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COMMISSION OF INQUIRY - THE WITNESS HEARINGS

ST. THERESA'S CATHEDRAL HALL
LAFFAN STREET, HAMILTON, BERMUDA
THURSDAY, OCTOBER 6, 2016

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AUDIO RECORDED TRANSCRIPTION

October 6, 2016

Day 7

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

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A P P E A R A N C E S

COMMISSION MEMBERS:

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

COMMISSION LAWYERS/COMMISSION'S COUNSEL:

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

PUBLIC SERVICE LAWYER:

- Ms. Venous Memari, LIBERTY LAW CHAMBERS LIMITED

CLERK TO THE COMMISSION:

- Ms. Alberta Dyer-Tucker
- Jane Brett

RECORDER:

- Rolf Martin

Also Present: Mr. Jerome Lynch

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1 **CHAIRMAN EVANS:** We'll begin today's proceedings
2 with an announcement that I have to make. On the 9th of
3 September 2016 the Commission issued a summons requiring
4 Mr. Dennis Lister to appear before the Commission on the
5 28th of September 2006, quote, or such other time and date
6 as the matter may be adjourned to.

7 The summons was served on Mr. Lister personally
8 on 12th of September 2016. On the 26th of September
9 Mr. Lister was informed by letter that it was not necessary
10 for him to appear on Wednesday, the 28th of September but
11 asking him to appear yesterday, Wednesday the 5th of
12 October at 2:00 p.m. He has not acknowledged that letter
13 nor a reminder that was sent to him on Monday, the 3rd of
14 October. He did not appear yesterday, Wednesday the 5th of
15 October, and we have not heard from him.

16 For the avoidance of any doubt, the Commission
17 rules that for the purposes of the witness summons issued
18 and served on Mr. Dennis Lister, the hearing of his
19 evidence is adjourned until next Monday, the 10th of
20 October 2016, and he is required to attend the hearing
21 pursuant to the summons on that date at 10:00 a.m.

22 The summons has been issued pursuant to the
23 relevant section of the Commission of Inquiry Act 1935.
24 A copy of this ruling will be served on Mr. Lister
25 forthwith.

1 MR. HARGUN: Thank you, Mr. Chairman.

2 CHAIRMAN EVANS: Now Mr. Lynch.

3 MR. LYNCH: I hope you will have been put on notice
4 certainly at my request albeit late this morning but we have two
5 very short applications which we would appreciate it if they could
6 be made now. I understand the need to obviously get on with the
7 evidence but I would appreciate if we could make those short
applications

8 now for practical reasons. The first concerns the evidence of Mr.
9 Brady who gave evidence yesterday prior to two clients that I had
10 who were giving evidence yesterday. Our position in short is
11 this. We are requesting that he be recalled for the
12 purposes of cross-examination by us. And the reason for
13 that is because there are matters that we would wish to put
14 to him which we believe will be of assistance to the
15 Commission, and for the Commission to see his responses to
16 the suggestions that are being put.

17 You will recall that on the 13th of June of 2016
18 when I believe it was that it was published the Commission
19 of Inquiry's initial procedural statement, contained in that
20 at page 6 is this line:

21 "The Commission will provide a list of those
22 witnesses which it proposes to call to give oral evidence at
23 the witness hearing." And you will appreciate, Sir, as a
24 jurist of considerable number of years, if you don't mind
25 my saying so, that the normal course, will be for us to

1 be on notice as to when a witness is being called and so
2 on. And indeed, can I say straightaway, we've been
3 assisted in that regard by my learned friends who have provided
4 me in private as it were with such information as to reveal when
5 it is, and it is proposed to give evidence by certain
6 witnesses.

7 Now, as with all hearings, these things are fluid
8 from time to time and one understands that. But it had
9 been our understanding that up until yesterday, that
10 Mr. Brady would be giving evidence after Mr. McLeod and
11 Mr. Matvey. And as such, we would have sought after they
12 had given evidence leave under the rules that you have
13 created to be able to cross-examine Mr. Brady.

14 We have been, as it were, in effect denied that
15 opportunity to even make those representations because as I
16 came into court -- court -- as I came into this inquiry
17 yesterday, shortly before half past eleven as we were required
18 so to do, it was clear that Mr. Brady had just concluded his
19 evidence and was walking out of the building.

20 Obviously at that stage I had no idea what it is
21 that he had said. And the position is this, is that
22 looking at his statement, it is not immediately obvious that
23 there are certain matters that we would have wished to put.

24 But in the light of what we have read this
25 morning in the newspapers, we wish to have both a

1 transcript of his evidence and then be right to be able to
2 set out the circumstances in which we would like to
3 cross-examine him. And you will appreciate your rulings as
4 published in September of this year require that first of
5 all, subject to Paragraph 2 and 4, Subsections 2 and 4,
6 where a witness is giving oral evidence at an Inquiry
7 Hearing only counsel to the Inquiry and the Commission
8 may ask questions of that witness.

9 But, where a witness has been questioned orally
10 in the course of the Inquiry Hearing pursuant to Paragraph
11 1, the paragraph that I've just read, the Chairman may
12 direct, the witness's legal representative may ask Witness
13 questions. And where a witness has been questioned orally in
14 the course of an Inquiry Hearing and the witness's evidence
15 relates to the evidence of another witness, the legal
16 representative of the witness to whom the evidence relates may
17 apply to the Chairman, you, sir, or Commission to question
18 the witness who has given oral evidence.

19 Now of course, I'm required by Subsection 4 to
20 set out the reasons why. For obvious reasons I'm not
21 anxious to do that in public, and we're happy to do it in
22 private in the sense that I've set out (a skeleton of) arguments
23 setting out reasons why we submit that it would be appropriate to
24 do so and why you would be assisted in hearing that cross-examination.
25 We'll provide it obviously to your counsel and to you.

1 It seems to us that for us to be able to do that
2 properly, we would need a transcript of his evidence. And
3 so we are in this difficult situation, having as it were
4 inadvertently been led to believe that Mr. Brady would be
5 giving evidence after Mr. McLeod and Mr. Matvey. We have
6 been disadvantaged and we submit that the Commission is
7 disadvantaged in not having before it questions that we
8 would seek to ask of Mr. Brady.

9 And in the light of what we've read in the papers
10 this morning, it's clear that there are matters which we
11 really ought to put to Mr. Brady and for you to then be able
12 to assess the veracity of his evidence.

13 CHAIRMAN EVANS: Mr. Hargun.

14 MR. HARGUN: Mr. Chairman, that's an entirely
15 matter for yourself. I'll only make two points.
16 As far as the transcript is concerned, it will
17 take, as I understand it, at least five or possibly seven
18 days before we obtain the transcript. And secondly, it's a
19 matter of convenience to see when Mr. Brady can come back
20 with Mr. Dunch.

21 CHAIRMAN EVANS: Yes.

22 MR. LYNCH: Precisely why we should make the
23 application now, our first, as it were, opportunity to do so
24 because it's only right and fair that he should be
25 consulted. If so, you are minded to at least permit us to

1 make that application in writing setting out the reasons
2 under Subsection 4 of the rules --

3 CHAIRMAN EVANS: Let's see where we go from here.
4 First of all, you mentioned private conversations between yourself
5 and Mr. Hargun... Counsel. I just want to make it plain. So far
6 as the Commission is concerned, we would expect, and indeed
7 welcome private communications between Counsel in the
8 course of the hearing, private in that sense. But
9 nevertheless, on the basis of the professional interchange.

10 MR. LYNCH: Of course.

11 CHAIRMAN EVANS: And that's something we welcome
12 and that has been useful in this case.

13 So far as your application is concerned, are you
14 saying you must have the transcript before you can
15 cross-examine?

16 MR. LYNCH: Well, it's going to be difficult not
17 to have that available because otherwise I'm relying..

18 CHAIRMAN EVANS: It's a fact of life, we don't
19 have the transcript until middle of next week. And that's
20 no criticism involved.

21 MR. LYNCH: No, no, I understand. It's just a
22 practical difficulty about it. I wondered, we're Thursday
23 today and of course we have an intervening weekend. And
24 one imagines, the transcripts are being done as and when
25 they arrive on a day-by-day basis. It seemed to me that it

1 was possible, at least for you to prioritize, if you thought
2 it appropriate, such a transcript ahead of that evidence
3 which is hitherto been given in an attempt to try and have it
4 available by, it would have to be available by Monday.

5 CHAIRMAN EVANS: I'm not sure how I or we can
6 prioritize something, that's a matter for the transcribers.

7 (Inaudible discussion.)

8 CHAIRMAN EVANS: There is a recording available
9 as of now presumably.

10 MR. LYNCH: Well, that I imagine could be done
11 electronically.

12 CHAIRMAN EVANS: And what I understand therefore
13 is that you or your representatives could listen to the
14 recording at any time.

15 MR. LYNCH: Well, if that could be done, then
16 certainly we could make those arrangements. Can I then ask
17 that you make no other ruling other than if the recording
18 can be made available to us, that we should be permitted to
19 do so.

20 CHAIRMAN EVANS: I'm going to go a little but further
21 because we have been told there are personal reasons why it would
22 unthinkable for Mr. Brady to be recalled before the coming weekend.
23 In other words, next Monday or probably Tuesday would be the
24 first opportunity.

25 MR. LYNCH: I was going to suggest frankly to do

be

1 it tomorrow would be perhaps unfair, if nothing else, yes.

2 CHAIRMAN EVANS: Well, let's adjourn your
3 application. You'd need to make it in writing. And on the
4 basis that you will then be able to listen to the
5 recording.

6 MR. LYNCH: Yes.

7 CHAIRMAN EVANS: And I think I should make it
8 plain that the Hearing or the further cross-examination if
9 it takes place would have to be Tuesday or Wednesday at the
10 latest next week.

11 MR. LYNCH: Certainly. Yes. I'd be very
12 grateful.

13 CHAIRMAN EVANS: Thank you very much.

14 MR. LYNCH: The second matter which pertains to
15 Mr. Burgess who's shortly to give evidence before the
16 Commission. You will appreciate that we provided a
17 statement to...

18 CHAIRMAN EVANS: Yes.

19 MR. LYNCH: ... a statement to the Commission fairly
20 recently. We have only been instructed fairly recently on
21 behalf of Mr. Burgess. And therefore, he was able to take
22 a number of features which have given him cause for
23 concern.

24 Now, the application is that he should be
25 permitted to read into the record the first eight

1 paragraphs instead. Can I set out reasons why please in
2 the briefest of terms?

3 The position is this: I think it's already been
4 understood all of the witness statements, subject to any
5 particular application as I understand it, will be published
6 in due course on your website. At the present time, all that
7 appears on your website are the various orders and
8 rules that have been made, together with the documents that
9 have been relied upon in respect of each of the various
10 projects.

11 (Inaudible discussion.)

12 MR. LYNCH: I've not seen them. I have to say
13 I've been going on -- I see nods all around, so I'm
14 grateful for that. In those circumstances, if it is to be
15 the case that Mr. Burgess' statement is to go up this
16 evening, then we're assisted by that. Nonetheless, prior
17 to giving evidence, he's anxious that the public at large,
18 at this being the public hearings of the Inquiry, should be aware
19 of his position. Without making any formal application - and
20 he doesn't ask me to make any formal application in respect
21 to those matters which you are obviously familiar having
22 had his statement - but he is anxious that he should have
23 the opportunity to set the scene, as it were, before he is
24 asked questions. That is, of course, entirely a matter for
25 you, but we ask on his behalf that he should be

1 permitted to do so.

2 CHAIRMAN EVANS: Mr. Hargun, can you confirm that
3 the witness statement in the normal course will be
4 published on the Commission's website after the witness has
5 given evidence?

6 MR. HARGUN: Yes. That has been the procedure in
7 relation to every single witness. And that is precisely
8 what happened in relation to Mr. Burgess' statements. We
9 can even have it uploaded at lunchtime if that assists. We
10 have not followed the course which has been suggested here
11 that any particular witnesses reads particular portions of
12 their witness statements.

13 CHAIRMAN EVANS: We'll retire to consider your
14 application.

15 **(Recess taken) (Recess ended)**

16 CHAIRMAN EVANS: Mr. Lynch, we do not think it
17 right to treat Mr. Burgess different from other witnesses.
18 The procedure is that the witness statement will be
19 published on the Commission's website and I understand
20 following Mr. Hargun's indication that arrangements are
21 being made for that to be done by midday or in the course
22 of today.

23 But just to make it plain, the purpose of this
24 inquiry is for the witnesses to be questioned either by the
25 Inquiry or through Counsel or through their own Counsel if

1 need be. And, of course, that applies to Mr. Burgess as
2 to everybody else. But we are not prepared to make any
3 special ruling in relation --

4 MR. LYNCH: No, I understand that. I obviously
5 haven't been able to find my way through the web that is
6 your site that identifies the fact that each witness's
7 statement is published each night. I certainly haven't been
8 able to see that. I'm told by everyone that it's there.
9 So it's me rather than anyone else.

10 CHAIRMAN EVANS: Thank you.

11

12 THE WITNESS: I, Derrick Burgess, certify to
13 Almighty God that the evidence I shall give shall be the
14 truth, the whole truth, and nothing but the truth.

15 CHAIRMAN EVANS: Sit down, Mr. Burgess.

16

MR DERRICK BURGESS

17 called as a witness, being first duly sworn, testified as
18 follows:

19

EXAMINATION

20 **BY MR. HARGUN:**

21 Q Good morning, Mr. Burgess.

22 A Good morning.

23 Q My name is Narinder Hargun, Counsel for the
24 Commission. I will be asking you some questions in
25 relation to the matter which you received in of response to

1 which you have prepared a witness statement.

2 Your witness statement is dated, Mr. Burgess, the
3 4th of October 2016, yes?

4 A Yes. My witness statement is dated, say that
5 again?

6 Q Is dated the 4th October 2016?

7 A Yeah.

8 Q And can you kindly confirm that the statements
9 which you have made in that witness statement are correct?

10 A They are correct.

11 Q Thank you. Can I start with one minor issue that
12 relates to the Department of Payment and Resources, 129
13 Front Street renovation, do you remember that project?

14 A In what regard?

15 Q This was what -- this is was a project which was
16 handled by Works and Engineering, PS Horton in relation to
17 it. Do you remember that?

18 A I had no involvement in that as Mr. Horton's
19 probably told you.

20 Q Yes. Well, let's see that. The Commission is
21 concerned, so that you can focus your mind on it, two
22 things in relation to that: One, that particular project
23 wasn't tendered, that's one issue; and the second issue is
24 that given the expenditure which was incurred which was in
25 excess of \$50,000, cabinet approval wasn't sought. Those

1 are the two issues with which the Commission is focused on.

2 Now, you say you were not involved, but my
3 understanding is that it wasn't tendered because you
4 directed that it should not be tendered.

5 A Mr. Hargun, you are incorrect. Don't tell me
6 stuff that I know nothing about. You are incorrect. Now
7 let's get something straight.

8 Q Hold on --

9 A No, let's get something straight. I'm very
10 sensitive to disrespect and I **will** deal with that. I'll
11 respond to it.

12 Q Can we have a look at Tab 18, the public one?

13 A Which one?

14 Q The witness binder.

15 A You've got two, you've got binder 1 and 2. I've
16 got it. Yes.

17 Q You have Tab 18?

18 A Yes, sir.

19 Q Is that the Witness Statement of Thomasina
20 Hassell?

21 A Yes, sir.

22 Q Okay. We're making progress. If you go to the
23 exhibits, could you please go to page 1 of the exhibit?

24 A Talking about Thomasina's statement?

25 Q Yes, Thomasina's statement, in the back is a

1 document. And if you go to page 1, we will read it
2 together. We are looking at the bottom --

3 A Hang on. Hang on.

4 (Inaudible discussion.)

5 Q You see that document there, that is a -- that
6 is a memorandum from -- to Lucy Chung.

7 Lucy Chung was an architect in Works and
8 Engineering. Yes?

9 A Uh-huh.

10 Q From Steven Squire, Architectural Technologies.

11 A Uh-huh.

12 Q And it is a memorandum, purpose of the meeting.

13 "The purpose of today's meeting was for Mr. Kenneth
14 Dill, Head of Civil Service and the Honorable Derrick
15 Burgess, Minister of Works and Engineering, to visit the
16 future location for the Department of Human Resources and
17 Head of Civil Service Management Services and to formalize
18 themselves with the space."

19 Do you remember that?

20 A I can recall having a meeting down there, yes.

21 Q Okay. All right. Good. Then look at... There's a
22 section on the Master Plan, associated cost with that is
23 about 2 million. And there's a Phase Plan and different
24 costs are set out.

25 A Uh-huh.

1 Q And then you'll see, "Based on the above
2 information, the occupancy dates remain the same and the
3 savings if the Master Plan option is chosen, would be
4 \$352,079.20."

5 A Where are you reading from, sir?

6 Q I'm reading just before the bid which is
7 highlighted. Under the Phase Plan... You've gone to a
8 different page. Go back to the same page.

9 A The page before that?

10 Q Yeah. You see that?

11 A Based on -- right.

12 Q Let's look at the next sentence which somebody
13 had unhelpfully tried to highlight and now it's difficult
14 to read but I'll read it slowly with you and see if you
15 can follow it, Mr. Burgess.

16 "The Minister," that is you, "stated we can
17 bypass the tender procedure and also bypass submitting the
18 building control if it is going to shave off 50 days on the
19 schedule."

20 A Mr. Hargun, that email or correspondence... You see
21 my name on the email, the correspondence?

22 Q Well, it says --

23 A Do you see my name on the email of
24 correspondence?

25 Q This is a memorandum within the department.

1 A Still didn't answer my question. You see my name
2 there?

3 Q No.

4 A Okay.

5 Q Is it not correct?

6 A No, it's not correct. Mr. Hargun, this project
7 never came to me as the Minister to take to Cabinet.
8 Right? Hang on. I had no involvement nor did Bobby have
9 any involvement when this thing was initiated. Let's be
10 very clear. Don't try to tie me to something that I know
11 nothing about.

12 Q But you say you attended a meeting?

13 A So what, I attend many meetings.

14 Q It's a simple question, Mr. Burgess.

15 A Uh-huh.

16 Q A Steven Squire, Architectural Technologist, is
17 saying that you said at that meeting --

18 A I did not say it at that meeting, Mr. Hargun.

19 Q Can you think of any reason why Steven Squire,
20 architectural technologist in your department would say
21 that?

22 A Why would you want me to answer for Steven Squire?
23 Mr. Hargun, I said to you I don't know anything about this project,
24 the initiation of it. I had nothing.. This never went to Cabinet.
25 It never was tendered out. Nothing to do with me. Tendering

1 process is done by the technical officers, not the Minister.

2 Q Mr. Burgess, it's a simple question.

3 A It's a simple answer too. Gave it to you.

4 Q Okay.

5 A No, no, let's get something straight right. No,
6 no.

7 Q Can you just answer the question? No, I don't
8 want any speeches, Mr. Burgess.

9 A No, no. It doesn't go like that. We're not
10 going to reenact tortured slavery with me. Right?

11 CHAIRMAN EVANS: Mr. Burgess, you'll be surprised
12 to hear that you and I, you and we, have something in common
13 using your words, we are sensitive to disrespect.

14 THE WITNESS: Yes, I am.

15 CHAIRMAN EVANS: And from the point of view of
16 the Commission, that includes disrespect to Counsel. Will
17 you please concede that we, including Counsel, are sensitive
18 to disrespect as you are.

19 THE WITNESS: It's disrespectful for you when I
20 give you an answer and you try to get it out of me, you try
21 to beat me down like a slave to tell you what you want to
22 hear, that's disrespectful. When I told you I had nothing
23 to do with it, I had nothing to do with it.

24 CHAIRMAN EVANS: I'm not going to prolong this
25 discussion.

1 THE WITNESS: Well, don't disrespect me.

2 MR HARGUN: Mr. Chairman, I'll move on.

3 THE WITNESS: Please do.

4 **BY MR. HARGUN:**

5 Q It is right, I think you just confirmed that,
6 this project never actually went to Cabinet for its
7 approval. That's right, isn't it, Mr. Burgess?

8 A What did I tell you. I told you I had nothing to
9 do with it; there was no tendering documents, no paperwork
10 came to me (from) the Cabinet paper to have this approved.

11 Q Yes, but PS Horton also gave evidence in relation
12 to it and he accepted that no Cabinet approval was given and
13 he said it was on oversight and he regretted it.

14 Do you agree with that?

15 A If Mr. Horton told you that, then Mr. Horton told
16 you that. I didn't tell you that.

17 Q No, no, I'm asking --

18 A Don't ask me whether I agree what Mr. Horton told
19 you, I wasn't here.

20 Q Mr. Burgess, do you agree with that sentiment
21 which he expressed that it was on oversight and it was
22 regretted?

23 A Oversight by who?

24 Q By the Department, by that... That Cabinet
25 approval should have been obtained, it wasn't obtained and

1 it was an oversight and that oversight is regretted?

2 A It was on oversight by the technical officers.

3 Q Yes. But do you accept that Cabinet approval
4 should have been obtained?

5 A That's what... That's normal process over
6 \$50,000.

7 Q All right. Thank you very much.

8 A Uh-huh.

9 Q Can we talk about the Dame Lois Browne Building?

10 A Yes.

11 Q You were not involved in the tendering for the
12 contract originally in December 2007. That was Minister
13 Lister?

14 A I became Minister of W and E in December 20th of
15 2007.

16 Q Yes. But in relation to the original tender
17 process, that was Mr. Lister. I believe you were not
18 involved in that, Mr. Burgess?

19 A Well, I wasn't there. I couldn't have been.

20 Q Okay. But you were involved in relation to the
21 new contract which was signed in December 2008?

22 A Involvement in what regards?

23 Q In the sense that you were the Minister at the
24 time.

25 A I was the Minister, yes.

1 Q And you made presentations to the Cabinet in
2 relation to it?

3 A I don't recall that.

4 Q Okay. We'll have a look at that.

5 And I think we're in agreement, but confirm that
6 you accept that in relation to all contracts in excess of
7 \$50,000 the contracts have to be approved by Cabinet?

8 A Yes.

9 Q Under the Financial Instructions?

10 A And it depends on circumstances, yeah.

11 Q Yes. Okay. And this contract which was
12 signed in December 2008, that was a new contract, was it
13 not?

14 A Uh-huh.

15 Q Yes? Can I just ask you to have a look at it?

16 A What page do you want, sir?

17 Q I want you to look at Tab 10. Tab 10 of the --

18 A This one right here?

19 Q -- of the public binder. And I want you to go to
20 page 253, right at the back, very close to the end of the
21 back just so that you get the reference, Mr. Burgess.

22 A 253?

23 Q Yes, 253 is the page I want to you have a look at
24 and --

25 A There you go.

1 Q Yes. So that you can get the context,
2 Mr. Burgess, the document starts at page 248. It's dated
3 1st of December 2008, the contract?

4 A Yeah.

5 Q So that you get the context, it is a contract
6 between the Government of Bermuda and LLC Bermuda Limited?

7 A Right.

8 Q Do you see that at page 248?

9 A Yeah, yeah.

10 Q And if you go to page 253, you'll see Paragraph
11 8.6, Other Provisions. Yes?

12 A 8.6, yes.

13 Q If you go to Paragraph 8.6.3, look at the second
14 sentence in that paragraph.

15 It says, "The owner, that is the Government and
16 the contractor, that's LLC"?

17 A Have mutually agreed.

18 Q "Have mutually agreed to rescind the Construction
19 Management Agreement and it is hereby agreed that
20 [inaudible 10:36:32] reserved. The terms of this agreement
21 shall supersede the terms of the said Construction Management
22 Agreement which is hereby rescinded and is declared void
23 and of no further effect."

24 So, did you understand that the effect of this
25 clause was that as far as the previous contract was

1 concerned, that no longer existed?

2 A Mr. Hargun, that would be been dealt with by
3 our lawyers and the technical people. Ministers don't
4 get involved in that.

5 Q Fair enough. So I mean, this was not your
6 understanding that this contract which was signed by the
7 contract which was superseding the previous contract?

8 A Let me say this. What I do remember about that
9 contract is that when the new contract was signed, it was
10 signed for a million dollars less.

11 Q No. That's a separate point. Just answer this question.

12 A What's that again?

13 Q Did you not know that this contract which was
14 being signed was a contract which superseded --

15 A Yes, that's normal. Anyone would know that.

16 Q Well, thank you very much.

17 Given that it was a new contract, was this
18 approved by the Cabinet?

19 A I can't recall. I can't recall. I would
20 imagine so.

21 Q Well, we haven't been able to find any decision
22 where Cabinet approved it.

23 A Okay.

24 Q Did you ever take it to the Cabinet?

25 A You know, Mr. Hargun, I don't know if it was

1 required because it was ongoing process. That was something
2 to do above what was going on. That was just a change of
3 partnerships, I think it was. So, I don't think the change of
4 partnerships has to go to the Cabinet, you know.

5 Q But this a new contract.

6 A I understand that.

7 Q It superseded the previous contract. It had different terms.

8 A It didn't change. In fact, if the contract was for
9 more money, for example, the original I think was for 72
10 million point, right. If that contract had increased to say
11 74, yes, it would have to go to Cabinet. But the money had
12 been already approved by Cabinet and, in fact, this was a
13 reduction in what Cabinet had approved earlier.

14 Q But it changed terms, didn't it?

15 A Nothing changed in terms as far as what... Tell me
16 where, where you read...

17 Q Just look at the page we're looking at. Look at,
18 look at page 8.6.1? It says...

19 A Hang on, I've got to get the page first? What page?

20 Q Page 253. Look at 8.6.2.

21 A Let me get there first. Back here. Okay.

22 Q Yeah. 8.6.2, "It is agreed that an advance
23 payment of \$600,000 is due and payable to the general
24 contractor within seven days of execution (pursuing)."

25 That was new?

1 A Mr. Hargun, when you go in the particulars of
2 a contract, you've got the wrong person. You need to deal
3 with our legal people. It's not one that the Minister
4 deals with.

5 Q Forget about the detail. This wasn't a detail.
6 This was a substantial commercial point that under the
7 previous contract, there was no question of paying the
8 previous contractor 600,000 lump sum payment. Here, within
9 seven days of signing the contract, \$600,000 was to be paid
10 to LLC Bermuda Ltd. That was a new provision. That provision
11 was never approved by the Cabinet.

12 A Mr. Hargun, if that was what they agreed. If it was
13 illegal, it wouldn't be in there. So that was something in the contract.

14 Q It's not a question of illegality, it's a
15 question of this was a new contract which had different
16 terms. Yes?

17 A Mr. Hargun, I don't know what was in the old
18 contract. I'm not the one that sits down and goes --
19 that's your job as lawyers, not mine.

20 Q And also, the previous contract provided for a
21 bond.

22 A What's that?

23 Q A bond.

24 A A bond?

25 Q Yes.

1 A Yes, sir.

2 Q And this one did not provide for a bond did it?

3 A Right. Mr. Hargun, as the author, Larry Dennis
4 has said in a document - I don't have it with me - that you
5 can't get a bond in Bermuda. So, you know what we done for the
6 bond. Every payment that was made, the request was made by the
7 contractor. For example, if they wanted to make a million
8 dollar payment, Works and Engineering held back, I don't
9 know if it was 10 or 15 percent as to go towards a bond, as
10 a guarantee of the work that was performed.. Because you
11 can't get a bond in Bermuda.

12 Q You can get a bond in other countries --

13 A No, no. I'm talking about Bermuda.

14 Q But in this case under the previous arrangement there
15 was a bond, the bond was obtained in Canada.

16 A Uh-huh.

17 Q Yes?

18 A I don't know. So you keep asking me questions
19 that I cannot answer. I was not a part of that legal
20 document. In fact, Mr. Hargun, you said it earlier and I'm
21 going to tell you again. I was not the Minister and even
22 the previous Minister wouldn't have known that.

23 Q But you negotiated this contract.

24 A No, sir. You got it all wrong. Ministers don't
25 negotiate the contracts.

1 Q We'll have a look at that. Can you look at the
2 Minutes of the Cabinet at 10-41?

3 (Inaudible discussion.)

4 A What page are you on?

5 Q This is your presentation.

6 A What page?

7 Q 10-40, let's start at 10-40, that's where the
8 Cabinet Minutes starts. That is a meeting on the 4th of
9 November, 2008.

10 A Yeah.

11 Q You were making the presentation.

12 A Uh-huh.

13 Q And let's pick it up, Mr. Burgess, in the second
14 paragraph, at last sentence, "He," that is you,
15 Mr. Burgess, "noted however that as of October 15, 2008,
16 the job was behind schedule by about four months."

17 Do you recall that?

18 A Where are you reading from?

19 Q Second full paragraph, last sentence.

20 A Yeah, go ahead.

21 Q Yes.

22 A Uh-huh.

23 Q Then you, the Minister, also reported that it
24 became increasingly clear from all the reports received
25 from the Canadian participants, that is Lisgar in LLC, were

1 not as proficient as had been previously thought in the
2 construction management of the project of this size.

3 You also confirmed that from an early stage
4 technical officers within Works and Engineering had
5 identified that scheduling personnel provided by Lisgar as
6 less than adequate in the performance of their tasks. And
7 as a result, relations between senior Lisgar
8 representatives and Architectural and Engineering staff
9 within Works and Engineering and CSP often resulted in time
10 consuming and delay producing difficulties sometimes
11 accompanied by acrimonious exchanges, both personally and
12 by email.

13 Do you remember this meeting and telling the
14 Cabinet all this?

15 A What year was it, 2008? This is 2016.

16 Q Yes.

17 A You remember stuff eight years ago, word for word?

18 Q Mr. Burgess, you could say yes or no.

19 A I'm asking you. Why you asking hypothetical
20 questions eight years ago, this is not something. Do you know...

21 Q Mr. Burgess, do you recall telling Cabinet this?

22 A Don't raise your voice to me, please.

23 MR. HARGUN: Mr. Chairman?

24 CHAIRMAN EVANS: Mr. Burgess, you've been asked a
25 straightforward question. Do you remember this Cabinet

1 meeting recorded as having taken place on the 4th of
2 November 2008.

3 THE WITNESS: I like that tone, Mr. Chairman.

4 CHAIRMAN EVANS: How so?

5 THE WITNESS: I like that tone. I don't recall
6 the meeting. But if it's a Cabinet meeting, I was there.
7 But if you're going to ask me do I remember, I don't
8 remember. This is what is recorded.

9 CHAIRMAN EVANS: We can leave this on that basis.

10 BY MR. HARGUN Q: We'll leave it on the basis that

11 Q: We'll leave it on the basis that what's in here is correct.

12 A Right.

13 Q Then the next paragraph, "The Minister confirmed
14 that Works and Engineering had resolved to continue to work
15 in good faith with the principals of LLC, particularly with
16 Landmark, and in whom Works and Engineering continued to place
17 considerable confidence; and to affect a seamless
18 transition resulting in change, (intervention ?) and
19 management structure on the project.

20 As a result, you know that Landmark was forced to
21 arrange for the takeover from Lisgar of its minority shares
22 in LLC and that subsequently the drafting of the memorandum
23 Lisgar had withdrawn from the project.

24 So, this memorandum is dated the 4th of
25 November 2008, and according to this note, subsequent to the

1 drafting of this memorandum but prior to this meeting,
2 Lisgar has already departed?

3 A Uh-huh.

4 Q Yes?

5 A Uh-huh.

6 Q Is that correct?

7 A Yes, that's what's there.

8 Q Thank you. And then if you look at the next page
9 at 41, "The Minister reported that a consultancy agreement
10 had been executed by the Government of Bermuda with
11 Carruthers Shaw and Partners, CSP, which was a
12 well-established Canadian architectural and consulting firm
13 as architectural and design consultants, along with Chief
14 Architect in Works and Engineering. He noted that shortly
15 after commencement of the works in January 21, 2008, the
16 project faced significant changes at the excavation (stages)
17 ... challenges.

18 He stated that your technical survey which had
19 been conducted on the Government's behalf had failed to
20 identify substantial volume hard rock beneath the surface.
21 This the Minister confirmed was a significant but not the
22 only contributing factor in what was now an estimated
23 three to four months' delay in the construction works.

24 The Minister also confirmed that subsequent to
25 the drafting of the memorandum, a decision had been made to

1 terminate the services of CSP and to engage the services of
2 a local architectural firm, Conyers and Associates.

3 So by 4 November 2008, Lisgar, the Canadian
4 partner in Landmark Lisgar and the architectural, Canadian
5 architectural firm CSP had departed; both the architect and Lisgar.

6 A Yeah. They were fired, yes.

7 Q They were fired.

8 A Yeah, were fired.

9 Q And then have a look at - miss the next paragraph - after
that,

10 have a look at the paragraph after that. The Minister reported
11 that the performance bond - that's you, Mr. Burgess, telling
12 the Cabinet - that the performance bond in the amount of
13 7,200,000 provided by Aviva Insurance, Inc. Aviva,
14 the Canadian company, had been regarded by the Ministry
15 of Finance as inadequate because of the failure on the
16 part of either Aviva, Lisgar or LLC to ensure that adequate
17 funds or assets were available in Bermuda in the event
18 that the bond had to be called following completion of the
19 works or substantial default by LLC.

20 Do you understand that, Mr. Burgess?

21 A Mr. Hargun, I didn't negotiate this here.

22 Q No, no. Do you understand --

23 A I understand.

24 Q Why is it being said that the performance bond
25 wasn't adequate?

1 A Mr. Hargun, I don't remember that because I didn't
2 negotiate that contract. Right? So I wouldn't know the
3 particulars of that.

4 Q No. I think what is being said... This is you
5 telling the Cabinet and what you appear to be telling the
6 Cabinet is that the Ministry thought that the bond was
7 inadequate because the bond company did not have assets
8 within the jurisdiction.

9 A Not in Bermuda, no.

10 Q Why is that inadequate?

11 A That's another jurisdiction.

12 Q Yes.

13 A Right. I didn't negotiate that so I cannot
14 answer for stuff that I don't know too much about.

15 Q No, I understand.

16 A I wasn't the one there, you know.

17 Q I'm just trying to understand why say inadequate
18 because the company doesn't have assets in the
19 jurisdiction.

20 A Well, if we had to make a claim on that it would
21 be very difficult to make a claim in Canada on a bond for
22 something in Bermuda. That's the way I understand it.

23 Q It's straightforward. You just make a claim in
24 Canada, if they don't pay you sue them either in Canada or
25 Bermuda. What's the problem?

1 A It's just like the cheques.

2 Q What's the problem?

3 A Yeah. I can't... Look, Mr. Hargun, you're asking me
4 something out of my league, right, I'm not going to try to
5 answer something that I'm not proficient with.

6 Q All right. Fair enough. It's just that You are
7 telling this to the Cabinet --

8 A Well, I'm reading a document that's presented to me,
9 that's presented to all Ministers to take to Cabinet for their
information.

10 Now, if I had to explain that further to the Cabinet my technical
11 people would have been there to explain it. That's how it
12 goes, you know. Not me, I'm not the expert.

13 Q You can't help us at this stage?

14 A No, I can't.

15 Q Fair enough.

16 A I'd be a fool who tried to.

17 Q Fair enough. And he, that's again you,
18 Mr. Burgess, confirmed that Landmark had also agreed in
19 principle to permit Works and Engineering to amend the
20 construction management and project management agreement in
21 ways that were currently under review, and would include
22 cancellations and a release of the bond provided by Aviva
23 through offices of Lisgar.

24 So, you're telling the Cabinet that the contract
25 is being renegotiated but the bond will disappear, yes?

1 A If that's what it says.

2 Q That's what it says.

3 A That's what it was.

4 Q And it's right, isn't it, that this is the last
5 time you were there, it does not appear that you ever
6 brought the contract back to the Cabinet for approval?

7 A I thought I answered that already so let's not go
8 back there.

9 Q All right.

10 A Maybe if I can help you out, right.

11 Q No, no, that's all right.

12 A You don't want to get help?

13 Q Let me just ask the questions.

14 A Keep going then. You need to know the Minister
15 Code of Conduct, when it comes to that. Obviously you don't know
it.

16 Q Let me ask the question.

17 So now we have under the new contract, Lisgar is
18 no longer --

19 A No longer.

20 Q So it's just LLC Bermuda Limited. Changed the
21 name after Lisgar to LLC Bermuda Limited. Same company, yes?
22 Do you remember that?

23 A The name was changed. Well, it's LLC.

24 Q LLC.

25 A Right.

1 Q And so we're seeing that the bond disappeared and
2 a payment was made of \$665,000?

3 A To who?

4 Q To the company.

5 A You know, I think Robert Horton addressed that
6 in a 2009 reply to the Auditor.

7 Q Yes.

8 A And so for me to try to answer and be specific and
9 know all... I really, it would be unfair for me to try to do that.

10 Q Okay. Now one of the reasons, tell us if you didn't
know,
11 one of the reasons why and Mr. Matvey, one of the principals of LLC
12 gave evidence yesterday, the main reason why they were
13 looking for the Canadian company was, Landmark itself did
14 not have the resources, the financial resources, to
15 undertake this project. So they wanted a Canadian
16 partner and the Canadian partner was Lisgar.

17 You knew that?

18 A Uh-huh. Mr. Hargun, once again, I was not there,
19 I was not the Minister when this contract was first
20 initiated for the Cabinet.

21 Q But you were the Minister when Lisgar disappeared.

22 A No, no. What did I say?

23 Q Yes.

24 A I was not the Minister.

25 Q Yes.

1 A Don't tell me I knew this. Right. Don't try to put
2 words in my mouth.

3 Q I was asking you whether you knew that that was
4 the reason why they had gone to Lisgar?

5 A Mr. Hargun, if I say I knew, you can write it down
6 as gospel he knew, like I was a part of it. I'm not sure,
7 so why would I answer if I'm not sure to something.

8 Q Well, you can say you're not sure.

9 A Ok, well, I'm not sure.

10 Q Ok. Fair enough. You're not sure.

11 A Okay.

12 Q And Lisgar has now disappeared and did you know
13 what the financial position of the company was after Lisgar
14 had disappeared? You were the Minister.

15 A Which company?

16 Q The company which were going to build a seventy million
17 project for the Government of Bermuda?

18 A LLC.

19 (Multiple voices unintelligible.)

20 A No, I didn't know the financial position of them.

21 Q But should you not have been concerned as the
22 Minister?

23 A Mr. Hargun, all those particulars will be handled
24 by the lawyers and technical officers in WE. When we get
25 the last, we get the produce when it's finished to take to

1 Cabinet or if it has to go there to approve it.

2 Q But were you not concerned now that Lisgar had
3 disappeared who was going to provide the financing to LLC?

4 A It was obvious they had to find it because the
5 contract was recommended to be approved, signed I guess.

6 Q They signed it but you had no assurance they would
7 perform it because, unless you had checked as to their
8 financial position?

9 A It's quite obvious they had it because the
10 building's finished.

11 Q That's looking after the fact. I'm asking you at
12 the time?

13 A Well, it obviously it wasn't a problem because
14 the job continued. It didn't stop.

15 Q Mr. Matvey gave evidence yesterday and he said
16 after Lisgar left they had -- they were in a financial bind
17 because they could not get the appropriate financing from
18 the bank.

19 Did you know that?

20 A Go ahead, what's your question?

21 Q Did you know that?

22 A Mr. Hargun, don't ask if I knew stuff that I'm
23 not sure about. Who did he have that conversation with?

24 Q He was giving evidence to the Tribunal yesterday
25 and he said that after Lisgar left, it put the company in a

1 financial bind. And they had to go to the bank to arrange
2 additional financing.

3 I'm asking you whether as Minister of Public
4 Works who had made a presentation to the Cabinet, whether
5 you were aware of that fact?

6 A No. Mr. Matvey wouldn't have discussed that with
7 me... No reason to.

8 (Inaudible discussion.)

9 MR LYNCH: Forgive me but that's not actually what was
10 said by Mr. Matvey. What's being put was not what was said by Mr
Matvey.

11 (Inaudible discussion.)

12 Q Did you know that Mr. Matvey was buying the shares
13 back from Lisgar, the Lisgar shares?

14 A How would I know that. Tell me how would I know
15 that.

16 Q You were the Minister. You'd be interested in
17 that.

18 A I am not involved in those companies' personal
19 business. You know that, Hargun, you're supposed to be a
20 top lawyer. Come on. Right

21 Q Mr. Burgess, this is a company which is doing a major
22 project for Bermuda.

23 A I'm not involved in business.

24 Q But you would be interested to know who's behind
25 that company, would you not?

1 A Mr. Hargun, no. I didn't know who is behind
2 their business.

3 Q That's not right, is it, Mr. Burgess, because
4 whenever there's a construction contract by a company which
5 goes to the Cabinet, the names of the principals are
6 disclosed to the Cabinet.

7 A Right.

8 Q That's right, isn't it?

9 A Yeah.

10 Q Yes. And one of the reasons why they disclosed it
11 so the Cabinet can see their financial viability, yes?

12 A Mr. Hargun, when all that information -- before
13 it comes to us, all that's checked. Again, we get the final
14 product.

15 Q Yes. But did you accept that one of the reasons
16 why principals are disclosed to the Cabinet is so the
17 Cabinet can tell whether they're financially viable?

18 A If they weren't qualified --

19 Q Can you just answer the question?

20 A Hang on. Hang on. Let's be cool now. Be cool.
21 Right. Ask the question again because you're...

22 Q One of the reasons that I said to you that in
23 relation to all construction contracts, when the
24 recommendation goes to the Cabinet, it's not only the name
25 of the company as a contractor which is disclosed to the

1 Cabinet, but the names of the principals.

2 And one of the reasons, and that was Mr. Horton's
3 evidence, one of the reasons why the names of the
4 principals are disclosed is that **their** financial position
5 can be made clear to the Cabinet.

6 A Uh-huh.

7 Q Do you know that?

8 A Mr. Hargun, before -- again, you know, because you're
9 trying to re-enact slavery, right.

10 Q No, I am not.

11 A Yes, you are.

12 Q Mr Burgess, I am not and you must stop saying that, like

you --

13 (Multiple voices unintelligible.)

14 CHAIRMAN EVANS: Mr. Burgess, the transcript will
15 show that you've been asked a straightforward question. I'm
16 not going to repeat it.

17 Are you prepared to answer that question or not?

18 THE WITNESS: What's the question?

19 Q: I'll try it again.

20 A Yeah, try it again.

21 Q When contracts are presented to the Cabinet for
22 their consideration and approval, not only is the name of
23 the company which is the recommend bidder disclosed, but
24 all the principals behind it are disclosed.

25 And one of the reasons and there are a number

1 of reasons that I would come to, one of the reasons why
2 they're disclosed is so that the Cabinet can see their financial
3 standing as to whether they are able to execute the
4 contract.

5 A Right.

6 Q Do you accept that?

7 A Once those papers come to me, all that has been
8 checked by the technical officers, the AG's chambers, so
9 once we have it then we do what we have to do with it.
10 That's normal, Hargun, you know that. Come on.

11 Q Mr. Burgess, the question was very simple. The
12 question was the names are disclosed to the Cabinet so that
13 the Cabinet is in a position to check the financial
14 viability of those individuals.

15 Do you accept that?

16 A Mr. Hargun, all this is checked before it gets to
17 Cabinet. We don't check... Cabinet doesn't check that.

18 Q Mr. Chairman, there's a communication problem.
19 I'll move on.

20 A No, it's not a communication problem. I'm
21 telling you that the Cabinet does not check the who's..
22 All that's checked before it comes to us.

23 Q Yes. Mr. Burgess, I can't take it any further.
24 I'll move on.

25 The second reason why the names are disclosed is

1 that, so the Cabinet can check that there is no conflict of
2 interest.

3 A That is done before it gets to Cabinet.

4 Q Thank you. That was the evidence of PS Horton,
5 that one of the reasons why the identity of the individuals
6 behind the company which is proposing to undertake
7 Government construction work is that so that at most, the
8 Department and the Cabinet can see that there are no
9 conflicts.

10 Do you agree?

11 A Mr. Hargun, I'm going to tell you one more time,
12 all, when that paper comes to us is basically a finished
13 product. They've made all the checks. They've done all
14 their due diligence. That's not for Cabinet to do.

15 Q Mr. Burgess.

16 A Why are you --

17 Q That is not an answer to my question.

18 A It's not?

19 Q I'll ask it one more time.

20 A No, no. Don't ask it any more.

21 Q You don't have to answer it.

22 A No, no. Don't ask it no more. I'm telling you,
23 what are you trying to do, beat me down like a slave to get an
24 answer that you want.

25 Q I'm not. I'm...

1 A I know you're from South Africa, you know. I know your history.

2 CHAIRMAN EVANS: Mr. Burgess, you're a person of
3 great experience as a Minister and you're talking to events
4 nearly ten years ago. And the least the Commission could
5 expect is that you will seek to answer the questions in a
6 responsible way.

7 THE WITNESS: Mr. Chairman --

8 CHAIRMAN EVANS: You've been asked a question and
9 so far you have not answered it.

10 THE WITNESS: Mr. Chairman, I'm glad you recognize my
11 status. Right? He needs to respect it. Right? Because
12 I'm not going to be disrespected --

13 (Multiple voices unintelligible.)

14 CHAIRMAN EVANS: I'm going to stop you.

15 THE WITNESS: What! You're closing the Hearing?

16 CHAIRMAN EVANS: The Tribunal is the judge of...

17 THE WITNESS: The judge is the Almighty God.
18 That's what I believe in.

19 CHAIRMAN EVANS: If you'd allow me to finish what
20 I was saying; The Tribunal can judge whether sufficient
21 respect is being shown to the witness by Counsel and by the
22 Counsel to the witness.

23 THE WITNESS: Mr. Chairman, you wouldn't know what
24 disrespects me because you've never walked in my shoes. You've
25 never walked in my shoes. Every day of my life I'm

1 reminded that I'm black. Why does that have to happen?
2 You will never experience that. Never. Ever. Everything we
3 do is because -- and it's decided whether you are black and
4 that's what is here today.

5 CHAIRMAN EVANS: Mr. Burgess, I can appreciate
6 that you are under some strain.

7 THE WITNESS: I'm not under strain.

8 CHAIRMAN EVANS: Will you please moderate your
9 language and do your best to answer the question.

10 THE WITNESS: Mr. Chairman, I will react
11 according to the atmosphere because I can be very cool. I
12 can adjust to anywhere you want to go. If you want to be
13 Biblical, I can go there. If you want to be street, I can
14 go there. If you want to be respectful I prefer to go
15 there, but you must respect me also.

16 **BY MR. HARGUN:**

17 Q Were you aware, Mr. Burgess, in November of 2008
18 that Mr. Winters Burgess and Mr. Vincent Hollinsid were seeking
19 an equity interest in this company?

20 A How would I know that?

21 Q I'm asking the question. Did you know that?

22 A I'm asking how would I know that? No, I did not
23 know that.

24 Q You did not know.

25 And do you know, you're familiar with obviously

1 Winter Burgess?

2 A I call him Uncle.

3 Q Uncle! Is he your uncle?

4 A No. I do. I call everyone cousins. And I've been
5 brought up that way. I people older than me I call them uncle
6 and auntie. You probably don't understand that.

7 Q Fair enough.

8 (Laughter)

9 A Yeah. That's what I do.

10 Q You knew Mr. Hollinsid?

11 A Did I know Mr. Hollinsid, yes.

12 Q He was I think the fire chief until recently?

13 A Yes, he was.

14 Q And when did you find out that they had an equity
15 interest in this company?

16 A I didn't find out.

17 Q You didn't find out?

18 A No.

19 Q Well, let's just see if we can -- I can help you.
20 Can we have a look at an article which appeared
21 in the Royal Gazette in 2009, and if you go to Tab 10.

22 A What are all these books in front of me.

23 Q Page 57.

24 A Which book?

25 (Inaudible discussion.)

article...

1 A Okay. Sir.

2 Q Page 57. As you will see, this is a Royal Gazette

3 A Wait a minute. I don't have it yet. 57?

4 Q Yes.

5 (Inaudible discussion.)

6 A 10-57, right here. Here we go.

7 Q Yes, 10-57. This is dated the 10 January 2009,

8 and you'll see that this says, "We have nothing to hide.

9 There are no Cabinet Ministers involved, says Derrick

10 Burgess."

11 A Right.

12 Q If you look at, right at the bottom, the last

13 full paragraph, "Mr. Burgess confirmed to us that the two

14 principals of LLC are Winter Burgess and Edmund Lee

15 Matvey."

16 A Right.

17 Q This is in January 2009.

18 A Uh-huh.

19 Q So in January 2009, it appears that you were

20 telling the Royal Gazette that one of the principals was

21 Winter Burgess. Yes?

22 A That's what it says.

23 Q Is that correct?

24 A Let's not be -- if that's what this segment says...

25 I hate to be quoting from the Royal Gazette because I know they

1 don't like me. But if that's what it says, that's correct.

2 Q So, we can work on the basis that you knew in
3 January 2009 that one of the principals was Winter Burgess?

4 A Right.

5 Q Okay. We know now, because Mr. Matvey told us
6 yesterday, that the other principal who was entitled to
7 20 percent of the equity plus a monthly payment of 5,000 a
8 month, 6,000 a month was Mr. Vincent Hollinsid. He said
9 that, he told the Tribunal yesterday - the Commission.

10 A Uh-huh.

11 Q When did you find out that Mr. Vincent Hollinsid
12 had had an interest, he was a principal?

13 A Mr. Hargun, I don't know when Winters or
14 Hollinsid had an interest in this company.

15 Q We've already established Winter Burgess, forget
16 that.

17 A You said when, I don't know when.

18 Q Yes. Well, two years ago, three years ago, four
19 years ago. You knew in 2009 that Winter Burgess was a
20 principal, did you know around the same time that Vincent
21 Hollinsid --

22 A I don't know when these guys became principals of
23 LLC. How would I know that?

24 Q Well, that's another question I'm going to ask you
25 in a moment. I'm just trying to sort of pin you down as to

1 how it is that, when it was that you actually found out
2 that the principals behind this company was among others,
3 Winter Burgess and Vincent Hollinsid?

4 A I don't know.

5 Q Okay. Well, let's have a look at your evidence
6 before the PAC, which was given on 26 May 2016. Have a
7 look at page 229 in Tab 10.

8 A 229.

9 (Inaudible discussion.)

10 Q 229. Are you in tab --

11 A Ten.

12 Q You are?

13 A That's what you told me.

14 Q Yes. There's a transcript of your evidence given
15 to the PAC.

16 A Okay. You said 253?

17 Q No, 229.

18 A 229. I don't see 229.

19 Q This is evidence you are giving. In fact, I
20 think you were asked to give evidence. You were not
21 required to give evidence, you wanted to give evidence to
22 this body. And you see it's on the 26 May 2016. And
23 you're talking about this project and the company which
24 constructed it. You talk about the construction price,
25 etc.

1 Look at line 21. You see that?

2 A 21?

3 Q Mr. Burgess, Mr. Souza, do you see that?

4 A Right.

5 Q Mr. Souza asked you the question, "Okay. I'm not

6 familiar with this company. Who were the principals of

7 Landmark Company? And Mr. Burgess says," that's you,

8 Mr. Burgess," Bryan," that I assume is Bryan McLeod who

9 gave evidence yesterday, "Lee Matvey," I think that's Lee

10 Matvey, then you say "Winter Burgess."

11 A Yeah.

12 Q And then you say, it's a typo, you say "Vincent

13 Hollinsid"?

14 A Right.

15 Q "That's the four I know."

16 Now, obviously, by this time you know that it's not

17 only Bryan McLeod and Lee Matvey, you know that the other two

18 are Winter Burgess and Vincent Hollinsid?

19 A Uh-huh.

20 Q Now, obviously, you know by the 26 May 2016 that

21 Vincent Hollinsid is the principal of this company?

22 A Right.

23 Q When prior to 26 May 2016 you think you knew that

24 he was the principal?

25 A Mr. Hargun, right, I don't know when they became

1 principals in this company. Do you understand? I've
2 answered that so many times. You're not going to try to
3 beat me down like a slave, you know. I'm going to tell you, I'm
4 going to keep using that phrase until you understand. You don't
5 like it, right, that's fine. I answered your question.
6 Don't ask me again. Mr. Chairman, I've answered I don't
7 know when they became principals in the company. So
8 what --

9 CHAIRMAN EVANS: You may have misunderstood the
10 question. You're being -- you say in May of this year you
11 knew who the four principals --

12 THE WITNESS: Uh-huh.

13 CHAIRMAN EVANS: The question is and one of them
14 was Mr. Hollinsid.

15 The question is when did you know, when did you
16 acquire that knowledge?

17 THE WITNESS: I don't know. This is 2016. I
18 don't know when these guys -- I don't get no documents from
19 from anybody.

20 CHAIRMAN EVANS: Leave it on the basis that
21 sometime between 2009 and 2016 you became aware that
22 Mr. Hollinsid was one of the principals of the business.

23 THE WITNESS: To ask me when, what date, I can't
24 tell you.

25 CHAIRMAN EVANS: Thank you.

1 **BY MR. HARGUN:**

2 Q Mr Chairman. Fair enough. Mr. Matvey gave evidence
3 yesterday as did Mr. McLeod. They told us that neither Mr. Winter
4 Burgess nor Mr. Vincent Hollinsid despite the fact that
5 they were getting profit share of 22 percent and 20 percent
6 and despite the fact that they were drawing salaries of
7 11,000 a month and 6,000 a month, they were, in fact, not
8 shareholders.

9 A Uh-huh.

10 Q Did you know that?

11 A No. How would I know that? Come on.

12 Q So given that they were not shareholders and you
13 could not see in the Register of Shareholders that they
14 were principals, how did you find out that Winter Burgess
15 was a principal?

16 A Mr. Chairman, let me say this. I don't know where he's
17 going... I'm going to tell you right off the (rail. I don't know if
18 he's got a problem with that name Burgess. I don't know when they
19 were shareholders. I don't know the arrangements with their
20 company. That's none of my business. I'm not asking people what
21 they get paid or whatever, what their dividends are. I don't know
22 that. Mr. Hargun should know damn well I wouldn't know
23 that.

24 Q That's not the question, Mr. Burgess.

25 The question is, sometimes you can tell somebody's

1 the principal because you can look at the Public Register
2 of Shareholders that tells that you they're shareholders.

3 In this case, these gentlemen for whatever reason
4 decided that they were not going to be shareholders.

5 So the question arises how did you find out in
6 2009, January 2009 that Winter Burgess was a principal?

7 A Mr. Hargun, was it illegal for them to be
8 principals?

9 Q That's not the answer to my question.

10 A That's a question I'm asking you because I don't
11 know where you're going with this here.

12 Q You don't know have to know where I'm going with
13 my question, you just have to answer my question.

14 A It don't work like that, bye. Let me say this here.
15 I know of no involvement of dates and arrangements that
16 Mr. Burgess or Mr. Hollinsid had with LLC. So don't ask me
17 because I can't answer you.

18 Q I have moved away from dates. You've already
19 said that you don't remember and we'll have to look at the
20 documents.

21 I'm now dealing with something completely
22 different, Mr. Burgess. Listen to me.

23 A Okay.

24 Q I'm trying to find out, how did you find out that
25 Winter Burgess was a principal?

1 A Now Mr. Hargun, I never tried to find out.

2 Q How did you know?

3 A They were there. I don't know. It wasn't no
4 document that came to me to say they're principals.

5 Q How did you conclude that they were principals?

6 A I didn't conclude nothing.

7 Q Well, you told the Royal Gazette in 2009 that Winter
8 Burgess was a principal?

9 A Right, because these guys are there together,
10 they're working together. Those four guys worked
11 together.

12 Q So, they were working together and you concluded
13 they were principals?

14 A You're not going to put words in my mouth.

15 Q Is that the evidence?

16 A That's not the evidence. I'm going to tell you
17 again, right, I'm going to tell... You're trying to get my
18 nerves but you're not going to do that. I don't know any
19 arrangements that Mr. Burgess, Mr. Hollinsid, Mr. Matvey or
20 Mr. McLeod had with their working relationship, so don't
21 ask me.

22 Q Mr. Burgess, you told the Royal Gazette in 2009
23 that Winter Burgess was a principal and the Tribunal would
24 be assisted by your evidence if you told them how you came
25 to that view.

1 A Mr. Hargun, you know, I don't know where you're
2 trying to go.

3 Q Don't worry about that. Just answer the
4 question.

5 A No, I tell you, watch your tone of your voice.
6 Don't do it to me, you know. I'm telling you. Now, I'm going to
7 tell you one final time, right. I don't know what arrangements
8 that Winters or Matvey, McLeod and Hollinsid, where are you
9 trying to go, go somewhere else with somebody else because
10 I cannot assist you. And why is it so important what dates
11 they became partners with these guys? Come on, bye.

12 Q You told the Public Accounts Committee under
13 oath --

14 A That's right.

15 Q -- under oath that Vincent Hollinsid was a
16 principal of LLC. And Vincent Hollinsid is not a
17 shareholder of this company.

18 Can you tell us how you concluded that he was a
19 principal of this company?

20 A You asked me how I --

21 Q Yes.

22 A Mr. Hargun, as far as him being a shareholder, I
23 don't know that. As I understand that Winters, Hollinsid
24 and McLeod and Matvey, they were partners. To what extent
25 I don't know.

1 Q When did you find out they were partners?

2 A Mr. Hargun, this is 2016, almost 2017. Don't ask
3 questions. I don't know that.

4 Q Well, was it around 2009 when the, when Lisgar
5 disappeared and you were telling the Royal Gazette in 2009,
6 early 2009, that Winner Burgess was a principal. Was it
7 around the same time you concluded that all four of them
8 were partners?

9 A What part of my answer was not clear to you?

10 Q I'm asking you a question.

11 A I told you I don't know. Right? We
12 abolished slavery in 1834.

13 Q Mr. Burgess, I don't want to hear that.

14 A Oh, you don't?

15 (Multiple voices unintelligible.)

16 A You will hear it.

17 Q I'm not interested in that.

18 A I know you're not because of your racist
19 practices.

20 CHAIRMAN EVANS: Mr. Burgess.

21 THE WITNESS: Mr. Chairman, I'm trying to be very
22 respectful but I'm not going to let him or anybody
23 disrespect me. I will repeat, you never traveled in my
24 shoes nor has he. Every day, I will repeat, I'm reminded
25 of I'm black.

1 CHAIRMAN EVANS: Mr. Burgess, I was hopeful that
2 using your words, we reached a situation where we were
3 showing respect to each other.

4 THE WITNESS: No, you are. So far, you are.

5 CHAIRMAN EVANS: Just a moment. And we were going
6 to keep it cool. You say you can keep the matter cool if
7 you want to. Please try.

8 THE WITNESS: No, I will try but ask him to also
9 because I will respond according to the tone.

10 **BY MR. HARGUN:**

11 Q Mr. Burgess, we now know because we were told
12 yesterday under sworn evidence that as far as Winter
13 Burgess is concerned, whilst he was not a shareholder of
14 the company so that nobody could actually tell whether he
15 had any interest by looking at the shareholders' register,
16 he actually had an equity stake, 22 percent of the equity
17 stake so that whatever profits were made by this company,
18 Winter Burgess received 22 percent of the profits.

19 And we were also told under oath that Vincent
20 Hollinsid was not shown as a shareholder of the company,
21 was a 20 percent equity shareholder in this company. So
22 that whatever profits were made by this company in relation
23 to the Dame Lois Browne Building project, he would receive
24 20 percent of the profits.

25 Now that we know this information, do you think

1 that that is information which should have been disclosed
2 to the Cabinet?

3 A Mr., what's your name, Hargun?

4 Q Hargun, that's my name.

5 A Right. I didn't know this here and why would
6 they disclose that to Cabinet. The makeup has already been
7 provided to us by the technical officers, why would that be
8 of interest to the Cabinet after the technical people had done
9 their work?

10 Q Let's assume for a moment that they were actually
11 the principals in January 2009, all, both Mr. Vincent
12 Burgess and -- I mean, Vincent Hollinsid and Winter Burgess.
13 Assume that they were principals in January 2009 at the
14 time this contract is being entered into.

15 A Right.

16 Q Would you not as the Minister of Works and
17 Engineering think it appropriate that their equity interest
18 in this company of 42 percent be disclosed to the Cabinet?

19 A Mr. Hargun, I guess if Mr. Burgess and
20 Mr. Hollinsid were a different complexion it wouldn't be no
21 problem here. It wouldn't be a problem. You seem to be
22 question everything black people done. That's all you're
23 doing, you know, because what you're saying to me is they
24 shouldn't be a part of it because for whatever reasons,
25 right. If they were white, you wouldn't even have this

1 question to me. That's the racism I talk about. That's
2 the racism you knew about. (Junior should have taught you
3 up to know better than that?).

4 MR. HARGUN: Mr. Chairman, this is abusive.

5 CHAIRMAN EVANS: Mr. Burgess, we have now begun to
6 cross the line between respectful behavior. You are a
7 witness in these proceedings; have your status as a
8 former Minister. I appreciate straightaway the background
9 feelings you may have about the situation, but none of that
10 excuses straight answers to straight questions.

11 And the question is, forgive me for repeating it.
12 On the assumption as we have been told that in let's say
13 December '08 or January '09 Mr. Burgess and Mr Hollinsid had
14 between them a 42 percent interest in the profits, the
15 equity of this company.

16 The question was, would you agree that that is
17 a matter which ought to have been known to Cabinet?

18 THE WITNESS: Mr. Chair, you don't stay in
19 Bermuda, right. I have to give the context in order for
20 you to understand. Right? Common in Bermuda you won't see
21 or face what I face. So, that's the reason I have to answer
22 the way I am. It's okay you sitting there and making the
23 judgment. Right? But if you don't understand the context,
24 you won't be able to give a fair judgment.

25 CHAIRMAN EVANS: Well, I have the disadvantage of

1 being just a lawyer, not a Minister. But as I see it, it's
2 a straightforward question.

3 If two gentlemen of whatever color have
4 42 percent equity interest in the bidding party, do you as
5 a former Minister agree that is information which ought to
6 be before Cabinet?

7 THE WITNESS: Mr. Chair?

8 CHAIRMAN EVANS: I've given you the last chance to
9 answer that sense, a straightforward simple question.

10 THE WITNESS: Mr. Chair, in Bermuda those
11 questions, there's two standards: One for blacks, one for
12 whites. Again, if they were white, it wouldn't be a problem you
know.

13 We wouldn't be going through this right now if they were white.
14 I'm telling you, you don't understand Bermuda... And it's no
15 disrespect to you. You wouldn't expect to because you don't live
16 here. I live here.

17 Mr. Barritt would know. Mr Bradshaw would know, but you
18 wouldn't know, so I have to make it very clear to you because
19 you're sitting in judgment. I thought we were sitting in inquiry
but
20 you're sitting in judgment and I need to get the context out so you understand
it.

21 CHAIRMAN EVANS: I'm glad you mentioned my colleagues
22 because I think you're recognizing that this is an inquiry
23 by four persons, not one.

24 THE WITNESS: Yeah.

25 CHAIRMAN EVANS: And it is an inquiry which is

1 seeking simply seeking the truth. A straightforward
2 factual question is the one you've been asked. So far
3 you've not answered it and can I take it that you will
4 answer it or won't?

5 THE WITNESS: No.

6 CHAIRMAN EVANS: Will you answer it or not?

7 THE WITNESS: Mr. Chair, you know, I'm sitting
8 before a committee of 75 percent white and 25 percent black
9 in a country that is 60/40. Do you know what it feels to
10 be up here, like I'm before a lynch mob. When I read
11 the history books, when I read the history books, that's
12 the way I see you. You have to understand that and it's no
13 disrespect to you. I'm telling you just like it is.

14 CHAIRMAN EVANS: We'll have to deal with this on
15 two levels, you are not answering the question and you've
16 asked us to understand your reasons for refusing to answer.

17 THE WITNESS: No, no. I'm asking you to understand
18 the way I'm answering and my reaction. That's what I'm
19 asking you to understand. What's your question?

20 CHAIRMAN EVANS: We'll move on.

21 **BY MR. HARGUN:**

22 Q I think we'll move on. Thank you, Mr. Burgess.

23 A All right.

24 Q Mr. Burgess, you were also shown financial
25 statements in relation to the LLC Company yesterday for the

1 first time. And we saw from the financial statements of
2 that company, that that company was also doing other
3 Government contracts, and in particular, the Marsh Folly
4 project.

5 A Uh-huh.

6 Q Do you remember?

7 A Yes.

8 Q And also the Veritas [sic] building, I think
9 that's the name?

10 A Veritas.

11 Q Veritas?

12 A Yes.

13 Q And sir, perhaps I can ask this question.

14 When these contracts were awarded to this company
15 LLC, did you know at that time in relation to the Marsh
16 Folly project and the Veritas project, that 42 percent of
17 the principals behind this company at the time were
18 Mr. Winter Burgess and Mr. Vincent Hollinsid?

19 A Mr. Hargun, what you're saying right now I'm learning
20 for the first time.

21 Q Which is what?

22 A What you just said. You just asked me did I know
23 that they owned 42 percent, you're telling me that for the first
24 time because I never knew.

25 Q But you did know, for example, Winter Burgess, that

1 he was a principal?

2 A What do you mean? I understand as I said to you
3 earlier, I knew they were partners with Matvey & Bryan. Now
4 to what extent and how much, what percentages they earned,
5 I wouldn't have known that. I never asked. None of my
6 business.

7 Q Forget about the 42 percent. Did you know that
8 they had a financial interest in profit sharing when these
9 contracts were awarded to LLC, that is the Marsh Folly
10 contract and the Veritas contract?

11 A I guess, Mr. Hargun, as partners in the business,
12 I'm assuming the profits are shared with partners as in any business.

13 Q So the answer is yes?

14 A Yeah. I mean, I don't know why you ask the
15 question. Every business they should profit something.

16 Q So do I understand that certainly by the time the
17 Marsh Folly contract was awarded you knew that they were
18 profit sharers?

19 A No, no. Hang on a minute. What I said to you, right,
20 you're trying -- you're not going to trip me up, right, cause
that's what
21 you're trying to do. I said to you, right, I don't know. I would
22 imagine that as partners in any business they were sharing the
profits.

23 Q Yes. And so, Well, perhaps I'll ask you a
24 straight question again and you can say yes or no.

25 By the time the Marsh Folly contract was awarded,

1 were you aware that Vincent Hollinsid and Winter Burgess
2 were profit shareholders?

3 A I knew they were partners in the business and I
4 would assume like anyone in this room and outside of this
5 room, if you're a partner, you share in the profits.

6 Q Yes. And you knew that by the time the Marsh
7 Folly contract was awarded?

8 A I knew that from every business in Bermuda,
9 whether it's Marsh Folly or whether it's CS and P.

10 Q And also true of Veritas?

11 A Any business. Let me tell you about Veritas.

12 Q No.

13 A You don't want to hear it yet?

14 Q Okay. That's enough. Thank you, Mr. Burgess, in
15 relation to that.

16 A All right.

17 CHAIRMAN EVANS: Would this be a convenient place
18 to take our break?

19 Mr. Burgess, we're going to take a ten-minute
20 break. Would you be very careful please not to speak to
21 anybody about your evidence during the ten-minute break.

22 THE WITNESS: Yes, sir. No problem.

23 **(recess taken.) (recess ended)**

24 MR. HARGUN: Mr. Chairman, I propose we move away
25 from this topic. If there are any questions and if there is

1 any re-examination, this might be an appropriate time.

2 CHAIRMAN EVANS: Or should we leave it all to the end in
3 this case?

4 MR. HARGUN: I'm happy to do that.

5 CHAIRMAN EVANS: I think that's better.

6 MR LUNCH: I think that might be the better
7 course.

8 **BY MR. HARGUN:**

9 Q Mr. Burgess, can I ask you a few questions in relation
10 to a different topic, the commercial court building? Please have a
look
at...
11 at the original award recommendation at Tab 1, page 9, but let's have a look

12 (Inaudible discussion.)

13 MR. HARGUN Q: Tab 1.

14 A This one?

15 Q Yeah. If you look at page 9.

16 A One second. Yeah.

17 Q You see that this is dated 15 October 2008. We
18 know that, if you look at page 10, that's the date of the
19 document?

20 A Uh-huh.

21 Q And you'll see, Mr. Burgess, tender responses,
22 all the contractors who responded to it. Amongst them is
23 Bermuda Drywall at 2, and DeCosta at 4, and then there are
24 other, in total seven. Yes?

25 A Right.

1 Q And then the bullet point underneath those seven
2 contractors, you'll see the technical officers have
3 written, "One incomplete bid was received. Bermuda Drywall
4 and Ceilings did not include in its price for five addenda
5 and did not complete all sections of the formal tender.
6 Neither previous product information, nor schedule of
7 values were provided."

8 I understand that the technical officers at this
9 state were taking the view that the bid from Bermuda Drywall
10 was not complete?

11 A Yeah. That's -- yeah.

12 Q And then if you look at, if you go to page 10,
13 that's the next page?

14 A Yeah.

15 Q You'll see tender evaluation. They say the
16 lowest builder is DeCosta; the second lowest bidder price is
17 within 5 percent of the low bid. The closeness of the bids is a
18 good indicator that the bidders understood the same scope of
19 work.

20 And you'll see their recommendation is that we
21 would recommend awarding the contractor to DeCosta Construction.

22 A Right.

23 Q Do you see that?

24 A Yes, sir.

25 Q And if go back to page 7.

1 A Yeah, that's the next page, yeah.

2 Q Page 7, go backwards. 7. It's an email from
3 Mr. Horton. 7 at the top.

4 A I don't see 7 at the top.

5 (Inaudible discussion.)

6 A Oh, okay.

7 Q Yep. And you see that's an email from
8 Mr. Horton of 13 October 2008. And I think you're copied in
9 actually, Mr. Burgess, next to Lucy Chung.

10 A Uh-huh.

11 Q Lawrence -- Lawrence was at least at the time
12 although, in fact, still is the Chief Architect. The Minister
13 has requested that any contracts to be issued in connection
14 with the new commercial court in the Government Administration
building
2008."
15 building, 2nd floor, be held until his return to the Office on 21 October

16 A Right.

17 Q So the recommendation has been made but you are
18 asking that it be... In fact, no, that's not quite right.

19 The recommendation is two days later but you are
20 saying, hold off until you get back?

21 A That's what it says, yes.

22 Q Yes. And then as I understand it, there was a
23 second bid in relation to a re-tender and that also went to
24 Drywall?

25 A Uh-huh.

1 Q Yes?

2 A Uh-huh.

3 Q And before the technical officers had a time to
4 review, I think it's right that... If you look at page 32...
5 This is on January the 7th?

6 A 32, yeah. Got it.

7 Q Yeah. And this is again from the Permanent
8 Secretary?

9 A Yes.

10 Q It says, "Lawrence, I'm writing to confirm that
11 the Honorable Derrick Burgess, JP, MP, Minister of Works
12 and Engineering, has approved the award of the contract for
13 the construction and fit-out of the entire second floor of
14 the Government Administration building."

15 A Right.

16 Q "To Bermuda Drywall and Ceilings Limited."

17 A Uh-huh.

18 Q And I think on the strength of your instruction,
19 I think a letter was written to Bermuda Drywall on the 8th
20 of January which you will find on the next page?

21 A Yes. Got that.

22 Q You see that?

23 A Yes, sir.

24 Q There's a formal letter from the Ministry to
25 Bermuda Drywall, Devree Hollis?

1 A Yes, sir.

2 Q Saying that they have been awarded the contract
3 for the amount of \$1,696,553?

4 A Yes, sir.

5 Q Yes. Now, this was, Mr. Burgess, this is written
6 on the 7th of January. And your instruction to Mr. Horton
7 was on the 7th of January. And Mr. Horton complied with
8 your instruction by writing a letter to Bermuda Drywall on
9 the 8th of January. And I see that the technical officers
10 are considering a re-tender on the 12th of January which is
11 four days after the letter has gone out to Bermuda Drywall
12 and that you will find at page 34.

13 A 34?

14 Q Yes.

15 A Yeah. Uh-huh.

16 Q And you'll see this is the technical officer's
17 review of the position. And you see, they say that the
18 initial tender procedure at Paragraph 3, they say the
19 project was advertised as a public tender in the Bermuda
20 Sun on the 27th and 29th of August. And then if you go
21 on page 35, and they say who were the initial bidders, the
22 seven bidders are listed. And they say in the line below,
23 an incomplete bid was received from Bermuda Drywall and
24 Ceilings.

25 A Yes, sir.

1 Q If you look at Paragraph 5, initial tender
2 evaluation?

3 A Uh-huh.

4 Q The lowest bidder is DeCosta Construction?

5 A Right.

6 Q And while the bid was from the second lowest bidder,
7 AJW Construction within 5 percent; and then value engineering,
8 with most responsive bidder. As requested by the Minister,
9 the design team along with most responsive bid of DeCosta
10 Construction, underwent a value engineering exercise in
11 order to reduce costs.

12 I think this was the case where you were quite
13 concerned about the Rolls-Royce treatment and you wanted to
14 reduce the cost. Do you remember that?

15 A Yes. In fact when I, when we first got the
16 paperwork from the technical people, they wanted to spend 2
17 point, I don't know, 2.6, \$2.3 million. And I told my PS,
18 I says, "No, we're not going to spend that type of money on
19 the refurbishing of that office." And then we got, I don't
20 recall who, what architect, and they told me there was a lot of
21 frills in there.

22 And my orders to them was, "Look, I want a
23 standard Government office. This is not to be no
24 Rolls-Royce. Give me a Toyota." Right? And they took the
25 plans and whoever and they fixed it.

1 Q The original contract was, I think you're right,
2 it was 2,334,000?

3 A Yes.

4 Q That was the original Contract Award
5 Recommendation. And am I right, the email seemed to
6 suggest, Mr. Burgess, that you took it upon yourself to
7 take the drawings to another architect?

8 A No. That's incorrect. Mr. Hargun, one thing I would
9 never do is go into anybody's office or house and take
10 something that doesn't belong to me. My mother brought me up
11 better than that, right; and that's something I just would never ever do.

12 Q Right.

13 A You're looking for the email from the boy,
14 Jonathan somebody?

15 Q Yes. I was going to show it to you just in fairness to
16 you. You know that there's an email from...

17 A Oh, yeah, I saw it. I saw it the same week, yeah.

18 Q It's, I think page 17?

19 A 17.

20 Q Where it says that this is Jonathan Castro. Look
21 at page 17.

22 A One second. One second. I got 17. Yeah.

23 Q And you see that there is an email from this
24 gentleman, Castro, who is a student architect to Lucy. Lucy
25 was a senior architect in your department?

1 A Yes.

2 Q "Minister Burgess with an unknown person came in
3 this morning about 8:35 asking for you. I told him that
4 you were not in yet. And then he asked where you sat. And
5 when I showed him your desk, he said he was taking the
6 plans for what I believe to have heard Magistrates' Court
7 Hamilton Police Station. However, he may have meant the
8 Ministry of Finance and Commercial Courts. These were
9 the plans that he took with him. Looking at what his guest
10 had in his hands, I noticed that they were SHY Architecture."

11 Suggestion being that you took the drawings and
12 gave them to SHY?

13 A Mr Hargun, that never happened. I would never go into...
14 In fact, I've only been in the... In the four years that I was
Minister,
15 I've been in the property architect's section once. And that's
when
16 I first went there as a Minister to be introduced. I never had any
17 interaction with any of them.

18 Q So this is not --

19 A That's not true. There's no truth in it
20 whatsoever. I would never take... The thing is if I
21 were have took... Just say if that was true, and I'd have took
22 those documents to somebody. How would they get paid because
23 I'm not the one, the Minister's not the one that initiates
24 a contract.

25 Q Well, I was going to ask you that, if SHY was

1 instructed (did we have a contact name)?

2 A I don't even know who SHY is.

3 Q The architects.

4 A But I don't know who they are. I've heard of a
5 SHY but I don't know who they are. I wouldn't have been
6 the one to do that. Because those things have to go to
7 the PS who would put it in train with the right people,
8 the technical officers. But certainly I couldn't give
9 those plans to anybody because they'd say, Well, how am I
10 going to get paid. The Minister doesn't deal with payment
11 of contracts to anybody.

12 Q I appreciate your evidence. You say this didn't
13 happen. It's interesting that this student architect says,
14 "Minister Burgess then introduced himself to me as
15 Mr. Burgess, the Minister."

16 A See, that's where I knew that wasn't me. One
17 thing I never do, I never introduce myself to anybody as
18 Mr. Burgess. If I went into a Ministry, I'll say I'm
19 the Minister. Or I say I'm Derrick Burgess because I hate
20 to put myself above anybody else, and when you say you're Mr.
Burgess.

21 Oh, no. I've never done that in my life, never, ever.

22 Q Let's go back to the second tender, second
23 evaluation, rather.

24 A What number?

25 Q We were looking at... It started at page 34 and we

1 were at page 35.

2 A Right. Got it.

3 Q And you see at Paragraph 7, re-tender procedure?

4 A Uh-huh.

5 Q "The Minister instructed the Department of
6 Architectural Design and Construction to re-tender the
7 project to all bidders including disqualified bidders with
8 a reduced scope of work as developed in the Value
9 Engineering exercise, plus maintaining existing office
10 portions along with the perimeter of the building in the
11 existing and future offices. A (post tender) addendum was
12 issued to all bidders on Thursday, December 18, 2008.
13 Re-tender prices were required by Tuesday, December 23,
14 2008."

15 A Uh-huh.

16 Q "Re-tender response; revised bids were received
17 from three of the seven original bidders, Bermuda Drywall,
18 DeCosta and AJW Construction."

19 A Correct.

20 Q And then you see the bids are set out?

21 A Yeah.

22 Q At 1.696 million from Bermuda Drywall; 1.725 from
23 DeCosta, a difference of 28,000; AJW Construction is a higher
24 bid at 2.1 million.

25 A Uh-huh.

1 Q And then, Paragraph 9, Contract Award.

2 "The Minister effectively awarded the contract to
3 Bermuda Drywall and Ceilings and gave them authority to
4 start on site January 2, 2009. A formal letter of intent
5 was sent by PS Horton to Bermuda Drywall on January 8,
6 2009."

7 Is that right, Mr. Burgess?

8 A Yes, sir.

9 Q That you had actually already given the contract
10 to them and with an authority to start work on the 2nd of
11 January?

12 A Yes.

13 Q So, by the time PS Horton sends the letter of the
14 8th of January 2009, had they in fact started the work?

15 A I can't recall at this point but I tell you, I
16 would want them to start right away because this job was
17 time sensitive and was behind time.

18 Q Yes. And then re-tender evaluation, they say -
19 this is your technical officers, "Bermuda Drywall and
20 Ceilings submitted the lowest price and it would appear
21 that the contract was awarded to them by the Minister on
22 this basis. The difference between lowest price and next
23 lowest price was 28,000. This represents 1.7 percent
24 difference. Bermuda Drywall and Ceilings re-bid did not
25 include the five addenda, nor were all sections of the

1 formal tender completed as required."

2 Is that right, Mr. Burgess?

3 A I'm sorry. My apologies, sir. My mind was
4 somewhere else.

5 Q I was asking whether the last sentence accorded
6 with your recollection. The last sentence reads, Bermuda
7 Drywall and Ceilings re-bid did not include the five
8 addenda?

9 A Yes, sir.

10 Q Okay. And then next paragraph, "As instructed by
11 the Minister, the Department went back to Bermuda Drywall
12 and Ceiling to ask if the addenda were included. This was
13 eventually confirmed and provided. A requirement of the
14 bid was to provide a list of relevant past experiences.
15 Bermuda Drywall and Ceilings noted two past projects, the St.
16 George's Police Station and the police's Commercial Crime
17 Department."

18 A Right.

19 Q "It is worthwhile pointing out that the millworks
20 supplied and installed for the Police Commercial Crime
21 Department was of mediocre quality. There are still
22 deficiencies to be corrected over the six months after the
23 client has moved into the space."

24 Are the last two sentences which I just read
25 correct?

1 A Well, Mr. Hargun, the first time I saw this is
2 when I got this bundle from the Commission some time ago.
3 If that work was, you know --

4 Q Mediocre?

5 A No, below the standard. I want my cousins on the
6 street to understand what I'm talking about. If it was
7 below the standards, then we should have been informed. I
8 don't even think my PS even knew that because I'm sure if
9 my PS would have known he would have told me.

10 Q You were not aware of that?

11 A No, first time I saw this was then.

12 Q Fair enough. Then look at the conclusion and
13 recommendation. "The Ministry of Works and Engineering --

14 A Where are you now?

15 Q Sorry. Paragraph 13.

16 A Okay.

17 Q Yeah?

18 A Yeah.

19 Q Conclusion and Recommendation. "The Ministry of
20 Works and Engineering having considered the quality of work
21 on past projects, bidding deficiencies and actual prices is
22 of the opinion that DeCosta Construction can best
23 satisfactorily provide the services required."

24 Let me ask you, why are these technical officers
25 doing this evaluation and recommendation in circumstances

1 where the Ministry has already told the Bermuda Drywall on
2 the 8th of January in the written letter that the contract
3 is awarded to them?

4 A I can't answer for them. Right? But let me say
5 this here, that I thought very important based on our
6 mandate that Dame Jennifer Smith repeated in Parliament
7 on the 22nd of November, 2002, because the Minister, because
8 our mandate was to take care of everybody; give contracts
9 to those people that had been deprived over the years
10 because in our history, Mr. Hargun, at one time before the
11 PLP got in power in November 1998, no black firm could bid
12 on jobs of \$300,000 and above.

13 We changed that and we promised... There was a
14 mandate from Dame Jennifer Smith, and one that I agree with
15 today, that we will make sure to level the playing field.
16 And if somebody is deficient in some of their bids,
17 tendering's, then we will assist them because they've never
18 done it before.

19 In fact, this job from Mr. Hollis is the first
20 job that I understand he ever got from this magnitude from
21 Government because Mr. Hollis would have never got that job
22 or anybody of his complexion would have gotten that job
23 under those technical people that we had up there.

24 Q You know Mr. Hollis, do you?

25 A Oh, yeah. I know him. I know everybody in

1 Bermuda.

2 Q I mean, DeCosta Construction, I mean, was DeCosta
3 Construction a large operation?

4 A What was that again?

5 Q DeCosta Construction which were the recommended
6 contractors by the technical officers, was in the first
7 round and the second round.

8 Do you know them?

9 A No. You know, but DeCosta Construction comes up
10 numerous times in different contracts that was awarded
11 DeCosta Construction. In fact, they got one contract for
12 the Auditor's office, saying that the WE had put a price of
13 134,000. There/then was a price on a Bermudian contractor, a
14 black Bermuda contractor that was below what the WE had
15 budgeted for. And then DeCosta Construction was 20,000
16 above them and they recommended go to DeCosta Construction,
17 and you know what their reason was, because if we hire this
18 black constructor, we're going to hire some people to watch
19 him. And I've got this in writing, you know.

20 Q Well, I haven't seen that.

21 A I know you wouldn't see that. I say that in no
22 disrespect but I have it here, you know. And --

23 CHAIRMAN EVANS: I'm sorry to interrupt. You were
24 being asked about this particular occasion when Bermuda Wall (*sic*)
25 and DeCosta were the two bidders. You referred to another one.

1 Can we just get the answer right on this one.

2 THE WITNESS: Mr. Chairman, with all due respect,
3 I'm trying to give the context. If you don't understand the
4 context, then you won't understand my answer.

5 CHAIRMAN EVANS: No, I think I have understood.

6 **BY MR. HARGUN:**

7 Q So after, I don't want to repeat myself,
8 I'm just trying to understand.. You've already advised Bermuda
9 Drywall on the 8th of January that they are the successful
10 bidder?

11 A Right.

12 Q By all accounts are actually are working in the building?

13 A Yeah.

14 Q So, can you help the Tribunal as to why it is that on
15 the 12th of January the technical officers are doing this
16 award recommendation?

17 A Well, Mr. Hargun, there is five projects that I
18 got intimately involved with because they were time
19 sensitive. And over those five contracts, and I have more,
20 I can write on my (brick), right off my head, right, those five
21 contracts saved the taxpayer \$17 million.

22 And I know they were incensed by that because
23 this little black boy off the streets come in and they would
24 get this work done \$17 million less. Now the technical
25 officers' responsibility, see if you can get the best for

1 the taxpayers' bucks. That's their job. They didn't do
2 that. In fact, they were incensed with me because I was
3 able to get it done with less money. So they had no
4 respect for me. They put cheques on file, fraudulent cheques
5 on file so this, is a history.

6 Q So you think this is like a retaliation, is it?

7 A That's the only way I can think of because why
8 would you be annoyed by saving money.

9 Q Fair enough.

10 A And given those that were disadvantaged, what,
11 why would anybody in their right mind be annoyed at that.

12 Q Then Mr. Burgess, sometime later, this is
13 obviously a retroactive approval by the Cabinet.

14 (Inaudible discussion.)

February.

15 Q The matter was taken to the Cabinet on the 10th of
16 So this is even after the second recommendation by the technical
17 officers which was on the 12th of January, that you will see at
18 40.

page

19 A 40?

20 Q Yes.

21 A Right. 40?

22 Q 40. Yes.

23 (Inaudible discussion.)

24 A Oh, okay. Got you. Got you.

25 Q You see that?

1 A Yes, sir.

2 Q Now, I won't take you right through it, it's time
3 consuming.

4 You see that it's dated 10th of February 2009?

5 A Yeah.

6 Q And in introducing this contract recommendation
7 seeking retroactive approval, the Minister of Works and
8 Engineering informed... and that's you I think at the time?

9 A Yes.

10 Q ... and you referred to in the 4th paragraph, "The
11 Minister advised his colleagues that following an initial
12 tender procedure during August, September 2008, he directed
13 that every effort be made to achieve a lower bid for the
14 most responsive bidder, DeCosta Construction. And then it
15 goes on and then --

16 (Inaudible discussion.)

17

18 40. It's right in the beginning. And so on.

19 And the Cabinet approves it. Just, I could not
20 see any reference to it; just, perhaps you can confirm that the
21 second Contract Award Recommendation of the 12th of
22 January 2009 by the technical officers which was I'll say
23 made about a month before the Cabinet meeting, that wasn't
24 referred to by you in the --

25 A In the paper?

1 Q No, doesn't look like it.

2 A Uh-huh. All right. Yeah. No, it's not. Right.

3 Q Okay. Just one minor point. If you look at page
4 25?

5 A Which binder are you on to now?

6 Q Back to the main one, Tab 1.

7 A You said 25?

8 Q Page 25.

9 A Yeah, got it.

10 Q If you look at, right at the bottom of that page
11 there is an email, Mr. Burgess, from Permanent Secretary
12 Horton.

13 A Right.

14 Q To Lucy Chung. And Permanent Secretary says, "I
15 shall be grateful if you would provide me with a copy of
16 the specifications for the commercial courts [inaudible 12:12:12]
17 expanded Ministry of Finance job. As he told me last week, the
18 Minister wishes to share these with another architectural
19 firm in the expectation that the job can be completed more cheaply."

20 I think PS seems to be under the impression that
21 you're going to give it to - and I think it's copied to
22 you, Mr. Burgess, this email - that you wanted to take it to
23 another architectural firm?

24 A No. I have no recollection of that. I don't
25 think I would have done that. I mean, the job had started,

1 why would I do that.

2 Q This is in December, December 2nd.

3 A Yeah. I don't recall that. What I recall is
4 that I told them.. What I recall I told them, you're not
5 going to get... We don't want a Rolls-Royce, we want a
6 Toyota.

7 Q I understand that.

8 A So that's all I know about that. This here, I
9 don't know anything about it.

10 Q Then just to complete the picture on that little
11 issue, if you look at the email just above that, and that
12 is an email from Lucy Chung to PS Horton. And she says,
13 "PS Horton, the set of drawings the Minister took on Friday
14 has all the specifications on it."

15 And I think again, Mr. Burgess, you're copied in
16 that email.

17 A Uh-huh.

18 Q So I mean, certainly the emails, I accept that
19 you have no recollection and indeed you wouldn't do that,
20 now the emails seem to suggest that something happened
21 here.

22 A Well, Mr. Hargun, I wouldn't have no conversation
23 with Lucy Chung. She's one of those that I had to correct
24 her. In fact, she done... Even before I became a Minister. I
25 can recall going to Sylvia Richardson's one time - preopening -

1 and she took us on tour and the rails on that building were too
2 low. And I said, "These rails are too low." I was just a back
bencher.
3 And she reprimanded sternly. And I said, okay. Couple months
later a
4 patient went over that rail and killed themselves. When I became
5 Minister of WE, I had those rails extended, the height extended. We
haven't
6 had that since. So I know she's got some problems with me and
that's
7 okay. That's fine.

8 Q Just to balance that observation, is it fair to
9 say that PS Horton when he gave evidence, he said that he
10 held her in high regard.

11 A That's great and he should. Mr. Horton's a man
12 of principal. Right. Because I've got a problem with someone
13 that doesn't mean he does, you know.

14

15 Q Can I move to another project?

16 A Yes, sir.

17 Q Southside. That's...

18 A The commercial court?

19

20 The lab, the lab.

21 Q The documentation that we have to refer to would
22 be in Tab 6 but don't go there yet. You, in your witness
23 statement at Paragraph 28 of your witness statement,
24 Mr. Burgess, you say that "I have read the statement of
25 Robert Horton and can confirm the contents are accurate."

1 A Where are you reading it from?

2 Q Sorry, this is your witness statement, your own witness
statement.

3 A Okay. All right. What number?

4 Q This is, well, it should be in Tab 8 of the witness
5 statements. But you're looking at your own binder.

6 A Yeah. Right. But this is my... You're talking
7 about my witness statement?

8 Q Yeah.

9 A I just wondered what number are you reading from.

10 Q You mean paragraph?

11 A Yeah.

12 Q Let's start at Paragraph (26 ?). It's under the
13 heading Southside Laboratory Contract.

14 A There you go. I got it.

15 Q 26. "I should make it clear that Vernon Burgess
16 is unrelated to me." 27. "I refer to your previous
17 response Exhibit 3."

18 Paragraph 28. "I have read the statement of
19 Robert Horton and can confirm the contents are accurate as
20 best I can recall, save that it is my recollection that the
21 redirection in tender requirements was for all bidders."

22 A Right.

23 Q "Not just Concorde." And let's just have a look
24 at the, Mr. Horton's written statement. Can I ask you to
25 have a look at in the witness binder Tab 7?

1 A Uh-huh.

2 Q Tab 7, Paragraph 61.

3 A Yeah.

4 Q He is also dealing here with the Laboratory contract
5 in Southside.

6 He says, "With respect to the Commission's
7 current understanding, as set out in the opening paragraph,
8 I confirm that the tender process changed from a tender to
9 fit-out a building in Lolly's Well, Smith's, to a tender to
10 fit-out a building in Southside in St. David's. I confirm
11 that the Minister of Works and Engineering expressed concern
12 about the tendering process at an early stage, specifically
13 regarding the wisdom of spending public funds to improve a
14 privately-owned building."

15 I think you would agree with that?

16 A You said you agree with that?

17 Q I assume you agreed with that?

18 A Oh, yeah. Oh, yeah. The thing is when they
19 brought that contract to me to do a fit-out in a building that
20 we would have to do ceilings, walls for \$1.3 million or a little
21 more, right.

22 A For... To spend that on somebody else's building, and
23 plus on top of that, pay averaged \$50,000 a year... No, no, \$150,000
24 a year in rent. And I said, "No, we're not going to spend
25 that type of money on a non-Government building, let's find

1 a Government building."

2 Q Right. And then he goes on to state, "He later
3 expressed support for the award of the contract to Concorde
4 Construction. I confirm that during a site meeting with
5 Concorde and technical staff of the Ministry of Works and
6 Engineering at Southside, the Minister of Works and
7 Engineering agreed to reduce the tender requirements for
8 Concorde. I also confirm that the Contract Award
9 Recommendation originally prepared by Ministry of Works and
10 Engineering technical specialists was amended to remove
11 some details."

12 I mean, in his evidence which he gave, he said
13 that this site visit was obviously you and the technical
14 officers and Concorde, but not other bidders.

15 A I know I had a meeting down there. Let me say this,
16 Mr. Hargun. My history, and I've done it before up there,
17 if we're going to re-tender any project, I always tell them
18 send it to everybody. Everybody. So I will not. I
19 wouldn't have done anything to favor anybody in this
20 regard, in regard to tender process.

21 Q This is after the re-tender.

22 A No, I understand what you're saying.

23 Q This is after the re-tender.

24 A Yeah.

25 Q The suggestion is after the re-tender that you

1 ask Concorde with technical officers and Mr. Horton, to go to
2 the site and at the site it has been suggested that you --
3 or you said that they did not have to worry about the air
4 conditioning and --

5 A Okay, I've got you covered now. I'm sorry. The thing is
6 I think what they had in their -- something, and I don't
7 recall all of it, is that the roof work, ceilings,
8 asbestos, that was the responsibility of BLDC, and not for this
9 contract. That's what I recall about that, and air
10 conditioning.

11 Q And in fact, if you look at an email from again
12 Lucy Chung, if you go to Tab 6.

13 A Same one?

14 Q Yes.

15 (Inaudible discussion.)

16

17 Q If what had been said to Concorde Construction
18 at the site --

19 A What paragraph are you on, sir?

20 Q Let me just introduce it.

21 A Oh, okay.

22 Q Do you see what Lucy Chung is doing... If what had
23 been said to Concorde Construction at the site had been
24 said to all the contractors, you'll see that the bid prices
25 for everybody, all the other contractors also changed and

1 this is the analysis, page 3.

2 And you'll see that this is an email from Lucy
3 Chung to the PS copied to the Chief Architect. She says,
4 We have now received confirmation from Concorde
5 Construction with respect to which allowances are included
6 and excluded in their bid per attachment documents. In
7 addition, we would have expected their bid to remain the
8 same, but Concorde Construction has revised and resubmitted a
9 higher bid from the original 886 to 974. For the avoidance of
10 doubt Concorde Construction was contacted to confirm all of the
11 above.

12 And then Analysis of Concorde. You'll see
13 Paragraph 1, 2, 3, 4. And then, the paragraph after that,
14 Mr Burgess, "We acknowledge the Minister's clarification at the
15 the site that he is not concerned with the other bidders."

16 Do you recall that?

17 A No. In fact, Mr. Hargun, this is the first time
18 I've seen this. This was never presented to me.

19 Q You see, sir, it was sent to PS Horton and, as I say,
20 copied to most of the people in the department.

21 A Yeah, not me. First I'm seeing it.

22 Q Okay. Fair enough. And I can just give you your
23 opportunity to comment on it. However, we thought it may
24 be helpful to provide the (full length) comparison of all the
25 bids once adjusted to match Concorde Construction

1 bid, i.e., delete air conditioning and ceiling; which is
2 apparently what was said to them at the meeting. And you
3 will see Concorde Construction is at 974.

4 If the same reduction of work was proposed to all
5 the bidders, DeCosta Construction is reduced to 967; they
6 become the lowest bidder.

7 A Yeah.

8 Q And then Burt Construction and so on, you can see
9 what happens on the figures.

10 And she says, "We would advise against accepting
11 any of the tenders as the project has not been designed for
12 these premises and the scope of work will vary from as
13 specified from the previous location at Lolly's Well. In
14 addition, our present course is highly irregular as it
15 relates to Financial Instructions and the tendering process
16 and (various questions be forwarded)."

17 Then she says, "Although it will take time, we
18 would suggest reissuing full tender documents which all
19 works identified this being the only way in which an
20 accurate contract sum can be confirmed, as at present there
21 are too many variables. We are of the understanding that
22 you have kept the Minister apprised of the current
23 situation."

24 And as I understand, there was no re-tender?

25 A What are you asking?

1 Q Well, I mean, she seems to be suggesting that
2 because we have told one bidder that the requirements are
3 much less than it was in the tender documents, we haven't
4 told that to all the other bidders. And she says that we
5 should not go with Bermuda... Sorry... we should not go with
6 Concorde Construction but, in fact, to be fair to
7 everybody, we should re-tender.

8 A As I said, this is the first time I'm seeing this
9 document and I'm surprised it could be from her because as I
10 recall, the person that was preparing the drawings was I
11 believe was -- I believe (inaudible 12:24:33). It wasn't her,
12 anyhow. It was some other architect in the ministry. So I
13 don't know. I've never -- first time I'm seeing this.

14 Q Have you seen the email on the next page, page 5.
15 This is from Lucy Chung to Mr. Brady. It's of the 13th of April.
16 She says, "I received a copy of the CAR today for Concorde
17 Construction, Building 322 Southside Lab, etc. He did not
18 advise if Cabinet approval was received. It differs significantly
19 from what we prepared for acting PS Outerbridge.

20 In our version, that's the version of the 5th of
21 April, we had removed our department's name from the
22 heading because it was a recommendation put forth by the
23 Minister and not the Department.

24 Do you remember all that?

25 A I don't remember all this, this writing from

1 Brady to Lucy... Two (inaudible 12:25:34), you know.

2 (plus I'm out of this?).

3 Q It says that, "Overall, the document was
4 misleading and gives the impression that a somewhat proper
5 tendering procedure was followed and that our department
6 not only recommended Concorde, but feel they're experienced
7 and qualified to do the job."

8 She's saying they moved the name, the logo, that it
9 was the architectural department.

10 If you look at the next page, page 6, you'll see
11 it says Ministry of Works and Engineering.

12 A Yeah.

13 Q But it's taken off, Department of Architectural
14 Design and Construction. They whited that out.

15 Is she suggesting that it wasn't the
16 Department's recommendation, it was your
17 recommendation?

18 A You know, she should have been reprimanded for
19 that because the technical officer doesn't run the Ministry.
20 That would have to be a decision -- that
21 decision should have been from the Minister... Not the
22 Minister... from the PS who would discuss it with me. No
23 staff can take off their department like it's not come from
24 it. That's disrespectful.

25 Q I think what she seemed to be saying,

1 Mr. Burgess, is that Concorde was very much your
2 recommendation and that wasn't the recommendation of the
3 Department.

4 A Again, Concorde was one of those minorities, minorities
5 in the majority black country that... First job they've had from
6 Government. They would never got a job because of that. And they
7 had some derogatory remarks about Concorde. And I said, take those
8 remarks out... Remarks designed to turn people against them.
9 Right? That's what they done. And I said, no, because the
10 Minister decides what they take to Cabinet, not the civil
11 servants.

12 Q The... When you say derogatory remarks?

13 A Disparaging.

14 Q Yes. Have a look at page 9 under the
15 Recommendation.

16 A Yeah.

17 Q You'll see that in the initial wording it says,
18 We would recommend awarding the contractor for the scope of work
19 set up in the Contract Award Recommendation to Concorde
20 Construction. And then this line; the Minister is of the
21 opinion that Concorde Construction has experience and
22 expertise that will enable the company to carry out the
23 scope of work to satisfactory standard. In other words,
24 it's an odd way of putting it... It's the Minister's view
25 they can carry out the work.

1 And I see that in the final wording which was given
2 to the Cabinet, that sentence comes out - It's the
3 Minister's view.

4 And if you look at page 12.

5 A Yeah.

6 Q It says, that sentence is reworded, "It's the
7 conclusion of Works and Engineering that Concorde
8 Construction, the company that submitted the lowest bid, has
9 the experience and expertise that will enable it to
10 complete the scope of work."

11 Is that what you meant?

12 A That's, Mr. Hargun, these writings will come with
13 the approval of my PS. And I have no problem with that.
14 That's what PS put down, I have no problem with that.

15 Q Your PS does deal with it actually in his
16 witness statement. If you go back to in the witness binder
17 Tab 7?

18 A Just the small one?

19 Q No, it's the big one.

20 A Yeah. I've got 7.

21 (Inaudible discussion.)

22 Q If you look at his witness statement at Tab 7, we
23 can pick it up --

24 A What number, sir?

25 Q We can pick it up at Paragraph 66.

1 A I've got to get the statement first. Is it at the front?
2 66?

3 Q Do you see Paragraph 66?

4 A Yeah.

5 Q "I am confirming that Ministry of Works and
6 Engineering technical staff brought to me for the
7 Minister's consideration the referenced Contract Award
8 Recommendation dated the 5th of April 2010." We just
9 looked at that, Mr. Burgess.

10 A Right.

11 Q "I am confirming also that pursuant to the
12 request of the Minister, I made some modifications to the
13 Contract Award Recommendation of the 5th of April 2010.
14 Such modifications reflected in the Contract Award
15 Recommendation dated 12 April 2016.

16 And the Commission's attention is drawn to
17 Paragraph 7. "Recommendations in the Contract Award
18 Recommendation of 5 April 2010," and that's the
19 objectionable part.

20 "We would recommend awarding the contract for the
21 scope of work set out in this Contract Award Memorandum to
22 Concorde Construction. The Minister is of the opinion that
23 Concorde Construction has the experience and expertise
24 that will enable the company to carry out the scope of
25 work to a satisfactory standard." And, ass such, etc.

1 And then Paragraph 68, "The Minister of Works and
2 Engineering, upon reviewing the Contract Award
3 Recommendation of 5th April 2010 and noting in particular the
4 above quoted paragraph recommendation questioned the
5 relevance of some information set out earlier in the
6 document, arguing that it was included mainly to cast
7 aspersions upon Concorde Construction's suitability for the
8 project and the Minister's involvement in the tendering
9 process. The Minister of Works and Engineering was
10 particularly critical of the inclusion of the information
11 in Paragraph 3. Tender Response that the cost of pre-fit
12 works can be excessive of \$700,000, noting that the
13 inclusion of such information was irrelevant as it would be
14 borne by BLDC and used to effect improvements to a
15 public-owned building. He also argued that he had made
16 clear that during the site meeting of 11th March 2010, costs
17 associated with asbestos abatement, roof repairs, mold
18 cleanup, etc., would be borne by the BDLC and not by the
19 Ministry of Works and Engineering.

20 "Although I challenged the Minister of Works and
21 Engineering's view that the information was included to
22 disparage Concorde Construction and as a criticism of his
23 involvement in the process, arguing instead that its
24 inclusion was intended to give his colleagues a complete
25 picture of the circumstances of the contract awards. I

1 accepted his view that the information that concerned him
2 did not alter in any substantial way the technical
3 officers' ultimate recommendation that the contract be
4 awarded to Concorde Construction."

5 So that's the part you were talking about?

6 A Yes, sir.

7 Q Which was deleted?

8 A Yeah.

9 Q Okay. And it is right, isn't it, that in fact as
10 it turned out, the expense was reasonably higher than --
11 substantially higher than what was the bid. If you look at
12 in Tab 6, page 17 - Tab 6 of the public binders.

13 (Inaudible discussion.)

14 A What page, 17?

15 Q Page 17.

16 A Yeah.

17 Q We see that the original bid was for --

18 A 974.

19 Q -- 974, and with the change orders. The change
20 orders were 797.

21 A Right.

22 Q So the final bill was for 1,771,000.

23 A Right.

24 Q Which is approximately, mental calculations are
25 80 percent higher than the original bid?

1 A Right.

2 Q I ask you to have a look at, in the same binder
3 at --

4 (Inaudible discussion.)

5 Q In the witness statements, the (Hassell) statement
6 at Tab 18.

7 A Uh-huh. Yeah.

8 Q If you go to the exhibit again, and if you look
9 at the page numbers at the bottom in handwriting, if you
10 look at page 32.

11 A 32.

12 Q You'll see again an email in the middle of the
13 page from Lucy Chung on April 5, 2010.

14 You see that?

15 A Yes, sir.

16 Q And it's copied to Permanent Secretary Horton,
17 Robert Brady and... Lawrence Brady rather... Jeremy Burnham
18 and Charlie Borman. It's addressed to Acting PS Outerbridge.

19 "Per our discussion this morning, we have
20 revised the Cabinet Award Recommendation as requested to
21 award it to Concorde Construction. We would like to note
22 our department's recommendation differs and our concerns
23 which were outlined in the email below still stand. To
24 reiterate our main concerns, Concorde bid may not
25 necessarily be the lowest bid. Two, the proper tendering

1 process does not allow a bidder to revise his bid.
2 Normally they either stand by their bid or withdraw their
3 bid. Otherwise, other bidders should be given the
4 opportunity to revise their bid and the whole process is
5 compromised."

6 I mean, do you agree with that sentiment?

7 A Yes, I agree with it. I'm not sure if Concorde
8 revised their bid. Maybe something was added, I don't know
9 because, you know, that's the only way it would have been revised.
10 Something changed from the Ministry.

11 (Inaudible discussion.)

12 Q I think it was... One consequence was Concorde was still
13 the only... Concorde was told that you don't have to worry
14 about the air conditioning and worry about the ceiling.

15 A I think the technical officer was told that also. All
16 was told on the meeting.

17 Q PS Horton's evidence when he gave evidence here
18 in relation to that point, that was clear, that only
19 Concorde knew that that was the diminution in the scope of
20 work, the other bidders did not.

21 A Well, Mr. Hargun, I beg to differ. If there's any
22 change that would affect any contract, I would always tell
23 them send it to everybody. So that's Mr. Horton's opinion.

24 Q And that's also been suggested by Lucy Chung.
25 Lucy Chung is basically saying it should be re-bid.

1 A Why didn't they re-bid it? That's not for me.

2 Q It wasn't re-bid because I think that.. I think it
3 wasn't rebid because, if you look at the page 30.

4 A Page 30?

5 Q Yes.

6 A Yeah.

7 Q This is from PS Horton.

8 A To Lucy Chung?

9 Q To Lucy Chung of April the 3rd, 2010. Cabinet
10 Award Recommendation re Lab at Southside. "Lucy, I have noted
11 your email suggesting that the work for the new lab at
12 Southside should be put out to tender once again. However --

13 A Where are you reading from, Mr. Hargun?

14 Q If you look at the handwritten script at the
15 bottom, page 30.

16 A Page 30.

17 (Inaudible discussion.)

18 Q I may have confused everybody. We're still in the
19 statement of (Hassell).

20 A You took me to the page 30 of the memo from Horton to
21 Lucy.

22 Q No. Can you help him.

23 (Inaudible discussion.)

24 A I don't see it here.

25 Q That's all right. If you look at it, the email

witness

1 at the bottom. There are two emails, right, from the bottom
2 is from Robert Horton.

3 You see that?

4 A Yeah.

5 Q To Lucy Chung?

6 A Uh-huh.

7 Q April 3rd, 2010?

8 A Yeah, got it.

9 Q "Lucy, I have noted your email suggesting that
10 the work for the new lab at Southside should be put out to
11 tender once again. However, the Minister's anxious to
12 take the Cabinet Award Recommendation regarding the encaptioned
13 letter back to Cabinet on Tuesday. Will you modify the attached
14 document where necessarily, mindful of your discussion with
15 Mr. Burgess. [inaudible 12:39:48 -- and you suggested the amount
of
16 the contract] as I shall be abroad next Thursday. Please speak to
17 Stephen Outerbridge regarding any challenges."

18 The suggestion seems to be that whilst she made the
19 suggestion of recommendation that the entire project be rebid. It
20 wasn't rebid.

21 It appears from the email that, Mr. Burgess, you
22 were looking to take it to the Cabinet?

23 A Well, you know, this was no discussion that was
24 had with me. So you know, if that discussion... The fact
25 that the discussion should have been held with me. It wasn't

1 held with me.

2 Q Okay.

3 (Inaudible discussion.)

4 CHAIRMAN EVANS: That email was April the 3rd and
5 it suggests the matter would go... The Ministers was anxious to
6 take the matter to the Cabinet on the following Tuesday,
7 which would be April the 6th. Mr. Horton in his statement,
8 Paragraph 70, says the recommendation is the 12th of April and
9 that would have gone to Cabinet on the following day, the
10 13th of April. He says there's no record of the Cabinet
11 decision that day.

12 I wonder whether there is a record of a
13 Cabinet decision on the previous Tuesday, the 6th of April.
14 It would mean the decision was made before the
15 recommendation was made. And I wonder if that's what
16 happened.

17 MR. HARGUN: There is no Cabinet conclusion on
18 this contract.

19 CHAIRMAN EVANS: Even on the 6th of April?

20 MR. HARGUN: No. It appears that it was never taken to
21 Cabinet.

22 THE WITNESS: I couldn't answer that but I'd
23 have to get approval from Cabinet to do that.

24 **BY MR. HARGUN:**

25 Q That's what the Financial Instructions say. We

1 have not been able to find one, Mr. Burgess.

2 A Well, they should have had... If that is the case, I mean
3 I mean, the thing is, they're the ones that prepares the
4 documentation to bring to the PS. Obviously, if that's the
5 case, they didn't prepare the documentation because the PS
6 would have presented it to me to take to Cabinet. So that's
7 why I'm puzzled with that one.

8 Q I'll move on to another point.

9 (Inaudible discussion.)

10 CHAIRMAN EVANS: Mr. Hargun, can we take a short
11 break.

12 MR. HARGUN: Certainly, sir.

13 CHAIRMAN EVANS: Just a few minutes. Thank you.

14 **(Recess taken) (Recess ended)**

15 **BY MR. HARGUN:**

16 Q Mr. Burgess, can I ask you to have a look at the
17 witness binder and go to Tab 11. There you will find the
18 witness statement of Ms. Cox.

19 A Uh-huh.

20 Q And do you have it?

21 A Yes, sir.

22 Q Now, just to Paragraph 1. She's just giving a
23 background in relation to government posts. In Paragraph 2
24 she's dealing with the general issue of delegation,
25 delegations in the sense that where it could be said the Minister

1 of Finance had delegated authority to another Ministry in relation
2 to products and so on. Then, paragraph 3 she's still dealing with
3 the issue of delegation under the Public Lands Act and I want
4 to read that paragraph slowly with you and then ask you a
5 question at the end.

6 A Yes, sir.

7 Q And that's a factual question not a legal
8 question.

9 A Uh-huh.

10 Q She says, "Under the provisions of the Public
11 Lands Act 1984, the Act as amended, the Minister with
12 responsibility for Works and Engineering is assigned the
13 charge and management of, one, Public Works and Engineering
14 as well as the charge and management of all public lands,
15 other than parks and highways, and public buildings and the
16 construction, erection, improvement, maintenance and repair
17 of such lands and buildings. Section 7 of this Act
18 provides that the Minister may delegate any of his
19 functions to the Permanent Secretary or such other
20 officers as the Permanent Secretary may specify." Right?

21 Now, that's all I want to read. And I will read
22 you again the last sentence which says, "Section 7 of this
23 Act provides that the Minister," that is formerly you, "may
24 delegate any of its functions to the Permanent Secretary or
25 such other officers as the Permanent Secretary may

1 specify."

2 And the question I have for you and it is a
3 factual question is, You never delegated that authority?

4 A I can't recall in my term as a Minister.

5 MR. HARGUN: Okay. Thank you very much,
6 Mr. Chairman, that's my examination.

7 CHAIRMAN EVANS: Mr. Lynch.

8 **BY MR. LYNCH:**

9 Q Yes, just a moment. Let me start, please.
10 Dealing with Cabinet papers. Just give me one moment, please.

11 If we turn to the Cabinet papers, the small
12 bundle, and sir, I think it would be most helpful if we can
13 turn to page 10-41, which is the Minutes of a Cabinet
14 meeting that took place on November 4, 2008, dealing with
15 the new Magistrates Court and Hamilton Police Station.
16 Just pause one moment so everybody can turn to the appropriate
17 page. It's at page 10-41 which is about half through.

18 Can you see... The public don't have this because
19 they're Cabinet Minutes, but it's two pages of closely
20 typewritten script; correct?

21 A Uh-huh.

22 Q And these two pages are said to be extracts from
23 the Minutes of the Cabinet meeting. That is to say, they
24 don't (be) included here, the part that's relevant
25 because, obviously, a Cabinet meeting might cover a number

1 of different subjects.

2 When you present as the Minister to Cabinet, do
3 you have a Cabinet paper in advance of making any
4 presentation?

5 A Well, we get Cabinet papers. We normally met on
6 Tuesdays; you'd get the Cabinet papers on Fridays.

7 Q So the Cabinet meets on which day of the week?

8 A Tuesday.

9 Q Tuesday. The Cabinet paper which the Minister,
10 any particular Minister in any particular matter obtains
11 that on about the Friday before, may that vary, may it be
12 it's closer to the Tuesday or can it be longer?

13 A Yes. And sometimes you get the Cabinet papers
14 Friday and not all of the papers are in there. You get some
15 the morning that you go into Cabinet.

16 Q Right. So the general rule is, there is a
17 Cabinet paper in advance or a meeting at which the Minister
18 is making any presentation?

19 A Yes.

20 Q When you get the Minutes that we can see here in
21 detail, detail material contained in it - much of which has
22 been read by my learned friend - when you get that kind of detail
23 is that something that comes off the top of your head or is that as
24 part of the Cabinet paper that you've been given by your Ministry?

25 A We'd been given those papers by the... Comes from, via

1 the technical office to the Permanent Secretary.

2 Q So just so that we all understand the position, you're
3 given a paper in advance of the Cabinet meeting. Do you read it?

4 A Particularly if it's pertaining to my Ministry,
definitely then.

5 Q Specifically dealing now with **your** Ministry.

6 A Yes.

7 Q Do you read the document that's being given to
8 you?

9 A I try. I try my hardest because, you know, you
10 want to be -- You don't want to go down to the Ministry --

11 CHAIRMAN EVANS: I think that may be a
12 misunderstanding. Do you mean does Mr. Burgess read it
13 himself?

14 MR. LYNCH: Yes.

15 CHAIRMAN EVANS: Or does he read it out to the
16 Cabinet?

17 **BY MR. LYNCH:** Let's take both of those separately, Yes.

18 Q First of all, do you read it to yourself?

19 A Oh, yes.

20 Q And who gives it to you?

21 A My -- Well, you get it from -- It comes from the
22 Cabinet office because the papers are taken to Cabinet and
23 they come from the, I believe from the Cabinet Secretary.

24 Q Who would be responsible for preparing it?

25 A I think those papers would be prepared by the

1 Permanent Secretary. He would -- yeah. He would be the
2 final --

3 Q So, in this instance, Mr. Horton, who would
4 prepare or have other officers prepare a documents which is
5 then presented by you?

6 A Uh-huh.

7 Q You would read it to yourself?

8 A Yeah.

9 Q When you get to the Cabinet, do you read it back
10 to the Cabinet or do you read selected parts of it? How does
11 it work?

12 A Selective parts of it unless they want to hear
13 everything then we read from all the documents.

14 Q When you get the Minutes afterwards, do the
15 Minutes reflect that Cabinet paper or do they reflect what
16 you're saying?

17 A I don't recall. I don't think we get Minutes.
18 The Ministers don't get the Minutes.

19 Q We see the Minutes here of the Cabinet meeting.

20 A Yeah, but I think those are... Maybe Cabinet
21 conclusions on the particular... Like for example, if it was
22 a contract, then there would be a Cabinet conclusion that
23 would go to the Permanent Secretary. But I don't recall
24 ever getting Minutes from a Cabinet meeting.

25 Q Do you get Minutes of a meeting from the last

1 Cabinet meeting at the start of the new Cabinet meeting?

2 A I don't think so. I can't recall. I don't think
3 so.

4 Q In any event, there's a Cabinet paper prepared by
5 your department, handed to you in advance by your Permanent
6 Secretary which you use to make a presentation?

7 A Well, it doesn't come directly. It comes from the
8 Cabinet Office because the papers have to be sent down to
9 Cabinet, to the Cabinet Secretary by the Permanent
10 Secretary. And that's when the bundle is (handled) and given
11 to Ministers.

12 Q All right. Can we just have a look at a couple
13 of bits. Bearing in mind, this is a Minute that reflects
14 what the Cabinet were being told in November, 4th of
15 November 2008 in respect of the Magistrates Court Hamilton
16 Police Station Building. Right?

17 Can we have just a look, the second page of that
18 Minute and the third paragraph.

19 Do you see the third paragraph? Let's just read
20 it briefly.

21 "The Minister reported that the performance bond
22 in the amount of \$7.2 million provided by Aviva Insurance,
23 Inc., Aviva, a Canadian company, had been regarded by the
24 Ministry of Finance as inadequate because a very failure on
25 the part of either Aviva, Lisgar or LLC to ensure that

1 adequate funds or assets were available in Bermuda in the
2 event that the bond had to be called following completion
3 of the works or substantial default by LLC." Right?

4 A Uh-huh.

5 Q Are these your words?

6 A No, they're not my words.

7 Q Right. Where do you get that information from?

8 A This information would come from the technical
9 officers... Well, from the PSB of the technical officers.

10 Q Did you have any understanding as to whether your
11 Government's Attorney General had been involved in that
12 matter?

13 A A contract of this magnitude, the AG's chambers
14 would be involved.

15 Q Can you now recall whether you had received any
16 advice... just a yes-or-no answer, please... because I'm
17 concerned about privilege, but do you now recall whether
18 you received any advice from the Attorney General's
19 Department about the validity of the bond?

20 A No.

21 Q No, you don't recall or no, you didn't get any
22 advice?

23 A Didn't get any advice.

24 Q Is the Attorney General a member of the Cabinet?

25 A Yes.

1 Q Is he sitting there when this is being discussed?

2 A Yes.

3 Q Is it his responsibility in the event that he
4 recognizes any difficulty as far as the law is concerned to
5 raise that?

6 A He would have. I think he would have raised it
7 before he even got there.

8 Q Yes. As far as you're aware now, these years
9 later, do you know if any issue was raised by the Attorney
10 General?

11 A No, I don't recall.

12 Q Next then, please, on that subject. You mentioned
13 about the bond.

14 Can I ask you this, did you understand whether it
15 was possible to have a bond in Bermuda, a Bermudian bond?

16 A In a conversation that my PS and I had with Larry
17 Dennis; he came to our office and he acknowledged you cannot
18 get a bond in Bermuda.

19 Q Does it come to this, you want a \$7 million bond,
20 you have to have 7 million to put in the bank.

21 A Right.

22 Q There's no point in having a bond, is it?

23 A Exactly.

24 CHAIRMAN EVANS: If the Cabinet Minutes shows
25 that the matters for concern was whether there were assets

1 in Bermuda to back up a bond -- (Inaudible discussion.)

2 CHAIRMAN EVANS: I don't want to teach anybody to
3 suck eggs, but a bond is a contract and that can be with
4 anybody, Bermudian or Canadian or whoever. Since it's a
5 bond, you want to have some assets to back it up. They can
6 be in Bermuda or anywhere else. If they're somewhere else,
7 the question arises, what would be the prospects of
8 enforcing a judgment against assets whatever they are.

9 THE WITNESS: Uh-huh.

10 CHAIRMAN EVANS: On the face of it the Minute was
11 just concerned with the absence of any assets in Bermuda?

12 **BY MR. LYNCH:**

13 Q Well, was it your understanding that there was a
14 difficulty - I don't want to put any higher than that. If
15 it's a matter of law, it's a matter of law, we can deal with
16 that otherwise, but was it your understanding there was
17 a difficulty with the bond?

18 A I didn't know there was any difficulty because I
19 was not the Minister at the time that this contract was
20 done up. But I did know afterwards, you know, because
21 under the new owners, LLC, we discussed the bond and we
22 arranged, as my PS had correctly done, we start withholding
23 15 percent of payments that they were getting, you know,
24 from W&E.

25 Q Instead of having a bond?

1 A Instead of having a bond, yeah.

2 Q Thank you.

3 A And that was, and after that the totals were held
4 for a certain period of time, before LLC can get that money
5 back.

6 Q Can we next look, please, at Tab 10, page 229?
7 Before we deal with this specifically, can I ask
8 you first of all, to have this bundle, please.
9 (Inaudible discussion.)

10 Q Just tell us what that is please.

11 A It's a witness bundle addressed to the Honorable
12 DV Burgess, (re) the Commission of Inquiry July 2016.

13 Q And open it, would you, please?

14 A Yes, sir.

15 Q To the first page.
16 And can you tell us what it shows on the first
17 page?

18 A Well, it shows eight projects: Port Royal,
19 Heritage --

20 Q Pause just one moment, please.
21 It shows eight projects, yes?

22 A Yes, sir.

23 Q Can you now tell us, please, slowly which of
24 those eight projects it tells you about?

25 A It tells us about Port Royal Golf Course.

1 Q Right.

2 A Heritage Wharf, Bermuda Emissions Control
3 Limited, Renovations of Human Resource, Commercial Courts,
4 Maintenance and Storage, Central Laboratory and Southside
5 Laboratory Contract.

6 Q Does it say anything at all there listed to do
7 with the Magistrates Court or the police station?

8 A No.

9 Q Did that bundle come together with a letter from
10 the Commission of Inquiry dated the 25th of July?

11 A I know a letter came with it but I don't have it in
12 front of me.

13 Q I do. So just bear with me for a moment. Accept
14 with me that there's a letter addressed to you dated 25th
15 of July 2016?

16 A Okay. Uh-huh.

17 Q That letter came together with that bundle, did
18 it not?

19 A Yes, sir.

20 Q And it required you, to, or asked of you to
21 provide answers to a series of questions.

22 A Uh-huh.

23 Q And that was the first that you heard of any
24 desire by the Commission of Inquiry to ask you questions
25 for this purpose?

1 A Uh-huh.

2 Q Throughout that letter when it asked detailed
3 questions, and I can tell you what it is worth, it's an
4 eight-page letter, it deals with each of the eight topics
5 that are listed there, doesn't it?

6 A Right.

7 Q And asks specific and pointed questions in
8 relation to each of those topics?

9 A Yes, sir.

10 Q When was the first that you understood you were
11 going to be asked anything at all about the Dame Lois
12 Building?

13 A Today.

14 Q I think, with me you were able to look at a
15 number of documents nonetheless about that in advance of
16 today?

17 A Yeah.

18 Q We haven't been, as it were, told a few days ago
19 you might be asked about it.

20 A Right.

21 Q That aside, is that the first that you had of any
22 notification that you would be asked to go back all those
23 years and think about your part and look at emails dealing
24 with these events?

25 A Yes, sir.

1 Q Thank you. Had you been asked in advance to do
2 that, would it have given you a greater opportunity to have
3 considered your answers and the way that you might have
4 dealt with them.

5 A No... I really tried to refresh my memory, you
6 know!

7 Q Can you then please... Can I have that folder back?
8 (Inaudible discussion.)

9 Q Tab 10, please, in our volume... the exhibits,
10 bundle Tab 10.

11 A Was it bundle 1 or 2?
12 (Inaudible discussion.)

13 Q This is your giving evidence before the
14 Committee, Public Accounts Committee, on the 22nd of May --

15 A What page?

16 Q It's page 229 at the top, should say 10-229 at
17 the top. But page 45 of the transcript at the bottom.

18 A Yes.

19 Q You're at the Public Affairs Committee, Accounts
20 Committee?

21 A Uh-huh.

22 Q Giving evidence before them earlier this year.

23 A Uh-huh.

24 Q Correct?

25 A Yes.

1 Q After the Commission of Inquiry has been
2 announced, but before you're asked any specific questions
3 by the Commission of Inquiry to address.

4 A Uh-huh.

5 Q You nonetheless volunteered, as I understand it,
6 to give evidence before the Public Accounts Committee?

7 A I volunteered to come here. I met Ms. Luck and
8 Mr. Bradshaw and I said if I'm not invited, I'll invite
9 myself to come to this Hearing because I want to testify.
10 So I didn't have to be subpoenaed.

11 Q I'll stick to the question I've asked in a minute.
12 At the Public Accounts Committee Hearing you were asked a
13 number of questions. And we've been... And you've had your
14 attention drawn to the questions you were asked by Mr Souza
15 who says this, "Okay, I'm not familiar with this company.
16 Who was the principals of this Landmark Company," and clearly
17 he's referring to LLC?

18 A Right.

19 Q All right. And your answer to that is,
20 "Landmark," and it's written Landmark with a question mark,
21 "and then Bryan was last."

22 What do you mean by last?

23 A I don't know myself.

24 (Inaudible discussion.)

25 Q Maybe there's some difficulty with the

1 transcript itself and I suspect it might be. "Lee Matvey,
2 Winters Burgess," and it should say Vincent Hollinsid
3 rather than Winston. That's before "I know." All right.

4 Now you told my friend repeatedly that you don't
5 know when you found that out, whether it was the day before
6 or years before. That's as I understand your recollection.

7 A Yeah, it's none of my business.

8 Q Pausing there for a minute, please.

9 Is this something that has featured from time to
10 time in the press one of which we've seen?

11 A Every project, Berkeley included, that was awarded
12 to a firm with blacks involved, it was the media, they had
13 a field day every day, every day.

14 Q Maybe you've heard it that way?

15 A I really can't answer that. I don't know when
16 they became partners or whatever.

17 Q The media is not limited to the newspaper, is it?

18 A No, it's not.

19 Q There are a variety of radio shows and such like.
20 Some of which have a certain amount of notoriety where these
21 matters might have been raised.

22 You call Winter Burgess your uncle?

23 A Yeah.

24 Q Out of respect for his age; correct?

25 A Well, he doesn't look much older than me, but I

1 do call him Uncle.

2 Q Don't worry about offending him. Is he here?

3 A Yeah, he's got children my age.

4 Q Mr. Burgess, how long have you known him? How
5 long have you known Uncle Burgess?

6 A Long time, like I know many people, long time.

7 Q He's a black man, I take it?

8 A Yes.

9 Q Where does he live?

10 A Hamilton Parish - (God's Bible belt).

11 Q Is that your Parish?

12 A Yes, certainly.

13 Q Was that the Parish which you represented?

14 A Yes, sir.

15 Q Is he the sort of chap you'd bump into in church
16 or in the streets?

17 A Not in church. County game. In the streets.

18 Q All right. Help me about this, please.
19 Do you know the difference between a partner, a
20 principal, a shareholder, an equity partner or any other of
21 those things in a company? Do you know the difference?

22 A To me they're all the same.

23 Q Or director even?

24 A They're all the same. You're all getting
25 profits, sharing in the profits.

1 Q And so if expression is used to you, who were the
2 principals of a company, would you understand that? How
3 would you take that?

4 A I take it as who are the owners, who is
5 responsible for this property, for this company.

6 Q Whether they own it?

7 A Or not.

8 Q Or not. But are party to it?

9 A Uh-huh.

10 Q The Bermuda Drywall Company you told us was a man
11 by the name of Hollis; is that right?

12 A Devree Hollis.

13 Q Devree Hollis, black?

14 A Oh, yes.

15 Q What does he do?

16 A He's a drywall specialist, one of the best in the
17 country.

18 Q Forgive me for sounding ignorant but what is a
19 drywall specialist?

20 A Well, you get a shell. Let's say this building
21 right here, this room, and you want to divide it up into
22 different rooms. You'll really drywall it. After you put
23 all the frame-work you drywall it instead of putting in stone.

24 Q The project that he was bidding on, did that
25 involve dry walling?

1 A Oh, yeah, because you had to reconfigure the
2 whole -- the floor.

3 Q This was the commercial court building?

4 A Well, it was known as the Finance Department.

5 Q Right.

6 A And they were refurbishing and then they included,
7 they cut some of the Finance down and they included two courts.

8 Q We now have as the commercial courts?

9 A Yeah.

10 Q And you stated both in your statement and in
11 answer to questions, you as a part of the Government's
12 desire to want to enfranchise black people who can carry
13 out some Government work?

14 A Yeah.

15 Q Did that play a part in your seeking to award the
16 contract to the Bermuda Drywall Company?

17 A Yes. And I make no apology for it.

18 Q Not suggesting you should, but so the Commission
19 can understand, that there was a degree - I hope I can put it
20 this way - a positive discrimination toward black builders
21 to try and to carry out Government work?

22 A All my life, before my life and (it continues).

23 Q And this was a deliberate policy on the part of
24 Government, not just you?

25 A Uh-huh.

1 Q And stating it so some years earlier?

2 A Well, that was in the PLP's 1998 platform. Dame
3 Jennifer Smith had to get up in Parliament on November 22,
4 2002 and to... Because one of the Ministers done just that and
5 was criticized by the then OBA and Dame Jennifer Smith got up
6 to reiterate the policy of the Progressive Labor Party is to
7 enfranchise those that had been disenfranchised over the
8 years, all their lives, I should say.

9 Q You say you make no apology for making that
10 positive discrimination.

11 A No.

12 Q If you saw in your time as the Minister for Works
13 did you weigh up sometimes if you had a white company and
14 a black company that the prices were similar, would that
15 make a difference to you which one is which?

16 A Yes, in a sense that if, for example, let's say
17 three contractors bided on a job and the black guy's price
18 was a million and the white guy's price was 900,000. And
19 they both were on equal standards as far as being able to
20 do the job, there wouldn't be a problem for me. I'd have to
21 give it to the white guy because I'm not going to throw that
22 type of money away. But if we're talking about \$10,000, to me
23 it's not a big issue depending on the size of the contract.

24 Q Size of the contract?

25 A Yeah.

1 Q So if it was marginal, the black guy would get
2 it?

3 A Because he's been discriminated against all their
4 lives.

5 Q Did you feel that you had the cooperation with
6 that policy of your department?

7 A I certainly had it with my Permanent Secretary.

8 Q That's Mr. Horton?

9 A Yes, sir.

10 Q Who was [officially certified 01:13:37]?

11 A Yes.

12 Q What about in the Architects Department?

13 A No, definitely not.

14 Q What makes you say that?

15 A Well, you know, one of them put some fraudulent
16 cheques in the file after talking to a senior staffer from
17 the Audit Department. I have that in writing. Job said
18 they put out for tender, for example, Veritas Place. I can
19 give you many but let me choose that one.

20 We got a contract from them for \$1,228,000. And
21 I said, when Bobby brought that to me, what the hell am I going
22 to do with this money. So, it's for the Police. I said maybe
23 the Police needs something special. So I call the Commissioner
24 and the Minister for the police budget. And they came in and
25 we talked. I says, Commissioner, what type of office you

1 need? He said just a regular office. I said, you sure you
2 don't need no special walls or anything. He said no. I
3 said leave it with me. And I took the plans because we had
4 them there. And I asked Bobby, Look, we need two sets of
5 plans. I called the owner of the building that they were
6 supposed to go into. I said, so-and-so, can I see your, the
7 people who build your building on site; and I also asked the
8 same people that were doing the police court building,
9 I'd like to meet you on site of the Veritas Place.

10 And I gave them both plans, specifications. I said
11 this is time sensitive because I got the police up there
12 in the mould, up in Prospect. I need to get this done. I need
13 a price back in five days. One price came back of 287,000,
14 one price came back at 310,000. And I said, what was the
15 extra million dollars supposed to go. That happened again
16 at Fort Knox.

17 Q Pause there. I just want to illustrate if I can
18 your approach as to how you might deal with any particular
19 project that came your way during your tenure?

20 CHAIRMAN EVANS: Can I just... The example you gave,
21 you say you took the plans and showed them to two...

22 THE WITNESS: Gave them, not showed. Gave them to...
23 the plans along with the specifications as far as what needed to be done.

24 (Inaudible discussion.)

25 THE WITNESS: Well, they're black for start.

1 (Inaudible discussion and laughter.)

2 CHAIRMAN EVANS: Well now, I just want to follow
3 it up. That was the case where you took the documents
4 including the plans to show them to two possible contractors?

5 THE WITNESS: With the knowledge of the Permanent
6 Secretary.

7 CHAIRMAN EVANS: I see, because we did have the
8 references earlier to you.

9 THE WITNESS: Oh, yeah. I wouldn't have done it
10 without the approval of the Permanent Secretary.

11 CHAIRMAN EVANS: I see. So Ms. Chung was right
12 in one of those cases and said you took the plans. You say
13 that would have been authorized by Mr. Horton?

14 THE WITNESS: And I never, never, never took any
15 plans, never took anything out of anybody's office. I wasn't
16 brought up like that, Mr. Chairman.

17 CHAIRMAN EVANS: Any questions?

18 MR LYNCH: No. I was going to suggest. I
19 probably have finished but I would like to review where we
20 are and if you were minded to rise for lunch now, maybe
21 I'll have questions, maybe I won't. I'd like at least the
22 opportunity after the break.

23 CHAIRMAN EVANS: What do you think about that, Mr
24 Burgess. We'll have to be very careful, ask you to be very
25 careful not to talk to anybody else about your evidence

1 during the interval

2 THE WITNESS: Mr. Chair, it's what you direct,
3 that's what I will do.

4 CHAIRMAN EVANS: I want to make sure you're
5 happy to have.

6 THE WITNESS: Mr. Chair, you tell me not to say
7 nothing, regardless, I don't say nothing. Lunch time, yeah,
8 let's eat.

9 CHAIRMAN EVANS: Okay. Well, we'll adjourn till a
10 quarter past 2. And please be careful.

11 **(Recess taken) (Recess ended)**

12 **BY MR. LYNCH:**

13 Q Sir, thank you. I just have a few more
14 questions, please. Mr. Burgess, would you take back please
15 for a moment your file, which was supplied to you by the
16 Commissioner of the Inquiry in pursuit of the request to
17 provide information and a statement. Can I ask you to --

18 Can I make clear so that everyone understands the
19 position, Mr. Burgess.

20 You were instructed by my firm about a week or so ago,
21 correct, and the position is, is the additional papers that
22 form the substance of the files that we're now using were
23 supplied to us electronically and in hard core form in that
24 time in the course of the last week, so the material has
25 been available to us?

1 A Uh-huh.

2 Q Between you and your lawyers in the days
3 immediately prior to this. But, your... The bundle that you
4 were working from, if I can put it like that, if we can
5 have a look, please, first of all, our Tab 1 which deals with
6 the, described as Finance Headquarters FHQ documents. This is the
7 Commercial Courts and Finance Department. That's different
8 tab in your bundle, isn't it?

9 A Yeah.

10 Q Tab 5?

11 A Yeah.

12 Q Turn to Tab 5, please. And can you have a look,
13 please. I think the last page of your bundle, how many
14 pages is there in there that you'd been given?

15 A Well, it's 43.

16 Q 43. And we can see that it's 76 in the new
17 bundle. All right. Now you were asked about a number of
18 emails and the like in relation to this particular matter.

19 And when was the first time that you ever got to
20 see any of those emails?

21 A Well, in fact, I only got another bundle last Monday.

22 Q Right. Just take by way of example so we have
23 something in front of us, have a look, please, if you would
24 at page 7, an email from Mr. Horton to Lawrence Brady
25 copying in Lucy Chung and you.

1 A I don't have that one here.

2 Q No, that's not one featured in your bundle when
3 you were provided with it.

4 A Uh-huh.

5 Q If you take up the new bundle, please, would you
6 have a look at page 7 in that new bundle?

7 A It's at Tab 5, you said?

8 Q It's at Tab 1, page 7.

9 A Tab 1, yeah.

10 Q We can see the subject matter if you look at
11 the top, the subject matters is the Commercial Courts,
12 that's how it's described anyway. Mr. Horton, your
13 Permanent Secretary is writing to Lawrence Brady, the
14 architect, Chief Architect; correct?

15 A Uh-huh.

16 Q And is saying, Lawrence, the Minister has
17 requested that any contracts to be issued in connection
18 with the new Commercial Court in the Government
19 Administration Building, second floor, shall be held until
20 his return to the office on the 21st of October, and this
21 is being sent on the 13th of October; Right?

22 A Uh-huh.

23 Q First of all, do you recollect asking that no
24 decision is made or anything done until you return?

25 A I don't remember.

1 Q Prompted by this email, do you think that may be
2 the case?

3 A I don't think so.

4 Q Were you interested in the cost of the commercial
5 court and the Finance Department going to that building?

6 A Every contract that came before me I was
7 concerned about the cost.

8 Q Right. Just pausing there for a moment, please.
9 Having seen this email and the other emails that
10 you've been referred to. We're not going to refer to them
11 all, but having seen this one and other ones, first of all,
12 do you know where they come from?

13 A No, I have no clue.

14 Q Do you know what we lawyers call the provenance,
15 the origin of these particular documents?

16 A Uh huh.

17 Q Do you know where they come from?

18 A I see on the top of the thing, Lucy Chung's --

19 Q Email?

20 A -- email name on top.

21 Q Right.

22 A I don't, really don't know.

23 Q Do you still have access to your emails from
24 this time?

25 A No.

1 Q So are you able to say whether the emails you've
2 been shown are a complete account of all the emails that
3 passed between the people in that department and your's over
4 the relevant period?

5 A No, I can't because if an email was sent to me or
6 I was copied, the PS would get it and deal with it.

7 Q What I'm asking you specifically is whether
8 you're in a position to be able to say whether the email
9 that we look at here and over the pages, the subsequent
10 pages that have been drawn to your attention, whether they
11 are a complete list of all emails concerning these, this
12 transaction?

13 A No. No.

14 Q And are you, therefore, dependent on the
15 selection process made by whoever is responsible for doing
16 it?

17 A No, I'm not. I can't depend on them.

18 Q No. How much faith would you place in that
19 selection process?

20 A I'm going to say none because of what they've
21 done to me. They put cheques on file, fraudulent cheques on
22 file unbeknownst to me, on file December the 12th in a
23 letter to Ken Dill from Robert Horton where Lawrence Brady
24 says he put them on file from instructions of a senior
25 staffer at the Audit Department.

1 Q Whatever the position is then, the position today
2 as you sit there now, what degree of confidence you
3 have that you got a full list of all emails that pass
4 between the relevant people concerning this transaction?

5 A I have no confidence, none whatsoever.

6 Q Can I ask you --

7 (Inaudible discussion.)

8 Q Forgive me for a moment, please. Yes. If you
9 turn please to in the new bundle, page 17, this is not one
10 that featured in the old bundle, the bundle that you were
11 originally given.

12 A Yeah.

13 Q We can see here there is an email, it's dated the
14 28th of November 2008.

15 A Uh-huh.

16 Q This is a month or so before Christmas of 2008?

17 A Right.

18 Q And it's an email --

19 CHAIRMAN EVANS: Can we have the page, please.

20 MR LYNCH: Please forgive me. Page 17.

21 MS LUCK: And tab?

22 MR LYNCH: Tab 1, sorry. We're still in Tab 1. Sorry.

23 (Inaudible discussion.)

24 **BY MR. LYNCH:**

25 Q The original tab that was given to us was Tab 5.

1 But the one that we're now on are from your Tab 1 and the email
2 there is from the person called Jonathan Castro who I think
3 you said you have no recollection of him.

4 A Don't know him.

5 Q And this is the account given by him to -- sent
6 from him to Lucy Chung and copied to Lawrence Brady, do you
7 see?

8 A Uh-huh.

9 Q This is an account of him with you going into the
10 office with somebody else and taking apparently some plans
11 which you say is not true. All right?

12 A Uh-huh.

13 Q When was the first time that you had an
14 opportunity to consider that?

15 A I think I saw these yesterday, I think.

16 Q In the last few days?

17 A Yeah.

18 Q Can you just help us about this. This is not
19 copied to your Permanent Secretary?

20 A No.

21 Q It's not copied to you?

22 A Huh-uh.

23 Q Did anyone call you as best as you can recall
24 from the Architects Department and say, what's going on,
25 Minister, how come you come into our department taking up

1 some drawings?

2 A No one's called me and if that was true, I would
3 have expected that.

4 Q Would you expect a junior member of staff of the
5 Architect's Department to be writing to the senior staff
6 members of the Architects Department pointing out something
7 that happened without bringing it to the attention of
8 either you or your Permanent Secretary?

9 A It was a student architect.

10 Q And if you go up the page you'll see that
11 Lawrence Brady then does bring it to Bob Horton's attention
12 later that morning. And he says, "I refer to Mr. Castro's
13 email received this morning. Needless to say this action
14 causes me great distress that someone, be it Minister or anyone
15 else,"
16 blah, blah, blah, coming into the department and taking drawings.

16 And do you see that?

17 A Yes.

18 Q Was that ever brought to your attention?

19 A Never.

20 Q By Mr. Horton?

21 A First I've heard of it. First, this week,
22 yesterday, I think it was.

23 Q He says, that was Mr. Brady, "In the light of our
24 meeting with the Auditor General this week, we are entering
25 a very risky approach in best practice and procedures."

1 Do you understand what he means by that?

2 A No.

3 Q I think that's all I need to ask on that point. Thank
you.

4 Next, would you please turn to Tab 6 in our
5 bundle, that's the new bundle. It's Tab 8 in your bundle.
6 Have a look, please. 6 deals with Central South
7 Laboratories, Southside, I think that's --

8 (Inaudible discussion.)

9 Q Is that right?

10 A Uh-huh.

11 Q And again, are there some emails contained in our
12 new bundle which are not in the old one?

13 A Most certainly. In fact, there's no emails in this
14 one.

15 Q Yes, I know. Can you turn, please, to page 5 of
16 the new bundle, which is an email from Lucy Chung to
17 Lawrence Brady.

18 Do you see that there are two emails on that
19 page, one up at the top which is the replies, you have to
20 start halfway down the page because it's in reverse order.

21 The position is, this is an email that now we're
22 dealing with a period on the 13th of April of 2010. All right?

23 A Uh-huh.

24 Q So this is post the cheque issue; right?

25 A Uh-huh.

1 Q The previous one we looked at dealt with before
2 cheques were found on the account. Anyway, having a look at
3 that, we can see that this is sent by Lucy Chung to
4 Lawrence Brady.

5 Again, no one copied in, not your Permanent
6 Secretary or anyone else, just as between the two of them.
7 All right?

8 A Yeah.

9 Q Again, are you able to say whether this is a
10 complete breakdown of all the emails that passes in the
11 department or not?

12 A Well, it hasn't gone to the PS; definitely hasn't
13 come to me.

14 Q Having a look at that email, it says in terms, "I
15 received a copy of the CAR today for Concorde Construction,
16 Building 322 Southside Laboratory Project as revised by the
17 PS. He did not advise Cabinet approval was received. It
18 differs significantly from what we prepared for the acting
19 PS, Outerbridge.

20 In our version we had removed our department's
21 name from the heading because it was a recommendation put
22 forth by the Minister and not our department. In addition,
23 some facts were omitted, overall document was misleading
24 and gives the impression that a somewhat proper tendering
25 procedure was followed, and that our department not only

1 recommended Concorde, but feel they were experienced and
2 qualified to do the job."

3 Pausing there for a minute, again an internal
4 complaint made from a junior member of the Architects
5 Department to the most senior architect about what had
6 happened.

7 Would you as Minister have expected that to have
8 been sent to your Permanent Secretary?

9 A I would have thought something as serious as they're
10 discussing that's where it should have went. That's their boss.

11 Q And she says, "My question is how much detail
12 should I go into when I respond to the PS in terms of
13 setting the record straight. Should I just acknowledge
14 receipt and mention that it was somewhat misleading or
15 should I outline the misleading evidence point by point.
16 Should I draw it to anyone else's attention? Thomasina."

17 Who is Thomasina?

18 A Thomasina is the financial controller or
19 whatever, something in Finance, in charge.

20 Q She was in charge of Finance, was she?

21 A Yeah.

22 Q Then at the top, the response from Lawrence Brady
23 back to her, again, not including anyone else at this
24 stage, "Sorry for the delay, Lucy." He's responding the
25 following three days later. He says this; "(Down in Greece

1 GPS does not work ?). I would say inform Thomasina in a memo
2 as she is the CFO", Chief Financial Officer, "and has to be
3 made aware of it. If you don't get any response, then it
4 would have to go/be to the Accountant General."

5 It's clear he was not suggesting that she should
6 make any complaint to you?

7 A Or to the PS. The PS is her boss.

8 Q Would you have expected that to have been
9 conveyed to you?

10 A I... At least I would have expected it to be conveyed
11 to the Permanent Secretary.

12 Q Turning, please, to page 17, is page 17 in your
13 binder?

14 A No.

15 Q Can you turn to 17 in the bundle they've now
16 provided?

17 A Yeah. This is the... It's described as the Payment
19 Certificate for Contract Services to Concorde Construction,
20 who at your behest won the contract to carry out this work?

21 A Yeah.

22 Q Can we just see, please, what does it mean, is
23 this a document with which you're familiar?

24 A No.

25 Q Have you ever seen such a document?

1 A I've not seen it and first I'm seeing of it.

2 Q Do you see at the, towards the bottom, it
3 describes that it is signed off on the 28th of March 2012
4 by somebody, is it Simmons?

5 A Simmons.

6 Q Do you know who that is?

7 A I can't make out the name, first thing, but I do
8 know there's a young man Simmons who I believe worked in
9 Accounts.

10 Q Right. Anyway, this has been apparently signed
11 off as being approved; correct?

12 A Yeah.

13 Q And it's for an original... If we just look at
14 the statement account, the original contract sum is
15 974,500?

16 A Right.

17 Q Change orders on the agreed CCDs, I have no idea
18 what that means. No doubt someone will help me.
19 797, that's 797,288.50?

20 A Uh-huh.

21 Q And then contract sum to date, 1,771,788 and 50 cents?

22 A Uh-huh.

23 Q Total value of the work completed today/to date and then
24 it sets it up there?

25 A Yes.

1 Q And this has been approved.

2 Is this something that you have anything to do
3 with?

4 A The Ministers are not involved in the accounting
5 of anything in the Ministry. They won't get this here.
6 And no one has even told me about any change orders but
7 change orders come as a result of changes in the project.

8 Q Yes.

9 A And it's done with the -- it's done by the
10 approval of the technical officers on site.

11 Q Yes. Thank you very much. That is all I need to
12 ask you about those documents. Lastly this, please.

13 Your statement sets out, if I can draw your
14 attention, please, to Paragraph 8 of your statement which
15 deals with the Chief Architect, Mr. Brady, and your
16 observation there that you regarded him as often working
17 against the interest of the Government.

18 A Yeah.

19 Q Given the stated policy that was the Government's
20 and franchising a greater number of black people who had
21 the ability to carry out this work, did you regard the
22 Architects Department or their officers as being on board,
23 if I can use that vernacular, with your policy?

24 A No, I don't think so. In fact, let me take it to
25 Cockburn Bridge. We had to get two-way traffic across

1 Cockburn Bridge. And I had a meeting with the... The engineers
2 came into my office and they had the drawings for a bridge
3 to build the Cockburn Bridge. I wasn't fussy about it, so I
4 asked them, What is the total funding for that? They said,
5 8 million. I said, We're not doing to do it. They got
6 annoyed, one fellow even resigned. But I met a Bermudian at...
7 in fact, Dennis Correia who's world renown for his work.
8 I've seen him in the international books.

9 I said, Meet me at Cochrane Bridge. I said,
10 Dennis, what would you do to get two-way traffic across
11 this street? He said, I'll do a replica of what you've got

12 Q Sorry?

13 A He'd do a replica of what was already there.

14 Q Yes.

15 A I said, Okay. What do you think it will cost?
16 He said, Under a million. Well, we done it. And we saved
17 7 million dollars.

18 Again, another one, Club Med. Club Med, they had
19 -- I said, I want to knock down Club Med before Cup Match.
20 This was one January. I don't know what year, whatever year
21 it was. And they told me, you can't knock that down by Cup Match.
22 You're going to be all this year and part of next year. I said

okay,

23 I said, what is the total approved funding? They said, 20 million.
24 I said, We're not going to spend 20 million.

25 So we called various peoples but we got hold of Ambling,

1 Ambling. We shared in the expense of the Ambling contract.
2 So we had a conversation with him. And payments were sent
3 to him. And he brought up the idea of - talking to whoever he
4 was talking to - about implosion. And we imploded it. And it cost
5 \$13 million. Another savings of \$7 million. We would have
6 finished before Cup Match but we had some asbestos problems.

7 Q These are just illustrations in what you're
8 saying?

9 A Yeah.

10 Q The point is this isn't it. Your desire on the one hand
11 to ensure black contractors got work combined with the need
12 to save money?

13 A Yes.

14 Q And is there anything that you did that you think
15 was wrong?

16 A Well, you know, if the taxpayer is going to
17 complain that what I've done saved them \$17 million, then I
18 guess let it be.

19 Q See, the wiff is left in the air, as to
20 potential corruption here. Do you understand?

21 A I understand that history.

22 Q And what do you say about that?

23 A Well, you know, what I say about that, it was in
24 1933 the Berkeley Institute asked the Government for funds
25 to enable them to extend because that was the only black

1 school at that time for children, blacks, other than
2 the AME schools for high school in St. George's. And the
3 Government said yes, but we will name your Chairman and we
4 will add additional people to your board. In other words,
5 we don't trust you but we put our people there to watch this money.
6 Now, there were others schools, Saltus, Bermuda High School for Girls and
7 St George's Prep, Whitney Institute, got money from the Government.
8 No such requirement was asked of them.

9 They had to watch blacks. Because it was a black school
10 they had to watch them. Never watched white schools. And not
11 all -- let me make it very clear. Not all white people are
12 racist. My grandmother was white, one of my grandmothers
13 was white.

14 MR. LYNCH: Glad you said that. My mother was
15 white too. Thank you very much. I have no other
16 questions.

17 **BY MR BARRITT:**

18 Q I had one, Mr. Burgess, if I could. I'm not
19 talking about any specific contract, I'm just drawing on
20 your years of experience in Government and in Parliament.
21 We've heard a lot of evidence on the requirement about
22 disclosure of interest so that in case there's any possible
23 conflict of interest.

24 We've also heard that when papers go to Cabinet,
25 whatever Ministry, whatever roles of project, the

1 principals behind those projects are disclosed as a matter
2 of course.

3 Was that the situation in your day?

4 A Well, as always, because once the civil servants
5 prepared the papers, all that's included.

6 Q So you would expect to see that --

7 A Yeah.

8 Q -- in the Cabinet memorandum, the disclosure of
9 who the owners are?

10 A Yes, sir.

11 Q And you would agree - maybe you would not agree
12 with me - but that's good practice and that's something that
13 should remain in place today?

14 A Well, that's the requirement. And I have no
15 problem with the requirement.

16 Q Right. Because it's something that ought to be
17 done?

18 A Yeah.

19 Q Part of good governance. Thank you.

20 **BY CHAIRMAN EVANS:**

21 Q I've just got a couple of questions. What I ought
22 to say first is this. Your counsel has made the point you -
23 or you made it - you were not asked in the original request to
24 give evidence, you were not asked anything about the Dame Lois

Browne

25 Building. I'm sure you will accept that there was a reason for

1 that.

2 As you pointed out, the contract for that
3 building was signed before you became the Minister?

4 A Correct.

5 Q What has emerged in the evidence is that the
6 contract was in effect replaced by a new contract when you
7 were the Minister. So I hope you'll accept me from me.

8 A Oh, yeah, I have no problem with that.

9 Q And in that connection I'll add this. Since you say
10 you've had very short notice of that matter, if when you go
11 away again you look at those papers and want to make any
12 further contribution, will you let us know in writing?

13 A Certainly.

14 Q What you want to say about it?

15 A Uh-huh.

16 Q And conversely, we may come back to you with
17 further questions.

18 A Not a problem. I always volunteered to come.

19 Q Just a couple of questions. I had been going to
20 ask some questions which, in fact, have already been asked
21 by your counsel this morning.

22 Do you remember he began by saying, did you have a
23 policy, I think he called it, of favoring Bermudians,
24 especially perhaps black Bermudian companies when you
25 properly could?

1 A It's not my policy, but I agreed with the policy.
2 This policy was put in place by Dame Jennifer Smith, the then
Premier.

3 Q And you felt you had a political mandate to that
approach?

4 A Well, I know within my heart, even if they didn't
5 have it, that we had to make things right for everybody
6 regardless of any platform and anything. Everybody's were born
7 equal. At least it's supposed to be.

8 Q And you said to him very firmly you felt you had the
9 support of your Permanent Secretary, Mr. Horton?

10 A Oh, yes.

11 Q But you felt you hadn't got the support of your
12 department?

13 A I know I didn't have the support of the
14 department.

15 Q What I wanted to ask you is this. Let's assume
16 all that; that you had this firmly held belief and a policy
17 and you had political mandate for it, did you feel that you
18 would get support in Cabinet?

19 A Oh, yeah. You know, I never had no problem
20 getting that support in Cabinet because, in fact, in the
21 Code of Conduct, if you go against the mandate, then you
22 should -- the Minister resigns. That's in the Code.

23 Q So you were happy. You see, what I was wondering
24 was this. You have that policy, you're going to, I
25 won't say favour, but perhaps you do say you will favour

1 black Bermudian companies when the need arises..

2 Can I put my question --

3 A I'm sorry, sir.

4 Q At the moment I don't see how that affects two
5 things. That wouldn't stop you putting a matter out to
6 tender, would it?

7 A Oh, no. No. No. Not at all, because the thing
8 is, the reason why I passed that way is because, as I said earlier,
9 if contracts come in and there's blacks and whites that are
10 applying for it, if we're talking about a difference of
11 \$100,000 or \$50,000, that's not a problem to me. It goes
12 to the best person.

13 But if we're talking about, depending on the size
14 of the contract, anywhere from 10 and 20 thousand dollars,
15 I don't have a problem with that.

16 Q No. As I think Mr. Hargun said at the outset
17 the two things we're interested in, particularly, are the
18 tendering procedures and the Cabinet's approval.

19 And again, your policy wouldn't affect the
20 question of whether you would go through Cabinet approval
21 or not, would it?

22 A No, no. I mean, the Cabinet, we're on line with
23 that. I never experienced in Cabinet where anyone, any
24 Minister was against that.

25 Q Yes. So given your policy.

1 Was there any reason not to obey the normal rules
2 for tendering and for getting Cabinet's approval?

3 A No. The thing is, that policy I agree with but
4 there were times when things are time sensitive. You got
5 to do some, for example, like the commercial court, that
6 had been agreed about, it was a year before it was done.
7 And we were behind time. And it was in January and in
8 Bermuda most contractors, they close for two weeks.

9 I wanted to get that thing done as soon as
10 possible because we were paying rent to others that,
11 because the (sand) had to be relocated, and my objective was
12 to save as much money as it had always been for Government.

13 Q Yeah. I see that might be a particular situation
14 where you might do what you did without specifically
15 getting Cabinet approval, but that would be nothing to do
16 with your black Bermudian company policy?

17 A No. No. It's not necessarily a black Bermudian
18 policy, even today in Bermuda we're talking about a living
19 wage for all. And the people, most people that are
20 disadvantage by a living wage are black people. And so
21 they would be, the blacks would be, the majority of the
22 beneficiaries if we get a living wage.

23 Q And lastly, one question of procedures. We've
24 heard a lot about the Contract Award Recommendation which
25 basically is made originally by the technical officers and

1 then that would go to Cabinet?

2 A Uh-huh.

3 Q And we've actually heard of two examples where
4 the Minister wasn't happy with the recommendation.

5 A Right.

6 Q One solution is for - Dr. Binns suggested this - is
7 for the Minister to put a paper before Cabinet and not put
8 the recommendation at all.

9 Another solution which was the result in one of
10 your cases with Mr. Horton was to be, if you don't mind me
11 saying so, the technical officer's recommendation was
12 influenced by you before it was presented to Cabinet.

13 A I make no apologies for it.

14 Q No. I understand that. But what I wanted
15 to ask you was this.

16 If there is a case and about to happen where
17 there's a technical officer's recommendation and the
18 Minister isn't happy with it, is there any reason why the
19 recommendation shouldn't go before Cabinet and then the
20 Minister can explain to his colleagues why he disagrees
21 with it?

22 A Well, Mr. Chair, if things were rough, above board,
23 and I'm talking about the mentality of it, I would
24 agree with you. But there were fine projects that I
25 intimately got involved with and saved 17 million dollars.

1 And I question, I'm not the expert here in construction. I
2 only know a little bit about construction. But if I was
3 able to be -- I hate to say the word -- but if we were able
4 to save \$17 million, I question, Well, what happened to these
5 civil servants, they're supposed to be the experts.

6 Q I'm not quite sure that's an answer to my
7 question.

8 A I'm sorry.

9 Q Not thinking of any specific case. But as a
10 general rule where you have the technical officers making a
11 recommendation which the Minister for good reason or bad,
12 let's assume it's good reason, takes a different view.

13 Now rather than play around with the
14 recommendation or submit another paper, what would be wrong
15 with a simple rule that the recommendation should go to
16 Cabinet and the Minister should then explain to his
17 colleagues why in this particular case he thought it right
18 to depart from it?

19 A Well, I don't think it's as plain as that, because
20 a Minister has brought things to Cabinet. And one (has) to prove
21 the recommendation of Civil Service. But the majority of the
22 Cabinet says no. And so you go by the majority. Now, the
23 recommendations from Civil Service do not have to be accepted
24 by the Cabinet. The Cabinet is (indiscernible - disappearing

02:51:59)

25 Q But the Cabinet decision should count.

1 A Yeah, that comes first - not the recommendation
2 from the Civil Service. It's the Cabinet's decision. You
3 know, if we had to go by the recommendation of the Civil
4 Service, then you need not have a Cabinet for this matter.

5 Q You haven't answered my question. A case where
6 the technical officers as they always do in the course of
7 their normal duties make a recommendation. And let's
8 suppose it's a case where the Minister for good reason or
9 bad, for any reason would take a different view.

10 Why in that case shouldn't the recommendation go
11 before the Cabinet, plus the Minister's explanation to
12 Cabinet of why he does take a different view leaving it to
13 the Cabinet decision which... to go with.

14 A You know, I can agree but politics doesn't go
15 that way, even in Cabinet. But, and I'm not -- I'm agreeing but
16 it doesn't always work like that in Cabinet.

17 Q Can you in one sentence explain to me why it
18 doesn't?

19 A Because they're people, human beings.

20 Q You can't always rely on getting the results?

21 A Human beings change. They've got their reasons
22 and they're entitled to them. Some people just -- No, I'm
23 not going to do it. And they probably don't have a reason.
24 I can't explain why they go the way they go.

25 Q And that would be a bad thing, because the Minister

1 wouldn't get his own way, is that --

2 A Yeah, I mean, that's politics.

3 **BY BARRITT:**

4 Q We're thinking that that might be a
5 recommendation you made that where technical officers on
6 any project make a recommendation and after their
7 evaluation, that be attached as an annex to the Minister's
8 memorandum to Cabinet, in which the Minister says, Attached,
9 you'll find the technical officer's recommendation, but I
10 disagree and here are the reasons why and I invite you to
11 agree with me and not with them.

12 A You can make the recommendation and I have
13 nothing against that. Cabinet doesn't have to agree with
14 any recommendation unless you put it in law. And laws
15 don't dictate the decisions of Cabinet.

16 CHAIRMAN EVANS: Thank you. We're now, Mr Lynch, any
17 questions arising out of my...

18 **BY MR LYNCH:**

19 Q May I ask two. Tendering procedures. You were
20 asked and it was pointed out to you by the Chair, that
21 one of the issues that they're concerned with in particular
22 are the procedures that are used for tendering.

23 Part of that procedure is that when the various
24 tenders come in, they have to be compliant with a
25 particular form that has been drafted in the

1 past. And they have to be filled in in a certain way.

2 We've seen a number of examples where tenders
3 have been made, filled in in a certain way but they're
4 wrong. In other words, they've either omitted to put in a
5 certain line or certain fact or something of that kind.
6 And they fall fowl of that procedure. It's part of the
7 tendering procedure.

8 If it is in some minor way or some small respect
9 non-compliant with the tendering procedure, would that
10 stop you as the Minister from nonetheless considering that
11 bid particularly if it were from a black firm who had not
12 previously bid?

13 A Well, you can call a non-compliance with the
14 tendering procedure, the requirement that you put down your
15 shareholders and they didn't put it in. That shouldn't
16 disqualify someone from getting that job. You can go back
17 to the contractor and say, look, you didn't put this in. But
18 most of the times that the things that were omitted had
19 nothing to do with the ability for them to do the job or
20 the knowledge they had. It's based on your financial
21 position or who your shareholders is.. Nothing to do with
22 the job.

23 Q Just to come back to my question in response to
24 what the Chair was asked of you. If there is noncompliance
25 in some relatively, what you might regard as a minor way,

1 not relevant to whether they can do the job, if there was
2 noncompliance in that respect, would you be prepared
3 nonetheless to ignore that noncompliance?

4 A Not ignore it totally but I would favour it and go
5 and get, tell the Technical Officer or the Permanent Secretary
6 to get these fellas in and fill out those forms correctly;
7 because a lot of our folks haven't had any experience in
8 dealing with all this paperwork. So, they're deficient there
9 so they need training. And the training comes from you
10 wanting to help, meaning the Government wanting to help.

11 And these little things are easy done - just call me -
12 because it has nothing to do with the pricing of the job. It has
13 nothing to do with the ability of the job.

14 Q The second matter that I want to ask you
15 about following the Chair's question was this. And I think
16 there may have been a misunderstanding between... On the one
17 hand, the position as it was when a Technical Officer made
18 a recommendation in respect of a job that you were
19 responsible for at the time, firstly, did you feel bound by
20 that Technical Officer's recommendation?

21 A I'm not bound by anybody's recommendation.

22 Q Pause there. Did you feel obliged to inform
23 Cabinet at that time that the Technical Officer's view was
24 different from your own?

25 A No, no, because it's not required.

1 Q Did you at that time trust your Technical
2 Officers?

3 A No, definitely not.

4 Q Today what's being proposed is that there may
5 be a recommendation coming out of this Inquiry, which would
6 suggest that in the future perhaps, it would be perhaps
7 wise to have the Technical Officer's recommendation laid
8 laid before the Cabinet to give it something
9 substantial

10 A Uh-huh.

11 Q And that you, the Minister, would be able to say,
12 don't follow that recommendation because either I don't
13 trust them or I think they've got some ulterior motive or I
14 just don't accept it, whatever the reason might be. That's
15 what I think what the Chairman was getting at; is there might
16 be such a recommendation for the future.

17 Would you agree that might be a way to prevent
18 any accusation later being made?

19 A Let me answer this way. I think I said it before
20 already, that not all recommendations are turned down by
21 Ministers. Ministers come and say this is the
22 recommendation of my technical people and we'll pass it.

23 Q But in the future, would you, if that were to be
24 a suggestion as to how it might be in the future, would you
25 agree or disagree with that?

1 A See, you cannot agree. This is politics. This
2 is not an operation in a hospital or something. This is
3 politics. It goes by the climate you're dealing with, the
4 people that you're representing. So for us to say, Well,
5 we'll put this law or this policy in place, you can't do
6 that. Things change with time in politics based on the
7 needs and the wants of the people. And if you're voted in
8 based on that, you have to answer that for those people.

9 (Inaudible discussion.)

10 CHAIRMAN EVANS: Apart from what I mentioned
11 earlier, a possibility we might come back particularly on
12 the Dame Lois Browne Building, but generally, thank you.
13 We might come back, but thank you very much indeed.

14 THE WITNESS: Thank you very much.

15 (Inaudible discussion.)

16 MR. HARGUN: Mr. Chair, our next witness is
17 Ms. Paula Cox.

18 CHAIRMAN EVANS: I think we're just waiting to
19 give Mr. Lynch a chance to depart with dignity.

20 (Inaudible discussion.)

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

24 CHAIRMAN EVANS: Thank you, Ms. Cox. Please sit
25 down.

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PAULA COX

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

DIRECT EXAMINATION

BY MR. HARGUN:

Q Ms. Cox, good afternoon.

A Good afternoon.

Q My name is Narinder Hargun as you know. I'm going to ask you a few questions in relation to your witness statement.

A Sure.

Q And after that the Commissioners may have some questions.

A Sure.

Q And Ms. Cox, you've kindly prepared a witness statement in the relation to the issues you were asked about. And that witness statement, unless you have it separately, is in the witness binder at Tab 11. And it is dated the 22nd of August 2016.

And can you just confirm that the statements which are made in that witness statement are correct?

A I can confirm that they are true and correct.

Q Thank you very much. One of the issues which the Commission has been concerned about this issue of delegation. And specifically, this issue of delegation as

1 to whether and how delegation can occur for one ministry to
2 another. And in that context, separate out two different
3 issues: One, is the legal issue as to how it's done; and
4 the second one is the practical issue as to whether it
5 should or should not be done in any given case.

6 But can we just first of all look at the legal
7 issue as to, you know, when and how delegation can
8 effectively occur.

9 And in that regard, you refer to in Paragraph 3
10 of your witness statement -- Well, perhaps by way of
11 introduction, in Paragraph 2, you say that you have no
12 recollection of ever being asked to authorize any Minister
13 and/or Permanent Secretary with responsibility for Works
14 and Engineering to delegate their functions in respect of
15 capital projects for the Port Royal Golf Course remediation
16 works, Heritage Wharf, Bermuda Emissions Control Limited;
17 and no directions were ever given me in my capacity as the
18 Ministry of Finance for any such delegation in respect of
19 any or all of their capital projects. Yes?

20 A Yes.

21 Q And what is being said by some is that the
22 delegation occurs by way of the approved estimate for
23 revenue and expenditure for any particular year.

24 What is being said is that if, either in the
25 explanatory memorandum or as a note, it is said that the

1 responsibility for a particular project is assigned from a
2 department, say, other than the Works and Engineering and
3 let's say, for example for the sake of argument, Ministry of
4 Tourism and Transport, that that is effective delegation.
5 That is what is being said.

6 Do you follow that?

7 A I follow it, but what is your specific question?

8 Q Well, the question I was going to ask you is
9 whether you agree with that understanding, that that is
10 effective delegation?

11 A I don't think that a note in the estimates of
12 revenue and expenditure in and of itself can be an
13 effective delegation, particularly within the remit of
14 Ministry of Public Works which as you would have noted from
15 the Public Lands Act it's very clear that the only person
16 and the only legitimate authority for Public Works rests
17 with the Minister and of course he has the ability
18 obviously in terms of dealing with the Accounting Officer
19 and that's his Permanent Secretary.

20 Now what one has to be clear about is that how do
21 you define delegation because what you might find
22 conceivably is that there are -- there is a particular
23 project where there is a shared responsibility and where,
24 for instance, I, if I were the Minister of Tourism or there is
25 a Minister of Tourism has a particular interest in a

1 project being completed, he clearly has a vested interest
2 in seeing it done.

3 And if you refer to the, I think your binders
4 where you see the, I think Permanent Secretary Whitter, I
5 think, was very, very accurate in how she made reference to
6 I think a particular project that there is a shared
7 responsibility. And where she was asking the Permanent
8 Secretary for Works and Engineering notwithstanding that
9 there was said to be a sensible delegation, that there was
10 still the shared responsibility with the Public Works
11 Minister.

12 And you'll see in terms of, throughout the binders
13 that I'm looking at --

14 Q The statement is at Tab 5 if you want to have a look.

15 A I didn't think that you're at that statement.

16 I'm going to refer to my binder because I want to
17 start looking at things that I've not had access to.

18 If I look at Tab 3 in particular.

19 Q Which is what, what are you looking at?

20 A Tab 3, Bermuda Emissions Control. Tab 3, Bermuda
21 Emissions Control, and if I look at the binder that was
22 provided to me that says, you see, I think --

23 Q Page number?

24 A There's a page, there are a couple of pages I
25 want to refer to. They're page 9-11.

1 Q 911 would be in our binder, those who are looking
2 at this would be --

3 (Inaudible discussion.)

4 A And 913.

5 (Inaudible discussion.)

6 A 911, 912, they're emails with a heading at the top
7 Michael McFee.

8 Q Yes, that would be page 134, I think, with
9 Michael McFee --

10 A 9159 is the number that's at the top of the
11 binder that I was provided with. And it goes to 9161,
12 9163.

13 Q Is that the email from Michael McFee to --

14 A It's a number, it's a of number of emails that
15 are talking about, it has Randy Rochester; Cherrie Whitter.
16 It says what? You see I think email dated June 22, 2009,
17 3:08 p.m. to Randy Rochester and CC'd to Curtis Stovell re
18 Satellite Lease Agreements.

19 And it says, "I had not intended for them to review
20 the invoices. The exercise was to hand over the buildings to
21 Works and Engineering prior to paying the final invoice. Works
22 would therefore have to come in to review the facility, identify
23 anything that was outstanding in their view, create a punch list,
24 etc., and it is at this point that the invoice could then be paid.

25 CHAIRMAN: I'm sorry, Ms. Cox, we haven't got the document.

1 THE WITNESS: These are the binders that I was
2 provided with by yourselves.

3 **BY MR. HARGUN:**

4 Q Ms. Cox, what's happened is that all those documents
5 have been put into these larger binders.

6 (Inaudible discussion.)

7 CHAIRMAN EVANS: Say it one more time.

8 THE WITNESS: Okay.

9 (Inaudible discussion.)

10 **BY MR. HARGUN:**

11 Q There are page numbers at the bottom, Ms. Cox, those are
12 identifying all of them.

13 A So you want me to use page numbers at the bottom
14 as opposed to the ones at the top.

15 Q Then we can at least --

16 A So 10-10, 911.

17 Q 911.

18 A Yeah.

19 Q So that would be page 119, Mr Chairman. So forgive me...

20 A And this is just an extrapolation as an
21 illustration because you'll see others where I think there was an
22 an RC who was a technical officer, I believe, an engineer in
23 Works and Engineering. And you see on various
24 projects where there is the claim for its representation
25 that there's delegation. I would query... Well, I'd say the

1 there can't be delegation if the Minister... I can't speak for the
2 prior Minister of Finance, but certainly while I was the Minister
3 of Finance there was no delegation by me in the form that
4 would be required in writing to delegate to another
5 Minister.

6 And I would say also that in those cases where
7 you have what some would say is a (sensible) one and shared sort
8 of co-parenting, that doesn't remove -- doesn't remove the
9 responsibility and the residual responsibility for Works
10 and Engineering to be involved in and have oversight.

11 And you'll see that and why I drew attention to
12 these emails and there are others where you'll see that
13 there is still the residual oversight by Works and
14 Engineering.

15 If the Minister of Finance (hasn't) delegated in
16 writing, then there has been no delegation. What you can
17 have is that there is a joint interest and from a political
18 policy point of view, a Minister who wants... because... We're
19 talking about an ocean, the golf course, whatever... There is
20 an interest in seeing something built by a (respective)
21 Minister in Tourism and Transport. That doesn't remove the
22 inherent responsibility of the Ministry of Works and
23 Engineering.

24 Q So, would you say that in relation to where there's
25 shared responsibility, having shared interest...

1 A Shared interest.

2 Q Shared interest, the legal responsibility
3 continues to remain with Works and Engineering?

4 A Yes.

5 Q So --

6 A In the absence of a written delegation from that
7 relevant Minister of Finance.

8 Q And would you go as far as to say that as far as
9 the accounting officer for that project is concerned, that
10 remains with Works and Engineering?

11 A It remains with Works and Engineering but clearly
12 we don't operate and shouldn't operate (inside those) so that
13 therefore, there has to be cross-liaising with the
14 accounting officer where there is a shared interest. And I
15 believe you'll see that in some of the correspondence that
16 we've seen.

17 Q If you look at just to -- That view has
18 been expressed certainly by former Attorney General,
19 perhaps I can show you a letter.

20 A Yes, I'm aware of his letter.

21 Q You're familiar. I mean, you'll find that in Tab
22 11, if you don't have it -- do you have copies?

23 A I could seek to find it but which tab is it in my
24 binder? I saw it.

25 Q In our binder it's at Tab 11, page 111.

1 A And it's in my binder which... I think I've come
2 across it.

3 (Inaudible discussion.)

4 Q Do you have that?

5 A It's around here. Yes, I have it.

6 Q Yes. That's the letter of the 2nd of March. And
7 for relevant purposes, I can pick it up at the second
8 paragraph.

9 "It is said at the outset it appears perfectly clear
10 to me that the Public Treasury Administration and Payments Act
11 1969 by Section 3, one requires everyone concerned in or
12 responsible for the payment of public monies shall obey all
13 instructions that may from time to tome be issued by the
14 Minister of Finance or by directions of the Minister of Finance
15 in respect of these (accountings) thereof.

16 And then those instructions commonly known as
17 Financial Instructions issued by the Minister of Finance
18 provide unequivocally as follows," and that's the Financial
19 Direction 12.1.2, Capital Development.

20 "The accounting responsibility of capital
21 development rests with the Permanent Secretary for the
22 Ministry of Works and Engineering who is the Accounting
23 Officer for all projects in Capital Development estimates with
24 the exception of minor works. For minor works, the accounting
25 responsibility remains with the applicable accounting

1 officers.

2 The Permanent Secretary of Works and Engineering
3 is obliged or obligated to ensure that proper consultation
4 with the applicable accounting officer is maintained
5 throughout all phases of the project." And this is the
6 opinion expressed.

7 "Accordingly in my respect of the opinion subject
8 only to Financial Instructions being amended in that
9 respect by the Minister of Finance, there can be no
10 question but that the accounting responsibility for Capital
11 Development projects as defined in the Financial
12 Instructions rests with the Permanent Secretary for the
13 Ministry of Works and Engineering."

14 The suggestion, and that's the alternative view,
15 Ms. Cox, which has been put, "The suggestion that what transpired
16 was a delegation of authority for the accounting responsibility
17 from Capital Development projects related to Transport by
18 way of amended note to the capital estimates in the
19 approved estimates of revenue and expenditure for 2002, 2003
20 does not stand up to critical examination.

21 He says the Appropriation Act is simply an annual
22 statute to provides for funds to be paid out of the
23 consolidated fund in accordance with section 96 of the
24 Bermuda Constitution Order, and for no other purpose to
25 suggest somehow that explanatory memorandum to the

1 Appropriation Bill 2009 in delegation of authority cannot
2 in my opinion be correct.

3 I mean, do you broadly agree with that?

4 A I would say that view is one that I find
5 persuasive but clearly I cannot override or comment on
6 what a prior Minister of Finance would have done. And in
7 2002, '3 it would have been my father as the Minister of
8 Finance.

9 So I can't speak to whether there was a
10 delegation then or not to be honest, or what I can tell
11 you is my position as the Minister of Finance and as a
12 lawyer, what I would do, but I can't speak to that.

13 Q That is helpful.

14 And in relation to practical issues, you say a
15 shared interest where two ministries can jointly look at a
16 particular project.

17 A Uh-huh.

18 Q And presumably in relation to issues like
19 contracting with third parties; issues like outsourcing,
20 one would look at where the expertise is, if there's a
21 joint ministerial project.

22 In other words, one would look at which ministry
23 has the expertise to do whatever is required in relation to
24 that particular project.

25 A Are you asking me to opine on that?

1 Q Well, I'm asking, you've obviously in Government.

2 A What I can say, I can speculate and say that that
3 would seem to make sense, but I think that to extrapolate
4 from that into a specific circumstance would be most
5 unwise.

6 Q No I fully accept that. I mean, say for example
7 as I understand the position, please correct me, in
8 relation to, say, construction projects; one ministry which
9 has the expertise either to do it internally or dealing
10 with professional contractors, professional suppliers,
11 professional services of the like, one would think would be
12 Ministry of Works and Engineering because that is the
13 ministry which has historically built up that expertise.

14 A Yes, that would generally be the case.

15 Q And in relation to those, for example, say if you
16 were building a school, while it's clearly the Ministry of
17 Education has real interest in it. As a client, customer, it
18 has its own needs, it would want to have its input in
19 relation to how the schools should be built, what
20 specifications there should be.

21 But presumably when it comes to building the
22 school, the actual dealing with third-party contractors,
23 architects, suppliers of materials, concrete, cement, that
24 presumably would be done by Ministry of Public Works?

25 A Ministry of Public Works has the institutional

1 capacity, but I think you would actually have to go by the
2 particular project because in some cases it may be a
3 project manager who has the construction expertise.

4 And then what you would see is that there would
5 be the liaising and the overlap of cross ministry even if
6 from a legal perspective in terms of signing off, you
7 would have the Ministry of Public Works through its
8 relevant Senior Officer, Accounting Officer signing off
9 or using their expertise of the Technical Engineers.

10 Q Yes. Thank you. I mean, as I understand, the
11 way you see it is, even in the case of shared interest,
12 particularly in relation to infrastructure of projects,
13 Ministry of Public Works continues to have a significant
14 part to play?

15 A They did. But I believe since the defeat in
16 2012, I believe Financial Instructions may have been
17 modified and it may make it clear so that we aren't having
18 to delve in these murky waters where they may actually have
19 made it more clear that you can't delegate. But I can't
20 speak to what has been done specifically, but I believe
21 that has changed.

22 Q I understand. Can I ask you in relation to a
23 slightly separate matter, this is the development of
24 the Dame Lois Browne Building?

25 A You're asking me about the construction of the

1 Dame Lois Browne Building?

2 Q No, no, no, no. I'm not going to ask you about
3 the construction, but I was going to ask you as to certain
4 questions in your capacity as a member of the Cabinet if
5 you can remember that far. And if you can't remember,
6 please say so.

7 One of the questions I was going to ask you was
8 that when, you recall that the original project and
9 obviously it's delving back into memory, it was in
10 December 2007. That was with the company called Landmark
11 Lisgar Limited. Remember that?

12 It was a joint venture, I use that word loosely,
13 between the Bermuda company and the Canadian company Lisgar,
14 you remember, and the contract was awarded to them by the
15 Government and it was appropriately, I think, considered
16 by the Cabinet and approved.

17 And then there were difficulties. And one
18 doesn't have to go into the nature of those difficulties.
19 Eventually around November 2008 Lisgar decided to exit the
20 Canadian partner. And we know because we've been told that
21 the Canadian partner sold the shares to the Bermuda
22 partner, if I can put it that way.

23 And then there was a new contract which was
24 entered into with the new entity, the same company remained
25 but it was renamed LLC. What used to be Landmark Lisgar

1 remained the same entity and the legal entity, but changed
2 its name to LLC.

3 A Uh-huh.

4 Q And the question I have for you, and you may not
5 now remember, and if you don't remember, you can tell me
6 that.

7 Was the Cabinet around this time told that one of
8 the principals of the new company, when I say new company,
9 the shares having been bought from Lisgar, that one of the
10 principals of this company now was Vincent Hollinsid?

11 A So far as I can recall, no. But that in itself
12 does not need to be conclusive because Ministers as you're
13 aware sometimes travel and perhaps it was mentioned at a
14 Cabinet paper, Cabinet that I wasn't present, but I
15 certainly don't recall it in any Minutes that I would have
16 read or it being brought up.

17 Q No, I accept that. And was the Cabinet at any time
18 told, and again the same qualifications which you just
19 mentioned, Winter Burgess as one of the principals of this
20 company?

21 A I can't recall that being mentioned.

22 Q No.

23 A Or disclosed to Cabinet.

24 Q That's fair enough. Can I ask you to just move
25 to another topic, and that is in relation to the Ambling

1 Contract, only because in my opening I did show the tribunal
2 the Cabinet Minutes, and your observations in relation to it.
3 You'll find that at Tab 8, page 1.

4 A That would be in a separate binder.

5 Q That would be in a separate binder.

6 A Because I've never gotten that in any binders.
7 Tab 8?

8 Q Mr. Adamson is going to give it to you.

9 A These binders, it's very unusual, isn't it, for
10 me to get binders to refer to that I wasn't given. Tab 8,
11 you said?

12 Q Tab -- yes. It's the first page.

13 A Yeah.

14 (Inaudible discussion.)

15 A Yes, I have it.

16 (Inaudible discussion.)

17 A Did you want to continue talking?

18 Q Yes. It's just there's a discussion in relation
19 to the Ambling Development Partners Consultancy Agreement.
20 And that is just to give you the reference, Ms. Cox, this
21 is the conclusion on the 4th of March 2008. And you see
22 that it was introduced by [inaudible - loud noise].

23 This memorandum, the Premier informed the Cabinet that
24 its purpose was to invite their approval of the engagement
25 of Ambling Development Partners as a consultant to Government of

1 Bermuda and the terms set out in Annex 1.

2 And you'll see that this was a consultancy
3 arrangement where this particular consultant was providing
4 services, it appears, to a number of departments.

5 A Uh-huh.

6 Q And for example, you see that in the second
7 paragraph, the Premier informed that the Consultancy
8 Services might be required in relation to a number of
9 construction and site management phases, etc. And then the
10 next paragraph the Premier thought that these services might
11 be required by the Ministry of Works and Engineering, and in
12 relation to particular projects, the Dame Lois Browne-Evans
13 Court Building, the asbestos abatement, and the demolition
14 of the former Club Med site, and the remediation and
15 pre-development phase of Morgan's Point. And then... So
16 that's Works and Engineering.

17 And then the next paragraph it says that they
18 might be able to assist also the Department of Planning in
19 relation to strategic review. And the Premier also advised
20 that they were well known to the Cabinet in particular
21 their principal who is named at Mr. Eddie Benoit. And it
22 goes on.

23 The part I was going to ask you was, if you go to the
24 next page, 8-2, the second paragraph, "the Premier informed
25 Cabinet that the Minister of Finance had been consulted and

1 did not support the memorandum" -- and that was you at the time,
2 I believe, Ms Cox. "The Minister of Finance informed Cabinet that
3 she had difficulty supporting the memorandum because the contract
4 had not been put to tender.

5 A Uh-huh.

6 Q Does that accord with your recollection?

7 A Yeah, that does.

8 Q And did you consider that it should be put out to
9 tender even though as I understand it, this was actually a
10 renewal of what appears to be a longstanding arrangement
11 with this consultant?

12 A I'm not sure that it was a renewal, but certainly
13 in terms of the latter question you asked, I certainly felt
14 it should be put out to tender.

15 Q Okay. But it appears that you were in the minority
16 that day?

17 A Yes, it's collective responsibility.

18 Q Very well. And the next topic I want to talk to
19 you about is really the bulk of what you say in your
20 witness statement, mainly that some of the issues which the
21 Commission is concerned with are issues which were certainly
22 identified in your administration, I think both as Minister
23 of Finance and as a Premier because at least a couple of
24 studies were done by the Government, the KPMG Advisory
25 Report, which I'm not sure whether it was sponsored by the

1 Minister of Finance or the Cabinet office.

2 And then of course there was the Internal
3 Management Consulting Section which looked at some of the
4 issues that were relating to procurement of construction
5 contracts.

6 And that's what I wanted to look at to see at
7 least if we can identify the issues as they were at the
8 time and whether you think that the measures which have
9 already been taken are adequate and whether there should be
10 other reforms which you had in mind. Just to remind you,
11 Ms. Cox, the relevant part of the KPMG Advisory Report
12 you'll find in a small binder B1 and --

13 (Inaudible discussion.)

14 Q For reference purposes, I think if you are
15 looking at the page numbers at the bottom of the pages
16 starting with the 352, the relevant part is at page 355,
17 just -- This is in 2010, clearly either the Ministry or the
18 Cabinet had taken the view that it was sufficiently factually
19 there were incidents or concerns which required the
20 Government to instruct on outside advisory institution
21 company to have a look at this issue.

22 I mean, what was the sense at the time when KPMG
23 Advisory was instructed to do this study?

24 A When you say what was the sense, are you talking
25 about what was the reaction or are you asking what was the

1 rationale.

2 Q What was the rationale?

3 A The rationale was clearly the fact that we had
4 had Auditor General's reports which showed there were some
5 serious lapses. Clearly, there was what governing in 1998,
6 2000, 2008 was different from maybe in the 1980s. And as you
7 would know, the proliferation of the need to be mindful of
8 compliance, governance and even in terms of when you're
9 dealing with entities which want to be recognized on the
10 world's stage, you certainly had to raise the bar and
11 sharpen the saw.

12 And the Auditor General had given enough reports
13 which indicated and showed some serious lapses. When you
14 look at the lapses, you've got to also look at what can we
15 do to add value and to help, and what have we provided our
16 public officers with in terms of a toolkit. And there is
17 value in going to a third party who had the expertise and
18 competence in these areas to look at with fresh eyes some
19 of our processes and see where they needed to be rejigged
20 and improved. And there were a number of areas that were
21 highlighted by KPMG.

22 Q Yes. I think if one is looking at the summary... You can
23 have a look at page 355.

24 A Yes.

25 Q And you see the paragraph had a background. "The

1 Ministry's responsible for the stewardship of public funds,
2 including the management" -- and do you have that - "and
3 control of the Capital Account and development of Annual
4 Capital Expenditure Plan of approximately 150 million.

5 "In keeping with its responsibility, the
6 Ministry's interested in identifying the weaknesses in the
7 Government's current capital project expenditure management
8 and determining how leading practices can be adopted to improve
9 the transparency and control of the expenditures.

10 " We understand that the Ministry's concerned that
11 the oversight and internal controls for awarding and
12 managing capital projects may not be in keeping with
13 leading international practices. Additionally, in some
14 cases, current Government policies and practices may not be
15 rigorously followed which may have contributed to
16 significant costs on several capital projects.

17 "Consistent application of a framework for
18 assessing, procuring and implementing capital projects
19 would benefit Bermuda in many ways. For example, it would
20 help ensure projects are appropriately charted, scoped and
21 structured, ensure design and construction, costs are competitively
22 priced, prevent or limit cost overruns, strengthen public and
23 (better)confidence in infrastructure development, reassure
24 financial markets and rating agencies that Bermuda is soundly
managed."

25 That is an interesting point because the

1 criticisms which enable the Auditor General's report cumulatively
2 do affect Bermuda's ratings as a jurisdiction. And one of
3 the main recommendations by the KPMG report was the Office
4 of Procurement and Management, a centralized body to look
5 at these issues. And that was in fact implemented by the
6 Good Governance Act of 2011.

7 A Uh-huh.

8 Q Yes. The other report, internal report, I wanted
9 you to have a look at is the Management Consultant Section
10 report at Tab 2 and --

11 A Same binder?

12 Q Same binder. It's at Tab 2.

13 A Okay.

14 Q And if you go in there, you'll see that the page
15 number's on the side. If you go to page 758, and this is
16 an internal review prepared by -- prepared for you and the
17 Cabinet Secretary by Kevin Johnston and (Kay) Fox. I don't know
18 whether this was a presentation, it looks like a
19 presentation.

20 You see on that page there is a heading Problems
21 Definition, what appears to be at least an attempt at
22 identifying certain issues which I believe do exist.

23 And I wonder whether we can have your reaction to
24 how the issues are identified here?

25 A Could you -- is it page 7-55?

1 Q It should be page 7-58.

2 (Inaudible discussion.)

3 Q Do you see the page, Problem Definition?

4 A Section 4?

5 Q Section 4.

6 A Yes.

7 Q And they attempted to define at one; "Ministers have
8 become involved in operational decision making for
9 procurement and contracting in the Bermuda Public Service.
10 In extreme cases, recommendations for contract awards made
11 by technical officers following tendering were changed.
12 Post-tender modification then resulted in contracts awarded
13 to companies not included in the original bid process."

14 This is circumvention of procedures. And clearly,
15 this is defined as an issue. And we've had differing
16 views in relation to that. One is that as a starting point
17 whenever there is a variation from a recommendation from a
18 technical officer's recommendation, one needs to know why.

19 And there are other viewpoints that the Minister,
20 in effect, has a complete discretion because the Minister
21 is following a particular social political policy and
22 therefore, not necessarily bound by whatever it is
23 recommended by the technical officers.

24 How do you see that?

25 A How I see it is that Cabinet is the ultimate

1 authority. And what will happen and civil servants are
2 there to advise, provide recommendation but ultimately, the
3 decision as to whether to approve on a particular option or
4 to approve a particular contract resides with the Cabinet.

5 And therefore, the Cabinet should be provided
6 with the proper information. And if you look at and
7 probably have seen some of the information that has been
8 provided by the then Interim Procurement - Director of
9 Procurement - you'll see that there is even weighting given
10 trying to be... This is a civil servant, quasi consultant who is
11 trying to be sensitive to political realities which is that
12 you don't just give contracts to people who have
13 always gotten them. You have to also look at even if they
14 haven't had Government experience, what else do they have
15 and there's a weighting in there. I believe you went through
16 it in exhaustive detail.

17 But to go right back to refocusing on your
18 question specifically, I think Civil Servants, if they're
19 doing their job effectively will provide and inform their
20 Ministers properly with information as to recommendations,
21 whether on tender, whether on options as do we go here or
22 there in terms of building something or the other.

23 But ultimately, it is the Cabinet which is the
24 ultimate authority on whether those recommendations are
25 approved or not, and whether they may decide that for

1 political reasons or for social reasons, that there are
2 other factors that the civil servants would not have taken
3 into account of.

4 So I think to be quite honest, this is typical.
5 Have you ever read that book, the book, How To Be A Minister,
6 and it's based in the UK. I'd almost like to remind you of
7 the movie, the shows, Yes Minister. This last comment, this
8 is 'circumvention of procedures', that is typical with greatest
9 respect to Civil Service; this is typical Civil Service-ese
10 where they will say the Minister doesn't do this. I say
11 then it's circumvention. Nonsense. Nonsense.

12 The Minister has been charged with deciding but
13 they have to be properly informed... Have to be.

14 Q That's interesting when you say the Cabinet has
15 to be given proper information.

16 A Yes.

17 Q They have to be properly informed. Do you think that
18 in that context where the Minister is taking a different view, for
19 perfectly legitimate reasons, from the recommendation of the

technical

20 officers, that clearly he or she will no doubt represent, present,
21 their views to the Cabinet members at a meeting either in
22 writing or orally, but do you think that the recommendation
23 which has been made by the technical officers for which he
24 disagrees, that should also form part of the package?

25 A If the Ministers are to be properly informed, how

1 could they not get all the information.

2 Q Yes. Yes. Then if you look at the second bullet
3 point, it is said that the Permanent Secretaries have not
4 fulfilled their duty to provide guidance as to the
5 Minister's role and involvement in operations and
6 decision making for procurement and contracting within the
7 Bermuda Public Service.

8 What is being said here, what was the issue?

9 A You're -- I mean, it seems a simply-worded
10 statement. And in your interpretation I'm sure would be
11 equally the same as mine. The assertion is that Permanent
12 Secretaries haven't done their job in advising Ministers about
13 the process for procurement.

14 CHAIRMAN EVANS: Can I just intervene. Looking back
15 over your long experience as Minister of Finance 2004 to '12,
16 do you think that comment is justified that over that period,
17 Permanent Secretaries have failed in their duty to remind
18 Ministers of the proper procedures?

19 THE WITNESS: I don't know, to be quite honest.
20 And if I would answer somewhat in this context if I can take
21 some liberties. The four of you as Chair and three
22 Commissioners, let's picture this. Today you were elected
23 as a new Government. Two of you are lawyers, one of you
24 may be an entrepreneur, one of you is an expert in financial
25 services. You bring to the Cabinet, a small Cabinet

1 obviously, your own various positions. And you are, as a
2 new Government, you are under pressure because you want to
3 deliver and you want to deliver for the people who elected
4 you... Quickly.

5 The lawyer, let's say someone like me, I tend to
6 be rules-based, focused on compliance and governance. I
7 can sometimes be the one who may be seen as an inhibitor
8 because I see my job whether as AG or Minister of Finance
9 as a risk manager. But I also have to be sensitive to the
10 political realities that you have to try to get things done
11 and try to get them done as efficiently and as
12 expeditiously as possible.

13 And unless you as a Permanent Secretary and a
14 technical officer are also au fait with the rules, you may
15 say yes Minister, we can do that. Yes, we can do that.
16 You want this done, we can do that. I'll get it done,
17 Minister. But they need to make sure that they check with
18 the checklist, go to the Accountant General as the principal
19 Accounting Officer. Go to the PS if you are a Technical
20 Officer and not at the PS level.

21 And I think that sometimes out of a zeal to
22 achieve rapid results, sometimes there may be lapses. So
23 in terms of I think this is a fairly harsh statement and I
24 would not say that that is necessarily correct in the
25 majority of cases with our Permanent Secretaries. Most of

1 them, they're asked to come up with a ministerial statement
2 for Friday. At 9:00 at night Thursday night they drop
3 everything and do it. There's an urgent issue. They do
4 it. And generally they go over and above. But sometimes
5 they're mistakes are made and sometimes there is some
6 sloppiness.

7 But I don't know that I think this is a harsh --
8 a harsh, harsh indictment; and I also think let's bear in
9 mind notwithstanding the respect for the officeship, this is a
10 private sector consultant who is probably telling you why
11 you need their services.

12 **BY MR. HARGUN:**

13 Q I think this is a term.

14 A Okay.

15 Q This was a report to you by the Management
16 Consulting Section of the Government?

17 A Yeah.

18 (Inaudible discussion.)

19 A That was -- I mean, I don't know, you've got just
20 be mindful because I know that I've seen in the KPMG report,
21 a couple of them, and all I'd say to you is that rules are
22 important and we have to have a standard of governance.
23 That's why you made changes. And you made changes. But I
24 think that to tar in one fell swoop, this is public service, I
25 think this is probably overly harsh.

1 Q Fair enough. And then Point No. 3, I think we do,
2 we have a KPMG report saying there were certainly a degree
3 of noncompliance.

4 Point No. 4, there's a lack of robust
5 organization why policies and procedures with clear
6 decision and approval points for contracting and
7 procurement in the Bermuda Public Service.

8 Was that your sense around this time, this is
9 2010?

10 A I think that there was a sense probably from 1998 that
11 you had empires being built in the -- probably in Public Works
12 and that you needed to -- there was the sense that
13 contracts were awarded almost at a matter of rope to the
14 same rule, same rule. And that you had to do something to
15 change the existing trajectory.

16 And that's why in terms of if I can digress just
17 briefly; when I was the Minister of Finance solely, and had
18 responsibility for what was then known as the Small
19 Business Development Corporation which is now known as
20 Bermuda Economic Development Corporation, I actually passed
21 legislation and sought advice from human rights as to how
22 I could amend the legislation so that the positive, I
23 suppose affirmation of giving to businesses that had been
24 judiciously screened out as black businesses could be
25 adopted as a policy without being in breach of

1 discrimination claims.

2 And as a result, we amended that and you had the
3 Economic Development Corporation and you did things in
4 terms of the constructive initiative to try and make sure
5 that you provided those who hadn't got access with greater
6 opportunities.

7 Q Sure. And then on the... If you go to the next page,
8 the Point No. 6, they make it that there is a lack of robust post
9 contract award change control and monitoring practices.

10 I think this is more in terms of contract
11 management. Presuming that was an issue?

12 A If this is the recommendation, I assume - or the
13 comment - I presume they'd taken it based on having reviewed
14 and done a review of various subcontracts.

15 Q Yeah. And lastly, there are identified issues to
16 be addressed, the last issue they address is the structures
17 such as Purchasing and Tendering Committee which provided
18 oversight that Capital Projects have lapsed and no longer
19 function.

20 Is that overstating the case or was that?

21 A I wouldn't be able to comment on that. That's,
22 they're talking about operational procedures within the
23 Ministry of Works and Engineering. That's what they're
24 referring to. I was not the Minister of Works and
25 Engineering. I was not working in the Ministry of Works and

1 Engineering but if I assume this it evidence based, so I
2 can't challenge it or affirm it, but I assume that they're
3 honest and this is what they found.

4 Q When you were considering the Office of
5 Management and Procurement, the central body..

6 A Project Management and Procurement.

7 Q Did you have a conception as to its size in terms
8 of how large it would be, in terms of its composition
9 because at the moment as I understand it, you're
10 obviously -- it hasn't come to a final position. At the
11 moment they have a Director who's like a substantive
12 director appointed soon and then a deputy director and
13 and then maybe one or two other people but it's a reasonably
14 small department.

15 I mean, did you have a sense as to what its
16 makeup might be in terms of personnel?

17 A I believe there was a review done but I believe
18 also you would be aware that Government was in a position
19 that it was seeking to manage its cost without growing it
20 to an inordinate extent but certainly it was obvious that
21 it needed, in order to do the job that was required, you
22 did need to staff up to some degree. As to whether that
23 would end up being five or six people, I don't know.

24 And remember, there was also the overlap with the
25 Engineering Section and the Architectural Engineering

1 Section of Public Works. So remember, the Department of
2 Project Management and Procurement weren't the builders.
3 They were to provide the oversight and hands-on management
4 but they weren't actually the builders. And if you have
5 all your building blocks in place, in terms of your
6 compliance processes, your documented procedures, then it didn't
7 necessarily have to be this explosion of people.

8 But it did have to be clear procedures that were
9 funneled out to the respected ministries, especially those
10 ministries which did have Capital Works within their plans.

11 Q This office was assigned either to the Ministry of
12 Finance or the Cabinet Office?

13 A Uh-huh.

14 Q That was a deliberate decision rather than being
15 part and parcel of Works and Engineering?

16 A No. You can have -- it's like an Audit
17 Committee. You don't have somebody -- or a compliance
18 officer, you don't have somebody working in a company who's
19 providing oversight who's actually part of the operational.
20 I mean, that would be a conflict of interest and you would
21 be judge and jury in your own cause.

22 So you've got to have the separation if you want
23 to really have legitimacy in terms of oversight. And that
24 as you'll recall was what was recommended by KPMG, an
25 oversight function.

1 Q If you stay there, the Commissioners may have
2 questions.

3 **BY MR. BARRITT:**

4 Q Ms. Cox, if I may, I want to go back to this
5 delegation point because it's been a subject of some
6 discussion and I might say even contention evidence from
7 different people.

8 One of the things we also heard was because there
9 was a Cabinet Development Committee of which the Minister
10 of Finance was the head, it was assumed, my word now, that
11 because the Minister of Finance was the head of this, it
12 included the Minister of Works and some other Ministers
13 that all Capital Projects were discussed there.

14 And it was presumed that in that discussion would
15 include the delegation of a project to Works... to either
16 Ministry of Tourism or some other ministry. And as a
17 result of that, they could assume that it had your approval
18 as Minister of Finance.

19 A Mr. Barritt, as I indicated to Mr. Hargun, I
20 cannot speak to what happened in 2002 or 2003. And I would
21 go outside my authority where I'd just speculate though I
22 would find it surprising if the former Minister used that
23 form to delegate.

24 And if I can, just without sharing anything that
25 I'm going to give to you as Commissioners, but let me give

1 you a sense of what it would be because now remember, we
2 pretended you were the new Cabinet. And if when you go and
3 sit in the Cabinet Committee, you have pages and pages of
4 this which will set out your Cabinet Capital Expenditure
5 and the projects, and you can imagine in about sometimes 10
6 or 12 Ministries what it's like because you're looking at
7 all these projects.

8 When I was the Minister of Finance what you were
9 doing really because you're talking about your capital
10 expenditure this is part of trying to finalize for the
11 budget, what you're doing is really prioritizing who will
12 be in on the 'in list', and who will be on the 'out list'. And by
13 in and out, this may be because we didn't have the funding;
14 this would have to be deferred so it would be in 2009, '10
15 if we're looking at it in 2004, '5.

16 But it wasn't about delegation, this was really
17 like, I wouldn't say horse trading, but it was letting
18 Ministers and their relevant Permanent Secretaries, that
19 this isn't happening. We can't do this and we can't afford
20 it. It wasn't getting to issues about delegation; it wasn't
21 that type of academic esoterically; it was about, this what is
22 going... these are the projects, and these are what we can do
23 and these are what we can't do.

24 This is your capital acquisition, no, you're not
25 getting a new truck because we can't afford it. This is

1 your TAF and it's a three-year multi-year capital expenditure
2 plan but it wasn't about delegation when I was the Minister of
3 Finance. It was about agreeing which projects would be
4 able to go and which could be put and would be included in
5 the budget for that year.

6 Q Right. I thought that was the case, but given
7 there's been some difference of opinion, I thought I would
8 take the advantage or the opportunity to ask you for the
9 time you were Minister of Finance.

10 A Yes.

11 Q Another thing that's arisen as well with respect
12 to this delegation were the number of projects where we
13 have heard that it was thought, I'll use those words, that
14 the projects had been delegated to the Ministries
15 themselves like Tourism in particular in respect of a
16 number of projects.

17 And that as a result, Works and Engineering were
18 no longer responsible in any way for what went on.

19 I take it you would disagree with that view?

20 A The fact that I would disagree with it doesn't
21 mean that that wouldn't be a view that was held by Works
22 and Engineering. Because I think sometimes lines got
23 blurred. Lines got blurred. But what I would say is
24 that's why I particularly liked, I'm not even going, I
25 should try and find the letter or the memo from the PS

1 Whitter, because I think she was very clear and very
2 helpful if you look at the binder that I was provided with
3 where she referred to her colleague and said, now this is
4 the case, but I assume that Works and Engineering retains
5 the residual responsibility. And I believe this was on
6 Emissions. I believe that was Emissions.

7 And you had the exchange between two PS's where
8 there was the affirmation that that was the case, even though in
9 terms of some of the... And I think you also had something
10 from the former Works and Engineering Cabinet Secretary PS,
11 who's now the Cabinet Secretary which says, look, we dealt
12 with the contracts but we now assume you in Tourism will
13 run with it. But it still didn't obviate the Works and
14 Engineering involvement.

15 And I can't speak to what was agreed or talked
16 about at the Senior Civil Service level. But what I will
17 say as Minister of Finance, I didn't delegate the work to a
18 particular minister.

19 Q And in fact, you said if you had done, you would
20 have done it in writing?

21 A That would be what would be required.

22 Q That would be in the form of a memo?

23 A Why speculate on how I would have done it since I
24 haven't done it. [multiple voices] -- it doesn't make sense.

25 Q You never did it in your time. Okay. Fair

1 enough.

2 Another question I have is with respect to
3 Cabinet procedures in the day that you were...

4 A It wasn't that long ago. When you say in the day,
5 it makes it sound like it was about 50 years ago.

6 Q All right. Fair enough. I'm trying to be as
7 reasonable as I can in phrasing my questions.

8 Would it be your expectation as Minister of
9 Finance and as Premier that any papers that come forward
10 where contracts are to be discussed and considered, that
11 that memorandum would include disclosure of who the
12 principals are of those businesses?

13 A There was a change from my recollection when I
14 became the Premier. I think that prior to that, there was
15 less required in terms of when contracts were going to be
16 approved. There was a change in procedure which required
17 more to be disclosed and for the contracts to come down
18 with that information, and even with sometimes I believe
19 the rating. But that changed, remember I only became the
20 Premier in 2010. So there was a change in process.

21 Q And when you say a change in process, was this --

22 A Well, it was requiring more, a little more
23 information to be --

24 Q How was that communicated?

25 A PSs would have been told.

1 Q PS's would have been told.

2 Under the Good Governance Act, I think it was the
3 second one where --

4 A 11 or 12?

5 Q I think 12, I don't have it in front of me, where
6 there are breaches under the Act, particularly one of
7 collusion or where you've induced a Minister --

8 A If there were breaches under the Act.

9 Q Sorry?

10 A If there were breaches under the Act.

11 Q Yes. Yes. The defense was punishable within
12 three years of the event. Why was the limit of -- Do
13 recall why it was limited to three years?

14 A I think before it was, I believe there may have
15 been something that indicated before it was something like
16 six months you had to bring an action. And this was to
17 extend it. But I'll have to refer to the Act.

18 Q Okay. I didn't know there was -- I thought it
19 was --

20 A It may be five years because I think it was
21 because of the fact of Government election term is
22 five years, so I think what it was, was requiring a five year
23 term from what I recall. [Inaudible 04:00:48].

24 Q There is a binder that has the length...

25 A I think it was five years.

1 (Inaudible discussion.)

2 **BY MR. BARRITT:**

3 Q Is under 33C, that's right. "Notwithstanding
4 anything in any other provisional law proceedings in respect of
5 an offence against this Act shall be commenced within three years
6 after the date of the commission of the offence."

7 And I was just curious to know why it was limited
8 to three years. Sometimes these things don't come to light
9 immediately. I make no comment. I'm just saying as a
10 matter of fact.

11 I thought you might be able to shed some light on
12 this.

13 A No. I'll check and maybe I'll come back to you
14 because I have my notes from then. And you're referring to
15 12, yes?

16 Q 2012, yes, in 2012. All right.

17 A Which clause.

18 Q 33C, it's under Clause --

19 A You sure that's 2012?

20 Q Yes, it's Clause 5 of the amendment.

21 (Inaudible discussion.)

22 A Well, I think that was what was advised and
23 there's nothing in particular that was flagged as to/
24 that it should be longer. I think there was something,
25 when I find it I think that's in the second Act..

1 (Inaudible discussion.)

2 UNIDENTIFIED SPEAKER: If I may?

3 THE WITNESS: Of course.

4 **BY MR BRADSHAW:**

5 Q You mentioned synchronicity?

6 A I beg your pardon?

7 Q You mentioned synchronicity. As we look at sort
8 of making recommendations going forward, might it make sense
9 from your perspective to look five years to sort of match
10 the political terms of the election?

11 A I think you can suggest that but I think there
12 would have been a reason why it wasn't because we spent a
13 lot of time with Parliamentary Council. And she was
14 excellent and we went through it in excruciating detail.
15 So I think that while you can make the recommendation, I
16 just know that that was not the thinking then.

17 Now maybe things have changed, and maybe
18 there will be, that may find favour but it wasn't thought to
19 be reasonable at the time, but if I locate it in the course,
20 I'll certainly make a comment.

21 **BY MR. BARRITT:**

22 Q Thank you. And my next question has to do with
23 Cabinet papers and presentation to Cabinet, just the
24 procedure as to how it operated in your day. And this
25 might be two parts, one, when you were Minister of Finance

1 and then one when you became Premier in the event there was
2 some change?

3 Was the practice with respect to Cabinet papers
4 that involved capital expenditure, that they must always
5 have the signature of the Minister of Finance, i.e., the
6 Minister of Finance is seeing, and would the paper indicate
7 whether the Minister agreed or disagreed with what's
8 proposed?

9 A Cabinet papers generally would have key Ministers
10 to sign off which would require usually that the AG had
11 seen it; where it required expenditure the Minister of
12 Finance, and then depending on if it crossed into somebody
13 else's ministry aspects, then it would either need to be a
14 joint paper or have a paragraph that said the relevant
15 Minister had signed off.

16 I think ones that required capital expenditure
17 depending on the timing, those would probably be coming
18 with your whole raft of Cabinet memoranda for budget. And
19 at budget time you had, notwithstanding that we had a capital
20 expenditure meeting, that in itself wasn't definitive in and of
21 itself. You still had to have a budget presentation and talk to
22 Cabinet and say that, look, this is where we are. We're
23 squeezed here, we know you want to proceed with A, B, C but
24 we don't have the monies to do that or we believe this is a
25 higher priority.

1 So you basically spent almost all day on budget
2 papers dealing both with programs and policies which were
3 more funded obviously out of current account expenditure
4 but capital expenditure, you say this is the budget, we can
5 only spend X amount on capital expenditure.

6 So, looking at our carry forward, that may give
7 you a little bit more flexibility. We had less capital
8 expenditure meetings in the latter days because remember,
9 we had the recession. And there were very few if any
10 capital, new expenditure projects that were approved that
11 weren't already in the cycle of a three to five-year cycle.

12 But generally if it required expenditure, it
13 would require the Minister of Finance or the acting
14 Minister of Finance to sign off and they shouldn't be
15 signing off unless it had been properly reviewed by the
16 Budget Office.

17 And that's why from a procedure of Cabinet
18 papers, sometimes there are emergencies that come along but
19 that's why the Cabinet Secretary exercises, and I'm sure
20 still exercises some rigour about allowing late Cabinet
21 papers. Because remember, Cabinet meets or met and I
22 assume it still meets on Tuesdays, which meant that you had
23 to have your Cabinet Memoranda in by about Thursday or
24 Friday, before Friday in fact, because they would be circulated
25 so Ministers had them over the weekend to review so that they

1 were fresh and primed for Tuesday's meeting.

2 Now sometimes you did have exceptions where late
3 Cabinet papers came and it was like do or die. And they
4 might have to be reviewed and accepted and added on a late
5 agenda on Tuesdays. Wise Ministers would obviously call
6 their Permanent Secretaries and their legal advisors to say
7 is this okay, I'm going to fax this over or could you come
8 and get it and review it because it's urgent.

9 Q Would a paper ever go to Cabinet where the
10 Minister of Finance didn't approve?

11 A Of course. Of course. Of course. Of course. I
12 always as the Minister of Finance should have veto power,
13 but not so. No. Of course. Of course. And especially if the
14 Minister of Finance wasn't the Premier.

15 Q When you were Premier, did the practice change?

16 A Well, obviously, the Minister of Finance/
17 Premier that gives you -- then you do have the authority.

18 Q I would think so.

19 A You would have the authority but if you weren't
20 Premier --

21 Q But back in the day when you were just Minister of
22 Finance?

23 A Minister of Finance, yes.

24 Q You couldn't hold up a paper?

25 A Oh, I could not. The Premier of the day spoke.

1 Q And the Cabinet would then decide?

2 A And then you thrust yourself on the mercy of the
3 Cabinet and you decide to see if moral suasion and
4 argument prevailed. Often it did, but not always.

5 Q Would that include even where in the Minister of
6 Finance's view, the expended was going to exceed what was
7 budgeted?

8 A I think it would require that you, in terms of
9 the budget, that they knew that there wasn't going to be
10 any supplementaries so they had to then cut something else.

11 Q No. But we -- we -- I do recall when there were
12 supplementaries and supplementaries would occur.

13 A Yes.

14 Q And I presume, tell me I'm wrong, that's where
15 someone's exceeded what was the authorized budget?

16 A Or something happened, maybe a hurricane or more
17 people were out of work so you needed to increase your
18 financial assistance.

19 Q And I couldn't imagine the Minister of Finance
20 objecting to that, a Cabinet paper.

21 A Of course not. Not a wise Minister of Finance.

22 Q But I could see it happening with respect to an
23 expenditure that hadn't been budgeted for a particular
24 capital project or a new capital project?

25 A It depended again. You see, it's very dangerous,

1 Mr. Barritt, and you know this full well, for me to make
2 carte blanche statements because it depends on the
3 exigencies of the situation and what was required at the
4 time.

5 Remember, sometimes we had some issues, remember
6 we had -- I remember being in Cabinet when you had 9/11 and
7 there were some issues that came out of that and there were
8 costs that were unanticipated; and you have to deal with that.
9 So sometimes things happen.

10 Q Yeah, I understand that, but I --

11 A And accommodations had to be made from a
12 budgetary and financial perspective.

13 Q But I'm only talking about those cases in which
14 the Minister of Finance has come to a view that this shouldn't
15 be approved.

16 A Most cases in terms of the Minister of Finance
17 says that; people will listen, generally, generally.

18 Q They will listen. Okay. All right. My next question
19 has to do with the Attorney General. And you mentioned the
20 Attorney General who sits around Cabinet --

21 A This is quite wide ranging in terms of what you're asking me.

22 Q No, no, no. It's just that it's come up in evidence
23 and as a person who was a senior person in Government I thought
24 you'd most likely have a view. And it was suggested to us,
25 and you said that papers will -- some papers go to the

1 Attorney General and have to approve, and I presume that's
2 where it's something that involves a contract or a legal
3 opinion is required.

4 It's been suggested that because the Attorney
5 General sits in Cabinet, that if the Attorney General
6 hasn't raised an objection in Cabinet to anything, one can
7 presume that the Attorney General agrees that something is
8 lawful.

9 A So you're asking me --

10 Q Is that a fair comment?

11 A If the Attorney General has been properly seized
12 of the Cabinet memorandum before he or she came to Cabinet
13 and you have usually the signature, the initial that's
14 required by the Attorney General, that is still approved.
15 And they will hold off signing if they get a late paper and
16 they haven't had a chance to think about it and also run it
17 by their technical officers' Solicitor General.

18 So generally, if a paper comes and it should have
19 (whether) legal ramifications, the Attorney General's
20 initials. If it comes late, then she or he would generally
21 have a side-bar and call or have their person come by and
22 look at it. And if they can - and sometimes it would be held
23 over because they hadn't had the legal review, or hadn't
24 had a chance to have the legal review.

25 MR. BARRITT: Okay. Thank you.

1 (Inaudible discussion.)

2 **BY CHAIRMAN EVANS:**

3 Q Ms Cox, you said that after, I think you said after
4 you became Premier, you became aware of the need to make sure
5 that the Cabinet would know who the Principals were when
6 there was a contract bid.

7 Have I summarized what you said correctly?

8 A I think that may be correct, but what I said was
9 probably more generically framed, that it was more
10 information that came down with contracts. And certainly,
11 and I can't recall whether we had the principals provided
12 prior to 2010.

13 But certainly usually saw that, just as you had to
14 know whether they had owed any money to Government and whether
15 they were in good standing, and, of course, there was a payment
16 if they owed money to Government. Had they agreed to have a
17 payment plan, there was more information required.

plan

18 And I believe that included that the principals, and
19 that that didn't exist prior to 2010, but I could be
20 mistaken.

21 Q I was going to ask you just two questions.

22 How did you introduce this change? Was there any
23 change in rules and regulations or Financial Instructions?

24 A No, no, no. It was, it's more just Cabinet
25 processes. You would advise; and remember, you had a Civil

1 Service executive, Permanent Secretary, so that
2 information would have been informed that way, as well as
3 through their Ministers at the table.

4 Q Are you saying the Cabinet Secretary would have
5 been made aware of the need?

6 A Yes.

7 Q And the second was, was that an initiative you
8 took as Premier when you started?

9 A Yes.

10 Q Was this because you were aware that that hadn't
11 always been done. In other words, standards had slipped?

12 A I think I was aware that there had sometimes been
13 some lapses. I think the whole country was aware through the
14 Auditor General's reports; and we wanted us to sharpen our
15 swords.

16 Q Thank you. Well, now, I can take this chance to say
17 how impressive it is by seeing that from KPMG were instructed,
18 I think on your initiative in late 2009, was it?

19 A I think 2010.

20 Q And then they reported. Then there was the internal
21 management put in and there were the two new Acts?

22 A Uh-huh.

23 Q Good Governance, 2011, 2012, so we get a
24 clear picture from your statement and we're going (to go
25 forward) to show how things began to look up from then on

1 and these new measures were introduced.

2 What I wanted to ask you is firstly, looking back at
3 the Acts, the 2011, '12 Acts, do you wish you had done any
4 of that differently, are there bits of that which are
5 unnecessary or are there bits which ought to have gone in and
6 haven't?

7 A No, I think that what has happened subsequently
8 is that the one area, remember the UK has, I think, a Bribery
9 Act, and I think they have introduced legislation. And it
10 took them much longer. And they've also had a lot of
11 pushback from the/some of their financial sector.

12 I think the only gap which exists between our
13 legislation and theirs is with regard to the foreign
14 corrupt practices for non-residents. Like, in terms of that
15 applies to let's say... I don't know... International
16 President, Premier, whoever, I think there's legislation that
17 deals with, not with Bermudians, but with people who may be
18 transacting with Bermuda who are senior or may be with
19 politicians.

20 I think the U.S. covers this in terms of their,
21 they have something I think called Foreign Corrupt
22 Practices. But I think the only gap in our legislation
23 when we went through it again in excruciating detail was that, and
24 that was a further aspect to come. But we also needed to
25 do to some consultation. And consultation doesn't mean

1 consent, but we certainly had to let the international
2 business stakeholders know this is coming.

3 And I don't think anything has come yet on that
4 from the current Government, but that may be
5 something that's in the works. So that was the one gap
6 that we saw.

7 Q Thank you. And the next important question is,
8 you set up the framework then.

9 Are you disappointed or otherwise with the progress
10 or lack of progress that there's been?

11 A I'm not in the position to know what progress or
12 lack of progress there has been. Saying that, I don't
13 believe that there has been any media that suggests that
14 Financial Instructions regulations had been made
15 legislative instruments. Because right now you can, if you
16 breach it while there can be... Usually there's dismissal, but
17 it isn't something there where there is -- it's not an offense.
18 So I think that is important. If it has, if it isn't in
19 train, to get it in train.

20 And I think also in terms of the Code of Practice.
21 When I was there, we were up to Version 6. I don't know
22 how many versions there are still, but it required a lot
23 of --

24 MS LUCK: 15 or 16.

25 MR BARRITT: 16 now.

1 THE WITNESS: 16! Oh, my goodness!

2 There must be a lot of consultation.

3 Q Yes. You see, broadly, the picture is this.

4 There isn't yet a permanent director appointed
5 although there may be one in the offing. The Codes of Practice,
6 etc., are not yet finalized, how many drafts there have been
7 through. So, let me put it like this.

8 In 2006... 2011 when you were responsible for
9 making this new law, if you'd been told then that this
10 would be the position in five years' time, what would you
11 have said?

12 A I would be astounded because if we recognize that
13 this is critical as a linchpin to our financial control
14 framework, then it is important. There are some things
15 where it is important, notwithstanding that you may put a
16 moratorium on hiring.

17 Some individuals, some positions are key,
18 especially when you realize that you can actually save the
19 Government money and add value by having that control. So
20 I think that this is certainly one, with respect, I'd advise
21 because I'm not in the position and you realize there's a
22 new [inaudible 04:19:24] in charge, but I really think that this
23 is one that they would want to probably make sure they expedite
24 because it's already been, it's almost five years, isn't
25 it, and nothing's happened.

1 Q Yes. Well, not quite nothing happened, but nothing
2 really seems to have taken effect.

3 A No, it's important.

4 Q I want to hypothesize just be quite brutal
5 about this, what you have installed is a concept and I
6 think you called it a supervisory body.

7 A Yeah.

8 Q And its job is to supervise Government
9 departments?

10 A Uh-huh.

11 Q Now, you don't have to see Yes Minister to know that
12 Government departments can be very defensive of their own
13 interests.

14 And I just wondered whether a factor may have
15 been that if you're setting up a body to supervise other
16 Government departments, you're going to expect to find
17 resistance from those departments and some of them can be
18 very good at stirring things down.

19 Do you think that's happened?

20 A I think that it would probably be, Mr. Chair,
21 unwise for me to speculate because it could be any number
22 of reasons. I believe that the position was advertised
23 because I know from someone who even had applied. And
24 presumably they didn't meet the cut but --

25 MS LUCK: And as Dr Binns said that

1 there was an acting director and that they expected it to be
2 substantive so I wouldn't like us to leave you with a thought
3 that there isn't. My understanding is there was somebody who
4 was in an interim role really right from the beginning from the
5 the time it was put in place. So we shouldn't leave you with
6 the impression that this person hasn't been there, they have.

7 THE WITNESS: No, I know there is somebody acting
8 but I'm just saying that... I think that... I don't know. I think
9 that Governments show by their action or inaction what they
10 think are priorities. And I think that this is key if you
11 are sincere about seeking to deal with some of the
12 institutional issues that have caused some of the lapses.

13 And I think what would be more interesting is to
14 look at the next Auditor General's report that deals with
15 the period since the election and to see what, if anything,
16 has changed. And while I can be a cynic, I won't
17 speculate, but I think that if so, I think you probably
18 could be busy for the next ten years.

19 MS LUCK: Probably something else.

20 **BY CHAIRMAN EVANS:**

21 Q I think you may be saying that if there was a
22 recommendation to make this a top priority... That's one if.
23 If the recommendation was acted upon, that's the second
24 if...

25 A Yeah.

1 Q ... and then way or another, something would happen?

2 A Yeah, it would have to. And it's necessary.

3 It's necessary.

4 **BY MR. BARRITT:**

5 Q Can I just quickly... It's about Cabinet Minutes.

6 Just so we're all clear on evidence we've heard. Cabinet Minutes
7 are seen by the Ministers after they're drawn up and they
8 can make any amendments or corrections thereto.

9 A You mean, Ministers in Ministry?

10 Q Ministers who are, attend the Cabinet meeting. Minutes
11 are kept, they're subsequently shared with Ministers, the
12 Minutes, and they can make any corrections they think are
13 appropriate?

14 A I'm sorry, Mr. Barritt, I'm not clear.

15 Are you asking me that when I was Minister of
16 Finance, would I see a Cabinet memo from the Minister of
17 Finance?

18 Q No. No. The Minutes of Cabinet meetings, they
19 are circulated, are they not, after Cabinet meets for
20 Ministers to review and correct and/or amend?

21 A The Minutes of Cabinet meetings come back to you
22 on Friday.

23 Q With your package?

24 A With your Cabinet package. And then they are not
25 sent to Government House who gets a copy of our Minutes

1 until we have approved those Minutes because suppose something
2 was going to change. So on Tuesday the first item of business
3 after the prayer is you go through the Minutes.

4 Q That's what I was driving at.

5 A It's part of your package.

6 Q Yes. Okay. Thank you very much.

7 And the other question I was going to ask, I just
8 don't know how this works, but there are presentations of
9 memos that go in the package for the Tuesday coming meeting
10 in which a Minister is going to ask for something or inform
11 Cabinet or seek a conclusion.

12 Is it taking, is the practice generally to have
13 them taken as read when you meet on a Tuesday or are the
14 papers read out?

15 A No, the Minister presents.

16 Q And they present --

17 A And sometimes will have their technical officers
18 standing by. It is not taken as read. It isn't a rubber
19 stamping exercise, Mr. Barritt.

20 Q I'm just trying to get clarification. Thank you.
21 And the last thing, this is another thing that's bedeviled
22 us a bit around Financial Instructions, what they mean and
23 their force. And I think I've always thought that their
24 power or they're developed under the Public Treasury and
25 Ministry and Payments Act of 1969, where the Minister of

1 Finance is responsible for issuing instructions for people
2 who are responsible for the custody and handling of money.

3 And it says here that these people shall obey
4 **all** instructions that may from time to time be issued by
5 the Minister or by the direction of the Minister in respect
6 to the custody and handling of the same, an accounting
7 therefore.

8 A Uh-huh.

9 Q And is it generally taken, and can it be taken
10 that these are the financi... What the purpose of the Financial
11 Instructions serve, that these --

12 A I wouldn't limit it to Financial Instructions.
13 And I'm not sure that that is the reference to Financial
14 Instructions. That would be more instructions if we say
15 that the budget envelope is 900,000,000 or whatever. I
16 think Financial Instructions are the policy documents that
17 you have and that Ministers and that accounting officers
18 I think should... are to be guided by.

19 Remember, under the Amendment at the Governance
20 Act and what's supposed to be in terms of the regulations
21 to Financial Instructions, they are to have a higher weight
22 than they have now by becoming almost a legislative
23 instrument which they aren't currently so that there is
24 actually an offense if you breach Financial Instructions.

25 That doesn't exist presently, but it was

1 contemplated in the Good Governance Act where that was to
2 come with regulations, as well as the Code of Conduct.

3 Q Thank you. You've come to where I was going.

4 **BY CHAIRMAN EVANS:**

5 Q It just occurred to me. I'm not sure we've asked
6 you one question which has arisen that's in relation to
7 what have been called the Contract Award Recommendations
8 prepared by the technical officers in a department. And
9 you have a case where the Minister for whatever reason
10 doesn't agree with the Technical Officers' recommendation,
11 wants to recommend the second lowest bid or whatever it may be.

12 What do you say about that situation?

13 A I think I covered it, I believe in speaking with
14 Mr. Hargun, and he said that... I think he drew my attention
15 to something, I think from the KPMG report and I said that
16 that isn't necessarily. I mean, technical officers can recommend
17 but ultimate authority rests with the Cabinet and they're
18 free to disagree for whatever policies.

19 Q I think that's the closest we've come to this in
20 your evidence, but I just wanted to focus on this
21 particular point.

22 In such a case, do you think there might be a
23 requirement that the Technical Officers' recommendation
24 should always go to Cabinet even if the Minister puts in
25 his own paper or note saying, I've got the following

1 reasons for not agreeing with it, in this particular case,
2 let Cabinet decide?

3 A I think, I mean barring maybe the exception,
4 maybe your exception but generally that would be the
5 practice.

6 Q You think so?

7 A Yeah. That would be the practice or it would
8 come down with the options, and in the presentation the
9 Minister would indicate that, you know, My technical
10 officers say A, B, C, D and this is -- they're out to lunch
11 on this one. And this is, they may tell you stuff that you
12 don't necessarily -- they wouldn't put it in writing but
13 that maybe suggests that there may be a conflict with the
14 technical officer or whatever.

15 I'm just speculating but there are reasons that
16 Ministers will certainly tell you. That usually would come
17 to Cabinet where they tell you about what they've raised and
18 what the technical officers recommend and their concern.

19 Q You as a Cabinet member would expect them to tell
20 you?

21 A That is the norm. That is the norm. There may
22 be sometimes legitimate reasons for an exception and also
23 given time exigencies but that is the norm.

24 CHAIRMAN EVANS: Thank you. Now Mr. Hargun

25 MR HARGUN: Nothing further.

1 Well, Ms. Cox, we're most grateful to you.

2 Thank you very much for your evidence.

3 (Inaudible discussion.)

4 (End of audio.)

5 **End of Day's Proceedings**

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1 REPORTER'S CERTIFICATE

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

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

10 IN WITNESS WHEREOF, I hereby certify this in the
11 County of Placer, State of California, this 13th day of
12 October, 2016.

13
14 

15 AMY E. PERRY, CSR 11880
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