

SPECTORPUB00300
20/02/2014

SPECTOR
pp 00300-00353

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION SPECTOR

Reference: Operation E13/0275

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 20 FEBRUARY 2014

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes. Before we resume the proceedings could I just remind Counsel to stand in front of the microphone and to speak clearly and loudly because the cameras in this courtroom which assist the public gallery in terms of understanding what's going on focus on the microphone, so if you're not standing in front of the microphone and you're not speaking clearly the camera simply swings to wherever there's the most noise which is often nowhere at all. So could I just reiterate please it is important that you speak up when you are addressing questions to the witness.

Yes, Mr Polin.

MR POLIN: Thank you, Commissioner.

Mr McCarthy, I was asking you some questions yesterday afternoon about the ongoing role that Mr Camilleri may have played in the continuing administration of the L3C contract, do you remember that?---Yes.

And you told me that he indeed did have an ongoing role and I suggested to you for example that he would ultimately be involved in approving whether works had been completed properly and whether payments would be made as the result of that. Do you remember that?---I remember that, yes.

You also agreed yesterday afternoon that in terms of any bonuses that were paid to you that they were dependent upon how well UGL as a company performed?---Yes, I agree.

And that the better UGL performed the better Mr McCarthy performed?
---Um - - -

In a general sense?---Yes, of course.

Your evidence yesterday was that you had lent \$20,000 initially on 10 October 2012, you didn't believe that created conflict?---That's correct.

You went on to lend further money up to a total of \$428,000, you didn't believe it created a conflict 'cause you considered it was a personal loan?
---That's correct.

And that if called upon in terms of making decisions administering the L3C contract you knew Mr Camilleri to be someone of integrity and you considered he'd do the right thing?---That's correct.

What would have been the case then if the \$428,000, sorry, I withdraw that. And I take it that was the reasoning behind you're not feeling that you needed to disclose the loans?---Um, yes, that I, yes, that's correct.

That you didn't think that it would create a conflict?---I didn't think that it would create a conflict.

It was a personal loan and that when called upon he would do the right thing?---That's correct.

10 What then would have been the case if the \$428,000 was loaned to Mr Camilleri say in mid 2010? It still would have been a personal loan would it not?---Ah, if the circumstances arose then, yes, it would have been a personal loan, yes - - -

It still would have been, yeah. And you still would have considered Mr Camilleri would have done the right thing being called upon to make any decisions involving UGL?---Um, yes.

20 So is it the cast that in your mind it really made no difference as to when the loan was made if the loan indeed was made back in mid 2010 it still would not have been disclosed?---Um, I think you're proposing a different circumstance that I never considered.

I'm asking you to consider it now?---Right. Um - - -

Is there any reason why the circumstances would be any different? You said the reasons why the loan wasn't disclosed is because it was a personal loan?---Yes.

30 And that you believed that Mr Camilleri if he had to make decisions would make those impartially without, essentially that's what you said didn't you?---That's correct.

Why would it have been any different back in July 2010? It still would have been a personal loan in your, your mind would it not?---Yes.

And you would have still had the same understandings and beliefs about what Mr Camilleri would have done in making decisions would you not?---Yes, yes, I would have.

40 So you still would have not disclosed the loan?---At that point, no, that's right, I would, I would have probably chosen the same decision.

Right. So that of course would have meant that you as the bid manager for one of the major tenderers for one of the major State contracts would have been in a position where you had loaned \$428,000 to a senior executive involved in the decision processes on that major contract and you wouldn't have disclosed it?---I think if you follow that logic that, yes, that's, that's right.

And don't you see a really big problem with that?---Um, I, think in hindsight and had, had that been the circumstance that yes, others could perceive that there may be a problem with that.

Well, the way - you keep saying in hindsight, you acted in a particular way in relation to particular loans in October 2012 didn't you?---Yes.

You can't look at it in hindsight, you did what you did?---I did.

10 And you tell us that nothing would have been different, you would have done exactly the same if those loans had been given back in mid 2010, didn't you?---Yes.

So the fact of the matter is that back in 2010 you would have loaned Mr Camilleri \$428,000, you would not have disclosed it as part of you being the bid manager for the L3C contract?---Oh, I think that's the conclusion that you would come to, yes.

20 Yeah. And you don't see a really big problem with that?---No, I don't, I mean no, because it was a personal loan.

Right. You've told us about how you actually met to agree that you wouldn't talk to each other for the whole period of the tender process yet you would meet and lend money on a personal basis. Can you explain that? ---I'm sorry, I think, I think there may have been a different outcome if during the tender process Joe had approached me, in fact because um, if that's the question.

30 Well, the questions have been pretty straightforward and simple have they not?---Well, during the tender process all contact was made through the controlled probity process and we agreed to that.

I understand that, I understand that, but you've already agreed that you would have loaned Mr Camilleri the money back in mid-2010 and would not have disclosed it, that is likely thing you would have done, you've agreed with that haven't you?---Yes.

40 And you can see, can't you, that that is incredibly inconsistent with an agreement for example not to in fact speak to Mr Camilleri?---Oh, I'm not sure that I can see it's inconsistent. The, the agreement to not speak to Mr Camilleri was on the basis of the probity controls that we knew were going to be in place.

Do you agree that what you did in lending Mr Camilleri money and not disclosing it was wrong?---No.

You don't?---No.

So I take it just following this path of logic that we've been adopting you would think that lending Mr Camilleri money on a personal basis during the tender process would not have been wrong, and not disclosing it, would not have been wrong either?---Well, I, I think there are various circumstances and I think that it would have - I think if it occurred during the tender process yeah, there would have been a different trigger that may have come in my mind, yes.

10 Do you think to lend Mr Camilleri money during the tender process and not disclose it would have been wrong?---I, I believe that I would have um, disclosed it in the tender process, yes.

Do you believe that having lent him money and not disclosed it during the tender process would have been wrong?---Um, I think in, in, in hindsight in interpreting the ah, um, the requirement to report I think I should have, I would have reported it.

20 Do you think it would have been wrong to have lent Mr Camilleri money during the tender process and not have disclosed it?---No, I don't think it was - the use of word "wrong" is in, in relation to um, interpreting the requirement under policies, so I think under the policies of reporting in hindsight I believe I would have reported it.

THE COMMISSIONER: We're not asking you what you would have done we're asking you whether or not the non disclosure of a loan during the tender process is in your opinion wrong. Was it right or wrong? It's a simple question. Is it right or wrong?---I think I would have disclosed.

30 No, we're not asking you that, we're not asking you whether you would have disclosed. Is the non disclosure of a loan to someone in the course of a tender process right or wrong?---I think it would - if the only answer I could give is right or wrong I think wrong.

MR POLIN: Well that's the only answer you can give to that question, it invites an answer or right or wrong doesn't it?---Yes.

Right. It would be considered inappropriate behaviour wouldn't it?---Um, wrong, wrong and inappropriate, yes.

40 Yes. You could, could you imagine what you would think as a bid manager on a major tender if you heard that another bid manager had lent Mr Camilleri money and had not disclosed it?---Um, yes, if, if that became knowledge I think there would be concern.

There would be more than concern wouldn't there, there'd be a public outcry and a call for an inquiry wouldn't there?---I don't know to what level it would be raised but you know. Public inquiry's quite a significant level, I don't know that it would have gone to that level.

You had a lot of trouble then answering the question as to whether lending money to Mr Camilleri during the tender process whether it was right or wrong, did it actually take you that long to come to that decision, is it something you have to really think long and hard about?---I think circumstances are, are taken into account and one considers an appropriate action to take.

10 See in terms of RailCorp one of their states major employers and suppliers aren't they?---Yes.

They have various contractors that do work for them?---Yes.

Very large amounts of money pass between RailCorp and those contractors for the provision of those services?---Yes.

Don't they?---Yes.

20 There are lots of we've heard robust systems put in place in terms of the dealings between RailCorp and its contractors, would you agree with that? ---That's correct.

And to try and make it as very simple as I can is it correct to say that those robust systems and the like are put in place to establish a level playing field between RailCorp and the contractors?---Um, yes, I think that's, that's a reason that they're put in place.

30 And in terms of the playing field they're trying to, they're put in place to establish a playing field that's fair?---Yes.

A playing field that's honest?---Yes.

And a playing field that's transparent for all the participants who may want to at some stage play on the field?---Yes.

Do you have any problems with those simple concepts?---No.

And they would apply would they not to the L3C contract?---Um, yes.

40 In a very simplistic sense?---Yes.

And that you as one of the players needed to be fair, honest and transparent?---Yes.

How is lending money from one player to another player either without disclosing it either fair, honest or transparent?---I didn't see it at the time as a transaction between the businesses when you say one player to another player I saw it as a personal transaction.

Sir, in terms of this contract two of the important people in terms of the future administration of the contract were you and Mr Camilleri weren't you?---Not in the future administration of the contract, no.

If we have just a quick look at the contract we have two parties to the contract?---Yes.

We have RailCorp as one party?---Yes.

10

And we have UGL as the other party?---That's correct. No, UGL Unipart.

I've been referring to them as UGL, it's part of the same corporate entity I take it?---No, it's a different, it's a different company, it's a joint venture that was formed.

20

It may well be but its, its, if I can just refer to them as UGL for the time being, the two parties to the contract were UGL and RailCorp?--- Can I just clarify the two parties to the contract was a consortium that was formed as a JV and RailCorp.

Right?---UGL was a shareholder in the consortium.

In terms of the contract, and I take it you're very familiar with the contract, the parties I think were referred to RailCorp and the L3C contractor?---Yes, in the contract, yeah.

And we know who RailCorp is?---Yes.

30

And you were employed by a company, either the company who was the L3C contractor or an associated company?---I was employed by UGL and I was during the tender period working on behalf of that company, yes.

You were working for the L3C contractor as defined in the contract weren't you?---During the tender period, yes.

40

And after the tender period as well, weren't you?---I, I was, my role after the tender period was to mobilise the new company 'cause simultaneously we were forming the company and migrating the contract from the old contract to the new contract so I had a role for a period of time and then I was always um, in the - past, past that role was not part of the business.

The contract was for seven years initially wasn't it?---Yes.

Notices would have to be served one party to the other during the course of the, the contract in relation to various matters?---Yes.

Who was the party, who was the address for service of the notices on behalf of RailCorp?---Ah, in, at the time the tender was submitted - - -

No, in terms of the contract, the contract was entered into in December 2011, in terms of the contract and the future administration of the contract who were notices to be served upon in terms of RailCorp?---Ah, I was nominated initially.

RailCorp?---Oh, sorry RailCorp?

10

Yeah?---Um, I'm not sure, um - - -

It appears to be Joe Camilleri?---Right.

Notices in terms of the L3C contractor appears to be Kevin McCarthy?
---Correct.

That's the contract that's sign in December 2011?---That's correct.

20

You're not telling me are you that the two of you were not big players in the future administration of that contract?---That, that um, clause in the contract was amended shortly after, after the JV company was formed.

Where does it say in the contract that the address for service of notice of the, on the parties is going to end shortly thereafter?---Well, it doesn't say it in the contract.

30

No. Just incidentally I take it that in terms of the your job you're acutely aware of putting the actual tender together and you're acutely aware of the contract that you would win should the tender be successful?---Yes.

That's your job isn't it?---Yes.

And you'd be aware wouldn't you that the contract provided for, put various things dealing with conflicts of interest and fair dealing?---Um, yes.

40

One of the provisions required that all friendships and commercial relationships between the L3C contractor and/or any associate of the L3C contractor on one hand and any employee of RailCorp on the other hand was to be disclosed in writing prior to the execution date of the contract, it's in clear terms in the contract that you were acutely aware of, wasn't it?---
Oh, I can't honestly remember that clause.

And we have the two people who are nominated for service of notices in the contract, you and Mr Camilleri having a longstanding friendship, neither of you disclosing in writing as required that longstanding friendship?---I, I take it, I haven't got the contract in front of me, but if that's what the contract states then I don't have a - - -

Well, you told me - - -?--- - - - a recollection of it.

This contract was your job, you'd be acutely aware of the terms of the contract?---Well they're - - -

It's your job at UGL?---It was my job to pull the contract together, there were commercial people involved in, in writing the contract and agreeing to it.

10

I understand that. But you weren't going to have anything in the contract that, and tender for it that UGL didn't particularly agree to were you?--- Well UGL agreed to it, yes, but in terms of my knowledge I, I pulled together information that was a decision of a commercial person involved in the tender.

See, sir, you lent this money to Mr Camilleri and continued to lend it to him and not disclose it because you thought you'd get some sort of benefit from it didn't you?---No, I didn't.

20

Why then did you not disclose it?---It didn't occur to me that I needed to disclose it at the time.

The very contract that you worked on I take it you were involved in the formulation with your lawyers of the contract required you to disclose at the very least your friendship?---And, and I, I'm not, I'm not aware and I don't have a recollection that I needed to disclose it so I - - -

30

But you're aware that you had to disclose the friendship?---No, I'm, I'm saying that I didn't have that consciously in my mind that it needed to be disclosed.

And you're aware weren't you that the contract in fact incorporated or adopted RailCorp's Code of Conduct didn't it?---Again I would need to look at the contract to know if that was the case.

And if indeed it was the case you're aware aren't you that any loan by you to Mr Camilleri would have to be disclosed?---Um, it's - if the contract states that I needed to disclose friendship I acknowledge that.

40

Yeah. If you needed to disclose a friendship with someone who worked at RailCorp - - -?---Yes.

- - - there's no doubt you had to disclose the fact that you'd lent someone at RailCorp \$428,000?---I don't know that the contract would have said that, if that's what you're referring to.

No, it may not have said, there wasn't a clause saying if you have lent someone at RailCorp money you've got to disclose it?---Yeah.

But it required you to disclose any conflicts that you may have?---If you say
- - -

It's inferring that a friendship may be a conflict isn't it?---I've acknowledged if that's what it says that, yes, that's what it says.

10 But the contract, the contract is inferring that something as simple as a friendship is a conflict?---I take that as what it says, yes.

And it must be disclosed?---If that's what it says, yes.

You would have no doubt in accepting back at that time that the loan of money to an employee of RailCorp was also a conflict and must be disclosed?---Um, I think it's logical to think that it should.

20 MR CROWLEY: Commissioner, objection. My friend is telling Mr McCarthy what his view of the contract is and what he thinks an inference should be from the contract and then putting that to Mr McCarthy as a fact and asking him questions to comment on a fact which is not a fact but is an inference which Counsel has made.

THE COMMISSIONER: Well I understood Mr McCarthy agreed that if the contract provided in those terms then he would accept the propositions that were being put to him. Mr Polin, do we have the, the term of the contract that - - -

30 MR POLIN: We do. I - excuse me just one moment.

THE COMMISSIONER: I'll just note for the record the witness is being shown a document. Is this the relevant contract, Mr Polin?

MR POLIN: Yes, Commissioner. It's part, it's part of - I think there are other documents but the document being shown, well the pages opened at this stage are pages 20 and 21 of the L3C agreement which was, I saw the date, dated 23 December 2011.

40 Do you see, Mr McCarthy, open there on page, bottom of page 20 the top of page 21 there's a section dealing with conflicts of interest and fair dealing?
---Yes.

And do you see that the contractor firstly represent that at the date of execution of the contract no relationship exists other than as specified in clause 6.3(b), do you see that?---Yes.

And you see 63(b) deals with a requirement of the contractor to declare or disclose in writing and friendship between anyone associated with the L3C contractor and an employee of RailCorp, do you see that?---Yes.

And do you see by the reading of those two clauses together UGL has warranted that as a result of there being no disclosure by you and Mr Camilleri that you and Mr Camilleri are not friends? Do you see that's the reading of those two clauses?---Um, yes I agree.

10 You see then section 6.4 deals with probity warranties?---Yes.

And you can see the contractor represents and warrants that it will act honestly and fairly, act ethically, impartially? See all the (a), (b) and (c)? And then it warrants that it's put in place effective systems and policies to comply with RailCorp's business, Statement of Business Ethics which forms part of RailCorp's Rules and Procedures. Do you see that?---Yes I do.

20 And if I could just show you this document. This is the RailCorp Statement of Business Ethics that's just been referred to in that clause is it not?---Um, I believe it would be.

And if you turn over to the last page there's a section headed 'Conflict of Interest.' Do you see that?---Yes.

It clearly says, "All RailCorp employees, contractors and consultants are required to disclose any potential and actual conflicts of interest. RailCorp extends this requirement to all our business partners and suppliers"?---Yes.

30 That captures you does it not?---Yes.

It requires you to disclose any conflict of interest?---Yes.

That's something you've not done?---Um, I, at the time I hadn't made the connection. Um, I thought that the UGL policy of conflict of interest would be the documentation that achieved the result of having systems, policies and procedures in place to meet dot point (d).

40 That might be an excuse that someone working in the back rooms of UGL might be able to give. You were the person responsible for the tender weren't you?---I did manage the tender, yes.

An integral part of the tender was the contract that you were tendering for? ---Yes.

That's what your job was, you weren't doing anything else at the time were you?---No, that was my, that was my role.

Out of all the people employed by UGL or its associates you were the person who was most acutely aware of the provisions of this particular contract leading up to the time it was executed and there after were you not?---I don't know that I would have been the person most acutely aware, my role in terms of reading the commercial terms of the contract was to pull it together not to do the interpretation myself.

10 If you weren't the person who was most acutely aware part of your job was to be acutely aware wasn't it?---Yes, part of my role was to be aware of what was in the contract.

And if you turn over to clause 12.2 it's on page 38. You'll see there that in terms of the services the contractor was providing they had to be in accordance with RailCorp's rules and procedures, taken in accordance with their Code of Conduct. Do you accept that?---Yes, it states RailCorp's rules and procedures.

20 So, sir, have you got any other excuse as to why the loans to Mr Camilleri weren't disclosed other than you didn't think of it as anything other than personal at the time?---Um, this, this period that we've been talking about is the LC3 period the loans were clearly made after that period.

30 Yeah. Well first of all we dealt with the friendship that wasn't disclosed. We've also dealt with your evidence where you said that even if you'd loaned the money in the tender period it wouldn't have been disclosed. We'll now deal with the period after the operation and I think we have to some extent dealt with the period after the commencement of the contract because you said that Mr Camilleri was a person who was involved in the ongoing administration of the contract as indeed were you?---Initially I was, that's correct.

Yeah. And that he would have to approve works, he would have to approve payments, those sorts of things in terms of the ongoing relationship between RailCorp and UGL?---Yes.

Nothing was disclosed as the contract continued was it?---No.

40 No different really to whether you disclosed it beforehand was it?---Nothing was, no, that's correct no, nothing was disclosed.

You were keeping Mr Camilleri on side weren't you, throughout the initial administration of the LC3 contract weren't you?---It wasn't in my mind that that was the purpose of anything that I was undertaking, no.

It would certainly be handy to have Mr Camilleri on side during the early period of the L3C contract wouldn't it?---Um, I don't know that the word "onside" is, is a term I would use.

What term would you use?---Well I think we were both professional in, in application and we would administer our duties as um, as they were appropriate.

What was the term that you used when you found out Mr Camilleri was not on your side so to speak back in the days of MainTrain contract?---Oh, I can't remember, that was in the document we looked at yesterday.

10 But you'd used a similar sort of term to that would you?---I don't remember the term, if you, if I could look at the document again.

You understand what I'm saying when I say you want Mr Camilleri on side don't you?---That document referred to a period which was before the contract was in the market.

I think it's come back, I think the words you used in that document was that "Joe is no longer a supporter." Do you remember that?---Okay, yes.

20 So what you would want during the administration of the contract was for Joe to be a supporter of UGL wouldn't you?---A supporter of the, well of the contract and the new joint venture that was being formed, yes.

And a good way to have Joe as a supporter of the UGL contract and its administration would be to have Joe owing you some money would it not? ---No, I don't believe that owing money would in any way have influenced his support for the business.

30 Wouldn't Mr Camilleri have 428,000 good reason why he would want to support you in the ongoing administration of the L3C contract?---Again I make a clear distinction between the personal loan and the contract, it wasn't related to the business dealings of the two companies.

Was there a time during the latter part of 2012 where you thought that Mr Camilleri may have been of some assistance to you other than in terms of assistance to UGL in administering the L3C contract?---So which period are we in?

The second half of 2012?--- The second half of 2012?

40 Yeah?---Just before the tender was let, is that what you're saying?

The second half of 2012, the contract was signed - - -?---Oh, sorry, the second half of 2012.

The contract was signed in December 2011?---Yes.

It came into it - it was up and running in July 2012?---Yes.

And I've suggested to you that you were getting benefits from Mr Camilleri in the administration of the L3C contract during the second half of 2012, that's what I've suggested to you so far. What I'm asking you now is were there any other ways which you thought Mr Camilleri may provide benefits to you in the second half of 2012?---Well, I - - -

Other than in your role administering the L3C contract?---I, I don't believe Joe was providing benefit to me in any of those periods.

- 10 Okay. Other than his role in the maintenance area you were aware weren't you that he was in charge of the reform programme at RailCorp?---I didn't know he was in charge, I knew he was part of a process.

You were a good friend of Mr Camilleri and I take it as of December 2011 you were back talking to him?---Um, I don't recall exactly when the first point of contact was.

- 20 Were you working at RailCorp premises throughout 2012?---Ah, so from, in the first half of the calendar year I was on the Auburn site.

Right. If maybe you just hand that folder back for a moment, and the other.

THE COMMISSIONER: When you say the Auburn site you mean that they were RailCorp premises?---I believe RailCorp owns the facility and it's under the control of the contract.

MR POLIN: Commissioner, might these be just marked for identification and then we'll work out how many - - -

- 30 THE COMMISSIONER: Well, I'll just mark pages 20 and 21 of the agreement.

MR POLIN: And 38.

THE COMMISSIONER: And page 38 and the schedule being the, what was the name of that document?

MR POLIN: Statement of Business Ethics.

- 40 THE COMMISSIONER: Statement of Business Ethics, that'll be MFI 3. Thank you.

**#MFI 3 - PAGES 20, 21 & 38 OF AGREEMENT OF L3C
AGREEMENT BETWEEN RAILCORP AND UGL DATED 23
DECEMBER 2011 AND STATEMENT OF BUSINESS ETHICS**

MR POLIN: Mr McCarthy, are you serious suggesting that you didn't realise in 2012 that Mr Camilleri was in charge of the reform programme that was going on at RailCorp?---There'd be quite some period where I hadn't been in contact with Mr Camilleri and I think in the first half of 2012 also I wasn't directly in contact with him. I knew he was involved in the reform process because the people who were involved in the execution of the contract were other people.

10 By October 2012 there's no doubt that you were in contact with Mr Camilleri?---Ah, in October 2012 is when he, he phoned.

Yeah. So at least by that time you were in contact with him?---Yes, he phoned me.

You're aware that he's involved, well, I think you agreed he's aware that you're involved in the reform process?---Yes.

You weren't aware do you say he was in charge of it?---That's correct.

20 Right. I take it you were aware that he was a 37 year longstanding employee of RailCorp?---Yes.

And being involved in the reform process he would have significant inputs into that process?---Yes.

And in terms of decisions that would be made he would be highly influential in making those sorts of decisions?---Oh, I didn't know what his role exactly was in the process so - - -

30 I didn't ask you - - -?--- - - - I don't know how influential his decisions could be. I think people would have asked for his counsel on, on, on decisions.

They would have asked for more than his counsel, he was involved in the whole reform process wasn't he?---Yes, but I didn't know what role he had.

40 Wouldn't UGL as the major and in fact the onsite contractor but a major supplier to RailCorp, wouldn't they make it their business to know what was, what RailCorp was doing in terms of reform?---I think in that, in that point of time that there was a lack of information in the marketplace about exactly what RailCorp was doing.

THE COMMISSIONER: Mr McCarthy, can I ask you to concentrate on the question because we'll be here all day if you don't answer the question that - - - (equipment malfunction)

SHORT ADJOURNMENT

[10.40am]

MR POLIN: Mr McCarthy, before the break I was asking you some questions about your knowledge of Mr Camilleri's involvement in the reform process being undertaken at RailCorp, do you remember that?---Um, yes, I do.

I think you agreed with me did you not that you were aware he was involved in the reform process at RailCorp?---Um, yes, I was aware.

10 You were aware that RailCorp was undertaking or going through a reform process were you not?---Yes, I was.

I think you just said you weren't aware that he was in charge of the reform process?---That's correct.

But notwithstanding that you knew from his position at RailCorp that he was someone who would be influential in the reform process?---Yes.

20 He would be influential in the decisions being made in the reform process?
---Yes. That's why he would be on that team.

In the second half of 2012 and the first half of 2013 did you see that there, other than the administration of the LC3 contract did you see that there were any times when Mr Camilleri may have been possibly influential in any other decisions that you could be involved in?---Um, so in the second half of 2012 um, I, I believe that Mr Camilleri was still in the reform process.

30 Right. And so are you saying that because of that he wouldn't be called upon to make decisions or have any influence in any areas of work or matters that you were involved in?---That's correct.

Is it correct?---It is.

Are you sure about that, Mr McCarthy?---Yes, I have that belief.

You applied for a job with Sydney Trains didn't you?---I did.

40 That was a job that was advertised as a result of the reform process that went on within RailCorp, didn't it?---Um - - -
Wasn't it?---Yes.

RailCorp was in fact being split into two separate entities, Sydney Trains and New South Wales Trains was it not?---That's correct.

That job was advertised I take it?---Ah, um, yes I believe it was.

What was the job?---Um, there were various general manager roles at that time.

So it was a position as a general manager at Sydney Trains?---As a general manager at Sydney Trains, that's correct.

And I take it that that job was advertised towards the end of 2012?---I believe it was advertised.

10 Would you think that the advertisements and the, were placed in the second half, towards the end of 2012?---I'm not sure exactly when the advertisements came out.

Now, applying for a job as a general manager at Sydney Trains which has obviously been created as part of the reform process I take it you would have thought that Mr Camilleri may have had some influence in terms of who would get that sort of job?---No, I didn't think that he would.

20 Why wouldn't you think that?---Um, I was aware that the roles would have reported into Mr Gavin Campbell.

They may have reported to Mr Campbell but it was Mr Camilleri who was running the reform process wasn't it?---Well I didn't know he was running the reform process.

Yeah. You accept that he was influential in the reform process?---Yes.

30 You'd accept then that he may be influential in determining who filled position as, that were created as a result of the reform process?---No I don't.

Why not?---I had no knowledge that that was his role, that he would be influential in deciding who got which job.

You said he would be influential, you agreed that he would be influential in the reform process?---Yes.

The reform process created new jobs?---Yes.

40 Why would he not be influential in who actually went into those particular jobs?---Um, I don't believe that he, that there's link that he would have been influential in who got what job. I think his role in the reform process was about deciding how the organisation structure would be formed after the separation.

I'm not suggesting that he was going to sit on the interview but you're aware that he was one of the players in the reform process and he would have been influential, potentially in the decisions?---I doubt it.

You doubt it?---Yes.

But you agree that what, it could have been a possibility?---I think it would have been a role, I was applying for a role that was at Joe's level so I wouldn't have thought in any way he would be involved in the decision process.

I take it then even if he wasn't involved in the decision process he's someone who you would use in support of your application for the role?---
10 No I wouldn't.

Why not?---I didn't need, I wouldn't put him forward as a supporter.

Why not?---I didn't think I would need to. I didn't think then it was a, it would be in any way required.

The, you interviewed for the job didn't you?---I did.

And that interview, did it take place on 19 February, 2013?---Yes um, yes.
20 About that time. The exact date, I'd have to look in my diary.

And the day before the interview did you put a call through to someone at RailCorp, or Sydney Trains?---I did.

You rang to tell them that you had become aware of an issue with a RailCorp employee with implications on yourself and UGL and you thought it prudent to discuss prior didn't you?---Um, that was the context, yes.

You also said that you wanted to clear your name of any inference of any wrongdoing didn't you?---No. I don't think I would have said that.
30

Could I show you this document. Is this a, have a look at it, a photocopy of a diary or some sort of book that you keep records in?---Um, yes it looks like it is.

It doesn't appear to be a diary as such but it's a - - -?---It's a notebook.

That you diarise matters in. If you turn to page 1,482 is this a file note of a telephone conversation that you had on 18 February, 2013, the day before your interview?---Yes.
40

And you see that a bit under halfway down the page, want to, sorry, halfway down, "Aware of RailCorp internal investigation. Assume the following due process. There could be external investigation e.g. ICAC. Want to clear my name from any inference of wrongdoing." See that?---Sorry, which part are you in?

Did I say the wrong page. Sorry, 1,488. Did I say - - -?---Oh, 88. Yeah, okay. 88.

Sorry. See just below the, halfway, “I want to clear my name of any inference of wrongdoing”?---Yes I do.

And then just a bit lower down, “Not aware until today,” that is 18 February, “That this person had not told RailCorp of the personal loan situation from me”?---Yes.

10

So your suggesting are you that it was a personal loan, you’ve always said that, and that’s why you didn’t have to disclose it?---That’s correct.

But you’re suggesting, notwithstanding that it was personal loan, that Mr Camilleri did have to disclose it?---I was aware at this point in time, so this was after Joe had phoned me to tell me that he had been terminated - - -

Yeah, but what you say there, just read it again. “Not aware until today that this person had not told RailCorp of the personal loan situation from me.”

20 Do you see that?---So I - - -

You’re saying there, Sir, aren’t you, and you’ve told us consistently that you felt no obligation to disclose to anyone the loan because it was personal?--- This was - - -

You’re saying there, Sir, aren’t you that Mr Camilleri was under an obligation to disclose it and you didn’t know he hadn’t disclosed it until the day before, or until the day, sorry?---No, that’s not what my intention was in writing that diary note.

30

That’s what it says but doesn’t it?---I, this, if I could explain this is in relation to Joe had rang me just a couple of days before when he was terminated and he told me that he was terminated because, one of the reasons in the termination note was he failed to um, to tell RailCorp about the loans. So this was in relation to the fact that he had been terminated because he failed to tell them.

THE COMMISSIONER: Well Mr McCarthy, the note, the note suggests that you’re telling this person at RailCorp HR, because that’s the point of the note isn’t it, you’re making a note of what you’re telling this person at RailCorp HR during the phone call?---(No Audible Reply)

40

You see at the top of the page 18/2/2013, and then Gavin Campbell, Nicole Azuri, and then RailCorp HR which I’m assuming is the section to which you’ve placed the call, is that right?---Um, yeah. I think that the note is a mixture of um, the points that were in my mind and exactly what was discussed.

All right. Well so this is what you are telling the person on the other end of the line?---I don't believe that that point was discussed with, with the other people on the line.

What point?---The point about you're referring to.

All right. Well if it wasn't discussed with whoever was on the line the note nonetheless represents something that you either thought was important or that you were intending to discuss but didn't emerge in the conversation?

10 ---Yes.

All right. So what did you think was important about the fact that you were not aware until that day that Mr Camilleri had not disclosed your personal loan to RailCorp, what did you think was important about that?---So I was aware that he had been dismissed because he hadn't disclosed, I was aware also that um, an email from me had been referred to in the termination notice, I therefore understood that um, Gavin Campbell who was Joe's boss would know that I was the author of the email that was referred to and I, if you put those together I therefore thought that Gavin Campbell may have interpreted that I was aware that, that Joe hadn't informed RailCorp and that was the purpose of the note that I wasn't aware.

20

MR POLIN: At this point in time you had been identified hadn't you, you'd been identified as a person who'd lent Mr Camilleri money?---I didn't, I didn't – well, sorry, yes, I did know that because I – the email was referred to.

And until RailCorp ultimately terminated Mr RailCorp (as said) your identity as a person who had lent money to Mr Camilleri had not been disclosed?---Not by me, that's correct.

30

And not by Mr Camilleri?---I now find that out, yes. At this point this is when I found out that he hadn't.

Had you anticipated that Mr Camilleri had told RailCorp the moment he first borrowed money that he'd borrowed money?---No.

Right. So your anticipation was that in lending the money no-one was ever going to find out outside you and Mr Camilleri that the money had been loaned?---Um, no. My, my – the purpose of this was that - - -

40

I'm not asking about the purpose of that I'm asking you about when you lent the money you said that it was a personal loan you had no intention of telling anyone?---That's correct.

Did you understand that because it was a personal loan that Mr Camilleri also had no intention of telling anyone?---Um, yes, I would assume that.

The intention therefore of the two of you was that you would both continue to operate in your respective roles without disclosing to anyone the fact of these loans?---That's correct.

You would continue to administer for your part whatever you had to do in terms of the L3C contract and you would not disclose the loans?---At that point in time that you're referring to I had no role in administering the L3C contract.

- 10 Whatever part you had in the L3C contract you weren't intending to disclose the loans to anyone?---At that point in time I had no, no role with the L3C contract.

Sir, we've got to go through step by step. From the time it was signed right up until a point of time probably late in 2012 you had an involvement in the continuing operation of that contract didn't you?---No.

None at all?---I had - - -

- 20 Are you saying, sir, you had no involvement in the administration of that contract after the day it was signed?---I think, I think you're blurring the periods. I was involved upon the end of June in terms, I wasn't involved after that period.

Okay. Up until the end of June you operated and did whatever you did in terms of the administration of the L3C contract without disclosing the loan to anyone?---There was no loan in that period.

- 30 Right. After that, after the loans were created your general intention was never to disclose them to anyone was it?---That's correct.

And you understand that that was Mr Camilleri's general intention as well not to disclose them to anyone?---I believe that was correct.

You made an application for a job with Sydney Trains in late 2012 didn't you?---Yes.

- 40 It was never your intention to disclose to anyone that you had lent money to Mr Camilleri was it?---Ah, no, when the, when the, when I applied for the role that's correct.

Sir, it's a simple question. You applied for the role - - -?---Yes.

- - - through the job application and possibly obtaining the job?---Yes.

It was never your intention to disclose to anyone that you'd lent Mr Camilleri money was it?---That's correct.

That's correct, it was not your intention?---When I applied for the role, yes.

Yes. Right up until 18 February, 2013 it was not your intention to disclose to anyone that you had lent Mr Camilleri the money?---Um, no, that's not correct. I disclosed fully to my own organisation that I had lent the money to Joe.

10 I withdraw the question. It was not until Mr Camilleri was terminated from RailCorp that you had an intention to disclose to anyone that you had lent him money?---I, I, I disclosed fully to my organisation when I found out that he was terminated.

Yeah?---Yes.

Prior to that you'd never disclosed it?---That's correct.

And prior to that you had no intention of disclosing it?---At that point no, that's right.

20 Right. And if Mr Camilleri had not been terminated and no one from RailCorp had found out about the loan you would have never disclosed it? ---Um, that's correct.

You would have gone through an interview process for a position with Sydney Trains and possibly taken the job without disclosing the fact that you had lent a senior executive at RailCorp \$428,000?---Possibly would have, yes, that's not what happened of course.

30 I understand that. Do you think that would have been the wrong to do? ---Um, no.

Why not?---Oh, I've said many times I treated it as a personal loan?---Right.

And that for example if by chance Mr Camilleri happened to be sitting on the panel of people that interviewed you and decided who was to get the job you would just have assumed that he was a person of integrity and would have done the right thing?---I, I knew that Mr Camilleri wouldn't be on the panel.

40 THE COMMISSIONER: Mr McCarthy, that was not the question. You really have to focus on the question.

MR POLIN: You didn't know, did you, when you first applied for the job that Mr Camilleri would not be on the panel did you?---I assumed he would not.

You assumed he would not. If he in fact turned out to be on the panel you would have had no intention to disclose to anyone that you had lent money

to him, you would have, as you've told us many times before, just have assumed that he is a person of integrity, would have done his job and made his decisions impartially, that's what you would have done isn't it?---I, I'm not sure whether I would have or not, I think the circumstance of him being on an interview panel would have changed.

Why?---Well, because I think it's just a change, it's a very different circumstance.

10 Why?---Because he, he would obviously be in a position to make a decision about, directly about my future.

Well, I take it it's just a panel, he would only make a recommendation as part of the panel?---I assume.

That's no more than he was ever doing in terms of work on the, the L3C tender isn't it?---I don't know, they're, they're unrelated I think.

20 I know they're unrelated but you understand don't you that it's about decisions and recommendations that Mr Camilleri's making?---It, it would have been but he, he wasn't in a position to, to be on the panel.

So are you saying, sir, that if Mr Camilleri was on the panel you would have done something differently, that's if he was on the panel for your job interview with Sydney Trains?---I may have.

When you say you may have - - -?---But the, the circumstance didn't occur so I, I don't know.

30 When you say you may have does that just means you're not sure?---I, I think you consider circumstances when they occur and if that changes the position.

Would you have used Mr Camilleri's name for example as a referee?---No.

Why not?---I didn't, I'd say that I didn't need to.

Normally when you go for a job like this you, you put up names at least as referees?---Yes.

40 You do, that's the normal procedure?---Yes.

That's what would have occurred in this case wouldn't it?---I had, I had other referees.

Who were the referees that you put up?---I don't remember exactly I'm sorry.

Well, who are they, you must know who are the people in applying for a job with Sydney Trains that you would have put up as your referees for the particular job?---To, to be honest I'm not even sure that um, I was at that point asked to put up a referee.

10 Whether you were or you weren't who would you have put up, do you think a longstanding friend who worked for 37 years at RailCorp, he sounds as though he'd be the kind of person that you would immediately put up as your first referee, logically wouldn't you?---Not, not necessarily, no.

Logically you would wouldn't you?---Oh, I'm saying not necessarily, no.

I know but logically - you may not necessarily but logically you think he would be the one you'd put up?---I have, I have other people in industry that know me and had worked closely with me, I can't say that I would, that your logic is necessarily correct.

You're applying for a job with Trains?---Yes.

20 Sydney Trains. Mr Camilleri works with Trains, you'd known him for 20 or 30 years, he'd worked in Trains for 37 years. Can you think of a single person that you would consider more appropriate than he to put up as a referee?---Um, I think um, people who work with me in UGL would be better referees.

Would they?---(No Audible Reply)

30 Why?---Well, well they - in, in recent years they've worked more closely with me.

But people at RailCorp understand the workings of RailCorp and what's actually required in terms of working at RailCorp don't they?---I think it would have possibly been detrimental to my role to put a, a former RailCorp employee as a referee.

40 You would know if he was used as a referee that any panel would no doubt consult him and seek his opinion or recommendations in relation to your suitability for the role wouldn't they?---I assume if he was a referee they would contact him.

That's the way it works?---Yes.

Yeah. And you would have gone through that process if that indeed had occurred without telling anyone that Mr Camilleri was indebted to you to the extent of \$428,000?---You're putting a lot of hypothetical here together.

Yeah.

MR CROWLEY: Objection, may it please. My friend is putting a hypothetical to a situation where my client has already told Counsel that he wouldn't have done it, he's already said he would not have put Mr Camilleri as a referee and - - -

THE COMMISSIONER: Well, I mean, he's testing that proposition, I accept that. Anyway, we can move on. Yes, Mr Polin.

10 MR POLIN: Sir, do you understand that at the very least just dealing with a perception that you seeking work either as a contractor or indeed applying for a job with RailCorp there's a perception of some sort of conflict where you have loaned a senior executive at RailCorp \$428,000 and have not disclosed it to anyone, can you see at least there could be a perception that there's a conflict there?---Perception I think is a terminology that's in the eye of the beholder, you're asking me to put myself in the position of other people.

Yeah?---So it would depend on the other people that you are asking me to put (not transcribable)

20

That's right, and that's exactly what Codes of Conduct are about isn't it? Part of its about perception, how your behaviour is perceived by others, that's exactly right isn't it?---Ah, I believe, yes, it is.

So to actually apply a Code of Conduct at times you're required to put yourself into someone else's shoes and look at the thing that you're about to do and gauge how you think they would perceive that action, do you understand that?---I, I, I understand the concept - - -

30 Yeah?--- - and I think that's a difficult thing to do.

When you say, is that a difficult concept to understand?---No, it's a difficult thing to put yourself in the role of any other person.

Okay.

40 THE COMMISSIONER: Mr McCarthy, does that mean that you never do it? Do you mean to say that in your ordinary daily life you are not capable of assuming or perceiving how other people might react to a situation?---Ah no, I would apply that principle.

Well you do all the time don't you?---And in, I think every time that I would do that I would know who's role I'm putting myself in, not, I don't, I - - -

Well put yourself in the role of another tenderer. Now, answer the, Mr Polin's question on the assumption that you're in the role of another tender. Ask it again, Mr Polin.

MR POLIN: So you're in the role of the other tenderer. How do you think they would see a situation where you're seeking work from RailCorp and that a person there who is influential in being able to decide whether you get the work or not, how do you think they would perceive the fact that you had lent that person and that person was indebted to you to the extent of \$428,000?---Um, I think they might perceive it was a personal loan.

10 They might perceive it was a personal loan?---If, you said if they knew - - -

THE COMMISSIONER: What else might they perceive? Mr McCarthy - - -?--- - - - it was a personal loan.

What else might they perceive? That's one of the things they might perceive. What else might they perceive?---I think if they didn't know it was a personal loan and they didn't know um, me and Joe then possibly they might perceive something.

20 MR POLIN: Can I ask you, we'll make it even more simple. There are two of you, the two contractors applying for a particular piece of work. Do you understand that?---Yes.

Okay. I want you to just to assume these matters. Mr Camilleri is the person who's going to decide who gets the piece of work. Do you understand that?---Yes.

You don't know the other contractor. You've never met him. Do you understand that?---Yes.

30 These are assumptions I'm putting to you?---Yes.

You don't know whether or not the other contractor knows Mr Camilleri or not. Can we assume that?---Okay.

Yep. You both put your proposals into Mr Camilleri and the proposals, for all intents and purposes are, the tenders are identical. Do you accept that?---Okay.

40 Now, someone walks into the room and whispers into the other tenderer's ear, "Did you know Mr McCarthy," oh sorry, I withdraw that. "Do you know Mr Camilleri owes Mr McCarthy \$428,000?" Now, I want you to move, put yourself in the position of that tenderer. How would he then do you think see that tender process?---In that circumstance that you've described with him having all of that, no knowledge position I think he may see an issue, yes.

You said he may see an issue. It's a little bit more definite than that, isn't it?---I don't know.

He would see an issue wouldn't he?---I'm not certain. I'm saying he may and that's - - -

Wouldn't he immediately thing, 'How am I going to get this. The bloke who's handing out the work owes the bloke who's getting the work \$428,000. I'm not in with a chance'?---I, he may perceive that's an issue, yes.

10 That's exactly what was occurring initially, from the very first moment you failed to disclose your friendship with Mr Camilleri on the L3C tender wasn't it?---So the periods that you're confusing me over - - -

THE COMMISSIONER: No, no, no. He's talking about before the tender. He's talking about the disclosure of your friendship. Just focus on the question?---Before the tender.

MR POLIN: Yeah?---So can you repeat the question, sorry.

20 I'll take it back and try and make it even more simple for you. We'll go back to our little scenario with the two tenderers. Remember that?---(No Audible Reply)

The man walks into the room and rather than whispering in his ear, "Did you know that he's, he owes him money," he whispers in his ear, "Did you realise these two blokes, McCarthy and Camilleri are great friends and have been great friends for the last 30 years." Now, put yourself in the other tenderer's position. You'd think, 'Something wrong here isn't there'?---I think there's lots of friendships that exist in the industry. I don't think that
30 that was necessarily a conclusion that you would come to.

Putting yourself in the shoes of the other tenderer how do you see that, how do you perceive what's going on in that process?---I, if it was to occur to me, I'm putting my, and I was the other tenderer in that case - - -

Yeah, looking back on it?---Um, yeah I think possibly that person may have a concern, yes.

40 Yeah. You'd immediately say, 'Hey, what's going on? You two are good friends. I'm not in with a chance of getting this work. Why didn't you tell me?' That's exactly how you'd feel as the other tenderer wouldn't you?---Um, possibly.

And that's exactly what you did on the L3C tender didn't you?---Certainly not intentionally, no.

The effect of what you did was to do that though wasn't it?---I'm not sure that that is the case. You're connecting a lot of hypotheticals. And I think

the circumstances, all of the hypothetical you put together was considered a whole bunch of circumstances.

THE COMMISSIONER: Mr McCarthy, when one, when a company has a probity policy or a conflict of interest policy the staff are trained are they not in the context of hypotheticals, aren't they?---Um, I don't, I'm not aware of being trained like that, no.

10 You have never been trained at all? You've never received any training in conflict of interest issues or things of that nature?---That's correct.

Not ever in your whole working life?---I believe that's correct.

Well that might explain something. But anyway - - -

MR POLIN: If you were the person on this major government contract that was responsible for the contract and all the requirements for all of the people for UGL and all of the people for RailCorp to deal with conflicts of interests and the relevant Codes of Conduct, is that right?---Are you
20 referring to the LC3 contract?

Yep. Yep?---Um, yeah I was in control of the process.

And you've never had any training you say in relation to those matters?---I'm not aware that I've had any formal training, no.

When you say you're not aware that you've had any - - -?---I can't, well the answer is no, I'm not.

30 Yes. So then if we move ahead to the loans, you've loaned the \$428,000 to Mr Camilleri. The same scenario with the tenderers. Every time you were dealing with RailCorp after that either for UGL or where you were applying for a job where there are circumstances where Mr Camilleri could possibly influence in any way a decision how do you think the other tenderer or other job applicant would have felt knowing that the person he's up against is in, is owed \$428,000 by the person who might influence the decision? How would that be perceived if you were in that person's shoes?---Um, again a person of knowledge I think may perceive that it was a personal loan.

40 I'm asking you to assume in that scenario that that wasn't known, that it was a personal loan?---And I think a person without any knowledge may have an issue, yes.

Yeah. And the only way that person might know that is if you come out and say, 'Hey, it was a personal loan.' That's right isn't it?---Yes.

And until you come out and tell them that they don't know anything about the loan do they?---Of course not.

And that's why when there is this perception, or could be a perception which creates a conflict you've got to come out and tell people, isn't it?--- Um, I, well, I think it's a requirement to inform ah, not tell people but to ah, inform the organisation.

And see is it the case that far from being a personal loan this is a loan to Mr Camilleri that you were well aware may well influence the way he might make decisions involving you in the future?---No, I didn't believe that.

10

Well when we deal with it as being a personal loan, well why do you say it's a personal loan as distinct from just it was a loan?---Um, I was lending money from my own personal accounts to a friend.

It wasn't a loan either was it? I've just done a quick check and you can correct me if I'm wrong but it appears that it was in fact at least 50 loans you made to Mr Camilleri?---No, I don't think that's correct.

20

We're certainly talking in the order of 50 loans aren't we?---No.

What are we talking in the order of?---I think there was 27.

Twenty seven. And have you got records of it?---I do.

Do you regard two loans on one day or the advancement of two amounts on one day as being one loan or two loans?---Um, two loans.

30

Right. So that as an amount was advanced to him that would be regarded as a loan?---Yes.

And if two amounts were advanced on the one day that would be two loans?---Um, yes. I think there were 27 transactions if you want to put it that way, bank transactions.

Excuse me just for one moment. I'll just bring up this document on the screen. If you just have a look at, this is page 1. There's three pages. Now I must say I counted, when the count the transactions that it totals 50?---I haven't seen this document before.

40

I understand that. There's a summary of what appears to be the transactions. Is it the case there's so many of them that you can't remember?---No, I believe that there was 27, I have my own records which I've counted of 27.

But you agree that the total was 428,000?---Yes.

They start 10 October 2012?---Yes.

And they end 12 February 2013?---That's correct.

At what point in time if any during the course of advancing those monies did you suddenly realised that you'd been taken for a ride?---Um, I, I didn't suddenly realise that I'd been taken for a ride through that whole period otherwise I would have completely stopped.

Or was it you were happy to continue providing money to this man because it to some extent was an investment in your future?---No, that's not correct.
10 I had no intention to make a benefit, a gain from what I was loaning.

You, you knew Mr Camilleri was a highly paid executive at RailCorp didn't you?---Yes.

You knew he owned a house?---Yes.

At all times you thought you were going to get the money back didn't you?--I did.

20 You thought he had a lot of superannuation as well?---That's correct.

It didn't cross your mind that you were not going to get the money back?---Um, it didn't cross my mind at, at the later part but that, but, but - - -

But the very end?---Towards the end of course it was crossing my mind, yes.

But for example the 10 October was the first transaction, he came to you. What did he say?---Um, on the very first phone call?
30

Yeah?---Um, he explained that he had a, his daughter had a significant personal issue um, and that they needed money quickly, I think the money that they needed was on the same day or the very next day um, and that um, he had a few alternatives in, in order to seek the money and that he um, was asking me as a friend to loan him the money.

What was the reason that he had to get the money so urgently?---So we had a brief conversation and at that point in time it was because there was a court process that required funds to do with um, um, lawyers fees or
40 something like that at that point in time.

And why was that so urgent?---I believe it was a time in the court proceedings where they required money to be able to proceed further with the court proceedings.

Again why was that so urgent?---Um, so, I'm not sure, he explained it as urgent and as what he understood to be urgent in the process.

You've been the bid manager for multi million indeed billion dollar contracts haven't you?---Yes.

You've dealt with lots of lawyers?---I have.
You've dealt with lots of legal issues and claims and the like haven't you?
---Yes.

10 In terms of that experience that you had what was your understanding then of why payment of some legal fees on the 28th, sorry, 10 October was so urgent?---I, I thought that um, if he hadn't paid the fees that the process was going to um, to be stopped.

Right. Have you ever paid a lawyer in cash?---No, I personally haven't had much need to pay a lawyer.

Right. But for UGL's point of view I take it they get an account from a lawyer and a cheque is paid?---Yes.

20 He was telling you was he that money had to go into this lawyer's account on that particular day?---Um, yes.

He needed the money on the spot?---Yes.

And was he telling you that once that money went in there everything was fine, that would be sorted?---Yes.

Did he suggest to you at that point in time that he was going to get some sort of windfall out of this case?---No.

30 Right. Okay. So you accepted that, you gave him the money, no doubt it went into the lawyer's account, everything was fine. Of course until the next day. What happened then?---Um, so Joe rang the next day and explained that um, the money that, that they had collected from me was part of money that they were collecting from the family as well, that the total fee that they required was actually more than he originally had asked me for.

And how much was the total fee required?---I can't recall.

40 Right. It's obviously more than \$20,000?---Yes.

Right. Yeah. Keep going?---Um, and that, um, the other source of, of money which I believe he explained as coming from his family um, was not coming through in the time and that he needed a further loan from me.

And so you then advanced him a further \$25,000?---That's correct.

And that was again to go to the lawyers?---I believe, yes.

Right. And how much at that stage did you understand that there was – you're putting 45,000?---I didn't ask him what the total bill was.

Right. And did he assure you that that was all that was necessary and that was going to clinch the deal?---I think in the conversation he's, he thought and he told me that that was what was required, um - - -

In terms of what he had been seeking 25,000 had fallen through and could you plug the gap?---Um, I think - - -

10

So to speak?---Yes.

Yeah. So you did that?---I did.

Yeah. At any time in those two days did you ask him anything about the nature of the legal case?---Um, at so during, I think it was before the second loan on the second day when we had the conversation and I said that I thought that it was a large amount of money to the loan to him um, and I asked him for a further explanation, I also explained that I would like to sign a, an agreement on getting the funds returned and um, um, having some form of collateral at the base of that agreement um, so this occurred in that second conversation when he asked of the second amount of money.

20

Mmm?---Sorry, the question again?

Did, what, did he tell you anything about the nature of the case he said his daughter had?---Ah, he, he explained that it was related to an identity theft - - -

30

Yeah?--- - - - of his daughter many, several years earlier.

Yeah?---Um, and that um, he had the claim, they had a claim to recover costs ah, and damages regarding the identity theft - - -

Yeah?--- - - - and that the money was needed to fund the case.

And did that strike you just that story as quite unusual?---It, it did, yes.

40

Right. And on the basis of a story that struck you as quite unusual you advanced at that \$45,000?---Um, it was unusual but I believe, I thought it was believable and um, because Joe was a personal friend I did advance him the money, yes.

How in your mind were you actually putting together that story as being in any way believable, her identify had been stolen, how, how did you put in your mind that that had been done?---At that, at that point in time I, I didn't require the full explanation, I, I'd organised to meet him straight after the - - -

So the money was being invested in Joe Camilleri not in, in any legal case wasn't it?---Well, I, I loaned the money to Joe, I knew that it was for the benefit of his daughter and I believed him when he said it was for the legal fees.

10 But you didn't for one moment over those two days stop, having already admitted that he story seemed unusual, stopped to analyse the story in any way to determine whether it was truthful?---Um, I, in, in the timeframe and um, there was um, some time pressure because of the, his requirement to have the money before the end of the day, um, I thought that through and I it was a believable story.

So at the end of the second day you then had a bit of time to reflect. How, how, do you understand that she had her identity stolen?---At the end of the second day um, the start of the first day we had a meeting and, and - - -

20 I'm must asking at the end of the second day what was in your mind in terms of this legal case, how did she, how did you understand she had her identity stolen?---Um, I think that um, he had also partially explained that she had fallen into the wrong crowd and - - -

No, I'm just asking you what was in your mind at that time, you've been given a story?---Yes.

30 How you were actually rationalising what that story is, how were you rationalising that she had her identity stolen?---Um, that, that someone had actually stolen credit cards or, or a passport or something like that, they had stolen her identity and then used to, to rack up debts.

So what, they'd stolen her passport and, and - - -?---Yes, or something like that.

Yeah, what would they do with that, a passport with her photo on it?---Well, I thought they had access to something that would allow them to ah, accumulate a debt or - - -

Okay, well, let's - - -?--- - - - in, in her name.'

40 Let's assume it's the credit card, how were you rationalising that someone had racked up a big credit card debt in her name?---Ah, simply by using the credit card.

Okay. And what sort of - and that of course happens all the time. What sort of amount were you thinking had been racked up on this credit card rationally before it was actually stopped?---Um, I, I assumed quite a significant amount of money, yeah.

Most credit cards have got a limit on them, I think all but very, very few have got a limit on them don't they?---Yes.

And how old was Mr Camilleri's daughter at the time?---Um, 26 I think or 25.

And you'd think that if she had a credit card it would be one with a limit on it?---Yes.

- 10 What sort of limit might you think would be on a credit card of a 26 year old girl, just rationalising back then at the time?---I don't, know, \$20,000, 10,000.

\$20,000?---Yeah.

Okay. So someone's racked up a bill of \$20,000, is that what you were rationalising at that time?---Um, I thought that um, the case was for not just recovery of the funds from the credit card but for costs and damages as well.

- 20 Well, for costs I suppose they might have got some legal costs in some way. What, what sort of damages were you rationalising were being paid and by who?---Um, look, I think on the, on the first day and the second day that um, the pressure of the time and the - - -

Well, you had overnight to sleep about it, you've just given the man \$45,000?---And I'd organised to meet him the morning of the next day - - -

Yeah?--- - - - to discuss it in more detail.

- 30 But having given him the \$45,000 you must have been thinking what have I given it for, all the damages, in your mind I'm asking you what was in your mind at the time, where were the damages coming from?---Um, I, I didn't think through exactly how those damages may have occurred.

Okay. So the next day when you met up with him?---Yes.

You would have been incredibly surprised that he wanted more money?---Well, that was after I met up him.

- 40 Yeah, someone else had pulled out had they in giving him money?---Um, I believe so, yes.

Right. And so he wanted another \$7,000?---Yes.

And you gave him another \$7,000?---I did.

So you were in for \$52,000?---Yes.

Was any more of the story told to you at that time?---Um, in the meeting, yes.

What else?---Okay. So the identity, the identity theft had um, um, had racked up a debt.

Yeah. What was the size of the debt?---Um, a significant debt, I didn't know the exact size of the debt.

10 But you thought probably \$20,000?---I thought, I thought more like 100,000 or something like that.

Well, why, why would you think that? You've already, we've gone through this, you said it was a credit card, a 26 year old girl, probably a limit of \$20,000, why would you think it'd be - -?---Well, well, Joe was explaining that it was a significant debt.

20 Yeah, so \$20,000?---I think he may, I think he may have even have explained that while the debt was being racked up that they were paying so that they were actually, so um, at that point in time even though her identity had been stolen that she was paying off the debt, she was actually making payments against that and that had occurred for several payments and even to the point that he had made, given her to make payments off against the debt so the debt was accumulating over a period of time and they were paying and I, I believed that um, at that point in time, because Jessica, the story was she'd fallen into the wrong crowd and potentially she hadn't identified that um, it was um, an identity theft and that had um, been paying off that debt as it was accumulating so that the debt had accumulated to a large amount.

30 Okay. So the story then seems to be on the third day that she hadn't understood even at that time was it that her identity had been stolen, she had a big credit card bill, she didn't appreciate that someone else had racked it up and she was actually going about paying it off?---Yes, that's correct.

So that just sounds like absolute nonsense doesn't it?---Um, it's a, a complex story, yes.

40 Well, it's not complex really at all, it's just nonsense isn't it?---No, I don't believe its nonsense.

That someone would actually not even know that someone else is using their credit card racking up a substantial debt - -?---I thought - - -

- - - and that they would just go ahead and be paying it off?---I think potentially in my mind I thought she, she may have known, she may even have known who the person was who was racking up the debt or, or um, that

the um, there was some implication in her mind that she may have been partially responsible for it, I don't - - -

But you're familiar with the way things operate with credit cards aren't you, you have a credit card?---Yes, I do.

Yeah. Have you ever had it stolen?---Um, I've had um, transactions occur against it, yes.

10 Yeah?---That, that I didn't - - -

It happens reasonably regularly doesn't it, that either you or your bank will find transactions on your credit card that aren't yours?---It's happened to me once.

Yeah. Someone's accessed, got the number and uses the number to purchase goods for example in America, right?---It's happened to me once, yes.

20 And what did you do?---Um, I rang the bank.

And what did they do?---And they cancelled the card.

Right. And what happened then?---Um, I think there was a period of investigation or something by the bank.

Yeah. And what happened?---Ultimately I had the money returned to me.

30 Yeah. That's generally what happens isn't it?---I'm not sure, it happened to me once, yes.

Yeah. Well your only experience in that sort of thing that's what happened?---That's what happened to me, yes.

That's why you would have thought when you told this story it was absolute nonsense wouldn't you?---No, I didn't think it was absolute nonsense.

40 Why not?---Because, because the explanation was that she'd fallen in with the wrong crowd and that she may have been implicated somehow in that wrong crowd in, in the use of her, her identity or her cards.

What do you mean implicated in the use of her identity, that doesn't make sense. It's her identity of course she's got to use it that's who she is?---I wasn't sure that she hadn't lent the card to someone or something like that, that um, and they had used it on - - -

But in any event you're just talking about a credit card bill and there's a dispute about it?---Oh I didn't know that it was a credit card.

I though you said earlier that you assumed it was a credit card?---No, I didn't, I think you said let's assume it might be a credit card.

Okay. Well what else were you assuming that it was?---Um, I didn't assume the way the transactions occurred.

10 I'm sure \$45,000 or \$52,000 you wouldn't assume you'd actually ask Mr Camilleri. What was it that he told you was the reason for this debt being racked up, the identity being stolen, what did he tell you?---So it's the reason that I have explained.

Yeah. Well what is it, was it a credit card, a passport?---I didn't, I didn't specifically ask him the way that the debt was accumulated. Why not?---Didn't cross my mind.

20 It didn't cross your mind. You, you seem very willing to advance money to Mr Camilleri regularly without being given any real reason for doing it. Would that be a fair summary?---I believed that there was enough reason that um, that permitted me to continue to give him money.

And it's because you at all times thought he was of financial means didn't you?---I, I thought that, yes.

He had a good job, a nice house, a big superannuation package, is that right?---Yes.

30 Whatever you advanced him you were always going to get it back?---And that was part of the agreement that we signed on that day as well.

And you were happy to advance him the money because you saw it as an investment didn't you?---No, I didn't see it as an investment at all.

You kept Mr Camilleri on very good terms by being able to lend him this money?---That wasn't the reason that I did it I did it because he was a friend in need, there was a lot of emotion in, in his plea for money and that's why I lent it to him.

40 And he was, you were helping him out weren't you?---I was helping him and his daughter, yes.

You were giving him a favour?---Well I was loaning him money.

Yeah. You were giving him a favour?---Well - - -

It's a favour wasn't it?---The use of the word "favour" - - -

Yeah?---I loaned him money.

And I take it you might expect that in return he may at some stage do a favour for you?---No, I didn't expect anything other than the money to be returned plus as we discussed yesterday the costs that were associated with that.

Okay. So that, is that the extent of the money that was advanced in what you call I think the first tranche - - -?---I, I - - -

10 - - - the 52,000?---It was.

And I take it because you were told this was all so urgent, the money needed to be paid, the whole thing was going to come to an end as soon as the money was there?---That's correct.
And so the payment of the 52,000 was going to bring it all to an end?
---That's correct.

20 The next week do I take it you approached Mr Camilleri and asked for your money back?---Um, I think I rang him regularly, yes.

You rang him regularly over the following weeks did you?---Yes.

Asking for your money back?---Um, yes, I don't know if it would have been every day but - - -

He didn't give you the money back did he?---No. He explained that in that period that, that it had been successful and that, that there - I think he even contacted me on - - -

30 So what did he say, it had been successful? What was he saying?---Well, I think up until about the 16th - - -

The 16th of what?---Um, I think um - - -

Sorry, the 16th of - - -?---16 December possibly. So from, so the 52 was in October.

40 But let's just deal with the end of October and November, okay. No more money was lent by you in that period?---To, sorry the - - -

No more money was lent by you to Mr Camilleri in the period from 12 October through to the end of November?---That's correct.

Right. In that period you are chasing him for the money, he wasn't giving you the money?---That's correct.

You said something about it's, the matter's been resolved?---Yes.

What did he say? What matter was resolved? This is the identity fraud?---
The court - - -

The recovery of money and damages?---The court proceedings to award
them the costs and damages was in the process of being finalised and I think
he said it been finalised and I - - -

Okay. He said it had been finalised, right?---Yes.

10 Yep?---And that the process was taking longer than they expected.

Okay. Right. And the - - -

THE COMMISSIONER: Mr McCarthy, sorry, can I just ask you when the
reference was made to damages, an award of damages was this meant to be
a sum of money that would come to Mr Camilleri's daughter as damages for
some kind of wrongdoing?---Sorry?

20 Is that what you understood?---Another part of the explanation - - -

No, I'm just asking you what you understood by that?---Sure. So the
damages I believed were part of um, ah, in terms of getting the money that
they had loaned um, and went into debt, that they had guaranteed.

MR POLIN: What money - - -?---That somehow Joe - - -

30 What money had they loaned?--- - - - and Jessica had guaranteed, sorry, that
they were paying off. They had some form of a guarantee of monies to be
paid and that they, Joe had explained that they were being pursued by debt
collectors in relation to that.

But - - -

THE COMMISSIONER: Sorry, I was asking you about what you
understood by Mr Camilleri's reference to damages being awarded?---Yeah.

40 That's what you said a short time ago?---I'm getting to that. So the debt, the
debt collectors were hounding him and his daughter for repayments of the
money and that caused him considerable, him and his family considerable
disruption to their family, and angst and concern and I thought the damages
were, he explained the damages were about the fact that the debt collectors
had inappropriately chased them up when it was proven that it was identity
theft.

MR POLIN: Right. So debt collectors had been ordered to pay damages to
Mr Camilleri's daughter for inappropriately attempting to get debts paid by
her when in fact someone had stolen her identity and someone else had
created the debt?---So I - - -

Is that a correct summary of what you'd been told?---Well, he explained the debt collectors were working for the banking establishment.

Right. So they're working for the banks?---So the banking establishment are, had um, ah, involvement in the - - -

Right, so - - -?--- - - - in assigning the debt collectors to Joe to pick up the debt.

10

The banks. Did he name the banks?---I don't think at that point in time, no.

Okay. So the banks had engaged debt collectors to recover debts from his daughter. It was determined that the debts weren't hers because her identity had been stolen?---Yes.

They were debts of someone else?---Yes.

20

And the banks were being ordered to pay damages to his daughter for the distress she suffered in having debt collectors approach her for those debts?--That's right. Costs and damages. The costs were the amounts that they had paid off the loans that weren't, that they'd previously paid off that weren't actually, sorry, the, that weren't actually incurred in her name. And the damages were about the debt collectors.

I must say it sounds like an absolute lot of nonsense to me?---It's a, it's a complex story.

30

No, it's not that complex?---It's - - -

I thought I summarised it quite quickly and well then that you agreed with didn't you? It's not that complex?---Well, I don't know, yes I, can I have the question - - -

40

THE COMMISSIONER: Mr McCarthy, can I just ask you in terms of the, in terms of what you've described you understood that there were legal proceedings that were not actually, sorry, legal proceedings that were either on foot or close to conclusion. That's, that's what you're saying is it? ---Yeah.

You understood that all these, this was all arising out of legal proceedings that had actually been engaged in and were close to conclusion?---Yes.

And, and did you at any stage ask Mr Camilleri which bank it was or banks plural that he, that his daughter had sued?---Um, I, I did but I'm not sure that I did it on the second day which is the day we were talking about the discussion but along the way - - -

Did you, did you at any stage, did you at any stage ask Mr Camilleri who was appearing for his daughter for the proceedings that were being taken, i.e. the legal representatives that were appearing?---Um, I had, I had asked him um, several times for more information about who was involved, who the lawyers were, et cetera and um, I had a constant theme that was put back about the ASIO involvement and the confidentiality that was around the matter.

10 MR POLIN: Well I'll come to that in a moment. But just, so you've lent the \$52,000, you've been told, your words were that it had been finalised, that there were just some hiccups in getting the thing processed?---Yes.

So throughout November you had every expectation, the \$52,000 was coming back to you in the near future?---Yes.

And whether - - -?---Within, within, within a week I think.

20 You thought that story that you'd been given was nonsense or not you I suppose didn't care so much because you were told it was finalised?---Yes, I assumed it was coming back quickly.

Did he suggest what sort of damages in terms of what sort of monetary amount the daughter was getting?---Not at that point, no.

Right, okay. So then early December you haven't got your money back, there's further contact, is that right?---That's correct.

30 He comes to you, he wants more money?---I think there was contact, um, yes.

And - - -?---Before, before he asked me for more money there was contact where he gave me more information.

Right. And what was the information? It had all fallen through?---No.

No?---That the process had been successful, um, that the um, money was um, going to be made available, um and that everything looked okay.

40 Okay. So then everything's looking fine. Then on the 7 December he comes and asks for more money?---Yes.

Totally inconsistent with what you've just been told by him days earlier? ---Yes.

Okay. What was the reason on 7 December for the need for more money? ---So he had explained that um, in the process of releasing the funds that the funds, so this is now that the case had been um, decided that there was a process which they were involved in to make the funds available and um,

that that process required them to pay fees, other legal fees and bank fees before the funds could be made available.

Okay. Now what did you just thinking about that then, okay, it's been finalised, she's going to be paid back whatever debt or whatever money she's paid on the debt she's going to be paid some costs and she's going to be paid damages by these banks, I assumed you meant they were Australian banks, that was your feeling?---I thought at that point it was probably more than one bank, yes, Australian banks.

10

But Australian banks?---Yes.

Okay. And so there were legal proceedings had been finalised and settled and the banks had been ordered to pay money?---Yes.

Yeah. How on earth could she be required just logically to pay firstly bank fees, what bank fees to banks who have ordered to pay her damages?---So Joe had explained that in an earlier part of the process that um, his daughter was required to sign a document with the first group of lawyers that represented them um, regarding the fact that they were required to pay the fees - - -

20

Yeah. I didn't ask you that before --- - - - before the release of the funds.

I didn't ask you about the lawyers' fees. I will come back to that but you said part of the money - - -?---No, and bank fees that they had to pay all the fees associated with the case before the funds could be released.

Yeah. But the bank fees. How, how on earth is she being required to pay bank fees, on any view of it could she be paying bank fees to banks who have been ordered to pay damages?---I asked him why there wouldn't be, they wouldn't be able to offset if there was payments coming.

30

'Cause that's what you'd think. If something's owed back to the banks they would just take it out of what they've been ordered to pay.

And he explained that, that they couldn't offset because the agreement that they, that Jessica had signed earlier.

40

With who?---With, with the other party to the um, court proceedings.

And did you tell them that's just nonsense just tell them to offset it?---I, I - - -

Set a new agreement?---Well he explained that it was an agreement that they couldn't change and it was said earlier in the proceeds, that she, that she had signed.

And what did he say he needed it on that day \$10,000?---To, to, to clear, so
- - -

So \$10,000 to clear bank fees and lawyers fees so the money could be released?---Yes.

Right. And you gave him the money?---I did.

10 And he took it to go and clear the bank fees and lawyers fees and then later that day he comes back?---Yes.

Another \$10,000?---Yeah. So the same explanation that I had before that the, that they were accumulating money from, from different places and that the amount that they were asking me for wasn't always the total amount that they required and so I found myself in a situation where he would be ringing back saying that we weren't able to get the other \$10,000 that we thought would come through from the family um, or, or another process and that he was um, asking me to fill the gap.

20 So you're now in for \$72,000 in bank fees and lawyers charges?---Yes.

What did you anticipate was the money that, what did they settle for?---Um, I think at, at some point um, in discussion around this time Joe had indicated that there was about a \$5 million settlement proceeds.

Right. I take it when he said that you started laughing?---Well I thought it was a large amount, yes.

30 No. I said you started laughing - - -?---No, I didn't laugh.

Not that it was a large amount?---No, I wasn't in a position to laugh, no.

Right. Where on earth, how on earth was a bank ever going to become liable for \$5 million in damages for having sent a debt collector to recover some debts on a credit card? Just logically, think about it?---I, so I wasn't aware of the full scale of what they had, what the identity theft had stolen from her and - - -

40 Well just think about. Surely you were exercising your judgment on what you were being told at the time weren't you?---Um, I, I thought it was a large amount but I thought it was plausible.

How on any view of it at this time is that plausible?---Today in hindsight?

No then. No, no, back then. How could it ever have been plausible?---I thought it was.

Have you ever seen an article in the paper, heard from anyone anywhere even in America, have you ever heard of anyone getting \$5 million in damages for the stress caused by a bank putting a debt collector onto someone?---It's not something that I would, would normally go searching for or have knowledge of, no.

10 But have you heard of, you hear some wild stories about decisions courts make at times. Have you ever heard of a story as wild as that?---Oh I don't know that I've ever paid attention to stories about damages, level of damages.

It's a pretty wild story isn't it?---It's, um, it's a difficult story to understand, yes.

Yeah. And as soon as you heard it there would have been alarm bells going off and you think I've got to get to the bottom of this, wouldn't you?---I, I trusted Joe.

20 Is that, is that – I keep putting this back to you, is that the reason why this wild story was going through unquestioned that you were always thinking, doesn't matter how much money I give him, he's a man of means I'm going to get him back but the more I give him the bigger favour he owes me?---I, I, I gave him the money because I trusted his judgment, I trusted his honesty and um, and he was a good personal friend and that, yes, I thought I was thought I was getting the money back quickly from a process and that he ultimately had said that he would give me the money back from the proceeds of either sales of his assets or, or superannuation.

30 But we're getting wild unbelievable stories at this stage, aren't we?---Um, they're stories, yes.

They're getting wilder and more unbelievable aren't they?---Well, I think he was very, it was a very um, cunning story in terms of how it was developing.

40 But doesn't - - -?---Each day, each explanation of what the money was needed for was slightly different but believable. The amounts weren't always the same and um, so it became a story that I was engrossed in and believed.

In any event he's back is it in another three days saying, 'Guess what, it's fallen through again. Can I have another \$10,000.' Is that right?---Yes.

I won't keep going on with that but then he's - - -?---No, there's 27 transactions.

Sorry?---I don't - - -

Yeah, then - - -?--- - - - thing we want to go through all - - -

The day after that he comes back, 'You'll never guess what, it's fallen through again. Can I have \$25,000'?---Yep. And an explanation of a process which was not working for him, his party, the QC that he explained had been put in place. An almost unconscionable process where the banks seemed to be in a loop where he could never accumulate enough ah, funds to pay off what he owed before they would release the money.

10 An unconscionable process. It just seems like a ridiculous story doesn't it?--Ah, it's a difficult story to understand.

A ridiculous story to understand?---And I think it um, in the cold light of day of course it seems that way but in the time when it was being told an the emotion that was involved with it um, when you have a good personal friend crying on the phone and explaining that he needs the money, and um, I was involved personally in the story and in the friendship.

20 THE COMMISSIONER: Mr McCarthy, even back in 2012 you read the newspapers on a daily basis I take it?---Not every day, yes.

But you read them reasonably regularly?---Yes.

30 Did you ever see any stories published about what came to be known as the Nigerian Scams but were generally publicised in the context of police warning people against paying out money on a promise that once the funds were received into a particular bank account that some windfall lottery gains would be released to them? Did you ever read any of those stories?---I'm not sure that I did and I certainly didn't, it didn't click in my mind that this could have been the case.

But whether you read them or not were you aware of those kinds of operations around about that time?---I don't think I was highly aware, no.

No.

40 MR POLIN: In any event, just skipping through over the, is it the 7th, 7 December you advanced two lots of \$10,000. 10 December another \$10,000. The next day, 11 December \$25,000. And then it must have shocked you on 12 December, the very next day when he comes and says it's all fallen through and he needs \$55,000. Didn't it?---Each day I um, I think I started the conversation with, "Joe, you've got to be kidding. It can't possibly be like this."

But you've just given him \$110,000 in the space of five days?---The reason for the \$55,000 was an explanation that the process had um - - -

Fallen through?---No. That the lawyer working for them had been successful in getting a final sum from the bank to close because up to that day they seemed to be trying to process with the bank every day and not clearing the process.

So you're saying what's been happening is that there were bank fees being generated - - -?---Every day.

- - - on this large amount of money?---Yes.

10

And to get the large amount of money out you had to pay the bank fees?---Yes.

So they'd rock up to the bank with the money to pay the bank fees and they'd be told it's \$60,000 for example, and the bank would say, 'No, no, sorry. You didn't calculate today's interest. It's \$65,000'?---That's correct.

And so they'd come back the next day with their \$65,000 and say, 'Sorry, you forgot to calculate today's interest. It's \$70,000'?---That's correct.

20

So they'd go away and get another \$5,000 and come back the next day? And the bank would say, 'Do you know what, you've forgotten to calculate the interest again.'---It - - -

'It's another \$5,000'?---The story even included an account of um, the process at the bank being a IT process that um, was ah, creating something that may not even have occurred and at some point that they fixed the IT process. So yes.

30

So it was an IT problem at the bank? This is occurring on a - - -?---That was part of the story.

- - - daily basis?---That was part the story why the money was accumulating like that.

Just think about it logically. You've got \$5 million in the bank and you want to take it out and the bank says, 'Well, there's some charges you've got to pay before you take it out.' What do you do?---You would pay the charges.

40

You'd just say, 'Just take the charges out of the \$5 million and give me the balance'?---Well, I've already explained that his explanation of that was that they had agreed that the charges had to be paid before the funds were made available.

Okay?---He couldn't, he couldn't offset.

And what would you do then when you went to get your \$5 million and you went to pay your charges and the bank, 'Sorry, it's more because you didn't take into account today's charges.' I take it the first time you'd say, 'Okay. Okay. What are the charges? I'm coming back tomorrow with the money to pay it off.' And you do that. What do you do when the bank says, 'Well sorry, you didn't calculate the extra charges for today?'---I think you'd be pretty upset.

10 Yeah. This story has now, by this stage, the middle of December become just bizarre hasn't it?---Yeah, it has, yes.

It has. At that stage you'd lent \$162,000 hadn't you?---Yeah, on Sunday, yes.

Yep. So that's, the first tranche was 52. The second tranche is 110?---Yes.

20 The way you've described it. It's up, and they're the monies you'd lent up to 12 December. And you've accepted that the story that you've been given is bizarre?---I've accepted that's it's a difficult story to understand, yes.

Yet you go on don't you and advance a lot more money?---There was more of the story that was coming out along the way, yes.

When you say there was more of the story there's, it's more of the - - -?--- Well, it's a very similar story and along the way different parts of the story were being added to which allowed me to think that um, there was reasons why the process hadn't concluded.

30 Okay. So it hadn't concluded up to 12 December. That's your second tranche. The second or third tranche you seem to have broken it down into four separate tranches?---Yes.

Is that because it was four separate periods of time that you identify?--- Well, it was, there were, yes because it's easy to think about when you're trying to explain to someone, there's four period of time but I think each tranche also had another element to the story added to it.

40 Okay. So at the end of tranche two which appears to be 12 December, 2012 you still didn't have your money. Come 14 December, 2012 there's a request for more money. What's the story now?---Um, that the proceeds of the court outcome, the first \$5 million, although they were trying to clear that ah, and that's what the fees were accumulating on, that the second payment which is another \$5 million was following up behind the first payment. That they expected that they had to clear the first payment before the second payment would occur, before the second, yeah, payment of \$5 million was made available and those two payments ran into each other and therefore the amounts that were accumulating were on a larger amount of money.

Okay. So correct me if I'm wrong, what you've said they haven't cleared the first \$5 million by way of payment of the fees but the damages being paid were more than that. It was actually, there was another \$5 million coming from what, another bank or - - -?---From the same process.

From the same bank?---Just in, yep.

10 And that that \$5 million had gone into the account so it was now \$10 million?---Yes.

And because they hadn't originally cleared the initial fees on the 5 million there's more fees owing because now it was 10 million?---That's correct.

And you gave on 14 December \$15,000?---If it's on the list, yes.

Yeah, it is?---For a period that, you know, it's difficult to know exact transactions on - - -

20 I understand that I've the list. You assume if it's incorrect - - -?---All right.

- - - we'll fix that up. How on earth did you give him \$15,000? We're up to \$10 million in damages now. A bank, a bank paid - - -?---I was already sold on, I was already sold on the story and it was a similar story so - - -

Yeah, but a bank paying \$10 million in damages for having - - -?---I think we've already established that it's a difficult story, yes, and I, I- - -

30 But I want you to accept that- - -?---These are more payments on the same story.

I want you to accept it's, it's more than a difficult story, it is bizarre and unbelievable?---And I was asking Joe to get more involved and find out more information and I always got the same response, which is that the, the ASIO involvement and the confidentiality that they had signed prevented him from being too involved and prevented me from finding out more information.

40 Right. So this was the time when he suggested to you that ASIO was involved?---No, no, much earlier.

He'd suggested that earlier?---Yes.

Okay. And you must have thought that's just nonsense?---Again I think it made, when you put it into the whole story it was explained well I think and- - -

Do you know who ASIO is?---Yes.

Who is ASIO?---Australian Securities Commission.

THE COMMISSIONER: Intelligence Organisation.

THE WITNESS: Intelligence, yeah.

10 MR POLIN: It's not a company that governs the conduct of companies and the like?---No, I, the explanation was that ASIO had the proof of the identity theft, that ASIO were called into the court case, they were subpoenaed if you like into the court case because they had the proof of the identity theft, for them to be subpoenaed into the court case there were confidentiality agreements that everyone was required to sign. That was the story.

Did you believe a word of that?---I did.

THE COMMISSIONER: Mr McCarthy, can I just ask you, did you understand even at that time that identity theft is a form of fraud?

---Um, I, I - - -

20

Well, it's fraud isn't it, if you steal - - ?---Yeah, sure.

- - -someone's identity and you, and you spend money in their name, it's fraud, isn't it?---I guess so, yes.

Well, did you understand that then, that that's what it was?---I didn't think, I didn't think of the terminology fraud, no.

Well, did you ever ask Mr Camilleri why the police weren't involved?

30 ---No, I didn't.

Why not?---Because I hadn't, you're connecting the legal connection between fraud and that being a criminal case and I hadn't made that connection.

But it's a form of theft, isn't it, if you, if you put someone in the position whereby they have lost, that you have taken money from them, i.e. you've used their credit card against their name, it's a form of theft, isn't it?

---Um, I guess, yes.

40

Well, what would you do if, if someone came into possession of your credit card and ran up large debts, assuming, let's assume for present purposes that the bank doesn't honour that agreement and in fact pay the debts and let you off the hook, if someone had done that on your credit card would you have reported it to the police?---Yes, I believe I would.

Well, why didn't you ask Mr Camilleri if he had reported this to the police? ---Because it didn't, it didn't cross my mind to ask the question.

MR POLIN: Okay, I'll just quickly go through the payment and you can assume they're correct, we'll correct them if they're not. So that's 14 December, another \$15,000, 17 December, another \$35,000, 18 December, \$65,000, 19 December, \$27,000, 24 December, \$5,000, 27 December, \$14,000, 31 December, 15,000, 2 January, \$5,000, again on 2 January, \$5,000, and I'll check this one, maybe on 4 January a further \$5,000. That takes us I think through tranche number 3. So that's one, two, three, four, five, six, seven, eight, nine, ten, ten more advances which totalled a further \$191,000. Was there any change in the story over those 10 advances?
---That, that period was related to the, I think the, when the two lots of money were, the two, the \$5 million had run into each other.

So there was an increase in the bank fees because of the increase in the size of the damages?---Yes.

And it went up, the bank fees went up by \$191,000 at least- -?---Yes.

- - -because they weren't getting to the bank quickly enough to lock in the fees before they actually went up again?---Yes.

That's what you're being told?---Yes.

Did you honestly at any time believe that?---Well, when I considered the large sum of money that was being held up I didn't, I thought it was plausible.

How could it, on any view of it, be plausible and how could it be plausible in circumstances where they've come back to you on 10 occasions for \$191,000?---I thought it was plausible.

You were running billion dollar bids on behalf of your company, weren't you?---I think this is um, the situation because of the emotion that was involved and it wasn't just a commercial transaction I was doing, it was a loan to a friend and I think the fact that there was a significant emotion involved has clouded my judgement.

I can understand for example how you would be put upon in pressing circumstances to give a loan and you give it without getting the full story, maybe even come back the next day and give a bit more, but after tranche 1 you've given \$50,000 and some stories, after tranche 2 you've given a further \$110,000 with some stories, how on earth could you give another \$191,000 on the basis that the Camilleris weren't getting to the bank quick enough to cover the increase in bank charges because the damages that they were getting were increasing?---I think there was corroborating information that was coming to me from different sources, I was in contact with another person who was – had lent, who was loaning money and being asked to loan money- - -

Who was that?--- - - - who had the same story.

Who was that?---That was Mr Colin Coutts.

10 Right. Another person. What about corroboration, did you at some stage ask Mr Camilleri up until this stage where you were in for about, well over \$300,000 for just a bit of paperwork to- - -?---I had, I had been asking Joe for various bits of paper. At one point in time um, he read over the phone, he said he had a piece of paper which was related to the court case and the ruling from the court case and he read that portion of, of that to me over the phone, so that was another piece of corroborating information I think.

And what was that he read to you? Something from, you told us that the court case was finished. The money was there in a bank account. The only thing stopping it was bank fees which just kept compounding?---I think it was in relation to the findings in their favour.

20 Right. So he read out a document that basically, that the sound of it over the phone were findings by a court in their favour which lead to the granting of the \$10 million in damages?---Yes.

So you understood from Mr Camilleri that there'd actually been a court hearing and that a judge had heard and determined the case on the evidence and then made findings in their favour?---Yes.

And that that's what he was reading out to you?---Yes.

30 And of course he's just reading out, did you ever see anything - - -?---No. I asked him for a copy of that and he again used the confidentiality - - -

The ASIO story?---Yes.

Right. Did you ever see any documents which in any way corroborated the story?---Um, yes. There was another email that was sent to me from Joe from his daughter which was about the transfer of \$5 million from Jessica's account to Joe's account.

40 Right. How do you do your banking, do you use online banking at all?--- Most of my banking is actually done by my wife.

Right. Does your wife use online banking, do you pay bills online, that sort of thing?---Yes she does.

And I take it you're familiar with online banking as well?---Yes.

And you're familiar with if you pay a bill, for example, your computer generates a receipt for the bill that you've paid?---Um, yes.

It confirms that you've paid it?---Yes.

You're familiar no doubt in terms of transferring money with being able to transfer money by computer?---Um, yes.

So you can get someone's bank account and transfer money into that account?---Yes.

10 And at the end of the transaction your computer generates a receipt confirming that the money's been transferred?---Um, I go back to the fact that I don't normally do that. My wife would normally do all of those transactions so ah, the form of the receipt - - -

Whether she normally does it that's something you've done isn't it?---Um, online I don't know that I have ever transferred personally.

20 Right. So is the document we're talking about, if we just bring up on the screen document 1523 over to 1524. Oh just – you see up the top of the page it's, "Kevin, for your information please delete once you've read it. Also can you please confirm you've received it. Regards, Joe"?---Yes.

And then underneath appears to be an email from Jessica Camilleri to Joseph Camilleri?---Yes.

And it says, "Transfer receipt"?---Yes.

Do you see that?---Yes.

30 And is that what you were shown?---Yes. I was sent that document.

You were sent that?---Yeah.

You got that email?---Yes.

And you didn't delete it did you?---I forwarded it, I think it came - - -

To another computer account?---To, to another computer, yeah.

40 Yeah. And that's how this was obtained?---Yes.

Now that appears to be does it not, just looking at a receipt for transfer from one bank account to another?---Yes, that's what I thought it was.

Yeah. And so what did you understand that was showing you?---That there was money in the process of being transferred from Jessica's account to Joe's account.

So that Jessica has transferred from her Smart Access account, it's got it written there?---Yes.

From account to Joseph Camilleri and his account?---Yes.

And the amount is - - -?---5 million.

- - - \$5 million?---Yes.

- 10 So the money is as you see it is in Mr Camilleri's account?---Um, no. The explanation was that - - -

Just, I'm talking about the document that's - - -?---Yeah, no.

- - - from Jessica's Smart Access account?---Yeah.

So it's not from a bank. The account's coming from her Smart Access account and the rest of it is over the page by the way to account description, "Dad" when and it's got the date?---Yes.

- 20 So the document clearly is a receipt of a transfer of funds from a Smart Access account in the name of Jessica Camilleri to dad's account Joseph Camilleri?---Um, no, I didn't recognise it as a receipt of the transaction that had actually concluded, I recognised it as a receipt from the start of the process.

Start of what process?---Well when, when you – so I, when you go to a teller at a bank and you make a transfer you get a receipt from the transfer, that doesn't mean the transfer has cleared.

- 30 Okay. But you can see the transfer is the 28 December that's at the bottom?---Yes.

At 3.58 and 57 seconds PM. See that?---Yes.

And the document actually says, "The funds should be available in the two account" that's the Joseph Camilleri account, "within two business days"? ---That's right. So I assumed that um, this was the start of the transfer process that - - -

- 40 Okay. So 5 million was going to be in Mr Camilleri's bank account within two business days probably about 30 December, 2012?---That's what I think the document showed, yes.

And that's your understanding of the document at the time?---At the time I was given this document, yes.

Yeah. Yet - - -?---I think when I was given the documents I may not have paid attention to the exact dates.

Well you, you knew when you got the email didn't you? You got the email on 30 December and it appears that that's a Sunday so the transfer's gone through on the Friday so it would be clear no later than the Tuesday. That's what you thought I take it?---I, I don't recall connecting all the dates in that way but if you on the surface that's what you would think, yes.

10 But whether you actually connected the exact dates you're being told there's \$5 million in Mr Camilleri's bank account, it's going to be cleared in a couple of days?---That it would be cleared in a few days, yes.

Yeah. And you would have thought thank goodness it's all over?---Yes, I did.

Right. And so you then gave \$15,000 on 31 December, 5000 on 2 January, another 5,000 on 2 January, another 5,000 on 4 January. What on earth for? ---I was told that transfer, the second half of the clearing of the transfer had been held up by the bank.

20 Sorry?---That the funds didn't clear into Joe's account.

So he wanted to sit on his \$5 million and not give you any, he wanted to wait 'til the 10 million came through and he wanted your money to get the other 5 through?---No, he told, he explained to me that that the transfer hadn't cleared.

THE COMMISSIONER: Is that a suitable time, Mr Polin?

MR POLIN: Yes.

30 THE COMMISSIONER: We'll adjourn for lunch and resume at 2 o'clock, thank you.

LUNCHEON ADJOURNMENT

[12.45pm]