

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 51

(WEDNESDAY 20 OCTOBER 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Sir Geoffrey Cox QC, and Ms Lauren Peaty 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 Augustus Jaspert gave evidence.

Ms Sonia Webster gave evidence.

Court Reporter:

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Those present:

Session 1

Sir Geoffrey Cox QC, Withers LLP

Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Mr Augustus Jaspert

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

Session 2

Sir Geoffrey Cox QC, Withers LLP

Ms Lauren Peaty, 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, I think
4 we're ready.

5 MR RAWAT: Thank you, Commissioner.

6 Commissioner, our first witness of today is Augustus
7 Jaspert, who is the former Governor of the Virgin Islands.

8 Before he takes the oath, could I just raise one
9 point--

10 COMMISSIONER HICKINBOTTOM: Yes.

11 MR RAWAT: --briefly with Sir Geoffrey.

12 Yesterday, I identified some documents by reference to
13 page numbers which are in the Hearing Bundles for this topic and
14 over which privilege was asserted. It's obviously quite
15 pressing that we clarify the position of the Attorney General in
16 relation to those documents.

17 SIR GEOFFREY: May I interrupt, Mr Rawat. The
18 privilege is not asserted in respect of those documents.

19 MR RAWAT: Very grateful for that confirmation. Thank
20 you, Sir Geoffrey.

21 COMMISSIONER HICKINBOTTOM: Thank you, Sir Geoffrey.

22 BY MR RAWAT:

23 Q. Mr Jaspert, can you see and hear us?

24 A. Yes, I can.

25 Q. I understand that you wish to take an oath. Do you

1 have a copy of the Bible with you?

2 A. I do, yes.

3 Q. Now, could you take the Bible in your hand and repeat
4 after me: I swear by all mighty God--

5 A. --I swear my all mighty God--

6 Q. --that the evidence I shall give--

7 A. --that the evidence I shall give--

8 Q. --shall be the truth--

9 A. --shall be the truth--

10 Q. --the whole truth, and nothing but the truth?

11 A. --the whole truth and nothing but the truth.

12 Q. Thank you.

13 Would you give the Commissioner your full name,
14 please?

15 A. It is Augustus James Ulysses Jaspert.

16 Q. And your professional address?

17 A. Marsham Street, London, United Kingdom.

18 REALTIME STENOGRAPHER: This is the Court Reporter.
19 I'm sorry to interrupt, but I'm having a hard time hearing Mr
20 Jaspert. So, could you talk a little louder or get closer to
21 your microphone, please.

22 THE WITNESS: Is that better?

23 REALTIME STENOGRAPHER: Yes, it is. Thank you.

24 BY MR RAWAT

25 Q. You will have received copies of the Hearing Bundle in

1 electronic form. Can I confirm that you have those with you?

2 A. I do.

3 Q. And as the Court Reporter just indicated, it's
4 important as we go through your evidence to keep your voice up,
5 and to speak slowly. I think the advice I'm now going to give
6 everyone is it's always better to shout rather than to whisper.

7 Can we just deal with some background first of all.
8 Could you give the Commissioner an outline of your professional
9 background before you took up the role of Governor in the Virgin
10 Islands?

11 A. Thank you.

12 So, throughout my career, I have been a public servant
13 in a number of different areas. I was firstly in a local
14 authority in the United Kingdom. Then in the Central Government
15 of the United Kingdom Government, including in Her Majesty's
16 Treasury, the Home Office, the Cabinet Office, and Number 10
17 Office of the Prime Minister before taking up appointment as
18 Governor of the British Virgin Islands.

19 Q. And what was the period of your tenure as Governor in
20 these islands?

21 A. That was from August 2017 until January 2021.

22 Q. Was the time that you spent as Governor extended at
23 any point?

24 A. Yes, it was. It was initially for a period of three
25 years, and it was extended until January 2021.

1 Q. And what's your current role?

2 A. I'm currently the Director General of Delivery in the
3 United Kingdom's Home Office, and that's responsible for
4 immigration and security, counter terrorism and policing and
5 public safety.

6 Q. You obviously will have some aware of the Constitution
7 of the Virgin Islands. By all means refer to Sections of that,
8 and we can look at them if we need to, but what was your--and
9 what is your understanding of the role of the Governor under the
10 Constitution of 2007?

11 A. Thank you.

12 Well, as you rightly say, the role of the Governor is
13 set out by powers and is limited by the Constitution of the
14 Virgin Islands 2007. That is essentially where I drew my
15 tenure, but as I know with all Governors, by taking the
16 direction for their role.

17 As you will be well-aware, within the Constitution
18 that sets out defined functions for the Governor, while I am
19 empowered to exercise those functions, these include Section 60
20 that are specific responsibilities for external affairs, for
21 defence including the Armed Forces, for internal security--that
22 includes Police Force--and terms and conditions of persons
23 holding public office as well as the administration of courts.

24 As Governor, I also had the power to make
25 appointments, again in line with the Constitution, and I believe

1 that is Section 92, but I can--public appointments. I also had
2 a role in chairing Cabinet but not having a vote in Cabinet as
3 well, and also Chaired the National Security Council.

4 Q. And in terms of the constitutional limitations on the
5 role of Governor, what were those?

6 A. The Constitution sets out the role of Governor, as I
7 specified, and also the role of where power is essentially
8 exercised through others, principally the Elected Government as
9 is set out within the constitutional framework. That would be a
10 key part of it, but also within exercising my authority as
11 Governor all of--my actions and decisions are guided by the
12 Constitution and also by laws of the Territory as well, which
13 may set out in more detail, depending on what the specific law
14 is, the role of the Governor relevant to that particular issue.

15 Q. It has been submitted to the Commissioner that for the
16 last 20 to 30 years Governors have sat in Cabinet and done
17 nothing. Would you accept that as a characterization of the
18 role of the Governor in the BVI?

19 A. No, I don't accept that.

20 So, the Governor has a number of roles in Cabinet.
21 Prior to Cabinet, the Governor is alongside the Premier and the
22 Cabinet Secretary in shaping the Agenda as part of the Cabinet
23 Steering Group. The Governor then as Chair of Cabinet may
24 sometimes also bring papers pertinent to those areas where there
25 are Governor's responsibilities are, I mentioned Section 60

1 areas for example.

2 The Governor also, and in line with the Constitution
3 and the spirit of modern partnership, as Governor I would in
4 Cabinet often questions, challenge, support some of the
5 discussions and deliberations that were there as well.

6 And finally, the Governor also has a role in helping
7 to ensure that the Cabinet Secretary takes forward the minutes
8 and records the decisions and would sign off with Cabinet those
9 Minutes of Meetings.

10 Q. And could you just explain the process by which
11 minutes were agreed?

12 A. The process was essentially that the Cabinet Secretary
13 would prepare a draft of the meeting, which would then be
14 returned to the next meeting for agreement or an amendment or
15 comment by Cabinet, and any discussion or matters arising from
16 those minutes prior to my signature as Chair of Cabinet.

17 Q. The whole of Cabinet would have to approve the minutes
18 from the last meeting?

19 A. Yes, the practice was that the first item of any
20 Cabinet Meeting was the discussion by Cabinet of those previous
21 minutes. However, there was a period when the record-keeping
22 was not kept up-to-date, where the Cabinet Minutes were not
23 prepared between each Cabinet Meeting. During those meetings,
24 we did not start with the Cabinet Minutes as the first item.

25 Q. And what was the reason for this slippage in

1 record-keeping?

2 A. Well, really, it was an area which I encourage that we
3 do get back to good record-keeping. It was a core tenet, I
4 believed, of the approach that we need to have in place. Part
5 of it was due to, at that time, the height of the COVID pandemic
6 where we were holding very long meetings and making decisions
7 which were recorded as decisions in the meeting for sometimes
8 very rapid communication. I did write to the Cabinet at one
9 point encouraging them to both get meeting papers in advance,
10 but also we held discussions which I would like to try and
11 encourage that we prioritize getting the Cabinet Minutes back
12 into place and into good order.

13 Q. And in terms of getting the minutes back into good
14 order, is that a function of the Governor as the Chair of
15 Cabinet or was it something that fell to the whole of Cabinet?

16 A. Well, the Cabinet Secretary is appointed to undertake
17 the minutes and to take those, but it was a decision by whole of
18 Cabinet a number of times where we did not take those minutes.
19 I encouraged that we would hold sessions to agree the minutes
20 and to work through essentially what was a backlog of the
21 minutes, and a number of times in those Cabinet discussions, my
22 suggestion was not taken forward by other Members of Cabinet.

23 Q. And why was your suggestion not taken forward, were
24 you told?

25 A. Well, as I'm sure you understand, the Cabinet

1 discussions are confidential, so it wouldn't be appropriate for
2 me to divulge individual Ministers or Members of Cabinet's views
3 or those discussions, but it was a position taken by the
4 collective of Cabinet, and as I said I don't have a vote, and
5 I'm not.

6 Q. Your voice is dropping a little bit, Mr Jaspert, so if
7 you could just remember to keep it up, please.

8 It follow, doesn't it, from what--how you've responded
9 to earlier questions, that you--the Governor does have a
10 significant role to play under the 2007 Constitution?

11 A. Yes, that is correct.

12 Q. But as Governor, whom are you accountable?

13 A. Well, I'm accountable in a number of ways as Governor.
14 Firstly, I'm formally accountable to Her Majesty The Queen and
15 the Secretary of State, but also I'm accountable to the laws of
16 the Territory, to the British Virgin Islands, and the
17 Constitution that we just discussed.

18 I'm also--there is no immunity as the Governor, I'm
19 accountable through the frameworks of the laws of the Territory.
20 I also instigated and pushed that the Governor should be held to
21 account in a way through an open approach with the media and
22 also with the public, so I would regularly hold discussion
23 sessions or catch-ups with the media as well to explain the work
24 of the Governor.

25 Q. But there isn't an obligation under the Constitution

1 of 2007 for a Governor to have to appear in front of the House
2 of Assembly, for example, and answer questions?

3 A. That is correct.

4 Q. Nor would you have to appear in front of a committee
5 comprised of Elected Officers together with members of the
6 public?

7 A. That is also correct.

8 Q. And so, doesn't it follow that, under the
9 Constitution, there is an absence of accountability to those
10 people who would be most directly affected by decisions that a
11 Governor takes?

12 A. Well, as I said earlier, the Governor is accountable,
13 in effect, through the laws of the Territory, that both grant
14 powers and limit powers of the Governor, and from the
15 Constitution of the Territory. Those are--the laws are the
16 democratically elected laws put in place by--well, laws of the
17 Territory put it in place by the democratically elected
18 representatives of the Territory. So, I feel that that
19 essentially gives a strong framework around the role of the
20 Governor.

21 Q. Would you accept that, as Governor, you wear two hats:
22 You are expected to speak on behalf of the BVI but you are also
23 accountable to the foreign Commonwealth and Development Office,
24 and the Secretary of State?

25 A. Yes, you could see us as wearing two hats. I didn't

1 during my particular time in the Virgin Islands find that I was
2 having to consciously wear two hats because the interests of the
3 role was taking up office where the interest--to serve the
4 interest of the people of the British Virgin Islands and to
5 serve Her Majesty. The interest of the United Kingdom, those of
6 the people of the British Virgin Islands and the interest in my
7 role with the Government of the Virgin Islands as Governor and
8 the people of the British Virgin Islands as well.

9 So, whilst it could be characterized as two hats for
10 me, really it was one hat and one position which was about what
11 was in the best interest of the people of the Virgin Islands as
12 is set out through the Constitution.

13 Q. The Preamble to the Constitution contain these words:
14 "The people of the Virgin Islands have genuinely expressed their
15 desire to become a self-governing people and to exercise the
16 highest degree of control over the affairs of their country at
17 this stage of its development, and noting that the United
18 Kingdom, administering power for the time being, has articulated
19 a desire to enter into a modern partnership with the Virgin
20 Islands based on the principles of mutual respect and
21 self-determination".

22 Now, those--that Preamble must have been something
23 that you would have had to keep in mind when exercising your
24 powers as a Governor?

25 A. Certainly. In fact, I would say even more to keep in

1 mind, it was a guiding principle. It is not just a
2 Constitution, it's also Article 73 of the United Nations setting
3 out similar principles around that, and so in operating my role
4 as Governor, that, during my tenure, it was both the law of the
5 Constitution as well as the spirit of the Constitution,
6 including set out through that Preamble, which was a key guide
7 to how I operated throughout.

8 Q. And you mentioned Article 73 of the United Nations
9 Charter. The point there is the reference to developing
10 self-government, isn't it?

11 A. Correct, yes.

12 Q. And you also accept that in White Papers in 1999 and
13 2012, the UK Government committed to a modern partnership with
14 the BVI?

15 A. Yes, that is correct.

16 Q. And those commitments that we find in the Preamble in
17 Article 73 and in the White Papers come to this, do they not:
18 That the UK Government, in its dealings with the BVI whether
19 through the Governor or whether through other organs of the
20 State, needs to conduct itself on the basis that this is a
21 modern partnership and on the basis that all the steps it takes
22 should be intended to develop and promote self-government would
23 you agree with that?

24 A. Yes, I would agree with that, and that was an
25 important part of my--my approach in my time as Governor.

1 There is something about promoting the importance of
2 growing self-determination and growing strengthening of the
3 Territory itself. It's also, as I mentioned earlier, about
4 upholding the Constitution and making sure also that at times it
5 was challenging the Elected Government to help ensure that
6 standards are upheld to take the self-determination ever further
7 and stronger as well.

8 Q. Your voice dropped a little bit, could you just repeat
9 the last part of what you said?

10 A. Sorry, I'm going to try and move the computer nearer
11 to me, so give me one minute, if that will help because I am
12 shouting at the top of my voice. So, let me rearrange my set-up
13 here.

14 Is that better, Mr Rawat?

15 Q. Is sounds like it is.

16 A. Good.

17 Sorry, the question was surrounding the last part of
18 my comments.

19 Q. You were speaking about self-determination, and I just
20 wanted to ask you just to repeat the last part of what you said.

21 A. Yes.

22 What I was saying at the end was that, as part of a
23 commitment to self-determination, that sometimes meant that I
24 would need to support, encourage, sometimes challenge the
25 Elected Government as well on the principles, for example, of

1 good governance or helping to ensure that self-determination was
2 made stronger through the practices and approaches that were
3 taken forward.

4 Q. You mentioned "good governance". What did you see the
5 role of yourself as Governor to be when it comes to or when it
6 came to good governance?

7 A. Well, the Constitution of the British Virgin Islands
8 is different to some Constitutions, for example, the Cayman
9 Islands Constitution where it is specifically stated as within
10 the Constitution. However, it runs throughout, I believe, the
11 role of the Governor to promote good governance, to promote
12 adherence to the laws of the Territory, the Constitution itself,
13 and the principles that are set out within that.

14 So, for me, that was something that was called to what
15 I was doing to help build up those institutions, to help take
16 forward the progress on laws that could strengthen the
17 frameworks around good governance, and to change good or areas
18 where I perceived that good governance was falling short as
19 well.

20 Finally, obviously, the role of the Governor as under
21 the Commission of Inquiry Act, it is down to the Governor who
22 has the power to call an Inquiry, as you're well-aware, should
23 there be concerns that warranted at that level. I called the
24 Inquiry because of very concerns relating to good governance
25 that had been presented to me, and those alleged failings in

1 good governance were key areas that I had no option other than
2 to call the Commission of Inquiry to ensure that they could be
3 looked into.

4 Q. Now, the Commission has sent you what we call a
5 "Warning Letter". Do you have a copy of that? It's dated
6 the 4th of October 2021.

7 A. I do, yes.

8 Q. If I could explain, Mr Jaspert, the letter is
9 confidential, but what its purpose is, is to give the recipient
10 notice of potential criticisms that may be made of them in the
11 Commissioner's Report.

12 Now, under the Commissioner's Protocol concerning
13 potential criticisms, a participant can raise a potential
14 criticism of another; and, in this case, the Elected Ministers
15 who are participants have raised criticisms of you. The
16 Commission also determined there was another criticism that
17 ought to be put to you, and you were then asked to provide a
18 response to that.

19 I should make clear that these potential criticisms do
20 not represent the provisional or concluded view of the
21 Commissioner. The reason you are given an opportunity not only
22 to have notice of them but also to respond to them is to ensure
23 that you are treated fairly.

24 You have provided a Written Response to those
25 criticisms; is that right?

1 A. I have, yes, that's correct.

2 Q. And do you have a copy of that with you?

3 A. I do, yes.

4 Q. And can you confirm it's the 14th of October 2021, and
5 carries your signature?

6 A. Both of those are correct.

7 Q. And you've annexed to it a document. Can you confirm
8 that you are content that your Written Response together with
9 any accompanying documents should stand as part of your evidence
10 to this Commission?

11 A. Yes, I am content, yes.

12 Q. I would like to take you through that Written
13 Response, but as we do so to put it in a wider context and show
14 you some other documents on which you might be able to assist
15 the Commissioner.

16 Now, the first criticism, potential criticism, that
17 was raised is that your statement and actions led to a
18 perception of disrespect for Elected Government, and the example
19 is given that, in December 2020, you briefed the press that
20 yourself and the Deputy Governor were to bring forward the
21 Integrity in Public Life Bill making no reference to a previous
22 decision of Cabinet to approve Integrity in Public Life Policy.

23 I think we've provided you with a minute of Cabinet,
24 it has the page number 345 at the bottom of it, and it's the
25 Cabinet Meeting No. 30 of 2019. Do you have that?

1 A. Which bundle is that in, please, Mr Rawat?

2 Q. I think it was provided by e-mail as a separate
3 document.

4 A. I believe I have that, if it is--30 of 2019?

5 Q. Yes.

6 If you look at the page that says 30 of 2019, it
7 should have the number 396 at the bottom.

8 A. Yes, I can confirm I've got that.

9 Q. It's the minutes of a Cabinet Meeting on the 7th of
10 November 2019, and I should explain, Mr Jaspert, that when the
11 Deputy Governor gave evidence, which was on day 17 of our
12 proceedings, I canvassed this minute with him, and if I could
13 ask you just to turn through, please, to page 402--let me know
14 when you've got there.

15 A. Yes, I'm there on 402.

16 Q. Now, this refers to Memorandum No. 378/2019, and it
17 indicates that you, as Governor, was bringing this memorandum to
18 Cabinet, and it's headed "Integrity in Public Life Policy".

19 Am I right to say that you were the person bringing it
20 to Cabinet?

21 A. That is correct, yes. It was, I believe, a paper
22 prepared by the Deputy Governor, and I took it to Cabinet.

23 Q. If we look on to the next page, it says that--at
24 page 403--that you presented the paper, and you explain that or
25 the Premier raised an issue as to what the approach was in other

1 countries with respect to drafting Integrity Legislation, and in
2 particular who would determine the Chairman of the Integrity
3 Commission. He explained that in some countries, the Governor
4 general selected the Chair, and the Prime Ministers would choose
5 the Chairman of a Commission.

6 The deliberations then continued, pressing various
7 aspects of the Policy, and if you go over to page 404, there
8 were further deliberations, and in the course of which running
9 through the document, you said that the Bill wasn't meant to be
10 a straitjacket but would help to raise standards and help people
11 do the right thing or carry out the right intentions. You also
12 said that the Public Service must be free of corruption if the
13 goal was to develop a world-class Public Service. The Premier
14 pointed out the importance of appointing true professionals to
15 the Integrity Commission and he referred to the use of retired
16 judges. And the importance of having a Chairman of an Integrity
17 Commission who was not partial.

18 You then at 32 said that this Integrity in Public Life
19 Policy was the component of a wider suite of proposed
20 legislation including the Public Service Management Act and the
21 Whistleblower's Bill. You stated the AG has mentioned that he
22 drafted the Whistleblower's Bill but there were elements already
23 included in the Public Service Act and, therefore, it was being
24 amended.

25 You also suggested that there be consultation with the

1 Public Service as stakeholders as the first step.

2 You concluded, that the last part of the deliberations
3 that's recorded is that the Chairman stressed the need to get
4 the Integrity in Public Life Bill right. It was not just about
5 passing legislation but that the effectiveness of the
6 implementation phase was important.

7 The decision was that Cabinet reviewed and approved
8 the draft Integrity in Public Life Policy, and there was this
9 part of the decision that Cabinet was asked to take to decide
10 that the Bill entitled "Integrity in Public Life 2003" be
11 reviewed in line with the policy and incorporate a review of the
12 Register of Interests and Complaints Commissions Act.

13 So, against that background, Mr Jaspert, could you
14 just explain, firstly, the circumstances which saw you bringing
15 an Integrity in Public Life Policy to Cabinet in November 2019?

16 A. Thank you.

17 So, the first thing was that this was areas of work
18 that had been taken forward by the Deputy Governor's Office, and
19 hence it was for me to take those to Cabinet. As you noted in
20 the minutes, this was part of a suite of reforms, including the
21 Public Service Management Act which the Deputy Governor was also
22 working on, with colleagues across Government, so for me as the
23 Governor to take this paper to Cabinet.

24 Q. But how long had this work been ongoing for?

25 A. The work on the Integrity in Public Life Act, I'm

1 afraid I haven't got the exact dates of when it had started. I
2 had been for quite a while preceding this prior to the draft Act
3 coming to Cabinet as well as discussed at this meeting that you
4 referred to.

5 Q. But--so what--

6 A. And the alternative policy I believe it was and the
7 Integrity in Public Life Policy that would then guide the Act.

8 Q. But have I understood this right, that in terms of the
9 Integrity in Public Life Policy and the Whistleblower's Bill and
10 the Public Service Management Act, the entity that was leading
11 on that at that time was the Governor's Group?

12 A. Yes, that is--that is correct--that is correct.

13 Q. And presumably although you can't be precise, the work
14 had been going on for some time?

15 A. Yes. The work had been going on for some time, but it
16 also involved conversation and discussion, including with the
17 Premier, and as was here with other colleagues at Cabinet as
18 well, but it was a significant piece of work that was being
19 undertaken by my group, or the Deputy Governor's Office, and
20 hence as the--it was a paper that I brought forward to Cabinet
21 for Cabinet's approval, which, as you can see from the notes,
22 they subsequently did approve that and decided that the work
23 goes forward and decided that the--on the--as noted on the 23(3)
24 and decided that the Deputy Governor's Office takes it forward
25 with the Attorney General's Chambers to draft the new public

1 draft of the new Bill.

2 Q. If you turn up the bundle 1 of the Governance Bundle,
3 (drop in audio), page 339. Tell me when you're there.

4 A. I am there.

5 Is this "The Speech from the Throne"?

6 Q. Yes. So, this is "The Speech from the Throne", 14th
7 of November 2019, so just a week after you had brought that
8 paper to Cabinet. You're delivering the speech, but it is
9 prepared, as you explained on the next page within the Premier's
10 Office in consultation with Ministries.

11 Now, if you go through to page 344, there is reference
12 there to (drop in audio) Integrity in Public Life being brought
13 forward to preserve and promote the integrity of public
14 officials and public institutions, and there is also reference
15 to Whistleblower Legislation.

16 So, at that point, when you are delivering "The Speech
17 from the Throne", was it your understanding that the Deputy
18 Governor's Office would take the lead in taking this legislation
19 and these policies forward?

20 A. Yes, that is correct.

21 Just to elaborate a little bit on this, you will see
22 in "The Speech from the Throne", there are, as I state at the
23 beginning of that speech, it is myself delivering it, but it is
24 a speech that is prepared within the Premier's Office in
25 consultation with Ministries and speeches and deliberated and

1 approved by the Elected Government of the Virgin Islands.

2 Within that speech you will see a number of different
3 Bills which is essentially the legislative programme of the
4 Government, and the preparation and development of those
5 policies and Bills goes through to the respective Ministries, so
6 some of those may be the Ministry of Natural Resources, Labour
7 and Immigration, some would have been through, for example,
8 Ministry of Education or the Premier's Office, for example, on
9 things like--I can see things such as Customs Management and
10 Duties Act, and some would fall to the Governor's Group such as,
11 for example, and in this case the integrity--as we've discussed,
12 the Integrity in Public Life Policy, but there are also within
13 that speech other areas such as I believe the Police Act and
14 also the Witness Anonymity Bill.

15 So, what was completely normal practice was for the
16 respective lead at Cabinet to bring their paper from their
17 respective Ministry or group, which is what I was doing in this
18 case, in the Integrity in Public Life Policy, and then it was
19 established practice and policy that a respective lead after a
20 decision by Cabinet would then communicate that respective
21 policy more widely to the public.

22 So, I read the seed criticism or alleged criticism,
23 that the Governor or myself as Governor talked about the
24 Integrity in Public Life Bill, but that was completely normal
25 practice as I, as the attendee of Cabinet who had taken that

1 paper, talked about it.

2 Similarly, if we had taken an education policy or an
3 Education Act, I would expect the Minister of Education to be
4 talking about that afterwards or if it was a Police Act, I may
5 be talking about Police policy afterwards.

6 There was no disrespect. It was completely following
7 established practice and procedures of Cabinet approaches.

8 Q. We will come back to that in a moment, but just
9 sticking with the chronology, so we're in November 2019, you've
10 given this "Speech from the Throne", there were various
11 documents, and I don't want to show you all of them, but that
12 shows that work was going on between different Departments and
13 the Deputy Governor's Office in relation to Integrity in Public
14 Life. So, if you turn up page 470, please. Let me know when
15 you're there, Mr Jaspert.

16 A. You cut out a bit. Was it 470?

17 Q. Yes, please.

18 A. Yes, I'm on page 470.

19 Q. And if we're both on the same page, this is a
20 memorandum from the Director of Human Resources to the Permanent
21 Secretary in the Deputy Governor's Office on the 12th of
22 November 2020, making comments on an Integrity in Public Life
23 Bill. So, that indicates, does it not, that at least in
24 November 2020, the Deputy Governor's Office was still taking the
25 lead in relation to this bill?

1 A. That is correct. The Deputy Governor's Office were
2 taking the lead in relation to that. And as was noted at the
3 Cabinet on the 7th of November, as we've just discussed with
4 those minutes, and as is expected, the Deputy Governor's Office
5 would consult others on the development of policy.

6 Q. And what role in this process would you, as Governor,
7 have?

8 A. Well, I am the Manager of the Deputy Governor as well
9 as head of essentially of the Governor's Group through which the
10 Deputy Governor's Office falls within my remit.

11 I also obviously constitutionally have responsibility
12 for the terms and conditions of Public Officers within the
13 Territory of which in this case was part of or lead to part of
14 that responsibility as well.

15 Q. We're about a year on from "The Speech from the
16 Throne", and if I could ask you just to go to page 483. You
17 should have a Cabinet Memorandum 505 of 2020, dated the 13th of
18 December 2020.

19 A. Yes, I have that.

20 Q. That has been produced by the Premier's Office, and in
21 terms of background on the Integrity in Public Life Act, it
22 refers to the good governance principles, the Constitution, that
23 efforts have been made since the 1990s to introduce Public
24 Service into integrity of legislation in the BVI, and previous
25 governments have recognised the need for framework to guide,

1 support, and assure that the conduct of public affairs by public
2 officials conforms with internationally accepted standards of
3 integrity.

4 It refers to 2003 a draft of the Integrity in Public
5 Life--

6 (Lost audio.)

7 REALTIME STENOGRAPHER: I'm sorry, you were breaking
8 up, could you start that last part, please.

9 MR RAWAT: Yes, certainly. Sorry, Mr Kasdan.

10 BY MR RAWAT

11 Q. The paper, Mr Jaspert, refers to previous efforts that
12 were meant to introduce Public Service Integrity legislation,
13 and it notes that those were being made since the 1990s, and it
14 refers to a draft of 2003, which didn't advance beyond the
15 consultative stage, but some Sections did find its way in the
16 Register of Interests Act.

17 At four, it refers to the 11th of January 2018 when
18 Cabinet considered a paper titled "status report, strategic
19 direction for an improved Public Service", and what's said is
20 that Cabinet approved the good governance strategy and requested
21 full development and implementation of the following within the
22 first quarter of 2018, Public Service Management Act, Integrity
23 Commission, and Ministerial Code.

24 There is then at five on the next page it's five a
25 reference to the Public Service Management Bill, the

1 establishment of a working group to review a draft Ministerial
2 Code.

3 It notes at seven that the Cabinet had noted by memo
4 55 of 2020 that the Premier's update on progress made to ensure
5 good governance in public affairs in the first 11 months of his
6 Government's administration and noted that the Integrity in
7 Public Life will be among several pieces of good governance
8 legislation that will come to Cabinet during the course of 2020.

9 And then says that the need for Integrity Legislation
10 was championed by the current Premier and Minister of Finance,
11 noted that when he was appointed Leader of the Opposition, he
12 also championed this cause.

13 It then continues through, it makes reference to an
14 Integrity Commission, and then in terms of the decision that
15 Cabinet is asked to take, we see that at 492, where Cabinet
16 reviews and notes a Bill which was attached to the paper that
17 we've just looked at headed "Integrity in Public Life Act 2020",
18 decreed that Cabinet would rescind the decision taken in Cabinet
19 Memo 378/2019, so that's the memo that we looked at at the
20 start, where the Deputy Governor was deemed to be given the sole
21 lead on this matter, and then approved that the Deputy Governor
22 and the Premier's Office work in collaboration on this matter,
23 with the Premier's Office as the lead seeing that the scope is
24 wider than Public Officers.

25 Now, that (drop in audio) from the Premier's Office

1 introduces its own bill. Prior to the matter coming to Cabinet,
2 were you aware of that development?

3 A. I'm sorry, relating to the development of this paper
4 specifically or--

5 Q. Yes.

6 So, as I understand the sequence, in September 2019,
7 and I said--I erroneously said "The Speech from the Throne" was
8 a week after that, it was, in fact, in November 2019, but in
9 September 2019 we have you bringing forward to Cabinet a minute
10 where you introduce a suite of Bills, including Integrity in
11 Public Life.

12 Then, in December 2020, the Premier's Office brings to
13 Cabinet an Integrity in Public Life Act of 2020, which rescinds
14 the memo that you brought to Cabinet.

15 Were you aware that the Premier's Office was going to
16 take that step before it arrived in front of Cabinet?

17 A. I will need to fully refresh my memory here on the
18 exact sequence of events but what I was aware of at the time is
19 that the Deputy Governor had been working with the Attorney
20 General and with others, including Permanent Secretaries across
21 the Public Service to take forward the Cabinet Decision of the
22 Cabinet of November 2019 that we previously discussed and to
23 develop the Integrity in Public Life Bill.

24 I believe I was not consulted on a different bill that
25 came forward by the Premier as well as just outlines came into

1 the Cabinet, I believe, 18th of December 2020, if it was that
2 Cabinet there.

3 I do recall, and in fact, if I go down in the bundle
4 to 494, I then wrote to the Deputy Governor and the Attorney
5 General who had been working on the Integrity in Public Life
6 Bill, setting out that a separate paper had been tabled to the
7 one that they were working on or had been working on.

8 So, from my recollection of the time and looking at
9 what is here, when I went into that Cabinet meeting in
10 December 2020, I had been under the impression that the Deputy
11 Governor's Office, in partnership with all the others who we
12 just discussed were leading on this, and the Premier presented a
13 different position in through that Cabinet Paper.

14 Q. If you look at the next page in the bundle, 494, this
15 is a letter dated 18th of December 2020 which you sent to the
16 Deputy Governor and the Attorney General, and you write of your
17 gratitude to them and their offices and colleagues of the work
18 they'd done on the Integrity in Public Life Bill. You describe
19 it as a positive demonstration of cross-Ministry collaboration
20 and say I fully support the intent behind the Bill which is to
21 improve good governance and transparency in the BVI. You
22 continue: "As you know Cabinet Memo 378/2019 set out that
23 Cabinet had agreed the Deputy Governor would work up a policy
24 and liaise with the Attorney General's Chambers to take this
25 forward. At this week's meeting of Cabinet on December 16th

1 (drop in audio) the Premier presented his own paper in the
2 Integrity in Public Life Bill, and"--

3 REALTIME STENOGRAPHER: I'm sorry, I'm losing you
4 because there's a little bit of background noise that's cutting
5 you off, Mr Rawat.

6 MR RAWAT: What I will do, Mr Kasdan, is I will read
7 that paragraph again.

8 BY MR RAWAT

9 Q. What you have written, Mr Jaspert, is this, the
10 Attorney General and the Deputy Governor. "As you know,
11 Cabinets Memo 378 of (drop in audio) set out that Cabinet had
12 agreed the Deputy Governor would work up a policy and liaise the
13 Attorney General--(drop in audio)

14 REALTIME STENOGRAPHER: I'm sorry, I'm still losing
15 you. It keeps dropping and now we're hearing a dog barking in
16 the background.

17 MR RAWAT: A tribute to my reading skills.

18 COMMISSIONER HICKINBOTTOM: Certainly those who are
19 not speaking, such as Mr Jaspert and Mr Rawat, if they could
20 mute, that may help, but Mr Rawat, could you read that again.

21 MR RAWAT: Yes.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 BY MR RAWAT:

24 Q. What you wrote in your letter, Mr Jaspert, was, "as
25 you know, Cabinet Memo 378 of 2019 set out that Cabinet had

1 agreed the Deputy Governor would work up a policy and liaise
2 with the Attorney General's Chambers to take this forward. At
3 this week's meeting of Cabinet on December 16, outside of that
4 decision, the Premier presented his own paper and a separate
5 Integrity in Public Life Bill", which you described as the
6 Premier's bill, and then you continue: "As I set out in
7 Cabinet, I believe this is inconsistent with Section 60 of the
8 Constitution, which clearly sets out the terms and conditions of
9 services of persons holding or acting in public offices are a
10 responsibility of the Governor".

11 And you say that, "accordingly, pursuant to Section 43
12 of the Constitution, I'm requesting that you and your offices
13 continue and complete the work underway on the Integrity in
14 Public Life Bill being cognizant of the Premier's bill to ensure
15 that the final Bill reflects all Ministries of Government and
16 most importantly delivers good governance and integrity for the
17 people of BVI. I look forward to seeing a final draft the
18 Integrity in Public Life Bill early in the new year in order
19 that I can take a paper to Cabinet early in the new year".

20 Now, that's as of the 16th of December--

21 COMMISSIONER HICKINBOTTOM: 18th.

22 BY MR RAWAT:

23 Q. 18th of December, two days after that Cabinet Meeting.

24 Now, what's said in the potential criticism that's
25 raised by the Attorney General is that, on behalf of the Elected

1 Ministers is that the example is given that on the 3rd of
2 December 2020 the former Governor briefed press that the Deputy
3 Governor and he were to bring forward the Integrity in Public
4 Life Bill making no reference to previous Cabinet's decision to
5 approve Integrity in Public Life Policy.

6 But breaking that down and keeping to the chronology,
7 firstly, what do you understand by the reference to "previous"
8 Cabinet's Decision to approve Integrity in Public Life Policy"?

9 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Jaspert, you
10 are now on mute, I think.

11 THE WITNESS: Yes, my apologies.

12 So the previous Cabinet was the Cabinet we discussed
13 which was the 7th of November, I believe, 2019 Cabinet at which,
14 as we highlighted earlier, I took a paper forward on the
15 Integrity in Public Life Policy prepared by the Deputy Governor.
16 The Deputy Governor then, in good faith, took that work forward,
17 and having had Cabinet's agreement to take it forward as such--I
18 know he consulted, as you also highlighted, across a range of
19 Ministries and individuals--and that was the position that I'd
20 been following on since that Cabinet in November 2019.

21 I have to admit my memory on the calling is exactly
22 each Cabinet but looking at when we come back to the 18th of
23 December 20--sorry, 16th of December 2020 Cabinet, I believe, is
24 the second one you're referring to, which, I believe, was after
25 the point that I had made, a statement, as I said, which is very

1 normal for I to do, or the respective Minister or lead to do, on
2 any matter that's been to Cabinet and has had Cabinet's approval
3 on, so that 16th of December Cabinet Meeting was after that
4 point.

5 I do remember being somewhat surprised at the time
6 that the--having operated in a fully partnership approach, as
7 was my intention throughout my tenure as Government--as
8 Governor, with the Elected Government, the Premier brought
9 forward this paper that was separate to the decision that had
10 been agreed at the previous Cabinet and without the wide
11 consultation or partnership approach that I could have mitigated
12 any sort of potential for there being two different Bills out on
13 the same subject.

14 Thank you.

15 Q. But what you appear to have done in--from your letter
16 on the 18th of December 2020, take the decision that work should
17 continue on the Bill that the Deputy Governor had been working
18 on, and that ultimately there would be a paper that you could
19 take to Cabinet. What was the basis of you taking a paper back
20 to Cabinet in circumstances where Cabinet had rescinded your
21 original paper?

22 A. So, the letter you refer to, I--just for clarity that
23 is the 18th of December 2020 letter to the Deputy Governor and
24 Attorney General, I assume.

25 Q. Yes.

1 A. Yes, thank you.

2 Yes, as I said, I was somewhat surprised that the
3 Premier, when I had been attempting to operate in strong
4 partnership throughout, brought a separate paper on Integrity in
5 Public Life Policy without the partnership consultation on it.
6 As I set out in the letter in the integrity--that letter of
7 December 18, 2020, at that point my concern might be was for the
8 responsibilities that I had relating to the--Section 60 and the
9 terms and conditions of Public Officers, and we did have the
10 work on the way in the Public--Integrity in Public Life Bill to
11 take forward work to improve those conditions through the
12 standards-setting as part of the Integrity in Public Life Bill.

13 So, that was my interpretation of the work that needed
14 to continue on that part of the area of work, the Integrity in
15 Public Life Bill as is listed in that letter, and I was wanting
16 that to be cognisant of the separate bill that had been put
17 forward, which is in the letter referred to as the "Premier's
18 Bill".

19 Q. And you refer to Section 60 because--and you say that
20 you raised in Cabinet that the Premier presenting his own paper
21 was inconsistent with Section 60 because that gives you
22 responsibility for terms and conditions of Public Officers, but
23 you then--the request that you make to the Deputy Governor and
24 the Attorney General is based on Section 43, which says
25 (reading): "In any case in which the Governor is requiring this

1 Section to consult the Cabinet, the Governor shall act in
2 accordance with the advice of the Cabinet unless in his or her
3 opinion such advice would affect a matter for which he or she is
4 responsible under Section 60".

5 Just explain to the Commissioner in sort of working
6 terms why Section 43 allowed you to take this step that we see
7 in this letter?

8 A. So I'm working off memory here from the events at the
9 time, but reading it and my recollection of the events were that
10 I was taking forward the Policy, the Integrity in Public Life
11 Policy, which was linked to the terms and conditions included to
12 the codes for Public Officers, as well, so those conditions of
13 Public Officers as part of the responsibility under Section 60.

14 A separate bill was, policy bill, was presented, which
15 I wasn't confident I had been consulted on or involved in,
16 despite my constitutional responsibilities, and hence I wrote to
17 the Deputy Governor and the Attorney General the--as is set out
18 quoting Section 43 of the consultation, that I was taking it
19 forward on my view that the--that this work needed to continue
20 as part of the responsibilities relating to Section 60.

21 Q. The last piece of correspondence perhaps I will show
22 you is at page 560 in the same bundle, please.

23 You have there an e-mail from the Attorney General, I
24 think it's to Parliamentary Counsel, it says counsel in her
25 Chambers headed "Integrity in Public Life Act. And it says:

1 "The Integrity in Public Life Bill is now internally
2 controversial".

3 "Please review the attached correspondence. We need
4 to resolve the current conundrum where the Premier brought a
5 version of the Bill after DGO had been working with Chambers to
6 produce a draft".

7 "Grateful for your thoughts on resolution. The
8 Government would like for the Bill to be introduced into the
9 House of Assembly later this month".

10 Can you help at all with whether, between your letter
11 to the Attorney General of the 16th of December 2020--or 18th of
12 December, sorry, and this e-mail you had any discussions with
13 the Attorney General about the Integrity in Public Life Bill?

14 A. Thank you.

15 This e-mail you referred to is the 8th of March 2021
16 e-mail; is that correct?

17 Q. Yes.

18 A. Yes. Obviously, I was not serving as Governor at that
19 point. I'd left office in January 2021, so I can only talk for
20 the time when I was Governor, if that is okay.

21 But to answer the question specifically in terms of in
22 that period when I was still Governor, yes, I did discuss with
23 the Attorney General and the Deputy Governor the Integrity in
24 Public Life Policy and how this could be taken forward
25 effectively. As alluded to in that e-mail of the April-March,

1 although it's not for me to presume anything on behalf of The
2 Honourable Attorney General on it, but it did--she uses the
3 words "internally controversial" around that, and I would have
4 spoken, I believe, after the exchange of letters on how we take
5 forward this area of work to ensure that there is a--the
6 Integrity in Public Life Policy is forwarded in its development.

7 Q. Would that have--in terms of discussion, would that
8 have involved The Honourable Premier?

9 A. Yes. I'm sure I would have spoken to The Honorable
10 Premier about it. Unfortunately, despite multiple requests
11 I--for regular meetings, I'd encouraged weekly meetings, and
12 then also encouraged at least every second week a meeting; these
13 weren't always responded to, but when I did have the opportunity
14 to discuss with the Premier, I would on a number of matters
15 including these kind of areas if there were any disagreements.

16 My aim was to have more regular meetings so that we
17 would, as I said earlier, strongly committed to a modern
18 partnership and a strong and effective partnership and strongly
19 committed to a strong relationship with the Premier as well, so
20 I had hoped that there would have been more regular meeting to
21 be able to enable these kind of discussions, or to prevent the
22 kind the situation where we are in the middle of Cabinet with a
23 Bill being presented which, as was in the 16th of December 2020
24 Cabinet, which hadn't been widely consulted on, and--its work or
25 development had taken both myself as well as other Members

1 somewhat by surprise.

2 Q. But the--from your perspective as Governor, is this a
3 fair summary, that you considered that the matter properly lay
4 with the Deputy Governor because of your responsibilities under
5 Section 60?

6 A. Yes, it lay with the Deputy Governor--in relation to
7 the public--of the public office, those are the terms and
8 conditions of Public Officers, it's clearly related to, well, my
9 responsibility but the Deputy Governor taking forward that on my
10 behalf.

11 But just to stress a point which is really important,
12 everything I took forward, whichever part of Section 60 it fell
13 under, I would take forward in a partnership approach with the
14 Elected Government, and there was a key tenet throughout my time
15 as Governor. That was one of my Guiding Principles. We talked
16 earlier about some of those Guiding Principles, and that was the
17 core part of the constitutional relationship; and so, even if
18 something was assigned constitutionally to my group or was an
19 area that Cabinet had assigned to me, or two areas of my group,
20 for example, later during the COVID crisis there was--or COVID
21 pandemic period, Cabinet requested a function to be assigned to
22 the Deputy Governor which was more about the health response and
23 setting up a contact center, but taking that forward as per
24 Cabinet Decision, still important that it was taken forward in
25 partnership approach with the Elected Government.

1 Q. You have the third bundle, which it's mostly made up
2 of correspondence.

3 A. I do, but you'll have to bear with me because it's
4 electronic, so I will have to just open that up on the system.

5 Q. Okay.

6 (Pause.)

7 A. Thank you. I've located the third bundle.

8 Q. Thank you.

9 It should have the front cover that just says
10 "Additional Material Provided by Elected Ministers". If you go
11 through it, please, to page 28.

12 A. I'm on page 28. Is that Ben Merrick Visit Follow-up?

13 Q. Yes.

14 A letter dated 18th of June 2019 from The Honorable
15 Premier to Ben Merrick, who was Director of the Overseas
16 Territories Directorate at the Foreign Commonwealth Office, and
17 The Honorable Premier is responding following a visit that
18 Mr Merrick paid to the BVI in earlier in June and following a
19 series of meetings.

20 What the Premier said was (reading): "We discussed a
21 number of important issues on which I stated the Territory's
22 position", and he then set out the following: "Under the
23 heading Register of Interests, Register of Interests of
24 Ministers will be made public immediately following further
25 consultation with the Governor".

1 I'm going to pause there.

2 This is in June 2019.

3 Was there further consultation with you about
4 publishing the interests of Ministers?

5 A. I believe there was, and I also believe with the
6 Attorney General, as well.

7 Q. And what was the outcome of that consultation?

8 A. I'm afraid I don't have that document here unless you
9 can refer me to it in the bundle, so I'm operating from memory,
10 but I believe the outcome of that was that the--that there would
11 be amendments to the Registry of Interests Acts required in
12 order to take forward that position.

13 Q. What's also said under the heading of the "Integrity
14 Commission, (reading) "an Integrity Commission will be
15 established by the end of 2019 led by the Premier's Office as
16 the lead ministry".

17 Were you aware of that aspect of the discussions with
18 Mr Merrick?

19 A. Yes. I can say I was part of that meeting. I was
20 copied, as is down and below on page 29, was copied that letter
21 as well. That letter included a number of things which weren't
22 fully taken forward in terms of some of those commitments.

23 Q. We'll come back to that, but if the Premier is
24 committing to establishing, by the end of 2019, an Integrity
25 Commission led by his lead Ministry, would you not have been

1 aware that it was his intention that, in terms of Integrity in
2 Public Life Policy, it should come within the ambit of one of
3 his Ministries?

4 A. No, that's not my recollection of that discussion or
5 that went down on that letter. That letter is obviously one
6 from the Premier, and I don't have here the note of the other of
7 Mr Merrick's conversations of it.

8 But there's an important point here which is this
9 letter, as I see from the date, is the 18th of June 2019. The
10 position on Integrity in Public Life Policy, I believe, was
11 presented in 2018 first to Cabinet, where it was agreed of the
12 arrangements for how it would be taken forward. It was then
13 presented after this letter, on the 7th of November--or I
14 believe it was 7th of November, the November Cabinet we
15 discussed earlier in 2019--again where Cabinet agreed that it
16 should be taken forward by the Deputy Governor's Office.

17 This letter may refer to that a--any acts need to be
18 taken need to be taken by an elected member of government, so
19 that may be what's referred to there, but I can't make
20 assumptions beyond that. Thank you.

21 Q. In fairness to you, Mr Jaspert, I should say that you
22 have not had access to all the records that would have been
23 generated during your time as Governor and that you, yourself,
24 might have generated in terms of letters; and so, you're
25 dependent, really, on what the Commission has provided to you;

1 is that right?

2 A. That is correct, yes.

3 Q. In that case, can I urge you perhaps to--not to
4 speculate. If--I appreciate that time has passed. So, if you
5 cannot remember something, please do say so.

6 Just before we leave this letter, there's just a
7 couple of points to draw to your attention.

8 On--there's a heading called "Tender Waivers", and
9 when the Premier states the Territory position, he writes this
10 (reading): "Tender waivers are exceptions to the normal
11 tendering process that should only be done for legitimate
12 reasons that are clearly explained in the decision".

13 If you can remember, this appears to be an issue that
14 was raised in the meeting with Mr Merrick. But why was it being
15 raised?

16 A. I--from memory, I remember being concerned and making
17 these concerns both to Cabinet and to Mr Merrick in the Front
18 Office--the Foreign Commonwealth Office as it was then--about
19 the practice of tender waivers and my concerns that we'd made
20 also to the Premier and, as I said, to Cabinet that the laws
21 required tenders to be undertaken were not always followed, and
22 encouraged that we should in the interest of value for money for
23 the people of the British Virgin Islands, that there should be
24 the correct approach taken to tender waivers.

25 Q. There are a number of matters on this. This letter

1 refers to, in particular, the Recovery Development Agency in the
2 UK Loan Guarantee, that we may need to come back to, but under
3 transparency and accountability, the Premier makes this point
4 (reading): "Government of the Virgin Islands remains concerned
5 that the numerous questionable actions by the past
6 administration in terms"-- and then he brackets he writes "i.e.,
7 BVI Airways deal, Pier Park development"--where sufficient
8 evidence exists but legal actions not pursued to date by the
9 responsible authorities. And then he makes of in the second
10 bullet point: Lack of accountability and transparency by the
11 previous administration should not go unaddressed by law
12 enforcement.

13 And then says (reading): "As discussed, all actions
14 deemed necessary to re-establish and strengthen transparency and
15 accountability will be explored and implemented by my
16 Government. However, this must be done in concert with the
17 requisite authorities sending a strong message that questionable
18 actions of the past administration will not be tolerated".

19 So, in terms of the part--and let's pick one: The BVI
20 Airways deal--that past actions of a previous administration,
21 was the Premier's position that insufficient action had been
22 taken in relation to those events?

23 A. Mr Rawat, sorry. Firstly, could you remind me what
24 page you're referring to in the bundle?

25 Q. Page 29--I'm sorry. I should have drawn that to you,

1 but on the same letter but at page 29--

2 A. Um-hmm.

3 Q. --I won't read it all out, but you'll see under
4 "Transparency and Accountability", the Premier refers to
5 numerous questionable actions by the past administration, but
6 then also laments that legal action had not been taken, and
7 whilst his administration will take "...ALL actions deemed
8 necessary to re-establish and strengthen transparency and
9 accountability..." "...this must be done in concert with the
10 requisite authorities sending a strong message that questionable
11 actions of the past administration will not be tolerated".

12 So I just wonder, if you can, if you can remember just
13 to give the Commissioner the context in which that issue was
14 being canvassed.

15 A. Yes. Of course, I can't speak for the Honorable
16 Premier, he will explain his own context to that, but I can
17 recall that there was deep interest, rightly so, not just
18 amongst selected Members or amongst myself as Governor, but also
19 I know within the public of the Virgin Islands into some of
20 these deals or developments that are referred to there.

21 I was aware that the Pier Park development had been
22 the subject of an Auditor General's Report, I believe. The BVI
23 Airways deal was also subject to a report, a Special Report, by
24 the Auditor General. I believe both of--well, the BVI Airways
25 deal is now further to a subject investigation by the Royal

1 Virgin Islands Police Force. Of course, it would not be
2 appropriate for me to comment on anything that is a subject of
3 an ongoing investigation effort.

4 Q. Were representations made to you when you were
5 Governor that those projects should be the subject of a
6 Commission of Inquiry?

7 A. Yes. Representations were made to me, the Premier and
8 in Cabinet. It was discussed about the Commission of Inquiry
9 into those. It had also been put to, I know, to my predecessor
10 as well, the notion of a Commission of Inquiry, into one of them
11 at least. In relation to the position that was taken on them,
12 at that point they were still the subject of--well, BVI Airways
13 was the subject of audit and then an investigation, and there
14 was a route to--or way to go on the conclusion of those.

15 Q. What about others like Pier Park, and we could look at
16 this later on when we look at other correspondence, but there
17 was also the cost of the School Wall. Why didn't you have
18 Commissions of Inquiry in other projects?

19 A. So, those I--it should be very clear, as Governor, one
20 of my most difficult decisions was to call the Commission of
21 Inquiry. It is not a step I would have ever wanted to have do
22 or undertake should there have been any other way to avoid doing
23 so.

24 But those specific ones that you mentioned, there was
25 still investigations underway at that point. But for me calling

1 the Commission of Inquiry was really because of the cumulative
2 concerns that were presented to me about good governance, which
3 covered not just specific reports that you mentioned, or were
4 those--some of those themes. I saw the practice continuing, so
5 the practice of, for example, tender waivers continuing; the
6 practice of, for example, employing consultants without
7 competition; the practice of not--actually not complying with
8 the laws of the Territory; also some of the practices of
9 appointing people to Boards, Statutory Boards with little
10 transparency or openness in the process. Or sometimes that
11 there was some of the institutions hindered in carrying out
12 their work to look at some of the alleged areas which may need
13 to be looked at in more detail.

14 So, at that point, when we had discussed and looked at
15 the--those issues, the concerns were presented to me later
16 relating to a cumulative set of concerns as I've outlined,
17 including more widely concerns that had been relayed to me, many
18 allegations, including from credible Public Officers, leaders of
19 some of our institutions, as well as credible members of the
20 public of serious concerns relating to intimidation of Public
21 Officer, serious concerns relating to allegations of decisions
22 being directed outside of processes.

23 And most concerning is also, allegations of links to
24 organized criminality and to those involved in the cocaine
25 trafficking trade as well, including allegedly amongst those in

1 the highest holders of office.

2 So, my decision on the Commission of Inquiry was due
3 to a cumulative set of concerns rather than one specific report
4 such as the BVI Airways or Elmore Stoutt High School wall, as
5 you've referred to.

6 Q. Thank you.

7 MR RAWAT: Commissioner, I noted the time, and I
8 wonder just give the Stenographer a break.

9 COMMISSIONER HICKINBOTTOM: Certainly.

10 Mr Jaspert, we have a live Stenographer, and he needs
11 a break after about an hour or so. So, we'll just take a
12 five-minute break and then come back to resume your evidence.
13 Thank you very much.

14 THE WITNESS: Thank you.

15 (Recess.)

16 COMMISSIONER HICKINBOTTOM: Good. Mr Rawat, I think
17 we're ready to resume. Thank you.

18 MR RAWAT: Thank you, Commissioner.

19 Commissioner, I should just explain I have been asked
20 by Sir Geoffrey just to put two additional questions--

21 COMMISSIONER HICKINBOTTOM: Yes.

22 MR RAWAT: --on the matters we have been canvassing
23 with Mr Jaspert, and I'm quite happy to do so.

24 BY MR RAWAT:

25 Q. Mr Jaspert, sticking in the first bundle, bundle 1, if

1 you go please to page 478.

2 COMMISSIONER HICKINBOTTOM: I'm sorry, which bundle?

3 MR RAWAT: Bundle 1.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 BY MR RAWAT:

6 Q. Do you have it, Mr Jaspert?

7 A. It's the Expedited Extract of the 2nd of December
8 2020.

9 Q. No, you should be in the Governance Bundle Part 1?

10 A. Yes--sorry, four--can you repeat the page, is it 478?

11 Q. 478, and it should be--it's your statement to the
12 press?

13 A. "Opening Remarks by His Excellency the Governor's
14 Catch-up with the Media on December the 3rd."

15 Q. That is the example that is given by the Attorney
16 General in her potential criticism of you, and that's what's
17 referred to.

18 So, in that, if we look at 478, you start off by
19 paying tribute to the Public Officers, but if we go over to the
20 next page, in that, you say and it's at the third paragraph, you
21 refer to "the successes and great things we are achieving as a
22 Territory, it's important that we also address any areas that
23 could hold us back".

24 And you then continue, "I would like to spend some
25 time talking about the governance of the Territory", and you

1 refer to seeking to make BVI as successful as possibly can be
2 with equal opportunities and a high standard of governance for
3 all. And you conclude that paragraph by saying that at a
4 previous briefing you discussed the things you need to put in
5 place to achieve this for more transparent practices to laws
6 which protect against corruption.

7 You refer in the next paragraph to hearing time and
8 time again that people want reforms and more, and you point to
9 the people of the BVI as our greatest asset.

10 You then say: "When I talk about improving
11 governance, despite what some may say I do not do so as a
12 criticism of BVI but based on what I believe the people of BVI
13 want. I, like the majority of people here, want BVI to be as
14 successful and self-determining as it can be."

15 You then say "recently I've had a number of concerns
16 and allegations put to me by the community. I will not go into
17 the specific details as they are purely allegations, but I will
18 broadly speak to the areas that they touch on. I do so--after
19 much deliberation--because I want to be transparent and open
20 about these things and to find out more about what we may be
21 facing".

22 The first one you point to is "many people are
23 concerned about transparency when it comes to public projects
24 and funds". You refer to the Auditor General having written
25 numerous reports detailing common areas in this area, tender

1 waivers, interference, contract-splitting, inflated prices, and
2 you continue: "As you know, investigations are under way on
3 some matters which I cannot comment on". You then refer in the
4 final paragraph on that page that the Deputy Governor and
5 yourself continue to work with local institutions about how we
6 can address these challenges, and you refer to "Auditor General,
7 Commissioner of Police, Complaints Commissioner, Financial
8 Investigations Agency and the Register of Interests doing
9 important work into specific areas of concern".

10 Over the next page you then say: "Second, many are
11 concerned about the number of drugs and cash seizures and gun
12 violence recently taking place in the Territory," and then you
13 refer to "these make it very clear that the Territory is
14 vulnerable to drug trafficking, serious organized crime and all
15 that comes with it", but you say "criminal investigations are
16 underway".

17 But you then go on, "we're taking immediate steps to
18 bolster security and law enforcement agencies with the support
19 of NSC who invited UK police officers to provide extra support
20 to the Joint Task Force".

21 The third point you make is that you've heard the
22 community raise concerns relating to intimidation, victimization
23 in the Territory. You say: "These have been put to me by a
24 number of individuals in senior positions across the Public
25 Service, even the media, industry and our community" you again

1 say that you will not go into specific details as that are
2 shared with confidence.

3 But you then conclude: "I want to be clear that no
4 one in this Territory should be afraid to raise a concern. It
5 is a constitutional right to have freedom of speech and everyone
6 should be able to do their job without fear or favor. My office
7 and the Deputy Governor's Office are always open to any
8 individual seeking to raise a concern or ask for help. We will
9 put in place a process for these to be shared in confidence. We
10 will also bring forward measures to strengthen our institutions
11 in response to these concerns. The Deputy Governor and I will
12 shortly be bringing forward the Integrity in Public Life Act,
13 which will bolster the ability of our institutions to ensure
14 accountability".

15 I have tried to briefly summarise that statement to
16 the press, but the question I'm asked to put to you is this:
17 Why did Mr Jaspert not make clear that the whole Cabinet was
18 united on the importance of this legislation?

19 A. As I said before, it was quite common for respective
20 lead from Cabinet to talk about their respective areas. When
21 the Minister of Education talks about an education
22 responsibility, he won't necessarily name check the Minister of
23 Natural Resources or the Governor or any other Member, and
24 similarly here I believe I was talking about the position of
25 taking for this mentioning the work that was the Deputy Governor

1 was taking forward. That is a normal--a normal approach and was
2 the precedent process or policies that were in place.

3 Q. If you turn to 496, please, in the same bundle, you
4 should have a statement by the Premier on the Integrity in
5 Public Life Act 2020, and it's dated the 22nd of December 2020.

6 A. Yes, I have that, thank you.

7 Q. In this, the Premier writes: "My team and I pledge
8 that if given the opportunity, we would ensure that legislation"
9 and he describes it as "long outstanding legislation to
10 strengthen the accountability of public officials and to guard
11 against misconduct and abuse of office." He says "if given the
12 opportunity, we would ensure that this legislation go from being
13 a discussion to being a reality".

14 And then points to one such step in the passage--is
15 the passage of the Integrity in Public Life Act, which is
16 currently a Bill, and recently came before Cabinet for
17 recommendations on 18th December 2020.

18 This draft legislation was prepared and submitted to
19 Cabinet on the initiative of the Premier's Office. May I say
20 that it is important to note the role that the Premier's Office
21 and your elected BVI Government is playing in driving the
22 process for our Territory to have this legislation. The Premier
23 continues: "This initiative of the Premier's Office is
24 important for two reasons:

25 "One, it represents our continued maturity as a people

1 who have long been in control of our affairs.

2 "And two, it represents our commitment to
3 strengthening governance, which remains important for having a
4 stable economy".

5 The statement continues, "Integrity in Public Life
6 Bill maintains priority on your Government's legislative agenda.
7 In fact, by the first quarter of 2021, this Bill will be back
8 before Cabinet for final consideration, then before the House of
9 Assembly and then wait for the assent by the Governor.

10 "Your Elected Government believes in promoting and
11 enhancing ethical conduct standards and that is why we are
12 walking the talk and we are driving the initiative to
13 consolidate laws relating to prevention of corruption and the
14 award, monitoring, and investigating Government Contracts and
15 prescribed licenses".

16 What the Premier's statement also says is:
17 "Additionally, the Bill seeks to make provision for a code of
18 conduct and Declarations of Interest for Public Officers, and
19 may I say that both the Integrity in Public Life Bill and the
20 Code of Conduct are reflected for the best regional and
21 international practices and standards for such legislation".

22 He adds: "Cabinet has approved that the Premier's
23 Office will work in collaboration with the Deputy Governor on
24 this particular matter. The Premier's Office is the lead
25 Department on the work to finalise the Integrity in Public Life

1 Act because the scope of the legislation is wider than Public
2 Officers".

3 And the question that follows from that is this: Is
4 it not clear that the Government was offended that Mr Jaspert
5 had presented this legislation as his initiative alone in the
6 context of the other matters referred to in that media briefing?

7 A. Thank you. I'm afraid I can't speculate as to how
8 other people, aside from myself, felt about things. That is for
9 them to describe how they--how they feel about it, but I've
10 explained very clearly, and the position on this, and why as is
11 normal practice there is no intention of any disrespect around
12 it. It was purely normal practice, but irrespectively from
13 Cabinet would talk about their respective policy areas in more
14 detail. It's a well-established practice, one that I was simply
15 following. But I'm afraid I can't--can't talk on behalf of the
16 elected Members of Cabinet.

17 Thank you.

18 COMMISSIONER HICKINBOTTOM: The Premier, Mr Jaspert,
19 is giving evidence tomorrow, so perhaps he is someone that we
20 can raise this issue with.

21 BY MR RAWAT:

22 Q. Mr Jaspert, before I move on, I've dealt with the
23 first potential criticism that the Commission has raised with
24 you, but is there any other matter in your Written Response that
25 you want to draw the Commissioner's attention to?

1 A. Do you mean in relation to the first criticism in
2 relating to the other--

3 (Overlapping speakers.)

4 Q. In relation to--

5 A. No, the only part that I will draw attention to is the
6 approach that I took to the partnership throughout, which was to
7 have spoken of the spirit and the letter of the Constitution to
8 work on behalf of the people of the Virgin Islands, to work in
9 partnership with the Elected Government. I worked, obviously,
10 in partnership with two different administrations during my
11 tenure, and also to a clear commitment to stay professional and
12 courteous in that relationship at all times. In a relationship,
13 there are times when there may be constructive challenge,
14 constructive insight into it. I can't obviously comment on the
15 reasons for why some of the correspondence you will have seen
16 from Members of the Elected Government, whether that was
17 correspondence put out into the public domain or correspondence
18 in letters that were sent. Sometimes, I believe, fell short of
19 a professional tone. I can't speculate as to reasons why the
20 elected Members of Government took that approach, but I can be
21 very clear and confident in the approach I took, which was about
22 always trying to get back to a north star of partnership and
23 guiding principles for the best interests of the people of the
24 Territory and operating in a professional and courteous way with
25 all of the Elected Government.

1 Thank you.

2 Q. What you have provided to the Commissioner in support
3 of your position that you sought to do a partnership of mutual
4 respect with other Members of the Cabinet, is a letter that you
5 produced and wrote on the 5th of May 2020, and you set out there
6 eight suggestions for the conduct of Cabinet to make it more
7 effective. I'm not going to read out the detail, but they are:
8 Meeting should last for a maximum of three hours; discussions
9 should be focused on the topics of the Agenda and the specific
10 items being discussed; interventions, questions or points raised
11 are brief, focused and specific to the items being discussed;
12 interventions and discussions about the strategic policy issues
13 being discussed and collective to Cabinet and not about any one
14 Member of Cabinet; public offices and experts presenting to
15 Cabinet are given the space and opportunity within time limits
16 to advise and brief; open and frank discussions within the
17 confidential remit if Cabinet is valued; papers/proposals are
18 submitted at least two working days in advance of being placed
19 on the Cabinet business agenda, and with sufficient time in
20 advance for Cabinet Secretary for circulation and agreement
21 through the Cabinet Steering Group in line with the Cabinet
22 Handbook; meetings start on time unless there are exceptional
23 circumstances.

24 And just explain to the Commissioner, what compelled
25 you to write making those suggestions to other Members of the

1 Cabinet?

2 A. Thank you.

3 Well, that letter was not the first time that I'd
4 raised matters relating to the conduct of Cabinet. I had raised
5 them within Cabinet, but also even if you go to back in the
6 Governance Bundle 3, for example, page 19 is a note of a meeting
7 between the Premier and myself of the 24th of May 2019 where in
8 that meeting I encouraged that papers should come to the Cabinet
9 in advance.

10 This is partly part of ensuring it's not just about
11 that there's respect to everybody around the Cabinet table but
12 actually it's about good governance and making good decisions
13 for the people of the Virgin Islands. That if Cabinet is
14 getting papers in advance, if there are discussions that are
15 actually focused on the topic in hand and not of agenda items,
16 if Members are able to, as I put down here, make interventions
17 or to have their points debated, those who turn up are treated
18 with respect or are able to--particularly Public Officers are
19 able to give frank and fair advice. Obviously if there is a
20 decision of the elected Members of Cabinet as to whether they
21 adopt that advice or not, that's their prerogative, but making
22 sure that Cabinet was making policy on the basis of facts and
23 knowledge.

24 These are all, I believe, good principles for
25 decision-making in the best interests of the people of the

1 Virgin Islands, but are also principles that were encapsulated
2 in the Cabinet Handbook.

3 The background to that specific letter was that we had
4 had a series of meetings which had often started late by a
5 Members of Cabinet often delaying the start of Cabinet when
6 Cabinet--all Members ideally should be there on time to start
7 promptly. That topics not covered by the agenda were brought
8 into the Agenda meeting which often delayed conversations.

9 Or at times, that if somebody did raise a constructive
10 point, there was often what I perceived to be, and is my
11 perception, particularly when it was directed against myself, I
12 can only speak to that, but I perceived there to be ab
13 aggressive--could be at times--an aggressive or disrespectful
14 approach to how comment frank and fair discussion was treated
15 within that.

16 So, part of that letter was, as I put at the beginning
17 of it, they were suggestions. I made it clear that these are
18 initial thoughts, and Cabinet colleagues will no doubt have had
19 their own thoughts. My intention was to help us make good
20 decisions for the people of the Virgin Islands through what is
21 the highest level executive decision-making policy in terms of
22 Cabinet.

23 Q. Before I move on to the second potential criticism,
24 there are a number of matters that are not being pursued by the
25 Elected Ministers but which do feature in the material and

1 evidence that has been put before the Commissioner, and I think
2 in fairness to you, I need to put them to you.

3 If you turn, please, to page 113 in the bundle, the
4 same bundle we're in.

5 A. Mr Rawat, I'm afraid my bundle only goes up to
6 page 89. Is it in the same bundle that included the letter to
7 Cabinet? Or are you talking about--are you referring to a
8 different bundle?

9 Q. I'm sorry, Mr Jaspert. Asking you to go somewhere
10 else in the bundle is probably not helpful. You have more than
11 one bundle.

12 The bundle I'm speaking of is bundle 1 of the
13 Governance Bundles. So, it's the bundle in which we found the
14 press that we were just looking at a few moments ago.

15 A. Okay. Thank you.

16 And can you remind me the page, please?

17 Q. 113, please.

18 A. 113, thank you.

19 Q. Tell me when you're there.

20 A. I believe I'm there on the correct page.

21 Q. If I give you the context, this is part of the
22 Position Statement that has been submitted to the Commissioner
23 on behalf of the Elected Ministers, and they have all signed
24 this document.

25 One of the matters it canvasses, and this is in

1 relation to the relationship with the UK Government and areas of
2 disagreement, is the conditions that the United Kingdom
3 Government imposed in order for the BVI to access a Loan
4 Guarantee of \$300 million.

5 And what's said at paragraph 24, and one of the
6 examples that is given of the sort of conditions that were
7 imposed was that the Recovering and Development Agency was set
8 up. It was an agency on which the UK, through the Governor,
9 could appoint individuals. It was an agency where the
10 arrangements were that, essentially, the UK, it is said, could
11 dictate where funds would go. In the context of the Loan
12 Agreement, some of the conditions that followed included, for
13 example, having to divest of assets that would be better held in
14 the private sector.

15 What's said at paragraph 24, though, is: "From the
16 very first day of its mandate, the newly Elected Government came
17 under heavy pressure from former Governor Jaspert to agree and
18 sign up to the terms of the Loan Guarantee agreement, while it
19 resisted doing so on the grounds that it was unwilling to put
20 itself in the position of sacrificing political and democratic
21 control of so central a priority of its economic policy. An
22 extraordinary briefing war broke out between the Elected
23 Government and the Governor and the FCDO, in which the latter
24 sought to refute the Government's suggestions that the Loan
25 Guarantee and the RDA would have such an effect".

1 We need to couple that with you don't need to turn it
2 up necessarily, but it's the Response that the Elected Ministers
3 have put in to the Governor's Position Statement, and that's the
4 Position Statement of the current Governor, also refers to
5 this--

6 MR RAWAT: And that's at page 917, Commissioner, and
7 it's paragraphs 52 and 53.

8 BY MR RAWAT

9 Q. At paragraph 52, the Ministers observe that in seeking
10 to mitigate the risk of the UK's contingent liability, and
11 that's in relation to the Loan Guarantee, which is a clear
12 policy imperative for both the proposed Loan Guarantee
13 Arrangements and Protocols for Effective Financial Management,
14 the FCDO has attached broad conditions and demands regarding the
15 conduct of the economic policy of the Virgin Islands", and
16 what's said is that encroaches on the financial freedom of the
17 maneuver but also upon the island's legitimate aspiration to
18 govern and make important political and economic choices for
19 themselves.

20 "The Governor", and that's the current Governor,
21 "presents this as a choice for the Virgin Islands Government,
22 but in a relationship of such unequal bargaining power, that
23 choice may often not appear a real one. This is so particularly
24 when, as in the case of the Loan Guarantee, the FCDO has
25 informed the Government, if it rejects the Loan Guarantee, it

1 will not look favorably under the PEFM on any alternative
2 borrowing. And when it was accompanied by intense and unusual
3 pressure from the Governor", and now that's a reference to you,
4 "who went so far as to place the papers for signature before the
5 Premier immediately upon swearing him in".

6 The first question is: Did you put the incoming
7 administration under pressure to sign up to the Loan Agreement
8 and its terms?

9 A. Thank you very much.

10 There is a number of points that you draw out there,
11 and first is I don't recall pressurising the Premier to sign as
12 he was sworn in. That's not something that I actually recall
13 from my recollection of events.

14 But just to explain a bit about the Loan Guarantee or
15 the offer of the Loan Guarantee because the intention of it--and
16 this is something that the then elected Premier, the former
17 Premier, I should say, was something that was developed
18 initially in consultation with the UK Government, essentially
19 with one aim, and that was to support the people of the
20 Territory to recover.

21 In fact, if you go to bundle 3, page 48, there's a
22 letter from Ben Merrick to Premier Fahie confirming, and I
23 quote, "the Loan Guarantee"--the quote starts here. "The sole
24 intention of supporting the Virgin Islands to lead its own
25 recovery".

1 And that was why the Loan Guarantee was designed
2 exactly in that way, that it should be a BVI lead recovery, and
3 for me and I talked earlier, it was really important, my guiding
4 principles were about the Constitution, were about supporting
5 self-determination, about supporting Article 73 throughout. And
6 that was why it was asked, yes, the UK did give significant
7 grants to the tune of about--I think it was about 15-\$16 million
8 to various projects and about \$18 million I believe of support
9 in the aftermath of the storms of the affected Territories in
10 the region. Actually, the UK, the position that the Loan
11 Guarantee was taken forward on was to support the Territory
12 itself to design its own recovery, to design its own approach to
13 recovery through an act that the House of Assembly, the BVI's
14 House of Assembly voted on and took part in the Recovery and
15 Development Act. And also to design their own plan for
16 recovery.

17 For me, this was an important point about helping to
18 take forward a stronger and more self-determined approach to the
19 recovery of the Territory.

20 As to intense and unusual pressure, to quote those
21 words that are in there, I don't recall putting such pressure on
22 but I do recall being very clear throughout my concern about the
23 pace of recovery and that this was an offer, an offer given in
24 good faith to the Territory to help the Government should it
25 wish to bring in more money at a cheaper rate than they would

1 otherwise be able to likely get, which in clear principle is
2 built in about transparency, accountability in terms of how that
3 money is spent in the interests of the people of the Virgin
4 Islands.

5 So, if I applied any intensity to one thing to see the
6 recovery go forward, this was because if I was waking up every
7 morning at that precise point I could pop a few miles down the
8 road, or not even a few miles and it would pay me to see
9 children educated in a tent outside the school. It would pay me
10 to go and see the Central Administration building, and to see
11 Public Officers working incredibly hard, and I applaud their
12 efforts of their work to recover for the Territory and their
13 commitment to keep going to work even though there were very
14 difficult circumstances when the recovery they were working in
15 offices that sometimes had no windows due to the impact of the
16 hurricanes or were a tent down in the Customs dock in the west
17 end, for example.

18 So, if I had intensity to my desire to move forward on
19 supporting recovery of the Territory, that's something I stand
20 by as a good thing, and I hope that that was reflected across
21 others that there was an intensity to ensure that children were
22 educated not in tents, to ensure that Public Officers had fit
23 and proper buildings to operate out of, to ensure that
24 electricity, critical roadwork, to ensure that all of the
25 recovery was going at pace. That was my intensity out of the

1 interests that I had, the oath that I swore to to serve the
2 people of the Virgin Islands. It's up to the Elected Government
3 as to how they wanted to take that forward. It was their
4 decision in terms of the funding approaches and how they wished
5 to take what was purely an offer and solely for the intention of
6 supporting the people of the Virgin Islands if it was rightly so
7 a devolved choice and a devolved approach and the financing
8 arrangements of the Territory as they were well-aware under the
9 Constitution, and so it was up to the Elected Government as to
10 how they wanted to go forward on the Loan Guarantee.

11 Q. You referred to a letter from Ben Merrick to
12 Dr Orlando Smith. In that same bundle, can you look at page 64,
13 please.

14 A. That is a page of Transcript?

15 Q. No. It should be a letter--page 64 in the bundle in
16 which you found the letter from Ben Merrick to The Honorable
17 Premier?

18 A. I'm sorry, to confirm, that is bundle 3?

19 Q. Yes.

20 A. Bundle 3, thank you.

21 Q. 25th of October 2019 letter.

22 A. I'm sorry, I have to open up a different--this one was
23 only given electronically, can you just remind me the page
24 number, please?

25 Q. 64, please.

1 A. That is the--that is letter of the 25th of
2 October 2019 addressed to Lord Ahmed.

3 Q. Yes, it's a letter from the Honourable Premier Andrew
4 Fahie to Lord Ahmed, Minister of State for Overseas Territories
5 and it concerns misinformation at high-level technical meetings,
6 and the context of it is that the BVI Government was developing
7 a revised Recovery and Development Plan with which the Foreign
8 Commonwealth Office had had input, and there had been technical
9 meetings between the two governments.

10 Over on the other page, though, page 65, at the top
11 there what the Premier write is "you'll recall during my
12 recently completed trip to the UK, we held private discussions
13 about the relationship between the Governor and my Government.
14 Ongoing developments cause me to wonder whether the relationship
15 between my Government and yours has really been reset as we
16 aimed to do.

17 "In addition to different characterisation of the
18 Territory to recovery and rebuilding process, it pains me
19 terribly to report that advancement in recent high-level
20 meetings continue to be impeded by misinformation,
21 misstatements, and assumptions not based on fact coming from the
22 Office of the Governor in these deliberations, as has been the
23 case prior to and subsequent to our meetings in London last
24 month. The results of this misinformation has seemingly led to
25 a cynical tone encroaching into the sessions which my team has

1 often intimidated. To elaborate, it was brought to my attention
2 that in our technical meeting of October 24, 2019, the Office of
3 the Governor accused the BVI Government and our technical team
4 of trying to tamper with Regulations for the Recovery and
5 Development Agency Act which they said were already approved in
6 Cabinet. The fact is that those regulations have not been
7 approved".

8 And The Honorable Premier then refers to a Cabinet
9 Extract of October 11th, 2018 and says that Cabinet Extract is
10 very clear that the Cabinet of the day only approved the
11 principles to inform the final drafting of the Regulations for
12 the RDA Act.

13 Now, the point of drawing your attention to this,
14 Mr Jaspert, is not limited to whether there was accusations
15 being made of tampering with Regulations but a wider point which
16 is that there was and had developed, if you like, an atmosphere
17 of mistrust between yourself and the Elected Ministers.

18 So, take the first point first please, and that is
19 that, you know, the accusation that the BVI Government tried to
20 tamper with Regulations. Was that accusation made?

21 A. I'm afraid I can't recall that being made. I don't
22 think I would have used language such as that, that's not
23 something I have a recollection of.

24 Q. And what about the wider point, that it does point to
25 a lack of trust between yourself and the Elected Ministers?

1 A. Well, I refer back to what I have said already. In my
2 relationship with the elected Government, as I said, I served
3 with two administrations in my tenure as Governor, my approach
4 is always the same, to be guided by a spirit of modern
5 partnership, to operate in the interests of the people of the
6 Territory, to help take forward self-determination as per
7 Article 73 of the United Nations, and to help ensure that there
8 is good governance as well across all areas as well.

9 But in change, you will see from various different
10 public statements put out by Members of the Elected Government,
11 I should say the currently Elected Government, and the tone of
12 some of those letters, often there were assertions or
13 insinuations put out about myself in those or a tone I wouldn't
14 always by myself didn't always feel was professional and
15 courteous in a way, and the sort of those points were handled.

16 But that didn't alter my approach, my approach was
17 always to aim to try and work in partnership, always to put the
18 people of the Virgin Islands first and always to operate within
19 the realms of the Constitution and in a professional way and
20 courteous way throughout.

21 Q. Another reference to you appears at page 918 in
22 bundle 1 of the Governance Bundle. You don't necessarily need
23 to look it up. I could summarise the point.

24 At paragraph 60, what the Ministers say--and this is
25 in their response to the Government's--the current Governor's

1 Position Statement: "As the Ministers have previously sought to
2 highlight, the former Governor adopted an expansive
3 interpretation of his Section 60 responsibilities with which the
4 Cabinet did not always agree".

5 And they then go on to give as an example of this your
6 argument or it is said that you argued that measures to contain
7 and combat for the pandemic should be led by yourself and the
8 Department of Disaster Management in accordance with the
9 Disaster Management Act, notwithstanding that there were other
10 statutory provisions that governed an outbreak of this sort and
11 would assign responsibility and powers to the Minister of
12 Health.

13 Starting with that and starting with disaster
14 management, is it right that when it came to the Disaster
15 Management Act and when it came to disasters, that you took the
16 view that Section 60 meant that you had to take the lead?

17 A. Thank you very much.

18 The Disaster Management Act sets out clearly the role
19 of the Governor, but also it is a lead that is about partnership
20 as well, so the Premier would Co-Chair what is called the NDMC,
21 the National Disaster Management Committee, with myself. We
22 would have representatives from across all the Ministries at
23 those meetings as well. In fact, I recall when the COVID
24 pandemic first hit, we held a--I can't remember the exact
25 acronym--I think it was an NEOC meeting or NDMC health meeting.

1 I remember sitting alongside the Honourable Premier and the
2 Honourable Minister of Health as well. That was the partnership
3 approach in action.

4 So, whilst the Section 60 does give responsibility to
5 the Governor for the security of the Territory, as you rightly
6 say, and the Disaster Management Act does place the Governor in
7 a certain role there. And it also is important, as is written
8 throughout the Constitution, but also how I acted, was to take
9 that forward in a partnership approach with the, of course,
10 current Elected Government.

11 Q. If we look more closely at the question of disaster
12 management, and I can take you to the correspondence if you need
13 to see it, but it's right, isn't it, that towards the end of
14 2020, the Budgetary responsibility for the Department of
15 Disaster Management and where it was located, meant that it
16 moved from the Governor's Group to another Ministry; is that
17 right?

18 A. So, yes, there was--sorry, you will have to give me
19 the page number for the letter, but there was a letter I wrote
20 to the Honorable Premier at the time relating to this. This was
21 an interesting example where there was a very clear position in
22 terms of both constitutionally and under the laws of the
23 Territory, in terms of the Disaster Management Act. And as I
24 had said, I had always operated with a clear approach to
25 partnership. Part of, I think, a good partnership is that you

1 consult, you treat each other with respect, and you engage each
2 other if you are going to do things that may affect the other
3 partner.

4 This was, I have to admit, quite a strange occurrence
5 because without any consultation, without any engagement,
6 without any discussion with myself, the Premier took forward an
7 amendment that affected an area that I was responsible for
8 through the Budget approach, as you highlighted. As for me,
9 when I had been committed to a partnership approach and at least
10 in the letters that the Premier would quite frequently send to
11 me, he would affirm his--or at least he would affirm his
12 commitment to the partnership. It was supplied that an approach
13 was taken and that there was no consultation, engagement or
14 discussion about it, I think.

15 If you could refresh my memory on what page in the
16 bundle where the letter is, I would be able to be more specific,
17 but I do remember at the time being somewhat disappointed at the
18 approach that had been taken without consultation.

19 Q. Was there--let's take it in stages because if you need
20 to refresh your memory, you should do it. It's page 885 of this
21 bundle.

22 A. Thank you. Yes, I have it.

23 Q. On the available correspondence we have, this seems to
24 be the first letter that's written, and it's the intent then to
25 move the Department of Disaster Management from the Governor's

1 Group to the Premier's Office, and you say in this letter, you
2 express your disappointment and you say "this is not a
3 partnership approach to governance", and you set out your
4 obligations under the Disaster Management Act and say that it's
5 consistent with the clear connection between disaster management
6 and your responsibility for internal security afforded to you by
7 Section 60.

8 Now, that was you expressing your position. If we go
9 to 888, you're then writing that disaster management should be
10 presented correctly in the budget estimates as being under the
11 remit of the Governor's Group.

12 So what was the position? I can take you to the
13 letter that the Premier wrote on the 9th of December that you
14 are referring to here, but we may not need to look at it, but
15 you had written to express your disappointment. What was the
16 position as of the 18th of December? Where did the Department
17 of Disaster Management lie?

18 A. According to these letters, I believe legally the
19 responsibility as per Disaster Management Act 2003 placed the
20 responsibility with the Governor, and is also the position as
21 per the letter that was in there that referred to the Disaster
22 Management Act of 2003.

23 In terms of the Budget, I'm afraid from memory cannot
24 recall exactly where the Budget was in the cycle of the House of
25 Assembly debates at the time, whether it had been passed or not

1 at that point, but the position on disaster management itself
2 was legally very clear in the Disaster Management Act of 2003.

3 Q. Does--just in terms of the Budget, was the effect
4 that--I'm just thinking what practically occurred--was the
5 position that, in terms of whilst you might have had statutory
6 responsibilities under the Act, did the Budget sit with as a
7 result of these changes, was the Budget moved from your group to
8 another Ministry?

9 A. So, I refer to the letter just below, as I refresh my
10 memory on this. The 22nd of December 2020 that is page 889, I
11 was actually on holiday then out of Territory, and Mr David
12 Archer as Deputy Governor was Acting Governor at the time, and
13 that implies that--I will read that. "I have assented to the
14 Appropriation 2021 Act of 2020, that clarified that in doing so
15 do not endorse any purported regroupings or movement of
16 financial controls within the Budget estimate unless in line
17 with current governance structures. And until these are altered
18 through a proper and lawful process including, where necessary,
19 sent to legislation reallocating responsibility".

20 So, from that I take that the Act was signed off in
21 terms of the Appropriation Act by the Acting Governor at the
22 time for that important position put it, but obviously that
23 needed to be lawful in terms of the positioning of the disaster
24 management function.

25 Q. If you look at the bundle 3. At 218, please.

1 A. Can I confirm that is a memorandum from the Attorney
2 General to the Premier and Minister of Finance?

3 Q. It's to you dated the 21st of December 2021.

4 A. Correct. Got it.

5 Q. This is advice on what seems to have been the dispute
6 between yourself and the Premier, which was should the
7 governance and control of the Department for Disaster Management
8 vest in the Governor or in a Minister of Government. And the
9 advice of the Attorney was in short that the Disaster Management
10 Act of 2003 vests that the authority fall to the Department for
11 Disaster Management in the Governor without ambiguity. The Act
12 can be re-amended to assign responsibility to a Minister of
13 Government. And what's suggested is that a mediated solution
14 between yourself and the Premier to try and resolve the dispute.

15 As of the time you ended your tenure, Mr Jaspert,
16 where did the Department for Disaster Management sit?

17 A. I believe it sat through the Disaster Management Act
18 2003. It sat as the Attorney General says in her advice, the
19 Disaster Management Act 2003, the Act--I'm reading from 2(a) of
20 her letter, vests authorities in the DDM in the Governor. There
21 is no ambiguity or absurdity in the legislation, and she goes on
22 in that sentence. I believe that was the position as when I
23 left.

24 Q. Did you have budgetary control for it?

25 A. I refer back to the letter from the Acting Governor at

1 the time that the Appropriation Act was signed off, and that the
2 position was that the Governor was responsible for disaster
3 management.

4 Q. Another issue that arises--and again it's not
5 something that has been pursued against you, but it has been
6 canvassed with Governor Rankin, but it's this, it's the question
7 of who chairs Cabinet in the absence of the Governor. There
8 appears to have been a dispute and a difference of the
9 interpretation of the Act--of the Constitution, rather, on the
10 basis that the Premier's view was that where the Governor is not
11 present, Cabinet should not be chaired by a Deputy but should be
12 chaired by him as himself as the Premier.

13 Is it right to say that your interpretation of the
14 Constitution was that you could have your Deputy chair the
15 Cabinet?

16 A. Thank you.

17 When I started out--took over my tenure as Governor in
18 2017, the practice that I walked into, and the precedent was
19 that the--in the absence of the Governor, the Governor chaired,
20 now that Governor could be the Acting Governor or the Deputy two
21 Governors, actually the person fulfilling the function of the
22 Governor as the Chair in Cabinet. That was I received advice
23 from The Honourable AG at the time, Baba Aziz, who confirmed
24 that position with myself--well, before Cabinet, actually, that
25 the person fulfilling the function of Governor is the Chair of

1 Cabinet, and that is the person of myself or whether it is the
2 person of another individual who is fulfilling the function of
3 Governor. I don't actually have that advice in front of me, I'm
4 sure it's in one of these bundles, but if you know the exact
5 point, I can probably quote more directly, but I do remember the
6 position that I was advised by the then-AG.

7 And I believe my last Cabinet Meeting, it was a few
8 days before I left, the--well, no longer new, but the Attorney
9 General now, The Honourable Dawn Smith, advised that a different
10 interpretation and also advised that Cabinet could be chaired by
11 video link as well, which I did subsequently do as Governor in
12 the Territory at the time.

13 Q. So, for the majority of your tenure as Governor, the
14 advice of Baba Aziz on the interpretation of who should sit
15 under the Constitution and who can chair Cabinet, was that it's
16 either the Governor, the acting Governor or the Deputy to the
17 Governor?

18 A. Correct.

19 Q. The final point I would like to canvass with you
20 before returning to the potential criticisms is the question of
21 how the Governor ought to approach the question of interacting
22 directly with Public Officers. If you're in the bundle (b) (3)
23 and you turn up 122, please. Go to 120, first.

24 A. Can I confirm that is a letter of the 60th of May 2020
25 from The Honourable Premier to the Baroness Elizabeth Sugg?

1 Q. It is.

2 And it is headed "over-reaching by UK Government
3 officials" and what the Premier writes is that he continues to
4 be concerned with the many transgression of the Governor that
5 are far-reaching beyond his special responsibilities as outlined
6 in Section 60". He says, "I've written to your office on many
7 occasions expressing concerns of the Governor's continual
8 actions of usurping the people of the Virgin Islands' desire to
9 become a self-governing people and to exercise the highest
10 degree of control over the affairs of their country at this
11 stage of its development".

12 The letter continues that there appears to be a lack
13 of due respect for the ministerial advancement of this Territory
14 and protection against over-reaching as there is a consistent
15 showing of solidarity with the Governor in the face of his
16 numerous and continued transgression against the Government and
17 the people of the Virgin Islands.

18 The Honorable Premier goes on then to make some
19 further points including, for example, that in the pandemic, the
20 health emergency operations center had been established and
21 successfully so, and that its membership includes a Permanent
22 Secretary and Ministry of Health and Social Development, Chief
23 Medical Officer, BVI Health Authority and the Director of
24 Communications and the Director of the Department of Disaster
25 Management.

1 Going on to 122 and having set out all of those
2 entities involved in the health emergency operations center, the
3 Premier continues: "With this solid structure in place, it was
4 a surprise to learn that apart from this structure as approved
5 by Cabinet, the Governor's Office summoned some Members of the
6 HEOC to discuss COVID-19 under a message sent from the
7 Governors' office on 7th April 2020, without any prior
8 discussion with the Health Minister who has the legal authority
9 for handling of all matters related to any health pandemic".

10 He then sets out the mail, and then continues, "this
11 is a very genuine concern of over-reach into the Public Service
12 of the Virgin Islands by the Governor through--by the FCO
13 through the Governor and the Governor through his office, even
14 though Ministers have been legally assigned the responsibility
15 of administering of their Departments and Ministries, as is in
16 keeping with the Constitution".

17 He continues that "Public Officers have privately
18 expressed concerns in confidence that the Governor and the
19 Governor's Office are making direct contact into Ministries and
20 Departments and have requested that a proper Protocol be
21 established so there is a clear understanding of how the
22 Governor's Office should be interacting with Ministries and
23 Departments.

24 "For those Public Officers who have been in the Public
25 Service for a significant period of time and have institutional

1 knowledge and understands how the mutual relationship across
2 Ministries and Departments worked in the past, they have
3 expressed a high level of discomfort to me privately. I have
4 asked them to express the same with the Deputy Governor about
5 the Governor's Offices' actions, while some may have been
6 hesitant because the Deputy Governor reports to the Governor,
7 I'm sure that some may have mustered the courage to express
8 their concerns without fear".

9 The letter then returns to setting out the
10 Constitution, but at the top of page 124 refers to the heavy
11 handed approach by the Governor and his office to abuse his
12 authority within the Public Service to summon Public Officers is
13 not appropriate.

14 If you go to page 130, start at 127. At 127, you have
15 a 19th of May letter from The Honorable Premier to yourself,
16 saying that he had reviewed a draft letter from you, other
17 correspondence and Police Commissioner Michael Matthews' radio
18 interview of the 8th May 2020 and says that statements you're
19 making are unfounded as you allege. And this is concerns about
20 using military personnel in the BVI.

21 The Premier then sets out a number of specific points,
22 including that this is being mediated through the NSC, and one
23 of those on there was the Attorney General, whose term of office
24 expired on the 10th of February 2020. Again, what it ends with,
25 is--and this is at page 130, having set out the powers that you

1 have, the Premier expresses the hope, as you contemplate on your
2 exercise of these powers have you considered the following:
3 Exercise of powers under the Constitution must be in accordance
4 with the Preamble of the Constitution. The Constitution is
5 underpinned by democratic values that pervade BVI society.

6 And he then sets out a number of those values,
7 including the general expression and desire of the Virgin
8 Islands Public to become a self-governing people and to exercise
9 the highest degree of control over the affairs of their country.
10 And the point that the Premier makes is that you have a penchant
11 for unilateral exercise of constitutional powers, in some even
12 perceived to be in violation of the Constitution, and that is
13 indeed characteristic of the home rule that was practiced by
14 your predecessors on the ancestors of Virgin Islanders decades
15 ago.

16 So, there are two instances that I've brought to your
17 attention there where the Premier is expressing in strong terms
18 concerns with examples that you, Mr Jaspert, were engaged in
19 what he calls "constitutional over-reach". Did you take the
20 Premier's warnings on board?

21 A. Sir, firstly, I see in those letters there's a number
22 of assertions which I have to record were unfounded in terms of
23 what was written there. Some of the correspondence clarifies
24 the misrepresentation that the Premier presented in those
25 letters.

1 So, that was in terms of the specific examples. I'm
2 happy to talk through on those areas, but to say that security
3 is not the constitutional responsibility of the Governor--that
4 would be the insinuation--it's a slightly strange position to
5 take, but that was one way my interest was in accepting the
6 security, as I am constitutionally bound to of the people of the
7 Territory.

8 So, I have to say I refute the assertions that are in
9 these exchanges.

10 Q. Go to 210 in the same bundle. This is a letter of the
11 17th of December 2020 addressed to you from the Premier, and it
12 relates to the use of the Government's Information Service in
13 the BVI, and he explains that that resides in the Premier's
14 Office. And just to summarise the point of the letter, it
15 points to that during the extenuating circumstances created by
16 the hurricanes, there was a change in the access that the
17 Governor's office had to GIS, which is described here as
18 (reading): Usually privileged and there's now a need to return
19 the method and function of the Territorial Government's official
20 communications apparatus to its regular mandate, and the Premier
21 writes (reading): "We have been pleased to extend the courtesy
22 to the Governor's Office".

23 And so, what he explains he's done is that he has
24 instructed the Permanent Secretary in the Premier's Office that
25 the Director of Communications and GIS will no longer be

1 responsible for issuing Communiqués or providing public
2 relations coverage on behalf of the Governor, Governor's Office,
3 and the Foreign Commonwealth Development Office.

4 He writes (reading): "It's more appropriate for the
5 Governor's Office to be responsible for communicating its and
6 the FCDO's country business plan and activities through its own
7 separate channels". He notes, however, that in requests, that
8 in the spirit of cooperation as a courtesy to him and his office
9 and his position that he should receive such communications from
10 the Governor's Office and the FCDO prior to any--any
11 communications, rather, prior to their being issued to the
12 public. He notes that as leader of the Overseas Territory he
13 must be aware beforehand and not learn of information in the
14 public domain.

15 Now, at 226 in this bundle, the Premier is responding
16 to a letter from you which we haven't seen, but he again
17 explains, and what he does here is he explains the difference
18 between your role as the Representative of the Queen as the head
19 of State and his as the head of Government, and he then goes on
20 to set out again by reference to the role in the past of the
21 Government Information Service; a decision that he would, and we
22 see this at page 229, instruct the Director of Communications,
23 on the Permanent Secretary on his directive that it's not
24 responsible for issuing Communiqués or providing public
25 relations coverage on behalf of the Governor, Governor's Office,

1 and the Foreign Commonwealth and Development Office. That is a
2 matter for them, but that in the spirit of cooperation and
3 courtesy he should receive your communications.

4 He says that GIS will be approved to issue
5 communications where there is a partnership between the
6 Territorial Government and the Governor's Office on specific
7 projects and initiatives.

8 I'm giving you this background, Mr Jaspert, and I'll
9 add one little more detail, and that is that we've heard
10 evi--the Commissioner has heard evidence that the Premier also
11 requested that any inquiries to Ministries or officials should
12 go through his office, and Governor Rankin provided two draft
13 memoranda to the Commissioner as part of his Written Response
14 which showed that.

15 So, bringing those threads together, and I can take
16 you to your response to the Premier, which is at 243 if you need
17 to see it, the threads are, firstly, the concerns that were
18 being raised by the Premier, and it's an example of
19 constitutional over-reach, was that, as Governor, you were going
20 directly to Public Officers rather than, as you should have
21 done, through his office; and secondly, that it was not for the
22 BVI Government and certainly not for its information services to
23 be disseminating information that was produced by the FCDO and
24 the UK Government, you as Governor being an extension of the
25 FCDO and the UK Government.

1 Taking the--those are--the reason I want to draw you
2 to that, it's focusing on the point of constitutional over-reach
3 by you operating essentially outside your Section 60 powers.

4 A. Thanks very much.

5 First, let me say there was no constitutional
6 over-reach.

7 Secondly, it would also help, I think, to explain the
8 difference between the UK and the Foreign Office, the
9 Commonwealth Office, FCDO, Foreign Commonwealth and Development
10 Office, as it's now called, and the Government of the Virgin
11 Islands. And the Governor has a role, as is set out in the
12 Constitution, where I act within those parameters within the
13 Constitution, but I act as part of the Government of the Virgin
14 Islands, as well, and, therefore it is through the
15 constitutional power. I exercise those, if you go to Section
16 46(1) of the Virgin Islands Constitution Order 2007: The
17 Executive authority of the Virgin Islands shall be vested in Her
18 Majesty; Section 46(2), subject to its Constitution Executive
19 Authority of the Virgin Islands may be exercised on behalf of
20 Her Majesty by the Governor.

21 Now obviously it goes on with other sections where a
22 large part of that authority is rightly delegated to elected
23 Members of Government. But it is a misrepresentation,
24 unfortunately, by--in those letters to present it to the
25 Governor as suddenly a Foreign Office or FCDO institution. The

1 Governor is actually a BVI institution. It is BVI's
2 Constitution under Constitutional Order of 2007, and it is under
3 that approach that I was fulfilling my role.

4 So, it is therefore wrong for the Governor acting
5 through the Constitution of the BVI acting in a role that I have
6 for the Governor Government of the Virgin Islands to be blocked
7 from communicating out by Government Information Service, the
8 GIS, as it was called. That was the first part, and that was
9 something I resisted.

10 There is a third point, I think, that Foreign and
11 Commonwealth Office communications are UK-solely communications.
12 And sometimes the Governor's Office may act as a postbox for
13 those communications, and that is fair that those controlled
14 perhaps by the Governor's Office if the FCDO team there rather
15 than necessarily through GIS, although sometimes it may be that
16 there was a collaborative approach to that message. But my role
17 as Governor of the Virgin Islands is to be exactly that, the
18 Governor of the Virgin Islands, and hence it's completely right
19 that the Government Information Service supports the de facto
20 position that I have as the Governor.

21 Relating to the second point of that, going to Public
22 Officers and working with Public Officers, this is something
23 that--or only going, I believe--in one of the letters it refers
24 to the idea of only by the Premier's Office. As part of the
25 Constitution, I am bound to operate within the realms of the

1 Constitution; so also is the Premier or any Member of
2 Government; and so, it would be constitutionally incorrect to
3 direct that all communication or interaction has to only happen
4 with the approval of the Premier, and that is to draw an exact
5 part in the Constitution, but the time I will summarise it from
6 memory and we can maybe come back to it, but essentially it's
7 clear that the Governor has the ability to go--to get
8 information from Ministers and to involve one for the Premier
9 when he does so.

10 There are also areas whereas I directly involve Public
11 Officers due to my constitutional responsibilities around terms
12 and conditions of Public Officers, around obviously Section 60
13 responsibilities, more widely on security, et cetera.

14 So, if the Premier put forward a position that was
15 unconstitutional, then, of course, I would not be able to
16 operate in that position. I would need to operate to the
17 Constitution of the Virgin Islands for the interests of the
18 people of the Virgin Islands.

19 Thank you.

20 Q. But I think are you--if you have Section 56(7) in mind
21 when you were saying that you have a constitutional right to
22 approach the Ministry officials.

23 A. Yes, that's correct. Section 56(7), the Governor
24 acting in his or her discretion may at any time request from a
25 Minister any official papers or seek any official information or

1 advice available to that Minister with respect to a matter for
2 which that Minister is responsible under the Section and shall
3 inform the Premier of any such request.

4 Q. But that Section refers to Ministers. So, what's the
5 basis on which it allows you to approach a Public Officer rather
6 than a Minister?

7 A. So, as a basis of carrying out my constitutional
8 responsibilities under Section 60, there are a number of areas
9 where I would engage with Public Officers. These include, for
10 example, the chairing of what was called the "TSAG", the
11 Territorial Security Action Group. That included Public
12 Officers working and responsible for aspects of the notion of
13 the Territory's security, and hence clearly within my
14 constitutional remit to engage with them. It included also, for
15 example, the Criminal Justice Advisory Group, the CJAG as it was
16 called, and clearly that links to administration of courts under
17 Section 60.

18 Obviously, also there was engagement with the terms
19 and conditions of Public Officer. A regular engagement would
20 be, for example, with the folks at HR on those matters that may
21 relate to terms and conditions of Public Officers.

22 And other times I would engage with the Minister or
23 Ministers over a framework for where we were collaborating
24 together. One example I can recall is with the Minister of
25 Natural Resources, Labour and Immigration where the UK funded,

1 for example, support to map the, I believe, the seabed of the
2 Territory and to do work to help preserve the coast or the
3 natural environment where the Minister and I jointly went on
4 visits together.

5 Other areas where I've engaged with the Public
6 Service, for example, as part of being Governor was to be
7 connected into the communities, and so my office would often
8 contact Ministers' offices, going through the Minister to
9 arrange, for example, a visit to a school or visits to other
10 areas of Public Service.

11 Finally, the other area where increasingly towards the
12 ends of my tenure, as I believe concerns escalated amongst
13 Public Officers or at least what was presented to me, I did
14 engage with Public Officers because they presented with me
15 serious allegations of intimidation, serious allegations of
16 political interference, serious allegations of direction that
17 they felt uncomfortable with; and so, I did hold a number of
18 meetings with Public Officers who sought to see me to report in
19 confidence about the pressures they were being placed under. I
20 saw that as part of two thoughts:

21 One, my responsibility under the terms and conditions
22 of Public Officers, if they've been allegedly directed to do
23 things that I believe were wrong, part of my role was to support
24 them on that.

25 And secondly, my duty under the Constitution and under

1 Article 73, to support the security and the good governance of
2 the Territory to help make sure that there were avenues for
3 issues to be aired, discussed and for me to then to make
4 decisions if required on how to ensure they could be
5 investigated or dealt with through the respective authorities.

6 Thank you.

7 Q. Just focus on the question I asked. You--I think your
8 evidence to the Commissioner is that you were acting
9 constitutionally because Section 56(7) does allow you to--or
10 doesn't mandate that you must in your communications with any
11 parts of government go through the Premier.

12 What it specifically refers to is that you can request
13 official papers or seek any official information or advice
14 available to a Minister with respect for which that--to a matter
15 for which that Minister is responsible, and you then have to
16 inform the Premier of any such request.

17 Is your position that 56(7) allowed you to approach
18 Public Officers, or is it because it does not mention Public
19 Officers there's no restriction on you discussing with Public
20 Officers?

21 A. Thank you.

22 As I made it clear, my interpretation of 56(7) clearly
23 doesn't require me to go solely through the Premier, so it does
24 enable me to engage--request information from Ministers or, as
25 it says, any official papers or official information, and in

1 areas where I have responsibility I can engage with Public
2 Officers, as I said. I don't see that in conflict with the
3 Constitution. In fact, I believe it's fully part of me
4 fulfilling my constitutional responsibilities.

5 Now, also one of the parts of the bundles you
6 mentioned was about officers in my office engaging with other
7 offices across the Public Service. Now this--my office was made
8 up of officers who were employed by the Government of the Virgin
9 Islands and also some who were employed by United Kingdom
10 Government by the Foreign Commonwealth and Development Office.
11 And there were areas where Officers would rightly engage at sort
12 of a working level to support the interests of people of the
13 Territory. For example, and these were areas where I would--I
14 took to brief Cabinet on to make sure that they were informed,
15 but areas, for example, in supporting programmes to restore
16 electricity in the Territory; now 25 percent of all of the
17 electricity was stored, all the powers that were put back up
18 after Hurricane Irma were funded by the UK Government support.
19 They would include, for example, water as it was, repairing
20 sewerage arrangements, repairing police stations across the
21 Territory, et cetera.

22 These were areas where the practical arrangements in
23 terms of how the support would be done, there would be a
24 dialogue running through between officers in my office and
25 officers in respective Ministries, for example, Public Works

1 where it relates to, for example, sewerage.

2 The other area whatever it would be by regular flow of
3 communication between my office and other Ministries was on a
4 practical level, where my officers were to regularly deal with
5 their counterpart officers to fulfill the functions that I have
6 as Governor, and to fulfill the functions that a Minister may
7 have. An example of that is land. A fantastic officer in my
8 office who deals with most of the "OHATA" (phonetic) matters in
9 my then-office, who deals with the, for example, papers relating
10 to land that I had to sign off for, and they would regularly be
11 in touch because of the files and bundles of paper would be
12 moving around to the various Ministries en route to an
13 agreement.

14 So, there was a sort of routine engagement, as you
15 would expect with the functioning of any Government, and then
16 there was the engagement that I undertook under the Constitution
17 as per my responsibilities and duties.

18 In terms of the specific one that you referred to
19 here, I see that in one of the letters, I believe the one you
20 quoted from the then-current Premier to Baroness Sugg was, I
21 believe following instruction at Cabinet where there had been
22 ongoing discussion about the support that the UK could or would
23 provide to the British Virgin Islands going through the period
24 of the pandemic; and so, it seems we have an alerted Cabinet to
25 have ongoing discussion. It seems quite normal that a--not an

1 insignificant matter, but an officer in my office would reach
2 out to Officers in other parts of the Ministries or other parts
3 of the Government to ensure that there could be a proper
4 dialogue about the support that could be provided in the most
5 effective way.

6 Thank you.

7 Q. Take you back, Mr Jaspert, to page 122.

8 A. So I am between bundles. Could you clarify, are we
9 on, which bundle are we on?

10 Q. This is the letter we--the first letter we looked at,
11 because there are two aspects of this, two concerns that The
12 Honorable Premier raises. The first is the proper route by
13 which under the Constitution the Governor should consult with
14 Public Officers and Ministers, which you've responded to.

15 But the second which is illustrated here and which is
16 described as a continual concern of over-reach into the Public
17 Service is consulting or, in fact, summoning members of a
18 particular body without notifying a Minister and without
19 notifying the Premier. And so, what is being done is that the
20 Governor and the Governor's Office are engaging directly and not
21 even having the courtesy to tell the Minister responsible what
22 is going on.

23 A. I'm afraid that's a statement I don't believe has much
24 credence to respect, Mr Rawat. I know you're reading out words
25 from a letter and not your own words, but the--as I've

1 highlighted, there are instances where my office would support
2 people of the Territory and in line with the Constitution would
3 engage with Officers across the Territories.

4 Included, for example, I would have a discussion about
5 support to bringing vaccines to the Territory, and that was a
6 discussion we had at Cabinet. I also discussed with the
7 Minister of Health about that. Having had that discussion to
8 constitutionally in a way, under Section 56(7), it isn't quite
9 right but the practical detail is followed up, enabling the UK
10 Government to kindly donate thousands upon thousands of vaccines
11 to help support and protect the people of the Virgin Islands.

12 So, there were regular examples of where there would
13 be a high-level discussion between myself and respective
14 Minister, and then there would be a practical follow-up on those
15 kind of measures.

16 And they would also come the other way, as well.
17 There would be discussions back from officials in, for example,
18 Ministry of Health about when the next batch of vaccines is
19 coming, or the timelines around that, and that is would you'd
20 expect as part of a helping position.

21 But I just take a step back, because we talked quite a
22 bit about the spirit of the Constitution, as well, and the
23 Preamble to the Constitution. And so, when I remind myself of
24 the series of letters that the Premier would write with these
25 kind of assertions in, I also remind myself of being quite

1 confused at times when the Preamble to the Constitution has a
2 clear commitment to a modern partnership. And so, in a
3 partnership you would expect there to be dialogue with the
4 elected Government. You would expect Ministers and the Governor
5 to be talking and engaging. And so, to me, that spirit of the
6 modern partnership is something that I think is important to get
7 the best of the relationship for the people of the Virgin
8 Islands.

9 Thank you.

10 Q. Just I think to summarise what you're saying, your
11 position first is that you do not accept that your conduct
12 amounts to constitutional over-reach; is that right?

13 A. Correct. Thank you.

14 Q. That there is nothing in the Constitution that
15 requires you to only communicate with the--through the Premier
16 or his office.

17 A. That is correct.

18 Q. And that what you may do as the Governor, aside, there
19 is nothing improper, you say, in your offices in the Governor's
20 Group communicating with other Ministries and Department within
21 Government without the need to take it to a higher level and
22 alert a Minister or, indeed, the Premier.

23 A. Well, as a matter both of the partnership approach
24 that I talked about and as a matter of being always open with
25 the Elected Government, I think--I can't recall every single

1 instance, but I'm pretty certain that I would always be raising
2 issues with the respective Minister. The working level in
3 action of the various conversations is something that you would
4 expect in the functioning of any government that are--so my
5 officers and the Ministry Officers were engaging following
6 conversations between a Minister and myself. That was something
7 that I would expect and, I believe, is always within the remits
8 of the powers of the Constitution. It would be wrong, I
9 believe, and would have been unconstitutional if those were
10 prevented from happening unless there was prior approval of the
11 Premier, which I believe is the position you were referring to,
12 and that position was put forward by the Premier, I believe, was
13 not with merit in the Constitution.

14 Thank you.

15 Q. And you don't accept that there may have been
16 instances where you did not or, if you like, you or your office
17 sought information or took steps without consulting the Minister
18 or alerting the Premier as you ought to have done.

19 A. I'm certain there were times where expediency of the
20 circumstances meant that I may have to. So, if I describe my
21 first few months in the Territory, I arrived and within two
22 weeks the Territory was sadly devastated by two mega--mega-mega
23 hurricanes, Hurricanes Irma and Maria. As part of that, there
24 were very, very many decisions and immediate interactions that
25 needed to be taken to ensure that lives were saved, that

1 property was protected, that the Territory did not suffer
2 further, any law and order concerns. You will recall sadly
3 there were instances of looting, or people did not suffer
4 further from a lack of access to water or lack of access to
5 sewerage, et cetera.

6 So I don't recall every single moment of all of those
7 events--there were many, many things that were happening at the
8 time. But I do remember, yes, there would have been times I
9 would have been engaging with Public Officers, partly also
10 because communications were poor during that period. But in
11 line with the Constitution and in the spirit of partnership, I
12 did everything I could to ensure that the Elected Ministers or
13 Elected Government were fully engaged in that. So, for example,
14 during the period where we were in an immediate hurricane
15 response, I held a daily meeting with--open to all elected
16 Members, obviously including the then--Premier; also actually
17 opened that up to other members of the then-Premier's idea and
18 support to do that, to other members of the House of Assembly as
19 well.

20 But in terms of interaction with Public Officers, yes,
21 there were times when I feel confident for the need to save
22 lives, to prepare the Territory for disaster, to support the
23 immediate aftermath, to restore law and order effectively.
24 There were times when I had to, due to expediency and due to
25 lack of communications, engage with Public Officers, and those

1 are things that would be done, but as an overall framework,
2 there was always a framework for engagement with Elected
3 Ministers as well.

4 As I mentioned earlier, sometimes engagement was
5 difficult. You'll recall I mentioned that I want to try and
6 establish a routine of regular one-to-ones or meetings with the
7 Premier, and I suggested those weekly so that if there were any
8 disagreements or any potential areas where either one of us
9 inadvertently could be misunderstanding each other's intentions
10 or inadvertently could be undertaking things that we wanted to
11 discuss further, I wanted to ensure there was a good space,
12 which you'd expect as part of our strong commitment to
13 partnership for that. Unfortunately, that wasn't the approach
14 that was fully supported by the Premier, but I still made sure
15 that the Cabinet through interactions and as--that I upheld the
16 constitutional approach as far as I could.

17 MR RAWAT: Commissioner, I'm going to move on to a
18 different topic. I don't know whether this is a convenient time
19 to have a lunch break.

20 COMMISSIONER HICKINBOTTOM: Certainly.

21 So, in terms of Mr Jaspert, is it just criticisms 2
22 and 3?

23 MR RAWAT: Yes, and then there will be some other
24 specific matters that we'll need to go through.

25 COMMISSIONER HICKINBOTTOM: Okay. Good.

1 Mr Jaspert, we'll now break for lunch for half an
2 hour, so we'll come back at 2:00, I guess 7:00 your time and Sir
3 Geoffrey's time, but in half an hour's time.

4 Good. Thank you very much.

5 THE WITNESS: Thank you, Commissioner.

6 (Recess.)

7 COMMISSIONER HICKINBOTTOM: Good. Thank you,
8 Mr Rawat. We're ready to continue.

9 MR RAWAT: Thank you.

10 BY MR RAWAT:

11 Q. Mr Jaspert, can I take you back to your Written
12 Response to the Warning Letter from the Commission. Potential
13 criticism 2 concerns the Register of Interests.

14 COMMISSIONER HICKINBOTTOM: Just before we start the
15 evidence on this, Sir Geoffrey, the Elected Ministers made two
16 criticisms of Mr Jaspert. This is the second one concerning
17 Section 13 of the Register of Interests Act of 2006, and this is
18 in relation to a request that said that Mr Jaspert made when he
19 was the Governor of the Registrar of Interests concerning
20 information, I think, about the failure of elected Members to
21 make declarations.

22 When this was raised some time ago, you were
23 ambivalent or perhaps more accurately, I wasn't clear as to what
24 you were saying, which may be a different thing.

25 As to the position--as to your position in relation to

1 the Registrar herself, I assume that the Elected Ministers say
2 that the Registrar of Interests has breached Section 13, but is
3 that assumption correct? What is the Elected Ministers'
4 position?

5 SIR GEOFFREY: You sum it up correctly, sir.

6 COMMISSIONER HICKINBOTTOM: So, the Elected Ministers
7 say that the Registrar did breach Section 13?

8 SIR GEOFFREY: Yes.

9 COMMISSIONER HICKINBOTTOM: And has anything been done
10 about that?

11 SIR GEOFFREY: I need to understand a little bit more
12 about what you mean has anything been done.

13 COMMISSIONER HICKINBOTTOM: Has any action been taken
14 against or in respect of that breach?

15 SIR GEOFFREY: Well, it's not for me, I think, to say
16 whether they should or shouldn't. I think the outcome of your
17 Inquiry may well be reasonably awaited for these things.
18 Plainly, it depends on--it depends on all of the circumstances
19 which you're inquiring into.

20 COMMISSIONER HICKINBOTTOM: With respect, I didn't ask
21 whether what should happen. I just asked whether that breach
22 has been raised to the Registrar and if any action has been
23 taken against her.

24 SIR GEOFFREY: I can't help with that. The Ministers,
25 Elected Ministers are only seven Members of the Assembly. It

1 would be for the Assembly to take any such steps and see whether
2 they agreed about it.

3 COMMISSIONER HICKINBOTTOM: But have any steps been
4 taken? You may not know.

5 SIR GEOFFREY: I genuinely don't, but I'm not entirely
6 certain what the relevance of the question is. The issue first
7 is whether or not the Governor invited her to breach her oath
8 and to break her duty of confidentiality. It may well be
9 thought by Members of the House of Assembly, that if those were
10 the circumstances, she was put in a very awkward and invidious
11 position.

12 As I submitted to you before, clearly the correct
13 approach, I submitted some months ago to you, could be arguably
14 to have taken a different approach in connection with going to
15 court. I recall we had this exchange some time ago. But
16 I--with respect, sir, I simply can't answer your question, and
17 so it would be sensible of me not to say "yay" or "nay" to the
18 precise question at the moment.

19 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

20 Mr Rawat.

21 MR RAWAT: Thank you, Commissioner.

22 BY MR RAWAT:

23 Q. Mr Jaspert, the potential criticism relates to you,
24 and it is, I think, in light of the exchange between the
25 Commissioner and Sir Geoffrey, I would perhaps just set it out

1 as it has been formulated by the Attorney General.

2 The former Governor requested information from the
3 Registrar of Interests which could at least arguably be
4 considered as a breach of her oath of office and of
5 Section 13(1) of the Register of Interests Act 2006. Such a
6 request risks conveying the impression that the laws of the
7 Virgin Islands do not apply in full to the Office of the
8 Governor.

9 So, if I just draw to your attention what Section 13
10 says, 13(1) reads as follows: "The Registrar and any person
11 appointed or designated to assist the Registrar in the
12 performance of his duties under this Act (a) shall before
13 assuming office subscribe to the Oath of Confidentiality
14 referred to in Schedule 3, (b) shall not, save in accordance
15 with the provisions of this Act or otherwise in relation to any
16 court order, disclose information (1) relating to any
17 Declaration or matter in the Register or (2) that he has
18 acquired in the course of or in relation to his duties or in the
19 exercise of any powers or performance of duties under this Act".

20 The oath itself--

21 MR RAWAT: Which, Commissioner, is your page 75 in the
22 bundle.

23 COMMISSIONER HICKINBOTTOM: Yes, thank you.

24 BY MR RAWAT:

25 Q. The form of the oath is this, Mr Jaspert: "I, being

1 the Registrar of Interests/a person appointed/designated to
2 assist the Registrar of Interests in the performance of his
3 duties under the Register of Interests Act 2006, solemnly swear
4 or affirm that I shall keep confidential all declarations and
5 other information in connection with or relative to Members of
6 the Legislative Council and the Register of Interests which has
7 come to my knowledge in my capacity as Registrar of Interests, a
8 person appointed/designated to assist the Registrar of Interests
9 or in relation to such office that I hold, and I shall not
10 disclose such Declaration or other information except as
11 authorized by and in accordance with law".

12 The point that, as I understand it that the potential
13 criticism goes to is that a Registrar under the Act is not
14 allowed, save in specified circumstances, to disclose
15 information relating to any Declaration or matter in the
16 Register, so they cannot disclose information that is--that goes
17 in the Register or details of the Register itself; or
18 information that he has acquired in the course of or in relation
19 to his duties or in the exercise of any powers or performance of
20 duties under this Act.

21 Now, it's right, isn't it, that the Registrar of
22 Interests is a constitutional position?

23 A. That is correct.

24 Q. And in terms of lines of reporting, does the Registrar
25 sit as part of the Governor's Group?

1 A. She does in terms of budgetary group reporting but is
2 obviously independent in terms of how she--she operates to the
3 constitutional approach in the Act.

4 Q. Now, you had, therefore, appointing responsibility for
5 the Registrar of Interests; is that right?

6 A. Yes, that is correct.

7 Q. And as part of your role as Governor, did you meet
8 with the Registrar of Interests?

9 A. Yes, I did.

10 Q. And presumably you met with her on more than one
11 occasion?

12 A. Yes, as Governor I appointed a number of people who
13 were--including those who held constitutional posts, would meet
14 with them from time to time to discuss their terms and
15 conditions, the operations of their or how they are fulfilling
16 that posts.

17 Q. In meeting with the Registrar of Interests, did you
18 appreciate that her role was one that went to standards of good
19 governance?

20 A. Yes, it is a fundamental core part of standards of
21 good governance.

22 But really it's not just her role. Her role is the
23 embodiment of, in a way of the function, the responsibility of
24 the--as is prescribed under Section 112 of the Constitution. It
25 is the application to the Members of the House of Assembly,

1 including Ministers, Section 112(4), and the holders of such
2 other officers as may be prescribed by law, and it is really
3 about upholding the governance of the Territory through the
4 Declaration of Interests. She was fulfilling that role, but it
5 is a constitutional responsibility on elected Members to declare
6 their interest as is set out in Section 112 of the Constitution.

7 Q. Did you--in meeting with the Registrar, did she
8 disclose to you information or that her role could not be
9 fulfilled without Members complying with her requests? And with
10 the requirements of the Register of Interests Act?

11 A. As part of meeting with the Registrar of Interests,
12 she made clear that her role could not be fulfilled without
13 compliance, and she presented serious concerns that she was
14 hindered in fulfilling the role, hindered in fulfilling the
15 constitutional duties by Members of the House of Assembly,
16 including by Members of the Elected Government. She did
17 highlight the problems she had in fulfilling her role and hence,
18 upholding the good governance that the Constitution demands in
19 this matter.

20 Q. Did she disclose to you the names of Members of the
21 House of Assembly who had not complied with the provisions of
22 the Register of Interests Act?

23 A. The Registrar of Interests did not disclose the
24 Registry Book, did not disclose the interests, but she did in
25 the course of highlighting to me what she felt--well, she

1 believed were very, very serious constitutional infractions by
2 Members of the Elected Government and some Members of the House
3 of Assembly, but they were not complying with their requirements
4 under the Constitution to declare interests, and she had
5 repeatedly asked for those who were not complying to comply, and
6 I think the Registrar of Interests was put in an incredibly
7 difficult position by the lack of compliance by those that she
8 had repeatedly asked for compliance from and was--I believe she
9 was ignored in her efforts to ensure that the Constitution and
10 the Act was upheld.

11 Q. Did she give you the names of Members of the House of
12 Assembly who had not complied?

13 A. She did by way of a report. If I can refer to--I'm
14 afraid I don't have the bundle title, but I believe you have
15 sent it to me. She gave--this going back a while. She had made
16 her concerns to previous Governors, indeed, and then she did
17 further after, continued, through lack of compliance, she
18 continued efforts to get compliance from elected Members.

19 She did send me what was entitled--if you have this in
20 front of you--a status report on Members of the House of
21 Assembly non-compliance with requirements of Section 3 of the
22 Register of Interests Act 2006.

23 Within that Report, she highlighted incredibly serious
24 concerns relating to Members who were delinquent in their
25 compliance of their responsibilities under the Act. I received

1 that Report, I memoed back to her or my office did on my behalf
2 on the 20th of December 2020. I have just noted to
3 acknowledging receipt of it. I did not correspond back to her
4 on the specifics of any named Member being aware of the issues
5 of it, and I'm conscious that the Registrar was placed in an
6 incredibly difficult position by such a serious breach of the
7 compliance that was required by elected Members.

8 Q. Sorry just to stop you, I think I cut across you, and
9 the reason was because I think we couldn't quite hear some of
10 what you were just saying. Could you just repeat what you just
11 said, please.

12 A. Which part? All of it or--

13 Q. The last part.

14 (Overlapping speakers.)

15 Q. You had spoken that you received report from the
16 Registrar of the extent of non-compliance, and you then went on
17 to say you took that seriously, and I think you were explaining
18 the reason why you took it seriously.

19 A. Yes.

20 I took it seriously because it is a fundamental breach
21 of the Constitution. I will quote the Section in the
22 Constitution, Section 112, there should be for the Virgin
23 Islands a Register of Interests, which shall be maintained by
24 Registrar, who shall be appointed and may be removed from office
25 by the Governor acting in his or her discretion.

1 Section 112(2), it is the duty of any person to whom
2 this Section applies to declare to the Registrar for entry in
3 the Register of Interests such interests, assets, incomes, and
4 liabilities of that person or of any other person connected with
5 him or her as may be described by law.

6 It then goes on to say that who it applies to, which
7 is Section 112(4), to all Members of the House of Assembly,
8 including Ministers, and under Section 112(5), it says that
9 failure to comply with or the making of false statements in
10 purported compliance with subsections 2 and 3, then sanctions
11 which may be imposed may include the suspension of a Member of
12 the House of Assembly from sitting, from voting, in the House
13 for such period as may be prescribed in such a law.

14 So, for me, when I am informed of this, and if I go
15 back to some of the earlier statements, throughout my time as
16 Governor, it's absolutely critical to support the
17 self-determination of the people of the Territory, to support
18 Article 73, both in upholding strong governance and security,
19 and self-determination, and to support the ongoing democracy and
20 the advancement of the Territory to the benefit of the people of
21 the Territory.

22 If something is reported such as this which goes to
23 the heart of that good governance, goes to the heart of
24 democratic accountability, that there may be Members, there may
25 also be Elected Ministers who are in breach of a constitutional

1 right who may be operating without sanctions having been applied
2 to them as I listed there, and who may, if they were in an
3 Elected Government position may be making decisions on the
4 spending of public money, of taxpayers' money in the Virgin
5 Islands, without having declared their interests, and you have
6 noted my concerns about a trend of use of tender waivers, so
7 there is lack of transparency in where contracts were going to;
8 a trend in Crown Land being given out without full valuations at
9 subsidised costs. And if, and this is just an "if", because I
10 was obviously not party to knowing what people's interests were,
11 but if that fundamental breach has occurred, that means that
12 calls into question many of the decisions and undermines the
13 self-determinating and the strong governance of the Territory.

14 So, yes, I did see this as a very serious issue when
15 it was reported to me.

16 Q. The questions I'm asking you are directed to
17 establishing what information you received from the Registrar,
18 so you have said that she didn't show you the Register itself?

19 A. That is correct.

20 Q. And did you see people--Members' declarations for
21 those who had actually provided information to her?

22 A. I did not see any Members' declarations. I believe
23 that would, as you've highlighted, she was under confidentiality
24 of those declarations.

25 Q. So, what you were told by the Registrar--and tell me

1 if I've misunderstood this--are the names of Members who had not
2 provided her with information?

3 A. That is correct. And you will have to guide me as to
4 what I can say in this--

5 (Overlapping speakers.)

6 A. --written form, you have the paper that you sent me
7 which includes her status report, but I don't want to obviously
8 get into the details or name any particular individual.

9 Q. Mr Jaspert, if I explain that the questions are
10 directed to what you were told, we can keep it relatively high
11 level because the Commissioner has taken evidence from
12 individual Members and former Members as to the extent of their
13 compliance with the Register of Interests Act, but just trying
14 to pin down what you had, so you had names of individuals who
15 had not complied, and you also had, did you, the years over for
16 which they had failed to comply?

17 A. That is correct, yes.

18 Q. But what you didn't have provided to you by the
19 Registrar was that information that she could have entered into
20 a Register?

21 A. That is correct. I did not have that information.

22 The only other part you haven't referred to, just for
23 full disclosure, that I did have was she informed me of the
24 attempts she had made over successive attempts to get compliance
25 from Members who were delinquent in their constitutional

1 responsibilities, so she did inform me of a series of those
2 letters that she had sent to try to encourage compliance.

3 Q. Commissioner has some of those letters and has--that
4 they have been put to individual Members. They are letters
5 reminding them of their obligation to complete a declaration
6 every year. Is that what you're referring to?

7 A. That is correct, yes.

8 Q. At the time when you were having these discussions
9 with the Registrar, were you aware that she was bound by an Oath
10 of Confidentiality?

11 A. I was aware of the requirement of confidentiality
12 relating to the Declarations of Interests.

13 Q. And were you aware that that extended not just to a
14 declaration or a matter in the Register but to information that
15 the Registrar has acquired in the course of or in relation to
16 her duties or in the exercise of these powers or performance of
17 duties under this Act?

18 A. Sir, I was aware of the Register of Interests Act
19 2003, if that is what you are--

20 Q. 2006?

21 A. 2006, apologies.

22 Q. And did you--when you met with the Registrar, did you
23 request from her details of the degree of non-compliance that
24 she was speaking of, or did she volunteer that information to
25 you?

1 A. She had volunteered information about the difficulty
2 she was having in getting Members to comply with the Register of
3 Interests Act and their constitutional duties.

4 She also requested my support to, in general terms,
5 encourage Members to comply, and I did have that conversation
6 with elected Members to, in general terms, encourage them to
7 ensure that they complied with their duties.

8 Q. Break that down a little bit. The Registrar asked you
9 to intercede to encourage Members to complete their
10 declarations. Just what steps did you take, then, to try and do
11 that?

12 A. So, you'll be aware--and this is not the only Governor
13 who has faced these challenges, but the Registrar in the past
14 had written, I believe, to the Speaker or the Chairman of the
15 (drop in audio)--if I could just reference my notes for exactly
16 who that was--to the Chairman of the Standing Orders Committee,
17 apologies, she had written to. And then there was also
18 correspondence to the then-Speaker of the House and to the
19 then-Premier as well concerning this. I also at my time had
20 spoken to elected Members to encourage them to comply with the
21 requirements. That is something that I would from time to time
22 have to talk to elected Members about, compliance with laws.
23 It's not a position I wanted to be in, you would hope that they
24 would be ensuring that they were complying fully with the laws
25 of the Territory that they themselves have possible institutions

1 that they've put in place.

2 Q. Did you speak or raise the matter with the Leader of
3 the Opposition?

4 A. Yes, from memory I believe--I did.

5 Q. And did you raise the matter with the Premier?

6 A. Again, from memory I believe I did. I will have to
7 recall exactly, but I believe there was a general discussion at
8 Cabinet about the responsibilities of members of Government are
9 included in such things as declaring interests. As part of that
10 conversation, we also included compliance with the Cabinet
11 Handbook, et cetera. This was an induction, if you want, for
12 some of the new Members of the Elected Government.

13 Q. Again, your voice dropped. You referred to an
14 induction?

15 A. Sorry, I don't know if my internet is proving bad or
16 if I'm dropping out. I'll try shouting. If you can hear me.

17 So, I believe what I was saying was that, in terms of
18 the Leader of the Opposition from memory, yes, I did raise it
19 with the then-leader of the Opposition. I also did raise the,
20 again in general terms, with the Members of, I believe, of the
21 Cabinet. But from memory, that was again, from memory, I
22 believe part of a general discussion we had at Cabinet in one of
23 our early Cabinets of this administration where there was--it
24 wasn't formally called an induction, but it was a sort of
25 briefing into the role of Cabinet Ministers, which included, for

1 example, the duties under the Cabinet Handbook, and as part of
2 that declaration of, I believe, Declarations of Interests. But
3 I'm operating from memory on that part, I'm afraid. I don't
4 have the paperwork right in front of me.

5 Q. But you remember an induction for the new Cabinet
6 Members which included, not just the Cabinet Handbook, but the
7 obligations under the Constitution and under the Act to complete
8 a Declaration of Interests?

9 A. I'm afraid I can't remember specifically what formed
10 part of that. It was one of our early Cabinet meetings in 2019
11 under the new administration. From memory I recall the place of
12 it, I believe it was on Virgin Gorda as one of the first
13 meetings we held on that fantastic sister island.

14 I had also as part of Cabinet discussions encouraged
15 Members to declare their interests and declare any conflicts as
16 well. I'm afraid I don't have the Agenda of that specific
17 Cabinet to hand, but I do recall in general terms that interest
18 or part of the discussion.

19 COMMISSIONER HICKINBOTTOM: Mr Jaspert, when the
20 matter was raised in Cabinet, the Attorney would have been there
21 or would have been represented. Did she then raise any concerns
22 over the confidentiality of all of this under the 2006 Act?

23 THE WITNESS: So, from memory, this would have been
24 under the former Attorney General's time as opposed to the
25 current Attorney General, but I will obviously declare--I cannot

1 remember the exact wording of what we discussed. I do remember
2 discussion on declaring interests. I do remember at one
3 point--and this may be on the Cabinet records or the file but
4 the then-Attorney General gave some advice on declaring
5 interest.

6 I don't recall the point about confidentiality being
7 raised as part of that, but as I said, I'm operating from memory
8 on that point, and I don't have the Cabinet records in front of
9 me.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 BY MR RAWAT:

12 Q. Did you, in your discussions with the Registrar
13 consider referring her to the Attorney General for advice?

14 A. I'm not sure I can recall that. I am aware there was
15 some advice from the Attorney General relating to the--making
16 the interests public or the Declaration of Interests public,
17 which was a question if you recall in the session we had before
18 you broke for lunch or dinner for us here, there was a
19 discussion related to the letter that the Honorable Premier sent
20 to Ben Merrick in the United Kingdom's Foreign Commonwealth and
21 Development Office, about the publicising--sorry, I haven't got
22 the letter formally in front of me again here, but it was in the
23 bundle we talked about before about publicising the Registry of
24 Interests, I think that was, the letter of September 2019, was
25 it I think, from Governance Bundle 3 page 28.

1 So, at that point, I believe there was advice sought
2 as to whether the interests could be made public, but as part of
3 also reforms or proposed reforms to the Register of Interests
4 Act, advice was sought from the then-Attorney General about what
5 could be done to strengthen the Registry of Interests Act, to
6 one of the matters looked into as part of that advice was about
7 making the interests or the declarations of those interests
8 declared public.

9 Q. Did you give any consideration, when you were having
10 discussions with the Registrar that, by speaking to you, she
11 might be breaching her Oath of Confidentiality?

12 A. I don't recall I did specifically on that, but we did
13 discuss that she couldn't make the Registry Book public, from
14 memory, that is in terms of the actual Declarations.

15 Q. And just to be clear, it's your evidence that
16 she--leave aside the Registry Book, she would have had
17 declarations from those Members that complied which would have
18 given details of assets they may have held, she did not disclose
19 that kind of information to you; is that right?

20 A. That's correct. She didn't declare--she did not
21 declare the interests. She didn't declare to me give any
22 information relating to those interests under declarations.

23 COMMISSIONER HICKINBOTTOM: Mr Jaspert, the criticism
24 is that you requested information from the Registrar which could
25 at least arguably be considered a breach of Section 13 in the

1 Oath of Office, and it may be that we will have to have some
2 submissions on the law in relation to that, but when you were
3 discussing these matters with the Registrar, you've said that
4 you knew what Section 13 said. Did you consider that it was a
5 breach or a possible breach of Section 13 in her Oath of Office?

6 And the second part of the question: Did she raise
7 with you the possibility that it was a breach of Section 13 or
8 her own oath?

9 THE WITNESS: No, she did not, and I did not--I was
10 part of that--you will see on the trail of paperwork on this
11 that she has many times tried to encourage compliance, and she
12 had also flagged concerns about the lack of--lack of compliance
13 in general terms. Those have been going on for a while. I
14 didn't consider that a breach that she was concerned about the
15 lack of--lack of compliance. That was her job to do so.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. I think I have taken it as far as I can absent legal
19 submissions on the point.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 BY MR RAWAT:

22 Q. Mr Jaspert, can I move on to the third criticism,
23 which is not one advanced by the Attorney directly against you,
24 but arises as a criticism, in fact, that the Attorney makes of
25 previous Governors, and you are a previous Governor, and this

1 goes to the fact and pace of Public Service reform. So, what's
2 said is that a Governor is constitutionally responsible for
3 Public Service reform but has neglected this responsibility.
4 For example, there is a lack of human resources systems and
5 infrastructure in place to allow policy development; the current
6 pay structures are a significant cause of problems in recruiting
7 to the Public Service; record-keeping is a matter for the
8 Governors in a parlous state; no proposal for the desperately
9 needed transformation of the Public Service was forthcoming from
10 successive Governors and Deputy Governors until late 2017.

11 To pull that together a little bit more, the point
12 that is made in the Elected Ministers' Position Statements and
13 their response indeed to the current Governor's Position
14 Statement is that they have inherited years of chronic neglect
15 of the Public Service. The effect for them as policy-makers is
16 that they are hindered in moving forward with policy because
17 there isn't the machinery in place for policy formulation,
18 policy creation for monitoring and evaluation.

19 Now, do you accept that the Public Service has
20 suffered from years of chronic neglect?

21 A. Firstly, let me just briefly take a moment in terms of
22 the Public Service just to say that, during my tenure as
23 Governor, I have been supported by some incredibly talented and
24 dedicated public Officers who have been through some very
25 challenging periods in rebuilding the Territory. Someone who I

1 worked with, amongst the finest I have worked with in my long
2 career in Public Service and I thank them for their support to
3 people of the Virgin Islands, and support they gave to me as
4 Governor and support they give to the Elected Government.

5 That doesn't mean that everything was perfect in the
6 Public Service or that there wasn't a need to continuously
7 improve or to further modernise or to transform the Public
8 Service.

9 But that there has been chronic neglect in that
10 assertion, there have been challenges in taking forward reform
11 of the Public Service. I can highlight some of those as well,
12 but there has been a long programme of plans to improve the
13 Public Service. If you go to the Public Service Transformation
14 Framework which is in the bundle--I suppose you could call it
15 bundle 4--is the one relating on the back of the letter annex
16 that I sent to you that includes the detail of the Public
17 Service initiatives that have been undertaken over the past 20
18 years.

19 When I came into office as Governor in 2017--

20 COMMISSIONER HICKINBOTTOM: Hang on for a moment,
21 Mr Jaspert.

22 BY MR RAWAT:

23 Q. Let's just for the purpose of the Transcript, you have
24 as part of your Written Response provided the Commissioner with
25 a document which is headed "Public Service Transformation

1 Framework 2019" issued from the Deputy Governor's Office.

2 Now, that's--is there a particular part of that that
3 you wish to draw the Commissioner's attention to?

4 A. Yes, there is a page within that document--I'm trying
5 to locate the exact page.

6 Q. Is it page 5?

7 A. That is correct, yes. And I believe it is--yes,
8 page--

9 Q. If you just bear with me, Commissioner, I will put
10 this in the record.

11 COMMISSIONER HICKINBOTTOM: Yes, please.

12 BY MR RAWAT:

13 Q. What is said, and this is a document which has a
14 forward that is signed by yourself--or the forward includes
15 comments from yourself as Governor, the current Premier, and the
16 Deputy Governor, and there is a section which says under the
17 heading "context" that the Government of the British Virgin
18 Islands have undertaken several Public Service initiatives over
19 the past 20 years, and then it sets a figure. This figure, in
20 fact, is the same as the one that the current Governor provided
21 to the Commissioner as part of his Written Response, and it sets
22 out various initiatives.

23 So, in the late Nineties there was the National
24 Integrated Development Strategy. Between 1999 and 2005 there
25 was introduction of service charges, public outreach and

1 engagement, employee engagement, development of sister islands
2 coordination work. In 2000 to the present, Department of Human
3 Resources and HR Reform was established. Then there was between
4 2003 to the present establishment of the Complaints Commissioner
5 Act and Office. Then there was 2013 to present, financial
6 reform in the establishment of fiscal management legislation,
7 deployment of finance planning officers, revision of the chart
8 of accounts, a medium-term fiscal planning, financial protocols
9 agreed. 2013 to the present there was also internal Complaints
10 Management Programme, revision of service charges and service
11 culture, a governance structure for greater collaboration and
12 decision-making, launch of the Government's official website,
13 implementation of revised Public Service standards of
14 excellence.

15 And then under the heading transformation between 2017
16 to the present, strategic direction for an improved Public
17 Service, seven broad areas of change, commission of the
18 Permanent Secretary transformation team, deployment of a
19 transformation unit to institutionalise and drive service wide
20 change, OT employee engagement survey and the Good Governance
21 Framework.

22 So, is your point that if in reliance on this document
23 what can be concluded is that Public Service reforms or
24 initiatives were being undertaken as from the late 1990s?

25 A. Yes.

1 What I can infer from that document, obviously, I was
2 not Governor back in the late 1990s, but yes that document you
3 referred to does set out the range of reforms that had been
4 undertaken.

5 Q. But can I ask you this: In terms of--you have spoken
6 of your responsibility for terms and conditions of Public
7 Officers under Section 60 of the Constitution. What was the
8 ambit of that or what did you consider that gave you in terms of
9 responsibility?

10 A. Well, it gave me, as it sets out in the Constitution
11 really, the terms and condition, that includes the Public
12 Service code, the conditions under which they operate, that
13 includes the organs and Regulations that relate to the Public
14 Service.

15 As part of that also, through the Deputy Governor's
16 Office related to the transmission of the Public, so it's
17 improving their terms, improving the conditions or the
18 operations of the Public Service. The Deputy Governor led that
19 Transformation Programme but it was a partnership where all of
20 the Ministries, something that was confirmed at Cabinet as that
21 approach.

22 There are limitations though, to the role that the
23 Governor has with the Public Service, and some of the challenges
24 were down to some of the limitations. So, the Governor does
25 not, as you know, have a vote in Cabinet, so whilst papers could

1 be put forward to improve the terms and conditions, the Governor
2 wouldn't necessarily have a vote in Cabinet allowed. The
3 Governor, of course, is not responsible for funding, so to give
4 some examples, the level of funding given for training to the
5 Public Service was allocated by the Elected Government was
6 incredibly--well, I would argue was incredibly low but fortunate
7 to the number of Public Officers. I think I have in front of me
8 is \$25,000 for 3,000 Officers but would need to have that
9 checked more widely.

10 Also measures were put it in place that hinder the
11 transformation of the Public Service. I recall in, I believe it
12 was, March 2019, from memory I believe it was around then, that
13 the current Premier put a recruitment freeze in place, using the
14 Budget approach to freeze recruitment of Public Officers which
15 may also hindered efforts to improve the Public Service.

16 Finally also, you will see from the papers in the
17 bundle that you have that transformation plans despite initially
18 having the support of the former Elected Government and the
19 current Elected Government, there was a change in position by
20 the current Premier where he then essentially through his
21 actions, paused the work on the Public Service transformation.
22 I quote from the Deputy Governor's--letter from the Deputy
23 Governor, which if you have that same bundle which we were just
24 looking at with the--which had the plan, motion plan in there.
25 There was an exchange of letters where the Deputy Governor

1 expressed and I quote, how he was shocked and surprised by the
2 position that was being held by the Premier. He went to say the
3 Premier is basically requesting to bring over two years of
4 assiduous work to a halt because of a desire to see a Public
5 Service responsibility led by this office.

6 I understand then in the submission from the Elected
7 Ministers, including some criticisms directed to me, there's a
8 submission that the Governor is responsible for the Public
9 Service, which was something that was about the transformation
10 as part of that criticism, but the work had been blocked by that
11 position that the Premier had taken at that point.

12 Q. You said quite a bit, and I need to break it down a
13 little bit.

14 The first point is you made a point about funding. I
15 think you said that there was \$25,000 for training for 3,000
16 Public Officers, but the point that the Elected Ministers make
17 is that, in support of chronic neglect, is that this isn't just
18 about money. It's about support from Governors and standing
19 behind them from the FCDO and the UK Government. So--and that
20 support can come in two ways, firstly, support that is offered
21 in terms of technical support, training, et cetera; but
22 secondly, financing training.

23 So, leave aside what budget the Government might
24 choose to allocate to training their 3,000 Public Officers. Can
25 you assist the Commissioner with this: During your tenure as

1 Governor, what support did the UK Government give the BVI Public
2 Service, first of all, in terms of training support, and then in
3 terms of financial support for training?

4 A. Thank you.

5 Firstly, there is a very important point which I will
6 labour, and I know we have discussed this before, but as part of
7 being Governor, my commitment was to the Constitution, was to
8 Article 73 of the United Nations, the Territory is largely
9 self-determined, and as part of that self-determined is on
10 finance, that the Territory has been--since my time there came,
11 I think, the anniversary of 25 years of being--proud of being
12 out of "CON-TIN-ATE" (phonetic) from the United Kingdom.

13 So the first call on funding for the Public Service
14 should come from the democratically Elected Government as
15 appropriated through the House of Assembly and the Appropriation
16 Act. That is the right point, and I believe that is the
17 important principle that the Territory itself sets its budgets.
18 I did not want it that it would be the UK setting budgets for
19 the Territory or for UK going back on any self-determination.
20 That was a position the UK never wanted, I never wanted, and
21 indeed in the Constitution it's very clear is something that the
22 people of the Territory don't want. So, I would have always
23 tried to resist that.

24 Turning to specifics, there were areas where in
25 addition to or adding value to the input locally to take forward

1 the Public Service, there were areas in my time where the United
2 Kingdom Government did provide technical support and did provide
3 some funding and expertise to support the efforts to improve the
4 Public Service. This included, for example, funding work by
5 PAI, whom I believe you--who would take report and review of
6 Public Service. It included supporting, putting in place a
7 public engagement survey for the Public Service. I believe this
8 was the first time that had been undertaken. And it included
9 some technical support, as well, and including through to some
10 of the areas that Ministers had identified where they wished
11 technical support.

12 There is also, Public Officers had to cross the
13 Overseas Territories networks, I know, to link up, as well. In
14 terms of support, there was a heads of Public Service meeting
15 which the Deputy Governor would attend along with fellow
16 Overseas Territories Deputy Governors, as well.

17 So, throughout my time, there was funding, technical
18 support, advice, and backing from the UK Government to transform
19 and take forward the Public Service, but the fundamental parts
20 of UK and myself as Governor and the Constitution and I know
21 people have turned to firmly commit to the responsibility that
22 for funded primarily lies with the Elected Government.

23 Thank you.

24 Q. You mentioned the position of the Premier. Could you
25 turn up in bundle 3, please, 1(3).

1 A. Sorry, Mr Rawat, your voice went a bit quiet. Was
2 that bundle 3?

3 Q. 137, please.

4 A. 137, thank you.

5 Q. This is a letter from the Premier to you dated the
6 10th of September 2020.

7 A. I have located that letter, thank you.

8 Q. You've got it, have you?

9 A. Yes, I have, thank you.

10 Q. It's a long letter, so I won't read lots of it out,
11 but the point of it is that the Premier writes with regard to
12 the Public Service Transformation Programme presently before
13 Cabinet and notes that having reviewed the paper and comments
14 submitted to Cabinet on this matter, a number of critical
15 observations were made which go to the heart of the
16 transformation exercise.

17 Firstly is that issues involved in improving the
18 delivery of Public Services were appropriate for the Public
19 Sector Transformation Programme but not issues around
20 legislation programmes or politically sensitive issues and he
21 therefore says things like a Ministerial Code do not belong in
22 the PSTP.

23 He makes the point in his letter that whilst there are
24 human resources management aspects to the PSTP which are within
25 the remit of the Deputy Governor's Office, transformation of

1 government service delivery should be focused on upgrading the
2 system and overall infrastructure of Government to ensure
3 efficiency is a part of the way Government functions. And what
4 the transformation plan should do is focus on the long-term
5 upgrading of the normal systems of Government.

6 The letter then goes on to say that there are numerous
7 areas in the proposed plan that has been appropriated to the
8 Governor's Group, the administration of which is already clearly
9 delegated to Ministers and Ministries, and the Premier then
10 returns to reference the Constitution and makes two points. So
11 he returns to the example of who chairs Cabinet in the absence
12 of the Governor, and then that the Governor--it will be
13 inappropriate for the Governor to function as the head of
14 Government.

15 The upshot we see is at page 140, where the Governor
16 says that in light of the issues--the Premier, rather, says
17 (reading): In light of the issues raised, it's the position of
18 the Government of the Virgin Islands that the following must be
19 done before the PSTP can progress any further. Firstly, that
20 areas that have been assigned to the Deputy Governor and which
21 rightfully sit with the Premier's Office or House of Assembly
22 must be addressed. Secondly, the Premier's Office must assume
23 the role of lead Ministry for the PSTP; and then he says you
24 need a Human Resources Audit and an Employee Engagement Survey.

25 Now. This was on the 10th of September. If you go to

1 page 141, which is the next page in the bundle, you appear to
2 have written to the Premier on the same day, and he replies on
3 the same day, reiterating his position, firstly, that his
4 Government's commitment to the transformation of the Public
5 Service into the modern and efficient and effective and
6 accountable organisation that delivers high quality services,
7 but what he says is that his position remains that it is not for
8 the Deputy Governor's Office to take the lead on this Public
9 Sector Transformation Plan.

10 At 171 in the bundle--again, we don't have in this
11 bundle, Mr Jaspert, the letters that you wrote. We were only
12 disclosed the letters that the Premier wrote, but the Premier on
13 the 16th of October returns to Public Service transformation,
14 and although again it's a long letter in which he reiterates his
15 support for a meaningful transformation of the Public Service,
16 the Premier makes clear that, on his analysis of the
17 Constitution, which, as he says, is what must guide the way
18 forward, then there are areas of ministerial responsibility
19 within the Public Sector Transformation Plan that is
20 inadvertently listed execution by the Governor's Group and which
21 need to be restored to the Ministry under which they
22 substantially reside.

23 And then on the 19th of November, at page 180, he
24 reiterates, and I think what would follow was a proposal for a
25 leadership partnership model which was proposed by the Deputy

1 Governor with the--his office and the Premier's Office working
2 in partnership, but the Premier rejected the proposal raised by
3 the Deputy Governor, which was that he be the Chair and the
4 Permanent Secretary to the Premier's Office be Deputy Chair. In
5 the Premier's view, that was not a leadership partnership but an
6 arrangement that puts the Governor's Office in charge of
7 responsibilities that are outside the Governor's constitutional
8 scope.

9 Now, this was the Premier expressing a view based on
10 his analysis of the Constitution and based on his analysis of
11 the limitations that the Constitution places on a Governor, and
12 in relation to Section 60, it was--your limitations were related
13 to terms and conditions of Public Officers but not related to
14 matters that more properly fell under other Ministries and
15 should be seen as probably falling under Ministers.

16 Now, you mentioned that the Premier's decision to make
17 the--or to have his office take the lead hindered the process
18 but you can--that takes us to the--you referenced a letter from
19 the Deputy Governor, but just be clear, in what way did that
20 hinder the Transformation Plan?

21 A. Thank you.

22 The Transformation Plan had been to Cabinet before,
23 and Cabinet had endorsed the approach, including endorsing the
24 approach of the Deputy Governor's leadership of this programme
25 but also endorsing the approach where Ministers, Ministries

1 themselves, were leading their respective parts of it. That was
2 clearly an approach that was taken. And I just say, I haven't
3 unfortunately got my letters here that they--which I'm sure can
4 be copied and accessed to them, but that was the approach taken.
5 That was how the Transformation Programme then proceeded based
6 on Cabinet's agreement of that approach.

7 Then the Premier, after a number of conversations I
8 attempted to the Cabinet Steering Group, and I believe we also
9 had a bilateral conversation, the problem was that the plan
10 could not go forward unless there was--got to Cabinet for
11 agreement to Cabinet to then process. So, when the offer of,
12 which I believe is in one of the letters, my letters or I'm
13 operating from memory here rather than seeing that letter, but I
14 believe I put forward an offer--I or the Deputy Governor put
15 forward an offer to taking this forward in a partnership
16 approach to take account of those issues that had been raised.
17 As I talked about earlier, my approach always was to operate in
18 a clear partnership approach, but the Deputy Governor was then
19 was a de facto head of Government taking aboard then with the
20 Premier's Permanent Secretary that was, as you say, was rejected
21 by the Premier, and that led to a delay in the Transformation
22 Programme progressing.

23 Q. The point you've made--and this is the Deputy Governor
24 writing to you on the 23rd of September 2020 on Public Service
25 Transformation Programme, the Deputy Governor explained that

1 Cabinet had agreed to accept the Public Service Transformation
2 Framework on 26 February 2020, agreed to receive presentations
3 from each Ministry, and he writes (reading): "The
4 Transformation Framework which was entered and supported by
5 Cabinet and clearly delineated areas of responsibilities and
6 accomplishments for each Ministry. There was a full partnership
7 to this point, and I must admit I'm totally aghast by the recent
8 requested change of heart. It has always been clear that the
9 Transformation Plan is owned by each respective Ministry".

10 Under the heading the Premier's Office must assume the
11 role of lead ministry of PSTP. The Deputy Governor writes
12 (reading): I was shocked and--upon receiving the note, I was
13 shocked and surprised at the position which is being held by the
14 Premier, namely "the Premier's Office must assume role of the
15 lead Ministry of the PSTP". The Premier is basically requesting
16 to bring over two years of assiduous work to a halt because of
17 his desire to see a public service responsibility led by his
18 office. This is therefore an alarming and urgent matter that
19 must be addressed. The notion that a Public Service
20 Transformation Programme should now be led by the Premier's
21 Office creates an opportunity for there to be a clear
22 delineation between the roles of the Premier's Office and the
23 Deputy Governor's Office in leading the Public Service. The
24 answers to the question of who leads the Public Service must be
25 addressed with urgency.

1 The Premier's Office is responsible for setting and
2 leading the Policy agenda of the Government. Public Service
3 Transformation is a programme geared at improving the overall
4 efficiency of the Public Service and must be led by the Deputy
5 Governor's Office who has overall responsibility for the
6 management of the Public Service. There is no attempt to guide
7 and lead Government's agenda, and there will be varying overlaps
8 when a matter on the Government's agenda also results in an
9 improved Public Service such as implementation legislation to
10 introduce e-government and digital transformation. I do believe
11 discussions can bring clarity to this matter.

12 Now, this is September 2020. Were there further
13 discussions then as to who should lead on the Public Sector
14 Transformation Programme?

15 A. Yes, I recall there were further discussions. I agree
16 with the position you--that the Deputy Governor put forward, and
17 that is the position that mirrors the constitutional position
18 around respective roles, but the policy agenda of government is
19 set by the Elected Government terms and conditions--

20 THE STENOGRAPHER: Keep your voice up, please.

21 THE WITNESS: --is through the Deputy Governor for the
22 Governor but delegated through the Deputy Governor.

23 So, there were some discussions held both myself and
24 the Deputy Governor and also myself, the Premier, and the Deputy
25 Governor. As you made aware or you highlighted, the Deputy

1 Governor put forward a proposal to cement that partnership
2 approach even further, rightly reflected that it was already a
3 partnership approach, but the Deputy Governor put forward
4 proposals to cement that partnership approach even further, and
5 we tried to discuss those with the Premier, as you have already
6 referred to the letter from the Premier, which that approach,
7 partnership approach, was rejected.

8 BY MR RAWAT:

9 Q. And so, was the upshot that Cabinet decided that the
10 Premier's Office should lead on the Public Service
11 Transformation Plan?

12 A. I recall at the time that the paper didn't make it to
13 Cabinet, so Cabinet--we discussed these issues at Cabinet
14 Steering Group, but I--unfortunately I haven't got the Cabinet
15 Minutes here of when it did go to Cabinet, but I don't recall at
16 this point it went to Cabinet because of this perceived impasse
17 as you highlighted.

18 Q. Okay. If you turn up bundle 1, please, and you go to
19 page 913, if I take you to paragraph 24, please, I think you
20 suggested or your evidence, Mr Jaspert, if I heard you
21 correctly, was that in March 2019, Cabinet had a hiring freeze;
22 is that right?

23 You're muted.

24 COMMISSIONER HICKINBOTTOM: I'm sorry, you're muted,
25 Mr Jaspert.

1 THE WITNESS: Apologies. That was bound to happen at
2 some point.

3 Yes, I--as I said, I was operating from memory, but I
4 believe it was around March 2019. It was very soon into the
5 tenure of the current administration.

6 BY MR RAWAT:

7 Q. And which sectors of the Public Service did it cover?

8 A. I believe it was applied across the board to the
9 Public Service. I am again operating from memory, but I believe
10 the chain of events was that the Premier instigated a
11 recruitment or hiring freeze or appointment freeze which I--was
12 done without consultation with myself. I obviously had
13 responsibility around appointments and terms and conditions of
14 Public Officers. When I asked for that to be discussed and that
15 particular note to be amended, following discussions, I believe,
16 then, the freeze was placed on the budget side of it, so that
17 people could not move forward even if they could recruit
18 someone, they can actually move forward with their budget
19 position around that post.

20 Q. But just so that we can be clear, you're saying an
21 appointment freeze was instituted without consultation with you
22 but possibly the way it was done was in terms of freezing
23 budgets; is that right?

24 A. I believe that is correct, but I will need to refer to
25 the exact papers to--to the exact chain of events, but yes, I

1 believe it was based on initially freezing posts, would be a
2 better word, and then move to freezing the Budget.

3 Q. And the effect of freezing the Budget means you had no
4 money to appoint; is that what you're saying?

5 A. Yes. It essentially means that appointments could not
6 proceed or there were difficulties in appointing across the
7 Public Service.

8 Q. Now, if I take you to paragraph 24, one of the points
9 that is made, and this is in response of the Elected Ministers
10 to the Governor, is that the FCDO has consistently pressed the
11 Government to reduce the size, growth, operating costs and wages
12 bill of the Public Service. No doubt because of that, an
13 external recruitment freeze in the Public Service was proposed
14 to the Cabinet by the then-Governor in 2010, which was
15 implemented until 2012, and a further freeze on external
16 recruitment was proposed to Cabinet by the former Governor in a
17 Cabinet Paper, dated 28th of May 2018, and subsequently adopted.

18 Now you will see that proposal, and I'm taking the
19 reference to former Governor to be you in the second Governance
20 Bundle, bundle 2, page 1528.

21 That paper is a detailed paper, but recorded as a
22 memorandum to Cabinet from the Governor, and it sets out
23 information as to employee statistics, pre- and post- hurricane,
24 in-service retirement trends, management of human resources
25 strategy. But the decision that was being sought was for

1 Cabinet to decide to cease non-essential external hiring; agree
2 to advertise technical and highly difficult to fill posts, both
3 internally and externally, concurrently in order to fill those
4 positions in a more efficient manner; decide to maintain
5 Cabinet's decision to treat scholarship students as internal
6 candidates and decide that essential cases of external hiring be
7 considered by the Governor in accordance with Section 92 of the
8 Virgin Islands Constitution Order.

9 Could you just, first of all, explain what "external
10 hiring" means?

11 A. That is the hiring of persons who are outside of the
12 Public Service.

13 Q. And who was to decide what is an essential as opposed
14 to non-essential external hire?

15 A. Could you just refresh me with the page number you're
16 referring to as well, please?

17 Q. 528, please, Mr Jaspert.

18 A. I'm afraid I don't have a page 528 in Governance
19 bundle 2. You said it's in Governance bundle 2.

20 Q. 1528, one thousand five hundred and twenty-eight.

21 A. In Governance bundle 2?

22 Q. Yes.

23 A. I'm afraid my Governors bundle 2 goes up to page 135,
24 unless I'm mistaken.

25 SIR GEOFFREY: It's--in my bundle it's marked

1 bundle 1, not 2. So it may be that Mr Jaspert has the same as I
2 do. This has come to me as Governance Bundle 1., and I see the
3 paper is there.

4 MR RAWAT: 1528, then, in Governance Bundle 1. Thank
5 you, Sir Geoffrey.

6 THE WITNESS: Thank you. Yes, I do have that as part
7 of Governance bundle 1. I thank you, Sir Geoffrey, for the
8 clarification.

9 BY MR RAWAT:

10 Q. This is a paper you're bringing forward, and tell me
11 if I misunderstood it, but you're recommending to Cabinet that
12 they decide to cease non-essential external hiring and if you
13 look at (d) that decide that essential cases of external hiring
14 should be considered by you in accordance with Section 92 of the
15 Constitution. And what the Elected Ministers say is that was
16 adopted as a strategy.

17 A. Yes. Well, what I don't have here is the Cabinet
18 Minute, so again I'm going by memory. I have the paper here,
19 but I do recall, I believe, that that was adopted with the
20 agreement of Cabinet. That was partly due to the concern at
21 that point about the budgets compared to the whole.

22 Q. What concern was there (drop in audio)?

23 A. I'm sorry, Mr Rawat, I couldn't hear the question.

24 Q. What concern was there over budget at that time?

25 A. At that time the then-Government administration had

1 put forward a series of proposals relating to concern about the
2 recovery or the impact of the hurricanes on the financial health
3 of the Territory and the potential impact on revenue. May 2018,
4 we were still very much as a Territory in recovery mode and that
5 there would obviously be an impact on tourism revenue, and there
6 was spending being required to rebuild aspects of the Territory.
7 It was from the back of that this paper was brought forward
8 where there were requests from the Cabinet, the Cabinet at that
9 time, to look at how we could reduce costs, and this was a
10 proposal put forward about ensuring that the Public Service did
11 not grow with external hires, partly after, if I recall from
12 memory, to protect existing Public Officers should there be a
13 worsening financial situation.

14 I believe there was a further consideration relating
15 to your question round which I couldn't answer it, but relating
16 to essential cases where some guidelines were put in place
17 related to what constitutes an essential member of staff. I'm
18 afraid I don't have those guidelines here, but I do recall I
19 believe the Director of HR through the Deputy Governor's Office
20 did develop guidelines around essential.

21 Q. If I take you to paragraph 2, just to understand the
22 context in which you say this paper was produced, firstly, is
23 your evidence that Cabinet called for proposals to reduce costs?

24 A. There was a--I can recall--again, I don't have the
25 Cabinet records from those Cabinets, but I do recall discussions

1 with the then-Government about the need to look at costs. I do
2 recall that there was a request to look at the costs of the
3 Public Service does include, I believe--it includes, I believe,
4 analysis by the then-Financial Secretary relating to aspects of
5 the budgets for the Public Service including aspects such as
6 allowances, pay, et cetera, for the Public Service. So yes, it
7 did stem from discussions and requests at the then-Cabinet.

8 Q. What's said at paragraph 2 is that it's recommended
9 that voluntary measures are taken to cease non-essential hiring
10 in the service and to stabilise employment costs, to redirect
11 savings in the areas of higher priority and to avoid payless
12 paydays.

13 Was that a real risk that if you didn't reduce costs
14 you could end up not being able to pay people?

15 A. As I recall at that point, there was a genuine concern
16 which was raised by the Financial Secretary and by the
17 then-Premier/Minister of Finance, bringing, I believe, the paper
18 to Cabinet. There was genuine concern about the state of the
19 Territory's economy and hence the impact on potential Government
20 revenue following the hurricanes.

21 So, yes, the context was there was genuine concern
22 that the Territory could be faced with a crunch point on its
23 ability to finance all that is needed to finance at that--at
24 that point, was also directing money towards the recovery of the
25 Territory. And we talked earlier about the Loan Guarantee and

1 what those discussions were about opening up financing groups
2 for the Territory and the Government to avoid any potential
3 areas of concern, but also to ensure that the Territory's
4 recovery could continue.

5 Q. And do you accept the point that's made by the Elected
6 Ministers that the FCDO has constantly pressed the Government to
7 reduce the size of its Public Service?

8 A. So, I do accept that there has been support from the
9 Foreign Commonwealth and Development Office, or FCDO as it was
10 at that time, to help to improve the Public Service, to look the
11 efficiency and the effectiveness of the Public Service. Part of
12 that at times did include questioning the size, I believe, of
13 the Public Service as part of its efficiency, but also other
14 areas including supporting the Territory to become a more modern
15 Public Service as we talked about earlier.

16 Q. Was your proposal you see non-essential external
17 hiring, then, an example of the FCDO pressing the Government to
18 reduce the size of its Public Service?

19 A. No, it wasn't. This was a proposal brought forward by
20 the government of--well, by myself as Governor, but acting in my
21 constitutional role as part of the Government of the Virgin
22 Islands, which was not a proposal brought forward because of any
23 pressure from the form of this. This was a proposal brought
24 forward in response to the Cabinet of the Virgin Islands and the
25 pressures that the Government of the Virgin Islands was facing

1 at that particularly challenging period of the hurricanes.

2 COMMISSIONER HICKINBOTTOM: Mr Rawat, I see the time.
3 Is now a good time for a break?

4 MR RAWAT: Certainly.

5 COMMISSIONER HICKINBOTTOM: And perhaps you can then
6 also--

7 MR RAWAT: Take stock.

8 COMMISSIONER HICKINBOTTOM: --take stock.

9 Good. Mr Jaspert, we'll have a five-minute break, and
10 then we'll work out how we are going to deal with the rest of
11 the day, given that we have another witness due at 4:00. But
12 let's have a five-minute break, and then we'll come back and
13 discuss that briefly.

14 Thank you very much.

15 (Recess.)

16 COMMISSIONER HICKINBOTTOM: Good. Thank you,
17 everyone.

18 We have another witness coming up at 4:00--that is in
19 a few minutes--and we still have got a few topics to go through
20 with Mr Jaspert. What I propose to do is, Mr Rawat is going to
21 finish this particular topic, which should not take very
22 long--only a few minutes, I think--today. Then, so far as today
23 is concerned, we will break for five minutes, and then we will
24 call the Auditor General.

25 And Mr Jaspert, fortunately, is able to come back

1 tomorrow at 8:00 BVI time, so we will recommence with Mr Jaspert
2 at 8:00 tomorrow to a conclusion. We will deal with any
3 application for questions by Sir Geoffrey after that, and then
4 come to the Premier hopefully at 10:00 tomorrow morning.

5 And thank you, Mr Jaspert, for making yourself
6 available tomorrow, just to complete the evidence, which will be
7 very helpful indeed.

8 Good. If there are no other observations on that,
9 then I would ask Mr Rawat to proceed to a conclusion on this
10 topic.

11 Good. Mr Rawat.

12 BY MR RAWAT:

13 Q. Mr Jaspert, can I take you back into bundle 1, page
14 913, please.

15 (Pause.)

16 Q. Mr Jaspert, can you hear us?

17 (Pause.)

18 COMMISSIONER HICKINBOTTOM: I think you're muted,
19 Mr Jaspert. We can see you.

20 No, we can't hear you.

21 THE WITNESS: Hello, can you hear me?

22 COMMISSIONER HICKINBOTTOM: We can hear you now.
23 Thank you very much. We lost you for a moment, but we've got
24 you back. Good.

25 THE WITNESS: Apologies. My connection failed, sir,

1 for the moment.

2 COMMISSIONER HICKINBOTTOM: These things happen.

3 Mr Rawat.

4 MR RAWAT: Thank you, Commissioner.

5 BY MR RAWAT:

6 Q. Mr Jaspert, can I just take you back to page 913,
7 please.

8 A. Bundle 1, that is?

9 Q. 1, please.

10 A. I'm on page 913.

11 Q. Thank you.

12 We just are sorting out some technical issues,
13 Mr Jaspert, so give me one moment.

14 (Pause.)

15 COMMISSIONER HICKINBOTTOM: Are we all back?

16 Again, Mr Jaspert, can you still see and hear us?

17 THE WITNESS: I can, indeed, Commissioner. Thank you.

18 COMMISSIONER HICKINBOTTOM: Thank you.

19 Mr Rawat.

20 BY MR RAWAT:

21 Q. We're hopefully at page 913, and this is part of the
22 Response to the Position Statements of the current Governor, so
23 I have taken you to the argument that the FCDO has constantly
24 pressed the Government to reduce the size of the Public Service,
25 and we have looked at the paper have you brought forward.

1 What the Response continues is by saying is that no
2 doubt these policies have led to serious difficulties within the
3 Public Service, and Ministers consider a different more balanced
4 approach is necessary. And it then refers to the current
5 administration approving payment of annual performance
6 increments for the Years 2016 and '17 and 2017 and '18, and
7 having--and strongly advocating a comprehensive review of pay
8 structures within the whole of the Public Service.

9 But it's this point, which you might be able to assist
10 on, albeit I accept it's going to be response to the current
11 Governor, but what's said is no particulars are given as to any
12 occasion on which a request to provide financial support for a
13 serious, credible, and coherent plan for transformative change
14 in the Public Service has been declined by the existing or any
15 previous Cabinet.

16 Are you able to either confirm that to the
17 Commissioner, or if you don't agree with it, explain why?

18 A. Thank you. Sorry, my connection is slightly cutting
19 in and out. I believe you are asking about a credible plan for
20 transformation; is that correct?

21 Q. Yes.

22 Well, financial support for such a plan.

23 A. I'm sorry, which aspect of financial support in
24 particular, Mr Rawat? My apologies. I missed the first part of
25 your question.

1 Q. The point is made that the Governor's Position
2 Statement doesn't give any particulars as to any occasion where
3 a request to provide financial support for a serious, credible,
4 and coherent plan for transformative change in the Public
5 Service has been declined by the existing or any previous
6 Cabinet. Can you help with this: Is it right, first of all,
7 that where plans for modernizing or transforming the Public
8 Service has been put before Cabinet, and then that Cabinet has
9 been prepared to provide financial support, or if you don't
10 agree with that proposition, can you explain why you don't agree
11 with it?

12 A. Thank you.

13 I don't agree with it. From memory part, of the
14 Appropriation Act--Budget Act, actually, that essentially goes
15 to Cabinet as part of the preparation for that, there was
16 pressure placed on bringing down the budgets for these kind of
17 activities of the Governor's Group, Deputy Governor's Group.
18 I'm afraid I don't have the Appropriation Act to give you exact
19 figures within it.

20 Secondly, as we discussed earlier, part of the
21 argument--the problem was that, at the end of my tenure was that
22 the plan for transformation, as we've discussed earlier, did not
23 make it to Cabinet due to that exchange of letters from the
24 Premier that progress was stalled in terms of taking the plan
25 forward.

1 Thank you.

2 Q. Could I ask you to turn to 916 in the same document,
3 please.

4 At paragraphs 45 and 46, the Elected Ministers respond
5 to a point made by the current Governor as to the challenges
6 facing both the Royal Virgin Islands Police Force and the Office
7 of the DPP, and those challenges amount to a lack of resources
8 for training and for filling vacant slots.

9 And what's recorded by the Governor is that the
10 outgoing Commissioner of Police in his 2020 Report noted that
11 the Royal Virgin Islands Police Force's regularly allocated
12 budget were far below the reasonable costs required to maintain
13 the competencies and highly skilled requirements and demands in
14 investigating crime and bringing offenders to justice. Then
15 points out that the Police Force has 67 roles unfilled.

16 In the next paragraph, at 46, there was a quote from
17 the Governor's Position Statement which again points to the need
18 for adequate financial resources being provided to the DPP and
19 the Commissioner of Police. At 473, what the Elected Ministers
20 say is they were unaware of any request by the outgoing
21 Commissioner of Police for additional resources for recruitment
22 that they have declined. Indeed, during the last budgetary
23 discussions, the outgoing Commissioner of Police was
24 specifically asked what sum he needed to finance the Police, and
25 his wishes were followed.

1 Can you--and it may be that you can't because of the
2 length of your tenure, but can you help at all with any
3 information as to whether the outgoing Commissioner of Police
4 was provided with funds to fill or to meet the requirements he
5 needed for the Police Force?

6 A. I believe that funds were provided--whether they were
7 fully adequate is a different matter, but funds were
8 provided--through the Appropriation Act for the Budget.

9 The issue, I believe, that the Commissioner of Police
10 faced was about the restrictions put in place by the Minister of
11 Finance which delayed the filling of positions. So, if I refer
12 you to--well, I remember corresponding in July of 2020 to the
13 Premier following concerns raised to me by the Commissioner of
14 Police, but also across the other areas where I held
15 constitutional responsibility, the administration of courts as
16 well and through the independent--some of the independent
17 bodies.

18 From what I have here on that, vacant positions within
19 the Governor's Group, even if the Budget was being there, posts
20 had been agreed as part of the Budget process as approved by the
21 House of Assembly, that the ability to go out and recruit is
22 being held up financially by the Ministry of Finance. These
23 posts include urgent positions that included within the
24 Magistracy, the Magistrate, a senior administrative officer, a
25 bailiff, Attorney General's Chambers, Solicitor General,

1 Principal Crown Counsel, two Senior Crown Counsels. Within the
2 Royal Virgin Islands Police Force at that point there were 36
3 vacancies which I was informed by the Commissioner was creating
4 significant pressure on the IVRTF at that time dealing with
5 multiple challenges in the Policy, and some of those posts were
6 specialist posts, and including one head of intelligence, one
7 specialist officer for covert policing, one financial
8 investigation--financial investigator, a major investigation
9 team comprising on detective sergeant and five constables, and a
10 senior investigative officer as well.

11 I quote that slightly at length because I believe the
12 issue was even if money is being allocated, actually the
13 assertion that was put forward and read out from the Elected
14 Ministers' statement was that it didn't in practice that money
15 flowed through the posts to be filled and unable to perform
16 fulfillment of those services particularly, as you mentioned,
17 the Commissioner of Police. I do believe the Commissioner of
18 Police was at one point fully informed of it, went to see the
19 Premier about that, where he outlined the vacancies and the
20 impact that was havoc on the Royal Virgin Islands Police Force.

21 Thank you.

22 Q. And what year are you speaking of there? What's the
23 time period you were speaking of?

24 A. That is in 2020.

25 Specifically, there was an exchange around July 2020,

1 which I just--well, that was at that point in time is when I
2 highlighted the 36 vacancies within the Royal Virgin Islands
3 Police Force, but I know this wasn't an issue that was just
4 limited to that one point in time.

5 Q. Last thing on this topic, could you turn up, please,
6 in bundle 3, page 135.

7 A. Letter of the 1st of July 2020 from The Honourable
8 Premier to myself; is that correct?

9 Q. Yes.

10 And what he's writing in regard is a recent discussion
11 that the two of you have had about your plans to commence
12 one-on-one meetings with Permanent Secretaries and the
13 Government of the Virgin Islands.

14 The Premier then sets out what he says at the
15 following provisions of the Virgin Islands Constitution Order
16 that is irrelevant to the prospect of meeting with Permanent
17 Secretaries.

18 First is Section 61--sorry, that's 60(1), which sets
19 out your special responsibilities and includes terms and
20 conditions of service of persons holding or acting in public
21 offices.

22 Two is that responsibility for the conduct of the
23 business of government, including responsibility for the
24 administration of any department of Government shall be assigned
25 by any Minister by the Governor in accordance with advice of the

1 Premier. That's Section 56(1).

2 He then takes you to Section 56(5), which it's for the
3 Minister exercise direction and control over the Department,
4 including directing the implementation of government policy.

5 He then takes you to Section 56(5) again and says the
6 role of the Permanent Secretary is a supervisory one that's
7 subject to the Department being under the direction and control
8 of the Minister.

9 And then which mentions and sets out Section 56(7),
10 which is the reference we've looked at as to the basis on which
11 a Governor can request official papers and information from a
12 Minister.

13 What the Premier then continues is: "I'm sure you
14 would agree that the above provisions clearly identify the
15 constitutional parameters that apply to the role of the Governor
16 in the system of governance in the Virgin Islands. The authors
17 of the Constitution, in their wisdom, were explicit that the
18 Governor's interactions with the Permanent Secretaries are
19 limited to that of the terms and conditions of Public Officers.

20 "Venturing beyond these limits, you would agree, would
21 result in breaching or over-reaching of the Constitution, which
22 would be contrary to the principles of good governance. It is,
23 therefore, imperative that all parties who would be engaged in
24 your proposed meetings are mindful of this so they do not run
25 afoul of the Constitution.

1 "in this regard, it would be necessary for measures to
2 be taken for the enlightenment of the Public Officers so they
3 are aware of the letter and spirit of the Constitution, and why
4 they must be careful not to step outside of these limits when
5 having discussions with the Governor.

6 "It is also important to note that constitutional
7 protections, such as confidentiality, are intact only when the
8 conduct is within the scope of the Constitution. Those
9 protections become nulled when actions are committed outside of
10 the constitutional remits. That is why adherence to the
11 Constitution is essential for everyone".

12 Now, this was a proposal for you to have meetings with
13 Permanent Secretaries. Did you, in fact, have such meetings?

14 A. Yes, from time to time, I did have such meetings.

15 Q. Even after receiving this letter in which the Premier
16 expressed certain concerns?

17 A. The concerns that were put out--and we actually
18 covered some of this earlier and linked to that proposal from
19 the Premier to essentially act unconstitutionally by trying to
20 restrict my involvement with Ministers solely by going through
21 his office--that was obviously not a correct constitutional
22 position we discussed earlier, but as we noted many times here,
23 as Governor, we have responsibility for the terms and conditions
24 of the Public Service, even having accepted, I believe, in the
25 Position Statement from the Elected Ministers to discussed that

1 earlier, paragraph 18 read out from their own statements
2 important aspects of the Governors accepted responsibility as
3 terms and conditions of service, appointment to officers in the
4 interest of Public Service including the skills and training
5 methods and Code of Conduct, policies and procedures
6 organisations of the Public Officers for Elected Ministers' own
7 statement para 18.

8 So, of course, as part of that from time to time I
9 would meet with the Permanent Secretaries as part of discussions
10 on the terms and conditions of the Public Officers both them as
11 individuals but also the Public Officers they and Permanent
12 Secretaries are managerially responsible for their respective
13 areas.

14 Q. But would you accept that the Premier had a different
15 and narrower view of what Section 60 allowed you to do as a
16 Governor?

17 A. Well, I can't speculate on the Premier's view. I
18 would accept there were a number of times you would have seen
19 for a number of these letters the Premier did propose different
20 approaches, and including ones that as we discussed earlier, ran
21 contrary to the Constitution, but I was very clear throughout my
22 tenure that I talked about earlier I was guided by the
23 Constitution, was guided by the partnership approach, and was
24 guided by overriding interest, which was to the interests of the
25 people of the Territory. In this regard, it was, of course,

1 perfectly normal that there would be discussions on the terms
2 and conditions of Public Officers as in my remit within
3 Section 60 of the Constitution.

4 Q. Thank you.

5 MR RAWAT: Commissioner, I have reached the end of
6 that topic.

7 COMMISSIONER HICKINBOTTOM: Good. Thank you,
8 Mr Rawat.

9 That's the end of that topic, Mr Jaspert, and thank
10 you for agreeing to come back tomorrow at 8:00, and we will
11 recommence this evidence then. Thank you very much.

12 And I will gather together the directions I propose to
13 make at some later date sometime later this week, but Sir
14 Geoffrey, in relation to Section 13 of the Register of Interests
15 Act, the criticism is put on this basis, that is, that the
16 Governor requested information from the Registrar of Interests
17 which could at least arguably be considered as a breach of her
18 oath of office in Section 13(1) of the Register of Interests Act
19 of 2006.

20 Just looking at that criticism, it might be the
21 Attorney General's view that it was not, in fact, a breach
22 because it's put in a very light manner.

23 And consequently--I see you shake your head, but
24 that's literally true on the basis of the way in the criticism
25 has been put. But certainly I would welcome legal submissions

1 on behalf of the Attorney on that issue, just to know, really,
2 what it is that the Registrar is prohibited by Section 13 and
3 her oath, what she is prohibited from disclosing.

4 SIR GEOFFREY: If I may just rejoin, I agree it's put
5 somewhat cautiously in this schedule, but if you look at the
6 Response to the Governor's Position Statement, you will see that
7 it's set out in much more express and clear terms, but I will
8 certainly--I will certainly, sir, clarify that and ensure that
9 you have submissions on it from us.

10 COMMISSIONER HICKINBOTTOM: That may be the Ministers'
11 Position Statements and their response to the Governor's
12 Position Statement that say all sorts of things. But the
13 criticisms which I asked for from the Ministers are set out in
14 the table. Those are the criticisms which they expressly
15 pursue, and so that's why we are now focusing upon them and why
16 those legal submissions would be helpful.

17 I can give--I can give directions on that and no doubt
18 on a number of other matters later on this week.

19 SIR GEOFFREY: Of course, but let me say, if I may,
20 that we would expect you to read all of the Position Statements
21 and to take them into account and not be confined by the
22 schedule of criticisms. What we've tried to do--what I
23 understand was done--is that that schedule was intended to
24 express what was set out in the Position Statements.

25 So I wouldn't want you to feel confined or fettered

1 from taking into account on some pleading basis matters that are
2 contained in the wider Position Statements. I would be troubled
3 if you thought you were so confined. I mean, I hope that the
4 schedule does cover it.

5 COMMISSIONER HICKINBOTTOM: Geoffrey, it would pain me
6 if you were troubled, but the type of criticisms is clearly for
7 one purpose, and that is to ensure procedural fairness to
8 witnesses.

9 SIR GEOFFREY: I understand that entirely, thank you,
10 but the point is that we have submitted evidence to you, and
11 that evidence is before you, and it can't simply be ignored, we
12 respectfully submit.

13 COMMISSIONER HICKINBOTTOM: And to do that, I have to
14 know what criticisms can properly be put, that need to be put.
15 These are they. The evidence is set out in the table. That's
16 the evidence that is being put to witnesses, and that is what
17 the focus will be.

18 SIR GEOFFREY: You mistake your own course, plainly.
19 Forgive me. There is no point in a debate about it. This is a
20 matter for you to decide, and if choose to take that course,
21 nobody else can have complaint, not at least in the course of
22 your Inquiry.

23 COMMISSIONER HICKINBOTTOM: And, of course, I have
24 read the Position Statements, I have read the Responses, I have
25 read everything, but the criticisms made by the Elected

1 Ministers which they consider should, as a matter of procedural
2 fairness, be put to witnesses are those that they have set out.

3 You're right, it is a matter for me to make sure that
4 all witnesses are acted--are accorded procedural fairness, and
5 that's what I will do.

6 SIR GEOFFREY: Right.

7 And I don't seek to demur from it. I just invite you
8 to consider all of the Position Statements and the evidence in
9 front of you.

10 COMMISSIONER HICKINBOTTOM: Which, of course, I will
11 do.

12 SIR GEOFFREY: Then we're at one.

13 MR RAWAT: Can I raise that the practical difficulty
14 is that what is said in the Position Statement about--and it's
15 not a Position Statement; it's actually in the Response to the
16 Governor's Position Statement--what he said about the "Register
17 of Interests" point is not evidence. It's a submission.

18 What I think, Commissioner, what you will assisted by
19 is on the evidence that has been given so far, why is it said
20 this is a breach? It would be--we would be--we would be in
21 different Territory, for example, if we had evidence that there
22 was a Register that existed and a Registrar--and I'm speaking
23 entirely hypothetically; I will make this clear--had shown
24 someone that Register, then it would be clear, but we're in a
25 different area, and that's the area on which you would, I think,

1 welcome assistance.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 And in the form of a legal submission.

4 SIR GEOFFREY: And we will certainly provide it, but
5 it is, of course, adumbrated very shortly at paragraph 108
6 onwards in the response to the Governor's statement. And I'm
7 sure it's not difficult, sir, to perceive, as Mr Rawat did, that
8 the oath relates to any information acquired by the Registrar in
9 the course of her duties, and the list of names, dates, and
10 years of delinquency is information that she manifestly must
11 have acquired in the course of exercising her duties. She
12 didn't pick it up from the waste-paper bin while cleaning the
13 office.

14 So I will, of course, put that in writing, if you
15 think it helpful.

16 COMMISSIONER HICKINBOTTOM: Yeah, it would be helpful,
17 and it may be that short, Sir Geoffrey, but that would be
18 helpful, so I know what the Elected Ministers' position is on
19 that, and I can come to a view whether that position is properly
20 taken.

21 Good. Thank you again, Mr Jaspert. We will see you
22 tomorrow at 8:00. What we will do now is I will rise just a few
23 minutes whilst we reconstitute ourselves here, and then we can
24 hear again from the Auditor General.

25 Good. Thank you.

1 THE WITNESS: Thank you very much, Commissioner.

2 (Witness steps down.)

3 (Recess.)

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Session 2

COMMISSIONER HICKINBOTTOM: Good. Mr Rawat.

MR RAWAT: Commissioner, our next witness is Sonia Webster, the Auditor General, and Ms Webster has kindly returned to give further evidence to you following an application by Sir Geoffrey Cox QC on behalf of the Attorney General and the Elected Ministers to be allowed to put questions to the Auditor General.

You have allowed that application, Commissioner, but it is limited to a number of specific--

COMMISSIONER HICKINBOTTOM: Yes.

MR RAWAT: --heads of questioning.

The first is--relates to the Auditor General's Reports on COVID stimulus, and particularly the Farmers and Fishermen Report, and that is the use of the word "inflate" alongside the use of the word "falsify".

The second is in relation to the Report issued by the Auditor General on the Virgin Islands Neighborhood Partnership Project. And as Sir Geoffrey put it, the real question is: Was it published or wasn't it published?

The third takes us back to the COVID Stimulus Reports, and that is the timing of those Reports. Sir Geoffrey wishes to know from the Auditor General when she was asked by the Governor to audit pandemic schemes. Was she--did she have discussions with the Governor or anybody else about the timetable in which

1 she should deliver her Report? When did she know that she was
2 going to be called to give evidence to the Commission on the
3 28th of June? And was she informed of the ground her evidence
4 was required to cover?

5 The fourth is, as Sir Geoffrey put it, Cabinet policy
6 because what isn't accepted is the Auditor's position that
7 before you have a change of policy, a change of policy, once
8 approved, has to be approved by Cabinet, in short, and that
9 isn't accepted. But what's suggested and what was suggested in
10 submission to you is that is open to Minister on good ground to
11 alter aspects of a policy approved by the Cabinet where
12 particularly he believes and where he believes his colleagues
13 will support the change, and as a political matter it's
14 appropriate to return to Cabinet some stage. That's--Sir
15 Geoffrey puts that on the basis of an interpretation of
16 Section 56 that may not be an matter since we are venturing in
17 to legal submission where the Auditor General can particularly
18 assist.

19 The final area, number five, is in relation to
20 assumptions that the Auditor General has made, it is said the
21 Auditor General made in her Reports, and I assume again it's
22 related to the Farmers and Fishermen Report.

23 What Sir Geoffrey says is those instructing him found
24 puzzling some of the answers about the schemes themselves, and
25 he points as an example--and I'm quoting from Sir Geoffrey here

1 rather than the Auditor General--he submitted that the Auditor
2 General said that you would have to start such a programme--you
3 would have to start such a programme by building up the
4 Department of Agriculture, and so he contended that the Auditor
5 General's starting point was that the proper way for going about
6 running such a scheme would be to equip the Department of
7 Agriculture with the infrastructure apparatus and equipment to
8 deliver it, and that raises in Sir Geoffrey's submission
9 questions about whether or not the assumptions that the Auditor
10 General applied to what is effectively emergency relief and
11 stimulus schemes are really the opposite in the circumstances of
12 the time.

13 So, with that introduction, I shall hand over to Sir
14 Geoffrey.

15 COMMISSIONER HICKINBOTTOM: Good. Thank you. That
16 sets the background.

17 Sir Geoffrey.

18 SIR GEOFFREY: Yes, I'm most grateful, Commissioner,
19 and I'm extremely grateful to the Auditor General for coming in
20 for what I hope will be a shortish period.

21 May I first put in a plea in both--or my plea in
22 mitigation straight from the beginning, that is, first, my
23 technological capability is not high, and all of the papers I
24 have are on line--on the screen, so it may take me a little
25 while to navigate between the pages.

1 But there should be before the Auditor General, sir, a
2 small bundle--at least I hope so--which includes in
3 particular--and this will be the first document I would ask you
4 to go to, Auditor General, please.

5 BY SIR GEOFFREY:

6 Q. The hearing day 49 Transcript. I don't know in which
7 bundles that will appear, but we did ask that it should be
8 before you.

9 COMMISSIONER HICKINBOTTOM: I think it's in a separate
10 bundle.

11 SIR GEOFFREY: I'm most grateful.

12 COMMISSIONER HICKINBOTTOM: Got it. Thank you.

13 MR RAWAT: Can I assist, Sir Geoffrey, the Auditor
14 General will have the hearing bundles for the COVID stimulus
15 hearings. She will also have a copy of the Virgin Islands
16 Neighborhood Partnership Project Report, and then in a separate
17 bundle hearing day 49 and hearing day 50.

18 SIR GEOFFREY: I'm extremely grateful, and it's to
19 day 49 at page 170, if I could invite you, Auditor General,
20 first to go.

21 BY SIR GEOFFREY:

22 Q. And there you will see your answer at line 17 to a
23 question that was put to you by counsel to the Inquiry which I
24 shall read: "Where you have a Section 20 request from the
25 Government, does that affect the timing of the Report or the

1 timing of the work that you can do?"

2 Now, your answer to that, Auditor General, was: "It
3 does, because if the Governor"--and I think the "Government" in
4 the question might have either been a mistake or a mistake of
5 transcription because you answer: "It does, because if the
6 Governor is making a request, then you would expect to give it
7 some priority.

8 "Why?

9 "Because he would have his own concerns aside from us
10 having concerns about how the Programmes might be run. He
11 probably would have his own concerns for wanting to do that."

12 Now, Madame Auditor General, you, I think, told the
13 Commissioner that the Governor had, in fact, asked you to look
14 at these Programmes with a view to carrying out an audit of
15 them; is that correct?

16 A. That's correct. He requested that we look at the
17 whole spending around COVID because I imagine he had some
18 concerns about that.

19 Q. Right.

20 And can you help me when he first asked you to look at
21 the Programmes around COVID? Do you have a note of it?

22 A. I think I do.

23 I believe it was June 2020, but I'm checking. Yes,
24 June 2020.

25 Q. What is the note that you have there, Auditor General?

1 A. The note I have here is simply of the date, and I
2 should mention that when this was mentioned to me, we had
3 already taken the decision to audit these Programmes, so I
4 actually did not receive anything in writing from the Governor
5 because I told him that we were already planning to do these
6 audits.

7 Q. So, this was in an oral discussion between you and the
8 Governor, was it?

9 A. This was in one of the meetings, yes.

10 Q. Yes.

11 And had you decided to audit pursuant to Section 12 or
12 Section 20?

13 A. We had decided to audit it--well, when we started the
14 Audit would have been Section 12, but with the Governor's input
15 it became a Section 20.

16 Q. Thank you.

17 Now, help me with this: Was his request that you
18 should review or audit all of the pandemic schemes or only some
19 of them?

20 A. His request was non-specific.

21 Q. So, in terms of the ground that you had to cover or at
22 least that you were being requested to cover, it was just
23 generally pandemic schemes, was it?

24 A. It was expenditure related to the pandemic spending.

25 Q. Yes.

1 Now, at--I wonder if you could--keeping open, if you
2 can, the Transcript that you have in front of you, go to the
3 Transcript which I hope may be in the same bundle or perhaps a
4 similar--another one, but in any event, of the 28th of June
5 which was day 18 of the proceedings. And if you could go in
6 that--in that bundle to page 93 of the Transcript.

7 MR RAWAT: (Off microphone.)

8 Which page do you want to take the Auditor General to?

9 SIR GEOFFREY: Page 93, please, at line 8.

10 BY SIR GEOFFREY:

11 Q. There, just to set the scene, you were being asked
12 questions on your first appearance before the Commission about
13 the request from the Governor. You had said at the bottom of
14 the previous page you had sent the Reports to the Governor
15 because he'd made the requests. The Commissioner asked you,
16 "But it was your decision to audit", and you reply, "It was my
17 decision to follow through with the investigation".

18 And you then said as follows: "In fact, when it was
19 brought to me", what did you mean by "when it was brought to
20 me"?

21 A. Well, it's impossible to answer that without reading
22 the full context of it.

23 Q. Well, just have a look at the context. You're saying,
24 "It was my decision to follow through with the investigation",
25 you then continue, "That is to say, having been requested by the

1 Governor". You then continue: "In fact, when it was brought to
2 me, what I said is that I would have a look at it".

3 I'm simply asking, Madame Auditor General, what was
4 meant there by "it was brought to me". Somebody seems to have
5 been bringing you the proposition that you should do that Audit.
6 Was that the Governor?

7 A. Again, I would not answer the question before I read
8 the full context and I'm able to see what I'm talking about
9 here. I think it's a little bit impossible to actually make a
10 statement on something that is unclear. "When it is brought to
11 me" can mean anything.

12 But I said--and I think I said this to the
13 Commissioner as well--this Audit--we had already decided to do
14 this Audit, and we had been looking at it for some time. And
15 when the Governor mentioned it to us, then it became
16 something--the priority changed somewhat because if we had
17 concerns about it and he had concerns about it, then it was
18 definitely something that needed to be followed up on.

19 Q. No, I quite understand. I just wondered if you could
20 help me with the meaning was of "when it was brought to me", but
21 you continue in any event in that paragraph, I wonder if we
22 could look at it because this is my--the main purpose of this
23 question.

24 You said: "What I said is that I'd have a look at it
25 and do a preliminary review to see whether or not it was an area

1 we could actually look at, that we would want to look at it".

2 So, the context of something being brought to you is
3 that you'd said you would have an initial look; is that right?

4 A. That would be the context, but let me just say that,
5 without reading this and knowing whether it's referring to this
6 particular audit or something else, I'm unable to answer it
7 clearly.

8 "When it was brought to me" would mean that somebody
9 brought it in, in any event.

10 Q. It does refer to this Audit, Madam Auditor General.
11 If I were wrong about that, I would invite correction from
12 counsel to the Inquiry. It's plainly about this Audit, and it's
13 about particularly as we follow through farmers and fishers.

14 And my question was this: What preliminary review did
15 you do?

16 MR RAWAT: There is a reference at page 92, though, to
17 four reports that were issued under Section 20.

18 SIR GEOFFREY: Right. Well, let's just have a
19 look--let's describe it in this way.

20 BY SIR GEOFFREY:

21 Q. All the pandemic reports is what we're talking about
22 here, so you've had it brought to you, and what preliminary
23 review did you do?

24 A. We would do an assessment of what in terms of the
25 procedures for making payments, the monetary amounts that would

1 be awarded to the various Programmes, who would be managing
2 these Programmes, what criteria has been put in place to ensure
3 that there are controls and that the amounts were within the
4 Policy.

5 There are a number of things we would look at before
6 we decide to go ahead. But in this case, if we're talking about
7 the COVID spending--and without me reading this bundle, I don't
8 know what you're talking about specifically--in this case, the
9 COVID--one of the main issues why we flagged this is because
10 it's discretionary spending, and with discretionary spending
11 there are always issues.

12 Q. So, the preliminary review would have preceded your
13 actual commencement of the Audit, would it?

14 A. It would have to, yes.

15 Q. Yes.

16 And how long would that have taken from the date on
17 which you were requested by the Governor to have a look at it?

18 A. I would not be able to say how long that would have
19 taken because it would--it would take as much time and as we can
20 in terms of the information we have. And in this case, we were
21 still waiting to receive information, so it would take--a
22 preliminary review can take as little as a week or as much as a
23 couple of months. And--

24 Q. Did you--thank you for that. That's most kind.

25 And did you have periodic meetings with the Governor

1 to discuss this and other audits you were doing?

2 A. We have occasional meetings every six weeks, every two
3 months or so, but not ongoing meetings to discuss what's
4 happening with this Audit.

5 Q. Did he ask you how you were progressing with the
6 Audit?

7 A. The only time, really, I would discuss an audit with
8 the Governor is when I'm having issues with it.

9 Q. So, may I ask you again: Did he ask you how you were
10 progressing with the Audit?

11 A. Not to my recollection, no. Not this Audit.

12 Q. Now, when were you first aware that the Commission of
13 Inquiry wished to hear your evidence on the 28th of June 2021?

14 A. I do not have that date with me.

15 Q. I think earlier when you were being asked questions by
16 Mr Rawat you did say that you had been informed that what the
17 Commission wanted to look at--correct me if I'm wrong--as you
18 understood it, was any reports that you had completed; is that
19 correct?

20 A. That is correct, yes.

21 Q. Did the Governor speak to you about the completion of
22 this Report once the Inquiry had been called?

23 A. It's not one report. It's several reports.

24 Q. The "pandemic reports"; let's use that expression, if
25 we may.

1 A. Pandemic reports.

2 And I should point out that the Governor changed
3 within the period of doing this Audit, and no, the Governor did
4 not speak to me about the progression of the Reports, not at any
5 time.

6 Q. If we go back to 170 where you mentioned that if the
7 Governor had requested the Report, you would tend to give it
8 priority. Presumably you were aware, were you, that the
9 Report--it would be convenient for the Inquiry to have as many
10 completed reports as possible?

11 A. Absolutely, yes.

12 Q. You can't help me when you knew that you were going to
13 give evidence first on these matters, but can you give me some
14 indication? Was it a week? Two weeks? Three weeks? A month
15 or two before you gave evidence?

16 A. Sir, I can get that date and make it available to you,
17 but I don't have that with me at the moment.

18 Q. Well, I would be most grateful if you did.

19 So, help me--help me with this: If you knew that the
20 Inquiry was keen to receive all reports that you had completed
21 and you knew that the Governor attached some significant
22 priority to the pandemic reports and, of course, by then, you
23 would have known that the Inquiry had been put into commission,
24 would you not? So, by February, you knew that there was a
25 Commission of Inquiry; correct?

1 A. Correct.

2 Q. So, you know that the Governor attaches importance to
3 this--your audits of the pandemic schemes. You know that it
4 will be convenient for the Inquiry to look at those pandemic
5 schemes among your other reports; correct?

6 A. Through my audits. I'm not thinking in terms of the
7 Commission and being convenient for the Commission. I'm
8 thinking in terms of completeness so I could move on.

9 Q. I understand.

10 But what I'm really asking you is this--

11 (Overlapping speakers.)

12 A. There wasn't some reason in my mind at the time--I'm
13 sorry.

14 COMMISSIONER HICKINBOTTOM: No, no, finish your
15 answer.

16 BY SIR GEOFFREY:

17 Q. Please finish, yeah.

18 A. That suggests that I find to be really borderline, but
19 when we're doing our audits, we're not doing it for the
20 Commission, we're not doing it for any individuals. We're doing
21 it because it's our job.

22 Q. I have no doubt about that, Madame Auditor General.

23 A. (drop in audio) the audits because unless we complete
24 it, then it's useless.

25 Q. I'm not suggesting for a moment that your--

1 (Overlapping speakers.)

2 A. --programmes, there were several different audits, and
3 I was lobbying my staff to ensure that we can get them out
4 quickly because we were in a period where we did not get the
5 Financial Statements, and when we get Financial Statements, that
6 would be a priority, so I wanted to get these out so I can move
7 on to that and not have them sitting on the desk.

8 As it is at the moment, we have the Financial
9 Statements and I haven't been able to do much else with the
10 existing "reports" that we have.

11 Q. Well, thank you for that. As you know, the Permanent
12 Secretary of the Premier's Office wrote to you an e-mail--and we
13 needn't look it up, but it essentially asked you for one further
14 week on the 21st of June, she asked you for a week until the
15 28th of June. You sent your Reports to the Governor on the 21st
16 of June. And on the 24th of June, the Inquiry announced that
17 you would give evidence on the 28th.

18 Now, you haven't been able to help me when you first
19 knew that you were to give evidence on the 28th?

20 MR RAWAT: Commissioner--

21 COMMISSIONER HICKINBOTTOM: Could you just give me one
22 moment.

23 SIR GEOFFREY: Yes, of course.

24 THE WITNESS: Just to assist, the Commission sent a
25 summons to the Auditor General the 10th of June 2021.

1 COMMISSIONER HICKINBOTTOM: 10th of June.

2 SIR GEOFFREY: I'm most grateful. Thank you. Thank
3 you so much. That's extremely helpful.

4 BY SIR GEOFFREY:

5 Q. So, do you happen--did the summons have a date on it,
6 Mr Rawat, may I just ask?

7 COMMISSIONER HICKINBOTTOM: Yes, it did.

8 SIR GEOFFREY: To the 28th?

9 COMMISSIONER HICKINBOTTOM: To the 28th, yes.

10 SIR GEOFFREY: Thank you.

11 BY SIR GEOFFREY:

12 Q. So, you knew on the 10th of June that you would be
13 required to give evidence on the 28th; correct?

14 A. Apparently, yes.

15 Q. Yes.

16 And at this point, the Premier's Office was asking you
17 for a delay, was asking you for time, and you decided that on
18 the 21st of June, one week before you were due to give evidence,
19 you would cut off the time that the Premier's Office would have.
20 And I'm simply asking--you'll understand why I'm asking, I'm
21 sure, Auditor General--

22 COMMISSIONER HICKINBOTTOM: I'm sorry, we had both
23 you, Sir Geoffrey and the Auditor General speaking at the same
24 time.

25 THE WITNESS: I would just like to correct him for a

1 moment there. The Premier's Office asked for time, and we give
2 them almost a month, which is more time than we gave other
3 Ministries, other Departments when we issue draft reports. That
4 was more than sufficient time.

5 BY SIR GEOFFREY:

6 Q. No, no I'm not suggesting you hadn't given time--

7 A. I'm sorry, they did not send us anything else. We had
8 been asking and asking, and they sent us nothing for 11 months.
9 Are we to assume that within a week they're going to send us
10 something?

11 Q. Well, the Permanent Secretary asked you for one more
12 week, and I'm simply wanting to know why not give it to her
13 since she'd asked for just one more week, and she would be ready
14 with whatever it was she was preparing. Let's not confuse two
15 issues. She asked you for one more week.

16 But, of course, if you hadn't--if you had given that
17 week, those Reports would not have been finalised to put before
18 the Inquiry, would they?

19 A. If you had given me sufficient reason to give her
20 another week, she would have gotten it.

21 COMMISSIONER HICKINBOTTOM: Well, and also the premise
22 of the question isn't right.

23 SIR GEOFFREY: Very well.

24 COMMISSIONER HICKINBOTTOM: That we could not have
25 dealt with that Report on the 28th of June if the Report wasn't

1 completed until the 28th of June or whatever the date was. It
2 doesn't mean to say that the Commission of Inquiry wouldn't have
3 considered the Reports.

4 SIR GEOFFREY: At some later point, of course.

5 COMMISSIONER HICKINBOTTOM: Sorry?

6 SIR GEOFFREY: At some later point.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 SIR GEOFFREY: Yes. Well, at some later point, but as
9 we know, we are particularly keen for your timetables to be
10 respected.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 SIR GEOFFREY: And the point I'm simply seeking to
13 explore is, is it a coincidence, and the Witness says it is, and
14 that's fine, that on the 21st the Reports are sent to the
15 Governor, on the 24th--allow me to finish for just a minute, if
16 I may--on the 24th, the Inquiry announces that the evidence is
17 to be given on the 28th. And, of course the Commission needed
18 time to prepare. I mean, it is simply--is it a coincidence?
19 And Madam Auditor General, I hear you say it is.

20 THE WITNESS: Well, Sir, what I would say to you is
21 that in not going a response from the Premier's Office and
22 having then ask me for an extension to that date, it did occur
23 in my mind that they were actually trying to prevent the Reports
24 from being finalised.

25 Q. And thus not be available for the Commission?

1 A. And thus not be available for the Commissioner or
2 anything else.

3 Q. Thank you, thank you, Madam Auditor General.

4 So, it was in your mind that this Report was needed
5 for the Commission, and you felt that the Premier's Office was
6 deliberately delaying so that it would not be available for the
7 timetable of the Commission? That's essentially what you just
8 said; correct?

9 A. No. What I said is that it was in my mind that the
10 Premier's Office was actually using delay tactics to avoid the
11 Reports from being finalised.

12 Q. And available to the Commission?

13 A. You added that.

14 Q. Well, no, Madame, forgive me. You said it first. I
15 think the Transcript will show that what you told us was that it
16 was in your mind that it would not be available for the
17 Commission.

18 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey,
19 but it would not have been available for the Commission on the
20 28th of June.

21 SIR GEOFFREY: On the 28th, quite.

22 COMMISSIONER HICKINBOTTOM: We can see what the
23 Transcript said, but anyway, the Auditor General has given her
24 answer, but because I have to consider any criticisms that are
25 put to a witness, it the premise of your question that it was

1 not coincidence?

2 SIR GEOFFREY: Well, I don't know. I can't assert
3 that. I'm seeking to explore it but the Witness has said not,
4 so I intend to leave it there.

5 BY SIR GEOFFREY:

6 Q. But may I move on now just to my final question on
7 this subject. On the top of page 170, if you just have a look,
8 Madam Auditor General, for me, line 2?

9 A. I'm sorry, before we move on, I need to clarify
10 something. I am not--I have not said that we were at any stage
11 attempting to facilitate any processes, and I've said this
12 earlier: When we were doing our audits, the intention is to do
13 the Audit to completion and finish as many of them as possible
14 so that when we get the Financial Statements we can move into
15 that without having these sitting on our desk.

16 And we were placed with a situation where the
17 Premier's Office was not facilitating our request, and at that
18 stage we still needed to go ahead and complete our audits.

19 BY SIR GEOFFREY:

20 Q. Very well. 170 if we may, at line 2.

21 (Overlapping speakers.)

22 A. --in the request, it did occur to us that this may be
23 a delaying tactic on the part of the Premier's Office, and this
24 is my position with this.

25 Q. What would be the point of the delaying tactic?

1 A. I don't know, you would have to ask them because they
2 were not providing information.

3 Q. Well, yes, but what would be--what was in your mind as
4 to why there might be a desire to delay?

5 A. Well, what was in my mind, there were several things,
6 one of which was there might be some information in there that
7 the Premier's Office doesn't want us to see, and we did some
8 specific searches that brought up some specific--some
9 interesting details that are not in this particular Report, and
10 probably will be in the other Reports, but we did some searches
11 because we thought there might be information that the Premier's
12 Office or people in the Premier's Office might be hiding, or
13 might not want us to see. That was one of the things that was
14 functioning in our mind.

15 Q. Right.

16 COMMISSIONER HICKINBOTTOM: The background--the
17 background to your audit, as I understand it, is what is on
18 page 170 at line 23. I mean, you have already touched upon this
19 today, Auditor General, and that was this was an audit terms, in
20 accountancy terms, high-risk spending because it was
21 discretionary. Is that the--

22 THE WITNESS: Yes--

23 COMMISSIONER HICKINBOTTOM: Is that the background to
24 the audit?

25 THE WITNESS: This is why we made a decision early to

1 do this Audit even before the Governor had suggested it.

2 COMMISSIONER HICKINBOTTOM: Yes. Sir Geoffrey.

3 SIR GEOFFREY: Thank you.

4 BY SIR GEOFFREY:

5 Q. At the top of page 170, just a slightly different
6 point, but you see you say at the time there, that it's not the
7 first time, this is page 170, at line 2, "it's not the first
8 time that we've gotten involved in the process early, and
9 sometimes it's actually just necessary to get involved early".
10 And you mentioned the sum of 7 million. "It made sense for us
11 to get an early look at it early and have a report ready
12 possibly to be able to assist the Ministries, the Departments
13 that were working on this".

14 Do you agree with Mr Forbes, the Financial--former
15 Financial Secretary that when he expressed his view that the
16 Auditor General should not be involved during the currency of
17 execution of a programme, particularly in making Recommendations
18 about it because when she comes or he comes later to audit it,
19 she will to some extent be auditing her own Recommendations?

20 A. I think the former Financial Secretary, you started
21 out by making a distinction between my office and Internal
22 Audit, and he was right in that Internal Audit comes in during
23 the process and they would look at the systems, the processes
24 and so on, and they would provide Recommendations. Our job is
25 different. We come in and we look at the money because that's

1 what we have to report on.

2 In terms of what the Financial Secretary says, I do
3 not agree with it because, by extension, what he's saying is
4 that, at the end of an audit, for instance, when we make
5 recommendations and a Department adopts those Recommendations,
6 we then cannot, moving forward, audit that entity because
7 they've accepted our Recommendations. For that reason what he's
8 saying doesn't really follow true, doesn't ring true.

9 And the other reason is that, when we make
10 Recommendations that are different to Internal Audit's
11 Recommendations, our Recommendations normally, they would advise
12 the Department to adhere to policy, adhere to spending plans and
13 to adhere to what's already in place. Internal Audit can be a
14 bit different, making Recommendations on things they see need
15 fixing or changing or improvements that they would see.

16 So, our Recommendations don't go to the extent that
17 you would see Internal Audits' Recommendations, for instance.

18 Q. Thank you.

19 May I move on now to a different subject, and that is
20 your Report on the Virgin Islands Neighborhood Partnership
21 Project. Now, I wonder if you could go in the--in this
22 Transcript--I hope I--forgive me for a minute, I've got to
23 navigate it myself and make sure I've got the right reference,
24 but I think it's 115 of this Transcript. Yes. 115, if you
25 would be so kind.

1 A. 115?

2 BY SIR GEOFFREY:

3 Q. 115, yes, of day 49.

4 Now, you will see there, Auditor General, that you
5 were speaking about, right at the top Section 12 audits are to
6 be forwarded to the Minister, but in a number of cases the
7 Reports are not actioned, they're not taken before the House, so
8 the general policy you told the Commissioner is that, once the
9 Financial Statements--that is to say, the main Financial
10 Statements that relate to that Audit have been tabled, the
11 Reports can be made public, and you will publish them, and you
12 say--you explain at line 89 that we'll publish them on the
13 website.

14 Now, subsequently, you made clear that, in fact, and
15 again at line 18 of this page, you say: "We'll put it on our
16 website, but if it's not tabled and the Financial Statements to
17 which the Audit relates are tabled, we will put the Report on
18 the website provided there are no issues of confidentiality or
19 security".

20 Now, do I take it that you did not--as I think you
21 told the Commissioner, you did not have a website in
22 2012--2011-2012; is that correct?

23 A. We did have a website in 2011--2011, yes.

24 Q. But you didn't put your Reports on it, I think you had
25 told us because of some technical limitations of it; is that

1 right?

2 A. We would not have put--we had a website, and we did
3 put our Reports on it, and what I had said to the Commission is
4 that the website--we were not able to maintain it because the
5 person who was actually managing the website moved abroad.

6 Q. Well, what you see I'm puzzled about is that what is
7 your evidence? Was this Report published anywhere in, let us
8 say, 2012, or wasn't it? We know it was not tabled before the
9 House. We know that it doesn't appear to have surfaced in any
10 Cabinet consideration. The Virgin Islands newspapers reported
11 that it had not surfaced or been published when it was leaked in
12 early 2019.

13 So, what is your evidence, Auditor General? Was it
14 published after some reasonable point after you produced it, or
15 wasn't it?

16 A. That Report was published, I think, earlier this year
17 on my Report--sorry, on our website.

18 Q. Sorry, my fault. Carry on.

19 A. Yeah.

20 It was published, I think, earlier this year, and I
21 believe it's early this year when we set up our website when we
22 finally got it up and running. That's when the Report was
23 published.

24 Q. For the first time?

25 A. For the first time, yes.

1 Q. Right. Thank you.

2 Now, help me with this, if you would: I imagine on
3 day 18, you, I think, gave evidence to the Commissioner that it
4 had been published more or less contemporaneously. Was that
5 simply an error? I expect it was.

6 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, can you take
7 us to the passage you mean?

8 SIR GEOFFREY: Yes, I can. Yes, I certainly can.
9 Twenty-eighth of June at page 93 to begin with, please, day 18.

10 COMMISSIONER HICKINBOTTOM: Have you got that, Auditor
11 General? Day 18.

12 THE WITNESS: What page?

13 BY SIR GEOFFREY:

14 Q. Page 93. We will go to two references in this bundle,
15 if we may but the first starts at line 13.

16 Oh, no, wait a minute. I may have a wrong--it's 94,
17 not 93. I do apologize. 94, not 93. At line 12.

18 Counsel, as you see there, introduced the Report to
19 you and put this question at 16: "I think that Report was
20 produced in or published in January '13".

21 You initially said, "Correct", but quite
22 understandably you then said: "I'm not seeing the date on the
23 Report, and you thought that the date might have been a little
24 earlier than that, so let me verify that date".

25 If you could then go to page 124 of the Transcript,

1 have you got 24?

2 A. What page?

3 Q. 124, you will see at line 6, you say--you're being
4 asked about what the reaction of the Ministry was. This is
5 page 124 of the same Transcript, you're being asked about what
6 the reaction of the Ministry was, and you said: "I don't recall
7 there being a positive reaction. I do recall the Report,
8 actually. I think this one, that this was one that was in the
9 public".

10 Let's just continue for a moment.

11 "And I can recall from outside, for instance, one of
12 the institutions, somebody from one of the churches, who ran
13 into this, and she actually contacted us after the Report went
14 public, and he was pleased to see that it was being made public,
15 that the Programme hadn't done what it was supposed to do, and
16 he wanted to know whether the Ministry was going to continue
17 with somebody who was actually going to do the job, and they
18 told him to contact the Ministry, and they might have an
19 answer".

20 So, in your evidence on the 28th of June, although you
21 questioned the date, it does appear, does it not, that what you
22 were saying was it had, in fact, been published?

23 A. It had been leaked into the press, yes.

24 Q. Right.

25 So, you didn't say that at this time. What you

1 suggested was that you agreed with counsel that it had been
2 published--

3 A. I was agreeing with counsel that it had been--
4 (Overlapping speakers.)

5 Q. Have a look at 94. I see the Commissioner expressing
6 dissent, so religiously faithful to his--we'll need to look at
7 the document again.

8 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, it wasn't
9 dissent. It was merely a suggestion that that was a question
10 which perhaps could have referred the Witness back to
11 paragraph 94.

12 SIR GEOFFREY: That's exactly what I'm doing now.
13 It's just that navigation isn't always easy. Let's have a look
14 at the page--

15 THE WITNESS: That is part of--page 94, 16, question
16 was, was it produced or published, and it was actually produced
17 at that time.

18 BY SIR GEOFFREY:

19 Q. Right.

20 A. The Response was--my answer was in response to the
21 produced, not the published. That Report was leaked, and that
22 Report was leaked twice. It was leaked at the end of 20--

23 Q. Yes.

24 A. --2011 and again in 2019.

25 Q. 2019.

1 But you see, you were shown the Beacon Report by
2 counsel last time you appeared. Your Report wasn't leaked.
3 What was leaked was a set of documents that had been provided to
4 the Assembly. The Article doesn't say that your Report was
5 leaked. So, again--I am--I'm simply puzzled. When you gave
6 evidence in--on the 28th of June, what you're telling the
7 Commissioner is that you weren't saying it was published; is
8 that right?

9 A. What I was saying is that it was produced at that
10 date, and to my knowledge it was leaked out in December 2011.
11 And I may be wrong, it could be that it was simply as you're
12 suggesting that various--it wasn't just the Beacon, by the way.
13 It was on the BVI as elsewhere, the various entities probably
14 just got information from--from the House of Assembly.

15 Q. It would have been given to them?

16 A. Yeah, possibly, but going through one of the Reports
17 and I can remember having this discussion with one of my staff
18 because my position was that they had gotten information from
19 the House of Assembly, and she says to me, no, this is our
20 Report. And going through one of the Reports I realised that
21 some of the things that were being said were actually taken from
22 our Report.

23 Q. Hmm.

24 A. Which is why I say it was leaked.

25 Q. So, in other words, as at 2012, you would have known

1 that although your Report was getting partial leaks, it had not
2 been published; correct?

3 A. It had not been issued by the Ministry officially, and
4 it had not been published by me.

5 Q. Quite.

6 So, if we can just look at that for a moment, if you
7 could go to page 139 of the day 49 Transcript.

8 You had, of course, Mrs Webster, at line 8 some
9 scathing things to say about this Project. You mentioned a
10 Programme where something is so blatantly false, so blatantly
11 wrong. You said we can't sit on it. Have you got that?

12 COMMISSIONER HICKINBOTTOM: No, not yet.

13 BY SIR GEOFFREY:

14 Q. Oh, I do beg your pardon. Page 139 of day 49.

15 COMMISSIONER HICKINBOTTOM: And Sir Geoffrey was
16 reading from line--

17 (Overlapping speakers.)

18
19 BY SIR GEOFFREY

20 Q. Line 10, roughly.

21 You're saying there you see how important it is in
22 connection with that Report that we can't just sit on it, as you
23 put it.

24 Have you got it, Mrs Webster?

25 A. I'm not sure that I'm looking in the right bundle,

1 actually.

2 Q. Page 139, day 49. It's difficult to deploy all these
3 documents, I'm sorry.

4 A. 139?

5 COMMISSIONER HICKINBOTTOM: That page 139 at the top,
6 and then line 8, the Witness "that is correct".

7 THE WITNESS: Correct.

8 BY SIR GEOFFREY:

9 Q. That's it.

10 COMMISSIONER HICKINBOTTOM: We've got that.

11 SIR GEOFFREY: I'm most grateful.

12 BY SIR GEOFFREY:

13 Q. And then if you continue on, you'll see how you're
14 stressing the importance of this Report where something was so,
15 as you put it, so blatantly false, so blatantly wrong. You said
16 you couldn't just sit on it because we can't get all the
17 information. We can't just leave it, you said, on the side of
18 our desks, and you pointed out various other matters that
19 concerned you about it.

20 And my question to you is: Given that importance and
21 if you'd look further on down in the Transcript at 141, the same
22 one, so you say--you say for some time in this passage of
23 evidence, the concerns you had about it and what you felt the
24 Ministry should do, my question really is this, did you ever
25 inquire why the Minister or of the Ministry why they had not

1 tabled it as it was their legal obligation to do?

2 A. Sir, my job is to do the Audit, complete the Report,
3 pass it on to the Ministry, and then their job commences there.

4 Q. Yes, but did you not have a discussion with Dr Potter
5 on the subject?

6 A. It is their job to take the Report forward, and I'm
7 not going to take any responsibility for the fact that they did
8 not take the Report forward.

9 Q. No, but forgive me, this is a matter of public
10 concern. You've said how important it is, it doesn't sit in
11 somebody's desk. All I'm asking is: Did you correspond with
12 the--I think you said Dr Potter was the Permanent Secretary at
13 the time; is that correct?

14 A. That is correct.

15 Q. Did you advise Dr Potter in any way? Did you say, for
16 example, that she should use it for internal purposes, or did
17 you say has she--will she be publishing it? Did you have that
18 discussion?

19 A. The Permanent Secretary knows to what with an Audit
20 Report, sir.

21 Q. But ultimately you have the power to ensure it's made
22 public, don't you?

23 A. If they didn't know what to do with an Audit Report,
24 then they would come back and ask me. And I've had instances
25 where they would come back and ask me.

1 Q. Right, but this Report was of particular significance.
2 You've drawn the Commission's attention to it. You said it was
3 a very serious situation. Why did you not take steps to draw it
4 to the public's attention?

5 A. We did. We put it on our website.

6 Q. But that was years later.

7 A. When we had a website, yes.

8 Q. Well, you did it six-seven years later, but in 2012,
9 2013, 2014, 2015, all the way up to 2019, your Report did sleep
10 in somebody's desk, didn't it?

11 COMMISSIONER HICKINBOTTOM: I'm sorry, just one
12 moment. Just to put page 139 into its proper context, which I'm
13 sure, Sir Geoffrey, you would want that done.

14 SIR GEOFFREY: Of course.

15 COMMISSIONER HICKINBOTTOM: The context of that, if
16 the Auditor General reads from the top of page 139, was the
17 completion of the Report by the Auditor General.

18 SIR GEOFFREY: Of course. Of course.

19 COMMISSIONER HICKINBOTTOM: We can't sit on it. This
20 was her explaining why she completed it and produced it.

21 SIR GEOFFREY: Yes, but there are many other examples
22 where I'm sure the Auditor General isn't going to, I hope not,
23 contest this.

24 BY SIR GEOFFREY:

25 Q. You've repeatedly said in evidence to the Commission

1 that it's important that material like this should be before the
2 public, haven't you?

3 A. Yes.

4 Q. You agree with that principle?

5 A. Yes.

6 Q. And my question is simple: Why did you not take steps
7 to ensure that the attention of the public was drawn to it until
8 2020--no, 2021?

9 A. The Report was sent to the Ministry, and within that
10 Report, if you've read it, there were a number of paragraphs
11 that said to the Ministry, you need to take further action on
12 this, you need to get more information because the information
13 that we have, the information that you have, apparently begs the
14 question who gets--

15 (Overlapping speakers.)

16 A. --otherwise try to provide the sums.

17 Q. But forgive me, you knew by 2012-2013 they weren't
18 doing that because nothing had surfaced. Correct? If you
19 didn't know by 2013, you would have known by 2014, wouldn't you?

20 A. By 2012, 2013, we would have been focused on other
21 audits.

22 Q. But this was a very important matter.

23 A. Sir, they're all very important. It's only important
24 for a certain individual at the moment but they're all very
25 important.

1 Q. I hear that, but you've said that this was an
2 important one. I simply need to understand, if I may, and it
3 may be the Commissioner would be assisted, why did you not, as
4 you could, have taken steps to publish or draw to public
5 attention that Report at the time in 2012-2013?

6 A. Because we were at that time engaged in other audits,
7 and because--this is an audit that went to the Ministry, and the
8 Ministry did nothing about it. Aside from the fact that
9 we--there is a particular Ministry that we find in our Reports
10 tend to wind up in the press.

11 Q. That makes it worse, doesn't it, Auditor General?

12 A. It does, it does make it worse.

13 Q. So, why not publish?

14 A. Why I don't publish--why I didn't publish it?

15 Q. You take steps to draw it to the public's attention?

16 A. I can't publish it until my Financial Statements have
17 actually been tabled.

18 Q. Well, they would have been by then, surely, by 2013,
19 at least?

20 A. They were tabled in 2013, yes.

21 Q. And the other thing you could have done is escalated
22 it to a Section 20 Report, couldn't you? You told the
23 Commissioner at day--we can look at it, if you like, but day 18
24 at page 24, that you had a complete discretion to convert a
25 Section 12 Report into a Section 20 Report. Why not do that?

1 So you put it to the Governor?

2 A. At the time it did not occur to us to do that.

3 But quite apart from that, I'm not sitting in my
4 office wondering what's happening with VINPP Report. I am not.
5 I have other things to do.

6 Q. But this was a very controversial report, was it not?

7 A. They're all very controversial, and I don't know why
8 you're focused on this one because they're all very
9 controversial.

10 COMMISSIONER HICKINBOTTOM: Auditor General, who, in
11 your view, is primarily responsible for publishing the Reports?
12 Who is primarily responsible? I understand that once the
13 Financial Statements for the relevant period are out or the
14 specific report has been tabled in the House, you consider that
15 you are able to publish it, but who is primarily responsible?

16 THE WITNESS: The Permanent Secretary, it's her
17 responsibility to move the Report forward to Cabinet, and then
18 beyond that.

19 BY SIR GEOFFREY:

20 Q. Forgive me. I understand that, but you're the Auditor
21 General, you occupy a constitutional office. You were concerned
22 about the abuse of public money about which you have made
23 excoriating criticism. Then you find that a Minister has not
24 followed his legal obligation, an auditable question itself, to
25 produce this Report before the Assembly. And instead of

1 publishing it yourself or taking steps to refer it to the
2 Governor, for some reason you take no action in connection with
3 it until 2021, this year, when earlier this year you put it on
4 your website. And the question that I have for you is simple
5 and legitimate. Why not?

6 COMMISSIONER HICKINBOTTOM: Just let's Sir Geoffrey
7 ask his question, Auditor General.

8 THE WITNESS: Okay.

9 BY SIR GEOFFREY:

10 Q. Why not?

11 COMMISSIONER HICKINBOTTOM: Why didn't you publish it
12 earlier, is the question, Auditor General.

13 BY SIR GEOFFREY:

14 Q. Given those considerations?

15 A. We did not have the means to publish it at that time.
16 We have a website now, and that Report, along with others, have
17 been put on the website.

18 Q. But why not do it at the time by the simple expedient
19 of, as you told the Commissioner on day 18, page 24, that you
20 could easily do which is convert a Section 12 Report into a
21 Section 20, thus referring it to the Governor who would have put
22 it before the House?

23 COMMISSIONER HICKINBOTTOM: The premise of that
24 question, I think, is that, a Section 12 Report, once it's
25 completed, you can convert to a Section 20 Report. Can you do

1 that?

2 BY SIR GEOFFREY:

3 Q. Day 18, perhaps it would be helpful then to look at
4 the Transcript?

5 A. Knowing that, but I'm think that it's possible. But
6 my question is why are we focused on one report when there are
7 several that are just as important? Why this Report?

8 BY SIR GEOFFREY:

9 Q. Well, forgive me, that's a matter which I am permitted
10 by the Commissioner to address questions to you on. I'm focused
11 on it because I am puzzled as are those I represent why this
12 Report seems to have been suppressed or withheld and although
13 one quite understands that the Report may have been suppressed
14 and withheld by the political government of the time, why the
15 Auditor General took no steps that she could to bring so serious
16 a matter to the attention of the Governor and to the public
17 thereby?

18 A. Sir, I'm hearing you, but the Auditor General is not
19 everything to everyone, and you have a Ministry that has
20 obligations. It's their responsibility to take steps to ensure
21 that this Report is tabled. I cannot take on all the
22 responsibilities of everyone. They have to do their jobs.

23 Q. But had you happened to have a website in 2012, it
24 would have gone on to that?

25 A. It would have been there, yes.

1 Q. Why do you think it was that no steps were taken to
2 provide the Minister to refer to table this Report before the
3 House? Did you discuss that with anybody?

4 A. No, I cannot speak to that.

5 Q. Do you think it might have had something to do with
6 the fact that, in January 2012 and then in April 2012,
7 Mr Skelton-Cline was appointed by the then sitting Government to
8 a position as Consultant to the Minister of Telecommunications
9 and subsequently Managing Director of the Port?

10 A. I have no idea.

11 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I'm not sure
12 that the Auditor General can speculate as to that, particularly
13 in circumstances in which you are (drop in audio) the Minister
14 and the Ministry.

15 SIR GEOFFREY: Well, not those Ministers,
16 unfortunately, but the position--may I come back to the point,
17 and you may be right, Mr Commissioner, so let me put the
18 question rather differently.

19 BY SIR GEOFFREY:

20 Q. Was it not even more acutely in the public interest
21 that this Report should receive public attention when the person
22 who was its subject had been appointing Managing Director of the
23 British Virgin Islands port?

24 A. Again, it was not my responsibility to move that
25 Report forward. We did our job, we completed the Report, we

1 sent it to the Ministry. I cannot do everything, and I cannot
2 be expected to do everything.

3 Q. No, thank you. Well, let me move on, if I may, to
4 another point, and that is your Report. I can put this fairly
5 shortly because counsel asked you questions, that is to say
6 language.

7 Counsel for the Inquiry put to you that the Elected
8 Ministers' concern that the language you had used in your Report
9 used the word "inflate". What he did not put to you was that
10 you had used the word "inflate" and also used the word
11 "falsified".

12 A. Yes.

13 Q. In other words, you seemed to have been accusing
14 public officials of long-standing of falsifying public
15 documents.

16 What did you mean? Did you mean they intentionally
17 did so, with fraudulent intention?

18 A. I meant that they intentionally changed the figures
19 that were sent to the Treasury, and those figures do not match
20 what was submitted to them.

21 Q. Well, yes, but that pre-supposed that your theory as
22 to how it was to have been allocated the money was correct but
23 you were already in the possession of the knowledge that the
24 banded system had been used, weren't you?

25 A. We were not told that a banded system had been used,

1 and had not been given any kind of authorisation for a banded
2 system to be used.

3 What we know from the Policy is that individuals were
4 to submit what they needed, their wants, and that would be taken
5 into consideration in terms of what would be paid, and that is
6 in the criteria that was publicised, everyone (drop in audio)
7 complied, and then we saw where these submissions--the amounts
8 in these submissions had been changed and then sent to the
9 Treasury.

10 And as an accountant, you don't do that. That's the
11 kind of thing that puts you in prison.

12 Q. You used the word "falsify".

13 A. Well, that's exactly what happened.

14 And the reason why we use that word, those words,
15 "falsify" and "inflate" is because a strong message has to be
16 sent that you don't do this. Don't do it.

17 Q. But you had no evidence to suppose that anybody had a
18 fraudulent intention, did you?

19 A. I had the documents that showed that the amounts had
20 been changed.

21 Q. But yes, but as you said, you base this on the fact
22 that, as you put it just a moment ago, the actual requests for
23 the sums of money that were being made by applicants were to be
24 taken account of in the allocation of the money. It didn't mean
25 that it need to exactly equate to what they requested, did it?

1 It's perfectly legitimate to adopt a banded system, wouldn't it,
2 for ease and speed?

3 A. If that was the Policy, yes.

4 Q. Well, where was the Policy that it wouldn't be? That
5 it would be used according to request of need? Can you help me
6 where you find it set out in any Cabinet Decision that they
7 intended any specific means of allocation of the money?

8 Yes, they certainly intended evidence to be brought
9 before those applying the scheme of what people were asking for,
10 but that doesn't mean that they were going to allocate it
11 precisely according to that, does it? They took it--they should
12 take it into account, but what would be wrong with adopting a
13 banded scheme?

14 A. A banded scheme has not been approved by Cabinet.

15 Q. Well, no scheme had.

16 A. What has been approved by Cabinet is that individuals
17 are to bring in what they need, bring in your footers, bring in
18 the estimates, and those would be taken into consideration in
19 making you a payment.

20 In fact, what was approved by Cabinet is that based on
21 that information, the vendors would be paid on your behalf.
22 That is what Cabinet approved during the period that they were
23 putting this scheme together.

24 Q. Certainly the suppliers should be paid directly. So
25 help me with this, again to come back to the verb "falsify", do

1 you not see that that connotes to many people reading it a
2 deliberate, fraudulent intent?

3 A. Well, what I can say to you is that we saw the changed
4 figures, and we sent them a draft report, and we got no
5 response.

6 Q. I see.

7 Well, can we come on, then, to a different subject,
8 which is the whole question of the assumptions that you made in
9 the Report. I wonder if you could go--I think you have there
10 the Premier's Office's Response, as it's entitled. I wonder if
11 you could look at that. It should be in the bundle in front of
12 you. I hope that message reached you.

13 COMMISSIONER HICKINBOTTOM: Let me try and find that
14 for the Auditor General.

15 Is that in bundle 1?

16 SIR GEOFFREY: Yes. I'm most grateful.

17 MR RAWAT: It's the Preliminary Report of 28th of
18 June 2021, which Dr O'Neal-Morton said was going to be the
19 Response to the Auditor General's draft report is at 88.

20 SIR GEOFFREY: We're talking about the document
21 entitled "Premier's Office's Response", not, I think, that one.

22 COMMISSIONER HICKINBOTTOM: This isn't the Response.
23 Let me just make sure we've got the right reports here.

24 SIR GEOFFREY: Yes, yes.

25 COMMISSIONER HICKINBOTTOM: There was a report

1 prepared by the--by Dr O'Neal-Morton and her team at the time in
2 draft, and then there's a response of the Premier--

3 SIR GEOFFREY: That's it.

4 COMMISSIONER HICKINBOTTOM: There was a response to
5 the Commission.

6 SIR GEOFFREY: Yes. That's the one we're talking
7 about.

8 COMMISSIONER HICKINBOTTOM: We've got that document.
9 That's the one at 220.

10 SIR GEOFFREY: Excellent, thank you.

11 BY SIR GEOFFREY:

12 Q. And if you could turn to paragraph 58 of it, I would
13 just like you to read paragraph 58, which sets out an example of
14 a pandemic relief scheme that was used in the United Kingdom,
15 and you will see--do you have it, Ms Webster?

16 A. I'm getting there.

17 Q. Thank you.

18 So, let's just look at it together, if we may.

19 For example, the paragraph reads: "Under the small
20 business grants and retail and hospitality and leisure grant
21 schemes, in addition to the suspension of business rates,
22 standard grants of £10,000 were made to any ratepayer, whether
23 in active business or not, regardless of need and without
24 application or request which merely occupied premises that, on
25 the 11th of March 2020 were Registered and eligible for small

1 business or rural rate relief, which is, in fact, up to
2 £12,000 rateable value, and to any retail hospitality and
3 leisure business that occupied premises registered for those
4 uses with a rateable value of up to 15,000, and then 25,000 was
5 given to retail, hospital and leisure business with premises up
6 to a value of 51".

7 Now, just pause there for a minute. I wonder if you
8 could then go to day 39--sorry, day 18, 28th, page 39.

9 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey,
10 I'm just reading something.

11 SIR GEOFFREY: Yes, of course.

12 COMMISSIONER HICKINBOTTOM: What is the reference,
13 please?

14 SIR GEOFFREY: Day 18, so the 28th of June at page 39.
15 At least I hoped it was.

16 Bear with me just a minute because it may be that I
17 have the wrong day. Just a minute.

18 COMMISSIONER HICKINBOTTOM: 39.

19 SIR GEOFFREY: Yes, I thought it was, but I don't have
20 that reference here which is entirely my fault. Bear with me
21 just a moment, if you would.

22 (Pause.)

23 Well, I'm afraid I have what looks like a false
24 reference. So, the best thing for me to do, I think, sir, is
25 invite the Auditor General to look at her Report on farmers and

1 fishers, which if you will just bear with me a minute, I will
2 find. It is at the main bundle, if it's before the Auditor.
3 I'm not sure it is, but it's her Report on the farmers and
4 fishers scheme and the churches and schools scheme.

5 THE WITNESS: I have it.

6 BY SIR GEOFFREY:

7 Q. Thank you.

8 COMMISSIONER HICKINBOTTOM: I haven't.

9 SIR GEOFFREY: Ah.

10 THE WITNESS: Bundle number one.

11 SIR GEOFFREY: I did ask that it be--

12 COMMISSIONER HICKINBOTTOM: I'm sure it's in one of
13 the bundles.

14 SIR GEOFFREY: Yes.

15 THE WITNESS: Page 39.

16 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

17 BY SIR GEOFFREY:

18 Q. Thank you.

19 One of the criticisms you make--and forgive me for not
20 having the reference to hand, but both in your evidence to the
21 Commissioner and in your Reports, is that churches, for example,
22 are made no application. I think one reference which we might
23 be able to find, and again it's my fault, Ms Webster, so please
24 forgive me, but I think if we were to go to 161 of day 49, there
25 are many other references, but sadly my reference note is

1 not--is not accurate, but if we were to go to 161 of day 49 just
2 by way of example--I'm just having to reach it by--at line 20 on
3 161, you make the criticism of the scheme that--which you found
4 quite fundamental, which is that many churches or some of them
5 certainly did not apply and did not show any interest in being a
6 part of the Programme, and you say and what happened is that the
7 Government then took a million dollars and gave it to these
8 individuals--I imagine you mean churches--even though they had
9 expressed no interest, no need, and no requirement.

10 Now, if you'd just reflect again on the document I
11 showed you, that is to say paragraph 58, you will see that, in
12 the pandemic response schemes adopted in the United Kingdom, no
13 application was required, no request, no indication of means,
14 not even any indication that they were pursuing active business,
15 indeed, in many cases they were boat moorings or empty lock-ups.

16 And the point I make is that all of the strictures
17 that you have adopted of the pandemic schemes before the
18 Commissioner could be applied, could they not, to the scheme
19 which is summarized at paragraph 58 of the Response?

20 COMMISSIONER HICKINBOTTOM: That's the UK scheme?

21 SIR GEOFFREY: Yes.

22 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey,
23 and before the Auditor General answers, I'm afraid I'm
24 completely lost.

25 SIR GEOFFREY: Well, I'm sorry about that. But why?

1 COMMISSIONER HICKINBOTTOM: I'm sure it's my fault,
2 and I'm sure you can clarify.

3 The UK scheme had its own criteria, whatever those
4 criteria were. Speaking for myself, I have no problem with a
5 policy that during a particular crisis involves giving money to
6 people for various reasons, including stimulation of the
7 economy, for example, as a policy, absolutely fine, but it
8 depends on what the criteria are.

9 And so, I think isn't the right question to ask the
10 Auditor General first is: What criteria did she audit against?

11 SIR GEOFFREY: With respect, I don't agree with that.
12 And of course, if you want me to examine the Witness according
13 to your scheme and pattern, then I will do that, but I would be
14 asked to be permitted to continue with my examination, which has
15 a point and to which I hope will be become clear.

16 I wonder if the Witness might be permitted just to
17 answer my question.

18 BY SIR GEOFFREY:

19 Q. Could not the criticisms that you made that no
20 application was needed, that it was not based on means, these
21 were the criticisms that you've made, Madam Auditor General, of
22 the schemes that were before the Commissioner. No application,
23 not based on means, gratuitous payments as you described them,
24 gratuitous payments made without merit.

25 Now, how does that differ would that criticism not

1 apply exactly to the scheme that is set out at paragraph 58?

2 A. In all due respect, sir, I don't know what the
3 criteria was for those payments.

4 Q. The criteria are exactly as set out at 58.
5 (Overlapping speakers.)

6 A. --seeing the Cabinet Paper for those payments.

7 Q. You mean for the UK scheme?

8 A. Yes.

9 Q. Well, I can assure you, Madame, that that is an
10 accurate statement of how the scheme worked. Just assume it is
11 for the moment.

12 A. I do not understand why we would seek out worst-case
13 scenarios--

14 Q. No, no, that's not what I'm doing, Madam Auditor
15 General. What I'm pointing out to you is that your criticisms
16 of these schemes could be applied to many pandemic schemes that
17 were used in the United Kingdom and for that matter elsewhere in
18 the world because they were not dependent on means or
19 application, request, or even merit. Many people got massive
20 windfalls.

21 The point is that when you are administering an
22 emergency scheme, blunt-edged tools are inevitable. Every
23 country around the world found that, but your Report does not
24 seem to take account of that. Why not?

25 A. Go back to what you just said, and you said that this

1 was part of their criteria. It's not a part of ours. That was
2 not the criteria that was set out in our Cabinet. So, if indeed
3 that was a part of the UK's criteria, there is absolutely
4 nothing wrong with making those payments. That was not a part
5 of our criteria.

6 Q. But forgive me, it nowhere did it say that churches
7 needed to apply in the Cabinet policy, did it?

8 A. The Policy said that churches that did not apply would
9 be given a nominal amount.

10 Q. I see. But just help me with the issue, please. If
11 you are dealing with an emergency, a crisis, it is perfectly
12 understandable, is it not, to adopt blunt-edged often highly
13 overly inclusive means to reach the targets?

14 SIR GEOFFREY: I see the rhetorical gestures of the
15 Commissioner. I wonder what that means?

16 COMMISSIONER HICKINBOTTOM: It seems to me that that's
17 a matter of policy, and the Auditor General is an Auditor, but--

18 SIR GEOFFREY: I agree.

19 Let me just if I may, just continue, just a little bit
20 on these lines.

21 BY SIR GEOFFREY:

22 Q. If you could go to 206 of the Hearing, 206, page 206.
23 Just bear with me a minute while my computer catches
24 up.

25 Now, at page 206, Auditor General, and I hope line 19,

1 you make the point that the correct way to have started with the
2 farmers' and fishers' scheme was to start by building the
3 Department so that they're in a position to get out there and
4 help farmers and see what they need and make recommendations.
5 That would have been perfectly possible if this had not been a
6 crisis in which the Cabinet had declared that immediate relief
7 was needed. But what sort of time would it have taken to build
8 up the Department so that they were capable of doing what you
9 wanted?

10 A. Okay, first of all, that was in response to a
11 statement that was made in your submission, the Premier's Office
12 submission, where they essentially said that the Department of
13 Agriculture could not do what they were supposed to do because
14 they did not have the resources.

15 What I was saying--and then the starting point would
16 be to actually help them to get to the position or get to the
17 place where they could actually be of use to the scheme, to the
18 Programme rather than--

19 Q. But you have time in a crisis.

20 A. Of course you had time. They were asking for help,
21 and you were giving away money left, right and center. What was
22 wrong in providing them with what they needed in order to be a
23 part--an effective part of this programme?

24 Q. Well, the Premier's Office's response as you know,
25 says not only did they want vehicles and various other pieces of

1 equipment, they also claim that they didn't have the resources
2 to help, not just in terms of equipment, but this was an
3 emergency. How would you build up a Department in the middle of
4 an emergency?

5 A. You build the industry when you don't have any way of
6 monitoring what is going on in it. And if you don't start with
7 the Department, at least put them in the position where they
8 could be useful, then you spent money that we can't really
9 account for.

10 Q. Well, again, what I would suggest to you is that when
11 you are delivering an emergency stimulus to an economy that is
12 on the trauma table and has been shut down, countries all around
13 the world have adopted highly overinclusive, highly blunt-edged
14 means of getting that money to the target area, and the
15 priority, as the Premier's Office Response says, was to get the
16 money to the people, wasn't it? As urgently as possible.

17 A. We understand that the system would not have been
18 perfect, but there are many things that could have been done
19 and--

20 Q. Yeah.

21 A. --and I mentioned one of them, which would be to help
22 the Department get up to speed so that they could work with this
23 programme, that was one of them. That was a key one.

24 There were many things that could have been done
25 within this programme to make it work better. Another one would

1 be to insist that these people were registered. They're
2 commercial farmers and fishermen, all right, we will assist you,
3 but we need you in our Registry so that we can follow how you're
4 doing, see what your needs are, and perhaps help you in any
5 other way that you might need help--

6 (Overlapping speakers.)

7 Q. But the announcement of this scheme produced more than
8 a 25 percent increase in the number of registered farmers and
9 fishers?

10 A. But we don't know, you see.

11 Q. Well, you said so. It's in your report.

12 A. Yes, it is in my Report. What I said is the number of
13 registrations increased. We don't know--

14 (Overlapping speakers.)

15 A. --we don't know that those are commercial farmers or
16 fishers. I--

17 Q. Well they--

18 (Overlapping speakers.)

19 Q. --if they were to be registered, they would have to
20 be, wouldn't--

21 A. The way the system works--I can register as a farmer.

22 Q. Right. Well, let me move on because I don't want to
23 detain you unduly anymore.

24 You also said, I think, at page 220 when counsel was
25 asking about the checking of your assumptions relating to

1 fishing boats and fishing crew--page 220--that when the
2 criticism was put to you or the observation--this is the same
3 Transcript, Auditor General, but at page 220.

4 MR RAWAT: I'm sorry, which page, Sir Geoffrey?

5 SIR GEOFFREY: Page 220.

6 MR RAWAT: In day 49?

7 SIR GEOFFREY: Day 49. The same Transcript as we've
8 been looking at, line--right at the bottom, line 23.

9 BY SIR GEOFFREY:

10 Q. You're being asked about the boats. We won't mention
11 the vessels' names, but as counsel put it, one particular
12 example used did stand out in your Report, and you were asked
13 why you hadn't checked the three crew in fact owned their own
14 boats before saying in your Report that they'd all made claims
15 for the same vessel, multiple claims, as you put it, for the
16 same equipment, for the same vessel.

17 Now, your answer to that was at line 24 is: "How are
18 we to find the boats? Because at least the farms are supposed
19 to be stationary, but boats move around".

20 But you had the names of the crew, did you not?

21 A. You're assuming that we also had their contact
22 information.

23 Q. But they were registered with the Department of
24 Agriculture.

25 A. What I should point out with that is that the

1 individuals who--if those two other individuals actually owned
2 boats, those would be unregistered fishermen which means that--

3 Q. No, no, forgive me. That's just not right. The point
4 is that many of these vessels had been damaged since the
5 hurricanes and, therefore, they couldn't fish on them because
6 they hadn't had the money to be able to reequip them with their
7 engines and equipment. They were registered to that vessel, but
8 they had their own boats, and your answer for not checking that
9 was how would you find the boats. But you could perfectly,
10 easily have found the individuals, couldn't you?

11 A. Not necessarily. Again, you're assuming that the
12 contact detail was available.

13 And my point was, even--

14 Q. Why are you saying they weren't?

15 A. --the point was, even if they had boats, those boats
16 should still be in the Register. Whether or not those boats are
17 functional, they should still be in the Register.

18 Q. Did--

19 A. If they are registered--if they're registered
20 captains, their vessels should be in the Register.

21 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, are you
22 saying that they were registered?

23 SIR GEOFFREY: What I'm saying is they had other
24 vessels, and these men were registered as crew, and all it would
25 have needed was a phone call to them.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey.
2 Are you saying that the two vessels that these crew members of
3 at vessel number three were masters of were registered vessels?

4 SIR GEOFFREY: I'm not saying that. I'm saying they
5 existed, but they hadn't been able to be used for years.

6 COMMISSIONER HICKINBOTTOM: No, I understand that.
7 So, they were not registered vessels, so these two individuals
8 claimed for an engine as crew members of vessel number three?

9 SIR GEOFFREY: Claimed for different--

10 THE WITNESS: In addition, I would--

11 (Overlapping speakers.)

12 COMMISSIONER HICKINBOTTOM: I'm sorry, you froze there
13 for a moment, Sir Geoffrey. Could you just repeat that.

14 SIR GEOFFREY: What they claimed for was different
15 engine, in other words, they weren't all the same engine.

16 BY SIR GEOFFREY:

17 Q. But my point at the moment, if I may be permitted to
18 explore it, is why it was not possible simply to call these
19 people or to get in touch with them. Their details are on
20 the--with the Ministry because they are registered as crew to
21 that vessel, why not just call them and check whether they were
22 making fraudulent claims or not? Or making claims as you put it
23 for the same vessel for the same equipment?

24 A. Because, sir, the contact details may not have been in
25 the Register.

1 Quite apart from that, there is no indication there
2 would--there would be no indication that these are actually--if
3 they are captains or masters, there's no indication that they
4 were actually registered a licensed captains. And as such,
5 they're nonqualifying. Because they're not licenced, they still
6 don't qualify based on--

7 Q. Forgive me--

8 (Overlapping speakers.)

9 Q. There was a criterion that you could say--

10 (Overlapping speakers.)

11 Q. --been fishing. Was there not a criterion that you
12 could have an attested letter--

13 A. Yes.

14 Q. --that somebody had been fishing. So, they didn't
15 need to be registered.

16 A. That's true. We have not received any copies of those
17 from the Premier's Office.

18 Q. No, but before you make an allegation in an audit
19 report--

20 A. I'm sorry, let me finish.

21 In addition to that, we have not received any evidence
22 from the Premier's Office that these two other people actually
23 owned boats. So then simply saying that that is a case doesn't
24 mean that is the case. We need evidence.

25 Q. Well, let's leave that--let's assume for the moment it

1 is. What I'm suggesting to you is that you could have explored
2 it, and before you made an allegation that clearly implies,
3 potentially at least, fraudulent conduct, wouldn't it have made
4 more sense to have checked whether there was a basis for them
5 applying for this or requesting this relief?

6 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I don't
7 think there is any evidence of this. But are you suggesting
8 that the Premier's Office did check this?

9 SIR GEOFFREY: Yes.

10 COMMISSIONER HICKINBOTTOM: But before the event?

11 SIR GEOFFREY: Well, no. No, no. What we know is
12 that--well, I can't give evidence, so I--if you want submissions
13 on me, and I will certainly do so. The Premier's Office
14 Response makes it abundantly clear, and that is being attested
15 to by the Premier as well as the Permanent Secretary, that in
16 these cases--

17 THE WITNESS: (Unclear.)

18 (Overlapping speakers.)

19 BY SIR GEOFFREY:

20 Q. I wonder if I might finish my question, if I may, that
21 in these cases--in these cases, these persons owned their own
22 boats and were applying for the relief in connection with them.

23 And the point I'm simply making, and it is abundantly
24 so plain, that before an Auditor makes the suggestion that at
25 its essence deliberate claims have been made for the same

1 equipment, for the same vessel, and money has been acquired from
2 the public essentially under what would appear to be a
3 suggestion of false pretense, a check should be made to ensure
4 that suggestion is safe. Of course, an Auditor might well point
5 out the anomalies.

6 A. If on our checks with the record these individuals do
7 not own licensed boats, that is what the records show.

8 We sent to the Premier's Office a draft report that
9 they had for almost a month. They had the opportunity to come
10 back to us and say, hey, this is not the case. They did not do
11 that. So they cannot at this stage come to us and say, well,
12 you know, this is wrong. They had an opportunity for a month to
13 come back to--

14 (Overlapping speakers.)

15 Q. Well, I think they're entitled to come and tell the
16 truth, Madam Auditor General.

17 (Overlapping speakers.)

18 A. And say to--this is--

19 Q. And they--

20 A. --the purpose of us sending it to them. And we have
21 not received any evidence from the Premier's Office to date,
22 none, to show that these individuals (1) for licence, (2) they
23 had boats, and in fact, that there were actually three different
24 boats. No evidence. So--

25 (Overlapping speakers.)

1 Q. As I said, you don't need to be licensed to receive
2 relief.

3 A. It's basically your word against the records that we
4 have checked and verified that these people do not own boats.
5 It's your words against the records that are contained in
6 Agriculture Department.

7 COMMISSIONER HICKINBOTTOM: But also, Sir Geoffrey, as
8 I understand it, the role of an audit--the role of an Auditor is
9 to audit.

10 SIR GEOFFREY: That is to observe careful language
11 which is properly justified by the facts before her. And the
12 case of the Ministers, as you know, and it is a matter for you
13 to decide plainly or at least for you to consider as part of
14 your Report, is that the language that has been used in this
15 Report is excessive and goes beyond the facts that existed
16 before the Auditor General, not to say the criticisms were not
17 justified and not to say that--

18 A. (Unclear.)

19 (Overlapping speakers.)

20 Q. May I just finish, if I may?

21 A. --which that is in that Report matches exactly the
22 evidence that we had--

23 Q. (Unclear.)

24 A. And it's still matters the evidence that we had. You
25 have not presented anything different. We re.

1 Q. What I--

2 A. --we received--let me finish. We received a bundle of
3 almost 800 pages, and in that bundle no evidence. What were we
4 to do with that?

5 BY SIR GEOFFREY:

6 Q. Be careful, I would suggest, and use your language
7 sparingly and carefully.

8 (Overlapping speakers.)

9 A. --all the time in the world to put together that
10 bundle, what you could have done is presented us with copies of
11 the information that we requested, which would include--which
12 would include the notified letters, notarised letters that these
13 individuals should have had. That is what I would expect to see
14 in the bundle. That did not--

15 (Overlapping speakers.)

16 Q. Madam Auditor General, I'm not disputing any of that.
17 I'm not disputing that you should have had information.

18 A. You're telling me--

19 Q. What time--

20 (Overlapping speakers.)

21 Q. I wonder if--I wonder if I might be permitted to get a
22 word in.

23 A. --without producing any evidence at all, and how is
24 that permitted? You can sit there and say this and that and the
25 other. We have evidence these people were not in the Register.

1 You say you have evidence of something else, produce it, send it
2 to us. It's not sufficient and it is not satisfactory for you
3 to come and sit there and say you have something else and not
4 send it to us.

5 Q. But--

6 A. If you look at my response--

7 Q. It's not me, but may I complete my question?

8 A. --that particular issue, we said send us the evidence,
9 we can make amendment in addendum. We have not received any
10 evidence. At this stage I'm wondering--

11 Q. And as I'm trying to say, Madam Auditor General, I
12 don't want you to think for a moment that I disagree with much
13 of what you've said about the availability of material. The
14 point that I'm seeking to make is that your language, when you
15 carried out checks on the farmers, you went and found 19 farms
16 or expected them, your reason to the Commissioner was that you
17 couldn't find the boats. Well, all I'm asking is, why not
18 simply contact those crew members to ascertain what the facts
19 were?

20 A. Because the information was not available.

21 Q. But they have to give their names and addresses when
22 they register as crew.

23 A. How do you find someone with a name and address?

24 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, I've
25 heard the evidence. I've heard your--

1 SIR GEOFFREY: I'm leaving it there.

2 COMMISSIONER HICKINBOTTOM: I understand your
3 submission, and your submission goes not really as I understand
4 it to the qualities of the Audit as a whole but to the language
5 that the Auditor General has used.

6 SIR GEOFFREY: Yes. I think in this case that is
7 exactly right, that the concern is that there has been an
8 expression--may I say, as you so know, my private opinions are
9 one thing, and the Auditor General is understandably concerned
10 by the questions I'm putting, but I put them as you know, Sir,
11 on instructions, and frankly the concern that I'm seeking to
12 articulate here is that the language used in this report--

13 THE WITNESS: My answer, Sir, is that you are--

14 COMMISSIONER HICKINBOTTOM: Auditor General--

15 THE WITNESS: --you are making statements that are
16 unsupported, and these statements are actually going to be
17 reported elsewhere, and we have not received any evidence of
18 anything that you have said, and I think that is reckless.

19 BY SIR GEOFFREY:

20 Q. Well, no, it's not reckless because I've actually
21 checked my facts. I have actually seen the evidence. Whether
22 you--when and where you'll get it--

23 A. Unclear.)

24 (Overlapping speakers.)

25 Q. --is a matter for others, but the reality is--the

1 reality is that an exercise has been done, and certain of these
2 people, as the Premier's Office Response sets out in writing
3 have confirmed they have other vessels laid up for various
4 reasons for which the applications were made, which is what the
5 Premier's Office Response says.

6 Now, I want to leave it there because I--

7 COMMISSIONER HICKINBOTTOM: Sir Geoffrey--

8 SIR GEOFFREY: Yes.

9 COMMISSIONER HICKINBOTTOM: --this is important. You
10 don't, as I understand it, on this particular criticism, seek to
11 criticise the Audit as an audit. The only thing you criticise
12 under this particular criticism is the language that the Auditor
13 General has used, and I have heard--

14 SIR GEOFFREY: Having--yes.

15 COMMISSIONER HICKINBOTTOM: I heard the evidence--

16 SIR GEOFFREY: I think we make two points. The first
17 is the language.

18 The second point is that the Report fails to grasp the
19 context and crisis nature of a pandemic scheme being operated
20 against the clock in the immediate pressure of people suffering
21 genuine hardship where all around the world these
22 value-for-money principles were being relaxed, if not abandoned
23 altogether.

24 COMMISSIONER HICKINBOTTOM: I know, and I've heard a
25 lot about evidence about that. I've heard evidence about the

1 criteria that were adopted by Cabinet, the criteria which is set
2 out in the Premier's Office's Response, initial response, for
3 example, on page 35 of that Response, which sets out the
4 criteria, that Cabinet adopted for farmers and, on the following
5 page, for fishermen. It goes on to set out how they were to be
6 assessed under the criteria as the Cabinet required.

7 I have those criteria. I've had evidence as to how
8 those criteria were changed, and I will have to make of all of
9 that what I can.

10 SIR GEOFFREY: Right.

11 COMMISSIONER HICKINBOTTOM: But in respect of this
12 particular criticism, I've heard your submissions.

13 SIR GEOFFREY: Well, I just want then to move finally
14 to this question, related question, of Cabinet policy.

15 COMMISSIONER HICKINBOTTOM: Just one moment, Sir
16 Geoffrey.

17 MR RAWAT: Before you move on, may I just raise one
18 point before we forget it, is I think the questioning has
19 focused on what is paragraph 101 of the Premier's Office's
20 Response, which is at page 236 in the bundle, and that's the
21 challenge. The Auditor General, I put that to the Auditor
22 General and Sir Geoffrey has taken her to it.

23 In fairness to the Auditor General, she did then go on
24 to explain on page 221 why her audit drew the conclusion that
25 she did, but what I would mention is that Sir Geoffrey has said

1 that he has seen the evidence. There is no evidence cited in
2 the Premier's Office Response, which was prepared on the 7th of
3 September or submitted to the Commission on 7th of September, so
4 the evidence existed by the 7th of September. It was not made
5 available when Dr O'Neal-Morton gave evidence on the 8th of
6 October, and she was asked to produce it. It still hasn't been
7 produced, and in fact, what the Commissioner has been asked to
8 do is grant another extension to provide it.

9 If Sir Geoffrey has seen it, can we have it tomorrow,
10 please?

11 COMMISSIONER HICKINBOTTOM: With respect, Sir
12 Geoffrey, we've been pressing for this information, these
13 documents because they are relevant to the evidence this week,
14 and we still haven't--

15 SIR GEOFFREY: I'm aware of that, and urgent efforts
16 are being taken.

17 THE WITNESS: I had thought this was a session for me
18 to ask questions of the Witness. I realise that both counsel
19 and you, Commissioner, wish to ask questions of me, but would it
20 not be better at least to finish this witness whom I was very
21 anxious to be able to release or to allow you to release as soon
22 as possible? And I just have a few more questions to make, and
23 then I'm yours if you wish to continue to grill me rather than
24 permit me to ask the Witness questions.

25 COMMISSIONER HICKINBOTTOM: I have absolutely no wish

1 to grill you.

2 SIR GEOFFREY: I'm most obliged. Why don't I finish,
3 then?

4 COMMISSIONER HICKINBOTTOM: But what I would like is
5 for the questions to be asked on a procedurally fair basis. I
6 mean--

7 SIR GEOFFREY: Well, of course.

8 COMMISSIONER HICKINBOTTOM: --if you have information
9 upon which you're asking questions which neither we nor the
10 Witness, despite the fact that I've asked for it, have not seen,
11 that may--

12 SIR GEOFFREY: My questions, with respect, do not--are
13 not contingent upon what I have or haven't seen. The point that
14 I have sought to address with this Witness is that she makes
15 assumptions based on the evidence she has that were not checked.
16 It's as simple as that.

17 THE WITNESS: (Unclear.)

18 (Overlapping speakers.)

19 SIR GEOFFREY: Before you--let me finish, Madam
20 Auditor General, be so kind.

21 THE WITNESS: The evidence was left against the
22 record--

23 BY SIR GEOFFREY:

24 Q. And it is important that we have a normal procedure,
25 and while it's perfectly normal for judicial interventions

1 during counsel's questioning, it's not normal for a witness to
2 interrupt the questions, so just allow me if you would be so
3 kind to finish the question.

4 And the point is that you had available to you the
5 names and addresses of those whom you could have sought
6 confirmation about in exactly the same way as you did with the
7 farmers, and yet you chose not to do so, but rather to suggest
8 that on the--that you could be confident that applications were
9 made for the same equipment and for the same vessel.

10 SIR GEOFFREY: And that is the criticism we make, Sir,
11 and the witness has addressed it. She couldn't find the boats.
12 That's what she told you.

13 THE WITNESS: Sorry, I said that we didn't go to look
14 for the boats because we did not have the information. How are
15 we going to find it if we don't have the details?

16 BY SIR GEOFFREY:

17 Q. You had the names and addresses.

18 A. The names of the vessels--well, I would suggest that
19 you go out and find the vessels based on the names.

20 (Overlapping speakers.)

21 Now with respect--

22 Q. Don't you just--

23 A. --with respect to the farmers, we were able to get
24 additional information from the Department of Agriculture for
25 those individuals which allowed us to go out and look for those.

1 That information was not available for the boats.

2 Q. So you just contact the individual and say "where is
3 your boat".

4 A. And how do I do that, pray tell? Pretense?

5 Q. You've got a name and address.

6 A. We don't have the numbers.

7 Q. The numbers of what?

8 A. The individuals.

9 Q. Well, visit them. You have their address. You went
10 to the farms, why not visit the individuals?

11 A. (Overlapping speakers) --we're not at the farms.

12 And again, you're missing the point. These are boats.

13 Q. But they will be able to tell you where their boats
14 are, wouldn't they?

15 A. That's besides the point because our information is
16 based on what was in the Registers. Those individuals are not
17 in the Registers as masters.

18 Q. All right.

19 A. Means that they are--

20 Q. But perhaps we can move on just to the final point,
21 which I wanted to raise with you. You assumed, Auditor General,
22 as I understand your evidence, that a policy once approved by
23 the Cabinet could only be changed by the Cabinet; is that right?

24 A. An assumption? The constitution actually makes at
25 provision that policy is made by Cabinet and that Ministers

1 carry out the Policy in accordance with what has been provided
2 in Cabinet.

3 Q. Well, so, your assumption is, then, that a Minister is
4 not entitled in any circumstances to change a Cabinet or aspects
5 of a Cabinet policy unless he returns to the Cabinet to get that
6 approval. Is that your understanding?

7 A. I haven't seen any legislation that permits that.

8 Q. Right.

9 So, it is your understanding.

10 A. I have not--

11 Q. And you--you were in the presence of evidence that the
12 Policy had been changed, weren't you? In fact, de facto.

13 A. Refresh my memory, please.

14 Q. Well, you could see that the criterion
15 adopted--criteria adopted by the Cabinet were not being
16 implemented, but some other means of approaching a payment to
17 the applications directly, for example; yes?

18 (Overlapping speakers.)

19 Q. So clearly there'd been a change.

20 A. There's in--with respect to the application of the
21 Policy, the criteria we saw changes within the Ministry.
22 Basically, they did not comply with the Policy.

23 Q. Yah.

24 And if it were, in fact, legally available to a
25 Minister to change the Policy on the basis that he would believe

1 that he could return later to the Cabinet at some point but
2 his--that his colleagues would be in support of it, would that
3 somehow influence your Report?

4 A. If there was evidence that he had contacted them and
5 gotten their approval and I've seen that happen, I see--

6 (Overlapping speakers.)

7 Q. It would make a difference.

8 A. --it is Round Robin approval of a change per se.

9 Q. But I--let's just assume for a moment that a Minister
10 is entitled in his Ministry to make changes to policy in his own
11 ministerial field. Would it change your Report?

12 A. An assumption?

13 Q. If it was so.

14 A. I would not change a report on an assumption.

15 Q. Well, then, I'm asking you to assume for the moment
16 that the position could be that the Minister had changed the
17 policy perfectly legitimately, and you were in the presence of
18 evidence that applicants were being paid directly rather than
19 suppliers. Would it change your Report?

20 A. It would prefer to get the changed policy in my hand.
21 That would change my Report.

22 Q. I see, very well. Well, thank you very much, Madam
23 Auditor General. I'm most grateful to you for coming. I'm
24 sorry to have kept you as long as we have, but I hope not too
25 long.

1 COMMISSIONER HICKINBOTTOM: Good. Thank you, Sir
2 Geoffrey.

3 SIR GEOFFREY: Those are my questions.

4 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

5 MR RAWAT: No, thank you.

6 COMMISSIONER HICKINBOTTOM: Good. That I think
7 concludes the business of the day. Tomorrow--

8 SIR GEOFFREY: I wonder if I might detain you, no need
9 for the Witness, just for a moment.

10 COMMISSIONER HICKINBOTTOM: Certainly.

11 Auditor General, thank you for coming back and
12 answering these questions as you have, and it has been useful,
13 some of it has been useful, so thank you very much for your time
14 and your evidence.

15 (Witness steps down.)

16 SIR GEOFFREY: I'm pausing just out of courtesy to the
17 Witness because I didn't want to--it's got nothing to do with
18 the Witness. It's simply, if I may, an application that I need
19 to make to you this evening.

20 In the course of the evidence of both the current
21 Governor and the former Governor and, I think, the Auditor
22 General, reference has been made by Mr Rawat to Written
23 Responses to the Warning Letters, and in the case of the
24 Governors, if I can refer them to them compendiously, documents
25 appear to have been supplied to you, Sir. The participant has

1 not seen that--those documents nor the Written Responses, and my
2 application is that we should do so. The documents from--to
3 which Mr Jaspert referred today seemed to contain relevant
4 figures and relevant facts and details which those I represent
5 would like to have so that we can consider what, if any,
6 response or further inquiries need to be made in connection with
7 them.

8 And my application is: Could we please see the
9 Written Responses of each of the three recent witnesses?

10 COMMISSIONER HICKINBOTTOM: Yes, of course. The
11 Responses of all of the--those to whom criticisms have been sent
12 have not--

13 SIR GEOFFREY: Yes.

14 COMMISSIONER HICKINBOTTOM: --been--as I understand
15 the application.

16 Mr Rawat.

17 MR RAWAT: Well, I think in relation to the Auditor
18 General, because I think the application is related to as well
19 as the Auditor General as I understand it, it may be better just
20 to wait until we've collected all of the material because we're
21 waiting in relation to that for the information in relation to
22 the boats. We're waiting for more material that's got to come
23 in which was missing from the Premier's Office's Response.
24 We're waiting, although you've given an indication that if it
25 doesn't arrive, then you will draw a conclusion from that for

1 Dr O'Neal-Morton to actually confirm which parts of her
2 Preliminary Report actually responded to the Auditor General's
3 Reports. So, I think it might be better to take stock in
4 relation to that.

5 In relation to the Governors, I think--what I'd
6 suggest, Commissioner, is we revisit it at the end of their
7 evidence. We can deal with it tomorrow morning. But the
8 material--it begs a bigger question because the material that
9 I've been taking Mr Jaspert through is material that was
10 provided by the Attorney General in response to a request from
11 the Commission that all relevant documents cited in the Position
12 Statement of the Elected Ministers be disclosed, and what we're
13 finding is, of course--and what Mr Jaspert pointed out during
14 the course of today--is that the--it's letters from the Premier
15 being disclosed but letters from the Governor which must have
16 been received by the Premier because the Premier's Response to
17 them have not been disclosed. So I'd suggest we perhaps
18 consider it overnight and then see the best way forward.

19 COMMISSIONER HICKINBOTTOM: And--

20 SIR GEOFFREY: I'm totally baffled by that. Either
21 the Government, by which I mean the Elected Ministers, are
22 participants in this, in which case they are entitled to see the
23 material that you have seen or they are not, and frankly at the
24 moment the sense that we have as your sole, at least continuous
25 by discipline, is the participation is not really meaning a very

1 great deal.

2 This is the first opportunity that I have examined
3 witnesses. During the course of that examination, I have been
4 interrupted, I have been subjected to argumentation not only
5 from counsel, Mr Rawat, but rather more from you.

6 I now apply for a basic and fundamental standard of
7 equitable treatment which is to see the documents to which
8 Mr Jaspert referred when he spoke of figures which you wrote
9 down, I noticed, of the amounts of funding provided by the
10 United Kingdom Government, and I'm told I can--I may not be able
11 to have them or I can't have them until tomorrow or the next
12 day. What is the point of that when I may have to
13 cross-examine?

14 COMMISSIONER HICKINBOTTOM: Well, let's just sort of
15 break this down slightly.

16 SIR GEOFFREY: I think we should because it's a real
17 concern, and if I may say so, the frustrations on both the
18 Inquiry team side and the participants' side are all too
19 manifest both in the correspondence and in your frequent
20 criticisms of those I represent and those who are instructing
21 me, but we should try to put aside those for the sake of you
22 reaching a proper conclusion, and all I seek is equitable and
23 fair treatment of the participants. How on Earth can it be
24 wrong for me to not to see--or rather to see documents that you
25 have that are influencing your thinking at the time I need to

1 see them, which is when the Witness are giving evidence? I
2 simply don't understand the point of delay.

3 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, I
4 haven't said anything about this application yet at all.

5 SIR GEOFFREY: Well, in that case I apologize. If I
6 have been premature and you're going to grant it, I would be
7 most grateful, but I want to see them as soon as possible.

8 COMMISSIONER HICKINBOTTOM: Yes. But firstly, in
9 relation to the Responses, we have told all of the Witnesses who
10 have had letters of criticism that their responses would be
11 confidential, and therefore to release them to the participants
12 I would need at least to speak to the responders, the two
13 Governors that we're speaking about.

14 SIR GEOFFREY: It's about the documents?

15 COMMISSIONER HICKINBOTTOM: Not just as a matter of
16 courtesy but as a matter--

17 (Overlapping speakers.)

18 COMMISSIONER HICKINBOTTOM: Secondly, in relation to
19 the documents, I will look at the documents and see whether
20 there is any good reason for not letting you have the documents.

21 SIR GEOFFREY: Well, I am most grateful for that. As
22 soon as possible, if I may.

23 And may I observe this point--

24 COMMISSIONER HICKINBOTTOM: But, Sir Geoffrey, just
25 one moment.

1 SIR GEOFFREY: Yes?

2 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I'm afraid
3 you have to let me finish when I'm speaking.

4 SIR GEOFFREY: There's a delay, I'm sorry, on the line
5 that I've got.

6 COMMISSIONER HICKINBOTTOM: And I'm sorry because I
7 know there's a delay, and sometimes it's difficult to--I know
8 it's more difficult to interrupt and not interrupt people
9 remotely.

10 But I will look up them, and certainly some the
11 documents your clients will have because--they will because they
12 are the--

13 SIR GEOFFREY: No, no, I agree, but there are plainly
14 ones we don't. He's citing clear figures that have been
15 prepared for your Inquiry on this critical issue of funding for
16 the Public Service on which, if I may say, probably deserved its
17 own separate section of your Inquiry because we now need to go
18 away and look. A suggestion was made by Mr Jaspert that this
19 Government had imposed a pay--a recruitment freeze. We need to
20 go and look at that. We need to look at the figures that
21 Mr Jaspert's quoted, clearly from documents in front of him and
22 which he served, but don't--because I don't think we accept, I'm
23 afraid, quite a lot of what he said.

24 So, unless I'm able to it have the document, we can't
25 put before you what the facts may or may not be. That's my

1 point.

2 COMMISSIONER HICKINBOTTOM: I will look at the
3 documents, and we'll get back to you as soon as we can.

4 SIR GEOFFREY: Thank you.

5 COMMISSIONER HICKINBOTTOM: As you know, where we can,
6 we share everything with not only the participants but the
7 public, but we will look at these documents and come back to you
8 as soon as we can.

9 I understand the foundation of the submission, which
10 is that the Elected Ministers, in defending their position
11 effectively--but not effectively--in defending their
12 position--need to see the evidence including the documentary
13 evidence that the position that they have to defend is based
14 upon. I understand that. And they will have that opportunity.

15 You will appreciate that some of the evidence, when
16 it's given orally, is new to us as well, and the--but I will
17 consider the application and come back to you as soon as we can,
18 both with--

19 SIR GEOFFREY: Thank you.

20 COMMISSIONER HICKINBOTTOM: --both with regard to the
21 Position Statements and also with regard to the accompanying
22 documents.

23 SIR GEOFFREY: Thank you.

24 Now do I understand that you have a directions hearing
25 shortly? It will either be tomorrow or Friday?

1 MR RAWAT: Friday.

2 COMMISSIONER HICKINBOTTOM: Friday.

3 SIR GEOFFREY: Friday.

4 COMMISSIONER HICKINBOTTOM: I think it would be a good
5 time to take stock and make directions for the next stage of the
6 Inquiry.

7 SIR GEOFFREY: Yes. There may be a matter I need to
8 raise you with at some point. It may be perhaps first by
9 communication with Mr Rawat, but let me--Friday will probably do
10 for that.

11 COMMISSIONER HICKINBOTTOM: Yes, okay. Good.
12 Anything else, Mr--Sir Geoffrey?

13 SIR GEOFFREY: No, thank you.

14 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

15 MR RAWAT: No, thank you, Commissioner.

16 COMMISSIONER HICKINBOTTOM: Good. Thank you all.

17 SIR GEOFFREY: Thank you very much.

18 COMMISSIONER HICKINBOTTOM: Tomorrow.

19 Good. Thank you.

20 (Ends at 6:40 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 horizontal line.

DAVID A. KASDAN