

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 55

(WEDNESDAY 24 NOVEMBER 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom
(attending remotely)

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.

Solicitor General Mrs Jo-Ann Williams-Roberts appeared for the Attorney General.

Mr Richard Rowe and Mr Daniel Fligelstone Davies 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 HE John Rankin CMG.

Counsel to the Commission Mr Bilal Rawat also appeared.

HE John Rankin CMG gave evidence.

Mr Ronald Smith-Berkeley gave evidence.

Mr Jeremiah Frett gave evidence.

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Those present:

Session 1

Sir Geoffrey Cox QC, Withers LLP (attending remotely)

Mr Edward Risso-Gill, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP (attending remotely)

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

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Daniel Fligelstone Davies, Silk Legal (attending remotely)

Mr Alex Hall Taylor QC, Carey Olsen

Mr Bilal Rawat (attending remotely)

HE John Rankin CMG

Mr Steven Chandler, Secretary to the Commission (attending remotely)

Ms Juienna Tasaddiq, Assistant Secretary to the Commission (attending remotely)

Ms Rhea Harrikissoon, Solicitor to the Commission (attending remotely)

Mr Dame Peters, Audio-Visual Technician

Session 2

Mr Edward Risso-Gill, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP

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

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Daniel Fligelstone Davies, Silk Legal (attending remotely)

Mr Bilal Rawat (attending remotely)

Mr Ronald Smith-Berkeley

Mr Steven Chandler, Secretary to the Commission (attending remotely)

Ms Juienna Tasaddiq, Assistant Secretary to the Commission (attending remotely)

Ms Rhea Harrikissoon, Solicitor to the Commission (attending remotely)

Mr Dame Peters, Audio-Visual Technician

Session 3

Mr Edward Risso-Gill, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP

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

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Bilal Rawat (attending remotely)

Mr Jeremiah Frett (attending remotely)

Mr Steven Chandler, Secretary to the Commission (attending remotely)

Ms Juienna Tasaddiq, Assistant Secretary to the Commission (attending remotely)

Ms Rhea Harrikissoon, Solicitor to the Commission (attending remotely)

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: We've started. Good.

Mr Rawat, I think we're ready to begin.

MR RAWAT: Thank you, Commissioner.

Can I just, before we start, just introduce the legal representation that we have for this session. On behalf of the Attorney General, I think we have the Solicitor General, Jo-Ann William-Roberts; on behalf of the Attorney and the Elected Ministers we have Sir Geoffrey Cox QC, Edward Risso-Gill and Lauren Peaty; and then on behalf of a number of Members of the House of Assembly, we have Mr Richard Rowe and Mr Daniel Fligelstone Davies. And also representing the Governor today is Mr Alex Hall Taylor QC.

The Governor, I can see, is present at the IAC and ready to continue his evidence, and I suggest, Commissioner, that we start with that first so that we can get through that.

BY MR RAWAT:

Q. Governor, you took the oath on the last occasion, which was the 19th of October, when you gave evidence. You are still bound by that oath.

MR RAWAT: But other than that, Commissioner, I have nothing to add at the moment.

COMMISSIONER HICKINBOTTOM: Good. Thank you very much, Mr Rawat.

1 Yes, Governor, thank you again for your time in
2 joining us this morning, and I think we're ready to continue
3 with your evidence.

4 Sir Geoffrey, over to you.

5 SIR GEOFFREY: Thank you. Thank you, Commissioner,
6 and I have an awful echo on this. Is that happening with you?

7 COMMISSIONER HICKINBOTTOM: We can hear your echo, Sir
8 Geoffrey, yes.

9 SIR GEOFFREY: Right.

10 Now, I wonder if I might just try and solve that
11 technical problem because otherwise we're going to have a
12 difficulty. I'm just going to--it may be--would you forgive me
13 for a moment?

14 COMMISSIONER HICKINBOTTOM: Yes.

15 (Pause.)

16 SIR GEOFFREY: What I'm concerned about is that
17 Mr Risso-Gill is sitting next to me, and I wonder whether it's
18 the close proximity of his machines that is causing this
19 feedback.

20 COMMISSIONER HICKINBOTTOM: It may well be, yes.

21 (Pause.)

22 SIR GEOFFREY: I wonder if that has cured it. I
23 wonder--can you hear the echo, still? Can the Governor hear the
24 echo?

25 COMMISSIONER HICKINBOTTOM: It's certainly a lot

1 better. It may have cured altogether, Sir Geoffrey, so I think
2 we press on. Thank you very much.

3 SIR GEOFFREY: We will press on. I think that
4 probably has.

5 BY SIR GEOFFREY:

6 Q. Governor, may I thank you very much for sparing the
7 time to come back to answer what I hope will be questions that
8 are canter and relatively short, and there are some areas of
9 policy which I want to ask you about, or policy disagreement
10 potentially.

11 Let me begin, if I may, by quoting--I needn't take you
12 to it, but quoting the Foreign Affairs Select Committee, who
13 said this in their recent 15th Report: "The FCO must ensure
14 that the officials it appoints in the Overseas Territories have
15 the skills necessary both to build constructive relationships
16 with the Overseas Territories' governments and to ensure that
17 the Territories' governance meets the highest standards".
18 That's at page 782 of the Governance Bundle, for the
19 Commissioner's note.

20 I needn't take you to it, Governor, because it's, I
21 suspect, a relatively uncontroversial statement, to build
22 constructive relationships with the overseas Territories'
23 Governments and ensure governance meets the highest standards.

24 My question to you is not really based on what they
25 said, but what are the skills necessary for a Governor of an

1 Overseas Territory and particularly the Virgin Islands?

2 A. The skills are to have a means of performing
3 responsibilities of the Governor under the Constitution. Being
4 Governor of an Overseas Territory is a fairly unique job, and
5 people who have been appointed to those positions in the various
6 Overseas Territories have come from a variety of backgrounds.

7 So, my own background is in the Foreign Commonwealth
8 and Development Office, but I have colleagues who have a
9 background in the former Department for International
10 Development, who have a background in the Ministry of Defense,
11 who have a background in domestic holding departments.

12 What's unique about the Governor's position is that
13 obviously it involves working overseas but also involves
14 engagement on what would normally be considered domestic issues
15 as well as Foreign Affairs issues (drop in audio) I think is
16 useful for the job. There is no one particular model that fits
17 all.

18 Q. Build constructive relationships with the Overseas
19 Territories' government would take a degree of what might be
20 described, would you not agree with me, of diplomatic and
21 personal skill, the ability to manage human relationships, often
22 challenging ones?

23 A. That is correct.

24 It's also, of course, to ensure the highest standards
25 of government which is also the responsibility of the Governor.

1 It involves taking clear positions on occasion, so it's not
2 simply a matter of building constructive relationships with the
3 domestic government but also advising and cautioning, taking
4 positions the Cabinet may be departing from the governance
5 standards.

6 Q. The constructive relationship ought to be a
7 relationship in which frankness and candor is possible, wouldn't
8 it?

9 A. Yes, it would.

10 Q. Without offending?

11 A. That is correct. That is recommended always be the
12 aim of not (drop in audio).

13 Q. Yeah.

14 I mean, in your case, you--and I have looked with
15 admiration at your background. You were, I think, the High
16 Commissioner to Sri Lanka; am I that correct?

17 A. That's correct.

18 Q. Which you fulfilled for, I forget how many years. Was
19 it two years? I can't remember.

20 A. Four years in Sri Lanka.

21 Q. Four years in Sri Lanka as High Commissioner.

22 You had four years as the Governor of Bermuda, I
23 think?

24 A. That's correct.

25 Q. You were acting Ambassador to Nepal, so you've had a

1 long history--is that fair?--in diverse parts of the world as
2 the representative of the British Government and Her Majesty
3 and, indeed, four years as a previous Governor?

4 A. Yes. Four years in--as previous Governor; before that
5 a career in Foreign Affairs. I would suggest that being a
6 Governor is a bit different from being an Ambassador to a
7 foreign country. The functions and responsibilities differ
8 somewhat.

9 Q. Yes.

10 But what it has given you is, I guess, is a
11 considerable amount of experience. What do you think that the
12 experience that you've had has enabled you to bring to your role
13 as Governor?

14 A. I leave those to judge, I think, rather than myself.
15 I hope my experience has been useful in carrying out my
16 functions. Like all other Governors, I was selected after
17 competitive process. One isn't simply handed these job. The
18 jobs are advertised within Whitehall, when applies for the
19 position, is a fairly rigorous process, and the (drop in audio)
20 of the Foreign Commonwealth Development Office. And ultimately
21 the Secretary of State and Prime Minister and Her Majesty will
22 appoint the person who they believe is better suited for the
23 position.

24 Q. And in the course of that process, are the Overseas
25 Territories consulted?

1 A. I--

2 Q. Was the Virgin Islands consulted?

3 A. I believe it may vary somewhat. There was no formal
4 (drop in audio) consultation with the Overseas Territories (drop
5 in audio).

6 Q. My understanding is that there may be--the governments
7 may be written to prior to selection, asking what qualities they
8 would wish, but they're not actually consulted on individuals;
9 is that--is that correct?

10 A. I believe that's correct, Sir Geoffrey, yes.

11 Q. Yes.

12 You obviously--and Mr Rawat asked you this question; I
13 just want to ask one or two follow-ups--you obviously--any
14 Governor has a challenging role because they are not only--and
15 forgive me any put it clumsily--the Foreign Office's man in the
16 Overseas Territory, but they were supposed to be the Overseas
17 Territories' man, so to speak, in Whitehall and UK.

18 So, how do you balance that role? You said in
19 evidence on day 50, here in this Commission, that you did and
20 would represent the views and the interests of the Virgin
21 Islands and its Government to Whitehall. Is that really
22 feasible, or within what limits can you do it?

23 A. I have found it feasible. My job is to (drop in
24 audio) the Overseas Territory to Foreign Commonwealth (drop in
25 audio) and other colleagues in Whitehall. Sometimes that will

1 be done directly by the Government itself. For example, last
2 week, at the (unclear) Council in London when Premier Fahie had
3 meetings with Ministers in the UK; but otherwise, it is open to
4 me and something to be able to explain it, and to support to
5 defend their position where I believe it is a correct position
6 to which Whitehall should pay attention. But sometimes (drop in
7 audio) which is also to say (drop in audio) here that I believe
8 we are taking a position which may not be in the interests of
9 the--interest of the Territory or indeed in accordance with the
10 Constitution.

11 So, there are two sides to the position, but they are
12 all aimed at achieving (drop in audio) which is promoting the
13 good governance of the Territory.

14 Q. Suppose there is a conflict of interest--you may say
15 there never could be, but a conflict of interest--between or
16 strongly perceived to be at least between the interests of the
17 Islands and the interests of the British Government. How do you
18 manage the situation then?

19 A. That is, for the most part, a hypothetical--a
20 hypothetical issue. You try to find a way--a way through, is
21 the answer to that, so the example which I discussed in my
22 evidence on the 19th of October in relation to public beneficial
23 ownership is an example of that position that was made by the UK
24 Parliament. It wasn't a mutually popular one here in the BVI.
25 I understand that, but I have since tried to explain to the BVI

1 and indeed in my previous job why I believed the Parliamentary
2 Committee (drop in audio) it was in the long-term interest of
3 the Territory to move towards (unclear), so you try to find a
4 sensible way through either those differences or positions.

5 Q. But I mean that statement of position by you is really
6 simply saying they're wrong, and that in any event at some point
7 they're going to have to move towards it. But their point is
8 that why should they do that before it becomes a global
9 standard? Why should they do it before Delaware or Vanuatu or
10 other jurisdictions that haven't--including the United
11 States--that haven't adopted this as a standard? That's a
12 legitimate point of view for them, isn't it?

13 A. I understand the position. My view is the reason it
14 should be done is because, first of all, I think transparency is
15 consequently demanded across the world; and secondly because of
16 the EU position, especially the UK position, the EU position is
17 they don't (drop in audio) register, the likelihood it is to be
18 black-listed under the fifth anti-money-laundering directorate,
19 and I do not believe that's (drop in audio) of the BVI, which is
20 in the interest of BVI which is to have a high standard
21 transparent to have some of them in this sector between (drop in
22 audio).

23 Q. Look at other areas, if we can, because I mean there
24 may well be conflicts of interest. Mr Rawat asked you question,
25 for example, about the tuna catch in which the Overseas

1 Territories formally shared in a very sizable quota;
2 understandably, as a consequence of leaving the European Union,
3 a new arrangement had to be reached. The Territories and BVI's
4 case was allocated, I think, 10 tons. It might be said there,
5 there was a conflict because you were having to share a pie. In
6 circumstances like this, how could you be a credible
7 interlocutor with Whitehall when you are employed by it?

8 A. There was no practical conflict in that instance.
9 BVI, in recent years, has (drop in audio)--

10 Q. I'm aware of the substance of it, yes.

11 A. --albacore tuna, so there was no practical conflict in
12 that instance, and I was satisfied that the 10-ton allocation to
13 BVI (drop in audio) in the foreseeable future.

14 Q. Right.

15 I mean, your performance appraisals and the monitoring
16 of your performance are all appraised and controlled in the
17 FCDO, are they not?

18 A. That's correct. I am, in constitutional terms,
19 comparable duty to the Secretary of State, and I am quite
20 managed by the Director of Overseas Territories Directorate in
21 London and my (drop in audio) by the Directorate, but we have a
22 system where we have 160-degree feedback in that appraisal
23 process, and certainly I suggested to my line manager that he get
24 feedback from certain persons within BVI in assessing my
25 performance as well as seeking feedback from other colleagues

1 within the Foreign Commonwealth Development Office.

2 Q. Yes.

3 Let me move on, if I may. Article 73. What role
4 should it and does it play--that is, of the Charter of the
5 United Nations--and the general obligations that it places upon
6 the United Kingdom in your day-to-day functions? For example,
7 one of the duties that Article 73 requires is that the UK should
8 progressively develop the institutions of the Virgin Islands.
9 How do you interpret that in your day-to-day functions and in
10 the exercise of them?

11 A. Article 73 of the UN Charter is a binding obligation
12 on the United Kingdom as a member of the United Nations, but
13 also informs the Preamble to the Constitution, and it is my duty
14 as Governor to seek to ensure you keep within compliance with
15 the obligations under Section 73.

16 And I read Section 73 as a whole. I don't read
17 partially the Section 73 necessarily captures the full picture.
18 The obligation is to promote the well-being of the inhabitants
19 of these Territories, and to this end--and I quote--(a) to
20 ensure with due report for the culture of the peoples concerned,
21 their political, economic, social, and educational advancement,
22 their just treatment and their protection against abuses. And
23 (b), develop self-government to take into account political
24 aspirations of the Territories and to assist them in progressive
25 development of their political institutions, under the

1 particular circumstances of each Territory and peoples and their
2 varying stages of advancement."

3 So, I will always seek to develop the
4 self-governance--self-government here within the Territory, but
5 I also have an obligation to ensure just treatment and
6 protection against abuses, and that sometimes means giving the
7 Government advice or taking actions which the Government may not
8 be in agreement with but because I believe they're in order to
9 ensure just treatment and protection against abuses.

10 And I would view the decision taken by my predecessor
11 to establish this Inquiry as being wholly consistent with the UK
12 obligations under Article 73 to which I've just referred.

13 Q. I didn't actually ask you that question, Governor, but
14 it's good of you to state that resounding support. I mean, my
15 real question is this: Isn't it a function of the Government to
16 try to ensure that capacity for self-government is built up?
17 That the institutions are, as Article 73 requires the UK to
18 ensure, are progressively developed? That's the obligation,
19 isn't it?

20 A. That's certainly part of the obligations of the
21 Governor, and it's one that I will always seek to pursue.

22 Q. If they are--and, of course, the journey, according to
23 Article 73, is towards self-determination, isn't it?

24 A. The people of the BVI really have the right to
25 self-determination or--self-determination. It is for them to

1 exercise them accordingly with their constitutionally--and free
2 will.

3 Q. The duty under 73 is progressively to develop the
4 institutions so that they may assume a full measure of
5 self-determination.

6 A. If they so chose.

7 Q. And when they so chose and in what form they choose
8 it.

9 Now, how do you help them progressively develop their
10 institutions, build up their capacity for self-determination, as
11 Governor?

12 A. By promoting good governance, I would say, is a key to
13 that. I obviously have particular responsibilities under
14 Section 60 of the Constitution (drop in audio) police and
15 institutions in advance of the courts, so I will develop an
16 effective (drop in audio), I want to help to continue to develop
17 an effective legal system and effective courts in which citizens
18 can have confidence.

19 But in terms of wider development of self-governance
20 in areas which are devolved to the--to the Elected Government,
21 my responsibility is to advise and caution and encourage. And,
22 of course, I also have certain responsibilities in relation to
23 the Public Service in terms of the terms and conditions of the
24 Public Service and in terms of Appointments to the Public
25 Service to act general in accordance with the recommendations of

1 the Public Service Commission.

2 So, I have multiple functions in that respect, all of
3 which I think will help to develop good governance.

4 Q. I will come to Public Service, if I may, in due
5 course. Would you agree with this, that what is central to the
6 Governor's role is that he should command the trust of the
7 Elected Government, Ministers, Cabinet, and all parts of all
8 constitutional entities and institutions.

9 A. I would hope to always command confidence, but there
10 will be occasions where I may take decisions which I believe are
11 in the interest of self-governance, which may run contrary to
12 the intentions of the Elected Government. That was certainly
13 the case in Bermuda, where I had generally good relations, I
14 believe, with the Elected Government, but occasionally we locked
15 horns (drop in audio) which were different with the Government,
16 and that has certainly occurred since I have been in the BVI as
17 well.

18 Q. And that's perfectly understandable, but the
19 Constitution that the Virgin Islands has--we will leave aside
20 Overseas Territories for a moment--creates a situation where you
21 have a wide, quite extensive executive authority over Section 60
22 matters. Clearly, you are obliged to consult in certain cases
23 with the Premier.

24 But the difficulty here, isn't it--and I would very
25 much welcome your comment on this--that whereas that portion of

1 executive authority entrusted by the Constitution to the elected
2 institutions is democratically accountable, the decisions that
3 you take, whether on instruction or not on instruction is not
4 subject to any kind of democratic pressure, certainly not in the
5 Virgin Islands, and that can create, can it not, friction?
6 Because if part of the executive authority, part of the
7 Government in effect is not subject to democratic pressure and
8 scrutiny, it's not, therefore, driven or has to be driven by
9 inevitably, to an extent, those pressures.

10 Then there is an awkwardness because while on one side
11 the democratic government finds itself under those pressures, on
12 the other side, the Governor's office, that part of the
13 Constitution for which you are responsible, is not, does not
14 have to move perhaps in the same speed, may not even appreciate
15 the democratic pressure.

16 So, what you get is a situation where if a Governor
17 doesn't move in conjunction with the Elected Government, that
18 doesn't remove the possibility of disagreement; obviously,
19 that's different. But if it moves at a slower pace or it
20 doesn't appreciate the need, there is a central friction that
21 can arise from that, isn't there?

22 A. Let me--I think there is a twofold answer to that
23 question--challenge which you put, Sir Geoffrey. First of all,
24 you are correct, my formal accountability is to the Secretary of
25 State in the United Kingdom. That is the same with all the

1 Governor's laws, all the Overseas Territories. That doesn't
2 say--I mean, I'm not subject to the local accountability. I am
3 bound by the Constitution and constrained by the Constitution.
4 I am subject to British Virgin Islands law, like any other
5 person in this territory. I can be sued. I can be judicially
6 reviewed. I can be questioned in Cabinet as to the positions
7 which I am taking. I can receive questions and queries and
8 challenges from Members of the House of Assembly who may write
9 to me or, indeed, from The Honourable Speaker. And I as said in
10 my evidence on the 19th of October, I'm also accountable to the
11 court of public opinion and by a free and independent media.

12 So, while I am not democratically accountable like a
13 Minister is to the House of Assembly, all of those are ways in
14 which I feel I can be held accountable and indeed am held
15 accountable by people here in BVI.

16 As regards for me, the second part of your question, I
17 do indeed have powers of (unclear) under the Constitution which
18 fall to me as Governor. What most (drop in audio) are actually
19 devolved to the elected (drop in audio) Government, and there
20 where I chair Cabinet, I can advise, I can caution, I can make
21 recommendations if a decision is reported in Cabinet, which is
22 a--which I believe is a poor decision or wrong decision; I can
23 say so, but I have no power of (drop in audio). The Cabinet can
24 override my advice in any matter which is outside my special
25 responsibilities, and those are Cabinet Decisions, although

1 (drop in audio) which I, as Governor, however (drop in audio)
2 decisions may be, I cannot override. They are solely the
3 responsibility of the (drop in audio) BVI Elected Government.
4 So that's a real restraint of what I can do under the
5 Constitution as Governor.

6 Q. But you--obviously you accept that you, apart from the
7 Secretary of State, there is almost no democratic scrutiny.
8 You're not accountable to any legislature, other than the UK
9 legislature, which--under the Ministerial Accountability of the
10 Secretary of State. But if there were no role, if there were no
11 point in democratic scrutiny, we wouldn't have democratic
12 systems, would we? While you obviously put up, and I fully
13 accept that your judicially reviewable in decisions you've
14 taken, the jurisdiction, and no doubt the press will from time
15 to time write. The reality is you are not subject to the
16 day-to-day transparency and scrutiny of proper democratic
17 accountability.

18 I mean, in the United Kingdom, the Foreign
19 Office--Foreign Affairs Select Committee commented on this in
20 its Report, did it not? It proposed a different system of
21 holding the Overseas Territories Directorate and of the
22 decisions taken in the jurisdictions with a continuous scrutiny
23 from a new form of committee because the Foreign Office Affairs
24 Select Committee at last conducted an inquiry into the
25 governance by the UK of the Overseas Territories in 2008, before

1 its 2019 report. What it said was every 10 years is just not
2 enough. There's just very little democratic scrutiny of what
3 you're doing, isn't there?

4 A. I am not a democratically elected politician. I am an
5 appointed official, and my accountability applies in the way
6 which I described. If the view is that the Foreign Affairs
7 Committee in the UK should be examining the Overseas Territories
8 more regularly, then that's certainly a point for consideration
9 and debate.

10 But I, with respect, would not accept a position that
11 I am not accountable in certain ways to the people of the
12 British Virgin Islands.

13 I should also say that should I--I hope I will
14 not--but should I seriously breach my responsibilities under the
15 Constitution or seriously misbehave, it would be perfectly
16 possible for the Premier for the Government to make
17 representations to the Secretary of State, to the Ministry for
18 the Overseas Territories, and the FCO reporting what they
19 considered to be my ill behavior, and if I had misbehaved, if
20 I've breached the Civil Service Code, breach the Diplomatic
21 Service Code, seriously breached the Constitution, I would be
22 held to account by officials and Ministers in the United
23 Kingdom. I'm well-aware of that.

24 Q. There are often areas, as you well know, that aren't
25 quite as extreme as that where Overseas Territories do

1 write--indeed, there were plenty of letters written before you
2 arrived, but they don't tend to receive a particularly full
3 hearing. I mean, that was the complaint of the Overseas
4 Territories in the 15th report to the Foreign Affairs Select
5 Committee that the difficulty is they don't have a very easy
6 route of appeal, and certainly not a democratic one if they feel
7 that they are falling out of sync with a Governor. There's
8 little place for them to go. The Foreign Office back their man
9 unless, of course, there's a flagrant breach of they type that
10 you describe.

11 But look, let me move on, if I may. Impartiality,
12 political impartiality, is obviously critical, isn't it, to a
13 Governor's role?

14 A. In terms of domestic politics, absolutely. It's not
15 for me as Governor to favor one set of Members of the House of
16 Assembly or one political party over another, so yes, I would
17 always be politically impartial in that sense.

18 Q. And what about public expressions of disagreement with
19 the sitting Government over matters of policy? Is it--are you
20 governed by Cabinet--collective Cabinet responsibility or at
21 least Cabinet Confidentiality so as not to do that kind of
22 public expression of disagreement?

23 A. I would need to refer to the precise rules in the
24 Cabinet Handbook on that. I would always seek to respect
25 Cabinet confidentiality, but I'm not bound by Collective

1 Responsibility because I'm not a Member of Cabinet.

2 Q. So, is it appropriate for a Governor, I don't what you
3 would think--certainly you haven't issued any--to issue public
4 statements that may either be expressly or impliedly critical of
5 the sitting Government?

6 A. On occasion, I believe it could be appropriate,
7 something to be done no doubt after careful consideration. On
8 occasion it might be necessary to (drop in audio) particularly
9 of the Elected Government has taken a position which one
10 believes to be fundamentally incorrect or misleading.

11 Q. But then you wouldn't want to do that presumably
12 without full a discussion with the Government and attempts first
13 to resolve it in a different way?

14 A. I think in most circumstances, that's correct, yes.

15 Q. And presumably give warning of the statement you
16 propose to make?

17 A. Not necessarily, it would depend on the--the day as to
18 whether it be appropriate to give prior warning--

19 Q. If you were going to command the respect and trust of
20 those with whom you are--over whom you are presiding as the
21 Chairman of the Cabinet, surely before you resorted to a public
22 expression, a formal statement of disagreement or criticism, you
23 would want to strive might a main to reach a position where you
24 could avoid it first, wouldn't you?

25 A. I would have thought that--this is later. I don't

1 know whether there has been disagreement, and so it would be
2 very likely that, as Governor, I would have set out my position
3 in some detail mentioning in Cabinet my concerns on the issue,
4 having no doubt tried to find a constructive way forward on that
5 issue. It would only be after exhausting (drop in audio)
6 efforts to resolve the issue within Cabinet that one might (drop
7 in audio) to the public on it.

8 Q. Yes. Let me ask you a different area, if I may, but
9 same general thing. What I'm trying to elicit if I may, or from
10 you and your assistance is how a Governor should conduct
11 himself, what he can do to attract the trust of those who are in
12 this different position. They're accountable every day to a
13 legislature, to public opinion, to the electorate when they next
14 stand for their election. Clearly, the Governor has the
15 capacity to harm their electoral prospects with any such public
16 statements of disagreement or by inadvertently not moving fast
17 on various aspects of reform which lie within the Governor's
18 responsibility. How does one maintain the trust of an Elected
19 Government, any Elected Government, unless one conducts one's
20 self with absolute and impeccable faithfulness to the principle
21 that a Governor should not be involving him or herself except as
22 a last resort in the--in matters of political or policy
23 controversy? Isn't that obvious?

24 A. I'm not sure I would accept your "last resort" point,
25 counsel, because to go back to where we were on Article 73, one

1 has the obligation to promote self (drop in audio). One
2 recognizes Elected Government is responsible for domestic
3 policy. It is not for the Governor to determine that policy
4 outside the areas (drop in audio) possible, but the Governor
5 also has those responsibilities for ensuring just treatment and
6 ensuring protection against abuses. And if the Governor
7 believes that decisions are proposed or decisions are made which
8 are contrary to those principles, it is right and the duty and
9 the obligation of the Governor to speak up and try to prevent
10 that feeling of unjust treatment or abuse from taking place.

11 So, it is a positive obligation and duty of the
12 Governor to seek to do that.

13 Q. But, surely, what good can it do to make a--to resort
14 to the megaphone? The right way of doing that is to operate by
15 persuasion, by argument, by counsel. Ultimately, it's the
16 Government's decision to take those--a right to take those
17 decisions, and there may well be disagreements over it. It's
18 not for the Governor to express those disagreements publicly, is
19 it, except as a last resort?

20 A. One would always--one would always persuade and to
21 encourage and to advise, as appropriate, but there may be
22 occasions when it is right for the Governor to speak up.

23 Q. That's what the courts are there, for, aren't they?
24 If the Government is infringing the rule of law, if it's not
25 acting according to fundamental constitutional or legal

1 principle, the courts are there for that. Why is it a matter
2 for the Governor, who is part of the executive, to--an unelected
3 part of the executive, to resort to public debate?

4 A. I'm not sure I would use the term "public debate".

5 Q. Or public statement.

6 A. The obligation (drop in audio) and protection against
7 abuses is (drop in audio) self-governance. There could be some
8 decisions made which are not illegal and therefore for remedy
9 through the courts but nonetheless go so much against the
10 Governor's principles that it would be right, I think, for the
11 Governor to make his or her (drop in audio) no doubt.

12 Q. It would be difficult to know what those would be, but
13 let's leave that to one side for the moment. Let's suppose
14 you're right about that, and there's an area where there may
15 be--I mean, the Government--an Elected Government, within it's
16 own policy sphere, is entitled to take decisions at which there
17 may well be disagreement. You may disagree on all sorts of
18 grounds.

19 But I can't--at the moment I'm struggling to
20 understand what you're saying. I mean, why should a Governor,
21 if it's not illegal, it doesn't offend human-rights principles,
22 it doesn't offend constitutional principles, why should a
23 Governor resort to public criticism or public expression against
24 a sitting Government, fraught as that is with electoral
25 implications and political ones?

1 A. I think what the Governor will do not so much make
2 criticisms, firstly what he or she (drop in audio) needs to be a
3 correct position. I hesitate to give a current example, but
4 there have been statements made of late in relation to my
5 position, my legal representation before this hearing, which are
6 frankly misleading and inaccurate, a suggestion that I'm abusing
7 Section 103 of the Constitution (drop in audio), and I've been
8 very tempted to make a public statement, and I suppose I'm
9 making a public statement now, to state the inaccuracy of that
10 position that I think is legitimate for me to do so, with
11 respect.

12 Q. Well, Governor, absolutely. I mean any such criticism
13 would be wrong.

14 But let me move on if I may, on this issue. I mean
15 one of the issues again of the Governor's role which has caused
16 concern, and you were asked about it very fairly by Mr Rawat, is
17 this question of direct interaction with officials in the
18 Ministry for which Ministers are constitutionally responsible.
19 Now, I don't want to enter into this debate in any kind of
20 detail, but I will ask you, if I may, this: Would it be correct
21 for the Governor's office to direct or instruct officials in an
22 individual Ministry outside a Section 60 responsibility without
23 seeking the Minister's assent?

24 A. You asked me a good question, Sir Geoffrey.
25 Section 60, paragraph 8, does give that power of direction.

1 Q. I did say outside Section 60, so we're postulating
2 here that it's not a matter within the Governor's Section 60
3 responsibilities or not a matter that involves or affects it.
4 Can we take--assume that for the moment? This is a
5 straightforward issue of domestic policy in a constitutionally
6 devolved area. Would it be appropriate for direct interaction
7 between your office in seeking to either instruct or make
8 requests of officials in those areas without at least first
9 seeking the assent of the Minister?

10 A. It would be inappropriate to give direction in those
11 circumstances but I don't believe it would be necessarily or
12 appropriate (drop in audio) to have direct interaction, which I
13 think was your question, Sir Geoffrey.

14 Q. Direct instruction is what I was really at. Direct
15 instruction?

16 A. I think as regards direct instruction (drop in audio)
17 interaction would be perfectly proper, and I gave the example at
18 my hearing on the 19th of October of the--what the UK is giving
19 in relation to COVID-19 vaccinations there.

20 Q. But would it be appropriate there to inform the
21 Minister of what your office was doing with the officials?

22 A. In material matters, that's correct, but let me draw
23 your attention, please, to Section 40, paragraph 2 of the
24 Constitution, which says that the Governor shall not be obliged
25 to consult with the Cabinet or the Premier if in his or her

1 judgment the matter is not materially significant so as to
2 require a consultation. So, there might be disagreements about
3 what is materially significant different but--

4 Q. Those are in matters, forgive me, in which you would
5 otherwise be obliged to consult. We're talking here about
6 matters directly under the Section 56 control of a Minister.
7 Let me give you an example.

8 A Governor wishes--this is not a personal example--but
9 a Governor wishes to organize a school visit so that he can go
10 and talk to the school children or have discussions with the
11 principal, whatever it may be. His office rings the Permanent
12 Secretary or Deputy Permanent Secretary and seeks to organize
13 that visit. It wouldn't be right to do that, would it, without
14 at least asking the Minister first?

15 A. It might. It depends on the purpose of the school
16 visit, Sir Geoffrey. I understand the hypothetical nature of
17 the question. If I had been invited by the school to give
18 school prizes at the annual school prize day, I'm not sure (drop
19 in audio) the Minister for Education should be--that I should
20 make the Minister of Education aware for that. If I were to
21 going to go to the school to seek to better understand, you
22 know, education (drop in audio) is clearly a devolved matter,
23 then it would be appropriate for me to inform the Minister for
24 Education.

25 Q. There is here, isn't there, there is a line of

1 constitutional respect and comity that ought to be observed?

2 A. That's correct. And I hope I always (drop in audio)--

3 Q. No, these questions are not personal, Governor. Let
4 me make it absolutely clear.

5 A. I will always seek to inform, consult--first of all,
6 in accordance with my constitutional duties, and that there
7 might be (drop in audio) where I would seek to do that.

8 But there will be practical applications when I will
9 get in touch with officials (unclear), so to give you an
10 example, yesterday in preparation for this inquiry, I sought
11 information from the public school teachers in the Territory,
12 and I didn't feel obliged to tell the Minister I was seeking
13 that information. I was in Virgin Gorda a few weeks ago to
14 check on the population of Virgin Gorda, but I did not feel
15 obliged to consult with the other Ministers in seeking that
16 information. That's practical business, and we wouldn't be able
17 to carry out practical functions if what I (drop in audio).

18 Q. Sorry, the sound faded a bit there, but I think I did
19 catch the gist of your answer, and thank you for that. You were
20 simply making the point there are some cases where just
21 practically it doesn't make sense every time to seek individual
22 assent, but, of course, you'd want to keep the Minister informed
23 of visits like that in an area of his responsibility no doubt.

24 A. That's right, certainly. If it's a (drop in audio)
25 matter, yes.

1 Q. Yes. Can I move on then to chairing the Cabinet.
2 Now, the matter of law is a matter for the Commissioner for the
3 purposes of his inquiry ultimately to reach a conclusion on, no
4 doubt in the end for a court in the Virgin Islands to decide
5 should it ever be referred to. My question is not on the
6 question of law. The letter from Susan Dixon which you
7 disclosed plainly states that at the time the Constitution was
8 drafted and agreed between the United Kingdom and the Virgin
9 Islands, it was the clear understanding of both the United
10 Kingdom Government and the Virgin Islands Government that in the
11 absence of the Governor or an Acting Governor sworn in to all of
12 the functions of the Governor as an Acting Governor is, the
13 Premier would chair the Cabinet.

14 Now, whatever the legal position, and, as you know,
15 the Elected Ministers contend that it is contrary to the
16 Constitution for a Deputy Governor to have purportedly delegated
17 to him the function of chairing the Cabinet, but let's leave
18 that to one side, what sort of message does it send to the
19 elected institutions, to the electorate, to the Virgin Islands
20 people when a clear and express provision of the Constitution
21 that provides for their Premier to chair the Cabinet is
22 consistently and permanently ignored and means found every time
23 the Governor is absent to prevent the Premier from presiding
24 over the Cabinet, as was intended, according to Susan Dixon, by
25 both governments in 2008?

1 A. You referred to the advice of (drop in audio) Susan
2 Dixon and her advice of course also was that having the Deputy
3 to the Governor chairing the Cabinet was consistent with the
4 Constitution, so she did not advise that there was a breach of
5 the Constitution involved in that practice.

6 But you're correct, that the exchange of letters
7 between Dr Orlando Smith and (drop in audio) Henry set out that
8 intention, or the Premier chairing Cabinet when Governor was
9 unavailable but on Territory as opposed to were it an Acting
10 Governor when the Premier's off--when the Governor is off.

11 Q. Senior Counsel to the Foreign Office is advised that
12 it was well-understood at the time that the Premier would, in
13 those circumstance, chair the Cabinet, but that understanding
14 has been ignored by successive Governors, and (drop in audio)
15 and by the FCDO since 2008. Why?

16 A. For reasons which I am not aware, that was not the
17 practice that was followed after the current Constitution came
18 into being, and therefore that was a practice which was
19 inherited by my predecessor, Governor Jaspert, and the precise
20 reasons (drop in audio) happened in 2008 I do not know, but as I
21 said in my evidence on the 19th of October, I can envisage
22 circumstances in which the Premier would chair Cabinet as
23 envisaged in the exchange of letters and as envisaged under the
24 Constitution, but I would think it would be few and far between
25 because (a) I would always intend to chair Cabinet while I'm in

1 the Territory; and (b) the helpful advice from the Attorney
2 General as regards the (unclear) chairman (drop in audio)
3 otherwise not available to attend in person. Not in the
4 Territory would make those occasions rare, but I do not rule out
5 the possibility, and I recognize the import of exchange of
6 letters to (drop in audio).

7 Q. My question is what message does it send to the people
8 of the Virgin Islands? Their Constitution says that, in certain
9 circumstances, their Premier can Chair their Cabinet, and yet on
10 every occasion when this arises and the Governor has been
11 absent, means have been found not to allow successive Premiers
12 to do so. What message does that send consistent with
13 Article 73 in encouraging the people of the Virgin Islands to
14 assume responsibility for their own destiny if they can't even
15 chair their own Cabinet?

16 A. Well, as I say, I don't know the history about this
17 matter, and I'm not aware what the extent to which this matter
18 has been a matter of dispute prior to being raised when Governor
19 Jaspert was here who sought the advice of the Attorney General
20 in the matter--and acted in accordance with that advice.

21 But I recognize the point you are making, Sir
22 Geoffrey, and as I've said, I do recognize that maybe
23 circumstances in which going forward, that it would be
24 appropriate for the Premier to (drop in audio) Cabinet, and
25 (unclear).

1 Q. And I hear that, Governor, and thank you for it.
2 You'll understand that (drop in audio) articulate concerns of
3 those who instruct me, and clearly the concern here is that this
4 is--this is unfortunate, to say the least, because of the
5 message it sends and the Governors, and successive Governors and
6 the Overseas Territories Directorate, FCDO, whoever has been
7 consulted. I think this matter was raised a couple years ago
8 with the FCDO, simply doesn't wish a Premier of the Virgin
9 Islands to chair its own Cabinet, and that would be unfortunate.
10 And I hear you saying that that's not your view.

11 A. That's correct.

12 Q. Let's move on, if I may, because I'm extremely
13 grateful, and I want to press on with some further matters if I
14 may. I should have asked you about Sandler.

15 You made the point, I think, that Parliament
16 intervened to pass the provision there. I'm not--I think I
17 understand the distinctions you're making but you're not
18 suggesting it's not the Policy of Her Majesty's Government now?

19 A. It was not policy of Her Majesty's Government.

20 Q. It wasn't then but it is now?

21 A. Yeah but--because it was partially up to Parliament.

22 Q. Her Majesty's Government could quite easily have a
23 policy of reversing it if it didn't agree with it?

24 A. Not sure that's correct, Sir Geoffrey. That (drop in
25 audio) proposed on the cross-party basis, and I believe it was

1 clear to the whips that it would command a significant majority
2 within the House of Commons and Ministers made clear, Lord (drop
3 in audio) policy, but that hadn't been passed by the House of
4 Commons (drop in audio) that is the position (drop in audio)--

5 Q. There has been an election since then, Governor. That
6 Parliament was a hung Parliament. This Parliament is not a hung
7 Parliament by any means. If Her Majesty's Government wanted to
8 reverse it, they could do so by the simple expedient of
9 submitting an amendment or amending act, but it hasn't chosen to
10 do so, no doubt because the governments adopted that policy for
11 perfectly legitimate reasons.

12 A. I'm not familiar, Sir Geoffrey, with what the
13 Commissions may be in that particular matter, would be
14 appropriate--

15 Q. You managed to stay out of those, you're quite right.

16 A. (unclear) But it seems to me that the move towards
17 public Registers is pretty (drop in audio) we are going and
18 we're going to have to live with that reality.

19 Q. Now, the Public Service, if we may. In your evidence
20 in October, you considered or gave this answer that the Deputy
21 Governor was responsible for the--for a professional and
22 independent Public Service, and the management of the Public
23 Service lay with the Deputy Governor. Is that a correct or fair
24 assessment of your position?

25 A. Let me just refer to the exact words I used, if I may.

1 Q. Please do.

2 A. Just give me one second, please.

3 (Pause.)

4 A. Yes. What I said was that beyond my responsibilities
5 for the condition of the (drop in audio), and beyond my power of
6 appointment on the recommendations of the Public Service
7 Commission. I said that beyond that, the Governor--the Deputy
8 Governor's (unclear) in particular has been seen (drop in audio)
9 the overall management of the Public Service and I certainly do
10 not want to dissociate myself with that view of the function of
11 the Deputy Governor's Office which plays a coordinating role in
12 the management of the Public Service.

13 The point here, being is that that is not stipulated
14 anywhere in the Constitution but generally that's been
15 (unclear)his responsibility, from which I happily associate
16 myself.

17 I think you're on mute, Sir Geoffrey.

18 Q. So sorry.

19 Page 206 of the Transcript, Mr Rawat asked you the
20 role of the Governor is wider than that. It's about producing a
21 professional independent public service. To which you answered
22 at line 4: "Correct. And I need to work in partnership with
23 the Elected Government to achieve that goal". So, that seems to
24 be the position you took in October.

25 Now, I'd like, if I may, to take you to a document

1 which you will have seen, and is the--is in the Governance
2 bundle at page 242. So, if you have that handy, Governor, I'd be
3 grateful if you'd have a look at it. (drop in audio).

4 I couldn't quite catch that, I'm so sorry.

5 A. Just give me a moment to see if I could find it.

6 Q. Yes.

7 It's the guarantees--

8 A. The P I?

9 Q. Yes. Have you got that?

10 A. Yes.

11 Q. Excellent. Thank you very much. Now, I just want to
12 come with that--put a few points to you based on this.

13 If you'll turn to the first page under "Introduction",
14 you'll see the title "Importance of Policy and Planning". And
15 that's 244, if have you it.

16 A. Yeah.

17 Q. Now, policy is set out by Public Administration
18 International as being about identifying a problem and figuring
19 out ways to solve it; addressing a new need or responding to a
20 new challenge; articulating actions to deliver outcomes in the
21 real world; and evaluating something to see if it can be
22 improved.

23 That is a pretty decent description of what formation
24 of policy is about, isn't it? It's really the meat and potatoes
25 of governing. Have you a problem, you have a priority, you have

1 a need, and you formulate, thought through developed policy to
2 address that need or problem; correct?

3 A. What about by description, which you put, which was
4 paid for by the UK.

5 Q. Don't be so defensive, Governor. It is, you're
6 absolutely right. It was paid for by the Governor's office and
7 commissioned in 2018, and the process has been moving forward
8 for the Public Service transformation, but what this Report
9 shows is that that process of policy formulation, execution and
10 evaluation has been chronically neglected for many years.

11 Now, before you answer that question, let's just have
12 a look at some parts of this Report, may we? If we just--if you
13 continue to read the Report for me, policy and planning, says
14 the authors, are process by which governments translate their
15 political vision into programmes. Political parties may general
16 and specific commitments during election campaigns, but once
17 they're elected, a Government should articulate and implement
18 these by casting them as policy objectives. And it's a dynamic
19 process.

20 And at the bottom of the page, "policy and planning
21 are critical for the Executive to govern well and achieve what
22 they promised the electorate, and it is a central pillar in
23 establishing and maintaining good governance".

24 Do you agree with that?

25 A. Yes.

1 Q. Good policy formulation is a central pillar of good
2 governance, isn't it?

3 A. Yes, I agree.

4 It is also dependent on not just the work of the
5 Public Service in this area but also (drop in audio) of the
6 Government. So, Section 47, paragraph 3 (drop in audio)
7 previously states, "Cabinet shall have responsibility for the
8 formulation of policy, and it is for Ministers to direct their
9 Departments". And as the PAI Report says on the same page which
10 you're quoting, Sir Geoffrey, "once a Government's policy
11 objectives are clear, this allows the Public Service to support
12 them", so it's a partnership process which is required, which is
13 what I said--

14 Q. Policy objectives are in the manifestos.

15 A. The resources are required by the Public Service for
16 them to carry out their functions in this area.

17 Q. We will come to resourcing later.

18 A government comes into power with a series of
19 manifesto commitments. Now, you know that in the United
20 Kingdom, the Public Service in the United Kingdom will spend
21 some months in advance of a government coming into power,
22 developing policy options to fulfill their manifesto
23 commitments, don't they?

24 A. That's correct.

25 Q. Does that happen in the Virgin Islands?

1 A. We don't know the answer to that question?

2 Q. It doesn't--

3 A. (drop in audio) the election. So, I can't answer that
4 question at first hand.

5 Q. I'd like to suggest to you it doesn't happen. What
6 happens is shortly after a government is elected is they have an
7 induction day, perhaps a month or two after they're elected, but
8 there is no serious policy preparation--policy formulation to
9 present to Ministers options for fulfilling their manifesto
10 commitments, but that is a fundamental core function of any
11 Civil Service, isn't it? It's to propose to a Minister the
12 lawful policy options which will help him fulfill his
13 commitments, political commitments?

14 A. It's for Cabinet Ministers to determine their policy
15 for Public Service to assist them in executing that Policy.

16 Q. In policy, meaning in political terms, they're
17 objective. We want to help small farmers, we want to help--we
18 want to produce a situation where small local contractors get a
19 fair look in. The role of the Public Service, at that point, is
20 to put wheels to it, present them with lawful policy options to
21 enable them to implement those commitments, isn't it?

22 A. I agree.

23 Q. Yes.

24 Now, let's have a look at what the PAI Report said.
25 If you can go to page 248. If a Minister is not told if he

1 wants to achieve something, what policy options are available to
2 him within the law? How is he supposed to govern? You know,
3 don't you, that in the United Kingdom a Minister will receive
4 detailed ministerial submissions setting out the reasoning for
5 the decisions he might take on a particular subject, discussing
6 the policy options and inviting the Minister to choose between
7 them. That's a perfectly common thing for a Minister to see,
8 isn't it?

9 A. That is right. And, of course, that is Ministers
10 being opened to having various options proposed to them and
11 Recommendations proposed to them on how they should act, and a
12 wise Minister will wish to look at those different options
13 before taking development decisions. On occasion, Ministers may
14 be so determined (drop in audio) pursued, they may be less
15 interested in having different options put to them.

16 Q. Yes, but it is absolutely standard in the United
17 Kingdom that a Minister, particularly Ministers from all walks
18 of life, many of whom may have no experience of government
19 before, may even have very little experience with administration
20 in the private sector, they will have detailed submissions
21 setting out the reasons why certain policy options are
22 available, and when certain options may not be, and setting out
23 the risks connected with them in those ministerial submissions.
24 You know that, and that's what happens, isn't it? In the UK?

25 A. Sir Geoffrey, I may be able to help you, but I hope

1 I'm not overstepping the Bar in saying that I recognize that the
2 policy planning function of the Public Service could be further
3 developed, and that is precisely why I welcome the
4 transformation paper which is noted (drop in audio) in Cabinet
5 which has a section in it which would aim to achieve that
6 particular--that particular--the goal.

7 So, I do accept that. What I do not accept is any
8 failure of policy planning is responsible for what I had been
9 (drop in audio) implementing poor decisions made by Government.

10 Q. You don't accept that the failure of the Policy for
11 formulation, execution, and evaluation function is responsible
12 for what?

13 A. Fair and prudent decisions. So, for example, I have
14 seen the advice--submission of the Attorney General in this
15 regard. There is a need to increase the policy planning
16 capacity within the Government, but I do not believe, with
17 respect to the Attorney General, that it is a failure in policy
18 planning which has led to Procurement Legislation and procuring
19 bright lines being consistently ignores and overview tender of
20 waivers. I don't think it's lack of policy planning, which
21 leads to people not qualified for Statutory Boards being
22 appointed to them, and I don't believe that, say, a lack of
23 policy planning, which lead, for example, to an individual be
24 given citizen status who clearly did not meet either the policy
25 guidelines or indeed the policy Recommendations of the

1 Immigration Board.

2 Q. We can't discuss that individual case, Governor, as
3 you know, but there are certainly things that can be said about
4 that specific case, but it will be wholly wrong for us to
5 discuss that in public at this point. But let me come back to
6 some other points you made.

7 Unless a Minister is guided as to what policy options
8 are within legal parameters and whatnot, unless he's guided as
9 to the correct procedures for, let's say, appointing to
10 Statutory Boards and what might be lawful and what might be
11 unlawful, how is the Minister, unless he's exceptionally
12 experienced, perhaps legally qualified--I don't know--to
13 conclude that he should radically revise the entire embedded
14 practice over decades of the Government infrastructure, the
15 Government--the Civil Service? I mean, there was no code for
16 appointment to the Statutory Boards, but--(drop in audio)?

17 A. My view--

18 Q. Answer my question, sir--and has there ever been a
19 code or written guide--

20 COMMISSIONER HICKINBOTTOM: I can't hear you, Sir
21 Geoffrey.

22 REALTIME STENOGRAPHER: I'm having a hard time
23 following you, Sir Geoffrey. Could you ask that question again?
24 The audio is (unclear).

25 COMMISSIONER HICKINBOTTOM: We--I can't hear you, Sir

1 Geoffrey.

2 SIR GEOFFREY: I'm so sorry.

3 COMMISSIONER HICKINBOTTOM: I can hear you now.

4 SIR GEOFFREY: Can you hear me now?

5 COMMISSIONER HICKINBOTTOM: Yes.

6 SIR GEOFFREY: I'm so sorry. I don't know what's
7 happened there, there was no muting button, but it seems to be
8 muting and un-muting on its own.

9 BY SIR GEOFFREY:

10 Q. Help me with this, Governor, if you may. Was there
11 any code--is there now a code, such as the one produced by the
12 Cabinet Office in the United Kingdom, for the appointment by
13 Ministers to Statutory Boards and Bodies?

14 A. There is no general code, but, of course (drop in
15 audio) legislation, we specified criteria for reaching Members
16 of Statutory Boards.

17 Q. That is the same in the United Kingdom. There are
18 statutes that specify broad criteria, but the Civil Service in
19 the United Kingdom has thought it right some years ago through
20 the Cabinet Office where this function resides to promulgate
21 general advice and guidance and procedural guidance to Ministers
22 and to individual Ministers about the appointment of Statutory
23 Boards? Now, that is a function of the Public Service, isn't
24 it?

25 A. Such guidance may indeed (unclear)be in debate. In my

1 experience of Cabinet and Ministers here, I have--(drop in
2 audio) highly intelligent Cabinet of well qualified individuals,
3 they are well aware of the criteria which are stated for
4 appointments, they are aware of the (drop in audio). We can
5 read the Register of Interest Act, which is plain as a pikestaff
6 in what should be done. It doesn't require policy (drop in
7 audio) to understand that issue. It requires them to abide by
8 (drop in audio).

9 Q. Why do we do it in the United Kingdom, then? Are you
10 saying the United Kingdom Cabinet isn't full of intelligent
11 individuals, need the code whereas the Virgin Islands doesn't?

12 A. (unclear) As I said a moment ago, I believe such
13 guidance could be helpful, but the lack of such guidance--the
14 lack of such guidance does not explain decisions which may fly
15 in the face of what is required by legislation or
16 (unclear)criteria.

17 Q. Let's leave aside legislation. What written guidance
18 does is it sets a culture of expectation that--and it allows
19 Public Servants to refer to it as an established guide and
20 policy when giving advice to Ministers, doesn't it? But if you
21 don't have something like that in writing about the procedures,
22 a manual in effect, the whole purpose of manuals is to change
23 culture and to get people abiding by practices and rules that
24 are in favor of good governance, isn't it?

25 A. I agree with you, such training could be helpful.

1 Though, for example, we've fallen in a situation where tender
2 waivers happened all too frequently.

3 Q. And also within the Governor's Group?

4 A. Indeed, that happens within the Governor's Group.

5 (Unclear) Procurement Legislation has, I believe, been
6 passed by the House of Assembly, it will come to me for assent.
7 I hope that Procurement Legislation is helpful.

8 In applying that Procurement Legislation, guidance to
9 Ministers will not only be helpful, but it also requires
10 Ministers to be willing to abide by that legislation and comply
11 with its requirements, so it's a twofold process. No doubt
12 advice and guidance to Ministers is in detail. Following that,
13 I would welcome further work in that area. It is also the
14 responsibility of the Ministers to make sure they comply with
15 consent (drop in audio).

16 Q. My suggestion to you is that Ministers are not getting
17 robust, clear policy advice and formulation to enable them to
18 translate their political commitments into lawful--

19 (Overlapping speakers.)

20 A. It would be good to discuss individual concerns, but
21 let me come back to residence case, please, granting of
22 residence, where the law very clearly states the criteria. The
23 Immigration Board (drop in audio) policy recommendation be based
24 on those criteria. Those criteria and Recommendations are
25 clearly set out in Cabinet to Ministers, Ministers choose to

1 ignore that guidance, ignore that policy advice--

2 Q. Forgive me, Governor. As long as they're acting
3 lawfully, that's the right of democratically elected Ministers
4 to decide, and it's by no means clear that they were acting
5 unlawfully, and we can't discuss the individual case then there
6 may be many things that could be said about it.

7 As a general principle, I take it you don't disagree
8 that a Minister is entitled to be told in detail what policy
9 options are available to him that comply with proper legal
10 parameters; correct?

11 A. I agree that would be helpful, but I, with respect, am
12 contending is that any (drop in audio) decisions and issues
13 which have come up before this Commission of Inquiry. In other
14 words, I don't think that is a sufficient or clear explanation
15 of the concerns which are being investigated by this Commission.
16 It is not a failure of policy planning which explains all the
17 issues which have been considered here.

18 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
19 Sir Geoffrey. Ultimately, these will be matters that I will
20 need to consider. And enjoying the debate between you and the
21 Governor as I am, two things. I think in part these are matters
22 which I will need to consider on the basis of the evidence as I
23 find it. And secondly, Sir Geoffrey, this may be the--I assume
24 that this is the last matter that you're going to raise
25 questions with the Governor on, but I see the time. You had an

1 hour to ask questions. We've gone now over 75 minutes. I
2 obviously want to finish this particular topic, but is there
3 anything else on this topic that you can helpfully raise with
4 the Governor?

5 SIR GEOFFREY: Yes, if I may.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 SIR GEOFFREY: This is the last topic, along with
8 budget, so I'm hopeful of concluding it fairly shortly. I
9 haven't tried to interrupt the Governor in his answers, so
10 forgive me if we've taken it a little over, but indulge me, if
11 you would, for a little while longer on this point, it is
12 important and it is central, as you know, to the Ministers'
13 concerns.

14 COMMISSIONER HICKINBOTTOM: I understand that.

15 BY SIR GEOFFREY:

16 Q. Can we move to page 250 of the Report. The PAI Report
17 that we have in front of us.

18 The authors under "policy capability" say that policy
19 capability in most Ministries is weak, save for the most senior
20 level, i.e., "Permanent Secretaries".

21 And the authors then say: "This likely accounts"--do
22 you not have it, Governor? Forgive me.

23 A. I have it, sorry, yes, carry on, please.

24 Q. The authors than say: "This likely accounts why
25 policy reform in key areas such as immigration, labour workforce

1 development and telecommunications has not been progressed".

2 Now, we know, because this Inquiry has (unclear), that
3 Immigration is a particular topic where policy reform is
4 desperately needed. The Commissioner has looked into various
5 policies that seem to be emanated from 2004, for example, in
6 connection with Belongership. And what the authors of this
7 report are directly saying is that it is the policy capability
8 which is weak but is most likely the reason why reform in
9 Immigration aren't (unclear) in a key area has not been
10 progressed. And then the Ministers--the authors, take exactly
11 the point that you just made to the Commissioner. They say some
12 might say--and this is the last line of the paragraph--"there
13 has been no political will", but says authors, the quite rightly
14 I submit, it's difficult for politicians to find the will if
15 there's no solid evidence and robust strategic policy advice.

16 So, the authors are saying, I suggest to you, quite
17 the opposite, Governor, of what you just said. Policy
18 capability is fundamental to a Minister's ability to make
19 reforms and to get policy decision-making right. What was
20 needed is clear, transparent policies properly informed by the
21 law to which Ministers could know to guide their conduct as to
22 how to behave.

23 But the truth is that that policy function, as these
24 authors consistently say, doesn't exist in the Public Service.

25 A. Sir Geoffrey, I'm fully supportive of increasing the

1 policy planning functioning within the Public Service as,
2 indeed, was my predecessor, hence the--

3 Q. Now, forgive me, Governor--forgive me just a
4 moment--you may have been, but you always have a sting in the
5 tail. You say, okay, I get that the policy function is totally
6 dysfunctional in that it's asking--these authors say in your own
7 report, it's just not functioning, we will see what they say
8 later. They called it a "breakdown".

9 A. Yes.

10 Q. And yet you blame Ministers for not being surrounded
11 as they ought to be by robust policy advice setting out the
12 lawful parameters of what they can and can't do. There may be
13 examples where they've decided that they shouldn't, within their
14 scope of democratic discretion, to take certain decisions. But
15 what they're entitled to be surrounded by is a policy
16 environment in which they are being guided to the correct
17 conclusions, aren't they?

18 A. I--I agree with you that better informed and more
19 developed policy advice (drop in audio) would be helpful. There
20 has been--we referred briefly to the Budgetary issue, but let me
21 take specifically Natural Resources, Labour and Immigration.
22 That Ministry to which you've just referred, Sir Geoffrey.

23 If you look at the budget figures for 2020--

24 Q. Governor, forgive me just for a minute. We will come
25 to the budgets in a minute. But I'm anxious just to keep on one

1 topic at a time.

2 A. Okay.

3 (Overlapping speakers.)

4 Q. I promise you, we will come to budgets (drop in
5 audio).

6 What the Report is saying, look over the page, if you
7 will, at 251, "breakdown", as they later call it, in policy
8 capability extends even to the question of drafting legislation
9 so that it impacts on the Government's ability, they say, to
10 progress legislation to Royal assent, and they described why,
11 that unless you have a fully worked out policy behind
12 legislation, draftsmen of legislation find it very difficult to
13 make legislative choices in the way they draft, and so as they
14 put it, there is much delay, lack of clarity as to the purpose
15 and intent of Bills, and the Attorney General has said this
16 herself.

17 So, it frustrates and impedes Ministers in the course
18 of their role at every level because if you replace a fully
19 worked out policy platform with a legislative agenda, it's just
20 going to scar up the Government because the legislative agenda
21 founders because there is no fully worked out policy.

22 A. It's a point the Attorney General makes very clearly
23 in her submissions in relation to (drop in audio).

24 (Overlapping speakers.)

25 Q. Let's canter through, Governor, if you can because at

1 251, they then--the authors--can you hear me? Can you hear me,
2 sorry?

3 MR FLIGELSTONE DAVIES: Mr Commissioner, Sir Geoffrey,
4 we've had 10 minutes of submissions--

5 (Sound interference.)

6 COMMISSIONER HICKINBOTTOM: Just one moment. There is
7 a lot of feedback, Mr Hall Taylor.

8 MR HALL TAYLOR: I'm sorry, Mr Commission.

9 COMMISSIONER HICKINBOTTOM: A lot. Are you in the
10 same room as the Governor?

11 MR HALL TAYLOR: I will try speaking to--apology, can
12 you hear me now, Commissioner?

13 COMMISSIONER HICKINBOTTOM: That's much better, thank
14 you, yes.

15 MR HALL TAYLOR: I hesitated to interrupt but we have
16 had 10 minutes of submissions on this question, and he has, when
17 he has allowed the Governor to speak, it has been for a very
18 brief period, and he hasn't, in fact, allowed the Governor to
19 answer the question. I wonder whether he might be given a
20 chance, and then whether we might move on to a topic or a
21 subject or question for submission.

22 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, it is a
23 concern certainly to an extent I share. I understand the point
24 that you're making about the lack of policy planning capability.
25 I understand that, and the Governor has responded to that, but

1 is there anything else other than by way of lengthy submissions
2 that you want to ask the Governor about this?

3 SIR GEOFFREY: I think partly the problem I'm afraid
4 is that I have some sound difficulties, so I can't always hear
5 the Governor, and I'm simply muting and I'm muting the machine
6 does it on its own.

7 I think what I wanted to do is not make submissions,
8 and indeed I don't think I have been making submissions, but if,
9 Commissioner, you think so, I will endeavor to abbreviate them.
10 I think the point I would like to put to the Governor, if we
11 could just have a look at various parts of this Report, which
12 won't take us two minutes.

13 BY SIR GEOFFREY:

14 Q. So, Governor, if you would like to look at 251, the
15 Report not only says that the policy formulation function is
16 lacking, but it says the systems for executing policy require
17 strengthening, so that's at the bottom of 251. Over the page at
18 252, there is no clear (drop in audio) procedure--this is under
19 "system of policy evaluation"--to evaluate effectiveness of the
20 policies, and at the bottom of the page, "the absence of clear
21 policy inhibits the Public Service from performing a key
22 function which is to provide sound policy advice to
23 decision-makers".

24 And then if we go over the page to 253, "many of the
25 challenges in the Virgin Islands Government, this Report says,

1 stem from a breakdown in policy formulation and weak policy
2 capability in the line ministers".

3 Now, my question to you is: When you gave evidence in
4 October, you detailed a series of Public Service reform
5 initiatives. According to this Report, none of those Public
6 Service reform initiatives, if you look at page 248, either
7 touched upon this critical function of the Public Service or any
8 that were implemented, failed to be able to institutionalise it.
9 So, if you look at page 248, the second paragraph, you will see
10 that efforts were made to establish a policy coordination
11 mechanism. But going back to 2000, but it's clear that a number
12 of policies development initiatives and training have been
13 undertaken but uncoordinated and implemented without adequately
14 building institutional capacity and human resources to maintain
15 and institutionalise it.

16 So, until 2018, no sustained effort has been made to
17 cure this fundamental problem in the critical function of policy
18 formulation, implementation, and evaluation. Do you accept
19 that?

20 A. No (drop in audio) Sir Geoffrey. And I'm going to
21 come to the Budgetary point here because I believe it is
22 critical.

23 First of all, (unclear) in my evidence of 19th of
24 October, set out public transformation work since 1999. At no
25 point did I claim that all of that work was aimed at a policy

1 development, it was aimed at a variety of issues to improve the
2 functioning performance of the Public Service.

3 Secondly, I think it's incorrect to suggest that all
4 of that work was fruitless. I think, for example, that in the
5 evidence which I believe maybe we will come to today from the
6 Acting Financial Secretary, he does recognize, for example, the
7 usefulness of work provided by the debt advisor, provided by the
8 United Kingdom and (drop in audio) debt issues, and he does
9 recognize that some of the financial management training was
10 aimed at impact policy development.

11 There is a fundamental (drop in audio) financial
12 investment in training. And if I got (drop in audio) month ago,
13 the PAI Report refers to the issue of Natural Resources, Labour
14 and Immigration. And if one looks at the latest budget papers
15 tabled in the House, and if you look at a policy planning team
16 within Natural Resources, Labour and Immigration, the training
17 budget allocated policy planning and administrative services in
18 2022 budget estimates of \$978. I repeat: \$978.

19 Mr Frett, in his evidence, also recognises--if I may
20 just turn to his evidence--just bear with me one second, please.

21 (Pause.)

22 A. Yeah. He recognised in his evidence that the central
23 responsibility for training the Public Service lies with the
24 Department of Human Resources. As I said in my evidence the
25 19th of October, the allocation of budget there is a total of

1 \$25,000 having fallen consistently over the years to (drop in
2 audio) last year. And that is systematic of a wider lack of
3 (drop in audio) in training of public officials.

4 So, the total allocated budget for teacher training in
5 2021, the estimated expenditure is \$12,300, I believe there are
6 some 450 public teachers. That means an investment of less than
7 \$30, just over \$27 per teacher in training provision.

8 Now, no doubt the UK (drop in audio) but since 2018,
9 the UK has invested around £2.14 million in training for the
10 public terms. The primary responsibility for budgetary
11 provision for the Public Service rests with the Elected
12 Government, particularly in areas of devolved responsibility.
13 There are many fine Public Servants, and I do not believe,
14 certainly (drop in audio) not Public Servants who are very
15 capable of giving good policy advice, but there has been a
16 chronic lack of underinvestment in this area that I do believe
17 needs to be addressed, including in the area of policy planning,
18 and that is what the transformation (unclear), which is now
19 agreed in Cabinet going forward will hopefully seek to do. And
20 I hope that will help to address some of the concerns with you,
21 Sir Geoffrey.

22 Q. Let me ask you one or two questions arising out of it,
23 because as you know, Mr Frett doesn't accept your analysis of
24 the full training budget for the Government. While he accepts
25 that in one line of one Department, \$25,000 appears in

1 paragraph 3.6 of the Affidavit to which you refer, he makes it
2 clear that in 2021, the Budget for foreign and domestic training
3 of Public Servants was, in fact, £479,384.47.

4 And he also points out, as you may see from his
5 Affidavit, that that doesn't exhaust the amount that the Virgin
6 Islands Government pays for training because they also
7 subscribed to various international and regional bodies like
8 CARTAC and the IMF who provide consistent training on an annual
9 basis to Public Servants.

10 So, it isn't, really, Governor, is it, a fair analysis
11 to simply highlight a single line in the Department of Human
12 Resources' budget and put domestic training only and say that's
13 how much is being given to training, apart from everything else
14 is scholarships for 2020 were \$129,000. Of course, that was a
15 COVID year.

16 So, what do you say to that? Mr Frett doesn't agree
17 you with. He says that the Budget is hundreds of thousands of
18 dollars more than that. The problem is, or may well be, where
19 we're together on it, is it may not be addressing the central
20 question of policy formulation and evaluation.

21 A. Yeah, it's certainly correct that I accept that there
22 is more than \$25,000 provided for training across the Public
23 Service as a whole: You need to ask Mr Frett how much of that
24 \$479,000 (drop in audio) I don't know the answer to that. But
25 it--

1 Q. I lost you--made up of what? Forgive me, I have a
2 sound problem.

3 A. Figure may be made up of scholarships, overseas
4 scholarships. So, how much of it is for domestic training is
5 not clear to me. Mr Frett may be able to clarify that point,
6 but even taking the figure as it occurred, and without in any
7 way suggesting that they were not very capable Public Servants,
8 I have worked with Public Servants here (unclear) Public
9 Servants in the United States. I think there has been a lack of
10 investment here, and, indeed, that is one of the points we've
11 addressed in the Transformation Paper which was put forward by
12 my predecessor (drop in audio) on that matter, which has now
13 been adopted.

14 So, I hope that will seek to address some of the
15 problems to which you referred, some of the problems which I
16 recognised, Sir Geoffrey, but I repeat I do not think that (drop
17 in audio) in this area, in my view, is a matter for the
18 Commission to take a view on, and explains a number of the
19 concerns which have been raised with this Commission of Inquiry.

20 Q. I can't ask you questions about that because we don't
21 want to get into individual circumstance--cases.

22 The Ministries are suffering in a Public Service for
23 which you are responsible for the Deputy Governor of a
24 chronically neglected policy formulation, implementation, and
25 evaluation and monitoring functions. That must have been

1 apparent or if it wasn't, it should have been to you, your
2 predecessors for many years. According to the--would you not
3 agree with that? Would you agree with that? It must have been
4 apparent for many years.

5 (Overlapping speakers.)

6 A. Finish your proposition, Sir Geoffrey.

7 Q. Would you not agree with that? Was the end of my
8 proposition. Would you not agree it must have been apparent as
9 the PAI Report says?

10 A. I wasn't here at the time, so I cannot answer a
11 hypothetical question.

12 I don't believe that policy is something which is
13 (unclear) top in the ether. I think the Policy is also borne by
14 facts and experience.

15 So, for example, a training which the UK has provided
16 (drop in audio) child exploitation, a training which the UK
17 helped to fund in relation to sister islands coordination, I
18 believe will have helped to inform Ministers and inform Cabinet
19 and officials in the Policy to which we should be moving, so I
20 don't accept sort of practical training on particular (drop in
21 audio) in one area, a policy formulation in another area, that's
22 entirely different functions. I believe the former can inform
23 the latter. So, I'm not sure that I would agree with your
24 description of chronic failure. I believe that efforts have
25 been made in this area, but more could be done, but that

1 requires a government willing to invest and fund in that area,
2 and I look forward to, I hope now that we will finally get that
3 investment.

4 Q. Well, there is a cart and horse here, isn't there? No
5 sustained plan for addressing this fundamental and weakness in
6 the Public Service has been made by any of your successors until
7 2018. The PAI Report makes that plain. If the Ministers aren't
8 presented with a plan, they can scarcely fund it, can they?

9 A. I'm not aware, Sir Geoffrey, although I would not hear
10 of, prior to the PAI Report, of Ministers in previous
11 governments expressly claiming that they were respected in what
12 they could achieve by Government by a lack of policy planning.
13 It may have been there, but I'm not aware of it. This is an
14 issue which has come up in the most recent years and which there
15 is a determination now to address.

16 Sir, I think you may be on mute again, Sir Geoffrey.

17 Q. Final subject, if I may, which is related to budgets.
18 In your previous evidence--and indeed I think the Commissioner
19 raised questions on this subject--it wasn't that the budgets
20 have been declined, as I understand it, that you complained
21 about because I'm not aware that there has been any request, and
22 certainly my instructions and I must put it to you, that there
23 has been no requests from the Deputy Governor's Office or from
24 your group for funding for any issue which has been
25 substantively declined. As I understood it, the question--the

1 problem here was not that the budgets weren't there, but that
2 there was a very lengthy time, for example, to fill posts, and I
3 think you provided some recent correspondence on that. Is that
4 a fair position that I've set out?

5 A. Certainly it can be (drop in audio) process. It's a
6 bit like the Cheshire cat, Sir Geoffrey, the Budget is there and
7 then somehow not there and not available for the Commissioner or
8 the development--

9 Q. Can we look at this proposition because--

10 (Overlapping speakers.)

11 Q. Can you hear me?

12 A. Premier, just one second.

13 I believe as I said in my evidence that there have
14 been occasions where there has not (unclear) been a delay but
15 whereby the money has not been available to fill certain vacant
16 positions and I refer to the evidence of former Police
17 Commissioner Matthews in that respect.

18 Q. (drop in audio) Hello, can you hear me?

19 A. Yes, I can hear you.

20 Q. Thank you. I hear you say that, as you know, the
21 Ministers' position is that they aren't aware of having received
22 a request that they've declined, but let me come, if I may, to
23 the point. In the bundles in front of you, in Volume 1, can you
24 go to page 342.

25 Now, forgive me, 331, to begin with, 331. Delays in

1 processing requests for (drop in audio) are the product of a
2 system of recruitment first instigated in this Cabinet Paper,
3 which is the 28th of May 2018, I'm going to suggest to you, and
4 you may have seen this already. This was put forward by
5 Mr Jaspert, your predecessor. It's a memorandum from him.

6 Do you have it at 331?

7 COMMISSIONER HICKINBOTTOM: 331 in my bundle is a copy
8 of the Public Service Management Bill.

9 SIR GEOFFREY: Which volume--this is a bundle for the
10 current hearing. Perhaps there is another enumerated numbering
11 there, 259219. I wonder if that's the one I should be referring
12 to.

13 MR RAWAT: We don't need to be in the Governance
14 bundles, we need to be in the bundle that was submitted by the
15 Attorney General for this hearing.

16 SIR GEOFFREY: Yes.

17 (Noise interference.)

18 COMMISSIONER HICKINBOTTOM: Is this the Attorney
19 General's submission?

20 SIR GEOFFREY: No. This is the Cabinet Paper
21 submitted on the 28th of May 2018 to the Cabinet.

22 THE WITNESS: Thank you. I have it. I have it before
23 me now.

24 BY SIR GEOFFREY:

25 Q. Tab 3 of that bundle. And I have a 331 in the

1 right-hand corner.

2 Now, what this paper did, and it was raised with you I
3 think earlier--on the earlier occasion, is propose--your
4 predecessor proposed at page 334 of paragraph 9, agreement to
5 cease non-essential external hiring, and the Governor put
6 forward, your predecessor, that Accounting Officers would be
7 expected, where possible, to strictly deploy (drop in audio) the
8 growth of the service, and he mentions what they would be.

9 So--the Cabinet in 2018--previous government, of
10 course--adopted that proposal from the Governor. And if you'll
11 then march forward you will see in the bundle to
12 the 9th--forgive me. To page, what is it? I think it's 697.

13 A. Yes, I have it.

14 Q. You will find there a circular from the Ministry of
15 Finance dated the 2nd of May 2019, 697.99 in the bottom
16 right-hand corner. And there you see that the circular is to
17 inform Accounting Officers for new procedures for the filling of
18 vacant posts effective immediately, so this is the second of May
19 '19, and it makes it clear that if an Accounting Officer wishes
20 to commence hiring to vacant posts written approval for funding
21 or de-reservation of approved funding should be sought from the
22 Ministry of Finance via the Department of Human Resources and
23 the Ministry of Finance, it will require justification and proof
24 of funding, failure to do so will result in the Human Resources
25 Department delaying--denying the request, and then they will

1 provide the Department of Human Resources and the Ministry
2 further guidance in a joint circular.

3 Now, the joint circular, as I hope has been sent to
4 the Inquiry, but sets out the detailed requirements for the--any
5 vacancy in any part of the Government. So, if you'll look at
6 that, it's dated the (unclear)20th of May 2019, and you will see
7 that it's a joint memorandum from the Director of Human
8 Resources which is under your group, I think, is it not;
9 correct?

10 A. Correct.

11 Q. And from the Financial Secretary at the time, setting
12 out the quite rigorous procedures that are required, including a
13 recruitment requisition form, to implement the decision of the
14 previous government in 2018, and they say in terms--they refer
15 to the decision taken by Cabinet in the second paragraph as a
16 self-imposed measure to stabilize employment costs.

17 Now, delays in this procedure, which is very
18 cumbersome--I needn't go through with it perhaps in detail--you
19 may be familiar with them--but it requires the filling out of
20 requisition forms, are a direct consequence of your predecessors
21 invitation to the Cabinet to exert rigorous control over
22 recruitment to the Public Service, aren't they?

23 A. No doubt, as I believe is absolutely right to have an
24 approach involved (drop in audio) particularly given the strains
25 on the Budget caused by COVID-19. It's right that filling the

1 Public Service when money is tight (drop in audio). Of course,
2 I also believe that there may be occasions urgent to fill a
3 position, and I would hope--(drop in audio) fashion, but yet, I
4 do believe it's a correct process, Sir Geoffrey.

5 Q. And there may be some scope, then, because what I
6 think you've done, Governor, and let me make it clear, I'm being
7 in no way personally critical of you, sir, if I may say so,
8 there is no grounds to be--what I'm seeking to illuminate, if I
9 may, for the Commissioner is that while you say that there are
10 budgetary pressures, in truth, the Governor's Office, your
11 predecessor, acknowledged and indeed proposed a rigorous control
12 over recruitment, which has caused vacancies. Mr Frett says in
13 his earlier Affidavits, this is what we called a brain drain,
14 and it may well be there is now grounds, and I think you've done
15 this, haven't you? You have exhilarated for certain areas of
16 Government, I think the Attorney General's Office and possibly
17 the DPP, a compensation and salary review?

18 A. That's correct. (drop in audio) caused me concerns
19 over the rule of law functions carried out by the Attorney
20 General of the DPP, and so I did (drop in audio) reviewed there.

21 This is difficult for me. Every Government in the
22 world has had to tighten the belt because of COVID-19. I'm not
23 looking forward to an IP award from Civil Service in the year
24 ahead, but that (drop in audio) people leaving or what needs to
25 take (drop in audio).

1 Q. What I want to conclude, if I may, by putting to you
2 is really--is really this: It seems acknowledged on your side,
3 it's certainly acknowledged by the Ministers, that there is a
4 need for investment in a serious plan to upgrade, as you rightly
5 say, many very talented and very hard-working Public Servants,
6 but the apparatus and infrastructure and environment in which
7 they (drop in audio) is simply in requirement of real
8 modernisation now. You agree?

9 A. I agree that modernisation of parts of the Public
10 Service should take place, and the paper which I've agreed with
11 Government about (unclear) about good governance, it's about
12 digitalisation, it's about better customer service is directed
13 towards that end.

14 Q. Yes. And, indeed, the Public Service transformation
15 plan is really the first of its kind (drop in audio) proposed
16 (sound interference)?

17 A. I take your point about policy planning, but I do
18 believe that the previous attempts at reform, and I cannot speak
19 first-hand a number of them, have all been aimed at improving
20 the (drop in audio) of the Public Service, so I think it's a
21 continuum rather than just starting (drop in audio).

22 Sorry, Sir Geoffrey.

23 Q. We see what the PAI Report says about that, that any
24 efforts on the policy side of formulation of Immigration have
25 simply not failed to institutionalise. They haven't been

1 comprehensive or sustained. That's what PIA says.

2 A. Yes, but I draw the distinction between policy
3 planning function (drop in audio) but I do believe previous
4 training and previous work (drop in audio) Ministers of (drop in
5 audio) facts which function.

6 Q. I've obviously had the opportunity to discuss it with
7 Ministers and the great privilege of discussing with Permanent
8 Secretaries, as you rightly say, emphatically hard-working
9 people throughout the Government of the Virgin Islands. What's
10 apparent, though, is that, for example, the basic practices that
11 one might expect of making ministerial submissions with the
12 policy options, recording and minuting are not being followed in
13 any methodological and systematic way. For example, if you look
14 for a minute of a Minister's decision, if you ask for a record
15 of how a particular decision has been approached inside a
16 Ministry, you will struggle, really, to find any kind of audit
17 trail maintained by--I'm not saying this is universal but it's
18 certainly widespread, recording and minuting those decisions.
19 Would you agree with me that that sort of record-keeping is
20 fundamental, a core function of the Public Service?

21 A. Record meeting--record minuting is very important as
22 are typical of records, and I think, as this Commission has
23 demonstrated, there has been a challenge in getting the relevant
24 records out, and as I made clear in my evidence of 19th of
25 October, part of that is because (unclear) I assume that is

1 (drop in audio) advisory function despite to consistent requests
2 being made by the Deputy Governor's Department to increase
3 investment in that area, so yes--

4 Q. Fairly, Governor, it doesn't really need fancy bells
5 and whistles to keep a minute of your Minister's decision or
6 make ministerial submission and ask him to record or retain his
7 written comments on the submission, doesn't it? It can be done
8 in hard copy. It still is in the United Kingdom.

9 A. I have a hard copy of that myself--

10 Q. --(drop in audio) under investment. The fact is that
11 they're just not keeping the records. They're not minuting.
12 They're not recording. They're not making ministerial (drop in
13 audio).

14 A. The (drop in audio) which I'm most familiar other than
15 those which fall within the Governor's Group where I see some
16 rather good examples of the papers that come to me that are
17 Cabinet Decisions.

18 (Overlapping speakers.)

19 A. And other than during the (drop in audio) where I
20 recognise there were extreme difficulties given the frequency of
21 Cabinet meetings, in my experience, Cabinet Secretary keeps
22 excellent records of Cabinet and of the reasons for the
23 decisions made within Cabinet, so there is an example of which I
24 think is very good practice, so I suspect that it would be
25 different talk in different Ministries.

1 Q. Well, Cabinet is rather different.

2 A. (drop in audio).

3 Q. This inquiry, my instructions are, that the IRU that
4 has been assisting it, has simply been unable to get a hold of
5 minutes of serial decisions inside the Ministries, the Inquiry
6 has what the Government has, and you don't find submissions to
7 Ministers with recorded comments as to their views. You don't
8 have Minutes of Meetings, you don't have a record of how a
9 decision is taken.

10 Now, if you don't have that record of how a decision
11 is taken in the Ministry, it opens up both the Public Servant
12 and the Minister to misinterpretation later. Would you not
13 agree with me? Because if you have no trail of how a Minister
14 has approached a decision, no written record of it,
15 subsequently, a Minister could be accused of all kinds of
16 things, which a minute would reveal to be unfounded.

17 A. Yes, I'm tempted to say that maybe (drop in audio) for
18 decisions being taken, but what I don't know here, Sir Geoffrey,
19 is whether the failure to find that (drop in audio) in the first
20 place or whether the relevant records (drop in audio) has been
21 number of records were lost in Hurricane Irma, for example, so
22 (drop in audio) inevitable.

23 But I agree with you that it should be properly
24 (unclear) reasons for them, and the proper records should be
25 kept.

1 Q. Forgive me, a Minister saying "don't minute this", if
2 it's a matter of public business, a Public Servant should minute
3 it, shouldn't they?

4 A. Yes, they should.

5 Q. Right.

6 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, we have been
7 going over two hours.

8 SIR GEOFFREY: I'm concluding there, if I may, with my
9 thanks to the Governor. I think I needn't put any further
10 questions. I'm extremely grateful for the Governor's patience
11 for his time and indeed yours, sir.

12 COMMISSIONER HICKINBOTTOM: No, thank you, Sir
13 Geoffrey. I was particularly thinking about the live
14 Transcriber because he will need a break.

15 What I propose to do now is to break.

16 Mr. Hall Taylor has on outstanding application to ask
17 the Governor questions. What I would do is, in accordance with
18 the COI Protocol is for him to discuss those questions with
19 Mr Rawat to see whether they could and should be put through
20 him, if Mr. Hall Taylor has any questions to put, but then if we
21 have a five-minute break now for the Transcriber I will hear
22 from Mr Rawat and Mr. Hall Taylor then.

23 THE WITNESS: Let me thank Sir Geoffrey for his
24 questions. Thank you, sir.

25 SIR GEOFFREY: Thank you very much.

1 COMMISSIONER HICKINBOTTOM: Yes. Thank you, Governor.
2 We may have some more questions for you, but we will know in
3 five minutes or so. Thank you.

4 (Recess.)

5 COMMISSIONER HICKINBOTTOM: Good. Are we ready to
6 continue?

7 TECHNICIAN PETERS: Just one minute, Commissioner.

8 (Pause.)

9 TECHNICIAN PETERS: We are now ready to proceed,
10 Commissioner.

11 COMMISSIONER HICKINBOTTOM: Good. Thank you very
12 much, Mr Peters.

13 MR RISSO-GILL: Sir, Sir Geoffrey's has asked me to
14 present his apologies to you. He's had now to leave us, and,
15 so, I'm taking over--taking his Chair at least, but as I say,
16 his apologies for having to depart now.

17 COMMISSIONER HICKINBOTTOM: No, thank you very much,
18 Mr Gill.

19 Now, I understand that Mr Hall told Mr Rawat--(drop in
20 audio) Mr Hall, tell me, you've spoken to Mr Rawat. Mr Rawat
21 has some--a few consequential questions to ask the Governor, and
22 you have fed into him, in accordance with the Protocol, those
23 matters that you would wish to raise. So, Mr Rawat is going to
24 ask, as it were, all of the questions that need to be asked. Is
25 that right, Mr Hall Taylor?

1 MR HALL TAYLOR: Yes, that's correct, Commissioner.

2 COMMISSIONER HICKINBOTTOM: Good. Thank you very
3 much.

4 Thank you very much for coming back, Governor.

5 Mr Rawat.

6 MR RAWAT: Thank you, Commissioner.

7 BY MR RAWAT:

8 Q. Governor, I hope can you hear me.

9 A. I can hear you clearly, thank you.

10 Q. At very occasionally the audio drops out, so I may
11 need to just interrupt you, if we do lose you just to ask you to
12 repeat a question.

13 Now, you've been taxed over the last two hours by Sir
14 Geoffrey on a number of matters. What I would like to do is
15 hopefully take things a little shorter, but again address the
16 sort of issues that he has canvassed with you. Amongst those
17 issues was the constitutional and operational relationship that
18 exists between the Governor and elected institutions, and the
19 first question I'd like to put to you is this: Earlier, when
20 giving evidence, both today and on the 19th of October, you
21 expressed your commitment to the principles in Article 73 of the
22 UN Charter, which required the development of self-government
23 and assistance in the development of free political institutions
24 according to the circumstances and stages of advancement of an
25 Overseas Territory.

1 How is the stage of advancement of a Territory, such
2 as the Virgin Islands, assessed, and why might there be
3 differences, for example, in the degree of self-governance seen
4 in different Overseas Territories?

5 A. The Overseas Territories all differ. One size does
6 not fit all. And, for example, within this region, the most
7 (drop in audio) self-governing of the Overseas Territories not
8 actually part of (drop in audio)the Caribbean but in this part
9 of the world is (drop in audio) with Cayman perhaps a close
10 second. And those are Territories that (drop in audio) at high
11 capacities.

12 On the other hand, we have smaller Territories, such
13 as Montserrat and Anguilla, smaller populations, Montserrat
14 obviously facing the challenge of the volcano which occurred
15 there(drop in audio) UK overseas development assistance, and
16 whilst there are many capable persons (drop in audio)
17 nonetheless self-governing Territories, and that is assessed,
18 actually, I think by the governments themselves, who they made
19 clear they still required UK support in certain areas. Others
20 do not seek that support.

21 But also assessed by Governors and by UK Government
22 Ministers, and also by reports (unclear), for example, by the
23 IMF, by the Caribbean Task Force, by regional organisations.

24 And my job is, of course, to promote self--develop
25 self-government here in the BVI, and (drop in audio) typically

1 just a practical example of where there could be differences
2 between Territories, and (unclear) that is disaster management.
3 In Bermuda, there is a Ministry of natural security(drop in
4 audio) works in very close conjunction with the Governor, and so
5 there is more of a devolved function in disaster management
6 there. My judgment would be based on what happened to
7 particularly after Hurricane Irma, based on my own experience
8 with consultations, is at this stage, it is better for overall
9 responsibility disaster management to lie with me as Governor.
10 But as I've indicated, I do not rule out (drop in audio) in that
11 area as BVI further develops its capacity in that area to that
12 becoming more of a devolved function within the Territory. It's
13 a matter of judgment and assessment as to capacity and
14 capability.

15 Q. And you've spoken about your past experience in other
16 Overseas Territories, but what differences do you know of
17 elsewhere that you consider might helpfully be implemented in
18 the BVI?

19 A. Frankly, I think one of them is prioritisation of
20 infrastructure, and recognize (drop in audio) but I recognize
21 the physical complexity of the Territory, but I think everybody
22 here knows that we may usefully invest more in the (drop in
23 audio) not help with disaster(unclear) one quite obvious
24 example.

25 Q. Your voice dropped out there a little bit, Governor.

1 Can I just summarise is it as this: The step that you
2 identified might usefully be implemented is prioritisation of
3 infrastructure particularly in relation to disaster resilience?

4 A. That's--that's correct. Yes, that was.

5 Q. Thank you.

6 A. That was one example.

7 Similarly, I mean (drop in audio) a Ministry code
8 which is (drop in audio) by Cabinet, perhaps that could have
9 been done at an earlier date. I'm glad that progress has been
10 made on that (drop in audio).

11 Q. Now, moving on, obviously the Commission of Inquiry
12 was set up by your predecessor, but other than to initiate a
13 Commission of Inquiry, what powers under the Constitution might
14 a Governor otherwise have exercised to promote good governance?

15 A. The terms of actual powers are not many. The Governor
16 has priorities under Section 6 of the Constitution, powers was
17 appointment, and, of course, I can (drop in audio) sent to (drop
18 in audio). But as I thought to explain before the Commission,
19 there is areas which are--most areas are responsibility of the
20 Elected Government. When issues come to Cabinet, I don't
21 believe that a decision which has been made is not in the
22 interest of good governance. All I can do is advise or record
23 my objections in the Cabinet Minutes.

24 So, whereas my predecessor had, he was faced with
25 serious concerns which led to (drop in audio) establishing the

1 Commission of Inquiry. He didn't really have much other means
2 if Cabinet was going to consistently go against his advice to
3 his decision where is he felt there was (drop in audio) other
4 than to call a Commission of Inquiry.

5 There are other Overseas Territories where other
6 mechanisms are available and where there are standards of good
7 governance (drop in audio) is required to abide by or (drop in
8 audio) not being adhered to, both Cayman and Turks and Caicos
9 have provisions to that effect.

10 What it could also have is (drop in audio)
11 arrangements, although, of course, that would require compliance
12 with those watchdog recommendations, such as the (unclear)
13 Auditor General or Internal Auditor. But there are other
14 mechanisms available in other Overseas Territories which don't
15 exist in BVI, and which had they existed, might have allowed
16 another option other than the calling of a Commissioner Inquiry.

17 Q. You've spoken of Turks and Caicos and Cayman, you've
18 spoken of watchdog provisions but can you give the Commissioner
19 some specific examples of such other alternative remedies that
20 might assist a Governor in the BVI in promoting good governance?

21 A. Well, if we had agreed standards of good
22 governance--need to be a degree of specificity around this--and
23 if remedy (drop in audio) been taken, should those principles of
24 good governance be (drop in audio) hands as well, then that
25 would provide a remedy other than calling of a Commission of

1 Inquiry. But (drop in audio) for the Commission to look at
2 other constitutions in this area, if the Commissioner so wishes.

3 Q. One of the Sections of the Constitution that you drew
4 Sir Geoffrey's attention to was Section 42, 40.2, which you
5 responded to Sir Geoffrey by pointing out that it
6 removes--removes an obligation on the Governor to consult with
7 Cabinet or the Premier where, in that Governor's judgment, the
8 matter is not materially significant so as to require
9 consultation.

10 But could you explain what your understanding is of
11 matters which are, or are not, materially significant?

12 A. I can't give a hard definition. I gave a couple of
13 minor examples in (drop in audio) prize giving or seeking facts
14 of (drop in audio) Virgin Gorda.

15 But I'm seeking from public about (drop in audio)--

16 Q. I'm sorry interrupt you, Governor, but I--we're losing
17 you at the moment on the audio.

18 A. I'm sorry, I'll bring the microphone slightly closer
19 to me.

20 As a matter of judgment, Mr Rawat, I think where I'm
21 simply trying to establish facts (drop in audio) to understand
22 from a public, for example, what the position is, let's say, in
23 regard to the number of vaccines which have been administered;
24 as it relate to the number of active COVID case; where we are in
25 terms of setting up the drive-through vaccination arrangement at

1 the festival grounds in Tortola or (drop in audio) which I think
2 is not in itself required consultation. But should I get then
3 wish to get that factual information and make a change, or
4 propose a change, in policy in this area--propose or to
5 (unclear)has been done on delivery of vaccines or suggest to a
6 Minister that they wish to (drop in audio) delivered, that is
7 materially significant, and that would, I think, properly either
8 inform or consult with the Minister on (drop in audio) that
9 issue.

10 So, it's a matter of judgment. And there might be
11 areas of disagreement. I don't believe I have overstepped the
12 mark on that since I have been Governor. I need to be wary of
13 the desire to work (drop in audio). I will always seek to do
14 so, but it would be impractical to have to go through the
15 Ministers (drop in audio) on every issue.

16 Q. Now, one of the matters I think I asked you about on
17 the 19th of October--and I think it was something I may have
18 covered with former Governor Jaspert, but amongst the
19 correspondence that the Commissioner has seen was correspondence
20 without the use of the Government Information Service.

21 Now, is it practical for all communications between
22 the Governor, the Governor's Office, and Ministers and their
23 Departments and Public Officers to pass through the Premier's
24 office as seemed to have been proposed at one point in time?

25 A. It's neither practical nor would that be in accordance

1 with the Constitution, so there are certain areas where I am
2 required to consult with the Premier or inform the Premier there
3 are certain areas where I know that would be (drop in audio) to
4 do but the Constitution did does not, with respect, bar it.

5 As regards in communication--and this may be the point
6 to which you're referring, Mr Rawat--yeah, there was a proposal
7 and a draft Cabinet Paper which would have effectively limited
8 (drop in audio) services work with my Office of the view that it
9 wasn't the function of the information services to work with the
10 Governor, and (drop in audio) previous practice. (a) (drop in
11 audio) (b) it ignores the fact that (drop in audio) is part of
12 Government within the British Virgin Islands, and obviously I
13 have been unhappy with the suggestion that my communications
14 would be under a power of approval by the Premier or Ministers,
15 but I'm glad to say, as I said in my evidence on the 19th of
16 October we seemed to found a practical way through that
17 difficulty, and for the most part, I'm content with the working
18 as it stands with Government Information Services.

19 Q. If that were not the case and your communications did
20 have to go through the Premier's Office, what would be the
21 practical consequences of that?

22 A. Well, it would make communications require the
23 approval of the Premier, then that, again, would not be in
24 accordance, in my view, with the (drop in audio) framework
25 within which we are both operating. The Premier has his

1 responsibilities, and I have my responsibilities but I don't
2 think it would be interest of good governance or consistent with
3 the Constitution if any communication that I may require the
4 approval of the Premier.

5 Q. And do your views apply both to what I may describe as
6 "private communications"--for example, communication with the
7 Minister--as well as public communications?

8 A. What I was referring in this context to public
9 communications and Government Information Services, as regards
10 engagement with Ministers, then that is covered by the
11 constitutional provision. Where I do have the right to go
12 direct to Ministers on areas within my responsibility, which is
13 inform the Premier of same.

14 There is a materiality test there as well. I mean,
15 Ministers (unclear) may get in touch with me to ask me a
16 question on a particular matter, and I will give them an answer
17 to that. I don't suppose they've consulted Premier before
18 seeking that information, but I haven't felt it requirement to
19 inform the Premier, which are material issues, I'm told.

20 Q. And in terms of the relationship between the
21 Government Information Service and the Governor's Office or a
22 Governor what, in your view, should that relationship be?

23 A. The Government Information Service is there to serve
24 Government. I am part of the Government (drop in audio) under
25 the Constitution and, therefore, I'm very please to say they

1 have been of assistance. I (unclear) to Government Information
2 Services to assist me when giving out (drop in audio) in
3 relation to preparation for emergencies, in relation to the need
4 for people to get vaccinated, or any other matter which I may
5 wish to make an appropriate announcement, so Government
6 Information Services are there to serve the Governor as they are
7 there to serve the Elected Government.

8 Q. Can I move on to the Public Service which you have
9 been asked questions both by myself and Sir Geoffrey.

10 With whom do you consider that the responsibility and
11 the best opportunity lies to identify any shortcomings or
12 training needs in the Public Service?

13 A. I think it's a shared responsibility. I work, of
14 course, very closely with the Deputy Governor, and I consult
15 with the Deputy Governor in a formal sense every week but
16 informally we speak to each other on a regular basis to his
17 Permanent Secretary on a regular basis. I also speak,
18 obviously, sometimes with the Director of Human Resources, and
19 actually (unclear) give rise with the head of the Public Service
20 Commission, although her functions are primarily (drop in audio)
21 on my direction.

22 And so, in our regular meetings, I become aware of
23 issues affecting the Public Service and challenges within the
24 Public Service, and of issues which may be properly drawn to my
25 attention, so I have a responsibility in that area, but there is

1 also a responsibility for Permanent Secretaries who supervise
2 the Departments and staff within them, and the responsibility
3 for Ministers because, under Section 56, I think, of the
4 Constitution, Ministers have power of direction and control of
5 their Departments. So, they have a concern over the performance
6 of their Public Servants, it's perfectly proper for them to draw
7 them to the attention of their--to the Permanent Secretary and
8 to the Deputy Governor and his team as necessary. So, it's a
9 shared responsibility.

10 Q. Now, in your Written Response to a Warning Letter,
11 Governor, you set out various initiatives in terms of reforming
12 the Public Service that date back to 1999. You have seen
13 Mr Frett's latest Affidavit on that in which he addresses in
14 some detail those initiatives.

15 Taking this question in two parts, please: First of
16 all, having undertaken that exercise, what factors or challenges
17 do you believe historically have existed in training and
18 developing the Public Service?

19 A. I can only speak second-hand to that. I myself have
20 been in the Territory for 10 months--well, 11 months, 11 months
21 now.

22 My assumption which (drop in audio) is that the
23 training programmes and initiatives which have developed from
24 1999 onwards were designed to address particular needs, so if
25 you just give me one moment to refer to them. They were dated

1 '99, the work called "public outreach and engagement" and (drop
2 in audio) build capacity in those areas, (drop in audio)
3 establishment of the Complaints Commissioner, which was designed
4 to have (drop in audio) to deal with (drop in audio)
5 maladministration, a similar need for financial reform starting
6 in 2013.

7 I'm not sure I'm quite answering your question,
8 Mr Rawat, but those Public Service transformation initiatives
9 were designed to improve capacity and performance in the various
10 areas to which I've referred. And as the heading to the table
11 itself said, this is a journey, a journey of which I've referred
12 to-from 1999 onwards which continues to this day with the Public
13 Service Transformation Paper with which we're now moving forward
14 in agreement with the Premier.

15 Q. Well, can we bring it, then, to the current day,
16 please, Governor. In terms of the factual challenges that
17 currently exist in relation to training and developing the
18 Public Service, can you tell the Commissioner what you think
19 those are?

20 A. Well, again, they're what are addressed in the Paper,
21 and they cover a number of broad areas in relation to good
22 governance, eGovernment, digitalisation of the Public Service,
23 better customer service (drop in audio) people of the BVI, and
24 better human resources management. Within those broad headings,
25 there are a number of more detailed points, one of which relates

1 to policy planning capability.

2 So, there are needs in those areas which this paper
3 will hopefully address.

4 But as I was trying to make clear in my evidence, both
5 of the 19th of October and today, one of the reasons we did this
6 initiative now is, in my view, because of chronic underfunding
7 or training within the Public Service. The responsibility does
8 not lie with the Governor or with the Deputy Governor.
9 Responsibility for that basic underfunding in training and
10 adjusting, such as records management, lies with the fact that
11 Elected Governments--and my criticism is not directed
12 necessarily to any one particular government, but according lack
13 of underfunding in training. The UK has sought to play its part
14 and I gave you the figure of approximately £2.14 million since
15 2018, but that figure is a stark contrast, even if taking the
16 evidence in the Affidavit from Mr Frett is a stark contrast to
17 the training and investment in a number of parts of the Public
18 Service here, so we need to address that and improve that, and I
19 hope that the Paper now has been agreed will help to deal with
20 that.

21 But to try to lay the blame at the door of Governors
22 of the UK for this, I don't think is an accurate reflection of
23 the true position.

24 Q. Can I come back to the question of budgeting in a
25 moment, but just obviously you have seen Mr Frett's Affidavit.

1 He goes through the various initiatives that date from 1999, and
2 if one takes one point from that Affidavit, it is that, with
3 limited exception and the most prominent of those is the 2018
4 initiative, Mr Frett's view is that those earlier initiatives
5 did nothing to address policy development capacity in the Public
6 Service.

7 Is that something with which you would agree?

8 A. Not entirely, no. I recognise that a number of these
9 initiatives do not have the title "policy development capacity"
10 attached--attached to them. As I tried to indicate in my
11 evidence, I think that training in quite practical areas or
12 training on specific subjects--let me put it that way rather
13 better--can actually help to support policy development.

14 So, the first step in developing a child safeguarding
15 policy is actually training what the risks are and then
16 subtraining on how to address those risks, and that could help
17 to inform policy development in those areas. So I don't accept
18 that sort of delinkage between sort of policy development in an
19 ethereal sense on the one hand and practical training on the
20 other.

21 And, secondly, you need to ask the Acting Financial
22 Secretary on this yourself, but I think (unclear) some of the
23 training has been relevant to policy development.

24 But to take you beyond that, if you ask me is there
25 more to be done in that area? Yes, and the PAI Report does

1 point to more to be done in that area, and that is what is being
2 addressed in the Paper which was put forward and agreed by my
3 predecessor and then by myself with the Elected Government.

4 I don't need to repeat it, I think, but what I don't
5 accept is with respect to the submissions which have been put
6 forward by the Attorney General that the lack of what is viewed
7 as policy development skills is an explanation for a number of
8 failures in governance to which I've referred.

9 Q. You mentioned now the PAI Report. You mentioned the
10 transformation plan. It would seem that in terms of policy
11 development capacity of the Public Service what is now going to
12 happen is a partnership between various what might be described
13 as stakeholders, between the Governor, the Deputy Governor, the
14 Ministers and the Public Service itself.

15 But to your knowledge, prior to or outside this
16 Commission of Inquiry, has any lack in the policy development
17 capacity of the Public Service been relied upon to explain or
18 justify ministerial or Cabinet decision-making and departures
19 from and waivers of due process or principles of good
20 governance?

21 A. (drop in audio).

22 Q. I said I would go on to Public Service budgeting.
23 We've done that in some detail both on the last occasion and
24 today. The point I wanted to ask you was in relation, if you
25 have it with you, Section 6 of Mr Frett's Affidavit, if you have

1 that to hand, please, Governor.

2 A. Yes, I do. What Section?

3 Q. Yes, it's the very last page, 697.16, if you need the
4 page reference.

5 A. Just one moment, please. (unclear).

6 Yes, I've got that. Thank you.

7 Q. Thank you, Governor. I will summarize but it's the
8 Section headed "Budget responsibility", and he responds to a
9 piece of evidence you gave about the Budget available for the
10 Public Service lying with the Elected Government, and a point
11 that was also made on by Mr Jaspert.

12 But what--he says at 6.2 is that: "The appropriation
13 bill, inclusive of budget estimate is, subject to the approval
14 of the Governor. Further, if there is any breach of the
15 protocols involved, the Budget has to be approved by the UK
16 Government through the FCDO".

17 In reality, what can a Governor do in relation to an
18 appropriation bill put before him and her? And that's a
19 Governor in the BVI.

20 A. Not a lot. You know, budgetary matters are devolved.
21 The draft budget is discussed in Cabinet. The Governor can make
22 points about the appropriateness of otherwise of certain
23 proposed expenditures, but otherwise that is a matter for the
24 Elected Government and for the House of Assembly, and then the
25 appropriation bill comes to the Governor for assent.

1 And it perhaps would be the most nuclear of options
2 for any Governor to refuse assent, to the
3 appropriation--appropriation bill, so I think in practical terms
4 this is a very devolved issue.

5 Q. You have set out for the Commissioner, if you like, a
6 spectrum of Overseas Territories where you have one end an
7 Overseas Territory that may have a very, very high degree of
8 near independence, and at the other end others which are very
9 dependent upon the UK.

10 On that spectrum, if again returning to Article 73, is
11 it an indication of a Territory moving towards
12 self-determination that they do have responsibility for their
13 own budgets, and they do fund their own initiatives?

14 A. I think I'm correct in saying that the only Overseas
15 Territory in this region which doesn't have some form of
16 Framework Agreement with the UK is Bermuda, and I think that is
17 a mark of its degree of self-governance and the way that the
18 Territory has developed.

19 So, yes, I think you're correct, Mr Rawat, in what you
20 suggest.

21 Q. Returning briefly to Mr Frett's Affidavit, the term
22 that he uses is--well, most uses is "policy development capacity
23 of the Public Service".

24 What do you understand is meant by "reference to
25 policy development capacity of the Public Service"?

1 A. It's to assist Ministers in their formulation of
2 policy and to assist Ministers in the implementation of policy
3 to put in this most obvious terms. But the responsibility for
4 determining policy rests with Cabinet as specified in the
5 Constitution. And, therefore--excuse me my moment, please.

6 (Pause.)

7 A. Excuse me, Mr Rawat.

8 And, therefore, Cabinet Responsibility lies with
9 Ministers. The primary responsibility for investing funds in
10 developing in that capacity I think rightly rests with
11 Ministers, but working closely with the Governor, and I accept
12 my responsibilities for the Public Service as well. And I do
13 not dissociate myself from that general management of the Public
14 Service to which I referred.

15 And I recognize it's desirable to build capacity in
16 this area, as did my predecessor, which is why, since 2018, we
17 have been working on this particular Transformation Programme,
18 which I'm glad to say after some rather unfortunate delays has
19 now come to fruition.

20 Q. Now, you will have seen what the options set out in
21 the PAI Report are. One of the phrases that stands out from
22 Mr Frett's affidavit is a reference to a skilled policy
23 formulation cadre.

24 A. Mr Rawat, I have a slight cold which I picked up in
25 London last week. Excuse me, one second.

1 (Pause.)

2 A. Sorry. Please, Mr Rawat, could you repeat the
3 question.

4 Q. If one looks at the PAI Report, one of the options,
5 for example, is the development of a specialist unit that sits
6 within the Premier's Office. Mr Frett also refers to developing
7 a skilled policy formulation cadre.

8 Now, if one accepts--and it will be a matter for the
9 Commissioner--that there is a need to improve policy development
10 capacity in the BVI's Public Service, in your view, how might
11 such a need best be met?

12 A. Well, the transformation paper does specifically
13 propose a policy planning unit within the Premier's Office, and
14 I think that would be a helpful step forward.

15 Secondly, I agree that it's sensible to provide
16 further training to a probably relatively small number of
17 officers in this area to assist both central unit and assist
18 within their individual Ministries. Not every Public Officer
19 needs to be trained in policy planning and development. I think
20 it would be helpful to have people skilled within that area both
21 within the Premier's Office and within individual Ministries,
22 and there are such persons already as the PAI Report recognises,
23 it's a matter of increasing the number of people with relevant
24 skills in that area. There doesn't need to be across Public
25 Service as a whole, so looking at well-directed funding and

1 training to assist in that area.

2 Q. Now, you have spoken, Governor, about funding that has
3 come from the UK. You have said in plain terms, you referred to
4 chronic underfunding in the past. So, if there is going to be
5 this development, where would the provision for that and the
6 budget for that have to come from ultimately?

7 A. Come from the local budget here in the BVI, and the
8 Paper adopted on Public Service transformation has language in
9 it on the necessary budget for that purpose, but the UK would
10 help, I hope to be able to help clear the good governance field
11 but primarily as they should do from the Budget here in the BVI.
12 So this is a positive (drop in audio) forward, which I don't
13 hesitate to say I welcome.

14 Q. Just I think you may have differently answered this
15 question earlier, but you will be aware of the different topics
16 that this Commission of Inquiry has investigated. In your view,
17 would the development of a specialist unit that makes or
18 improves policy development capacity in the Public Service
19 resolve all of the issues that have been investigated by this
20 Commission of Inquiry?

21 A. No, I don't. And I think this is quite a
22 fundamental--quite a fundamental point because I hope without
23 oversimplification, there seems to be an argument that if things
24 have gone wrong in certain areas, it's because of a lack of
25 policy development within the Public Service, and responsibility

1 of the Public Service lies with the Governor and, therefore,
2 that's where any blame should lie, and I don't really recognize
3 that point.

4 The Attorney General, in her submission--I think the
5 penultimate submission--argues at paragraph 20, it reads: "In
6 my view, a number of areas upon which the Commission is focused
7 such as Statutory Boards, Belongership, Crown Lands, and
8 Contracts are all areas in which there has been a failure in
9 policy-making. However, I have not yet seen evidence of
10 dishonesty, finality or any intent in these areas, and I believe
11 that such problems as have been identified in the evidence could
12 have been avoided through carefully thought out and implemented
13 policies".

14 Now, I respectfully disagree with that because, for
15 example, on contracts, there are stipulated standards and
16 stipulated requirements which have simply not been followed.
17 Similarly, there are criteria for appointments to Statutory
18 Boards which have not been followed. The requirements to
19 declare interests under the Register of Interests Act is plain.
20 It's not a matter of policy development or lack of policy
21 development which has led to a failure to comply with the
22 legislation in that area. There has been a failure to comply,
23 but on a Belongership. I gave the example of the residency
24 decision, which, with respect, in my view, contrary to what a
25 clearly established policy criteria and what was a clear policy

1 recommendation from the Immigration Board.

2 So, policy development and better policy capacity can
3 help to inform these areas, but I do not believe that the lack
4 of policy-making which is referred to by the Attorney General,
5 even if there had been some inadequacies there, is a sufficient
6 explanation for some of the--what in my view--are the failure of
7 good governance which have been identified by this Commission.
8 That's my view of the matter.

9 Q. Commissioner, with the exception of one question, I
10 think I have reached the end of my questions. I pause here
11 because if Mr. Hall Taylor feels that there is a question that I
12 ought to have put or another question he wants me to put,
13 perhaps he can e-mail me quickly.

14 MR HALL TAYLOR: I'm happy to indicate that there are
15 no further questions.

16 MR RAWAT: Thank you for that.

17 BY MR RAWAT:

18 Q. My last point that I want to raise with you, Governor,
19 is this. Obviously, I asked you questions over what perhaps was
20 quite a long day. You have been asked questions by Sir Geoffrey
21 today, and we've covered a lot of ground, but is there any other
22 matter in relation to good governance in the Virgin Islands that
23 you wish to draw the Commissioner's attention to?

24 A. I think I would like simply to confirm that commitment
25 to good governance which I have and which I'm confident all of

1 my predecessors have had. As we have also had a commitment to
2 progressing self-governance. But in line with Article 73 of the
3 UN Charter, both responsibilities apply. And developing
4 self-governance doesn't mean the Governor necessarily agreeing
5 with everything. Sometimes the Governor's responsibility is to
6 draw plainly to attention where he or she believes there have
7 been failures of good governance, and I hope I do not pre-judge
8 what the Commissioner will find or recommend, but I hope that
9 the result of this Commission of Inquiry will be to help to
10 serve both of those goals of self-governance and good governance
11 within the British Virgin Islands.

12 Q. Thank you, Governor. I'm going to make two requests
13 of you, if I may. The first job we have for you is if you could
14 provide the documents that you had to hand when you were
15 answering questions from Sir Geoffrey. I'm thinking,
16 specifically you referred to the Budget for a Minister and the
17 training budget being \$978. If you could provide those
18 documents to the Commission.

19 The second job I have for you, if I may, is if you
20 could just give a breakdown of the, I think it's £2.14 million,
21 you say the UK has contributed. If you're about to set out in a
22 letter how that broke down for the Commissioner, that would be
23 helpful.

24 A. Yes, certainly I will endeavor (drop in audio)
25 sometimes that scientific process but 1.4 million is my best

1 estimate since 2018 and I can provide you with further details
2 of that. Thank you.

3 Q. Thank you.

4 Can I conclude, Governor, by thanking you for
5 returning to give further evidence to the Commissioner, but also
6 thanking you for the way in which you have given your evidence
7 today.

8 A. Yes.

9 COMMISSIONER HICKINBOTTOM: And could I add my thank,
10 please, Governor, both for your time today and also for the
11 helpful evidence that you have given today as well as in
12 October. Very much appreciate it. Thank you very much.

13 THE WITNESS: Thank you, Commissioner. Thank you.

14 (Witness steps down.)

15 COMMISSIONER HICKINBOTTOM: Now, Mr Rawat, we can let
16 the Governor and Mr. Hall Taylor go, I think, and I think the
17 next witness is Mr Smith-Berkeley.

18 MR RAWAT: And I think if I could ask you to rise
19 briefly for five minutes so we can set up the room and get
20 Mr Smith-Berkeley in place.

21 COMMISSIONER HICKINBOTTOM: Yes. That's clearly
22 sensible. We will break for five minutes so that can be done.
23 Thank you very much.

24 (Recess.)

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Session 2

COMMISSIONER HICKINBOTTOM: Good. Are we ready to continue?

TECHNICIAN PETERS: Commissioner, we're just getting the Witness set up now. We should be ready in a few minutes.

COMMISSIONER HICKINBOTTOM: That's great. Thank you very much. Thanks.

(Pause.)

TECHNICIAN PETERS: Mr Rowe, just to verify you are with us? Okay, wonderful, thank you.

Thank you, Commissioner. We are ready to proceed.

COMMISSIONER HICKINBOTTOM: Good. Thank you very much.

Good. Thank you, Mr Rawat. I think we are ready to continue.

MR RAWAT: Thank you, Commissioner.

BY MR RAWAT:

Q. Mr Smith-Berkeley, can you see and hear me?

A. Yes, I can.

Q. Thank you.

And thank you for coming to give evidence to the Commission.

I understand that you would like to make an affirmation.

A. Yes.

1 Q. Do you have the words of the affirmation with you?

2 A. Yes, I do.

3 Q. Could I ask you--there is no need to stand, but could
4 I just ask you to read out the words of that affirmation.

5 A. No, I understand perfectly.

6 I do solemnly, sincerely and truly declare and affirm
7 that the evidence I shall give shall be the truth, the whole
8 truth, and nothing but the truth.

9 Q. Thank you for that. Can we deal with some
10 introductory matter, please. Could you give the Commissioner
11 your full name.

12 A. My name is Ronald Smith-Berkeley.

13 Q. And your professional address?

14 A. Bellevue, Tortola.

15 Sorry, Road Town.

16 Q. Thank you.

17 Now, could you briefly give the Commissioner an
18 outline of your career in Public Service?

19 A. Career in the Public Service. I became a Permanent
20 Secretary in 2011, and I served for about nine years or so in
21 the Ministry of Natural Resources, Labour and Immigration.

22 And, in 2019, I was transferred to the Ministry of
23 Transportation, Works and Utilities.

24 Q. Thank you.

25 Now, the reason you were to attend to give oral

1 evidence to the Commissioner was to ask you some questions that
2 arise from your Fourth Affidavit. Can I confirm that you have a
3 copy of that with you?

4 A. Yes, I do.

5 Q. Could I take you to the last page of that Affidavit,
6 please.

7 A. One quick minute, please.

8 MS PEATY: I'm just going to help Mr Smith-Berkeley
9 find the Affidavit on the laptop.

10 THE WITNESS: If that's okay.

11 MR RAWAT: Thank you, Ms Peaty.

12 (Pause.)

13 MR RISSO-GILL: So, while Ms Peaty is doing that, I
14 should explain that Mr Smith-Berkeley, in case you didn't know,
15 he has all of the material on his laptop, so he'll be using that
16 to navigate the bundles.

17 COMMISSIONER HICKINBOTTOM: Yes, thank you very much,
18 Mr Risso-Gill.

19 THE WITNESS: I'm there, so you asked that I go to the
20 last page.

21 BY MR RAWAT:

22 Q. Could you confirm that that carries the date of the
23 26th of October 2021 and is signed by you?

24 A. Yes.

25 Q. And are you content, Mr Smith-Berkeley, that this

1 Affidavit formed part of the evidence before the Commissioner?

2 A. Sorry? I did not hear that.

3 Q. Are you content that this Affidavit should form part
4 of the evidence before the Commissioner?

5 A. Yes.

6 Q. Now, Mr Risso-Gill has helpfully said you have
7 everything on your laptop, but can I just confirm what
8 everything is?

9 Do you have the Written Response of Minister Wheatley
10 dated the 29th of September 2021 with the accompanying bundles'
11 documents?

12 A. Yes.

13 Q. And do you have the further response from Minister
14 Wheatley dated the 8th of October 2021, which also is
15 accompanied with documents?

16 A. Yes.

17 Q. We also asked for you to have access to the Hearing
18 Bundles that were prepared for the session that we did on Crown
19 Land.

20 Do you have that?

21 A. Yes.

22 Q. And you also, I hope, have been supplied with a small
23 sheaf of papers headed "Extracts From AG Disclosure".

24 MS PEATY: I'm not sure about that one, Mr Rawat.

25 MR RAWAT: I think it came through, I think, either

1 yesterday or this morning.

2 MS PEATY: Perhaps--if it's quick to do, could it
3 perhaps be e-mailed it to me, and then I can--if it's small, and
4 then I can show it to Mr Smith-Berkeley when we get to that,
5 if--

6 MR RAWAT: That's helpful. I think that's what we'll
7 are do, and then we'll press on and see if we can work through
8 it.

9 It's only 17 pages.

10 MS PEATY: It may be (drop in audio) place that we do
11 have --(drop in audio).

12 MR RAWAT: Can I explain, Commissioner. I'm
13 proceeding on the basis that there is no--or that the IRU
14 previously indicated that on behalf of the Attorney, that
15 there's no issues of privilege asserted over that material
16 anyway.

17 BY MR RAWAT:

18 Q. But if I return to Mr Smith-Berkeley, can I take you
19 to paragraph 2 of your Affidavit, please, Mr Smith-Berkeley.

20 A. Yes.

21 Q. In that paragraph, you explained that you were at
22 Natural Resources, Labour, and Immigration for some nine
23 years--or eight years. Aside from Minister Wheatley, which
24 other Ministers did you work for whilst you were in that
25 Ministry?

1 A. The Honourable Dr Kedrick Pickering.

2 Q. That's Dr Kedrick Pickering, isn't it?

3 A. (Unclear) And for about six months prior to that,
4 Honourable Omar Wallace Hodge.

5 Q. Now, if I could take you to--we perhaps don't need to
6 take you to it, but I will show you if you need it. In the
7 Crown Land Hearing Bundle, there is an Affidavit produced by
8 Joseph Smith-Abbott, who is now--who succeeded you at--as
9 Permanent Secretary at Natural Resources, Labour and
10 Immigration. That Affidavit was made as a result of a request
11 to Mr Wheatley to provide an Affidavit on various matters
12 concerning Crown Land. And when Mr Smith-Abbott gave evidence
13 in response to that Affidavit, he explained that it had been
14 prepared with the assistance of Public Officers working to him
15 in the Ministry. Were you asked to assist at all in the
16 preparation of that Affidavit?

17 A. I believe I was contacted towards the end, not at the
18 beginning, but I was contacted.

19 Q. And was that just to assist with some of the
20 information that went into the Affidavit?

21 A. Yes.

22 Q. In relation to the Affidavit that you've made and that
23 we're asking you questions about, how did you come to make that
24 Affidavit?

25 A. Well, I was contacted again, and I was asked to

1 confirm that the discussions mentioned by Minister Wheatley, and
2 I guess that in fair discourse at some point did happen, and I
3 think that is the essence of this document that we're looking
4 at.

5 (Overlapping speakers.)

6 A. --discussion.

7 Q. Who contacted you then?

8 A. I think it was either Mr Gill or Mr Abbott-Smith or
9 maybe together, but it came from one of those two persons.

10 Q. And who was it who drafted the Affidavit?

11 A. I don't know, but I can only assume when. When I
12 received it, it was drafted, but I reviewed it.

13 Q. Thank you.

14 Now, one of the documents that you referred to--and
15 this is at paragraph 3.1 of your Affidavit--it is the Response
16 that Minister Wheatley put in. And for the Transcript, that's a
17 response that he put in to a Warning Letter.

18 You say that you reviewed the Response together with
19 the documentation to which it refers, and you then go on to set
20 out particular paragraphs of the Response with which you agree.

21 Now, what that Response says, it refers to a dispute
22 between two parties. Would you agree that the two parties at
23 the heart of this dispute were Nature's Way and Delta Petroleum?

24 A. Yes.

25 Q. Now, in Mr Smith-Abbott's Affidavit that I mentioned a

1 moment ago, he said--and I can show you it if you need it--but
2 he said that a dispute had arisen between Mrs Penn, who is the
3 principal of Nature's Way, and Mr Bevis Sylvester over the land
4 in Parcel 310 to which Mr Sylvester also claimed to be entitled.
5 Now, Parcel 310 is what--where your Affidavit goes to and what
6 we're then to ask you questions about.

7 But in referring to the dispute involving
8 Mr Sylvester, in person, that's not something with which you can
9 agree, is it?

10 A. Can you ask that again, please? The dispute between
11 Nature's Way (drop in audio) and Mr Sylvester? I didn't--what
12 is the question again, please?

13 Q. You agreed with Minister Wheatley's response when he
14 refers to a dispute between two parties, and you've confirmed
15 that is Nature's Way and Delta Petroleum.

16 A. Yes.

17 Q. We know that the principal of Nature's Way is
18 Mrs Penn.

19 A. Yes.

20 Q. In Mr Smith-Abbott's Affidavit when--and in
21 recognizing Mr Smith-Abbott had only recently started at the
22 Ministry when he had to make his Affidavit, but he writes this:
23 "A dispute had arisen between Mrs Penn and Mr Sylvester over the
24 land in Parcel 310 to which Mr Sylvester also claimed to be
25 entitled".

1 And what I put to you was: That can't be something
2 with which you can agree because your point is that it's Delta
3 Petroleum that had the dispute. Would you agree?

4 A. Yes, I agree. However, may I continue?

5 Q. Yes.

6 A. Obviously the documents does mention Delta, but all
7 discussions that I had was with Mr Sylvester.

8 Q. But did you understand Mr Sylvester to have any claim
9 to Parcel 310 independent of any rights that Delta might be
10 asserting?

11 A. No.

12 Q. Now, tell me if you need to look at the documents, but
13 I'm hoping that you may have some familiarity with the
14 background of this case, which is Parcel 310, as I explained.

15 Now, what the documents show is that on the 18th of
16 July 2007, the Executive Council, as it then was, decided to
17 lease what became Parcel 310 to Nature's Way, and that decision
18 was then communicated to Mrs Penn on the 1st of August 2007.

19 Now, if you could turn up, please--and I hope Ms Peaty
20 has it--but the document that's headed "Extracts From AG
21 Disclosure" at page 6.

22 A. Okay.

23 Q. Thank you, Mr Smith-Berkeley.

24 If you've got--if we're both on the same page, you
25 should have a Cabinet Paper dated the 17th of August 2012?

1 MS PEATY: We're there, Mr Rawat.

2 BY MR RAWAT:

3 Q. Now, it's a memorandum from the Minister for Natural
4 Resources and Labour. By 2012, you were in position as the
5 Permanent Secretary. So, would you have had a hand in drafting
6 this paper?

7 A. Okay, sorry. I'm there now.

8 Q. What my question was whether you would have had a hand
9 in drafting this paper.

10 A. Also in reviewing, but yes, since it's ultimately the
11 Permanent Secretary's responsibility, but the process is the
12 matters would be discussed, and the officer responsible would
13 obviously draft the document, and then it comes to me for
14 review. So yes, I would have been very much involved in the
15 putting together of this paper.

16 Q. Now, before we see--we leave that page, you will see
17 that at Roman Numeral Eight (VII) under "Other" it says: The
18 leased property to benefit from an easement over Parcel 252 and
19 309. The paper itself is headed "Lease of Crown Land - Parcel
20 310 to Joan Penn doing business as Nature's Way Limited".

21 And then at (c) it says (reading): "The lessee to
22 undertake the outstanding reclamation at his/her own expense to
23 secure the southern boundary of the leased property, Parcel
24 310".

25 If we go to page 7, you will see that there is the

1 penultimate paragraph which is headed in November--begins
2 November 2011. So, in November 2011, Ms Penn wrote to the
3 Ministry to inquire about the offer made to her in 2007. The
4 offer of lease was never formalised despite her acceptance dated
5 August 2007 and the many follow-ups from her attorney.

6 If you look, please, at page 8, and at the top of the
7 page, the top paragraph, if you look at the last sentence, what
8 it says is that this paper seeks to regularize the offer as
9 handed down in Cabinet's decision of July 2007. So, it's
10 regularizing the offer that was made to Nature's Way.

11 So, it follow, doesn't it, Mr Smith-Berkeley, that the
12 position of the Ministry in 2012 was that Nature's Way was to be
13 preferred over any competing claim from Delta Petroleum?

14 A. Well, as a--as the last sentence says, "This paper
15 seeks to regularize the offer as handed down by Cabinet's
16 decision". So, at this juncture, we were implementing the
17 decision from Cabinet.

18 Q. Now, the issue that was perhaps could be said to be at
19 the heart of why it took so long for Nature's Way to gain access
20 to Parcel 310 was the question of landward access to that parcel
21 of land, wasn't it?

22 A. Yes.

23 Q. We don't have the Cabinet Decision, but if you look at
24 page 17 in that small bundle...

25 A. Yes.

1 Q. ...it's a letter from you as Permanent Secretary to
2 the Attorney General's Chambers, and it's addressed to Crown
3 Counsel, as she then was, Principal Crown Counsel now Maya
4 Barry. It's dated the 17th of June 2015. I'm not going to read
5 it out, but it--in summary, what it sets out or what it appears
6 to set out is that Cabinet had made a decision, had decided to
7 grant Nature's Way a lease and also to grant an easement over
8 309. So, that was the position in 2015, wasn't it, that you
9 were still progressing with the idea of a lease to Nature's Way?

10 A. Yes.

11 Q. Now, in your Affidavit, you referred to a judicial
12 review that was issued by Delta Petroleum in 2013. The
13 information before the Commissioner is that it was withdrawn in
14 March 2014.

15 But on the 25th of July 2017, and I will show you the
16 document if you need reminding of this, but it appears that the
17 lessee of Parcel 309 did grant an easement to the Governor,
18 which would allow landward access to Parcel 310.

19 Do you recall that?

20 A. Yes.

21 Q. So, by July 2017, it's right, isn't it, that the issue
22 of landward access to 310 had been resolved?

23 A. Could you take me to that (drop in audio).

24 Q. All right. If you look at the Crown Land bundle, the
25 first bundle, please, at page 1176.

1 A. Just a minute.

2 Q. It's the second bundle, but it's page 1176.

3 (Pause.)

4 MS PEATY: 1176?

5 MR RAWAT: 1176, please.

6 (Pause.)

7 THE WITNESS: Okay. We're at 1176.

8 BY MR RAWAT:

9 Q. Now, it's just so that you can orient yourself in
10 time, Mr Smith-Berkeley, but that's the Grant of Easement that I
11 mentioned earlier to you dated 25th of July.

12 Do you have that?

13 A. Yes.

14 Q. And so, in effect, that's a grant of easement to the
15 Governor from the lessee of Parcel 309, but the consequence of
16 it was that that gave landward access to Parcel 310, wasn't it?

17 A. Yes.

18 Q. If you turn through this bundle to 1213, please.

19 A. The same or the next bundle?

20 Q. Our bundles might be different, but I'm using a hard
21 copy. It's page 1213, please.

22 A. 1213? Okay.

23 Q. Yes. Now, it's--it might be, I think, an e-mail from
24 yourself to Ms Barry in the Attorney General's Chambers dated
25 the 17st of May 2015, and you are there to summarize, explaining

1 that there was an issue of access which had been resolved, that
2 Assistant Secretary Penn would commence the process which would
3 lead to the execution of a lease between Mrs Penn and the Crown,
4 and whilst that is in progress, we ask if you can write to Delta
5 via their Attorney, asking them to cease use of the said parcel
6 of land.

7 So, by 2018, you are taking steps, aren't you, as
8 Permanent Secretary to begin to execute a lease in relation to
9 Parcel 310; is that right?

10 A. Yes.

11 Q. And one of the issues that confronted you was that
12 Delta Petroleum had been illegally occupying Parcel 310, hadn't
13 they?

14 A. Yes.

15 Q. Now, the next few pages--and I don't need to take you
16 through it unless you want to--but there is correspondence
17 exchanged with Delta Petroleum's lawyers when they are asked by
18 the Attorney General's Chambers to vacate Parcel 310.

19 Do you recall that correspondence taking place?

20 A. Yes.

21 Q. And what we have, if we turn through to page 1218,
22 please.

23 A. 1218.

24 Q. In fact, if you go to 1217 first, please.

25 A. 1217. Okay.

1 Q. Now, 1217 is a letter from Ms Barry 1st of October
2 2018 to the Attorneys for Delta Petroleum, and it says this:
3 "We have now had an opportunity to take full instructions on the
4 matter and now able to advise the Government is not in a
5 position to discuss a lease of the subject parcel".

6 So, Delta had asked whether it was possible to lease
7 Parcel 310. Ms Barry, upon instructions, told her "no". And if
8 you turn to 1218, the next page...

9 A. Yes.

10 Q. ...you'll see ultimately that, despite the Attorneys
11 for Delta saying that they would leave Parcel 310, an Expulsion
12 Notice had to be signed from the Governor. Presumably you would
13 have been involved in obtaining that Expulsion Notice.

14 A. Well, this would have been--involved, yes, but this
15 would have been through the AG's Chambers as the Ministries do
16 not contact directly the Governor.

17 Q. So, once you had given instructions to the AG's
18 Chambers to ask Delta to vacate that land, it was for the AG to
19 take all necessary steps?

20 A. Yes.

21 Q. Now, this is the 18th of January 2019. The
22 right-of-way had been granted in July 2017. Why was it that by
23 January 2019 a lease had not been executed?

24 A. Because of the issue of what we are now discussing,
25 the occupation of the land by someone else.

1 Q. But why would the occupation of land by Delta
2 Petroleum stop the Ministry dealing with the mechanics of
3 executing a lease?

4 A. Well, practically it wouldn't, but I think at the
5 time, the thinking in the Ministry was we needed the parcel to
6 be cleared, so to speak, but, you know, there isn't anything
7 that I could think of that would have--stop that other than
8 seeking to ensure that the parcel was free and clear.

9 Q. So, in effect, Delta's continued violation of the law
10 meant that Nature's Way didn't get the lease.

11 A. I guess you can say that.

12 Q. Now, the Expulsion Notice is the 18th of January 2019.
13 What steps were taken to enforce that Expulsion Notice?

14 A. But other than asking, really, that's the major, I
15 think, the major step that was taken, just ask that the land be
16 vacated, and that was done primarily through the lawyers.

17 As you know, I did reach out to the Attorney General's
18 Chambers for assistance in that regard in order to get the land
19 free and clear so that we can forward, but I--

20 Q. But did--

21 (Overlapping speakers.)

22 Q. I'm sorry, I'll let you finish.

23 A. No, what I was saying is at this time there would not
24 have been any direct contact between ourselves and Delta or
25 Mr Sylvester. I think all of this would have been done through

1 the legal channel.

2 Q. I won't take you through it, but we have a sequence
3 of--it's three letters that are exchanged between the Attorney
4 General's Chambers and Delta Petroleum's Attorney, and then the
5 Expulsion Notice gets signed by the Governor. But once that's
6 signed--I mean, you only needed an Expulsion Notice, don't you,
7 because people won't leave voluntarily? Is that right?

8 A. Yes.

9 Q. But even after that Expulsion Notice was signed, the
10 Ministry didn't take any steps to get Delta Petroleum leave.

11 A. Other than our communications through the AG's
12 Chambers, no. There wasn't anything direct.

13 Q. Were you aware that an Expulsion Notice had been
14 signed?

15 A. Yes, I was made aware.

16 Q. And it's something that you would have put, as a
17 conscientious and senior Public Officer, you would have sure
18 that was on the file, wouldn't you?

19 A. Yes.

20 Q. Do you recall giving instructions to the Attorney
21 General's Chambers to enforce compliance with this Expulsion
22 Notice?

23 A. No, I don't recall doing that.

24 Q. Would that be something that you would need the
25 Minister to agree to?

1 A. No, I don't--I don't--I don't think so. I think the
2 notice carries enough weight. But to your specific questions, I
3 do not recall making contact with the AG's Chambers again on
4 this.

5 Q. Now, obviously the last part of your time as Permanent
6 Secretary of that Ministry would have coincided with the change
7 of administration and Minister Wheatley taking on that
8 portfolio.

9 Now, you've referred to the response in your Affidavit
10 when Minister Wheatley speaks of being briefed by you as
11 Permanent Secretary. When you briefed Minister Wheatley, would
12 you have explained to him that the issue of land access,
13 landward access, had been resolved?

14 A. I do not recall the details of those conversations.
15 You know, I do not recall saying that specifically or at this
16 point the details in general.

17 Q. Do you con--

18 (Overlapping speakers.)

19 Q. I'm sorry, I'll let you finish.

20 A. No, but I was saying but I know we had the discussion,
21 but I can't say specifically what I said or what he said. I
22 don't recall that.

23 Q. Do you consider yourself to be a conscientious and
24 diligent Public Officer?

25 A. I would say that.

1 Q. It's unlikely, isn't it, that if you were briefing a
2 Minister about Parcel 310 that you would omit to tell that
3 Minister about a detail that had consumed a number of years? Is
4 that right?

5 A. But I didn't--I think you're asking that I recall
6 specifically what I said, but I'm saying no, I don't recall
7 specifically what I said, but he was briefed on the matter.

8 Q. Was he fully briefed on the matter?

9 A. Well, "fully" is kind of subjective. "Fully", I would
10 have mentioned everything that needed to be mentioned that so
11 wrongs the matter. Obviously, it is clear that I brought it to
12 his attention forthwith and--because it needed--he needed to
13 know about this outstanding matter.

14 Q. And the outstanding matter that a Minister would need
15 to know is the fact that Delta Petroleum were illegally
16 occupying Parcel 310; is that right?

17 A. Yes.

18 Q. So, you would have drawn the existence of an Expulsion
19 Notice to the attention of the Minister, wouldn't you?

20 A. My discussion with the Minister, specifically I do not
21 recall exactly what was said, but the matter was brought to his
22 attention. I really do not recall exactly specifically what I
23 said on any timelines or anything, but it was brought to his
24 attention that we are dealing with the matter.

25 Q. Mr Smith-Berkeley, I appreciate that you can't

1 remember the detail of that conversation, and there doesn't
2 appear to be any record of that briefing that has been produced
3 to the Commissioner. But just taking it from the perspective of
4 the practice that you would adopt as an experienced Public
5 Officer, you would have--or would you have given a Minister all
6 relevant details about this issue?

7 A. Would I have given--

8 Q. Is it your practice to give a Minister all the
9 relevant details about an issue that you are briefing that
10 Minister on?

11 A. Yes. I would--well, this and other matters would have
12 given all the details that I thought the Minister needed to know
13 at the time. I hasten to say, though, that these are
14 discussions that would have taken place not necessarily in one
15 sitting, but over, you know, over a period of time. And so,
16 different details would have been given at different times, and
17 those--that would have been, I guess, in part to how the
18 discussion would have evolved between myself and the Minister in
19 any one sitting.

20 Q. If you've had more--if you were giving the Minister
21 more than one briefing on this matter, doesn't it make it even
22 more likely that you would have told him all the relevant
23 details?

24 A. I would say that.

25 Q. And the position that was reached in relation to

1 Parcel 310 when Minister Wheatley took office was that Nature's
2 Way no longer had a dispute with the Government because Cabinet
3 had decided to give Nature's Way a lease and access from the
4 land had been obtained, and so the only issue was expelling
5 Delta Petroleum, wasn't it?

6 A. Yes.

7 Q. If we could turn to your Affidavit and paragraph 4.3,
8 please.

9 A. Okay, I'm there.

10 Q. I just want to--the thrust of your Affidavit is about
11 essentially you were saying you were present when Minister
12 Wheatley received advice from the Attorney General's Chambers,
13 and you set out your recollection of that advice; that's right,
14 isn't it?

15 A. Are we looking at 4.3?

16 Q. I'm trying to summarise the main purpose of your
17 Affidavit. It's to confirm your recollection or set out your
18 recollection of the advice that was given to Minister Wheatley
19 by the Attorney General's Chambers?

20 A. Yes, I recall the discussion between (drop in audio)
21 yes.

22 Q. Now, it's the reason I took you to paragraph 4.3, is I
23 wanted your assistance as to when the advice was given because
24 you refer there to an e-mail that you sent to the Minister dated
25 the 23rd of July 2019, in which--I can show you the e-mail, if

1 you want, but in which you set out a suggestion from the
2 Attorney General's Chambers, and you say: "I believe it was
3 probably pursuant to that initiative the Principal Crown Counsel
4 took the opportunity to present itself to advise the Minister in
5 the meeting in 2019".

6 Let me know if you want to look at that e-mail, but in
7 terms of the meeting where the advice was given, is it your
8 recollection that it occurred sometime after the 23rd of
9 July 2019?

10 A. I do not recall specifically. I recall the e-mail but
11 I don't recall specifically the date.

12 Q. Would you just help us, then, with this. When that
13 last sentence of paragraph 4.3, what did you mean by that
14 sentence?

15 A. Okay. In the--in terms of how this would have
16 unfolded, I would like to think, then, yes, I did--I do recall
17 the e-mail to the Honourable Minister, and so the meeting most
18 likely would have come subsequently to that e-mail.

19 Q. Sorry, if you give me one moment.

20 (Pause.)

21 Q. Now, turning back to Paragraphs 3.5 and 3.6 of your
22 Affidavit, please.

23 Let me know when you're there.

24 (Pause.)

25 A. Yes, I'm there. I'm there.

1 Q. That, Mr Smith-Berkeley, is where you summarise that
2 you say you got advice of strong competing claims, and there was
3 a proposal of exploring with Mrs Penn the idea of giving up
4 Parcel 310.

5 You were there with the Minister. I think you were
6 also there with Mr Skelton, who is the senior Lands Officer.

7 A. Yes.

8 Q. And obviously with Principal Crown Counsel.

9 Why didn't no one take any notes of this advice?

10 A. I'm sure at that time the notes would have been jotted
11 down not formally because obviously we went ahead and acted on
12 the advice. But in terms of something that we can turn to--no,
13 nothing was noted in that sense.

14 Q. The Commissioner has not been provided with any
15 document from the files that show what the advice--what the
16 advice was. Would it have been recorded in the files?

17 A. Coming out of that meeting? The meeting--you're
18 making reference to the meeting between the Minister, Attorney
19 General's Chambers, and myself and the senior Lands Officer?

20 Q. Which is the meeting--yeah, that's the meeting at
21 which you get this advice.

22 A. Right.

23 Q. There is no written record of the advice that was
24 given.

25 A. Right.

1 Q. I think you said that it ought--it might have been
2 jotted down in the files.

3 A. No, no, no, I did not--

4 Q. And this--

5 A. I did not say that. I said--go ahead.

6 Q. I think I will let you correct me. I think what
7 you're saying is that people may have informally jotted down
8 what the advice was.

9 A. That's what I said.

10 Q. Other than the informal--other than the informal
11 jotting, what record of this advice was made?

12 A. I cannot point to anyplace or anywhere where that is
13 noted. However, as I mentioned, the advice was acted on and
14 subsequently resolved.

15 Q. The consequence of the advice was significant because
16 up until that point, the position of Cabinet and the Ministry
17 was that Nature's Way, which should have a lease to Parcel 310,
18 and the only obstacle was Delta being an illegal occupation of
19 that land. So, was any thought given to asking for the advice
20 in writing?

21 A. I cannot answer that because I, you know--that is
22 asking me to recall in detail what happened then, other than
23 what we have, you know, I can't answer that. I don't know.

24 Q. If you could turn, please, in the Crown Land bundle to
25 page 1221, please.

1 A. 1221?

2 Q. Yes, please, Mr Smith-Berkeley.

3 A. I'm there.

4 Q. If we're both in the same place, it's a Cabinet Paper
5 dated the 20th of June 2019.

6 A. Yes.

7 Q. Now, the decision sought there is close to the
8 decision that was ultimately made, which was that the decision
9 to grant Parcel 310 to Nature's Way be revoked.

10 And then if you see at (b) that Parcel 310 be granted
11 to Mr Bevis Sylvester as a lease for commercial purposes.

12 Now, again, would have you had a hand in drafting--and
13 it's still a draft--this Cabinet Paper?

14 A. Yes.

15 Q. And would it have been at the same level as before?
16 You would have reviewed the draft done by a more junior Public
17 Officer?

18 A. Yes. That is the first procedure.

19 Q. But obviously this was something of which you would
20 have had considerable knowledge at the time?

21 A. Yes. I had the Permanent Secretary or somebody else
22 does the drafting, but yeah, I'm responsible.

23 Q. And would the Minister have seen this draft?

24 A. Yes. The Minister sees all drafts.

25 Q. Even as they're being worked on?

1 A. Not--not necessarily. Those--the Minister's knowledge
2 of any paper would be in the discussion at the point back then
3 it was our paper based at the point the file goes to the
4 Minister. We are hoping that that would be a final draft that
5 ultimately would move on to Cabinet. However, there might be
6 edits from the Minister that comes back--you know, comes back to
7 the Ministry, but the Minister--

8 Q. If I summarise it like this--tell me if I've
9 misunderstood--so, the Minister makes a decision. The Public
10 Officers then draft the Cabinet Paper. The Cabinet Paper and
11 file will go to the Minister for final review, the Minister may
12 edit it, and then it will come back to the Public Officers?

13 A. Yes. If the Minister's edits comes back, if it
14 doesn't, it goes on to the Cabinet Office.

15 Q. If you look at 1222, the next page--

16 A. Yes, I'm there.

17 Q. --at paragraph 7, it refers to Delta not complying
18 with the request of the Government to vacate Parcel 310, and
19 continues: "So the Chamber was further instructed to prepare an
20 Expulsion Notice for execution by the Governor to be served on
21 Delta." And it goes on to say that it was executed on the 18th
22 of January 2019 and served.

23 And then that paragraph concludes: "To date, the
24 Company continues to occupy the property", so it's some six
25 months after the Expulsion Notice is executed Deltas are still

1 to the knowledge of the Ministry, illegally occupying the land,
2 aren't they?

3 A. Yes.

4 Q. If you look at paragraph 9, which shows that there's a
5 draft, but there is reference in paragraph 9 to a letter that's
6 dated--and the date hasn't been put in--the person who submits
7 that letter hasn't been put in, but someone submitting a request
8 to lease Parcel 310 to continue the operation of their business,
9 in exchange for this leasehold interest, Delta has entered into
10 agreement with Government to reduce the debt owed to them, and
11 then there is attached or supposed to be attached copy of that
12 agreement.

13 Now, there is no such letter, there is no agreement.
14 But can you help the Commissioner with what paragraph 9 was
15 intended to deal with or to address?

16 A. No, I cannot.

17 What I will say is this was probably at this point
18 background information, you know, that's--that's all I can say
19 on that, really.

20 Q. Now, you have signed posted the advice that you and
21 the Minister got from Ms Barry as having occurred sometime after
22 the 23rd of July 2019. This Cabinet Paper is dated the 20th of
23 June 2019.

24 So, what had changed between May 2019 when you wrote
25 to Ms Barry to say that the lease would be executed and 20th of

1 June 2019--May 2018 when you write to Ms Barry to say that the
2 lease would be executed, and the 20th of June 2019 when you're
3 drafting this paper?

4 A. The only thing that would have changed is--is, as I
5 recall, a decision by, I guess, instructions given by the
6 Minister at that time as to who the land would go to because
7 obviously we were hoping to execute on the previous--on the
8 previous decision, which was ultimately rescinded.

9 Q. Okay. If you turn through, please, to page 1234 in
10 that bundle, Mr Smith-Berkeley.

11 MS PEATY: 1234?

12 BY MR RAWAT:

13 Q. 1,234 in that bundle.

14 THE WITNESS: Okay.

15 BY MR RAWAT:

16 Q. You should have a letter from Bevis Sylvester to
17 Minister Wheatley.

18 A. 1234?

19 Q. 1234.

20 A. Okay. I'm there.

21 Q. Dated 12 June 2019? Do you have it?

22 A. 12 June 2019.

23 Q. And it's a letter written not as a representative of
24 Delta Petroleum, which we know Mr Sylvester is, but in as a
25 personal capacity, and it writes with respect to what he's

1 called lots one and two, but they're what became Parcel 310, and
2 he writes: "I hereby advise that I'm requesting to apply to
3 lease the said Crowned property for a period of 99 years. I
4 look forward to your favourable response on this matter."

5 Now, that seems to be on evidence that had been
6 supplied to the Commissioner the only development that occurs
7 between May 2018 and that draft Cabinet Paper that we were
8 looking at.

9 Did you have any discussions with Mr Sylvester before
10 that letter came in for the Minister?

11 A. No.

12 Q. Were you aware that he was going to send a letter to
13 the Minister?

14 A. No.

15 Q. If you look at the top, in manuscript, is written,
16 "please execute VW 12th June 2019".

17 Do you have that?

18 A. Yes.

19 Q. And am I right to describe that as an instruction from
20 the Minister?

21 A. Yes.

22 Q. What did you take or what did you understand to be the
23 instruction, what did the words "please execute" mean for you?

24 A. That this is what he wants done to a request.

25 Q. Now, the draft paper, as we looked at referred to the

1 lease being transferred to Mr Sylvester for commercial purposes.

2 Where did that information come from?

3 A. What bundle was the Paper in?

4 (Pause.)

5 A. Okay. I'm back at the Paper. What number are we
6 looking at?

7 Q. If you're back at the Paper, if you look at under
8 "DECISION SOUGHT" at (b), it says "be granted to Mr Bevis
9 Sylvester to be leased for commercial purposes"?

10 MS PEATY: Could you let Mr Smith-Berkeley have the
11 page reference, please, Mr Rawat.

12 MR RAWAT: 1221, Ms Peaty.

13 THE WITNESS: 1221.

14 BY MR RAWAT:

15 Q. It's that paper we were looking at, Mr Smith-Berkeley.
16 If you look under "DECISION SOUGHT" at (b), you will see a
17 reference to "commercial purposes" the end of the paragraph?

18 A. Yes, item (b), yes.

19 Q. Where did that information come from?

20 A. That information could have--I'm trying to
21 recollect--if you give me a minute, please.

22 (Pause.)

23 A. All right. In another--in another Affidavit that was
24 submitted that was made--we made a reference to a letter that
25 was written to us, written in to us by Delta, and that specific

1 request--I'm not sure which bundle you would have that in--that
2 specific request asked that the lease--the lease be granted to
3 Mr Sylvester (sound interference).

4 Q. That was the letter, I will find it for you in a
5 moment, but it was written in 2010. It's at--it's, in fact, one
6 of--it's attached to the documents that accompanied the further
7 response of Minister Wheatley.

8 A. Yes.

9 Q. It's a letter written by a director of Delta Petroleum
10 on the 18th of April 2010.

11 Why was that letter relevant to a transaction
12 occurring nine years later?

13 A. Because at the time--at the time the discussions
14 surrounding--we sent in the decision to give the property--to
15 give the land to Nature's Way and turned the land over to I
16 guess in this case Mr Sylvester, then that letter became
17 somewhat relevant to the discussion.

18 Q. Why was that--because the letter that we looked at of
19 June 2019 from Mr Sylvester doesn't say what he wants to lease
20 the land for.

21 A. No, it does not.

22 Q. Did you go back at that time to speak to Mr Sylvester
23 about his interest in the land?

24 A. No, I didn't.

25 Q. Did the Minister, to your knowledge, go back and speak

1 to Mr Sylvester?

2 A. I don't know that. I don't--I don't know if he did.

3 Q. So, was it just sort of detective work on the part of
4 the Ministry to try and guess what Mr Sylvester's interest was?

5 A. I would not say that.

6 Q. Why couldn't you just have gone and asked him for more
7 information?

8 A. I believe at the time when this--I also recall another
9 e-mail--I'm not sure what bundle that is in--requesting
10 additional information from Mr Sylvester. I believe there is an
11 e-mail to that effect. But in terms of a discussion
12 of--personal discussion with him, no, I didn't--I don't know if
13 the Minister did, but I did--I do recall instructing the
14 Officers at the time in the Ministry to write to Mr Sylvester,
15 and I think that would have come on the heel of the advice from
16 the Financial Secretary.

17 Q. Can I pause you there. I will take you to that in a
18 moment because if I take you to page 1241 in that bundle.

19 A. In the same bundle?

20 Q. Yes, 1241 in the same bundle, please.

21 A. Okay, I'm there.

22 Q. Now, that is another draft or iteration of the Cabinet
23 Paper, isn't it? Because it's dated the 27th of June.

24 A. Yes.

25 Q. And if you go through to 1244--1244, it refers again

1 to "commercial purposes".

2 But tell me if you don't agree with this, but what
3 subsequently the Ministry of Finance asked for was to get a
4 business plan from Mr Sylvester, and you did write and ask him
5 to give a business plan. Do you remember doing that?

6 A. I remember--I remember an e-mail--I remember
7 instructing someone in the Ministry to follow through on this
8 particular request from the Financial Secretary. An instruction
9 would have been to ask (drop in audio) submission of the
10 business plan.

11 Q. There is no record of Mr Sylvester submitting a
12 business plan. Did someone decide that it was no longer
13 necessary for him to do so?

14 A. I--I believe that shortly after that request of those
15 instructions were given could have been some time, my
16 recollection, in late July-August could have been, and I think
17 on the 6th of September, the following month, I reported to a
18 different Ministry, so I can't speak to whether or not that plan
19 came in, but I did give instructions for--to the Ministry staff
20 to request the plan.

21 Q. If you go to 1242.

22 A. I'm there.

23 Q. The purpose of this Cabinet Paper, the purpose of the
24 decision that was sought was it assists to facilitate economic
25 growth. How could you decide whether economic growth would be

1 facilitated without a business plan?

2 A. Well, just to reiterate what I said, the plan was
3 requested--well, I gave instructions to request the plan, and I
4 shortly, within weeks, was transferred to another Ministry, so I
5 can't speak to whether or not the plan came.

6 Q. If I tell you--if you turn back to page 1235 in this
7 bundle.

8 A. In the same bundle?

9 Q. Yes, please, Mr Smith-Berkeley.

10 A. Okay.

11 Q. That's a letter sent on your behalf to Mr Sylvester,
12 July the 25th, 2019, which concludes that: "In order for your
13 request to be further processed, you are required to provide the
14 Ministry with your business plan for the development of the
15 reclamation".

16 A. Yes.

17 Q. So, was that how things were left at the time that you
18 then moved to your new Ministry?

19 A. Yes.

20 This would have been--this was the instruction that I
21 make in reference to go ahead and request the plan, and I
22 shortly, thereafter, was transferred.

23 Q. And at any time when you were dealing with this in
24 2019, was there discussion about obtaining a valuation of Parcel
25 310?

1 A. No, I do not recall that. I do not recall that. And
2 I believe that could have been because it's not--Parcel 310 is
3 maybe 75 percent complete. There is still a portion of what is
4 supposed to be Parcel 310 that's still not be claimed.

5 Q. You said a short while after July 2019 you moved on
6 but up until the time you left the Ministry, had you had any
7 contact with Mr Sylvester?

8 A. Yes. I recall at least once, at least once meeting
9 with Mr Sylvester and myself. I recall that.

10 Q. And was that some time in 2019?

11 A. Was it...

12 Q. In 2019.

13 A. I do not recall that. If it was in 2019, it might--it
14 could have been quite early or maybe later the following year,
15 but I do not recall. I recall (drop in audio).

16 Q. But did you meet with Mr Sylvester before you moved on
17 to your new Ministry?

18 A. No.

19 Q. After you had moved to be Permanent Secretary
20 elsewhere, the Ministry of Transportation?

21 A. Did I meet with him after that?

22 Q. Well, I'm just trying to get at a time, a date for
23 when you met with Mr Sylvester.

24 I understand your evidence to be that at some point in
25 2019 you met Bevis Sylvester; is that right?

1 A. Yeah--no. What I'm saying is no, I do not recall
2 when. If it was then, it might have been quite early.

3 However, allow me to say this: That the practice
4 was--the practice was, once the lawyers begin--once the matter
5 is kicked up to the level of the--up to the AG's Chambers, then
6 all discussions, you know, obviously would have been from the
7 AG's Chambers to the lawyer on the other side, so that--that
8 particular meeting that I recall could have been quite--would
9 have been much earlier than that. I'm so sorry, but I don't
10 remember the specific (drop in audio).

11 Q. I mean, could it have been much earlier in time,
12 2010--well, around the time of the Delta Petroleum judicial
13 review?

14 A. Well, I--2010, well, no, because I became Permanent
15 Secretary in 2011. So, no, I'm very sorry, Commissioner, I do
16 not recall the time of the meeting. I really do not recall.

17 Q. There is in the correspondence and it's in the
18 documents that accompanies the further response. I could take
19 you to it, if you need to see it, but there's a letter addressed
20 to you dated August the 20th, 2013, which refers to a recent
21 meeting between yourself and Mr Sylvester writing as General
22 Manager of Delta. Could that be the meeting that you have in
23 mind?

24 A. Could you take me to that, please. What date was
25 that?

1 Q. We need now--you will need Ms Peaty's assistance with
2 this, but it's the bundles that accompanied the further response
3 of Minister Wheatley, so it's the Response of the 8th of October
4 2021.

5 MS PEATY: Which page in that bundle?

6 BY MR RAWAT:

7 Q. If you go to page 13, please, in that bundle.

8 A. Okay.

9 Q. Do you see, it's a letter on Delta Petroleum headed
10 paper dated August 20th, 2013, addressed to you.

11 And if you see--if you see the second paragraph it
12 says, "at our most recent meeting".

13 A. Yes.

14 Q. So, that seems on the papers that the Commissioner has
15 the only reference to a meeting between and you Mr Sylvester.
16 Could it be that meeting that you had in mind?

17 A. Yes. I'm--I'm thinking that this 2013, because it was
18 a while back, so I do recall that meeting. I'm so sorry, I
19 couldn't recall what year that was, but I remember the meeting.

20 Q. At the time in 2019, what was the Policy in relation
21 to non-Belonger companies being able to lease Crown Land?

22 A. Sorry, could you ask the question again, please?

23 Q. Focusing on 2019, what was the Policy in relation to
24 non-Belonger companies being able to lease Crown Land?

25 A. Well, the leasing of Crown Land, just in general, I

1 guess, whether it's--whether it's Belonger or non-Belonger, the
2 only difference there would have been, I guess, one requiring a
3 licence and the other really does not.

4 But a request would be made.

5 Are we speaking, so that I could zero in, are we
6 speaking just Crown Land in general or reclaimed Crown Land?

7 Q. Let's speak reclaimed Crown Land. We're discussing
8 Parcel 310. There is a difference, essentially could a
9 non-Belonger company lease reclaimed Crown Land in 2019?

10 A. It was--I mean, I don't recall an example where it
11 happened, but I can't say either that it could not happen, but.

12 Q. It would depend--sorry, please finish.

13 A. No, that basically was the end of my thought.

14 Q. So, it would depend on that non-Belonger company being
15 able to get a licence?

16 A. Yes, it would be subject to that Cabinet (drop in
17 audio).

18 Q. In this case, what the position that was reached when
19 you left the Ministry was that the lease to Nature's Way was
20 going to be rescinded, and Bevis Sylvester was going to get the
21 lease, not Delta Petroleum.

22 A. I don't understand the question.

23 Q. Well, I'm just wanting to confirm your understanding
24 of the position at the time that you left and moved to a new
25 Ministry. Was the position that the lease that was going to be

1 given to Nature's Way was going to be rescinded and instead a
2 lease was going to be given to Bevis Sylvester and not Delta
3 Petroleum?

4 A. That was my understanding.

5 Q. And how did you--how did that resolve the dispute with
6 Delta Petroleum?

7 A. I--I cannot speak to how that would resolve that
8 dispute. I'm sorry.

9 Q. Can I move on to just a different topic, please.

10 One of the points that Minister Wheatley made in his
11 response--and if you need to see it, it's page 7. That's the
12 Response that you speak to in your Affidavit, was that Delta
13 Petroleum had a claim based on the--what I'm going to summarise
14 as the Marine Estate Policy.

15 Is that your recollection as well, that they had that
16 claim?

17 A. I'm sorry, Commissioner, I was trying to find a page,
18 so could you please repeat. I'm sorry.

19 Q. If you go to Minister Wheatley's response, please.

20 A. Yes.

21 Q. Look at page 7.

22 A. 7.

23 Sorry, we thought we were there, but we're not.

24 (Pause.)

25 A. Okay. Page 7.

1 Q. And do you see a Roman X, please?

2 A. Yes.

3 Q. And in that Response, Minister Wheatley is referring
4 there to being advised that Delta had a claim based on the
5 policy for the management and administration of the Marine
6 Estate, which he holds the Policy. Which was a 1996 policy.

7 A. Yes.

8 Q. Is it your recollection that the advice that was given
9 at that meeting encompassed reference to this policy?

10 A. Are you referring to the meeting with myself, Ms Barry
11 and the Minister? That meeting?

12 Q. Yes.

13 A. That's--that's likely. Again--

14 Q. Mr Smith-Berkeley, I don't want you to guess. If you
15 can't remember that the advice of Ms Barry included reference to
16 that policy, please do say so.

17 A. Yes, I've said that before, and I said it like three
18 or four times. I do not recall specifically what the discussion
19 was.

20 Q. So, you don't remember that that advice was given to
21 the Minister?

22 A. No, I do not recall specifically what that was.

23 Q. If Delta Petroleum could assert a right based on this
24 policy, can you help at all to why it wasn't addressed at an
25 earlier stage?

1 A. No, I cannot speak to that.

2 Q. Because if you look at that--the extract from the AG
3 disclosure that we were looking at earlier, the bundle of
4 documents that was emailed to Ms Peaty just now, if you go to
5 page 8 in that bundle.

6 A. Yes, page 8.

7 Q. If you look under--this is back to that August 2012
8 Cabinet Paper we were looking at. If you look under "FINANCIAL
9 IMPLICATIONS", the Marine Estate Policy of 1996 is actually
10 referred to in that Cabinet Paper when a decision is taken again
11 to grant the lease to Nature's Way.

12 So, can you help as to whether or not the Marine
13 Estate Policy would also apply--have applied to Nature's Way?

14 A. Okay. Sorry, Commissioner, could you ask the question
15 again? I was just sort of--

16 Q. Let me break it down. No problem, Mr Smith-Berkeley.
17 I will break it down for you a little.

18 The first question I should have asked you is: Are
19 you familiar with this policy?

20 A. Yes.

21 Q. You are familiar with it?

22 A. Yes.

23 Q. And I can take you to--you'll see from the further
24 response of Minister Wheatley that he actually refers to the
25 Policy and cites it, and you can--and the bit that he cites

1 relates to undertaking of reclamation rather than occupying
2 reclaimed land. If Ms Peaty wants to bring it up, it's the
3 documents that accompany the first response at page 14.

4 A. Okay, page 14.

5 Q. Do you have it? It's headed at the top "Appendix C,
6 Reclamation Package" in manuscript.

7 Do you have that?

8 A. Yes, I do.

9 Q. Now, you've said you're familiar with the Policy. So,
10 tell me if I've misunderstood it, but this part of the Policy
11 appears to relate to someone who is undertaking reclamation
12 rather than occupying reclaimed land. Have I understood that
13 correctly?

14 A. Yes.

15 Q. So, does it follow that it would have also applied to
16 Nature's Way? Nature's Way had been given a right to occupy
17 reclaimed land by Cabinet; isn't that right?

18 A. Well, this--what I will say, Commissioner, this
19 particular piece of land may need to be looked at differently
20 because as my understanding of the Policy is that persons who
21 owns property that borders the (unclear) sea has the first right
22 of refusal, you know, so--but this particular--

23 Q. But--yes, Mr Smith-Berkeley, please finish your
24 answer.

25 A. This particular location that we--we're talking about

1 here today is maybe a little bit unique in many ways.

2 Q. In what way is it unique?

3 A. Well, apart from the back and forth, if you will, and
4 trying to execute under various--and trying to execute under
5 various policies/instructions, you know, how clearly we can
6 apply the Marine Estate Policy, I don't know.

7 Q. But you sort of summarised the policy as applying to
8 someone who has the land adjoining the sea. It's right, isn't
9 it, that up until 2019, applying the decisions of Cabinet,
10 Nature's Way had the right to occupy Parcel 310?

11 A. Could you ask the question again, please?

12 Q. When you were looking at the Policy a few moments ago,
13 Mr Smith-Berkeley, you said that you summarised the Policy as
14 saying that it relates to someone who is occupying land that
15 adjoins the sea; is that right?

16 A. No, I did not say that. Persons who is owned land.

17 Q. "Owned land". So, in that case it doesn't apply at
18 all because nobody owned the land apart from the Crown.

19 A. Well, I think that's--that's why I mentioned that
20 this--

21 MR RISSO-GILL: Forgive me, Commissioner. That's not
22 correct because Delta did actually own it.

23 MR RAWAT: I'm sorry. I couldn't quite hear you,
24 Mr Risso-Gill.

25 MR RISSO-GILL: Forgive me. It's not quite to say

1 that no one owned the land. Delta itself did own Parcel 221.

2 MR RAWAT: No, I understand Delta owned Parcel 221.
3 My questions are directed to Parcel 310, and as I understand it,
4 Delta did not own Parcel 310.

5 MR RISSO-GILL: Correct.

6 THE WITNESS: Yes, but the discussion--I think Mr Gill
7 is right (drop in audio) 310 is reclaimed land.

8 BY MR RAWAT:

9 Q. Can I put it this way, please, Mr Smith-Berkeley,
10 because I haven't got much more to go. I appreciate that you
11 can't remember this being part of the discussions that happened
12 in 2019, so based on your understanding of Appendix C, what
13 relevance does that appendix have to someone who has the right
14 to occupy Crown Land? (sound interference)?

15 A. This--this particular document, in terms of the
16 question of occupancy, no.

17 MR RAWAT: Okay. If you could give me a moment,
18 please, Commissioner.

19 (Pause.)

20 MR RAWAT: Commissioner, I've reached the end of my
21 questions. Can I conclude firstly by thanking Mr Smith-Berkeley
22 for making himself available. It was done at relatively short
23 notice, and we're grateful for that, but also thank him for the
24 way he has given evidence today.

25 MR RISSO-GILL: I did, in fact, just send an e-mail,

1 but it may have been rather late, suggesting one other short
2 area for Mr Rawat to go to. Because of the distances, may I,
3 perhaps, suggest that in this way rather than in the e-mail
4 fashion, I appreciate you were trying to bring the evidence of
5 Mr Smith-Berkeley to an end, and I hope this wouldn't be a very
6 long matter.

7 Can I indicate that it would be page 17 of the
8 additional bundle the Attorney General's disclosure, and it
9 would be to ask if Mr Smith-Berkeley can help, in respect of the
10 17th of June 2015 memo, to explain what's meant by the
11 penultimate sentence.

12 MR RAWAT: Of the entire letter?

13 MR RISSO-GILL: Yes. We went to the earlier parts of
14 that letter--

15 MR RAWAT: Yes, let's take him to it. I'm quite happy
16 to ask that.

17 MR RISSO-GILL: Thank you.

18 MR RAWAT: Ms Peaty has taken Mr Smith-Berkeley to
19 that memorandum. Can I confirm that Mr Smith-Berkeley has that
20 memorandum in front of him, Ms Peaty?

21 MS PEATY: Yes, Mr Rawat.

22 BY MR RAWAT:

23 Q. Mr Smith-Berkeley, can you see the last paragraph of
24 that memorandum?

25 A. The last paragraph, yes.

1 Q. Yes. And I'll read it out, but the last paragraph
2 is--explains that it's a request for advice, and you say: "It
3 should be noted that Delta Petroleum has an active/existing
4 application to lease Parcel 310 which bounds to land owned by
5 Delta Petroleum".

6 And can you just help at all with what that was a
7 reference to?

8 A. I would need to read this and (unclear) to get, you
9 know--

10 (Pause.)

11 A. All right. This letter seems to be--seems to be
12 conveying to the AG's Chambers a discussion back to 2015 that we
13 had with owners of Nature's Way. And trying to get some legal
14 (drop in audio) on direction, so what specifically are you
15 asking me, Commissioner?

16 Q. If you just go, having read it now, Mr Smith-Berkeley,
17 just go to that last paragraph in the penultimate sentence. And
18 to give you some context, we know from the August 2012 Cabinet
19 Paper that there had been an earlier Cabinet Paper dealing
20 September 2011, dealing for this land to go to Delta Petroleum,
21 but that then was overtaken by the August 2012 decision. We
22 know there had been a judicial review in 2013 that was withdrawn
23 in early 2014.

24 So, now we're in 2015. It's just--can you help at all
25 with what the sentence, it should be noted that Delta Petroleum

1 has an active/existing application to lease Parcel 310, which
2 bounds the land owned by Delta Petroleum? What does that refer
3 to? Can you remember?

4 A. No, I cannot remember.

5 Q. Thank you. As I've said, Commissioner, I don't think
6 there are any further question, so I thank again
7 Mr Smith-Berkeley for the way in which he has given his
8 evidence.

9 COMMISSIONER HICKINBOTTOM: No, can I echo that,
10 Mr Smith-Berkeley? Thank you very much for your time, and thank
11 you very much for the evidence and the way you have given it.

12 THE WITNESS: Thank you, Commissioner.

13 (Witness steps down.)

14 COMMISSIONER HICKINBOTTOM: Now, Mr Rawat, we have one
15 further witness, Mr Frett. Now, I understand, obviously, that
16 we've worked through lunchtime. Can I suggest that we have a
17 sort of 20-minute break? Is that convenient for everyone, and
18 then we hear Mr Frett's evidence at half past 2:00?

19 MR RAWAT: Certainly, Commissioner.

20 COMMISSIONER HICKINBOTTOM: Yes. Is their anything
21 else in the meantime? Good. Okay.

22 MR RAWAT: Not for me.

23 COMMISSIONER HICKINBOTTOM: 20 minutes. Thank you
24 very much.

25 (Recess.)

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Session 3

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

MR RAWAT: Thank you, Commissioner. Our next witness is Mr Jeremiah Frett, and I can see that Mr Frett is online.

BY MR RAWAT:

Q. Mr Frett, can you see and hear me?

A. Yes, Commissioner.

Q. Well, thank you for making yourself available to give evidence for what we can definitely say will be the last time to the Commission.

It's in relation to the most recent Affidavit you've made, Mr Frett. Can I confirm whether you have a copy of that Affidavit with you?

A. Yes, Commissioner.

Q. Could I ask you to turn to the last page of it, which will be at page 16 in Bundle Commission at 697.16.

A. What page number again?

Q. The last page of the Affidavit itself, Mr Frett.

A. Okay, Commissioner.

Q. And can you confirm, Mr Frett, that last page is dated the 12th of November 2021, and carries your signature?

A. That is correct, Commissioner.

Q. Now, are you content that this Affidavit should form part of your evidence before the Commissioner?

1 A. Yes, Commissioner.

2 Q. Aside from the Affidavit, can I just check, Mr Frett,
3 do you have available to you a bundle of the documents that the
4 Attorney General submitted for this hearing?

5 A. What was the name of that bundle, Commissioner?

6 Q. It's just headed, I think, "Bundle for Hearing on 24th
7 of November 2021".

8 A. Yes, Commissioner.

9 Q. You were also asked--but we hopefully we won't need
10 them--we have asked that you have the bundles that were prepared
11 for the Hearing on Governance, and we heard from Governor Rankin
12 and Mr Jaspert and the Premier.

13 Do you have those as well with you?

14 A. Yes, Commissioner.

15 Q. Thank you.

16 If I could take you, please, to paragraph 1.3 of your
17 Affidavit on the first page.

18 A. Yes, Commissioner.

19 Q. You refer there to not waiving privilege on the
20 documents that are exhibited to your Affidavit and mentioned in
21 it. Can you just clarify, which documents you, in fact, assert
22 privilege over?

23 A. Mr. Commissioner, I'm sure that is in my Affidavit
24 there are--

25 (Drop in audio.)

1 (Pause.)

2 A. Yes, Commissioner. Is there anything going on with
3 the system?

4 Q. We can hear you, Mr Frett, all right. My question
5 was: In relation to paragraph 1.3, which of the documents over
6 which you assert privilege?

7 A. Just for clarity, I'm not showing that the technician
8 is hearing this, but the previous recording is speaking over
9 this one right now.

10 (Overlapping speakers.)

11 A. --solve all the technical issues, please.

12 COMMISSIONER HICKINBOTTOM: Yes, it's not a problem
13 certainly I'm having. I'm not sure that anybody else is having
14 that difficulty, Mr Frett.

15 TECHNICIAN PETERS: Commissioner, we're not having
16 that issue here. I think if Mr Frett can probably see if he has
17 the Hearing open maybe in a window on his computer.

18 THE WITNESS: Okay. Just one second, please.

19 (Pause.)

20 TECHNICIAN PETERS: Commissioner, Mr Frett seems to
21 have unconnected, so we're just waiting to see if he reconnects.

22 COMMISSIONER HICKINBOTTOM: Thank you very much,
23 Mr. Peters. We'll wait.

24 (Pause.)

25 THE WITNESS: I hope this corrects the issue with the

1 problem that I was having.

2 COMMISSIONER HICKINBOTTOM: Mr Frett, can you hear me?

3 THE WITNESS: Yes, Commissioner, I can hear clearly
4 now.

5 COMMISSIONER HICKINBOTTOM: Good. Thank you very
6 much.

7 THE WITNESS: My apologies for the technical
8 difficulties. There was another section running from YouTube.

9 COMMISSIONER HICKINBOTTOM: These things happen,
10 Mr Frett. I think we're ready to go now. Thank you.

11 MR RISSO-GILL: We recommence, Mr Frett, so may I just
12 hope to assist on paragraph 1.3. It's a paragraph that's
13 inserted in the Affidavit that says "Public Officers to prevent
14 any inadvertent unauthorized waivers", but this Affidavit has
15 now been included in the Hearing Bundle. I understand it, no
16 privilege is asserted, so I hope that can help cut things short
17 at this point.

18 THE WITNESS: All right.

19 COMMISSIONER HICKINBOTTOM: I'll work on the basis,
20 Mr Risso-Gill, that there is no claim to privilege or indeed
21 anything else in respect to any of the Affidavits or the
22 exhibits.

23 MR RISSO-GILL: Thank you, sir.

24 BY MR RAWAT:

25 Q. Thank you.

1 Mr Frett, well, if we move on, then, could you just
2 help the Commissioner with this: How did you come to make this
3 Affidavit?

4 A. Commissioner, this document was submitted to me. I
5 will have to check my e-mail. I don't remember the details of
6 it, but it came through and it was given to me to make the
7 Affidavit--to provide the Affidavit on that. It will have come
8 through the Attorney General's Chambers or the IRU unit. I will
9 have to check the contents of my e-mail to see exactly where it
10 came from.

11 Q. Sir, can I just break that down a little bit. Was it
12 drafted and then presented to you for signing, or were you asked
13 to make an Affidavit?

14 A. It was sent--Affidavit was given. There was some
15 drafting. There was some assistance from the legal team that
16 gave me some assistance in drafting the information. I was very
17 much involved in the process. There was a lot of going back and
18 forth on the content. We did have meetings and discussed the
19 content, what I thought was adequately what should go into the
20 Response, and there was something they thought and I think some
21 things that--some information they would have had privilege to
22 from the previous submissions, the previous Affidavits that they
23 felt coincide with this one. So, therefore, some of those
24 things were inserted.

25 So, it was--first, I was working with my legal team in

1 providing this document.

2 Q. The question is, and you are someone who has made a
3 number of Affidavits to the Commissioner.

4 A. Yes.

5 Q. But why Jeremiah Frett this time around?

6 A. Commissioner, that's a very good question that is
7 posed. I don't know why, and I think that in this instance is
8 unfortunate because of the--I do not believe--and this is my
9 view--that Public Officers should not be responding to
10 questions, especially those in the hierarchy. So, I'm
11 responding to situations or questions may have posed to the
12 Governor who's in my chain of command, and I think that's
13 unfortunate and no Public Officer should have been put in such a
14 position.

15 But I will give the evidence as candidly as I can
16 based on what we were able to locate within the Ministry, and
17 from my knowledge of what took place as a senior officer within
18 Government.

19 Q. Why couldn't you say "no"?

20 A. Commissioner, was there option--I was not given that
21 option. I raised my concern with persons in authority about
22 whether or not I should be the appropriate person, whether or
23 not I should be giving evidence of this nature to the Commission
24 because it is a matter that was concerning to me and how it went
25 about as far as responding to or giving evidence against

1 something what the Governor may have said. So, I don't know
2 there was an option, Commissioner. Of course, every one of the
3 options we can say "yes" or "no," but if the Commissioner, from
4 what I understand, if the Commission asked for information
5 pertaining to the matter, we are obliged to do our best to
6 provide that information, and that's what I did.

7 Q. The position in relation to this Affidavit, Mr Frett,
8 the Commissioner did not ask for it. It was an Affidavit that
9 the Attorney General wanted to put to deal with Public Service
10 budgeting, and on the 22nd of October, the Commissioner gave
11 time to make that Affidavit, and he then extended the time, but
12 it was not the Commissioner's decision as to who should make it
13 or what it should be about. It was at the request of the
14 Attorney General.

15 Were you told that this Affidavit was being made at
16 the request of the Commissioner?

17 A. No, Commissioner. I just made that reference, as I'm
18 assuming that all these Affidavits that are provided are coming
19 from the Commission. If I'm wrong, I stand corrected. If it
20 was not--if this did not originate there, I stand corrected.

21 And you will appreciate, Commissioner, that as senior
22 officers, maybe Permanent Secretaries or senior officers, these
23 documents come through the Attorney General's Chambers area, and
24 that's trickled down to the persons who are to provide evidence.
25 So, if that is not the case, I just follow the instructions that

1 were given, and if that is not the case, I stand corrected.

2 COMMISSIONER HICKINBOTTOM: In any event, Mr Frett,
3 you were told to do this and you did it.

4 THE WITNESS: Correct. Correct, Commissioner.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 BY MR RAWAT:

7 Q. If we go to--

8 A. I say that, Commissioner, with some hesitation as is
9 noted earlier because of the nature in the evidence that I would
10 have provided, and I listened keenly this morning to some of the
11 discussion that took place, and I do not believe no Public
12 Officer should be put in a situation like this.

13 COMMISSIONER HICKINBOTTOM: Understood, Mr Frett.
14 Thank you.

15 BY MR RAWAT:

16 Q. Mr Frett, I appreciate the position you're in and that
17 you are a Public Officer. If you feel uncomfortable about
18 answering any of my questions, then please do say so. I can
19 either try and rephrase the question or we can move on. But can
20 I just ask you about Part 2 of your Affidavit, which is headed
21 "Initiatives to Develop Public Service"?

22 You've listed there, and you address, and you've
23 explained this in part, there are eight initiatives which the
24 Governor, Governor Rankin, had referred to in his response to a
25 Warning Letter; and, in your Affidavit, you addressed them each

1 in turn.

2 In relation to each of those initiatives, did you,
3 yourself--and you've been in public office--been in the Public
4 Service for some years--but did you, yourself, have any direct
5 involvement either in establishing or implementing any of these
6 initiatives?

7 A. Commissioner, in sum, I will have to go through each
8 one, but I do, as I noted in my Affidavit, I was working in the
9 Deputy Governor's Office, and the Public Service Development
10 Programme. It was ran through the Deputy Governor's Office.
11 While Ms Smith, Elana Smith, was the key person, I did have
12 some--a role but it would be through the budgetary process
13 within the Deputy Governor's Office or attending the numerous
14 meetings. I recall attending numerous meetings because of my
15 seniority within the group, with the Public Sector Development
16 Programme, so I'm quite knowledgeable about that.

17 If you look at the transformation process that just
18 took place that is ongoing--actually, I should say, when, in
19 2007--I can't remember the name of the Consultant that came from
20 the UK, I was one of the--I think there was five of us that were
21 selected to stay in that process, and we had a number of
22 initiatives. I was participant on behalf of the Ministry of
23 Finance, and the number of initiatives generated--germinated, I
24 should say--from within our discussion in our group, so I was
25 tasked to look at the Ministry of Finance group at some of these

1 things.

2 So, yes, in some of these I were actively involved in
3 some of the activities, and there were probably others and which
4 I could not speak to, and I did indicate in the Affidavit, I
5 cannot speak to some of these things.

6 Q. What you have done out is to set out your assessment
7 of each of these initiatives.

8 Am I right to say that it's based on your own
9 recollection of these initiatives?

10 A. Commissioner, that is my recollection, and in some
11 instances there may have been evidence to support that, and I
12 showed the time frame. Commissioner, you will appreciate we are
13 in the middle of the Budget process. I had to devote some time
14 towards the Budget process. The Commission of Inquiry has taken
15 up a tremendous amount of time for my team and I, and I had to
16 focus--so I do not--did not have time to go through each one to
17 provide evidence, but to say that there is not evidence on each
18 one of these things but a lot--most of some of the things that's
19 based on what I recollect what took place, whether it be with
20 the Public Service Development Programme.

21 For example, with the Public Sector Development
22 Initiative, I'm sure if I ask the question and do the research,
23 you will find the service charters from each Ministry. You will
24 find some documentation and the suggestion box and other things
25 that I know took place, but I didn't have the time to do that.

1 I have to prioritize where we are at right now.

2 So, Commissioner, that--is that a wrong statement,
3 that some of it may have been from my recollection, and I'm sure
4 that evidence and I think--and I don't have the time right now
5 to deal with them. My main priority right now has shifted, and
6 all right, this Commission had been going on for a whole--almost
7 a year, and at the same time I've been selected to be the
8 Financial Secretary January 1st of this year, and what a
9 welcoming gift, but nevertheless we have worked tirelessly to,
10 as best as possible, to provide the evidence needed to the
11 Commission of Inquiry as best as we can. And this is as
12 accurate as I can get this at this time, Commissioner.

13 Q. The phrase that you use when you addressed each
14 initiative, and it's a similar phrase, is this, that you say
15 that it's not apparent to you these initiatives had an impact on
16 policy development capacity. We see an example of that at 2.5,
17 paragraph 2.5.

18 What do you mean by "policy development capacity"?

19 A. Commissioner, jut let me clarify. The issue is not
20 apparent. I did hear, as part of the Governor's presentation
21 this morning and your line of questioning. When I say it's not
22 "apparent", I could not speak to whether or not the different
23 programmes or different process that was--came about, whether or
24 not it had an impact in dealing with policy development
25 capacity.

1 When I'm talking about policy development capacity,
2 say, for example, we had protocols. Let's just use a protocol
3 that just came in--that came, I think it was 2012. It talked
4 about a number of things that needs to be done but there'd
5 be--had the capacity--they didn't tell us or give us the
6 resources to do those things. How do you go about doing those
7 things? You will see in the legislation they will present the
8 basic framework but what is the capacity? Does the Public
9 Service have the capacity to introduce those things? You talk
10 about the business plan. As a service train, we have (unclear)
11 among the staff who know how to do a proper business plan to
12 support certain projects and programme.

13 So, the Policy capacity, that is what I'm referring
14 to. It can be persons who are trained or it can be the
15 framework because the law or somebody might just take advantage,
16 how do you take it to the next step? So that's what I was
17 referring to.

18 Q. And where does that phrase come from, Mr Frett?

19 A. Commissioner, that phrase come from I discussed the
20 matter with my legal team. As I said, this Affidavit was done
21 with the legal team, and we had some going back and forth and we
22 settled on this particular phrase.

23 Q. What you also say--and this is at 2.10 in the
24 Affidavit--at the very last sentence where you're discussing the
25 Complaints Commissioner, you say: "To my knowledge, these steps

1 did not assist with providing for an enhanced policy development
2 capacity in the Public Service ".

3 What do you mean by "enhanced policy development
4 capacity"?

5 A. Commissioner, once again--what number is that you
6 referring to so I can just take a quick look?

7 Q. 210, please, Mr Frett. It's on internal page 3,
8 bottom of the page, paragraph 210. It's the phrase "enhanced
9 policy development capacity".

10 A. Commissioner, the reason why I say you have to put it
11 in context because we talking about establishment the Complaints
12 Commissioner in 2003. And from my knowledge and from the
13 reports that I saw that would come to the Ministry may have
14 copied the Ministry, the Financial Secretary on that.

15 The complaints--the persons would go to the Complaints
16 Commissioner for various reasons, whether it would have been
17 about the service or they have been infringed, and whatever the
18 reason is, and often the Complaints Commission will investigate
19 the matter, and they will give recommendation or their findings
20 or whatever the issue was at the time. What I did not see, and
21 that does not mean it's talking about policy, policy on how do
22 you correct a situation. Say, example, there's a land issue.
23 Does it tell us how do you correct that land issue, that it will
24 not occur, that a person would not feel that they've been
25 infringed against.

1 So, when I'm talking about enhanced policy development
2 capacity, that the--but I have observed--I cannot speak for
3 everyone--is that some of the Reports on some of the things did
4 not go that far. I'm only telling you what I saw. I'm only
5 being in position. I'm speaking from knowledge and from what I
6 have seen.

7 Q. What's the difference between "enhanced policy
8 development capacity" and "policy development capacity"?

9 A. Commissioner, we can play with words but--

10 Q. But we're not playing with words, Mr Frett. They're
11 your words.

12 A. Yes.

13 Q. Sometimes you used "policy development capacity" and
14 sometimes you use "enhanced policy development capacity".

15 A. Commissioner, if you.

16 Q. When you used "enhanced"--let me finish, please.

17 When you used "enhanced policy development capacity,"
18 that could suggest that the--that there was policy development
19 capacity at the Complaints Commissioner, but you expected there
20 to be enhanced policy development capacity. I'd just like you
21 to explain the difference between the two terms, please.

22 A. Commissioner, there may be policies, there may be laws
23 that are in place. Some of them, if you look at our
24 legislation, some them are quite old, and some of them have
25 perhaps need to be revisited. And what I'm referring to in

1 where something need to be enhanced, they may not have been--the
2 policy that exists, perhaps needs some more enhancement to deal
3 with the situation because some things that would have occurred
4 20, 30, 40 years, something you have legislation, no longer
5 apply today. There's different situation that may have
6 occurred. So, therefore, whatever the situation that may have
7 occurred out of the Commission--Complaints Commission may
8 require that certain things need to be enhanced, need to be
9 revisited. For example, we just did the Procurement Act.

10 There's some issues--

11 Q. I'm so sorry, Mr Frett, what does the Complaints
12 Commissioner have to do with Procurement Act?

13 A. For example, the Complaints Commission, because they
14 might go to the Complaints Commission and say they have been
15 aggrieved by the procurement process. They do not agree how
16 they were treated, so they may have gone to the Commission, the
17 Complaints Commission, to complain and make an argument about
18 it. So, therefore, we will look at the situation and say what
19 are the issues? They may write to--this is just a hypothetical
20 situation. They may write to the Financial Secretary and say
21 this is the situation, this complaint was made. And when you
22 look at the legislation, it may be there was probably nothing
23 wrong in what took place. But if you now go now and see that
24 perhaps the new legislation is dated, there's new ways of
25 procurement, then you will--that's where it's talking about

1 "enhanced". We know "enhance" mean modernizing legislation.
2 It's not just for procurement.

3 Because the Complaints Commission, what I gathered is
4 is that persons go there to complain on various things, whether
5 it be legislation, services and different things. And if they
6 recognize there's an area that perhaps needs to be corrected,
7 then you go and you enhance or you scrap it and start over in
8 those specific places.

9 Q. Just--can I be clear? When you're saying that the
10 establishment of Complaints Commission in 2003, and in 2003, I
11 think you moved to the--you began to assume a number of senior
12 roles at the Ministry of Finance, but are you saying that that
13 establishment did not assist with providing for enhanced policy
14 development capacity? Are you saying that that is a, sort of, a
15 general proposition across the Public Service or is it specific
16 reference to the Complaints Commission?

17 A. Commissioner, I would have said that in how you are
18 stating it, sir. I'm sure there may have been, as I said, the
19 (unclear)subject has been in the post since I was a senior
20 officer.

21 I stated earlier, Commissioner, I did not have the
22 time, the resources to go through and take out each one of
23 these. I went off of my own recollection. If there were, I
24 stand corrected, and I'm willing to reject--retract the
25 statement that was made. This is based on the knowledge and

1 time frame that was given to me as far as I know it and from my
2 experience that I had at the time that I can draw from at the
3 time. This is as factual as I could have been at this time.

4 (Overlapping speakers.)

5 Q. I understand what the context in which you say you
6 have made this Affidavit, firstly the limited time; secondly,
7 that you've had to rely in greater part on your recollection.
8 You haven't done any research; and thirdly--

9 A. No. No, I did not say I did not do no research. I
10 said limited research.

11 Q. You did as much research as you would like?

12 A. Yes, there you go. Thank you, sir.

13 Q. All right. And third, that you have some discomfort
14 as a Public Officer about what this Affidavit addresses?

15 A. That is correct.

16 Q. But--

17 A. But what that addresses is that having a Public
18 Officer, having to address it based on--is the Governor is the
19 one to whom good governance and issues like that, and then I
20 happen to respond to the Governor's presentation that he made
21 earlier.

22 Q. What I'm trying to do with these questions is just to
23 understand some of the terms you have adopted in your own
24 Affidavit, and there is a distinction that would appear--you
25 appear to draw between "policy development capacity" and

1 "enhanced policy development capacity". What is the difference
2 between the two?

3 A. Commissioner, I thought I just went over that.

4 Q. Humor me, Mr Frett, you've done before, I know, but
5 just help me a little bit more by just telling me the
6 difference.

7 A. "Policy development capacity" meaning that it may not
8 have been there. When you enhance something, there might have
9 been some legislation, some framework that you're trying to
10 enhance, the main word being enhance, means you're trying to
11 improve on something that exists. And then there you said
12 "apparent", and we keep missing the word--I used the word
13 "apparent", it is not "apparent" to me. So, therefore, it is
14 not clear to me whether or not these things were able to have
15 the power--the initiative to be able to develop capacity--policy
16 capacity-building.

17 COMMISSIONER HICKINBOTTOM: My understanding,
18 Mr Frett, of what you say about enhanced policy development
19 capacity is that in some circumstances, you have policies, but
20 they may be outdated or they may be capable of improvement, and
21 that's why you used word "enhanced". Is that broadly right?

22 THE WITNESS: That is what I'm trying to say.

23 COMMISSIONER HICKINBOTTOM: Yes, now I understand
24 that.

25 Where you have policies, perhaps policies in statutes

1 or perhaps policies outside statutes, but where you have
2 policies, and they could be better, that's not a good reason for
3 not complying with the existing policies, is it?

4 THE WITNESS: Commissioner, in general terms, no. If
5 you have policies of laws--our laws you should abide by those
6 policies and laws as they exist.

7 COMMISSIONER HICKINBOTTOM: Exactly. It may be that
8 they can be improved because laws can often be improved, but
9 that's a different question. Thank you very much.

10 THE WITNESS: Yeah. Thank you, Commissioner.

11 BY MR RAWAT:

12 Q. Mr Frett, to paragraph 213, please.

13 This is in the Section where you're dealing with
14 fiscal management legislation from 2013, and that at 213 you
15 say: "It's not apparent to me that these initiatives, not all
16 of which emanated from the Deputy Governor or the Governor's
17 group, address the need to enhance policy development capacity
18 within the public service. Medium-term fiscal planning did,
19 perhaps, impose additional policy-making requirements on the
20 service but without assisting and improving capacity to
21 formulate the necessary policies".

22 I wonder if you could assist the Commissioner by just
23 developing that and explaining what you meant, particularly when
24 you referred to "policy-making requirements"?

25 A. Commissioner, I gave a brief example earlier. If you

1 look at the protocols and they talk about you must have a
2 business plan, right? How do you go about developing that
3 business plan, you need to have skilled persons within the
4 service, and they are to know when and how to apply the need for
5 a business plan because it's very important, especially with big
6 projects and programmes that we develop some business plans to
7 be able to know that we are getting value for money with these
8 Projects.

9 If we are talking about the medium-term fiscal plan,
10 we are fortunate that we have some skilled person within the
11 Government, within the Ministry of Finance, and we have leaned
12 on the resources to the training of CARTAC and others to help us
13 to build on these things.

14 But when these things were developed, it doesn't say,
15 okay, it comes with the policies and how you go about it. The
16 legislation was passed, but then how do you go about that? So,
17 then you have the leader as a senior officer, (unclear) Financial
18 Secretaries, then I'll have to say how do I go about coming up
19 with a medium-term fiscal plan, what is required to do so? What
20 resources do I need to be able to implement these things?

21 So, therefore, and what are international standards?
22 So, we now have to go out and build on these things.
23 Legislations are passed, out policies are passed--general
24 policy--but how do you go about doing those things.

25 Q. And how do you, as a senior officer, go about doing

1 those thing, Mr Frett?

2 A. Commissioner, it's a partnership that we have when it
3 comes to training or having the resources for--to implement
4 various policies. It may require human resources capacity. It
5 may require training. It may require--you have to outfit
6 accommodation, if you have new staff. And, of course, you have
7 the recruitment process, and the list goes on with a number of
8 things.

9 The senior officer, once a piece of legislation is
10 passed, and that is one of the things that you will find in
11 mainly going through the Cabinet process and even to of through
12 the legislative process. You should identify what are the
13 resources that you need to implement this policy or this piece
14 of legislation. Because, it's one thing to pass it or to
15 propose it, but implementation and the thing that is required to
16 do so, that is another step.

17 And the resources is, like I said, is a shared
18 responsibility. You have to get the financial resources in
19 order to do so, but also you need to walk into the
20 (unclear) human resources department. They have the
21 responsibility to help identify skilled trained persons and
22 other things they depend on to do so. We have been there
23 for--to utilize a service of our industry partners and, for
24 example, in the medium-term fiscal plan, to help us to come up
25 with the Policy making requirements that are suited in--that is

1 noted in International Best Practices, that we can now have a
2 medium-term fiscal plan framework that is acceptable.

3 Q. Your position is that, in terms of building up policy
4 development capacity, it requires a multi-faceted approach.
5 It's not as simplistic as just needing the financial resources,
6 or needing somebody to give training. It requires a true
7 partnership between a number of stakeholders?

8 A. That is correct.

9 Q. And would you accept that it doesn't mean that one
10 person has to take charge, everybody has to be involved; is that
11 right?

12 A. I see Government as--well, it's supposed to be working
13 as a team because there are multiple stakeholders that are
14 involved within the process. It's not just the Ministry of
15 Finance. It takes on a number of agencies, especially when it
16 pertains to certain subject matters, and may involve even SOEs,
17 some of them are SOEs, we will have to involve them, we have
18 international requirements so we have to engage our
19 international partners. Often, you'll see that (unclear)
20 Government may become Members of certain groups or associations
21 in order to gain that expertise and experience to carry out
22 different initiatives of programmes or help to improve under the
23 policy--I shouldn't use the word "enhance" but--it get me in
24 trouble, but to enhance that policy development.

25 For example, we are working on deposit insurance

1 scheme for the Territory, and we reached out to all partners to
2 that association. And Canada welcomed us, invited us for a
3 whole week in Canada to teach us and to train us and the better
4 things to look for in developing that piece of legislation,
5 helping to us develop the framework, and the Association also
6 helped us in so many ways.

7 So, it's not Central Government it's also working with
8 outside agencies and the stakeholders. So, it's a multi-facital
9 approach, where we have to engage various persons, but there's
10 somebody must take a lead in certain areas. There's certain key
11 areas that there must be a leader because you can't be trying to
12 drive a major policy decision unless there's someone who have
13 taken the lead in certain areas.

14 Q. If you turn, Mr policy--Mr Frett, please, to
15 paragraph 2.19. In that paragraph, and you're still in the,
16 sort of, I suppose, Public Finance Management side of things
17 when--part of your Affidavit, but you refer there to "policy
18 analysis and formulation".

19 Now, this is in the context of public finance, but in
20 relation to what a Public Officer can and cannot do, what do you
21 mean by "policy analysis and formulation"?

22 A. Commissioner, I noted that 2.9--I actually have it
23 underlined in my own copy of this particular document, and I
24 perhaps should have stated this differently when I read it over
25 again in here. I'm not sure in working with my legal team, I'm

1 not sure if that statements there should remain as is because I
2 did note it afterwards that perhaps to wording shouldn't have
3 been the way how it was, but in haste--but if you look at public
4 management, training, and so on; right?

5 Q. Can you pause there, Mr Frett. And it's important we
6 get your evidence as accurately as possible. You wouldn't
7 phrase paragraph 2.19 in the way that it is phrased, what should
8 it say? How would you correct it?

9 A. The fact is, Commissioner, there is training because,
10 if you look above, we talk about every year we do have training.
11 We do meet with the different Ministries and Departments, and we
12 do put through on the budget, you need to go through and
13 analyze, and they do have some level of training with the
14 different--different agencies, and they do some analysis with
15 them, but it's not--it can be better. I think it can be improve
16 the whole process, there is always room for improvement.

17 And we can do because we have something--we try to do
18 the Programme budgeting within the service, and there's some
19 room for growth. There is a lot of room for growth. So, if
20 there is a particular area or project or programme, we should be
21 able to capture what is the true cost of that particular project
22 and programme. And sometimes we still have some challenges
23 there.

24 So, there is some room for improvement.

25 And training--the budget training, even though we do

1 it, (unclear) more programme budgeting and how it all links
2 within the Budget. So, I think we can do a better job there,
3 but I would not say there is no emphasis--I would say there
4 could be improved emphasis on budget training. We do have--we
5 must say we are grateful for CARTAC because CARTAC every year
6 they send us scheduling and inviting us for various budget
7 training and so forth.

8 And so, that phrase there (unclear) that can be struck
9 out--that can be enhanced, and (unclear) noted when I was going
10 through the document last night I realized that 2.19 that I
11 underlined it, and so, surprisingly it came up here today.

12 Q. So, you would say that 2.19 should read "there could
13 be improved emphasis on this budget process training"?

14 A. Yes, not so much for Ministry of Finance but for the
15 other Ministries and Department to make sure that they--even
16 though we meet with them, but sometime we--is something we can
17 be struggling with sometime. Trying to get them to understand
18 Programme budgeting and how to work within the framework that we
19 have. So, there is room for growth, I believe.

20 But I would reword that, and I have it right there
21 underlined where I picked up on that as I was going through the
22 document in preparation for today.

23 Q. If I take you through, then, paragraph 2.25, please,
24 Mr Frett. This is a section on disaster management
25 capacity-building, and you say, "I'm aware of the many

1 conferences, meetings, trainings, workshops attended by the
2 Department of Disaster Management Government Stakeholders.
3 Further, the Department of Disaster Management Office trained
4 public officers" and you then exhibit two-page summary of this
5 training.

6 First question I was going to ask you is, who was it
7 who prepared that two-page summary?

8 A. Commissioner, I had to reach out to the DG office
9 because I did--I am aware of the training but I did not have the
10 details of everyone so I did ask for the Cabinet provide me the
11 training.

12 I didn't just want to just say they provide training
13 without evidence of the training.

14 Q. Thank you.

15 You conclude: "It's not apparent to me that this
16 initiative had an impact on the policy formulation capacity of
17 Public Service of the Virgin Islands".

18 Does "policy formulation capacity", is that a
19 different thing from "policy development capacity"?

20 A. "Formulation" and "development" is the same, one of
21 the same word for me.

22 Q. Now, when you say--

23 (Overlapping speakers.)

24 Q. Go on, please.

25 A. No, you go ahead, sir. Sorry, my apologies.

1 Q. No, no, not at all, Mr Frett, but when you say it's
2 not apparent to you that it had an impact, how do you measure
3 impact?

4 A. Commissioner, from time to time we do have training
5 within the Public Service on various things but what comes out
6 of that training, do--does that result into a policy change, the
7 way how you do things? And I--as I say it's not apparent to me.
8 I'm not sure. Time did not allow me to go out and investigate
9 and say "yes", this particular training that were called by DDM
10 that we were able to implement some policy initiative or
11 something like that. I'm sure there was, but it's not apparent
12 to me at this time, but it probably--I'm sure that because I've
13 work, I know I participated in a number of training exercises by
14 the DDM, it benefit me, it widened my knowledge but as far as
15 coming back to the finance and implement it--I don't recall
16 doing that, but I'm sure that maybe others who took away certain
17 things and it change certain legislation or certain policy that
18 they may have had, but I'm sure that if time alone I have had
19 more time to do more research, I would have found something but
20 at this time, it's not apparent to me that that actually
21 occurred.

22 Q. Thank you.

23 More than one witness has spoken about the difference
24 between the role of a Minister--firstly, the role of Cabinet in
25 making policy, and you would have heard the Governor this

1 morning pointing to the Constitution there, but also that we've
2 got Section 56 which sets out the role of the Minister, and then
3 we have the difference between the Public Officers, and we're
4 used now to the term "technical people", which Ministers and
5 former Ministers like to call persons such as yourself,
6 Mr Frett. But from your experience, what are the constitutional
7 limitations on the ability of a Public Officer to formulate
8 policy?

9 A. Commissioner, we, as Financial Secretary, under the
10 Public Finance Management Act, it does allow the Financial
11 Secretary to issue Financial Instructions. The Financial
12 Instruction in some way, is a policy, can become policy because
13 that may say how certain things are done; right? So I'm sure
14 that within certain other statutes for other Permanent
15 Secretaries and other areas within the Public Service that they
16 may have the ability to influence or deal with policy matters.
17 But from a greater scale of things, we are advisors to our
18 Ministers, and we may draft and formulate policies for the
19 Minister for Cabinet's approval or the House or subsequently the
20 House of Assembly approval. That is where most of the policy
21 decisions to Cabinet or the House of Assembly, but I'm saying
22 there may be circumstances where persons like myself can affect
23 policy directions through the statute that allows us to do so.

24 Q. And have you been able to do that during your time in
25 Public Service, Mr Frett? Influence policy direction?

1 A. Commissioner, from time to time, as a senior officer,
2 we will draft papers or do research for the Minister, so--you
3 call us "technocrats" or "bureaucrats", but the fact is,
4 Commissioner, Public Officers, especially technical or senior
5 officers, from time to time, what draft policy this on the
6 instructions by Cabinet or by the Minister that forms into
7 policy.

8 So, we are the backbone behind the Policy makers as
9 far as drafting legislations and other thing like that--not
10 drafting legislation, (unclear) but drafting the framework of
11 some of the things that have to be channeled through the
12 Attorney General's Chambers for the legal ratification of that
13 and then other things go straight to Cabinet.

14 So, I would say, Commissioner, that we, as senior
15 officers, we are very influential in how certain policies are
16 shared because we are the ones that had to carry out some of
17 those things for the Minister to carry to Cabinet. But like I
18 said earlier, Commissioner, in some instances like myself as
19 Financial Secretary, we do have, according to the statute, we
20 have certain powers that allow us to do certain things, and I'm
21 sure other Permanent Secretaries may have the same.

22 Q. And in fairness to technocrats, the technical people,
23 within the public service of the Virgin Islands, there is
24 experience, isn't there, in formulating policy for Ministers?

25 A. Commissioner, I've been in the service, actually I

1 joined in 1985 (unclear) way come back since then, but I would
2 say, I'm proud to be a Public Officer, and sometimes you hear
3 persons say things about Public Officers, but I'm proud, and
4 there are many other Public Officers who are glad and happy for
5 the opportunity to serve. I get a sense of pride when I know I
6 work on a piece of policy, a document that impacts the lives of
7 persons in the Virgin Islands positively.

8 And I would say there are persons within the service
9 that are quite skilled. I'm fortunate to have a number of them
10 here within the Ministry of Finance, but there are some areas,
11 Commissioner, where the skill sets are lacking within the Public
12 Service and where, I'm sure, by example, I know that there is a
13 young man that we have right now on secondment at BDO trying to
14 get him certified to be a public accountant, to be an
15 accountant. And I'm sure there's other areas--now that's one
16 area I know, especially when it falls under the Ministry of
17 Finance, you have Treasury, Internal Audit, Audit--not
18 audit--audit doesn't fall, but I'm just trying to say that there
19 are many agencies out there that need these kind of technical
20 skills that we have to develop, we recognize that there needs to
21 be developed and enhance to find persons who are interested in
22 specialized fields and given training and adequately equipped,
23 and we recognize that here in the Ministry of Finance, and
24 that's why I know that I have another two persons that have
25 already been identified to start the SCCA programme, and there's

1 others who have showed interest.

2 We have to build capacity in certain areas so that we
3 don't have to rely on consultancies, have to pay large sums of
4 money for this skill. And they are so grateful for external
5 partners who have--who have willingly shared with us their skill
6 set and knowledge in these areas. Just before I had to leave
7 the call, just before this meeting, I had to cut that call off
8 to join this meeting. We had the consultant from CARTAC. We
9 are finalizing the Public Finance Management Act. We are well
10 advanced on that. We just fine-tuned that. I had to leave that
11 to come to this meeting. So that's just how to show you. In
12 drafting, there is another example, there's some areas of
13 specialty as well, not just within the Ministry of Finance but
14 throughout the service.

15 But I think that is a work in progress. We recognize
16 that need, and I wouldn't say it saddens me, but coming here and
17 hearing this back and forth on who should and should not do
18 that, and should be responsible for certain things, I think
19 collectively we have a responsibility to try to enhance the
20 Public Service, whether they become--whether it be specialized
21 skills, administrative or whatever it is. I don't think of any
22 one person or one group but somebody have to take the lead to
23 steer that, and I'm happy to have been part of the
24 transformation process (drop in audio) in trying to shape what I
25 think and others think that is in the best interests for the

1 public and having a qualified well trained Public Service.

2 So, this working just started--I know the effort
3 started again back in 2000--right after the Hurricanes in 2018
4 when the work started again, and I'm all in on that process.
5 That is what we needed to be talking about, how do we
6 retransform the Public Service to meet the needs of today and
7 for the future generation. I think we were underway. I think
8 COVID and the Hurricanes tell us we have to become more
9 digitised and some other things that follow the course of the
10 Commission of Inquiry.

11 So, I don't want to take up and look and be here
12 pointing fingers. I think I'm more solution-oriented. Let us
13 find the solution. The Commissioner highlight certain things
14 that I already knew and that we are working on but the public
15 may not be aware of, but I'd rather take an optimistic look
16 rather than this pessimistic doom and gloom look with respect to
17 the Public Service.

18 Q. Would it be fair--

19 COMMISSIONER HICKINBOTTOM: Mr Frett, that's very
20 interesting and helpful. In your Affidavit you go through
21 various initiatives that have been taken in respect of
22 modernizing or improving the Public Service, and you say at the
23 end of quite a lot of them that this particular initiative
24 doesn't assist with the lack of policy development or
25 formulation capacity. Perhaps policy implementation capacity as

1 well a bit in brackets, but particularly the development and
2 formulation capacity, there is a lack of that.

3 And you said that there is some capacity there. I
4 mean, you're, as it were, living proof that there is some
5 capacity there, but more capacity is needed, and I think reading
6 your evidence that capacity is--what one of two things or
7 perhaps both of them, but probably--well, probably more people
8 need it, but it's really giving Public Servants the skill set to
9 be able to develop and formulate and implement policy.

10 But without casting blame on anybody for this not
11 happening, that in itself is a policy decision, isn't it?
12 Because it means prioritising the development and formulation of
13 developing the policy formulation capacity, but to do that is
14 itself a policy decision, isn't it, because there are other
15 priorities pressing on Government, and it's a matter of deciding
16 that money should be spent on increasing this capacity, money
17 and energy should be spent on increasing their capacity.

18 Is that right?

19 THE WITNESS: Commissioner, with respect to the point
20 of increasing staff, the Public Service is quite big as it is
21 right now. I think the focus is I'm happy and welcome the job
22 classification exercise and initiative that is currently being
23 done through the Deputy Governor's office. I think that would
24 shed a lot of light on where we are, what are the resources that
25 we need, but even outside of the job classification and salary

1 review.

2 I think even outside of that, I think that each
3 Ministry and even from a greater point of view, I'm happy to
4 know that an actual development strategy--the plan that is being
5 developed that that will help to say what are the priorities of
6 Government for the next 15-20 years or whatever it is, and then
7 that will help to formulate what are the resources. If this is
8 a national strategy for the country, what are the resources that
9 you're going to need to implement this strategy, this plan going
10 forward.

11 And I think that we cannot do things in isolation. I
12 think that the national strategy had been developed in the job
13 classification and you have to pinpoint a part that is where
14 resources should be channeled to deal with some of these
15 priority areas.

16 And the channel--

17 COMMISSIONER HICKINBOTTOM: But some--I'm sorry, very
18 sorry to interrupt, Mr Frett, but some of that channeling is
19 towards policy development/formulation capacity, isn't it?
20 That's where the energy may be channeled.

21 THE WITNESS: And Commissioner, I think--I'm not sure
22 if it was presented to--I think it's in my Affidavit, so much
23 things going on, but I think it's in my Affidavit where we spoke
24 about the transformation and having a Policy Unit being
25 developed. I think the Consultant, I hope she was joking, she

1 say, you would be a great person to head up the Policy Unit, and
2 I said, well, I don't know about that, but that was Ms Lynch.

3 But I would say that the Premier, the leader of
4 government, and the Governor recognized that already and I think
5 that what--the Deputy Governor was leading the charge on that,
6 we all recognize that it is an issue and is something that we
7 identify some time ago, but we have to now press ahead, get the
8 right persons in place, and let us deal with some of the issues
9 and let's formulate a solution in making the BVI and the
10 Government more efficient than what we are right now.

11 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Frett.

12 BY MR RAWAT:

13 Q. Mr Frett, what we shouldn't conclude about the Public
14 Service in the Virgin Islands today is that it's sort of a
15 desert of policy formulation. Is your evidence that there are
16 strengths in the Public Service in terms of policy formulation
17 and policy development capacity, and there are also weaknesses
18 that need to be addressed? Would you agree with that?

19 A. Commissioner, in any organisations, you have strengths
20 and weaknesses. You have to continue to build on your strengths
21 and where you're weak to have to put more resources into those
22 areas. So, it doesn't just go for the Government of the Virgin
23 Islands. It goes for any organisation that exists, and yet you
24 have to keep the machine oiled and going.

25 So, I would say that, Commissioner, there is room for

1 growth not just in policy development but in so many other areas
2 because, as long as you exist, there is always room for
3 improvement because the world continue to change. COVID has
4 taught us that. We have to continue to evolve, and we're doing
5 so based on the resources that we have. I think the Virgin
6 Islands has a very good testimony and sometimes we focus too
7 much on the wrongs and the ills, but we have very good testimony
8 when we look at some other countries. It doesn't mean we cannot
9 do better, I'm not saying we cannot do better, but sometimes we
10 have to celebrate the areas of strength and where we need to
11 improve on our weaknesses we will do so.

12 And I welcome the transformation on part of the team.
13 I have been part of a team from the time it begun, and I'm happy
14 to contribute in some of the things--some of those things have
15 already been implemented in the past and we're working, so I
16 don't want anyone who's watching thinking that we had not
17 started the process, we're waiting for the transformation. The
18 transformation started a long time ago even before the
19 Hurricane, but it's everything in a holistic view now, and I
20 think that's where the true partnership of the Premier group and
21 the DG, we holistically approach the issues and the challenge
22 and address them.

23 COMMISSIONER HICKINBOTTOM: Thank you very much.

24 BY MR RAWAT:

25 Q. If I move you on, please, Mr Frett, in the Affidavit

1 to paragraph 3.1, please.

2 A. Yes, Commissioner.

3 Q. If you look at--focus on paragraphs 3.133 to 3.5,
4 Mr Frett, you're dealing with a piece of the Governor's evidence
5 where he has said that the allocation of a training budget was
6 \$25,000 for the Public Service, and I think the point you make,
7 to summarise it, is that that's the allocation available to the
8 Department of Human Resources, but there are other resources
9 available to the Public Service for training. Have I summarised
10 that correctly?

11 A. Commissioner, that's correct, there are other
12 resources available, and even within the \$25,000 that is there
13 on the Human Resources Department, I think any Public Servants
14 who have been here during this COVID period this year will see
15 that number of training, in-house training initiative that was
16 conducted--conducted by the human resources that did not require
17 financial resources because we have a lot of skilled persons
18 within the service or within the Territory who are willing to
19 give up their time to train Public Officers, so I have to
20 congratulate "Kaiser Pen" (phonetic) and Marshal Smith and
21 Joshua Edwards and the whole HR team for being innovative and
22 conducting training online using less cash resources but using
23 online tools in order to train Public Officers. If you were in
24 a non-covered or traditional way of training, they would have
25 required probably for the training they probably require

1 hundreds of thousands of dollars to put on that same training
2 but they were able to be creative and innovative in what they
3 did, so I congratulate them on that.

4 So, I don't want us to just focus on \$25,000. What we
5 should focus more on what training was given to Public Officers.
6 That should be the focus. Is this sufficient? Does this then
7 meet the key areas that we should be targeting? Should we be
8 focused more on policy development-type training and things like
9 that? I would rather have that kind of discussion but to focus
10 on the dollar amount, I don't think that is fair.

11 And throughout my Affidavit, I'm sure where there are
12 plenty of other training that has occurred.

13 Q. Can I break that down a little bit, please, Mr Frett,
14 and just focus on the 25,000. I promise we will look at the
15 other elements of training in a moment, but 25,000 is what's
16 allocated to the Department of Human Resources. But there are
17 two things that flow from that: From what you just said, you
18 seem to be full of praise for the efforts that the HR Department
19 has made to train Public Officers; is that right?

20 A. That is correct, Commissioner.

21 Q. But what you also said, the second thing is that, and
22 this is at your paragraph 3.3, you say: "I should point out,
23 the training and development is a tool for greater efficiency
24 and productivity in the Public Service, lies directly under the
25 Deputy Governor's Office portfolio through the Department of

1 Human Resources".

2 And if they hold the role for improving--for using
3 training to produce greater efficiency and productivity, the
4 question that begs to you, Mr Frett, is is \$25,000 enough?

5 A. Commissioner, what the point that is being missed, I
6 know you said (unclear) to the other areas, what I see the Human
7 Resources Department being the central point to help to identify
8 the type of training, coordinate and everything like that
9 pertaining to training of Public Officers prioritise the areas,
10 things like that. That does not mean necessarily all the
11 financial resources is placed under the Human Resources
12 Department. It has been decentralized a long time ago. Each
13 Ministry now has a line item in the Budget that in some
14 Department for training, but it should not be done in a
15 haphazard way.

16 It should be done in a coordinated way with the
17 training Department, the Human Resources Department because I
18 can't speak directly because I have other evidence in front of
19 me, but I do look for that they are coordinating, the different
20 Ministries or Department have a training budget, I hope it's
21 done in coordination with the Training Division so that can be
22 maximizing the financial resources and that we are meeting the
23 needs of Public Officers. I'm not directly involved with the
24 coordinating activities, so I can't speak to that right now.

25 And if you go, as I said, there are people that I

1 interact with daily, and I know they have constant need for the
2 Director being constantly asking for more resources. Every
3 minute she may be asking for more resources, but we, ask the
4 Department to be creative, work with industry partners, and they
5 have been able to do so, and that's why I have nothing but to
6 say thank them for what they have done so far.

7 COMMISSIONER HICKINBOTTOM: Mr Frett, could I just ask
8 two questions arising out of that or just ask for your comments
9 on two things:

10 The first thing is, looking at the Table in
11 paragraph 3.5, and this is a table of resources which you say
12 have been spent on training, not simply the resources that have
13 been spent through the Department of Human Resources. They have
14 fallen from 2016 from \$138,000 to \$25,000, according to your
15 Table. But we are asked, you must look at other things, like
16 the individual training budgets. Well, those have, according to
17 your Table, fallen through \$598,500 to \$154,000 over the same
18 period. And we have been told that you also need to look at
19 scholarships. Well, they have fallen from \$466,000 in 2016 to
20 \$129,000.

21 So, it seems to me that wherever you look, it doesn't
22 matter which column you look at. The amount of money devoted to
23 training has fallen very substantially. But you say in
24 paragraph 3.2, you don't agree with the suggestion that there is
25 inadequate provision of the training.

1 So, are you saying that there in your view, there is
2 adequate provision for training and Public Servants are
3 adequately trained, even on the reduced budget which they've
4 had?

5 THE WITNESS: Commissioner, what is this in here? I
6 think it's somewhere in my Affidavit, what is not calculated in
7 some of these figures is the training from external partners,
8 internal training by individual--by skilled or trained persons
9 within the Public Service. It is not included--it is not
10 included in some of these figures that people were not able to
11 do the analysis.

12 So, if we are looking at these figures at face value,
13 the conclusion that you draw would have been accurate, but there
14 is--I would not say that is correct. If you look at 2017
15 figures and 2016, we know what happened in 2017, and we know
16 what happened in 2020 come forward. The Territory was in a
17 difficult situation at the time, it continued because of what
18 had been happening with the Hurricane recovery and also
19 priorities probably was shifted in other areas, but what it does
20 not show in these figures, what is the value of those trainings
21 received from external partners? What is the value of the
22 training conducted by the team from Human Resources where they
23 were able to have 20, 30, 40, 50 Officers on-line being trained?
24 Sometimes you will spend significant sums of money sending
25 someone to, say, Barbados for training or Jamaica but now with

1 on-line situation of training, a lot of agencies have been given
2 free training, and we have capitalized on those things. Perhaps
3 we need to capture the value of those things so we can have a
4 clearer picture what is the true cause of the training Officers
5 receive in the Public Service.

6 I don't think if you just zero in on this, I don't
7 think that it's fair to draw conclusion on that. This is the
8 raw information that was received from the system, and I think
9 as I noted in the thing we were not able either to have the time
10 to go through, and how do you go about--how much does the
11 training that receive from their agency would have cost.

12 And one other thing--

13 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Frett, but I
14 didn't ask that question. The question I asked is whether,
15 despite--despite--the falling amounts spent on training, you
16 say, as you do as I understand it in paragraph 3.2, that you say
17 that current provision for training Public Servants is adequate.
18 Do you say that it is adequate? Because some the Witnesses have
19 said that it is not adequate. But as I understand your
20 evidence, you say whatever the figures are because, as you
21 correctly say, you can get lost in figures, but whatever the
22 figures are, you say you do not agree with the suggestion that
23 we have made inadequate provision.

24 THE WITNESS: That is correct. That is what I said
25 there, Commissioner, because when you say--when you make up

1 (unclear) statement say that we have made (unclear) because that
2 is a blanket statement that you're making there.

3 COMMISSIONER HICKINBOTTOM: Mr Frett, that's fine, so
4 that when there is some concern about the lack of training in
5 relation to policy formulation and implementation, it is not
6 that the--this is my understanding of your evidence, it's not
7 that there is lack of provision for such training because you
8 said there is adequate provision for training, it's simply that
9 the training is not directed or prioritized to the right people.
10 Is that your view?

11 THE WITNESS: Commissioner, I would not say that's my
12 view. What I'm saying in that statement 3.1 (unclear) we have
13 made in (unclear) position, the point I'm trying to make, the
14 provision was made. Maybe we could have provided more, perhaps
15 yes, but when you use the word "inadequate", when someone calls
16 and says inadequate provision, that that word in itself, I would
17 prefer to say more provision could have been provided if the
18 person--this is the grey area I don't want to go back and forth
19 for what the Governor say. I would have say that more
20 provisions could have been made for training, but when you say
21 inadequate, it may give a certain perception. Of course, there
22 are areas that can do with more training and so forth--

23 COMMISSIONER HICKINBOTTOM: Now, Mr Frett, I
24 understand that, but again that's not the question I put. What
25 you say is--my understanding of your paragraph 3.2 is you say

1 you don't agree with the suggestion that there is inadequate
2 provision for training. That's a double negative. My
3 understanding of your evidence is you say that the provision for
4 training Public Servants is adequate. Of course, there could be
5 more, but you say that it's adequate.

6 So, if the provision for training is adequate, but
7 there is insufficient training in respect of policy development
8 which we have been told, doesn't that mean simply that the
9 adequate provision is not directed towards policy development
10 and formulation? Because you say you have the people, but they
11 need the skills.

12 THE WITNESS: Commissioner, based on how you rephrased
13 that, I would not disagree that prioritised training in the
14 service is not needed. It's something that we can do with. I
15 think that we have to identify and go through the transformation
16 process will help identify some of the areas that we should
17 focus on, and then we can go to those areas and put the
18 resources towards those areas or we can reach out to our
19 Stakeholders because every year they asked us what is the areas
20 that they would like us to focus on, so maybe we can write and
21 say these are the ones the Government has decide, these are the
22 priority areas, then we can start to focus and say okay, policy
23 development and training can be one of those areas.

24 COMMISSIONER HICKINBOTTOM: Yes, but--yes. A very
25 fair answer, Mr Frett, and I understand that. Thank you very

1 much.

2 THE WITNESS: Okay.

3 COMMISSIONER HICKINBOTTOM: Mr Rawat?

4 BY MR RAWAT:

5 Q. I mean, ultimately deciding which areas are going to
6 take priority will be a matter for the Government to decide,
7 won't it?

8 A. Commissioner, I would not say--when you say the
9 Government, what do you mean, the elected official Cabinet?

10 Q. Yes.

11 Is that where the final decision lies?

12 A. I would say the final decision would lie at the
13 Cabinet, if not the House of Assembly should the funding aspect
14 of it, but I would also say that each Ministry has a
15 responsibility. It should be a corroborative effort, and I
16 think that my friend (drop in audio) I know that he would take
17 that approach through the transformation process and identifying
18 some of these priority areas.

19 There have been priority areas in the past, and--but
20 things have changed, COVID, hurricanes and so forth, so we have
21 to revisit the key areas. And I'm sure that coming out of this
22 we will identify those areas.

23 Q. Can I ask--and they may not be mutually exclusive, but
24 which of two views you preferred? Because you've just referred
25 to the need--Ministries could take a lead here. So that's one

1 option, isn't it? Ministries can decide how to spend their
2 training budget or what areas their training--Public Officers
3 need training on.

4 Can I just finish, please.

5 Earlier, you also referred to the role of the
6 Department of Human Resources acting as a central point so that
7 there is a more Public Service-wide coordination of training.

8 A. Yeah.

9 Q. Now, in 2019, and one could argue that over the last
10 few years the Ministries could have done different things, but
11 in 2019, are you an advocate of the Department of Human
12 Resources acting as the coordinator for a more Public
13 Service-wide approach?

14 A. Commissioner, I'm of the view that there need to be a
15 central point of training for the Public Service. While the
16 monies may remain--funding may remain in various Departments
17 because of an accounting process that we have because you have
18 to show where the expenditures are going, where the (unclear),
19 so there are accounting issues. But with respect to--we don't
20 want--it need to be a collaborative effort between the
21 departments in human resources based on priority areas. And
22 Human Resources have the skill set in the--I'm not saying some
23 Departments don't have Human Resource Office Managers and so
24 forth, but we don't want Departments or Units running off just
25 determined they're going to send this person off for training,

1 so when they submit their budgets, they shall identify what the
2 training is for. And I think that they should perhaps in the
3 future we probably should make sure that Human Resources on the
4 training aspect of the Human Resources Department are
5 engaged--are involved in that process so that we make sure that
6 the training is relevant for the agency and for the officer.

7 Q. Who decides the priority areas?

8 A. That will have to be--that will have to be the Cabinet
9 Decision, choose something that is submitted. Hopefully the
10 transformation process will help to identify the priority areas.

11 I know that in the past, when more Governor's
12 scholarship was being offered, they used to have a list, I think
13 Cabinet at the time you saw what are the priority areas for
14 training, and they used to come when the Government--I mean, I
15 think that was channeled through the Deputy Governor's Office, I
16 think that's what they used to coordinate through consultation
17 across the Department Ministries and so forth. I'm not sure
18 where we are on that now. That is not my subject area.

19 But I'm of the view, this is of my opinion, that
20 notwithstanding the budgets are placed within Departments and
21 Ministries and so forth, when it comes to training, it must be
22 corroborative between true interaction or review by the Human
23 Resources Department to make sure there is
24 not--strategically--the training is strategically placed and
25 they have the expertise.

1 COMMISSIONER HICKINBOTTOM: Mr Rawat, I note the time,
2 and we've got a Transcriber transcribing. Have you got many
3 more topics to deal with with Mr Frett? If so, we probably
4 should have a break I think.

5 MR RAWAT: Not many more, but I'm quite happy to have
6 a five-minute break now. I'm sure the Transcriber would welcome
7 it, but I should finish fairly shortly, I hope.

8 COMMISSIONER HICKINBOTTOM: Let's have our five-minute
9 break, Mr Rawat, and then we will come back and hopefully you
10 will finish with Mr Frett shortly, yes?

11 THE WITNESS: Thank you.

12 MR RAWAT: Thank you.

13 COMMISSIONER HICKINBOTTOM: Thank you.

14 (Recess.)

15 COMMISSIONER HICKINBOTTOM: Good. Thank you,
16 Mr Rawat. We are ready to continue, thank you.

17 MR RAWAT: Thank you, Commissioner.

18 BY MR RAWAT:

19 Q. Mr Frett, can I just check up a couple of smaller
20 points you with, please, if I take you to page 12 in your
21 Affidavit.

22 A. I'm there.

23 Q. Do you have it, Mr Frett?

24 A. Yes. Yes, Commissioner.

25 Q. Thank you.

1 Do you see at point (e) you refer to training received
2 as part of consultancy contracts, and you give an example of
3 government upgrading its accountancy system and composed
4 (unclear) *** training. That isn't something that's related to
5 policy formulation or analysis, is it?

6 A. Commissioner, with this article that I make reference
7 to is not reference to policy formation. It pertains to a
8 software system, our accounting software system.

9 Q. And if you look at (f), (f), Mr Frett, you deal with
10 the Government's contribution to the H Lavity Stoutt Community
11 College, and you conclude--that's paragraph 5--you are revealing
12 that you are an alumni of the Community College. But just so
13 that we can understand this paragraph, it doesn't relate
14 specifically to funding for the education of Public Service
15 Officers, does it? It's a general grant for free education for
16 BVIslanders; is that right?

17 A. Commissioner, it's for all BVIslanders who are
18 residents in the Island. However, there is a number of Public
19 Officers that attends the college, and from time to time the
20 college will partner with Government and put on numerous
21 training activities. I know that my office last before we went
22 in business right there in training that they had there at the
23 college about a year or two ago, so they do partner with the
24 Government on a number of training--training initiatives. I'm
25 not sure if any additional money was given, but it was some

1 collaboration that they have. And we are looking for ways how
2 we can continue to build on that--on that relationship.

3 One of the things, for example, I think the teacher
4 training certificate programme is ran through the college.
5 That's where teachers get their certificate and training for
6 teaching, and that programme, I think it paused in 2016 because
7 they were going to revamp that programme, and then the Hurricane
8 came and then COVID. But I know very close in starting that
9 programme again, so it's a true partnership that they have with
10 Central Government, whether it be for one bigger short-term or
11 long-term training programme.

12 In addition, persons may go there on their own for
13 their own professional development. And we cannot remove the
14 fact, Commissioner, that public money is being used to fund our
15 organisation, majority of it.

16 Q. Thank you very much for that clarification, Mr Frett.

17 Can I just move on to another topic, and if you go to
18 Section 4 of your Affidavit, which is headed "Recruitment and
19 Pay Freeze", and you're referring there to a proposal by the
20 former Governor, Mr Jaspert, in a paper for a recruitment
21 freeze, and you have set out the context there.

22 Just so that we could put it into its proper context,
23 this was put to Mr Jaspert, and I explored this with him, and he
24 did take a Paper to Cabinet, but the point that was made was
25 that it's ultimately the Decision of Cabinet whether or not to

1 accept the Paper. Would you agree with that?

2 A. Commissioner, with respect to this piece of evidence,
3 this evidence I think was in the previous Affidavit as well.
4 This is based on the research that was done, and we were able to
5 identify this Cabinet Paper. I was not--I think everyone knows
6 I just joined--took up the post January 1st.

7 But with respect to who's responsible, I think it's
8 common knowledge how decisions of Cabinet are made, and I think
9 that from my knowledge matters pertaining to the Public Service
10 are carried by the Governor who prepares the Paper. Normally,
11 I'm assuming that the Deputy Governor's Office or somebody would
12 have prepared the Paper. There may have been other consultation
13 with other government agencies, but ultimately the Paper had to
14 be carried by the Governor. Whether or not he was the one who
15 dictated what took place, I cannot speak to that. I have no
16 knowledge of that.

17 (Overlapping speakers.)

18 Q. A reason--a reason you can't speak to it, of course,
19 is you would not have been privy to the Cabinet discussion,
20 would you, Mr Frett?

21 A. No.

22 Q. But the point is that anything that goes before
23 Cabinet, whoever brings it, has to be voted on by Cabinet; would
24 you agree with that?

25 A. Commissioner, I do not know of the runnings of inside

1 the Cabinet. I did hear previously--I don't know the
2 detail--that the Governor is the Chairperson, I don't know. I
3 don't know of the details. If the Governor carries a Paper,
4 then he votes on it, and those instances or not, I cannot speak
5 to that. That is something that's--I don't know about those
6 things.

7 Q. Okay. I will leave it there and just move on to one
8 last matter, and that's the final paragraph of your Affidavit,
9 6.2. Just in terms of budget responsibility, the appropriation
10 bill would be put together by the--put together by the Minister
11 of Finance and then taken through the House of Assembly and then
12 signed by the Governor?

13 A. Yes, Commissioner, the Governor's assent to the Bill.

14 Q. All right. Thank you.

15 MR RAWAT: Commissioner, I have reached the end of my
16 questions for Mr Frett. Can I conclude, first of all, by
17 thanking him. I did some calculations yesterday, and this is
18 actually Mr Frett's sixth appearance before the Commission, so I
19 think he has--he may have been beaten only by the Premier, but
20 can I--we thank him for the patience that he's shown with us.
21 We thank him for the time he has given to the Commission and his
22 team has given to the Commission; for making himself available
23 sometimes at relatively short notice but also today. I thank
24 him for the way in which he has given his evidence.

25 COMMISSIONER HICKINBOTTOM: Yes. And Mr Frett, can I

1 simply endorse all of that. I know the work that the Commission
2 of Inquiry has placed upon your shoulders and the shoulders of
3 those in your--under you in the Ministry of Finance, and the way
4 in which you have dealt with us in giving your evidence with
5 patience and good grace as well as being very helpful. It's
6 very much appreciated, so Mr Frett, thank you very much, indeed.

7 THE WITNESS: Thank you, Commissioner, and to all the
8 team that is on this call. But it would be wrong for me to
9 leave without thanking because what you're seeing is a product
10 of a team, and I wanted to thank the team members here, the
11 Ministry of Finance who I constantly called on to do the
12 research, "I need the information, check e-mails, check this,
13 check that". I was quite the taskmaster of trying to get--make
14 sure all the relevant information is submitted to you on time.
15 I know a couple of times that we were late on it, and I
16 apologise for that, but I want to thank the entire team, here
17 the Ministry of Finance, for their education and hard work
18 because without them, the Minister of Finance would not have
19 been able to be as supportive towards this Inquiry as I would
20 have liked.

21 So, thank you, Commissioner, and your team, and
22 Mr Rawat, quite a taskmaster there. But thank you, guys, for
23 everything.

24 COMMISSIONER HICKINBOTTOM: Yes, thank you very much,
25 Mr Frett.

1 (Witness steps down.)

2 COMMISSIONER HICKINBOTTOM: Now, Mr Rawat, is there
3 anything else in terms of evidence?

4 Mr Rawat, I can't hear you. If you're speaking, I
5 can't hear you.

6 MR RAWAT: I'm sorry, I was on mute.

7 Just in terms of evidence, just one small matter. You
8 will recall former Governor Jaspert gave evidence, and there was
9 no application ultimately to re-call him for further
10 questioning, but he was followed on day 52 by The Honourable
11 Premier who made some additional criticisms of Mr Jaspert, and
12 at that time you indicated that you would give Mr Jaspert an
13 opportunity to respond on those.

14 Subsequent to Mr Jaspert's appearance, we did also
15 have some further evidence in terms of Cabinet Papers from
16 January 2020. And you will recall, Commissioner, that I took
17 Mr Jaspert through some correspondence in which the Premier was
18 critical of Mr Jaspert's conduct in a particular meeting in
19 January 2020, and again he was invited to respond to that, given
20 that he now had sight of Cabinet Papers.

21 So, if I may, I just want to read from notes that
22 Mr Jaspert put in to you responding to those two points. It's
23 dated the 17th of November 2021, and under the heading "Evidence
24 of The Honorable Premier on day 52, 21st of October 2021",
25 Mr Jaspert writes as follows:

1 "I have read the assertions put forward by the Premier
2 regarding my conduct. I do not agree with these assertions, and
3 they do not correspond with my recollection of the events. As
4 Governor, I was clear throughout my tenure of my commitment to
5 work in partnership with the Elected Government of the day
6 having served with two administrations; and also my deep respect
7 for the Constitution and the role of Elected Members. I was in
8 the latter half of my time in office during the current
9 administration subject to many assertions by the Premier which I
10 believe were misrepresentations.

11 "You will have seen from the correspondence between
12 the Premier and myself that, despite leaving the subject of what
13 consider at times be unnecessarily confrontation assertions in
14 writing or even public statements, this did not change my
15 approach, which was to continue a commitment to partnership and
16 to operate professionally and with respect for the Constitution
17 and Elected Members at all times.

18 "Regardless of any real or perceived challenges in the
19 relationship, I should make clear that this had no bearing on my
20 decision to call a Commission of Inquiry.

21 As to the allegation of corruption that was made
22 following the Cabinet Meeting January 2020, Mr Jaspert says
23 this:

24 "Having reviewed the further correspondence relating
25 to the above meeting, I have nothing further to add to my points

1 as recorded in the Transcript from page 20 of my appearance at
2 the Commission. The letter I sent to the Premier and the
3 Cabinet, minutes--and the Cabinet Minutes at the time record the
4 position factually", and his response ends there, and I've got
5 nothing further to read.

6 That, Commissioner, concludes, I think, the evidence
7 that I need to put on the record today.

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

10 I think there are just three other things I think we
11 need to deal with, and I think we can deal with them fairly
12 quickly.

13 Firstly, Mr Risso-Gill, there are the Section 13
14 written submissions, and I have your submissions. I have the
15 submissions of Mr. Hall Taylor, and I will make of those
16 submissions I think what I can. I don't think I need to hear
17 any oral submissions. Both of the sets of submissions are
18 perfectly clear.

19 MR RISSO-GILL: Thank you.

20 COMMISSIONER HICKINBOTTOM: Secondly, there are the
21 Closing Submissions which have been submitted on behalf of the
22 Attorney General and the Elected Ministers which came in, I
23 think, on Monday evening. You need permission to rely on those,
24 and I've read those. They obviously very much are consistent
25 with the lines of questions that were put to the Governor today,

1 and also with earlier submissions that have been made, so I will
2 take those into account. And I have no questions to ask you,
3 Mr Risso-Gill, in relation to those submissions, save one, which
4 is a sort of administrative one.

5 What I would normally do, particularly as we aren't
6 going to discuss these submissions in an oral hearing, would be
7 to put those submissions onto the website so that the public can
8 have access to them. The submissions are accompanied by, I
9 think, about 600 pages of evidence, not new--I don't think any
10 of it is new evidence, but 600 pages of evidence which are
11 referred to in the submissions. And some of that evidence, I
12 think, has--well, if I put it in a positive, if I put the
13 question in a positive way, is the Attorney seeking any
14 redactions from any of that evidence or indeed any redactions
15 from your submissions?

16 MR RISSO-GILL: It's not something certainly with
17 respect to submissions that we have particularly considered yet,
18 although I don't anticipate there is anything in the
19 submissions. As to the bundle, I'm aware that there are plainly
20 some National Security Council materials that I understand that
21 they bear the redactions most lately approved by the National
22 Security Council.

23 May I simply say that I don't say something that I'm
24 corrected on later, ask that we get back to you in writing about
25 the bundle itself tomorrow? Would that be acceptable, sir?

1 Just to confirm. I suspect there is nothing, but I just want to
2 make sure before I say--

3 (Overlapping speakers.)

4 COMMISSIONER HICKINBOTTOM: Yes, Mr Risso-Gill. In
5 respect of the submissions themselves as well, I think it will--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: --I don't think there will
8 be anything in there, but if you can just confirm tomorrow
9 before we publish those on the website.

10 And then the third thing is that there is a PII
11 application in relation to the EZ Shipping bundle, and I think
12 this is a matter for the Solicitor General.

13 So the position I think is this, subject to anything
14 that Mr Rawat would like to make, any comments he would like to
15 make: The application has still not been properly redacted, but
16 without having looked through the material that has been
17 provided, only a provisional review by me, I believe that I can
18 deal with the application on what I've got, and that is what I
19 would propose to do.

20 Mr Rawat, do you want to add anything, any
21 observations in relation to the PII application?

22 MR RAWAT: No, thank you. Just to say it would
23 obviously be helpful if we can be a witness on paper, that
24 should be the way to do it.

25 COMMISSIONER HICKINBOTTOM: No, no, no, certainly, so

1 I'm fairly confident we can deal with it on paper, even if there
2 are matters which I can't deal with without some further
3 assistance, so I think that's where we are with the EZ Shipping
4 bundles.

5 Anything else, Mr Risso-Gill, or Solicitor?

6 MR RISSO-GILL: Sir, may I mention two things in
7 respect of the bundle which I should flag for you now.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 MR RISSO-GILL: There are two mistakes. First of all,
10 at pages 301 to 302, an e-mail exchange which shouldn't have
11 made its way in there did. We will communicate with you in a
12 clear way on paper about that, but whatever is published
13 shouldn't carry that particular inclusion.

14 And there is another mistake at page I think it's 230
15 and following, again we will make that correction in writing and
16 ensure that you have the correct insertion, if we could do it
17 that way, say that you have a perfected bundle, and I'm sorry
18 those are two glitches but we will sort those out for you.

19 COMMISSIONER HICKINBOTTOM: If you could do that in
20 the same letter that you're sending us material, that would be
21 splendid.

22 MR RISSO-GILL: Yes.

23 COMMISSIONER HICKINBOTTOM: Nothing else, though, from
24 you or the Solicitor?

25 SOLICITOR GENERAL: Nothing further, Commissioner.

1 MR RISSO-GILL: There is one thing I should rightly
2 mention now, which is that I'm aware there has been some
3 correspondence with Principal Crown Counsel Ms Barry, and I'm
4 not entirely sure whether that's been left, from the
5 Commission's point of view, so perhaps I could ask that, first
6 of all, where we are with Ms Barry. Mr Rawat may be able--

7 COMMISSIONER HICKINBOTTOM: Mr Rawat, can you help us
8 on that?

9 MR RAWAT: Mr Risso-Gill is right to say there was
10 communication. Two things have happened: Firstly, that there
11 has been disclosure of material which was, as Ms Barry pointed
12 out, ought to have been disclosed earlier, which was found in
13 the Attorney General's Chambers, and we were grateful and to the
14 Chambers for the efforts they made in getting that material to
15 the Inquiry. We were able to use some of it today.

16 Second thing is she set out in terms of what records
17 she has of the advice in relation to Parcel 310. She set that
18 out in writing. In short, there is no record of the advice that
19 is there.

20 We are not proposing to call Ms Barry to give evidence
21 today. It's the last day of evidence, so that's the position
22 that's reached. If Mr Risso-Gill requires more information, I'm
23 quite happy to discuss it with him off-line, if he wishes.

24 MR RISSO-GILL: I think maybe if there is any further
25 discussion--I'm most grateful to Mr Rawat--I suppose it may be

1 right for me to flag now that there is those in the Attorney
2 General's team and those instructing me may wish to reflect on
3 what has been heard today; and if so advised, might make
4 application in respect of further evidence from Ms Barry,
5 notwithstanding, sir, I certainly understand what you have
6 repeated several times with me present here about the need for
7 fragility today, and that's really supposed to be the end of the
8 evidence, but you may appreciate why I flagged it. What I
9 didn't want was for a decision to be taken that an application
10 should be made to you and may not have said anything today about
11 that, and it's because I can't rule out--I can see the
12 possibility, if I put it that way, so I hope you will understand
13 why I mentioned it now and the spirit in which I do, and I will
14 ask to leave it that for today unless you have anything further
15 you want to ask me about that.

16 COMMISSIONER HICKINBOTTOM: No, thank you very much,
17 Mr Risso-Gill.

18 Mr Rawat, anything from you?

19 MR RAWAT: Nothing more from me, Commissioner.

20 COMMISSIONER HICKINBOTTOM: Mr Rowe, nothing from you,
21 is there?

22 MR ROWE: Nothing from me, Commissioner. Thank you.

23 COMMISSIONER HICKINBOTTOM: Thank you very much.

24 Can I just conclude, then. I gave a lot of thanks at
25 the end of the last hearing in October, but can I just thank

1 everyone particularly at the IAC today for the arrangements that
2 they've made today, which have worked in the circumstances very
3 well. So, thank you, Mr Peters; thank you, Mr Kasdan--I know
4 he's not there, but he's been stenographing today--and also the
5 staff at the IAC for ensuring that everything has worked today
6 as smoothly as it has.

7 Good. Thank you all very much. That's the last day
8 of oral evidence and oral submissions, and I will get on with
9 writing the Report. Good. Thank you all very much.

10 (Whereupon, at 3:33 p.m. (EST), the hearing was
11 concluded.)

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