

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 54**

(WEDNESDAY 17 NOVEMBER 2021)

International Arbitration Centre  
3<sup>rd</sup> floor Ritter House  
Wickhams Cay II  
Road Town, Tortola

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Mr Edward Risso-Gill and Ms Sara-Jane Knock of Withers (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Mr Richard Rowe of Silk Legal appeared for those members of the House of Assembly who are not members of the Government.

Mr Alex Hall Taylor QC of Carey Olsen appeared for His Excellency Governor John Rankin CMG.

Counsel to the Commission Mr Bilal Rawat also appeared.

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Those present (all attending remotely):

Mr Edward Risso-Gill, Withers LLP

Ms Sara-Jane Knock, Withers LLP

Mr Richard Rowe, Silk Legal

Mr Alex Hall Taylor QC, Carey Olsen

Mr Bilal Rawat

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

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P R O C E E D I N G S

1  
2 COMMISSIONER HICKINBOTTOM: Good. Thank you for  
3 joining. One of the reasons is, of course, to make sure that  
4 the Hearing next week is effective and completed in the  
5 available time, so we sent around a list of items that hopefully  
6 we are about to clear away today and then have a good, clear  
7 start next week.

8 Mr Rawat, the first item is the Fifth Affidavit of  
9 Mrs O'Neal-Morton.

10 MR RAWAT: Yes, Commissioner.

11 Before I just respond on that, can I just introduce for  
12 the Transcript the representation today.

13 We have on behalf of the Attorney General and the  
14 Elected Ministers Mr Edward Risso-Gill and Ms Sara-Jane Knock.  
15 On behalf of remaining Members of the House of Assembly we have  
16 Mr Richard Rowe. And today we have Mr Alex Hall Taylor, who is  
17 here or has been permitted to represent the Governor when he  
18 comes to give evidence on the 24th of November. Everyone is  
19 attending remotely.

20 To return to the first matter on the Agenda, and just  
21 to give some background, Commissioner, Dr O'Neal-Morton, as you  
22 will, gave evidence on day 44, which is the 5th of October 2021,  
23 and subsequent to that on that day, the COI's e-mail to the  
24 Attorney General seeking disclosure of certain information  
25 related to the Response of the Office of the Premier to the

1 evidence in the Report to the Auditor General and the Internal  
2 Auditor. You will recall that that was a document which the  
3 Premier's Office prepared independently and submitted to the  
4 Commission.

5           The request was still outstanding at the time of the  
6 Directions Hearing of the 22nd of October, and you made  
7 directions in relation to responding to that request, and that  
8 was to be done by the 29th of October. With the grants of an  
9 extension, what occurred on the 1st of November was that rather  
10 than just documents being disclosed as the Inquiry had  
11 originally requested, we received the Fifth Affidavit of  
12 Dr O'Neal-Morton together with exhibited material.

13           Subsequent to that, the COI wrote to the Attorney  
14 General explaining that that required an application, and that  
15 application was then made. And to cut through it, that is the  
16 issue that I think remains outstanding in relation to the  
17 Affidavit submitted on behalf of Dr O'Neal-Morton.

18           You have a written application dated the 5th of  
19 November 2021 from Mr Niki Olympitis of the IRU, submitted on  
20 behalf of the Attorney General, and it's that matter--I think it  
21 may be that there are questions that you wish to ask  
22 Mr Risso-Gill, but unless I can assist further, I will turn the  
23 microphone over to yourself, Commissioner.

24           COMMISSIONER HICKINBOTTOM: No. Thank you, Mr Rawat.

25           Mr Risso-Gill, we now have this Affidavit, four pages

1 of Affidavit raising some new matters because I think Mr Gaskin  
2 hadn't been referred to at all in the evidence up to the date of  
3 this Affidavit as having any role. This evidence says he had  
4 quite an important role, and exhibited about 2,000 pages.

5 Only one question, I think, Mr Risso-Gill: For the  
6 24th of November, we have been told that Dr--I think I said  
7 "Mrs" before--Dr O'Neal-Morton is not available.

8 Can I explore slightly why she can't be available to  
9 answer any questions?

10 MR RISSO-GILL: I will need to take instructions about  
11 that, which I will do immediately now. I don't have  
12 instructions exactly as to why she was not available certainly  
13 not in front of me right now, so although it may be--it may be  
14 that Ms Knock can help with that. I'm not sure.

15 Forgive me, yes. I'm now assisted.

16 We have been told she is, in fact, out of the  
17 Territory. I don't know to what--whether that precludes  
18 it--that's the extent of the instructions I have now received.  
19 Whether that means she couldn't possibly join remotely, I don't  
20 know whether that's been explored yet.

21 COMMISSIONER HICKINBOTTOM: No, thank you,  
22 Mr Risso-Gill. That reflects what we have been told, and that  
23 is that she is out of the Territory, but that obviously doesn't  
24 preclude her from attending and giving evidence remotely. I  
25 don't think any evidence that she would need to give would be

1 very long, but perhaps you could take instructions on, if she  
2 were available, to give evidence remotely, if required.

3 As I say, rather curiously, this evidence does contain  
4 new material, which, despite several days of evidence on this  
5 topic, had not been disclosed before; and, therefore, it may be  
6 helpful if she were able to give evidence next week. So, could  
7 you perhaps take instructions during the course of the Hearing  
8 as to whether that might be possible?

9 Excellent. Thank you very much.

10 MR RISSO-GILL: We are certainly going to try to do  
11 that, sir, yes.

12 COMMISSIONER HICKINBOTTOM: Good. Otherwise, simply I  
13 will allow this evidence in, the Affidavit in, and I will  
14 obviously make of it what I can with or without  
15 Dr O'Neal-Morton's further assistance at an oral hearing.

16 MR RISSO-GILL: We're grateful, sir.

17 COMMISSIONER HICKINBOTTOM: Good. Thank you very much.  
18 Next, Mr Rawat, Mr Frett's further Affidavit.

19 MR RAWAT: Yes.

20 Commissioner, you will remember that when the Governor  
21 came to give evidence in October, part of his evidence related  
22 to training budgets for the Civil Service, and at that point Sir  
23 Geoffrey Cox, who was there on that date to represent the  
24 interests of the Elected Ministers and also representing the  
25 Attorney General indicated that he would be--he would seek to

1 adduce evidence in relation to what came to be described as the  
2 "Public Service Budget".

3           You gave on the 22nd of October, the Directions  
4 Hearing, you made an Order that any such Affidavit evidence  
5 should be produced by the 29th of October--that was your initial  
6 proposal--but Sir Geoffrey asked for and was given until the 5th  
7 of November. One of the points that you made, Commissioner, is  
8 that you would need to see the Affidavit before deciding whether  
9 to accept it.

10           Those directions having been made and that essentially  
11 Sir Geoffrey's request for time until the 5th of November having  
12 been granted, that was enshrined in Order Number 23. However,  
13 on the 3rd of November 2021, the Attorney sought an extension to  
14 the 12th of November. Reliance is placed on the need to prepare  
15 the budgets and that the Ministry of Finance had been working  
16 not only with its usual workload but also to deal with the  
17 requests from the COI throughout the year. However, I should  
18 make the point that at that time there were no outstanding  
19 requests from the COI to the Ministry, and this Affidavit was  
20 one that was not requested by the COI. It was upon the  
21 submission of Sir Geoffrey.

22           You, Commissioner, then granted an extension until  
23 the 10th of November, and the point was made that because it  
24 went to Public Service budgeting, it would be important to give  
25 the Governor sufficient time to consider its contents before he

1 came or returned to give evidence on the 24th of November.

2           We--the COI also wrote on the 5th of November to the  
3 Attorney, seeking further information about who was going to  
4 make this Affidavit. And, in fact, it wasn't until the 8th of  
5 November that we had confirmed that it was Mr Frett. But what  
6 you had also allowed on the 7th of November, you granted  
7 permission to share part of the Governor's response to a Warning  
8 Letter with Mr Frett.

9           So, it would seem that between the 22nd of October and  
10 the 7th of November, Mr Frett, who was due to make the Affidavit  
11 on Public Service Budgets, hadn't seen the Governor's response.  
12 But the position we came to was that, on your direction,  
13 Commissioner, this was due on the 10th of November.

14           On the 11th of November, the IRU wrote to the  
15 Commission to say that they would not be able to provide the  
16 Affidavit "today", as they had not received a signed or approved  
17 copies. There was no application of that kind for an extension  
18 of time. The Affidavit was provided on the 12th of November;  
19 and, in that e-mail, the IRU again pointed towards the demand of  
20 preparing for the Budget, but added that: "We hope that the  
21 Commissioner will find the Affidavit of assistance and  
22 respectfully request an extension of time until today for the  
23 provision of this evidence".

24           The Affidavit itself is 17 pages long. It has four  
25 exhibits running to 84 pages. There has been no application for



1 any part of it to be redacted, and so the issue that you have to  
2 determine this morning, Commissioner, is to decide, firstly,  
3 whether to allow what appears to be a retrospective application  
4 for extension of time to submit the Affidavit to you for  
5 consideration, and then whether to, in fact, admit it with its  
6 exhibits as part of the record of the Inquiry.

7 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

8 Mr Risso-Gill, plenty of new stuff in this Affidavit as  
9 well, but Mr Frett is available next week and is due to give  
10 evidence, and he can be questioned about this Affidavit then.

11 MR RISSO-GILL: Yes.

12 In terms of new stuff, I hope--at least Sir Geoffrey  
13 did presage the initiative, which is the first section, and  
14 Public Service--well, budgeting as well, so I hope that the  
15 topics of these don't come as too much of a surprise.

16 COMMISSIONER HICKINBOTTOM: No. The topics don't come  
17 particularly as a surprise; just all of the new evidence that  
18 goes to those topics.

19 But despite the lateness of it--and again there doesn't  
20 seem any sensible reason why this evidence is so late--I propose  
21 to allow the Affidavit in. I assume that there are no  
22 redactions, so I will simply say that this is open for public  
23 consumption both at the Hearing and in the Report, and Mr Frett  
24 can come next week and answer any questions in relation to it.

25 Is that right, Mr Risso-Gill?

1 MR RISSO-GILL: We would be very grateful, sir.

2 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

3 Next--I know there has been developments in the last  
4 few hours on this--the Public Interest Immunity application on  
5 the National Security Council material.

6 Mr Rawat.

7 MR RAWAT: Yes, Commissioner.

8 If I can just take this shortly, if I may. You will  
9 recall that there have been in the past two purported  
10 applications based on PII in relation to material that emanated  
11 from the National Security Council. On the 22nd of October, you  
12 gave further directions in relation to those applications, and  
13 in effect any application for PII in relation to material  
14 contained in the EZ Shipping bundle--and you recall we had to do  
15 those hearings at least in part in private--all contained in  
16 annexes to the response to the Elected Ministers to the Position  
17 Statements of the Governor were to be made by the 5th of  
18 November 2021. The application also came to encompass the  
19 Transcripts of days 50 and 52.

20 Again, the Attorney has needed an extension of time to  
21 deal with this matter. As I understand it, it is not a matter  
22 on which the IRU or Withers are instructed, and so neither  
23 Mr Risso-Gill or Ms Knock would be in a position to address you  
24 on this matter.

25 Where the developments that there have been is that the

1 application has been submitted, it was followed yesterday  
2 evening with a bundle or bundles of the documents which are the  
3 subject matter of the application, and also confirmation that  
4 there are no redactions sought in relation to the Transcript.  
5 In those circumstances, I think what I would invite you,  
6 Commissioner, to direct now is that--or observe, at least, that  
7 the next steps should be that you and your team will need to  
8 consider the application but that you should make a direction  
9 that the Attorney should ensure that she is available on the  
10 24th of November in case there is a need to canvass this matter  
11 at the Hearing.

12 COMMISSIONER HICKINBOTTOM: Yes, thank you.

13 Now, Mr Risso-Gill, this is something you can't help us  
14 on because you're not instructed on behalf of the NSC nor can  
15 you be.

16 I think three things--

17 MR RISSO-GILL: May I just say, I could help on the  
18 law, but it doesn't sound like that's necessary.

19 COMMISSIONER HICKINBOTTOM: Well, no. And seeing the  
20 various applications that have come in, it may be that you could  
21 help the AG on the law and how these applications should be  
22 made, but just leave that to one side for now and look at this  
23 particular application and where we are on it.

24 In terms of the Transcript for days 50 and 52, it's  
25 taken a month for the Attorney to get back to us, only to say

1 that, in fact, they can be made public and no redactions are  
2 being sought. That is something which I would have thought  
3 could have been done in a matter of minutes, if not hours, when  
4 the Transcripts came through a month ago. But in any event,  
5 those Transcripts can be now made available to the public in  
6 full, and we will put them up on to the website.

7 In respect of the bundles of documents, as Mr Rawat  
8 hinted, I think, what I propose to do is to making what I can of  
9 the applications that have been made and will come to a view on  
10 redactions which, of course, is ultimately a matter which I have  
11 to do on the material that we have, so nothing else further is  
12 required.

13 Except--and I think Mr Rawat is right in this--that we  
14 will need on the 24th someone who can speak to the redactions in  
15 case there are any issues. We only got this material. It was  
16 at quarter past 11:00 last night. I'm afraid on my machine I  
17 couldn't work out whether that was BVI time or UK time, but in  
18 any event, it was very late. We will need to consider it. If  
19 there are any issues, then we will need to go into closed  
20 session on the 24th and deal with them, but I'm hoping that  
21 there won't and that we can deal with all of the redactions on  
22 the material that we have.

23 But I will direct that the Attorney General appears  
24 next week on the 24th by way of someone who can represent her in  
25 respect of the NSC applications. There is nobody here today

1 that can do that.

2 Does that clear up that, Mr Risso-Gill, so far as  
3 you're concerned?

4 MR RISSO-GILL: The only thing I should point out is  
5 the Attorney General is taking instructions directly from the  
6 Governor on this, and plainly I'm not in a position to take  
7 instructions as to whether the lines of communication will be  
8 officially open for instructions to be taken between now and  
9 next Wednesday on the matters you may or may not raise. And I'm  
10 asked to emphasize that if there are issues relating to the  
11 specific redactions--and you do need to write to anybody--that  
12 should be addressed to the Governor by the Attorney General.  
13 But beyond that I don't think I can help any further.

14 COMMISSIONER HICKINBOTTOM: I mean, the issues about  
15 redactions of the NSC material has been going on for literally  
16 months, and it's not an issue--it's not an issue that I'm  
17 prepared to allow to delay preparation and delivery of the  
18 Report.

19 You say that the Attorney General is taking  
20 instructions from the Governor. That's obviously a matter that  
21 you may know having been instructed by the Attorney. But if  
22 that is right, I'm due to deliver my Report to the Governor; and  
23 so, if there are any redaction issues in relation to wider  
24 publication, they will have to be dealt with at that late stage.  
25 But so far as I'm concerned, I'm afraid that we now need to

1 press on with getting this Report written and delivered.

2           So far as the immediate issues are concerned, we'll do  
3 what we can in relation to the documents that we have. I would  
4 be very surprised if we needed to or wanted to refer to anything  
5 that could possibly be covered by PII in the Report, but if  
6 there is, that then we'll try and raise that before next week's  
7 hearing. Is that okay?

8           MR RISSO-GILL: I'm very grateful again, sir.

9           COMMISSIONER HICKINBOTTOM: No, thank you very much.

10           MR RAWAT: Commissioner, can I just make one point on  
11 that? I think Mr Risso-Gill says that this is the Attorney  
12 taking instructions from the Governor. I think, to be more  
13 accurate, she's taking instructions from the National Security  
14 Council which includes the Governor, the Premier, and the Deputy  
15 Premier. The difference--and this is a difference that was only  
16 highlighted when the Governor gave evidence, and that is that  
17 the NSC does not instruct the IRU, which is why, helpful as  
18 Mr Risso-Gill's submissions always are, and they may well be on  
19 the law in this area, there is a line beyond which he cannot  
20 cross, and he is as aware of that as I am.

21           But as you say, hopefully--and it may involve  
22 discussions between the COI and the Attorney General's  
23 Chambers--this is a matter that need not trouble you on the 24th  
24 of November.

25           COMMISSIONER HICKINBOTTOM: No, hopefully will that

1 will be right, and I'm fairly optimistic that that will be the  
2 case, Mr Rawat.

3 Good. The next issue, I think, is the scope of  
4 questioning for the Governor next week, Mr Rawat?

5 MR RAWAT: Yes, Commissioner.

6 You had directed on the 22nd of October that the  
7 Attorney set out those matters on which she would wish to  
8 question Governor Rankin, you having agreed in principle to his  
9 returning to be questioned.

10 Subject to receipt of areas that the Attorney wishes to  
11 question the current Governor, the COI wrote to the Attorney and  
12 asked for further clarification of those matters, and a response  
13 was sought and received by the 8th of November.

14 The Commission has shared that information with the  
15 Governor so that he is aware of it, and it may be that Mr. Hall  
16 Taylor may wish to address you on this, but the question on  
17 the--or the issue that arises for your consideration today is  
18 the extent to which questioning of the Governor will be  
19 permitted on the 24th of November.

20 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Rawat.

21 Mr. Hall Taylor, you may well want to speak to this,  
22 but at the moment what we've got is this: We've got five pretty  
23 wide areas that have been identified by Sir Geoffrey Cox for the  
24 Attorney in respect of which he wishes to ask questions of the  
25 Governor.

1           Secondly, we have a time limit of an hour for these  
2 questions, and given the business of the day, that is something  
3 I have made clear to him that it will be important for him to  
4 comply with. It seems to me that, in the absence of any greater  
5 particularization of the areas, there is a risk that the  
6 Governor will not be able to respond to questions because he  
7 will not have had time to prepare for them, including reading  
8 the particular documents which relate to the particular  
9 questions. Of course, we don't know what the questions might  
10 be. But at the moment, it seems to me that the main constraint  
11 on questioning is one of time as opposed to topic.

12           Mr Hall Taylor, any submissions to make on this?

13           MR HALL TAYLOR: Sir, only to agree with you that at  
14 the moment the scope of questioning seems to be particularly  
15 wide. Each topic themselves could take up quite a considerable  
16 period of time, and the Governor obviously is seeking to prepare  
17 to assist the Commissioner, as far as he's able to do so.

18           We would naturally encourage some narrowing down of  
19 both the issues and perhaps the topics themselves, but perhaps  
20 even specifying the actual areas within those topics that might  
21 be of interest to Sir Geoffrey and my documents that he intends  
22 to refer to in advance of the 24th of November so the Governor  
23 can properly prepare and assist the Commissioner the best he can  
24 on the day.

25           COMMISSIONER HICKINBOTTOM: Thank you, Mr Hall Taylor.



1 Mr Risso-Gill?

2 MR RISSO-GILL: Yes, sir.

3 I hear what everyone has said, and I have not yet had  
4 an opportunity plainly to canvass that nor will Sir Geoffrey  
5 have had a chance to hear it. However, I now have, and the only  
6 thing I would say immediately is that there is some further  
7 clarification in the document produced on the 8th of November.  
8 Particularly, I referred to Question 5 with a little more  
9 specificity which was given to the places to lead in the  
10 Governor's own evidence in response which have given rise to the  
11 headings that we point to there.

12 But I hear what was said about specificity, and I can  
13 take that back as well.

14 COMMISSIONER HICKINBOTTOM: There is not much more I  
15 can do, I don't think, Mr Risso-Gill, other than make two  
16 points, which I will make:

17 Firstly, there is the time point. I am not going to  
18 allow this questioning to go beyond the hour which I think Sir  
19 Geoffrey asked for, and certainly it's the time that I'm  
20 allowing him, so he has to be pointed with his questions.

21 The second thing is, it seems to me it would assist if  
22 Sir Geoffrey and you considered carefully if you could give any  
23 further direction in relation to the questions that you might  
24 want to ask the Governor and documents you may want to refer him  
25 to simply so the evidence that he can give next week can be as

1 focused as possible and can be as helpful to me as possible.

2 And can I ask you to write both to the COI and to  
3 Mr Hall Taylor by Friday at noon with any further focusing on  
4 topics and documents that you can--that you are able to give us?  
5 That, I think, would be helpful.

6 MR RISSO-GILL: I should immediately, I think, flag  
7 that I'm not sure that Friday will be possible. May I ask that  
8 we do that by Monday?

9 COMMISSIONER HICKINBOTTOM: Well, Monday is better than  
10 later.

11 MR RISSO-GILL: As soon as possible, failing if it can  
12 be achieved earlier, but it may be difficult this way.

13 COMMISSIONER HICKINBOTTOM: Firstly, Mr Risso--and I  
14 don't say this pejoratively, but directions to do things as soon  
15 as possible in the past in this COI have not been helpful and  
16 have not been complied with, so can we say by Monday by  
17 10:00 a.m.?

18 MR RISSO-GILL: Thank you, sir.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 And then that would help my preparation, but it will  
21 also, I hope, help the Governor to a certain extent.

22 Good.

23 MR RAWAT: Commissioner, I wonder if Mr Risso-Gill can  
24 give an indication now whether the Governor may be questioned on  
25 the contents of Mr Frett's Affidavit because, if that is there,

1 then that's at least the indication the Governor of something  
2 that has emerged since the 8th of November on which he may be  
3 questioned.

4 MR RISSO-GILL: Yes. I'm grateful to my learned  
5 friend. That, of course, now that that has been allowed in, I'm  
6 helpfully reminded by my learned friend that effectively that  
7 does constitute some further specificity which we didn't have  
8 before now that you have allowed the application to put in  
9 Mr Frett's Affidavit. Yes, the answer is there will be  
10 questioning on the basis of that Affidavit on the basis of the  
11 evidence within it, so I hope that also provides a good deal  
12 more, in fact, specificity as to the areas of questions.

13 COMMISSIONER HICKINBOTTOM: Good. Thank you, Mr Rawat.  
14 Thank you, Mr Risso-Gill.

15 Anything else on this topic, Mr Rawat?

16 MR RAWAT: No. Thank you, Commissioner.

17 COMMISSIONER HICKINBOTTOM: The next we move on to  
18 Closing Submissions, and first Silk Legal's Closing Submissions.

19 Mr Rawat, do you want to briefly outline where we are  
20 in respect of those?

21 MR RAWAT: Yes, Commissioner.

22 On the 22nd of October, the Directions Hearing we held  
23 on that day, you directed that Silk Legal should, by the 29th of  
24 October, lodge a list of those matters upon which they intended  
25 to or they would like to make Closing Submissions.

1           You also directed that they should, by the 26th of  
2 October, file any written submissions concerning the Sea Cows  
3 Bay Project which is a project that involved as Minister as--The  
4 Honourable Julian Fraser, Silk Legal did not comply with either  
5 direction.

6           In the absence of any information, the COI press notice  
7 which notified the public of the date of the Hearing noted that  
8 Silk Legal hadn't complied with the directions concerning  
9 Closing Submissions nor applied for an extension, and so that  
10 they would not be making oral submissions. What almost  
11 immediately followed is what purported to be Closing  
12 Submissions, and these, while apologizing for "missing the  
13 deadline for filing final submissions" give no explanation as to  
14 why it was missed, nor did they make an application for an  
15 extension of time to comply with the Order.

16           And in those circumstances, the question that arises on  
17 which you may wish to hear from Mr Rowe is whether, indeed, he  
18 wants the submissions to be put before you.

19           COMMISSIONER HICKINBOTTOM: Okay. Thank you, Mr Rawat.

20           Mr Rowe, I think I hope we can deal well this shortly.  
21 The submissions were late. There is no application to rely on  
22 them. What I propose to do is to extend time. I will take them  
23 into account. You are not making an application to make oral  
24 Closing Submissions, and those are the directions I propose to  
25 make, Mr Rowe. I don't see at this stage of the COI that there

1 is any benefit in exploring why this deadline, like so many  
2 other deadlines, was missed.

3 MR ROWE: Thank you. Good morning, and thank you very  
4 much, Commissioner. We agree you with entirely.

5 COMMISSIONER HICKINBOTTOM: Good. Thank you very much.

6 MR ROWE: We have nothing we wish to add to this.

7 COMMISSIONER HICKINBOTTOM: No. Thank you.

8 MR ROWE: It's treated and received, Commissioner; is  
9 that correct?

10 COMMISSIONER HICKINBOTTOM: Yes. I will take them into  
11 account.

12 MR ROWE: Thank you.

13 COMMISSIONER HICKINBOTTOM: And that's that.

14 MR ROWE: Thank you.

15 COMMISSIONER HICKINBOTTOM: The Attorney General's  
16 Closing Submissions, Mr Rawat, that's more substantial, I think.

17 MR RAWAT: Yes.

18 The Attorney had the same direction to lodge a list of  
19 those matters on which she wished to make Closing Submissions,  
20 which he didn't do--and that was on the 29th of October--and at  
21 the same time as doing so, there was an application for an  
22 extension to the 29th of November to provide Closing  
23 Submissions.

24 You will recall, Commissioner, that the Order asked for  
25 any Closing Submissions to be submitted by no later than Friday

1 the 12th of November, if allowed, and that wasn't--that was with  
2 the agreement or without any issue being raised by Sir Geoffrey.

3 So, we had an application on the 29th of October to ask  
4 for an extension of time until the 29th of November. That was  
5 refused in a letter from the COI dated the 5th of November. It  
6 was renewed on the 11th of November, again the extension being  
7 sought being to the 29th of November, and that was reviewed in  
8 the detailed letter from the COI on the 12th of November.

9 MS KNOCK: Mr Rawat, my apologies entirely for  
10 interrupting, but we've lost Mr Risso-Gill.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 No. Thank you, Ms Knock. We do seem to have lost him.

13 MS KNOCK: I think we lost him before you started  
14 speaking on this topic, Mr Rawat.

15 COMMISSIONER HICKINBOTTOM: First, let's try and get  
16 him back, and then Mr Rawat can rewind in terms of the  
17 introduction.

18 MS KNOCK: We will do what we can. Apologies.

19 (Pause.)

20 MR RISSO-GILL: Sir, I do apologise. I'm very sorry  
21 for the delay, sir. My computer just died for some reason--

22 (Overlapping speakers.)

23 COMMISSIONER HICKINBOTTOM: No, thank you,  
24 Mr Risso-Gill.

25 Did you--did the computer die--and these things happen,

1 I'm afraid, and I thank Ms Knock for noting it and letting me  
2 know so that we can get you back, and we got you back. Did you  
3 disappear just before Mr Rawat was about to begin?

4 MR RISSO-GILL: If we had reached item 6 of the Agenda,  
5 yes, I'm afraid so.

6 COMMISSIONER HICKINBOTTOM: Yes. Good. No, thank you  
7 very much.

8 Mr Rawat, can you just rehearse that?

9 MR RAWAT: Yes.

10 Commissioner, in compliance with the order you made on  
11 the 22nd of October, the Attorney did lodge a list of those  
12 matters on which she wished to make Closing Submissions, and she  
13 did so on the 29th of October. At the same time, however, she  
14 made an application to extend the time by which Closing  
15 Submissions should be submitted from the 12th of November to the  
16 29th of November. That application was refused in the letter  
17 from the COI dated the 5th of November.

18 On the 11th of November, the Attorney, through the IRU,  
19 again sought an extension until the 29th of November, and the  
20 basis of that application was addressed in detail in a letter  
21 from the COI dated the 12th of November in which it was made  
22 clear that you did not see force in the basis of the application  
23 but were prepared to extend time for submission of Closing--any  
24 Closing Submissions to the 15th of November.

25 On the 15th of November, the COI received an e-mail

1 from the IRU explaining that the Attorney would not be in a  
2 position to provide written submissions today, maintaining her  
3 request for an extension of time, and then concluding that in  
4 the circumstances we will respond to your letter as soon as we  
5 are able. So, that's the position we reached.

6 A letter was sent from the COI yesterday which  
7 explained that the application for an extension of time had been  
8 refused, and that at present there was no application before you  
9 for further time, and so the position we reached is that the  
10 Attorney has not complied with the direction to submit her  
11 Closing Submissions by the 15th of November.

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

13 Mr Risso-Gill, as far as I'm concerned, this is not  
14 simply a matter of the Attorney in the IRU ignoring directions  
15 which I'm afraid has happened on a very regular basis and has  
16 been disruptive, but this is slightly more pointed here. The  
17 directions that I gave on the 22nd of October made clear that,  
18 on the day that was going to be identified for the  
19 cross-examination of the Governor, I would hear final oral  
20 submissions, and they would be based upon written submissions  
21 which needed to be lodged before that Hearing and, indeed, in  
22 good time before the Hearing, so that the oral submissions could  
23 be very focused indeed--in fact, hopefully, they will be really  
24 restricted to Sir Geoffrey, in your case, responding to queries  
25 that I had about them, and that was clear on the 22nd of



1 October, and that is the plan that we have been working to.

2 In fact, the cross-examination of the Governor is  
3 somewhat late for various reasons, somewhat later than I hoped  
4 it would be, but nonetheless we still haven't gotten submissions  
5 from those the Attorney General represents. We still haven't  
6 got an extant application. We still have no date when we might  
7 expect them, and certainly no date before the 24th of November,  
8 which is vital if there are going to be any oral submissions,  
9 closing submissions at all.

10 With that background, have you any submissions to make?

11 MR RISSO-GILL: Sir, I'm not applying today, and we're  
12 not applying to make oral submissions.

13 In respect of the written submissions, what I can say  
14 is that I anticipate being in a position that we will be in a  
15 position to make an application to put them before you by  
16 4:00 p.m. on Monday, but it won't be before then.

17 And I can expand on a little why if that today would be  
18 helpful.

19 COMMISSIONER HICKINBOTTOM: Mr Risso-Gill, I'm sorry to  
20 interrupt, and it's quite difficult to interrupt remotely, but  
21 could I just interrupt to make sure I understood what you said  
22 so far.

23 Are you saying that it is proposed to lodge written  
24 submissions by the close of play on Monday?

25 MR RISSO-GILL: That is what I anticipate, the

1 application will be brought in due course. That application,  
2 sir, that you accept on Monday rather than--on next Monday  
3 rather than the Monday past. But that's not an application that  
4 has been made. I accept that. And there seems very little  
5 point in making such an application until we have the submission  
6 to which that application would go, so that is why I phrase what  
7 I have said in the way I have.

8 COMMISSIONER HICKINBOTTOM: Okay. It's certainly very  
9 unfortunate. As I say, the original proposal for Closing  
10 Submissions was based on the premise that I would have an  
11 opportunity to raise queries about the Closing Submissions if,  
12 as I expect I may well have, if I had any queries to raise, and  
13 it will be very unfortunate if I'm robbed of that opportunity.

14 But as you say, Mr Risso-Gill, currently there is no  
15 application for me to consider. When the application comes in,  
16 I will consider it. Making any directions today would be  
17 pointless.

18 MR RISSO-GILL: In those circumstances, sir, can I take  
19 it that it wouldn't be a useful expenditure of time now for me  
20 to help with why we are in the position we're in or give any--

21 (Overlapping speakers.)

22 COMMISSIONER HICKINBOTTOM: No, Mr Risso-Gill. You  
23 have written at length to the IRU, written at length the reasons  
24 for the delay. I'm afraid I don't find any of the reasons  
25 compelling, and I don't think it will be helpful to hear any

1 further submissions today.

2           What I'm anxious to do is see any submissions that the  
3 Elected Ministers have, and as you say at the moment, there is  
4 none prepared. When they are prepared, you will have to make an  
5 application, and that can only be considered on its merits. If  
6 the application is to lodge them after the Hearing, then I'm  
7 afraid that's very likely, indeed, to be refused. But you say  
8 the application is likely to be, the submissions will be come in  
9 by the close of play on Monday.

10           MR RISSO-GILL: At least I can say, sir, a very great  
11 deal of work had already gone into them. There is a very  
12 substantial draft already being worked on. The work has been  
13 done on all the three elections, particularly the first two of  
14 those questions, directed to the topics about which you heard  
15 during the course of the Inquiry. They didn't persist. It's  
16 obvious to the people sitting on their hands.

17           The work going through the material, extensive as it  
18 is, has taken place, and that is why I'm able to at least  
19 indicate that we hope to be in a position to reply for you to  
20 receive submissions on Monday.

21           COMMISSIONER HICKINBOTTOM: Mr Risso, can you give me  
22 this further comfort, that the direction is for--the submissions  
23 will be limited to 20 pages and not include any evidence? Can  
24 you give me an assurance in respect of that, too?

25           MR RISSO-GILL: I can--I think I can assure you, if

1 there is any evidence at all, it will be very limited. And in  
2 terms of the length, we have borne very carefully in mind the  
3 direction of 20 pages. I can't promise we will not go over  
4 that, but we will try very hard to keep it to 20 pages as  
5 possible.

6 COMMISSIONER HICKINBOTTOM: Carry on. I'm not sure  
7 that we can say any more, Mr Risso-Gill. When the application  
8 comes in, I will consider it.

9 MR RISSO-GILL: Thank you, sir.

10 COMMISSIONER HICKINBOTTOM: Anything else on that,  
11 Mr Rawat?

12 MR RAWAT: No. No, Commissioner. Thank you.

13 COMMISSIONER HICKINBOTTOM: The redaction process, I  
14 think, is next to be considered, Mr Rawat.

15 MR RAWAT: Yes.

16 Commissioner, I mean, again, redaction is a matter that  
17 has been something that has not gone as smoothly as the  
18 Commission expected it to be. There has been a difficulty  
19 persuading participants to comply with the Protocol, comply with  
20 requests to produce documents in certain formats. There is no  
21 real benefit in going into the detail of that history, but you  
22 made clear on the 22nd of October that you would take steps to  
23 ensure that those documents that--to which you wanted to refer  
24 to in your Report would--provided the documents be given one  
25 final opportunity to respond as to whether they were seeking

1 redactions.

2           The process has been sent to the Attorney and outlined  
3 and explained the process that the Commission intends to take.  
4 There has been correspondence, but we would say that the process  
5 is clear. It's important that it be adhered to, and in  
6 particular it's important that paragraph 9 of your Order made on  
7 the 22nd of October be adhered to, and that is that responses  
8 are made within five days because what we cannot allow is any  
9 ongoing issues over redaction delaying the preparation of the  
10 Report.

11           COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

12           MR RAWAT: It's just a question of making sure that  
13 everybody here today is clear as to the approach we intend to  
14 take.

15           COMMISSIONER HICKINBOTTOM: Thank you.

16           Mr Risso-Gill, redactions have been an ongoing problem,  
17 and the Attorney General has reserved her position, reserved the  
18 position of the Elected Ministers in respect of a number of  
19 areas, including, if not wholly, in respect of most of the  
20 documents that have been disclosed and even referred to in  
21 hearings; whether they can be referred to in the report for  
22 general publication without any further redactions. So, she  
23 reserved her right to come back to me in relation to redactions  
24 before documents were referred to in the Report and published  
25 with the Report.

1           And although that was not in compliance with the  
2 Protocol, it was something that I was prepared to live with, but  
3 I made it clear that it would be mean later that there would be  
4 a considerable amount of work for the IRU to do, and it would be  
5 under considerable time pressure. That is not my fault. It's  
6 because the Protocols were not complied with, and that moment,  
7 I'm afraid, has been reached now.

8           And the process, as you know, Mr Risso-Gill, is that we  
9 will notify the Attorney of documents that I propose to refer to  
10 and rely on in the Report and give her a final opportunity to  
11 make submissions--make an application in relation to any  
12 redactions from those documents that she thinks should be made  
13 before the documents are published as effectively an addendum to  
14 the Report.

15           I have given five days for that. In some ways, as far  
16 as the work I'm doing in drafting the Report, that is extremely  
17 generous, but after those five days, I'm afraid, the  
18 report-producing process will move on, and we will simply not be  
19 able to take into account any submissions or application the  
20 Attorney General wishes to make late. I will develop a plan for  
21 dealing with redactions in these documents for the purposes of  
22 the Report as best I can on what I have.

23           So, any observations on that, Mr Risso-Gill?

24           MR RISSO-GILL: None from me, sir, but I will, if I  
25 may, hand over to my learned friend Ms Knock who might have--I'm

1 not certain--might have some observation because it's very much  
2 an area on which she had spent a good deal of time.

3 COMMISSIONER HICKINBOTTOM: Okay. Thank you very much.

4 MS KNOCK: Thank you, Mr Risso-Gill. I think we would  
5 like to say thank you very much for setting out your Protocol  
6 for redactions. That's very helpful.

7 The only thing we would like to ask is, to avoid  
8 slippage and to comply with your timetable, given that we have  
9 already applied redactions to documents that--or proposed  
10 redactions to documents that appear in hearing bundles, we need  
11 to know when you are sending these documents to us whether or  
12 not those documents have appeared in a Hearing Bundle, and if  
13 so, whether or not redactions were applied. That will enable us  
14 to comply with your timetable.

15 COMMISSIONER HICKINBOTTOM: Mr Rawat?

16 MR RAWAT: It's not a question I can answer  
17 straightaway, Commissioner. I will need to speak to these  
18 members of the team that have more involvement in this process  
19 than I do.

20 What we are trying to do in order to avoid slippage is  
21 not, for example, send to the Attorney an entire Hearing Bundle  
22 but rather to focus on those Reports--of those documents that  
23 are of direct interest to the Report, and so when--we may be  
24 delivering them in a different way, but I think what I can say  
25 is I will ask to what extent we can comply or assist Ms Knock

1 with her request and do what we can to kind of try and  
2 facilitate that.

3 COMMISSIONER HICKINBOTTOM: Yes. Thank you, Mr Rawat.

4 Ms Knock, the number of documents compared to the  
5 Hearing Bundles will be very few. Some of the documents might  
6 be quite big, but the documents will be very few.

7 To the extent that we can assist in whether they've  
8 appeared in Hearing Bundles, we will, but the Attorney, of  
9 course, has reserved her right in relation to some of those  
10 documents in respect of which she suggested some redactions.  
11 She reserved her right as to coming back to us with redactions  
12 for the purposes of the Report, so there is a further exercise  
13 to be done, but we will do whatever we can to assist when we  
14 send the list of them--when we send lists of documents to  
15 identify those that have been referred to in various hearings.

16 MS KNOCK: Thank you very much.

17 COMMISSIONER HICKINBOTTOM: Good. Anything else on  
18 that, Mr Rawat?

19 MR RAWAT: No. Thank you, Commissioner.

20 COMMISSIONER HICKINBOTTOM: And anything else that we  
21 will need to consider?

22 Does the Hearing next week, the sort of timetable for  
23 the Hearing next week, which we can consider to some extent, but  
24 anything else, Mr Rawat, other than that?

25 MR RAWAT: Not from me. Thank you, Commissioner.



1           COMMISSIONER HICKINBOTTOM: Okay. Can I just raise one  
2 question before we come on to next week. Mr Risso-Gill, it's  
3 really for you but also for Mr Rowe to an extent. We're going  
4 to--we may have some written submissions on the areas which have  
5 been identified, Mr Risso-Gill, but are there any other legal  
6 applications that you propose to make in relation to the COI?  
7 I'm not saying there are any, but any need to be made and heard  
8 next Wednesday?

9           MR RISSO-GILL: None too I'm aware of now,  
10 Mr Commissioner.

11           COMMISSIONER HICKINBOTTOM: Is that the same response  
12 from you, Mr Rowe?

13           MR ROWE: It is, Commissioner.

14           COMMISSIONER HICKINBOTTOM: All right. Thank you very  
15 much. Good. Thank you.

16           Now, Mr Rawat, next week we start at 9:00 with the  
17 Governor, and we have the questions from--on behalf of the  
18 Attorney General. We--I have an outstanding application from  
19 Mr Hall Taylor to ask questions of the Governor really dependent  
20 upon the questions that Sir Geoffrey asks him. You may have  
21 some questions that arise out of Sir Geoffrey's questions, too.

22           We have Mr Smith-Barkley, who is due to give evidence,  
23 and I think he's--I think he's giving that evidence from the  
24 IAC.

25           MR RAWAT: That's right.

1           COMMISSIONER HICKINBOTTOM: We have Mr Frett, who is  
2 giving evidence from the IAC, so what's the sort of timetable  
3 that you envisage?

4           MR RAWAT: We are still--we still need to finalise the  
5 details, but the proposal is that we will begin at 9:00 with the  
6 Governor. We will have Mr Smith-Barkley at 11:00 and Mr Frett  
7 at 12:00.

8           COMMISSIONER HICKINBOTTOM: Good.

9           And then possibility of Dr O'Neal-Morton, Mr Risso-Gill  
10 is going to come back to us on her availability, but then any  
11 oral submissions that I allow to be made on behalf of the  
12 Elected Ministers following any written submissions, is that the  
13 business of the day?

14          MR RAWAT: Yes.

15          You have received sections on the ambit of Section 13  
16 of the Registration of Interests Act, and it may be that you  
17 might wish to raise with all the advocates that provision, but  
18 that may just be dependent upon further consideration of the  
19 written submissions. But our proposal will be to get all the  
20 evidence done followed then by any legal submissions and then  
21 any matters that arise from the written Closing Submissions.

22          COMMISSIONER HICKINBOTTOM: Yes. Thank you.

23          Just before I come back to the timetable, Mr Hall  
24 Taylor, are you making any submissions on Section 13 of the  
25 Registry of Interests Act?

1 MR HALL TAYLOR: We have been asked to, Commissioner,  
2 and that's under consideration. I think the deadline for us  
3 providing those is by 4:00 p.m. on Friday. Certainly, the  
4 question is under consideration, and if we do have submissions  
5 to make, they will be put in writing by that deadline.

6 COMMISSIONER HICKINBOTTOM: Okay. That's helpful.

7 I will consider the position, then, next week, and any  
8 oral submissions on that will be fairly short. It's a narrow  
9 point, and the written submissions are clear.

10 Okay, Mr Rawat. So that seems to be as far as we can  
11 take it in terms of the timetable for next week. I mean,  
12 hopefully we can get that timetable finalised tomorrow, possibly  
13 Friday, and then that can go on to the website so everybody  
14 knows what the timetable is going to be. But I'm not sure that  
15 we can take that much further today.

16 MR RAWAT: Not today, Commissioner, but we will--at  
17 least those who are present today represent the witnesses who  
18 are listed to be called, so that they can inform them of  
19 the--what will happen on the 24th. But other than that, I don't  
20 think there is anything further we need to deal with today.

21 COMMISSIONER HICKINBOTTOM: No. That's have been  
22 helpful. Mr Rawat.

23 Mr Risso-Gill, anything else from you?

24 MR RISSO-GILL: Only, sir, to clarify you said  
25 10:00 a.m. on Monday. Can I take that this is for any final

1 submissions from the those on whose behalf I'm asked to appear?  
2 Can I take it that's BVI time Monday?

3 COMMISSIONER HICKINBOTTOM: All BVI time,  
4 Mr Risso-Gill.

5 MR RISSO-GILL: Finally, as far as Dr O'Neal-Morton is  
6 concerned, we have made further inquiries as far as we have been  
7 able to, the position remains, insofar as we have been able to,  
8 the position remains, as we are told, that she is not available  
9 on Wednesday the 24th. However, can I simply suggest that we  
10 write to you today to explain, if we can, a little further what  
11 her position is, and if there is some insurmountable difficulty,  
12 say what that actually is.

13 COMMISSIONER HICKINBOTTOM: Thank you very much,  
14 Mr Risso-Gill. That is certainly appreciated. Thank you very  
15 much.

16 Mr Rowe, anything else from you today?

17 MR ROWE: No, Commissioner, just to say thank you for  
18 your indulgence. I appreciate it.

19 COMMISSIONER HICKINBOTTOM: No. Thank you, Mr Rowe.

20 Mr. Hall Taylor, anything else from you?

21 MR HALL TAYLOR: No, Commissioner. Thank you.

22 COMMISSIONER HICKINBOTTOM: Good. Thank you all very  
23 much. I think it's been a useful exercise today. I think it  
24 has cleared the decks considerably for the Hearing next week,  
25 and so hopefully next week we will conclude the evidence. We

1 will conclude any oral final submissions, and that will then be  
2 the final hearing.

3 I don't think there is anything else that I need to  
4 say. What will be apparent from this hearing but also from the  
5 correspondence that has been passing between the COI and, in  
6 particular, the Attorney General and the IRU, is that, as I  
7 indicated on the 22nd of October, subject to next week's  
8 hearing, evidence is now concluded. We've had some--since the  
9 22nd of October a couple of Affidavits which have been referred  
10 to today, which contain new evidence, but this is now a line so  
11 far as evidence is concerned. I will only request specific  
12 documents, specific evidence, if I think that is necessary for  
13 the purposes of the Report. But subject to that, next  
14 Wednesday's hearing will see the conclusion of the evidence, and  
15 I will then continue to prepare the Final Report with a view to  
16 delivering it in the time that has been assigned, namely the  
17 19th of January. That, given the amount of evidence and the  
18 amount of issues that have been raised, is a challenge, but it  
19 is a challenge which I am determined to meet.

20 Thank you all very much, and that is now the closure of  
21 this Hearing, and the next hearing will be next Wednesday at  
22 9:00 a.m. Thank you all very much.

23 (End of hearing.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN