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**REPORT OF THE STANDING PUBLIC ACCOUNTS COMMITTEE
ON THE REPORT OF THE OFFICE OF THE AUDITOR GENERAL ON
FIGHTING CORRUPTION IN THE CAYMAN ISLANDS
- NOVEMBER 2018**

1. REFERENCE

The Standing Public Accounts Committee of the Cayman Islands Legislative Assembly, established under Standing Order 77(1), met to consider the following Report prepared and submitted by the Auditor General:

Fighting Corruption in the Cayman Islands - November 2018

2. DOCUMENT CONSIDERED

In accordance with the provision of Standing Order 77(3), the Committee considered the following Auditor General Report which was referred in the House of the Legislative Assembly:

- Report of the Office of the Auditor General on *Fighting Corruption in the Cayman Islands - November 2018*

3. CHAIRMAN AND MEMBERS OF THE COMMITTEE

The following Members of the Legislative Assembly are the present Members of the Standing Public Accounts Committee:

Hon. D Ezzard Miller, MLA – Chairman

Mr. Christopher S. Saunders, MLA – Member

Mr. Austin O. Harris, Jr, MLA – Member

Hon. Bernie A. Bush, MLA – Member

Ms. Barbara E. Conolly, MLA – Member

4. MEETINGS OF THE COMMITTEE

The Committee held five (5) meetings to consider the Report:

- (i) Tuesday, 8th January 2019 (*Administrative Meeting*)
- (ii) Tuesday, 29th January 2019 (*Administrative Meeting*)
- (iii) Wednesday, 30th January 2019 (*Hearing*)
- (iv) Thursday, 31st January 2019 (*Hearing*)
- (v) Wednesday, 20th March 2019 (*Hearing*)

5. ATTENDANCE OF MEMBERS

The attendance of Members at the meetings is recorded in the Minutes of Proceedings which are attached to and form part of this Report.

6. PERSONS IN ATTENDANCE

In accordance with Standing Order 77(8), the following persons were in attendance at the meeting held with witnesses on **Wednesday, 30th January 2019**:

- Mrs. Sue Winspear - Auditor General, Office of the Auditor General
- Mr. Garnet Harrison - Deputy Auditor General, Office of the Auditor General
- Ms. Gay Frye - Audit Project Leader, Office of the Auditor General
- Ms. Zenobia Bradley - Audit Project Leader, Office of the Auditor General
- Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance and Economic Development
- Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

The following persons were in attendance at the meeting held with witnesses on **Thursday, 31st January 2019**:

- Mrs. Sue Winspear - Auditor General, Office of the Auditor General
- Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General
- Ms. Gay Frye - Audit Project Leader, Office of the Auditor General
- Ms. Zenobia Bradley - Audit Project Leader, Office of the Auditor General
- Ms. Anne Owens - Senior Assistant Financial Secretary, Ministry of Finance and Economic Development
- Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

The following persons were in attendance at the meeting held with witnesses on **Wednesday, 20th March 2019**:

- Mrs. Sue Winspear - Auditor General, Office of the Auditor General
- Mr. Garnet Harrison - Deputy Auditor General, Office of the Auditor General
- Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General
- Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance and Economic Development
- Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

7. WITNESSES CALLED BEFORE THE COMMITTEE

In accordance with the provisions of Standing Order 77(4), the Committee invited persons to give information and explanations to assist the Committee in the performance of its duties.

The following persons appeared before the Committee to give evidence on **Wednesday, 30th January 2019**:

- Mr. Samuel Rose - Cabinet Secretary - Cabinet Office
- Hon. Franz Manderson - Deputy Governor - Head of the Civil Service

The following persons appeared before the Committee to give evidence on **Thursday, 31st January 2019**:

- Mr. Robert Berry- Director, Cayman Islands Financial Reporting Authority
- Mr. Richard Coles- Chairperson, Anti-Corruption Commission Board

The following persons appeared before the Committee to give evidence on **Wednesday, 20th March 2019**:

- Mr. Haroon Pandohie - Director, Department of Planning
- Mr. Alan Jones - Chief Officer, Ministry of Commerce, Planning and Infrastructure
- Mrs. Rosie Whittaker-Myles - Chairperson, Standards in Public Life Commission Board

8. PRACTICE AND PROCEDURE OF THE COMMITTEE (S.O 77(6))

The Committee agreed that in accordance with the provisions of Standing Order 77(6), all meetings at which witnesses were invited to provide information should be held in an open forum. This decision was taken to promote openness and accountability in Government.

9. PAC RECOMMENDATIONS

Corruption has been identified as one of the most important problems facing the world today, and addressing it has become increasingly urgent. Corruption is a problem that affects both advanced and developing countries, and exists in both the public and private sectors.

9.01 The PAC endorses the recommendations of the Office of the Auditor General.

9.02 The Public Authorities Law should be amended to include the Central Planning Authority (CPA), the Development Control Board (DCB) and

other boards in Government or Legislation passed to provide similar provisions to allow Ministries proper oversight.

- 9.03 All future legislation that carries a clause to bring the law into effect by order in Cabinet to have a date by which the law should come into effect.
- 9.04 The Cayman Islands Government should make fraud training a part of every new employee introduction program.
- 9.05 The Director of Planning should ensure that any potential conflicts by Board members' with agenda items; should be declared at the start of each meeting of the CPA and DCB.
- 9.07 The Director of Planning should audit Board members' declaration of interest along with their declared conflicts; with agenda items at board meetings.
- 9.08 The Government should consider amending the Development and Planning Law and Regulations to ensure that developers put in place reasonable traffic management devices such as speed bumps.

10. GOVERNMENT MINUTE

The Public Accounts Committee wishes to draw Government's attention to Standing Order 77 sub-order 7 which reads:

"The Government Minute shall be laid on the Table of the House within three months of the laying of the report of the Committee and of the report of the Auditor General to which it relates."

The PAC expects the Government to honour the requirements of this Standing Order.

ACKNOWLEDGEMENT

The Committee is most appreciative of the efforts of the Auditor General and her staff in presenting a very fair, comprehensive and informative Report and for the support, assistance and constructive advice given throughout its deliberations.

The Committee also thanks the staff of the Legislative Assembly for the assistance provided.

REPORT OF THE COMMITTEE TO THE HOUSE

The Committee agrees that this Report be the Report of the Standing Public Accounts Committee to the House on the following Report of the Office of the Auditor General:
Fighting Corruption in the Cayman Islands - November 2018.

Hon. D. Ezzard Miller, MLA – Chairman

Hon. Bernie A. Bush, MLA – Member

Mr. Christopher S. Saunders, MLA – Member

Ms. Barbara E. Conolly, MLA – Member

Mr. Austin O. Harris, Jr, MLA – Member



Legislative Assembly of the Cayman Islands

PUBLIC ACCOUNTS COMMITTEE

MINUTES

Meeting held

Tuesday, 8th January 2019 at 10:00 am

Present:

Hon. D. Ezzard Miller, MLA - Chairman
Hon. Bernie A. Bush, MLA – Member
Ms. Barbara E. Conolly, MLA – Member
Mr. Christopher S. Saunders, MLA – Member
Mr. Austin O. Harris, Jr, MLA – Member

In attendance:

Ms. Manesa Webb – Committee Clerk
Ms. Da’Vina Ramoutar – Assistant Clerk
Mr. Jonathan King – Deputy Clerk of Tynwald (Isle of Man)

Mrs. Sue Winspear – Auditor General
Ms. Angela Cullen – Director of Performance Audit, Office of the Auditor General

1. Meeting to Order

There being a quorum present (Standing Order 77(2) refers), the Chair called the Meeting to order at 10:25 am.

The Chair gave a brief welcome to Members and thanked them for attending the Public Accounts Committee (“PAC”) Meeting. He also welcomed Mrs. Sue Winspear and thanked her and her team for attending.

The Chairman welcomed Mr. Jonathan King, who was attending as part of a two-week attachment arranged by the UK Commonwealth Parliamentary Association.

2. Approval of Minutes

- Tuesday, 11th September 2018

It was agreed that these minutes would be revised for approval at a future meeting. The clerks, Mrs. Sue Winspear, and Mr. Jonathan King would work together on the revision.

It was agreed that, in principle, minutes of the Committee's administrative meetings should record any formal decisions made by the Committee as a whole. However, discussions leading up to such decisions, and comments by individual Committee Members or officers in attendance, should normally only be included on the basis of an explicit instruction given by the Committee. These principles were particularly important in circumstances where the Committee was discussing confidential material, as had been the case on 11th September 2018.

▪ Wednesday, 24th October 2018

The following amendment was agreed by the Committee: at item 3, after the words "Hon. Gloria McField-Nixon, Acting Deputy Governor", to delete ", Portfolio of the Civil Service". The amendment having been made, these minutes were approved through a motion moved by Mr. Christopher S. Saunders, and seconded by Mr. Austin O. Harris.

▪ Thursday, 25th October 2018, morning

The following amendment was agreed by the Committee: at item 3, to delete the lines listing the identity of the witnesses. The amendment having been made, these minutes were approved through a motion moved by Mr. Austin O. Harris and seconded by Mr. Christopher S. Saunders.

▪ Thursday, 25th October 2018, afternoon

It was agreed that these minutes should be subject to the same treatment as the minutes of 11th September 2018.

The Committee confirmed its expectation that minutes and unedited verbatim transcripts of oral hearings would be circulated to Members of the Committee, and Mrs. Sue Winspear, as soon as they had been completed.

3. Matters arising from Minutes

Mrs. Sue Winspear and the Committee requested a copy of the Hansard verbatim relating to Wednesday, 24th October 2018.

4. Approval of Auditor General Invoice(s)

- *No. 207167 dated 31 October 2018 for the amount of \$46,865.30*

The invoice was **approved** on a motion moved by Mr. Austin O. Harris and seconded by Ms. Barbara E. Conolly.

5. Consideration of OAG Reports

- *Fighting corruption in the Cayman Islands – November 2018*

Introducing this Report, Ms. Angela Cullen said two issues, in particular, stood out. The first was the need to go beyond legislation and undertake preventative work. The second was the need to bring into force the Standards in Public Life Law.

There was a discussion about data monitoring and the publication of information by the Anti-Corruption Commission.

It was agreed to invite the following witnesses to give evidence in relation to this report:

- Mr. Richard Coles, Chair of the Anti-Corruption Commission Board;
- Ms. Rosie Whittaker-Myles, Chair of the Standards in Public Life Commission Board;
- Mr. Samuel Rose, Cabinet Secretary, Cabinet Office;
- Mr. Robert Berry, Director of the Cayman Islands Financial Reporting Authority;
- Hon. Franz Manderson, Deputy Governor/Head of the Civil Service.

The Committee wished to allocate one hour per witness with the exception of the Deputy Governor, who should come at the end and be allocated two hours.

For the proposed date of the hearing, see item 9 below.

It was noted that the information in this Report had been incorporated into the Report entitled "Follow-up on past PAC Recommendations – October 2018". Hearings on this Report were scheduled for the following week (see item 9 below).

6. Auditor General's Update

Mrs. Sue Winspear advised the committee that she expected to be able to report a surplus of \$450,000 to \$500,000 at year-end.

Mrs. Sue Winspear also advised the committee that she anticipated that her Office would go into a peak period of activity on the financial audit. She noted the following work nearing completion:

- a public interest report on board remuneration and senior salaries in SAGCs (expected to be completed by 18 January 2018);
- a review of the Office of the Auditor General itself (expected to be completed by the end of January);
- a performance audit on Customs (which might be completed by the end of February 2019); and
- a performance audit on all Government outsourcing (which might be completed by the end of March 2019).

7. Any Other Business

- *Review of the Cayman Islands Government Minute – The Government's Response to the Reports of the Standing Public Accounts Committee on the Reports of the Auditor General - June 2018*

There was a discussion of the question of whether the Committee's reports and the Government Minutes issued in response should be debated. No conclusion was reached.

The Chairman asked that the draft PAC Annual Report for 2017/18 be circulated to all the Members of the Committee and the Auditor General.

There was a discussion of whether, and if so, when and how, to investigate the expenditure incurred on the recent refurbishment of office space for the Ombudsman.

[Consideration of the report listed at item 8 on the Agenda has been minuted at item 6 above.]

8. Scheduling of Future Meetings

The next meetings were confirmed as follows:

- Wednesday, January 16th, 2019 at the time to be confirmed (*Hearing on Oct 2018 Follow-Up Report on Past PAC Recommendations- October 2018, Appendix 4- Government Programmes: Supporting those in need (May 2015)*)
- Thursday, January 17th, 2019 at 10:00 am (*Hearing on Oct 2018 Follow-Up Report on Past PAC Recommendations- October 2018, Appendix 1-Ensuring Quality Health Care and a Healthy Population (January 2017)*)
- Friday, January 18th, 2019 at 10:00 am (*Hearing on Oct 2018 Follow-Up Report*)
- Wednesday, January 30th, 2019 at 10:00 am (*Tentatively Scheduled Hearing on Fighting corruption in the Cayman Islands*)

Noting that the opening of the Grand Court was scheduled for the morning of Wednesday, January 16th, the Committee asked that the witnesses for this date be contacted with a view to starting the hearing in the afternoon.

The Committee confirmed that the following dates, previously tentatively scheduled as hearing dates, were no longer needed:

- Friday, January 18th, 2019 at 10:00 am
- Wednesday, January 23rd, 2019 at 10:00 am
- Thursday, January 24th, 2019 at 10:00 am

It was agreed that if an administrative meeting were needed this could be held at the conclusion of the hearing on Wednesday, January 30th, 2019.

9. Adjournment

There being no further business, the Chair adjourned the meeting at 11:35 am.



Legislative Assembly of the Cayman Islands

THE STANDING PUBLIC ACCOUNTS COMMITTEE

MINUTES

Meeting held

Tuesday, 29th January 2019 at 10:12 am

Present:

Hon. D. Ezzard Miller, MLA - Chairman
Hon. Bernie A. Bush, MLA - Member
Ms. Barbara E. Conolly, MLA - Member
Mr. Austin O. Harris, Jr, MLA - Member

Apologies:

Mr. Christopher S. Saunders, MLA - Member

In Attendance:

Ms. Manesa Webb - Committee Clerk
Mrs. Da'Vina Ramoutar - Assistant Clerk
Mrs. Sue Winspear - Auditor General
Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General
Mr. Garnet Harrison - Deputy Auditor General, Office of the Auditor General

1. Meeting to Order

There being a quorum present (Standing Order 77(2) refers), the Chair called the Meeting to order at 10:12 am.

The Chairman gave a brief welcome to Members and thanked them for attending the Public Accounts Committee ("PAC") Meeting. He also welcomed the Auditor General and thanked her and her team for attending.

2. Approval of Minutes

None.

3. **Matters arising from Minutes**

Review the deferred minutes:

- September 11th, 2018 (*Administrative Meeting*)
- October 25th, 2018 (*Administrative Meeting*)

4. **Approval of Auditor General Invoice(s)**

- No. 207209 dated 25 January 2019 for the amount of \$32,486.50

The invoice was **approved** on a motion moved by Mr. Austin O. Harris and seconded by Ms. Barbara E. Conolly.

5. **Auditor General's Update**

- *Owen Roberts International Report (ORIA) Terminal Redevelopment Project Progress Update as at August 2018—January 2019*

The Committee discussed the ORIA Report. The discussion ensued whether a Hearing would be appropriate since the ORIA project was not completed. Concerns were raised that the objective of a “real-time audit” would be impaired if the Hearing was not scheduled now.

The OAG proposed a discussion “in camera” rather than a public Hearing. Concerns were raised that such a discussion would be regarded as “private” and will bar the Committee from reporting to the House of its findings.

Tentatively the following witnesses were considered:

- Mr. Albert Anderson, Chief Executive Officer, Cayman Islands Airports Authority
- Mr. Stran Bodden, Chief Officer, Ministry of District Administration, Tourism and Transport
- Mr. Thom Guyton, Chairman of Board, Cayman Islands Airport Authority
- Mr. Peter Ranger, Chief Project Manager, Major Projects Office
- Mr. Roy Williams, Project Manager
- Mr. Max Jones, Director of Public Works Department

Since the project is still ongoing, the Committee **agreed** on a Motion to delay the Hearing until the completion of the ORIA terminal redevelopment project (Phrase 1 and Phrase 2). The Motion was moved by Mr. Austin O. Harris and seconded by Ms. Barbara E. Conolly.

6. Formulation of Hearing Questions

Ms. Angela Cullen sent the Committee via email the *Briefing for PAC Hearing on 30th January 2019 on OAG report Fighting Corruption in the Cayman Islands* on January 25th, 2019.

The Committee **agreed** that each Member would ask a witness a question using the following format:

- Committee to ask Hon. Deputy Governor questions on Anti-Fraud Training;
- Committee to ask Mr. Robert Berry, Director, the Cayman Islands Financial Reporting Authority, questions on Financial Reporting Authority;
- Committee to ask Mrs. Rosie Whittaker-Myles, Chairperson of the Standards in Public Life Commission, questions on Standards in Public Life Law
- Committee to ask Mr. Richard Coles, Chairman, Anti-Corruption Commission Board, questions involving Anti-Corruption; and
- Committee to ask Mr. Samuel Rose, Cabinet Secretary, questions on Whistleblowing.

It was **agreed** that the witnesses who are to appear for the Hearing dated 30th January 2019 should be rescheduled as follows:

- Mrs. Rosie Whittaker at 2:00-3:00 pm;
- Mr. Richard Coles at 3:00-4:00pm; and
- Mr. Robert Berry at 4:00-5:00 pm

7. Any Other Business

None

8. Scheduling of Next Meeting

The next meetings were confirmed for:

- Wednesday, January 30th, 2019 at 1:00 pm (*Scheduled Hearing*)
- Thursday, January 31st, 2019 at 1:00 pm (*Scheduled Hearing*)

9. Adjournment

There being no further business, the Chairman adjourned the meeting at 11:18 am.



Legislative Assembly of the Cayman Islands

THE STANDING PUBLIC ACCOUNTS COMMITTEE

MINUTES of Meeting with Witnesses

Wednesday, 30th January 2019 at 1:04 pm

FIGHTING CORRUPTION IN THE CAYMAN ISLANDS –NOVEMBER 2018

Present:

Hon. D. Ezzard Miller, MLA - Chairman
Mr. Christopher S. Saunders, MLA - Member
Ms. Barbara E. Conolly, MLA - Member
Mr. Austin O. Harris, Jr., MLA - Member
Hon. Bernie A. Bush, MLA - Member

Attendees:

Ms. Manesa Webb - Committee Clerk
Mrs. Sue Winspear - Auditor General, Office of the Auditor General
Mr. Garnet Harrison - Deputy Auditor General, Office of the Auditor General
Ms. Gay Frye - Audit Project Leaders, Office of the Auditor General
Ms. Zenobia Bradley - Audit Project Leaders, Office of the Auditor General
Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance and Economic Development
Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

Witnesses:

Mr. Samuel Rose - Cabinet Secretary - Cabinet Office
Hon. Franz Manderson - Deputy Governor - Head of the Civil Service

1. Meeting to Order

There being a quorum present (Standing Orders 77(2) refers), the Chairman called the Public Accounts Committee Meeting to order at 1:04 pm.

2. Welcome

The Chairman gave a brief welcome to Members of the Committee and thanked them for attending the Public Accounts Committee (“PAC”) Hearing. He also welcomed and thanked Mrs. Sue Winspear, along with Mr. Kenneth Jefferson and Mr. Matthew Tibbetts.

The Committee was advised that they would be dealing with the Auditor General’s Report entitled, *Fighting Corruption in the Cayman Islands –November 2018*.

Review of the Fighting Corruption in the Cayman Islands –November 2018

▪ *Fighting Corruption In The Cayman Islands –November 2018*

The Chairman invited the witness, Mr. Samuel Rose, to the Chamber. Administration of oath was administered and thereafter, Mr. Samuel Rose was welcomed and thanked by the Chairman for attending the meeting and told to state his name and title for the record.

Discussion ensued with questions being asked to Mr. Samuel Rose by the PAC members. Before departing the Chamber, Mr. Samuel Rose was again thanked by the Chair.

The Chair invited the witness, Hon. Franz Manderson, to the Chamber. Administration of oath was administered and thereafter, Hon. Franz Manderson was welcomed and thanked by the Chair for attending the meeting, and told to state his name and title for the record.

Discussion ensued with questions being asked to Hon. Franz Manderson by the PAC members. Before departing the Chamber, Hon. Franz Manderson was again thanked by the Chair.

3. Any Other Business:

There was no other business on the agenda.

4. Scheduling of Next Meeting

The next meeting with witnesses was confirmed for:

- Thursday, January 31st, 2019 at 2:00 pm.

5. Adjournment

There being no further business, the meeting was adjourned at 3:30 pm.

**OFFICIAL VERBATIM REPORT
STANDING PUBLIC ACCOUNTS COMMITTEE
WEDNESDAY
30 JANUARY 2019
1:04 PM
*Meeting with witnesses***

“FIGHTING CORRUPTION IN THE CAYMAN ISLANDS—NOVEMBER 2018”

Verbatim transcript of the Standing Public Accounts Committee meeting held 30 January 2019, at 1:04 pm, in the Chamber of the Legislative Assembly Building, George Town, Grand Cayman.

PAC Members

Present: Hon. D. Ezzard Miller, MLA, Chairman
Hon. Bernie A. Bush, MLA, Member
Mr. Austin O. Harris, Jr., MLA, Member
Mr. Christopher S. Saunders, MLA, Member
Ms. Barbara E. Connolly, MLA, Member

In attendance: Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development
Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development

Audit Office: Mrs. Sue Winspear - Auditor General, Office of the Auditor General
Mr. Garnet Harrison, Deputy Auditor General, Office of the Auditor General
Ms Gay Frye, Audit Project Leader, Office of the Auditor General
Zenobia Bradley, Audit Project Leader, Office of the Auditor General

Witnesses: Mr. Samuel Rose, Cabinet Secretary, Cabinet Office
Hon. Franz I. Manderson, Deputy Governor, Portfolio of the Civil Service

[Hon. D. Ezzard Miller, Chairman presiding]

The Chairman: Good afternoon everyone.

Please let the record show that we have a quorum present, so I would like to call this public hearing of the Public Accounts Committee to Order.

Today we will be conducting hearings into the Auditor General's Report on "Fighting Corruption in the Cayman Islands". We have two guests this afternoon: Mr. Samuel Rose, Cabinet Secretary, and the Hon. Franz Manderson, the Deputy Governor, in that order. Before we invite any guests, I invite the Auditor General to introduce her staff that she has here with her.

Mrs. Sue Winspear, Auditor General, Office of the Auditor General: Thank you, Mr. Chairman. Good afternoon members of the Committee, colleagues. Thank you for the opportunity to make some opening remarks.

As you mentioned, these series of sessions are about fighting corruption in the Cayman Islands; a report that we published in November, 2018.

I have with me today, Mr. Garnet Harrison, Deputy Auditor General, Zenobia Bradley and Ms. Gay Frye who were part of the team that worked on this audit along with the Performance Audit Director and the Audit Manager.

The performance audit assesses the effectiveness of the mechanisms that the Cayman Islands have put in place for preventing corruption, both at a national level and using the Planning service as a particular case study example. We selected Planning because of its importance to the infrastructure and the economy of the country.

The audit itself was a cooperative audit carried out by a range of other supreme audit institutions across the world, and I am proud to say that we led the way and Garnet was very much involved in the development of the approach and the toolkit to be used and rolled out around the world.

My report concludes that a lot has happened in the Cayman Islands to create a framework for combating fraud and corruption. This includes passing laws, setting up anti-corruption bodies and introducing policies and procedures in core government.

Of the range of legislation in this area, the main piece is the Anti-Corruption Law, which was first introduced in 2010, and has subsequently been updated three times, however, a major gap in the legislative framework remains and that is the Standards in Public Life Law which, despite being passed by the Legislative Assembly in 2014, has still not been brought into force nearly five years later.

The Anti-Corruption Commission was set up in 2010 and is responsible for investigating potential corruption cases and can call on other bodies, such as my Office as the Police Service to support its investigations. The Commission for Standards in Public Life has also been established, but its role is severely hampered by the Standards in Public Life Law not being in place.

Another part of the national framework, a policies and procedures within core Government, supports the fight against corruption. Since May 2017, the civil service has taken a number of actions, including introducing a new Anti-Fraud Policy, developing on line training for staff to accompany this, developing a whistle-blower policy and hot-line. Further actions continue and have been taken very recently, since the report has been published and I am sure the Honourable Deputy Governor will speak about this during his testimony.

All of these developments are relatively new and, obviously, more needs to be done to embed these, to help develop changes in behaviour. Focusing specifically on the Planning sector now, as the case study, we focused on the Department of Planning, the Central Planning Authority on Grand Cayman, and the Development Control Board for the Sister Islands. We were able to see the improvements being made to both governance and transparency since our last report in this area, in 2015. For example, board meetings are now public. Although decisions are still made in private, the outcomes of the decisions are made public. However, we have reiterated our 2015 recommendation about reviewing the balance of board members on these bodies, as the vast majority have a background in the infrastructure sector, and this, risks creating conflicts of interest.

Our detailed review in this area also found that Notice of Interest forms were not being routinely completed by Planning's civil servants, or where they were completed, they were not being used by management in Planning, to allocate workloads, so as to ensure no conflicts of interest arise.

Thank you, Mr. Chairman.

The Chairman: Thank you, Auditor General. I will ask the Page to bring in Mr. Rose, please.

[Pause]

CABINET OFFICE

ADMINISTRATION OF OATH OR AFFIRMATION

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: I, Samuel Rose, do solemnly, sincerely and truly, declare and affirm that the evidence I shall give to this honourable Legislative Assembly shall be the truth, the whole truth and nothing but the truth.

The Chairman: Thank you, sir.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, sir.

The Chairman: Good afternoon, Mr. Rose. Firstly, let me, on behalf of the Committee, thank you for taking the time out of your busy schedule of playing music—

[Laughter]

The Chairman: —to come here to be with us, but we appreciate it and look forward to an interesting session.

Normal practice is that when you answer the first question, you state your full name and your title which is just for the records. We all know who you are but we have to get it officially in the record in case they accuse me of acting as Cabinet Secretary, you know?

You were informed that we will be asking you questions on the Auditor General's report on fighting corruption in the Cayman Islands and some of the recommendations that the responsibility for their implementation fall to you. So, members of the Committee will have some questions for you and I will invite Ms. Barbara to lead us off.

Ms. Barbara E. Conolly: Thank you Mr. Chairman.

Good afternoon again to my PAC [Public Accounts Committee] colleagues and to the Auditor General and her team, the Finance team, and last but not least, to the Cabinet Secretary, Mr. Rose. Again, thank you for accommodating us here today.

In November 2018, the Office of the Auditor General issued a report on fighting corruption in the Cayman Islands. One of the recommendations is that the Government should bring into force the Standards in Public Life Law 2014 as a matter of urgency. This Law was passed in the Legislative Assembly some four years ago. My question is: Can you provide the reasons for delay in enforcing this Law?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, Mr. Chair. For the record, my name is Samuel Rose and my position within the Civil Service is that I currently serve as the Cabinet Secretary.

I thank you for your very warm welcome. I can think of a few places I would rather be than here this afternoon with you and this, very esteemed Committee.

Mr. Chair, in answering the Member's question, I do recall in your opening remarks that the reason for which I am down here is that some of the specific recommendations fall to me to implement. I would rather the record show that I do not see where it says that the Cabinet Secretary as being the individual responsible for the implementation of some of these recommendations, but rather the Cabinet. So, I just would wish to make that specific clarification because obviously there is a separation in responsibilities there. The comments I do make, will obviously, in hopes of assisting you with your inquiries today, reflect my views as well as the discussions that I have had with the Premier.

I think there has been quite a bit of debate and discussion since the publication of this very helpful report. I have had no direct discussions or information which would indicate why . . . well, I guess some of the discussions and arguments and debates that have gone on in the public domain indicated some of the concerns that have existed, but I have not had any first-hand information with regards to some of the concerns that some individuals may have, whether they be current board members or people serving in various public offices with the Law itself. To the best of my knowledge, I think it is public knowledge. There have obviously been some concerns about the Law and it is my understanding that the Premier have plans to conduct another review of the Law and is discussing this with the Attorney General. Therefore, I anticipate a further announcement on this in the not-too-distant future.

Ms. Barbara E. Conolly: Thank you, Cabinet Secretary.

Can you indicate what the timeframe would be, in order to carry out this review?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: I do not have any specifics on a timeframe but, obviously, I think that the report is a very timely report and it is something that is quite current in the public domain right now, so I would anticipate this to occur in the very near future.

The Chairman: Maybe it would be helpful, Mr. Rose, particularly for the public, if you explain what your role is as Cabinet Secretary, so that we can get the differentiation between Cabinet, which is usually the elected Members of this Legislative Assembly who form the Cabinet, plus the Deputy Governor and the Attorney General, chaired by the Governor. Maybe if you could explain what your role is, I think the public would understand.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, Mr. Chair.

Well, my role is one of the unique roles in the public service. It is quite well-defined and the job description is basically laid out in section 48 of the Constitution, and I think, for the record, it might be helpful if I am allowed to read from the Constitution. It says:

"48. (1) There shall be-

- (a) a Cabinet Office, which shall be an office in the Government; and**
- (b) a Cabinet Secretary, whose office shall be a public office, who shall be a person who is a Caymanian and who shall be appointed by the Governor, acting after consultation with the Premier.**

(2) The Cabinet Secretary shall have charge of the Cabinet Office.

(3) The responsibilities of the Cabinet Secretary shall include—

- (a) providing frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy;**
- (b) co-ordinating the development and implementation of policy between departments and ministerial portfolios and across the wider Government sector to ensure that Government policy is developed coherently;**
- (c) providing for administrative and secretarial support for the Cabinet and the Premier in order to allow high-quality and effective government;**
- (d) arranging the business for, and keeping the minutes of, the meetings of the Cabinet or any Cabinet committee and conveying the conclusions reached at the meetings to the appropriate person or authority;"**

To that end, I serve as the Premier's Chief Officer in his constitutional role as the Premier and for the purposes of this Law or any law, when a commencement order is brought forward, it is brought as a Cabinet Paper, attaching the commencement order, et cetera, and so, the Cabinet would decide whether or not to approve that Paper, just as any other matter of business. When that decision is taken, we disseminate that to the various bodies, whether it be the Ministry that brought the Paper, GIS [Government Information Services] for publication and Gazette, et cetera. I've said it in a nutshell.

The Chairman: Section 1, sub-section (2) of the Standards in Public Life Law reads as follows: **"(2) This Law shall come into force on such date as may be appointed by Order made by Cabinet and different dates may be appointed for different pro-**

visions of this Law and in relation to different matters."

Now, this is a recent clause, probably two decades old, maybe, in terms of our parliamentary history. Prior to those kinds of clauses, whenever the Governor signed what was called a vellum copy, a law commenced.

Do you have any responsibility in all those things you just read out? Or, who monitors the clauses of these laws to see that they are complied with? In this case, what we have is four years where we had the Law passed in 2014 then, it was brought back in 2016, and substantially watered down, particularly, in the requirements that were needed by private sector people serving on boards, and yet, it has not been brought into effect. Who has the responsibility to see that these clauses are acted on?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, Mr. Chair.

Again, in general, it would be whoever the Member of Cabinet was that piloted the matter through Cabinet and, I guess, into the Legislative Assembly and then, back again for commencement. As you pointed out to me, that this is a more recent clause, obviously, we have seen other laws where certain sections come into effect immediately and for various reasons, other sections will come at a later date. It would then therefore be to that Ministry because there may be some other ancillary matter which needs to be addressed; the commencement or the creation of a body or the hiring of a particular staff member or what have you, which would be to the effectiveness of that particular Law. So, the natural expectation would be that when all those other factors are ready, that member of Cabinet would bring a subsequent paper saying that he is recommending the bringing into effect of the dormant (I guess we could call it that) or the non-effective—

The Chairman: —Commencement.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: —Yes, commencement of those portions of the Law.

The Chairman: And in this case, as I recall, this Law was piloted by the Honourable Premier himself.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: I honestly cannot recall who actually piloted that one.

The Chairman: The concern that we have as a Committee, in addition to the matters that were raised by the Auditor General, is that it is (certainly in my view) a way of short-circuiting or not implementing the decision of the Legislative Assembly. The Legislative

Assembly passed this Law, as I recall, with a couple amendments with the normal expectation that it would have been brought into effect in a reasonable period of time because there was a whole pile of hoopla and press coverage at the time of the importance of the legislation in terms of particularly addressing corruption, which is corruption fuelled by conflicts of interest, particularly by politicians and the business activities, senior civil servants and board members. So, having had four years now (five next month) that the Law has not been brought into effect, we are very concerned and maybe we will need to make a recommendation that that clause in future legislation carries some sort sunset provision, that is, the Law will be implemented within six months or before a particular date. It is unusual for legislation to be passed and not implemented for these periods of time because basically we could say it was a waste of parliament's time in 2014.

Are there any other questions on that line?
You have another question Barbara?

Ms. Barbara E. Conolly: Thank you, Mr. Chairman. This may be another question that you may not be able to answer. It may not be under your mandate but I will ask it in any event.

In the Auditor General's report it states that there is a perception that some activities such as the appointments of public officials are open to corruption due to the lack of transparency in the appointment process. Can you explain how the appointment process for public officials is constituted?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you and through you Mr. Chair.

I actually do appreciate having the opportunity to answer this particular question. It did raise in my mind a few questions as throughout the process of this report being generated, I do not recall being invited to provide any information. I would have happily made myself or my team available to assist in perhaps clarifying any concerns or misconceptions. I do believe (and this is my personal opinion) that this particular phraseology is rather unfortunate and perhaps, if I can explain the process, I am not sure if the Auditor General's Office still have any questions, but if I can at least shed some light in the process I could at least, in the minds of the public who are reading this, bring some clarity.

So, there are various public offices, and again, I am presuming that the term 'Public Official' is kind of akin to what is referred to in the Constitution, I believe, under section 19. That is my presumption but as there is no definition of 'Public Official' in the Public Service and Management Law, I stand to be corrected.

We have various boards, committees—

The Chairman: I do not think this is related to civil service appointment or public servants. This is related more to, where it says 'Public Officials', I think it is intended to mean particularly board members because you would look at the problem identified which is specifically the membership of the CPA [Central Planning Authority] and the DCB [Development Control Board]. So, it would not in any way be related to those appointment of public officials under which is the purview of the Governor, handed down through the Deputy Governor. That is not what we are talking about; we are talking about how the boards are recruited, identified and appointed.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you for clarifying that, Mr. Chair, and I believe the Honourable Deputy Governor will be relieved to hear that as well.

If I may then speak to the specifics around the appointments for public bodies, whether it is a board, a committee or what have you. We have no shortage of those. For statutory authorities, their laws speak specifically to individuals, in some cases the specific skillsets that individuals would possess. So, for instance with the Cayman Islands Development Bank, it has asked for people from various sectors to be represented on that particular board. Likewise, with others such as OfReg [Office of Regulation], again you are looking for specific skillsets. There will be some where it is just lay people from the public, et cetera.

In general, what usually transpires is that, again, this is all done via a Cabinet paper, and so, ministries and portfolios, sometimes civil servants are out there working to approach members of the civil society who they deem or possess some of these necessary skills, knowledge and integrity, to serve on respective boards, to gauge whether they are interested in even serving. Sometimes, there are some boards for which it is quite difficult to find people at times. Not everyone is lining up to volunteer for it and, of course, quite often in our tradition, people do not necessarily come forward and say, *Hey, I want to do this or I want to do that*. I think in recent times we have seen a few boards where there has been an advertisement put out to people to express whether or not they are interested in coming forward and serving.

There is also a very protracted and specific process; for instance, in OfReg's Board where I chair a committee that reviews the applications and of which the Leader of the Opposition and the Premier get to select an individual to serve on that body to even review the people that are put forward to be considered by Cabinet. So, it is quite a robust process in that case. In general terms, every single appointment is going to come by a Cabinet paper. I can confirm that each of those Cabinet papers will contain the proposed board members biographical information, including their background which allows for scrutiny,

whether or not they are a fit and proper person to actually conduct that. As you know, there is discussion at Cabinet level about individuals' ability to do this, et cetera.

Most importantly, in terms of the transparency, every appointment for these public bodies is published in the gazette. So, again, there is no fly-by-night creation or inclusion of individuals on these public bodies. So, that is the style that we currently have and I just thought that I would, for the record, just explain how it actually works.

Mrs. Sue Winspear, Auditor General, Office of the Auditor General: Sorry, just as a point of personal clarification: Whether we saw the Cabinet Secretary or not before we made this statement is irrelevant because the point is that there is a perception. We have got that perception from our interviews. So, whether or not we spoke to the Cabinet Secretary, that perception will continue because that is the view being expressed to us. Of course, we know OfReg was a public recruitment exercise but to my knowledge, that is the only board appointments that have been done for a public exercise.

The Chairman: That is one of the few boards that we fought very hard to specify in the legislation itself. As we know, most of the other boards are basically political appointments. The Minister responsible asks the people to put who he wants on the board. The old-fashioned claim is that you need to have people who will implement your policies. I will leave it there for now. But it used to be, way back when, that the Clerk of Ex-Co [Executive Council] and the Attorney General had some oversight to make sure that appointments being made were not in conflict with other legislation.

In this case, in modern day Cayman for instance, we have the very specific requirements of the Public Authorities Law. Does your Office accept any responsibility to ensure that Cabinet Papers accepted to be put on the agenda, comply with other legislation in the process of making appointments for specific legislation?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, Mr. Chair.

My team, obviously, reviews all Cabinet papers and the subject expertise will be generated from within the Ministry that is putting the Paper forward, but I do believe that the Policy Coordination Unit does look at the laws, et cetera. They take a look at the bios to ensure the bios are included and that the individuals are connected back to the specific areas. Are they ultimately responsible? No. But I do know that they review these things as well, to ensure that the paper is robust and complete.

[Inaudible interjection]

The Chairman: Is there anybody else? Does the Attorney General's Chamber accept any responsibility or has to make a comment for the record, in Cabinet, as to whether these appointments comply with the Public Authorities Law and, if and whenever, the Standards in Public Life Law comes in, that those appointments comply with those, and things like the Procurement Committee and stuff like that?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Mr. Chair, through you, our Cabinet Paper template does make provision for comments from the Ministry of Finance, for financial implications; from the Attorney General's Chamber for legal implications. We have a provision for public service implications in the event that we need to add staff or what have you, or there may be a public service impact in terms of numbers. So, again, we make a provision for the Portfolio of the Civil Service to be able to comment, etcetera.

So, the provision is there, should concerns be raised, but, in general, most of these are routine. They are following the laws. The Paper should refer to the Law and the clause under which these appointments are being made and, as I think I referenced earlier, there will be instances where the Law is quite specific in terms of the skillsets that the members, being put forward, should possess.

The Chairman: Does the bio require any reference to potential conflicts or interests? Does the Declaration of Interest accompany these recommendations?

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Not all of them; no, Mr. Chair.

Mr. Christopher S. Saunders: Thank you very much, Mr. Chair.

I just want to thank the Cabinet Secretary for coming here today. Just one quick question: I notice that you read from section 48 of the Constitution, which speaks to a few of responsibilities and I noticed the very first one and just to read it back, it says: **“(3) The responsibilities of the Cabinet Secretary shall include- (a) providing frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy;”**.

I notice the very first verb that jumps out is “frank”. Now, I ask this for the simple fact that the Constitution does recognise that somebody needs to give frank advice to the Premier, the Cabinet and the Governor and, I am not trying to, I guess, go over an executive privilege because what is discussed in Cabinet is something that is outside the remit of this Committee, but just to drive home the point. In your role, do you provide these frank . . . now, I am not going to ask you if they follow it or if they listen, just to

make sure that you do provide the very frank advice. The reason why I am saying that, Mr. Rose, is that I think you have already established yourself as a person on the Island with a lot of integrity, and a lot of people respect you. At the end of the day, I just want for the public to also know that in your role as Cabinet Secretary, you do provide the frank and neutral advice. Now, whether it is listened to is a different thing, but, at a minimum, have you ever provided frank advice to the Premier or the Cabinet with regards to some of these appointments? And, is it something that the Government should reconsider? If so, have they ever taken it under advisement? If you do not answer, it is fine.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, and through you, Mr. Chair.

This all comes with the territory and I can assure the member that I am not hindered in any way, shape or form in carrying out my duties and so I do them without fear or favour and to the best of my abilities in accordance with the Constitution.

The Chairman: As you will see in the Auditor General's Report, the Central Planning Authority (CPA) keeps coming up. This is one of those boards that we have recommended consistently that the Government considers making some appointment changes but it never happens. I understand that that paper would have to come from the Ministry of Planning, but is it one of the things that your staff would consider recommendations made by the PAC on specific boards as a part of your evaluation process when those boards are submitted for Cabinet consideration by the respective ministries.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Mr. Chair, would you be so kind as to clarify whether or not you have made recommendations in the past for other boards? I am just trying to establish whether there are other recommendations which have been made that we may not have considered, or if is it in the future, going forward.

The Chairman: I do not recall that we have made specific recommendations for other boards as we have made for the Central Planning Authority.

You will recall that we even had the Chairman of the Central Planning Authority give evidence before the Committee, but we have set other guidelines and some of the things that are reflected in the Public Authorities Law or for the make-up of boards, I think it goes as specify the percentage of civil servants that cannot be exceeded et cetera. So we have made other recommendations.

I can recall the long discussion on the appointment of the Cayman Islands Health Practice Board for the licensing of Physicians where we had

the unfortunate situation there, where every member was changed one time and the total conflict with the Public Authorities Law which was already in place at the time that that was made. Added to that was previous evidence given by the Ministry to this Committee, that they would never change a board in its entirety for continued purposes. So, we are concerned that somebody is taking up the responsibility, when we make these recommendations to see . . . and it has to be somebody, I believe, in your organisation that would look at the conflicts that might arise in these kinds of recommendations from various ministries.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, Mr. Chair, for that clarification. That does assist me in being able to provide you with a response.

As you have alluded to, with the commencement of the Public Authorities Law, which came into effect in, I think, June 2017, it does change the landscape and we now find ourselves having to look at two different bibles side by side. So, you are looking at the individual piece of legislation, but you are also looking at the Public Authority (sic) Law.

Now, bearing in mind that some of the appointments to public offices would not quite kick up all the way to being public authority, statutory authority, because it may be a committee or a different body or organ, which is not a SAGC [Statutory Authorities and Government-owned Companies] with a CEO or a Managing Director and all the bells and whistles that come with that.

I believe the CPA would fall under that. Just a question: Is the CPA actually a statutory authority per se, in this question?

[Inaudible reply]

The Chairman: A statutory authority in the sense that it has a separate board.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Right.

The Chairman: It is the Board for the Planning Department, so it has the authority in its name and, I want to caution against the dismissal of the recommendations in public authorities, because it is not a legal authority. It is just like "Thou shall not steal" does not say do not steal from Ezzard.

When the Government sets legislative standards as to things like the percentage of civil servants and the kind of transparency, I should not be appointing my brother to all the boards in government, et cetera, and all of the other people on the board are my first, second, third, fourth, twenty-first cousins, right?

Those kinds of things are stipulated in the Public Authority Law. I believe it is fair to say that, it is expected that they will have some global significance regardless of what the Committee is made up to.

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: And Mr. Chair, I fully agree with you. I believe that is going to only assist in a more robust and transparent system in which we can eliminate the perception or the fear of corruption, et cetera, but I simply made that point in relation to the Public Authorities Law because, you know, it would not necessarily directly apply in all instances. I do believe, like I said, in a changing landscape, if the PAC were to make specific recommendations, there would be no quarrel with us, from my perspective within the Policy Coordination Unit, in their conduct of reviewing Cabinet Papers and appointment recommendations, to take that into consideration. Obviously, that would lead to a discussion with the Ministry and the Chief Officer that brought it forward but constitutionally we would not have the ability to stop a Paper or an appointment from proceeding. Part of our job is to coordinate the Policy; we do not formulate the Policy and, ultimately, the decision whether a Paper goes on the Agenda is made, as per the Constitution, jointly between the Governor and the Premier.

The Chairman: But you understand the importance of having somebody that will have that kind of oversight because, getting back to the Medical Practitioners Law, you are right, the Public Authorities Law came in on the 1st June, 2107, and that Board was appointed in September, 2017.

What we are trying to get at is that somebody needs to pick up these oversights, whether deliberate or otherwise, by the Ministry submitting the Paper.

Are there any other questions?

Mr. Christopher S. Saunders: Thanks very much, Mr. Chairman.

Mr. Rose, I want to thank you again for coming here again. One point I want to highlight is that, over the next two days, as we look at the Auditor General's Report, and the whole corruption issue, I just wanted to look at Section VIII of the Constitution. The heading for that is "Institutions Supporting Democracy" and, contained within that section, under section 117, it speaks about the Commission for Standards in Public Life.

One of the things we want to highlight from the public standpoint and from where we are as a democracy is that these are the corner stone of what it is that we will need as a democratic society, to make sure that our democracy remains strong. This is where the public gets involved and it is how the public is expected to hold their public and other officials accountable. So, this is something that is very serious.

Now, at the end of the day, I know that this is something that is ultimately the remit of Cabinet and in your position as Cabinet Secretary, in terms of having those frank and neutral discussion is to just remind them, and this is something that the public has already indicated to us, the importance of this section.

As it stands right now, and if I were a member of the Planning Board and knowing exactly what has been said and the reports and everything that is out there, it would also give me pause. This is not to suggest that the members of the Planning Board are doing anything untoward, but it is the perceived conflicts that arise from being a member of that board. In terms of reputational risk and everything else, these are the kinds of things that people take into consideration. So, in terms of that frank and neutral advice, it is just something to remind the Members of Cabinet that when these appointments are coming up, at least from your staff and your team's standpoint, that you look at the perceived conflict and, at least, at a minimum, let them be aware that there is a potential of perceived conflict here so they can be guided accordingly. This is something that we need to get done urgently. Next month will literally make five years since we have passed this Law and nothing has happened.

I also want to thank you for the work that you have done as a civil servant, as a good public servant and just continue to do the good job.

The Chairman: Mr. Rose, thank you very much for taking the time and answering the questions freely and fairly. So, thank you very much and enjoy the afternoon and play a little music before the sun sets and you will feel a lot better.

Thank you very much

Mr. Samuel Rose, Cabinet Secretary, Cabinet Office: Thank you, Mr. Chair.

[Pause]

The Chairman: Good afternoon, Mr. Manderson, Deputy Governor.

PORTFOLIO OF THE CIVIL SERVICE

ADMINISTRATION OF OATH OR AFFIRMATION

Hon. Franz I. Manderson, Deputy Governor: I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly shall be the truth, the whole truth and nothing but the truth.

The Chairman: Thank you, sir.

Hon. Franz I. Manderson, Deputy Governor: Thank you.

The Chairman: Good afternoon, Mr. Manderson, Deputy Governor.

Hon. Franz I. Manderson, Deputy Governor: Good afternoon, sir.

The Chairman: We are extremely pleased that you could find the time in your busy schedule to come down here to appear before the PAC. As you will recall, the last experience was a very pleasant one.

Hon. Franz I. Manderson, Deputy Governor: Yes, sir.

The Chairman: So, when civil servants come back and tell you how Mr. Miller and that Committee interrogate people, you can say, *But they did not do me that*. They might think that we favour you, so be careful.

Hon. Franz I. Manderson, Deputy Governor: Thank you very much. Okay, sir, will do.

The Chairman: Mr. Austin.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman and, certainly let me echo your sentiments by extending a welcome to the Deputy Governor, thanking him for appearing before this Committee; appreciating his very busy schedule and so we will try not to keep you too long.

If we may begin with the question on the Standards and Public Life Law, in the Auditor General's report, paragraph 37 which is found on page 18 it states: "The Standard and Public Life Law 2014 does not yet have a commencement date despite being passed by the Legislative Assembly four years ago." [UNVERIFIED QUOTE] I wonder if the Deputy Governor can outline to this Committee what are the reasons for this four years and counting delay, in both enforcing and commencing this Law.

Hon. Franz I. Manderson, Deputy Governor: Good afternoon, Mr. Chairman, and Members. Again, thank you for inviting me to be here this afternoon. I look forward to answering your questions and sharing information on this very important report, "Fighting Corruption in the Cayman Islands."

Mr. Chairman, through you: To answer the question: We have been—as you correctly said—this Law has been around for quite some time. My understanding was that once the Law was passed, there was a significant concern expressed by board members that the Law, as drafted, would require them to give a lot of details about their personal holdings, personal investment and that would become public, they had a concern that, *we are happy to serve on boards,*

but it was never our intention that my entire life would be made public.

It is my understanding then, that we looked at the Law and there were a lot of discussions. I believe there was a further amendment to the Law to address some of these concerns, but to be very specific to your question, that concern remains. Obviously—again, this is me speaking as Deputy Governor. I am not speaking on behalf of the Political Directorate who is responsible for the passing and implementation of laws—from feedback that I have received, there is, still a concern from private sector board members that the Law, as drafted, does give them some concern. I am not concerned if a matter comes before me that I have to declare a conflict and report the conflict; that is not what the persons who have spoken to me have said. It is if I have to make my entire holdings public, then that is a problem for me.

Now, I do believe that the matter is being addressed. I know the Premier has certainly heard what the Auditor General has said, head the utterances from the public and is keep to get the matter addressed. I do not think anyone wants the status quo to continue.

Mr. Austin O. Harris, Jr.: Thank you.

Mr. Chairman through you, and I thank you for that answer. I wonder if I can get you to stipulate further because there seems to be a level of misunderstanding, particularly in the public domain, and that is why I will ask you again to stipulate.

The delay in the implementation of this Law, is it correct for this Committee to assume or understand that that delay is coming from concerns raised by private sector individuals versus the public service?

Hon. Franz I. Manderson, Deputy Governor: That is absolutely correct. I have never heard anyone from within the elected Government, within the civil service, anyone, say that they had an issue with this Law.

As you know, Members of Parliament are required to file declarations, do all of these things. All of our information is already public so, I have never heard any Member of the Government or the public service speak against this Law.

The Chairman: Mr. Austin.

Mr. Austin O. Harris, Jr.: Thank you. Mr. Chairman, through you:

Can you give this Committee any indication of perhaps a timeline, when these concerns of specifically, private sector persons who would, in fulfilling their civic duty to serve on government boards, been addressed?

Is there any indication or timeline that you can provide to this Committee to give the public confidence that this Law, which was unanimously ap-

proved in the Legislative Assembly four years ago, will not languish another four years, and, to also, perhaps identify a timeline upon which, it may, in fact, be implemented?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, through you: I do not have a timeline, but I can say with confidence that a matter is now a priority for the government. All of us, both sides, want to see this done, so I am not expecting any significant delays. Certainly, nothing like we have just experienced.

Mr. Christopher S. Saunders: Through you, Mr. Chairman: At present, how are the principles of this Law being managed in the civil service at this point?

Hon. Franz I. Manderson, Deputy Governor: Thank you, sir. Mr. Chairman, through you:

As the Auditor General said, the Law has not come into force, but we still have the Constitution that makes it very, very clear what the standards in public life should be; it gives the Standards in Public Life Commission great autonomy to carry out its duties. I do not want to leave the impression that we have a Commission that cannot carry out its function; that is not the case.

This Law strengthens their ability, but they can deal with complaints now and take action now, to the very best of my knowledge. So, this Law does strengthen their ability but, if you read the Constitution, it makes it very clear what the powers of the Standards in Public Life Commission are, and they have, to the best of my knowledge, been carrying out their duties.

Mr. Christopher S. Saunders: Thanks very much for that, Mr. Manderson.

I just want to look at Schedule 1 of the Standards in Public Life Law (2014), to list out who this Law, in principle, applies to:

1. Members of the Legislative Assembly, including the Speaker.
2. Chief Officers and Deputy Chief Officers
3. Chief Financial Officers and Deputy Chief Financial Officers.
4. Heads of Departments, sections or units and their deputies as well any other organised entity within a ministry or portfolio; statutory authority, statutory body, government-company, department, section or unit and their deputies.
5. Chief executives of statutory authorities, government companies and their deputies
6. Members of governing bodies of statutory authorities.
7. Members of governing bodies of government companies.

8. Members of all Commissions created by or under the Constitution.
9. A person holding a full-time or part-time position in a public authority who engages in an activity that is in conflict, is likely to conflict, or may be perceived to conflict with, his position in a public authority.
10. Any other person specified by regulations made by Cabinet.

Just looking at the broad reach in terms of chief officers, deputy chief officers, chief financial officers and deputy chief financial officers, heads of departments, sections and their deputies, what I am trying to understand is that there are a lot of people that would be covered within the civil service where they are looking to have this information, if the Law is passed, to be provided.

My question is: Despite the Law not coming into effect, you as Deputy Governor, who is ultimately in charge of the civil service, how are these senior civil servants at this point being managed regarding conflict? Do they give a report to you? Do you ask them to provide the spirit of what should have been provided so that, at a minimum, you, as the Head of the Civil Service, at least have an idea where there would have been conflicts or perceived conflicts?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, thank you and through you.

To answer your question: is a report made to me? No. Are civil servants required to declare conflicts? Yes. Are some required to give the declaration of interest? Yes.

A lot of these things are happening now. If you're asking me whether I get a report from these civil servants, no, I do not. I expect chief officers, who would also be covered in those, to carry out those responsibilities under their ministry. If you think that that is a good suggestion, I am happy to take that forward. But I am comfortable that the spirit of the Standards in Public Life Law and our requirements under the Constitution is being met by the civil service.

Mr. Christopher S. Saunders: This was an issue was raised by the Member for East End, Mr. McLean, concerning the chicken farm in East End and the person having that kind of thing. The reason I ask that question is that, that in itself, was a conflict and I think, at a minimum, recognising what has happened, and recognising the spirit, just like Members of the Legislative Assembly including yourself, that had to come here and list out their register, if the issue is that they do not want this information to be made public, the spirit of it is that it should remain in private; at least the Cabinet Members should have an idea of who they are putting on these boards, if they do not want it to be public.

The senior civil servants, at a minimum, should at least have that information reported to you to avoid the issue like we had in East End with the farm. I am sure if that was declared to you, a person in that position. You would have been able to proactively deal with it as opposed to it happening and we having to deal with it now. I think, where the spirit is concerned and yourself as a Deputy Governor, Head of the Civil Service, should have that private information available to you, for you to at least be comfortable or to borrow from Reagan, "Trust, but verify". At least you will have something there.

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, I totally agree. Our Public Service Management Laws (PSML) and workplace rules require civil servants to declare to us when they are going to be applying for part-time employment, when they were doing all of these, getting involved in businesses, which is how we found out about this particular case. So, there are rules now that require it. Remember that persons will join the civil service, not having any interest and then will acquire them later on. So, I take your point and certainly will take it forward but I am comfortable that a lot of the mischief that this Law is trying to avert, we do have some procedures in place to address it, but I take your point sir.

The Chairman: The private sector objectors to declaring this information, have they made any recommendations of how the public can have confidence that they have declared their conflicts if we do not have the information beforehand.

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, just repeat that sir.

The Chairman: Has the private sector made any recommendations of how the public that we represent would have knowledge that they have a potential conflict before they declare it or, in times when they do not declare it, because we have some record of what their interests are?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, what was said to me, and I do believe, some of these concerns have been addressed. Again, I do believe there was an amendment to the Law some time back.

The Chairman: The Substantial amendments in 2016—

Hon. Franz I. Manderson, Deputy Governor: Right.

The Chairman: —which, we were told, at the time that those amendments were tabled by the Premier; that the reason for those amendments, and what

many of us considered 'watering down' of the requirements was because of objections by private sector individual. So, to hear now, that they are asking for them to be even reduced more, is troubling.

Hon. Franz I. Manderson, Deputy Governor: Thank you, Mr. Chairman.

I am not saying, Mr. Chairman, that they are asking to be reduced more, because I am not familiar with those 2016 amendments, but what was said at the time (and again, up until recently when I have spoken to persons) was that if their information is held by the Standards in Public Life, then they are fine with it being held. So, I have no issue declaring all my assets, all my holdings, all my partnerships, declare it to the Commission, but I am not entirely comfortable being made open to the public.

The Chairman: Certainly, they can see the inherent desire to have public access, because we know of instances in the past where people have not . . . I mean there was the famous member of years gone by of the Central Planning Authority that made a statement quite widely, that he was going to the meeting and when it got to his item on the agenda he would just tell the rest of them, *Okay, I am going outside while you approve this for me.*

[Laughter]

The Chairman: Right?

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman.

If we can move away from the Standards in Public Life Law for a moment and turn our attention of the Anti-fraud Policy which is outlined on page 25 and 26 of the Auditor General's Report. I will refer specifically to paragraphs 59, 64 and 65.

Paragraph 59 on page 25 states:

"In May 2017, the Cayman Islands Government issued an Anti-Fraud Policy to facilitate the development of controls that aid in the detection and prevention of fraud against the Government."

Paragraph 64 on page 26 states: **"The training is delivered by the Civil Service College and aims to increase civil servants' understanding of Fraud and corruption."** However, just below it, paragraph 65 states: **"At the end of September 2018, only 19 per cent of the 3,950 civil servants had completed this training."**

Can the Deputy Governor advise this Committee if the ratio of civil servants completing this clearly very important training has increased since September 2018? If not, what plans are in place to increase these numbers and to ensure that training is provided more regularly to civil servants?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, through you, the answer to that is yes, the training rate has increased substantially. In December, we had a major drive and the numbers have . . . let's just say, increased significantly. So, why I cannot give you an exact figure is because I allowed . . . So, how we measure the civil servants is that (I did the training) you log on to the system, it records that Franz Manderson has done module one, two, three and four. I watched the videos, I answered the questions and I passed the . . . It is actually a test to make sure that you are not just doing the training for the sake of it but you are actually paying attention and that you have taken something away from it. I found the training to be very useful.

We had large groups of staff who were not having readily access to computer. So, take Public Works, for example, not everyone at public Works has a computer, so I allowed civil servants to take the training in a group. So, the numbers have gone up substantially and I would venture to say now that the majority of civil servants have done the training, but I cannot, in any degree of accuracy, tell you the exact number because a lot of the training was done in a group setting, which still worked and the feedback I got was that it still worked very well. Not everyone in the civil service has a computer, so it is those kinds of issues that we have to face.

Mr. Austin O. Harris, Jr.: Mr. Chairman, through you: I certainly commend the Deputy Governor for his recent push to increase the number of civil servants and I believe the record should show that it was, in fact, in November 2018 that you announced that in order to get more civil servants to commit to this training, it was not so much a lack of a computer, but your enticement was to give them a discretionary day off from work which, of course, everyone jumped at and took advantage of the opportunity.

I am curious, though, with the challenges that you just mentioned, whether it be lack of a computer or access to the training itself, or perhaps, without having to give the civil service days off in order to complete this necessary training, are there any plans in place, whether it be on a quarterly or annual basis, where civil servants can more regularly participate in this anti-fraud training?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, thank you.

First, let me just clarify that for the last three or four years, in the very slow periods of Christmas, I authorized civil servants to have a day off based on performance. So, it was not just take a day off, it was based on performance in the annual Performance Agreements. Anyone who got a "3" and above, which means you did your job, were given the day off. And again, that was a good incentive and we have seen an

increase in performance. People really valued that day.

This year, because we changed our financial year, there were no performance assessments. They are being done this month. There were no performance agreement in place for me to do it in December so, I decided to use the Anti-Fraud policy as the carrot, and I must say the response was overwhelming. I do not want the public to get the impression that I just give everybody a day off. It was based on doing something substantial, something that was going to benefit the civil service as a whole.

The answer to your question is yes, one of the recommendations that the Accountant General had was that somebody should be an owner of this policy. I appointed our superstar, Auditor General [PHONETIC] to be in charge of this policy and I will be working along . . . sorry, Accountant General. My apologies! My superstar, Accountant General,—

The Chairman: Is there a specific reason why you are picking people who are members of the PAC?

[Laughter]

Hon. Franz I. Manderson, Deputy Governor: Maybe.

—for him to help us champion the policy and ensure that it becomes wide-spread across the civil service and business as usual.

Like I said, I want to lead by example. I did the training myself and found it to be very beneficial. Mr. Chairman, the team really did a good job. Ms. Lauren Knight and the Accountant General and Mr. Vinton Chinsee and other civil servants really did a good job of putting together a training package with videos, showing scenarios where fraud and corruption can happen. So, we were seeing it and it really aided the training. It was not just reading some documents and then saying we have done the training. So, I want to commend them for putting together the package.

The answer to your question is, yes, we are now going to be reviewed on a regular basis and ensuring that all civil servants continue to keep up to speed with it.

Mr. Austin O. Harris, Jr.: Thank you.

Mr. Chairman, I just have one final question on this point. It will take us a few pages back to paragraphs 15 and 16, which are found on pages 8 and 9 of the report.

To summarise the two paragraphs, it states that since 2011 there have been a number of high-profile fraud and corruption cases, and that between 2016 and June 2018, there was an increase in the number of fraud and corruption allegations against the public sector.

If I may ask the Deputy Governor, in his opinion, or perhaps in his informed opinion; what are some of the reasons for this rise in fraud and corruption related cases within the public sector in recent years?

Hon. Franz I. Manderson, Deputy Governor: Thank you, Mr. Chairman.

Mr. Chairman, I think there are a number of reasons. We have developed a zero tolerance towards corruption. So, I have made it very clear that we will not tolerate any instances of corruption and we have encouraged chief officers, heads of departments and the entire civil service that if they feel that there is corruption, they should report it. That has helped tremendously. So we have had, I think, increased reporting. I can say that the majority of cases that the Anti-Corruption Commission (ACC) is now investigating against the civil service were brought to their attention by us. This was self-reporting by the civil service. This was not the Anti-Corruption Commission coming in and saying, *We understand that there is fraud or corruption in this particular department*. So, we have been proactively reporting cases to the Anti-Corruption Commission.

The Auditor General alluded to it, and when she was saying that low pay can be a factor for corruption, I agree with that. I was very concerned, as the Head of the Civil Service, when we were in this prolonged period of austerity where I have seen civil servants struggling to support their families; civil servants living from pay cheque to pay cheque and people are human, and people sometimes become susceptible to corruption. The good news is that over the last three years, the Government has given the civil servants, I think, about a nine per cent increase in salary over those times. I am not seeing the kind of struggling that I was seeing before. So, that in itself, I believe, is also going to bring cases of the need for somebody to do something wrong, down.

So, with the zero tolerance of corruption, with civil servants being better paid, I believe we are going to see reduced instances of corruption. Will we ever be corruption free? I am not prepared to say that, but certainly, where there is corruption, we will report it.

Mr. Austin O. Harris, Jr.: Thank you. Mr. Chairman, just a supplementary follow up.

Notwithstanding your efforts to root out corruption and fraud within the public service, I wonder what your thoughts are, specific to the implications of reducing, or the desire to reduce fraud and corruption within the public sector. What are the implications of not having a, Standards in Public Life Law implemented? What are the [implications] of not having regular training of civil servants of anti-fraud policies or otherwise? What are the implications of those two things in the overall goal to root out corruption within the public service? What tangible action can you provide this

Committee that the Government is taking to fulfil your laudable goals sir, of rooting out that corruption within the public service?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, through you:

There are a number of things. From where I sit, I do not believe that not having a Standards and Public Life Law is fuelling corruption; I do not see that. We have an Anti-Corruption Law and we have an Anti-Corruption Commission and they are very robust and they are doing their job. We will continue to do what we can with the Fraud Awareness training but there are other important mechanisms to prevent corruption; one of those is FOI. That is shining the light on issues that deters really corruption. Having an effective ombudsman which we have, a Parliamentary Commission, I think also helps to reduce corruption. The work of the Auditor General helps to reduce corruption. This Committee plays a big part in reducing corruption across the civil service.

One of the things I constantly say to my team—and this is not about corruption, this is more about decision making and justification—is, do you think that you can explain it to the Public Accounts Committee? If you cannot, then do not do it; right? But that is because we have an effective Public Accounts Committee. So, all of these bodies and Commissions that we have in place, I think the Auditor General speaks to it in her report; she actually said the word “pleased”. She was pleased to see these things in place. The Procurement Laws, the Public Authorities Law that makes it very clear, the role and responsibilities of Cabinet, CEOs, boards; all of those things together, is a very, very effective package that will deter corruption; I have no doubt.

Mr. Christopher S. Saunders: Just following on from my colleague for Prospect; through you, Mr. Chairman.

In terms of the reporting mechanism for us, for the people in the general public, we recognise that the civil service (as you said) went to the ACC. For members of the general public, including myself as a MLA and others, when we do find or hear of things within the civil service, who is the best person for us to direct those concerns to, from within core government?

Hon. Franz I. Manderson, Deputy Governor: So, if you are aware of corruption, then you should report it to the Anti-Corruption Commission. You have an obligation to do that actually, by law.

Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development: Mr. Chair, I would just like to interject for a second.

There is a website that we have and being the owner of the fraud policy I would like to use this as a

promotional opportunity. We have a website www.fraud.gov.ky that provides a reporting hotline so that anyone from the public or within the civil service, who is aware of any kind of corruption at all, can please call that number and that number actually goes overseas. It is not going to be answered by a local person. You do not have to worry about it coming back on you and we have the whistle blower protection policy in place as well.

[Inaudible interjection]

Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development: The number is on the website and you can actually call that number. It is anonymous. We give you a number so you can follow up on it anonymously and so on. So, we have that available and there has been a request to roll that out across the public service as well. So, that would be for the entire public service.

Thank you.

Hon. Bernie. A. Bush: Through you, Mr. Chairman.

Everyone seems to think that corruption is only money and those things. Has it been explained to chief officers and other civil servants that nepotism, cronyism, and those things are also considered corruption?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, through you.

I am not sure if I have ever heard about those being corruption. There is a list in the Auditor General—

Hon. Bernie. A. Bush: Yes sir, and it sits right there—nepotism, cronyism—in the third column under “people”.

Hon. Franz I. Manderson, Deputy Governor: I read it. I am not sure that I agree with everything here. I mean, is bullying corruption? I have never heard that before?

Hon. Bernie. A. Bush: But these days—

Hon. Franz I. Manderson, Deputy Governor: But it is wrong

Hon. Bernie. A. Bush: But these days bullying is everything; I have seen that.

Hon. Franz I. Manderson, Deputy Governor: Right. So, to answer your question, Mr. Chairman: if the Auditor General says it is corruption, I am happy to agree with that. I just know it is wrong; nepotism and all the things that you just said.

Hon. Bernie A. Bush: And, Mr. Chairman, through you: You as the Deputy Governor and the Head of Civil Service, you have your procedures; you advertise a post, and it says that you have to have A, B and C. An individual applies that has neither A, B, nor C, and that individual being short-listed, what do you consider that?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, it is kind of hard for me to answer that question. I do not know what you are talking about.

Hon. Bernie A Bush: But it is definitely wrong.

Hon. Franz I. Manderson, Deputy Governor: No, I am not prepared to say that. I do not know what case you are talking about. These hypotheticals . . .

Hon. Bernie A. Bush: Okay. To get a driver's licence the first thing is that you have to be 17; correct?

Hon. Franz I. Manderson, Deputy Governor: I thought it was 18, but yes, 17 now.

Hon. Bernie A. Bush: It is 17, sir, just to let you know. It has not changed from our time.

Hon. Franz I. Manderson, Deputy Governor: Good.

Hon. Bernie A. Bush: Okay, still 17. So, if you have to be 17 and someone has given you a licence at 16, something is wrong. If you list something in the public world, that is saying "for me to be Deputy Governor I have to have A, B and C", but I have neither and all of a sudden, I am short-listed. Something is wrong. The fact that you do not see it as wrong, kind of gets it clear.

Hon. Franz I. Manderson, Deputy Governor: No. Mr. Chairman, I am not saying that at all.

Hon. Bernie A. Bush: Okay.

Hon. Franz I. Manderson, Deputy Governor: To the member's point: if the driver's licence is 17, and you get it at 16, and the issuing body did not have the authority to give it to you at 16, then that is a problem.

The issue is that the person who is exercising that authority has the ability and the authority to do it. If you do not have it then, again, that is a problem.

Hon. Bernie A. Bush: Okay, Mr. Chairman. Thank you. That gives us, as legislators, we have to close that loophole so it cannot be done. Thank you, sir.

The Chairman: Mr. Deputy Governor, I ask that you give some consideration to put that fraud training on CIGTV, so that the public might have some access.

But now that you have your website, it might do the same thing. I think it is important for the general public to have an idea of what are the efforts being made within government for anti-fraud and detection. You might want to consider making the anti-fraud training part of the orientation for all new employees, so that they have to do that as part of the orientation exercise.

Hon. Franz I. Manderson, Deputy Governor: Right. Yes, sir.

Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development: Mr. Chair, just, to also note . . .

The Chairman: And again, you have the authority to say that in a performance evaluation, those are one of the things that are required if you are to get the five or the four, et cetera;

Hon. Franz I. Manderson, Deputy Governor: Exactly.

The Chairman: To build-in those kinds of incentives.

Hon. Franz I. Manderson, Deputy Governor: Agreed, Sir.

The Chairman: I want to say publicly, Mr. Deputy Governor, that I do not consider the report by the Auditor General a bad report. I believe that it is fair to say that we have many of the pieces of the puzzle in place. The only question remaining is: Do we have a monitoring agency of some sort that is monitoring the effectiveness of the various pieces of legislation?

These are the kinds of questions that we are going to be asking the Board Chairman, because they should now be in a position on most of this legislation, to pass a view as to whether they are satisfied with the effectiveness of the various commissions.

Are you satisfied that the various agencies for anti-corruption have adequate resources to fulfill the requirements of the legislation?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, thank you.

Yes, I do. The Auditor General alluded to it in her report. The Government over the years has given, specifically the Anti-Corruption Commission, a number of additional resources. I was very pleased to see that they have actually made efforts to bring in a young Caymanian into that agency in order to get training because those are very-specialised investigation techniques dealing with corruption. So, I commend the Commission for that but, to the very best of my knowledge, the requests that have come forward for additional resources have been met.

The Chairman: Any other questions?

Mr. Austin O. Harris, Jr.: Mr. Chairman, thank you.

I have two more questions related to the same paragraph. If I could turn the Deputy Governor's attention to page 27 of the report, paragraph 69, it states that the government's internal audit service is the first response Fraud Investigation Team and in January 2018, it established the Counter-Fraud Programme which prepares quarterly counter-fraud reports for the Deputy Governor. But the Auditor General's report went on to state that it is not clear how the information in these reports are used and/or how the messages may be disseminated to the civil service.

My first question is: Can you enlighten this Committee as to how this first response initiative is working, and in particular, how do we use the information contained in those quarterly reports, if that is something that can be stated in public?

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, thank you and thank you very much for that question, sir.

Mr. Chairman as the report says, those reports are sent to me. I ensure that I read them. A lot of times the internal audit reports are no flagging any particular issue, but then, sometimes they are major recommendations. So, one of the things that I did earlier on, was to make that compliant with our oversight bodies, a part of chief officers' Performance Agreements. So, in the chief officers' Performance Agreements, there is a section saying, "complying with our oversight bodies"; the Auditor General, the Ombudsman, the Commissions and of course, Internal Audit. From time to time, I will seek feedback from those oversight bodies as to what comments they have in relation to compliance with their recommendations in those areas and I get regular feedback. So, that works, but it is not working as well as it should. I am here to say that; which is why I very much agreed with the Auditor General's recommendation 7, which is further down the page of the establishment of an Audit and Risk Committee.

The Audit and Risk Committee is the Civil Service Public Accounts Committee. So, the Auditor General reports to the Public Accounts Committee. Rather than the internal audit units reporting to me, they will now report to the Audit and Risk Committee which is chaired by non-civil servants. That would then allow for their reports to be looked at in more detail. Obviously, I am always very busy. I do not have opportunity to focus on some of these things, but it is the job of the Audit and Risk Committee, to review their audit reports, to call chief officers and say, *Why are these recommendations not being put in place?*

Mr. Chairman, I have the terms of reference here for the Audit and Risk Committee that I would be

happy to leave with the Committee for your review and any feedback.

The Audit and Risk Committee has actually been appointed. It has had its first initial meeting on the 25th of this month. I am very pleased that we have been able to accomplish this. It has been something that the Auditor General has flagged before, but I am very pleased to say now that we have put that in place and I expect to see much better compliance now with these internal audit recommendations that were in the past.

Mr. Austin O. Harris, Jr.: I certainly want to thank the witness because he pre-empted what would have been my second question as it relates to the Audit Committee. I am grateful to know and I am sure the Committee is grateful to know that the Committee itself is appointed and had its first meeting and hopefully that will improve the process. But thank you very much, sir.

Mr. Christopher S. Saunders: Thank you very much, Mr. Manderson, for coming here today.

I think one of the things that we just want to make the public aware of, is that the Auditor General's report says "Fighting Corruption in the Cayman Islands". What we want the public to understand is that we just needed to have a national conversation and a frank discussion and what we are looking to achieve over the next two days, in terms of looking at this. We are not waiting for something to happen. We are trying to make sure that the processes and procedures are in place to prevent many of these things from happening but, at the same time, if they do happen that we have the investigative tools necessary to look at them.

I do not want anyone to think there is widespread corruption but, rather, this is more of a tool to have the public discussion, to let them know that this is something that for us, as legislators, and everyone that lives here, it is something that is key in order for our own economic survival. Businesses do not do business with places that they think is corrupt and, at a minimum, we want to make it clear that this is something we are proactively looking at to make sure that we plug what we can plug and at least have the discussion.

I want to leave the DG in saying that, regardless of the fact that we are still waiting on the Standards in Public Life Law to be, I guess formally enacted, even though it has been passed, what I would probably encourage him to do is that, within the civil service itself, even if the information is not made public, for his own governance and for his own tool, at least the spirit of what it needs to do, have those chief officers, deputy chief officers, chief financial officers, deputy chief financial officers and heads of departments, make that formal declaration to your office or

the Portfolio of the Civil Service, so you have that information on file.

As I said, if issues need to be made public, at a minimum, I think that the Cabinet Members, with regards to the people in the private sector who do have those concerns, the Members of Cabinet should have that information to have an idea of who it is that they are appointing. At the end of the day, if we do have issues happening with any one of those directors, it is an international embarrassment or a national embarrassment to the people of the Cayman Islands. I think anybody making these decisions should at least have the information. If we do not want it made public, it does not mean that they cannot have the information on a private level. I just wanted to put that out there.

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, I think that is an excellent suggestion and I will certainly take that forward.

The Chairman: Just to also add my word of thanks to you, Honourable Deputy Governor, and to say that it is fair to say that the Committee is satisfied that, in general, the civil service is doing a successful job in terms of its campaign against corruption and successful.

Corruption in this region that we are in, is responsible for the destruction of governments, countries, individuals, and it is important that we all do all that we can to try to prevent the creep of corruption into our society because of its so-corrosive effects it can have on the whole social-economic structure of the country.

We thank you all for the efforts that you have made, and we will continue to support you all in making the right choices for the right reasons. Thank you very much time for your time, sir.

Hon. Franz I. Manderson, Deputy Governor: Mr. Chairman, thank you very much and to the Committee members as well. It has been a pleasure.

Thank you.

The Chairman: Just to remind the Committee that we are meeting tomorrow at 2 o'clock to continue our public hearing.

Tomorrow we will host Mr. Robert Berry at 2 o'clock and Mr. Coles at 2:30 and Miss Rosie at 4 o'clock.

[Inaudible interjection]

The Chairman: Mr. Berry is coming from the Cayman Island Financial Reporting Authority. Mr. Richard Coles is the Chairman of the Anti-Corruption Commission Board and Miss Rosie Whittaker-Myles is the

Chairperson of the Standards in Public Life Commission.

I thank you all for today. The Committee is adjourned until 2 pm tomorrow.

At 2:45 pm the Public Accounts Committee stood adjourned.



Legislative Assembly of the Cayman Islands

THE STANDING PUBLIC ACCOUNTS COMMITTEE

MINUTES of Meeting with Witnesses

Thursday, 31st January 2019 at 2:15 pm

FIGHTING CORRUPTION IN THE CAYMAN ISLANDS –NOVEMBER 2018

Present:

Hon. D. Ezzard Miller, MLA - Chairman
Mr. Christopher S. Saunders, MLA – Member
Ms. Barbara E. Conolly, MLA – Member
Mr. Austin O. Harris, Jr., MLA – Member
Hon. Bernie Bush, MLA – Member

Attendees:

Ms. Manesa Webb - Committee Clerk
Mrs. Sue Winspear - Auditor General, Office of the Auditor General
Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General
Ms. Gay Frye - Audit Project Leader, Office of the Auditor General
Ms. Zenobia Bradley - Audit Project Leader, Office of the Auditor General
Ms. Anne Owens - Senior Assistant Financial Secretary, Ministry of Finance and Economic Development
Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

Witnesses:

Mr. Robert Berry - Director - Cayman Islands Financial Reporting Authority
Mr. Richard Coles - Chairman - Anti-Corruption Commission Board
Mrs. Rosie Whittaker-Myles - Chairperson - Standards in Public Life Commission Board

Apologies:

Mrs. Rosie Whittaker-Myles - Chairperson - Standards in Public Life Commission Board

1. Meeting to Order

There being a quorum present (Standing Orders 77(2) refers), the Chairman called the Public Accounts Committee Meeting to order at 2:15 pm.

2. Welcome

The Chairman gave a brief welcome to Members of the Committee and thanked them for attending the Public Accounts Committee (“PAC”) Hearing. He also welcomed and thanked Mrs. Sue Winspear, along with Ms. Anne Owens and Mr. Matthew Tibbetts.

The Committee was advised that they would be dealing with the Auditor General’s Report entitled, *Fighting Corruption in the Cayman Islands –November 2018*.

Review of the Fighting Corruption In The Cayman Islands –November 2018

▪ *Fighting Corruption In The Cayman Islands –November 2018*

The Chairman invited the witness, Mr. Robert Berry, to the Chamber. Administration of oath was administered, and thereafter, Mr. Robert Berry was welcomed and thanked by the Chair for attending the meeting and told to state his name and title for the record.

Discussion ensued with questions being asked to Mr. Robert Berry by the PAC members. Before departing the Chamber, Mr. Robert Berry was again thanked by the Chair.

The Chairman invited the witness, Mr. Richard Coles, to the Chamber. Administration of oath was administered, and thereafter, Mr. Richard Coles was welcomed and thanked by the Chair for attending the meeting and told to state his name and title for the record.

Discussion ensued with questions being asked to Mr. Richard Coles by the PAC members. Before departing the Chamber, Mr. Richard Coles was again thanked by the Chairman.

3. Any Other Business

There was no other business on the agenda.

4. Scheduling of Next Meeting

The next meeting with witnesses will be rescheduled till a later date.

5. Adjournment

There being no further business, the meeting was adjourned at 4:05 pm.

**OFFICIAL VERBATIM REPORT
STANDING PUBLIC ACCOUNTS COMMITTEE
THURSDAY
31 JANUARY 2019
2:14 PM
*Meeting with witnesses***

“FIGHTING CORRUPTION IN THE CAYMAN ISLANDS—NOVEMBER 2018”

Verbatim transcript of the Standing Public Accounts Committee Meeting held 31 January 2019, at 2:14 pm, in the Chamber of the Legislative Assembly Building, George Town, Grand Cayman.

PAC Members

Present: Hon. D. Ezzard Miller, MLA, Chairman
Hon. Bernie A. Bush, MLA, Member
Mr. Austin O. Harris, Jr., MLA, Member
Mr. Christopher S. Saunders, MLA, Member
Ms. Barbara E. Connolly, MLA, Member

In attendance: Ms. Anne Owens, Senior Assistant Financial Secretary, Ministry of Finance and Economic Development
Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development

Audit Office: Mrs. Sue Winspear, Auditor General, Office of the Auditor General
Ms. Angela Cullen, Director of Performance Audit, Office of the Auditor General
Ms. Gay Frye, Audit Project Leader, Office of the Auditor General
Zenobia Bradley, Audit Project Leader, Office of the Auditor General

Witnesses: Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority
Mr. Richard Coles, Chairman, Anti-Corruption Commission Board

Apologies: Mrs. Rosie Whittaker-Myles, Chairperson, Standards in Public Life Commission Board

[Hon. D. Ezzard Miller, Chairman presiding]

The Chairman: Good afternoon, everyone.

Please let the record show that we have a quorum present, so I would like to call this public hearing of the Public Accounts Committee to order.

We are continuing our public hearings on “Fighting Corruption in the Cayman Islands”. This afternoon we will have two witnesses: Mr. Robert Berry, who is the Director of the Cayman Islands Financial Reporting Authority and Mr. Richard Coles who is the Chairman of the Anti-Corruption Commission (ACC) Board. We had scheduled Mrs. Rosie Whittaker-Myles but, unfortunately, she had an emergency. She had to leave the Island yesterday. We will re-schedule her for another date and we may take the opportunity, pending approval from the whole Committee, to call somebody from Planning, since we have them as an identified entity in the report.

Could the Page to please bring Mr. Berry into the Chamber?

**CAYMAN ISLANDS FINANCIAL
REPORTING AUTHORITY**

**ADMINISTRATION OF OATH
OR AFFIRMATION**

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly shall be the truth, the whole truth and nothing but the truth.

The Chairman: Good afternoon, Mr. Berry, and thank you for coming.

You would have been informed that we are doing public hearings on fighting corruption in the Cayman Islands and we invited you as the Director for the Cayman Islands Financial Reporting Authority (CIFRA). The only rule we have, basically, is when you answer the first question, just identify yourself by your full name and your title for the records, okay?

Mr. Saunders.

Mr. Christopher Saunders: Good afternoon, everyone, and thank you, Mr. Chairman.

Through you to the witness: Mr. Berry, first of all, welcome; glad that you are here. The purpose of this hearing, as the Chairman alluded to, is that the Auditor General recently did a report on fighting corruption in the Cayman Islands and we hope that these hearings will at least, highlight to the general public that this is something we look at and consider very serious, and also, at the same time, use this opportunity to inform, educate and enlighten the public with regards to the steps and the different tools that we have, both from a prevention and investigative standpoint in terms of dealing with corruption.

Your area of Financial Reporting Authority (FRA) is one such area that is used in terms of combating. What we would like to do, for the very first question, just explain to the general public the role of the FRA and what it does and how it works with the other bodies, in terms of fighting corruption in the Cayman Islands?

Thank you.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Thank you.

Good afternoon, Mr. Chair. My name is Robert James Berry. I am the Director of the Financial Reporting Authority.

Through you, Mr. Chair: Thank you for the question. The FRA is the agency responsible, primarily, for receiving, requesting, analysing and disseminating information regarding proceeds of criminal conduct or suspicion of proceeds of criminal conduct. In recent times, we have also been assigned the responsibility for ensuring that targeted financial sanctions with regards to terrorism, terrorist financing proliferation and proliferation financing are implemented in the Cayman Islands.

To speak a bit as to how the FRA plays its role in the fight against corruption and any other general financial crime or criminal conduct, there is an obligation under the Proceeds of Crime Law for persons to file what we call suspicious activity reports or SARs, with the Financial Reporting Authority, where they have suspicion of criminal conduct, and that would include corruption.

Once received, those cases are reviewed by the Director (myself) or my Acting Director, and assigned to an analyst for review and to make recommendations. Should we decide, or come to the conclusion that there is suspicion of criminal conduct, we will disclose that to the relevant agency, whether it is local law enforcement being RCIPS, Immigration, Customs, the ACC, or to a competent body such as CIMA (Cayman Islands Monetary Authority) or DCI (Department of Commerce and Investment) that has

responsibility for AML [Anti-Money Laundering] supervision, for them to take the appropriate action.

We also have the powers under PoCL (Proceeds of Crime Law), to make disseminations to overseas FIUs [Financial Intelligence Units] where we have suspicion of criminal conduct.

In addition to the threshold of suspicion of criminal conduct, there is a new provision in the Proceeds of Crime Law, under section 4(2)(ca) I believe, that would enable the FRA to disclose information to any local competent authority, whether it be law enforcement or a supervisor, even without the threshold of suspicion of criminal conduct. So, if we form the view that the information would be relevant for them and material to them performing their functions, there is that provision that we can disclose it spontaneously or upon request. I think that is the key where we are a conduit through which information flows and is disseminated to the relevant parties.

Mr. Christopher S. Saunders: Thank you very much, Mr. Berry.

From your experience, generally, and just looking back at the report, I want to say for the record, this has been one entity that has consistently gotten their reports to the Legislative Assembly on time. The two reports I am referring to is the Annual Report you did in 2016/2017 and also the Interim Report that you did from the 1st July to the 31st December 2017 to bring your reporting in line with government's financial year—well done on that one. I think that was actually quite proactive.

I noticed you mentioned on the Interim Report that the FRA closed 42 of 563 new cases. The report is available online in terms of the public and everything else. What I am curious about is, generally speaking, what would normally be the delays in terms of some of the stuff that is being reported? From your experience, what is generally most of the stuff reported to the FRA? Thanks.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you. Thank you for the question.

The delay in processing cases submitted to us, there has been a significant increase in the number of reports filed with the FRA so, if we were to go back a couple of years, in a financial reporting period, we were receiving around 600 SARS. In the last two years, particularly, if you look at Calendar Year 2017 and Calendar Year 2018 and our 2018 report is in progress, because we do, as you said, we are an Agency that we do meet our deadline of three months after the year-end. There has been a significant increase in SARS, so we are now, I think, in 2018 we received 938, which is pretty much a 50 per cent increase over kind of the running average for the last few years. We did hire additional staff last year and

that made a significant improvement in the number of cases we analysed and closed.

Also, in that six month period (and it is not an excuse), but, we were heavily involved in finalising and preparing for the mutual evaluation report plenary in Barbados. We tracked our cases and set timelines, obviously, as targets for us to achieve. In the current environment, we are struggling to do that and, as you said, all the information in the annual reports, we are very transparent in the number of cases we receive, what we analyse, what we close and therefore, what is pending.

Mr. Christopher S. Saunders: In terms of resources, I think what the public and everyone would appreciate, is that the financial services industry is our golden egg and it is important for the public to realise. I do not know if this is a number that you have, that, even though 600 or 900 cases may be reported, if we were to look at the number of transactions we do annually in the Cayman Islands, I would probably say they numbered in the millions. So, to have 900 suspicious activities, I do not want someone in the public thinking that 900 is a large number, when we are looking at millions of transactions per year that are actually being conducted by these financial entities. So, I just want to put that out there.

One of the things you mentioned was in terms of struggling with resources, and the question is: do you have sufficient resources, you believe, in which to meet the mandate, or the mission, of the FRA?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you. Thank you for the question.

We have recently undertaken an assessment of our resource needs including both human and capital, in terms of IT infrastructure, and we concluded that we currently do not have the necessary resources to meet the mandate in the sense of the timeliness of what we would like to be achieving.

What we have done is prepare the necessary paper through our Acting Chief Officer and the AG, the Attorney General . . . sorry, it is the Auditor General.

[Inaudible interjection]

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Thanks. I will be careful then.

Through the Honourable AG, to seek supplemental funding in 2019 for additional staff, which we believe will put us in a place where, anticipating there could be more growth in the number of SARs (Suspicious Activity Reports) filed, as a result of recent legislative changes in the Anti-money Laundering Regulations with the appointment of a Money Laundering Reporting Officer to each Cayman Islands Fund. We

factored that in and made the necessary requests for additional staff that we think will help us keep pace with what is coming in, but also to have some capacity to chip away at the pending cases that exist at this point in time.

Mr. Christopher S. Saunders: Thank you very much.

One of the things I noticed from going through your annual report is that, from when the FRA started . . . well, from being a unit within the police force, to bit by bit this gradual evolution which, goes again to show the growth of what it is that we are doing. In your experience, and in your own opinion, in terms of the legal framework that we have right now, do you see it as something being adequate or do you think that there are other laws that we need to be looking at changing? Because, we do have some laws on the book that are 40 years old; not in this case, but in terms of laws that you think we need to update and, more importantly, other areas that you think may be coming on the horizon that we should be looking at, that we think is a potential area, that may be a risk to the Islands.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

Thank you again. That is a very good question. The current legislative framework with regards to the operation of a financial intelligence unit, the FRA, I think our legislation is well placed and up to date. As a result of the CFATF (Caribbean Financial Action Task Force) mutual evaluation, we obviously undertook a very thorough review of the current legislative framework to ensure that the jurisdiction, and in particular, the FRA, complies with the international standards with regards to being a FIU (Financial Intelligence Unit).

The Proceeds of Crime Law, we have an all-crimes approach, so there are no predicate offences that you file on; it is suspicion of any criminal conduct. It is usually in a financial context, albeit. The responsibility now lies on everybody, so any person could file a SAR. I mean, predominantly they come from the financial services industry through the money laundering reporting officers for those entities.

The DNFBPs (Designated Non-financial Businesses or Professionals) are also caught. We have a broad spectrum of which people are obliged to file suspicious activity reports. The FRA has the powers to request any information it deems necessary to assist in analysing those cases and it has the powers to then disseminate to the appropriate parties. So, from that point of view, I think the legislative framework for the operation of the FRA is very sound.

There are other pieces of legislation that have reporting requirements, obviously, given the context we are in under the Anti-Corruption Law there are separate reporting obligations specific to an offence of corruption. It could be that someone would file the

same information with the FRA and obviously, if they did, we would process that and if it is obviously local corruption, that would be an offence under the Anti-Corruption Law and the ACC would be the appropriate body that we would disseminate that to.

From my point of view, based on the general knowledge I have of the operations of some of the other competent authorities, I feel the legislative framework is quite up to date and more than adequate. I base that on the recent mirror that we went through and my general understanding of what I have read and seen from the other competent authorities.

Mr. Christopher S. Saunders: Thank you.

I remember, going back to the time (I think it was maybe around Christmas) where we had the issue with the money transfer and Western Union and the whole nine yards, one of the things that jumped out to me is that about more than two years prior to that incident, the US Department of Justice had launched something called 'Operation Choke Point', which basically targeted the money transfer businesses, the pawn shops, people selling guns, and those kind of stores, basically cash-heavy business. Of course, two years later by the time it arrived with the whole corresponding banking issues and the whole nine yards, I was a little bit surprised that that whole thing had caught the Government and the people of the Cayman Islands by surprise, but within the industry we knew that this was already an issue.

One of the things we want to make sure of is that we are still being forward-looking, because at the end of the day, we have a tendency sometimes to be more reactive as opposed to proactive. With that said, what we are looking for is . . . like . . . just about every year that I can remember, we have had some adjustment to some law coming out with some new thing within the financial services industry.

Where do you see as being the next issue? One of the things is that they keep moving the bar every single time and what I guess surprises me, and many people in the public, is that we cannot seem to be ahead of the bar, we are always playing catch up. So the question is: where do you see the opportunity for us to be ahead of what is coming on as opposed to, again, waiting on some global group to say *Okay, fine, this is it, let us go move to this*. Where is the opportunity for us to be ahead of the curve?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

That is a tough one for me to answer, to be honest. Quite honestly, I cannot think of an area to get ahead of. I know of one that, I think, we are already behind on. I know there are already discussions ongoing with regards to crypto assets. Some people still refer to it as crypto currencies although there have been recent discussions that they are not really functioning as a currency. So, I think crypto assets curren-

cies is an area and the regulation of them, again, I think that is more of a supervisory issue in terms of how to regulate entities operating in that space but, obviously, from my point of view, I think they would already be caught in terms of reporting obligations of suspicious activity because they would be engaging in relevant financial business and so, the Anti-Money Laundering Regulations and the provisions under the Proceeds of Crime would apply to them.

Mr. Chair, to the Member, I cannot really think of an area to answer.

Mr. Christopher S. Saunders: No, no, that is fine because your answer actually kind of brought out the point I was looking at in terms of regulation because you report on what it is that we regulate, in a nutshell; correct?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, I report on suspicious activities that are filed with the FRA predominantly coming from the regulated financial sector or DNFBPs sector.

Mr. Christopher S. Saunders: Thanks.

So, in a nutshell then, if we look at a suspicious activity, that in itself is a very broad area. For us, the main thing is, looking back at the numbers, where something is suspicious because I noticed that a lot of them, of the 500 or 600 that used to be, like 100 of them would be closed where somebody would consider it suspicious, which is fine, because not many people are trained to identify what is suspicious versus. . .

What would be the criteria used that someone would send to you that you would say, *This may be suspicious to the person, but not really suspicious to us; a normal transaction?*

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

There are instances where people . . . they are commonly referred to as defensive filings. There is that arena where people—and I think if I was a MLRO [Money Laundering Reporting Officer] I would do the same thing where if there is something unusual and they look into it further and arrive at, *Well, no, I think this is suspicious*. They will file that with us and because we have access to broader information . . . So, something that might look suspicious to them, based on information we might have access to, we would say, *Well, no; that is actually quite fine based on the analysis we have done. The source of funds checks out or whatever else it may be*.

No further action is a case where, based on all the information in front of us and the analysis we have done, we do not think that we have met the threshold for suspicion of criminal conduct; and that is not a very high threshold, in my opinion. When you

start to look at the annual reports and indeed, when the 2018 comes out, you are going to see a lot of disclosures to law enforcement, competent authorities overseas, FIUs. Yes, we're still going to always have that percentage that get filed "no further action".

One of the things, and it is imperative on the FRA to do, is to do outreach to better inform people and provide examples of what is suspicious activity. It is a very subjective determination so, two people may look at the same set of facts and one may say no and one may say yes. But, by and large, we do not want the industry just filing for the sake of filing.

That is actually an area of improvement where, if we move forward with the new IT infrastructure, one of the things we are going to do in that is mandate that whoever is filing the SAR must identify a predicate or some kind of offence that they are suspicious of, so that it forces them to, before they send it and then sign it off, that it is just not a general suspicion. I am suspicious that this is fraud or this is layering and money laundering type of thing.

Mr. Christopher S. Saunders: Just one last question. I notice in the 2016/2017 Report that, when you were giving the breakdown . . . again, like I said, this is a well-completed report. It provided a lot of information. One thing I was curious about, from reading the report, is where it says 4 of 12 cases carried over from 2013/2014. I was just curious, not to get into the details of the cases but, those four cases going back so far, what would be the hold-up of why those cases be outstanding for quite some time? Is it a legal issue or treaty issue or what?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

I think it is just a pull on priorities. What we try to do is take a balanced approach to try and keep the current, current, and still chip away and obviously, make a big push to eliminate those older ones. I would have to look at them, specifically, but I suspect that the most honest answer I could give is that it is just a pending matter that something else took a priority over.

Mr. Christopher S. Saunders: I just want to make sure it was not a case where it was being held up in a legal case or somebody is waiting to be prosecuted in some country.

Thanks very much, Mr. Chairman.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman and certainly through you.

First of all, I want to echo the welcome of the witness. I thank him for being with us this afternoon. I think the benefit of these hearings is in many cases, it allows the public an opportunity to learn a bit more about the mechanisms presently in place, that help

protect against things like the broader issue of corruption, criminal conduct, money laundering, et cetera.

As such, I want to take us back to some of your earlier testimony, to some of the questions from my colleague, the Member for Bodden Town West, and to talk a bit about the operation of the FRA (and forgive me, this is my definition) in its 'gatekeeper capacity' one way or the other. You mentioned having, I think, I heard you correctly, 600 SARS (Suspicious Activity Reports) on an annual basis; is that a correct number? Did I hear that correctly?

[Inaudible interjection]

Mr. Austin O. Harris, Jr.: Nine hundred now. It increased to 900 last year. Well, to my point, in your professional experience, what is driving this increase in SARS on an annual basis?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you, this is usually a very popular question. It is very hard to say in terms of, I think a big driver right now is that there is now a new requirement for each Cayman Islands Fund to have an appointed MLRO. So, I think we are already seeing cases where two different people are filing on the same thing because the MLRO of an entity that provides a service, to say the fund, and now the appointed MLRO, they are seeing the same information and legally speaking, they have an obligation under the Proceeds of Crime Law to file.

I think other things that could be driving, it is that, like many other things, there could be more adverse information coming out in terms of . . . I mean, adverse media is a major trigger for a SAR filing so, a client that, until the news breaks that he has been indicted in New York for securities fraud, the service provider might not have been aware of any such activity taking place but that adverse media would trigger them to review the client relationship and, I would expect, to file a SAR.

I think over the last couple years an increase has also been seen in governments and agencies worldwide cracking down on fraud, corruption; those types of things. I think those are all drivers.

Mr. Austin O. Harris, Jr.: Thank you for that response.

Mr. Chairman, through you: Certainly, if I can draw a few conclusions, perhaps it would be safe to say that it is a direct result of the robust avenues in which financial services industry participants have, in terms of the country's laws, regulations and otherwise; that they feel comfortable and, certainly, it is made easier in which they can make these reports on a daily or annual basis, and that otherwise suggests to me that, in one way or the other, the industry as a whole is following the rule of law. But again, that would be my assumption, based on your response.

I wonder if we could talk nuts and bolts for a minute. What is the ratio, following investigation of these suspicious activity reports, that are found to be either legitimate or meeting the threshold requiring further action, versus those that might be defined as spurious, false or, I think as you put it, filed as NFA (No Further Action) presumably required? What is the ratio between those that are successful passing the bar, versus those that go to file 13?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

I would have to quickly look at some stats, but I would like to say that even if something is filed NFA, it is still recorded as intelligence because, time and time again, something filed as NFA, three or four years later, when another filing comes in, it then takes it up to the next level in terms of additional information that then you go back and look at that and go, *Okay, four years ago that was filed NFA*. But, given these developments, it is quite often that that report will then get attached to, or the information in that report will be included in any disclosure. I would have to look at the statistics, but in each of the annual reports it does give a breakdown of what has been filed "No Further Action" and in quite explicit detail. It goes line item by line item: "Disclosed to RCIPS, disclosed to RCIPS and CIMA, disclosed to RCIPS, CIMA and Immigration, disclosed to Customs and Immigration". It is quite specific. I would have to take a good look if—

Mr. Austin O. Harris, Jr.: Mr. Chairman, sorry, through you.

Forgive me, if the information that I seek is readily available, which I suspect would be through the annual reports. There is no need for you to quote it. Perhaps my colleague has a copy of it available and maybe he can answer the question. I need not have you search for that answer, which I can obviously, ultimately find for myself.

If I could go back to one final question, as it relates to the ability of the FRA to fulfil its remit. You mentioned not having adequate resources to meet the growing demands of the FRA—600 SARs jumped to 900 last year, presumably. The demands on your division, as an intelligence unit, are increasing. I wonder if you could expand on this lack of resources. Is this human capital that we are talking about? More staff or is it broader technologies that perhaps, can supplement the need for more human bodies? What is it?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you. Thank you for the question.

It is both. The assessments we do basically max out the number of analyses that a person can do in the course of a year; once you factor in—I mean, some cases are fairly simple and straight forward, some cases are very complex and take more time but,

ultimately, even if you just went with a general ratio of, let us say a staff member will analyse and hopefully close 100 cases per year, there are persons who exceed that, so that is just a general benchmark.

When you start to get into the numbers of a 1,000, 1,200 SARs, a staffing complement of six or seven people to do that, in addition to some of the other work that we need to do in terms of outreach, doing strategic analysis, and contributing in other ways to the fight against financial crime, we are ultimately spending all our time analysing and trying to get cases analysed and closed.

The request we are making for supplemental funding is for some additional staff. It is also for an IT system that would facilitate electronic filing of SARs, which is a key feature that is necessary. It has been a complaint of the financial services industry for a long time, the whole manual delivery, either hand-delivering it to the FRA or sending it in by fax, so we are exploring. Whatever system we get is going to allow for the electronic filing of suspicious activity reports in a secure manner. We anticipate that e-filing all of the information in that will then, automatically, populate whatever database the information is stored in, again, versus the manual system of having to populate it by retyping information that is already provided to you.

The system will also need to have certain analytics that will enhance the manual analysis, so it will have features in terms of connections and relationships between parties and being able to map that out. Obviously, you know, you always hear that a picture is worth 1,000 words; sometimes when you see it graphically, or in a link chart rather than writing out names connected to entities. So, there is that element of it as well. It is both and, I think, whatever system we do get, there will be efficiencies realised in that, compared to our current process. But given where the numbers are now, the human capacity to actually do the analysis and to type up the assessment done and the recommendations, there is a need for additional people.

Mr. Christopher S. Saunders: One final one. Sorry, RJ, I do not know if you brought your reports with you. I just have one question that I am just curious, which would be on page 17 of your interim report and page 18 of your full annual report.

In a nutshell, I could not help but notice that on the 2016/2017 report, where you were looking at comparison of monthly cases received, I noticed like in December 2015, you had roughly around 24/25 cases, but then in December 2016, the number jumped to about 210. I noticed prior to that, the highest month (just looking at the 18-month period) would have been around 88, which would have been in November 2016. I noticed there was a big spike. Now, I know my colleague for Prospect raised the issue or asked the question in terms of part of the reason for

the jump and I believe one answer that was probably omitted, that could probably be used, is also the increase in (I guess) public awareness or public knowledge in terms of these activities.

I do not have a problem with it jumping up but, if you kind of look at the graph by itself, you would have seen that (I do not know if the camera can zoom in) this green bar is just out there by itself, and the natural [average] person would ask, what really happened in December 2017 for it to have jumped above 200 cases, when prior to that it has been maybe around 70 or 80 is the highest for any month looking at the period. Now, I know December is the end of the year, and normally auditors will come in like around January, so, I do not know if it is a situation where people are getting together their end of year accounts and then realise that something was happening and say, *You know what, let me file this off before the auditors come in.* I do not know, but it kind of really jumped out when over 200 in one month, so, I am just curious with what happened.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

What I can say about that—and we did make a comment in the report on it—is there was a one-off event that resulted in a spike. I really cannot go into a lot of detail but, as a result of a one-off event that we do not anticipate will happen again, but we knew that we would have to at least put something in there to try and explain the spike and as you said, it is . . . so it was a one-off event and I think that is all I could really say about it.

The Chairman: I just have one general question. One of the complaints of the international agencies that we have all of these agreements with seems to be that we do not get enough successful prosecutions in Court. Therefore, our enforcement always seems to be questioned as to whether, while we might have the stuff on the books, we do not seem to be prosecuting enough people in banking and in the financial industry in the local environment, to indicate that we are in fact serious about the crime.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, that is a very accurate representation of the perception out there and it is something that, I think jurisdictionally, we do need to look at further.

From an FRA perspective, we are an administrative FIU, which means that we do not have investigative powers so our role is receive, analyse, disseminate. We obviously work closely with law-enforcement agencies and one of the things we always strive for is to get feedback from the agencies we disseminate information to, in terms of how useful was it, how was it used. If it was not useful, why

wasn't it, is there additional information you need from us. I think that is an area that—

The Chairman: Do you have a view or an opinion, as to what we can do to make sure that more people get prosecuted by the prosecuting agencies so that our image is changed internationally?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: I do not have a view as such, Mr. Chair. I think that each agency has to look at its role and take an honest look in the mirror as to whether it is discharging its functions and it is not always easy to say, well, I am resource short, or whatever.

I think there is a certain diligence that is required to keep fighting the fight, so to speak, and again, for us, it is absolutely correct because the international community, and even through the mirror process, is going to look at *Okay, well, that is great Mr. FRA, you analysed this, you disseminated that, then what?* And the use of financial intelligence is actually a big component of—

The Chairman: Would that situation be improved if your agency was given investigative and prosecutorial powers? I know that our Constitution says that the only person that can prosecute anyone for any crime in the Cayman Islands is the DPP [Director of Public Prosecutions], but one is beginning to get to the stage to believe that there is just far too much for any one agency to do; and maybe, it is time to expand the prosecutorial function to some of these anti-corruption agencies, in order to demonstrate to the international world that we are serious and we are, in fact, prosecuting people.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chairman, my view would be, I think, that the current strategy taken by the Cayman Islands, in terms of having an administrative FIU [Financial Intelligent Unit], is appropriate. It segregates duties and indeed, as a member of the Egmont [Group], over the last two or so years that I have been in the role, we have actually seen a number of FIUs move away from being a hybrid or a law-enforcement, to become an administrative. Now, that does not mean that that is the way to go, but I think a lot of agencies are, basically, either at the point where they do not have the resources to do all of it so, breaking it up into different agencies works for them.

I think the model we have here is workable and personally, I think it is the right model. For example, I will be very candid, Mr. Chair: if it were a law-enforcement FUI, I certainly would not be the appropriate person to head it up, because I am not a law-enforcement officer. I know about doing investigations to a certain degree, but when conducting criminal investigations, it is in a whole different sphere.

I think both models can work, and I think what is most important is for all the agencies involved to be speaking to each other and be on the same page in terms of the priorities of certain matters; particularly, because of the international scrutiny as, depending on what chart you look at—whether we are the fifth, sixth, seventh, whatever the largest international financial centre. There are higher expectations in terms of the flows through Cayman and the size of the financial industry here.

The Chairman: Even locally, it is not uncommon to hear comments from people that, (I think it is public), but let us take the case of HSBC. The US Government fined them; I think it was billions of dollars, or certainly hundreds of millions of dollars. We did nothing in Cayman, other than to close their doors and they are gone. Are we losing out? Is that a part of the reason that we have this reputation that we are only pretending to do these things, because we do not really do anything?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, my response to that is . . . in the HSBC matter, albeit the US did impose a significant fine of, I think, \$1.9 billion and I think it was a five year deferred prosecution agreement, and this is from memory, Mr. Chair. The one thing I will say about what Cayman did, I think Cayman was one of the only jurisdictions that actually revoked a banking licence for that group.

The Chairman: Here is what the local community say: *Yeah, we revoked the banking license and all the people who were doing business with them lost out because they were shifted over to some other bank that they did not know anybody.* But the country got no benefit. We should have gotten enough from them to pay off the national debt.

Every other jurisdiction that, I believe, they had the problem with (because I think Mexico fined them substantially, as well) but [in] Cayman, they simply sold their business to some other bank, or banks, or other financial institutions at a profit, and walked away scot-free.

Mr. Christopher S. Saunders: Mr. Chairman, I just want to add, for the record, because I was employed at HSBC at the time that happened, and what I can say to you, is that the Cayman Government at the time did try to impose a fine on HSBC. The problem was that the legislation actually limited their ability to do so, and I can say for a fact, that the Government did try to find a creative way and it was blocked by one particular individual. I will not say who it is, but I can tell you for a fact. But that is a different story for a different time.

The Chairman: If we are not getting the results, and we cannot demonstrate to the international world that we are prosecuting people and fining, is it because the legislation in these other agencies (and maybe you do not want to proffer a view on that); is it because the legislation in your agency is inadequate in these respects?

Is that because there is some political lobby in the financial industry that is preventing the kind of legislation, and the kind of teeth that we need, to be actually put in place?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, what I would say to that is that, [in] my opinion, the Proceeds of Crime Law and the relevant legislation in the Cayman Islands is certainly robust and appropriate for the operation of the FRA and, I think, for the investigation and prosecution of criminal conduct. Anything outside of my remit, I do not think I am the best person to speak to it, Mr. Chair.

Mr. Christopher S. Saunders: Thank you very much. I know that one went a little bit off.

Just one final question from you, Mr. Berry, and thanks, thus far: One of the things some people believe is that we sometimes report a little bit too much information. If you go to CIMA's website and you were to look at even the total deposits held by Classes A and B Banks, you would see that it is in excess of \$700 billion. But if you were to really dig into that money, you would realise that the bulk of it are in corresponding banks overseas, in the various countries, but people would leave with the impression as if though these monies are actually here. I say all of that to say, sometimes I think we put information out there, that people are looking at internationally, and it gives our competitors and other people reason to look at us in a different light.

One of the things that jumped out from reading your report is, when I looked at the full 2016/2017 Report, and just to, kind of give an idea, I chose the Americans for a reason. I am reading from page 19, where we are talking about the cases that you guys got. I just want to read briefly: **"The greatest number of subjects was classed as Caymanian. Of those 297, 64 were Caymanian nationals (natural persons) and 233 were legal entities established in the Cayman Islands."** And this is part I want to zero in. It goes on to say: **"The United States provided the second largest number at 108, comprising 95 natural persons and 13 legal entities."** And third went on to Ecuador.

When I went to the interim report, just looking at the two to give myself a kind of point of reference, it says: **"The greatest number of subjects was classed as Caymanian. Of those 278, 50 were Caymanian . . ."** This means that, in terms of natural persons it went from 64 down to 50. But then, the part

that grabbed me, says, "**The United States provided the second largest number at 249, comprising 241 natural persons . . .**" What really jumped out at me is the United States number moving from 95 natural persons to 249 natural persons. And if I was a person in the US looking at that, I would be kind of wondering what it is that Americans are doing in Cayman, why their number moved from 95 to, say, 241. That is a substantial jump.

Now, granted, it may just be cases being reported but, from that standpoint, just reading it in that context . . . and of course, it could be a situation where 100 of them were really basically nothing, but, the number just kind of jumped out and this is the kind of stuff that some people may believe the US will look at and say *Wait a minute, what are American citizens doing in Cayman? Let us put some pressure or put something on the Cayman Islands*, when, in fact, it could basically have been nothing.

That is what I am trying to understand. What would have been driving the increase in the numbers from 95 to over 240?

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

I do not think I can identify a specific driver. Again, what we ensure is that, when we get the case we, to the best of our ability, identify the predicate accurately, and the subject accurately, and a report may have more than one subject so, if we think the report is primarily about a person or an entity from this domicile, or that nationality, that is how it gets classified.

Going back to the question that was posed about the numbers and what drives them, that was the activity during that period, and it could be very well be that the next period the number fluctuates back down. I think what the reports do show is that consistently, Cayman Islands and the United States are . . . well, in the two reports you looked at, there are one, two—and again, largely the Cayman is Cayman-domiciled entities, as opposed to natural persons.

Mr. Christopher S. Saunders: Yes, the thing I am trying to get at is in terms of this report, and it may be just a writing style but, if there is a sentence that can come after it that will basically say, "Of this 241, 150 proved to be nothing." Just leaving something like that by itself, like I said, I am reading it and it is leaving me to guess, like somebody is doing something.

What we are basically trying to avoid is people jumping to the wrong conclusion, because we already have enough people overseas that are looking at us sideways in terms of . . . kind of adding more meat around it so at least not to give the impression as if though there are 241 Americans, as opposed to 95 the previous year. Just more stuff like that, really and like I said, it is just a matter of style and something to consider for the 2018 report. Thanks.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

Thank you for that suggestion. That is something we will go away and review in preparing the 2018, to see if we could provide additional wording to make it clearer.

The Chairman: Mr. Berry, thank you very much, sir. We appreciate the time you gave us and we certainly will take into consideration your answers in our report.

Thank you very much for coming, Sir.

Mr. Christopher S. Saunders: I just want to add one more thing.

I know, RJ, that you have a very limited team and, like I said, I went back and looked at your website and at what it is you guys are doing and you are doing some great work over there with limited resources.

I just want to say, on behalf of my colleagues, thanks and keep it up. You do put a lot of information out there, which is good. For us it is good, but I just want to make sure that it is not too good for our competitors or other people looking in but, just well done to your guys and just keep it up; it is really good work.

Mr. Robert Berry, Director, Cayman Islands Financial Reporting Authority: Mr. Chair, through you.

I want to thank you and the members for the discussion and positive feedback and encouragement. I too want to thank the Committee for the opportunity to be here and in particular, to talk a bit about what the FRA does. Sometimes, we take it for granted because we primarily deal with the financial services industry and they have a pretty good working understanding of what we do, but sometimes when I run into someone on the street and they say, *Hey RJ, how are you? What do you do?*

I am the Director of the FRA and they go, Is that a part of CIMA? Or, they honestly do not know.

One of the things that have actually been suggested to us is that we do a more general outreach to the general public on what we do. So, I think this is very useful in that regard. So, thank you again for the opportunity be here.

ANTI-CORRUPTION COMMISSION BOARD

ADMINISTRATION OF OATH OR AFFIRMATION

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: I swear by Almighty God that the evidence I shall give in this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

The Chairman: Thank you, sir.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: You are welcome.

[Inaudible interjection]

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: It is.

[Laughter]

The Chairman: But it is a better set of circumstances, sir.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: It feels kind of nice.

The Chairman: We are much friendlier than the general Assembly.

Just to thank you Mr. Coles for taking the time to come and answer some questions for us. As you would have been made aware, we are dealing with fighting corruption in the Cayman Islands and, as Chairman of the ACC (Anti-Corruption Commission), we rely heavily on you to be a very integral and important part of that fight against corruption.

The first question is probably: as Chairman, are you satisfied that the legislation, in its present format, is achieving the goals that the Anti-Corruption was set out to do.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yes, Mr. Chairman, I think in broad terms, it is.

There has been some amendments to the Law, as I think you would be aware, fairly recently, and there will be some further suggestions that we are going to bring forward; but they are really sort of relatively minor things that arise because, as the Law was, the Royal Cayman Islands Police officers were investigating corruption offences, whereas now, we have investigators as part of the ACC, and some of the powers have not transferred as well as they should have done. So, we need to sort of rectify that. But they are sort of technical matters rather than anything that goes to the general heart of the Law.

The Chairman: I forgot to ask you, sir, when you answer the next question, just identify yourself by your full name and your role just for the records of the House.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: I am Richard Coles and I am the Chairman of the Anti-Corruption Commission.

The Chairman: How do you think the role of the ACC has changed since its inception?

Are you satisfied that the ACC is being able to adjust to a changing role in our society?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: I believe it has. Of course, when it was first formed back in 2010, it was a slightly different animal to what it is now and the composition of the Commission itself was various public officers plus a couple of private citizens, and the Chairman was the Commissioner of Police. Whereas now, it has no public officers on it, we are all private citizens.

The Chairman: Yeah, I think that is a big improvement actually.

Are you getting the kind of support from the other Anti-Corruption agencies in a collaborative way to do your job?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yes, I believe we are.

We have entered into Memorandum of Understanding (MOU) with most of those agencies; in fact, I think all of them now. Maybe the only one we are still waiting to have an MOU with is the Prison Department, but otherwise, we have MOU with them all. I think they are working well and, as far as I am aware, we get good cooperation both ways with those agencies.

The Chairman: I know that recently we have added an investigative arm. Do you believe that the Anti-Corruption Commission is growing to the fact where you may want to be able to not only investigate but prosecute?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: We have always had an investigating capability but it used to be handled by RCIPS officers whereas now, we have our own, although all of our investigators have experience as senior police officers before joining us. So, they are all experienced investigators.

As to prosecuting, well, of course in Cayman the DPP has that right.

The Chairman: Constitutionally, yeah.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yeah. And I do not have a problem with that. I think in some ways, it is not a bad thing for an investigator when we have completed our investigation to have an independent third party assess it before it actually goes to court; I think there is something to be said for that.

The Chairman: The reason I asked that question is because there are some Anti-Corruption Commission agencies. The one that is often quoted to me is Hong Kong, as having their own prosecutorial arm and people often wonder why we do not have it here, and I think your answer is proper and quite good.

Mr. Christopher S. Saunders: Perfect. That is good, it will be easier. On page 4 where it says: "The Governor has broad powers of oversight over the work of the Commission and may give to the Commission direction as to the policy to be followed in the exercise and performance of its functions." It goes on to say: "To date, the Governor has not issued any such directions. The Commission may, after consultation with the Director of Public Prosecution, issue guidelines setting out:

- the forms and procedures of making a report of a corruption offence; and
- the operation of procedures in connection with disclosures made to the Commission."

With that said, sir, I am just curious in terms of, are there any limitations that you have found, in your opinion, where even though no directions have been issued, is there something that the Commission needs? I am just kind of curious as to why it was included in the report. Was it a silent cry for help? I do not know; I am just curious.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: No, it was included because that was what the Anti-Corruption Law says. It is true to say that we have not received any directions from any of the Governors since the Commission was formed.

Having said that, I think it also says in the report that the Chairman (myself), I meet fairly regularly with the Governor; not on a sort of monthly or quarterly basis but as and when required, and brief him/her on what we are doing. If there is anything that the Governor wishes to raise, with me, that is the time to do it. But we have not received any formal policy directions; not to date anyway.

Mr. Christopher S. Saunders: Okay. Thank you very much.

One of the things I also want to touch on which starts on page 12, says: "Section 5 topical issues". I noticed that there were some listed—and again, I really have to commend you guys for the report that you guys have put out there. I think it is really good, it was quite informative.

One of the things that jumped out was on page 14 that says: "Meeting with the Deputy Governor". The report says: "The Chairman met with the Deputy Governor to discuss wider issues which affect both the civil service broadly and the work of the Commission directly. It was agreed that the Manager and Senior Investigator would meet with the Deputy Governor and his Senior Management Team to further these discussions, however, due to various scheduling conflicts the meeting has not yet been re-scheduled."

I recognise that this report was up to the 30th June 2018. I am just curious that since the 1st July or

onwards, have you guys had the meeting with the Deputy Governor with regards to the matters that you raised in this report?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Unfortunately not.

Mr. Christopher S. Saunders: Alright, no problem.

One of the other things that jumped out also is just touching on the media policy where it says: "The Commission noted that there are numerous instances where the media references the wrong cases and/or provides incorrect information in its reporting. The Commission agreed it was difficult to make corrections to these reports due to the fact that they usually reference an ongoing investigation or a matter before the Courts. The Commission agreed that, whilst the standard policy is that it will not comment, or correct these reports, there will be exceptional circumstances in which the Commission will make further information available."

It goes on to say: "The Commission issued on its website, a Media Policy setting out the circumstances where the Commission would release information regarding persons who had been arrested and/or charged. The Chairman continues to be the official spokesperson. The single point of contact for members of the media is the Manager, who will in turn, liaise with the Chairman."

Just out of curiosity, just looking at that issue itself, and I do recognise the sensitivity and especially we in this House are mindful of commenting on anything before the Courts. Have you guys found a work around within your policy that would basically deal with that issue? Because at the same time, what we do not want is when you do have incorrect information in the media, on a small Island, the possibility of even probably tainting a jury pool and everything else.

Have you guys found a work around that will allow you guys to continue doing what you are doing, while at the same time ensuring that, to some extent, the wrong information does not continue to be out there in the public domain?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yes, that is a good question and I suppose it is a balancing act, really. We do not give details when an arrest is made. We do not name names at that point, but, of course, the press are aware of it and we make a press release and we give very limited information that individuals have been arrested and searches carried out under a search warrant. But we do not name names and do not give details of the case. It's difficult to prevent the media coming to their own conclusions, which they very often do and unfortunately, they are very often wrong. They sort of get part—

The Chairman: We know about that, sir.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yes, the Hong Kong Commission is very well established and has been very effective and, in fact, when I was in Hong Kong a couple of years ago I had the opportunity to meet with one of their deputies and was very well received there.

They were very interested to hear about what we did in Cayman and quite surprised at the length we had gone to here because, as you are well aware, Mr. Chairman, we do not always get the press that we deserve.

The Chairman: No.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Not, internationally and so, they were very happy to hear that. But they are a massive organisation and they have a considerable number of staff. But yes, they go right the way through to prosecute. I am not saying that could not happen here, but constitutionally, it could not happen at the moment.

The Chairman: Under the present Constitution.

You, as Chairman, in your assessment of the resources that the administrative arm has, are you satisfied that you have adequate resources to fulfil the role of the legislation?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: That is a tough question, Mr. Chairman. I suppose I would say we never have enough resources, really, and the truth is—and I am happy to admit this—that we do have to prioritise cases. We just cannot proceed with every matter simultaneously and so, we prioritise and re-prioritise continually.

Yes, if we had more resources, we could proceed with more cases at the same time. So, I would never turn that down and, if we continue to receive reports at the rate we are doing, then, I think, we will be looking for more resources, both in terms of qualified trained investigators and we would like to see another trainee investigator. We have one who has just joined us last year, a Caymanian, and in fact I can say now, we had some exceedingly good applications and it was difficult to get to the one that was eventually chosen to join us. So, there is no shortage of individuals out there who would like to join and who are capable of joining so, that would, I think, be a good thing too.

The Chairman: Do you believe that enough people are aware that they themselves are committing a crime if they are aware of the possibility of corruption and they do not report it to your agency?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: We certainly make that clear on our website and that is true, there is an onus on

members of the public and indeed, public officers, to report matters that they are aware of, but I have to say we do have, in my opinion, very good cooperation from the public. I cannot really speak before this present Commission was formed in 2016, but I believe that we do enjoy a high level of confidence of the public in Cayman, and that is demonstrated by the sheer variety of reports from the whole spectrum of individuals in Cayman.

I have no complaints about people reporting. I think they are confident—I would like to think so, anyway—in what we do. And I think they are also very happy that we keep these matters strictly confidential and so, you do not have to think when you have made a report to the ACC you are going to find it in the Compass the next day.

The Chairman: That is very important. I wish I could say the same about the police and the immigration department, having been exposed by both.

Can you opine on whether the increased number of fraud cases is as a result of more fraud in the society or people just getting more comfortable with reporting it?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Difficult one to answer. Certainly, we are getting more report and that, I think, is the key to it, really. I would not say we rely entirely on reports because we are perfectly capable of initiating investigations ourselves but, we have sufficient reports coming to us. We really do not have, I suppose, the capability at the moment to initiate our own investigations if we chose to do so, because we have more than enough reports coming in, and effective reports too.

Mr. Christopher S. Saunders: Thank you very much, Mr. Chairman.

Speaking of reports, Mr. Coles, I want to thank you all for the report that you published. It is the ACC Annual Report, 1st July 2017 through 30th June 2018. It is actually a pretty good report, if I must say so, and quite informative.

I know that you probably did not walk with a copy but that is fine. One of the things that jumped out at me on the report was where, under the section "Control Oversight and Policy Directions", where it says—

[Inaudible interjection]

Mr. Christopher S. Saunders: Oh, you did walk with it?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yes, I have a copy with me.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: They get part of the truth, but not all the truth and then they print it, you know? The only thing we look at as a sort of plus on that is that, when the press continually reports something that is wrong, we know that the ACC is not leaking. But, in terms of correcting it, that is very difficult. I mean, even when the press will sometimes call us and say, *We hear that you might be investigating such and such. Can you confirm whether you are or whether you are not?* And we have a policy of neither confirming nor denying these sorts of things because, once we say, *No, you are wrong on that one*, we will get questions every day saying *Well, how about this one?*—until eventually we get one where we say *We cannot deny that. Oh, so that means you are doing that one then, are you?* It is very difficult.

That is our policy with the media. Not to be obstructive, but so that we do not find that people are getting named before they ever had a chance to really see what is in front of them. But if there was something outrageous printed, we would try and find a way to correct that without jeopardising or prejudicing what we are doing. We understand the needs of the press to inform the public, but we have to protect the investigation that we are doing and indeed, protect what could turn out to be innocent people who are never charged, from having their names splashed around the media.

Mr. Christopher S. Saunders: Thank you very much for that, Mr. Coles.

One of the things that we kind of highlighted from yesterday with regards to the public as a whole, is that the Auditor General's Report, "Fighting Corruption in the Cayman Islands" was more meant to inform, educate and enlighten the public in terms of what it is that we are doing to prevent, investigate and, if need be, prosecute corrupt individuals. What we were hoping to get from this session, particularly for the public, is to kind of let them know what it is that we are doing. Thus the reason why we are kind of putting these things on the issue, because, we know the media does report on these Committee and at least, put it out there in the public that this is still an issue for us and that it is something that we take seriously and are looking at.

With that said, I noticed that within your report, you listed several agencies that you guys were looking to meet and work with in order, I guess, to facilitate better relationships and kind of, I guess, to expand what it is in terms of having multi-national agencies work together to fight corruption which, I think is a good thing. You listed the Major Organized Crime and Anti-Corruption Agency in Jamaica and also the Miami National Crime Agency and the Commonwealth Caribbean [Association of Integrity Commissions and Anti-Corruption Bodies]. Just out of curiosity and for the listening public, can you give us a brief idea in terms

of how these discussions went and what it is that we were looking to achieve in terms of broad outcomes that we were looking for in having those discussions?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: With pleasure.

First of all, let me say that I value the opportunity of appearing before the Public Accounts Committee today, to do that very thing; to make more public the work that we do and I hope it is reported, of course.

Now, as far as those organisations are concerned, geographically they are very close to us. We have in the past, often benefitted from cooperation with them, but I thought it would be helpful, certainly in terms of the Major Organized Crime Agency in Jamaica, if we introduced ourselves and let them know who we were and, I have personally met with the head of that organisation. I think the cooperation is enhanced if individuals actually know each other and have met and we certainly have good cooperation from them, because there are often areas where the Jamaican authorities can assist us.

Within Miami, their net spreads way beyond Miami into the US, and so, they can be very helpful to us even if it does not necessarily relate to Miami itself; they can facilitate our enquiries into other areas of the United States. I am pleased to say that in both cases . . . well, in the case of the Miami Agency, they came down here. In the case of the Jamaican Authority, I was actually in Jamaica and so, I took the opportunity of meeting with them.

Mr. Christopher S. Saunders: Thank you very much.

In terms of the big picture, what do you think it is we . . . and when I say "we" I am talking not just the Members of this Legislative Assembly, but the public as a whole, because this is an important issue in any democratic society, to ensure we have prosperity. What do you think it is that the public needs to be more aware of or what is it that the public can do to better fight corruption, in order to make sure that we stamp this out or properly deal with it here, in the Cayman Islands?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Well, certainly keep on letting

us have these reports when you feel something is happening. But one of the areas we have noticed, in the various reports that we have received and the various matters that we have investigated is that, generally, these matters get reported and come to light at far too an advanced stage. Very often they come through the Office of the Auditor General, when they have been doing an audit, or internal audit, and many of these matters should be picked up a lot earlier than that.

You might ask why they are not, and the Commission has given some thought to this, and I

think part of the problem is that we have a lot of supervisory structure within the public service but, the supervision is not always being done. By that I mean that, when superior officers are required to sign off (to use an expression), they are just signing off, and they are not actually prodding into whether they should be signing off. And if more of that happened, these would get picked up earlier. I mean, no reflection on the Auditor General, but really, it should not be the Auditor General picking these things up; they should be picked up earlier. I think if that happened, we would have these matters nipped in the bud much quicker, they would not grow into what they sometimes do grow into, and maybe it would dissuade people a bit more from carrying out these activities.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman, through you.

First of all, I just want to welcome Mr. Coles this afternoon. Thank you for appearing and if I could, briefly, continue with the rolling out of compliments that my colleague, the Member for Bodden Town West started with.

I think in this world of increasing fraud and corruption and the need to provide mechanisms, gatekeepers, to protect our economy and our way of life in the Cayman Islands, I think the public should be confident that the Chairman of the Anti-Corruption Commission also is a former Attorney General of the Cayman Islands so, I would like to think that the Commission is in good hands.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Thank you.

Mr. Austin O. Harris, Jr.: I would like to take us back to the issue of adequate resourcing, in terms of the Anti-Corruption Commission's remit and ability to perform its tasks. Also, questions relating to are you doing enough to just get by or are you failing to meet your optional potential as a Commission.

If I can do so by looking specifically at the Auditor General's Report, paragraph 45, which is contained on page 20 of the report, states that the "Anti-Corruption Commission staffing has increased significantly since 2015, from one investigator to six investigators in 2017. The Anti-Corruption Commission also acquired specialist expertise from outside the Cayman Islands to support some of its activities and investigations." The paragraph goes on to state that this reliance on others may affect time taken to carry out the investigations.

My question, Mr. Coles, through you, Mr. Chairman, is one of outsourcing versus insourcing. It has been stated numerous times that the Cayman Islands is a recognised leader in financial services and, as a result of that, we are also a leader in the mechanisms required to support that financial services industry and, by that, I mean lawyers, account-

ants, forensic, auditors, law-enforcement professionals. So, forgive my ignorance, but perhaps you can enlighten this Committee as to what are the skill-sets needed by the Anti-Corruption Commission to fulfil its remit that cannot be found within the Cayman Islands, specifically.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Thank you, Mr. Chair. Through you:

It is true, there is expertise that we do not have within the Anti-Corruption Commission itself, and in some cases it is not available on island and you mentioned some of them; forensic accounting is one. Of course, there are forensic accountants on island, but not necessarily with the experience that we require for the sort of investigations we are doing. Of course, we have the major accounting firms all with large offices here in Cayman and most of them would have that capability, but not necessarily with the personnel here in Cayman. It might be at an office elsewhere. That is one of the areas.

Increasingly, it is in the area of electronics that we need additional expertise. That is in terms of investigating electronic hardware like computers, cell phones, all of that. We do not really have that capability on Island and, in fact, it is not widely available anywhere. We know where that expertise lies, but it is in a few places and those few places are in demand so, it is not that we cannot find it but then we have to wait our turn to get that work done, and it is time-consuming work as well. Sometimes, the evidence that we need that expertise to work on, obviously, these people need to have access to it. That, in itself, can present issues. You do not just put it in the post and send it. So, it can have some significant issues.

To go on from that: could we have people on Island capable of doing that? Yes, I am sure we could. Could we fully employ them? That is highly unlikely, because we only need them from time to time. It can be an issue and it can cause delays and it does cause delays, and we are always very mindful that, particularly when a case is ongoing and people are already, in some cases under arrest, but have not yet been charged and will not be charged until we have gone through the investigation to see what is appropriate. And, of course, we are trying to get this done as quickly as we possibly can, for the purposes of justice.

Mr. Austin O. Harris, Jr.: Thank you for that. Mr. Chairman, through you:

When we look at the key messages of the Office of the Auditor General's report, pages 2 and 3, in the fourth paragraph states that "The work of the Anti-Corruption Commission is reactive, as it investigates allegations of corruption that are referred to it." [UN-VERIFIED QUOTE]

Yesterday we heard evidence of this from the Deputy Governor, that the increase in reports to the

Anti-Corruption Commission came as own investigations conducted internally by the Government and then, therefore, suggested to the Anti-Corruption Commission, not the other way around—the Anti-Corruption Commission did not go to the Government and say *We have questions about so and so*. Again, the body itself is more reactive, as you stated, rather than having the ability to issue its own reports.

It says: "Many corruption investigations are complex and can take a long time to complete. It is not clear whether the ACC has the resources it needs to effectively investigate the volume of existing corruption cases. It was investigating fourteen cases at the time of the audit, some of which had been ongoing for a number of years." [UNVERIFIED QUOTE]

Notwithstanding your previous testimony, which identified that there is a growing demand for persons with your specific skillsets, that sit on anti-corruption commissions and those persons are not widely available, what, in your estimation, would be the ideal staff complement that would both enable the Anti-Corruption Commission to investigate and close cases in a more efficient manner, but also to have the opportunity (like the Office of the Auditor General and other bodies) to be able to initiate your own investigations, so perhaps there are things that you see that no one else does? What would be an ideal number, if asked?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Thank you, and through you, Mr. Chairman.

Perhaps I can preface my answer by saying that we can, of course, initiate our own investigations if we choose to do so; we do not have to wait for a report from outside to do it. But, yes the public service often does initiate a report to us that they find; that they have a suspicion that something has or is going wrong and they refer it to the Anti-Corruption Commission. I sort of call the Anti-Corruption Commission really the Anti-Corruption Police in Cayman, because that is our role. We are a police service but we specialise in anti-corruption; that is what we are there to do.

We investigate and then, as I have already said, we pass the matter to the DPP's Office for them to make a decision on what charges should be laid and then carry it forward. The DPP's Office, as I am sure you honourable Members are fully aware, is extremely busy and has a very, very, heavy case load. We do not just liaise with the DPP at that stage when we pass it over, but we generally are liaising with them continually during an investigation, to make sure that we are covering areas that they feel are necessary to a successful prosecution, and are not missing or going down a route that would be non-productive as far as they are concerned. We work very closely with them and I am not in any way blaming the DPP's Office, but they themselves have to deal with things

on a priority basis and so that can, sometimes, cause some delays. It is just the way things are.

Certainly, if we had more investigators, we could deal with more matters and not have to prioritise as much as we do. What would be an ideal number? We could probably do with double what we have now. I mean, we have 6 but if we had 12, it would be a lot, lot, better. We do not just have one investigator on one matter. Sometimes some matters require a number of investigators to deal with them and so, some of the cases are very complex and they take a lot of man power and a lot of time. So, it is difficult to put a number on it, but if you ask me to, I would say well, if we double the number of investigators—and as I have already mentioned, we have one Caymanian trainee and would very much like to have a second one. That would make a real difference, I think, to us.

Mr. Austin O. Harris, Jr.: Thank you.

Mr. Chairman, just one final question and I will be focusing on paragraphs 45 to 47, which are contained on pages 20 through 22 on the Auditor General's report.

If I could just preface it, Mr. Chairman, through you; certainly, not to question the integrity of the testimony that has been given and provided to us today, in any manner whatsoever but, if I could make a brief observation, that it seems sort of the status quo, if you will, whenever we are dealing with matters of recommendations from the Office of the Auditor General on respective departments, agencies or commissions (and I use this term very loosely). Again, not to question the integrity of the witness specifically, but merely making a general comment; that the standard status quo excuse is, *We would be able to do more if we had more resources, if we had more staff, if we had more investment in technology, et cetera*. What this Committee seeks to understand is which of those claims for the need of more resources is, in fact, a legitimate claim. Or is it just again, loosely speaking, a cop-out for lack of efficiencies within the operation of these respective departments, et cetera? And that is why I point to paragraphs 45 to 47.

Those paragraphs state that the "ACC reports its performance publicly through its annual reports. Performance information could be improved by extending to it to include some efficiency and effectiveness measures such as the cost per case or the length of time taken to investigate and close cases." [UNVERIFIED QUOTE]

Paragraph 46 on page 21 states that: "Over the period of 2012-2017, the number of active cases varied from year to year, with the highest number in 2013-2014". [UNVERIFIED QUOTE] It is not clear how many live cases continue from one year to the next, and, how many are new cases. This, to me, identifies that there may not exist an active empirical measurement in which the Commission itself can

measure its own effectiveness, its own efficiency as a commission, as a body. Also, this empirical evidence or measuring stick may, better enable yourself, Mr. Chairman, to measure, well, is it 6 staff, is it 12 staff or will 9 actually cut the mustard, with some improved investment in technology?

The question is:

1. First of all, would you agree with the Auditor General's recommendations that, perhaps, what is lacking from the Anti-Corruption Commission is a tool to measure effectiveness and efficiencies and would you otherwise, agree to adopt the recommendations put forward?
2. Do you accept that this lack of measurement may also be a limiting factor in terms of the performance of the Anti-Corruption Commission?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: I am, happy to answer that question. If I can put a bit more colour around the sort of number that I gave you.

In terms of an investigatory organisation, the ACC is very young. In its present form, we started 2016 (two and a half years ago). Under its former guise, with the Commissioner of Police as the chairman, it effectively had the entire resources of the Royal Cayman Islands Police Service and, when the Commissioner wished to do so, he just pulled in officers from RCIPS to deal with cases. So, I would not say he had unlimited resources, but he had hundreds if he wanted to use them.

Of course, when it was completely reorganised, and we had our own investigators, then we now have six, a somewhat different number. So, that of itself creates an issue; it is a totally different concept. And we are evolving, which is why I said that it is difficult to give you a number. Sometimes 12 would make a huge difference. Sometimes 30 or 40 would make a huge difference, but we do not have that capability that the Commissioner had and we do not necessarily want that capability, because we are an independent organisation. That is not to say that we do not get support from the Commissioner and RCIPS, because we do when we want it, and we have the ability to delegate to the Commissioner in certain instances. For example, when we do require additional manpower on a temporary basis, say, when we are carrying out multiple search warrants, we do not have sufficient officers to carry out multiple search warrants all at the same time, which very often is the way it is done. If there is a female involved, we do not have a female investigator, so, we need to call upon RCIPS for a female officer to assist.

Those are the sorts of things where we have to get additional assistance. Would we need all those officers all the time? No we would not, but the nearest I can tell you, is, and I have discussed this with the

investigators, that to double that number would make a material difference to us.

In terms of our reporting, we do the best we can in terms of giving the figures and so on. Of course, cases on indictment here in Cayman do not run on a time limit. We can pick up a case anytime and reinvestigate it. It is not like in the United States where, they get time-barred and that is the end of it. To a certain extent, when we have a case that perhaps we have had to pause it for a while, for whatever reason, that does not mean it is closed. If we get further information either ourselves or from a member of the public, that case is reopened. So, it never really gets closed and it remains there and sometimes it can start to go live again and then it can be put on hold again, you just never know with these things. So, it is difficult to say that case is now closed, finished and we will never deal with it again. That does not really happen in this jurisdiction. We are different to the United States.

Otherwise, I would say the Commission talked about this; could our record keeping be any more useful in those terms. We do not do timesheets like the law firms do. We do not have a timesheet and say we have spent so many hours on this; we do not do it like that. The investigators, of course, make their notes on a file by file basis, which they have to do because that is the file that gets passed to the DPP's Office and he has to see every single thing they have done. So, to that extent, when an individual investigator does some work, the file is annotated as such. Then, there are time records, but that is merely to say that the investigator has worked on various cases for a certain amount of hours in the day and fulfilled their commitments. We do not have the sort of time sheets the way that some of the professionals do. And I do not think that would work, because they are working on multiple cases all the time. So, that would be kind of hard.

We can certainly look at seeing if we can have some method of using the buzz word 'value for money' to see if we can make sure that we can identify that because certainly, that is what we want to do and the more useful statistics that we can have, I think, the better it would be. We certainly value all these comments, but I am just being honest with you how the system works. We have been going in our present form only for about two and a half years, so we are still sort of moving from having the unlimited resources or assets to the individuals that we have employed with the ACC.

Mr. Austin O. Harris, Jr.: Nothing further. Mr. Chairman, other than to certainly thank the witness again and, in particular, to thank the Members that make up the Anti-Corruption Commission. Six, doing the work of, 30, 40, 50, doing a commendable job but certainly, in the environment in which we operate, it is a much-

needed service and I just wanted to extend this Committee's thanks.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Thank you.

Mr. Christopher S. Saunders: Thank you, Mr. Chairman.

Mr. Cole, thank you very much. I just want to say that I really enjoyed reading this report because I found it to be very frank, very straightforward and it was not sugar-coated, so I really appreciate it.

One of the things I just want to bring up is on page 12 also, section 5.1.2, where it speaks about the Public Authorities (Amendment) Bill. It says in the report: **"The Commission has concluded that it falls under the definition of 'Statutory Authority' in the Public Authorities Law ('the PAL') and should be included in the Amendment Bill, section 3 (amending section 3 of the PAL) and section 5 (amending section 54 of the PAL) 'law enforcement' as one of the listed functions where the bad faith rather than negligence standard, applies. A request was made to the Attorney General, but this was not taken forward in the Amendment Bill passed in the Legislative Assembly."**

I am just a bit curious in terms of what is it, because if this is something that the Commission or your members feel is important, maybe we need to revisit.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Yes, it was something that was discussed by the Commission that the standard, if you like, which was then put into the amendment to the Public Authorities Law, applies to most of the boards in Cayman and to the Monetary Authority and so on. But, for some reason, the Anti-Corruption Commission was left off of that and when we saw that, we made a representation to have it included but it was not included. So, I think the same standard should be across the board really. I have no idea why it was not included. Maybe it was just an oversight, I do not know.

Mr. Christopher S. Saunders: That is something that we can deal with.

Just pretty much my last question, and I guess this is more of a broader thing, where in the very first one when it speaks about proposed amendments to the Anti-Corruption Law, it says: **"Legislation to permit Investigators to Use protective gear in the course of their duties was presented to the Legislative Assembly."** I know that one was actually approved.

It goes on to say **"There are other desirable amendments to the Law. Members will meet during the next reporting period in order to discuss**

and recommend any necessary future amendments to the Law."

Just out of curiosity, we are just trying to understand what additional legislation you think would be needed to the Anti-Corruption Law in order to make it more effective? Have you guys had that discussion yet? Have you guys come to a conclusion?

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: We have not come to a conclusion yet, we are going through that process.

At the last meeting we had some proposed amendments that were put before us and we were taking them away to look at them but, some of them arise from this transition, from us in the past using RCIPs officers, to now having our own dedicated officers. There are some powers that a police officer has, that our investigators should also have, that have not been, maybe, effectively transferred so, we would like to correct that.

I do not think there is anything contentious in there at all. I think the intention was that all the powers that they would need would be transferred across, but there are occasions (and I probably would not want to speak about them here) when we, in fact, have to use an RCIPs officer, because he or she has the power that the investigators do not and that clearly is not how it should be.

Mr. Christopher S. Saunders: Thank you very much Mr. Coles.

I just want to say that I think what the ACC is doing is quite commendable. I noticed by just looking at your stats, you, I think, arrested 12 people and charged 10, so that is actually a pretty strong number. I believe that you do have one case that is going on next door at the courts right now. So, it is clear that something is being done and I just want to say, on behalf of the members here, well-done to your team and please pass on our gratitude from the members of the PAC and, I am sure, the wider Members of the Legislative Assembly.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: I will. Thank you very much.

The Chairman: Thank you very much, Mr. Coles.

We appreciate the time and we ask you to continue to keep up the good work.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: I will certainly try.

The Chairman: Alright.

Mr. Richard Coles, Chairman, Anti-Corruption Commission Board: Thank you.

The Chairman: A very trump-pinion, you know. In all of us cases, be careful what you ask for.

We will adjourn the Committee and as soon as I get an indication of when Mrs. Rose Whittaker can come, I will circulate a round-robin to establish a date and then we can add the person from Planning for that same day.

The meeting is adjourned.

At 4:04 pm the Public Accounts Committee stood adjourned.



Legislative Assembly of the Cayman Islands

THE STANDING PUBLIC ACCOUNTS COMMITTEE

MINUTES of Meeting with Witnesses

Wednesday, 20th March 2019 at 10:12 am

FIGHTING CORRUPTION IN THE CAYMAN ISLANDS –NOVEMBER 2018

Present:

Hon. D. Ezzard Miller, MLA - Chairman
Mr. Christopher S. Saunders, MLA - Member
Mr. Austin O. Harris, Jr., MLA - Member
Hon. Bernie Bush, MLA - Member

Attendees:

Ms. Manesa Webb - Committee Clerk
Mrs. Sue Winspear - Auditor General, Office of the Auditor General
Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General
Mr. Garnet Harrison - Deputy Auditor General & Freedom of Information Manager
Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance and Economic Development
Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

Witnesses:

Mr. Haroon Pandohie - Director, Department of Planning
Mr. Alan Jones - Chief Officer, Ministry of Commerce, Planning and Infrastructure
Mrs. Rosie Whittaker-Myles - Chairperson, Standards in Public Life Commission Board

Apologies:

Ms. Barbara E. Conolly, MLA - Member

1. Meeting to Order

There being a quorum present (Standing Orders 77(2) refers), the Chairman called the Public Accounts Committee Meeting to order at 10:12 am.

2. Welcome

The Chairman gave a brief welcome to Members of the Committee and thanked them for attending the Public Accounts Committee (“PAC”) Hearing. He also welcomed and thanked Mrs. Sue Winspear, along with Mr. Kenneth Jefferson and Mr. Matthew Tibbetts.

The Committee was advised that they would be dealing with the Auditor General’s Report entitled, *Fighting Corruption in the Cayman Islands –November 2018*.

Review of the Fighting Corruption In The Cayman Islands –November 2018

▪ *Fighting Corruption In The Cayman Islands –November 2018*

The Chairman invited the witness, Mr. Haroon Pandohie, to the Chamber. Administration of oath was administered and thereafter, Mr. Haroon Pandohie was welcomed and thanked by the Chair for attending the meeting and told to state his name and title for the record.

Discussion ensued with questions being asked to Mr. Haroon Pandohie by the PAC members. Before departing the Chamber, Mr. Haroon Pandohie was again thanked by the Chair.

The Chairman invited the witness, Mr. Alan Jones, to the Chamber. Administration of oath was administered and thereafter, Mr. Alan Jones was welcomed and thanked by the Chair for attending the meeting and told to state his name and title for the record.

Discussion ensued with questions being asked to Mr. Alan Jones by the PAC members. Before departing the Chamber, Mr. Alan Jones was again thanked by the Chairman.

The Chairman invited the witness, Mrs. Rosie Whittaker-Myles, to the Chamber. Administration of oath was administered and thereafter, Mrs. Rosie Whittaker-Myles was welcomed and thanked by the Chair for attending the meeting and told to state her name and title for the record.

Discussion ensued with questions being asked to Mrs. Rosie Whittaker-Myles by the PAC members. Before departing the Chamber, Mrs. Rosie Whittaker-Myles was again thanked by the Chairman.

3. Any Other Business

There was no other business on the agenda.

4. Scheduling of Next Meeting

The next administrative meeting was confirmed for:

- Tuesday, March 26th, 2019 at 10:00 am

5. **Adjournment**

There being no further business, the meeting was adjourned at 3:30 pm.



**CAYMAN ISLANDS LEGISLATIVE ASSEMBLY
COMMITTEE OF PUBLIC ACCOUNTS**

Fighting Corruption in the Cayman Islands
~November 2018~

*Edited verbatim transcript relating to the Official Report of the Standing
Public Accounts Committee Meeting—20 March 2019*

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PAC Members Present:

Hon. D. Ezzard Miller, MLA, Chairman
Hon. Bernie A. Bush, MLA, Member
Mr. Austin O. Harris, Jr., MLA, Member
Mr. Christopher S. Saunders, MLA, Member

Apologies: Ms. Barbara Connolly, MLA

In attendance: Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development
Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development

Audit Office: Mrs. Sue Winspear, Auditor General, Office of the Auditor General
Mr. Garnet Harrison, Deputy Auditor General, Office of the Auditor General
Ms. Angela Cullen, Director of Performance Audit, Office of the Auditor General

Witnesses: Mr. Haroon Pandohie, Director, Department of Planning
Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure
Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life

PAC Clerk: Ms. Manesa Webb

**OFFICIAL VERBATIM REPORT
STANDING PUBLIC ACCOUNTS COMMITTEE
WEDNESDAY
20 MARCH 2019
10:08 AM**

Meeting with witnesses

“FIGHTING CORRUPTION IN THE CAYMAN ISLANDS—NOVEMBER 2018”

Verbatim transcript of the Standing Public Accounts Committee Meeting held 20 March 2019, at 10:08 am, in the Chamber of the Legislative Assembly Building, George Town, Grand Cayman.

[Hon. D. Ezzard Miller, Chairman presiding]

The Chairman: Good morning everyone.

Let the record show that we have a quorum present, and that we have apologies from Ms. Barbara Connolly who is down with the flu.

I will ask the Page to bring in Mr. Pandohie please.

This morning we are continuing our enquiries into the Report by the Auditor General on fighting corruption and the legislation we have in place.

Our first guest this morning is Mr. Haroon Pandohie.

[Pause]

DEPARTMENT OF PLANNING

Mr. Haroon Pandohie, Director, Department of Planning: Haroon Pandohie, Director of Planning.

**ADMINISTRATION OF OATH
OR AFFIRMATION**

Mr. Haroon Pandohie, Director, Department of Planning: I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

[Pause]

The Chairman: Thank you, sir.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you.

The Chairman: Good morning, Mr. Haroon Pandohie; thanks for coming.

As you would have been informed, we are continuing our public hearings into the state of Anti-Corruption legislation, et cetera, in the Cayman Islands. We invited you because, for some time now,

the Auditor General has been reporting on the conflicts that the public perceived in the make-up of the Central Planning Authority Board and you would have gotten the references, et cetera.

Can you tell us what kind of progress you have made in terms of getting the members of the board to comply with the recommendations, such as, register of interests? And, how do you handle declaration of interests by board members?

[Short pause]

The Chairman: You will have to ask the witness that is coming next. Standing Orders do not allow us to have witnesses in the gallery. It is different if they are both appearing, but you cannot sit in the gallery and listen.

Mr. Haroon Pandohie, Director, Department of Planning: Good morning, Mr. Chairman, and good morning to all the Members. Thank you for your invitation to appear before the Committee today to speak on this report.

Mr. Chairman, as it relates to the register of interests, we have required all board members to file with the department a register of interests and those register of interests are then placed on the department's website. We are in the process of updating the various register of interests for this current year.

The Chairman: How do you determine, or how does a member acknowledge that they have an interest in an item on the agenda?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you for that question, Mr. Chairman.

At the beginning of the meeting, through the Chairman, we do an initial roll call and ask members to declare if there is any item on the agenda. Just by way of background, the agenda is made public in advance to the meeting, and is also provided to the board members in advance of the meeting. So, at the initial

roll call, we ask members to declare if there is an item on the agenda in which they have an interest or potential conflict, that they declare that conflict. What we recommend to them, and what occurs is, if there is any potential question, we ask that they declare it, we deal with that as a procedural matter and then as the agenda proceeds, we also ask the members to declare any conflict as it comes up and recuse themselves from the discussion.

The Chairman: Mr. Chris.

Mr. Christopher S. Saunders: Thank you, Mr. Chairman, and I want to thank the Director for coming here this morning.

Quickly, for the listening public: can you give us an overview of the Planning Department; what it does, its role and so forth? In doing so, we can at least educate the public. One of the things we are trying to get out of these sessions is for the public to understand the roles of these departments, generally speaking. So, while people do have an idea, just give them more of a textbook definition.

Thanks.

Mr. Haroon Pandohie, Director, Department of Planning: Through the Chairman to the Member.

The Department of Planning serves as the Administrative arm within the context of the Development Planning Law for the Central Planning Authority and the Development Control Board. Within that remit, the department covers three main areas:

- the long range planning of the policy development aspects which includes the development plan and any amendments to the law or regulations, et cetera
- the administrative arm, through the current planning process, and processing applications for planning permission; and
- the building control function, in which we process applications for permits.

Mr. Christopher S. Saunders: Just quickly, in terms of the development policy, what role does the department play in terms of working with the Ministry to develop the National Plan?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The Department, through its policy development arm, provides the technical advice to the Central Planning Authority and the development or update of a development or area plan.

You would have heard that we are in the process of updating the plans through the Plan Cayman Initiative and we have currently put out a national planning framework for discussion. So, the

department plays a large technical role in collating information, providing policy advice, planning and technical advice to the Central Planning Authority that then ultimately decides the components that make up the plan.

Mr. Christopher S. Saunders: With regards to the current plan that we have, which, I think is the 1997 Development Plan that is in use; what do you see as the shortcomings in that plan hence the reason we are working on a new plan?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The 1997 plan was a plan that met the needs of the day. As the Island develops and as our entire development framework changes, we need to have a plan that keeps up with that framework. We need a plan that is guided to deliver the quality of life that the residents of the Cayman Islands have decided that they wish to enjoy. Obviously, as a country develops, the definition of "quality of life" also changes. I would therefore say that the plan, while it was adequate for the time in which it was put in place (and this is with any country), as the situation changes, we need to ensure that we have a plan that takes into account today's kinds of situations but also lays the ground work to deal with future situations as they come up.

Mr. Christopher S. Saunders: One of the things that a lot of people had a benefit from the last time is that, a person could expand their house by 10 per cent without planning approval; does that still exist or has it changed?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

What was affectionately known as the "10 per cent rule" was repealed a few years ago. As a department, we undertook a technical analysis and we looked at the number of enforcement cases that we were having to process, as a result of persons misunderstanding the 10 per cent rule, and what the implications were of persons consistently misunderstanding and misapplying the 10 per cent rule. For instance, there was a misunderstanding that the 10 per cent rule gave the ability to do a one-time addition of no greater than 10 per cent of the current structure. It required persons to meet all the code requirements, as well as meeting set-backs; all the general requirements in terms of site coverage setbacks. It was restricted to a one-story addition.

We had persons, because they were not fully au fait with the requirements of the Law, doing a two-story addition which introduced significant structural challenges of persons not meeting setbacks. So, unfortunately, the situation we found ourselves in was

that persons, through this misunderstanding, would proceed to develop. We would then come on the tail-end, usually by a complaint from a surrounding landowner, and then have to undertake enforcement proceedings against the landowner. The land owner would then be subjected to penalties as provided for in the regulations of 10 times the standard planning fess.

Additionally, they would then have to incur significant cost in having to do a number of technical reports. For instance, on the structural side, they would have to engage an engineer to do a structural assessment of the property. If there are any deficiencies, correcting those deficiencies after the fact, can prove quite challenging. Or, they would be placed in a situation where an individual, unbeknownst to them, built an addition to their house that literally sat within a foot of a boundary. Technically, that raises an issue in terms of the adjoining neighbour accepting to have that encroachment and also, it added a number of significant technical challenges along the lines of fire ratings.

At the end of that analysis, we found that whilst the 10 per cent rule was there to provide a quick avenue for persons looking to do development, traditionally, in Cayman we would construct over a period of time, what we were finding was that the downside was greatly outweighing the benefit of being able to proceed with the 10 per cent rule.

One area as well, with the 10 per cent rule that many persons failed to adhere to, was that, they were still legally required to notify the department that they were undertaking this addition. So, all of the requirements were fundamentally the same, with the exemption of the fee. When you balance out what that fee would have been under the course of the standard planning application, as opposed to what we were consistently seeing individuals being faced with, due to these after-the-fact additions that were not in compliance with the Law, as I said, the cost greatly outweighed the benefit.

Mr. Christopher S. Saunders: Thanks very much.

I am kind of glad that you touched on the subject of enforcement because, there is this issue that many in the public believe that some people are basically exempted from the selection of enforcement. There are many people, especially some of the bigger developers, that have done things without Planning's permission or approval, and they basically seem to get away with it. Where is the penalty for them? How is that dealt with? Why do they continue to get away with it?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The Law was amended (if memory serves correct) two years ago to facilitate a fundamental change in the enforcement process. Previously, enforcements had to be driven from the Central

Planning Authority; that now has changed. They are now issued at the departmental level via me, as the Director of Planning.

One thing I will say with that is, on the enforcement side, there is the option for individuals to apply for planning permission. It does come with the 10 times, after-the-fact fee, but there is a process by which, even if we do serve an enforcement notice, the first avenue is to cure that enforcement breach; they can apply for planning permission. Often times, many persons who have undertaken illegal development do proceed to apply for planning permission and eventually are granted planning permission which closes the enforcement file. Those who do not apply for planning permission, we then proceed to submit a case file to the Director of Public Prosecution's (DPP) Office for a ruling as to whether or not there are sufficient grounds to charge. If a determination is made that there are sufficient grounds to charge, the DPP's Office then proceeds with laying charges to the courts and the process then is dealt with through the courts.

Mr. Christopher S. Saunders: Approximately how many files did the Department of Planning submit to the DPP for prosecution and roughly, how many of them were prosecuted?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

I do apologise to the Member. At hand, I have the number of enforcement cases that the department processed last year, which was 248, and to which I also note, was the highest number, if we look at a five year window. I do not have at hand, that detail of information but, **Mr. Chairman, may I commit to provide that to the Member and the Committee in writing at a later date?**

The Chairman: That would be fine.

Isn't the fee for the 10 per cent addition to a house, zero?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman. Yes sir.

The Chairman: I was just confirming that the Government made that change in regulations without me knowing.

Mr. Bush.

Hon. Bernie A. Bush: Through you, Mr. Chairman.

Was the Owen Roberts Airport one of those cases?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

I would ask if the Member could further clarify the question for me, please.

Hon. Bernie A. Bush: Was the Owen Roberts Airport one of those cases that proceeded without Planning's permission for works?

[Pause]

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The airport did receive Planning's permission. Through the development process there were a number of iterations to the plan, but based on my records, all necessary planning permissions were achieved.

Mr. Christopher S. Saunders: Sorry.

Did they start with Planning's permission or they came back afterwards and got permission (that is, the airport)?

Mr. Haroon Pandohie, Director, Department of Planning: Without any information to contradict, they achieved Planning's permission prior to starting.

The Chairman: Mr. Austin.

Mr. Austin O. Harris Jr.: Thank you, Mr. Chairman, through you and certainly again, good morning and welcome as a witness. Thank you for being here.

There has been much discussion about the relative development boom taking place in the Cayman Islands right now. According to the Office of the Auditor General's Report, the number and value of permissions granted in the Cayman Islands increased significantly in the five years from 2013-2017. In 2017, the number of planning permissions increased by 40 per cent to 1,156, which can be found on pages 28 and 29 of the report; while the value of planning permissions increased by a whopping 180 per cent to \$800 million in 2017. So, very clearly, a development boom and is presumably good for the economy.

The Central Planning Authority delegates certain powers to the Director of Planning to approve certain permissions known as "Administrative Approvals". We note, curiously, in the report that the number of administrative approvals decided by the Director of Planning, works out to about 600 per year; that is 51 per cent of the overall planning approvals in 2017.

I wonder if you could explain your role in making these approvals and what criteria must be followed in order to grant those approvals, sir?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

A number of years ago, the Central Planning Authority, with the approval of Cabinet, delegated to the Director and Deputy Director of Planning, the

ability to grant administrative approvals. These relate to houses, duplexes and sub-divisions under six lots and 10 per cent additions to commercial buildings, industrial buildings et cetera, but nothing that would change what we would consider to be a material change to the initial grant of planning permission.

In considering an approval for administrative, the process is fundamentally the same, as if an application would go to the Central Planning Authority. So, an application is submitted to the Department of Planning, that application is assigned to a planner who is charged with doing a technical assessment of the application. If the application falls within one of those criteria that has been delegated to the Director or Deputy Director for the approval, and meets all parameters of the regulations, again, just to highlight that neither I nor the Deputy have delegated authority to grant a variance. Therefore, for a house or duplex, if it meets all the necessary setbacks, site coverage, building heights, et cetera, that application can then be considered for administrative approval.

The application is processed by a technical planner who is required to complete a detailed checklist which again verifies things such as: site coverage, minimum lot size, sufficient access to the property, water supply, waste disposal, just to name a few; that those things have been verified to be in accordance with the regulations. The application is then forwarded with the recommendation from the technical planner, to either me or the deputy for consideration. We would then review the checklist and the necessary plans to once again confirm that the application does conform with the regulations and applicable laws. If they do, we then have the ability to sign off on it.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman, through you, just to follow up.

When we talk about some of those applications with the variances that, again, go back to the CPA itself to make a decision, it has been shared to me by local architects (whether they be small or medium size or even home owners who are seeking to expand on their property) that the number of complaints by CPA inspectors who come out and say, well, they reviewed the plan, they identified areas that need improvement and they send the architect back to make those corrections. Those corrections are made, returned and the application resubmitted along with a resubmitted fee. They are then often told that there are new issues, not previously identified in the first inspection, that again, results in that architect or developer going back to the drawing board to correct those. And it has been stipulated to me that this happens quite frequently, and not only does it delay projects, but it increases the cost associated with many of these developments. Can you explain to this

Committee, why there is this back and forth, and, in particular, what is being done to address them in the initial inspection, so that we can save both time and money?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman, to the member. On a point of clarification: when you refer to inspections, would that be in-field inspections or perhaps the plan review process that occurs within the office, prior to the permit being released?

Mr. Austin O. Harris, Jr.: Through you, Mr. Chairman. Thank you very much for that clarification.

Actually, it is both.

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman. I thank the member for that clarification.

If I can address the plan review aspect first: an application for a permit would be submitted to the department, an initial verification is done electronically to ensure that all components of the application are submitted at the time. Over the course of many years, in looking at our operations and the things that have slowed down that process, we've noticed an increasing trend in applications being submitted which were incomplete.

So, an application gets to a Plans Examiner, after sitting in the queue, only for them to open the file to say, *Well, I am missing X, Y, and Z, I have to reject the application.* So, we do an initial check of the application to make sure all the necessary documents are contained in the application.

I will take the example of a house. A house is submitted to the plan review process, and through the years we have strengthened our combination plans examiner and inspector protocols. Previously, if a standard house has four major components that are inspected: structural, plumbing, mechanical and electrical, in previous years, those were done by four separate individuals, which, again, led to some levels of inconsistencies, as well as increased timeframes. The majority of those are now dealt with by one plans examiner, the structural plumbing and mechanical, and the electrical done by a separate inspector.

Through that process, any code deficiencies, again, that process is to ensure compliance with the codes. During that process, the plans are reviewed to determine that they are in compliance with the codes. If they are determined to be in compliance, an approval is granted and it moves to the next step. During that process if there are any code deficiencies identified, those are sent back via the online planning system to the agent, asking them to correct the deficiencies and resubmit the plans.

Over the years, we saw the needs and have been undertaking a series of educational components with the building code to ensure that we are all

operating on the same page, as it were, that what the examiners are looking for, that the architects and the various agents are clearly informed as to what those requirements are. I would say that that has gone a long way to address some of the back and forth. For instance, we have adopted the 2009 International Building Code and International Residential Code. Along with ensuring that we had a code that was robust and met today's safety standards, a large component of that was to make sure that we had a document readily available to everyone.

Under the 1999 Standard Building Code, one of the deficiencies we identified was simply the fact that the same information was not available to everyone. Also, due to the age of the document, it was not readily available for anyone coming into the industry, or even persons who have been there for a number of years. Fundamentally, we had a situation within the department where we were looking at one set of standards and could be referencing a code section. We could then say, *You must meet section 2108 as it relates to egress windows.* However, the individual doing the design work may not necessarily have access to that exact code document to ensure that they are meeting those standards.

Again, through adopting the code and through some various educational components, we have hopefully gone a long way in ensuring that everyone is using the same standards in which to do the designs.

Now, in regards to the question of the back and forth, because buildings are fundamentally a collection of systems, unfortunately sometimes a change in one area, if you are not cognisant of the impact on another area, leads to a knock-on effect. For instance, separation issues on electrical. Again, this is why we try to ensure that one examiner is taking a holistic view of the project and is not sort of focusing solely on one area and misses the implications down the road. We do have a way to go with that but we are moving forward in that direction.

Back to the example of electrical: an examiner may look at it and determine that where the electrical panel is being placed, it creates an encumbrance, or something called "working clearance". Now, they may adjust the location of the panel to address that technical aspect, but then, they might put the panel too close to say, a gas appliance, which does not come up until someone is looking at the gas plans and layout. This is why we are trying to fully integrate the system. So, when someone looks and says, *Hey, there is an issue with the working clearance on this panel,* they can also note the fact that in addressing that issue, please ensure that the panel does not exceed the required minimum separation from a gas appliance as well. That is one of the areas, leading to the back and forth, that we have found over the years.

Mr. Austin O. Harris, Jr.: Mr. Chairman, just one final question.

I thank you for those answers and certainly, I thank you for the explanation, as it relates to Cayman's building codes to which, I do not think anyone would disagree with, are quite robust in this country and it comes as a direct result of your diligence and that of your department.

As it relates to code changes, amendments, updates or otherwise, is there a central repository where all architects, developers and those involved in the building process can access these specific changes so that they can stay current with various codes and so that they can avoid the back and forth?

Thank you, sir.

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The codes are produced by the International Code Council and they are copyrighted documents. So, on the department's website, we do provide copies of only local amendments and those can also be found within the Building Code Regulations. The actual document itself can be purchased from the International Code Council and it can be either purchased in the hardcopy format or in PDF format. That was one of the huge pushes for us to move to a more updated code, so that it was readily available to individuals and they could then purchase the codes.

Initially, when we started the code change process, the department purchased a number of copies and provided those for sale to persons within the industry; again trying to ensure that the information was readily available to all persons.

The Chairman: If I could bring you back to the makeup of the Central Planning Authority; does your department consider that the Public Authorities Law applies to the Central Planning Authority?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you for that question, Mr. Chairman.

Legal advice was sought and provided via the Ministry. You may wish to follow up with the Chief Officer for the Ministry to clarify that the Central Planning Authority was not covered by the Public Authorities Law.

[Pause]

The Chairman: Even with that interpretation, are you aware of, or have you gotten any instructions from the Ministry that the CPA should at least comply with the spirit of the Public Authorities Law?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir. The Chief Officer has written to the various chairmen for the various boards that fall under

the Department of Planning, outlining certain aspects such as: encouraging them to fill out the register of interests and to ensure that those are provided in a timely manner and are available for inspection.

The Ministry has also supported us in endeavours to open meetings to members of the public. For instance, with the Central Planning Authority, those meetings are open to members of the public. Previously, only persons who are invited to appear before the Authority were able to attend the meeting, but that has now changed; the meetings are open to the public, with the exception of the deliberation and voting component of the meeting.

The Chairman: Is there any particular reason why the deliberations and the voting are prohibited from the public?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

At this time, the members of various boards feel that to ensure there is open, free and frank discussion, the deliberation and voting components of the meeting are not open to the public.

The Chairman: Well, that would indicate to me that the so-called "open and frank" discussions are not necessarily about the application. If the application is open to the public, the presentation of the objectors are open to the public, the presentation of the person applying is open to the public, why would it be necessary to have the deliberations of the evidence presented to the board? Certainly, I am assuming that the only deliberations being done by the CPA is based on the evidence put before it.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman and your point is taken.

What I would say in response is that we continue to work with the board along those lines to encourage and provide the necessary mechanisms to help the board to move to the point where all aspects of the matter would be open to the public's viewing.

The Chairman: The last time that I found it necessary to go to a CPA meeting, I was not allowed into the public aspect of the CPA until after. I do not know what went on, but until the CPA decided that *Yes, we started the meeting, so the public can come in now*, that is not what I believe is envisaged by the regulations and the need to have these things transparent. I was very concerned there were things going on in there that I should know about but I was not being privileged to; therefore, there was a deliberate reason to keep me out. Is that the situation,

that in each agenda, there are matters discussed before the meeting is open to the public?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I do recall the specific incident that you spoke about and I am happy to say that that prompted a change, so all aspects of the meeting are open, with the exception of the voting and deliberations as I said earlier; my apologies, sir.

The Chairman: It is the actual act of voting that is necessary for the public to know, if we are going to be able to clearly demonstrate that there are no corruptive practices occurring and that people are not being influenced to make a certain decision. So, I trust that in the very near future the actual decision making will also be a matter for public scrutiny.

Another question is: do you have a way of auditing whether somebody does in fact declare an interest in a matter before the CPA because of their registrar?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

As I said earlier, the register of interests are provided to me as executive secretary and they are then uploaded to our website. We have an internal process by which we check those registries and look at applications to see if there is anything that may readily be apparent. We will raise those again during that initial stage of the meeting, which we ask persons to declare any conflicts. So, that is when those discussions would occur.

As it relates to a detail auditing or verification of the information, no sir, we do not have a process to do that.

The Chairman: Would that be something you would consider in the future? If we are going to rely solely on the individual declaring an interest, there really would be no purpose of having the registry available.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir, it is something that we are actively working on and looking at the various international standards as it relates to that.

At this time, because of the state of legislation, the focus is on education and in providing all the members with the various pieces of legislation that governs their conduct. Also, through that education, I guess, within a nutshell, making sure that everyone is fully aware of the penalties and the outcomes if they do not comply with those various requirements.

The Chairman: What action could you take, if any, if a board member did not comply with the declaration of interest?

Mr. Haroon Pandohie, Director, Department of Planning: At this point in time sir, outside of continuing to ask that they provide, and seeking the assistance of the Chairman and ultimately, the Ministry, I would be limited as to what action I could take to enforce that.

The Chairman: Are you consulted by the Ministry prior to the appointment of individuals to the CPA? Is your approval for a member of the CPA required before a recommendation is made to Cabinet?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

There would be a general consultation but no, my approval is not required.

The Chairman: So therefore, your influence on who is appointed by Cabinet as a Member of the CPA is almost non-existent?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I would say outside of being asked to provide a recommendation or flag in any areas of concern, it would be limited to that, sir.

The Chairman: Are you aware of any methodology employed by the Ministry in trying to select persons for the CPA, or, is that strictly a political decision?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I am not aware and would ask perhaps, sir, if that question could be directed to the Chief Officer responsible for the Ministry of CPA.

The Chairman: You probably will not have this but, can you provide it for the Committee? We have heard a lot about approvals and planning and the value of what has been approved. *Would it be possible for you to provide us with what percentage of the 1,156 approvals and \$800 million in value that actually received a Certificate of Occupancy (CO), or, is in the process of getting one?*

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir, we would be able to do a process by which we can compare what has received Planning's permission to what has received a permit and ultimately what has proceed to a Certificate of Occupancy. I would undertake to provide that to the Committee in writing.

The Chairman: Thank you.

Do you believe that the Ministry is providing you with the kind of resources; that is, infield inspectors and planning inspectors, to process this

kind of 40 per cent increase of applications? How many resources, if any, did you get to deal with that kind of workload increase?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Some additional resources were provided within the areas of plan reviews and inspections. As you said, we have experienced a significant growth in the amount of work produced by the department. I have some quick stats here. For instance, last year alone, we conducted over 10,000 building inspections. So, it is a significant amount of work that is provided. What we are trying to do, is to take a multifaceted approach to it by:

1. Looking to leverage technology to drive efficiencies where we can.
2. Looking to use third party entities. (So, we have launched the third party plan reviewer which can also be increased to cover inspectors as well.)
3. Having a programme to engage private sector and to assist us with conducting reviews and inspections, along with some other areas as well.

The Chairman: If I am doing a building that requires foundation inspection and I do not apply for foundation inspection, the Law carries penalties against me as the developer or the contractor. What protections exist in the Law for the builder if inspections are not timely? Is there any timeframe? For instance, does the Law allow, if I apply for a foundation inspection, that it will be done within 24 hours, 48 hours, or I can go ahead and do my work because I have contractual obligations for my client?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Within the department's budgetary targets that is where that information would be listed. We have a budgetary target to provide inspections within three working days of being requested. Often times, we are able to do them, if not the next day, then within 48 hours of being requested.

The Chairman: There are currently no penalties for you not getting inspection done in a timely [manner]? Does it depend solely on the resources that you have available?

Mr. Haroon Pandohie, Director, Department of Planning: Yes, Mr. Chairman. There are currently no penalties in the Law, that in the event we are not able to conduct an inspection within that timeframe.

The Chairman: One of the things that may have influence on the matter before us today; that is, the corruptive practices, discretions by the board. It seems that the current legislation allows the board to vary just about anything that exists in the Law. Do you believe it is time to either, have that discretion curtailed or removed and you meet the code or you don't meet the code?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I would say that in my view, there would always be instances in which some level of discretion would have to be exercised. But sir, I do agree that as the industry matures, and as a country, we need to look closely at ensuring the level of variances and processes by which that is done to: (1) streamline it; and (2) ensure that all necessary standards are properly documented in the legislation and they are readily available to everyone and there is consistency across the board.

The Chairman: You will be aware of the development that I have made, many representations about the wide use of discrepancy which eventually led to an amendment to the Law, that all shoreline properties must now have a certified high water survey within the last six months. The particular development I am talking about, the high water mark, the water was shoulder deep. However, even with that requirement, as I understand it, the CPA can still vary the setback.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir, it is an area in which Central Planning Authority has what we refer to as a variance process but for which they can grant a variance for a seaside setback.

The Chairman: You have dealt with the national policy positions. As you mentioned earlier, you do not have the kind of input that you would need, in terms of the makeup of the CPA, to allow you to recommend some kind of balancing act that not every member of the board is in the construction industry or owns a hardware store. You do not have that kind of influence under the current way that the board is appointed?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

That is correct.

The Chairman: How then does the Ministry or the Chief Officer, who is your direct line of authority, expect to hold you responsible for enforcing register of interests and conflict of interests on these board members?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I would ask perhaps if that question could be directed to the Chief Officer.

The Chairman: It will be, but right now, is there no memorandum or instructions that you have received from the Chief Officer or the Ministry that would aid you in trying to get compliance with the aspects of the spirit of the Public Authorities Law?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Outside of the initial communication I referenced earlier, in which the Chief Officer wrote to the various chairs of the boards, no sir.

The Chairman: Are you aware of that correspondence containing any punitive actions? That is, if board member B does not submit a register of interests within 90 days, his appointment to the board will be revoked.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I have not reviewed the correspondence for quite a while but from what I remember of the correspondence, there was no punitive actions outlined in the correspondence.

The Chairman: Are you aware of any changes in the appointments to the Central Planning Authority in recent times?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Not outside of the standard course in which a member, for one reason or another, resigns their appointment from the board and they are subsequently replaced.

The Chairman: *How long has the current Chairman of the CPA been in that position?*

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

It has been a number of years, but just to ensure that I do not provide the board with an inaccurate timeframe, I would ask if I could provide that to the Committee in writing.

The Chairman: That is accepted.

Can you give us an outline of your department's anti-fraud and anti-corruption processes that you have for your staff and what portion of that, if any, extends to the board members?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

The department, being a government department, we fall under various policies such as: the CIG's Anti-Fraud Policy, Whistle-Blower Policy, et cetera. So, as a department, we ensure that we meet those requirements. For instance, all staff members are required to complete a registry of interest, which is filed with me. They are also required to seek approval to have any outside interest, such as a second job, and those are tracked and kept up to date.

As it relates to internal operations through a risk assessment process, we have sought to ensure that our management systems provide sufficient things such as separation of duties. One of the areas, as well as with us instituting our electronic file management system, is that we are able to offer greater transparency of the process; it greatly enhanced their document retention, as well as their ability to track better, the operations or actions of users. For instance, with regards to single logons we can check to see what actions are taken by a staff member, what time, automatic date stamp, time stamps, et cetera.

The Chairman: When the CPA turns down an application, which I would assume is based on technical recommendations you have made, would there normally be a requirement of substantial changes to the technical part of the application; whether that is from an engineering point of view, electrical, plumbing setbacks or whatever, before resubmission to the CPA?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir. If the Central Planning Authority ultimately decides to refuse an application, the applicant does have the right to submit a fresh application for consideration. In doing so, as a department, we ensure that all necessary information is presented to the Board; that is, the reasons for the previous refusal, which would also be provided to the applicant, so that the applicant would have to demonstrate how they have addressed those deficiencies that led to initial refusal.

The Chairman: They also have the alternative of making an application to the Appeals Tribunal if they do not agree with the decision, but that is only on points of law that would not be on design. Only sections that are covered by law can appeals be made, right?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir, an appeal can be filed based on the decision of the Central Planning Authority to the Planning Appeals Tribunal. And yes sir, there would be four points, which are points of law that an appeal can be filed on, for instance:

1. The decisions that variance with the development plan.
2. It is at variance with the laws and regulations.
3. That the board breach the principle of natural justice; and or
4. That the board took into account something that it ought not to.

Again, just on the point of natural justice. For us, that is why it is so critical and important that we enhance the level of transparency of the process, so that all persons are fully informed as to what occurred.

The Chairman: I assume then, resubmissions would normally be about matters that were not a matter of the Law which would allow someone to go straight to the Appeals Tribunal.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir, the majority of resubmissions are the applicants seeking to address the identified deficiencies and then resubmit for the board's considerations. Throughout that process, earlier I mentioned the technical review aspect. Ultimately, the decision is the Central Planning Authority's. However, when we do that technical review as a department, it is our responsibility as well, to flag to an applicant any potential deficiencies where they are not in compliance with the Law. In doing so, they have an opportunity to address those prior to, or provide the Central Planning Authority with sufficient reason as to why they cannot meet those requirements prior to the application being considered by the board.

The Chairman: The most recent case that comes to mind for me was the extension of the tunnel on West Bay Road. I note that according to press reports that that was not an appeal to the Appeals Tribunal; that was a resubmission to the Central Planning Authority. Were there substantial changes to the design and structure the second time around which allowed it to be approved?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

Yes sir, a new application was filed in response to the refusal. In refusing the application, the Central Planning Authority determined that sufficient reason had not been provided to warrant an extension to the tunnel. So, in making the new application, the applicant sought to include additional information that was previously not before the board to justify or demonstrate the necessity for increasing the length of the tunnel.

Again, Mr. Chairman, if I may: given the rules under which an appeal is heard, an applicant is not

allowed, without leave of the Chair, to add additional information for consideration by the Tribunal. So, if an applicant fails to provide the information or wishes the Central Planning Authority to have new information in which to consider, they would have to file a new application to do that.

The Chairman: I find it curious that you used the term "sufficient reason". Was there not a legal development and planning requirement which was the reason why it was turned down? Was it turned down on the basis that there was not sufficient social economic or design . . . well, it couldn't be design because that would be structure . . . social economic reasons provided in the first instance, which were provided in the second instance, that allowed the board to approve the application?

Mr. Haroon Pandohie, Director, Department of Planning: That is correct, Mr. Chairman.

If I may, I would add that when we referenced earlier in terms of areas of the Law, and how we can strengthen the legislation, I believe, that that highlights the need to strengthen the legislation to be clear as to what those various components are, so that an applicant is clear as to what they need to address and that the board has the necessary information before it.

The Chairman: I do not recall a lot of reasons, other than technical, why an application could be refused, or are required to substantiate an application, other than things like polling in the neighbourhood within a small radius, et cetera; and those that usually require the adjoining land owners to object, as opposed to having the developer have the support of the adjoining landowners.

Do you believe that the Development and Planning Law should include those kinds of considerations or should it be left to the technical code that is applied to buildings which is contained in the International Code?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I would agree that there is a need for an enhancement in the information that is provided or the rationale given, in terms of a grant of planning permission because the technical codes would apply at the permitting stage, so, planning permission would have already been granted.

In the technical codes, you address life safety issues. They address minimum standards to protect the public health and safety but they do not address the issue as to whether or not a particular type of development is appropriate; and what are the potential social economic impacts of that development or even

the impact on the traffic standards, et cetera, building codes would not address those areas.

The Chairman: Do you believe that that kind of approval should be handled separately from your department which would be left then, to concentrate on the technical requirements and the building code? The reason being is that I see a conflict or, at the very minimum, you being put in a difficult position where something may be approved but does not meet the Law under which you are administered.

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

I would suggest sir, that to ensure that does not happen, I think that is why it is critical that the process is fully integrated. One of the functions of my role as the Director of Planning in advising the board is to flag issues such as this. So, to ensure that the board is fully informed that, although they may look at a particular development for instance—and just one that went through the process a bit is the definition of a duplex—the board may take a particular stance that the Law may provide them some level of discretion to determine that a project fits within a particular category. But, as the Director of Planning, my staff and I are there to provide the necessary advice to fundamentally say to the board where they do have discretion and where they do not; and to ensure that we do not have a situation where something is granted permission on a particular use type, only to get to permitting stage, to then, as a department, for us to say, *I am sorry, but yes, I appreciate that you have been granted this permission; however, you do not meet these technical standards.* And so, we ensure that we deliver a fully integrated process to be sure that that level of inconsistency is minimised or does not occur.

The Chairman: Mr. Austin.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman though you.

Certainly, I want to thank you for the comprehensive questions, as it relates to the anti-corruption controls. Forgive me if this question has been asked before, and if it has, perhaps you can identify that to me.

Looking at paragraphs 96 and 97 of the report which can be found on page 35; it states that **“Since 2007, the Department of Planning has adopted a comprehensive procedures manual that outlines the entire planning process. It defines the core processes for planning permission and it provides an overview of the department’s structure, functions and responsibilities.”**

Paragraph 97 states: **“All employees are required to complete a notice of interest each year ...”**

My first question, Mr. Chairman, through you, is: Does this requirement also extend to the CPA board members on an annual basis?

Mr. Haroon Pandohie, Director, Department of Planning: Thank you, Mr. Chairman.

On an annual basis, through my role as the Executive Secretary to the Central Planning Authority and the other boards, I work with them to ensure that these register of interests are provided to us. They were provided last year and we are in the process of updating them for this year, but there is no legal requirement that they do so.

Mr. Austin O. Harris Jr.: Thank you, Mr. Chairman, and through you: a follow-up.

Paragraph 98 states in the second line: **“... the Department of Planning relies on self-declaration by employees of any conflict of interest prior to working on a planning application. We found no evidence that conflict of interest forms were being checked before work is assigned to staff. This creates a risk that employees may be processing planning applications in which they have a conflict of interest. As at June 2018, ten of 34 (29 per cent) staff notices of interest for 2017 had not been completed. This creates further risk as notice of interest forms are not being completed in a timely manner.”**

My question, through you, Mr. Chairman, is: What assurances can you provide to this Committee and this country, that those persons, both processing and approving plans, do so with the highest levels of integrity?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman, first of all, in relation to that, I thank the member for the question.

We have noted the recommendation and have improved, ensuring that we get full compliance from all staff members for their notice of interest forms and we are in the process of updating those for this year.

As it relates to ensuring that all necessary standards are met, as an organisation, we strive to ensure that we have sufficient separation of duties in terms of assignment of work. So, staff are assigned work in which they are processed. How the system is set up, they are not permitted to select what projects they are assigned to work on. That occurs whether it is an application for planning permission, a plan review to undertake, as well as an inspection.

We also ensure that we have certain checks and balances; for instance, on the inspection side, we do not have project specific inspectors. So, it is a rolling process, in terms of who is assigned to a project.

Again, we strive to ensure that all of our staff personnel are trained to the same level and standard

to where it is not a situation of one particular inspector showing up on a particular job site all the time.

We also include other inspection mechanisms; for instance, prior to achieving a Certificate of Occupancy, the various inspectors will go out and do various disciplines for the inspections. But, as a final check and balance, there is a requirement that a planner, who is separate from that inspection process, goes out to verify that the building has been built in accordance with the approved drawings; that sign off is required, as well as with larger projects.

Outside agencies are also required to provide inspections, whether it is the Cayman Islands Fire Service, Water Authority or NRA [National Roads Authority], to the particular area of construction prior to a Certificate of Occupancy being issued. That Certificate of Occupancy is finally approved by either, me or the deputy director, again, outside of the inspection process, so that, along the way we do not have a situation where an individual could potentially conduct a technical review and be fully responsible for signing off on a project.

[Pause]

Hon. Bernie A. Bush: Through you, Mr. Chairman.

Do you have knowledge of any members of the Planning Department staff having permission from any of the deputies, yourself, or those above you, to operate construction related business?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

No sir. Inherently because of the inherent conflict perceived or otherwise, permission would not be granted for such an operation to occur.

Hon. Bernie A. Bush: Thank you.

Mr. Christopher S. Saunders: Through you, Mr. Chairman, and I want to thank the witness. Thus far, he has been quite informative, in terms of his testimony today.

With regards to the land for public purpose, what is the concept surrounding that whole process? More importantly, how is it and what is the process in which a developer can reclaim or buy back the property previously set aside?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

Under the Development Planning Regulations, lands for public purpose, the Central Planning Authority, in considering a subdivision of land, can ask for up to five per cent of the total area of that subdivision to be set aside. That land is set aside, either for active or passive recreational purposes for

those residents within the development to which it applies; it is not open to the general public per se. It would be persons within the development, as I said, for active and passive recreational uses.

One of the areas, Mr. Chairman, if I may be allowed to elaborate a little bit, is that we are looking at, as a part of the development plan and review process, making sure that the LPP lands are actually put to a full proper use. As it stands right now, it only has to be allocated, but there is no legal requirement that any further enhancement of that property be done to actually make it viable for active or passive recreation. We have identified that it is an area which needs to be addressed; because as a country and as our development pattern becomes denser, we believe it is going to be critically important that those areas are actively developed. In doing so, persons will have access to sufficient open space and recreational spaces.

Mr. Christopher S. Saunders: Thank you very much for that, which now goes to my second question of active and passive use.

Now, there is a particular development in my constituency, where the NRA has actually taken a portion, I understand, for basically use of a future road and it is one of the best pieces of property that would be used for a park. Now, under what authority, if the NRA needs something for roads, is that not something which should have been sorted out and not the LPP taken for that?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

I am not familiar with the exact situation. However, prior to a recent amendment to the Law, lands for public purpose designation were allowed to be used for designating future road corridors. Again, in revisiting the legislation, it was determined that perhaps that was not the best use of lands for public purpose and that there was another mechanism to achieve that. That was removed from the list of potential uses for the property for LPP lands. So, that may have been an older subdivision in which at the time, they were allowed to use a LPP designation as a potential future road corridor but again, that is something that would not be permitted today.

Mr. Christopher S. Saunders: So, if the land is designated for future corridor and it has not been used, with the change in the Law, in essence, could the residents of that area go and use the property?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

If I fully understand the question, the planning permission that would have been in place at the time

would still stand. If it was designated as a LPP for the purpose of a future road corridor, it could be utilised for that, obviously, subject to the acquisition process for it. However, going forward, that designation would not be used for LPP lands.

Mr. Christopher S. Saunders: Well, I can tell you which one it is to save any vagueness; it is little Savannah Gardens which is still a fairly new sub-division.

Now, the LPP that is designated inside there, which would have made a really good park for those residents, for whatever reason, it appears that because it is the LPP next door to another subdivision, there is this belief about joining all of these roads and the whole nine yards. At the end of the day, the people of that community are without a park and it is a residential area with over 100 homes and no park. In essence, the only use for the LPPs now, would be for increased traffic through it, which would disrupt a peaceful residential community having more traffic coming from a neighbouring sub-division. The question then is: What will the residents have to do to get their LPP back so they can have a park in that area?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The residents of the area can apply to modify planning permission to remove the designation of that area as a road reserve. The designation would have been solely for planning purposes, as you alluded to. Previously, it was used to ensure connectivity between subdivisions and ensuring that land was set aside for future roads, but we have other processes such as the Boundary Planning process, as well as designating actual future road corridors as a part of the development plan. In our view, that better addresses the needs for a future road infrastructure, without encumbering or using the lands for public purpose process. As you rightly said, that really should be used to enhance individual subdivisions and to provide the residents of those subdivisions with adequate recreational spaces.

Mr. Christopher S. Saunders: Do they send the letter to you? I guarantee you are getting that letter next week. Is it to be addressed to you or to the Central Planning Authority?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

Yes sir, the letter would be sent to me, as Director of Planning, and I can then subsequently raise it with the Central Planning Authority.

Mr. Christopher S. Saunders: Okay.

The next issue that again goes towards development is the issue of street lights and speed bumps, like basic stuff within a general sub-division.

Now, I have large sub-divisions in my area and a lot of those roads are still in the developers' names therefore the roads are private roads. From that standpoint, the residents in those areas require some level of lighting to go in, as part of the infrastructure, and as part of their safety, security, et cetera. The question then is: Is there a minimum amount of lighting/streetlights that are supposed to go into each of those subdivisions? What happens is that, the people bought their houses and the minute they turned it into their home, they began to look at things that they were not looking at before. They just wanted to get their houses first, and after they got it, they are like, *Wait a minute, where are the speedbumps? Where is the lighting?* They then, basically turned to the Government for assistance, in that regard. I believe at this point, there are certain basic requirements or basic needs that should be met in those overall developments and not for it to become a problem for government after they move in.

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

A recent amendment that was done to the regulations introduced an infrastructure fee per subdivision lots. We are seeking to address that fundamental issue. In that, the planning process governs the creation of the subdivisions in that process, but then, it was ensuring that there was a funding mechanism to collect some level of funding, that, as you said, sir, would go towards such things as street lighting, as well as traffic calming measures, et cetera.

A fee of \$100 per lot was introduced under the infrastructure provisions to be able to then be transferred to the National Roads Authority (NRA) to facilitate its individual programme as to providing street lights. With that, I would say there is currently no process within the planning process that dictates the provision of streetlights and where they go and those particular standards.

Speaking earlier, in terms of the need to enhance their standards, I would suggest that the area needs to be addressed as a part of this overall development plan review process. In doing so, we would have in place, documented standards and persons would have some level of assurance as to what type of infrastructure would be provided. Thereafter, we could use that to ensure that we have adequate funding mechanisms in place to provide that level of infrastructure.

As our urban patterns change in developing, we have become more densely populated and fundamentally sophisticated in our development pattern. There's going to be fundamental things that previously did not have a certain level of discretion to it

and because it goes to quality of life, I think consumers will expect it to be provided. So, I think we need to be proactive in ensuring that we have measures in place to address those needs.

Mr. Christopher S. Saunders: Can you just confirm for me that those funds collected for infrastructure needs were transferred to the NRA?

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

The Law provides for the Minister, with the responsibility for Finance, to be able to allocate the infrastructure proceeds. The latest information I have is that those funds were to go to the National Roads Authority. Perhaps I could be allowed the opportunity to confirm and provide that to you in writing.

Mr. Christopher S. Saunders: Fair enough. I am just putting them on notice, if they are listening, that I am coming for some street lights and some speedbumps.

The Chairman: This is what happens when you want to have Finance Committee every two years you see. Are there any other questions?

Mr. Christopher S. Saunders: Just thanks again to the Director.

One final question from me, sir: in your opinion, obviously as the person on the ground; is there any law or legislation we can change or implement that would actually make your job or your life easier? For the reason that, as it stands, there is a perception that only certain people are actually prosecuted by the Planning Department and the big fishes keep getting away. The whole idea behind this report in dealing with corruption is that people need to have some level of confidence, that the law is being applied equally across the board. It also creates a situation as though the smaller homeowners are subject to one rule and the bigger guys have something else. Like I said, this is for you to do your job and ultimately, this is the area in which those things are dealt with in this Legislative Assembly.

Is there anything that we can change, implement or do, that would make your job easier and, in essence, make the process more effective?

Thank you.

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

I thank the Member for the question and the opportunity to provide that specific feedback.

I would say, sir, I think, it is critical, because, in looking at the regulations and the Law holistically, we are able to better define the standards by which everyone will be held accountable. This is to ensure

that there is consistency across the board and it is clear to everyone what constitutes a breach of planning permission. So, there is not a level of discretion or ambiguity, in terms of what that breach is; but by clearly defining the standards, we can ensure that there is consistency across the board and that everyone is held to the same standards. This would then ensure that the enforcement process is clear to all concerned.

Mr. Christopher S. Saunders: Mr. Chairman, again, I want to thank the Director publicly. He is one of the very few heads of departments that, if someone comes to me with an issue, he actually takes calls and returns calls. He is a consummate professional and I want to say a great representative to your Department and your Ministry and I thank you on behalf of my constituents for the work that you have done and continues to do.

Thank you.

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman.

I thank the Member and the other Members of the Committee for those kind words.

The Chairman: Thank you, Mr. Pandohie.

You can duck this question if you want because it is not intended to be a political question but it is a question that has eaten away at me for a long time. Do you think that we have progressed beyond the need for a CPA and that planning approvals should just be left to the technical people and the competence in your department?

Mr. Christopher S. Saunders: Don't answer that. Don't answer that.

[Laughter]

The Chairman: In all seriousness, thank you very much for your time. We appreciate your frankness and your answers, sir. Thank you, it is refreshing.

Mr. Haroon Pandohie, Director, Department of Planning: Through you, Mr. Chairman, thank you and to all the other members of the Committee, as well as the staff of the Auditor General for the great work that they do.

The Chairman: We will take a break and will be back at 1:30 pm, when we will be seeing Mr. Alan Jones, the Chief Officer for the Ministry of Commerce, Planning and Infrastructure. And at 3:30 pm, we have Mrs. Rosie Whittaker-Myles, the Chairperson, for the Commission for Standards in Public Life Board.

Proceedings suspended at 11:31 am

Proceedings resumed at 1:44 pm

The Chairman: Good afternoon.

Let the record show that we have a quorum.

If I could ask Mr. Chris to bring in Mr. Jones, the witness, please.

[Pause]

MINISTRY OF COMMERCE, PLANNING AND INFRASTRUCTURE

ADMINISTRATION OF OATH OR AFFIRMATION

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

[Pause]

The Chairman: Good afternoon, Mr. Jones.

You know the drill. The first question you are asked, just give your name and title for the record, please.

You were invited here this afternoon because we are continuing the hearing on "Fighting Corruption in the Cayman Islands" of the Auditor General's report, November 2018. We have a few questions for you, mostly, concerning the Central Planning Authority and the things encountered there.

As you would be aware, we had the Director in this morning and some of the questions we asked him, he asked that we ask you instead. So, let me start off the questions by doing a follow-up.

The first question we have concerns the Public Authorities Law (PAL). Does the Ministry believe that the Public Authorities Law applies to the Central Planning Authority?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Good afternoon, sir, and good afternoon members.

Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure.

Mr. Chairman, in answering your question, I actually sought legal opinion on this very point from the Attorney General's Chambers and the advice was quite clear that the PAL did not cover the Central Planning Authority.

The Chairman: Can you explain that to us? Is it because, it has the name "Authority" on it and is not working as a "Board of Directors", so to speak?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes, Mr. Chairman.

I am prepared to waive the privilege on that advice to provide it to you for your information because it is quite informative.

In essence, the advice was that many of the facets of the normal authority, such as, having a purchase agreement with government, having their own accounts, et cetera, are not met. Therefore, the CPA does not meet the criteria to be a body covered by PAL, as would be the case with a normal board.

The Chairman: The obvious follow-up question is: Are there are certain provisions in the Law that relates to how the board conducts its business, minutes, transparency, integrity and certain anti-corruption measures? Are any of those being applied to the Central Planning Authority?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Just for clarity sir, are you saying that those provisions included within PAL

[Inaudible interjection]

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Unfortunately, I cannot give you an exhaustive list, but generally speaking, wherever possible, yes, we try to apply those. There are obviously some areas where we can't, for example, on the salary issues and all of those personal matters. However, wherever possible, we try to do that, whether it is in relation to register of interests which I know is a hot topic, and fraud policy.

The Chairman: When it comes to the composition, can you give us a breakdown on how someone is appointed to be a member of the Central Planning Authority?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes, sir.

The positions are normally for a period of three years. The current term expires on the 31st July this year, just for your information.

When the term is coming to an end, me and my officers will speak to the Minister, advise him/her of the current membership and ask if he/she wishes to consider taking to Cabinet, for their decision, some changes to that board, in terms of putting names forward. The names are essentially chosen in the final event by the Minister and by Cabinet, but officers will engage, perhaps make some suggestion in taking general advice from the Director of Planning.

The Chairman: Is there any exercise, in terms of the competencies that would be good to have on board

members; whether they are involved in the industry, or whether there is perceived, if not, real conflicts of interest in terms of their individual occupations; and whether they can or cannot have opportunities of benefit? Are those kinds of things considered before?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: They are considered, sir.

I am aware, and we are all aware this has been a topic that has been discussed at this Committee previously. The Ministry went away, listening to the comments of the Auditor General's report, yourself and the Committee at that time, in relation to us being vigilant and continuing to carefully select, as best as we could, a balanced authority representation.

We are aware that there were some concerns, that there were too many people from the construction industry and related fields and that therefore, there could be, in certain quarters, a perception of possible conflict. However, I recall that the Chairman of the CPA coming to the Committee and speaking to this point himself. The Chairman quite eloquently put forward the point that because Cayman is so small, it is difficult to get enough people with sufficient knowledge of the matters which they are decided on; that is, development, without getting into an area of some perceived conflict. However, we do continue to try to balance that as much as possible, but to be frank, it is difficult, having regard to Cayman being so small and the industry being quite large, relative to the size of the Cayman Islands.

The Chairman: In your opinion, is it necessary to have people on the board who are directly related or involved in the construction industry from a competence point of view? Is that not more a requirement of the department of planning itself, where the competencies should be?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: It is debatable sir; I think a subjective opinion.

My personal view is that it is probably both. Clearly, the Planning Department needs to have expertise, and it does. However, when you get a technocrat in, trying to brief people on a particular project, it helps if those people who are being briefed understand the basics of what the technocrat is telling them. So, there are significant benefits to that, whether it is in relation to design, or in relation to whether something is going to look aesthetically pleasing or not. So, we can obviously debate how many people on the CPA need to have that technical ability.

I, personally, feel that there is a need for representation to some degree, yes.

The Chairman: The last time I observed the CPA, I think it is fair to say that the majority, if not two-thirds, of the board, seemed to be people who are directly involved with the industry and not a lot of lay people. In fact, I do not recall seeing anyone there with legal or planning qualifications, other than being involved in the industry themselves. Is there any likelihood that this is likely to change in the near future? You said you have appointments coming up this year.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes sir, and in that regard, this conversation is quite fortuitous in relation to the timing of the new board appointment. Obviously, following this session, I will speak to the Minister about it and relay yours and the Committee's views. We will also try to ensure that there is some balance.

It is an interesting point that you make about the legal qualifications. The same question comes up in relation to many of our boards and in this case, an authority, but it is effectively operating like a board. One problem with that is trying to get people with legal qualifications or lawyers, to give up their time to come, in that, they are giving up a lot of potential income. The other thing is that, they may sit there for the whole meeting for a five minute comment on a legal matter and then that is it. So, it is a question of efficiencies, but I do take your point and it is something we have to discuss.

Certainly, the question of whether or not we could get more "lay people" is something I think worthy of discussion and will be discussed with the Minister.

The Chairman: For a decade, I have been suggesting to various governments that we use time to change the way we solicit board members. Instead of it just being a political process, where you get appointed to a board because you are a supporter of whatever current government is in, we go to some kind of system where we actually put an ad in the paper seeking people to sit on boards and I believe we did it for the —

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: OfReg.

The Chairman: The Utility Regulation and Competition Office (OfReg) is even better because OfReg has specific provisions in the law that requires people to be vetted by a special committee of that, right? However, in a more general way, I believe the Government did it for the reduction in the Sentencing Law, where you get a Conditional Release Board for the Conditional Release Law. They were, also shocked at the number of people. This is because there seems to be a whole pile of Caymanians,

between the ages of 25 and 40 that get no opportunity to offer civic service through board appointments, for the reason it seems that boards have been made up of the same people here for the last 20 years.

When I talk to these young Caymanian professionals who would love the opportunity to sit on a board, they have no way of putting their names forward, whereas, if we change the system and instead of relying on political appointments only, there would be people who actually wanted to do it and believe they can contribute. So, I would invite you to look at that when you come to your appointments this year, listing the competencies and the compensation, although minimal as it may be. Most of these people are not going to be doing it for the compensation; they are going to be doing it because they believe they have an opportunity to do some civic duties and to contribute to the governance of the country.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes and just a quick comment on that. I am glad that you highlighted how well OfReg was put together because that was put together under my Ministry and my supervision; so thank you for that comment.

The Chairman: Well then, sir, you cannot escape now, so you need to do it. We are in fact, doing the development plan again, so that should lead to substantial changes to the Development of Planning Law under which the Planning Authority Board is established, therefore, we can make the necessary changes there as well.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: I think you are being a little optimistic there, sir.

[Laughter]

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: I do take the point though, and I think the fact that we approached it in that fashion with OfReg, this was obviously a new body and new legislation completely. So, there was no baggage in relation to existing legislation.

There will always be a political element to this because even in OfReg's case, the nominations were approved by Cabinet; so they, ultimately, must have the final say. However, I do agree with you from a personal perspective, that generally speaking, in relation to the sort of bodies, it is nice to advertise and to get some younger people. You are correct; there are a lot of young Caymanian professionals who want to get involved. Whether it is appropriate for all the CPA is really a policy matter, so I do not really wish to talk to that. It would be a decision by Cabinet and by the Minister, but in principle, I would agree with you.

The only thing I would say in relation to the CPA is that, if you list the requirements, you might end up with a list of requirements related to the construction industry. We might be going around a little bit in circle but I do take your point.

The Chairman: We have the Builders Law amendments coming up in the next Sitting of the House to deal with some of that.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: That's right sir.

The Chairman: I am not very optimistic about the changes being made. Nevertheless, some of the things highlighted in the Auditor General's Report were: How are you holding the Department of Planning in compliance? What kind of reports do you request from the Department of Planning, in terms of it complying with government's anti-fraud policies and other procedures that have been introduced as part of the anti-corruption campaign?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: The relationship between the Ministry and the Department are multilevel. I have a Liaison Officer who meets bi-weekly with the Director of Planning to get feedback on all of these issues, as well as operational and he or she will feed those back to me. I also have regular meetings with the Director of Planning, both in his role as the Director of Planning and as Executive Secretary to the CPA. I obviously rely on him, whom I would regard as the primary oversight of the CPA to report anything to me that he is identifying as being untoward, not in proper compliance with proper ethics and anti-fraud policy.

Since the report came out in November last year, I know the Director of Planning spent a considerable amount of time changing policies and processes. This was to ensure that some of the gaps identified by the Auditor General have been closed; particularly, in the conflicts of interest area, in relation to the department when they are dealing with applications.

The Chairman: This morning, the Director of Planning gave evidence that, if a sitting member of the Central Planning Authority was not in compliance with the register of interests and did not declare an interest at a particular time, then he had no way of holding them accountable. Is this something that the Ministry is looking at? If you found out that a member of the board did not file a register of interest, was not updated and did not declare any interests, are there any consequences for that board member? Are there likely to be other appointments revoked?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes, sir.

First of all, the Director of Planning was quite correct in what he said. There is a clear understanding between the Director of Planning and I, that I and the Ministry want, need and expect all members of the Development and Control Board and the CPA to sign register of interests' forms. I believe he confirmed this morning, something which I already knew, that they had done for 2018; I think, he is just finalised it for 2019.

By way of an example, there are no real teeth to this other than rescinding the appointment, ultimately. There was one case maybe two years ago—I am guessing, the time is not really relevant—where a member of one of those bodies was not happy and basically refused to sign a register of interests form. At that juncture, myself and the Director of Planning had a frank conversation. I let it be known to him that he needed to meet with the person concerned and effectively say to them that if they did not sign the form we would have to reconsider their position on the board. Obviously, that is not my decision; that would be for the Minister and Cabinet to decide but acting as the Minister's representative in that scenario, the point being, we expect 100 per cent compliance. Personally, I do not wish to see anybody on the CPA or the Development Control Board who has not declared a register of interests.

The Chairman: Do you have a question, Mr. Austin?

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman, and through you: I certainly want to welcome and thank the Chief Officer for attending these hearings. As always, it is very informative and in my short two year tenure, all of my conversations with chief officers have been very fulfilling and I am sure today will be no different.

I only have one or two questions, depending on the answer that is received. I want to refer directly to the Auditor General's Report, November 2018: "Fighting Corruption in the Cayman Islands". Specifically, I will be pointing to page 25 paragraphs 59 and 60.

Paragraph 59 states: **"In May 2017, The Cayman Islands Government issued an Anti-Fraud Policy to facilitate the development of controls that aid in the detection and prevention of fraud against the Government. The policy establishes new procedures that aid in the prevention, detection, and investigation of fraud and related offences."** It goes on to list 11 different ways in which that is sought to be achieved through the Anti-Fraud Policy.

Paragraph 60, in the first few lines, goes on to state that: **"However, it is not clear if the fraud risk**

management framework has been embedded across the Cayman Islands Government. For example, the Ministry of Commerce Planning and Infrastructure and the Department of Planning did not have evidence that such a framework was in place."

Through you, Mr. Chairman: Can the Chief Officer inform this Committee what, if any progress has been made to implementing the Anti-Fraud Policy?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Through you, Mr. Chairman, to the Member. Thank you for the question, sir.

At that point in time when the report was written, I would agree that that is a correct statement, in relation to both my Ministry and my perception from what I knew of government in general. Following that report, the Deputy Governor, through the relevant ministries, arranged for Anti-Fraud training for every employee. I don't know exactly off of the top of my head, but it was effectively 100 per cent attendance at that Anti-Fraud Policy training.

In terms of sensitisation, which I think is an important part here, of teaching staff what is and what is not acceptable, what is needed to be looked for in terms of risks, I think that message was certainly delivered as a part of that framework of training that the Deputy Governor had arranged.

This morning, I believe the Director of Planning spoke of the fact that he had introduced many of those components of the Anti-Fraud Policy. Whether it meets the definition of a framework or not, is really a question of your definition of "framework". What I would say is that, the message that comes from the Anti-Fraud Policy is certainly well embedded in my Ministry and my Department. In fact, just by way of information, I would say that the Anti-Fraud Policy itself was drafted by my CFO [Chief Financial Officer] and the CFO from the then Ministry of Home Affairs. So, we were integrally involved in it and in fact, we are driving it.

The Chairman: One of the things the Director of Planning said was that, he expects board members who get the agenda beforehand—because it is published anyways—to declare their conflicts. I think he said he was trying to get it done during the rollcall of members.

When I recently had the privilege of attending a mock hearing, I observed that the chairperson of that meeting said that: "If anybody has any conflicts, please declare them now, publicly." I think if such a policy was put in place; particularly with the Central Planning Authority, for members to publicly declare their interests, it would give the public a lot of

confidence in overcoming the perception that there are a lot of opportunities for corruptive acts to take place. It should not be a very difficult thing for the Ministry to implement in supporting the director with some sort of directive, if you were so minded. I think it would go a long way to alleviate what may be a misconception as certainly, it is a popular perception in the eyes of the public. So, I invite you to give that some consideration.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Could I just say sir, I agree to take that on board. It would seem sensible. I must confess that I don't know specifically how CPA deals with that at the moment. Very much like yourself, I was interested in what the Director of Planning had to say this morning on that. I will certainly speak to him about that and ask him to put that suggestion forward.

One thing I would just clarify though is that, the Law does say that the CPA manages their proceedings; I think that is almost quoted word for word. So, we can request and suggest but we cannot direct.

The Chairman: I would suggest that that Law is only related to how they take minutes, et cetera. It is not related to procedures that affect the opportunity for conflicts. I think that there are other pieces of legislation that require boards to manage that more appropriately and in some kind of structure in an orderly way, as opposed to just . . . It is one of the phrases that exist commonly in law that we need to eliminate.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: No sir, I am not disagreeing with you. I am just pointing it out for further information of the Committee, sir.

The Chairman: It is appreciated.

Mr. Christopher S. Saunders: Thank you, Mr. Chairman, and through you to the witness: Firstly, I have to concur with my colleague for Prospect, in that, since elected, I must admit that I have found Mr. Jones very easy to work with and he is very forthcoming. So far today, he has been on the same path.

I just want to highlight one section here from the Development and Planning Law (2017 Revision). I will just read it for the ease of Members present. It says: "**The Authority, the Board, the Department of Planning, the Director or an employee of the Department of Planning shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective duties or functions under this Law unless it is shown that the act or omission was in bad faith.**"

One of the things that the Standard and Public Life Law tries to manage is the conflict or perceived conflict. The Law is actually quite detailed with regards to some of the information that should be turned over to the Commissioner for the Standard and Public Life. We believe that even if members on the board do not want their information to be made public, at a minimum, the Ministers or Cabinet should have the necessary information to see if members of the board have conflicts.

One of the things that the Law also addresses is the income derived from some of these businesses. I said it is something that we should operate with, because, for example, if prior to someone's appointment to the Planning Board, their construction related business makes \$500,000 per year, whereas, previous years, they made \$200,000, \$300,000 or \$400,000, then, while sitting on the Planning Board, their income suddenly increased to \$2 million, \$3 million, \$4 million or \$5 million. From the public's standpoint, it is important that even if this information is not in the public's domain, the Ministry, the Minister and if needs be, the Cabinet, should at least have the information. What we do not want is people using these appointments to get rich.

It is not a coincidence that this report actually looked at the Planning Department. This is one area that has the most perceived conflicts and the possibility of where something can go sideways. What is being done to manage those conflicts where just about everybody sitting on the board is conflicted?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Through you, Mr. Chairman, and thank you to the Member for the question.

That one is a little tricky. In relation to the increase in incomes, obviously, that would be a subjective thing. It would be something that would have to almost be reported up through the chain, to myself and the Minister, almost second hand, in some ways. To say, "Well, something doesn't seem quite right here." but there will be no science involved in that, it would be a subjective opinion.

In relation to Cabinet, the Cabinet does see the biographies of prospective appointees. There has been some discussion between myself and the Director of Planning about putting those biographies on the Department's website. In doing so, the public will at least know who is who. In Cayman most people tend to know who is involved anyway but for the sake of full disclosure and transparency, that is something I think we will consider.

In terms of this other "information", it is a tricky one. I believe it is something that we just have to ensure that the process is at the CPA and that the Planning Department is robust enough and have sufficient checks and balances in place. This will ensure that effectively, one person cannot make a

decision; and then to monitor these decisions and identify if anything is untoward. As I said previously, if the Director of Planning or anybody else for that matter reported something to me in that regard, we would take that very seriously and do further due diligence.

Mr. Christopher S. Saunders: I just want to read section 12 of the Standards in Public Life Law, 2014 that we are still waiting to come in effect. It says: **"In making a declaration required under section 11(1), a person in public life shall include, in relation to himself and any connected person, details relating to –**

- (a) shareholding and directorships held in any company or other corporate body;**
- (b) any contract made with any public entity;**
- (c) any company, partnership or association in which money is invested;**
- (d) any trust;**
- (e) any land, whether beneficial or otherwise;**
- (f) any investment fund in which an interest is held;**
- (g) any political, trade, professional, fraternal or charitable association or organisation, registered or unregistered to which there is a connection;**
- (h) sources of income other than a salary or money from other perquisites of office;**
- (i) other substantial interest whether of a pecuniary nature or not, which raise or may appear to raise material conflict of interest;**
- (j) any loan, secured or non-secured, other than from any institution regulated under "regulatory laws" as defined by section 2 of the Monetary Authority Law(2013); and**
- (k) such other details as Cabinet may prescribe in regulations.**

The thing about it is; I do understand the reservation of members appointed to these bodies giving out this much information. I could understand not wanting it in the public's domain, but seeing the information at Cabinet and now the changes to the Freedom of Information (FOI) Law with the Minister, some things are actually exempted. However, these are the kind of transactions that cannot be checked by the Auditor General and we must have some level of oversight to the board members. In this case, Cabinet puts them there and there is a certain responsibility from Cabinet to do so.

The question is: what is the Ministry doing? In essence, this Law should have come in effect. So, we should have at least had some template or some idea in terms of how we were going to implement this Law. The question in all of that is: where does the protection

of the public's interest come in? I mean we cannot have people sitting on boards that are in an industry and determining what is going on in the same industry.

I think a previous Auditor General's report even raised the very issue of the chairperson being one of the largest sellers of construction equipment. I mean at what point does someone doing something/transaction, not go through that business.

I know it is difficult to monitor. Yes, we know in Cayman that everybody knows everybody. It is exactly because everybody knows everybody, why we are actually having this hearing today. What steps or possible steps do you think the Ministry should be taking to ensure that the public is safeguarded in that regard?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Through you, Mr. Chairman.

Two comments to start with: you mentioned the Chairman of CPA, sir—just because this is for public record, the Chairman did come down at one of the sittings of PAC and explained his personal circumstances. I remember his statement that he was actually appointed to be Chairman of CPA because he was an Architect. The fact that he owned a hardware store was coincidental. Just for the record, I know he did say that and to be fair to him—

The Chairman: He also said that he doesn't know what I was concerned about because everybody else was doing the same thing.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: My second point, on a general level, notwithstanding the fact that Standards in Public Life has not come into effect yet—which is a policy decision, so I cannot really talk to that—the Deputy Governor has issued edict to chief officers that they should have their staff within Government signed up. So, for example, all of my staff in the Ministry each year sign and are expected to sign register of interest forms. That is not something that you can actually force on people at the moment because it is not in law. However, to be fair to the civil servants most are upfront and playing ball with this and signing these forms.

In relation to the boards and CPA Development Control Board, as I mentioned earlier, to date, we have managed to get all of them to sign these forms. However, there is no doubt that there are some people who are uncomfortable, be it on CPA, Development Control Board, or in similar situations, who are uncomfortable about declaring all of the information that you read out there and it is quite a list. It really does get into quite a lot of personal business. It is trying to strike this balance between people's

privacy, but also having regard to the fact that there are no public board and therefore there needs to be transparency. That balance is going to be a difficult one to find and it is going to be subjective.

In relation to what can the Ministry, the process or the system do to control this, I actually think that we are not doing a bad job now. I would struggle to put my finger on something specific, other than the Standards in Public Life Law coming in to effect, which would obviously help, because it gives us teeth at that point in time.

I would struggle to come up with a specific single suggestion that would solve all of the problems that you have identified. I am not saying that there are not concerns but the very nature of the process, and the way that you are asking people to serve on these boards, if we are not careful, we will make it so exhaustive of a list that people won't wish to do it. We struggle enough at the moment to find good quality people to spend their time and effort to sit on these boards. Often—which I am sure most people here would know at some point in time—these meetings can go on for hours and hours and hours; and if you are in workforce somewhere else, it is quite a sacrifice that people are making. So, we do have to get that balance. Nevertheless, we are remaining vigilant, certainly in terms of the CPA and the developmental control board. The Director and I speak about this often and we are both on the same page. We need to keep our eyes open, remain vigilant and see if there is anything we can identify that doesn't quite seem right, in terms of, as you said earlier, increasing income over what you might normally expect. It is a difficult one to deal with but I do accept your point.

The Chairman: Mr. Austin.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman.

I knew I had one other question; I just lost my place as to where it was. Again, sticking with the Anti-Fraud Policy which to your testimony, whilst in November 2018 it had not been implemented but since the report, it has been implemented by the Ministry.

Page 25, paragraph 61 states that: **"All new civil servants are briefed on the policy as part of employee orientation, which all new employees are required to attend. However, their attendance is not currently monitored."**

Notwithstanding the fact that during a new employee's orientation, there is a great deal of information to take in, I wonder whether or not something as serious as the prevention of corruption within government is sufficient a topic to be raised only at orientation. If you can certainly identify to us when and how often members of the Ministry are required or offered the opportunity to participate in workshops that deal with the Anti-Fraud Policy. Also, how does the

Ministry monitor those who participate in these workshops for lack of a better word, sir?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Through you, Mr. Chairman.

I would agree with the Member's point that briefing at the time of joining the service when you are getting bombarded with a lot of information in and of itself is not sufficient. To add to that, the fact that over time people forget certain parts of it, notwithstanding the fact that the Ministry and the entity continuously remind people of appropriate behaviour. I would certainly agree that refresher courses need to be done, not just in my Ministry but across government.

I have to be honest, I cannot recall the last time when there was a widespread refresher; it is very much based on, *We did it that one time and we are now doing it with all new people so everybody has it at least once.* I will take the Member's comment to heart and speak to the Deputy Governor in relation to this suggesting that maybe across government, we could arrange for a periodic refresher; whether that is every year, every two years or something similar. I think that is a good point sir.

Mr. Austin O. Harris, Jr.: Mr. Chairman, through you. I thank the member for that response and if I may provide him some degree of guidance as to whom the policy identifies as the "owner" of ensuring this to happen.

Certainly, paragraph 62 which continues on page 26 states: **"The policy states that chief financial officers are the owners of the policy, which makes them responsible for checking and, if necessary, updating the document at least once a year or within 30 days of any significant organisational change."**

Again, obviously, not being bold enough to tell you how to do your job, perhaps in your discussions in terms of scheduling workshops and raising awareness of anti-corruption matters, perhaps it is something that you could use as guidance and your chief financial officer may even have a plan of his/her own.

Thank you very much for your testimony.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Mr. Chair, I would just like to interject here for a moment.

Following the report issued by the Audit Office, the Deputy Governor has requested that an owner be appointed. Accordingly, he appointed me to be the owner of the Anti-Fraud Policy for government which requires that we look at the policy once a year to do an update. It is actually something that we are in the process of doing right now. The Accountant General will own the Anti-Fraud Policy and our Department will ensure that we keep it updated in connection with the CFO Representatives.

Mr. Austin O. Harris, Jr.: Mr. Chairman, through you. I want to thank the member for that response and certainly, it builds my confidence that the matter is in good hands.

The Chairman: Go ahead Mr. Chris.

Mr. Christopher S. Saunders: Just a quick question: The management of the Local Companies Control License (LCCL) process; does that go through your Ministry or is it another Ministry?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: LCCL?

Mr. Christopher S. Saunders: Yeah.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes, it comes through my Ministry.

Mr. Christopher S. Saunders: Okay. Well there have been a lot of concerns in the public because I think for around maybe 30 years (if memory serves me correctly) we only had about four LCCLs which covered the two fuel companies, CUC and Cable and Wireless. For the public's purpose, those are companies that could not have a majority Caymanian ownership.

Now, we understand from a presentation last year, that there are now over 200 LCCLs in effect; I think it is closer to around 250. We are also trying to understand what the process for granting LCCLs is. More importantly, what is the follow-up, follow-through or check-in process afterwards? Based on some grants that I have seen, within the last five years, we should have had around \$7 billion worth of investment, if adding all of those advertisements where Caymanian participation was being sought for \$2 million, \$5 million, et cetera. When added, it is a significant amount of money but we have not seen it, based on the planning approvals or anything like that. I am just trying to get a better understanding of that process.

Thanks.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Through you, Mr. Chairman.

There are really two parts to the LCCL: the normal application where people advertise and put a price for the investment and the advertisement, and then invite Caymanian participation. The second version is where applicants can apply to Cabinet to have the advertising requirement waived.

In relation to the former application (that is, the normal application), you are probably correct—I am a

little nervous here because I am getting into the area of policy a little—that people sometimes believe those investment numbers are inflated to perhaps dissuade certain Caymanians from getting involved in that area. That is obviously not something we would wish to encourage in any way, shape or form. However, I know there is a perception out there which has been for 30 years, that that is what happens. All we can do is our best to ascertain, as best as we can that that number seems appropriate. So, if somebody is going to do a small car workshop and they are saying it is going to be a \$10 million investment, then obviously, something does not quite add-up and DCI would do their best to identify those areas.

The ongoing monitoring of it is tricky. In all honesty, I would have to say that is probably not done to a large extent, in terms of seeing whether or not that \$500 million, whatever it was, in supposedly the investment actually transpired. I would be honest and say that that is an area to which we could certainly do better in.

In relation to the waiver situation, where people don't have to advertise, then that is obviously a policy matter. Whilst officers might give a recommendation, it is essentially a matter for the Minister and Cabinet to decide what they consider is in the national interest.

Mr. Christopher S. Saunders: Thank you very much for that.

Hon. Bernie A. Bush: Mr. Chairman, through you.

Thanks for your honesty on the part that you all have not followed up on checking whether what they said was right or not. So, let us get this straight now: the LCCL applies to your Ministry, so you take it to Cabinet and Cabinet decides?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Through you, Mr. Chairman.

No, the Minister will take a Cabinet paper. This is in relation only to those where they are seeking a waiver of the need to advertise.

Hon. Bernie A. Bush: Correct. So it goes to Cabinet?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: That is correct sir. It is a Cabinet decision.

The Chairman: One of the things that we run into in the public, in terms of the corruptive opportunities in Planning, is the way the CPA uses its discretion. The CPA seems to have unlimited discretion and from reports in the media and from our observation, it seems that the discretion is applied differently, to

different people. For example, set backs on the waterfront: some people seem to be able to get that 75 foot waived completely, other people seem to get huge difficulty even on the next door piece of land where you have the same coastal interference, et cetera.

Are there any plans by the Ministry to change or somehow better define the opportunities for discretion by the CPA in planning applications?

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Mr. Chairman, in relation to the actual day-to-day operations of how that applies and the perceptions that you speak of, I will defer to the Director of Planning's comments this morning. He is far more an expert in this area than I am, in terms of the day to day operations. They do have a wide discretion.

I believe that because of the nature of the development itself and the fact that no development is ever the same; they do need to have some discretion to allow certain variances from the policies. Whether or not those powers of discretion are too wide, or not, is really a policy matter, I think. I think it is really for the Cabinet to decide.

My personal view is that there will always be this view that somebody got something that someone else did not, or have different standards being applied to them. I think that is not just Planning, I think that is just life, and how people deal with things. If they don't get what they want, they will always feel that somebody else got it just because they are who they are rather than who has a better scheme. I am not discounting what you are saying and obviously, at the end of the day, neither of us can really say that it definitely happens or it does not happen, but there is this perception.

The Chairman: I can give you instances after instances of it happening. The opinion of the public is that, as long as someone has enough money, they can get anything they want done in Planning. The inference is not always necessarily that the person is paying anybody in the CPA to get the discretion, but just the fact that they are at that level in society; there seem to be a huge difference.

I can occupy the rest of the even with a certain development in Rum Point, including blocking the fire access, which I can promise you right now, is blocked with cars. If a fire truck needs to get in, they cannot. Even when people complain, there does not seem to be the aptitude or the desire to enforce the rules on these people. Forget the discretions of Planning; the rules do not seem to apply and that is troubling sir, very troubling.

I can agree with you that some discretion is needed but the discretion should be only on certain circumstances and once the circumstances are the same, it should not matter who you are; the discretion is the same. What seems to be now, is that the

discretion is undefined, and unlimited, and whether you get it or not is dependent on what you are willing to ask for and what mood they are in.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Yes sir.

I remember the Director of Planning saying this morning, and he is far more an expert on this than I am, in terms of those circumstances where the CPA does and does not have discretion. They do not have ultimate discretion to change anything. They are limited within certain parameters. As I said before, whether or not it needs to be tightened, it is debateable. We can certainly put the case. I am not saying that the world is fair to everybody in every circumstance; I mean I just cannot comment on that.

What I would say is that, in relation to planning applications, obviously, if somebody feels that they have been unfairly treated then there is the recourse to the Planning Appeals Tribunal.

To be frank with you, if somebody felt something really untoward was happening in relation to how they were being dealt with, then, I, as Chief Officer, would welcome them contacting me. We would happily look at something if we felt that there was reason to do so. But ultimately, the CPA does have, at the present time, the authority under the Law to use that discretion.

In answer to a part of the question at the beginning, sir, if the Ministry is actively doing anything to examine changing those, the answer is no, not at the moment.

[Pause]

Mr. Christopher S. Saunders: Mr. Jones, I just want to thank you for coming down here today. The conversation was actually quite frank and welcoming, to some extent. We are kind of like chief officers who, under the Law, have a lot of responsibilities, but, at the same time, some people are scared sometimes. So, I am glad that you came and took a bold approach. I appreciate it. I hope other chief officers that come before the PAC recognises that they can be straightforward and frank.

The last question to you which is a standard question from me is: is there any law that you think we can change, amend or fix that you think will make your life or your Ministry much easier to get things done or is there something we can do? At the end of the day, every single government department operates under some law or regulations at some point. What do you think it is that we can actually improve that can help you carry out your functions and responsibilities?

Thanks.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Thank you, sir.

Through you, Mr. Chairman: By way of an answer, I will throw out something as was discussed earlier and I am not going to say whether I am in favour of it or not, but I would suggest it is something worthy of consideration and the Chairman touched on it earlier, in that the PAL does not, at the present time, affect the CPA. Yes, there are other bits of legislation that kind of infer things on how the CPA should be run, but it is a point for discussion as to whether or not, for example, PAL needs to be brought to include CPA or there needs to be some other mechanism.

This is not a question, I think, of the Ministry or the Government really wanting to control the CPA; we don't, because that is why we have an independent authority. It is important and I think it is vital that they remain independent from the political side of government. Nevertheless, at the moment, there are no teeth there, in terms of that oversight role. In fact, it is somewhat similar, in terms of PAL itself with the authorities that the chief officers have in that particular case; some statutory oversight role but there are no teeth attached to it. So, you can ask, beg and suggest, but ultimately, there is no control. In a PAL case with the chief officers, they have responsibility but they do not necessarily have the power to enforce them.

Mr. Christopher S. Saunders: I would actually agree with that because in essence or in principle, you are asking a political appointed board to remain politically neutral. That is just not human nature because it is still a politically appointed board. So, what you said actually make sense and I think it is definitely something worth looking at.

Thanks very much.

The Chairman: Thank you very much sir for coming and we look forward to seeing you, not too often, because it is not a good sign when you have to come here every time we hold a hearing.

Thank you very much.

Mr. Alan Jones, Chief Officer, Ministry of Commerce, Planning and Infrastructure: Thank you sir.

The Chairman: We will take a 20 minute break.

We got in contact with Mrs. Rosie Whittaker and she is on her way. So we will just take a quick five and a short ten.

Proceedings suspended at 2:43 pm

Proceedings resumed at 3:00 pm

The Chairman: I would like to call the Meeting back to order and invite Mrs. Rosie Whittaker-Myles from the

Commission for Standards in Public Life Board to come in.

[Pause]

COMMISSION FOR STANDARDS IN PUBLIC LIFE

ADMINISTRATION OF OATH OR AFFIRMATION

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly shall be the truth, the whole truth and nothing but the truth.

[Pause]

The Chairman: Good afternoon Mrs. Rosie Whittaker-Myles and thank you for coming early at short notice. We know you are busy so we appreciate you taking the time.

What we want to talk to you about is "Fighting Corruption in the Cayman Islands" which was the report done by the Auditor General's Office in November 2018. What we want to talk to you about is the Commission for Standards in Public Life. As Chairman of the Board, we note that you have dutifully filed your reports and it was very interesting to read but your constant complaint is the lack of the legislation to give you the authority to do many of the things that you wish to do. Can you give us any update on where the legislation is?

[Pause]

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Good afternoon Mr. Chair and Members.

Thank you very much for affording me the opportunity to appear before you.

I too, read with interest. I speak on behalf of the Commission when I say that, we are really pleased and thankful for the Auditor General that she highlighted in her report the need. She referred to it in one instance as an urgent need for this Law (The Standards in Public Life Law) which was passed in 2014 and amended in 2016 to come into effect.

As you have quite correctly indicated, we have, as a Commission, sent a number of letters, we have gone to the extent, as a Commission, to draft information that we thought should be included in the regulations for the Law. Obviously, if we have a law, we will need some regulations as to the operation of the Law. We have followed up on many occasions.

At a meeting with His Excellency, the Governor, late last year, we were told that His Excellency would be bringing to the attention of the Honourable Premier, the concerns of the Commission and to request that something be done very quickly to have this long delayed matter resolved. So, that is as much as I can tell you about where we are right now.

Since then, we have not received any communication from anyone as to whether any communication has taken place. The Commission is aware that they are based on other persons who appeared before this Committee, to speak to the report of the Auditor General that there may be some further amendments, but this is based on what we have read in the newspaper. We do not have any more information on it.

The Chairman: I can tell you, in my other role as Leader of the Opposition, I requested the Governor to make haste to get this legislation into effect. We will be making a very strong recommendation in this report that we will hopefully table during the Meeting that starts on the 4th April. We will recommend that the legislation be brought into effect ASAP.

As we understand, it appears that certain persons who sit on boards are objecting to some of the requirements that the law will place on them. I find that, quite frankly, a bit disappointing because if you are on a board, for reasons other than altruistic reasons, then I think you should not be on the board.

I know that the time has passed where the government can give the 21 days' notice for the next meeting of the Legislative Assembly, unfortunately, the Standards in Public Life does not seem to be on that for that meeting. The last time we met was some four months ago, so we are looking then at another four to six months; that is reason to be concerned.

How difficult is it for you to do your job without the supporting legislation?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Thank you, Mr. Chairman.

It is very difficult for the Commission to operate in the way that it is established by the highest Law of our land, the Cayman Islands Constitution, section 117. One of the major responsibilities for the Commission is that once the Law comes into effect, will be establishing and maintaining that Register of Interests. Obviously, if the Law is not in effect, we do not have the power to deal with that aspect of our responsibility. So, to answer your question, that being one of the primary responsibilities of the Commission, we are not being effective.

With the respect to other aspects of the functions of the Commission, we have boldly stepped into certain arenas, requested information and made enquiries and we have been met with no objection whatsoever. Whenever we ask for information or

follow-up, we got clarification. We realise though, that someone could respond and say, *well, you know, you do not have a law in effect, so we are just not going to respond*, but that has not been the case; so we are grateful for that.

The Chairman: Have you found this huge resistance to the implementation of this Law? I cannot say with any certainty that I have found a lot of opposition. The cry that I hear from the general public I represent is: When is this Law coming into effect? So much so that I can tell you that one of the pieces of legislation they are bringing in the June sitting, has a similar clause in it. I will be fighting an amendment to put a time limit on that clause, even though it will be brought by Cabinet; I intend to try and amend that section to say it must be done within 90 days or 180 days or put some figure there. For the reason that, when it is left like this, 10 years from now, the political arm of government, the international and local bodies can get the credit of passing legislation but have no fear of it being implemented.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Mr. Chair, with respect to the question as to whether or not the Commission has encountered any resistance from board members, I cannot say that we have.

Last October, there was a training session held at the Marriot. During this session the secretariat very kindly arranged for board members and others, to participate in a training that would familiarise them with the various laws that they need to be complying with; the Standards in Public Life Law being one. The Auditor General, I believe, was at that training session, as well as was the Ombudsman and the Chair for the Anti-Corruption Commission.

There were one or two people who approached members of the Commission and indicated that they had very strong resistance to the Law because of what they understood would be required of them when the Law comes into effect. No one has come to me and expressed such sentiments. Nevertheless, I can tell you that having talked with the Honourable Premier, he has expressed to me, as he has in other places, that there is quite a lot of resistance from persons who are lay persons who volunteer their time and their effort to serve on boards and committees. They feel that they should not have to be disclosing to the general public their interests, assets, income and liabilities. No one has expressed any objection to me, personally, but I have heard, through others, that there are some objections.

Hon. Bernie A. Bush: Through you, Mr. Chair: If the Law were to be put in place, what areas of the civil service would the Commission have power over?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Through you, Mr. Chair.

The Commission's functions are to set and establish the highest standards of integrity in public life. Therefore, that gives the Commission a very wide ambit as to who they will be responsible for, where they can be asking questions, getting additional information, and pointing out things that the Commission thinks is not being done appropriately. So, I think the Commission will have very broad powers once the Law comes into effect.

Hon. Bernie A. Bush: Through you Mr. Chair: In your opinion, what will happen if a civil servant comes before the Legislative Assembly during budget or comes before the Public Accounts Committee (PAC) and tries to misinform us, or give wrong information?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: I believe we had an example of that not so long ago, where there were allegations that some misrepresentations were made. The Commission did make some initial inquiry and it is something that we will continue to follow up on. However, even without the law being in place, there is already provision for these matters to be looked into. Having said that, however, if the Commission considers that having explored those avenues, there is something else that the Commission should be doing, then, by all means, when we have the power to do so, we will be doing so. I would also imagine that any other commission would be doing so.

I must point out "any other commission" because for me and at least one other member of the Commission, our term has already expired, but was renewed for a few months until the end of this year.

Hon. Bernie A. Bush: Thank you, Mr. Chairman, and thank you ma'am.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman, through you: First of all, I want to, again, add my voice to the welcome to the witness for appearing. Thank you for being before us.

If I could first refer to the Auditor General's Report, paragraph 37, page 18, which speaks directly to those Standards in Public Life Law, it states: "**The Standards in Public Life Law, 2014 does not yet have a commencement date despite being passed by the Legislative Assembly four years ago. This is a major gap in the framework for combating corruption, and it weakens the intended impact of the framework.**"

It goes on in the closing lines to say: "**The fact that the law is not yet in force may also affect**

public trust and lead to lack of integrity, transparency and accountability."

Now, Mrs. Whittaker-Myles, the Chairman, in his second question asked you, how your Commission's role was being hindered by the fact that the Law is not in effect. Whilst you stated that in respect to the Register of Interests, you were restricted, you also gave testimony that whenever your Commission asks for information, they have yet to be denied. Moments ago, you also stipulated that despite the absence of the Standards in Public Life Law, there are other laws and mechanisms that provide support, which would otherwise benefit the work of the Commission for Standards in Public Life. For example, the Anti-Fraud Policy, which was implemented across Government in 2017/2018 (I believe).

So again, I ask the question: How precisely is the work of the Commission for Standards in Public Life being hindered in the absence of this Law?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Through you, Mr. Chair.

As I indicated earlier, one of the primary functions of the Commission, when it has the Law in effect and can do what it is supposed to be doing under the Constitution and under the Law, will be dealing with the Register of Interests.

You are quite right in saying that is one aspect of the law. However, that is a very important aspect of the law, I would say. I say that because the Commission has had the experience of going through the process of making an appointment to inspect the Register of Interest; which as you know, deals with the declarations that have been made by Members of the Legislative Assembly, those who run for Office, Ex-officio Members of government and in some limited respects, members of the press. Now, the Commission has, on two occasions, inspected registers. On the last occasion, it identified certain areas that more information and clarification were needed.

Now, the Commission did so, because we don't have a law, so we don't have the power to do certain things. But we did so, in any event, because if we had been challenged, we would say, well, it is a matter for the public. The public is entitled to inspect and we have done so. I am sure I say on behalf of the Commission, that we are not satisfied with the responses that we have received from enquires that we made. We still have outstanding information, and we are the Commission, we are not just members of the public who would have asked for this information.

The Register of Interests, we say is very, very important. We do not believe that there is sufficient scrutiny and sufficient management of the register as

exists, which is one of the reasons why the Register of Interests is prescribed under the Constitution.

You are quite right in saying that since we have been appointed, whenever matters have arisen, we have not been met with any objection. Nevertheless, that does not mean that there are other areas that we could not be involved with and that people would not come to us with concerns as a Commission. So, until we are fully functional, we don't know whether there are other people out there who would not have found us, made enquires and reports to us, that we would investigate.

Mr. Austin O. Harris, Jr.: Mr. Chairman, thank you and through you.

With the greatest of respect to the witness: I don't believe this Committee is satisfied with the answer that there are hypothetical circumstances that the Commission could act but is somehow being hindered. The question was: How are you being hindered, what examples can you give, and do you know for a fact, that persons are failing to come forward because there is a lack of law?

I am just trying to understand that Constitution (paragraph 117, section 9(a) through to (g)) doesn't stipulate that it requires a law to be enacted in order for you to fulfil your mandate.

Again, while I appreciate that there could always be issues that could be addressed but have not, for one reason the other. However, I am wondering, are there specific circumstances where your Commission's duties and obligations have been hindered, either by direction of the Constitution or otherwise, by the absence of the Standards in Public Life Law?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Through you, Mr. Chair.

I cannot say that I am aware, or that there is any record of any previous Commission being made aware—because you are aware that there was one Commission before ours—of any complaint that may have been made but would have been hindered by the absence or lack of enforcement of this Law. That is my brief answer to your question.

Having said that, if a law is anticipated by the highest law of the land and the general public is made aware that the law is going to come into effect, the general public would then have an expectation that the legislators and those responsible for bringing laws (especially those passed) be put in effect. Until the law is in effect, we don't know how and how often it will be used. However, I would hope that you would agree with me and the other voices that called for this, that there is a need for the law to be brought into effect.

Mr. Austin O. Harris, Jr.: Mr. Chairman, a final question. Whilst I agree with you that any law passed

by this honourable House should in fact be anticipated to be implemented, I also like to note that as an elected Member, we are elected by the people for the people.

Even though I asked this question of the Honourable Deputy Governor when he appeared before this Committee, let me ask you. Reason being is that there seems to be some degree of confusion, if not malalignment-*[sic]* of certain members of the media, as to what the significant objections are behind the delay of the implementation of the law.

Can you state whether the significant objections you have received, heard, or otherwise know about, relating to the delay in the implementation of this Law, are emanating from the public sector or a member of the private society, who, in this instance, may specifically serve on boards?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Through you, Mr. Chairman: I can only repeat what I have been told and what I have said already. No one has come to me specifically and said, *I object to this Law because I do not want to file a declaration*. No one has come to me with such a complaint.

I have heard that there are persons in the private sector who serve on boards and a member of my Commission expressed to me shortly after the training in October of last year, that at least two persons (I believe she said) came to her and said, "This is going to be a problem and they would object." I have heard from others that there will be objection or there is objection. I have also heard from the Honourable Premier himself that persons who serve on boards have indicated that they have a problem and they will object. In fact, in one newspaper article—I am sorry I did not bring it with me—there was some coverage, where there was reference to a mass exodus of persons from boards if the Law came into effect. No one has expressed that to me.

If I may, I think that the fear or the concern, if that really is one of the reasons for the delay for the Law, can easily be answered by the Law itself. Whereas, section 11 of the Law requires the declarations are to be filed, section 12 makes it very clear that declarations by board members (their interest, assets, income and liabilities) will only need to be filed where there is a possible or perceived conflict of interest.

As a board member, if there is no interest in their own assets, income and liabilities and that of their immediate family, which has been defined thus far, as "spouse and dependent", then the declaration will be a nil declaration until such time as something arises. If something arises, then the declaration will need to be made and the other steps that the Law prescribes will be taken. For example, you recuse yourself from the decision making process and not returning.

Mr. Austin O. Harris, Jr.: Mr. Chairman, just a comment.

I agree with the witness but I think therein lies the problem. If members will not declare their interest, then how will the boards, the Ministries or otherwise be able to identify a potential conflict if they do not know there are ownership of properties, or business and pecuniary interest or otherwise. So, to suggest it as a solution, which I think is a logical one, is lacking if we do not know in advance that there may be a possible conflict.

I thank you very much for those answers ma'am.

Mr. Christopher S. Saunders: Mr. Chairman, the witness quoted section 117 of the Constitution that deals with Commission for Standards in Public Life. I just want to add one bit. The Constitution itself is broken down into nine parts and Part 8 in which the Commission for Standards in Public Life falls is under the section that says, **"Institutions Supporting Democracy"**.

So, it is not just a matter of what the Constitution says. For us, as agents of democracy, we need to recognise that the highest document in the land touched on the importance of having institutions to deal, in terms of supporting democracy. I have here with me, the Standards in Public Life Law that was passed by this House but has not gone into effect.

As I go through the menu reading from the Law, starting from section [5(1)], I am going to ask the witness to just give a simple yes or no.

Section [5(1)] states: **"The functions of the Commission, as prescribed in the Constitution, are – (a) to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;"**.

I will ask the witness for the first one, and I am going to go through each of these individually.

Are you able to do this without the Law being into effect? Are you able to do this, Madam Chairperson? —Just a yes or no.

[Pause]

Mr. Christopher S. Saunders: The Law is in effect—

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: To assist, yes.

Mr. Christopher S. Saunders: Okay.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: I believe we are able to assist.

Mr. Christopher S. Saunders: Okay.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: However, in order to ensure the prevention of corruption or conflicts of interests, we obviously cannot do very much.

Mr. Christopher S. Saunders: Okay, thank you.

Second question regarding subsection (b) which states: **"to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers;"**. Is your Commission able to do that at this point?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: To an extent, yes. I think we can but we would not have the full powers and I can indicate at this stage—and I know you said "yes or no"—

Mr. Christopher S. Saunders: Yep; that is fine.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: I can indicate at this stage that we consider being included in monitoring and standards of ethical conducts in the Legislative Assembly. We consider that the Ministerial Code of Conduct will play an important role in that. As far as we are aware, we have made contributions to that code but, it is not finalised, is our position.

Mr. Christopher S. Saunders: Section 5(c) reads: **"to supervise the operation of the Register of Interests and to investigate breaches of established standards;"**.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Mr. Chair, through you: we do not have that power at this time.

Mr. Christopher S. Saunders: Okay.

Subsection (d) states: **"to review and establish procedures for awarding public contracts;"**.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: The answer is yes. However, I should qualify just by saying that the previous Commission's Chair played a very important role in moving forward the Law that we now have to deal with public contracts. However, we have a limited role to play. We were asked to contribute to the Law when it was in draft form and the regulations, and the Commission did so.

Mr. Christopher S. Saunders: Okay.

Subsection (e) states: “to review and establish procedures for appointing members to public authorities, and the terms of their appointment;”.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Mr. Chair, through you: To the extent that we can request and follow up on information, yes, we can do that at this time. Whether or not we will get the response we would want, I do not know but we certainly can review and establish procedures for appointing Members.

Mr. Christopher S. Saunders: Okay.

Subsection (f) states: “to recommend codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;”.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: I would say that the Commission has certainly conducted itself as if it has the authority to do so, for the reason that we have certainly provided feedback and input on the draft code, as I indicated, and as I thought would come under the ethical standards as well. However, that is all we can do. We have not been able to move anything forward because we understand that that is with the Cabinet Office and others. We have sent in our recommendations.

Mr. Christopher S. Saunders: Just looking at section 5(2) of the Law that was passed but has not gone into effect, it says: “In the exercise of its powers and performance of its functions under this Law and the Constitution, the Commission –

- (a) shall not be subject to the direction or control of any other person or authority;
- (b) may in cases where it considers it appropriate to do so, make use of any external advisors;
- (c) shall have the same powers as those of the Grand Court to summon witnesses, require the production of reports, documents, other relevant information; and
- (d) may do all such things as are necessary or expedient for the purpose of carrying out its functions.”

Mr. Chairman, through you, to the witness: After reading section 5(2), without this Law being in effect, are you able to do all that is listed in section 5(2); as that would be required for you to perform your role as a part of the Commission that is supposed to, as per the Constitution, be a part of “Institutions Supporting Democracy”?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Brief answer is ‘no’. And, one of the most glaring provisions in that section is the power to summon witnesses and require production of reports, documents and information. We clearly do not have that power as yet; we will not, until the Law comes into effect.

The Chairman: If I could get back to number two: When you said that you inspected the Register of Interests for Members of the Legislative Assembly; if you found cases where Members’ register of interests may not be up-to-date, you would have no way of knowing whether they are complete or not. If you were to discover that the Legislative Assembly body established under the Register of Interests Law, to monitor and ensure compliance with that legislation has not met for years, or has not filed a report to Parliament on the functions of that Committee, without the Standards in Public Life Law, you have no authority to require that that be done; is that correct?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: That is my understanding, Mr. Chair.

As a Commission, we would not have any power to do so. I know, however, though, that under the Register of Interests Law, there are certain provisions for complaints to be made. So, I would imagine that as with any member of the public, we would have the right to amend a complaint if we are not responded to.

The Chairman: But, if the proper Standards in Public Life Law were in place, which would transfer these register of interests under your supervision, you would then have the authority to ensure that the Law is complied with. When currently, there is nothing you can do about it, no more than Joe Blow can say, *I want the register completed because I do not think that I have inspected the registry and I think this person’s last one on the file is two or three years old, it needs to be updated.* Nothing can be done about it now.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Mr. Chair, I agree with you and you are quite right. That is one of the reasons why at the beginning, I indicated that the Register of Interests is so important. It is extremely important. If we are seriously looking at good governance, integrity and having the public’s confidence, then we need to have the Law in place, so that the Commission can carry out its duties set out under the Law.

The Chairman: Do you have any comment on what appears to be an increase in fraud and other

compliance issues in the public service, in general, over the last couple years?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: I would only be able to comment on my own views.

Clearly, because of the increased vigilance of the Anti-Corruption Commission, the Police and others who are involved in the investigation process, there seems to be an increase in matters being brought to the forefront.

Now, whether it is an increase in the commission of such offences, I think it would be difficult to hazard a guess. But, we now have in place—and I believe we can all agree on that—a functioning Anti-Corruption Commission and investigations are being conducted, and, in some instances, matters are being brought before the court and dealt with.

The Chairman: However, the Chairman of the Anti-Corruption Commission, in evidence to this Committee, suggested that he is terribly short staff and just to deal with what he has in hand, he basically needs 100 per cent increase in his number of investigator. Unfortunately, he has to prioritise, without investigating, what investigations to do. That does not bode well for the state of our Anti-Corruption.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Mr. Chairman, if I may just add to what the differences in the roles are and the Auditor General did point it out in her report.

The role and function of the Anti-Corruption Commission is to investigate and enforce, and the primary role for the Commission for Standards in Public Life is to prevent. So, we have the tools that we should be using to prevent but we are not as effective as we need to be.

The Chairman: Mrs. Whittaker-Myles, thank you very much for your time.

[Inaudible interjection]

The Chairman: Go ahead.

Mr. Christopher S. Saunders: I do recognise that the Law is not in effect as yet, but there's a standard question that I ask most witnesses: Is there anything else that you think should be included in this Law that would make it more effective?

I know some people are already concerned about the Register of Interests, but there's a shortcoming that I have found with the Law and this is just my personal opinion. I also raised this issue with

the chief officer that was here before. If you see a person appointed to a board that owns a company and is making \$300,000, \$400,000 or \$500,000 per year in revenues. However, all of a sudden, after their governmental appointment during their time on the board, their revenues jump up to the millions. I mean, while rather subjective or may just be lucky, those are the kind of things that would naturally jump out when a person starts receiving other contracts, that prior to their appointment, they would not have gotten. I think that is one thing that needs to be clear in the Law. Like I said, that is my personal opinion but in your opinion, is there anything else that you think could or should be added to the Law that would have made it more effective?

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Through you, Mr. Chair.

There is one other area of concern that I have and perhaps at some time in the future, if there is going to be a further amendment; this could be taken on board. As it is now, the Law does not stipulate what happens when someone retires from office with respect to their declarations. Do their declarations then end at that time or are they under an obligation to continue declarations for a period of time after the demit office?

I know that in some jurisdictions, there is provision for continued reporting for a period of time, two years I believe in one instance, and I think in another instance, I came across five years. However, just to ensure that proper reporting is being done and when someone demits office, there is not some enrichment that otherwise could not be explained.

Mr. Christopher S. Saunders: Thank you very much Mrs. Whittaker-Myles. I really appreciate your time here today.

Mrs. Rosie Whittaker-Myles, Board Chairperson, Commission for Standards in Public Life: Thank you very much, Mr. Chair.

The Chairman: Thank you very much.
The meeting is adjourned.

At 3:44 pm the Public Accounts Committee stood adjourned.