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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION SPECTOR

Reference: Operation E13/0275

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 19 FEBRUARY 2014

AT 10.00AM

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

<MARK EDWARD ROSS-SMITH, on former affirmation [10.01am]

THE COMMISSIONER: Yes. Now, Mr Ross-Smith, you're under your former oath. I think Mr Silver was going to cross-examine. Yes, Mr Silver?

MR POLIN: There was just - - -

THE COMMISSIONER: There was, sorry, there, I'm sorry.

10

MR POLIN: We've just a couple of quick questions I'd said.

Mr Ross-Smith, you were shown Exhibit 10 yesterday, that was the letter on, that had the Commonwealth Bank logo on it - - -?---Yes.

- - - for one a better description. Do you remember, I think you said that the letter you saw or were provided by Mr Camilleri was similar to that but not the same?---Yes.

20

Do you remember what the date of the letter you were shown was?  
---Unfortunately not. Um, I do remember that it was to his name and full home address and that the body of the letter was bigger than the one you showed me.

Other than that document at any time did Mr Camilleri show you any other documents?---Nothing.

30

Now I think you gave some evidence that you're aware of RailCorp's Code of Conduct and we dealt yesterday with the section in terms of conflicts of interest. Do you remember that?---Yes.

What was the position with everything infrastructure, did they themselves have a Code of Conduct as such?---There is an employee handbook which is in the process of continually being re-written, I don't believe there's a current version.

40

Did that handbook have a section or anything within it dealing with conflicts of interest?---I don't think we've been issued with, with the handbook.

Right. So you hadn't got a handbook at that stage back in 2004?---I don't believe so, no.

Had you received training directly from your employer about conflicts of interest - - -?---No.

- - - dealing with large corporations like RailCorp?---No.

So are you aware as to whether back in 2012 everything infrastructure had any sort of policy in place dealing with conflicts of interest when dealing with large corporations?---I don't believe so. My understanding was that we always adopted the, those sorts of codes from the company that we were embedded in.

And then I think you said yesterday that after you're aware that ICAC became involved you then documented your record as to what happened and went - - -?---Yes.

10

- - - straight to your employer and told them about it?---Correct.

You've continued to work there since that time?---I have.

What have they done in terms of any policies in relation to conflicts, conduct, conflicts of interest, sorry, in relation to dealing with corporations like RailCorp since that time?---Um, I'm only aware of one email that came out from our most senior director two days when this case was in the press and my name was mentioned and he just let everybody else in the  
20 organisation know what EI's position was, was that EI had been cleared by the ICAC sometime in April of 2013, that as far as they were concerned EI had, had no involvement in this and that I was involved because I'd lent money to Mr Camilleri.

All right?---But other than that I'm not aware of any specific communication that's gone out to the company.

So you had told them that you had found yourself in this awkward position - - -?---Yes.

30

- - - whilst doing your work where you found yourself conflicted dealing with Mr Camilleri and having told them that they've done nothing in terms of dealing with that situation occurring in the future, is that correct?---I don't think we needed to be told to be honest.

Right?---But they have been totally supportive through the whole thing.

Right. So are you saying that there's nothing that you needed to be told by them in terms of your dealings and how you should have dealt with Mr  
40 Camilleri back in August of 2012?---Ah, look, I was fairly aware that they thought I'd done something stupid but there was no specific training or lessons put in place by the company for any of the other employees to my knowledge.

That's the questions, thanks.

THE COMMISSIONER: Mr Chee, did you want to cross-examine Mr Ross-Smith?

MR CHEE: Yes, very briefly, Commissioner. Thank you.

Mr Ross-Smith, I think you gave evidence that you last spoke to Mr Camilleri about the time he was dismissed, is that right?---Yes, I looked at my notes and I think it was 13 February and I believe he was dismissed on the 14<sup>th</sup>.

10

Did you at any time after that chase up Mr Camilleri for the amounts that were outstanding?---I did.

Did you - - ?---Several times throughout the whole of 2013.

Yes?---But not in 2014 because I was aware that all this was going down.

And that occurred after he was dismissed?---Correct, oh, and before I have to say that I was chasing him for the money right from August 2012.

20

Is it the case that you last spoke to him six to eight weeks ago to chase up the money?---I doubt that it would be that recent.

But it's possible?---It's possible, yeah, six to eight weeks would take us back to December so possibly, yes.

Right. Thank you. At the time he approached you for the loan did he, apart from the promise of repaying you, did he appear to attempt to exert any influence over you by reason of his position?

30

THE COMMISSIONER: Sorry, are we talking about after Mr Camilleri was dismissed?

MR CHEE: No, no, no, I've, I've moved on from that, I'm going back to the loan and the, the circumstances around the loan.

THE COMMISSIONER: Right, so we're talking about prior, prior to his dismissal?

40

MR CHEE: Yes, that's correct.

THE COMMISSIONER: Right.

THE WITNESS: Did I feel any pressure? Um, a lot of emotional pressure - - -

MR CHEE: But - - ?--- - - - but I didn't feel that he was, you know, exerting any sort of work related influence on me.'

Did he threaten you or - did he threaten you?---Not at all.

Did he make any other promises apart from the one that I just referred to?  
---The only promise was that he would repay it tomorrow or Saturday or Monday.

Right?---And that promise was repeated for the next year.

10 Moving on, Commissioner. Mr Ross-Smith, you mentioned that Mr Camilleri appeared to show some reluctance when you and Mr Camilleri were in the bank and you were withdrawing money for him, what's the basis for that opinion?---One of the times that we went to the bank, and I'm not sure which of the four it was, he pointed up at one of the cameras and said, "That is the camera that caught the people or the girl who had stolen my daughter's identity," and that's how they had identified her. So if he knew where the cameras were I put two and two together and surmised that he didn't wanted to necessarily be on, on any camera footage.

20 Mr Ross-Smith, there are cameras within the bank, all banks aren't there, even outside of banks?---Yeah.

So he would have been captured on camera wouldn't he, regardless?---More than likely.

If I could take one further step back, when you were speaking to him about the loan, when he approached you for the loan I think your evidence was that he had said he had spoken to a lawyer in Sydney, is that correct?---I believe he said something like he had a lawyer dealing with this in Sydney but something had gone wrong with that relationship.  
30

He didn't say that he had spoken to any lawyer did he?---He did, yes. He didn't mention any names but he did mention that he was no longer dealing with the Sydney lawyer and he now had a lawyer in Melbourne.

I put it to you that he never said those words he didn't, he didn't say that he had spoken to a lawyer in Sydney?---He certainly said that a lawyer was dealing with the issue. I figure you'd have to speak to a lawyer for them to be dealing with it.  
40

One last issue. Again I'm jumping about in time. Moving onto the point in time where he showed you the document which appeared or at the time purported to be, was purported to be a letter from Commonwealth Bank, it's Exhibit number 10. How certain are you that the document which you'd been shown Exhibit number 10 is not the document which you saw at the time?---A hundred per cent certain.

And what's that, what's that certainty based on?---It's a different letter. It was addressed to a different person, it had a different address on it, the wording about your attorney, power of attorney Joe Camilleri or whatever it was were not in the first letter and I've said the, the body of the letter was fuller in the letter that I saw.

Right?---There's no question in my mind it was a different letter.

10 When you pointed out the spelling mistake of the word "paid" how did Mr Camilleri react?---It was actually repaid and he said to me, why, how is that spelt and I said r-e-p-a-i-d.

So he was certainly surprised and he hadn't seen that, it appeared to you that he hadn't noticed that before, is that correct?---It appeared to me he hadn't noticed that before.

Thank you. Nothing further, Commissioner.

20 THE COMMISSIONER: Mr Silver.

MR SILVER: Mr Ross-Smith, just to deal with the letter initially, there's something I can't understand. Did you say in your evidence that you had no personal relationship with Mr Camilleri?---Well I don't know what you mean by personal. For 18 months we had worked very closely together.

And do you socialise with him no doubt?---Not at all.

And you went to his house?---Not at all.

30 You knew his home address?---I did.

And how did that come about?---Because on the letter that I typed up and I signed on the, I think the 13 September the acknowledgement of debt, his name and address was on that plus he gave me his home phone number at that time.

Was the acknowledgement of debt before or after he showed you the letter from the bank?---Oh long before.

40 Long before. And in terms of the probity issues you understand that the probity issues around conflicts of interest are very serious issues?---I understand that.

Yeah. And you take them seriously now?---Yes.

And you always have?---I've always been a champion of probity. I mean it was one of my jobs as, as project director to make sure that probity within the project was adhered to.

So you at all times understood what conflicts of interest involves?---As it pertained to procurement within RailCorp, yes.

Yes. And one of the things, one of the measures of your understanding came from RailCorp, was it documents in training?---There was a half day training course called the probity and ethics course which everybody was involved in, I believe everybody who was involved in evaluation of a tender had to have.

10 And you attended that?---I attended that although I was never involved in evaluation.

Yes. And did that deal with, well that did deal with conflicts of interest didn't it?---It was more – well, yes, um, in terms of suppliers and contractors.

But you didn't really have to be told what a conflict of interest was in your business experience did you?---Not really, no.

20 Right. So I can take it that at all times relevant to these, this investigation you fully understood what a conflict of interest was and what it amounted to?---Yes.

And I trust your organisation has the same knowledge and understanding, the senior officers?---I can't answer for them.

Well, you've spoken to them about this haven't you?---Not specifically about conflict of interest, no one has ever in my company raised with me that I was in conflict of interest.

30 So this inquiry has happened and since you have been under the spotlight as it were you have never had a discussion in your organisation about conflict of interest?---Not specifically.

And when you wrote your letter or note of 10 August didn't that deal with conflict of interest?---Sorry?

Sorry, the note that you, that you recorded.

40 THE COMMISSIONER: The file note.

MR SILVER: So your file note, was that brought to the attention of your organisation?---Yes, I gave it to our senior director who in fact then presented that to ICAC a few days later.

Right. And did that deal with conflict of interest?---There was a dot point in there where I tried to point out or justify to myself that he was not involved in my chain of command.

And did you discuss that file note with anyone at your organisation?---I can't remember them coming back to me about it, I mean it was a fairly comprehensive note.

Just remind me what your position is at the, at your company?---I'm a consultant.

Are you an employee?---Yes.

10

And who do you report to?---I report to whichever director is on the particular project I'm on, at the time it was Mr John McLuckie.

And the board, do you know if the board got notice of your note?---I assume it did, certainly all of the four directors at the time.

And you always understood that one of the ways of dealing with a conflict is disclosure?---Yes.

20

And could you just remind me if you've said already but if you haven't could you tell me when you have made disclosure to RailCorp about this topic?---Some time after Mr Camilleri was dismissed it started to become spoken about within, within the company.

Could you tell me when you made a declaration to RailCorp?---No.

You haven't?---Well, verbally, yes.

30

No, an official declaration of your conflict of interest?---No.

And neither has your company?---To RailCorp?

Yes?---No.

Yes. How do you view that - - -?---Not to my knowledge.

40

How do you view that in terms of your obligation arising from the conflict of interest?---Well, as I've learnt in the last couple of days that's contrary to, to what RailCorp's Code of Conduct said.

You knew that from the time you understood what a conflict of interest was about (not transcribable)?---No, I, as I have testified before I didn't really think about it applying on a personal loan from one person to another.

No, no, I'm talking about your knowledge of how to deal with a conflict of interest, that's always been in your knowledge, correct, about disclosure?  
---No, no, I wouldn't say that. I've been taught to conflict of interest, I've not been sure of the process thereafter.



How many years have you been dealing with RailCorp and at RailCorp in one way or the other?---Ah, from June ah, August or September 2010 until the middle of December last year, 2013.

Did you ever read the Code of Conduct?---I don't believe I did, no.

Was it ever furnished to you?---Sorry?

10 Was it ever furnished to you?---Um, as the, as the document that I've seen here, no.

But what was plastered on your walls?---There were things about safety, occupational health and safety, the environment, on the course we certainly had course content.

Which dealt with a conflict of interest?---Which dealt with procurement.

And conflicts of interest?---Yes.

20

Yes. Thank you, no further questions.

THE COMMISSIONER: No one else? Nothing arising, Mr Polin?

MR POLIN: No, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Ross-Smith, you may step down, you're excused?---Thank you.

30

**THE WITNESS EXCUSED**

**[10.19am]**

THE COMMISSIONER: Yes.

MR POLIN: Commissioner, I call Andrew Rogers.

THE COMMISSIONER: Yes, Mr Rogers, just take a seat. Mr Buchen, have you talked to your client about the protection offered by section 38 of the Act?

40

MR BUCHEN: I have, your Honour. He does seek a declaration under section 38 and he will be giving an affirmation.

THE COMMISSIONER: Thank you. Mr Rogers, do you understand that the order that I'm about to make protects you from the use of your answers in any criminal prosecution but does not protect you from the use of those answers if you should give false evidence before the Commission.

MR ROGERS: Yes.

THE COMMISSIONER: You understand that?

MR ROGERS: Yes.

THE COMMISSIONER: And that the penalties for giving false evidence involve terms of imprisonment. You understand that?

10 MR ROGERS: Yes.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

20

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR**

30

**DOCUMENT OR THING PRODUCED.**

Could the witness be affirmed, please.

MR POLIN: Is your name Andrew Nigel Rogers?---Yes.

And, Mr Rogers, are you still an associated director of Third Horizon?  
---Yes.

And was that your position back in 2012?---Yes.

10

Now, Mr Rogers, do you have some concerns about giving your evidence here today?---Yes, because I come forward and um, it's just the reputational damage that's on me is my concern.

It's not concerns about anyone else - - -?---No.  
- - - that's' here?---No.

20

Right. Now in terms of Third Horizon what work does that company do, what's the nature of the work they do?---It's a management consultancy firm, they provide consultancy services to clients.

Now prior to, sorry, I withdraw that. When did you first start working for Third Horizon?---Um, I started I think it was 2011.

Right. Prior to that is it correct that you actually worked for RailCorp?  
---Yes.

30

And indeed immediately prior to that you were working for Mr Camilleri, is that correct?---In his division, yes.

Right. He was the head person of the division you were working - - -?---He was the General Manager.

And how long did you work for Mr Camilleri?---There was a change in leadership during that process but it was about two and a bit years, so it was from mid 2009 to October 2011.

And how long did you actually work for RailCorp?---During that period.

40

So mid 2009 - - -?---Yes.

- - - through to 2011?---Yes.

And I take it that during your time there working with RailCorp you became aware of the various Codes of Conduct?---Yes.

Matters associated with conflicts of interest and the like?---Yes. I'd just go on training, yes.

Now you're aware as to who Anthony Courtman is?---Yes.

Who was he?---Um, he's a colleague and a friend of mine for the last ten years. Um, I worked with him at um, Third Horizon.

And is it the case that Mr Courtman also had worked at RailCorp immediately before Third Horizon?---Yes.

10 How long had he worked at RailCorp for?---I'm not sure of the specific dates.

What was his position at Third Horizon, was it the same as yours?---No, he was a director.

Right. So does that mean as an associate director you were beneath Mr Courtman?---Not directly. My director is Steve Metzmacher. Anthony is another director.

20 I suppose what I'm asking you is was he in the more senior - - -?---Yes, he was, he's a superior, yes.

Right. In terms of your work at Third Horizon back around 2012 did a lot of that work involve RailCorp, that's your work?---In 2012?

Yeah?---No. I was actually working for Transport for New South Wales as a consultant and then at the end of, of that year I came to RailCorp.

30 What about Mr Courtman, was a fair bit of his work back in 2012 did it involve RailCorp?---I don't, I don't think so, I don't know. Um, I know that he was working in Transport for New South Wales at the same time.

And I take it back in 2012 RailCorp was a client that Third Horizon was anxious or keen to get work from?---We were working with a number of clients including RailCorp, we did have ongoing projects with them and we did work as part of transport cluster with RailCorp.

All right. I understand you had worked with them?---Yes.

40 I take it that you were keen to continue to work with them?---My core clients, yes.

Were you familiar with the various tender processes that one would go through to get work through RailCorp back at that time?---I understand you need to go through tender processes, yes.

Were you familiar with the tender processes?---Yes, in terms of I understood it comes out of the WCCL or professional services. The actual definition of those documentations I'm not familiar with. Sorry, shouting.

And were you aware of those processes not only through your work with Third Horizon but also your work with RailCorp?---Yes.

10 In terms of Third Horizon and your work there did you have occasions where you dealt with Mr Camilleri at RailCorp, in terms of your work?---  
Sorry, say that question again.

I'm asking you, you've told me you worked with Mr Camilleri at the time you worked at RailCorp?---Yes.

During the period that you were with Third Horizon are there times that you came to work with Mr Camilleri - - -?---No.

- - - whilst he was in RailCorp?---No.

20 Did you have any contact at all with Mr Camilleri from the time you left employment at RailCorp up until the time - - -?---Not to my recollection, no.

- - - he was dismissed?---Not, not that, not to that um, up until he was dismissed?

Yep?---Um, it was, it was more, David Highland was part of that process and he was giving guidance in terms of the overall projects. That was my exposure to Joe.

30 There's no doubt is there that towards the end of 2012 Third Horizon was seeking work from RailCorp?---Yes. And we got work, yes.

Exactly. And you indeed did get work from RailCorp?---Yes.

Were you involved in either the work being done or the seeking of work at that period of time?---Yes.

40 What was your involvement?---So as a, as a delivery person I was the programme manager, which is the project that we won. And I was also part of the input in terms of the proposals um, putting those proposals together.

And in terms of that work and the work you were doing did that bring you into direct or even indirect contact with Mr Camilleri?---No.

Even through email?---I don't recollect I had an email, I don't think so, no.

At a point in time I understand Mr Camilleri approached you and asked to borrow some money?---Yes.

Do you remember when that was?---14 Feb, 2013.

2013. Now - - -

THE COMMISSIONER: Did you say 14 Feb?---14 Feb. I think it was a Thursday. It was on my statutory declaration.

10 MR POLIN: Have you, up until that time have you ever socialised with Mr Camilleri?---No.

You said that you'd, he had been the senior person in the section in which you worked for a period of time?---Yes.

Would you have called him a friend?---No.

20 How would you describe your relationship with Mr Camilleri as at 14 February, 2013?---Um, at that point in time I saw him as a director or a general manager for reform. Um, I had no contact with him during those processes. David Highland had taken on his responsibilities for the programme.

So just roughly in that - - -?---I wouldn't say we had a, sorry.

No, I'll just ask it?---Yeah.

Just roughly in that period of time how often if ever would you contact or have contact with Mr Camilleri?---At the end, up until that day?

30 Yes, well let's say in the year 2012?---Yes. None.

No contact at all?---To my recollect I had minimal contact with him other than my project exposure.

When you say, the difference between minimal and none what do you mean by minimal?---I didn't have any contact up to the point we got appointed.

40 Throughout the year 2012, whether it's through your work or just the fact that you happened to run into him during the day did you have contact with Mr Camilleri?---Not that I can recollect, no.

Right. Do I take it then that the contact made on 14 February, 2013 was somewhat out of the blue?---The way it happened, yes.

Well, even the fact that it happened, when - - -?---Yes it was unusual at that point.

Now, can you tell me the circumstances as to how this contact was made? Whereabouts was it made, firstly?---Um, I think it was, it was, I was sitting at my desk doing my project work and he approached me.

And your desk, was that within the RailCorp premises?---Yes.

And can you tell us, doing the best you can, what, what he said to you?  
---Can I refer to my stat dec?

10 Just if you can, just doing the best you can, just tell us what you recall of the, that particular conversation?---He came up to me asked for Chris Rowe, Chris Rowe wasn't at his desk or in his office and then he said to me - - -

Sorry, can I just - he came and asked you where Chris Rowe was?---Yes.

Right. Who is Chris Rowe?---Chris Rowe is my director.

Right?---He was my line manager for the project.

20 Yeah?---At that point he said can I talk to me in private and we went into Chris Rowe's office and he um, started a conversation he'd like to talk to me about a personal issue. He reiterated that a number of times um, and at the time I - because of the nature of my work that I was doing, I was going through a number (not transcribable) people would confide in me about their personal issues. I understood that it was one of those issues. He then went on to make a request for money from me.

What did he say in terms of the request?---My daughter is in, he, he made a case that his daughter was experiencing problems.

30 Right?---Particularly that she was, she was, I think he referred to as fraud as part of the case.

Well, doing the best you can can you tell us what was the case that he made, what did he tell you that his daughter's problems were?---He said that he had a large number of legal bills that he needed to pay and that his, his daughter, someone involved, he didn't give a lot of detail but someone involved was, had taken over his identity and that he had to remunerate the lawyers, et cetera, et cetera about the expenses.

40 Did he say someone had taken over his identity as in Mr Camilleri?---No, no, in terms of his daughter's identity.

Someone had taken over his daughter's identity?---Yes.

And what, there are a large amount of bills that had to be paid?---Yes, yes.

And that was the reason he was asking for money?---Me, yes, he was asking me for money to pay the legal bills.

Right. So when you say pay the legal bills was he suggesting to you that there was some sort of legal proceedings in place?---Yes. He did make mention that that the legal proceeding was going to conclude within the next few weeks or month and he would be able to return my cash.

10 Did he tell you or say to you what would happen when the, the legal proceedings was concluded?---Yes, he said that he had enough money to retire (not transcribable) substantial value.

When he said it was a substantial value did he indicate what sort of money he was talking about?---It was above a million.

Right. So he said to you that the legal case would result in him getting over a million?---Yes.

20 But it was certainly enough he thought he'd be able to retire?---Yes.

How did you then respond to this? Sorry, I withdraw that. Did he, did he actually ask for a specific amount?---Yes, he did.

What was the amount that he asked for?---10,000.

Right. And how did you respond to it?---Um, I tried to back him off but he pursued me.

30 When you say you tried to back him off how did you do that?---I said I needed to refer to my wife and that we had joint investment decisions and I wouldn't be making a decision like that without consulting her.

Right. And what did he then say to you?---He said it's a personal loan, there shouldn't be an issue and he pursued me to ask what are my, what are my credit cards, can I take out any investments, he actually went after how much investments do you have type arrangements.

40 So he was specifically asking you about your personal financial position? ---Yes, yes, yes. He wanted me to go down with him to the ATM to check my balances.

Right. He asked you about your personal investments as well?---Yes.

He was asking you how much money you had in the bank was he?---He wanted, no, I don't recall he actually asked me how much did you have but he wanted to see how much I had as part of looking at my transaction in the ATM. I did say to him I had no money and it was all locked up in investments.



Right?---So his, he, his approach was all right, let's check how much you have available.

So was he suggesting that he didn't believe you and he wanted you to take him down to the ATM to verify exactly what you had?---I don't think it - that's not how I would see it.

Right?---I think he was just trying to get me to the ATM.

10

Right. And so what happened then?---I said I needed to talk to my wife.

Right. And what happened then?---Um, he said you need to talk to your wife, I need the money urgently.

Right?---Um, I can't recollect the time but it was somewhere in the afternoon, he needed to make this payment to whoever he needed to pay it. Um, following that um, he said, he said to me that um, it's a personal issue, when we walk out the door we need to talk about project issues.

20

Right. Did, when you said that you needed to talk about your wife - - -?  
---Ah hmm.

- - - did he then put some pressure upon you to call her?---Yes, yes.

Did you then call her?---I tried to, yes.

So you felt pressured enough that you actually tried to make the call?---Yes, I was under pressure.

30

Did you actually make the call to her?---Yes.

And you weren't able to, to reach her, is that the case?---Yes, at that point in time, yes.

So what, what did you then say to him about lending him the money at that point?---I said I - I didn't, I didn't close the conversation with him I said I would talk to my wife and left it there hoping he'd go away.

40

Did he go away?---He did but he said he'd come back and asked if I had his mobile number and I would contact him once I had spoken to my wife.

Did he come back?---Yes.

When was that?---About half an hour later.

Right. And what did he say when he came back?---He asked me to come and talk to him in another room in the visual management room, at which point he immediately opened by saying where's the cash.

Right. And what did you then say?---I said Joe, you've comprised me and you and I'm not giving you the cash.

Right. Are they actually the words you used?---Yes.

10 Having said that to him what did he then say?---He, he said to me where am I going to get the cash, he was reflecting internally I think and articulated that and he said I need the cash and that's where he stopped and I reiterated that and he said okay this conversation hasn't happened and we walked out the door.

Right. So when you say you reiterated that what do you mean, you - - -?---  
You comprised me.

Right?---Yes.

20

You said that - - -?---I said it twice.

Did you say to him that he had comprised you - - -?---Yes.

- - - or that he comprised you and he?---I think both of us I said, yes.

And so you repeated that did you after he asked for the cash again?---Yes.

30 You said he walked out saying, correct me if I'm wrong but the words I recall you saying was "this meeting never happened"?---Yes.

What did you understand that to mean?---I don't – I think he didn't wanted to pursue it any further.

It wasn't this meeting's come to an end he was suggesting he wanted you to believe that the meeting had in fact never occurred?---Correct.

Is that correct?---Yes.

40 And that's the – he had come and asked you for some money?---That was my understanding.

You had refused to give him the money - - -?---Yes.

- - - and he wanted to pretend then having not got the money but he never in fact asked you?---That is my understanding of it, yes.

Did you understand from that that he believed that he had done something at that point?---I think in the state that he was in um, I don't think he was thinking clearly at anything, so I don't know what he was thinking.

Right. Throughout these two conversations how were you feeling in terms of the request that was being made? You've said that you felt comprised?  
---Yes.

10 What did you mean by that?---I think in my opinion that he had crossed the, crossed the line.

When you say crossed the line - - -?---Yes.

- - - what sort of line are we talking about?---I don't think it's right to ask other people for money specifically contractors.

20 Are you suggesting by that that he'd crossed the line and that effectively he - - -?---He gave me, he gave me his problem in my opinion and I had to do something with it then.

And did you mean that that was causing you some sort of conflict potentially - - -?---Yes, directly.

- - - in terms of you being a contractor of RailCorp - - -?---Yes.

- - - and he being an executive of RailCorp?---Yes.

Did you feel pressured by him?---Yes.

30 Why was that?---Because everything was rushed. I'm not Joe's friend and I think that was abnormal for me in the first instance to, a stranger coming up to you and asking for money is not normal, um, a stranger asking with incredible pressure on you at that specific point in time is not normal, a stranger saying to you that you close the door and the meeting never happened is not normal in my opinion.

40 Right. What - - -?---I did, I did feel stressed because I did speak to my wife and I think I talked to my wife about personal issues that are work related I think again that has stretched it for me.

Right. What did you then do?---During the conversations I had a conversation with Chris so between the two points and I made Chris aware that Chris had approached me, that Joe had approached me for money and Chris told me do not do it.

Right. That's Chris your director?---Rowe, yes.

Right.

Was he within the building at the time or he was somewhere else?---No, he came back in.

So he, in addition to ringing your wife you actually rang Chris at that point?---Chris came, I saw Chris and asked to speak to him, yes.

10 After Mr Camilleri finally left did you formally report it or was the report effectively made by the phone call with Chris?---No. It was a conversation with Chris. I went back and told Chris how the meeting had concluded, the incidents that concluded with Joe. I went home, had a long conversation with my wife, understood my contract of employment, and then reported it on Monday morning to my employer.

Now, at any time up until that point in time had you become aware that Anthony Courtman had lent money to Mr Camilleri?---No.

20 You were aware weren't you, or maybe you weren't, that Mr Courtman had been dealing with Camilleri, Mr Camilleri in the period from mid 2012 at least through to the end of 2012?---Yes.

You having felt compromised by Mr Camilleri asking for money would you consider that Mr Courtman was compromised in giving or lending Mr Camilleri some money?---I don't understand the question, sorry.

You said that you felt compromised?---Yes.

30 That there was potentially a conflict by just the very fact that Mr Camilleri had asked you for a loan?---Yes.

The fact that Mr Courtman had in fact not only been asked but gave Mr Camilleri a loan, do you consider that at that point when he gave the loan Mr Courtman was in a - - -?---If it was the same circumstances as myself, yes.

You considered he was conflicted?---Yes. In my opinion from the - - -

40 No, I accept that. It's only your opinion. And I take it that is because you would consider that both Mr Camilleri and Mr Courtman would have difficulties doing their job with the understanding that one was indebted to the other?

MR O'BRIEN: I object to that, Commissioner. The difficulty with that question is that the witness has said earlier that he would be, he would feel that Mr Courtman might be compromised in the same circumstances that he was in.

THE COMMISSIONER: Ah hmm.

MR O'BRIEN: The fact is that they were in different circumstances and Mr Courtman was never in the same circumstances as this witness.

THE COMMISSIONER: Well, perhaps we can just clarify. Mr Rogers, in what way do you say that Mr Courtman would have been conflicted by lending money to Mr Camilleri?---I don't know the circumstances of Anthony Courtman's debt. I don't know that. I only know my situation.

10 MR POLIN: When you say the circumstances do you mean the circumstances were that a RailCorp executive had gone to a contractor - - - ?---Yes.

- - - in what would appear to be firstly hurried, a hurried sense but also trying to keep the matter secret and asked to borrow money? They're the circumstances you're talking about?---Yes.

MR O'BRIEN: I object to this also. Commissioner, I just don't see that there's much to be gained by Counsel Assisting asking this witness about  
20 his view, and as he says his opinion on what Mr Courtman might or might not have been, the situation that Mr Courtman might or might not have been if this witness don't know the situation that Mr Courtman was in.

THE COMMISSIONER: Well, I think Counsel Assisting's putting the circumstances, provided the parameters are explained to the witness I see know problem with the witness offering an opinion. It makes no, it makes, it makes to difference does it whether he gives an opinion or doesn't give an opinion.

30 MR O'BRIEN: Well, one thing we know the difference to be, and this is fundamental and hasn't been visited upon, is that this witness was in the premises of RailCorp working under a contract which had been secured with RailCorp and there's no suggestion that there was even a contract in place or mooted at the time that the, that the loan was given by Mr Courtman. I mean, that has to be a very fundamental matter that needs to be addressed in the questions leading up to an opinion to be sought from this witness.

THE COMMISSIONER: Mr Polin, is there any, is there any further detail  
40 that you can put to Mr Rogers that illuminates Mr Courtman's position?

MR POLIN: Yes Commissioner. You were working on a particular contract with RailCorp at the time, is that correct?---Yes.

Your company of course was always looking to get work from RailCorp were they not?---Yes.

Did it make any difference to you the fact that you were doing a specific job at the time in terms of you feeling conflicted?---Um, it was irrelevant of the work, if that's your question?

Yeah. If you had been in fact at that time merely looking for work for RailCorp would you have felt equally as conflicted if you'd been put upon for the loan at that time?---Personally, yes.

10 If Mr Courtman had been put upon for a loan at a time when he may not have been actually doing work for RailCorp but was looking for work from RailCorp and he's put upon for a loan in reasonably similar terms to those as yours, but obviously not identical would you have considered that Mr Courtman would have been conflicted firstly by just the approach but certainly by in fact giving the loan?

MR O'BRIEN: I object to the question.

THE COMMISSIONER: Well, the parameters have been outlined.

20 MR O'BRIEN: Well, I think the term looking for work from RailCorp is, it's far too loose. The difficulty that I have with that is that we know from evidence already before you, Commissioner, that there is a series of processes that companies need to go through to look for or engage in work with RailCorp.

THE COMMISSIONER: Yeah, well I appreciate that but this is, this is state instrumentality that probably is responsible for the, for the largest if you like, scope of contracts of any state instrumentality worth billions of dollars overall. It would be ridiculous wouldn't it to suggest that various  
30 consultancies were not keen to receive some kind of work from RailCorp. I think that's the point that's being made, not whether or not they'd actually gone through a tendering process. Is that right, Mr Polin?

MR POLIN: Yes, Commissioner. I'm not suggesting for a moment it was in the middle of anything particular. But there was obviously, I'll ask a couple more questions, Commissioner.

THE COMMISSIONER: All right.

40 MR POLIN: There's obviously - - -

MR O'BRIEN: If I may - - -

THE COMMISSIONER: Yes.

MR O'BRIEN: The other, the other point that I have, Commissioner is that I don't see how the Commission is assisted by questions as to this witnesses opinion as to another person's conduct.

THE COMMISSIONER: Well look, we're not bound by the rules of evidence.

MR O'BRIEN: I accept that.

THE COMMISSIONER: This witnesses, this witnesses opinion, given that he was approached by Mr Camilleri for a loan and he rebuffed that approach becomes relevant I would have thought in so far as he's the first witness  
10 who has actually acknowledged the conflict at the moment that it arose. So I'm quite happy to let him give an opinion. Of course, Mr Courtman can say something different but it's his opinion, that's all we're interested in at this stage.

MR O'BRIEN: It would be relevant I would accept if they were in identical circumstances but they are not.

THE COMMISSIONER: Well look, one of the issues we're exploring here is just to what extent people understand what a conflict of interest means  
20 and to what extent the Code of Conduct was read and understood. That's one of the ultimate issues that will have to be determined so I'm prepared to allow Mr Rogers to give his opinion. Thank you. Yes, Mr Rogers?---My opinion, if it's a perceived conflict of interest then it is probably a conflict of interest.

MR POLIN: Right. And there's no doubt is there that the lending of money by a contractor to a RailCorp executive is at least a perceived conflict?---In my opinion, yes.

30 Now, are you aware of some of the dealings that your company had with RailCorp in the second half of 2012?---Yes, I was part of some of the emails, yes.

There was a benchmarking tender process?---Yes.

Do you recall that?---Yes.

40 Were you aware as to how, I withdraw that. You're aware obviously that Third Horizon were asked to tender for the benchmarking contract?---Yes.

Are you aware as to how it came that Third Horizon were asked to tender?--  
-I'm not sure of the specific, I understand that we are on Frameworks and that's how, that's how RailCorp procures people, on Frameworks.

Did you have any discussions or were you in contact by email with Mr Camilleri at any time leading up to your company being invited to tender for the benchmark contract?---Not that I can recall, no.

Having been asked to tender for the benchmark contract, I think that was in August 2012, is it the case that your company then didn't in fact tender, put in a tender - - -?---Yes.

- - - for that contract?---That's correct.

Why was that?---Because we felt, our management team felt that the scope was too broad and the timeframes were too compressed and we couldn't respond appropriately.

10

Right. Do you recall having discussions at the time after which you decided not to put in the tender with Mr Courtman or any of the others at Third Horizon about any concerns that Mr Camilleri may have had by the fact that you didn't actually put in a tender having been invited to do so?---Not any concerns that I can remember, no.

20

Do you recall any discussions where Mr Courtman had either emailed or spoken to Mr Camilleri and attempted to, if I could use the expression smooth over the fact that having been invited to tender you didn't in fact put in the tender?---I probably wouldn't use that language.

MR BUCHEN: I object to that question, I object to that question.

THE COMMISSIONER: Yes, Mr Buchen?

MR BUCHEN: In terms of the lack of specificity in that question, any discussions with who.

30

THE COMMISSIONER: All right. Mr Polin.

MR POLIN: Yes, Commissioner. Excuse me, Commissioner. Just while that's coming do you remember seeing an email that came from Mr Courtman on 18 September, 2012 which was in these terms, I'll get a copy for you but it read, and the email was not just to you it was to Steve Metzmacher?--- Metzmacher

40

Metzmacher, I think it's just to the two of you, "A quick update gents, managed to speak to Joe Camilleri this morning, no issues with the non-response. Appreciated our position and honesty. He mentioned that Chris would be going out for a programme manager analytical support in the near future and that we would be invited."?---Yes.

Do you remember seeing that email?---Yes, I do.

Did that strike you - - -?---Yeah.

You can put it up on the screen if you need to?---I recall the email.



Did that email strike you as unusual in terms of RailCorp's processes?  
---I don't know RailCorp's processes, I didn't see it as being unusual.

Right?---The reason that I say that is because if you're not going to submit a proposal I think it's decent to tell the person the reasons why you haven't submitted a proposal.

And, and make sure from a commercial point of view they're not upset with you and you don't create a bad relationship?---Correct.

10

- - - for that contract?---That's correct.

And in terms of this proposal it appears that the person that Mr Courtman was attempting to appease was Mr Camilleri?---Yeah, as per the email, yeah, I guess so.

20

Could I hand up a copy of that email for you so you can - the second part of the email or the second sentence he mentioned Chris would be going out for programme manager and analytic support in the near future and that we would be invited. I take it by that Mr Courtman was saying that he'd been told by Mr Camilleri that Third Horizon, notwithstanding the fact they didn't put in a tender for the benchmarking contract, were going to be invited to tender for the programme manager and the analytical support contracts.

30

MR BUCHEN: I object to that question. The Commission has the email. The Commission can ask Mr Courtman about what he meant by his own email. How does it advance the interests of this inquiry to ask a witness to interpret what the author of the email meant by the words in the email.

THE COMMISSIONER: Well, he was a recipient of the email, surely he could be asked what he understood by the contents of the email.

MR BUCHEN: That's, that's correct but all he can - - -

THE COMMISSIONER: Right.

MR BUCHEN: - - - give evidence about is his understanding - - -

40

THE COMMISSIONER: All right. All right. Well - - -

MR BUCHEN: - - - not what, not what Mr - - -

THE COMMISSIONER: All right. Well, it's received on that basis then.

MR BUCHEN: Thank you.

THE COMMISSIONER: Thank you.

MR POLIN: I take it - - -?---I would read it as is.

Right. And you'd read it that that's what he'd been told. Did that accord with your understanding of RailCorp practices, that someone would tell you in advance that you would actually be invited?---Like I said, I don't know what RailCorp's normal practices are.

10 I thought you said that having worked at RailCorp for a period of time and having dealt with them through your work with Third Horizon you understood generally what the processes were in terms of contractors obtaining work?---Yes, I do and at a general space, yes.

And in particular the contractors obtaining work I think you were getting it through the WCCL programme?---Yes.

20 And you would be aware wouldn't you that through the WCCL programme it would not be up to Mr Camilleri to decide whether Third Horizon would be invited to put in a tender or submission for the programme manager contract or the analytical support position?---I'm sorry, I don't know exactly whether Joe can say that or WCCL.

You don't understand the system well enough to be able to answer that?  
---No.

I tender that email page 1002.

THE COMMISSIONER: Yes. That's Exhibit 11.

30

**#EXHIBIT 11 - EMAIL FROM ANTHONY COURTMAN TO STEVEN METZMACHER AND ANDREW ROGERS DATED 18 SEPTEMBER 2012.**

40 MR POLIN: If at this point in time you had become aware that Mr Courtman had loaned money to Mr Camilleri, this is the point of time where you've decided not to put in a tender for the benchmarking contract but you had been told that you're going to be invited for two other contracts, what would you have done?---If, if I had find out?

That he had lent money?---I guess it's always hindsight, I would probably, probably tell my director.

Chris Rowe, again he was your - - -?---He was my direct manager in RailCorp.

Right. Were you aware that notwithstanding the fact that Third Horizon didn't put in a tender for the benchmarking contract that they were asked to submit a conflict of interests on that tender process?---Chris, Chris Rowe?

Yeah?---Um, Chris told me post everything that there was something in the documentation, yes.

10 Yeah. And that you'd been asked to tender I think (not transcribable) reason because people at Third Horizon had previously worked at RailCorp?---I think it was specifically with regards to me.

With regards to you?---Yes.

So the fact that you had worked at RailCorp previously was enough to create the need for recording a conflict of interest?---As he saw it, yes.

20 Yeah. And that was notwithstanding the fact that you weren't even submitting a tender on that particular contract?---I don't know the timing but I guess so, yes.

And I think it was suggested that it was because at that stage you had a continuing role in the evaluation is that correct?---Myself?

No, Chris?---Chris was on the, I think Chris was on the adjudication panels for those tenders.

30 Right. Excuse me, Commissioner. I think, is it the case that on the 26 September 2012 Third Horizon were invited to submit an offer of services on the program manager contract?---Yes.

That offer was directed to Anthony Courtman was it not?---Yes.

Is that, would that be unusual that it would be directed to him as opposed to any other director - - -?---No.

- - - within the company?---No. It wouldn't because each director had a, had a client that was a point of contact.

40 And are you aware that following receipt of the request to submit an offer Mr Courtman then had communications with Mr Camilleri?---I don't, I don't know, no.

Would that be usual, would he need to have communications with Mr Camilleri in dealing with the offer that was to put in for the program manager position?---Is this while the tender is still open?

Well this after, yes, after you've been asked - - -?---Yes.

- - - to submit an offer - - -?---Yes.

- - - would Mr Courtman have need to have discussions with Mr Camilleri about that?---I'm not sure unless it was to qualify something or another, I don't know. You can ask questions generally I believe.

Right. Is that normally done in a transparent way by email or by letter and the like if you've got issues?---It normally goes to the procurement person.

10 Right. It's not, would not normally be done by actually physically meeting up with Mr Camilleri?---No.

Right. Would you know what Mr Courtman in terms of the work he was doing for Third Horizon would be doing, meeting with Mr Camilleri in early October 2012?---I don't recall, no.

Were you aware that the, the offer or proposal of Third Horizon for the program manager contract was submitted to RailCorp on 10 October 2012?  
---Yes.

20

And I take it you were aware that at the time of that, that that was submitted there was no conflicts of interest submitted with it or no forms notifying conflicts of interest submitted with it?---From ourselves?

Yes?---I don't think there was anything in our tender, no.

Yeah. In terms of that tender did you anticipate that Mr Camilleri would be on the, a committee that would process the tender?---Personally yes, I would have thought that would be normal.

30 Right. Indeed do you recall on the 11 October 2012 sending an email to Mr Courtman and Mr Metzmacher in which you indicated that you'd spoken to Chris Rowe and indicated that Mr Camilleri was probably going to be the convenor for the interview?---Yes.

Which considered was good news?---Yes.

And do I take it that's 'cause you, I think you thought he was familiar with the kind of work you'd done or - - -?---Yes, I'd worked with Joe, yes, on writing stock reform.

40

Do you remember later that day then receiving an email back from Mr Courtman?---Yes.

Which commenced, "Cheers Andy, just shaking my head and laughing at the present, if it's Joe it would be good, he knows what our capabilities are and that we can deliver for them"?---Yes.

Do you remember receiving that email?---Um, I was pointed out by the investigator, yes.

Right. When you received it what did you understand was the meaning of the first sentence?

MR BUCHEN: I object. That email is in response to the earlier email on 11 October.

10 THE COMMISSIONER: Well I know but he's being, he's being asked what he understood was meant by the first sentence in the context of that communication.

MR BUCHEN: Yes, but that context has not been properly put to the witness and the context is what follows in the earlier email. And that's - - -

THE COMMISSIONER: Well I thought the, I thought the earlier email was put. Anyway we'll - - -

20 MR POLIN: It was, it was put, that was the bit about Joe being the convenor.

THE COMMISSIONER: Joe being the convenor.

MR POLIN: And I, we'll put - - -

MR BUCHEN: No. In my respectful submission the material context that elicited that response has not been put to the witness which is the very next point in the email about the procurement process being buggered up.

30 THE COMMISSIONER: Well perhaps the whole of the email could be put to the witness.

MR BUCHEN: Yes.

MR POLIN: That's, you can see that's page 1121 on the screen, that's the email that we're talking about. That's the email that you sent and that went to Mr Courtman and Mr Metzmacher?---Yes.

40 Okay. But if we get the next email which I thought I'd said to you clearly is in response to your email, is that correct?---Yes.

"Cheers Andy", and I was asking you then about the first sentence, "Just shaking my head and laughing at the present"?---Yes.

What did you understand that to mean?---At the time I didn't see, I didn't, I didn't take note of it.

Right. It's an unusual thing to start the email off with isn't it?---Yes.

After that the email, "Joe would be good because he knows our capabilities and that we'll deliver for him" is essentially what - - -?---Yes.

- - - you had previously said your reason for suggesting that he would be good if he was the convenor.

10 Yes. But - - -?---I think he was referring to my comment about the procurement being bugged up.

And I tender that email.

THE COMMISSIONER: That is page 1120 and 1121 Exhibit 12.

**#EXHIBIT 12 - EMAIL FROM ANTHONY COURTMAN TO ANDREW ROGERS AND STEVEN METZMACHER "RE: RAILCORP" DATED 11 OCTOBER 2012**

20

MR POLIN: And then on 9 November 2012 Third Horizon was awarded the contract weren't they?---Um, after interview, yes.

And the email informing Third Horizon that the contract had been awarded had come from Ragini Jalihal?---Yes.

30 And do you know who that is?---She's the procurement person, I met her at the interview.

And she's the procurement person that works in the part of the WCCL program?---I understand so, yes.

That's the email there up on the screen 1150, the email half way down addressed to Steve and you see who the email has come from?---Yes.

I tender that email. I have one copy of this, we'll get another copy. Sorry, I was - - -

40 THE COMMISSIONER: Yes. That's page 1150 Exhibit 13.

**#EXHIBIT 13 - EMAIL FROM RAGINI JALIHAL TO STEVEN METZMACHER "129657GJ- PROGRAM MANAGER: CONFIRMATION OF ENGAGEMENT" DATED 9 NOVEMBER 2012**

MR POLIN: Now Sir, I've just taken you through some jobs that Third Horizon had with RailCorp at the end of second half of 2012, the first tender that wasn't submitted and then one that was, and was awarded. Do you recall that?---Yes.

10 You'd agree with me wouldn't you that if at a time before that work had been done, and I'm including the processes of the first tender and the process of the second tender, if it had been known that Mr Courtman had lent money to Mr Camilleri you would say wouldn't you that the fact of that loan should have been disclosed during both the processes?---I would think so.

And that's because the fact of the loan created a conflict of interest between Mr Courtman, Third Horizon, Mr Camilleri and RailCorp?---In my opinion, yes.

20 And there's no doubt that that loan in terms of both those tender processes could be perceived by others to possibly effect the way Mr Camilleri may have made any decisions he made in relation to either of those two tenders?--If he was part of those decision making processes, yes.

And indeed, the way he may have interacted with others at RailCorp who were part of the decision making process, is that correct?---I would think so.

Now, you've said that you're aware of the RailCorp Code of Conduct. How big is Third Horizon as a company?---Um, I think we've got about 80 or 90 consultants.

30 Does Third Horizon have its own Code of Conduct?---Yes.

Does it deal with conflicts of interest in dealing with contractors?---I can't remember the specific clauses but it's, the inference is in there.

Did you read the - - -?---I think the inference is in there.

Right?---I haven't read it for a long time.

40 And was that in place as at 2012, the Code of Conduct, or a, one in similar terms?---I think so, yes.

Is it a document that's been in place for a long time or does it get renewed and updated and approved?---I'm not sure. I would think it's in place. I'm not sure, sorry.

Do you know whether anything was done in relation to the company's Code of Conduct and dealing with conflicts of interest after this particular situation?---So when I - - -

The situation came to light?---So when I, when I raised the issue with my director on the Monday he informed me that Anthony was in a similar position. And then at the end of the week Anthony was terminated.

Other than that has anything been done in terms of bringing conflicts of interest to the attention of employees and the like?---Yes it has. Neville has sent out emails reminding everyone about the Code of Conduct and conflict of interest, yes.

10 Yes, I have no further questions, Commissioner, at this stage.

THE COMMISSIONER: Thank you. Mr Chee?

MR CHEE: Mr Rogers, when Mr Camilleri approached you for the loan I think you said that he wanted to get you to the ATM?---That's correct.

Is that right? I think you said also that he asked for 10,000?---Yes.

20 Is there a daily withdrawal limit on your accounts?---I wouldn't know. I don't draw \$10,000, I'm sorry. I don't know.

Do you think it's - - -?---I don't see the relevance, I'm sorry.

Do you think it's possible to withdraw 10,000 from an ATM?---I think my limit is 5,000.

And was that - - -?---He did want to see my balance as part of that process.

30 I'll just, I'll come to that. But at the time that he asked you for the money did you think that your maximum withdrawal limit was 5,000?---I'm sorry, I wouldn't be in that state of mind to be thinking about my finances at that point.

Okay. I think you've also said that he wanted to see your investments, or the amount of your investments?---He asked about my investments and whether I had investments, because I said to him my money was tied up in investments.

40 Right?---And he was exploring that, yes.

And would that information be available to you via an ATM?---No.

So to suggest that he, that he wanted to get you to an ATM appears quite inconsistent then?---It's completely consistent. He wanted to know my balances of my cash. He asked me whether I had a credit card, he asked me if I had a cash card, he asked me about other cards, he asked me if I could raise cash.



I think you've also said in your evidence that at the, that Mr Camilleri didn't seem to be thinking clearly. What was the basis for that?---Because I'd said no to him.

Did he, did it appear that he was experiencing some sort of external pressure?---I think he was a man under pressure, yes.

Thank you, nothing further.

10 THE COMMISSIONER: Mr Silver?

MR SILVER: Mr Rogers, would you be aware of the draft for RailCorp, would you be aware of the actual terms of agreement between Third Horizon and RailCorp?---Which specifically ones are you referring to?

On any contract that you might be working on, would you look at those, the terms of the contract?---Yes.

20 Can I just hand you, I'm afraid I've only got one document at the moment. This is a Prequalification Scheme Performance and Management Services standard form of agreement?---Yes.

I just want to ask you a question about it. It says, are you familiar with that document?---I haven't read it for a time but I am familiar, yes.

Yes?---And it's a Prequalification Scheme, yes.

30 And it says at the bottom of the front page that it's a standard form of a agreement?---Yes.

Is that a RailCorp standard form of agreement I understand?---Yes.

And could you turn to paragraph 3 of the agreement, or clause 3?---Sorry, which page you're on?

It's clause 3 of the agreement. It's right near the front?---Engagement? Ah, conflict of interest, yeah.

40 Conflict of interest. And there's 3.1 and 3.2?---Yes.

And that deals with conflict of interest. Have you ever read that before?---I can't recall reading that, no.

And does it, and you considered yourself bound, and you considered your company bound by conflict of interest provisions did you not?---Yes.

And did you understand that all of the RailCorp agreements have a provision like this within them?---Yes.

Thank you. I could just read that conflict of interest clause into the record rather than tender the document that would be appropriate. "Conflict of Interest. The service provider undertakes that at the date of this agreement no conflict of interest exists or is likely to arise in the performance of the services. The service provider must notify the principal in writing immediately up becoming aware of the existence or possibility of a conflict of interest." And I think, I think that's sufficient for our purposes. Thank you. If you can give that document back, please.

THE COMMISSIONER: Mr O'Brien, do you wish to cross examine?

MR O'BRIEN: Yes, if we're done here. Mr Rogers, you described - - -?--- Sorry, who do you represent? Sorry.

I represent Mr Courtman?---Thank you.

20 Sorry about that. Mr Rogers, you described Mr Courtman as a director?--- Yes.

In mid 2012. And you said that you're an associate director?---Yes.

You were at that time in any event?---Sorry, were - - -

You were at that time an associate director - - -?---Yes.

30 I think you're still an associate director?---Yes.

Now, there are various tasks, various - - -?---I'm sorry, I'm struggling to hear you.

There are various types and different ways in which directors are remunerated - - -?---Yes.

- - - at Third Horizon. Is that - - -?---I don't the remuneration schemes, I'm sorry.

40 All right. Okay. So are you aware that there are equity directors and salaried directors?---I understand so, yes.

Do you know into which category Mr Courtman fell?---I would assume he's a salaried partner or a salaried director.

At that time?---I understand so.

You gave evidence earlier about the, the benchmarking tender?---Yes.

And this is the tender that you didn't actually make?---Yes.

The tender was no tender?---No, we didn't submit.

Correct. That it was the case that Third Horizon had been invited to tender, is that - - -?---Yes.

10 And that was in about, somewhere in late August or October of 2012?---I think it was 30 August.

Thank you. And there was a written invitation to tender - - -?---Yes.

- - - that came to Third Horizon, is that right?---Yes.

And that came from the RailCorp Procurement Department?---Yes.

And that you said was addressed to Anthony Courtman?---As I recall, yes.

20 Okay. Now after that invitation to tender was there or is there ordinarily an invitation to attend a briefing?---Yes.

And do you know if there was such an invitation?---Um, I don't know if its ordinary but you do have briefings, I can't remember on the benchmarking if there was a briefing, I think there may have been, yes.

Do you know if Mr Courtman attended a briefing?---I can't recall, he may have yes, if there was one, yes.

30 That would have been early October?---Um, I think it would have been in September.

In any event you didn't attend a briefing?---Not for the benchmarking, no. In fact I think there was one now that I recall, yes.

40 Thanks. Now there, there was a discussion perhaps a week after the tender invitation to, as to whether there would be a proposal put or the tender would be, would be, would be entertained by Third Horizon, is that right? ---As a management we collate our thoughts and see if it's worthwhile pursuing, yes.

And it was decided it wouldn't be pursued?---Correct.

Now there was some evidence given in relation to a conflict of interest declaration. Are you suggesting, and I don't think it was clear, are you suggesting that there was a conflict of interest declaration made in that process of determining whether or not you would or would not tender? ---I don't understand your question.

Was there a conflict of interest declaration given to RailCorp?---From ourselves?

From Third Horizon prior to the decision being made not to tender for the benchmarking contract?---I don't know. I'm sorry, I don't know.

10 Well, is it ordinary practice in your experience to go that effort to complete a conflict of interest declaration for a tender proposal which in fact is not going to be tendered for at all?---I don't that would normally be done, no.

In other words if you don't tender you don't submit a conflict of interest declaration?---As I would see it, yes.

So it's unlikely that there would have been a conflict of interest declaration made for the benchmarking tender?---Probably not, no.

Because the tender wasn't entered into?---It wasn't submitted.

20 It wasn't submitted. I want to ask - - -?---For that specific tender.

Thanks. Well, I want to ask you about the next tender because that's the project management support for reform tender?---Yes.

And that's the tender that you were successful in?---Yes.

That Third Horizon was successful in tendering for?---Yes.

And that you ended up working at RailCorp in provision of services?---Yes.

30 Now am I right in saying that the principal people involved from Third Horizon in the compilation of that tender application and the provision of those services were yourself, Steve Metzmacher?---Yes.

That those two, that it was the two of you principally involved in that?---The three of us.

Who was the third person?---Anthony.

40 Right. And was his role in it if you can recall?---He, he, he was, he was helping put together, he was helping compile the information, discussing the, the thoughts and putting it together with myself.

Can I suggest to you in relation to that tender he provided a case study?---He may have, yes, he, he probably would have, yes.

And he may have updated his CV?---I think so, yes, he would have.

THE COMMISSIONER: Mr O'Brien, sorry, I just want to clarify, are you putting to this witness that they were the only two things that Mr Courtman did as part of this tender process?

MR O'BRIEN: Yes.

THE COMMISSIONER: Well, you'd better make it clear because that wasn't the sense of the question.

10 What's being put to you, Mr Rogers, is that they were the only two things that Mr Courtman did by way of contributing to the tender process, namely providing a case study and updating his CV. Does that accord with your recollection?---No, because we discussed the proposal as well.

MR O'BRIEN: In terms of the actual generation of the tender document - - -?---Yes.

20 - - - who was responsible for that?---It was a, it was a, the way it's done is it workshopped amongst people so I put together the bones, Anthony would have a look at it, he would look at the financial elements, we would discuss that as part of the team et cetera, so you know, it's jointly done as a team.

Now you said in your evidence that there was, you were successfully awarded the tender on 9 October, 2012?---I can't - if that's the date.

THE COMMISSIONER: It was November, 9 November.

MR O'BRIEN: Thanks, Commissioner. Sorry.

30 And that was after an interview process?---Correct.

Was Joe Camilleri part of the interview process?---No.

Was about Chris Rowe?---Yes.

And do you know the relationship in, within RailCorp between Chris Rowe and Joe Camilleri?---Yes.

40 Can you explain that to us please?---I understand that Chris Rowe reports to Dave Spiteri who's his direct line manager but Chris was part of the reform project and he was reporting to Joe as part of the project.

Thank you. So notwithstanding the, the contents of the email that's been tendered now in relation to, in relation to the possibility of Joe being on the tender committee, it transpired that that didn't happen?---That's right, yes.

I've got nothing further thanks, Commissioner.

THE COMMISSIONER: Thank you. Mr Buchen?

MR BUCHEN: You worked at RailCorp from 2009 to 2011, correct?  
---Correct.

And is it the case that you worked in the rolling stock reform section of RailCorp?---Correct.

Who was in charged of that programme?---Joe.

10

Did - was Chris Rowe also involved in that process?---Yes.

Was Chris Rowe also working underneath Joe - - -?---Yes.

- - - in that particular reform process - - -?---Yes.

- - - that you were involved in for a two and a half year period?---Yes.

20

Did Chris come to know about the quality of your work during that time?  
---Yes.

Did Joe come to know, Mr Camilleri I should say, about the quality of your work during that period of time?---Yes.

In fact is it the case that that particular project that you were working on was nominated as a finalist for some sort of award within RailCorp?---Yes.

30

When I say award I don't mean an award of a contract I mean an award for good work?---Yeah, best team award for RailCorp, yes.

Right. There's been evidence about two projects, one is referred to as the benchmarking project and the evidence has established that that, that Third Horizon withdrew its tender for that particular project?---Yes.

And it was ultimately awarded to a competitor of Third Horizon by the name of Indec?---Yes.

That's right isn't it?---Yes.

40

And there is a subsequent project which was subsequently awarded to Third Horizon in that particular division of RailCorp, right?---Yes.

By which I mean the maintenance reform section of RailCorp?---Yes.

But RailCorp – I withdraw that. Third Horizon already had a profile at RailCorp because it had done work in other sections of RailCorp, correct?  
---Yes, we had a half profile.

All right. For example it's the case isn't it that Third Horizon had worked on a very large project involving the New South Wales Transport Department which concerned corporate services right across the Transport cluster?

---Yes.

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

10 Did you work on the project at all?---I was the program manager for the office, yes.

And that project inevitably brought you into contact with RailCorp which was one of the key transport providers?---Yes, we worked a lot with RailCorp.

All right. And there were other projects that for example in business services and train scheduling that Third Horizon had performed for RailCorp directly?---Correct.

20 I want to ask you some questions about the process the application or selection process concerning the program that was eventually awarded to Third Horizon in the latter part of 2012. And just tell us again what was the name of that project?---The one that we won?

Yes?---It was the program manager role in asset maintenance?

Thank you. Now after being invited to tender for that work you received a request for proposal. Is that right?---Yes.

30 Which is in management speak known as an RFP?---Yes.

And is that the ordinary course of affairs - - -?---Yes.

- - - that, that someone who has or an entity that has suitable skills and experience might be provided with an RFP a request for proposal - - -?  
---Yes.

- - - to tender for a particular piece of work?---Yes.

40 Did that document set out the criteria - - -?---Yes.

- - - for the project?---Yes.

You're given an opportunity like everyone else who tenders to put in a written proposal?---Yes.

Which in effect seeks to pursue RailCorp that you can, you should be awarded the contract?---It establishes our credibility and skills, yes.

All right. Now you worked on that process didn't you?---Yes.

And it's the case isn't it that a very detailed submission in the order of 47 typed pages was provided to RailCorp as part of that process?---Yes.

That proposal actually provided RailCorp with a number of options about the way the service could be structured - - -?---Correct.

10 - - - and delivered to RailCorp?---Yes.

And one of those options, in fact the key option concerned you personally - - -?---Yes.

- - - performing the nub of the work?---Yes.

The substance of the project?---Yes.

20 At that time can I suggest that you were highly qualified as a management consultant?---Yes.

You had multiple masters degrees in relevant areas?---Yes.

You had over 15 years experience - - -?---Yes.

- - - as a consultant and you had worked on some significant projects that were very relevant to the type of project that you're pitching for?---Yes.

30 And in particular you'd spent those two and a half years in rolling stock reform?---Yes.

Right. And you had a senior position in project management?---Yes.

And subsequent to that you had worked in that New South Wales Department of Transport program?---Yes.

Which was a multi disciplinary organisational change and improvement initiative in the public sector transport environment?---Yes, across the cluster.

40 Did you, were you of the view that that legitimately qualified you to perform the type of project that pitching for?---Yes.

Now in your detailed written submission did you then after outlining the various other options available did you then go into detail about the type of service that you would provide?---Yes, and we gave examples in case that is - - -

And gave examples of the sort of work that you could perform?---Yes.



And outlined the prospective methodology of the project?---Yes.

And some of the ideas that you had that you could bring to the reform process at RailCorp?---Yes.

After submitting that detailed written proposal did you then have to participate in an interview process?---Yes.

10 All right. Who was, how many interviewers were there?---There were four. It was Chris Rowe, Reg McGuinness, Steve Edwards and the procurement person.

Okay. And when you say procurement person did you understand that person to come from the procurement department or procurement division of RailCorp?---As an independent, yes.

As an independent?---Yes.

20 Did you understand that that was one of the probity measures that RailCorp had in place for the procurement process?---Yes, it was explained to me at the beginning.

And it was after, sorry. Mr Camilleri was not an interviewer?---No.

He was not one of those four people?---No.

30 And did that lead you to think, have any thoughts about whether Mr Camilleri would be involved in the selection process?---No.

What do you mean by that answer no?---I saw it as the adjudication panel would be as part of that, they would assess the tender, the documentation.

Those four people?---Those four people.

Okay. Not Mr Camilleri?---No, not at that, no.

40 All right. Now you were shown a copy of the contract that was ultimately signed?---Yes.

I think the document is called "A Standard Form of Agreement"?---Yes.

And you pointed out in your evidence that the words at the top of that document were "pre-qualification scheme"?---Yes.

That's right isn't it?---Yeah.

You read those words on the front - - -?---Yes.

- - - page of the contract?---Yes.

Can I show you a three page extract from the contract that you were shown, please. Do you see first of all if you turn over the second page which has the date of the contract that it's 9 November 2012?---Yes.

And do you see the last page of the document contains a schedule - - -?  
---Yeah.

10

- - - which sets out the perimeters of that project?---Yes.

And that has the date and the value of the project and the name of the program - - -?---Yes.

- - - at item 4. So this is the contract that relates to the tender that you were successful on?---Yes.

20

And at the top of that document the front page it says, "Pre-qualification Scheme Performance and Management Services"?---Yes.

I tender that extract.

MR POLIN: Commissioner, I haven't seen it but I'm not sure what the point of tendering an extract of a contract in relation to a matter that I don't think is actually an issue.

THE COMMISSIONER: Well I didn't think it was either but - - -

30

MR SILVER: Sorry to interrupt. Could I lodge a provisional objection on the basis of confidentiality? I haven't seen it but it might be a confidential document.

THE COMMISSIONER: Well it does concern me a bit, Mr Buchen, that there are documents floating around that Counsel haven't seen.

MR BUCHEN: Yes.

40

THE COMMISSIONER: I mean I don't know if you were here when I referred to the fact that the standard directions apply and within those standard direction there is, there is a direction that relates to the provision of  
- - -

MR BUCHEN: Documents to Counsel Assisting.

THE COMMISSIONER: - - - documents to Counsel Assisting and, and to others so that we don't waste time arguing about these matters but can I just

suggest that we, that you finish those questions with Mr Rogers and then we deal with that issue?

MR POLIN: The other thing is I think Third Horizon may not be aware that the documents go up on the website and become public and I'm not sure whether they would want it to be, but anyway.

THE COMMISSIONER: Well let's – can we go further with Mr Rogers or are you nearly finished?

10

MR BUCHEN: Well can I say I will withdraw the tender for the moment.

THE COMMISSIONER: All right. Do you want - - -

MR BUCHEN: I'll ask some questions about what's on the face of the contract.

THE COMMISSIONER: All right, thank you.

20 MR BUCHEN: If I can just ask you now briefly about an email that you were shown which is Exhibit 12. And that was the email exchange, you've got that in front of you, of 11 October 2012. Your email is the first in time and there's those three dot points there that you've had a chance to read and then there was Mr Courtman's following email subsequent email. Now in your evidence-in-chief when you're being examined by Counsel Assisting you gave this answer and this was in respect of that first part of Mr Courtman's response, "Just shaking my head and laughing at the present", the answer you gave was, "I think he was referring to the comment about procurement being buggered up." What do you mean buggered up?---Yes.

30

What do you mean by that answer?---Um, procurement were, they had been giving us wrong email addresses and this was just another set of things coming through as a change.

All right?---We got, we got wrong email addresses. They got email address incorrect, et cetera.

Can I put this to you?---Yep.

40 Was it the case that RailCorp didn't handle the procurement process particularly well?---We did have misinformation, yeah. We got wrong email addresses, yes.

And you felt by virtue of what you wrote in the email that they had buggered up the process?---Yep.

MR SILVER: I object to that.

THE COMMISSIONER: Well, that wasn't his expression. That was Mr, that was a remark attributed to someone else but relayed by this witness.

MR BUCHAN: Sorry. Sorry. I withdraw that question. You had been told by someone that from within RailCorp that the procurement process had been bugged up?---Correct.

Chris Rowe works for RailCorp doesn't he?---Correct.

- 10 And it's, is it your understanding then, I'm just following on from the answers you've just given, that, and this is of course just your understanding of what Mr Courtman must have meant, that you took the 'just shaking my head and laughing' to mean laughing about bugging up the procurement process?---The changes, yes.

You were asked questions about whether Mr Courtman was actually a director of Third Horizon at certain times. Do you know precisely when it was that Mr Courtman was a director?---No um - - -

- 20 If I put it to you that the incident involving the loan that we've heard about between Mr Courtman and Mr Camilleri occurred before he was formally appointed as a director of Third Horizon would you be in a position to contradict that?---I don't know, I'm sorry.

You just don't know?---No.

In any event you had no knowledge at all of the loan between Mr Courtman and Mr Camilleri - - -?---No.

- 30 - - - that we've heard about in the evidence?---No.

Until much later which is when you went to, when you spoke to your superiors at Third Horizon about an incident that you were involved?---18 Feb.

18 February?---Yes.

That's when you found out about it?---Yes.

- 40 You had no personal contact, no social contact with Mr Camilleri?---Nothing.

The contract that you were awarded was that contract ultimately performed?---Yes.

Did you get any positive feedback about the manner in which Third Horizon performed the contract?---Yes, a number of times.

All right. Was the contract extended?---Yes it was.

All right, so that further work could be done in that reform area?---Yes.  
They asked us to extend.

At the time that, at the time that you were performing that contract and at later times as Third Horizon performed other contracts for RailCorp - - -?---  
Yes.

10 - - - in areas outside of the maintenance reform area?---That's correct, yep.

Okay. A number of contracts?---There may have been about four or five and we're currently working on a couple as well now.

Right. Yes?---Independent of maintenance.

The last matter I want to take you to is what happened after Mr Camilleri approached you for a loan?---Yes.

20 You've given evidence, or it is established in the evidence that that occurred on 14 February, is that right?---Yes.

You told Mr Rowe on that day about what had happened?---Yes.

Mr Rowe was an employee of RailCorp?---Yes.

Did you consider that you were informing RailCorp directly of what Mr Camilleri had done?---He was my direct manager, yes.

30 He was your direct manager and a representative of RailCorp?---Yes.

On the Monday you informed your superiors at Third Horizon, correct?---  
Yes.

And you're aware aren't you that after you notified your superiors Third Horizon formally notified both RailCorp - - -?---Yes.

- - - and ICAC?---Yes.

40 And also other government departments?---I understand so, yes.

Such as the New South Wales Department of Transport?---Yes.

About the incidents?---Yes.

The - - -?---As I understand it before the disclosure, yes.

And that disclosure to RailCorp and ICAC occurred on 18 February. Do you know that?---No I didn't know that.

Which was the day that you went and - - -?---Yes.

- - - raised the matter with your superiors?---Yes. Yes.

You answered a question which was asked by one of the other Counsel about Neville sending out emails after this incident - - -?---Yes.

10

- - - to employees of Third Horizon about conflict of interest policies and procedures?---Reminding everyone, yes.

Is that right?---Yes.

Neville is Mr Neville Bagot?---Yeah, he's my MD.

He is your managing director?---Yes.

20 So he's a senior figure at Third Horizon?---Yes.

And that was a response within Third Horizon to ensure that conflict of interest policies were firmly adhered to?---And it's touched on every month at the weekly, at the monthly meetings, yes.

Okay. Just one other matter, just picking up from an answer that you gave. You've been asked a series of questions about your level of contact with Mr Camilleri?---Yes.

30 Your level of personal contact with him. And you gave an answer at one point that you had minimal contact other than through project exposure?---Yes.

Well what did you mean by that last part of the answer?---So Joe, because, specifically on the project management role or, in what context, sorry? So it was it was in the context of Joe giving instructions about the project specifically and direction. It was within his area and he was leader of the reforms so he gave direction.

40 Did that answer also encompass Joe becoming aware of the work that you were performing there?---Yes.

Under his directorship?---Yes. Yep. Yes. Specifically my role within his rolling stock reform. It was seen as a success within RailCorp and he took that, yes.

I take that during the process you did have frequent contact with Mr Chris Rowe?---Yes.

About project matters?---Daily. Daily. Yes.

Sorry?---Daily.

Daily?---Yes.

Updates?---Yes.

10 About the status of your work?---Yes, all the time.

And who did Chris Rowe report to?---To Joe.

Thank you.

THE COMMISSIONER: Anything arising, Mr Polin.

20 MR POLIN: There's just one matter. There may have been some confusion in relation to some questions I asked about Mr Rowe being required to submit a conflict of interest declaration notwithstanding that Third Horizon didn't submit a tender on the benchmarking, and there was some questions to the effect that well, that wouldn't have occurred. If I could tender, it's an email dated 19 September, 2012. It's page 1,035, to Chris Rowe about that. And that's going up on the screen. I thought I'd do that just in case anyone wanted to ask questions. I'm not sure it's necessarily any particular issue but it was suggested that - - -

THE COMMISSIONER: Yes.

30 MR POLIN: - - - he wouldn't do that.

THE COMMISSIONER: No, I understand. All right, this is page 1,035 which now becomes exhibit 14.

**#EXHIBIT 14 – EMAIL FROM CHRIS ROWE TO LARA BRUMMELL “RE: WS131870 BENCHMARKING CONSULTANT” DATED 20 SEPTEMBER 2012**

40 THE COMMISSIONER: Yes, thank you, Mr Rogers. You may step down. You're excused?---Thank you.

**THE WITNESS STOOD DOWN**

**[11.45AM]**

MR BUCHAN: Commissioner, perhaps for the sake of completeness I should mark for identification that document that was shown to the witness.

THE COMMISSIONER: Yes. Yes. That document which is an extract from the contract, isn't it Mr Buchan?

MR BUCHAN: That's correct.

THE COMMISSIONER: MFI 1.

MR BUCHAN: Thank you.

10 THE COMMISSIONER: Is Mr Harris here today? No? Sorry, Mr Buchan, it will be MFI 2.

**#MFI 2 - EXTRACT OF STANDARD FORM OF AGREEMENT  
BETWEEN RAILCORP AND THIRD HORIZON CONSULTING  
DATED 9 NOVEMBER 2012**

20 THE COMMISSIONER: I think I indicated yesterday that a document that Mr Harris, who's not here, showed to a witness should be MFI 1.

MR BUCHAN: Thank you.

THE COMMISSIONER: Yes, Mr Polin.

MR POLIN: I call Anthony Courtman.

30 THE COMMISSIONER: Mr Courtman, have you been given some information about the availability of an order under section 38 of the Act?

MR COURTMAN: Yes.

THE COMMISSIONER: You understand that if I make the order it protects you against the use of your answers in any criminal prosecution against you but does not protect you in the event that you give false evidence to the Commission, you understand that?

MR COURTMAN: Yes, your Honour.

40 THE COMMISSIONER: Right. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.



**PURSUANT TO SECTION 38 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT  
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL  
DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS  
DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS  
PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN  
GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY  
THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION  
IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR  
DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Do you wish to be sworn or affirmed,  
Mr Courtman?

MR COURTMAN: Affirm I believe.

THE COMMISSIONER: Affirm. Could the witness be affirmed please.

MR POLIN: Is your name Anthony John Courtman?---That's correct.

And Mr Courtman back in 2012 you worked for a company known as Third Horizon?---That's correct.

10 What was your position at Third Horizon?---Ah, I started off as an associate director and then became a director later on.

When did you commence your employment with Third Horizon?---I believe it was around about February 2011.

And I think you no longer work with Third Horizon?---That's correct.

When did you finish work with Third Horizon?---I finished in February, 2013.

20 I think you said you started as an associate director and you ended up as a director?---Yeah.

When did the change occur?---Ah, the exact date I'm unsure of but I think it was formally put in place in September some time I think of 2012 I think.

Prior to working for Third Horizon is it the case that you'd worked for RailCorp?---That is the case.

30 How long had you worked for RailCorp for?---Ah, I worked directly for RailCorp for around about, I was engaged by RailCorp for nearly, for nearly, nearly three years I think it was from about February or March 2008 through to early, through to the end of 2010 I think it was.

Was that essentially the period immediately before you commenced work at Third Horizon?---Ah, I spent a secondment onto Transport for New South Wales for about four months from RailCorp.

40 Yeah?---And I think that finished, I finished that up in around about November or December 2010 and I didn't start until, with Third Horizon till I think it was around about February or March 2011, something along those lines.

When you started with RailCorp back in 2008 was that when you first became aware of Mr Camilleri?---It was relatively soon in that, in that piece, yes.

Had you known him prior to working at RailCorp?---No.

In terms of your work at RailCorp for those three years where were you in terms of Mr Camilleri? Were you in his section?---In his section, I had um, I had a number of roles at RailCorp and when I was initially engaged I was run to, I was engaged to run their customer service improvement programme, that had some involvement with Joe because Joe had a number of the initiatives that he was managing in that area.

10 Yeah?---I then was subsequently asked by the CEO to go and give Joe a hand on maintenance reform, about, I think it was around 12, 12 to 18 months into my engagement so I was essentially for a period of time doing two roles which meant that I spent quite a bit of time with Joe and the team at, on the maintenance reform as well.

Did you socialise with Mr Camilleri?---No.

Would you have regarded him as a friend outside work?---I would, I would regard him as a, as a mate, he was um, very supportive of me um, ah, and provided some guidance on a number of occasions.

20 Is that guidance provided in terms of your work?---Um, work and also um, career.

Right?---That sort of, yeah.

But other than work or career did you interact with Mr Camilleri at all on social, sporting bases?---No, no.

30 So the only guidance he's given you is in a work sense?---Didn't always relate to, to, to RailCorp, it was sometimes around where I was going in my career and some discussions around that and taking the secondment at Transport for New South Wales and other things like that, we certainly discussed families.

Would he be someone that you'd go and have a beer with after work or on a Friday night?---I would have had a beer with Joe after work on a Friday night but he, he was not the sort of person that typically went for a beer.

40 Sorry, are you saying by that you would have gone and had a beer with him - - -?---I would have been happy to have a beer with Joe.

But did you actually?---Look, there may have been one or two occasions where he's - I can, I can think on one of the training development things for some of the people we had a social session which I think Joe and I were both at but other than that I can't recall any specific examples.

So in 2011 you effectively went from the public sector into the private sector?---Yes.

And in your role at Third Horizon I take it that you were keen to obtain work from work?---As a number of one of, one of potential customers, yes.

You were keen to obtain work from all of your potential customers?  
---Yes, that's correct.

One of your potential customers just happened to be RailCorp?---Yes, that's correct.

10 And that's a company that you had a, a reasonable understanding of the workings of prior to starting at Third Horizon?---A reasonable understanding.

Were you aware when you started at Third Horizon of the way in which you'd go about getting work from RailCorp for Third Horizon?---Certainly learnt from, from some of the other senior people in the organisation, I was encouraged to set up meetings and just make sure we were present and available and, and that where there was opportunities we were able to put our credentials forward for opportunities to, to bid on work.

20

Right. And I take it that you considered that your relationships with the people at RailCorp were important in terms of getting the work?---Oh, I think with any client that's a reasonable assumption, yes.

Yeah. And I take it that that's one thing when you were at Third Horizon you did, you tried to encourage good relationships with the people who worked at RailCorp who may be responsible - - -?---Yes.

- - - for giving out work?---Yes, I made, I made an effort where I, where I could to catch up with, with various people at RailCorp, that's correct.

30

And you were aware in terms of Third Horizon how they would get work through the WCCL process?---I wasn't aware that Third Horizon would use the WCCL process, typically it was on a, the, the Government panel and it's just the sort of thing I, through the, the State Government panel.

So you were aware of the WCCL process?---Broadly, yes.

40 Yeah. You thought that Third Horizon might obtain work through RailCorp by means other than the WCCL programme?---There's a range of different options in which you can either be through an open tender, it can be through an invitation, it can be through a range of means is my understanding, I don't know the specific machinations of which ones they choose to, to choose when but, yes.

So there were various ways and you were aware of what those various ways were?---Reasonably aware, yes.

Yeah. Now when did you start at Third Horizon sorry?---I believed it was around about, in either February or March, probably February 2011 I believe.

Right. During 2011 were you involved at Third Horizon with doing any work for RailCorp?---No.

10 Throughout the first half of 2012 were you involved with Third Horizon in doing any work for RailCorp?---Doing any work for RailCorp, no.

Right. Do I take it that notwithstanding that you were still keen to encourage the relationships and attempt to get work from RailCorp at that time?---Yes.

And indeed I take it that's throughout the first part of 2012 exactly what you did?---Oh, catch up people yes, that's correct.

20 And attempt to encourage relationships and attempt to get work from them? ---That's correct.

You were keen. At some point in 2012 did Mr Camilleri approach you about he obtaining a loan?---He did.

At that point in time had you been involved in doing any work for Third Horizon on behalf of RailCorp?---No, that – no, I hadn't.

Notwithstanding that you had been in contact with Mr Camilleri before the approach was made - - -?---Yes.

30 - - - for a loan?---Yes.

Is it the case that he approached you on 13 August 2012?---It was certainly around that date, I can't, I don't have the specific records, my understanding is, it was around that date.

You've provided some records I think in relation to the financial transaction did you not?---Yes.

40 Yeah, yeah. So the position is as it - - -?---It was, sorry to interrupt, sir. It was certainly around that, it was certainly around that date.

Yeah, that's all right?---Yeah, sorry.

So the position is that as at 13 August 2012 you yourself had not done any work for Third Horizon for RailCorp but you'd contacted people at RailCorp in an attempt to get some work?---We had a, we'd had a number of meetings which I attended sometimes by myself but most of the time um,

typically we were encouraged to go at least the two of us and, and most of those meetings were conducted with Steve Metzmacher and myself.

And that contact including those meetings some of them involved meeting and contacting Mr Camilleri?---That's correct.

Because I take it you're aware at that time that he was a person who was very important in terms of his position at RailCorp?---I think in, in relation to the area that he's involved in, yes, I think that's a fair assumption.

10

Yeah. I'm only asking in relation to the areas involved?---Yeah.

That was in the maintenance section, is that correct?---Yes.

Yeah. And he was a person who was influential in terms of the decisions that could be made as to where work went?---To some degree, yes.

Would you have described yourself back in August 2012 as a close friend of Mr Camilleri?---Not a close friend, no.

20

I think were there occasions where you went to see Mr Camilleri prior to August 2012?---Yes.

And there are occasions where you sent emails and corresponded by email?---Yes.

Were there ever occasions where he had come to see you before August 2012?---Not that I recall, no.

30

Is it the case that in August 2012 in terms of the loan he came to see you?---No.

No?---He called me.

Right. Whereabouts were you when he called?---I believed I was in my office, I can't remember whether I got the phone call on my landline or my mobile, probably most likely my mobile.

40

All right. And whereabouts was your office?---In North Sydney.

Right. Mr Camilleri was working in the city I take it?---He was down at, yes, towards Central Station.

Right. And what did, doing the best you can, what did he say to you?---Um, he had, he expressed, I had spoken to Joe and had a lot of contact with Joe over a period of time, there was a tone in his voice that concerned him immediately from the, from the um, from the phone call, he was in distress.

Well just stopping you there for a moment. When you say you'd spoken to Joe and had a lot of contact with him over a period of time, you were talking the period immediately leading up to August 2012?---No, I'm talking over the duration of the time that I had known Joe, I worked with him quite closely for a period of time. Um, Joe had called, called me up and um, was in a distressed state um, he said um, I need a personal favour um, you're aware of the issues that I had with my daughter and I said yeah, I have some vague recollection of that Joe and he said um, I need some money to, something along the lines of I need some, some money to, to pay for some legal fees um, and my reaction to that, sorry - - -

Before we get to your reaction is that all he said, I need some money to pay for some legal fees in relation to this daughter or was there more to it? ---In the subsequent conversation um, I asked him whether he could go - - -

We'll come to that in a moment. But at that stage did you ask him anything?---I was aware of the situation from even from the time that I had um, worked at RailCorp that Joe had been um, trying to address a legal matter for his daughter or what I believed was a legal matter for his daughter at the time, um, he'd expressed to me um, that it had something to do with her mobile phone and that she'd got in with the wrong crowd.

And is that something he expressed back in the early days back in 2008? ---Yeah, back, back in – well no, probably more towards the end of when I was um, um, towards the end of my time at RailCorp, I can't remember the exact date.

So it was a mobile phone debt?---That conversation would have been a face to face conversation the initial one. The, the conversation when he called me to ask for money was on a mobile phone I believe or on a, on a phone.

I may have confused you. The conversation you had face to face when you worked at RailCorp - - -?---Yeah.

- - - about the problem with the daughter - - -?---Yeah.

- - - was along the lines that she'd run up a bill on a mobile phone debt?

---No. It was, there'd been some issue with regard to in a mobile phone account that had been set up in her name or something along those lines and that they, as it was – it had run up a significant bill associated with it and he was fighting the legal case on her behalf with her to, to get that result.

So he was fighting a mobile phone company about the validity of a bill. Is that a fair summary of what you just said?---I don't know, I don't, yeah, something along those lines, yeah, but I don't, I think it was to do with, yeah, a mobile, with an account that had been set up or incorrectly that she was being billed for that wasn't, yeah.

THE COMMISSIONER: Sorry - - -?---Sorry.

Can I just clarify, Mr Courtman, a minute ago you said that he said that that it had something to do, sorry, something to do with a mobile phone account set up in someone else's name?---I think – sorry, to correct that. Set up in her name but not by her or something along those lines.

10 I see, all right. You mean set up by someone else in her name?---Yes, something along those lines. Sorry, sorry for that.

MR POLIN: That was your understanding of the problem back in the, at the time you worked at RailCorp?---Yeah. Yes, sorry, that's correct.

And then you received this call in August 2012?---Yes, that's correct.

And did you understand the need for funds related to that matter?---That was my understanding of it, yes.

20 And you needed some legal fees?---He needed to pay some legal fees that he said he was on, in arrears on that he needed to sort out in order to resolve the matter.

Right. And by the matter I take it you took him to mean this issue involving the mobile phone being set up in her name?---Yes, something along those lines.

I take it from your time at RailCorp you understood that he was a senior executive there?---Yes.

30 A very highly paid senior executive?---Yes.

I don't dare say a person who is paid a fair bit more than you?---Yes.

40 Did it surprise you then that this person a highly paid executive would be ringing you to assist him to pay legal fees in relation to a case involving - - - ?---I was, I was surprised. In – Joe had um, disclosed to me 12 months before hand or some period that he'd cashed in some of his long service leave I think he described or annual leave describe to, to pay the bill so I knew there was a legal matter ongoing in relation to it, I knew that legal fees weren't cheap so in that extent I could, I think but I was, was very surprised when he called me and asked for, for the loan.

A legal case involving a mobile phone bill you wouldn't have thought would be that expensive would you?---I, I, I at the time I didn't think about it in that context, I thought that it was a, it seemed to be a reasonably credible story, something that had longevity to it that, that made me believe it was, it was true and factual.



Were you aware that he was earning in excess of \$300,000 per year?---I didn't know exactly how much Joe was earning, I anticipated - - -

You would have thought --- - - - it was around at least the \$250,000 mark.

Right. And he'd told you that he cashed in long service leave - - -?---Ah  
hmm.

10 - - - in relation to this particular legal matter?---Yes.

To pay fees for this legal matter?---Yes.

Didn't that ring some alarm bells with you something wasn't quite right?  
---It should have, it didn't in the context that um, he was, was doing it in the context of a long term scenario, it wasn't something that had been sprung on me that I wasn't aware of in that context um and from that perspective I was I suppose less suspicious of any, any story of, that it was, that it wasn't anything other than the truth.

20

Did you think that he might have had some financial issue himself that he wasn't telling you about?---No, at the time I believed Joe to be a complete, a decent and honourable, an honest person.

Yep. How much money did he ask you for?---He asked me for \$10,000.

And what was your answer to him?---I said to him that um, I think in part of that conversation I asked him if he could it, get, get money from elsewhere. He'd said that he'd, he had borrowed some money from others um, and that  
30 he needed it quickly and, and in a hurry. Um, my response to him was, "Joe, I just can't afford to. I can't give you \$10,000. It's too much money for a personal loan for me to give you that."

Right. So did the call then end?---No. Um, he said, "Can you help me out at all," and I said, "Look, um, I can probably lend you two or three to help you out but that would be as much as I'd be comfortable to help you out with."

Right. And so what happened?---Um, we agreed to um, to meet at  
40 Wynyard. I think I was going into the city on, around that time and I said, "Look, come and meet me." I agreed - - -

Oh, just stop a minute?---Sorry.

Is that the case or did you make a special trip into the city to meet him?---I, I don't believe I made a special trip into the city to meet him, no. I think it was on the back of I was going into town anyway.

He told you didn't he he needed the money straightaway?---Yes.

But it just happened that when he rang you you happened to be going into the city?---I, I'm unsure of the exact timing of this, and I, but I think I was, I think I agreed to heading there and meet at, it was around midday or some time around about then I think, from recollection. I remember the sun being out and quite bright.

10 And you said that you'd indicated to him something along the lines of, "Joe, can't you get the money from other people"?---Yes.

And he said that he had borrowed money from other people?---He said he'd borrowed money from family and friends.

From family and friends?---Yep.

20 I take it that at this point you were feeling quite uncomfortable?---It was a very unusual circumstance. Um, there was an element of discomfort about it but um, I went back to the principle of here was someone in need. I genuinely thought someone was in need and needed a help, needed a hand. Um, and there was a distress in Joe's voice that um, convinced me above all other reason that it was the right thing to do to help him out.

He was in fact a person that you'd been speaking to and seeing in the months leading up to this - - -?---Yes.

- - - specifically for the purposes of attempting to get some work for Third Horizon?---Yes.

30 Didn't it give you some concerns that the person that you had been attempting to get work from had approached you out of the blue seeking a loan?---Um, at the time no, I wasn't particularly concerned about it from that perspective. I wasn't thinking about it in that context. I was thinking about it in the context of someone that appeared very desperate and needed, needed support. In hindsight um, when I look, I did have some concerns about it but I believed Joe to be um, honest and I didn't anticipate it was an issue given it was a personal loan.

40 What were the concerns that you had about it at this, at the time?---Oh, simply that it might create a conflict of interest, but given it was a personal loan I didn't, I didn't see it as such.

Why were you concerned at the time that it might create a conflict of interest?---Um, on the basis that um, if Joe was making a decision about the selection of us for something it would be something that could create an issue.

Right. Well, there's no doubt is there that in providing the loan to Mr Camilleri you were doing him a favour?---Um, yes I believe so.

Yeah. You were giving him a benefit?---Um, at the time I didn't look at it that way but I think in hindsight I certainly believe that um, given what I've heard, the enormity of, the reality of that certainly didn't come through at the time. I wasn't thinking about it in the context.

10 Do you have a problem with the word benefit?---Um, having sat and listened to the discussion around it um, I think I understand now the interpretation of it.

Well there's, I'm not suggesting there's any particular interpretation on the word benefit other than it's ordinary English meaning?---Um, I didn't, I didn't perceive the loan at the time to be a benefit to Joe I suppose, in that context but that doesn't mean that we're now, I have a - - -

20 In it's ordinary English sense how could it have not been anything other than a benefit? He comes to you saying, "Would you please quickly lend me some money," and you quickly lend him an amount of money interest free. How can that be anything other than giving him a benefit?---Um - - -

Just using the ordinary understanding of the word benefit?---It was, it was a short term loan.

Yeah?---Um, I didn't look at it in that context.

30 I understand that but I'm asking you now how could it have been anything other than a benefit at that time?---Um, it probably was a benefit at that time.

Well, why do you say probably? Why wasn't it?---Um - - -

It was wasn't it?---I suppose so. It's certainly not something that I considered a benefit to Joe at the time.

40 What did you consider it if not a benefit? It was to his detriment that he was getting the money?---In my view he wasn't using it for himself. He was using it to help his daughter out and I didn't see how that was actually a benefit to Joe.

But it was a benefit he was getting and maybe passing on to benefit his daughter?---Ah, it could be interpreted that way I suppose, yes.

Your concern is that the word benefit is used in Codes of Conduct and the like?---Um, I hadn't perceived it in that way and I certainly, at the time I didn't look at it that way but - - -

But is that what, is that what is giving you the difficulty answering the questions now?---I don't think I've had difficulty answering the question.

Well you seem to take quite a while to ultimately agree that what you had done by giving the loan was give Mr Camilleri a benefit. Took a while to get there?---Sorry if that was the case.

You had worked for RailCorp for two or three years?---Yes.

10 You were aware that they had in place a Code of Conduct?---Ah, vaguely, yes.

You were aware that the Code of Conduct dealt with amongst other things giving benefits and conflicts of interest and the like?---Certainly dealt with conflict, I was aware it dealt with conflicts of interests and certainly with gifts. I was aware of, in relation to that.

20 And indeed, sorry, indeed you've said that, I'll just, if you come to that could you, would you have considered what you did in giving the loan to Mr Camilleri as a gift?---No.

Why not?---Um, because it was a loan. It was, it was something that was going to be, I anticipated to be repaid back. It wasn't a gift for any um, any particular purpose and I wouldn't have given him a gift.

All right. Where did you get the money from?---From my account.

30 Was it in a cash account or did you have to borrow it or - - -?---It was in a cash account, yeah.

All right. And that's an account I take it you'd earn interest on?---That's correct.

You weren't asking Mr Camilleri to give you interest?---On the basis that it was due to be repaid promptly.

Yeah. But you were losing the interest and he was getting the benefit of it, isn't that part of it a gift?---I hadn't perceived it that way at the time.

40 In any event you said at the time that you lent it, the money to him you were immediately aware that there was a perception, I think your words were, "There was a perception that there could be a conflict of interest"?---Ah, yes I believe that was my words.

Now, you've now agreed that giving him the loan created, or gave him a benefit?---Yes.

The fact of that immediately created a conflict of interest didn't it?---In hindsight, yes.

You're saying in hindsight because I'm asking the question now but the fact of the matter is at the time you did it the conflict was immediately created wasn't it?---Um, I didn't perceive it at that time.

10 How could you have not have perceived it? You were going to Mr Camilleri at RailCorp being the one of the people you knew was influential in making decisions about work coming to your company and here you were giving him a loan. He was indebted to you?---It was a personal loan for a small, sorry. It was a personal loan for a small amount of money um - - -

Now when you say it was a personal loan, what else could it have been? Did you distinguish a personal loan from what a business loan or something?---Yes.

20 So why wasn't it a business loan?---Because it wasn't, it was from me as an individual, it wasn't from anyone who I was working for at the time.

Well, I take it that if he was to pay interest on it you'd have to pay tax on the interest so that would make it to some extent a business loan. I don't understand why you say it was, insist it was a personal loan other than just a loan?---Because it was from me from, as an individual.

Right?---Yeah.

But it's you as an individual - - -?---Yes.

30 - - - who worked for a contractor, is that correct?---Um, I didn't perceive Third Horizon to be a contractor of RailCorp at the time, incorrectly.

Okay. They weren't a contractor to RailCorp, they were a contractor to various entities I take it at the time?---Yes.

They wanted to be a contractor to RailCorp didn't they?---Yes.

40 So you were employed by them, a company that wanted to be a contractor to RailCorp?---Yes.

And you were lending money to one of the people who would be influential in deciding whether they would give work to Third Horizon?---Potentially, yes.

How is that anything other than creating a conflict of interest between you, Mr Camilleri, Third Horizon and RailCorp?---At the time I didn't perceive it to be a material amount that created a conflict of interest and - - -

So was it the amount the fact that it was only \$3,000?---There was a number of factors, it was the amount, it was that it was a short term loan and it was a personal loan.

Do you regularly or did you at the time regularly lend people money?---Um, at the time, shortly before that occasion I had actually been approached by someone to borrow from me.

Yeah, and who was that?---Duncan Isles.

10

And who was he?---He was a guy I went through school with.

Right. A friend?---Yes.

Right. No working relationship with him?---No.

Quite different to this isn't it?---Yes, most definitely.

20 Yeah. Why do you say the amount, what, sorry, I withdraw that. What, what amount did you lend to Mr Isles?---Ah, I, I didn't lend it in the end.

Right. Why not?---Um, he then, he came back to me and said he didn't need it.

Right. How much did he want?---He wanted between two and \$3,000.

30 Right. Does the amount make any difference to the loan, whether it's, becomes a conflict of interest or not?---In, in my mind it did at the time, in hindsight probably it didn't.

Right. Who were your - I take it you had companies that were competing against Third Horizon for particular RailCorp jobs?---Yes.

Without naming the companies - - -?---Yes.

- - - how would you think an employee or one of those companies might perceive your loan to Mr Camilleri in circumstances where they're seeking to get the same work that you're seeking to get?---Um, they may have concerns about it.

40

What about if an employee of one of those companies had lent money to Mr Camilleri and you'd found out about it, what would your concerns be about that?---Um, I think you'd want to understand the circumstances about it and whether or not, yeah.

Would you?---Probably.

Wouldn't you without understanding the circumstance immediately think that company's in conflict, they can't deal with Mr Camilleri in terms of these jobs?---Yes, I think so.

And so what you'd want them to do then is declare what they'd done?  
---Yes.

So that it was transparent, so everyone could see it?---Yeah.

10 And in terms of the RailCorp Code of Conduct that's what you were required to do wasn't it?---Ah, I now understand that that's the case, yes.

So you should have done exactly what you would have expected another company to do?---Yes, yes, I should - - -

And that is to be transparent and show everyone exactly what you'd done?  
---Yes.

20 But you didn't do that?---No, I didn't see it in that light at the time.

Are you aware from the Code of Conduct that in fact not doing, doing that and then acting upon or acting further in terms of what causes the conflict can be considered improper conduct?---I understand that, I didn't at the time.

That would make sense wouldn't it?---Yes.

30 And the fact of the matter is you didn't declare the conflict and then you went on to act upon it didn't you?---I think, yes.

Did you say anything to anyone about the loan from Mr Camilleri from 13 August, 2012 up until the time you find out he'd been dismissed?---No.

40 What were the circumstances in which you found out he'd been dismissed?  
---I got a phone call on the Sunday at home. I had heard that he'd left RailCorp on the Thursday but was unaware of the circumstances around it. I got a phone call from Joe on the, on the Sunday explaining, where he had said he had been dismissed because of um, loans to, to people um, and ah, on that basis um, he said that um, he had, I'm just trying to recall the exact, the exact conversation but I believe he told me about it, he told me that um, ah, there was a list, that my name was on it um, and my reaction to that was jeez, Joe, 'cause he'd told me that there was over 30 people that he'd borrowed money from, which was all news to me in terms of the extent of the issue. Um, my immediate reaction was I needed to tell Third Horizon about it.

Why? What, what actually changed, what was - you said that you thought it was a personal loan?---What changed?

Yeah, what, what actually - - -?---Was that, was that I became aware that Joe hadn't, hadn't um, hadn't told the truth in relation to the matter and therefore it created what I perceived at that point in time was a, was a conflict for Third Horizon which I needed to make them aware of.

Why hadn't he told the truth, he'd told you that he had the financial problems, you asked him why don't you borrow it from other people, he said I have borrowed it from people, I'm now coming to you?---Yeah.

10

When he's dismissed he told you he'd borrowed from other people, what had, what had changed?---He, he, he had told RailCorp that he, that it hadn't, sorry, when asked about whether he'd borrowed from, from anyone outside of RailCorp, outside of RailCorp he had said no and, and that he'd lied in that context.

He told you that did he?---Yes.

20 So he told you that he had lied to RailCorp when they'd asked him if he'd borrowed from people outside RailCorp?---Yeah. That, I don't know, I don't if he, he used the word lie but he certainly said he hadn't told them that, that, the extent of the loans.

Right. But you said that he told them, he told you that he'd given them a list and your name was on the list?---That's correct.

Well, that would be telling them wouldn't it that - - -?---No, I don't, I didn't, I didn't say he gave them this, he said they had a list.

30 Okay. So that he had told them - - -?---Yeah.

- - - people that he'd lent money to - - -?---Yes.

- - - and then subsequently they'd obtained a list that had your name on it? ---Yes.

40 Right. So what was the problem, why had anything changed?---Why had anything changed, because he hadn't told the truth about, that he, that he, that he, he'd borrowed money from people outside RailCorp.

But why had anything changed for you, it was still just a personal loan to someone who was in need wasn't it?---Um, Joe had been dismissed as a result of the, Joe had told me he'd been dismissed as a, as a result of it, on that basis I felt obliged to tell Third Horizon in relation to the matter.

So what happened I suppose is that this had all come into the open, he had brought it out into the open when you had not?---I hadn't, hadn't, at the time



didn't perceive the need to actually disclose it at that time as it was a personal loan.

When he asked you for the loan did he ask you not to tell anyone?---Um, yes.

Didn't you regard that as suspicious at least?---I don't think he, he didn't, he didn't use the words don't tell anyone, he wanted to keep it as a personal matter.

10

But didn't you regard that as suspicious?---At the time, no, I should have.

Why, why at the time didn't you?---Um, why at the time didn't I?

Yeah?---Um, I think because I didn't -- if I was going to loan him money it was going to be a personal matter and I didn't have an issue with, with it from that context.

20

It does sound all very suspicious you'd agree with that doesn't it?---Yes. I don't disagree that it - - -

That a RailCorp senior executive coming to a potential - - -?---Yes.

- - - contractor saying can you lend me some money and we got to keep it quiet?---In hindsight, yes, I agree, um, at the time I was, my primary concern was with Joe's um, level of distress I suppose which was, which I think clouded my judgment in relation to it.

30

Now I just want to ask you some questions about your contact and you've told us that you're in contact with Mr Camilleri - - -?---Yes.

- - - in the period leading up to the loan?---Yes.

You were corresponding with him were you not, there's an email of 2 April, just excuse me for one moment. If we could show you page 885. Just want to show you just a series of emails?---Yes.

40

They'll probably come up on the screen in front of you. You see that at the bottom half of the page that's an email from you to Mr Camilleri, is it not? ---Yes.

The 2 of April, "Hope is all well." You're asking him whether you could catch up with him?---Yes, that's correct.

And then the email at the top from him back to you indicating that three or four would suit?---Yes.

And I take it the following bant you caught up with Mr Camilleri?---Yes.

And - - -?---Well I believe so.

Yeah. And I take it the purpose of the emails and any catch up was an attempt to see if you could further the position of Third Horizon in getting some work from RailCorp?---Maintain the relationship and, and that, yes.

Yeah. If you – page 882. I think this is an email 4 April two days later. Again to Joe about a couple of things?---Yes.

10

Again about a meeting. Steve Metzmacher also catching up with you? ---Yeah.

Also asking whether he could, you could use him as a referee?---That's correct.

Then he confirming no problems about bringing Steve?---Yes.

20

And I take it you again met with him or that may have been the same meeting?---I believe so, yes, yeah.

Yeah. Again for the purposes of moving forward - - -?---Yes.

The progress in getting work?---Yes.

If you look at page now 896. Now this is an email you've sent to Mr Camilleri?---That's correct, yes.

30

And you're attaching an overview of Third Horizon's joint venture and general capabilities?---Yes.

And the last paragraph you're indicating Third Horizon would welcome any opportunity to bid for work at that time?---Yes.

So it's clear from that you're indicating to him what the capabilities are - - - ?---Yes.

- - - and, but you're interested in getting work?---Yes.

40

And the, the contact you have with RailCorp in terms of doing this is Mr Camilleri?---Amongst other people.

In terms of certainly these documents, the context to Mr Camilleri?---Yes, that's correct.

Did you sent that overview to other people at RailCorp as well?---I don't, I don't believe so, no.

Right. But, so in terms of that overview the point of contact was certainly Mr Camilleri?---That's correct.

Page 900. This is an email dated 9 May 2012. Again from you to Mr Camilleri?---Following up on that.

Yeah, just a follow up again. See how it's going again hoping to move forward the relationship to get one of getting work - - -?---Yeah.

10 - - - rather than just attempting to get work. Then page - - -

MR O'BRIEN: Sorry, Commissioner, I don't mean to interrupt the Counsel Assisting. I'm struggling to see that on the screen. I wondered if I could get a hard copy of these emails?

MR BUCHEN: I'm in the same position as well, Commissioner.

20 THE COMMISSIONER: Well they're all posted on the Intranet, they're available to Counsel electronically. Are they not?

MR POLIN: I'm not sure these ones are yet.

MR O'BRIEN: I didn't think until they're tendered there are - - -

THE COMMISSIONER: These aren't? Oh all right. Well - - -

MR O'BRIEN: They're not until they're tendered.

30 MR POLIN: We'll, we'll get some.

THE COMMISSIONER: All right. Well we'll do that in the adjournment. I'm sorry.

MR POLIN: Is that better?

MR O'BRIEN: That's better, thank you.

40 MR POLIN: Then page 901 an email 24 May. Is that another follow up?  
---(No audible reply)

Is that another follow up, I think you indicated you struggled to get in contact with David Callahan?---Yes.

So when you were having problems you seem to go back to Joe as being your contact to help you?---Joe had referred us that it'd be worth while catching up with David Callahan, um, it was just polite to keep him in touch in terms of where we were at with things, yes.

Right. So that if you were indeed, sorry, I withdraw that. So Mr Camilleri was actually recommending people within RailCorp that you should be looking to possibly get some work from as well?---As other people did?

Yeah?---Yes.

No. I'm not suggesting that - that this is - - -?---Yes.

10 - - - your point of contact, this is the person you were talking to?---Was, was one of the people point of contact, yes, and certainly in those discussions referred to, to - we asked, one of the things that we asked the question as a standard question is should we refer to, is there anyone else that's worthwhile catching up with.

And if you had problems catching them, catching up with them you'd go back to Mr Camilleri as your point of contact to help you?---Not always, no.

Well you seemed to on that occasion?---IN that occasion?

20 Yeah?---Well I'm not sure I asked, I asked in that occasion for him to, to do, um, to do anything to assist but certainly just keeping up to speed in terms of - - -

Then on page 919 now this isn't an email, it's not your email but this is an email from Metz that's Steve Metzmacher, Metzmacher, is that correct? ---Yes.

30 And it's indicating that there's an important meeting with JC I take it take it that's Joseph Camilleri booked for Wednesday 10 to 10.30. Do you see that?---Yes.

Now that's, that email is dated 9 August 2012. Do you see that?---Yes.

What was that meeting?---Um, I believe I had um, prior to Joe um, asking for um, the money I had um, either dropped him a line or contacted him to set up a catch up 'cause we hadn't actually caught up with him for, for a while.

40 Well that's your, the previous emails I showed you were about catch ups, can we catch up no problem - - -?---Yeah.  
- - - this is an email and you're included in it saying that there's an important meeting with Joseph Camilleri booked for August, doesn't appear to be a catch up. Do you recall what it was?---Um, it was a catch up.

Right. Was it the case that it was being indicated to you that you were closer to getting onto a tender panel or receiving some sort of work?---I don't, I'm not sure at the time in terms of the - - -

Well at that time that's the date of that email that's (not transcribable), that's the 9 August 2012?---Yeah.

You'd been seeing Mr Camilleri, speaking to him for several months at that stage?---Yes.

And you'd be doing that in attempt to get some work?--- Yes.

10 At that stage how well have you gone, had you got any work?---Ah, no.

Right. Did it look as though you were going to get any work?---Um, I believe so.

What particular jobs, anything, what was the position?---I think the, the, the area where we, we stood a very good chance I think eventually when it, it, um, hit the market in terms of responding on and doing and being successful on was around maintenance reform.

20 Right. But was there any particular job that was coming up at that stage that were looking to get involved in, looking to - - -?---Look there was certainly um, the one that had um, from, from my memory the one that had, that had been a focus for the organisation was around a program management support.

Right. Did you have dealings with the WCCL committee or the people involved at WCCL?---When?

At any time leading up to August 2012?---Not that I recall of, no.

30 Well, you knew the WCCL programme and the way it worked?---Ah, broadly.

You knew that in terms of many of the white collar type jobs that the way the programme worked is that WCCL or the people there would nominate a tender panel?---My understanding of that was that it would be done in conjunction with the business.

Right. Was it?---That's my understanding of it.

40 Did you - but even if it was done in conjunction with the business the WCCL people would put together a panel and that panel - - -?---Yes.

- - - would be invited to tender?---Yes.

Did you- you're sending Mr Camilleri the overviews of Third Horizon's capabilities and the like?---Yes.

Had you sent them to the WCCL?---No.

Why not? Wouldn't they be the people who were primarily involved in actually deciding whether Third Horizon went onto a tender panel or not?  
---I didn't look at it that way, no.

Why?---Um, because the, my understanding in terms of - well, firstly the WCCL process wasn't typically the, the type of process that we would, we would pursue. It was primarily related to individual appointments into roles and typically that was not the model that we as an organisation pursued, we  
10 were a consultancy, we pursued consultancy opportunities typically which would involve delivering a service rather than providing a resource.

At this point in time you hadn't got any work from RailCorp?---That's correct.

I take it you'd take whatever you got assuming it was on the right terms?  
---I don't think we would take whatever we got, I think we would, we would um, um, do things that fitted within the - - -

20 Yeah, I said assuming it was on the right terms?---Yes.

The first invite to tender was through the WCCL people wasn't it?---Ah, I believe so, I believe so.

And indeed the second one was as well wasn't it?---Ah, I'm not entirely sure but I'll take your word for it, yes.

But notwithstanding that you didn't think that it was worth informing the people at WCCL of the capabilities of Third Horizon?---No, on the basis  
30 that my understanding was the business, particularly in the types of things that we did were, were heavily involved in the decision-making around um, who, who was on the panel and certainly - - -

Sorry?---And certainly from, from the limited exposure I'd had at, at um, at RailCorp I, I believed that was the case.

Right. So clearly there's a meeting with Mr Camilleri, would you agree from that email at some time soon after 9 August, 2012?---I don't know what the exact date of that - - -  
40

I said soon after, I assume it's soon after?---Yes.

And at the meeting no doubt is Mr Metzmacher and yourself?---That's correct.

And it's important enough that Mr Metzmacher's arranging to shift another meeting he has with the Public Works Department?---That's his phraseology but yes.

Then it's the case is it not that within four days of that email Mr Camilleri is contacting you about the loan?---Ah, I believe that's the case.

Right. Do you recall in the days leading up to giving the loan have conversations with Mr Camilleri about possibly putting in a tender for a benchmarking contract?---Not that I recall but I'm not sure of the sequence of events around the period of time.

10 Were you aware that there was a benchmarking contract that was going to go out to tender at about that time?---About, I was made aware I believe at the meeting with Joe but again I can't recall.

THE COMMISSIONER: Is that a suitable time, Mr Polin?

MR POLIN: Sorry.

THE COMMISSIONER: That's all right.

20 MR POLIN: Commissioner, yes.

THE COMMISSIONER: Mr Courtman, can I just ask you in relation to that email - - -?---Yes.

- - - it indicates that the important meeting is booked for Wednesday so I'm assuming that's the following Wednesday after the email?---Oh, I, I'm not sure.

Well - - -?---It seems like a logical conclusion I, I would agree but I'm not  
30 sure in terms of the - - -

All right?---The only way I could tell is to go back to my diary and see when the meeting was actually scheduled for.

All right. Well, could, could you just accept then that if the email was sent on 9 August and it's referring, which was a Thursday, it's referring to a meeting which we might assume was the following Wednesday, that would be 15 August that that meeting was due to take place?---That, that sounds about right, yes.

40

Yes. I'll resume at 2 o'clock, thank you.

**LUNCHEON ADJOURNMENT**

**[12.46pm]**