

COMMISSION OF INQUIRY

Held at

St. Theresa's Cathedral Hall
Laffan Street, Hamilton, Bermuda

MONDAY, 28 NOVEMBER 2016

Before:

SIR ANTHONY HOWELL MEURIG EVANS	CHAIRMAN
HON JOHN BARRITT	COMMISSIONER
FIONA ELIZABETH LUCK	COMMISSIONER
KUMI DUANE BAMIDELE BRADSHAW	COMMISSIONER

A P P E A R A N C E S

Mr. Narinder K. Hargun

Mr. Jeffrey P. Elkinson

Mr. Ben Adamson

for the Commission

Mr. Eugene Johnston

for Donal Smith

Bermuda Emissions Control Ltd.

ALSO PRESENT:

Ms. Alberta Dyer-Tucker

Ms. Jane Brett

Clerks to the Commission

Lisa Barrett, CRR, RPR, CRC, CSR

Angela Gunn, CSR

Margaret Gazzard, CSR

Chartered Shorthand
Reporters

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1 MONDAY 28TH NOVEMBER 2016

2 --- Upon commencing at 9:32 a.m. ---

3 **THE CLERK:** Good morning, Everyone. I am
4 going to ask you to stand, please, as the Commission
5 enters. And can you please ensure that all cellular
6 devices are turned off or are put on vibrate before
7 they come in. Thank you.

8 **THE CHAIRMAN:** I will begin merely by saying
9 that this is the third public hearing held by the
10 Commission. We have published a provisional timetable
11 for this week's hearings, and I won't seek to add to
12 that at the moment. So will you begin, please, with
13 the first item of business.

14 **MR. ELKINSON:** Thank you, Mr. Chairman, and
15 Members of the Commission.

16 And the first item of business would have
17 been Mr. Delroy Duncan appearing on behalf of Trocan
18 Management Limited in respect of a subpoena
19 for documents for a company Bermuda Emissions Control
20 Limited, but Mr. Duncan will in fact now be appearing
21 tomorrow. By agreement that subpoena has been stood
22 over till then.

23 So, Members of the Commission, the other item
24 of business that then comes up is a summons that is
25 extant in respect of Bermuda Emissions Control Limited

1 to Mr. Donal Smith, and I see Mr. Donal Smith is here
2 in the Commission.

3 Yes.

4 **THE CHAIRMAN:** Is Mr. Smith here? Mr. Smith,
5 I understand you are here today in response to our
6 subpoena. Thank you for coming. The subpoena invites
7 you to answer certain questions.

8 You are here and willing to answer those
9 questions; is that right?

10 **THE WITNESS:** Of course, but let me say this
11 respectfully --

12 **THE CHAIRMAN:** Thank you. Will you come
13 forward, please, to the witness stand.

14 **THE WITNESS:** Sure, I'll do that.

15 **MR. ELKINSON:** Good morning, Mr. Smith.

16 **THE WITNESS:** Good morning.

17 **THE CLERK:** Good morning.

18 **THE WITNESS:** Good morning. How are you
19 doing?

20 **THE CLERK:** Do you prefer to make an oath or
21 to affirm?

22 **THE WITNESS:** I never swear on the Bible.
23 I will affirm. I'm not worthy to swear on God's Bible.

24 I am Donal Smith. I do solemnly and
25 sincerely affirm that the evidence I shall give will be

1 the truth, the whole truth and nothing but the truth.

2 **DONAL SMITH: AFFIRMED**

3 **THE CLERK:** Thank you.

4 **MR. ELKINSON:** Have a seat, Mr. Smith.

5 **EXAMINATION BY MR. ELKINSON:**

6 **Q.** So, Mr. Smith, you are in receipt of
7 a letter from the Commissioners dated 14 November,
8 2016, and that also provided a summons to you to attend
9 to answer some questions, although you did have the
10 option of providing an affidavit if you wished to the
11 two very short questions.

12 Do you recall the questions, Mr. Smith, or
13 can you I provide you a copy of that document?

14 **A.** Well, first of all, let me say this to
15 you: I don't know what happened to my lawyer.

16 **Q.** Oh, do you wish to wait for him,
17 Mr. Smith?

18 **A.** Well, respectfully, because I know you
19 lawyers are tricky, and I don't want to be trapped.

20 **Q.** No, well, I take it that applies to
21 your lawyer too, does it?

22 **A.** No, it doesn't apply to him. He's
23 honest. So I think we should wait for him,
24 respectfully, if you don't mind.

25 **THE CHAIRMAN:** Oh, certainly. And I'm sorry

1 I hadn't checked --

2 **THE WITNESS:** No, that's all right.

3 **THE CHAIRMAN:** -- what the position was.

4 **THE WITNESS:** I'm here.

5 **MR. ELKINSON:** I'm happy to stand down,
6 Mr. Chairman.

7 **THE CHAIRMAN:** And when your lawyer
8 arrives -- have you had any news from him or her?

9 **THE WITNESS:** Well, first of all, back to
10 Mr. Elkinson's remark about I received a letter,
11 I didn't receive a letter. It was verbally
12 communicated by my attorney that I'll have to appear
13 today.

14 Secondly, he said it was 10 o'clock, and then
15 at 9:20 he said it's -- I mean at 8:20 he said it was
16 9:30, and I'm, like, what kind of tricks are you guys
17 playing?

18 **BY MR. ELKINSON:**

19 **Q.** So, this your lawyer you are referring
20 to --

21 **A.** Either he got it wrong or somebody is
22 messing with my time, because I was all relaxed to come
23 before you this morning, but I'm more relaxed now,
24 trust me.

25

1 **Q.** I will give you a copy of the
2 documents when you stand down, Mr. Smith, and you will
3 see it says 9:30, and there was a letter addressed to
4 you --

5 **THE CHAIRMAN:** Mr. Smith, we needn't take
6 your times on these things. I'm sorry if you've been
7 inconvenienced, but thank you for being here on time,
8 and we will now adjourn until your lawyer arrives.

9 **THE WITNESS:** Yes. Sure.

10 **THE CHAIRMAN:** Do you have any idea where he
11 is now, how long he'll be?

12 **THE WITNESS:** I don't even know where he
13 lives.

14 **THE CHAIRMAN:** So you don't know where he is?

15 **THE WITNESS:** No, I don't.

16 **THE CHAIRMAN:** Well, let's --

17 **THE WITNESS:** I'm sure he's going to be here.

18 **THE CHAIRMAN:** Well, when he comes, you may
19 or may not want to have a word or two with him.

20 Should we say we'll sit at 10 o'clock?

21 **MR. ELKINSON:** Certainly, Mr. Chairman.

22 **THE CHAIRMAN:** If you are ready --

23 **MR. ELKINSON:** I can advise you earlier.

24 **THE CHAIRMAN:** -- and can check with
25 Mr. Elkinson, we'll start before 10 o'clock.

1 **THE WITNESS:** Yes, maybe he can enjoy that
2 second cup.

3 **THE CHAIRMAN:** Otherwise 10 o'clock. Thank
4 you very much.

5 **THE WITNESS:** Thank you.
6 --- Upon recessing at 9:37 a.m. ---
7 --- Recess ---
8 --- Upon resuming at 9:51 a.m. ---

9 **THE CHAIRMAN:** Mr. Johnston, I wondered if
10 you wanted to say anything about your late arrival.

11 **MR. JOHNSTON:** My apologies. I was just
12 seeking to run down some information for the
13 Commission, and I was taken from doing that, and was
14 sent a call, they called and they said they was looking
15 for you.

16 **THE CHAIRMAN:** Please come back.
17 (Witness resumes stand)

18 **MR. ELKINSON:** Thank you, Mr. Chairman.

19 **BY MR. ELKINSON:**

20 **Q.** Mr. Smith, in relation to the subpoena
21 that's issued in this matter, I placed a copy there on
22 the desk and it raises some questions. As indicated,
23 there was an accompanying letter that you could have
24 provided this information by affidavit, but the
25 Commission appreciates that you have turned up today to

1 respond to these questions, which are required on the
2 basis that the Commissioners haven't seen your
3 accounts, yours being those of Bermuda Emissions
4 Control Limited.

5 So the first question that's raised is
6 whether you or the company, or any company owned or
7 controlled by the company or yourself, made any
8 political contributions in connection with the business
9 of Bermuda Emissions Control Limited?

10 **A.** You know, I read your question. I was
11 really taken aback.

12 **Q.** Well, is there a "yes" or "no" answer
13 to it, Mr. Smith?

14 **A.** Well, there is more than a "yes" or
15 "no" answer.

16 **Q.** Are there political contributions made
17 by yourself or the company in connection with its
18 business?

19 **A.** I just want to be sure as to what I'm
20 interpreting.

21 **Q.** Well you have an attorney, Mr. Smith.
22 Do you wish to consult with him before you --

23 **A.** No, you're asking me. I'd like you to
24 put it to me in another way.

25 **Q.** Well, I can only put it to you as it's

1 written here, Mr. Smith. So perhaps you will take
2 a moment to read it.

3 **A.** No, I just read it. Can you ask me
4 the question again?

5 **Q.** Sure. Did you or the company or any
6 company owned or controlled by the company, or
7 yourself, make any political contributions in
8 connection with the business of Bermuda Emissions
9 Control Limited?

10 **A.** Well, it doesn't -- it doesn't say
11 Bermuda Emissions Control Limited there. It says: "Did
12 you or the company..."

13 If you are talking about Bermuda Emissions --

14 **Q.** Yes.

15 **A.** -- you know, I must say this for the
16 whole world to hear. I find it --

17 **Q.** No, it's either -- well, it's either
18 "yes" or "no" --

19 **A.** It doesn't say "yes" or "no."

20 **Q.** No, you have to say "yes" or "no".

21 **A.** Respectfully, may I answer the
22 question? I find it almost -- I just find it bizarre
23 that the taxpayers of this country would want to know
24 an answer pertaining to a political contribution.
25 I find it really silly. I find it very out on left

1 field, out by north -- past North Rock.

2 **Q.** If I may, Mr. Smith, you are not the
3 only one that this question has been asked of. Many
4 other persons have been asked for the purpose of this
5 Commission, and how it's been established by the
6 Premier, have been asked this question --

7 **A.** Yeah.

8 **Q.** -- as this Commission looks into such
9 matters, and you either want to answer the question or
10 you don't.

11 **A.** Well, I don't know why the Premier
12 would ask me such a question. My --

13 **Q.** The Commission is asking you this
14 question.

15 **A.** Well, even you. My \$1.50 has anything
16 nothing to do with anybody's business. But --

17 **MR. JOHNSTON:** Mr. Chairman --

18 **THE WITNESS:** But, but --

19 **THE CHAIRMAN:** Let the witness finish.

20 **THE WITNESS:** But respectfully, I find the
21 question silly and dumb, for the record. And the
22 answer is: I have never made a political contribution
23 of any sort to any party.

24 I really would make a contribution today to
25 Michael Dunkley; he's going to need it.

1 **BY MR. ELKINSON:**

2 Q. So the second question is did
3 you or the company --

4 **THE CHAIRMAN:** Did Mr. Johnston want to say
5 something?

6 **MR. JOHNSTON:** No, the witness is fine, he
7 has answered the question, but it would have been
8 noticed from earlier that he was asking what the
9 Commission meant by political contribution.

10 **THE WITNESS:** Thank you.

11 **MR. JOHNSTON:** That's not altogether clear.

12 **THE CHAIRMAN:** And your answer was, as I have
13 noted it: "I have never made any political
14 contribution." You were also asked whether the
15 company, BECL, has ever made any political
16 contribution?

17 **THE WITNESS:** Never.

18 **THE CHAIRMAN:** Thank you, Mr. Smith.

19 **MR. ELKINSON:** Thank you, Mr. Chairman.

20 **BY MR. ELKINSON:**

21 Q. The second question is: Did you or the
22 company, or any company owned or controlled by the
23 company or yourself, provide, whether directly or
24 indirectly, economic or other benefits outside the
25 normal course of business to individuals who are linked

1 to the government?

2 **A.** No.

3 **Q.** Thank you, Mr. Smith.

4 Those are the questions, Members of the
5 Commission.

6 **THE CHAIRMAN:** Thank you.

7 Mr. Johnston, is there anything more you want
8 to say?

9 **MR. JOHNSTON:** I have nothing more.

10 **THE WITNESS:** Is that it?

11 **MR. ELKINSON:** Thank you, Mr. Smith. Yes,
12 you are free to go.

13 **THE CHAIRMAN:** Thank you, Mr. Smith.

14 **THE WITNESS:** I am free to go?

15 **THE CHAIRMAN:** You are free to --

16 **THE WITNESS:** What about looking -- what
17 about seizing my documents? What about breaking and
18 entering a private company to seize documents to see
19 how my money is operated? What about copies of my
20 accounts --

21 (Simultaneous speakers - unclear)

22 **BY MR. ELKINSON:**

23 **Q.** Mr. Smith, if there's is a criminal
24 offence, I suggest you go to your local police
25 station --

1 **A.** But that's what I explained to you
2 before. Charged me in the Magistrates' Court with
3 a crime and then let the -- I told you before, lock me
4 up, because you are doing what they call in the
5 Magistrates' Court a breaking and entering, you want to
6 get in my books, and now that question is not on the
7 table? That means -- am I free to go?

8 **Q.** Indeed, Mr. Smith.

9 **A.** I'm never going to come back?

10 **Q.** That's entirely up to you, Mr. Smith.

11 **A.** No, it's up to you. Thank you.

12 Jesus, praise the Lord.

13 **THE CHAIRMAN:** Mr. Smith --

14 **THE WITNESS:** Yes.

15 **THE CHAIRMAN:** -- let me please make the
16 position clear. You received a subpoena and you
17 responded to it. You've appeared today and you've
18 answered the questions and the Commission is most
19 grateful to you.

20 **THE WITNESS:** Oh, thank you.

21 **THE CHAIRMAN:** That's the end of your --

22 **THE WITNESS:** Of me, here?

23 **THE CHAIRMAN:** The end of the business so far
24 as this subpoena is concerned.

25 **THE WITNESS:** Oh, wow, so all those other

1 claims is not necessary?

2 **THE CHAIRMAN:** The other matters are --

3 **THE WITNESS:** This cost me a lot of money to
4 my lawyer and to Mr. Duncan. Do I get my money back?

5 **THE CHAIRMAN:** Mr. Smith, you are not
6 listening to what I say, or you're not understanding --

7 **THE WITNESS:** Please, I'm listening now.

8 **THE CHAIRMAN:** You have responded to this
9 particular subpoena --

10 **THE WITNESS:** Yes --

11 **THE CHAIRMAN:** -- and we are grateful to you
12 for answering the questions contained in it.

13 **THE WITNESS:** Yes.

14 **THE CHAIRMAN:** That concludes the matter so
15 far as this subpoena is concerned.

16 **THE WITNESS:** Oh, thank you. Thank you,
17 Mr. Chairman.

18 **THE CHAIRMAN:** Thank you very much.

19 **THE WITNESS:** Yes. God is so good. Praise
20 the Lord.

21 (The witness withdraws)

22 **THE CHAIRMAN:** Mr. Johnston, is there
23 anything you want to add?

24 **MR. JOHNSTON:** No, it was just going to be
25 this preliminary point before the witness took the

1 stand, but it's only for the record, it's that the
2 Commission would have remembered that I made a number
3 of objections to a previous subpoena, some preliminary
4 points for whether the subpoena should be issued. I've
5 just repeated that I'm not waiving any of those things,
6 but I understand...

7 **THE CHAIRMAN:** Well, but I think we just made
8 plain too --

9 **MR. JOHNSTON:** Sure --

10 **THE CHAIRMAN:** -- that today's appearance has
11 been concerned with this subpoena, and this subpoena
12 only.

13 Will you be, and may I ask you to do this:
14 This is entirely a matter between you and your client,
15 but if you were able to make sure that your client
16 understands that position, it would be most effective.

17 **MR. JOHNSTON:** No, he does. I want to make
18 myself abundantly clear what I have just tried to put
19 forward to the Commission, is that we made a number of
20 objections about a previous subpoena --

21 **THE CHAIRMAN:** We all know --

22 **MR. JOHNSTON:** We know that.

23 **THE CHAIRMAN:** -- there have been other
24 subpoenas, and we all know, I hope, it is quite clear,
25 that we are not dealing with anything else on this

1 occasion, just this one subpoena.

2 **MR. JOHNSTON:** And about this subpoena --

3 **THE CHAIRMAN:** Yes.

4 **MR. JOHNSTON:** -- we are repeating only those
5 parts about the preliminary, that the subpoena should
6 not have been issued without going to the part -- the
7 preliminary part. We haven't waived that.

8 **THE CHAIRMAN:** None of that matters --

9 **MR. JOHNSTON:** Yes.

10 **THE CHAIRMAN:** -- today. Thank you.

11 **MR. ELKINSON:** Thank you, Mr. Johnston.

12 **THE CHAIRMAN:** And, Mr. Elkinson, what's the
13 position with regard to the other witness?

14 **MR. ELKINSON:** So the next witness,
15 Mr. Chairman, will be at 11 o'clock, and Ms. Joyce
16 Hayward will appear then.

17 **THE CHAIRMAN:** Yes. And so we will adjourn
18 now.

19 **MR. ELKINSON:** If the Tribunal will now
20 adjourn until --

21 **THE CHAIRMAN:** Thank you, again.

22 **MR. ELKINSON:** Thank you very much.

23 --- Upon recessing at 10:01 a.m. ---

24 --- Recess ---

25 --- Upon resuming at 11:03 a.m. ---

1 **MR. HARGUN:** Good morning, Mr. Chairman.
2 Mr. Chairman, our next witness is Joyce
3 Hayward.

4 Mrs. Hayward, good morning.

5 **THE WITNESS:** Good morning.

6 **BY MR. HARGUN:**

7 **Q.** My name is Narinder Hargun. I am
8 counsel for the Commission. I will be asking you some
9 questions in relation to the witness statements which
10 you have made, and after that, it is likely that the
11 Commissioners will have questions in relation to your
12 statement, but before we do that, can we have you read
13 out the affirmation?

14 **THE WITNESS:** I do solemnly and sincerely
15 affirm that the evidence I shall give shall be the
16 truth, the whole truth and nothing but the truth.

17 **JOYCE HAYWARD: AFFIRMED**

18 **EXAMINATION BY MR. HARGUN:**

19 **Q.** Mrs. Hayward, you have sworn a witness
20 statement and that's dated 10 September 2016?

21 **A.** Yes.

22 **Q.** Do you have a copy of that?

23 **A.** Yes, I have a copy of that, I brought,
24 and there is a copy in the binder as well.

25 **Q.** Yes. Could you just confirm that the

1 statements that you have made in that witness statement
2 are correct?

3 **A.** Yes, they are to the best of my belief
4 and knowledge.

5 **Q.** And just by way of background, you
6 were the Accountant General for the Government of
7 Bermuda from July 2004 to August 2013?

8 **A.** Yes.

9 **Q.** And, as you know, the Auditor
10 General in relation to certain aspects have made
11 certain findings in the 2009, 2010, 2011 audit report
12 and, specifically, there are three areas where the
13 Auditor General has reservations and made findings, and
14 one relates to the expenditure was not approved by the
15 Cabinet in accordance with the Financial Instructions?

16 **A.** Uh-hmm.

17 **Q.** And the second area is that the
18 payments were made without signed contracts?

19 **A.** Uh-hmm.

20 **Q.** And the third area was that there was
21 no tendering of contracts in relation to a contract
22 which was required to be tendered in accordance with
23 financial instructions. Yes?

24 Can I just look at the response which you
25 have made, and that is set out, and we can conveniently

1 look at your witness statements at pages 5 and 6.

2 If you look at page 5 and you see at the top
3 of the page you say:

4 "My responses as requested and outlined
5 above are included below."

6 And then you are referring to
7 paragraph 3.1.7, which is dealing with the issue of
8 whether Cabinet approval had been obtained. Yes?

9 **A.** Correct.

10 **Q.** And just to save time, if you look
11 under (b), paragraph (b) you say that:

12 "My understanding of the process by
13 those in The Accountant General's
14 Department was that the personnel in the
15 ACG Department did not receive Cabinet
16 Conclusions as they contain confidential
17 information that is privy only to
18 certain levels. As such, the ACG
19 personnel were reliant on the
20 responsibilities as exercised by each
21 Accounting Officer and each Financial
22 Comptroller in their respective
23 departments and ministries. The
24 accounting officer and financial
25 comptroller are familiar with the

1 operations and finances under the
2 agreement and are cognizant of their
3 requirements under the Financial
4 Instructions. The accounting officer
5 also oversees and is often the experts
6 in the specific areas that are
7 contracted in relation to the department
8 or ministry. Therefore, we relied on
9 the accounting officer as they were
10 responsible to ensure proper
11 support/authorisation was obtained."

12 So let me see if I understand it. Are you
13 saying that as far as your department was concerned,
14 you relied upon the accounting offices in the other
15 ministries to make sure that the contracts -- the
16 payments complied with the financial instructions as
17 far as obtaining Cabinet approval was concerned?

18 **A.** Correct, yes.

19 **Q.** Did you make -- did your department
20 make any checks in relation -- in that regard at all?

21 **A.** In regard to?

22 **Q.** Whether Cabinet approval had been
23 obtained.

24 **A.** No, we seldom would do that, from my
25 recollection. And, again, this has been a while back,

1 but we would rely upon the accounting officers, the
2 persons who were providing information to us, to have
3 done whatever the due diligence was they were doing to
4 make sure that it complied so that we could make
5 payment.

6 **Q.** Well, I'll ask you sort of questions
7 at the end, but let me just deal with the second
8 aspect, which is that in relation to contracts, whether
9 contracts had been signed or not in relation to
10 payments to be made. And that you deal in the middle
11 of that page in reference to item 3.2, which is dealing
12 with as to whether contracts had been signed -- yes?
13 Your witness statement.

14 **A.** Let me make sure 3.2 is in relation
15 to.

16 **Q.** Yes, if you look at paragraph (b) --

17 **A.** Yes.

18 **Q.** -- your answer in relation to the
19 question as to what checks were made by your department
20 in relation to whether contracts had been signed, you
21 say:

22 "My understanding of the process by
23 those in the Accountant General's
24 department was that the personnel in the
25 Accountant General's department

1 ordinarily did not receive copies of
2 every contract executed by Government
3 (other than approved consultant
4 contracts provided by the Cabinet
5 Office). As such, the Accountant
6 General personnel were reliant on the
7 responsibilities as exercised by each
8 Accounting Officer and each Financial
9 Comptroller in their respective
10 departments and ministries."

11 **A.** Correct.

12 **Q.** So your answer is the same as in
13 relation to whether the contracts had been approved by
14 the Cabinet?

15 **A.** Correct.

16 **Q.** So you are saying that in relation to
17 whether contracts had been signed, that wasn't really
18 your responsibility to check, but the responsibility of
19 the Accounting Officer in respective ministries?

20 **A.** Correct.

21 **Q.** Okay. And then the final area which
22 was as to whether contracts which required tendering in
23 accordance with Financial Instructions, whether they
24 had been tendered, you were asked as to what checks
25 your department made, the Accountant General's

1 department, and you deal with that on page 6.

2 And if you look at page 6, you see in
3 reference to item 3.3, which is this particular area,
4 and the answer which you give is at (b):

5 "My understanding of the process by
6 those in the Accountant General's
7 department was that the personnel in the
8 Accountant General's office were
9 dependent on Cabinet Office, Accounting
10 Officers and Financial Controllers to
11 ensure that the appropriate tendering
12 procedures were followed. Therefore, we
13 relied on the Accounting Officers as
14 they were responsible to ensure proper
15 support/authorisation was obtained."

16 So you give the same answer in relation to
17 the third issue relating to tendering that you relied
18 entirely upon the Accounting Officers in other
19 ministries?

20 **A.** Correct.

21 **Q.** On one reading of the Auditor
22 General's report, one gets the impression that the
23 Auditor General believes, or at least considers that a
24 significant part of the control system is the
25 Accountant General's department to ensure that

1 Financial Instructions are complied with, but it is your
2 evidence that you are not really making any additional
3 checks to the checks already made by the ministries,
4 the Accounting Officers of the ministries in relation
5 to these areas?

6 **A.** We make sure that -- or the Accountant
7 General's department at the time would make sure that
8 the documents were signed off by those persons, so that
9 it would evidence that, so that was the check, not the
10 additional check.

11 **Q.** Yes. And let's take an example.
12 Let's assume that we're dealing with a capital project
13 which requires Cabinet approval and a signed contract,
14 and it requires tendering. What material would you get
15 from the Accounting Officers, say of Works &
16 Engineering, which would tell you that these three
17 requirements had been complied with?

18 **A.** I'm sorry, I can't really remember
19 that at this time. It's been a while ago. I know we
20 received paperwork that would have their initials on
21 them, or signatures, or when we moved to the new
22 system, that would be approved in the system, but what
23 the actual documentation we received, I'm not sure at
24 this time.

25 **Q.** I mean if you don't remember, say so.

1 Then would you -- for example, would you
2 ordinarily receive copies of the underlying contracts?

3 **A.** Typically, no, not that I can recall
4 because many times they were very thick, so I think, as
5 was mentioned in the witness statement, we would
6 receive contracts just for consulting contracts, but
7 not for large construction contracts and things like
8 that.

9 **Q.** Right. And you would receive hard
10 copies, or these would be electronic requests?

11 **A.** For capital contracts?

12 **Q.** No, I mean just for payments
13 generally.

14 **A.** It could be either, either electronic
15 or hard copy.

16 **Q.** Let me turn to a separate issue. This
17 is a question of delegation. Remember you were asked
18 a number of questions in relation to the issue of
19 delegation. That comes in two forms. One is
20 delegation of responsibility from one ministry to
21 another. Say, for example, construction contract which
22 ordinarily would be dealt with in Works & Engineering
23 to another Ministry.

24 **A.** Uh-hmm.

25 **Q.** Or a waiver from the

1 Accountant General, whether a particular requirement of
2 the Financial Instruction should be complied with --
3 yes?

4 **A.** Uh-hmm.

5 **Q.** Now, let me ask you questions in
6 relation to the Heritage Wharf project; do you remember
7 that?

8 **A.** Yes.

9 **Q.** Yes. I mean, do you recall whether
10 you were requested to give a consent or waiver in
11 relation to the requirement that Works & Engineering
12 should have responsibility for this capital project?

13 **A.** I think it's in my statement that that
14 authority wouldn't come -- have come from the
15 Accountant General's office, so, no, I would not have
16 been asked for a waiver.

17 **Q.** Yes, I mean as far as I understand it,
18 your evidence is that to the best of your recollection,
19 no such request was made?

20 **A.** To our office, correct.

21 **Q.** Yes. And certainly, likewise, no
22 waiver was sought in relation to any noncompliance with
23 Financial Instructions.

24 **A.** Not that I recall, to our office,
25 correct.

1 **Q.** No. And let me ask you, secondly, in
2 relation to Port Royal, and you deal with that in your
3 witness statement. I'd ask you to go to page 12.

4 There you are dealing with issues relating to
5 Port Royal in that section. And just before Heritage
6 Wharf, the paragraph before that, do you have that,
7 page 12 of your witness statement?

8 **A.** Yes.

9 **Q.** And I can -- perhaps I can pick up in
10 the middle of that paragraph, one-third down, "The Act
11 also requires." Do you see that sentence?

12 **A.** Yes.

13 **Q.** (Reading):

14 "The Act also requires the Board of
15 Trustees to follow the Financial
16 Intructions of the Minister of Finance
17 or any other instructions issued by the
18 Minister in charge of golf courses.
19 During the course of the audit we were
20 not aware of and were not provided with
21 any other instructions issued by the
22 Minister in charge of golf courses."

23 Then you say this:

24 "To the best of my recollection, the
25 Financial Intructions (and a set

1 modified for use by the Quangos) were
2 provided to each controller -- or the
3 accounting person responsible for the
4 financial operations -- of each Quango
5 during my tenure as the
6 Accountant General by the Minister of
7 Finance. If they were operating with
8 another set of financial
9 policies/procedures, they were to
10 provide her with such financial
11 policies/procedures being used in lieu
12 of the FI for her/Ministry of Finance's
13 review and approval."

14 Do you know whether the Trustees at the
15 Port Royal were provided with this modified set of
16 Financial Instructions?

17 **A.** I don't know for sure.

18 **Q.** But you say that for Quangos, the
19 customary procedure is to give them a modified version
20 of Financial Instructions?

21 **A.** A modified set of Financial
22 Instructions was provided for Quangos who did not have
23 any Financial Instructions, business the Financial
24 Instructions themselves were for Government which were
25 maybe 60 or 70 departments at that time, so it wouldn't

1 be applicable to smaller Quangos, however, some Quangos
2 had the wrong sets of Financial Instructions. So
3 a scaled down version was done that was more applicable
4 for a Quango than Government, and provided to the
5 Minister of Finance for her to then provide to the
6 ministers in charge of the Quangos, and so what they
7 actually received were got at each Quango, I wouldn't
8 know that question.

9 **Q.** Right. Sitting here now, do you
10 recall what the main modifications to the Financial
11 Instructions?

12 **A.** I'm trying to recall, but there would
13 be things like a head of a department, because there
14 wouldn't necessarily be heads of departments at
15 a Quango, so those kinds of references, or something
16 that was Government-specific, so it was those types of
17 things that would have been modified.

18 **Q.** But they would continue to contain the
19 basic requirements like, for example, tendering?

20 **A.** As far as I recall, yes, but the
21 amounts and things might be different, or were left
22 open --

23 **Q.** Yes.

24 **A.** -- for them to use based on their
25 organisation.

1 **THE CHAIRMAN:** Before we move on, I think
2 I know the answer, but in that passage to which counsel
3 has just referred, two lines up from the next heading
4 to there is a reference:

5 "They were to provide 'her' with such
6 financial policies."

7 Who is the lady referred to there?

8 **THE WITNESS:** The Minister of Finance at the
9 time.

10 **THE CHAIRMAN:** Who was then, Mrs. Cox?

11 **THE WITNESS:** Mrs. Cox, yes.

12 **BY MR. HARGUN:**

13 **Q.** The issue of Quangos is actually dealt
14 with at the very beginning of Financial Instructions,
15 you will recall, Ms. Hayward. Perhaps we could have
16 a look at it together.

17 If you go to this binder, which mine is
18 marked "A".

19 If you go to tab 4, you will see a set of
20 Financial Instructions.

21 **A.** Yes.

22 **Q.** Do you see the Financial Instructions
23 there for dated 31 December, 2008?

24 **A.** Yes, I do.

25 **Q.** If you go to page -- internal

1 page 13 --

2 **A.** Uh-hmm.

3 **Q.** -- which is the introduction; do you
4 see that?

5 **A.** Yes.

6 **Q.** And if you look at the fifth paragraph
7 down: "Financial Instructions should..."

8 Do you see that?

9 **A.** Yes, uh-hmm.

10 **Q.** (Reading):

11 "Financial Instructions should form the
12 minimum standard for financial controls
13 in every department, Ministry, or Quango
14 with additional specific procedures
15 formulated at the departmental level."

16 [As read]

17 Do you see that?

18 **A.** Yes.

19 **Q.** So do I understand that even as far as
20 Quangos are concerned, they have to comply with the
21 minimum standards?

22 **A.** Well, the asterisk below --

23 **Q.** Yes.

24 **A.** -- further outlines that if they
25 choose, any modifications may be documented in writing.

1 **Q.** I was going to actually take you
2 there.

3 **A.** Okay.

4 **Q.** (Reading):

5 "If a Quango chooses to use these
6 Financial Instructions, any modifications
7 must be documented in writing."

8 Just pausing there, that's what you were
9 referring to that there were modified versions of
10 instructions for the use of Quangos?

11 **A.** Yes, but any type of Financial
12 Instructions or instructions accounting policies should
13 be documented.

14 **Q.** Documented, yes, of course.

15 "And if a Quango chooses not to utilize
16 these Financial Instructions, the
17 organisation must have written financial
18 procedures in place. These financial
19 procedures must be provided to the
20 Accountant General's department and the
21 department or agency that provides
22 funding to the Quango."

23 Yes?

24 **A.** Yes.

25 **Q.** So if Port Royal was to have its own

1 procedures in relation to financial administration,
2 a documented copy of those had to be provided to your
3 department?

4 **A.** Yes. That's -- that's what this says,
5 and that's correct. However, if I am recalling, and
6 this is thinking back several years, this was something
7 new. I don't have all of the prior Financial
8 Instructions, but we were working on that with the
9 Minister of Finance, so that's why I said in my
10 statement that they were to be provided to her. She,
11 in turn, would then provide them to us in the
12 Accountant General's department, so there was a process
13 in place for them to get to us, but the ultimate
14 objective was for them to go through the Minister of
15 Finance, through their Minister, and then be provided
16 to the Accountant General's department, so we knew
17 that -- what they were operating with.

18 **Q.** Yes, of course it's important that
19 your department has a set of procedures if they are
20 different from Financial Instructions so that when you
21 are making payments and the like, you can see that
22 they've complied with it?

23 **A.** Yes, however, again, the Quangos came
24 under various departments and ministries, so they
25 actually would be the responsibility of the Accounting

1 Officer of the department, that they are really the
2 ones responsible to make sure that all policies and
3 procedures and so forth as they worked on them with the
4 Quangos were followed, and we would again use the
5 authority of the Accounting Officer, whoever they
6 delegated to in the Accountant General's department to
7 make payment.

8 **Q.** Right. And just concentrating on
9 Port Royal, during your tenure as the
10 Accountant General, you did not receive any
11 documentation which showed that they had their own
12 policies and procedures?

13 **A.** I can't recall for sure. I don't
14 remember.

15 **THE CHAIRMAN:** Before you move on, what
16 the -- these are the 2008 Financial Instructions, and
17 they require special procedures, I'll call them, to be
18 provided, "to the Accountant General's department."

19 Now I haven't quite followed what you were
20 saying. Was it that that means they would have to go
21 to the Ministry of Finance, and it's up to the Ministry
22 of Finance whether to provide them to that department,
23 or are you saying it should go direct?

24 **THE WITNESS:** They did not come directly to
25 us. They actually went through a process before they

1 would come to our office, so by the time they came to
2 our office, they should have been in a formal set,
3 because we would not make the -- we wouldn't be
4 involved in the discussions with the Quangos as to
5 whether those -- the amounts within or so forth were
6 approved by the permanent secretary or Accounting
7 Officer and/or Minister of Finance.

8 So it would go through a process before it
9 would come to the Accountant General.

10 **THE CHAIRMAN:** I think what's troubling is
11 this: There's no provision here for the instructions,
12 the special instructions to be provided to the Minister
13 of Finance.

14 **THE WITNESS:** Well, anything that comes to
15 the Accountant General's department, we come under the
16 Minister of Finance, but, as I mentioned, these things
17 were new and being worked on, so this was a process
18 that was being put into place in order for them to get
19 to us, because as we put this in place, we realised the
20 process had to be followed in order for it to work.

21 **THE CHAIRMAN:** Yes, but when these say
22 "provided to the Accountant General's department," do
23 they mean that, or do they mean provided to the
24 Minister of Finance, who may not pass them on to the
25 Accountant General's department?

1 **THE WITNESS:** It would mean that it should go
2 through the process and then get to the Accountant
3 General's department, so we would know that they're in
4 place, but if they went to the Minister of Finance, she
5 or he could let us know that they are in place, so it's
6 both ands.

7 **THE CHAIRMAN:** Yes, I'm still a bit unclear.
8 If it says "to the Accountant General's department,"
9 that means direct, and it either means that or it
10 doesn't mean it?

11 **THE WITNESS:** It does not mean that it has to
12 come directly to us.

13 **THE CHAIRMAN:** I see. And are you saying
14 that in view of the way in which the business is
15 handled, this is, in fact, not properly worded?

16 **THE WITNESS:** It could be clarified.

17 **THE CHAIRMAN:** Would there be machinery for
18 it to go straight to a department without going through
19 the Ministry of Finance?

20 **THE WITNESS:** When you say "would there be
21 a machinery," a process?

22 **THE CHAIRMAN:** Well, if this was taken at its
23 face value, information has to, or documents have to go
24 to the department and would that be feasible? Could
25 that be done in practice, or would it still have to go

1 through the Minister of Finance?

2 **THE WITNESS:** It could be done, I would
3 guess, in practice.

4 **THE CHAIRMAN:** It could be done directly.
5 Thank you.

6 **MR. BARRITT:** Could I just ask a question,
7 Mr. Hargun?

8 **MR. HARGUN:** Yes, of course.

9 **MR. BARRITT:** You say things were being
10 worked on, Ms. Hayward -- good morning.

11 **THE WITNESS:** Good morning.

12 **MR. BARRITT:** I'm trying to understand, what
13 would be the point of sending Financial Instructions to
14 the Accountant General at all, whatever process was
15 chosen? What to your mind was the point of sending
16 Financial Instructions to the Accountant General's
17 department?

18 **THE WITNESS:** And to the other point, it's
19 really -- this could have been worded to say "Ministry
20 of Finance/Accountant General."

21 For our office, it would be more to have
22 an idea of how we were all operating, so we would have
23 knowledge of that, because sometimes best practices are
24 shared, with, oh, this Quango is doing this, that
25 Quango is doing that, this department is doing that, so

1 we could share information among the organizations, but
2 it would be helpful to know sometimes how other
3 organizations are operating.

4 **MR. BARRITT:** Well, it wouldn't be for the
5 purpose of making sure that the trustees, in this case,
6 Port Royal, making sure that the trustees were adhering
7 to Financial Instructions?

8 **THE WITNESS:** Not -- no, that's not what that
9 would be for. From my recollection, as I mentioned,
10 the responsibility for approvals, and things like that,
11 was within the Ministry that that Quango would have
12 been reporting to.

13 **MR. BARRITT:** So what check would there be if
14 an Accounting Officer in a particular department or
15 a financial controller had got it wrong or was signing
16 off on things improperly without checking, who would be
17 checking that person then?

18 **THE WITNESS:** The Accounting Officer would
19 have people in place in that area, so but it was -- it
20 is just like if any -- in any organisations, there
21 should be checks and balances in that organisation, and
22 as it comes to the Accountant General's office.

23 **MR. BARRITT:** Okay, but you will know now
24 from reading the Auditor General's report that that
25 simply wasn't happening, and in her estimation, on

1 a pervasive basis, and nobody was catching any of this
2 stuff. And your position, as I understand it, and
3 I know that this was sometime ago, is that that wasn't
4 the job of the Accountant General's department. Is
5 that a fair conclusion to draw?

6 **THE WITNESS:** I would say somewhat, that we
7 made -- we made sure we had qualified accountants in
8 place in those organisations who were responsible for
9 those, but the Financial Instructions which I had
10 regular meetings with the Financial Controllers and
11 made sure that they understood, that they knew what
12 they had to do. I had an open door policy. I met with
13 most of them on a regular basis individually as well,
14 so they were tasked as qualified accountants to make
15 sure things were in place, and within their Ministries,
16 with the persons that they reported to.

17 **MR. BARRITT:** But nobody would actually check
18 their work in the Accountant General's department,
19 nobody would actually check to see even on a spot check
20 basis that people were doing what they were supposed to
21 do?

22 **THE WITNESS:** I think there were spot checks,
23 because there is, I thought through the witness bundle,
24 evidences where persons were called or emails were sent
25 saying we don't have a contract or we don't see this or

1 that, but, again, with custom and practice, we would
2 receive the information that -- as was mentioned, we
3 didn't receive Cabinet conclusions, we were informed
4 that they were in place. The signatures would tell us
5 that those things were in place, so that was the --
6 with putting the right people in place, was what was
7 the control that we had in place at that time.

8 **MS. LUCK:** Can I ask a question? So when
9 were payments refused at the Accountant General level?

10 **THE WITNESS:** If we did not have the
11 applicable authorisation on the payments.

12 **MS. LUCK:** And that authorisation is simply
13 down to a signatory at the right level?

14 **THE WITNESS:** Correct.

15 **BY MR. HARGUN:**

16 **Q.** So would it be fair to say that you
17 were effectively checking signatures?

18 **A.** Correct, and depending on the type,
19 for capital projects they would be different than other
20 payments, because we weren't capital project experts.
21 So if it was a payment to BELCO, we would have
22 an invoice, check the mathematics, and so forth.
23 That's where our expertise would lie. But capital
24 contracts, capital projects and things like that, that
25 was not our expertise, so that was why that lied

1 outside of our department.

2 **Q.** So, say, for example in relation to
3 capital projects, you would rely upon Works &
4 Engineering, as long as it was certified by Works &
5 Engineering that the payment was to be made, you would
6 simply make the payment?

7 **A.** Correct.

8 **Q.** So, simply reading the Auditor
9 General's report, one can gain the impression that the
10 Auditor General thinks that the Accountant General's
11 department is, in fact, the final check before payment
12 is made?

13 **A.** And it was a final check of something
14 other than maybe what the Auditor General thought
15 should be in place.

16 **Q.** So your evidence is that you were the
17 final check but the final check only to make sure that
18 the Accounting Officer in respective Ministries had
19 signed off on it?

20 **A.** Correct.

21 **MR. BRADSHAW:** I have a question: Do you
22 feel that was sufficient, with hindsight?

23 **THE WITNESS:** If the things had been in place
24 in the departments as they were, then, yes, the process
25 should have worked, how it was set up, but of course

1 with hindsight, there are things that have been
2 corrected and fixed or changed that have made the
3 process better.

4 **BY MR. HARGUN:**

5 **Q.** Let me go back to Port Royal, in
6 relation to Port Royal. And I just want to sort of tie
7 down as to what the -- whether they had their policies
8 and procedures documented, other than Financial
9 Instructions.

10 Can I ask you to have a look at a document at
11 tab 11 of the public binder. Tab 11, page 33.

12 **A.** Uh-hmm.

13 **Q.** It is 33 at the top on the right-hand
14 corner. You see that that is the internal audit
15 report; you see that?

16 **A.** Yes.

17 **THE CHAIRMAN:** Can we identify this on the
18 transcript because we don't actually all have copies?

19 **BY MR. HARGUN:**

20 **Q.** Certainly, this is a document at
21 tab 11, page 33, which is a report by the Department of
22 Internal Audit dated 18 November, 2011. Yes?

23 **A.** Yes.

24 **Q.** And that relates to the golf courses;
25 do you see that?

1 **A.** Yes.

2 **Q.** And one of the golf courses which they
3 deal with, if you look at the first paragraph, is the
4 Port Royal Golf Course?

5 **THE CHAIRMAN:** Thank you.

6 **BY MR. HARGUN:**

7 **Q.** I'll take it very quickly here. You
8 will see that if you go to the third paragraph:

9 "The Department of Internal Audit
10 performed an audit of the golf courses
11 to assess the design and operating
12 effectiveness of controls for creating,
13 calculating, consolidating and reporting
14 revenue collection, payroll, cash and
15 purchasing of goods and services.

16 Additionally, as part of our audit, we
17 reviewed compliance with the legislation
18 and internal policies and procedures,
19 including human resources, and assessed
20 the adequacy of the information
21 technology environment. We noted
22 deficiencies and areas for improvement
23 in all areas that we reviewed.

24 The audit observations that were noted
25 throughout this report are partially

1 attributed to undocumented policies and
2 procedures."

3 Do you see that?

4 **A.** Yes.

5 **Q.** That suggests that they did not have
6 documented policies -- yes?

7 **A.** Or some policies and procedures could
8 have been undocumented. I'm not sure.

9 **Q.** And just to look at that point in
10 greater detail, if you go to page 11-37, and one of
11 the -- this is a -- these are findings, and you will
12 see that the risk level is high in relation to 1.1.
13 This is one of their main findings, policies and
14 procedures.

15 "The golf course developed its policies
16 and procedures manually. That will
17 cover both its operations and financial
18 processes using the Government of
19 Bermuda Financial Instructions as
20 baseline and tailored to fit the nuances
21 of golf courses. The golf courses
22 should, as well, 1) obtain the most
23 updated copy of Financial Instructions
24 and make it available to management and
25 accounting personnel; 2) conduct

1 an internal training for all personnel
2 to make them aware of the provisions of
3 Financial Instructions."

4 [As read]

5 Again, that suggests that when the internal
6 audit did the audit, that they were in need of
7 documented policies and procedures -- yes?

8 **A.** That would -- I would take that to be
9 the case.

10 **Q.** And certainly, your evidence, as
11 I understand it, is that during the period you were
12 there, 2003 onwards, you did not receive a copy of
13 their internal policies and procedures?

14 **A.** And I'm saying I'm not sure. I --
15 I don't recall that for sure, yes or no.

16 **Q.** And can I just -- I want to come back
17 to the Bermuda Emissions in a few minutes, but let me
18 just ask you one question in relation to
19 Bermuda Emissions, that's the TCD, the main building
20 and the other two buildings which were constructed, and
21 of course the operating contract.

22 **A.** Uh-hmm.

23 **Q.** Just, can you confirm that certainly
24 you were not asked to agree to the buildings being
25 built by anybody other than Works & Engineering.

1 **A.** You are asking if I was asked or...

2 **Q.** Yes, asked to give consent to the --

3 **A.** The buildings being built? There were
4 emails, and I did not find them when I was reviewing
5 this morning, that were asking about various things
6 regarding BEDC.

7 **Q.** BECL?

8 **A.** Yeah.

9 **Q.** Yes.

10 **A.** So I can't recall whether I was asked
11 specifically about them being built by outsider. I
12 know if there were various questions that were being
13 asked about things being outside of the norm for that
14 project.

15 **Q.** We will look at the correspondence in
16 a minute, but specifically, you may or may not recall,
17 BECL, the company, ended up becoming the project
18 manager for that construction.

19 You were never asked to give consent to that?

20 **A.** I can't recall -- I would have to go
21 to specific documents -- if I was or not.

22 **Q.** We'll we can have a look at that.

23 And, well, maybe we should -- we can have
24 a look at that now. If you go to Tab 9, page 170,
25 we'll start off with the criticism which the Auditor

1 General makes in relation to this project.

2 Tab 9 is the tab dealing with
3 Bermuda Emissions. Those are the documents relating to
4 it. Could I ask you to go to page 170.

5 **A.** Yes.

6 **Q.** And you will see at page 170 is part
7 of the special report by the Auditor General in
8 relation to Bermuda Emissions. And if you look at the
9 last full paragraph, you see that the Auditor
10 General says:

11 "Although the Accountant General went
12 on to state that 'typically experts in
13 the field will review the estimates to
14 ensure three courts are comparing
15 'apples and apples,' the
16 Accountant General failed to recognise
17 the need to follow an open tender
18 process."

19 [As read]

20 **THE CHAIRMAN:** Mr. Hargun, would it be
21 better, perhaps fairer to the witness, to begin at the
22 top of this page, "This proposal was referred to the
23 Accountant General."

24 **BY MR. HARGUN:**

25 **Q.** Certainly, yes. Do you have that

1 page, Mrs. Hayward?

2 **A.** Yes, I was looking for -- I made notes
3 in my --

4 **Q.** It is fairer to you if I start
5 earlier: Look at the second paragraph.

6 "This proposal was referred to the
7 Accountant General, who suggested that
8 a detailed business case needed to be
9 made to support the sole-sourcing of the
10 satellite facilities construction
11 contracts. On March 8, 2006, BECL
12 submitted a letter to the
13 Accountant General explaining the
14 reasons why they believed CCCL -- that's
15 Correia Construction -- should be chosen
16 to construct the satellite facilities.
17 As part of their analysis, BECL compared
18 CCCL's construction cost estimates to
19 two cost estimates prepared by two
20 independent construction consulting
21 firms."

22 Now, just pausing there: The reason why all
23 this is going on is because there hadn't been an open
24 tender. Correia Construction were just selected as the
25 sole contractor, and there had to be justification as

1 to why that procedure was adopted, and it's in that
2 context, you come into the picture and there is
3 correspondence with you?

4 **A.** Uh-hmm.

5 **Q.** And then the next paragraph:

6 "In an April 10th, 2016 email to the
7 Ministry of Tourism and Transport's
8 controller, the Accountant
9 General concluded that BECL was in
10 compliance with the Financial
11 Instructions because BECL obtained three
12 quotes -- one, from CCCL, and the other
13 two from the two construction consulting
14 firms. However, our audit reveals that
15 the consulting firms did not bid on the
16 satellite construction contracts.
17 Instead, both firms were engaged by BECL
18 to assess the reasonableness of the
19 construction rates used by CCCL.
20 In our view, these two assessments
21 cannot, therefore, be considered
22 legitimate bids for the purposes of
23 Financial Instructions, which require
24 a full and open tender process.
25 Although the Accountant General went

1 on to state that, 'Typically experts in
2 the field will review the estimates to
3 ensure that three quotes are comparing
4 "apples to apples," the
5 Accountant General failed to recognise
6 the need to follow an open tender
7 process. It is important to note that
8 the inability of the
9 Accountant General to bring this project
10 back in-line with the Financial
11 Instructions can somewhat be explained by
12 the pressure exerted on the
13 Accountant General to just make things
14 -- 'just make it happen.'"

15 [As read]

16 And I will come back to that quotation in
17 a moment.

18 "The desire to openly tender the
19 satellite facilities building
20 construction contracts was confirmed, in
21 part, by Cabinet's approval in May 2005
22 to move ahead with the construction of
23 the two satellite sites, following an
24 'open tender process.' I question why
25 the Permanent Secretary in the Ministry

1 of Tourism and Transport ignored the
2 direction of Cabinet."

3 Now, there seem to be a degree of criticism
4 by the Auditor General in relation to the role which
5 you played. The Auditor General Appears to be under
6 the impression that you, in effect, approved the
7 procedure which was adopted. And I think before I ask
8 you the questions, let me show you your response to
9 that criticism by the Auditor General, and it's in the
10 same tab. I ask you to go to page 136, because you
11 were asked to comment on the draft of the report,
12 Mrs. Hayward, were you not?

13 **A.** Yes.

14 **Q.** And you will see at page 136 where you
15 say -- this is an email from you, 16 July, 2010, to the
16 Auditor General, Mrs. Matthews, you say:

17 "Good day, Mrs. Jacobs Matthews. In
18 regards to the draft special report on
19 'Government's management of a Motor
20 Vehicle Safety and Emissions Testing
21 Programme' dated July 3, 2010, I provide
22 the following points of clarification:

23 1) On page 8 it is noted 'that

24 April 2006: The

25 Accountant General indicates that BECL

1 is in compliance with Financial
2 Instructions as BECL obtained three
3 quotes on the cost of satellite
4 facilities.' Please see the email
5 correspondence included below (in
6 italics) to the then controller, Julie
7 Grant."

8 Julie Grant was the controller at Ministry of
9 Transport?

10 **A.** Yes.

11 **Q.** (Reading):

12 "In that email, I noted it appears they
13 satisfied Financial Instructions, but
14 I went on to say that I did not see the
15 supporting information attached. I also
16 added that experts should have reviewed
17 the estimates to ensure that quotes were
18 proper/comparable. You will also note
19 I then indicated that I am not an expert
20 in this area, and as such could not
21 ascertain if the estimates are
22 sufficient, and that the financial
23 instruction requirement would be met if
24 there was documentation provided.

25 Please note that this email was provided

1 to Mike MacPhee and he came to interview
2 me regarding the review."

3 [As read]

4 Now, why were you involved in this process,
5 Mrs. Hayward?

6 **A.** There was question from -- and, again,
7 I'm trying to remember or recall, assuming from back
8 then that because there was, I guess, question about
9 how the process was moving forward that they wanted to
10 get some comfort that "they", meaning the department
11 that was responsible for this Tourism and Transport,
12 comfort that they could get approval or buy in or
13 confirm that they were following Financial Instructions.

14 **MR. BRADSHAW:** Who within the department was
15 reaching out to you?

16 **THE WITNESS:** And I'm trying to remember
17 I think there were meetings with Mr. Horton,
18 Mr. Telemaque and various account officers in
19 the department --

20 **MR. BRADSHAW:** Horton in Works & Engineering,
21 I think.

22 **THE WITNESS:** Yeah.

23 **BY MR. HARGUN:**

24 **Q.** Perhaps I can show you an email that
25 might help you. If you go to page 28 in the same

1 binder, in the same tab, you will see the second email
2 on that page, Mrs. Hayward, is an email from Brian
3 Walker, who is the estate surveyor. It is addressed to
4 Mr. Telemaque and others, including Julie Grant and
5 you.

6 Do you see that, you are the last recipient?

7 **A.** Yes.

8 **Q.** And it says:

9 "Further to my email of 10 February and
10 subsequent meeting with Correia/BECL..."

11 Correia are the sole construction contractor.

12 "... and the Accountant General, Monday,
13 20th February, there seems to have been
14 little movement with this project. Just
15 to summarise, as far as I am aware, to
16 take this forward, we need the
17 following: Something in writing from
18 the Accountant General stating the
19 building process can be done by Correia
20 without a tender process due to the
21 specialist nature."

22 **A.** Uh-hmm.

23 **Q.** So I think what is happening, and tell
24 me if you agree, Correia Construction was selected
25 without an open tender, there was a degree of unease as

1 to whether that was the appropriate procedure, so they
2 were looking for a degree of comfort from you, as the
3 Accountant General, that that was acceptable. Do you
4 remember that?

5 **A.** Yes, that makes -- yeah.

6 **Q.** And it is in that context that I think
7 they wrote letters to you explaining why it made sense
8 that Correia Construction, as the sole contractor,
9 would be acceptable in accordance with the Financial
10 Instructions. Do you recall that?

11 **A.** Yes.

12 **Q.** So they were, in effect, seeking
13 a waiver from you to the extent that there was any
14 infringement of the Financial Instructions that, can
15 you, the Accountant General, confirm that this is
16 acceptable; do you remember that?

17 **A.** Yes.

18 **MR. BRADSHAW:** Could you just clarify the
19 "they"? Could you just clarify who the "they" was?

20 **BY MR. HARGUN:**

21 **Q.** That would be -- I think subsequently
22 you received correspondence from Entech. Do you
23 remember Entech?

24 **A.** Yes.

25 **Q.** That was one of the companies which

1 was --

2 **A.** Involved.

3 **Q.** -- which was instructed by BECL, and
4 let me just see -- if I find the letter, I'll come back
5 to you, but let me take you back to your response to
6 the Auditor General, back to page 137. And we looked
7 at page 136, the first email, and, secondly -- the
8 second email is the one which you referred to about
9 where you were writing to Julie Grant, the
10 controller -- yes?

11 **A.** Yes.

12 **Q.** And then you see the handwritten notes
13 on page 137, August 17, 2010, meeting with Joyce
14 Hayward, Heather Matthews and Michael MacPhee. Do you
15 remember that meeting?

16 **A.** It is vague but, yes, I remember.

17 **Q.** Vague. And look at the first
18 handwriting.

19 "The Accountant General stated that the
20 ministerial controller said to her 'make
21 it happen.'"

22 Do you see that phrase?

23 **A.** Yes.

24 **Q.** What's that reference to,
25 Mrs. Hayward?

1 **A.** In a discussion with Ms. Grant she had
2 explained that they needed to move forward on this
3 as quickly as possible, so that she was being
4 instructed that she needed to make it happen, that we
5 needed to figure out how to put things in place to get
6 this to move forward.

7 **Q.** And she was being instructed to make
8 it happen by whom?

9 **A.** I am not sure. I see Mr. Telemaque is
10 cc'd on this email, so it may have been, but I'm not
11 sure who specifically would have said that.

12 **Q.** So, I mean do I understand it that
13 there was -- there is some urgency in getting this
14 project moving?

15 **A.** From what I understood, yes.

16 **Q.** And so that the Ministry was looking
17 for ways to move forward with the sole contractor?

18 **A.** Or with the project, yes.

19 **Q.** With the project, yes.

20 **A.** Uh-hmm.

21 **Q.** And the next handwritten note, it
22 related to the already decided-upon construction
23 process, and that's at the already started construction
24 process was Mr. Correia as the sole contractor, yes?

25 **A.** That I'm not sure what if he's

1 referring to something I'm saying or something he
2 thought was the case.

3 **Q.** Yes.

4 **A.** I'm not sure.

5 **Q.** And just to complete that. The third
6 handwritten comment is:

7 "She stated..."

8 And I'm assuming it's you, but please
9 confirm:

10 "She stated that she felt the Ministry
11 of Transport and Tourism had already
12 made up their minds on the sort of
13 process that would be followed."

14 Yes?

15 **A.** Yes, that probably was myself.

16 **Q.** And what were you saying then?

17 **A.** That they knew what they wanted to do
18 or how they wanted to do what they wanted to do, and so
19 they were trying to get that to move forward.

20 **Q.** Yes. And, as I say, you wrote this
21 email to Julie Grant, the controller, at Ministry of
22 Transport. Were you giving your blessing to this
23 procedure by writing that email?

24 **A.** No, well, I said I'm not an expert, so
25 I can't ascertain if these estimates are sufficient.

1 It appears Financial Instructions have been met, if
2 there is documentation provided.

3 Q. Yes.

4 A. And so I was letting them know I could
5 not make that determination. I'm not the Accounting
6 Officer in the area, and I'm not an expert on this.

7 And at the time I did not know the
8 relation -- the interrelationships between Correia and
9 BECL and Entech and who was who and all of that, but if
10 it was one company or not. What I was provided made it
11 look like they were different entities. So that's why
12 I used the words "appear" and it seems like and then
13 qualified it to say, "I'm not an expert," but from what
14 you're giving me, if this was -- if the documentation
15 was provided and given to the experts, then it would
16 look like it would follow Financial Instructions, but
17 that would still have to be done.

18 Q. And did you know that these were not
19 open bids at the time?

20 A. No, I wasn't aware of how that whole
21 process -- again, I'm thinking the Accounting Officers
22 and the experts involved were doing that due diligence,
23 and so hence, that's where I said I needed to call
24 Julie Grant to find out if she was making sure all of
25 those things were in place with those experts.

1 **Q.** Did you know when they were asking you
2 to confirm that this was all right that they had
3 already selected Correia Construction?

4 **A.** No, I was not aware of that.

5 **THE CHAIRMAN:** Did you establish whose
6 handwriting this note is in?

7 **BY MR. HARGUN:**

8 **Q.** Can you help us, Mrs. Hayward?

9 **A.** It's not mine, so I don't know for --

10 **Q.** Presumably it is one of the people
11 that attended the meeting, which was with
12 Mrs. Matthews.

13 Who else came with Mrs. Matthews; do you
14 remember?

15 **A.** Well, my meeting actually was just
16 myself and Mr. MacPhee. Mrs. Matthews wasn't in that
17 meeting.

18 **Q.** And Mr. MacPhee is?

19 **A.** Was one of the persons in the Auditor
20 General's department.

21 **Q.** So is it likely to be Mr. MacPhee's
22 handwriting?

23 **A.** I would -- since the memo was to
24 Ms. Matthews, and, again I'm assuming, I don't know --
25 that it would have been her handwriting, I would guess,

1 because she's saying meeting with Joyce Hayward -- and
2 actually I could be wrong. Maybe I'm remembering this
3 incorrectly, because whoever wrote this saying, "Joyce
4 Hayward and Heather Matthews and Mike MacPhee," I am
5 remembering a meeting with Mike and myself, and so I'm
6 not recall a meeting in August with Ms. Matthews, but
7 that could have been. But, again, I'm not sure --

8 **Q.** So it is likely to be one of the
9 people who attended the meeting?

10 **A.** It could have been, because I had lots
11 of meetings with auditors. We worked together quite
12 often.

13 **THE CHAIRMAN:** And the ministerial controller
14 referred to was Julie Grant; is that right?

15 **THE WITNESS:** Yes.

16 **THE CHAIRMAN:** And what is the status, which
17 Ministry was she connected with?

18 **MR. HARGUN:** Transport. Minister of
19 Transport.

20 **MR. BRADSHAW:** And I believe you said that
21 the Ministry of Transport and Tourism was trying to get
22 the project moved forward, correct?

23 **THE WITNESS:** From my recollection, yes.

24 **MR. BRADSHAW:** And your understanding of that
25 was because of the conversation with Julie Grant or

1 because of something else?

2 **THE WITNESS:** From the conversations with
3 Julie, from my -- again, from my recollection.

4 **MR. BARRITT:** I have a question. Who are the
5 experts that you are referring to when you give your
6 evidence today and back then, and...

7 **THE WITNESS:** I wouldn't have specific
8 titles. In each department or ministry there would be
9 the technical officers who were familiar with
10 buildings, building codes, so those persons who would
11 do the certifications and certificates and actually
12 work with the persons on the ground, so when they did
13 site inspections, and those kinds of things, those
14 technical engineers and those types of persons.

15 **MR. BARRITT:** You would expect those people
16 to reside in the Ministry of Works & Engineering; would
17 you not?

18 **THE WITNESS:** Yes.

19 **MR. BARRITT:** Not in the Ministry of Tourism
20 and Transport?

21 **THE WITNESS:** Correct, except what I was
22 informed, again, from recollection, from memory was
23 that there were certain things with these emissions
24 that were transport-related that those persons had
25 knowledge of.

1 **MR. BARRITT:** That which persons?

2 **THE WITNESS:** That persons in the Transport
3 Department, and, again, I'm not sure which persons but,
4 that it was more transport-specific.

5 **MR. BRADSHAW:** Sorry, who was informing you
6 of this? Who was telling you all this stuff because...

7 **THE WITNESS:** I'm trying to remember whether
8 it was Julie or -- and I can't recall for sure. It may
9 have been Julie and/or some of the meetings from --
10 because I think there was one meeting again with
11 Mr. Horton and the persons from Correia --

12 **MR. BRADSHAW:** Okay.

13 **THE WITNESS:** -- that were -- and, again
14 I said, "I'm an accountant, I'm not an Emissions
15 person, I'm not a building inspector. I need you all
16 to tell me that you've done your due diligence," but
17 the -- but the -- from what I understood, there were
18 experts for this type of emissions, and you're right,
19 there would be experts in both Works and, I would
20 think, Tourism or Transport, rather.

21 **MR. BRADSHAW:** One other question I have as
22 well, is I think I've heard you mention Mr. Horton
23 a couple of things. My understanding is he's with
24 Works & Engineering, but that this whole thing has been
25 delegated, correct me if I'm wrong, to Tourism and

1 Transport. So why was he involved if it had been
2 delegated --

3 **THE WITNESS:** It seemed like they were
4 working together. There was the introduction, and,
5 again, it seems like there was a meeting that I was
6 asked to attend, and I thought Mr. Horton had asked me
7 to attend that meeting, so I assumed they were working
8 together, the Ministries.

9 **MR. BRADSHAW:** Okay.

10 **BY MR. HARGUN:**

11 **Q.** I think you were asked how it all
12 started, at least I think Mr. Bradshaw asked. Perhaps
13 I can help you with that.

14 If you go to page 14 in the same tab, you
15 will see how this episode started.

16 There you will see a letter dated 7th of
17 February of 2005 from the Ministry of Works &
18 Engineering as signed by Mr. Brian Walker, the chief
19 surveyor -- yes?

20 **A.** Yes.

21 **Q.** And that's addressed to you,
22 Mrs. Hayward, in your capacity as the
23 Accountant General?

24 **A.** Yes.

25 **Q.** And there they say:

1 "Further to a discussion with Philip
2 Holder."

3 Philip Holder was, and may still be, in the
4 Chambers, Attorney General's Chambers, yes? Do you
5 remember that, Philip Holder?

6 **A.** Vaguely, but, yes, okay.

7 **Q.** (Reading):

8 "I am writing to ask for your advice and
9 direction regarding the above. Two
10 satellite emission testing facilities
11 are proposed at either end of the
12 island, one at Rockaway Road,
13 Southampton, and one at Ramey Street,
14 Kindly Fields, St George's. These
15 stations are to support the main TCD
16 unit in Hamilton. The whole contract
17 was approved by Cabinet in June 2003
18 (Conclusion 23(03)2). At that time,
19 Bermuda Emissions and Correia
20 Construction were to supply the up and
21 running facilities with Government
22 buying the facility and equipment back
23 from them at an agreed price. However,
24 due to advice from the Attorney
25 General and with reference to financial

1 regulations, it was decided that this
2 was the most cost-effective way to
3 proceed. This was due to proposed works
4 not being tendered for, in particular,
5 the construction of the buildings and
6 therefore not knowing if a fair price is
7 obtained. The whole contract is
8 essentially to be in three separate
9 parts. 1) design, 2), construction,
10 and, 3), equipment supply and
11 installation. It is suggested that due
12 to the specialised nature of the
13 contract, Bermuda Emissions prepare and
14 deliver, on a consultancy basis, all
15 specifications for works and for all
16 stages. In order to comply with
17 financial regulations, it is proposed
18 that the construction phase be tendered,
19 although this preparation has raised
20 concern by this ministry's purchasing
21 section. This is because Correia
22 Construction and Bermuda Emissions have
23 directors who are partners in both
24 Correia, and Correia would be tendering
25 for the work. The buildings to be

1 constructed are to be a simple
2 construction and it is fair to say that
3 several contractors on the island could
4 do the work. However, I have been
5 informed the equipment to be installed
6 into those buildings is an integral and
7 specialist part. Equipment installation
8 and the construction of the buildings
9 can be done in separate phases but this
10 will take longer. As Correia
11 Construction have been working with
12 Bermuda Emissions on this project for
13 several years at this stage would be
14 expedited much quicker if they were the
15 chosen contractor. The question I am
16 asking is --

17 And this is why you get involved --

18 "... could it be argued that the
19 construction of the building and the
20 installation of the equipment are all
21 one specialist entity thus allowing them
22 to deliver this and effectively negating
23 normal financial regulations? If so,
24 building costs from Correia, which would
25 be checked by a third-party, say

1 government architects, to make sure
2 a fair price is obtained."

3 Call me at this number if you would like to.

4 And that's Brian Walker, the chief surveyor,
5 from the Ministry of Works & Engineering.

6 So you see what's happening is that they are
7 concerned that the Financial Instructions haven't been
8 complied with because an open tender hasn't been
9 carried out in relation to the construction of two
10 buildings, in circumstances where it is accepted by
11 Works & Engineering that a number of contractors could
12 actually build those buildings.

13 And they're asking you, as the
14 Accountant General, whether you accept that it is
15 a fair argument that because the installation in those
16 buildings is of a specialised nature, whether the
17 construction and installation could be considered just
18 one project. Do you see that?

19 **A.** Uh-hmm.

20 **Q.** And it's in that context, in answer to
21 that question, you write the email, which you do to
22 Julie Grant eventually -- there are further
23 exchanges -- which you find at page 136, and which is
24 the email that we looked at -- yes? And you say that
25 that is a tentative email. You are not giving

1 permission. You are simply expressing a view?

2 **A.** Right. Well, there was the prior
3 email in response to that on the next page to
4 Mr. Walker --

5 **Q.** Yes.

6 **A.** -- where I said:

7 "It doesn't appear that there is a case
8 being made to contravene Financial
9 Instructions."

10 And that's I guess where lots of things began
11 to go back and forth as to whether it was, whether it
12 wasn't. And, again, as you said, yes, with the email
13 to Julie, what does it appear for me as an accountant,
14 versus someone who is an expert in the field...

15 **MR. BRADSHAW:** So your email to Mr. Walker
16 said it does not appear that there is a case to be made
17 to...

18 **THE WITNESS:** At that time I didn't have
19 enough to say that it appears.

20 **MR. BRADSHAW:** Sorry, I have it right in
21 front of me.

22 **BY MR. HARGUN:**

23 **Q.** Mrs. Hayward, were you aware that
24 based upon your email to Julie Grant, they proceeded to
25 engage -- well, Correia Construction had already been

1 engaged, but they proceeded to instruct Correia
2 Construction to build those two constructions --
3 construction sites as a sole contractor?

4 **A.** I don't recall. I don't recall. I'm
5 not sure whether --

6 **MR. BRADSHAW:** Is that BECL?

7 **BY MR. HARGUN:**

8 **Q.** BECL. Were you aware that BECL was
9 taking your email to Julie Grant as, in effect, your
10 permission?

11 **A.** I don't think I was aware of that.

12 **Q.** So when you received the Auditor
13 General's report with that criticism, what did you do?

14 **A.** This Auditor General's report?

15 **Q.** Yes, with the passages we looked at.

16 **A.** Because I think I'm trying to remember
17 which Auditor's report is which.

18 **Q.** I mean the passage which I showed you
19 at page 170.

20 **A.** Oh, yeah, but, I'm sorry, ask your
21 question again. My apologies.

22 **Q.** I said: What did you do, if anything,
23 when you read that report?

24 **A.** That's where we had the meeting, and
25 I responded to Ms. Matthews, or Heather, with my

1 response that they may have looked at it that I was
2 giving permission or that I was not aware of a tender
3 process, and I think there is a reply somewhere, but
4 that there wasn't -- that we didn't know that there was
5 a need for an open tender process.

6 There was a -- I won't say a fine line, but
7 it was that we would rely again on the experts to
8 determine whether that process had actually been done
9 or not based on the parties and what they were -- what
10 was provided.

11 So as me not being an expert in the field,
12 I would -- I did not understand at that time what they
13 were referring to as a tender process versus a quote or
14 an estimate or the various things.

15 So, as an accountant, I was -- they were, it
16 appeared, asking me to look at something on a technical
17 side with construction and so forth, versus
18 an accounting side.

19 **Q.** So your position is that your email
20 wasn't giving consent, as such?

21 **A.** Correct.

22 **Q.** So when you see that criticism in the
23 Auditor General's reports, in effect, saying that,
24 rightly or wrongly, BECL took your email as consent,
25 did you consider whether you should take any action in

1 relation to not authorizing further payments?

2 **A.** That would have been for the Minister
3 of Finance and/or Financial Secretary. So those kinds
4 of discussions would have occurred with a financial
5 secretary, and they would make those determinations,
6 because of the Government's risk involved with moving
7 ahead or not moving ahead.

8 So those were the kinds of things the
9 financial secretary would have had to make
10 a determination on.

11 **Q.** But my impression was it was the
12 Accountant General's function at the end of the day
13 whether to authorise payments?

14 **A.** We take authority from the Minister of
15 Finance through the Financial Secretary. That's our
16 reporting chain. So there are recommendations that
17 I can make, there is information that the Financial
18 Secretary is aware of, and privy to, but they make the
19 ultimate decisions. I wouldn't have that authority to
20 stop work for anything on the island.

21 **Q.** Did you take it up with the Minister
22 of Finance that your email appears to have been taken
23 as consent when it wasn't intended to?

24 **A.** There were meetings about -- I never
25 meet directly with the Minister of Finance on things

1 like that.

2 The chain of authority is that the civil
3 servants don't get direction directly from Ministers,
4 but I would take it to the Financial Secretary. So,
5 whenever an auditor's report is done, there is
6 a discussion with the Financial Secretary. So there
7 were discussions with the Financial Secretary about the
8 report and how we respond to the Auditor General's
9 report, and we take direction from the Ministry of
10 Finance through the FS.

11 **MR. BRADSHAW:** For me, I'm a bit confused.
12 My understanding is this email was taken as essentially
13 a waiver, and my understanding was that sometimes -- or
14 my expectation would be that waivers would actually be
15 in writing, not just necessarily in just an email, and
16 I'm not sure if that is appropriate or not. But if
17 this was taken as a waiver, and you didn't intend for
18 it to be taken as a waiver, I guess my question is: Did
19 you -- and there is a lot of money involved here, and
20 you are the Accountant General, did you then say, let's
21 pull the brakes up because there is something that has
22 gone awry and, you know...

23 **THE WITNESS:** Well, and, again, from my
24 recollection, these things are at a different level in
25 that the contracts are aware that we are, as Accountant

1 General's department, sitting in the position of saying
2 the Financial Secretary, the Permanent Secretaries of
3 both Works, Ministry of Tourism and Transport are all
4 aware of what's going on, and so when these kinds of
5 things happen, we go to our up line and say, are you
6 okay with this? Has this been agreed at the Cabinet
7 table? And they would tell us yes or no, or that
8 they're handling it. So in these cases the Financial
9 Secretary would let me know that that was being handled
10 at that level.

11 **MR. BRADSHAW:** Do they document it? Is there
12 any documentation around that where they said...

13 **THE WITNESS:** I would -- I'm assuming that --
14 well, no, I know there are CSE, it used to be called
15 Cabinet CSE meetings, Civil Service Executive.

16 **MR. BRADSHAW:** Yes.

17 **THE WITNESS:** So I'm taking it that they
18 would have been documented at those points, but those
19 are things that we are often not privy to at my level,
20 but I would get direction from the FS. So if there was
21 a -- so he was aware of the concerns and the issues,
22 but, from my understanding, and again recollection,
23 that they were aware of whatever concerns or agreements
24 had been made, and they had been ratified or agreed at
25 the higher levels.

1 **MR. BRADSHAW:** But for me, my challenge is
2 I'm trying to put myself in your shoes. It is my name
3 being attached to something that I would need to know
4 what's going on. Like you know I understand that
5 people are telling me stuff, but I want to see
6 something, you know. I mean just to be fair, you know.

7 **THE WITNESS:** And I wouldn't -- as I said,
8 I would not be privy to Cabinet conclusions.

9 **MR. BRADSHAW:** Fair enough.

10 **THE WITNESS:** Even though there were times
11 that things would be passed down in Cabinet
12 conclusions, I would have to just be told that, yes,
13 you can move forward with this, and I would have to
14 accept that from my manager.

15 **MR. BRADSHAW:** I have one more question,
16 please. So I just wrote this down because I was
17 thinking, trying to put myself in your shoes, saying so
18 did you feel there it would have been feasible for you
19 to say -- because essentially what's being said is you
20 were in a very -- you were in a very, very important
21 position, right, as Accountant General. Would it have
22 been feasible for you to say "you know what, folks,
23 this isn't my area of expertise, I can't sign off on
24 it?"

25 I mean understand that you said let me ask

1 the technical officers, of whomever, but if you just
2 didn't feel comfortable, would it have been
3 realistically feasible for you to say "I can't sign off
4 on this right now," or would there have been pressure
5 put on you to make you sign off on this? Can you talk
6 to that or --

7 **THE WITNESS:** I would say that those kind of
8 cases, again, I would take to the Financial Secretary,
9 and they would deal with it between PSs and FSs.

10 **MR. BRADSHAW:** And who was Financial
11 Secretary then?

12 **THE WITNESS:** I'm trying to remember if it
13 was Donald Scott or Anthony Manders because I can't
14 recall actually, I apologize, as to who was in the seat
15 at that time. But it was similar with both of them,
16 that I would take it to them. They would -- either one
17 of them -- when I had concerns or issues, and they
18 would let me know that they would address it with their
19 colleagues, or had addressed it with their colleagues.
20 And quite often there were things that were done at
21 various other levels and we would be instructed as to
22 how to move forward and operate.

23 So if there were concerns with the Financial
24 Secretary, he would take them, or she would take them,
25 if there was a she, to the Minister of Finance, and

1 make sure that at that level, their colleagues were
2 informed.

3 At times I would be informed that, yes, this
4 went all the way to Cabinet, there was a Cabinet
5 conclusion, or it was addressed at CSE, and they got
6 comfort. So I would take my concerns to my Financial
7 Secretary. Sometimes there were emails that I would
8 send to document to cover myself -- of course I don't
9 have any of those now -- so that is how the chain of
10 command would work.

11 **MR. BARRITT:** I was going to ask: Given all
12 that happened in this particular case with respect to
13 BECL and what you've been put to, and the criticism of
14 the Auditor General, you obviously continued making
15 payments authorised, which in your job is under the
16 *Public Administration of Payments Act* is to make sure
17 that everything is done according to either Financial
18 Instructions or direction of the Minister of Finance.
19 What, in fact, happened in this particular case that
20 gave you the comfort that you needed to then continue
21 making payments?

22 **THE WITNESS:** I have to say that I'm not sure
23 when this building was finished, I'm sorry. Because
24 quite often the Auditor General's report come out after
25 things are already done.

1 **MR. BARRITT:** Afterwards.

2 **THE WITNESS:** So this report came out in
3 2010. I'm thinking the building was probably done by
4 that point, but I don't know for sure. But when the
5 questions come up from -- because I would say we met
6 quite often with the Auditor General on many different
7 things. We had a good working relationship.

8 If she brought things to my attention -- and
9 prior Auditor General, Larry Dennis, brought things to
10 my attention, we would work on them, discuss them. If
11 there were concerns we would then go to the FS and the
12 Permanent Secretaries, Accounting Officers to make sure
13 they were aware and try to mitigate or make sure there
14 were things put into place to make sure that we could
15 continue on, so, that's...

16 **MR. BARRITT:** You're saying that you think
17 that happened -- you think that probably happened in
18 this case?

19 **THE WITNESS:** Oh, in this case, I'm saying
20 I'm not sure because I'm not -- I don't even remember
21 when the building was finished, and if the report was
22 done after the building was finished or not, because,
23 again, things were going on, as you say, the tendering
24 was not done or done.

25 The Correia was being paid even before this

1 report was finished, or looked into.

2 **MR. BARRITT:** Do you ever recall in all your
3 years as Accountant General getting a direct
4 instruction from the Minister of Finance, either
5 directly or through the FS saying "make these
6 payments"?

7 **THE WITNESS:** No.

8 **MS. LUCK:** I have some general questions
9 about Financial Instructions. I don't know whether you
10 wanted to move on.

11 **THE CHAIRMAN:** Well, I'd just like to ask one
12 more.

13 **MR. HARGUN:** Please do.

14 **THE CHAIRMAN:** Could we look again at
15 pages 136 and 137, please.

16 **THE WITNESS:** Yes.

17 **THE CHAIRMAN:** Which I'm just finding the --
18 and it goes on to 138. It seems to me, if we start at
19 the top of page 136, that is to the Auditor
20 General from you?

21 **THE WITNESS:** Yes.

22 **THE CHAIRMAN:** And then we've got one
23 paragraph which is one, then there is an original
24 message --

25 **THE WITNESS:** Uh-hmm.

1 **THE CHAIRMAN:** -- which is from you to Julie
2 Grant. And then on the opposite page it is headed
3 "memo," and you can see what we've got. I think the
4 position may be this, but you can tell me if it's right
5 or not. The top one on page 136 leads on to the bottom
6 half of 137 --

7 **THE WITNESS:** Yes.

8 **THE CHAIRMAN:** -- is that right?

9 **THE WITNESS:** Yes, it is.

10 **THE CHAIRMAN:** And the top of 137 leads on
11 from the bottom part of 136; is that right?

12 **THE WITNESS:** Yes, and then it went from one,
13 and one is continued and then two.

14 **THE CHAIRMAN:** And in fact, the bottom of 137
15 goes on to 138?

16 **THE WITNESS:** Yes.

17 **THE CHAIRMAN:** And now on that basis,
18 there's, first of all, your message at the bottom of
19 136 which was the 10th of April, 2006. Are you with
20 me?

21 **THE WITNESS:** Uh-hmm.

22 **THE CHAIRMAN:** And that leads to the top of
23 page 137, and that's the email which concludes:

24 "As I am not an expert..." et cetera.

25 But that's the email which rightly or wrongly

1 was taken as your approval; is that right?

2 **THE WITNESS:** I -- hearing you all tell me
3 that this was taken as my approval, so...

4 **THE CHAIRMAN:** That's the one we're talking
5 about?

6 **THE WITNESS:** That's the email. Yes, that is
7 all the same email.

8 **THE CHAIRMAN:** When we go to page 137, there
9 is the further complication, there is this manuscript
10 note. I think you accept -- or there may have been
11 a meeting at which all three of you were present, Joyce
12 Hayward, Heather Matthews and Michael MacPhee, and you
13 don't know whose handwriting this is?

14 **THE WITNESS:** Correct.

15 **THE CHAIRMAN:** That's August 17th, 2010.

16 **THE WITNESS:** Uh-hmm.

17 **THE CHAIRMAN:** I think we've seen earlier
18 that you saw a draft of the special report in July,
19 2010, and the report itself is published in October.
20 So this is -- this manuscript note is of a meeting
21 which took place at a time when you knew what was
22 coming in the report, but the report itself hadn't been
23 published. You'd been given a chance to comment on it?

24 **THE WITNESS:** On findings that -- a lot of
25 the commentary often wasn't provided, but the findings

1 were discussed.

2 **THE CHAIRMAN:** And is it fair to say that,
3 according to this note, when you were asked about the
4 draft financial report, basically what you said is "As
5 I said at the time, I wasn't an expert and I was told
6 that I had to make it happen?"

7 **THE WITNESS:** That's what was discussed in
8 the meeting.

9 **THE CHAIRMAN:** Yes. You are accepting that
10 that's an accurate note of what happened at the meeting
11 in August 2010?

12 **THE WITNESS:** That the financial controller
13 was asked to make it happen.

14 **THE CHAIRMAN:** Yes, yes. Well, the
15 Accountant General, that was you, stated that the then
16 Ministry controller, who was then --

17 **THE WITNESS:** Ms. Grant --

18 **THE CHAIRMAN:** -- Julie Grant -- said to her,
19 to you, "Make it happen"?

20 **THE WITNESS:** Right.

21 **THE CHAIRMAN:** That's right --

22 (Simultaneous speakers - unclear)

23 **THE WITNESS:** But she was -- I wouldn't say
24 she was telling me to do that. She was referring to
25 the context in what --

1 **THE CHAIRMAN:** Yes.

2 **THE WITNESS:** -- was being worked with.

3 **THE CHAIRMAN:** And just one more question.

4 Looking at your original email of the 10th of April,
5 2010 --

6 **THE WITNESS:** Yes.

7 **THE CHAIRMAN:** -- you begin by -- did you say
8 that you'd mentioned this to the Financial Secretary
9 before you wrote it?

10 **THE WITNESS:** The -- no, I won't say that
11 I said my -- talked to him about my email before
12 I wrote him, no.

13 **THE CHAIRMAN:** You did or didn't?

14 **THE WITNESS:** Did not, that I can recall.

15 **THE CHAIRMAN:** Because I noticed that it
16 begins, "I realise," it's written very much on the
17 basis of "I", and correct me if I'm wrong, I don't see
18 any suggestion here that you had spoken to the
19 Financial Secretary about this?

20 **THE WITNESS:** Correct.

21 **THE CHAIRMAN:** You wrote this on your own,
22 that one?

23 **THE WITNESS:** The email, yes.

24 **THE CHAIRMAN:** Yes. Thank you.

25 Thank you, Mr. Hargun.

1 **MS. LUCK:** Are you going to go on to another
2 section or can I just ask some general --

3 **MR. HARGUN:** Please do.

4 **MS. LUCK:** Just a couple of questions. When
5 the Auditor General's report is presented, obviously
6 you've had a chance to look at it, review, provide some
7 comments, but eventually it is produced in its final
8 form. Who owns the Auditor General's report within the
9 Civil Service in terms of making sure recommendations
10 are put into effect, changes occur?

11 **THE WITNESS:** That would be the -- as I would
12 see it, the Accounting Officer or the -- in this case,
13 the Financial Secretary, the Ministry head, so the
14 Permanent Secretaries and/or Financial Secretary for
15 Ministry of Finance.

16 So along with the Accounting Officers, the
17 actual ownership would be the Financial Secretary,
18 because whatever responses we would generate would have
19 to go to them before they go to the Auditor General.

20 **MS. LUCK:** But you didn't have this central
21 role, given that, in effect, as I think I heard you
22 say, that you met with the Financial Controllers within
23 all the departments, gave them updates and talked about
24 what they should be doing, you weren't the focal point
25 to make sure all those actions were being taken?

1 **THE WITNESS:** With Auditor General reports?

2 **MS. LUCK:** Yes.

3 **THE WITNESS:** No, I would be involved.

4 I would make sure I was aware. And, again, they
5 wouldn't always come to me. I would ask for them, but
6 the Permanent Secretary and Accounting Officer, head of
7 departments, would be the ones responsible to make sure
8 that those things were done. And as
9 financially-related, most of them, if they were
10 financially-related, which most of them were, the
11 Financial Secretary/Minister of Finance.

12 **MS. LUCK:** In the Auditor General's report
13 she talks about the fact that there was lack of
14 financial controls, and these heightened the
15 opportunity for non-conformance, fraud and
16 appropriation.

17 **THE WITNESS:** This is in which Auditor
18 General's report?

19 **MS. LUCK:** In the Consolidated Fund for 2010,
20 2011, and 2012.

21 **THE WITNESS:** Which was issued after I was
22 out of the office.

23 **MS. LUCK:** Right. But, in general, the
24 Auditor General talks about lack of control.

25 **THE WITNESS:** Uh-hmm.

1 **MS. LUCK:** How did you view that as the
2 Accountant General? In my mind, other than the
3 Financial Secretary, the most senior accountant within
4 the whole of the Civil Service?

5 **THE WITNESS:** There were lots of discussions,
6 both Auditor Generals and myself had throughout, so
7 we -- I thought both Auditor Generals were very aware
8 of what we were doing to put more controls in place.

9 And, you know, we re-established the Internal
10 Audit Department for just that purpose as well, which
11 started in the Accountant General's, under my purview,
12 and then moved into its own department. So we
13 recognised that things could just continue to get
14 better, and so that was open discussion between the
15 Auditor Generals and myself, the Financial Secretary.

16 **MS. LUCK:** So this concept of where the
17 Accountant General really checked signatories as
18 opposed to checking underlying support documentation
19 from the Ministries, was that not part of your
20 consideration in terms of improving controls?

21 **THE WITNESS:** Well, that's why the Office of
22 Procurement was established. That those supporting
23 documents were reviewed for things other than capital
24 contracts, because we could have that expertise. They
25 were things that we could review. But things that were

1 much more complex dealing with contracts, we didn't
2 have that purview, so that was allowed to be -- or was
3 delegated to responsibility within the departments, but
4 from my understanding after I left, as I was leaving
5 the Office of Procurement was set up for that purpose,
6 so there would be another set of eyes that were the
7 experts in contract, contract law, and all those kinds
8 of things, so that these kinds of things could be
9 reviewed.

10 **MS. LUCK:** In the meantime, things just
11 carried on as they had before, it rested within the
12 Ministry that was undertaking --

13 **THE WITNESS:** In the meantime before that --

14 **MS. LUCK:** Yes.

15 **THE WITNESS:** Yes, the Civil Service had been
16 operating that way for many years, and it was
17 identified that we could strengthen things.

18 **MS. LUCK:** We talked about -- I think in the
19 Auditor General's report we talk about the lack
20 timeliness of reconciliations around bank statements.

21 **THE WITNESS:** Uh-hmm.

22 **MS. LUCK:** And I know that that was a work in
23 progress, but there is no question, the lack of or the
24 timeliness around bank reconciliation makes -- allows
25 you to be exposed to fraud, and indeed that did happen,

1 didn't it?

2 **THE WITNESS:** I'm not sure what you are
3 referring to specifically in all of this or is that
4 just a general question?

5 **MS. LUCK:** In general. You will see in the
6 Consolidated Fund Auditor's Report she talks about the
7 lack of timeliness of bank reconciliations.

8 **THE WITNESS:** Yes. That had been discussed
9 with the Auditor General for the prior years as well.

10 **MS. LUCK:** And why hasn't it changed?

11 **THE WITNESS:** There were changes that had
12 been made all throughout. So some of the comments that
13 she makes, or "he" before, were not always that -- when
14 you look at our reference -- responses you will see
15 that we didn't always agree with how they worded what
16 they said, because they didn't quite often give us
17 credit for the changes that had been made. The fact
18 that a six-person team had been put into place to
19 address bank reconciliations, that wasn't mentioned,
20 even though it had been done in order to get bank
21 reconciliations in place.

22 The fact that we set up separate bank
23 accounts and put things in place so that they would be
24 easier to reconcile, and they had gotten much more
25 timely, so...

1 **MS. LUCK:** But fraud had occurred, during
2 your tenure?

3 **THE WITNESS:** Yes.

4 **BY MR. HARGUN:**

5 **Q.** Just a slightly different topic. We
6 discussed this issue of delegation, where
7 a responsibility for a particular works is transferred
8 from one ministry to another, specifically for
9 practical purposes from Works & Engineering to Ministry
10 of Transport and Tourism, both in relation to BECL and
11 the Heritage Wharf.

12 **A.** Uh-hmm.

13 **Q.** Did you ever question as to whether it
14 had been done properly?

15 **A.** That was not under our department.
16 That was the Ministry of Finance.

17 **Q.** Right. I mean did you -- so you were
18 not concerned as to whether it was -- you were not
19 concerned once you started receiving payment requests
20 from Ministry of Tourism to pay for Heritage Wharf, you
21 were not concerned as to whether there had been proper
22 delegation of that function from the Ministry of Public
23 Works?

24 **A.** I can't speak to that.

25 **Q.** What I'm asking: Did you think it was

1 part of your function that you should look into it,
2 and, if necessary, take advice?

3 **A.** I won't say that I didn't look into
4 it, but I -- again, that's not my -- under my purview.
5 Like I said, I would bring things to the attention of
6 the Ministry of Finance, and they would let us know the
7 rationale as to why things were done.

8 We -- I wasn't privy to all of the
9 complexities of everything that was going on. So, my
10 opinion was quite often -- as I say, I don't have my
11 emails now to submit to you to say the questions
12 I asked, many questions along the way, but the way they
13 were then handled were -- was outside of my purview.

14 **Q.** So --

15 **A.** So my job was to bring things to a
16 person's attention, and, as a qualified accountant, to
17 make sure that I got answers that I was comfortable
18 with that at least all of those questions had been
19 considered and answered.

20 **MR. BRADSHAW:** So did you look into this,
21 because you said you can -- correct me if I'm wrong.
22 You said you can't say you didn't look -- okay, simple.
23 Did you look into this?

24 **THE WITNESS:** I won't say I spent time
25 looking at who the experts are --

1 **MR. BRADSHAW:** No, no, just did you ask the
2 question?

3 **THE WITNESS:** I asked the questions, yes.

4 **BY MR. HARGUN:**

5 **Q.** And your view was that this was
6 an issue for the Minister of Finance?

7 **A.** Correct.

8 **Q.** Tell me -- you started answering it.
9 We are looking at the consolidated audit report, the
10 three years, but there had been earlier reports which
11 had been critical of the way payments had been made,
12 the way there had been non-compliance with Financial
13 Instructions over a period of time.

14 I mean sitting here today, what steps did you
15 take as a result of those audit reports in order to
16 remedy the perceived deficiencies?

17 **A.** Well, as had been noted, there had
18 been things that had happened. We were putting things
19 in place. Persons were being hired, were being
20 trained, a team of Financial Controllers.

21 I personally went out to do interviews to
22 hire people to bring them here to train others, and we
23 put a training management accountant programme in place
24 so that non-Bermudians could train Bermudians to take
25 on these roles that we needed to strengthen the

1 policies and procedures across the Government, and we
2 were putting things in place. It unfortunately doesn't
3 happen overnight, but those things were being put into
4 place.

5 **Q.** Was one of the issues just shortage of
6 resources in terms of manpower?

7 **A.** Yes, uh-hmm.

8 **Q.** And you left in 2013, you said. What
9 was the position then, in terms of manpower?

10 **A.** It was still being discussed, and we
11 actually had a review being done by -- I'm trying to
12 remember the name of the department. It changed a few
13 times. I guess it was under Human Resources, but
14 a staffing and source review was being done for the
15 Accountant General's office and across Government as to
16 how it should properly be structured.

17 We were looking at whether it should be more
18 centralized versus decentralized, what parts should be
19 centralized and decentralized. So there was still work
20 being done.

21 **Q.** Was it within your tenure when the new
22 computer system was introduced?

23 **A.** Yes.

24 **Q.** I mean, do you have a view on that as
25 to whether that has improved the position in terms of

1 controls?

2 **A.** When I was there, yes, it had
3 significantly, I'd say, improved controls.

4 **Q.** And in what way, would you say?

5 **A.** Because we then were able to receive
6 documents, one, more efficiently by them being scanned,
7 and we were requiring everything to be scanned, because
8 earlier I think you asked was it hard copied or
9 scanned? So by receiving everything by a scan, we
10 didn't have to wade through a lot of paper. We could
11 easily see the documents we needed. And, again, not
12 necessarily construction contracts but general
13 payments. And we could make sure that approvals were
14 in place, because the system required certain approvals
15 to be in place. So it wasn't a manual process where
16 someone could overlook. It had -- certain things had
17 to be in place, so certain controls were built into
18 that system.

19 **Q.** You would have seen that in the audit
20 report, there is a section dealing with -- small
21 section dealing with duplicate payments --

22 **A.** Uh-hmm.

23 **Q.** -- that there were instances where the
24 same vendor had been paid twice or three times --

25 **A.** Uh-hmm.

1 **Q.** -- and in certain cases there had
2 been -- it simply wasn't possible to recover, because
3 the vendor had gone -- become insolvent.

4 What steps did you take in relation to the
5 issue of double payments?

6 **A.** Can you take me to that --

7 **Q.** Sure.

8 **A.** -- in the Auditor's report because
9 I --

10 **Q.** If you look at the report, it is in
11 binder C, tab 3, which is the report, and specifically
12 it's at internal page 27, and paragraph 3.4.

13 **A.** I'm sorry, binder B?

14 **Q.** C. It's Tab 3. And it is page 27 of
15 the report, and we are looking at paragraph 3.4. You
16 will see that there the Auditor General says:

17 "An underlying premise for Financial
18 Intructions that payments for the same
19 goods and services will not be made
20 twice."

21 And then the table sets out the payments
22 which have been paid -- made twice or three times.

23 And then you see the commentary below:

24 "The third quarter grant was recovered
25 but not a cheque which was issued twice.

1 The amount paid to Sandys 360 has not
2 been recovered."

3 Do you see that?

4 **A.** Yes.

5 **Q.** So the question I was asking you,
6 clearly without a doubt, a serious matter to make
7 payments twice and particularly at the risk that it may
8 not be possible to recover.

9 Do you recall whether you took any steps in
10 order to make sure that it doesn't happen again?

11 **A.** Absolutely, yeah. And looking at
12 this, we -- one, the system was different with E1
13 versus EnterpriseOne and the prior system, One World.
14 JD was OneWorld versus EnterpriseOne.

15 So, the making of duplicate payments would be
16 more easily able to be seen and identified with just
17 the system controls in place.

18 There was also training, of course, that went
19 along with the implementation of the new system, so
20 that persons would be very clear with how to input
21 an invoice, so that invoice ABC could not be put in as
22 AB-C, or something like that, so that the system would
23 pick that up. So, there were different controls put in
24 place to make sure that those kind of things didn't
25 happen and you can see the lessening of the

1 duplications from '10, '11 and then '12.

2 **MR. HARGUN:** Thank you. If you just stay
3 there, I think the Commissioners may have further
4 questions.

5 **QUESTIONS BY THE COMMISSION:**

6 **MR. BARRITT:** Just following up on that: Our
7 terms of reference empowers to refer people for either
8 discipline or surcharges in cases where things like
9 this occurred.

10 Do you recall what happened to the people who
11 were responsible for duplicate payments, and
12 particularly the Sandys 360?

13 **THE WITNESS:** For most of the duplicate
14 payments, and, again, I'm going from memory, they were
15 human error, where persons -- quite often, again from
16 memory, persons being on leave, one person handling
17 something and then someone comes in and picks it up and
18 not properly cancelling or filing something, so they're
19 seeing it and making the payment again. But what we
20 made sure was that the person did the work, along with
21 the Accountant General's office to recover or fix the
22 next invoice.

23 So most often, and I don't know for sure, but
24 most often, if there was a duplicate payment made we
25 either got that money back or fixed it the next time.

1 So, if we overpaid by \$50, the next invoice we
2 subtracted the \$50. But persons were given verbal --
3 if depending on again the BPSU agreement, verbal,
4 written, documented written and so forth warnings, but
5 persons were informed of their errors and the Financial
6 Controllers were the ones that were put into place and
7 charged to make sure their persons were adequately
8 trained. So, we began to put Financial Instructions,
9 training in place, and we required it for persons who
10 we saw didn't seem to understand or were making errors
11 and so forth.

12 With the Sandys 360 payment, that was one
13 that was discussed at the level of Financial Secretary,
14 because it was concerned with Sandys 360 and with their
15 ability to repay and so forth, because there always --
16 if there was an issue with the company or the persons
17 couldn't pay us back, we set up a payment arrangement
18 with them, so they were required to pay the Government
19 back or we took it to Magistrates' Court or go through
20 the court system if we needed to collect on the debt.
21 And with the Sandys 360 that was one that went to the
22 Financial Secretary to handle how that was going to be
23 resolved.

24 **MR. BARRITT:** And so you don't recall how it
25 was resolved?

1 **THE WITNESS:** I don't have a clear
2 remembrance of that.

3 **MR. BARRITT:** Can I ask you this question:
4 With respect to Financial Instructions you say your
5 department relied on the financial -- the Accounting
6 Officers and the Financial Controllers in each
7 ministry.

8 If we find as a fact that Financial
9 Instructions were not adhered to, deviated from, we
10 should hold those people and those people alone
11 responsible for those deviations and failures. Under
12 your view, the Accountant General's office bears no
13 responsibility?

14 **THE WITNESS:** That's how the structure was,
15 at least at that time, that we were delegating that
16 responsibility or ensuring that they were empowered
17 to --

18 **MR. BARRITT:** Were you formally delegating it
19 or are you just talking about that's the way you
20 practised?

21 **THE WITNESS:** When you say formally how --

22 **MR. BARRITT:** Well, you say you delegated
23 that to the financial controllers, that responsibility,
24 and I would look at Financial Instructions to see that
25 delegation there to be some sort of formal delegation,

1 or are you just telling us that's the way --

2 **THE WITNESS:** It's custom and practice --

3 **MR. BARRITT:** That was custom and practice?

4 **THE WITNESS:** I'm trying to -- I don't recall
5 what we specifically said in Financial Instructions
6 because, again, that was a process where we were
7 bringing in the Financial Controllers and establishing
8 that process.

9 **MR. BARRITT:** I want to give you
10 an opportunity to comment on this: I have some
11 difficulty following that line of reasoning, even if
12 it's custom and practice, because when I read the
13 Financial Instructions, the introduction on that page,
14 and I'll just read you a couple of passages, things
15 like:

16 "While each Government department is
17 unique in terms of its objectives and
18 daily operations, Financial Instructions
19 are required to ensure that financial
20 transactions are properly recorded and
21 controlled on a consistent basis."

22 And later on:

23 "Any questions relating to the
24 application or interpretation of
25 Financial Instructions should be referred

1 to the Accountant General's department."

2 One gets the impression, as well, from the
3 Act under which the office of the Accountant General is
4 established, the *Public Treasury and Administration*
5 *Act*, that the Accountant General's department really is
6 there to make sure that Financial Instructions are
7 adhered to, not just that there are signatures, but
8 that someone's checked to see whether all the paperwork
9 is there and, indeed, we hear now that that's happened
10 with respect to the new computer system.

11 Have I got a wrong impression of what's
12 required of the office of the Accountant General?

13 **THE WITNESS:** I think it's not complete. The
14 way you're looking at it is not how the custom and
15 practice actually worked.

16 Yes, the Accountant General is responsible to
17 issue the Financial Instructions under the authority of
18 the Minister of Finance, the Ministry of Finance and to
19 make sure that we are working with the departments to
20 make sure they're adhered to, which is why the
21 Section 2.7, the delegation of the Accounting Officer's
22 responsibility, the Accounting Officers have quite
23 a lot of responsibility for the Financial Instructions,
24 and they can also delegate their responsibility,
25 because we cannot do it alone. There were 80 -- 70,

1 80 -- between 60, 70, 80 Government departments in any
2 given time. I think at one point there was 83, if
3 I'm -- again, by memory -- if my memory serves me, so
4 there was no way we could be responsible for every
5 single department, every single person following
6 Financial Instructions.

7 **MS. LUCK:** And financial controllers within
8 a Ministry, what's their reporting? Who reviews them?
9 Who...

10 **THE WITNESS:** They actually -- we were
11 working on them reporting into the Accountant General's
12 office, but it was decided that that would not be the
13 case, so they reported in to either the department head
14 or the Permanent Secretary.

15 **MS. LUCK:** And that was the case when you
16 were Accountant General?

17 **THE WITNESS:** Yes.

18 **MS. LUCK:** And any changes to Financial
19 Instructions, who initiated, who reviewed the Financial
20 Instructions, the changes and then the rolling out of
21 new Financial Instructions?

22 **THE WITNESS:** It would be a -- it would come
23 from my office, as well as the financial controller.

24 So, I would just say it was collaborative in
25 that we, every year, would ask Financial Controllers

1 for their input; what problems did they see, making
2 sure that they were put into place, what infractions
3 had they seen on a regular basis.

4 We also met with the Auditor General and the
5 Internal Audit Director to see what things they had
6 identified and noted. So, we would combine all of that
7 information in the Accountant General's office, and the
8 Accountant General would provide that to the Financial
9 Secretary for review and approval, and then to the
10 Minister of Finance, and then to roll it out we would
11 get that final approval, update the Financial
12 Instructions and then our office, the Accountant
13 General's office, would send them out in conjunction
14 with the Financial Secretary.

15 The Financial Secretary would be the person
16 that would make sure that the Permanent Secretaries had
17 them and understood them, and I would make sure that
18 the department heads and controllers had them, and then
19 we would have meetings with the department heads and
20 the Financial Controllers to make sure they were aware
21 of new Financial Instructions and any specific items
22 that they should be aware of that were the new items,
23 we would bring to their attention.

24 **MS. LUCK:** So you would summarise all this
25 collaboration into new revisions to Financial

1 Instructions. The Permanent Secretary, Financial
2 Secretary would, in effect, review them.

3 Is it likely he or she would come up with
4 anything new or would be more a review?

5 **THE WITNESS:** They would sometimes.

6 **MS. LUCK:** They would sometimes. And then it
7 would be signed off by the Ministry of Finance and
8 then --

9 **THE WITNESS:** Yes.

10 **MS. LUCK:** -- it would be rolled out.

11 **THE WITNESS:** Yes.

12 **MS. LUCK:** Thank you.

13 **THE CHAIRMAN:** Just two questions: More than
14 once in your evidence you've referred to capital
15 contracts or works or construction contracts.

16 **THE WITNESS:** Yes.

17 **THE CHAIRMAN:** And you gave me the impression
18 that in your mind, at least, there are some kinds of
19 contracts which are different from other ones.

20 **THE WITNESS:** Consultative contracts, those
21 employment type.

22 **THE CHAIRMAN:** Well, I just wanted to ask
23 you: Is there any category in the instructions or in
24 the rules dealing with what you've called capital
25 contracts, construction contracts?

1 **THE WITNESS:** I think there is just
2 a section relating to capital expenditures, and so --
3 and items typically over the \$50,000 range and so
4 forth, quite often are capital contracts, but that is
5 why the Office of Procurement was being put into place
6 and from what I understand, later, Financial
7 Instructions were modified to specifically separate out
8 those.

9 **THE CHAIRMAN:** But going back to before the
10 Office of Procurement, when you were there
11 as Accountant General, was there any formal definition
12 of capital contracts or construction contracts as
13 distinct from others?

14 **THE WITNESS:** I'm looking at Section 12 which
15 deals with capital expenditures, and so we would,
16 again, custom and practice, but from my recollection on
17 page 70 of this -- this is the 2009, December,
18 Financial Instructions, capital expenditures is defined:

19 "... as the acquisition, construction or
20 development of any tangible capital
21 asset valued in excess of \$5,000."

22 So, those types of capital expenditures and
23 large capital --

24 **THE CHAIRMAN:** That's a pretty wide
25 definition and it doesn't begin to focus on what

1 I think you had in mind when you said capital or big
2 construction contracts where you need lawyers, for
3 example.

4 **THE WITNESS:** Right. But, yes, correct, but
5 that would come under things that are capital in
6 nature, versus employment and personal in nature --
7 personnel.

8 **THE CHAIRMAN:** Would it help or not to have
9 a special category of the ultra big contracts, the big
10 construction contracts?

11 **THE WITNESS:** I can't speak to that because,
12 again, that's a kind of process and policy because it
13 wasn't just accounting process; it's also Government
14 policy as to who and how and where they should reside
15 so...

16 **THE CHAIRMAN:** But it wouldn't affect your
17 function, as you would see it. You would have the same
18 overall function in relation to them all; is that
19 right?

20 **THE WITNESS:** Well, it would depend on how it
21 was decided. The Accountant General's role changes or
22 can change based on the Financial Secretary/Minister of
23 Finance.

24 **THE CHAIRMAN:** Now, the other matter is this:
25 At the beginning of your evidence you were asked about

1 Port Royal, I think, and I asked you a few questions
2 because I got the impression, perhaps wrongly, that you
3 were distinguishing between your department, the
4 Accountant General's department and the Ministry of
5 Finance, and you were asked: Did you ever receive
6 special details of any special instructions that the
7 Quango Port Royal had drawn up. And you said, "Well,
8 I didn't receive them, but the Ministry of Finance may
9 have done."

10 **THE WITNESS:** Correct.

11 **THE CHAIRMAN:** Now, I'm really puzzled,
12 because looking at the Financial Instructions, I see
13 that they were actually issued by your department.

14 **THE WITNESS:** Accountant General's
15 Department and Ministry of Finance, were under the
16 Ministry of Finance but --

17 **THE CHAIRMAN:** That's the first page. And
18 then if we look at the introduction, first paragraph,
19 second sentence:

20 "The Accountant General will continue to
21 amend Financial Instructions, as
22 necessary."

23 And so on.

24 **THE WITNESS:** But the Accountant General does
25 everything under the auspices or under the authority of

1 the Financial Secretary.

2 **THE CHAIRMAN:** Yes. Well, that's what I just
3 want to -- there doesn't seem to be much doubt on the
4 face of these documents --

5 **THE WITNESS:** Right.

6 **THE CHAIRMAN:** -- that your department within
7 the Ministry of Finance were responsible for the
8 Financial Instructions?

9 **THE WITNESS:** Correct, yes.

10 **THE CHAIRMAN:** And they were the right people
11 to go to, if you had to go anybody?

12 **THE WITNESS:** Correct, yes.

13 **THE CHAIRMAN:** So, I go back to what you
14 said: How could it happen that somebody might have
15 gone to somebody else in the Ministry of Finance and
16 you might not have -- might or might not have received
17 it yourself?

18 **THE WITNESS:** You are referring to Quangos?

19 **THE CHAIRMAN:** Yes.

20 **THE WITNESS:** And that is not the same as
21 Government departments and how things are actually
22 operated because they did not report into the
23 Government in the same way. Like we had no purview
24 over their controllers and so forth, and actually I had
25 a dotted line even with the ones internal to

1 Government, so they didn't report directly to me. The
2 Quango controllers I had no purview over.

3 **THE CHAIRMAN:** I'd like then to pursue this
4 because do you remember you were asked by counsel about
5 the bottom of page 13, which says that the Quangos must
6 report to the Accountant General's department.

7 **THE WITNESS:** Right.

8 **THE CHAIRMAN:** And that's when you said, well
9 that wouldn't necessarily come to my department; that
10 would go somewhere else. Do you say there was a
11 general --

12 (Simultaneous speakers - unclear)

13 **THE WITNESS:** Before it came to the
14 Accountant General's department. I'm sorry.

15 **THE CHAIRMAN:** There was a general practice
16 for Quangos not to report direct to you; is that what
17 you're saying?

18 **THE WITNESS:** Correct.

19 **THE CHAIRMAN:** How did that come about?

20 **THE WITNESS:** That's how they were
21 structured.

22 The Quango -- that's how the Quangos were
23 structured, that they don't report into the Accountant
24 General's department.

25 We were -- and that's what I was saying. I'm

1 not sure when, if this was the first Financial
2 Instructions where this was put in because this was
3 a work in process. As I mentioned, we were in the
4 process of trying to make things better, so as we began
5 this and having conversation with the Minister of
6 Finance we wanted more teeth with the Quangos, and so
7 we began to start the process and ask the Minister of
8 Finance to work with us on it, and she was definitely
9 in agreement with that. But in order to make that
10 happen she had to work with her colleagues, the
11 Ministers and the FS, with the Permanent Secretary.
12 So, the way it started was that the modified or the
13 Financial Instructions or accounting policies would go
14 to their Permanent Secretary and then to the Minister
15 of Finance or ministers, and then to the Accountant
16 General's office.

17 **THE CHAIRMAN:** I'm going to pursue this.
18 This was December 31st, 2008?

19 **THE WITNESS:** Yes.

20 **THE CHAIRMAN:** So, I think, I follow that
21 clearly what you're saying: This reference to Quangos
22 was put in because as of that date you were concerned
23 that the Quangos weren't reporting to you?

24 **THE WITNESS:** Correct.

25 **THE CHAIRMAN:** So can we go back to the years

1 before 2008. Where did these Quangos come from? Who
2 was setting them up?

3 **THE WITNESS:** They were set up by acts of
4 Parliament. They were legislation that were setting up
5 the Quangos.

6 **THE CHAIRMAN:** So there has to be an act of
7 Parliament for a Quango to exist?

8 **THE WITNESS:** As far as I know, but not being
9 a lawyer and that I don't know for sure.

10 **THE CHAIRMAN:** No. What was happening in
11 practice? If they weren't reporting to you, who were
12 they reporting to?

13 **THE WITNESS:** Well their own boards of
14 directors. From my understanding, their own boards.
15 I think we saw Port Royal had their own trustees and so
16 forth, so they would have their own boards, but overall
17 there should always have been a Minister that they
18 reported in to. So, each Quango was responsible to
19 a Minister who was responsible for that Quango. And
20 so the Minister of Finance would then liaise with their
21 colleagues in trying to make, put things in place for
22 the...

23 (Simultaneous speakers - unclear)

24 **THE CHAIRMAN:** SO I think you are saying, and
25 you are not a lawyer, but you would expect to find that

1 there was an obligation to report to a Minister.

2 **THE WITNESS:** Yes --

3 **THE CHAIRMAN:** But --

4 **THE WITNESS:** -- as far as I know.

5 **THE CHAIRMAN:** -- any contact between that
6 Minister and the Minister of Finance would be informal;
7 is that what you're saying?

8 **THE WITNESS:** You say it would be informal?

9 **THE CHAIRMAN:** Informal. In other words,
10 there's no obligation on them to report to the Ministry
11 of Finance?

12 **THE WITNESS:** Correct, at this -- I don't --
13 I don't know of anything that was formal.

14 **THE CHAIRMAN:** Yes. So, from the point of
15 view of your responsibility was the overall one for
16 Government finances. Until these changes were
17 introduced, you, in effect, had no responsibility for
18 any Quango that had been established with some
19 different structure?

20 **THE WITNESS:** That's pretty much correct that
21 we -- that that's where we -- that the Minister of
22 Finance would liaise with her colleagues, and several
23 of the Quangos did report into the Minister of Finance,
24 but there were many others, several I would say, that
25 did not.

1 **THE CHAIRMAN:** Right. And what's the
2 position today with the Office of Procurement? Is
3 that --

4 **THE WITNESS:** I don't know. I'm sorry,
5 I haven't been in Government for a few years.

6 **THE CHAIRMAN:** You don't know. Well, thank
7 you very much.

8 **MR. HARGUN:** Thank you very much,
9 Mrs. Hayward.

10 **THE WITNESS:** Okay. Finished?

11 **THE CHAIRMAN:** Yes. I think that's the end
12 of your evidence, and we are most grateful to you.
13 Thank you.

14 **THE WITNESS:** Thank you.

15 (The witness retired.)

16 **MR. HARGUN:** So, on that basis, I think that
17 is the business for today.

18 **THE CHAIRMAN:** Nothing more this afternoon.

19 **MR. HARGUN:** We can start tomorrow at 10
20 o'clock?

21 **THE CHAIRMAN:** Are you sure it's 10 o'clock?
22 I would like it to be 10/o'clock, but I did see
23 a reference to 9:30.

24 **MS. LUCK:** Only for today.

25 **THE CHAIRMAN:** I thought it was Tuesday, as

1 well. At any rate, it is 10 o'clock tomorrow morning.

2 Thank you very much.

3 --- Whereupon hearing adjourned at 12:53 p.m.

4 to Tuesday, 29 November, 2016 at 10:00 a.m. ---

5

6 The foregoing transcript is
7 certified correct to the
8 best of my skill and ability:

8

9

10 *Lisa Barrett*

11 Lisa Barrett, CRR, RPR, CRC, CSR,

12 Certified Realtime Court Reporter

13 Editors: Angela Gunn, CSR

14 Margaret Gazzard, CSR

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