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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION TUNIC

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 30 MARCH, 2015

AT 2.04PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, thank you, Mr Naylor.

<MATTHEW JAMES MONTGOMERY, on former oath [2.04pm]

10 MR NAYLOR: Mr Montgomery, I was asking you some questions about the circumstances in which it is necessary to seek three tenders or just one tender or when you might go to open tender. So we're at that stage of the process before in fact a tenderer has been selected?---Ah hmm.

Am I right in my understanding that at the point in time that you've decided to whom tenders should be sent, so if we're working for example, let's use the example of a Tahmoor-related claim and your understanding, as I understand, is that if the value of the claim is up to \$50,000 then you can select three tenderers off the list - - -?---Yes.

20 - - - and invite those three tenderers to submit tenders or quotes. Yes, that's right?---That's right.

And at that point in time you would send them a bundle of documentation. That's right?---That's right.

And that documentation would include what might be called a scope of works - - -?---That's right.

- - - or technical specifications?---Scope of works, yes.

30 And that document would set out what needed to be done?---Ah hmm.

Yes. And the selected tenderers to whom the tender invitations had been sent would be given a certain period of time in which to respond and submit tenders?---Yes.

Yeah. And those tenders would be, would need to be received by a certain date?---That's right.

40 And is it the case that the tenders need to be deposited into a tender box - - - ?---A tender box, yes.

- - - situated at the Picton District Office?---Yes, on our front counter.

All right. Is there some capacity for tenders to be lodged either by post or electronically?---Um, I'm not aware of electronically but I know they can be lodged by post or I know they are lodged by post sometimes.

And what, what happens when a tender is lodged by post?---Ah, the customer service officer will submit the tender into the tender box.

I see. So the document gets received by the office?---Yeah.

And the customer service officer physically deposits it into the tender box?
---Into the tender box.

And does that need to occur by the time which is designated as the closing date and time?---Yeah, prior, prior to the closing date and time.

10 I see. Once – can, can you just describe the process that then happens, the closing date and time has arrived, what then happens?---Two of the Board staff will open, open the tender who aren't or haven't been previously involved with the claim - - -

Yes?--- - - - and we have a tender book which is previously filled out ah, and the tender documentation is filled into that tender book.

Okay. So am I understanding correctly that the tender book has already filled in details in relation to the property which is the subject of the tender?
20 ---Yes.

Right. And it, it has noted in it the closing date and time - - -?---It has.

- - - for the tender?---Yes.

And when the tenders are in fact received you open the, you open the tender box and these, these two people inspect the documents that have been received?---That's right.

30 All right. And let's say three, three tender invitations were sent and three tenders are received by the designated date, the prices which have been quoted get noted into the tender book, is that right?---Into the tender book, yes.

Okay. And is it the case that the tender book together with the tenders are then given to the particular district officer who has carriage of that particular claim?---Yes.

All right. And have, have you been an officer in that particular position?
40 ---Yes, I have.

All right. And that officer then prepares a document?---Yeah, a minute. We ah, we write a minute.

A minute?---Yes.

And that minute forms or contains a recommendation, does it, about which if any of the tenders should be accepted?---Yes, it just lists the three tenders, the three prices - - -

Yeah?--- - - - and the recommendation for the cheapest, cheapest tender.

Okay. And what, where does the minute go?---The minute goes, if it's within the district manager's delegation it goes to the district manager.

10 Yes?---If it's above it will go to the CEO.

Okay. Just go back to the scope of works document, the technical specification document that goes out with the tenders, who prepares that document?---The scope of works?

Yes?---The district supervisor who carried out the claim inspection.

20 Okay. All right. And when it comes to forming a view as to which tender should be accepted if any of them, what considerations would you as a district supervisor bring to bear on that question?---Ah, it would be the cheapest tender.

All right. Okay. Any, any other considerations that - - -?---No.

- - - you apply?---No.

Just the cheapest?---Just the cheapest.

All right.

30

THE COMMISSIONER: Mr Montgomery, can I just ask you, given your background as a builder, would there be occasions when the cheapest tender price seems far too low to carry out a scope of work?---Yes. Yes.

40 Well, in those circumstances wouldn't there be some perceived risk that what will happen if you give the project to the cheapest tenderer that you'll just receive a number of variations later on?---I, I haven't had it happen at the district – the Mine Subsidence Board but if I did receive a quote which I couldn't see the builder being able to complete the scope of works within that price I'd raise it with him.

But that hasn't happened to you?---I haven't had that happen, no.

Right. Thank you.

MR NAYLOR: Just on the – so you make your selection on the basis of the cheapest, the cheapest quote, the cheapest tender unless there is some circumstances in which you think that - - -?---Yes.

- - - it's far too cheap to be reasonable?---Mmm.

That goes up to the district manager if it's - - -?---District manager.

- - - if it's within his - - -?---With his - - -

- - - or her delegation to, to accept your recommendation?---Yes.

10 Or if it is beyond his or her financial delegation it goes up further – up the line further?---That's right.

It goes to the CEO?---To the CEO.

Does it ever go to the subsidence risk engineer?---Um, no. If he's acting we'll send it ah, send it to him if Greg's away or – but if Greg's there we'll always send it to Greg.

20 Okay. And how long – well, withdraw that. Have you sent minutes up to the CEO?---Yes.

And what – how long does it take generally for those minutes to be turned around and sent back to you, either the recommendation is accepted or, or not?---Um, it can vary greatly.

Yes?---I've had ah, times where it's taken a few months.

A few months?---Sometimes it can take a two day, a few days.

30 And what about the other situation where you send, you send a minute to the district manager who is your superior officer - - -?---Mmm.

- - - because he or she has the appropriate delegation, financial delegation to, to approve the selection - - -?---Yes.

- - - how long does it take for those minutes to be considered and turned around?---Generally done within a day or the next day.

40 I see. Once the decision is made as to the tender, who should be approved to do the work - - -?---Ah hmm.

- - - the works can then commence?---Yes. We send out ah, three letters – four letters notifying the two losing tenderers that they weren't successful. We send a letter to the owner notifying them who won the tender and a letter to the winning tenderer.

All right. Do you ever inform the tenderers who were unsuccessful firstly, as to who won the tender?---Yes. Yes.

And, and do you also inform the losing tenderers what the price was that was tendered or quoted by the successful tenderer?---Yes.

You do?---Yeah. It's been done, yes.

All right. Well, is it done generally?---Yes. It was done generally, yes.

10 When you say was that suggests it was done in the past - - -?---It was done - - -

- - - but it might not be done now?---Not so much now, no.

All right?---Yeah. We haven't done many – I guess it's – things have slowed up a little bit recently but, yeah.

I see. All right. And once, once then a tenderer has been selected and those – that correspondence has been sent, can the work then commence?---Yes.

20 All right. And what's your role as a district supervisor in relation to, to the work?---Ah, to oversee, oversee the workmanship and also to ensure that the scope of works is complied to.

And how do you fulfil those objectives?---I'll just ah, do regular site visits um, communicate with the owners, make sure they're happy with everything, how everything is going.

30 And how do you fulfil those objectives?---I'll just, ah, do regular site visits, um, communicate with the owners, make sure they're happy with everything.

Yeah?---How everything's going.

So how, how often are you out of the office doing site visits?---Um, every day.

Yeah?---I'll spend maybe a third of the day out.

40 Yeah?---Mmm.

How many claims do you think you've got on hand, that you've got carriage of it any one particular time?---Ah, usually around 20.

Okay?---Yeah.

All right?---Depending in the size of them. Sometimes you can have a handful of \$100,000 jobs or maybe a much larger amount of, a couple of, just jobs that are going to take a week or two, so - - -

Okay. And is it the case from time to time, I guess particularly for the larger jobs, contractor submit progress payment invoices?---Yes. Um, sometimes, yeah, sometimes not.

And when you receive a progress payment invoice, what's your practice?---I'll just ensure that the works that is being, um, that the invoice has been submitted for have been completed.

10 How do you do that?---A site inspection.

Okay. So if a contractor has submitted a progress payment invoice, say the total value of the contract is \$40,000 - - -?---Yeah.

- - - and a contract and a part-payment invoice is submitted for say \$10,000?---Ah hmm.

Does that involve you going out to the site and seeing if \$10,000 worth of work's - - -?---Yes.

20 - - - been done?---Yes.

All right. And you ensure therefore, do you, that prior to approving payment, that the work has been done to your satisfaction?---Yes.

Okay. And is that the case also with final invoices?---Yes, it is.

Okay. From time to time it is necessary for variations to be made - - -?---Yes.

30 - - - to the contract price?---Yes.

What sort of circumstances give rise to the need for variations?---It's, it's quite common because of the nature of our work. Um, we might, um, have a crack in, for example, a crack in a wall and part of us opening up that wall might expose other damage that wasn't, that wasn't seen beforehand. Um, yeah, so there's situations like that or if we, there may be, um, damage that wasn't, um, um, yeah, which couldn't be seen beforehand which - - -

40 Okay?--- - - - which becomes obvious.

When you say it's quite common - - -?---Mmm.

Let's say you've got 20 odd matters on hand?---Ah hmm.

What percentage or how many of those matters do you think, just on average would involve variations being submitted?---I would say 75 per cent.

All right. And do you know if there are any rules that apply to the approval of variations?---Ah, my understanding is it's, ah, 10,000 or 15 per cent of the total contract value, whichever is the lesser.

And from where do you get that understanding?---The delegation, the delegation list that - - -

10 Okay?--- - - - that I've got, yeah.

Shall we go back and have a look - - -?---Yeah.

- - - at the delegation list. Have you got the single document T2 in front of you? The March, 2012 document?---Yes.

Yes. Do you want to refer to that one or do you want to refer to the July, 2012 one?---I'll refer to this one.

20 Okay. So can you, where does this document refer to the financial delegation in relation to a variation?---Um, the very, the very bottom line in the supplementary notes.

I see, yeah. So do you have volume 2 in front of you?---Yes.

Can I take you to page 735. Do you see, you've looked at this document before. This is a Schedule of Delegations dated 10 January, 2007?---Yes.

30 And I think your evidence is this is not the delegations that you have applied?---No.

That's right. Have you seen this – you might have answered this before in which case I apologise for asking again, but have you seen this particular document before?---I don't recall seeing that.

No. Okay. All right. While you've got that, while you've got that document, can you go back a few pages, 729?---Ah hmm.

40 And that's a document which is headed Schedule B as at 30 November, 2002. You can make the assumption that this document appears in the bundle of policies and procedures - - -?---Mmm.

- - - that starts at page 499 in the same bundle and has a date at page 502 of 4 September, 2014. So you see at the bottom of page 502 there's a date - - - ?---Yes.

- - - 4 September, 2014?---Ah hmm.

And if you go over to page 505 there's a prefacing letter that is signed by Mr Cole-Clark, 4 September, 2014?---Mmm.

See that?---Ah hmm, yes.

And the document I want to show you, which is the Schedule B document, you'll need to go back to 729, forms part of the same bundle of documents, so if you go over the page to 731, I want to draw your attention to paragraph 11, "Tenders for Works." Just read that. See the second sentence there
10 deals with variations?---Yes.

And it says, "Variations to the contract tendered price can only be approved up to 25 per cent or \$10,000, whichever is less." But that's not your practice?---No, it's not.

Right. And have you ever been told that variations can be approved up to 25 per cent?---Ah, not in my recollection, no.

No. All right. Who is it that approves a variation?---Well, within our
20 delegation we'll approve it ourselves um, above that we will um, I'll send it to my district manager who may have – I'd have to check my schedule which I have here.

Yes?---Um, so it's the same for the district manager, so once, we send it up to the CEO once it's gone above my delegation.

Okay. So for a Tahmoor-related claim - - -?---Mmm.

- - - we'll work on the basis of your schedule, the one that you're just
30 referring to?---Yes.

The March 2012 schedule?---Yes.

For a Tahmoor-related claim?---Yes.

If the contract value is, the original contract value, which is the accepted tender is say \$40,000, and a variation is received for say \$10,000, you can't approve that because it's above your \$8,000 delegation?---Yes, that's right.

40 All right. Could you approve any variations on, on that matter, even if you are the one with carriage of the particular job?---My understanding is I can still approve up to the 10, 15 per cent or 10,000 - - -

Right?--- - - - or 10,000 whichever is the lesser.

I see. All right. And if it's more than that then it has to go up to the district manager?---To the, to the, or to the, yeah, yeah.

Or to the CEO?---Yeah.

All right. Have you ever been shown – well, I withdraw that. Apart, apart from this document which, which has at the bottom of it, and this is the March 2012 schedule of delegations, apart from this document when you say there's a 15 per cent limit of the, on the approval of variations all you're referring to, the only document you've ever seen is, is, is this and the, and in particular the last line?---Yes.

10 You haven't - - -?---I haven't seen any of this.

You're not relying upon any other documents that you might have been shown at any time?---Only that.

Okay. All right. This, this bundle of documents that I've, we've, I've been asking you some questions about and the particular bundle that you should have in front of you is that bundle of, dated September 2014 starting at 499, you see it's a very large bundle - - -?---Yes.

20 - - - that goes for the rest of the folder, do you, have you ever seen a bundle of documents like this in the Picton District Office?---Ah, yes, I have seen a bundle like that, yes.

Yeah. Where?---I've got a, I've got our policy and procedures manual which is, it's just sitting in our office on a, on a desk there.

Right. You, you, you haven't had resort to it, you haven't looked at it? ---I have.

30 From, how often do you look at the document?---Not very often.

Right. Okay. If you've got a question about, on your mind about what to do in a particular case how do you address that question?---I'll speak to the district manager.

All right. And how many copies of this do you think are in the Picton District Office?---That's the only one that I'm aware of.

40 And where precisely in the office?---It's sitting on a filing cabinet um, yeah, it's fairly central in our office.

I see?---Mmm.

Are you aware whether the policies are also available electronically?---Yes.

And have you ever had occasion to use that electronic access to the policies? ---Yes, yes.

How, how, when was the last time as best you can recall?---Um, it was actually fairly recently um, I was ah, requested to fill out a gift, gifts register.

Yes?---Um, and I had to go find it and I actually wasn't able to find it in that, in that bundle.

10 Right. All right. Sir, I want to take you to another document. It's in, if the witness might be shown volume 5 of T1 at 2063. Just take a moment if you wouldn't mind, Mr Montgomery, to look at pages 2063 to 2065. So have you had a chance to look at that?---Yeah.

Does that appear, sir, to be a claim investigation report in relation to a property at 88 Rita Street, Thirlmere?---Yes.

Commissioner, for your benefit and the benefit of other parties represented, a chronology is available in relation to this particular file.

20 THE COMMISSIONER: Thank you.

MR NAYLOR: Mr Montgomery, the claim investigation report that I'm referring you to is one document within a copy of the file in relation to 88 Rita Street, Thirlmere and you have the entire copy of the file in front of you?---Ah hmm.

It's basically in reverse chronological order. But can I just ask you some questions about this document.

30 MR CHEE: I object, Commissioner.

THE COMMISSIONER: Yes.

MR CHEE: I believe that Counsel Assisting has indicated that the full file was available to the witness. I'm instructed the document which is contained within the bundle, the tender bundle T1, isn't the actual full file of 88 Rita Street, Thirlmere.

40 THE COMMISSIONER: Well, as far as we're aware, I think we had the documents provided to us by the Board so if it's not the complete file we wouldn't be in a position to know that, Mr Chee. But one way or another it doesn't matter, does it, whether or not we have the complete file for the purposes of asking questions based on this document.

MR CHEE: I certainly don't cavil with that. I was just cavilling with the way in which the question was put.

THE COMMISSIONER: All right. Well, if you, if you are able to shed any light on where the balance of the file is I'm sure Mr Naylor would be pleased to hear. Anyway, go on, Mr Naylor.

MR NAYLOR: Let me just ask you some questions then about this particular document, the claim investigation report?---Ah hmm.

10 The property the claim – it would appear, sir, that there was a claim for compensation made in respect of the property at 88 Rita Street, Thirlmere - -
-?---Yeah.

- - - on the basis that it was affected by mine subsidence damage?---Yes.

That's the inference that one would draw from the fact that a claim investigation report has been prepared in relation to the property. That's right, isn't it?---Mmm, that's right.

20 All right. And is that a property that – well, is that a claim that had been assigned to you?---No.

All right. And I'm right in thinking am I not that a claim that the district officer, whether a district supervisor or district manager, who has carriage of the particular claim prepares the investigation report in respect of the claim?---Mmm.

You were not the district supervisor or district officer with carriage of this particular matter. Is that what you're saying?---Yeah. That's right.

30 All right. If you go to page 2065. Is that your signature that appears over your name at the top of the page?---Yes, it is.

Well, what are the circumstances do you know that led to you putting your signature on that page?---Um, I'd come back from ah, from inspecting another property –um, I was doing another claim inspection and when I came back to the office ah, Darren had printed out this claim file – this claim investigation report and he um, said that, you know what it's like getting Greg to sign things. He said sign this one just so I can get it moving.

40 All right. Pardon me. Just while I'm getting another document, Mr Montgomery, the date that appears there, 15 May, 2013?---Mmm.

Does that accurately reflect the date that you had this conversation with Mr Bullock?---I, I don't know. I didn't actually take much notice of the date when I signed it.

Okay. Did Mr Bullock say anything else to you at all?---Um, no, not that, not that I can recall.

And having been asked by Mr Bullock to sign the document, even though you didn't have carriage of the matter, you agreed to do so?---Yes, I did. I, I didn't feel comfortable with it but I did.

Well, why did you not feel comfortable doing it?---Because I was signing off that I'd inspected a property that I'd never been to.

10 Right. And why would you sign it then?---Um, I guess um, a big part of it was I just, I didn't want to get offside with my district manager, I didn't want to um, you know, being a temporary employee I didn't want to put myself in a vulnerable position where I might, you know, I don't know if it would have but, you know, I didn't want to um, risk, risk my job.

Had this happened to you before?---It happened a couple of times before.

And on the previous occasions was it also Mr Bullock who'd - - -?---Yes.

- - - asked you to sign your name to a document that wasn't yours?---Yes.

20 And on the previous occasions what, what did you think about that?
---Um, the first time I think I hadn't been at the Board very long um, and I didn't, I didn't think too much of it. The second time, I don't remember the addresses so I don't know the exact timeframe of them, but the second time I was suspicious about it, I didn't, I didn't, again I didn't feel comfortable about it, why we would do that, but, yeah.

And the document I'm asking you about is the third occasion, is it?

---Ah hmm. That's right, the third.

30 All right. Okay. And again you thought that was unusual in some - - -?
---Yes.

- - - in some way. All right. Did you take an opportunity to look at any other documents related to - - -?---Yes, I did.

- - - the particular property?---I looked through it, yeah, I looked through the photographs and the - well, just, actually just the photographs.

40 When, when did you do that?---At the time I signed the form.

Right. The photographs are the photographs behind the Claim Investigation Report?---That's, yes.

And they're the photographs which appear at page 2075 and 2076. Is that right?---That's right.

Okay. You didn't - did you look at any other documents which comprised that file - - -?---No.

- - - at that particular time, apart from the Claim Investigation Report?---No, I didn't.

And since that time have you been asked by Mr Bullock to sign off on any other Claim Investigation Reports in respect of claims which you don't have carriage of?---Not since then.

10 Can I just ask you this question, on the basis, sir, that you've been a district supervisor and continue to be a district supervisor – I appreciate, sir, that you didn't have carriage of this particular claim, but go to page 2055 which is slightly earlier in the bundle. You see that document?---Yes.

That appears to be a tender or a quote, does it not?---It does.

By an organisation or an entity named MAB Building Services Pty Limited?---Yes.

20 Dated 29 May, 2013?---Yeah.

Do you know of that entity, MAB Building Services Pty Limited?---No, I don't.

Ever heard of them?---No.

Sir, again, on the basis of your experience - - -?---Mmm.

30 - - - as a district supervisor, if a selective tender process was being used for this particular claim?---Mmm.

I appreciate you weren't the officer with carriage of it?---Mmm.

But if a selective tender process was being used for it then, am I right in thinking that there would've been a list of selective tenderers, of registered tenderers, pre-approved tenderers that would've been available at that particular time?---Yes.

40 And that the person with carriage of it would need to have selected from the building contractors on that list?---Mmm.

In order to invite - - -?---Yeah.

- - - a particular building contractor to quote on a matter. That's right?---That's right.

All right. Can I take you, sir, to volume 2 which should still be in front of you, page 488?---Yes.

You'll see, sir, this appears to be a Minute of the Board behind which, or giving approval for tenderers to go on to the list of registered or pre-approved tenderers for the period 2011 to 2013?---Yes.

June, 2011 to June, 2013. If you go over the page and you were a district supervisor during, at least some of that period?---That's right.

Yeah. You started, I think, October, November, 2011?---That's right.

10 So this particular list of building contractors that appears at page 489 and it goes over to page 490 would've been the list of tenderers that you would have used when carrying out your duties as district supervisor?---That's right.

And so you would expect to see MAB Building Services on this list if a selective tender process was being used in relation to 88 Rita Street, Thirlmere?---That's right.

20 All right. And would it also be your expectation that three quotes would be needed?---Yes.

And the district manager would, at that time, have had financial delegation to approve a tenderer up to the value of 50,000?---That's right.

All right. In relation to a Tahmoor related claim?---Yes.

All right. You can put folder 5 to one side?---Ah hmm.

30 Just for the time being. Can I ask you some questions about another property. A property at 336 Moreton Park Road, Douglas Park? Do you have a memory of - - -?---Yes, I know that that one.

- - - that particular property?---Yes, yes.

And was that a property the claim for which had been assigned to you - - -? - - -No.

40 - - - or someone else?---No, it wasn't mine, it was, I know that was one of the Board's properties.

Okay, it wasn't yours. You didn't have carriage of it?---No.

All right. Did you have any involvement in relation to that particular claim?---I opened, I believe I opened the tenders. I opened the tender (not transcribable)

All right. And with whom did you open the tenders?---Lyn Evans.

Lyn Evans?---Ah hmm.

And what position does Lyn Evans occupy?---She's a customer service officer.

All right. What, what time of the day do tenders usually close at the Picton District Office?---2.00pm.

10 Okay. And so when, at what time of the day would the tender box have been opened?---After 2.00 so sometimes we do it just after, sometimes it might be an hour after.

Okay. All right. And do you know how long ago this might have happened?---Ah, it was last year um, towards the beginning of last year.

Yes?---Yeah.

So you and Ms Evans are there emptying the tender box?---Ah hmm.

20 Right. And do, do you have a memory of how many tenders were in the box?---There was three.

Three?---Three.

In relation to this particular property?---That's right.

30 All right. And having emptied the tender box what, what happened next? ---Um, I opened, I was opening the envelopes and Lyn was taking the envelopes out, ah, sorry taking the paperwork out and um, I was passing it to her and she was filling out the ah, um, the, the book that we keep.

The tender book?---The tender book.

Okay?---And um, as I opened, as I opened the envelopes I noticed that they'd been opened previously.

All right. Well, are you referring to all three envelopes or just - - ?---No, two.

40 - - - some?---Two.

All right. And do, do you have a memory sitting there now as to, as to the particular contractors whose envelopes you say appeared to have been opened?---I don't remember the, the contractors, I know it was the two losing contractors.

I see. Well, how, on what basis do you say that the envelopes appeared to have been already opened?---They'd been sticky-taped back, back together.

All right. So are these normal-sized envelopes or large envelopes?---No, they're normal size.

All right. And where, where on, where was the sticky tape on the envelopes?---Um, on the back um, where the fold comes over.

All right?---Yeah.

10 Well, it's, it's often the case is it not that people put stick-tape on their envelopes to make sure they're sealed properly. What, why do you say that these envelopes had already been opened?---Um, I, well, I wasn't certain but I'd, I'd never seen that before.

You'd never seen that before in relation to - - -?---Envelopes being sticky-taped back together.

What, tender envelopes or envelopes - - -?---Tender envelopes.

20 Tender envelopes. All right.

THE COMMISSIONER: Did the third envelope have sticky tape on it? ---No, it didn't.

MR NAYLOR: Do you remember who the contractor or which the contractor was in relation to the third envelope?---It was Plantac.

30 Right. I want to show you a document please, Mr Montgomery, and Mr Lawrence will allow you to inspect it, do you need to open the plastic envelope in order to inspect those documents properly?---No, no, I don't.

All right. Well, based on what you can see what, what are those documents?---These are the envelopes that, that I opened that day.

All right. And inside, inside the plastic sleeve there are three envelopes, is that right?---Yes.

40 All right. And after you observed - and they're, they're the envelopes that you saw on that particular day?---Yes.

And are two of those envelopes the ones that you say had sticky tape applied to them?---Yes, yes.

All right. And after you observed these particular envelopes with sticky tape on them what did you do next?---I spoke with John Rawes and I said, "Two of these envelopes have been opened."

Yes?---And, and he - - -

And what did you do after that?---Um, and he, he said to me, “Darren stayed back last night.”

And after he said that, what happened?---Um, nothing, that was it. The envelopes went into the bin - - -

Yes?--- - - - um, and I – that was the end of the conversation.

10 Right. We discussed it a bit more, we said it’s not, something’s not right there.

Yes?---Um, then later on that day it was I guess weighing on my mind a little bit and - - -

Yes?--- - - - I got the envelopes out of the bin and I put them in the drawer and they stayed there.

20 All right. I’ll ask you to return that plastic sleeve containing those three envelopes. Commissioner, it’s the practice not to tender the originals so I tender copies for the purpose of the exhibits of the documents that have just been identified by the witness, and can I also tender photographs, a copy, colour photographs or colour copies of photographs, please.

THE COMMISSIONER: If anyone wants to examine the original exhibit they’re free to do so.

30 The copies that represent the tender documents and photographs of the envelopes will be marked together as Exhibit T5.

#EXHIBIT T5 - COPIES AND PHOTOGRAPHS OF ORIGINAL MSB TENDER ENVELOPES

MR NAYLOR: The Commissioner pleases.

MR CHEE: Commissioner - - -

40 MR NAYLOR: So - - -

MR CHEE: Oh, I do apologise for interrupting. If I may have access to the original copies just so that I can review and take instructions.

THE COMMISSIONER: Yes.

MR CHEE: Thank you.

MR NAYLOR: I have no further questions. Thank you.

THE COMMISSIONER: Yes. Who wants to go first? Any cross-examination of Mr Montgomery, before we get to Mr Chee?

MS HOGAN-DORAN: I just have a few short questions.

THE COMMISSIONER: Yes.

10

MS HOGAN-DORAN: I'll try and - - -

THE COMMISSIONER: Ms Hogan-Doran for the Board.

MS HOGAN-DORAN: Yes, and I'll try and confine myself because I'm conscious of the time and I'm conscious of Counsel Assisting's indications.

THE COMMISSIONER: Thank you.

20 MS HOGAN-DORAN: And to assist you I'll try and proceed in accordance with the order in which topics you were taken to with Mr Naylor?---Ah
hmm.

So, Mr Montgomery, my name is Dominique Hogan-Doran and I appear for the Mine Subsidence Board. If the Mine Subsidence Board's records indicate that you were, you commenced your employment on 15 November, 2011, would that accord with your recollection?---That would sound right.

30 And you indicated that you had come through a temporary agency, Hays Recruitment?---That's correct.

And that's H-a-y-e-s?---H-a-y-s.

H-a-y-s. And is it your recollection that you undertook an induction process when you commenced with the Board?---Yes.

And was that induction process in two parts, the first with Hays itself?
---Ah, yes, a general induction with Hays, not, not specific to the Board's workings, but - - -

40

And the second one was with Mr, with the, with the district manager, Mr Bullock?---That's correct.

Is it correct that you were interviewed by Mr Bullock?---Yes.

Right. When you were undertaken through your induction process with Mr, Mr Bullock, did he draw to your attention the Code of Conduct for employees of the Board?---I don't recall.

And did he draw to your attention the delegations that would operate in respect of your role with the Board?---Yes.

Right. You were asked a question by Counsel Assisting concerning the Claim Investigation Report and you said that you used your experience to assess the cost of repairs. When using your experience did you have regard to any other matters, and in particular I'm considering any estimation software available to you?---Yes, we had estimation software.

10 And is the name of that estimation software Cordell's Building Software?
---Yes, yes, it is.

And is it your practice in your role as district supervisor when undertaking claim investigation reports to use that software to estimate the costs of repairs?---It's there for us, it's available for us to use if we want to.

And do you use it?---On occasions.

20 And to your observation do others in the office use it?---Um, on occasions, yes.

You were asked a question concerning the change to the Tahmoor specific rule concerning the financial delegations from 50,000 down to 20,000 and you said that that had occurred recently when Mr Rawes went into the role as acting district manager at Picton. Is it correct to say that occurred after Mr Bullock resigned in December 2014?---Yes.

30 And do you know how – how did you become aware of that change?---Um, it was either, it was either Greg Cole-Clark or John Rawes that told me.

Thank you. You gave some evidence concerning the selected tender list and the – an explanation concerning insurance being your assumption as to the reasons why there were two sets of, of limits concerning the tenderers?
---Mmm.

Do you recall that?---Yes.

40 Other than what you've already indicated to the Commission, do you have any other knowledge concerning how the selected tenderers list is collated or prepared?---Um, I have an understanding of how the, how the builders are recruited for the, for the position, for the positions.

Would you be able to describe that to the Commissioner?---Um, the – my understanding is the ah, an advertisement is put out and builders are, builders are asked to um, to apply to be on that tender – to be on that panel, sorry.

You also gave some evidence concerning attending district meetings. Do you remember that evidence?---Yes.

And is it the position that you've attended a number of district meetings - - - ?---Yes.

- - - during the course of your employment?---Yes.

10 All right. Do you recall travelling to Wyong for district meetings during 2012?---Yes.

And attending at those meetings were other district supervisors and district managers from the other, other regional offices or district offices of the MSB?---That's right.

And also those from head office?---Yeah.

Including the chief executive?---Yes.

20 And do you recall attending the first of the meeting in May, 2012?---Um, I, I don't recall it but it's - I most likely did.

Do you attend - I think you've already agreed with me that you recall attending a number of meetings - - -?---Yes, I - - -

- - - in that period - - -?---Yeah.

- - - but as your hesitancy as to the date?---Yes, that's right.

30 All right. And do you recall that as part of the matters that were dealt with during the course of those meetings in 2012 there was for discussion the new procurement procedures that were being developed for the Board, do you recall that?---I don't recall that, no.

Do you recall attending - do you recall there being training in respect of those new procurement procedures?---At that meeting?

At that meeting?---No, I don't, I don't recall that.

40 Sitting here now you can't recall?---Training regarding those procedures?

Yes?---I don't recall that.

During the - one of - at least one of those meetings do you - you've been shown a schedule of delegations from March, 2012 which is Exhibit T2? ---Yeah.

Do you have a recollection of that document being distributed to you during that meeting?---I, I do, I do remember being handed a delegation sheet at a, at a district meeting. I don't remember the dates of that.

Right?---Yeah, I don't - - -

But it's a – just looking at T2 now?---Mmm.

It was a document of that kind?---Yes.

10

But you can't recall the specific date?---No.

On the document?---No.

No, but you understood did you or it was conveyed to you during the course of that meeting that this was the new delegations?---Um, I don't recall the actual discussion about the delegation – about the – I do remember receiving but I don't recall the actual meeting.

20

And do you recall or at least leaving that meeting with an understanding that those are the delegations – authorities that would apply to all members of the Board at least from then on?---Sorry, can you, can you say that again.

Did you have an understanding when you left that meeting that that delegation, the schedule of delegations - - -?---Yes.

- - - would apply to you in your role as district supervisor going forward?
---Well, I already – I don't recall the actual meeting. I just, I just – I would assume so if I was given that, that delegation.

30

I see. You were asked some questions this afternoon by Counsel Assisting concerning the sending of minute papers up to people above you in the hierarchy - - -?---Mmm.

- - - for their approval because it was outside your delegation. Do you recall those questions?---Yes.

40

And do you recall you gave some evidence where you said it could vary greatly, sometimes a few months, sometimes a few days, concerning minute papers sent to, to the head office?---That's right.

Sitting here now can you recall any particular features concerning the, the minute papers where there was any delay?---Um, I – as far as reasoning for the delays?

Yes?---I don't, I don't remember being given reasons, reasoning as to why there were delays.

Right?---Yeah.

When, when – did you personally follow up in respect of those minute papers?---Ah, it was normally the district manager following it up.

Wouldn't the procedure have been – would the procedure have been that it would go, that you would provide it to the district manager and he would then – your expectation was that he would then send it up to above him?
---I, I would write the minute and the district manager would sign it and
10 then liaise with the CEO regarding it.

And is it, just two things that arise from that, the first is did you ever have a conversation with the CEO concerning delayed minute papers being returned?---Ah, no.

And the second is am I, am I right in understanding your evidence that it was Mr Bullock who was telling you that it had been delayed?---Yes, but I also knew because I hadn't received it.

20 All right. Can you recall any specific properties that these delays were attributed to or concerned?---Ah, the one that stands out in my mind most is, because it came back the most recently, which, it wasn't one of mine though, it was a property at Greenacre Drive which came back because it, we hadn't, it was, it was over a year that we hadn't received it back.

All right. You were asked some questions concerning information being provided to, if I might call them the losers in the tender process?---Mmm.

30 You gave some evidence that they were told who had won the tender and the price at which they had won. Do you remember that evidence?---Yes.

In your experience of the Picton office do you recall how those losing tenderers were told?---Um, yes, we'd call them.

Right. And from that do I understand it was never done in writing to your recollection?---It was also done in writing.

Right. By email?---No, we'd send a letter.

40 There'd be a letter?---There'd be a letter.

And is it the practice of the Picton office to keep records and copies of all letters that are dispatched?---Yes.

So we could expect to see letters of that kind could we?---Yes.

Okay. You said in your evidence that that was no so much now going on?
---Um, the, the letter - - -

That they were communicating with unsuccessful tenderers concerning information as to the successful tenderer?---Yes, that's right, yeah. Verbal not so much now, we still do follow the procedures.

Right. And is it your understanding that it is not the procedure to inform unsuccessful tenderers as to who won and what was the price?---I do now.

Right. And that change of affairs, when did that come about?---Um, it's – at the end of last year.

10

Right. And is that, is that before or after Mr Bullock left?---It, it was after.

Right. And do you know –how did that come to your attention?---Um, I think just with, with what's happened at the Board I think a much greater spotlight's been put on it, the proper procedures so - - -

Thank you. I have no other, further questions.

THE COMMISSIONER: Anyone else? No. Yes, Mr Chee.

20

MR CHEE: Thank you, Commissioner.

I appear for Darren Bullock, you understand that?---Yes.

You've been asked some questions by Counsel Assisting about what you would do if you were unsure about policies and procedures and I understand your answer was that you could look at the hard copy but you also could look at the intranet, that's correct isn't it?---Yes.

30

I'd like to suggest to you that the intranet documents weren't kept up to date, what would you say about that?---That they weren't kept up to date?

Yes?---Um, well, I would, I would agree, I'd think that's possible.

It's, sorry, you would agree that it's possible?---Yes.

Okay. As part of the policies and procedures the manual also contains a section about position descriptions containing duties and obligations, are you aware of that?---In, in the policies and procedures?

40

Yes?---Um, sorry, can you repeat that, please?

Within the policies and procedures of the Mine Subsidence Board, is it your understanding that there is a section within that document that deals with position descriptions containing, which set out duties and obligations?---Yes.

Okay. Have you seen the position descriptions?---I've seen mine, the district supervisor.

Have you seen anyone else's?---I don't believe so.

I'd suggest, I'd like to suggest to you that in fact the procedure document - -
-?---Mmm.

10 - - - doesn't contain the position descriptions. What would you say about that?---Ah, it's possible. I've, I've seen the position descriptions and I've also got the policy and procedures manual.

Sorry, just to clarify. When did you see them?---The procedures?

No, no, no. The position descriptions?---The position descriptions. I've seen them on line.

20 And were they updated and current at the time that you looked at them?---I don't know.

MR NAYLOR: I object.

THE COMMISSIONER: I suppose that assumes that he knows whether or not that'd been updated?

MR NAYLOR: Yes.

30 THE COMMISSIONER: Which wouldn't be necessarily within his knowledge, but anyway, go on.

MR CHEE: Mr Montgomery, was there some sort of date stamp on the position description? For example, it might be approved as of a particular date. Did you notice anything of that effect?---I didn't notice.

Sorry, I didn't hear that?---I didn't notice.

You didn't notice it. I would like the witness to be shown two documents. These documents are, well, one of them, the first is actually T2.

40 THE COMMISSIONER: Yes.

MR CHEE: It's just a cleaner copy of T2 and the other is Business Management Systems Contractors Infrastructure Works as at 30 April, 2013.

THE COMMISSIONER: Just if, if the witness could be shown, what page is it in? Ah, sorry, you want the T2 shown to him, yes.

MR CHEE: And also the contractor's infrastructure works document dated the 30 April, 2013.

THE COMMISSIONER: Is that in the existing tender bundle?

MR CHEE: I believe it is but I don't have a reference for it.

MR NAYLOR: I can indicate Commissioner that there is a slightly earlier version of this document date 10 April, 2013 at volume 2, page 493, but - - -

10

THE COMMISSIONER: Right, anyway.

MR NAYLOR: But the particular document that I've been given, which is a seven-page document is, is not the same document as the two-page document which appears at that page reference I've just given.

THE COMMISSIONER: All right. Well anyway, for the time being we can just show the witness the two documents that Mr Chee's handed up.

20 MR CHEE: Mr Montgomery, can you identify those two documents?--- Yes. One's the schedule C, Schedule of Allegations as, ah, dated 1 March, 2012 and the other is the Infrastructural Works, Business Management, from the Business Management System.

Are you familiar with these documents?---I'm familiar with the schedule C, um, T2 document.

30 I'd like to suggest it to you, Mr Montgomery that these two documents were taken off the intranet site late in 2014, um, closely before Mr Bullock resigned from the board. Would you, what would you say about that?

THE COMMISSIONER: Well, Mr Chee, how is he supposed to know whether that was downloaded by somebody else? I mean I - I mean - - -

MR CHEE: Sorry, I - - -

THE COMMISSIONER: We can establish that by some other evidence but can we proceed on the basis that you want to ask him a further question in relation to this?

40

MR CHEE: Yes. I want to put it to the witness that the Intranet was out of date and it has been out of date for a very long time.

THE COMMISSIONER: What's a very long time?

MR CHEE: Well, the date from the contractor's infrastructure works is from 30 April, 2013 and he has given evidence that if he had any questions about the policies he would visit the Intranet. It's my positive case that if

someone were to attempt to locate the relevant procedures documents, they wouldn't be able to.

THE COMMISSIONER: Well, the problem is this. There are, as I understand it, a large number of documents on the Intranet site and a broad statement such as the Intranet site is well out of date might encompass every single document or a number of specific documents in that volume of documents, but, but secondly, the extent to which those documents such as they are on the Intranet that are out of date, I'm just not quite sure what this witness is meant to say about that. I mean they either are or aren't out of date as a matter of record, aren't they, because one should be able to look at the site and determine what the date of the document is. Now, short of getting some kind of forensic IT expert to take snapshot of that Intranet site at a given date, I don't know how we unravel that particular problem. But anyway, your proposition is - - -

MR CHEE: Perhaps - - -

THE COMMISSIONER: - - - that this witness would be hard pressed to find a current document on the Intranet site in relation to some aspect of policies and procedures. Is that the point of the question?

MR CHEE: It is, and also to confirm that the witness would have no confidence in looking at the Website as to whether or not those policy documents were current - - -

THE COMMISSIONER: Well - - -

MR CHEE: - - - and that he would have to seek some other means to verify the current policy.

THE COMMISSIONER: All right. Well, again it assumes that this witness would know whether or not the documents were up to date, but let's just make those assumptions, Mr Montgomery, shall we. Look, can we just assume for present purposes that there may have been some document on the Intranet site that were not up to date, whatever length of time we're talking about. Was that something that was within your knowledge generally at the time that we're talking about?---I was aware there were some out of date um, out of date material up there but I don't know ah, yeah, with regards to this question I don't know.

Right. Well, just coming to the second part of the question, if you, if you had wished to keep yourself informed by looking at the Intranet would you have chosen that source of information as a reliable one or would you have done something else?---I would, I would have um, looked at the paper copies simply because it's, it's easier to go through.

You mean the hard copies?---The hard copy, yes.

And that was presumably a hard copy that was kept in the office somewhere?---That's right.

MR CHEE: Thank you. You were asked some questions by Counsel Assisting about the subsidence risk engineer. Do you recall that?---Yes.

10 Is it within your knowledge if there was a subsidence risk engineer employed by the Mine Subsidence Board before you came to the Mine Subsidence Board?---When I came to the Mine Subsidence Board the risk engineer was already employed.

But you're not aware if there was a mine subsidence risk engineer before that?---I'm not aware.

Okay. You were also asked some questions about district meetings. Do you recall that passage of evidence?---Yes.

20 Who conducts these district meetings?---The CEO.

Okay. And can you remember when you last had a district meeting?---I think it was at the end of 2013.

Right. Thank you. Are these district meetings meant to occur with some regularity?---My understanding is they're meant to occur with some regularity.

30 Are you able to say more specifically?---Without -- um, through -- just through talk I've heard that it's supposed to be every three, three or so months.

But you haven't had one since around November, 2013?---That's right.

So it would appear that it's long overdue?---That's right.

Do you know why -- --?---No, I don't.

40 -- -- there hasn't been a district meeting since that time?---(No Audible Reply)

Could I ask you some questions about your involvement with the CEO. Have you got day-to-day dealings with him?---No, I don't.

Does he visit the Picton office?---Um, not regularly.

Are you able to provide some indication as to how often he might visit?
---Um, in -- --

If it's not regularly what would it be?---In the um, in the last few months he's been down a couple of times ah, maybe two or three times that I remember. Um, prior to that it would have been over, over twelve months.

So that would be rather infrequent I would say?---Yeah.

10 Coming back to – sorry, for jumping about. Coming back to T2 which is the schedule of delegations, is it possible that that document or an announcement which relates to that document was made at a district meeting?---Yes, it's possible.

And is it possible that the announcement was made before the document was drafted and disseminated?

MR NAYLOR: I object.

THE WITNESS: I don't know.

20 MR NAYLOR: It hasn't been established when the document was drafted.

THE COMMISSIONER: No. Do we know when it was drafted? Well, we know, we know, that it bears a date but I suppose that we don't know when it was drafted.

MR CHEE: Perhaps I'll ask the question again.

THE COMMISSIONER: All right.

30 MR CHEE: Do you know whether there was an announcement made at a district meeting about a schedule of delegations, one which you see at T2, before the date 1 March, 2012?---I don't know.

Could it have been possible that an announcement was made at a district meeting before 1 March, 2012 in relation to a schedule of delegations?---It could, it could be possible.

Okay.

40 THE COMMISSIONER: Mr Montgomery, these district meetings, you said they were chaired by the CEO?---That's right.

Did he come to Picton or did you go somewhere else?---Ah, usually it was in Wyong. It's fairly - - -

So you all had to travel to Wyong?---We went to Wyong, yes.

And were there minutes kept of these meetings?---There was.

And were the minutes circulated after the meetings?---Yes, they were.

So presumably it would be something that you would see in the minutes?
---Yes.

MR CHEE: Mr Montgomery, on the issue of records, are you familiar with a system called DocuMaps?---Yes, I am.

10 What is DocuMaps?---DocuMaps, a geographical information system which we record all our um, all the relevant information to each claim file.

If I may summarise, it's an electronic system that records information about a particular file?---That's right.

Okay. Have you had the opportunity to review the tender bundle that was served and in particular have you had the opportunity to review any of the claim files that appear within the tender bundle T1?---Um, the, the – on, on – in DocuMap?

20 No, no, no. I meant review the documents that were served not in DocuMaps. I'll be returning to DocuMaps in a moment?---Oh, okay. I have, I have, yeah. Not in any great depth but I have had a look.

Right. Are you able to say having reviewed the documents served that there could be additional documents that belong to files which aren't in the document that was served?

THE COMMISSIONER: Well - - -

30 MR NAYLOR: I object.

THE COMMISSIONER: I'm sorry, first of all, Mr Chee, the question's expressed in the conditional, could, could there be documents, not there are or there aren't but look, doesn't that assume that this witness would actually know of the complete documents across all of those files?

MR CHEE: Commissioner, the witness has indicated that he was familiar with some of the files and - - -

40 THE COMMISSIONER: Yes.

MR CHEE: - - - he would be able to give his view as to whether or not the full file was appearing. It's my - - -

THE COMMISSIONER: Well, I don't know that, I don't know that he actually acknowledged the second part of that proposition but look, it's a bit unfair to put this on the witness now. I mean if you want to, if you, if you want to put that there are documents in files that don't appear in the tender

bundle you have to identify the documents, you have to give this witness an opportunity to actually go and look through those particular files which you identify for those purposes and then put the question to him, which you can do perhaps tomorrow but not after, not, not after he's been in the box for most of the day and he hasn't looked at anything so can we - - -

MR CHEE: I appreciate – yes.

THE COMMISSIONER: - - - deal with it in that way at a later time?

10

MR CHEE: Um, yes, we can certainly deal with that and it perhaps might be of assistance to Counsel Assisting that I, that I – to indicate that I – the position of Mr Bullock is that there are documents which are missing and - - -

THE COMMISSIONER: Well, if that - - -

MR CHEE: - - - and that's from DocuMaps.

20 THE COMMISSIONER: Well, if that's your client's positive case - - -

MR CHEE: Yes.

THE COMMISSIONER: - - - he has to identify what the documents are - - -

MR CHEE: Of course.

30 THE COMMISSIONER: - - - because we've got no way of knowing if we've never received them but anyway, well, that can be, that can be dealt with at a later time.

MR CHEE: Thank you.

Moving onto a different area, Mr Montgomery, I'd like to ask you about the auditing processes within the Mine Subsidence Board. Do you know whether there was any audit occurring at the Mine Subsidence Board? ---Yes, I know we have SIA (as said) Global auditing and, and also we have an internal audit that we do.

40

Can you tell the Commission your understanding of what occurs during this internal and also in the external audit?---Um, with the internal audit we will be assigned a number of – whether, whether it's um, a building approval or a building application or, or a claim file and we will have a step-by-step process of what needs to happen with those files and we will check off on that checklist that that's been followed or highlight areas that's not followed.

THE COMMISSIONER: And who assigns the files for each person to, to audit?---Ah, the personal assist to the CEO.

Ms, and that's who, sorry?---Ah, Olga Dent.

Oh, right. And so this is something that the CEO - - -?---The, yeah.

- - - instigates?---Yes, I believe so. I've, I've um, been involved with one um, and it was, it came from the CEO's personal assistant.

10

MR CHEE: Were you given any feedback in respect of that audit?---Not, no.

In terms of the external audit I'm not sure that you've explained your understanding on what occurs, could you - - -?---Yeah.

- - - elaborate please?---I'm not, I haven't been involved with ah, those external audits too much but my understanding is that someone comes in from SIA (as said) Global and looks at all our procedures and um, processes and, and yeah, so, I, I don't know any more than that, I haven't seen what they do.

20

Right. Would it be correct that the audit deals with the procedures, would it, is it the case that it deals with the way in which claims are handled or am I wrong about that?---Again, I, I don't know 'cause I haven't personally dealt with - - -

Okay, all right, thank you. Could the witness be shown page 496 of T1. I think you recognise that that, Mr Montgomery, as the list of tenderers?

30

---Yes.

Sorry, panel contractors. Do you see the entry, "Every Trade Building Services?"---Yes.

And you'll see also if you go across that the area of work includes the Picton area?---Yes.

Have you ever used Every Trade Building Services?---No.

40

Why not?---Um, as I said before, we like to use the people that are local to the, local to the area, so - - -

Okay. All right. If I can also take you to O'Donnell Constructions further down, have you used O'Donnell Constructions?---No, I haven't.

Notwithstanding the fact that they're the Picton area and they're on the list? ---Yeah.

MR NAYLOR: Well, I object. It hasn't been established where they are.

THE COMMISSIONER: Well, we're – I mean they've nominated Picton but where are they, where are they physically based, do you know, Mr Montgomery?---No, I don't.

MR CHEE: And is the reason why – sorry. Have you used O'Donnell Constructions?---No, I haven't.

10 Okay. And is there a reason for that?---Um, they're just, they're a contractor I haven't, I haven't – to be honest I haven't looked, I haven't looked at them before, I haven't um, had any dealings with them.

But you do accept that they are on the panel?---Yes.

THE COMMISSIONER: Have they ever been a tenderer for any of the projects that you've had responsibility for?---No.

No?---No.

20

MR CHEE: So it would seem to me that there would be some reasons for certain contractors being preferred. You agree with that?---I do, yes.

You previously gave evidence about a time when you were looking for the section of the procedures manual dealing with gifts or - - -?---Ah hmm.

- - - the gift register?---Yes.

Is that correct?---That's correct.

30

Do you remember that?---Yes.

Why were you looking for that section?---Because I had received an email from the CEO regarding a letter which I sent to him um, a year earlier um, about, which, which was from a client thanking me for my work and also acknowledging that there was, they'd given me a gift.

What was that gift?---The gift was a case of beer and two movie tickets.

40

And, sorry, what did you, what was the, what was contained in the correspondence to the CEO in relation to this gift?---Um, so when I received that letter and, and the gift I sent the letter which I received from the um, from, from the client, client, to the head office for their records.

Why did you send it to the head office?---Because my understanding was that if we did receive a gift we needed to acknowledge it to head office.

And did you hear back from the head office?---Um, yes, that was um, um, at the end of last year.

Sorry, you sent the letter, what about the actual gift itself, was that sent to the head office as well?---No, no, I kept that.

Okay. Could I clarify with you, when – to your best recollection when did you receive this letter and the gift from - - -?---It was in, it was in around, around November 2013.

10

And when did you forward on the letter to the head office?---To the head office, to the CEO.

When did you do that?---In the, at the same time.

The same time?---Yeah.

Okay. Have you had reason to, sorry, I'll withdraw that. Have you received any other gifts in the course of your work with the MSB?---Yes. I've received a, a bottle, a couple of bottles of wine throughout the course and a cake, I think.

20

THE COMMISSIONER: A cake?---A cake.

MR CHEE: Do you like cake?---Not particularly.

In terms of the bottles of wine - - -?---Mmm.

- - - when did you receive those bottles of wine?---Um, it was a client who gave, who, um, it would've been around mid to late 2013 as well.

30

And could you give us the context of that? Was it in respect of a job that you'd done?---A job, a finished job and the lady came and said, "Thanks."

When you say lady, was that the home owner or the contractor?---The home owner, yes.

Okay. And what did you do with those bottles of wine?---Um, she, we just distributed them through our, she'd brought six bottles of wine and it was for our office. It was, and then we all took a bottle, I think, or a couple of us did.

40

In respect of the bottles of wine and also the case of beer and movie tickets?---Mmm.

Did you have any concerns that there might be a potential conflict of interest?

THE COMMISSIONER: What about the cake, Mr Chee?

MR CHEE: Ah, cake, ah, that's right. I forgot the cake, I'm sorry.

THE COMMISSIONER: Don't forget the cake. Sorry, the question was - -
-

MR CHEE: Did, did, did you have - - -

10 THE COMMISSIONER: Did you, did you think there was any conflict of interest in accepting those gifts, Mr Montgomery?---Um, because the claims were finished I didn't see it being an issue as long as I acknowledged it to my, to my managers.

MR CHEE: Right. Were there any other instances where you thought that there could be a potential conflict of interest or real conflict of interest arising from your work?---Um, regarding what me and, do you mean regarding gifts or - - -

20 Any conflict of interest?---Yes.

Not just gifts?---There was a time, um, in 2012 I, I used the Board's plumber to, um, to install a gas bayonet in my home.

Could I clarify what you mean by the Board's plumber? Do you mean - - - ?---Ah, sorry. A contractor.

A contractor?---Yeah.

30 So you've used a contractor. Could you identify the contractor?---John Gardiner.

And John Gardiner is a contractor on the contractor panel?---Yes.

THE COMMISSIONER: He's a local plumber I take it?---He is.

MR CHEE: Did you raise your concerns about this potential conflict of interest?---Yes.

40 How and when?---I asked, I asked, um, Darren if, if, it it was okay if I used him. And that was, um, um, then, then I, then what happened, he did the work, um, and he hadn't invoiced me for it and I spoke to Darren about that and he said, "You've said you've done the right thing by telling me but you need to give him something for us." And I gave him a case of beer for that.

THE COMMISSIONER: You gave him?---The plumber.

A what?---A case of beer.

A case of beer?---Mmm.

Ah, so you just gave the plumber the case of beer in lieu of - - -?---Mmm.

- - - paying - - -?---Yeah.

- - - for the work, right?---Mmm.

10 MR CHEE: If I could clarify, when did you tell according to your, um, evidence, when did you tell Mr Bullock that John Gardiner Plumbing was going to do the work or had done the work?---It was prior to doing the work.

I suggest, I'd suggest to you, I'd like to suggest to you, um, Mr Montgomery that you didn't inform Mr Bullock that you had arranged John Gardiner to do plumbing work until only after the work had been completed?---No.

Do you agree?---I disagree.

20

Were there any other instances where you had, had contractors do work for you outside of the Board?---I've had a contractor of a contractor do some tiling at my house.

Could you be a bit more specific, which contractor?---A tiling contractor of Will Built, Will Built Homes.

THE COMMISSIONER: So, so not an employee of Will Built Homes but - - -?---No.

30

- - - someone who they use?---Who he used.

MR CHEE: How did you come to meet this contractor?---Um, during my inspections on homes I've seen, I saw, at the time I saw him around.

This would be in the context of your work with the MSB?---Yes.

And was this in the context of him working or him or her working as a contractor for Will Built?---Yes.

40

Did you feel the need to disclose this information to the Board?---Um, I again discussed it with Darren but I didn't do anything more than that.

When did you discuss it with Mr Bullock?---Um, prior to the work, prior to the work being done.

Are you certain about that?---I am.

I'd like to suggest it to you, again that in this particular instance you did not inform Mr Bullock until after the work had been completed. Do you agree or disagree?---I disagree.

What did Mr Bullock say when you informed him?---Um, he said, "He's a good tiler, he did my, my house."

10 Did he say anything about the use of, or the allocation of work to Will Built, did he tell you anything about that?---Um, I don't understand what you - - -
In the context of course of using the tiler - - -?---Mmm.

- - - subcontractor to Will Built?---Mmm. No, we didn't discuss Will Built.

I'd like to suggest, suggest to you that in the three and a half years or four years that you've been working for the Mine Subsidence Board, you have allocated a number of jobs to Will Built. Do you agree with that?---Yes.

20 Are you able to say how many jobs you've allocated to Will Built?---No, I couldn't tell you.

Would you disagree if I said that there were around 20 jobs that you were allocated – that were allocated to Will Built?---No, I wouldn't disagree.

Okay. And what about jobs allocated to Plantac in the three and a half years that you've, three and a half or four years that you've been at the Board, have you allocated work to Plantac?---Yes, I have.

30 Would you disagree with me if I said that the number of jobs that had been allocated to Plantac would be in the vicinity of 11?---Um, I would, I would have thought it was less.

Less, okay. How many less?---I wouldn't, I'd think four, four or five maybe.

Could the witness be shown a document which is titled Property Claims Repair Tahmoor Status Report. I have additional copies for Counsel Assisting.

40 THE COMMISSIONER: Is this in the tender bundle?

MR CHEE: No, it's not.

THE COMMISSIONER: Yes, show the witness.

MR CHEE: Mr Montgomery, do you recognise the document that you have before you?---Yes, I do.

Could you describe what it is?---Ah, it's a spreadsheet that we keep um, on our Tahmoor claims as to ah, each claim and the builder that's been allocated.

Okay. Looking at the first page across the first row there are a number of headings. Approximately in the middle of the page there's a heading titled "officer". Do you see that?---Yes.

10 I do apologise for the size of the font. It's – the table contains a lot of information but you can read it can't you?---Yes.

And underneath that heading there are a number of initials?---Ah hmm.

For example, DB. That you understand to be Darren Bullock don't you? ---Yes.

20 If you look down the page you will notice that there's also the initials MW, Sorry. Sorry, on the second page if you look down that same column you will notice the initials MM?---Yes.

What does that relate to?---That's me, Matthew Montgomery.

Okay. I think it would be rather time consuming but I'd like you to accept from me that having gone through this document - - -?---Mmm.

- - - I have been able to identify 11 different matters where you were recorded as the claims officer - - -?---Mmm.

30 - - - and the contractor to which work was awarded is recorded as Plantac. I don't propose, Commissioner, to go through the table. I think it is, it speaks for itself and - - -

MS HOGAN-DORAN: Commissioner, it might be my, my error from being outside just at that moment, is it indicated – has it been indicated by Mr Chee that this is a document created and maintained on the MSB systems?

THE COMMISSIONER: I've got no idea.

40 MS HOGAN-DORAN: Thank you, Commissioner.

MR CHEE: Mr Montgomery, you've recognised this document as a document used to record the claims. This is a Mine Subsidence Board document isn't it?---Yes.

And it's a document held at the Picton office?---Yes, it is.

And maintained at the Picton office?---Yes.

THE COMMISSIONER: This – as I understand it, Mr Chee, this goes back to 2008. There are dates of repairs on this document that go as far back as 2008.

MR CHEE: Yes.

10 THE COMMISSIONER: So are you suggesting that the 11, that the 11 matters that this witness has attributed to Plantac have all occurred post November 2011?

MR CHEE: Of course.

THE COMMISSIONER: Right. Well, perhaps Mr Montgomery can have a look at it at some stage overnight.

MR NAYLOR: Commissioner, might I just interrupt. The standard directions - - -

20 THE COMMISSIONER: Yes.

MR NAYLOR: - - - clearly provide for these documents - - -

THE COMMISSIONER: Yes, I know.

MR NAYLOR: - - - to be provided to Counsel Assisting in advance, particularly if they're going to be used and shown to witnesses. I wonder if my friend has any other documents. I haven't said anything until now but - - -

30 THE COMMISSIONER: Well, he's adverted to other documents hence my comment about having to identify the documents and produce them.

MR NAYLOR: All right.

THE COMMISSIONER: So we'll wait with baited breath, Mr Chee. I'm assuming that you can, that you can provide the documents that you say were not in the files and they can be provided in advice to Counsel Assisting.

40 MR CHEE: I have a difficulty with that in that my client no longer works for the Mine Subsidence Board. It does not – he only has available to him certain documents that he was able to obtain before his resignation.

THE COMMISSIONER: Well, whatever he has he's under a duty to provide in advance to Counsel Assisting because we don't know - - -

MR CHEE: Indeed.

THE COMMISSIONER: You see, this is the problem. We don't know if the documents are already in the tender bundle or they're documents that we've never been provided with by the Board because until we see them we don't know that we don't have them. So I think the better course is for you to provide everything that you have and we can check them against the tender bundle and then determine whether or not there are documents there that haven't been made available to us by the Board.

10 MR CHEE: I agree, Commissioner.

THE COMMISSIONER: Right.

MR CHEE: I in fact was somewhat surprised that it wasn't included in the tender bundle that was served, I thought that it would have been included already.

20 THE COMMISSIONER: Well, anyway as Counsel Assisting has already pointed out the standard directions do make it very clear that anything that, that, anything that counsel wishes to rely upon by way of a positive case should be provided in advance to Counsel Assisting but anyway, do you have very much more to put to Mr Montgomery because my, my preference would be for you to put any other questions that you, that you wish to put to him to put to him now and then you can revisit this question of these missing documents first thing tomorrow morning.

MR CHEE: I do have some further questions, Commissioner.

30 THE COMMISSIONER: All right.

MR CHEE: But I won't be long.

THE COMMISSIONER: Just so we can round off this aspect of it, Mr Montgomery, you can have a look at this document overnight and determine for yourself whether or not there are 11 claims that relate to your management of a repair that went to Plantac?---Okay.

40 MR CHEE: If I can take it one step further, if I could ask Mr Montgomery to assume that there were 20 jobs allocated to Will Built and approximately 11 jobs, sorry, 11 jobs allocated to Plantac, would you say that is an unusual distribution of work to Will Built and Plantac over the course of the three and a half years that you've been working at the Board?

MR NAYLOR: I object. Is the assumption which underpins that question based solely upon the document that the witness has been provided with by Mr Chee?

THE COMMISSIONER: Is it, Mr Chee? Is it based solely on, on the documents?

MR CHEE: It's not based solely upon the documents. Mr - - -

THE COMMISSIONER: Well, if it's not based solely on the documents you're going to have to put to Mr Montgomery - - -

MR CHEE: Yes.

10

THE COMMISSIONER: - - - what it is based upon.

MR CHEE: Mr Montgomery, you've had discussions with fellow MSB officers in, in relation to the rotational system, isn't that correct?---Yes.

And as part of those discussions you would have discussed how many times you've used a particular contractor?---Yes.

Isn't that right?---That's right.

20

So in the context of these discussions, having informed yourself from – by speaking to the other board officers in your opinion do you think that this distribution that I have set out, 20 jobs to Will Built and 11 jobs to Plantac, represents an unusual or abnormal distribution of work to those two contractors?

THE COMMISSIONER: Sorry, Mr Chee, you're going to have to put some parameters on this. Is this unusual in the context of this particular officer's duties over the four, three and a half years that he's been employed there, is that what's being put?

30

MR CHEE: Yes, it is.

THE COMMISSIONER: Against, against when you say an unusual distribution against a total of how many matters that he's had responsibility for over that time?

MR CHEE: Against the distribution of work to Will Built and Plantac by other officers within the Board.

40

THE COMMISSIONER: Well, that – sorry, how do we know that?

MR CHEE: I think - - -

THE COMMISSIONER: You see, Mr Chee, for this witness to answer that question he would have to know precisely what every other officer in that Picton office has done over the period of time that corresponded with his employment assuming that they had exactly the same number of matters to

exactly the same value, the parameters have to be set and the criteria has to be the same but can I suggest this, to the extent that these documents establish anything one would have thought that if we went through every single officer who was employed over the same period of time as Mr Montgomery we would see similar things emerge from these documents. Why wouldn't that be a proposition that could be established just by reference to the records, why would we have to ask this witness that question?

10 MR CHEE: It can and would probably be best be established based upon the records, however, I was attempting to progress the matter as far as I could today in terms of the distribution but if, if the case is that it can be dealt with tomorrow I'm happy for that to be dealt with tomorrow.

THE COMMISSIONER: Well, I think it needs to be because I think this witness has to be given the opportunity to look at the documents and refresh his memory from the files that are part of the tender bundle. I know that's going to be tedious, Mr Montgomery, but you might have to sit down with your legal representative and go through that exercise?---Okay.

20

MR CHEE: Lastly if I can turn to the issue of when you found out about the allegations against or if you did find out about the allegations against Mr Bullock. Mr Montgomery, when did you first hear about this ICAC investigation concerning Mr Bullock?---First heard about it?

Yes?---I first heard in, it was, it was in July.

July of 2014?---No, sorry, November.

30 November of 2014?---'13.

'13?---Mmm.

In what context did you hear of these investigations?

MR WILLIS: Well, I object.

MR CHEE: Okay. What did you hear?

40 MR NAYLOR: I object.

THE COMMISSIONER: Well, again, look, Mr Chee, does it matter what he heard? I mean really.

MR CHEE: Well, it does in terms of the particular – well, this morning I put an application in respect of documents - - -

THE COMMISSIONER: Well, I know, but people hear all kinds of things in a town the size of Picton. I'm quite sure that gossip is rife. God knows it's bad enough in a town the size of Sydney, so I mean the difficulty is, as I understood it, you wanted to base your application this morning on knowledge of a particular document within the office.

MR CHEE: Yes.

10 THE COMMISSIONER: Well, isn't that the point? Because what he may have heard and what the actual scope and purpose of the investigation was is probably two quite different things.

MR CHEE: I think it would still be useful to understand whether or not the document, if he did see it in late 2014, affected his perception.

THE COMMISSIONER: Well, you can ask him that, if he, if he did see it. Did you know, Mr Montgomery, about the service of the document in the office in about November of 2014?---The, the service of - - -

20 The service of a summons from ICAC in about November two thousand and - - -?---I knew of it, I knew of it.

You did know of it?---Mmm.

Did you see the document?---I did.

MR CHEE: Mr Montgomery, what did you know of it, what was told to you?---There was um, I knew there was a summons that was served to the office um, and that was it.

30 Okay. Commissioner, I have no further questions for today.

THE COMMISSIONER: All right. Well, given the time I think it's probably more useful if we adjourn and resume tomorrow at 10 o'clock and Mr Montgomery can be asked those further questions, but in the meantime, Mr Chee, I would hope that any documents that you currently have are provided to Counsel Assisting so that he can meet any other questions that might be asked tomorrow morning.

40 MR CHEE: Yes, Commissioner.

MR NAYLOR: Commissioner, just in relation to the three documents, one of which is already in evidence, that Mr Chee has referred the witness to, I haven't looked at the last document in any detail, nor the other one for that matter, but should they be marked perhaps for the sake of clarity?

THE COMMISSIONER: Yes, just in case we don't revisit them.

So those, those documents are the Property Claim Reports, Tahmoor Status Report, is that the one?

MR NAYLOR: Yes, Property Claims Report, Tahmoor Status Report.

THE COMMISSIONER: All right. I'll mark that MFI2.

10 **#MFI 2 - PROPERTY CLAIM REPAIRS TAHMOOR STATUS
REPORT T TAHMOOR STATUS**

THE COMMISSIONER: And what was the other one?

MR NAYLOR: The next document is the Business Management System Contractors' Infrastructure Works dated 30 April, 2013.

THE COMMISSIONER:

20

**#MFI 3 - BUSINESS MANAGEMENT SYSTEM CONTRACTORS
DATED 30 APRIL 2013**

MR NAYLOR: And the third document, it's really a copy of T2.

THE COMMISSIONER: Oh, well, we won't bother about that.

MR NAYLOR: No, no.

30

THE COMMISSIONER: Right.

All right. Thank you. Mr Montgomery, it's probably best if you don't discuss your evidence with anyone overnight so that you can return tomorrow morning and meet the questions that Mr Chee has for you. Yes?

MR WILLIS: Commissioner, might Mr Montgomery and myself be provided with copies of those two MFIs, 2 and 3?

40

THE COMMISSIONER: Additional documents? Yes, certainly, you may, Mr Willis, and - - -

MR WILLIS: And limited to instructions in relation to those two documents could I have contact with - - -

THE COMMISSIONER: Oh, absolutely, you're not included in the warning I just gave to Mr Montgomery because you have to take those instructions to make your representation meaningful, Mr Willis, so.

All right. Thank you. I'll adjourn till 10.00am.

THE WITNESS STOOD DOWN

[3.55PM]

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AT 3.55pm THE MATTER WAS ADJOURNED ACCORDINGLY

[3.55pm]