

BRITISH VIRGIN ISLANDS COMMISSIONER OF INQUIRY

HEARINGS: DAY 6
(TUESDAY 18 MAY 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Sir Geoffrey Cox QC of Withers LLP (instructed by the Attorney General), Solicitor General Mrs Jo-Ann Williams-Roberts, and Mr Hussein Haeri of Withers LLP appeared for various BVI Government Ministers and public officials.

Dr Carolyn O'Neal Morton gave evidence to the Commission.

Mr Jeremiah Frett gave evidence to the Commission.

Hon Andrew A Fahie gave evidence to the Commission.

Counsel to the Commission Mr Bilal Rawat also appeared.

Court Reporter:

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

Those present:

Sir Geoffrey Cox QC, Withers LLP

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Hussein Haeri, Withers LLP

Mr Richard Rowe, Silk Legal (attending remotely)

Mr Daniel Fligelstone Davies, Silk Legal (attending remotely)

Mr Bilal Rawat

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

1
2
3 COMMISSIONER HICKINBOTTOM: Good. Now, I think
4 everyone here has either participated or certainly been close
5 to participating in previous hearings, so--and also, I know the
6 Secretary has given the house rules out this morning, so I
7 don't think there is anything I need to repeat about that.

8 In terms of privacy, currently a private hearing.
9 I'll hear submissions at the end as to whether it needs to
10 remain private whilst anybody looks at any parts of it for
11 parts that need to be redacted. Good.

12 Mr Rawat.

13 MR. RAWAT: Good morning, sir. Our first witness is
14 Dr Carolyn O'Neal Morton, and can I ask that she be sworn,
15 please.

16 COMMISSIONER HICKINBOTTOM: Yes, thank you.

17 COMMISSIONER SECRETARY: Good morning, Dr O'Neal
18 Morton.

19 THE WITNESS: Good morning.

20 COMMISSIONER SECRETARY: Would you like to swear an
21 oath or make an affirmation?

22 THE WITNESS: I'll swear an oath.

23 COMMISSIONER HICKINBOTTOM: Could you take the Bible
24 in your left hand and read the words on the sheet in front.

25 THE WITNESS: I swear by Almighty God that the

1 evidence I shall give shall be the truth, the whole truth, and
2 nothing but the truth.

3 COMMISSIONER SECRETARY: Thank you.

4 BY MR RAWAT:

5 Q. Good morning, Dr O'Neal Morton.

6 A. Good morning.

7 Q. Could you give the Commissioner your full name,
8 please.

9 A. My name is Dr Carolyn Ann (phonetic spelling) O'Neal
10 Morton.

11 Q. And your professional address?

12 A. Cutlass Tower, Premier's Office, Road Town, Tortola,
13 Virgin Islands, VG1110.

14 Q. First of all, thank you for coming to give evidence
15 today. Your willingness to assist the Commissioner is much
16 appreciated.

17 What I hope to do today is to try and keep my
18 questions short and simple, but if at any time you have
19 difficulty understanding a question or you would like me to
20 repeat it or rephrase it, then please do ask me.

21 You should have near you two bundles of documents.
22 You don't need to open them yet, but we will be looking at some
23 of those in due course.

24 A. Okay.

25 Q. Could I also ask you, please, Dr O'Neal Morton, to

1 try and keep your voice up and speak slowly because it's--the
2 reason for that is because you--your answers need to be
3 accurately and clearly recorded on the Transcript of the
4 hearing.

5 A. Certainly.

6 Q. Before I continue, what I would like to explain to
7 you is why we've asked you to attend today.

8 A. Um-hmm.

9 Q. And that is because there are a number of matters on
10 which we believe you may be able to help the Commissioner
11 further.

12 You are attending as a witness. As any witness and
13 indeed every lawyer that appears before the Commissioner, you
14 have an obligation to assist this investigation. And while you
15 will have, I think, legal representation here, I want to make
16 clear to you that I don't intend, through my questions today,
17 to put to you a criticism or an allegation that you have to
18 answer.

19 Can we start off, please, by if I could ask you, just
20 to give the Commissioner a brief outline of your civil service
21 career, please. When did you join the service?

22 A. I joined the service in 1985 with the Ministry of
23 Education as a teacher. And up until now, I am in the public
24 service. I joined as (unclear) teacher (unclear) education. I
25 am now in the Premier's Office from March last year, 2020.

1 Q. And you say you've been in the Premier's Office since
2 March 2020. Were you just appointed directly to the Permanent
3 Secretary role?

4 A. That is correct, the Premier's Office.

5 Q. Had you held the position as Permanent Secretary in
6 any other department?

7 A. Yes, I was previously Permanent Secretary in the
8 Ministry of Education and Culture until 2013.

9 Q. And after that?

10 A. After that, I was out of the public service until I
11 came back last year, in 2020.

12 Q. Thank you. The Commissioner has already heard
13 evidence from other senior civil servants for General Orders
14 for the public service, which I think were last revised in
15 1982. Aside from those orders, are you aware of any other
16 protocols or directives that govern how civil servants in the
17 Virgin Islands go about their work?

18 A. I know financial management instructions, the rules.
19 I'm aware of the rules because--in my job.

20 Q. So you say there are financial management
21 instructions.

22 A. Correct.

23 Q. Are those written documents?

24 A. Yes, those are written documents from the Ministry of
25 Finance.

1 Q. And are they issued to all departments or just--are
2 they ones tailored for the Premier's Office?

3 A. Those are general direction--financial directions for
4 the service.

5 Q. I follow. Thank you. Aside from those, are you
6 aware of any other policy directives that help to educate civil
7 servants about how they should go about their work?

8 A. I can't think of any right now. I know those are the
9 two main ones that govern the general orders and financial
10 management.

11 Q. Your voice is dropping a little bit.

12 A. Oh, sorry. Let me come forward.

13 COMMISSIONER HICKINBOTTOM: Just one moment. This
14 gentleman is the technician. He'll make sure that everything
15 works--

16 (Overlapping speakers.)

17 THE WITNESS: Give me some volume?

18 COMMISSIONER HICKINBOTTOM: Just one moment.

19 (Pause.)

20 THE WITNESS: Okay. No problem. (Unclear.) Oh, can
21 you hear me well now?

22 COMMISSIONER HICKINBOTTOM: Yes. It's not for us.
23 We can hear you--

24 THE WITNESS: Oh.

25 COMMISSIONER HICKINBOTTOM: --or I can hear you.

1 It's so that your voice, as Mr Rawat says, can be transcribed
2 accurately after the hearing.

3 THE WITNESS: Oh, okay, all right.

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

6 THE WITNESS: You're welcome.

7 BY MR RAWAT:

8 Q. A few more questions about life in the civil service,
9 if I may.

10 Now, if you had a civil servant in the Virgin Islands
11 who had a concern over the way that a Minister was conducting
12 himself or herself in terms of Government business, how could
13 that civil servant raise that concern?

14 A. The usual instruction is that a civil servant would
15 put that in writing about how they feel about a situation and
16 then direct it to their supervisor, who should take care of it
17 for whom it really should go to.

18 Q. You've obviously occupied senior positions within the
19 civil service. Have you had more junior civil servants
20 approach you and raise concerns?

21 A. Regarding?

22 Q. Have you, as yourself, in your experience--

23 A. Um-hmm.

24 Q. --as a senior civil servant, have you had more junior
25 civil servants come to you raising a concern?

1 A. About real situations or--

2 Q. About how a Minister was behaving, conducting himself
3 or herself over government business.

4 A. Umm, I've not had that experience.

5 Q. Or, for example, a civil servant feeling that they
6 were being asked to do something that might compromise their
7 neutrality.

8 A. Umm, I've not had that experience.

9 Q. At any time, have you become aware of civil servants,
10 other civil servants, that had concerns but didn't feel able to
11 raise them?

12 A. Umm, not that I can recall, no.

13 Q. Is there a forum at which senior civil servants like
14 Permanent Secretaries, et cetera, meet across departments?

15 A. If there's a senior managers meeting that a Deputy
16 Governor holds that all senior managers are invited to.

17 Q. And how often does that meet?

18 A. They're usually like once a month or twice a month,
19 depending on the situation.

20 Q. And who chairs that?

21 A. The Deputy Governor chairs that.

22 Q. What sort of topics come up at that senior managers
23 meeting?

24 A. At that meeting, they're usually ministerial reports
25 and perhaps the H.R. Director might give an H.R. update, and

1 any current events, maybe COVID-19, information like that,
2 would be transmitted to senior managers.

3 Q. Thank you very much.

4 Can--you've also--I think this is obviously your
5 second time as a Permanent Secretary of a department. Could
6 you just explain what your current role involves to the
7 Commissioner?

8 A. My current role involves the coordinating person for
9 the Premier's Office; means I'm coordinating the operational
10 side of the Ministry, and I coordinate various departments and
11 statutory bodies. We have a liaison between those entities.
12 So basically a coordinator.

13 Q. Does your role encompass giving advice to your
14 Minister, in this case to the Premier?

15 A. Yes, it does. That is one of my duties.

16 Q. And is there any guidance on the ambit of what you
17 can give advice on?

18 A. In the role profile, it simply says advises the
19 Minister, so...it doesn't say specifically, maybe mainly
20 operation policy, things related to the Ministry where it
21 doesn't specifically say the items in detail.

22 Q. So, is it a matter for your own professional judgment
23 to decide what you need to say, I'm going to give you advice on
24 or I'm not going to give you advice on?

25 A. Or he might ask for advice, as well.

1 Q. Ministers in any government may be approached by
2 third parties who may wish to persuade them to take a
3 particular line in terms of Government policy. In the Virgin
4 Islands, is there any policy or criteria by which those
5 conversations between Ministers and third parties are recorded?

6 A. I'm not aware of any policy.

7 Q. Is there any guidance, for example, that says that
8 when such discussions take place, a public officer such as
9 yourself, a civil servant, needs to be present?

10 A. I am not aware of that policy.

11 Q. Is there any guidance that covers a situation where
12 the Minister and the third party are having essentially a
13 private conversation, any guidance that says, well, if that
14 occurs, it should be recorded subsequently and communicated to
15 civil servants?

16 A. Umm, I'm not aware of that situation.

17 Q. So, it is possible in the Virgin Islands for
18 Ministers to have private conversations with third parties
19 about government policy that you, as the Permanent Secretary,
20 would not be aware of.

21 A. I can't say that because I'm not sure that hap--that
22 occurred.

23 Q. But it's possible, isn't it?

24 A. I don't know if it is possible.

25 Q. Could we look, please, at A1 in the bundle. If you

1 take up the bundle that's labeled Bundle 1, just go to Page A1.

2 You'll see a pagination in the bottom right-hand
3 corner, and if you just go through, you should come to, I
4 think, the first page is A1, if you have it.

5 A. Um-hmm.

6 Q. It should be a letter from the Commission of Inquiry
7 dated the 8th of March 2021.

8 A. Um-hmm.

9 Q. And it's addressed to the Premier. It's a Request
10 for Information/Documents No. 2.

11 Do you have that?

12 A. I see the letters, um-hmm.

13 Q. You should see--it order begin "Dear Honourable
14 Premier."

15 A. Um-hmm.

16 Q. You got it?

17 A. Yeah.

18 Q. Thank you.

19 A. 8 of March?

20 Q. Yeah.

21 A. Um-hmm.

22 Q. Now, this was a request that was addressed to the
23 Premier. But did you have any involvement in responding to the
24 request as Permanent Secretary?

25 A. Yes, we did. We did. We did have an involvement.

1 Q. So, would it be fair to say--and it's understandable
2 the Premier delegated dealing with the request to you as
3 Permanent Secretary?

4 A. Yes, the request did come to me, and we dealt with
5 the portion of the request that we were able to deal with.

6 Q. We'll--we'll look at the response--

7 A. Okay.

8 Q. --in a moment. But can you just help with this, just
9 set out a bit more detail about how the request was responded
10 to. You said "we dealt". Who is the "we"?

11 A. We, when I say "we", I mean the Ministry, the
12 Premier's Office. Yeah.

13 Q. So how did you--

14 (Overlapping speakers.)

15 Q. --how did you go about identifying the documents that
16 the Commissioner was seeking?

17 A. Um-hmm, because it was a joint request, any and all
18 contracts, because this particular individual held a contract
19 initially with the Premier's office; and then afterwards, one
20 was held with the Ministry of Finance.

21 Q. I will come back to that--

22 A. Okay, so that's why I--

23 (Overlapping speakers.)

24 Q. It's very helpful that you've indicated that because
25 that is something we--we were going to ask you to help us clear

1 up.

2 A. Um-hmm.

3 Q. But before we get into the meat of it--

4 A. Okay.

5 Q. --just how--what process did you adopt to find the
6 documents that would answer these questions? Did you delegate
7 it, for example, to a junior civil servant or did you take the
8 task on yourself?

9 A. No, sir. I delegated it to my Finance and Planning
10 Officer, who's responsible for that.

11 Q. The Attorney General has set up a unit called the
12 Inquiry Response Unit. Did you seek assistance from the--I
13 think the shortened version is the IRU. Did you seek any
14 assistance from the IRU?

15 A. Yes. The IRU instructed how to send the information
16 forward, and that is what we dealt with.

17 Q. So, you passed on the information to the IRU that you
18 had found.

19 A. My Finance Officer passed on the information.

20 Q. As far as you're aware, did your Finance Officer need
21 the assistance of the IRU to identify particular types of
22 documents that needed to be produced?

23 A. Being just as we were indicated, we sent the
24 information to our I-drive, and then they filtered it to IRU.

25 Q. I see.

1 A. And then they decided.

2 Q. And did you send the documents in their original
3 format, as you had them?

4 A. Yes, we sent them, exactly as we had them.

5 Q. We'll look at the documents you've provided in--as we
6 go through.

7 A. Okay.

8 Q. But just--let's summarise and so that we can
9 orientate ourselves around the bundle.

10 We'll need to move to the second bundle now,
11 Dr O'Neal Morton.

12 A. Okay.

13 Q. We'll look at what's been provided.

14 If you go to--I'm just going to take them in order
15 that they appear in--in the bundle, but if you could, page 905.

16 A. 905.

17 Q. It's just so that you--to give you a sense of the
18 documents that we're going to be looking at before we get into
19 the details.

20 A. Um-hmm.

21 Q. This is a six-page report from the Grace Counseling
22 and Consultancy Center, and it's dated 17th of March 2020. If
23 you then go to 915--sorry, 916, I think, actually--do you have
24 that, Dr O'Neal Morton?

25 A. Um-hmm.

1 Q. You should have an agreement between Grace Center and
2 the Government of the Virgin Islands, and in the left--bottom
3 left-hand corner it says "Premier's Office".

4 A. Um-hmm.

5 Q. I think if you jump back to 912, please.

6 A. Okay.

7 Q. You have a Second Report from Grace Counseling and
8 Consultancy Service which is dated 24th June 2020. And then if
9 you go through to 930, this is the start of a set of payment
10 documents, invoices and the like.

11 But if you go through to 992, that's another report
12 from Grace Counseling Consultancy Center, dated 13th of
13 September 2019.

14 And then if we last go to 1027, you should have an
15 agreement again between Grace Consulting and the Government of
16 the Virgin Islands, with the "Premier's Office" written in the
17 bottom left-hand corner? Do you have all of those?

18 A. Yes, but is that the same one previously from 2019?

19 Q. We'll--we'll look at in detail.

20 A. Uh-huh.

21 Q. It's--I think there are differences. We produced
22 more than one agreement, it seems. So, that's the entirety of
23 the documents that you produced or your Financial and Planning
24 Officer was able to locate.

25 The last thing that the--and I can take you back to

1 the Letter of Request, if you wish--but the last thing that the
2 Letter of Request asked was if you considered that any other
3 Ministry or arm of Government was involved in these
4 arrangements, could you please indicate which Ministry or arm
5 of Government and the role it played.

6 Now, no answer was provided to that request. Was
7 there any reason that it couldn't be answered?

8 A. I think the--the response was a joint response. The
9 Ministry of Finance answered their portion, and we answered our
10 portion. I don't know is what occurred there.

11 Q. I see. So, did you liaise with the Ministry of
12 Finance about...

13 A. We sent out all our stuff to IRU, stating who did
14 what, and that was our part, we did that part.

15 Q. So, did you send information to the IRU saying look
16 at--

17 A. This was what we did, and this was what--

18 Q. There's other material with the Ministry of Finance.

19 A. Um-hmm, because they asked what did we have so we
20 produced all that we had.

21 Q. Thank you.

22 Well, again, now we have to jump around the documents
23 a bit--

24 A. Okay.

25 Q. --jump around the bundle because they were sent to

1 us--they weren't sent to us in chronological order. But if we
2 go to 1027, so we'll take them now in time, if we can.

3 So, this was the agreement you--we're just asking a
4 question about a few moments ago.

5 A. Um-hmm.

6 Q. If you turn over to the next page, you'll see that it
7 says: "This Agreement is made this 27th day of March, 2019
8 between the Government of the Virgin Islands...and Grace
9 Consulting."

10 Now, just so that we can be clear--and what you were
11 asked to do was to produce any contracts between Premier's
12 Office and Grace Consulting or Grace Consultants in the last
13 three years, and this is the first one in time that you
14 produced. So, just to make sure we understand it, this is the
15 first contract the Premier's Office has engaged in with Grace
16 Consulting in the last three years; is that right?

17 A. Based on what we found, yeah.

18 Q. You say "based on what we found." What does that
19 mean?

20 A. Because I wasn't there. So it's based on what we
21 found and--

22 (Overlapping speakers.)

23 Q. But presumably your records must be searchable.

24 A. Yes, they are. Yeah, they are.

25 Q. But are you satisfied, Dr O'Neal Morton, that--

1 A. Um-hmm.

2 Q. --that that is all the contracts that you hold?

3 A. Yes, I do believe.

4 Q. We can see if we're looking at page 20--1028, that
5 there's reference at the top--

6 A. Um-hmm.

7 Q. --in manuscript PMO.

8 A. Um-hmm, yes.

9 Q. Can you just explain what that full reference is,
10 please?

11 A. That would be the agreement number
12 PMP--PMO/005P/2019. That is the agreement number.

13 Q. But obviously PMO is Prime Minin--Premier's--

14 A. Premier's Office.

15 Q. --Premier's Office.

16 A. Um-hmm.

17 Q. And if we go to 1035, which is--it's the page on
18 which the signatures appear.

19 A. Um-hmm.

20 Q. And it's signed on behalf of Premier's Office by the
21 then-acting Permanent Secretary, Mrs Elvia Smith-Maduro, and
22 obviously, you were not in post at this time.

23 A. Not as yet, sir.

24 Q. So, where is Mrs Smith-Maduro now?

25 A. Mrs Smith-Maduro is currently the Deputy Secretary in

1 the Premier's Office.

2 Q. So, she's your immediate Deputy; is that right?

3 A. Yes, sir.

4 Q. Now, again, we can go back to the Letter of Request,
5 if you like, if it'll help you, but Requests A and B were for
6 pre-contract correspondence between Claude Skelton Cline and/or
7 Grace Consultants, formal or informal, including tender, bid
8 documents and all electronic correspondence such as e-mails.

9 And then you were asked details of all documents upon
10 which the BVI Government consid--considered such arrangements,
11 and made any decision to approve or award Mr Claude Skelton
12 Cline and/or Grace Consultants any contracts.

13 Now, in response to those two requests and in
14 relation to this contract, no response was provided at all on
15 A, as in pre-contract correspondence--and, in fact, in relation
16 to any contract--and none on B in relation to this contract.

17 So, clearly, the Acting Permanent Secretary signed on
18 behalf of the Premier's Office, but does the fact that you have
19 produced no pre-contract correspondence mean that your office
20 holds no records of any pre-contract discussions with Grace
21 Consulting?

22 A. I would have to check and get back to you on that one
23 because I'm not sure about that.

24 Q. Well, you will have read the request. Did you
25 satisfy yourself by, for example, speaking to your Financial

1 and Planning Officer that he or she had addressed their minds
2 to digging out pre-contract correspondence?

3 A. Um-hmm, well, I am not certain because we have moved.
4 We've lost things in the hurricane. I'm not sure on post
5 because we moved in 2020.

6 COMMISSIONER HICKINBOTTOM: Sorry. I'm sorry--I'm
7 sorry to interrupt, Dr O'Neal Morton. You can't lose these in
8 the hurricane.

9 THE WITNESS: No, no, no. What I'm just generally
10 speaking, but I mean moving and post--moving into the Ministry,
11 I don't know if documents got misplaced, but whatever we
12 produced is whatever we had, and I can always check again and
13 see if maybe we missed some, and then provide them. I can do
14 that.

15 BY MR RAWAT:

16 Q. All right. Well, let--can I try and help you with--
17 with--with--I mean, the best help you will get is by going back
18 to the Letter of Request and reading--

19 A. Um-hmm.

20 Q. --what there is. But what I would say to you is that
21 it seemed highly unlikely that you won't have any pre-contract
22 correspondence that existed before Ms Smith Maduro signed this
23 contract. And if we go back to 1028, you'll see why, because
24 the last part of the preamble says, "And whereas the
25 Consultant"--and this is a reference to Grace Consulting--"has

1 represented to the Government that he has the necessary
2 qualifications, expertise and skills to execute these
3 services."

4 So, I would suggest to you that there must have been
5 something put forward by Grace Consulting--

6 A. Um-hmm.

7 Q. --that satisfied the Premier's Office that he had
8 represented to you, as the Premier's Office, that he had the
9 qualifications. So there must be documents, mustn't there?

10 A. Okay, I will do a search, and I'll provide whatever I
11 can.

12 Q. We'll--we'll leave it there for the time being.

13 A. Okay.

14 Q. If we--and please, I appreciate that you were not in
15 post at the time. So, if you can't help me with something, do
16 say so.

17 A. Okay.

18 Q. But could I look--ask you just about--or just take
19 you to what was agreed in terms of what the consultant would
20 receive under the contract. If you go to 1029, and we look at
21 part 3, under 3.1, the consultant--the contract was going to be
22 for some--the contract was going to be for six months anyway,
23 because that's on the previous page. It runs from 25th of
24 March 2019 to 17th September 2020. But consultant was to be
25 paid \$16,300 per month, which, if my math is right, comes to

1 \$99,780 for the period.

2 And if you look at 3.2, 3.3, and going overleaf 3.5,
3 the consultant under this contract--and that is Grace
4 Consulting--was allowed to claim expenses and was also entitled
5 to a tax-free gratuity of 5 percent upon satisfactory
6 completion of the contract.

7 Now, aside from pre-contract correspondence and
8 whatever representations Grace Consulting may have made to the
9 Premier's Office, what steps did the Premier's Office take to
10 ensure that Grace Consultants were a proper entity with which
11 to enter into a contract?

12 A. I don't understand the question, and I wasn't there
13 at the time, so...

14 Q. You are giving--

15 A. Um-hmm.

16 Q. --nearly \$100,000 of public money to someone for six
17 months' work. At the moment, we don't know, because it hasn't
18 been provided, what representations Grace Consulting made to
19 the Premier's Office as to what they could and could not do.

20 My question is this: When you enter into a contract,
21 do you have in place a due-diligence process to confirm that
22 the person--the--the--the people you're contracting with can
23 enter into a contract?

24 A. Are you speaking generally or are you speaking--

25 Q. Yes.

1 A. Yes, generally, we--we do that.

2 Q. But do you have it written down as a policy about
3 what you should do?

4 A. It is--I'm unaware if there is a policy, but in terms
5 of financial management, those are the things that we look for
6 when we--(unclear) we have a contract made up, and our
7 contracts are always vetted as well to make sure they are in
8 agreement with--with Government regulations and rules.

9 Q. And when you say "vetted," is that--would you send it
10 to the Attorney General's Chambers for vetting?

11 A. Yes. That's the--

12 (Overlapping speakers.)

13 Q. That's part of the process.

14 A. --office that usually vets them.

15 Q. But you don't have, for example, a set of criteria by
16 which, within your office, your officers will conduct a
17 due-diligence exercise.

18 A. We normally--in terms of a person's qualifications?
19 Is that what--what you're referring to?

20 Q. Yeah. That's (unclear)--

21 A. Well, they usually--

22 (Overlapping speakers.)

23 A. --in their proposal, they usually indicate those
24 things, and we usually check them off and make sure that that
25 is the case.

1 Q. So, returning back to this contract, what there will
2 also be is the proposal from--from, in this case, Grace
3 Consulting and documented what steps you took to investigate
4 that proposal.

5 A. Okay, I will have to search the records in terms of
6 that and provide that in terms of the proposal.

7 Q. Do you know if the Premier's Office was aware that
8 Mr Skelton Cline, who is Grace Consulting, had previously been
9 criticised by the Auditor General in relation to his work on
10 the Neighborhood Partnership Project?

11 A. If I would be aware of it? I am--I'm not sure. I'm
12 not sure that I'm aware of it.

13 Q. But in terms of assessing a proposal--

14 A. Um-hmm.

15 Q. --to Government and the steps you've explained your
16 office takes--

17 A. Um-hmm.

18 Q. --would it include looking at things like that?

19 A. The Auditor General?

20 Q. Yeah, looking at somebody's past history and their
21 performance under previous contracts.

22 A. The Auditor General is a post auditor--

23 Q. Yes.

24 A. --internal auditor. It's the ongoing officer who
25 might look at that situation.

1 Q. But what we're asking--I'm asking you about,
2 Dr O'Neal Morton, is a situation where you are going to enter
3 into a contract for a significant sum of money with a third
4 party.

5 A. Um-hmm.

6 Q. You said that you will investigate their proposal.
7 Does that investigation involve looking at things like an
8 Auditor General's report to check whether they have performed
9 contracts properly in the past?

10 A. I don't recall that being included.

11 Q. So, would it be fair to say that--that whatever
12 policy you have in place isn't written down in one single
13 place, is it?

14 A. Not necessarily.

15 Q. And is it left to the judgment of the individual
16 officers to how far they take it?

17 A. Well, the supervisor would--should control the
18 situation in that case in terms of--

19 (Overlapping speakers.)

20 Q. And is all that documented?

21 A. The policy?

22 Q. No. The steps that are taken. Let's assume--

23 A. Um-hmm.

24 Q. --a public officer is looking at this proposal.

25 A. Um-hmm.

1 Q. Will they write down their assessment of the
2 proposal?

3 A. I don't know they write it down. What I normally
4 practice, we do certain things in a certain order.

5 Q. What do you do in a certain order?

6 A. Okay, you get--you get the proposal, and--and you
7 look at it, and you make sure that the person, based on your
8 perception, is qualified to do the job, whether subcontractor
9 or whomever; and then based on that, we make sure that they're
10 in line with statutory requirements because, if they are not,
11 then we cannot issue a contract to them, so all of those steps
12 we would take.

13 Q. Break that down a little for me. You said that you
14 would look at it and you--it would be based on your perception.
15 So, what guidance is given to an officer as to how to reach a
16 view on--on a proposal?

17 A. It varies depending on what the person is going to
18 do. If somebody's applying to provide legal services, then, of
19 course, they have to be a lawyer, a legal professional, and we
20 can verify that easily, stuff like that. If the person
21 wants--is a contractor, we can verify whether he's a bona fide
22 contractor or not by placing a call to the Ministry of Finance
23 or to Public Works. We try to verify those things in that way.

24 COMMISSIONER HICKINBOTTOM: And, for example--

25 THE WITNESS: Um-hmm.

1 COMMISSIONER HICKINBOTTOM: --obtain a contractor's
2 trade license, make sure that for the contractors--

3 (Overlapping speakers.)

4 THE WITNESS: If--yeah, still they have a trade
5 license, and that's--and that is part of the process because
6 they won't get a contract, Commissioner, unless they have a
7 valid trade license.

8 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

9 BY MR RAWAT:

10 Q. If you look at 2.3, which is paragraph 2.3 in this
11 contract on page 1029, this contract doesn't require the
12 consultant to submit regular reports during the course of the
13 contract, but what it does say at 2.3 is: "During the term of
14 this agreement, the Consultant shall devote sufficient
15 attention and time to the performance of service under this
16 Agreement to ensure that all milestones and deliverables are
17 met in the manner and by the dates agreed."

18 Now, in this case, do you know how that requirement
19 was monitored?

20 A. I don't know, sir. I don't know how it was
21 monitored.

22 Q. Would there be, in the Premier's Office, internal
23 memoranda looking at how the contract was being performed?

24 A. There might be.

25 Q. Go to 1039.

1 Now, one step of verification seems to be obtaining
2 or requiring Certificates of Good Standing; is that right?

3 A. That is correct.

4 Q. So, here we've got a certificate from the Inland
5 Revenue Department dated the 28 of March 2019. If you go over
6 to 1040, you have a letter from the Social Security Board,
7 which says that they can't issue a certificate as the bus--as
8 the business--as the relationship of the Grace Center with the
9 Board is very recent.

10 But if you then go over to the next page, at 1041,
11 you've got another Certificate of Good Standing dated March 28,
12 2019, and that's from the Nat--from National Health Insurance.

13 A. Um-hmm.

14 Q. Now, is there a protocol as to how many certificates
15 are required?

16 A. There should be one from Inland Revenue, Social
17 Security, and NHI.

18 Q. So, there must be Certificates of Good Standing from
19 all of those.

20 A. All sorts of (unclear) because if you have just
21 started, you may not have a good standing because you have not
22 had a relationship, so they will just verify that you probably
23 have (unclear) previously but not necessarily in this
24 particular business.

25 Q. Are these certificates relied upon in terms of

1 assessing the--or verifying the suitability of entering into a
2 contract?

3 A. Yes, they are. They are required. If we don't have
4 them, we cannot pursue the contract because they are part of--

5 Q. The process.

6 A. Um-hmm, they're part of the process.

7 Q. Thank you. If we go back, then, to 1035, we see
8 again, just to remind ourselves, it's Mrs Elvia J Smith-Maduro
9 signing on behalf of the Premier's Office. It's Mr Skelton
10 Cline signing on behalf of Grace Consultancy. Now, there are
11 no dates there, but if we look at 1036, we have
12 the--Mrs Smith-Maduro is recorded as having appeared on the
13 27th of March 20-eight-19, and Mr Skelton Cline on the 25th of
14 March, and you have a certificate from a Commissioner for
15 Oaths.

16 Now, the contract was made on the 27th of March 2019.
17 Could you just clarify this for me: If part of the process is
18 obtaining Certificates of Good Standing, why were they--why are
19 the Certificates of Good Standing all dated for the day after
20 the contract?

21 A. I'm not certain, sir. I'm not certain.

22 Q. But is that, if you, as a Permanent Secretary--

23 A. Um-hmm.

24 Q. --if that came on your desk and you've got a contract
25 signed before Certificates of Good Standing have appeared,

1 would that cause you concern?

2 A. I can't answer. I don't know the person or with an
3 incorrect date, I can't--I can't answer to that. I don't know
4 if they mix up the dates; I'm not sure.

5 Q. Keep your voice up, please. I'm sorry to interrupt
6 you but (unclear)--

7 A. No, I say I'm not certain if the dates were mixed up,
8 so I--I can't answer to that situation.

9 Q. Well, leaving aside the possibility that the dates
10 were mixed up, what we have is a contract dated the 27th of
11 March.

12 A. Um-hmm.

13 Q. Certificates of Good Standing dated for the day
14 after. You've explained previously that they are an important
15 part of the verification process.

16 A. Correct.

17 Q. So, you as a--I appreciate you were not involved in
18 this contract, but as a Permanent Secretary of long standing,
19 if that appeared on your desk in this way, would it cause you
20 concern?

21 A. It would; looking at the dates it would, um-hmm.

22 Q. Because your expectation is Certificates of Good
23 Standing before the contract is signed.

24 A. Or they could be the same day.

25 (Overlapping speakers.)

1 A. --well, as long as you receive (unclear)--

2 Q. But they must be there, mustn't they?

3 A. I agree, um-hmm.

4 Q. Now, again tell me if you can't help with this.

5 A. Um-hmm.

6 Q. But, as I pointed out to you, the contract doesn't
7 require the consultant to give reports during the currency of
8 the contract. So, how was the performance under this contract
9 evaluated as it ran?

10 A. So I wouldn't be able to answer that because I--like
11 I said, I was not there at the time. I--I--I'm not able to
12 answer that, but I can get that information for you. I can
13 certainly do that.

14 Q. Well, it was information that the Commissioner had
15 sought--

16 A. Um-hmm.

17 Q. --in his Letter of Request. None has been
18 forthcoming under that part of the Letter of Request, and if
19 performance was evac--evaluated, presumably it would have been
20 documented. Am I right, that if--if--if--if there had been any
21 evaluation of the performance of this contract, it would be
22 written down somewhere in your office?

23 A. I would imagine. I--I--I can promise you I can look
24 for it and supply it to the Commission. I can do that.

25 Q. Can I take you to 992 now.

1 This is the report that Grace Consulting did submit
2 to the Premier.

3 A. Um-hmm.

4 Q. It's dated the 13th of September 2019, so it's
5 towards the end of the contract, which was going to end on the
6 17th of September.

7 If we see the overleaf at 993, it records that "The
8 aim of this report is to provide a summary of the progress made
9 with respect to the various assignments being managed by Grace
10 Consultants Ltd under a consultancy agreement with the Office
11 of the Premier of the Virgin Islands".

12 A. Um-hmm.

13 Q. Now, this--no--nothing there--there has been no
14 correspondence produced to the Commissioner under this Letter
15 of Request between the Premier's Office and between Grace
16 Consulting over the period of March when the contract started
17 in September 2019. Would you have expected there to be
18 correspondence?

19 A. I might have expected that, um-hmm.

20 Q. So, again, is that something that you'll need to go
21 back and look for?

22 A. Okay, but as I see that this was going to the Office
23 of the Premier, not the Premier's Office, two different
24 offices.

25 COMMISSIONER HICKINBOTTOM: I'm--I'm--I'm sorry?

1 THE WITNESS: This was sent to the Office of the
2 Premier, not the Premier's Office. That's two different
3 offices.

4 COMMISSIONER HICKINBOTTOM: You'll have to forgive
5 me, but there's a difference between the Premier's Office--

6 THE WITNESS: Yes, there is, sir.

7 COMMISSIONER HICKINBOTTOM: Could you just explain
8 that to me.

9 THE WITNESS: The Premier's Office is the operational
10 side that I--I am in charge of.

11 COMMISSIONER HICKINBOTTOM: Right.

12 THE WITNESS: And the Office of the Premier is the
13 other side where the Premier sits with his--his secretaries.
14 They are two different offices.

15 You understand?

16 COMMISSIONER HICKINBOTTOM: Yeah.

17 BY MR RAWAT:

18 Q. Thank you for that clarification. Of course, it
19 was--this was a document that you found as part of your
20 searches. Does--does that mean that--and it's your Financial
21 and Planning Officer, I think, who undertook to respond to the
22 request, that what would had been looked for would have been
23 material held by the Premier's Office and not held by the
24 Office of the Premier.

25 A. That is correct.

1 Q. So, nobody has gone to ask at the Office of the
2 Premier: Do you hold any information in relation to this
3 request?

4 A. Because it's two different offices, so we were just
5 exactly dealing with what was directed to us. I don't
6 know--people probably don't know the differences, but...

7 COMMISSIONER HICKINBOTTOM: I'm sorry if--if I'm
8 getting slightly confused.

9 THE WITNESS: Okay.

10 COMMISSIONER HICKINBOTTOM: Could--could you just go
11 back for a moment to the first Bundle, to A1; that's the very
12 first document, I think, that Mr Rawat took you to. It's the
13 other docu--it's the other bundle; that's it, and right at the
14 beginning A1. It's the first substantive document after the
15 index.

16 This is the request that the Commission sent to you
17 to which you responded, but the request is to the--is to the
18 Premier. I know that it was given to you to action, and--and--
19 and you actioned it, but--but you say you only actioned it--you
20 only actioned it in terms of the office for which you were
21 responsible for.

22 THE WITNESS: Well, it came to the Premier, so it
23 could be any of the off--any of the two offices. You see what
24 I'm saying?

25 COMMISSIONER HICKINBOTTOM: Well, not really.

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: It could be if--

3 THE WITNESS: Um-hmm.

4 COMMISSIONER HICKINBOTTOM: --it could come to either
5 of them if they then liaised with the other part and made sure
6 that the response is complete, but you say it was handed to
7 you, but you didn't liaise with the other half.

8 THE WITNESS: What was handed to me? I (unclear).

9 COMMISSIONER HICKINBOTTOM: Well, you said that the
10 request was given to you, and you passed it on to your Finance
11 Officer to action, to get the documents that were requested.

12 THE WITNESS: Um-hmm. If we had any in the Premier's
13 Office, information in the Premier's Office.

14 COMMISSIONER HICKINBOTTOM: But you didn't liaise
15 with the other part of his office, the other office.

16 THE WITNESS: I don't recall doing that.

17 COMMISSIONER HICKINBOTTOM: Right. Okay. Thank you.

18 BY MR RAWAT:

19 Q. Nor does it seem to occur to the officer who did
20 take charge of responding to this request to suggest to the
21 Commissioner under F that there might be an Office of the
22 Premier which might hold relevant documents.

23 A. No, no.

24 Q. Okay. Well, let's go back to that contract in 992.
25 I appreciate, it may be that--well, this is all that you got in

1 the Premier's Office. There may be a whole lot more documents
2 in the Office of the Premier, but let's--we look at the
3 contract. The contract has--if you go to Page 1000, please.

4 A. Some water.

5 Q. Of course.

6 (Pause.)

7 Q. Dr O'Neal Morton, this is a table that is annexed to
8 the report from Grace Consulting, the September 2019 report.

9 We don't need to go into the detail too much, but if
10 you go to ten--1005, please, that's a page which has part of
11 the table on it, but it also has in capitals at the bottom:

12 "This project was assigned to the consultant by the Premier on
13 August 1, 2019."

14 Now, we see the same rubric at 1021, and that reads:
15 "This project was assigned to the consultant by the Premier on
16 August 22, 2019."

17 Now, that's obviously during the currency of the
18 contract the consultant is given additional tasks to do.

19 Now, given that you've just revealed that there are
20 two offices with slightly different names, one is a reference
21 to--assigned to the consultant by the Premier, would that have
22 come from your office or would it have come from the Office of
23 the Premier?

24 A. For the time period, I cannot identify. I can always
25 check because August 2019, I--I can't verify that, so I--I--I'm

1 not sure of that.

2 Q. But what it suggest, doesn't it--

3 A. Um-hmm.

4 Q. --is that given the consultant was given additional
5 work, there must be--there must have been correspondence
6 between the Premier's Office or the Office of the Premier and
7 Grace Consulting.

8 A. I cannot verify that.

9 Q. Well, what I'm going to suggest is that when one
10 looks at--well, firstly, I'm going to suggest that it would
11 seem near impossible for this to have appeared in this report
12 if someone on behalf of the Premier hadn't contacted Grace
13 Consulting and had a dialogue with them or if Grace Consulting
14 having contacted the Premier and had a dialogue. And by
15 "Premier," I'm going to use that as a shorthand for your role,
16 the Premier's Office and the Office of the Premier. But there
17 must have been discussions that led to that, wasn't there?
18 It's logical.

19 A. In the Office of the Premier, I'm not sure.

20 Q. But there must have been discussions.

21 A. Must have been, might have been.

22 Q. Well, nobody would allow a consultant to add to their
23 workload and add to what they're doing in their Report without
24 previously agreeing it, would they?

25 A. I would think not.

1 Q. And the point I'm trying to make is that, if the
2 request had been properly looked at, this sort of
3 correspondence would have been produced to the Commissioner.
4 Would you agree with that?

5 A. I can't summarise that because, as I say, I'm--I'm
6 not too sure something was done in the Office of the Premier,
7 so I can't make that analysis that--that you're--

8 (Overlapping speakers.)

9 Q. If it occur--it occurred to somebody, and one of the
10 first things you said at the very beginning was that this was a
11 joint response involving the Ministry of Finance. It doesn't
12 appear to have occurred to anyone that it might have also
13 involved the Office of the Premier. But somewhere, either in
14 your office or the Office of the Premier, on the answers that
15 you've given so far today, there must be additional
16 documentation relevant to this request which hasn't been
17 produced to the Commissioner. Would you agree with that?

18 A. Might have been an oversight; I can agree with that,
19 and as I said before, I can always search out, find whatever
20 documents that--that are missing and that you need to complete
21 the request. I can always do that. (Unclear.)

22 (Overlapping speakers.)

23 Q. Thank you for that indication. And can I make clear,
24 Dr O'Neal Morton, I'm not suggesting any bad faith on the part
25 of any officer involved in responding to this request. People

1 make mistakes. People may not have been assisted in--or guided
2 through the process. So I'm not suggesting anybody is acting
3 in bad faith, but it's a simple point. There is--there are
4 documents that are relevant that appear to be missing, aren't
5 there?

6 A. I--I think when I can search for them and I promise
7 that I'll do my best. So I'm willing.

8 Q. Thank you very much for that.

9 Can I take you to a document that doesn't emanate
10 from the Premier's Office, and it's at 818.

11 COMMISSIONER HICKINBOTTOM: Page?

12 MR RAWAT: 818.

13 COMMISSIONER HICKINBOTTOM: Thank you very much.

14 BY MR RAWAT:

15 Q. You should have a Memo No. 403 of 2019, dated the
16 18th of September 2019. Have you got it?

17 A. Number 818?

18 Q. Yes, please.

19 A. That is the award of a consultancy, and the next,
20 where to next?

21 Q. It's headed "Award of Consultancy Contract, Grace
22 Consulting."

23 A. What page?

24 Q. 818.

25 A. Um-hmm, I have that.

1 Q. Now, if you see next to the date, it's the initials
2 M-O-F. Does that give us a clue as to who would have drafted
3 this memo?

4 A. Yes. That would be Ministry of Finance, uh-huh.

5 Q. Now, correct me if I'm wrong, but it appears to be a
6 memo that's now going to be submitted to Cabinet. So would
7 your office have had any input into this memo at all?

8 A. I am not sure.

9 COMMISSIONER HICKINBOTTOM: Just to be--just to be
10 fair to the Secretary, if you go to page 823.

11 THE WITNESS: Okay.

12 COMMISSIONER HICKINBOTTOM: Which I think is the end
13 of the memo, and it's--at least as it were in inverted commas
14 "signed" by Hon. Andrew A. Fahie, Minister of Finance."

15 THE WITNESS: Um-hmm.

16 COMMISSIONER HICKINBOTTOM: Does that help answer the
17 question as to whether you would have had any input into this
18 memo?

19 THE WITNESS: That would have been carried by the
20 Ministry of Finance, who would have--

21 COMMISSIONER HICKINBOTTOM: Okay.

22 THE WITNESS: --any input in that. In the background
23 information, it's noted that the Premier's Office, you know, he
24 did a contract so the background information would carry that
25 so that Cabinet would get an idea of what occurred with the

1 consultant previously.

2 BY MR RAWAT:

3 Q. I think this is the second contract which right at
4 the beginning it leads us into the second (unclear)--it might
5 have been you mentioned. Let's look at that second contract.
6 You'll find it at 916.

7 Do you have it?

8 A. Yes, 916?

9 Q. Now--

10 A. Um-hmm.

11 Q. --I think was the con--this is--this is the later
12 contract, but it's between now--between Grace Center and the
13 Government of the Virgin Islands, whereas the previous contract
14 had been between Grace Consulting. But at the bottom, it still
15 carries the address of the Premier's Office. It still carries
16 an agreement number, prefix PMO.

17 A. Um-hmm.

18 Q. So, what involvement did your office have with it, in
19 circumstances where you're saying it was actually the Ministry
20 of Finance that was leading on?

21 A. Because the M on agreement number tells me it's a
22 major contract. It's also means a major contract. It will be
23 carried by the Ministry of Finance, but it will be funded by
24 the Premier's Office. The Ministry of Finance would be the
25 supervising entity of the contract.

1 Q. I see. So, they deal with all of the details and you
2 provide the funds.

3 A. Once the individual who has the contract sends any
4 information to the Ministry of Finance, the Financial Secretary
5 verifies that the person has completed a work to his or her
6 satisfaction, and they send the invoice to the Premier's Office
7 for processing.

8 Q. Can I come back to invoices in a little while?

9 A. Sure, no problem.

10 Q. If I--again, obviously this is a document that's come
11 from the Premier's Office to the Commissioner. If we look at
12 917, and subparagraph 1.1, the end of that refers to an
13 Appendix A. Do you have 119?

14 A. Um-hmm I do.

15 Q. If you look at 1.1, can you see that it refers to
16 Appendix A?

17 A. Um-hmm, yes, sir, um-hmm.

18 Q. Now, that hasn't been provided. Would you be
19 surprised that your office doesn't hold a complete copy of the
20 contract?

21 A. That probably has to get omission somewhere in--in
22 the correspondence because the appendix had to have a company.
23 This might have gone to Cabinet. It had to have been there, so
24 I don't know why it is not here. It should be there. Cabinet
25 wouldn't have approved it with missing information because a

1 major contract has to go to Cabinet.

2 Q. And it has to have everything with it, as you said.

3 A. It has to because if we didn't have the appendix onto
4 it, any Ministry, any entity, it would be sent back to fulfill
5 this information, so I can't say where--why it is omitted here,
6 but it should be here. So, I can always take a note.

7 Q. Yes.

8 A. And get back.

9 Q. What we see is as well is now that this is going to
10 be a 12-month contract, and if we go over to the next page, at
11 3.1, you'll see that the base salary per month is \$12,000. So
12 again, on my maths, that's a total salary of \$144,000; plus, as
13 we look at 3.2, that there will be approved travel and
14 accommodation expenses. And it says "travel to be approved by
15 the Permanent Secretary before the actual travel occurs."

16 If you go to 6.1 in this document...

17 A. On which page? I don't have a 6.1.

18 Q. Page 919. If you go to 919...

19 A. Okay.

20 Q. On 911, you should see a heading "six deliverables."

21 A. Okay, um-hmm.

22 Q. And what that requires is "The Consultant shall
23 deliver to the Financial Secretary and the Premier and Minister
24 of Finance monthly reports, briefings and other documents as
25 particularized in Appendix A. A copy of the monthly report

1 should also be sent to the Permanent Secretary, Premier's
2 Office."

3 So, hopefully the person who drafted this contract
4 makes clear that it's your office rather than the Office of the
5 Premier that the monthly report has to go to. Now, that would
6 mean that logically your office would hold 12 reports?

7 A. Logically, it should be.

8 Q. Yes. Your office has disclosed two under this Letter
9 of Request. Do you know what's happened to the others?

10 A. I can't say with certainty, so we only did two, so we
11 missing...

12 Okay.

13 Q. Can I just ask for your help with one thing, please?

14 A. Um-hmm.

15 Q. Could you jump back to the first bundle.

16 A. Um-hmm.

17 Q. And just leaf through to the index. You see that the
18 index has paginated numbers in the last column. If you find
19 yourself number 905, you'll find under a heading "Documents
20 Disclosed for the Premier No. 2."

21 Do you see that?

22 A. Uh-huh, uh-huh, 905.

23 Q. Now--now, what the table shows is a reference that
24 was given to the document by the IRU, and it shows the document
25 description. So, for example, if we look at the first line,

1 905, it's referred to as Appendix B, quarterly reports for
2 March and June, which are the two reports that have been
3 produced. And then if you look further down at 991, there's
4 Appendix A, Grace Consulting Final Report.

5 Can you help at all with what the reference to
6 Appendix B and Appendix A could mean?

7 A. Appendix B?

8 Q. Yeah. Do you see at the top--

9 A. (Unclear.)

10 Q. Yeah. There is a reference for Appendix B--

11 A. Um-hmm.

12 Q. --and then we've got the reports that you produced,
13 the reference to Appendix A, and we've got the Grace Consulting
14 Final Report, which suggests that these were appended to other
15 documents, and those other documents haven't been provided to
16 the Commissioner. Can help with what they might be? What
17 might they have been appended to?

18 A. I'm not certain, because I know the Ministry of
19 Finance also submitted information, but I don't know if we did
20 this. I'm not certain. I'm not certain. Quarterly Reports
21 for March (voice trails off).

22 Q. Okay. Well, thank you for trying to help.

23 If we go to 912 in the second bundle.

24 A. Which page is that?

25 Q. 912, please, Dr O'Neal--

1 A. One-two?

2 Q. --Morton. Thank you.

3 A. Um-hmm.

4 Q. Now, this is the second of the two reports that we
5 have, so there are at least ten or there must be ten that are
6 held by your office and haven't been produced, but we see that
7 it is addressed to the--to Glenroy Forbes, who I think was the
8 then-Financial Secretary.

9 A. That is correct.

10 Q. But it is--there's a signature on it, and it says
11 "approved" and a date, 7 of the 7th 2020. I was wondering
12 whether you could help us with whose signature that is.

13 A. I'm not sure.

14 Q. Fair enough. Thank you.

15 Before we leave the lack of reports from Grace
16 Consulting, could you go to 907. This is actually two pages
17 into the other status report that Grace Consulting provided.
18 You'll see the front page on page 905.

19 If you see, beginning there, the first line, it's a
20 report provided to Government on the 17th of March 2020, and
21 the author of the report refers to "my last report dated
22 January 22nd, 2020." So that tells us at least there was one
23 other report produced.

24 A. Excuse me, where are you reading from? (Unclear.)

25 Q. Sorry. Let me--I'm taking it too fast. Go to 905.

1 A. (Unclear) my last report that I'm looking--
2 (Overlapping speakers.)

3 A. Nine-five?

4 Q. Let me orientate you.

5 A. Um-hmm.

6 Q. --you have 905.

7 A. Uh-huh.

8 Q. That's one of the two reports from Grace Consulting--

9 A. Um-hmm.

10 Q. --that the Premier's Office has provided, and you see
11 it's dated the 17th of March 2020.

12 Do you have it?

13 A. The Premier's Office provided this?

14 Q. Yes.

15 A. Okay.

16 Q. So, all the documents that I took you to at the
17 beginning, Dr O'Neal Morton, are the documents that the
18 Premier's Office provided under this Letter of Request.

19 A. Okay. She was (unclear) from the Ministry of
20 Finance.

21 Q. If we look at the contract, we look to the contract.

22 A. Um-hmm.

23 Q. I appreciate these reports are addressed to the
24 Ministry of Finance. They're addressed to the Financial
25 Secretary, but under the contract they were to be provided to

1 the Permanent Secretary and the Premier's Office, as well. The
2 question is--well, the first question would be whether they
3 were provided to you, but the second question is why have you
4 only been able to find two of them? And that's the immediate
5 concern of the Commission. But if I look at page 907 now--

6 A. Um-hmm.

7 Q. --if you look under 1.1, "Consultancy Notes", the
8 author of the report begins that part with the words "Permit me
9 to point out for the purposes of this report since my last
10 report dated January 22nd, 2020..." I wanted to flag that out
11 to you because it suggests that there is at least one previous
12 report that must have been submitted.

13 But the more important point is to take you to the
14 third paragraph that begins "Provided for you in the following
15 document are some bullet points, extrapolating the most salient
16 points. I've also attached for your reference the full
17 presentation and subsequent draft Memorandum of Understanding
18 submitted by Global Port Holdings".

19 And then in the last paragraph, in the last sentence
20 of the paragraph, the author draws the reader to pages 67 to 74
21 of the GPH proposal for Tortola.

22 Now, my reason for drawing your attention to this,
23 Dr O'Neal Morton, is that it may be that the Commissioner asks
24 you to go back to the Premier's Office and make further
25 inquiries. But what I would ask is that in making those

1 inquiries you ensure that not only, for example, reports are
2 provided but also that any attachments or appendices are sought
3 out and provided.

4 Now, you've explained that because it was a major
5 contract, it went through the Ministry of Finance. If we go to
6 875, please--start at 874, please. This is the first of two
7 documents that I'd like to show you, Dr O'Neal Morton.

8 874 is a Cabinet Meeting, No. 22 of 2019. If you go
9 overleaf to 875, in the section that is headed "Decision
10 Sought," and it reads at d: "Noted that the deliverables being
11 sought from Grace Consulting are functions under the remit of
12 the Ministry of Finance, but in this regard that even though
13 the consultant will be reporting to the Premier, copies of
14 reports should be furnished to the Financial Secretary."

15 If we now go to 878, it--well, if you go to 876, you
16 have a memorandum from the Ministry of Finance. But if you go
17 through that to Paragraph 7, it says there: "The Consultant
18 performed the above duties to the satisfaction of the Permanent
19 Secretary, Premier's Office." Now, that is a reference to the
20 first contract that we looked at.

21 A. Um-hmm.

22 Q. Yeah?

23 A. Um-hmm.

24 Q. So, I just want to understand this. We've got those
25 two documents. Does that help you to explain to the

1 Commissioner who would have been responsible for evaluating
2 performance under this second contract?

3 A. The supervisory arm of the second contract was the
4 Ministry of Finance.

5 Q. So, is the position that even though your office
6 received reports--

7 A. Um-hmm.

8 Q. --it was not now your office's job to assess
9 performance of the contract?

10 A. No, because in the--if we go back to 875?

11 Q. Yes, please.

12 A. It says in "Decision Sought" 28 for Cabinet d:
13 "Noted that the deliverables being sought from Grace Consulting
14 are functions under the remit of the Ministry of Finance, but
15 in this regard that even though the consultant will be
16 reporting to the Premier, copies of the report should be
17 furnished to the Financial Secretary."

18 Then it goes on to say in e: "noted that the cost for
19 services to be provided by Grace Consulting shall be charged to
20 22204090 Premier's Policy Planning & Administration for you '09
21 zero policy planning and administration - 528299 Consultancy."

22 Q. So, you--you're--the second contract, the Premier's
23 Office would have had no role in evaluating performance. Your
24 job was simply to sum off and pay.

25 A. Okay, the supervisory role was the Ministry of

1 Finance in the second because it's a major contract, as well.

2 Q. So, is it the policy that, in relation to all major
3 contracts, supervision would be exercised by the Ministry of
4 Finance?

5 A. It is usually be--and is mainly because of the value
6 as well.

7 Q. I see. And what do you define as a major contract?

8 A. Over a hundred thousand dollars is a major contract.

9 Q. Thank you.

10 If you go to 882--if you give me a moment, please.

11 A. Okay.

12 (Pause.)

13 Q. Now, this is an expedited extract from Cabinet.

14 A. Um-hmm.

15 Q. Isn't copied to you.

16 A. No.

17 Q. What it does is we looked at the second contract,
18 which ran up to September 2020, and if you look at what Cabinet
19 has decided at a., and that is to waive the tender process for
20 the execution of a new contract between Grace Center and the
21 Government of the Virgin Islands for twelve months from
22 September 2020 to September 2021.

23 Now, our understanding is that there is a new
24 contract in place. You're now the Permanent Secretary, the
25 Premier's Office. Are you--should you have received a copy of

1 that contract?

2 A. I don't think we normally do. We might get an
3 instruction extract from the Ministry of Finance. Since this
4 extract is not addressed to me, and it would have implications
5 for the Premier's Office in terms of financial obligations, we
6 might get an instruction extract, letting us know that this has
7 passed through Cabinet, and this should be done.

8 Q. But on the new contract, who's now still paying the
9 bills? Is it the Premier's Office or is it the Ministry of
10 Finance?

11 A. It's the Premier's Office.

12 Q. You're still paying.

13 A. Um-hmm.

14 Q. And you--you haven't got in your records a copy of
15 this third contract.

16 A. Normally, we get an instruction extract because the
17 Ministry of Finance would have forwarded the contract to
18 Cabinet, and attached to the instruction extract would be a
19 copy of the contract as well.

20 Q. But you must have had something because you're still
21 paying on the new contract.

22 A. Well, we--we are operating on the instruction
23 extract.

24 Q. Which would have--

25 A. From--

1 Q. --normally have the contract attached to it.

2 A. Which will have an attachment, if we can access it.

3 Q. Well, is that something else that you need to check,
4 to find out whether you do have a copy of the third contract?

5 A. I'd have to check that.

6 Q. Could we go to page 930, please.

7 A. Just a moment. Three-zero?

8 Q. This is the start of a number of pages which are
9 essentially records of payments made to Grace Consultants under
10 the contracts. I'm not, you will be pleased to know, going to
11 take you through every single page.

12 A. Oh, thank you.

13 Q. But what I would like to do is just ask your help
14 just to understand how it works.

15 So, can I ask you just to go to--again, well, you
16 have to jump around because they weren't provided in any clear
17 order, but if you go to 934.

18 A. 934, uh-huh.

19 Q. It should be a purchase order.

20 Do you have it, Dr O'Neal Morton?

21 A. Yes, I do. 934.

22 Q. So it's a--it's a Purchase Order, and the date is in
23 the American style, so it's actually on the 25th of
24 January 2020.

25 A. Uh-huh.

1 Q. You'll see at bottom, anyway, that in manuscript it's
2 been written in 27th of January 2020, so that's addressed to
3 the Office of the Premier. Now, you clarified that that could
4 be the other office that it goes to, not your own.

5 But if we look on the--on page 932, that invoice
6 seems to have then gone on to require a Payment Approval Form,
7 and it's dated the--you see at bottom it's dated the 28th of
8 January 2020, and there's a signature, and it says "Permanent
9 Secretary."

10 Now, would that be--I don't think you were in post
11 then, but would that be the person occupying your current role
12 who had signed that?

13 A. Yes, that would have been.

14 No, no, 20--28th of January 2020, I think that might
15 have been Mr Patrick Malone because the individual signed for
16 the Permanent Secretary, so (unclear)--

17 (Overlapping speakers.)

18 Q. I see, right, that's fair enough.

19 (Overlapping speakers.)

20 A. (Unclear) Permanent Secretary.

21 Q. It's the Permanent Secretary that then approves the
22 payment.

23 A. Yes.

24 Q. I see. Okay. All right. And that's in line with
25 your previous evidence that, whilst the Ministry of Finance is

1 supervising, the Premier's Office is making the payments.

2 A. Correct, um-hmm.

3 Q. Okay. Could you just take a look, please, at 958.

4 A. Um-hmm. (Unclear.)

5 (Overlapping speakers.)

6 Q. Now--this is now--I mean, we saw that under the
7 second contract, Grace Consulting was being paid \$12,000 a
8 month, and so this is a bill for consultancy services, but this
9 time it's addressed to the Financial Secretary, and it's dated
10 the 18th of August 2020, and then there's handwritten, but we
11 can't tell who the signature is. It's approved for payment.

12 If we look at 960--

13 COMMISSIONER HICKINBOTTOM: I'm sorry. Just on 958,
14 before we leave that, underneath the signature, there appears
15 to be FS., and as it's addressed to the Financial Secretary,
16 could that be the Financial Secretary.

17 THE WITNESS: That might be, where it says "Approved
18 for payment", Commissioner?

19 COMMISSIONER HICKINBOTTOM: Yeah, "Approved for
20 payment". It's got, as it were, scribbled--

21 THE WITNESS: Yeah, that may be--

22 COMMISSIONER HICKINBOTTOM: --and then FS.

23 THE WITNESS: Yeah. So, yeah, that might be the
24 Financial Secretary, yes.

25 COMMISSIONER HICKINBOTTOM: Okay. Thank you very

1 much.

2 BY MR RAWAT:

3 Q. If you go to 960 now, so this is--the document we
4 just looked at is dated 19th of August 2020. If you go to 960,
5 we then have a--you're now in post, your name and signature
6 appear at the bottom there. It's dated the 28--21st of
7 August 2020, and it's now a bill to the Office of the Premier
8 for \$12,000.

9 Just to complete the picture, if you go back to 957--

10 A. But it's not--sorry, if I could interrupt you. It's
11 not a bill. That's the Purchase Order.

12 Q. Purchase Order, right.

13 A. That's the Purchase Order, making the payment.

14 Q. I see. But--that's a fair point.

15 If you go back to 957, please, you then have 24th of
16 August. Again, we looked at this Payment Approval Form and
17 signed, I think, on your behalf as Permanent Secretary.

18 So, I just want to understand the process because
19 what--it seems a little confusing that the, if you like, the
20 bill comes in on the 18th of August to the Financial Secretary.
21 There is then a Purchase Order from the Office of the Premier
22 on the 21st of August and then approval for payment on the 24th
23 of August. Can you just clarify the process of how it works.
24 Who should the consultant have been submitting his invoices to?

25 A. He submits them to the Ministry of Finance. Then the

1 Ministry of Finance submits to us the approval for payment.
2 Once that is done, we do a Payment Approval Form. We accompany
3 the invoice and also the Purchase Order as well as a voucher to
4 execute payment out of Treasury.

5 Q. And is whether you make the payment depends on
6 approval from the Ministry of Finance.

7 A. Yes. That has to set it all off. The invoice,
8 usually you saw where Commissioner was just asking about the
9 signature. We won't execute a payment unless we get an invoice
10 with a signature from the Ministry of Finance, there's a proof
11 of payment. So we--that was our signal to proceed.

12 Q. I see. So, without being dismissive of your role by
13 the time on the second contract--

14 A. Um-hmm.

15 Q. --the work of the Premier's Office is simply to pay
16 once it's been approved. That's what that--

17 A. I wouldn't put it that way.

18 Q. All right. Let me put it a different way, but is
19 that what it comes down, supervision of the contract, approval
20 for payment is all with the Ministry of Finance.

21 A. Um-mm.

22 Q. Your role is once you get the approval from the
23 Ministry of Finance, it's just to make the payment.

24 A. And also have the copies of the reports. You should
25 have that as well.

1 Q. Yes, but you--do you--your--and this is going to the
2 Premier's Office. I mean, you're signing off these documents.

3 A. Um-hmm.

4 Q. Does your office have any role of the evaluation of
5 performance under the contract?

6 A. No, because the supervisor is the Ministry of
7 Finance, as in the Cabinet paper, so we have to go based on
8 that.

9 Q. We can look back at the contract, if you want, but
10 one point that appears, arises from the--from the invoices that
11 we've been provided is that none of them seem to include a
12 claim for expenses.

13 A. Expenses? I don't see anything or recall any. Just
14 recall the fee, the sum fee.

15 Q. Yes.

16 A. Based on the invoice. I don't recall any others.

17 Q. You will remember that when we looked at the
18 contract, travel, for example, was to be approved by the
19 Permanent Secretary before the actual travel occurs. So, it
20 follows, doesn't it, that--that your office should hold
21 documents that relate to the paying of expenses claimed, relate
22 to the approval of travel; is that right?

23 A. If--if any occurred.

24 Q. If any occurred.

25 A. Um-hmm.

1 Q. Yes.

2 A. That we don't have any so if something has not
3 occurred.

4 Q. But there are a number of possibilities, aren't
5 there, Dr O'Neal Morton. The first possibility is travel did
6 not happen in the entire 12 months.

7 A. Yes.

8 Q. The second possibility is that given some of the
9 que--some of the answers you've given today, that it may have
10 been that there--the documents exist but they haven't been
11 located.

12 A. Well, we have to search the documents to verify that.

13 Q. If I pull the threads together, please, Dr O'Neal
14 Morton, we've gone through a number of the documents,
15 particularly the documents that the Premier's Office has
16 produced to the Commissioner, and we've looked at the Letter of
17 Request. I think you would accept, wouldn't you, that there
18 hasn't really been full compliance with that Letter of Request;
19 would you accept that?

20 A. I would accept that there are certain documents that
21 are missing, and I accept--and I apologise for that--and I
22 accept responsibility of providing them at a later time.

23 Q. I'm--I'm not making no criticism personally of you,
24 Dr O'Neal Morton, but--and you have very helpfully undertaken
25 to review the disclosure, and I think the Commissioner may wish

1 to make an order in relation to that in due course.

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

3 A. Certainly.

4 Q. You're a civil servant of seniority and
5 long-standing. You're now a Permanent Secretary. Are you
6 allowed, as a civil servant, to be a member of a statutory
7 Board?

8 A. By virtue of a senior post as a Permanent Secretary,
9 we are allowed to be ex officio members of statutory boards.
10 Means we are the liaison between the Board and the particular
11 Ministry that we work under.

12 Q. So--so, it's--it's an extension of your job as a
13 Permanent Secretary anyway.

14 A. Correct, correct.

15 Q. And are you, in fact, presently a member of any
16 statutory Board?

17 A. The Permanent Secretary would be member of all the
18 statutory boards under his or her remit, but in some instances,
19 the Permanent Secretary has representation. Desk officers
20 might go to the Board meetings or be the liaison with the
21 Boards instead of the Permanent Secretary.

22 Q. Now, a number of statutory boards sit under your
23 department, so to speak; is that right?

24 A. That is correct.

25 Q. Is there one entity that has responsibility for all

1 of the statutory boards or does it devolve down to the
2 individual Minister?

3 A. Various Ministries have statutory boards underneath
4 them.

5 Q. So, in your case, a number of statutory boards will
6 essentially point towards the Premier's Office, but there could
7 be another department that would have other statutory boards
8 that it supervises.

9 A. Correct, uh-huh.

10 Q. Taking your office as an example, then, and the
11 statutory boards on which you sit--

12 A. Um-hmm.

13 Q. --does the Premier's Office maintain a list of all
14 the boards that it has and the list of their membership?

15 A. We do.

16 Q. Do you, for example, maintain a record of who has
17 been appointed to which board and at what point in time and who
18 by?

19 A. We would have that information.

20 Q. On any particular statutory board that sits under the
21 Premier's Office, who ultimately decides who will be appointed
22 to that statutory board?

23 A. Who ultimately decides?

24 Q. Yes.

25 A. They have various boards and various set-up according

1 to the legislation. Some may be decided by the Governor, some
2 may be leader opposition. It varies from board to board. It's
3 not standard across the boards.

4 Q. Does your office--insofar as the Premier may have a
5 role in appointing people to statutory boards, does your office
6 have any role in conducting due diligence of any prospective
7 candidate?

8 A. For most of the requirements is that the person be a
9 fit and proper person, and by that very big description, what
10 we--we are working on refining those descriptions in order that
11 we can have different--different criteria set for boards.

12 Q. And you used the term "fit and proper person".

13 A. That is the expression that is used.

14 Q. Looking at the current situation that pertains--

15 A. Um-hmm.

16 Q. --what criteria are used in the Premier's Office to
17 assess whether someone is a fit and proper person?

18 A. I would imagine fit and proper, the person is--has
19 their mental capacities and--it varies because there are some
20 boards that look at particular professional areas and if
21 they're and proper, if we're looking for somebody from the
22 legal profession, so I can't speak generally on all boards
23 because different boards have different criteria that are
24 looked at, different persons and different positions, so I
25 can't give a blanket statement in that regard.

1 Q. But is there somewhere a policy that says this is the
2 definition of "fit and proper person"?

3 A. Well...

4 Q. For example, does it require that someone is a person
5 of good character?

6 A. Of course, um-hmm.

7 Q. So that is a requirement.

8 A. Yeah, I would imagine "fit and proper" means they're
9 of good character in the community, upstanding, et cetera.

10 Q. And I don't know whether you've been involved in
11 conducting an exercise, but do you get references from people?

12 A. Yes, we do in some instance, uh-huh--with my
13 experience.

14 Q. And is that all kept in your office? Do you keep all
15 of these records about the inquiries you might have made of a
16 possible candidate?

17 A. All of those would usually--put on the file that
18 relates to the particular board.

19 Q. I see.

20 MR RAWAT: Sir, I've come to the end of my questions.
21 But may I just have a moment so then I will...

22 COMMISSIONER HICKINBOTTOM: Yes.

23 (Pause.)

24 MR RAWAT: Dr O'Neal Morton, thank you very much for
25 your assistance this morning. Thank you for the way you've

1 given your evidence, but I have no further questions for you.

2 THE WITNESS: Okay, thank you. And I do promise to
3 submit information that we said was not there so we'll do our
4 best to--to assist in that regard, most definitely.

5 COMMISSIONER HICKINBOTTOM: Yes, thank you, Dr O'Neal
6 Morton. Can I add to that? And thank you again for coming and
7 giving your evidence as you have.

8 It's--it's clear that the disclosure that you've made
9 is--is not complete, and so, if I can ask you to do these
10 things, firstly to check generally against the requests that
11 have been received that full disclosure has been given.

12 I just pause for a moment because we now know there
13 are two offices that the Premier has, only one of which you
14 run. So should we--does that mean we should address requests
15 in respect of the other office to somewhere else, not you
16 because you don't liaise--I'm sorry, because somebody else is
17 in charge of that other office?

18 THE WITNESS: The Premier's Secretary runs the other
19 office with the Office of the Premier.

20 COMMISSIONER HICKINBOTTOM: Okay. So,
21 the--the--the--the request really should be restricted to your
22 office.

23 THE WITNESS: It depends on what the request was
24 about.

25 COMMISSIONER HICKINBOTTOM: Well, the request is on--

1 THE WITNESS: Oh, yeah, tab 1?

2 COMMISSIONER HICKINBOTTOM: Tab 1. Yes.

3 THE WITNESS: Okay, yes, yes, yes, in that case.

4 But I--I see from the reporting that some of the
5 reports actually, based on the Cabinet paper, would have gone
6 to the Premier directly.

7 COMMISSIONER HICKINBOTTOM: And you wouldn't see
8 those?

9 THE WITNESS: No, I wouldn't see that.

10 COMMISSIONER HICKINBOTTOM: You may not see those.

11 THE WITNESS: I--I may not see that. That might go
12 straight to his office--

13 COMMISSIONER HICKINBOTTOM: Okay, okay.

14 THE WITNESS: --for his Private Secretary.

15 COMMISSIONER HICKINBOTTOM: So, what--what I'll do is
16 I'll make a--I'll make a direction, please, firstly that you
17 simply consider the requests, and whether there were any
18 documents within your office that should be disclosed in
19 relation to those requests.

20 Secondly, we will write to you--I know you've been
21 taking notes of documents which have been referred to which
22 you're going to have another look for, but we'll write to you
23 with that list.

24 THE WITNESS: Okay.

25 COMMISSIONER HICKINBOTTOM: And if you could look for

1 those, please, and produce those.

2 THE WITNESS: Certainly.

3 COMMISSIONER HICKINBOTTOM: Now, how long will that
4 take, Dr O'Neal Morton?

5 THE WITNESS: It depends on--can you give us a week
6 to do that?

7 COMMISSIONER HICKINBOTTOM: Certainly.

8 THE WITNESS: 'cause we--we--we--we are short-staffed
9 at the moment.

10 COMMISSIONER HICKINBOTTOM: Yes, certainly,
11 certainly.

12 THE WITNESS: So, if we can get a week (unclear)--

13 COMMISSIONER HICKINBOTTOM: Certainly. So shall we
14 say 4:00 p.m. Monday, 4:00 p.m. next Monday?

15 THE WITNESS: It's not quite a week.

16 SIR GEOFFREY: Monday is a bank holiday, sir.

17 COMMISSIONER HICKINBOTTOM: Is here. 4:00 p.m.
18 on--on Tuesday.

19 THE WITNESS: Okay. That will be a week.

20 COMMISSIONER HICKINBOTTOM: Okay.

21 THE WITNESS: We'll work towards that.

22 COMMISSIONER HICKINBOTTOM: And that's--and that's a
23 full week. Okay, that's that.

24 And finally, I think, just privacy, any observations
25 on privacy?

1 SIR GEOFFREY: One day? I need to consult the
2 Attorney General, but I--I shouldn't have thought there's a
3 problem. If you mean for the publication of the Transcript.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 SIR GEOFFREY: Yes. Would you just give us one day
6 for that?

7 COMMISSIONER HICKINBOTTOM: Until 4:00 p.m. tomorrow.

8 SIR GEOFFREY: Yes. We'll ask (unclear) right now.

9 COMMISSIONER HICKINBOTTOM: Yes, we can certainly do
10 that, Sir Geoffrey.

11 And that's it. Thank you very much, Dr O'Neal
12 Morton.

13 THE WITNESS: Okay.

14 (End Session 1)

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

Session 2

COMMISSIONER HICKINBOTTOM: I'm not--Mr Rawat, I'm not sure how long you will be with Mr Frett, but I suggest we have a break at a convenient moment for half an hour or whatever.

MR RAWAT: Thank you very much, sir.

COMMISSIONER HICKINBOTTOM: Now, could Mr Frett be sworn, please. Thank you.

COMMISSION SECRETARY: Mr Frett, would you prefer to swear an oath or make an affirmation? Please pick up the Bible in your left hand and read the words on the sheet in front of you.

THE WITNESS: I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the whole truth.

COMMISSION SECRETARY: Thank you, Mr Frett.

COMMISSIONER HICKINBOTTOM: Yes. Thank you.

MR RAWAT: Thank you, Commissioner.

BY MR RAWAT:

Q. Mr Frett, can you give the Commissioner your full name, please.

A. Commissioner, my name is Jeremiah Alexander Frett.

1 Q. And your professional address?

2 A. Qualmar Building Number 2, "Proper Sail"

3 (phonetic), Tortola, British Virgin Islands.

4 Q. Again, thank you for coming to give evidence, being
5 willing to assist the Commissioner.

6 As I told Dr O'Neal Morton, I hope I will keep my
7 questions short and simple, but if you need me to repeat or
8 re-phrase a question, please feel free to ask.

9 The bundle of documents are there by you. We may
10 be looking at those in due course, but do remember as well
11 just to keep your voice up, speak slowly, so that we can
12 record you for the purposes of the Transcript.

13 Again, as I told Dr O'Neal Morton, it's important
14 to tell you that you have been called as a witness to try and
15 assist the Commissioner further. I'm not intending through
16 my questions to put to you a criticism or an allegation that
17 you have to answer; merely, I hope to seek more information
18 from you.

19 Again, can we start off by asking you to give the
20 Commissioner a brief outline of your civil service career.

21 A. Yes, Commissioner.

22 I joined the service in 1985.

1 I had a short break in 1991--1988, sorry, to 1996
2 when I rejoined the service.

3 And I have been--since I rejoined the service, I
4 have worked in the Deputy Governor's office, a Financial
5 Controller at the Police, Virgin Islands Police Force.

6 And since 2003, I have worked in the Ministry of
7 Finance in a senior role.

8 COMMISSIONER HICKINBOTTOM: Thank you.

9 BY MR RAWAT:

10 Q. Now, when were you appointed to the role of
11 Financial Secretary?

12 A. January 1st, 2021. I was confirmed at the acting
13 capacity as Financial Secretary.

14 Q. And you're still acting as Financial Secretary?

15 A. Commissioner, that is correct.

16 Q. And what position did you hold immediately before
17 being appointed acting Financial Secretary?

18 A. Deputy Financial Secretary.

19 Q. And just for the record, your predecessor was
20 Glenroy Forbes; is that right?

21 A. Commissioner, that's correct.

22 Q. Has Mr Forbes now left the civil service?

1 A. Commissioner, that is correct.

2 Q. Could you just explain what the job of Financial
3 Secretary is?

4 A. The Financial Secretary, in a nutshell, is a chief
5 financial advisor to the Government of the Virgin Islands.
6 His role may entail a dealing with economic matters
7 pertaining to the territory as well as budgetary matters,
8 pertaining to expenditure and revenue, and also good
9 governance as respect to how the funds of the territory is
10 managed.

11 Q. And do you head the operational side of the
12 Ministry of Finance?

13 A. Commissioner, currently, it's only just yesterday I
14 received a second Deputy, but since taking office in January,
15 I did not have any Deputies at the time.

16 Q. But, as Financial Secretary, is it your job to lead
17 the operational side of the Ministry of Finance?

18 A. Yes, that is correct, Commissioner.

19 Q. If you pick up the first bundle, Bundle 1, please.

20 A. This one?

21 Q. Yes. I think it will be the one that's closest to
22 you.

1 And if you turn to Page 159, you should see there a
2 letter from the Commission dated the 5th of March 2021 and
3 addressed to The Honourable Andrew Fahie, Minister of
4 Finance.

5 Do you have that?

6 A. Yes.

7 Q. And it says "The Minister of Finance Request for
8 Information/Documents No. 1."

9 Now, before we look at its detail, are you able to
10 help the Commissioner with a sense of how the Ministry of
11 Finance went about responding to this request?

12 A. Commissioner, the Minister of Finance's role was a
13 result of the Customs Department which falls under the
14 Ministry of Finance portfolio, and the Commissioner--the
15 Customs Department is part of the Joint Task Force.

16 And it's true--

17 Q. Sorry to interrupt you, Mr Frett.

18 A. Yes.

19 Q. Can I ask you just to pause there.

20 A. Okay.

21 Q. We will get into that detail in a little while.

22 A. All right.

1 Q. The Commissioner has heard evidence about the Joint
2 Task Force, and he's heard from Wade Smith.

3 A. Yes.

4 Q. What my question is directed to is this letter came
5 in.

6 A. Um-hmm.

7 Q. I'm assuming that the Minister of Finance, as with
8 other Ministers, asks his officials to deal with it. Did the
9 letter come to you to deal with?

10 A. Yes, Commissioner.

11 Q. How did you set about providing the response to
12 this letter?

13 A. Commissioner, in the Ministry of Finance, I set up
14 a team led by a young lady name "Masheeda Hudge" (phonetic),
15 who had been working with--with the Attorney General
16 Chambers, and she had--she's a lawyer by training and she has
17 been the lead person in the Ministry of Finance in collating
18 these documents, and we worked very closely together in
19 reaching out to the various Ministries, the various
20 Departments, and sometimes coordinated other Ministries in
21 getting the necessary information to submit to the Commission
22 on Inquiry.

1 Q. And did you have assistance in undertaking that
2 from the IRU?

3 A. Yes.

4 Q. Did you liaise and seek advice from the IRU?

5 A. Yes, Commissioner.

6 Q. If you go to the index, please, and leaf through
7 the index--I think it's the third page in--you will see a
8 heading "Documents Disclosed for Minister of Finance No. 1."

9 A. Do you have a page number?

10 Q. It doesn't have a page number. It's just the very
11 index. I just want to ask your help with something.

12 If you turn through, I think, probably to the third
13 page, you should see a heading "Documents Disclosed for
14 Minister of Finance No. 1."

15 Do you have that?

16 A. Yes, Commissioner.

17 Q. If you see the central column, it has a heading
18 "IRU Document Description," and then it's a set of PDFs--

19 A. Yes.

20 Q. --which carry numbers.

21 Can you explain why--well, I mean, who gave these
22 documents that title?

1 A. Commissioner, when we were scanning the documents
2 through the computer, there's a scanner. The scanner is the
3 one that labeled it accordingly.

4 Q. I see.

5 A. Yes.

6 Q. And did you convert everything into a PDF?

7 A. I cannot say definitely all the documents were
8 converted into PDF, Commissioner. However, the ones that
9 were scanned, they would result in a PDF form-like document.

10 Q. I see.

11 Can I just ask for--I mean, you have heard the
12 questions I put to Dr O'Neal Morton. I would like to try and
13 take things a little more shortly with you, please, Mr Frett.

14 If you go to Page 162. We're looking now at the
15 documents that were provided by the Minister of Finance.

16 There is a concern over the order in which these
17 documents came to the Commission. If you look at 162, it's
18 an e-mail, and it has two attachments. Are you able to point
19 to which particular attachments those are?

20 A. Commissioner, at this time, I will have to do more
21 research and identify the documents that has been asked about
22 under Page 162.

1 Q. All right. Let's go to Page 303, then.

2 A. Okay.

3 Q. The page is at 302, please.

4 That's--and again, we don't need to get into the
5 detail. We may come back to this document, but it's a
6 Ministry of Finance document dated the 2nd of September 2020,
7 but if you go over to 303, it appears to be incomplete at
8 303.

9 Do you know why it was provided in an incomplete
10 form to the Commission?

11 A. Commissioner, at this time I cannot say why it was
12 incomplete, but from looking at the document, it seemed to be
13 a Cabinet paper, and I'm sure that we can provide that
14 information to you, sir, Commissioner, as soon as possible.

15 Q. If I ask you just to go to 314, please. You know,
16 again, that's a document which came from the Ministry of
17 Finance. Header is a "Memorandum," but if you turn through
18 to Page 317, again, it's another example of a document that
19 appears to have been provided in an incomplete form.

20 And just to give one more example, 554. The
21 internal page numbering for this document starts at the
22 bottom, so just next to the word "Restricted," you have the

1 number 1.

2 A. This is Page 544?

3 Q. 554, please.

4 A. Yeah.

5 Q. Now, you see the internal page 1. Next to
6 "Restricted" you have the number 1. Do you have that?

7 A. Yes, Commissioner.

8 Q. If you turn overleaf to 555, the numbering now
9 becomes 3. If you go over to 556, it becomes 5. So, what
10 seems to have happened is that only odd pages have been
11 provided.

12 Would you accept, Mr Frett, it's probably unlikely
13 that the document reached the Ministry of Finance in that
14 way, and that this might just be a mistake in the way that
15 disclosure--documents were compiled for disclosure?

16 A. Commissioner, from--from looking at the document,
17 it's appeared that this is how the documents was scanned. It
18 may have skipped, sometimes, Commissioner, if there is a back
19 and front page, and you scan the document as a single page
20 and not as back and front, it will only capture the one side
21 of the page. So, from looking at this, it appears that may
22 have been the situation, yes.

1 Q. I don't want to labour the point, Mr Frett, and I
2 don't want to take you through an exercise where we try here
3 to marry up e-mails with attachments or confirm which bits
4 are missing, but would you accept that it does seem that the
5 Response to the Request from the Commissioner has been less
6 than complete?

7 A. Commissioner, from the point raised, some
8 information--some of the pages are missing, based on the
9 numbering, and we will seek to do so. But Commissioner, I
10 would say that the Ministry of Finance was the centre point
11 for requests from the Commission of Inquiry. As noted
12 earlier, there were no Deputies, and we have some
13 vacancy--other vacancies within the Ministry of Finance, and
14 the team, but need report persons from all different units to
15 assist in getting these documents together.

16 And based on the volume of information we provided
17 to the Commission of Inquiry, that's very likely that
18 incidences like this may have occurred, but I guarantee it's
19 not out of wanting to provide the information. It's because
20 we tried to comply with the strict timeline that was given to
21 us, and at certain points we had to ask for extension because
22 of the volume of information that we were receiving.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 BY MR RAWAT:

3 Q. Mr Frett, as I said to Dr O'Neal Morton, we make no
4 criticism of the members of your Department who have been
5 engaged in the exercise. The Commissioner has acknowledged
6 publicly the efforts that have been made, but as you will
7 appreciate, it is important for the Commission to receive as
8 much assistance in as complete a fashion as possible, and in
9 a way in which the Commissioner can understand what is going
10 on. And if documents are missing or attachments are missing,
11 that pace of the Commission slows down.

12 Can I just take you back to Page 159, please, and
13 we will--I do need to ask you some questions about the
14 disclosure just for your assistance, even though there may be
15 pages missing, et cetera. If you go to 151, we can
16 understand the context of what my questions will be--159,
17 sorry.

18 If I summarise--and you've already given an
19 indication that you appreciate what this was about--this
20 request was directed to documents held by the Ministry of
21 Finance in relation to contracts with EZ Shipping Limited for
22 radar barges. And it asked a range of questions including

1 pre-contract correspondence, documents evaluating
2 performance, the contracts themselves, post-contract
3 correspondence.

4 Now, what was disclosed includes two signed
5 contracts, and we can see one at 343.

6 Now, 343 is a contract dated October 14, 2020. And
7 if you go to 345, you'll see at 3 that the duration of the
8 agreement was 23rd of August 2020 to 22nd of October 2020.

9 Now, the second contract that has been produced by
10 the Ministry of Finance under this request is at 576.

11 You have it, Mr Frett?

12 A. Yes.

13 Q. We see dated the 29th of December 2020. If you go
14 through to Page 578, it covers a period from the 23rd of
15 October 2020 to the 22nd of December 2020.

16 Now, the Commission has received from elsewhere,
17 from the Commissioner of Customs, a third contract which you
18 find in the same bundle at Page 51.

19 A. Page 51.

20 Q. Yes. If you see--if you've got the right page, it
21 should be a document dated the 18th of March 2021.

22 If we go, Mr Frett, to Page 54 at paragraph 3,

1 we'll see that the duration of the agreement is one month
2 commencing from the 24th of December 2020 and ending on the
3 23rd of January 2021.

4 Now, it must be right, isn't it, that a copy of
5 this contract must be held within the Ministry of Finance,
6 mustn't it?

7 A. Commissioner, that should be correct. I have to
8 double-check on that, but we should have that document in the
9 Ministry of Finance.

10 Q. Now, I've taken through--you through the dates of
11 the contracts and their durations. A common feature of all
12 three contracts is that they've been signed after the
13 contract period begins, and I think in the case of the last
14 two it's after the contract has even ended.

15 Now, can you explain why that happened?

16 A. Commissioner, from my knowledge of the project of
17 the initiative dealing with border security, at the time with
18 COVID-19--the borders in the territory was locked down--there
19 was an urgent need to protect the borders; and through the
20 National Security Council and the Joint Task Force, decisions
21 were made to procure the barges for the borders to protect
22 the borders, border security, or due to the logistics of the

1 procurement process and other reasons, it's always lagged
2 behind time of the processing of the payment process. And we
3 try our best, based on scenarios that occurred, to try to be
4 more timely in execution of the contracts prior to the work,
5 but because of the urgencies and the situation that arise, as
6 noted, it almost came to a month-to-month type situation
7 because there was other dynamics currently happening in
8 trying to come up with a more permanent solution. So, when
9 those permanent solution did not arise, therefore, there was
10 a continuation of the arrangement with the current provider.

11 Q. In your experience, how often does it happen that
12 the Government is entering into contracts for substantial
13 sums of money after the work has been done?

14 A. Commissioner, I'm not in a position to state how
15 often it happens because I just took over the position of
16 Financial Secretary, but even in other senior roles, you have
17 to do some research to find out when contracts were issued
18 after the facts. I'd be presumptuous to draw that conclusion
19 at this stage.

20 Q. But is it something that in your function as a
21 Deputy Financial Secretary and now acting Financial Secretary
22 that the Minister of Finance would keep an eye on?

1 A. Commissioner, that is something that we are
2 vigilant about, but I don't--from my experience, it is not a
3 common practice for these things to happen. If it do happen,
4 it is based on an emergency or some situation that that may
5 have arise--arisen.

6 Q. Now, going back to the first contract, if we go to
7 page 186.

8 A. Commissioner, did you say 106?

9 Q. 186.

10 COMMISSIONER HICKINBOTTOM: 186, yes. Thank you.

11 BY MR RAWAT:

12 Q. What I would like you to do, I will just take you
13 to three documents. These are the only three documents we
14 can find that relate to first payment, but you've got there a
15 purchase order which is dated the 24th of September 2020.
16 The signature at the bottom, who is that?

17 A. Commissioner, from my knowledge, it appears to be
18 Glenroy Forbes's signature, but I cannot verify that. It
19 would have to be verified, but from my experience that
20 appears to be his signature.

21 Q. Look at 193. (drop in audio) then got a payment
22 voucher 24th September 2020. And then if you look at 195,

1 you've got a Payment Approval Form. This is the sum of, I
2 think, \$420,000 being paid at or around the 24th of
3 September. The document's signed off by the Financial
4 Secretary.

5 Now, if we go to 193, what's written in the middle
6 of the page is "I certify that this Payment is in accordance
7 with the term of the contract/agreement," and then there is a
8 major contract reference, "and the work to this amount has
9 been properly performed," and then it's got a signature. I
10 don't think it's a signature of the Financial Secretary,
11 but--and I can show you the same thing in relation to the
12 final payment under this contract.

13 But just--can you explain this to me: How was this
14 officer able to certify that the work had been properly
15 performed at the time when the contract hadn't even been
16 signed?

17 A. Mr Commissioner, I have to--can you clarify that
18 again because this payment, from my knowledge, may have
19 occurred after.

20 Q. Well, what I showed you was the first contract.
21 The first contract is signed on the 14th of October, and it
22 covers the period of the 23rd of August to the 22nd of

1 October 2020.

2 A. Hmm.

3 Q. So, it's signed just as the period, contractual
4 period, is coming to an end.

5 I've shown you three documents which better relate
6 to the first part payment under that contract with
7 EZ Shipping, and there's a contract reference on those
8 documents, but I'm just wanting to just understand how on
9 page 193, when payment for \$420,000 is being made on the
10 24th--on or about the 24th of September 2020, anyone could
11 have certified that it was in accordance with the terms of
12 the contractual agreement and the work to this amount has
13 been properly performed.

14 A. Commissioner, I'm not in a position to answer that
15 question. I will have to verify with the person who signed
16 that to get the knowledge on what took place here.

17 But from looking at the date, it was signed on the
18 24th, and the contract would have ended on the 27th.

19 Q. October.

20 COMMISSIONER HICKINBOTTOM: Mr Rawat's point, I
21 think, is that the contract wasn't signed until the 14th of
22 October.

1 THE WITNESS: So it's after the fact the work was
2 already completed.

3 COMMISSIONER HICKINBOTTOM: Correct.

4 THE WITNESS: So, it's retroactively the person is
5 approving the payment.

6 BY MR RAWAT:

7 Q. But he's approving--he or she is approving the
8 payment on the 24th of September, so even before the contract
9 had been signed.

10 A. Yeah.

11 Q. Does this--this--this--with this rubric, does that
12 appear on every payment voucher that--that the Ministry of
13 Finance issues?

14 A. Commissioner, I'm not--I do not believe that is the
15 case. I will have to verify the situation with this
16 particular payment and get the details of it. I was not the
17 Financial Secretary at the time, so I don't want to make any
18 statement that may not be accurate.

19 COMMISSIONER HICKINBOTTOM: I understand that.

20 The person who signed that statement on page 193,
21 the signature seems to be somebody--that it's somebody called
22 "Thomas." Does that ring a bell?

1 THE WITNESS: Commissioner, that appears to be the
2 Finance and Planning Officer.

3 COMMISSION SECRETARY: That's the--okay.

4 THE WITNESS: "Mariette Thomas" (phonetic).

5 But I do not want to make a statement that is
6 inaccurate. I would have to confirm what are the dynamics
7 that took place with this particular payment.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 BY MR RAWAT:

10 Q. Can I--if you are going to make further inquiries,
11 Mr Frett, can I ask you to do it on this basis: What is of
12 interest is what information was available to the officer in
13 order for her to sign that declaration.

14 I will take you on to another point. If you go to
15 241 in the bundle.

16 A. 241, Commissioner?

17 Q. 241. It should be Memorandum 376 of 2020.

18 Do you have it?

19 A. Yes, Commissioner.

20 Q. And it's got your name at the top of it, so
21 presumably you were the author of this memorandum?

22 A. More than likely, Commissioner. Yes, Commissioner.

1 Q. Is it a proper inference for the Commissioner to
2 draw that, because it carries your name at the top--

3 A. Yes, Commissioner.

4 Q. --you are issuing it?

5 A. Yes, Commissioner.

6 COMMISSIONER HICKINBOTTOM: Yes, thank you.

7 BY MR RAWAT:

8 Q. If we look at the bottom of paragraph 3, there is a
9 reference there, and this is about the Joint Task Force--it's
10 about the measures that had been taken by the Joint Task

11 Force to secure the borders, and paragraph 3 begins:

12 "Assistance from the UK military was also recommended as a
13 temporary solution. This document was not acted upon as it
14 is viewed that the territory possesses both the requisite
15 manpower and the ability to procure the necessary resources
16 to secure our sea borders. The cost of UK military support
17 is unknown."

18 To your knowledge, Mr Frett, was any approach ever
19 made to confirm, or any effort ever made to confirm, what the
20 cost of UK military support would be?

21 A. Commissioner, with respect to this particular
22 paper, it was worked on in conjunction with Customs, the head

1 of the Joint Task Force--we liaise on such matters--and the
2 information that was available to me, that is based on the
3 comments that was raised in the paper based on the
4 information that was presented.

5 Q. Is it--

6 A. The Joint Task Force and the--and the National
7 Security Council would have been some form of consultation,
8 so if the information is not available, I could not speak
9 to--to that.

10 Q. Break it down for us. You say that you drafted
11 this paper based on information in a discussion with Customs.
12 Who in Customs were you discussing with?

13 A. Commissioner, I cannot be specific at this time.
14 However, I know that the head of the Joint Task Force, which
15 was Mr Smith, we are--we are in constant communication on
16 this and other matters, and sometimes he will work with his
17 senior team members to discuss this--discuss this particular
18 matter.

19 Q. Well, so one source of information would have been
20 Mr Smith. What about Mr Romney?

21 A. Yes, Mr Romney is one of his senior team members.
22 Mr Lettsome is another senior team member.

1 Q. And you sought their assistance in producing this
2 paper; is that right?

3 A. Yes, Mr--yes, Commissioner.

4 And we would note, Commissioner, that this paper
5 sometimes mirrored that of the National Security Council
6 paper.

7 Q. But my question, Mr Frett, was directed to the last
8 sentence on that page, which is: Do you know whether any
9 effort was made to confirm what the costs of UK military
10 support would be?

11 A. Commissioner, from the Minister of Finance
12 perspective, I do not recall having asked for that specific
13 information specifically from the UK.

14 Q. Well, you may not have asked for it, but were you
15 aware of anybody else made an approach to find out this
16 information?

17 A. Commissioner, I do not know.

18 Q. To your knowledge, were you aware of any approach
19 being made to the UK about this possibility?

20 A. Commissioner, first-hand I do not know of that
21 information, so I wish not to comment on that. It may have
22 been third party, that I'm sure National Security Council or

1 Joint Task Force may have voiced that concern, but I have no
2 confirmation of that.

3 COMMISSIONER HICKINBOTTOM: I understand that,
4 Mr Frett, but you don't know of any?

5 THE WITNESS: No.

6 COMMISSIONER HICKINBOTTOM: "No." Thank you.

7 THE WITNESS: Not an official.

8 BY MR RAWAT:

9 Q. If you could go, Mr Frett, to paragraph 4 in the
10 same document, this is referring to what's called the barge
11 option. If you look at the last sentence, it says: "While
12 all the options were thoroughly reviewed, Customs agreed to
13 proceed with the barge option after consultation and
14 discussions to obtain subsequent approval from the Financial
15 Secretary and the Minister of Finance." Now, who was
16 responsible for thoroughly reviewing all the options?

17 A. Commissioner, from my knowledge, it was the Joint
18 Task Force that looked at the options that were available to
19 them, and I'm sure they may have had discussions within the
20 National Security Council on the options that were presented
21 to--to them.

22 Q. Now, there's a reference there to consultation and

1 a discussion.

2 Can you explain that? Who was having the
3 discussions?

4 A. Commissioner, with respect to this project, the
5 Joint Task Force was the lead in dealing with border security
6 during this era, and they consulted--there is a process of
7 where they consulted with the--or seek approval from the
8 National Security Council on certain matters--these matters.
9 And because Customs falls under the Ministry of Finance, we
10 were kept in the loop and were responsible for drafting such
11 papers to go to the National Security Council on their behalf
12 because Customs did not have that expertise, so they liaison
13 and lean on the expertise of the Ministry in drafting the
14 necessary papers being the parent Ministry that it falls
15 under. So, the Ministry of Finance was kept in the loop on
16 these matters.

17 Q. So, I just want to understand the process of how it
18 works.

19 So, the Joint Task Force--again what your evidence
20 is, the Joint Task Force conducted a further review?

21 A. Hmm.

22 Q. Customs agreed to proceed with the barge option

1 after consultation and discussion?

2 A. Correction, Commissioner, on the Joint Task Force.
3 It wasn't just Customs, it was the team of the Joint.

4 Q. But if you look at what the sentence says, it
5 refers to "Customs," and they're agreeing to proceed with the
6 option after consultation and discussion.

7 Now please just tell me, who were Customs
8 consulting and who were Customs discussing with?

9 A. Commissioner, from my knowledge of the situation,
10 Customs was part of the Joint Task Force, so they were
11 held--what was communicated to me there was constant meeting
12 with the Joint Task Force, and in turn they would have made
13 representation to National Security Council on matters
14 pertaining to border security.

15 Q. It refers to subsequent approval from the Financial
16 Secretary in the Ministry of Finance. What's that process?
17 What approval is required?

18 A. And that is which paragraph, Commissioner?

19 Q. Again, we're still looking at paragraph 4.

20 A. Commissioner, that would have been with respect to
21 funding because, from my knowledge, that National Security
22 Council made--made policy decision with respect to border

1 security, but that still have to come through--because of the
2 amount of money that was being sought, they had to go through
3 Cabinet and the Financial Secretary--they would have to carry
4 that paper. I think the Finance--don't correct me--correct
5 me if I'm wrong--I may be wrong on this, but I think the
6 paper went through because of the amount of money that was
7 being requested, it would have been from the Ministry of
8 Finance, and--and that is where it talk about getting the
9 approval from the Minister and the Financial Secretary.

10 Because it was quite elaborate, if you look at that
11 attachment, I think it was in the millions of dollars, so we
12 have to identify whether the funding sources are available to
13 meet this Border Security Plan that was being contemplated.

14 So, the Minister of Finance, the Financial
15 Secretary would have to say whether the resources are there,
16 and the Ministry--the Minister of Finance would have to say
17 whether or not it is a policy decision from Cabinet, whether
18 or not they want to proceed in that direction. But these are
19 indeed from the National Security Council because they had to
20 go to the Joint Task Force, they had to go to the National
21 Security Council and then come back through Cabinet for
22 funding requirements.

1 Q. Can I just ask you just to look at paragraph 5.
2 That refers to three companies being asked to submit a quote,
3 and concludes EZ Shipping Limited was the recommended company
4 after review of the proposals submitted.

5 So, who reviewed those proposals and who made the
6 recommendation?

7 A. Commissioner, from my knowledge, it was the Joint
8 Task Force.

9 Q. On boats. So the Joint Task Force reviewed the
10 three quotes, and then the Joint Task Force made the
11 recommendation?

12 A. Commissioner, to my knowledge.

13 Q. Turn to paragraph 8, please, on page 243. If you
14 look at paragraph 8, please, Mr Frett. It begins "The barge
15 platforms were activated on 23rd of August 2020, and have
16 yielded significant results ranging from arrest, deterrents,
17 and detention of vessels."

18 It continues that it's alleged that, on Saturday
19 morning, 22nd of August, at West End, Tortola, a person
20 violated the BVI border entry laws." That's, of course, the
21 day before the barge platforms were activated, but then
22 continues that "Customs had aborted an apparent attempt by

1 smugglers and through the use of platforms have been able to
2 detect and hold a vessel coming into our territorial waters
3 on 28th of August."

4 Now, I'm just interested in the reference to
5 "significant results." It had--this memorandum was written a
6 week after the barge platforms were activated, so what was
7 the measure of "significant"?

8 A. Commissioner, the information that formed part of
9 this Cabinet paper, this memorandum, is--was provided from
10 the Joint Task Force and through Mr--the Commissioner, and
11 they indicated that the number of deterrents that they have
12 yield is based on that fact. I cannot say it was based on
13 figures and data.

14 Q. Did they give you any data?

15 A. Commissioner, no.

16 Q. So, they just told you it had a significant
17 impact--

18 (Overlapping speakers.)

19 A. I--

20 Q. And you used that information for your paper?

21 A. And Commissioner, they also--of course, this is not
22 just the BVI working in isolation. They was working in the

1 partners of the U.S. Coast Guard, so there was communication
2 between both agencies. Some of what was not disclosed to me
3 because of a sensitive nature, but they indicated from their
4 presence in the area, in certain areas, that they noted a
5 definite decrease in activity from the barges being out
6 there. So that was information they would have had,
7 Commissioner, for which used to form the part of this.

8 Q. Mr Frett, in order to prepare this paper, did you
9 have e-mail exchanges with, for example, Wade Smith or
10 Mr Romney or Leslie Lettsome?

11 A. Commissioner, because of the volume of information
12 provided, I cannot say if it's already included in this
13 package or not. If not, they may have been, and if it's not
14 provided, the learned gentlemen have such information,
15 Commissioner, that I may not be aware of, we would seek to
16 provide that information for you.

17 Q. If I can help you, it isn't in the material that
18 you've provided. I think the Commissioner would be assisted
19 by understanding what discussions there were between yourself
20 and members of the Joint Task Force or the Customs Department
21 in order for you to prepare this paper, so could I ask you
22 that you undertake that task and review your e-mails to see

1 if you can provide us with some information.

2 Sir, I'm going to move on to another topic, and I
3 wonder if now would be a convenient time just to have a short
4 lunch break.

5 COMMISSIONER HICKINBOTTOM: Yes, certainly.

6 Should we say half an hour?

7 MR RAWAT: Yes.

8 COMMISSIONER HICKINBOTTOM: We will come back at
9 quarter past 2:00. Thank you very much.

10 (Recess.)

11 COMMISSIONER HICKINBOTTOM: Good. Mr Rawat.

12 MR RAWAT: Thank you, Commissioner.

13 BY MR RAWAT:

14 Q. Mr Frett, thank you for coming back.

15 Could you--before we leave that document we were
16 looking at before the lunchtime break, could you just go to
17 page 242, please.

18 Just to return you to paragraph 6 which reads: "It
19 was further agreed that the Financial Secretary would
20 negotiate terms and conditions of the draft proposal with the
21 recommended company EZ Shipping Limited inclusive of price."
22 The disclosure that the Ministry of Finance provided contains

1 nothing that goes towards that paragraph, so there should be,
2 I'd suggest, perhaps a note of a meeting with EZ Shipping,
3 perhaps e-mails, correspondence, something that's
4 pre-contract correspondence.

5 So, could I ask that, now you're taking this review
6 back to revisit it, that that also be in your mind?

7 A. Commissioner, I will seek to do so.

8 COMMISSIONER HICKINBOTTOM: Thank you.

9 BY MR RAWAT:

10 Q. Just so that you can orientate yourself in time,
11 the document we were looking at is the 2nd of September 2020.
12 If you look at page 222, on the 7th of October 2020, Cabinet
13 agreed the issuance of the contract agreement between the
14 Government and EZ Shipping--that's down at the bottom--for
15 \$840,000, a duration of 60 days.

16 Now, that's the next event in time, but where we
17 see at (a), there's reference there to Appendix F.

18 When the Ministry of Finance receives an expedited
19 extract, do you also receive the appendices?

20 A. Commissioner, if Appendix X was noted in the
21 expedited extract, it would have formed part of the Cabinet
22 paper, so that document should be available.

1 Q. Does it come to the Minister of Finance--Ministry
2 of Finance?

3 My point is, do you just get this page, the
4 expedited extract, or do you get the appendices that are
5 cited in it?

6 A. Commissioner, the extract comes to the Ministry of
7 Finance when Cabinet makes a decision and it pertains to the
8 Ministry.

9 With respect, Commissioner, to the appendix, there
10 is no need for the appendix to come back to the Ministry of
11 Finance because we are the originator of the paper.

12 COMMISSIONER HICKINBOTTOM: Exactly. So, that's
13 emanated from you to cover the--

14 THE WITNESS: Yes.

15 COMMISSIONER HICKINBOTTOM: Because you were the
16 corresponding department, effectively.

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

19 THE WITNESS: And just noting that we're just
20 making reference to it.

21 BY MR RAWAT:

22 Q. So, it's making reference to an appendix that would

1 have been included in the original Cabinet papers submitted
2 to Cabinet?

3 A. Correct, Commissioner.

4 Q. Thank you for clarifying that.

5 Could you just quickly help me with page 301,
6 please, Mr Frett.

7 So, we've seen your original memo. We've seen the
8 Cabinet decision. In between, on Sunday the 20th of
9 September 2020, you e-mailed, I think it's the AG's office,
10 with what you say is at the bottom "attached Cabinet paper
11 and Appendix E" and this is award of a contract for
12 EZ Shipping.

13 Now, the response that came back on the 21st was
14 that the good standing certificate from the Company's
15 register and the register director should be sourced so that
16 we are in a position to confirm that the Company's capable of
17 entering legal relations with the Government and that
18 Mr Chadwall is a director and thus capable of making
19 decisions which bind the company. Mr Chadwall is the owner
20 of EZ Shipping.

21 So, does it follow that what had effectively
22 happened was that the Government was using the services of

1 company, EZ Shipping, because they had started using their
2 services as from August 2020, for whom as yet they did
3 not--have not been able to confirm that the company was
4 capable of entering legal relations and Mr Chadwall was a
5 director?

6 A. Commissioner, I would not summarise it that way.
7 We were in the height of COVID-19, and during that time, like
8 in any other country, there was a lot of uncertainties. And
9 pertaining to the border security, there was of utmost
10 importance because they had concerns about smuggling of
11 humans--human smuggling as well as other drug activities,
12 criminal--other criminal activities. So, that was at that
13 heightened time of concern the Government felt it necessary
14 to protect the borders.

15 With respect to Ms Barry's response asking for this
16 information from the Attorney General, Commissioner, some
17 form of due diligence would have taken form with the three
18 providers that the Joint Task Force evaluated to know their
19 capabilities and whether or not they could have provided the
20 services. And based on that due diligence, they would have
21 thought--they would have engaged in, they decided that this
22 was the best option to move forward with, but the back end

1 now of dealing with the contractual arrangement where we have
2 policies in place that require certificates of good standing
3 from Inland Revenue, Social Security, and NHI. In addition,
4 they should have produced the trade license, and if they did
5 not have a trade license, they need to have a company. They
6 have to show that the company was in good standing. That's a
7 standard policy requirement.

8 Sometimes I know that, Commissioner, to put things
9 into perspective, at that time too, the government office is
10 in lockdown, we were persons who could not come into the
11 office for whatever reason. We did not have, especially with
12 Inland Revenue, the resources at that time to be able to act
13 expeditiously. But this happened just at the nick of time,
14 and sometime these entities ask for a lead time for providing
15 these documents. And I do believe from my recollection--I
16 can go back and double-check, Commissioner--that such
17 information was subsequently provided.

18 But I do believe that, because of the urgency of
19 the matters, that that document may have been submitted to
20 Attorney General Chambers without those supporting documents
21 as part of a policy initiative when issuing contracts.

22 COMMISSIONER HICKINBOTTOM: Thank you.

1 BY MR RAWAT:

2 Q. Thank you.

3 Let's go to 231, please. This is now Memo No. 555
4 of 2020 dated the 28th of October 2020. It carries your name
5 at the top of it, and again it relates to EZ Shipping.

6 Now, this is about an issuing of a new contract to
7 EZ Shipping. We see that at paragraph 4. Now, in that
8 paragraph--give me a moment, please.

9 (Pause.)

10 Q. Sorry, it's paragraph 2 I should take you to.

11 Now, Paragraph 2 says: "This border security
12 measure has proven objectively successful in deterring
13 persons seeking to enter into the territory illegally. There
14 has been a marked reduction in marine traffic to that end."

15 Now, where did your information that there had been
16 a marked reduction come from?

17 A. Commissioner, the paper was drafted in consultation
18 with Customs--Mr Smith is the head of the Joint Task
19 Force--and this information was shared from--I can't say the
20 Joint Task Force, but since he's the head of the Joint Task
21 Force, I can only draw the conclusion it came from the Joint
22 Task Force--in working with the other law-enforcement

1 agencies of the Task Force, as well as the counterpart in the
2 U.S. Virgin Islands.

3 Q. You say that the information came either from the
4 Joint Task Force or the Customs Department, but in what form
5 did the information come to you that you used in this memo?

6 A. Commissioner, from my recollection, it probably was
7 verbally in our discussion in drafting the document, but I
8 will have to double-check on that. I will have to confirm
9 that.

10 Q. So did--is it your recollection, Mr Frett, that in
11 preparing this document, you would have had verbal
12 discussions with Mr Smith, for example?

13 A. Commissioner, that is--that is correct. I would
14 not have called--I would not have put this document together
15 without the involvement of the Head of the Joint Task Force.

16 Q. And would you have had e-mail correspondence with
17 him?

18 A. If they're not provided, we sought to provide all
19 documents pertaining to any transactions, pertaining to
20 EZ Shipping as requested, but it is a particular document,
21 the gentleman could have presented, I will seek to do so
22 because in submitting of the information, I did tell the

1 team, I gave them access to my e-mail to do the search for
2 any matters popping up that says "EZ Shipping" or if I saw
3 the e-mail that said that we can do such.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 THE WITNESS: It could have been missed.

6 COMMISSIONER HICKINBOTTOM: But so far as you're
7 aware, everything has been disclosed?

8 THE WITNESS: As far as I know, Commissioner.

9 COMMISSIONER HICKINBOTTOM: But you will check in
10 your own e-mail again?

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: Thank you.

13 BY MR RAWAT:

14 Q. Right. And could it be that you were actually
15 provided documents, data statistics, to show how the radar
16 barges had functioned, or does it come down to it's
17 Mr Smith's opinion that you're reporting in the memo?

18 A. Commissioner, I do not recall statistics as far as
19 data in any specific format. I will not say that it is a
20 Commissioner opinion based on the information that he
21 presented from how he spoke apparently come from activities
22 that actually occurred based on the radar system detected

1 based on vessels that may have been detained, based on what
2 their counterparts in the U.S. Virgin Islands and others
3 would have said there's been a reduction of traffic.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 THE WITNESS: So, those information based on that,
6 they would have drawn the conclusion.

7 COMMISSIONER HICKINBOTTOM: But any data will be
8 with Mr Smith--

9 (Overlapping speakers.)

10 THE WITNESS: Yes. I will seek to see, but I'm
11 not--the Commissioner have any data relating to that or his
12 counterparts.

13 BY MR RAWAT:

14 Q. If you go to 263, please, we might be able to deal
15 with this one shortly. This is your next memorandum again
16 for a new contract with EZ Shipping. It's dated 15th of
17 January 2021, Memo 73 of 2021.

18 Again, if we look at paragraph 2, it says there:
19 "This border security measure has proven objectively
20 successful in deterring persons seeking to enter into the
21 Territory illegally. There has been a marked reduction in
22 marine traffic to that end."

1 And again, put simply, Mr Frett, is that just
2 information coming from Mr Smith in the way that you have
3 previously discussed in relation--

4 (Overlapping speakers.)

5 A. Commissioner, that is correct.

6 COMMISSIONER HICKINBOTTOM: They're the same words;
7 yes?

8 THE WITNESS: Yes, Commissioner.

9 And I would say, Commissioner, even I do not have
10 that information, sometime you will see it on the news or you
11 would call me and say this just happened or that just
12 happened. And that information may not have been documented,
13 it might have been in the form of a phone call. And I'm sure
14 the National Security Council will have such information as
15 well.

16 COMMISSIONER HICKINBOTTOM: Yes. Okay. Thank you.

17 BY MR RAWAT:

18 Q. If you look at--just look at 259, please.

19 This is the--sort of effectively the Cabinet
20 extract of the decision the Cabinet made which was to approve
21 the new contract, and we see that if you go to 260, it's
22 dated the 2nd of March 2021.

1 And--I mean, it seems to be an incomplete document,
2 but if you go to 261, again that's--it refers again to the
3 same memo, same title--

4 A. Yeah.

5 Q. --perhaps has a similar paragraph (a), but it's
6 dated the 17th of February 2021. So, the first one we looked
7 at is dated the 2nd of March, the second one is dated the
8 17th of February 2021.

9 Just dealing from your experience, Mr Frett, do
10 sometimes expedited extracts emerge about the same decision
11 but that are differently dated?

12 A. Commissioner, this would be a question for the
13 Cabinet Secretary, but looking at this, the expedited
14 extract, from my knowledge, is something that happened
15 immediately, and afterwards they don't have the formal
16 official memo coming out of Cabinet.

17 So, I don't want to say that is the case here.
18 Looking at the numbers, it's the same number. I have to read
19 the document because I didn't have an opportunity to peruse
20 what I was going to be asked today. So, if it came out 2021
21 to look at it, but it could be that one is expedited extract
22 and one is the regular extract because, if you look at the

1 top, one says "regular," one says "expedited." Expedited
2 happened immediately to allow the execution of whatever--

3 COMMISSIONER HICKINBOTTOM: And the regular
4 extract, the later one, referred--

5 THE WITNESS: That was followed after.

6 COMMISSIONER HICKINBOTTOM: --it refers to the
7 expedited extract?

8 THE WITNESS: Yeah.

9 BY MR RAWAT:

10 Q. Do these come out via e-mail or do they come out
11 via ExcoTrack?

12 A. Commissioner, there is a current ExcoTrack system,
13 that once they're uploaded, they're immediately sent to the
14 person who is dealing with the particular matter, so as you
15 can--it comes in that format through the system back to the
16 software system.

17 Q. Can we go, please, to--

18 A. And as well to your e-mail as well.

19 COMMISSIONER HICKINBOTTOM: Right. Yes. Thank
20 you.

21 BY MR RAWAT:

22 Q. Can I just take you to just 283, please. You see

1 the bottom of 283, it's an e-mail from Mr Matthews, who was
2 then Police Commissioner, dated the 17th of August 2020 to
3 the Financial Secretary. You're copied in, you're the last
4 name on the chain, and Mr Matthews is referring to the NS
5 expedited extract and the subsequent submission of priority
6 spend areas which he attaches to the e-mail, and then refers
7 to only one vessel being available. Now, that's that.

8 If you go over to 282, there is an e-mail from
9 Teshonda Thomas on behalf of Mr Forbes, 31st of August 2020,
10 which is to Mr Matthews and Mr Smith. You're copied in.

11 Who is Mr Emanuel?

12 A. Commissioner, that is the Budget Coordinator.

13 Q. So, that's another official in the Ministry of
14 Finance?

15 A. Correct.

16 Q. Now, the e-mail continues "Dear Sirs," but if you
17 go over to the other side, it refers to a recent set of
18 meetings with the Premier and Minister of Finance. "I would
19 like to confirm that funding in the amount of 1 million is
20 currently available, through the Ministry of Finance, to
21 address the priority areas in the COVID-19 Border Security
22 Plan." I appreciate you were not Financial Secretary at the

1 time, but could you shed any light on what funds Mr Forbes is
2 referring to here and where they had come from?

3 A. Commissioner, from my knowledge, I do believe I
4 will have to verify that. That funding was approved through
5 a supplementary relating to the COVID matters. And it was--I
6 do not remember the exact sum that was placed in that
7 particular account under the Ministry of Finance related to
8 border security. It was placed under there because Customs
9 was the head of the Joint--is the head of the Joint Task
10 Force. And since Customs falls under the Ministry of
11 Finance, funding for the border security measures was placed
12 under the Ministry of Finance that included Police, Customs,
13 and Immigration.

14 And I believe that what Mr Matthews is asking for
15 is access to the money because the plan that they presented
16 would have included, if I guess, the funding that is
17 requested--required, referring to here in this document,
18 access to that money.

19 Q. Just go now to 375, please, Mr Frett.

20 It's an e-mail from Sandra Ward, the Cabinet
21 Secretary, dated 25th of September 2020, and it's about
22 engagement of EZ Shipping Limited to provide radar

1 surveillance platforms. You are one of those copied into the
2 e-mail which is addressed to the Financial Secretary. But
3 it's setting out an action item from the National Security
4 Council meeting, which asked for a Cabinet paper to have
5 included in it information about scope, specifications,
6 equipment of vessels that are being utilised as platforms
7 along with the technical details and the radars being used
8 and a detailed payment plan should also be submitted.

9 Can you help at all with what was actually being
10 asked for here?

11 A. Commissioner, at this stage, it would be difficult
12 for me to state that--I read the document here, but I would
13 have to go back and do my research and try to recollect on
14 what exactly this was pertaining to and what action may have
15 been taken.

16 At a glance, however, Commissioner, it appears that
17 this is wants more information to see what is the
18 specification, what is happening with the border security, I
19 guess they're trying to find out how effective are the reach
20 it probably had, but I cannot speak directly to it until I
21 have more--a bigger opportunity to review the document, and
22 then I would be able to make a more informed and put it into

1 informed response and put it into context.

2 Q. Would you accept that it appears to be relating
3 specifically to the EZ Shipping vessels that have been
4 provided? It's asking for information about them, isn't it?

5 A. Commissioner, from the caption, the title at the
6 top is "NSC Action: Engagement of EZ Shipping." So, from
7 what I'm seeing on the document, one would infer that it
8 pertains to EZ Shipping.

9 Q. Okay. Please go to 614, please.

10 The Commissioner has heard evidence already that,
11 on the 6th of May 2020, EZ Shipping and its owner Mr Clyde
12 Chadwall, sent an unsolicited proposal in to Government which
13 was copied in to--was also copied to the Police Commissioner,
14 and this is his response that we see at the bottom here.

15 Amongst those he copied in were Greg Romney and
16 Leslie Lettsome of Customs. But if you look at the e-mail
17 above that, it's dated the 3rd of November 2021, and it is a
18 communication to you from Greg Romney saying "This is the
19 very first communication I received regarding the EZ Shipping
20 proposal," so it's just that e-mail after sometime being
21 forwarded to you.

22 If you then look overleaf at 616.

1 A. Commissioner, may I make an observation?

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: That would have been March, I
4 believe.

5 BY MR RAWAT:

6 Q. Yes, you're quite right. 11th March. It's the
7 American way--you're quite right. Thank you very much for
8 that. We are not yet in November.

9 A. Yes.

10 Q. If you go over to, please, 616, Mr Frett. I just
11 want to show you a sequence of e-mails and then ask you a
12 question.

13 A. Hmm.

14 Q. Again, Mr Romney forwards you, again on the 11th of
15 March 2021, information about an agreement with Mr Henley for
16 the use of his boat during lockdown.

17 If you go to 624, again 11th--3rd--11th of March, I
18 should say, signed agreement with Mr Johnson is forwarded to
19 you, and original e-mail is March 28, 2020.

20 If you look at 638, same date again, and you're
21 being sent and asked to compare dates between the EZ Shipping
22 proposal of August the 12th and this one from Caribbean

1 Transport of August the 11th.

2 If you go to 640, on the same date again, 11th of
3 March, Mr Romney is sending to you a letter obtained after a
4 meeting with Mr Chadwall to understand what was being
5 proposed at what cost. If you turn overleaf, you will see
6 that the letter is dated the 12th of August 2020.

7 And the last one just to invite you to look at,
8 please, Mr Frett, is at 642, and what Mr Romney is now
9 forwarding to you is e-mails, in particular at the very
10 bottom an e-mail of Mr Matthews about the first approach from
11 EZ Shipping, the unsolicited proposal.

12 And so you have a set of e-mails that are sent to
13 you on the 11th of March 2021. Could up just explain why
14 this information was being sent to you at this point in time,
15 please?

16 A. Commissioner, from my recollection is that once the
17 request was made--I think it's around the request from the
18 Commission of Inquiry, if I'm not mistaken, and we was trying
19 to solicit the information, try to get the information from
20 the Department because, like I stated earlier, Commission, is
21 that the Customs was the lead agency and they are the head of
22 the Joint Task Force, so I am, from my involvement

1 previously, I was trying to--I thought it was best to go
2 directly to them and get the information that I may have had
3 gaps.

4 In fact, I was trying to search my e-mail, and we
5 had more I think from Lotus Notes, so finding the
6 information, I think, was difficult, so I asked--I asked the
7 Commissioner, who spoke to Mr Romney, to send me all
8 information they may have had related to the EZ Shipping
9 matter, so that's why you see that date. It may have been
10 sent to me, I may have had a copy of the Ministry, I may have
11 had a hard copy previously, so I don't want the Commissioner
12 to think this is the first time that we are seeing this
13 document because it was integrally in part of the process.
14 It's just for the submission we asked for them to submit the
15 documents.

16 COMMISSIONER HICKINBOTTOM: Because you couldn't
17 find any of the documents?

18 THE WITNESS: Yes.

19 In a timely manner because the time was so tight.
20 We looked at the files. In addition to the files I know that
21 there were some e-mails or some other--from my memory, I know
22 that there was other areas that was missing from our file,

1 and that's why I called the Commissioner in which he got me
2 this additional information.

3 BY MR RAWAT:

4 Q. So, these e-mails are directed to you trying to
5 respond to a request--

6 A. Yes.

7 Q. --rather than you having to do a separate exercise
8 for the purpose of assessing--

9 A. Yes.

10 Q. --the value of the EZ Shipping contract?

11 A. Yes, Commissioner, because I realised there were
12 some gaps.

13 COMMISSIONER HICKINBOTTOM: Yes. Okay. Thank you.

14 BY MR RAWAT:

15 Q. You haven't--the Ministry of Finance hasn't
16 received a request in relation to Grace Consulting, but you
17 were here when I asked Dr O'Neal Morton some questions, and
18 she also--she explained how at that stage in the process the
19 Ministry of Finance became involved. So, I would like to ask
20 you some questions about that. If you can't help, say so,
21 and we can try and get the information in a different way.

22 Now, if you go to 1027 in the bundle, please.

1 COMMISSIONER HICKINBOTTOM: It's in the other
2 bundle, I think. It's in the second bundle.

3 BY MR RAWAT:

4 Q. Yes. It's this.

5 A. Yes.

6 Q. Have you got it?

7 A. Yes.

8 Q. If you give me one moment, please.

9 A. Yes.

10 Q. Now, this is the first contract between Grace
11 Consulting and the Government of the Virgin Islands that I
12 was looking at with Dr O'Neal Morton this morning. And her
13 explanation--and I would just like you to confirm it--is that
14 because of the size of the contract it was one that could
15 stay with the Premier's Office, and so the Ministry of
16 Finance would not have had any involvement in this contract.

17 A. Commissioner, any contract under \$100,000 is
18 executed by the Department of the Ministry for which it
19 relates (drop in audio).

20 Q. If you go to 818 in the bundle.

21 A. 818?

22 Q. 818, please, Mr Frett. Thank you.

1 Memo 403 of 2019 dated the 11th of September 2019
2 from the Ministry of Finance.

3 So, this deals now, I think, with the steps taken
4 to enter into the second contract, which is Dr O'Neal Morton
5 explained because it's a major contract then falls under the
6 supervision of the Ministry of Finance. That's right, isn't
7 it?

8 A. Commissioner, in this sense, yes.

9 Q. Are there any instances when a major contract
10 doesn't come within the purview of the Ministry of Finance?

11 A. Commissioner, under normal stances--under normal
12 circumstances, notwithstanding that the contract is a major
13 contract, this merely is the agent that goes through Cabinet,
14 if necessary, to get approval of entering into that contract,
15 and once that contract is executed, it is the Ministry or the
16 Department that is responsible are the ones who execute that
17 practical--

18 COMMISSIONER HICKINBOTTOM: And supervise it?

19 THE WITNESS: And supervise it.

20 But in this instance there was a--there appeared to
21 be a unique arrangement because of the--I'm assuming that the
22 subject matters that were more financial in nature why the

1 Ministry of Finance was somehow involved in some
2 supervision--supervision aspect of it. But it's not a
3 normal--something you would see throughout.

4 BY MR RAWAT:

5 Q. Now in the lead-up to this because it's the
6 Ministry of Finance-like submission to Cabinet to approve
7 this contract, isn't it? In the lead-up to that new
8 contract, would the Ministry of Finance have been in
9 correspondence with Grace Consulting?

10 A. Commissioner, I cannot speak to that.

11 Q. Would you expect that there would be
12 correspondence?

13 A. Under normal circumstances, Commissioner, there may
14 have been, but I cannot speak to--to something like that
15 because the Ministry of Finance subject area that a
16 consultancy is being entered into, there may have been. You
17 have to ask the former Financial Secretary those questions
18 but I cannot speak intelligently to that.

19 Q. When there is such correspondence, does it involve
20 correspondence by e-mail?

21 A. Commissioner, the Government of the Virgin Islands
22 interact--their communication took many forms, through

1 e-mails or memorandum, financial circulars, in so many
2 different ways, so I cannot say at this point which medium
3 they used, if there was such a communication.

4 Q. Does that interaction include the use of WhatsApp
5 or other sort of social medium?

6 A. Commissioner, WhatsApp and other social medium that
7 come in the form of communication these days, we find it to
8 be quite easy so sometime we may revert to that, but I cannot
9 say that that was the case in this instance.

10 Q. If you go to 821, please, and paragraph 16.

11 Actually, if we start at paragraph 14, I'm going to
12 summarize, but paragraph 14 makes clear that the Ministry of
13 Finance is a proponent of the tender process for--where you
14 have contracts over \$100,000. It notes at paragraph 15 that
15 the deliverables being sought from Grace Consulting are
16 functions to be delivered by the Ministry of Finance and to
17 advise the Minister of Finance accordingly; and that even
18 though the consultant will be reporting to the Premier,
19 copies of reports should be furnished to the Financial
20 Secretary.

21 But at 16, it then goes: "However, if it has been
22 determined that Grace Consulting is best suited to provide

1 services required directly to the Premier's Office and those
2 reasons must be provided in the paper, the reason for the
3 waiver must also be justified to ensure that transparency,
4 accountability and value for money are achieved. The
5 established practice is to provide evidence that
6 short-listing of established providers for comparison were
7 sought and that they provided similar goods and services in
8 the past or that experts have deemed that these providers
9 have proven track record delivery."

10 So, where there is a tender waiver, paragraph 16
11 seems to suggest that there's an established practice of
12 information that you need to gather to justify that waiver;
13 is that right?

14 A. Commissioner, whenever someone is asking for a
15 waiver within the process, there should be a justification or
16 explanation as to why such a process--the procurement process
17 is being waived.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 BY MR RAWAT:

20 Q. In this case, taking this case as an example, where
21 would that justification be recorded?

22 A. Commissioner, I did not have time to peruse this

1 particular document, so I do not--I cannot say, but usually
2 you will find that in the decision sought, sometime you may
3 find the justification in the background of the paper, so
4 you'll find that in either one of the two places. The
5 decision start at the background as to why this--why a
6 particular product of service is required.

7 Q. But if we go back to paragraph 16 and we make it
8 more general, if there is an established practice to provide
9 evidence, does that mean that within the Ministry of Finance
10 you would hope the information or the evidence that you have
11 obtained to comply with that established practice?

12 A. Commissioner, I'm not familiar with this particular
13 paper, and I don't have the details, so I don't want to
14 unload for anything, but I would say that the points raised
15 in paragraph 16 that was something as a practice, we would
16 seek to make sure that such best practices are adhered to,
17 best procurement practices are adhered to, at all times.

18 COMMISSIONER HICKINBOTTOM: So, there should be
19 something--there should be something in writing that went to
20 Cabinet justifying the waiver?

21 THE WITNESS: That is a position that Cabinet and
22 the Cabinet Secretary, Commissioner, always raised that, that

1 justification must be given.

2 COMMISSIONER HICKINBOTTOM: Now, in paragraph 19 on
3 the top of Page 822, there is a reference to "my general
4 views on the waiver of the tender process are articulated in
5 Appendix C."

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: I'm not sure we have
8 Appendix C.

9 MR RAWAT: We don't, but I'm--not sort of in a form
10 that we can reconcile with this paper, but I think this is,
11 with no disrespect to the author of the memo, sort of cut and
12 paste of the view of the AG. And if you go to 816.

13 COMMISSIONER HICKINBOTTOM: Yes. You're right.

14 MR RAWAT: That is, I think, the stance of the
15 standard memorandum that the--

16 THE WITNESS: The AG uses.

17 MR RAWAT: --the AG has issued on the approach.
18 And it's the advice of the--it's the previous AG's advice
19 about the tender process.

20 COMMISSIONER HICKINBOTTOM: Thank you very much.

21 BY MR RAWAT:

22 Q. Could I just ask you--and again, you may not be

1 able to help on this, but go to 874, please.

2 A. Yeah.

3 Q. A cabinet minute of 2019.

4 It's chaired by the acting Governor, Mrs Rosalie
5 Adams, and we can see that at the--recorded absent on leave
6 was then Governor Mr Jaspert.

7 If you look at paragraph 22, it begins: "The
8 Acting Governor asked about the concerns expressed by the
9 Financial Secretary that Grace Consulting's duties would
10 overlap with their mandate to recommend revenue generating
11 initiatives."

12 Now, you would not have been Financial Secretary at
13 that time, but in order for the Acting Governor to express
14 that view, would those concerns have been recorded in a
15 document that was before Cabinet?

16 A. Commissioner, I can only look at the content of the
17 document, and if that was expressed by the then Acting
18 Governor, I cannot speak to whether or not the Financial
19 Secretary was invited to Cabinet to where such a statement
20 was made or it could have been in a form of another document
21 because, from time to time, public secretaries or other
22 officials are summoned to Cabinet for clarification on any

1 document, so I don't know what the situation is here,
2 Commissioner.

3 COMMISSIONER HICKINBOTTOM: No, thank you for that,
4 but also I think the last sentence in paragraph 22 on that
5 page does confirm that Appendix C was simply the document at
6 page 816.

7 MR RAWAT: Yeah.

8 BY MR RAWAT:

9 Q. What we see also in paragraph 2 is that the
10 Minister of Finance said he had discussed this concern with
11 the Financial Secretary.

12 Now, would a conversation like that between the
13 Minister and the Financial Secretary be recorded routinely?

14 A. Commissioner, I cannot speak to what took place
15 between the former Financial Secretary, but I do know when I
16 interact with the Minister of Finance, at times I do record,
17 I do work with my book and I record some information and
18 other times I do not, and sometimes I use my Surface and send
19 some notes and I take notes sometimes, so I cannot
20 speak--there is not a policy to say that this is a format in
21 the way you meet with the Minister are you supposed to record
22 your conversation or any decision that is being made at any

1 given time.

2 Q. It's a matter of individual--

3 A. Yes.

4 Q. --practice?

5 A. Yes.

6 Q. Thank you.

7 A. Some person may after the meeting take notes for
8 themselves, too, of what the actions they need to be taken,
9 some persons may do so during the conversation.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: It all depends on the situation.

12 BY MR RAWAT:

13 Q. Before we leave the document, if you look at
14 paragraph 23, do you agree with the proposition that's set
15 out there that the standard should be to avoid waiving the
16 tender process but only in exceptional circumstances?

17 A. Commissioner, we are near completion, it should be
18 going to Cabinet shortly, and the new Procurement Bill, and
19 this is a key area that we address in the Procurement Bill on
20 how waivers are to be issued in the procurement process.

21 So, we are--if you look at just about all of the
22 Cabinet papers with waivers have been issued, we always raise

1 our concern about it from the Ministry of Finance
2 perspective, and we have addressed that through the draft
3 paper that is coming from Cabinet and then to the House of
4 Assembly for approval, using best practices, and that--that
5 is being implemented throughout.

6 COMMISSIONER HICKINBOTTOM: Sorry, I understand
7 that, but that wasn't the question.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: The question was do
10 you--do you approve of 23 as a proposition?

11 THE WITNESS: Commissioner, what page was that
12 again?

13 COMMISSIONER HICKINBOTTOM: At page 874.

14 THE WITNESS: 874.

15 COMMISSIONER HICKINBOTTOM: Paragraph 23, that the
16 standard should be to avoid waiving the tender process.

17 THE WITNESS: Yes, Commissioner. That is why we
18 have made sure, not because of this statement, it has been an
19 issue of concern, and that is why we have addressed--we are
20 addressing it now in the new Procurement Bill. It's an issue
21 that we acknowledge.

22 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

1 BY MR RAWAT:

2 Q. Let's turn to the second agreement with Grace
3 Center, which is at 916 in the bundle that you have in front
4 of you, Mr Frett.

5 Sorry, give me a moment.

6 (Pause.)

7 Q. Now, this Agreement--you were here when Dr O'Neal
8 Morton gave evidence and explained that this Agreement was
9 different from the first because it came under the
10 supervision of the Ministry of Finance. The role of the
11 Premier's Office was to pay. They provided the funds, if you
12 like, but the supervision came from the Ministry of Finance.

13 Now, the--if we go to 6.1 in this paper, in this
14 contract, at 919, there is a requirement there on the
15 consultant, Grace Consulting, to deliver to the Financial
16 Secretary and others monthly reports, briefings and other
17 documents as particularized in Appendix A, and we don't
18 actually have Appendix A, but it follows from this, doesn't
19 it, that these reports would have been delivered to the
20 Ministry of Finance. In fact, when we looked at them earlier
21 with Dr O'Neal Morton, they are addressed to Glenroy Forbes.

22 So, how would--with a contract like this, if the

1 Ministry of Finance is exercising supervision, how does it go
2 about evaluating whether a contractor is delivering on the
3 contract properly?

4 A. Commissioner, from my knowledge with respect to
5 this project, the contract, is that one of the requirements
6 that's correctly stated there are to submit monthly reports,
7 and the Ministry of Finance will review the reports and they
8 are comfortable with the contents there or they will be
9 submitted to the Premier's Office for payment.

10 Q. Let's look at one of the reports. It's at 912.
11 Again, it's written on the front of it. It's a report 24th
12 of June 2020, but written on the front of it in manuscript is
13 approved 7th of the 7th 2020. It's addressed to Mr Forbes.

14 Can you identify that signature?

15 A. Commissioner, that is my signature.

16 Q. Right. So, that's something you approved.

17 Now, you say you will receive reports and consider
18 them, but what is the process by which you look at the
19 reports and critically evaluate whether someone is performing
20 their contract?

21 A. Commissioner, with respect to this particular
22 contract, there was no--from my knowledge, I don't think

1 there was a set standard of analysis because of the--some
2 area that was broad in scope, and the overall project or
3 program pertaining to what contains in this, this was
4 originally paid in the Premier's Office. However,
5 we--because of some of the nature of some of it was more
6 revenue-generating-type activities is that we were to review
7 what the officer or the consultant was doing with respect to
8 some of these things.

9 Q. Well, would you make a record of your assessment?
10 I mean, is it just simply a case that you, Mr Frett, would
11 read this Report and then write on the front of it
12 "approved," or do you make other notes to show why you
13 consider that they are performing under the contract?

14 A. Yes--Commissioner, in some instances, I will--for
15 expediting the payment, I may have signed it, but I do know
16 that from time to time the consultant would have had
17 discussions or meetings which I may not have been a part of
18 with the Financial Secretary, so I cannot speak to some of
19 the discussions that they may have had.

20 As the Deputy Financial Secretary at the time
21 responsible for operations, there are certain things I would
22 sign off for on behalf of the Financial Secretary to exhibit,

1 but I do know that the discussions surrounding most of the
2 deliverables, he did not--the consultant did not have them
3 directly with me; it was more so with the Financial
4 Secretary. I don't know the magnitude of it, but I know
5 that--they will come to me directly about the deliverables.

6 Q. We understand that Mr Skelton Cline currently has a
7 contract with the Government in the same terms. Are you now,
8 as Acting Financial Secretary, receiving reports from
9 Mr Skelton Cline?

10 A. Commissioner, we continue to receive reports, and I
11 would say that I did receive some--a huge bundle. I didn't
12 have an opportunity to go through it, but I'm sure it
13 probably was supply of activities surrounding--surrounding
14 all that he did so far.

15 Q. When did you receive that huge bundle?

16 A. I can't say. It had to be months ago.

17 It was part of us getting the information to submit
18 to the Commission of Inquiry because, as Financial Secretary,
19 I said I need to see all of the reports that was completed so
20 I can make copies for submission to the COI.

21 Q. Sorry, who provided that huge bundle to you?

22 A. That was Mr Cline. Skelton Cline.

1 Q. So in order to--

2 A. It was--Commissioner, it was easier for me to go to
3 him than--as I stated, we are dislocated right now because of
4 COVID and relocation from the admin complex of filing room is
5 in a total different building from where we operate from, and
6 I thought it was easier for him to provide all of the reports
7 that may have been submitted, that would have been submitted,
8 so that we could have copies and submit.

9 COMMISSIONER HICKINBOTTOM: And that was for the
10 purposes of making a submission to the Commission of Inquiry?

11 (Overlapping speakers.)

12 THE WITNESS: Yes.

13 BY MR RAWAT:

14 Q. Even though at that time and still state, you
15 haven't yet had a request for information relating to
16 Mr Skelton Cline?

17 A. Commissioner, can you repeat? I'm not--

18 Q. As I understand it, the Commission hasn't sent you
19 a Letter of Request in relation to Grace Consulting or
20 Mr Skelton Cline, but--

21 A. Yes, yes.

22 Q. --you took it upon yourself to contact him and

1 obtain information from him?

2 A. Yes.

3 Q. I see. And have you done that in relation to any
4 other people?

5 A. Commission, no--Commissioner, no, not that I know.

6 Q. Was there any reason, out of all the people with
7 whom the Ministry of Finance is currently contracting on
8 behalf of the Government, you chose Mr Claude Skelton Cline
9 to approach?

10 A. Commissioner, can you repeat that again, please?

11 Q. Was there any--you must, as the Financial
12 Secretary, be supervising a number of contracts.

13 A. Hmm.

14 Q. Was there any reason, out of all of those
15 contracts, that the only person you chose to approach for
16 information was Claude Skelton Cline?

17 A. Commissioner, with respect to Mr Cline, a respected
18 public figure, and he has a talk show, and I think it was
19 appropriate to clarify to make sure that whatever he was
20 supposed to do with regard to the Financial Secretary, that
21 we have the necessary documents in place in the event,
22 because being a small society and he's a public figure, and I

1 wanted to make sure that I have other requisite documents.

2 Q. And there are no other public figures that you've
3 treated on that basis?

4 A. Commissioner, at this time, no.

5 MR RAWAT: Commissioner, may I just have a few
6 moments?

7 COMMISSIONER HICKINBOTTOM: Yes, certainly.

8 (Pause.)

9 MR RAWAT: Thank you, Commissioner. Those are my
10 questions.

11 Mr Frett, thank you for your time and thank you for
12 the way you have given evidence today.

13 COMMISSIONER HICKINBOTTOM: Again, can I add my
14 thanks as well, Mr Frett, for your assistance. You've
15 referred to some documents that you're going to look for, and
16 we will write to you confirming those documents, and we will
17 write to you as soon as we can.

18 And again, in terms of timing, by next Tuesday?

19 THE WITNESS: I will seek to do so, Commissioner.
20 Some of them we probably already have. Although it was
21 copied incorrectly, I'm sure that we can identify those.

22 COMMISSIONER HICKINBOTTOM: Good. Thank you very

1 much. Thank you very much.

2 And in terms of--

3 SIR GEOFFREY: One more--one day as the previous,
4 if I may.

5 COMMISSIONER HICKINBOTTOM: Certainly.

6 SIR GEOFFREY: I have been taking notes, and I
7 think I can consult with the Attorney and we can give you a
8 swift answer.

9 COMMISSIONER HICKINBOTTOM: Thank you very much,
10 Sir Geoffrey.

11 Good, thank you, Mr Frett.

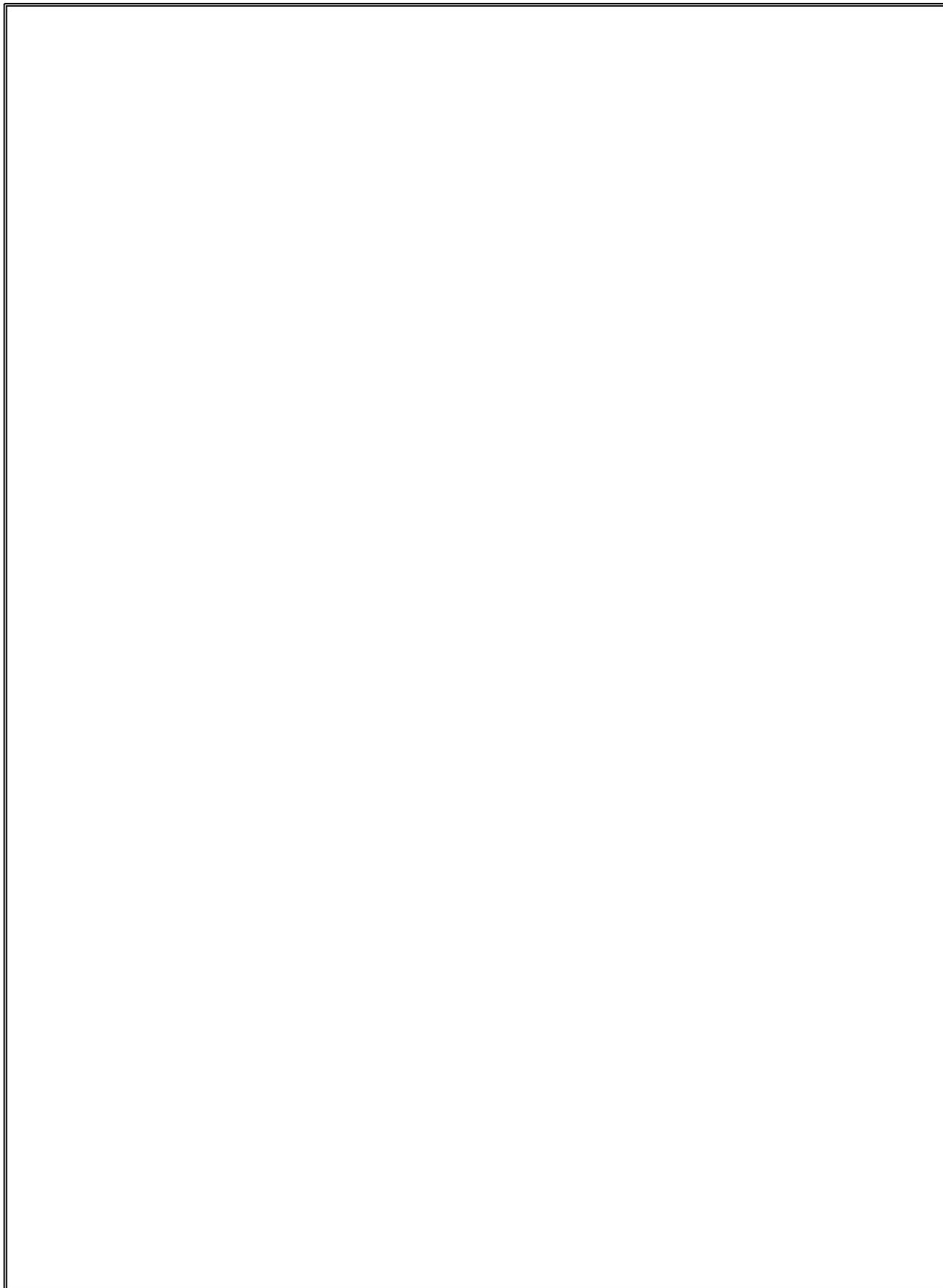
12 Now, we may have to rise because things have to be
13 COVID-sanitized, which we will do as quickly as we can. Five
14 minutes?

15 COMMISSION SECRETARY: Yes.

16 COMMISSIONER HICKINBOTTOM: Five minutes. Thank
17 you.

18 (End of Session 2)

1



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

Session 3

COMMISSIONER HICKINBOTTOM: Good. Thank you for your patience, Premier.

It's important that you are here to hear the evidence of Dr O'Neal Morton and Mr Frett because they were obviously talking about requests that were made to you and the responses that were made on your behalf.

And also, I suspect, the number of questions now that we'll have to ask you will be less than there otherwise would have been.

THE WITNESS: No problem.

COMMISSIONER HICKINBOTTOM: Could the Premier be sworn in.

THE WITNESS: Hello, my good friend. It's warm right there.

COMMISSION SECRETARY: Would you like to swear an oath or make an affirmation?

THE WITNESS: I don't like to swear, so that's affirmation.

COMMISSION SECRETARY: Would you like to turn the sheet over in front of you.

THE WITNESS: Yeah.

COMMISSION SECRETARY: That white sheet there, and turn it over.

THE WITNESS: Okay.

1 COMMISSION SECRETARY: And read the words on the
2 sheet.

3 THE WITNESS: I do solemnly swear and truly declare
4 that the evidence I shall give shall be the truth, the whole
5 truth, and nothing but the truth.

6 COMMISSION SECRETARY: Thank you.

7 THE WITNESS: So help me God.

8 COMMISSIONER HICKINBOTTOM: Sir Rawat.

9 MR RAWAT: Thank you, Commissioner.

10 BY MR RAWAT:

11 Q. Good afternoon, Premier, and can I reiterate the
12 Commissioner's thanks for your patience today.

13 A. Yes.

14 Q. Can we start off with the usual formalities. Could
15 you give the Commissioner your full name, please.

16 A. My name is Andrew Alturo Fahie.

17 Q. And your professional address?

18 A. Commissioner, professional address is Cutlass
19 Building, Road Town VG1110. I don't write to myself so I try to
20 remember.

21 Q. As I've told every other witness, I try to keep my
22 questions short and simple. If at any time you wish me to
23 repeat or rephrase a question, please do ask me.

24 The bundles that we have been looking at with
25 Dr O'Neal Morton and Mr Frett are there in front of you, and we

1 can look at those in due course if we need to.

2 Again, as we tell all witnesses, do remember to keep
3 your voice up and speak slowly because then your answers are
4 more easily and accurately recorded on the Transcript of this
5 Hearing.

6 As the Commissioner has explained to you, it was
7 important to give you the opportunity to be present when senior
8 officials from the departments that you oversee and who report
9 to you as Premier Minister of Finance gave evidence because the
10 Letters of Request were addressed to you in person.

11 You are attending as a witness, and you will have
12 heard the explanation I gave to Dr O'Neal Morton and Mr Frett.
13 I don't intend today to put questions to you that contain a
14 criticism or an allegation that you have to answer. But, of
15 course, you do have Sir Geoffrey here to safeguard your
16 interests.

17 Can we start, as we do with all witnesses, with some
18 background, please, and just give--first of all, could you give
19 the Commissioner a brief outline of your background before you
20 entered politics, which I think was in 1999.

21 A. Before, you said?

22 Q. Yes, please.

23 A. Commissioner, before I entered politics, I used to
24 teach and also be Assistant Principal at the BVI High School,
25 which is now the Elmore Stoutt High School, and through that and

1 other areas that I've taught which included H.L. Stoutt
2 Community College and after-school program for young ladies that
3 were pregnant and drop out of school and had to be tutored to
4 get their degrees, and also at the prison for free. Every
5 afternoon, they help prisoners get their high school
6 certificates. So, all in all, I ended up teaching close to
7 3,000 persons over the years before I enter into politics.

8 I did try to get in politics in 1995 but I lost
9 miserably, so I said I wasn't coming back, but I did come back
10 in '99 and won as a representative for the First District, and
11 I've been in politics from then until now. This is my sixth
12 consecutive four-year term.

13 Q. Thank you. I think you were 28 years old when you
14 were first elected to the House of Assembly; is that right?

15 A. Yes, (unclear).

16 Q. And, as you've said, you've been a member of the House
17 of Assembly ever since. And has that been throughout as a
18 member of the Virgin Islands Party?

19 A. Yes, mostly in the opposition, but yes.

20 Q. Well, I understand that--and correct me if I'm
21 wrong--but I understand that the Virgin Islands Party formed the
22 Government between 1986 and 2003.

23 A. 19?

24 Q. '86 and 2003?

25 A. Right, but I wasn't--I wasn't involved.

1 Q. Of course not

2 A. Yeah.

3 Q. But that was their period of time in Government.

4 A. They had other periods, but that was the latest,
5 longest span in all the political history.

6 Q. You, of course, as you said, elected in 1999. Between
7 1999 and 2003, did you hold ministerial office?

8 A. Shortly from 2003--2001, I think it is, to 2003. Then
9 we lost the election. I became Minister, due to the Minister of
10 Education, across the floor, so I had--I was called from the
11 back bench.

12 Q. And you took over the Ministry of Education.

13 A. Ministry of Education was split at that time because
14 she--that Minister had Education and Health, so it split into
15 two Ministries, Education and then the Ministry of Health.

16 Q. Thank you. I understand again that the Virgin Islands
17 Party returned to Government from 2007 to 2011. In that
18 administration did you hold any office?

19 A. Yes. I was a Minister of Education from 2007 to 2011.

20 Q. And, of course, in the most recent election, you
21 returned as the head of your party, and you became the Premier.

22 A. Yes, in 2019, February 25th.

23 Q. Now, the Commissioner heard a few days ago from The
24 Honourable Minister Wheatley, and he explained that in the
25 Virgin Islands, if you stand for election, you have to make a

1 Declaration of Interest as a candidate. Could you just clarify
2 one thing for us, please: Where are candidates required to
3 publish that Declaration?

4 A. Well, Commissioner, we're--when you're running, you
5 have to declare it in the newspapers a certain--I can't remember
6 the day, but there's a specified time before the elections. So
7 once you declare that you're a candidate, so you must declare it
8 in the newspapers.

9 Q. And when you say, Premier, "in the newspapers", does
10 that--could it be any newspaper--

11 (Overlapping speakers.)

12 Q. --or are you required to put it in The Gazette?

13 (Overlapping speakers.)

14 A. But not newspaper, any public document--sorry, like
15 The Gazette, newspapers. I think then they were even
16 considering online because the law was kind of vague with online
17 at that time because it was written so long before.

18 Q. And does the law, the requirement prescribe what a
19 candidate has to set out?

20 A. It does, but it still be--but for myself, whatever I'm
21 involved in, I set it out because I firmly believe you can't be
22 private in the public.

23 Q. Do candidates have to say that they are of good
24 character?

25 A. Well, every candidate will say they have good

1 character, Commissioner.

2 COMMISSIONER HICKINBOTTOM: I think Mr Rawat is using
3 it in a technical sense.

4 MR RAWAT: A very technical sense.

5 COMMISSIONER HICKINBOTTOM: And a person of good
6 character has no convictions.

7 THE WITNESS: Oh, no convictions. Well, the--because
8 it's specific in terms of convictions, so it would be a
9 disqualifier.

10 BY MR RAWAT:

11 Q. Right.

12 A. Depending on what the length of the commission--the
13 conviction is, because, you know, there--there--there are
14 certain parts of the law that absolve some convictions; if six
15 months and under, then, you know, that the person could still
16 run.

17 COMMISSIONER HICKINBOTTOM: So--so--so some
18 convictions which are a particular sentence, I suspect--

19 THE WITNESS: Right.

20 COMMISSIONER HICKINBOTTOM: --you can't stand?

21 THE WITNESS: Some--some convictions if they're a year
22 or more, you cannot stand, but if it's a year or less, you can.

23 COMMISSIONER HICKINBOTTOM: And for the--for the
24 lesser offences, when you can stand, are--are--are those--do
25 those become spent so you don't have to disclose them? Is that

1 what you're saying?

2 THE WITNESS: Well, you disclose them, but--but
3 they're suspended sentences, so to speak, so they--I don't
4 remember the legal term but like suspended--

5 COMMISSIONER HICKINBOTTOM: Well, certainly in England
6 and Wales they're spent, but--

7 THE WITNESS: Right.

8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: --there may be a different
10 term--

11 THE WITNESS: But you're allowed to run still--

12 (Overlapping speakers.)

13 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

14 BY MR RAWAT:

15 Q. What's the position, though, if someone has just been
16 arrested or investigated for a criminal offence? Do they have
17 to declare that?

18 A. Well, yes. Well, arrested is not, as far as I can
19 recall, a barrier from running for elections. What is the
20 barrier would be is if you already tried and you were proven
21 guilty or you spent a year or more.

22 Q. Yes.

23 A. So the arrested would not be a barrier from running.

24 Q. And there is no requirement on the candidate to say
25 actually I was arrested two years ago for this offence, nothing

1 came of it, or I'm being investigated for a criminal offence.

2 That--the requirements don't extend that far.

3 A. No, you wouldn't--you wouldn't have that--you wouldn't
4 have to declare that. But, of course, it's a small country, and
5 everyone knows everyone, so everyone would know if that exists,
6 and if it's a barrier that would say when you come to register.

7 Q. And, I mean, who do you register with?

8 A. The Elections Office. They are the ones who are the
9 gatekeepers for this.

10 Q. Your perspective as a leader of a party, and you've
11 made public commitments towards transparency and good
12 government, from that perspective, if you had information like
13 that come to your notice about a candidate in your party, would
14 you allow that person to stand?

15 A. Information in terms of what?

16 Q. If--if you--if you were given information that a
17 candidate or a potential candidate had either been arrested or
18 had been investigated for a criminal offence, would you allow
19 them to stand?

20 A. Well, it would not be a matter, Commissioner, if I
21 would allow them. I always work on if the law allows it. If
22 the law allows it, I can't be the one to stop it.

23 Q. You will have obviously heard the questions that were
24 asked of Mr Frett about the radar barges contract.

25 A. Yes, sir.

1 Q. And primarily, the issue at the moment for the
2 Commission is the trying to understand how all the documents fit
3 together, which, the reasons I need not go into, has not been
4 the easiest task. But if I could ask you, Premier, please, to
5 take the second bundle. It's the smallest one. That's the
6 first one, the one with the less number of papers will be
7 the--we'll call the "smallest".

8 A. Thank you.

9 Q. And if you could turn up, please, 1107.

10 But please, Premier, just to give yourself context,
11 turn to 1104, please.

12 A. Yes, sir.

13 Q. When the Commission first received this document, it
14 was in a form where the pages were out of order. We've now
15 received a version which is--appears to be in sequential order.
16 And what you have is a document headed "Unsolicited Proposal for
17 Border Control" from EZ Shipping.

18 I wanted to take you in particular to page 1107.

19 A. Um-hmm.

20 Q. And this is a letter dated the 6th of May, which forms
21 part of the proposal. It's addressed to yourself as the
22 Premier, and we can see at the bottom that copied in are the
23 Governor, the Commissioner of Police, and the Financial
24 Secretary. And it is an offer to meet and negotiate a proposal
25 that is being put to Government.

1 Now, the author of the letter is Clyde Chadwell, owner
2 of EZ Shipping.

3 Do you know Mr Chadwell?

4 A. Well, I spoke to Mr Chadwell and all the other
5 individuals.

6 Q. In what capacity do you know Mr Chadwell?

7 A. As a regular businessman, Commissioner.

8 Q. Now, so--we'll break down the concept of capacity. Is
9 he a personal friend to you?

10 A. I want to answer that very clearly, but--but
11 respectfully. In politics, I don't keep any enemies, so
12 everyone is my friend.

13 Q. Well, leaving aside the Andrew Fahie who is the
14 politician.

15 A. No, the Andrew Fahie who is a Christian. I don't keep
16 enemies.

17 Q. Right.

18 A. So everyone is my friend.

19 Q. Is he a closer friend than others?

20 A. I don't keep close friends, but I keep friends. And I
21 don't mean it for (unclear); that's just how I am.

22 Q. Right. But would you desc--would Clyde Chadwell
23 describe you as a friend?

24 A. I can't tell you what he would say, but I don't have
25 him as a close friend; but a friend, everyone is my friend.

1 Q. You described him as a businessman. Is he--

2 A. Yes.

3 Q. --someone that you have done any business with
4 yourself?

5 A. Not that I can recall upfront. Not that I recall
6 because his line of business isn't something that I do.

7 Q. What line of business do you do?

8 A. When I do--do business like, for example, we have
9 apartment; one building, we rent apartments, so I don't need him
10 for, say, for that. And we have rentals, two cars that--that we
11 rent, another rental car, so I--my line of business. And I also
12 do real estate. So I really do not come across Mr Chadwell in
13 my walks of life over the years.

14 Q. It is important that I try and break this down and
15 take it in stages, but has any family member of yours had any
16 dealings with Mr Chadwell on a--on a business level?

17 A. Well, Commissioner, that's a very difficult one to
18 answer, with due respect because as far as I know, the answer
19 would be no, but this is a small country. Everyone knows
20 everyone, so I don't know if they had or didn't have as far as I
21 know. I can't--I can't say "yes".

22 Q. If you take my questions--start with the words, "to
23 your knowledge".

24 A. To the best of my knowledge, I cannot say "yes," and I
25 cannot say "no".

1 Q. Now, the Commissioner has heard quite a lot of
2 evidence already about the formation of the Joint Task Force and
3 who comprised it. And, in fact, we've heard from the Customs
4 Commissioner, who would have led on the Joint Task Force. But
5 do you, yourself, Premier, know how it came about that
6 Mr Chadwell decided to make this unsolicited proposal to you?

7 A. I would say, in general, this is not uncommon at all
8 in our culture. People meet you as elected official, as
9 Premier, or otherwise, and tell you about businesses that
10 they're interested in and would the Government be interested.
11 And they will tell you that they're going to write a letter, and
12 they tell you this whether they meet you in the supermarket, in
13 church, anywhere they do meet you, so it's not uncommon at all.

14 And when they do write it, though, and if I receive it
15 and it comes to me, I would point them to the correct direction
16 to do this, which, for me, when I did receive this, I didn't get
17 a follow-up call. I led--I make sure that I led them to know
18 that that is not in my domain. So, with that--I don't--I
19 remember them writing another letter--I think it was to the
20 Commissioner of Police--which I told them they'll have to see
21 either the Commissioner of Police or the Head of Customs, or
22 whatever the case may be, to deal with those matters. That's
23 not a call for me.

24 So, I respectfully receive these things from many
25 persons over time, and I would always direct them to the right

1 channels so that they can get their affairs dealt with in the
2 correct manner.

3 Q. So, in this case, prior to this letter arriving on
4 your desk--

5 A. Um-hmm.

6 Q. --had you received any approach from Mr Chadwell at
7 all or did it come completely out of the blue?

8 A. Well, not as far as I can recall. I--I'm trying to
9 recall as I sit because you would-would recognise, Commissioner,
10 that, you know, we did furnish now way over 5,000 documents.
11 So, not knowing that this is the one that I'll be drilling on, I
12 do not recall having any prior knowledge of him or any other
13 persons in this field that would have written to me at this
14 time. I really don't recall that.

15 Q. But what you have told the Commissioner is that,
16 having received it, you pointed Mr Chadwell in the right
17 direction, having said that it wasn't something that fell within
18 your remit.

19 A. Exactly.

20 Q. And again, I'm sorry if I missed this but, in terms of
21 pointing it, was it--did you give Mr Chadwell a phone call and
22 say this is where you've got to go, or did you respond by e-mail
23 or--

24 A. No, not at all. I remember receiving couple of
25 messages from different people in the Premier's Office saying

1 that he was calling, following up on his document, ask I asked
2 them to call him back and to let him to know that he has to put
3 it to the right channel.

4 Q. And did you--did--did the person who was calling on
5 your behalf explain what channel that would be?

6 A. Yes. I told them the Commissioner of Police probably
7 wouldn't know that neither. So it would either have been the
8 Commissioner of Police or the Commissioner of Customs, because
9 this correspondence came very early in the embryotic stages of
10 dealing with the Joint Task Force. So it was one in which they
11 were creating who would be the Head of the Task Force, so there
12 was not a definite--a definite steer or whatever it is the
13 Commissioner of Police at the time or the Head of Customs, but
14 it ended up now to be the Head of Customs.

15 Q. Help us with us, then. I mean, the Commissioner has
16 heard evidence that we have one reason for the--or the Joint
17 Task Force was--was directed to border security, particularly
18 because of the pandemic. So when was--in time, can you give a
19 date as to when the Joint Task Force was actually set up?

20 A. I won't attempt to do that because I don't want to
21 mislead the Commission because, in the last 13 months dealing
22 with COVID-19, a lot has happened, a lot of meetings. I would
23 say that it was put together knowing that we were a point where
24 we had to find our own resources to fight COVID-19. Even when
25 we requested in Cabinet for--verbally and get in conversations

1 with the Government look for other resources, we were encouraged
2 to look for own--among ourselves for our own resources; and one
3 of the decisions was how do we maximise what we have, and that
4 decision resulted, Commissioner, in us agreeing to allow the
5 Customs, Immigration, and the Police to work together in an
6 informal but yet formal manner because, way I say it that way,
7 Commissioner is that there are specific laws that still go on
8 what Immigration is responsible for. There's specific law
9 that--that--that mandate what Customs is responsible for, and
10 there's specific laws that mandate what the Commission of the
11 Royal Virgin Islands Police is mandated for.

12 But what we did is, in an effort of working together,
13 rather than having to do the mammoth task of amalgamating all
14 these laws, we came under agreement that we all come together
15 and work together for one common good, and we--we were able to
16 have them to be able to--based on certain laws that they have
17 and polices--to be able to transfer some over to Customs and
18 some over to Immigra--Police because, given that the borders
19 were being closed, there's no need much for Immigration, so the
20 Immigration officers were disbursed more so that we could have
21 more border security.

22 COMMISSIONER HICKINBOTTOM: As I understand it, of
23 these three limbs, each was given the powers of the others--

24 THE WITNESS: Exactly.

25 COMMISSIONER HICKINBOTTOM: --so that they could work

1 flexibly.

2 THE WITNESS: Right. Exactly.

3 And they were also what you call deputised Immigration
4 Law Officers deputised as police officers--

5 COMMISSIONER HICKINBOTTOM: Yes.

6 THE WITNESS: --and so was Customs Officers, depending
7 on the level of COVID-19 we're in at the time with the need. At
8 one time, the need was more on the ground, and at another time
9 the need was more on the water. So they were being fluctuating,
10 depending on the need with the--with the law enforcement,
11 Commissioner.

12 COMMISSIONER HICKINBOTTOM: It's a flexible force.

13 THE WITNESS: Yes, it was a flexible force at the
14 time.

15 So, given all of that, I don't remember the exact time
16 because it was really an informal-formal kind of--of--of--of
17 mandate given to the Cabinet, and then we later--they will come
18 to the National Security Council quite often, and they would
19 give reports. And at that time they eventually named the head
20 of Customs the head of the Joint Task Force.

21 As a matter of fact, the first set of meetings were
22 right in this room because we were locked down; and when we do
23 meet, we--we--we had to meet here because of social distancing,
24 so the whole room was open, so they were there, and at that time
25 we--we were also asking if we could have gotten any PPEs or any

1 other resources that we had received to help the Task Force at
2 that time, but it was not--it was not forthcoming.

3 We were not concerned--and I must tell you this,
4 Commissioner, if I may--so heavily about the seas at that time,
5 so that was a time that we were given an offer, and as well we
6 were told that the military was coming and will--our question at
7 that time was we--we did not request for the military at that
8 time because our need were on the ground. What we were
9 requesting from the UK at that time in Cabinet was money for the
10 help with the social issues, because we knew COVID-19 would be a
11 social issue. We also requested, and that could be found in the
12 newspapers because we requested a military board to be able to
13 help with the quarantine because we knew that we would need
14 quarantine spaces; and also for the Joint Task Force, we
15 requested any equipment or expertise to help our people on the
16 ground, because we had enough people. What--all we needed is
17 some other resources to get it done, and we needed more like
18 PPEs and those kind of health things from the UK at the time.

19 But they--when we brought them up at attention of the
20 Governor, he was not--he did not receive our request well, and
21 as a result to there was letter that written in NSC, as he said
22 he's forwarding to the UK for the military. However, when we
23 saw the letter in NSC, which we asked to see, 'cause under
24 section 57 the NSC does advise the Governor on section 57 of the
25 Constitution, he--when you--we recognised the letter which we

1 were given, he stated to us that he got his information from the
2 Commissioner of Police.

3 Why I say that, Commissioner, with your humble
4 indulgence, I crave, the letter was very strong, and it did not
5 describe the BVI that we knew. He said that he got the
6 information from the Commissioner of Police, and we questioned
7 the Commissioner of Police on his--his findings. Why? Because
8 for 15 months being the Premier of the country, never had we
9 seen such reports coming forward.

10 COMMISSIONER HICKINBOTTOM: I'm sorry, I'm slightly
11 lost. This is a report from whom to whom about what?

12 THE WITNESS: It was a report the Governor said that
13 he received from the Commissioner of Police to send to the UK,
14 requesting for military help in a time when we needed medical
15 help. So we were questioning, as NSC members, what does the
16 letter entail that--that justifies going for military help at
17 this time.

18 COMMISSIONER HICKINBOTTOM: Was the--did the request
19 to seek military help in terms of border control?

20 THE WITNESS: The military was border control and
21 overall, but that was not a major concern at the time of
22 that--of COVID-19 at that time.

23 COMMISSIONER HICKINBOTTOM: Okay.

24 BY MR RAWAT:

25 Q. Whether you say "at that time," Premier, we're talking

1 right at the beginning of the pandemic.

2 A. Correct.

3 Q. March 2020. March-April 2020.

4 A. Coming down into that time.

5 (Overlapping speakers.)

6 Q. Thank you.

7 A. Yes, we were beginning to close the borders, yes.

8 Q. We--we can look at the documents ourselves, so I don't
9 want to take you through too much. Now where--where I'd like
10 your help is just to understand how the different entities sat
11 together.

12 So, you've mentioned the National Security Council,
13 which you would sit on as Premier.

14 A. Yes.

15 Q. The Attorney General sits on it, the Commissioner of
16 Police as well, as well as the Governor.

17 A. And the Deputy Premier.

18 Q. Now, what I'm interested in is just how information
19 was moving around the system. So you've got a Joint Task Force.
20 If they produce a report, which entity does it go to first?

21 A. Well, thank you for asking that, Commissioner.

22 When we received the report, most times it was not a
23 written report. They would come, as I said, right in this room,
24 and they would sit social distance, and they would give their
25 report, and that would be the bearing off of what we would make

1 decisions off of, first (unclear) NSC.

2 Q. Can I just interrupt you?

3 A. Yes, sir.

4 Q. When they come to "we", are they coming to the
5 National Security Council or (unclear)--

6 (Overlapping speakers.)

7 A. The National Security Council. The National Security
8 Council. They would report to the National Security Council,
9 and then when they are finished reporting to the National
10 Security Council, depending on if it's a financial need,
11 National Security Council does not have the constitutional
12 authority, Commissioner, to--to approve finances, so it will
13 have to go then to the--to the Cabinet.

14 But I must also say that, in that era, even with the
15 individual responsibilities, according to the law, there were
16 things that the Police needed that they didn't have to go
17 through JTF for, the Joint Task Force, because they were urgent
18 needs, and there were things that the Customs would need. For
19 example, Police, if they had a need for boats, we had overriding
20 understanding, even for Police, that they would rent the boats.
21 Sometime the Commissioner would just call me as Minister of
22 Finance and say, listen, we have an urgent need for--for boats,
23 I would call the number; and I would tell him, Commissioner, we
24 have to--to do whatever we have to do, so make sure that you
25 have all the--the information from whoever the owner is that you

1 are getting these boats from so we can know exactly what we're
2 paying for.

3 So, the Public Finance Management Act was--was--was
4 flexed a little bit for all the agencies to be able to get
5 whatever is needed at that time to make sure that we protect the
6 BVI.

7 And (unclear) I don't know if your records would have
8 this because (unclear) 85,000 doc--papers that you would have, I
9 don't know if it's in there, but I would say that the--we were
10 projecting in the beginning if we did nothing, we would have
11 within a few weeks' time 3,700 corona cases, and this was given
12 by our epidemiologists and then who predicted this. So we were
13 on the verge of making sure panic but yet still under control to
14 do whatever was needed to--

15 COMMISSIONER HICKINBOTTOM: But, Premier, you
16 obviously are, particularly given the limited medical
17 facilities, you understand that we have--

18 THE WITNESS: Yeah.

19 COMMISSIONER HICKINBOTTOM: --in the territory, you
20 had to do a number of things. You say you had to do things on
21 the land.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: But also you closed the
24 borders.

25 THE WITNESS: Eventually we did.

1 COMMISSIONER HICKINBOTTOM: And can--this isn't a sort
2 of test.

3 THE WITNESS: No, no.

4 COMMISSIONER HICKINBOTTOM: But can--can you remember
5 when that was?

6 THE WITNESS: I remember when we first closed the
7 border, it was a Sunday, I remember--but I'm trying to remember
8 what--

9 COMMISSIONER HICKINBOTTOM: That's enormously helpful.

10 THE WITNESS: I tried to remember the date, but I
11 could get back the date--

12 COMMISSIONER HICKINBOTTOM: I'm sure you can--we can
13 find out the date, but can you remember the month, just to give
14 us some idea, or the approximate month? I mean, the lockdown in
15 the UK was in March--

16 MR RAWAT: 23rd of March.

17 COMMISSIONER HICKINBOTTOM: Well, it was the 23rd of
18 March.

19 THE WITNESS: The pandemic was called in
20 the--unfortunately announced the 11th of March, but I can get
21 that for you.

22 But what I remember as a Sunday is even more important
23 than the date because the Saturday, we--my--my sib--my children
24 was away, and I didn't mention to my wife that we would be
25 closing the border, and she was thinking about bringing home the

1 children. So the Saturday I had to tell her when she told me
2 they're coming home they can't because we're closing the border
3 on Sunday.

4 COMMISSIONER HICKINBOTTOM: But given that the
5 pandemic was announced on the 11th of March, UK locked down the
6 23rd of March, Mr Rawat said, was it about then?

7 THE WITNESS: Well, I still, before they give you the
8 date--

9 COMMISSIONER HICKINBOTTOM: Okay.

10 THE WITNESS: --I don't remember the circumstance
11 because sleeping in a bed next to a lady, telling her children
12 can't home was not easy, so that's why I remember the date.

13 COMMISSIONER HICKINBOTTOM: No, well I understand.

14 THE WITNESS: But, indeed, I'll get it for you.

15 COMMISSIONER HICKINBOTTOM: Okay.

16 MR RAWAT: So--

17 COMMISSIONER HICKINBOTTOM: I'm so sorry.

18 THE WITNESS: No problem (unclear).

19 COMMISSIONER HICKINBOTTOM: When the borders were
20 closed--

21 THE WITNESS: Um-hmm.

22 COMMISSIONER HICKINBOTTOM: --whenever that was, there
23 would be a border control issue because you would have to stop
24 people simply coming in, which is, because of the nature of the
25 territory, relatively easy to do. Was that right? So,

1 won't--won't the season issue from the--from the of date of
2 the--of your lockdown?

3 THE WITNESS: Well, speaking from the experts, and I
4 will state this, I don't--I--most likely you would have heard
5 this, Commissioner, so forgive me if I sound repetitive, not to
6 (unclear) else--we do have vast waters, 60 islands and islets,
7 and having to watch on the east and having to watch on the west,
8 which is west going to St. Thomas, USVI, and mostly in east, in
9 that area, the first--the first initiative that was taken was to
10 utilise the help from the United States Virgin Islands Coast
11 Guard, which they worked very closely with us all the time
12 with--so, given too that we also had on order one or two boats
13 to come in, we thought we would tread a little water in terms of
14 time with that.

15 But as time passed, and we were able to keep the
16 numbers down, the history of the Virgin Islands is that most of
17 our people leave and go to the USVI, but because at that time
18 our numbers were down and the USVI numbers were up, we saw
19 people trying to get up here they were claiming that it was
20 safe, so we now had to move into the mode of addressing that.
21 And hence the concern came about making sure that we can get the
22 border control. I must--I mean border help. I must state that
23 we didn't go back to the Governor at that time because that was
24 later down, that wasn't right away, asking for the ships to
25 come, the military ships, and then for--for them to at least

1 stay within three months so that we could get some of the boats
2 that were on order to reach in. But his response was that he's
3 not sure if he can do it, and then if the opportunity is still
4 there. So, that is what created a void for quite a little time.

5 I must say, though, Commissioner, in full openness
6 that the--in NSC, when we spoke with the Joint Task Force--and
7 this is from them reporting to us--in the beginning they were
8 renting smaller boats, and the smaller boats caused a concern
9 with a lot of the officers. First of all, they were concerned
10 and they stated through their head of their units who reported
11 to NSC their concern for their safety on the water.

12 Second of all, the smaller boats, based on what they
13 reported to us, could not stay out on those waves or waters too
14 long and--and--and take it. So, they were concerned about
15 getting a bigger vessel for--and plus the smaller boats were
16 fibreglass. So that also concerned--in many cases, there was a
17 line of fire, gunfire, et cetera. So all of that was a concern
18 that was coming to us at NSC.

19 And with it, that is what helped to make the decision
20 that the Financial Secretary was--at the day was sitting with
21 the head of the JTF, who happened to be Customs, because
22 sometimes the name would interchange, but--and--and made a
23 decision of that, and they came and asked for the funding; so
24 that's where I came in, and I told them once--every question
25 that you have asked me, I've asked them, and I was satisfied as

1 Minister of Finance that we had to do something.

2 Plus, the last meeting that we had, I remember, was on
3 the 21st of--I think is August because the 22nd, I think, is a
4 smuggling went on at West End. I heard it earlier. But the
5 last meeting we had on the 21st, and I was in two minds whether
6 to allow for them to go or not, but when that happened, given
7 all the other rumours that was going, I realise that you had to
8 move to get something out there to protect the water. So I
9 agreed with them after saying that they did a short list, et
10 cetera. Was it done in terms of the normal procurement? No,
11 but nothing was done during that time in that way, whether it
12 being the hiring of hotels, would be the hiring of boats, would
13 be the hiring of cars. It was just an emergency time to make
14 sure the people were safe. So I think I needed to make sure
15 that I put on the record and--and acted in good faith to secure
16 and protect the people of the Virgin Islands.

17 COMMISSIONER HICKINBOTTOM: Thank you very much,
18 Premier.

19 MR RAWAT: Thank you.

20 BY MR RAWAT:

21 Q. Again, if we just go back to the question which was
22 about how information flows.

23 A. Right.

24 Q. So, you've explained that the Joint Task Force would
25 come--I don't want to get into the detail of what they were

1 saying or what the plans were and how it changed. I just want
2 to understand how information moves around.

3 So the Joint Task Force would present to the NSC.

4 A. Right.

5 Q. The NSC has no powers to make financial decisions.

6 A. None.

7 Q. That has to go to Cabinet.

8 A. Right.

9 Q. Right. But, in terms of plans about border control--

10 A. Right.

11 Q. --obviously the Joint Task Force has three experts on
12 it, if you like.

13 A. Right.

14 Q. But is it the--is it the decision ultimately of the
15 NSC, or does the NSC simply ratify what the Joint Task Force is
16 proposing?

17 A. Just ratifies.

18 Q. Right.

19 A. Sometimes I go ahead and just retroactively ratify.

20 Q. So, essentially you exercise oversight over what the
21 Joint Task Force was doing, but it's subject, of course, to
22 financial questions. If the Joint Task Force came up and said
23 we need X amount of equipment, we're going to go buy it, the job
24 of the NSC is to say, it's essentially okay, go and do it.

25 A. Yes, Commissioner, but can I just add to help

1 strengthen this--this august body's mission? We had
2 correspondences, not directly to me but at least copied, where
3 the Commissioner of Police was--was--he was not a fan of the
4 ship--the barges but Immigration and Customs were.

5 The Commissioner of Police also--the then-Commissioner
6 of Police also supplied some documentation of one where persons
7 wanted to give smaller boats for free. The issue with that, my
8 professor in college told me anything free means one of two
9 things: Somebody paid for it already or somebody will pay for
10 it after.

11 But other than that, one of the concerns about the
12 marine sector doing any business unless it has some kind of
13 competitive bidding or whatever is that we have concerns with
14 our--our accrediting, whether it be financial task action force
15 which specifically states not to--to receive any free gifts for
16 any law-enforcement agencies, et cetera, so--and other areas--so
17 with that now, they brought that to us; we didn't even have to
18 tell them that, and they were concerned because even some of the
19 vessels that were brought as free, there was not official but
20 unofficial word that they were vessels of interest to Customs
21 or--or Immigration.

22 And then the ones that costed less again was the issue
23 of the fibreglass boats, et cetera, that they were concerned
24 about safety and could not stay out on the waters too long
25 because we do have some very treacherous waters as you go way,

1 way out, because we do have to go out to other waters. So I
2 just needed to make sure I added that--sorry--there, so...

3 Q. Does--and I assume the NSC can make recommendations to
4 the Joint Task Force about things it should investigate or
5 information it should seek. But does the ultimate decision lie
6 with Cabinet?

7 A. NSC--if it's a national-security issue, NSC does have
8 a mandate under section 57 of the Constitution, but anything
9 (unclear) the expenditure must come to the Ministry of Finance,
10 and if it's going over a hundred thousand, then it must come to
11 Cabinet. Must.

12 Q. So, in effect, there is a split in terms of the Joint
13 Task Force, and the Joint Task Force needs money and it's a
14 hundred thousand--under a hundred thousand pounds, you would
15 have power as Minister of Finance to sanction that. If it's
16 over a hundred thousand pounds, it will have to go to Cabinet.

17 A. Right. But either one that it is, I wouldn't use
18 sanctioning powers so lightly or loosely. I still would have at
19 all times them to bring whatever proposal to go whatever due
20 process of course to the Financial Secretary or whomever so they
21 can deal with it because I don't get involved in those--those
22 aspects at all.

23 Q. Then in terms of national security, it's for NSC to
24 ratify what the Joint Task Force are proposing?

25 A. Well, I--I ratify retroactively and sometimes before.

1 For example, NSC charged them with coming up with a border
2 control plan--I remember very clearly--and their duty was to go
3 away as a team and come back with a plan in different phases,
4 immediate, low-lying fruits that you can do now; then interim,
5 after mid-term; and then long-term planning.

6 For example, one of the areas they--they have been
7 charged with by NSC is to--to look about a full tender process
8 about platform and about radar systems and about many other
9 things so that--that we will learn from the lessons of the past
10 where our deficiencies were so that we can tender those and have
11 a full, open process so make sure that we own those as a--as a
12 country.

13 Q. Can I turn to another topic.

14 A. Yes, sir.

15 Q. It's a topic that we canvassed with Dr O'Neal Morton.
16 And if you go to 1243 in the bundle, please, Premier.

17 A. Same bundle?

18 Q. Yes.

19 A. One--one what?

20 Q. 1243.

21 A. 1243, right.

22 Q. As you'll have appreciated, we have asked questions
23 today about the contract process for Mr Skelton Cline and his
24 consultancy, and he provided consulting. At least in the first
25 instance, from the first contract, he was providing consultancy

1 directly to your office and then subsequently came under the
2 supervision of the Ministry of Finance.

3 Now, there a number of matters that Dr O'Neal Morton
4 said she needs to check out. This is a newspaper report. If
5 you go over to the next page, it says, if I read a little
6 section of it: "The Andrew Fahie administration was the one who
7 invited Claude Skelton Cline's company, Grace Consultants, to
8 submit a proposal to secure a \$98,000 government contract.
9 Deputy Permanent Secretary in the Premier's Office Elvia
10 Smith-Maduro gave that statement to BVI News amid questions
11 about how the company was selected for the Contract".

12 And it then goes on. I won't read it all out, but it
13 goes on to quote Mrs Smith-Maduro.

14 Now, I don't want to go into the detail of the press
15 report, but was Mr Skelton Cline invited to submit a proposal to
16 your office?

17 A. Well, my good friend, Commissioner, if I may, I do
18 find it difficult, and I say so with all due respect, of
19 commenting that while you say you don't want to add anything
20 with this BVI news, it is not an online paper that is--that to
21 me reports things accurately, especially since I've taken office
22 because--and I have my proof on that, so--

23 (Overlapping speakers.)

24 COMMISSIONER HICKINBOTTOM: No, I don't
25 think--Mr Rawat wasn't suggesting that everything you read

1 online is accurate in any shape or form.

2 THE WITNESS: Yeah.

3 COMMISSIONER HICKINBOTTOM: So, the--the--the question
4 was did the--did the Government--did you invite Mr Skelton Cline
5 to submit a proposal for the Contract.

6 THE WITNESS: Commissioner, thank you. Whenever I see
7 BVI News, a get a little bit jumpy, I must say, so I'm sorry
8 about that.

9 But I would say that Mr Skelton Cline came after the
10 2019 elections, like everyone else I said earlier does, and said
11 that he can help with finding different ways for new investments
12 to come to the BVI, just like--he stated that he has been able
13 to get something like this done, and I told him, just like I
14 tell everyone else, please make sure that you send in your
15 documents. I was very careful with that because Mr Skelton
16 Cline was known to be around all political parties during the
17 campaign, so I asked him to present your documents and
18 your--your detail of what all you--you can offer to the
19 Premier's Office for consideration.

20 And once it is submitted and the CV and we have all of
21 that and we do agree to move in that direction because nothing
22 is wrong with anyone trying to help with the economy, one of the
23 things I must state for the record that is clear, that anyone
24 working with me would say, I never interfere with the technical
25 aspect of anything that anyone presents. If it is an angle that

1 the Government is going and the technical personnel can justify
2 these actions and can make sure that the--the--the reports, like
3 you alluded to earlier, are coming in, and the results are
4 coming based on the deliverables, well, then, that is fine
5 because our job is to try to jump-start the system.

6 I must say, though, there's a--there's an
7 institutional capacity issue in the BVI Government that the
8 Inquiry cannot go past without picking it up in its vehicle.
9 And when I say so, I mean these are tasks that the Finance
10 Ministry would help with, but if you research the records, it is
11 many years since major investments have come or been drawn in by
12 the Ministry of Finance. So, at the time it was a way for us to
13 see how to get someone to be that catalyst, to allow for that to
14 happen.

15 COMMISSIONER HICKINBOTTOM: I'm sorry to--just
16 to--just to go back to the question, Premier, I think the answer
17 was that Mr Skelton Cline came to you--

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: --not the other way
20 around.

21 THE WITNESS: Yes.

22 COMMISSIONER HICKINBOTTOM: And you told him to send
23 in, effectively, a proposal.

24 THE WITNESS: Hmm.

25 COMMISSIONER HICKINBOTTOM: --together with documents

1 showing that--to show that he was an appropriate person
2 to--to--to deal with the Government in respect of the proposal.

3 THE WITNESS: Like I do for every single person that
4 comes to me with proposal, because many do.

5 BY MR RAWAT:

6 Q. Who in your office would have been responsible for
7 assessing that proposal?

8 A. Well, when that came, that would have gone to the
9 Permanent Secretary at the time, and then they would look it
10 over and then decide if the person has all the documentation and
11 if this is something that can go ahead with.

12 Q. And does the personal secretary then make a
13 recommendation?

14 A. The personal secretary won't make--they'll give
15 advice; yes, they'll give advice.

16 COMMISSIONER HICKINBOTTOM: I'm sorry, the personal,
17 not the Permanent Secretary.

18 MR RAWAT: Permanent Secretary.

19 COMMISSIONER HICKINBOTTOM: The Permanent Secretary.

20 THE WITNESS: If I may, the Permanent Secretary
21 because all the private part of my private--part of the
22 Premier's Office does is answer mail and do all those other
23 things.

24 COMMISSIONER HICKINBOTTOM: Yes. I understand that.

25 THE WITNESS: Yeah.

1 COMMISSIONER HICKINBOTTOM: So, it was the--the
2 Permanent Secretary would have looked at the documents and
3 assessed them.

4 THE WITNESS: Right.

5 BY MR RAWAT:

6 Q. And would have advised you whether it was a suitable
7 proposal or not.

8 A. Right. And then ask for my input also.

9 Q. Yeah. Now, you--you made the point that Mr Skelton
10 Cline was known as someone in the--in the election campaign that
11 had been perhaps associated with your party, and you wanted to
12 be careful.

13 A. Yes.

14 Q. So, in this instance, did that care continue over into
15 the assessment of the proposal? Did you leave it to others
16 until the last minute?

17 A. I left it to others, but I always would tell them make
18 sure whether him or who to make sure that you can account for
19 whatever you're doing because, you know, in cases like these, if
20 these ever pop up, so that no one would have to--to come
21 and--and be--be--be coerced to say anything for me, so I'd
22 always make sure that they can stand the test of time for the
23 actions.

24 COMMISSIONER HICKINBOTTOM: So, so--you--you--I think
25 what you're saying is you gave instructions that the assessment

1 should be a thorough and a good one.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: Thank you.

4 BY MR RAWAT:

5 Q. Prior to the approach from Mr Skelton Cline, did you
6 know him at all?

7 A. Well, of course, I know Mr Skelton Cline. Like I
8 said, it's a small place. He's a preacher. Plus before, when I
9 was Minister, we had some other interactions, but it wasn't with
10 me directly.

11 Q. So, again, let's break it down. What's--what--in what
12 capacity do you know Mr Skelton Cline?

13 A. He's a pastor businessman.

14 Q. Is he someone with whom you've had any business
15 dealings yourself?

16 A. No. Never had any personal business dealings with him
17 at all.

18 Q. Given that he was perhaps associated by others with
19 your party, is he--would you describe him as a political
20 associate?

21 A. That's a tough one, because he moved from party to
22 party. There were people in my party that--that--that would
23 conclude that he--he was--I wouldn't say he was a political
24 affiliate, as--

25 COMMISSIONER HICKINBOTTOM: A supporter?

1 THE WITNESS: I would say he was a supporter; that
2 would be a better word, yeah.

3 BY MR RAWAT:

4 Q. Mr Frett made the point that Mr Skelton Cline has a
5 certain public profile. Would you agree with that, that he is a
6 prominent public figure?

7 A. If I may, he confuses me at times because even to us
8 he goes outside--with him, when Mr Frett was speaking, I really
9 smiled because we knew from what all he was saying, it was only
10 time before somebody asks about him because he--sometimes he
11 would go at our Government; sometimes he would be go there;
12 sometimes he would be all over. So everyone know Mr Skelton
13 Cline speaks his minds and goes in directions that--that most of
14 us wouldn't venture.

15 Q. In the lead-up to signing that first contract--

16 A. Um-hmm.

17 Q. --which we looked at with Dr O'Neal Morton--

18 A. Yes.

19 Q. --did you have any conversations or discussions with
20 Mr Skelton Cline at all in relation to that contract?

21 A. No. We didn't discuss anything with--in-depth
22 analysis of the contract. He just told me, like I said, that he
23 feels that he can offer this service to Government and bring
24 some new investments and bring some persons in to--to--to help
25 to strengthen up the economy of the Virgin Islands in different

1 areas.

2 Q. After that first approach, Premier, did you have any
3 further discussions with Mr Skelton Cline?

4 A. No, no, no. I was clear what I told him from the
5 get-go in case a day like this comes.

6 Q. And--and let's be clear so we have it on the record.

7 A. Yes.

8 Q. You said you didn't have any discussions after that
9 first approach in relation to this proposal?

10 A. Not on this. Not on this at all.

11 Q. Did you have any discussions with Mr Skelton Cline of
12 any sort--

13 A. For?

14 Q. --in the lead-up to him signing that first Contract?
15 So you have a date.

16 (Overlapping speakers.)

17 A. (Unclear.)

18 Q. We don't need a date precisely. You have a moment
19 when Mr Skelton Cline approaches you with a proposal.

20 A. Uh-huh.

21 Q. You've told Commissioner you pointed him in the right
22 direction.

23 A. Right.

24 Q. You've also now said--so we know he signs the contract
25 eventually, the first contract. You've said that, you know, it

1 was for others to deal with and give you advice and that you had
2 no discussions between first approach and the signing of that
3 contract about that proposal with Mr Skelton Cline.

4 A. No, I wouldn't--I wouldn't discuss that at all.

5 Q. Right. Aside from that, in that period, between the
6 proposal approach and the signing of the first contract, did you
7 have any other kind of discussions with Mr Skelton Cline?

8 A. Well, he's someone that you see all the time, and he
9 will talk but I always gave my speech.

10 Q. So, there wasn't any e-mail exchanges going on between
11 you and him?

12 A. Definitely not. Definitely not.

13 Q. Mr Frett has told us about the popularity of WhatsApp.
14 There were no WhatsApp exchanges going between you and
15 Mr Skelton Cline during this period?

16 A. Definitely not--if it was--so it was just to--if
17 it--probably just a hi-and-bye, but that's rare. The guy's not
18 someone that I communicate with on a daily basis, believe it or
19 not.

20 Q. If you go to page 1247.

21 A. Yes, I'm right here.

22 Q. In fact, we can--we could look at 1245, first of all.

23 We don't need you, Premier, to--to--to assist us
24 with--with whether the news website is a--is--is--falls on the
25 good side of the line or the bad. But these are two examples of

1 headlines where you say Claude will be fired if he doesn't
2 deliver, and on 1247: "If Skelton-Cline doesn't produce he'll
3 be fired".

4 A. Yes.

5 Q. What I wanted to just get for the record, is that
6 accurate? Did you say that Mr Skelton Cline would be fired if
7 he didn't deliver?

8 A. Commissioner, once I know about it, that's my intent.
9 I still mean it.

10 Q. You say once you know about it. Did you mean that
11 once people had started raising concerns over the fact that he
12 had been awarded that contract without tender?

13 A. No, no, I wasn't talking about that at all. I was
14 talking about once it's brought to my attention by our technical
15 people that it's--it's not producing and yielding what it's
16 supposed to yield, then I would fire him. I would have no other
17 choice because you have to defend the public's money.

18 Q. And that's just a--and that's a principle which you
19 apply to any contract where something has gone wrong.

20 A. For sure.

21 Q. And at any time did those on the technical side come
22 to you and say, Premier, this isn't looking good, you need to
23 think about this?

24 A. I don't remember such times. As I remember, I don't
25 recollect such things.

1 Q. We've seen that--at the end of the first contract,
2 Mr Skelton Cline produced one report. Once he moved into the
3 second contract, which then went under the supervision of the
4 Ministry of Finance, he was producing monthly reports. We don't
5 know whether he did or not because we've only seen two at the
6 moment. But were any of those reports put on your desk for you
7 to consider?

8 A. I would say that the reports after the first contract
9 was discussed. And one of the things that I remember in the
10 discussion with the technical persons was that they were
11 concerned if six months was sufficient time that was signed to
12 have produced the deliverables, and that's where the
13 consideration came on whether it should have an extension, but
14 an extension require Cabinet. And the then-Financial Secretary
15 stated clearly, well, we will put in some more--some more pegs,
16 so to speak, so that we can make sure that we can see the
17 progress by--by month.

18 COMMISSIONER HICKINBOTTOM: So--so there would be a
19 more regular and better assessment of progress.

20 THE WITNESS: Exactly, that's a better word to use.
21 Thank you.

22 BY MR RAWAT:

23 Q. And so, the position we're in is actually that the
24 person who is Permanent Secretary in your office at the time of
25 the first contract is not in post at the moment, and obviously

1 it was a different Financial Secretary; it was Mr Forbes. But
2 looking at both contracts, was it down to them to make sure that
3 there was satisfactory delivery on the contract?

4 A. Well, under the Public Finance Management Act no
5 Permanent Secretary or FS signs for payments if they're not
6 satisfied because you don't--I don't put any pressure on anyone
7 to do that. That's up to their own integrity to make sure
8 because you have to guard the public purse.

9 Q. So they would then only be coming to you if there was
10 a problem.

11 A. In my field of work, yeah, that's usually when I see
12 people, when there's a problem.

13 Q. Go to 992, please.

14 A. 992. Yes.

15 Q. This, Premier, is report that Mr Skelton Cline appears
16 to have produced at the end or towards the end of that first
17 contract.

18 A. Right.

19 Q. And it was the six-month contract.

20 Now, I just wanted to ask, if you please go to
21 page 1,000.

22 A. Yes.

23 Q. There is a table--

24 A. Yes.

25 Q. --where Mr Skelton Cline sets out his objectives

1 and--and sets out what he has done, in effect.

2 A. Correct.

3 Q. I took Dr O'Neal Morton to a couple of pages, and it's
4 one--the first one is at 1005.

5 A. Um-hmm.

6 Q. And it was the text which said this project was
7 assigned to the consultant by the Premier on August 1st, 2019.
8 And then if you look at 1021, please, it's a second project
9 assigned to the consultant by the Premier on August 22nd, 2019.

10 Now, those are, of course, Mr Skelton Cline's words.

11 A. Yes.

12 Q. But what appears to have happened is he starts
13 off--started off the contract with a certain set of objectives.
14 As the contract moved along, he was given an additional two
15 objectives.

16 A. Yes.

17 Q. Now, were you the person who assigned him those
18 objectives?

19 A. The first set--the first set in 2019, you mean?

20 Q. Yes. This is the first contract. I could show you
21 that contract, if it will help you to get some context.

22 A. No, I remember because it was not in the contract.

23 Q. Yes.

24 A. These were added after--with discussions.

25 But I want to state clearly for the record that even

1 when persons turn in reports to me, I would still route them
2 through the correct channels with the technical persons because
3 persons, given it's a small community, always feel that once
4 they write to the Premier that they will get the action that
5 they want, so it's common practice here. But you have to always
6 let them to know yes, I'm the Premier, but there are technical
7 channels to go through and also set policies and guidelines,
8 that I must adhere to them, not going to circumvent for anyone.

9 So, even though the report he wrote to me, it went
10 directly and sat with the technical persons and they--

11 COMMISSIONER HICKINBOTTOM: I'm sorry, when you say
12 "technical persons", who do you--

13 (Overlapping speakers.)

14 THE WITNESS: (Unclear) terms on the IPS or Minis--or
15 the Financial Secretary (unclear).

16 BY MR RAWAT:

17 Q. So it's a civil servant?

18 A. Right. I call them a technical person, sorry.

19 Q. Right.

20 A. I don't like the word "civil servants."

21 Q. Well, perhaps we could--

22 A. Yeah.

23 Q. --compromise on Dr O'Neal Morton's words that those
24 who are responsible for the operational side.

25 A. Yes, that's--she eloquently put it that way, yes.

1 Q. So, is that--but obviously these--these are now being
2 added in August 2019--

3 A. Right.

4 Q. --rather late in the contract.

5 A. Right.

6 Q. So, just so that we can be clear, so Mr Skelton Cline
7 wrote to you during the currency of the contract and then you
8 routed it to the operational people.

9 A. All the time, yes.

10 Q. And so, you wouldn't have had any dealings directly
11 with Mr Skelton Cline during the course of this contract.

12 A. No. As a matter of fact, if the record would show,
13 there were incidents where the Permanent Secretaries of the day
14 demanded of him to make sure that certain things were done
15 according to the contract. So, whenever those incidents
16 happened in our territory, whoever the contractor is always
17 finds the Premier. But I would always write them back, whether
18 it's Skelton Cline or anyone at all, back to those who deal with
19 the operational site of Government at all times.

20 COMMISSIONER HICKINBOTTOM: And--and it's for them. I
21 mean, probably normally one person, the Permanent Secretary or
22 the Financial Secretary or whoever.

23 THE WITNESS: Right.

24 COMMISSIONER HICKINBOTTOM: It was--it's that person
25 who makes the assessment--

1 THE WITNESS: Right.

2 COMMISSIONER HICKINBOTTOM: --onto the contract as to
3 whether the contract is being delivered, and I--I think this
4 is--I think this is what you said. You would expect only to
5 hear about things if there were some doubt about that--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: --in the mind--in the mind
8 of the assessor. Yes.

9 THE WITNESS: Yes, Commissioner.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 BY MR RAWAT:

12 Q. Could I ask you now, please, Premier, just to turn up
13 page 874.

14 A. Page?

15 Q. 874.

16 A. Um-hmm. Okay.

17 Q. It's headed Cabinet Meeting No. 32 of 2019.

18 A. Right.

19 Q. And you can see that under "Deliberations", it begins
20 at paragraph 21.

21 A. Right.

22 Q. Now, am I right to say that this isn't a complete
23 minute? There must have been 20 other paragraphs under
24 "Deliberations"? Would that be right?

25 A. Is it 21 or 2.1?

1 Q. It's 21. It's 22, 23, 24.

2 A. Oh, okay, I see, I see. They're probably just the
3 recording sections that were relevant to that--

4 Q. So it's not--

5 A. Probably I'm not sure but--
6 (Overlapping speakers.)

7 Q. It's not the original minute because that would be a
8 complete one with--

9 A. Yeah.

10 Q. --paragraphs 1 to 20 in it.

11 A. Okay.

12 Q. Now, the reason I--I don't want you to speculate
13 or--about the detail of this, but it's the questions that I
14 asked Mr Frett.

15 Now, there's reference there to concerns being
16 expressed by the Financial Secretary.

17 Now, in terms of those concerns, would they be
18 recorded on a document that then comes to Cabinet?

19 A. Which specific concerns are you relating to them?

20 Q. That--that I cannot help you with because I haven't
21 seen the document. What it says is the Acting Governor asked
22 about concerns expressed by the Financial Secretary. So my
23 question is: How do those concerns get put before Cabinet? Are
24 they, because they seem to be two ways, aren't they, either the
25 Financial Secretary's in attendance--

1 A. Or.

2 Q. --or there is a paper in which the Financial Secretary
3 has set out concerns. Do you--

4 A. Um-hmm.

5 Q. I mean, from the look of this document, and I accept
6 it's been perhaps--it's partial and not complete. It doesn't
7 look like the Financial Secretary was there. But is it the norm
8 that if a senior official has concerns about a contract, they
9 can record it on document and put it in front of Cabinet?

10 A. Well, let me to you, Commissioner, tell you the
11 procedure. When you're doing Cabinet papers, whether it's a
12 waiver or any paper at all, the--the Ministry responsible for it
13 does a paper with all the background information, and then they
14 will do the decision sought. And on the paper, depending on the
15 content of the paper, that would determine who all in terms of
16 the different Ministries, Attorney General and Financial
17 Secretary would have to give comments on the paper. So that
18 would go through the--what you call ExcoTrack, and then they
19 would post their comments. The Attorney General post their
20 comments. The Financial Secretary post their comments. If it's
21 a matter dealing with health, then it has to be related to the
22 health (unclear). The (unclear) PS will post their comments,
23 and then it would come to--for approval to the Cabinet Steering
24 Group, which would be the Governor and the Premier and the
25 Cabinet Secretary. And once it's approved to be on the agenda,

1 then it would come to the agenda.

2 So what happened is that the Cabinet Steering Group--I
3 don't remember who was acting as Governor then--but that day, I
4 think this one was Mrs Adams--she was acting because the
5 Governor (unclear)--

6 COMMISSIONER HICKINBOTTOM: I'm sorry, Mrs Rosalie
7 Adams, it's at top of the page.

8 THE WITNESS: Right. Thank you, sir.

9 I recognise that--that you pointed out, thank you.

10 Both of them were out of the country I think at that
11 time, a substantial holdup of the Governor's (unclear) and the
12 Deputy Governor.

13 So, really and truly, Ms Adams came in, I think, or
14 the day or two before so she would not have been part of the
15 lead-up for the paper. She'd just be there at that time because
16 I think the whole stint was very short, so she was there for the
17 day of Cabinet as the Acting Governor.

18 So, with it now, the Attorney General's generally,
19 especially the past Attorney General, whether it was an
20 emergency or not, had the one standard answer for waivers,
21 whether it was urgent or not. It was almost a cut and paste.
22 You know what was coming, and he would put it on all papers all
23 the time, no matter what it is, which begs the question of us
24 having to try to speed up, which I was trying to get done from
25 the time I reached the new procurement laws, not abuse but to at

1 least take into consideration of certain aspects of waivers
2 could be used and reduce the need for waivers.

3 I'm happy to say now that that's going to be
4 considered by Cabinet within a week's time. The paper is now
5 finally ready. The legislation is finally ready. So we'll be
6 addressing that to strengthen that arm of Government, of good
7 governance, to limit and reduce when this could be used. So I
8 don't see that it will be able to be an issue much more for any
9 government, neither this one or the one in the future.

10 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
11 Premier. Paragraph 22 refers to two concerns.

12 THE WITNESS: Right.

13 COMMISSIONER HICKINBOTTOM: The first one, first line
14 is a concern of the Acting Governor--sorry, it's a concern
15 referred to by the Acting Governor but the concern was expressed
16 by the Financial Secretary. That's the first one.

17 THE WITNESS: Right.

18 COMMISSIONER HICKINBOTTOM: Second one, halfway down
19 that paragraph, is that the Acting Governor asked about the
20 Attorney General's comments with respect to waiving the tender
21 process, and we've got Appendix E because it's--and that the--

22 THE WITNESS: Right.

23 COMMISSIONER HICKINBOTTOM: --and that's the letter,
24 which I think is the standard letter--

25 THE WITNESS: From the Attorney General.

1 COMMISSIONER HICKINBOTTOM: --from the--from the
2 previous Attorney General.

3 Sir, just--just to ask the question, so that we've got
4 concerns expressed by the Financial Secretary, we've got the
5 Attorney General's comments with respect to waiving the tender
6 process, and those would have been on ExcoTrack.

7 THE WITNESS: Yes, those would have been ExcoTrack.

8 COMMISSIONER HICKINBOTTOM: Okay. Thank you.

9 THE WITNESS: So the Acting Governor, I must say,
10 though, is a very outstanding, long-standing public servant, so
11 she would have known.

12 COMMISSIONER HICKINBOTTOM: No, no, no, I'm sorry. I
13 just wondered whether--whether concerns that had been
14 expressed--

15 A. Right. They would be unavail--

16 (Overlapping speakers.)

17 COMMISSIONER HICKINBOTTOM: They would be on--

18 (Overlapping speakers.)

19 THE WITNESS: --in my Cabinet could see them. Anyone
20 who's--who commented on the paper would see them when they're
21 coming forward.

22 COMMISSIONER HICKINBOTTOM: Yes, thank you.

23 MR RAWAT: Thank you.

24 BY MR RAWAT:

25 Q. I'm sure not every Attorney General, indeed, former

1 Attorney General, uses a cut-and-paste approach to life.

2 COMMISSIONER HICKINBOTTOM: And--and--and I mean, I
3 think this is right, Premier--

4 THE WITNESS: Um-hum.

5 COMMISSIONER HICKINBOTTOM: --because I don't want to
6 be unfair to--

7 THE WITNESS: Yeah.

8 COMMISSIONER HICKINBOTTOM: --the previous Attorney
9 General, who is not here. But my understanding is that Appendix
10 C, which we can see, it's the first document in that bundle,
11 page 816.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: And it's a memorandum
14 dated the 25th of October 2019.

15 THE WITNESS: Um-hmm.

16 COMMISSIONER HICKINBOTTOM: And my understanding is
17 that whenever waiver came up, the Attorney General referred to
18 this memorandum.

19 THE WITNESS: At all times.

20 COMMISSIONER HICKINBOTTOM: At all times. So, when
21 you said "cut and paste", you're referring to this memorandum.

22 THE WITNESS: This memorandum.

23 COMMISSIONER HICKINBOTTOM: Okay.

24 THE WITNESS: And then--and then the--if it is not
25 appendix to the paper, they would--he would extrapolate just the

1 sections (unclear)--

2 (Overlapping speakers.)

3 COMMISSIONER HICKINBOTTOM: Yeah, but it was just--so
4 every time waiver came up--

5 THE WITNESS: Right.

6 COMMISSIONER HICKINBOTTOM: --the Attorney General
7 would--would send this in or the gist of this in, and that would
8 be his comments.

9 THE WITNESS: In general.

10 COMMISSIONER HICKINBOTTOM: That--that's--that's fine.
11 Well, it's fine.

12 THE WITNESS: But, Commissioner (unclear)--

13 COMMISSIONER HICKINBOTTOM: It's not public for today,
14 but--

15 THE WITNESS: Yeah.

16 COMMISSIONER HICKINBOTTOM: --that memo said, if there
17 is going to be waiver, you need to have jolly good reasons.
18 That's my paraphrase. But that's possibly not a matter for
19 today, but that's what the memorandum said, and, as a general
20 proposition that seems to me to be unexceptional.

21 THE WITNESS: Agree.

22 But, Commissioner, if I may--and it's right and if it
23 looks at it in its absolute form, but again may I state that
24 being a new Government coming in, one of the things that I
25 recognise and my team recognise is, which is for another day, is

1 the capacity deficiency in the public service that needs
2 attention and is now going to get attention, but it is--it plays
3 a key factor, especially if--when you're trying to get the work
4 of the people done. So a lot of times the professional need
5 that should be in the Government you had to look outside,
6 whether they even be in the Attorney General's Office or in the
7 DPP's office.

8 So it--this memo is written for--for even when they
9 want to get the attorneys to help and they had to get waiver
10 because it was a standard letter based on how the current
11 procurement act is done. Now, the new act is even more
12 stringent than it, but it also recognises the emergencies
13 because the--the current one is not as--as clear when it comes
14 to emergencies. But the emergencies will be specifically
15 defined to make sure that we strengthen good governance and not
16 reduce it, but the capacity, the manpower is the issue, but
17 finally we are on the road towards looking about how do we deal
18 with that matter.

19 COMMISSIONER HICKINBOTTOM: Okay. It's probably for
20 another day, but that's--that--that's helpful. Thank you,
21 Premier.

22 BY MR RAWAT:

23 Q. If I could just move on to another topic, please--

24 A. Yes.

25 Q. --and ask you, Premier, just to turn to 995. We're

1 going back to Mr Skelton Cline's report that we looked at
2 earlier.

3 A. Yes.

4 Q. And I just want to draw your attention just to a
5 section of his Executive Summary, which is the penultimate
6 paragraph on that page where he says: "Several initiatives have
7 been directed to the attention of Cabinet, such as the
8 reconstitution of the Climate Change Trust Fund Board and
9 Telecommunications Regulatory Commission..."

10 Just focusing on the Board, if you go to page 1000,
11 you have 2.1, and it's--it's actually the first topic that
12 Mr Skelton Cline tackles in this report, and it's climate
13 change, and he sets out his objectives and goes through various
14 processes. And if we go to--i think it's--we go to 1001. It's
15 sections found at page 1000 to 1002. I draw your attention to
16 1001.

17 Under "Follow-up Action Required", he makes what may
18 be described as a--as a number of recommendations, and one which
19 is "the re-establishment of the Climate Change Trust Fund Board.
20 The Climate Change Unit will then proceed...and then Director of
21 the Climate Change Unit must be selected and appointed."

22 Focusing on the Board, and this is a recommendation,
23 if you like, and it's September 2019, was the Board established?

24 A. When we took office on February 25th, 2019, one of our
25 mantras was to strengthen good governance and also to strengthen

1 the economy. The majority of our boards were either
2 non-functional or existing, and there was no life or with all
3 that you have seen coming, for all the policies to help generate
4 new revenue, to help move our territory to the next level. And
5 we came with a policy that we later revised because it was in
6 the past approved policy but one that was--had tacit approval to
7 have all boards just to be the life of the sitting Government.
8 But we later recognised with maturity in the office that that's
9 not the best thing to do. You need to make sure that you vary
10 the tones of the persons on the boards. So now we're revising
11 the policy to do that because it's better good governance rather
12 than having a full drain of the Board all at one time.

13 Q. Sorry to interrupt you but my question was, was the
14 Climate Change Trust Fund Board--

15 A. Yeah, but--but I--
16 (Overlapping speakers.)

17 Q. --was it established?

18 A. Yes, sorry, Commissioner, but I--with every text there
19 is a context and pretext, so I needed to give that pretext to
20 answer the text.

21 So the Climate Change Board fall in that same policy
22 that we had, where we moved towards the renewing--not renewing
23 persons on the Board and getting new Board members overall. So
24 it was dismantled, but it was never put together as one of those
25 boards that were never brought back as yet up to date that

1 we--and now we're looking at to see. So it was one of those
2 boards that was not--did not allow to continue along with many
3 others when we took office.

4 Q. So--so--so--so, just to try and shorten it, when you
5 took office, you didn't allow the Board to continue.

6 A. When I say, so I mean--

7 Q. It hasn't been reestablished--

8 (Overlapping speakers.)

9 A. When the time came for them being--being up or
10 consideration for new persons, we were able to move towards
11 Cabinet of--of getting new persons on boards, but this was one
12 of the boards that was--I want the correct word since it's being
13 recorded, that we held to review, but all the persons on it,
14 time since then, even though some were asked if they would
15 consider to--to retire, this Board was never put back together
16 as yet.

17 COMMISSIONER HICKINBOTTOM: I'm sorry, I need to be
18 clear on this.

19 When you came--when your administration came to
20 power--

21 THE WITNESS: Right.

22 COMMISSIONER HICKINBOTTOM: --this Board existed.

23 THE WITNESS: That Board existed along with a few
24 others.

25 COMMISSIONER HICKINBOTTOM: Now--now it doesn't exist.

1 THE WITNESS: No, it is not current. It--

2 COMMISSIONER HICKINBOTTOM: I'm sorry, but, well, it's
3 not functioning.

4 THE WITNESS: It's not functioning because it's not
5 current. We have--

6 COMMISSIONER HICKINBOTTOM: And has no members.

7 THE WITNESS: Right.

8 COMMISSIONER HICKINBOTTOM: And, well, how did it get
9 from having members to having no members? Did they retire?
10 Were they relieved of their duties? Did they run out of time?

11 THE WITNESS: Some ran out of time, and others we
12 asked if they would have--you know, serve--allow other persons
13 to serve because we wanted to, at that time with a new policy,
14 like I said, that we implement the Government--it was a
15 Government policy that we were implementing, that Boards should
16 serve for the tenure of any sitting Government. But like I said
17 earlier, with experience now, we have learned that that's not
18 the most wise thing to do, allow for staggered times on the
19 Board, like three years, two years, four years. So, with that
20 now we--and the process not only of just reinstituting boards
21 but we're in the process now of bringing policies to be approved
22 so that we can have guidelines, 'cause one of the only policies
23 that exists with boards for years has been you have to be a fit
24 and proper person and judge their résumé, but we prefer now to
25 keep boards energized and to maximise the potential of what

1 boards really were constituted to do. We're going to make sure
2 that we put in place criteria so that persons can apply now, in
3 the public--with public notice, when board times expire,
4 members' times expire, so that we can get even better cadre of
5 people coming forward so that we can make sure we strengthen our
6 boards and make sure that they're more productive because the
7 more productive boards are, the more revenue your territory
8 makes.

9 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
10 much.

11 BY MR RAWAT:

12 Q. Is the Economic Advisory Council a board?

13 A. No. It's an ad hoc committee that was put together
14 by--by the Minister of Finance.

15 Q. You're the Minister of Finance. Was it put together
16 by you?

17 A. Yes. That would be the same person.

18 Q. Who sits on that council?

19 A. Economic Advisory Council?

20 Q. Yes.

21 A. Let me make sure that that's not mixed up with
22 the--that's the one with Mr John Cline as Chair that you have?
23 'Cause that's a--it is Economic Advisory Council that is ad hoc
24 committee that has been put together, and that was in the middle
25 of COVID so that we can have businesspeople come together so

1 that we can see how we can go about reviving the economy while
2 balancing lives with livelihoods. So that's--that's not
3 something approved by Cabinet. It's just an ad hoc committee.

4 Q. Set up by yourself?

5 A. Set up by myself. They have advis--

6 Q. Do you sit on that committee as Minister of Finance?

7 A. No I don't sit on it at all. They meet without me.

8 Q. Does any--does any member of the Cabinet or Minister
9 sit on it at all?

10 A. No, none of them sit on it.

11 Q. Right. So it's just a group of concerned businessmen,
12 if you like.

13 A. Right.

14 Q. Businesspeople.

15 A. And they approached me, I must say, and stated
16 that--you know, and they got a cross-section of persons on it.

17 Q. Do you--do you know whether it has a secretariat?

18 A. Well, let me clarify it by saying this in the record
19 correct. I endorsed it because they were already fine without
20 me. I endorsed it, and so in the wisdom to be a group, to
21 listen to, because given that they are businesspeople in the
22 community with genuine concerns, so I endorsed it, and adopted
23 it, but it was not something that I created overall on my own.
24 It was something that they already had decided to put together.

25 Q. You've referred to Bishop John Cline. Do you know if

1 Mr Skelton Cline's involved with the Economic Advisory Council
2 at all?

3 A. They have brought him only as a member but not
4 (unclear). That was--

5 Q. I didn't catch your answer, Premier.

6 A. They brought him on their own as members, like they
7 did with many other persons, but that was independent of me.

8 Q. Could we look again now--it's a different page in
9 Mr Skelton Cline's report. If you go to 998, please.

10 This is, I think, the almost penultimate page of the
11 report, where amongst the additional areas that were also
12 assigned by The Honourable Premier is recorded the Shores
13 Development. Do you have that, Premier?

14 A. Yes.

15 Q. It refers to Shores Development. And what we see is
16 again in his table.

17 A. Which--which development?

18 Q. If you look--do you see the--the--

19 A. 998?

20 Q. Yes, 998.

21 A. Oh, okay. Yes.

22 Q. And one of the ones that is referred to as an
23 additional area assigned by The Honourable Premier was the
24 Shores Development.

25 Again--

1 A. Oh, okay. I see.

2 Q. Again just--just so that we're clear, I mean, you've
3 explained how we were calling the technical people (unclear) and
4 the operational people would have--were overseeing his contract.

5 A. Um-hmm.

6 Q. And you were, if you like, at arm's length. Would you
7 still have had to say "yes" or "no" to additional areas being
8 added to a contract like that?

9 A. Well, first of all, let me state that--that, for
10 clarity, some of these areas were not only areas added as Mrs
11 Cline--that Skelton Cline was doing his--fulfilling the terms of
12 his contract, and he would be looking at the areas for
13 development. He, himself, would find other areas that he
14 would--he would fit under the umbrella of what he was hired for.

15 Q. But presumably, given the amount of public money
16 involved--

17 A. Um-hmm.

18 Q. --you would want to--your office would want to say
19 "yes" or "no" to what he was doing, wouldn't they?

20 A. Well, I'll put it this way: Once it was anything that
21 was within the legal domain, it is not (unclear) because of
22 investment. If he saw the need--if he saw the potential
23 for--for four hotels and he--or whatever the case may be, he
24 would--he would let us--say these are things that he would
25 be--we would be pursuing.

1 COMMISSIONER HICKINBOTTOM: Premier--Premier, I
2 understand that at least hypothetically.

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: On page 998, the bottom
5 four bullet points, he says, this is his document, not yours or
6 any departments.

7 THE WITNESS: Yes.

8 COMMISSIONER HICKINBOTTOM: The following additional
9 are also assigned by The Honourable Premier.

10 THE WITNESS: Yes, for--for him to explore the
11 possibility--

12 (Overlapping speakers.)

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: Thank you.

15 BY MR RAWAT:

16 Q. The question is whether when he says "assigned by The
17 Honourable Premier", is it assigned by your office, so you don't
18 have anything to do with it, or is it something you would have
19 had to say, yes, all right, I'm happy for him to look at
20 medical--medicinal marijuana. I'm happy for--a Special
21 Committee on Cruise Tourism. I'm happy about the medical
22 school?

23 A. I want to say that for--for when these were discussed
24 in terms of signed by The Honourable whoever it is, it's more
25 that--well, it was that he brought that you say were larger,

1 you're happy to, if he explored them and see lots of
2 possibilities there in what Government's--

3 Q. I appreciate--it's not--I mean--

4 A. Yeah.

5 Q. --we just need to be perfectly clear because Mr Claude
6 Skelton Cline's wording--

7 A. Um-hmm.

8 Q. --if you took it in isolation suggest that you as
9 Premier said, I'd also like you to look at the following four
10 areas.

11 A. And--

12 (Overlapping speakers.)

13 Q. Let me go through them.

14 A. Um-hmm.

15 Q. One option is that you, Andrew Fahie had something
16 directly to do with it. The second option is it's your office,
17 and you might just say "yes" or "no".

18 The third is that your office does it and you have
19 nothing to do with it.

20 And the fourth seemed to be that Mr Skelton Cline's
21 wording is wrong, and these were just areas he came up with
22 himself.

23 So, just that we can be clear, which one of those
24 options is it?

25 A. Well, I would state--I don't know if I could take the

1 options you give me, but allow me to give the option that I
2 know. For--for clarity, these are some of the areas, as
3 Mr Skelton Cline named, that he can pursue. I think that the
4 wording there is a little strong. And when you say the
5 following additional areas were also assigned by The Honourable
6 Premier, these are areas that he decided to pursue, but we did
7 not have a negative mind towards it, but there were areas that
8 he said that he think that he could pursue to help (unclear)--

9 (Overlapping speakers.)

10 Q. So you think he's--he's--he's--you would dispute his
11 wording.

12 A. In this case, in retrospect, yes. It's his wording
13 but he--

14 (Overlapping speakers.)

15 Q. You didn't give him these areas.

16 A. No, areas he suggested.

17 Q. Right. But did you agree to them?

18 A. I didn't--once there were positive areas and not
19 negative, I never got in his way.

20 Q. So the use of the word "assign"--

21 A. In terms of nothing illegal--

22 (Overlapping speakers.)

23 Q. --is not something you accept?

24 A. Hmm?

25 Q. The use of the word "assign" is not something you

1 accept.

2 A. Yes, I know that it's strong.

3 Q. If you look at what he says about the Shores
4 Development, we'll go to--

5 A. Yes.

6 Q. 1004.

7 A. I want to just say something for the record, though.
8 The reason why I say "assigned" would be strong is that, for
9 example, Shores Development, I wouldn't know about that. That
10 would be something that he would be able to know to bring to the
11 table. I would not know that. So I couldn't assign something
12 that--that I didn't know. The--the--the common talk, some of
13 them was specific, yes, but common talk about bringing more and
14 more investors and investments.

15 Q. I think to be fair to you, Premier, it's not something
16 we actually can explore much further.

17 A. Um-hmm.

18 Q. Hopefully, when Dr O'Neal Morton's further
19 investigations come--

20 A. Yes.

21 Q. --bear fruit, there may be correspondence that will
22 shed light on how these came to be added to it, so let's not--I
23 just want to ask you a little bit about the Shores Development.

24 And just to give you--this is all the information I
25 can give you, but it is 1004, and where he says his tasks

1 completed, this is in relation to Shores Development, number
2 one, he says he met with the principals of Shores, Allison
3 Petraus, Roy Garroway and David Archer to discuss the project in
4 terms and condition, and then he goes on to refer to an MOU
5 document.

6 If you go to 1022, this is where--Part 3 of the table
7 is where he makes recommendations, and he says the terms--in
8 relation to Shores Development: "The terms and conditions
9 proposed by the developer are suitable to the objectives of the
10 Government and should be accepted once the Government is
11 satisfied, so that the MOU can be drafted by the office of the
12 Attorney General".

13 Now, the--if we look at what the report says, if you
14 go to 910, please.

15 Just give me a moment.

16 (Pause.)

17 Yes, sorry. If we go to BS 6910, please. We are
18 going to a Second Report here. This is now--Mr Skelton Cline's
19 continued with his second contract. It's his March 17, 2020
20 report, and at 910 he talks about the Shores at Brandywine,
21 including "I've referred the Deputy P.S. with the details of the
22 principal of Shores, Mr Allison Petraus".

23 Deputy P.S., I take, is Deputy Permanent Secretary.

24 And then "Obligations of the Government: The
25 Government shall: Agree to a Crown Lease of 99 years Land and

1 Sea Bed Lease at Brandywine Bay..."

2 So, what Mr Skelton Cline is--appears to be
3 recommending is that--is the leasing of Crown Land.

4 Now, can you help us with this. Hopefully more light
5 will be shed on this as we get more documents, but who is
6 Allison Petraus?

7 A. Well, let me help you with it overall.

8 This was a presentation that he brought in terms of
9 someone who wanted to develop the Brandywine Bay Area, so they
10 came and they made a presentation to the Government that
11 Mr Cline brought. But the conditions that was set out here were
12 what they told him that they would want, but that's not what
13 Government agrees to. So, we carried the Cabinet in terms
14 of--of certain approvals on it, pending many things, and one of
15 the pending things included speaking to the people of that area
16 to see they want the development. Since then we have spoken to
17 the people of that area, and since Cabinet have approved certain
18 things, pending certain things would happen, and they're not in
19 favor of the development, so that never went anywhere since
20 Cabinet approved.

21 Q. The--we've obviously heard about statutory boards, and
22 you've given the Commissioner some evidence about it already,
23 and that's--I understand it; different statutory boards sit
24 under different Ministries.

25 A. Um-hmm.

1 Q. And the Minister would be responsible for--at least in
2 part, for some appointments to the boards. So, for you, it
3 would be under your dual role of Premier and Minister of Finance
4 that some statutory boards would come within your ambit.

5 One of the people that the Commissioner has taken
6 evidence from is Patsy Lake, who Mrs Lake said that she was
7 related to you. Can you explain the family connection, please?

8 A. My first cousin.

9 Q. And on which side? Your mother or your father's side?

10 A. She's my first cousin on my father's side, just like
11 how the Chairman of the PSC is my first cousin on my mother's
12 side.

13 Q. And the PSC, is that the Public Services Commission?

14 A. Yes.

15 Q. Now--

16 A. Who I might add was the PSC is the Chair selected by
17 the Governor, so--and the board--but I don't know which one
18 we'll ask about with her, but I'll be able to see that.

19 Q. Well, the board--what Mrs Lake did tell us was that
20 she's the Vice Chair of the BVI Airports Authority. Would you
21 have involvement in appointing people to the BVI Airports
22 Authority?

23 A. Yes, but not to the--not to the different
24 subcommittees. That will not be my role.

25 Q. Fine. So, by that you mean they choose their own

1 Chairman and Vice Chair.

2 A. They will choose their own Vice Chair and all of that.
3 They have their own articles of corporation of how the Airports
4 Authority operates.

5 But might I say for the record that many, the whole of
6 this island is related, so I don't want to seem like
7 it's--it's--it's done by relations. It's very difficult in this
8 country to do anything where some person might not be related
9 somehow to the other, so it's not a--a unique situation.

10 Q. Well, just so--appointments to the BVIAA, do you come
11 within the remit of yourself either as Minister of Finance or
12 Premier? Is that right?

13 A. Through Cabinet. It would carry the recommendations
14 to Cabinet.

15 Q. You've made the point that other--that on these
16 islands that people are related. But since becoming Premier,
17 have you recommended any other family members to become members
18 of statutory boards?

19 A. I can't answer that right now because, you know, you
20 don't know even who are related. I might say no and you might
21 find someone and then tell me, it's--allow me to talk to the
22 boards and see that I--

23 Q. Well, anybody you know--

24 (Overlapping speakers.)

25 A. Not consciously do it that way.

1 Q. --you've known to be a family member you have
2 appointed--

3 A. (Unclear.)

4 Q. --or recommended for appointment to a board?

5 A. Yeah, but--but Patsy Lake wasn't recommended because
6 she was a family member or--

7 Q. I'm not suggesting that.

8 A. No, but I want to make it clear for the record,
9 Commissioner.

10 (Overlapping speakers.)

11 Q. You have--

12 A. Because--

13 Q. --you have made it clear--

14 A. No, I want to make it clear for Commissioner why she
15 was selected.

16 She's one of the hardest-working private
17 businessperson that we have, and on top of that, she has been
18 known as one of the freedom fighters that save our Wickham's Key
19 lands when it was being given away years ago where most of these
20 areas are reclaimed. So she was part of the positive action
21 movement, so it is not a family thing with her. It is the
22 national pride that she has done to fight to save a lot of this
23 territory. So, for me, I don't see her in that light because
24 she is a businesswoman, but I don't see in the light of being
25 that because of our family. She has fought for the legacy of

1 this country to be in the hands of Virgin Islanders, and that
2 has to be respected.

3 Q. Before you digressed, can I just--or the question I
4 was asking you was whether you have recommended for appointment
5 to boards since becoming Prime Minister any individuals who you
6 know to be family members of yours?

7 A. Cannot recall at this time but I would state clearly,
8 though, to go and in the--no matter what your intent is with
9 that question, Commissioner, we must go into the criterias of
10 selecting members of boards, and you can only go by what the law
11 says. The law says a fit and profit--fit and proper person in
12 some cases. In some boards there are clear stipulations,
13 because Patsy Lake would represent employees, employers. There
14 is some specific criterias that persons would fit in some boards
15 and there are none in others but would refer to fit and proper
16 person. So whatever selections have been done, I know for
17 one--one thing for sure: It has been done according to the laws
18 of the Virgin Islands and not outside.

19 Q. When you say--you referred more than once to "fit and
20 proper person" test. Is that recorded in one law or is it in
21 policy or is it in governance?

22 A. Well, as a general, (unclear) in policy, and that's in
23 documents, in legal documents showed here, and I even showed the
24 UK for years I have been saying in politics, I don't understand
25 the legal meaning of a "fit and proper person", but that's

1 beside the point, but that's a professional term.

2 Q. I see. So it's not actually recorded in the law.

3 A. In some laws it is.

4 Q. Right.

5 And so, the--the criteria by which people are
6 appointed to statutory boards can be found in a number of
7 different policies, guidances, and laws.

8 A. Well, this is--for example, the RDA Board, the
9 Government has two appointments there, but there is no criteria
10 how he appoints, and there's nothing towards him. It is just
11 that over the years, the "fit and proper" is the only thing that
12 has been used (unclear)for that Public Service Commission,
13 Teacher Service Commission, or any board that's not unique to
14 boards. And Ministers, even the constitutional boards, unless
15 there are specific criterias for them, like the National Bank
16 Board has specific criterias that FSC has for those. So you
17 have to fit those criterias. That person who's going to have to
18 fit the criteria, but also we also look at your CV.

19 So, with it, now your CV will tell us and your résumé
20 will tell us if you're a fit and proper person, if you're
21 competent, competent to help move forward the aspirations and
22 the visions of the board.

23 Q. And since being appointed Premier, have you
24 recommended for appointment to a board a person who would be
25 seen by others to be a close friend of yours?

1 A. Well, again, you go back into close friends. I don't
2 have any enemies. So, with that in mind, I--I have persons on
3 boards who--who supported other political parties. There are
4 persons on boards who allegedly supported all parties. I
5 believe in looking for the best person for the board with the
6 laws that are given now.

7 What I would say is I do agree that we need to
8 strengthen the policies of how boards operate and what--how this
9 selection process is. But given that we are two-year Government
10 with 13 months in the COVID, there was some delays in dealing
11 with that, but we're dealing with that now. We have set up
12 policies in place and starting to moving towards--we even carry
13 a paper, the Cabinet, already informing the Cabinet that we are
14 going to be shifting how this is done and how we're going to be
15 advertising for persons on boards, and even with those whose
16 time will be coming up, whose tenure will be--be--be shortly
17 due. They will have a chance to reapply, and then we will go
18 through the process of making sure that there is a more
19 transparent and open process, not that the process that is used
20 now isn't transparent but a more clear policy.

21 And this has been going for years, so now we are
22 trying to make sure that we have a clear, distinct policy of how
23 persons are selected because we know, as a growing country,
24 we're not at the age of the UK and all the U.S. and those other
25 countries, but we know as a growing country to reach to the next

1 level, we have a lot of work to do, with further strengthening
2 good governance and further strengthening policies. And in our
3 two years now in office, now that we have a little breathing
4 room from COVID, which I don't know what that is, but in terms
5 of that room, but we're trying to work on those now.

6 Q. The Commissioner has also heard from Bevis Sylvester,
7 who's the chairman of the BVIAA. Do you know Mr Sylvester?

8 A. Again, I know Mr Sylvester.

9 Q. And in what capacity do you know Mr Sylvester?

10 A. The same way I state with everyone, everyone is my
11 good friend.

12 Q. Have you at any point in time had any kind of business
13 dealings with Mr Sylvester?

14 A. Definitely not.

15 Q. He's not what might be described as a political ally.
16 He's not seen as a close associate of yours; is that right?

17 A. In politics I don't know who is close to you or who is
18 not, so I don't ever gravitate towards and saying that because
19 it's never clear.

20 Q. Can I--final matter that I'd like to canvass with you
21 today, Premier. I can take you to them, if you want, but there
22 are a number of articles online.

23 A. Hum.

24 Q. In which you were in opposition--

25 A. Yeah.

1 Q. And this spans to 2015 through to 2018.

2 A. Yeah.

3 Q. You made, or had attributed to you, allegations that
4 the previous administration were corrupt.

5 A. Um-hmm.

6 Q. So, you accused them of corruption. You accused them
7 of being political pirate. You accused them of financial
8 misappropriation.

9 As I said, if you want me to take you through the news
10 reports, I can do so. But is it right? Are those--did you make
11 such remarks?

12 A. Yes, I did.

13 Q. And--and, I mean, do you stand by your allegations
14 that the NDP were corrupt?

15 A. There was--there were actions that--that concerned me.
16 I didn't hide then and I don't hide them now. And I'm always
17 appalled that when we were in the opposition, we asked for
18 Commission of Inquiries on these, and we were told by the
19 Governor that it would be too expensive to have a Commission of
20 Inquiry. And then when we came to office, the Governor had
21 called us one week, asked him many times for Commission of
22 Inquiry on areas of great concern to the taxpayers, and we were
23 told that it's too much money to have a Commission of Inquiry,
24 it would take up too many resources and they would report to the
25 police, and we--we never heard anything about it again to this

1 day. So, we--we--we were always told about the lessons learned,
2 but there was no lesson learned based on what you will see.

3 So I must say, Commissioner, if I can, please, I--I
4 realised very quickly that we have to strengthen our resolve to
5 have good governance because if you search anyone's life
6 from--from now till whenever, you will find things that persons have
7 to improve upon because there's none that is free from--from
8 something that went wrong, not illegal but wrong. That's life.
9 But as my life, your life, or who's life, but we recognise now
10 with the contractor general legislation to make sure we put
11 legislation in, is dealing with the second and third reading
12 right now. We want to make sure good governance is
13 strengthened.

14 COMMISSIONER HICKINBOTTOM: I'm sorry, Premier, to
15 interrupt. I understand that these measures are going through,
16 but as I understand it, the--the answer to the question as to
17 whether you stand by those comments is yes.

18 THE WITNESS: The answer, Commissioner, is yes, but I
19 haven't seen any lessons learned. So, before we get taught the
20 lessons, like now, we put in--in good governance legislation
21 which we got little delayed with--

22 COMMISSIONER HICKINBOTTOM: I'm trying--

23 THE WITNESS: --to show that we're serious about--

24 COMMISSIONER HICKINBOTTOM: No, I understand that.

25 THE WITNESS: --stopping corruption.

1 COMMISSIONER HICKINBOTTOM: I understand that. But
2 the answer to the question is yes.

3 THE WITNESS: Yes, sir.

4 BY MR RAWAT:

5 Q. And at the time, making allegations such as financial
6 misappropriation or corruption, you were effectively accusing,
7 were you not, the previous administration of engaging in
8 criminal activity?

9 A. One, make it specific what I was saying, that we were
10 talking about BVIAA, that was one, and it was not hard to say
11 that because you had no plane, no money, and no flights. I
12 mean, a beginning lawyer in the first year of law school would
13 say something is wrong there, and every entity that could have
14 looked into that when we went to them in the opposition turned
15 us down. So I saw that as a time where we probably were looking
16 at this incorrectly, but I maintain that that was quite a bit of
17 taxpayer's money that went out, and you had no plane, no money,
18 no flight.

19 I didn't say that as a personal attack on them, you
20 were dealing with situations that were right in front of your
21 very eyes that every time you went to the Governor's Office to
22 get the Commission of Inquiry, since we were getting nowhere
23 because we were on the Public Accounts Committee, we did a
24 report on that and other things. When we carried it to the
25 Governor's Office, he said that was not enough for a Commission

1 of Inquiry. Let the Attorney General do. They--they did their
2 work. Nothing. That's not enough.

3 We went back. They stated to us that--that it's too
4 expensive for a Commission of Inquiry. So, after a while, the
5 arms and the tenets that supposed to help with good governance
6 wasn't--was not (unclear) see if--how do we improve.

7 COMMISSIONER HICKINBOTTOM: I'm so sorry again to
8 interrupt, Premier, but going back to the question, the question
9 was that, by making those remarks, you must have meant that the
10 previous administration were involved in criminal activity. But
11 certainly those remarks must have meant--sorry, this is a
12 question, but using the words--word "corrupt" must have meant
13 dishonest.

14 THE WITNESS: I can't say they if they were criminal
15 activities because until proven guilty, you're innocent. I just
16 saw it as corruption, not just the mere fact of planes or what
17 wall or whatever else was there. I saw the whole system as
18 corrupt.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 THE WITNESS: Because--and I'm talking about from the
21 Governor system down because all the arms that you went to to
22 bring good governance, there was no response. So you have to
23 excuse me when I say that I wasn't picking on the current
24 administration, although I just saw the whole system as
25 corrupts, and it should not be about just us. It should be

1 about justice, so I was concerned about that. And I vowed in
2 our administration, even like every administration where you
3 will have things to work on, we're going to better this country
4 by putting good governance in to make sure it doesn't even dream
5 of happening again.

6 COMMISSIONER HICKINBOTTOM: I understand that.
7 But--but the--the word "corrupt" normally, necessarily implies
8 dishonesty.

9 THE WITNESS: To lawyers. To me? Who--who didn't
10 study law, the word "corrupt" means more than just dishonesty.
11 It also means persons who could do something about it, ignoring,
12 taking care of their responsibilities, and then move towards
13 others with what you will call less-off sin or no sin at all. I
14 find that to be corrupt, so that's my definition.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 BY MR RAWAT:

17 Q. Amongst the material at the back if you could turn up
18 page 1234, please.

19 This is, I hope, from a source that you'd approve of,
20 Premier, the Government of the Virgin Islands it's a statement
21 by you during the First Sitting of the First Session of the
22 Fourth House of Assembly, and it's dated the 13th of March 2019.
23 I just want to ask you just if you could turn up, please, 1236.
24 And if you go five paragraphs down, to the paragraph that
25 begins: "We are in the process of engaging a firm...", so it

1 reads: "We're in the process of engaging a firm to do a
2 comprehensive forensic audit of the Finances and overall status
3 and assessment of the Government of the Virgin Islands. This
4 process of assessment will allow us an accurate assessment of
5 where we are so that we can better manage expectations and build
6 a strong foundation upon which to build upon as your new
7 government moves forward so the people's work can be done".

8 "This process will be completed within the first 100
9 days of office. However, this government will remain steadfast
10 in purpose and diligent in actions in doing the people's work".

11 My question is: Which firm carried out the audit?

12 A. None.

13 Q. So, you didn't actually engage a firm to do this.

14 A. Well--well, since this is not investigation, it's an
15 Inquiry, if I may, I need to--to--to preface it by saying that
16 is a--was a whole, sole intention. But as we get going, one of
17 the areas that plagued us from then to now has been the
18 institutional--lack of institutional capacity in the Government,
19 and we had to start to prioritise. So then we shift this into
20 looking into some of the statutory bodies to make sure that they
21 get audited because that seems to be where some of the problems
22 were before we took office, so some of them are undergoing
23 audits as we speak. It's not completed, but they're undergoing
24 audits as we speak.

25 And the Government, itself, we started to implement

1 areas to make sure that we were compliant with all judiciary
2 responsibilities to the UK, and to ourselves. For example, we
3 were outside of the ratio for the--for the protocols for
4 effective financial management when I took office was one of the
5 infractions against the Constitution, against the public
6 protocols for effective financial management. We quickly
7 remedied that. Every other area that we are financially outside
8 of what was expected of us for the UK we remedied except for
9 one, which we are working on right now, and we got delayed due
10 to COVID, which is updated current Audited Financial Statements.
11 And we're able to balance the budget. We were able to make sure
12 that our ratios for debt to income were within the ratios agreed
13 upon with the UK, and the last thing that we are working on now
14 is to make sure that we have updated Audited Financial
15 Statements, which is something, also is a constitutional breach.

16 So, I said all those there to say that we didn't get
17 to do the audit in the way that I would have wanted in terms of
18 a company, but internally, through some measures that we have
19 put in place and continue to put in place, we're getting our own
20 audit done; but for the statutory bodies, they had to engage
21 persons to help with the audit, and there are audits going on
22 there now to make sure statutory bodies also comply and come in
23 line.

24 I might say, Commissioner, the Attorney wishes you
25 kind regards, it's his other reason too why I've sat with this

1 Governor and we agreed and brought forward integrity in public
2 life, and the first reading has already been done, with the
3 second one to be done before the end of June to implement that.
4 The whistleblower legislation, soon to come freedom of speech
5 information, is important to me not just as a jargon. It's
6 important to me because I want to make sure that we strengthen
7 all tenets of good governance so that any sitting Government,
8 whether mine or in the future, will not get away with what I
9 have seen happen in the past.

10 And also it allows for layers, Commissioner, to be
11 enacted so that we do not have to be hoping that a Governor
12 moves to look into these matters because most of our legislation
13 depends on if a Governor calls a Commission of Inquiry, if we
14 can get them to get the Police to move, but by then, millions of
15 dollars are outside of the Treasury. So we have to put more
16 layers of good governance, and that is what we are working on
17 right now with this Government in many areas.

18 But after two years, the difficult I could do right
19 away. The possible will take a little while. But,
20 Commissioner, you will see on page 1234 why I say that everybody
21 is my good friend. If you notice all my speech--and this not
22 political, Attorney, with due respect--the fourth paragraph says
23 this: The last line, Lieutenant Governor wrote two very good
24 friends of mine, and I only met them not too long after they
25 won. It is--if you trace my speeches, that's the way I speak or

1 if I meet you for the first, I call you "my good friend", as I
2 believe everyone should live in peace and harmony, and those who
3 work with me know that that's my mantra.

4 Q. Just picking up one point so that we don't lose it,
5 Premier, you said that the statutory boards are currently
6 undergoing audits.

7 A. Majority of them.

8 Q. Who is--who is conducting those audits?

9 A. I have stayed independent and divorced from that. The
10 boards will decide.

11 Q. So, they decided on their own, whether it's a private
12 company or whatever--

13 A. Yes.

14 (Overlapping speakers.)

15 Q. --and they are engaging people to conduct those
16 audits.

17 A. Yes, sir.

18 Q. Is there a time by which those audits have to be
19 completed?

20 A. Well, again under the boards--excuse me if I don't
21 give one answers because, you know, I'm math and science and not
22 law--if it was up to me, it would have been yesterday. It
23 is--it's gone on too long, which is another area that we're
24 trying to work on in the public service, timing. But the reason
25 that they have a timing problem again is because of lack of

1 institutional capacity.

2 COMMISSIONER HICKINBOTTOM: Just to rephrase
3 Mr Rawat's question, when do you expect them to produce these
4 reports?

5 THE WITNESS: Well, this was something started about
6 going into the--close to the--when COVID came up, so it caused
7 some delays, in fairness to them. So they should be in the
8 thick of it right now, so I would expect that probably some of
9 them in the next three months or some in the next six months.

10 COMMISSIONER HICKINBOTTOM: Because the--the--the--and
11 I appreciate that you've gone about this in a different way.

12 THE WITNESS: Yeah.

13 COMMISSIONER HICKINBOTTOM: But on page 1236, the
14 Comprehensive Forensic Audit you said would be completed within
15 the first hundred days of office. That would be by something
16 like June 2019.

17 THE WITNESS: Right. Well, I would say, Commissioner,
18 being a young Premier, I was quite optimistic, still energetic
19 but optimistic about getting certain things done--

20 COMMISSIONER HICKINBOTTOM: Okay.

21 THE WITNESS: --and made certain promises. But again,
22 the institutional capacity, I realised real quick to always be
23 more mindful of not giving certain definite dates until you're
24 sure what--so, speaking with technical officers, they will tell
25 me if we get this done in this time, and I would say, but then

1 after that I'll be the one who left with mud in my face. I've
2 slowly learned now to--to be a little more wise in giving
3 definite dates until things come together.

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

6 MR RAWAT: May I just have a moment, Commissioner.

7 (Pause.)

8 MR RAWAT: Commissioner, those are my questions, so I
9 think all that remains for me to do is to thank the Premier for
10 coming today and thank him for the way that he has given his
11 evidence.

12 COMMISSIONER HICKINBOTTOM: Mr Rawat, with other
13 witnesses there have been specific documents that they refer to
14 and they said they'd go and try and find, but I'm not sure there
15 is with the Premier.

16 MR RAWAT: No, I don't--I don't think we--

17 (Overlapping speakers.)

18 COMMISSIONER HICKINBOTTOM: (Unclear) make sure--

19 MR RAWAT: --we need to ask Premier at this point to--

20 (Overlapping speakers.)

21 COMMISSIONER HICKINBOTTOM: --there's any homework
22 that we have for the Premier.

23 THE WITNESS: Thank you for not giving me homework,
24 but what I would like to say is I thank you all for--for being
25 so open with it, and I want you to know that whatever assistance

1 and help that we could give the Commission, that is what we're
2 doing Commissioner because I've told my--all the Ministries and
3 Departments and Ministers to let us help because I'm looking for
4 a just outcome, because I know for sure that we have some areas
5 we have to improve upon as a territory. We're working on them,
6 and I know once we're given an opportunity with a just outcome,
7 we'll continue to make a better Virgin Islands.

8 COMMISSIONER HICKINBOTTOM: Thank you, Premier. Can I
9 provide thanks to Mr Rawat for coming to give evidence. I'm
10 sorry it's been quite a long day.

11 THE WITNESS: (Unclear) my good friend.

12 COMMISSIONER HICKINBOTTOM: But it's been very
13 helpful, thank you for coming.

14 THE WITNESS: (Unclear) has been one of my Ministers.

15 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, privacy?

16 SIR GEOFFREY: Again, by tomorrow. We'll give you
17 some very quick responses by tomorrow.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you. Thank
19 you. And we'll consider that when we get the Transcript.

20 Thank you, Premier.

21 THE WITNESS: Thank you, Commissioner. Thank you
22 everyone.

23 (End of Session 3)

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 positioned above a solid horizontal line.

DAVID A. KASDAN