

In the matter of the Commission of Inquiry appointed pursuant to section 1A of the Commission of Inquiry Act 1935 dated 24th February, 2016

Additional Witness Statement of Derrick Vaughn Burgess

1. I, Derrick Vaughn Burgess of 7 Barry Road, St. George's GE 04, served as Minister of Works and Engineering from 21st December, 2007 until November 2011 when I was reassigned to the Ministry of Transport. Members of the Commission of Inquiry ["COI"], established on 24th February, 2016 by the Hon. Michael H. Dunkley, JP, MP, Premier of Bermuda, in accordance with provisions of the Commissions of Inquiry Act 1935 to inquire into the findings of the Auditor General's Report on the Consolidated Fund of the Government of Bermuda ["The Report"] for the Financial Years 2010, 2011 and 2012, will recall that I gave evidence before the COI on 6th October, 2016. I now offer additional evidence and make observations with respect to the COI's proceedings generally.

The Issue of Race

2. The terms of reference for the COI do not include race; however, the issue of race has found its way into the COI's establishment and proceedings. The Premier appointed a four-person panel of Commissioners. In addition, the COI allowed the employment of three legal counsel from local law firm Conyers Dill & Pearman to assist witnesses in the drafting of their statements and to take down their evidence if they wished. These legal counsel also questioned witnesses on their evidence during the COI's proceedings. The inclusion of the three counsel from Conyers Dill & Pearman brings to seven the total numbers of persons who comprise the COI team – six whites (86%) and one black (14%). In a country where the racial makeup is approximately 60% black and 40% white, I venture to say that approximately 80% of the people called to give information before the COI are black. It is my submission that a COI that is 86% white is a direct insult from the Premier and reflects shocking disrespect for the people of Bermuda, particularly the black population. There are more than enough black Bermudians with the intelligence, education and integrity to sit as Commissioners on the COI.
3. For far too long, race has been a prominent part of decision-making here in Bermuda. To support this assertion, I refer the COI to the work *A Random Walk Through the Forest* authored by Joseph T. Christopher, Ph.D., Chief Education Officer of Bermuda from 1996 to 2007. Dr. Christopher writes that in 1933, The Berkeley Institute, a school that was available to both blacks and whites but for most of its existence up to that point [and until recent years] had a student population that was virtually 100% black, required additions to the school and requested funding from Government. The Bermuda Government agreed to provide the requested funding on condition that The Berkeley Institute Board of Governors accept nominees from Government for the position of Board Chairman, as well as additional members of the Berkeley Board. The Government-

appointed members of the Board would then outnumber those appointed by the Berkeley Educational Society, the parent body of the school which had appointed all Board members from the time of the school's founding in 1897. In essence, the requirements by Government would result in Government having a major influence over the operation of the school. No such order was required of historically white schools that were assisted by the Bermuda Government in the purchase of land and buildings.

4. On page 126 of *A Random Walk Through the Forest*, Dr. Christopher notes that all white schools were able to have boards of management and were encouraged to operate their schools independently; black schools, on the other hand, were managed by the central office of the Education Department. Why do I include these references to Dr. Christopher's book? They are included because they reflect the Government's view in 1933 that blacks were irresponsible, incompetent and incapable of managing finance. The composition of the COI brings into question whether or not the same thinking provided the underpinning of the selection of the COI's Commissioners and its legal counsel from an historically white law firm. It seems that the contempt shown towards blacks by some whites continues to this day.
5. The local print media have been a powerful tool in shaping public perceptions of individuals and specific groups. Many have accepted exploitation and verbal abuse while their dignity and respect were ignored. Money, time and energy have convinced some blacks to accept the degraded status imposed on them. On the other hand, many whites deny that they continue to believe that they are superior to blacks and should, therefore, be in charge!

Mr. Lawrence Brady, Chief Architect

6. I note with great concern the absence of any questions from the COI regarding the fraudulent cheques that were placed in a filing cabinet in the Department of Architectural Design and Construction seemingly to tarnish the names and reputations of the Premier and a Government Minister of the day. The following questions remain unanswered:
 - a) Where did Mr. Lawrence Brady, Chief Architect, Department of Architectural Design and Construction, get the cheques?
 - b) Why were the Police not called to investigate the matter in December 2008?
 - c) Who instructed Mr. Brady to put the cheques on file?
 - d) Why didn't Mr. Brady report this matter to the Permanent Secretary immediately upon 'discovering them' as opposed to having conversations at the Office of the Auditor General?
7. The following questions with respect to Mr. Brady were not raised by the COI and remain unanswered:
 - a) Why did Mr. Brady sign a Payment Certificate exceeding \$50,000 without the knowledge and approval of the Permanent Secretary?

- b) Why did Mr. Brady engage the services of Canadian architects CS&P to produce drawings for a new facility at Marsh Folly and the Dame Lois Browne-Evans Building without Cabinet approval?
 - c) Why didn't Mr. Brady cooperate with lawyers hired by Government in a claim filed by Canadian architects CS&P?
 - d) Why didn't Mr. Brady prepare a Contract Award Recommendation regarding renovations at the Ingham & Wilkinson Building to accommodate the Department of Human Resources for the Permanent Secretary to present to the Minister for Cabinet approval? Here, it is worthwhile noting that when I appeared before the COI on 6th October, 2016, counsel for the COI seemed energized in trying to connect me with the Department of Human Resources renovations project, despite my informing the COI that I had no involvement as there was no Cabinet Memorandum presented to me for Cabinet approval. Mr. Brady would have been responsible for initiating the documents to be presented to Cabinet for approval. For the record, I was invited to visit the site of the renovations project after work had already commenced.
 - e) Why didn't the COI ask Mr. Brady about his over estimation of approximately \$1,000,000 on one \$310,000 project and another \$1,000,000 on a second project costing \$800,000? This over estimation by Mr. Brady is very alarming, yet not one question on these issues were raised by the COI or its legal counsel.
8. Mr. Brady would have played a major role in supplying several documents to the COI's lawyers and may have passed on copies of these same documents to his lawyer, Mr. Alan Dunch, hence his 288 page witness statement. To many this would seem unethical. When giving evidence before the COI, Mr. Brady, in answer to a question from Mr. Jerome Lynch, QC, stated that he had been instructed by the Accountant General's Department to put the fraudulent cheques on file. However, in his letter of 19th May, 2009 to Mr. Kenneth Dill, Head of the Civil Service, Permanent Secretary Mr. Robert Horton stated that Mr. Brady had told him that he placed the cheques in the Department's files following a 12th December, 2008 meeting with a senior staff member of the Office of the Auditor General. A copy of the Permanent Secretary's letter is attached for the COI's consideration at Annexe 1.
9. I attach at Annexe 2 for the COI's information a copy of Payment Certificate No. 14 dated 12th August, 2008 which has been signed by Mr. Brady and a subordinate. I do not believe that the COI has yet had sight of this Payment Certificate which includes, under the subheading "Statement of Account":
- a) Contract Sum - \$123,200
 - b) Authorized Additional Services - \$3,344,365.08
 - c) Revised Contract Sum - \$3,467,565.08
- This Payment Certificate is for a payment of \$167,268 signed by Mr. Brady who in his position as Chief Architect did not have the authority to sign for any amount above \$50,000 in the absence of authorization from the Permanent Secretary.
10. Whilst the referenced Payment Certificate No 14 shows a contract sum of \$123,200, Mr. Brady has been unable to produce the contract attached to this payment. In fact, CS&P

was instructed by Mr. Brady to prepare drawings for the Marsh Folly project at a cost of more than \$1,000,000 and for the Dame Lois Browne-Evans Building for over \$3,000,000. Paragraph 7 b) above refers. Again, no Contract Award Recommendation or Cabinet approval documents have been produced in support of these payments, a fact verified in a letter of 20th January, 2009 from Conyers Dill & Pearman for the attention of Permanent Secretary Robert Horton. A copy of the letter from Conyers Dill & Pearman is attached for the COI's consideration at Annexe 2B.

11. Further to the drawings for Marsh Folly by CS&P at a price in excess \$1,000,000, the COI's attention is drawn to pages 2 and 3 of my letter of 23rd December, 2010 to Premier the Hon. Paula A. Cox JP, MP. A copy of that letter is attached at Annexe 5 for the COI's consideration. Page 2, numbered paragraph 5 states that Mr. Brady, although unauthorized, signed a Special Form of Agreement to pay CS&P \$1,291,000 for work as design consultants with respect to the construction of new facilities at Marsh Folly. Page 3, numbered paragraph 6 indicates that the work was put out to tender in April 2010. The COI will note that one of the bidders requested a meeting with Permanent Secretary Mr. Robert Horton and me to inform us that the drawings put out to tender were ill prepared, thereby exposing the Government to considerable risk.
12. Conyers and Associates, Architects, was asked to review the tender documents. In summary, Conyers and Associates concluded that the drawings were far from complete. Conyers and Associates was then tasked to bring the drawings to the acceptable standard, an undertaking that cost the Bermuda taxpayer an additional \$250,000.
13. On the question that was asked about payment to contractors for the Dame Lois Browne-Evans Building, I refer the COI to my responses to the Auditor General's Report that were tabled in Parliament on 13th March, 2009 and in February 2016.
14. The question put to Mr. Brady regarding payment to contractors for the Dame Lois Browne-Evans Building did not result in a correct answer. The COI's attention is again drawn to my responses to the Auditor General's Report that were tabled in Parliament on 13th March, 2009 [attached at Annexe 6] and in February 2016 [attached at Annexe 7]. I refer in particular to pages 1 through 12 in my 13th March, 2009 response and pages 3, second last paragraph through and including page 5 in my February 2016 response.
15. I attach for the COI's consideration at Annexe 3 the memorandum of X February 2012 to Acting Financial Secretary Mr. Anthony Manders and then Premier the Hon. Paula A. Cox, JP, MP from Trott & Duncan, Barristers and Attorneys, on behalf of Conyers and Associates. The COI will note that there was no formal government contract or Cabinet approval for the drawings/architectural plans for the Dame Lois Browne-Evans Building. The COI will also note that Mr. Brady refused to cooperate with lawyers and architects hired by the Government in a case against them filed by the CS&P of Toronto. It is puzzling that the Auditor General performed a special audit on the Dame Lois Browne-Evans Building and also conducted a value for money assessment on the project, but failed to mention any of the foregoing.

16. I believe that my mistrust of Mr. Brady is justified as highlighted in a letter that I wrote to Premier the Hon. Paula A. Cox, JP, MP on 20th April, 2011. A copy of that letter is attached at Annexe 4 for the COI's consideration. The COI will note at page 1, numbered paragraph 1 (2) that Mr. Brady was the owner of a construction company and had possessed an intermediate sized truck #IN1544 since 1992. I believe that such situation reflects a conflict of interest as outlined in the Government of Bermuda's Conditions of Employment, page 38, 7-2-3 [copy attached at Annexe 4B for the COI's consideration].
17. I believe that my mistrust of Mr. Brady is also justified by his failure to advise Permanent Secretary Mr. Robert Horton immediately upon becoming aware that copies of cheques that were potentially very damaging and embarrassing to then Premier Dr. the Hon. Ewart F. Brown, JP, MP and me were on file in the Department of Architectural Design and Construction. Mr. Brady has indicated that he became aware of the cheques' existence on 12th December, 2008, yet it wasn't until 29th January, 2009 that he brought this very serious matter to the attention Mr. Horton. The question? Why the delay? I invite the COI to draw its own conclusion in that regard.

Mrs. Heather Matthews, Auditor General

18. The following questions with respect to Mrs. Heather Matthews, Auditor General, author of the Report on the Consolidated Fund of the Government of Bermuda ["The Report"] for the Financial Years 2010, 2011 and 2012, were not raised by the COI and remain unanswered:
- a) Why did the Auditor General fail to include reference to the unauthorized Payment Certificate signed by Lawrence Brady in her Special Report on the Dame Lois Browne-Evans Building?
 - b) Why didn't the Auditor General's Report include concerns about the drawings by CS&P that were not approved by Cabinet?
 - c) Why didn't the Auditor General's Report include the fact that Mr. Lawrence Brady failed to prepare a Contract Award Recommendation for the Permanent Secretary and Minister regarding renovations at the Ingham & Wilkinson Building to accommodate the Department of Human Resources?
 - d) Why didn't the Auditor General's Report indicate that drawings prepared by Canadian architects CS&P at the request of the Chief Architect for the central laboratory at Marsh Folly were incomplete and that the cost to the taxpayer to improve and complete them was an additional \$250,000?
 - e) Why didn't the Auditor General delve further into how and why the fraudulent cheques were placed on the file within the Ministry of Architectural Design and Construction?
 - f) Why would the Auditor General suggest that Dr. the Hon. Ewart F. Brown, JP, MP and I repay the Government for the funds that were spent for the investigation into the fraudulent cheques, knowing that we were acting on behalf of the Government and not in a personal capacity?
19. I offer for the COI's consideration the following extract from my February 2016 Response to the *Report of the Auditor General on the Consolidated Fund of the*

Government of Bermuda for the Financial Years March 31, 2010, March 31, 2011 and March 31, 2012. Annexe 7, pp. 12-13 refers.

“The “Office of the Auditor General Media Release of 26th January, 2012 attributes the following statement to the Auditor General: “...where the fundamental financial rules which govern all civil servants have been blatantly disregarded at the highest levels in Government, appropriate sanctions should be applied....”

“The Auditor General seems to have forgotten that when she assumed office as the Accountant General in 1994, she recognized and reported to the Minister of Finance that Stamp Duty revenues were not being administered and collected properly and that a significant amount of Government revenue was being lost. In fact, the 1998 Audit Report stated that the Accountant General collected some \$10,000,000 in Stamp Duties on land and property transfers in 1998. A review of the Land Valuation Office records indicated that Stamp Duties of \$16,000,000 should have been collected, marking a shortfall of some \$6,000,000. The 1997 shortfall was almost \$10,000,000. The 1998 Audit Report goes on to state that no records were maintained by the Accountant General to identify the land transfers on which the \$10,000,000 was collected. Consequently, the transfers on which Stamp Duty was not collected could not be identified.

“The Auditor General commented that “these revenues may never be collected” rather than something to the effect that every effort must be made to secure the outstanding revenue. Approximately \$16,000,000 is an extraordinary amount to write off without a proper review of the losses and how they occurred. She seems to have resigned her role when she indicated that “these revenues may never be collected”. Maladministration on collection of these funds dates back to the early 90s when the then Accountant General issues her first Report on the Consolidated Fund. Her attempts to rectify the matter were feeble; in fact, there was a three-year wait before a consultant was engaged to assist in the matter. It was found that Stamp Duties had been adjudicated at less than market value and there is no evidence of an investigation into who was responsible for such false accounting. Consequently, those who conducted such transactions were possibly allowed to continue unfair assessments and continue to be unaccountable for such actions. The Government lost millions of dollars in revenue during this timeframe. Therefore, the matter should have been investigated, as there was the possibility that false accounting, breeches of Financial Instructions and even theft even occurred.

No records, no control, no Police investigation. \$16,000,000 of Government tax revenue uncollected or gone missing. The Accountant General responsible for this gross mismanagement is later promoted to Auditor General. Now she recommends the sanction of others. Shameful.”

Additional Observations

20. During my appearance before the COI on 6th October, 2016, I was never asked about how I was able to save the Bermuda taxpayer some \$17,000,000 on five Government projects. The COI seemed to have no interest in savings effected in the Ministry of Works and Engineering as a result of assistance from the Ambling Company. The COI’s sole

interest, it appears, was that the Finance Minister did not support issuance of the contract with the Ambling Company whilst the then Premier clearly and correctly noted the collective responsibility of Cabinet. It seems to me that counsel for the COI was too often in an adversarial, almost prosecutorial role with witnesses.

21. The COI's attention is again drawn to information set out in Annexe 7, pp. 6-7 on the following five Government projects:

- **Demolition of Former Club Med Hotel, St. George's**

A \$20,000,000 TAF had been approved for the demolition of the former Club Med, St. George's in order to prepare the site for new hotel development. Following consultation with the Ambling Co. Ltd., I recommended that the building be removed via implosion rather than via the more traditional methodology. Cabinet accepted my recommendation. As a result, the demolition of the facility on 25th August, 2008 via implosion cost approximately \$13,000,000, thereby effecting a savings of some \$7,000,000 to the Bermuda taxpayer.

- **Cockburn Bridge, Ireland Island, Sandys**

There have been repeated suggestions that Ministers, including myself, were guilty of interfering in areas that fell outside their remit as Ministers or that might be contrary to certain provisions of Financial Instructions. Let me state clearly that upon hearing that Ministry of Works and Engineering technical officers had projected that the cost of a replacement Cockburn Bridge would be in the region of \$8,000,000, I did 'interfere'. As a result of my 'interference', the replacement bridge in 2009 cost \$1,184,994.99, thereby effecting a savings of just under \$7,000,000 to the Bermuda taxpayer.

- **General Contractor Services – Interior Fit Out and Relocation of Environmental Health Laboratory, Lolly's Well Road, Smith's FL05**

Upon receiving a Contract Award Recommendation that general contractor services for the interior fit out and relocation of the Environmental Health Laboratory from 7 Point Finger Road, Paget to Lolly's Well Road, Smith's FL05 be approved for \$1,290,000, I expressed the view that far too much money would be expended for the three-year occupancy of a building that Government did not own and recommended that the facility be relocated to a building owned by the Bermuda Land Development Company Ltd. at Southside instead. I subsequently directed that the tender documents be modified and the job re-tendered. As a result, Cabinet approved a Contract Award Recommendation in the amount of \$974,500 for the laboratory to be relocated to Building 322, Southside, thereby effecting a savings of some \$316,500 to the Bermuda taxpayer. More importantly, the improvements would be made in a Government-owned facility.

- **Veritas Place, Court Street Hamilton – Accommodation for Senior Command of Bermuda Police Service**

The Architects Section within the Ministry of Works and Engineering, headed Mr. Lawrence Brady, submitted an estimate of \$1,258,000 for the project to prepare the building for the Bermuda Police Service team. Surprised by the size of the estimate, I met with two independent contractors on site to provide them with the plans prepared by the Architects Section and asked that they provide bids for the same work. Submissions of \$317,000 and \$287,000 respectively were received, with the latter bid

being accepted. Some would call this ‘Ministerial interference’; however, I see this as saving the taxpayer from financial abuse.

- **Fort Knox Building, 14 Wallers Point Road, Southside, St. David’s – Ministry/Department of Education**

I had sight of plans prepared by the Architects Section to modify the Fort Knox Building, Southside in order that it might accommodate the Ministry/Department of Education [MDOE] which required consolidation and relocation from sites at Dundonald Street, King Street and the former Bishop Spencer School on Glebe Road. The estimate for this job was \$1,800,000 with a projected relation date of September 2011. I forwarded the plans to the BLDC who confirmed, after review, that the job could be completed for just under \$800,000 and that the MDOE could move in by 1st June, 2011. Instances such as these caused me grave concern as we had no idea how long this apparent overpricing practice had been going on. Such overpricing of jobs is/was totally unacceptable.

22. The five projects identified at paragraph 21 above were time-sensitive and following my intervention [‘interference’ in the eyes of some] realized significant savings of approximately \$17,000,000 for the Bermuda taxpayer.
23. In the quasi court style inquiry conducted by the COI, the objective of the COI’s lawyers’ adversarial approach appeared to be to prosecute and criminalize some witnesses. I volunteered to attend the hearing because I sincerely believed that the COI was interested in what I had to say and not particularly what its lawyers were addressing. It became quite obvious that the COI lawyers had an ulterior agenda; they never asked me or the Permanent Secretary about our general experiences within the Ministry of Works and Engineering. They never asked us for our recommendations for that Ministry or how it might be improved.
24. It seems to me that the COI’s sole objective is to persecute those associated in any way with the PLP Government. That was evident throughout the hearing by asking the civil servants and a former Premier of Bermuda the same questions over and over again. Of great concern is the fact that neither the COI nor its counsel raised any questions about the fraudulent cheques that were brought to the Permanent Secretary’s attention by Mr. Lawrence Brady on 29th January, 2009. They failed to ask the question as to why the Office of the Auditor General didn’t inform the Bermuda Police Service immediately upon former Auditor General Mr. Larry Dennis taking possession of what he believed to be fraudulent cheques in December 2008. Significantly, the Bermuda Police Service did not become involved in the matter of the fraudulent cheques until being called by Permanent Secretary Horton following Mr. Brady advising him on 29th January, 2009 that these damaging and embarrassing documents were on file in the Department of Architectural Design and Construction. The COI is advised that I became aware of and saw the fraudulent cheques for the first time when they were brought to my attention by Permanent Secretary Horton following his 29th January, 2009 discussion with Mr. Brady.
25. A recent event that took place in the United States illustrates why I believe that race continues to play a role, not only in the U.S., but also in Bermuda, hence my comments at

the beginning of this statement. There was a black lady on a Delta flight from Detroit to Minneapolis. During the flight a passenger took sick and was unresponsive. The flight attendant made an announcement asking if there were any doctors onboard. The black lady raised her hand to indicate that she was a doctor. The flight attendant said to the black lady, *“Oh no sweetie, put your hand down, we are looking for an actual physician, a nurse or some type of medical personnel. We don't have time to talk to you.”* A white man said that he was a doctor which led the flight attendant to say to the black lady, *“Thanks for your help, but he can help us because he's a doctor.”* During the flight, the attendant in conversation with Dr. Cross (the black lady), said, *“Oh wow, so you are an actual physician?”* She then proceeded to ask condescending questions and asked to see Dr. Cross’s credentials in addition to asking what type of doctor she was. Dr. Cross shared the experience with others and other black women began sharing stories of disrespect in their fields. Dr. Cross and others made the statement, *“I am sick and tired of being disrespected.”*

26. I do not believe that the establishment of the COI is an honest attempt by the current Government to review critically the past and to improve upon the future. If so, why weren't the tender procedures surrounding the airport contract reviewed also at this time? In his response to questions from the COI's lawyers, Mr. Marc Telemaque, Secretary, Ministry of National Security, candidly stated that “nothing has changed”. So, what is the purpose of this inquiry? I have concluded that this inquiry is not about seeking the truth by looking at all aspects of events during 2010-2012. This inquiry is not commissioned to improve our Government. Instead, this inquiry is an attempt by the current Government to point fingers and disavow a prior Government as it seeks to regain the Government at the next General Election.

Derrick V. Burgess

Date