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COMMISSION OF INQUIRY - THE WITNESS HEARINGS
ST. THERESA'S CATHEDRAL HALL
LAFFAN STREET, HAMILTON, BERMUDA
WEDNESDAY, OCTOBER 5, 2016

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CERTIFIED

AUDIO RECORDED TRANSCRIPTION
October 5, 2016
Day 6

Reported by: Amy E. Perry, CSR License No. 11880

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A P P E A R A N C E S

COMMISSION MEMBERS:

- Sir Anthony Evans, CHAIRMAN
- Ms. Fiona Luck, COMMISSIONER
- The Honorable John Barritt, J.P., COMMISSIONER
- Mr. Kumi Bradshaw, COMMISSIONER

COMMISSION LAWYERS/COMMISSION'S COUNSEL:

- Mr. Narinder Hargun, CONYERS DILL & PEARMAN
- Mr. Ben Adamson, CONYERS DILL & PEARMAN

PUBLIC SERVICE LAWYER:

- Ms. Venous Memari, LIBERTY LAW CHAMBERS LIMITED

CLERK TO THE COMMISSION:

- Ms. Albert Dyer-Tucker
- Jane Brett

RECORDER:

- Rolf Martin

- Also Present: Mr. Alan Dunch, Esq.
Tom Lynch, Esq.
Ryan Hawthorne, Esq.

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1 CHAIRMAN EVANS: I've got one preliminary matter
2 and is this we're pleased to see that we now have witness
3 statements which respond to the questions that the
4 Commissioner had asked about the projects. I understand
5 there may be some questions about documents coming forward.

6 Can you bring us up-to-date on that?

7 MR NARINDER HARGUN: Certainly. I'll ask Mr
8 Adamson to address you on that.

9 MR BEN ADAMSON: Good morning, , Mr Chairman. In
10 terms of documents, there are discussions hopefully happening
11 today between ourselves, Liberty Law Chambers and the Attorney
12 General's chambers about the documents which are necessary to be
13 responsive to the subpoenas. Hopefully, as a result of those
14 discussions, we'll get the documents tomorrow or certainly in time
15 for when the witnesses come to give their statements which is
16 on Friday and Monday.

17 CHAIRMAN EVANS: Very good. Thank you very much.

18 MS VENOUS MEMARI: If I may be excused.

19 CHAIRMAN EVANS: Yes, certainly.

20 MS MEMARI: Thank you.

21 CHAIRMAN EVANS: There's no need for you to have leave

not

22 to be here, you're most welcome whenever you choose to be here
23 because you're representing your clients as of right?

24 MS MEMARI: I'm grateful. My colleague, Charmaine Smith
25 is here. Thank you very much.

1 CHAIRMAN EVANS: Thank you very much.

2 MR. HARGUN: Mr. Chairman, next witness is
3 Lawrence Brady.

4 MR. ALAN DUNCH: Mr. Chairman, for the record, I
5 appear on behalf of Mr. Brady. My name is Alan Dunch.

6 CHAIRMAN EVANS: I wondered why you were here.
7 But I could guess and you're here to represent Mr. Brady.

8 MR. DUNCH: Yes, in the hope it won't be necessary
9 for me to say anything at all. I have represented Mr. Brady for
10 many years in relation to the matters he is going to give evidence on.

11 CHAIRMAN EVANS: And just for clarification, you
12 appear as of right, as of right under Section 12; is that
13 right?

14 MR. DUNCH: Yes.

15 CHAIRMAN EVANS: And we don't need to give you
16 leave but thank you for being here.

17 THE WITNESS: I, Mr. Lawrence Brady, swear by
18 Almighty God that the evidence I shall give shall be the
19 truth, the whole truth and nothing but the truth.

20 CHAIRMAN EVANS: Sit down, Mr. Brady.

21 **MR. LAWRENCE BRADY**

22 called as a witness, being first duly sworn, testified as
23 follows:

24 **EXAMINATION**

25 **BY MR. HARGUN:**

1 Q Mr. Brady, good morning. My name is Narinder
2 Hargun. I'm going to ask you a few questions in relation
3 to the statement you have made and after that, the
4 Commissioners are going to have some questions. You've very
5 kindly prepared a witness statement responding to the
6 questions which were asked, and you attempted to answer
7 the questions. And you have exhibited documents in
8 relation to the contracts you were asked questions about?

9 A Correct.

10 Q Do you have a copy of your witness statement?

11 A Yes, I do.

12 Q And you say that you are the chief architect for
13 the Government of Bermuda?

14 A Correct.

15 Q And you were appointed to that position in 2007?

16 A That's correct.

17 Q And you were attached to the Ministry of Works
18 and Engineering?

19 A Correct.

20 Q And that is the Ministry of Works and Engineering
21 where the architectural division is associated?

22 A Yes.

23 Q Just by way of background, how many people do you
24 have in that division?

25 A Again, at this point in time there may be say

1 two. Back in 2007 it ranged anywhere from 10 up to 18
2 people.

3 Q And how many architects did you have?

4 A During that time it would be about four
5 architects and technical people as well associated with it.

6 Q So just to looking back in 2007, and we'll come
7 to see how it is that you are no longer in that Department.

8 In 2007, what work would the Architectural Division do for the
9 Government of Bermuda?

10 A What we would do, we actually plan, monitor and
11 oversee the capital projects and they'll range from office
12 renovations to new buildings, like the Magistrate's
13 courthouse and police station, Southside Police Station,
14 and any sort of capital projects we'd be in charge of.

15 Q Yes. And you say that from your appointment in
16 2007, it can be seen that my (impotent) advice was
17 increasingly rejected while that advice diminished.
18 The Permanent Secretaries and the Ministries took increasingly
19 larger roles in delivery of projects. Can you get the
20 background in relation to that assertion?

21 A Well again, it goes back to 2007 when we tendered
22 the Magistrates Court, Hamilton Police Station project.

23 Q That's the Lois Brown Building?

24 A Correct. Once the tenders were put in, we
25 prepared, I prepared a recommendation, prepared a

1 recommendation that was forwarded to the Permanent
2 Secretary who then would review it with the Minister.
3 Then a decision was made based on that recommendation.

4 Unfortunately, the recommendation I proposed was
5 not taken. And correspondence with the Permanent
6 Secretary at the time, it was noted that that Paper was a
7 Minister's paper, not the technical officer Paper.

8 Q So, how did that lead to your advice not being
9 sought, if that was indeed the position, in future?

10 A Well, in late 2007, there was a change in
11 Permanent Secretaries and Ministers.

12 Q So this is when? This would be when you say late
13 2007?

14 A That would be November, December, December of
15 2007.

16 Q November, December 2007, change of Permanent
17 Secretary; Mr. Horton coming in?

18 A Correct.

19 Q And Mr. Derrick Burgess coming in as Minister?

20 A Correct.

21 Q The contract with Landmark Lisgar was signed
22 in December 2007?

23 A Yes.

24 Q Was the new Minister and the new Permanent
25 Secretary in position by that time or was that signed under

1 the old regime with Mr. Lister being in position?

2 A I didn't actually see that contract, it was never
3 presented to me for review. But that was during the change
4 over at that time. Again, I don't want to speculate but I
5 think it might have been still under Mr. Lister at the time.

6 Q And were you still involved in relation to the
7 Administration? I don't want to use that term in technical
8 terms, but were you still involved in the projects for the
9 building of the Magistrate's court building after
10 December 2007?

11 A We played a role. When I say we, the Department
12 played a role. There was a person who was a project
13 manager, project architect for it within the Ministry,
14 Christina Kokosky. So she ran the project. I had general
15 oversight of what took place in the Department, but she was
16 the person employed by Works and Engineering to see the
17 project through.

18 As time went on, especially in 2008, there
19 became a bit of a conflict between Ms. Kokosky and the
20 Minister on how she administered the contract; in other
21 words, she fulfilled her role and responsibility ensuring
22 that the contract was carried out correctly. This created
23 problems with the Minister. And as time went on, it got
24 less involved. We were then almost phased out.

25 Q When you say Minister, this is the new Minister,

1 Mr. Burgess?

2 A Correct.

3 Q What sort of issues were there?

4 A I think it was just again Administration making
5 sure that the contractors supply what they're supposed to
6 supply; goods and services for what they had been
7 contracted to do.

8 In some cases, there were issues with crack
9 filling, excavations, extras that were being asked for but
10 were not being honored. And when I say being honored, we
11 were not just signing the cheques and saying fine, you can
12 have all these extras. So it was, she administered the
13 contract correctly.

14 Q And this was a project where the architect was from Canada?

15 A They were the consulting architects, yes.

16 Q Consulting architects.

17 In relation to payments, who would certify the
18 payments under the construction contracts?

19 A The way we had it set up is that the contractors
20 would then send the request for payments to the
21 Canadian architectural firm. They would then review it
22 and send it to us to say they certified that the goods
23 and services had been received.

24 At the same time, just to go back, one set of
25 documents would go to Canada for request for payment. At the

1 same time another set would come to Public Works, Works and
2 Engineering for us to look at as well. So by the time the
3 certification took place in Canada, we'd also be
4 reviewing the documents to make sure things were in place.

5 Q And were there any issues in relation to that
6 certification by the Canadian architects?

7 A Again, they did the job. They sort of held the
8 letter of the law, so to speak, and what was supplied and
9 what they were willing to certify.

10 Q And did that cause problems?

11 A Very much so.

12 Q What was the nature of those problems.

13 A It was more to do with that the contractors
14 needed money in order to keep working. And I think that
15 that's where the problem came in, is they really didn't
16 have the cash flow required to run a project like this.

17 Q And were there other issues of some of the
18 payments which were sought?

19 A They actually, a lot of payments would request
20 things that couldn't be certified. So what they requested
21 and what they actually paid were completely different.
22 Normally there would be amounts certified a lot less because
23 we couldn't justify what was done. And when those
24 questions kept coming up, that's when we increasingly got
25 pushback from the Minister and Permanent Secretary.

1 Q Why would you get a pushback from the Minister
2 if the amounts were not certified as sought by the
3 general contractor?

4 A Well, the Minister started playing a bigger role
5 in the projects. He took a great interest in getting
6 involved in the projects.

7 Q Generally, just tell us, you were the chief
8 architect, generally when the contract had been signed and
9 the construction started and the contract had been
10 administered by the architects, what role is the Minister
11 expected to play in that?

12 A None really. I mean, it was just a matter of
13 making sure that the project delivered. But prior to this,
14 we'd never seen this type of involvement that took place.
15 And we were talking about being sidelined. In some cases
16 he'd be meeting with people, my staff, which I didn't even
17 know about; and also with the Canadian architects. There
18 were meetings that took place that I didn't know anything
19 about.

20 Q I mean, just give us an example of the sort of
21 payments which the general contractor would see which you
22 thought was not following the contract?

23 A Well, there were a few in particular. I raised
24 the question with the Permanent Secretary on one - well,
25 one of many - where the contractor had seeked reimbursement

1 for purchasing of a car for someone in the construction
2 company. It was also a payment made to a political party
3 as a donation. And another one which really stood out was
4 accommodation for the contractors.

5 CHAIRMAN EVANS: One was a payment to provide a
6 car, did you say?

7 THE WITNESS: Yes, for one of the workers in the
8 construction firm. And that was reported in the auditor's
9 report. They mentioned that as well.

10 CHAIRMAN EVANS: And then the second, making
11 political --

12 THE WITNESS: Donations, yes.

13 CHAIRMAN EVANS: Do you recall which party it was?

14 THE WITNESS: It was PLP. I raised the
15 question with the Permanent Secretary because I didn't see
16 this as being construction-related reimbursement costs.
17 It was left at that.

18 CHAIRMAN EVANS: I see. Sorry, did you say, to
19 provide accommodation?

20 THE WITNESS: Yeah, it was accommodation for
21 staff. It was at some -- at a guest house.

22 CHAIRMAN EVANS: I see. In other words, paying
23 for the guest houses for the worker?

24 THE WITNESS: Yes, which is somewhat unusual for
25 a client to be paying for accommodation.

1 **BY MR. HARGUN:**

2 Q Was there an incident where there was an issue in
3 relation to cheques appearing on the files in relation to this
4 matter? Can you tell the Commissioners the background of this
5 and what impact it had in relation to your relationship with
6 the Minister and the Department?

7 A That goes back to 2008. We had met - Well,
8 the Permanent Secretary, Mr. Horton, he invited the Auditor
9 General's office into our office. And we had a brief
10 discussion about projects and, you know, anytime the
11 Auditor wished to come in to review any documents, they're
12 more than welcome to do that.

13 Shortly after that, the Auditor General
14 representative, Mr. Michael McFee, came to my office and
15 requested to look at the files for the Dame Lois Browne
16 Building. But he was already invited in by the Permanent
17 Secretary. We indicated where the files were, that he can
18 review them at any time he wanted. And that was that.

19 He then turned around and said, "Well, what I need
20 to do is talk to you because I'm interested in a particular
21 set of files." And I made the comment of saying, "Well, I
22 don't know what you're talking about."

23 He then took me back to my office, he read me
24 the 1990 Audit Act that it's an indictable offense to
25 obstruct the Auditor General from carrying out their

1 duties. And that he'd like to have these files relating to
2 these cheques.

3 At which time I said, I'd never ever seen these
4 cheques. He said, "Well, we are aware of these, so where
5 are they?" And I indicated that they resided in Canada.
6 But up until that point in time, we'd never had those
7 cheques in Bermuda Government locally in the files.

8 Q So these are the cheques, these are the cheques,
9 photocopies of cheques from the General Contractor?

10 A Yes, yes, but I say, up until that point in time
11 I'd not seen these things. I'd not physically seen them.

12 Q So what happened, what did you do?

13 A Well, we made a call to the Canadian Consultants,
14 where these payment requests were being made. They had
15 them and they sent them to Bermuda electronically.

16 CHAIRMAN EVANS: At the moment, I'm a little
17 unclear. You say, these cheques. You talked
18 about photocopies and the cheques being in Canada?

19 THE WITNESS: Yes.

20 CHAIRMAN EVANS: First of all, can
21 you --

22 **BY MR. HARGUN:**

23 Q These are cheques, photocopies of cheques
24 paid by the General Contractor to various parties?

25 CHAIRMAN: To who?

1 MR HARGUN: Various parties?

2 A Yes. The way the contract was set up that we'd
3 only reimburse the contractor if he showed that he'd
4 actually spent money or paid out money, so that's the only
5 time we'd ever reimburse them on things that he actually
6 spent money on.

7 And so, in his request for payment, he would
8 indicate if he bought \$10,000 worth of block, he'd indicate
9 the supplier's block and actual canceled cheque of... that
10 they did pay for the block. And then he'd reimburse
11 based on that.

12 Q So these photo copies of cheques would be the
13 General Contractor's evidence?

14 A Yes.

15 Q That he had made his payments?

16 A Correct.

17 Q So, you got an electronic copy of those cheques
18 and what did you do with them?

19 A Well, actually when they were sent to me, we
20 agreed a time when they'd be sent. Again, it's not just
21 the cheques, it was a whole request for payment for that
22 particular time, so it wasn't just these two documents, it
23 was a complete request for payment. And some of these
24 requests would be the thickness of these binders.

25 So, it's not just one or two documents, it was a

1 whole stack of documents. The Canadian architects sent them
2 down electronically. We agreed a time when they'd be put
3 on this special FTP site that you needed a password to get
4 into it.

5 I organized with the Auditor General's
6 representative to be at my office at that particular time
7 when these things would be on the FTP site. When we got
8 notification that they were on the site, I then called back
9 to Canada to get the password in order to access it.

10 At that point in time, the Auditor General
11 representative, Mr. McFee was standing on the side of me.
12 He passed me a memory disc, stick, and as I downloaded the
13 information, it went directly onto his stick from my
14 screen. So, technically the Auditor General got to see
15 these documents prior to I even opening them.

16 Q So all right. So the Auditor General took a copy
17 of -- electronic copy of the, essentially, the file which
18 were maintained by the architects in Canada?

19 A Yes. Correct.

20 Q Did you also take a copy?

21 A I then turned around and passed it on which was
22 normal procedure, passed it on to the quality surveyor in
23 my office to download information and put it on file
24 because that becomes now Government's property.

25 Q When you say put it on file, hard copies?

1 A Hard copies, yes. Correct. Hard copies and
2 electronic copies as well.

3 Q So did that become an issue at some stage?

4 A During the investigation from the Auditor
5 General, that took place from November to about, that's
6 November 2008, until about January 2009. They conducted
7 their investigation and concluded that like architects,
8 we couldn't turn, pay for these things because there
9 wasn't any backup to say that these were legitimate costs
10 associated with the construction project.

11 So no payment was made. The Auditor General
12 felt that was fine in terms of paying for something we
13 didn't receive. And that was the end of that.

14 On January 28th, I brought the information to the
15 attention of the Permanent Secretary to say that
16 these documents are on file.

17 And from that time, January 28th, that evening,
18 that's when the police came to my office. I was home at
19 the time and they raided my office and seized my computer.
20 And from that point on, the relationship with myself and
21 the Ministry and/or the Minister and the Permanent
22 Secretary continually went downhill.

23 Somehow they, whatever belief they had in this
24 whole thing. If we skip ahead to April of 2008, that was
25 the time I was arrested by the police.

1 Q 2009?

2 A 2009, sorry. 2009. So April 2009, that's when I
3 was arrested by the police because, how did they put it,
4 that they found these documents on my computer.

5 Q And specifically what documents were
6 objectionable?

7 A Well again, it was these cheques again.

8 Q And were there any particular cheques which people
9 (detected) ?

10 A Particular names?

11 Q Yes. Can you tell us?

12 A Well, the ones they were concerned with were two
13 particular cheques that were made out to D. Burgess and
14 Dr. Brown. And people raised the question, well was I
15 concerned with that. With the D. Burgess portion of it, we
16 weren't because there was another D. Burgess that was also
17 working on the project at the time. And for the amount of
18 money that it was, it really didn't raise any sort of major
19 issue.

20 But the thing it didn't have was any backup to
21 say what you were providing services for. And that's why no
22 payment was made on that, on those documents. But it was
23 still around. There is a Dalton Burgess that was
24 associated with the project, and I think he was doing some
25 project management for the construction company.

1 When, in reference to the Dr. Brown issue, again,
2 in the way the contract was set up, Government would pay
3 for workers to (see physician 10:28:28) so during that
4 period of time we were also reimbursing other doctors
5 for services they had provided. But they had backups;
6 We saw patient so-and-so. So those had backup material.

7 This one for Dr. Brown didn't have any backup
8 material, nor did the thing for D. Burgess have any backup
9 materials. So no payment was made to those.

10 But out of that whole situation, that's when the
11 sort of relationship between myself and the Minister and
12 Permanent Secretary just deteriorated.

13 Q You said that you were visited by the police?

14 A Yes.

15 Q What were they investigating?

16 A They were investigating those documents, those
17 two cheques.

18 Q And were they suggesting that you might have
19 played a part in it?

20 A I think they obviously did because they arrested
21 me for this and questioned me. No charges were made. The
22 one thing that was unique to this whole situation is when
23 they identified that ESD's *[sic]* documents were found on
24 your computer. And when I was being interrogated, so to
25 speak, at the police station and the police officers handed

1 me a document, he said, "Well don't you recognize this?"

2 And I looked at it and I said, "No, I don't."

3 And he said, "How can you say you don't recognize it
4 because we got it off your computer?" And my lawyer, we
5 both looked at this document and he said, "No, I've never
6 seen this document before."

7 Then when I questioned the policeman, I said,
8 "Well, what is it?" And he mentioned it was a PhotoShop copy
9 of these cheques that were manipulated. When I asked him
10 the question, on any of my computers, the one he ceased
11 from my house or from the office, on any of those computers
12 did I have a program called PhotoShop that would allow me
13 to see those documents.

14 And at that point in time he quickly shut the
15 interview down because unless you actually have a program
16 on your computer at any point in time, you would not be
17 able to access that information.

18 So somehow this stuff was somehow attached to one
19 of the files that they were able to access which I couldn't
20 access.

21 Q So was it being suggested or was the police
22 investigating you on the basis that you might have
23 manipulated the cheques?

24 A Yes. Correct.

25 MR DUNCH : This is the condition that

1 the complaint or the matter that was being investigated --

2 CHAIRMAN EVANS: Sorry, do you want to make an
3 implication or submission?

4 MR DUNCH: I am just making a
5 comment.

6 CHAIRMAN EVANS: Well, you'll have your
7 opportunity to ask questions of the witness.

8 THE WITNESS: Again, the investigation didn't
9 just take place in Bermuda, it also took place in Canada.
10 And a thorough investigation was carried out in
11 Canada with the Mounted police at the architectural firm,
12 our consultants. And again, came to the same conclusion that
13 that nothing originated from them and nothing originated
14 from my office.

15 **BY MR. HARGUN:**

16 Q Were you sued by --

17 A Yes.

18 Q When?

19 A I was actually sued by Dr. Brown and Derrick
20 Burgess in Canada under the full agreement with Cabinet of the
21 day and with Attorney General going along with it. And
22 that lawsuit, I had to pay for myself out of my own pocket,
23 whereas with Brown and Burgess, their legal fees were
24 paid by the Bermuda Government.

25 Q What was the claim made against you in Canada in

1 civil proceedings?

2 A It was defamation but it was a -- that I was in
3 collusion with others to defame them.

4 Q Conspiracy to defame?

5 A Conspiracy to defame.

6 CHAIRMAN: Colluding with others to do what?

7 WITNESS: To defame them.

8 Q Eventually those proceedings [inaudible 19:33:29] --

9 A No, actually it went through the court system and
10 I did get some damages out of that; successful in the portion
11 that we were defending. But my total expenses and
12 everything and also to my reputation has not been...

13 CHAIRMAN: This was a claim against you for defamation
and
14 conspiracy to defame?

15 WITNESS: Yes.

16 CHAIRMAN: And was there an outcome, was there a
judgment?

17 WITNESS: I won the case.

18 CHAIRMAN: There was a judgment dismissing the case?

19 WITNESS: Yes, correct.

20 CHAIRMAN: And you received some compensation you said?

21 WITNESS: Yes, very, very minimal just to get it out of
22 Canada and bring it back to Bermuda, just to put an end to
23 the Canadian situation.

24 CHAIRMAN: I think technically it's possible that; are
25 you saying the claim is dismissed after a hearing on the merits

1 or was it dismissed so the proceedings could take place in
2 Bermuda?

3 WITNESS: Well, no, it was determined that it
4 should not have been in Canada anyway. So it was a false claim
5 all the way around on the whole action.

6 CHAIRMAN: Yes.

7 WITNESS: So I won on that.

8 **BY MR HARGUN:**

9 Q You say all these issues led to a situation where
10 your relationship with the Minister deteriorated?

11 A Absolutely, not just with the Minister, I would
12 say within the whole government really.

13 Q And so just tell the Commissioners, you were the
14 Chief Architect in 2007/2008, you still remain the Chief
15 Architect?

16 A In title.

17 Q What has happened to your function, where are you
18 now?

19 A As it stands now, I am still with the Office of
20 Project Management Procurement which is part of Cabinet but
21 I answer to the Permanent Secretary for Public Works. So
22 it's a bit of a muddle there.

23 Q So under the -- at the time when Mr. Burgess was
24 the Minister after all this happened, did you remain within
25 Public Works?

1 A In, up until the 2010 and under Paula Cox,
2 that's when she set up the office of -- Office of Project
3 Management Procurement which at that time was moved over
4 to the Ministry of Finance. And everyone's role and
5 responsibilities were changed around.

6 Technically, at that point in time there was a
7 restructuring and I was told that the requirements of the
8 Chief Architect is no longer necessary. And they offered
9 me a position as Technical Officer Manager. So in reality
10 it was. I have been made redundant.

11 Q What happened to your role in relation to the
12 Dame Lois Browne Building after this?

13 A Basically in 2008, I would say December of
14 2008, we actually weren't involved in it. The architects
15 were no longer involved. We were straight out of it. We
16 didn't provide any technical advice, (services) running or
17 anything else. There was a contract signed with another
18 architectural firm.

19 Q That was outside the government?

20 A Outside of government, yes.

21 Q Can I ask you to look at some documents in which
22 you have produced. If you go to, I don't know how your
23 file is organized, at page 21 of your exhibit, the document
24 which you have provided, 21 exhibit in Tab 1. And you see
25 at the bottom there is an email from Mr. Julian Hall to

1 Sylvester Lee, copied to Derrick Burgess and copied to you.

2 Do you see that?

3 A Tab 21.

4 Q Your witness statement has some exhibits attached
5 to it?

6 A Yes.

7 Q It would be at the bottom of the page 21.

8 A At the top.

9 Q I don't have any numbers at the top.

10 A Tab 3, I thought you said Tab 1.

11 (Inaudible discussion.)

12 A Okay. Where are we?

13 Q Tab 3, page 21. Do you see that letter of the
14 16th December 2008 right at the bottom?

15 A Yes. Right.

16 Q And let's see, it's from Mr. Julian Hall, Lee
17 Sylvester, Acting PS, Ministry of Works.

18 And you see, "The Minister" at the time is
19 Mr. Burgess "is currently considering engaging the services
20 of Conyers and Associates in certain respects in connection
21 with the construction of the Dame Lois Browne-Evans
22 Building. As I said to you yesterday, I am directed by the
23 Minister to request that a full set of Drawings and
24 Specifications, electronic and hard copy, be sent without
25 delay to Harold Conyers at that firm to enable Conyers to

1 prepare a new proposal." What is happening here at this stage?

2 A Well again, you got to look at the date which is
3 the 10th September 2008.

4 Q Yes.

5 A So this is very close to the beginning of the
6 project, so I think it was an indication that we were being
7 moved out and a new set of architects were being put in.

8 Q And if you go to page 23, this is --

9 A Yes.

10 Q An email from you to Christina Kokosky.

11 And she's the architect in charge of this
12 project?

13 A Yes. Public Works or Works and Engineering
14 Architect.

15 Q You say there, "On the last payment request from
16 LLC did you review the backup documents to this request?
17 The reason I ask is that I am very concerned as part of the
18 claim for payment on the project documents submitted in
19 particular and items dated 26 June 2008 credit card number
20 166 in the name of Progressive Labor Party noted as
21 Charitable Donations in the amount of \$1,000."

22 How was that resolved?

23 A I don't know. I sent that along to the Permanent
24 Secretary. He just responded, noted, and that was the last
25 I heard of that.

1 Q Okay. And then if you look at page 28. It is an
2 email from Lucy Chung who is one of the architects in your
3 department, yes?

4 A Yes.

5 Q To Jacqueline Robinson. And there she says, "My
6 understanding is that the Architects' Department is no
7 longer involved in the Magistrates' Court building."

8 Was that the position in January 2009?

9 A Yes, I think so.

10 Q And I think that is also confirmed by you if you
11 look at the next page 29 where your email to the Permanent
12 Secretary, Mr. Horton.

13 You say, "This department was no longer to be
14 involved on this project"?

15 A Correct.

16 Q And this is, if you look at page 38, this is a
17 statement by the Minister to the House of Assembly, and the
18 relevant part I want to show you, it's made on 13th of
19 March 2009.

20 At page 38 he says, Upon the signing -- second
21 paragraph -- "Upon the signing of the new contract, this is
22 the new contract signed with the firm LLC."

23 Is that right?

24 A That's what it states. I was not involved in
25 that.

1 Q "A project team replaced the overseas architects,
2 consultants and some Ministry technical staff. Mr. Eddy
3 Henri as the Owner's Designated Representative and Conyers
4 and Associates, Ltd., as the Project Architects. Mr. Henri
5 brings to his role some 35 years' experience and expertise
6 and enjoys an outstanding reputation in the local
7 construction industry. Similarly, Mr. Harold Conyers and
8 his team at Conyers & Associates Ltd have a record of proven
9 excellence in the local building industry."

10 So do I understand that Mr. Harold Conyers has
11 now replaced the Canadian architects and the Architects in
12 the division at Works and Engineering?

13 A In essence, yes, that's correct.

14 Q Harold Conyers is an architect?

15 A Yes.

16 Q And he was working at a firm, architectural firm
17 called Conyers & Associates?

18 A Correct.

19 Q How many architects were there at that firm at
20 the time?

21 A I can't tell you. I really don't know. I knew
22 of Harold Conyers and Charlita Saltus and there were like
23 two, three, maybe four of us.

24 Q Within the architectural community in Bermuda
25 would that be a small firm, large firm, medium?

1 A It's, I would say medium at the most.

2 Q And was Mr. Conyers and the firm involved in
3 subsequent projects in the ministry?

4 A Yes, they took over a number of projects from the
5 public, from the Architecture Department. One of them was
6 the Marsh Folly project, they did that one. There was
7 another one that the Minister was looking to have them
8 involved in which was the Works to Ministry of Finance and
9 Commercial Courts. There was an indication that they were
10 going to sort of get that one as well.

11 Q Mr. Brady, I want to show you a witness statement
12 by the Minister who has sent it to us which, and is signed
13 by him. There's a specific paragraph which deals with you,
14 and I want you to look at it and if it is appropriate,
15 respond to it.

16 Do you have a copy of that witness statement?

17 A Yes, sir. I have it.

18 Q Do you have a copy of that, Mr. Burgess'
19 statement?

20 A I do but not in here. It's in the --

21 CHAIRMAN EVANS: Do you have a spare?

22 MR. HARGUN: Yes.

23 CHAIRMAN EVANS: Thank you very much.

24 **BY MR. HARGUN:**

25 Q I draw your attention to Paragraph 8 of his

1 written statement. Mr. Burgess says, "It is important that
2 the Commission of Inquiry know that I found it difficult to
3 trust the then Chief Architect Mr. Lawrence Brady. I felt
4 that he was often working against the interest of the
5 Government and its stated policy of broadening the ambit of
6 those awarded Government contracts. I believe my
7 suspicions were proven correct when he later admitted
8 placing two cheques subsequently proven to be false and made
9 out to me and Dr. Brown ostensibly by Landmark Lisgar
10 Construction Limited on the Ministry's files following a
11 meeting at the Office of the Auditor General on the 12th
12 of December 2008. I attach a letter sent to my PS Robert Horton -
13 **by** my PS Robert Horton - to the head of the Civil Service on
14 the 19th May 2009 as Exhibit 2. Do you want to respond to that?

15 A I think I touched on it before, I mean, once any
16 documents are received by my department, (when) it was in
17 Government, it's not my position to destroy these things,
18 it's technically Government's property. And we were just
19 satisfying the request of the Auditor General. It was
20 their request to receive these documents and once they
21 received them we put them on file.

22 Q Yes. The suggestion in the third paragraph, "I
23 believe my suspicions were proven correct when he later
24 admitted placing two cheques subsequently proven to be false
25 and made out to me and Dr. Brown," this suggestion seems to

1 be that you had something to do with those false cheques,
2 did you?

3 A No, not at all. I had nothing to do with that.
4 And again, I say at that point in time it was not for me to
5 say what was false and what wasn't. We were just saying
6 whether or not any sort of money should be reimbursed for
7 what they were claiming at that time. And it was
8 determined that that was not a reimbursable, didn't have
9 backup, it was not paid out.

10 CHAIRMAN EVANS: As I understand you've said that
11 you received on your - in your office - electronic copies of
12 two cheques which were therefore placed on the Government
13 files?

14 THE WITNESS: Not just two cheques but the whole
15 document. It was a whole request for payment.

16 CHAIRMAN EVANS: Cheques and supporting documents.

17 THE WITNESS: Yes. It was in the whole -- in the
18 whole file requests for payment. So these weren't just
19 separated out and then highlighted, saying these are the
20 cheques. It was the submission for that request for
21 payment.

22 **BY MR. HARGUN:** Q: How many pages would that be?

23 A I'd say it would be the size of the binder.

24 MS LUCK: The whole batch?

25 WITNESS: Yeah, would be a batch. Would be the request

for

1 payment for block, for cement, would be everything in it.
2 So these things weren't highlighted, you'd actually have
3 to go through.

4 CHAIRMAN EVANS: So there were two of the
5 documents supporting a payment request?

6 THE WITNESS: Yes.

7 CHAIRMAN EVANS: And the cheques in question, you
8 said who were the named payees. Who drew the cheques, whose
9 cheques were they?

10 THE WITNESS: Well, they were from the contractor,
11 from the Landmark Lisgar Contractor at the time for
12 reimbursement for contract related --

13 CHAIRMAN EVANS: Were they good, old fashion
14 cheques? In other words, paper cheques signed by on behalf of
15 the contractor?

16 THE WITNESS: Yes, they were made out that way,
17 yes.

18 CHAIRMAN EVANS: So it might have been said how
19 could you have produced those documents and there was a
20 suggestion was that you'd be able to do it on your
21 computer; is that right?

22 THE WITNESS: That's where this whole PhotoShop
23 program comes in. But that was the insinuation.

24 CHAIRMAN EVANS: Did you have any means of
25 knowing what bank arrangements the company had?

1 THE WITNESS: No, I didn't know what bank. We
2 didn't look into that part of it.

3 CHAIRMAN EVANS: Thank you.

4 BY MR BARRITT:

5 Q Can I just get clear in my mind the sequence of
6 events here? I think you said that -- I want to go back to
7 when Mr. McFee from the Office of the Auditor General came
8 to you, took you in your office and told you what his [inaudible 10:51:28]...

9 A Yes.

10 Q At that time, he was specifically looking for --

11 A Yeah.

12 Q No. What was he specifically looking for?

13 A He was looking for those two cheques. He was
14 looking for those documents.

15 Q Those two cheques, those are the ones made out to
16 Dalton Burgess --

17 A No, no, no, to D. Burgess and Dr. Brown.

18 Q And he told you that?

19 A Oh, yeah.

20 Q And then you went back to your - Well, not back
21 to, in your office, then you went to the Architects in
22 Canada and said, send me --

23 A We didn't have those documents in Bermuda because
24 what they would normally do, they would only send down the
25 documents that they had certified for payment. Things that

1 they didn't certify they wouldn't send to us. Whatever
2 they certified they'll say, this is what they've asked for,
3 we've looked through the documents, yes, we see that
4 there've been \$10,000 worth of block made out to such and
5 such a company. We see the cheque that's made out to them,
6 we feel that this should go to reimbursement.

7 Q So in this case, Mr. McFee's urging you're now
8 asking the architects in Canada to send you --

9 A All of it, yes.

10 Q All of their files or --

11 A All of that particular payment request for that
12 period of time.

13 Q With respect to those two cheques?

14 A Yes.

15 Q And then they send them to you electronically?

16 A On our secure FTP site.

17 Q Right. And he downloads them at the same time?

18 A I down loaded it, yeah. So I had to call back to
19 Canada, get the password to get into that while the Auditor
20 General's --

21 Q Making electronic copies.

22 A ... is standing right next to me, and we downloaded
23 onto a stick what was there.

24 Q Did you then review the documents they sent?

25 A No. All I did was then pass it onto our quantity

1 surveyor to have the documents put on file. Did I
2 personally put it on file, no. It was a policy that the
3 documents come into the office, it goes on file, yes.

4 Q But you weren't curious to see whether those
5 two cheques were in the batch that they were sending you
6 electronically?

7 A I just gave it all to the Auditor General. It
8 didn't -- I didn't have any interest in it. All I knew is
9 that it didn't bother me or it didn't concern me that I saw
10 D. Burgess because I know a Dalton Burgess and for Dr.
11 Brown, we were paying other doctors for patient care. So
12 it didn't raise any sort of concern.

13 We were paying Island Health Care is the
14 other part of this business for patients to see, to be seen by.

15 MS LUCK:

16 And my recollection was these were for a fairly
17 small amounts of money?

18 A Yeah, I think one of them was for \$5,000 and the
19 other one was like for 14,000.

20 **BY MR BARRITT:**

21 Q And this is at the time, and so, is it subsequently
22 that they're alleged to have been photo shopped and
23 different cheques?

24 A Well, this is -- That's when it was alleged after
25 the Auditor General reviewed them and carried out his

1 portion of his investigation. And then when I brought it
2 to the attention through the Permanent Secretary in
3 January, because now that the investigation of the Auditor
4 General was finished, I realized that no money paid out,
5 that's when the police got involved and realized
6 something was photo shopped or something that took place.

7 Q What was the substance of the allegation of the
8 PhotoShop, that those two cheques in those small amounts
9 were photo shopped?

10 A Yes, and that I, somehow I was connected with the
11 PhotoShop.

12 CHAIRMAN EVANS: As I understand it, one cheque
13 was made out to D. Burgess and the other to Dr. E. Brown?

14 THE WITNESS: Yes.

15 CHAIRMAN EVANS: And you said that there was a
16 Dalton Burgess involved with the project who might have
17 been the payee?

18 THE WITNESS: Yes.

19 CHAIRMAN EVANS: And Dr. Brown might have been
20 any Dr. Brown having rendered medical services?

21 THE WITNESS: Well, we knew that Dr. Brown, but we
22 actually paid his other business for seeing patients and
23 workers on the site.

24 CHAIRMAN EVANS: If those were the payees, was
25 there any matter to be investigated or concerned about as

1 far as you were concerned?

2 THE WITNESS: No. That would have come across.
3 It didn't have any backup. It wasn't paid so we weren't
4 concerned about that at all.

5 CHAIRMAN EVANS: And they weren't paid because
6 they hadn't been certified by the Canadian architects?

7 THE WITNESS: That's correct.

8 CHAIRMAN EVANS: Thank you. Do you have any
9 further questions of this witness?

10 MR BRADSHAW: Did Mr. McAfee say at any time what prompted his
interest?

11 WITNESS: No.

12 MR BRADSHAW: [Inaudible] --

13 WITNESS: It got to discussion of, we didn't hear that
from,
14 or anything else. He obviously knew of them from
somewhere.

15 **BY MR BARRITT:**

16 Q So these cheques, when this file was downloaded
17 and this file came through, these weren't cheques that had
18 previously been received and not rejected, but the request for
19 payment refused because there was no backup material? The
20 first time these cheques were coming to Works and Engineering.

21 A No. Yeah. That's the first time they
22 came to Works and Engineering, yes, that's correct.

23 Q So when were they rejected in the ordinary course
24 of business?

25 A They were rejected back in September of that year

1 of 2008.

2 CHAIRMAN EVANS: By the Canadian architect?

3 THE WITNESS: Correct. Yeah.

4 **BY MR. HARGUN:**

5 Q I think we're finished with this. Can I ask if
6 you, to please have a look at a written statement by --
7 affidavit by Devree Hollis. Yes, if you go to the back of
8 that binder.

9 (Inaudible discussion.)

10 **BY MR. HARGUN:**

11 Q The owner of Bermuda Drywall and Ceilings,
12 Limited. And he has affidavit on the 27th September.

13 A Yes.

14 Q I want to you look at Paragraph 10 and I would
15 like you to respond to it if it's appropriate. Paragraph 10,
16 he says --

17 A I don't have a paragraph 10. I have a Paragraph
18 6 and then it goes to 12.

19 (Inaudible discussion.)

20 **BY MR. HARGUN:**

21 Q He says, "I've been asked why my company was
22 awarded the contract. I don't know. I understand the
23 technical officers had recommended a different company.
24 One of my employees, Mr. Hoop worked for us for six months.
25 Before that he had worked for a company called Disc

1 Drywall. He told me that he was the owner of Disc Drywall
2 and had, one, met Mr. Lawrence Brady about a Government
3 contract. Mr. Hoop told me that Mr. Brady had asked him if
4 I give you this contract, what's in it for me.

5 And when they said that they did not work like
6 that, then Mr. Brady had told him that they would not get
7 any Government work."

8 Do you want to respond to that?

9 A Completely false.

10 Q Do you know Mr. Devree Hollis?

11 A I know of him. I couldn't tell you -- I might
12 have met him once. I don't -- can't recognize him. And
13 this other guy, Mr. Hoop, I don't know who he is.

14 Q You don't know Mr. Hoop?

15 A No.

16 (Inaudible discussion.)

17 CHAIRMAN EVANS: Any questions?

18 MR. DUNCH: There are a few things, Mr. Chairman
19 which I think it might be helpful to you to clarify. I'm
20 in your hands as to whether or not I'm entitled do that.

21 CHAIRMAN EVANS: Well, you're here as counsel
22 representing, as I understand it, Mr. Brady.

23 MR. DUNCH: Yes.

24 CHAIRMAN EVANS: You'll have the opportunity to
25 ask him any questions. Do you think there's further

1 material that ought to be put to (inaudible 11:01:02)

2 MR. DUNCH: Well again, we're here to assist you
3 so I will ask some questions, but understand that they're
4 being asked to assist you in clarifying what might be a
5 misunderstanding. And I'm sorry, I forgot I'm supposed to be
6 standing up.

7 **BY MR. DUNCH:**

8 Q Mr. Brady, it might be helpful if we just took
9 the Commission through a certification process for the Lois
10 Browne-Evans Building. What I propose, I'll just take it
11 step by step and you confirm.

12 The certification process is a stage process;
13 correct?

14 A Correct.

15 Q And it was a monthly process?

16 A Yes.

17 Q And it involved every month the contractors
18 submitting to the architects CSP, a short form setting out
19 what reimbursements were being sought?

20 A Correct.

21 Q And behind that short form would be all of the
22 documentation that was supposed to show that the payments
23 that were being sought to be reimbursed had, in fact, been
24 made?

25 A Yes.

1 Q And as you said, those requests for certification
2 each month would come in in a binder as thick as the one in
3 front of you?

4 A Yes, that's correct.

5 Q They were sent directly to CSP in Canada?

6 A Correct.

7 Q In fact, for the record, the architect who
8 reviewed them was a gentleman by the name of Sam
9 [Spagnola ?].

10 A Yes.

11 Q And the job of the architect CSP was to go
12 through the requests for certification and certify that
13 each request for reimbursement was fully supported?

14 A That's correct.

15 Q And part of the support were the actual cheques
16 that had been written by the contractor to the various
17 suppliers of goods or labor?

18 A That's right. That's correct.

19 Q And where a request for certification was made
20 and there was no supporting documentation, that request for
21 reimbursement - or that request for certification and
22 reimbursement - would be rejected?

23 A That's correct.

24 Q Where there was documentation that didn't flow
25 from any particular line item, questions would be raised

1 as to what they were about?

2 A That's right.

3 Q And that's the cheques you were talking about in
4 terms of the car, the political donation, the accommodation
5 for staff and the two particular ones we've focused on?

6 A Correct.

7 Q And if there was no satisfactory explanation
8 given, they too would simply not be reimbursed?

9 A That's right, sir.

10 Q What came back to you for your files in Bermuda
11 was effectively the shorter form of request for
12 certification of supporting documentation being only
13 those things which the architects had agreed should be
14 reimbursed?

15 A That's correct.

16 Q Now in the context of the two cheques that Mr.
17 Hargun... I'm sorry.

18 MR BARRITT: Can I just interrupt. I thought
19 the witness said that when these binders went to the
20 Canadian people, you got copies of them at the same time?

21 THE WITNESS: We got a copy. But the
22 certification copies would go to Canada. They would be
23 sent because the company Landmark Lisgar, or the Lisgar
24 portion of it was in Canada.

25 MR BARRITT: What were you getting copies of

1 then?

2 THE WITNESS: We'll get similar binders but we
3 found out sometimes that binders were not the same so
4 that's why we always relied on the Canadian company for
5 certification.

6 MR BARRITT: Thank you.

7 **BY MR. DUNCH:**

8 Q The actual certificates for this project were
9 certainly, as long as CSP was involved, were prepared
10 in Canada, were they not?

11 A That's right.

12 Q Now, the two cheques that Mr. Hargun asked you
13 about in particular, you said in your evidence before the
14 Commission and you said in your witness statement that in
15 April 2009 you were arrested?

16 A Correct.

17 Q You were arrested on suspicion of forgery;
18 correct?

19 A Forgery and conspiracy, I think it was. Yeah.

20 Q And that investigation was closed?

21 A That's correct.

22 Q You were sued in Canada by Dr. Brown and
23 Mr. Burgess in 2011. And again, because the Chairman asked
24 the question, I think we just need to get clear what
25 actually happened in that lawsuit.

1 If you recall, isn't it correct that as part of
2 your defense, you made an application for security for
3 costs to be posted by the two of them?

4 A That's correct.

5 Q And the court after a protracted hearing ordered
6 that they put up, if I recall it correctly, \$50,000 of
7 security for costs?

8 A Yeah, I think it was about 50,000.

9 CHAIRMAN EVANS: How much?

10 MR. DUNCH: 50,000.

11 MR BARRITT: Canadian?

12 THE WITNESS: Yes.

13 **BY MR. DUNCH:**

14 Q And in fact, that security was not posted;
15 correct?

16 A I wasn't clear on all that. I think part of it
17 was -- it wasn't -- yeah, I don't think in total.

18 Q Well, in any event, isn't it correct that what
19 actually happened was that the case was dismissed for
20 failure to comply with that court order?

21 A Yes.

22 Q So there wasn't actually a trial on the merits,
23 it was dismissed on procedural grounds and you were awarded
24 your costs?

25 A Yes.

1 Q Were those costs ever paid?

2 A Yes, it was.

3 Q Taxed costs?

4 A Excuse me?

5 Q Taxed costs?

6 A Yes.

7 CHAIRMAN EVANS: Paid by who?

8 **BY MR. DUNCH:**

9 Q Do you know who paid them?

10 A Actually Dr. Brown paid it.

11 Q I think, Mr. Chairman, that clarifies or actually
12 no, there's one more question I should just ask you again
13 to clarify.

14 Prior in time to the Auditor General approaching
15 you in December of 2008, it is correct, isn't it, that CSP
16 were fired by the Government as the architects?

17 A Yes, they were fired.

18 Q And are you aware of the fact that CSP ultimately
19 sued the Government for breach of contract and damages?

20 A That's correct, yes.

21 Q And are you aware of the fact that the Government
22 actually settled that lawsuit and paid CSP?

23 A That's correct, yes. I'm aware of that.

24 CHAIRMAN EVANS: Where were those proceedings?

25 MR. DUNCH: Here in Bermuda, Mr. Chairman. I

1 think that completes.

2 CHAIRMAN EVANS: Could you put a date on that? CSP
3 were fired, when was that?

4 THE WITNESS: That was in November 8, 2008.

5 MR BARRITT: This was before Mr. McFee came to
6 your office or after?

7 THE WITNESS: Before.

8 CHAIRMAN EVANS: April 2009 is when you said you
9 were interviewed. When did Mr. McFee come to your office?

10 THE WITNESS: In 2008.

11 MR. DUNCH: December 2008 is in your statement.

12 THE WITNESS: That's fine.

13 CHAIRMAN EVANS: December?

14 THE WITNESS: December. Yeah.

15 CHAIRMAN EVANS: So when he came to your office,
16 they'd already -- the architects had already been fired?

17 THE WITNESS: Correct.

18 CHAIRMAN EVANS: But, you still had the
19 communications you had with them before they were fired; is
20 that right?

21 THE WITNESS: Yes. It is.

22 CHAIRMAN EVANS: Thank you.

23 **BY MR. DUNCH:**

24 Q And in fairness, you continued to communicate
25 with them after they were fired as well, didn't you?

1 A That's right, yes.

2 Q That was an ongoing dialog arising from the fact
3 they were suing for the contract?

4 A Yes. And it should be noted that the Permanent
5 Secretary actually wrote a letter saying what a wonderful
6 job they had done or carried out.

7 Q If I recall correctly, Mr. Brady, didn't they go
8 as far as to apologize to them for what had happened?

9 A Yes, in the letter, yes.

10 Q Who was responsible for them being fired?

11 A I would say it's a toss between the Permanent
12 Secretary and the Minister.

13 CHAIRMAN EVANS: Did you say the Permanent
14 Secretary wrote an apology?

15 THE WITNESS: Yeah, he actually --

16 CHAIRMAN EVANS: That's Mr. Horton?

17 THE WITNESS: But also thanked them for the
18 wonderful job that they carried out.

19 **BY MR. DUNCH:**

20 Q This was not the only project that CSP had done
21 for the Bermuda Government, was it?

22 A No, there was a few other projects they were
23 working on.

24 MR BARRITT: Marsh Folly?

25 THE WITNESS: Marsh Folly is one.

1 **BY MR. DUNCH:**

2 Q Do you know from your own information whether or
3 not subsequent to them being fired, CSP spoke with the
4 Auditor General?

5 A I don't know.

6 MR. DUNCH: Thank you very much. Hope that
7 helped.

8 CHAIRMAN EVANS: Thank you. Any questions?

9 MS SMITH: No, thank you, Mr. Chairman.

10

11 **BY MR BARRITT:**

12 Q If I could. I wondered, Mr. Brady, if I could
13 draw upon your years of experience in Works and
14 Engineering.

15 As a result of issues that have arisen generally
16 without getting specific. We've heard that there are
17 and have been times when there are numbers of capital
18 projects that Works and Engineering are taxed to capacity
19 and unable to cope or to handle them all, would that be --
20 is that a fair comment?

21 A I wouldn't say that's fair, no. The ways of
22 handling the projects, if we're allowed to carry it out
23 are roles and responsibilities.

24 Q I was going to come on to that. And is one of
25 the ways actually outsourcing and having people help you

1 manage the projects --

2 A We also took another way of doing it by during
3 the time when the economy wasn't as great as it used to be,
4 we'd actually second people in from architectural firms.
5 So instead of them laying the people off, we'll bring them
6 in to Works and Engineering and have them work on projects
7 in order for us to deliver them. That way you're not
8 actually having someone on full-time pay. You're not
9 outsourcing, so to speak. You actually have the person
10 working for, in office, and that saves a great deal of money.

11 Q And that was done?

12 A Yes.

13 Q Is the other way actually outsourcing to hire
14 someone to manage a project?

15 A Yes.

16 Q Is does happen?

17 A Yeah.

18 Q And what would be the arrangements that were made
19 with respect to that? Would Works and Engineering simply let
20 that person manage the project and get on with it or would
21 Works and Engineering still provide some sort of
22 supervisory role?

23 A We'll provide oversight to make sure that things
24 abide by Financial Instruction, and make sure the work is
25 carried out to the proper standard. So we'll provide

1 oversight in some cases although it may go out to an outside
2 architectural firm we'd make sure that it is what we're asking for.

3 Q That's the role that Works and Engineering would
4 play?

5 A Yes.

6 Q In such circumstance?

7 A Yes.

8 **BY MS LUCK:**

9 Q You talked about the fact that you're now
10 reporting to the Office of Project Management and
11 Procurement.

12 A Well, I think I'm still assigned to Office of
13 Project Management and Procurement but I work for Public
14 Works & get paid by Public Works. It comes out of that budget.

15 Q So when they moved you to that, the Office of
16 Procurement, what date was that?

17 A That was in 2010, I believe it's around like
18 October, November or somewhere around that time.

19 Q So we'd understood that the Office of Project
20 Management and Procurement was an aid to try and take a
21 more vigorous approach to capital projects. It would bring
22 everything together in one place. We understood first of
23 all it's reporting to the Ministry of Finance and then
24 perhaps now it's reporting to the Cabinet Secretary's Office?

25 A Yes, I'm not quite sure how it's run right now.

1 Q So just in general, can you give a view of how
2 it's been structured, whether you think it's operating the
3 way it should, has it sort of fulfilled, you said you had a
4 lot about the expectation it's going to be a very good
5 vehicle to deal with some of the issues we've been hearing
6 about?

7 A Yeah. I think again, if you turn the clock back
8 and I believe if you look up to 2007, I think things worked
9 pretty good. It's just after, you know, in the 2008 years
10 onward, that's when things went a little some haywire. And
11 here we are now we're trying to sort of instead of getting
12 back to what worked and maybe tweaking what worked to make
13 it work better, we now have this system that it's chaos and
14 we're trying to reinvent something to get back to what we
15 should have been doing.

16 It's not very clear but it's... we're trying to fix
17 something that's broken when something back in 2007 and
18 before that worked fine. It wasn't perfect. But we just
19 needed some additional tweaking on it. And it could/still
20 satisfied everyone. I think the thing is with OP and
21 P, I think it was a whole -- Paula Cox was headed in the
22 right direction in trying to keep Ministers away from
23 projects. And we just needed to sort of tweak it so
24 it could be better tuned really.

25 **BY MR BRADSHAW:**

1 Q In your perspective, I think you used the word
2 chaos, where is the chaos occurring in the current system now?

3 A I think we're headed in the right direction.
4 We're looking at trying to fix things. It was just those
5 years from 2008 up until say 2012.

6 Q Okay. I misheard that.

7 A Yeah. I think those are the -- and that's why
8 we're here looking at all the stuff right now. That's what
9 took place during that period of time.

10 **BY MR BARRITT:** So what is the office doing now?

11 A Which office?

12 Q The Office of Procurement --

13 A No idea. No idea.

14 Q I thought you were --

15 A I'm assigned to them, technically with them
16 but I'm actually with Public Works. I report to Public
17 Works, the Permanent Secretary. So I don't know what
18 OP and P does.

19 Q You haven't been called upon to do anything?

20 A Not with OP and P. I'm called to do things with
21 Public Works, to do projects with Public Works as the Chief
22 Architect. So we've got a number of projects we're working
23 on in that area. So I can't speak to OP and P.

24 CHAIRMAN EVANS: Just have to ask you a couple
25 questions about Ms Kokoski who is the architect in your

1 department.

2 THE WITNESS: Correct.

3 CHAIRMAN EVANS: Who was still involved, or was
4 involved in the Dame Lois Browne Building project when it began.

5 THE WITNESS: Correct.

6 CHAIRMAN EVANS: And I think you said things
7 became rather uncomfortable and she ceased.

8 THE WITNESS: Yes, she actually -- her contract
9 was up in 2008 in October, November 2008. And she did ask
10 to have it extended. She was willing to stay on longer
11 just to do the transition but that was never accepted so
12 she finished up in 2008.

13 CHAIRMAN EVANS: When did she cease to be
14 involved in the Dame Lois Browne?

15 THE WITNESS: I would say in October 2008.

16 CHAIRMAN EVANS: I see. But she did remain on
17 the scene until then?

18 THE WITNESS: Yes, she actually was running the
19 whole project.

20 CHAIRMAN EVANS: I see. And then you said "we
21 were phased out"?

22 THE WITNESS: Yeah, in essence, yes.

23 CHAIRMAN EVANS: Yes. I was going to ask,
24 when you were phased out, meaning your Ministry, your
25 Department, who was carrying out the job of overseeing

1 the project from the Government's point of view?

2 THE WITNESS: No one. It was Conyers And
3 Associates and Eddie Henri, the project manager for the
4 site.

5 CHAIRMAN EVANS: Yes.

6 THE WITNESS: He was directly employed by
7 Works and Engineering.

8 CHAIRMAN EVANS: Oh, I see.

9 THE WITNESS: By the Minister. So he reported
10 directly to the Permanent Secretary and Minister.

11 CHAIRMAN EVANS: I haven't quite appreciated
12 that. So it was Mr. --

13 (Inaudible discussion.)

14 CHAIRMAN EVANS: And he was a direct employee of
15 the Ministry?

16 THE WITNESS: Correct.

17 CHAIRMAN EVANS: And he reported to?

18 THE WITNESS: Permanent Secretary and Minister.

19 CHAIRMAN EVANS: Thank you. Mr. Hargun, anymore
20 questions?

21 MR. HARGUN: Nothing from me.

22 CHAIRMAN EVANS: That concludes your evidence.
23 Thank you very much for being here today.

24 THE WITNESS: You're welcome.

25 CHAIRMAN EVANS: We'll take a break now. Thank you.

1 We'll resume at 11:30.

2 **(Recess taken) (Recess ended)**

3 CHAIRMAN EVANS: Now who do we have here?

4 I ask you to identify yourselves.

5 MR. LYNCH: Of course. Sir, position the is.
6 this. I'm Jerome Lynch. I think we've already met. I'm
7 assisted this morning by Ryan Hawthorne, Counsel from
8 Hertford, London who's joined our firm recently. There
9 is an application which I think you've had foreshadowed on
10 behalf of Lee Matvey and Bryan McLeod, that we should be
11 entitled to represent both their interests at this inquiry.
12 And may I make that application now?

13 CHAIRMAN EVANS: You were good enough to notify us you were
14 going to make it and we can accept your presence. Not being technically
15 and not granting leave but we acknowledge your (affair) under section 12.

16 MR. LYNCH: I'm grateful. Two other matters, can
17 I raise briefly. I hope to assist. Firstly, we were asked as
18 indeed was Mr. Matvey by way of the subpoena to provide
19 documents in relation to the directionship of the company that
20 we have yet to obtain. I have told my friend, and can tell
21 you, sir, and the Commission, that Christopher Swan who is the
22 company lawyer has been contacted and asked to produce those
23 documents. As soon as they're in our hands, they will be
24 in yours.

25 CHAIRMAN EVANS: Thank you very much.

1 MR. LYNCH: Forgive me for not having them today.

3 I've been asked to allow Mr. Matvey to give evidence first.

4

3 I think originally it's been planned the other way around.

4 (inaudible 11:34:35) Obviously he's the person best able to deal with that

5 specific matter and, if anything arises, if it comes after

6 his evidence then of course we can recall and deal with that.

7 CHAIRMAN EVANS: Thank you very much.

8 MR. LYNCH: There is an additional document which

9 I understand is to be [deployed]. We supplied it at the request

10 of Council for the Commission which are the LLC Bermuda Ltd

11 financial statements which I think you may or may not yet

12 have had copied on. I see some of you got it. The

13 position in respect to that is these are private company

14 documents which oughtn't to be in the public domain. We take

15 no objection to the Commission using them for the purposes

16 of establishing the facts as you are obliged so to do.

17 But we would ask, sir, following consideration

18 that these need not be in the public domain. There's a file

19 Binder 3, I think which has a number of private documents

20 in it and it could we would respectfully suggest be placed..

21 CHAIRMAN EVANS: As I understand it, you're not

22 asking for the scope of this particular hearing of this

23 witness to be restricted, the documents can be referred to

24 but you're asking they shouldn't be published as part of

25 the Commission's public record?

1 MR. LYNCH: Quite so. From what I hope are fairly obvious
2 reasons, they are private papers. (Ordinarily to be in the public domain.)

3 CHAIRMAN EVANS: Yes, we can certainly accept
4 that. I'll just repeat it to make it clear: the fact that
5 they are not to be published will not restrict the scope of
6 today's proceeding and of course if they are referred to in
7 the course of today's proceeding, they necessarily will be
8 on the public record.

9 MR. LYNCH: Well, insofar as they're referred to.
10 (indiscernible 11:36:28) I'm sure he's got better
11 things to do.

12 CHAIRMAN EVANS: Insofar as they're referred to
13 they will be on the record.

14 MR. LYNCH: Of course.

15 CHAIRMAN EVANS: Apart from that, they will not
16 be published (back).

17 MR. LYNCH: No doubt, sir. If I thought the
18 position was getting to a point where it would embarrass
19 the company, you permit me to make that observation. I
20 hope I don't have to interrupt.

21 CHAIRMAN EVANS: Perhaps at the end of the
22 evidence you can indicate to us whether you feel that point
23 has been reached. Thank you.

24 BY MR. HARGUN: Mr. Chairman, just in relation to
25 the Register of Directors so that there's no

1 misunderstanding, we're not simply looking for the Register
2 of Directors showing what the position is today, but much
3 more importantly, what the position has been historically,
4 so that's -- We're looking for the entire register as it
5 has changed from the very beginning to date.

6 MR LYNCH: We'll do our best to accommodate.
7 Whatever we have, whatever we're able to obtain.

8 CHAIRMAN EVANS: There's some documents to come.
9 I suppose they're not in evidence yet but it won't do any harm.
10 We've got the bundle of financial statements which are to
11 remain private except to the extent that they're referred
12 to. Can we give that a reference number?

13 MR. HARGUN: We can. I'll call that Matvey 1.

14 And in front of you, you have copies of the same
15 financial statement stapled and numbered, which I might
16 refer to during my examination.

17 CHAIRMAN EVANS: Good. And Mr. Matvey's coming
18 first.

19 MR. HARGUN: Mr. Matvey's coming first.

20 THE WITNESS: I Edmund Matvey do swear by
21 Almighty God that the evidence I so give shall be the
22 truth, the whole truth and nothing but the truth.

23 CHAIRMAN EVANS: Thank you. Please sit town.

24 THE WITNESS: Am I allowed to take out my
25 documents?

1 CHAIRMAN EVANS: Have them with you and then see.

2 THE WITNESS: Okay.

3 **MR. EDMUND MATVEY**

4 called as a witness, being first duly sworn, testified as
5 follows:

6 **EXAMINATION**

7 **BY MR. HARGUN:**

8 Q Good morning, Mr. Matvey.

9 A Morning.

10 Q My name is Narinder Hargun. I'm going to ask you
11 some questions and after that your counsel may have any
12 questions for you and then Commissioners.

13 A Okay.

14 Q You have very helpfully given us a one-and-a-half
15 page statement which is dated the 7th of September.

16 Do you have a copy of that?

17 A Yes, I have it here. It is the witness binder

18 Q It is the witness binder, Tab 27, for
19 the Commissioners.

20 A Okay, I think this is it.

21 Q Okay.

22 A Yes.

23 Q And Mr. Matvey, this relates to the construction
24 of the Dame Lois Browne Building, yes?

25 A Yes.

1 Q And particularly in relation to the construction
2 contract between LLC Bermuda and the Government of Bermuda.

3 A But this was originally Landmark Lisgar.

4 Q We'll come to that. And just background, you've
5 been in construction for a long time?

6 A For over 30 years.

7 Q In Bermuda?

8 A In Pittsburgh, Dallas, in 20 years in Bermuda.

9 Q Okay. And just for background prior to Landmark
10 Lisgar you were already interested in coming from
11 Landmark?

12 A Landmark Construction.

13 Q Landmark Construction?

14 A Yes.

15 Q And Landmark Construction still exists today?

16 A Yes.

17 Q And just that is owned by you and?

18 A Me and Bryan McLeod.

19 Q Still the only two people?

20 A That's correct, yes.

21 Q And who are the directors of that company,
22 Landmark Construction, Limited?

23 A Bryan and I.

24 Q And Mr. McLeod; and you've been business partners?

25 A Since 2000.

1 Q 2000?

2 A Yes.

3 Q And that's primarily in the construction
4 industry?

5 A That's correct.

6 Q And that is your focus, construction?

7 A Yes.

8 Q Okay. And can I ask you to have a look at
9 Paragraph 2 sets up the background, this is in relation to
10 the construction of the Dame Lois Browne Building, you say,
11 "The original plan was to form a partnership with the sole
12 intent to construct the Dame Lois Browne-Evans Building
13 project with myself and Bryan McLeod from Landmark
14 Construction along with Gino -- how do you pronounce?

15 A Excuse me, sir. I got to actually find the
16 document.

17 Q Oh, okay.

18 A I apologize.

19 Q It is a witness binder in front of you and if you
20 go to Tab 27 you'll find it.

21 A What was the number?

22 Q If you look at this number, the binder in front
23 of you, Tab 27.

24 A Okay.

25 Q Do you see that?

1 A Yes.

2 Q Let's start from the beginning, I'm looking at
3 Paragraph 2.

4 A Yes.

5 Q "The original plan was to form a partnership with
6 the sole intent to construct the Dame Lois Browne-Evans
7 Building project with myself and Bryan McLeod from
8 Landmark Construction along with Gino Bifulchi?

9 A Gino Bifulchi and John Bifulchi.

10 Q Gino Bifulchi and John Bifulchi from Lisgar
11 Construction being the shareholders of Landmark Lisgar
12 Construction.

13 Now Lisgar Destruction is a company in Canada?

14 A Correct.

15 Q And you've had dealings with them in the past?

16 A No, we -- when the contract came about, the
17 expression of interest, we worked with a (former ?) company
18 out of Canada exclusively and they worked with Lisgar
19 Construction. And we were introduced by them and we liked
20 their company so we formed a partnership.

21 Q Okay. So when the project came along, you
22 obviously needed a partner because you couldn't do it
23 yourself?

24 A Correct. We needed it for financial reasons.

25 Q Yes. And then you say, "During the first year of

1 the project it became evident that the two companies could
2 not continue as they originally planned and it was decided
3 that Lisgar part of the company be bought out and the name
4 was changed to LLC Bermuda Limited and that company
5 completed the project."

6 A That's correct. And if I might add, when we got
7 the contract we got on site, there was problems right from
8 the beginning. It seemed to me the technical officers did
9 not want to work with us.

10 Q No. No. Just listen, just look at the structure
11 of... We can deal with the problems, but for the time being
12 just look at the structure to which you had to complete
13 the contract.

14 So it's the same company, Landmark LLC?

15 A Landmark Lisgar, we bought out Lisgar. When we
16 bought out Lisgar we changed the name to LLC, Landmark
17 Lisgar Construction LLC. But it was now owned by Bryan and
18 I.

19 Q And you say the original intent was that
20 Landmark Construction would continue normal operations
21 building projects throughout Bermuda for our clients.

22 So that has continued?

23 A Yes. Correct.

24 Q So, as far as LLC is concerned which had built the
25 Dame Lois Browne Building, what has happened to that

1 company?

2 A After we completed the court building our
3 reputation was so destroyed we could not carry on.

4 Q What has happened to it?

5 A It's closed.

6 Q When you say it's closed, everything is wound up?

7 A I'm not a field guy here. Some of my terminology
8 might not be correct. But it ceased to exist. I'm
9 assuming it was whatever you do.

10 Q Are you still a shareholder?

11 A I don't think there is an LLC. So I couldn't be
12 a shareholder if there wasn't. Again, I don't know.

13 Q Okay.

14 A All right.

15 Q And when you -- okay. Let me try again.

16 Companies, in order to bring them to an end they are wound
17 up.

18 Do you know whether it's been wound up?

19 A Wound up. I don't know. I don't know. It ceased
20 to exist. We stopped all operations. Did we go to a
21 lawyer and wind it up, I don't know. That's not my part.

22 CHAIRMAN EVANS: That's a perfectly good answer.

23 THE WITNESS: Yeah, I don't know.

24 **BY MR. HARGUN:**

25 Q Mr. Matvey, can we have a look at the ownership

1 structure of Landmark Lisgar when it was called Landmark
2 Lisgar prior to the departure of the Lisgar partner.

3 A Yes.

4 Q Ask you to go to binder at the Tab 3 in the
5 public binder.

6 A This one.

7 Q Do you have Tab 3, if you go to page 32.

8 (Inaudible discussion.)

9 Q Ah, sorry, I gave you the wrong reference. Go to Tab
10 10.

11 A Yes. Okay.

12 Q And there you see the LLC Bermuda Limited
13 Register of members, Yeah. page 32.

14 A 32.

15 (Inaudible discussion.)

16 I'm looking.

17 Q Try page 154 in Tab 10.

18 A I see 10-30, 10-31. What page?

19 Q 10-154.

20 A 10-154. Okay. Yes.

21 Q Do you see that? That's the Register of Members
22 of LLC updated, but you can see how it was originally.

23 Originally, you see that this is the top is you,
24 Mr. Matvey, you have -- You have a number of shares in that
25 company?

1 A Correct.

2 Q And they were transferred to 3,000, to 3,900
3 shares to Paragon Trust Company. And the ownership of
4 Lisgar part was held through a trust, wasn't it?

5 A Yes. It was with the Caco Trust. It was the
6 mystery trust that everyone wanted to know.

7 Q Yes. So just looking at the share register, the
8 Paragon Trust Limited shows that they owned 3,900 shares?

9 A Now again, I don't know if this is right or not
10 but what I think this is, when we transferred to LLC again,
11 I might be wrong, Paragon Trust who acted on behalf of
12 the Caco Trust was on here until I guess they got their
13 payment to leave, you know, until the deal was done as far
14 as buying them out.

15 Q Shall we just look at the original share register,
16 right. Originally, as it was set out, am I right that you
17 had 6100 shares?

18 A On this one here?

19 Q Yes.

20 A Yes.

21 Q And is it right that Paragon Trust had 3,900?

22 A Yes, that's correct.

23 Q So that was the original structure, wasn't it?

24 A Well, obviously it's right here, I guess it is.

25 Q So, where does Mr. McLeod fit in in all this?

1 A For LLC, Bryan and I were partners in Landmark.
2 Before LLC he was the CEO and he was paid a salary and a
3 percentage of the profit.

4 Q Percentage of the profit?

5 A Yes.

6 Q So he wasn't a shareholder?

7 A No.

8 Q Okay. And how was it decided what percent of the
9 share profit he would be given?

10 A We decided.

11 Q What percent was he given?

12 A I think 25 percent, no, 20. Again, I'm not -- I
13 think about 28 percent, not exactly sure.

14 Q So, he was acting as CEO of the Landmark Lisgar,
15 he was given 28 percent of the profit but he wasn't a
16 shareholder?

17 A No.

18 Q And the shareholders originally were you, 6100
19 shares, and Paragon Trust, 3900 shares.

20 Paragon Trust was acting as a trustee for the
21 Caco Trust?

22 A Yes.

23 Q Which you'll find on the next page, 155.

24 A And I actually don't know why that is. I guess
25 that's a legal thing they do. I don't know why that is.

1 Q Why is what?

2 A Why Paragon Trust is on here for LLC.

3 Q Well, they are the registered shareholders,
4 Paragon Trust.

5 A Again, I don't know.

6 Q And if you look at page 174?

7 A Yes.

8 Q And you'll see the beneficiaries of the Caco
9 Trust are John Bifulchi and Gina Bifulchi and their children?

10 A Yes.

11 Q And as I understand, the relationship between your
12 side and the Lisgar side had difficulties in 2008?

13 A Correct.

14 Q And it was decided that they would exit from this
15 project?

16 A It was mutually decided that they were going to
17 exit, yes.

18 Q Yes.

19 A It became unbearable for them to be working on
20 the site. There was no cooperation, and they, you know,
21 the site was getting delayed constantly, constantly in
22 the press. They were never given the opportunity to
23 actually build without a problem.

24 Q Did you buy their shares?

25 A Yes, we did.

1 Q And when I say buy they're shares, who bought the
2 shares because there's an agreement I see at page 175
3 between Landmark Lisgar Construction Limited and Paragon
4 Trust Limited. And it's said to be in agreement for the
5 repurchase of shares in Landmark Lisgar Construction
6 limited.

7 Do you recall these shares being bought from
8 Paragon Trust Limited? Who is buying these shares? Do you
9 remember?

10 A We borrowed the money from the bank.

11 Q Sorry?

12 A We borrowed the money from the bank so we bought
13 them.

14 Q Who is we?

15 A It was Bryan, it was I and this is a lot more
16 involved. Do you want me to give you the story? It's a
17 lot more involved. It's not straightforward.

18 Q I want to understand the shareholders.

19 A Right, the shareholder for LLC?

20 Q Yes.

21 A I was the sole shareholder.

22 Q You were the sole shareholder?

23 A Yes, so I bought the shares.

24 Q Okay. And you bought the shares for how much?

25 A Now again, I might be wrong. I think it's about

1 1.5 million.

2 Q Yes, I think it's around 1.5 million.

3 And you say, what was Mr. McLeod's interest in
4 this at this stage?

5 A He was the CEO running the job.

6 Q So he did not become a shareholder directly or
7 indirectly in this?

8 A No.

9 Q Okay. And if you go back to your witness
10 statement, you are answering the question - and just to give
11 context to it - Paragraph No. 4 is the answer to the
12 question you've been asked upon you, who were the directors
13 of LLC during the currency of the contract, yes?

14 A Yes.

15 Q And you say "Mr. Winters Burgess and myself were
16 directors."

17 A That's correct.

18 Q And can you tell the Tribunal who is Mr. Winters
19 Burgess?

20 A He, Winters Burgess is a gentleman I've known for
21 25 years. He, when we bought out Lisgar we had to finance
22 the job. Okay? We got a... We got a statement from the bank
23 saying that we do not have enough collateral to --
24 for our overdraft. When Lisgar left, the -- we did not
25 have enough collateral when Lisgar left.

1 We had a million dollar overdraft. And we also
2 needed money to pay off Lisgar. So I knew George; and Bryan
3 and I went to George and asked him if we could put up his
4 house as collateral.

5 Q Who is George?

6 A Winters Burgess, sorry, I go by George.

7 Q So he put up his house?

8 A Yes, he put up his house. He came back and he
9 said he put up his house, he wanted a percentage of the
10 profit and a fixed salary for the job.

11 Q Okay.

12 A So we got his assets, went to the bank, we gave
13 the bank the assets. The bank then came back to us and
14 said that the assets were not enough. So we got another --
15 we know Vincent Hollinsid. Right?

16 Q Okay.

17 A And Vincent Hollinsid put up his house. So we
18 got his house, we put the assets up, they approved the
19 overdraft and they approved the \$1.5 million loan and we
20 paid Lisgar and we moved forward. George got 22 percent of
21 the profits and an \$11,000 a month salary and Vincent got
22 20 percent of the profit and a \$6,000 salary.

23 Q Vincent Hollinsid?

24 A Yes.

25 Q Can you repeat that back?

1 A Vincent Hollinsid, he got 20 percent of the
2 profit and a \$6,000 a month salary.

3 Q And did Mr. Hollinsid also become a director?

4 A No. Only reason George was a director, he
5 demanded he was would worried that if the job failed he
6 would be able to recoup his money for the -- so he
7 wouldn't lose his house.

8 Q Let me just get this straight. So as far
9 as the financial arrangements are concerned from now on,
10 Mr. Winters Burgess is receiving a salary of 11,000 a
11 month?

12 A Yes, it might be -- from what I remember is
13 11,000.

14 Q And he is receiving essentially an equity
15 stake although he's not a shareholder, an equity
16 stake of 22 percent?

17 A Yes.

18 Q Okay. And Mr. Hollinsid who is I believe
19 Dr. Brown's --

20 A Yes.

21 Q Brother?

22 A Yes.

23 Q He is receiving a salary?

24 A He received a salary of 6,000 a month and
25 20 percent of the profit. But you have to remember they

1 put up their houses and the job at the time was very shaky
2 at best.

3 Q So Vincent Hollinsid has effectively an equity
4 stake of 20 percent?

5 A Correct.

6 Q How long had you known Mr. Hollinsid?

7 A I met Vince through George about four or
8 five years.

9 Q So you met Vincent Hollinsid through Winters
10 Burgess?

11 A Correct.

12 CHAIRMAN EVANS: We're looking back to 2007 or
13 '8. You knew him for three or four years before that; is
14 that what you're saying?

15 THE WITNESS: I'd say that's correct, yeah.

16 **BY MR. HARGUN:**

17 Q Do you know Mr. Hollinsid's day/pay job?

18 A Yeah, he was a fire chief.

19 Q Yes, he was a fire chief. Just so we get it right,
20 at the very beginning when Landmark Lisgar started operating,
21 who were the directors?

22 A Landmark Lisgar?

23 Q Yes.

24 A John, Gino, myself and Bryan.

25 Q And Bryan?

1 A Yes.

2 Q And when did Bryan cease to be a director?

3 A Of Landmark Lisgar?

4 Q Yes.

5 A When did he cease to be a director?

6 Q Yes.

7 A When we -- when I went (new ?) LLC, Bryan was away.

8 So that's why he wasn't put on there. I don't know why.

9 Q No, but I mean Landmark Lisgar just simply

10 changed its name? It's a name of the same company.

11 A Yeah, right.

12 Q If he was a director of Landmark Lisgar he would

13 not cease to be a director just because you changed its

14 name?

15 A I don't know, maybe he was a director then. I

16 don't know.

17 Q Well, you say in answer to the question, who are

18 the directors, you say the directors are Winters Burgess

19 and myself?

20 A Right. And that's what it was. That's it.

21 Q But --

22 A Why was he erased, I don't know. He was the -- I

23 don't know why. I don't know.

24 Q Was he originally a director of Landmark Lisgar?

25 A Yes.

1 Q Was he ever taken off as a director of Landmark
2 Lisgar?

3 A Actually, he was an owner of Landmark Lisgar, I
4 guess but using a different terminology.

5 Q Well, you said he didn't have any shares in Landmark
6 Lisgar?

7 A I don't know. Sorry. I don't know.

8 Q What do you mean?

9 A Landmark Lisgar, we were all owners so he would
10 have shares.

11 Q Well, I would assume so but at the very beginning
12 I asked you the question, did he have any shares and you
13 said no.

14 A Of Landmark Lisgar?

15 Q Yes?

16 A We all had shares.

17 Q Okay. Let's start again.

18 A Yeah.

19 Q At the very beginning --

20 A Can I look at the actual form? I don't know.

21 Q At the very beginning when Landmark Lisgar --

22 A There was four of us. Bryan, I, Gino and John. All
right.

23 Q Okay.

24 A So, I guess we were the owners. Is that right?

25 Q Were you the shareholders?

1 A Yes. Okay. Yes. That's right.

2 Q So what percentage did you have?

3 A It was all equal, 25/25/25/25.

4 Q Okay. Not 60/40 as you said before?

5 A 60/40, Landmark Lisgar?

6 Q Yes.

7 A It was 60/40 in terms of, in Bermudian.

8 Q Oh, I see. But the real arrangement was
9 25/25/25/25?

10 A You know what, I don't know.

11 CHAIRMAN EVANS: Mr. Matvey, forgive me for
12 asking this. Did you have a lawyer acting for you in these
13 matters because I think perhaps you haven't passed company law exams.

14 A Yeah, we had Christopher Swan who did this for
15 us.

16 CHAIRMAN EVANS: You did have a lawyer acting for you?

17 THE WITNESS: We had Christopher Swan and they
18 had some other guy.

19 CHAIRMAN EVANS: It doesn't matter who it was.
20 You were acting with a lawyer's help in all these companies?

21 THE WITNESS: Yes, yes.

22 CHAIRMAN EVANS: Thank you.

23 **BY MR. HARGUN:**

24 Q So, at any rate, after Lisgar parted company and
25 it became LLC Limited, the arrangements were effectively

1 that Mr. Winters Burgess would have a 22 percent stake,
2 equity stake, Mr. Hollinsid would have 20 percent equity
3 stake; yes?

4 A Yes.

5 Q What was your stake?

6 A Mine was same as Bryan's.

7 Q What was that?

8 A 28 percent.

9 (Inaudible discussion.)

10 Q And both of them were getting a salary; Mr.
11 Burgess of 11,000 per month, and Mr. Hollinsid of 6,000
12 a month?

13 A Correct.

14 Q So, let me show you a transcript of the evidence
15 given by Minister Burgess earlier last month, I think it
16 was. If you go to page 10? Tab 10, at page 229.

17 A Sorry, what page?

18 Q 229.

19 (Inaudible discussion.)

20 Q 10, 229, if you look at page 229, this is the
21 Public Accounts Committee. You're familiar with the Public
22 Accounts Committee?

23 A Yes.

24 Q And Minister Burgess, former Minister Burgess, is
25 giving evidence under oath here. He is answering questions from

1 members of the Public Accounts Committee. And if you look
2 at page 229, you'll see that there's a discussion in relation
3 to the Dame Lois Browne Building, you'll see that Mr. Burgess
4 at line 5 is saying that the initial cost for the building
5 was 72.9. Mr. Burgess says it was 71.9 million, etc. You
6 see all that, don't you?

7 A Yes.

8 Q Then you see at line 21, Mr. Souza. Mr. Souza
9 says, Okay, I'm not familiar with this company. Who was
10 the principals of Landmark Company? Mr. Burgess.

11 A He's wrong.

12 Q Landmark, Bryan McLeod was last, Lee Matvey,
13 that's you, and then he says Winters Burgess and Vincent
14 Hollinsid?

15 A That's the four I know. Vincent and Winters
16 were never involved in Landmark Construction.

17 Q No, he's talking about LLC, the company was
18 built --

19 A He has on here, Landmark.

20 Q I know (he said that) but in the context if you
21 look at it he's talking about the company which built the
22 the Lois Browne Building.

23 A Yes.

24 Q Which is, of course, LLC.

25 A Right.

1 Q And he's answering the question, who are the
2 owners of -- principals of LLC -- and I think you've
3 confirmed it today. He says Bryan, and then you and Winters
4 Burgess and Vincent Hollinsid?

5 A Yeah, I would say Winters and Vincent were
6 investors.

7 Q Okay, fair enough. They had an equity stake?

8 A Yes, they did.

9 (Inaudible discussion.)

10 Q 22 percent for Winters Burgess and 20 percent for
11 Vincent Hollinsid; yes?

12 A Yes.

13 Q So, and do you know how the Minister would know
14 this?

15 A I have no idea.

16 Q Well, I mean, what you've just told us this morning
17 wasn't public knowledge.

18 A I can't speak for Mr. Burges., I have no idea.

19 Q You didn't tell him?

20 A No, I didn't tell him.

21 Q I want you to have a look at your company's
22 accounts, please, if you would, Mr. Matvey. Mr.
23 Adamson's going to give you an copy.

24 A You have to understand, I'm not an accountant.

25 Q Fair enough.

1 A Okay.

2 Q We're just talking dollars and cents as to where
3 the money went. And let's have a look at -- let's have a
4 look at the retained earnings which generally means is the
5 money which has been earned. Yes?

6 A Yes.

7 Q If you look at the 2009 which is at page 3?

8 A Yes.

9 Q You'll see - Well, if you look at first of all
10 page 2 and you see retained earning of \$754,000 right at
11 the bottom?

12 A Yes.

13 Q What is your understanding of that, do you have
14 an understanding?

15 A Retainer to me is we made money but it was
16 actually put back into the company, it wasn't paid out.
17 That's what the retainer is to me.

18 Q Right. So, look at page 3, we're still in 2009.
19 This is the profit and loss account.

20 A Sorry, I'm on the wrong -- yes.

21 Q And page 3, and you see there's a reference to
22 deduct shares purchase costs, 1,554,000. That is the money
23 which you paid to Lisgar?

24 A Correct.

25 Q Yes. How did you come to that calculation? How

1 did you decide that you were going to pay them \$1,554,787?

2 A That's basically what they wanted. I think it
3 was 1.5, I don't know how the accountant did it.

4 Q How did you come to the precise figure of \$787?

5 A This is an accounting thing. I think we paid
6 them 1.5, I don't know how we got that number. I don't know.

7 Q I mean, let me ask you, did you take the view
8 that at that time you were buying a 50 percent stake from
9 Lisgar, the company was approximately worth to the
10 shareholders about [three million dollars)?

11 A When we bought Lisgar out, it was only Bryan and
12 I. I was buying one point; I was buying the company, period.

13 Q Right, right. So you can't tell us how you came
14 to this figure.

15 A I could tell you how we got to 1.5. I don't.
16 know how he did it. I don't know.

17 Q Okay.

18 CHAIRMAN EVANS: I think you're saying aren't
19 you that, from your point of view, you were buying half the
20 company and that's the figure the accountant came up with.

21 THE WITNESS: Yeah. Again, I don't know if this
22 is the final but that's just the number there, I have no
23 idea how.

24 CHAIRMAN EVANS: That's what you're saying, from
25 your point of view it was half the company but you can't

1 say how this particular figure came.

2 THE WITNESS: Yeah, I don't know.

3 **BY MR. HARGUN:**

4 Q So, let's just look at the -- on page 5, we know
5 the position as of 31 December 2010, you see under Accounts
6 Receivable is an item, Accounts Receivable, Court. That's
7 reference in the Lois Browne Building, isn't it?

8 A Correct.

9 Q And as of that date, 31 December 2010, we're
10 showing a receivable of 1,975,000?

11 A Correct.

12 Q And when was that receivable received by you?

13 A When?

14 Q When I say you, the company?

15 A When was it received? Again, I don't know if that
16 was at the end of the job. I don't know if that was owed
17 on job. I don't know.

18 Q But it had been paid hasn't it? It's an asset of
19 the company?

20 A Yes.

21 Q Yes. And the retained earnings in that year if
22 you look at it (by now) is set to be 3.755 million. Yes?

23 A Yes.

24 Q And to complete that picture, if you look at the
25 final balance sheet at page 9, this is for the financial

1 year ended 31 December 2011. Just to clear that picture,
2 you see Accounts Receivable Court, zero.

3 So during the last 12 months that figure which
4 was an accounts receivable has now been collected by the
5 company in the amount of 1.975 million. Yes?

6 A Where did you get the 1.975?

7 Q If you go to page 5 you will see under Accounts
8 Receivable?

9 A Okay, yeah. Yeah.

10 Q That 1.975 is now zero, which would mean that
11 that accounts receivable has been received by the company.
12 Yes?

13 A Correct.

14 Q So go back to page 9, and you see -- you see
15 there's an item there, Accounts Payable Landmark of
16 986,000.

17 Why are you paying that much?

18 A Landmark was providing labor for the site. They
19 provide labor for the job.

20 Q I see. So the arrangement was LLC would
21 essentially stop (contract) as far as labor was concerned?

22 A And Landmark Lisgar.

23 Q Yes. And then you see item right at the bottom,
24 Distributions to Date, \$2,590,000.

25 What is that referring to?

1 A That would be I guess George and Vince.

2 Q George being Winters?

3 A Yes.

4 Q And Vince being Vincent Hollinsid?

5 A Yes.

6 Q Yes.

7 A And I guess Bryan.

8 Q Yes.

9 A And I guess me.

10 Q So this is the \$2,590,000 paid as of the 31

11 December 2011 would have been paid to you for your percent

12 of the 28 percent, and to Mr. McLeod has 28 percent, and to

13 Winters Burgess, his 22 percent and Vincent Hollinsid his

14 20 percent; Yes?

15 A Yes.

16 Q Thank you. Can I ask you to please look at your

17 witness statement. You were asked the question in relation

18 to Answer 10 --

19 A Excuse me, I don't know where it is now. It's

20 Tab?

21 Q 27.

22 A 27.

23 Q The question was, has LLC or Landmark Limited or

24 any company affiliated with those companies ever made any

25 political contributions, if so, please provide.

1 A This one?

2 (Inaudible discussion.)

3 A Okay. Yeah.

4 Q And you give your answer in 10.

5 Before we look at the details in 10, it is right,

6 isn't it, that your company has never made political

7 contributions before 2008?

8 A I only have one page here.

9 Q Look at, on the other side.

10 A I don't have a 10.

11 Q Here you have it. The question I was putting to

12 you was that prior to 2008 you had not made any political

13 contributions to any political party?

14 A No.

15 Q This particular contract was signed in

16 December 2007; correct?

17 A Yes.

18 Q And you say, you answer the question in relation

19 to political contribution, you say, "Political

20 contributions of \$27,000 were made to the Progressive Labor

21 Party, 1,000 in 2008, 13,000 in 2011 and again in 2013,

22 \$3,000 each year for Christmas turkeys and \$10,000 each

23 year for the banquet."

24 A Correct.

25 Q Let me take this slowly and go year by year.

1 A Okay.

2 Q Now, let's just look at the payments made to the
3 Progressive Labor Party by you.

4 2008 how much was paid?

5 A \$1,000.

6 Q 2009?

7 A Nothing in 2009.

8 Q 2010?

9 A Nothing.

10 Q 2011?

11 A 2011, 13,000.

12 Q Why did you pay 13,000 in 2011?

13 A Because they asked us if we could contribute
14 10,000 for the banquet and 3,000 for turkeys for senior
15 citizens, so we did.

16 Q Who is they?

17 A Sorry?

18 Q Who asked you that?

19 A Somebody from the PLP.

20 Q Who?

21 A I don't recall.

22 Q Are you a PLP party member?

23 A Do I support the PLP?

24 Q Well, are you a member of the party?

25 A No.

1 Q Do you recall the individual who called you?

2 A No, I don't recall.

3 Q And who did you write the cheque to?

4 A Wrote it to the PLP.

5 Q The PLP.

6 A Yeah.

7 Q You sent it by post or you gave it to somebody?

8 A I don't remember how I sent it.

9 Q Well, I mean you've been doing it. I mean, this
10 is a reasonably regular occurrence, you would know how you did it?

11 A It wasn't a regular occurrence. It was once a
12 year, three times. I probably dropped it off at the PLP
13 office.

14 Q On Court Street?

15 A Yes.

16 Q And you say, let me understand. When you say
17 3,000 each year for Christmas turkeys, is it 3,000 each
18 year from 2008 onward or particular years?

19 A No, that was the total. 1,000, 2008; 13,000,
20 2011; and 13,000 in 2013. That was it.

21 Q Then you say \$10,000 each year for banquet?

22 A Yeah, that's correct.

23 Q Oh, I see.

24 A It's 10,000 for the banquet, 3,000 for turkeys,
25 10,000 for banquet, 3,000 for turkeys and 1,000.

1 Q I see. Okay. And this is, the banquet is the
2 annual banquet?

3 A Correct, I think that was for a table.

4 Q For a table?

5 A Correct.

6 Q Let me ask you to please look at Tab 3 in the
7 same binder, the witness binder. And go to Tab 3 and there
8 you will find -- No, it's page 23 in there. In the
9 exhibits.

10 A What page?

11 Q Page 23.

12 A 23.

13 (Inaudible discussion.)

14 A It's 23?

15 Q It would be Mr. Brady's witness statement. I'm
16 looking at an exhibit in there. Page 23.

17 You see that, do you have that, Mr. Matvey?

18 A Yeah, I see it.

19 Q There you see, Mr. Matvey, this is an exchange
20 between Christina Kokosky who was the project manager at
21 Works and Engineering, an email to Mr. Brady. It's on
22 October 7, 2008. And they are dealing with issues. And
23 they say, "On the last payment request from LLC, did you
24 review the backed up documents for this request? The
25 reason I ask is that I'm very concerned that part of the

1 claim for payment on Project documents submitted in
2 part an item dated 26 June 2008, credit card number
3 166 in the name of Progressive Labor Party noted as
4 Charitable Donations in the amount of \$1,000."

5 Is that the 1,000 you were talking about in 2008?

6 A What are you saying?

7 Q He's saying that you're claiming it as part of
8 the disbursement --

9 A It wouldn't have been claimed on our payment
10 requests.

11 Q I think that's what it was.

12 A I don't know. This shouldn't have been if
13 it was. Obviously, they didn't pay it.

14 Q Well --

15 A It should have been. What should have happened
16 was, we put our claim in, that shouldn't have been on
17 it.

18 Q Just so I have it clear in mind, I'm slightly
19 changing the topic.

20 Who were the shareholders of Landmark in 2007?

21 A Of Landmark?

22 Q Yes.

23 A Bryan and I.

24 Q Just Bryan and you. And --

25 A That's never changed. It's always been Bryan and

1 I.

2 Q Okay. You say at page -- Paragraph 3, you say of
3 your witness statement, there were no communications and/or
4 discussions between LLC Limited and the Minister of Works
5 and Engineering or anyone else that are associated with the
6 Ministry in relation to the contract prior to the awarding
7 of the contract. The contract was awarded following a
8 normal tender process which we entered into after having
9 been prequalified."

10 A Correct.

11 Q You know that the technical officers in relation
12 to their recommendation, the recommendation was --

13 A I know that now. I know that we weren't --
14 they didn't want us on the job. And I know it from -- I
15 didn't know it then but as soon as we got on that site and
16 all the problems we had, it was obvious the technical
17 officers didn't want us on that site.

18 Q And the contract to Landmark Lisgar was awarded
19 because the Minister did not accept the recommendation
20 of the technical officers. You know that?

21 A I know it now, yes.

22 CHAIRMAN EVANS: You said when you got onto the
23 site it was -- it became obvious to you that they didn't
24 want you there, who's they?

25 THE WITNESS: Every five minutes we were in the

1 press. No matter what we did we were in the press. If we
2 were digging a hole and there was a problem, it was in the
3 press. There was problems with the payments, we were supposed to get
4 payments every 30 days, we were getting them 45 to 60. Now
5 that could have been our part as far as the, how we were
6 putting them in, I don't know, but no matter what we did,
7 there was a problem.

8 CHAIRMAN EVANS: Payments are going through
9 Canada, weren't they? That's what we heard just now.

10 THE WITNESS: I guess so.

11 CHAIRMAN EVANS: When you say they, who do you
12 mean by they?

13 THE WITNESS: The technical officers. It seemed
14 to me they had an agenda that they were going to destroy
15 this job. They destroyed my reputation. And you know,
16 we're still trying to get our reputation back and after
17 this I don't know what to say.

18 CHAIRMAN EVANS: Had there been a public tender
19 for this work?

20 THE WITNESS: Yes.

21 CHAIRMAN EVANS: Because I think we were told
22 when there's a public tender all the contractors
23 are there and the bids are read out.

24 THE WITNESS: I wasn't there actually; my
25 partner was.

1 CHAIRMAN EVANS: There was somebody?

2 THE WITNESS: Sorry?

3 CHAIRMAN EVANS: So you or your partner?

4 THE WITNESS: Yes.

5 (Inaudible discussion.)

6 **BY MR LYNCH:**

7 Q Firstly this, at the time that you were being --
8 the time that you won the contract, were you aware of other
9 bidders involved in the bidding process?

10 A Yeah, there was other bidders, yes.

11 Q And in relation to that, did you have any inside
12 knowledge of what the bids were?

13 A No.

14 Q When you won the contract, what did you think was
15 the position as far as your bid was concerned?

16 A I figured we were pretty qualified. We were
17 the low bidder and we won the job. I was quite happy.

18 Q And the second matter is this. On a number of
19 occasions during questions from our friend you were asked
20 about the relationship, (profit of the (value ?) relationship
21 to the technical officers ?).

22 When we're talking about technical officers, who
23 do you mean specifically?

24 A Lawrence Brady and Sam, I can't remember his last
25 name, Spanagalo [sic] or something like that.

1 Q Lawrence Brady was who?

2 A He was the architect in charge of the job.

3 Q And how did you get on with Lawrence Brady from
4 the inception of this job?

5 A Communication was more not me, it was the men as
6 far as who was running the site. It was just constant
7 problems. I don't know, you know, I'm sure some of them
8 were caused by us but we actually couldn't build the job
9 because anything we did on the job, it was always in the
10 press; there was a problem; there was a holdup; there was
11 wait, wait for information. There were problems everywhere.

12 Q You worked for, your company Landmark worked for
13 Government before, hadn't they?

14 A Yes.

15 Q You built, I believe, the bus station?

16 A Correct.

17 Q And did you have those sorts of problems when you
18 were doing that job?

19 A The bus station when we build it, there was a
20 problem when they uplifted the design, the original design
21 was too low for the new buses that had air conditioners on
22 top.

23 Q Pause for a moment. Every job has --

24 A Yeah, it had a problem. They redesigned it. We
25 built it.

1 Q I think the Commission might be interested
2 to know, was there any difference in the relationship
3 between you and the technical - Let me finish - and the
4 officers when you were building the bus station and were
5 there any difficulties of a similar kind when you were
6 building the courthouse?

7 A When we built the bus station, everyone was
8 cooperative, we all worked together and to me, we did a
9 good job on it.

10 Q That was the job that you had used as part of
11 the background to why you should win this contract?

12 A I guess a bunch of jobs, I guess, yeah.

13 Q But what was the contrast, as it were, between
14 the cooperation between technical staff, Government
15 employees and you, the contractor, in those two different jobs?

16 A It was greatly different.

17 Q Did that affect the outcome of that job?

18 A The courthouse?

19 Q Yeah.

20 A Yes, it delayed it.

21 Q Thank you.

22 CHAIRMAN EVANS: No questions?

23 **BY MS LUCK:**

24 Q Just have a couple. I know you say you're not an
25 accountant, and I totally accept that, but can I just ask for a

1 couple clarifications. So we talked about the share
2 purchase line in the financials and you confirmed that it
3 was indeed when you were in effect paying Lisgar for the
4 other half of the company you took back, do you know if
5 there was any formal valuation of the company at that
6 point, I mean, do you have professional accountants
7 who do your books and records?

8 A Yeah, right there.

9 Q So to your recollection, you think there was a
10 professional valuation where somebody looked at the value
11 of the company at that point and said --

12 A The value of Landmark Lisgar?

13 Q Yes.

14 A Yeah, we just didn't pop out a number.

15 Q Right.

16 A They had to make a (feasible switch ?) and
17 actually pay it. They had a problem paying it.

18 Q And was that a negotiation between both sides?

19 A Yes, it's Bryan and I, Gino and John. They
20 basically had enough, they wanted out of the job.

21 Q And then the other thing, and again you may not
22 be able to answer it, I'm used to seeing financial
23 statements where the P&L just represents one year's
24 activities. So the profit and loss account is just for
25 that year.

1 A The profit and loss account for my company, I
2 don't want to see it. It's always ever since this job, it
3 doesn't look good.

4 Q Okay. No, it's a more technical question, and
5 maybe you can't answer it, which is the way you show your
6 account, it looks as though you're actually showing
7 cumulative profit and loss every year. So it's not just a
8 snapshot of one year, it's 2009 shows one year and 2010
9 shows two years --

10 A I don't think you add them up.

11 Q No, no, you don't. Because you're showing them
12 cumulatively. That's all.

13 **BY MR BRADSHAW:**

14 Q I heard you say, and I wanted to confirm this
15 correctly, did Landmark shareholders never changed throughout,
16 yourself and Bryan were the only shareholders of Landmark --

17 A Yes.

18 Q -- from inception until today?

19 A 2001 until now.

20 Q And is Landmark's still operating?

21 A Yes.

22 Q Doing other stuff while this project was --

23 A Yes.

24 Q And again, we got all the percentages as far as I
25 think it's 29 percent, the profit sharing, but were you and

1 Bryan both drawing salaries out of the company at this
2 time?

3 A LLC?

4 Q Yes.

5 A Yes.

6 Q Can you share what those numbers were, roughly?

7 A Boy. I don't want to guess.

8 Q Okay.

9 A Sorry, I don't want to guess what it is.

10 Q Fair enough.

11 A A lot of money we actually had in the company
12 we've put back in the company, basically.

13 Q That's fair enough.

14 A Now again, I don't want to guess.

15 Q That's --

16 A Six years ago.

17 Q And I just want to -- because what I was looking
18 at, I was also looking at the fact that Landmark appeared
19 to also be taking... There's a relationship to Landmark and LLC,
20 so Landmark was doing, supplying labor I think you said.?

21 A Yes.

22 Q So Landmark was also extracting some economic value
23 from the project as well?

24 A Yes.

25 Q Fair enough.

1 **BY CHAIRMAN EVANS:**

2 Q Mr. Matvey, I just wanted to ask one question.

3 Landmark has been your company and Mr. McLeod's?

4 A Correct.

5 Q Ever since 2001?

6 A Correct.

7 Q So, was that operating right through this period?

8 A Yes, it was.

9 Q And what we've been concerned with was the
10 specific project which started as - you call it a partnership -
11 but an arrangement between you and Mr. and Mrs. Bifulchi is it?

12 A Bifulchi.

13 Q From Canada?

14 A Yes.

15 Q And then first of all, that was a company and
16 then you bought them out of that company?

17 A Correct.

18 Q And so as far as that company was concerned, it's
19 been a one-project company and we've got the accounts here?

20 A Yes. Correct.

21 Q I just wanted to ask you about the beginning of
22 that, how did you come to set up that partnership with
23 them?

24 A With Gino and John?

25 Q Yeah.

1 A We met, we got together, we did the job. What
2 are you asking?

3 Q Well, what I did ask you. How did you come to
4 form that partnership with them? Apparently --

5 A We formed the partnership; we did this job,
6 finished it up. It was job-specific.

7 Q Yes, you formed a partnership -that didn't come out of the blue --

8 A It was job specific. Sorry.

9 Q So how did you come to team up with them for this
10 particular job?

11 A We knew -- we used a concrete company out of
12 Canada, and they worked with Lisgar Construction
13 quite a bit. It's a pretty large company. And they
14 recommended us to talk to Lisgar. We knew we needed
15 a backup. Landmark couldn't handle it on our own. So
16 we met them, we did an introduction and we liked their
17 company. We saw the jobs they did and we formed a
18 partnership.

19 Q I see. So you were interested in doing this
20 job and then you needed a backup and they came up?

21 A Yeah. Correct.

22 Q Right.

23 A Well, and also, you know, they were bringing in
24 their experts and everything else and we had ours.

25 CHAIRMAN EVANS: Yes. I think that's all.

1 **BY MS LUCK:**

2 Q Sorry, one more question for clarification.

3 So you just said the LLC was only doing the Dame
4 Lois Browne-Evans Building. The financials actually show
5 information on Marsh Folly [inaudible12:3534].

6 A I'm wrong then, sorry. My job was after, I
7 apologize.

8 Q So that continued to do work after?

9 A Yeah, I apologize. I was wrong.

10 **BY MR BRADSHAW:**

11 Q And I guess my question is around... At least what
12 I'm hearing from you is that things were a bit tight,
13 maybe more than a bit tight when you had to go and buy out
14 the... I can't remember the name, Bifolchi, I think?

15 A Gino and John.

16 Q And you went to the bank for collateral, one of
17 the banks?

18 A We had with Gino and John and Bryan and I, we had
19 a million dollar overdraft. When they came out, the bank
20 notified us that they needed more collateral to keep that
21 million dollar overdraft. And we also knew we had to buy
22 out Landmark Lisgar for quite a bit of money. And so we
23 had to do something. That's what we did.

24 Q Did the incumbent shareholders, Bermuda
25 shareholders, so to speak, yourself and Bryan, did you

1 contribute towards that bank collateral or was it primarily
2 just for these folks?

3 A No, before that we had collateral in it but it
4 wasn't enough. Obviously, Lisgar had more than we did.

5 Q So when you went out to get these gentlemen
6 who were your investors, they were sort of adding in
7 another two-and-a-half million dollars almost, give or
8 take, collateral by guaranteeing --

9 A I guess you can say that, I don't know if it's
10 the right way to say it though. They did approve a million
11 dollars. They reinstated our overdraft, and we were able
12 to pay off Lisgar.

13 Q Local bank?

14 A Yeah. HSBC.

15 CHAIRMAN EVANS: Well, thank you very much --
16 (Inaudible discussion.)

17 **BY MR LYNCH:**

18 Q Can I just ask you to take a look at the accounts,
19 the financial statements that you provided, please?

20 LLC... Let's start with Landmark Lisgar.

21 A Right.

22 Q First of all, you have the company Landmark?

23 A Correct.

24 Q You form a partnership with Landmark Lisgar and
25 create them, that company, for the purposes of doing the

1 Courthouse, Dame Lois Building?

2 A Correct.

3 Q Now, that gets formed in 2008?

4 A Yes.

5 Q You buy them out in 2009?

6 A I'm sorry?

7 Q You buy them out in 2009?

8 A Yes.

9 Q And so by the time you get to 2009, you just look
10 at the accounts, please, as it is now renamed LLC; it's the
11 same company but with a new name?

12 A Yes.

13 Q Yes? If we look at 2009, the first page of the
14 accounts receivable, we can see just shows a figure.

15 A Hold on, I'm lost again.

16 Q Yes.

17 A Page 3?

18 Q Page 2.

19 A Oh, okay. Yes. Okay.

20 Q Yes. It should be the balance sheet as of the
21 31st December 2009. Do you see a few lines down it says
22 Accounts Receivable?

23 A Correct.

24 Q And then it provides a figure just shy of 5
25 million?

1 A Correct.

2 Q Do you see that? That's accounts receivable in
3 respect of what transaction, please?

4 A The courthouse. It must have been a payment
5 request that was due.

6 Q Right. Thereafter, if you go please to page 5,
7 do you see accounts receivable for the next year, December
8 2010?

9 A Yes.

10 Q And there it's split now under this company LLC
11 into three parts?

12 A Yes.

13 Q The courts, as you've described it there at
14 Marsh Folly and Veritas.

15 A Yes.

16 Q And so by now, other work is being done under the
17 name of LLC?

18 A Correct.

19 Q But when it was first formed back in 2009 --
20 2008, forgive me, when the company was first formed under
21 its original name, Landmark Lisgar, it did only one job?

22 A Correct.

23 Q And it wasn't until 2010 the Bifolchis, Bifolchi
24 brothers, I think they were, when they were out of the
25 picture as it were, you started doing other work under that

1 company?

2 A They were out then.

3 Q Thank you very much.

4 **BY CHAIRMAN EVANS:**

5 Q If we look at the profit and loss account
6 for 31st December 2010.

7 A Okay.

8 Q That shows contract billing totalling \$78 million
9 but then the --

10 A Hold on, sir. I'm sorry. I'm lost again. What
11 page?

12 Q 2010, 31 December 2010.

13 A Okay. Now I'm all right.

14 Q Just getting it. Contract billings, the total was
15 \$78 million and then various figures, one-and-a-half
16 million and 316,000 for the other two contracts, Marsh
17 Folly and Veritas.

18 A I'm lost here.

19 Q I think the point is --

20 A Page 6.

21 MS LUCK: The heading is Profit and Loss Account
22 through 31 December 2010.

23 THE WITNESS: Yeah. Sorry.

24 **BY CHAIRMAN EVANS:**

25 Q I think the point is simply, the total figure is

1 very large, 78 million. Then there is references to the
2 other two, Marsh Folly and Veritas. Those are
3 relatively small figures?

4 A Correct.

5 Q And so it would seem that the courthouse was by
6 far the major part of the company's worth?

7 A Yes.

8 Q Were those Government contracts, Marsh Folly and
9 Veritas?

10 A Yes.

11 CHAIRMAN EVANS: Thank you.

12 BY MS LUCK:

13 Q And why would it run through this company and not
14 Landmark?

15 A We just carried on with LLC. I guess we finished
16 that and did two more jobs.

17 Q And so the shareholders would be receiving the
18 same sort of distribution --

19 A [Inaudible] whatever we did.

20 Q But they weren't necessarily required to put up
21 collateral for those jobs?

22 A No, no, they were small.

23 CHAIRMAN EVANS: Did Landmark do any Government
24 work after LLC started?

25 THE WITNESS: Bryan, did they?

1 CHAIRMAN EVANS: We're asking you now.

2 THE WITNESS: I don't remember.

3 CHAIRMAN EVANS: LLC only did Government work and
4 I was wondering --

5 THE WITNESS: Yeah, and then after Marsh Folly
6 that was it. We didn't do any more work.

7 CHAIRMAN EVANS: Okay. Thank you.

8 **BY MR HARGUN:**

9 Q Just two follow-up questions. In case Marsh
10 Folly made any profit, Winton Burges would have received
11 22 percent equity stake, yes?

12 A Yes.

13 Q And Vincent Hollinsid would have received his
14 20 percent stake, yes?

15 A Yes.

16 Q And if Veritas made any profit, Mr.
17 Burgess - (indiscernible 12:43:15)?

18 A It's correct.

19 Q Yes? They would have received (the other stake)?

20 A Yes.

21 Q Thank you.

22 CHAIRMAN EVANS: Well, thank you very much,
23 Mr. Matvey. That concludes your evidence.

24 (Inaudible discussion.)

25 CHAIRMAN EVANS: The financial statements should

1 not appear on the Commission's website.

2 THE WITNESS: Could I make one more
3 thing? There was a letter, anonymous letter that was --

4 CHAIRMAN: I think you're going to get some advice from counsel.

5 CHAIRMAN EVANS: Should we start Mr. McLeod?

6 MR BRYAN McLEOD: I think we can.

7 (Multiple voices- inaudible discussion)

8 CHAIRMAN: Thank you very much.

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

12 **MR. BRYAN MCLEOD**

13 called as a witness, being first duly sworn, testified as
14 follows:

15 **EXAMINATION**

16 **BY MR. HARGUN:**

17 Q Mr. McLeod, good afternoon. Just to confirm from
18 you that the directors of Landmark were just yourself and
19 Mr. Matvey?

20 A Yes.

21 Q And that has been the position throughout?

22 A Yes.

23 Q And you have very kindly prepared a one-page
24 statement which is dated the 2nd of August 2016.

25 And can you confirm that the statements made in

1 that affidavit are correct?

2 A Yes.

3 Q You were asked three questions, Mr. McLeod, and
4 they were in relation to the LLC, the company which
5 constructed the Dame Lois Browne building. You were asked
6 the question whether and when Mr. Vincent Hollinsid and
7 Mr. Winters Burgess were ever shareholders in LLC.

8 The second question you were asked was, how much
9 did they pay for their shares.

10 And the third question you were asked was, the
11 circumstances in which they purchased their shares.

12 And your answer in relation to those questions
13 was, one, "Mr. Vincent Hollinsid and Mr. Winters Burgess
14 were never shareholders in LLC Bermuda Limited."

15 And then you say, you refer to the Register of
16 Members. And you say, "Mr. Hollinsid and Mr. Winters
17 Burgess were never shareholders. They never paid any
18 monies for the shares and as a consequence in regards to
19 the question, that there are no circumstances surrounding
20 the purchase of shares." Yes?

21 A Yes.

22 Q You didn't bother to say that Mr. Winters Burgess
23 in fact held a 22 percent stake in the company?

24 A I was not asked that.

25 Q Okay. And you did not say, and you failed to

1 mention that Mr. Vincent Hollinsid held a 20 percent equity
2 stake in the company?

3 A No, I didn't.

4 Q And you did not feel that that was in any way
5 misleading?

6 A I was asked a question whether they were
7 shareholders and they were not.

8 Q And you did not feel that it might be worthwhile
9 for the Commissioners to know that Mr. Vincent Hollinsid
10 and Mr. Winters Burgess were receiving 42 percent of the
11 profits in this company?

12 A This was a very complicated project. There's a
13 lot of long stories. I was asked a question, I answered
14 the question.

15 Q So you did not feel that that was relevant?

16 A When I got the subpoena or the questions,
17 whatever they were, I looked at the questions, I answered
18 the questions. That's it.

19 MR. HARGUN: Very well. Nothing further.

20 CHAIRMAN EVANS: Doesn't look like we're going to
21 run into the lunch hour --

22 (Inaudible discussion.)

23 **BY MR BRADSHAW:**

24 Q Just really quickly. again, around this whole,
25 beginning of this relationship with these other parties. My

1 understanding again is that when these folks provided the guarantees,
2 they actually were providing collateral for financing. Is that fair to say?

3 A The Bifolchis?

4 Q No, the folks being Mr. Hollinsid and Mr. Burgess?

5 A Yes, they put up their houses to the bank, HSBC,
6 as collateral.

7 Q Which is fair. And when -- Was the collateral
8 ever released? I mean, obviously, when the [inaudible 12:49:37]

9 A It has been released, yes. The overdraft is no
10 longer and everything is finished.

11 Q Okay. Did that happen sort of at the end of
12 the -- When did what happen, what time?

13 A In their mind it took too long. It was well
14 after the project was over that we ended up getting the
15 paperwork all together.

16 Q In your - not your - but in LLC's relationship with the
17 guarantors, did that(inaudible/cough) a document around the profit share?

18 A To be honest, I do not recall. I mean, I know
19 that it was all agreed and --

20 CHAIRMAN EVANS: Could you keep your voice up,
21 please.

22 THE WITNESS: I'm sure it was all agreed but
23 whether there was a formal document, I'm not sure.

24 **BY MR BRADSHAW:**

25 Q Okay. And I guess my question again, maybe it's

1 a technicality of whether or not it's equity or not, is
2 what would your anticipation had been if LLC had done very
3 well and continued to survive as an entity, would that
4 profit share relationship continue into perpetuity or
5 would there have been some sort of [inaudible 12:50:56]?

6 A The way that we set up the company, we said that
7 we needed the overdraft (except ?) for the courthouse building.
8 After the courthouse building we would look at any other
9 projects that we got as a totally separate issue.

10 Q Okay. And so would they continue to participate
11 in the profits from any future projects?

12 A Things were going well so we would have thought,
13 yes.

14 Q Okay. All right. Thank you.

15 BY MS LUCK:

16 Q Can I just ask one question. Salaries
17 suggests employment. So, did they come into the office,
18 did they work with you on the project?

19 A I met with Vincent occasionally to go over
20 subcontracts and to get some background on people that I
21 didn't know that he possibly did know. He was very
22 valuable that way. Winters showed up on site every day.
23 He's been in construction forever, 40, 50 years and he
24 knows everybody. He knows the way things get done. He
25 knows efficiency and he was extremely valuable on site.

1 MR BRADSHAW: Did it actually (materially ?)
2 facilitate?

3 THE WITNESS: Yes.

4 **BY CHAIRMAN EVANS:**

5 Q When they became involved, I think you said that
6 it was a complicated matter and an agreement was reached
7 and we know what the terms were, they became salaried and
8 entitled to a share of profits.

9 You say you -- Was that agreement ever recorded
10 in writing?

11 A I don't recall whether it was or not.

12 Q You've never seen it?

13 A I would like to think it was but I can't say for
14 100 percent sure.

15 Q It might be said it has been suggested that if
16 they're going to share in the profits, they would
17 effectively become shareholders and their houses are online
18 for any losses.

19 A Well, their houses were online for losses.

20 Q And they were going to receive a share of
21 profits?

22 A Yes.

23 Q It might be said, in substance, they were becoming
24 shareholders. When you were asked the question, why were you
25 so definite that they weren't shareholders?

1 A As the -- In my mind a shareholder has to be
2 registered in the books as a shareholder. They were
3 never registered in the company books as shareholders.

4 Q I see.

5 A There was an agreement that they would be paid a
6 certain percentage for putting up their houses. That was
7 their investment return, or whatever.

8 Q Was the question of their becoming shareholders
9 ever discussed?

10 A I don't recall it ever coming up.

11 Q You don't recall --

12 A I don't recall it ever coming up.

13 CHAIRMAN EVANS: Thank you. Any questions?

14 **BY MR BARRITT:**

15 Q Yeah. Mr. McLeod, at one stage Mr. Matvey
16 looked at you, someone in the audience, and said, he's
17 the accountant. Was he referring to you?

18 A No, I'm not the accountant.

19 Q You're not?

20 A I was the CEO.

21 Q So you're not responsible for these account
22 amounts?

23 A I'm responsible for the outcome.

24 Q For the outcome -- No, no. I mean, you didn't
25 put them together?

1 A No, I did not put them together.

2 Q I'm going to be very precise with Mr. McLeod.

3 So in every year, in each year past when you were
4 deciding what each person would get, on what statements
5 would you rely to decide that Mr. Burgess was getting X,
6 Mr. Hollinsid was getting Y, I was getting W and Mr. Matvey
7 was getting zed, what statements were used?

8 A Basically what happened was at the beginning of
9 the job we forecast what the cost would be. We broke that
10 down and we came up with the salary. As the years went on
11 we decided that the salaries were fair and reasonable and
12 we just maintained those salaries. We didn't -- I do not
13 recall us ever getting a raise during the short time frame
14 of this project.

15 Q Actually, I was asking how you would determine
16 what 20... What was it, 22 percent... How would you calculate
17 what sums of money they were going to receive for their
18 equity share or their share in the profits?

19 A Their share of the profits was based on them
20 putting up their houses. The fact of the salaries were
21 based on... Obviously, Winters got a lot more money than
22 Vincent because Winters was on site from 7 o'clock in the
23 morning until 4 o'clock at night.

24 (Inaudible discussion.)

25 **BY MR BRADSHAW:**

1 Q There's a line item, it says distributions and
2 does that line item refer to distributions as of the
3 equivalent of the dividends only or does that line item
4 refer to distributions as dividends plus their salaries?

5 A Dividends.

6 Q Okay. When were dividends -- I'll refer to the
7 -- see when it actually came out.

8 **BY MR BARRITT:**

9 Q No. Is it on the basis of the figures we've
10 been given here that everybody's shares were calculated?

11 A Yes.

12 Q As to what --

13 A I mean, basically we looked at the year. We
14 decided whether the company could afford to -- we decided
15 that if the company was in a position financially to
16 distribute some money, and if it was, it did distribute
17 money.

18 Q But these are the statements on which you relied
19 or operated to calculate shares?

20 A Yes.

21 Q Thank you.

22 (Inaudible discussion.)

23 **BY MR BRADSHAW:**

24 Mr. McLeod, you said there were dividends. I mean, we had a
25 report saying no dividends were ever declared.

1 A There were no dividends, I mean, again it's a --

2 Q You call it Profit share? Right?

3 A Profit share.

4 Q And those distributions, I guess the lump sum of
5 them would be in 2011? I'm not seeing them before
6 2011. So, at the end of the job?

7 A The job needed money during the process so we
8 didn't distribute very much through the job, we distributed
9 it at the end.

10 CHAIRMAN EVANS: Any more questions? Thank you
11 very much, Mr. McLeod. That concludes your evidence. We
12 adjourn until 2 o'clock.

13 **(recess taken) (recess ended)**

14 **MR. HARGUN:** Our next witness is Mr. Donald
15 Scott.

16 THE WITNESS: My name is Donald Andrew Montgomery
17 Scott. I do solemnly and sincerely affirm that the
18 evidence I shall give shall be the truth, the whole truth
19 and nothing but the truth.

20 CHAIRMAN EVANS: Thank you, Mr. Scott. And do
21 sit down.

22 THE WITNESS: Thank you.

23 **MR. DONALD SCOTT**

24 called as a witness, being first duly sworn, testified as
25 follows:

1 **EXAMINATION**

2 **BY MR. HARGUN:**

3 Q Mr. Scott, thank you for your comprehensive
4 written statement dealing with the statement issues.
5 Just for the record, your witness statement which you
6 kindly provided to us, can you confirm to us that the
7 contents of that witness statement which by way of a letter
8 the 17th August 2016 are correct?

9 A They are correct. I wish to add that I did send
10 an amendment, an errata, I see that's included here.

11 Q You did, the last page?

12 A Yes.

13 Q The percentage?

14 A That's right.

15 Q Thank you very much. Just by way of background,
16 you're now retired, but prior to that you were the
17 Secretary to the Cabinet?

18 A Correct.

19 Q And Head of the Civil Service?

20 A Yes.

21 Q Until November 30, 2013?

22 A Uh-huh.

23 Q And you were in the Civil Service in Bermuda for
24 34 years?

25 A That's correct, sir.

1 Q And over that time you acted as the Financial
2 Secretary?

3 A Yes.

4 Q And for the Ministry of Finance obviously.

5 And you also acted as the most senior person in
6 the Accountant General's Department?

7 A In terms of having oversight of that department,
8 but I was actually employed by the Ministry of Finance
9 Headquarters. The Accountant General's Department was a
10 separate department within that portfolio.

11 Q The Office of the Tax Commissioner?

12 A Yes, also included.

13 Q And HM Customs?

14 A Yes.

15 Q Registrar Companies?

16 A Yes.

17 Q And the Department of Social Insurance?

18 A Yes.

19 Q What the Commission would find most helpful
20 would be if I could take you through what I perceived to
21 be issues in relation to some of the contracts and other
22 issues, and then possible solutions which I think have been
23 implemented already and others which might be.

24 In relation to that, you have helpfully
25 pointed out that some of the weaknesses which are

1 identified in the Auditor General's Report --

2 A Yes.

3 Q -- could already have been addressed because
4 the Auditor's report is obviously historical and deals
5 with issues which took place earlier.

6 A Yes.

7 Q Can we just have a look at, at least at seeing
8 if we can identify the problems or the weaknesses and in
9 relation to that, you have pointed out that the Government
10 itself instructed KPMG Advisory to do a study in relation
11 to that?

12 A That's right.

13 Q I just want to have you look at a couple of
14 the recommendations made by the KPMG advisory. If you
15 go to Binder B1 in front of you.

16 A This one?

17 (Inaudible discussion.)

18 Q And the KPMG Advisory Report is at Tab 1,
19 you see that?

20 A Yes.

21 Q And the recommendations or at least the problems
22 identified start at page 360, if you look at the pages at
23 the bottom?

24 A I have it.

25 Q And you see page headed, Findings and Recommendations?

1 A Yes, sir.

2 Q "Compliance with Governmental Policies and
3 Procedures, half of the projects examined in the diagnostic
4 review did not appear to be Government Policies and
5 Procedures of capital projects."

6 Just reminding you that this was a number of
7 projects differentiated by size?

8 A Yes. Yes.

9 Q "And additionally, the Ministry indicates that
10 in recent years virtually all significant major capital projects
11 have been over-budgeted. Failure to comply with Government
12 Policies and Procedures may have reduced the value for
13 money achieved in these projects and may have compromised
14 the perception of fairness under the Government Procurement
15 Processes. Common issues observed in several (central/sample)
16 projects related to bidder solicitation in several
17 instances technical personnel solicit bids directly from
18 known companies. Reasons cited for not following policies
19 by deadlines and the limited [inaudible] with appropriate
20 skill (of contractors).

21 And this is obviously talking about issues which
22 arose around 2008 to 2010 period.

23 Does this accord with your perception of the
24 issues at the time?

25 A Yes, it does. In fact, the issues that were

1 pinpointed and documented were a concern of the Ministry
2 of Finance from about the period, the end of 2007. The budget
3 office which is within Ministry of Finance Headquarters
4 monitors spend flows on major capital projects.

5 In fact, throughout the entire Government.
6 Monthly there are reports that give actual spend against
7 the budget that's appropriated for any given year. So
8 throughout the course, the Budget Office was in touch with
9 senior officers and those Ministries or Departments where
10 the spending profile was more than anticipated.

11 There were discussions that went on with the
12 senior offices and in instances where it looked like the
13 total authorized figure was going to be reached far in
14 advance of what the initial plan indicated, those officers
15 were prompted to have discussions with the Minister
16 responsible to make sure that adequate notice was given to
17 the Budget Office to make supplementary estimate or
18 revision of the total authorized figure so that
19 would be accommodated.

20 So these concerns led Ministry of Finance, you
21 know, after a number of projects had demonstrated this
22 lack of complicity within the initial budget that was
23 allocated to call in a professional firm to have a look
24 at what was going on within the Departments. This was done
25 under the authority of then Minister of Finance, Paula Cox.

1 Q And am I right that in relation to Ministries
2 where the expenditure was not in accordance with the
3 budgeted figures, most of the time that was in relation to
4 Ministries which were engaged in capital infrastructure
5 projects?

6 A Most of the time, yes.

7 Q And that, for [present] purposes I suppose is
8 the Ministry of Public Works?

9 A That included Ministry of Public Works, included
10 Ministry of Tourism and Transport, it included at one point
11 Ministry of Education as well. Whichever ministries had
12 heavy infrastructure projects going on, there was always a
13 concern that budgets needed to be as precise as they could
14 be from the beginning. This meant that the design work
15 needed to be complete before the project was offered for
16 inclusion in the budget.

17 Q Presumably the Ministry of Tourism was included
18 largely I suppose because of the Heritage Wharf project
19 which was a very substantial capital project?

20 A Well, Ministry of Transport actually... I see
21 this has been a matter of much discussion between the Auditor
22 General, the Attorney General's Chambers, Ministry of
23 Finance, the question of whether or not the delegation by
24 the Ministry of Finance with respect to oversight of capital
25 projects within the Ministry of Transport was in accordance

1 with Financial Instructions.

2 The answer to that, Mr. Chair, Mr. Hargun, is
3 that the Public Administration Payments Act authorizes and
4 powers the Minister of Finance to give instruction. He is
5 responsible for that particular piece of legislation. Each
6 year the Annual Appropriation Act must be approved by the
7 Legislature in order for the budget to become active.

8 The capital expenditure plan is a critical part
9 of the annual estimates of recommended expenditure. There
10 is an explanatory note in the Capital Development - well,
11 Capital Development as well as Capital Acquisitions - that
12 notifies to the Legislature that the Minister of Finance
13 has made a departure from Financial Instructions in
14 these particular regards.

15 He has full authority so to do. He is not in any
16 way restrained by the Public Treasury Administration and
17 Payments Act as to when, how and where he will exercise his
18 authority.

19 Q That's in relation to the legal issue as to
20 whether there's been --

21 A Actually, it's more a policy issue that's
22 supported by the legal framework that comes with the
23 Appropriation Act. The Cabinet established a Capital
24 Development Committee early on after the Progressive
25 Labour Party won the Government in 1998. That particular

1 committee, the standing committee of the Cabinet was
2 chaired by the Finance Minister. It included as a standing
3 member the Minister responsible for Works and a number of
4 other ministers as well from time to time depending on the
5 profile of capital expenditure.

6 That committee was responsible for screening,
7 reviewing the projects that were put forth for inclusion in
8 the capital plan. It decided on priorities, it decided on
9 funding levels and reported back to Cabinet. The senior
10 officer for Ministry of Finance who attended the committee
11 meetings at the time was the Director of the Budget. The
12 Budget Office had responsibility for putting the budget
13 together each year.

14 So the notes that appeared in the estimates of
15 capital, the estimates of revenue and expenditure came
16 out of decisions, policy decisions, taken by the committee
17 and these decisions were reflected as notes to capital
18 expenditures.

19 So from our point of view, it was clear in
20 our minds and in our understanding of the law that the
21 Finance Minister had full authority so to do.

22 Q And you touch upon that and you say that in
23 your witness statement.

24 A But I think it needed to be clarified with
25 respect. I think it needed to be clarified a little

1 bit more because I recall seeing a letter from a learned
2 Barrister in Bermuda.

3 Q Mr. Froomkin?

4 A Yes, indeed, a most valid gentleman, saying this
5 was nonsense. I disagreed with that for reasons just stated.

6 CHAIRMAN EVANS: Do we have the reference to
7 Mr. Froomkin's letter.

8 THE WITNESS: Yes, we do.

9 CHAIRMAN EVANS: Just not at this moment but some
10 time.

11 MR. HARGUN: It is actually exhibited twice, one
12 in relation to the -- once in relation Heritage Wharf and
13 once in relation to Port Royal. It's endorsed by 11/12 and
14 I can give you the reference.

15 CHAIRMAN EVANS: Thank you.

16 THE WITNESS: Mr. Chairman, for the record, I'd
17 also like to add that the previous Auditor General never
18 took issue with the delegation that was notified to the
19 Legislature in the annual estimates of revenue and expenditure.

20 MR BRADSHAW: Which one?

21 THE WITNESS: Yes, because the delegation
22 actually occurred in the 2002, 2003 budget year. And it
23 carried through until 2010, 2011.

24 MR HARGUN: I happen to have the reference.
25 It's Tab 11, page 111.

1 **BY MR. HARGUN:**

2 Q Page 111. Thank you very much. That's
3 dealing with the legal issue as to whether there's been
4 proper delegation. Can I ask you to go back to the KPMG
5 Advisory report?

6 A Yes.

7 Q And then underneath you'll see, about two
8 thirds down, it says KPMG recommends.

9 KPMG recommends that the Government explore and
10 further assess the following provisions to help ensure
11 compliance with Government Policies and Procedures. They
12 suggest development oversight authority to help manage
13 capital projects and ensure compliance in Government
14 Policies and Procedures.

15 A Yes.

16 Q And is that suggestion taken up?

17 A Yes. The way the Government decided to do it
18 was to establish the Office of the Project Management and
19 Procurement. And the establishment of the Office was
20 included in the Good Governance Act of 2011.

21 Q Yes.

22 A It amended the Public Treasury Administration
23 and Payments Act to establish the Office of Project
24 Management and Procurement and charge that office with a
25 number of important responsibilities.

1 Q This is clearly a theoretical framework as far
2 as KPMG Advisory is concerned, a centralized body which
3 will oversee, manage and give direction in relation to
4 procurement of projects as they go along.

5 When, to the extent that you were involved in
6 implementing that proposal, did you have any idea what
7 was envisaged in terms of how large that body would be --
8 what's involved with that?

9 A Uh-huh.

10 Q One can have an[Inaudible 02:1700) achieve much.
11 What's the complement you thought or think would be appropriate?

12 A Well, it was actually the charge of another group
13 of offices in the civil service. But my recollection is
14 that the skill sets that needed to be included in that
15 office was project management expertise, procurement
16 expertise, making sure that there was a fair and
17 transparent process, that every department seeking to have
18 a project come forward would have to go through.

19 So it was really, it was redoing a system that
20 was not working as properly as it should. There were
21 weaknesses in the Ministry of Works and Engineering. There
22 were bound to be weaknesses in the Ministry of Transport
23 and Tourism.

24 I'm not trying to tarnish the performances or
25 reputations of people who worked in those areas, but

1 weaknesses happen from time to time. We're prone to error
2 from time to time. When those errors are identified,
2 those who really want to make a difference will take notice
4 of them, consider what the best options are for going
5 forward and implement those solutions.

6 So this particular office, and it was considered
7 for a long, long time whether or not it should stand
8 outside of Government, or whether it should stand inside
9 of Government. It could have rested within Works and
10 Engineering Section, but it needed to be set up
11 independent of Works and Engineering under a strong
12 leadership ministry which would either have been the
13 Cabinet Office or Ministry of Finance and allowed to
14 develop.

15 I understand that initially it was with the
16 Ministry of Finance but has recently been transferred to
17 the Cabinet Office. But again, the core functions that
18 would be required for that particular entity to discharge
19 would be skillful project management expertise... even
20 involve themselves in design of major capital projects,
21 give advice to departments.

22 For instance, Heritage Wharf, I can go there.

23 Q What would be helpful, say for example, your idea
24 of how that offices would operate efficiently. Let us assume
25 that we are rebuilding Heritage Wharf. What role would that

1 office play in that relation to that?

2 A Well, for instance, it would ensure that the
3 design work was completed before the project went out to tender.

4 Q That was one of the problems and the reason for
5 higher extra costs?

6 A Indeed.

7 Q Engineers --

8 A Uh-huh. So these are some of the functions that
9 it was envisioned that such an office would fulfill.

10 Q So what would be that office's interaction with
11 let's say Public Works because at the moment, as I
12 understand it in relation to majority of contracts, the
13 ownership is with Public Works and they oversee the
14 [inaudible - riddle about ?] outside help and --

15 A When you say at the moment, are you talking about
16 today?

17 Q Yes.

18 A Or are you talking about --

19 Q Yeah, or even the... between the period say 2008 to
20 2011.

21 A Uh-huh.

22 Q It was primarily Public Works?

23 A Yes, primarily Public Works but even if Public
24 Works was relieved of the accounting responsibility, the
25 Permanent Secretary as the accounting office for that

1 department and having that department that had certain
2 skill sets that would be helpful to the proper fulfillment
3 of any capital project, the Ministry was still charged with
4 retaining a responsibility to liaise, coordinate with the
5 Ministry of Transport and Tourism in this particular case
6 and Ministry of Health if need be, or Ministry of
7 Education.

8 Q Right. I was thinking of how would the central
9 office, the new office, how would that interact with
10 Ministries like Public Works in relation to major projects?

11 A Now. I'm thinking on my feet right now. I
12 could be wrong, but my sense is that -- my sense is that
13 it would support and buttress the work that was going on
14 inside of the Ministry of Public Works to ensure that
15 every step of the way was aligned to best practice.

16 If there were slips that these would be notified
17 that the senior managers, architects, engineers, again, it
18 would be a collaborative type of arrangement, not
19 overbearing, because all of the expertise would not
20 necessarily reside within the Office of Procurement and
21 Project Management.

22 Q Can I also ask you to have a look at another
23 internal report that's prepared by Management Consulting
24 Section. For this purpose, what I want you to look at
25 is their identification of the issues as to whether

1 you think that is an appropriate identification.

2 You find that at Tab 2 in the same bundle.

3 This was, if you look at the page 748, this appears
4 to be the report for the Premier and the Cabinet
5 Secretary.

6 Are you familiar with this?

7 A No, I'm seeing this for the first time.

8 Q All right. This is in February 2011, and if you
9 look at the next page so that, you know, it was prepared by
10 Kevin Johnston and [Ithea] Fox.

11 A Yes. Which page are you looking at?

12 Q I was going to look at eventually at page 758.

13 A Okay.

14 Q Page numbers are on the side.

15 A I have 758, yes.

16 Q You see at the top Problem Definition?

17 A I do.

18 Q I'm interested in your reaction to how this
19 particular report identifies the issues. They say, "These
20 provide the basics of subsequent recommendation and these
21 would identify and agree as the problem issues. One,
22 Ministers have become involved in operational decision
23 making for Procurement and contracting in Bermuda Public
24 Service. In extreme cases, recommendation for Contract
25 Awards made by technical officers following tenders were

1 changed. Most tenders (indiscernible 02:24:08) resulted
2 in contracts awarded to companies, not included in the.
3 original bid process. This is circumvention of procedures.

4 Was that a problem at the time do you think and
5 is that a fair representation of an issue?

6 A I think it attempts to capture dynamics that were
7 taking place at the time. Ministers come with different
8 styles. Some are more hands-on than others. And I think
9 we've seen that in some of the evidence that has been put
10 before the Commission.

11 In some instances, that can be a problem. But we
12 need to be more specific to see what those instances are to
13 come to a judgment as to whether it was problematic or not.
14 But in a general sense, yes, this was an issue that was of
15 concern to some senior officers.

16 Q The second issue it identified in Paragraph 2 is,
17 Permanent Secretaries have not fulfilled their duties to
18 provide guidance as to the Minister's roles and involved in
19 (indiscernible) operations and decision making and procure-
20 ment and contracting within the Bermuda Public Service.

21 Did you think that was an issue and was that a
22 fair representation?

23 A It's entirely possible, again knowing the
24 personalities of some of the Ministers at the time, that's
25 entirely possible.

1 Q And then I think, I don't have to take you to
2 3 because that has been referred to before.

3 And the Point No. 5, "There is insufficient
4 resourcing, planning and control for projects in Bermuda
5 Public Service." I think you touched upon that.

6 A Yes, I think that that was a big issue at the
7 time.

8 Q I mean, in essence, what you are saying is that
9 in relation to some of the substantial infrastructure
10 projects much more planning had to be done before the
11 decision was taken to build that department.

12 A Uh-huh. There is a question of resourcing as
13 well. As you know, Bermuda is a small country and
14 skill levels, experience levels of architects, engineers,
15 quantity surveyors and so on, it's difficult for the Public
16 Service to hold on to some of the best talent that they have.

17 And during this period of time I remember
18 distinctly that there were a number of senior officers who
19 left Works and Engineering Department of Ministry to go
20 elsewhere. And they were not easily replaced.

21 Q Well, up to 2008 the economy was booming.

22 A Indeed.

23 Q And if you look at the next page on 7.9 on the
24 other side of that page, you see 6, there's a lack of
25 robust contract award exchange control and monitoring practices.

1 A Yes. This is so. In fact, the regime at the
2 time did allow for senior officers within the Ministry of
3 Works and Engineering to sign off on change orders of the
4 significant level of (course ?).

5 I don't think there was ever an indication that
6 there was a need to take change orders back to Cabinet -
7 significant change orders - and that may be one
8 consideration to include if it's not already hardwired into
9 the approval process.

10 Q So let me understand it. Let's say Cabinet has
11 approved a contract for \$5 million, a construction contract,
12 and there is a change of say another million dollars and it
13 was a new contract, you would actually need Cabinet Approval.

14 A That's correct.

15 Q But are you saying that for the change order
16 presently understood, you would not necessarily need a
17 Cabinet approval?

18 A No, you wouldn't, not if the order did not exceed
19 the total authorized figure for the project.

20 Q Okay. What's the position, and you may have a
21 situation where the Cabinet has approved a contract with a
22 particular contractor, substantial contract, say, and issues
23 arise in relation to that contract. And then the amount of
24 spend may be approximately the same but the contract is in
25 effect completely renegotiated with the contractor in terms

1 of payment terms, in terms of cash flow, in terms assisting
2 the contractor, in terms of other terms in the contract.

3 What's your understanding, at what stage one
4 would have to take the Cabinet back -- have to take that
5 particular contract back to Cabinet for re-approval?

6 A Well, putting on my old habit as Financial Secretary
7 if there was a situation like that, that Ministry of Finance
8 became aware of, there would be time out. We need to --

9 CHAIRMAN EVANS: Sorry, I can't hear you.

10 THE WITNESS: Sorry. Putting on my old hat as
11 Financial Secretary. If a situation arose like that, the
12 Ministry of Finance would interrupt the situation and
13 cause a hold on the project until such time as a proper
14 way forward could be ascertained with the approval of the
15 Cabinet, because clearly, if it was going in that
16 direction, that was not the direction that the Cabinet
17 would have approved initially.

18 BY CHAIRMAN EVANS:

19 Q How would the Minister of Finance know?

20 A Pardon?

21 Q How would the Minister of Finance know?

22 A Well, possibly through monitoring process if the
23 expenditures were shown to be escalating at a rate above
24 the profile that was projected for the project, that would
25 be one indicator. But, if the Oversight Department was

1 actually in the mode of renegotiating major terms and
2 delivery schedules for the project, that wouldn't be
2 countenanced by the Minister of Finance.

3
4 Q I think, in your words --

5 A I'm sorry. That would not have been countenanced
6 countenanced by the Ministry of Finance.

7 Q How would the Ministry of Finance know whether that was
8 that was going on or not?

9 A This is an issue, sir, because once a project has
10 gone under the ownership of a particular manager, these are
11 issues that are sometimes taught internally. But the
12 scenario that was presented by Mr. Hargun sounds to be of
13 serious and sufficient concern to merit fairly direct action.

14 Q Do the Financial Instructions provide for that
15 situation?

16 A No, they don't.

17 Q And you're saying they should?

18 A I think they could because you see at the time,
19 they were two separate documents. Financial Instructions
20 were fairly general in terms of capturing proper
21 accounting, separation of responsibilities and so on
22 throughout the service, both the capital as well as foreign
23 account expenditure. Whereas Works and Engineering had a separate
24 set of rules and procedures for major capital projects.
25 And one of these issues was the need to marry the two to

1 make sure that there were no major gaps in the overall
2 control process for Government expenditure - be it
3 foreign account or capital account. There
4 needed to be an integration of the two documents to make
5 sure that there were no areas where there were large
6 differences that enabled a ministry to not adhere to best
7 practice.

8 Q But what kind of precaution might be taken
9 against that, that being a situation where the
10 Ministry of Works and Engineering is doing a major
11 renegotiation. Should you tell the Ministry of Finance --

12 A I don't know if this has already been taken up by
13 the creation of the Office of Project Management and
14 Procurement. My sense is that it probably would be because
15 it was an issue that was signaled for urgent attention
16 during the time I was in office.

17 I don't know what specific action points had been
18 included in the existing procedures. And so if it didn't
19 exist, then I would certainly take your point that it's
20 something that would need to be considered and included.

21 **BY MR. HARGUN:**

22 Q And finally, the last point in relation to that
23 Point No. 7 was that structures such as Purchasing and
24 Tendering Committee which provided oversight of Capital
25 Projects have lapsed and no longer function. Was that a

1 fair --

2 A I think that was a fair comment, yes.

3 Q Yes. And you referred to the measures which
4 have already been taken, and that you do at page 3 of
5 your witness statement. You referred to in the fourth
6 paragraph.

7 "First, the Internal Audit Act 2010 was
8 enacted to provide for an independent assessment of
9 stewardship, performance and cost of Government policies,
10 programs and operations. This was to provide reasonable
11 assurance that persons entrusted with public funds carry
12 out their functions effectively, ethically and in
13 accordance with the law."

14 A Yes.

15 Q And in relation to that, we have seen one of the
16 Internal Auditor's reports, earlier audited reports, in
17 relation to the golf course.

18 A Uh-huh.

19 Q And, but how does that work, it's left entirely
20 to the Internal Auditor to take a particular department or
21 a section to collect an audit?

22 A The Internal Audit, the Director of the Internal
23 Audit Department reports to the -- This is still the case -
24 reports to the Secretary to the Cabinet. So at the beginning
25 of each year when that officer sets out the plan for the year,

1 there is a discussion with the Secretary of the Cabinet to
2 see if that officer has any particular concerns of
3 particular departments that need looking at.

4 So it's a combination of recommendations by the
5 Director together with consultation with the Secretary of
6 the Cabinet. And there may even be input from the
7 committee who overlooks the work of the internal audit.

8 Q So they're primary led by where the issues are?

9 A Yes.

10 Q Or seem to be?

11 A Uh-huh. Or emerging issues.

12 Q Yes. And then you say, "The work of the Internal
13 Audit has led to significant improvements in public
14 administration since its inception in 2010."

15 I mean, clearly that may well be the case. Why did
16 you say that?

17 A Well, when I was in office there were a number of
18 reports that were produced. We sat and discussed them.
19 Permanent Secretaries who have had charge of those
20 departments that had been examined by the Internal Auditor,
21 heads of department were spoken with; Permanent
22 Secretaries were spoken with. And while I was Cabinet
23 Secretary, I caused Permanent Secretaries to include in
24 their own annual business plans taking into account
25 significant recommendations by the Director of Internal

1 Audit for departments for which they had oversight.

2 And I can say without being too specific that
3 there was a general improvement in the performance of the
4 heads of those departments as a result of the reports
5 done by the Department of Internal Audit.

6 Q Right. Thank you. And then missing one
7 paragraph, you referred to the Good Governance Acts, you
8 say, "The Good Governance Act of 2011 amended the Public
9 Treasury of Administration and Payments Act to establish
10 the Office of Project Management and Procurement."

11 And we touched upon that?

12 A Yes.

13 Q And you referred to the Good Governance Act 2012,
14 which made further amendments to the '69 Act to create
15 criminal offense related to collusion in the awarding of
16 Government contracts.

17 I mean, some of these provisions are obviously
18 designed to send a message in a sense that it's an activity
19 which is frowned upon and if caught, there would be
20 sanctions.

21 What's your sense after this legislation in terms
22 of its effect, did it have that desired effect? Obviously
23 one is trying to look at the negative?

24 A Well, the 2000, I think in both those instances,
25 particularly the 2011 Act that established the Office of

1 Project Management & Procurement, I think that there have
2
2 been positive indications of how that particular office has
3 interacted with the rest of government with respect to
4 proper project management of projects that are under way.

5 I don't have any sense at this point what the
6 effect has been of the amendments made in 2012.

7 Q Sure.

8 CHAIRMAN EVANS: Can I just ask one question?

9 (Off-the-record discussion.)

10 **BY CHAIRMAN EVANS:**

11 Q I hope I'm not over simplifying it. There
12 was the KPMG report in I think in December 2010?

13 A 2010. Correct.

14 Q Then there was the Internal Management meeting
15 which we saw the Minutes of which came February 2011.

16 Then there was the Good Governance Act some time
17 later?

18 A Later in 2011.

19 Q And the, as far as the statute went, the office
20 was established?

21 A That's correct.

22 Q By the end of 2011?

23 A That's right.

24 Q Without being unkind, I think in effect the evidence
25 is that it hasn't actually started working yet?

1 A Well, no, it had an interim director and
2 (surprisingly ?) now, there is a permanent director in
3 place. It has had the opportunity to put out procedural
4 codes. It has actually been involved in the management
5 of an ongoing project which had beneficial effect.

6 Q It is functioning?

7 A Yes. So far as I'm aware.

8 Q Yes. I think the evidence said from Dr. Binns
9 was that there had been an interim director and it's hoped
10 that there will be a permanent director soon, the person
11 is in place; and there is a deputy director and but the --

12 MS LUCK: The policies and procedures I think
13 are on revision but that they hadn't been finalized.

14 MR. HARGUN: The code is in draft but about to
15 be made public.

16 **BY CHAIRMAN EVANS:**

17 Q But we said, or I certainly had the impression
18 it's not up and running yet, it's maybe making a start.
19 But it's not really making a difference yet?

20 A I'm prepared to be corrected by your view.

21 Q Well, I'm not so much on that factual aspect.
22 but I was going to ask you - I don't mean to embarrass
23 you -- but it sounds as if this almost by definition,
24 is an office that's going to tread on other people's
25 toes? It's going to be...

1 A Purposely so.

2 Q And I just wondered, unkindly, whether the fact
3 that it's taking rather a long time in the gestation period
4 is for that reason, that it's quite difficult to get people
5 to move on something where the results will possibly
6 (tampen?).

7 A Well, Mr. Chairman, on that point I cannot offer
8 a view. I've been out of the service now for three years.

9 Q Yes.

10 A But I have a general point to make about change
11 with human beings. You know, there's a Cuban philosopher,
12 can't remember his name right now. But he says, human
13 beings are the only species that are capable of stumbling
14 over the same rock twice. You know, in life, we're all
15 prone to error. And changes for the better take a long,
16 long time. We try and do that in public administration,
17 the structures and processes and procedures that will make
18 Governments right. And certainly these same concerns exist
19 in business and in international organizations, like FIFA,
20 International Athletic Federation and so on.

21 You know, these are the issues of people
22 generally. Those that are concerned to make positive
23 changes must be bold, must be relentless and must keep the
24 end in view.

25 Q I'll just take the (indiscernible) question further.

1 Suppose there is an obvious need for the kind of
2 oversight or control of the Office of Design and
3 (Engineering ?), given your knowledge of this existing
4 structure apart from that, is it the best way to establish
5 another office which is going to be from outside to
6 control from outside or is it better to reform within
7 each ministry?

8 A I think you need a leader to cause the reform to
9 go on within each ministry. I think a centralized
10 body as the Office of Project Management and Procurement
11 is intended and perceived to be would be an effective addition
12 to the Government apparatus. As it would stand, I think
13 pretty much at the height of the organizational structure
14 in align with the Cabinet Office and Ministry of Finance.

15 I think it is important to establish it. Whether
16 the functions could be evolved to a better functioning --
17 and this is specific to project management, public
18 infrastructure projects in Bermuda. We've seen that there
19 were problems, we've seen that there were cost overruns, we
20 need to fix it.

21 It could have been theoretically placed within
22 the Ministry of Works and Engineering. And it's entirely
23 possible that at some point down the road it could be
24 re-integrated with that particular ministry. But the
25 feeling was that in order for the change and behavior

1 to be led, a new entity was required.

2 Q Should there be a minister specifically
3 responsible for it?

4 A I don't know that you need an additional minister
5 to take on that function. I think between the Premier and
6 the Minister of Finance, you've got sufficient power and
7 authority to make it happen.

8 **BY MR. HARGUN:**

9 Q And these are the legislative changes, and then
10 you turn to other changes.

11 You say, "Second, the replacement and upgrading
12 of Government's financial information and management system
13 was under way in 2010."

14 This is yours?

15 A Yes. Yes.

16 Q "The implementation of the new system, JD Edwards
17 Enterprise, E1, began in the final quarter of 2011. The
18 new financial management system has stronger protection
19 features in the purchasing and payment process based on a
20 strict requirement for all non-payroll expenditure requests
21 to be supported by an approved purchase order for each
22 payment transaction. This means that if a payment batch
23 request does not have a document connection to an
24 approved purchase order number that is unique in the
25 payments system, it will be rejected for payment."

1 A That is correct.

2 Q And we heard evidence from Thomasina Hassell who
3 gave evidence in that regard. And I mean, as we understand
4 it, the trust of the evidence was that the input required
5 for the computer is such that it pretty much ensures that
6 Financial Instructions had been complied with before a
7 payment could be utilized.

8 A That was the intent of the design, yes.

9 Q And thirdly you say, "A revised set of Financial
10 Instructions was released in March 2013 and included
11 updates to payment authorization, financial approval
12 authority, contract register for capital goods and
13 requirements for daily deposit of revenue as some of the
14 major changes and enhancements."

15 A Uh-huh.

16 Q And these changes are made obviously to the
17 Financial Instruction on a regular basis?

18 A Yes.

19 Q One of the issues, as you know, given your
20 experience, there's been an issue as to whether, to what
21 extent the Financial Instruction should be amended so that
22 they become regulations?

23 A Uh-huh.

24 Q It's envisaged that they would be at some stage?

25 A Well, that's, I understand that that process has

1 now in train and the Minister of Finance Headquarters
2 is charged with completing that particular process.

3 Q One of the advantages of Financial Instructions
4 given that they are policy of the Ministry of Finance is
5 that given that it's policy, they can be amended quite
6 easily?

7 A Uh-huh.

8 Q They are flexed. And once you have regulations,
9 you would arguably use that flexibility?

10 A This is correct. And if I was there now and I'm
11 not, that is one of the issues that one would struggle
12 with, the ability to make changes. I think the concern or
13 the wish to have some of the procedures buttressed or
14 supported by Legislation is to have a fight when those
15 rules are not complied with.

16 I don't know that every [inaudible 02:47:41] Financial
17 Instructions would have it - in my sense is that it shouldn't
18 have it. But there are some areas and some points where
19 things will get out of hand quite quickly if the process is
20 not followed in accordance with instructions.

21 Q You were saying that some of the fundamental
22 features of the Financial Instructions could be (a way of
23 regulations)?

24 A Yes.

25 Q And others would remain as policy?

1 A I agree. Yes.

2 MR. HARGUN: Mr. Chairman, I don't have any
3 further questions.

4 (Inaudible discussion.)

5 **BY MS LUCK:**

6 Q Mr. Scott, I'm interested in the setting up of
7 the Internal Audit Department.

8 A Yes.

9 Q Having been around that myself in the commercial
10 world a lot. In the commercial world, internal audit doesn't
11 report to any part of management. It actually reports to
12 the Audit Committee Chair who's an independent person.

13 A Uh-huh.

14 Q Was any thought given to a structure like that
15 when you set up the department?

16 A Well, the Cabinet Secretary was considered to be
17 outside of the thread in this regard. There is an
18 external auditor's department and that department
19 as you know when the report is ready, it's submitted
20 to the Speaker of the House of Assembly.

21 And I'm not completely familiar with the way
22 Internal Audit departments work in the private sector, but
23 I do know that, for instance, as far as the evolution, the
24 internal audit function actually always existed in
25 the Accountant General's Department and evolved to the

1 point where there was more than one person carrying out
2 that function and eventually it was set up as a division
3 within the Accountant General's Department.

4 But then we saw the Ministry of Finance would
5 need to bolster its resources and take it out of the
6 Accountant General's Department because indeed the
7 Accountant General's Department needed to be subject to
8 independent checks as well. So --

9 Q Well, it's involved in the private sector to the
10 extent, certainly for a public company, the conversations
11 actually determined by the Audit Committee Chair and
12 his colleagues, not by anybody within management. I was
13 interested in your talk about change because you're absolutely
14 right, changing behaviors for human beings is quite difficult.

15 A Yes.

16 Q Certainly, my experience has been usually it's a
17 combination of the carrot and the stick. So in Internal
18 Audit, my experience has been, the carrot is that people
19 commit within their performance evaluation that they will
20 respond to internal audit issues on a timely basis and see it
21 as a positive way to actually help them improve the work that
22 they do. And obviously if their evaluation by Internal
23 Audit who gives some input to their evaluation, that's --
24 they actually do that, that's your carrot.

25 The stick, of course, is reverse of that. That

1 somebody isn't taking any notice of Internal Audit issues,
2 is not responding. So, I heard you talk about the PSs,
3 have it as part of their plan, that Internal Audit changes
4 and recommendations will be adhered to.

5 So in my world, if you didn't adhere to Internal
6 Audit changes or you didn't get back to them in time or you
7 didn't make, you know, responses, you actually had to come
8 in front of the Audit Committee and say why not.

9 What's the carrot and stick in the Government
10 environment?

11 A Within the current Government structure, there
12 is an annual performance appraisal process. If heads of
13 department, senior officers, are charged with delivery of
14 certain achievements including a movement on, a satisfaction
15 on recommendations that's come not only from the Department
16 of Internal Audit, but the Auditor General as well.

17 There are those two. In addition to that,
18 Permanent Secretaries are charged with making sure that
19 operationally they stay within the agreed budget that was
20 allocated by the Legislature. So all of these points have
21 been, I can't say whether they still are but my sense is
22 that they still are because all that moves in the
23 direction of better governance and oversight.

24 And when an officer is found to be negligent in
25 satisfying his or her annual objectives, that shown to be

1 a consistent performance. The appraisal should indicate
2 that. And if it's below par, if it's not satisfactory, the
3 appraisal should also set out a series of action steps that
4 need to be taken by that particular officer in order to
5 continue to enjoy not having to go before the head of the
6 Civil Service for lack of improvement in performance.

7 Q And culturally, you think people saw the
8 importance of internal audit?

9 A I think by and large, most Civil Servants are
10 honorable people who want to do the best that they can do.
11 Of course, there are some who perhaps not so keen. Perhaps
12 their working for the Civil Service is not what they wish
13 to do. In those instances, there should be encouragement
14 to help them find somewhere else to earn a living.

15 **BY MR BARRITT:**

16 Mr. Scott, good afternoon. I have a number of questions
17 that arose when I read through your witness statement.
18 I'll take them in no particular order, perhaps as they arose
19 in your statement. First, let me say this, I think we're
20 appreciative of the perspective and overview that you gave
21 in your witness statement about what is said in the Auditor
22 General's Report, Section 3, and based on your experience
23 when you were in Government, what changes occurred as a
24 result, not of Section 3 because the report came later, but
25 as of things that are the subject of the Auditor General's

1 Report. There's always this time lag between what happens
2 and what's reported upon by the Auditor General.

3 And you've made some comments with respect to
4 that and I think we all agree with that, that that needs to
5 be closed.

6 My questions if I may, with respect to the Good
7 Governance Act and one of the changes in there, particularly
8 with reference to the collusion offenses. Do you recall why a
9 do you recall why a three-year limitation was put on that?

10 A I actually wasn't too much involved in the
11 instructions or the policy concerns that led to the Good
12 Governance Act 2011 or 2012, because I think that's the
13 amendment that speaks to the issue of collusion.

14 Q So you're not able to answer that question?

15 A No, I'm not.

16 Q With respect to Financial Instructions, in your
17 experience both as Financial Secretary and then as Cabinet
18 Secretary for a period of time, how were Civil Servants,
19 what were they told with respect to Financial Instructions;
20 that is, how were they to regard them - as guidelines just
21 to be followed or --

22 A Well, I think the orientation was perhaps a little
23 more firm than that. Heads of department in particular and
24 Permanent Secretaries had to have better than a working
25 knowledge of Financial Instructions. They needed to be

1 fully aware of what the consequences were of not
2 following Financial Instructions.

3 Mind you, breaches were supposed to be reported
4 to the Accountant General. That didn't always happen. I
5 recall that in many instances... I wouldn't say many
6 instances... but there were surcharges that were put upon
7 Civil Servants for not following Financial Instructions.

8 I won't be specific about when they happened and
9 who was the subject of that focus, but that did occur. The
10 more serious breaches, theft, and, you know, many of these
11 cases actually ended up in the courts.

12 So, where there were breaches that were serious
13 and found out in some instances there was a surcharge put
14 on a particular officer, and if there was an underlying
15 legal infraction, then in many instances those went to
16 court.

17 Q Can I just ask you, pausing for a minute,
18 yesterday there was some discussion on the Code of Conduct
19 and Employment Conditions of Civil Servants.

20 What's your view on the disclosure of conflicts
21 of interest, potential or otherwise?

22 A For?

23 Q By Civil Servants.

24 A I think those should be -- those should be
25 disclosed. If there is a requirement for, and that already

1 exists. The question of how you enforce it is difficult
2 because, you know, disclosure requires a commitment to
3 ethical behavior. It absolutely requires that.

4 So people who are involved in their own
5 businesses, for instance, and there's no prohibition
6 against the civil servant being involved in a business
5 or even a major shareholder in a company, but if that
6 officer's a senior officer and comes into a situation
8 where there is a direct conflict, that should be
9 disclosed to his or her head of department.
10

11 Q Now you said direct interest, but I think the
12 Code of Conduct talks about family as well.

13 A Yes, it does. Yeah.

14 Q If I could, on your witness statement on the note
15 I made of page 6, I want to make sure that we understand you
16 correctly. Where the paragraph that begins the third from
17 the bottom, notwithstanding it begins.

18 Above that you were talking about Financial
19 Instructions where projects may be delegated on the basis
20 that you've shared with us here today.

21 But then you go on to say, "Notwithstanding any
22 exception that is made to the Financial Instructions, the
23 Permanent Secretary of Works and Engineering remained
24 charged with an obligation to ensure proper consultation
25 with the Accounting Officer of the client department

1 throughout all phases of the project."

2 A That's correct.

3 Q So it would be incorrect in your view for Works
4 and Engineering to wash its hands of a project that's been
5 as it were delegated to the Ministry of Transport and
6 Tourism?

7 A Yeah, that would be deplorable.

8 Q Deplorable?

9 A Yes.

10 Q And so what sort of oversight would you expect
11 Works and Engineering to be providing under --

12 A To have an open and collaborative approach to a
13 ministry for which a delegation had been given. For
14 instance, many of the capital projects, normally best
15 practice would require a project team, a project management
16 team to be in place to ensure oversight of the project
17 during its run to completion.

18 In this particular instance where projects
19 would -- Senior officers should form part of the management
20 team overseeing the project. So if there's been a
21 delegation to the Ministry of Transport and Tourism, a
22 Senior Officer from the Ministry of Works and Engineering
23 should be part of the project team that is overseeing that
24 particular project. And I think, I mean, it's intended to
25 be a collaborative process.

1 You know, every project has a major policy
2 objective of the Government, that is, it's seeking to
3 achieve. Collective responsibility just doesn't sit with
4 the Cabinet, it should sit with all departments and
5 ministries in government.

6 So, at the level of a major project, Works and
7 Engineering should always have some degree of input into
8 the management of a project.

9 Q And you know, we drew specific projects to your
10 attention, contracts like Heritage Wharf and Port Royal.
11 You would have expected that to be happening --

12 A Yes, that would be been the expectation.

13 Q Thank you. Next question if I may, going on to
14 page 9 of your witness statement, you said in there, I'll
15 try and pick through the relevant paragraph. I was trying
16 to appreciate the significance of this comment. It's one
17 that occurred I think a number of times, with respect, I'm
18 quoting you now, it's the third paragraph down on page 9.

19 " With respect to the fact that the contract was
20 not tendered, the Government had the power and authority so
21 to do. It must also be recognized that the Attorney
22 General, Government's legal advisor, is a member of Cabinet
23 and has a duty to ensure that Government's decisions
24 comply with the laws of Bermuda."

25 A Yes.

1 Q What were you, in effect, saying there? Let me
2 try it this way.

3 Were you saying because the Attorney General sits
4 in Cabinet, a Paper Cabinet memorandum comes or doesn't
5 come when a decision is made. It is presumed that it is
6 lawful and in accordance with policy and procedure?

7 A Let me try to be more precise if this is not clearly understood.

8 Q Please.

9 A This was strictly to do with a decision by the
10 Government not to tender a particular project. That's a
11 Cabinet decision. Cabinet is the ultimate executive
12 authority. It can set aside policy guidance in almost
13 every respect because at the end of the day it can revise,
14 amend, change policy.

15 But it needs to do so in accordance with the law.
16 The reason that the Attorney General sits in Cabinet is to
17 ensure that the decisions of the Cabinet accord with
18 Bermuda law. So that's the only point I was making.

19 Q Okay. And stop here for a minute, too.

20 When Papers come to Cabinet in your day, did it
21 include a line in there that the Attorney General's
22 chambers is viewed and approved?

23 A All Cabinet papers that have legal
24 implications must go through the Attorney General's
25 chambers.

1 Q That would include something where they were
2 making a decision not to tender?

3 A Yes.

4 Q And would that Paper reflect that it had been
5 there and that the Attorney General's --

6 A The initial of the Attorney General needs to be
7 shown.

8 Q It needs to be shown?

9 A In the margins of the Paper.

10 Q You would expect to see that otherwise as Cabinet
11 Secretary you would have rejected it or sent it back?

12 A I would have advised the Premier because at the
13 end of the day, the Premier. There's a process where all
14 Papers going to the next agenda for Cabinet, are shared with
15 the Premier beforehand. And the Premier also has to sign off
16 on a Paper in order for it to be on the agenda.

17 Q That's true too for the Minister of Finance?

18 A Indeed.

19 Q It would be critical when it comes to spending,
20 capital expenditure?

21 A Uh-huh.

22 Q I would presume that a Paper just wouldn't go to
23 Cabinet unless it had the Minister's signature?

24 A If they're (of national implications), they're
25 absolutely required.

1 Q Would a Paper still go forward if the Ministry of
2 Finance had objections?

3 A That's possible. I think you saw an instance of
4 that.

5 Q We did. And that's why I wanted to ask you that
6 question, whether that happens and how often it happens?

7 A Well, I think the case is established by the
8 fact that it has happened. How many times has this
9 happened, I couldn't say because I didn't always sit at the
10 Cabinet table.

11 Q I can only ask for the time that you sat there.
12 The other thing on page 11, you said -- Give me a
13 moment, I'll find the paragraph. Oh, yes, here it is...
14 It's third up from the bottom.

15 "When payment requests are delivered to the
16 Accountant General for processing, there is an expectation
17 and a reliance that the payment is properly presented in
18 accordance with all the requirements of Financial
19 Instructions by the user department."

20 What I wanted to ask you, you use the word
21 expectation and reliance?

22 A Uh-huh.

23 Q But would it be your understanding that no
24 payment would even be made unless the payment was properly
25 presented in accordance with all requirements of Financial

1 Instructions?

2 A Yes.

3 Q That would be -- that's the practice, that's the
4 requirement?

5 A Uh-huh. Yes.

6 Q And any exception to that would be a deviation
7 that merits disciplinary action?

8 A If there was such a deviation, yes.

9 Q It's a serious, serious enough breach?

10 A But that, the other intent of that paragraph
11 again is to -- and maybe the detailed understanding of
12 Financial Instructions is not widely appreciated. But
13 there's a clause in Financial Instructions that lists in
14 every Ministry Headquarters, every department within that
15 ministry who the accounting officer is for that particular
16 section of Government.

17 And the responsibilities of the accounting
18 officer are clearly laid out in Financial Instructions. So
19 again, the expectation of a payment officer in the
20 Accountant General's Department, because it's the Paymaster,
21 you know, it's a user service for the rest of Government.

22 If the request for payment comes, the expectation
23 is that the accounting officer in the department that has
24 sent that request for payment has conducted his or her due
25 diligence to make sure that it's a proper payment, there's

1 required documentation attached. If that's not the case,
2 then that payment is stopped and the proper supporting
3 documentation is requested.

4 So, you know, there were questions about how is it
5 possible that, you know, the Accountant General could make
6 this payment when there was a cause for concern about
7 whether it... properly --

8 But again, it comes, it looks like it has the
9 supporting documentation, it will be processed because if
10 there is a problem, it's not with the Accountant General's
11 Department. It would fall back to the responsibility of the
12 department that sent the payment request.

13 Q You used the expression, looks like it has the
14 proper supporting documentation. I would have thought it's a
15 question of whether it contains it or doesn't contain it.

16 A Yes, you're absolutely right.

17 Q That's why I say, the responsibility lies between
18 the person who's required to make the payment to say, hey,
19 everything that's required is not here. I need it and/or it's
20 the responsibility of the person who's the accounting
21 officer which I understand is the Permanent Secretary in
22 most cases?

23 A In a Ministry, yes. In a department it's the
24 Head of the Department.

25 Q The Department Head to make sure all the paperwork

1 is there when they send it up?

2 A Absolutely.

3 Q Fair enough. A couple other things arising out
4 of today, if I may. When you were taking earlier, and I
5 think I have this right, you know, when the question was,
6 how would the Ministry of Finance know whether or not
7 people were following the terms of a contract with respect
8 to spending of money.

9 And one of the things I said, perhaps, and you
10 know, you said there were these overspends that prompted
11 the KPMG report and other issues like that, that perhaps
12 because there isn't this oversight at the interim level or
13 strong oversight at the early level, that's how some of
14 these things get out of hand pretty quickly?

15 A Well, you have to be careful. Some projects have
16 their own expenditure profile. Lump sums need to be
17 expended fairly quickly at the beginning of the project.
18 That should be demonstrated in the profile. But as I
19 indicated before, the Budget Office within the Ministry of
20 Finance monitors payment, accumulated spending on every
21 capital project that's on the books.

22 And in areas where it looks like the payment, the
23 spend profile is ahead of the projected profile, and the
24 projected profile would be reported before, before money
25 began to be spent, the projected profile for a particular

1 project would come from the department that had principle
2 oversight for the project. Usually would be from Works and
3 Engineering.

4 So the chief architect, other senior officers
5 would say this project is going to take this length of
6 time, this is the flow of expenditure that we expect to see
7 over this course of time. The Ministry of Finance would
8 monitor that to see whether or not the actual spending was
9 in accordance with the projected. So, there were
10 indicators and signals that --

11 Q Under your scenario, without sounding unkind, if
12 people were doing their job, these things would be spotted
13 really early?

14 A Indeed.

15 Q The next question I had was -- Oh, another thing
16 that we heard, and I'm adding a bit here myself as well so
17 I'm not going to attribute this to anybody, is that there
18 are times when Cabinet, Government of the day, decides that a
19 project is of national importance or is a national priority
20 and speed is required, movement to achieve what they want
21 to achieve, it needs to be done quickly. And as a result
22 of that, sometimes the rules are waived and other
23 requirements under normal circumstances wouldn't be adhered
24 to.

25 I mean, do you accept that, first of all, as a

1 proposition and secondly, your views on how notwithstanding
2 that, a project should still be monitored or there should
3 still be oversight?

4 A No matter how important a project is, it
5 should be properly -- its foundation needs to be
6 properly erected and put in place. And if there is going to
7 be a requirement... For instance, in the tendering process,
8 projects of national importance so far as I've seen in my
9 experience don't happen overnight. They're considered for
10 a fairly long period of time. And maybe they become urgent
11 because the initial work and planning that should have been
12 done wasn't done in the time left before the project needs
13 to be completed.

14 And this happened with Heritage Wharf. For
15 instance, the design work that should have been in place
16 before the project went to tender wasn't done and it wasn't
17 a design bill contract, it was something slightly
18 different.

19 But this, so in terms of national importance,
20 it's still required that financial prudence is observed;
21 that proper organization for the delivery and project
22 management capacity for the delivery of the project is in
23 place.

24 Q And would that be the, again, I think you already
25 answered this after an earlier question, some sort of

1 collaborative effort that involves the Ministry of Works
2 and Engineering?

3 A Yes.

4 Q And the people who have the departments who are
5 overseeing these major projects and/or the people they've
6 employed to assist them, that to your mind is the way to
7 go?

8 A Yes.

9 Q Those are my questions. Thank you.

10 (Inaudible discussion.)

11 **BY MS LUCK:**

12 Q You mentioned earlier that you had a view that
13 Financial Instructions and the PFA documents should be
14 married?

15 A Yes.

16 Q And if that hasn't happened, I don't know whether
17 it has or whether it hasn't, who would drive that, who
18 would own that?

19 A The office, the Director of the Office of Project
20 Management.

21 **BY CHAIRMAN EVANS:**

22 Q I've just got two tender-specific questions.
23 We've heard about technical officers in the ministry
24 forming a view, making a recommendation about the award of
25 a contract. And they would prepare the document, I think

1 you called it the Contract Award Recommendation?

2 A Yes.

3 Q And we've heard at least two instances where the
4 Minister disagreed with the Department's recommendation.
5 And I think they were dealt with in totally different ways
6 in the two cases.

7 But what emerged from that discussion was that
8 a suggestion that one could make it a requirement that the
9 Ministry recommendation should always go forward as such --

10 A I agree.

11 Q -- to the Cabinet?

12 A Cabinet should have full information before it
13 comes to a decision about a course of action.

14 Q But if you have a situation where it's possible,
15 and we've seen two examples from it, for the Minister to
16 make a recommendation to the Cabinet without fully
17 disclosing the Department's recommendation is different.
18 It's obviously not a very satisfactory situation on the
19 face of it.

20 So one way of guarding the case could be to have a
21 straightforward requirement that the Department's or
22 Ministry's recommendation would always go to the Cabinet
23 and then it's up to the Minister if in any case he wants to
24 do something different?

25 A I agree.

1 Q Would that be workable and sensible?

2 A I believe so.

3 Q Thank you.

4 A I agree with it wholeheartedly.

5 Q Thank you. Now the other thing is generally a
6 question of sanctions. And you mentioned, you've said
7 there's been several examples of surcharges?

8 A Some to my knowledge, I wouldn't -- Yes.

9 Q This is one thing that's been troubling me, I
10 think that if you're dealing with a multimillion contract,
11 the question to this, possibly to a surcharge, is not likely
12 to be a realistic sanction, I would have thought.

13 But can you give us some idea how the sanction
14 system has worked, what sort of sums are involved and how
15 are they calculated?

16 A From my recollection the highest sum involved was
17 in the region of \$50,000.

18 Q I'm sorry.

19 A This wasn't for a... It wasn't in relation
20 to a capital project. I think major capital
21 projects where there are deviations or lack of compliance
22 with the processes and procedures that support, that's a
23 different set of circumstances altogether. I don't know
24 that Financial Instructions as presently structured can
25 adequately deal with that.

1 Q Because I'm having some difficulty. I can see
2 there might be cases where a particular officer has made a
3 mistake on a particular contract, as a result of which there
4 was an overspend of X, and it might be said of him, you
5 should pay a quarter of X, or half of X?

6 A That might be one way to have it bite, but that
7 would require some thought.

8 Q Is that how it's done?

9 A Well, I haven't been directly involved in those
10 instances where as Financial Secretary I became aware of
11 actions that had been taken by the Accountant General's
12 department or a situation in another department where the
13 Minister of Finance of the day authorized a sanction he
14 placed on - a surcharge - he placed on a particular
15 officer.

16 Q Please say anything else you'd like about this
17 because I'd like your help in a perfectly open way.

18 Is a surcharge a realistic sanction for this sort
19 of problem we're looking at?

20 A I'd like to pursue that more fully before giving
21 an answer.

22 MR BRADSHAW: Are there other sanctions which you
23 think might be appropriate?

24 THE WITNESS: If you're talking about cases of
25 mal-administration, I don't the know. It's not something

1 I have considered fully.

2 **BY CHAIRMAN EVANS:**

3 Q Well, we asked Dr. Binns about it. He said of
4 course the ultimate sanction is --

5 A Dismissal.

6 Q This is more in the case of whistler blowing which is
7 (an effective subject] and he said the civil servant may have to
8 retire or can always retire. That's on any view, one end
9 of the scale.

10 A Yes.

11 Q And at the moment, speaking of myself I'm at a lost
12 to know what sanctions there are for any departure
13 from Financial Instructions which are not at the end of the
14 scale?

15 A You see, punishment has not always
16 been viewed as the end result. Training, retraining,
17 building up capacity is the first effort. And if that
18 doesn't work, then I think and it's the same individual
19 consistently or serially involved in the same lack of
20 performance, I think, again, the road towards dismissal
21 or resigning from the post in the Civil Service is the way to go.
22 That has been -- The emphasis has been in that direction up
23 until this point in time so far as I'm aware.

24 Q Yes, thank you. As far as whistle blowing is
25 concerned, just want to think about this. That's really in

1 the same area, isn't it? If a civil servant does complain
2 about the conduct of his seniors, is the machinery
3 satisfactory for dealing with that situation?

4 A I think under the recent amendments put forth by
5 the Good Governance Act protection was (sought/thought) to be
given.

6 Q That's the 2012 Act?

7 A That's correct.

8 Q Has that been tested and practiced?

9 A I have no information that allows me to answer
10 that question adequately.

11 CHAIRMAN EVANS: Good. Well, Mr. Hargun, any more
12 questions?

13 MR. HARGUN: I have no further questions.

14 CHAIRMAN EVANS: I must say we, as Mr. Barritt
15 said, we are really most grateful to you for your very thoughtful
16 [inaudible poster] which we've all read and benefited from. Not
least

17 I may say for the positive aspect put in the year 2010 onward. You
18 were there until 2013.

19 It does look as if an effort was
20 made to get things back on track which I think is your
21 word.

22 THE WITNESS: Thank you, Mr. Chairman and Commissioners.
23 Thank you.

24 CHAIRMAN EVANS: Part of our task of course is to
25 make recommendations for the future and the time will come

1 when we begin to formulate some ideas. We may well ask you
2 to come back at that stage if we may to help us with our
3 questions.

4 THE WITNESS: I'd be pleased to assist.

5 CHAIRMAN EVANS: Thank you very much indeed.

6 THE WITNESS: Thank you.

7 CHAIRMAN EVANS: Now at this time shall we go on
8 to Mr. Lister?

9 MR. HARGUN: We were expecting Mr. Lister at
10 2 o'clock. We have not seen Mr. Lister. So I'm not -- I am
11 uncertain as to --

12 (Inaudible discussion.)

13 MR. HARGUN: It has been managed by assistance
14 here. I'm not sure whether as to what the position --

15 CHAIRMAN EVANS: So ought perhaps to take formal
16 steps of seeing when he's present.

17 MR. HARGUN: Certainly.

18 CHAIRMAN EVANS: Is Mr. Dennis, the Honorable
19 Dennis Lister, is he present here? Could you ask outside
20 the door if there is anybody there, ask if Mr. Lister --

21 (Inaudible discussion.)

22 CHAIRMAN EVANS: I think we can take it that he
23 hasn't appeared. Where do we go from there?

24 (Inaudible discussion.)

25 MR. HARGUN: It's difficult to know why not he's

1 not here.

2 MS DYER-TUCKER: He was served and there
3 were two follow-up communications.

4 MR. HARGUN: There have been communications, I'm
5 not sure what the position is.

6 CHAIRMAN EVANS: Should we leave it until 10:00
7 tomorrow morning?

8 MR. HARGUN: Certainly.

9 CHAIRMAN EVANS: Perhaps you could attempt to
10 contact Mr. Lister if he's in Bermuda.

11 MR. HARGUN: We will do that. And subject to
12 that, Mr. Chairman, the position is that we would hope to
13 receive Mr. Burgess at 10:00. And there are -- and Paula
14 Cox.

15 CHAIRMAN EVANS: I think the first priority will be
16 to see where we are with Mr. Lister.

17 MR. HARGUN: We will certainly try to find out.

18 CHAIRMAN EVANS: We'd also like your submission,
19 your help on what we can do if he hasn't appeared.

20 MR. HARGUN: Certainly.

21 CHAIRMAN EVANS: Thank you. Well thank you very
22 much indeed. Resume at 10:00 tomorrow morning.

23 (End of audio.)

24 **End of Day's Proceedings**

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REPORTER'S CERTIFICATE

I, Amy E. Perry, a Certified Shorthand Reporter in and for the State of California, duly appointed and commissioned to administer oaths, do hereby certify:

That I am a disinterested person herein; that this audio recording was reported in shorthand by me, Amy E. Perry, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

IN WITNESS WHEREOF, I hereby certify this in the County of Placer, State of California, this 12th day of October, 2016.



AMY E. PERRY, CSR 11880