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COMMISSION OF INQUIRY - THE WITNESS HEARINGS

ST. THERESA'S CATHEDRAL HALL  
LAFFAN STREET, HAMILTON, BERMUDA  
FRIDAY, OCTOBER 7, 2016

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**CERTIFIED**

AUDIO RECORDED TRANSCRIPTION

October 7, 2016

Day 8

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

**CLERKS TO THE COMMISSION:**

- Ms. Alberta Dyer-Tucker
- Jane Brett

**RECORDER:**

- Rolf Martin



**I N D E X**

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Examination of LUCIA PENISTON  
Examination of CURTIS STOVELL

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Page 20

1 MR. HARGUN: Mr. Chairman, the next witness is  
2 Lucia Peniston, the Tax Commissioner.

3 (Inaudible discussion.)

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

7 **MS. LUCIA PENISTON**

8 called as a witness, being first duly sworn, testified as  
9 follows:

10 **EXAMINATION**

11 **BY MR. HARGUN:**

12 Q Thank you. Good afternoon, Ms. Peniston. My  
13 name is Narinder Hargun, and I'm going to ask you very few  
14 questions in relation to your witness statement. And after  
15 that, the Commissioners may have some questions for you.

16 And your witness statement is dated the 19th of  
17 September 2016; yes?

18 A That is correct.

19 Q And can you please confirm that the statements  
20 made in that witness statement are correct?

21 A Yes, they are.

22 Q Thank you. Your witness statement deals with  
23 issues raised by the Auditor General in the report which we  
24 are concerned with, and in particular, at Paragraph 3.9.  
25 It's, if you have it, you can turn it up, but it's not

1 necessary, I'll just read it. It's a few sentences.

2           Where she says under inadequate provisioning,  
3 "During the 2011 the Office of Tax Commissioner set up a  
4 20 million provision for doubtful accounts for taxes which  
5 were more than 90 days' outstanding. The assumption in the  
6 (inaudible 02:04:02) provisions were not reasonable. Additionally,  
7 a well-founded plan of action for collection was not provided  
8 given the historical and statistical record of collection.  
9 The provision was subsequently increased to 21.7 million."

10           So we're dealing with really two issues. One  
11 is the provision for doubtful debt was inadequate; and  
12 secondly, attempts to collect outstanding receipts;  
13 correct?

14 A           Yes.

15 Q           Now in relation to proper provisioning, if I can  
16 ask you to have a look at your witness statement which  
17 unless you have it separately would be in the witness  
18 bundle Tab 19.

19 A           Yes.

20 Q           And at Paragraph 2, you say that "I agree with  
21 the Auditor General's observation that the 2011 provision  
22 for doubtful accounts for taxes which were more than  
23 90 days outstanding was inadequate. The records indicate  
24 that the original provision was subsequently increased to  
25 comply with changes in the Canadian Public Sector

1 Accounting Standards for tax revenue recognition and  
2 allowance for doubtful accounts."

3 Is the provision in compliance with that  
4 particular standard?

5 A Yes. At that time in 2011 I was not Tax  
6 Commissioner, so I can only go based on the evidence of the  
7 records that I have available to me. And since then in  
8 2013, we have developed an actual policy for how to  
9 ascertain the appropriate Doubtful Provision. And that was  
10 discussed with the Auditor General at the time, the staff  
11 member who was responsible for the audit, and we reviewed  
12 that an on annual basis to ensure that it's in line with  
13 the accounting standards for tax revenue recognition.

14 Q And that's the position as of today as well?

15 A Yes.

16 Q Very well. And then the second issue which is  
17 raised is the question of collection. And you touch upon  
18 that in Paragraph 5 if of your witness statement. And if  
19 we could just look at it and see what you say there.

20 You said, "Regarding the Auditor General's  
21 observation that a well-founded plan of action for  
22 collection was not provided given the historical and  
23 statistical record of collection, I am aware that the  
24 existing Debt Management Section of the OTC was formed  
25 by the Auditor General when she was Tax Commissioner.



1 The DMS consists of three posts whose primary focus is the  
2 collection of tax arrears. The DMS has established  
3 policies and procedures which have been modified as  
4 required. The DMS also sets annual target and performance  
5 measures and they work with the Debt Enforcement Unit of  
6 the Attorney General's Chambers on matters which have been  
7 referred to the Unit for collection. I am aware that the  
8 DMS has continued to focus on their objectives in an  
9 effort to achieve the best collection results despite the  
10 economic climate and inability of companies to settle tax  
11 arrears which have built up over the years of  
12 noncompliance. Over the past few years, the OTC has also  
13 increased the level of smart cooperation with other  
14 Government departments and agencies. For example, the  
15 Department of Immigration Work Permit Policy now includes  
16 the requirement that employers applying for a work permit  
17 must include confirmation that the employer is in good  
18 standing with the OTC. The same policy applies to the  
19 relicensing of company vehicles and taxi licenses. The DMS  
20 also completes vetting requests for Government departments  
21 seeking to engage the services of a vendor which is a  
22 policy outlined in Section 8.2 of Financial Instructions.  
23 These enforcement tools may not result in 100 percent  
24 collection of tax arrears, but they force a noncompliant  
25 tax payer to make contact with the DMS, make a payment,

1 set up a payment plan and avoid the lengthy and costly court  
2 process for collection."

3 Is there anything else that you think that your  
4 department should be doing in terms of collection?

5 A Well, not necessarily just our department singly,  
6 I don't think that the Office of Tax Commissioner could  
7 tackle the issue of debt collection and enforcement on its  
8 own. There are like I mentioned smart cooperation's very  
9 important and starting to see some success there. But it  
10 needs to increase with other Government departments and  
11 agencies.

12 Q Is that happening?

13 A It is happening. I think it could happen more  
14 and we can look at ways of ensuring that when a Government  
15 service is provided, a license or certificate is provided,  
16 that business needs to be compliant. I am not saying  
17 100 percent of the arrears collected because sometimes  
18 that's not reasonable, but at least have a payment plan in  
19 place with our office. And they're not entirely  
20 delinquent, so that could extend to liquor licenses, it  
21 could extend to various types of certificates that are  
22 issued by other Government departments. So I'd like to see  
23 that improved as well.

24 Q I see that's one of the conditions or  
25 requirements for tendering of the Board of Government

1 contracts is that you are in compliance with your  
2 obligation to the tax department.

3 A Yes, you're in good standing. Yes.

4 Q Good. Let me ask you a slightly different  
5 question in relation to collection.

6 What can you say to the Commissioners in relation  
7 to whether there is any pressure by the politicians or from  
8 other people within the Government in relation to  
9 collection efforts?

10 I mean, that in the context of potential pressure  
11 that perhaps in relation to a particular individual or  
12 company perhaps your department should go easy.

13 A No, we are not. We are not pressured to go easy  
14 on any particular tax payer. We do have pressure to  
15 collect, obviously that's pressure from even the tax paying  
16 public. I know that they feel strongly about the level of  
17 tax arrears and companies who don't comply. And there are  
18 companies that do. And so we get pressure from that aspect  
19 but that's a general.

20 I have never experienced pressure to go easy on  
21 an individual taxpayer. We are always encouraged to work  
22 with taxpayers because we have to balance the needs of  
23 collection with we're not in the business of closing  
24 businesses down which will have a domino negative effect.

25 Q Sure.

1 A So where we try to work with taxpayers but as far  
2 as going easy on an individual taxpayer, no.

3 Q I mean, that's your personal experience, is that  
4 also the experience of other people in your department?

5 A Yes. I have discussed this with the Debt  
6 Collection Section who have been there since inception of  
7 the Unit. And they also agree that they, similarly, they  
8 have not been pressured to be easy on any individual  
9 taxpayer.

10 MR. HARGUN: Thank you, Ms. Peniston. I don't  
11 have any further questions. Mr. Chairman.

12 **BY MS LUCK:**

13 Q Could I just ask you a question on your  
14 statement, Paragraph 5. You say about four or five  
15 sentences down, the DMS has established policies and  
16 procedures which have been modified as required. They  
17 also set annual target and performance measures.

18 Can you just describe a little bit how that  
19 works?

20 A Well, we have the procedures which I included and  
21 they're a framework. We can't follow them 100 percent with  
22 every single taxpayer because we have to assess each  
23 individual situation as different. And we may try to  
24 ascertain a certain payment and that may not be always  
25 feasible. We like to do shorter payment plans but

1 sometimes we have to do six months and then reassess it  
2 after six months.

3 A lot of these companies that have managed to  
4 survive through the economic downturn are still struggling.  
5 So although they're able to file their returns and pay  
6 their current debt which is good because they're not adding  
7 to their arrears, they just don't have a surplus of what  
8 supports their arrears in big chunks. So it's a matter of  
9 working with them, those procedures are a framework.

10 The targets they have, as far as making contact  
11 with a number of taxpayers a week, making a certain number  
12 of phone calls, they have quotas, we have performance  
13 measures about how much we aspire to collect. It is  
14 difficult. Like I said, there are some external factors  
15 that are sometimes outside of our control. The economy is  
16 a big part of that.

17 And until we start to see businesses thriving a  
18 little bit more, they're going to continue to make very  
19 modest payment plans. And they also have targets as far as  
20 how many files they refer to either the Debt Enforcement  
21 Unit or take it to Magistrates' court. But like I said,  
22 those targets do change. They are targets but when you're  
23 dealing with individual companies, things may happen and  
24 you always want to negotiate and work with the taxpayer.

25 Often when we send them to court, it's a long

1 process, it's costly. It's more costly for the taxpayer  
2 and we often get payment plans which are even less than  
3 what we would achieve if we had continued to work with the  
4 taxpayer in turn.

5 Q So when you say there is a target for being  
6 referred to the Debt Enforcement Unit, if I go to Paragraph  
7 17 of your witness statement, it says, "There is no  
8 existing policy or directive for when a matter is  
9 referred."

10 Is that what you mean; so each individual or  
11 group as a whole may have a target who refers to the debt  
12 reinforcement, but depending on the circumstances, that may  
13 change?

14 A Yes. But this policy actually refers to the fact  
15 that you'll see in Financial Instructions there's a set  
16 policy for other Government departments to refer their debt  
17 to Accounts General's Debt Collection Section. So they  
18 don't have a choice. Once it reaches a certain age, they  
19 have to refer it.

20 We don't have that similar policy with DEU at  
21 this point. So it's not like the chambers had said once a  
22 debt that's reached this level and this age you must refer  
23 to us. We can still assess whether it's practical to refer  
24 it to DEU or whether we can try and handle it internally  
25 because they're also under resourced in that unit as well.

1 Q Thank you.

2 **BY MR. BARRITT;**

3 Q Just so we know what we're talking about, what's  
4 the current provision?

5 A The current provision meaning for the year end  
6 2015, '16 which is still unaudited, which is as I refer to  
7 my witness statement in point 12, it's set at 81.6 million.

8 Q 81.6. And that's up considerably from what it  
9 was in the Auditor General's report?

10 A Yes, and I can explain that if you would like me  
11 to.

12 Q Yes, please.

13 A Like I said, the methodology, there was no set  
14 methodology at that time for establishing the Doubtful  
15 Provision. And there was one key component that wasn't  
16 included during the time of the report was that there was  
17 no provision for land tax except for Quango tenants because  
18 of a loophole, not a loophole in the legislation but nature  
19 of the tenants is when they move, the land tax moves with  
20 the assessment and the new tenant is not going to pay the  
21 old land tax that was due when the old tenant was there.  
22 So that's questionable so we always have provision for  
23 that.

24 But for all the other land tax, there was no  
25 provision in place. That was never a part of the Doubtful

1 Provision. And the reason was there was a fundamental  
2 disagreement between the legislation and accounting  
3 principals. The legislation, I think it's Section 70 of  
4 the land tax, Land Evaluation Tax Act, actually protects  
5 the land tax. So if somebody unfortunately purchases the  
6 property and their legal counsel doesn't do the proper due  
7 diligence and verify with our office that there's any land  
8 tax outstanding, that new owner will inherit that land tax.

9 So eventually somebody's going to have to pay the  
10 land tax. It never gets written off. So that's the reason  
11 or the rationale that land tax was never included in the  
12 Doubtful Provision.

13 In 2013 when I went through the process of  
14 developing this methodology, I felt to include it would be  
15 conservative, it's the best financial statement disclosure  
16 because it's not likely you're going to collect those  
17 amounts within the next fiscal year.

18 So by not including it in the Doubtful Provision  
19 it inflates your receivables, your current assets. So it  
20 is included. So that made a big jump from what you see in  
21 the report to what is now because we have a component in  
22 there which is land tax.

23 BY MS LUCK:

24 Q And that's by the AG'S..

25 A Yes, that was all discussed, the methodology that



1 was used and the policy was discussed with them at that  
2 time. And we continue to use the same policy but we review  
3 it on an annual basis during the audit process.

4 **BY MR. BARRITT;**

5 Q You also shared with us in Paragraph 9, for the  
6 last financial year ended, a total tax receivable was  
7 stood at 219 million.

8 A Yes.

9 Q I'm sure you're able to compare from past years  
10 to position today, what direction are we moving in?

11 A Well, as stated here that because of the year end  
12 and how it falls, that's not a true reflection of these are  
13 taxpayers who haven't paid their tax debts, because that  
14 includes an accrual for taxes that are received on  
15 April 15th.

16 So on the year-end financial statements it always  
17 looks like there's a huge amount of money outstanding in  
18 taxes, but actually a lot of that, a big chunk of that  
19 comes in before April the 15th when people have to file  
20 their taxes.

21 But having said that, it still has increased. We  
22 have -- the tax rates have gone up so you're going to have  
23 larger amounts of taxes. And you do have taxpayers who are  
24 still struggling to pay off the full amount of their taxes  
25 due or the arrears have also accumulated from prior years

1 and is being carried forward.

2 Q I think you told us about 736 businesses and  
3 individuals on your tax --

4 A And installment plans.

5 Q Installment plans.

6 A Yes.

7 Q And I presume that represents all of the  
8 delinquents?

9 A Yeah, at cross-sections whether it be sole  
10 proprietor or a company or land tax.

11 Q And I just wondered if you could share with us, I  
12 know you said that -- you said in your evidence here today  
13 and in your statement that, you know, as you try to work  
14 out plans with people, it's not often feasible, you said  
15 since of a likely result in bringing the business to its  
16 knees in loss of jobs.

17 Who makes that determination and how is it made?

18 A It's not easy to make that determination because  
19 not always the information... We don't have the ability to go  
20 in or we don't go in and review a full set of financial  
21 statements for the individual company. We don't even have  
22 the resources to do that if we could. So we have to take  
23 it on face value and continue to work with the taxpayer.

24 So it is a bit subjective as far as how we make  
25 that determination. But considering the economic climate

1 and how these businesses are coming out of and starting to  
2 see a little bit of improvement in their performance, that  
3 has been the trend since I've been the Tax Commissioner is,  
4 you know, if you push too hard, basically what they're  
5 saying is that I'm not going to be able to pay you unless I  
6 shut down or make this many people redundant, or they just  
7 simply don't have the cash flow to make large payments on  
8 their arrears.

9 But our objective is to maintain the contact with  
10 the taxpayer so that they don't just drop off and become  
11 entirely delinquent.

12 Q And you'll recall, we asked you about whether  
13 there were any attempts to identify people who might be  
14 delinquent in tax arrears with payments of social insurance  
15 and health insurance. And I think you said you don't have  
16 the authority to demand that information.

17 But is it not shared in this smart program so  
18 that you might be -- the Government might be able to catch  
19 people early in terms of not making social payments or  
20 health insurance payments for employees?

21 A Well, specifically, I did say that with the  
22 Pension Commission which is the private pension and the  
23 health council, we don't as yet have the ability or the  
24 authority to request that information.

25 But as far as social insurance, the Department of

1 Social Insurance, we do work with them and I have noted  
2 that the Debt Enforcement Unit of Chambers who are  
3 responsible for collecting all Government debts including  
4 social insurance has combined some matters. So where  
5 there's a company that may be in arrears for taxes and  
6 they're also in arrears for social insurance, we might  
7 negotiate a combined payment arrangement or DEU may pursue  
8 that matter collectively to the courts.

9 Q Thank you.

10 **BY CHAIRMAN EVANS:**

11 Q You said that the current figure for tax  
12 provision is -- provision figure is 81.6 million?

13 A Yes.

14 Q And you said that's updated because you took the  
15 decision to include the deformed figures for land tax; is  
16 that right?

17 A A portion thereof, yes.

18 Q What was the amount of the increase, can you  
19 remember?

20 A At the time we changed the policy between the  
21 year in 2012 and 2013, I believe it was 9, approximately  
22 \$9 million was added to the Doubtful Provision just from  
23 that portion of land tax.

24 Q Thank you. Of course, the fact that it secured  
25 against the property, doesn't alter the fact that it's

1 outstanding.

2 A Yes.

3 Q And are proceedings taken against the property in  
4 respect to the amounts?

5 A Yes. We do pursue land tax in the courts. We  
6 focus, the DMS focuses primarily on payroll tax. I will  
7 say that simply because of the resource issues.

8 Q Yes.

9 A And there are some other methods in land tax,  
10 the Land Valuation and Tax Act provides more authority and  
11 power to the Tax Commissioner to do things like garnish.  
12 We can garnish rents. We can garnish salaries. That's  
13 what we would like to do because those are very powerful  
14 and effective ways of collecting.

15 However, that requires a lot of manpower to be  
16 able to ascertain whether a property is being rented and  
17 who's the tenant and how much they pay in rent. Also, to  
18 ascertain where a landowner works, how are we going to find  
19 that out and send an order out to their employer.

20 So it's things we want to do, we just simply at  
21 the moment don't have the resources to do it. But that is  
22 the objective, eventually hopefully when the hiring freeze  
23 is lifted and we can get some more people on staff.

24 MR BRADSHAW: [Inaudible 02:24:14] primarily on  
25 staffing then or is it on funding as well?

1 THE WITNESS: Well, staffing and funding, yes.

2 COMMISSIONER EVANS: Do you have any more?

3 MR. HARGUN: Nothing from me, Mr. Chair. Thank  
4 you.

5 COMMISSIONER EVANS: Ms. Peniston, thank you very  
6 much indeed. You've been most helpful with us. Thank you.

7 (Inaudible discussion.)

8 MR. HARGUN: Mr. Chairman, the next witness is  
9 Mr. Curtis Stovell, Accountant General.

10 COMMISSIONER EVANS: Thank you.

11 (Inaudible discussion.)

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

15 COMMISSIONER EVANS: Thank you. Sit down,  
16 Mr. Stovell.

17 Mr. Hargun, the witness statement doesn't  
18 actually give the dates when Mr. Stovell was in his various  
19 posts. I wonder if you can begin by --

20 **MR. CURTIS STOVELL**

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

23 **EXAMINATION**

24 **BY MR. HARGUN:**

25 Q Good morning, Mr. Stovell, my name is Narinder

1 Hargun. I'm going to ask you questions in relation to the  
2 two witness statements which you have made. The first  
3 witness statement, let me just get that right.

4 Your first witness statement was 16  
5 September 2016.

6 Do you recall that, a four-page statement?

7 A Yes.

8 Q Can you just confirm that what you said in that  
9 statement is correct?

10 A Yes, it is correct.

11 Q And secondly, Mr. Stovell, you swore another  
12 witness statement on 26th of September largely dealing with  
13 the Airport issue?

14 A Yes.

15 Q And can you --

16 (Inaudible discussion.)

17 **BY MR. HARGUN:**

18 Q And you have also confirmed that that is correct?

19 A Yes, this is correct.

20 Q And it's right that formerly that you've given  
21 two witness statements, and you've already provided the  
22 Commission with a detailed letter, some of the issues and  
23 that letter is dated 8 July 2016?

24 A Was that the letter and request to the  
25 information requested, yes, that is correct.

1 Q Thank you very much. So let me start by asking  
2 what Mr. Chairman asked.

3 Can you just tell us your position within the  
4 Government say for the last ten years?

5 A Sure. I am currently the Accountant General and  
6 I began in that post in April 2014. Prior to that I was in  
7 the Ministry of Tourism and Transport.

8 COMMISSIONER EVANS: Don't go too quickly. Did you say April?

9 THE WITNESS: April of 2014.

10 COMMISSIONER EVANS: Yes.

11 THE WITNESS: Prior to that I would have been the  
12 Ministry Financial Controller for the Ministry of Tourism  
13 Development and Transport from November 2007.

14 COMMISSIONER EVANS: 2007 to 2014?

15 THE WITNESS: Correct. And prior to that I would  
16 have been the Financial Controller at the Department of  
17 Airport Operations from October 2005.

18 **BY MR. HARGUN:**

19 Q Thank you. Can I start with asking you questions  
20 in relation to the Airport Project. And in relation to  
21 that, there are really two issues, one is as to whether  
22 they've been in compliance with the Financial Instructions  
23 in relation to the agreement of the Government with the  
24 Canadian Commercial Operation. Yes?

25 And secondly, in relation to the relation to the



1 selection of Aecon as the contractor to construct the  
2 Airport, yes?

3 A Okay.

4 Q And the questions really concerned with as to the  
5 process which has taken place and whether there's been a  
6 compliance. And we see from the documentation,  
7 Mr. Stovell, that there have been waivers in relation to  
8 a particular [inaudible - financial?] instructions.

9 I'm going to show you three or four documents  
10 which set out your reasoning and the documents which set  
11 out the waivers.

12 Before I do that, could you just in a very broad  
13 outline explain to the Commission what has happened and  
14 your role in giving the waivers in relation to their  
15 request made by the Ministry of Finance?

16 A That's a bid broad but I'll attempt to do that.  
17 I was approached by the Ministry of Finance in connection  
18 with the Airport transaction. And the question was how  
19 this will be able to comply with Financial Instructions.  
20 I interpreted that as requiring or requesting a waiver in  
21 terms of sole source permission, which is what resulted in  
22 the first second and third memos.

23 Q Okay. Well, let me take you through that because  
24 those are the main documents which set out either the  
25 requests which we're dealing with and your reasoning in

1 relation to them.

2 The first letter is at page 5 of the documents  
3 which are exhibited to your second affidavit.

4 You have the documents?

5 A Yes.

6 Q And that is a memorandum by you to Mr. Manders  
7 who's the Financial Secretary and as of the 25th of  
8 September 2014.

9 I see that you've been dealing with this project  
10 for some time certainly over the last two years or so?

11 A Yes.

12 Q And there you say, Items Under Consideration.  
13 The Bermuda Government desires to enter into the following  
14 with the Canadian Commercial Corporation, one, a Memorandum of  
15 Understanding regarding air transport; two, a Letter of  
16 Agreement specific to the airport and bridge projects.

17 And the objective is to determine the  
18 applicability of Procurement Rules in Financial  
19 Instructions and ensure FI compliance to the extent  
20 applicable. And then you set out what you consider to be  
21 possible relevant instructions. Yes?

22 A Yes.

23 Q And they are 2.12, permission to depart from  
24 Financial Instruction must be sought from the Accountant  
25 General in writing. Departure of these instructions

1 without the written permission of the Accountant General is  
2 not permitted.

3 At 8.2.3, 1, Goods and Services with an estimated  
4 value in excess of 5,000 shall be obtained on the basis of  
5 at least three quotations.

6 8.3.1, A minimum of three written quotations or tenders  
7 using in addition to tender or request of quotation ought  
8 to be considered before the acceptance of the aspired goods  
9 goods and services in excess of 15,000.

10 Contracts included here are for goods and  
11 services in excess of a total of 50,000 which are not  
12 relevant or part of the expenditure of capital  
13 development as defined in Section 12.1.2.

14 And then at 12.1.2, The accounting  
15 responsibilities for capital development expenditure rests  
16 with the Permanent Secretary of Public Works. The  
17 exception of, two, the assigned accounting responsibility  
18 includes capital development projects for which the  
19 Minister of Finance can delegate the responsibility for  
20 expenditure to a Ministry other than Public Works.

21 And then Section 12.2, The tendering process must  
22 be in accordance with F1, Section 8 or Public Works written  
23 procedure. Any decision on capital projects managed and  
24 executed by Ministries and Departments outside of the  
25 Ministry of Public Works as approved by Cabinet are to be

1 made by the Permanent Secretary or head of department of  
2 respected Ministry in a manner that is consistent with  
3 tendering processes outlined above as governed by the  
4 written procedure of F1, Section 8 of Public Works written  
5 procedure.

6 And then you discuss the issue which are  
7 presented. You say that the Memorandum of Understanding  
8 document contains no specific financial terms or  
9 obligations so it's technically outside the scope of the  
10 Financial Instructions. The MOU is relevant because it is  
11 authorizing document under which any specific agreement  
12 would be issued.

13 And then the Letter of Agreement. The Letter of  
14 Agreement for the Airport and Bridge projects refers to  
15 services to be provided by CCC to Government in return for  
16 the fees to be paid to CCC. Whether the CCC fees are paid  
17 directly by the Government or borne by the project, and its  
18 external financing is not relevant, these factors confirm  
19 that the LA is covered by and must comply with Financial  
20 Instructions.

21 That was your conclusion?

22 A Yes.

23 Q And you say that: Note that my analysis is  
24 restricted to the relationship between CCC and Government.  
25 It is premature to consider contracts that will be awarded

1 under the project so far in advance or even procurement  
2 services, agreements being established by CCC and  
3 Government.

4 Do I understand that you're saying that all you  
5 are giving waiver at this stage is just the agreement with  
6 CCC, not for any further contracts entered into by  
7 Government, say for example, with a contractor?

8 A That's precisely what I was saying, yes.

9 Q Thank you. And then I think I can take you to  
10 the factors considered which you took into account in  
11 considering whether a waiver should be given in relation to  
12 it. And that is at page 7. You say the Minister of  
13 Finance detailed the urgency of national importance of the  
14 projects, that is job creation and declining condition of  
15 existing facility. A tendering process would mean a significant  
16 longer timeline before shovels are in the ground. I agree  
17 this is a factor in favor of sole sourcing CCC.

18 And one of the projects I see that to the  
19 Ministry relied upon in relation to that was the major  
20 project in relation to the hospital, which apparently took  
21 a long time in order to procure that.

22 A Yes. That was one of the comments that he had  
23 made, yes.

24 Q The financing structure of the project is  
25 beneficial to Bermuda in that any debt issues will not be

1 attributed to Bermuda indebtedness. At this point I cannot  
2 confirm the ability of projects to sustain their  
3 related debt, but that will be addressed at the end of  
4 the first phase of the engagement when the decision on  
5 whether to proceed with the development is taken.  
6 So I consider the financing arrangement to strongly  
7 support sole sourcing CCC.

8 I see from the other material which you have  
9 exhibited, in particular, the Minister's correspondence with  
10 the Governor, the issue of financing, certainly as far as  
11 the Ministry is concerned, is critical in that the Minister  
12 takes the view that the Government is not in any position  
13 to increase its indebtedness.

14 A That's correct.

15 Q So that this project can only occur as long as it  
16 does not increase the indebtedness of Bermuda Government on  
17 its financial statements?

18 A I wouldn't go as far as that. I think it's  
19 highly desirable that it not increase the debt of the  
20 island, yes.

21 Q The present debt is slightly in excess of 2  
22 billion; correct?

23 A Slightly, few hundred million slightly less, yes.

24 Q And then the next factor you took into account  
25 was you say, The government holds that the direct ability

1 and experience of CCC support the likelihood that they will  
2 bring the project in successfully. I reviewed available  
3 material about CCC and their public reputation as specialists  
4 in Government-to-Government solutions including those  
5 involving infrastructure aligned with the Ministry of  
6 Finance recommendation of CCC. That the MOF also met with  
7 the client country of CCC for whom they built an airport,  
8 that endorsed the CCC's performance in their jurisdiction  
9 is also a strong positive factor for selecting CCC.

10 This, CCC is a Quango, the Canadian Government,  
11 is it?

12 A Yes, I believe Crown Corporation or former Crown  
13 Corporation, yes.

14 Q And what's the structure, is it funded by the  
15 Canadian Government?

16 A I believe it's self-sustaining. But it's still  
17 strongly linked to the Canadian Government and that all of  
18 the access to information requirements of the Government  
19 also apply to CCC.

20 Q And do I understand that after it entered into  
21 contractual arrangement with say a sovereign nation, it  
22 then enters into contracts with the commercial contractors?

23 A That's correct.

24 Q And I mean, presumably from the Canadian  
25 Government's perspective, it does so because it provides

1 contracts for Canadian commercial contractors?

2 A I can't speak to as why they do that. I mean, I  
3 certainly from the Canadian Government standpoint seeing it  
4 as them being a good global citizen in terms of encouraging  
5 international development with the full weight of the  
6 Canadian Government behind that.

7 And certainly it is good for the Canadian economy  
8 as well in terms of commerce in those companies. That  
9 would help them remain globally competitive.

10 Q That was the part I was touching on.

11 A Yes.

12 Q And then the final point you take into account is  
13 the fee structure for the remuneration of CCC appears to be  
14 still under discussion. As such it's difficult to evaluate  
15 value for money until the terms are solidified. It's clear at  
16 this stage that the activities under all phases of the LA  
17 appear quite comprehensive.

18 And then you conclude. Under ideal circumstances  
19 a competitive tender process is always preferable. In the case  
20 of the Airport and Bridge projects, based on the above factors  
21 supporting the appointment of CCC, I give permission to  
22 waive the requirement for three quotations for the services  
23 to be provided under the LA.

24 My provision is provided under the condition that  
25 when available, further information be provided on CCC's



1 fees even at a high level to enable the valuation for  
2 value for money for their services.

3 Financial Instructions also require the Minister  
4 of Finance formally delegates responsibility for the  
5 project to the Managing Ministry. If it's not Public  
6 Works, the delegation of the responsibility must be  
7 documented in writing and provided to me at earliest  
8 convenience.

9 So at this stage by your memorandum of 25th of  
10 September 2014, you are at least giving waiver for the  
11 Ministry to enter into a contract agreement with the CCC?

12 A That is correct.

13 Q And then the next document I want to you have a  
14 look at is... --

15 **MR. BARRITT:** Could I just ask the Accountant  
16 General a question. Good afternoon. In that conclusion  
17 which I think is important to note, you say you give your  
18 permission to waive the requirement for three quotations  
19 for the services to be provided under the Letter of Agreement.

20 What services did you have in mind when you used  
21 that word 'services'?

22 A Is that something that you're going to go into  
23 later or should I go into it at this time?

24 My review of Letter Agreement which is what all  
25 of this is based on which is all I'm being actually asked

1 to provide permission or advice on, is that the CCC  
2 services are broken up into phases. If we look at that  
2 Letter Agreement which I believe is...

3 MR. HARGUN: Yes. It's actually in there. If  
5 you want to look at the Letter Agreement, that's page 8.

6 A Beginning at page 8. And if you skip to page 10  
7 it talks about the Airport Project Development phases. And  
8 it's split into phases 1A beginning on 10 and then 1B on  
9 page 12 and Phase 2 on page 13.

10 What was critical to me when I read this document  
11 was that Phase 1A at the end of that phase results in a  
12 decision which is a go/no go. It's at that point that the  
13 Government and the CCC make a determination on whether the  
14 project will go forward, feasibility, affordability,  
15 finance ability, all of those questions would have to have  
16 pretty much definitive answer at that point.

17 From my perspective, those were the services that  
18 I was giving permission for, because at that stage once  
19 that go/no go decision is made and Mr. Hargun will probably  
20 go into it in my next or third memo, I'm not sure which,  
21 then further agreements follow from that.

22 MR. BARRITT: Sorry to interrupt.

23 **BY MR. HARGUN:**

24 Q It is quite right that Mr. Stovell's position  
25 was and is that he certainly was not at that time giving a

1 waiver in relation to a contract with a contractor, in particular Aecon.

2 MR. BARRITT: Sorry to have interrupted.

3 THE WITNESS: That's all right.

4 COMMISSIONER EVANS: In a sense, maybe, Mr Stovell,  
4 if you want to establish your dignity here, the consent you  
5 gave at this stage, was not consent to a construction contract?  
6

7 THE WITNESS: The consent I gave at this stage  
8 could not have been for a construction contract because I  
9 was not aware that there was a construction contract.

10 COMMISSIONER EVANS: That becomes clear when one looks

at...

11 MR. BARRITT: Preliminary due diligence.

12 THE WITNESS: Absolutely.

13 **BY MR. HARGUN:**

14 Q And then I think in relation to your waivers, the  
15 next point perhaps is to look at your memorandum of the  
16 11th of May 2015, again to the Financial Secretary,  
17 Mr. Manders. And the subject matter is Airport Redevelopment  
18 Sole Source. And you say that this is a follow-up from the  
19 memorandum we just looked at? Yes?

20 A Yes.

21 Q And in the conclusion of the above noted memorandum, I  
22 waive that requirement for three quotations under the condition  
23 that when available further information be provided on  
24 CCC's fees even at a high level to enable the evaluation of  
25 value for money for their services.

1           At this time I'm requesting that my office be  
2 provided with value for money analysis that had been performed  
3 in this respect. It is critical that the information be  
4 provided prior to their go/no go to redevelopment decision.  
5 This question was raised again at the end of 7th of May  
6 Public Accounts Committee Meeting. The information can be  
7 provided to me by email.

8           Additionally, note that based on information  
9 available, I consider that the use of general contractor  
10 handpicked by CCC to also be a sole source requiring ACG  
11 approval to waive Financial Instruction requirement. It is  
12 my expectation that a formal request to sole source would  
13 be forthcoming to me in writing to that effect allowing me  
14 and OPMP sufficient time to digest, query and respond.

15           Particularly in light of the recent items in the  
16 press alluding to prior contract of the MOF by the  
17 contractor identified by CCC, it is critical that all  
18 aspects of this project consideration follow the current  
19 financial requirements and be able to stand up to the  
20 highest degree of scrutiny. I appreciate your assistance.

21           So there you're saying that if they want to  
22 waiver, if the Ministry of Finance wants to waiver in  
23 relation to a sole contractor, please let me have the  
24 information in good time so that I can consider it?

25       A           Correct.

1 Q Yes. And I think you do consider it. If you look  
2 at the next memorandum that is the memorandum of the 7th of  
3 March 2016, nearly ten months afterwards. Again, to the  
4 Financial Secretary, Mr. Manders, you refer to your  
5 previous memorandum. You do give context.

6 You say that in my May 11th Memo, I indicated  
7 that I considered the selection of contractor, Aecon, by CCC  
8 to be a sole source requiring ACG approval to waive  
9 Financial Instructions. I note the following excerpt from  
10 CCC document outlining their selection of contractor.

11 And you quote; in the case of the redevelopment  
12 of the LF Wade International Airport in Bermuda, CCC was  
13 introduced to the potential opportunity by Aecon, a  
14 Canadian company. You said that initially you were of the  
15 understanding it was CCC who introduced Aecon to this transaction.  
16 My read-on is that Aecon was the intended construction partner  
17 which was not my final understanding under the CCC letter  
18 agreement was provided to me.

19 It is fact that Aecon was in train prior to the  
20 engagement of CCC, and the intent was far more forward looking  
21 than I could appreciate at the time. I can understand the  
22 Minister's view but my sole source comments encompass the  
23 breadth of the project.

24 I think the point you're making there is the  
25 Minister might have rightly or wrongly understood that when

1 you gave your waiver in relation to CCC, that included  
2 possibly a waiver in relation to any and all contracts?

3 A A waiver in accordance with the entire project.

4 Q Yes.

5 A Yes.

6 Q And that's the understanding or misunderstanding  
7 you're referring to here?

8 A Yes.

9 Q And then you go on to say, However, based on my  
10 limited awareness with respect to Aecon at the time, that  
11 certainly was not my intent. I reviewed the correspondence I  
12 I had in hand and did not find any mention of Aecon leading to the  
sole  
13 to the sole source memo I issued in 2014.

14 Based on my read of the above mentioned CCC  
15 document and their indication that Aecon was the originator  
16 of the transaction, I can say that I was under the impression  
17 that the construction contractor was yet to be selected.

18 My interpretation of CCC selection document is  
19 that my original impression was incorrect. However, based  
20 on my understanding at the time that there was no  
21 contractor selected, I was not provided permission through  
22 the construction phase of the project.

23 My understanding was that a contractor would be  
24 identified subsequent to my sole source permission memo and  
25 I would have requested information on Aecon at the time of

1 the letter agreement had I been aware that that  
2 identification had already taken place.

3 Notwithstanding my concerns above, it is clear  
4 that CCC thoroughly vets its counterparts using a fairly  
5 rigorous set of procedures. And this testifies to the  
6 rapid ability and soundness of Aecon. This supports the  
7 likelihood of satisfactory execution of the project. What  
8 it does not provide clarity on is whether there were, or are,  
9 alternatives suitable entities capable of a similar execution  
10 that CCC might have worked with and that is ordinarily one  
11 of the key elements of a sole source request.

12 This doesn't preclude sole source permission  
13 being given but does result in a diminished argument in my  
14 view. Were/Would there having been measures identified to  
15 address deficiencies for the 2015 entrustment letter, I look  
16 forward to the following.

17 One, agreement of the UK on the measures proposed  
18 by Government to address the key gaps; two, the required  
19 evidence based report from the Government on the completion  
20 of the agreed-upon measures. Once the two items are  
21 complete, I am satisfied that the conditions to provide the  
22 sole source permission for the project would have been met.

23 So, do I understand that you have there given a  
24 conditional waiver that if those two conditions are met,  
25 you will give your waiver in relation to Aecon as the

1 contractor?

2 A That's correct.

3 Q And then, Mr. Curtis, in your handwritten note,  
4 you say, Update. Based on a communication from the  
5 FCO to the Governor dated May 6, 2016, the UK  
6 Government has now agreed to the measures as outlined  
7 by the Bermuda Government, ie., item No. one is satisfied?

8 A Correct.

9 Q And just to complete that, Mr. Stovell, if you  
10 look at page 81, 80 and 81 to the exhibits in your second  
11 affidavit, you will see a letter from the FCO of 6th May  
12 2016 written to His Excellency, the Governor?

13 A Yes.

14 Q And that's the letter, it's from the Director of  
15 Overseas Territories of the Foreign Commonwealth Office. Dear  
16 Governor, Paragraph 1, miss Paragraph 2.

17 As you know, evaluation work was undertaken  
18 last year by Deloitte, which assessed whether the project  
19 for the redevelopment of the Airport represented value for money  
20 for Bermuda according to the requirement for the full business  
21 case under Her Majesty's Treasury's Green Book, Guidance for  
22 Appraisal of Public Spending Proposals. And you've had access  
23 to the Deloitte study?

24 A Yes.

25 Q Three, The requirements which the Government of



1 Bermuda is therefore seeking confirmation on is Paragraph  
2 6B of the 17th of July 2015 entrustment letter, see below.

3 Which says the United Kingdom Government and the  
4 Government of Bermuda must agree on what measures are  
5 required to address the deficiencies that are identified by  
6 the Deloitte in their assessment report.

7 So, the UK Government's position was that the  
8 Deloitte study to the extent it identified deficiencies had  
9 to be put right before they would give this confirmation?

10 A That's correct.

11 Q And in Paragraph 4, Officials in my directorate  
12 have been in discussion with the members of the Bermuda  
13 Ministry of Finance on the key gaps and remedial measures  
14 documentation that was provided to address that  
15 requirement. We've been informed by Deloitte that Deloitte  
16 has also reviewed all of the proposed measures.

17 Completion of the measures that have been  
18 identified would greatly improve the business case and  
19 reduce risks around the project. I'm therefore content  
20 for the Government of Bermuda to proceed to the next stage.

21 6E, Publish a written evidence-based assurance  
22 that the required measures have been taken before the  
23 contract can be concluded. At official level, we have  
24 requested to see the critical part to understand the key  
25 milestones of this project, and opportunities for closer

1 engagement around the risk register. Such steps should  
2 also help support the completion of future requirements.

3 And then he says, I should be grateful if you would  
4 pass our thanks to the Government of Bermuda for their engagement thus far.

5 So, that was the first condition. What about the  
6 second condition in your memorandum on the 7th of March?

7 A The second condition would be what's referred to  
8 in terms of the publishing a written evidence based assurance  
9 that the required measures have been taken. I'm not  
10 aware that's been done yet.

11 Q But that would be taken in due course presumably?

12 A Yes.

13 Q So that's the extent that you have 'in principle'  
14 given the waiver subject to two conditions; one has been  
15 satisfied and the other you await?

16 A Correct.

17 Q Yes. That's what I was going to ask in relation  
18 to the Airport Project.

19 MR HARGUN: Does the Commission have any questions in  
mind?

20 **BY MR. BARRITT;**

21 Q So the waiver here, Mr. Stovell, just so we're  
22 clear, is now Aecon - would be the contractor?

23 A That's correct.

24 Q And limited to that?

25 A Yes.

1 Q I wanted to ask you if I could, if I can  
2 continue... The involvement of the Office of Procurement and  
3 Project Management, what role they have played thus far  
4 with respect to the Airport Project in your decision making  
5 or decision making period?

6 A Well, in terms of this permission being requested  
7 and granted, let's step back a little bit and talk about  
8 how the OPMP, Project Management and Procurement, play in  
9 all these sole source requirements. I mean, the airport is  
10 just an example, be it the largest example, but it is just  
11 an example of multiple requests for sole source that I  
12 receive.

13 Every sole source request that I get is  
14 considered in tandem with the Office of Project Management  
15 and Procurement and in consultation with that, and those  
16 permissions are not ordinarily given without the Office of  
17 Project Management and Procurement indicating that they  
18 have no objections to anything given.

19 Now, as it specifically relates to the airport, I  
20 was aware that the OPMP had been consulted and I was not  
21 aware of any objections that they had to the issuance of  
22 the sole source.

23 Now further to that, I'm not aware of what  
24 involvement they may have had in terms of agreement  
25 negotiation or being provided with documentation after the

1 permission was granted, establishment of commercial terms  
2 and those sorts of things. You'd have to speak to the  
3 Ministry of Finance about those.

4 Q The Ministry of Finance is the client, I presume,  
5 as OPP is under Cabinet Office?

6 A Correct.

7 Q As client as opposed to. All right. Want to  
8 jump in, Mike?

9 **BY MR BRADSHAW:**

10 Q To be clear, just a question for you. Around the  
11 value of money analysis that's part of this whole  
12 assessment thing, would that be your purview or would that  
13 be for the Financial Secretary?

14 A That value for money is for the Financial Secretary.  
15 It's for whoever the client department has to be to make sure  
16 that that case is put forward and proven.

17 **BY MR. BARRITT;**

18 Q Sorry. Forgive me. I'm just working my way  
19 through; you gave us a number of emails and this is not  
20 always easy to go through them and this has come up quickly  
21 on me.

22 There was the bid earlier on and I think it was  
23 in the first memo where you said there needs to be a  
24 delegation of responsibility for this project.

25 A Yes.

1 Q And although that was touched upon in the memo, I  
2 think I read later on in emails this was in fact addressed?

3 A Yes.

4 Q And the delegation has been done by the Minister  
5 of Finance?

6 A Yes.

7 Q Pursuant to Financial Instructions. And it's  
8 been delegated to the Permanent Secretary for Tourism  
9 Development and Transport.

10 A Yes, or called the Ministry --

11 Q The Ministry of which he happens to be the  
12 Permanent Secretary. Okay. So that step's been taken.

13 There was also at one stage, you'll forgive me,  
14 subsequent to this there's correspondence between  
15 yourself and the FS, the Financial Secretary in the  
16 Ministry of Finance. And it's been, in May of this year  
17 when there is talk or request or mention of a memo that  
18 you're still looking to produce, I found one here. The  
19 email here from yourself to Mr. Manders on a Sunday, May  
20 the 29th, and page -- oh, yes. The pages, mine are cut off  
21 at the bottom I regret to say, looks like page 88 in the  
22 exhibits. Page 88. There's reference there, are you with me  
23 everybody, page 88. It's a series of emails.

24 Actually starts, I think mention of the memo,  
25 February the 11th, 2016, from yourself to Mr. Manders. And

1       then Mr. Manders having done the memo yet, and you're  
2       saying the memo's in the office.

3       A           Oh, that's actually page --There's two pages  
4       here.  There's a typewritten page 88 and then there's a  
5       handwritten page 82.

6       Q           Okay.

7       A           So yes.

8       Q           What memo are you talking about here, what memo  
9       is still to come that hasn't come?

10      A           This is Memo No. 3 that we're discussing here,  
11      the one that's actually dated February I believe.  Because  
12      if you, as you said, this email actually begins if you go back  
13      back to - I want to say - typewritten No. 90, 9 0, page No. 90.

14      Q           Page No. 90, yes.

15      A           9 0.  If you look, if you look at the text of that  
16      email, that email is actually the, essentially, the body  
17      of the memo of the February memo.

18      Q           For the February... That we've already touched  
19      upon?

20      A           Exactly.

21      Q           I understand that.  But the emails at which I'm  
22      asking you about, you see Mr. Manders is now on Sunday, May  
23      the 29th on '89; Have you done the memo yet.  And you're  
24      saying in reply that morning, the memo is in the office.  
25      And then, I'll send it in the morning.  So this is May, this

1 is gone well beyond --

2 A Right. And I had actually neglected to send in  
3 the memo. The memo was done after we had this email  
4 exchange, but it was done on February 20 -- whatever the  
5 date of the memo is.

6 Q So in May you're talking about a memo that you'd  
7 already done?

8 A Yeah, in accordance with the discussion we had  
9 back in February.

10 Q You can see how I'm...

11 A Absolutely.

12 Q The other thing that struck me as curious, too,  
13 and perhaps you'll explain it, that it seemed there were a  
14 number of emails on the 26th of September of which you were  
15 being pressed for that first memo that you did. And  
16 although there had been an earlier email, I think in August  
17 the 15th, alerting you to this particular project in that  
18 they would come to you for a waiver from Financial  
19 Instructions on the --

20 A For something.

21 Q For something, yes. And on the 26th now you're  
22 being really pressed on that day from the morning to the  
23 night. And in fact, you send them the memo, I think  
24 probably --

25 A Probably that night, the 26th. But discussions

1 were taking place on the 27th.

2 Q And it's just that you had done a draft on the  
3 25th and it got the date the 25th as opposed --

4 A Let's say I had started on the 25th and finished  
5 on the 27th.

6 Q And never changed the date to the 26th?

7 A That's right.

8 Q Okay. Thank you.

9 (Inaudible discussion.)

10 MR BRADSHAW:

11 Just a quick question for you. We've heard some  
12 other witnesses talk about timelines and using  
13 -- Saying that because they're matters of national  
14 importance and things need to be done quickly, hence the sort  
15 of approach things, projects differently. I'll say that?

16 And I noted here in your first memo that the  
17 Minister of Finance detailed the urgency and national  
18 importance and talked about job creations, climate  
19 conditions, existing facilities as reasons for... I'm reading this.

20 A Yes.

21 Q And you say something here that, I agree this is a  
22 factor in favour of sole sourcing; correct?

23 A Yes.

24 Q I know it's hard to sort of quantify qualitative  
25 aspect, but you know, how on a scale of 1 to 10, I'd say



1 how important is that factor?

2 I mean, I don't know if I'm being clear on my  
3 question but it's a reason, is it a critically important  
4 reason, would you say it's a very important reason?

5 A I would say it's one of the reasons. I mean, it's  
6 not -- If it's the only reason, it's not going to go ahead  
7 but it's certainly one of the reasons. I'm not going to  
8 attempt to rate them on a scale of 1 to 10. But certainly  
9 if we're talking about matters of national importance, if  
10 we're talking about matters of public safety, that would  
11 probably rank above national importance. But all of those  
12 are factors that are considered when the decision is made.

13 **BY MR. BARRITT;**

14 Q One more question if I may. With respect to your  
15 initial memorandum of the 25th dated 25th September 2014,  
16 where you put out that in memo right at the outset, the  
17 objective. Determine the applicability of procurement rules  
18 and financial questions and ensure financial compliance to  
19 the extent possible.

20 A Yes.

21 Q Applicable. Was there any ever disagreement with  
22 both your stated objective at that stage from the Ministry  
23 of Finance or with the memo itself?

24 A That memo was circulated to the Ministry of  
25 Finance before it was finalized. So I would have to say

1 no, sir.

2 Q So the draft was circulated?

3 A Absolutely.

4 Q As you were working on it?

5 A Absolutely.

6 Q And so your answer is yes, it was accepted?

7 A Yes, I had no request to change it.

8 Q Okay. And I also noticed in the Letter of  
9 Agreement which you may have as well under Structure and  
10 CCCT/CCC Team, and I'll just quote: Any firm or firms so selected  
11 shall have been subject to CCC's due diligence in vetting  
12 in terms of technical, financial and managerial  
13 capabilities and shall be subject to prior due diligence  
14 and approval to be completed by Bermuda. End quotes.

15 A Yes.

16 Q Was that ever drawn to your attention or did  
17 that come to your attention, that particular paragraph?

18 A Absolutely.

19 Q And that is important to you, was important to  
20 your thinking in any way?

21 A Well, it's important in that I'm giving permission  
22 at that time for the involvement of CCC who in my view were  
23 a management team, were coming in and assisting in the  
24 assessment of the feasibility of a new airport facility.

25 Now, before they bring on the person... And I

1 respect their procedures in terms of vetting and the stable  
2 of contractors that they partner with, but it does say, in  
3 concert with Bermuda. So, at that point I wasn't aware of  
4 anything that had been done or agreed with any other party  
5 so I wasn't giving permission --

6 Q It doesn't say, in concert with. It says, shall be subject  
7 to the prior due diligence and approval to be completed by Bermuda.

8 A Okay.

9 Q Was that in your mind at the time that you did  
10 the memo of September 25th or any subsequent time?

11 A At the time I did the memo I wasn't really  
12 looking to the CCC team as such, I was just looking to CCC  
13 as an organization.

14 All right. Thank you. Those are my  
15 questions.

16 **BY MR BRADSHAW:**

17 Q I have one more for you. My understanding from  
18 your memo of March the 7th, the second part, I'm just  
19 referring to the second part where you say, the required evidence  
20 base report from Government on completion of the agreed upon measures.

21 A Yes.

22 Q Right? And my understanding is that once that's  
23 received, it's in your mind that you would then say you're  
24 going to sort of sign off on the waiver for financial instructions?

25 A That's correct.

1 Q So is that effectively a go/no go?

2 A Oh, no, no. The go/no go decision was what was  
3 reached back in, I don't know, I don't know dates at this  
4 point, but the go/no go decision would have been reached  
5 prior to entering into the next agreement which would have  
6 been the Airport Development Agreement. That was entered  
7 into back in 2015.

8 **BY MR. BARRITT;**

9 Q Can I just follow up. I'm sorry. One thing just  
10 occurred to me.

11 With respect to, as Mr. Hargun put it to you, there  
12 were two conditions in your last memo. One has been met and  
13 you're waiting for the other to be completed.

14 Will that be the end of your involvement with  
15 respect to this particular project?

16 A More than likely, yes. I mean, unless my advice  
17 is sought on an accounting matter to do with the project or  
18 some, you know, advice in terms of paying for things and  
19 accounting for them, that probably will be the end of the  
20 project, yes.

21 Q And if you're able to answer this question,  
22 please do.

23 Who in Government will be responsible, if not the  
24 Accountant General's Department, for ensuring that the  
25 Bermuda Government or the project continues to get value

1 for money in terms of other contracts or subcontracts?

2 A Whoever the client department is. And you know,  
3 the airport, and without going into the detail of the  
4 airport transaction in the subsequent because I don't think  
5 that's why we're here, whether there's a Quango that's set  
6 up to operate and sort of take care of retained services,  
7 whoever is managing the whatever infrastructure contracts  
8 happen to be in place, I can't, I really, I can't answer  
9 that question.

10 Q Okay. But that's... Maybe another way of putting  
11 it. That's the importance, is it, of the delegation that  
12 has occurred in terms of who's going to be responsible under  
13 Financial Instructions for oversight?

14 A Well, the delegation relates to the capital project.  
15 Are you asking about the capital project or are you asking  
16 about subsequent to the airport being constructed?

17 Q The difference.

18 A The difference is, the capital project is once  
19 it's built, it's built. After that you get into the  
20 operations phase which is the concession stage or however  
21 it's going to be run.

22 Q Right. I'm talking about the construction  
23 project.

24 A That would be, currently the Ministry of Tourism  
25 Development and Transport.

1 Q It would be under that delegation?

2 A Yes.

3 MR. BARRITT: Thank you.

4 **BY CHAIRMAN EVANS:**

5 Q Just one question, Mr. Stovell. You were asked  
6 about the role played by the officer in the Management and  
7 Procurement.

8 A Yes.

9 Q And you said that you would consider every  
10 request in discussion with them?

11 A Yes.

12 Q And you then said you were not -- They were  
13 consulted and you were not aware of any objections?

14 A That's correct.

15 Q Is there any machinery by which you should be  
16 aware of any objections or by which they should positively  
17 say they approved?

18 A Well, it varies a little bit from project to  
19 project and request to request. But in this case I  
20 specifically asked the Financial Secretary whether the OPMP  
21 had been consulted and whether they had expressed any  
22 objections to the request, and he said no, they had not.

23 Q So when I say is there any machinery, it rather  
24 sounds as if there isn't any formal machinery, but on this  
25 occasion you did ask specifically?

1           A           Well, no. In this case I asked specifically of  
2           the Financial Secretary. Ordinarily, and I'll give an  
3           example. If a department is coming to me with a request to  
4           waive the requirement to seek multiple quotes for \$100,000  
5           piece of equipment, that request is going to go to both me  
6           and the OPMP.

7           Q           I guess the --

8           A           It's going to go to both me and the OPMP  
9           simultaneously. If they don't get it sent by the client  
10          department, then I will send it to them when I receive it.  
11          And my permission will be granted contingent on any  
12          objections voiced by the OPMP. This is all done by email.  
13          They'll confirm by email they have no objections, (as will I).

14          Q           Yes. We understand the position to be that  
15          this new office has been established but its operating  
16          rules are not yet final, put it like that.

17                        Do you think there should be some formal  
18          requirement for them to be consulted and to approve?

19          A           Well, they are required to be formally consulted.  
20          They are required to be formally consulted.

21          Q           Are they?

22          A           Yes.

23          Q           And for the results to be known to you?

24          A           Oh absolutely.

25          Q           That's all there is?

1 A Yes.

2 Q Good. Thank you.

3 A And that's not the same as what we're talking  
4 about, their Code of Practice or their guidelines. Currently  
5 the requirement, my requirement in terms of Financial  
6 Instructions is that the OPMP is consulted on all of  
7 these requests.

8 Q Oh, I see. Your requirement?

9 A Yes.

10 Q Thank you. Well, I don't think we have any more  
11 questions of the Airport Project.

12 (Inaudible discussion.)

13 **BY MR. HARGUN:**

14 Q Just a general question, Mr Stovell, in relation to  
15 the issue of Financial Instructions and delegation.

16 You said that in relation to this particular  
17 project the mere fact that there had been a manager type,  
18 like CCC, had been engaged, that did not mean that one need not  
19 comply with Financial Instructions in relation to a  
20 selection of the contractor? Yes?

21 The mere selection of CCC did not mean that that  
22 was the end of complying with Financial Instructions as far  
23 as selecting the contractor was concerned.

24 I think that's on your thesis?

25 A I believe that's what I said, yes.



1 Q How would you apply that, say for example, to  
2 Heritage Wharf where in effect a manager, I suppose you can  
3 call it manager, Entech was selected. Presumably, Financial  
4 Instruction continue to apply say in relation to a  
5 contractor, a general contractor. In that case that was  
6 I think, Correia Construction.

7 A You mean, before I was Accountant General and  
8 when I was Controller in that Ministry?

9 Q Yes --

10 (Inaudible discussion.)

11 A How do you ask -- I'm not quite sure.

12 Q I'm just trying to apply this analysis, what's  
13 happening at the Airport to Heritage Wharf.

14 A Are you trying to -- Are you asking me to apply  
15 this analysis to what activities I was involved with at  
16 that time?

17 Q Yes.

18 A Ask me again then.

19 Q Well, I'm asking is. Entech, they had engaged Entech.

20 A Yes.

21 Q I call it managing the project, and it  
22 was Entech which was actually interviewing the various  
23 people who would be the contractors?

24 A Yes.

25 Q Right. One question would be, in relation to the

1 selection of the contractor, presumably the full force of the  
2 Financial Instructions continue to apply?

3 A I wouldn't see why not.

4 Q Yes. And secondly, in relation to the issue of  
5 delegation, you say they'd had to be a written delegation  
6 from the appropriate department to another department?

7 A Yes, from the Ministry of Finance. That's where  
8 Financial Instructions dictates. The Ministry of Finance  
9 must make the delegation.

10 Q Okay. Would you require the delegation in the  
11 Heritage Wharf, for example, from the Ministry of Finance  
12 to Tourism?

13 A That requirement was not in Financial  
14 Instructions at the time of the selection?

15 Q Fair enough.

16 CHAIRMAN EVANS: This one's... Surely the  
17 delegation aspect is statutory, isn't it, not just  
18 Financial Instructions?

19 MR. HARGUN: It's both.

20 COMMISSIONER EVANS: It's both?

21 MR. HARGUN: Yes.

22 THE WITNESS: It's both in what way, sir?

23 MR. HARGUN: Well, I think --

24 (Inaudible discussion.)

25 **BY MR. HARGUN:**

1 Q Ms. Cox talked about Public Land Act. in fact, Ms.  
2 Cox' analysis which is shared by a large extent by  
3 Mr. Froomkin, former Auditor General, is that you cannot have  
4 delegation other than in accordance with a particular  
5 statute. And for example, certainly you cannot have  
6 delegation or function from one ministry to another simply  
7 by note in a memorandum to the annual statute which  
8 authorizes expenditure.

9 A Okay.

10 Q That's a separate point.

11 A I think it's a separate point. Is it one I'm  
12 being asked to --

13 Q No.

14 A Okay.

15 MS MEMARI: I'm sorry, I just wonder if it's unfair to  
16 ask a question that goes to law. He's now being asked  
17 to --

unfair

18 COMMISSIONER EVANS: Ask Mr Hargun I think. It's not  
19 to ask Mr Hargun a question.

20 (Inaudible discussion - multiple voices. Laughter)

21 **BY MR. HARGUN:**

22 Q Let me ask you some non-legal questions which you  
23 can answer.

24 Port Royal, you were the Minister of Tourism I  
25 think at the time when Port Royal was being developed, the

1 --

2 A Yes.

3 Q And Ms. Whitter gave evidence that I think within  
4 the Ministry, you were the person I suppose who had most  
5 interface with the trustees.

6 A That would be accurate.

7 Q I mean, just tell us, what did you do in terms  
8 of, you know, the Ministry's interface with the trustees.  
9 How often would you meet, what would you do, can you tell  
10 us more about it?

11 A Well, I would have, as I recall attending trustees  
12 meetings September 2009 and onwards.

13 Q You would actually attend the meetings?

14 A I would attend the meetings from September 2009  
15 onwards which was after the conclusion of the actual  
16 project itself.

17 Q After the conclusion?

18 A After the golf course would have been reopened by  
19 then.

20 Q So what was your involvement when they were  
21 spending the money?

22 A They were still spending money.

23 Q Oh.

24 A But not the project money at that point.

25 Q Yeah.

1           A           During that time, and let's step back a little  
2 bit to explain how this all works, how the mechanism works  
3 is; the Government golf courses which, by the way, was not  
4 just Port Royal Golf course. There was also Ocean View Golf  
5 Course and St. George's Golf Course while it was still open.  
6 They would require funding for any particular year, either  
7 operating or... Well, certainly operating, but in often cases  
8 in the case of the remedial project, capital moneys as well.

9                   Those grants would have been approved in the  
10 House during the budget process, prior to April 1 of the  
11 relevant financial year. Now, during the year as you  
12 can imagine, anyone who's been involved in charity or any  
13 sort of other organization that's entitled to a grant,  
14 you make periodic requests for the grant that you're  
15 entitled to.

16                   In the case of Port Royal and the other  
17 Government golf course for the operating grant, those  
18 submissions came in on a regular basis. We discussed the  
19 fact that you have a grant for this year of \$1.3 million,  
20 you're requesting a quarter of that, what's left is  
21 three-quarters and off you go.

22                   In terms of the capital grant, and specifically  
23 as it relates to the remediation of the golf course, the  
24 capital budget was approved, set and I believe increased a  
25 couple of times as anyone who's read the report will

1 have seen.

2 Those funding requests would have come in from  
3 the Board of Trustees of the golf courses. They would have  
4 contained a stack of support in terms of invoices that  
5 backed that request, whether it was fertilizer, whether it  
6 was fuel, whether it was trucking, tree removal, et cetera,  
7 et cetera, and that particular request, I would check for  
8 basically mathematical accuracy. I'd ensure that the  
9 documents that were in there were approved by the  
10 management of the golf course and of the trustees.

11 And if there were any questions in terms of  
12 support or duplication or any question of any sort, I would  
13 pose those questions to either the general manager of the  
14 golf course or someone on the Board of Trustees.

15 Q So which year did you start there, when did you  
16 start attending the Trustees meetings?

17 A September 2009.

18 Q 2009?

19 A Yes, was it 2009, I think it was 2009. Yes,  
20 2009.

21 Q So the remedial work had been done by this time?

22 A I think the course was open by then.

23 Q And tell me what was your understanding in  
24 relation to... Under what financial regime were the Trustees  
25 working under?

1           A           When I came in to the Ministry - remembering that  
2           I started there in November of 2007 - it was under way. And  
3           the regime as I'm sure other witnesses have spoken to was the  
4           understanding that the Board of Trustees had the ability to  
5           regulate their own proceedings and that they were managing  
6           that capital project.

7           Q           The material Financial Instructions does say that  
8           the Quangos can have their own written rules. And what it  
9           talks about is financial, written financial procedures  
10          provided by the respective Quango. Did they have any  
11          written financial procedures?

12          A           I do not recall seeing Port Royal's or the other  
13          golf courses' written procedures but that's not to say that  
14          they didn't exist because we have to remember that the Golf  
15          Course Consolidation Act I believe was done in 2006 which  
16          was prior to my arrival. And it was with the Ministry of  
17          Tourism as opposed to Tourism and Transport.

18                        So there may have been something that was at the  
19          Department of Tourism which was Department 33 at the time.  
20          I do not recall seeing a written set of financial  
21          procedures.

22          Q           One of the conditions, if you want to, if you're  
23          a Quango and you want to utilize alternative written  
24          financial procedures is that you must deposit a copy of  
25          those, one with the Accountant General, and two, with the

1 (random ?) Ministry.

2 We don't know whether they deposited anything  
3 with the Accountant General because we don't have any  
4 evidence, but do you recall whether they deposited a set of  
5 written alternative financial procedures with the Ministry  
6 of Tourism?

7 A Is that the question I just answered or... I just said  
8 I had no knowledge of any written financial --

9 Q No, I thought you were talking about while you were  
10 sitting with the Trustees as to whether...

11 A No, no, when I was at the Ministry of Tourism and  
12 Transport.

13 Q Fair enough. You recall that there was  
14 subsequently an internal review, internal review of the  
15 Port Royal Golf Course?

16 A Yes.

17 Q And I won't take you to it, it was in 2011?

18 A Yes.

19 Q One of their main criticism was they didn't have  
20 any written policies.

21 A I think that their criticism was actually that  
22 the policies needed to be documented.

23 Q Documented, exactly. Which, so it seemed to  
24 suggest --

25 A Or better documented or fully documented. I



1 don't think it specifically spoke to the fact there was  
2 nothing in writing, but whether they were adequate or even  
3 able to be located is a different story.

4 Q Yes, okay. Fair enough. There were a number of  
5 criticisms as you know in relation to the Port Royal Golf  
6 Course and I was just wondering whether you were there at  
7 the time when some of these incidents took place.

8 Tab 11. I'll only take you to one page.

9 A The public binder?

10 Q Yes, Tab 11, page 90.

11 A Yes.

12 Q Do you see Mr. Stovell, if you read it to  
13 yourself, you'll see that in the second paragraph they're  
14 talking about awarding contracts to various people without  
15 tenders and in relation to which the Trustees are  
16 interested in and personally interested.

17 Were you there at the time or was this before  
18 your time?

19 A I was at the Ministry, but I wasn't intimately  
20 involved with the contract awards at all.

21 Q Okay. So this is not something which you can  
22 speak about?

23 A No.

24 Q Fair enough. Let me just ask you generally in  
25 relation to what has happened in relation to compliance of

1 related Financial Instructions. In the audit report which  
2 we are concerned with, if you look at page, at the Audit  
3 Report.

4 (Inaudible discussion.)

5 Q If you look at page 24 of the relevant audit  
6 report. Page (23/24?). It's in Binder C, tab 3. This is,  
7 I suppose, the thrust of the criticism of the Auditor  
8 General. I mean, this is in relation to a number of issues  
9 and in relation to one of them she concludes that it is  
10 evidenced that the policies and procedures and rules  
11 pertaining to the capital expenditure are being violated to  
12 such an extent that it has now become the norm for which  
13 there are no consequences.

14 I mean, that's a view in relation to matters as  
15 they existed three or four years ago.

16 You are the Accountant General at the moment  
17 presently, what's your view in relation to what the present  
18 position is and perhaps you can talk about how things have  
19 changed in the last two, three, four years.

20 A Well, I mean, what I will say is that at the time  
21 and during the years that this report relates to, those  
22 were the years that the audited financial Statements of  
23 the Bermuda Government were being qualified or given a  
24 non-healthy opinion because of issues regarding  
25 specifically to capital projects.

1           That is no longer the case and has not been the  
2 case for three years, I want to say, since March of  
3 2013. So clearly, in the view of the Auditor, the  
4 situation is not what it was at the time that they were  
5 compiling information for this report which was issued  
6 some years later.

7           And in terms of my... There are some factors that  
8 we have to consider here, is that currently and in the last  
9 few years, that the quantity and the magnitude of capital  
10 projects has diminished significantly due to various  
11 factors, one, being the fact that we have less money than  
12 we did and that would be the primary factor.

13           So there's less chance for these Heritage Wharf  
14 and Port Royal Golf Course-type incidents that have been  
15 identified by the Commission for investigation. So that's  
16 one factor.

17           But the other factor is a heightened awareness  
18 to, precisely to the matters that have come to the  
19 attention of the Public Service from those reports.

20 Q           You're talking about the culture of compliance as  
21 to whether that has changed?

22 A           I guess I am. I'm talking about actual  
23 compliance. Culture is difficult to measure. I'm talking  
24 about what I've seen since I've been there. And what I've  
25 seen since I've been there is certainly in my view, an

1 increased approach to the Accountant General's Department  
2 in terms of ensuring that permissions are being obtained.

3 I'm talking about an increased and heightened  
4 awareness in terms of requirements for Cabinet approval.  
5 I'm talking about an increased number of cases and examples  
6 where things are perhaps getting sent back from Cabinet  
7 because the requisite number of quotes or the case wasn't  
8 made as is required under Financial Instructions.

9 I can't speak to the years that these things were  
10 happening in terms of those particular instances, but I can  
11 say that they, just my experience since I've been here, have  
12 shown that that has improved a great deal.

13 **BY CHAIRMAN EVANS:**

14 Q Can you put a date of where you say the culture  
15 of compliance began to improve?

16 A No, I wouldn't be able to put a date on that, no.

17 Q Well, what approximate dates have you got in mind?

18 A I don't have an approximate date in mind.  
19 Remember, I wasn't in post when these things were going on.  
20 All I know is that once, since I'm there --

21 Q Since you've been Accountant General?

22 A Absolutely.

23 Q Yes.

24 A I haven't seen these types of incidents.

25 Q And you've been Accountant General since?

1 A April 2014.

2 CHAIRMAN EVANS: Thank you.

3 MR. HARGUN: Mr. Chairman, I don't have any  
4 further questions.

5 **BY MR. BARRITT;**

6 Q Yes, I do. I have one on, particularly on Port  
7 Royal. I want to make sure I understand in terms of what  
8 you were saying.

9 It seemed as though you were saying that if there  
10 was an approved grant or budget for the Port Royal Project  
11 Trustees, the job of Controller was simply to make sure  
12 that their supporting documentation was there for the  
13 request and that it was a mathematical exercise that  
14 everything added up and everything matched.

15 Is that a fair assessment?

16 A That might be a bit of a gloss-over given the  
17 time.

18 Q I want to get this clear because --

19 A Well, I mean, I'm an accountant, not a bookkeeper.

20 Q Sorry?

21 A I'm an accountant, not a bookkeeper. So, if I'm  
22 receiving a request for \$3 million, I'm ensuring that  
23 what's in that package is relevant and relates to the  
24 project. I'm ensuring that the project is still within the  
25 budget that they've been allotted. I'm ensuring that the

1 appropriate authorizations as I understood them at the time  
2 whether it's a Board of Trustees and Management are there.

3 I'm ensuring that there is no unnecessary or  
4 unrelated requests for funding included in that package,  
5 and I'm ensuring that it actually relates to the golf  
6 course.

7 I mean, I may have oversimplified things when I  
8 said I make sure it all adds up, but I made sure it is for  
9 what it's supposed to be for.

10 Q Yes, and the reason I'm drilling down on this is  
11 because it's important in light of what the Auditor General  
12 has to say in that Section 3, which we're concerned.

13 Because the question I now want to go on is that  
14 who is making sure that monies is being spent and contracts  
15 are being entered into in accordance with either Financial  
16 Instructions or the financial procedures of the Quango?  
17 Whose job was that?

18 A Well, the understanding would have been that that  
19 would have been the responsibility of the Board of Trustees  
20 at the time. If what you're asking is who's making sure  
21 that they're making sure, I guess that would have been me.

22 But I was not, at that time. My view was that  
23 they had the authority to conduct their matters. And if  
24 you're asking, well, did you make sure that they did it in  
25 accordance with their own procedures, I suppose you could

1 say that no, that wasn't done.

2 Q Well, I think... There is some question about that  
3 and the question is, well, who was responsible for making  
4 sure that people operate as they should in terms of their  
5 own financial procedures or Government's Financial  
6 Instructions.

7 Did I hear you say you guess it was you or --

8 A I mean, in the absence of anyone else, I would  
9 have to say, yes.

10 Q Did that... And would it be fair to say that's the  
11 job of all financial controllers in different departments  
12 where project have been delegated?

13 A I don't want to take us to the project  
14 delegation, down that road too far because I'm not certain  
15 that there are that many projects delegated. But in terms  
16 of whether it's a project or whether it's operational,  
17 because you're talking about ensuring that the Quango, or a  
18 semiautonomous government unit, is following its own  
19 procedures. It should be the Financial Controller and the  
20 accounting officer who has responsibility for that Quango.

21 Q And that would be the Permanent Secretary?

22 A Or the department head.

23 Q Or the department head, yes?

24 A Correct.

25 Q Thank you. All right. That helps because I

1 think to focus in on where we need to focus.

2 So I was going to stay with the same thing, you  
3 were around when Heritage Wharf was being done?

4 A Yes.

5 Q Would that be the same analysis and conclusions  
6 applicable to that project?

7 A Well, no, it's not a Quango. Let me make sure  
8 what your question is.

9 Q Well, that project was delegated to the Ministry  
10 of Tourism and Transport?

11 A Yes.

12 Q In terms of managing the project?

13 A Yes.

14 Q We've heard that not only were they  
15 expected to manage but they were expected to provide  
16 oversight. And in fact, some project managers were hired  
17 to do the oversight on the ground as it were. But invoices  
18 would be collected and payment requests made, and I presume  
19 they went to the Financial Controller responsible in the  
20 Ministry of Tourism and Transport?

21 A They went to me.

22 Q They went to you. So were you the person in that  
23 situation who was -- who should have also or maybe you  
24 were, checking to see whether contracts were being entered  
25 into and services acquired and people paid in accordance



1 with Financial Instructions?

2 A I think we're conflating a couple of things here.  
3 The Heritage Wharf Project was being managed by the  
4 Ministry of Tourism and Development and Transport. The  
5 Ministry of Tourism and Development and Transport is bound  
6 by Financial Instructions which means that any work, any  
7 checking that I'm doing, I'm ensuring that whatever I'm  
8 looking at is in accordance with Financial Instructions.

9 Q All right. Okay. That answers the question.

10 Just jumping back to Port Royal, sorry, a  
11 question I meant to ask. You said you thought you were  
12 appointed after the remediation... Not appointed but  
13 attending the meetings of the Trustees after the  
14 remediation work.

15 Why were you now sitting in on meetings of the  
16 Board of Trustees, what brought about that?

17 A Well, I mean, there was -- There were a couple  
18 things going on. It was leading up to the PGA Tournament, there  
19 were ongoing operational expenditures at the golf courses.  
20 And they essentially, it was just a matter of really of due  
21 diligence and ensuring that we were closer to the  
22 operations of the golf courses, particularly in light of  
23 the cost overruns that were experienced with the project  
24 and with the closing of St. George's Golf Course; and with  
25 the Ocean View Golf Course which continuously runs a

1 deficit. There was just, there was an overall desire to be  
2 closer to the operations of the golf courses.

3 MR. BARRITT: I have no more questions. If  
4 someone wants to jump in at this point.

5 BY MS LUCK:

6 Q It's totally unrelated but it's more from the fact  
7 that you are in a somewhat unique position. You've been a  
8 Controller in a Ministry and now you're the Accountant  
9 General. And if you could just help us. We understood that  
10 the old system had certain checks and balances in terms of  
11 supporting documentation in the Ministry, and then there  
12 were checks in the Accountant General's Office.

13 Now with the new system, my sense is that the  
14 delegation and the need to... Not delegation, wrong word...  
15 the responsibility for preparing all the supporting  
16 documentation for payments really rests within the Ministry  
17 and the Accountant General's role is more of an oversight,  
18 making sure it's all happening.

19 Can you describe it because you're obviously  
20 experienced in both?

21 A Thank you for reminding me of that. I would -- I  
22 don't see that there's a whole lot of change between what  
23 was then and what is now. And I did listen to the  
24 testimony I read and recapped it as well, but we need to  
25 clarify a couple things here.

1           The current system that we are operating, and  
2           let's stop calling it a system, it's an accounting  
3           platform. The accounting platform is a JD Edwards E1  
4           system. The accounting platform we were on prior to E1 or  
5           Enterprise 1 was JD Edwards World. That was the same  
6           engine, the same background process, the same computer even.  
7           It's an upgrade, it's the front face of it that's changed.

8           There was a shift in the way the documentation  
9           was provided. In terms of responsibility for  
10          authorization, responsibility for documentation, all of  
11          that responsibility was and remains with the Departments  
12          and the Ministries. The difference now is that those  
13          bundles aren't necessarily copied and sent to the  
14          Accountant General in order to effect payment.

15          They will be pertinent pages, excerpts will be  
16          copied, maybe a signature page, a fee schedule from the  
17          contract will be copied and attached to the transaction so  
18          that the Accountant General folks can make sure that the  
19          appropriate authorizations and support are there.

20          Q           That's electronic?

21          A           Exactly.

22          Q           That's scanned in and attached to that.

23          A           So there's no more people carrying bundles of  
24          paper from one department to another to the Accountant  
25          General's Department. So there's a functional change in

1 terms of how things physically move and work, but in terms  
2 of responsibility where that lies, where the controls are  
3 and those sorts of things, it really hasn't changed much.  
4 It's improved it but it hasn't changed in terms of the  
5 accounting officer and the Department of Ministry being  
6 responsible for the work.

7 Q: Thank you.

8 **BY MR. BARRITT;**

9 Q On that point, whether it comes by hand or  
10 electronically, is it fair to say that if the documentation  
11 in support of a request is not there, there is no payment  
12 made?

13 A If the documentation and support actually is not  
14 there, the transaction won't even take in the system. Now  
15 that's the first step. The second step is that if you  
16 attach something that's inappropriate or insufficient and  
17 inadequate, the responsibility is that of the Department  
18 and the Ministry.

19 If I put the hat back on that I'm the Financial  
20 Controller back in the Department, and someone has put in  
21 something, some requests for payment and attached an  
22 invoice that actually relates to a different transaction of  
23 service that was provided, it's my responsibility to look  
24 at that transaction in the system it has, I'm  
25 electronically improving it and ensure that the support is

1 what's required for the transaction is being requested. And  
2 if it is not, it goes back.

3 Q It goes back, no payment is made?

4 A Correct.

5 Q It would not be acceptable practice for payment  
6 to be made on the promise documents will soon follow?

7 A No.

8 Q It's important that... I want to go to your  
9 departmental letter next...

10 **MR BRADSHAW:** We didn't get a chance to  
11 get (hands on) -- There's a system to track who and when,  
12 so when information is being inputted into the system and  
13 let's say something needs to go back a year or two later can  
14 you see who inputs a specific piece of information and when?

15 THE WITNESS: Yes, you can.

16 MR BRADSHAW: You can, thank you.

17 MR. BARRITT: If Mr. Stovell can be referred to  
18 his departmental letter, the reply of 8th of July. I think  
19 it's somewhere in one of those documents.

20 THE WITNESS: I'm sorry, is this the --

21 (Inaudible discussion.)

22 THE WITNESS: Is this the public bind?

23 COMMISSIONER EVANS: Can we have a reference,  
24 please.

25 THE WITNESS: Okay.

1 **BY MR. BARRITT;**

2 Q It's there.

3 A I have it.

4 Q Oh, you have it?

5 A I have it.

6 Q Sorry. In some of our questions starting with  
7 No. 1 where we talked about Cabinet approval for  
8 expenditures, we specifically asked questions about does  
9 the Accountant General dispute the report's finding that  
10 69 percent of 43 million expenditures included in the  
11 [audit sample] greater than 1 million in 2011, did not  
12 have prior Cabinet approval.

13 And there were other questions; does the  
14 Accountant General believe that the rate of  
15 [unintelligible 03:41:36] the requirements for prior Cabinet  
16 approval have improved since 2011. One of the things I  
17 noticed with respect to answers that were given, you said  
18 that, As I did not start at the Accountant General's  
19 Department until 2014, I cannot speak to past practice or  
20 steps taken in relation to it... Fair enough... and I was  
21 not able to locate documents in file to that  
22 effect. In a number of instances your answers were, I  
23 wasn't there prior to 2014, I don't know. But I couldn't  
24 find documents to support or what to explain anything that  
25 was done or not done.

1                   And I wanted to ask you the question, doesn't  
2 strike you as unusual that you couldn't find these documents  
3 on files in the Accountant General's Chambers, what  
4 happens to them?

5           A           Well, let's talk about which documents we're  
6 asking about here, because the question, if I look at it,  
7 are you talking about 1C, for example, what steps have been  
8 taken by the Accountant General since the report in relation to  
9 ensuring the Cabinet approvals are in place for adherence to  
10 Financial Instructions. Is that what you're referring to?

11          Q           Yes.

12          A           It is, I guess your expectation is that there  
13 would be memos addressing the concern and the steps that  
14 were being taken and those sorts of things?

15          Q           Yeah, I'm just curious to know whether you're --  
16 whether you were surprised not to find anything there?

17          A           I was.

18          Q           Pardon me?

19          A           I was surprised.

20          Q           You were surprised?

21          A           If steps had been taken, that they're not  
22 documented - or not that I could locate them in time to  
23 provide the response to the Commission.

24          Q           Okay.

25          BY MS LUCK: Can I just ask a question about

1 Can I just ask a question about breach of financials?

2 MR. BARRITT: Sure.

3 MS LUCK:

4 Q Self reporting.

5 A Yes.

6 Q How does that work?

7 A Well, as you said it's self-reporting. And what  
8 every public officer's responsible for is if they become  
9 aware of the breach of Financial Instructions they're  
10 required to inform me. Those communications usually take  
11 place in the form of an email, but I've received telephone  
12 calls as well.

13 And once that notification is received, I'm sure  
14 that if the individual who is providing me with that  
15 notification is anyone other than the accounting officer  
16 for the Ministry of the Department, that that accounting  
17 officer is notified and aware of the breach.

18 And I will inquire as to remedial action being  
19 taken or any action whether it's disciplinary or whatever  
20 the case is. And I will inform the Financial Secretary of  
21 the breaches and what the results were at the Ministry  
22 Department level.

23 Q And who decides on this action or whatever the...  
24 Is it you or is it in joint being with the FS?

25 A That's a good question. And the only way I can



1 really answer that is that I look to the Department and the  
2 Ministry to affect some kind of satisfactory sanction. If  
3 that sanction is basically, you know, we told them not to  
4 do it again, then I'll have a discussion with them and I'll  
5 consult with the FS in terms of adequacy of that sanction.  
6 But to be honest, it hasn't the really come to us yet to  
7 really be tested.

8 Q We certainly saw documentation - I think it may have  
9 been the FS's witness statement and appendices that show, you know,  
10 obviously redacted names but showed evidence that there was  
11 self-reporting, there were examples and a level of  
12 transgression and so forth.

13 How long is that written summary sort of schedule  
14 being produced? Is that something that's gone back years or  
15 was that something again that's been an improvement?

16 A I think I started April 2014.

17 Q I think it started in April 2014.

18 **BY MR. BARRITT;**

19 Q Can I ask you another question, Mr. Stovell, it's  
20 again with Section 3 matters of the Auditor General's  
21 report, particularly that pertaining to duplicate payments,  
22 Section 3.4, Duplicate Payments, in the Auditor General's  
23 Report. It was something that you were asked in your  
24 departmental letter in which it said that the Accountant  
25 General's Department dispute the number of payments listed

1 at Section 3.5.(for May?) B, what steps if any have been  
2 undertaken by the Accountant General since the report to reduce  
3 the incidence of the overpayments, and what are the procedures  
4 currently in place in relation to prevention of and  
5 recovery of overpayments?

6 And you replied in your letter, The report  
7 findings are not disputed. B, I was not able to locate any  
8 information in the Accountant General's Department relating  
9 to the investigation of the \$1,179,253 duplicate payment.  
10 This is the one, I think, concerns 360... Sorry... That's a  
11 Works and Engineering one

12 (Inaudible discussion.)

13

14 Q And then you also said the Sandys 360 duplicate  
15 payments have been investigated and followed up  
16 but the entity does not possess the liquidity to repay  
17 the funds.

18 So we take it from that, that Sandys 360 got a  
19 windfall in terms of two payments and they should have only  
20 gotten one, and they spent the money or they refused to  
21 give the money back?

22 A They spent the money.

23 Q They spent the money?

24 A Yes.

25 Q Was anybody called to account for that error, the

1 duplicate payment?

2 A I don't believe so. I don't believe so. Not  
3 that I'm aware of. A more appropriate answer is I'm not  
4 aware.

5 Q You're not, okay. And then I think in answer to  
6 Question C, procedures currently in place for the prevention  
7 of and recovery of overpayments, you said as you didn't start  
8 in the department until 2014, I can't speak to past  
9 practice or steps taken in relation to and was not able to  
10 locate documents on file to that effect. That's another  
11 instance. It was a sort of thread running through  
12 your answers where you said you just couldn't find anything  
13 to show what, if anything, was done since this occurred.

14 A Well, except that I speak to the primary change  
15 after that.

16 Q The new system?

17 A Yes.

18 Q And that significantly cuts down on the  
19 likelihood of a particular invoice being paid twice?

20 A On the possibility of it being paid twice, yes.

21 Q Sorry... I'm quoting you when you say it's cutting  
22 down on the 'likelihood'. That wasn't my word. Okay. Fair  
23 enough. Thank you.

24 A Welcome.

25 **BY CHAIRMAN EVANS:**

1 Q Just one question, Mr. Stovell. You were the  
2 Financial Controller of Ministry of Tourism from 2007?

3 A Yes.

4 Q And then from, in September 2009, you started  
5 attending meetings of the Port Royal Trustees?

6 A Yes.

7 Q And you answered Mr. Barritt about this. You gave  
8 me the impression but I'd like you to just tell me, tell  
9 us what your position was.

10 You gave me the impression there was some kind of  
11 appraisal of the situation at that time. As a result of  
12 which you were decided, it was decided that you as a matter  
13 of policy would attend that meeting; is that right?

14 A That's accurate. I mean, it was a discussion  
15 that had been ongoing for some time in the Ministry. But  
16 the action in instructional requests to the Chair of the  
17 Board of Trustees didn't take place until September 2009  
18 and that's when I started attendance.

19 Q How long had those discussions been going on?

20 A Probably about a year.

21 Q And who did you discuss it with internally?

22 A That would have been the Permanent  
23 Secretary.

24 Q Who made the approach to the Chairman of the  
25 Trustees?

1 A The Permanent Secretary.

2 Q I see. So you and the Permanent Secretary were  
3 conscious of and were discussing among yourselves a  
4 situation which what, seemed to require you to have more  
5 involvement in their contractual affairs?

6 A I'm not quite sure. I don't think that what  
7 you're saying is inaccurate but it was more along the lines  
8 of if you consider the corollary of we had maybe seven or  
9 eight departments within the Ministry; we met on a regular  
10 basis with the department heads, with the accounting  
11 officers for those departments. I would have met regularly  
12 with the financial people in those departments.

13 And with a Quango, it's more difficult. It's  
14 more cumbersome. So the mechanism that was identified or  
15 one of the mechanisms that was identified was getting closer  
16 to the operations by attending the meetings.

17 Q Were there any other Quangos? It doesn't matter  
18 which they were, but was Port Royal Trustees the only one?

19 A With the Ministry, yes.

20 CHAIRMAN EVANS: Good.

21 MS MEMARI: No more questions.

22 MR. HARGUN: Nothing further.

23 COMMISSIONER EVANS: Thank you very much indeed.

24 THE WITNESS: Thank you.

25 COMMISSIONER EVANS: Mr. Stovell, that concludes

1       our evidence, but at a later stage we may want to come back  
2       to you for further help with regard to the recommendations  
3       for the future.

4               THE WITNESS:  Very well.  Thank you.

5               COMMISSIONER EVANS:  Thank you.

6               (Inaudible discussion.)

7               (End of audio.)

8                               **End of Day's Proceedings**

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1 REPORTER'S CERTIFICATE

2  
3 I, Amy E. Perry, a Certified Shorthand Reporter  
4 in and for the State of California, duly appointed and  
5 commissioned to administer oaths, do hereby certify:

6 That I am a disinterested person herein; that  
7 this audio recording was reported in shorthand by me, Amy  
8 E. Perry, a Certified Shorthand Reporter of the State of  
9 California, and thereafter transcribed into typewriting.

10 IN WITNESS WHEREOF, I hereby certify this in the  
11 County of Placer, State of California, this 14th day of  
12 October, 2016.

13  
14 

15 AMY E. PERRY, CSR 11880  
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