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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION SPECTOR

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 19 FEBRUARY 2014

AT 2.02PM

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

<ANTHONY JOHN COURTMAN, on former affirmation [2.02pm]

THE COMMISSIONER: Could I just ask counsel to speak up so that we can hear because the noise of the air conditioning is making it difficult for the voices to carry in the room. Yes, thank you, Mr Polin.

MR POLIN: Thank you, Commissioner.

10 Mr Courtman, I was asking you just before the break some questions about that email dated 9 August, 2012, do you remember that?---You were asking some details about it, it's not up on the screen at the moment.

And do you remember the Commissioner then asked you some questions about it referring to a important meeting - - -?---A meeting on the 15th potentially, yeah.

- - - with Joe on the Wednesday?---Yes.

20 And it's likely that on a reading of the email taking into account the date it was sent that that is referring to a meeting on 15 August, 2012?---Yeah, yes, I recall that.

Now because that's a meeting that took place, if it did at that time, two days after you loaned the money to Mr Camilleri?---Ah, if that's the case yes, I believe that would be right.

It would have been a meeting I take it with you, Mr Metzmacher and Mr Camilleri?---That's correct.

30 And it would have been an ideal time when you could have disclosed the fact that you'd lent Mr Camilleri the money two days' earlier?---In hindsight I should have done it at the time of the loan.

Now are you aware within about a week and in fact it was on 23 August, so a week and one day, 2012 it appears that RailCorp through the WCCL had picked a panel who were to be invited to tender on the benchmark contract?---No.

40 At any stage did Mr Camilleri tell you that?---That, that he, that the panel had been picked?

Yeah?---No. My recollection was at the meeting we asked the question about what opportunities were likely to, to come up.

Is this the meeting you're talking about possibly on 15 August?---Yeah, possibly on the 15th.

I'm suggesting that some time after that indeed it would have been after 23 August - - -?---Yes.

- - - did Mr Camilleri ever tell you that WCCL had nominated a panel who were going to be invited to tender on the benchmarking contract?---No, I don't believe so. I believe I received a phone call from a lady from procurement within RailCorp advising me of that and that we would be sent through some material.

10 Right. Well what I'm actually asking you about is whether he told you in fact initially a panel had been selected - - -?---No, I don't believe so, no.

- - - and that Third Horizon wasn't on that panel?---No, no, I don't believe I was told that.

You don't recall having any discussion with him about him doing anything about getting Third Horizon on the panel?---On, on the meeting, on, on the Wednesday or whenever it was the um, we had a discussion around what opportunities were, were there Joe raised the fact that were likely to be
20 going out for a panel on benchmarking, um. Steve Metzmacher in particular um, spoke at length about our experience in relation to that, um, both in terms of work that we had done for um, other clients within the transport cluster and outside of the transport cluster. At that meeting I believe Joe said um, something along the lines that, um, he'd be happy to nominate us to, to, to be considered on that panel.

Right. He said that at that meeting did he?---I believe so, yes.

30 Right. And that would be the meeting on the 15 August?---If the meeting was on the 15 August, yes.

Right. It appears a panel was in fact selected on the 23 August and then on 24 August Mr Camilleri asked for the name of Third Horizon to be put onto that panel. Were you aware of that?---No, I wasn't aware of that.

Was your first knowledge a telephone call or was it an email received on 30 August 2012 indicating to you that you'd been invited to submit an offer of services?---The first contact I got was from WCCL by phone I believe, I
40 received a phone call from someone in procurement which I think was the lady whose name, eventually it came through um, is my recollection of it and then, and um, she'd advised that the time, the turn around time scales were short which was hence whilst she was contacting um, contacting us in terms to confirm whether we, whether we were going to respond.

You say a lady was that Ragini?---I believe so, yes.

I think having received that invitation - - -?---Yeah.

- - - you were then invited to attend a, pre tend a meeting you were not?---A briefing I believe so, yes.

And you attended that?---Yes. Steve Metzmacher um, I think was due to go but couldn't make it was in both of our diaries, he couldn't make it and asked me to go.

And was that attended by other companies that were - - -?---Yes.

10 - - - that were invited to tender as well?---Yes.

And that would have been an appropriate time would it not to disclose any conflicts of interest?---No, I didn't think so at the time on the basis that, um, we hadn't decided whether we were bidding on it at that particular point in time.

In any event I think it was decided was it not either by you or by others that Third Horizon would not submit a tender on that particular contract, is that correct?---That's correct.

20

Is it the case that you then made contact with Mr Camilleri?---At the request of Mr Metzmacher, yes.

Right. And was the contact with Mr Camilleri, was the reason for the contact to make sure that he having assisted them getting you invited to tender wasn't upset by the fact that you didn't tender?---Um, we had an experience where we got some feedback on a, um, proposal for transport for New South Wales previously where a number of proponents hadn't responded and that had disappointed the, the, um, business unit. Um, I had actually um, called procurement to advise them that we weren't bidding on, on a piece of work and expressed that it was because we thought there were better organisations placed to deliver that work for um, transport. Steve had asked me to contact Joe and expressed the same which is what I did and to make sure that, and to ask the question to say um, to, to confirm that because we hadn't bid that it wouldn't been seen as detrimental in relation to the bid for any further work.

30

So in other words, to keep on good terms with Mr Camilleri?---Yes.

40 And then – Commissioner, might the witness be shown Exhibit 11?

THE COMMISSIONER: Yes.

MR POLIN: Now, this is an email, is it not, from you to Mr Metzmacher and Mr Rogers?---Yes.

And this is – “A quick update, gents,” and it's about the meeting that you've had with Mr Camilleri- - -?---Yes.

- - -having not tendered for the Benchmarking contract?---And on the back of a discussion that we had with the, the meeting with Steve Metzmacher and- - -

Yep?---Yes.

You indicate you managed to speak to Mr Camilleri?---Yes.

10 And that there were no issues, no responses, he appreciated your position and your honesty?---Yes.

So you effectively smoothed it over with Mr Camilleri and you were still on good terms with him?---Yes.

Again he was a person you needed to keep on good terms with, wasn't he?
---Potentially, yes.

20 Yeah. Then you go on to say, "He mentioned," that's Mr Camilleri mentioned, "that Chris," who's Chris?---Chris Rowe.

Chris Rowe?---Yes.

He's also one we've spoken about with RailCorp?---Yes.

"Would be going out for the program manager and analytical support."?
---Yep.

30 So going out to tender on a contract for the program manager and for analytical support. Is that correct?---Yes.

He'd be going out and doing that in the near future?---Yes.

"And that we would be invited."?---Yes.

So Mr Camilleri's telling you, is he not, in, or had told you prior to you writing this email, that two contracts were going to be going out to tender and that you would be invited to tender on both of them?---I wasn't sure if it was one or two- - -

40 Right?--- - - -in terms of in that context.

So the program manager and analytical support may be one contract you're referring to?---Yes.

Okay. Whether it's one or two, he was telling you- - -?---He, he, he, he, he had said that um, he didn't see an issue with us not responding and then on that basis he was happy to put us forward.

Well, he said a bit more than that, didn't he, he said that he didn't have a problem, appreciate your honesty and that Chris would be going out, going out to tender- - -?---Yes.

- - -on a particular contract, let's assume it's one contract?---Yeah.

In the near future and that you would be invited to tender. Is that correct?
---Yes. And then- - -

10

So Mr Camilleri's telling you ahead of any tender being announced that Third Horizon will be one of the successful companies invited to tender. That's what he appears to have said, hasn't he?---It would be put, that he, he would put us on the list, I believe that was what he indicated.

And so you were being led to believe that Mr Camilleri had the power to put you onto the shortlist for a tender?---Or that Chris- - -

Had the power?---Had the power.

20

And that either Chris or Mr Camilleri had in fact done that in relation to this contract?---Um, based upon the, the email I believe, and that conversation and my recollection of the conversation it was something along those lines, yes.

Do you think the fact that you had loaned Mr Camilleri money had anything to do with that?---No.

30

What was the position in relation to the loan at this stage?---He hadn't repaid it.

Had you asked for it to be repaid?---I believe so.

Right. And what had he said?---Um, he said I think in the terms that he should be able to pay it in early November.

Do you think – when he said he couldn't repay it, what did you say?---I was disappointed.

40

Right?---But it wasn't a significant sum of money that I was in distress about on that basis and I- - -

So essentially, sorry?---Sorry.

Essentially you were extending the loan?---Yes.

Providing him with another benefit?---In, in that context, yes.

And this is the person who is telling you that he's providing your company with a benefit in being put on a tender list?---I didn't see the link.

The fact is that very soon after that Third Horizon did receive a letter telling them that they were requested to put in a tender on the programme manager contract weren't they?---I believe so.

And very soon after that Third Horizon won the programme manager contract did they not?---In the space of a month or something, yes.

10

Yeah?---I believe that's the case.

And through all those processes, the tender processes leading up to the granting of the tender, you haven't disclosed the conflict you had with Mr Camilleri?---No. My naïve view of that was that because he wasn't on the, being the decision-maker in, in that because it was going to a panel et cetera that I didn't believe I had to.

Was that right?---He wasn't on the panel, no.

20

Wasn't he?---No.

He wasn't in hindsight but did you - that certainly wasn't always the case was it?---Um, there was potential that he could be on the panel.

Well, indeed there was a point in time when you in fact thought he was? ---I thought he might be, yes.

Thought he might be or thought he was?---Thought he might be invited.

30

If you could return that. Might the witness be shown Exhibit 12. Again, this is a series of emails, if you turn to the second page which is the first email, that's, you see it's an email from Andrew Rogers?---Yes.

And that's to Steve Metzmacher and yourself?---Yes.

In this he said he had a chat with Chris Rowe and this email's dated 11 October?---Yes.

40

Joe is probably, I assume that means probably, going to be the convenor for the interview which is good news?---Yes.

So as at 11 October the expectation of yourself and Third Horizon was that Joe was going to be convenor for the interview therefore highly influential in making the decision was he not?---(No Audible Reply)

Is that correct?---Yes.

Then if you go back to your response, “Cheers, Andy, just shaking my head and laughing at the present.” I take it that’s because you were happy that someone that you were dealing with closely at that time and in fact so closely so that you’d lent them money was going to be the person possibly deciding on the job?---No, that’s not the case. I, I believe I wrote that in the context of um, Andrew Rogers was well known to, to Chris and Joe and um, I couldn’t think of two other people in RailCorp that would speak more highly about Andrew’s work.

10 Right. Why would you be shaking your head about that and laughing?
---Um, because of the irony of it.

Right. There’s also a lot of irony in the fact that at this very point in time Mr Camilleri, the person deciding, owes you money?---I, I see the conflict now, I didn’t see it particularly at the time.

Probably a greater reason to shake your head and laugh wasn’t it?---No.

20 Why not?---Because I didn’t, I didn’t draw the, the, the link between the two.

Didn’t it occur to you at least by this stage in this whole process when you’ve been told that the likely convenor where in fact you - sorry, the likely convenor for the interview was going to be Mr Camilleri, didn’t you think by that stage that you needed to come forward and tell at least the others that - - -?---At, at that stage I thought if Joe was going, ended up being the convenor and that was confirmed then I would need to declare a conflict of interest.

30 Well, why wasn’t it done at this point, rather than shaking your head and laughing the email certainly suggests that you’re happy that Mr Camilleri has been appointed the convenor aren’t you?---Because initially I didn’t think about it in that context, when I reflected on it um, I, I, I saw that there could be a potential conflict of interest but I only thought I needed to, to, to raise that if it did actually um, ah, be part of that, that panel.

40 So are you saying that at this time that is in October 2012 you were actually thinking gee, if he’s the convenor of the meeting I’m going to have to come clean and say that I’ve lent him money?---No, I was thinking that I needed to, to declare the conflict at that particular point in time if he was the convenor.

Yeah. Well that seems to be if that’s what you thought at that time it seems to be incredibly inconsistent with saying just shaking my head and laughing at present and then going onto Joe would be good, he knows our capabilities and that we can deliver for him. That’s quite inconsistent with you saying that at that time you had in your mind that if in fact Mr Camilleri was the convenor you were going to have to disclose a conflict of interest?---I didn’t

see the conflict at that particular point in time. Um, at the time I sent the email um, my initial thoughts we've withdrawn from the previous process, I didn't see that there could be a link between the conflict of interest at that particular of point.

There's no suggestion in this email that you were withdrawing from this tender process is there?---No, not this tender process the previous one.

10 I understand that but this one there's no suggestion at this time - - -?---No.
- - - you're withdrawing from it?---No.

And there's no suggestion is there that anyone other than Mr Camilleri is going to be the convenor?---I know that he may be, yes.

Yeah. But you said just but a moment ago that you had already decided at this point in time if he was in fact the convenor you would declare a conflicts of interest?--- I said after, after I had time to reflect on it.

20 How much after?---Oh it probably took me a day or two to get my head around it.

Right. Well why is it then that a day or two later you didn't do it?
---Because I didn't um, I had, it hadn't been confirmed whether he was going to be on the panel or not.

Well I assume – you didn't find that out until the day I take it?---I believe so.

30 So what, you were going to turn up on the day and say ooh he's on the panel I better declare a conflict of interest?---My view on it and I'm not saying it was the right way to approach it because in hindsight it wasn't but my view was if, if he wasn't on the panel there's not a conflict other people are making the decision.

So do I take it then rather than being happy that Mr Camilleri was on the panel within a day or so of this email you were hoping he wasn't going to be on the panel because you knew at that point you were going to have to disclose a conflict?---Yes.

40 And if he was on the panel you were going to turn up on the day of the interview disclose a conflict which would mean of course Mr Camilleri could sit on the panel I take it?---I didn't think that far ahead.

And the whole thing would have just been a waste of time, they would have had to have reconvened or - - -?---I didn't, I didn't expect Joe to be on the panel, um - - -

Why didn't you expect him to be on the panel you've just been told Joe will probably be the convenor of the interview, why did you have any other expectation other than, than - - -?---Because I thought if he was asked he would, he would um, decline.

So you were, you were saying that you thought if he was asked to be the convenor he would disclose the conflict of interest?---Yes.

10 This is the conflict of interest that you hadn't disclosed?---That I didn't think I, I needed to at that particular point in time.

Well why would you think he would have needed to?---Um, because for the, for, for the same reasons that if I knew that he was definitely on the panel and was, was part of the decision making process that, that I thought it would be appropriate to make that declaration.

Is that the truth?---Yes.

20 If it was and that you were willing to actually wait 'til the actually day of the interview to disclose a conflict of interest why wouldn't have told Andrew Rogers or Mr Metzmacher?---I didn't say on the day I said I would wait, it would be - if he, if he was on the panel then I would have to declare it.

30 But if you'd obviously had these thoughts within a day or so of this email why didn't you go straight to them and say by the way don't get your hopes up about Joe being on the panel because if he actually is I'm going to have to disclose a conflicts of interest?---Because it was a personal matter and I didn't want that interfering with my, with, with work.

How was that going to interfere with your work? I would assume that your, the people at work would have not been happy if you'd actually turned up on the day of an interview to disclose a conflict of interest?---Oh I don't, I didn't think that, didn't think that through to that extent.

40 Is it the truth of the matter that you were never going to disclose the conflicts of interest because you were in fact happy that Mr Camilleri could have been the person deciding upon this job because you had influenced him by giving him a loan?---No, that's not the case.

But do you have any other reason then why you didn't disclose the loan at this point?---Because I considered it a personal loan, I didn't consider it to involve Third Horizon. My view was, and I'm not saying it was the right way to view it in hindsight, was that unless Joe was, was the decision-maker or the decision-maker around the selection, then I didn't see that a conflict had arose.

But I think you've already agreed with me that just as a matter of logic looking at it, a conflict arose straightaway, as soon as you- - -?---In hindsight, yes, I agree with you.

Well then when you say in hindsight, at the time the person you're seeking work from, you're lending money to?---I didn't see it that way at the time.

THE COMMISSIONER: Mr Courtman, can I just raise something with you?---Certainly.

10

You keep saying that you didn't see it that way at that time. Can I just ask you, would your immediate reaction have been different if for example you had said to Mr Camilleri, well, I don't have any money but I have a good friend who is a solicitor who can provide you with free legal advice. Would you have regarded your position as different?---I don't quite understand.

Well, you keep saying that you thought it was a personal matter, it was a personal loan of a small amount of money to Mr Camilleri so that he could continue to fund a solicitor?---Yes.

20

Well, what I'm asking is, would you have seen it in exactly the same light had you said to Mr Camilleri, I don't have money but I have a good friend who's a solicitor who can give you free legal advice? What would, what would have been your reaction to whether or not there was a conflict of interest in those circumstances?---Um, I, I, I, I wouldn't have seen it as a conflict of interest either I don't think.

You wouldn't have seen that as a conflict of interest?---At the time, no. I think now I think in terms of I, I would have seen it as a, as a conflict of interest, at the time I don't believe that's the case.

30

Right.

MR POLIN: What's actually changed, just the fact that you've been brought before this inquiry?---No.

Well, what?---I certainly didn't appreciate the extent of the Code of Conduct in terms of RailCorp's Code of Conduct. My interpretation of it was incorrect. I didn't, I didn't see us as a contractor because we weren't engaged by, by um, by, by RailCorp.

40

What if the amount had been \$300,000 instead of \$3,000?---I think that's a much more material amount of money and I would have seen it as, as a um, as, as, as an issue.

So it's the amount of money that was the issue?---I, I didn't see the amount of money – a number of things, certainly I don't believe, the amount of money I didn't see as providing benefit at the time, in hindsight because I

didn't, I didn't recognise the link and I accept that. I understand that a larger sum of money would, could um, would be, would be construed potentially differently.

Why?---Because, because of the influence of, of such, such an amount of money.

But it's all relative, isn't it, the- -?---Look, in, in hindsight neither are appropriate but- - -

10

But are you saying that \$300,000 could be influential but \$3,000 is not really that influential?---I didn't see it as influential at all.

But you're saying that if you had loaned \$300,000 it might be seen as influential?---I think that that would be a fair assumption, yes.

So you are saying that it's, the issue is the amount of the loan?

---Certainly the amount of the loan was the, was, was, was, was part of my, my rationale behind it.

20

Right?---In terms of the need for a conflict of interest, I think beyond a small amount of a money creates a non, something that's bigger than a, than a typical personal loan.

Well, what- -?---I certainly, sorry.

What is it that means a \$3,000 loan is personal rather than a \$300,000 loan? It's still being lent from Anthony Courtman to Joe Camilleri?---Yes.

30

You still stand there and say this is just personal between us?---Um, yes.

And in saying that you're just attempting to justify there's no connection between the relationships you have with your respective businesses are you not?---I don't quite understand that.

Well, you referred to Mr Camilleri suggesting and you've indeed said on several occasions it's just a personal loan?---Yes.

40

And he said that it's just between the two of you personally?---Yes.

All you were doing is attempting to justify to yourselves that the loan had nothing to do with or didn't take into the relationships you both had in your respective businesses?---I believe it was a naïve view of the world but yes.

Yeah, you can't do that just by saying that that's what you're doing, can you?---At the time I thought it was a reasonable position to take.

You both remained Anthony Courtman, a director of Third Horizon and Joe Camilleri, an executive of RailCorp?---Yes, but I - - -

One looking for work from the other?---Yes.

One then lending money to the other?---Yes.

Whether you said it's personal or not it doesn't take away from that relationship does it?---In hindsight, no.

10

And it doesn't take away from the perception that one would have as to what was going on in terms of that relationship does it?---No, I understand that it could be misperceived.

20

Why was it, why was it then that the matter had to be thrown out into the open before you actually disclosed this to everyone including your employer?---At the time I - because Joe hadn't been on the, on the panel I didn't see him as being part of the decision-making process. I felt no need to disclose it, the only point at which I felt it was needed to be disclosed, disclosed um, because it had nothing to do with my employer um, and my employment situation is when I found out that, that um, that Joe had not, when asked about it um, told the truth.

You keep saying that Joe was not going to be party of the decision-making process but it's clear from the documents that there's a period of time where you thought he was going to be part of the decision-making process isn't there?---Ah, there is a short period of time where that was a potential, yes.

30

But short or not that was your time, wasn't it, to disclose it?---In hindsight, yes.

And you didn't do it?---No.

Could I just show you this document. Is this a letter dated 18 February, 2013 that you gave to your employer - - -?---That's correct.

- - - following notification from Mr Camilleri - - -?---Yes.

40

- - - that he had been dismissed?---Yes.

And in fact that ICAC had been looking into the matter?---Well, at that point in time um, my discussion with, with um, with Joe, I wasn't made aware that ICAC were in the matter but I, I, I believed that that might have been the situation, I'd actually I think said to Joe I may need to go to ICAC on this.

You were going to go to ICAC?---Yes.

In the letter, the final paragraph, don't you see you apologise to them and offer your full cooperation to ICAC?---Yes.

That's because Third Horizon had already been to ICAC hadn't they?---I wasn't aware of that.

Well, you're offering to cooperate with them, you knew the matter was already with ICAC didn't you?---No.

10 At the time you wrote this letter?---No, I don't believe so.

Wasn't it reported to ICAC I think the day Mr Camilleri resigned?---I, I'm not aware of that.

I tender that letter.

THE COMMISSIONER: Yes, that letter will be Exhibit 15.

20 **#EXHIBIT 15 - LETTER FROM ANTHONY COURTMAN TO
'NEVILLE', THIRD HORIZON CONSULTING PARTNERS DATED
18 FEBRUARY 2013**

MR POLIN: There are some other documents that we looked at on the screen, we might just tender those as a bundle at the end.

THE COMMISSIONER: All right.

30 MR POLIN: Just one final matter, so that's February 2013?---Yes.

Did you speak to Mr Camilleri again about, around about that time?---Um, I, I believe I may have spoken to him once, once more but I don't know the exact timing of that. Um, ah, ah, to um, confirm um, that I'd been sent home from, from Third Horizon um, and seeking confirmation from him that um, he wasn't involved in the decision-making processes.

So you were dismissed by Third Horizon?---Yes.

40 When was that?---Ah, I believe it was a the back end of the week that I told them about it, so it was the Thursday or the Friday, something like that.

So you had some discussions with him seeking to clarify whether he was part of the decision-making process at any stage?---Yes, because at the time I didn't believe he was and I wanted confirmation that that was the case.

Then from that period of time up to the middle of 2013, so to the end of June 2013, did you have any further contact with Mr Camilleri?---I, I did send him a letter requesting repayment of, of, of the loan.

Right. And when was that?---I think it was in early March from memory.

10 And did you get a letter in response to that?---I think I got an email back. I sent him the letter via, in two modes, one was – and the reason, the reason I called Joe was to find a way in which to correspond to him to send him the letter and I believe- - -

Is that because you didn't want to speak to him by phone, you wanted to send a letter, is that what you're saying?---I, I, I believed it was best to correspond at that point in time- - -

Okay?--- - - -via, via, via writing. I think I got his email address and sent him an email with the letter attached, I also posted the letter to him.

20 Okay. And when was that roughly?---I think it was around about 3 March.

And did you, you got an email back from him?---Yes, confirming that he, that he'd paid \$1,000 towards the loan and he would pay the rest when he was, when it was available.

All right. So you'd lent a thousand, sorry, you'd lent \$3,000?---Yes.

And he'd repaid \$1,000- - -?---Yes.

30 - - -in March of 2013?---Yes.

Then from that period, so from the middle of 2013 through to the end of 2013, did you have any further correspondence with Mr Camilleri?
---No, I did not.

Did you request the money back by letter at all?---At the time I, I, I um, I believe there was a, there was a process going on in relation to at this point in time and I didn't want to cloud that process.

40 And so by that do you mean that you didn't think it was appropriate for you to contact- - -?---Yes.

- - -Mr Camilleri?---That's correct.

Notwithstanding the fact I take it you wanted your money back?---Yeah, most definitely.

And so is it the case that right up until today you haven't – or since that contact in March last year you haven't contacted Mr Camilleri?---I have not contacted Mr Camilleri.

Has Mr Camilleri contacted you?---Yes.

When did he contact you?---On, I think it was on Saturday or Sunday.

You mean Saturday as in- - -?---Previously gone.

10

- - - a couple of days ago?---Yes. He contacted me on a number that I wasn't familiar with, but, but- - -

When you say that, you did- - -?---It came up on my phone a number that I didn't recognise. It actually rang out, I was not by my phone at the time.

Yes?---It went to voice mail message. When I went to pick up the phone, the phone rang again. I picked up my phone and answered it. It was Joe on the phone. I said to him- - -

20

So what did he say, just do the best you can, what he said?---So, so he said, "I'm just ringing to say I've just settled on my house, I want to pay, repay you the loan amounts." And I said, "Joe, it's not appropriate for me to talk to you at the moment." He asked me, he said, "Can I just give you, can you just give me your bank account details and I'll transfer some money?" And I said, "Joe, it's not appropriate to, to, to talk, to speak at this particular point in time."

Right. And- - -?---And I hung up the phone. I then contacted my legal counsel immediately after that, literally within two minutes.

30

Yes?---He asked me what it, what it pertained to, I explained what the conversation was about and, and he asked me how long it was and I said I thought it was for thirty or forty seconds. I then hung up the phone and I checked on my phone to see how long the conversation was for, it was for a minute and 14 seconds, so I texted my solicitor to advise him to that extent.

Yes. And so I take it you haven't then had any further contact with him?---No.

40

And you haven't received any money from him?---No, because I haven't provided – unless he's got my details from previously, I haven't provided any updates to, to that.

And that call was on Saturday?---I believe it was on Saturday.

Do you recall what time of day it was?---If I can turn my phone on I can probably check for you.

Oh, no, it's all right, just if you recall, it's not that important?---I think it was in the morning.

Excuse me. No, no further questions.

THE COMMISSIONER: Mr Chee?

MR SILVER: Thank you. Sorry, Mr Chee.

10 THE COMMISSIONER: Mr Chee, do you want to go first?

MR CHEE: Yes, I'll be very quick. Mr Courtman, did Mr Camilleri offer to pay you any interest or out-of-pocket expenses when he approached you for a loan?---No.

That's all.

THE COMMISSIONER: Mr Silver?

20 MR SILVER: Mr Courtman, I act for RailCorp?---Yes.

Can you hear me?---Just.

I act for RailCorp and some other employees. I've just got a few questions. And may I make it clear that my questioning is not focused on debating what you thought about whether you had a conflict of interest or not. I just want to clarify some factual matters. And in 2012 you were fully aware that there's a concept known as a conflict of interest actually existed?---I was aware that there's a concept, a concept existed, yes.

30

And that arose from among other things education about that topic, about that concept?---Some education, yes.

Yes. And you were employed at RailCorp from February 2008 to the end of 2010, correct?---Yes, that's correct.

And part of your education about the conflict of interest derived from your education at RailCorp, correct?---Part of it, yes.

40 Yes. And you said in your evidence that you had a vague memory of the Code of Conduct at RailCorp, do I trust that means you have a vague memory because of passage of time?---Probably a combination of, of things, certainly a passage of time is part of it and I hadn't looked at it for, for, for a long period of time, not since I was probably in the early days I think at RailCorp.

Yes. But you had, you confirm that you attended seminars on the Code of Conduct at RailCorp?---I didn't, I didn't attend seminars I think I went to one session I think in, early in my employment period at - - -

When I say seminars let's call them briefings. Did you go to a Code of Conduct briefings at RailCorp?---I believe I attended one that went for an hour or two.

10 Yes. Can you remember or can you recall that you in fact attended a Code of Conduct briefings, probably going to say you don't remember the exact dates but I've got an employee record here which records on 3 March 2008 that you attended a Code of Conduct briefing and that on 8 March 2010 you attended a Code of Conduct and that on 30 October 2009 you attended an ethics probity briefing?---I remember the first one I don't remember the next two.

20 Could have forgotten about that?---Oh I may have but I certainly don't, I don't recall, I certainly remember when I first joined RailCorp I went to a briefing, I don't remember attending the other two.

30 Could I show you that record. If you have a look at, there's a resource history, primary resource first entry is 3 March 2008. That's maybe the one that you remember, it was probably shortly after you attended. Straight after that there is another record of code of conduct briefing and then right near the end of that list there's a 30th of the 10th, 2009 ethics and probity for PCFT. You can't dispute that you attended those, those briefings as recorded?---I don't recall it but I'm not saying I don't dispute whether I don't recall it. If I went, I certainly recall going to the first one and I don't know how this record is compiled.

The question is you don't dispute that you attended those three briefings? ---I'm not clear whether I did or not. I certainly the first one I don't necessarily recall the next two.

Thank you. I have no further questions. I tender that document. That record.

THE COMMISSIONER: Exhibit 16.

40

#EXHIBIT 16 - SYDNEY TRAINS PERSONNEL HISTORY REPORT OF ANTHONY COURTMAN

THE COMMISSIONER: Yes, Mr Buchen.

MR BUCHEN: Mr Courtman, I act for the company Third Horizon?---Yes.

And Mr Rogers. You first disclosed to your colleagues at Third Horizon the loan on Monday 18 February 2013?---I believe that was the date, yes.

All right. And that's the same date of the letter which is just - your letter - - -?---Yes.

- - - which has become Exhibit 15 in these proceedings?---Yes.

10 Can I just take you to two final portions of that letter, Exhibit 15, the second page, the third last paragraph, it says this, "In relation to the loan I would like to make it clear that I acknowledge that no other Third Horizon person had any knowledge of the loan," that's the truth isn't it?---That's entirely correct.

"If there is any concern regarding my actions they are my actions personally as a mate of Joe's who tried to help him out of a tough spot. At no stage have I or would I have ever sought to leverage my loan to Joe to gain any advantage for myself or Third Horizon."?---That's correct.

20 Do you still think that that's the case?---Yes, yes. I certainly believed that that was the case at the time, I didn't try and leverage anything from it. Um, I think in hindsight whether it could be perceived that is a - - -

There's one other part of the letter I just want to draw your attention to. "I also note that from a Third Horizon perspective my actions were prior to my appointment as a director of Third Horizon."?---That's correct.

Is that correct?---I believe so, yes.

30 I have no further questions, thanks.

THE COMMISSIONER: Anything arising, Mr Polin? Oh, sorry, I'm sorry. Mr O'Brien.

MR O'BRIEN: It's quite all right, Commissioner.

40 Mr Courtman, had you or Third Horizon whilst you were there ever successfully tendered for RailCorp work?---Only on the, for RailCorp work on the, the one with ah, in, in Joe's area I believe, the other areas were within Transport for New South Wales.

So prior to August 2012 had you or Third Horizon successfully tendered for Transport New South Wales contracts?---Yes.

Can you tell the Commissioner which contracts they were?---So there was a - - -

And possibly when they were given?---So there was one at um, we were asked to bid for two pieces of work for Transport for New South Wales which I was directly involved with. Well, I was involved in a number of the ones with Transport for New South Wales but there was two in particular that I led on. One related to some um, I think it was a, a programme, a programme management role within Transport for New South Wales. Um, we weren't selected on that but the feedback was very positive in terms of the, the, the offer that we put forward. Um, we were asked to bid on another piece in relation to the Rail Services contract which was the service agreement between Transport for New South Wales and um, the rail entities. Ah, we were successful on that and um, whilst it was a, a bit of a stop/start affair I ended up delivering that and was working on that for Transport for New South Wales.

Now can the witness be shown, I think it's Exhibit 12. Do you see that that is a, is page 1120 and it's an email from you to Andrew Rogers and Steve Metzmacher?---Yes.

Dated 11 October, 2012 and you were asked questions about that email, do you recall those?---Yes.

And at one stage you said that the reason you said you were, in that email you were just shaking your head and laughing at present you said that that was, you, you thought it was ironic?---Yes.

You were laughing at the irony of it?---Yes.

Now what did you mean by that?---What I, what I meant by that is that Andrew Rogers um, who I believed was the candidate we were putting forward in that um, is probably one of the best programme managers I've ever met um, and Joe and, and ah, Chris were both aware of his capabilities and um, having worked so closely with, closely with him and that was the irony that I meant in that, in that situation.

You were asked about the second part of that, the second sentence in that email and that is if Joe had, if it's Joe it would be good and he knows what our capabilities are and that we will delivery for him. What, what do you mean, what did you mean by he knows what our capabilities are and that we will delivery for him?---Exactly that, how, how good that Andrew Rogers was in terms of capability.

Thank you. Nothing further, thanks, Commissioner.

THE COMMISSIONER: Anything arising?

MR POLIN: Just one quick question. In terms of your letter of 18 February, you were asked in relation to the paragraph where you said, "I

note that from a Third Horizon perspective my actions were prior to my formal appointment as a director of Third Horizon.” Do you see that?
---Yes.

When you say your actions, do you mean the loan to Mr Camilleri?---Yes.

And of course there was a continuing obligation to disclose that loan, wasn't it, wasn't there?---In hindsight, yes.

10 Particularly at a time when you thought Mr Camilleri was going to be a convenor on a committee that was going to decide on one of your contracts?
---In hindsight, yes.

So you're not talking about that time there, are you?---No.

I take it you were a director by that stage?---I may not have been.

You don't know?---I don't know exactly the timings of these two.

20 Why if you don't know the timing, why did you agree then that you weren't a director at the time of the loan or is the answer that you just don't know?
---My actions were in relation to the loan to Joe.

Yes. But when did you become a director?---I believe it was in September time.

Okay?---Sometime around then. Sorry.

30 THE COMMISSIONER: Yes, thank you, Mr Courtman, you can step down, you're excused.

THE WITNESS: There's, sorry to interrupt, there's two pieces- - -

THE COMMISSIONER: Yes, we'll just take those back.

THE WITNESS EXCUSED

[2.51pm]

40 MR POLIN: Could I just tender as a bundle the emails that were referred to, if I read them onto the record, they're pages 879 to 886.

THE COMMISSIONER: Ah hmm.

MR POLIN: 896 to 913, 919 to 921, 928, 933 to 934, 940 to 941, 947 to 948, 954 to 955, 961, 966 to 967, 93, sorry, 993 to 994, 1056 to 1057, 1063 to 1064 and 1157 to 1158. A total of 46 pages.

THE COMMISSIONER: Right. Exhibit 17.

#EXHIBIT 17 - BUNDLE OF DOCUMENTS BEGINNING PAGE 879

THE COMMISSIONER: Yes, Mr Polin.

MR POLIN: I call Kevin McCarthy.

10

MR CROWLEY: Commissioner.

THE COMMISSIONER: Yes.

MR CROWLEY: My name is Crowley. I seek leave to appear for Mr McCarthy.

20

THE COMMISSIONER: Yes, Mr Crowley, you're granted leave. Have you spoken to your client about the effect of section 38 orders under the Act?

MR CROWLEY: We seek such a declaration, Commissioner.

THE COMMISSIONER: All right. Thank you.

30

Mr McCarthy, do you understand that if I give the order that is proposed it protects you against the use of your answers given in evidence in any criminal proceedings against you but it does not protect you in relation to proceedings for giving false evidence before the Commission. Do you understand that?

MR McCARTHY: Yes, I do.

THE COMMISSIONER: And that the penalty for giving false evidence include custodial penalties. Do you understand that?

MR McCARTHY: Yes, I understand that.

40

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 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
McCarthy?

MR McCARTHY: Sworn, thanks.

THE COMMISSIONER: Could he be sworn, please.

THE COMMISSIONER: Yes.

MR POLIN: Is your name Kevin Ross McCarthy?---It is.

Mr McCarthy, are you still employed by UGL Limited?---The, the
10 appropriate full name of the company I'm employed with is UGL Rail
Services Pty Limited, yes.

That company I take it is part of the group- - -?---Part of UGL, yes.

- - -of UGL Limited?---Yes.

And what's your position- - -?---My current position?

- - -at UGL?---My current position is General Manager of Projects and
20 Tenders in the Passenger Group.

Was the position you were in or have been in for about the last three or four
years?---I had a different, I've had different titles but um, a very similar
role.

You're familiar with the tender process for the L3C contract?---I am.

And UGL tendered for that contract I think was it back in 2010?---I think
the process started around 2010, yes.

30 What was your position with UGL back then?---Um, I was given the role of
bid manager for the project in about October 2010.

Do I take it that you are the person who's in charge of that particular
tender?---So the role of the bid manager is to manage the process, to
coordinate all the responses, pull together documentation and submissions,
um, both submissions to the customer and submissions inside the group for
approvals, um, make sure that – a gatekeeper to make sure everything
happens.

40 So what's your relationship, can you give the history of your relationship
with Mr Camilleri, when did you first meet him?---Joe and I have known
each other for um, almost thirty years in total, um, we've known each other
well for more than twenty years and we originally met, um, when I joined
RailCorp as a cadet engineer and was assigned to, sorry, back then it was
the State Rail Authority um, when I was assigned to L-car workshops for a
six month period and that's when I first met Joe he was an
engineer/manager at that workshop. So that's the length of our, our
friendship or our knowledge of each other.

And do I take it putting aside potentially what may have happened in more recent times you would have described the relationship you had with Mr Camilleri as a close personal friendship?---Yes, I would describe the relationship as a friend, yes.

You used to socialise with Mr Camilleri on occasions?---On occasions, that's correct.

- 10 You used to do things like go fishing with him, that sort of thing?---Um, I think we had an open invitation to go fishing, I don't know that we ever um, achieved that goal but we certainly had the intent to do that at some point.

And certainly as at 2010 you'd known him for a long time and you would describe your relationship as a longstanding close personal friendship? ---Yes, I would describe him as a, him as a friend. Um, your word close or long, I mean as a friend I think is appropriate.

- Well it's certainly longstanding?---It is.
20 It could have been, are you saying thirty years or so?---We'd known each other well for twenty, just over twenty years, yes.

Now by 2010 UGL had held, was it known as the LC3 contract back then as well with RailCorp?---Not, it was originally called the MainTrain contract.

So they had the MainTrain contract for about 17 years or so?---That's correct.

- At that stage?---That's correct. It was originally awarded in about 1983.
30

And it was a large contract wasn't it?---It was a large contract, yes.

Was the contract that was very important to UGL?---Yes.

It became apparent didn't it throughout 2010 that UGL were maybe not as popular as they had been with RailCorp?---Um, I think there were many circumstances that, that led to the tender being out to market and performance probably was one of those, yes.

- 40 I think you became aware did you not at some stage in 2010 that Mr Camilleri potentially was no longer a stronger supporter of UGL, is that correct?---Yes, that's correct.

And is it the case that in December 2010 you in fact met with Mr Camilleri to discuss that exact matter, the fact that he was - - -?---No, it's not - - -

- - - no longer a strong supporter of - - -?---No, that wasn't the purpose of our meeting in October 2010. And I think - - -

Sorry, I didn't say October I said December?---December. Now I think it was more, it was more like October that we met but I think your reference to not being a strong supporter is from a much earlier period.

There's certainly reference seen in an email that you are circulating I take it to others within UGL that following a meeting with Mr Camilleri that what you took away from the meeting was that Joe was no longer, sorry, was now neutral and no longer a strong supporter for UGL and MainTrain although
10 he will not be negative either?---Um, yeah, that, that's correct, yes.

Right, so - - -?---I, I remember I was shown that email in that interview.

So do I take it that you did have this meeting with Mr Camilleri and it would appear that it was probably from the email, it took place on Friday, 10 December, 2010?---I, I couldn't be certain of the date, no.

Okay. Could I just show you this document, it's page 1466 and this is an email from yourself is it not?---Yes.
20

It's to, is it Phillip Johns, Don, Don Parker and Ross Donnelly?---Yes.

Who were they, directors of UGL?---Ah, no. Um, Phillip Johns was my direct boss at the time.

Yeah?---Um, Ross Donnelly was um, the - actually at that point in time Ross Donnelly I think may have been the bid, the bid manager, the nominated bid manager that I was taking over the role from.

30 And that's an email that you sent on Monday, 13 December?---Yes.

You make reference to a meeting with Joe last Friday?---Yes.

Which would be 10 December?---Yes.

And you attached a meeting record to that email?---Yes.

And you indicate to those to whom the email was sent that key takeaway, I assume that means the key points you took away from the meeting, is that
40 correct?---Yes.

The first point was, "Joe is now neutral and no longer a strong supporter of UGL and MainTrain although he will not be negative either." Is that correct?---Yes.

I tender that document.

THE COMMISSIONER: Yes. That will be Exhibit 18.

**#EXHIBIT 18 - EMAIL FROM KEVIN MCCARTHY ATTACHING
MINUTES OF MEETING WITH JOE CAMILLERI DATED 13
DECEMBER 2010**

MR POLIN: Now in terms of that meeting it was just you and Mr
Camilleri wasn't it?---That's correct.

10 It wasn't a meeting that you were having with others at - - -?---No, it was
just a meeting between Joe and myself.

And I take it at this point in time it was important for you to in a
professional sense keep on good terms with Mr Camilleri?---Um, ah, yes, I
think um, that, that um, Joe was a person who was in a position um, of
knowledge with RailCorp.

He's indicated to you at this point that he was not going to be a strong
20 supporter of UGL?---Yes.

And I take it that you would then want to do whatever you could to turn that
around?---Ah, not whatever I could but yes, I think - - -

I don't mean whatever you could - - -?---Yeah.

- - - I mean you would do what you thought was appropriate to turn that
around?---Oh, I think within the organisation my advice was to, within the
organisation that the organisation would need to do some things, yes.

30 Right. You would want to reverse this position, have a situation where
rather than him being no longer a strong supporter you would have liked to
have seen him as a strong supporter of UGL?---Um, I think, I think it would
have helped, yes, and I think this is evidence, this is, this is my information
to the company.

Yeah. But part of your job I take it is to, to keep the work coming in from
RailCorp?---Um, I'm not the prime sales, point of sales contact but yes, it's
40 part of my role in the business development area.

Well, this, this is a meeting you're having with your longstanding friend Mr
Camilleri?---Yes.

He's expressing some misgivings he has about your company?---Yes.

And I take you would want to try and turn those around?---Yes.

In any event I take it you weren't able to turn it around as you probably would have liked to and a decision was made to put the MainTrain contract out to tender?---That's correct.

And it's what's been referred to as the L3C contract that was the old MainTrain contract that was put out to tender?---That's correct.

And you were the bid manager for UGL for that, in that tender process?---That's correct.

10

So do I take it you were the person that had to make sure that the tender that was put in was correct in all respects?---That it complied with all the requirements that were put out in the tender documents, yes.

Right. Do I take it that in terms of the dollars and cents, that wasn't your department?---That's, that's correct, there was quite a detailed governance process over the whole tender submission.

20

Right. It was your, your job to submit the data and information that you were given by others- -?---Yes.

- - -but make sure that you'd complied with – you had to make sure that the company had complied with all the requirements that RailCorp had in relation to the tender and the tender process?---That's correct. So in pricing there's a schedule of pricing that needed to be filled in correctly, it was my role to make sure that it got filled in correctly.

30

And one of the important requirements in the tender process was the question of conflict of interest and the like?---Ah, yes, conflict of interest would have been a- - -

All tenderers had to disclose any conflicts of interest that they had? ---I'm not aware of a formal process where that was the case, no. I think we, we submitted deeds of confidentiality- - -

Right?--- - -to RailCorp as required by their process.

40

Wasn't there as part of the tender process a requirement to declare that in submitting the tender the tenderer wasn't aware of any conflict of interest they had in submitting the tender?---I'm not aware of a document in the tender that requires that, no.

Right. You were certainly familiar with RailCorp's Code of Conduct? ---I knew RailCorp had a Code of Conduct, I had never been issued with such Code or trained on such Code of Conduct, no.

Right. Is that notwithstanding the fact that UGL had been working intimately with RailCorp for the previous 17 years?---That's correct.

When you say you hadn't been issued with that, do I take it that no one from UGL had been issued with a Code of Conduct?---I don't, I'm not aware of it.

You certainly were aware of the concept of a conflict of interest?---Yes, I was.

10 You were aware, weren't you, that a corporation such as UGL with no doubt hundreds of employees working at RailCorp could from time to time find circumstances where there existed a conflict of interest?---UGL has a conflict of interest policy.

You'd be aware wouldn't you that in working with a corporation like RailCorp situations of conflict of interest with UGL would arise?
---I would hope that they wouldn't arise but I'm aware of the concept of a conflict of interest.

20 Does UGL's policy in relation to the conflict of interest deal with circumstances where UGL is tendering for major government contracts?
---I don't think that it specifically deals with tendering as a principle.

Does it deal with the relationships that UGL employees may have with major government departments and their employees?---No, I'm not aware that it deals with it as a, as a relationship issue either.

What does it deal with?---It, it deals with the definition of things that may fall under the definition of a conflict of interest.

30 What's it, what's it for, what's the UGL conflict of interest policy for?
---I think it's to inform employees of- - -

Ah hmm?--- - - -thing that may be defined as a, as a conflict of interest.

And what's the problem with a conflict of interest?---Sorry, I'm not understanding?

40 Well, what's wrong with having a conflict of interest?---There's nothing wrong with having a conflict of interest, a definition for it.

Right. So why do you need to identify what a conflict of interest is?
---(No Audible Reply)

What's the purpose of this policy?---Well, I think it's a prudent corporate policy to have a conflict of interest- - -

But to do what?---To identify- - -

You said so far that- - -?---To identify- - -

What a conflict of interest is?---Yes.

Okay?---If individuals- - -

What's the purpose of that?---If individuals give rise to events that may be a conflict of interest.

10 But does it go any further than that and say things like you shouldn't put yourself into a position where a conflict of interest is created or does it say if you do happen to get into a position where a conflict of interest is created you should do something about it?---I believe it would state something like that, yes.

Well I'm asking you what does it state or don't you know?---Well I can't, I can't say word for word but does it tell you, firstly what does it say a conflict of interest is?---It says basically that a conflict of interest is where
20 um, a um, an employee would do an act which would adversely affect the decision making process of um, a customer, a supplier or another employee.

Is it that he does something that - - -

MR CROWLEY: Excuse me, Commissioner, can I object. My friend is asking my client about a document that he doesn't have in front of him.

THE COMMISSIONER: Well hang on a minute, he's answered the previous question, I don't understand Counsel Assisting is asking him to repeat the document word for word but we're asking generally, I think what
30 he understands by the term conflict of interest he has acknowledged that he's in a position to tell us that. If it gets any more particular then perhaps the document can be provided.

MR CROWLEY: As I understood the questions he was asking specifically about what the conflict of interest said and my client hasn't got it in front of him and he's - - -

THE COMMISSIONER: No, he - I understood him to ask what a conflict of interest was under the policy. But anyway for a more abundant caution
40 providing Mr McCarthy understands.

Mr McCarthy, you've just given an example of where an employee does something or, or provide something which might influence a contract or a supplier of services. Does the same thing arise if, if the contractor or the supplier services provides a benefit to an employee? Is that also a conflict of interest?---I don't believe the principal of benefit is interview the document, no.

You don't believe that that benefit appears in your company's - - -?---Yes.

- - - document?---Yes.

Well if – you mean by that - - -?---I think the terminology is not in the document.

10 Right. Well forget about the terminology you gave an example of an employee providing some kind of benefit or doing something that would influence the actions of a contractor or a supplier. What I'm asking is does the converse also constitute a conflict namely the supplier or the contractor providing some kind of advantage or benefit to the employee?---Um, I think it references it in relation to um, um, work in relation to um, the services of work that are provided by the organisation.

Mr McCarthy, I appreciate that but it's a fairly simply question. If a conflict of interest arises out of an employee doing something for a contractor does it also arise out of a contractor doing something for an employee?---Um, yes, I think it would.

20

MR POLIN: I don't have a copy of your Code of Conduct so I was just trying to understand what your understanding of that document was. Do you understand?---Okay.

And does the Code of Conduct as you understand it goes so far as to so that you don't want to put a, a client I suppose in a position where not only might they not be able to make a decision but there's a perception that they may have problems making that decision?---Um, yes, I think it goes to the concept of perception.

30

So it, it, it deals with not just the actualities but also perceptions as well? ---Yes.

So that you would be aware in your dealings with RailCorp for example that you wouldn't be want to be doing things that would be perceived that could influence - - -?---That's correct.

- - - decision making with - - -?---Yes, that's correct.

40 - - - within RailCorp. And if there were circumstances where such a perception might arise it would be t he case that the conflict should be disclosed?---Um, yes, I think that, that the process is disclosure.

And the reason for that is, no-one's suggesting that anything wrong has been done but it's to make the conflict transparent to everyone else?---That's correct.

It's to remove the perception?---That's correct.

You were a longstanding friend of Mr Camilleri weren't you?---That's correct.

There's no doubt is there on the tenderer of L3C contract that there would arise the perception from that longstanding friendship that that may potentially cause some problems for Mr Camilleri and those deciding upon the contract?---Um, no, I don't believe that people who knew Joe or who knew me would have that perception.

10

THE COMMISSIONER: What about other people who didn't know you and didn't know Mr Camilleri, what would their perception be? Other companies, other tenderers?---I'm not sure I don't know that a friendship in its own right gives a perception.

MR POLIN: Well you've got some of the other major companies I think that tendered, their large companies that tendered for this particular contract weren't they?---Um, yes.

20 They wouldn't know you would they?---I think they all know me.

They all do?---Yes, in some way.

How do you know that?---The people that are employed in those organisations are known to me.

Are you suggesting that all the people within the organisations that - - -?
---No, I'm not suggesting that every person, every organisation knows me.

30 That's why of course it's, there's a need to make things transparent isn't it, to bring it out and show there may be a problem because there's a longstanding friendship involving the big manager for one of the bids and one of the major potential decision makers at RailCorp?---Well I hold the position that I don't believe there would be a perception if people knew our relationship.

40 Right. Well at this time you entered into an agreement or a relationship with, entered an agreement for one of a better expression with Mr Camilleri about the behaviour of both you and Mr Camilleri over the bid period didn't you?---We, we, we in the meeting we discussed the fact that there was a bid process coming up, that under that bid process we both understood there would be controls in place and we were acknowledging to each other that that meant that um, our contact would be limited for a period, probably a considerable period because of the bid process.

You agreed, you and Mr Camilleri that you wouldn't contact each other during the period of the bid process?---We, we agreed that there would be a

process in place which would not allow us to contact each other and we informing each other of that process.

Who directed you as part of the process not to contact each other?---We made that decision.

Yourselves?---Yes.

10 There was there nothing, there was nothing said as part of the process that you Mr Camilleri not contact each other was there?---We had, we discussed it in the meeting and we both had an understanding that the process would, would prevent that from happening, yes.

You perceived, both you and Mr Camilleri that there would be a perception that there was an issue about your longstanding friendship?---No, I don't think that's what we had in mind, we thought we were discussing that there would be a process in place, it was a fact not a perception.

20 Sorry, when you say there was a process in place I don't understand what you mean. Was there a document that said you and Mr Camilleri were not going to be able to talk to each other?---We both understood that there were probity um, processes which would be put in place by both organisations over the period of the tender.

You keep talking about processes. I understand what you mean. Were there documents, were there directions, were people told these things? What, what's a process?---At that point in time I don't believe the processes had been finally formalised.

30 Well they weren't any were there. There was no document, there was nothing, no direction given to you or Mr Camilleri not to talk to each other was there?---Ultimately, no, that's right.

So what actually happened was you and Mr Camilleri agreed that you were two of the major players in this particular tender process?---That we both held roles in the process yes, that were important roles.

40 And you were on for different roles, one's the tenderer one's receiving the tender?---Yes.

And you perceived that there would be a problem if people knew that you were in regular contact?---I know you, I know you're using the word "perceived" but I was aware of as an example the probity process that UGL was about to put in place but hadn't documented yes, was, was created a Chinese Wall inside the organisation between the people who were part of the - and it was called business as usual, operating the normal contract and the normal LC, the normal MainTrain contract and those that were in tender. I had, I was declaring to Joe that I was clearly in the Chinese Wall that was

on the side of the tender and therefore I wouldn't be on the other side which was the part of the normal business as usual operations process.

Are you saying that you and Mr Camilleri were ahead of your time, you were ahead of the processes being put in place?---The processes hadn't been finally documented at that point in time so, yes, I think we were both aware of the processes that would be put in place.

10 So you were referring to processes that would possibly be put in place - - -?
---Yes.

- - - but you say weren't in fact put in place and as a result of you being aware of these processes that could be put in place you and he decided for the term of the bid you wouldn't contact each other?---Um, ultimately the process I just described in UGL was put in place.

But am I correct in saying you both decided for the term of the bid that you wouldn't contact each other?---That's correct.

20 Why was that, that you weren't going to contact each other?---I think I just described that we would be in a process where it won't, it wouldn't be, it wouldn't be - - -

No, the processes hadn't started?--- - - - it wouldn't be allowed for us to be in contact because I was not in the business as usual space within UGL.

If the processes had been put in place why was it that you wouldn't be allowed to be in contact?---Um - - -

30 What's the problem with it?---Okay. I think if you think about the L3C tender um, UGL was the incumbent and ah, as part, being the incumbent there were many meetings that were a normal, part of the normal business, business as usual that would take place between UGL and um, RailCorp, it was seen as appropriate to make clear separation between all of those meetings and the meetings that would take place as part of, specifically of the tender which would be under the tight control of a tender probity process so there was a need for a Chinese Wall to be set up inside the organisation.

40 But what you're saying is that it wouldn't be good for you and Mr Camilleri to be seen communicating, regularly meeting during the, the bid period?
---Not only, not that it wouldn't be good to be seen, it would not be allowed.

Right?---I was not in the business as usual team and the instruction UGL would be that my only point of contact, because I was in the tender team, would be through the tender process.

Right. And that's because what, that contact, people might perceive may some way influence the tender process?---It's because the companies would have those controls in place.

And why do they put those controls in place, so there's no perception - - -?
---To ensure - well - - -

- - - that people will try and influence the tender process?---To avoid, to avoid, to avoid influence.

10

Yeah?---Yes.

That's right isn't it?---Yeah. Well, to, yes, that's correct, to avoid any influence.

20

So when you and Mr Camilleri decided that the two of you wouldn't speak did you go to the other tenderers and say we're just letting you know that Mr Camilleri and I are not going to speak for the purposes for the term of the tender process?---I'm not aware of the processes that the other tenderers would have in place, no.

No, I'm just asking you about what you told the other tenderers?---No, I didn't say, I, I basically don't have any communication with the other tenderers.

You and Mr Camilleri made this agreement not to speak?---Yeah.

The agreement was made between you and Mr Camilleri?---Yes.

30

No one else?---No.

It wasn't documented and disclosed to others was it?---No.

So equally no one knows whether the agreement was kept either do they?
---No, I guess not.

40

The other tenderers were not aware, were they, that you were - some, some form of formal declaration that you were a longstanding friend of Mr Camilleri's were they?---There was no declaration, no.

Those who possibly knew you might have known there was a longstanding friendship?---I believe they, they would know that we had a - - -

Those who didn't know you wouldn't know?---Of course.

That's not terribly transparent, is it?---No.

Did you think it was important in such a large tender process that your longstanding personal friendship was something that should have been disclosed?---No, I didn't, I didn't see that it was important at the time at all. I didn't think that our longstanding personal relationship would influence in any way the decisions that we both made.

10 I don't understand that, sir, in circumstances where you've both agreed not to talk to each other. Why couldn't, why is it that your friendship was not important?---Well, I tried to explain the reason that we agreed not to talk to each other is because we knew there would be a firm Chinese wall set up which would prevent- - -

In the future, which wasn't set up?---No, it was, in UGL it was set up.

Right. Was that before or after the- - -?---It was after the meeting.

20 THE COMMISSIONER: Mr McCarthy, stripping it down to its basics, what you appear to be saying is that you agreed not to talk to each other because you acknowledged that because of your longstanding relationship with RailCorp and with Mr Camilleri in particular over the course of the main frame contract that you'd had for 17 years, that you were in possession of information that was critical to the big process. Isn't that essentially it? --- (No Audible Reply)

30 When you talk about Chinese walls, you're talking about containing information that you had and not allowing it to intrude into your application for the LC3 contract, aren't you?---It wasn't, it wasn't specifically for information that I had, it was so that in, in the process that UGL could clearly explain that there was a separation between the normal- - -

Exactly?--- - - -the normal contact of the business with RailCorp and the tender process.

I understand, you said that several times, but what it was about was quarantining information that you had because of your 17-year association that would otherwise, if you like, bleed into the processes that would be set up for this new tender. Isn't that the position?---No, I'm not sure I understand the question.

40 All right. Well, let me go back to this. Regardless of what the, what policies were or weren't put in place, what was a Chinese wall, what wasn't a Chinese wall, a short time ago you acknowledged that the reason ultimately for all of that being put in place was so that you could avoid the appearance of influence, namely the influence of that longstanding relationship to intrude into the tender process. You agreed with that, didn't you?---No, I'm not sure that I, I agreed specifically with the way that you've worded it, I, the influence that we were trying to avoid was that information

that may be gained through the business as usual organisation could be filtered into the tender organisation to aid the tender.

Yes. And it's that very fact, isn't it, namely your 17-year association that allowed you to acquire all that business as usual information that put you in a stronger position for the tender process and it therefore encouraged- -?
---Well, yes, I- - -

10 - - -encouraged this policy of Chinese walls. Isn't that what you're saying?
---No, I don't think that, that the policy was encouraged by me personally, I think- - -

I'm not suggesting it was?---Yeah, so- - -

Mr McCarthy, look, look, it's pretty simple, isn't it, you had a longstanding personal friendship with Mr Camilleri?---Yes.

You said you had known him for over 20 years?---Yes.

20 17 of those years was while your company was providing a main frame contract to RailCorp?---Yes.

Right. So the bulk of that friendship was developed over the period of time that your company was directly providing services to RailCorp?---That's correct.

And you were about to go into tender for a further contact at a time when you were not exactly number one on their list. Is that a fair assumption?
---Um, yes, I think that's a fair assumption.

30 Right. So your agreement with Mr Camilleri not to have contact with each other during the bid was so that the perception of any special information or relationship that you had over that period of time would not be seen to be part of the tender process. Isn't that the position at the end of the day?
---Um, no, I don't think it was specifically what we, what we were about. Not that I say that I couldn't influence him, that there would be processes in place that would prevent me from- - -

40 But you could influence him, couldn't you, you could influence- - -?
---No, I don't- - -

You could influence the tender process by dint of the special relationship that you had built up over those 17 years, couldn't you?---I don't, I don't know that I could have, no.

Right.

MR POLIN: Would you accept that others looking from the outside might perceive that you were able to?---I'm not sure that they would perceive that either.

10 What about all these people who you say all knew you were great friends with Mr Camilleri, why wouldn't they be thinking, gee, his a good friend with Mr Camilleri, I'm a bit concerned he might be able to influence Mr Camilleri in his decision-making. That's what they'd think, wouldn't they?
---I think that they would look at – and if they were part of other bids they would understand the probity that was put in place around the tender from RailCorp and, and how that would control the extent that anyone could influence anything.

So why did you two decide that you wouldn't speak?---We were informing each other because we had, we had some regular contact, we were informing each other that we wouldn't be able to have that regular contact.

20 Why didn't you just let the processes take their course, why did you actually go and both agree that you wouldn't speak for the term of the bid?
---Well, it was appropriate for us to let each other know that there would be a long period of time where we wouldn't be talking to each other.

Why?---Because that would be unusual in our normal relationship.

But why did you have to tell him and why did he have to tell you? You both would have known?---Well, we were going into a period of two years of no communication.

30 Why would you say – why is it you're saying it's appropriate that we should inform each other that we are not going to be able to communicate?---Well, I asked him how his family was going, I, we caught up and we weren't going to be able to catch up for another two years.

In any event, UGL were successful in getting, winning the contract?
---Yes, ultimately.

And I think the contract was awarded December 2011 to start mid-2012?
---December '11, that's correct.

40 And between the awarding of the L3C contract, other contracts, smaller contracts, have been awarded to UGL by RailCorp, haven't they?
---I presume that they may have, yes.

Well, you are someone that is generally involved at least indirectly with most things in terms of contracts being tendered with RailCorp, aren't you?
---Um, not, not most things and in fact I think, don't know that I've been involved in any other- - -

When asked previously hadn't you said, "I generally have some indirect involvement with most things that are being tendered?"---I, I have um, some indirect involvement- - -

Yeah?--- - - -not with tenders, but just generally in the business, people might consult me regarding information or position because of my long-term participation in the industry and in and around RailCorp.

10 But didn't you say, "I generally have some indirect involvement with most things that are being tendered. It's my role in the organisation?"---Um, I believe that's what I said, yes.

Well, is that the truth?---I think that it's a word, yes, it- - -

And so you would have involvement with ongoing work that may be available for UGL from RailCorp?---Yes, but I wasn't involved in every, in everything that occurred.

20 I'm not suggesting, sir, that you were involved with everything, I'm suggesting that from the time of the awarding of the L3C contract up until the present time you have been at least indirectly involved with other work that has been awarded to UGL?---I'm not, I'm not aware of work that I've been involved with, other work.

I take it you hope that you'll be, you will in the future be involved in work that is awarded to UGL?---Um, I believe, I hope I will be, yes.

30 What was the term of the, initial term of the L3C contract?---It was originally tendered for seven years.

Right. And so was it anticipated at the end of seven years it would, then there would be another tender?---I think it had an option to extend at RailCorp's discretion.

Right. So if RailCorp didn't extend at their discretion there would be another tender after seven years for a contract of similar, similar kind? ---I'm not sure what, what would happen in seven years, I suspect the contract would be completely different.

40 It may well be completely different but it's a maintenance contract for trains and your company's involved in maintaining trains?---Yes.

You would expect in seven years' time your contract, your company would hope to be tendering again?---I believe we hope to tender for that work, yes.

Mmm. When did Mr Camilleri first approach you and ask you for money? ---I believe it was on 8 or 9 October, 2012.

And I'll come back to the specifics of it in a moment, but he asked you for, was it \$20,000 or did he ask for more?---No, he asked for \$20,000.

And you lent him \$20,000?---I think it was on the 10th that I lent him that money, yes.

You lent him \$20,000?---Yes.

10 Just dealing with – can I just – one matter before I come, come back to that. You're aware aren't you as part of the tender process for the L3C contract that the RailCorp personnel involved in it are required to sign a conflict of interest register as part of the documentation?---Um, I wasn't specifically aware but it wouldn't surprise me.

Are you aware as to whether Mr Camilleri recorded in the conflict register your longstanding friendship?---Um, I wasn't aware until I saw it on the screen two days ago, and I believe it wasn't on the list, but up to that I had no knowledge.

20 Right. But you would have expected, wouldn't you, that that's the kind of thing he would have declared?---No.

No?---Not necessarily, no.

Okay. In any event, you lent the money to Mr Camilleri on, the first lot, \$20,000 on 10 October, 2012?---Yes.

30 Now, I take it at that stage this is more than then just a close personal friendship, you are coming, Mr Camilleri's coming to you asking you for a big favour?---Yes. It was a very emotional discussion um- - -

He's coming asking for a big favour?---He was, yes.

And you're granting the favour?---He, he was asking for me to help him, so yes, I helped him.

And you gave him help?---I gave him help.

40 And you've no doubt heard me ask this of others, you gave him a benefit? ---Um, yes, I've heard, I heard the word benefit many times- - -

Have you got a problem with the term?--- - - -in this.

Yeah, and you don't have a problem with it, do you?---At the time I, it's not how I would have described it.

Is that, do you mean that's not the word you would use?---That's correct.

Yeah?---I was helping a family, I was helping Joe and I was helping Jessica so- - -

Yeah, you were giving him help?---I was giving him help and in hindsight - - -

He was getting a benefit?---The word, the general use of the word benefit is yes, he would, if, if it wasn't worth anything then it wouldn't be a benefit.

10 Yes. And everyone's ducking and weaving at the word because it's the word used in the Code of Conduct?---Well, in the RailCorp Code of Conduct, and I've seen that in the last couple of days.

Yes. But there's nothing magical about the word, it's a common everyday word, isn't it?---And I think if it's used in its common language like that you could apply that there would be a benefit.

Yeah?---Otherwise there would be no point giving, giving anything or helping.

20

That's right. So on 12 October you were giving Mr Camilleri and interest-free loan for \$20,000 which you agree represented a benefit to him? ---Um, I gave him a loan. The term interest-free is not specifically.

Okay. Well, tell me about the provisions for interest that were struck between you and Mr Camilleri on 10 October, 2012?---So in the, in the first discussion that we had we talked about and Joe offered for all my costs to be covered.

30 Right?---So in early discussions that we had it was about costs, my understanding of costs, it would be that, so for me to recover everything that I would have lost financially, which means, includes the interest that I would have otherwise earned.

So you don't have a problem extrapolating the definition of the word "cost" out to include interest but you had troubles with the word "benefit"?---Well, I think the, the definition of interest is, is a little complex in that when normally a bank charges you interest they're charging you profit in that interest and I had no intention of making profit from the transaction.

40

Well, what was the agreement that was struck on 10 October in relation to the payment of interest on the \$20,000?---The discussion was about costs, yes, it was a, it was a brief discussion, it was an emotional discussion, we didn't go into great lengths about talking around interest rates and things like that, it was that if I lent him \$20,000 I would have all of my costs recovered.

But what was the, what does that mean? Whatever you said you'd incurred as a cost he was going?---Yes, I - yes.

He was going to pay 25 per cent interest, he was going to pay five per cent interest?---No, I, I - - -

10 What was the rate?---It was, it was discussed at the rate of wherever the money had come from and, and I wasn't sure at that point in time where the money was coming from or what account it was in until I discussed that with my wife so I didn't know what rate would be appropriate.

Okay, well, I'll come back to it in a moment but in any event on that day having him the money - - -?---Yes.

- - - you realised didn't you that a conflict of interest had been created?
---No.

20 Why not?---Ah, because I knew um, from the long term relationship that Joe and I had had in, in our ah, business relations and everything that we had done that um, we trusted each other um, that we had a high degree of integrity and that there would not be a conflict created in, in our businesses from that.

There already was a conflict created, it was the question whether that conflict ultimately led to a problem, isn't that the case?---Well, I didn't believe that there would ever be a conflict that led to a problem.

30 Right. What about the contracts potentially that Mr Camilleri may have been involved in decision-making that could have gone to UGL after the awarding of the L3C?---I didn't think that my personal loan to Joe and his family would in any way influence his decision-making for other contracts.

What about potentially the re-tender of the L3C contract in seven years time?

---Or, or that included.

How could it not, you lent \$20,000 - - -?---Yeah.

40 - - - to a person who's influential in potentially deciding on a billion dollar contract?---I lent, I lent \$20,000 to a good friend.

THE COMMISSIONER: Mr McCarthy, if you didn't think that it was going to cause a problem why didn't you declare it? If you thought that it was a personal loan, it was all above board and Mr Camilleri would honour his, his commitment to you and that it was essentially an arrangement between the two of you why not declare it?---I didn't, I didn't think that um, that it was a, a thing that I had to declare, I didn't believe that there would be a conflict and therefore I didn't declare that, that there would be.

There are two, there are two parts of this, one is recognising that the arrangement gives rise to a conflict of interest which may or may not materialise, the reason for the declaration policy is so that others can look at the transaction at arm's length and decide whether or not they think it gives rise to a real conflict, that's the point of the declaration isn't it?---And I, I didn't make a decision - - -

10 Well, I understand that but do you agree with what I've just suggested, you see there are two aspects to this, not just whether or not you think ultimately there would have been a real conflict but the fact that a conflict arose and then whether or not it was actualised at some later time. There are, there are two parts to it aren't there?---Um, yes, and I didn't think, I didn't think it was a cause for me to raise that as a, as a potential conflict.

MR POLIN: So you don't see it as being a conflict, a potential conflict or a problem that you may have a bid manager who has loaned \$20,000 to a person at RailCorp who is influential in deciding upon the bid?---Well, the bid, the L3C bid had finished 10 months earlier.

20 Well, there's another one coming up in seven year's time?---Well, I wouldn't know that I would be - - -

Mr Camilleri - - -?--- - - - the bid manager in seven years' time or Joe would be in his position in seven years' time.

But you may well be, you've created the conflict by giving the loan haven't you?---No, I don't agree that we created a conflict of interest in giving the loan.

30 What about the next contract, you talked about the smaller contracts that may come after the large contract, what about the next contract that had to be decided. You've lent the \$20,000, why doesn't that create a conflict? ---Because I didn't believe that anything that I was doing was going to influence Joe's decision-making process.

He's got to make decisions no doubt at that time in terms of the whole administration of the contract doesn't he?---Ah, of the LC3 contract?

40 Yeah?---Yes, I assume that he was in a position.

He'd have to make decisions whether the work of UGL was up to scratch and whether UGL should be paid in accordance with the contract?---Um, yes, I assume that was part of his role.

Why wouldn't your loan of \$20,000 be seen as possibly influencing Mr Camilleri's decisions in relation to whether UGL would get paid under the contract?---I, I didn't believe that it would.

Well, can you see how someone from one of the bidding parties standing beside you might perceive that it could?---Um, I, I don't know. I, I - - -

Why don't you know?---You're asking me to put my, my feet in a - - -

Okay?--- - - - a whole bunch of other people's shoes and I'm suggesting that people that knew me would know that, and, and knew Joe would, would believe that there was no potential.

10

Well, so to make it clearer then we'll put it, put you back in your shoes, what if UGL didn't win the bid and one of the other bidders won the bid and you saw the bid manager for one of the, the company that ultimately won the bid give a loan to Mr Camilleri, what would you think of that?---Um - - -

You'd be horrified wouldn't you?---If, if I knew that they were friends, yes, I would.

20

What if you didn't know him?---Sorry, I wouldn't be horrified, I wouldn't expect that it would be a concern.

What if you didn't know the bid manager, you'd be horrified wouldn't you, that a bid manager you didn't know had lent one of the influential people a large sum of money?---If it, if it was a person that I didn't know that's possibly correct, if I didn't know the person who was lending the money and I didn't know the person who was receiving the money, yes.

30

And see isn't it the whole point of it, you don't necessarily know all the people, all the players in the - - -?---I, I didn't, I didn't think through all of this logic at the time.

And if you skip ahead a few months, and we'll go through it to some extent, but you come to the time when Mr Camilleri was ultimately sacked from RailCorp, you lent Mr Camilleri \$428,000?---Yes.

40

Had he not been sacked by RailCorp he would have been there deciding upon the L3C contract, making decisions about when UGL get paid, whether their work's up to scratch, how they get back, what they get paid?---I assume, I assume that's correct, yes.

How on earth could Mr Camilleri have made those decisions without favour knowing that he owed the bid manager for UGL nearly half a million dollars?---Well, I don't believe that Joe would have made those decisions to favour UGL.

Half a million dollars he owes you?---Yes. And I think there was a clear distinction between the personal loan that he owed me and business.

This also seems to have been a common theme, the use of the expression “personal loan”. Why is it “personal loan” as opposed to just a loan?---Oh, well, I put the word “personal” in because I had a longstanding - you used the word “personal” relationship, I had a longstanding personal relationship with Joe.

Yeah?---He was a good friend, our families knew each other, um, I was lending money to his family, I, I would call that personal.

- 10 But you’re, you’re trying to by use of the word “personal” distance the ramifications in a business sense aren’t you?---I believe there were no ramifications in a business sense.

Well I take it it’s a pretty good thing the big day down at UGL the day it’s announced that they win the L3C contract?---Which was 10 months earlier, yes.

I understand that. Big day though isn’t it?---Of course.

- 20 A big day for you too?---Everyone enjoyed the event, yes.

You get paid a large bonus?---I am, I am, um, on a bonus scheme and I get paid a bonus each year, yes.

And the bonus is paid on the basis of how you’ve gone in the previous year?---The bonus is paid on, more on the basis of how UGL goes, that is the individual.

- 30 And so UGL winning the L3C contract has gone really well haven’t they?
---Um I’m not sure exactly how the results would have been directly affected.

Yeah. But so where UGL goes well Mr McCarthy goes well?---In terms of the bonuses that’s what I believe the bonuses are distributed based on how the company is going.

- 40 So in terms of you being paid it’s in your interest for UGL to go well?
---Um, of course it’s, to hold my job it’s in the interest to UGL to go well.
Every employee of course has an interest that the company should perform well in everything that they do.

And UGL had gone through a period that had a contract for 17 years, towards the end of the contract they were not being looked at favourably by RailCorp and that causes some problems, doesn’t it?---Well, yeah.

RailCorp are questioning - - -?---Of course UGL would like to retain the contract.

RailCorp are questioning UGL's bills and saying they're not getting value for money for what they're paying. That's what was happening wasn't it?
---I think there were some parts in, in RailCorp that were questioning that, yes.

And so it's important for UGL if the L3C contract travels smoothly?---Yes.

Work's done the bills are paid?---Yes.

10 Bills get paid Mr McCarthy gets a bonus?---Yes. We've established that my bonus is based on how the company performs.

Mr Camilleri is one of the influential people dealing with the administration of that large contract?---Yes.

Mr Camilleri's happy, UGL are generally happy?---I don't know that - - -

Just in a general sense --- - - - happy is the right terminology to use for business transactions that occur across, you know - - -

20

If Mr Camilleri is happy with the way he considers that UGL is undertaking the contract UGL is happy 'cause they get paid well?---Well I think that the contract in its own right and the way it's been structured it would be more than Joe that would need to be happy. There's a whole sweep of KPI performance measures that would have to be met.

I understand that, sir. There's all sorts of rigorous processes - - -?---Of course yes.

30 - - - we're told are put in place?---Yes.

But Mr Camilleri is one of the cogs in the rigorous process?---He is one of the cogs in the process, yes.

Yeah. How on earth was he going to rigorously enforce his particular task in that cog when he owed the bid director of UGL nearly half a million dollars?---I believe that he would have performed his duty as he had every other time impartially and I'd seen that over many years.

40 How, how would you – sorry, I withdraw that. Have you ever seen Mr Camilleri perform his duties in circumstances where he owed a contractor nearly half a million dollars?---Um, no, I'm not aware, no. But I have, I have witnessed Joe using his influence impartially in every other decision that I've known him to make.

Was the Mr Camilleri you saw on the 10 October the same sort of Mr Camilleri that you dealt with in terms of his integrity and honest?---I didn't see him on 10 October it was a phone conversation.

No. The 10 October is when you first gave him the money wasn't it?---Um, that was a transaction that was done remotely.

Oh was it?---Yes.

Okay. Well was the person you spoke to when he came requesting this loan the same person you'd know for the previous thirty years?---Well on the phone I could perceive it was the same person.

10

I understand it was - - -?---I, I, I knew that he was stressed, I could tell that, yes.

Under pressure?---Um, yeah, yes, stressed.

And that's the person you're saying down the track being indebted to you for half a million dollars nearly would have no problem in being impartial and unbiased in administering a contract?---That's what I believe.

20 THE COMMISSIONER: It might be an appropriate time, Mr Polin. I think we'll leave it there for today.

MR POLIN: Yes, Commissioner.

THE COMMISSIONER: Mr McCarthy, you're to return tomorrow morning shortly before 10 o'clock if you could, and I'll adjourn until 10.00am tomorrow. Thank you.

30 **THE WITNESS WITHDREW** **[3.54pm]**

AT 3.54 THE MATTER WAS ADJOURNED ACCORDINGLY
[3.54pm]