

1 COMMISSION OF INQUIRY - THE WITNESS HEARINGS
2 ST. THERESA'S CATHEDRAL HALL, LAFFAN STREET,
3 HAMILTON, BERMUDA
4 FRIDAY, SEPTEMBER 30, 2016

5

6 **FINAL CERTIFIED SIGNED DOCUMENT**

7

8 (Beginning of Audio Recording.)

9 MS ALBERTA DYER TUCKER: Good morning, ladies
10 and gentlemen, we're about to start. I would ask that
11 you check your cellular devices and ensure that they
12 are either turned off or put on vibrate, please.

13 Ladies and gentlemen.

14 MR NARINDER HARGUN: Good morning,
15 Mr. Chairman. Just a housekeeping matter. Mr. Manders
16 was supposed to give evidence first thing in
17 the morning.

18 CHAIRMAN: Yes.

19 MR HARGUN: That has been
20 rescheduled. We have received witness statements in
21 relation to the issue of the airport and we are
22 considering them. And rather than appearing this
23 morning, he will be rescheduled probably next week.

24 CHAIRMAN: Yes. Thank you. I'd like
25 just to confirm what you already said, that we have

1 received a witness statement from Mr. Manders dealing
2 with those questions that we had asked about the
3 airport project. I emphasize that quite properly, the
4 answers are confined to the questions we had asked.
5 And we are most grateful to Mr. Manders and, indeed, to
6 the attorney general for the fact that that has come.

7 MR HARGUN: Thank you. In that case,
8 Mr. Chairman, unless there are other issues, we can
9 proceed with Mr. Telemaque.

10 CHAIRMAN: Yes. And is that in order?
11 Everybody's ready? Mr. Telemaque is here. Thank you.

12 Whereupon,

13 **MARC TELEMAQUE,**

14 having been duly sworn,

15 was examined and testified as follows:

16 CHAIRMAN: Thank you, Mr. Telemaque.

17 And I hope you haven't been inconvenienced by switching
18 around.

19 THE WITNESS: No, sir.

20 CHAIRMAN: Thank you.

21 **EXAMINATION**

22 **BY MR. HARGUN:**

23 Q Good morning, Mr. Telemaque.

24 A Good morning.

25 Q Mr. Telemaque, you were very kindly given a

1 witness statement, which is dated the 19th of
2 September. Do you have a copy of that statement?

3 A I do. Is it in any of these bundles?

4 Q It should be in the witness --

5 A Tab 6.

6 Q Tab 6, binder. Can I just ask you to confirm
7 once you look at your witness statement, that what you
8 have said there still continues to be correct?

9 A Yes, that's correct.

10 Q And you're presently the secretary for
11 national security?

12 A Yes.

13 Q And can you tell us what your positions were,
14 say, from 2008 onwards in relation to the Ministry of
15 Transport and the Ministry of Tourism and Cabinet
16 Secretary just so we get the dates right?

17 A From 2008?

18 Q Yes.

19 A In 2008, I was the Secretary to the Cabinet.
20 And the only retained responsibility for matters in
21 Tourism and Transport was the responsibility for hotel
22 development.

23 CHAIRMAN: Could you keep your voice
24 up?

25 A I'm sorry. I can hear me. By 2008, a

1 substantive Permanent Secretary had been appointed to
2 the Ministry of Tourism and Transport.

3 Q And you were Permanent Secretary of Transport
4 and Tourism what years?

5 A I was appointed first the Permanent Secretary
6 of transport in September 2002. The Ministry then became
7 the Ministry of Tourism and Transport in around August of
8 2004 and I was the Permanent Secretary. And I was
9 appointed Secretary to the Cabinet December of 2006.
10 And pending the appointment of substantive Permanent
11 Secretary for the Ministry, I was Cabinet Secretary and
12 continued as Permanent Secretary of tourism and
13 transport, I think, until mid-2007.

14 Q And who was the -- who were the Ministers in
15 relation to Transport and Tourism whilst you were
16 Permanent Secretary?

17 A The Minister was Dr. Brown.

18 Q Throughout the period?

19 A Yes.

20 Q In your witness statement, you dealt with a
21 number of issues. You dealt with the processing of
22 payments. You deal with -- you dealt with specific
23 contracts, namely Bermuda Emissions Control Limited,
24 Heritage Wharf, and Global Hue, and also I think you
25 said that you played no material part in the Port Royal

1 Golf Course.

2 A That's correct.

3 Q Can we just touch upon some of the issues
4 that you dealt with in your witness statement? Just
5 firstly in relation to the Bermuda Emissions. And the
6 issue I want to deal with is the issue of whether an
7 open tender was required in relation to the
8 construction project. You recall that issue. And I
9 think you dealt with it in paragraph 12 of your witness
10 statement. You say that "I recall that sometime in
11 2005, Cabinet considered a Paper related to the
12 construction of the satellite testing facilities. That
13 resulted in a conclusion that the construction of these
14 facilities to be subject of an open tender process.
15 This was incongruous with the earlier conclusion of
16 2003 and at variance with the manner in which the
17 Ministry was proceeding in advancing this initiative."

18 Do you see that?

19 A Yes.

20 Q Let's just unpack that statement. The
21 position is that in relation to all the buildings which
22 were built in relation to Bermuda Emissions, there was
23 no open tender. That's correct, isn't it?

24 A Yes.

25 Q And the sole contractor selected by BECL was

1 Correia Construction.

2 A Yes.

3 Q And I think you are referring to two Cabinet
4 conclusions, and we should have a look at those. The
5 first one you referred to, the earlier conclusion, that
6 is in 2003. And you will find that in that small
7 binder underneath. That is Conclusion 23032. And that
8 is dated the 10th of June 2003, I believe.

9 A That's correct.

10 Q And I think, the page would be page 3. And on
11 page 3, if you look at that, in the -- just
12 about two thirds down, you see that the Minister and
13 Cabinet have previously identified Bermuda Emissions
14 Control Limited, BECL, as the preferred contractor to
15 provide emission and vehicle safety inspection
16 services and he was proposing that BECL be confirmed
17 to do this. Do you see that?

18 A Yes, I do.

19 Q And that was the Minister of Tourism -- the
20 Minister of Transport?

21 A Yes, that's right.

22 Q And that's Dr. Brown?

23 A Yes.

24 Q And if you then look at the conclusion, which
25 is at page 5, paragraph 1, which you recite in your

1 witness statement, "The Cabinet approved the proposal
2 to contract Bermuda Emissions Control Limited to
3 provide an emissions inspection maintenance program and
4 to outsource the vehicle safety inspection service as
5 amended and provided in annex."

6 A Yes.

7 Q That's the provision you relied on for saying
8 that Bermuda Emissions were selected really for the
9 program?

10 A Not just that provision, but that's part of
11 my --

12 Q Yes. The language which you have set out in
13 paragraph 13 -- Sorry -- in --

14 A 12.

15 Q -- 12, does it not come from this paragraph
16 or is there another passage you relied upon?

17 A No. It's paragraph 10.

18 Q Paragraph 10.

19 A Paragraph 10 of my statement cites the
20 conclusion in there.

21 Q And that is, indeed, the passage which I've
22 just read?

23 A Right.

24 Q Yes.

25 A That is correct. And that is lifted from

1 that conclusion.

2 Q Yes. Thank you. And the issue in relation
3 to open tender is that, the suggestion certainly in a
4 subsequent Cabinet conclusion that it should be
5 from open tender. Can we just have a look at that?
6 And that is that that took place two years afterwards in
7 2005. And if you look at page 12, you will see that
8 that is Conclusion 25 6, meeting with the Cabinet on the
9 17th of May 2005. And you will see that the issue
10 before the Cabinet for decision was in paragraph 1,
11 introducing the joint paper between Minister of Tourism
12 and Transport and Works and Engineering. The Minister
13 of Tourism and Transport informed his colleagues that
14 its purpose was to invite Cabinet approval of the
15 construction of two satellite testing sites. The
16 Transport Control Department, one at Rockaway
17 Southampton and the other at Southside St. David's.

18 A Yeah. Yes.

19 Q And then you'll see that the Cabinet, one,
20 approved the construction of two satellite testing
21 sites of the Transport Control Department at Rockaway
22 Southampton and at Southside St. David's following an
23 open tender process. Do you see that?

24 A Yes.

25 Q So, certainly on the face of it, the Cabinet

1 is mandating that the approval is conditional upon an
2 open tender.

3 A Yes.

4 Q Yes. And, indeed, if you look at -- If you
5 look at paragraph 4 of the conclusion and the decision,
6 the Cabinet agreed that Bermuda Emissions Control
7 Limited should be engaged to prepare all tender
8 documents for the construction of the satellite sites
9 as well as design of the sites and the supply and
10 installation of all equipment required. Yes?

11 A Yes.

12 Q So, in fact, the Cabinet directed Bermuda
13 Emissions Control Limited to prepare tender documents.
14 Yes?

15 A Yes.

16 Q And the position is that Bermuda Emissions
17 Control Limited, in fact, did not do that. That's
18 right, isn't it?

19 A I don't recall. But I accept it, that they
20 didn't.

21 Q In fact, they simply pursued it with Correia
22 Construction as the -- as the contractor. No other
23 bids were -- no other parties were invited to bid for
24 this?

25 A For the two satellite sites?

1 Q Yes.

2 A Yes.

3 Q Or, indeed, the main one.

4 A That's right. Yes.

5 Q And you were the Permanent Secretary at the
6 time?

7 A Yes.

8 Q And what action did you take, if any, to
9 ensure that Bermuda Emissions Control Limited complied
10 with this decision of the Cabinet?

11 A Well, I mean, this is 10 years ago, and I
12 don't recall any actions taken in that regard. But I
13 think that it will be useful to understand, as I
14 indicated in my statement, that even that portion of
15 the conclusion is incongruous with what was the overall
16 proposal. And one of the pieces that appears to be
17 missing from the consideration of this entire matter is
18 what is referred to in the Cabinet conclusion as
19 Annex 1.

20 Q Yes.

21 A And that annex, if my memory serves me
22 correctly, contains a complete package, which was a
23 design/build arrangement for the entire project of
24 which the satellite testing facilities were a part.

25 I can also say that there needs to be some

1 context around this conclusion because by 2005, as you
2 will notice, the Ministry was then the Ministry of
3 Tourism and Transport. The government had experienced
4 a change in administrations. So there were some
5 significant changes at the Cabinet table.

6 And you will note, as you pointed out in the
7 question, that two years had passed since the original
8 approval for the entire project, which was being
9 pursued by the relevant ministries as a global project,
10 of which this was a part.

11 I'll just pause here to say that the
12 indication of Cabinet's agreement -- because it is not
13 a direct -- but Cabinet's agreement in that paragraph 4
14 of the 2005 conclusion is somewhat contradictory
15 because that is exactly what was being -- it was being
16 done by others. It was being done elsewhere. It was
17 being done by Bermuda Emissions Control Limited, I
18 believe, already as part of the wider project, which
19 had previously been approved. And you will see there
20 is other documentation -- I think I refer to it either
21 in my statement, but it certainly is in the bundles,
22 which indicate that what Cabinet had accepted in its
23 original conclusion was that this was a package. It
24 was a specialized set of work. And that in an effort
25 to ensure that costs were kept to a minimum and also

1 that the policy initiative was achieved in a timely
2 manner, that this would be done as part of the wider
3 project, which had been approved in 2003.

4 Q Well, let's just explore that because that's
5 what you say in paragraph 12 of your witness
6 statement --

7 A Yes.

8 Q -- because you are being asked as to why a
9 public tender wasn't followed. And the explanation
10 that you give is this in paragraph 12. You say "I
11 recall that sometime in 2005, Cabinet considered a
12 paper related to the construction of the satellite
13 testing facilities. That resulted in a conclusion that
14 the construction of these facilities be subject to an
15 open tender process." Yeah? We've just seen that.

16 A Yes.

17 Q "This was incongruous with earlier conclusion
18 of 2003 and at variance with the manner in which the
19 Ministry was proceeding in advancing this initiative."
20 Yes?

21 A Yes.

22 Q Now, let's just follow this through. You
23 accept that the 2005 conclusion on the face of it is
24 calling for a public tender?

25 A Yes.

1 Q And you took the view -- and if you want me
2 to, let me know -- that this was incongruous with the
3 earlier decision in 2003.

4 A It wasn't just my view. It was the view of
5 colleagues as well.

6 Q Yes.

7 A And I think this was canvassed extensively
8 because I think it would be fair to say that this is
9 perhaps the fifth inquiry into this matter. This has
10 been canvassed extensively in the record of Public
11 Accounts Committee.

12 Q Yes. We'll have a look at that.

13 A And as I indicated at that time, this was the
14 subject of some discussion. And as I indicate in the
15 witness statement, I recall the internal discussions
16 between the ministries there and the individuals there
17 about how to deal with this.

18 Q Can I ask you this? Even assuming that the
19 two Minutes -- the 2003 Cabinet decision and the 2005
20 Cabinet decision -- let us assume that there is a
21 conflict or an ambiguity or as you say incongruous,
22 would you not accept that a subsequent decision of the
23 Cabinet two years afterward would -- in any event ought
24 to be the one which should be followed?

25 A Not necessarily. Because there had been a

1 change in administration, not in government.

2 Q But I mean, you're a lawyer. As a lawyer,
3 ordinarily, you would follow the most recent directive
4 from a governmental body, would you not?

5 A I don't think that you can construe something
6 like this in so strict a fashion.

7 Q And did you -- did you or any of your
8 colleagues thought that given that there was this
9 ambiguity between the earlier 2003 directive from the
10 Cabinet and the 2005 subsequent directive which openly
11 called for an open tender, that perhaps you should go
12 back to the Cabinet and ask them to clarify?

13 A I don't recall any specific discussion on
14 that point. But as I accepted and, I think, indicated
15 and the record of Public Accounts Committee will
16 indicate, I accepted some years ago that with
17 hindsight, it would have been prudent to return and
18 seek a clarification where we had that particular
19 issue.

20 Q Yes. And I think the public accounts
21 committee reference you're making, just to confirm,
22 that is that -- If you pick up your binder at Tab 9,
23 page 188, is this -- if you look at -- this is the
24 Minutes and the record of the Public Accounts Committee
25 in relation to this matter and the document starts at

1 page 184. But I think the relevant part which you are
2 referring to, I believe, is at page 188. And the
3 document is dated 16th of July 2011. At paragraph J,
4 "When questioned about this, the former Cabinet
5 Secretary" -- is that you, Mr. Telemaque?

6 A Yes.

7 Q "And Permanent Secretary of Ministry of
8 Transport and Tourism refer to previous overarching
9 decision of the Cabinet to have a single vendor for
10 emissions control. He was asked why MTT disobeyed a
11 Cabinet conclusion that required the satellite
12 facilities to be put out to tender. Two, if the two
13 Cabinet decisions were in conflict, why he did not, as
14 PS, recommend to the Minister to take it back to
15 Cabinet for clarification? Three, even without the
16 clarification, it would have been reasonable to
17 conclude that the most recent decision of the Cabinet was
18 its current thinking, notwithstanding a decision it
19 made in the past. Adding weight to this logic was the
20 fact that the most recent Cabinet decision conformed
21 with standing Financial Instructions. Instead of this
22 line of thinking, the Ministry chose to ignore the most
23 recent Cabinet instruction and tried to use a previous
24 decision as cover for its actions."

25 And then at K, "The former Cabinet Secretary

1 and Permanent Secretary for MTT after pointed
2 questioning from the committee, eventually admitted
3 that he should have advised the Minister to return to
4 the Cabinet for clarification."

5 Is that right that that was your position
6 before the PAC, that --

7 A Yes. But if it would assist you, I can give
8 you exactly what I said. And I happen to have found my
9 note from the time. And I think it would be useful,
10 because the Minute does not do it justice.

11 Q Certainly.

12 A I did not ignore the direction of
13 Cabinet. The addition of the open tender
14 process to the 2005 conclusion contradicted the nature
15 of the global approach to the project which had
16 previously been approved by Cabinet. Whilst I accept
17 that on its face this contradiction should have been
18 clarified, the rigor of the process and vetting through
19 which the project was put withstands scrutiny. It was
20 not carte blanche. The Accountant General and others
21 were attempting to adhere to Financial Instructions and
22 the time taken to do that supports that contention.

23 Q In relation to that, can I ask you just a
24 simple question, Mr. Telemaque? Given that there was a
25 2005 direction from the Cabinet which called for an

1 open tender in plain language and, in fact, directed
2 BECL to prepare tender documents, if there was any
3 doubt in any public officer's mind as to what Cabinet had
4 in mind having regard to the 2005 Cabinet conclusion,
5 why not go back to the Cabinet?

6 A As I indicated, I have accepted with
7 hindsight that should have been clarified.

8 Q Very well.

9 MR BARRITT: Can I ask a question?

10 **EXAMINATION**

11 **BY MR BARRITT:**

12 Q Mr. Telemaque, you said earlier on there had
13 been a change in administrations.

14 A Yes, that's correct.

15 Q And I wondered exactly what you meant by that
16 given, as I understand it and correct me if I'm wrong,
17 that both yourself and Mr. Brown were -- remained as
18 the PS and the Minister responsible for Tourism.

19 A The change in administration I referred to
20 was following the election of 2003, the government,
21 whilst successful, chose a new leadership team, and
22 there had been a change in Premier.

23 Q But --

24 A That is referred to --

25 Q That's what you meant -- but I am correct in

1 saying that you remained as the PS.

2 A Yes. That is correct.

3 Q And Dr. Brown remained as the Minister --

4 A Yes. That is correct.

5 Q So there was no change there.

6 A No.

7 Q Yeah. And so -- correct me again if I'm
8 wrong. Aren't you the person who, if you don't prepare
9 the papers that go to Cabinet for approval, you are the
10 person who has final oversight before they do go to
11 Cabinet so inconsistencies and errors are spotted.

12 A If the paper had any from the
13 Ministry from which I am responsible, yes.

14 Q But as I read the Minute, it did come.

15 A I'm not so sure that's the case. I don't
16 recall drafting that paper.

17 Q But even if --

18 A You will notice it's a joint paper.

19 Q Even if it's a joint paper, it might be
20 something prepared by Works --

21 A Absolutely.

22 Q -- that you'd never see.

23 A Absolutely. Well, not necessarily that I
24 wouldn't see. But that would only come to the Minister
25 for his signature to sign as a cosigner or a cosponsor

1 of the Paper. The drafting would be done elsewhere.

2 Q Yeah. But before it goes to the Minister,
3 wouldn't it go through you before it goes to the
4 Minister?

5 A In an ideal world, yes.

6 Q In an ideal world. So there are cases where
7 it may not happen. Is that what you're suggesting?

8 A Ministers are occasionally unsupervised.

9 Q Ministers are occasionally unsupervised. And
10 this may have been one of those cases?

11 A It's quite possible. Because I think that --
12 and that's what I attempted to point out to Mr. Hargun.
13 If you look at the -- I've lost it now. But if you
14 look at the conclusion, the conclusion -- the
15 conclusion seeks -- and Mr. Hargun continues to refer
16 to this -- as a directive. And that's just the point.
17 It wasn't. It wasn't a directive to BECL to do
18 anything. The Cabinet agreed that BECL would do
19 something. That would not be my practice. My practice
20 would be to secure approval for something specifically.
21 So the drafting is a point.

22 Q Perhaps something does turn on that, but I --

23 A It did, certainly, was.

24 Q The Cabinet usually acts on a paper that's
25 presented to them. They don't act out of the blue.

1 A I agree. And that is -- that is
2 demonstratable.

3

EXAMINATION

4 **BY MR. HARGUN:**

5 Q It's perfectly true, the language used,
6 Mr. Telemaque, is that the Cabinet agreed. But a fair
7 reading of those four paragraphs is that the Cabinet
8 agreed to proceed with the construction project subject
9 to those conditions which are set out in there.

10 Would you not accept that?

11 A Yes. But let me just -- let me just say
12 since we're having this discussion, let's just -- let's
13 break it down. I don't see the original Cabinet paper
14 here. But there is a legitimate question that would
15 suggest on what basis would BECL be engaged to prepare
16 all tender documents for the construction of the
17 satellite sites? Why would that be devolved to BECL?

18 Q Well, those are questions I'm going to ask
19 you in a minute. But for the time -- for the time,
20 we're just concerned with the issue that --

21 A And I might add, in a joint paper with the
22 Minister of Works.

23 Q Yes. Well, do you recall why this was a
24 joint paper with the Minister of Works?

25 A No, I don't. Well, I don't recall why but I

1 can see why because the project was a project within
2 the Ministry of Tourism and Transport and the Minister
3 of Works obviously having something to do with
4 construction.

5 Q Construction, yes. Anyway.

6 **EXAMINATION**

7 **BY CHAIRMAN:**

8 Q I'd like to take that a little further. You said
9 there was a contradiction between the Cabinet resolution
10 in 2005 and the earlier one.

11 A Yes.

12 Q But when I look at the Minutes for the 2005
13 Cabinet meeting -- you have those I think -- in the
14 second paragraph, it records the Minister, meaning, I
15 think, the Minister of Tourism, noted that it was
16 proposed that BECL would be engaged to prepare all
17 tender documents and the standarding perhaps, the
18 Cabinet members understood that to mean there would be
19 an open tender.

20 A And what I'm trying to say and perhaps
21 expressing here poorly is that that had already been
22 agreed.

23 Q Well, I take your point. But when you say
24 there was a contradiction of an incongruity, it's a bit
25 hard to say that the Cabinet in some way was changing

1 its mind when on this occasion, it did exactly what the
2 Minister of Tourism wanted it to do?

3 A In a joint paper with the Minister of Works.

4 Q And on the face of it, the Minister said that
5 there would be a tender.

6 A Yes. On the face of the Minute, yes.

7 Q And so what happened after that? There must
8 have been a change of mind, if not of policy.

9 A Yes.

10 Q At a later stage when the same Minister and
11 you wouldn't say Permanent Secretary said, "Oh, well,
12 we didn't want what we asked for and got. We wanted
13 something different," but putting it more blatantly
14 than that, "We're not going to have a tender process."

15 Now, whose decision was that?

16 A I don't -- I can't point to it being the
17 decision in any given moment of any one individual.
18 But I do want to, if we could, just examine that second
19 paragraph to which you refer, sir, because I think it's
20 important to try and explain this.

21 That second paragraph says "The Minister
22 noted that it was proposed that BECL be engaged to
23 prepare all tender documents for the construction of
24 the satellite sites and further that BECL has
25 consultants to the Ministry of Works and Engineering

1 and Housing would design the sites and supply and
2 install all equipment as required."

3 Q Yes. And that, of course, was Resolution 4.

4 A Well, actually -- Yes, that's right. That's
5 right.

6 Q The point I'm making is the Cabinet on
7 the 17th of May 2005 did exactly what they understood
8 the Minister to be asking, that BECL should prepare
9 tender documents implying that there would be a tender
10 process and they understood it in that sense following
11 open tender process. Now, I think on any view of what
12 you're telling us, there was a change of mind, because
13 there was at some stage a decision not to have a tender.

14 A I accept that. But what I'm trying to
15 explain is, is that this creates and created at the time
16 significant confusion because under the original
17 approval, BECL had been approved to do exactly this
18 with the exception of the open tender. That is the
19 sole change.

20 Q Yes. I followed that, if I may say so.

21 A Right.

22 Q And what I'm asking you is somebody later
23 realized that there was what you called a
24 contradiction, notwithstanding that the Cabinet had
25 done what they had been asked to do. And there was, in

1 essence, a decision later not to go ahead with the
2 tender process. And all I'm asking is whose decision
3 was that? The Minister's or yours? If we're looking
4 at probabilities, it can hardly have been taken without
5 at least the approval of the Minister.

6 A I think that's likely, yes.

7 Q Yes. Was the initiative kept -- did the
8 initiative come from you or from the Minister?

9 A If it would have given us a direction to
10 public officers in the manner in which to proceed, it
11 would have come from me.

12 Q And so why did you decide to -- not to
13 proceed with the tender process?

14 A With respect, that's not what I said. I
15 didn't say I decided anything. You asked who would the
16 instruction have come from. In the ordinary course,
17 it would have been from the Minister. I don't recall
18 that. But that would be the flow of instructions, if
19 you will.

20 Q Well, thank you very much. That's where we
21 are on the evidence.

22 A Right.

23 Q Thank you.

24 **EXAMINATION**

25

1 **BY MR HARGUN:**

2 Q Can I ask you a question with a slightly
3 different (indiscernible), Mr. Telemaque? When you
4 received Cabinet decisions like this one and it relates
5 to your Ministry and you're the Permanent Secretary,
6 do you understand that that is your -- becomes your
7 responsibility to ensure that those decisions are
8 complied with?

9 A Yes.

10 Q So in relation to this particular project, it
11 was outsourced to BECL. How did you see your
12 responsibility to ensure that the conditions which the
13 Cabinet had imposed had been complied with?

14 A I'm not sure I understand.

15 Q How were you going to make sure that the
16 conditions which had been set out in this document had
17 been complied with?

18 A As I would with any other conclusion, there
19 would have been contact made with those
20 responsible for the execution of some of the
21 requirements, chambers with respect to a particular
22 contract; Other technical officers who were closer to
23 the teams conducting some of the work would have been
24 directed to make the appropriate contact to move things
25 along is what we'd ordinarily do with respect to any

1 conclusion.

2 Q Would you or -- would you yourself or would
3 you direct somebody within your Ministry to contact
4 BECL to find out whether they had complied with this?

5 A In this case, I would have directed someone
6 else.

7 Q Yes. And did you?

8 A I couldn't say. I can't recall. It would be
9 my practice to.

10 Q Presumably, you did find out that there was no
11 open tender.

12 A I did find out? Yes.

13 Q About the time when it occurred.

14 A I would imagine so, yes.

15 Q And did you at that time take any action to
16 ensure that this was complied with or take any other
17 action to disclarify the position?

18 A As I've indicated, I think, numerous times,
19 not at that time.

20 Q Okay. In any event, the position is that the
21 selection of contractor led to BECL?

22 A Yes.

23 Q And what control did the Ministry have, if
24 any, over the selection of the contractor? Were they
25 left completely to the discretion of BECL with the

1 contractor (issue)?

2 A With respect to the two satellite testing
3 stations?

4 Q Yes.

5 A I don't think you can -- I don't think -- I
6 must not be expressing myself clearly. I don't think
7 you can cast this in that light. And what I tried to
8 emphasize to the Public Accounts Committee at the time,
9 what I tried to emphasize to the Auditor General and
10 what I had tried to emphasize in this case is that the
11 Ministry was proceeding on the basis of the original
12 decision which was that BECL and Correia would be doing
13 the emissions testing facilities, which included both
14 the North Street site and the two satellite sites.

15 Q You're relying on the 2003 decision?

16 A Yes. I think, if I can say with respect, it
17 would be a useful line of inquiry and one with which I
18 cannot help you as to why it is that this paper appears
19 and there's an attempt to extract the construction of
20 the two satellite sites by what appears to be the
21 Ministry of Works and Engineering when two years ago
22 the decision had already been made.

23 Q Yes. Just on these -- The construction
24 projects themselves, it's right, isn't it, that they
25 are just ordinary construction projects? There's

1 nothing special about them?

2 A The two satellite sites?

3 Q Yes.

4 A I've seen that said. I don't know that --

5 Q Well, even the TCD, the main building, I mean,
6 it just - it's a regular building; there's nothing
7 exceptional about that building which could be built by
8 any contractor.

9 A I don't think that that's correct.

10 Q What's so special --

11 A That site is a difficult site on which to
12 build. That site abuts a tidal canal I think you'd
13 call it. And so it's prone to significant flooding and
14 required some expertise in the management of the
15 construction at that site.

16 Q But any number of contractors in Bermuda
17 would do that.

18 A I suspect that's correct, yes.

19 Q I mean, this wasn't a case where ordinarily
20 there's not any particular reason why there could not
21 be open tender?

22 A Where this could not?

23 Q Be open tender. Yes. You agree with me.

24 A Well, I mean, the determination of an open
25 tender is a matter for policymakers and

1 decision-makers. If the government is considering what
2 amounts to a package which presents for their
3 consideration that includes design, build,
4 construction, management, the installation of
5 specialized equipment, and so forth, then it is the
6 government's ability to accept that package in its
7 entirety and to seek the -- for the relevant Minister
8 to seek the support of his colleagues in Cabinet to do
9 so.

10 Q No. I accept that the government can do
11 that. All I'm asking you is that in relation to these
12 particular constructions, the three buildings, the one
13 in Hamilton and the two satellite buildings, they could
14 have been built by any number of Contractors in
15 Bermuda.

16 A But I hear that, and I have no reason to
17 depart from that. But I am not the one that can say that
18 with authority.

19 Q Was the Ministry aware or were you aware that
20 BECL was awarding the contract to Correia Construction
21 which was, in fact, a 30 percent shareholder in the
22 same company?

23 A I don't recall being aware of that at the
24 time.

25 Q And had you been aware of that, would you be

1 concerned?

2 A I think that it would have been an item in
3 the ordinary course which would have been disclosed to
4 the Cabinet or included in any contract recommendation
5 or award.

6 Q Would that not on the face of it give rise to
7 a conflict of interest?

8 A Well, some would say in Bermuda where there
9 is no conflict, there is no interest. But I mean, I
10 understand what you mean, but I think that part of what
11 Cabinet goes through in the consideration of contracts
12 is a disclosure of the principals of any particular
13 entity. There are a number --

14 Q Did Cabinet know that Correia was a
15 30 percent shareholder --

16 A I cannot say. That predates me as the
17 Permanent Secretary.

18 Q But you as Permanent Secretary did not know.

19 A I was not aware of that. The chronology will
20 indicate that I found this in train.

21 CHAIRMAN: You said Correia was a
22 30 percent shareholder in BECL?

23 WITNESS: BECL, the entity which
24 engaged them.

25 CHAIRMAN: Yes.

1 Q Was the Ministry aware that Mr. Correia was,
2 in fact, a director of BECL?

3 A I cannot -- I don't recall being aware of
4 that.

5 Q And had you been aware of that, would you
6 have been concerned on behalf of the Ministry of the
7 government?

8 A I'm not sure it would have been for me to be
9 concerned. I think that I would expect that that would
10 have been shared as part of the information for
11 Cabinet's consideration as continues to be the case, I
12 think, with respect to any contract award
13 recommendation, the principals of a particular entity
14 are disclosed.

15 Q You -- Let me show you a letter which was
16 written in March 2006, which you'll find at 923. This
17 is a letter written by BECL to the Accountant General
18 seeking to justify the appointment of Correia
19 Construction. And you see on the final paragraph on
20 page 1 of that letter, it says "BECL acknowledges that
21 Mr. Dennis Correia is a director of both BECL and
22 Correia Construction and presents this fact as a
23 distinct advantage to this project."

24 Did you at the time when this letter was
25 written receive this letter?

1 A It's not addressed to me.

2 Q But your position -- You're saying that you
3 don't recall seeing this letter at the time?

4 A No, I don't.

5 Q So is your position that at the time you were
6 not aware that Mr. Correia was a director --

7 A I don't recall being aware of that, no.

8 Q Can I ask you to have a look at the Auditor
9 General's report in relation to this issue and which
10 you'll find at page 159 in Tab 9. You see in the
11 Summary of Findings, if you look at the fourth bullet
12 point, the Auditor General concludes that "Any inherent
13 conflict of interest between BECL, the consultant, and
14 CCCL, the contractor, as both were 30 percent owned by
15 the same individual." That is a conclusion of the
16 Auditor General. Do you accept that?

17 A That it is an inherent conflict of interest?

18 Q Yes.

19 A I think that's her determination. That's
20 her determination.

21 Q I understand that. I'm asking you as the
22 Permanent Secretary at the time for the Ministry
23 whether you accept that that is, in fact, correct.

24 A That is her determination. That is what
25 she found. And it's her -- it's what she found. It's

1 not a matter for me.

2 Q What is your view of the fact that BECL on
3 behalf of the government of Bermuda was awarding
4 contracts to Correia Construction which were a
5 30 percent shareholder in BECL?

6 A I think that the declaration of any interest
7 or the principals in any entity should form part of any
8 contract award recommendation. And so the Cabinet at
9 the time, which would I think have been 1999 when this
10 was first dealt with, would have been made aware of
11 that or should have been made aware of that. And their
12 determination should be guided by that accordingly.

13 Q And they should have been made aware of it
14 because it is a potential conflict?

15 A They should be made aware of it whether it is
16 a conflict or not because the principals in any entity
17 seeking to do business with the government are
18 ordinarily disclosed.

19 Q Yes. But, I mean, let me just try that
20 again. Do you not accept that a company awarding
21 contracts to another company which is, in fact, a
22 shareholder in the company which is awarding it, does
23 give rise to a clear conflict of interest?

24 A I accept that.

25 Q Yes. Just one (be added ?). The prior

1 bullet point, do you see that? "Contract signed off
2 for construction of new TCD building before acquiring a
3 complete set of drawings." Was that, in fact, the
4 case?

5 A I don't recall. Is this referring to the
6 North Street site? Is that what that refers to?

7 Q I think this refers to -- probably yes. Is
8 that right?

9 A I don't recall that being the case.

10 Q Yes. And can I also ask you to please have a
11 look at page 183, which is the public accounts
12 committee report in relation to this matter? If you
13 look at -- Go to page 187.

14 A I'm sorry. 18 -- ?

15 Q 187. The -- One of the points made by the
16 Auditor General is that the -- at paragraph E, "The
17 transfer of supervisory authority to transport
18 notwithstanding the absence of an authorizing document,
19 was intended to be a one-off for the runway resurfacing
20 project and not permanent." That's in reference, I
21 think, the first time when there was a transfer of
22 delegation of projects to the Ministry of Transport.
23 However, no one in the Ministry of Finance appeared to
24 be cognizant of the potential conflicts of interest
25 that might arise from the operating government

1 department also having supervisory authority over its
2 own capital projects. That's the background.

3 Have a look at G. "The contractor, BECL,
4 which was controlled by the contractor, CCCL, was in no
5 position to refuse change orders. They were simply
6 rubber stamped. Thus CCCL had no risk of having change
7 orders refused."

8 Just pausing there, is it -- is it right
9 that, in fact, the entity which certified that a payment
10 should be made on behalf of the government of Bermuda
11 in this case was, in fact, BECL?

12 A I'm not so sure that that's technically
13 correct.

14 Q Well, I think that's what -- that's what this
15 report says.

16 A I accept that.

17 Q Yes. Let's just go on. But, I mean, you
18 are -- it's right, isn't it, that as far as the change
19 orders to the contract were concerned, the change
20 orders were accepted or rejected by BECL?

21 A Yes.

22 Q And that is, as I say again, a company in
23 which the contractor had 30 percent shareholding; and
24 BECL, just to be clear, effectively was a two-man band.
25 But you knew that.

1 A Well, as I said before, I found this ou
2 in train.

3 Q Yes. But, I mean, now that you know that
4 BECL or the two-man band and it was effectively
5 selecting a contractor on behalf of the government for
6 three substantial buildings and it was the entity which
7 decided whether to accept change orders or not. Do you
8 consider that appropriate control by the government of
9 public moneys?

10 A Well, I mean, I would say this, that in order
11 for there to have been payments, BECL's fiat would not
12 be the end of the matter.

13 Q Well, let's call that true. You were the
14 Permanent Secretary at the time. BECL would certify
15 that payment should be made. In practical terms and in
16 reality, what other controls were there in place?

17 A I think that in order to action a payment
18 from the consolidated fund would require some
19 involvement from the Ministry of Finance.

20 Q But the machinery which had been set up was
21 simply that whatever was requested by BECL certified
22 was paid. I mean, this was bound by the Ministry of
23 Transport. You were the Permanent Secretary at the
24 time. I mean, just -- That is right, isn't it?

25 A That I was the Permanent Secretary at the

1 time?

2 Q No, no, no. That payments were made on the
3 basis of what was certified by BECL.

4 A Yes. I would assume so, yes.

5 Q And just to contrast that, in the ordinary
6 course, if the project had been left with Works and
7 Engineering, the certification of payments would have
8 been made by the technical officers of Works and
9 Engineering. Yes?

10 A Unless Works had outsourced the project.

11 Q Yes. But outsourced the project in the sense
12 that they had appointed their own architect or
13 appointed their own manager? Yes?

14 A Yes.

15 Q But in this case, the government did not
16 appoint anybody other than BECL? Yes?

17 A And I think my recollection is that I think
18 the approval process involved the director of TCD at
19 the time.

20 Q Yes. But the --

21 A -- by definition involves the controller as
22 well.

23 Q But he has no experience in relation to
24 construction works? That's right, isn't it?

25 A Yes, that's right.

1 Q So, the reality is that you would simply be
2 accepting what was brought forward by BECL. Yes?

3 A Yes.

4 Q So in effect, what has happened here, would
5 you accept that really the control mechanism which
6 ordinarily exists in relation to construction projects
7 on behalf of the government of Bermuda, namely
8 certification of payments by the technical officers of
9 Works and Engineering, had been shifted to BECL?

10 A Yes. But I think that there is a context
11 that surrounds that. And I'm sure that in later
12 questioning, we'll explore that a little bit deeper.

13 Q But, you accept that as general proposition
14 that's correct?

15 A Yes. Yes.

16 Q Let's just go back to what else the
17 Auditor General says. The -- Paragraph H,
18 "Statutorily, BECL was doing what Works and Engineering
19 was supposed to be doing." That's the point I've been
20 making. You see that that was also the conclusion of
21 Public Accounts Committee?

22 A Yes.

23 Q For example, an engineer submitted an
24 application for a million dollar change order and BECL
25 approved it the next day.

1 Were you aware of that, that a million dollar
2 change order was approved -- ?

3 A I don't recall that.

4 Q You were the Permanent Secretary at the time.
5 You did not get yourself involved in this level of
6 detail?

7 A No.

8 Q No. So who was involved from the Ministry at
9 this level of detail?

10 A The department itself.

11 Q When you say the department itself, which
12 public officer was doing that?

13 A I think that this project spanned -- I think
14 it spanned two directors at Transport Control. And I
15 think the witness list at the beginning gives an
16 indication of who those might have been. I don't want
17 to speculate.

18 Q Yes.

19 A I think it was -- It may have been
20 Mr. Monkman and then thereafter Mr. Rochester.

21 Q Yes. And the Public Accounts Committee
22 concludes that it was highly unusual and unlikely that
23 proper due diligence was carried out on such a large
24 change order in such a short period of time.

25 Would you agree with that conclusion, that a

1 million dollar change order is rubber stamped the next
2 day?

3 A Unless of course because of the same
4 closeness that you're criticizing it was -- Everyone
5 knew what was going on already.

6 Q What do you mean, everybody knew what was
7 going on?

8 A Well, I mean, you've made much of the fact
9 that there was Correia doing the construction, who was
10 also involved in BECL. By definition, that is a very
11 close relationship. The converse interpretation is
12 that, because of the closeness, they may have known
13 what was going on. I can't speak to that. But I'm
14 just saying that, you know, everyone is entitled to
15 draw their conclusions. And the committee has drawn
16 theirs.

17 Q Yes. But that's conjecture on your part.

18 A Well, does the committee produce an
19 indication except for their view that it was highly
20 unusual and unlikely that proper due diligence was
21 carried out? I wouldn't call that conjecture. I would
22 say that that's their opinion.

23 Q Fair enough. Fair enough. But, you as
24 Permanent Secretary for the Ministry which is in charge
25 of this project, what system did you put in place that,

1 if the contractor who is doing work for the government
2 of Bermuda puts in a request for a \$1 million change
3 order, that that is properly considered?

4 A I don't think that that would have been for
5 me to put a system in place. There is a system in
6 place.

7 Q Whose responsibility was it if it wasn't
8 yours?

9 A The project was being -- At that level was
10 being handled at the department level.

11 Q When you say the department level, who is the
12 department level?

13 A As I indicated, at the director level. The
14 head of that department would have been the director of
15 TCD.

16 Q And do you know as the senior civil servant
17 in the department what controls he put in place to make
18 sure that the million-dollar change orders were
19 properly considered?

20 A I cannot speak to that.

21 **EXAMINATION**

22 **BY CHAIRMAN:**

23 Q And just to clarify one matter. When you
24 speak about department, is that a department of the
25 Ministry?

1 A Yes.

2 Q You were the Permanent Secretary and
3 therefore the senior officer within the Ministry?

4 A Yes.

5 Q And then this was a department which -- was
6 that within your jurisdiction?

7 A Yes.

8 Q Yes. Thank you.

9 MR. HARGUN: I want to move to another topic.

10 If there are any questions in relation to
11 this, this would be a good time to ask.

12 MR. BARRITT: Two, if I may.

13 **EXAMINATION**

14 **BY MR BARRITT:**

15 Q When you refer to the department,
16 Mr. Telemaque, you say this director, but I think we've
17 also come to learn that there are Officers underneath
18 the director who are responsible for processing
19 payments too, are there not?

20 A Yes. I would imagine that's correct.

21 Q Who would you expect if not by name, by
22 office, to be involved in vetting the -- you know,
23 requests for payments?

24 A In a department, it could be whoever the
25 payment administrator is, whoever is managing the

1 accounts. Departments have controllers. There would
2 be several layers.

3 Q But these are the people who would be
4 responsible --

5 A Yes.

6 Q -- and who should be held responsible in the
7 event -- these are the people who are responsible for
8 making sure that payments are being --

9 A Processed.

10 Q -- processed correctly --

11 A Yes.

12 Q -- and properly.

13 A That's right.

14 Q And all the paperwork's in order.

15 A Supported by documentation, et cetera.

16 Q Right. And if they have a concern, they
17 would go to the director who would go to you who would
18 go to the Cabinet Secretary?

19 A In some cases, yes. But not necessarily.
20 So, for example, if a payment is being processed -- and
21 this -- this check and balance happens sometimes at the
22 lowest possible level. If a payment administrator is
23 being asked to action a payment for which there is no
24 supporting documentation, irrespective of how junior
25 that individual is, they have the right and do go to

1 the department head to either seek the --

2 Q I'm just trying to establish --

3 A Right.

4 Q It's not a right. It's an obligation.

5 A That's right. And even if -- even if the
6 department in question hasn't properly actioned the
7 payment and sends it, say, for example, to the Ministry
8 of Finance, an officer from the Accountant General's
9 office will say, "Where is the support for processing
10 this payment?"

11 Q And the buck stops each step of the way?

12 A Yes.

13 Q Thank you. One other thing I wanted to ask
14 was that you said in answer to a question by Mr. Hargun
15 that it would be a useful line of questioning on why
16 the paper of 2005 was joint from Works and Engineering
17 and Tourism. I wondered what you -- if you could
18 elaborate and tell us what you mean by useful line of
19 questioning? Is it now with hindsight that you're
20 saying that or would you have recognized at the time
21 that this is a useful line that should have been
22 questioned?

23 A I think I've recognized that for some time.
24 And the reason I raise that is because I maintain that
25 Cabinet was doing something de novo. They were doing

1 it over.

2 Q And something that wasn't spotted at the time
3 by you but before the Paper went to Cabinet?

4 A I don't recall doing so. But certainly on
5 seeing the conclusion, I perceive a direction that was
6 not in keeping with what had been approved two
7 years ago.

8 Q Yeah. And that's something I would have
9 thought would have been spotted by you and the Minister
10 at the time given your previous involvement. But what
11 I was trying to get at, are you -- What I am trying to
12 get at now is are you suggesting that Works and
13 Engineering were doing an end run around the Ministry
14 of Tourism and Transport?

15 A That's strong language. I'm not going to
16 suggest that. But I think that there is -- There is
17 something to be considered as to why that would be
18 extracted from what was a global approval two years
19 ago. That has to be a consideration. Why would it be
20 done? If the project had been approved in total in
21 2003, what would be the rationale for taking it out?
22 And that's why I referred gently to the changed
23 administration.

24 Q Well, I sit here and I wonder was Works and
25 Engineering now trying to rein this project back in?

1 A The project hadn't commenced.

2 Q No, no. It hadn't commenced. But the way it
3 was being -- developing, Works and Engineering had
4 effectively been taken out of the equation, had been
5 delegated to your Ministry. This is works that Works
6 and Engineering normally do -- does. They have the
7 expertise and the staff to do it. And I wondered
8 whether Works and Engineering were now trying to assert
9 themselves to try to get the project back on, as they
10 saw it, track. But you have no recollection of those
11 discussions?

12 A No, no.

13 Q Thank you.

14 CHAIRMAN: Mr. Hargun, we'll take a
15 10-minute break now if that's convenient.

16 MS. MEMARI: Before we break, may I ask a
17 couple of questions while we're on this.

18 And I won't be more than two minutes.

19 CHAIRMAN: Well, the position under the rules is
20 that we can give leave for that. But there
21 are safeguards to make sure you're going to
22 stay on the same subjects that we've already
23 covered or introduce a new aspect on those.

24 MS. MEMARI: Any aspect to those subjects?

25 CHAIRMAN: Yes. Very well.

1 MS. MEMARI: Thank you.

2 **EXAMINATION**

3 **BY MS. MEMARI:**

4 Q So, Mr. Telemaque, could I ask you to turn to
5 page -- Tab 9 of the Commission bundle, page 23?
6 This is the letter that Mr. Hargun brought to your
7 attention on Bermuda Emissions to the Accountant General.

8 A Yes.

9 Q You were not copied in on this.

10 A No.

11 Q And at the time you did not see it?

12 A No, I did not.

13 Q And that's why now you say that at the time
14 you did not know about BECL's interest.

15 A Yes. You'll forgive me. I'm not trying to
16 demonstrate a level of frustration. But there is a
17 point which I think is consistently being mixed --
18 missed and which is not helpful dealing with this in a
19 vacuum. And I think I need to be (indiscernible
20 10:59:42) The Commission kindly wrote to me to ask
21 certain questions. And on the basis of the questions
22 that were posed, I answered those questions in the
23 witness statement. And I think it is important to note
24 that in my statement at paragraph 7 and 8, I set out
25 chronologically that I was not in post at the time and

1 that when I was appointed in September of 2002, this
2 project was in train. That is to say the approval had
3 already been secured. So these discussions about
4 ownership and conflicts of interest and so forth, if
5 they happened, they predated me. If they did not, they
6 predated me. That's a very important point to make.

7 I'm not saying -- Mr. Barritt is frowning.
8 The letter -- I know this is from 2006. But what I'm
9 saying is that what is attempted to be done is an
10 indication -- Any line of questioning that deals with
11 my knowledge of the composition of the companies and so
12 forth, that is an issue that was settled when I arrived
13 in the Ministry.

14 Q And who was your predecessor?

15 A Mr. Tucker, who is listed in the set of
16 witnesses for the Public Accounts Committee.

17 MR BARRITT: The reason I frown, Mr. Telemaque,
18 and you drew attention to it, I just want to
19 be clear from you that you're not suggesting that
20 anything that is drawn to your attention sub-
21 sequent to your appointment can, therefore, be
22 ignored.

23 THE WITNESS: No. I'm not suggesting that.

24 **BY MS. MEMARI:**

25 Q Now, Mr. Telemaque, could I ask you to return

1 to page 26 of the same pack? That is a memo from
2 the Accountant General. It's a memo from Ministry of
3 controller consultant to the Accountant General and
4 you're copied in.

5 A Yes.

6 Q And it says "I have reviewed the information
7 in our files and found that these here are in
8 compliance with the following sections as of the
9 Financial Instructions 7.1 Value for money;
10 9.31 Documentation for Goods and Services in Excess of
11 50,000"; and it goes on about other aspects of the BECL
12 contract.

13 So, this having been brought to the Accountant
14 General's attention, would there have been no further
15 communication from the Accountant General as to the
16 veracity of that? You were able to rely on that;
17 correct?

18 A Yes.

19 MS. MEMARI: Thank you.

20 CHAIRMAN: Now, we'll take the break.

21 But unless there's anything else you want to ask on
22 this topic, Mr. Hargun. Very good --

23 WITNESS: I'm sorry, sir. Could I -- just
24 to close this out? I just want to draw
25 the Commission's attention to the

1 referred contractor interviews, et cetera. See that?

2 A Yes.

3 Q And the conclusion is at paragraph 10 approved
4 the selection of Correia Construction Limited as the
5 preferred contractor for the construction (whose right ?)
6 the Hon. the Premier as the Minister responsible for
7 Transport to negotiate the terms of a contract with
8 Correia Construction Company Limited subject to further
9 approval from Cabinet. Yeah?

10 A Yes.

11 Q You were Permanent Secretary of the Ministry
12 of Tourism (at the Department ?)?

13 A Yes.

14 Q Let me just explore with you the resources
15 which were available to the Ministry of Tourism at the
16 time. We talked yesterday by Dr. Binns who was the
17 Permanent Secretary at Works and Engineering.
18 Obviously, Works and Engineering had a full complement
19 of technical officers who know how to procure
20 and manage large-scale construction projects? You
21 accept that?

22 A Not always.

23 Q Well, let's break it down. Works and
24 Engineering had a chief architect and department of
25 architects? Yes?

1 A Yes.

2 Q Ministry of Tourism doesn't.

3 A That's correct.

4 Q Ministry of Tourism does not have any
5 architects?

6 A That's correct.

7 Q Department of Public Works has a number of
8 engineers? Yes?

9 A Yes. It fluctuates. Engineers are difficult
10 to retain.

11 Q Yes. And it is right, isn't it, that the
12 Ministry of Tourism does not have any engineers?

13 A That's correct. Well, that's not exactly
14 correct. There are engineers in Marine and Ports. But
15 they're not that kind of -- but not structural.

16 CHAIRMAN: Can you keep your voice
17 up?

18 THE WITNESS: I'm sorry. There were
19 engineers in Marine and Ports that are
20 mechanical, not structural.

21 Q It's not structural. There are no civil
22 engineers?

23 A That's correct.

24 Q And the Ministry of Works and Engineering has
25 a number of Quantity Surveyors who can look at and

1 quantify materials, costs in relation to civil
2 construction projects?

3 A Yes.

4 Q And it's right, isn't it, that the Ministry
5 of Tourism has no such expertise?

6 A That is correct.

7 Q It is common for Public Works, the technical
8 officers for -- at Public Works to go and -- go to the
9 sites and measure quantities and certify payments under
10 the relevant contracts?

11 A If that is the project manager of the
12 process, yes.

13 Q Yes. And it is right, isn't it, that there's
14 no such expertise at Ministry of Tourism.

15 A That is correct.

16 Q So, it would be fair to say that -- would it
17 not, that the department, not unexpectedly, that the
18 Ministry of Public Works as the name implies,
19 is geared towards delivery of public capital projects on
20 behalf of the government of Bermuda?

21 A That is its function.

22 Q That is its function. On the contrary, the
23 Ministry of Tourism has no such expertise?

24 A That is correct.

25 Q It's also right to say that historically at

1 any rate, it has always been the Department of Public
2 Works which has carried out public capital projects on
3 behalf of the government of Bermuda.

4 A It has -- It has done the lion's share.

5 Q Lion's share.

6 A But there are a number of projects that from
7 time to time and for whatever reason are handled
8 outside of that Ministry.

9 Q Right. This was -- This was one of the major
10 civil engineering projects in Bermuda for
11 the building of the second pier. It's
12 right to say, isn't it, that the Ministry of Tourism
13 had no internal expertise in relation to this project
14 at all?

15 A To the construction?

16 Q Yes?

17 A That's correct.

18 Q In fact, not only the construction but even
19 the design of anything to do with the -- anything to do
20 with achieving a second pier in terms of design, in
21 terms of resources, in terms of knowing who to contract
22 with. It did not have the expertise, did it?

23 A That's correct.

24 Q For example, the Ministry of Tourism would
25 not necessarily know what the finer points of

1 distinction are between, say, AIA contract or a
2 (indiscernible 11:22:33) contract.

3 A That's correct.

4 Q And when you were provided with a AIA
5 contract or a (indiscernible) contract by Correia
6 Construction, you had to go to Ministry of Public Works
7 to ask them to have a look at it?

8 A Are you suggesting that I was? Myself
9 personally?

10 Q I think you actually did.

11 A Okay.

12 Q The way I look at it. And so with that in
13 mind, why was it that the -- this -- one of the largest
14 civil construction projects in Bermuda was assigned to
15 the Ministry of Tourism?

16 A Because -- Can I refer to my witness
17 statement?

18 Q Yes, of course.

19 A Thank you. I think it is at Tab 6 and it's
20 page 5 of the statement. And it starts at paragraph
21 15. The question that was posed by the Commission in
22 its correspondence was the rationale for delegating
23 this capital project to the Ministry of Tourism and
24 Transport which I think is similar to what you're
25 asking.

1 Q Yes.

2 A And the statement says "Any consideration
3 related to the development of a second cruise pier for
4 Bermuda at Dockyard must be viewed through the lens of
5 a rapidly changing cruise ship industry generally and a
6 changing relationship between Bermuda and the cruise
7 industry specifically during the period 2005-2009. In
8 the special report of March 2015, the Auditor General
9 sets out the lengthy periods of inaction between
10 discussions on the development of a cruise port
11 infrastructure and concurrent cruise ship policy for
12 Bermuda."

13 **EXAMINATION**

14 **BY CHAIRMAN:**

15 Q Mr. Telemaque, forgive me for interrupting,
16 but we've got your statement, of course. And I think
17 it might be helpful to distinguish between two points.
18 The first is why it was necessary to have another pier
19 overall for the larger cruise ships. And the second one
20 is why if it was necessary, that the task of providing it
21 was not supplied to the Ministry -- given to the Ministry
22 of Works and Engineering. So, we can take as read what
23 you say about the need of the tourist industry to have
24 large ships. Let's concentrate on why, if there was a
25 pier needed, why did the Ministry of Tourism, which had

1 no expertise, take that on for itself.

2 A Well, if I may say so, with respect, there is
3 a wider audience for what's happening in these
4 proceedings. And as a matter of course, I think it is
5 very important that that audience hear exactly what the
6 rationale is because it has been lost in some of the
7 noise surrounding this particular project.

8 Q Well, I hear you say so, Mr. Telemaque, but
9 I've suggested that there's a clear distinction --

10 A I understand.

11 Q -- between the need for the cruise -- the
12 pier and the construction of it. If you think in
13 order -- Although we're only dealing on the face of it
14 with the construction, if you think it's necessary to
15 go into all the other stuff, do so.

16 A I do. And I'd be grateful, if I may. If I
17 could continue at paragraph 16, "In October 2006,
18 Cabinet considered how to approach the development of
19 Dockyard in particular and ultimately approved the
20 construction of the second cruise pier. It was
21 determined early on and accepted by the then Minister
22 of Works and Engineering that the nature of this
23 project was such that there was not the in-house
24 capacity to design, build, and manage the project,
25 particularly in light of the aggressive time lines

1 against which this project was required to be
2 delivered. It is important to note that the Ministry
3 of Tourism and Transport's position was that this
4 project was ideally suited to a public-private
5 partnership with one of Bermuda's cruise line partners
6 and this was commended to the Cabinet for their
7 consideration. Part of any public-private partnership
8 of this kind would necessarily involve preferential
9 berthing and long-term contracts with the cruise line
10 partner to realize the maximum return on their
11 investment. With that in mind and the ceding of
12 control over which ships would call at any new pier,
13 Cabinet determined that the government of Bermuda would
14 fully fund the development in an effort to retain
15 control and flexibility around the management and
16 berthing arrangements for this significant tourism
17 asset."

18 If I might just pause there, and I think this
19 goes to Mr. Hargun's question and to the first of the
20 two-part question which you posed, sir, and that is
21 that very often in government, the policy is the
22 responsibility of one Ministry, and that policy will
23 include whatever vision the Minister has, whatever
24 action the Minister wants to implement or to take in
25 fulfillment of that policy, and occasionally the

1 action, which is required to bring that policy to
2 fruition resides elsewhere.

3 And in this case, part of what had been the
4 problem -- and that's why reference is made to the
5 length of time and it's born out of the chronology of
6 the Auditor General's report that had been -- that had
7 taken place, it took a virtual seismic event in order
8 to get the requisite level of attention around this
9 particular project. And that event was, as I refer to
10 later, was the change, the withdrawal of the last
11 cruise ship calling at Hamilton which was ultimately
12 deemed to have significant negative consequences for
13 the tourism industry, particular within Hamilton and
14 ultimately within St. George's.

15 And at the time already, there were issues
16 within the global economy which were beginning to
17 affect Bermuda. And so the pace at which this project
18 needed to move made it of national importance. That is
19 the rationale that surrounds the decision-making.

20 And so in this situation, the policy and the
21 execution was melded. It did come together in one
22 place for the very reason that the stewards of the
23 policy had at that time a determination to advance the
24 initiative and to implement what was required to
25 realize the initiative so that the time frame of April

1 of 2009 was effectively met.

2 Q If I may say so, to use your words, the
3 stewards of the policy also had a Department of Works
4 and Engineering, which was on the face of it, the
5 appropriate department -- Ministry to handle that
6 matter.

7 A The important point of that is that on the
8 face of it.

9 Q Yeah. Then the real question is let's go
10 below the face, below the surface. Why wasn't that
11 obvious source of government expertise used?

12 A I think there is -- there is an inherent
13 assumption and it had been an assumption made by the
14 Auditor General. There was an assumption made by all
15 who posed questions around this that somehow that the
16 Ministry of Works and Engineering did not and does not
17 experience the same level of staff changes, retention
18 issues that anywhere else has. At varying times, the
19 Ministry of Works and Engineering may not have the
20 capacity to manage all of the government projects.
21 There are 77 government departments. In the case of
22 this Cabinet, there are 10, 12 Ministers, one area
23 having the responsibility for managing that wide
24 ambit of projects.

25 MR. HARGUN: Can I just pursue that?

1

EXAMINATION

2

BY MR. HARGUN:

3

Q Perfectly well understood what you're saying, and let's unpack it. Fully understand that there was great urgency in relation to this project. There was a time limit because in the next season of the year, the following season, that the (pier be) accepted. So there was great urgency.

9

Secondly, let's just for present purposes accept that there was no internal capacity within Works and Engineering to actually do the project itself. Right? So, we're working on the basis that whatever happened, the expertise had to be contracted from third-party sources. That's your point, isn't it?

15

A Yes. That's right.

16

Q But, Mr. Telemaque, contracting expertise from third parties in relation to major civil engineering projects itself requires an expertise, doesn't it?

20

A Yes, it does.

21

Q For example, you as the Permanent Secretary had no real knowledge of the distinction between a (indiscernible - fiddick) and an AIA contract. Yes?

24

A That's correct.

25

Q It is the -- It would be the Department of

1 Works and Engineering which would know who are the
2 suitable contractors within the construction industry
3 in Bermuda and elsewhere, would it not? It would have
4 a better specialization (expert than you would ?).

5 A Yes. But that expertise wouldn't be confined
6 to them.

7 Q Yes. So, if speed was an issue and the
8 question was that we need the resources, construction
9 resources, management resources, quantity surveying
10 resources from outside, the Ministry which was capable
11 of doing it was Works and Engineering as opposed to the
12 Ministry of Tourism?

13 A And I will continue to return to this point.
14 There is an inherent assumption which is not supported
15 by the fact. And everyone has made it from the Auditor
16 General straight through to these proceedings. And that
17 assumption is that that capacity was simply in a
18 holding pattern within the Ministry of Works and
19 Engineering and was failed to be tapped into by the
20 Ministry of Tourism and Transport. And that simply is
21 not correct.

22 Q But what would be the purpose of assigning
23 that contract to Ministry of Tourism which has nil --
24 nil specialization in relation to either doing it from
25 internal sources, which you accept it does not, but it

1 doesn't even have the expertise to appropriately source
2 the specialized construction industry in Bermuda and
3 internationally.

4 A That premise ignores the engagement of the
5 project managers who did have the requisite level of
6 expertise.

7 Q But wouldn't it have been better for the
8 project manager to be engaged by the Department of
9 Works and Engineering who at least speak the same
10 language?

11 A I believe that the Minister of the Ministry
12 of Works and Engineering was consulted in the
13 engagement.

14 Q I'm asking you from your
15 perspective as Permanent Secretary, I'm asking a
16 question. What compelling reason there is, even if one
17 assumes that the management resources, the construction
18 resources, and all the resources in relation to this
19 project were going to be contracted from third parties,
20 what compelling reason there was that it should be
21 assigned to the Ministry of Tourism, which had nil
22 specialization in this area than the Department of
23 Works and Engineering?

24 A Because the Ministry of Tourism and Transport
25 had a direct interest as the steward of the policy in

1 this regard to advance the matter and the Ministry was
2 equipped at least to do that.

3 Q But that happens all the time. It's the
4 Ministry of Education, it's the Minister of Education
5 who is the guardian of the policy for purposes of
6 education and he wants to build schools, but the
7 project to build schools isn't assigned to the Minister
8 of Education, is it?

9 A This was a national priority. And can I --
10 if it will assist, can I deal with two more recent
11 illustrations?

12 Q But can you just answer my question as to
13 the --

14 A I can't speak to hypotheticals and abstracts.
15 There is a context that surrounds everything that
16 happens within the public service and within the
17 management of public policy. There is a context around
18 it. And to analyze these things in the absence of that
19 context is, with respect, not helpful and does not
20 present a clear picture of either what was going on at
21 the time or how things are managed in an effort to
22 achieve certain aims.

23 And I'll give you -- if I may, I would
24 propose to give you perhaps three illustrations. The
25 first illustration is this: One of the principal

1 projects of the Ministry of Tourism and Transport for
2 the period 1998 when the former government was elected
3 right through to 2006 was something referred to as the
4 ferry project. And that project was \$26.9 million set
5 out for the procurement of six fast ferries and four
6 significant dock improvements around Bermuda. Those
7 dock improvements were managed and handled by the
8 Ministry of Works and Engineering. There was an
9 engineer within the Ministry at that time who played a
10 significant role in advancing that particular project.
11 It was the Minister's policy vision. It was endorsed
12 by his Cabinet colleagues. It was ultimately approved
13 as a fiscal expenditure by the legislature. And it was
14 executed in accordance with varying time lines. It was
15 not however, in the same realm as the national priority
16 at Heritage Wharf.

17 And so to create this atmosphere or this -- I
18 think someone who was in the Public Accounts Committee a
19 suggestion that there was a government within a
20 government operating and all sorts of other ridiculous
21 assertions like that. That is simply not correct.
22 This was a national priority.

23 And let me pause one second because this is
24 important. Because there is some suggestion -- and I
25 am clear what the suggestion is, and I'm going to rebut

1 it -- and the suggestion is that somehow that this was
2 being done to enrich or otherwise. I don't want to get
3 in all that. That's a matter for others to deal with.

4 But I want to draw an example and it's an
5 example from the current framework. This government --
6 this government has effected or is attempting to effect
7 upgrades to King's Wharf, which is the adjacent wharf
8 to Heritage Wharf. And as part of that process, this
9 government is seeking to have no Public Works
10 involvement with the exception of preparing an
11 anticipated range of construction costs. And I will
12 just quote from what this government has decided to do.
13 "In addition to construction costs, the budget should
14 also include project management, design development by
15 an experienced, external, overseas consultant, site
16 investigations led by local consultants with overseas
17 assistance, planning and environmental approvals for an
18 estimated total of 1.75 million."

19 And do you know the rationale surrounding
20 this decision which is perfectly supported? The
21 rationale surrounding this decision is that this must
22 be prepared and in readiness for the America's Cup, a
23 national imperative. This action has not occasioned
24 the attention of the Auditor General. It has not
25 occasioned the attention of anyone in the media. It

1 has not even been brought to the attention of the
2 Commission. But it is an act which this government has
3 done which is identical to that which was done with
4 respect to Heritage Wharf. And all I am saying is that
5 it is a false assumption to simply say that the
6 expertise is there and that there's no recourse to go
7 outside.

8 Public administration and public policy is
9 about the delivery of policy initiatives and the
10 responsibility of Ministers and Permanent Secretary is
11 to prioritize that delivery in accordance with the
12 national imperatives.

13 Q Mr. Telemaque, you misunderstand if you think
14 that I'm suggesting to you that one needs not
15 go outside. I accept -- I accept it for the
16 purposes of my questioning that it was appropriate to
17 engage third-party resources. My sole question to you
18 was that, if speed was an issue, would you not
19 accept, that it was probably better that the
20 department which has the expertise to actually engage
21 those resources. That would be the Works and
22 Engineering and not the Ministry of Tourism?

23 A I don't accept that.

24 Q Well, let's have a look at what you actually
25 did do after Ministry of Tourism was asked to -- was

1 asked to manage this project. If you look at the
2 binder, it's at Tab 12. You write to Entech Limited.

3 A Yes.

4 Q Were you familiar with Entech Limited?

5 A Yes, peripherally.

6 Q I think they were engaged by Bermuda
7 Emissions at one stage. So perhaps you would have
8 known them from your previous assignment.

9 A No. I didn't know them from there.

10 Q And you are asking them to provide project
11 management services.

12 A Yes.

13 Q Yes? Those would be the services which would
14 traditionally be provided by Works and Engineering - in
15 all of the evidence of Dr. Binns yesterday? Yes?

16 A Not traditionally. But these are services
17 which they have provided and can provide.

18 Q And does the Ministry have any particular --
19 does the Ministry of Tourism have any particular
20 expertise as to -- in relation to how to select the
21 architectural management provided? I mean, you wrote to
22 Entech and you wrote to Woodbourne Associates and a
23 number of other people.

24 A Yes.

25 Q Does the Ministry have expertise as to who is

1 the most suitable management consultant in relation to
2 this selection?

3 A Not specifically. I think... You don't have
4 that expertise for almost any contract. What is done
5 is, a tactical officer will prepare a scope of work
6 based upon some other technical advice from within or
7 based upon what policy objective is determined to be
8 fulfilled and either to in an open tender process or to
9 recognize service providers in the area provide that
10 scope of work and invite bids accordingly.

11 Q No. I understand that. But I mean, the
12 question was, did your Ministry have the expertise? You
13 send out these bids to a number of people. Are you
14 prepared to act as -- are you prepared to provide
15 project management services? And then they reply back
16 to you. Presumably, it requires some expertise to
17 decide who is the most suitable person.

18 And the question I'm putting to you is that
19 Works and Engineering would have that expertise because
20 that's what they do. Did the Ministry of Tourism have
21 that expertise?

22 A I mean, that is difficult because, I mean,
23 who's to say that, you know, any Ministry has the
24 expertise to determine who conducts cleaning of
25 government offices. You set out a scope of work. And

1 where a bid meets the scope of work -- that's why in
2 the evaluation of contracts, there is a matrix by which
3 technical officers are guided and there is a certain
4 rating that is provided for certain factors which range
5 from the completeness of the bid to the number of
6 questions that are answered, the levels of answers
7 which are provided. And that matrix assists in making
8 a recommendation to the Minister or the Minister making
9 a recommendation to Cabinet.

10 Q The only reason I suggest that the Works and
11 Engineering might have more expertise is because that's
12 what they do. The Ministry of Tourism doesn't do this.

13 So why not leave it to Works and Engineering
14 to do it?

15 A Well, I think it was still a question of
16 timing and the urgency of the matter.

17 Q But the timing would be much more efficient
18 with Works and Engineering because they knew what they
19 were doing.

20 A The deadline was mentioned, Mr. Hargun.

21 Q No. I understand that. I accept that
22 deadline. Just -- I mean, just exploring with
23 you. If the issue is one of deadlines and timing,
24 isn't it better to go with a department which has the
25 expertise in contracting with outside resources than

1 a Ministry which has no experience in this at all?

2 A As a general principle, yes.

3 Q And in this case --

4 A But, again, there is context to everything.
5 And that is important.

6 Q Yes. So you write to them and they say
7 they're prepared to do this. And Entech is selected.
8 Entech is also approved by Cabinet. And then time
9 comes when contracts are being drafted. And, have a
10 look at a letter which was written to you by Dr. Binns
11 and that's on the 13th of April 2007, which you will
12 find at page 27. Do you see -- that's a letter? He
13 says "It's a pleasure to provide you with a copy of the
14 contract that the Ministry of Works and Engineering
15 have prepared for the construction of the new pier at
16 Royal Naval Dockyard."

17 Why are you asking Works and Engineering to
18 prepare the contract?

19 A Why was I asking? I think we were directed
20 to.

21 Q By?

22 A I'm not sure. It may have been the Attorney
23 General Chambers. I'm not sure.

24 Q And the reason -- I mean, tell me if I've got
25 it wrong. The reason is engineering contracts -- civil

1 engineering contracts, construction contracts are
2 specialist contracts, aren't they?

3 A Yes, they are.

4 Q It requires specialization -- extreme
5 specialization to finalize those contracts. And those
6 are not the type of contracts which can be finalized
7 and agreed upon by just commercial (men ?).
8 Yes?

9 A Yes.

10 Q And it's right, isn't it, that the Ministry
11 of Tourism has no expertise in agreeing to construction
12 contracts?

13 A I would accept that.

14 Q And the only Ministry within the government
15 which has the expertise to agree to a complex, high
16 value construction contract is Works and Engineering.

17 A Construction contract?

18 Q Yes.

19 A Yes.

20 Q And doesn't this fact by itself, that the
21 Ministry even doesn't have the expertise to enter into a
22 construction contract, demonstrate to you that the
23 Ministry which could have achieved this project with
24 great speed would have been the Works and Engineering?

25 A I don't accept that.

1 Q Okay. And Dr. Binns, who is giving helpful
2 suggestions in relation to the construction contract,
3 he points out a number of things which he thinks you
4 should be aware of. If you look at page 28. For
5 example, if you look at the penultimate paragraph, he
6 says "The cost of the purchase of the performance bond
7 at 50 percent of the contract value is estimated to be
8 in the region of Bermuda dollar 3 million. This has
9 not been required in the contract and will not be
10 purchased by Correia Construction Limited."

11 Now, he is helpfully pointing out that you
12 should know that the contract doesn't call for a bond.
13 And if it did it would require \$3 million in terms of
14 the cost.

15 Now, as Permanent Secretary for Tourism and
16 obviously in charge of this project, did you pay mind to
17 as to whether you should require a bond under the
18 contract?

19 A No. I don't recall this ever being
20 discussed.

21 Q Was that an issue in your mind?

22 A At that time, I don't recall. I don't think
23 so.

24 Q And is that because -- I don't wish to be
25 unkind. Is that because you don't really have any

1 expertise in relation to construction contracts?

2 A You can make that assertion.

3 Q OK. And so Dr. Binns gives you assistance in
4 relation to drafting of the contract and, in fact,
5 signs the contract on behalf of the government.

6 Do you know why it was that the Ministry of
7 Works and Engineering was required to sign the contract
8 and not Tourism?

9 A I believe that that likewise was directed.

10 Q Directed by?

11 A I think it was directed by Chambers. I don't
12 recall.

13 CHAIRMAN: Chambers means the Attorney
14 General?

15 THE WITNESS: Yes, sir.

16 Q And if you look at the next page, which is at
17 page 29, and he says that the contract is signed. In
18 the second paragraph he says "Normally under contracts
19 that are signed by this Ministry, we retain
20 responsibility for interiorly managing the contract,
21 meeting with the contractor, and vetting and approving
22 all payments under the contract. We understand that on
23 this project our role was simply to draft and agree
24 contracts with respective parties and sign them on
25 behalf of the government. We have now discharged this

1 task. In keeping with the original intent that this
2 project would be managed by the Ministry of Tourism and
3 Transport we are pleased as agreed between us to assign
4 all responsibility for further management of the
5 contract including all of its conditions and vetting
6 and approval of payments to the Ministry of Tourism and
7 Transport."

8 Do you see that?

9 A Yes.

10 Q So from then on, the Ministry of Tourism
11 became responsible including, for example, he says,
12 which is very important, "vetting and approval of
13 payments." Yes?

14 A Yes.

15 Q And in that context, I think you appointed
16 Entech as the managers.

17 A Cabinet approved the engagement of Entech as
18 the project managers.

19 Q On your recommendation?

20 A Cabinet approved the appointment of Entech as
21 the Cabinet managers [sic] helped make recommendations,
22 the recommendations of that of the Minister.

23 Q No. I understand that. But let me
24 understand. You -- actually, you as Permanent
25 Secretary, wrote to the various entities including

1 Entech as to whether they were prepared to provide
2 management services. And I fully accept constitutional
3 theories and the decision of the Minister. But as a
4 matter of fact, presumably, you recommended Entech.

5 A I recommended Entech? That's not my
6 recollection.

7 Q So, who selected Entech?

8 A The Cabinet approved Entech from -- I think
9 that the conclusion indicates that Entech, Woodbourne
10 Associates, and Bermuda Project Managers were their
11 choices. And Cabinet chose Entech.

12 Q There were, for example, Woodbourne
13 Associates. I mean, who decided that Woodbourne
14 Associates (indiscernible) wouldn't be put forward?

15 A That was a decision of the Cabinet. They
16 had, it appeared from this -- and you don't have the
17 original Cabinet paper. But it appears from the
18 conclusion that they had the three.

19 Q There was no filter process. All three went
20 before Cabinet. Is that what you're saying?

21 A It would appear to be so from the Minute.

22 Q All right. Can I ask you to have a look at
23 the report prepared by Trent Construction. I think
24 you're familiar with that, are you?

25 A No, I'm not actually.

1 Q Well, let's have a look at it together then.
2 You'll find that at page 83. This is -- If you go to
3 page 88, that is page 10 of the report, and they deal
4 with the project management as it took place in
5 relation to this particular very substantial civil
6 engineering project. They say "Entech were again the
7 company responsible for the day-to-day project
8 management of the site and we understand from our
9 meeting with Correia that the full-time personnel were
10 on site to monitor and check works as they progressed.
11 Entech were also responsible for payment certificates
12 and for assessing and recommending the additional costs
13 and variations that occurred on the sites." That's
14 right, isn't it?

15 A Yes.

16 Q So they were effectively performing the
17 function which ordinarily would be performed by the
18 technical officers of Works and Engineering.

19 A That is because they were approved by Cabinet
20 as the project manager.

21 Q Understand. But that is, in fact, the
22 result.

23 A That is because they were approved by Cabinet
24 as the project managers.

25 Q I'm not -- I'm not taking issue with you that

1 this wasn't approved by Cabinet. I'm looking at the
2 result. The result is that effectively payments are
3 certified now by Entech whilst in the ordinary course
4 in relation to construction contracts, they would be
5 certified by the technical officer of Works and
6 Engineering?

7 A No, Mr. Hargun. I can't accept that. What
8 I'm trying to say is that having been engaged as
9 project managers, that is what they would do. So there
10 is no - And it's very important because you see for
11 almost a decade now, there has been an attempt to
12 impugn some level of impropriety towards that
13 particular arrangement, and that is simply not factual.
14 It happened then. It is happening now.

15 Q Well --

16 A And so one of two things must be the case.
17 Either there is equal corruption or we are dealing with
18 an imperfect system that no one seems to have the
19 ability to change. And I have to say --

20 (Participants speaking over each other.)

21 CHAIRMAN: Mr. Telemaque, I think it
22 would be within the bounds of this inquiry to make
23 the second point that you've just done but I would
24 like you to keep clear of the political aspects
25 which you introduced in your first point

1 THE WITNESS: Well, sir, I appreciate that.

2 CHAIRMAN: Thank you.

3 THE WITNESS: But I read the newspaper and there
4 has been a decade, I want to make that crystal
5 clear. There has been a decade of reputational,
6 professional, and personal damage inflicted as a
7 result of simple imputations of that manner which
8 do not reflect how public administration is
9 handled and things which are basic --

10 CHAIRMAN: And I understand that, the depth of
11 depth of your feeling. But let's stick to the
12 remit of this inquiry which does not include
13 politics & which I'm interested to see you accept
14 does include examining current & past practices

15 THE WITNESS: Absolutely. Thank you.

16 **BY MR HARGUN:**

17 Q Mr. Telemaque, so that you understand, I'm
18 trying to compare the contractual position with that
19 which otherwise prevails. That's all.

20 A Well, I'm sorry. I don't accept that either,
21 but I understand what you're saying.

22 Q Yes. Can we have a look at this --

23 A Absolutely.

24 Q And then it says Entech -- "As we have
25 previously noted, Entech's specialty is not in the

1 field of estimating or surveying and we are not aware of
2 any in-house or external party being involved with the
3 project in order to verify costs."

4 Now, that's quite a serious point. Do you
5 accept that?

6 They're saying -- so let me repeat it.
7 They're saying that these project managers which you
8 have engaged - that the Cabinet has engaged - do not
9 have a specialty in the field of estimating or surveying
10 and "we're not aware of any in-house or external body
11 being involved with the project in order to verify
12 costs."

13 Do you accept that as a factual statement,
14 sir?

15 A I don't think so. I just --

16 Q You are in charge. You tell us what the
17 issue is.

18 A Because if you look at the suggestion here,
19 "Expertise is not in the field of estimating and
20 surveying, and we are not aware of any in-house" -- but
21 these are all chartered engineers, structural
22 engineers, civil engineers.

23 Q But this is an important point. Trent,
24 they're specialists in that field and they say that
25 they don't have the specialization. Did you know that?

1 A I'm not so sure that it's correct. Can you
2 turn back to the letter. It's at --

3 Q Well, they simply said they were going to
4 provide you their services. What this report is saying
5 is that they don't have the expertise. If you want to
6 look at their letter again --

7 A No, no. I'm just saying that if you look at
8 their letter, you will see it's Entech Limited at the
9 letterhead, engineering and planning consultants. And
10 you'll see that the qualifications are chartered
11 engineers, principal engineer.

12 Q Yes.

13 A I'm sure I understand why they would
14 suggest that they wouldn't have the expertise.

15 Q So you're not sure where this comes from?

16 A No, I'm not.

17 Q Okay. Fair enough. Let's just keep on
18 going. "On a project of this value and scope working
19 with a competent contractor who employs quantity
20 surveyor, it would have been much more prudent to employ
21 a similar quality surveyor to protect government
22 interests."

23 They're suggesting we didn't do that. Do you
24 accept that critique?

25 A Not necessarily. Because I think that the

1 original scope of work and then eventually the project
2 management side included a construction rear-view
3 function.

4 Q Yes. But there seems to be gaps.

5 A Well, as I say, I'm not familiar with the
6 Trent report. This was prepared for the Auditor
7 General. It's a report clearly that she relies on
8 heavily.

9 Q Well, let's just keep on going. If you go
10 back to page 88, "Our concern in respect of the
11 additional costs were highlighted in our main report,
12 but we reconfirm these aspects below: One, on what
13 basis was the original schedule of rates accepted? Who
14 verified on what grounds were the values accepted as
15 realistic?"

16 Do you know the answer to that?

17 A I don't.

18 Q No. Let's move on then, "Two, the revised
19 contract price which increased the project value from
20 38 million to 47 million. There does not appear to be
21 sufficient detail in the Correia documentation to
22 adequately accept all the values claimed. We see no
23 evidence that the value was checked in any way. Again,
24 if this was checked, who verified it? On what grounds
25 were the values accepted as realistic?"

1 Do you know why the values were accepted at
2 \$47 million?

3 A Well, I'm not sure what these numbers refer
4 to. But if this is a variance between the TAF, which
5 is at 38 million and the 47 million which must
6 represent some additional work, it will be recalled
7 that there were a number of issues with this project as
8 it went along which were unforeseen and which required
9 some significant expenditure in order to properly
10 address it.

11 I will also say that I'm not so sure that I
12 accept that it wouldn't be sufficient detail in order
13 to demonstrate that. That detail has actually been the
14 subject of much public commentary and ranges from the
15 discovery of a wreck unbeknownst to anyone in the
16 vicinity of some of the pile driving right the way
17 through to requiring a pneumatic hammer and a
18 curtain to protect the dolphins at Dolphin Quest, which
19 was likely unforeseen --

20 Q They refer to that in the report.

21 A Fine. As I say, I have not seen this. This
22 was never supplied to me.

23 Q Well --

24 A But, I mean, to complete that thought. And
25 then the last sentence where you say that "No evidence

1 of the value was checked," I recall even after I had
2 ceded the responsibility for the Ministry of Tourism
3 and Transport that there were some rigorous discussions
4 and testing between the Ministry and its controller and
5 Permanent Secretary for the certification of payments
6 for this particular project. I recall that distinctly.

7 Q Let's look at this report and get your
8 reaction to it. It says "As highlighted in our
9 original report, there are many of the variations which
10 occurred and have been accepted without evidence of any
11 verification, simply acceptance."

12 You would agree with that.

13 A Yes. And that's not -- that's simply not
14 correct. That flies in the face of the public record.
15 I don't think there's anyone in Bermuda who disputes.
16 I mean, there is a video of the wreck that was found
17 and now forms part of a historical record.

18 Q Let's have a look at -- miss the next one.
19 Let's have a look at the paragraph after that. "The
20 typical method undertaken on such large projects would
21 require that every aspect of the works are actually
22 physically measured on site, rebar counted, concrete
23 measured, lamppost counted, et cetera, every aspect
24 accounted for."

25 Do you accept that, that that is the way to

1 do -- ensure that moneys are properly accounted for?

2 A If they are experts in their field, I accept
3 that.

4 Q Yes. I mean, because this is important
5 because the contract which was agreed upon on behalf of
6 the government, there was no -- there was no real price.
7 There was no price. There was simply a construction
8 contract and it would be paid for as it went along.
9 Yes?

10 A Yes. Okay.

11 Q In other words, it was not for a fixed sum.

12 A Yes. Yes.

13 Q And it goes on to say --

14 A Can I just make an observation there? That's
15 a very interesting assertion because you will
16 appreciate that in the court of public opinion, this
17 project had a fixed sum which has been exceeded by, I
18 think, \$12 million. That is position that has been
19 espoused and I think seven espoused in the Auditor
20 General's report. So it's interesting to hear you say
21 that that's not correct.

22 Q But not quite, Mr. Telemaque, that way.
23 There was certainly an estimate by presumably the
24 government and by the department that it was originally
25 going to cost -- and we can have a look at it. The

1 original total price figure, as you know, was
2 \$35 million. Now, obviously, that figure came from
3 somewhere. You tell us where it came from.

4 A Well, you would have to have regard to
5 meetings of what was then called the capital
6 expenditure committee, which was a committee of --
7 chaired by the Ministry of Finance, which was comprised
8 the various technical officers, permanent secretaries,
9 depending on the nature of projects that were to be
10 done. And the committee's function was to chart the
11 government's capital expenditure over various fiscal
12 years.

13 And so those figures which you would see in a
14 regular budget book under the heading TAF would be, as
15 you rightly say, an estimate. They would refer to --
16 TAF stands for total allocated funding.

17 Q But presumably it came from your Ministry.

18 A Yes. It might have come from the Ministry.
19 But you know what? It may have come even from Public
20 Works.

21 Q Well, either from your Ministry or Public
22 Works, somebody took a view that it was going to cost
23 35 million?

24 A That's correct. And that view would have
25 been based not on an estimate found in just in

1 anything out of the sky. It would have been based upon
2 some basic design specifications that had been
3 provided. And I think Dr. Binns makes reference in one
4 of his letters to the specifications provided in a
5 report prepared as part of the cruise ports master plan
6 from 1999 by (indiscernible) which is an engineering
7 design outfit in Florida.

8 Q So, the original figure was 35 million, the
9 estimate, made by somebody in government. And then as
10 you know, the TAF went up to 45 million. And then
11 eventually the TAF was 60 million -- 59.8.

12 **EXAMINATION**

13 **BY CHAIRMAN:**

14 Q Before you move on. Mr. Telemaque, or perhaps
15 counsel is suggesting that may be the estimate came
16 from the Department of Works and Engineering. Now,
17 yesterday Dr. Binns told us that he as Permanent
18 Secretary of that department -- that Ministry at that
19 time had no involvement at all or no direct involvement
20 until you took the contract to him for approval. And I
21 just wondered whether that was relevant to your
22 assertion that they may have provided an estimate.

23 A Not necessarily. And I can assist in this
24 regard. The committee to which I referred to
25 earlier would meet -- and it would be very helpful to

1 actually have one of the old spreadsheets which would
2 indicate that. But what you would be looking at is a
3 sheet which would have a list of projects and capital
4 expenditure and capital acquisitions on one side and
5 columns by year across the page. So, for example, the
6 ferry project to which I referred to earlier was a
7 total allocated funding of \$26.9 million. But that
8 \$26.9 million was spread through various years. And
9 that would have been spread based upon the likelihood
10 of spending a certain amount of money in a given year.
11 It would have been based upon the need to procure
12 vessels. It would be based upon the likelihood that
13 contractors would have the capacity to do the work that
14 was required in any given fiscal year. And it also
15 would have been based upon the Ministry of Finance
16 position as to the levels at --

17 Q We seem to be straying a bit because the simple
18 question, as I understand it, there was an original
19 estimate of \$35 million --

20 A Yes.

21 Q -- for the Heritage Wharf project. You were
22 asked where that estimate came from. I think you said
23 you weren't involved yourself or you couldn't say.

24 A I don't recall.

25 Q You speculated that it might have come or in

1 part at least through the Ministry of Works and
2 Engineering. And all I'm saying is the then Permanent
3 Secretary told us that he and presumably his department
4 had no involvement until the later stage when you took
5 the contract to him to be signed.

6 A I accept that. But what I was trying to
7 demonstrate is that from time to time, those TAFs can
8 be on the books, if you will, or reflected in an outlay
9 for years.

10 Q It's my fault. I haven't followed the
11 relevance of that. But don't let me hold you up.

12 MR. HARGUN: Can we just complete
13 this part.

14 **EXAMINATION**

15 **BY MR. HARGUN:**

16 Q Can you go back to the report?

17 A Yes.

18 Q We are still at page 88. Just to give the
19 context, I'll read the sentence again. "The typical
20 method undertook on such large projects would require
21 that every aspect of Works are actually physically
22 measured on site, rebar counted, concrete measured,
23 lamppost counted, et cetera, every aspect accounted
24 for. These measurements are written down on site and
25 added to a main document which tracks the project and

1 progress as a whole. In this instance, we have been
2 provided with Correia payment applications which
3 provide quantities and which appear to have been
4 accepted without question. There is no evidence of
5 re-measurement or query by the project management
6 whatsoever and we would question whether any exists."

7 Do you know whether Entech ever did -- ever
8 remeasured any of the (indiscernible)?

9 A I cannot comment on that.

10 Q You cannot comment on that. And then you go
11 onto the next page -- the next paragraph, "As we have
12 repeatedly commented, Correia were placed in a very
13 strong contractual position and had the necessary
14 resources in order to make the most of any contractual
15 situation. In the given circumstances of a site with
16 so many changes and additions, re-measurement would have
17 been the most reasonable and accurate method of
18 obtaining a realistic picture of the project as a whole
19 and would have then provided a better way to control
20 costs. This would have, however, require the client's
21 representative, Entech, to have also carried out
22 re-measurement and have the proper knowledge of costing
23 in order to effectively monitor and manage costs. As
24 it is, we see no evidence of re-measurement or record
25 of works on site querying the quantities submitted

1 in payment application or querying the additional
2 submissions."

3 So do you have any comments that there was no
4 (remission)?

5 A No. I cannot comment on that. But I do want
6 to observe that this report, which I have heard
7 mentioned, was never supplied to me. And you putting
8 it to me for the first time 10 years later is hardly a
9 useful exercise inviting me to comment. And I would be
10 interested to know whether or not this was put to
11 Entech.

12 Q I have no idea whether this went to Entech.
13 Any more questions on this? Can we move to another topic?

14 **EXAMINATION**

15 **BY MR BARRITT:**

16 Q I have one question, if I may.
17 Mr. Telemague, you were referring to the King's Wharf
18 and you were reading from a document. I don't know --
19 I think you were.

20 A Yes.

21 Q What document was that and can we have a
22 copy?

23 A I can provide a copy.

24 Q Thank you.

25 A I can provide a copy.

1 Q And then with respect to this report that
2 you've just seen for the first time, I can appreciate
3 your difficulty in dealing with it 10 years later. Do
4 you have any comment on whether you should have seen
5 this report at some point? It having been produced with
6 respect to a project in which your Ministry was
7 involved and you were?

8 A I think that the basic rules of natural
9 justice would demand that I would see such a thing.

10 Q Okay. You're talking in the context of the
11 hearing.

12 A Not at all. I'm talking in the context of
13 when it was used as Exhibit A by the Auditor General.

14 Q Okay. I'm trying to understand how we can --
15 this goes to the -- you refer to it as the imperfect
16 system that we appear to have. It could be a case of
17 that. And I'm trying to figure out how something like
18 this could be brought to bear, rather than 10 years
19 later, back in 2011. Do you have any thoughts on that?

20 A I think as a matter of professional courtesy
21 that the subject of critical reporting or the subject
22 to whose actions are being inquired should have the
23 opportunity to respond.

24 Q All right. And should it be part of some
25 process whereby projects are reviewed either as ongoing

1 or after the fact --

2 A Well, Mr. Barritt, I think it's actually
3 quite basic because ultimately what happens is -- and
4 the Auditor General did this with respect to TCD. The
5 Auditor General did this with respect to Heritage
6 Wharf. Critical commentary is made without naming
7 names but says "the Permanent Secretary." And so
8 everyone can figure out who it is. You just have to
9 look at the dates. But in more cases than I care to
10 recall, that Permanent Secretary in particular who
11 ultimately is named in the report does not have the
12 opportunity to formally respond to what is being said.

13 Well, narrowly what has happened -- and I'm
14 grateful for the professional courtesy of colleagues,
15 who, because the Auditor General's practice is to write
16 to whomever is in place at the time within the
17 respective Ministry, and thankfully colleagues have,
18 from time to time, shared what has been put or what has
19 been suggested in a draft report, for example, or a
20 report and invited comment.

21 Q Right. That's, as it were, behind the
22 scenes.

23 A Exactly.

24 Q Yeah. And what I'm trying to drive at -- and
25 let me see if I can express myself clearly here, is that

1 I think that this kind of analysis even if it is post a
2 project or during a project can be very helpful to the
3 people who were in charge of the public purse.

4 A I agree.

5 Q And I'm trying to as we look at this find a
6 way that we can make this more effective rather than
7 looking at it as you put it 10. Well, not as you put it.
8 As the case may be -- 10 years later after the fact.
9 And if there's some way we can make it less personal
10 and more part of a system of government whereby these
11 things can be brought to bear at an earlier stage
12 dealing with issues. Have I made myself --

13 A Absolutely.

14 Q Do you think, if I may -- Mr. Chairman, I
15 don't want to lead the witness too much -- that this is
16 a role that should be played by Public Accounts
17 Committee? Is that the vehicle that should be doing
18 this? Is there some better vehicle?

19 A Well, I think the Public Accounts Committee
20 has a role to play in that regard. But I have to say
21 that where a report is produced by an independent
22 oversight or watchdog entity, I would have thought that
23 in order to provide as clear and as balanced a view to
24 the public, ultimately to the House of Assembly and
25 legislators, that there would be an opportunity for the

1 subjects of those reports to provide at the earliest
2 opportunity responses to critical reporting. I think
3 it would be useful.

4 Q I don't disagree with that. I'm trying to
5 take it a step further.

6 A Well, as I say, you can go to the Public
7 Accounts Committee. That might be of assistance. I
8 can't think through the process at the moment. But
9 certainly what happens is that of course, the Public
10 Accounts Committee does not activate until much later
11 in the process. The special report has been done by
12 then. You know, everything is in the open. The
13 assertions are there. The Permanent Secretary is
14 labeled. There are the headlines. All of those things
15 have already taken place. And so for the Public
16 Accounts Committee to attempt to put Humpty Dumpty back
17 on the wall, it may be too late.

18 Q Should it be activated earlier?

19 A Yes.

20 Q Okay. Thank you.

21 MS. MEMARI: By way of assistance, it may be
22 that the internal audit committee may perform
23 the function that you have just suggested.

24 CHAIRMAN: Well, thank you.

25 MS. MEMARI: I do have a couple of follow-up

1 questions.

2 MR HARGUN: There was one question I was
3 going to ask in relation to this which I...

4 CHAIRMAN: Mr. Barritt's asked his questions.
5 I think Ms. Memari can ask questions if
6 she wants to.

7 **EXAMINATION**

8 **BY MR. HARGUN:**

9 Q In relation to this, Mr. Telemaque,
10 you said that, at the moment in relation to King's
11 Wharf, there is a selection of the project manager and
12 third-party service providers. You said that. Who is
13 making -- which Ministry is making that request? Do
14 you know? Is it the Ministry of Tourism?

15 A No. It's the Ministry of Public Works.

16 Q Public Works.

17 A Yes.

18 Q Yes. Thank you.

19 CHAIRMAN: Just a moment.

20 **EXAMINATION**

21 **BY MR BRADSHAW:**

22 Q If I may. For me I'm concerned, as John is,
23 with sort of what this looks like moving forward.
24 And I've heard yourself, I've heard others
25 talk about -- and I looked through witness statements

1 and heard people talk about, to use your words, an
2 imperfect system. And I feel like you expressed
3 frustration, if that's fair that no one seems able to
4 change it. And for me, again, as somebody who's just a
5 taxpayer, I look at some of the reports that the
6 Auditor General has provided and some of the stuff that
7 we've had transparency to and I see potential learning
8 opportunities for the civil service and for many of
9 us -- or many folks, many of you -- sorry -- who are in
10 senior positions.

11 I guess my question for you is, what are your
12 thoughts on how best the organization can become more
13 of a learning organization and how best one can
14 recognize where they are -- and let's take away --
15 okay. Something bad happened or something that was not
16 perfect happened. And how can we learn from that and
17 move forward in a positive manner for Bermuda? What
18 are your thoughts on that, on how to do that? What are
19 your thoughts on how to fix the system, our imperfect
20 system?

21 A How long do we have?

22 Q Well, maybe it's something we can follow up
23 with you.

24 (Participants speaking over each other.)

25 A And the reason I say that is because, you

1 know -- and this point is important. I'm grateful for
2 your question. But I'll take it in just a couple of
3 phases, not to belabor it.

4 But you know the first thing that has to
5 happen is that political will must be executed with
6 courage. That is the first thing that must happen.
7 And so, if a government has a policy intent and
8 determines that that policy intent cannot be met by
9 existing rules, then that government has a
10 responsibility and open and transparent way to fix those
11 rules and not run from that and not to move to an extent
12 where the stewards of the rules --

13 Q The stewards being the civil servants?

14 A -- the civil servants, become the
15 target of a lack of political will to fix them.
16 Now, if I may, I'll give you a perfect example. In the
17 run up to the 2012 election campaign, one party
18 promised that they would ensure that 20 percent of
19 contracts were awarded to small business owners. That
20 on its face is a laudable aim. But if you look at that
21 undertaking, what does that undertaking mean? That
22 undertaking is an acceptance that the system currently
23 is flawed. It does not obviously deliver that
24 political intent. So how then, once you are in
25 government, do you execute that political intent by

1 awarding notionally 20 percent of contracts to
2 this body called small business? How are they defined?
3 How do you insulate yourself from allegations of
4 corruption and favoritism and so forth? How do you do
5 that in Bermuda? How do you do that in such a small
6 community?

7 Isn't it better to say that you're going to
8 attempt to fix the system? And of course, you're
9 inquiring into the airport. But the Minister of
10 Finance is on record as saying that Financial
11 Instructions are not suited for the modern world. I'm
12 paraphrasing, and we need to examine that part as well.
13 As if we, in a 21st century economy, in a 21st century
14 country that purports to be sophisticated, that
15 purports to be cosmopolitan, that says it's cutting
16 edge, has no rule of law. And all of those things that
17 make it an attractive jurisdiction is still bound by a
18 methodology for the basic award of public contracts
19 which dates from the last century. And then we wonder
20 why we're here.

21 What you have, sir, is you have good people
22 trying to execute the instructions of elected leaders
23 via a system that is broken.

24 CHAIRMAN: Now, Ms. Memari, you had a
25 question on this issue?

1

EXAMINATION

2

BY MS. MEMARI:

3

Q Mr. Chairman, my question is not so much forward-looking rather than backward-looking. You said that Works and Engineering has had the lion's share of capital projects; correct?

7

A Yes.

8

Q Are there any examples where a capital project was managed -- performed and managed by Works and Engineering that had to be subsequently rectified due to errors and mistakes. And if so, who would have vetted those contracts?

13

A I'm sure there are some.

14

Q Can you think of any?

15

A I'm not sure. The rules are so strict that you can't lead me a little more if you want to draw my attention to something specific.

18

CHAIRMAN: If you have one in mind --

19

THE WITNESS: That would be useful.

20

CHAIRMAN: -- why not say what it is?

21

Do you know any?

22

Q What about the project that involved digging holes? And I believe it was on the east end in the -- in the ocean. Just bear with me.

25

A I'm sorry. Yes. As part of the development

1 of the cruise ship policy -- cruise ships are getting
2 larger and larger -- the current caller to Bermuda,
3 The Anthem of the Seas, as I understand it, and if I
4 have misunderstood it, then someone, I'm sure, will
5 correct me. But as I understand it, The Anthem of the
6 Seas was meant to make its inaugural visits to Bermuda
7 in 2015. It was launched in 2015. That was not
8 possible because the channels in Bermuda were not fit
9 to receive a ship. And the reason for that is because,
10 as I understand it, there was a divergence of opinion
11 between the expertise within Public Works and the
12 expertise of engineers on behalf of Royal Caribbean
13 International, who similarly do this every day all over
14 the world. And the argument was that --

15 CHAIRMAN: Do we need to go into this?

16 THE WITNESS: Well, I think that this goes to
17 the point of what happens when projects don't have at
18 the outside the level of energy or commitment to see
19 them realized. There are consequences. So, for
20 example, whilst the argument raised as to whether
21 or not to draw to -- to dredge the north channel versus
22 the south channel between two sets of engineers. The
23 ship went somewhere else. And that represents an
24 economic detriment to Bermuda. It represents a
25 signature detriment to Bermuda because the ship was

1 being launched. And if you look at it, it's incredible
2 to see. The ship went in 2015 to somewhere else
3 as opposed to coming to Bermuda

4 CHAIRMAN: We're getting a long way
5 away from relevant questions.

6 MS. MEMARI: With all due respect, Mr. Chair,
7 we are not. The common thread throughout --

8 CHAIRMAN: Don't make a speech. If you want
9 to ask the witness any questions, you may
10 on this issue.

11 Q In your opinion, has it been the experience
12 of this Bermuda government that the Works and
13 Engineering have had the requisite specialization and
14 expertise in each and every case where there was a
15 capital project?

16 A Of course not.

17 CHAIRMAN: I'm sorry?

18 THE WITNESS: Of course not. And, again,
19 this is demonstrated by an illustration. There is a
20 project right now with the respect to the Swing Bridge
21 at St. George's. Public Works involvement was simply
22 to source the requisite consultant to do it.

23 CHAIRMAN: Well, we've -- thank you. I
24 think I get your point now.

25 MS. MEMARI: Thank you.

1 CHAIRMAN: Thank you very much. One thing
2 I can say is we are clearly up to date now
3 talking about future & past projects as well.

4 **EXAMINATION**

5 **BY CHAIRMAN:**

6 Q Now, I've got just one question for you
7 finally on this issue. You've been asked many times
8 about the relative expertise of the Ministry of Works
9 and Engineering and the Department of Tourism at the
10 time when you were contemplating the Heritage Wharf
11 contract. And you've given the answers you have done
12 to Mr. Hargun. Mine is really simply a factual
13 question.

14 Did you discuss -- do you have any
15 recollection of discussing that issue with the Minister
16 at the time?

17 A Discussing the capacity between -- within the
18 Ministry of Works?

19 Q Well, the question whether the matter should
20 go to the Ministry of Works of Engineering or be kept
21 in the Ministry -- be developed in the Ministry of
22 Tourism?

23 A I'm sure that there was a discussion along
24 those lines. The project was -- the project was
25 topical.

1 Q Well, putting the thing another way,
2 same question another way, whose decision was it?

3 A It was the decision of Cabinet.

4 Q Of Cabinet?

5 A I believe so, yes.

6 Q On the recommendation of?

7 A Of the Minister to the Paper, to Cabinet.

8 Q Which is why I asked whether you have any
9 recollection of as Permanent Secretary discussing that
10 matter with him?

11 A I do not have a specific recollection of
12 that, of any precise conversation in that regard. But
13 I would imagine we would have discussed it.

14 Q I see. Good. Thank you.

15 **EXAMINATION**

16 **BY MR. HARGUN:**

17 Q In that case, Mr. Telemaque, should we move
18 on? Should we move on to Global Hue? In your witness
19 statement, you say at paragraph 26, you say "The 2009
20 contract for Global Hue was viewed as a renewal of its
21 contract for services." And this is an answer to the
22 question, what is your understanding of why the
23 Ministry of Tourism did not put out to tender (20 ?) You
24 say "This was not in any way unusual within the then
25 Bermuda Department of Tourism. It is important to know

1 that where a destination has engaged a company charged
2 with its branding, marketing, and overall management of
3 the promotion of tourism product, in the absence or
4 some failure to perform to obvious dissatisfaction" --
5 the language underlined -- "in the absence of some
6 failure to perform or obvious dissatisfaction with that
7 company, best practice would suggest that the relation be
8 maintained for brand consistency and marketplace
9 certainty and confidence. In fact, it has been a
10 source of criticism as part of the rationale for the
11 formation of the Bermuda Tourism Authority that too
12 frequent changes of agency partners either in
13 compliance with the rules of the government or owing to
14 changes in Ministerial outlook caused undue confusion
15 in the marketplace and resultant negative impact on
16 Bermuda tourism."

17 And then you conclude by saying at
18 paragraph 27 "It is therefore overly simplistic and
19 ignorant of best practice to suggest without more that
20 a contract of this nature should be tendered
21 automatically simply because it has expired." Yes?

22 A Yes.

23 Q But the contract which we were looking at,
24 the expiring contract, that wasn't just a normal
25 contract. It was an unusual contract, was it not? It

1 was the subject matter of the Auditor's report two months
2 prior to the renewal of the contract.

3 And can I just remind you what the Auditor
4 General had to say about that? If you go to Tab 7 and
5 go to page 15 --

6 A Mr. Chairman and to Mr. Hargun, whilst I'm
7 happy to answer this question, it should be clear that
8 at the relevant time, I was the Secretary to the
9 Cabinet. I was not the Permanent Secretary to the
10 Ministry responsible. So the question which was
11 brought, what was my understanding of why the Ministry
12 of Tourism and Transport did not put the 2009 contract
13 out to tender, and that is my understanding.

14 Q Let me ask you on the basis of you have been
15 in the Ministry of Tourism. And the question I'm going
16 to ask you is really your understanding of the issues
17 that -- what I'm going to show you is some of the
18 criticisms which were made by the Auditor General.
19 - a question to be - whether in those circumstances it
20 was appropriate. And I'm not questioning that the
21 decisions were made appropriately in terms of the
22 machinery. For example, the decision to renew was made
23 by Cabinet. So that -- I'm not questioning that.

24 The question I have is as to whether in light
25 of those criticisms, this is a contract which ought to

1 have been renewed as a matter of law?

2 A That's not a matter for me. The Cabinet made
3 a determination.

4 Q Fair enough. Let me just ask you as to
5 whether some of the criticisms made in relation to the
6 expiring contract, which you say the best practice
7 dictates that one should not automatically change,
8 whether having, after these criticisms, wasn't the normal case.

9 A I think that's one assertion. But as I say,
10 this is a matter for the Cabinet. And they obviously
11 would have had to consider what the current situation
12 was.

13 Q Let me ask you something on the point which you
14 made in here. If you can't answer it, please say
15 so. I mean, in relation to the first contract with
16 Global Hue, what was your role in it?

17 A What is the date of the first contract? I
18 don't --

19 Q In 2004, the department contracted with
20 Global Hue. I think when you were Permanent Secretary.
21 Yes?

22 A Yes.

23 Q So I think this is at the time when you were
24 there. And you will see at page 15, are you familiar
25 with the report by the Auditor General?

1 A Not overly familiar.

2 Q But I mean, you're aware --

3 A Yes. I'm aware.

4 Q -- there was a special report.

5 A Yes.

6 Q And you're aware that the special report
7 was critical?

8 A Yes.

9 Q And if you look at page 15, you remember the
10 setup, do you, Mr. Telemaque?

11 A No, I don't.

12 Q Well, there was -- there was Global Hue which
13 was the company with which it was contracted. As we
14 understand the position Global Hue itself did not
15 actually enter into arrangements with advertisers.
16 That was done by a -- what I've said a subagent, that's
17 my categorization. And the issues arised (*sic*)
18 in relation to Cornerstone not providing
19 invoices. They were simply saying this is what we're
20 charging. And that's that. Do you remember that
21 discussion?

22 A I do recall, yes.

23 Q Have a look at page 15, the fifth bullet
24 point "Cornerstone does not provide Global Hue and
25 Global Hue does not provide the department with copies

1 of media vendors' invoices. The department is
2 therefore unable to verify that the amount it is billed
3 are correct. It also makes a mockery of the
4 contractual right of the government of Bermuda or its
5 authorized representative to inspect and audit the
6 books, accounts, and records of Global Hue."

7 Yes? So I mean, you're familiar with
8 presumably -- given that you're Permanent Secretary,
9 you knew about the contract with Global Hue.

10 A Yes.

11 Q And not surprising, given that it involved a
12 substantial amount of money being spent on behalf of
13 the government of Bermuda, some \$10 million plus a fee
14 of \$1.4 million, the government of Bermuda would want
15 to have a right to make sure that the money being charged,
16 expended on its behalf, that it be (indiscernible 12:35:53).

17 A Yes.

18 Q And not unusually for that purpose, the
19 provision specifically provided that the government of
20 Bermuda can inspect and audit the books and
21 accounts?

22 A Of Global Hue, yes.

23 Q And that's solely for the purposes of making
24 sure that the money which is being spent, allegedly being
25 spent on its behalf is being spent. And so presumably,

1 If you get to a situation where the entity which is spending the
2 money, in this case Cornerstone on behalf of the government
3 of Bermuda, because that's the entity on the (core face ?)_
4 which is entering into contract with the advertisers,
5 If that company refuses to say, we're going to
6 provide you with the invoices for the underlying
7 material, it does make a mockery of the provision
8 that we can inspect the books and accounts of Global Hue,
9 doesn't it?

10 A I can't accept that globally. And I think
11 that other witnesses may be able to assist you more
12 with that because I was not connected to the matter of
13 that process.

14 Q No. I understand. But it's not highly
15 controversial. The sole purpose of this --

16 A I'm sorry?

17 I know you didn't mean
18 that.

19 Q The sole purpose of this provision is to find
20 out that the money which is being spent on behalf of the
21 government of Bermuda can be verified.

22 A Yes. I said that.

23 Q And you can only do that, Mr. Telemaque, if
24 you have the invoices from the people you're purchasing
25 the services from.

1 A Well, as I say, Mr. Hargun, I cannot comment.
2 And I don't think I can assist you in this section.
3 There are other witnesses who can speak to this and
4 speak far more cogently than I can.

5 Q Well, actually, you were the Permanent
6 Secretary when this contract was entered into. You
7 don't want to -- I mean, you can't assist us?

8 A No, I cannot.

9 You will note that the reference throughout
10 this is made to the department.

11 It refers to the Department of Tourism.

12 Q No. I understand that. But you are -- you
13 are the -- You were the head of that department at the
14 time?

15 A No, I was not. I was the Permanent Secretary
16 to the Ministry of Tourism and Transport. There was a
17 Director of Tourism who reported the me.

18 Q I see. So do you think that -- but you were
19 the head of both departments, were you not?

20 A I was the Permanent Secretary to the Ministry
21 of Tourism and Transport.

22 Q Yes. So can you not answer questions in
23 relation to a tourism matter?

24 A It would depend on the matter. I don't -- I
25 don't run departments. I run the Ministry.

1 Q On that basis, there would be the Director of
2 Transport? Yes? And there was a Director of Tourism?

3 A Yes.

4 Q So --

5 A There was a Director of Marine and Ports, a
6 Director of Civil Aviation. The Ministry of Tourism
7 and Transport at that time comprised seven departments.

8 Q So, if you can't answer any question related
9 to tourism, I assume you can't answer any question
10 related to transport either.

11 A It would depend on the matter.

12 Q Okay. What about this matter?

13 A I cannot help you. You will note that I was
14 not even asked about that by the Public Accounts
15 Committee.

16 Q That doesn't matter, the Public Accounts
17 Committee. I mean --

18 A But with respect, it does. The Public
19 Accounts Committee hears from witnesses who are able to
20 assist them in their deliberations. I was not
21 questioned about this by the Public Accounts Committee
22 nor was the Auditor General's report shared with me in
23 its draft form, which is the ordinary practice with
24 respect to this matter.

25 **EXAMINATION**

1 **BY CHAIRMAN:**

2 Q Mr. Telemaque, you must realize the fact that
3 somebody else hasn't asked you questions about a
4 particular matter doesn't prevent this inquiry or
5 counsel of this inquiry --

6 A No, sir. I'm not suggesting --

7 Q -- asking you about --

8 A I'm not suggesting that. I'm just saying to
9 Mr. Hargun that, you know, in the ordinary course as
10 the Permanent Secretary of the Ministry, there are some
11 matters in which I can answer in explicit detail. It
12 depends on what matter it is.

13 Q I just have -- there's a question of
14 responsibility involved.

15 A That's right.

16 Q And what you're being asked, as I understand
17 it, is this: A contract was made by the Ministry at a
18 time when you were Permanent Secretary of it.

19 A Well, no, sir. With respect, it's not
20 correct. You will see at page -- this bundle we're
21 looking at right now.

22 Q Well, that was the premise on which you were
23 being asked the question; is that right?

24 A That's right. That is my point. It says in
25 2004, the department contracted with Global Hue, an

1 American advertising agency. I don't think that in
2 this report, the Auditor General mentions a Permanent
3 Secretary.

4 **EXAMINATION**

5 **BY MR. HARGUN:**

6 Q But you were the Permanent Secretary to the
7 department.

8 A I accept that.

9 Q So --

10 MS. MEMARI: I do beg your pardon.

11 CHAIRMAN: I'm sorry. I'm not going to
12 allow an intervention at that stage.

13 MS. MEMARI: Mr. Chair, I'm not asking any
14 questions. But there may be an error in
15 recollection of that contract. we have a
16 witness, (Cherrie Whitter), who says that the
17 first contract started in 2006, not 2004.

18 CHAIRMAN: I'm sorry. It's for the witness
19 who's being asked the questions to answer
20 that way if that's the correct answer. I
21 don't want any contribution as to what your answer
22 would be. You can ask questions later.

23 Q Mr. Telemaque, not trying to trick you in any
24 way. It's just that in your witness statement -- the
25 only reason I'm asking you questions is because you

1 deal with this issue in your witness statement.

2 A Because the question you asked me what was my
3 understanding.

4 Q Yes.

5 A And that was my understanding.

6 Q And in your -- and then you said -- in quite
7 blunt terms, you said "It is therefore overly
8 simplistic, ignorant of best practice to suggest
9 without more that a contract of this nature should not
10 be tendered automatically."

11 Now, all I was going to put to you was this
12 wasn't an ordinary, normal contract. This was a highly
13 unusual contract which was being renewed. And the only
14 reason I'm asking you this question is because you have
15 gone into print in your witness statement to say so.

16 A Because I was asked.

17 Q Yes. But I mean, and all I'm trying to put
18 to you is that this is a highly unusual contract.

19 A I don't recall it ever being termed that way.
20 I don't --

21 Q Well, let's have a look at just -- I don't
22 want to spend too much time with it. Look at page 16,
23 the first bullet point. "The media vendors'
24 invoices" -- this is in relation to Cornerstone. "Media
25 vendors' invoices show that the Cornerstone's markup

1 during 2008 varied considerably. On some it was
2 minimal and others it was as high as 171 percent and
3 186 percent. A Cornerstone representative informed
4 me -- the auditors -- that 171 percent and 186 percent
5 markup represented Cornerstone's profit margin but
6 should not be viewed in isolation. She said that the
7 average markup for the year was more like 30 percent."

8 Now, you were the Permanent Secretary of the
9 Ministry. What is your view about markup of
10 186 percent by Cornerstone for the purposes -- for the
11 privilege of placing advertising with a third party?

12 A There is a context that surrounds this entire
13 matter, and a context which I am not able to assist you
14 with. This was a contract managed by the department.

15 Q So -- but I mean, just the simple question
16 that is saying -- Is an advertising agent on behalf of
17 the government entitled to mark up 186 percent. What
18 is your view on that?

19 A I have no view on that. This is a -- I'm not
20 going to comment in the absence of context surrounding
21 this. It would be unfair to colleagues and would not
22 do justice to the arrangement at the time.

23 Q Okay. But would you accept that -- would you
24 agree with me that, if this is factually correct, that
25 does make it a somewhat unusual contract, does it now?

1 A No. Because, again, these reports do not
2 provide the requisite context that would support why
3 things have occurred and why decisions have been made
4 or why situations exist. They don't.

5 Q Well, I mean, this is an inquiry. The
6 whole purpose of this exercise is to find out what the
7 true position is. Tell us the context.

8 A I don't know. And that is my point. I don't
9 know the context of this particular assertion because
10 the contract was managed by the department.

11 Q So, do I understand your evidence to be that
12 you don't know what the context is but you think that
13 the payment of 186 percent commission to Cornerstone
14 might well be explainable by reference to the context
15 which you are unaware of?

16 A No. What I'm saying is, is that with each of
17 these assertions as it is the case with every single
18 report, there is a context which is absent from the
19 report.

20 Q Well, that's what I'm trying to understand.
21 I mean, on the face of it, Mr. Telemaque, one looks at
22 the statement that a subagent in the United States,
23 when they spent \$100 on advertising on behalf of the
24 government is charging \$186 by way of commission on top
25 of it. To an ordinary person, it sounds a rather

1 bizarre proposition. And, as the Permanent Secretary,
2 I'm trying to get your reaction as to why you think
3 this is not abnormal and absurd.

4 A Because it is an assertion without context.
5 Let me give you an example. There is a suggestion that
6 Global Hue's contract was never tendered the first time
7 around. And that assertion has been in the public
8 domain now for a decade irrespective of the fact my
9 recollection is and another witness I'm sure will tell
10 you this, that six quotes were received --

11 Q How does this --

12 A -- and that contention -- because what I'm
13 saying is, is that by extension, you cannot take a single
14 item out of this report and ask me to comment on
15 whether it is absurd or not. This is a --
16 This is a public service contract which has context
17 surrounding it.

18 Q I fully understand that.

19 A And this report does not contain the
20 responses to these issues.

21 Q How does -- how does what you just said
22 answer the point, that paying somebody 186 percent
23 commission makes no sense?

24 A Mr. Hargun, you can make the assertion. I'm
25 not going to be obstructed. I'm telling you that I

1 don't know the context.

2 Q But how can 186 percent commission to an
3 advertising agent be justified in any context?

4 A All right. Let's do the (dance, then).
5 The complete bullet point reads -- and you're focusing
6 on 171 percent, 186 percent. The complete bullet point
7 reads that "The average markup for the year" -- it
8 should be -- sorry -- "Cornerstone's profit margin
9 which should not be viewed in isolation. She said the
10 average markup for the year was more like 30 percent."

11 Now, what may be the case -- and this is -- I
12 have to -- I add this caveat, complete speculation.
13 What may be the case, that some of the advertising that
14 attracted 171 or 186 percent markup was based upon
15 whatever the company had done to secure it. It may have
16 been premium advertising in some paper. It may have been
17 niche something that cost a million dollars to place.
18 It could have been anything. Whereas, the more average
19 markup -- and it may refer to one or two instances,
20 that markup would have been applicable. You haven't
21 taken me to the actual contract itself to see whether
22 or not that is, in fact, supported on the contract. I
23 accept that the numbers are high. What I'm saying is
24 that in the absence of the appropriate context, it's
25 not helpful or productive to simply say, "Oh, yes."

1 That's outrageous," because it may not be so. It may
2 be perfectly understandable.

3 Q With respect, I don't think that's an answer
4 to it. I'll say that -- I say that for this reason:
5 Let's assume the contract is a million dollars.
6 According to this, the 186 percent commission would
7 mean that you were paying \$1,186,000.

8 A Even that is an assumption.

9 Q Well, have a look at the next paragraph, if
10 you would, please.

11 **EXAMINATION**

12 **BY CHAIRMAN:**

13 Q Before we move on, I think you were saying,
14 Mr. Telemaque, by inference -- and I'd like you to be
15 clear - You can contemplate certain circumstances
16 where in this kind of contract, a 186 percent markup --
17 an 86 percent markup -- would be acceptable.

18 A And that, sir, is literally on the fly.
19 There may well be merit in Mr. Hargun's point. The
20 Auditor General may have the point well taken. I don't
21 know. I can't comment.

22 Q But, no. The other side to this coin, you
23 are asserting, as I understand it and I may be wrong,
24 that you can contemplate that the 86 percent --
25 186 percent uplift -- might be justified in certain kinds

1 of advertising contracts?

2 A I don't want to commit to say that that could
3 be justified. What I'm saying is, is that, you know,
4 Mr. Hargun is pressing for an answer, and I'm giving
5 what I suspect might -- could even -- could be a
6 scenario, a reasonable scenario. It's possible. I don't
7 know what the answer is.

8 Q If you don't know, say so.

9 A I've been trying.

10 **EXAMINATION**

11 **BY MR. HARGUN:**

12 Q Have a look at the next paragraph. "To test
13 the assertion at my request, the department prepared a
14 schedule of all Cornerstone's invoices for the year and
15 the markups charged. Overall, the markup for the
16 services billed by Cornerstone averaged 51 percent."

17 Now, you've been in tourism for a long time,
18 Mr. Telemaque, and you were the Permanent Secretary.
19 Isn't 51 percent markup extraordinary?

20 A Has an examination been conducted of all of
21 the contracts during that time to determine whether
22 that is out of line or not or are we looking at this in
23 isolation because it's Global Hue.

24 Q Let us just assume that that is the case, the
25 51 percent markup. Would you not consider that

1 extraordinary?

2 A No, sir. I cannot comment on that because,
3 again -- see, and this is really -- this is where the
4 justice issue comes in. Because in the Auditor
5 General's report, you know, there is a list of
6 contracts -- I can't remember what section it is. And
7 the Commission will be familiar with it. There is a list
8 of contracts which the Auditor General earmarks as
9 contracts which were either not tendered for which
10 Cabinet approval was not supportive and what have you.
11 And on that list, only certain contracts are selected for
12 examination. And I think that that is something which
13 should ultimately be justified because unless you have
14 conducted an analysis of the other contracts that form
15 part of the Department of Tourism at this time, there
16 is no way to comment or invite me to comment to say
17 that 51 percent is out of line. It could have been the
18 standard.

19 Q I was asking you on the basis that you've
20 been in tourism for such a long time. You were the
21 Permanent Secretary. You would know what the industry
22 is. You would have negotiated contract and you had
23 some basis for it. I was really asking you based upon
24 your expertise as a person who was responsible for the
25 Department of Tourism in this country as to whether you

1 thought 51 percent markup was something unusual.

2 A I was not responsible for the Department of
3 Tourism in that regard. The Department of Tourism was
4 one of the departments in the Ministry of Tourism and
5 Transport.

6 Q Very well. I'm going to move on to another
7 topic.

8 **EXAMINATION**

9 **BY CHAIRMAN:**

10 Q I'm not sure whether I should pursue this
11 matter, but I think I will because we've heard so much
12 coming and going about this 51 percent, 86 percent --
13 186 percent -- markup. What we're talking about is the
14 markup on the actual cost of the advertising space made
15 by the subagent rendering those to the agent for which
16 the government paid; is that right? That's what --

17 A Yes. I believe that's right.

18 Q Right. You were Permanent Secretary to the
19 Ministry of Tourism for three years.

20 A Longer than that.

21 Q On the days -- have I got it wrong?

22 A No, sir.

23 Q 2004 --

24 A 2004 to --

25 Q -- to 2007 --

1 A 2007.

2 Q -- is what you say. Now, in that capacity,
3 did you or did you not have some familiarity with
4 negotiating contracts in this area?

5 A I did not. Not at that -- not in this area.

6 Q Well, I think we must pursue it. You were
7 Permanent Secretary of the Ministry. On the face of
8 it, the Ministry would spend its life negotiating
9 advertising contracts. And you as the Permanent Secretary
10 say, do you, that you have no expertise at all as to
11 what might or might not be reasonable rates?

12 A I do. And let me explain why. This is a
13 structural issue.

14 Q This what?

15 A A structural issue. The Department of
16 Tourism until 2004, whilst it was named the Department
17 of Tourism, it was the sole department of the Ministry
18 of Tourism. The Department of Tourism was combined
19 with the Ministry of Transport after the resignation of
20 its Minister in the summer of 2004. And so the
21 Department of Tourism as it was then constituted
22 functioned in a similar way and was treated in a
23 similar way to a Ministry, even though it had the name
24 Department of Tourism. It's very similar to the
25 Department of Education, which, from time to time, has

1 been the sole department within the Ministry of
2 Education. Over time some structural changes have been
3 effected. So that is the issue. It would not be
4 unusual for the Permanent Secretary in what this brand
5 new entity referred to as the Ministry of Tourism and
6 Transport to have not been engaged in that. The
7 department had a structure through which it operated to
8 effectively handle contracts of this nature --

9 Q But I don't -- are you saying, "I was the
10 Permanent Secretary of the Department of Tourism and
11 Transport but there is a Department of Tourism. So
12 don't ask me about tourism."

13 A No. I'm not saying that.

14 Q Well, I think you are.

15 A No, sir, I'm not, with respect. What I'm
16 saying is, is that within the public service
17 there is expertise within departments within the
18 Ministry, departments have the ability and capacity to,
19 in fact, handle contracts of this nature in their own
20 regard. And the Permanent Secretary's
21 responsibility will be to exercise some degree of
22 oversight and to shepherd matters through Cabinet as
23 required based upon the needs expressed by the
24 department.

25 **EXAMINATION**

1 **BY MR BARRITT:**

2 Q So if I could come at it another way, to whom
3 did the Director of Tourism report? Anyone?

4 A Yes, eventually.

5 Q To whom?

6 A Well, before 2004, the Director of Tourism
7 reported to the Secretary to the Cabinet.

8 Q But now when it's a combined Ministry --

9 A The Director of Tourism reported to the
10 Permanent Secretary.

11 Q To the Permanent Secretary?

12 A Yes.

13 Q But on that basis, you would know something
14 of what was going on --

15 A Yes, I would. Yeah.

16 Q -- in Department of Tourism --

17 A Absolutely.

18 Q -- but not in this particular case.

19 A Not in this particular detail, no. This is
20 the detailed technical management of a contract for
21 services provided to a specific department. The
22 Ministry was comprised of seven departments. So, say,
23 for example, within the Department of Maritime
24 Administration where there is a contract with several
25 shipping lines to provide the examination of ships and

1 the recertification of ships under Bermuda registry, I
2 would not be familiar with the details surrounding that
3 particular contract in spite of the fact that the
4 Director of Maritime administration reports to me.

5 Where there is, for example, the Department of
6 Civil Aviation, responsibility to provide air
7 worthiness certification for the aircraft that are on
8 the Bermuda register. That may be done under a
9 significant contract worth millions and millions of
10 dollars managed specifically by the Director of Civil
11 Aviation, even though in the public service framework,
12 the Director of Civil Aviation reports to the Permanent
13 Secretary of the Ministry of Tourism and Transport.

14 Q So the Director of Tourism is the one charged
15 with the responsibility of making these decisions and
16 taking advice with respect --

17 A Not necessarily making decisions. Is charged
18 with the management -- responsibility for the
19 management of the contract after a decision had been
20 made by the Cabinet.

21 Q But -- and responsible for any decisions that
22 flow from those --

23 A That's right.

24 Q -- from that Cabinet decision.

25 A That's right.

1 Q And sometimes -- or you can tell us -- with
2 or without reference to yourself.

3 A Absolutely.

4 **EXAMINATION**

5 **BY CHAIRMAN:**

6 Q So in terms of financial accountability, are
7 you saying the only person responsible for, if there
8 was excessive spending in the Department of Tourism,
9 was the Director who reported to you and that you have
10 no responsibility at all?

11 A I think the public service puts it in the
12 frame of the responsible accounting officer. And that
13 is how it must be viewed. And it depends on the nature
14 of the contract.

15 Q And the Minister?

16 A The Minister's not the accounting officer.

17 Q I didn't ask if he was an accounting officer.
18 In terms -- in public -- in terms of the public, the
19 director, let's assume - don't make - only an assumption
20 has sanctioned overspending. You say you as Permanent
21 Secretary are not responsible for that?

22 A No. I'm not suggesting that.

23 Q My question is, under the system is the
24 Minister responsible for that?

25 A The Minister bears some responsibility in

1 that, if the expenditure is supplementary funding over
2 and above that which has been budgeted, the Minister
3 will require in the legislature to give an explanation.

4 Q I think that's a different point. And a
5 particular contract may involve overspending. At the
6 moment, I don't see why that would depend on whether it
7 was within the budget or not.

8 A I'm not sure I understand.

9 Q Okay. Well, it's not worth pursuing.

10 **EXAMINATION**

11 **BY MS LUCK:**

12 Q Could I just ask one question? Obviously
13 having been in the same position where I ran multiple
14 departments in the commercial world, it is difficult to
15 keep sort of tabs in underlying departments and really
16 understand in detail what's going on. However,
17 usually, there's a process where significant contracts,
18 significant spend is something that, of course, do
19 you meet with the department heads weekly? monthly?
20 How do you keep on top of what they're doing in the
21 individual departments? And so, for example, in my
22 experience, anything above a million-dollar commitment
23 by a department would always come to me for my sign-off
24 as the head of these various departments.

25 A I think that the process worked differently.

1 Certainly, there would be regular meetings with the
2 heads of departments that would occasionally include
3 the Minister. And that would be an opportunity to
4 canvas issues, to deal with anything that was topical
5 and also provide updates on the work of the Ministry
6 through its various departments.

7 With respect to the management of contracts in
8 this regard, this contract, the contract for which
9 Global Hue was engaged, was Tourism's real 'raison
10 d'etre'. It was what they did. It was their contract.
11 It was their thing. And Tourism had the various moving
12 parts to manage it because the structure of tourism --
13 none of the named titles, nothing changed when the
14 Ministry -- when the Department of Tourism was combined
15 with Tourism and Transport. The only thing that
16 changed was the reporting line.

17 Q Okay. Thank you.

18 CHAIRMAN: Well, now, where are we?

19 1 o'clock. We'll take our break now unless
20 we may finish within 10 minutes or so.

21 MR. HARGUN: I will not finish in 10 minutes.

22 CHAIRMAN: We'll be adjourned until

23 talk to anybody else about your evidence or
24 anything to do with it. Thank you.
25

1 **(Recess taken) (Recess ended)**

2

2 MS ALBERTA DYER TUCKER: Ladies and gentlemen,
3 before we start, can you just check your cellular
4 devices, please, to make sure they're either off or on
5 vibrate, please.

6 The Commission is resuming.

7

EXAMINATION

8 **BY MR. HARGUN:**

9 Q Good afternoon, Mr. Chairman. Good
10 afternoon, Mr. Telemaque.

11 A Good afternoon.

12 Q Mr. Telemaque, just a point of clarification.
13 Referring to the Trent report, just to clarify, I think
14 one of the answers you gave, I think you said that you
15 didn't see it. I'm assuming what you said -- you meant
16 you didn't see it at the time when it came out. The
17 report wasn't sent to you with the package which you
18 received in relation to the questions you were asked to
19 answer. Is that right?

20 A I don't think so, no.

21 Q Okay. Fair enough.

22 A (Indiscernible.)

23 Q You were sent the (ONG/OAG ?) report?

24 A The special report?

25 Q Yes.

1 A Yes, I was.

2 Q And it wasn't attached to it?

3 A No. I have my bundle here. I can --

4 Q Fair enough. I just assumed that it was --
5 since it was part of it, it would have been sent to
6 you.

7 A There is one. There were two of these Trent
8 reports?

9 VOICE: No. That is the one.

10 Q That's the one.

11 A There is just the one? Okay. Then, yes.
12 Sorry. Yes.

13 Q That's fine. Okay. Just a point of
14 information, Cornerstone. You remember we discussed
15 Cornerstone. Did you ever meet them?

16 A No, I didn't. I don't recall. That question
17 was posed by the Commission in the correspondence. I
18 do not recall meeting them.

19 Q Did you know of them if you didn't meet them in
20 terms of just being the PS, in terms of what they did --

21 A I did not, no.

22 Q Yes. I mean, I think the documents seem to
23 indicate they were -- they're a company in the US
24 acting as agent for purposes of advertising.

25 A Yes.

1 Q I mean, beyond that, did you know their
2 standing within the industry?

3 A No, I did not.

4 Q Can I turn very briefly to Ambling, Ambling
5 Consulting?

6 A Yes.

7 Q Can I just ask you a question by reference to
8 a document? If you look at Tab 8.

9 A I'm sorry. Which? Sorry. Okay.

10 Q It's actually the smaller binder.

11 A Okay.

12 Q It's -- it's the -- it's the Cabinet
13 conclusion of the 4th of March 2008.

14 A Okay. This doesn't have tabs. Is there a
15 page that --

16 Q 8-1.

17 A Yes.

18 Q Now, what was your position in March 2008?
19 Do you recall?

20 A Yes. I was the Secretary to the Cabinet.

21 Q You were Secretary to the Cabinet?

22 A Yes.

23 Q So, you would have been aware of this
24 particular matter coming before the Cabinet?

25 A Yes.

1 Q Yes?

2 A Yes.

3 Q And you see that this was proposed by the
4 Premier.

5 A Yes.

6 Q Yes. And do you know the people who are
7 Ambling Development Partners?

8 A I'm familiar with the company. I recall the
9 company. And I have met the principal.

10 Q Is that Mr. Benoit?

11 A Mr. Eddy Benoit.

12 Q Eddy Benoit?

13 A Yes.

14 Q Okay. Eddy?

15 A Yes, yes.

16 Q Okay. And what do they do? What sort of
17 consultancy services do they provide?

18 A My recollection is that in the United States
19 certainly, Ambling has been responsible for
20 environmental remediation, management or oversight in
21 addition to the provision and construction of housing
22 for the United States government and United States
23 Armed Forces and several other government contracts in
24 the United States that relate to land use is my
25 recollection.

1 Q I mean, you were with the Ministry of Tourism
2 and Transport and then Cabinet Secretary.

3 I mean, did you have direct dealings in terms
4 of receiving their consultancy services?

5 A Yes. I did.

6 Q In relation to which department?

7 A In relation to hotel development. They
8 provide services in that regard.

9 Q I mean, specifically, do you recall what the
10 project was?

11 A Yes. They were engaged to conduct a
12 examination of the state of Tucker's Point.

13 Q Tucker's Point?

14 A Yes.

15 Q And did they produce a report? Study?

16 A Absolutely.

17 Q Did it?

18 A Yes.

19 Q And that would be around when? Do you
20 recall?

21 A I think that would have been in early 2007 I
22 think. Between 2007 to 2008, in that time frame.

23 Q All right. And if you look at the -- There's
24 an agreement which is attached to the 2008 conclusion
25 which starts at page 4. Now, if you look at

1 Schedule B, which appears at page 9. There's a
2 Schedule B to the agreement. If you go to page 9,
3 you'll see it.

4 A Yes.

5 Q Now, that's supposed to set out the primary
6 duties of Ambling as the consultant.

7 A Yes.

8 Q As I say, you said you were the Cabinet
9 Secretary at the time. So look at Point H, "Provide
10 consultancy services and other special assignments by
11 government's Cabinet committee on special hotel
12 development project including the following: Tucker's
13 Point Condominium."

14 Is that the one you're referring to?

15 A Yes, it is.

16 Q And that's the one that they actually did
17 produce a report.

18 A Yes.

19 Q The second one is SDO for Monroe Beach and
20 Lantana Condominiums. Was that -- I'm not familiar
21 with an SDO proposed for Monroe Beach.

22 Did it come to pass?

23 A I don't think it came to pass, but there
24 were -- at that time, there were a number of
25 applications for SDOs, and each one had to be assessed

1 and analyzed because I'm sure they were quite topical.

2 Q And did they, to your knowledge, provide a
3 report in relation to that issue or you don't recall?

4 A Monroe Beach and Lantana? They did provide
5 some advice. I'm not sure if it came in the form of a
6 report, per se. But there was advice that was
7 produced.

8 Q Fair enough. Can I just -- unless you have
9 any further questions -- Port Royal.

10 A Well, can I just say something in respect to
11 Ambling?

12 Q Yes.

13 A I think it would be useful because it's
14 important in the overall context of examining Ambling.
15 And that is that it is important to note that Ambling's
16 work, in fact, set the stage for the rescue of Tucker's
17 Point. And that's an important point, because at the
18 relevant time when Ambling was doing their work,
19 Tucker's Point was in dire straits. And the effect of
20 Ambling's recommendations and work led to the eventual
21 securing of the Brandon Park and Rosewood
22 which is now the Brandon partner for Tucker's
23 Point. It's Rosewood Tucker's Point.

24 Q You're talking about a state when it had been
25 redeveloped in its present format?

1 A When the hotel was operating.

2 Q Yes, yes.

3 A That's right.

4 Q Okay.

5 **BY MR BARRITT:**

6 Q Mr. Telemaque, that contract that we've been
7 looking at appears to be dated 2010. Judging from
8 comments you've made and we've heard elsewhere, they
9 were employed by government prior to this --

10 A Yes, I believe so.

11 Q -- as well?

12 A Yes.

13 Q On the same terms? Do you know on what
14 basis?

15 A It may well have been on the same terms. But
16 my recollection is they were involved
17 with Tucker's Point because it was such a
18 serious situation. It was a dire situation. And their
19 engagement with respect to Tucker's Point is what is
20 most prominent in my recollection.

21 **BY MR HARGUN:**

22 Q . This particular agreement we're looking at,
23 Mr. Telemaque, is -- It starts in 2010 as of March and
24 ends in 31st of March 2011. Essentially, one-year
25 agreement. Do I understand that agreements were entered

1 into with Ambling on an annual basis? Because there
2 certainly seems to be agreements prior to this.

3 A There may have been. There was a -- There
4 was a varied scope of work that related to Ambling as I
5 understand it. And I think that others -- I have not
6 been asked specifically about this except for today --
7 but others I think have deposed to the fact that
8 Ambling had a remit that includes services to a number
9 of Ministries.

10 Q But, indeed, if you look at the -- if you
11 look at the Cabinet conclusion of the 4th of March, it
12 refers to a large number of ministries. In fact, the
13 Ministry of Tourism which is proposing it is, in fact,
14 one of the minor ones. The main contracts -- the main
15 engagements are supposed to be with other ministries,
16 in particular Works in Engineering, Planning, and so
17 on.

18 A Yes. And you refer to that, which actually
19 reminds me as well that Ambling was asked to examine
20 Department of Planning with a view to streamlining
21 processes and making planning more efficient. And that
22 was an important part of their work as well.

23 Q Let me ask you, I mean, since you were
24 Permanent Secretary of Tourism, looking at this
25 conclusion, it appears that, as I say, primarily they

1 are consulting other ministries, although there is a
2 reference to -- in a minor way to Tourism.

3 Do you recall why it was that the agreement,
4 the consultancy agreement itself, was actually entered
5 into by the Department of Tourism?

6 A I don't recall but I would say that it is
7 likely that that was where the first contract emanated
8 and it may well be that it was determined to continue
9 that contract. But I think I've seen somewhere in the
10 bundle of documents that, under the arrangement, the
11 services supplied to other ministries were shared
12 equally in terms of costs.

13 Q Yes. You are right about that. That is
14 actually -- I think it's mentioned in the memorandum
15 itself, from Cabinet.

16 A Okay.

17 Q Yes. Were you actually involved in the
18 negotiations in any way with Ambling in relation to
19 terms?

20 A No, I was not.

21 Q No. So for example, you would not be able to
22 assist the Commissioners in relation to the \$400,000
23 per annum retainer as to why that was --

24 A No, I don't think -- no.

25 Q -- picked up as opposed to any other figure.

1 A No, I don't. I don't think so. I don't
2 recall that.

3 MR BARRITT: Does he know who would? Would
4 it be the Tourism? Would it be the Director again?

5 THE WITNESS: I'm not sure it would have been the director.

6 The Director may be able to say more and may be
7 able to direct you. But I would be hesitant to
8 say it was the Director specifically. I'm not certain.

9 CHAIRMAN Yes. Perhaps I should ask you this.
10 The Minister of Finance dissented in this
11 proposal & we can see that. It's minuted in the
12 Cabinet. Do you recall why? It's at page 2-8-2. It's
13 the second paragraph.

14 THE WITNESS: This binder doesn't have 8-2. It
15 goes straight to 8-3.

16 MS LUCK: That's in the small
17 bundle.

18 THE WITNESS: It goes from 8-1 to 8-3 in this bundle.
19 So, I'm missing a page.

20 Q We shall give you page 2. It's the first
21 sentence -- sorry. The second sentence on the second
22 paragraph. I think the question was, do you know why
23 the Minister --

24 A I don't. I mean the Minute is -- I think
25 sets out --

1 Q Appears to indicate that the Minister took the
2 view, Minister of Finance, that it should be tendered.

3 A Well, I'm not sure it says that. I think the
4 Minister says that it had been put out to tender
5 specific to the Department of Planning. And -

6 Q No. I mean, if you look at the second
7 sentence, it says "The Minister of Finance informed
8 Cabinet that she had difficulty supporting the
9 memorandum because the contract, that is the proposed
10 contract, had not been put to tender."

11 I mean, that would appear to indicate --

12 A Yes. But I think you have to read that in
13 conjunction with the next sentence that says "She also
14 noted that as tender documents have been issued with
15 respect to the Department of Planning project to ensure
16 credibility of the process, the selection of a
17 consultant from amongst those who had applied for that
18 consultancy should be completed."

19 Q Yes.

20 A So it's the -- it's the -- it's the package.
21 I think that -- clearly, there was a divergence of
22 views. (indiscernible 02:18:41).

23 **BY CHAIRMAN:** I think you'll find as she goes on,

24 Q She says, "We don't need a project manager for
25 the Dame Lois Browne Evans building

1 A Yes. It said she'd been informed by a technical
2 officer a project manager had already been engaged for
3 the construction of the Dame Lois Browne Evans building.

4 Q Yes. I see that.

5 Was that correct?

6 A I don't know. I couldn't say. I wasn't
7 engaged with that project. I very likely would have
8 been in the room for this discussion, but I don't
9 recall.

10 Q This proposal was for Ambling
11 to become consultants for the following projects.
12 First, the Dame Lois Browne Evans court building. So,
13 this was the recommendation that came from your
14 department and/or your Minister?

15 A No, sir.

16 MS LUCK: No. Cabinet's unclear
17 at this point.

18 Q I'm so sorry.
19 And yet the objection is that we
20 already got a consultant for that --

21 A Well, the objection, if I may say so, sir.
22 I think the magic in this, if I could use that term, is
23 if you look over at 8-1 in the same paragraph to which
24 you just referred, that third paragraph, and it's
25 the -- look at it -- he referred to Cabinet's

1 attention, meaning the Premier at the time to its
2 consideration of the award of the contract for the
3 construction of the Dame Lois Browne Evans Court
4 building and the emphasis placed on the need to shore
5 up the project management ability within the Ministry
6 of Works and Engineering and noted that in particular,
7 the Ministry of Works and Engineering required a
8 variety of consultative services and project management
9 style oversight on the following projects.

10 So I think what this appears to show is there
11 is acceptance on the part of the Minister responsible
12 in this case, that there is a project manager in place,
13 but that there is another layer of oversight that is
14 required. The Minister of finance did not support that
15 it would seem.

16 Q So it raises in a different form the same
17 question, why should there be a new project manager
18 within the -- appointed by the Ministry of Tourism when
19 there already is one appointed by a Ministry of
20 Works & Engineering.

21 A It's not appointed by the Minister of
22 Tourism. This is a collective decision of the Cabinet,
23 even though the paper is brought by in the name of the
24 Premier. But it is viewed as project management style
25 oversight as opposed to the designation of Ambling as

1 the (fee ?) project managers. And it says that it's
2 almost a bells and braces approach to what is going on
3 now but uses the term "shore up."

4 Q So we've got two examples. We've had
5 this morning, today, of the Premier in his capacity as
6 Minister of Tourism not thinking that the Ministry of
7 Works and Engineering could provide the necessary
8 expertise; is that correct.

9 A Yes, sir.

10 Q Did the -- did he, do you know, ever take any
11 steps to improve the standards which he thought were
12 low within the Ministry of Works?

13 A There were a number of steps taken. There
14 was a general ethos of encouraging greater efficiency.
15 One of the things that the Premier did when he became
16 the Premier, to my recollection, is he created
17 something called the Efficiency Strike Force, which was
18 tasked with doing any number of things dealing with
19 different issues within government where there were
20 pockets of inefficiency, where things were not moving
21 as fast as possible. And a lot of this had to do with
22 the hotel development experience in the sense that the
23 construction market was very, very hot and developers
24 were interested, if not able, and the government was
25 very keen to be seen as having a mechanism in place to

1 deal effectively with interested investors and
2 developers. And so as part of that process, the
3 Premier was very keen on efficiency. And, in fact, if
4 my memory serves, the head -- the first head of that
5 Efficiency Strike Force was the former attorney
6 (indiscernible).

7 Q I'm sure. That's across the board. But
8 we've had these two examples of the Premier in his
9 capacity as Minister. I think -- not thinking Works
10 and Engineering were up to the job and so much so that
11 he was going to do it himself, if you like, through the
12 Ministry of Tourism.

13 All I'm asking is when he became Premier, are
14 you aware that he ever took any steps to raise what he
15 thought were the (modest) standards in Works and
16 Engineering?

17 A I think -- Well, the one step I mentioned
18 were the efficiency --

19 Q Well, that's across the board.

20 A That's right. And Works and Engineering,
21 Planning, and those areas, particularly touched
22 (indiscernible 02:23:32) about them would have been on the
23 list of those things to be addressed. I think also at
24 that time there was a keen interest in encouraging
25 young Bermudians who had engineering qualifications to

1 join and remain with the Ministry of -- what was then
2 the Ministry of Works and Engineering, which is always
3 a challenge because engineers are highly skilled
4 people. It's very difficult to retain them in the
5 public service because they're in demand.

6 **BY MR HARGUN:**

7 Q Thank you. Can I ask you a question -- a brief
8 question relating to Port Royal? What was your position in 2006?

9 A It depends on what date.

10 Q Well, just -- When did you change?

11 A 1st of December 2006. I was appointed
12 Secretary to the Cabinet.

13 Q Right. The reason I ask you is that
14 historically as you go under the 1998 Act dealing with
15 golf courses, the responsibility for golf courses used
16 to belong to the Ministry of Public Works. And that
17 was changed in 2006. So that the responsibility was
18 then, from then on to the Ministry of Tourism.

19 Do you recall that statute and were you asked
20 to reply in relation to it?

21 A My sole recollection is around the rationale
22 for that change. And I think that the rationale was
23 that because golf was seen as a significant tourism
24 product and part of the tourism product, that it was
25 felt and ultimately approved by Cabinet and the

1 legislature that golf courses would be better placed
2 under the responsibility of the Minister responsible
3 for tourism. And at that time, the Minister sought to
4 brand Bermuda's historic seasonality in a different
5 way. It referred to what is the traditional summer
6 period and a peak period as -- what was it? -- beach
7 and something -- sizzle, something like that. Beach
8 and sizzle. And the other period, which is more of a
9 shoulder season, as golf and (spa ?).

10 Q Right.

11 A And so there was a conscious effort on the
12 part of the Ministry at that time to effectively
13 elevate golf as a tourism -- a tourism product and the
14 idea was to bring them under the remit with the
15 Ministry responsible for tourism.

16 Q Was given -- Was thought given that whilst
17 the Ministry of Tourism could be in charge of golf
18 courses, to speak loosely, but in relation to major
19 remedial work which required substantial construction
20 work, that they should remain with the department
21 tasked with that work, namely Works and Engineering.
22 Do you recall --

23 A I don't recall that being said.

24 Q So, in relation to Port Royal, as you know,
25 there was a major remediation work undertaken. Were

1 you -- you say that you did not have material
2 involvement in it.

3 What was your position at the time?

4 A Again, it depends on the date. Are we
5 talking still in 2006 or --

6 Q We are talking in -- Well, in November 2007,
7 the government approved \$30.6 million on the
8 redevelopment of Port Royal. At the time you -- yes.
9 Soon after, it was transferred to Tourism. It was
10 transferred to Tourism in 2006. In November 2007, the
11 government approved 30.6 million for capital
12 redevelopment.

13 So you were still with Tourism at the time?

14 A I was already the Secretary to the Cabinet.
15 I'm not sure if a substantive Permanent Secretary had
16 been appointed by that time. I don't remember that
17 particularly date. Then maybe.

18 Q Yes. I mean, clearly this was -- These were
19 reasonably substantial amounts of money, 13,
20 \$14 million government money. And under --
21 it is being said -- that under the level of statutory
22 provisions, that was effectively handed over to the
23 trustees of the golf course.

24 Did the Ministry of Tourism consider whether
25 there should be effective controls as to how that money

1 would be spent?

2 A I think the answer to that is yes, but I am
3 not the best person to assist you.

4 Q You did not have any involvement?

5 A No, I did not. And I indicated this to the
6 Public Accounts Committee when they also asked to --
7 inquired into this.

8 MR. HARGUN: Mr. Chairman, I don't have any
9 further questions.

10 CHAIRMAN: Thank you.

11 **EXAMINATION**

12 **BY MR BARRITT:**

13 Q I do have a couple, just a few, if I may. in
14 paragraph 30 of your witness statement in answer to the
15 question, the question was posed I think in the context
16 of the Global Hue contract, and I'm not so focused on
17 the Global Hue contract as I am just the general
18 practice, if you will. You said -- the question was
19 "Did the Cabinet review and identify if the Minister of
20 Finance gave authorization not to follow Financial
21 Instructions which appeared to require a tendering
22 process for all contracts?"

23 And you said "My recollection is that the
24 practice then" -- if I can say that -- read that in --
25 "was to seek the approval of the Minister of Finance

1 evidenced by a signature on the actual Paper with
2 respect to contracts or Cabinet Papers which had
3 financial implications and where that approval and
4 support have not been evidenced, that would be
5 reflected in the ultimate Minutes of the meeting."

6 I presume the Paper -- actual Paper, you mean
7 the actual Cabinet Paper --

8 A Yes.

9 Q -- memoranda going to Cabinet?

10 A Yes.

11 Q And the Minutes are the Minutes of the
12 Cabinet meeting?

13 A Yes.

14 Q All right. So back then, was it the practice
15 when a Paper that involved the expenditure of money
16 particularly on a capital project or contract, it would
17 go to the Ministry of Finance for review and then they
18 would signify their approval on that paper or not?
19 Would that -- was that the practice back in the day?

20 A Yeah. I mean, it wasn't -- and I heard this
21 point yesterday. And the word "approval," I have
22 misused it as well. And that's why I say later on
23 "support." Because the paragraph on any Cabinet Paper
24 indicated the consultation reads "The Minister of Finance
25 has been consulted and supports the proposal or has no

1 objection." So whatever formulation he would choose to use.

2 Q But suppose the Minister of Finance does have
3 an objection.

4 A Then it would depend. The Minister would
5 either not initial the Paper.

6 Q Initial now, not put in -- not put in a
7 sentence.

8 A Well, I'm coming to that.

9 Q Okay.

10 A The Minister would, you know, have the option
11 either -- some Ministers of Finance choose not to
12 initial the Paper and they take the matter up at the
13 Cabinet table. Other Ministers of Finance have taken
14 the view that they will actually write on the Paper.

15 Q Okay. But a Paper would go to the Cabinet
16 regardless of what the Minister of Finance did or
17 didn't do.

18 A Yes.

19 Q That was the normal practice?

20 A Yes.

21 Q On this matter of Financial Instructions, I
22 think it might be helpful if we had your view on what
23 you consider them to be in terms of, you know, what
24 force and effect. And I shared yesterday, which I'm
25 sure you heard, a comment that we've had with respect

1 to what Financial Instructions are or are not. And if
2 you'll give me a moment I'll find them here -- it
3 here. And I'd just like to share this with you to get
4 your -- No, no. This is -- this is -- I wanted to
5 share something with Mr. Telemaque.

6 Financial Instructions is a policy document.
7 It is neither law nor regulations. "Financial
8 Instructions are neither law nor regulations.
9 Therefore, instances of noncompliance with the process
10 or procedural guidance contained in Financial
11 Instructions in and of themselves are not legal
12 infractions. It is important to understand the
13 difference between policy and law so that instances of
14 noncompliance with Financial Instructions are viewed in
15 the appropriate context."

16 That's not something you wrote. But I want
17 to know whether or not -- what you think of that,
18 whether or not you agree with it.

19 A I think it's accurate.

20 Q It's accurate. So how are civil servants to
21 regard Financial Instructions?

22 A As a guide and a strong guide for how the
23 public purse should be managed.

24 Q And if someone believes they're being
25 breached, what should they do?

1 A That breach should be reported in the
2 appropriate manner to line managers or as required to
3 the Accountant General.

4 Q And if I may ask you this question, what, if
5 anything, should be done with respect of a proven
6 breach of Financial Instructions?

7 A The conditions of employment in the code of
8 conduct set out a relevant disciplinary procedure, and
9 that should be adhered to.

10 Q All right. In your day as Cabinet Secretary,
11 you were there for a period of time, perhaps even as
12 Permanent Secretary. Were you ever aware of -- Were
13 any breaches ever reported to you and acted upon?

14 A They would not have been reported to me
15 because I was not the head of the civil service. At
16 that time, the head of civil service -- the head of
17 civil service and the Secretary to the Cabinet was
18 divided. There was a head of the civil service.

19 Q But as Permanent Secretary, it would have
20 come -- any breaches presumably --

21 A Yes.

22 Q -- on that chain that you just --

23 A Yes.

24 Q -- shared with us would have come to you.

25 A Yes.

1 Q Were there any in your day?

2 A Yes.

3 Q And what was the outcome? Do you know?

4 A There were disciplinary measures. Some
5 people were directed to repay moneys that were probably
6 expended. Some people were -- suspension of certain
7 privileges. There were a number of penalties that
8 would have been dealt with.

9 Q Do you recall, did they arise in the context
10 of any of the matters we've discussed here today?

11 A Not specifically, no.

12 Q Would there be a record of these -- records
13 kept of these sorts of things?

14 A I would imagine they would form part of an
15 individual's personnel file.

16 Q But not --

17 A No.

18 Q Not an independent separate list --

19 A No.

20 Q -- kept by, say, the Accountant General.

21 A I'm not certain. It may well be an audit
22 point where the Auditor Generally asks the Accountant
23 General to provide any evidence of breaches in any
24 given financial year. I'm not certain.

25 Q All right. I think we've heard too that --

1 and maybe you can comment on this or not -- that
2 Financial Instructions are about to become part of
3 regulations under the Good Governance Act, the
4 establishment of the Office of Procurement and Project
5 Management. I think I have that right. Do you know
6 what that's all about?

7 A I think that the idea is to encourage greater
8 fiscal accountability and confidence in the public
9 domain around the fiscal accountability exercised by
10 public officers and to give perhaps greater weight to
11 Financial Instructions.

12 Q Okay. And are you aware that -- We
13 understand that there's a sort of training program in
14 the works now to make people more aware.

15 A Yes.

16 Q And that's something that's happening within
17 your Ministry specifically. I'm not asking in your
18 capacity -- it's still Permanent Secretary but of
19 national security --

20 A Yes.

21 Q -- whether or not that's happening in your
22 department and how it's happening.

23 A There has been some discussion about how that
24 training is to be delivered. And in the interim period
25 while those discussions are ongoing, the controller of

1 both the Ministry and the departments, at least in my
2 Ministry are exercising greater and stricter controls
3 in accordance with Financial Instructions as expected.

4 Q Is the development of a training program
5 something new?

6 A For Financial Instructions?

7 Q Yes.

8 A I don't think so. I don't think it's new.
9 But it may -- I think what is new is the extension of
10 its delivery. It's being delivered to a wider cast.

11 Q Okay. Thank you. Those are my questions.

12 **EXAMINATION**

13 **BY MS LUCK:**

14 Q So just going back to this concept of how
15 people learn about Financial Instructions. I joined
16 the civil service. I've got an area of responsibility
17 that requires me to abide by Financial Instructions.
18 Do I get a manual -- obviously, I've got all the various
19 code of -- but does anybody spend any time with me when
20 I'm on-boarded to say this is a key part of what you do?

21 A It depends on the level of which the
22 individual is operating. But the answer is broadly
23 yes, particularly when an individual has sign authority
24 for the purchase of goods and services or is going to
25 be a line manager or accounting officer -- Without

1 question.

2 Q But that would be done in the context of
3 the -- within the department?

4 A Yes.

5

6

EXAMINATION

7 **BY MR BARRITT:**

8 Q I think you said earlier today that when you
9 were most passionate in the box, that it's time these
10 things were looked at and overhauled, Financial
11 Instructions. That's your position, isn't it?

12 A It is. And I think that -- I think that, my
13 position is that it is wrong, fundamentally wrong, to
14 cast a pall of suspicion over approaching Financial
15 Instructions in one era in one way and approaching
16 Financial Instructions in another era the identical way
17 in different ways. It's wrong. Because what that
18 means, is that people are going to be called to account
19 based upon who may or may not be making decisions. And
20 that is wrong.

21 Q Now I'm afraid you've confused me. I thought
22 I was pretty clear on you from earlier this morning
23 that, you know, we're operating on a set of rules that
24 are out of date for this century and they need to be --
25 your words -- time to fix the system. And I took it

1 from that that you meant it's time to look at these
2 instructions again to see whether they're still
3 relevant to what the demands are of government today
4 and what government does?

5 A Absolutely.

6 Q As opposed to just looking at whether or not
7 they're followed and/or enforced, whether as policy
8 guidelines or law.

9 A That's right.

10 Q That's your position.

11 A Absolutely. Because if you expect for the
12 government to be nimble, to be flexible, and to be a
13 21st century institution encouraging best practice and
14 management and in the delivery of services to the
15 people who pay taxes, then why wouldn't you equip the
16 organization with the best possible framework under
17 which to operate? And a perfect example is, you know,
18 if a wall needs to be repaired urgently, let's say for
19 the sake of argument that something has been damaged in
20 a hurricane or the water is rolling down the hill
21 because we've had an excessive rain and so forth, is it
22 an answer to the man whose house is almost under water
23 that, "Well, hold on a second, sir", because I might end
24 up in front of either the Auditor General or the
25 subject of a special report or in front of a Commission

1 of inquiry. "I can't fix your wall right now because
2 that would be a breach of Financial Instructions. What
3 I have to do is I have to get three quotes. I have to
4 wait the requisite period. I have to do all of those
5 things."

6 And see, part of what is happening with
7 respect to the examination of these projects and the
8 examination of much of the discussion surrounding a lot
9 of these things in the public domain in particular, is
10 that there has been collective amnesia. People have
11 forgotten the national priority that was ascribed to
12 some of these things. People have forgotten the
13 benefit that accrued as a result of some of these
14 things. And as a result, all we're talking about now
15 is process and trying to cast the pall over the process
16 in the name of saying that something was going on one
17 way or another.

18 Q I don't want to argue with you. Our
19 intention here is --

20 A But that is my view.

21 Q Our intention isn't to cast a pall over --

22 A It is done by the convening of these
23 proceedings, with respect.

24 Q No, no. But I want to zero in on what's
25 important for the future. And I think it's important,

1 as you say, for government to be nimble. But at the
2 same time, government has to be accountable.

3 A Absolutely.

4 Q And there has to be a modern system to make
5 that happen and be effective as well.

6 A Absolutely.

7 Q You would agree with that.

8 A Absolutely.

9 Q And that's probably part of the system that
10 needs to be fixed as well.

11 A Absolutely. And I think also, there needs to
12 be a greater understanding of the constitutional
13 position of Cabinet style government. You spent a
14 considerable amount of time yesterday having a
15 discussion about whether or not the presence or
16 existence of the Office of Project Management and
17 Procurement would have made a difference with respect
18 to one of the projects. It may have been Dame Lois
19 building or something like that.

20 Well, in an existing contract, the contract I
21 mentioned this morning in the Spring Bridge contract,
22 the Office of Project Management and Procurement did
23 not support the award of the contract to the
24 consultant engaged by the Ministry of Public Works to
25 effect that particular project. But the Cabinet

1 approved it in any event. Do I say that that was
2 corrupt, worthy of inquiry? No. What I say is, is that
3 Ministers have a constitutional responsibility and duty
4 to make decisions. They have the ability to do so.

5 One of my colleagues, former colleagues, used
6 to say that Cabinet is supreme.

7 Q Well, that's an interesting concept. I beg
8 to differ. The legislature is supreme. But we won't
9 get into that argument.

10 **EXAMINATION**

11 **BY CHAIRMAN:**

12 Q I think we heard yesterday or today that the
13 Financial Instructions allow for exceptional
14 circumstance. But you just quoted an exceptional
15 circumstance in order to justify departing from them.
16 That is within the instructions in their present form.

17 A And I accept that. My difficulty is more
18 with the reality of the situation and the reality of
19 life in Bermuda is that those exceptions are not --

20 Q Let me ask my question first. You referred
21 to the contracts under which we have under review. Are
22 you suggesting that any of those were covered by
23 exceptional circumstances?

24 A In some cases. It depends on the context.

25 Q Well, of course it does. But we've got a

1 limited number of contracts which you've been asked
2 about. And by referring to exceptional circumstances
3 as you did, I wondered whether you were suggesting that
4 any of those contracts you've been asked about --

5 A Not specifically.

6 Q -- have been justified by exceptional
7 circumstances.

8 A Not exceptional circumstances with respect
9 to, for example, the hurricane relief or the repair of
10 something damaged or what have you, but circumstances
11 which may justify a departure from Financial
12 Instructions or a departure from what might be accepted
13 or normal practice.

14 Q You mean there were examples of departing
15 from normal practice. And in your view, they were
16 justified by exceptional --

17 A It's not a matter for me to determine whether
18 they're justified or not --

19 Q That's what you were saying.

20 A No, no. I'm just saying that there is a
21 context around every decision that is ultimately made.
22 And to simply cast the decision itself *carte blanche* as
23 *prima facie* corrupt or wrong or, you know,
24 whatever, it does an injustice to the actual context
25 into which these decisions are made. And what it does

1 is it creates a firestorm in the public domain. It
2 injures the confidence of people in the institutions
3 which they should have confidence in. And it causes
4 public officers to be forced to defend actions which,
5 in fact, are taken with political fiat in what they
6 have determined is the best interest of the country
7 they were elected to serve.

8 Q I'm not sure who you're criticizing. It may
9 be the Inquiry. It may be the people who set up the
10 Inquiry. It may be the press. I don't know. But I
11 don't think that has anything to do with our Inquiry,
12 if I may say so.

13 A You may say so.

14 **EXAMINATION**

15 **BY MS LUCK:**

16 Q Could I just ask you one question? You talk
17 about, you know, clearly you're passionate about the
18 fact that there needs to be some change and to be
19 overhaul.

20 A No. I'm more passionate about the fact that
21 the people who are being held to account are being held
22 to account in my estimation being measured against what
23 would appear on some measure to be an unjust standard.
24 That's what I'm more passionate about.

25 Q Okay. But are you equally passionate about

1 there should be some change --

2 A Absolutely.

3 Q That's what I thought I was hearing you say.

4 A Absolutely.

5 Q As I look at you, you're a Permanent
6 Secretary of a significant Ministry. You were also
7 Cabinet Secretary. Where does that change come from?
8 Who initiates that change? Who owns it? Who drives it
9 through? Are you part of that?

10 A That's not within my remit currently. But,
11 yes, I would lend my support to such changes.

12 Q And where -- whose remit would it be?

13 A It would be within the Cabinet office.

14 MR BARRITT: Thank you for that.

15 MS LUCK: Thank you.

16 CHAIRMAN: Now, have you any more
17 questions?

18 MS LUCK: No, sir.

19 CHAIRMAN: I'm not inviting them.

20 Thank you very much.

21 So that concludes your evidence,

22 Mr. Telemaque. I'll say to you in closing

23 what I mentioned to Dr. Binns yesterday. Insofar

24 as we're concerned with making recommendations for

25 the future, it may well be that at a later

1 stage we come back to you and ask you to comment on
2 particular proposals we have or whatever it might be.
3 So to that extent, it's not the end of your evidence,
4 but it's the end of the present stage. Thank you.

5 THE WITNESS: Thank you.

6 MS LUCK: Thank you.

7 MR HARGUN: Mr. Chairman, the next witness will
8 be on Monday at 10 a.m.

9 CHAIRMAN: So we are adjourned till Monday.
10 morning at 10 0'clock. Thank you very much.

11 **(End of Day's Proceeding.)**

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CERTIFICATE OF REPORTER

3

4 STATE OF NORTH CAROLINA)

5 COUNTY OF MECKLENBURG)

6

7 I hereby certify that the foregoing is a true
8 and correct transcript of the electronically recorded
9 proceedings in the above-entitled matter.

10 This, the 6th day of October, 2016.

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MEREDITH R. SCHRAMEK
Notary Public in and for
County of Mecklenburg
State of North Carolina
Notary Number 200814200186

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