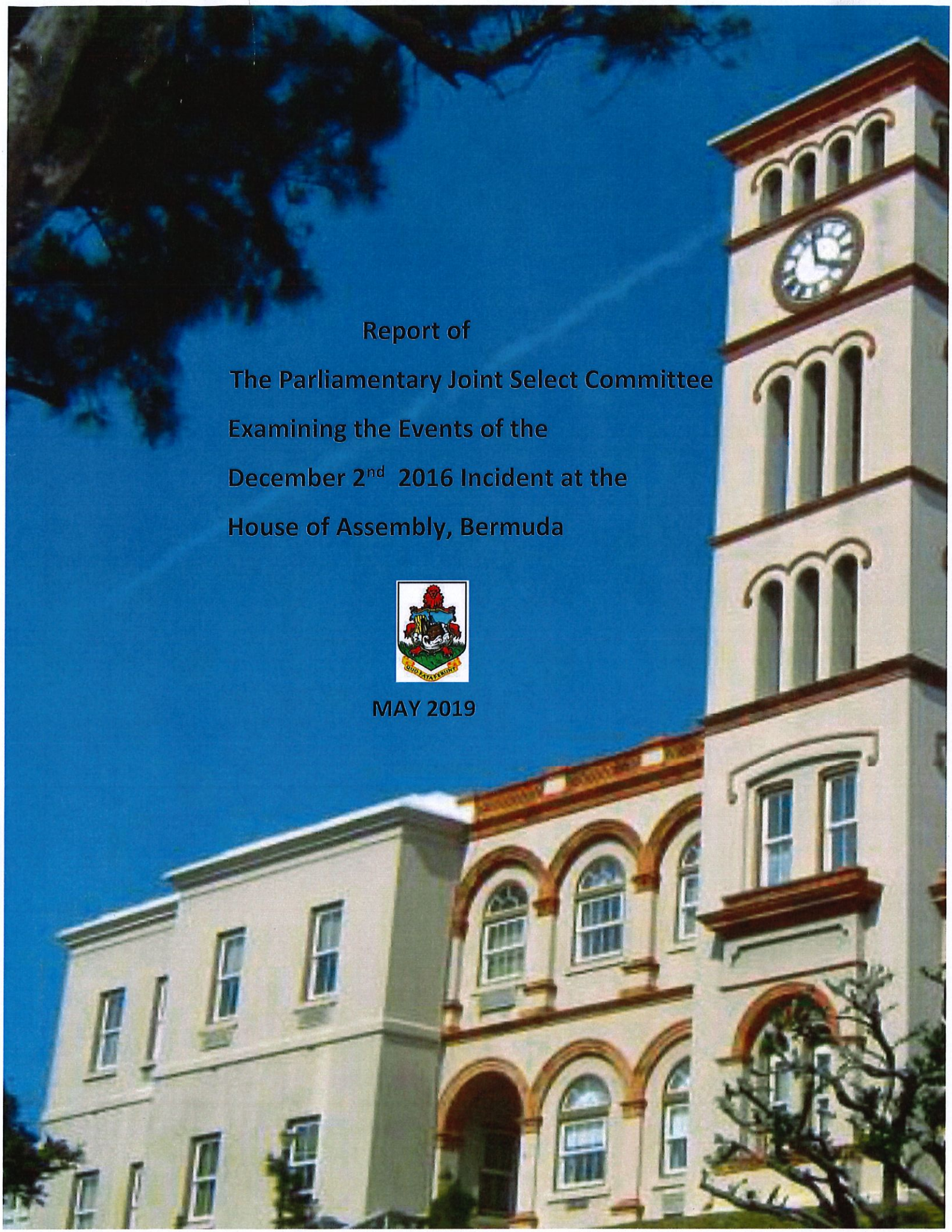

# Report of

# The Parliamentary Joint Select Committee Examining the Events of the December 2nd 2016 Incident at the House of Assembly, Bermuda

**MAY 2019**

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*House of Assembly*
*Bermuda*

25th May 2019

The Hon. Dennis P. Lister JP MP
Speaker of the House of Assembly
21 Parliament Street
Hamilton HM 12

Dear Mr. Speaker:

It is both my pleasure and my solemn duty to submit to you the Report on the findings of the Parliamentary Joint Select Committee ("the Committee") charged with examining the incident at the House of Assembly on 2nd December 2016. The report represents the end product of a Committee which has worked with diligence, focus and commitment on the task with which it was presented.

We trust that the information presented will serve to highlight not only issues directly related to the decision-making prior to and on 2nd December 2016, but also other matters which should be examined as well.

We are most indebted to you, Mr. Speaker, for your support throughout this process which has at times been most challenging. As you are aware, we had to restart our proceedings in February 2018, and we have had to work on, despite at times not having a full complement of members. We acknowledge the support provided by His Excellency the Governor, Mr. John Rankin, who was sworn in just days after the incident. We are grateful for the contributions of all persons who voluntarily provided information, and value the contributions made by other members of the community.

Finally, we thank the Clerk to the Legislature, Mrs. Shernette Wolffe, as well as former Assistant Clerk Ms. Sierra O'Meally, Consultant Clerk Mrs. Alberta Dyer Tucker and Sergeant Major Arnold Allen whose services were most appreciated.

Mr. H.K.E. Swan JP MP, Chairman
Senator The Hon. Joan Dillas Wright JP, President of the Senate
Mrs. Tinee Furbert JP MP
Mr. Scott Simmons JP MP
Mr. Ben Smith JP MP
Mr. Neville Tyrrell JP MP
Senator Marcus Jones

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# FOREWORD

***"There comes a time when one must take a position that is neither safe nor politic nor popular, but he must take it because his conscience tells him it is right."*** **Rev. Dr. Martin Luther King Jr.**

From its first meeting in December 2017, the Parliamentary Joint Select Committee ("the Committee") knew that its task would not be an easy one. It was given a timeline of three to six months to delve into and report fairly on the circumstances which had led to an incident which had provoked high levels of tension and polarization in the Bermudian community.

The Committee is aware that even now, some members of the public might feel that this review was unnecessary. The truth is that even two years later there are many in the community, particularly those directly affected by the incapacitant spray and those who witnessed the events, who remain interested in understanding how the country arrived at that point on that day. In the main, most want to know what could be done to avoid a repeat of the incident. Moreover, the Committee's efforts have uncovered that there are still key stakeholders who have much to answer for as it relates to the decision-making on 2nd December 2016.

The Committee trusts that this final report, although dealing with 'historical' events, will be useful and that its recommendations, together with recommendations highlighted in other reports, will be considered and operationalized in order to reduce the potential for another event of this nature.

It is already a matter of public record [1]that operational decisions made by the Bermuda Police Service contributed to the unfortunate manner in which events unfolded that day. That notwithstanding, and given its mandate to investigate the decision-making which had occurred, the Committee took the position that it should examine as much of the existing material as it could, identify any gaps which occurred when trying to piece together the events and seek clarity from those who could fill in some of the gaps.

Committee members committed to apply fairness, objectivity and transparency to all aspects of its investigation. More importantly, although members represented the gamut of political interests- Government, Opposition and Independent- they were determined not to make their investigation a political event. Therefore, they devoted themselves to meeting, researching and interviewing behind the scenes. They maintained confidentiality to avoid having their in-process efforts critiqued in public or in the media.

One particular matter should be mentioned. During the process of requesting information from key stakeholders, the Committee found itself engaged in dialogue with one lawyer who represented not just a member of the Executive, but also (or so was the initial thought!) the former Commissioner of Police. Towards the end of its research, the Committee was advised by the lawyer that he represented the entire Bermuda Police Service. Potential conflicts of interest will be addressed later in this report.

The point in mentioning the lawyer is that the Committee had no substantial allocation at its immediate disposal in order to seek legal advice. That notwithstanding, Members were most appreciative to be given potential access to funds through the Office of the Legislature. However, the absence of a specific budget

[1] The National Police Coordination Centre (NPoCC) Report was made public on 28th March 2017.

dedicated for the purpose of the Committee's mandate is noteworthy and should be a consideration in the future for any Joint Select Committee with a similar mandate. This of course would be a matter for the House of Assembly's Rules and Privileges Committee to determine.

The Committee must acknowledge the assistance provided by the current Speaker of the House of Assembly, The Honourable Dennis P. Lister, and His Excellency the Governor Mr. John Rankin, without whom the task might have been frustrated by on-going legal maneuvering and the obstacles presented by persons, some of whom hold or held constitutional offices.

The Committee wishes to thank for their cooperation former Speaker The Hon. K. H. R. Horton JP and former Parliamentarians Mr. E. T. Richards, Dr. E. G. Gibbons and those persons who were directly involved in the incident and willing to speak with the Committee. Additionally, the Committee is appreciative of responses provided by Opposition Leader Mr. L. C. Cannonier JP MP, current Secretary to the Cabinet Major M. T. Telemaque and by Mrs. C. Whitter, Deputy Head of the Public Service. The Committee also acknowledges that only after issuing summons, information was provided by former Parliamentarian Mr. J. Baron, current Parliamentarians Mr. M. H. Dunkley JP MP and Mr. T. Moniz JP MP, and former Deputy Commissioner Mr. P. Wright. The Committee also acknowledges the most helpful contributions of former Commissioner of Police Mr. M. De Silva, which were received after intervention from Government House.

In addition, thanks must be given to former members of the Committee: The Hon. M. J. Scott JP MP, and former One Bermuda Alliance Senators Andrew Simons JP and Robyn Swan. Their efforts and contributions were most appreciated.

During each instance when it was short of a member, the remaining members of the PJSC continued to deliberate on evidence received to determine the next steps necessary.

# EXECUTIVE SUMMARY

The work of the Parliamentary Joint Select Committee ("the Committee") is an important undertaking in Bermuda's history, as it affords a more comprehensive analysis than that found in other documents on one of the most serious social issues to have unraveled in Bermuda for more than 40 years. Sadly, many in Bermuda relate the tragedy of 2nd December 2016 to the disturbances that took place in the 1960s and 1970s.

To assist in understanding some of the deep-rooted feelings, the Committee attempts below to put into context the socio-political climate leading up to and during that period in 2016. It must be said repeatedly that Bermuda is ripe for an academic analysis of this period and the contents of this report can be a valuable resource in that effort.

While a matter best examined by a scholar such as a social scientist, it is reasonable to deduce that the social atmosphere that developed in 2016 did not happen overnight; there were many contributing factors. On 1st December 2017, Parliamentarian Renee Ming noted in the Legislature[2] that some 26 protests had occurred in the four year period between 2012 and 2016.

The work of the Joint Select Committee has been extended twice with the permission of the Speaker of the House: first because of delays caused by the ignoring and/or reluctance to engage by key witnesses that the Committee wished to interview, which also included legal challenges which were referred to the Speaker of the House. In the later months as the Committee began to uncover more information, due in part now to the willingness of persons to share information, together with the Committee's commitment to uncover the facts, the Committee was encouraged to seek an extension during its summation.

***" Truth crushed to earth will rise again" – Rev. Dr. Martin Luther King Jr.***

The mandate of the Parliamentary Joint Select Committee was to examine and to obtain a clear understanding of the decision-making that prevailed on 2nd December 2016, both at the House of Assembly and otherwise behind the scenes, which resulted in Officers being deployed in protective gear using a 'Bubble Tactic', and later resulted in Officers discharging CAPTOR spray on protestors.

Testimony from some of the protestors who were engaged in 'civil disobedience' disclosed that the experience was traumatic and some even considered it 'life threatening'. It was stated during testimony that an announcement was made that the "House would not sit at 1:00 p.m.", which was followed soon after by the surprise arrival of the police unit.

Astonishingly, when the Parliamentary Joint Select Committee reviewed the video from the body camera placed on an Officer, it was uncovered that an Order was given to Officers to deploy CAPTOR spray. The revelation 'flew in the face' of what was initially reported by the Bermuda Police Service, and of what previously had formed a major part of the findings and subsequent decision from the Police Complaints Authority.

Furthermore, the statements of former Deputy Speaker Mrs. Suzanne Roberts-Holshouser and former Member of Parliament Mr. Kenneth Bascome, shared with the Committee during its interview with

[2] House of Assembly Hansard 1st December 2017, p. 781.

members of the People's Campaign, revealed significant information that has illuminated serious discrepancies in the statements provided by the Bermuda Police Service and the testimony and statements provided by other witnesses. It should be noted that the testimony of Mrs. Roberts-Holshouser and Mr. Bascome did not form part of the police file requested to be sent to the Committee. However, their testimony states that discussions and planning took place between them, their political colleagues and the Bermuda Police Service about how to gain entry to the House of Assembly, and therefore reinforces Finding 3.9 of the National Police Coordination Centre Report which made significant reference to the adverse involvement of Platinum Command.

**A Disastrous Day in Bermuda's History**

From the outset, reports of the event, commonly referred to as the 'pepper spray event', placed the focus on the protestors and the Officers on the frontline, by making them the centre of attention.

However, during the process of gathering evidence and considering testimony, the Committee realized that while the protest itself was one matter, the decisions made by persons in light of the protest were a separate matter. It was the reaction by decision-makers to the protest which resulted in the disastrous events of the day.

Two questions emerged: **WHO** told the public to come out and **WHO** decided what should be done in light of the protest? A third related question was also raised: **WHY** did the events unfold as they did?

The Committee considered **WHO** was responsible for the presence of the protestors. In fact, it is a matter of public knowledge that chief amongst those encouraging the public to come out were:

**THE PEOPLE'S CAMPAIGN**

The People's Campaign was instrumental in uncovering key details about the airport redevelopment through Freedom of Information requests to the Canadian Government. In addition the group organized public meetings prior to the anticipated debate of the airport redevelopment bill. On the evening of 1st December 2016, the People's Campaign held a highly emotive public meeting at which members of the public were encouraged to be present at the House of Assembly on 2nd December 2016. The number of protestors, although few in the early morning, grew as the day progressed.

It was reported that many came out to show their displeasure about the airport redevelopment bill. It cannot be ruled out that some in the crowd may have come to intentionally block access to the House of Assembly, thereby breaking the law.

**THE PROGRESSIVE LABOUR PARTY**

Parliamentarians from the Progressive Labour Party (the Opposition at that time) did attend many of the highly emotive meetings/protests that took place, challenging the then One Bermuda Alliance Government. In addition, the then Leader of the Opposition, Mr. David Burt JP MP, addressed the public at a meeting at St. Paul's Centennial Hall on the evening of 1st December 2016 and encouraged them to demonstrate their dissatisfaction with the airport redevelopment proposal.

In video-footage taken on Parliament Street on the day of the incident, members of the Progressive Labour Party were seen in the crowd. Their presence would have been seen as a validation of the protests.

**NB**: By way of additional information, the Committee considered at length the pros and cons of the involvement of Parliamentarians in emotive causes that lead to civil disobedience; however, it was determined that their involvement was not dissimilar to what has transpired historically in both Bermuda and overseas.

After establishing **WHO** encouraged the protestors, the Committee turned its attention to **WHO** made decisions that day, particularly during the period between 10:00 a.m. and 1:00 p.m. which, based on evidence provided, was a key period:

**THE ONE BERMUDA ALLIANCE GOVERNMENT**

The OBA Government must accept some responsibility for the decision-making. It appears that Members of the Cabinet, determined to have the already oft-delayed debate on the airport redevelopment bill occur that day, influenced the Speaker to change his mind to have it debated at 1:00 p.m., thereby contributing to the climate of confusion that took place.

**THE SPEAKER OF THE HOUSE OF ASSEMBLY**

Considering the authority vested in the Speaker of the House in 2016, The Hon. K. H. Randolph Horton JP, it is apparent that he was indecisive on 2nd December 2016, having first stated that the House would not convene if Parliamentarians were not in the House at 10:00 a.m. and later changing his mind. This change of mind seemed to come after a series of telephone calls between the Speaker and the Acting Governor, the former Premier and the Bermuda Police Service. This change of mind also later forced the Gold Commander and/or other Senior Officers, now finding themselves under pressure, to react in haste.

**THE ACTING GOVERNOR**

The Acting Governor was in frequent contact with the parties including the Speaker, the Commissioner, the Premier et alia. Her presence/participation in the process could have also influenced the decisions made on the day and some responsibility must be ascribed.

**THE BERMUDA POLICE SERVICE**

The Bermuda Police Service must accept some responsibility for the outcome of the unfolding of events on 2nd December 2016. The National Police Coordination Centre's peer review, which will be referenced in more detail later in this report, details the BPS's deviation from the plan of action it had established for the day, as Officers found themselves reacting to events.

During the process of the 2018/2019 review, the Committee adopted the view that the newly-appointed Police Commissioner interfered with the intent of the Committee to interview member(s) of the Bermuda Police Service.

That notwithstanding, 2nd December 2016 will forever remain a tragic event in Bermuda's history. In fact, 2016 in its entirety can be described as a tumultuous political period characterized by a plethora of protests which culminated in the CAPTOR spray incident in December.

# A. THE WORK OF THE COMMITTEE

The work of all Parliamentary Joint Select Committees is important because of the charge to ensure that outcomes are evidenced-based and in the best interests of the country. The investigations of this particular Committee were important because members were tasked to look into a serious national incident. The powers and authority vested in Joint Select Committees can be found in Part IV of the Parliament Act 1957[3]. Sections 36 through 38 [4]of The Bermuda House of Assembly Official Standing Orders (revised July 12, 2013) also deal with the operation of legislative committees.

The Motion to appoint a Joint Select Committee to investigate, report and make recommendations on the events of December 2, 2016, was approved as amended in the House of Assembly (HOA) on 1st December 2017. The wording of the Motion follows:

> *WHEREAS at the gates of this House of Assembly a show of democracy descended into open conflict between concerned citizens of Bermuda, and those charged with protecting the very rights they sought to exercise, on December 2nd 2016*
>
> *AND WHEREAS the Government having declared its intention to establish a Parliamentary Committee to look into the events generally, including the decision-making and any directives of the Executive and the then Speaker of the House of Assembly to the Police, that led up to and precipitated events that day, including the deployment of police in riot gear and the use of incapacitant spray on the crowd of citizens assembled;*
>
> *BE IT RESOLVED that this Motion for the appointment of a Joint Select Committee to carry out the said Inquiry into the events of December 2nd, 2016 be approved*
>
> *AND, Thereafter, pursuant to Part IV of the Parliament Act 1957, that a Parliamentary Joint Select Committee be appointed to (1) to enquire into the aforesaid events as thoroughly as may be; (2 bring closure to this event by the making of all proper and necessary findings, recommendations and where required, sanctions; and to submit its report to the House of Assembly within three to six months.*

On 13th December 2017, Mr. H. Matthie, Vice Chairman of M.O.V.E., an organization which had established a committee to educate its members on the 2nd December 2016 protest and pepper spraying incident, especially in light of the then upcoming deadline for appeal/action to be taken by the protestors, sent communication to Mr. H. K. E. Swan JP MP, the Parliamentarian who had laid the Motion in the House of Assembly. That communication was held until after the Committee held its first meeting. Other similar communication to the Chairman was also held.

On 15th December 2017, the Committee held its first meeting, and elected Mr. H. K. E. Swan JP MP as its Chairman. From the start, the members expressed their commitment to doing their best for Bermuda, and to ensuring that any research and investigations related to the investigation were carried out with fairness and objectivity. The Committee's Terms of Reference [5]were derived directly from the Motion; thereafter, the approach to the task at hand was determined. The Committee then commenced a

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[3] Part IV of the Parliament Act 1957 is found in Annex 1.

[4] Sections 36 through 38 of the Bermuda House of Assembly Official Standing Orders are found in Annex 2.

[5] The Committee's Terms of Reference and operating authority can be found in Annex 3.

comprehensive review of two main documents: the National Police Coordination Centre (NPoCC) Report and the Decision of the Police Complaints Authority, before determining the key persons who should be interviewed.

In order to both demonstrate accountability and to solicit input from any persons with information, the Committee placed newspaper notices laying out its Terms of Reference and sent out letters to key identified stakeholders, asking for statements of account on what happened that day.

The Committee also used this period to advise M.O.V.E. that the Committee's mandate was not related to and could not impact any current or pending charges brought by the Bermuda Police Service. As such, while the Committee understood the urgency of the organization's request to meet, it was not positioned to provide the organization with information or advice which would impact the deadline for appeal, which was a legal matter.

In early February 2018, former Premier Michael Dunkley JP MP, who had been asked to submit a statement of account to the Committee but did not do so, pointed out a procedural error: although ratified by the Lower House, inadvertently the Committee had not been properly ratified by both Houses in accordance with the Parliament Act 1957. While Mr. Dunkley's observation was correct, a sitting Member of Parliament would customarily and as a matter of protocol raise his or her concerns directly with the Speaker and await a response, rather than raising the matter in the media before the response was given[6]. The net effect was that the Committee immediately stopped the work it had done to date until it could be properly constituted.

Speaker Lister acknowledged the anomaly and ensured that the Motion to establish the Committee was sent to the Senate which ratified it later in February 2018. The incident was helpful in that members collectively agreed that the Committee's work would not be played out in public and that all Committee press releases would be channeled via the Chairman.

Once properly ratified, the Committee determined that all work undertaken between December 2017 and February 2018 was null and void; as such, the Committee began afresh with its new end date set for August 2018. All persons previously appointed to the Committee agreed to continue serving, although objections to the participation of Mr. H. K. E. Swan and The Hon. M. J. Scott were raised by lawyer A. Dunch who represented, inter alia, Mr. Dunkley and at least one other potential witness. All persons and organizations previously contacted by the Committee [7]were advised of the adjusted start date and invited to resubmit any materials which they might have provided already. Members again elected Mr. H. K. E. Swan to serve as Chairman.

Seven persons were appointed to the Committee in December 2017 and the same seven appointed again in February 2018. In accordance with section 38 (4) of the Official Standing Orders of the Bermuda House of Assembly, a minimum of 4 members had to be present at each meeting in order to form a quorum. The Committee also determined that in order to expedite its work, on occasion a sub-committee of less than 4 members could review information and make recommendations for the larger committee to consider.

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[6] Royal Gazette 7th February 2018

[7] Including Government House, The Police Complaints Authority, Trott and Duncan, M.O.V.E., Mr. C. Looby, Mr. J. Baron, Mr. M. Dunkley JP MP, Commissioner M. De Silva and The Hon. K. H. R. Horton JP.

On 6th March 2018, lawyer Alan Dunch wrote to the Speaker on behalf of Mr. Dunkley and others for whom he (Mr. Dunch) acted, with objections to the participation on the Committee of Mr. H.K.E. Swan JP MP and The Hon. M. J. Scott JP MP. Mr. Dunch suggested that Messrs. Swan and Scott, both of whom had spoken passionately to the Motion in the House of Assembly- as did others- should either voluntarily decline to serve as members, or that the Speaker should rescind their appointments and replace them on the grounds of apparent bias and consequent procedural unfairness. The letter noted that Mr. Dunkley was not prepared at that time to participate in any way in the proceedings of the PJSC and that he reserved all rights that might arise once the Speaker had responded to the concerns raised.

On 15th June 2018 the Speaker announced in the House of Assembly ("HOA") that Mr. S. Simmons JP MP would replace The Hon. M. J. Scott JP MP, who represented at least one client involved in court-proceedings related to the incident on 2nd December 2016. In April 2018, former Opposition Senator Andrew Simons was removed from the Senate, leaving a void in the Committee's membership until a replacement was named. In July 2018, Ms. Robyn Swan was named as a new Opposition Senator and later as a Committee member. However, her tenure was short-lived. Her removal once again left a membership void which was not filled until November 2018 when Mr. Marcus Jones was named as a new Opposition Senator and member of the Committee.

Challenges with membership notwithstanding, the Committee met[8] regularly to discuss and analyze the information gathered, relying on several sources to gather information for its examination:

(1) The National Police Coordination Centre (" the NPoCC Report") commissioned by the Governor and authored by Assistant Chief Constable Chris Shead of the United Kingdom;
(2) the Decision (in respect of the 26 complaints made by members of the public on the use of captor spray at the House of Assembly on 2 December 2016), rendered by the Police Complaints Authority on 10th August 2017;
(3) statements of account requested by the Committee and given voluntarily by The Hon. K. H. R. Horton JP, Mr. E.T. Richards and Dr. E. G. Gibbons;
(4) interviews with and/or statements of account provided by Mr. M.H. Dunkley JP MP, Mr. J. Baron and Mr. P. Wright after summons[9];
(5) a statement of account, police policy documents and other documents, together with police camera video footage provided by former Commissioner M. De Silva, which were received after a request from the Committee to Government House;
(6) responses from Superintendent J. Howard [10]of the Bermuda Police Service through the current Commissioner of Police; and
(7) media reports on the incident.

A list of the correspondence issued and received by the Committee over the course of its review can be found in Annex 5.

The Committee held regular meetings at which members compared and contrasted information from the reports, formulated questions based on the information gathered, identified gaps in understanding and

[8] A list of meeting dates can be found in Annex 4.
[9] Part IV of the Parliament Act 1957 affords the Committee power to issue a summons.
[10] The first summons to Superintendent Howard was issued in November 2018; the second was issued in December 2018.

where appropriate, sought out key stakeholders who could possibly shed light on those gaps. As a result of this approach, the Committee recorded a number of matters which are highlighted and discussed in the Findings Section of this document.

After inter-Committee discussions surrounding the sensitive nature of some of the material which might be collected, and at the recommendation of former Senator Andrew Simons, the Committee established an electronic account with box.com which allowed for the safe and secure storage of materials.

As it had done prior to its ratification, in March 2018 the Committee placed two advertisements in the Royal Gazette, outlining its membership, the Authority under which it operated and its Terms of Reference. More importantly perhaps was the invitation for any member of the public to make a submission to the Committee. Regrettably, the advertisements again attracted no responses.

While it is clear that memories may fade after 2 years, the Committee was still shocked at how little focus had been placed by key stakeholders (or for that matter, the public) on the contents of the NPoCC Report. Perhaps this lack of focus occurred because those key stakeholders were not interviewed by Chief Constable Shead, or perhaps it was because they viewed the NPoCC report as focused solely on Police operations.

That may explain why some of the key stakeholders ignored initial requests from the Committee for statements of account. In fact, the Committee found its initial approaches to certain key stakeholders met with indifference or stony silence. Because of the view that the information held by these individuals was critical to understanding the events of 2nd December 2016, the Committee chose to exercise its authority to issue a summons to each of those persons. Even then, perhaps because of the length of time which had passed, some of these stakeholders stated that they no longer had access to files or that they did not recall certain critical events. Ironically, these same persons, once pressed, were able to recall in great detail other events of the day.

While being fully cognizant that some matters of national security cannot be publicly discussed, the Committee found that information provided by former Police Commissioner M. De Silva (after intervention through Government House) and Deputy Commissioner P. Wright (after a summons was issued) was useful in creating some understanding of general police operations. However, achieving a deeper and richer understanding of the details of police decisions on 2nd December 2016 was stymied when the lawyer for the new Commissioner, whom one might assume was not on the Island on 2nd December 2016, wrote that all communication to officers involved should be through the Commissioner (or the lawyer), as the Commissioner alone spoke for the Bermuda Police Service[11].

The Committee considered engaging a lawyer. It wrote to a small number of lawyers, received quotes but was later advised that some lawyers approached were conflicted. In the end, the Committee continued to refer all legal matters to the Speaker for consideration and opinion.

The Committee recognized that as its 6-month deadline of August 2018 approached, it was just beginning to uncover more meaningful information. Thus, before the HOA recessed in June 2018 the Committee decided to "Rise and Report Progress" to Speaker Lister, and to seek an extension of time from the Parliament. This was agreed to and a six-month extension was granted.

[11] MJM Letter dated 26th September 2018.

The Committee found the latter part of 2018 to be a far more active period than the first part of the year. It was during the months between September and December when it finally secured the cooperation of persons invited to appear before it. As a result of the testimony of witnesses sworn under oath, the Committee was able to further identify other persons of interest involved in the events on 2nd December 2016.

In January 2019, in order to expedite its work, the Committee agreed to the formation of a periodic sub-committee to review drafts of its proposed final report. After meeting and examining particular sections of the document, the sub-committee reported to the larger Committee which would then determine whether sub-committee suggestions would be accepted or not.

In March 2019, a further extension was granted by the Speaker and the Committee has done its best to meet the amended timeline.

# B. THE CONTEXT

Before going any further, it is important to establish the context for the events on 2nd December 2016. As part of the preparation for this report, the Committee briefly considered leadership as well as the social and political climate which had been created in 2016. The year was an interesting one for Bermuda for a number of reasons.

Although a British Overseas Territory, Bermuda is a self-governing jurisdiction with a duly elected House of Assembly. The Bermuda Government operates under the Bermuda Constitution Order 1968. There exist three separate governance arms:

- The Legislature, which comprises the Senate and the House of Assembly, is responsible for making laws for the peace, order and good governance of Bermuda;
- The Executive, the authority of which is invested in Her Majesty, and which comprises the Governor and the Cabinet. The Governor has special responsibility for external affairs, defence including armed forces, internal security and the police.
- the Judiciary, which comprises the Court of Appeal, the Supreme Court and the Magistrates Court and which ensures that the law of the land is applied evenly and fairly.

As part of this review, the Committee has had to make representation to members of the Legislature, members of the Bermuda Police Service and civil servants - all of whom have responsibilities and duties outlined in the Bermuda Constitution Order 1968.

The Commander-in-Chief of Bermuda is the Governor, appointed under the Foreign and Commonwealth Office in the United Kingdom. Under relevant sections of the Constitution, the Governor's responsibilities are provided for as follow:

***Governor's special responsibilities***

*62 (1) The Governor, acting in his discretion, shall be responsible for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government, including the administration of any department of government, with respect to the following matters-*

*(a) external affairs;*
*(b) defence, including armed forces;*
*(c ) internal security;*
*(d) the police.*

*(2) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of the Secretary of State, to the Premier or any other Minister designated by him after consultation with the Premier such responsibility for any of the matters specified in subsection (1) of this section as the Governor may think fit upon such conditions as he may impose.*

***Appointment, etc., of Commissioner and Deputy Commissioner of Police***

*87. Power to make appointments to the offices of Commissioner of Police and Deputy Commissioner of Police and to remove or exercise disciplinary control over persons holding*

*or acting in those offices is vested in the Governor acting after consultation with the Public Service Commission.*

In 2016, Bermuda had three Governors within a 9-month period:

- Mr. George Fergusson (commenced tenure 23rd May 2012; finished 2nd August 2016)
- Mrs. Ginny Ferson[12] (commenced tenure 2nd August 2016; finished 5th December 2016); and
- Mr. John Rankin (commenced tenure 5th December 2016; remains in place)

Acting Governor Ms. Ginny Ferson was the Commander-in-Chief of Bermuda on 2nd December 2016.

The timing of the transition of power at Government House came at the most inopportune time. The turnover of appointments to the role of Governor coincided with an acutely challenged Government and a country in crisis.

Although in the fourth year of its tenure, the One Bermuda Alliance (OBA) Government held only a razor-thin majority in the House of Assembly, with the then Speaker of the House, The Hon. K.H.R. Horton JP MP, actually an elected member of the Opposition Progressive Labour Party. In addition, the Government was at serious odds with the people, with Bermuda witnessing an unprecedented number of protests. In fact, the protest on 2nd December 2016 was not the first held at the House of Assembly in Bermuda that year.

In March 2016, the One Bermuda Alliance Government was hastily moving forward with introducing reforms to immigration legislation- which generated great disquiet amongst members of the public. Why was immigration such a thorny socio-economic issue in Bermuda? One must first understand that even in the twenty-first century, Bermuda continues to suffer from a myriad of racial problems- a fact substantiated in reports by social scientists and Royal Commissions [13]which have demonstrated that immigration has been used to manipulate the electoral composition of the country. It is an established fact that Black and Portuguese Bermudians in Bermuda have been adversely impacted by these past immigration policies.

Political researcher and Parliamentarian Walton Brown Jr JP MP, in his book *Bermuda and the Struggle for Reform: Race, Politics and Ideology 1944-1998*[14], provides at least one historical example of why there was such long-standing angst regarding immigration policy. Mr. Brown details a racially structured immigration policy promoted by the now defunct United Bermuda Party intended to ensure that all British subjects living on the Island for at least 3 years were given the vote-- made possible by a section included in the 1963 franchise legislation. Thereafter, the Government of the day encouraged immigration to the Island by British citizens in particular. Census data from between 1950 and 1970 show that there was a significant increase in persons born outside of but living in Bermuda. Since more than half of these individuals came from the British Commonwealth, after three years residency in Bermuda, they were entitled to vote. It is worth noting that while 15% of these persons were black, 83% were white.

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[12] Mrs. Ferson, the Deputy Governor, was Acting Governor in the interim after Mr. Fergusson left and before Mr. Rankin was sworn in.

[13] For example, The Wooding Report 1969, The Newman Report 1974 et alia

[14] p. 68

At the same time, Government leaders publicly planted the seed in the minds of Bermudians that the Island's birth rate was too high and that the Island was becoming over-crowded. In fact, locals were told that if Bermuda had more people than it could educate and train, there might be a strong possibility that in the future, the Government would have to search for other countries willing to take Bermudians.

Although this is but one example, it serves to underscore the fact that historically many Bermudians felt themselves to be at a disadvantage because of immigration policies. Thus, they were willing to converge en masse on the HOA in March 2016. Even though former Chief Justice, Dr. Ian Kawaley stated at the time[15] that it was "strongly arguable" that the withdrawal of labour in circumstances where it has no connection to a labour dispute was a breach of section 34 of the Labour Relations Act 1975, protestors downed their tools and physically came out in numbers in support of the protests at the House of Assembly. In fact, hundreds of persons locking arms in order to surround the building and engage in what was considered by most as a peaceful protest resulted in the unheard-of outcome of preventing the immigration legislation from being debated.

A peaceful protest is universally accepted as the act of citizens expressing disapproval through a statement or action without the use of violence. This type of protest has been used in countries all over the world to advocate for, inter alia, human rights issues, anti-war campaigns, and for expressing disapproval of various political/governmental policy issues.

**An aligned concept is that of civil disobedience, which is a conscious decision on the part of protestors to refuse to obey governmental demands or commands, especially as a nonviolent and usually collective means of forcing concessions from the government. When people engage in acts of civil disobedience, one might expect arrests to ensue.**

Thus, the protestors in March 2016 could have been arrested, but they were not. Instead, former Premier Sir John Swan brokered a settlement between the Government and representatives of the People's Campaign. At the time, the Bermuda Police Service (BPS) earned plaudits from then Governor George Fergusson for its management of the situation. As the former Governor pointed out in his comments on 20th March 2016,

> *"But I am clear, the police have a duty to maintain public peace as well as to enforce the law. These can be two different things, though it is not good if they diverge too far or for too long. The law should not be broken. However, it is not always sensible for the police to apply zero tolerance at the time, especially when emotions are running high. There was a risk of violence last week, despite the good efforts of the protest leaders to prevent this, and violence would have had serious consequences for the whole community. Although the police will no doubt be learning lessons too, in my view the police got this right[16]."*

The Governor's comments notwithstanding, the actions of the Police in March 2016 were roundly condemned by some, including former Attorney General Trevor Moniz JP MP who accused the police of, inter alia, being "missing in action.....standing back and twiddling their thumbs and doing nothing".[17]

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[15] The Royal Gazette 16th March 2016

[16] Bernews 20th March 2016

[17] House of Assembly Hansard: Motion to Adjourn 21st March 2016

Just as the Government's immigration policy had proven unpopular in March 2016, the Government's airport redevelopment initiative was proving to be equally unpopular in the lead up to December 2016. Objections were voiced, not to the building of a new airport to replace the existing L.F. Wade International Airport, but rather to the terms agreed to by the then Government since the initiative offered outsourcing of the Bermuda airport to a Canadian Corporation for a period in access of 30 years. (Ironically, a similar deal by the same company was rejected in the Cayman Islands which, like Bermuda, is a British Overseas Territory.) Although the terms of the airport contract had not all been released at the time, the public was aware that arrangements for the deal had not followed expected tendering and procurement processes.

After receiving responses to a series of Freedom of Information requests to the Canadian Government, the People's Campaign published a special report entitled 'A Bad Deal for Bermuda' criticizing the redevelopment plan and claiming that the country would face unlimited debt as a result of the arrangements made. Perhaps not surprisingly, the process as carried out locally drew much negative attention and criticism. On the evening prior to the anticipated debate, the People's Campaign hosted a public meeting about the airport redevelopment.

Added to this was the fact that most of the public were aware that the OBA Government was investigating reports that certain contracts awarded under the previous PLP Government were not properly tendered. The irony of this, vis a vis the airport project, was not lost on the public.

Early in the morning on Friday, 2nd December 2016, a small group of members of the public assembled at the gates of the House of Assembly in order to protest. At 10:00 a.m., the Bermuda Police Service warned protestors via Dispersal Order that blocking the gates was an offence[18], but took no other direct action against them.

The period between 10:00 a.m. and 1:00 p.m. was a most critical one in the events of the day, as it was during this period that decisions were made that altered the whole trajectory of the day. Members of Parliament intending to engage in debate on the legislation were blocked from accessing the House. Former Speaker Horton had already determined that if Parliamentarians were not in their seats by 10:00 a.m., the session would be cancelled[19]. Because there was no quorum by 10:15 a.m. a.m., the Speaker cancelled the session, although that decision was later amended. His position was communicated to the former Acting Governor, the former Premier, the then Leader of the Opposition and the former Commissioner of Police.

However, as the morning progressed, uncertainty still prevailed amongst Parliamentarians and the public regarding whether the House would sit, and it appeared that some behind-the-scenes maneuvering took place. During this period, two additional significant events occurred: (1) the numbers of protestors increased, and (2) a decision was made for the House to convene at 1:00 p.m.

The increased numbers of protestors blocking access to the House through its gates now presented a major challenge. In contrast to the way the Bermuda Police Service dealt with protestors in March 2016, Officers now marched in formation towards the crowd. Protestors who had been warned to disperse now found themselves sandwiched between the HOA walls and the on-coming Officers. In the confusion which followed, an order was given and incapacitant spray was used on protestors, sending some to seek

[18] The Parliament Act 1957, sec. 12.

[19] Mr. K. H. R. Horton Statement 23rd April 2018, paragraph 7.

medical treatment. Members of the Bermuda Police Service were also injured as a result of their actions which seemed to have provoked the crowd.

Governor John Rankin, who had been sworn in just days after the event, ordered an independent review of the actions taken by the police on 2nd December 2016. Assistant Chief Constable Chris Shead of the UK National Police Coordination Centre conducted the review, published as the National Police Coordination Centre ("NPoCC" ) Report.

Twenty-six protestors filed complaints with the Police Complaints Authority, which in August 2017 returned a Decision unanimously concluding that no misconduct could be attributed to the Officers and thus the complaints could not be upheld[20]. (However, one of the main findings of the Police Complaints Authority is disputed by this Committee).

In December 2017, the House of Assembly passed a Motion establishing the Parliamentary Joint Select Committee to examine the incident at the House of Assembly on 2nd December 2016. Thereafter the Speaker of the House of Assembly, The Hon. Dennis Lister JP MP, appointed a Parliamentary Joint Select Committee to investigate the matter, giving the Committee a timeline of between three and six months to present its final report.

[20] In February 2019, it was reported that a settlement had been reached between the Ministry of National Security and those filing complaints against the Bermuda Police Service.

# C. FINDINGS

Former President Barack Obama once said, ***" If you're walking down the right path and you're willing to keep walking, eventually you'll make progress."***

The former President was right.

The task facing the Committee at first seemed laborious, especially in light of the marked disinterest of the persons it initially tried to contact. Nonetheless, armed with its Terms of Reference, the Committee patiently went about its work, as members pored over the two primary reports written about the day's events. This close examination and the subsequent discussions proved fruitful in that they raised a number of questions which, it seemed, had not been previously articulated. The Committee identified those persons best placed to answer the questions and then set about inviting them to respond. In some cases, there was no initial response. In other cases, the initial contact led to immediate responses. In other cases, initial contact led to responses from a lawyer. However, the more the Committee probed, the more it felt that progress was being made.

The Committee identified specific periods of time relevant to the decision-making on or just before 2nd December 2016. For ease of reference, the findings are listed according to those time periods and are as follows:

- Prior to 8:00 a.m. on 2nd December 2016 (including any time on or before 1st December 2016);
- 2nd December 2016 before 10:00 a.m.;
- 2nd December 2016 between 10:00 a.m. and 1:00 p.m.; and
- 2nd December 2016 after 1:00 p.m.

The Committee also made other discoveries not directly linked to the timeframe above and has included those items in the final section of the Findings.

**SECTION 1: PRIOR TO 8:00 A.M. on 2nd DECEMBER 2016 (INCLUDING ANY TIME ON OR BEFORE 1ST DECEMBER 2016)**

*NB: Please note that in the main, the Committee depended on witnesses for the accuracy of the times at which specific events occurred; therefore, there may be some overlap in the recounting, depending on the witness who provided the testimony.*

**SUMMARY**

The Bermuda Police Service (BPS) had experienced a steep learning curve in March 2016 during the multi-day protest against the Government's proposed immigration policy. Although then Governor George Ferguson was extremely complimentary of the Police handling of the protest in March 2016, it was noteworthy that within the ranks of the then One Bermuda Alliance Government, there was both criticism of and openly expressed opposition to the way the BPS handled the March 2016 protests.

Because an Operation Order was developed, it is a matter of record that the BPS was aware that the M.O.V.E. organization planned public protests about the controversial Airport Redevelopment Concession Bill 2016 at the House of Assembly on Monday, 21st November 2016. [21]However, the actual debate was due to take place on 23rd November 2016.

In fact, there were a few false starts before the date of the debate was finally settled. The date was moved from 23rd November to 25th November to 30th November until finally, it was determined that the debate would take place on 2nd December 2016.

Because protests were anticipated, the BPS crafted a plan for managing the situation. According to the statement received from former Commissioner M. De Silva[22], sometime around 21st November 2016, he appointed Superintendent J. Howard, who was Acting Assistant Commissioner at the time, as Gold Commander. For those who may be unfamiliar, police organizations will on occasion establish a specific command structure to deal with certain issues, e. g. those involving public order. There is a single Gold Commander who sets the strategic plan for management; he or she establishes strategic intentions and the outcomes to be achieved and places them in one of three categories: preferred, acceptable and unacceptable. The Silver Commander is responsible for establishing tactical plans to achieve the desired outcomes; the Gold Commander signs off on these plans. Bronze Commanders, and there may be more than one, set operations. According to the former Commissioner, Bronze Commanders are responsible for the management of the groups of resources and the executions of actions to carry out the tactical plan. By way of specific example, Bronze Commanders may be responsible for areas such as intelligence gathering.

Mr. J. Baron reported in his testimony[23] that sometime during the week of 21st November -25th November 2016, he met with the former Commissioner, the former Deputy Commissioner and the former Minister of Finance in the Commissioner's office regarding the upcoming debate. He was made aware that an Operational Order had been developed to deal with the protests but he was not aware of its contents. He

[21] NPoCC Report, paragraph 2.1
[22] Mr. M. De Silva Statement 12th June 2016
[23] Mr. J. Baron Interview 12th September 2018.

reported that although he was aware of the command structure, but was not aware of the identity of the Gold or any other Commander.

To reiterate, the initial debate was due to have occurred on 23rd November 2016. However, the first documented operation plan, outlining the potential for protests about the anticipated debate, was developed for 25th November 2016. According to Mr. Shead, the Operational Order for this event appears to have been commenced on 30th November and then was updated on 2nd December once the events of the day started to become problematic.

A public meeting organized by the People's Campaign took place on the evening of 1st December 2016 and although the BPS was aware of the highly emotive nature of the meeting, no change in the operational plan was made in response to newly acquired intelligence.

Also on the evening of 1st December 2016, the former Leader of the Opposition made an appeal for members of the public to attend the grounds of the House of Assembly on the next day in order to show their objections to the airport matter.

Per the testimony of former Parliamentarians Messrs. E.T Richards and Mr. J. Baron, together with testimony of current Parliamentarian Mr. M. H. Dunkley who was Premier at the time, a meeting took place between the Gold Commander and the then Ministers of Finance and National Security sometime prior to 2nd December 2016[24]. The Committee understood the date of the meeting to be 1st December 2016, based on testimony from Mr. Dunkley[25]. According to Mr. E.T. Richards, arrangements were also made at a meeting with then Inspector Glasford of the BPS Special Branch for him to be escorted from his office to the HOA at 8:00 a.m. on 2nd December 2016[26].

Mr. E.T. Richards arrived at his office in the Government Administration Building (GAB) just after 7:30 a.m. to await his escort. From his office window, he saw his fellow Parliamentarian Mr. S. Richards inside the HOA grounds. Somewhere between 7:45 a.m. and 7:55 a.m. he also viewed an orderly queue of about 8 to 10 men filing down Parliament Street from the Church Street corner to the HOA gate. The anticipated police escort still had not arrived.

Former Speaker the Hon. K. H. R. Horton also arrived early, entering the HOA at 7:45 a.m. By 8:00 a.m., Mr. Horton, Mr. Sylvan Richards, two HOA custodians and the HOA Sergeant-at-Arms were present inside the building.

The Committee's review of the period prior to 2nd December 2016 not only showed that some level of inaction on the part of the BPS set the stage for what followed, but the Committee also uncovered discrepancies in the testimonies of key stakeholders. The Committee deems these discrepancies as grave enough to give cause to declare that the truth remains unanswered to this day. There remains much that can be gleaned about this period.

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[24] The confirmation by three former Cabinet Ministers that a meeting took place is in direct contrast to the response from the BPS which denied outright that such a meeting took place, thereby calling the accounts of the former Parliamentarians into question.

[25] Mr. M. Dunkley JP MP Interview 4th December 2018.

[26] Mr. E. T. Richards Letter 19th September 2018 and Correspondence 14th November 2018.

Key People: Prior to 8:00 a.m. on 2nd December 2016 (including any time on or before 1st December 2016)

- Former Speaker the Hon. K.H.R. Horton JP MP
- Former Minister of National Security J. Baron JP MP
- Former Premier M. Dunkley JP MP
- Former Attorney General T. Moniz JP MP
- Former Minister of Finance E.T. Richards JP MP
- Former Minister of the Environment S. Richards JP MP
- Former Commissioner M. De Silva
- BPS Gold Commander Superintendent J. Howard
- BPS Inspector A. Glasford

**FINDING 1.1: Identifying the Chain Of Command**

Both former Commissioner De Silva and Assistant Chief Constable Shead (in the NPoCC Report) give an account of the normal command structure used by police organizations for certain public events- such as the protests on 2nd December 2016. It would be expected that there be a single Gold Commander, at least one Silver Commander and one or more Bronze Commanders.

However, in section 3.9 of the NPoCC Report, Mr. Shead made the following statement:

> *"The role of **Platinum**[emphasis added] was referenced numerous times during the review. During the event, there was liaison between the Commissioner and other senior stakeholders and where appropriate, the Commissioner passed on the intentions of the Speaker of the HOA regarding session commencement times to the Gold and Silver commander to enable them to plan accordingly. The Platinum role however is not one that is recognized in public order command with the most strategic recognized role being that of Gold. However, it is reasonable to assume that where the Gold Commander is not the Commissioner or Chief Constable of a police force, that person may wish to provide advice and support to the Gold Commander before or during the event. Care does however need to be taken to ensure that role responsibility within the command structure is not confused. Platinum does not become the de facto Gold Commander should he or she provide advice and support and the Gold and Silver Commander need to remain cognizant that [they] have the most senior command roles for the operation and should not perceive any support provided as being an instruction. For this event the Gold Commander amended his strategy to just three strategic intentions from the original seven based on his perception and it highlights that amongst the existing command structure, there was clear misunderstanding of roles and responsibilities, reinforcing the need for appropriate training."*

Noting that this was the only reference to Platinum and after being informed by a number of witnesses that they were unfamiliar with the term, much less knowing to whom it referred, the Committee heard evidence from former Deputy Commissioner P. Wright who explained during his interview with the Committee [27] that during joint exercises between the BPS and other organizations such as the Emergency Measures Organization, the term Platinum Command was used. As far as he knew, the term was coined to refer to a group of people who were not Gold Command, and who did not instruct the Gold

[27] Mr. P. Wright Interview 7th November 2018.

Commander, but who needed to be kept informed of significant local events because they might be called upon to comment on them, especially if there was a matter of international importance. He also noted that while there was nothing written in any manual about Platinum Command, on occasion Government House might call meetings of certain heads and refer to those meetings as Platinum meetings.

By way of letter dated 26th September 2018, Government House indicated that the Acting Governor at the time, Mrs. G. Ferson, confirmed that she had no interactions with the Gold Commander on 2nd December 2016. Thus, several questions remain unanswered:

- Who was/were the person(s) considered as Platinum Command?
- Why was it that no-one other than the former Deputy Commissioner was willing to expound on the role?
- Was pressure or influence from the Platinum role the reason the Gold Commander amended his seven strategic intentions to three?
- Did this person or group influence the former Speaker to hold the session at 1:00 p.m.?

**FINDING 1.2: Meeting between Gold Commander and Politicians**

Two members of the then Cabinet (Finance Minister Mr. E.T. Richards and National Security Minister Mr. J. Baron) stated that they met with the Gold Commander of the Bermuda Police Service prior to 2nd December 2016. Former Premier M. Dunkley JP MP confirmed that he was aware that a meeting between the two former Ministers and the Gold Commander had taken place.

The testimony of the three former Cabinet Ministers indicated that a meeting took place; however , this is in direct contrast to a response from the Bermuda Police Service through the new Commissioner of Police (Mr. Corbishley) who, in answering questions directed by the Committee to the Gold Commander, advised by letter dated 14th January 2019 that no such meeting occurred.

Unfortunately, the Gold Commander has not appeared before the Committee to clarify this matter, even though he has been issued two summonses[28]. From the standpoint of the Committee, he is in breach of the summons (invoking immunity), and has a case to answer with regards to this breach.

Testimony from Mr. Dunkley identified [now Chief] Inspector A. Glasford of the Bermuda Police Service Special Branch as being present at the temporary Cabinet Office on the morning in question. Further, Mr. E.T. Richards stated that he had received instructions via the Inspector who was to arrange for an escort for Mr. Richards to the House on the morning of 2nd December 2016. That notwithstanding, Commissioner Corbishley indicated that Inspector Glasford was not involved in events on 2nd December 2016

It is noteworthy that Mr. Corbishley was not the Commissioner of Police on 2nd December 2016, having assumed the position following the June 2018 retirement of Commissioner Michael De Silva.

[28] 19th November 2018 and 12th December 2018.

**FINDING 1.3: Existing Security Concerns about the House of Assembly**

In response to a 2015 request from Former Speaker The Hon. K. H. R. Horton, a security review of the House of Assembly and its grounds was carried out by a BPS Special Branch Officer. The letter of review was addressed to Detective Inspector Glasford, Officer-in charge of the Special Branch. In the aftermath of the March protests, the review was updated in April 2016.

The Committee noted that many of the recommendations for enhanced security have been addressed, and noted that some which have not yet been carried out, such as the installation of additional fencing and CCTV coverage of the external grounds, might have been useful to have had in place in December 2016.

**SECTION 2: 2nd DECEMBER 2016 BETWEEN 8:00 A.M. and 10:00 A.M.**

**SUMMARY:**

According to reports and testimony, at around 8:00 a.m. small groups of people had begun to gather both at the Parliament Street entrance to the HOA as well as at the three ancillary gates (the corner of Parliament and Church Streets, the corner of Church and Court Streets and at Reid Street, opposite the Cabinet Office proper[29]). The former Premier, who had parked his vehicle at the Cabinet Office grounds that morning, made his way to the temporary Cabinet Office on Reid Street. He reported that he did not see any significant numbers of people as he made his way past the HOA grounds.

Since his escort had not arrived at 8:00 a.m. as arranged, Mr. E.T. Richards decided at about 8:15 a.m.to enter the HOA grounds alone; however, he was unable to access the grounds either because of being turned away by a police officer in uniform and/or by protestors[30]. He called the former Premier to advise him of this.

BPS Officers on site at the HOA [31]informed the protestors that they could not block access to the HOA but the Officers were ignored.

Former Commissioner De Silva and Superintendent Howard were travelling into Hamilton together[32]. Shortly after 8:15 a.m. both started receiving telephone calls to report that crowds had gathered at the HOA. The former Premier called the Commissioner at 8:29 a.m. to advise that one of his colleagues (Mr. E.T Richards) had been physically prevented from entering the HOA grounds. The former Minister of National Security, Mr. Baron, made a similar call at 8:32 a.m. In both cases, the Commissioner advised that Officers were at the HOA and attempting to deal with the issue.

At 8:30 a.m. BPS Inspector C. Clark called the Speaker to ask if Parliamentarians could meet in another location.

Reports to the Commissioner, who by now was in his office, continued to come in. An undefined number of Government Ministers and members had assembled in the GAB Office of Mr. E. T. Richards, not for a meeting, but rather waiting for instructions from the BPS as to when they could enter the HOA. Mr. Baron was called to Mr. E. T. Richards' office where he was advised that Mr. Richards was prevented from entering the HOA by members of the public and by a uniformed police officer.

At approximately 9:00 a.m., the Commissioner was informed that the Gold Commander's Team had contacted the Speaker to discuss contingency options for the HOA to continue including it seems, the tactics to achieve the goal of facilitating access to the HOA. The tactics were to include arresting persons who were committing the arrestable offence of blocking access to the HOA. The contingencies included changing the dates and/or times and/or venues for convening. While the Speaker was reportedly open to changing the date and/or time, he considered that the venue must remain as was. It was at this point that

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[29] On 2nd December 2016, the Cabinet Office Building was undergoing renovations; staff operated out of Innovations House, 46 Reid Street, Hamilton, which is located between Parliament and Burnaby Streets.
[30] Mr. J. Baron Statement 12th September 2018.
[31] It is unclear whether these Officers are from the prior evening's night watch or whether they were deployed to the HOA in the morning.
[32] Mr. M. De Silva Statement 12th June 2018, paragraph 21.

the Commissioner was informed that the Speaker would cancel the session if Parliamentarians were not in the Chamber by 10:00 a.m.

Just before 10:00 a.m. the Commissioner was advised that the Speaker had called the Gold Commander to say that he was cancelling the session[33]. The Commissioner contacted the Speaker directly. The Speaker confirmed that the session would be cancelled. As a result, the BPS suspended the planned enforcement tactic while commanders regrouped to assess the new information.

During this period, as might be expected, a number of other events took place. The former Minister of National Security reported that he tried more than once to contact the Speaker to ascertain what was going on. At about 9:15 a.m. the former Minister of National Security was also called by a senior civil servant and asked to speak at a funeral on behalf of the Premier. Thus, for a period of time, he was removed from most of the core actions and activities which occurred after this time period.

Key People: 2nd December 2016 Before 10:00 a.m.

- Former Speaker Mr. K. H. R. Horton JP MP
- Former Minister of National Security Mr. J. Baron JP MP
- Former Minister of Finance Mr. E. T. Richards JP MP
- Former Commissioner M. De Silva
- BPS Gold Commander Superintendent J. Howard
- BPS Inspector C. Clark

**FINDING 2.1: Police Stood Down**

Officers from the Bermuda Police Service were on duty at the HOA. They were prepared to execute the planned enforcement tactic but just before they would have done so, the Gold Commander's Team was informed that the HOA sitting was cancelled- a fact confirmed by the former Commissioner. The extent to which this stand down was communicated to Officers down the line of command and to others is unclear.

[33] Mr. M. De Silva Statement 12th June 2018, paragraph 25.

## SECTION 3: 2ND DECEMBER 2016 BETWEEN 10:00 A.M. AND 1:00 P.M.

### SUMMARY:

As might be expected, this time period is punctuated by a large number of telephone calls between key stakeholders to ascertain the status of events.

According to testimony provided by former Speaker The Hon. K.H. R. Horton, just prior to 10:00 a.m. he realized that only 2 of the 5 persons present in the HOA were Parliamentarians (Mr. Horton and Mr. S. Richards), and was minded to postpone the session until 9th December 2016.

As indicated earlier, in his statement former Commissioner M. De Silva reported that with just minutes to spare, he was informed that the Speaker had contacted the Gold Commander's Team to say that the session was cancelled. At 10:11 a.m., Acting Governor Mrs. G. Ferson called the former Commissioner to enquire about the status of events at the HOA grounds. The Commissioner was able to advise that as a result of the decision of the Speaker to cancel the session, the BPS had actually suspended its enforcement plan to arrest offenders blocking the HOA gates. The Acting Governor indicated that she would be in contact with the Speaker; throughout the rest of the morning, she periodically requested updates from the Commissioner.

At 10:15 a.m. former Premier Dunkley called the former Commissioner to enquire about the status of events. According to the Commissioner, the former Premier indicated that he would contact the Speaker to see if he would change the decision[34]. At 10:30 a.m., former Minister Baron called the Commissioner with a query on the status and received a similar reply.

The former Speaker gave testimony[35] to confirm that around this same time, he spoke by telephone with the Premier and the Attorney General, expressing his view that he would like to adjourn the HOA. According to Mr. Horton, the Premier and the Attorney General were interested in sitting and getting on with business. In hind-sight, the Committee found this to be a bit curious since according to the former Premier when interviewed, there were no critically important or time-sensitive deadlines to be met that would have necessitated that the HOA debate the amendments on that day. Nevertheless, the former Speaker stated that he ended his conversation with the Premier and the Attorney General still with the mindset that he would adjourn proceedings.

After speaking with the Premier, the Attorney General and the Commissioner, the Speaker had a lengthy discussion with the Acting Governor. According to Mr. Horton, they discussed the possible adjournment of the HOA, juxtaposed against the importance of carrying on the business of the country. They had some further discussion around the Parliament Act 1957 and the Standing Orders of the HOA. The Acting Governor relayed the assurances she had been given by the Commissioner about the Speaker's safety and that of his staff. Correspondence[36] received by the Committee stated that the Acting Governor was always clear that it was for the Speaker to decide whether or not to proceed with a sitting of the HOA.

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[34] Mr. M. De Silva Statement 12th June 2018, paragraph 27.
[35] Mr. K. H. R. Horton Statement 23rd April 2018, paragraph 7; Mr. K. H. R. Horton Interview 28th September 2018.
[36] Government House Letter 4th April 2018.

Just around 11:00 a.m., the former Minister of Finance and others left his Ministry office in the Government Administration Building on Parliament Street and headed to the Premier's office at the temporary Cabinet Office on Reid Street. A Committee query about the identity of those persons who assembled at the office of the former Premier during the morning in question revealed that several Parliamentarians were there for extended periods as they awaited word on the status of the opening of the HOA. Amongst those that met separately or in a small group with the Premier were the Attorney General and the Minister of Finance. During the morning, the Premier also had separate meetings with the Minister of National Security, Minister Fahy and Minister Gibbons. The Parliamentarians maintained a healthy separation between themselves and technical officers. No technical officers were engaged in meetings, nor did they provide advice with respect to the handling of the matters of the day.

The former Premier called the Commissioner again at 11:06 a.m. to say that he was in discussions with the Speaker and that he was hopeful that the HOA would be able to resume in the afternoon. Mr. Dunkley called the Commissioner again at 11:45 a.m. to advise that he understood that the Speaker was now planning to open the HOA and resume the session at 1:00 p.m.[37]. Mr. Dunkley asked about the police plan to get Parliamentarians past the crowds and into the HOA. The Commissioner explained that different tactics were being considered, with an aim of encouraging protestors who were breaking the law to stop, so that Parliamentarians could walk in unobstructed.

The former Speaker confirmed that it was after his conversation with the Acting Governor that he decided to hold the HOA session at 1:00 p.m. Most interestingly, and perhaps most curiously, the former Speaker candidly admitted in his own words to the Committee that he advised the Acting Governor that he would **not** take his seat as Speaker if the House convened at 1:00 p.m.; the Deputy Speaker would have had to have taken the chair.

The Speaker thereafter telephoned the Premier and the Leader of the Opposition to inform them that the HOA would meet at 1:00 p.m.

At 12:06 p.m. the Speaker called the Commissioner to say that it was his intention to resume the session at 1:00 p.m. He also inquired about the police plan to get Parliamentarians past the crowds. The Commissioner advised the Speaker that the BPS continued to engage with protestors to encourage them to stop breaking the law, but that, if left no other alternatives, arrests would be made. The Speaker stated that he did not ask the Commissioner what the plans were, nor was he told what they were. In a subsequent call to the Commissioner at 12:21 p.m., the Speaker confirmed his intention to resume the session in the HOA.

At 12:38 p.m. the Commissioner spoke by telephone with the Gold Commander who advised that despite trying all morning long, BPS attempts to encourage the protestors to stop blocking the HOA gates had not achieved success. As a result, the Team now planned to arrest protestors who were committing offences and, as a safety precaution, the arrest team would be equipped with helmets and other protective gear. Both the Commissioner and the Gold Commander were cognizant of the limited time in which action could be taken, as the 1:00 p.m. deadline was fast approaching. Shortly thereafter, at 12:47 p.m., the Commissioner contacted the Acting Governor to provide her with an update.

[37] Mr. M. De Silva Statement 12th June 2018, paragraphs 28 and 29.

Just prior to 1:00 p.m., the Speaker looked outside the HOA and "noticed that no Parliamentarian appeared to approach the House". [38]

At 1:00 p.m. the BPS read a proclamation to the crowd stating that protestors could not assemble unlawfully and that they were committing offences[39].

Key People: 2nd December 2016 Between 10:00 a.m. and 1:00 p.m.

- Former Acting Governor Mrs. G. Ferson
- Former Speaker Mr. K. H. R. Horton JP MP
- Former Premier Mr. M. Dunkley JP MP
- Former Attorney General Mr. T. Moniz JP MP
- Former Minister of Finance Mr. E. T. Richards JP MP
- Former Commissioner M. De Silva
- BPS Gold Commander Superintendent J. Howard
- HOA staff

**FINDING 3.1: Reversal of Cancellation of the HOA**

Former Commissioner M. De Silva provided the following account[40]:

> *"I was made to understand the Speaker informed the Gold Commander's team that he was cancelling the session. I placed a call to the Speaker at 9:54 a.m. and he confirmed that fact. The police suspended the planned enforcement tactic while commanders regrouped to assess the new information.*
>
> *At 10:11 am I received a telephone call from Acting Governor Ginny Ferson who enquired about the status of events at the HOA grounds. I explained that we had suspended an enforcement team to arrest the offenders who were blocking the gate as a result of the decision from the Speaker to cancel the session. She indicated that she would call the Speaker and she asked me to keep her updated. I received a few text messages from the Acting Governor throughout the rest of the morning. I do not hold those records any longer, but I recall that the messages were requests for periodic updates.*
>
> *At 10:15 am I received a call from Premier Dunkley, who had a similar enquiry. I gave a similar reply. Mr. Dunkley indicated he would contact the Speaker to see if he would change the decision. I received a call from Mr. Baron at 10:30 am. We had a similar conversation.*
>
> *I received a brief call from Mr. Dunkley at 11:06 am. He informed me that he was in discussions with the Speaker and that he was hopeful that the House would be able to resume in the afternoon.*
>
> *I received another call from Mr. Dunkley at 11:45 a.m. He informed me that he understood the Speaker was planning to open the House and resume the session at 1:00 pm. He asked me about the police plan to get MPs past the crowds and into the HOA. I explained that different tactics were*

[38] Mr. K.H.R. Horton Statement 23rd April 2018, paragraph 11.
[39] Mr. P. Wright Statement 7th November 2018, p. 3.
[40] Mr. De Silva Statement 12th June 2018, paragraphs 25-30

*being considered, including driving MPs in a police vehicle. I explained that our desire was to encourage those protestors who were breaking the law to stop blocking access, and to allow MPs to walk in unobstructed. I explained that Mr. Dunkley's police Special Branch liaison officer would inform him shortly of the final plans to escort the MPs into the HOA.*

*I received a call from Mr. Horton at 12:06 pm. He informed me that it was his intention to resume the session at 1:00 pm. He asked me about the police plan to get MPs past the crowds. I explained that we were continuing to engage with protestors and organizers to encourage them to stop breaking the law by blocking access to the HOA. It was our hope that we would gain compliance in that regard, but that we would consider making arrests if there were no alternatives. I received another call from Mr. Horton at 12:21 pm and he confirmed his intention to resume the session in the HOA."*

This period of time proves to be pivotal as it represents the period when a tremendous amount of pressure was placed on Speaker Horton to reverse his decision to cancel the session of Parliament.

That view notwithstanding, Mr. Horton reported to the media that he was under no pressure to change his decision about the cancellation. [41]

The testimony of former Minister Baron was also of interest. While he was honoured to deliver the tribute at the funeral, he was displeased to have been sent on a ceremonial duty away from the unfolding events which were directly connected with his Ministry of National Security. Further, Mr. Baron noted that with regard to the strategy and tactics used by the BPS, he could not see the logic of trying to "gain entry" into the HOA where the occupants were not in harm's way.

The Speaker received numerous calls from police and politicians but it appeared that it was the call between the Speaker and the Acting Governor's which seemed to place heightened emphasis on the Speaker reversing his decision.

When posed a question by the Committee, Governor John Rankin responded on behalf of former Acting Governor Ferson:

" Ms. Ferson confirmed that she had no interaction with Gold Command on December 2nd 2016. As previously noted in my letter to you on April 4, she did speak with the former Speaker around 1030hr to RELAY to him reassurances she had been given by the Commissioner of Police about the safety of him and his staff. They also had a discussion about the right of people to protest and the right of Parliamentarians to access Parliament unhindered..."

The pressure placed on former Speaker Horton was immense and eventually he reversed his earlier decision to cancel the session and open the House of Assembly at 1:00 p.m.

This was a decision which former Speaker Horton said during his testimony that he "regretted". He also revealed,

[41] Royal Gazette 1st April 2017.

"I shall stress that at this point I informed the Acting Governor that if the sitting indeed did take place at 1pm I would not take my seat as Speaker for that time. The Deputy Speaker would have to act as Speaker and assume the chair."[42]

**FINDING 3:2: Timing**

The Speaker guides the sitting of the House of Assembly. According to the statement provided by the former Commissioner of Police, at just prior to 10:00 a.m. the Speaker informed the Gold Commander's team that the proceedings at the HOA would not be held; as a result, the enforcement plan to arrest offenders who were blocking the gate was suspended. For all intents and purposes, the HOA sitting was cancelled.

If that is the case, a question can be raised: why at 11:45 a.m. (per the Commissioner) was the BPS still actively involved in consideration of how to get Parliamentarians pass the crowd?

The Speaker reportedly did not contact the Commissioner until 12:06 p.m. to indicate the possibility that proceedings might resume at 1:00- something that he did not confirm until the telephone call at 12:21 p.m.

**FINDING 3.3: Communication**

Communication is always key.

(a) Although the decision to hold the session at 1:00 p.m. had by now been confirmed, the former Minister of National Security, who had been sent to attend a funeral on behalf of the Premier, encountered a senior civil servant outside the Cathedral at approximately 12:50 p.m[43]. The civil servant, in good faith one presumes, informed the Minister that the session had been cancelled and that Parliament would not sit.

If at ten minutes before the proposed sitting, people in general were still unaware that there would be a sitting, this suggests the lack of a proper communication strategy on the day. It might also be a factor in why the crowds were later stunned to see police in helmets advancing towards them.

(b) In a letter dated 17th October 2018, the Committee was advised that former Acting Governor Mrs. Ferson recalled that she had received a telephone call from former Attorney General Mr. Moniz in the morning in question. The purpose of the call was to alert her to the difficulties in accessing the House of Assembly. [44]

This is in direct contrast to Mr. Moniz's testimony in response to a specific question he was asked about contact during his interview.

[42] Mr. K. H. R. Horton Statement 23rd April 2018 paragraph 9.
[43] Mr. J. Baron Statement 12th September 2018, p. 2
[44] Letter from Government House 17th October 2018

## FINDING 3.4: HOUSE OF ASSEMBLY (HOA) STAFF

The majority of the House of Assembly staff were not located on the grounds of the HOA on Friday, 2nd December 2016. At that point, in anticipation of renovations at the HOA, the Office of the Legislature had been moved to a temporary location on Victoria Street in the City of Hamilton.
Following the request from the Committee for an account of their experience on the day, the Clerk to the Legislature convened a meeting of the staff and their collective testimony, in the form of minutes from the meeting, are included as Annex 6.

Most noteworthy is that, contrary to all prior accounts from the BPS, it was revealed that the Gold Commander (Superintendent J. Howard) had been in contact with the HOA on two occasions trying to persuade them to be escorted and later transported past protestors to gain entry into the HOA.

It must be stated that HOA refused these offers and, as a result, it was not possible to convene Parliament on that day.

## SECTION 4: 2nd DECEMBER 2016 AFTER 1:00 P.M..

### SUMMARY:

Earlier on 2nd December 2016, a number of BPS Officers were stationed inside the gates and on the grounds of the HOA.

The small crowd from early in the morning had now grown in numbers. The majority of the crowd assembled at the Parliament Street entrances to the HOA. A smaller group was standing outside the southern entrance gate on Reid Street (opposite the Cabinet Office), where Officers were standing behind the walls observing them. The size of the crowd at Parliament Street notwithstanding, persons (civilians) who were present from early in the morning commented on the peaceful atmosphere which prevailed. They commented on the diversity of persons assembled (men, women, young and seniors) and that persons engaged many of the Officers on the streets in conversation, adding that no animosity between the protestors and the Officers was apparent.

Armed with the news that the HOA was now to sit, the Gold and Silver Commanders requested tactical advice and were given three options: (1) do nothing; (2) use a bubble tactic to gain entry; or (3) use the Police Support Unit (PSU) with full protective equipment and shields[45]. The Commissioner was aware that the tactic chosen by the Commanders was the "bubble tactic", which involved Officers making a tight circle by standing close together and moving simultaneously.

Just around 1:00 p.m. a critical order was given for the arrest team of BPS Officers to prepare themselves for the task of moving the crowds of protestors who were blocking access to the House of Assembly and thus once preventing Parliamentarians from entering the grounds.

Although not outfitted in full riot gear (they carried no shields), the Officers were kitted in protective gear: with bright green/yellow reflective jackets, batons, face visors and Captor spray. They moved in formation from the station on Victoria Street to those areas where HOA gates were blocked. The order appeared to be to arrest those persons who were breaking the law by keeping elected officials from entering the House of Assembly to do the peoples' business.

According to the former Commissioner, the protestors became aggressive and actively resisted the Officers. The Committee viewed body camera video which showed a group of Officers marching in formation, pushing through persons assembled, to the front of the Parliament Street vehicle entrance. In doing so, several persons, including seniors, were jostled. It appeared that the Officers "bulldozed" their way through the crowd. The crowd became agitated- perhaps at the unusual and unexpected sight of seeing Officers marching in formation towards them, or perhaps because of the way in which they felt the seniors were being treated- or both. Whatever the cause, the atmosphere immediately changed. Witnesses confirmed that the mood changed to one of disbelief. Protestors standing in front of the gate locked arms to prevent the gates from being opened.

It is not really clear what the bubble tactic was intended to achieve. According to the NPoCC Report, the intent of the bubble is normally to protect the people within it for movement through a crowd, but in this

[45] NPoCC Report, paragraph 4.11

case, there was no-one within the bubble. The Parliamentarians for whom access to the HOA was to being cleared were not present.

The NPoCC Report also made further points about the use of the bubble tactic:

(a) even if the BPS/PSU had been able to gain ground through the use of the bubble tactic, they did not have sufficient numbers to maintain that ground, given the large number of protestors[46];

(b) the command team was undoubtedly under pressure to take some form of action- given the decision for the HOA to sit, coupled with the lack of experience and training for dealing with this type of event.

At about 1:15 p.m., the former Speaker looked out of the window at the HOA [47]and saw Officers with helmets marching towards the crowd at the HOA main gate. It appeared to him that there was pushing and shoving going on between the Officers and the crowd. Appalled at what he was witnessing, the Speaker made the final decision to adjourn the sitting until 9th December 2016. Somewhere around 1:30 p.m., he called the Premier, the Leader of the Opposition and the Commissioner to inform them of his decision not to hold the session. He later called the Government Department of Communication and Information so that they could inform the public of the adjournment.

Unable to secure the opening of the Parliament Street gate, after about 10 minutes the Officers regrouped and marched from Parliament Street to Reid Street. Many of the persons originally at the Reid Street entrance had heard the commotion on Parliament Street and had moved closer to the corner of Reid and Parliament Streets. Realizing that the Officers were turning on to Reid Street, those persons rushed back to the southern gate, joined by others.

The PSU Officers marched to the gate and again found protestors with locked arms. Reports from members of the crowd characterize the behavior of the Police as very aggressive- pushing and pulling persons who considered themselves as participating in a peaceful protest.

Video footage showed that although orders were given for the people to get out of the way, it was actually physically impossible for them to do so. The south wall and Officers were at their back; the PSU Officers in helmets were in front of them. In the ensuing pandemonium, protestors were warned by the BPS that they would be tasered or sprayed. Finally, an order was given by one Officer for Officers to take out CAPTOR and spray[48].

More chaos, recorded on police body cameras, ensued. The matter ended when the PSU Officers retreated towards the corner and then up Court Street to the Police Station on Victoria Street. The BPS reported afterwards that fourteen Officers were assaulted during the incident: six suffered serious injury and eight were commonly assaulted[49].

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[46] NPoCC Report, paragraph 4.14

[47] Mr. K. H. R. Horton Statement 23rd April 2018, paragraph 12

[48] BPS body camera video

[49] Commissioner Corbishley Letter 15th March 2019

Although aware of what was happening at the HOA gates, the Commissioner and the Deputy Commissioner remained in their offices at the time of the incident, believing that their presence at the incident might cause confusion over who was in charge of the Officers.

The Committee had the opportunity to view videos from the body cameras of seven Officers. One video demonstrated that the situation was a no-win one from the start.

In the aftermath of the events in Hamilton, the Police returned to the Hamilton Police Station. In reviewing the video footage from the police body cameras, the Committee heard the following comment from Officers involved, "That *was a waste of time*".

Evidence provided to the Committee confirmed that a meeting, either called by the Acting Governor or by the Premier, was held at Government House at 3:00 p.m. In attendance were the former Premier, the former Deputy Premier, the former Attorney General, the former Minister of National Security, the former Commissioner of Police and the former Deputy Commissioner.

Key People: 2nd December 2016 after 1:00 p.m.

- Former Acting Government Mrs. G. Ferson
- Former Minister of National Security Mr. J. Baron JP MP
- Former Premier Mr. M. Dunkley JP MP
- Former Speaker Mr. K. H. R. Horton JP MP
- Former Attorney General Mr. T. Moniz JP MP
- Former Minister of Finance Mr. E. T. Richards JP MP
- Former Commissioner M. De Silva
- Former Deputy Commissioner Mr. P. Wright
- BPS Gold Commander Superintendent J. Howard

**FINDING 4.1: Tactical Advice**

The BPS had a particular strategic intent on 2nd December 2016:

> *The House of Assembly will sit by the Police gaining and maintaining access to one of the gates, allowing the legislators to attend the House of Assembly*[50].

The NPoCC Report indicates that the BPS tactical commanders sought advice on how they should manage the situation and were given three options: do nothing, use the bubble tactic or send in an arrest unit. [51]

The Report mentioned in paragraph 4.11 that advice was sought from a tactical advisor whose identity still remains unknown to the Committee.

The BPS found itself in the unenviable position of being given a relatively short span of time to figure out how to navigate through a large crowd in order to provide access to the HOA for Parliamentarians. However, there is no witness testimony to suggest that the Government Parliamentarians, who were to lead the debate on the airport redevelopment legislation, were anywhere closer to the HOA grounds than

[50] BPS Operational Order 30th November 2016, amended 2nd December 2016, Appendix C
[51] NPoCC Report, paragraph 4.11

the temporary Cabinet Office at Innovation House on Reid Street. Thus, even if the tactic had worked and the gate had been opened, the Parliamentarians for whom it had been opened were not there to enter.

**FINDING 4:2 Body Cameras and Instructions to Use CAPTOR Spray** [52]

The former Commissioner provided the Committee with much useful information, including video footage from body cameras worn by Officers directly involved in the 2nd December 2016 incident.

**Astonishingly, when the Committee reviewed one particular video from a body camera worn by an Officer, it uncovered that an Order was given to Officers to deploy CAPTOR spray. That revelation 'flew in the face' of what was initially reported by the Bermuda Police Service, and of what previously had formed a major part of the findings and subsequent decision from the Police Complaints Authority.**

The BPS policy on the use of Captor Spray indicates that CAPTOR *"is primarily designed for dealing with violent subjects who cannot otherwise be restrained."*

Moreover, the policy also states that the use of CAPTOR may be appropriate against:

> *(i) Those offering a* ***level of violence which cannot be appropriately dealt with by lower levels of force;***
>
> *(ii) violent offenders, where failure to induce immediate incapacitation would increase the risks to all present.*
>
> *.....The decision to use CAPTOR will be dependent on an officer's assessment of the situation. This will include their own ability to deal with the situation and the threat posed by the subject(s).*

Finally, the policy notes,

> *The ultimate responsibility for using CAPTOR rests with the individual officer, who is answerable ultimately to the law in the courts. Individual officers are accountable and responsible for all their usage of CAPTOR and must be in a position to justify such use in the light of their legal responsibilities and powers.*

According to its progressive list of use of force methods, the BPS ranks the use of CAPTOR as an acceptable method, but only if other methods have not worked. In the already referenced Operational Order [53], the BPS notes:

> 3.3.3 Police Officers, in carrying out their duties shall as far as possible apply non-violent methods before resorting to any use of force.

[52] See also Finding 5.6

[53] BPS Operational Order 30th November 2016, amended 2nd December 2016.

3.3.4 Police Officers should use force only when strictly necessary and where other means remain ineffective to having no realistic chance of achieving the lawful objective.

In the video referenced above, one can clearly hear an Officer who appears to be in charge at the south gate give a **command** for CAPTOR to be brought out and then for the Officers to spray the crowd. This runs in direct contrast to the BPS Usage policy which indicates that the individual officer assesses the risk before making a choice to use CAPTOR.

The command is then given by another Officer, "No more CAPTOR spray."

Any person, knowing that an order to use CAPTOR spray was given on 2nd December 2016, and who has been prepared to sit back and say nothing to the contrary, is a party to absolving the leadership of any responsibility for the actions taken.

**FINDING 4.3: The South Gate**

As indicated, the Committee reviewed footage from police body cameras; it also reviewed footage available from local media outlets such as Bernews and the Royal Gazette. Thus, the Committee was able to observe what transpired at the north-west gate to the HOA, at the Parliament Street vehicle gate and at the south gate on Reid Street.

The Committee found particularly interesting one video which clearly shows the situation which arose at the southern gate to the HOA (Reid Street opposite the Cabinet Office). The Officer who appears to be in command at the south gate is clearly heard directing the crowd to "Get out of the way or you will be sprayed" and "Get out of the way of the gate". The identity of the Officer who might have given the order to move from Parliament is unknown to the Committee. However, he and other Officers are standing behind the wall and in the way of the unlocked gate, which prevents the crowd from moving in that direction. More significantly, Officers in helmets on Reid Street are clearly visible in the video. They appear to be moving in such a way that the crowd is pressed against the HOA wall. The overall result was that the crowd, even if trying to comply with the order to move, had nowhere to go.

Having viewed video footage and heard the testimony of witnesses, the Committee noted that several of the persons at the southern gate were women; some were seniors.

Given that the PSU Officers had no success in gaining access to the HOA through the Parliament Street gate, it is unclear whether it was thought that the smaller gate on Reid Street would be easier to access.

It is clear from witness accounts that it was at the southern gate where most of the CAPTOR was discharged. However, it remains unclear whether the thought at the south gate was to utilize the bubble tactic again to gain access to the HOA grounds, or whether it was to arrest protestors who were blocking access to the HOA.

**FINDING 4.4 Gold Commander Not in Attendance at Meeting at Government House**

The Committee fully understands the BPS chain of command as explained during his interview by former Deputy P. Wright[54] (i.e. It is the Commissioner alone in the Bermuda Police Service who answers to the Governor).

Former Premier Dunkley, in response to a question as to why he thought that the Gold Commander was not present at Government House, stated that the Commissioner was free to bring along whomever he wanted to the meeting. However, given the extreme circumstances of 2nd December 2016, it would seem that the Gold Commander, who was in charge of police operations that day, and perhaps even the Silver Commander, should have been required to attend the meeting called at Government House to give an account of what transpired.

**FINDING 4.5: Acting Governor Takes a Position Against the Protestors**

Section 10 of the Bermuda Constitution guarantees the right of freedom of assembly and association.

In the aftermath of the protests on 2nd December 2016, the Centre for Justice provided information via the media as part of its remit to raise public awareness around civil liberties. The Centre noted that freedom of assembly could only be lawful if it was peaceful. Freedom of peaceful assembly means the intentional and temporary presence of a number of individuals in a public place for a common purpose. An assembly is deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent.

That notwithstanding, the Centre noted that so long as the assembly, march or protest was lawful and peaceful, the right to engage in such an assembly, march or protest could not be interfered. However, it also provided several legal references which identified the offences committed when access to carry out Government business was prevented. The article noted that anyone seeking to engage in civil disobedience should be aware of the risks associated with doing so, which might result in criminal sanction.

According to a Royal Gazette article[55]published on 2nd December 2016, Acting Governor Mrs. G. Ferson deplored the "inciteful" protest, urging protestors to act within the law. In her statement, Mrs. Ferson noted that

> *"The right to peaceful protest is also a right that we hold dear, but there are people who seek to go beyond peaceful protest [56]and incite criminal activity."*

Although the Committee did not have the benefit of directly interviewing the former Acting Governor, the Committee was of the view that the Acting Governor's comments reflected the Government House position. As such, there is a possibility that the comments could have influenced incoming Governor John Rankin's decision to call only for a [police] peer review which was limited in scope, rather than a comprehensive review or a Commission of Inquiry into the events.

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[54] Mr. P. Wright Interview 7th November 2018

[55] The Royal Gazette 2nd December 2016

[56] Bernews 3rd December 2016

**FINDING 4.6: Role of the People's Campaign and Others in the Protest**

The Committee appreciated the voluntary meeting with the People's Campaign during which the group provided submissions[57] which proved most enlightening.

In anticipation of the 2nd December 2016 debate at the HOA, the People's Campaign engaged in a concerted effort to encourage members of the public to attend the protest[58]. They were not in favour of the Government's plan to move ahead with the airport development under the existing terms and conditions, having conducted significant research on the then-proposed airport project and uncovered significant findings through a PATI request to the Canadian Government. Thus, members of the group exercised their democratic right to encourage a peaceful protest.

On the evening of 1st December 2016, the People's Campaign hosted what was reported as a very emotive public meeting which featured the then Opposition Leader Mr. David Burt and the late Mr. Larry Burchall as speakers. [59]At the meeting, members of the public were encouraged to attend the HOA the next day to show their opposition to the proposed redevelopment.

During the course of the morning on 2nd December 2016, the BPS had been advising protestors to clear the entrances or risk being arrested.[60] As word reached the Officers that the HOA would be re-opening at 1:00 pm, an attempt was made to gain access through the main gate by using a poorly executed 'bubble tactic' which resulted in physical confrontations between the BPS and protestors. Some members of the public, in anticipation of a potential arrest for civil disobedience, did block the HOA entrances on the Parliament and Reid Street sides. As the confusion escalated, protestors could be seen reacting to the CAPTOR spray.

PLP Parliamentarians are seen in video footage standing at the entrance to the HOA; they are also seen approaching the BPS officers.

**FINDING 4.7 Traumatic Experience for Frontline Protestors and Officers**

The Committee was approached by persons who had been involved in the protest. Subsequently, the Committee offered those protestors who had filed a complaint with the Police Complaints Authority the opportunity to offer a testimony. The same opportunity was afforded through the Commissioner to Officers who might have been involved in the events of the day.

By listening to those who chose to be interviewed, the Committee came to recognize that the experience on 2nd December 2016 was not only traumatic but left a lasting impression in minds of those involved, even more than two years on. One person described the interview process as cathartic. Other comments made by those interviewed are listed in part in Annex 7.

Notwithstanding the fact that some interviews took place, the Committee noted that some protestors

[57] The submissions from the People's Campaign are included as Annex 6
[58] Bernews 30th November 2016
[59] The Royal Gazette 2nd December 2016
[60] Mr. M. De Silva Statement 12th June 2018, paragraph 22.

who had filed complaints with the Police Complaints Authority were reluctant to appear due to a stipulation contained in a legal settlement. [61]

[61] The Royal Gazette 12th February 2019

## SECTION 5: FINDINGS FALLING OUTSIDE THE TIMELINE ON 2nd DECEMBER 2016

### SUMMARY

During its investigation of decision-making on 2nd December 2016, the Committee encountered a number of additional findings- many of which do not fit into the neat package of the timeline for the day. These findings are nonetheless important and underscore discrepancies. The most significant of these discrepancies are cause for concern; those which are of somewhat lesser significance are, at the very least, cause for eye-brows to be raised.

The Committee noted that it was faced with a multitude of attempts to thwart its efforts, e.g. the deliberate ignoring of its requests for information, which appeared as an attempt to prevent it from obtaining a proper understanding of the decision- making that led to the 2nd December 2016 incident. Given the level of reluctance and resistance encountered by the Committee, one might consider certain actions as deliberate attempts on the part of some to avoid true accountability.

These concerns were later confirmed following the revelations contained in the witness statements of the former Deputy Speaker, Mrs. S. Roberts-Holshouser, former Junior Minister Mr. K. Bascome, together with the submission from the HOA staff.

### FINDING 5.1 : Section 3.9 of the NPoCC Report

The NPoCC Report was a peer review of the Bermuda Police Service conducted by Assistant Chief Constable Chris Shead under direction of His Excellency the Governor. As it relates to this investigation, Deputy Governor Ms. Ginny Ferson was Acting Governor and Commander-in-Chief on 2nd December 2016.

When interviewed by the Committee about the findings contained in the NPoCC Report, key government stakeholders seemed unaware of the findings, particularly those findings listed in section 3.9 which called into question their role.

Significant excerpts from section 3.9 follow:

> " The role of Platinum was referenced numerous times during the review."
>
> "The Platinum role however is not one that is recognised in public order command with the most strategic recognized role being that of Gold."
>
> "... for this event the Gold Commander amended his strategy to just three strategic intentions from the original seven based on his perception and it highlights that amongst the existing command structure, there was a clear misunderstanding of roles and responsibilities..."
>
> "Care does need to be taken to ensure that the responsibility within the command structure is not confused. Platinum does not become the de facto Gold Commander. ..."

It was revealed that unknown key stakeholders outside of the BPS were not included in the interviews conducted by Mr. Shead; however, it is clear from the Report that the involvement of these stakeholders

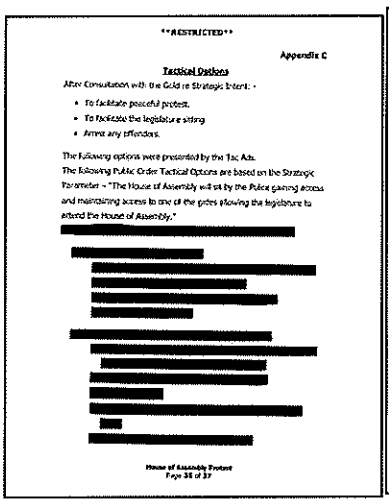
was of a significant magnitude, especially considering references outlined in the Report. The failure to interview these persons left a huge void in accountability.

To Mr. Shead's credit, this deficiency in his remit was not lost on him. However, save and except for the Committee's review, this aspect of Mr. Shead's report would have passed into history totally unnoticed. If a Parliamentary Joint Select Committee had been struck to work in tandem with Mr. Shead, those key persons, some of whom are now known to have been a part of the Legislature, would have been compelled much earlier (before the two year period during which some of their memories failed them) to offer testimony so that a more comprehensive picture of events could have been produced earlier.

As it stands, the delay caused by the failure to comprehensively investigate the event at the time, by limiting it as a peer review of only the BPS, taken together with the retirement of the former Police Commissioner and of the former Deputy Commissioner, could have rendered the Committee's work a 'cold case'. Certainly, other questions are raised.

## FINDING 5.2: Heavily Redacted Documents- Preventing The Committee from Acquiring and Understanding Information

It proved extremely frustrating for the Committee to consider evidence from the BPS when key elements were redacted. For example, two key pages of the Tactical Options given to Silver Command follow:



**RESTRICTED**

Appendix C

Tactical Options

After Consultation with the Gold re Strategic Intent: -

- To facilitate peaceful protest.
- To facilitate the legislature sitting
- Arrest any offenders.

The following options were presented by the Tac Ads.
The following Public Order Tactical Options are based on the Strategic Parameter - "The House of Assembly will sit by the Police gaining access and maintaining access to one of the gates allowing the legislature to attend the House of Assembly."

[redacted]

House of Assembly Protest
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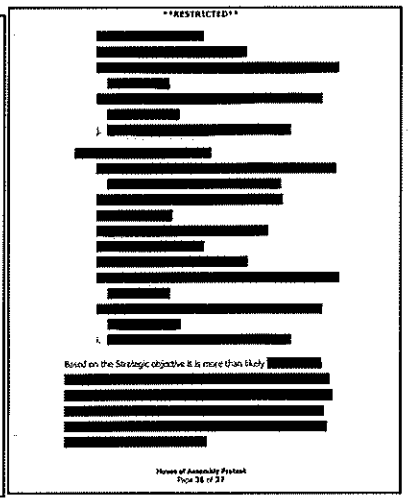

**RESTRICTED**

[redacted]

Based on the Strategic objective it is more than likely [redacted]

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It was difficult for the Committee to try to piece together a coherent picture of how decisions were made and of who made them- when faced with such heavily redacted documents.

As an arm of the Legislature charged with conducting business on behalf of the people of Bermuda, the Committee would have expected to be entrusted with the clear information necessary to assist with fulfilling its mandate.

## FINDING 5.3: Non-response of Key Stakeholders

As the Committee set about its work, it noted those persons identified in various reports, statements and other documents. Once it had settled not only on the list of names, but also on the questions which might

be posed to these persons, the Committee sent letters which explained the authority under which it operated, and invited those persons to provide a statement of account by a particular deadline.

These letters appeared in the first instance to have been ignored by the recipients, save for letters sent to the former Premier and the former Commissioner of Police. In those instances, the Committee received communication from lawyer A. Dunch. The lawyer laid out his clients' concerns about the composition of the Committee and stated that there would be no co-operation until the matters were addressed. At the same time, the former Premier, a seasoned politician, took the step of going to the print[62] and television media to voice his concerns about Committee membership. It is generally the norm for a sitting member of the Parliament to address any concerns which he or she might have in such instances with the Honourable Speaker and then to wait for a response.

Informed by the lawyer that there would be no response at that time from the former Commissioner, the Committee wrote to His Excellency the Governor who has control over the operations of the Bermuda Police Service. Thereafter, the Committee was pleased to receive a comprehensive binder of documentation from former Commissioner De Silva. It was through this documentation (some of which, nonetheless, was heavily redacted) that the identity of several key players, including the Gold Commander, was verified.

**FINDING 5.4: Police Willfully Disobey Summons**

Part IV of the Parliament Act 1957 outlines the authority of Joint Select Committees, including the power to issue summonses. To ignore a summons is an offence.

By way of information, the Committee issued summonses to specific Officers who played key roles on 2nd December 2016. The purpose of each summons was to allow the Committee to interview the Officer in question. Unfortunately, the Gold Commander who provided the strategic leadership on 2nd December 2016, did not appear before the Committee, even though he was issued two summonses.

By letter dated 14th December 2018, current Commissioner Corbishley indicated that he alone spoke for the Bermuda Police Service (unless he duly authorized someone else to do so), and as such, he would accompany the Gold Commander into the Committee interview room on 19th December 2018 so that he (the Commissioner) could respond to Committee's queries. The Committee was not prepared to accept the Commissioner's position and so advised him. Nonetheless, the Commissioner accompanied the summonsed Officer to the interview and was once again presented with the Committee's position.

The Chairman again informed the Commissioner that the summons was for the Gold Commander alone and that, in such circumstances, the Committee would refuse to set a precedent for future Committees by allowing the Commissioner to sit in the interview. The Commissioner did not accept the Committee's position and as a result, both Officers left. Thus, the scheduled interview with the Gold Commander did not take place.

The Committee expressed concern that the Commissioner showed a lack of respect for the procedures it had established and was encouraging Officer(s) to do the same.

[62] The Royal Gazette 7th February 2018; Bernews 10th February 2018

From the standpoint of the Committee, the Gold Commander remains in breach of the summons (invoking immunity), and still has a case to answer with regards to this breach.

**FINDING 5.5: Collective Legal Representation**

By way of reminder, the Parliamentary Joint Select Committee is composed of persons elected and appointed to serve the people of Bermuda. As such, the Committee does not take direction from a private person.

After it had been reconstituted, the Committee discovered from letters (dated 26th March 2018 and 28th March 2018) that lawyer Alan Dunch of MJM Barristers and Attorneys was the instructed attorney for former Premier Mr. M. Dunkley and former Commissioner De Silva and "others for whom we act". Mr. Dunch indicated that any communication from the Committee to those he represented should be directed through him.

On behalf of his clients, Mr. Dunch raised with the Speaker and with the Chairman the propriety of having 2 particular members (Messrs. Swan and Scott) sit as part of the Committee. The Speaker removed Mr. Scott from the Committee; Mr. Swan continued as the Chairman, duly elected by the other members of the Committee. Mr. Dunch considered that the Speaker had only addressed the membership issue in part and thus appeared to call into question the constitution of the Committee.

In a letter dated 26th September 2018 Mr. Dunch revealed that, in addition to those already named, " ...as you already well know", he was the instructed attorney of the entire Bermuda Police Service. The Committee had been aware that Mr. Dunch represented the former Commissioner, but up to the September letter, the Committee was not aware that he purported to represent the entire Bermuda Police Service. The Committee did query whether the BPS had received the necessary approvals to hire a private-firm lawyer as its representative, but to date has not received a response.

Given the clear delineation of powers as outlined in the Constitution, the Committee was hard-pressed to understand how a single lawyer could at the same time represent a member of the Legislature (Mr. Dunkley) as well as the entire BSP, which falls under the Executive - under the control of His Excellency the Governor.

It is the Committee's view that having Mr. Dunch represent both parties created an extreme conflict of interest.

**FINDING 5.6: Police Complaints Authority Decision Must be Called into Question**

During its review, the Committee discovered that evidence it received was at variance with the Decision issued in August 2017 by the Police Complaints Authority (PCA). There were several reasons for the position taken by the Committee:

(a) **The PCA did not interview those with complaints**

Twenty-six persons filed complaints with the PCA. However, based on testimony from persons involved, it does not appear that the PCA held individual or even group interviews with those persons.

**(b) Police Camera Footage**

The Committee collectively reviewed the body camera video provided by former Commissioner De Silva. The review revealed unequivocally that a command was given by an Officer at the southern access gate to the HOA to use CAPTOR spray on the crowds gathered.

This discovery refutes the key finding of the Police Complaints Authority (PCA) and underscores that what the PCA lists as a fact is actually erroneous.

The PCA asserts as fact that,

> *" **there was no order given by any person in command** [emphasis added] that Captor should be used. In every instance on the 2nd December when Captor was used, it was a decision made by the individual officer. This is in accordance with the Use of Force Policy."*
>
> *Finding – The PCA heard from Officers during the course of sworn examination and we also reviewed media and police footage. Officers reported fearing for their own safety as well as for that of fellow Officers. The appearance of the Officers coming to execute the "Bubble" from Church Street on to Parliament Street galvanized those who were protesting and a dangerous and chaotic period followed. The PCA is satisfied that there was no general command to use Captor. Officers who used it did so in the belief that they were protecting themselves or a colleague and, to use the words of the Policy governing the use of Captor at paragraph 6.5:- "The use of CAPTOR may be appropriate against: "*

In fact, this finding proved to be untrue. In Police video axon body 2 X81005093 (at 12:09 minutes into taping) an Officer orders,

> *"Get out of the way or you will be sprayed, move/go forward"*

In these instances, persons could not move as they were blocked in tightly.

The Officer gave command to other Officers,

> *"CAPTOR now, all of them, all of them"* and the command is followed.

Prior to this, he could be heard telling Officers, *" If you're going to use CAPTOR, CAPTOR one at a time."*

Later, a different Officer gave the order, *" No more CAPTOR spray".*

This Finding of the Police Complaints Authority must be nullified as it is based on a totally erroneous premise. The Committee's discovery is conclusive that the use of CAPTOR was the result of a clear directive to Officers at the southern gate to the House of Assembly.

**(c) Timing of the PCA Decision**

According to the PCA Overview: *We have determined the background as set out above from the review of the media and interviews and also from our reading of the NPoCC Report of ACC Shead .*

It is noteworthy that the PCA delivered its position after both the presentation of NPoCC Report and the conclusion of the court case against the complainants that they were reviewing; reference to both were included in their deliberations.

Considering that it has been established that one of their key finding is based on a false premise, the Committee must call the PCA Decision into question.

**FINDING 5.7: The Commissioner of Police Alone Speaks for the Bermuda Police Service**

Mr. Stephen Corbishley took up his role as Commissioner of Police in August 2018, succeeding former Commissioner Michael De Silva some 20 months after the incident on 2nd December 2016 Mr. Corbishley was not Commissioner at the time of the incident.

In a letter to the Chairman dated 21st September 2018, Commissioner Corbishley indicated that he fully understood the issues the Chairman raised [in a letter to the Governor who has control of the BPS], and that he was fully supportive to assist with the remit of the Joint Select Parliamentary Committee (JSPC) in examining the matters of 2nd December 2016. He sympathized " with the JSPC's role to make thorough enquiries into this event through access to all information."

On 26th September 2018, the Committee received a letter from lawyer A. Dunch indicating that he represented the entire Bermuda Police Service. He further wrote that the Commissioner alone, or through the lawyer, would speak on behalf of the Bermuda Police Service in relation to such issues as were raised by a properly constituted Parliamentary Joint Select Committee.

Thereafter, and certainly contrary to the tone of his first letter to the Committee, the Commissioner asserted verbally as well as in writing to the Chairman, that he alone speaks for the Bermuda Police Service, unless he duly authorizes someone else to do so. Thus, Committee questions for Officers who were directly involved in the incident on 2nd December 2016 must be channeled through him.

The Committee has a full understanding of lines of command but questions the accuracy of information which is now filtered from a direct source through the Commissioner. By way of example, the Committee was informed by one Parliamentarian that arrangements were made through a member of the Police Special Branch for him to be escorted to the House of Assembly. The same Officer was identified by another Parliamentarian as being present in the former Premier's office on the morning of 2nd December 2016. However, a query made through the Commissioner about any involvement of the particular Officer in events related to the day yielded a response that he was not involved.

**FINDING 5.8: Possible Willful Misleading**

The submission by the HOA staff and the witness statements from former Deputy Speaker Mrs. S. Roberts-Holshouser and former Junior Minister Mr. K. Bascome (the latter two obtained from the People's Campaign) not only raise serious questions about the BPS Command but also call into question the involvement of members of the then-Executive, as outlined in Section 3.9 of the NPoCC Report by Mr. C. Shead.

# D. COMMITTEE RECOMMENDATIONS

The Committee has identified a number of recommendations which it lists below in Part 1.

The Committee noted additional recommendations made by Assistant Chief Constable C. Shead regarding the BPS and its actions on 2nd December 2016. Former Commissioner De Silva supported the recommendations. The Committee also considers them to be relevant still and thus has included them in Part 2.

**PART 1**

**1.0 FURTHERANCE OF EXAMINATION**

**Recommendation 1.1:**

In order for these findings to be taken to the proper conclusion, a forensic audit by persons trained in reviewing and analyzing information must be carried out by an entity such as the Ombudsman or another relevant agency. This recommendation is not centred solely on the events of 2nd December 2016. It is abundantly clear to the Committee that a suitably trained and equipped professional body should examine the information gathered about any tumultuous event. Further, it should be mandated that such an entity be reinforced with strong law enforcement backing and the legal authority to have access to all relevant source documents.

**Recommendation 1.2**

Further to Recommendation 1.1, the Committee recommends that all persons or entities required to provide information to a Parliamentary Joint Select Committee provide the information in its entirety at the time of asking. Very late in its investigation, the Committee was provided with information which, had it been provided at the initial time of asking, would have certainly changed the line of questioning taken with certain witnesses.

**Recommendation 1.3**

The absence of a specific budget dedicated for the purpose of the Committee's mandate is noteworthy and should be a consideration in the future for any Committee with a similar mandate. This would be a matter to be addressed to the Speaker.

Every assignment given to such a Committee should be budgeted according to its unique merit. Making allowance for the acquisition of professional expertise, administrative and legal costs and the like must be considered an integral part so that the work is completed at a high and competent level.

## 2.0 BERMUDA POLICE SERVICE

**Recommendation 2.1**

The legislation under which the Police Complaints Authority operates should be updated to allow for an appeal process. The jurisprudence in the western world demands that this higher level of justice be afforded the complainant. The Committee recommends additionally that the membership of the PCA be reconsidered/restructured so that technical information on police operations be provided by an officer who will serve as an ex officio member of the PCA.

**Recommendation 2.2**

Similar to an Emergency Measures Organization Meeting, a meeting of ALL key stakeholders (e.g. BPS, members of the Legislature, HOA staff and others) should be held prior to events where it is known that a contentious Bill or other highly emotive matter is to be debated in the HOA.

**Recommendation 2.3**

In any circumstances, but particularly those similar to the events encountered on 2nd December 2016, the Bermuda Police Service must ensure that threat/risk levels are properly assessed, and communicated to the relevant persons, before taking action. Such assessment would avoid reactionary actions.

## 3.0 THE PUBLIC

**Recommendation 3.1**

The BPS and security firms should be trained in de-escalation versus escalation techniques and strategies for working with large crowds to maintain order.

Although this recommendation is highlighted in the NPOCC report, an added feature to this suggestion is the need for enhanced public awareness of rights. Just as the rules of engagement are a critical part of each law enforcement officer's repetoire, equally as important is the expected behavior when the public participates in a peaceful protest. As much as the right for peaceful protest is one of many freedoms available to a democratic society, equally as important is the right for its citizenry to enjoy safety. Although freedom of movement by protestors is a democratic right and must be allowed, the boundaries of that freedom need to be clearly defined and communicated in the interest of public safety.

Public announcements through the media, communicating street closures, restricted areas and entrances, etc. should be the norm leading up to the day of pre-planned protest events.

**Recommendation 3.2**

The Committee interviewed several members of the public who were involved in the events on 2nd December 2016. Even two years after the event, most of these persons expressed relief at finally "being able to tell their story". Several described the feeling associated with the re-telling as cathartic.

This underscores the fact that persons filing complaints with the Police Complaints Authority were not interviewed after the filing. When asked specifically whether they had been interviewed individually of collectively, the response was no.

The Committee also understood from correspondence from the current Commissioner of Police that beyond the physical assaults suffered by Officers, all were greatly affected emotionally by the events of 2nd December 2016, with some referring to the period as their most fearful period in policing.

The recommendation which follows is born out of the 2nd December 2016 events but is meant to apply to other events which might have a broad impact on a relatively small community such as Bermuda. In those circumstances where persons (whether civilians, Police Officers or others) suffer extreme trauma, for example through a hurricane, a horrific accident or events such as those under investigation, counselling services should be made available as a matter of course to those involved and to those impacted. While it is beyond the remit of this Committee to say whether or not such counselling should be with or without cost, the Committee recognizes that there is a need for persons to be able to unburden themselves in an organized, healthy and judgement-free manner so that they can move forward with their lives for the benefit of the community as a whole.

## 4.0 HOUSE OF ASSEMBLY

**Recommendation 4.1**

In addition to the Ministerial Code of Conduct, a code of conduct should be developed for all Parliamentarians (i.e. ALL members of the Legislature) which includes how they are expected to conduct themselves during protests.

The Committee noted shortcomings on the part of both the Government and the Opposition parties during the events of 2nd December 2016. The proper response of Parliamentarians during protests is important. There is an expectation that as legislators, they are obligated to uphold the law both in application and in appearance. Since their conduct can be open to subjective interpretation, a comprehensive code of conduct needs to be established removing all doubt in the minds and perception of the public.

**Recommendation 4.2**

The following recommendations from the July 2016 HOA security review which was conducted by the BPS should be undertaken if they have not already been started:

- permanent relocation of the Supreme Court off of the premises of the HOA;
- installation of alarm systems;
- installation of panic buttons;

- installation of plexiglass separating the public gallery from the Sessions Chamber;
- installation of CCTV for 360 degree exterior property coverage, including all gates and entrances, together with parking areas.

## 5.0 LEGAL AND POLICY

**Recommendation 5.1**

Consider the inclusion and interpretation of national interest and public interest in Bermuda's Constitution.

The laws of other western jurisdictions should be examined for precedents that can be amalgamated to the Bermuda Constitution in order to promote clarity of understanding regarding the two constructs.

**Recommendation 5.2**

After consultation with the BPS and others, consider having the Human Rights Commission develop a document entitled The Right to Protest Guidelines.

**Recommendation 5.3**

Update and amend the Public Order Act 1963 to include protests, marches and demonstrations, counter - demonstrations, press conferences, public and private meetings.

**Recommendation 5.4**

Develop and utilize when needed protocols related to a comprehensive communication strategy and policy for public order demonstrations.

**Recommendation 5.5**

Develop and implement a formal chain of command and organization chart for Ministers and the BPS to utilize during public demonstrations.

**Recommendation 5.6**

Committees such as Parliamentary Joint Select Committees should have full access to non-redacted materials. During the course of the Committee's attempt to gather information that would enhance the accuracy of the report, full access to source documents such as law enforcement cogent notes and Government briefing notes were not readily available. These documents, which are considered official government property, need to be released without a Committee having to resort to summonses, subpoenas or any other law enforcement mechanisms. Any amendments to existing legislation to enforce this or risk 'obstruction of justice' charges must be one of the tools in a Parliamentary Joint Select Committee's toolbox.

**Recommendation 5.7**

Section 40 of the Parliament Act 1957 provides for offences against the Act. The Gold Commander at the time of the 2nd December 2016 incident still remains in breach of the summons issued by the Committee; thus, the Committee recommends that the appropriate course of action be pursued against him in this matter.

**PART 2**

**(1) NPOCC Report: THE BERMUDA POLICE SERVICE**

Assistant Chief Inspector Chris Shead of the National Police Coordination Centre published the recommendations, which the Committee endorses for their validity, in his report on police operations on 2nd December 2016. The information in parentheses refers to particular sections of the NPoCC Report.

1. It is recommended that an appropriate planning process is established for all public order events well in advance of the event commencement date. The process should incorporate the establishment of a strategy, an appropriate and effective command structure and the development of suitable contingency plans. (2.1, 2.5, 3.4 & 3.5)

2. It is recommended that an overarching strategy be established and appropriately briefed to commanders for all long running disputes. (2.2)

3. It is recommended that clear guidance regarding record keeping and what policy logs should be maintained throughout the planning and implementation of public order events and introduce an audit process to ensure the direction is adhered to. (2.13)

4. To facilitate an effective response to future events, public order command training should be delivered to those who are likely to be placed in command positions. It is also recommended that the Force establishes the required numbers of trained commanders and the succession arrangements going forward, to help maintain resilience. (3.6)

5. It is recommended that consideration be given to reviewing how the BPS allocates command roles for public order events to ensure the most appropriate and experienced commanders are utilised in the most demanding roles (3.7).

6. It is recommended that consideration be given to the lobbying for additional appropriate legislation to assist in the management of protest and fill existing legislative gaps (4.5).

7. It is recommended that BPS review its approach to the use of threat and risk assessments to ensure greater specificity and enable them to inform the planning for public order and public safety events (4.8).

8. It is recommended that the BPS invest in protest liaison training and ensure a 'no surprises' communication strategy is adopted for future public order events (4.9).

9. It is recommended that consideration be given to the delivery of appropriate tactical training to the PSU and other appropriate personnel (4.15).

10. It is recommended that the application of public order tactics by the PSUs is reviewed and any lessons learnt incorporated into future training (4.15).

Former Commissioner De Silva supported these recommendations and categorized them as follows:

a) Planning: barriers around HOA environs, establish the number of commanders needed and provide training; invest in Police Liaison Teams; review length and breadth of tactical training
b) Training: for Officers; develop strategies, command structures and contingency plans; establish corporate record-keeping standards for public order incidents; develop threat and risk assessments for public order incidents; develop protocols for politicians for incidents at HOA;
c) Communication: improvements within BPS; what structure exists between BPS and politicians during crisis:
d) Legislation: to assist with management during a crisis; Parliament Act and Employment Act re: members/serving community

**Recommendation**

**This Committee recommends that the Minister of National Security report to the HOA with an update on the status of action taken on these recommendations.**

**SIGNED**

Mr. H. Kim E. Swan JP MP, Chairman

Senator The Hon. Joan Dillas Wright, President of the Senate

Mrs. Tinee Furbert JP MP

Mr. Scott Simmons JP MP

Mr. Ben Smith JP MP

Mr. Neville Tyrrell JP MP

Senator Marcus Jones

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# ANNEXES

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## PART IV

## EVIDENCE BEFORE LEGISLATIVE COMMITTEES

**Resolution required to apply Part IV**

29. (1) This Part shall apply in relation to the proceedings of a legislative committee in any case where a resolution that this Part shall apply in relation to that legislative committee—

(a) has, as respects a committee of the whole House, been passed by the House of the Legislature which is resolved into a committee of the whole House; or

(b) has, as respects a select committee, been passed by the House of the Legislature from which the select committee has been appointed; or

(c ) has, as respects a joint select committee, been passed by each House of the Legislature,

but unless a resolution has been passed as aforesaid such provisions shall not apply in relation to the proceedings of a legislative committee.

(2) Any such resolution as aforesaid which relates to the proceedings of a joint select committee shall, when passed by one House of the Legislature, be duly communicated to the other House of the Legislature.

(3) Where either House of the Legislature (or, as respect a joint select committee, then each House of the Legislature) has passed a resolution as aforesaid in respect of the proceedings of a legislative committee, a certificate to that effect signed by the President or, as the case may be, the Speaker (or, as respects a joint select committee, then both by the President and the Speaker), shall be delivered to the chairman of the legislative committee; and any such certificate shall, until the contrary is shown, be accepted in any proceedings of the legislative committee, and in all courts in Bermuda, and for all purposes whatsoever, as proof that the resolution was duly passed by the appropriate House or Houses of the Legislature.

**Summoning of witnesses**

30. (1) The chairman of a legislative committee may issue a summons under his hand to any person requiring that person to attend as a witness before the legislative committee at a time and place specified in the summons; and hereinafter in this Part "summons" is used to denote a summons duly issued under the authority of this section, and cognate expressions shall be construed accordingly.

(2) Without prejudice to anything in sections 32, 33 or 34, a summons to attend before a legislative committee may require the person summoned to produce to the legislative committee on so attending any document, specified or referred to in the summons, which is in his possession or under his control or is otherwise available to him.

(3) A summons to attend before a legislative committee shall be deemed to include requirements—

(a) that the person summoned shall remain in attendance as a witness before the legislative committee until his further attendance is excused by or on behalf of the chairman of the legislative committee; and

(b) that if while the person summoned is in attendance the legislative committee adjourns, then he shall, if so directed by the chairman of, or the secretary to, the legislative committee, attend again as a witness before the committee at a time and place specified by the chairman or secretary, and shall then remain in attendance until his further attendance is excused by or on behalf of the chairman of the legislative committee:

Provided that nothing in this subsection precludes the issue of a fresh summons to a person who has already been summoned, whether his attendance under the previous summons has been excused or not, or whether or not he has been directed (on an adjournment) again to attend before the legislative committee as aforesaid.

(4) A summons may be served on a person by delivery of the summons to him personally or by sending it by post under registered prepaid cover addressed to him at his last known place of residence; and if a summons is sent by post the person to whom it is addressed shall be deemed, until the contrary is shown, to have received it in the ordinary course of transmission by post.

(5) A summons may be in the form set out in the First Schedule.

**Evidence on oath**

31. (1) A person who, having been duly summoned, is in attendance before a legislative committee may, without prejudice to anything in sections 32, 33 or 34 be required by the chairman of the committee to give evidence on oath or, in circumstances where an affirmation is permitted under the Evidence Act 1905 [title 8 item 10], then on affirmation, as to the subject matter of the terms of reference of the committee.

(2) An oath or affirmation made by a person in attendance as a witness before a legislative committee shall, with necessary modifications, be in the form ordinarily used in proceedings before a court.

(3) The chairman of, or secretary to, a legislative committee may administer an oath or affirmation to any person in pursuance of the foregoing provisions of this section.

**Privilege of witness**

32. No person who, having been duly summoned, is in attendance before a legislative committee shall be required to answer any question, or to produce any document, which he would not be required, respectively, to answer or produce in proceedings before a court; and any such person shall, in respect of any evidence, or the disclosure of any communication, or the production of any document, be entitled to the same right and privilege as before a court.

**Restriction on disclosure of official matters**

33. No public officer, being duly appointed to be the holder of any office or post connected with the discharge of the functions of any Government Department or Government Board shall, except with the consent of the Governor—

(a) produce to any legislative committee any document which relates to the correspondence of any Government Department or Government Board or to any other matter affecting the public service; or

(b) give before any legislative committee evidence regarding any such matter;

nor shall secondary evidence be received by or produced to any legislative committee of the contents of any such document as aforesaid.

**Refusal to answer where reply or document of an irrelevant private nature**

34. Where any person who, having been duly summoned and being in attendance before a legislative committee, refuses—

(a) to answer any question that may be put to him; or

(b) to produce any document referred to in his summons,

on the ground that the reply to the question or, as the case may be, the contents of the document, are of a private nature and do not affect the subject of enquiry under the terms of reference of the committee, it shall be the duty of the chairman of the committee to determine whether such refusal should be upheld on those grounds; and if he determines that such refusal should be upheld he shall excuse such person, or if he determines that it should not be upheld he may, subject as hereinafter provided, require him to answer or to produce the document accordingly:

Provided that—

(i) where the chairman of the committee determines that such refusal should not be upheld he shall, if so required by the person in attendance as aforesaid, report the matter to the appropriate parliamentary authority; and the appropriate parliamentary authority may make such order as appears to him to be just and equitable; and the chairman and the person in attendance as aforesaid shall govern themselves accordingly; and

(ii) in any such case as aforesaid the chairman of the committee shall inform the person in attendance of his right to require that the matter be reported to the appropriate parliamentary authority.

**Evidence excluded from other proceedings**

35. Except in connection with a charge of an offence of perjury, or an offence under section 40(b), arising therefrom—

(a) no evidence shall be received in any other proceedings whatsoever that any particular facts were given in evidence by any person before a legislative committee; and

(b) no secondary evidence of the contents of any document produced by any person before a legislative committee shall, except as mentioned in the foregoing provisions of this section, be received in any such other proceedings,

unless the consent of the person who gave such evidence, or produced the document in question, before the legislative committee has been first obtained.

**Leave to disclose evidence**

36. Without prejudice to anything in sections 26, 27, and 35, no member or officer of either House of the Legislature, and no shorthand writer or parliamentary printer, shall give evidence in any other proceedings in respect of any minutes of evidence taken before a legislative committee or of the contents of any document laid before the

committee, or in respect of any proceedings of the committee, unless the leave of the appropriate parliamentary authority has been first obtained.

**Payment of witnesses**

37. (1) Any person who, having been summoned, attends before a legislative committee and, if so required, duly gives evidence or duly produces any document before the committee shall be entitled to be paid at the rate specified in section 9 of the Evidence Act 1905 [title 8 item 10], as respects a witness in a criminal cause.

(2) Where professional evidence is given by any other specially qualified person summoned and in attendance before a legislative committee, or any examination or analysis in respect of any person or thing is carried out in connection with any such evidence or is made in compliance with any order or request of the committee, then the specially qualified person shall be entitled to receive fees at the rates specified in the First Schedule to the Evidence Act 1905 [title 8 item 10]; and the chairman of the committee shall have the like powers as a judge in determining the amount of such fees.

(3) Any payment to witnesses made under this section shall be made out of the Consolidated Fund from monies provided by the Legislature for that purpose.

**Interpreters**

38. (1) The chairman of the legislative committee shall have the like powers as a court with respect to obtaining the services of an interpreter.

(2) An interpreter whose services are obtained as aforesaid shall be entitled to be paid at the rate specified as respects an interpreter appearing before a court.

(3) Sections 12 and 13 of the Evidence Act 1905 [title 8 item 10] (interpreters) shall apply and have effect, with necessary modifications, in relation to a legislative committee as they have effect in relation to a court.

(4) Any payments to interpreters made under this section shall be made out of the Consolidated Fund out of monies provided by the Legislature for that purpose.

**Retention of documents**

39. Where in accordance with any of the foregoing provisions of this Part any document has been produced to a legislative committee, the committee may retain the document for so long as is reasonably necessary to make a copy thereof or to take extracts therefrom, as may be required for the proper and convenient discharge of their functions.

**Offences under Part IV**

40. Without prejudice to anything in the foregoing provisions of this Act, any person—

(a) who, on being duly summoned to attend as a witness before a legislative committee, fails without reasonable excuse—

(i) to attend in accordance with the terms of the summons; or

(ii) to remain in attendance until he is excused from further attendance; or

(iii) to attend again in accordance with any direction duly given to him, as mentioned in section 30(3); or

(b) who, while in attendance as a witness before a legislative committee, after having been duly summoned—

(i) refuses to make an oath or (as the case may be) an affirmation when required to do so by the chairman of the committee; or

(ii) refuses properly and fully to answer any question put to him by a member of the committee, being a question which, having regard to the foregoing provisions of this Part, he is bound fully to answer; or

(iii) refuses to produce to the committee any document in his possession or under his control or otherwise available to him which he is required under the terms of the summons to produce, and which having regard to the foregoing provisions of this Part, he is bound to produce; or

(iv) uses any insulting or threatening language towards or in the hearing of the committee or any member thereof, or causes any disturbance or interruption in the proceedings of the committee,

commits an offence against this Act:

Punishment on summary conviction: a fine of $840.

**BERMUDA HOUSE OF ASSEMBLY**
**Official Standing Orders**

*Revised: July 12, 2013*

### 36. OTHER SELECT COMMITTEES

36. (1) A Select Committee, other than a Standing Select Committee, shall be appointed by order of the House, which shall specify the terms of reference of the Committee.

(2) It shall consist of as many Members as the House may nominate.

(3) The quorum of a Select Committee shall be such as specified in the order of the House.

(4) Every Select Committee shall be so constituted as to ensure, as far as is possible, that the balance of parties in the House is reflected in the Committee.

(5) Where a Member of a Select Committee dies, or for any other reason his or her seat becomes vacant, then subject to the preceding subparagraph, the House shall nominate another Member in replacement. Subject to the wishes of the House, the proceedings of a Committee shall not be invalidated on the ground of a vacancy in the membership of the Committee so occurring.

(6) Except as otherwise provided in these Orders, or by special direction of the House, a Select Committee may elect a Chair from among its Members.

### 37. JOINT SELECT COMMITTEES

37. (1) The Speaker may for the purposes of any Joint Select Committee (other than the Public Accounts Committee) appoint not more than seven Members to sit with Members of the Senate as a Joint Select Committee.

(2) The quorum of a Joint Select Committee shall be such as the Committee may decide.

(3) A Joint Select Committee shall elect its own Chair.

(4) A Joint Select Committee may be appointed at the request of either House with the approval of the other House.

### 38. PROCEDURE OF COMMITTEES

38. (1) Except as otherwise provided in these Orders, this order shall apply to all Select Committees.

(2) If the Chair of any Select Committee shall be absent from any meeting, the Committee shall elect another member to serve as Chair for that meeting only.

(3) Unless the House otherwise directs, except for the Standing Orders Committee and the House and Grounds Committee, all other Select Committees shall have the power to send for persons, papers and records.

(4) Unless the House otherwise orders, a simple majority of the Members of the Committee shall be a quorum.

(5) The first meeting of a Select Committee shall be held at such time and place as the Chair [in the case of a Standing Select Committee], or the Speaker [in the case of a Special Select Committee], shall appoint. Subsequent meetings shall be held at such time and place as the Committee may determine: provided that if the Committee fails to do so, the Chair shall, in consultation with the Clerk of the Committee, appoint such time and place.

(6) The deliberations of a Select Committee shall be confined to the matter referred to it by the House and any extension or limitation thereof made by the House.

(7) A Select Committee shall not have the power to delegate any of its functions to the Chair.

(8) Subject to any order of the House or resolution of the Committee, the sittings of a Select Committee shall be private.

(9) A Select Committee may:-

(a) sit at any time when the House is adjourned;

(b) except by leave of the Speaker not sit while the House is sitting.

(10) Every Select Committee shall, before the end of a Session, make a report to the House upon matters referred to it; but where a Committee finds itself unable to conclude its investigations before the end of the Session it may so report to the House.

(11) A Report of a Select Committee may contain the opinions and the observations of the Committee and may be accompanied by any Minutes of evidence taken before the Committee.

(12) A Select Committee may make a special report relating to its powers, functions and proceedings on any matters that it thinks fit to bring to the notice of the House.

(13) (a) The Chair of a Select Committee shall prepare a draft report and submit it for the consideration of the Committee; but alternative drafts may be submitted for consideration by any other Member of the Committee;

(b) The report finally to be adopted shall be such as is agreed to with amendments, if any, by all the Members of the Committee or, failing unanimous agreement by a majority of the Members;

(c) Any Member dissenting from the report of a majority of the Committee may by leave of the Committee put in a concise written statement of his reasons for such dissent, and such statement shall be appended to the report.

(14) The proceedings of and the evidence taken before any Select Committee and any documents presented to and decisions of such a Committee shall not be published by any Member thereof, or by any other person, before the Committee has presented its Report to the House.

(15) A report or special report together with a copy of the Minutes of proceedings of a Select Committee and a copy of the Minutes of any evidence given before that Committee shall: