4,000 on a weed-eater.

24 COMMISSIONER HICKINBOTTOM: I mean, that's really
25 quite important, isn't it, because the Treasury don't simply pay

1 out money? They pay out money on the basis of some
2 authorisation.

3 THE WITNESS: That's right.

4 COMMISSIONER HICKINBOTTOM: And the authorisation
5 ultimately is the Cabinet policy, the Cabinet Decision, to
6 recompense farmers for--on what I would call capital
7 expenditures--it's not called that here--for fencing or
8 whatever. And so, the fact that the--what went to the Treasury
9 was an indication that person A required \$4,000 for, in this
10 case, a weed-eater. That's really quite important, isn't it,
11 mechanically in terms of how the money actually came to be paid?

12 THE WITNESS: It's very important, actually.

13 And we have to--the provision that the Premier's
14 Office did sign that we did bands, and if those bands had gone
15 through the process of being approved, of changing the Policy
16 and going through the process of being approved, then this
17 wouldn't be necessary to be sending something to the Treasury
18 saying that we're going to pay this person,

19 COMMISSIONER HICKINBOTTOM: No, because the Treasury
20 would go back to change banding policy and say, well, the band
21 is £13,500, this is £13,500; we'll pay it.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: Thank you.

24 BY MR RAWAT:

25 Q. If you turn up, please, page 236, please.

1 This is part of your findings, your conclusions,
2 Auditor General, is that fishermen grants were intended to
3 assist with equipment and material costs. Payments were however
4 made to both vessel owners and crew members resulting in
5 multiple members on the same vessels receiving grants. This
6 included grant awards to multiple vessel members requesting
7 assistance for the same equipment.

8 And what's said is that the Response is from the
9 Premier's Office but it's said to be from the Government is that
10 the premise of your conclusion is not accepted because it's
11 based on the assumption that those who are registered as crew to
12 a vessel must therefore only fish or have an interest in that
13 vessel. And you assumed, therefore, that without any evidential
14 base that the applications must have been duplicated for the
15 same equipment.

16 And the point that was made in evidence is that you
17 can have someone who is crew on a boat in 2020 but actually has
18 a boat themselves which was damaged in the hurricanes, and this
19 is an opportunity to purchase an engine for that boat.

20 And the Response then continues that--and it points to
21 the prime example you've given where three individuals, master
22 and owner and two crew members on a boat applied separately for
23 engine and material, and you note that all three were awarded
24 grants. And it said that your assumption that this is evidence
25 for the assertion that multiple vessel members requested

1 assistance for the same equipment is what you used this for.

2 But it continues then to say: You appear to have
3 carried no basic checks to see whether your assumption is
4 accurate. In fact, the crew of that vessel each own their own
5 boat and, therefore, different engines and material for which
6 the crew applied were for those boats, which have been unable to
7 operate since being damaged in hurricanes. And this was--and
8 what it points out is this is precisely one of the purposes of
9 the Policy.

10 So--I mean, and this was an example that
11 is--features--it does spring to the eye from your Report. You
12 have three men on a boat all applying, it seems, for three
13 engines, but what the Premier's Office point out is you've made
14 a fundamental error, that these are three men applying for three
15 different boats.

16 A. Okay. The Premier's Office says that we did not carry
17 out any basic checks to see whether the assumption that it was
18 one boat or three boats--

19 COMMISSIONER HICKINBOTTOM: Yes. There is no need to
20 mention any of the boats.

21 THE WITNESS: Yeah, whether it was one or three boats,
22 that we didn't carry out any--I would say that we actually
23 carried out checks on the farms and we couldn't find farms. How
24 are we going to find the boats? Because at least the farms are
25 supposed to be stationary. Boats move around. So it would be

1 nonsensical for us to be out there trying to find boats.

2 But in response to this complaint, yes, we did
3 actually, in doing the Audit, we recognised that there was, in
4 fact, a number of cases where individuals work and several live
5 on boats. Some people who own boats would actually work as crew
6 on a different boat, and this was actually common within the
7 industry. It's fairly common and actually in looking at this
8 particular boat, we did take that into consideration, and the
9 Audit observation was that three people made applications for
10 engines, and all three got them for this particular vessel. But
11 for this particular vessel, what the Audit Report doesn't say,
12 because we actually found this--what the Audit Report doesn't
13 say is that it was actually four people who made requests--four
14 people from this boat actually made requests for engines, and we
15 didn't include the fourth person because we were able to trace
16 him to another boat and realised that he was actually master of
17 a separate vessel.

18 So, while four people apply for engines, he was not
19 included in the Audit observation because we recognised that he
20 had a boat, and he probably needed an engine for that.

21 The other three people we were able to identify from
22 the records, from the records at the Department of Agriculture,
23 that there was one boat owner and the other two were crew. We
24 haven't seen anywhere in the records that these are the two
25 people who were crew actually owned boats or were registered as

1 having owned boats. So, if they actually owned boats, they were
2 unregistered and they would not show up in the records.

3 So, this information that we have in our Report,
4 again, it's based on verifiable information that comes from the
5 Departments that would have the records. If the Premier's
6 Office has information otherwise, then this, to me, is a good
7 example of where they could bring that information and say, Hey,
8 look, this is the situation with this particular person. He
9 actually has a boat, and he shouldn't be on this list.

10 And if they're able to bring that information then
11 certainly that's something I would change in a Report in an
12 addendum because it would contribute to making the information
13 more consistent with what's out there. But again, we haven't
14 gotten any information to actually verify that this is, in fact,
15 the case.

16 Q. If I take you through to page 237, please. This is
17 where you say, your conclusion is that the absence of control is
18 in the implementation and administration of the farmers and
19 fishers programme has left the Government without means of
20 assessing how the funds were applied, and what's pointed out by
21 the response is that there's no basis for a statement that the
22 Government has no means of assessing how funds were applied
23 because each of the recipients will have provided their details,
24 and they will be required to demonstrate how they have applied
25 the money. Duplicate payments of the same grants are being

1 followed up and in almost all cases have been returned.

2 And what you say--what's said against you is that, as
3 a conclusion, you failed to consider the overall policy context
4 and extreme challenges faced by Government at the time of
5 unprecedented emergency, and you're muddled in your
6 understanding of policy goals that informed the development of
7 the scheme, which--within which it was in the circumstances
8 inevitable that there would be trade-offs.

9 And what's said finally is that you make untested and
10 inaccurate assumptions on the basis of which serious criticisms
11 are leveled in a language that is neither consistent with the
12 evidence nor with reasonable professional objectivity.

13 Now, that points a number of fingers, but if you deal,
14 and you have dealt with it, but--and this is at your page--I
15 think particularly your page 17--I think--and tell me if I'm
16 summarising it wrongly--it is that your point is, firstly, that
17 the Premier's Office disregarded Cabinet-approved publicly
18 promulgated policies that underpin the Programme. And you found
19 during your own audit no evidence of a change in Cabinet's
20 approach.

21 A. That's correct.

22 And I'm not sure whether the Permanent Secretary
23 brought a different policy in here when she came, but we haven't
24 seen a different policy to the one that we've--that was issued
25 in the process. We haven't seen a different policy.

1 Q. I mean, going to page 17, and this is at 106 because
2 this is the point that's made about your Report being muddled in
3 its understanding of policy goals, because what it goes on to
4 say is that (reading): Concepts such as need are used in your
5 Report without thinking through how while fulfilling the Policy
6 objectives. Such a scheme could practically have operated on
7 the basis of need, however that might be defined. And your
8 response is this: This rhetoric does not explain why the Policy
9 was changed without Cabinet's input, nor does it justify
10 payments of dramatic increases outside of the requested sums and
11 without monitoring mechanisms. Further, there is no ambiguity
12 as to the use of the word "need" in the Report. No one should
13 be challenged in understanding the context in which this word is
14 used.

15 "Need" in all cases is indic--refers to needs
16 indicated by the applicants and demonstrated in their
17 submissions. This is unambiguous.

18 A. "Need"--and this is--this particular complaint was a
19 little bit odd in that "need" is a word that's used repeatedly
20 by the Premier's Office in their--setting up their programmes
21 and even in their little--the grant, the application database,
22 one of the headings is "need". So "need" is a word that's used
23 repeated by the Premier's Office, and it's used in the same
24 context in the Report. The same context that they used is used
25 here. We have not imported anything different in the Report,

1 and this, I found it odd that they would be complaining about us
2 needing to define what "need" is. It's the same ordinary
3 definition that has been applied in their policies, in their
4 schedules, in their--the press releases that are put out. It's
5 the same meaning. We haven't changed it, and we haven't
6 attempted to import a different connotation or different meaning
7 to this word.

8 So, it was odd that they would take--object to us
9 using the word "need" in the Report and suggest that we need to
10 define what that means.

11 COMMISSIONER HICKINBOTTOM: But your response to this
12 really is the same as to other criticisms, and that is that your
13 lodestone, your--

14 THE WITNESS: It comes from them.

15 COMMISSIONER HICKINBOTTOM: It comes from the Policy.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: It comes from the Cabinet
18 policy. That's what you refer the Audit to.

19 THE WITNESS: And this is what the Audit is based on.
20 It's based on the Policy that has been approved, and everything
21 else that comes outside of that Policy, you have to be able to
22 support that that also has been approved, and we haven't got
23 anything to show that all of this activity that occurred outside
24 of the Policy was actually approved.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 BY MR RAWAT:

2 Q. Return to 107, which is that you make untested and
3 inaccurate assumptions, and your language is--lacks reasonable
4 professional objectivity.

5 You've written in response to that (reading): The
6 gravity of the Premier's Office's failure to cooperate with the
7 constitutional requirement of review and transparency cannot be
8 sufficiently underscored. Breaches of this nature results in
9 serious undermining of this Territory's democracy and erode
10 principles of good governance. The language in the Report
11 reflects the gravity of those infractions.

12 So just which infractions are you referring to?

13 A. The absence of transparency, the failure to cooperate
14 with the constitutional process, failure to cooperate with the
15 Audit.

16 And without question, if you go through all of Audit
17 Reports, what you're going to find is that the language changes
18 when there is absence of cooperation because we view that as a
19 grave infraction, where people are withholding public
20 information. Public information is not something for someone to
21 treat as if it's personal property. Some people treat it as
22 personal property. We find that it's a grave disservice when
23 people fail to provide public information, information of public
24 standing, and this is information that we need in order to
25 perform our duties, and this is what happened in this particular

1 case. I think for 11 months we were asking for information,
2 asking for access, asking for documents, and this Office failed
3 to provide even one piece of information, one piece of document,
4 one page. Nothing. We got nothing from the Premier's Office
5 for 11 months. Repeatedly sending e-mails asking for
6 information.

7 Q. And the constitutional requirement and review you
8 referred to is the role of the Auditor General under the
9 Constitution.

10 A. Right.

11 The role of the Auditor General and the Constitution
12 actually stipulating that--well and, the Audit tax stipulating
13 that the Auditor General should be provided with information she
14 needs to do her job. She can ask for whatever information.
15 Once it's public information, we do not ask people for their
16 personal information. This is Government's information. This
17 is Government's standing. And it should be accessible.

18 Q. But if you step back, Ms Webster, and look at some of
19 the points that are made in evidence, you've got a pandemic,
20 you've got an understaffed Premier's Office, you have a
21 Permanent Secretary who starts her job effectively on the day
22 when the first lockdown is imposed in the BVI. You've now had
23 an opportunity to look at the preliminary report. You've had an
24 opportunity to look at the Premier's Office's Response to your
25 reports.

1 Do you--would you accept the criticism that your
2 language reflects a lack of reasonable, professional
3 objectivity?

4 A. Not at all.

5 And we took all of that into consideration when we
6 were asking for information. One of the first things I did when
7 I started the communication with the Permanent Secretary is to
8 ask her to provide us with a liaison because I understand that a
9 Permanent Secretary doesn't have time to be looking for
10 documents to send to audit, to be facilitating requests made by
11 auditors. We get that. In fact, the Auditor General doesn't
12 have time to be chasing up heads of Departments, asking for
13 documents either, and they should have--this is something that
14 she should appreciate.

15 So, we did ask the Permanent Secretary, Please provide
16 us a liaison who can help the Auditors to get the information
17 that they need.

18 The other thing that we said to her, I think the
19 complaint was that, you know, dealing with two Audit Officers
20 was creating too much work for her and her staff. And I said to
21 her, Send us what you're sending to Internal Audit. That way
22 there is no duplication. It's simply adding a name to an e-mail
23 when you send something to Internal Audit. There is no
24 duplication there, no duplication of effort.

25 The other thing had to do with a related audit that we

1 were doing with one of the departments that fell underneath the
2 Premier's Office where we were basically being shut out from
3 getting information because the individual was not being given
4 the Authority that she thought she needed from the Permanent
5 Secretary, and the Permanent Secretary was being copied in on
6 the e-mails where we were asking for information, and she was
7 saying, Well, you know, I'm waiting for the Permanent Secretary
8 to tell me that I can do this.

9 And so, it's--it wasn't any undue burden on the
10 Permanent Secretary, and if it was, it was because it was
11 self-created. Simply saying to that person, for instance,
12 accommodate the request, that's an e-mail that has five words in
13 it, and that doesn't require any time.

14 So, by insisting on being in a back and forth, that
15 was unnecessary, and, you know, again we tried to do our work.
16 We recognise that people have--they have their jobs to. We're
17 trying to do our jobs but they have their jobs to do. We
18 recognise that, and we try to do our work in a manner that
19 doesn't interfere with their processes; you know, as much as
20 possible, we do what we can from our own offices. We request
21 that you send us things electronically if you can. A
22 database--you know, it's simply just attaching that. That would
23 have been just attaching the spreadsheet to an e-mail and
24 sending it; you know, it doesn't require a lot of effort. And
25 she--the Permanent Secretary doesn't need to do this. The

1 liaison could have done this, and again it would not have taken
2 any length of time. It would have been extremely useful to us.

3 So, yeah, we understand that, you know, we are
4 actually in challenging times, and we understand that there are
5 restrictions in terms of staff and resources, but we all--we
6 have been trying to work with that, and we tried to accommodate
7 where necessary. If you can--we don't need the information
8 today, but if we can get it during the week, then that would be
9 great. If you can get us some aspect of it, even if you don't
10 have all of it, that would be great. But we got no cooperation.
11 We didn't get a single document from the Premier's Office in 11
12 months of asking.

13 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

14 Mr Rawat, can we just take stock for a moment.

15 MR RAWAT: Yes.

16 COMMISSIONER HICKINBOTTOM: See where we are.

17 Ms Eker-Male, you have--the Attorney's got an
18 application to cross-examine Ms Webster. I assume that after
19 all of Mr Rawat's questions, that isn't going to be pursued with
20 Ms Webster; is that right?

21 MS EKER-MALE: Good evening, Commissioner. I'm afraid
22 I'll have to take leading counsel's instructions on this. I
23 note your point and consider whether there are further questions
24 leading counsel would wish to put to Ms Webster.

25 COMMISSIONER HICKINBOTTOM: And how long is that going

1 to take you?

2 MS EKER-MALE: I'll have to take instructions, I'm
3 afraid, Commissioner.

4 COMMISSIONER HICKINBOTTOM: We want to finish
5 Ms Webster today, and I'm just trying to take stock to find out
6 how long we're going to be. We're not going--(drop in audio)
7 Webster, of course. It's--you're the Attorney's representative.
8 If there are any other questions to ask, then I'll have to be
9 persuaded today that the application should be allowed.

10 MS EKER-MALE: Thank you, Commissioner. I think our
11 understanding of the letter we received was that application
12 hasn't been granted to ask further questions. And so--

13 COMMISSIONER HICKINBOTTOM: The application hasn't
14 been granted.

15 MS EKER-MALE: To ask further questions. That's our
16 understanding.

17 COMMISSIONER HICKINBOTTOM: I've said that I'll deal
18 with the application at the appropriate time.

19 MS EKER-MALE: Yes.

20 COMMISSIONER HICKINBOTTOM: But the appropriate time
21 is obviously when the witness is giving evidence.

22 MS EKER-MALE: Thank you, Commissioner. I think that
23 we would need a bit more notice to get leading counsel here to
24 ask the questions. If it's okay, I'll take instructions on when
25 he would be available to you.

1 COMMISSIONER HICKINBOTTOM: Right.

2 I'm a bit lost, really, but, well, what we'll do, I
3 think, is how long do you think you'll be, Mr Rawat?

4 MR RAWAT: I was going to try and shorten my
5 questioning because I know it's been a very long day for
6 Ms Webster.

7 COMMISSIONER HICKINBOTTOM: It has, yes.

8 MR RAWAT: I'm just slightly baffled about the
9 situation we find ourselves in.

10 COMMISSIONER HICKINBOTTOM: I'm equally baffled. We
11 have a representative of the Attorney General here. We have the
12 witness here, but apparently we don't know whether there are any
13 further questions to ask on leading counsel, unless he's
14 watching this, isn't going to be much help, is he, Ms Eker-Male?

15 MS EKER-MALE: Commissioner, I can take instructions
16 on this from leading counsel and let you know what the situation
17 is.

18 COMMISSIONER HICKINBOTTOM: Good.

19 MS EKER-MALE: I'm afraid until I've done that, I
20 can't give you an answer about whether we have further
21 questions, whether later today or later--a later date, and we'll
22 make an application for that.

23 COMMISSIONER HICKINBOTTOM: I'm sorry, I'm completely
24 lost.

25 What we'll do, Ms Eker-Male, is we'll have a

1 five-minute break now because we've been going quite a long
2 time, a five-minute break for the Stenographer. If you can take
3 your instructions in those five minutes, we'll come back and
4 then we'll complete Ms Webster's evidence.

5 MS EKER-MALE: Thank you, Commissioner.

6 COMMISSIONER HICKINBOTTOM: Thank you.

7 (Recess.)

8 COMMISSIONER HICKINBOTTOM: Yes, Ms Eker-Male.

9 MS EKER-MALE: Commissioner, thank you for that short
10 break.

11 I would like to take the point, Commissioner, that we
12 didn't know we were going to be given the opportunity to ask for
13 questions today. We received your letter this morning, and it
14 gave no indication of this. Similarly, at the start of this
15 Hearing, we were not told that we would be given an opportunity
16 to ask questions at the end of Ms Webster's evidence.

17 It's now past 7:00 in the BVI, and as you are aware,
18 leading counsel is in the UK, and it's past midnight at that
19 time. So, on this basis, it will not really be possible to ask
20 our questions today. So we ask if it's possible to call the
21 witness back on another day if we decide there are matters to be
22 dealt with that we would like to ask questions about.

23 COMMISSIONER HICKINBOTTOM: Ms Eker-Male, have you got
24 any questions that you would want to ask, given that Mr Rawat
25 has been, I think, very thorough? I mean, you're the person

1 here. Leading counsel isn't here. You can't take instructions
2 from leading counsel. He's not here. He hasn't heard the
3 examination. Normally, any cross-examination takes place
4 immediately after examination. Have you got any questions to
5 ask?

6 MS EKER-MALE: Commissioner, leading counsel--I
7 believe in the letter we stated that our leading counseling
8 would be asking questions, if we have any, and as I stated, he's
9 not available at this time because we have been given such short
10 notice that we have been given the opportunity to ask questions
11 today, therefore I'm not in a position to ask any questions.

12 COMMISSIONER HICKINBOTTOM: I'm sorry--I'm sorry,
13 Ms Eker-Male, you've got it all back to front. I'm not giving
14 you an opportunity. What I'm saying is you've got an
15 application. You didn't raise the application at the beginning
16 of examination when I would have thought that it would have been
17 raised had you wanted to pursue it, but I'm giving you an
18 opportunity to pursue the application now.

19 MS EKER-MALE: Commissioner, please clarify: Are you
20 granting our application to ask questions of the Auditor
21 General?

22 COMMISSIONER HICKINBOTTOM: I'm allowing you to make
23 the application.

24 MS EKER-MALE: I believe our application has been made
25 in writing, Commissioner, so I'm asking whether you've granted

1 that application.

2 COMMISSIONER HICKINBOTTOM: What I've said is I will
3 deal with the application at the appropriate time. It can't be
4 the appropriate time after the Witness has finished giving
5 evidence.

6 MS EKER-MALE: Commissioner, I'm afraid that I'm going
7 to need some clarification on this. We've made the application
8 to you in writing. We received the letter from you today that
9 that application is being considered and you will deal with it
10 at the appropriate time.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MS EKER-MALE: You lock asking me for us to provide
13 further submissions on that application, or are you--

14 COMMISSIONER HICKINBOTTOM: Yes, now is the
15 appropriate time to make any submissions.

16 MS EKER-MALE: Commissioner, I'm not in a position to
17 deal with this today. It's a matter for leading counsel. As I
18 stated, he's in the UK. It's now past midnight. We have not
19 been told that there would be directions sought about this at
20 this time, and I therefore request for some more time and for
21 this to be dealt with. I believe on Tuesday we are making
22 submissions to you anyway. Could this please be dealt with
23 then?

24 COMMISSIONER HICKINBOTTOM: Well, the answer is no
25 because the Witness will not be here then. And if I grant the

1 application, then the Witness will need to be here so that any
2 questions can be asked. But in any event, you are not pursuing
3 the application now?

4 MS EKER-MALE: We remain keen to have the application
5 granted, Commissioner, but I'm not seeking to ask questions of
6 the Witness tonight.

7 COMMISSIONER HICKINBOTTOM: Well, it seems to me that
8 it's an extremely unhappy situation when, apparently, someone is
9 going to be asking--he's going to be cross-examining a witness
10 which he may--which he hasn't heard to give evidence, he hasn't
11 been here to give evidence--he hasn't been here to hear the
12 evidence either remotely or here. You're representing the
13 Attorney General, and I'd assume that you are here to represent
14 the Attorney General in all aspects that counsel deals with,
15 including this outstanding application of yours.

16 MS EKER-MALE: Commissioner, I am here to represent
17 the Attorney General, but it is not--I'm not the person who can
18 make the submissions on this topic. I'm not leading counsel.
19 As I've offered, Sir Geoffrey can make these submissions to you
20 on Tuesday when I believe he is already going to be making
21 submissions to you, as is in the COI Hearing Schedule. We can
22 also make further written submissions to you, if that will be
23 helpful, but I'm afraid I can't address this this evening.

24 And as I said, we have been given such short notice
25 that we have been given an opportunity to address this today to

1 you verbally, and we are not in a position to do so.

2 COMMISSIONER HICKINBOTTOM: Mr Rawat.

3 MR RAWAT: I think the position that we've reached is
4 that an application to put questions to the Auditor General was
5 made on the 30th of September in writing. Subsequent to that,
6 and in response to a letter that came from Withers on the 13th
7 of October, the latest correspondence from the Commission
8 completed, as you have indicated, Commissioner, that you would
9 consider the application to cross-examine on--at the appropriate
10 time.

11 Now, that has to be set against the background that it
12 was known/publicised that the Auditor General will be giving
13 evidence today, and we are ending up in a situation where
14 counsel--leading counsel is the only person who can make
15 submissions on the point, which is to make the application to
16 put questions to the Auditor General, a point which would have
17 been obvious because at no point did the Commissioner indicate
18 that the application had been granted.

19 Nor is leading counsel--nor has leading counsel been
20 here to hear the evidence on what I understand to be is a very
21 narrow issue to be canvassed with the Auditor General, and which
22 I have canvassed today, and so what we're in the position of is
23 we are going to have to rearrange a witness in order to cater
24 for the availability for counsel's convenience because
25 counsel--it was decided by the Attorney General that her counsel

1 did not--who was going to be the person to make any application
2 or put any questions did not need to be present at any point
3 during the Auditor General's evidence today. And so, what we
4 are being asked to do is to end up in a situation where we will
5 have to have the Auditor General on standby in case an
6 application is granted, and then to be ready to deal with
7 questions, which inevitably will affect the rest of the
8 timetable.

9 COMMISSIONER HICKINBOTTOM: And that is if--and if the
10 Attorney General, in one of her forms, wishes to ask the Witness
11 any questions. We're not even sure that there are any questions
12 left to be asked.

13 MS EKER-MALE: Well, Commissioner, I do make that
14 point. I understand that Mr Rawat's lines of questioning have
15 been very thorough, and we will need to consider whether there
16 are further questions for leading counsel to ask.

17 Commissioner, I'd also like to point out that many
18 witness have been called back on multiple dates. That is
19 something that the Commission of Inquiry has been doing. So,
20 therefore, I do ask for your understanding that this could be
21 something that this could be something in this case, if there
22 are further questions for us to ask, that this is followed.

23 COMMISSIONER HICKINBOTTOM: I can give you no comfort,
24 I'm afraid, Ms Eker-Male. If you wish to pursue the application
25 in relation to the Auditor General, then I will not formally

1 refuse the application, but if this matter is raised again by
2 you, you will need to write to us, saying if you would like to
3 make further oral submissions, and then I will consider those,
4 but I simply cannot give you any comfort that you will be
5 allowed to do that, given that you are not prepared to do it
6 while the Witness is here.

7 Certain witnesses, of course, have been recalled
8 because I have asked for them to be recalled. I'm afraid the
9 COI is not driven by counsel's convenience, and particularly in
10 the circumstances that we find ourselves in now when the
11 Attorney General is represented and there is an opportunity to
12 pursue the application now. You're simply not in a position to
13 do that. That is not my fault. That is the fault of those who
14 instructed you to appear today, who appear not to have given you
15 proper instructions as to what to do. That is not my fault,
16 Ms Eker-Male.

17 As I've said, we don't--I don't have to consider it
18 now because you have no questions to ask the Witness, so what I
19 will do is ask Mr Rawat to proceed to ask the remaining
20 questions that he has.

21 BY MR RAWAT:

22 Q. Auditor General, can I take you back to your--I do
23 think the final issue I would like to canvass with you, amongst
24 the documents that you have provided as part of your Written
25 Response is an e-mail, and if you go to those documents page 38,

1 please. I think I just want to pick it up on a point you made.

2 COMMISSIONER HICKINBOTTOM: Page 38 of...

3 MR RAWAT: Page 38 of the documents that accompany the
4 Auditor General's Response.

5 BY MR RAWAT:

6 Q. You may have--and this goes to a point you were making
7 before we had the short break, Auditor General, but if you see
8 at page 38, it's an e-mail dated 2nd of December 2020, and
9 it's--if I'm--it's from a Public Officer in the Department of
10 Information Technology, and it's to--and correct me if I've got
11 this wrong, but it's to the Director of the Trade Department; is
12 that right?

13 A. That's correct.

14 Q. And it--copied into this are Dr O'Neal-Morton, but
15 also two of your Audit Team; is that right?

16 A. That's correct.

17 Q. And what's being said is that user accounts are being
18 created for those two members of your Audit Team, which means
19 that they would have--which am I right to assume with me that
20 they would then be able to access databases held by the
21 Department of Trade?

22 A. That's correct. They were able to access for a short
23 period.

24 Q. And you say "for a short period" because the next
25 e-mail you produce is from a member of your team, one of the

1 Auditors that you deployed on this, and it's the 3rd of December
2 2020.

3 And that Auditor is forwarding to you the e-mail that
4 we just looked at, and then writes: "Subsequently to this, I
5 received a telephone call from the Permanent Secretary Mrs
6 Carolyn O'Neal-Morton yesterday at about 5:00 p.m. objecting to
7 the Audit Office having access to any information. Her reasons
8 being (1) the Programme is ongoing, (2) some of the information
9 is highly confidential, (3) by law the Audit Office can only
10 examine the Programmes after they are completed, (4) they are
11 already working with Internal Audit and the Audit Office will
12 come in after. I informed the PS that I will refer the matter
13 to you".

14 Now, that's in December 2020.

15 Breaking this down--and this goes to, I think, a point
16 that is a point at issue between yourself and the PS, and we've
17 touched upon this. So, from your perspective, and--and this is
18 the evidence you gave when we first called you, your position is
19 there was a lack of cooperation on the part of the Premier's
20 Office.

21 A. That's correct.

22 Q. Dr O'Neal-Morton's position is that, as we've looked
23 at, that that's inaccurate, and it cannot be said that there is
24 a lack of cooperation.

25 But breaking this down, the thrust of Dr O'Neal's

1 point is that her understanding was that your role was
2 post-audit, and therefore as a matter of practice and as she
3 uses the word that's used in this e-mail, which basically is a
4 summary of a telephone call is by law, you were essentially
5 premature in what you were doing.

6 A. Um-hmm.

7 Q. And so what the appropriate course was for you to come
8 in after the Internal Auditor.

9 Now, I should explain that, on the 25th of June,
10 Dr O'Neal received advice from the Attorney General's Chambers
11 which confirmed that she had to comply with your requests, but
12 up to her point is up to time that was not her understanding.
13 Her understanding was that you would come in as a post-auditor,
14 and in the circumstances what was going on, the Stimulus
15 Programme is running, Internal Auditor being asked to do an
16 audit, the various pressures on the Premier's Office, it was
17 legitimate for her to say "no" to you.

18 I mean, what is your position on the suggestion that
19 the Premier's Office did not cooperate with you?

20 A. Having received this from the staff, my first
21 inclination was that maybe it was a misunderstanding, and so I
22 actually contacted her by e-mail and sent Dr O'Neal a copy of
23 the Audit Act or copy of the Constitution which gives the Audit
24 Office the right to come in and request information. Those were
25 sent to her. And after that, we did not get a response to that

1 e-mail, did I? I have a summary of the exchanges I had them
2 with me, between Dr O'Neal and I. I sent that, and we didn't
3 get the information even after having sent that, and I sent a
4 follow-up to that, and again didn't get any information.

5 And over a period of time we were sending e-mails, and
6 after a while--I think after the third or fourth
7 e-mail--Dr O'Neal would respond, "We will send the information,
8 we will send the Report, we will send, we will send, we will
9 send", but we never got anything--we never received anything,
10 any documents, any reports, any copies of the databases that we
11 requested, and not even access that didn't require Dr O'Neal to
12 do anything.

13 And as for a liaison, we wanted to assign a liaison
14 from the Premier's Office, which is, you know, one of the first
15 things that happens in the Audit.

16 So, I don't understand when Dr O'Neal is saying that
17 she was, in fact, cooperating because perhaps she can indicate
18 how she cooperated because we didn't receive anything from the
19 Premier's Office. We didn't receive--there isn't anywhere I
20 could take that aside from saying that we made several requests
21 several different times over a long period of time, almost a
22 year, and to date none of this--none of this information we'd
23 requested was actually given.

24 I would say, though, after we got bundle, I did
25 request the Report, a report--because of papers, the bundle only

1 contained a page of a certain document, and I asked if they
2 could forward me the full document, and she did forward that, so
3 that's the only thing after, you know, almost a year-and-a-half
4 that I actually got, and this is not even related to the Audit
5 procedure, but related to the COI.

6 So, my summary is that despite the ongoing requests
7 that were being made by myself, by my staff for information, we
8 received no information. That was, in fact, what happened with
9 this particular case.

10 And I think the Internal Auditor can speak for herself
11 because we were of the impression that the information was being
12 sent to Internal Audit, but having seen the Internal Auditor's
13 evidence, apparently they were not receiving information either,
14 and--

15 Q. If you turn up page 213, please, in that main bundle.
16 I did take Dr O'Neal-Morton through the chronology of contact
17 because--I mean, she explained to the Commissioner that she had
18 done a search of all of her e-mails to identify any relevant
19 e-mails and to produce them to the Commission, and this is one
20 which is dated the 10th of December 2020, which is from yourself
21 to Dr O'Neal-Morton, and you can see that the penultimate
22 paragraph, which says: "I'm enclosing excerpts of the
23 Constitution and the Audit Act which addresses the Audit
24 Office's mandate to access public property and information. You
25 may share this with this your staff". So, this would seem to be

1 the follow-up to the e-mail that we just looked at, which was
2 forwarded to you.

3 Did you or did at any time Dr O'Neal-Morton have a
4 direct conversation with you about the constitutional
5 obligations and the obligations on Public Officers under the
6 Audit Act?

7 A. No. There was no follow-up to this e-mail.

8 Q. The--that e-mail that we looked at where one of your
9 Auditors is explaining to you that Dr O'Neal-Morton has given
10 instructions that access should be denied to your offices, so
11 it's--yes, the e-mail where Dr O'Neal-Morton objected to the
12 Audit Office having access to information from the Trade
13 Department, you--tell me if I'm wrong in this, but your position
14 is that that amounted to an explicit objection to the Audit--to
15 your office as having access to that?

16 A. Having access. That was an explicit objection, an
17 ongoing explicit objection because that request was made several
18 times. It was made by the staff, and it was made by me.

19 Q. And so you would say that that is contrary to any
20 suggestion that there was, in fact, an attempt at cooperation?

21 A. It is contrary, yes, that would be our position.

22 And this required no effort on Dr Morton's part. It
23 doesn't require her to put any kind of resources. It's simply
24 an instruction, a simple instruction.

25 Q. I want to step back, Auditor General, from the detail

1 that we have been looking at because we have looked at a number
2 of allegations--a number of potential criticisms of you, and
3 indeed what might be said to be actual criticisms of you that
4 arise out of different reports and span a number of years, so we
5 looked at the Neighborhood Partnership Project, Sea Cows Bay,
6 the wall and COVID stimulus, and we have done that on two
7 occasions with you.

8 But stepping back from it all, and looking at the
9 concerns that are raised, firstly, by recipients of reports from
10 your office, they might be broken down into a number of
11 different themes. The first is that there is a failure by your
12 office to properly take account of and incorporate responses to
13 draft reports. Is that something that you would acknowledge or
14 accept?

15 A. No. I don't accept that. I think we do actually go
16 through the Response that we receive, and where we are--where
17 there are changes--well, we can actually verify the information
18 that is submitted. We will make the changes.

19 And--I mean, using the submission that came afterwards
20 from the Premier's Office, that's not something that can lead to
21 changes in our Report because they haven't provided any
22 supporting information on a lot of what's in there, and we would
23 just use, for example, the bands, where the bands are just
24 listed. I have the bands listed in my Report, but what I would
25 expect to get from them is what these bands are, how they are

1 put together, why they are put together that way, and what is
2 the expectation, having changed it. And where is the Authority
3 to actually apply this system?

4 This is what would change the Report. If you can give
5 us the information behind this, get us the supporting authority
6 behind it, which would be the Cabinet approval, then give us the
7 information on why this was done this way, then we can put that
8 in the Report. We do not agree with it, and probably would put
9 it in the Report and disagree with it, but it would go into the
10 Report.

11 Simply writing how long this is, saying add this to
12 your Report, that's--that's not something that is workable. It
13 doesn't add any value to the Report. And they have their own
14 ways of putting out their own information, which they should do.

15 Q. Have you--I mean, that submission to the Commissioner,
16 the Premier's Office's Response, it runs to 34 pages, but it has
17 a considerable number of annexes, I think nearly probably 900
18 pages' worth of annexes. Have you been able to consider those
19 annexes?

20 A. And adding them in the Report?

21 Q. Well, not just adding them in the Report, but did you
22 find anything in those annexes that informed your Report or
23 caused you to rethink the concludes you reached from that Audit?

24 A. No.

25 Again, when we put out the Report, we expect you to

1 send back--we expect the Officers to send back a focused
2 response to what's in the Report. We don't expect to be adding
3 paragraphs in order to accommodate what other people felt that
4 their experience was on this Project.

5 We tried to keep the Reports brief and factual. I
6 mean, we understand that Permanent Secretaries are busy, heads
7 of Departments are busy, but if we send them a 200-page report,
8 they're not going to read it--we know that--so we tried to keep
9 the information factual, brief, to the point. You can read it.
10 We tried to also make sure that it's completely supported, it's
11 supported. And this particular Report is supported based on the
12 records that we were able to get from the Departments that took
13 part that were related to this.

14 In particular, the Treasury, and I think people forget
15 that the Treasury exists, and the Treasury is central. You
16 can't make a payment without the Treasury, and certain documents
17 have to be appended in order to--in order to get a payment done,
18 and we have access, complete access, to those--to that
19 information.

20 So, I'm losing my way here.

21 So, basically, what we expect when we send out a
22 report is for people to look at the complaints, look at the
23 issues and address those issues. And if there is something in
24 there that we missed, if there is a policy that we didn't
25 consider, make that available. That's what would change a

1 report, not something that's, you know, somewhere off on a
2 tangent that's somewhat maybe barely related, that's not going
3 to change the Report, or something that something thinks they
4 remembered. If you think you remember that, you need to have
5 some sort of fact, some documents to support it for us to change
6 our Report. It has to be supported. They cannot change the
7 Report based on something somebody thinks they remembered or
8 something that they think happened because when I write
9 something--when I write something, it's supported by information
10 that we have, whether it's an e-mail or however it's policy or
11 whether it's a statement or something from the Treasury. It's
12 supported by that. And if there is something that's contrary to
13 that or something that has superseded that, send us that
14 information, and that we can take into consideration.

15 And despite the Response we got from the Premier's
16 Office, what we didn't get and what I was hoping to get from
17 this was actually this is the Policy that was changed to, "You
18 didn't have this", you know. That I can work with. I mean, if
19 I got that, it would be a big oops, there is a new policy
20 because our work is based on the policy that we know to be out
21 there. We don't know there to be a different policy. And, in
22 fact, nobody has sent us a different policy.

23 The policy is that these people would benefit from the
24 Programme. Then when we're doing our work, they're checking to
25 see whether people who got money under this programme actually

1 met those criteria.

2 Q. Another theme that flows from the totality of the
3 evidence that the Commissioner has--and this takes us back to
4 the sort of language that appears in some of your reports--and
5 that is that there is a lack of professional objectivity in the
6 way that you approach your work. Is that something that you
7 would accept?

8 A. No, I don't accept that at all.

9 And I think I explained the language, and you would
10 see it vary from report to report. And even where there is
11 certain criticisms in certain projects, the language probably
12 would be somewhat less critical. It would be--you can criticize
13 in a mild way because this is something that went wrong, and we
14 know that it needs to be addressed. But there is certain
15 infractions that are, to me, worse than others, and not
16 providing information on government projects is a big one of
17 those because this is government money that's being spent, and
18 you're telling the Auditor General that she can't see how the
19 money was being spent or she can't see what the motives were
20 behind this spending--that is not acceptable.

21 So, when that happens, the language changes because it
22 affects the transparency of that Project, of that Programme, and
23 it raises a red flag where we are concerned, where people are
24 not sharing information, hiding information as to how government
25 money is being spent or what is behind the figures, that raises

1 a red flag, and the language changes.

2 Q. And so, returning to the COVID Stimulus Reports, was
3 your choice of language deliberate there?

4 A. Yes, because there was--the language was deliberate
5 because there was a marked lack of cooperation in terms of
6 providing information.

7 Q. Now, you've seen the Premier's Office's Response, not
8 the Preliminary Report, the one but the more recent response to
9 the Commissioner. Did you have any observations on the language
10 used in that Report about your conduct?

11 A. Like I said, I expected a response from the Premier's
12 Office, but what I would have expected from him was to say,
13 "Well, this is the changed policy". He didn't have the changed
14 policy. "And look, this is how much we have achieved from this
15 programme. We have farmers now that can feed the Territory
16 based on what we just did".

17 That's the sort of response that would make me think,
18 "Okay", and take note, but what we got was that's basically a
19 lot of attacks without any kind of substance, without any kind
20 of supporting information, without any kind any indication that
21 there were changes that we needed to take into consideration,
22 that we missed some things somewhere. So, we got a lot of
23 attacks, but we didn't get the substance that I would have
24 expected from a response, and, you know, that I think is still
25 under an obligation to produce; to show us how the money was

1 spent, to show us, well, how the policy changed, and if the
2 policy changed where in fact that was made public so other
3 people wouldn't know that the policy changed and who would come
4 in and take advantage of that. You know, those are things that
5 I would have expected to see from a response from the Premier's
6 Office.

7 Q. The next point that arises is that looking at your
8 Reports in the round, it does indicate an Auditor General who
9 ventures outside the scope of what an Auditor should doing and
10 into the realm of policy formulation. Is that something you
11 would accept?

12 A. No, I don't accept that.

13 I think this position is one of the few that--this is
14 one of the few positions in Government that touches all the
15 Departments to be able to see everything, and able to comment on
16 everything. And if we have that level of access, on that level
17 of--if we have that, and we're not able to use it to actually
18 promote good governance, then I think we have failed. If we are
19 not able to comment on when we think something is going wrong or
20 something isn't being applied as it should be within the realms
21 of good government, then I think we have failed.

22 I don't think it's going outside of what the Auditor
23 General does because I don't believe we actually said the policy
24 should be this or the policy should be that. That has never
25 happened. We said that you have not applied the policy that was

1 actually approved.

2 And, in fact, you're making amendments to the policy
3 as actually going to Cabinet, and amendment was made to the
4 policy and then it went to Cabinet, is that the right way
5 around? So, I don't think we stepped outside of what we should
6 do.

7 And I think really not anybody else, if we don't say
8 it, who is going to say it? No one is going to say it. The
9 other officers that have a single reach, they are not going to
10 say it. So, to me, it's an obligation and a responsibility to
11 say something when something is off. Otherwise, it just goes
12 from bad to worse.

13 Q. And it isn't--

14 A. And the whole intention, really, isn't to be
15 reprimanding people but it's so they would know that, you know,
16 this is considered to be a little bit off, and also to know that
17 someone is actually looking at this and that they need to manage
18 the Department, manage their affairs in a way that is considered
19 correct for a public office.

20 And it can't be that any government department can
21 take a position that they can spend government money any old
22 way. There is a policy. You have to apply the policy. There
23 is a reason why that's there. It's a control. You can decide
24 to change that just so, but if you're going to change it, change
25 it in the right way.

1 Q. But do you accept that the line that you cannot cross
2 is in determining policy?

3 A. I can't determine policy, that's correct.

4 Q. I mean, you can ask what is the policy.

5 A. I accept that.

6 Q. And the processes that sit underneath the policy, and
7 that's what your focus will be, presumably, is on the processes.

8 A. That's correct.

9 Q. But it is not for an Auditor General, is it, to start
10 either formulating or changing or reading policy to be whatever
11 she wants it to be?

12 A. That's correct.

13 Q. And you don't--it's--is it your evidence that that's a
14 line you never crossed?

15 A. That's the line I don't think I've crossed.

16 And I think what we are saying repeatedly is that we
17 know what the police--the policy that has been shared with us
18 has not been applied on these Projects. And if there is a
19 different policy that has been approved, that has not been
20 shared with us, and that would make a world of difference.

21 And even with the Response that we got, they haven't
22 sent us a different policy.

23 Q. Have you asked for--in returning to COVID packages,
24 have you asked for the current policy?

25 A. After recently?

1 Q. Yes.

2 A. Reports have been Issued?

3 Q. Yes, after--

4 A. After the Reports have been issued, I think in my
5 comment I did actually say we need a copy of that policy because
6 I think there was a statement that this is the Policy, and
7 I--the Response that I have there is something in here where it
8 said, "Well, we'll need to see a copy of that policy".

9 Q. But what hasn't happened is either you have been
10 furnished with a copy of the policy or you have spoken to the
11 Premier's Office and got a copy. What the point you're making
12 is that, in your response to the Premier's Office, submission to
13 the Commissioner, you have indicated that it would be nice to
14 see the policy?

15 A. That's what's in the Response. It would be nice to
16 see this policy.

17 That whole statement that has been submitted, all they
18 had to do was to submit the policy. That would have answered a
19 lot of questions, a new policy, approved policy.

20 Q. Thank you.

21 MR RAWAT: Commissioner, if I could have a moment,
22 please.

23 COMMISSIONER HICKINBOTTOM: Certainly. Thank you.

24 (Pause.)

25 MR RAWAT: Commissioner, I have concluded my

1 questions. Can I finish by thanking the Auditor General for
2 making herself available today. We started later than we
3 anticipated, and we probably finished later than the Auditor
4 General anticipated, and we're grateful for the time she's given
5 to the Commission.

6 Can I also thank her for the way in which she has
7 given her evidence today.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 Ms Webster, can I echo that, thank you for your time,
10 a lot of it, today and your patience and the way in which you
11 have given your evidence, which has been very helpful. Thank
12 you.

13 (Witness steps down.)

14 COMMISSIONER HICKINBOTTOM: Now, Ms Eker-Male, can I
15 just say this very briefly:

16 Firstly, in relation to the Auditor General, if the
17 elected Ministers wished to pursue their application to
18 cross-examine her, I'm afraid you're going to have to write to
19 me. And if I need to hear any oral submissions, then I will
20 hear those on Tuesday morning when we hear the submissions on
21 other matters. However, we're now proceeding on the basis, so
22 far as I'm concerned, Ms Webster's evidence is over, and I will
23 need persuading that to ask her any more questions is
24 appropriate. But if I can be persuaded of that, then those
25 questions will be put, can be put, in one form or another.

1 In relation to the Governor and the former Governor in
2 respect of whom the elected Ministers have also made an
3 application to cross-examine, can I just make it clear that, in
4 the usual way, I would expect that the advocate, who is intended
5 to make any cross-examination of either the Governor or the
6 former Governor, to hear the evidence of them; to hear
7 Mr Rawat's questions of them; and immediately after that is
8 concluded I will hear any application to cross-examine. I can't
9 hear the application before then because, for all I know, there
10 will be no questions left to answer. But I certainly don't
11 propose to wait any longer than that. That is the--that is the
12 appropriate time to deal with the application, and that is when
13 I will deal with it in respect of the Governor and the former
14 Governor.

15 MS EKER-MALE: Thank you, Commissioner, for those
16 directions. That's appreciated. Thank you.

17 MR RAWAT: Commissioner, may I raise one matter before
18 you rise.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 MR RAWAT: We were expecting a response from the
21 Premier by 4:00 p.m. today to a Warning Letter, and the deadline
22 for that was extended. We haven't received a response, I
23 understand, nor a request for a further extension, and I was
24 wondering if Ms Eker-Male could assist at all with the position
25 in relation to that Response.

1 COMMISSIONER HICKINBOTTOM: Because we need this
2 Response for the Hearings next week.

3 MS EKER-MALE: I do understand, Commissioner. My
4 apologies the extension hasn't been requested today. If I may
5 request orally, please, or more appropriate, I can follow up in
6 writing, and we endeavor to get the response to you as soon as
7 we possibly can.

8 COMMISSIONER HICKINBOTTOM: But the next working day
9 we may be dealing with radar barges again, a matter that I
10 propose is raised before both in respect to the Governor and the
11 Premier. That's the next working day.

12 MS EKER-MALE: I understand that, Commissioner. My
13 apologies. Yeah, my sincere apologies that we haven't been able
14 to get this to you today. I'm aware it's being worked on as I
15 speak, and so we will get it to you as soon as we possibly can.

16 COMMISSIONER HICKINBOTTOM: You can't give any
17 indication of when that might be?

18 THE WITNESS: I anticipate it will be provided to you
19 over the weekend.

20 COMMISSIONER HICKINBOTTOM: There we are.

21 MR RAWAT: Thank you for that.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 Well, there we are. I can't say any more. It's very
24 disruptive of preparation when these documents come in so very,
25 very late, but we will get it when we get it.

1 Okay, Mr Rawat.

2 MR RAWAT: We resume again on Tuesday. I think it's
3 at 10:00.

4 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
5 much, Mr Rawat. Thank you, everyone.

6 (End at 8:02 p.m.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN