

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 52

(THURSDAY 21 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, Mr Edward Risso-Gill 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.

Honourable Andrew A Fahie gave evidence.

Court Reporter:

MR. DAVID A. KASDAN
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
david.kasdan@wwreporting.com

Those present:

Session 1

Sir Geoffrey Cox QC, Withers LLP
Mr Edward Risso-Gill, Withers LLP
Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Mr Augustus Jaspert

Mr Steven Chandler, Secretary to the Commission
Ms Juienna Tasaddiq, Assistant Secretary to the Commission
Mr Andrew King, Senior Solicitor to the Commission
Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

Session 2

Sir Geoffrey Cox QC, Withers LLP
Mr Edward Risso-Gill, Withers LLP
Mr Niki Olympitis, Withers LLP

Mr Bilal Rawat

Hon Andrew A Fahie

Mr Steven Chandler, Secretary to the Commission
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

1
2
3 COMMISSIONER HICKINBOTTOM: Good morning, everyone. I
4 think we're ready to recommence.

5 Mr Rawat.

6 MR RAWAT: Good morning, Commissioner.

7 Commissioner, just to put on the record the legal
8 attendance this morning, we have on behalf of the Attorney
9 General and the Elected Ministers, Sir Geoffrey Cox QC, Edward
10 Risso-Gill, and Martha Eker-Male. Representation for the
11 remaining Members of the House of Assembly is not present--

12 COMMISSIONER HICKINBOTTOM: Yes.

13 MR RAWAT: --either remotely or in person.

14 BY MR RAWAT:

15 Q. Mr Jaspert, I hope you can see and hear me?

16 A. I can. Good morning.

17 COMMISSIONER HICKINBOTTOM: Good morning.

18 BY MR RAWAT

19 Q. Good morning.

20 Thank you for returning and thank you for making
21 yourself available at relatively short notice.

22 The topic I would like to canvass with you next is the
23 power--your power as Governor to appoint Public Officers under
24 Section 92 of the Constitution. And to summarise, this is
25 something you mentioned before, but Section 92(1) gives you

1 power to make appointments to Public Offices and to remove and
2 to exercise disciplinary control or persons holding or acting in
3 such offices.

4 But you act in accordance with the advice of the
5 Public Service Commission save that you can act otherwise and in
6 accordance with that advice if you determine that compliance
7 with that advice would prejudice Her Majesty's service. Would
8 you accept that summary of the power that Section 92 gives you?

9 A. Yes, that is correct.

10 Q. And what you can do is, before exercising those
11 powers, you can refer the advice given to you by the Public
12 Service Commission back to the Commission for reconsideration
13 but then what you also have to do before appointing any person
14 to the Office of Head of Department or any more senior Office,
15 the Governor shall, in addition, consult with the Premier.

16 Does it follow when you are appointing Permanent
17 Secretaries that you would have to consult the Premier before
18 making any appointment?

19 A. Yes, it would, as it's written down in the
20 Constitution.

21 Q. If we could go to bundle 3--and I could ask you just
22 to turn up page 35 of that bundle.

23 A. I have a letter of 2nd of August 2019 from myself to
24 the Premier.

25 Q. That's right. As you said, letter of 2nd of August

1 2019 from you to the Premier, and it's responding to a letter
2 from the Premier where you--and he's responding to a memorandum
3 that you had sent him to consult your decision on the
4 appointment and reassignment of Permanent Secretaries, and what
5 you are doing in this letter is setting out the reasons and this
6 is responding to a request from the Premier, reasons for your
7 decision not to accept the Public Service Commission's advice as
8 to certain appointments.

9 And you make the point that deliberations and advance
10 planning on possible reassignment of Permanent Secretaries
11 actually started before the election in case there were
12 portfolio changes.

13 So, this is, obviously, in the run-up to the election
14 of February 2019.

15 So, did you engage in some advance planning once you
16 knew there was going to be an election?

17 A. As you would expect, in Public Service there is
18 planning for any change of administration, and yes, the Deputy
19 Governor and myself did discuss that with the RG's team in
20 ensuring an effective and efficient Public Service.

21 Q. Now, the Premier's Response to your letter--and before
22 we leave your letter, what you--and just to summarise some of
23 the reasons you gave for not following the Public Service
24 Commission's advice, and firstly, you say they didn't provide a
25 basis for the advice, for their advice on the merit and ability

1 of specific appointments. Commission did not provide evidence
2 to support what they took into consideration, the recommendation
3 presented to them by the Deputy Governor.

4 There was a concern by you--and this is at
5 page 37--I'm not going to name names, but that by directly
6 appointing someone who had contested the election, there was the
7 risk of eroding the impartiality of the Public Service, and you
8 then go on to discuss in detail specific appointments that you
9 had decided to make.

10 The Premier's substantive response to that is at page
11 41 in the bundle.

12 MR RAWAT: Commissioner, for your note, there was a
13 holding response from the Premier at page 40, substantive
14 response is at 41.

15 BY MR RAWAT:

16 Q. Now, again, it's a lengthy letter 12th of August 2019
17 from The Honorable Premier to yourself, and he takes issue with
18 the basis on which you decided to make certain appointments.

19 The Premier makes this point: "Your admission that
20 'deliberations and advance planning on possible reassignment of
21 Permanent Secretaries actually started before the election'
22 speaks volumes about your much vaunted belated policy of
23 intensive consultation. Indeed, I remember walking in on a
24 meeting where this very issue of the appointment and
25 reassignment of Permanent Secretaries was being actively

1 discussed in my absence. Presence at that meeting with the
2 Governor, the Deputy Governor, and the Director of Human
3 Resources".

4 Can you assist the Commissioner just with a little bit
5 more detail (a) about that meeting and (b) what concerns the
6 Premier raised with you about not being present in that meeting?

7 A. I'm afraid I don't recall that instance, and it's not
8 clear from that letter whether the current Premier is referring
9 to himself as Leader of the Opposition there if it was noted--as
10 you read out at the beginning of that actually started before
11 the election, so I would be surprised if the then-Leader of the
12 Opposition would have joined a meeting about the Public Service,
13 but I'm afraid I don't fully recall that meeting.

14 However, on the part of the question around the
15 meetings with the Deputy Governor and with the Director of Human
16 Resources as we discussed at that late time or was, of course,
17 discussed responsible for the terms and conditions of the Public
18 Officers, as well as you noted, appointments and it would be
19 quite normal for us to review the positions across the Public
20 Service.

21 Q. The point The Honorable Premier makes is this: "Given
22 the critical role played by Permanent Secretaries, they can
23 easily stymie and frustrate the work of the Government. It is
24 therefore imperative that the Government is supported by a cadre
25 of Permanent Secretaries who will partner with them and assist

1 to facilitate the timely and efficient implementation of
2 government policy in a professional and responsible manner.
3 This is precisely why you exceeded my recommendation with
4 respect to the appointment of a Permanent Secretary to my
5 office. It would be unthinkable for the duly elected Premier or
6 indeed a Governor to be saddled with a Permanent Secretary that
7 he did not approve of. This would not be in keeping with the
8 partnership to which you speak".

9 The Governor--the Premier, forgive me, then goes on to
10 address your approach to the Public Service Commission. But if
11 we take over to page 43, please. The third paragraph from the
12 bottom, the Premier says this: "It would provide fertile soil
13 for the disquieting and growing perception that the Governor is
14 attempting to micromanage the Government with the resulting
15 stagnation and frustration of the Government's agenda. The
16 sudden unprecedented meeting of Permanent Secretaries as a group
17 without the courtesy of informing any of the Ministers is, in
18 this regard, to say the least, noteworthy".

19 He then discusses one person in particular, and I'm
20 not going to name names, but he identifies that that person has
21 a family connection to another senior Public Officer, and points
22 to it as something which nonetheless allowed that individual to
23 serve as a Permanent Secretary without concern of nepotism but
24 now asks why you are raising concerns of a conflict in relation
25 to another person, and we saw that in the previous letter in

1 your letter to the Premier.

2 But what he does say about the person who has the
3 family connection, "I have complained about the fact that that
4 person has been openly critical of my Government's policies on
5 Facebook".

6 Now, the reason I wanted to draw your attention to
7 this correspondence was to ask you about how the process whilst
8 you were Governor, how the process of appointing Permanent
9 Secretaries worked. The Honourable Vincent Wheatley when he
10 gave evidence to the Commissioner said that he didn't have power
11 to pick his own Permanent Secretaries. Clearly, you have to
12 consult under the Constitution with the Premier. But to what
13 extent do you have to accede to the Premier's wishes as to which
14 Permanent Secretary would be appointed where?

15 A. Thank you.

16 Well, I refer back to Section 92 of the Constitution,
17 the model in the British Virgin Islands can rather be simplified
18 as sometimes tenders similar to the Westminster model. We don't
19 in the British Virgin Islands have an American model of Public
20 Service where the posts are appointed directly by the political
21 side. Public Service in the British Virgin Islands is impartial
22 and serves whatever Government of the day, and they're not
23 political appointees. In terms of the constitutional duty--that
24 is, as you rightly pointed out--under Section 92(4), before
25 appointing any person to their Office or Head of Department, of

1 which I would counter or any more senior Office, which I would
2 count the Permanent Secretary as part of that--the Governor
3 shall in addition consult with the Premier.

4 Actually, in this case, we talked quite a lot in the
5 previous Section about my desire in which to work in partnership
6 with the Elected Government. Both the Deputy Governor and
7 myself held extensive consultations with the Premier even before
8 this point going above and beyond the position in the
9 Constitution, including meetings to try to discuss arrangements
10 and to take on board views.

11 And separately, if there were any issue, there are
12 assertions in the Premier's letter. If there were any issues
13 about particular Public Offices to make clear that those
14 are--should be investigated or looked at separately, I won't go
15 into specifics, obviously they were names people but the case
16 that you did mention was subject to a report by the
17 Deputy--well, subject to a Report as part of that particular
18 allegation.

19 But the principle is that it is a free, impartial,
20 non-political Public Service that serves the Elected Government
21 of the day. I had confidence in the Public Officers and the
22 senior Public Officers that we had. There were no reasons given
23 to me as to why there should be any difference on that.

24 Thank you.

25 Q. Taking you back to the example, if it suggests your

1 constitutional obligation to stand up for the Public Service and
2 to ensure that it is impartial and independent, what can you do
3 in circumstances where a Minister or a Premier is raising
4 concerns about somebody being openly critical on social media?

5 A. Concerns--I will speak in general terms rather than
6 specifics about individuals, but if any concerns were raised to
7 either myself or to the Deputy Governor, who is in most cases
8 the Manager of the Permanent Secretaries, then there are in
9 which he--procedures in place to look at those and consider
10 whether there was any need for any internal or formal
11 investigation or approach on them. That could sometimes in
12 terms be about internal HR matters, it could also be sometimes a
13 referral to the Public Service Commission, potentially on
14 disciplinary matters. Those were in general terms. The reason
15 is always there. If any Minister ever had any concern about any
16 of their Officers or if any officer had a concern about another
17 officer, there are established procedures for those arrangements
18 to be taken forward.

19 Q. But under the Constitution, is it legitimate for an
20 elected official to say to you as Governor "I don't want this
21 person as my Permanent Secretary because they are someone that
22 will frustrate the work of my Government"?

23 A. Well, it is--an elected politician can always feel
24 free to say whatever they--whatever they wish, I can't speak for
25 them on that. But in terms of as I read the Constitution, it is

1 not the responsibility of a politician to appoint Public
2 Officers. It is the responsibility of the Governor to appoint
3 Public Officers on the advice of the Public Service Commission,
4 and having consulted based on the seniority of the post,
5 consulted with the Premier. So, it would be outside of the
6 Constitution and a breach of the Constitution should a
7 politician try to direct or try to appoint directly a Public
8 Officer, and for me that was important both to uphold the
9 Constitution and to uphold the impartiality of the Public
10 Service.

11 Q. Is a politician entitled to expect that (a) that they
12 should have a veto over who is the Permanent Secretary, and (b)
13 that they should expect that Permanent Secretary to share their
14 policy agenda?

15 A. So, any politician who is part of the Elected
16 Government, and I'm talking just in terms of those who are
17 Members of the Administration of the time, should have the
18 expectation that all of their Public Officers serve the Elected
19 Government of the day. And if they are not doing that in a fair
20 and impartial way, as part of Public Service codes and values,
21 then that should be a concern that is raised, so they should
22 expect to have the support of all of their Officers, and they
23 should expect to be able to raise any concerns if that doesn't
24 materialize, whether that is a bad performance management issue
25 or whether it is a more serious conduct, but it is not up to the

1 politicians to directly appoint that is not in line with the
2 Constitution.

3 Q. If you turn up page 107 in the bundle, same bundle,
4 please.

5 A. Thank you.

6 Q. It's another letter from The Honorable Premier to
7 yourself dated the 13th of February 2020, and it concerns the
8 appointment of the previous Attorney General, and what's said to
9 be a delay on your part in progressing or ensuring that the
10 position of Attorney General was advertised so that a new
11 Attorney General could be appointed in time to take up office
12 after 11th February 2020. The Premier points out that good
13 governance requires timely decision making and proper succession
14 planning on your part and says that you ought to be more
15 proactive to ensure that the process of appointing a new
16 Attorney General was completed in advance of the contractual
17 period of the incumbent so as to ensure a smooth transition.

18 He goes on at page 108 to say, unfortunately, you did
19 not do so, and your inaction has resulted in inordinate and
20 unreasonable delay, whereby the former Attorney General's
21 contract has expired with no meaningful and genuine steps taken
22 by you to secure a new appointment in a timely manner.

23 The Premier goes to say, given the current
24 Administration's issues with the incumbent AG your inaction
25 gives rise to the unsavory perception that the process is being

1 deliberately manipulated by your office to ensure that the
2 incumbent retains his position by holding over until a new AG is
3 appointed at your convenience. This is reinforced by your
4 decision to unilaterally extend the period of the incumbent
5 without seeking the advice of the Judicial and Legal Services
6 Commissions albeit on a temporary basis, which flies in the face
7 of established precedent whereby the Solicitor General is
8 usually appointed to act as the AG whilst the JOCS completes the
9 screening of candidates.

10 Now, the allegation that is made against you here,
11 Mr Jaspert, in this letter is that you deliberately delayed in
12 beginning the process of finding a new Attorney General in order
13 to allow the previous Attorney General to continue even on a
14 temporary basis, so giving the perception that you, as Governor
15 and your office, was deliberately manipulating the process.

16 Do you have any response to that?

17 A. Thank you. I confirm there was no intention of
18 deliberate delay, I definitely strongly counter the misguided
19 assertion in that letter of deliberately manipulated the
20 appointment of the now current AG, as you would expect in line
21 with the Constitution, giving me powers in the Constitution
22 particularly relating to the Judicial and Legal Services
23 Commission.

24 Thank you.

25 Q. Just to press you a little bit on this. Why was there

1 a delay in appointing a new Attorney General?

2 A. In the papers you have here, I'm afraid what you don't
3 have is my responses to these various letters, so I will be
4 working from recollection on some of them, but I do recall this
5 discussion being around making sure that there was time for the
6 then-AG to complete important work in the middle of what was an
7 extremely pressurized period with the pandemic, and also to
8 ensure that there was an effective handover with the incoming
9 Attorney General. That was all quite normal arrangements as
10 part of appointments that you ensure there is a smooth
11 transition and there is a smooth handover as part of any
12 transition in any public office.

13 Q. But the point that the Premier is making, which I'd
14 ask you to address directly, is that you were not timely in
15 succession planning. He makes the point that you know the
16 Attorney General's going to move on, and we will need to be a--a
17 new Attorney General would need to be appointed, and yet you
18 take no steps, it seems, to advertise short list and appoint in
19 good time. Is that what happened? Did you have to extend the
20 incumbent's time so that you could in effect catch up with the
21 need to appoint a new AG?

22 A. Once again, I'm afraid I don't have all of the
23 information here.

24 From memory what I do recall--and I won't go into the
25 contractual details but there was a part on the former AG of

1 making sure that his contract was served. There was then
2 consultation with the Judicial and Legal Services as you would
3 expect, as is set out in the Constitution of taking forward the
4 approach for the appointment of the next Attorney General. I'm
5 afraid about the specifics set out I can't remember the exact
6 date on which each of those happened, but I was confident as a
7 general point at all times this was in line with the
8 constitutional duties and constitutional responsibilities around
9 appointments, in this case, this is an appointment that is
10 covered under the appointment to legal Officers, so covered
11 under Section 95 as opposed to Section 92, although the Attorney
12 General also acts as a senior officer, that sort of account we
13 had, I believe.

14 Thank you.

15 Q. If you turn up page 18 of the same bundle, please.

16 COMMISSIONER HICKINBOTTOM: 18?

17 MR RAWAT: 18.

18 BY MR RAWAT:

19 Q. And what is headed "draft notes of a meeting on the
20 24th of May 2019".

21 COMMISSIONER HICKINBOTTOM: Mr Rawat, I have not got
22 that. Page 18 of that bundle?

23 MR RAWAT: Yes. After the tab.

24 COMMISSIONER HICKINBOTTOM: I'm sorry. Entirely my
25 fault. Sorry.

1 Thank you.

2 BY MR RAWAT:

3 Q. Do you have it, Mr Jaspert?

4 A. I do. Is this draft notes Friday 24th of May 2019?

5 Q. It's a note of a meeting between yourself and The
6 Honorable Premier. And if you go through to page 22, one of the
7 topics discussed was BVI Airways, and what's recorded--and this
8 seems to be the Premier is saying this--that there is no way--no
9 way where someone should not have been charged because a charge
10 of deception was never brought on the payment of \$7.2 million,
11 and you say, "let's follow the evidence". There is more detail
12 given by the Premier, but I won't set it out.

13 But if you turn to through 71 in the same bundle.

14 A. Can I confirm that's relating to the Loan Guarantee?

15 Q. Yes, it is. It is a letter 31st of December 2019. It
16 relates to the UK Loan Guarantee for hurricane recovery, and
17 it's from the Premier to yourself. And I think we've heard
18 evidence of this that when the Premier and his colleagues took
19 office, one of the things they wanted to do was to reassess and
20 renegotiate the conditions that the UK Government sought to
21 attach to the UK Loan Guarantee.

22 But if you go through to page 73, what the Premier had
23 said, and you don't need to turn it up but in the preceding
24 paragraph, the Premier pointed out that feedback from the public
25 in consultation formed his Government that the course being

1 pursued by the previous administration was not in line with the
2 wishes and aspirations of the citizens of the Virgin Islands.

3 And he then on page 73 says this: "This exercise was
4 also necessary because my Government thought it fool hearted to
5 place blind trust in the activities of the preceding Cabinet
6 which approved such wasteful, reckless and questionable ventures
7 as", and he then lists "7.2 million BVI/BV Airways deal that is
8 now engaging the attention of courts of the United States of
9 America. The equally controversial 1.6 million Elmore Stoutt
10 High School Perimeter Wall Project which saw individuals
11 inflating their costs by an average of 65 percent as much as
12 more than 150 percent of the true value of the work done, and
13 without the oversight of the Ministry of Finance Project
14 Management Team, and (3) more than 50 million in cost overruns
15 at the Tortola Pier Park Project of which 8 million in funds was
16 lawfully appropriated for improvement of the sewer system in
17 East End and which was redirected without proper lawful
18 procedures and which as it resulted in raw sewage flowing on our
19 roads while children walked to school daily".

20 He then says "with respect to the first two items
21 listed above, we are yet to see any meaningful steps within this
22 jurisdiction, whether through the Office of Governor or the
23 justice system, towards obtaining justice for the BVI
24 taxpayers".

25 And then the next paragraph down he says, "for abuse

1 and breaches of the public trust such as these, I hold the
2 entire Cabinet as then constituted culpable for dereliction of
3 duty before, during, and after these scandalous activities".

4 Now, the reason for taking you to that is it's a
5 summary of what I'm going to suggest are matters that The
6 Honourable Premier raised with you as Governor on more than one
7 occasion, and that was the need to investigate projects that had
8 been the subject of concern and which had occurred before his
9 administration took office, and you, did you not, resolutely
10 refuse to take any such action. Isn't that right?

11 A. That is incorrect.

12 I can expand on that if you wish, but I'm conscious
13 that some of these because action that has been taken are
14 actually the subject of Police investigations or are before the
15 courts. The matter of BVI Airways, they were about going into
16 the specifics of action, and there was an audit undertaken by
17 the Auditor General. That Audit Report was then, I believe,
18 referred to the Police, and there was I believe an investigation
19 underway.

20 On the Elmore Stoutt High School wall, again, there
21 was an audit undertaken by the Auditor General, and again that
22 Report, I believe, was referred to the Police, and there
23 is--although I'm not privy to the latest information--but I
24 believe there is an investigation still underway on that.

25 So, it would be actually incorrect that's the

1 statement that was asserted that no action was taken on those.

2 Thank you.

3 Q. So, what do you say about the 50 million in cost
4 overruns at Tortola Pier Park?

5 A. That preceded my time as Governor, but as far as I'm
6 aware there was an audit undertaken into that. I believe there
7 was--again, this preceded my time as Governor--but there was
8 also I think a Consultant--an audit by an auditing company I
9 believe was undertaken on aspects of the Pier Park--I'll need my
10 memory refreshed on exactly the details of that as it started
11 before my time.

12 Q. Could I ask you just to turn up page 229 in the first
13 bundle.

14 A. First bundle, is it?

15 Q. Yes, please, Mr Jaspert.

16 A. I have a letter 13th of January 2020 from the Premier
17 to myself.

18 Q. Yes.

19 Now, I'll make clear that I accept that we do not have
20 all of the correspondence that you would have exchanged with The
21 Honorable Premier on this topic, and indeed on others, but the
22 reason I wanted to draw your attention to this one and ask you
23 questions about it is because it relates to statements that The
24 Honorable Premier asserted you made in a Cabinet Meeting in
25 January 2020 in which he says that "cannot be allowed to go

1 un-noted", and in particular what's said is that you uttered
2 statements that "the BVI is full of corruption, amongst others",
3 and that was something which the Premier in this letter utterly
4 rejects. He just says that he and his colleagues want to
5 express their individual and collective disgust at your conduct
6 in this instance; that it is unacceptable that you should insult
7 them in this way and cast aspersions on their character.

8 And the overleaf, he continues by describing your
9 words as disrespectful, by your conduct amounting to "contempt
10 that flies in the face of the so-called modern partnership", and
11 that what he says is that your own statements you made are
12 consistent with a pattern of behavior that has been observed
13 from you towards his Government since the initial weeks of
14 his--of their tenure when you--when the Premier requested time
15 to analyze and consider the conditions proposed by the UK
16 Government with respect to its offer of Loan Guarantees.

17 If you go back to bundle 3 that we were looking at,
18 and go back to page 100, the correspondence proceeded in such a
19 way that there was correspondence with the Minister of State for
20 The Overseas Territories, and we see here a response 4th of
21 February 2020 from The Honorable Premier to Lord Ahmad in which
22 he says "when the duly Elected Government of the Virgin Islands
23 can be attacked, insulted, berated and offended with not even
24 the courtesy of an apology, the signal is clear. Under the
25 empire, all men are not equal. For those who are less than

1 equal there is no justice or fairness and the core rules of
2 engagement of British colonialism remain intact at a time when
3 we boast modern partnership". He reiterates that he and his
4 Ministers stand by their account of what occurred during that
5 Cabinet meeting that I had just drawn your attention to. Reject
6 your account, your version of events. He says Governor Jaspert
7 made clear reference to the situation in Turks and Caicos with
8 respect to the suspension of the Constitution in that Territory
9 due to public corruption. He continues that your utterances are
10 an insult to the Members of his Government who have been in
11 office for only 11 months and to political office with
12 unblemished reputations.

13 And he then continues at page 101, "during the tenure
14 of the previous administration, I as did many other citizens of
15 the Virgin Islands, called on the Governor to exercise the
16 responsibilities of powers associated with his office to
17 initiate inquiries into several high level matters where there
18 was strong reasons to suspect corruption. The Governor, who
19 also chairs the Cabinet, which has the general oversight of
20 these matters, did nothing at the time. Yet he now takes the
21 liberty to inflict intense scrutiny on an innocent Government
22 that's trying hard to do what's right and focused on the
23 well-being of the people of the Virgin Islands and the
24 resilience of our economy".

25 Now, he concludes by drawing attention to what he says

1 is another falsehood, and that's the purported lack of interest
2 in his Government in good governance legislation.

3 Now, a number of matters there. Before I give you an
4 opportunity to respond, and I'm going to ask you to respond to a
5 certain number of issues.

6 I'll take you back to bundle 1, please.

7 A. Could I have a page reference, please?

8 Q. 853, please.

9 A. Page 5-3? 53?

10 Q. 853.

11 A. Thank you.

12 Q. Let me know when you have it.

13 A. I do, if it's the letter of the 21st February 2020
14 from myself to the Premier.

15 Q. Now, it is an example, I acknowledge, Mr Jaspert, of
16 us not having all of the correspondence because you're
17 responding to the Premier in reference to a letter he has sent
18 to Lord Ahmad 15th of February. I've shown you the one of the
19 4th of February. We don't have--and I will be corrected if I'm
20 wrong on this, but we don't have the one of 17th of February.

21 But what you say is you take issue with, you say,
22 whilst you welcome the good governance commitments set out in
23 that letter, you do not agree with much of its content which you
24 consider to be unnecessarily confrontational and
25 misrepresentative of my conduct as Governor. Specifically, it

1 is disappointing that you continue to raise, and misconstrue the
2 discussion we had at Cabinet on governance on the 9th of
3 January 2020, and you point to that the accurate record of that
4 conversation would be in the minutes, which were agreed by all
5 Cabinet, including all Ministers at the time.

6 You continue that you strongly refute the assertions
7 that the Premier makes regarding your intentions, actions and
8 behavior.

9 And then you--and you say: "The overall tone of your
10 letter I find deeply disrespectful".

11 And then you return to the question of good
12 governance, concluding the letter by saying: "As you're aware,
13 the Deputy Governor's Office in partnership with other
14 Ministries and agencies has been spearheading work on the good
15 governance agenda. Legislative and policy proposals to improve
16 the standards and institutions to support strong integrity,
17 including the introduction of the Ministerial Code, Register of
18 Interests and the Integrity in Public Life Act are well
19 underway. I will ask the Deputy Governor and his team to
20 continue to work closely with your officials to support taking
21 these, and other important governance initiatives forward as a
22 matter of urgency".

23 A number of things to canvass with you: First, your
24 remarks in Cabinet in January 2020 to which The Honorable
25 Premier took sufficient defence that he felt compelled

1 eventually to write to the Minister in the UK about your
2 conduct.

3 A. Sorry, Mr Rawat, is there a particular question on the
4 letter?

5 Q. What's alleged is effectively that your behavior in
6 that Cabinet Meeting, your behavior towards the current elected
7 Members of the Government reform the Cabinet was disrespectful
8 and insulting and you tainted them all with the tag of
9 corruption.

10 A. So, that is incorrect.

11 You've covered a number of issues there, so I will try
12 and take that one first off and maybe we can return to some of
13 the others.

14 In a couple of those letters that you highlighted, you
15 would have seen the kind of tone and misguided assertions that
16 were often put out by the Premier. That wasn't the only one of
17 such letters. There were also Position Statements put out into
18 the public domain, as well; for example, relating to the
19 appointment of the Permanent Secretaries that we discussed where
20 I was obviously communicating with the Premier in good faith, in
21 good partnership, and expectation that these would be
22 confidential matters as appointments should be, and the Premier
23 put out a statement on September the 3rd, 2018 to the public, I
24 believe, which included a wide range of insinuations and
25 assertions which I, from a personal perspective, did not deem

1 befitting of a professional or courteous manner from an elected
2 leader of government.

3 That having said, that didn't change my approach
4 throughout my time as Governor, I was always committed to
5 working in partnership and committed whatever letters or tone or
6 assertions or insinuation that were put out, either publicly or
7 in various letters and you would have seen a number of those.
8 That didn't change my approach. My interest was to serve the
9 people of the Territory so I can partnership with the Elected
10 Government and to uphold the Constitution and to champion the
11 areas that I was responsible for.

12 In relation to that specific conversation at Cabinet,
13 I believe the Cabinet was but you will have to refresh my
14 memory, we've moved around a number of letters, but I think it
15 was early January, so the 6th or 7th of January of that year.

16 Q. The date by the Premier in his letter is the 8th of
17 January. You give the date of the 9th of January 2020.

18 A. Thank you.

19 So, I was very clear in that conversation there was a
20 discussion about the standards of good governance, including I
21 recall a discussion about investigations on previous areas where
22 standards may have fallen short and we've discussed some of
23 those relating to investigations into BVI Airways, Elmore Stoutt
24 High School wall, et cetera.

25 And I'm also very clear as I have been publicly as

1 well as privately in Cabinet discussions that I know and believe
2 the vast, vast, vast majority of the people of the Virgin
3 Islands, in my experience, of being there for a number of years,
4 the vast, vast, majority are law-abiding honest and integral
5 people.

6 That doesn't mean, though, that poor standards in
7 governance should be tolerated, and so I was surprised having as
8 the Premier highlighted when he was Leader of the Opposition he
9 would regularly come to me as Governor, highlighting was he saw
10 as concerns of governance, and you mentioned some of those
11 areas. I was surprised then when he became Premier that
12 practices that he had talked about before of lower standards of
13 governance continued, practices of tender waivers, practices we
14 talked about of Statutory Boards and agreeing contracts out of
15 procedures.

16 I was also surprised that when I would politely and
17 courteously point these out in Cabinet the need for explanations
18 or on tender waivers, about the need to ensure effective
19 governance is followed, and in particular to make sure that any
20 learnings from previous Audit Reports, whether they were on Pier
21 Park or BVI Airways or some of those you mentioned, we were not
22 repeating the mistakes of the past.

23 Unfortunately, I sometimes met with quite, as you've
24 seen from those letters, quite a negative reaction to my
25 encouragement for Good Governance Standards.

1 In terms of the particular assertions and the claims
2 of what was said in that Cabinet, I'm afraid they don't have a
3 recollection either rebut my recollection nor, I believe--but I
4 don't have it in front of me--the Claims that the Premier had
5 put out stand up with the official minutes of Cabinet either.

6 So, as I note in my letter of the 21st of
7 February 2020, and the accurate record of that conversation--I
8 quote from my letter, the accurate record of that conversation
9 is sent out in the minutes of that meeting, and this was agreed
10 by all of Cabinet, including all Ministers at the time.

11 And just to explain how Cabinet Minutes are taken,
12 they are taken by the Cabinet Secretary. She records those
13 minutes in an impartial way, but there is then an opportunity
14 for all Members of Cabinet to review those minutes as well, so
15 there is a very clear view that those minutes are recorded
16 accurately. Ministers signed off in effect, those minutes--I
17 was confident. When I looked at those minutes--I'm afraid I
18 don't have them now--but when I looked at those minutes, the
19 assertions that the Premier put forward, did not stack up
20 against the official recorded version of the minutes nor did the
21 stack up against my own recollection of the discussion.

22 Thank you.

23 COMMISSIONER HICKINBOTTOM: Sorry, just pausing there,
24 Mr Jaspert. Do we have those Cabinet Minutes, Mr Rawat?

25 MR RAWAT: I don't believe so.

1 COMMISSIONER HICKINBOTTOM: No. We haven't got those
2 Cabinet Minutes, Mr Jaspert, although, of course, hopefully we
3 will be able to get them. As Mr Rawat has explained, we simply
4 do not have all of the relevant documents, and in particular we
5 have dispositive the correspondence you sent to the Premier as
6 opposed to the correspondence he sent to you.

7 BY MR RAWAT:

8 Q. But just to unpick this a little, please, Mr Jaspert,
9 it's important for a number of ways because you have an elected
10 Premier sufficiently concerned not just to write to you but to
11 write to the UK Minister, and that, if the Commissioner accepts
12 the evidence, that posits a number of possibilities.

13 The first is that, as you went through the latter part
14 of your time as Governor, there was in effect a complete
15 breakdown in the working relationship between yourself and The
16 Honorable Premier. Would you accept that?

17 A. No, I wouldn't fully accept that. You will see from
18 the exchanges of letters, and you've highlighted some of those,
19 that there were at times when I would receive letters that--from
20 the Premier or indeed the Premier would send letters to others
21 or make public statements that you could argue were not always
22 written in a professional manner of a modern relationship.

23 However--and I hope you do receive all of the
24 papers--you will see that I always maintained a professional
25 relationship in terms of how I dealt and handled myself with the

1 Members of the Elected Government.

2 I should further add, though, that regardless of
3 relationship and as part of the relationship there are times
4 when you support, there's times when you change, there's times
5 when you offer advice, and there's times when you ask for
6 advice, and that is--I deem it as part of a healthy, modern
7 relationship that would be able--I would have hoped that it
8 could have been done without some of the exchanges you saw or
9 referred to in those letters, but part of the relationship is
10 also that.

11 But thirdly, I will be clear that any perceived sort
12 of--or how people may have read the relationship being seen what
13 came through in those letters or in the statements that were put
14 out, it's not for me to speculate as to the motives that the
15 authors of those letters or the Premier in particular would have
16 to explain his own motives. But I was very clear about what
17 guided my decision-making as Governor; that was guided by the
18 oath I swore to the people of the Virgin Islands; it was guided
19 by respect for the Constitution guided by respect for all of the
20 institutions including elected Members as part of the core part
21 of the constitutional arrangements of the Territory, and guided
22 by making those decisions, as I said, in the best interest of
23 the people of the Territory. Whether the relationship goes up
24 or down, in a way that doesn't have bearing on decision-making
25 as I was guided by those principles I talked about.

1 Thank you.

2 Q. It can have a different perspective for context,
3 Mr Jaspert, because if one looks at the issues that the Premier
4 was raising about your conduct in that letter, and there are
5 other letters where he--and other documents I've taken you to
6 where he says similar things, and that is that you had a
7 personal animosity towards this Premier and this Cabinet, and
8 that influenced the way you conducted yourself as Governor
9 in--from February 2019.

10 And an example of that--an example of your
11 differential approach to this Cabinet is your refusal to set up
12 Commissions of Inquiry into something like BVI Airways.

13 A. No, I'm afraid that's not correct. As I stated many
14 times, I was Governor during two different administrations, and
15 the Administration under The Honourable Dr Orlando D Smith and
16 then obviously under the current Premier, Honourable Andrew A
17 Fahie.

18 My approach to both of them was the same in terms of
19 the approach to partnership, the approach to be guided by the
20 Constitution, and the approach to be guided by the interests of
21 the people of the Virgin Islands. And as I talked about
22 earlier, there was no differential approach to calling a
23 Commission of Inquiry relating to the examples you talked about.
24 Those areas where there were concerns previously did have roots
25 that could be investigated and were actually whilst I was

1 Governor being investigated were the various areas I talked
2 about, both from BVI Airways and on Elmore Stoutt High School
3 Board.

4 But when I called the Commission of Inquiry, that was
5 because of a growing concern and a cumulative body of evidence
6 and allegations that was presented to me about serious areas of
7 failings in governance; and so, it would be remiss of me with my
8 responsibility to not take action to protect the interests of
9 the people of the Virgin Islands.

10 I would be very happy to explain more about those
11 areas of concern, but the important point is it was not about
12 one specific point, there was no differential approach taken
13 between whichever Government of the day where I have no view on
14 whichever Government is in power, that is not my duty as
15 Governor to have a view on that.

16 But I do have and did have a view on what is important
17 to protect the people of the Territory. That's my duty both
18 under the Constitution under certain areas.

19 Also, we talked about Article 73 of the United Nations
20 where there was also the responsibility to ensure, and I quote
21 from Article 73(a) (reading): To ensure with due respect--and
22 it goes on--for the culture of the peoples concerned, not quite
23 all of it, but also includes a duty to protect against abuses,
24 and what I saw was this cumulative and growing pattern of a
25 range of concerns relating to potential abuses, hence why I made

1 decision to call the Commission of Inquiry.

2 Thank you.

3 Q. Last point on this, leaving aside personality
4 differences or clashes. On the face of the letter--letters from
5 The Honorable Premier--and it would be a matter for the
6 Commissioner what weight to put on those letters--on the face of
7 that correspondence it points to, does it not, the inequality
8 that exists in what you have described as the modern partnership
9 because the reality is that, under this Constitution, the United
10 Kingdom always has the upper hand? Would you accept that?

11 A. So, no, I wouldn't fully accept that. The United
12 Kingdom is committed to the modern partnership. I can't
13 obviously speak for the United Kingdom. In my role as BVI's
14 Governor, I was obviously fulfilling a function as Governor of
15 the Virgin Islands, but I did observe a commitment from the
16 United Kingdom, set out both in the 2012 White Paper, clearly a
17 support for that approach of partnership, and also a support for
18 the constitutional arrangements where specific responsibilities
19 that are either jurisdiction of the Governor or the vast, vast
20 majority, the jurisdiction of the elected Government.

21 But I would also say it's wrong, too, I think,
22 characterize it about having the upper hand. The nature of a
23 partnership is actually the two partners are working together
24 for the interests of the people of the Territory, and that was
25 the approach I took throughout my time as Governor.

1 Q. Mr Jaspert, if one just takes the example of the
2 different stances that you and the Premier took to Section 60
3 and the responsibilities that are reserved to a Governor, it
4 must logically follow, mustn't it, that this Constitution cannot
5 allow a modern partnership to evolve?

6 A. So I do think it is--if the question is about the
7 Constitution itself, I do think it is good that the Constitution
8 is reviewed from time to time. I think that is health in the
9 development of any Territory. That is something that has
10 recently happened in Cayman Islands, I believe--or was happening
11 whilst I was Governor in Anguilla, as well, and I know that both
12 the former administration and current administration were
13 looking at constitutional review, and I know that's something
14 that I supported as Governors and also was supported from the
15 United Kingdom has always open, offering that.

16 But as the Gov--I was Governor under that Constitution
17 of the time. If the Constitution was reviewed, I would have
18 been Governor under a different Constitution, if I were to be
19 then Governor of--at that time, so my role is not to think of a
20 different Constitution. My role is to separate within the
21 Constitution as is the role of the Premier to operate within the
22 Constitution or any other Member of posts that we may have
23 discussed to that today, and it is the Constitution of the day
24 that I would say I observe and upheld.

25 Thank you.

1 Q. Just to conclude, as part of your Written Response,
2 you drew the Commissioner's attention to a statement issued by
3 The Honourable Premier on the 3rd of September 2019 headed
4 "Setting the Record Straight re: the appointment of Permanent
5 Secretaries". That relates, does it not, to the conversation we
6 had earlier about your not following recommendations of the PSC
7 in appointing certain Permanent Secretaries? Is that right?

8 A. That is correct.

9 Q. Is there any particular part of that statement that
10 you want to draw the Commissioner's attention to or otherwise
11 make a point on?

12 A. So I included that statement purely as an example, I
13 believe, of the kind of tone that was sometimes put out into the
14 public domain.

15 It's important to stress that in dealing with Public
16 Service appointments and whilst I or any other elected Member
17 either amongst themselves or with myself or with others may have
18 agreements or disagreements from time to time. I felt it
19 important that still there was a professional and courteous
20 relationship.

21 You will see from that statement, and I include it as
22 an example partly because it goes into details which the
23 appointments process is normally meant to be confidential and I
24 was surprised to get such a statement in the public domain, but
25 also you will see the kind of insinuations that are leveled

1 within these kind of statements.

2 So I did--there were a number of these throughout my
3 time as Governor. I was very careful that didn't--very mindful
4 that this wouldn't sway my decision-making or wouldn't sway the
5 approach that I took to any matter, and it is up to others to
6 justify or to explain why they would put these kind of
7 insinuations out there, but you will see, and I believe I
8 covered it under the part entitled--criticism entitled
9 "Disrespect for the Elected Government", which I strongly
10 counter, and clear I remained committed to partnership and to a
11 professional approach at all times.

12 However, you will see from the kind of tone that is in
13 that letter of the various different insinuations that were
14 often put out, so all of the letters sometimes had to be seen in
15 that context. That includes insinuations that could be related
16 to areas of me going against Belongers or people of different
17 race, which I strongly contest and did not match any of the
18 evidence of how I undertook my role.

19 Thank you.

20 MR RAWAT: Commissioner, I'm going to move on to a
21 different topic, so it might be a convenient pause for the
22 Stenographer.

23 COMMISSIONER HICKINBOTTOM: Yes, certainly.

24 Just a couple of things. Firstly, how long do you
25 think you'll be, Mr Rawat? I'm only thinking about the Premier.

1 MR RAWAT: I probably will be a little over the--a bit
2 beyond 10:00. I would have thought about 10:30. Maybe in the
3 break we can just see--look at that and get a time for--

4 COMMISSIONER HICKINBOTTOM: Let's look at that, and
5 then we can give the Premier a different time, if it's half an
6 hour later, then we can give him that time.

7 Sir Geoffrey, could I just raise one or two small
8 points with you. Firstly, I sent the Responses of the Governor
9 and the former Governor over with the attachments yesterday
10 evening, so you should have those.

11 SIR GEOFFREY: Thank you. I've seen they've arrived
12 with us. We'll obviously look at them in due course. I'm most
13 grateful. Thank you.

14 COMMISSIONER HICKINBOTTOM: And I think probably you
15 will have had all of the attachments in any event.

16 SIR GEOFFREY: Yeah.

17 COMMISSIONER HICKINBOTTOM: Documents to and fro, but
18 I know you got those.

19 And in terms of the Auditor General, we're still
20 working on that. There may be some redactions that are
21 required, but hopefully you'll get that shortly.

22 SIR GEOFFREY: Okay.

23 COMMISSIONER HICKINBOTTOM: I wanted to get the
24 Governor and the previous Governor's over to you because they're
25 still in the process of giving their evidence.

1 Just this morning, a couple of things have arisen
2 which perhaps can you help us with. First, the Cabinet Minutes
3 of, and then the dates are not absolutely clear but it's some
4 date between the 6th and the 9th of January 2020.

5 SIR GEOFFREY: I already put in train an inquiry as to
6 that, and I'll try to let you know later on today what the
7 progress is. We are trying to ascertain whether they do form
8 part of previous disclosure, and if they don't, we'll obtain
9 them.

10 COMMISSIONER HICKINBOTTOM: Good. And if you could
11 either identify them or send them through, that will be helpful.

12 And secondly, the documents that we have got, and
13 consequently the Governor has got, are not a complete set, and
14 in particular the documents--there were quite a lot of letters,
15 fairly lengthy letters, some of them from the Premier to the
16 Governor, and not many letters from the Governor to the Premier.

17 But I assume that I can take it that the letters from
18 the Governor, which we don't have, that none of them is relied
19 upon in support of any contention that the Governor was
20 disrespectful to either the Elected Ministers or disrespectful
21 to the modern partnership in the Constitution; is that correct?

22 SIR GEOFFREY: The letters that we don't have?

23 COMMISSIONER HICKINBOTTOM: Yes.

24 Well, no, no, you have them. We don't have them.

25 SIR GEOFFREY: No, no. No, no, no, don't make that

1 error, please. That would be a complete misconception.

2 COMMISSIONER HICKINBOTTOM: Okay.

3 SIR GEOFFREY: If we haven't served them to you, it's
4 because we can't find them.

5 COMMISSIONER HICKINBOTTOM: No, no--okay, no--yes.

6 SIR GEOFFREY: The Government does--

7 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey, I
8 interrupted. Carry on.

9 You're muted, Sir Geoffrey. One moment.

10 SIR GEOFFREY: I'm so sorry.

11 I wouldn't want this to be unclear. We have mounted a
12 really quite sustained effort to try to put all of the jigsaw
13 pieces of this correspondence together, and what we've found--I
14 say "we", I mean, of course, the IRU with Public Officers--is
15 that there are gaps in the records of some of these
16 correspondence chains. So, what you have is what so far Public
17 Officers have been able to find in the relevant Ministries,
18 particularly the Premier's Office.

19 What we invited, as I understand it, is correspondence
20 with the Inquiry team is that if there are gaps relating, for
21 example, to the former Governor and current Governor's letters,
22 they might be supplied by the Governor's Office. Presumably,
23 the Governor's Office will have copies of the former Governor
24 wrote to the Premier. But we at the moment don't have them, and
25 what I would be very keen for you to accept--I hope you

1 would--is that a real effort has been made to put these gaps, to
2 fill these gaps, but the record-keeping just isn't there. We
3 don't have them physically. That's the position.

4 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey.
5 Is there anything else?

6 SIR GEOFFREY: No. But I may have got what you were
7 suggesting wrong, but I want to make that absolutely clear.
8 We'd asked the Governor's Office to supply those vacancies
9 because we just don't have them for some reason.

10 COMMISSIONER HICKINBOTTOM: First, Sir Geoffrey, that
11 is helpful because you've explained that this is, so far as
12 you're able to put it together, a complete set of the documents,
13 which is at least helpful to know.

14 SIR GEOFFREY: Well, it's a complete--

15 COMMISSIONER HICKINBOTTOM: I'm sorry, Sir Geoffrey,
16 could you just say that again.

17 SIR GEOFFREY: I don't know why that is. I apologise.
18 It's a complete incomplete set.

19 COMMISSIONER HICKINBOTTOM: Well, yes, that's an
20 idiosyncratic way of putting it, but I know what you mean.

21 SIR GEOFFREY: You know what I mean.

22 COMMISSIONER HICKINBOTTOM: Yeah, I do know what you
23 mean, and thank you.

24 I mean, it is just--it happens that the Premier's
25 Office have managed to find more of the Premier's letters than

1 they have of the Governor's letters, but so be it. But what I'm
2 saying is that--and you have answered this question, too,
3 indirectly, that the Elected Ministers do not rely upon any
4 letters from the Governor in support of their contention, which
5 is a contention I understand they made, that the Governor,
6 Mr Jaspert, the former Governor, was disrespectful to the
7 elected Members or disrespectful to the Constitution or
8 disrespectful to the modern partnership, which is--arise out of
9 both the Constitution and other documents such as the
10 convention. But that must be the case.

11 SIR GEOFFREY: It must because we just don't have
12 them.

13 (Overlapping speakers.)

14 COMMISSIONER HICKINBOTTOM: (Unclear.)

15 SIR GEOFFREY: It's frustrating, I think, to your
16 participant as it is to all others. I would love to see them,
17 but I don't have them. That's why we wondered whether or not
18 the Governor's Office might be able to assist in filling these
19 gaps.

20 COMMISSIONER HICKINBOTTOM: Okay. But anyway, we know
21 where we stand at least on that and--

22 SIR GEOFFREY: Yeah.

23 COMMISSIONER HICKINBOTTOM: --that's helpful. Thank
24 you very much.

25 Good. We'll break for five minutes.

1 Okay. Perhaps that--a question has come through
2 from--

3 MR RAWAT: I was going to cover that anyway.

4 COMMISSIONER HICKINBOTTOM: Yes. But we can deal with
5 the question that's come through from on behalf of the Elected
6 Ministers after we have our break, but we'll have a five-minute
7 break now, and then we'll come back, and we'll deal with timing
8 first, and then conclude Mr Jaspert's evidence.

9 Good. Thank you.

10 (Recess.)

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

13 Mr Rawat, what I propose to do is I will not start
14 with the Premier until 11:00. There may be a short gap, but
15 we've got to finish off the evidence of Mr Jaspert and deal with
16 any application to questions from the Attorney General. And so,
17 Sir Geoffrey, if I can leave it to you and your team to get a
18 message through to the Premier to say that he can arrive at
19 11:00 and not 10, that would be very helpful.

20 Thank you. Good.

21 Yes, Mr Rawat.

22 MR RAWAT: Yes.

23 BY MR RAWAT:

24 Q. Mr Jaspert, I would now like to move on to a different
25 topic on which I would ask you to assist the Commissioner.

1 One of the matters which the Commission has taken
2 evidence on is the process by which persons are appointed to
3 Statutory Boards in the BVI, and a point that has been made not
4 just by Ministers and the Premier but also by Permanent
5 Secretaries is that that process was, to in greater part,
6 informal. In particular, there was not a process by which posts
7 for Statutory Boards were routinely advertised.

8 And one of the points that was made in evidence to the
9 Commissioner was that it was only in May 2020 that the
10 then-Governor--and that's you--were well aware of the existing
11 practice suggested a shift to a more transparent process for
12 critical leadership posts such as the Chairman of Boards, and
13 it's noted and it was put to the Commissioner that even then you
14 were not extending your recommendation to the appointment of
15 ordinary Board Members.

16 Now, the evidence for this is found in a Cabinet
17 Minute No. 38 of 2020. Do you have a copy of that with you? We
18 must have sent it to you as an individual document.

19 A. Can I confirm that's not in one of the bundles?
20 That's sent separately, is it?

21 Q. Yes. It's a separate document that we've provided to
22 you.

23 A. Okay. Give me one moment to locate it, please. Thank
24 you.

25 (Pause.)

1 A. Can I confirm that is referring to Cabinet Meeting No.
2 38 of 2020?

3 Q. Yes, and so the date of that meeting is the 6th of
4 May 2020. You will see at the bottom, it carries the page
5 reference 3082. If you turn through to the next page, one of
6 the matters that was on the Cabinet agenda under a paper
7 presented by the Premier was the need to appoint a new Chairman
8 to the BVI Ports Authority, and at (3) you are recorded as
9 saying, the Chairman suggested that the required skill set
10 should be advertised for critical positions of Chairman of the
11 Respective Boards. The Premier responded that he would be in
12 agreement subject to the same being done for the Public Service
13 Commission. The Chairman confirmed the skill set for the
14 Chairman of the PSC was advertised. The Chairman was of the
15 view that there should be a shift to a more transparent process
16 for the appointment of critical leadership positions such as
17 Chairman of Boards, therefore the required skill set should be
18 advertised in this regard. And what the Premier noted was that
19 the captioned appointment was being made in accordance with the
20 requisite legislation, hence it was in keeping with transparency
21 and good governance, and what's recorded is further discussion
22 ensued on the matter.

23 If you move through to page 3085, please, there is
24 then discussion of another matter which is the terms of
25 membership of all Statutory Boards and Committees, a paper

1 presented by the Premier that is part of the minute at (11) you
2 are recorded as reiterating your view that the requisite skill
3 set should be advertised for the appointment of membership of
4 the respective Boards and committees, in keeping with
5 transparency and good governance principles.

6 What's recorded then is there were differing views
7 among Members on whether the skill set for membership on Boards
8 and committees should be advertised. The Premier noted the
9 Chairman's comments but stated that his suggestion was not the
10 only method to achieve good governance and transparency
11 principles. He suggested allowing the respective Ministries to
12 put forward their recommendations for the Cabinet's
13 consideration.

14 You acknowledged the Premier's comments and stated
15 that you would continue to express your opinion.

16 Now, the point that's made to the Commissioner was
17 that, by then, you have been in post as Governor for some years.
18 You would have been well aware of the informal process used in
19 Ministries to appoint individuals to Statutory Boards, and yet
20 it is only in May 2020 that you are suggesting that there should
21 be advertising of Board membership and then only in relation to
22 chairpersons.

23 Was that the view that you held in May 2020?

24 A. That was the view that I was--from my recollection of
25 what you have here, in May 2020, I did hold the view that there

1 should be transparent appointments to Boards and there should be
2 qualified people appointed to Boards. That wasn't the first
3 time I held that view, though, nor was it the first time that I
4 had made that point to the Elected Government.

5 In fact, if I refer you back to the Governance Bundle
6 3, page 19, which was the notes of--I believe they're informal
7 notes between the Premier and myself of the 24th of May 2019,
8 you'll see and there I raised some concerns about appointments
9 to Statutory Boards. There had also been a series of
10 discussions in Cabinet. Again, I'm afraid I don't have Cabinet
11 Papers as part of my documents here, I only have those which
12 you've sent me. But there was a number of discussions at
13 Cabinet in 2019 where the Administration wished to move people
14 from Boards and to place their own people or other people on to
15 those positions in the Boards. At that point in time, again had
16 made consistent points about improving the transparency and the
17 skill sets of people on Boards.

18 Thank you.

19 Q. But were you of the view that, in terms of an open and
20 transparent process involving advertising, it could be and
21 should be restricted to chairmen of Boards?

22 A. I'm not sure if that was my view.

23 Sorry, could you refer me to--

24 (Overlapping speakers.)

25 A. --quoting in the minutes? What I see here is

1 paragraph 11, the Chairman, which in that case, the Chairman was
2 myself, reiterated his view that the requisite skill set should
3 be advertised for the appointment of membership of the
4 respective Boards and committees in keeping with transparency
5 and good governance principles.

6 Q. Would you turn to page 3084 in that document.

7 A. Yes. I have that.

8 Q. Paragraph 4, Mr Jaspert, it says there that you're
9 recorded as saying that the shift to a more transparent process
10 should be for the appointment of critical leadership posts as to
11 Chairman of Boards, so the inference that can be drawn from that
12 is that you were of a narrower view is that being that in terms
13 of advertising, you only need to be limited to Chairman of
14 Boards rather than the ordinary Member.

15 A. No, that's not correct. It does make clear there I
16 said "such as Chairmen of Boards". If you go up in to the
17 Cabinet thing, you will see that the item that we were
18 discussing was specifically, I quote at the beginning of it, the
19 resignation of the Chairman of the BVI Ports Authority, I won't
20 name. So, we were at that time discussing a Chairman
21 appointment, hence, why I believe--because I was talking on
22 topic to that item.

23 But as you will see in the Cabinet record, I was clear
24 "such as" not exclusive to, I would stress as my interpretation
25 of such act. That was an example of that.

1 I would add also that I had held discussions with the
2 Premier also with other Members of Cabinet, encouraging them to
3 adopt a more transparent process to the appointments to
4 Statutory Boards.

5 Q. Linked to this, we saw the reference to the Public
6 Service Commission. During your time as Governor, there will
7 have been Boards for which you were responsible. To what extent
8 were those--were Members appointed to those Boards through an
9 open and transparent process?

10 A. So, when I first came into office, the practice was, I
11 believe, that people were appointed from names that were put
12 forward to the Governor, unless there were specific principles
13 for how those should be appointed, some of them are appointed,
14 for example, the Governor would appoint sometimes on the advice
15 of the Premier or sometimes on the advice of the Leader of the
16 Opposition, depending on what Board it is, sometimes, for
17 example, on the PSC, it is an individual from the Civil Service
18 Commission or team as well. So, sometimes it was purely on
19 those that were passed through to me unless there was a
20 particular reason which would bar their appointment, I was to
21 appoint them.

22 But I did change the practice for where they were an
23 appointment by the Governor. I had the full remit around it to
24 try to encourage a more open process. I believe this was taken
25 forward, although I don't have the papers in front of me on the

1 advert of it, but I do recall a very significant one at the time
2 was the Chair of the Public Service Commission, where I believe
3 that did go out with an advertisement, a job--a role
4 specification, for want of a better word, to ensure a
5 transparent process around it.

6 There were other posts as well including, for example,
7 key Commissioner posts where a similar principle was applied.

8 Q. A point that is made, you have spoken about the
9 concern you had about the use of tender waiver, but a point that
10 is made in the Position Statement of the Elected Ministers is
11 that--and they describe tender waivers as this: A long standing
12 and widespread problem, albeit it may have increased since the
13 hurricanes.

14 MR RAWAT: Commissioner, we don't need to look it up,
15 but for your note it's at page 119 in the Governor's bundle at
16 paragraph 44.

17 BY MR RAWAT:

18 Q. The Position Statement continues at paragraph 44 as
19 follows: "The previous government approved at least 44 waivers
20 between August 2015 and February 2019. Between 2019 and 2021,
21 out of 10 contract awards made by the Governor's Group, six were
22 by waiver of tender".

23 We don't have the sort of underlying data that
24 supports that but would you accept that during your time as
25 Governor, the Governor's Group did engage in contracts where the

1 need for a tender was waived?

2 A. I'm afraid I don't have the details to hand, but yes,
3 there were times when there was need for exceptional
4 circumstance where those were waived and moved.

5 Q. And what would be the process by which the Governor's
6 Group would go about getting a tender waiver?

7 A. As a principle, it should be rare and exceptional. If
8 the tender waivers were taken or were put forward, I would be
9 working from memory only, I'm afraid. I don't have any of the
10 papers here relating to them, but it normally would be things
11 where there were an immediate need to deal with a particular
12 issue, be that certain aspects that required immediate
13 assistance often relating to the Public Service, and when there
14 were clear exceptional reasons as to why that should be taken
15 forward, but I'm afraid I don't have the details in front of me
16 here.

17 Q. So, would there have been instances, therefore, where
18 the Governor's Group asked for waivers from the tender process?

19 A. As I said, I don't have the details, but from memory I
20 believe there may have been.

21 Q. Just want to move on to a different topic, which is
22 Crown Land, and you will, I hope, have been sent different
23 bundles for Crown Land. Can you confirm that you have those?

24 A. Yes, I believe I do.

25 Q. If you give me a moment, please, Mr Jaspert.

1 Do you have the bundle in electronic form or in hard
2 copy?

3 A. I believe I have it electronic.

4 Q. If you could just turn up, please, page 1294.

5 Let me know when you have it.

6 A. This one--this one may be in paper so, I may need to
7 consult, possibly.

8 1294, is it?

9 Q. Yes, Mr Jaspert.

10 (Pause.)

11 Q. If you've got it in hard copy, it will be in the
12 second bundle, bundle 2.

13 (Pause.)

14 Q. Have you been able to locate it, Mr Jaspert?

15 A. I am, but it's downloading, so apologies, you will
16 have to bear with me whilst the Internet struggles with this
17 connection and downloading, so apologies.

18 (Pause.)

19 COMMISSIONER HICKINBOTTOM: Mr Jaspert, what Mr Rawat
20 is the going to do, I think, is to identify--the bundles are
21 huge, but he's going to try and identify the specific pages and
22 so he can e-mail those over to you, and that will probably save
23 us a lot of time in terms of downloading.

24 THE WITNESS: That would be much appreciated. Thank
25 you, Commissioner.

1 COMMISSIONER HICKINBOTTOM: We can do that. That will
2 be done now.

3 Yes, thank you.

4 (Pause.)

5 THE WITNESS: Commissioner, if it helps, I believe I
6 have located 1294, which I believe, if it's correct is a letter
7 of the 11th of November 2020 entitled "files returned to the
8 Ministry with regards to land transfers".

9 COMMISSIONER HICKINBOTTOM: You're right, Mr Jaspert.
10 We will carry on with that.

11
12 BY MR RAWAT

13 Q. When he gave evidence recently to the Commissioner,
14 The Honourable Vincent O Wheatley made the point that he felt
15 that you would delay signing off Crown Land disposals
16 notwithstanding his efforts to explain the applicable criteria
17 to you, and it left The Honourable Wheatley with the feeling
18 that you didn't think land should be going to locals.

19 Now, we see that, in this letter of the 11th of
20 November 2020, which the Honourable Wheatley wrote to you, he
21 refers to this: "I refer to the land files of the Ministry
22 which were returned unsigned. This has created quite a bit of
23 frustration. There are persons who would have made payments for
24 their awarded lands in full which leaves them with no access to
25 the properties assigned. The transfer of Crown Lands to persons

1 is one of my Top Priorities for the Government of the Virgin
2 Islands, and I sincerely hope we can come to an understanding
3 and have these matters expedited".

4 He then refers to your wish to have a written document
5 of the criteria used to distribute parcels of land and notes
6 that he wishes to state that the matters were discussed and
7 approved by Cabinet and the Ministry has carried out
8 instructions of Cabinet.

9 The Honourable Wheatley then continues: "I'd expect
10 that any issues of the matter would have been raised and
11 discussed during Cabinet Meetings. Furthermore, a number of
12 these matters pre-date my tenure and the selections were made by
13 previous administration".

14 But he then says that the present Government
15 campaigned on empowering our people, especially the young
16 people, through this distribution of Crown Land and asked this
17 question: "What greater asset could there be than for a young
18 Virgin Islander to own his or her own piece of land and build
19 his or her own home. Persons selected by my office using the
20 criteria are enclosed, and in some cases there are direct
21 selections by the Minister and all other elected
22 representatives. The Spooner's Estate Land Advisor Committee
23 was set up in 2006 and the attached report and extract outlines
24 the criteria which were put together".

25 And he then says that the Ministry has a database of

1 hundreds of applications of the years on file. District
2 Representatives and where possible Advisory Committees are
3 consulted when lands become available in order to make a
4 decision. Selections are also made based on an individuals'
5 need and the ability to pay. Hence, a person with a later
6 application could be given land over someone on file who has
7 applied long before. It was not done on a
8 first-come/first-serve basis.

9 And he then concludes by referencing that the Anegada
10 Advisory Lands Committee has already signed and agreed to by
11 Cabinet.

12 You responded to that at 1299 in this document.

13 You thank Honourable Wheatley for the work that his
14 Ministry has done in preparing files for your review and
15 signature. And you say that: "I'm sure you will agree it's
16 important that comprehensive guidelines are in place to be used
17 as a benchmark for anyone who is involved in the decision-making
18 process and would serve as an essential document, not only for
19 me, but for my successor, and it would serve as a guideline for
20 the Attorney General's Chambers when providing comments and/or
21 advice on land matters. I assume that the Ministry is operating
22 from guidelines that stipulate the priority of the allocation
23 process, the selection process and the guidelines by which
24 individuals are recommended to Cabinet for disbursement of Crown
25 Land.

1 "I look forward to receiving the guidelines used in
2 the decision-making process for all the outstanding matters
3 pending my signature for Spooner's Estate, Anegada, and Virgin
4 Gorda."

5 There is another letter that you wrote which was in
6 response to a letter from the then-Permanent Secretary in the
7 Ministry of Natural Resources, Labour and Immigration, where you
8 noted and this is at 1304, Mr Jaspert, it's a letter you write
9 on the 18th of December 2020, you noted the valuation reports
10 now form the basis on which cost of Crown Land is determined,
11 and you note that valuations had not been provided for any files
12 submitted to you on 8th of December 2020. You asked for an
13 explanation. You then say I feel compelled to reiterate the
14 importance and need for comprehensive guidelines that would
15 support the process and provide a fair and equitable system for
16 decision-making.

17 So, that's the background in terms of the evidence
18 that the Commissioner has available to him.

19 The first question for you is: Given the concern
20 raised not just in writing but in oral evidence by Honourable
21 Wheatley, did you take a deliberately obstructive approach to
22 signing requests for Crown Land?

23 A. No, absolutely not. I strongly refute the contention
24 you quoted from Honourable Wheatley that I didn't want land
25 going to--I don't want to misquote, but I believe you said it

1 was not going to locals or Belongers.

2 In fact, actually the actions I took, as you will see
3 from the letters, were 100 percent in support of, as Honourable
4 Wheatley notes in his only letter, empowering people, making
5 sure that there was fairness in the distribution of Crown Land,
6 making sure that there were clear guidelines around how that
7 land is distributed, making sure there was transparency in how
8 and who gets that land.

9 So, contrary to that assertion, actually the action I
10 took was very clear that interests of the people of the
11 Territory, interests of Belongers, ensuring that they had
12 fairness, transparency and clear guidelines to the operation of
13 something that is so important, and I know that I play such an
14 important part in the culture of the British Virgin Islands to
15 make sure that land was given out in a way that was fair to all
16 Belongers.

17 Thank you.

18 Q. What sorts of guidelines were you expecting the
19 Ministry to have in place?

20 A. Well, it is, as you're well-aware, under the
21 Constitution, under Section 41 of the Constitution, 41(2), it is
22 that the Minister shall have responsibility for administering
23 all lands and other property referred to, and that goes on in
24 Section 41(3). In this Section that the Minister means the
25 Minister is charged with the responsibility for Crown Lands. In

1 this case, that Minister was the Minister for Natural Resources,
2 Labour and Immigration. So, as part of what I believe was a
3 commitment to both empowering the people, as the Minister
4 quoted, as well as that commitment to good governance and to
5 good administration, you would expect that something as
6 important as land is given out to a set of guidelines that would
7 specify the approach of how it is given out, the kind of
8 prioritisation of it to people, the assessment of it, et cetera.
9 It's not for me to administer it. The Constitution is very
10 clear on that point. It is the responsibility of the Minister,
11 but as I am, as is my right under the Constitution, requested
12 information about the guidelines for the administering of that
13 land.

14 Q. But did you appreciate, Mr Jaspert, that the history
15 of the Virgin Islands which meant that different estates may
16 have different criteria, and it wasn't a situation where you
17 could have one-size-fits-all criteria?

18 A. Yes, I did, indeed. And that's why I actually asked
19 for cite of those guidelines and cite of the criteria for the
20 different estates, recognizing exactly as you say the history of
21 some of those, so that I could be clear, so that my office could
22 be clear when files are presented to me for my signature, that
23 they were in the correct order as per those guidelines,
24 depending on exactly where it was, whether it was Virgin Gorda
25 land, whether it was Spooner's, whether it was Anegada, et

1 cetera. All of those had different approaches, based, as you
2 rightly say, on the historical context for land allocation.

3 Q. Turn up page 1291, please. I can take you to an
4 Affidavit that has been submitted to the Commissioner by
5 Mr Joseph Smith-Abbott who is the current Permanent Secretary in
6 the Ministry of Natural Resources, Labour and Immigration, and
7 he has dealt with a number of issues concerning disposal of
8 Crown Land, including showing how the process worked in relation
9 to a number of samples, a sample of disposals.

10 One of those is the subject of this letter that you
11 write to the Permanent Secretary in Natural Resources, Labour
12 and Immigrations, who at that time wasn't Mr Smith-Abbott, it
13 would have been probably--it may have been Dr Potter.

14 And your letter is dated 3rd of June 2020, and it
15 concerns Parcel 310.

16 Now, to give you some background, and I can take you
17 to it, if you need to have more detail, but the Commissioner has
18 heard evidence that Parcel 310 was a parcel of land, Crown Land,
19 that the Government had agreed to lease in 2007 to an entity
20 called "Nature's Way". For many years the principle pf Nature's
21 Way could not assess that land and it had been occupied
22 illegally by Delta Petroleum, who eventually was subject of an
23 Expulsion Order signed by you.

24 When The Honourable Vincent Wheatley came into office,
25 he resolved what he explained to the Commissioner he saw as a

1 long-running dispute by arranging for Nature's Way to be able to
2 buy the freehold of another parcel of land for a nominal sum of
3 one dollar.

4 He then agreed to lease Parcel 310 which had been the
5 parcel that had been--where previous government had agreed to
6 lease to Nature's Way. He leased this to Bevis Sylvester, and
7 this is the subject of your letter because you write here,
8 "reference is made to the licence in favor of Bevis Sylvester
9 which was on 28th May 2020 submitted for my signature. I've
10 examined the licence and the supporting documents on the file.
11 The supporting evidence on the file seems to highlight some
12 apparent anomalies. The last valuation carried out on the said
13 property was done 23 years ago. I found no evidence on the file
14 indicating that a new assessment was carried out on the
15 property, nor was it submitted to Cabinet for their
16 consideration. Therefore, the current value of the property is
17 unknown".

18 You then say: "On 19th of January 2019, I signed an
19 expulsion notice regarding the same property, and this also was
20 not brought to Cabinet's attention when this matter was
21 discussed. It's essential when a matter is brought to Cabinet
22 for a Decision, they are presented with the necessary documents
23 required to allow sound decisions to be made. This will also
24 assist me in my role as signatory".

25 You then say: "I have signed the attached licence and

1 it would be appreciated if going forward that the required
2 documents are presented at Cabinet level to avoid any delay in
3 the process".

4 On the next page, 1292, you write in December 2020, on
5 17 December 2020, to the Honourable Wheatley, and you say that
6 you have agreed to sign the instrument of transfer for Parcel
7 290, and this is the parcel that went to Nature's Way, but you
8 place on record a number of what you say are infractions and
9 your dissatisfaction with the process by which this matter was
10 handled.

11 And you point to 2007, the decision to lease what
12 became Plot 310 to Nature's Way at the cost of \$800 per annum,
13 that four years later, Mr Bevis Sylvester had written to the
14 then-Premier requesting a lease of that parcel of land.
15 Thereafter, you say the property appears to be illegally
16 occupied by Delta Petroleum. You then refer to having signed
17 the Expulsion Order, and then you note that Cabinet was asked to
18 agree that the granting of the lease to Nature's Way be revoked
19 in its entirety, and you point out that there was a failure to
20 inform Cabinet that there was an expulsion notice, that a
21 valuation had not been carried out on any of the properties.

22 And you then concluded that it was only at my request
23 of 30th of July 2020 after Cabinet's decision was made that a
24 valuation was carried out on Parcel 290, which revealed that the
25 property was valued at \$600,000 and sold for one dollar.

1 Now, again, you set out some of the background there,
2 but taking you back to 2191, why would you have signed the
3 License in any event if you had concerns?

4 A. Well, as you highlight there, there were a number of
5 concerns I had, I won't reiterate all the points that you've
6 made, but there were concerns there which gave rise to me having
7 questions about this particular transfer of land.

8 However, as Governor, sometimes there are things you
9 agree with, sometimes there are things you disagree with,
10 sometimes there are things that you question and try to seek an
11 improvement to the processes. But also there are times when
12 whether you agree or disagree. You are constrained by the
13 Constitution in terms of your role. In this matter under the
14 Constitution, under Section 41 of the Constitution as I quoted
15 earlier, it is for the Minister to administer all lands referred
16 to in subsection (1), subsection (1) refers to the--essentially
17 Crown Lands as the title of that Section.

18 So, whilst as you can see from the exchange I was
19 concerned about the number of infractions, concerned that
20 information had been not given to Cabinet. It raised serious
21 questions for me about why land valued at \$600,000 was only
22 valued after that that I had requested to see site
23 valuation--was given out for one dollar, when there had also
24 been infractions of illegally occupying that land by said
25 applicant as well.

1 It did, of course, raise questions. In my role I did
2 the best that I could to try to improve the governance around
3 it, but ultimately it is a matter for the Minister as per the
4 Constitution where it constrained in my ability as to what I can
5 do on that matter.

6 Thank you.

7 Q. Were there other concerns that you had about Crown
8 Land disposals?

9 A. Yes, there were.

10 Q. And what were--what was the nature of those concerns?

11 A. So, there were similar concerns relating to valuations
12 that went always the power they had been undertaken, there were
13 also similar concerns about Crown Land being handed at what
14 could probably best be described as a vastly subsidized rate, so
15 even where it had been valued at whatever price that was, often
16 then it was given out at a peppercorn, for clarity, a few
17 dollars off, a few hundred dollars rent rather than at the rate
18 of the valuation.

19 That, for me, left me with questions as to whether
20 Belongers are actually getting fair treatment, inequitable
21 treatment under this arrangement, and wherever there was
22 actually a proper processes and policies in place around the
23 distribution of Crown or allocations of Crown Land.

24 Q. One final question on this topic, but did you
25 appreciate, Mr Jaspert, that for many years across different

1 administrations, certainly for residential disposals of Crown
2 Land, there was a deliberate policy of selling or disposing of
3 Crown Land at less than market value in order to encourage BVI
4 Islanders, Belongers to have access to land for residential
5 purposes?

6 A. Yes, I fully did. And I think it's probably worth
7 clarify a bit around the kind of land files that came to me.

8 So, sometimes I had Non-Belonger applications, that
9 was essentially when a Non-Belonger is purchasing a property
10 normally or plot of land off a Belonger or sometimes it was
11 Non-Belonger to Non-Belonger. Those again, I was the signatory
12 on and would sometimes send them back if there are areas in the
13 file or the Attorney General's Chambers normally would do the
14 bulk of that through their work vetting the files.

15 There were then Crown Land allocations to Belongers
16 under various schemes to promote the ownership of land to
17 Belongers, and schemes such as in Spooner's Estate, Virgin Gorda
18 and Anegada, et cetera, and those were something that obviously
19 is to be supported, and my role there was to sign those off, and
20 as you saw in the exchanges, just asked for clarification on the
21 guidelines around them.

22 There's in the third set which would often come, which
23 were more of a commercial nature. We just talked about one of
24 those at 1291, I think, was the reference the Bevis Sylvester
25 leasing of the land where I don't believe that was part of the

1 allocation of land to Belongers under those schemes. It was
2 essentially a commercial transaction where on those, again, my
3 role was to be signature on them, but the land is administered
4 under the Constitution by the Minister. Those would come to
5 Cabinet, and I would check sometimes that all the papers were in
6 order. I would sometimes question as to why land was being
7 given out, in this case as you said, I believe it was \$600,000's
8 worth of land for one dollar. It wasn't apparent exactly why
9 such a subsidy was being given. I know in the testimony of
10 Mr Abbott, he said there is, I quote page 11 of the bundle, I
11 believe is the sixth Affidavit of Joseph Smith-Abbott refers to
12 on 4.3(c), discretionary allocations which include, he goes on
13 to say, ought to fill a particular policy objective, for
14 example, supporting those in hardship.

15 Again, I didn't know the details of this case. I
16 wasn't particularly presented with it, but it wasn't clear if
17 Mr Sylvester was being supported because he was in hardship and,
18 hence, that's why there was land at a lower rate.

19 My role was purely to question the arrangements that
20 had been put in place and to question whether Cabinet had been
21 given the full information on it, and hence, that's why I turned
22 those files back for clarification on the points prior to my
23 signature.

24 Thank you.

25 Q. Put those files away now. Again, returning to your

1 role under the Constitution as Governor, and taking you back to
2 paragraph--Section 60 and subsection (8), please.

3 Do you have that, Mr Jaspert?

4 A. I have the Constitution here, thank you.

5 Q. Did you, during your time, as Governor, exercise the
6 power there in that subsection which allows you, after
7 consultation with the Premier, to give directions as to the
8 exercise of function conferred on another person or authority,
9 if it would involve or affect any of the matters reserved to you
10 as Governor?

11 A. I'm not aware of a specific, but if you would like
12 to--if there is something you would like to specifically
13 address, I'm happy to talk through.

14 Q. We may have lost some of what you said there,
15 Mr Jaspert, but I think for a moment we also lost Sir Geoffrey,
16 but I see he's back online.

17 Can I just confirm, Sir Geoffrey, can see and hear us?

18 (Thumbs up.)

19 MR RAWAT: I see Sir Geoffrey's thumb says yes.

20 SIR GEOFFREY: It's sometimes the shortest way of
21 dealing with matters on these computer links. I do apologize,
22 but I am hearing and I am seeing. Thank you.

23 MR RAWAT: Thank you. Unfortunately, the medium
24 doesn't allow you to--wouldn't allow you to give a thumbs down,
25 Sir Geoffrey, because you would have disappeared.

1 BY MR RAWAT:

2 Q. But, Mr Jaspert, I just wanted to--I think I am going
3 to try and put it in a different way.

4 You have reserved responsibilities under Section 60;
5 that's right, isn't it?

6 A. That is correct.

7 Q. And including internal security and, as we have been
8 discussing, terms and conditions of persons in public office.

9 Subsection (8) allows you to give, in certain
10 circumstances, a direction, having consulted with the Premier.
11 Were there instances during your time as Governor where you did
12 issue such a direction?

13 A. I can't recall that specific, but please do refresh my
14 memory if there is something I have missed.

15 Q. I don't have an example where you did it, but were you
16 or can you assist the Commissioner by indicating what
17 circumstances you might need to issue such a direction?

18 A. Well, I wouldn't like to speculate, if that's okay,
19 Mr Rawat, I'd rather than deal in specifics.

20 Thank you.

21 Q. But it's right, isn't it, that if you were to issue
22 such a direction, you would have to consult with the Premier?

23 A. That is my reading of that Section of the Constitution
24 that you're quoting from, yes.

25 BY MR RAWAT:

1 MR RAWAT: Commissioner, the last topic that I need to
2 deal with is the topic of radar barges, and that's one where I
3 think we need to go into private just for complete safety.

4 COMMISSIONER HICKINBOTTOM: I assume you won't
5 actually take very long?

6 MR RAWAT: Hopefully not.

7 COMMISSIONER HICKINBOTTOM: Mr Jaspert, we will just
8 go into private session now, and once that's been done, we
9 will--stay on the line. It will just take a minute or so while
10 that's done. Thank you.

11 (End of open session. Confidential session begins.)

CONFIDENTIAL SESSION

1
2 COMMISSIONER HICKINBOTTOM: We're in private session.
3 Mr Rawat.

4 MR RAWAT: If I could just have a moment to find my
5 notes.

6 (Pause.)

7 BY MR RAWAT:

8 Q. Mr Jaspert, can I just confirm what bundles you have?
9 Do you have the bundles in electronic form? Radar barges.

10 A. I'm afraid I have a mixture, but I believe I have--I
11 have access to the Epiq system, so I should be able to pull up
12 anything. There may be a short delay if it needs to download.

13 Q. Well, I'll try and do it in such a way that we try and
14 perhaps not to go too much into the documents, but I hope you'll
15 recall the context, and that is in 2020, the Government entered
16 into a series of contracts with EZ Shipping, which covered the
17 provision of barges to be used as radar platforms at sea, and
18 that involved decisions made by the NSC and Cabinet.

19 The Contracts covered the periods 23rd of August 2020
20 through to 22nd of September 2020--or the 27th of October, then
21 the 23rd of October through to 22nd December, and finally the
22 23rd of December through to the 22nd of January. Is that
23 something that you can remember being involved in as a Member of
24 the NSC and as Chair of Cabinet?

25 A. Yes, correct.

1 Q. The starting point is that EZ Shipping sent an
2 unsolicited proposal addressing the use of their boats as radar
3 barges to the Premier, but copying you in. Do you remember
4 receiving that proposal?

5 A. I don't specifically remember that e-mail, but I do
6 remember being made aware of it at the time.

7 Q. When you say you remember being made aware of it, who
8 made you aware of it?

9 A. Subsequent discussions, I believe it was outlined. It
10 was an unsolicited proposal. I believe the Commissioner of
11 Police also flagged it to me as part of our regular discussions.

12 Q. In terms of the sort of chronology and the sequence of
13 events that occurred, I don't think there's very much dispute,
14 if any, on the facts, and one of the events that did occur was
15 that in July--on 3rd of July 2020, there was a Cabinet Action
16 Item where Cabinet agreed that Customs, or the Border Control
17 Task Force should revisit a proposal received from private
18 vessel owners offering their vessels to support Order Manager
19 Control efforts, which would then be considered by the National
20 Security Council.

21 Can you just explain what a Cabinet Action Item is?

22 A. Sorry, that I assume is an action stemming from
23 Cabinet, so Cabinet, as per discussions, there were sometimes
24 actions that came from Cabinet, and then there would be
25 decisions of Cabinet.

1 Q. So--

2 A. So that would have been the action category. Those
3 are not Cabinet--not areas where Cabinet has taken a vote and
4 decided on the matter but has asked what action to be taken
5 forward.

6 Q. What we understand the sequence of events to be is
7 that on the 23rd of August, before a contract had been signed
8 with EZ Shipping, The Honorable Premier authorised the
9 deployment of three radar barges belonging to EZ Shipping.

10 Were you aware of that decision being made at that
11 time?

12 A. From my recollection, I was not aware of the Premier's
13 decision. I was aware of the issues, you say because this had
14 been discussed, and there had been security advice that was not
15 in favor of these barges from, I believe, from the Commissioner
16 of Police, from the RVIPF, I should say, from Customs and from
17 Immigration, but I wasn't aware that the Premier was taking
18 steps outside of that security advice, to the best of my
19 knowledge.

20 Q. But would you accept that there was--or there had been
21 in the lead-up to the Premier's decision of the 23rd of August a
22 decision taken that the Joint Task Force, as it was properly
23 called, should progress the use of radar platforms as part of
24 the security--process of securing the border?

25 A. Can I ask to what document you're referring to pass

1 that decision, please?

2 Q. Right. Let me just take you through it. If we start
3 off with 3691, please.

4 A. Sorry, I have three bundles on Crown Land. Do you
5 know which one it is? Crown Land or EZ Shipping. There is
6 four, Part 4, 1 to 4, so I'm keeping up with where we are.

7 COMMISSIONER HICKINBOTTOM: Part 4.

8 THE WITNESS: Part 4. Thank you very much.

9 COMMISSIONER HICKINBOTTOM: 3691?

10 MR RAWAT: Yeah.

11 BY MR RAWAT:

12 Q. To shorten it, if we start off with 3584, please.

13 It's within your Part 3, I understand, Mr Jaspert, 3584.

14 A. Apologies. It's just one scan loading up the files.
15 Thank you.

16 I believe I have that document. Thank you.

17 Q. What it should be is the 22nd July 2020, a memorandum
18 by yourself and the Premier to the National Security Council,
19 which at (a) seeks a decision from the Council to review and
20 accept what's called the "Comprehensive Border Security Plan 3-6
21 Months Projection" for the Territory.

22 Do you see that?

23 A. Yes, I do. Thank you.

24 Q. The Comprehensive Plan, itself, we find starting at
25 3587. Let me know when you've got that.

1 A. I have that. Thank you.

2 Q. So, just to give you some context, Mr Jaspert, as part
3 of the pandemic, there was a Joint Task Force set up which
4 comprised the Police, Customs, and Immigration. They had come
5 up with a Border Security Plan which came to Cabinet, and they
6 were asked to reconsider and reconsider, as I've showed you on
7 30th of July, by reference to offers from owners of private
8 vessels. They then came up with a Comprehensive Border Security
9 Plan, and we're now at the point in the timeline when it's come
10 to the NSC, and if you go through to page 3603...

11 A. Yes, I have that.

12 Q. You'll see that there's reference there, at 3603. If
13 you look at d) there's reference there to using rental radar
14 platforms for one month at \$510,000.00, and in the longer term
15 purchasing five radar platforms for \$150,000.00, and the action
16 points are recorded as (reading): To search, secure and
17 purchase radar platforms and to detect aircraft and vessels in
18 and around Territory. It's to be noted there will be other
19 costs involved for erection of these platforms and proper
20 planning and evaluation has to be made.

21 So, that's the document that comes before the NSC.
22 And if you look at 3609, that's the consequent decision of a
23 special meeting on the 24th of July of the Council, and amongst
24 the Council--the NSC reviews and accepts the Security Plan that
25 I've just shown you to, makes a number of immediate pri--or

1 identifies a number of immediate priority funding areas,
2 including at (iv) on page 3610, having (reading): At least two,
3 24-hour platforms, in principle", the costs of which were to be
4 "negotiated by the Joint Task Force in conjunction with the
5 "Ministry of Finance following a rapid invitation of proposals
6 for approval by the NSC".

7 Do you have those?

8 A. I do, yes.

9 Q. That's the context.

10 If you go through, please, to 3646.

11 A. I have that.

12 Q. On the 25th of September 2020, the NSC recommends to
13 Cabinet (reading) that the Government enter into an agreement
14 with EZ Shipping Limited for a period of 60 days with effect
15 from 23rd of August 2020 through to the 22nd of September 2020,
16 and recommends that EZ Shipping should be reimbursed at a rate
17 of \$14,000 per day, totaling \$840,000 for three vessels in
18 accordance with a draft contract that's before the NSC.

19 And then if you go to 3648, that's the Cabinet
20 Decision that then follows.

21 The Contract was actually signed on the 14th of
22 October 2020. So, just to summarise the factual context, you
23 are Chair of the NSC and Chair of Cabinet. The barges--I will
24 call them the "radar barges"--supplied by EZ Shipping are
25 deployed on 23rd of August 2020, and subsequent to that date,

1 NSC recommends an agreement with EZ Shipping which Cabinet also
2 agrees with and a contract is then entered into on the 14th of
3 October, so towards the end of the Contract period.

4 So, hopefully you've got enough context now, but were
5 you--returning back to the 23rd of August, prior to that date,
6 did you have any discussions with The Honorable Premier about
7 deploying the radar barges?

8 A. Yes.

9 So, the overall context was that we were obviously at
10 that point going through the coronavirus pandemic and had agreed
11 to shut our--close our borders, and protect the borders. The
12 context was that we needed a good way to help make sure there
13 was surveillance around the borders. There had been, I
14 understand, voluntary barges, essentially, put out--or not
15 barges, they were voluntary radar platforms, largely those were
16 charters yachts, I believe, had been put out voluntary basis.
17 Also I had attempted to take to NSC, and you'll see separately
18 an exchange of letters relating to an offer which was for
19 technical assistance support from the United Kingdom, which was
20 similarly deployed to, I believe, Cayman and the Turks and
21 Caicos Islands to help develop better and stronger border
22 security and to put in place things like radar or to put in
23 place measures that could help support the development of our
24 local agencies of BVI. That was, you will see, a separate issue
25 but that was the subject of a number of push-backs from the

1 Elected Government as you will see in some of the wider
2 exchanges.

3 There was then, as you have rightly highlighted, a
4 Border Security Plan which included the need for radar, but did
5 not specify who, and in principle it was to have some platforms.
6 And as you've rightly highlighted, I understand that commitment
7 was given to EZ Shipping ahead of that time and ahead of the
8 Cabinet discussion by the NSC or Cabinet discussion that may
9 have agreed or not on it.

10 I did hold discussions also with both as part of
11 National Security Council and with the Premier, because I was
12 concerned about the approach taken on EZ Shipping. The--at
13 first, this was because there had been no--it was an unsolicited
14 proposal, and there was--I believe there should have been a
15 wider approach to look at how we solve the problem, the problem
16 being border security, radar, and to have a look at what other
17 approaches there may be. There's no way to guarantee cost
18 effectiveness of it or operational effectiveness of it, and that
19 point I was not given any information as to any due diligence
20 undertaken as to the Company itself.

21 As he then also highlights, decision was taken outside
22 of the National Security Council around it, which always caused
23 me further concern on this matter.

24 So, yes, I did have a number of conversations both as
25 parts of the National Security Council and outside of National

1 Security Council around this matter.

2 Thank you.

3 Q. So, just so that we're clear about what you knew, so
4 23rd of August 2020 is when the barges are deployed. How soon
5 after that date were you aware that they were--had been
6 deployed?

7 A. I'm afraid I would not be able to give an exact date
8 from recollection, but I do recall the security agencies, as you
9 would expect, myself as Governor, would have kept me updated on
10 the actions of the security agencies, but I can't recall exactly
11 when I was informed about this.

12 Q. If we go to 3883 in the bundle.

13 A. 3883?

14 Q. 3883.

15 A. Apologies, it may be a bad line but was that 1883?

16 Q. 3883.

17 A. Thank you.

18 I believe I have that, if that is Cabinet Agenda No.
19 78 of 2020?

20 Q. Yes.

21 And this is where the paper NSC having made the
22 recommendation, the paper is taken to Cabinet, and Cabinet then
23 sign--agrees to the Contract, the first contract with
24 EZ Shipping being entered into.

25 But what you say there and it's--there are some typos

1 there, but it's recorded that the Minister of Finance presented
2 this paper. You reiterated your position on signing contracts
3 before the NSC or Cabinet gets to review and approve and
4 decision-making approach to ensure that, and then says "con",
5 that Cabinet does not have to ratify something in the past.

6 So, what concern were you raising at that time?

7 A. I will have to partly work from recollection from
8 this, 'cause as you said, the minutes aren't 100 percent fully
9 capturing all over, but there seem to have a gap or typos in
10 them.

11 But my point here, I believe, was that Cabinet was
12 being presented with the paper essentially to make a decision.
13 This was a Decision Paper, I believe--but I believe that this
14 was relating to the EZ Shipping--when their hands were
15 essentially tied, so the ability of Cabinet to make a decision
16 was severely restricted because the Contract had already been
17 verbally agreed, I believe, with EZ Shipping. They had already
18 started to undertake their work. The commitment had already
19 been given to them. Cabinet had been briefed on a number of
20 occasions also from the Attorney General that a verbal agreement
21 is as much as a written agreement, and so they were well-aware
22 of the position on signing either verbally or written contracts
23 before there was the formal authority to do that. That formal
24 authority to do it is dependent on the level of spend, and
25 obviously this was a security matter, so it should have been

1 done at National Security Council, and as you've highlighted,
2 the EZ Shipping started this work, was given, I believe, ahead
3 of a formal decision of NSC.

4 NSC, where the amount exceeds \$100,000 passes that to
5 the Cabinet for approval also, and I believe that this again,
6 this decision of the approval to EZ Shipping or commitment to
7 EZ Shipping, had been made before that Cabinet Decision of the
8 spend as well.

9 So, I believe my point there is that it was about
10 essentially the process, both from a security perspective and
11 from a good governance perspective, as well.

12 We did at that time, and I remember thinking this at
13 the time, we were meeting very, very frequently as Cabinet and
14 as National Security Council. So, if there were or was urgent
15 business, that could have always been brought to a one of those
16 Council meetings, in fact. Separately you would have seen in
17 the various bundles there was an exchange between the Premier
18 and myself where he, the Premier, complains that we didn't meet
19 on NSC in the afternoon or I think within two hours of him
20 asking it, and we met instead the next morning, which seemed a
21 completely reasonable position, and so it was obvious that we
22 could meet within 24 hours when needed.

23 This didn't--so my point I believe there was about
24 both due process, adherence to the respect to NSC and both
25 Cabinet, as well.

1 Q. And just to be clear, is your evidence that you, as
2 Chair of Cabinet and as Chair of the NSC only learnt of the
3 circumstances in which this first contract was being entered
4 into after the event? So you weren't, prior to the barges being
5 deployed on the 23rd of August, you weren't aware of that.

6 A. That is, I believe, my recollection, yes.

7 Q. And you weren't aware of the detail, how many barges
8 there would be, what daily rate they would be charged at?

9 A. No, I was--I don't believe I was aware of that,
10 although, as you mentioned earlier, there was the unsolicited
11 proposal e-mail from the company, but I didn't have information
12 beyond, I believe--

13 (Overlapping speakers.)

14 Q. Just to avoid confusing you, Mr Jaspert, I don't think
15 it's--the unsolicited proposal gave a different value, a
16 different price to that which Government eventually agreed and
17 also a different number of barges, but would the first--on the
18 chronology I summarised to you, would the first time that you
19 would have been aware of this have been when it first came as a
20 contract to review and recommend before the NSC, which would
21 have been in September 2020?

22 A. I'm afraid from memory I can't recall the date, but I
23 believe the Police Commissioner would have--and/or the other
24 heads of the security agencies would have told me that the
25 barges were live, for want of a better word, even if not

1 actually approved through the formal mechanisms.

2 I know they had reservations about the barges. I
3 can't speculate as to what pressure they may or may not have
4 been placed under, but I don't know that the agency, the Police,
5 the Immigration and Customs had reservations about using those
6 barges, which they had made clear as part of the security work
7 around it. I believe, actually, that the Police ultimately
8 ended up not using the barges as a platform for their own work.

9 Q. I mean, you say that the Police, Immigration, and
10 Customs raised concerns. Is it your recollection that all three
11 entities were raising concerns or just some or one of them?

12 A. I--again, I'm working from recollection, although I
13 believe in some of the Transcripts--I haven't got all of them to
14 hand--of when these agencies appeared in front of yourselves. I
15 believe there were--were those points raised or concerned. So,
16 I do remember Customs raising concerns and that was I know from
17 the evidence Mr Romney provided to you. I quote page 103 of his
18 Transcript saying that "that we were not in favor of the use of
19 the barges", and also quite from, I believe, Mr Matthews had
20 said to me but it's a point that he reiterated--actually it's a
21 Mr Romney here, so I believe, I would add that such platforms do
22 not feature as a priority in our previous plan submitted to NSC,
23 and the Police Commissioner, himself, also had raised concerns
24 with me, and I believe I would have to look through the
25 Transcript more, but I believe he also reiterated that point

1 with yourselves as well about his concern about these barges.

2 Q. Aside, Mr Jaspert, what evidence others may have given
3 to the Commissioner, but I just want to understand what you knew
4 at the time.

5 So, at the time--and I don't think this is
6 disputed--but certainly after--it was only after that first
7 deployment that the Contract arrangements were finalised. But
8 in terms of concerns that Customs and/or Immigration and/or the
9 Police may have had at the time about the use of radar barges,
10 did anyone raise those concerns directly with you?

11 A. Yes, they did. I consulted--
12 (Overlapping speakers.)

13 Q. (Unclear.)

14 A. Sorry, Mr Rawat.

15 Q. Who raised those concerns with you?

16 A. I believe the Commissioner of Police raised concerns
17 to myself, which covered the nature of the threat and the
18 operational effectiveness of the proposed response and also he
19 gave me briefing which included sensitive details.

20 Q. If I could take you in the bundle to 1831, please,
21 which would be your Part 3 bundle.

22 REALTIME STENOGRAPHER: You said 1831?

23 MR RAWAT: 1831, yes.

24 THE WITNESS: I confirm that is the National Security
25 paper No. 021/2020.

1 Q. Yes. Now again, this isn't, I believe disputed, but
2 that first contract with EZ Shipping ended in--on the 22nd of
3 November 2020, but the barges continued to be deployed. On the
4 6th of November, the matter returned to the NSC. And as you can
5 see on this page--and you'll see, yes, on this page, that
6 Council is invited--that's the National Security
7 Council--invited to recommend the continued engagement of
8 EZ Shipping covering a further two months, through the period
9 from the 23rd of October 2020 through to the 22nd of Novem--of
10 December 2020.

11 So, the matter is returning to the NSC.

12 Now, 6th of November 2020, would you have been in the
13 Virgin Islands at that time, and would you have participated in
14 this meeting?

15 A. Yes, I believe I was there. I don't recall traveling
16 during that period.

17 Q. You can see that at paragraph 2 on this page in terms
18 of background information, what's said is that this border
19 security has proved objectively successful in deterring persons
20 seeking to enter into the Territory illegally. There has been a
21 marked redaction--reduction in marine traffic to that end.

22 And if we go through to page 1832, at paragraph 4,
23 what's said is (reading): "The EZ Shipping Limited barge
24 platforms were activated on 23rd of August 2020, and have
25 yielded significant results ranging from being a deterrent to

1 arrests and detention of vessels. The platforms have and
2 continue to function as strategic outpost locations from which
3 Her Majesty's Customs or Royal Virgin Islands Police Force
4 marine vessels are rapidly deployed to intercept suspicious
5 maritime activity. The extended patrol range and expedited
6 patrol deployment of local authorities have allowed the
7 Territory to achieve immediate border protection while
8 developing more permanent measures".

9 Can you remember if you were, as the NSC meeting of 60
10 of November 2020, presented with any information to support
11 what's said in the paper?

12 A. Thank you.

13 I believe from recollection that we were not furnished
14 with evidence as to the effectiveness of the barges, but I will
15 say that is from recollection. I don't have obviously the full
16 papers here. These are for the minutes of that meeting.

17 So, we didn't--didn't actually have any ability to
18 assess whether this amount we were paying or the Government was
19 paying for these barges was cost effective or security-wise
20 effective.

21 Secondly, we did not have information on alternative
22 options, and as I mentioned earlier, I had to bring in support
23 from the United Kingdom to help develop, train, and boost our
24 own capability in the Virgin Islands, and that was quite
25 strongly resisted by, as you will see from various letter, by

1 Members of the Elected Government.

2 Also later then also I had the opportunity to bring in
3 a British naval ship, H.M.S. Midway, which had significantly
4 more--I'm not sure I can go into operational details that it did
5 have, as you would expect, had radar on it.

6 So, I believe there was enough information given on
7 the effectiveness and the comparison of that either in cost
8 terms or in security terms against our others measures and
9 around here, but again I'm operating from recollection rather
10 than from papers, full papers here. That may be what I said I'm
11 missing in my recollection.

12 Thank you.

13 Q. Doing the best that you can, and I appreciate, you
14 know, the point you make that you don't have the full papers,
15 but can you remember raising any concerns over this second
16 contract at the time?

17 A. Yes, I can. I remember raising concerns about with
18 this Contract, really throughout all of the various different
19 permutation it went through, all the various reasons we've
20 spoken about.

21 Q. And were those concerns both being made on a "value
22 for money" basis as well as a security basis?

23 A. Yes, they were made on a "value for money" basis. You
24 can see that at cost of the barges compared to estimates that we
25 had for setting up static radar platforms, including with

1 support from the UK, and potentially with funding from the
2 United Kingdom.

3 But also on the security grounds around the
4 arrangements were put in place, for example, basic questions as
5 who would have access to the radar information were not
6 answered. Who--were the crew of the barges vetted or not? If
7 we're placing them with key responsibilities on national
8 security, there were areas that raised concerns had not been
9 factored, and as I said, the Commissioner of Police raised
10 points to me about concerns around arrangements.

11 Q. Did you appreciate, Mr Jaspert, that there was
12 a--firstly did you appreciate that the--if you like, there was a
13 policy objective of the BVI drawing on its own resources in
14 order to facilitate and fund its own security?

15 A. Yes, I did.

16 Q. And that the intention for a long-term solution in
17 terms of radar platforms was one that was proving to take longer
18 than originally anticipated, not least because of the pandemic?

19 A. I don't fully accept that. I think it was taking
20 longer potentially because there wasn't such strong well-to-do
21 it. There seemed to be a fair bit of drive from certain
22 quarters to get the EZ Shipping arrangement moving, if that
23 drive would be sustained on the more sustainable positions and
24 potentially cheaper and more security--potentially more security
25 effective operations that could have potentially supported us to

1 a different position.

2 As you--just going back to the point about the Policy
3 objective, that is one that we talked at length about in these
4 sessions with a hundred percent support, and why hence I was
5 very open and transparent about the offers available. The
6 Premier then later, actually I believe, changed his position
7 about and actually asked for some of those--some support to come
8 in around some of the areas as well.

9 Thank you.

10 Q. Just to assist the Commissioner, there, with some
11 detail about the nature of the support that offered by yourself
12 from the UK.

13 A. Thank you.

14 Well, again, I'm afraid I don't have full details
15 here, but I do recall that the UK was funding certain equipment,
16 so, for example, night vision goggles to teams that out there.
17 The United Kingdom had offered what they called a security
18 assessment assistance team, I believe it was called, which was
19 essentially a team that could come over and help particularly
20 fit with that policy objective of the BVI, itself, developing
21 its capabilities and funding its own capabilities for the UK to
22 bring over some marine and security experts to help train up, to
23 help get proposals going. If the funding comes from the local
24 budget, that is all the better, and that fits with that policy
25 objective, but installing things like radar and scoping were

1 quite technical tasks, so there were offers there to do.

2 And then there was also later the arrangements around
3 direct support in terms of the military ship that was in the
4 region and in in the region throughout the season, and was there
5 at the time as well.

6 So, there was a range of offers to support the
7 development of BVI's own capabilities in line with the position
8 of supporting BVI itself to develop.

9 Thank you.

10 COMMISSIONER HICKINBOTTOM: Mr Rawat, I know the time.
11 I wonder how long you've got to go so we could plan a break for
12 Mr Kasdan, but also possibly the Premier.

13 MR RAWAT: I hoped probably about 15 minute, I would
14 hope, but if you want to have for Mr Kasdan now, it's
15 probabl--I'm the world's worst estimator of time, may have
16 proved on more than one occasion.

17 COMMISSIONER HICKINBOTTOM: Mr Kasdan, would you like
18 a break now? We're going to be--because we may have an
19 application then as well from Sir Geoffrey Cox, so we are going
20 to be probably half an hour.

21 Is it best if we have a break now, Mr Kasdan?

22 REALTIME STENOGRAPHER: Yes, it is. Thank you very
23 much.

24 COMMISSIONER HICKINBOTTOM: That's what we will do,
25 break for five minutes. Thank you.

1 (Recess.)

2 COMMISSIONER HICKINBOTTOM: Good. Mr Rawat.

3 MR RAWAT: Thank you.

4 BY MR RAWAT:

5 Q. Mr Jaspert, can you see and hear me?

6 A. I can.

7 Q. I'm going to try and take this shortly, but hopefully
8 with some sense of chronology, and perhaps without going too
9 much into the documents. If you need to see a document, please
10 ask me, but what I hope I'm going to put to you is sort of some
11 undisputed facts, and so it may be that we can do without the
12 documents and if I get a date wrong, I hope someone will correct
13 me.

14 We've talked about what your knowledge was of the
15 first contract that was awarded to EZ Shipping, which would have
16 been back in October of 2020, so just to give you the sequence,
17 that first contract was entered into on the 14th of
18 October 2020?

19 MR RAWAT: And Commissioner, for your note, it's
20 at--you'll find it at page 54 in the bundle.

21 BY MR RAWAT:

22 Q. And it was due to end on the--start on the 23rd of
23 August and end on the 22nd of October 2020. That's the first
24 point.

25 Notwithstanding that was the end date, the information

1 that the Commissioner has--and this is in a Cabinet
2 Memorandum--is that the EZ Shipping barges continued to be
3 deployed by the BVI Government after that date.

4 The next step in the sequence was the memoranda that I
5 took you to, before we had the short break, of the 6th of
6 November 2020 which was a memorandum to the NSC and which
7 recommended the continued engagement of EZ Shipping for a period
8 of 60 days from the 23rd of October through to the 22nd
9 of December 2020, again at the same rate of \$14,000 a day for
10 the use of three barges.

11 On the 23rd of November--and again, if you need to
12 look at it, tell me--the Premier granted approval to the
13 Financial Secretary and the Accountant General to make available
14 at the sum of \$840,000 to cover payments due to EZ Shipping.
15 Would that have been something that you would have been aware of
16 as Governor?

17 A. If it was done outside of the National Security
18 Council or outside of Cabinet, then I doubt I would have been
19 aware of it.

20 Q. On the papers, it appears that on the 24th of November
21 and then on the 24th of December, payments were made to
22 EZ Shipping, they were in the sum of \$420,000 and covered the
23 period from the 23rd of October to the 23rd of November, and
24 then the 24th of November through to the 23rd of December.

25 Would you have been aware of those payments being

1 made?

2 A. Again, unless they were discussed at Cabinet or NSC,
3 if they were made outside of that, or unless I was specifically
4 memoed by the Financial Secretary, and I believe I would have
5 been aware of those specific payments.

6 Q. The second contract that the Government signed and
7 which was signed by the Premier, that the Government signed with
8 EZ Shipping was on the 29th of December 2020, but if you go,
9 please, in your first bundle, your Part 1 bundle, to page 483.

10 A. Apologies, Mr Rawat. Can you repeat the page number,
11 please?

12 Q. Yes.

13 Part 1 of the bundle, page 483.

14 A. Thank you.

15 I have it, if that's the memo from the Cabinet
16 Secretary to the Premier dated 30th of December.

17 Q. That's right.

18 And it's a memo or it's an expedited extract, and it
19 relates to a meeting of the National Security Council on 30th of
20 December 2020 where the Council took a number of decisions which
21 was in particular to recommend the continued engagement of EZ
22 Shipping Limited to provide three barges to serve as radar
23 platforms for a further two months with effect from the 23rd of
24 October through to the 22nd of December 2020.

25 Do you recall being at an NSC meeting on the 30th of

1 December 2020?

2 A. I believe I was out of the Territory at that time, so
3 for my travel plans I was not in the Territory, so I don't
4 recall this meeting and I believe I was out of the BVI at that
5 point.

6 Q. So, how soon before the 30th of December had you left
7 the Territory?

8 A. From recollection, I believe I flew on either the 20th
9 or 21st of December and I believe I returned in the first week
10 of January--

11 (Overlapping speakers.)

12 Q. What we see from the chronology is that, although
13 counsel was recommending the continued engagement of
14 EZ Shipping, the Contract had already been signed, and it had
15 been signed after the expiry of the Contract period. Were you
16 aware of any of those details?

17 A. Not relating to this particular further extension of
18 this Contract, but as we discussed earlier, I was aware that
19 there had been a retrospective, I suppose is the right word for
20 it, agreement to a contract that had been taken outside of the
21 correct--by the NSC or Cabinet processes.

22 But in terms of this specific 30th of December one, I
23 was not aware of this particular set of papers or decision.

24 Q. Now, what we also know is that Cabinet then on the
25 31st of December ratified the recommendation of the NSC that

1 we're looking at, and that after the expiry of the Contract
2 period, which was 22nd of December, the barges continued to be
3 deployed by the Government. And there was then another NSC
4 memorandum dated the 19th of January 2021 where NSC was invited
5 to recommend or to note a draft agreement between the Government
6 and EZ Shipping for a period of further 30 days.

7 Now, NSC did not meet until the 10th of February, so
8 that would have been after your tenure as Governor ended,
9 wouldn't it?

10 A. That is correct, yes, sir.

11 Q. Were you aware of that there was further plan to
12 extend the Contract with EZ Shipping after December 2020?

13 A. I don't believe I was aware at the time. However, it
14 wouldn't have surprised me. There had been a lot of pressure
15 there to keep this Contract going, despite, as I mentioned, the
16 concerns had been raised relating to it.

17 Q. And to your recollection, you said you raised
18 concerns. Did other--who were the other--did others raise
19 concern?

20 A. From my recollection, I believe that Members of the
21 Joint Task Force did raise concerns, including the Commissioner
22 of Police, as I mentioned.

23 I can't recall whether--the Financial Secretary
24 normally would raise concerns about financial spending,
25 particularly this quantity of amount that is done in such a way

1 when there had been concerns raised by the Financial Secretary
2 in trying to reduce the amount of money spent on the Security
3 Plan. I can't recall, but I would be surprised if she didn't,
4 that the Attorney General obviously she raised--not speculate at
5 this meeting, I wasn't at it.

6 Q. Mr Jaspert, just leave aside particular meetings, but
7 please don't speculate. If you can't remember, say so.

8 You said you raised concerns. There is a quite a
9 lengthy timeline to this Contract from October through into
10 January of the new year. If you can't remember now--and I
11 appreciate you don't have all the documents to refresh your
12 memory from, including Minutes of Meetings, then it's best to
13 say so. If you can't remember whether others raised concerns
14 and at what point, then just say so.

15 But the process begins in October 2010--2020, and ends
16 and is still ongoing when you finish your tenure as Governor.

17 At what stage along that timeline did you raise
18 concerns?

19 A. I believed I raised concerns when I first heard about
20 it, which would have been early on in the period we discussed in
21 the timeline you set out, and also I believed from recollection
22 raised concerns when it came to the Cabinet on National Security
23 Council meetings. You referenced one of those discussions in
24 Cabinet where I raised concerns about the position Cabinet was
25 placed in to essentially have no option other than to

1 rubber-stamp something that had been taken outside of the
2 correct procedures.

3 So, in short, I remember raising concerns throughout
4 this period, although from memory I won't be able to give you
5 the exact dates when those were.

6 Q. One of the aspects of the use of radar barges was that
7 it would allow Members of the Joint Task Force to better detect
8 vessels in the area, and if as necessary, intercept those
9 vessels. What those who drafted Cabinet Papers and memoranda
10 would have had in mind is the risks associated with the
11 pandemic, particularly the spread of COVID.

12 In order to intercept, you need boats. Over the
13 course of the contract, so starting in October and running
14 through into January when you left the Territory, do you know if
15 there had been any improvements in the ability of Customs and
16 the Police Force to intercept successfully vessels?

17 A. So, there had been problems with our vessel fleets,
18 both those of the RVIPF, and of Customs, I believe the Police
19 (drop in audio) off the water for many, many months and I know
20 that the Commissioner had struggled to get funding, to get it
21 fixed from the Ministry of Finance. I think it was small sums
22 of, I believe it was in the region of 30-\$40,000 or so that was
23 required, but that took a long time to get that through.

24 And towards the end of my tenure, there were
25 developments to and through the Customs boat I believe, again

1 from memory, there was a refurbished boat as well as a Police
2 boat which the RVIPF went to see and wish it well on its
3 christening, for want of a better word, but as the boat was
4 brought into service, but there had been a run of successive
5 lack of full capability on the water to intercept.

6 Q. And when was that Customs boat brought into service?

7 A. I'm afraid I don't recollect the exact date.

8 Q. Perhaps if you use the time when you left the
9 Territory as a benchmark, how long before that did you go to the
10 christening of this boat?

11 A. It would have been towards the end of my--end of my
12 time as Governor, but I'm afraid I can't recall the exact date.
13 I believe it was a Police boat actually, not the Customs one
14 that him and I went jointly to the RVIPF command.

15 Q. Thank you.

16 One last matter then, if you turn up and it will be in
17 the Part 3 bundle at page 2042.

18 A. I'm sorry, was that 2042?

19 Q. 2042, please.

20 A. Thank you.

21 I have that, yes.

22 Q. This is a document headed "Joint Border Patrol Monthly
23 Reports" and said to cover the period August 24th 2021, through
24 to 31st January 2021, and the figures, as I understand it, show
25 the number of vessels detected using the radar barges and then

1 the numbers intercepted.

2 Now, you would likely have left the Territory by the
3 31st of January, but during the course of the currency of this
4 Contract with EZ Shipping--and there were three in total--do you
5 recall being provided details of this sort whether in the NSC or
6 outside the NSC?

7 A. I'm afraid from memory I can't recall, although from
8 the look of it, it may be a document that would have circulated
9 to Members, but I'm afraid I don't recall this specific
10 document.

11 Q. Well, leave aside the specific document, but do you
12 recall being briefed at all as to the effectiveness of the radar
13 barges?

14 A. I believe we did have some briefing on it, but I can't
15 recall--

16 REALTIME STENOGRAPHER: Keep your voice up. I lost
17 you. I believe we did have some briefing on it, but I can't
18 recall, what?

19 THE WITNESS: I can't recall when or what briefing
20 that was or whether I saw this particular briefing.

21 BY MR RAWAT:

22 Q. Can you recall whether the information you were given
23 about the radar barges gave you any comfort?

24 A. I do recall, but having quickly skimmed this paper,
25 one of the areas where there was some comfort, not necessarily

1 about EZ Shipping's radar barges, but the use of radar gave some
2 comfort in terms of spotting some essential boats or on factors,
3 also the comfort to the Officers that may be deployed on them.
4 I don't know if that was specific to EZ Shipping more as I think
5 about the utility of radar.

6 Q. During that time, there was obviously a proposal for
7 developing land-based radar. Do you recall how much progress
8 was made on that during your time as Governor?

9 A. Yes, I do recall that there were discussions to
10 land-based radar in places were seen as a more reliable, more
11 cost-effective and more secure basis. That was one of the areas
12 which initially had tried to get Technical Assistance from the
13 UK to back our local response on. And towards the end of my
14 time, there was developments to try to take forward the scoping
15 of the land-based radar proposal.

16 I recall the National Security Council received a
17 paper on the potential for the use of land-based radar, and I
18 remember there was some work done to ascertain potential
19 locations of that and how that could operate as a system.

20 Q. You if turn up, please, and it will be in your Part 2
21 bundle page 1034. Let me know when you have it, Mr Jaspert.

22 A. 1834, is it?

23 Q. 1034.

24 A. Apologies, thank you.

25 I have a "REQUEST FOR QUOTATION" 24 November 2020?

1 Q. Yes.

2 As I understand it, this was a tender request. It's a
3 draft tender request in relation to Procurement and Installation
4 of Radar and Camera Border Security Surveillance Equipment for
5 Customs, and it may be suggested to the Commissioner that this
6 was withdrawn at your request.

7 A. I believe that is correct.

8 Q. Can you remember why you asked for that tender process
9 to be withdrawn?

10 A. I believe there was a letter from myself on this, but
11 I don't know if that is in the bundle or not, so from memory, I
12 believe this was that this had been taken through as
13 a--essentially a tender put out solely around equipment, as it
14 says, for HM Customs when there had been endorsement to a joint
15 approach around it, and there had been a plan worked up for the
16 approach to radar in the Territory, which this didn't align
17 with. And there had been a previous agreement about how the
18 radar--start with the words, land radar would be taken forward
19 which this didn't align with, so I requested that it be removed
20 so that the tender could be taken forward in line with the
21 previous decisions.

22 Q. Thank you.

23 MR RAWAT: If I could have a moment, please.
24 Commissioner.

25 COMMISSIONER HICKINBOTTOM: Certainly.

1 (Pause.)

2 BY MR RAWAT:

3 Q. Just one last matter, Mr Jaspert.

4 The position is that I think--or would you accept
5 this, first of all, that in terms of deployment of these radar
6 barges, there was at least a security aspect to that decision?

7 A. Definitely, yes. They were primarily for our
8 security.

9 Q. And so, would they have come within the ambit of
10 Section 60 and your powers under that provision?

11 A. Yes, security falls within Section 60.

12 Q. Now, you said that you had concerns over, firstly, the
13 process, contracts being entered into before NSC and Cabinet
14 have seen them and being asked to ratify decisions after the
15 fact, and also I think tell me if I'm misrepresenting what you
16 say. You had some concerns over the utility of this deployment.

17 Did you at any time consider using the power that you
18 have under Section 60(8) to make a direction?

19 A. Yes, I did. It did concern me that this could be
20 essentially an over-reaching of the Constitution by The
21 Honorable Premier into matters that are, as you rightly say,
22 within Section 60. I'd consider that ultimately I believe the
23 use of those powers such as you mentioned should be as a last
24 resort, and so I--in the specific instance where this tender was
25 there, I asked for it to be withdrawn, for example, and

1 expressed my concerns on other areas.

2 On EZ Shipping, it was a very hard one because the
3 commitment had already been given to EZ Shipping outside of all
4 of the arrangements. I had to weigh up the utility of (drop in
5 audio) more formal approach with the reality that EZ Shipping
6 had already been given a commitment to undertake their work and
7 essentially had been given a contract, even though, as you
8 highlight for the timeline, a contract wasn't actually given
9 until a few months after they started their work, so regardless
10 in a way of whether the constitutional powers had been used or
11 not, that wouldn't have given them much utility to the fact that
12 the Government was committed to giving money to providers and
13 that other options hadn't been pursued when we had the
14 opportunity to do so.

15 Q. And just so that I'm clear, the proposed tender that
16 was withdrawn at your request, was that--are you giving that as
17 an example where you did use your Section 60(8) power?

18 A. I'm afraid I don't have my letter here. I cannot
19 recall whether that was specifically referring to Section 60(8),
20 as you highlight, or whether it was a letter more encouraging
21 the correct approach rather than having to use the
22 constitutional power to achieve the correct approach.

23 Q. Do you have a copy of the Constitution with you?

24 A. I do, yes.

25 Q. Could you turn up Section 57(3), please.

1 A. Yes, I have that relating to National Security
2 Council.

3 Q. Yes. And 57(3) says that the National Security
4 Council shall advise the Governor on matters relating to
5 internal security and the Governor shall be obliged to act in
6 accordance with the advice of the Council unless he or she
7 considers it giving effect to the advice would adversely affect
8 Her Majesty's interest, whether in respect of the United Kingdom
9 or the Virgin Islands, and where the Governor has acted
10 otherwise and in accordance with the advice of the Council, he
11 or she shall report to the Council at its next meeting.

12 Given what you say about the decisions that had been
13 made in relation to EZ Shipping, which is essentially a contract
14 before it had come to NSC, a commitment made, barges deployed,
15 would Section 57(3) have afforded you a way or a route by which
16 you could have prevented that continuing?

17 A. It potentially could have, as my understanding of
18 that. However, as has been highlighted, the Minister of Finance
19 has responsibility for the finance of payment, so those payments
20 had, I believe, already gone out the door or been committed, so
21 whilst I would be able to use Section 57(3) on the security
22 matter, the finance had already through the Minister of
23 Finance's powers been committed to and given out.

24 I did, I believe, raise this power as part of the
25 National Security Council discussions. We tried to encourage a

1 more effective approach, and it also raises this power as part
2 of my deliberations with the National Security Council when I
3 ultimately decided to utilize the support of H.M.S. Midway,
4 which was the United Kingdom Naval ship which temporarily joined
5 our waters to help patrol the waters and tackle the kind of
6 issues that we were concerned about.

7 Q. Over what period was H.M.S. Midway in British Virgin
8 Island waters?

9 A. I'm afraid I don't have the exact dates to hand.

10 Q. Can you give the Commissioner some idea, again using
11 the time you left the Territory as a benchmark?

12 A. I believe it was around about--at the end of the
13 summer period, I believe, so right around about September-ish,
14 September 2020, the end of September 2020, and would have been
15 there for a while.

16 Obviously the operational deployment of a military
17 ship are not revealed in detail exactly where it was at any one
18 point but I was aware that having entered our waters and to
19 support our operations. It then stayed around for a while. So,
20 I believe it was at the end of my tenure from the end of
21 September 2020.

22 Q. So, end of September 2020, you said they were there
23 for a while. When you say "a while", are we talking week or
24 months?

25 A. I believe that would have been weeks, but again, I

1 don't have the details to hand here.

2 MR RAWAT: Commissioner, I think I have reached the
3 end of my questions but I'm asked to put a question to
4 Mr Jaspert.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 BY MR RAWAT:

7 Q. Mr Jaspert, just to help you with some chronology,
8 I've got a question which I'm very happy to put on behalf of the
9 Attorney General, but you have three contracts that are signed
10 for EZ Shipping, so the first contract is entered into on the
11 14th of October 2020, by which time the barges have been
12 deployed and payments made or approved.

13 The second contract is entered into on the 29th of
14 December 2020, by which time there is still ongoing use of the
15 barges, and further payments have been made.

16 The third contract is signed on the 18th of March 2021
17 but it covers a period up to the 22nd of January 2021, so by the
18 time that's signed, the work of EZ Shipping is suggest finished,
19 and they have--payment has already been approved to them.

20 But the question I'm asked to put to you is: Given
21 that you would have been aware of the first contract being
22 entered into, why didn't you say that no further contracts
23 should be entered into with EZ Shipping?

24 A. I reflected my concerns to NSC and Cabinet, but as
25 part of a commitment of being Governor, we've talked about a

1 number of times here, my instinct and my approach and my
2 principles were to try and encourage self-determination and good
3 decisions by the Elected Government as the first point. I don't
4 think a Governor should be reaching to exert powers as the
5 starting point. They should be trying to encourage support and
6 take forward stronger, more effective self-determination. On
7 hindsight, you could question whether that strength of
8 self-determination or more necessarily the right decisions were
9 made by those who were responsible, those who had the Authority
10 over the finance and gave them out, but my principles were clear
11 about the approach I took, which was to try and operate a
12 partnership, raising concerns in private about the matters,
13 trying to encourage a better position, trying to work up
14 alternative options, as I mentioned earlier, as well using some
15 of the Authority that I had rather than jumping straight to
16 constitutional powers.

17 Q. Thank you.

18 MR RAWAT: Commissioner, I think I have reached the
19 end of my questions.

20 COMMISSIONER HICKINBOTTOM: We can go back, then, to
21 open session.

22 MR RAWAT: Yes, we can.

23 COMMISSIONER HICKINBOTTOM: Good.

24 Mr Jaspert, we're just going into open session again,
25 so that will just take a minute or so, but we will...

1
2

(Confidential session ends.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OPEN SESSION

COMMISSIONER HICKINBOTTOM: We are back live-streamed. We have now completed the private session on radar barges.

Sir Geoffrey, as earlier this week, what I would propose is that the full Transcript, when it's available, is sent to the Attorney for her to excise anything that needs to be excised, I think quite a lot, if not everything, that we've discussed in private session.

It may be that everything can be left in, but the Attorney will have an opportunity to suggest redactions of anything that needs to be redacted, so that will be done, as I say, in the way in which we dealt with your evidence earlier this week.

Now, Mr Rawat, is that the end of the questions that you have of Mr Jaspert?

MR RAWAT: It is.

And can I conclude by thanking Mr Jaspert for not only his attendance yesterday but also for making himself available today, and can I also thank him for the way in which he has given his evidence to the Commission.

COMMISSIONER HICKINBOTTOM: Yes.

Mr Jaspert, just two things. Firstly, can I also echo that and thank you for your time and the manner in which you have given your evidence, both yesterday and again today, which

1 I know you rearranged at short notice.

2 If you just stay on the line for a moment because
3 there is an outstanding application for the Attorney to ask you
4 questions as well, and Sir Geoffrey, can we deal with that now?

5 I think you're muted, Sir Geoffrey. Let's just check.

6 SIR GEOFFREY: Yes.

7 Can you hear me, Commissioner? Yes, good.

8 We can deal with it, but what I'm going to propose
9 rather than me make an application now is that I should be
10 permitted by you, if you would, to have a period to reflect upon
11 whether to examine Mr Jaspert would serve any useful purpose
12 beyond the questions that I will have for the current Governor.
13 I can see that there may be some areas, but I would like to take
14 instructions on whether really it's necessary to detain
15 Mr Jaspert who has important other responsibilities and whether
16 Mr Rankin and his availability which I know we're talking about
17 in the appropriate ways through the usual channels, would
18 suffice. It's simply this, that if I don't need to
19 cross-examine Mr Jaspert, then I wouldn't want to trouble either
20 him or the Inquiry.

21 COMMISSIONER HICKINBOTTOM: I will hear from Mr Rawat.
22 It seems to me, Sir Geoffrey, that's a perfectly sensible
23 approach, if I might say so.

24 SIR GEOFFREY: May I propose--forgive me for
25 interrupting. I was going to propose one final thing, and that

1 is I take it a decision on this, subject to your directions
2 tomorrow morning, but perhaps we might discuss it and then serve
3 in writing a note either saying clearly no need or indicating
4 those areas in respect of which I would like to ask questions.

5 COMMISSIONER HICKINBOTTOM: I think it's sensible.

6 First, we can deal with this tomorrow. I mean, in
7 terms of the Governor, the current Governor Rankin, what we
8 discussed the day before yesterday and what I can give
9 directions for tomorrow is that you are going to let us have
10 details of the areas on which you want to question him as part
11 of the application, and then that can be dealt with at the same
12 time as any application in relation to Mr Jaspert.

13 SIR GEOFFREY: Sorry, for some reason I'm muting
14 automatically, which no doubt is a helpful thing to have but not
15 in a moment like this.

16 I understood you'd granted my application in relation
17 to the current Governor, what I will there just indicate for the
18 Cabinet--for the Inquiry's use and the current Governor's use is
19 the broad areas.

20 In relation to Mr Jaspert, I don't seek at this stage
21 to examine him. I seek time to reflect on it, and I will then
22 make in writing an application to examine him alongside serving
23 the areas for the current Governor.

24 COMMISSIONER HICKINBOTTOM: That's fine. And we can
25 deal with the precise directions tomorrow.

1 SIR GEOFFREY: Yes.

2 COMMISSIONER HICKINBOTTOM: But I indicate certainly
3 my approach to your application in respect of the Governor,
4 Governor Rankin, and that can all be dealt with tomorrow. And
5 as you say, that's going to be subject to your putting in areas
6 of questions that you want to ask him. I can give a direction
7 tomorrow which can obviously be linked with that in relation to
8 Mr Jaspert.

9 MR RAWAT: You're on mute again, Sir Geoffrey.

10 SIR GEOFFREY: There must be some setting on it.

11 I may not be in a position by tomorrow. I hope that's
12 not what you were expecting, to have the document drafted.

13 COMMISSIONER HICKINBOTTOM: No, what I will do
14 tomorrow is to make directions that you draft the document
15 by--it will be sometime very early next week, just so that we
16 can know where we are, and then directions can be given for any
17 further questioning and the Hearings and so on, so I think
18 that's all fine.

19 In which case, Mr Jaspert, again, thank you, and in
20 respect of the pending application, we will obviously let you
21 know.

22 Can I ask this--and obviously this is now in a
23 hypothetical question, but hopefully you can give a real answer.
24 I'm not--I'm not quite certain, and I haven't asked for
25 submissions, and I'm sure I won't have to have submissions on

1 whether you are actually compellable to give evidence about what
2 happened when you were Governor under Section 60 of the Evidence
3 Act, but could I just put this question to you: If Sir Geoffrey
4 did have any questions to ask you, subject obviously to him
5 identifying the areas on which he wants to ask you questions, is
6 that something that you would at least in principle be willing
7 to do?

8 THE WITNESS: Thank you, Commissioner.

9 Well, I'm obviously not a lawyer, so I will leave
10 those deliberations to yourself and other lawyers, but my
11 understanding is that this is an inquisitorial and not
12 adversarial Commission, and I haven't put forward any Position
13 Statements into the Commission, have responded rather to what
14 has been put to me, either through writing or through the
15 questions, so I would be very happy to have responded in writing
16 if there are further questions of things that are put to me but
17 I haven't put any position that would see and would need to
18 understand what position I would be cross-examined on, as I
19 haven't put a--

20 (Overlapping speakers.)

21 THE WITNESS: --responded.

22 COMMISSIONER HICKINBOTTOM: Again, if I might say so,
23 that's perfectly sensible, a perfectly sensible approach.

24 So, what I'll take is that you're reserving your
25 position in respect of the application, and let's see what Sir

1 Geoffrey has to ask and the form in which he wants to ask it,
2 and then we can take it from there, Mr Jaspert, but thank you
3 for that indication.

4 Good. I think, subject to anything that Mr Rawat has
5 to say, that brings an end to this--to the evidence of
6 Mr Jaspert, and so subject to anybody saying there's anything
7 else to deal with, I will rise just for a few minutes while we
8 reconstitute things here before we start on the evidence of the
9 Premier.

10 Good. Thank you all very much. Thank you again,
11 Mr Jaspert.

12 (Witness steps down.)

13 (Recess.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Session 2

COMMISSIONER HICKINBOTTOM: Good morning.

THE WITNESS: Good morning.

COMMISSIONER HICKINBOTTOM: I think we're ready to go ahead.

First, Premier, can I apologize for the delay in starting your evidence. I'm afraid the last Witness had run over considerably, so thank you very much for your patience.

Secondly, obviously we've heard evidence from you I think it was last week over two days in respect of various Warning Letters and your Response on various issues, and those matters have been dealt with. There is one area where I suspect the questions will be fairly narrow now in relation to radar barges where there's a Warning Letter that we need to deal with today.

And Mr Rawat may have one or two questions in relation to other specific matters which we can deal with.

The main part of today, though, concerns governance, and it's really--and we've had a lot of submissions made on behalf of yourself and the elected Ministers in relation to governance, and I will take all of that into account, of course, but there are some questions in relation to governance where I would welcome your assistance.

What I suggest we do, Premier, is we will deal with the specific matters including radar barges first. By the time

1 we've dealt with them, it may be time to have a lunch break
2 because we have been going since 8:00, and then deal with the
3 more general governance issues after lunch.

4 The main specific issue of radar barges because of the
5 position in relation to documents, we will hear in private
6 session, and so what I propose, Mr Rawat, if this is convenient
7 for everyone, is if you can deal with any specific matters with
8 the Premier that we can deal with in open session, we would deal
9 with those first now, and we then deal with radar barges in
10 private session. We will then break for lunch without going
11 back into open session, and then all be in open session this
12 afternoon on governance. Is that convenient?

13 MR RAWAT: Yes.

14 COMMISSIONER HICKINBOTTOM: Premier, that's the way in
15 which we will proceed then, Premier. Thank you very much.

16 THE WITNESS: Okay.

17 BY MR RAWAT:

18 Q. Premier, thank you for returning.

19 A. Yes.

20 Q. I know you would like to start with a prayer. So, if
21 you want to say that now.

22 A. Thank you so much.

23 Father God, we thank you for being here today. Holy
24 Spirit, we give you full authority over this day and over each
25 of us that your will alone be done, your Kingdom come, let your

1 will for the British Virgin Islands and each of us be now
2 manifest today greater than ever and from here on in and may we
3 all be aligned to your will for this Territory and for our lives
4 overall. Now, Dear God, every word that comes out of our
5 mouths, let it be ordained and also approved by you. In Jesus'
6 name, Amen.

7 COMMISSIONER HICKINBOTTOM: Thank you, Premier.

8 Thank you, Mr Rawat.

9 BY MR RAWAT:

10 Q. Thank you, Premier. You will be familiar now with the
11 introductory remarks that I make to witnesses, but I feel that I
12 ought to do it anyway.

13 First, of course, as you'll be aware, you made an
14 affirmation on the first day, the first time that you gave
15 evidence to the Commission, and you're still bound by that.

16 A. Yes.

17 Q. Secondly, although it may seem a little daunting,
18 there are a number of bundles just to your left which we might
19 need to look at. Fortunately, I think I can say with some
20 certainty we won't need to look at every bundle.

21 Secondly, can I ask you to remember just to keep your
22 voice up.

23 A. Okay.

24 Q. And speak slowly.

25 In terms of specific issues, I have one small matter

1 in relation to Belongership that I would ask for your assistance
2 on, and if you could look on the shelf next to you for the
3 Part 2 Belongership Bundle. If I could take you to the first
4 page, it should be 847, but if you go through, please Premier,
5 to 1270.

6 COMMISSIONER HICKINBOTTOM: My first page is 885.

7 MR RAWAT: It's not the first time that I--but I think
8 we're still all right, but 1270.

9 THE WITNESS: Yes.

10 BY MR RAWAT

11 Q. If we're both on the same page, you should be at a
12 Cabinet Memo which is brought forward by the Minister
13 responsible for Immigration matters, The Honourable Vincent
14 Wheatley, and it's dated 13th of May 2021; is that right,
15 Premier?

16 A. Yes.

17 Q. Now, if I draw your attention to, just summarizing it,
18 but it's headed "Applications for Certificates of Residence
19 status-January, March, and April 2021".

20 I wanted to ask your assistance on one specific
21 matter, but can I ask you just not to name any names?

22 A. Okay.

23 Q. Or give any details at all. We asked Honourable
24 Wheatley about this, and the way we proceeded was that not to
25 say anything that would tend to identify the person involved,

1 including the nature of the offending.

2 We also asked the Governor about it who used the
3 phrase "non-minor offending" and you may wish to do the same.

4 But what this application or this memorandum concerns
5 are applications for residence under the standard process, so
6 it's not under the fast-track programme that, as you described
7 yourself, you were the face of, but Honourable Wheatley was the
8 body and the organs, and which finished, I think, in 2019, so
9 it's back to the standard process.

10 A. Um-hmm.

11 Q. So, it's a set of applications for residence, and it's
12 Residence Status for person who have lived continuously in the
13 Territory for over 20 years.

14 But at paragraph 3 there is mention of one applicant
15 who has not about recommended by the Board. As we understand
16 the process: "The Board can only make Recommendations, but
17 Cabinet must make the ultimate decision", and in this case, "in
18 relation to one person, the Board did not feel able to make a
19 recommendation but the matter came before Cabinet anyway, and
20 what the Board says is the Board recognizes, although that
21 person has resided in the Territory over 20 years, a criminal
22 record exists", and the Board then says: "As stipulated in
23 Section 18(1) (a) a person receiving a Certificate of Residence
24 should be of good character, and therefore these persons should
25 not hold any criminal record within the Territory".

1 If you need to just look quickly at what 18(1) (a)
2 says, Premier, if you turn up page 1441, this is the Immigration
3 and Passport Act. It's part of the material that was exhibited
4 to the Affidavit of Mr Joseph Smith-Abbott, and it tells us at
5 18(1) says: "Subject to the other provisions of this Section,
6 none of which apply in this instance, the Cabinet may, after
7 consultation with the Board, grant a Certificate of Residence to
8 any person who applies for the same in the prescribed manner and
9 who (a) is of good character, and (b) in his or her application
10 has stated an intention to reside permanently in the Territory".

11 So, in this case, returning back to page 1271, if you
12 look to 1273, the Cabinet had a long list of 188 names to grant
13 residence to, but at 1282, we see that what Cabinet was being
14 asked to do was to accept the recommendation of the Board not to
15 grant a Certificate of Residence to the person we have been
16 discussing.

17 If you turn to 1298, Premier, we have the Cabinet
18 Decision, and Cabinet accepted the Board's recommendation in
19 relation to the persons where they had positively recommended
20 that a Certificate of Residence should be granted. But in
21 relation to the individual we've been looking at, decided not to
22 accept the recommendation of the Board of Immigration not to
23 grant a Certificate of Residence.

24 So, Cabinet in these circumstances decided it was
25 appropriate to grant a Certificate of Residence.

1 Now, urging you again to perhaps be careful about the
2 information you feel able to give in an open session, but in
3 circumstances where the Act says that someone must be of good
4 character, can you assist the Commissioner at all with the basis
5 on which Cabinet was able to say that someone who had a criminal
6 record could still get a Certificate of Residence?

7 A. Well, first of all, this wasn't cut and dry when it
8 was in Cabinet as is in your synopsis of what has been
9 presented. This was an individual that was--the record that was
10 brought to Cabinet showed clearly that this was a person who
11 spent all their life basically in the British Virgin Islands
12 which we have a lot of them. The only place they know is here.
13 They might not have been born in the British Virgin Islands but
14 they went the entire school in the British Virgin Islands, and
15 then they come out of high school, they go to college. These
16 are the kind of cases we get. And as a result, some of them,
17 from time to time, being young people, get in trouble with the
18 law, and they would still venture and put in for the application
19 but the larger question which was a discussion is how do you
20 eliminate persons for life that made a mistake when they're
21 young? When would they ever be able to apply, not that this is
22 a right, but when do you ever be able to apply for this?

23 The law, as far as we were looking, is silent on that
24 aspect of it, and you have the point, I don't know if you see
25 any other way. Should their record be--only be considered for

1 two years? Five years? 10 years? When would it be that they
2 would be given the privilege to apply again? Because with it
3 now, and the good character, doesn't specifically as it states
4 based on the crime that was committed, I'm trying not to call
5 the name, so that's why I'm trying to talk a little slowly.

6 Q. Right.

7 A. They were there, but there were concerns about what
8 all their role was, and so it was a properly ventilated topic
9 inside of the Cabinet.

10 What I must say about it is that it was not a cut and
11 dry case, and it was not someone that just, you know, applied
12 and didn't fit all our other categories, but we do face the
13 situation of knowing with the good character after persons who
14 only know here as home, when does it start with the good
15 character? Is it that their record is known but they can vouch
16 that since that time that person has a good character? When
17 does a good character start? Does it have to be a good
18 character all their life without any blemish? Can I tell you
19 that our young people are not like how most persons were young
20 before, they get in some little trouble here and there, but if
21 here is the only place that they know is home and they made a
22 misstep in their life, the question is how long do you go before
23 you allow for this person to be given the opportunity?

24 Because when you read the law, it says subject to
25 other provisions of this Section, the Cabinet may, after

1 consultation with the Board, grant a Certificate of Residence to
2 any person who applies for the same in the prescribed manner and
3 who is of good character.

4 Now, the question as simple as that may be sounding is
5 when was this offense? How long since that offense a person has
6 been of good character? What all do we have to show that they
7 have turned around their life?

8 So, all those questions came in.

9 And Cabinet also does have to exercise discretion
10 along those lines. It was not a special case in that, as I
11 stated, someone who was not here and did the time--spent the
12 time in the country and had fulfilled all the other obligations,
13 so this is a person who definitely had a brush with the law, and
14 I think it's registered on a minor offense--I'm not sure--I'm
15 trying to recollect--but whatever it was, it was indeed a
16 concern, and it even was discussions about legally can Cabinet
17 look at this through the light of when will the good character
18 start from.

19 To some persons who are still waiting for status, it's
20 not an indictment against them. They will always be taken care
21 of, but no matter how much you take care of this backlog that
22 those are going to keep coming forward.

23 And when you look at the cases and especially in this
24 case, that was one that took a lot of consideration to do. If
25 you don't look at it now, then, under the law, when do you look

1 at it? And if under the law, when does good character start?
2 Is it saying which is a question I was asked, that good
3 character is only that you live a life and have no mistakes, no
4 brush with the law, to get this, or does a good character take
5 into consideration how do you progress after you've gotten in
6 trouble and how long it has been since then.

7 I know that this was a few months ago--well, not too
8 long ago, but those are the impetus behind what the discussions
9 were at that time.

10 COMMISSIONER HICKINBOTTOM: I understand that because
11 that's very clear, Premier, but just a couple of things so I'm
12 clear.

13 In respect to the information that Cabinet had on
14 page 1271, Mr Rawat has read this out already.

15 THE WITNESS: Right.

16 COMMISSIONER HICKINBOTTOM: But it sets out this
17 individuals' offenses and then it says as stipulated in Section
18 18(1)(a), which is the Section we looked at, the person
19 receiving Certificate of Residence should be of good character,
20 therefore these persons should not hold any criminal record
21 within the Territory. That's what it says in the note which
22 came to Cabinet, and on the basis of that note, the Attorney
23 said in paragraph 8, no adverse legal implications with that.

24 So, how did we go from that, which is a statement of,
25 if you like, what the law is, but what Section 18(1)(a) says, to

1 an exercise of discretion by the Cabinet where this condition,
2 precondition, in Section 18(1) (a) appears not to have been
3 complied with? How does that square up?

4 THE WITNESS: The question I have asked is in
5 18(1) (a), and once in the language of the paper, the law says is
6 of good character, and in the paragraph that you mentioned, the
7 paragraph says that they--that there is a good character and
8 doesn't have a criminal record.

9 COMMISSIONER HICKINBOTTOM: And, therefore--

10 THE WITNESS: And therefore--

11 COMMISSIONER HICKINBOTTOM: And, therefore, has no
12 criminal record.

13 THE WITNESS: Right.

14 COMMISSIONER HICKINBOTTOM: Describe whatever you
15 like. That might be an interpretation of the Act or a
16 statement, but that's a statement in the Cabinet Paper. You may
17 disagree with that as a matter of law or somebody might--that's
18 a different question--but that's what the paper says, but you
19 went to consider discretion in the face of precondition which
20 appears not to have been complied with.

21 I just wanted to--wondered if you could help us square
22 that, how did that happen?

23 THE WITNESS: I don't think this is, with due respect,
24 cut and dry. These are always very testy subjects in the
25 public, especially by some of our indigenous persons, but when

1 those persons who have lived here all their life and contributed
2 and are young people, if they have problem with the law and--I
3 don't want to categorize problems.

4 BY MR RAWAT:

5 Q. No.

6 A. But--and they have gotten their life together, how
7 does that attribute is of good character? Are we saying that
8 the law says that once you have troubled the law and offense and
9 you were 18 years old or 16 or 17 and you have been of good
10 character since, that you can never be considered again because
11 you made a mistake when you were younger? Those were some of
12 the discussions that we--that the Cabinet was having: It was
13 not an easy discussion.

14 COMMISSIONER HICKINBOTTOM: Thank you very much.

15 Yes.

16 BY MR RAWAT:

17 Q. Thank you, Premier.

18 I don't think I need to pursue this any further, so I
19 would ask you to put the Belongership Bundle away and return to
20 radar barges.

21 COMMISSIONER HICKINBOTTOM: So, as I suggested,
22 Mr Rawat, we will go into private session now, and what we will
23 do is we will deal with radar barges, we will have lunch after
24 radar barges, and come back into open session after that. Thank
25 you.

1

(End of open session. Confidential session begins.)

CONFIDENTIAL SESSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR RAWAT:

Q. Premier, can I check that you have with you, it should be on the desk anyway, but there should be a copy of Warning Letter No, 6 that we sent to you.

A. Yes.

Q. And do you also have a copy of the Response that have you provided to that?

A. Just for my edification, and just for information's sake, we went in private sessions because it was national security? Okay.

COMMISSIONER HICKINBOTTOM: Just to bring you up to date, Premier, the answer to that is "yes", and we're waiting to hear from the National Security Council through the Attorney as to whether there are any redactions to any of the documents or--

THE WITNESS: Okay. I just wanted to know for my--

COMMISSIONER HICKINBOTTOM: Yes.

So, what will happen is we will complete this session in private. The Transcript of this session will then go to the Attorney, and she will or one of her team will make any redactions from the Transcript that she thinks necessary, then the Transcript will be made public.

THE WITNESS: Okay. Thank you for explaining that. I just needed that. Thank you.

BY MR RAWAT:

1 Q. And the benefit of it, Premier, is it allows you and I
2 to say what we need to say without raising eyebrows, but if we
3 deal with it this way, and I think you heard me before, but do
4 you have the Response with you?

5 A. Yes, I have the Response.

6 Q. It is a detailed response, and can I take you to
7 page 11 of it.

8 A. Yes.

9 Q. Could you confirm it's dated the 19th of October 2021
10 and carries your signature?

11 A. Yes, October 19, 2021. That's my signature.

12 Q. Thank you.

13 And can I confirm that that document together with the
14 annexed documents that accompany it, that you are content that
15 they form part of your evidence before the Commission?

16 A. Definitely so.

17 Q. Thank you very much.

18 The Inquiry has gathered quite a lot of evidence on
19 radar barges.

20 A. Yes.

21 Q. And has heard evidence from individuals concerning the
22 deployment of the radar barges between October and January.

23 A. Right.

24 Q. The contracts that were formed. I cannot now remember
25 whether we asked you questions about it, but we certainly asked

1 Members of Customs, the former Police Commissioner, I think we
2 may have asked Mr Frett as well.

3 The way I propose to deal with it today, Premier, is
4 not to read out too much of the detail of either the Warning
5 Letter or your Response, and the reason for that, particularly
6 because your Response is detailed, it sets out a chronology, and
7 so what I want to do is just identify the framework of it. The
8 other reason is because--and I think I can say this with
9 confidence--that actually having taken all the evidence, it's
10 now clear the sequence of events, and so what I would like to do
11 is to get an outline your position on the record, and then ask
12 you if I may some additional questions as to the information
13 that was available to you at the relevant time as you went
14 through the process.

15 A. Okay.

16 Q. And so, if we look, first of all, at the Warning
17 Letter, it sets out a chronology which covers the processes by
18 which Government entered into three contracts with EZ Shipping
19 to deploy radar barges, and those contracts were, first of all,
20 they were signed--the first one was signed 14th of October 2020
21 and covered a period of the 23rd of August through to the 22nd
22 of August--of October 2020. The second one was then signed on
23 the 29th of December 2020 and covered a period from the 23rd of
24 October 2020 through to the 22nd of December 2020. And the last
25 contract was signed on the 18th of March 2021 and covered the

1 period of the 23rd of December 2021 through to the 22nd of
2 January 2021.

3 Perhaps the different to note is that on that last
4 contract it was for a shorter period, 30 days, and the decision
5 had been taken that there should only be two barges instead of
6 three, and also the price was reduced from 14,000 down to
7 \$12,000 a day.

8 Would you agree with that, Premier?

9 A. All those as stated, yes.

10 Q. And what you have done in your Written Response is to
11 set out the chronology of events that led up to the Contracts
12 being entered into, Decisions to make to deploy the barges, and
13 also the circumstances, as you say they were, in which Cabinet
14 was informed and the NSC was informed.

15 Now, what I should add to that, and for the record
16 again I want to do it, and that is that, as part of your Written
17 Response, you rely on certain paragraphs of the Response of the
18 Elected Government, as you put it, to the Position Statement on
19 governance submitted by the current Governor, and we can look at
20 that--

21 A. The Response to his--

22 Q. Yes.

23 A. Yes.

24 Q. But I will take you to it now, if you find on that
25 shelf the radar barges bundle.

1 A. Yes.

2 Q. At Part 3, please.

3 If you turn through, please, Premier, to 2854. Let me
4 know when you're there.

5 A. I'm there.

6 Q. Thank you. This is, as you've noted, Premier, the
7 Response of yourself and your ministerial colleagues to a
8 Position Statement submitted by the current Governor, but as
9 part of that Response at paragraph 90 you deal with the
10 EZ Shipping contract, and as part of your Written Response to
11 the Commissioner and to the Warning Letter, you explain that you
12 rely on the matters and particularly the chronology set out at
13 paragraphs 91 through to 105.

14 A. Correct.

15 Q. Can you confirm that that's right?

16 A. Yes, I confirm those.

17 Q. Now, against that background--and I will give you an
18 opportunity, of course, to add any details that you may wish,
19 but can I ask you some additional questions on these matters.

20 Now, you refer, and we can see this in the Response,
21 that if we look at paragraph 92, there is reference to Joint
22 Task Force Comprehensive Border Security Plan three-month
23 projection, and tell me if I've summarized this incorrectly:
24 Firstly, that as part of the Response to the pandemic, a Joint
25 Task Force was created involving Customs, Immigration, and the

1 Police?

2 A. Yes, it was, yeah.

3 Q. And they were asked to come up with a Comprehensive
4 Border Security Plan?

5 A. Yes. Thank you.

6 Q. And as part of that, as we will see, as that plan
7 developed, and in particular, following a decision--well, not a
8 decision--an action item of Cabinet--

9 A. Um-hmm.

10 Q. That plan involved to consider the use of radar
11 platforms?

12 A. As a result of what we were facing, yes.

13 Q. Yes.

14 Now, if we look, and it's going to be in the Part 4
15 bundle 3547 in the Part 4 bundle.

16 A. Yes.

17 Q. We're at a relatively early stage of the process, but
18 the position is that this is a National Security Council
19 memorandum. It's brought to National Security Council by both
20 yourself and the Governor. It's dated the 25th of May 2020, and
21 it's actually what triggers a resubmission of the Comprehensive
22 Border Security Plan. That's one of the decisions that flows
23 from it.

24 But if you look at paragraph 7, please, Premier, that
25 says that--and it refers to the Joint Intelligence Unit, I'm

1 assuming that's part of the Joint Task Force?

2 A. Yes.

3 Q. But it says "adoption of a border management systems
4 and a radar platform at key locations would assist in gathering
5 key intelligence".

6 Now, am I right to assume that at that point in time
7 what the NSC had in mind was a land-based radar platform rather
8 than a sea-based platform?

9 A. That was all. It was more land than sea. That was
10 all.

11 REALTIME STENOGRAPHER: I'm sorry, could you repeat
12 your answer again, sir.

13 THE WITNESS: That was all. That was our
14 understanding. Land and sea, but they were doing it in
15 different phases.

16 BY MR RAWAT

17 Q. But when you say "all", and I'm trying to keep the
18 chronology, but you're in May 2020, was the thinking at that
19 time that you will have land and sea together or that you would
20 look at both options and see what the timelines would be for
21 establishing them?

22 A. Well, let me make it clear now when I said land and
23 sea, the radar mainly would have been for the sea because of our
24 many islands, the radar was mainly for the sea. The land was
25 not really we were looking at saying the radar for land because

1 you have manpower on the land. We were looking at the radar for
2 how we can help us to patrol, so to speak, and to do
3 surveillance on the sea and to help with the surveillance of the
4 sea, especially with the pandemic, and the pandemic at hand and
5 everything.

6 COMMISSIONER HICKINBOTTOM: Just so that I understand,
7 Premier, you could have a land-based radar system, I mean, with
8 the radar actually fixed on the land, but over the sea.

9 THE WITNESS: Right. It would still be for the sea
10 mainly.

11 COMMISSIONER HICKINBOTTOM: So, your concern was--the
12 concern was wherever the radar was, whether on boats or on land,
13 but you obviously wanted the radar over the sea because the
14 whole point, as I understand all of the evidence, including
15 yours previously, the purpose was to stop people coming in.
16 That was the main--

17 THE WITNESS: Unauthorized persons.

18 COMMISSIONER HICKINBOTTOM: Well, yes, but it was a
19 lockdown, but it's a fair point you make. But it was a
20 lockdown, so there wouldn't be many of those.

21 THE WITNESS: Yes.

22 COMMISSIONER HICKINBOTTOM: But it's a fair point you
23 make.

24 THE WITNESS: Yeah.

25 COMMISSIONER HICKINBOTTOM: Thank you.

1 BY MR RAWAT:

2 Q. But again to summarise because I don't think it's in
3 dispute, is that the way matters evolved was that the Joint Task
4 Force did produce a revised Border Security Plan that considered
5 that the use of an option of renting radar platforms or whilst
6 sourcing and paying for a system that the BVI could then use
7 going forward, and initially the cost and the cost was based on
8 the unsolicited proposal from EZ Shipping that had come in, that
9 cost of using--of renting radar barges was estimated at \$510,000
10 with the cost of having a fixed system at \$150,000.

11 And you made the point in your Written Response that
12 initial estimates was that that could be done in a month, but
13 that proved to be a little too optimistic; is that right?

14 A. Up to now, yes.

15 Q. All right. Can I come back to up to now a little
16 later in the sequence, but what the NSC agreed in principle was
17 that efforts should be made to have at least two radar
18 platforms, and then inquiries were made, there was Customs made
19 inquiries of various providers and it was agreed to go with
20 EZ Shipping.

21 A. Um-hmm.

22 Q. But the starting point in terms of your Written
23 Responses--and you are unequivocal in this--is that, even before
24 contracts had been signed, even before it had gone back before
25 the NSC to make recommendations to the Contract and to Cabinet

1 is to ratify, on the 23rd of August 2020, you made the decisions
2 that these should be deployed?

3 A. Well, based on the information provided by the
4 technical experts in the Joint Task Force because I'm on my own
5 couldn't make that decision. The--on August 23rd when the
6 Decision was made and the date when the--based on my statement,
7 we did not know what we know now. Today we--we know more today
8 because hindsight is 2020, but at that time COVID-19 was ramping
9 up, and we were deeply concerned about the lockdown, what it was
10 going to do to us economically, and also we were advised from
11 the earliest by the health officials that if we do not do
12 anything, we will have been experiencing thousands of cases.

13 What we were also concerned about is we had to make
14 sure that we instill public confidence, that despite what we're
15 going through that you do have real protection on the borders on
16 land or on sea, and to make sure as much as humanly possible
17 because we have 60 islands and islets, it's very difficult to
18 fully have our Officers out there, and we go all the way
19 200 miles, and that's very rough, and they have to be out there
20 doing surveillance.

21 So, we wanted to make sure as much as possible that
22 the borders were secure and persons are not, as you rightfully
23 say, entering at that time because no one had a playbook. This
24 was the first we're dealing with something of this nature. We
25 had to shut down the entire country.

1 And given that we had to shut it down, we had concerns
2 about the virus coming in through illegal aliens, and they get
3 in here because, like all the Caribbean islands, and even out on
4 the water sometimes smuggling is an issue now and again. So, we
5 wanted to make sure that they don't get in and land here and we
6 don't know about them, and they have COVID and spread COVID
7 throughout the entire Territory.

8 When you weigh the options of having to take the
9 advice and pay for barges to secure the borders versus what all
10 can happen if you do nothing, that was the issue and, I must say
11 that the day before the barges were launched, the initiative was
12 launched we had a big scare of persons, and I have it in my
13 statement, where I think somewhere where persons--there was a
14 concern about illegal entry at the western end which is the area
15 where I live, not too far from where it happened. And by the
16 time persons called and law enforcement got there, they got
17 away.

18 So, that also added to what the intel was coming back
19 to us all the time because, even before that 23rd of August and
20 we signed, we were hearing all the time through, you know,
21 updates outside of the meetings that the concern of the possible
22 ramping up of illegal activities on sea, especially with
23 smuggling.

24 And the reason why smuggling was heavier for us than
25 drugs at that time was that the BVI took some very bold stance

1 at the beginning of this pandemic to keep our numbers down. So,
2 persons--

3 BY MR RAWAT:

4 Q. COVID numbers?

5 A. Our COVID numbers down, of COVID--

6 Q. Cases.

7 A. --active positive cases down, so I don't show they
8 help people, so that was--that was--with that now, we were known
9 around the Caribbean region to some on the unofficial warden as
10 a safe haven for what we were doing, so there were words that
11 persons were trying to get in here.

12 As a matter of fact, we have a lot of family in the
13 United States Virgin Islands, and there was a sidebar joke that
14 we were stating that you could stay over there, and we will see
15 you when COVID is over because at that time the numbers over
16 there were active positive numbers were increasing, so even
17 right there next to St. Thomas was an issue that we had to look
18 at.

19 And then we had--I want to get my bearings correct,
20 but coming from in the area of Sint Maarten and those areas, we
21 had to keep a keen eye on those technical persons would advise
22 us of these, and also which is hard on that side and the other
23 side.

24 So, all of that we were advised upon. So, we didn't
25 know at the time, we couldn't wait, and as I said in the

1 statement, I kept my colleagues informed when we did have to
2 move my Cabinet Ministers because you know a move like that you
3 would have to. So, constantly they were informed in all matters
4 of what we have to do during this COVID-19 and regularize after
5 because waiting until you get it right, everyone might be dead,
6 so we just had to move.

7 I want to say that we know now more today as I said
8 about COVID, and it was just concern for the safety of the
9 people of the Virgin Islands that we acted in the best interest
10 of them, so I just want to state that clearly, so the advice is
11 what I moved on.

12 Q. If we look at--and this is in, I hope, the same
13 bundle, but if you go, please, to 3617. You should be seeing a
14 memorandum which is dated on the front as 2nd of September 2020.
15 You signed it off on the 7th of October 2020 when it would have
16 gone to Cabinet, but obviously that's the September date, and I
17 should know this by now is I think the date that it goes up on
18 ExcoTrack.

19 But the 2nd of September is obviously a few days after
20 you've made the decision to deploy.

21 A. Um-hmm.

22 Q. It's helpful because it tells you some of the--or
23 gives a sense of the information that if we look at 3619, you
24 would have had at the time.

25 Now, you said to the Commissioner that when you made

1 the decision to deploy on the 23rd of August 2020, you were
2 dependent on what the technical people were telling you. I know
3 that every politician in the BVI likes to call Public Officers
4 the technical people, but can I press you to be a little bit
5 more specific. Who was giving you information or where were you
6 getting your sorts of intel from that informed your decision?

7 A. Okay, but culturally, first, once we call Public
8 Officers the technical persons, so excuse me for that.

9 Q. It's not a criticism. It's an observation.

10 A. No, no, I'm just saying that, but I know that you
11 would want to know.

12 The Chairman of the JTF is who met with me, and the
13 then-Financial Secretary. They are the ones who summoned me to
14 a meeting.

15 Q. I see.

16 And that would be Mr Smith and Mr Forbes?

17 A. Mr Smith--

18 (Overlapping speakers.)

19 A. Customs and Forbes were--

20 Q. Were Financial Secretary?

21 A. That's correct.

22 Q. Mr Smith gave evidence that he returned back to the
23 post of Commissioner in I think at the beginning of August.

24 A. Right.

25 Q. Both he and Mr Forbes have given evidence to the

1 Commissioner. But what it says if you look at paragraph 8 on
2 3619 is that the barge platforms were activated on 23rd of
3 August and have yielded significant results ranging from
4 arrests, deterrents and detention of vessels. The point is made
5 that the Police Force haven't yet committed to using platforms
6 but the other two entities are. It's recorded this expeditious
7 activation was deemed necessary as there was evidence that some
8 persons violated the laws of the Territory. It is alleged that
9 on Saturday morning 22nd of August 2020 at West End, Tortola a
10 person or persons violated the BVI border entry laws. That's
11 the point you mentioned a few minutes ago. Since then Customs
12 has aborted an apparent attempt by smugglers and through the use
13 of the platforms has been able to detect and hold a vessel
14 coming into our Territorial waters on Saturday 28th of
15 August 2020.

16 Now, that seems to be that the sum total of the
17 information that would have been available.

18 Why were the results considered to be significant?

19 A. We're in the middle of a pandemic, and any kind of
20 smuggling of persons is going to draw concern. It's one thing
21 when you're not in a pandemic and you hear someone smuggling and
22 you don't have COVID. You've asked this question, did they get
23 away, did you catch them, and how many of them there were. But
24 in a pandemic, you were asking, did you get them? Did you know
25 how many of them there were? Did you have all of them tested?

1 How many of them had COVID?

2 And so the questions would be different in a pandemic,
3 so our aim was to make sure we keep out any more cases of
4 COVID-19 and contain that what's already inside.

5 Q. If you turn, Premier, to 3624, please.

6 Now, this is a National Security Council paper
7 memorandum from your office, 13th of September 2020, and so this
8 is barges deployed. It's now the point at which the draft
9 agreement between the Government and EZ Shipping has been set in
10 place, and so it's the first time that the NSC has an
11 opportunity to approve that agreement.

12 You're nodding, if you could say "yes" for the
13 Transcript?

14 A. Oh no, no. I just nod a lot.

15 Q. But do you accept that's when--

16 A. Because when they were meeting that time I was just
17 nodding, and there was a vote as yes and the OECS said--no,
18 that's how I am. Sorry. Okay.

19 Q. It's important you say that because then I won't take
20 your nod as a yes.

21 A. I was nodding but not sleeping or saying yes.

22 Q. But have I understood this right in terms of the
23 sequence, so you've deployed the barges, you authorized payment
24 to EZ Shipping, and now--I mean, they're on the water, so to
25 speak, but now this is the first time that you're bringing

1 through your office, the Contract to the NSC to make a
2 recommendation on.

3 A. For NSC to officially confirm with it because with the
4 decision that was made, the Members of NSC, most of them would
5 have already known, if not all. And when I say so, the
6 Commissioner of Police is part of the JTF, so he would have
7 known about the barges. There is no way he would not have
8 known. The Customs and Immigration are not part of NSC, but
9 those--all of them meet in JTF.

10 The Governor at the time knew that we were considering
11 barges, but I want to say something that is concerning that even
12 in COVID that had heightened, there were a lot of discussions
13 outside of JTF--outside of NSC trying to make sure that we make
14 the right moves and listening to advice, so even inside of NSC
15 when it was stated to look at these things, it was been hanging
16 for quite a while, if you notice when the first recommendation
17 came for barges because it started before Mr Smith even became
18 the Customs Head. Mr Lettsome was the Head.

19 So, this was something being discussed all the time
20 and the concerns were heightening that we needed to come to some
21 kind of conclusions that we were asking the JTF to do, come to a
22 conclusion because there is going to come a time when we may
23 have to close the borders, and we want to make sure that we know
24 what we're doing.

25 So, when that decision did come out of the concern, I

1 did call the Governor and tell him. He wasn't at first
2 receptive to having the idea of the barging going out there. He
3 wanted it to come through NSC before, but we were not in that
4 position. We had to make a decision and we make the decision by
5 calling upon making a decision that we have to get these barges
6 out there based on the technical expertise, which he was privy
7 to also from other NSC meetings about the concerns that were
8 heightened about the security of the seas, but it's not a matter
9 of overstepping any bounds for any one of us, but during those
10 times you had to make decisions based on what the technical
11 personnel for the JTF and all of them were telling you.

12 COMMISSIONER HICKINBOTTOM: I think this applies to
13 the later contracts too, but certainly to the first contract,
14 which Mr Rawat is taking you to now, the fact is because we now
15 understand that the timeline, the order in which things happen,
16 and in respect of the first contract, you, as Premier, deployed
17 the barges from, I think, the 23rd of August, and then the
18 approval of, I think first the NSC, which was required because
19 it's a security matter, and secondly the Cabinet, which was
20 required because of the money, they were obtained afterwards.
21 Normally, that order would not have been the same because you
22 would presumably have gotten the approval of the NSC and the
23 Cabinet before whatever happens happens, but in this case you
24 say that it was for a good reason because of the urgency of the
25 situation.

1 THE WITNESS: In the public's interest.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: As a matter of fact, the public was
4 crying out for more secure borders even before this. And when
5 that happened on the 22nd of August, it was quite a time here to
6 be the Premier and the public was really--their concerns had
7 mushroomed exponentially, so there was no doubt that something
8 had to be done, because the people were afraid you had to
9 maintain the stability of the country, you had to maintain the
10 stability and confidence of the people that they are safe.

11 COMMISSIONER HICKINBOTTOM: Yes. No, I absolutely
12 understand that evidence. Thank you.

13 BY MR RAWAT:

14 Q. We can take it, then, shortly, Premier. I think and
15 tell me if I've misunderstood your Written Response, but your
16 point is that you acted in the interest of the public?

17 A. 100 percent.

18 Q. And so, you had to change the usual order, and that
19 was--that was the position you found yourself in as these
20 contracts went through, so you authorized in August 2020, and
21 then you dealt with the NSC and the Cabinet afterwards and
22 signed the Contract afterwards. You allowed the barges to
23 continue beyond the Contract date, and then the Administration
24 was allowed to catch up, so the paper was produced, it went back
25 to NSC, it went back to Cabinet, and that's how it continued.

1 And the change that we spoke about in
2 January--December-January where the numbers of both of the
3 barges diminished, was because of the change in the
4 circumstances in terms of what the BVI was confronted by.

5 A. It was always in our mind, Commissioner, that the
6 radars would have been in place in short order because that's
7 what they--now that you know the technical people who I mean,
8 that is what the technical persons were telling us.

9 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt but
10 I was going to ask you a question. But let me just preface the
11 question.

12 We've heard evidence from a number of people involved,
13 mainly in security, such as the previous Governor, the former
14 Chief of Police, that they--I think this fairly reflects their
15 evidence, that they understood the Policy of keeping the borders
16 secure for all of the reasons that you've said, particularly
17 given the medical facilities here, which are limited because of
18 size, and because of the close community here, so keeping people
19 out generally speaking was an important policy and, as it were,
20 keeping the people who were here locked in--locked down and
21 locked in free from COVID, so that is a policy understood.

22 And even a policy to use radar, I think, was
23 understood, but they say that they expressed concerns at the
24 time about this way of doing it, doing it by barges as opposed
25 to other ways of maintaining the security of the borders.

1 Do you recollect those concerns being expressed to
2 you, and how did you approach those concerns?

3 THE WITNESS: The Governor had some concerns, and we
4 discussed them, but also the Governor had the Authority under
5 Section 67(3), I think, when we carried to NSC to veto it, which
6 I told him that clearly it's your prerogative. If you have a
7 better method of dealing with it, well, veto it and let's move
8 forward.

9 He did not veto it. But under the Constitution he had
10 the power to do it, so we moved forward after discussing that,
11 we just kept moving forward.

12 Now, the concerns with the Commissioner, there was the
13 concern that he raised in our face and those that we hold on the
14 street. I won't go into those because I don't lead on gossip.
15 But with that now in mind, when you look and see what's
16 happening with these--the Officers called for a meeting of the
17 Premier, and I only ask them to pass their concerns through the
18 Chair of the JTF because I was trying to limit at the time as
19 the number of persons that should go around.

20 And the Chairman of the JTF, which was later validated
21 by the Immigration Commissioner, stated they had concern
22 spending 24 hours on small boats since they're going to be out
23 there for 24 hours on catamaran, and they said that, (1) they
24 are concerned for their life, (2) they are concerned for overall
25 safety. They were concerned, too, with the arrangements with

1 certain private citizens to be dealing with it because they said
2 that some of them, in their analysis, may be persons of interest
3 or may become persons of interest. There were concerns about
4 those who stated that they could have done it for free, but, of
5 course, I didn't see any of that come forward, but then again,
6 the size of the boat one and two. In college my professor told
7 me there is nothing free. Free means either somebody has paid
8 for it already, he said, or somebody will be paying for it
9 after.

10 So, in this line of work, you have to be careful
11 because, in front of the NSC, too, when you hear this word
12 "free", it doesn't end well.

13 So, the Officers on Customs and Immigration stated
14 clearly they're not going to get in any small boat. They were
15 getting sea sick, plus those boats are fiberglass--this is the
16 Report that comes to me--and any gunshot that fires out there,
17 it's not like you're dealing with the other boats, I forget
18 whether it's iron or whatever they told me, but something along
19 that line--would have a better chance of survival, and that's
20 what came to me as for me, and I understand where they were
21 coming from.

22 BY MR RAWAT:

23 Q. Thank you.

24 A. Especially knowing, Commissioner, I might add, that we
25 didn't know the duration of how long we were going to be out

1 there, so they were concerned about that.

2 And a lot of the boats, if I may add, as I put in my
3 statement, too, were leaving the country, so accessibility to
4 boats like before was not forthcoming because the marine
5 industry felt that we were not working with them in this COVID.

6 COMMISSIONER HICKINBOTTOM: Yes, thank you. Thank you
7 very much.

8 BY MR RAWAT:

9 Q. Can I just take you, though, to the part of the Border
10 Security Plan that you will find at 3601, Premier.

11 A. Yes.

12 Q. So, this is the version of the plan that looks at
13 radar barges and renting and purchasing, it's the one right at
14 the start, but it is the document that has the cost-benefit
15 analysis in, and if we look at 3601, you will see that what it
16 says is a cost analysis indicates that the use of these
17 platforms at the prices quoted will cost the BVIG about \$510,000
18 per month and over \$1.5 million for a three-month period.

19 Now, I accept that I think the point has to be made
20 that that price dropped because the figures, the daily rates
21 changed.

22 Research indicates that the procurement and
23 installation of the radar system will cost in the region of 1.5
24 to \$2 million. That's the fixed permanent solution. The use of
25 the platforms are short-term with no guaranteed benefits. The

1 procurement of the radar is a six to 12-month project but with
2 greater benefits for years.

3 So, it's comparing the immediate radar barges solution
4 against the long-term solution.

5 But the point it makes about the use of platforms is
6 that it's short-term with no guaranteed benefits. Now, you
7 speak in your Written Response of the cost-benefit analysis.
8 This is the cost-benefit analysis that was presented to you.

9 So, were you aware when you went into this and made
10 your decision to deploy the barges that there was no guarantee
11 that they would bring any benefit?

12 A. That's what is stated in terms of that before, they
13 themselves understood what we were dealing with with COVID, but
14 as time passed, this became more and more fluid because this
15 one, if I don't--if I recall very carefully--what's the date on
16 this one?

17 Q. That will be, but it's the version. That's the
18 version that's 22nd of July 2020.

19 A. Right.

20 Q. The change after that, Premier, as far as I can
21 ascertain it, is that the decision that's made is yes, in
22 principle, we're going to go for two platforms, at least two
23 platforms, go and try and find them, and then the Task Force and
24 the Ministry of Finance are asked to go and negotiate, and so
25 when the negotiations are done, that's when you're able to make

1 your decision to deploy. But this in terms of a cost-benefit
2 analysis is it.

3 A. Well, my cost-benefit analysis was not only based on
4 this. It was based also on the factor of what it will cost us
5 not to do anything because our economy, our lockdown economy,
6 we're talking at least per day three to four, maybe more million
7 dollars per day we will be losing. But on top of that, if we do
8 not do anything and persons enter into our Territory illegally
9 because it was a lockdown, we would still lose that money
10 because we would have had to lock down because the cases would
11 have expanded exponentially, we didn't have any sites of
12 vaccines at that time. We didn't even know if the vaccines
13 would work because there was a lot of talk that they're being
14 worked on. We were not sure.

15 We even signed up for--with the CARICOM and the OECS
16 region at first when we wasn't sure where we would get vaccines
17 to sign up to be able to get vaccines through that, with India,
18 when they were finished testing in the next year. So we were
19 not sure the public's confidence in Government and governance
20 was down because they were concerned about--about what's
21 happening with the borders, and it was on radio shows. The
22 public pressure was immense.

23 So, we had to weigh in the balance what it would cost
24 us if we don't do something, what it would cost us if we do and
25 what we would see also? Because we always had a plan, through

1 COVID, through an HEOC team to do whatever we had to do to tread
2 water so to speak until we found a little clearer way to deal
3 with COVID, whether it be through vaccines or whatever. We
4 didn't know because there were no guarantees at that time. It
5 was like shutting off the lights in this room and asking me to
6 ask Mr Rawat for a broom, to sweep the deck with a broom.
7 That's a Hercules--Herculean task. But that is what we were
8 faced at that time, we just had to keep moving. And the
9 Response here now, as you noted, I wasn't involved in the weeds
10 of this. I was just involved in the higher level of making the
11 decision once they brought it. So they were the ones who, in
12 terms of the JTF and the Task Force, of negotiating whatever
13 they had to negotiate and doing whatever had to be done to
14 bringing it to us so that we could make decisions.

15 COMMISSIONER HICKINBOTTOM: I understand that, and I
16 certainly understand everything was very fluid and uncertain,
17 but the passage that Mr Rawat took you to, the bit that I'd
18 highlight, was that in terms of the barges in terms of sea-based
19 radar, firstly, cost quite a lot compared with land-based, cost
20 quite a lot. And secondly, no guaranteed benefits. And the no
21 guaranteed benefits would have been so whatever the position was
22 in this situation, that's the concern.

23 THE WITNESS: Can I help you there?

24 COMMISSIONER HICKINBOTTOM: Yes.

25 THE WITNESS: You don't have any guarantee with

1 benefits in any way our system in terms of my knowledge but you
2 could not rely on land-based radar system and you still cannot
3 rely on that solely, if at all. To understand what we are
4 saying, it can only be done if you can picture it or see it or
5 one or both and go and see what I'm saying. With 60 islands and
6 islets and 200 miles of water under our drop around us, there is
7 no radar you can put on land that would be able to detect some
8 of these unless you have it complemented by something on sea.

9 COMMISSIONER HICKINBOTTOM: I understand that, too,
10 Premier, but what this says is no guaranteed benefits for the
11 barges.

12 THE WITNESS: Um-hmm.

13 COMMISSIONER HICKINBOTTOM: Compared with land-based,
14 which this says--this assessment says would certainly have
15 greater benefits.

16 THE WITNESS: Yes, but let me go back to that. The
17 land-based would be the radar system.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 THE WITNESS: And they told us that it would take a
20 month. But as time passed one month turn into two months turn
21 into three months.

22 Now, one of the areas that we have stated in all our
23 papers and I state it again is the problem with the capacity of
24 the institutional--of the Public Service, so now here you are
25 now, wherever the time comes to have a meeting on anything, on

1 anything Commissioner, they give you the options, but my 22
2 years of experience, not in Government because I spent a lot of
3 time in Opposition, has been the one that they tell you that
4 they can get done shortly, usually doesn't get done. That's not
5 a criticism against them. It just means a lot of things
6 happened and they missed the time frame.

7 When you missed that time frame, then you wait and you
8 wait. Any government in position gets in trouble with this
9 because then the public outcry becomes more.

10 I asked specifically about those radar, are you sure
11 you can get in those meetings a radar up and going in one month?
12 They told me once we get all the specs and we do everything. I
13 asked a question, too, and I remember with the competitive
14 pricing, did you go out and get that. As yet they said they got
15 certain things from some of the people. With everywhere shut
16 down will you be able to get those things ordered and get them
17 here in time, they couldn't answer that there.

18 So, the situation that you were in from them is all
19 right, go back and review everything. But when they came back,
20 they said, all right, based on our intel later on and based on
21 what is happening and concerns of smuggling, we have to move and
22 do something now.

23 So, they said that, then what they were saying at that
24 time, but the realities on the ground did not allow them to
25 follow through with what they were saying because it was their

1 plan.

2 MR RISSO-GILL: May I interject. I accept from a far
3 to ask whether it may be helpful to the Premier to look at the
4 first and second paragraphs on page 3601, in respect of the
5 cost-benefit analysis, there is a bit more on that page about
6 the cost-benefit analysis.

7 BY MR RAWAT:

8 Q. Have you read that, Premier?

9 COMMISSIONER HICKINBOTTOM: Yes, and also the rest of
10 the fourth paragraph there which goes on to say that the use of
11 the platforms vis-à-vis barges are short-term with no guaranteed
12 benefits. Procurement of the radar is a six to 12 months
13 project but with greater benefits for years. But certainly
14 there was uncertainty as to how long it would take to get a
15 fixed radar system.

16 THE WITNESS: Yes, but remember--and I thank counsel
17 for intervening, but that's--that is exactly what I'm trying to
18 say. They always said six to 12 months before we could get
19 this. First they start with a month, then they came in with the
20 six to 12. The reason that they came to the six to 12 is
21 because of the questioning. Even before this meeting.

22 So, with the time to get radars keep shifting but you
23 don't have that kind of time.

24 COMMISSIONER HICKINBOTTOM: Because you said literally
25 the 22nd or 23rd of August you had to do something there and

1 then, and however long radar, fixed radar was going to take, you
2 weren't going to get it on the 23rd of August?

3 THE WITNESS: Right.

4 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
5 much.

6 BY MR RAWAT:

7 Q. Just to help the Commissioner with this because my
8 recollection of the evidence was that what the technical folk
9 were saying and what they've told the Commissioner is that,
10 initially, they didn't have radar barges in mind at all. It was
11 the Decision of Cabinet telling them go and look at proposals
12 from private vessels that meant that they rewrote the Border
13 Security Plan, and then came up with this idea of radar barges
14 as a temporary solution whilst a land-based system is procured.

15 But your point to the Commission is actually that to
16 consider it as a--that the ultimate goal is a land-based system
17 is a fallacy because, in fact, a land-based radar system in the
18 BVI won't achieve all that's needed.

19 A. From my angle?

20 Q. Yes.

21 A. No.

22 And I want to state clearly that that's from my angle.
23 They're the technical experts, but from what I know about radars
24 and these waters, what I want to say in NSC, when they do come
25 with a plan, not only with radar barges, there's discussion with

1 many other things, whether they be boats or whatever the case
2 is, so it was fluid. It was never something that's etched in
3 stone. They would bring their report, just like the Health
4 Emergency Operation would bring their report. By the time they
5 come we discuss, and then in discussions, no matter who brings
6 it up, then things would shift because based on the time that we
7 had at hand and what had to be dealt with a lot of shifting was
8 happening, and on the fly, and there's one who would have been
9 dealing with all those things.

10 Q. If we look at paragraph 12 of your Written Response,
11 Premier, you set out there various discussions that went on, and
12 this follows on from getting the paper that we'd been looking at
13 to the NSC, on the 25th of September, with the result that you
14 say the NSC recommended the first contract with EZ. You note
15 that the former Governor expressed his disappointment that the
16 matter hadn't come back to NSC before the barges were deployed.
17 You refer to Mr Matthews, who would have been an ex officio
18 member of NSC, and then the views of the--expressed by the
19 Deputy Premier.

20 These are not--these discussions or the record of this
21 NSC discussion is not one that's been provided to us. But is
22 there a record or would there be a record of the discussion that
23 the NSC would have had on the 20th of September?

24 A. I don't know how the record taken is with the NSC part
25 as that's something given the nature of it is limited, so you'll

1 have to ask the Cabinet Secretary.

2 Q. You go on, then, to--as we go through the chronology,
3 to--and if we look at 3913 in the bundle, which is we're looking
4 at the Part 4 bundle. We're at Cabinet Memo 28th of
5 October 2020. It's dealing now with the second contract. And
6 if you look, Premier, at paragraph (5) on 3914, paragraph (5)
7 speaks of (reading): "The EZ Shipping Limited barge platforms
8 were activated on 23rd of August 2020, and have yielded
9 significant results ranging from being a deterrent to arrests
10 and detention of vessels. The platforms have and continue to
11 function as strategic outpost locations from which Her Majesty's
12 Customs or Royal Virgin Islands Police Force Marine vessels are
13 rapidly deployed to intercept suspicious maritime activity. The
14 extended patrol range and expedited patrol deployment of local
15 authorities have allowed the Territory to achieve immediate
16 border protection while developing more permanent measures".

17 Just, I mean, what information did you actually have
18 at that time as Cabinet, outside this memo?

19 A. Outside the--well, the technical officer that was
20 handling it, he was dealing with the JTF person, so I really
21 can't answer that.

22 Q. You're going to have to be a little bit more specific
23 about identifying the technical officer--

24 A. Oh, the Financial Secretary would assign, I think it
25 was Mr Frett. So, when they're writing the paper, the

1 background and all that information, I wouldn't have that
2 outcome from the--him speaking with the JTF and getting the
3 information and extrapolating that for the paper.

4 Q. So, the technical officer or the Public Officer
5 responsible for drafting the paper would have to go and find the
6 information.

7 A. They have to get all that information.

8 Q. But what Cabinet wasn't getting was briefings on how
9 it was going. You would depend on the information summarised in
10 the paper for you.

11 A. Right. That would be so because at that time, it--it
12 remember that in 2020 you had 94, over 90 special sittings of
13 Cabinet. The main thing was always get the health unit in
14 there. If you had an order in which persons would come in,
15 although this was dealing with certain aspects of containing the
16 disease, they too would probably just form part of their report
17 but the health team is the one that you mainly would have seen.
18 The Health Emergency Operating Center, I think, is their name.

19 COMMISSIONER HICKINBOTTOM: So, is this right,
20 Premier, that it says here that there were significant results
21 as a result of the radar barges, but other than that, that
22 assertion which has come up through the usual route, are you
23 saying that you didn't see any evidence, detailed evidence, of
24 effectiveness of the barges?

25 THE WITNESS: Well, for sure we didn't have much

1 people trying to get in as before. I remember that one time NSC
2 Customs even stated that the US Border Control or one of the US
3 border control stated clearly that they can see that the barge
4 either as a deterrent or the limits--the limiting persons
5 attempting to get into the BVI. So--

6 COMMISSIONER HICKINBOTTOM: Yeah, certainly the
7 evidence--I think this is right--Mr Rawat will correct me if I'm
8 wrong--but I think the evidence is consistently from all of the
9 witnesses who has given it that the barges cut down sea traffic,
10 generally.

11 THE WITNESS: Oh, tremendously. The persons who
12 disagree would be disagreeing for disagreeing's sake, but that
13 was a fact.

14 COMMISSIONER HICKINBOTTOM: So, that's perhaps one
15 mark of effectiveness. But in terms of--

16 THE WITNESS: Which is major because that stopped
17 persons from coming in.

18 COMMISSIONER HICKINBOTTOM: I accept that. I mean
19 that's one reason for them sitting there.

20 THE WITNESS: Yeah.

21 COMMISSIONER HICKINBOTTOM: But in terms of
22 effectiveness, that is you've got radar on there and they will
23 spot vessels on the water. How effective were they at spotting
24 vessels and stopping vessels?

25 And can I add that to a second question which is also

1 linked to what's said in this paper. It says here they--the
2 barges continue to function as strategic outpost locations from
3 which Customs and the Police vessels are rapidly deployed to
4 intercept suspicious marine activity. We have heard evidence
5 that the interceptors, the interceptor boats, quite a lot were
6 laid on, so at any one time there was perhaps only one
7 interceptor boat available, and money was not available to get
8 these in--which is relatively modest--to get these intercept
9 boats back on the water so that they could be deployed. Could
10 you perhaps respond to each of those aspects?

11 THE WITNESS: Well, whenever something doesn't work in
12 this country, they turn to the money with the Ministry of
13 Finance and blame the Ministry of Finance.

14 The first I knew some of the condition of some of the
15 boats, because I wouldn't be dealing with those on a regular
16 basis, was a result of when COVID came on, and he was asking,
17 Well, what about the boats? And that's when I found out that we
18 needed to get some money for Police to fix one of their boats.
19 That's when I found out that a boat that was ordered for Police
20 did not come as yet. That's when I found out that a boat that
21 was ordered for Customs did not come as yet. And that's when I
22 found out that a boat--other boat for Customs, I think it was,
23 that needed some parts that they were told they didn't have any
24 money.

25 So I told them I didn't know about these because I

1 take national security very seriously, so we'd have stopped
2 something to get the money there. So, adjustments was made to
3 make sure that the funding was given to them to get them done.
4 And since then, in recent times, Customs have received their new
5 boat. Their other boat has been commissioned. The Police have
6 received their new boat and the other boats that they have is
7 now in commission, so we fulfilled the role that we had not
8 thought was fulfilled.

9 COMMISSIONER HICKINBOTTOM: Was any of that done
10 whilst the barges were there?

11 THE WITNESS: The fixing of the boats?

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: I cannot remember--I don't think that
14 much of it was done when the barges were there. It was limited
15 boats for the reason being getting parts out and shipping was an
16 issue around that time.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: So that was the--

19 (Overlapping speakers.)

20 COMMISSIONER HICKINBOTTOM: Thank you. No, thank you
21 very much.

22 MR RAWAT: Commissioner, if I could just deal with one
23 point perhaps and then we can break for lunch.

24 COMMISSIONER HICKINBOTTOM: Yes, thank you.

25 BY MR RAWAT:

1 Q. Premier, I mean, it may be that you've already
2 answered this because I think you may point towards the
3 technical folk, but it's again in terms of sort of the language
4 of the memoranda that were prepared for you. If you go--and I
5 think we're in the Part 2 bundle, Premier.

6 A. Which memorandum had been prepared for me?

7 Q. At 1831.

8 COMMISSIONER HICKINBOTTOM: Yes, I don't think
9 we've--this is Part 2., and I don't think we've looked at
10 Part 2, Premier.

11 THE WITNESS: 1831?

12 MR RAWAT: Yeah.

13 THE WITNESS: Or part 2?

14 COMMISSIONER HICKINBOTTOM: Part 2.

15 THE WITNESS: Okay.

16 COMMISSIONER HICKINBOTTOM: 18--

17 BY MR RAWAT:

18 Q. 31.

19 A. Let me just get this pulled up for you.

20 Q. So, what we're look at or hopefully you'll find,
21 Premier, is that this is a NSC memorandum, again coming from
22 your office, and you detailed in your written response the sort
23 of circumstances in which these memoranda were being produced.

24 A. Um-hmm.

25 Q. And this one is the--asking the NSC to make, if you

1 like, a post-event recommendation to Cabinet because the barges
2 are still deployed but you need to set in place a new contract.

3 And if you see 3. and 4., we see the same sort of
4 wording that we saw just a moment ago in the Cabinet Memo, so
5 that there is a reference to yielding significant results,
6 ranging from being a deterrent to arrests and detention of
7 vessels. There's the reference to the boat platforms being used
8 as strategic outpost locations, and it concludes that (reading):
9 "The extended patrol range and expedited patrol deployment of
10 local authorities have allowed the Territory to achieve
11 immediate border protection, while developing more tomorrow
12 measures". It's similar, if not the same wording as you had
13 with the Cabinet Memo.

14 And then if we go to 1887 in the same bundle.

15 A. Yes, sir.

16 Q. And again it's now third contract time, so 19th of
17 January 2021, you're taking a memoranda to Cabinet, and at 3.
18 and 4. we see yet again the same sort of wording as we've seen
19 before, so there's reference to the barges functioning as
20 strategic outpost location, reference to the extending of patrol
21 ranges, the initiative has lowered petroleum fuel and vessel
22 maintenance costs is something that appears in earlier
23 documents. (Reading): "The barge platforms have yielded
24 numerous significance results from ranging from arrest and
25 deterrents to the detention of vessels. Personnel on the

1 platform include officers from Her Majesty's Customs and the
2 Immigration Department".

3 So, as this contract goes--or the Project, let's call
4 it, goes through the process of three contracts, the memoranda
5 that are being prepared, either for the NSC or for the Cabinet,
6 uses the same wording time and time again.

7 But, I mean, this is where I'm going to guess you say
8 to me, Well, that's the information I was given by the technical
9 folk, that's what I base my decision on.

10 A. Well, you know me by now. I only can tell you the
11 truth.

12 Q. And--but the question then is, did you, as you went
13 through, because you're going from the 23rd of August, did you
14 ask for more information?

15 A. All the time. NSC--the Joint Task Force made
16 presentation to NSC. And even when they come and made
17 presentation, whether the Government then or now, they were
18 always never convinced about the effectiveness of it, but I
19 couldn't agree.

20 I'll state this for you. We saw--and I haven't
21 mentioned it because they're relative to the barge. We saw in
22 the newspaper the then-Governor and the then-Commissioner,
23 immediate past Governor and Commissioner who held a press
24 conference about the biggest drug bust ever. The morning of
25 that press conference we met for NSC, if not 7:00 a.m.,

1 8:00 a.m. because usually I'm to walk every morning from 7:00,
2 so it would probably we--we had NSC, and we heard about the drug
3 bust, you know, through the grapevine over the weekend. As I
4 remember, it was early in the week. But when we went to NSC, we
5 got some of the information, and we were told that we--you know,
6 we'll be given more information at a later date, but this is
7 what they have, et cetera, et cetera.

8 I was stunned, and rather taken aback to be given a
9 phone call--to receive a phone call from someone outside that
10 asked me if you're watching the press conference. I told
11 them--I asked them, what press conference? And I remember the
12 person, I don't remember who it was, but I remember the person
13 telling me, you know, you have to go online.

14 I was immensely shocked to see the Governor and the
15 Commissioner holding a press conference about the drug bust.
16 Let me explain to you why.

17 And stating that it was the biggest drug bust ever,
18 and basically doing something that I categorically disagree
19 with, branding the BVI negatively.

20 I went and I spoke afterward in NSC about it and said
21 that we met in the morning, and the details that came out in the
22 British press at the same time as the press conference and in
23 your press conference was never given to us in NSC, and that
24 constitutionally is a breach because you supposed to inform the
25 Premier of the country all that information that you

1 disseminated in the media and in the British press, and I took
2 offense to it, and I have been branded in some quarters as
3 standing up for drugs, but that's not what I was saying. What
4 I'm saying that you could have turned the press conference into
5 a positive for the country, and say that the arms of our law
6 enforcement have been able to capture the largest drug bust
7 ever, not paint the BVI as the drug-running country, that the
8 biggest drug bust has I think and make it seem like everybody is
9 doing drugs in this country is bad. That was a consistent
10 language that I resented, and I still do.

11 Because our law-enforcement agencies work hard, and
12 like every entity they're going to be good and bad apples.
13 Let's hope that they're less bad apples than good. But the
14 problem is with bad apples it doesn't matter how many there are.
15 You leave them there too long, it will affect the other apples,
16 so those have to be looked into.

17 Now, that now, after that had happened the JTF came to
18 Cabinet, came to NSC sometime after we were discussing, and
19 there was a discussion between the then-Commissioner of Police
20 and the rest of JTF where the JTF--the then-Commissioner always
21 go on his own tangent, but the JTF was saying that their intel
22 was telling them that that trailer was there before the
23 lockdown. That's their intel. The Commissioner didn't too much
24 agree, but the JTF said something that was interesting, that
25 their intelligence told them that the reason they caught the

1 trailer of drugs is because they could not get it transported to
2 where it's going because here it's not--it's known in national
3 security that here is not a port where drugs come to stay.
4 Transshipment. But because of the barges, they could not get it
5 moved. Of course, that was disagreed.

6 Now I'll also state that, and I cannot leave although,
7 without saying this, Mr Rawat, because I attempt to clear my
8 name no matter how the Report comes--I pray God it comes out as
9 fair and it's possible, Commissioner, I'm going to clear my
10 name. There was a one time when the ship came from the UK to
11 help with the securing of the borders, and we cannot get that
12 mixed up with two different times. There was a time long before
13 when they would talk they do not tell us about the ship coming,
14 and that was in the earlies, that even in shutdown, there was no
15 problem, and we asked why is that ship coming? What is the
16 issue? We didn't have no media issue at that time at all.

17 And we were right in the same room, I remember well,
18 and we too asked them what is it that you sent to the UK to
19 describe--describe--why we need this ship and have them come in
20 and land and different things because it's going to cause a
21 destabilizing factor for the people in their minds, the borders
22 is not closed, we don't have--you said it was based on the
23 Commissioner of Police memorandum. We didn't get to keep it,
24 but we saw it.

25 And I remember the Deputy Premier at the time was

1 Honourable Malone, and when he read it, he said if he wasn't
2 living in the BVI, based on this Report, he would not even come
3 here because he's scared to read what he's reading about the
4 Territory.

5 And my warning to the Commissioner, which caused an
6 alarm to the Governor and him, was that I'm the Premier. And I
7 remember it well. It was 15 months into us being in Government,
8 and your responsibility under the Constitution as Commissioner
9 of Police is to keep the Premier informed--it's in the
10 Constitution--of all that's happening. You don't have to give
11 me the details that it's Tom, Jerry, or--but keep the Premier
12 informed.

13 And I received--when I read the Report that was going
14 to justify why the ships had to come, I happened to have as your
15 CI marked on my paperwork--I read a lot--and I brought all the
16 Reports then, and I said these are the reports that you give us.
17 You never reported to us that there was robberies going on,
18 persons are smuggling in and you were able to catch somebody.
19 You caught one person that fell on a dingy, and the fellow on
20 the dingy when you caught him we know what that was. The whole
21 world know that he was coming from St Thomas. He came in here
22 illegally but we knew that he came to see his girlfriend because
23 she was pregnant but it was illegal, so he got off.

24 But at the end of the day, you knew these--those
25 things but there were more things added on to that we never

1 heard before.

2 So, what I was saying is that I told them,
3 Commissioner, Commissioner, you have to be truthful to us. The
4 Commissioner stormed out, angry, and we never got an apology
5 from him, but he came back and I told him, Governor, you have to
6 speak to him on that.

7 But I bring all of that up to state that is national
8 security advises the Governor. Those information was not known
9 by us. Press conference was held, and the BVI was branded to
10 the wall as the greatest drug-running area with the greatest
11 drug bust ever, and we missed a grand opportunity to boost
12 morale in the law enforcement by saying it may have been--it is
13 the greatest drug bust we ever had, but because of our Officers
14 we were able to capture it, and that is a point I was making.
15 Spin it the other way. Don't spin it to the balance in the
16 negative way. But then, the Commissioner of Customs, the Head
17 of Customs, stated that the intel said that that trailer
18 couldn't get out of here because it wasn't destined to stay here
19 based on the intel, and that now, of course, brought some
20 disagreement with that.

21 On top of it, I remember a Report from the Chairman of
22 the JTF who came back and told us that the US officials informed
23 them in a meeting they--they had--they have regular meetings
24 that they know that the barges have moved, and they asked them
25 how come? Because they said the see the activities are

1 increased.

2 So, statistically what I was trying to tell the
3 then-Governor and even my good friend now, the new Governor is
4 you can't weigh the effectiveness of the barges by how much you
5 capture. You have to weight by how much you deter, but you
6 cannot get that figure because you would never know how much you
7 deter, but we know that the numbers for getting into here were
8 low.

9 Now, there was also a communication problem with the
10 barges because of these--the nuances that should have been
11 ironed out. When the ship came, the US Coast Guard--this is
12 what was reported to us and it was in a letter written to NS--to
13 the Governor, copied to NSC--called the Task Force of here in
14 the BVI, let them to know that they've seen a large object
15 moving, and with that in mind, I was informed that we may have a
16 huge shipment is what they felt it was.

17 But to find out now that they engaged the radar also
18 picked them up at the same time, the radar of the barges,
19 something is out there moving, you all need to mobilise.

20 But when they mobilised the boats, they saw it was the
21 Navy ship from the UK. The issue with that, Commissioner, was
22 that before the ship came, I told the Governor there must be
23 communication between the ship and all of them if we are going
24 to work together to protect our borders. You can't have the
25 Commissioner and the Navy ship one way for the UK and rest of

1 the JTF and others on the other way.

2 Now, since then I've spoken with this new Governor,
3 and I asked of him to let us work on developing our own Coast
4 Guard, which I brought up from before, but that was ignored, but
5 this Governor, I must say, being more mature and listening to
6 why, we have a number of students major in marine science at the
7 college here, and none of them have been qualified, and they've
8 been asking about our own Coast Guard.

9 So, I've spoken, we have spoken and just lately I've
10 also given him a note just asking him for an update, so we are
11 looking into that part of it, to help with the security.

12 I also bring up which I wanted to, Commissioner, to
13 them that I am not saying it has to be EZ Shipping, BZ Shipping
14 or FS Shipping, but we must invest in our own platforms, so even
15 conversations had been had to look at Coast Guards in America
16 and different places that are selling used platforms so that we
17 can purchase. Our waters are to open to just rely on the land
18 radar.

19 Lastly there, I know we are going for lunch, and I
20 will say this: The radar system, I don't know if you carry me
21 to any bundle with that, but I will carry you to the bundle of
22 my mind. When the radar system was tendered in December,
23 through the Ministry of Finance--

24 Q. 1034.

25 A. Oh, thank you so much. I know we are working

1 together. 1034. Some of the topics may not be always popular,
2 Commissioner, but I'm going to state as I remember it. I intend
3 to leave this business without shackles.

4 COMMISSIONER HICKINBOTTOM: 1034, that's the
5 quotation.

6 THE WITNESS: So, this was--it was November quotation,
7 Request for Quotation, I remember well because it was during
8 budget time, and I was stating let us get the quota--let us get
9 the Tender Documents out and have a full, open tender since we
10 are in better times now when we have a little more time we don't
11 need to rush, we don't need to waive the tender process. Let's
12 go through the regular process now that we have just a little
13 more time although it was still hectic, so they agreed, because
14 for this, at least we could do it. Other matters we may not.
15 So they put out the tender.

16 But then when we went to NSC, the Governor rightfully
17 came and he said, Well, I saw the tender is out. I need to get
18 more input on the technical part of it. Could you pull it back?
19 I'm in a spirit of cooperation. That's the then-Governor, the
20 former Governor. I had to instruct the Ministry of Finance to
21 pull back the Tender Documents. We still have them somewhere in
22 here because (noise interference) that was dealing with that, so
23 we pulled that back.

24 MR RAWAT: This is just to help you, Premier.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 MR RAWAT: This is all that we've got.

2 THE WITNESS: Okay.

3 COMMISSIONER HICKINBOTTOM: But how it was explained
4 to us is that as the top of the document says--

5 THE WITNESS: Yea.

6 COMMISSIONER HICKINBOTTOM: --this was a proposed
7 Tender Document for HM Customs, but not for all of the security
8 aspects--

9 THE WITNESS: Right.

10 COMMISSIONER HICKINBOTTOM: --which the--for which
11 radar was required, and it did not comply, we were told, with
12 original requirements for security.

13 THE WITNESS: Well, it did not deal with those, but
14 Customs is under the Ministry of Finance, and what I was asking
15 NSC, when are we going to get this radar dealt with?

16 So, Customs being under the Ministry of Finance, the
17 Ministry of Finance decide it's better that we tender for some
18 kind of radar than to be having no kind of radar because
19 eventually we have to give up these barges, and nothing was--the
20 only thing that was coming out of the meetings with the radar
21 over the last couple of months were the people who went in.
22 That's the only thing that was coming out of those meetings.

23 COMMISSIONER HICKINBOTTOM: But why couldn't a Tender
24 Document have been prepared which covered all of the necessary
25 requirements for security?

1 THE WITNESS: Well, the instruction was to make it as
2 broad as could be, but that is why I stated when the Governor
3 said he wants more input into this, I said, No problem,
4 Governor, but we've been discussing this for a very long time,
5 so let us expand it. We'll pull it back and let's expand it.
6 He said he wants his office to take--have more input into this.
7 I said, I have no problem at all, but let's not take as long as
8 we are taking.

9 Commissioner, today, based on what I'm seeing in front
10 of me, the 21st of October 2021, and the tender still has not
11 gone out.

12 These are the issues that sometimes keep me up by
13 night because in the public interest you're moving to get this
14 done, to put something there before everything is--before you
15 have nothing. Now they--we have more boats, et cetera, but
16 that's not enough. We have to get those are radar out.

17 Now, we are most through with the Budget process
18 because I believe now I work from morning to night, and still
19 there's no tender that's gone out. Although I must say with the
20 new Governor, we have met, and he has clearly seen where the
21 bottlenecks are. I won't get into that part because we have our
22 understanding that whatever needs to be done by his office has
23 to be speeded up.

24 But this is--would have allow us to have something
25 rather than what we have now is nothing. But this should not

1 even have been an issue. This was the point I'm making because
2 the first time we heard about radar was to take a month; the
3 next time they said 6 to 12 months, and now, Commissioner, after
4 sending out tender in November, that was pulled back, we are now
5 here now, nearly another November and tender, the overall
6 tender, the big tender with everything in it, has not gone out.

7 COMMISSIONER HICKINBOTTOM: I think it's fair to say
8 we have no evidence of that--

9 THE WITNESS: Because they don't--

10 COMMISSIONER HICKINBOTTOM: There's no doc--

11 (Overlapping speakers.)

12 THE WITNESS: It's just a story.

13 COMMISSIONER HICKINBOTTOM: Yes, okay.

14 THE WITNESS: And so there's nothing. That's my
15 point.

16 MR RAWAT: The story is a good point to end on,
17 Commissioner.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

19 That's the end of radar barges.

20 MR RAWAT: And there might be a couple of questions
21 after that, but I think we'll move on to governance very
22 quickly.

23 COMMISSIONER HICKINBOTTOM: I mean--

24 THE WITNESS: No, if you want really, I could finish
25 for you now.

1 MR RAWAT: No. I think there's a couple of things I
2 need to check.

3 COMMISSIONER HICKINBOTTOM: Okay.

4 THE WITNESS: Oh, okay. Yeah, yeah, well, that's
5 good. You--

6 COMMISSIONER HICKINBOTTOM: We'll do that.

7 THE WITNESS: And fact check there.

8 BY MR RAWAT:

9 COMMISSIONER HICKINBOTTOM: Half an hour, so we'll try
10 and get back by about 10 to--5 to 3:00, Premier. Half an hour.

11 THE WITNESS: Oh, 10 to 3:00?

12 COMMISSIONER HICKINBOTTOM: Yes. It's now 25 past
13 2:00.

14 THE WITNESS: Okay.

15 COMMISSIONER HICKINBOTTOM: So we'll try and start
16 about 5 to 3:00.

17 THE WITNESS: Okay.

18 COMMISSIONER HICKINBOTTOM: Good. And I think we'll
19 be on to governance quite quickly.

20 MR RAWAT: Yes. Yep.

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

23 (Recess.)

24 (End of confidential session.)

1
2
3
4
5
6
7
8
9

OPEN SESSION

COMMISSIONER HICKINBOTTOM: Are we in open session or closed session?

We're in open session at the moment, Mr Rawat.

MR RAWAT: Could we return to closed session? U have just a few matters to ask the Premier about?

COMMISSIONER HICKINBOTTOM: Yes.

Thank you, Mr Peters.

(End of open session. Confidential session begins.)

CONFIDENTIAL SESSION

1
2 BY MR RAWAT:

3 Q. Premier, just a few matters in relation to the
4 questions of radar barges, please. In your evidence earlier you
5 made the point that the Joint Task Force, the beginning of this
6 process, came to you. This was at a time when they were on
7 fiberglass boats and getting sea sick and having concerns for
8 their safety. They came to you, and one of the issues they
9 raised with you was that they had concerns about the use of
10 these private vessels because they were using because there were
11 persons of interests to them on those boats.

12 When you deployed or authorized the deployment of
13 radar barges on which certainly there were Immigration Officers
14 and Customs Officers, what vetting was undertaken of the crew of
15 those radar barges?

16 A. Well, I said there may have been issues with them, and
17 in terms of with those barges, that would be something that I
18 would yield to them. I don't get involved in those parts. I
19 just said what I told you.

20 Q. So, did you ever learn whether or not they had
21 undertaken any vetting?

22 A. No, I didn't get in that part at all.

23 Q. If you could turn to your Response, please, and I just
24 asked you about paragraph 2.1, please?

25 COMMISSIONER HICKINBOTTOM: Yes.

1 BY MR RAWAT

2 Q. At paragraph 2.1, you referred to Cabinet's decision
3 of the 3rd of July 2020, which was a decision to revisit you say
4 "the proposal received from private vessel owners offering their
5 vessels to support order/management/control efforts."

6 A. Um-hmm.

7 Q. And you explained it was expressed not as a Cabinet
8 Decision based on a Cabinet Paper but as a Cabinet action item.
9 We haven't got any disclosure in relation to that 3rd of July
10 2020 Decision save for an e-mail, which was provided, which
11 informs that it is, indeed, a Cabinet action but how did it come
12 about that Cabinet made that decision?

13 A. Cabinet action--after review if it was Cabinet, NSC.

14 Q. It was Cabinet. I can help you--

15 A. Yes, Cabinet's Decision--two-point where?

16 Q. If you look at 2.1?

17 A. 2.1.

18 Q. At the beginning of your Written Response, but the
19 actual--the information that we have is at 3570, if you need to
20 look at it.

21 A. What bundle was that?

22 Q. That would be, I hope, in your Part 4 bundle.

23 A. Page?

24 Q. 3570.

25 A. 3570. Um-hmm.

1 Q. That's all the information that's been disclosed to
2 the Commissioner, and as you rightly say in your Written
3 Response, it was a Cabinet action item.

4 A. Yes.

5 Q. So, I'm assuming it's something that's actioned at a
6 Cabinet Meeting.

7 But can you explain how it came about that Cabinet in
8 July 2020 took--agreed that the action should occur?

9 A. I can't quite remember why they took the action. I
10 know that there was a lot of discussions being asked about it,
11 about overall border security, et cetera. But I'm trying to
12 remember as you talk, but I don't recollect what happened there
13 or someone asked something or whatever because this is now we
14 are quoting the "Cabinet agreed", yeah, the action point for it,
15 I don't quite remember it. I'm trying to remember there as I
16 read it.

17 Q. But presumably, there would be some Cabinet records
18 that might give an insight into how Cabinet came up with that
19 action point.

20 A. Maybe not, because sometimes during that times, there
21 was just general conversation about different things, about
22 cases or because during that time or as far as I could remember,
23 there was a lot of things that used to be discussed that or
24 passing things. I don't know how that we called it or what. A
25 lot of things were discussed.

1 Q. I think we have taken it as far as we can with you.
2 It might be something we will have to ask the Attorney General
3 to assist us with or the Cabinet Secretary.

4 A. Yeah, I don't remember that at all. I don't remember
5 how it went.

6 Q. We looked at moments ago the radar Tender Document--

7 A. Um-hmm.

8 Q. --which you explained was withdrawn at the request of
9 the Governor.

10 A. Yes.

11 Q. And that's a point you make in your Written Response.
12 You will see--

13 A. This same one?

14 Q. No, you can put that back.

15 But you will see, Premier, in that rack of files, one
16 that's slightly smaller and doesn't have a label on it.

17 A. Yes.

18 Q. If you turn to the papers that sit behind the tab, you
19 should see a cover sheet, "Additional Material Provided by
20 Elected Ministers".

21 A. Yes.

22 Q. If you turn, please, to page 183 in that bundle.

23 A. Yes.

24 Q. Now, we saw that the date of that Tender Document was
25 November 2020.

1 A. Yeah. Yeah, that's what--

2 Q. What I'm taking you to is this is a bundle of
3 documents that have been disclosed by the Elected Ministers, and
4 what Sir Geoffrey explained earlier today to the Commissioner is
5 that a search was undertaken to find all of these letters, and
6 there are a number missing, particularly letters to you from the
7 Governor, but we have letters from you to the Governor.

8 Now, in this letter, you're writing about the radar
9 tender, and you write to say--I'm not going to necessarily read
10 it all out, but that you're responding to a letter from the
11 Governor. You say that that letter contains factual
12 inaccuracies, areas of misinterpretation and misinformation, and
13 instances where there's a variance in our respective
14 recollection of the facts in a number of areas, and you say
15 you'll make a substantive response in due course.

16 But you then remind him that border protection is the
17 responsibility of HM Customs, the Department of the Ministry of
18 Finance, and in your portfolio as Minister of Finance. And that
19 there are no provision in the Constitution to mandate his
20 consent in this matter. Authority lies with the Minister of
21 Finance, no provision in the Constitution vests you as the
22 Governor with the power to instruct me. There is nothing
23 constitutionally irregular with the publication of the tender
24 notice by Her Majesty's Customs.

25 And you then conclude that the tender notice will

1 therefore, remain as published. As you say, the substantive
2 response will be provided in due course, and we see that
3 overleaf at page 185.

4 Now, that is a lengthy letter. Just draw your
5 attention to some points.

6 You say in the first instance your claim--this is on
7 page 185--you report unaware of the position of the Government
8 of the Virgin Islands of HM Customs to pursue with optimum
9 urgency the acquisition and installation of a wholly BVI-owned
10 and BVI-operated border protection surveillance system doesn't
11 align with the facts, and then you set out various details.

12 You go through at 188 to explain that border
13 protection--this is the penultimate paragraph on this--is
14 outside the parameters of the Governor's constitutional
15 authority, which is limited by Section 61.

16 And then the point you make at 189 is, in light of all
17 the above, and as I advised on last Friday, the tender
18 invitation will proceed as published.

19 So, there seems to be more of a history to this Tender
20 Document--

21 A. Um-hmm.

22 Q. --perhaps than we might have thought. Why did you at
23 least initially take the stance that the tender invitation and
24 the tender would go forward?

25 A. Because I was tired up with having meetings and

1 nothing coming out. And whenever you see that movement starts
2 with something, there seems to be more effort to always come and
3 give reasons why things should move forward.

4 And we were at a risk of not having our borders
5 secured, and there is also a concern with the barges being out
6 there so that we can make sure that we move swiftly so that when
7 the barge's time is up that we have something out there. So I
8 was concerned that this was being discussed all the time, a
9 movement was done to get something done, and rather than to
10 finding the common ground on how we could move forward on it,
11 that we have some kind of radar system afterward when the shelf
12 life of the platforms, as we call them, is over.

13 So, this was to let them know that with all due
14 respect and constitutionally because some is under the Ministry
15 of Finance, so if we cannot--we do have the Authority under the
16 Constitution to get whatever is needed for costs shared with any
17 other law enforcement, likewise Police have things that they
18 would get and share with any other law enforcement, I can't stop
19 Police from getting what they need to get. In terms of if the
20 Governor decides he wants something for Police. Customs also
21 fall--they share an umbrella so to speak, but they're squarely
22 under the Ministry of Finance, which is what we decided already,
23 well, let us use that part of the Constitution to be able to
24 move forward with these radar and do an open, transparent
25 tendering process. I thought that I was going to be given the

1 key to the City, but obviously not.

2 Q. You've explained that Customs is, let's call it, a
3 Department within the Ministry that sits under the Ministry of
4 Finance, and Wade Smith has come to the Commissioner and
5 explained his reporting lines. There is nothing, therefore, to
6 stop you as Minister of Finance deciding to finance the purchase
7 of a radar system for Customs?

8 A. Through an open tender process, no.

9 Q. Well, and if exceptional circumstances existed through
10 a waiver of a tender process?

11 A. Whether Customs or Police, you can do it, but of
12 course, you would check with those who are over Police if you
13 had to do that, if that's what they want.

14 Q. But leaving Police aside, your point is that this
15 Department sits under the Ministry of Finance, and the Ministry
16 of Finance can go ahead with it, and you rely on the
17 Constitution to say that. The question is, then, given what you
18 have just said to the Commissioner about the urgency that you
19 saw, why didn't you go ahead? Because what you've been saying
20 to the Commissioner is, better some radar system than none, so
21 why not go ahead?

22 A. When you go into good governance, you will find out,
23 Mr Rawat. After a while, in life you try not to fight too many
24 fights, and you try to find common ground to get what's needed
25 to be done the best interests of the Territory, so when I saw it

1 becoming an issue, I said well, all right, after a while, I went
2 into the NSC and I agreed we will yield whatever expertise or
3 whatever you want to put towards the Project, feel free to do
4 it, but just do the Territory one favor: Do not have this
5 lingering like everything else. That's the only thing I was
6 asking.

7 COMMISSIONER HICKINBOTTOM: These two letters say that
8 the tender invitation that we've seen will go ahead.

9 THE WITNESS: That's what it was saying because the
10 urgency to get a radar system in place.

11 COMMISSIONER HICKINBOTTOM: I understand that. So,
12 the urgency is still there. You have the Authority under
13 Customs as Minister of Finance to send the tender out. You say
14 you're going to send the tender out. I don't think we have seen
15 any other documents after this document.

16 THE WITNESS: No, it doesn't have any because after
17 that we went to National Security Council, and they were still
18 at a month that it needs to pull back, and his office being
19 involved and I told him, well, all right, in the best interest
20 of Territory I would ask finance to pull back the tender and
21 then get the input and put it back out. But please, move with
22 haste.

23 COMMISSIONER HICKINBOTTOM: I don't think we have seen
24 those Minutes.

25 MR RAWAT: No, no.

1 THE WITNESS: I don't know if they have minutes in NSC
2 like that with that but that's what was discussed.

3 BY MR RAWAT:

4 Q. But the position you'd reached, Premier, is you've got
5 the 23rd of August decision to deploy the barges?

6 A. Yeah.

7 Q. You've then got the series of contracts. Now, what
8 leads up to that 23rd of August Decision is the Comprehensive
9 Border Security Plan, and what they say, at least in the first
10 iteration of that plan is, no, this is entirely barges,
11 entirely--entirely sort of temporary because we ought to be able
12 to procure something within a month.

13 A. Um-hmm.

14 Q. And then as you pointed out, a month becomes a little
15 longer. And we saw that in the same document that refers to a
16 month, you're also in the portion I showed you about
17 cost-benefit analysis refers to six to 12 months.

18 But the point at which you're trying, as you say, get
19 this off the ground, is November 2020. So after November 2020,
20 two things happen: Governor Jaspert leaves at the end of
21 January, and a week before he leaves, the last contract with
22 EZ Shipping ends. So, you had essentially a time window of
23 about two months to get something in place because you're doing
24 an open tender in November 2020 to try and put something in
25 place in time for the barges--losing the barges, basically.

1 What was it that made you think you could achieve a
2 radar--a permanent radar platform within two months?

3 A. Mr Rawat, that's a perfectly logical question. After
4 so many different timeframes in this, all I can answer is that I
5 needed to make sure that in the public interest something got
6 done and a step be made to get it done in the most open and
7 transparent manner. This has been spoken about, as you can see
8 in documents for months.

9 So, when we came to the point of these writings and it
10 came a heavy discussion in both quarters, in the NSC meeting
11 subsequent to this, (drop in audio) all right, if you need to
12 put in more input we will pull it back in. We will then get
13 whatever other input that you want to get from your office and
14 be part of the tender if you have some more expertise that you
15 can lend to it, and then put it back out.

16 I just didn't want to be given any more
17 unnecessary--or any confrontation or something that will be done
18 in the public interest, so sometimes you give up--they had the
19 right, and dead is dead. So, being dead right in this--in the
20 middle of this and don't know if he's going ahead and the
21 borders are left open, that's something I would have to answer
22 to the people for, so I just decided to pull it back in the
23 interests of the partnership that I was seeking for, and I think
24 that that needed to be to have cooperation so that whatever
25 technical expertise the Governor or whomever else he has around

1 him that can allow because he's said to have persons in his
2 office, et cetera, and who had expertise and contact the persons
3 who had expertise that could lend some more into the Tender
4 Document, and I just pull it back after that in agreement that
5 we would.

6 Q. But obviously, as I've said, Governor Jaspert's term
7 ends not too long after the barges leave--finish.

8 A. Um-hmm.

9 Q. You've got technical folk in terms of Customs,
10 Immigration, and the Police. They're the Joint Task Force.
11 They were the ones originally tasked with finding what they say
12 they wanted which is a land-based system.

13 What has happened--what has the NSC done since the
14 beginning of February of 2021 in terms of a radar system?

15 A. I don't mean to be rude, Commissioner, but if you
16 close your eyes real tight, that's what I do now.

17 COMMISSIONER HICKINBOTTOM: So, you say nothing had
18 been done in NSC.

19 THE WITNESS: Well, for me, I would say nothing
20 because the tender hasn't gone out. We turn it over, the
21 Governor wanted a committee between the Ministry of Finance and
22 his office, and they're meeting, and I have--since then, the
23 Customs got their boat, Police got their boat, you try to make a
24 make-shift work, and I just left--now and again you would ask
25 how far they have gotten and you will hear that they had some

1 more meetings again. I think that the best person to answer
2 that will be the Ministry of Finance technical persons who are
3 over it, and the Governor's Office.

4 I have carried this as far as I could go, and I felt
5 that if this was allowed to go ahead, we would have something
6 rather than nothing, so that's the most I can answer. There's
7 nothing else I can lend to that except that there's a committee
8 in place at this meeting.

9 Q. Just one last matter, but before I do, can I explain
10 why--I'm not going to take you, Premier, through all the detail
11 of the chronology, the Commissioner has that. He also has, and
12 you've mentioned it, in evidence the reasons you put forward in
13 your Written Response for delays in getting papers before
14 Cabinet and the NSC and getting contracts signed.

15 I just want to ask you to deal with one thing, and
16 that's in Part 4, I hope, Part 3, please, of the--

17 A. Commissioner, while you're doing it, though, I just
18 created and I said it a lot of times, to bear in mind--Part 4,
19 you said?

20 Q. Part 3, please.

21 A. Yes.

22 Bear in mind the environment in which we were
23 operating, the circumstances surrounding it because if you look
24 at it just purely from hindsight, things would seem like it
25 would have been methodological in certain sequences, but I just

1 ask to create the indulgence to remember that we were moving
2 through the worst pandemic in the last 100 years and at that
3 time public confidence was being wavered, and we had to shore it
4 up.

5 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat. Which
6 page?

7 BY MR RAWAT:

8 Q. 2854, please.

9 I'm going to ask you about paragraph 90 but put it in
10 some context.

11 Obviously, 23rd of August, decision to deploy.

12 Thirteenth of September memorandum goes to the NSC
13 with asking for a recommendation for a contract for dates.

14 Twenty-fourth of September there is a payment made
15 authorized for EZ Shipping.

16 Twenty-fifth of September is when the NSC meets and
17 decides on the memorandum.

18 Seventh of October the memorandum gets prepared for
19 Cabinet. It comes on the same day before Cabinet who makes the
20 decision. So you've had the recommendation from NSC, you've had
21 the recommendation from Cabinet.

22 And on the 14th of October, that first contract is
23 signed.

24 Now, what's said at 90 is that both the JTF and the
25 NSC were closely involved in that decision, and the NSC

1 certainly approved the Contract prior to its signature.

2 The point is that--I think I just want you to clear
3 this up, is that NSC--what NSC approved is the in-principle
4 decision to have at least two, 24-hour platforms. What then
5 happens is you give the Authority, payments are made, everything
6 is done save for the Contract, and so it can't be said, can it,
7 that actually NSC approved the Contract before signature because
8 it's all in place, that they're essentially dealing with a
9 situation which is after the event.

10 A. Well, this writing is from who?

11 Q. This is part of your response--

12 A. Uh-huh.

13 Q. --to the application of the Governor--

14 A. This is part of the Response here.

15 Q. So, it's something which carries your signature and
16 the signature of the other--

17 A. No, I was just wondering where this document you were
18 in because--

19 Q. I'm sorry, I should have mentioned it before.

20 A. Yeah. That's all. I can't remember it being no
21 document. No problem at all.

22 Yes.

23 So, you say you wanted to know what part of it in
24 terms of?

25 Q. Well, just that last bit which says "NSC certainly

1 approved the Contract prior to its signature", and the point is
2 that everything is done with the first contract as with the
3 second and the third, NSC and Cabinet are essentially dealing
4 with things after the event.

5 And so, if you take the first incident of radar
6 barges, they're--

7 A. You mean after they have been commissioned?

8 Q. Yeah.

9 A. Okay.

10 Q. So, you've authorized them.

11 A. Um-hmm.

12 Q. You have agreed--agreed the rates. They have been
13 paid, and then the matter goes to NSC.

14 A. I have it before the minutes. Let's just make sure
15 I've got it correct.

16 I authorized them on advice with the technical team.

17 Q. I accept that.

18 A. The technical team agreed, and payments were made when
19 the technical team was able to securely ensure that the
20 Financial Secretary, who had made the payments, are comfortable
21 with it. So, because those sections would not involve me at all
22 with that, so I just want to make that clear.

23 Yes, the situation in the NSC certainly approved the
24 Contract prior to its signature. Well, they would not approve
25 the implementation of the actual barge going on the sea before.

1 The Contract and all of that, they would have had to have some
2 kind of tacit approval even if you were meeting informally to
3 make sure that we do that.

4 Q. So, were there--I know that you said that you briefed
5 Cabinet Fellow Ministers.

6 A. All the time.

7 Q. Outside the ambit of the NSC and the Cabinet, were
8 you--you were updating people as to what was going on?

9 A. The Ministers were always--and plus they're very
10 intelligent people. They will be checking too to see if this is
11 worth it because it will have to get their vote and they were
12 comfortable with what they were hearing on their own sounding
13 rooms. But they were always informed. My Ministers were always
14 informed, my Cabinet Ministers.

15 COMMISSIONER HICKINBOTTOM: It seems this is literally
16 true because the Contracts weren't signed until sometimes after
17 the Contracts had been completed.

18 THE WITNESS: The boats were in the water. The
19 Contract was something else.

20 BY MR RAWAT:

21 Q. I think we finished with radar barges, and so we can
22 go back into, I think, to open, if we may.

23 COMMISSIONER HICKINBOTTOM: Good.

24 MR RAWAT: If I could have a moment.

25 Before we go, can I just check one thing.

1

(Pause.)

2

MR RAWAT: We can go into open now.

3

COMMISSIONER HICKINBOTTOM: Yes, please.

4

(Confidential session ends.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OPEN SESSION

COMMISSIONER HICKINBOTTOM: Okay. We are back in open session. In the private session, we dealt with EZ Shipping and radar barges. We have now completed that, and as with other evidence this week on that topic, the Transcript will be sent to the Attorney General, who will then take instructions to any redactions that are necessary before the Transcript becomes public.

Mr Rawat.

MR RAWAT: Thank you.

BY MR RAWAT:

Q. Premier, I want just to turn to the question of governance, and the Commissioner has read and will re-read the Position Statements of the Elected Ministers which comes with a supplementary note and then there's also the Response to the Governor's Position Statement.

So, he has the themes that you and your colleagues raise in those documents, and submissions. What I would like to do if I may, is try and take it at a high level just to sort of understand your position and we may need to look at some of the correspondence as we go through, but a point that emerges not just from the submission but also from when one looks at the exchange of correspondence you had, particularly with Governor Jaspert, but also from the statements that you've made when you've given evidence previously, and that is that firstly, you

1 considered that anybody, be it an elected politician or a
2 Governor, needs to be guided by the Constitution of 2007 because
3 that will tell you what you can and cannot do.

4 Would you accept that?

5 A. Yes, in principle for sure.

6 Q. And in particularly when you're talking about Guiding
7 Principles, what you need to have in mind is that firstly, the
8 Preamble and what it says about self-government and also
9 Article 73 of the UN Charter and in particular the reference
10 there to developing self-government. And part of that context
11 is also the commitments that the UK Government had made to, in
12 1999 and 2012 White Papers, to the concept of a modern
13 partnership with the BVI. And this is what I put to both Mr
14 Jaspert and Governor Rankin, your position would be that any
15 Governor who, considering what powers he or she has under the
16 Constitution, should act in such a way that they are always
17 keeping in mind the need to promote self-government.

18 A. It definitely for Governors and elected officials,
19 irregardless of whether you were in the seat of premier or not,
20 based on Article 73, which I'm sure that later in the proceeding
21 you will turn to, does state clearly about the need, if I could
22 paraphrase it, of the United Nations Article 73, state clearly
23 about the need to have all colonized--all colonized Territories
24 to be decolonized, and to be decolonized, then you would expect
25 not only for persons to act within the ambit of the Constitution

1 but also to have a clear path forward.

2 COMMISSIONER HICKINBOTTOM: I'm terribly sorry, could
3 we go to Article 73, Premier.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: It will help me with what
6 you're saying about it.

7 THE WITNESS: No problem at all.

8 MR RAWAT: If my memory is right, it will be in the
9 Hearing bundle on governance, bundle 1 on governance. I think
10 it's at 933.

11 THE WITNESS: 9?

12 MR RAWAT: 33, Premier. 933.

13 COMMISSIONER HICKINBOTTOM: Yes, that's it. That's
14 the start of it.

15 THE WITNESS: 11?

16 BY MR RAWAT:

17 Q. Yes. I may yet again have a bundle that has different
18 pages in it.

19 COMMISSIONER HICKINBOTTOM: 933.

20 THE WITNESS: Okay. This is in the bundle 1. 933.
21 Yes.

22 COMMISSIONER HICKINBOTTOM: Just give me one moment,
23 Premier, please.

24 (Pause.)

25 COMMISSIONER HICKINBOTTOM: Thank you very much.

1 BY MR RAWAT:

2 Q. I think you were saying something about the importance
3 of Article 73, Premier.

4 A. Yes.

5 In terms of Article 73, it is clear, even throughout
6 the entire charter of the United Nations, which I thank you for
7 having this in the bundle because it would be a document that we
8 would have to refer to quite a bit. In Article 73 clearly
9 states, and I just need to read the first paragraph so that I
10 could refresh my memory: "Members of the United Nations which
11 have or assume responsibilities for the administration of
12 Territories whose people have not yet attained a full measure of
13 self-government recognize the principle that the interests of
14 the inhabitants of these Territories are paramount and accept as
15 a sacred trust the obligation to promote the utmost, within the
16 system of international peace and security established by the
17 present charter, the well-being of the inhabitants of these
18 Territories, and to this end to ensure, with due respect for the
19 culture of the peoples concerned, their political, economic,
20 social, and educational advancement, their just treatment, and
21 their protection against abuses; to develop self-government, to
22 take due account of the political aspirations of the peoples,
23 and to assist them in the progressive development of their free
24 political institutions, according to the particular
25 circumstances of each Territory and its people and their varying

1 stages of their advancement; to further international peace and
2 security; to promote constructive measures of development, to
3 encourage research, and to cooperate with one another and, when
4 and where appropriate, with specialized international bodies
5 with a view to the practical achievement of social, economic,
6 and scientific purposes set forth in this Article".

7 COMMISSIONER HICKINBOTTOM: I think he's simply
8 reporting to the UN.

9 THE WITNESS: Right, so that's to report back to the
10 UN, and that's one.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 THE WITNESS: And "to transmit regularly to the
13 Secretary General for the information purposes, subject to such
14 limitations as security and constitutional considerations may
15 require, statistical and other information of a technical nature
16 relating to economic, social, and educational conditions in the
17 Territories for which they are respectively responsible other
18 than those Territories to which Chapters 12 and Chapters 13
19 apply".

20 So, in Article 73 in the United Nations of which we
21 have just read, and I alluded to before, so I thank you for
22 bringing it to the table, it is clear, and with other
23 documentations of the UN, which I know you will research, that
24 there are clear markers and dates when reporting must done on
25 the progress of what all colonized Territories are achieving

1 with whoever is the ruling over all that Territory, whether it's
2 the UK or the BVI, what are we achieving to get them to a
3 self-determination.

4 It's not a matter in the whole charter of "if". It is
5 a matter of "when". And one of the reporting time that's coming
6 up is 2023.

7 Now, one of the areas I see in the modern partnership
8 as a Premier of this Territory, and I made some notes on it, and
9 excuse me, today I'm expecting a very fruitful conversation, not
10 so much inquiry but conversation on good governance, is that in
11 a modern partnership, no one should be guessing if we're
12 achieving goals to lead to self-determination. That should be
13 something that is clearly demarcated.

14 For example, you are in a partnership with me, and I'm
15 in a partnership with you, and it's a modern partnership. In no
16 way should I try to demote you, and no way you should try to
17 demote me, and in that you should promote each other. Because
18 if I can give an example, Commissioner, and I pull this example
19 from the junior parliamentarian we have here in the Virgin
20 Islands, Parliament, and the Premier who plays that role said
21 something in a closing debate about self-determination, and I
22 use his quotation, any parent worth their salt would make sure
23 that their child develops to the point where they are proud of
24 them, and that means that you have to instill all the principles
25 and foundations in them that they would perform as excellent as

1 humanly possible when they become an adult. That means that
2 you're supposed to make sure that at no time that you do
3 anything to try to stop them from becoming an adult but say that
4 you are trying to help them.

5 And what do I mean by that? Our Position Paper is
6 clear, but if this modern partnership is going to be modern,
7 then we must have clear demarcations of what are the attainable
8 goals, when we are going to reach them, and what do we need from
9 each other to get there. There should be no hidden details. Is
10 it that you want us to invest in good governance, for example,
11 to show that we can govern ourselves, to prove that we can do
12 it, well, then all right. Let us find out what you all need to
13 be put in place, and let the relationship show that this must be
14 attainable in two years, in five years, in seven years, because
15 you don't get there one time, it's a journey. But it cannot be
16 an everlasting journey.

17 So, we must have all the objectives clearly marked
18 out, and we must be able to show how we're going to mature as a
19 Territory to become self-determined with the help of the UK.
20 That's what a parent does for a child.

21 Now, why do we turn to Article 73?

22 If the United Nations, when we go to them and we went
23 to many of the United Nations as you rightfully see, my Deputy
24 Premier has represented me well in many of them, to state our
25 case. If the United Nations are convinced that we are not ready

1 to be self-determined, whenever that time is, ten-years, 15
2 years or 20 years, they will say, well, all right, you will have
3 to re-understand why you have to stay being ruled, but the
4 question is what has been done?

5 Now, I need to switch, Chair, to questions to the
6 Position Statement of governance, and I need to be allowed,
7 Chair, not to read anything, I just want to read four-six
8 paragraphs or what we have here to add to the context of the
9 history of the Virgin Islands so that you can be able to join me
10 in the journey that you and I will have on this good governance.

11 So, Mr Rawat, and Chair, Commissioner--

12 BY MR RAWAT:

13 Q. Pause there for a moment.

14 A. Yes.

15 COMMISSIONER HICKINBOTTOM: Premier, are you going to
16 your Position Statement?

17 THE WITNESS: Yes, just the first.

18 Q. The first one?

19 A. Yes, the first one.

20 MR RAWAT: Which--it's page 106, Commission of
21 Inquiry, in your bundle.

22 COMMISSIONER HICKINBOTTOM: Thank you. Yes. Good.

23 THE WITNESS: Yes.

24 Now, this Position Statement was also in terms of
25 governance and it briefly mentioned when we took office, but

1 this journey is larger than any political party. "The
2 Government of the day took office on February 25th, 2019, and we
3 committed to change and renewal including of governance in the
4 Virgin Islands. It won an overwhelming mandate for that change,
5 gaining the support of 46.6 percent of the voting electorate
6 compared to the 28.2 percent of its nearest rival, the outgoing
7 NDP Government.

8 "This Position Statement, which is submitted by the
9 seen Cabinet and junior Ministers (the Elected Government), is
10 intended to indicate, at a general level, some of the structural
11 difficulties and weaknesses that the Elected Government has
12 faced in the Territory's governance since it came to office and
13 to answer the questions posed by the Commission; it is not
14 intended to be their full statement on these and other matters
15 under Inquiry. While we have not set out our answers in the
16 examination question form they have been asked, it is hoped
17 those answers will become apparent from what follows.

18 "Further, the identification of problems is not
19 intended to imply that there are not considerable strengths
20 within the system of Government of the Virgin Islands when it is
21 working well. Virgin Islanders are rightly proud of their
22 history, their vigorous democracy and strong political tradition
23 and identity, which have no doubt developed because of
24 resilience born of geographical remoteness and of their own
25 spirited activism.

1 "Democratic elections are firmly rooted and there is a
2 vigorous and proud political tradition of representative
3 government, which is especially cherished because within living
4 memory it has had to be fought for. Civil society, much of it
5 perhaps based on widespread participation in the Methodist
6 Church, and its representative forms of governance, was active
7 in this cause. For example, the Civic League was founded in
8 1938 to campaign for the restoration of the Legislature, and the
9 later campaign in 1949 by Theo Adolfo Faulkner, a fisherman--and
10 I repeat a fisherman--of great stature from Anegada, for the
11 restoration of Representative Government to the Islands because
12 he had been unable to find medical treatment for his pregnant
13 wife on Anegada and had no representative with whom to raise his
14 concerns, is widely remembered and celebrated. His actions
15 which gained strong support, and were accompanied by protests,
16 led to the return of the Legislative Council in July 1950.

17 "Similarly, the positive action movement of the late
18 1960s, in which Mrs Patsy Lake was prominent", but which was led
19 by Mr Lloyd, must state that clearly, our hero, "is remembered
20 for"--and Mr Lindy, I forgot him, and many others--"but is
21 remembered for its fight to reverse the UK Colonial
22 Administrator's decision to sell a long lease to a British
23 Developer of Wickham's Cay and most of Anegada just before
24 ministerial government was restored in 1967, causing the UK
25 Government to buy back the lease from the Developer".

1 The last thing I would like to bring in terms of
2 giving some reflection of our history before we move into good
3 governance, "the continuity of tradition runs all the way back
4 to the time of slavery, in 1776, when the Quaker, Samuel
5 Nottingham, freed the slaves and gave them his estates in
6 Tortola". So from then we see how we became inheritance of
7 lands. "The freed slaves then followed a practice of buying
8 their Fellow slaves' freedom from the neighboring plantations".
9 So as we were freed, we went and freed others.

10 "The names many families now bear the names of the
11 former owners of the plantations where their ancestors had been
12 enslaved. However, uniquely in the West Indies, in 1808, when
13 the slave trade was abolished, most of the planters returned to
14 Britain, abandoning their estates, and the slaves began to
15 purchase the land from them, which became the pattern throughout
16 the rest of the 19th century. The land these former slaves now
17 owned and cultivated was the outward symbol of freedom,
18 independence, and dignity. The tradition is important to
19 understanding the proud sense of self-reliance, identity and
20 belonging of the people of the Virgin Islands", which also these
21 are aspirations.

22 Now, Chair, I give you that to state that I put it to
23 you today as we go through good governance, I'm coming here to
24 state clearly that if we have clear objectives and the way
25 forward and we are treated like true partners, then

1 self-determination will come, and will come in a manner that we
2 do not have to have these--these confrontations that are coming
3 up.

4 And when I state that I will yield to the questions,
5 but I would state here, when a child, Commissioner, you have a
6 child that does something you may perceive to be wrong, and it
7 may be wrong, scolding that child out in the public into the
8 international media does not allow trust to build, and nor does
9 it allow for persons to be able to have solid relationships,
10 especially seen, especially seen that those matters may have
11 been able to be dealt with differently.

12 Why do I say so, and then Mr Rawat, I will yield to
13 you after this. We are here with the Terms of Reference in the
14 Commission of Inquiry, and might I add from the time 33 months
15 or so we are in Government, we have not had one day or month to
16 even enjoy the victory because coming in the wake of Irma and
17 Maria and then coming into COVID-19, we have seen challenges and
18 now into a Commission of Inquiry while dealing with COVID.

19 Why do I say so, Mr Commissioner? Commissioner, sir,
20 I put it to you that, as we go through no matter what concerns
21 that you have had, I have never seen Section 60 of the
22 Constitution, Section 60 of the Constitution, (5) (f).

23 BY MR RAWAT

24 Q. Give us a moment.

25 A. Yes, I will give you a moment and I will say it again

1 Section 60(5)(f), ever--ever--been requested or have ever been
2 implemented or ever been adhered to, meaning this, Commissioner,
3 60 basically says that the Governor shall be responsible for the
4 conduct of subjects to this Constitution and any other law of
5 any business of the Government of the Virgin Islands including
6 the administration of any Department of Government with respect
7 to the following matters, and you have them, external affairs,
8 subject is subsection (4), defence including the armed forces,
9 internal security including other Police Force without prejudice
10 to Section 57. The Terms and Conditions of service of persons
11 who are holding or acting in public office without prejudice to
12 Section 92, and the administration of courts, and it goes on.

13 But as a key factor here in (5) that says the Terms
14 and Conditions report to in subsection (4) are the following,
15 and can I take you to (f), and may I tell you that (f) says, the
16 Premier and all Ministers shall provide to the Governor on
17 request all--it didn't say some; it said all--papers and
18 information including the text of any instrument under
19 negotiation available to the Premier or other Minister with
20 respect to any activities in pursuance of subsection (4).

21 I put it to you, Commissioner, that had this been
22 employed, a different direction would have been other than this
23 Commission of Inquiry because you cannot run a country on gossip
24 and innuendos nor can you run it off of persons coming every
25 minute to you especially when you're dealing with politics. So,

1 if you're going to do something, which you have a right to do,
2 it would be to exercise the full gamut of the Constitution
3 before you go into other areas of the Constitution without
4 allowing the very partners that we say that we have. Had this
5 at any time been requested of the Premier, whether it be under
6 the barges or whether it had been under the grants, nothing to
7 hide like some persons are saying, had it been to anything that
8 is needed in the exercise of Section 65(f), the Premier and the
9 Ministers had no grounds to stand on not to adhere to them, but
10 this was never, ever exercised.

11 So, the question is, when these kind of things come
12 forward, are you helping me get to Section 73, Article 73 of the
13 United Nations Charter, or are you trying to get me away from
14 Section 73? Because, Commissioner, this playbook has been seen
15 before. Any time you don't want to get a country towards
16 Section Article 73, once you put a distrust between the elected
17 officials and the people, whether they be Anguilla, Barbuda,
18 Caymans, Turks and Caicos, Montserrat, BVI, then these actions
19 cause persons never to trust any elected officials past or
20 present. That means that most or some--I wouldn't most--some
21 would say that the only rescue we have is the partnership, with
22 due respect, which would be the UK or the FCDO, and that is the
23 only one we can trust with good governance, but you cannot have
24 it that way because those things destabilize the Territory.

25 For example, Mr Rawat, you would have heard some

1 things I said, and I saw them in the media, when persons of a
2 high office goes to the public and throws out innuendos like
3 that, be it a Governor, without evidence, without proof, the
4 irreparable damage that it does to person's character and to the
5 Territory leaves scars and leaves persons wondering if this
6 person running the country is a drug runner, if this person is
7 in organized crime. Those are wrong. Why didn't you come to
8 National Security Council. This is what Article 73 does. It
9 teaches you, respectfully I say it, to come within the gambit of
10 the Constitution so that any Section that you are hearing that
11 you could have it properly ventilated.

12 And if the Premier, no matter who it is--I'm not
13 speaking now as the Premier, it's just me, if the Premier past
14 or present refuses to bring the information to you, then you're
15 left with no other choice but to move forward. But at least
16 allow the systems in the Constitution to work before you reach
17 these end products, not saying that these end products of
18 Commission of Inquiry et cetera doesn't have its place, but
19 allow it.

20 Now, Article 73, Commissioner, what I hope in this
21 Report that comes out also is not for us to be seen that we
22 can't be trusted to handle our own affairs because the Terms of
23 Reference is clear, but there are other Terms of Reference that
24 could have been added on to the Terms of Reference, other areas,
25 but you have to do what you were assigned to do.

1 But there are thousands of decisions that have been
2 made in this country that are good. We were left to be a bird
3 sanctuary, and we build here with tourism through the different
4 leaders and we build it to financial services, we want to build
5 it and continue it build it. But there is one way to stop us
6 from getting to Article 73 and it's the most effective way and
7 it's being used right now: Make sure things come out that help
8 people lose confidence in leadership. It doesn't have to be me
9 because some persons now will be saying we can't do it unless
10 this person's watching over us, so that you can continue your
11 questioning like this.

12 A lot of persons train people, Commissioner, to be
13 like the lamb in a pasture, fenced, and there is a wolf out
14 there watching in, and people train the lamb to keep an eye on
15 the wolf, not but--the flock of lamb is reducing because nobody
16 check that the shepherd has on his menu morning, noon and night,
17 lamb. We got to keep our eye on the shepherd with what has
18 happened here, not the wolf that our persons are being trained
19 to so that we can reach the Article 73.

20 And when we get going, I will go into the Protocols, I
21 will go into the high level framework, and all of them,
22 Mr Rawat, as you guide me, to a show where some of these
23 decisions that we are asked of me and are not free will. They
24 are decisions where we have been put in that direction or else,
25 but that does not come out like that. That's not a modern

1 partnership.

2 So, I will yield and allow you to carry me through a
3 few of these documents, and I also will now and again ask to
4 refer to our Position Statement so that today we can have a
5 fruitful discussion on what is happening here with us getting to
6 Article 73 because, Commissioner, you will research is not a
7 matter of if our colonies must be decolonized is under the UN,
8 whether my people in the Virgin Islands want to hear it or not
9 or the Anguillans want to hear it or not or Montserratans, it's
10 not a matter of "if" that they say in the charter, it's a matter
11 of when because it must happen, so we must work together to get
12 it done. So, Commissioner, I will be glad to know.

13 COMMISSIONER HICKINBOTTOM: Okay. Thank you, Premier.
14 Can I just--there are a lot of strands there. Can I
15 just refer to a couple.

16 It seems to me at the moment, and we're nine months
17 into the COI, but it seems to me at the moment that Article 73
18 is really the starting point of the COI, and will probably be
19 the endpoint of the COI. Nothing I've heard has suggested that
20 there is, let alone should be or could, be any diminution in the
21 obligations of the United Kingdom under Article 73. Those
22 obligations are clearly set out at Article 73, but they're also
23 set out at really--as is the foundation of what you read out
24 from your Position Statement in the Preamble to the
25 Constitution. The principles are set out in that Preamble, and

1 they--the principles on relevant background, but they include a
2 couple of things which I shall take as completely firm.

3 First, the Constitution Preamble affirms that the
4 people of the Virgin Islands have generally expressed their
5 desire to become a self-governing people. I don't necessarily
6 agree, Premier, with you if you say Article 73 means "when" and
7 not "if" in all circumstances of all non-self-governing
8 Territory, but so far as the BVI is concerned, then that
9 generally expressed desire is expressed in the Constitution, and
10 as I say, that seems to me to be an unequivocal matter.

11 Secondly, prior to becoming a self-governing people,
12 both Article 73 and the Preamble require that the people of the
13 BVI wish to and are able to exercise the highest degree of
14 control over the affairs of their country at this stage of its
15 development. That is also made clear in the Constitution.

16 Also made clear in the Constitution, thirdly, that the
17 Virgin Islands should be governed based on adherence to
18 well-established democratic principles and institutions. That I
19 think also, in substance, reflects Article 73, but it's also, I
20 think, reflected to an extent in the Position Statement, and
21 those democratic principles and institutions include the
22 characteristics of good governance, and those are set out in
23 another UN Document and are repeated in a number of Position
24 Statements.

25 So that--you asked various questions about Article 73.

1 I don't see that those questions are difficult for me to answer.

2 THE WITNESS: Well, as we get going, they're not
3 difficult questions to answer at all. It's just a matter of
4 whose lens you're looking through.

5 COMMISSIONER HICKINBOTTOM: No, no, no, it's not--with
6 respect, Premier, this is not a matters of whose lens you're
7 looking through. I am firmer than that.

8 THE WITNESS: Um-hmm.

9 COMMISSIONER HICKINBOTTOM: Article 73, it seems to
10 me, is a non-negotiable Article.

11 THE WITNESS: Um-hmm.

12 COMMISSIONER HICKINBOTTOM: The question you posed is,
13 am I here--I'll use my own words but this is in substance to
14 question--am I here to further the purpose of Article 73 or to
15 deny it? And I am here to further the purpose of
16 Article 73--full stop. That's the answer to that question.

17 THE WITNESS: Never--I never--I don't disagree with
18 that at all for you.

19 COMMISSIONER HICKINBOTTOM: No, but you asked the
20 question. That's the answer.

21 THE WITNESS: Well, it was hypothetical, but I don't
22 disagree with you, Commissioner. I feel that that's what you're
23 here doing today, and we'll be able to see from different angles
24 in terms of the components that would make up that.

25 COMMISSIONER HICKINBOTTOM: And I've obviously seen

1 and heard a huge amount of evidence about matters relevant to
2 particularly governance, and seen some very substantial
3 submissions on your behalf in respect of good governance, and I
4 will take all of those into account as well as what you have
5 said and will say today, but that is the background and that is
6 my starting point.

7 And I'm sure that Mr Rawat will have some questions to
8 ask you about this, to enable you to--because that's what the
9 purpose of this session is for is to get your views on
10 governance.

11 But there are two crucial questions. I don't expect
12 you to answer these in response to me, but they're questions
13 that I'm sure Mr Rawat will want to explore with you with.

14 But firstly, it's clear from the evidence that I've
15 seen, to put it mildly, that governance in the BVI is not all
16 that it should be. One of the questions--I mean, I will have to
17 determine in various areas the state of governance, but the
18 evidence in some areas is pretty clear, but I will have to
19 consider, and this is something that again your submissions are
20 already borne on this, but I'd welcome your help, is to ask the
21 question why. Why is governance in such a state in various
22 areas of Government here?

23 And I've heard this week--I've heard and seen this
24 week substantial submissions on your behalf in relation to the
25 state of the Public Service and who's responsible for that and

1 that's clearly one major plank in the submissions that you are
2 making to the Commission of Inquiry, but anything else in
3 respect to that, why is governance so--is in the state it's in,
4 that's the question one question I'd welcome assistance on.

5 The second question which also bears upon another
6 plank of the submissions I've seen on your behalf is as to the
7 future. You have--or there has been put in place, but largely
8 by the elected Government, the House of Assembly in particular,
9 a number of measures concerning governance in the broadest sense
10 such as the Integrity in Public Life Act and various other acts
11 which the Attorneys kindly sent me details of as to the current
12 position.

13 But the other area which I'd welcome assistance on as
14 to why you say that I can have confidence that those would be
15 followed through given the history of governance in the
16 Territory.

17 So those two aspects, I don't ask you to answer those
18 questions, but they are questions which I hope Mr Rawat will
19 explore with you this afternoon because those are two matters
20 which I would welcome your assistance on.

21 Mr Rawat.

22 MR RAWAT: Thank you, Commissioner.

23 THE WITNESS: Thank you for your clarity,
24 Commissioner.

25 BY MR RAWAT:

1 Q. Premier, can I, in complete candor, explain how I want
2 to deal with this this afternoon--

3 A. Um-hmm.

4 Q. --because your Position Statement is detailed and
5 lengthy. The Response to the Governor's position statement is
6 equally detailed. Both of them come with additional documents,
7 and it seemed to me that rather than take you through that and
8 just read it out, either you or me, what I wanted to do was,
9 with your assistance, dig a little deeper into some aspects of
10 it, and some particularly--some--what I would suggest are rather
11 fundamental aspects of how the Constitution actually works
12 because I could, for example, explore at length with you your
13 position on the UK Loan Guarantee. I could explore at length
14 with you where disaster management should actually sit with the
15 Elected Ministers or with the Governor. I could explore with
16 you who should chair the Cabinet. I could explore with you how
17 a Governor should communicate with Ministers or Public Officers.

18 But it seems to me that where the Commissioner will
19 best be assisted--and those may be symptoms of a condition that
20 the Commissioner may be best assisted by you identifying, and
21 what I wanted to take you to, as I see--and I'm going to suggest
22 to you--that the fundamental starting point should--when you're
23 looking at the question of whether the Constitution works should
24 be Section 60 because Section 60, everything--those examples
25 that I gave you trigger this point, don't they? I could walk

1 into the room and say, This is the position. This is how I
2 interpret who gets to chair the Cabinet. You can walk in and
3 you can say, No, this is how we interpret who chairs the
4 Cabinet.

5 But the reason I say we need to go to Section 60, and
6 what I would welcome your response to, and so it's possibly the
7 longest question I've asked, but it's this: That section 60
8 sets out special responsibilities of the Governor, and so it is
9 impor--it is open to an individual Governor to take a very
10 expansionist view to Section 60, and that's a complaint you lay
11 at the door of Mr Jaspert.

12 It is also equally possible that a Premier could take
13 a very narrow view of Section 60. A different Premier may take
14 a different view.

15 But what I'm going suggest to you--and I'm going to
16 shut up in a moment--but what I'm going to suggest to you is
17 that the reason the interpretation of Section 60 is important is
18 because it sets the nature of the relationship between the
19 Elected Ministers and a Governor, and depending on how the two
20 parties see Section 60 dictates how they work in partnership and
21 if they can work in partnership.

22 So, can I start off by just asking you what do you see
23 or how should--would you say a Governor should approach
24 Section 60?

25 A. Well, Section 60 in--first of all, our Constitution is

1 a working document, and the Constitution can only come to life
2 through the people who have to adhere to it and administer it,
3 so there's nothing absolute in the conduct of a person reading
4 Section 60. What do I mean by that? Let me go clearly into it.

5 "The Governor shall be responsible for the conduct
6 (subject to this Constitution and any other law) of any business
7 of the Government of the Virgin Islands, including the
8 administration of any department of government, with respect to
9 the following matters--external affairs, subject to
10 subsection (4).

11 If I stick a pin in it right there for you, for
12 external affairs could mean any kind of relationships you're
13 creating with international persons, et cetera, but that cannot
14 be interpreted by anyone sitting in this seat, even if it's a
15 responsibility of the Premier that you cannot take advice from
16 anyone else. I don't see it that way. I don't see Section 60
17 being that because it is--or any responsibility under the
18 Premier is one that is so absolute that someone else cannot
19 speak to you about the subject under you and you take advice
20 accordingly, whether it is your technical staff or other persons
21 in the public office--Public Service.

22 When you have this in mind in terms of--I can't speak
23 in isolation of Section 60 alone because it says: "The
24 Governor, acting after consultation with the Premier", so that
25 is one part it says. "The Governor, acting in his or her

1 discretion, may, by"... "writing, delegate, with the"...
2 "approval of a Secretary of the State, to the Premier"... "and
3 other Minister designated..."

4 So, inside here it calls for a lot of consultation
5 with the Premier. Let's ignore who's the Premier now and just
6 look at it as what it's saying.

7 So, the Governor has his clear responsibility under
8 Section 60, but that doesn't mean if the Governor, for example,
9 needs to look into something or to request information, as I
10 said it earlier, or there is something that the United Kingdom
11 may be wanting to do that he doesn't contact the Premier who has
12 a different responsibility under the Constitution and say,
13 Premier, whoever that be, maybe him or her, 'cause one of these
14 days it will be a woman, we need to--I need to let you to know
15 that the Governor's Office or the United Kingdom is interested
16 in running this programme, whatever the Programme may be.

17 So, I as Premier or whoever is Premier cannot take it
18 to mean that every single communication must come through the
19 Premier; that would be ludicrous. But the initial conversation
20 and the initial dialogue should bear that mutual respect among
21 both partners, even when it crosses each other's
22 responsibilities, that there would be that mutual respect.

23 Of course, now that the persons in the different
24 offices, after the formal hierarchy part is finished, and that
25 is conveyed to the other members of the staff, whether the

1 Ministry or any entity under the Governor, then they can
2 continue their discussions, of course, keeping both informed
3 especially if there is any policy decision to be made.

4 But I do not see the Governor's responsibility to be
5 one that he picks up the phone or she picks up the phone and
6 just call a Public Officer under a Minister and just start to go
7 into a new area or some other area. That's not the
8 responsibility of the Government. It doesn't bear for respect,
9 and it does not bear for respect for the Premier to call someone
10 down in the Governor's Office and started to get information or
11 look into something that's happening in the Governor's Office.
12 That mutual respect has to be there.

13 I can say beyond a shadow of a doubt that--and I mean
14 that wholeheartedly--it takes the maturity of persons in these
15 positions to make sure that it works, and even when there are
16 gray areas or areas of concern, mature persons sit down and they
17 try to solve it.

18 For example, and since the Commissioner said we have
19 to be--he has to be able to convince--be convinced of what we
20 can do to represent ourselves. When I took office, there were
21 concerns raised on many fronts with many things to me, and
22 working along with the Governor, you want to have that
23 relationship that shows that you have mutual respect for the
24 post and the person because, Commissioner, I have taught over
25 3,000 students in my lifetime, out here and abroad, and I've

1 worked with a lot people. We may have differences, but it never
2 reached to the point that we cannot function together for the
3 betterment of everyone else and the better--for the good of all.
4 So, you find a way to work professionally.

5 Now, this Governor, since then, some of us carry over
6 things that will linger, and we were able to sit down as
7 professionals and be able to say I don't agree with you here, I
8 agree with you here, and we had our disagreements, but we also
9 had areas where we were able to find common ground in the best
10 interests of the partnership on both sides and mainly the people
11 of the Virgin Islands.

12 For example, Commissioner, we were--we got through
13 things so far such--and I'll name some of them as you rightfully
14 know, but I'll name them to finish--respond to you with the
15 Governor's Section. Thus far we were able to pass a Ministerial
16 Code. This was long in coming for years, but there was some
17 difference in, I would say, methodology in the beginning with
18 this with the former Governor because your Ministerial Code, the
19 word alone says the Ministers should have an input in the
20 Ministerial Code. It should not be a document that is handed to
21 Ministers, which when we got elected that's what we were given
22 and say, all right, implement this by such-and-such a time.

23 You have to allow the Ministers now to have input on a
24 code which we went and we changed after a while and say, all
25 right, in retrospect, let us have a committee involved, and have

1 the committee go and discuss these matters of past legislators
2 whether they work with us politically or not because the country
3 is larger than a political party, in my humble view and in
4 anyone's view who has any basic common sense.

5 And that Committee went away, and they did some good
6 work. They asked for extension, and they come back with the
7 parameters to guide the behavior and conduct of all Ministers.
8 That was able eventually to be passed and now being implemented.

9 We saw the contractor general legislation we have
10 passed. Why did we pass that? We came in after years of
11 hearing concerns of what contracts and it's part of your
12 mandate. We needed to put something in place, and this is
13 before the COI, which you know based on the history of it, we
14 need to put things in place so that from before and during the
15 letting of any contract, when this unit gets fully functional in
16 the next couple of weeks or month or two, that persons who come
17 and say they have concerns and are they're looked into and see
18 if they're concerns and nip the concerns that are reaching to
19 levels such as this, nip it "in the bud", and have whatever
20 needed to be dealt with at an earlier stage.

21 Now, when we put that, and we know that these are new
22 parts of good governance, but we only what, only had just got
23 in. It's only now about 33 months. We can't change the whole
24 world in one time. Now we look and we see the Police Act.

25 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,

1 but could I just pick up one point before you go into the Police
2 Act, about procurement of contracts.

3 THE WITNESS: Right.

4 COMMISSIONER HICKINBOTTOM: The point I was
5 making--and you've--you are dealing with it; I'm not saying that
6 you are avoiding it or not dealing with it as you go
7 through--but in terms of procurement of contracts, we've figures
8 for the number of Major Contracts, the proportion of Major
9 Contracts where the procurement process, the tender process, is
10 waived by Cabinet, and it's something like 60 percent of Major
11 Contracts, even during this administration. It's very, very
12 high. And given that waiver can only be in exceptional, rare
13 circumstances, that's at least curious and unexplained.

14 Contract-splitting we've heard about that.

15 So, there are procurement rules here already, before
16 these changes, and Dr Glasgow has helped a lot to understand
17 what the current procurement regime is. But if that regime is
18 bypassed, just to use it as an example, what confidence can I
19 have or far more important, what confidence can the people of
20 the BVI have that any new regime will not be similarly bypassed?

21 THE WITNESS: Well, you have the confidence in that
22 the regime was never there, and you have confidence in that the
23 step has been taken to ensure that is done independent of
24 political interference.

25 You also have confidence in that if we can't do

1 anything at all to police ourselves, well who can? Because
2 every human being, whether from the United Kingdom, Russia,
3 Grenada or whoever is prone to certain things happening if there
4 is not something there to check them. No one does what's
5 expected; they only do what is inspected. But if there are no
6 policies in place, to have inspections done in a timely manner,
7 then these things will continue.

8 You could any what--you could put in the best
9 procurement rules, if you don't have something on the lower
10 level to monitor these and make sure that they're going
11 correctly, then you will have an issue.

12 But may I add that most of these problems have been
13 lingering for quite a while.

14 Now, when we say in terms of the waiver, numbers,
15 Commissioner, never lie. Interpretation of them sometimes do.

16 For example, we had five waivers, if I can remember
17 correctly, four to five, on a school, that is the Elmore Stoutt
18 High School, and we are doing a block called the L-shaped
19 building that we later named the L. Adorothy Turnbull Building.
20 When we came into office, in fairness to the last
21 administration, they had the battle coming out of Hurricane
22 Irma, and a whole school, our children were up in a building
23 that was supposed to be a commercial building without any hope
24 of moving.

25 We made a very calculated but necessary decision to

1 use the tender process, waive the tender process at that time.
2 But we didn't do it willy-nilly. We took the contractors that
3 were already approved by CDB, but not the one that was approved
4 in terms of getting the whole contract on their own, to speed up
5 the Contract.

6 Now, that was now taken by the then-Governor, as,
7 Well, you're doing the same thing that other Governments are
8 doing. But you can't look at it in isolation. We have to move
9 our children from a building that was concerned with mold and
10 you have a thousand and 1500 or 1600 persons up in that
11 building, teachers and children, and no fault of the last
12 Government, I'm not going to blame anyone but something had to
13 be done now. So, we moved and we waived the tender process for
14 that. We were never seen in a good light by the then-Governor
15 for that.

16 COMMISSIONER HICKINBOTTOM: But that's why--

17 THE WITNESS: But let me help you, Commissioner.

18 COMMISSIONER HICKINBOTTOM: No, but--no, and I'll let
19 you continue, but that's why I didn't refer to specific
20 examples.

21 THE WITNESS: Right. I'm giving you one.

22 COMMISSIONER HICKINBOTTOM: I can find no doubt a
23 specific example where there is no apparently good rationale for
24 a waiver of the tender. That's why I use percentages. These
25 percent--we haven't checked them. These percentages have come

1 from, I think, your office, the Ministry of Finance.

2 THE WITNESS: Ministry of Finance.

3 COMMISSIONER HICKINBOTTOM: And it's 60 percent of
4 Major Contracts, the tender process is waived.

5 Now, given that the only ground of waiver is one that
6 requires extraordinary circumstances, that's why I used that
7 proportionate figure.

8 THE WITNESS: I agree, and I understand.

9 But that Project, may I tell you, has turned out to be
10 one of the studies of the same Caribbean region with CDB on how
11 you can split a project and be fully--not split a project and be
12 fully accountable, and they had lauded the Ministry of Finance
13 for that the same that Dr Glasgow, and he even give a
14 presentation on it.

15 What I'm saying here, Commissioner, other than having
16 the systems in place, the definitions of some of these need to
17 be revisited.

18 In audit terms, they look at a project where over the
19 years we tried to stretch the economic activities, and they look
20 at a project that says--and says that if you do not give that
21 project to one person and you broke that project up into
22 pieces--'cause let's face it, let's talk about what happens that
23 you cannot be accountable for that and you're not going to get
24 value for money, but Elmore Stoutt High School L-Shaped Building
25 proved otherwise. But some of the terminologies that have been

1 used cannot hold the test of time in a court.

2 I have heard about contract-splitting, and people
3 believe in this terminology. You cannot split a contract. You
4 can only split the project.

5 So, you have a terminology of contract-splitting that
6 you're being judged by but legally that doesn't exist.

7 COMMISSIONER HICKINBOTTOM: But it's a shorthand, and
8 we all--I mean it is a shorthand, but everybody uses it, I
9 think, in the same way, and that is that there is a project, one
10 project, and it's split into different contracts.

11 THE WITNESS: Right. But look at culturally how we
12 build in the Virgin Islands, and you will understand because we
13 cannot have policies and laws that do not allow for
14 accountability, that's one; but we cannot have them now divorced
15 from the culture of the people or we wouldn't bring those small
16 contractors along in an accountable manner because if you do
17 that, you would wipe out a whole sector of your young
18 contractors coming up, and only those who have money to tender
19 will be able to tender.

20 And you have now to look at that economically also,
21 how do I get the smaller contractors to be able to get part of
22 the economic pie in an accountable manner, and make sure the
23 policy is reflected. That is why Finance have come up with this
24 new policy measure for pandemics so that we can make sure that
25 every time you do a contract, you have to now be graduated by

1 coming to classes and being sharpening your skills. That is
2 what governing people is about, finding out where the issues
3 are, what are hindering your people from moving to the next
4 level, and get those worked out, not throw out the baby and the
5 bathwater together because while some persons may think that's
6 okay, you have a population that can't pay their loan, that
7 can't mind their family because we decided that we took out any
8 project that they could do and put it on a high level to tender,
9 which doesn't sound bad, but why not put some smaller projects
10 to tender like we're doing now where it doesn't have all those
11 cumbersomeness involved in terms of having to take all the huge
12 sums for insurance, and you don't know if you're going to get
13 it, but smaller projects you don't have to take out those huge
14 sums. So, start our people off smaller.

15 So, these are some of the areas that we have sat down
16 with the Ministry of Finance, and I gave them credit that they
17 have--make sure that they are incorporated.

18 In the Position Statement, too, Commissioner, you will
19 see that we have worked with CDB in other areas to help us with
20 our new procurement legislation, and the new procurement
21 legislation already had their first reading in the House of
22 Assembly with us waiting until I could name the date for--to
23 continue House to be passed for the second, which allows us to
24 do International Best Practices, but it also allows us to do new
25 ways within good governance of bringing what we call the "small

1 man" along. Right now it's difficult how the laws are but you
2 could bring them along in an accountable manner.

3 Why I say these things, Commissioner, and I'm glad
4 that you brought them up--when we talk about Police Act--

5 COMMISSIONER HICKINBOTTOM: I'm sorry, and I will let
6 you speak about the Police Act--

7 THE WITNESS: No, I'm at your disposal. I'm here to
8 speak on good governance and all that.

9 COMMISSIONER HICKINBOTTOM: But can I just take you up
10 for one thing on contract-splitting, what's called
11 "contract-splitting"?

12 THE WITNESS: Um-hmm.

13 COMMISSIONER HICKINBOTTOM: There would be nothing
14 wrong--in my view, there would be nothing wrong as a matter of
15 policy for a government to take the view that it would be--it's
16 right, as a matter of policy that we split up projects and give
17 it to smaller builders. It may cost more, but as a policy
18 that's a policy that we want to pursue.

19 But if you are going to pursue that policy, wouldn't
20 you have to have some assessment on how much the policy would
21 cost? So, a paper saying, Look, if we do this project with one
22 contractor, it will cost a million dollars. If we do it with 10
23 contractors or 12 contractors, it will cost more. It will cost
24 \$1.3 million. But it's worth it because economically it has
25 advantages, and as policy that's what we want to do.

1 But on the documents that we have seen, that's not
2 what happened.

3 THE WITNESS: Well, Commissioner, you're talking my
4 language with what you said there, but I need to tell you why
5 it's not happening. We go back to the institutional capacity
6 issues. This is what we came in and met, and that's why we said
7 in our Position Paper that we do agree with the analysis now
8 that we have come and found common ground on the transformation
9 of the Public Service. Never before in my 22 years of politics
10 have I seen where a document came forward that states clearly
11 how are you going to transform the Public Service in a way where
12 all of us take ownership, and it is clear and detailed how we're
13 going to move forward.

14 That--this means now here we have a joint effort and
15 the current Governor and myself have come in an agreement with
16 it, and it's a paper coming to Cabinet, I think, if not next
17 week, week after, to move towards transforming the Public
18 Service, which calls for a few things, Commissioner, and it
19 cannot be done overnight because this is a long-standing
20 problem. So, to hold me within two years or three years or
21 within a term, that can't happen; I could tell you here,
22 unequivocally it cannot happen, but we have the roadmap now for
23 it.

24 So, you need a Policy Unit in the Premier's Office
25 because now we have built the country as far as we could go

1 doing certain things. Now you're correct. There must be a
2 Policy Unit for the overall Government. If we want to do that,
3 then pull in someone inside the Policy Unit that deals with
4 engineering along those lines, and let's make a policy for this.

5 These are things that when a Minister comes in now
6 that we're trying to build a service. No matter who comes in to
7 the next election, no matter who wins, that you will meet on
8 your desk, because of a Policy Unit, this is how--where we are,
9 these are the policies that were being worked on. If you want a
10 policy done, what we will do is bring you all the options as
11 Minister.

12 All right now that doesn't exist, and it should have
13 existed years ago, but we are where we are. So, now when that
14 Policy Unit gets together, if we want to move in that direction,
15 we can. But look what happened. The Ministry of Finance did
16 their best under a very capable Procurement Unit and Dr Glasgow
17 came up with a new policy for us, but now how do we integrate
18 that whole policy in terms of the whole Government so everyone
19 is on the same page? That is what we're doing with this
20 transformation right now.

21 On top of that, Commissioner, we also propose in terms
22 of the Ethics Integrity Section for the Cabinet, we've heard a
23 lot in this Commission of Inquiry on whether Ministers need to
24 do this or need to do that, but who tells you? When you get
25 elected, even I have newly elected persons there and they're

1 telling me, Well, I didn't know this, I didn't know that. And
2 I'm trying, as I remember, to tell them because there was never
3 a Policy Paper done across the Government because there was
4 never a Policy Unit. Now we're working towards that, and those
5 things don't win votes but it saves countries from any more COIs
6 and save countries from any more embarrassments. It saves
7 country from going down the wrong road or thinking that they're
8 going right but they're really going wrong because now you can
9 say this is our policy for fishing, this is our policy as a
10 Government for agriculture.

11 Right now the Ministry of Agriculture deals with that
12 on their own, but the Policy Unit now must be the one that
13 dictates or--and give those advice to Ministers so that they can
14 make better decisions. It's not a knock on the Public Servants
15 at all. Please understand that. But these are things that
16 should have been implemented for a long time which is under the
17 Public Service. Now we're moving together to do it.

18 Another thing, Commissioner, that has created a--

19 BY MR RAWAT:

20 Q. Before you continue--

21 A. No, I didn't want to talk about that yet. I was
22 coming to a point.

23 Q. The reason I have interrupted is just because I think
24 we have been going for some time. We ought to give Mr Kasdan a
25 break.

1 A. Of course.

2 COMMISSIONER HICKINBOTTOM: No, sorry, Premier, we
3 should and--

4 THE WITNESS: I have to do that for goodness.

5 COMMISSIONER HICKINBOTTOM: Firstly, the--what you
6 said on the transformation of the Public Service and on the
7 development of a Policy Unit or a means of producing policy,
8 both are helpful, but if just one--this is the last time I'll go
9 back to contract-splitting.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: But on contract-splitting,
12 you say that the assessment of the cost of contract-splitting is
13 not done because of a lack of capacity in the Public Service,
14 but is that right? I mean, on any project, you will have an
15 architect; but more importantly for these circumstances, you'll
16 have a quantity surveyor, the QS will give you a draft bill of
17 quantities on the base of one contractor, and he or she will
18 give you another bill on the basis of 10 contractors. I mean
19 it's just an exercise. It doesn't require any input from Public
20 Offices, does it?

21 THE WITNESS: But that's the key. It requires a
22 policy, so that when they do do it, they know for sure that they
23 have to bring both options.

24 The issue that you're having right now, Commissioner,
25 is that the one option comes and then the decision is made,

1 Well, we want to be able to divide this up in the most
2 transparent and accountable manner to allow more persons to get
3 it, get a piece of the economic pie without compromising good
4 governance.

5 But based on what is written, policy-wise, it doesn't
6 support those actions, so you are always going to have the
7 Auditor stating, Well, there is out of line with the Policy, so
8 the Policy Unit becomes important.

9 And why that works, I would say and when we build here
10 in the Virgin Islands now, we don't bill given a contract to
11 everything anywhere. We let someone come and tell us how much
12 it costs to put up blocks and get their price. We let someone
13 come and tell us how much it costs for plumbing. And we hire
14 overall Project Manager, and you have to stay on them because if
15 nobody does what is expected, only it was inspected. So, even
16 with that if you're not watching them every day, what costs \$10
17 will cost \$110.

18 But what I'm saying is that concept is something we do
19 all the time for building so that we can save money or save
20 time. Even if it costs a little more, you save time.

21 So, the Project Manager now is who you hold
22 accountable to help you to save time, and with that in mind,
23 that same concept with a Policy Unit behind of it is what's
24 going to help us. So, the key there is the policy that will
25 help us to avoid some of the other reports that's come out

1 because--coming out because the Policy doesn't allow for the
2 Auditor, in fairness to them, to look at something else because
3 there's no policy there to look at. But once we do a Policy
4 Unit, that allows the Auditor and the Minister and everyone to
5 look at the Policy Unit and say, Ah-ha, this is what we are
6 going towards, and if we need to shift, we'll need to shift the
7 policy and the Policy Unit will get a cue and know what to do.

8 That is only one of many ways that I can guarantee you
9 that we'll be able to help shepherd ourselves into the
10 Article 73, but after the break we'll discuss more.

11 COMMISSIONER HICKINBOTTOM: That's very clear,
12 Premier, also very helpful.

13 We will break now because we have been going some
14 time, so we'll break for five minutes for the Stenographer.
15 Thank you very much.

16 MR RAWAT: Thank you.

17 (Recess.)

18 COMMISSIONER HICKINBOTTOM: I think we are ready to
19 continue, Premier.

20 Can I just say this, we have been sitting since 8:00
21 this morning, we have a live Stenographer, and there are limits
22 to even what Mr Kasdan can do in one day, so what I have said is
23 that if need be, he can stop live stenography. All that will
24 mean is that the Transcript will not be available this evening.
25 It will be available tomorrow at some point, but if he has to

1 stop live stenography, that's the only impact, but I would like
2 to thank Mr Kasdan in any event for his sterling efforts today
3 so far. Thank you.

4 SIR GEOFFREY: Commissioner, I wonder if I may say,
5 both congratulating Mr Kasdan on still being a live
6 stenographer. I'm afraid I'm not likely to be a live counsel if
7 I continue for the third night much longer than 10:00 at night.
8 So, if my screen goes dark, I shall still be alive but I shall
9 have logged off, both the Premier and Mr Olympitis are aware of
10 this, and I hope you will forgive me.

11 COMMISSIONER HICKINBOTTOM: No, of course, Sir
12 Geoffrey, and we fully understand. We will obviously simply
13 carry on.

14 SIR GEOFFREY: Yes, of course.

15 COMMISSIONER HICKINBOTTOM: We hope not to be too
16 late, but go when you need to go, Sir Geoffrey.

17 SIR GEOFFREY: I will.

18 COMMISSIONER HICKINBOTTOM: Thank you very much.

19 SIR GEOFFREY: Thank you, Commissioner.

20 BY MR RAWAT:

21 Q. Premier, there are two slightly specific issues that I
22 would like to canvass with you, the first is, do you still have
23 that small bundle of--the smallest bundle of correspondence with
24 you?

25 A. The one without the label?

1 Q. Yes.

2 A. Yes.

3 Q. Now--

4 A. The page?

5 Q. If you turn up page 86, please, Premier.

6 A. Yes.

7 Q. What I'm hoping to do by showing this letter is I hope
8 to make a bigger point with it, but this file has a number of
9 letters in which you have written to Governor Jaspert. And I
10 put a number of these to him yesterday and today during the
11 course of his evidence, so this is a letter in which you accused
12 him--

13 A. Page 86?

14 Q. Page 86.

15 A. Eight?

16 Q. Eight-six.

17 A. I'm in the wrong file.

18 Q. If you go--you may have a tab that's in the middle, if
19 you go behind that, you will see the correspondence.

20 A. Okay. Okay, yes.

21 Q. There are examples of letters and I think we looked at
22 that when we looked at the radar tender letters where your
23 language is strong, and here you take issue and allege that at a
24 Cabinet Meeting in January 2020 Mr Jaspert said the BVI is full
25 of corruption, and you then set out and take issue with him and

1 with his behavior, and the language is and may be said by some
2 to be inappropriate for a Premier to be writing to a Governor.
3 You describe him as insulting the integrity of all Virgin
4 Islanders, you describe him as showing contempt, having
5 disrespectful utterances, that his comments are consistent with
6 a pattern of behavior that you'd observed from him towards your
7 Government since it started in office.

8 And you then take issue, and if we go to page 88, for
9 example, you raise, and it's not the first time that you raise
10 it, Premier, but you raise failings to deal with allegation of
11 misconduct in the previous administration, including the BVI
12 Airways deal, the Elmore Stoutt High School, the Tortola Pier
13 Park Project. And you say that the refusal by Mr Jaspert and
14 his predecessors to allow the conduct of Public Officials in
15 these matters to be scrutinised and evaluated by the judicial
16 arm of the state has prevented these matters from being
17 ventilated according to the measures provided in the
18 Constitution.

19 And if I take you to page 100, on this particular
20 issue, matters escalated to the extent that you then wrote
21 ultimately to Lord Ahmad, and I took, Mr Jaspert, we don't have
22 many letters from him. I did take him to a letter where he
23 writes to you, and this is after the 4th of February 2020 making
24 clear that he doesn't accept any of the allegations being made
25 against him.

1 But you repeat here to Lord Ahmad that you stand by
2 your account of what happened at the Cabinet Meeting, that there
3 was disrespect, that you and your Fellow Ministers were
4 insulted, and then you repeat again at 101 the fact that he had
5 been called on whilst you were in Opposition to take action into
6 several high-profile matters and done nothing. You point at the
7 last page to another falsehood.

8 It's not the--the purpose of this question is not to
9 ask you to explain your side of this correspondence because we
10 have the correspondence, and we can see that, but it's to make
11 this point, and it's taking you back to the point I was making
12 about Section 60 because, what the correspondence shows is that
13 there was what perhaps can be mutually said as a clash of
14 personality between yourself and the previous Governor, but the
15 fact that there could be that clash of personality illustrates,
16 doesn't it, or points to or is a fundamental weakness in the
17 Constitution. Would you accept that?

18 A. In--in terms of fundamental weakness in the
19 Constitution in terms--I'm not clear.

20 Q. Because when one looks at the correspondence, that's
21 why when I started I referenced Disaster Management, I
22 referenced who Chairs the Committee, I referenced how to access
23 public officials, because at the heart of this dispute, this
24 personal breakdown, if you like, was a different interpretation
25 of the role of the Governor, and that's why I say that where you

1 have--where you have--if you have a Constitution that can lead
2 to the two major figures under that Constitution, the Premier
3 and the Governor not being able to work together, that points to
4 a fundamental weakness in the Constitution.

5 A. You see, Commissioner, I would preface my answer by
6 saying something I said earlier, and it's--you know, the answer
7 is written in the Position Statement, but I would say that I
8 have taught over 3,000 students over all of my life. I have
9 worked with thousands of persons in my life, and they might say
10 sometimes that I'm hasty, but I have never heard them say that I
11 was not someone that you could work with, even if we did not
12 agree on areas.

13 And becoming Premier in February 25th--on the 26th,
14 our Government met, and I went to and I thought I would be
15 swearing in as Premier, and I just need to give you this
16 backdrop.

17 I got a call from the Governor's office saying that I
18 can't swear in as Premier because he wasn't ready to swear me in
19 yet because of some technical difficulties, and they told me I
20 would have to come the next day. I found that to be real queer.

21 So the next day came and they told me that--they
22 called and said it would probably be around 10:00, but then they
23 called back and said it would have to be 2:00, that's the next
24 day. I decided that this is--this is out of hand.

25 So, I went with all my Members that won the election

1 and those who didn't, and we went and I told them we are going
2 to sit in the Governor's Office until I got sworn in as Premier.

3 Of course, this already started rumors that we
4 couldn't get along with the former Government because it doesn't
5 take long to form these things but that was not the case. I
6 just couldn't be sworn in as Premier because of some technical
7 issue.

8 When I got there with all my Members with me present,
9 I finally now was told by the Governor that the issue is
10 that--well, some of the staff they can't find something called a
11 writ for the election for my constituency. They know that I won
12 it because the numbers were needed and some kind of paperwork or
13 something, and I found that queer, and they couldn't the
14 officer--so anyway, whatever that was, I just tell them, listen,
15 just let the Governor know I have to swear in today, we have the
16 country to run, and let's get going.

17 So, I got sworn in, and when I got sworn in, I was
18 overjoyed and looked forward to a professional relationship, but
19 when we were finishing swearing in, taking the photos, et
20 cetera, and everyone was leaving, he asked for me to stay back,
21 and that stay back was he and I, where he started to ask me
22 about some papers he put down about certain things with the UK
23 to get signed. Of course, it took me by surprise because I had
24 just sworn in as Premier, and it was even with the Loan
25 Guarantee in terms of certain things with it. So I told him I

1 really can't discuss that with you now, that will be premature,
2 give me a chance. I thought he was a little aggressive of how
3 he responded, but I chalked that up to him having a rough day.

4 But after that, I left, and we went, and the next days
5 when I think I went into the office as Premier for--and I asked
6 them to schedule a meeting for me with all the Permanent
7 Secretaries to meet them, just to give a courtesy call, when I
8 was in the meeting, one we were over in the Ralph T O'Neal
9 complex--it wasn't named that then, that's 2019--I got a knock
10 on the door and said that you have a phone call from the
11 Governor. I left the meeting, and the reception area, I took up
12 the phone, they gave me the phone, and the Governor came on
13 shouting, telling me that I just started and it was no curse
14 words, it was shouting, and I started already to cross the line,
15 that's what he said, cross the line by meeting the Permanent
16 Secretaries and not going through him, and I listened for quite
17 a while. The old me would have answered back, but I'm older now
18 and more mature, so I just listened, and then when he was
19 finished, I said, Governor, with due respect, I know that you
20 want to speak with me but in this tone you're doing and tenor,
21 that I don't think he is speaking to me. He said, Well, you
22 know, it's not a matter of that, but there are procedures to
23 meet with Permanent Secretaries, especially the one that's in
24 the DG office and different things he said. I said, Well, I'm
25 new to the post. I didn't mean anything by this. I just was

1 doing a courtesy call.

2 After that, he said, Well, let us meet tomorrow
3 morning, and started to go through different things. Plus he
4 accused me of going to the media and letting out who the
5 Ministers were without letting him know first so he could swear
6 them in, which was not true. Somebody in the meeting leaked
7 out, and he accused me from the day 1 of doing things that I did
8 not do. But in the interest of the people I left it go.

9 COMMISSIONER HICKINBOTTOM: But, Premier,
10 the--Mr Jaspert hasn't had an opportunity to give evidence in
11 relation to most of what you said, but one or two parts he has,
12 and his recollection is not the same as yours, but the point Mr
13 Rawat is making was really not upon who was right and who was
14 wrong and whose conduct was inappropriate and whose wasn't. It
15 was this point: Doesn't it illustrate and what you've just said
16 perhaps illustrates it better, that there is a fundamental flaw
17 in the Constitution.

18 And I think there are three possible answers. One is
19 no, it isn't.

20 Secondly, yes, there is a fundamental flaw and
21 something can be done about it.

22 Or, third, there is a fundamental flaw, but nothing
23 can be done about it fundamentally because the Constitution
24 relies upon a partnership between the elected Ministers,
25 particularly the Premier and the Governor, and if there is a

1 clash of personality, Mr Rawat said, or a loss of trust or
2 whatever, then that is a major problem for the Constitution,
3 because the Constitution is based upon some form of partnership.

4 So, leaving aside the particulars, what do you say
5 about that in terms of the Constitution? Does this reflect a
6 real problem with the Constitution as it currently is, or does
7 it not?

8 THE WITNESS: Commissioner, I respectfully hear you,
9 but I'm trying to tell you where--how to angle this. I don't
10 know if it fits into any one mold that you have mentioned
11 because when this happened, I tried, as I do with everyone else
12 to meet with him the next day down in his office, and then I
13 would come back to the office, and before I know it, the phone
14 would call--he had some other areas, and I would end up going
15 sometimes two, three times a day for meetings until I was told
16 by someone, Look, you have to understand that you have to lay
17 the foundation or this going to continue but you are going to
18 make sure that you are meeting.

19 I come to you, Commissioner, because I sat and I
20 listened to a lot of things and I have never said this to the
21 public, and I have never said this in the Commission of Inquiry,
22 but I have to give you context with this.

23 And then after that, Commissioner, when I started to
24 state that, Listen, not only am I coming to the meetings, but
25 the way you're speaking to me I have issues with it.

1 COMMISSIONER HICKINBOTTOM: But--

2 THE WITNESS: I come to you, Commissioner, so I wrote
3 to the UK--

4 COMMISSIONER HICKINBOTTOM: I'm sorry, Premier, before
5 you continue, can I tell you the difficulty I have.

6 THE WITNESS: Um-hmm.

7 COMMISSIONER HICKINBOTTOM: And that we've gone
8 through a lengthy process of--

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: --criticism letters,
11 requesting you and the other elected Ministers to identify
12 criticisms of other Public Officers, and we put those to those
13 Public Officer, including the Governor and the former Governor,
14 and if criticisms are made now, then at the moment, subject to
15 any questions in cross-examination Sir Geoffrey has for you,
16 there is no opportunity for those criticisms to be responded to
17 because there has been a process whereby these criticisms were
18 to be made, and then a response to be given.

19 THE WITNESS: Yes, but at the same time, though,
20 Commissioner, I too have sat for a few days and heard some new
21 criticisms came up that I wasn't--I am in no position to answer
22 any of them, and those are dealing with person's name and
23 character, and I firmly believe in life that the only thing that
24 a man has next to God is his name, and I would say that
25 the--when the point came that we could not--or not we--I tried,

1 and I'm not perfect, so I'm not saying that I got everything
2 right, but it seemed to have been to the point where the
3 then-Governor felt that he didn't get anything wrong, and I have
4 never seen that perfect human being yet in my life.

5 I extended my concerns to the UK, writing, and I asked
6 to intercede because I could see where this was going from in
7 the early stages. And I spoke to Mr Jaspert must be twice in
8 Opposition, one, we are went in as Leader of the Opposition
9 concerned with some areas, and the second time he called saying
10 that he just wanted to have a chit-chat. I didn't have no
11 regular meetings with him.

12 So, I have to make sure some of these things are
13 cleared.

14 COMMISSIONER HICKINBOTTOM: But they should have been
15 made clear--if they were going to be relied upon, they should
16 have been referred to earlier so that we could then have raised
17 them with Mr Jaspert.

18 THE WITNESS: I couldn't do that, Commissioner,
19 because yesterday Mr Jaspert said a lot that stunned me.

20 MR RAWAT: Yeah, but, I think to be fair to him,
21 Premier, what I did was not only put the criticisms that had
22 been made of him, which were only two, I put to him a range of
23 matters which appeared in the Position Statement and which
24 appeared in correspondence to try to give him an opportunity to
25 answer.

1 BY MR RAWAT:

2 Q. But the reason I brought this to your attention, it
3 was simply an example. It's not--it's not intended to create a
4 criticism of him now, but the point is--just the point that I'm
5 trying to make to you, and I would ask you to assist the
6 Commissioner on, is that it actually doesn't matter who the
7 Governor is and who the Premier is, but if under this
8 Constitution you end up in that situation, in a situation, for
9 whatever reason where there is a lack of trust between two
10 pivotal figures under the Constitution, does that not point to a
11 fundamental weakness in the Constitution?

12 A. It points to a fundamental weakness in the partnership
13 and, by extension, a good bit of the Constitution in that the
14 partnership has to be one where someone has to step in and be
15 able to find common ground.

16 I took it on myself, and I must give Baroness Sugg
17 credit when I wrote to her and I explained these concerns that
18 had been going on from day 1. I didn't even get to say a word,
19 and we agreed that we would reset.

20 So, it reached a point that even if before that when I
21 spoke with her that if we had met one-on-one and we left the
22 meeting, the memorandum or the public discourse that I will hear
23 would be different to my recollection of the meetings. So we
24 had--end up now having to meet with secretaries or somebody as a
25 witness because there seemed to be a concern that neither of us

1 were leaving with the same interpretation and remembrance of the
2 meetings.

3 So, I actually called for a meeting, and I told him to
4 have present who he would want so that we can get past whatever
5 constitutional bypass that is there, and we had the meeting. I
6 was clear to say where ever I have offended you, I would
7 apologize, whether it's personal or otherwise because I'm not
8 perfect, so let us move forward. His response didn't help. His
9 response was clear. You--it's good to know that you have
10 finally understand that you are wrong, and you are very wrong.
11 There were witnesses in the meeting.

12 And his language to us has always been one in which as
13 if we can't do anything right. It was an abusive relationship
14 if you ask me, as if we couldn't do anything correct, and I
15 wrote all around for help.

16 So, there is a problem with the partnership because
17 whenever I wrote, they would write back and say, I hear
18 everything that you said, but we're with Gus.

19 Q. But, I mean, divorce it from Gus and Andrew. I
20 think--can I just ask you is: In the course of responding to my
21 point, you used the phrase "constitutional bypass," I think,
22 some sort of constitutional block. And if you could assist the
23 Commissioner just how would you define that constitutional
24 block?

25 A. Well, if you reached to the point where you have

1 spoken directly with the then-Governor and said, Let's see if we
2 get past whatever this is, and that doesn't seem to work at all,
3 and then you reach the point where you wrote--written to those
4 who are his superiors to ask to intervene, and that will lead to
5 you hearing that you're with--

6 Q. With the Governor.

7 A. With the Governor, thank you.

8 And then, even after that, you decided to do--why call
9 my Christian duty and say, All right, let us find how to get it
10 done because a country have to run, and a lot of this I've never
11 said publicly, and it still doesn't find a way. Who do you turn
12 to?

13 COMMISSIONER HICKINBOTTOM: Well, that's the
14 constitutional flaw.

15 THE WITNESS: That's what I'm saying. Who do you turn
16 to?

17 And I have--also had Public Officers who were
18 concerned about how they were spoken to by the Governor, but who
19 do they turn to?

20 So, we cannot have the partnership where one side of
21 the partnership can speak to the other side, if they choose so,
22 and then hide behind the authorities that they have in the UK
23 and make it seem like the Premier's not being respectful, the
24 Premier is not being accommodating, the Premier is not this--I
25 have seen the contrasts where the new Governor has sat in his

1 seat. We don't agree on everything, but no one knows that. I
2 even--we must have but two or three correspondence between us in
3 the time he's here, and mostly it's to go through what PSC is
4 saying.

5 I'm not saying that he has given me my way or I have
6 given him his way, but there is a certain decorum you carry with
7 maturity in these posts, and it cannot be carried in a way where
8 you can your post and use it as a weapon.

9 So, with that now, this maturity that is here, we are
10 able to sit down and say, "All right, let us move forward here".
11 The Governor asked me what was the concern that you had here?
12 You would always tell me plain I can't go into what's happening
13 with your predecessor, and I tell him I don't want to. All I
14 want to do is to solve these things in the best interests of the
15 people of the Virgin Islands and get on with it, and that is
16 what we have done.

17 In addition, Commissioner, I do have a pet peeve in
18 knowing that in the 21st Century, Governors, of course, have to
19 report to the UK what they're doing, how things are going. That
20 is fair because you should report to your boss, but my boss is
21 the people of the Virgin Islands. I have to report them.

22 But if I have an area where I feel the Governor is not
23 performing, the first professional etiquette to do is to hold a
24 meeting with him or her, and say I have concerns in this area.
25 The Constitution does not need to spell that out. That's what

1 I'm saying, it's a working document. But how do I know what is
2 being written about not me as Premier but any Premier to the UK.
3 So, very easily, if you get the wrong personality in that seat,
4 the FCDO can brand you in the wrong way because you never get to
5 see it to be able to give balance to those Reports. The only
6 other areas would be dealing with yourself.

7 And that is an area with the modern partnership that
8 has to be adjusted. You cannot be able to write up on me
9 without me being able to bring--be allowed due process and
10 natural justice because the Public Service in which the Governor
11 is over should not do that to any Public Servant, and it
12 happened a lot. They were accused of things and carried
13 straight to the PSC, and they couldn't see their file, they
14 couldn't defend themselves. That is not right.

15 So, those are areas that must change even inside the
16 Public Service because everyone should be given the opportunity
17 to defend themselves and clear their name.

18 So, that is what I agree with that it's not only a
19 problem about the Constitution, it's a problem with the modern
20 partnership not existing in the mindset and in a way that allows
21 for us to be balanced in a situation where there are, I would
22 say, "disputes" within the Constitution that would allow for us
23 to say, "Well, that is a just outcome. Whether I agree or
24 disagree, it was a just outcome from it". That's what needs to
25 improve here also.

1 BY MR RAWAT:

2 Q. Can I just move on to another point, and that's
3 Section 56.

4 Section 56 obviously is--sets out what a Minister can
5 do and the role the Minister has in the administering
6 department, but it also identifies the role of the Permanent
7 Secretary. And the question I wanted to ask you was what--I
8 will take you to a letter that you wrote, and if you go to
9 page 41 in that small bundle.

10 (Pause.)

11 Q. This was part of correspondence that you had with
12 Mr Jaspert about selection of Permanent Secretaries, but at 41
13 is the penultimate paragraph on that page you make this points:
14 "Given the critical role played by Permanent Secretaries, they
15 can easily stymie and frustrate the work of the Government.
16 It's therefore imperative that the Government is supported by a
17 cadre of Permanent Secretaries who will part with their
18 Ministers to facilitate timely and efficient implementation of
19 government policy in a professional and responsible manner".

20 And you go on to say--you mentioned that the Governor
21 acceded to your recommendation with respect to appointment of
22 the Permanent Secretary in your office, and say: "It would be
23 unthinkable for a duly elected Premier or indeed a Governor to
24 be saddled with a Permanent Secretary that he did not approve
25 of. This would not be in keeping with the partnership to which

1 you speak".

2 But it's again hopefully a general question, but under
3 the Constitution within the BVI, what can a Minister expect of a
4 Permanent Secretary?

5 A. I appreciate you say generally, I know what you mean,
6 but I need to state the section in the Constitution that created
7 this discourse.

8 In Section 92 of the Constitution, I need to point
9 out, in terms of--well, even if you go to Section 91, it talks
10 about the Public Service Commission in the Constitution of the
11 Virgin Islands 2007, and it states clearly what all the Public
12 Service Commission can and can't do. It clearly outlined it,
13 and they perform the task rather well, I must say.

14 What one of the areas that this was--this came as a
15 dispute with is the power to appoint, et cetera, to Public
16 Office. And Section 921 says, subsection (1) if I may,
17 Commissioner: "Subject to this section and to the other
18 provisions of this Constitution, power to make appointments to
19 public offices and to remove and exercise disciplinary control
20 over persons holding or acting in such offices shall vest in the
21 Governor acting in accordance with the advice of the Public
22 Service Commission. But the Governor acting in his or her
23 discretion may act otherwise than in accordance with that advice
24 if he or she determines"--"determines"--"that compliance with
25 that advice would prejudice Her Majesty's service. Before

1 exercising the powers vested in the Governor by subsection (1),
2 the Governor may act in his or her discretion (1) before the
3 advice, (2) of the Public Service Commission back to the
4 Commission--Public Service Commission for reconsideration by
5 it".

6 Subsection (3) says of the Section 92: "If the Public
7 Service Commission having reconsidered its original advice under
8 subsection (2) substitutes for a different advice,
9 subsection (2) shall apply to that different advice as it
10 applies to the original advice".

11 Commissioner, I learned in these posts not to become
12 emotional because emotions can ruin a country. This simply says
13 that once the Public Service Commission makes recommendations
14 and forward them to the Governor for appointment, the Governor
15 has the right under Section 92 of the Constitution, if he
16 doesn't agree, to send it back for reconsideration to the Public
17 Service Commission. If the Public Service Commission sends it
18 back to the Governor and stands its ground on its decision, then
19 it's up to the Governor to do one of two things: To either
20 accept the recommendation or decide that it is prejudicing Her
21 Majesty's service.

22 Now, Commissioner, you want an area first to work on
23 this area that says "prejudice Her Majesty's service". In my
24 years of politics, I must say that the last Governor who used
25 that so frequent whenever that decision needed to be made on

1 many things, and I can't--I'm not clear up to now what is the
2 definite definition of "prejudicing Her Majesty's service"? It
3 can't be only when you don't agree and fit it into the mould.

4 But the Public Service Commission had selected
5 Permanent Secretaries and made a decision. It was sent to the
6 Governor. The Governor did not agree with the selection process
7 for the Permanent Secretaries, so he sent it back under the
8 Constitution, which he has all authority to do. They send back
9 the Recommendations as was recommended before again, and the
10 Governor decided that he is--he cannot allow for these
11 appointments because it's going to prejudice Her Majesty's
12 service with some of the persons who are there.

13 So, he told me that, "I would give you yours as
14 Premier, but I will decide on for the other Ministers
15 accordingly". I don't know--I don't go lead my troops, and the
16 Public Service Commission made a decision that was clear, and
17 they stood by the decision and sent it back, which was clear.
18 The Governor needed to state clearly under the Constitution how
19 does your action going against the Public Service Commission
20 prejudice Her Majesty's service? And that is the impetus behind
21 what triggered with a lot of these letters with Permanent
22 Secretaries.

23 I have never seen that happen in my years of being in
24 politics, although I wasn't in the Government. I had been
25 around in one or two governments. It even never reached to that

1 level. There was always a conversation with other Premiers
2 stating, "All right, let us see how we could find the best
3 person to accommodate". It's almost as if under the
4 Constitution the Governors would work out with the Ministers and
5 the Premier. But again that's why I give the foundation of how
6 things started.

7 Q. Premier, I--

8 A. I'm sorry, I come back to Section 56.

9 Q. Thank you for coming back to Section 56.

10 (Pause.)

11 COMMISSIONER HICKINBOTTOM: Good. While Sir Geoffrey
12 Cox is still with us, I'm happy. If we lose him as well we had
13 better find Mr Olympitis, but I suspect--

14 SIR GEOFFREY: I hope Mr Olympitis is restoring his
15 connection, but I'm going to hang on until he does.

16 COMMISSIONER HICKINBOTTOM: Thank you, Sir Geoffrey.
17 That's fine.

18 BY MR RAWAT:

19 Q. I understand the particular context of what you're
20 saying, and again, it is certainly--it might not be one of those
21 situations where there is my side, your side, and the truth, but
22 it's certainly one where there were two sides because Mr Jaspert
23 produced some documents in relation to this.

24 But my reason for drawing you to Section 56 is not
25 about a potential for disputes between Governor and the Premier,

1 but it's about what, particularly given the size of the
2 jurisdiction, but what can a Minister expect of a Permanent
3 Secretary? Because it's the point that I drew your attention to
4 is that you say the Permanent Secretary can easily stymie and
5 frustrate the work of the Government, and it goes to, I think, a
6 point that you have made in general which is that if you have
7 policy-makers as elected officials, they need the machinery to
8 not jump to transform their policy into action, and I think you
9 would see a Permanent Secretary as an important part of that
10 machinery.

11 A. I do.

12 Q. But because you say that you need to be able to
13 approve of your Permanent Secretary, so that's why I'm asking,
14 what can you expect of a Permanent Secretary to be?

15 A. Innovative, integrity, effective, has the public
16 interest at heart, and want to make sure that they better the
17 system in terms of the public system, the Public Service.
18 That's what you want to make sure that some of the basic
19 criterias about Permanent Secretary because it's crucial,
20 because we are 18th Century Public Service, with no disrespect
21 to the persons in it, trying to operate in the 21st Century,
22 so--so, until we are able to transform the Public Service, the
23 only way for this country to survive while we're working on it
24 is have as innovative a person as possible.

25 But even Rumpelstiltskin could only make a certain

1 amount of gold, but he stopped when he ran out of straws.

2 That's why the entire system needs to be transformed.

3 And also might I add to be--the Permanent Secretary
4 must also have an eye for talent and not stymie the talents.
5 And the system should make sure that is no stymying of talents.
6 Sometimes the persons get the position, and they don't bring
7 people along, but that should not be up to the Permanent
8 Secretary. It should be up to the system.

9 Q. If you allowed the elected Minister to essentially be
10 able to pick who his or her Permanent Secretary will be, and The
11 Honourable Vincent Wheatley made this point, that he said, "I
12 can't pick my own Permanent Secretary", and his inference was
13 that he would like to be able to pick his own Permanent
14 Secretary.

15 I don't want you to read this out, and I certainly
16 don't want to go into the detail of it, but if look at page 43,
17 Premier, again it's trying to make a general point, but you
18 refer there--and it's the penultimate paragraph--to a Permanent
19 Secretary who you say has been openly critical of your
20 Government's policies on social media. And it's just--I
21 generally do not need to know the details of it at all, and I'm
22 not asking for that reason, but it's the extent to which a
23 Minister can expect a Permanent Secretary to essentially be
24 someone who will not just put the machinery in place to ensure
25 that policy goes forward, but will be in line with that policy,

1 won't stymie and frustrate the Minister.

2 If you can assist a little further with that, that
3 will be helpful.

4 A. Well, the professionalism of it, Mr Rawat, you work on
5 the legal team and the Commissioner, and if you are going to
6 make comments in the--on-line after the COI is finished here
7 every night or every other night, I'm sure you will be replaced,
8 and that should not be encouraged with persons at those senior
9 level. That's the only point I'm making. You could have your
10 views; you could disagree, that's not what I'm saying; you don't
11 have to work with me because you support me or you like me. We
12 don't need to work--to like each other to work, you know. We
13 just have to have one and same purpose, one and same goal.

14 I have persons, advisor who was a solid supporter on
15 the other side, but we have one single purpose. He and I have
16 one single purpose and goal to see a better Virgin Islands,
17 we're working together.

18 So, I'm not gravitating towards us saying it's someone
19 supposed to be politically or there must be some framework.
20 That's not what I'm saying at all, but oneness and purpose, and
21 what is that purpose? To make sure we advance the Public
22 Service, to be the best Public Service in the 21st Century and
23 beyond, to make sure that we are working in the best interests
24 of the public because the public have a lot of needs and need to
25 have them addressed to make sure that we are confidential, not

1 confidential to the point of hiding anything that's wrong
2 because you're not going to ask them to do anything that's
3 wrong; to make sure that they're innovative; to make sure that
4 they understand that time is money because some persons get paid
5 the 15th and 30th of every month don't understand what the
6 private sector is going through in the failure to make your
7 decision in a more timely manner causes them financial hardship.

8 So, those are the areas that you look for in--when
9 you're getting persons in the senior level of government than
10 not just have the degrees of it being they have the education,
11 but also educated to the atmosphere and the culture at hand and
12 the work that needs to be done, and at the end of the day be
13 able to give you solid advice. You may not agree, but at least
14 they are able to analyze the situation and give you solid
15 advice. And if you want to take it, that's up to you. It will
16 be to your own detriment if you don't do it most of the time,
17 but at least they're working as a professional, and that's all
18 you ask for.

19 Q. Moving onto the point you've made about an 18th
20 Century Civil Service.

21 A. In terms of if I have to do analysis in terms of it,
22 that would be the best way to put it, but there is not enough
23 persons in the Public Service. I want to say that clearly.

24 Q. Understood, and you referred to the PAI Report--

25 A. Correct.

1 Q. --which the current Governor explained something
2 currently funded by the FCDO, and he explained the history of
3 Public Service transformation as he sees it.

4 But one of the points he made is that whilst under
5 Section 68 the Governor has responsibility for terms and
6 conditions of Public Officers, the Budget comes from the
7 Government. The Budget comes from the Ministry of Finance. And
8 he explained that this year, for 3,000 Public Officers, you have
9 a training budget of \$25,000.

10 A. Well, first of all, I heard a lot of figures thrown
11 around the last couple of days that I would say just like you
12 would tell me you need those documents and need to bring them to
13 the COI so we could analyze them because I heard a lot of
14 figures thrown around. I thought a lot of things thrown around,
15 what has been given, what has not been given.

16 And, respectfully, I would think those need to be
17 submitted because the Budget process is one in which we--since I
18 have been Premier until now with this plan and even before, I
19 have never seen a holistic plan of how you want to move forward
20 the Public Service, and what all funding would be needed.

21 I have heard different Departments coming and asking
22 for this and asking for an extra person here, which you will
23 find in any country, but how does that fit into the overall
24 development of the Public Service?

25 And also, how do we know that you really need those

1 persons? Because--not because you feel that you need them,
2 means that you need them, in terms of getting someone
3 externally. That is why this transformation is important
4 because there is also HR audit. How do we know that we have
5 people working in the right positions? We have a lot of persons
6 in the Public Service right now that major in universities in
7 areas where they're not--their skills are not being utilized,
8 they become bored, they become disenchanted, and sometimes some
9 disciplinary actions of some them, but we're not dealing with
10 the core of the problem. Do we have our people in the right
11 positions?

12 And also, what are we, in terms of government, in
13 terms of the same Public Service, what are you doing over the
14 years to encourage persons to continue to upgrade themselves if
15 they want to move from Associate's degree to a Bachelor's, where
16 is the pay for that? If they want to move from Bachelor's to
17 Master's, where is the pay for that? There is nothing like that
18 in the scale.

19 So, what I'm saying here to you, Attorney, it is nice
20 to see what has or has not been given to the Public Officers
21 over the years, whether by present or past governments, but I
22 would challenge them to bring forward for me what overall plan
23 that has been given to show, "Look, this is where we want to go,
24 and this is how much money will be needed". We can't deal with
25 these things and certainly when you have limited resources

1 coming out of Irma and Maria and COVID.

2 Q. But, Premier--

3 A. But the FCDO has been clear over the years they want
4 to make sure they reduce the Public Service.

5 Q. Can we break that down--

6 A. Yeah.

7 Q. --because we need to split it into two things.

8 A. Okay.

9 Q. Or possibly three.

10 The first is the future.

11 A. Okay.

12 Q. And that's the public sector transformation framework
13 plan, and I think both you and the Governor, the current
14 Governor, I think, are on the same page at least on that in that
15 there is an arrangement that you are going to work together and
16 take it forward.

17 A. Yes.

18 Q. The second is the past, and that's where you part
19 company because, in relation to the past, you have a particular
20 perception and a particular phrase for the Public Service, and
21 you put it into the context. The--and not just the current
22 Governor but I think a Governor's position will be, "Well, this
23 is part of--you are responsible for your own affairs. How you
24 decide to fund your Public Service is a matter for you".

25 And that leads me on to the--

1 A. Actually, if you are responsible for your own affairs
2 and that will be the mindset of Governor of the last 20 or 30
3 years, so I will have to ask if there are any innocent
4 bystanders.

5 Q. Well, that would be, I think, a very difficult
6 question for everybody to answer, but could I take you to the--I
7 will come back to your point about the FCDO wanting to shrink
8 the Public Service.

9 A. Um-hmm.

10 Q. But the present, which is what I started with, is the
11 training budget, so do you agree with Governor Rankin when he
12 says that the training budget for a Public Service of 3,000 is
13 \$25,000?

14 A. I can't agree with figures thrown around just like
15 that. I have to go and make sure that I do an in-depth
16 analysis, one--there are several areas that you have to look at
17 it. And no offense to the Governor because I find him to be a
18 very good professional, but those are the answer that the
19 technocrats would give them. First of all, \$25,000 is that what
20 they requested? That would be a question that will have to be
21 asked.

22 If I didn't request \$25,000, then how much did they
23 request? Were they able to justify their requests to assure
24 what they're going to do with that training money because, at
25 the end of the day, if you are training money just for training

1 money's sake, when everyone is competing for money, AG Office is
2 looking for lawyers, Police is looking for Police,
3 teach--education and teachers, so persons have to come and
4 justify their budget. That's why I'm saying that this holistic
5 approach now would allow us all to have ownership of how it
6 moves forward from here on in.

7 But in the past, the most that you're going to have
8 there are people pointing fingers because there was never a
9 clear plan to go by, implement, nurture, and then made sure that
10 it continues to work with proper monitoring. This is the way
11 forward now.

12 Q. But this is also--I mean, you say people pointing
13 fingers, but in saying that the FCDO have a certain stance, and
14 in your Position Statement what you say is you say the FCDO's
15 position is what led to freezes in terms of hiring. But the
16 point that you don't make in your Position Statement is that
17 it's the Cabinet of the day that gets to make the decision. A
18 Governor can come to Cabinet and bring a paper--

19 A. Yes.

20 Q. --and say, "You need to do"--total hypothetical--"you
21 need to reduce your Public Service by 2 percent, and here is how
22 you do it", but it's Cabinet that votes.

23 A. Right.

24 Q. And so a Cabinet can turn around and go, "Actually,
25 no, we're not doing that. Our manifested commitment is to grow

1 our Public Service or we're not doing it". It's ultimately the
2 decision of Cabinet. It's not--a Governor cannot force Cabinet
3 to vote in a particular way.

4 A. Not--not that you could force the vote in a particular
5 way, but to give you a for-instance, it was not our Government
6 that put on the hiring freeze. We were able to, based on the
7 records, as far as I can recall, some amendments came about it
8 while we were there in terms of how to go about it and the
9 hiring of it, the process to about incurred some process they
10 have--I can't remember the name of the process--the Public
11 Service has quite a cumbersome process, might I add, but I can
12 see why. But we have to make sure over the years we see what
13 were some of the symptoms of the problem.

14 I happen to be around long enough to know that there
15 were one time when persons would just get hired and then the
16 money would be sought after--would be sought for afterwards.
17 That became a problem.

18 Then there were times in the Public Service where
19 persons were not performing, and rather than finding how to
20 address that, they put in to hire someone else so they could
21 avoid dealing with person that was not performing.

22 So, there is a lot of entities inside of there over
23 the years that have built this up where to be very blunt, over
24 the last 20-30 years that Governors cannot be innocent
25 bystanders. There was to be come forward a plan. This plan has

1 come forward. This plan we were sitting and going through the
2 Integrity in Public Life, we're able to work that out together
3 and bring it forward. How do you make Public Officers be
4 accountable for their work and any other benefits that may come
5 outside of it?

6 There are a lot of areas where we have been able to
7 sit down with mature and professional heads at the table so that
8 we can move forward in the best interests of the people of the
9 Virgin Islands.

10 Q. But if you're making the point that a Governor cannot
11 just say, "I'm an innocent bystander", you must, in fairness,
12 surely accept two things:

13 Firstly, Governors can't, with the exception of their
14 Section 103 power, cannot and do not control the money; but
15 secondly, Cabinet can't say--any Cabinet can't say, "We are also
16 innocent bystanders".

17 A. Well, Cabinet can sit to a certain extent they are
18 innocent bystanders, but not whole-heartedly, given this.

19 It is very difficult when it comes to the budget
20 cycle--and I have gone through numerous of them--everyone comes
21 to the table with the sirens on, wah-wah, wah-wah, wah-wah. The
22 siren is ringing, and you now have to sit down with Finance and
23 how do you shut off some of these sirens?

24 And if I may add, most of them are legitimate, but
25 then you only have the certain amount of resources with certain

1 amount of revenue that's coming in.

2 But in the absence of a full policy plan of how and
3 what our Government wants to achieve, then you don't know what
4 boat is getting to you to the destination or you if you are
5 getting to the destination you need to get to at all. That's
6 the point I'm making. Now, with this, we could go and say, when
7 the Policy Unit comes into place, if we want to go, for example,
8 into medicinal marijuana as an example, and we have the full
9 policy with that, we have the full outline of how that's going
10 to go, the full projection of how much money we're going to
11 make. We can say, "Well, all right, within the next seven
12 years, we can only grow the Public Service by 2 percent each
13 budget". Then you have tangible things to make decisions on.

14 Right now, you are making decisions on emotion.
15 Listen to the persons plea and see which one can plea the best
16 and see if you can give that one a little more and how you can
17 deal with these different things. So, the Public Service needs
18 the full plan, so that when all of this plan goes in, again the
19 Policy unit as Polygraph (phonetic) International says, even the
20 Integrity Commission to help us in certain areas, even for
21 Cabinet as we said in our Position Statement, to put Integrity
22 Section into a Cabinet that will help the Policy Unit check our
23 Cabinet Papers so we don't have to come back to COI with absent
24 contracts of Cabinet Papers, to check everything because right
25 now Ministers are brought into this to answer a lot of things

1 that you met. There is no way you could fix these things.

2 And even if the COI is finished, if we don't do what
3 we're doing here now, even before the COI, to put these systems
4 in place and have the cooperation of the Governor as it is now,
5 then we will never be able to fix these.

6 So, really and truly that's what I mean that we have
7 an 18th Century Public Service operating in the 21st Century.
8 You become a Minister now and you was never in Government
9 before. You go to Cabinet, you have the handbook but the
10 handbook is only--that law need upgraded which we spoke about to
11 make sure it's upgraded because if you're going to host Cabinet
12 Meeting, for example, it doesn't take into account Zoom.

13 So, there is a lot of upgrading to do a lot of new
14 policies to make. Cabinet now supposed to be the entity that
15 holds our Ministers and new Ministers accountable, "You need to
16 check to make sure that you check that you don't have any
17 conflicts in this paper, you don't have this, you're not doing
18 anything that are contrary to what all, and that checklist comes
19 before that paper even gets into Cabinet". If it needs to go
20 back and go back and be--be and approved and as well hold
21 seminars through that Cabinet Integrity Unit in Commission to
22 improve the writing of Cabinet Papers and also being one in
23 accord with the Policy Unit. That's where we're going with the
24 Government with this transformation, but it's going to take time
25 because this was neglected for a long period of time.

1 The only Public Service thing I remember in my 20-plus
2 years of politic, Mr Rawat, that had any kind of effect between
3 now is PSDP, Public Service Development Programme.

4 Q. Which is something that both Governor Rankin and
5 Mr Jaspert referenced as part of--they give the examples of
6 initiatives over the years, since 1999.

7 A. Right.

8 Q. And the reason I know this, Premier, is because it
9 appears in the Public Service Transformation Framework the front
10 page of which has a very picture of yourself, Governor Jaspert,
11 and the Deputy Governor.

12 A. Yes, we're all good friends.

13 But what I'm saying here, though, with that in mind,
14 with all fairness, there were some key persons that brought that
15 to life. It didn't come out of the belly and the womb of the
16 entities being the Governor or Deputy Governor's Office in those
17 days. That came out of the womb of person like Ms Lala Smith
18 and many others who came together to make that work.

19 What I'm saying here, whatever time came to make a
20 change, the entities who made that change can make that change,
21 but that also is because it was not rooted and grounded and
22 accepted and embraced by all the entities died.

23 So, you have to have buy-in when you're going to do
24 these programmes. That was a good programme that died, but it
25 did develop some strong senior Public Officers, and most of them

1 are retired now.

2 So, not only to put these entities into place is
3 crucial for good governance through the Public Service, but the
4 monitoring of them and the maintenance of them is crucial.

5 And also, Mr Rawat, we need those plans so we can know
6 whether we can grow the Public Service by how much percent we're
7 going to grow it each year or if it needs growing at all.

8 And to tell you about the FCDO, inside the financial
9 framework for financial management, and the Protocols for
10 Effective Financial Management, right now we have to make sure
11 that 25 percent, I think, of it--of our assets is liquid cash.
12 That is a huge call on any government. But if you fall below
13 the ratios--I'm going to give you where you don't--you're not
14 told by the FCDO what to do, but you're told, I give you, for
15 instance, and you now have this document in the protocols.

16 COMMISSIONER HICKINBOTTOM: We have this document,
17 yes.

18 THE WITNESS: So you would be able to check me on
19 this.

20 BY MR RAWAT:

21 Q. Is this Protocols for Effective--

22 A. Protocols for Effective Financial Management.

23 Now, when you look at the Protocols for Effective
24 Financial Management, inside that Protocols for Effective
25 Financial Management, we--and this was signed in 2012 by an

1 agreement with the last Government--here we see the risk weight
2 for different statutory bodies, Tourist Board a hundred percent.
3 Meaning whatever debt they have, the Central Government has that
4 weight on its books, so what the Tourist Board is 100 percent
5 weight for the debt.

6 The PIL authority, 80 percent.

7 HS Stoutt Community College, 80 percent.

8 Prospect Reef Management Company, 80 percent. Lord
9 know that they're dead down there.

10 BVI airports Authority 50 percent.

11 National Bank, 20 percent. A bank should have money,
12 they get it 20.

13 BVI Electricity Corporation, 20 percent.

14 Financial Services Commission, 20 percent.

15 Ports Authority, 20 percent.

16 Social Security Board, 20 percent.

17 The issue here which we had to spend some time since
18 we took office is to say you could not give us the weight of the
19 debt in percentage and don't give us the weight of the profits
20 so that our ratios could be better and we could be better able
21 to maintain that 25 percent that you give us of liquid cash. I
22 must say that when we started on this, we were told it's a
23 nonstarter, but we have been able to make some adjustments in
24 that respect.

25 But what happens, though, Mr Rawat, is if we go and we

1 borrow monies right now to do the airport, to do anything
2 because we wouldn't have it in liquid cash, and we violate or
3 breach the protocols, with the ratios, we now--and you would
4 know this good--we now have to get permission from the UK. The
5 Loan Guarantee was given to us to--and before my time but giving
6 you the background of it, as a special tool to give us special
7 rates, where the UK would be able to back those rates.

8 My concern as coming from a businessman's side, but
9 looking at it from Government, no matter without the Loan
10 Guarantee, we always had to get our loans approved by the UK.
11 You couldn't get a loan without no OT. With the Loan Guarantee
12 you will--they said they could help us get it at a smaller rate,
13 but the Loan Guarantee doesn't give us money. We have to go and
14 get that money and pay back that money. The rate may be lower,
15 but who is to say I cannot get those same rates without the Loan
16 Guarantee? It isn't that we don't want it, but let's look at
17 the measures inside of there.

18 There are two ways I spend some money of the taxpayers
19 to go to the UK to ask about. One that I must make clear, once
20 you get a loan from the UK because you're beyond your ratios,
21 the UK have to approve your budget. They can come in that
22 budget which had been suggested that you might need to have a
23 debt to income of a specific ratio. Depending on what that
24 ratio is, they will be telling you without saying it because you
25 have to go do that to your people, that you have to cut

1 something in that expenditure to meet this ratio.

2 If you cut, given the percentage that have been thrown
3 out in cases happens it's not finite but thrown around, the only
4 thing that you can cut in the expenditure of the recurrent of
5 the country to meet the ratio that may be given to you if you
6 borrow is the Public Service. But the language doesn't say,
7 "Cut the Public Service". But you have read between the lines.

8 Now your budget would have to be approved once you're
9 borrowing money and you're over which means they're not going to
10 approve your budget unless you're within those ratios. How do
11 we get within those ratios? We have to cut something major
12 under recurrent. What is major in the recurrent that you have
13 to cut to get you in line? The Public Service. Who has to go
14 tell the Public Service they are cut? The elected officials.
15 This is bacon and egg, and the politician become or the official
16 become the pig. We have to keep speaking with the UK on these
17 matters so that my late father, who was a taxi man, who couldn't
18 read or write but had a lot of common sense. He said anytime
19 people are speaking about bacon and egg and you're the pig, keep
20 speaking until it's lunch and turn it into chicken and chips so
21 that they could think about it, and if it's both our concern,
22 let us get to dinner where there is lettuce and tomato.

23 Because in this here now, there are two words that
24 bother me up to now that went to the UK to find out what the
25 definition of those two words are. They reserve the right to

1 implement any other measures or mechanisms. We have asked to
2 please define what "other measures" are and define what other
3 mechanisms: are because we want the Loan Guarantee, but these
4 conditions have some ambiguous words. We were told, "Don't
5 worry about it. Those are things we can work out where we are
6 going". You don't get married and work it out afterward. You
7 get to know the person before you get married.

8 So, inside the Protocols also there are some
9 conditions that says what will happen if you fall below in terms
10 of deficit spending. That's why this year and last year we
11 raise the Budget because you don't want to fall in these areas
12 where these things automatically click in, so I'm being given a
13 lot of heat through this country for persons saying, "Well, the
14 money is not spending, you went and revised two budgets"--and
15 even some of our Ministers get angry the money is missing, but
16 we're keeping everyone hired, we are keeping the lights on until
17 a better day comes and we make more revenue and we negotiate
18 these terms and conditions. And we are able to get some time
19 without some of these conditions to get back within the correct
20 ratios, given that we are faced with a pandemic.

21 Now I must say that conversations I'm going again with
22 these, and I'm looking for success in these areas, but you asked
23 me a question. The FCDO cannot tell us to cut the Public
24 Service and Cabinet do it--that is correct--but these other
25 things in here could make us do it on our own without.

1 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt
2 possibly both Mr Rawat and you, Premier, but two points on that,
3 two brief points on that, or two brief questions.

4 Firstly, you say that to enable Territory to come
5 within the Budget, the only way of doing that would be to cut
6 the Public Service, but the whole point of the loan, wasn't it,
7 was to be--to revive the economy to put further money in the
8 economy which would affect the ratio itself.

9 And secondly, I appreciate that you firmly believe
10 that the conditions attaching to the loan are unattractive but
11 you weren't required to accept the loan, and the loan hasn't
12 been accepted. It's entirely up to the Cabinet as to whether to
13 accept the loan.

14 THE WITNESS: Yes, Commissioner.

15 COMMISSIONER HICKINBOTTOM: Sorry, the Loan Guarantee.

16 THE WITNESS: The Loan Guarantee.

17 Yes, Commissioner. One of the things Attorney Rawat I
18 grew up in a village of parables, so excuse me when I get to
19 stories. I just--it's in me. It's tantamount to me being out
20 in the ocean, in the sea, and you're there hoping that a boat
21 will pass by and a cruise ship pass by and you say whoop-de-do,
22 you can't get on, but here is an anchor and see if you could
23 make it to shore with an anchor and didn't throw you a life
24 raft.

25 You see, the Loan Guarantee was told that it's going

1 to revive the economy, but getting a loan of merely
2 £300 million to do just road and walls and some little projects
3 here and there where the Hurricane damage, some needed
4 infrastructure--all of them need it. I'm not against roads and
5 walls. That's not what I'm saying.

6 We are asking also for the purpose the loan to be
7 re-examined. I can go and take this loan for £300 million and
8 expand the TB Lettsome Airport for £190 million. All we're
9 doing is negotiation to say, "Listen, we need some
10 renegotiations in these areas", and we're getting them, but the
11 way it is right now, that money was for specific things because
12 of what Irma and Maria did. That might have been the situation
13 then, but we have done some rebounding, and we are in the middle
14 of a lot of negotiations in the background that's going to help
15 us to bring in revenue, because once the airport is lengthened,
16 then you have more people coming in, more hotels, more commerce.
17 Once you have different schools built, which we are getting the
18 schools built now, we have found ways to juggle to get those
19 things done so new Elmore Stoutt High School will be hopefully
20 completed by the time they're ready to move in 2022-2023 from
21 the junior school and move out of where they are now. The next
22 school is going to start to offer tender. All of those things
23 are going to be tendered through the RD and through different
24 entities and other schools with tendering, so we are working on
25 these.

1 We have been able to stretch the last Government had a
2 \$65 million loan. We are able to use that and sit down with CDB
3 who asked us for direction on it so we can get things done. But
4 taking a loan under those terms and conditions for £300 million
5 that's specific o how those monies would be spent and also
6 conditions and measures that are attached were not in the
7 public's interest for generations.

8 COMMISSIONER HICKINBOTTOM: But you weren't bound to
9 accept it.

10 THE WITNESS: No, but that's what I'm telling you.
11 You can't come--we were told by one Governor if you don't want
12 what the UK is going, we know what we have to go independent.
13 That's not language you want, Commissioner, not for you, but I
14 mean we're, saying if you come to help me and we are in a
15 partnership together, don't give me what you want. Give me what
16 I need. I need help so that, if we took that loan to do those
17 things at that time, the Loan Guarantee because we still have to
18 pay for that money, we didn't see COVID coming, where would we
19 be financially?

20 Commissioner, I deal with these things every day.
21 Because the measures inside the document would have had us tied
22 to whatever we negotiate but would be at the mercy of the FCDO
23 or the UK to decide whether they agree with us or not without
24 being tied.

25 COMMISSIONER HICKINBOTTOM: But you didn't--you didn't

1 accept the Loan Guarantee, and secondly you haven't taken out a
2 loan under the Loan Guarantee.

3 THE WITNESS: No, no, but we have loan, a \$65 million
4 loan we were using.

5 COMMISSIONER HICKINBOTTOM: I know.

6 THE WITNESS: We're going to come to a point where we
7 are going to need some more money obviously to go borrow, but
8 what I'm saying is that we're negotiating to have these areas
9 and measures and conditions and terms and conditions adjusted.

10 COMMISSIONER HICKINBOTTOM: Which is fine.

11 THE WITNESS: All I'm saying is, it wasn't the most
12 receptive way in the beginning. It took some time because
13 first, when we were early dealing with the percentage weight of
14 debt, it was a no-starter. We took months, a trip to the UK to
15 get that down. We were even told, if you're going, it doesn't
16 make sense to go to the UK to speak on this, but I believe to
17 show up you know when you show up and we were able to get
18 adjusted. Now we're working on getting the conditions of what
19 the Loan Guarantee can be adjusted, and we are going to work on
20 the measures to be adjusted so that we could make sure that
21 while I'm down you don't kick me out.

22 COMMISSIONER HICKINBOTTOM: That's fine.

23 THE WITNESS: That's fine now because we reach here,
24 Commissioner, but we wasn't there. This took 33 months to get
25 here.

1 BY MR RAWAT:

2 Q. Premier, haven't you just defined the concept of
3 negotiation? You came into office, and you inherited a
4 particular arrangement in terms of the conditions around the
5 Loan Guarantee.

6 A. Um-hmm.

7 Q. Your decision as head of an administration was that
8 you didn't consider those conditions to be appropriate for the
9 BVI, and so you set out to renegotiate them, and what you told
10 the Commissioner, that's what you are doing.

11 A. Yes.

12 Q. And as the Commissioner says, you may be successful in
13 renegotiating conditions, which may mean that you feel able to
14 make use of the Loan Guarantee or you may not.

15 I mean, doesn't it also take us back to the central
16 point that it's part of what being self-governing is about? You
17 have to choose, and you do choose.

18 A. Yes, but what I'm saying here is that we chose, but
19 when we made a choice, it wasn't one that was accepted at first.
20 And even with here now because of continuous negotiation with
21 mature persons in these positions on both the UK side, which we
22 have some of them there now, and also in the BVI side which we
23 have, and the UK's representative, we can sit and speak.

24 It was negotiations that brought out the Integrity in
25 Public Life. It was negotiations that brought out the

1 Ministerial Code. There was negotiation that brought about the
2 transformation of the Public Service to move ahead. It's
3 negotiation that bring out in terms of what we are going to do
4 with the records-keeping and how we are going to move forward in
5 a manner that respects the Governor's authority but at the same
6 time respects the security of the country and also making sure
7 we secure the documents of the country.

8 But these are many areas even, Commissioner, I might
9 add a little tangent. It's communication together with broader
10 legislation out, so we now have that past and setting that up so
11 anyone who wants to--who sees something wrong can come and say
12 when this unit is set up, and if they are right they are pay for
13 it, and if they're wrong they pay for it.

14 So, we have all of that--the Freedom of Information is
15 another area that we are just going to start to engage to start
16 the let the legal minds get together for that. These are things
17 that are needed for progressing democracy.

18 But working with the right person even with the human
19 rights, those are things that we already had meeting--I had a
20 meeting with the Governor and the Deputy Governor, how do we
21 move forward the Human Rights Bill, so that is something that
22 will be coming.

23 So, I have lived in the House of Assembly passing
24 bills where persons are asking why is he passing bills and
25 passing bills? I'm trying to make sure that we pass the

1 relevant bills to show that we can manage ourselves. So, even
2 if they want to keep me or get rid of me, the system will be
3 there so we don't get rid of the country. That's what I'm
4 trying to do with my colleagues.

5 And you have the Integrity Commission, the salary
6 revision. We even went now with the salary revision and brought
7 it forward with the Governor. He brought the paper, it was
8 their lingering for a while, we were saying, "Listen, you can't
9 have that. People need to be paid their worth". So, that also
10 had to be taken into consideration, so that paper already
11 approved, they're already moving forward with that.

12 E-government legislation. We cannot only look about
13 expanding the Public Service. Technology is on the horizon, so
14 that's why I'm saying this whole transformation plan is crucial.
15 We are talking about expanding. We may need to keep the same
16 size. We may need to shrink in terms of persons who retire,
17 rather than filling that position you leave that vacant because
18 now something will be done digitally, not shrink to have anybody
19 meaning they will be fired.

20 But all of this is what we need to see with the plan.
21 That's why we signed on to the plan. The plan is costing us, I
22 think it's \$3.9 million to do over the space of two years. We
23 already committed to that in this year's coming budget. It
24 wasn't reached out as yet, but when it comes out, that will be
25 inside of there as our commitment to partner with the Governor

1 who is with the Public Service and the Deputy Governor for once
2 and for all transform the Public Service as has been stated by
3 many other reports and areas. All of this we're doing in just
4 one or two years, the difficulty right away, impossible and will
5 take a while.

6 And while we are at it, I must state that we were
7 behind with Audited Financial Statements. We're now moving up
8 to the point where we have done with all of these most to the
9 Auditor General she could do her part. My good friend, Auditor
10 General, who is nice, so she could do her part so we can now
11 have Audited Financial Statements and not be infringement of the
12 same protocols, which--and even the Constitution, which is
13 something we are most there with, I think by next we're submit
14 of middle of next year we should be there. And there are other
15 areas that we are working on with the whole financial reform,
16 with the Public Service with the Governor, these are all things
17 some already happening, some on the verge of happening.

18 We see even with crime, Police Service Act, the Police
19 Act has been there for years. Nobody wants to touch it. We
20 have now the second and third reading. It will be passed soon.
21 We have passed legislations to keep the BVI and the country
22 which I must give our governments in the past credit for with
23 Financial Services from the D Orlando Smith government to the
24 Ralph T O'Neal to, you know, CB Romney and HS Stoutt because
25 that is a secret call for us. We don't play with that at all.

1 No political football there, so that now whatever legislation is
2 needed.

3 And may I add even with these leaks that did not pass
4 some of the legislation we passed in past two years would have
5 been seen in a much, much more dim light than we are here.

6 So, we're not sitting on our laurels, persons, you can
7 check, Mr Rawat, check the history of the House of Assembly what
8 all we passed in the past two years, and you will recognize that
9 we are moving towards Article 73.

10 COMMISSIONER HICKINBOTTOM: We also had twice because
11 we had an update from the Attorney General as to the measures
12 which are being made in one form or another. Thank you,
13 Premier.

14 Mr Rawat, is there any--

15 BY MR RAWAT:

16 Q. Could I ask one more questions, Premier.

17 A. No problem.

18 Q. But it's is this, on Public Sector transformation,
19 that was an initiative which, on the evidence the Commissioner
20 has, was led by the Deputy Governor's Office, and it had been
21 led for--there had been again on evidence some two years' work
22 on into it. I went through the correspondence with Mr Jaspert,
23 but--and I appreciate that you're now--you've come to an
24 arrangement with the current Governor as to how to take this
25 forward, but why was it necessary for--because at one time you

1 were arguing for it--to lead a Ministry on that to be the
2 Premier's Office--why was it important for the Premier's Office
3 to be the lead agency?

4 A. At that time because I changed after a while to have
5 it--

6 Q. As I understand it now, there is--

7 A. A joint?

8 Q. A joint arrangement.

9 COMMISSIONER HICKINBOTTOM: That's the evidence that
10 we have, Premier.

11 THE WITNESS: Whoever give that evidence is
12 hundred percent correct. It's joint now.

13 Let me speak to the joint so we could keep to general.
14 The joint was done because there are a lot of sections in the
15 Public Service overall and not--that add statutory bodies.

16 Also, we have to be careful with three arms of
17 government in--three arms that exist in Government, so to speak.
18 You have the Legislative Branch. The Governor at no time or any
19 other entity should be seen as dictating or organizing for the
20 legislative arm. That's an independent body according to the
21 Constitution under the laws.

22 Then you have the Judiciary. No one--no one--should
23 be caught trying to do things for the Judiciary or interfere in
24 any shape or form, even trying to manipulate how they should be
25 hiring and what they were doing forward, because you may as an

1 outside person of the Judiciary decide when they may need two
2 more Magistries or one more Magistracy, but I don't know what your
3 skills will be, not you, but a person involved so we have a
4 saying, a cockroach (unclear), so that's not your forte. But
5 under the Constitution it is independent. Then you have the
6 executive arm, which is the Cabinet with the Governor.

7 But inside of those entities with the Cabinet now the
8 Minister's section they have under Section 56, and even the
9 Governor would have certain independent constitutional roles
10 under him--not under him, but in the Constitution he will be the
11 layer they would report towards for putting their budgets or
12 whatever the case, but they're independent. They cannot be
13 influenced. The Auditor General, the Complaints Commissioner,
14 the--well, Ombudsman, Ombudsperson--things of that nature.

15 So, now you will have different Boards under
16 Ministers, but that's not under the purview of the Government
17 because they have statutes, they have their own laws, they
18 have--et cetera.

19 So, given all of that, at first the thought was let us
20 make it under the Premier's Office under the Permanent Secretary
21 so we get a policy for everything. But as time passed, even as
22 we sat and discussed with the Deputy Governor and even with the
23 new Governor, cooler heads were able to prevail. And I'm the
24 first to say, if I see that what you're telling me is let's move
25 in that direction because no one is always right, so we were

1 able to say all right, given that there are clear demarcations
2 in certain areas, let's do it jointly so that we can cover all
3 without interfering with those that are--don't need to be
4 interfered with, but still make sure we harness what we need to
5 get from all, so that is what we came to the conclusion with a
6 united way moving forward, and I'm pleased with what is
7 happening so far.

8 MR RAWAT: Commissioner, I think I have run out of the
9 topics that I would like to canvass with the Premier today, so
10 can I conclude, first of all, by I think apologizing to the
11 Premier because we started late with his evidence, and so we are
12 grateful that he's continued and willing to sit for longer to
13 conclude that evidence, but also can I say thank you for the
14 way, Premier, in which you have given your evidence today.

15 COMMISSIONER HICKINBOTTOM: And I can echo that,
16 Premier. Thank you for the courteous way in which as you have
17 given your evidence, but also thank you for the helpful way in
18 which you have given your evidence on governance, which is a big
19 topic. We heard a lot of evidence about it, but your assistance
20 on these particular issues is much appreciated. Thank you.

21 THE WITNESS: Thank you all, thank God for everything,
22 and let's keep moving on and get a stronger BVI towards
23 Article 73.

24 COMMISSIONER HICKINBOTTOM: Yes. Mr Rawat.

25 MR RAWAT: Commissioner, we will be sitting tomorrow.

1 I believe it's at 9:30 for a Directions Hearing.

2 COMMISSIONER HICKINBOTTOM: Good. Thank you very
3 much.

4 SIR GEOFFREY: Commissioner, I wonder if I might just
5 say a word. Have you--can you hear me? Hello?

6 MR OLYMPITIS: Commissioner, Sir Geoffrey wants to
7 speak with you.

8 COMMISSIONER HICKINBOTTOM: Yes, we did cut everybody
9 off, so we are all back.

10 SIR GEOFFREY: I'm so sorry, I didn't obviously time
11 it correctly.

12 I hope to be appearing at your Directions Hearing
13 tomorrow, but may I just observe on the matters of training
14 budgets, it is our intention to submit further evidence to you
15 on that, or at least rather to apply to you to submit further
16 evidence on that, because we do have further information on the
17 matters of things like training. Perhaps it's best to deal with
18 it tomorrow because it may be you would want to give a direction
19 in connection with it, but I simply wanted to mark that in
20 advance. We do, I'm afraid, have further evidence on this. We
21 don't accept the figures that have been given to you in evidence
22 in the last two days.

23 COMMISSIONER HICKINBOTTOM: Firstly, thank you, Sir
24 Geoffrey, for raising it now because that's helpful.

25 This is a matter which has arisen out of the oral

1 evidence.

2 SIR GEOFFREY: It has.

3 COMMISSIONER HICKINBOTTOM: So, first I'm very happy
4 to deal with it tomorrow.

5 SIR GEOFFREY: Right.

6 COMMISSIONER HICKINBOTTOM: There should be a
7 direction, but that sounds as though it's not going to take us
8 very long. You should be given--we've had lot of evidence, and
9 I can give you a time by which that can be done.

10 SIR GEOFFREY: That was just my proposal. I hope to
11 be with you tomorrow, but just in case not, I wanted to just
12 mention that in case so that a note can be made of it and to
13 submit further evidence.

14 COMMISSIONER HICKINBOTTOM: Thank you very much, Sir
15 Geoffrey.

16 SIR GEOFFREY: Thank you.

17 COMMISSIONER HICKINBOTTOM: I will deal with that
18 formally and any other matters that arise in respect of the next
19 stage of the Inquiry.

20 SIR GEOFFREY: Thank you.

21 COMMISSIONER HICKINBOTTOM: Good. Is that all, Sir
22 Geoffrey? I'm sorry we cut you off.

23 SIR GEOFFREY: Not at all. That's all it was, and
24 forgive me for detaining you for it.

25 COMMISSIONER HICKINBOTTOM: Thank you. We will see

1 whoever we see tomorrow at 9:30.

2 SIR GEOFFREY: Thank you.

3 COMMISSIONER HICKINBOTTOM: Thank you.

4 SIR GEOFFREY: Good night.

5 (Ends at 6:28 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