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COMMISSION OF INQUIRY - THE WITNESS HEARINGS

ST. THERESA'S CATHEDRAL HALL

LAFFAN STREET, HAMILTON, BERMUDA

MONDAY, OCTOBER 3, 2016

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AUDIO RECORDED TRANSCRIPTION

October 3, 2016

Day 4

Reported by: Scott Huseby



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A P P E A R A N C E S

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I N D E X

Examination of CHERIE-LYNN WHITTER	Page 4
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1 THE WITNESS: I swear by Almighty God that the  
2 evidence I shall give shall be the truth, the whole truth  
3 and nothing but the truth.

4 CHAIRMAN EVANS: Thank you, Ms. Whitter. You may  
5 have heard what I just said, we're conscious that you may  
6 feel that you're sort of tucked away a bit but if you will  
7 have any problems communicating to us or to Counsel, please  
8 say so.

9 THE WITNESS: Yes, I'm quite comfortable.

10 CHAIRMAN EVANS: Good. Thank you.

11 CHERIE-LYNN WHITTER

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

14 EXAMINATION

15 BY MR. HARGUN:

16 Q Good morning, Ms. Whitter.

17 A Good morning.

18 Q You very kindly have made a witness statement to  
19 the Commission back in the 22nd of December 2016.

20 Do you have a copy of that?

21 A I do. I do, sir.

22 Q And can you please confirm that what is said in  
23 that statement is correct?

24 A Yes, sir, that's correct.

25 Q And in that statement, Ms. Whitter, you deal with

1 the issue of processing of payments?

2 A Uh-huh.

3 Q And you deal with the issue of Heritage Wharf?

4 A Correct.

5 Q And you deal with the issue of Port Royal Golf  
6 Course?

7 A Uh-huh.

8 Q And you also touch upon GlobalHue?

9 A Uh-huh.

10 Q And finally, you say a few words in relation to  
11 the Ambling Contract?

12 A Yes.

13 Q Can we just deal with the issue of the Port Royal  
14 which as you kindly dealt with in Paragraph 15 to 20 of the  
15 witness statement?

16 A Uh-huh.

17 Q And just so we get the context right, you write  
18 to point out that the golf courses are subject to the Golf  
19 Courses Consolidation Act of 1998?

20 A Correct.

21 Q Paragraph 15 of your statement?

22 A Yes, sir.

23 Q And you have set out the relevant provision, just  
24 to get the context, this is at Paragraph 15 on page 5 of  
25 your statement, and specifically I think you draw the

1 Commission's attention to Section 10, Subsection (2) which  
2 provides that "Any funds appropriated by the Legislature  
3 for the operation or maintenance of golf courses or for  
4 capital development shall be applied, subject to the terms  
5 of the appropriation, in accordance with, (a) any  
6 instructions issued by the Minister of Finance or direction  
7 issued by him under Section 3(1) of the Public Treasury,  
8 Administration and Payments Act 1969; or (b) any other  
9 instructions issued by the Minister." Yes?

10 A Yes.

11 Q And then you refer to a further provision which  
12 I'll come to in a moment.

13 Just so we get the context right, you were at the  
14 Ministry between 2008 and 2011?

15 A That's correct.

16 Q Ministry of Tourism.

17 A That's correct, and of Transport.

18 Q And Transport, yes.

19 A Uh-huh.

20 Q And the Minister responsible for golf courses was  
21 the Ministry of Tourism?

22 A That's correct.

23 Q And that would be Dr. Brown?

24 A That's correct.

25 Q And so you were, in fact, involved with the golf



1 courses, let me just show you a reference.

2 Would you look at Tab 11 of the public documents,  
3 Tab 11, page 1 through 6.

4 A Tab 11, what page?

5 (Off-the-record discussion.)

6 A There is no Tab 11 here, just page 126.

7 Q If you look at page 11-126. Do you find it  
8 there? I understand these minutes have been taken out,  
9 Ms. Whitter. Can I just see if this reminds you. I'm  
10 reading from the Trustee Minutes of June 24, 2008.

11 And it's recorded there, "The chairman," who is  
12 Mr. Wendall Brown, I think at this stage, "stated that he  
13 had met with Ms. Cherie Whitter to express his concern that  
14 the employee benefits benefits had not been paid since  
15 December 2007?"

16 A Uh-huh.

17 Q Do you recall that?

18 A I vaguely recall it, yes.

19 Q Yes. The reason I'm showing you is really trying  
20 to understand the sort of involvement you had with the golf  
21 course.

22 Can you help us as to what sort of involvement,  
23 sort of detailed involvement you had with the golf course?

24 A The golf course, in accordance with the act, was  
25 responsible or the trustees were responsible to the

1 Minister and by way of discussions with the Minister or the  
2 Ministry as it relates to their funding we would meet on a  
3 as-needed basis to discuss issues. Generally, the issues  
4 that the Chair would bring to the Ministry were funding  
5 related issues.

6 Q You say you would meet as needed, and let's say  
7 in 2008, 2009, how often did you meet?

8 A I can't recall the frequency specifically. Once  
9 a month, once a quarter, it really...

10 Q Yes. Do you recall the time when the Capital  
11 Project was undertaken by --

12 A I do.

13 Q During that time, do you have a sense of how  
14 often you met with the Trustees?

15 A On an -- it was not the Trustees, it was  
16 generally the Chair.

17 Q The Chair.

18 A And it was regular, but not as per any particular  
19 schedule. So as needed once a month, once every other  
20 month. I do not recall specifically, sir.

21 Q Right. And you would meet in your offices?

22 A Yes, sir. And he would also meet with the  
23 Premier or the Minister.

24 Q Thank you. And you got -- you referred to in  
25 relation to the supervision and management and in

1 particular, the financial management of the golf course, in  
2 Paragraph 16 of your witness statement, you say, "Further,  
3 I have referred to the Financial Instructions dated 1  
4 January 2007, in its Introduction it states:"

5 And just so that the Tribunal has these  
6 instructions in mind, I'll show you actually the relevant  
7 instructions. They haven't changed. They're identical in  
8 2008.

9 If you look at Binder A, and if you were to go to  
10 A(4) page 13, you will see that that is the introduction  
11 section which you're referring to.

12 You are referring to 2007 Financial Instructions,  
13 but all the material has the same introduction as that  
14 intro?

15 A Yes, sir.

16 Q And there in the fifth paragraph it stated by the  
17 Minister, "Financial Instructions should form the minimum  
18 standard for financial controls in every department,  
19 ministry or Quango with additional specific procedures  
20 formulated at the department level."

21 Do you see that?

22 A I do.

23 Q So would you accept or was it your understanding  
24 that the, as far as the Quango's were concerned, and let's  
25 assume that the golf course is a Quango, that they had to

1       comply with the, at the very minimum with the minimum  
2       standards for financial control as set under the Financial  
3       Instructions?

4       A           By way of assistance, I refer you to the asterisk  
5       that is attached to the word Quango. That it's an upper  
6       case. And associated with that asterisk below it reads,  
7       "If a Quango chooses to use these Financial Instructions,  
8       any modifications," and I repeat, "chooses to use these  
9       Financial Instructions, any modifications must be  
10      documented in writing. If a Quango chooses not to utilize  
11      these Financial Instructions, the organization must have  
12      written financial procedures in place. The financial  
13      procedures must be provided to the Accountant General's  
14      Department and the department or agency that provides  
15      funding to the Quango."

16     Q           Yes. The point I was trying to put to you was  
17     that if the Quango did use separate financial procedures  
18     because they had separate financial procedures in place,  
19     they had to comply with the minimum requirements of the  
20     Financial Instructions?

21     A           Sir, the asterisk refers you to the requirement  
22     for the Quango.

23     Q           I understand that. The only Quango may have  
24     their own set of rules and procedures in relation to  
25     Financial Instructions. And I'm just trying to see your

1 understanding.

2 Was it your understanding that the alternative  
3 financial procedure if the Quango did have it, they had to  
4 comply with the minimum standards of financial  
5 instructions?

6 A It was my understanding, sir, that if the Quango  
7 chose to use these Financial Instructions, any  
8 modifications must be documented in writing. If a Quango  
9 chooses not to utilize these Financial Instructions,  
10 chooses not to use these Financial Instructions, the  
11 organization must have written financial procedures in  
12 place. That, sir, was -- is my understanding.

13 Q No, I understand that. But it's not just pieces  
14 of paper, the alternative Financial Instructions at a  
15 Quango couldn't say that would be perfectly proper to have  
16 contract with the Chairman of the Board?

17 A That, sir, would be a matter for the Minister of  
18 Finance whose instructions those were, and the financial  
19 procedures that may or may not have been submitted to the  
20 Accountant General's Office.

21 Q Yes.

22 A I cannot answer that question, sir. That's a  
23 matter of interpretation.

24 Q That's perfectly understandable, and I accept  
25 that.

1                   Would you have a look at Paragraph 17 of your  
2                   witness statement?

3           A           Yes.

4           Q           You say, "it was my understanding that Port Royal  
5           Golf Course had its written financial procedures in place  
6           in accordance with Financial Instructions."

7                   Can you tell the Commissioners on what facts your  
8           understanding was based upon?

9           A           My understanding was based on the documentation  
10           that would have been on file within the Ministry. As a  
11           reminder, I joined the Ministry, this project was already  
12           in channel. And so my review and my understanding of what  
13           was in place and what was in situ would have been in  
14           accordance with the file that would have been presented to  
15           me for my review.

16          Q           Do you recall whether any written documentation  
17           in accordance with the Financial Instructions were provided  
18           to the Ministry?

19          A           Specifically during this exercise or generally?

20          Q           Well I mean, you said that you assumed at the  
21           time when this particular capital project was going on that  
22           the golf course had its own financial procedures in place  
23           in accordance with Financial Instructions.

24          A           Yes, sir.

25          Q           Now under the Financial Instructions if that was

1 the case, a copy of those written financial procedures  
2 would have to be provided to the Ministry?

3 A Yes, sir.

4 Q Now the question I'm asking you is, can you tell  
5 us whether such a written copy was provided to the  
6 Ministry?

7 A I cannot tell you that I reviewed specifically  
8 the instructions. My assumption, having assumed  
9 responsibility for the Ministry, was that they were there.  
10 My, during my review of this matter and in consultation  
11 with the Ministry of Finance, I was advised based on the  
12 Financial Instructions and specific to the paragraph that  
13 we noted earlier in the Financial Instructions  
14 introduction, that financial -- that the Port Royal had its  
15 own financial procedures, they were a Quango, and they were  
16 not required to follow specifically Financial Instructions.

17 Q Do you mind bringing us at some stage or sending  
18 us a copy of the written financial procedures which Port  
19 Royal Golf Club had provided to the Ministry in 2008, 2009  
20 at the time this procedure was taking place?

21 A I will invite colleagues to review the files. I  
22 can't guarantee where those files are or what may be  
23 contained in them at this point. You'll appreciate it has  
24 been some ten years maybe and so therefore files have been  
25 moved, ministries have changed and we'll have a look.

1 Q Yes, thank you.

2 A You're welcome.

3 Q And you'll accept, do you, that in relation to  
4 the Port Royal Capital Remediation Project, no Cabinet  
5 approval was obtained in relation to the contract excess of  
6 \$50,000?

7 A I'm not sure that given that they were Quango and  
8 given that their financial procedures were different than  
9 Financial Instructions, that they would have been required  
10 to get Cabinet approval for matters in excess of \$50,000 or  
11 purchases of cumulative products for service in excess of  
12 \$50,000.

13 That is it not standard operating procedure, is  
14 not for Quango's, was not, has not been and currently is  
15 not the case. By way of current example, as a for  
16 instance, the Commission is a body-corporate. Was there  
17 tender for the procurement of services for Conyers Dill?  
18 Did you respond to an RFP? Was there Cabinet approval for  
19 the expenditure in excess of \$50,000? Body-corporate's  
20 operate differently.

21 Q So just answer, if you can just answer the  
22 initial factual question.

23 Do you accept that no Cabinet approval was in  
24 fact obtained?

25 A I accept that, sir, by way of reference to the



1 Quango's and the financial procedures, that their financial  
2 procedures did not require them to get Cabinet approval.

3 Q Yes. But in all events, as I understand your  
4 witness statement, you say that you worked on the basis  
5 that Port Royal Golf Course during the relevant time had  
6 its own written financial procedures?

7 A That's correct, sir.

8 Q Okay. Can I ask just before I move on to a  
9 separate matter, did you obtain any periodical reports from  
10 Port Royal Golf Course when this project was going on?

11 A Absolutely we did.

12 Q And did it show that they were complying with  
13 their own written internal procedures?

14 A Our role, sir, was to provide them with the  
15 capital expenditure. Their role was to manage the project  
16 in accordance with their financial procedures.

17 Q So that the Commissioners can understand it  
18 clearly, what procedures or steps did the Ministry take, if  
19 any, to ensure that the Trustees of the golf course  
20 complied with their own written internal procedures?

21 A I don't know what steps the Ministry took prior  
22 to my arrival, and again, this project was in channel when  
23 I arrived at the Ministry. However, upon arriving and  
24 reviewing the file, I assigned the Ministry Controller to  
25 attend the board meetings specifically to address and

1 increase the level of oversight associated with the  
2 distribution of funds.

3 Q Okay. Can I -- are you familiar with the  
4 Internal Audit Department of the Government of Bermuda?

5 A I am.

6 Q And the Department on a regular basis conducts  
7 audits of different departments to see if they're complying  
8 with the financial requirements and the audit requirements.

9 Are you familiar that the Department of Audit, in  
10 fact, carried out an internal audit of the Port Royal Golf  
11 Course?

12 A Vaguely from the documents that you've presented,  
13 yes.

14 Q Yes. And shall we just -- 11-33.

15 A In which binder?

16 Q Tab 11, page 33.

17 A This one?

18 (Off-the-record discussion.)

19 BY MR. HARGUN:

20 Q I think this was given to you with the  
21 documentation bundle in preparation for your witness  
22 statement?

23 A Yes, sir.

24 Q Yes. And you see that that internal audit is  
25 dated the 18th of November 2011?

1 A Yes, sir.

2 Q And you'll see that the Chairman of the Board of  
3 Trustees has now changed, the current Chairman at least,  
4 Mr. Mitin Agabar?

5 A Uh-huh.

6 Q This is the Bermuda Golf Courses 2011 Operational  
7 Review.

8 A Uh-huh.

9 Q Can I ask you to please have a look at the third  
10 paragraph of the Opening Executive Summary.

11 "The Department of Internal Audit, IA, performed  
12 an audit of the golf courses to assess the design and  
13 operating effectiveness and controls by creating,  
14 circulating, consolidating and reporting revenue  
15 collection, payroll, cash, goods and services.  
16 Additionally, part of our audit, we reviewed compliance  
17 with the legislation and internal policies and procedures  
18 including Human Resources and assessed the adequacy of the  
19 Information Technology environment.

20 We noted deficiencies and areas for improvement  
21 in all areas that we reviewed. The audit observations that  
22 were noted throughout the report are partly attributed to  
23 undocumented policies and procedures."

24 A Uh-huh.

25 Q See, one of the criticisms they make, the

1 Internal Audit Department, is that their policies and  
2 procedures are in the main undocumented.

3 A Uh-huh.

4 Q So, in light of that, I'm surprised that you say  
5 that you were provided a document in 2008, 2009, the  
6 Ministry which set out the written policies and procedures,  
7 financial procedures of the Port Royal Golf Course.

8 A To be clear, sir, I did not say I was provided  
9 the document. I said I joined the Ministry in 2008 and  
10 there were likely financial procedures relevant to the  
11 operation of Port Royal on file at the Ministry. I did not  
12 say that I personally received a document.

13 I'm sure, however, that there were financial  
14 procedures that had been provided, whether or not they were  
15 adequate, whether or not they met the test, who's ever test  
16 that was, it was not a matter for our department, they were  
17 a Quango, they were a body-corporate.

18 Q I see that you now use the word likely, does that  
19 mean that you have no first-hand knowledge?

20 A There were likely and I believe I used that term  
21 initially in responding. They were likely on file at the  
22 Ministry, documents related to their financial procedures.

23 Q And the Commission will be grateful if we could  
24 see that document.

25 A As I said, I will endeavor to have technical

1 officers look through the file.

2 Q Let's have a look at what else they say. They  
3 said, "The risks associated with lack of policies and  
4 procedure are as follows:"

5 The second bullet point, "An internal control  
6 framework that the board and interim management will not be  
7 able to rely upon that may create loopholes in the  
8 Organization resulting in inefficiencies, wastages, losses  
9 and employees' abuse of fraud." That's one of the  
10 concerns.

11 You see that?

12 A I do, sir.

13 Q And if you look at 11-34, next page, the Internal  
14 Audit then has a section dealing with Compliance with  
15 Financial Instructions.

16 A Uh-huh.

17 Q You looked at the Internal Audit appears to be of  
18 the view that the golf course is bound to comply with the  
19 Financial Instructions.

20 A That's a view, sir.

21 Q Yes. And that would be a consistent view, and a  
22 rational view if the golf courses did not have their own  
23 written financial procedures. Yes?

24 A I'm sorry, can you repeat that question?

25 Q That would be a perfectly understandable view if

1 the golf courses did not have their own written financial  
2 procedures?

3 A Or if they deemed that the financial procedures  
4 that they did have in place were inadequate, yes.

5 Q Yes. And if you look at underneath Cash Handling  
6 they say, "There's a lack of oversight over the cashiering  
7 function of the golf courses." And the third bullet,  
8 "Petty cash disbursements are disbursed without any  
9 approved payments."

10 But then for our purposes, Ms. Whitter, look at  
11 the section dealing with Purchase of Goods and Services.

12 A Uh-huh.

13 Q The first bullet point, "The golf courses may not  
14 be getting value for money for certain of its vendor  
15 contracts. In all the sample purchases contractor we  
16 selected, we did not see evidence of tendering process."

17 Do you see that?

18 A I do.

19 Q Again, the Internal Audit seems to be of the  
20 opinion that they're under obligation to tender for  
21 contracts.

22 A Or the Internal Audit was making recommendation  
23 that they should perhaps strengthen their internal  
24 proceeding procedures and use Financial Instructions in the  
25 model for the development of financial procedures relative

1 to Port Royal.

2 Q Okay, very well. Look at the next bullet point,  
3 "We did not see any evidence of cabinet approval for golf  
4 courses contracts totalling over \$50,000."

5 You see that the Internal Audit simply appears to  
6 be under the impression that the golf course is under the  
7 obligation to obtain Cabinet approval in relation to  
8 contract of in excess of \$50,000?

9 A Sir, Quango's have historically and continue to  
10 have their own financial procedures. Quango's have  
11 historically and continue not to abide by Financial  
12 Instructions that requires them to submit to Cabinet  
13 purchases in excess of \$50,000. Not my rules, sir, but the  
14 rules that currently exist.

15 Q By my question was slightly different.

16 My question was that the Internal Audit appears  
17 to be under the impression that is such an obligation.

18 A They seem to be making a recommendation.

19 Q It's more than that, they say "We did not see  
20 evidence of Cabinet approval for golf courses for contracts  
21 totalling over \$50,000." They would not be making that  
22 observation unless they thought they were under an  
23 obligation to do so.

24 A A matter for Internal Audit, sir.

25 Q Okay, fair enough. And you see the next bullet

1 point, the bullet point after that, "There was no evidence  
2 that contracts were submitted and vetted by the Attorney  
3 General before signing."

4 Again, the Internal Audit appears to be under the  
5 impression that there is such an obligation.

6 A Sir, they are a Quango and I appreciate Internal  
7 Audit's view. However, it is a view that may, in fact, be  
8 inconsistent with the Ministry of Finance' view.

9 Q And would you have a look at 11-36. Page 11-36.  
10 I want you to concentrate on the first seven words at that  
11 page.

12 "Management is in agreement with the  
13 observations."

14 So it appears that the management of the golf  
15 course is agreeable that all these points which have been  
16 made should be implemented.

17 A Sir, appreciate that this audit, Internal Audit  
18 was completed in November 2011. By that time the Port  
19 Royal Golf Course had already been the subject of the audit  
20 report. They had already been subject to a lot of  
21 criticism with regard to the operation of the Capital  
22 Development Project. And so naturally they recognized that  
23 there were some flaws and there were some areas of  
24 inefficiency and obviously under new management, they would  
25 be inclined to agree with the point set out in the audit



1 report.

2 Q Well it's more than that.

3 A But I can't speak for that.

4 Q Fair enough. Just to complete that, and  
5 therefore, charged with the responsibility to ensure that  
6 actions are taken to remediate the observations.

7 The Chairman, that's Mr. Aggarwal, has appointed  
8 four members from the Board of Trustees that will spearhead  
9 the project of resolving the deficiencies noted in the  
10 audit report.

11 A Uh-huh.

12 Q So the Board of Trustees are going to implement  
13 the recommendations made by the Internal Audit, yes?

14 A Uh-huh.

15 Q And were you aware of that?

16 A I was not aware, and I'm not sure of the  
17 relevance as it relates to the Port Royal Capital  
18 Development Project. New management came along, noted some  
19 deficiencies, had Internal Audit come in, take a look at  
20 where they were deficient and agreed to put in place those  
21 things that were recommended. I think that is productive.

22 Q Well Ms. Whitter --

23 A And smart.

24 Q It's also for the Commissioner to decide. I  
25 mean, one of these, you see, as to whether the Port Royal

1 Golf Course had any written procedures at all.

2 A That's a matter for the Board, sir. They were a  
3 body-corporate, they were a Quango. They had  
4 responsibilities in accordance with the Act.

5 Q It's more than that.

6 A It's a matter for the Ministry as it relates to  
7 the disbursement of the funds and perhaps a matter for  
8 Ministry of Finance as it relates to disbursement of funds.

9 Q But it's more than that, isn't it, because if  
10 they did not have any written procedures dealing with  
11 financial matters as appears is the case from the Internal  
12 Audit Report, then they were obliged to comply with the  
13 Financial Instructions.

14 A Sir, I can take you back to the instruction that  
15 is in Financial Instructions. However, it's my  
16 understanding that they had financial procedures in place.  
17 Were they adequate, I can't speak to that but did they have  
18 them, that's a matter for the Quango.

19 Q We look forward to receiving them.

20 A If, in fact, we can find them in the files, sir.

21 Q Well would you try?

22 A Certainly.

23 Q Thank you. And would you, let's just see what  
24 the recommendations were, other recommendations were after  
25 the audit which had to be complied with. If you look back

1 at the next page, there are detailed recommendations which  
2 have been implemented. Look at the risk level, now dealing  
3 with high risk level. And that is, first of all, policies  
4 and procedures.

5 "The golf course developed its policies and  
6 procedures manual that will cover both its operations and  
7 financial processes. Using the Government of Bermuda's  
8 Financial Instructions as baseline and tailored to fit the  
9 nuances of both operations."

10 Does that not suggest at the moment that they  
11 don't have them?

12 A Or that they're inadequate.

13 Q Do you know?

14 A I was not on the Board of Trustees, sir. They  
15 either had them and they were inadequate and as a result  
16 they agreed to it.

17 Q It was for that reason I read you Paragraph 17 of  
18 the witness statement when you said "It was my  
19 understanding."

20 A Uh-huh.

21 Q "That they had their own written financial  
22 procedures.

23 And it was for that reason I asked you as to what  
24 their understanding was based upon.

25 A I'm sorry, your question?

1 Q Given that the Internal Audit Reports appears to  
2 indicate that there were no such written procedures, I was  
3 trying to ascertain on what factual basis did you base this  
4 statement that "it was my understanding that they had their  
5 own written financial procedures"?

6 What was your understanding based upon?

7 A Having assumed responsibility for a ministry that  
8 had been disputing funds to the Quango, one assumed that  
9 they had financial procedures in place. Additionally,  
10 having assigned the Ministry Controller to sit on the Board  
11 and sit in on Board meetings, there was more comfort that  
12 they had operating procedures.

13 Again, I can't speak to the adequacy of them,  
14 however, it was my understanding based on the fact that  
15 they had been operating as a Quango for many years, they  
16 delivered services, and so certainly they had some  
17 financial procedures in place. They weren't a new  
18 organization.

19 Q So to be fair, would it be fair to say that you  
20 just assumed that they had --

21 A It was my understanding, sir.

22 Q Understanding?

23 A That's correct.

24 Q But understanding based upon the fact that the  
25 payments were being processed, things had been going on and

1 you just assumed that they would have written instructions,  
2 written procedures in place?

3 A Certainly, sir. The golf course, Port Royal Golf  
4 Course had been operating for many years under the act  
5 prior to my joining the Ministry. Funds had been disbursed  
6 for many years prior to my joining the Ministry. That is  
7 correct.

8 Q And from that fact, that historical fact that  
9 funds had been disbursed for a long time, you assumed that  
10 they must have in place written financial procedures?

11 A There was no indication from the Ministry  
12 Controller or others in government that there were none.  
13 They were a Quango, and it was my understanding they had  
14 their own financial procedures and were not required to  
15 comply with Financial Instructions.

16 Q And it was -- was it for that reason that you did  
17 not think that there was any need to make sure that they  
18 complied with Financial Instructions?

19 A To make sure that they complied, I'm not  
20 following.

21 Q Well if they did not have their own written  
22 procedures, then they would be required under the Financial  
23 Instructions to comply with Financial Instructions?

24 A That would be a matter for the Board and the  
25 Chair, well the Chair and the Board, yes.

1 Q But I mean, but so your Ministry which is, which  
2 sponsored the remedial project which cost the rate payers  
3 \$13.5 million, what responsibility did your ministry have  
4 to make sure that the \$13.5 million which have been given  
5 to the Trustee of Port Royal was used either in accordance  
6 with the Financial Instructions or in accordance with their  
7 written procedures?

8 A What responsibility did we have?

9 Q Did you feel there was any responsibility?

10 A It was our responsibility to disburse the funds  
11 in accordance with the Financial Instructions. They were  
12 required to submit certain documentation in order to  
13 support the disbursement of the funds. And we were  
14 required to do that in accordance with Financial  
15 Instructions.

16 How they used those funds once they received  
17 those funds, they had a responsibility to ensure that they  
18 were using those funds in accordance with financial  
19 procedures that they were operating under.

20 Q Did you feel whether the Ministry had any  
21 responsibility in terms of supervision?

22 A The Ministry had a responsibility to perhaps  
23 identify any deficiencies, the Ministry had a  
24 responsibility to ensure that the funds that we were  
25 distributing were being used for the purpose for which we

1 were distributing them, yes.

2 Q How did you do that?

3 A We did that by ensuring that they provided  
4 reports, ensuring that the supporting documentation that  
5 was required to approve the disbursement was attached.

6 Q And did you ensure that the contracts which they  
7 were entering into for substantial amounts of money, say 2  
8 or 3 million dollars, that they were appropriately  
9 tendered?

10 A We did not review their contracts or their  
11 tendering process, no. That was not our responsibility.  
12 The Board is a body-corporate, that's their responsibility.

13 Q I understand Quango is a body-corporate. And  
14 they can enter contracts into their own name. But leave  
15 that on one side.

16 Given that the money which is being given is  
17 given by the Government of Bermuda, and in this case the  
18 money was being provided by the Ministry of Tourism to the  
19 Trustees. And I'm just exploring with you what procedures,  
20 if any, you put in place to make sure that the money was  
21 spent in accordance, the money was spent either in  
22 accordance with the Financial Instructions or in accordance  
23 with their own written procedures?

24 A We were required to comply with Financial  
25 Instructions and distribution of the funds to the Board.

1 The Board had a fiduciary responsibility to make sure they  
2 complied with their Financial Instructions and use of those  
3 funds.

4 Q So I get the position clear, that as far as the  
5 Ministry was concerned, the Ministry offered that  
6 \$13.5 million to the Trustees of the Port Royal Golf  
7 Course, as far as they were concerned, that was the end of  
8 their responsibility?

9 A In accordance with Financial Instructions and our  
10 responsibility for the Board, yes, sir. The Board is a  
11 body-corporate.

12 Q Very well. Let's have a look at the further  
13 recommendations by the Internal Audit. If you look at just  
14 the same policies and procedures, the Internal Audit says,  
15 "The golf courses should as well, one, obtain the most  
16 updated copy of the Financial Instructions and make it  
17 available to management and accounting personnel."

18 Do you see that?

19 A I do.

20 Q The Internal Audits seemed to be under the  
21 impression that they're bound by them.

22 "Two, conduct an internal training for all  
23 personnel to make them aware of the provisions of Financial  
24 Instructions."

25 A Yes. That section, sir, if you look at 1-1 it



1       instructs that they use the Bermuda Financial Instructions  
2       as a baseline and tailer them to fit the nuances of the  
3       golf course operations. So in actual fact, it's saying if  
4       you don't have something that's adequate, use Financial  
5       Instructions as a baseline and tailer them. But then it  
6       goes on to speak specifically to educate it on Financial  
7       Instructions. So it's somewhat contradictory but I accept  
8       your point.

9       Q           The important point of that paragraph, Ms.  
10       Whitter, is that it seems to suggest that they don't have  
11       in place written financial procedures.

12       A           Or adequately written financial procedures.

13       Q           Yes, fair enough. Adequately written financial  
14       procedures.

15                   And if you just look at page 11-45, this is  
16       again, the risk level is high. This is Purchase of Goods  
17       and Services. Tendering Process.

18                   "In all purchase contracts that we examined,  
19       there was no evidence that the contracts underwent the  
20       proper tendering process. If there was any tendering  
21       process done as represented by Management, documentary  
22       evidence was not available for Internal Audit to review."  
23       Just pausing there.

24                   I showed you the main body of the Internal Audit.  
25       And you saw that the management of the golf courses

1 accepted the report. So the management of the golf courses  
2 accepted that in relation to tendering process, that there  
3 was no evidence that the contracts underwent a proper  
4 tendering process.

5 Do you see that?

6 A I do.

7 Q And if you look at in detail below, that deals  
8 with contracts for goods and services in excess of 50,000.  
9 Documentation.

10 "A minimum of three recorded written quotations  
11 of tenders using the invitation to tender or requests for  
12 quotations are to be considered before the acceptance of  
13 supply and goods and services in excess of 50,000."

14 That is the same requirement as in the Financial  
15 Instructions, yes?

16 A That is.

17 Q And then if you please have a look at next page,  
18 11-46, middle of the page, "We recommend that the  
19 management strictly comply with the provisions of the  
20 Financial Instructions in regards to the contract tendering  
21 process concerning the submission of all tender quotes in  
22 order to achieve optimum value for money."

23 Do you see that?

24 A I do.

25 Q And you also accepted that the management

1       accepted that recommendation?

2       A           Which is their obligation and their  
3       responsibility. It's the management who need to be  
4       concerned with the financial management of the Quango, so  
5       yes.

6       Q           Yes. And look at the next sentence, "A  
7       consistent approach to purchasing across the whole of the  
8       government is essential to achieve the following  
9       objectives. Value of money, fairness, conduct of business  
10      openly and without receipt of practice, a variety of  
11      supplies and given the opportunity to quote.

12                Do you see that?

13      A           I'm sorry, where is that, sir?

14      Q           It's just the same paragraph underneath, you  
15      see --

16      A           Yes.

17      Q           And that is a quotation actually from the  
18      Financial Instructions. The Internal Audit Department  
19      appears to consider the golf courses just like any other  
20      government department.

21      A           That's a view, sir. However, there is an act in  
22      which we referred to earlier that establishes them as  
23      body-corporate. They were a Quango. And appreciate that  
24      the Internal Audit's view is that having reviewed the  
25      processes and procedures that they needed to be

1 strengthened and more in line with government, I accept  
2 that.

3 Q Yes. And we also looked at the Legislation, and  
4 the legislation requires golf courses to comply with either  
5 Financial Instructions or if they have them in place, their  
6 own alternative financial procedures, a copy of which has  
7 been given to the Ministry of Tourism."

8 A Uh-huh. And the Ministry of Finance.

9 Q We'll move on to another topic, but I must say we  
10 would like to see if it's possible a copy of those  
11 financial procedures.

12 A Certainly.

13 MR. BARRITT:

14 Q Pardon me, Ms. Whitter, I have a couple questions  
15 if I may.

16 A Sure.

17 Q Who, in fact, was the Financial Controller that  
18 you assigned to the Board of Trustees, do you recall?

19 A Curtis Stovell.

20 Q Curtis Stovell. And my next question is, could  
21 you tell us then what his responsibility would have been as  
22 you see it in terms of processing payments?

23 A He would receive payments that were approved by  
24 the consultant, all of the documentation, the standard  
25 documentation that's associated with an invoice, and he

1 would test that; where there were questions, he would go  
2 back to the Board and/or the consultant that had a  
3 consultant who was there, I think project manager.

4 Q So you would expect that it was his job then if  
5 there were anything on the face of it that looked out of  
6 the ordinary or anything you said you wanted to test, that  
7 was his responsibility, that was his job?

8 A Yes, sir.

9 Q Okay. And with respect to Financial Instructions  
10 and financial procedures, whichever we want to use, what do  
11 you see is their purpose?

12 A They are to guide the activities associated with  
13 the disbursement of government funds.

14 Q And for what purpose would that be, just to make  
15 sure that there's paperwork or is there some ultimate goal  
16 in mind?

17 A Good governance.

18 Q Fair enough. I was also going to suggest to you  
19 that also to make sure that the government's getting value  
20 for money?

21 A Absolutely.

22 Q Yeah. Okay. Fair enough. And so you would  
23 expect that that was Mr. Stovell's job.

24 Do you recall that he'd ever come to you with  
25 anything with respect to the Port Royal Golf course where

1 he queried anything and said PS, I'm concerned about this  
2 or that?

3 A Not specifically, but generally we would meet on  
4 a regular basis. We would, once the invoices were vetted  
5 and at once questions had been asked, we would often  
6 discuss the details of a particular invoice of a particular  
7 situation. That was normal course and standard operating  
8 procedure.

9 Q But do you recall anything out of the ordinary in  
10 all those meetings something that you were required to take  
11 up with respect to the golf course expenditure?

12 A Not specifically, no.

13 Q Thank you.

14 BY CHAIRMAN EVANS:

15 Q Just got one question then, Ms. Whitter. The  
16 note I made of your evidence was that you -- I sent the  
17 controller to attend their meetings to increase the level  
18 of oversight.

19 A That's correct.

20 Q I understand from what you just said that was  
21 Mr. Stovell, as the controller within your department, and  
22 he became a member, a regular attender at the golf club  
23 Board meetings.

24 A He was appointed as an ex officio member, that's  
25 correct.

1 Q The way you put it suggested to me that perhaps  
2 you were concerned that there wasn't enough oversight at  
3 the time, you wanted to increase the level of oversight?

4 A They were dealing with a capital project. The  
5 Ministry was charged with distributing a large quantity of  
6 funds. I wanted to make sure that if there was greater  
7 oversight of the spending, to ensure that the government  
8 interests were protected, that's correct.

9 Q And so you did feel a measure of concern that  
10 when you arrived, the sufficient arrangements were not in  
11 place?

12 A I'm not sure it was concern, it was  
13 responsibility. I felt a level of responsibility.

14 Q You recognize that it was your responsibility to  
15 increase the level of oversight?

16 A If I was going to be invited to sign off,  
17 authorize the expenditure, yes.

18 Q Yes. And I don't want to leave --  
19 You've said that you will ask if the Ministry  
20 files still contain the Trustee's own instructions in place  
21 of Financial Instructions, which you think you saw at the  
22 time; is that correct?

23 A It's my understanding they existed, that's  
24 correct.

25 Q I just want to see where we are on that.

1                   The law says that the Quango has to obey  
2   Financial Instructions unless it has its own instructions  
3   with you.

4   A               With the Accountant General's Office, that's  
5   correct. But the law doesn't say that, the Financial  
6   Instruction says that.

7   Q               And the furthest you can go is you think it's  
8   likely that there were special instructions, special  
9   arrangements here because that's what you would have  
10  expected to find?

11  A               That's correct, sir.

12  Q               But you stopped short of saying you actually went  
13  in the file and saw special instructions?

14  A               That's correct.

15  Q               The board of audit -- Internal Board of Audit  
16  went into this matter in great detail in 2011.

17  A               Uh-huh.

18  Q               And it said, it made its report on the basis  
19  quite clearly, that the normal Financial Instructions did  
20  apply.

21  A               That was the Internal Audit's view, sir. They  
22  were a Quango and in accordance with Financial  
23  Instructions. Again, I didn't write the Financial  
24  Instructions but the Financial Instructions is quite clear.  
25  If a Quango chooses to use these Financial Instructions,



1 any modifications must be documented in writing. If a  
2 Quango chooses not to utilize these Financial Instructions,  
3 the organization has written procedures in place. That's  
4 in Financial Instructions.

5 Q Yes. But the question is whether there were  
6 special instructions for the Board of Trustees or whether  
7 they were bound under the original to follow Financial  
8 Instruction?

9 A That's the question.

10 Q And when the Internal Audit went into this  
11 matter, I think, during 2011, it's quite clear I would  
12 suggest from that report that they assumed that the  
13 Financial Instructions did apply?

14 A They seemed that financial procedures that they  
15 had in place were inadequate, and recommended that they use  
16 Financial Instructions, the Government instructions.

17 Q And there are references in their report to  
18 demand the current Trustees accepting that the Financial  
19 Instructions did apply?

20 A That's their view, sir.

21 Q That's how one would read the report?

22 A That's how one would interpret the report  
23 perhaps.

24 Q Yes. But how likely is it then that there were  
25 special instructions which the Internal Audit somehow

1 failed to discover the existence of and which the Trustees  
2 in 2011 didn't suggest existed then?

3 A I'm sorry, can you repeat that question?

4 Q How likely is it, and I have to press you on  
5 this, that there were special instructions as to state from  
6 the normal Financial Instructions when in 2011 the Internal  
7 Audit proceeded on the basis that there were no Financial  
8 Instructions, and that the normal, no special instructions,  
9 the Financial Instructions did apply.

10 And what's more, the trustees at that time didn't  
11 suggest otherwise. They seemed to have accepted in 2011  
12 that the normal Financial Instructions did apply?

13 A I think it would be highly unusual if they after  
14 -- after quite a high profile matter being discussed  
15 publicly with regard to the Capital Project, and the Audit  
16 Report that suggested that the handling of that Capital  
17 Project was inefficient.

18 I think it would be quite likely that the Board  
19 would not agree that they needed to strengthen their  
20 internal financial operations. That golf course, as I said  
21 previously, has been operating for many, many years. And  
22 so they're -- and they were operating their procuring  
23 services, they were providing services, they were paying  
24 the employees, they had been operating for a very long  
25 time. So certainly they must have had some financial

1 procedures in place or they wouldn't be capable of running  
2 a business.

3           Were they adequate? I would suggest that the  
4 Internal Audit Report and the Auditor General's report was  
5 with respect to the project, suggested they did not have  
6 adequate procedures in place, I accept that. But I think  
7 it's illogical to accept that they did not have any  
8 procedures in place at all because they were running a  
9 business.

10 Q           Well and perhaps we're back at the situation  
11 whereas a matter of law, maybe the Financial Instructions  
12 were in place, but you say they seemed to behave as if no  
13 Financial Instructions were in place?

14 A           I don't recall saying they seemed to be -- I'm  
15 sorry, can you repeat that?

16 Q           Well your last answer, I understood, could you  
17 repeat it, when you said they seemed to have behaved in  
18 some way or another?

19 A           They seemed to have accepted that the financial  
20 procedures were inadequate.

21 Q           You mean the Internal Audit Report?

22 A           No, the Board. The Management and the Board  
23 seemed to accept that the financial procedures were  
24 inadequate.

25 Q           So the real issue may be this, the Board in 2011

1 doesn't seem to have disputed the idea which had come from  
2 the Internal Audit Report that what I'll call normal  
3 Financial Instructions did apply to them?

4 A That's a matter for the Board, sir. And if they  
5 accepted that, so be it.

6 Q Thank you.

7 BY MR. HARGUN:

8 Q Just one point arising out of that, Ms. Whitter.  
9 As you rightly pointed, there was a critical special report  
10 by the Auditor General in 2014.

11 A Uh-huh.

12 Q The number of deficiencies were identified. And  
13 in particular, they also identified a number of payments  
14 which were questionable, like for example, the \$10,000  
15 payment to a certain Mr. Bulford.

16 What steps has the Ministry taken, if any, to  
17 recover those funds?

18 A I would not know. I'm no longer in the Ministry  
19 of Tourism and Transport and have not been for quite some  
20 time.

21 Q Okay. Fair enough. That's answers my question.

22 Can we move on to GlobalHue.

23 (Off-the-record discussion.)

24 BY MR. BRADSHAW:

25 Q Given what we understand of the situation at Port

1 Royal, and the Auditor's Report and what have you, in  
2 hindsight, what, if anything, would you have done  
3 differently?

4 A I think that's an interesting question in that  
5 there are a couple of things, a couple of points that need  
6 to be made. It was the Cabinet who made a decision to  
7 provide for Port Royal to undertake the project. It was  
8 the Ministry in implementing that Cabinet decision, our  
9 responsibility to disburse the funds.

10 I'm not sure that the Ministry might have done  
11 anything differently. The Ministry has responsibility for  
12 disbursing the payments that the Legislature approved.

13 Q So my question's actually more of -- and I'm more  
14 forward looking, I'm trying to be forward looking. And I'm  
15 more concerned with the senior civil servants who are in  
16 place now because we all learn, right, we have experiences  
17 and we learn. And to say okay, for me, in my life, I might  
18 have done such or I may not have.

19 I'm just curious about what you, not the  
20 Ministry, but what you as an individual in that particular  
21 post may have done differently?

22 A That's a difficult question to answer because in  
23 every scenario it's going to be different. And we want to  
24 give a hindsight view. Hindsight is 20/20. How I might  
25 deal with my relationship or my oversight of a relationship

1 with Quango in the future may quite well be quite  
2 different.

3 Q Thank you.

4 BY MS. LUCK:

5 Q Ms. Whitter, by the time this report came out in  
6 November 2011, your assignment to the post of Permanent  
7 Secretary for Transport and Tourism had ended, correct, you  
8 left in January 2011?

9 A Yes, that's correct.

10 Q Had you been in the post, and had you seen these  
11 recommendations and the fact that Management of the Board  
12 of Trustees wanted to adopt these recommendations, would  
13 you have caused these recommendations and would you have to  
14 be adopted and would you have assisted Management to adopt  
15 these recommendations?

16 A The Ministry provides assistance to the Board,  
17 that is a Quango on an as-needed basis. I'm not sure how  
18 much assistance we could have given the Board in  
19 implementing financial procedures within their shop.

20 Q I think it would assist the Commission if you  
21 would tell them as Permanent Secretary, would you have  
22 accepted and adopted these recommendations especially in  
23 view of the fact that Management does appear to have  
24 accepted these recommendations, as Permanent Secretary to  
25 follow on what Mr. Bradshaw asked you?

1           A           When you asked that question, it suggests that  
2           the Permanent Secretary for Tourism and Transport or  
3           Permanent Secretary who has responsibility for a Quango,  
4           has a responsibility for implementation at an operating  
5           level.

6           The Permanent secretary does not have operating  
7           responsibilities. We provide assistance and advice to the  
8           Board. And so by way of clarifying anything that needed to  
9           be clarified perhaps, but it would be the Board and their  
10          Management who would have a responsibility for adopting and  
11          implementing. They're a Quango. They're not a government  
12          department that we have direct responsibility for.

13          If they were a government department that we had  
14          direct responsibility for, the response might be different  
15          and the steps taken to assisting the implementation would  
16          be different. But in this case they are, for all intents  
17          and purposes, a private organization.

18          Q           Fair enough. And Mr. Hargun pointed you to page  
19          11-46 for the Internal Audit recommends that Management  
20          strictly comply with the provisions of Financial  
21          Instructions in regard to the contract tendering process,  
22          concerning the submission of the vender in order to achieve  
23          optimum value for money, yes?

24          A           Uh-huh.

25          Q           May I ask you to in the same bundle, can I ask

1 you to turn to page, Tab 7, page 60 in a different context,  
2 but the principle is the same.

3 A Uh-huh.

4 Q In response to the Parliamentary standing  
5 committee on the public account, the now former Auditor  
6 General said that financial instructions are not clear when  
7 it comes to open tender. Actually, there is no  
8 recommendation for the open tendering process to be  
9 undertaken. It does say that contracts and agreements for  
10 goods and services over 50,000, the Acting Officer should  
11 consider the tender for the contract.

12 A Uh-huh.

13 Q Is that what your understanding of the tendering  
14 process was as provided by Financial Instructions?

15 A That's a difficult question to answer without  
16 context. I guess that speaks to open tendering versus  
17 closed tendering where you invite new entities to submit  
18 because they have the ability to be able to provide a  
19 service. And so --

20 Q Fair enough. Thanks.

21 BY MR. HARGUN:

22 Q Ms. Whitter, moving on to GlobalHue.

23 How you have very kindly set out your  
24 recollection in relation to both GlobalHue and at Paragraph  
25 21, you're answering the question, "Why did the Ministry



1 not put out the 2009 contract to tender? And that is  
2 renewable.

3 And then you said the Minister made a policy  
4 decision not to conduct an agency review. An agency review  
5 is the industry term associated with tendering in the  
6 advertising industry. His decision, that's the Minister's  
7 decision, not to undertake an agency to be supported by its  
8 Cabinet colleagues who approved the Procurement of Services  
9 Contract Award Contract Recommendation. GlobalHue," and so  
10 on.

11 So what you're saying is effectively, the  
12 Minister's decision which was passed by the Cabinet?

13 A That's correct, sir.

14 Q Did you make a recommendation, did you give any  
15 advice to the Minister?

16 A The Minister was aware that the agency contract  
17 was expiring and had been advised that the agency contract  
18 was expiring. Technical Officers provide the Minister with  
19 advice on a regular and ongoing basis relative to any  
20 number of things.

21 In this regard, the Minister had a particular  
22 position that he had taken based on the, I guess it was a  
23 very public discussion, deliberations around GlobalHue  
24 period, that was from inception when they were awarded the  
25 Agency of Record account for Tourism back in 2006.

1                   As a result of all of the public attention, the  
2 Minister had a particular position, and it was his position  
3 that he did not intend to conduct an agency review when the  
4 contract reached term.

5           Q           I understand that. And the reason I was asking  
6 that question, there have been two months prior to the  
7 renewal a special report by the Auditor General?

8           A           That's correct.

9           Q           And you rightly point out that that was a subject  
10 matter of great controversy?

11          A           Uh-huh.

12          Q           And we need not look at it because you're  
13 probably familiar with the report, there were certain  
14 aspects of the report if true would be disturbing?

15          A           Uh-huh.

16          Q           In particular, what would could be considered  
17 disturbing is the commissions charged by a company called  
18 Cornerstone.

19          A           Uh-huh.

20          Q           You may recall that highlighted, that the  
21 Cornerstone was charging commissions upon the advertising  
22 placed as high as 186 percent?

23          A           Uh-huh.

24          Q           Would you agree with me that that would be highly  
25 unusual to charge 186 percent on commissions?

1 A The relationship that the GlobalHue unit entered  
2 into with Cornerstone seemed to have one that provided for  
3 commission-based services.

4 Q Let me just ask you, you said the relationship  
5 with GlobalHue and entity Cornerstone. So this was just a  
6 separate agreement altogether between just GlobalHue and  
7 Cornerstone?

8 A They were a subcontractor.

9 Q And did the Government of Bermuda have any say in  
10 that?

11 A I think the contract provided for them to deliver  
12 services. One of those services was the procurement of  
13 media. Initially back in 2006, I believe, when the  
14 contract first commenced, GlobalHue were doing media buying  
15 and they had subcontracted out a component of that media  
16 buying to a communication called Curran. Curran  
17 Communications handled the luxury buying, and GlobalHue  
18 handled the balance of the buy.

19 Over time the GlobalHue as I recall their  
20 structure changed. They did an organizational review of  
21 sort, changed their structure, decided that they were not  
22 going to engage in media buying. And they would procure  
23 services and they would use a vendor to do the media  
24 buying.

25 Q And that's very helpful. Thank you.

1           The question I was asking was that, did the  
2           Government of Bermuda have no say in who these  
3           subcontractors were in relation to a very significant  
4           contract with the Government and GlobalHue?

5           A           It was not uncommon for agencies to use  
6           subcontractors for the revision of services. It was media  
7           buying or whether that was production relative to the  
8           production of advertising, it was not uncommon. So no, the  
9           government did not have a say in who they would use to do  
10          their buying. Bearing in mind that they would not just  
11          buy, as I understood, for the Bermuda account, but for all  
12          of their other accounts as well.

13          Q           So the answer is that Bermuda Government did not  
14          have any say in whether Cornerstone was hired or not?

15          A           No. And I don't believe that the contract  
16          provided that we should.

17          Q           And you recall that the time came when the  
18          Auditor General was reviewing the GlobalHue contract and  
19          not unreasonably, the GlobalHue wanted to -- excuse me --  
20          the Auditor General wanted to see the underlying invoices  
21          which showed the payments which Cornerstone as the  
22          subcontractor had made on behalf of the Government of  
23          Bermuda.

24                    Do you recall that?

25          A           Uh-huh. That was in accordance with the

1 contract, yes.

2 Q Yes. And is my understanding correct that  
3 Cornerstone took the position that it was not going to  
4 provide those invoices initially?

5 A Yes, though my recall of the situation is a  
6 little different than yours. What I recall was that the  
7 Cornerstone, the agency had changed its approach to media  
8 buying. No longer doing it in-house, but outsourced it to  
9 the company, Cornerstone.

10 When that occurred, they began to submit invoices  
11 to Department of Tourism for the media. During that period  
12 that the Auditor General was conducting an audit, the  
13 department that incidentally had stopped paying GlobalHue  
14 invoices, given that there was no supporting documentation,  
15 technical officers doing their job in accordance with  
16 Financial Instructions, they had stopped paying the  
17 invoices and brought to the attention of the Auditor  
18 General that they did not have the supporting  
19 documentation.

20 The Auditor General then lent, and the Auditor  
21 General's Office was asked to lend its assistant to the  
22 department by technical officers to secure the supporting  
23 documentation. That's my recall.

24 Q Well that's very helpful and understandable.

25 So you are confirming that Cornerstone at one

1 state did take the position that it was going to charge the  
2 Government of Bermuda through GlobalHue but not provide the  
3 primary invoices?

4 A I think the scenario from a business perspective  
5 was a little different. I think what occurred was  
6 GlobalHue had been modified its approach to the way it  
7 provided its services, entered into a relationship with  
8 Cornerstone that was commission based. It was commission  
9 based and it was based on terms and conditions that were  
10 inconsistent with the Bermuda Government's contract with  
11 GlobalHue. That inconsistency and that conflict did cause  
12 quite a bit of angst. Yes.

13 Q But even if its commission based, I mean let us  
14 even say this it had been agreed that Cornerstone would  
15 charge the Government of Bermuda or GlobalHue as its  
16 primary contractor, 186 percent of the amount paid by  
17 Cornerstone.

18 Surely, in order to recover the 186 percent  
19 commission, it would still have to show how much  
20 Cornerstone has paid to the advertising agencies?

21 A They, Cornerstone was not paying advertising  
22 agencies, they were procuring media and so they were buying  
23 broadcast media, they were buying print media, they were  
24 buying news print if I recall correctly. Whether or not  
25 there was 186 percent commission being charged across the

1 board, I think the record will show that it was not across  
2 the board when the auditor assisted the department in  
3 looking more closely at those invoices.

4 There were some invoices where there were  
5 unusually or very high commissions. And in other cases  
6 they were quite a bit lower. So I'm not sure that there  
7 was a consistent 186 percent commission being charged.

8 Q I'll come back to the 186 percent. But please  
9 give your explanation. You were trying to explain how they  
10 were charged.

11 How was it that they were claiming whatever  
12 commission was 186 percent or 100 percent, based on what?

13 A I can't answer that question because I haven't  
14 seen the documentation in a number of years. I was in the  
15 Ministry, not the department. I just happen to understand  
16 the whole process of media buying and how a scenario like  
17 that could potentially occur, where the -- where you have a  
18 media buyer who's consolidating its buy, not just buying  
19 for Bermuda, but buying for any number of clients a  
20 particular day part, let's say we're talking about  
21 broadcast, they could be buying a particular day part, they  
22 would bundle given their media strength, they would go out  
23 and they would get discounts. And then they would come  
24 back and charge that back to the clients.

25 Q So you, what you're saying is that Cornerstone

1 may be buying in bulk or warehousing?

2 A That's generally how they do it, yes.

3 Q And charging a portion of it.

4 But even on that basis if they want to charge on  
5 a commission basis, they would have to give some  
6 documentation, some material that shows what is your share  
7 and how it's calculated, and then the 186 percent  
8 commission on top?

9 A Absolutely. And technical officers noted that  
10 and are required the supporting documentation. So it  
11 wasn't the technical officers were not doing their jobs,  
12 technical officers were holding invoices and were not  
13 paying because they did not have the support in compliance  
14 with Financial Instructions.

15 Q Thank you. You're quite right. Not all the  
16 underlying invoices were charged commission 186 percent,  
17 you're perfectly right. Some were charged substantially  
18 less.

19 But it is right that the Auditor General  
20 concluded that on average commission of 51 percent of the  
21 total amount paid on behalf of the Government of Bermuda  
22 was charged, 51 percent commission was charged.

23 Now, you have spent considerable period of your  
24 time in the Tourist Ministry and the Tourist Industry as a  
25 result.



1                   51 percent commission is extraordinary, isn't it?

2           A           I can't speak to that, sir. I don't know what  
3           the commissions are or were being charged by other media  
4           companies and so I can't answer that question.

5           Q           Yes. You, I mean if you can't answer, you would  
6           say you would not accept from me that the conventional  
7           figure is something in the range of 15 percent?

8           A           Again, at the time I do not know what media  
9           houses were charging and what commissions looked like. And  
10          so I can't answer that question.

11          Q           Yes.

12          A           I would be hesitating a guess.

13          Q           And when the Auditor General found herself in  
14          that position where could not verify the amounts paid by  
15          Cornerstone on behalf of the Government of Bermuda and the  
16          Ministry had stopped making payments, how was that  
17          resolved?

18          A           It was -- this was an order that commenced  
19          under the former Auditor General, Larry Dennis. It was  
20          actually he. The Audit Department and the Department of  
21          Tourism worked very closely to resolve the issue. It was  
22          not a matter of the Auditor General simply doing a report.

23                    But because technical officers had raised this  
24          issue with the Auditor, the Auditor assisted, provided  
25          assistance by taking some steps that involved having

1 Cornerstone representatives come to Bermuda; those  
2 Cornerstone representatives presented to the department,  
3 technical officers and Ministry, how they went about their  
4 buy, what the justification was for the way they billed, as  
5 well as attempted to justify why in these circumstances  
6 they were unable to provide the supporting documentation  
7 that the department required.

8 Q I see. Are you telling me that in the end, no  
9 documentation was provided?

10 A I think in the end after quite a battle, if I  
11 recall correctly, I believe that the documentation  
12 ultimately was provided which allowed for the auditor and  
13 the department to do its analysis, which identified not  
14 only on a invoice-by-invoice basis the level of commission  
15 being charged, but also to support the payments that were  
16 ultimately made.

17 Q Right.

18 A As well as to put in place a process that would  
19 allow for the buy to be analyzed to the future.

20 Q Now you say a representative of Cornerstone came  
21 to Bermuda, did you meet them?

22 A I was in a meeting with them, yes.

23 Q Who were they?

24 A I cannot remember. There were two  
25 representatives from Cornerstone. I have no idea their

1 names now.

2 Q Where did they come from?

3 A I don't recall. New York maybe.

4 Q They came from the states?

5 A Yes, they did.

6 Q Was it New York or was it Atlanta?

7 A I'm sorry?

8 Q Was it New York or was it Atlanta?

9 A I honestly don't know. I can't recall.

10 Q And roughly, do you know how much money was  
11 actually paid to Cornerstone?

12 A I don't recall how much money was paid to  
13 Cornerstone, no.

14 Q Well the total spent under the first contract was  
15 approximately 10 million a year plus 1.4 million for  
16 GlobalHue, that was for their services. Of the 10 million  
17 which was to be for buying services, how much was channeled  
18 through Cornerstone?

19 A How much was channeled through Cornerstone, I'm  
20 not following you.

21 Q Channeled in the sense of from buying, assume  
22 from buying advertising space and the like.

23 A Cornerstone was the media buyer that GlobalHue  
24 used to procure media. And so I don't know the -- it  
25 varied from year to year. The media buy varied and the

1 funding associating it with media varied so you would  
2 have --

3 Q What would be your sense, million, 5 million?

4 A I have no idea, sir. And I don't want to guess.  
5 It varies. There was, when you look at an agency, the  
6 advertising agency contract, that's made up of media and  
7 production, media and the fee, sometimes travel and  
8 sometimes other miscellaneous costs. So I don't know how  
9 much of that was allocated to media. But typically it  
10 would be the majority of the funding that was allocated to  
11 media.

12 Q So perfectly understandable, you don't remember  
13 these two gentlemen's names who came down and you can't  
14 recall whether --

15 A There was a male and a female, sir. It was a  
16 white man and a white woman.

17 Q White man and white woman?

18 A Uh-huh.

19 Q And did you afterwards sort of, did you or the  
20 Ministry afterwards conduct any investigation to find out,  
21 you know, what is Cornerstone, you know, what's the  
22 background, what do they do?

23 A During the course of the issue with regard to the  
24 lack of the provision of the supporting documentation, yes,  
25 the Ministry did or the department more specifically did

1 look into who the organization was.

2 Q And what was it?

3 A I can't recall the outcome of that, sir. There  
4 were media buyers that had been subcontracted by GlobalHue.

5 Q Was it a substantial enterprise?

6 A I didn't recall, sir.

7 Q Does it exist today?

8 A I have no idea, sir.

9 Q So we, obviously under the first contract it was  
10 substantial issues primarily as a result of the involvement  
11 of Cornerstone in the running of the contract?

12 A Yes.

13 Q Yes. And time came when the contract expired in  
14 2009, and there was an issue as to whether it should be  
15 removed from GlobalHue or a contract to a different  
16 provider.

17 And I understand your evidence that it was the  
18 Minister's view that the contract should be renewed to  
19 GlobalHue and that was supported by Cabinet. I understand  
20 that and I accept that.

21 Did you make recommendation to the Minister?

22 A Sir, this contract was a contract for the  
23 Department of Tourism. And the Minister as I said earlier  
24 had a view because you did ask me that question earlier.  
25 And the Minister had a view. Given all of the controversy

1 around GlobalHue and its existence from the time they were  
2 awarded the Bermuda Tourism contract that he would not be  
3 doing an agency review. That was the policy position that  
4 the Minister took.

5 Q So are you saying that you did not give any  
6 advice because the Minister was not looking for advice?

7 A To a large extent, that's accurate. However,  
8 what we were required to do in accordance with Financial  
9 Instructions to ensure that we conducted a level of due  
10 diligence, and the Minister was aware of that.

11 Q Yes. When you say due diligence, you mean in  
12 terms to the new contract?

13 A In terms of the agency, to ensure that the agency  
14 was actually fit to manage the Bermuda Tourism account.

15 Q And you mean you did a due diligence in relation  
16 to GlobalHue?

17 A That's correct, sir.

18 Q What was the nature of that due diligence?

19 A We would have looked at a number of criteria with  
20 respect to how that agency was managing the account and  
21 rate the agency accordingly. I think that's born out in  
22 the witness document that you sent me where technical  
23 officers provided that information to Public Accounts  
24 Committee.

25 Q Did you make any recommendation in relation to

1 the future rule by Cornerstone?

2 A That was addressed, the issue, during from my  
3 recall, then my read of the bundle. The issue that was  
4 identified as it relates to GlobalHue was its management of  
5 the media buy and its inability to deliver in accordance  
6 with Financial Instructions and its contract, the  
7 supporting documentation for media.

8 Q And I think so the Commission can see it, the  
9 changes which you affected, you were applying in the  
10 revised contract, if you look at Tab 7, page 20. The  
11 revised contract starts at page 18, dated 15 of March 2009,  
12 and the relevant party, I think you're referring to is at  
13 page 20 dealing with third-party suppliers.

14 A Uh-huh.

15 Q Do I, I have not seen the original contract  
16 whether it's in the documentation, I just haven't come  
17 across it.

18 Do I understand that the prior expiring contract  
19 did not have these provisions?

20 A That is correct, from my review it did not have  
21 these provisions.

22 Q Fair enough. And that 4.1 provides that  
23 GlobalHue shall enter into agreements as agent for the  
24 Department of Tourism to make purchases of materials and  
25 services from third parties necessary for the declaration

1 of production of BDOT, marketing and advertising concepts  
2 and programs only in the event that GlobalHue does not have  
3 the personnel and facilities to perform any such services  
4 and only authorized by media pursuant to Section 4.2. All  
5 third parties' supplier costs shall be clearly identified  
6 on GlobalHue estimate sheets. GlobalHue shall use due care  
7 in selecting third-party suppliers."

8 So the provision now provides they can only use  
9 third parties when they don't have the resources  
10 themselves?

11 A Uh-huh.

12 Q And secondly, they must identify the costs?

13 A Uh-huh.

14 Q And 4.2, "GlobalHue should provide media copies  
15 of all over scale talent agreements, music licensing and  
16 other major contracts requiring payment for reimbursement  
17 by BDOT, prior to the execution of such agreements"?

18 A Uh-huh.

19 Q And if you look at I think the other relevant  
20 provision 5.1, GlobalHue shall not enter into any agreement  
21 with any third-party vendors requiring payment or  
22 reimbursement by BDOT such as but not limited to  
23 sponsorship, research agencies, production companies, et  
24 cetera, without prior approval of BDOT.

25 So under the new regime, GlobalHue cannot enter



1 into subcontract without the consent, prior consent of the  
2 government?

3 A That's correct, sir.

4 Q And GlobalHue would be obliged to in effect  
5 provide invoices from the original subcontractor?

6 A That's correct, sir.

7 Q And that was to overcome the issues with  
8 Cornerstone?

9 A Uh-huh.

10 Q As it happened, the Cornerstone did not play any  
11 role under the new agreement?

12 A That's correct.

13 Q And that was a point picked up by the Public  
14 Accounts Committee. Can I ask you to just cast your eye on  
15 that, you'll find that on page 108.

16 A Same tab?

17 Q Yes. You'll see that it's Tab 7. The report  
18 starts at page 104 and the relevant part you will find at  
19 page 108 at letter F. And we can just read together at F.

20 "Cornerstone Media was given a subcontract by  
21 GlobalHue to distribute advertising to the media  
22 marketplace. This subcontract cost 33 million over a  
23 period of January 2006 to March 31, 2009."

24 Just pausing there, Ms. Whitter, that seems to  
25 suggest that some \$33 million was paid over to Cornerstone

1 during those three years?

2 A I'm not sure that it was paid to Cornerstone.  
3 Cornerstone may, in fact, if they were -- and I don't  
4 recall that they were quite frankly, the media buying  
5 partner for GlobalHue from the inception of the contract.  
6 When the contract started as I stated earlier, GlobalHue  
7 was doing media buying and at some point entered into a  
8 relationship with Cornerstone, but that may well have been  
9 the value of the buy. I don't, again, I don't know what  
10 the value of the buy was, that they would be buying using  
11 those funds to buy media.

12 Q Yes. I mean just looking at the two sentences,  
13 the two first sentences at Paragraph F, if we read them  
14 together, they simply seem to suggest that Cornerstone was  
15 the recipient of \$33 million.

16 A Cornerstone procured media on behalf of the  
17 Bermuda Government. We had media, we had advertising in  
18 the marketplace. So when you say they were the recipient  
19 of --

20 Q Forgive me. I'm not suggesting that \$33 million  
21 went into the pockets of Cornerstone. They clearly entered  
22 into contracts in respect of which they had to pay  
23 themselves.

24 A Okay.

25 Q Yeah.

1 A Thank you for the clarification.

2 Q To put it another way, contracts with Cornerstone  
3 entered into on behalf of the Government of Bermuda, they  
4 in turn invoiced and received payment from the Government  
5 of Bermuda of \$33 million.

6 A Perhaps they didn't do the numbers, but if  
7 it's -- and I don't know where this came from, if this is  
8 an audit report and I don't know what the number represents  
9 or where that number came from.

10 Q Fair enough. Let's not debate that further. The  
11 contract was not tendered and was not approved by the  
12 Attorney General, that's a subcontract. G. From a value,  
13 the money perspective, Cornerstone did not appear to add  
14 any value for BDOT as GlobalHue seamlessly took over its  
15 function after the Auditor General raised the red flag  
16 about lack of documentation and higher than average  
17 mark-ups."

18 Just pausing there, let's just break it down a  
19 bit.

20 Is it right that once it was decided for whatever  
21 reasons that Cornerstone was not going to play any part in  
22 the marketing buy on behalf of the Government of Bermuda,  
23 that GlobalHue which had the main contract without any  
24 problems took over that function?

25 A I'm not sure that it was without any problems, it

1 came with quite a bit of angst for the department and its  
2 employees, but yes, they assumed responsibility once again  
3 for the media buy as they had originally when the contract  
4 started.

5 Q So let's get it straight. Your evidence is that  
6 when the contract was first started in 2006, GlobalHue was  
7 in fact doing all the funding?

8 A GlobalHue was doing some of the buying. Curran  
9 Communications was doing the luxury buy, so yes.

10 Q But all right. What portion would be the luxury  
11 buy?

12 A Again, I don't know the numbers, sir. I don't  
13 know that.

14 Q But certainly, GlobalHue was doing the buying in  
15 respect of the other part?

16 A Yes.

17 Q And according to the Public Accounts Committee,  
18 it seems that after it was decided for whatever reason,  
19 Cornerstone could not be in the picture. That function  
20 which was being performed by Cornerstone was taken over by  
21 GlobalHue?

22 A To be clear, it was not as a result of the Public  
23 Accounts Committee. It was not as a result of the Auditor  
24 General. It was as a result of the technical officers of  
25 the Department of Tourism to ensure that they were

1 complying with Financial Instructions who raised this  
2 issue, put pressure on GlobalHue, used the Auditor  
3 General's Office in order to effect a change.

4 Q I'm not querying that point. And I accept that.  
5 Let me bring it this way.

6 After the department raised issue and the  
7 technical officer's aides raised issues in relation to the  
8 involvement of Cornerstone and it was decided that the  
9 Cornerstone could not stay in the picture, all the  
10 functions which had previously been performed by  
11 Cornerstone was taken over by GlobalHue?

12 A It was a condition of the contract, the renewed  
13 contract, yes.

14 Q And they had the resources to do that?

15 A Well they found the resources to do that. They  
16 restructured and I suppose found the resources to conduct  
17 the buy.

18 Q Yes. So going back to G, this is the PAC.

19 "From a value for money perspective, Cornerstone  
20 did not appear to have any value to BDOT as GlobalHue  
21 seamlessly took over its function after the Auditor General  
22 raised the red flag of lack of documentation and higher  
23 than average mark-ups. The arrangement with Cornerstone  
24 was indeed costly to BDOT while adding no value."

25 Then H. "It is not clear why Cornerstone was

1 hired in the first place or who made that decision as  
2 GlobalHue was capable of doing that job internally at the  
3 outset."

4 What do you say about that sentence?

5 A Which sentence, sir?

6 Q The sentence I've just read. "It is not clear  
7 why Cornerstone was hired in the first place or who made  
8 that decision as GlobalHue was capable of doing that job  
9 internally at the outset."

10 A GlobalHue was indeed as I've indicated doing the  
11 job at the outset. GlobalHue made a decision to  
12 outsource its media buy, that was a business decision that  
13 the company made. It was not a division that BDOT made or  
14 that BDOT was involved with.

15 Q And BDOT was not consulted that it should be with  
16 a company called Cornerstone?

17 A No. They were probably advised.

18 Q I was going to move on to another topic. If you  
19 have any other questions.

20 BY MS. LUCK:

21 Q Ms. Whitter, you talk about fact that the  
22 Attorney General's department worked closely with you while  
23 you tried to unravel what had gone on with Cornerstone  
24 Media so how did that process work? The technical officers  
25 saw the underlying information wasn't being provided to the

1 department, and then they went through you and then  
2 involved Auditor General or what?

3 How did that actually work?

4 A Technical officers initially noted the change  
5 where they were not receiving the supporting documentation.  
6 They initially requested that documentation from the agency  
7 and held the invoices accordingly. The agency failed to  
8 provide the invoices so the department continued to hold  
9 the invoices. The audit, the Auditor General's Department  
10 was doing an audit at the time. And technical officers  
11 raised the issue with regard to the lack of supporting  
12 documentation with the auditor to solicit support and help  
13 in trying to access the documentation that was required in  
14 compliance with Financial Instructions.

15 Q And eventually, I think it was after about two  
16 years, eventually all the invoices were brought forward and  
17 you were able to review them; is that correct?

18 A When this matter was ultimately resolved, I was  
19 not with the Ministry. I had moved on to another role but  
20 it's my understanding that all of the invoices were  
21 ultimately provided.

22 Q And so you don't then have any idea of whether  
23 any moneys were deducted from those invoices as being  
24 inappropriate payments and so forth?

25 A I did not.

1 Q Do you know who would know that?

2 A No. Whoever it was, the -- either the director  
3 at the time. This is a matter, this contract falls under  
4 Head 33 which then was the Department of Tourism. So the  
5 accounting officer would have been the director.

6 Q Thank you.

7 BY MR. BARRITT:

8 Q Ms. Whitter, just focussing on GlobalHue were the  
9 ones who made the decisions to outsource to Cornerstone  
10 during the contract and the department was not consulted on  
11 the buys you said?

12 A Advised more than likely.

13 Q Just clear up one thing for me.

14 But you were Director of the Department of  
15 Tourism at that time?

16 A During the period, a portion of the period, in  
17 the first contract, yes.

18 Q Yeah. So you would have known whether or not the  
19 Tourism was advised?

20 A Yes.

21 Q Yeah. But your recollection is that you were  
22 probably advised, you don't recall anything particular with  
23 respect to that?

24 A There is no formal notification. It may have  
25 been something that an agency representative or the



1 president of the agency mentioned.

2 Q Okay. And just, were you there when the original  
3 contract was entered?

4 A I was.

5 Q You were. Was it true what they said in the fact  
6 minutes that this contract was not approved by the Attorney  
7 General?

8 A That's not true.

9 Q It was approved?

10 A It was indeed approved by the Attorney General  
11 initially when the Auditor General was undertaking its  
12 review, given the filing system and given changes with the  
13 way that contracts were handled, there was a time when  
14 contracts were initially sent directly from the department  
15 to the Attorney General's Chambers for review prior to  
16 being submitted for Cabinet consideration.

17 The process change, contracts were then required  
18 to be submitted to the Ministry and the Ministry, in turn,  
19 would submit those contracts to the Attorney General's  
20 Chambers for review. The correspondence associated with  
21 the review of the GlobalHue contract did not come back to  
22 the department. It went to the Ministry.

23 When the Auditor General was doing its review,  
24 review of the department files, the letter from the  
25 Attorney General's Chambers confirming that they had no

1 legal objections was not on file. After the audit was  
2 completed some months after, the letter was found in the  
3 Ministry files and provided to the auditor.

4 Q Thank you.

5 BY CHAIRMAN EVANS:

6 Q Just one last question. Could you turn to  
7 Section 7 of the bottom of page 20.

8 A Uh-huh.

9 Q You saw this earlier. If you turn back to page  
10 18, you'll see that this the -- what I'll call the 2009  
11 renewal of the GlobalHue contract. And you refer to Clause  
12 4 which imposes restriction on dealing with third-party  
13 suppliers. And you were shown a number of subclauses which  
14 say there has to be prior approval and so on.

15 A Yes.

16 Q Now those, a consequence of that contract as I  
17 understand it was that GlobalHue no longer used  
18 Cornerstone?

19 A That's correct.

20 Q And I wanted to ask you about, were you involved  
21 in the negotiation of that clause?

22 A This contract was negotiated by the Department of  
23 Tourism. That would have been the director. I was -- I  
24 probably at the time I was the Permanent Secretary and  
25 given that this is quite controversial, I probably

1 consulted with the director as it relates to this contract.

2 Q Because you've been asked whether the Ministry  
3 made any technical recommendation of this contract, and you  
4 explained it hadn't because the Minister had already had  
5 formed a Ministry review; is that correct?

6 A That is correct.

7 Q And what I wanted to ask you was this.

8 Those provisions were there suggesting that a  
9 major part of the renegotiation was with regard to the  
10 possibility of Cornerstone, the problem of Cornerstone  
11 repeating itself; is that right?

12 A Those were -- those provisions were there because  
13 it caused the department quite a bit of angst. There was a  
14 requirement for the department to manage this contract in  
15 accordance with Financial Instructions. It was a  
16 requirement that the vendor who was being awarded the  
17 contract understood without question that there were  
18 certain requirements and restrictions associated with the  
19 delivery of services.

20 Q Yes. And so I think you're good in saying, this  
21 clause was in a sense negotiated with the Cornerstone  
22 experience in mind?

23 A Perhaps, yes.

24 Q And you said at one stage it became a condition  
25 of the contract that GlobalHue would not use Cornerstone,

1 and did I note that correctly?

2 A I don't know if it was it a condition of the  
3 contract, no, I don't recall specifically that they would  
4 not use Cornerstone. But in the event they used  
5 Cornerstone or any other media buyer or vendor, that they  
6 had to adhere to the conditions and provisions as set out  
7 in the contract. They opted, I believe, in the end not to  
8 use Cornerstone.

9 Q Sorry, I missed that.

10 A I believe they opted of their inner core not to  
11 use Cornerstone.

12 CHAIRMAN EVANS: Thank you. No further questions  
13 on GlobalHue. We'll take our ten-minute break now. We'll  
14 start again at 5 to 12. And we take a 10, it will be a  
15 12-minute break. Could you be very careful not to speak to  
16 anybody else about your evidence during the gap.

17 (Whereupon a recess was taken.)

18 BY MR. HARGUN:

19 Q Ms. Whitter, can I ask you a brief question in  
20 relation to the Ambling contracts?

21 A Sure.

22 Q In your witness statement at Paragraph 32, you  
23 set out your limited recollection in relation to that. You  
24 say that as far as you're aware, "Ambling provided hotel  
25 development consultation for the Cabinet Office and by

1 extension the Department that had responsibility for  
2 various aspects of hotel development in accordance with the  
3 relevant legislation. As noted above, whilst I was the  
4 Permanent Secretary for the Ministry of Tourism and  
5 Transport at the time, the responsibility for the hotel  
6 development remained the responsibility of the Cabinet  
7 Office. I have been unable to determine if any reports  
8 were produced and therefore, I'm unable to provide copies.  
9 Yes?

10 A Yes.

11 Q I just want to ask you to take a look at the  
12 services provided by Ambling, specifically when you go to  
13 Tab 8 and go to page 9, this Schedule B sets out the  
14 services which they are going to provide, the consultancy  
15 services.

16 A Uh-huh.

17 Q Wondering if you could help me to identify from  
18 your perspective and you may not know which ministry's  
19 likely to be the ministry involved. Paragraph A, "Oversee  
20 the implementation of Ambling's recommended operation and  
21 internal policy changes to the Planning Department."

22 From that, I'm assuming that the Planning  
23 Department which would be concerned; is that right?

24 A That's what it says.

25 Q And secondly, "Develop a new impact fee model

1 that would be assessed on the first larger commercial  
2 projects on the island that would exceed a minimum of 20  
3 million in total cost in value. These fees will be  
4 collected by both the Ministry of Works and Engineering and  
5 Ministry of Environment and Sports."

6 I'm assuming that the prime ministry concerned  
7 with, that would be Works and Engineering?

8 A Presumably.

9 Q And C, "Provide general consultancy services during  
10 the development and construction of Grand Atlantic Hotel  
11 and affordable housing residents."

12 Would that be Tourism or Cabinet?

13 A That would be the Department of Tourism but the  
14 handling of the inter-development matter, that would have  
15 been with the Cabinet Office via the Department of Tourism.

16 Q Why was it done that way, do you recall?

17 A I do not recall specifically; however, it was --  
18 there was a period when there was no Permanent Secretary  
19 for the Ministry of Tourism and Transport. At that time  
20 the functions of the Permanent Secretary were undertaken by  
21 the Cabinet Secretary, and the Minister obviously was one  
22 in the same as the Premier.

23 And when the transition occurred, the Permanent  
24 Secretary was put in place with the Ministry, the Cabinet  
25 Office or the Premier opted to obtain the Hotel Development

1 component there. They viewed Hotel Development as a  
2 national priority and there was a special Cabinet Committee  
3 that deliberated with respect to Hotel Development.

4 Q And prior to that change, historically that would  
5 be with the Ministry of Tourism?

6 A That's correct.

7 Q Thank you. Provide program, this is D, "Provide  
8 Program Management Services and Development agreement,  
9 negotiations, man those structures, land swap at  
10 Southlands, and the master planning overview at Morgan's  
11 Point, envisioned Five Star Resort Hotel development and  
12 PGA golf course.

13 Which ministry would be involved there, you  
14 think?

15 A That would be a number of ministries.

16 Q Yes. And would Tourism be involved in that?

17 A With respect to the hotel development component,  
18 yes.

19 Q And do you recall receiving any reports in  
20 relation to that?

21 A I don't recall receiving any reports in relation  
22 to Ambling generally, though I'm advised that reports were  
23 received.

24 Q And E, "Provide general consultancy services to  
25 Ministry of Works and Engineering."

1                   That's clearly Works and Engineering as it  
2                   states.

3                   F, "Provide program management services with the  
4                   Bazarian Group during the development closing and  
5                   construction phases for the former Club Med site, which  
6                   would be the new Five Star Resort Hotel and Golf Courses in  
7                   St. George's. You know that that hadn't taken place.

8                   But that would be with the Cabinet, wouldn't it?

9                   A                   And the Department of Tourism.

10                  Q                   Yes.

11                  A                   Uh-huh.

12                  Q                   And presumably with your capacity at Tourism, you  
13                  did not see any report for that?

14                  A                   Because that the relationship between the  
15                  technical officer responsible for the hotel development and  
16                  the Department of Tourism and Cabinet office worked, I  
17                  didn't receive any specific reports.

18                  Q                   And G, assist the Ministry of Tourism and  
19                  Transport with the final development agreement and closing  
20                  process, the construction of St. Regis Hotel and  
21                  condominiums on Par-la-Ville Road.

22                  We know that, the historical fact that has taken  
23                  place. Did you receive any reports?

24                  A                   Most of this work, I am aware was ongoing work,  
25                  and so I don't recall any specific reports with Ambling at



1 all.

2 MR. HARGUN: Fair enough. This gentleman may  
3 have questions.

4 BY MR. BARRITT:

5 Q I have one area I'd like to focus on, Ms.  
6 Whitter, if we could. It's in your statement, Paragraph  
7 15. This is in context of questions you were asked about  
8 Heritage Wharf Contracts. And in Paragraph 15 you said, "I  
9 was not at the Ministry at the time this matter occurred.  
10 However, it's fair from the documents presented that  
11 technical officers made every effort to respect the  
12 principles of Financial Instructions whilst adhering to the  
13 policy direction of Government. To this end, Financial  
14 Instructions were not followed explicitly, but all actions  
15 were well documented."

16 That reply was in the context of the Heritage  
17 Wharf; correct?

18 A Uh-huh.

19 Q And what documents presented were you referring  
20 to there, the ones that you were presented in your witness  
21 bundle or any others?

22 A It's the ones that were in the witness bundle.

23 Q Within the witness bundle.

24 In your comment, in your statement, "Technical  
25 offices made any effort to respect principles of Financial

1 Instructions while adhering to the policy of direction," to  
2 me, that admits that there may also be a conflict between  
3 Financial Instructions, the principles of Financial  
4 Instructions and the policy and direction of the  
5 Government.

6 Were you meaning to say that?

7 A I was indeed.

8 Q You were indeed?

9 A Uh-huh.

10 Q And I'm not going to detain you to ask instances,  
11 examples of that, maybe Heritage Wharf is one of them.

12 How do those conflict get resolved?

13 A At the Cabinet table. Sir, if you refer to the  
14 Conditions of Employment and Code of Conduct, the  
15 Conditions of Employment and Code of Conduct are very  
16 clear.

17 The functions of Cabinet are the final  
18 determination of policies, the strategic control of  
19 Government, the coordination of Government Ministries and  
20 Departments. The Code of Conduct goes on to express  
21 Ministers are responsible collectively for Government  
22 Policy and individually to Parliament for their work.

23 This doctrine collective responsibility means the  
24 Cabinet acts unanimously, even if when ministries do not  
25 all agree on the subject. The Departmental Policy must be

1 consistent with the policy of the Government as a whole.  
2 It then later identifies that permanent secretaries and  
3 heads of department are responsible for implementation of  
4 Government Policies.

5 And so therefore, when you look at Financial  
6 Instructions which guides our activities with respect to  
7 the financial operations, and Financial Instructions as you  
8 pointed out, a former colleague indicated the view within  
9 Government in Financial Instructions is a policy.

10 Where there are policy decisions made, where the  
11 policymakers that determine they will set aside their  
12 policy, i.e., Financial Instructions, to agree a single  
13 source bid or to agree a departure from Financial  
14 Instructions, then the technical officers are then required  
15 to implement accordingly.

16 And so the decision makers, if for instance they  
17 decide to take a project like Heritage Wharf and give it to  
18 the Ministry of Tourism and Transport or to assign it to  
19 the Ministry of Tourism and Transport, the policymakers  
20 have made that decision. It's up to us to implement and so  
21 therefore we adhere to, to the extent that we can, the  
22 Financial Instructions based on the policy decision that's  
23 been made with respect to departing from any provision  
24 that's set out.

25 MS. LUCK: I'm sorry. I do beg your pardon. We

1 just want to make sure you're reading from the correct  
2 witness statement. Did you just say Paragraph 15?

3 MR. BARRITT: I did.

4 MS. LUCK: Is that the draft witness statement  
5 because [inaudible] our signed one.

6 MR. BARRITT: Mine says Witness Statement --

7 CHAIRMAN EVANS: I think there is a problem here  
8 because I have the same as Mr. Barritt. And I noticed  
9 there is a difference in the paragraph numbering.

10 MS. LUCK: Yes, content as well.

11 CHAIRMAN EVANS: We're looking at the paragraph  
12 which Mr. Barritt and I have as 15, but I suspect you may  
13 have as 14.

14 (Off-the-record discussion.)

15 MS. LUCK: The content is actually different on  
16 the Paragraph 14 as well. I do beg your pardon. Mine is  
17 marked up.

18 MR. BARRITT: Has this been withdrawn then, is  
19 that what you're questioning?

20 MS. LUCK: Yes, sir.

21 MR. BARRITT: That comment's been withdrawn.

22 THE WITNESS: From my recollection, yes. I don't  
23 have the draft witness statement.

24 MR. BARRITT: I didn't mean to be unfair. I was  
25 asking if you were withdrawing.

1 CHAIRMAN EVANS: Where are we?

2 MS. LUCK: Thank you.

3 MR. BARRITT: I hope I can still ask the  
4 question.

5 UNIDENTIFIED SPEAKER: She's answered it.

6 BY MR. BARRITT:

7 Q She had. I was going to ask another one, too, as  
8 a follow-up from your comment.

9 Where you depart from Financial Instructions in  
10 making a decision -- sorry -- Cabinet decides to depart,  
11 for instance, not tendering and having the sole source and  
12 going ahead contrary to recommendation of technical  
13 offices. I understand that.

14 But Financial Instructions still apply after  
15 that, do they not, in terms of, you know, you said earlier  
16 about your job is to disburse funds.

17 But the job is still to apply Financial  
18 Instructions with respect to disbursement of funds, is it  
19 not?

20 A Yes, that's correct.

21 Q And that means that people still have to be  
22 rigorous, my words, in vetting invoices, payments and  
23 things that are brought to their attention?

24 A That's correct.

25 Q And I think you used the word, correct me if I'm

1 wrong, test?

2 A Uh-huh.

3 Q Test to see whether there is the underlying  
4 supporting paperwork?

5 A That's correct.

6 Q Okay. Thank you. And then -- now I've got to  
7 come back to see what your Paragraph 14 is different. Oh,  
8 it is. Oh, it is considerably.

9 "In my respectful submission breach of Financial  
10 Instructions is a question of law and I'm not able to  
11 comment." But I still think it's fair to ask you how you  
12 personally regard Financial Instructions, and I think you  
13 refer to that. You told me in policy and they're not laws.

14 A That's correct. There's no legislation for that.

15 Q And as a head of a department, I mean, I presume  
16 you're always on the lookout to make sure that the people  
17 in the department, particularly those who have a  
18 responsibility for paying are following Financial  
19 Instructions?

20 A Absolutely. And Financial Instructions are  
21 required to be followed except when the Cabinet makes a  
22 decision to depart from them. If they make a policy  
23 decision to move in a different direction, we move in a  
24 different direction.

25 Q Of course they're not involved in the day-to-day

1 operation of ministry, they make an overall decision  
2 they're going to proceed this way and then it falls to the  
3 Civil Service.

4 You say they're implemented but still, to keep a  
5 close eye on the government purse?

6 A That's correct.

7 Q Thanks. That's all I have. Thank you. I was  
8 going to ask you another one based on Paragraph 15 that I  
9 saw, but I guess I can't now, unfortunately.

10 BY MR. BRADSHAW:

11 Q I have a question for you. I've sort of listened  
12 to your -- and some of the other folks have come up, and  
13 tried to put myself in your shoes and, quite frankly, at  
14 times I can see why there might be challenges for you all.

15 My question is, what things look like, the  
16 context, what things look like today. And I'm asking your  
17 perspective as the deputy head of the Civil Service.

18 There are various learning opportunities. I've  
19 had a lot of opportunities in my life -- where we're given  
20 information, some feedback, maybe fair, some maybe unfair,  
21 it's not for me to say, from the Auditor General's reports  
22 and what have you. And it seems to me that the senior  
23 civil servants have been those who are at the top now have  
24 been in the civil service for an extended period of time,  
25 and so you've had a lot of change, some good, some bad,

1       what have you.

2                   What does the environment look like today as far  
3       as being able to share your experience, that experiential  
4       learning that you would have as a PS or PSO Cabinet, right,  
5       with other PS's, for example?

6                   What does that look like? Do you guys -- is  
7       there a system in place, is there anything in place right  
8       now where the people who are going to be next in line are  
9       able to learn from your experiences?

10                   Is anybody else sitting in that particular  
11       position so they can experience new learning opportunities  
12       personally from the old ones?

13                   I guess that's what my question is. Is there  
14       anything in place where -- let's say something with which I  
15       was when involved is the subject of the Auditor's Report  
16       where I can say, okay, okay, that was tough, okay, here are  
17       things I might have done differently. I didn't want to ask  
18       you about the things you might have done differently. It's  
19       not about being an adversary or anything like that.

20                   Where I say, okay, how can I communicate this to  
21       those folks who are coming behind me in the organization.  
22       Because civil service is so critically important and you  
23       guys, you have come up already, you know, you guys impress  
24       me. We're all going to have experiences, some good, some  
25       bad.



1                   How do I communicate the things I've learned from  
2 to the next people in line and to my peers, what are you  
3 guys doing about that today?

4           A           I guess there are two channels where our  
5 experienced are shared. One is via the media because the  
6 media has characterized us and this process. They've  
7 learned from our experience via the media. Internally, we  
8 have a CSE, which is the Civil Service Executive, where  
9 Permanent Secretaries meet on a weekly basis to review and  
10 discuss matters of importance to the Bermuda Government.  
11 We also have a monthly Heads of Department Meeting where  
12 heads of department meet to discuss activities that are  
13 occurring in the Bermuda Government and our interest. And  
14 so therefore there are opportunities for learning and  
15 sharing of experience. However --

16           Q           Is it something you don't want to say right now?

17           A           I might have been a bit unkind.

18                   CHAIRMAN EVANS: I'm afraid I couldn't hear what  
19 you said.

20                   THE WITNESS: Good.

21                   CHAIRMAN EVANS: So where are we?

22                   THE WITNESS: I'm sorry. So we were talking  
23 about -- we were talking about things that we do and  
24 sharing. There are always opportunities. All of these  
25 opportunities are learning opportunities. What the Auditor

1 General does is it comes in, reviews various activities to  
2 providing insightful information to help us improve. We  
3 take those recommendations and implement those  
4 recommendations. We invite the Internal Auditor into our  
5 departments and into our ministries to do the same thing.  
6 So that we're continuously building, continuously  
7 strengthening our financial responsibilities and  
8 implementing procedures and importance with rigor.

9 Q It's getting past generation, so to speak?

10 A Most people, to be perfectly honest, most people  
11 are not interested in going through what we are going  
12 through, and so therefore they are being far more vigorous  
13 than we may have been in the past or they may have been in  
14 the past. This has not been for most Civil Servants,  
15 Senior Civil Servants and/or other technical officers a  
16 pleasant experience. And so they're absolutely learning  
17 from this experience what to do and what not to do. And so  
18 it's both formal and informal.

19 BY CHAIRMAN EVANS:

20 Q I'll say now what I would have said at the end of  
21 your openings. Perhaps it is the end of your evidence --  
22 and I have one rather small question for you.

23 But what I'll say now is that you are the Deputy  
24 Head of the Civil Service; is that right?

25 A That's correct.

1 Q And as I mentioned to Dr. Bins, part of our task  
2 of course is to make recommendations for the future. And  
3 we haven't got that far yet in our deliberations but it's  
4 more than likely there will come a stage when we formulate  
5 some ideas. And that stage we shall very much want to ask  
6 people like you to comment on those suggestions.

7 And so to that extent, we should be looking for  
8 your help in the future as well as today.

9 Now the one question I had about the Ambling  
10 Contract is this. You've dealt with this in the last  
11 paragraphs of your statement, not sure what some of the  
12 numbers of the paragraphs are.

13 One thing you say was the payment that was made  
14 to Ambling was shared by all three ministries. That is  
15 Ministry of Works, Ministry of Environment and Sports and  
16 Ministry of Tourism.

17 And you mentioned the figure of \$460,000  
18 statement of the per payment over the duration of the  
19 contract term. And I wanted to ask you about that  
20 subdivision of this payment.

21 Speaking from memory, the Cabinet didn't  
22 authorize the payment to be split in that way, did it? It  
23 simply didn't deal with the question?

24 A I do not recall what the Cabinet conclusion  
25 associated with the contract of value was, but the

1 contracting value, the total value was split three ways so  
2 each ministry entered into its own agreement with Ambling.  
3 And so this was the Department of Tourism's agreement with  
4 Ambling, the value of it, and each of the other two  
5 departments had its own agreement and paid its own sum.

6 Q Well I hadn't appreciated that. The Cabinet  
7 authorized the engagement value, and I seem to remember  
8 there was a fee mentioned.

9 But you say that in the result, three separate  
10 agreements were entered into by each of the three  
11 ministries with Ambling?

12 A In accordance with Financial Instructions, yes.

13 Q What you had said in your evidence previously  
14 about this was because you were the Permanent Secretary in  
15 the Ministry of Tourism, one of the three ministries, this  
16 wasn't really a matter for your ministry at all because the  
17 Hotel Development is with the Cabinet Office and so on.

18 A It is with the Department of Tourism, so you'll  
19 note that the agreement was entered into between the  
20 Department of Tourism and Ambling. The Hotel Development,  
21 the management of the Hotel Development component of the  
22 Department of Tourism's work was managed and the oversight  
23 was via the Cabinet Office.

24 Q I see. So are you saying that the Ministry of  
25 Tourism which became one of the three ministries, which

1 entered into a contract with Ambling, that aspect of the  
2 Ministry of Tourism's affairs is dealt with by the Director  
3 of Tourism?

4 A No. Well, Head 33, there is Accounting Officer  
5 who's formerly Head 33. And in Financial Instructions I  
6 think in the early portion of the Financial Instructions  
7 you'll see identified by a Head all of the accounting  
8 officers. The accounting officer is associated, that  
9 individual who has the custody, care and custody of  
10 Government funds in accordance with the disbursement. Head  
11 33 paid for the Ambling Contract. And so that was the  
12 Department of Tourism. Department of Tourism reports to  
13 the Ministry.

14 And so I would have been involved not with the  
15 distribution of funds or management of the contract, but  
16 from a strategic perspective as the Ministry responsible  
17 for the Department. However, the Department's work  
18 relative to Hotel Development is managed by the Cabinet  
19 Office. Somewhat convoluted.

20 Q It's certainly convoluted and I think I'm rather  
21 lost in the maze and in the main. The basic proposition,  
22 to just clarify this if I can.

23 There were three ministries, each of which made a  
24 separate arrangement with Ambling as a result of one  
25 Cabinet resolution?

1 A That's correct.

2 Q Each of the ministries paid quite substantial  
3 sums of money to Ambling under those agreements?

4 A That's correct.

5 Q One of the ministries was Tourism of which you  
6 were at the time Permanent Secretary?

7 A That is correct.

8 Q But for whatever reason, did you have any  
9 personal involvement in the negotiation of your ministry's  
10 contract with Ambling?

11 A No, and the contract was negotiated by the  
12 Department of Tourism.

13 Q And so the remaining question is how did it come  
14 about that the Department of Tourism was part of your  
15 ministry, you were the Permanent Secretary of that  
16 ministry, yet you were not personally involved?

17 A That is the -- there is one Minister who is both  
18 the Premier and the Minister of Tourism and Transport.  
19 There was a special Cabinet Committee for Hotel Development  
20 which the Minister responsible for Tourism and/or the  
21 Premier chaired. And so therefore, there was some direct  
22 relationship, reporting relationship between the  
23 Department, the Hotel Development section of the Department  
24 and the Cabinet Office relative to Hotel Development  
25 projects.

1 Q So let's just spell this out.

2 I think you're saying that the Minister concerned  
3 was the Premier at the time?

4 A Correct.

5 Q That he had made the arrangements direct with the  
6 Department of Tourism?

7 A Whether he or the Cabinet conclusion, the  
8 Department of Tourism executed the agreement, that's  
9 correct.

10 Q And the fact was, however it came about, you as  
11 Permanent Secretary of the Ministry were not personally  
12 involved?

13 A That is correct.

14 Q Thank you. Do you want to comment on that one?  
15 I'm not asking you to, but if you want to.

16 A I have no comment.

17 CHAIRMAN EVANS: Thank you.

18 BY MR. BARRITT:

19 Q Sir Anthony, I do recall the Cabinet Minute, when  
20 it was presented to the Cabinet, it did say that the  
21 Premier informed the Cabinet that the cost associated would  
22 be borne equally by the Ministry of Tourism and Works and  
23 Engineering and Environment's Board from existing  
24 allocations in the fiscal year 2008, 2009. And as such, no  
25 new money would be required. So I think that may have been

1 the reason you could comment as to why it was done that  
2 way, no new money was required. It was money for the  
3 retainer. It was drawn from three departments.

4 A That's correct.

5 BY CHAIRMAN EVANS:

6 Q Well, but does it make any difference whether  
7 it's already budgeted money or new money when it comes to  
8 accounting and spending it.

9 A That's correct. Not sure -- is there a question?

10 Q Well, I said, does it make any difference whether  
11 it's already budgeted money or new money when it comes to  
12 accounting for how that money is spent?

13 A That's correct. And there was in accordance with  
14 the Cabinet conclusion a contract that was negotiated and  
15 administered in accordance with Financial Instructions.

16 Q The need to comply with the Financial  
17 Instructions would be there regardless of whether it was  
18 already budgeted or not, wouldn't it?

19 A Absolutely.

20 CHAIRMAN EVANS: Yes. Thank you. Have you  
21 finished all together?

22 (Off-the-record discussion.)

23 CHAIRMAN EVANS: Do you have any further  
24 questions, Ms. Memari?

25 BY MS. MEMARI:



1 Q Just one question to clarify the maze. When it  
2 comes to Ambling, it's related to Hotel Development and  
3 that's why you didn't have any responsibility because when  
4 it came to hotel development, all the responsibilities were  
5 vetted in Cabinet Office as opposed to Ministry of Tourism.  
6 Is that what you were saying?

7 A That is correct.

8 Q Thank you.

9 CHAIRMAN EVANS: Apart from what I said earlier,  
10 that's the end of our evidence for today. Thank you very  
11 much indeed.

12 MR. HARGUN: The next witness will be Robert  
13 Horton.

14 (Off-the-record discussion.)

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

18 CHAIRMAN EVANS: Thank you, Mr. Horton. Do sit  
19 down.

20 THE WITNESS: Thank you.

21 ROBERT K. HORTON  
22 called as a witness, being first duly sworn, testified as  
23 follows:

24 EXAMINATION

25 BY MR. HARGUN:

1 Q Good afternoon, Mr. Horton.

2 A Good afternoon.

3 Q Mr. Horton, you've prepared a witness statement  
4 that is dated 24 February 2016. Do you have a copy of  
5 that?

6 A I do, sir.

7 Q Can you confirm for the benefit of the Commission  
8 that the statements that you have made in the witness  
9 statement are correct?

10 A I do confirm.

11 Q Just to go over the topics which you deal with in  
12 your witness statement, Mr. Horton, you deal with the issue  
13 of Processing of Payments?

14 A Yes.

15 Q And then you deal with Specific Contracts  
16 relating to that, you said relation to Port Royal. You  
17 have no involvement in relation to it; likewise to Heritage  
18 Wharf; likewise in relation to Bermuda Emissions Control,  
19 Ltd.

20 A Yes, sir.

21 Q You had passing involvement in relation to The  
22 Dame Lois Browne-Evans Building; but you did have  
23 involvement in relation to Renovations of the Department of  
24 Human Resources which we'll look at, and The Commercial  
25 Court/Ministry of Finance Renovations?

1 A Yes.

2 Q And The Maintenance and Stores Building?

3 A No.

4 Q And the Central Laboratory Building?

5 A Yes.

6 Q And finally, the Laboratory Contract relating to  
7 Southside?

8 A Yes.

9 Q And just in relation to processing of payments,  
10 you see that in Paragraph 6 of your witness statement you  
11 say that "Given the findings set out in the report, it is  
12 apparent that in some instances there was a failure to  
13 adhere to Financial Instructions with respect to the  
14 payments process."

15 A Yes, that's right.

16 Q And we'll look at some of the issues. And one  
17 minor matter which is the renovations to the Department of  
18 Human Resources, you, in essence, set out in Paragraph 31,  
19 you say that -- the question you're answering is "What was  
20 the justification for negotiating directly with the  
21 contractor and not following the tendering process? That's  
22 Paragraph 31, Mr. Horton.

23 A Yeah.

24 Q And you say, "I am unaware of any justification  
25 in this instance for negotiating directly with the

1 contractor and not following the tendering process, except  
2 perhaps to expedite the process given the urgency that  
3 accompanied the need to relocate the Department of Human  
4 Resources." Yes?

5 A Yes.

6 Q And then you also were asked, "Were the  
7 requirements of PFA 2002 met?" And you say, "Having  
8 reviewed PFA 2002 in preparation for this Commission of  
9 Inquiry, I can say in hindsight that certain requirements  
10 with respect to tendering were not met."

11 And finally, "Why was Cabinet approval not  
12 obtained?" And you said, "I am unable to explain why the  
13 Cabinet approval for the renovations project was not  
14 obtained. Under normal circumstances, Ministry of Works  
15 and Engineering technical officers would have been prepared  
16 a Contract Award Recommendation which, following my review,  
17 would have been forwarded to the Minister who in turn would  
18 have presented it to his Cabinet colleagues for approval."

19 And then you were asked to comment generally.  
20 And you say, I can only surmise that the payments had been  
21 made because work had been completed, services had been  
22 delivered and Authorizing Officers believed that all  
23 necessarily due diligence that I have stated in my previous  
24 Paragraph 4 had been carried out.

25 Is there anything you wanted to add to this in

1 relation to the particular project?

2 A Well I think it's important to make the point  
3 that responsibility for this initiative was assumed by the  
4 head of the Civil Service. So I had not a great deal of  
5 involvement in the project. Mr. Kenneth Dill who at that  
6 time was the Head of Civil Service assumed direct  
7 responsibility for it.

8 Arguably, an odd occurrence, but he was the Head  
9 of the Civil Service, he worked at the Cabinet Office and  
10 that's the way it was.

11 Q I think it may well have been there was a degree  
12 of confusion as to who was responsible, do you think that?

13 A There was no confusion in my mind at the time.

14 Q Fair enough. Okay. And in that case we'll move  
15 on to the Commercial Court Renovations.

16 A Yes, sir.

17 Q And you have very helpfully set out your response  
18 at Paragraph 35 to 45 of your witness statement. Let me  
19 just ask you to help us understand some of these by looking  
20 at the documentation.

21 The original tender evaluation, if you would look  
22 at, I think it's Tab 1, page 5. And that's the original  
23 tender valuation of 15 October 2008. You'll see --

24 Do you have that one?

25 A Page?

1 Q Page 9. That's your own binder.

2 A Yes, it is. And it's because of the volume of  
3 pages it's coming apart.

4 Q I extend policies [inaudible] --  
5 (Inaudible discussion.)

6 A So we're looking at?

7 Q We're looking at Tab 1, page 9. Tab 1, page 9.

8 A Yes.

9 Q So there is the Contract Award Recommendation.  
10 And you'll see it's actually dated 15th of October 2008.  
11 The date appears at the end but let's not worry about that.  
12 You see Paragraph 2, Tender Procedure?

13 A Yes.

14 Q And it sets out that it was advertised?

15 A Uh-huh.

16 Q Paragraph 3, Tender Response, AJW Construction,  
17 Bermuda Drywall and Ceiling, Catcon [sic], DeCosta,  
18 Patterson Contracting, Recon Limited, and Riley  
19 Construction. And then you see one incomplete bid was  
20 received from Bermuda Drywall and Ceilings did not include  
21 in his price for five addenda and did not complete all  
22 sections of the form tender, now the previous project  
23 information nor schedule of the value were provided. Yes?

24 A Yes.

25 Q It was incomplete?

1 A Yes.

2 Q And then if you look at the next page, you'll see  
3 the bids are set out and tender evaluations of Paragraph 4,  
4 it says the lowest bidder is DeCosta Construction. The  
5 second lowest bidder is within 5 percent of the lower bid,  
6 the closer the bid is a good indicator that the bid is  
7 under same scope of work. Yes?

8 A Yes.

9 Q And then the recommendation by the technical  
10 officers is, we would recommend awarding contract to  
11 DeCosta Construction?

12 A Yes.

13 Q Among other reasons, the bid was complete and it  
14 was the lowest?

15 A Yes.

16 Q When I say technical officers, who actually  
17 decides in relation to these tenders, who evaluates them?

18 A They would have been evaluated by offices within  
19 the Department of Architectural Design and Technology and  
20 Construction.

21 Q Is it, I mean generally is there just one person  
22 or more than one person?

23 A Normally it is more than one person involved.  
24 And often times they would get the input from specifically  
25 the quantity surveyor, the architect, who's likely to head

1 the project; and on occasion from our Finance and  
2 Administration team.

3 Q And the quantity surveyor would be involved  
4 because?

5 A Well he has an assessment and understanding  
6 quantities, and he would be in the position to assess the  
7 validity of the bid in terms of the amounts suggested for  
8 the provision of the particular service.

9 Q Okay. And if you would look at in the same tab  
10 if you go to page 7, let's go back. You'll see the bid is  
11 on the -- this is on the October the 13th, two days before  
12 the 15th of October recommendation, and you see it's an  
13 email from you to Lawrence Brady who's the chief architect.

14 A Yes.

15 Q And you say, "Lawrence, the Minister has  
16 requested that any contracts to be issued in connection  
17 with a new commercial court in the Government  
18 Administration Building be held until his return to the  
19 office on 21st October 2008."

20 What is happening here, can you tell us?

21 A Yes. The Minister contacted me. He was on leave  
22 at that time. He was aware of the amount that the  
23 Department of Architectural Design and Construction had  
24 estimated that the work would cost. He felt that this  
25 amount was excessive. This was his view based upon what



1       only he can determine. And he, and I think this is stated  
2       by the Minister himself, the former Minister. He didn't  
3       want a Rolls-Royce. He was very concerned about  
4       expenditure. And he determined that he did not want his  
5       net advanced until he had further sight of documents and  
6       further discussion on it.

7                If I can share with the Commission at this time,  
8       and it's, I think it's important that I do so.

9       Q            Certainly.

10      A            That the Minister was at this time greatly  
11      exercised about the cost which the Department of  
12      Architecture and Design and Construction had estimated for  
13      certain projects. And I would like to cite two for the  
14      benefit of the Commission which were sort of going on at  
15      the very same time which concerned him enormously.

16                One was with respect to the planned implosion of  
17      the Club Med Hotel in St. George's. You all will remember  
18      that. Our technical officers had recommended \$20 million  
19      as the cost of that to get rid of that structure. It was  
20      not going to be an implosion. They had recommended that it  
21      be removed in the traditional way. It would be simply  
22      taken down.

23                The Minister felt this was an exorbitant amount  
24      of money. He did intervene. He made some contacts with  
25      overseas entities. And the work was eventually done for

1       \$13 million less. It was demolished in August 2008. And  
2       around the same time, and this relates to an issue that one  
3       of my former colleagues identified early before the  
4       Commission. There was the matter of improvements in  
5       Dockyard to accommodate a larger cruise ship.

6               We've heard discussions about the pier, but there  
7       was also the need to improve access to Dockyard. And I  
8       refer specifically to Cochrane bridge. It was one very  
9       narrow structure which would not have accommodated the huge  
10      volume of traffic that was anticipated once we got the new  
11      large cruise ship.

12             And our ministry was an estimated an amount, I  
13      believe, in the region of 12 million for that project. The  
14      Minister through his invention was able to reduce that  
15      amount significantly by, I think, by about 75 percent. So  
16      he was really very concerned about what he called wastage  
17      of the public's money for Rolls-Royce initiatives. So he  
18      did involve himself. He did, and I will use the term  
19      because it's a question raised by the Commission, he did  
20      interfere.

21      Q           I understand. That's very helpful.

22                Can you please have a look at page 14?

23      A           Yes.

24      Q           You are -- this is another email which you've  
25      sent to the chief architect. You said, "Please do not

1 forget to provide for me by tomorrow the additional  
2 expanded reasons to support the decision to qualify the  
3 Bermuda Drywall and Ceilings as bidders for the Ministry  
4 Commercial Construction Project."

5 Why are you asking for additional reasons?

6 A Well you see, the Minister was, and I think I  
7 need to interject another point which makes -- puts it in  
8 context. The reason I moved to the Ministry of Works and  
9 Engineering in December 2007 we worked together previously  
10 in another ministry.

11 But one of the things that he said repeatedly, it  
12 was his refrain; when we went to the Ministry of Works and  
13 Engineering, we must provide opportunities for a greater  
14 cross section of the Bermuda workforce. He emphasized  
15 small business, in particular. He referred frequently to,  
16 and I remember this because at the time of the election of  
17 1998, I was an Assistant Cabinet Secretary.

18 And all of us Senior Civil Service at the time,  
19 as is the Westminster way, in preparation for an election,  
20 we are to look carefully at the platforms provided by the  
21 two elective parties. And I remember and he quoted from  
22 this regularly, the Progressive Labor Party platform, and  
23 they won the government 1998 as you know. They talked of  
24 the empowerment of the people. They talked of expanding  
25 the economic pie. And he felt, I can only emphasize this,

1 the Minister felt, and he didn't waiver from this view,  
2 that within the Ministry of Works and Engineering, too  
3 often work went to establish large, already successful  
4 companies.

5 And I think this was a part of his rationale for  
6 expressing concern about the cost. There were two reasons:  
7 The cost of the bid or the cost of the estimated work. And  
8 that would have been provided by my Ministry of Works and  
9 Engineering. But also, it was his wish to involve smaller  
10 businesses.

11 Q Do I take it that Bermuda Drywall and Ceilings  
12 was a small contractor?

13 A Yes.

14 Q And he wanted to know why they were disqualified?

15 A Well I think that question was for my benefit.  
16 The Minister was feeling that they should be disqualified  
17 and we were having a major discussion at the time. I don't  
18 know that I supported the Minister initially in this  
19 because the process had been carried out efficiently, I  
20 thought, and the technical officers had recommended  
21 DeCosta.

22 Q Yes, and they'd also been disqualified --

23 A They had, as per the document that we just read,  
24 yes.

25 Q Okay. So let's have a look at, just through this

1 contract at paragraph, page 15, you'll see there are key  
2 points of a meeting with the Minister. This is on the 27th  
3 of November, Mr. Horton.

4 A Yes.

5 Q If you look at Point No. 4 under Financial and  
6 Commercial Courts project, the Minister is considering a  
7 different method of product delivery. He believes he can  
8 cut costs by not hiring general contractor and hiring  
9 subcontractors directly. He will consult with his advisor  
10 before issuing his instructions.

11 So what's happening here?

12 A Well this is a note from Lucy Chung.

13 Q Yes, the meeting that you had, apparently.

14 A The meeting, yes. I would be present. I  
15 don't -- many years ago, I don't remember specifically but  
16 Lucy Chung was an outstanding employee so I can accept  
17 wholly what she had written; that what the statement  
18 attributed to the Minister. I don't know when she writes,  
19 he will consult with his advisor before issuing his  
20 instructions, whether he was referring to the Permanent  
21 Secretary or some other advisor, I don't know.

22 Q Right. And I think Lucy Chung advised you  
23 that -- or Lawrence Brady advised you that the Minister had  
24 come in early one morning and taken the drawings to take  
25 them to another architect. I think you'll find that on

1 page 17, two emails, one from a student in the Architects  
2 Department saying that the gentleman described himself as  
3 Minister Burgess and took the drawings. And then you have  
4 an email from Lawrence Brady saying that he's concerned as  
5 to whether this is the way we should be doing things.

6 Do you see that?

7 A Yes.

8 Q And that was the case where the Minister was  
9 taking drawings to another architect to see if one could  
10 come to a lower price, cut costs?

11 A I would be remiss if I endeavoured to explain or  
12 try to explain the Minister's reservation for taking those  
13 drawings from that office. It was an action that I  
14 (deplored ?) what had happened.

15 Q And if you look at page 24, and this is an email  
16 from Lucy Chung to you, Mr. Horton. And she says that for  
17 the avoidance of doubt, please note that we are on hold on  
18 this project pending further instruction from you. You  
19 stated that the Ministry's consulting with another  
20 architectural firm with expectation that they're going to  
21 assist in completing the project more cheaply."

22 So presumably there are architects within Works  
23 and Engineering?

24 A Absolutely, a whole team.

25 Q Yes. Whole team. How many do you have?

1 A Oh, gosh, I really don't remember offhand the  
2 number, but we would have had, oh, gosh, I'm guesstimating,  
3 half a dozen qualified architects at the time.

4 Q So anyway, the Minister seems to have gone  
5 outside, I think there's some suggestion in the  
6 correspondence that he's gone to S.H.Y., the architectural  
7 firm?

8 A Yes.

9 Q Yes.

10 A That is the suggestion.

11 Q And then, this is because he wants reduced scope  
12 of work. And if you then look at a further file note, or  
13 an email, page 27.

14 A Uh-huh.

15 Q And this is from Lucy Chung, I think to you and  
16 to the Minister. And the key points of the meeting. One,  
17 the Minister instructed the Architect Department to ask all  
18 bidders to rebid the work based on reduced scope of work.  
19 The architect is to issue a text description of the reduced  
20 scope of work. Yes?

21 A Yes.

22 Q And then at very far schedule, three, the  
23 Minister wants the prices in by Tuesday, December 23.  
24 We're already at December 18 in five days' time, presumably  
25 after they received the material.

1 A Uh-huh.

2 Q And then, five, the Minister instructed the  
3 Architect Department to immediately seek pricing for  
4 various carpet suppliers. This is a very hands-on Minister  
5 talking about getting prices for carpets.

6 A Yes.

7 Q And Paragraph 9, the PS gave instructions to  
8 include all bidders and to allow bidders to make  
9 corrections to irregularities that may have disqualified  
10 their bid. Is there a reference to Bermuda Drywall?

11 A It was, and you alluded to this earlier,  
12 Mr. Hargun. The Minister wished for the first bid to be  
13 invited -- or he wished for Bermuda Drywall, a small  
14 contractor, to be given the further opportunity to bid.

15 I would have emphasized that to the Minister that  
16 we must proceed with a level playing field. And you  
17 couldn't simply ask one of those bidders to submit a  
18 revised bid. You would have to do so with all of them.

19 And that's why the revised Contract Award  
20 Recommendation would have referred to all bidders having  
21 the opportunity to submit revised bids. It was an unusual  
22 step.

23 Q Yes. Well, it sounds that way. And I think it's  
24 picked up, Mr. Horton, in exchange of emails between the  
25 Chief Architect and I think then you get involved in there



1 as well.

2 If you look at page 30, and right at the bottom  
3 of page 30, you see that there's an email from Lucy Chung  
4 to Lawrence Brady and I think you're copied in.

5 Do you see that?

6 A Yes, I do.

7 Q And she says, "Lawrence, the PS," that's you,  
8 "called me on Wednesday, December 31 to discuss the  
9 Accountant General's own workstation. Please note the  
10 following. And then if you go to page 31. One. "The  
11 Minister asked if we had made a commitment to EPS."

12 Who's EPS?

13 A I don't recall, Mr. Hargun.

14 Q "We did not. As such has gone ahead and hired a  
15 Dennis Trott, who is going to have experience dismantling  
16 and reassembling work stations?

17 A I recall now. I think EPS was a company which  
18 had expertise at dismantling office furniture.

19 Q So do I understand it that the Minister is now  
20 engaged in hiring people to dismantle workstations?

21 A Certainly. Yes.

22 Q Yes.

23 A The Minister, I don't know if it was a case of  
24 his being involve in the hiring, or certainly as indicated  
25 here in identifying.

1 Q Yes. And, two, "The Minister scheduled for  
2 Dennis Topp to start work today." Three, "I agreed to meet  
3 him on site this morning." Four, "When asked by required  
4 electrical disconnections work to PS, the PS advised that  
5 Leroy Robinson would be doing it because the decision has  
6 been made to award the contract to Bermuda Drywall and  
7 Ceilings."

8 Who had made that decision?

9 A The Minister.

10 Q Okay. Is this before we've had the second bid,  
11 the second tendering?

12 A Not to my knowledge, sir. I would have to review  
13 the documents more to be able to tell you.

14 Q I'll come back to that. And you'll see that the  
15 Point 15, she says, "This is a highly irregular way of  
16 running a project. And I'm not concerned about the lack of  
17 coordination, and more importantly, construction drawing  
18 12:54:50 create problems that may end up costing us more  
19 money in the end."

20 That was the concern she expressed.

21 A That was a view that Lucy shared, yes.

22 Q And if you look, go back on page 30, you'll see  
23 that Lawrence Brady is now involved in the conversation,  
24 he's the Chief Architect. He says, "Lucy, I concur with  
25 the observations in the report. This is not how the

1 projects are or should be run. It should be noted that in  
2 review that a recent tender was not carried out by this  
3 department, nor any recommendations were forward by the  
4 Department, or Cabinet approval given to my knowledge. The  
5 decision to award any contracts were carried out at the  
6 higher level."

7 By that, I assume it's the Minister?

8 A And he may be including me, it might have been  
9 his perception.

10 Q "I'm also concerned that the additional works  
11 were to be added and that the final expenditure is going to  
12 exceed the original tender amounts and the quality is going  
13 to be compromised."

14 So, the Chief Architect is concerned that whilst  
15 we've gone out and asked for a second tender, nobody's  
16 actually done an assessment on the bids received. Somebody  
17 higher up, by which my assumption was, the Minister decided  
18 who was going to actually get the contract.

19 A Mr. Hargun, I'm not so sure if I can confirm the  
20 accuracy of the statement that nobody in the architectural  
21 section had looked at the revised bids. Mr. Brady clearly  
22 says that he had not and is not aware that others had done,  
23 but my recollection was that it was looked at, although  
24 they were not supported of --

25 Q Your memory is good. I will take you through

1       there.  And I'm taking it chronologically.

2       A            Okay.

3       Q            And at this stage, this is just a conversation  
4       between the senior people at Works and Engineering by you,  
5       the Chief Architect and Lucy Chung.

6       A            Lucy Chung.

7       Q            And you respond, Mr. Horton -- that's the next  
8       email, "Lawrence, you are right.  The awards --

9       A            Where are you?

10      Q            You see it?  RKH, I'm assuming that is you?

11      A            Yes, it is.

12      Q            In fact, you refer to, in one email you address  
13      two people, and that's the email from you to Lawrence Brady  
14      and Lucy Chung?

15      A            Yes.

16      Q            And that's sent by you on the 4th of January 2009  
17      at 9:14.

18                    Do you see that?

19      A            Yes, I do see that.

20      Q            And you said, "Lucy, I of course share your  
21      concern about what you accurately described as a highly  
22      irregular way of running a project.  I'm also greatly  
23      concerned about the apparent lack of coordination and  
24      construction drawing."

25                    So you basically agreed with Lucy Chung?

1 A I shared her concern, yes.

2 Q And then in the middle of that same email, then  
3 you address Lawrence, that's Lawrence Brady. You said,  
4 "Lawrence, you're right. The award extended to Bermuda  
5 Drywalling has not yet been approved by Cabinet."

6 Is the Minister's expectation that it would be  
7 approved retroactive? Yes?

8 A Yes.

9 Q And then this is, these exchanges of emails are  
10 taking place on the 4th of January. And then there's an  
11 email from you, Mr. Horton, on the 7th of January.

12 A Yes.

13 Q And if you go to page 32, you will see your  
14 email. And you say it's addressed to Lawrence, Chief  
15 Architect, copied to Lucy Chung.

16 You say, "Lawrence, allow me to confirm that  
17 Honorable Derrick V. Burgess, JP, MP, Minister of Works and  
18 Engineering," all that title in an email.

19 A If I may interject, I did put that there because  
20 I thought this was a very significant email because I  
21 recognized the discomfort of the technical experts in the  
22 department. And this was intended to be a very formal  
23 communication to the staff of the Minister's wish, or his  
24 intention.

25 Q Fair enough. And you say, the Honorable Derrick

1 V. Burgess, JP, MP, Minister of Works and Engineering, has  
2 approved the award of the contract for the construction and  
3 the entire second floor of the Government Administration  
4 Building in order to accommodate the construction of two  
5 commercial courts and the renovation and expansion of  
6 Ministry Headquarters to Bermuda Drywall and Ceilings in  
7 the amount of 1,696,553. Yes?

8 A Yes. I think I earned that communication in that  
9 I intended to communicate this was the Minister's wish but  
10 what I should have said, and he intended, to take this  
11 recommendation to his Cabinet colleagues.

12 Q Yes.

13 A And that's the way to get full support.

14 Q And the next day on the 8th of January you, in  
15 fact, write to Bermuda Drywall and Ceilings.

16 A Yes.

17 Q And that the next stage, and you say, it's  
18 addressed to a Mr. Hollis at Addendum Lane, "We are pleased  
19 to inform you that your submitted tender for \$1,696,553.18  
20 for the captioned work has been accepted." And "Yours  
21 sincerely," copied Lawrence Brady, Chief Architect, and so  
22 on.

23 So that's on the 8th of January.

24 A Uh-huh.

25 Q And then --

1                   CHAIRMAN EVANS: It's 1 o'clock, Mr. Hargun. I  
2 think that's a convenient time to stop here. Have we seen  
3 what the second round of bidding brought in, were there any  
4 other bids received?

5                   MR. HARGUN: I will come to that one. I will  
6 come to second assessment bidding.

7                   CHAIRMAN EVANS: Right. Thank you very much.

8                   Now Mr. Horton, we'll adjourn until 2:00. Will  
9 you please be very careful, don't speak to anybody else  
10 about your evidence during that interval.

11                  THE WITNESS: Yes, sir. I shall not.

12                  CHAIRMAN EVANS: Thank you.

13                  (Whereupon lunch recess was taken.)

14                  BY MR. HARGUN:

15                  Q            So Mr. Horton, let's just pick up the story  
16 again, which we were discussing just before lunch. Please  
17 go back to Tab 1.

18                  A            Yes.

19                  Q            And just to remind you, if you go to page 32,  
20 just to go back a bit.

21                  A            Uh-huh.

22                  Q            And you'll see that that was your advice to the  
23 Department, the decision of the Minister, that's on the 7th  
24 of January?

25                  A            Yes, sir.

1 Q And then if you look at the letter on page 23,  
2 that's a letter on the 8th of January, you're writing to  
3 Bermuda Drywall and Ceilings, confirming that they've been  
4 selected as the bidder?

5 A Yes, sir.

6 Q And so that's the position of the 8th of January,  
7 then I want you to see a document which is on the next  
8 page. That document, if you look at the date on page 37 is  
9 actually dated 12th of January, the document dated page 34.  
10 That is to say four days after you sent the letter to  
11 Bermuda Drywall and Ceilings, saying that they are --  
12 they've been selected as the bidder, yes?

13 A Yes.

14 Q And so let's have a look at the Contract Award  
15 Recommendation.

16 Now who is making this Contract Award  
17 Recommendation?

18 A It is the Minister who makes the Contract Award  
19 Recommendation, but it is prepared by the technical  
20 officers and who pass, who will, in turn, pass it on to the  
21 Permanent Secretary.

22 Q Right.

23 A But it's the Minister's document.

24 Q Prepared by the technical officers?

25 A Yes, and modified. We're required by the



1 Minister or me or by me, I should say, the Permanent  
2 Secretary.

3 Q Yes. Let's have a look at that document,  
4 Mr. Horton, at page 34 you'll see to refer to the initial  
5 tender procedures?

6 A Yes.

7 Q Paragraph 3.

8 A Uh-huh.

9 Q And then if you look at page 35, they refer to  
10 ten lines down, incomplete bid was received by Drywall and  
11 Ceilings. Yes?

12 A Yes.

13 Q And then initial tender evaluations, you'll see  
14 that they say, the lowest bidder is DeCosta Construction.  
15 And then there's a Value Engineering with most responsive  
16 bidder. They, as requested by the Minister, the design  
17 team along with the most responsive bidder, DeCosta  
18 Construction, underwent the value engineering exercise in  
19 order to reduce costs. Yes?

20 A That was pursuant to the request of the Minister.

21 Q Okay. And then you see the re-tender procedure?

22 A Uh-huh.

23 Q They say, the Minister instructed the Department  
24 of Architecture and Design and Construction to re-tender  
25 the project with the reduced scope of work as developed in

1 the Value Engineering exercise, plus maintaining partitions  
2 along the parameter of the building in the Ministry of  
3 Finance. A forced tender then was issued to all bidders on  
4 December 18th. Re-tendered prices were required by  
5 December 23rd.

6 And then Paragraph 8, re-tender responses are set  
7 out. And you will see over there on page 36, Bermuda  
8 Drywall and Ceilings, 1.696; DeCosta Construction, 1.725;  
9 the difference in those two of 28,000. AJW Construction,  
10 2.1 million. And there's a contract award.

11 The Minister effectively awarded the contract to  
12 Bermuda Drywall and Ceiling and gave them the authority to  
13 start on site January the 2nd, 2009, before the Letter of  
14 Intent was sent from PS Horton to Bermuda Drywall and  
15 Ceiling on 8th of January 2009.

16 So they're saying that the Minister actually  
17 decided the 2nd of January 2009?

18 A Uh-huh.

19 Q And they continue to carry on the evaluation.  
20 Re-tender evaluation, they say Bermuda Drywall and Ceiling  
21 submitted the lowest price and it would appear that the  
22 contract was awarded to them by the Minister on this basis.  
23 The difference between the lowest price and the next lowest  
24 price was \$28,000. Odd. This represents a 1.7 percent  
25 difference. The Bermuda Drywall and Ceilings re-bid did

1 not include the five addenda nor were all sections of the  
2 formal tender completed as required; is that correct?

3 A I have no reason to dispute this.

4 Q Just so that I understand it, the five addenda,  
5 would there be a cost attached to the five addenda?

6 A I cannot say, Mr. Hargun. I would have to see  
7 the detailed documents to remind myself of exactly what  
8 those addenda were.

9 Q Yes. And then next paragraph, "As instructed by  
10 the Minister, the Department went back to Bermuda Drywall  
11 and Ceiling to ask if all the addenda were included and to  
12 fill in the company information sheet. This was eventually  
13 confirmed and provided. The requirement of the bid was to  
14 provide a list of relative past experience. Bermuda  
15 Drywall and Ceiling noted two past projects: The St.  
16 George's Police Station and the Police Commercial Crime  
17 Department. It is worthwhile pointing out that the  
18 millworks supplied and installed for the Police Commercial  
19 Crime Department was of mediocre quality."

20 Do you recall that, or is this just a technical  
21 officer's --

22 A I do recall. I do recall they're expressing  
23 their view. I do remember that project clearly.

24 Q "There are still deficiencies to be corrected  
25 over six months after the client has moved into the space."

1 Presumably you have no reason to doubt that?

2 A No.

3 Q And then you'll see, Conclusion and  
4 Recommendation. "The Ministry of Works and Engineering  
5 having considered the quality of work on the past project,  
6 bidding deficiencies and actual prices/advices of opinion  
7 that DeCosta Construction was the best bidder and could  
8 provide the services required."

9 So four days after you have actually told Bermuda  
10 Drywalling that they are the chosen contractor, the  
11 technical officers are doing an assessment and concluding  
12 it should be DeCosta Construction?

13 A The technical officers never wavered from their  
14 view that DeCosta was the more suitable bidder for this  
15 project --

16 Q Okay.

17 A -- and it's reflected in this Contract Award  
18 Recommendation which was prepared by the technical  
19 officers.

20 Q I'm certain it's my fault. I'm just trying to  
21 understand, given that the Minister had already decided  
22 earlier in the month on the 1st or 2nd of January that  
23 Bermuda Drywall is going to get the contract, and indeed  
24 you had written to them on the 8th of January?

25 A Yes.

1 Q Saying that they were the contractors selected by  
2 the Ministry.

3 Just trying to understand the value and purpose  
4 of this assessment on the 12th of January.

5 A Well, it was my wish, it was my expectation, it  
6 was theirs, too, that the Cabinet in reaching its decision  
7 with respect to the award of this contract would be  
8 apprised of all relevant details.

9 Q I understand that. I see. I see. That is  
10 helpful.

11 A And it was a view that I expressed very strongly  
12 to the Minister also when he saw some details of this  
13 document and questioned the inclusion of some of the  
14 information. And I think I've spoken to that in my witness  
15 statement, but I think it was full disclosure this was the  
16 view of the technical officers.

17 Now the Minister had absolutely no obligation to  
18 accept the recommendation of the technical officers. This  
19 was his document which he would take to his ministerial  
20 colleagues.

21 Q Yes.

22 A Ultimately. Ultimately.

23 Q Let's, can you have a look at the Minutes of the  
24 Cabinet?

25 A Yes.

1 Q Cabinet decision when this was considered?

2 A Uh-huh.

3 Q And if you -- that's on the 10th of February.  
4 Look at that small binder, Mr. Horton, in front of you.

5 A This one?

6 Q Yeah. And this should be a document, page 40  
7 FHQ.

8 A Page 40, I have it, sir.

9 Q Yes, you have. And you'll see that this is on  
10 the 10th of February 2009, this is. And it says, "In  
11 introducing this contract recommendation with retroactive  
12 approval," and it is retroactive, but presumably Mr. Hollis  
13 has already started work?

14 A He had, yes.

15 Q "The Minister of Works and Engineering informed  
16 his colleagues that the scope of work comprised of the  
17 phase, the re-use and the renovation of the second floor of  
18 the Government Administration building, an area of  
19 approximately 13,000 square feet.

20 And the next paragraph, "Minister noted the  
21 commercial cost project involved the construction of two  
22 new courtrooms," and that's described. And then he said,  
23 the next paragraph, "The Minister advised his colleagues  
24 that following initial tender procedure during August,  
25 September 2008, he directed that every effort be made to

1 achieve a lower quote from the most responsive bidder,  
2 DeCosta Construction. Consequently, the design team  
3 together with DeCosta Construction underwent the Value  
4 Engineering exercises to reduce costs. At the conclusion  
5 of this exercise, the Minister advised his colleagues that  
6 he further directed that the project be re-tendered to the  
7 seven original bidders with the reduced scope of work as  
8 developed, the Value Engineering exercise, plus the  
9 maintenance of existing office partitions along the  
10 parameter of the building in the Ministry of Finance  
11 existing and future offices.

12 The Minister noted that the revised bids were  
13 received from only three of the original seven bidders,  
14 Bermuda Drywall, DeCosta and AW Construction. And then the  
15 Minister recommended that the contract be awarded to  
16 Bermuda Drywall and Ceilings Ltd for 1.6 million, et  
17 cetera. The Cabinet approved the award."

18 And on the face of that document, it does not  
19 appear that there was any reference to the second  
20 evaluation on the 12th of January which once again  
21 recommended DeCosta.

22 A I would not presume to question what is in the  
23 Cabinet conclusion. So you have to be, and one can take  
24 this at face value.

25 Q Yes.

1 A It's not written by me, it's written by staff at  
2 the Cabinet Office.

3 Q No, I understand that. You said, which made  
4 sense, that you wanted the Cabinet to have the benefit of  
5 the opinion of the technical officers as expressed in the  
6 evaluation of the 12th of January. It's just that if  
7 you -- there does not appear to be any reference in these  
8 Minutes to that second evaluation.

9 A May I scan at the Contract Award Recommendation?

10 Q Yes, of course. Which one?

11 A The one dated the 12th.

12 Q The one dated the 12th, you will find at page --

13 A There it is.

14 Q It's page 34.

15 A Yes. Uh-huh. Because normally, Mr. Hargun, when  
16 the Assistant Cabinet Secretary or the Cabinet Secretary is  
17 preparing the Minute, it reflects in the case of a Contract  
18 Award Recommendation, it would reflect aspects of the  
19 actual document which Cabinet had before it. And so  
20 looking at this document to see if there was reference to  
21 an assessment of the second round of bids.

22 Q We'll there were references to a second  
23 assessment.

24 A I accept that.

25 Q Okay. Just curious, was there any particular



1       rush with this project?

2       A           There was. There was. I'm glad you raised that  
3       question. There was urgency. The Ministry of Finance  
4       which occupied the second floor was very, very desirous of  
5       moving as soon as possible. And also there was some  
6       pressure to establish a commercial court. This was  
7       pressure from the Registrar of the Supreme Court. So there  
8       was urgency in those respects, yes.

9                And I think there was an expectation that this  
10       work would have started sometime before early January 2009,  
11       but there had been delays. And so yes, there was urgency  
12       attached.

13       Q           Very well. And I'd like to move to another topic  
14       on this.

15                Do you have further questions in relation to  
16       this?

17                CHAIRMAN EVANS: No, not at this stage. Very  
18       briefly, spent some time in relation to the Central  
19       Laboratory contract which basic documents in relation to  
20       that, Mr. Horton, you'll find at Tab 5 and the issue --

21                THE WITNESS: Mr. Hargun, make I make an  
22       observation at this juncture?

23                MR. HARGUN: Yes, of course.

24                CHAIRMAN EVANS: I'm sorry, I think we'll stick  
25       to questions and answers. Wait until you're asked a

1 question if you would.

2 THE WITNESS: It's of critical importance to the  
3 answer I'm about to give.

4 CHAIRMAN EVANS: Well you haven't been asked a  
5 question yet.

6 THE WITNESS: Well, I know it's on the subject so  
7 my observation relates to Mr. Hargun referred to the bundle  
8 and I wanted to refer to the witness bundle before me.

9 CHAIRMAN EVANS: As a golden rule, perhaps an old  
10 fashioned one, let's have the question and then the answer.  
11 You can of course give any answer that you think fit.

12 THE WITNESS: Thank you, Mr. Chair.

13 BY MR. HARGUN:

14 Q Mr. Horton, which binder did you want to look at?

15 A I'm referring to the witness bundle that I  
16 received.

17 Q Yes.

18 A At the end of August, a huge bundle. And I want  
19 to share the concern that initially on this Central  
20 Laboratory Building Project, the original document that I  
21 received, and you can confirm it, contained eight, maybe  
22 less than eight pages. And I was asked to comment, respond  
23 to very specific questions from the Commission on this  
24 project.

25 And I wrote in a draft which you would have

1 received that I was unable to respond because I found the  
2 documentation woefully inadequate. And I'm very grateful  
3 to the Commission for providing me in the middle of  
4 September with 128 additional pages which enabled me to be  
5 of assistance to the Commission. I could not have been of  
6 assistance to the Commission with the few pages that had  
7 been given to me earlier.

8 Q I think the "thank you" goes to Mr. Brady for  
9 providing this documentation.

10 A I'm grateful to him.

11 CHAIRMAN EVANS: Can I say we're grateful to you  
12 for dealing with 128 pages in what is it, ten days or so.

13 THE WITNESS: Thank you, sir.

14 BY MR. HARGUN:

15 Q There are two issues here. One is to why there  
16 wasn't a tender. And the issue is whether contract at this  
17 size needs to be tendered.

18 And secondly, Mr. Horton, why Cabinet approval  
19 was not sought in relation to this.

20 And just trying to assist you as to whether one  
21 of the reasons why it may not be tendered is originally, if  
22 you look at the page 1, the cost, the initial cost was  
23 \$46,000.

24 A Uh-huh. You are referring to page 1?

25 Q Page 1, Tab 5.

1 A So that is the bundle. I'm now looking at your  
2 bundle, so that's page 1 of Tab 5?

3 Q Yes.

4 A Thank you.

5 Q So if this was the entire contract, of course  
6 there would be no question of tendering and there would be  
7 no question of obtaining Cabinet approval because it's only  
8 \$46,000?

9 A I understand.

10 Q Then if you look at, this is a letter dated 26th  
11 of May 2008. But in about a week's time, you received  
12 another letter from CSP Architects from Canada. And that's  
13 at page 3. Now you'll see that they are at this stage in  
14 relation to the entire project submitting possible fees in  
15 excess of a million dollars.

16 So did you at this stage, one would know that  
17 this wasn't just the \$46,000 contract, this was very  
18 substantial expenditure?

19 A Yes.

20 Q And one would be looking at, if not a tender,  
21 certainly, looking at any Cabinet approval?

22 A Under those circumstances, yes. I can expand on  
23 that response if you wish.

24 Q Please. Yes.

25 A Mr. Hargun, this project was accompanied by --

1       there are two aspects of my response. First, the urgency,  
2       this was accompanied by enormous urgency. The labs had  
3       been occupying space at the Old Hospital on Point Finger  
4       Road. The Bermuda Hospital Board wanted them out ASAP  
5       because they wanted to advance the rebuilding project  
6       there. So they had to relocate with a sense of urgency.

7                 Different locations have been identified, one of  
8       which was Woodlands School in Pembroke. Plans had started  
9       actually for relocation to that site. However, the  
10       Ministry of Education decided they wanted to continue the  
11       use of their building for a preschool. And the building  
12       section, it's in my former ministry, then was charged with  
13       the responsibility of looking for alternate accommodation.

14                They liaised with our Department of Architectural  
15       Design and Construction. Hence, now involved with CS&P,  
16       instant matter. They, CS&P, Carruthers Shaw & Partners of  
17       Toronto were the principal architects of the new Hamilton  
18       Police Station building on the corner of Court and Victoria  
19       Streets. They were and are very established and very  
20       successful and with a great range of expertise,  
21       architectural firm in Toronto.

22                We had, or the Department of Architectural Design  
23       and Construction had a longstanding arrangement with them.  
24       They knew them. They knew their resources. We already had  
25       in place the contract for what is now the Dame Lois

1 Browne-Evans Building.

2           Recognizing the expertise available to them, and  
3 I won't presume to speak for Chief Architect, Mr. Brady  
4 because it was he who, with our support, made contact and  
5 asked CS&P if they would advance this matter. They had  
6 access to the best in terms of forensic lab designers, in  
7 Toronto and elsewhere and he asked them if they would take  
8 on this task.

9           To the question of it not being tendered, I think  
10 a legitimate one, and I think I have offered a response in  
11 my witness statement. May I read that?

12 Q           Of course. Yes, please.

13 A           "Management Policy and Procedure PFA 2002 6.3.2  
14 requires that in the case of contract services with an  
15 estimated value of more than \$50,000, the -- and I quote,  
16 the method of procurement shall generally be by Open  
17 Tender. However, Management Policy and Procedure PFA 2002  
18 6.11.4 allows for the tendering process to be waived in  
19 special circumstances such as economic climate or market  
20 conditions, in brackets, including the unavailability of  
21 specialized services. I was satisfied -- I Permanent  
22 Secretary, was satisfied that the Department of  
23 Architectural Design and Construction's familiarity with  
24 CS&P's Partners, Ltd of Toronto, that firm's proven ability  
25 to access specialized services that would be required in

1 the design of a multi-purpose facility of the kind proposed  
2 and the need to move forward as expeditiously as possible,  
3 given the Environmental Health Department's urgent need for  
4 relocation from the Old Hospital site, justified the  
5 absence of the open tender process."

6 Q Right. So, that said, that's the open tender  
7 process?

8 A Yes.

9 Q What about getting approval from the Cabinet, the  
10 retroactive approval?

11 A I cannot explain why that did not happen.

12 Q That's an odd one because look at page 33 in the  
13 same binder.

14 A Page 33.

15 Q Tab 5, 33. Because this contract goes on for  
16 some time.

17 A Yes.

18 Q And this is a payments certificate for  
19 professional services signed by you amongst others as the  
20 Permanent Secretary on the 18th of February 2009. So this  
21 project had been going on now, it started in June. So we  
22 are now at some eight months into it. And if you look at  
23 the amount of this bidding, that's \$16,000.

24 By this time, the project, the revised contract  
25 sum is 783,000.

1                   Did it not occur to anybody during this time that  
2 perhaps you should seek Cabinet approval?

3           A           I can see it did not occur to me. I don't  
4 remember details. I certainly recognize it was ongoing.  
5 The Architectural Design and Construction Division were  
6 keeping us fully apprised of the work that was being done.  
7 I was satisfied that the work was being done.

8                   This document to which you just referred,  
9 Mr. Hargun, was submitted by the project manager, Lucy  
10 Chung, whose judgment I valued enormously and I had no  
11 question about signing it. But your question as to why it  
12 didn't occur to us to take it to Cabinet for its approval,  
13 I cannot respond to that. I'm sorry.

14          Q           Very well.

15          A           Except to say it was a regretful oversight on my  
16 part.

17          Q           Very well. I'd like to move to another contract.

18                   BY CHAIRMAN EVANS:

19          Q           Having some difficulty accepting that, are you  
20 accepting this matter should have gone to the Cabinet for  
21 approval let's say in June 2009?

22          A           Inasmuch as contracts in excess of \$50,000 are  
23 required to go to Cabinet for approval, yes.

24          Q           And you say that you regret that it didn't?

25          A           Yes.



1 Q Why didn't it? That's what we're here to ask,  
2 why weren't the recommendations followed in this case?

3 A I cannot answer that question, Mr. Chair. It was  
4 a very high priority matter in our Ministry. And it's one  
5 that I had not been handling myself at its inception. It  
6 was handled by the Department of Architectural Design and  
7 Construction. And the witness bundle will show the  
8 correspondence between Mr. Brady and CS&P Partners, but  
9 still it doesn't solve the probability of having ensured  
10 that it was taken to Cabinet. And I did not. And I regret  
11 that oversight. I'm prepared to acknowledge that was an  
12 oversight.

13 Q How much time is spent on a tendering process,  
14 can you generalize on that?

15 A You're not speaking of this matter?

16 Q Yes, well, I am, of course.

17 A Well, this one was put out to tender, sir.

18 Q But you said that's because it was so urgent?

19 A Yes.

20 Q And I wondered how much time would have been  
21 wasted or spent --

22 A Spent.

23 Q -- on a tendering process?

24 A Oh, my goodness. I would think given the highly  
25 specialized services that were required for the building

1 that was envisioned, I would have said, and this isn't  
2 perhaps the most informed response, I'm not a member of  
3 that team but it would have taken a couple of months at  
4 least.

5 Q Thank you. And do you remember when work  
6 started, we saw the letter --

7 A It didn't start.

8 Q -- the 28th of May and the award was the 3rd of  
9 June, was it?

10 Do you remember when work actually started?

11 A Mr. Chair, on this specific initiative, this  
12 particular plan for a number of reasons, the Government had  
13 a change of direction in terms. So a modified structure  
14 was filled, but not -- the structure that we're addressing  
15 here involved provision for Ministry Headquarters, a  
16 variety of labs, the Department of Health Headquarters,  
17 accommodation for Solid Waste staff and of the Ministry.  
18 It was a very complex, very large and very expensive  
19 project.

20 The Government for fiscal reasons decide they  
21 couldn't, notwithstanding the amount of money that had been  
22 expended in the development of the plan, chose to move in  
23 another direction. And ultimately, a portion of the plan,  
24 it was accommodation provided for the Solid Waste staff and  
25 for the accommodation of our equipment and machinery and

1 garbage trucks, et cetera, at the Marsh Folly site. That  
2 was done.

3 But the huge plan which involved accommodating  
4 the laboratories, et cetera, was not pursued. Instead, and  
5 this will be addressed in another matter that the  
6 Commission will no doubt discuss, the Government chose to  
7 locate the labs elsewhere.

8 Q Thank you.

9 A I hope that assists, sir.

10 BY MR. HARGUN:

11 Q Can we then move on to another project and that  
12 is the laboratory at Southside. That you will find in Tab  
13 6. Can I ask you to go to page 6, now that is a Contract  
14 Award Recommendation that is dated 6th April 2010. And  
15 you'll find the date by looking at page 9.

16 A Yes.

17 Q And just so we see, "The scope of the work for  
18 this tender comprised the relocation of Bermuda Government  
19 Environmental Health laboratory for this current location  
20 in the Old Hospital Building in the space of approximately  
21 5,000 square feet to a space located in Building 322  
22 Southside formerly used by the Bermuda Police Service, an  
23 area within a building of approximately 13,000 square  
24 feet." Yes?

25 A Yes.

1 Q And if you look at the tender response at page 7,  
2 and you will see that the contractors who responded were  
3 DeCosta, Greymane, (Burt ?) Construction, Concorde  
4 Construction and Colmar Construction.

5 A Yes.

6 Q And under the details of responses, you will see  
7 that under Bullet Point No. 4, "Concorde Construction  
8 submitted their tender on the superceded form, did not  
9 indicate that their previous addenda were concluded and  
10 indicated a completion date of 7th of May 2010." Yes?

11 A Yes.

12 Q Does that indicate that their bid was incomplete  
13 or just minor deficiencies?

14 A I don't possess the technical expertise to answer  
15 that question.

16 Q That's fine. And then on the next page, page 8,  
17 first full paragraph, "The Ministry of Works and  
18 Engineering original estimate for scope of work to relocate  
19 to Lolly's Well was 1,374,000. It should be noted that the  
20 pre-fit-out works would be required at Southside such as  
21 roof repairs, asbestos abatement, mold cleanup, abandonment  
22 and stripping out the existing building services and  
23 finishes to the whole building, which approximately 13,000  
24 square feet in size in order to accommodate the 5,000  
25 square feet fit-out. The cost of the pre-fit-out works can

1 be in excess of \$70,000.

2 In addition, your structural, electrical or  
3 mechanical service had been carried out on the new site,  
4 and such costing for these elements are unknown."

5 And then you will see the bids are set out.  
6 Concorde is 866,000. And then the -- under the validity  
7 column, you'll see that there's a notation, 'unclear if all  
8 works are included.' DeCosta 1,276,000, valid; Burt  
9 Construction 1,000,320, unclear if all works are included.  
10 Greymane 1.341 valid; Concorde Construction 1.6 million,  
11 unclear if all work's been included.

12 And then tender evaluation. Concorde  
13 Construction's tender is almost 30 percent below that of  
14 the next bid, which raises concerns regarding their  
15 understanding of the project. The highest bidder is almost  
16 20 percent higher than the second highest bidder. The  
17 remaining three bidders are within 5 percent of each other,  
18 although it is unclear if Burt Construction have included  
19 for all the works. The closeness of the bids is a good  
20 indicator that the bidders understood the same work.

21 The Minister called for a site visit on Monday,  
22 March 22, 2010 with the PS. Architects from the Department  
23 of Architectural Design and Construction and Vernon Burgess  
24 of Concorde Construction in order to seek assurance from  
25 Mr. Burgess that his bid included all that was required.

1                   Mr. Horton, is this -- has it been subjected that  
2                   the Minister suggested that he meet with Mr. Burgess of  
3                   Concorde Construction at the site?

4           A           Yes.

5           Q           And did that take place?

6           A           I believe that meeting did take place, sir.

7           Q           And who was in attendance at that meeting?

8           A           Well the Contract Award Recommendation indicates  
9                   that I and architects from the Department of Architectural  
10                  Design and Construction and Mr. Burgess were present. I do  
11                  not remember the specific meeting but I would not question  
12                  this document was written by the --

13          Q           Yes.

14          A           -- architect section, and I will accept if they  
15                  state that I was at that meeting, I was. And I normally  
16                  would have -- well, I attended some meetings with the  
17                  Minister. And so I think that I would have been at this  
18                  one.

19          Q           Do you recall whether other contractors were  
20                  invited or just --

21          A           This meeting if I remember correctly involved  
22                  only Concorde.

23          Q           And the person who attend was Mr. Burgess?

24          A           It was, yes, Mr. Vernon Burgess.

25          Q           Yes, Mr. Vernon Burgess of Concorde?

1 A Yes.

2 Q Can you now look at your witness statement?

3 A Yes.

4 Q And I ask you to have a look at Paragraph 61.

5 There under the heading, The Laboratory Contract in  
6 Southside which is what we're talking about, with respect  
7 to the Commission's current understanding as set out in the  
8 opening paragraph, "I confirm that the tender process  
9 changed from a tender to fit out a building in Lolly's  
10 Well, Smith's to a tender fit out a building in Southside,  
11 St. David's."

12 All that means was the location was changed?

13 A And a number of specifications.

14 Q Number of specifications. You're absolutely  
15 correct.

16 And then you say, "I confirm that the Minister of  
17 Works and Engineering," that's Mr. Burgess?

18 A Yes.

19 Q "Expressed concern about the tendering process at  
20 an early stage, specifically regarding the wisdom of  
21 spending public funds to improve a privately-owned  
22 building." That's at Lolly's Well?

23 A Yes.

24 Q "He later expressed support for the award of the  
25 contract to Concorde Construction."

1                   That's with Mr. Burgess?

2           A           Yes.

3           Q           Yes. "I confirm that during a site meeting with  
4           Concorde and technical staff of the Ministry of Works and  
5           Engineering at Southside, the Minister of Works and  
6           Engineering agreed to reduce the tender requirements for  
7           Concorde."

8                   Now can you explain to the Commission what this  
9           is attempting to say?

10          A           Well the Minister and we alluded to that a moment  
11          ago, objected strongly to expenditure of one half million  
12          dollars as I think it might have been, to develop a  
13          privately-owned building. That was Lolly's Well. He was  
14          the Minister with responsibility for the Bermuda Land  
15          Development Corporation. And he knew of the existence of  
16          one of its buildings, a publicly-owned inasmuch as the BDCL  
17          is publicly-owned.

18                   He recognized that one of its buildings would be  
19          suitable and that we should spend publicly earned moneys  
20          for the development of a publicly-owned building. And when  
21          he suggested that the conditions changed, it was because  
22          the Contract Awarded Recommendation, as you later just  
23          identified refers to the need for a lot of additional work  
24          being done at Building 322 Southside.

25                   It was the Minister's view that that additional



1 expenditure would be borne by the Bermuda Land Development  
2 Company and not by our Ministry, our Ministry, the Ministry  
3 of Works and Engineering. So he did, in fact, require that  
4 some of the things he/we requested of Mr. Burgess and  
5 indeed other bidders be removed.

6 Q So this was to apply -- this reduction in tender  
7 requirement was to apply to everybody?

8 A You know, at this juncture I would have to look  
9 at the chronology again. I'm not sure that meeting  
10 occurred after the Minister made clear having looked at the  
11 other.

12 Q Well, if it assists you --

13 A Yes, please.

14 Q If it assists you, look at the email from Lucy  
15 Chung.

16 A Yes.

17 Q Where she said that the reduction which is  
18 proposed to a Concorde Construction applied to everybody,  
19 then --

20 A Could you direct me to that?

21 Q Yes. Sorry. Forgive me. Look at page 3. Page  
22 3 is, let's just take it and this is from Lucy Chung.

23 PS, we've now received confirmation from Concorde  
24 Construction with respect to which allowances that included  
25 and excluded in their bid for contract documents. In

1 addition, we would have expected the bid to remain the same  
2 but Concorde Construction have revised and resubmitted a  
3 higher bid from the original 886 to 974. For the avoidance  
4 of doubt Concorde Construction was contacted to confirm all  
5 of the above.

6 And then there is analysis of Concorde bid  
7 construction, you see in Paragraph 1, increased bid from  
8 886,000 to 964? Yes?

9 A Yes.

10 Q And then if you look underneath under Paragraph  
11 4, she says, "We acknowledge the Minister's clarification  
12 at the site visit that he is not concerned with other  
13 bidders."

14 What's that referring to?

15 A I would assume, Mr. Hargun, it's referring to the  
16 other four companies that submitted bids.

17 Q So he's just concerned with Concorde?

18 A I would deduce that from reading this.

19 Q "However, we thought that it might be helpful to  
20 provide the following comparison of all the bids once  
21 adjusted to match Concorde's Construction bid, i.e., delete  
22 the air conditioning and ceiling." Just pausing there.

23 The Minister was saying to Mr. Burgess of  
24 Concorde that he didn't have to worry about the air  
25 conditioning and ceiling. Yes?

1 A Yes.

2 Q So when he met him on the site with the technical  
3 offices, I think you were there, he told Mr. Burgess, that  
4 is, Minister Burgess told Mr. Burgess that he didn't have  
5 to, as far as the scope of the work was concerned, he  
6 didn't have to worry about the air conditioning and he  
7 didn't have to worry about the ceiling.

8 And at that stage, the only person attending as  
9 far as the bidders were concerned was Mr. Vernon Burgess?

10 A Yes.

11 Q And Lucy Chung is saying to you that -- I should  
12 read also Paragraph 4 on that page, 4.

13 There may be other exclusions in this bid that we  
14 are unaware of as we were not present at the original  
15 meeting between Concorde Construction and the Minister when  
16 the project was discussed. This would give Concorde  
17 Construction an unfair advantage to the submission of their  
18 bid." Yes?

19 A Yes.

20 Q And is he expressing the concern that maybe  
21 Mr. Vernon Burgess of Concorde is being offered  
22 arrangements in terms of bidding and in terms of work to be  
23 done which extended to others?

24 A I think that is clearly the view being  
25 communicated by Ms. Chung, yes.

1 Q And she says that if that was to happen to  
2 everybody, then you'd have to revise their bids. And she  
3 does that exercise. She said Concorde Construction is at  
4 974 at page 3, and if you look at page 4, DeCosta  
5 Construction bid will go down from 1.276 to 967,000 so that  
6 DeCosta Construction will become the lowest bid.

7 And she does the same exercise for others, yes?

8 A Uh-huh.

9 Q And then she says this. "We would advise against  
10 accepting any of the tenders as the project has not been  
11 designed for these premises and the scope of work will vary  
12 from that specified for the previous location at Lolly's  
13 Well.

14 In addition, our present course is highly  
15 irregular as it relates to Financial Instructions and  
16 tendering process and may raise questions if audited."

17 Did you share that view?

18 A There's no reason that I would not have done.

19 Q "Although it will take time, we would suggest  
20 reissuing full tender documents. With all works  
21 identified, this being the only way in which an accurate  
22 contract can be confirmed, and at present there are too  
23 many variables. We are of the understanding that you have  
24 kept the Ministry and the PS apprised of the current  
25 situation."

1                   So the technical officers, particularly Ms. Chung  
2                   for whom you have great respect is suggesting that the only  
3                   proper way to proceed in this case is to involve a rebid?

4           A           Yes.

5           Q           Was that done?

6           A           No.

7           Q           And okay. Why wasn't that done?

8           A           Mr. Hargun, the Minister was adamant that he  
9                   wished to proceed with the Concorde Construction bid. And  
10                   in my witness statement, I have addressed some of the  
11                   concerns that I expressed with the Minister about the extra  
12                   content of the Contract Award Recommendation which  
13                   identified a number of the concerns which had been raised  
14                   by the technical officers.

15          Q           You do. And I'll take you through that. Just  
16                   before we do that, have a look at page 5. And this is from  
17                   Lucy Chung to the Chief Architect, Lawrence Brady. In the  
18                   email she says, "Lawrence, I received a copy of CAR today  
19                   from -- Contract Award Recommendation -- today for Concorde  
20                   Construction for Building 322 Southside Lab subject as  
21                   revised by the PS. He did not advise if Cabinet approval  
22                   was received. It differed significantly from what we  
23                   prepared for Acting PS Outerbridge. In our version we have  
24                   removed our department's name from the heading because it  
25                   was a recommendation put forth by the Minister and not our

1 department.

2 In addition, some facts were omitted. Overall,  
3 the document was misleading and gives the impression that a  
4 somewhat proper tendering procedure was followed and that  
5 our department not only recommended Concorde, but feel they  
6 are experienced and qualified to do the job."

7 Do you see that?

8 A I do.

9 Q And did you understand that Ms. Chung was  
10 expressing the position that they had not recommended  
11 Concorde and they had not said that it was their  
12 representation that they were experienced and qualified to  
13 do the job?

14 A Mr. Hargun, as far as I can recall, the Contract  
15 Award Recommendation which was submitted to the Ministry  
16 for consideration, the first one that's referred to, that  
17 to be the 5th of April.

18 Q The 5th of April.

19 A The recommendation, it states unequivocally, the  
20 recommendation of the award to Concorde Construction  
21 notwithstanding the many concerns which have been raised in  
22 the body of the Contract Award Recommendation. That was  
23 not put there by me. I did make other changes, I will  
24 assure you. And I will identify those later. But this was  
25 not changed.

1                   So, when Ms. Chung writes that it gives the  
2                   impression that is somewhat -- that our department  
3                   recommended Concorde but feel that they're experienced and  
4                   qualified to do so. Unless she's saying that we  
5                   recommended Concorde but we don't feel they're qualified  
6                   and experienced to do so. I'm not quite sure what she  
7                   meant by that.

8                   Q               Well you're not going to recommend somebody if  
9                   they're not qualified to do it.

10                  A               But they did. She did write this. This came  
11                  from her. The Contract Award Recommendation.

12                  Q               If you look at page 9, it is odd language under  
13                  the Recommendation.

14                  A               Page 9?

15                  Q               Nine. Would recommend award in the contract for  
16                  the scope of work to Concorde. And then this sentence,  
17                  "The Minister is of the opinion that Concorde Construction  
18                  has experience and expertise that will enable the company  
19                  to carry out the scope of work."

20                                I mean, that is an odd way of expressing it from  
21                  the technical officers making a recommendation by saying  
22                  that it's the Minister who says they've got the experience.

23                  A               This is the Permanent Secretary's statement  
24                  there. I inserted that for the information of the Cabinet.  
25                  Because this document was -- it's the Minister's document.

1 We argued over it but I thought it important that they be  
2 aware of the concerns which have been shared by the  
3 technical officers. But he was strongly of the view that  
4 Concorde should be given the contract.

5 Q And if you look at the -- look at the  
6 recommendation on the 12th of April 2010.

7 A Yes, that's the one that went to Cabinet.

8 Q That's the one that went to Cabinet. Under the  
9 recommendation, that is the Minister's recommendation was  
10 (taken out?) And it's the Minister's view. And other  
11 qualifications I think which you are referring to, the  
12 additional cost was also taken out.

13 A I'm sorry. When I saw that statement I thought  
14 it was in the statement, too, I do apologize. I misread  
15 the documents. When I read 'the Minister is of the  
16 opinion,' that wasn't in the original document.

17 Q Yes.

18 A That had been submitted by Ms. Chung. Now I  
19 understand more fully, and it was removed.

20 Q [Inaudible] not the Minister?

21 A Presumably.

22 Q Yes.

23 A And the Minister would state, Mr. Chair,  
24 repeatedly, "This is my document. I am taking it to  
25 Cabinet, to my colleagues." The technical officers



1 prepared, yes. And I recall this being sent as a  
2 suggestion that it should come from the Department and  
3 Ms. Chung makes reference to that. And I, too, thought  
4 that it was an inappropriate recommendation from Ms. Chung  
5 because there are technical officers who are preparing a  
6 document for the consideration of the Minister and  
7 obviously of the Cabinet. So their work is on behalf of  
8 the Minister.

9 And she did, I do recall clearly the objection  
10 because a version had come or the view had been expressed  
11 that instead of saying Ministry of Works and Engineering at  
12 the top of the Contract Award Recommendation --

13 Q It said the Department of Architectural Design  
14 and Construction?

15 A Yes.

16 Q And that was what she was objecting?

17 A Yes.

18 Q Because that wasn't her recommendation?

19 A Yes.

20 Q But leaving aside these, what went to the  
21 Cabinet, I mean what about this aspect that, as far as  
22 Concorde Construction was concerned, the meeting with  
23 Mr. Burgess and the Minister Burgess whereby the cost of  
24 air conditioning and the cost of the roof is taken off.

25 And, but -- and he's told that he doesn't have to

1 worry about it.

2 A Mr. Vernon Burgess.

3 Q Vernon Burgess. But as far as all the other  
4 bidders are concerned, they are bid on the basis that that  
5 is included?

6 A I agree.

7 Q That is a bit odd, isn't it?

8 A Yes.

9 CHAIRMAN EVANS: I missed that.

10 MR. HARGUN: I said that's a bit odd.

11 CHAIRMAN EVANS: I agree.

12 BY MR. HARGUN:

13 Q I mean, not to put too unfair a point on it, it  
14 is unfair to the other bidders, isn't it?

15 A I think that argued safely, yes.

16 Q Did you advise the Minister in relation to this  
17 issue?

18 A The Minister had a lengthy discussion on this  
19 issue. And in particular, when it came to submitting the  
20 Contract Award Recommendation to Cabinet. The document  
21 which had been submitted to Ministry Headquarters for  
22 consideration outlined a number of concerns.

23 The Minister was strongly opposed to the  
24 inclusion of those concerns, and arguing that it was his  
25 paper and he had the right to say what was in the paper.

1 The technical officers had a right to express their view.  
2 It was for him to accept or reject.

3 But in summary was the Minister's position and I  
4 remember, Mr. Hargun, explaining to a perhaps disappointed  
5 Ms. Chung and other staff that ultimately it is the  
6 Minister's call, although normal practice would involve  
7 their, the Minister, you know, accepting the recommendation  
8 of the technical officers.

9 He was not bound to do so. And I know of many  
10 other cases where Ministers didn't for reasons A, B and C.  
11 But the Minister's -- I acquiesced to the Minister's  
12 decision to alter the Contract Award Recommendation. But I  
13 emphasize the importance of the inclusion of information in  
14 it which would advise Cabinet of concerns -- some of the  
15 concerns, not all -- that they had, the technical officers  
16 had.

17 Q But the Cabinet would not know about the  
18 previous, the first recommendation and the reservations?

19 A No.

20 Q And the Cabinet would not know that in relation  
21 to Concorde; and Mr. Vernon Burgess had been told that as  
22 far as he was concerned, he didn't have to do the air  
23 conditioning or the roof?

24 A Those details were not shared in the Contract  
25 Award Recommendation that they saw, although, they were

1 shared in the document which had been prepared by the  
2 technical officers.

3 Q Yes.

4 A And I would have no way of knowing what  
5 information the Minister shared with his Cabinet colleagues  
6 apart from the document dated 12 April.

7 Q Yes. That's have a look at that document on the  
8 12th of April 2010.

9 A Yes.

10 Q And keep, which starts at page 10, and you see at  
11 page 11, Cabinet is advised that for the same work,  
12 Concorde Construction will bid for 974,000 and DeCosta  
13 Construction will bid for 1,276,000.

14 Do you see that?

15 A I'm sorry, could you direct me again, please?

16 Q Page 11.

17 A Page 11, yes.

18 Q Yes. You'll see the company bid validity in the  
19 two-thirds of the way down?

20 A Uh-huh.

21 Q Concorde Construction, 974,000.

22 A Yes.

23 Q DeCosta, 1,276,000. Now, keep your finger there  
24 and go to page 4, back to page 4.

25 And you know that Ms. Chung had told us that if

1 we apply the reductions to everybody with the Minister  
2 Burgess as represented to Vernon Burgess, then DeCosta  
3 Construction's bid, in fact, comes down to 967,000.

4 A Uh-huh.

5 Q So, it is unfair to DeCosta Construction that the  
6 Cabinet was told they were going to charge 1,276,000 and  
7 because if they were to do the same work, i.e., not do the  
8 air conditioning and not do the roof, their bid, in fact,  
9 would be 967,000, i.e., lower than the bid for Concorde?

10 A I accept that observation, yes.

11 Q So to that extent, what was represented to the  
12 Cabinet was not a fair representation of the bids received?

13 A In its detail, no. But the point I want to  
14 emphasize and this was the point which I think where the  
15 Minister eventually persuaded me, and I would like to read  
16 an excerpt from my witness statement.

17 He says, "You are arguing with me. You're  
18 arguing with me but they have recommended Concorde." I  
19 said, "Yes, Minister, they have in the document they  
20 submitted on the 5th. They have recommended Concorde but  
21 there are reservations expressed and we must include all of  
22 those."

23 And he felt and I could say, with the Chairman's  
24 indulgence I would like to read my response of an exchange  
25 I had with the Minister who was quite adamant about what he

1 would and would not take to Cabinet on this matter. May I?

2 Q Show us if you think -- that's from your witness  
3 statement?

4 A Yes.

5 Q Yes, of course.

6 A Yes. I would like to read Paragraph 68 and 69.  
7 "The Minister of Works and Engineering, upon reviewing the  
8 Contract Award Recommendation of the 5th of April 2010 and  
9 noting in particular the above quoted Paragraph 7," and  
10 that is the paragraph where it states that the contract  
11 would be awarded to Concorde Construction.

12 He questioned the relevance of some information  
13 set out early in the document, arguing that it was included  
14 merely to cast aspersions upon Concorde Construction's  
15 suitability for the project and the Minister's involvement  
16 in the tendering process. The Minister of Works and  
17 Engineering was particularly critical of inclusion of the  
18 information at Paragraph 3. And Responds that the cost of  
19 pre-fit works can excessive of 700,000, noting that  
20 inclusion of such information was irrelevant as it would be  
21 borne by the BLDC, the Bermuda Land Development Company,  
22 and used to effect improvements to a public-owned building.

23 He also argued that he had made clear that during  
24 the site meeting of 11th of March 2010, costs associated  
25 with asbestos abatement, roof repairs, mold cleanup, et

1 cetera, would be borne by the BLDC and not by the Ministry  
2 of Works and Engineering Headquarters. And I'll conclude  
3 with this paragraph.

4 Although I challenged the Minister of Works and  
5 Engineering's view that the information was included to  
6 disparage Concorde Construction and as a criticism of his  
7 involvement in the process, arguing instead that its  
8 inclusion was intended to give his colleagues a complete  
9 picture of the circumstances of the contract awards, I  
10 accepted his view that the information that concerned him  
11 did not alter in any substantial way the technical  
12 officers' ultimate recommendation that the contract be  
13 awarded to Concorde Construction. I subsequently adhered  
14 to his request to amend the Contract Award Recommendation.

15 Q Can we just go back to what exactly was the  
16 original recommendation and whose recommendation it was?

17 Can I ask you to please go back to on page 5 and  
18 particularly the email exchange from Lucy Chung to Lawrence  
19 Brady.

20 If you go back to page 5, this is from Lucy  
21 Chung, "Lawrence, I received a copy of the CAR today from  
22 the Concorde Construction, Building 322 Southside Lab  
23 Project and revised by the PS. He did not advise Cabinet  
24 approval was received. It differs significantly from what  
25 we prepared for Acting PS Outerbridge. In our version we

1 had removed our department's name."

2 Now just pausing there, look at the next page,  
3 page 6. You'll see after the Ministry of Works and  
4 Engineering, and if you compare that heading with the  
5 heading at page 10, the reference to Department of  
6 Architectural Design and Construction had been removed.

7 A Uh-huh.

8 Q Do you see that?

9 A Yes.

10 Q And she says that that was deliberately removed,  
11 removed our Department's name from the heading because it  
12 was a recommendation put forth by the Minister and not our  
13 department.

14 So she is saying that the recommendation of the  
15 5th April 2010 is not the Department's recommendation but  
16 Minister's recommendation?

17 A Mr. Hargun, I did say I had the highest regard  
18 for Ms. Chung, but I cannot accept that statement because  
19 the document that I had before me did conclude at its  
20 conclusion which came from her, the document of the 5th,  
21 did include it is recommended that the contract be awarded  
22 to Concorde Construction.

23 Q And then the odd sentence, the Ministry's of the  
24 opinion that Concorde Construction --

25 A Yes, that was deleted.



1 Q But I mean, you would know because you worked  
2 with obviously Lawrence and Lucy Chung. She's quite clear,  
3 she says we had removed our Department's name from the  
4 heading because it was a recommendation put forward by the  
5 Minister and not our Department. She's quite clear on  
6 that.

7 A I remember having a conversation with Lucy Chung  
8 after this and pointing out that every recommendation which  
9 emanates from that Ministry is the Minister's. It's not  
10 the technical officers' recommendation. And on the point  
11 of her removing, and she did --

12 Q Yes.

13 A -- request that the Department of Architectural  
14 Design and Construction be removed. I said that was not  
15 possible, that you are the Department who had been working  
16 on this contract award. It falls within our Ministry. It  
17 fell within the ambit in every single Contract Award  
18 Recommendation which emanated from our Ministry would have  
19 had if it came from that section or if it came from the  
20 building section, that would have been there.

21 Q It may be slightly odd behavior, but the fact  
22 that she's saying that take off the Department of  
23 Architectural Services is completely with her position that  
24 this is not a recommendation from her department.

25 A But the question begs then, why would she write

1 that concluding unless she felt some pressure to do so, I  
2 don't know.

3 Q Well she says that. Doesn't she say that she was  
4 just drafting the documentation because that was the  
5 Minister's recommendation?

6 A That's not my understanding. Not with that final  
7 paragraph.

8 Q It says, it was the recommendation put forth by  
9 the Minister and not by our Department.

10 A What she says was, if I may read, the Minister is  
11 of the opinion -- it reads, "We would recommend awarding  
12 the contract for the scope of work" -- I'm reading her  
13 original document, I'm looking to see in that was changed.  
14 Well yes, it has been changed.

15 Q Yes.

16 A In fact, she was more direct. What she has  
17 written was, in the 5th of April, "We would recommend  
18 awarding the contract for the scope of work set out in this  
19 Cabinet Award Recommendation to Concorde Construction."

20 That was written by Ms. Chung. But she did add,  
21 "The Minister is of the opinion that Concorde Construction  
22 has the experience and expertise that will enable the  
23 company to carry out the scope of work to a satisfactory  
24 standard."

25 Q No, I understand. It's obviously not

1       satisfactory, but clearly, on April the 15th, once both of  
2       these had been put out, she's trying to explain what the  
3       original one, that's the 5th -- of the one on the 5th of  
4       April.

5       A            Yes.

6       Q            That somehow wasn't her recommendation -- the  
7       Department's recommendation -- it was the Minister's.  
8       There we are. Let me -- I mean, let me just go back on the  
9       point which I made earlier, and I think we seem to be in  
10      agreement on that, that to the extent if you look at page  
11      11, and because one of the critical issues in relation to  
12      the evaluation is obviously price, isn't it?

13     A            Uh-huh.

14     Q            That the price which is set out on page 11 from  
15     the various, the contractors, and it's unfair to all the  
16     other contractors other than Concorde because they think  
17     that air continuing and the roof is included. Yes?

18     A            Yes.

19                    BY CHAIRMAN EVANS:

20     Q            Can I just find it unfair that it's a  
21     misstatement, isn't it. Was this paper presented to  
22     Cabinet on the basis those were the respective bids for the  
23     work that was covered by this contract?

24     A            Sir, the Cabinet would have seen the document of  
25     the 12th of April.

1 Q Yes, that's what we have?

2 A Yes. I think you are right. In the absence of  
3 the information which had been deleted from the earlier  
4 version of the document, it can be argued, I think that  
5 Cabinet didn't have as much information as they should  
6 have.

7 Q Well I'm trying to get away from all the details  
8 which you've been talking about.

9 A Yes.

10 Q Look at the end product, the Cabinet is asked to  
11 approve a bid from contractor who's said to have bid  
12 \$974,500, on the basis that the next bid was 1,276,000.  
13 That was untrue because the figure given from the other  
14 contractor was for a materially different piece of work,  
15 wasn't it?

16 A I accept that, sir.

17 Q And so this was on the face of it a misleading --  
18 I say not on the face of it, but from what we now know was  
19 a misleading document?

20 A Well we don't know, sir. I think on the face if  
21 it you were right. What we don't know is what the Minister  
22 might have shared with his colleagues when this document  
23 was presented to Cabinet.

24 Q Well you've told us how the Minister was adamant  
25 throughout --

1 A He was. He was unwavering in his position.

2 Q So I'm not sure as much likely that he would have  
3 corrected before his colleagues the very misrepresentation  
4 that this document contained.

5 A I understand your position, sir.

6 Q Thank you.

7 MR. HARGUN: I'd like to move on to another topic  
8 unless you have further questions on this.

9 CHAIRMAN EVANS: You are not suggesting we have a  
10 break now.

11 BY MR. HARGUN:

12 Q No. No. Very briefly in relation to Ambling,  
13 you refer to that -- I'm not sure you do specifically refer  
14 to it.

15 Let me show you a document, I just have a brief  
16 question for you. Would you look at Tab 8, page 9. This  
17 is, Mr. Horton, part of the Ambling Contract which starts  
18 if you look at page 4, it is a contract signed on behalf of  
19 the Government of Bermuda and by the Ministry of Tourism.

20 A Direct me, forgive me if I'm struggling. First,  
21 I have not been given any information on Ambling. I was  
22 not told I would be questioned on Ambling. I would not be  
23 here. So could you direct me again?

24 Q Sure. Tab 8.

25 A Tab 8.

1 Q Page, start at page 4.

2 A Page 4.

3 Q It's just a point of information, Mr. Horton.

4 This is a -- I accept that you may not have read  
5 this contract. It's a contract which is dated May 17,  
6 2010. It's signed on behalf of the Government of Bermuda  
7 and Ministry of Tourism. And the relevant passage/page I  
8 wanted to show you is at page 9. Page 9.

9 A Uh-huh.

10 Q This is Schedule B. What Schedule B does is, it  
11 sets out the services which they are providing. And the  
12 question I'm going to ask you so that you don't think that  
13 they're huge issues is whether you were aware whether they  
14 provided those services to the Ministry of Works and  
15 Engineering when you were the PS?

16 That's the only question I'm going to ask you.  
17 And there are paragraphs where it suggests that the  
18 services are being provided to Works and Engineering.

19 Look at Subparagraph B is to develop a new impact  
20 fee model that would be assessed on the (most?) larger  
21 commercial projects on the island that would exceed a  
22 minimum of 50 million in total cost and value.

23 These fees would be collected by both the  
24 Ministry of Works and Engineering and the Ministry of the  
25 Environment and Sports.

1                   Do you recall any work product being generated  
2                   and given to the Ministry of Works and Engineering at the  
3                   time you were there in relation to this?

4           A           Let me say at the outset, I have seen this  
5           document for the first time.

6           Q           I understand that.

7           A           But yes, with respect to Paragraph E.

8           Q           Yes.

9           A           Certainly I recall some assistance provided by  
10           Ambling, Mr. Eddie Benoit with respect to the demolition of  
11           the former Club Med.

12          Q           Okay.

13          A           And some on the subject of the cleanup of  
14           Morgan's Point. I do remember those two. But in terms of  
15           specifics, I cannot go beyond that.

16          Q           Considering that was in relation to the Club Med,  
17           that was presumably putting (him) in touch with people who  
18           were demolition experts?

19          A           That's right. That's right. That's definitely.

20          Q           Yes. And in relation to the remediation process?

21          A           Well, I don't remember the detail there. I know  
22           our Engineering section was very much involved in the  
23           development of proposals for the cleanup, the environmental  
24           cleanup of Morgan's Point. And I do recall some discussion  
25           between our Engineering section and Mr. Benoit but the

1 extent of those discussions, sir --

2 Q You do not recall?

3 A -- I do not recall. I'm much more au fait with  
4 the discussions on the demolition because I was involved in  
5 those. And with respect, you drew my attention to  
6 Paragraph B, I can offer no comment.

7 Q That's perfectly fine. Thank you very much for  
8 your assistance. I don't have any further questions.

9 BY MR. BARRITT:

10 Q I do, if I may, please. Mr. Horton, I'm going to  
11 call on your years of experience, I know we didn't ask  
12 these questions ahead of time.

13 Was it the practice then in your Ministry with  
14 respect to bids that are received and companies that make  
15 bids that you would know who the principals are of those  
16 companies?

17 A It was a requirement that certainly by the time  
18 the Contract Award Recommendation reached us, at the  
19 Ministry level, we would know that there was a requirement  
20 that information on the principals of companies be  
21 provided. It's a part of the bidding process and it was  
22 included in the information which would be provided for the  
23 Ministry's consideration.

24 Q And that's important because not only --

25 A I'm guessing at that response but it's always



1       been --

2       Q           A requirement because?

3       A           Yes, as far as I'm aware, long before I reached  
4       the Ministry in 2007.

5       Q           Okay. And I was just saying it's a requirement  
6       because?

7       A           It makes sense to avoid perceptions of conflict  
8       of interest perhaps, or we have to ensure that when the  
9       Department is doing its due diligence, we have to ensure  
10      that there's no indebtedness on the part of any of the  
11      owners, that they don't owe the Government a great deal of  
12      money, et cetera. Those are my --

13      Q           Observations?

14      A           Yes.

15      Q           That's fair enough. I'm only asking for those.  
16                  With respect to Financial Instructions, not just  
17      those that are peculiar to Works and Engineering of a  
18      separate set, how are they generally to be regarded by  
19      Civil Service, policy --

20      A           To be valued.

21      Q           To be valued?

22      A           Yes. They're instructive. I recognize that they  
23      are policy and not a law, but it was our expectation that  
24      there should be adherence to Financial Instructions unless  
25      compelling (takes?) was advanced as to why it should not

1 be. Hence, I had no hesitation in admitting that in cases  
2 where something didn't go to Cabinet or something which  
3 wasn't put out in tender, with hindsight that they should  
4 have been. That would have been the expectation.

5 Q And if -- we've heard previously that there's  
6 often sometimes a conflict arises between policy decisions,  
7 that is, decisions that are made by Ministers and Cabinet,  
8 and Financial Instructions, how do those, in your day, how  
9 were those resolved?

10 A I hope that wasn't a frequent occurrence.

11 Q Well you tell me. I mean --

12 A In my experience it has not been a frequent  
13 occurrence. I go back to my days at the Cabinet Office  
14 from 1994. I think in cases where there was conflict, the  
15 Cabinet would be very, very clear in its reasons if they  
16 were supporting a direction other than that set out in  
17 Financial Instructions, they would be very, very clear in  
18 their reasons for it.

19 In cases where members of my team, the Works and  
20 Engineering team, I've got to say in this case, were not  
21 adhering, not only for us as the managers, to address the  
22 matter because it would be our expectation that there is  
23 adherence to Financial Instructions.

24 Q And deviations or departures from that are  
25 matters for --

1 A To be addressed by the Senior Managers, by the  
2 Financial Secretary, Accountant General, the Permanent  
3 Secretary.

4 Q Not necessarily --

5 A Unless it's something absolutely egregious, then  
6 we would go further, I would imagine.

7 Q Those are my questions.

8 BY MS. LUCK:

9 Q Mr. Horton, we were given an example here where  
10 technical officers took a view on the best construction  
11 company to fulfill a role, and as you've explained the  
12 eventual Contract Award Recommendation paper is the  
13 Minister's paper.

14 A It is.

15 Q And so we've got a conflict there.

16 A I accept that.

17 Q So how often might that happen?

18 A It is rare in my experience. And in my -- with  
19 the -- well I had only one Minister when I was at the  
20 Ministry of Works and Engineering. There was the Hon.  
21 Derrick Burgess; there may have been two or three cases  
22 that I can recall. No more.

23 Q So in those other times, the technical officers'  
24 recommendations, their thought process, the Minister would  
25 respect and understand and look to them as the technical

1 support?

2 A Yes?

3 Q For a decision?

4 A Yes. I mean, an example, my Ministry would deal  
5 with some vast contracts. When I say vast, in tens of  
6 millions. In one case, one hundred million dollars for  
7 refurbishment, let us say, of the Tynes Bay Waste  
8 Management Facility, high technology, and you know, the  
9 recommendation is accepted without question. So it's rare.  
10 And they've happened in a case of some smaller projects in  
11 the scheme of things.

12 Q Thank you.

13 BY CHAIRMAN EVANS:

14 Q It seems to me, Mr. Horton, from your evidence  
15 that there's some ambiguity about the status of the  
16 recommendation. It's called the Contract Award  
17 Recommendation, isn't it. And I think in my naivety I had  
18 thought that if there was a case where the technical  
19 recommendation is one thing, and the Minister didn't agree  
20 with it, then the matter would go forward to Cabinet on  
21 that basis.

22 In other words, they would know, Cabinet would  
23 know that the technical advice was so and so, that they  
24 would know and ask the Minister why he disagreed.

25 Now, that may be a bit over simple, because what

1 we've just seen in this laboratory case is that the  
2 technical recommendation is made, but then it's, correct me  
3 if I'm wrong, the Minister seems to have lent upon the  
4 technical officers who ended up modifying their report so  
5 that they took their own name out of the heading. They  
6 said it was the Minister's view that somebody was well  
7 equipped. And then if that goes to Cabinet as the  
8 Minister's report, but ostensibly on the basis the  
9 technical officers were supporting it.

10 So that's making it a rather ambiguous document,  
11 isn't it?

12 A Yes. I accept your view, and maybe if persons  
13 within the Ministry of Works and Engineering are listening,  
14 a way forward would be in the rare case that happens, that  
15 fact should be stated explicitly that, you know, I as the  
16 Minister am making recommendation which departs from the  
17 view.

18 I know that when one is preparing a full Cabinet  
19 memorandum which contains a great deal of detail and  
20 supporting documentation, if a Minister's opposed to a  
21 certain process or procedure, that is set out quite  
22 clearly. But that doesn't obtain in a case of that  
23 standard format contract award. But I am struck by your  
24 remarks, and I should make some observations to my former  
25 colleagues.

1 Q But we're listening to you now. And on the face  
2 of it, I think you're agreeing that a system under which in  
3 such a case the Cabinet sees the technical recommendation  
4 as well as the Minister's --

5 A Yes, the full technical recommendation, yes.

6 Q And so in one way or another, that ought to be  
7 brought up to the Cabinet. Dr. Binns last week told us  
8 that in such a situation and he did have one experience of  
9 it, there is a difference between a Contract Award  
10 Recommendation which would go before Cabinet as the  
11 Ministry's recommendation, or the Department's  
12 recommendation. He said you could have a Cabinet paper and  
13 I think he said there was something else. And I'd  
14 understood from his evidence that in this situation we're  
15 talking about, the Minister would say, Well, I'm not going  
16 to put that recommendation before the Cabinet but I'm going  
17 to write a Cabinet paper which will set out that matter as  
18 I see it.

19 A I can accept that observation, yes.

20 Q But that's another way of doing it.

21 A Yes, it is, sir.

22 Q Could it have been done in this case?

23 A That assumes the Minister would have agreed it be  
24 done in that way.

25 Q Or putting it perhaps unkindly, the Minister

1 wanted it to go forward as what appeared to be a Ministry  
2 recommendation, is that what you're saying?

3 A I have nothing further, sir.

4 Q Thank you.

5 CHAIRMAN EVANS: Good. Have you got more  
6 questions?

7 MR. HARGUN: No.

8 CHAIRMAN EVANS: No. Well, Mr. Horton, that's  
9 the end of your evidence at least for today. In view of  
10 the part of our agreement, as you know, is to make  
11 recommendations for the future. And the time will come  
12 when we may be forwarding some views about that. We may at  
13 that stage come back to you if we may to draw on your  
14 experience to ask your views on that.

15 THE WITNESS: If I may assist, I certainly will.

16 CHAIRMAN EVANS: Subject to that, thank you for  
17 your evidence.

18 (End of audio.)

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R E P O R T E R ' S C E R T I F I C A T E  
I, Scott A. Huseby, Court Reporter,  
do hereby certify that this transcript  
is a true and accurate record of the  
electronically recorded proceedings,  
transcribed under my direction  
this the 27th day of October, 2016.



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SCOTT A. HUSEBY



