

SPECTORPUB00354  
20/02/2014

SPECTOR  
pp 00354-00406

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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 2.00PM

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

THE COMMISSIONER: Yes, Mr Polin.

MR POLIN: Mr McCarthy, could I just, I'll hand you back a copy (not transcribable) on the screen of that receipt. So you agreed when you saw, when you saw that that was just a copy of a bank receipt from a computer that's been copied and pasted into an email?---Um, at the time that's what I  
10 thought it was, yes.

Yes. And it was a copy of the receipt from Jessica's end saying that the money had been transferred?---That's correct, the start of the transfer process had occurred.

And did you speak to Mr Camilleri about what had happened at his end in terms of his bank account, what had been received?---Um, I think ah, if not shortly after um, possibly the same day or close by um, he was explaining to me that the transfer hadn't actually cleared into his account.  
20

Right. A little bit later did you ask him to show you his account to see what went in?---No, I didn't.

Right. Did he tell you in fact on that day that an amount of \$5 was transferred from Jessica's account into his account?---No, he didn't.

If he'd told you that what would you have thought of that?---Um, I would have, I, I think I would have um, quizzed him on the, on the amount that was transferred.  
30

Yeah. And what if you looked at his account and saw that in accordance with the receipt number, which is there, there appeared a deposit in his account of \$5?---I, I, I would have looked at this document harder and I would have thought that there may have been some fraudulent um, action.

Someone may have copied the receipt and altered the \$5 to \$5 million?  
---Yes.

I tender that document, Commissioner.  
40

THE COMMISSIONER: Yes, that will be Exhibit 19.

**#EXHIBIT 19 - EMAIL FROM JOE CAMILLERI TO KEVIN MCCARTHY FORWARDING EMAIL FROM JESSICA CAMILLERI TO JOE MCCARTHY "RE:HI DAD" DATED 30 DECEMBER 2012**

MR POLIN: Sorry, it's page 1523 and 24.

THE COMMISSIONER: Mr Polin, do we want to mark page 1488 of the diary, of Mr McCarthy's diary, do we want to mark it or tender it?

MR POLIN: There'll be a couple more pages that I'll ask questions about briefly.

10

THE COMMISSIONER: Right, we'll leave that.

MR POLIN: Yes, we'll just tender those pages.

THE COMMISSIONER: Eventually.

MR POLIN: Yes.

THE COMMISSIONER: Thank you.

20

MR POLIN: Just moving through more quickly, now Mr McCarthy, we got then to the - oh, sorry, before I, I get to that at this point in time this is, in fact it's during tranche 3 were, were you getting any further information from Mr Camilleri about what was going on or did you speak to anyone else about what was going on?---Um, I had many um, conversations and phone calls with, with Joe. Um, sorry, which period exactly?

This is in December 2012?---Ah, before Christmas, after Christmas.

30

Before Christmas?---Um, I think um, I, um, I think I may have been in contact with Jessica on a, um, a text, text message basis.

Can I show you this document, this is page 1519, 1520. Is this a series of emails firstly starting at the second page from Jessica to you?---Um, yes.

Seeking amongst other things assistance with a further \$55,000?---Yes.

Indicating your funds would be returned within 24 hours?---Yes.

40

And then moving over to the first page. Is there an email back to her - - -? ---Yes.

- - - whereby I think you're suggesting you will advance some money and put in conditions upon the advancing of the money?---That's correct.

And then is there an email back from her confirming she understood the terms and conditions that you put on it?---Yes.

And then a short email back from you saying very good? Is that your email? No?---Um, the last, the last email seems to be from Joe.

So is that a - - -?---To, to Joe. I'm not sure that's a bit confusing.

It seems to be from Mr Camilleri to Jessica. But in any event working backwards the first email dated 12 December at 1.55 is from Jessica to you?---Yes.

10 Your email then back the same day at 2.51 with the conditions?---Yes.

And then her email back the same day at 3.03pm confirming her understanding the conditions?---Yes.

I tender those documents.

THE COMMISSIONER: Yes. Exhibit 20.

20 **#EXHIBIT 20 - EMAIL FROM JOE CAMILLERI TO JESSICA CAMILLERI FORWARDING EMAILS BETWEEN JESSICA CAMILLERI AND KEVIN MCCARTHY "RE:HI KEVIN" DATED 12 DECEMBER 2012**

MR POLIN: So, sir, you then move into the fourth tranche of money which started I think about 2 February 2013 and completed on 12 February 2013. Is that correct?---Yes, I believe around that time I, I need the, I need a document in front of me to confirm.

30

And that also wasn't advanced as a single amount was it, it was - - -?---No. - - - several amounts?---It was, it was an identical style of process to prior periods.

So it was advanced in about half a dozen or so separate amounts?---Yes.

Were you being given any further information or a different story or was it still the same story that bank fees were needed because the - every time they went to get the money out further bank fees have been racked up?

40

---That's correct. And there was another part to the story in that the fees were associated with I think they, the term that Joe used was a cashbox amount where is he explained that the cashbox amount was an amount which equalled the amount that um, they had originally paid off against the false debts as separate to the two lots of \$5 million which were an outcome from the, um, the court proceedings. So he explained that there was another um, different packet of money and in this process again he explained that it was, that they became linked and that was the reason why fees were still escalating.

So he wasn't suggesting that there was cash in a safety deposit box?---He, he used the word "cashbox" but I don't, no, I didn't interpret, he didn't explain that as a safety deposit box.

10 So you understood it to be that the 5 million had gone into the account, it was racking up bank fees, they weren't able to pay them off as quickly as they were being racked up, the second \$5 million went into the account increasing the problem, more bank fees they still can't keep paying the bank fees and then the cashbox amount - - -?---Yes.

- - - came in?---Yes.

Did you believe any of this, it sounds a bit like a game show?---As I've explained before um, difficult to believe, in hindsight obviously unbelievable but at the time highly emotional, I think at the last tranche um, the emotion ramped up and um, actually I, I believe um, Joe was in the position of threatening self harm.

20 At some stage you'd in fact offered to buy Mr Camilleri's house, hadn't you?---I made that offer as I thought that might be an approach out of the solution which would give me access to an asset.

And the way that was being done – and I'm just using numbers picked out of the air – if his house was worth \$1 million you were owed roughly half a million dollars, you would give him half a million dollars and take his house?---Yes.

30 And at any point was it, if that did go through were you contemplating disclosing that to anyone at RailCorp or UGL?---No.

Now, sir, if you just – have you still got your diary there?---Yes.

Fairly early on in the piece you'd in fact gone and got some legal advice about all of this, hadn't you?---Are you referring to a page, sorry?

If you look at page one four – before you look at it, do you recall it?  
---Um- - -

40 Do you recall early on in the piece speaking- - -?---It wasn't, it wasn't legal advice, it was- - -

What was it?---I rang a friend.

Right. And who was that, a lawyer?---Ah, she was in the legal profession, yes.

So she was a lawyer?---Yes.

You're not suggesting you rang a secretary from a legal firm?---No.

She was a lawyer?---Yes.

And you were ringing her to get some legal advice?---Oh, just as a friend actually to ask her for her view.

You could have asked your cleaner for her view as well?---I didn't.

10

No. Were you asking this woman because she was a lawyer and you were asking for her view as a lawyer?---Ah, because she was a friend and I thought she would have some skills where she may be able to help. I also asked other friends.

And those skills that you thought she may be able to use to help would be legal skills?---Yes.

Page 1474, is it Jenny Brown who- - -?---Yes.

20

- - -you spoke to?---Yes.

And there's a reference to Peter Gell there?---No, I'm not sure what that reference is.

There's a reference there to practise in legal litigation commercial.  
---Um, her, her advice to me is that it wasn't an area that she had any specialty in.

30

And you should speak to someone who practises in legal commercial litigation?---She suggest that, I thought that, that I could, yes.

Yes. And she suggested that Peter Gell would be the person you might - - -?---I, I, I'm not sure.

Is that what it appear? They're your notes, I'm- - -?---Yeah, it may be unrelated. I think you'll find on other pages of the diary that I generally put people's name towards the bottom end, it may even have been a phone call.

40

THE COMMISSIONER: Unrelated to what?---Well, I don't, I'm not sure that Jenny gave me the advice to ring Peter Gell.

MR POLIN: Well, what's his name doing smack bang in the middle of her, what would appear to be her phone numbers, are they, that are above his name and then what she seems to have talked to you about coming in around below his name?---They're probably her phone numbers, yes.

Yeah?---Sorry, the question?

But his name somehow is connected to the conversation that you had with her?---More than likely, yes.

Yeah. And just going back on your notes, it seems as though you said that she said, can't really help you, speak to someone who is in legal, practises in legal commercial litigation?---I think the advice that I got, that I took away from the discussion was that she said um, it's never good practice to lend money to friends.

10

Right?---I think she said family and friends.

Right. And that was October 2012?---Yes.

About, probably after you've lent the first amount?---Yes.

Maybe the second amount?---Probably after the second amount.

20 Yeah. And so you didn't, having sought out her assistance you obviously didn't listen to it?---I didn't take her advice.

And did you take her advice to speak to someone?---No, I didn't.

- - - who worked in commercial litigation?---No, I didn't.

The reference is then there to superannuation being a protected asset? ---Yeah, that, this was um, in her view there may be an issue with superannuation being put as a um, an asset over the loan.

30 Oh, you suggested that Mr Camilleri's superannuation may be used as a security some way for your loan?---I think that was offered from a very early stage by Joe, yes.

Right. He was always telling you wasn't he, he was saying that he had significant superannuation?---Yes.

40 And I take it you're familiar to some extent with the, the very old public service schemes and - - -?---I, I am so I, I um, had a full appreciation of his, his salary and the time he'd been, been on that scheme that he would have a significant amount of money.

Yeah. And so that you always thought as I've put to you before that no matter what your money was protected?---Yes.

And Mr Camilleri has always said to you that he'd pay you back hasn't he? ---Um, he, he has, we haven't had much contact in recent times.

Yeah, but he's always told you that he'd pay you back out of his superannuation?---Yes, he did.

And of all the people that he's lent money to you are the closest friend aren't you?---Um, it would seem probably, yes.

And you're the person, aren't you, who has brought bankruptcy proceedings against him?---That's correct.

10 Is that because he doesn't work for RailCorp anymore, he can't be of any use to you anymore?---Um, no, it was because I took on legal advice and the first time that I met with my lawyer he said this is obviously a Nigerian bank scheme, he basically slapped me in the face and I woke up.

But he's your friend, he's told you he'll pay you out of his superannuation? ---And it was always - - -

But is that right, that's what he's told you?---He, he told me that.

20 Yeah. His superannuation's still there, he hasn't been able to access that, is that right?---That's - as far as I know that's correct.

And you'd expect as a friend that he would honour this obligation, the loan that you created?---Oh, I severed our friendship fairly quickly when I understood that all of the trust that I'd put in him, every, everything that I understood him to be had been falsely um, applied over a period of time. I felt betrayed and I acted on that.

30 You knew fairly early on that there was a real risk in putting money into Mr Camilleri on the basis of these ridiculous stories you'd been told didn't you? ---I understood there was a risk, yes.

You weren't concerned about that because Mr Camilleri was at RailCorp and was always off, able to return the favour that you had given him wasn't - - -?---It had nothing to do with why I lent him money.

And once he's dismissed from RailCorp there's no favours he can do for you any more is there?---Again, nothing to do with the reason I lent him money.

40 All the other people who have lent money, they've all found out that it's a scam as well haven't they?---They probably found out before me by the sounds of what's happened in the last two days.

But you're the one, the closest friend who chooses to bankrupt him?---And I'm the one that got hurt the most.



I'm not too sure about that, sir. But have, have those proceedings continued, the bankruptcy proceedings?---No.

Why not?---We used the bankruptcy process to get access to information and when we found out that he was selling his house we took action directly to, to subpoena um, the, the money that came from the sale of his house.

10 Right. And so I think the proceedings were listed, the bankruptcy proceedings were listed a couple of days ago before the court?---That's correct.

Is it the case that Mr Camilleri wasn't bankrupted on that day?---That's correct.

Right. When did he sell his house?---Um, I, I think the um, actual sale date was in December.

And when did it settle?---It settled um, three weeks ago.

20 And you said you subpoenaed the money?---Yes.

What do you mean by that?---Sorry, garnished, we, we placed - - -

THE COMMISSIONER: You put a caveat on the property did you?---We put a caveat, no, we, we garnished the money from the people that owed him, the, the, from the seller, put a garnish on the seller.

30 So Mr Camilleri owned his property. What did it sell for?---Ah, I think it was \$700,000.

MR POLIN: And he obviously owed money to a bank, did he?---He did.

That money then came out?---Yes.

And where did the balance of the money go to?---Oh, then goes legal fees um, the sale process and then what was remaining out of all of that got split between his wife because she was co-owner of the property- - -

40 Yeah?--- - -and myself. Or sorry, my wife and myself.

How did you end up with the money ahead of all the other people that have lined up to get the money?---Well, obviously no one had taken legal action at the same time that I did and was able to create the garnish.

Right. And so how much did you get paid back?---I'm not even sure of the full amount yet because there was also the deposit amount which had to be split, but I think it was 45 from the, directly from the seller and then the

deposit had to be split and it was something like another 10, I'm not, and I'm not even sure today.

Right. And how much did Mr Camilleri get?---Nothing.

Right. Have you spoken to him in recent times?---I am obviously not on speaking grounds with Joe.

Right. But have you spoken to him?---No.

10

Throughout two thousand – or throughout this year has he come to you at all offering to pay back money?---This, this year?

Yeah, this year, 2014?---Um, no.

Right. Do you recall how much Mr Camilleri's wife, if anything, got out of the sale of this house?---I do.

20

How much did she get?---I was aware she got \$45,000 and she would have got part of the deposit as well.

What did you think about his wife getting \$45,000 when you're still owed obviously over \$350,000?---Well, obviously I would have liked the whole amount but I couldn't access the whole amount.

Right. Just a couple of other matters. You've told us about the application you made for a job with Sydney Trains as a, one of the general managers? ---Yes.

30

I take it that that was a job you wanted to get?---Yes.

And I take it just from the salaries, you've told us that the job would have been on about the same level as Mr Camilleri?---I don't know that I got through, enough way through the process to know exactly what the salaries were going to be.

Well, you told us the job was the same level as Mr- - -?---Same level, same level in terms, yeah.

40

Yeah?---Not, not necessarily monetary level, I didn't.

Well, they're all graded, aren't they?---I don't know how the pay scheme works, I don't know if all the general managers are on the same level.

You said he was the same level and they're all graded, the jobs at RailCorp, aren't they?---There were, I think there were five general manager roles that were advertised simultaneously.

You're not telling me you're applying for a job and you didn't know how much you were going to be paid?---I hadn't got far enough through the interview process to know exactly what was on offer, no.

You've got – with, with your documents we've got you to the day before the interview?---Yes.

Yeah. You went to the interview?---Yes.

10 Yeah. You obviously responded to an ad in the paper?---Oh, there would have been a range put on it I imagine.

Yeah, they generally put a range in terms of the wage?---I, I assume, I can't even remember.

Yeah, well, what was it?---I don't remember.

You're not telling us you're leaving UGL to go to RailCorp for a pay cut? ---No, I wouldn't have done that.

20

No. Getting the job was going to be something, an improvement for you? ---I would hope so.

It was a benefit, you were probably going to get paid more?---I may have moved for the same amount but if it broadened my skill sets I would have benefited in different ways.

Right. But nonetheless you would take the job because it was either a financial or some other benefit to you?---Of course.

30

If you just have a look at page 1485 of your diary. Is it, is that date 13 February, 2013?---I think it's probably the 15<sup>th</sup>.

The 15<sup>th</sup>, okay. You received a phone call from Mr Camilleri again repeating that Jessica could not give me any details of the court case. Do you see that?---Yes.

40 So this is your – you're now months down the track, you're now \$428,000 out of pocket, you were told three months earlier that the court case had been finalised and now you're being told you're not been given any more details of it?---I think this was the day after that he was terminated so he was ringing to tell me about a process he was committed to with, with her.

In any event he told you at that stage didn't you, didn't he that he was unsure then that's at the 15 February that Jessica had been telling him and subsequently telling you - - -?---Yes.

- - - the whole truth about the reason she needed the money?---Yes.

That's what he told you?---He did.

That he and the family had called a family meeting to the get to the bottom of it - - -?---Yes.

- - - because they essentially didn't believe her?---Yes.

10 And I take it at this point in time you didn't believe her either?---Of course not.

Then the second last paragraph, "I informed Joe that it would not be acceptable to me to leave the matter with RailCorp as it is as the inference is that I was a party or party to corrupt behaviour"?---Yes.

What did you mean by that?---I didn't think anything that I had done to that point in time represented inappropriate behaviour and if Joe was found corrupt I thought that that may have influence in me.

20 Why would Joe be found corrupt if you weren't going to be found corrupt? You were just the two ends of a financial transaction that you both chose to hide?---Well I knew that there were other transactions associated and other people associated.

What did you mean by it's unacceptable to leave the matter with RailCorp as is?---Joe was talking about whether he would um, take RailCorp to task over unfair dismissal.

30 Right. And so you were saying he should?---Yes. 'Cause I didn't think that there was any inappropriate behaviour at that point in time.

Because you think, thought that if he didn't do anything the inference that logically one would draw from his behaviour and indeed your behaviour is that it was corrupt?---At that point, yeah, obviously people could make an inference.

And I suppose that, that hasn't changed has it?---Well obviously not that's why we're here.

40 He hasn't, he didn't do anything about challenging RailCorp's decision did he?---I'm, I'm not aware, I don't know.

If he didn't the inference of course is that the behaviour of you and he was corrupt as you've identified back then?---That's what I identified.

And could I just show you this document. Is this your letter to your employer dated 14 February 2013?---Um, it's a, it's a letter that I drafted and I don't believe was ever posted.

It was or wasn't posted?---No, it was never posted.

In any event then it's a letter that you've drafted. And what caused you to draft it?---Um, the day prior, well on the same day I think I had a phone call from Joe explaining that he'd been terminated from RailCorp.

10 Yeah. And so you thought oh my goodness me, we've been caught?---No, I thought at that point in time that RailCorp could have possibly construed that there may have been inappropriate behaviour from Joe and that that would be a cause for me to report to my, under my own policy to report.

Why? What policy, there hadn't seemed to be any policy that you report anything before, what did Mr Camilleri's dismissal have to do with you and the need to report anything?---Well, it goes, it goes to the issue of um, potential and obviously with Joe informing me that RailCorp has terminated him and he informed me about the, a um, investigation process obviously someone else, probably RailCorp, thought there was a potential.

20 But what did it have to do with you, you've maintained steadfastly that you gave a personal loan to a friend, nothing more, nothing less. Why did you suddenly have to go in this flurry of reporting when Mr Camilleri was dismissed?---I thought it was appropriate.

It was appropriate because you know what you'd done was wrong?---No, and because I thought the, the level for potential for someone else to interpret it that way had increased.

30 Is this when you first realised the potential for perception?---Yes.

Why did you suddenly realise it then when you weren't able to realise it back at the time you were lending the money?---Well, there was an actual event that caused me to think about the potential, obviously RailCorp thought there was a potential. I actually think in the letter that Joe read out to the phone, over the phone to me the reasons why he was terminated weren't directly related to the potential either.

40 What were they related to?---Well, he said to me over the phone that he, he'd been terminated because he didn't follow instructions.

Yeah, that's right wasn't it?---Yeah.

Yeah?---Um, then he continued to borrow money from internal parties - - -?

Yeah?--- - - - and that he'd lied about borrowing money from contractors.

Right?---They were the reasons he said he was terminated.

Yeah. And what's that got to do with you?---Well, I'm, I'm explaining that it raised the potential for other people to see that there may be a conflict of interest.

How, how, how does that raise the conflict with you, just on that information how does that suddenly raise a conflict - - -?---It doesn't - - -

10 - - - if you've never seen - - -?---It doesn't change the conflict. It changed in my mind the, the way that other people may view. You're asking me to put my - all the way along, to put myself in the feet of other people - - -

Yeah?--- - - - and here I was putting myself in the feet of RailCorp.

No you weren't. Well, RailCorp, it wasn't a question of perception at that stage, RailCorp had caught Mr Camilleri?---There was, I didn't, I was unaware there was anything in the letter that said he was terminated because of um, the um, um, he - - -

20 THE COMMISSIONER: Whether there was or there wasn't the fact that he was dismissed you say was what caused the realisation for the first time that someone else might perceive this conduct as corrupt?---Yes.

MR POLIN: I tender that letter, that's page 1542.

THE COMMISSIONER: Exhibit 21.

30 **#EXHIBIT 21 - LETTER FROM KEVIN MCCARTHY TO PHILLIP JOHNS RE "KMc PERSONAL INCIDENT IDENTIFICATION" DATED 14 FEBRUARY 2013**

THE COMMISSIONER: That's the, the diary note is it, Mr Polin, page 1485?

MR POLIN: No, sorry, that had already been tendered. The diary notes are page 1482 - - -

40 THE COMMISSIONER: Yes, sorry.

MR POLIN: - - - 1488, 1474 and 1485.

THE COMMISSIONER: Thank you.

MR POLIN: They're the questions at this stage.

THE COMMISSIONER: The draft letter which is 1542, do you wish to have that marked?

MR POLIN: I'm sorry, I thought that was tendered as Exhibit 21. No? I tender that.

THE COMMISSIONER: I'm sorry, there might be, no. There might be some confusion. The emails of 12 December are Exhibit 20.

MR POLIN: Yeah.

10 THE COMMISSIONER: And then I thought you indicated that you were tendering the diary notes as Exhibit 21?

MR POLIN: I thought I, I was tendering the letter and someone said, no, you've already done it, so I thought that was, that was Exhibit 21, the letter.

THE COMMISSIONER: Well, let's re-number the Exhibits so that it conforms with the chronology of the questions. So Exhibit, Exhibit 21 will be the draft letter page 1542-1543, Exhibit 22 will be the diary notes. Thank you.

20 MR POLIN: And there was just the question of the contract or the pages of the contract we've just got to sort out that were marked for identification.

THE COMMISSIONER: Thank you.

MR POLIN: Thank you, Commissioner.

THE COMMISSIONER: Well, while that's occurring, Mr Chee?

30 MR CHEE: Yes, thank you, Commissioner. Mr McCarthy, could I take you to the first tranche of loans. I believe that you said that Mr Camilleri had told you that debt collectors had approached both him and his daughter. Is that right?---That's correct.

Why would debt collectors be approaching Mr Camilleri for debts which were racked up in his daughter's name?---He said, he said that he was guarantor.

40 Did you question him as to his, as to his position in respect of that arrangement?---Um, no, not – I took his word at that point.

Moving on, how was the money conveyed to Mr Camilleri, moneys throughout the whole course of the loan process?---Most of the moneys were transfers between accounts that my, my wife had control of and Jessica Camilleri's account.

So they didn't go into Mr Camilleri's account, they went directly into his daughter's account. Is that right?---Most of the transactions, yeah, not all.

With the, with respect to the other transactions, where did they go, where did the money go?---Um, some, I think there may have been some into Joe's account, I think there was also a very small amount of cash.

You've also taken bankruptcy proceedings against his daughter. Is that right?---I have.

For how much?---The, the full amount.

10 The full amount. And on what basis do you say that money's owed to you, was it a loan?---On the same basis, I believe that I loaned the money to both Joe and to Jessica.

All right?---In fact the proceedings are actually for my wife and myself against both Joe and Jessica.

If I could take you to the email correspondence that you had with Jessica – I believe it's Exhibit number 20. Did you have any other further discussions with Jessica around that period of time?---Can I see the Exhibit? Um, yeah,  
20 I think there were some discussions on the phone.

And these were discussions directly between yourself and Jessica?---Yes.

Did they involve Joe at any point?---Um, ah, well, Joe, involve Joe? No, there were discussions directly with Jessica.

Right. And what was said in those discussions?---Oh, goodness. Um, I um, believe I asked her to confirm the story, if you like. I quizzed her on the um, the details that Joe had given me and I think she basically answered  
30 each of my questions quickly, succinctly and, and correlated identically with Joe, the story that I had from Joe.

Is it possible that Jessica was telling the identical story to Joe and that she was the author of this version of events that we've explored today?---It's possible.

Okay. I have no further questions, thank you.

40 THE COMMISSIONER: Mr Silver? Nothing. Yes, Mr Crowley.

MR CROWLEY: Mr McCarthy, Counsel Assisting has put a lot of hypotheticals to you over the last couple of days, asking about how, how people in other companies might react if they knew that they were dealing with RailCorp in circumstances where someone from a competitor has put those, has a loan with a decision maker at RailCorp. I just like in dealing with those hypotheticals to get the time line correct because, I'd like to get the time line correct. So the LC3 contract that was negotiated and it was concluded in late December 2011?---That's correct.



And your evidence or the evidence is in the contract that you were the main person for notification for the joint venture group that signed the contract?  
---That's correct.

Of which UGL was a party to that joint venture and on the other side Mr Camilleri was the prime contact?---Correct.

10 Once that contract was signed what was your role?---Um, I had a role, um, between when the contract was signed and when the start of the services were to start to manage the transition process on behalf of the joint venture.

So UGL had the contract already and that ran through to 30 June 2012 didn't it?---That, that's correct.

So that contract remained on foot?---It did.

20 The LG3 (as said) contract that has been mentioned so often yesterday and today was a contract that didn't start until 1 July and it replaced the first contract?---That's correct.

And your role was not administering the contract that was in place that would expired on 30 June 2012 but your job was to do all the pre-work so that the new contract would be able to start on 1 July 2012?---That's correct. There were no services delivered under the LC3 contract in that period.

Okay. Now they contract had a standard clause with you as the legal representative and Mr Camilleri as the State Rail representative.

30 THE COMMISSIONER: UGL you mean, Mr Crowley?

MR CROWLEY: Mr Camilleri was the State Rail representative and Mr McCarthy was the - - -

THE COMMISSIONER: UGL.

MR CROWLEY: - - - joint venture representative. Was there any instance where you had to give any official notification as required, as contemplated by the contract to Mr Camilleri.

40 THE COMMISSIONER: Well, sorry. What official notification, what are we talking about?

MR CROWLEY: under the contract if there was any official notifications that clause said that the way to, to, to serve a documents on the other side if you like under the contract whether it was for an event of default or whatever - - -

THE COMMISSIONER: By notice in writing.

MR CROWLEY: By notice in writing by Mr McCarthy to Mr Camilleri.

And my question is during that period was any notification needed to be made?---Um, I have a recollection of only one and that was related to um, changing the details in the contract where I was no longer the point of contact it changed over to the new CEO of the joint venture company.

10 Right. So is that the only communication you had with Mr Camilleri from the time that the contract was entered into in December 2011 until 30 June 2012?---I, I believe so, yes.

Okay.

THE COMMISSIONER: Sorry, sorry, Mr Crowley. Can I clarify something? Your last question said was that the only communication you had.

20 Are you confining that to simply formal notifications under the contract or do you mean the question to embrace all forms of communication?

MR CROWLEY: All forms of communication.

THE COMMISSIONER: Do you understand that, Mr McCarthy, you're being asked - - -?---I, I understand that and I believe the answer is yes.

Sorry, the answer is that you did have - - -?---Correct.

30 - - - or that you didn't have?---I didn't have.

Any communication whatsoever?---I, I believe that's correct.

In what period of time, Mr Crowley, was it?---I think it - I'm sorry.

MR CROWLEY: From late December 2011 to 30 June, 2012.

THE COMMISSIONER: Well, anyway it's a matter for Counsel Assisting, I would have thought that cuts across the evidence but anyway, go on.

40 MR CROWLEY: On - at the end of 30 June, 2012 your role changed?---It did.

And what did your role become after 30 June, 2012?---Um, after that point I went back into the head office of UGL ah, to take um, the role of um, bids and um, project general manager.

Right. So you were the bids project general manager in head office, no longer at the Auburn plant?---That's correct.

And were any of the bids that you worked on from 1 July, 2012 until the call in October from Mr Camilleri, were any of the bids in that period bids involving State Rail?---No, they were not.

There was not a single bid that involved State Rail?---No.

10 From the date that you got the call from Mr Camilleri in October until he was dismissed from RailCorp were any bids that you worked on or any other business that you did in relation to any State Rail business?---Um, no.

Okay. So from 1 July, 2012 until 14 February where the dismissal was you had no involvement with the LC3 contract?---That's correct.

20 Okay. Now in the opening statement of Counsel Assisting he said words, he said these words, "Mr McCarthy was paid a large bonus by UGL for securing the L3C contract. This relationship and the amount owed by Mr Camilleri would on any view of it affect the ability of Mr Camilleri to impartially exercise his official functions. Now, isn't it true that those two sentences mixed the position?

THE COMMISSIONER: Well, isn't that a matter for submissions, Mr Crowley? How can this witness express an opinion on the structure of Counsel's opening address? I mean you can ask him a specific question but  
- - -

30 Right. In regard to that opening submission it's said you were paid a large bonus by UGL for securing the L3C contract. The bonus that you received from - in relation to the year in which the LC3 contract was given was the year ended 30 June, 2012?---That's correct.

Because that's the year in which it was done?---Yes.

So, so the bonus was received in relation to that contract before you received the call from Mr Camilleri?---The bonus was in about October or November, the payment.

40 Yeah. And it was in relation to the, to the period before you received that call from Mr Camilleri?---Yes.

So there is no connection whatsoever between the bonus you received from UGL for receiving the LG3 contract and the loan to Mr Camilleri?---That's correct.

There was a clear separation in time?---That's correct.

Thank you. Now if I can put a hypothetical to you, if you were doing someone a favour would you almost immediately go off and get advice to

see how you can tie someone up in relation to that favour?---No, I would not.

Then why did you go and seek legal advice from Jenny Brown after only the second payment?---Um, Jenny Brown was a, a, a friend and um, I was asking other friends for advice and their feeling on the, on the situation.

So you knew you were at risk, you thought you were going, there was a chance that you were not going to get this money back?---I did.

10

And, and that's not the favour, so isn't that contrary with you making a favour to someone? Would you, would you go and get legal advice – sorry, I withdraw that. Seeking a favour from someone, would you go and get legal advice to tie that person up without telling that person after you've started to provide the favour? Is that something you would do?---Generally not, no.

No. Okay. Now, can I take you to the interview process for the job. The, your evidence is that you raised the issue of the loan with State Rail executives prior to your, the day prior to your interview with State Rail? ---That, that's correct.

20

And can you tell the Commission why you believe you, you did it that day? ---The interview had only been organised I think the day before, I'd been aware, made aware that, that Joe had been terminated by Gavin Campbell, I knew that Joe had read over the phone the reasons for the termination. I actually rang Gavin Campbell um, to um, willing, willing to back out of the interview process if I thought in any way that I'd put him in a compromised position. I knew he'd terminated Joe, I knew that he knew that I was a part of that and I um, didn't seek in any way to put someone into compromise over that.

30

Right. No more questions, Commissioner.

THE COMMISSIONER: Anything arising, Mr Polin?

MR POLIN: Yeah, just one matter. Sir, you don't take this, the evidence you give in this matter lightly, I take it?---Absolutely not.

40

You want the Commissioner to accept that you're telling the truth?---Yes.

So it's important that you understand the questions, consider them and attempt to give a truthful answer?---Yes.

You were just asked some questions about your contact with Mr Camilleri. Do you remember that?---Yes.

And the contact you were asked between December 2011 and June 2012?

---Yes.

And The Commissioner in fact stopped the question at one stage because it could have been confusing that the question related only to formal contract notices under the contract document. Do you remember that?---Yes.

10 And you remember The Commissioner saying, “No, no, no, what’s being asked, did you have any contact at all with Mr Camilleri”- - -?---Oh, in, in relation, sorry, okay. So no, I didn’t clearly understand. I thought it was in relation to work.

Yeah, no, assume it’s in relation to work?---Oh, sorry.

Did you have – and you’re being asked questions of whether there’s any contact with Mr Camilleri, as to whether you had any involvement with him in any matters at work, including the contracts you were involved with. Do you remember that?---Yes.

20 And you answered that you did not?---I, I don’t, I don’t believe that I did.

You didn’t answer, I don’t believe I did?---Oh, sorry.

You said that you did not?---Well, I should have answered, I don’t believe that I did.

Is that because you’re taking the questions and the answers very lightly, aren’t you?---No, I’m not.

30 Right. Because, sir, we only need to open, I’ll just show you a copy of your diary again. I’ve only got to open the first page to establish that the answer was untruthful, don’t I?---(No Audible Reply)

24 April 2012, smack bang in the middle of the period that Mr Crowley asked you about. Three-quarters of the way down the page, “Done – rang Joe Camilleri re Bob Jenkins. Meeting arranged, commercial documents to RailCorp,” et cetera, et cetera. The first page of this document you provided alone confirms that the answer you just gave was not truthful?---Um, there’s two, there’s two dot points there, they’re not both the same dot point.

40 THE COMMISSIONER: What have the dot points got to do with it, Mr McCarthy? Your attention is being directed to the fact that on 24 April you had a phone conversation with Mr Camilleri?---I did. It was in relationship to a reference um, for Mr Bob Jenkins. So he was asking for a personal reference.

MR POLIN: You’ve asked whether – we don’t know really from this document but it’s pretty clear that you had a conversation with Mr Camilleri, I don’t know who Mr Bob Jenkins is, we have to believe anything

you say wouldn't we? But you were asked a question whether you had any contact at all with Mr Camilleri and you said you did not?---Well I could not - - -

But that's clearly not true is it?---And I, obviously I didn't remember this contact.

Yeah. So we've got to scrutinise everything you say don't we?---No, no. This was not directly related to the execution of the LC3.

10

I take it we probably really need to get out of all RailCorp's records wouldn't we, of meetings and all those sorts of things and go through them laboriously to check whether you ever spoken to Mr Camilleri?---I think the point that I should have made or meant to make was that during all that period the amount of contact that we had was next to nothing that all of my contact was made through the transition team.

20

Why on earth we would believe that when only five minutes ago you told us that the in fact contact was zero, there was no contact at all?---Well I still believe there was no contact relative to the contract.

So if we go and find some more documents the contact's a little bit more than next to nothing is it? What's the position?---Well my position is that my, my points of contact during all of that period were with um, Mr Reg Graham and the transition team.

I tender that page of the – we'll get copies - - -

30

THE COMMISSIONER: Yes. I'll join, I'll join that page with Exhibit 22.

**#EXHIBIT 22 - DIARY NOTES OF KEVIN MCCARTHY CIRCA FEBRUARY 2013 – P1471, 1474, 1482, 1485, 1488**

40

MR POLIN: Finally, Mr McCarthy, in terms of just some of other questions you were asked. If you doubted that you were going to get the return of the money when you'd lent \$45,000 why on earth would you go ahead and lend another 380 odd thousand dollars?---Um, well I, I, I interpreted the advice that I got is that if I'd asked any lawyer I would have got back the same information which is you should never lend money to family or friends.

Why would you answer Mr Crowley that you doubted you'd get the return of the money when you consistently answered to me that you had no doubt, you were always going to get the money returned?---Oh I always knew Joseph Camilleri had offered his superannuation as well.

But what is it, what's the answer, the answer to Mr Crowley that you doubted that you were going to get the money returned after \$45,000 while the answers to me that you had no doubt that you were going to get the money?---No, I don't believe that I said I had no about all the way long, I, I quizzed - - -

You said you doubted that the money would be returned?---Sorry, in relationship to?

10 After the \$45,000, after you paid that much?---Well I had, I had a doubt in my mind and that doubt in my mind stayed for, for the period but it didn't become a doubt which caused me to um, stop the loans.

It wasn't a significant doubt to double up, triple up, quadruple up and about ten times more?---Correct.

THE COMMISSIONER: Yes, thank you, Mr McCarthy, you're excused.

20 **THE WITNESS EXCUSED** **[2.59pm]**

MR POLIN: I call Pierre Rochecouste.

THE COMMISSIONER: Mr Silver, I take it that you've had the same conversation with Mr Rochecouste?

MR SILVER: Yes.

30 THE COMMISSIONER: Thank you.

MR SILVER: It'll be an oath, Commissioner.

THE COMMISSIONER: Mr, tell me how you pronounce your name?

MR ROCHECOUSTE: Certainly, your Honour. Rochecouste.

THE COMMISSIONER: Rochecouste.

40 MR ROCHECOUSTE: Yes, thank you.

THE COMMISSIONER: Mr Rochecouste, have you had explained to you the affects of an order under section 38 of the Act?

MR ROCHECOUSTE: I have.

THE COMMISSIONER: You understand that the order protects you from the use of your answers in criminal proceedings against you but not in

relation to any proceedings that might be taken for any false evidence that you give to the Commission.

MR ROCHECOUSTE: I do.

THE COMMISSIONER: And I understand that you wish to be sworn?

MR ROCHECOUSTE: Yes, please.

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

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



MR POLIN: I'm sorry, sir, I didn't catch your name, is it Rochecouste?  
---That's okay, Rochecouste, silent S.

Couste, okay. So your name is Pierre Rochecouste?---Correct.

10 And, sir, I think back at December 2011 your position was Acting  
Maintenance Contract Commercial Manager at RailCorp?---Acting General  
Manager.

General Manager?---That was Joe's substantive position.

Right. You were reporting to Gavin Campbell?---In that position, correct.

And I think in previous times you had been reporting to Mr Camilleri?  
---Correct.

20 How long had you been at RailCorp?---Oh, I started in RailCorp in 1986 or  
previous entities.

When you started in 1986 what sort of position were you in?---Oh, I started  
as a cadet engineer. In those days public utilities were offering cadetships  
so I applied and started as a cadet and started at a place called Elcar(?) as all  
sort of cadets would go through and this is where I first met Mr Camilleri.

That was back in- -?---1986.

30 Yeah. And then I take it, what, during that period you worked up the ranks  
to the position you're in, that was you were acting in Mr Camilleri's  
position, were you, in 2011?---Yes.

And were you at that time essentially the same level as him?---Oh, prior to  
me acting in his role?

Yeah?---I was reporting to him.

40 Right. And then when you were acting in his role and into 2012 were you at  
the same level or- -?---That is correct.

Right. Now, just firstly, you understand Mr Camilleri had been dismissed  
from RailCorp back in early 2013?---That is correct.

Did you have any contact with him throughout 2013 after he was dismissed?  
---After, yes, I have.

In 2013?---That is correct, I did.

When was that?---Um, I think it was just a day or two after he got dismissed.

Yeah?---Um, he called me- - -

Yeah?--- - - -asking what had been said about his dismissal.

10 Yeah?---And um, that was primarily it and ah, what had been said and that he said that, you know, he still wanted to repay me.

Yeah?---That pretty much was the first phone call.

Was there any further phone calls in 2013?---There were. Um, I was trying to recoup some money that I'd loaned him.

20 Yeah?---And I think that would have been around August of that year, there was a reason why I started ringing him in August um, I was trying to get my money back.

Yeah?---And I subsequently called him again around September and I increased the frequency at which I called him.

Yeah?---That led to around November and then after that I started decreasing the frequency at which I was ringing him up.

Right. Were you in fact contacted with, contacted by him last Saturday?  
---Yes, I did. Or he did, pardon me, he did.

30 Could I show you this document. Did it surprise you that he contacted you last Saturday?---I was surprised. Yes, that was a document I put together.

And is this a document that you created as a result of having been contacted by Mr Camilleri last Saturday?---Correct.

I tender that document. It's page 2719.

THE COMMISSIONER: 2719.

40 MR POLIN: 2720. And is that an email you sent to your lawyer?---That is correct.

THE COMMISSIONER: Exhibit 23.

**#EXHIBIT 23 - EMAIL FROM PIERRE ROUCHECOUSTE TO ELIZABETH BALL DATED 17 FEBRUARY 2014**

MR POLIN: And for all intents and purposes, does that set out the detail of the conversation you had with him and what, what happened?---Yes, I tried to be as explicit as possible about the interaction. I was a bit worried um, about what the ramification might be.

You were worried that may create some sort of perception?---Indeed, indeed.

10 And the fact is that he deposited some money into your bank account in circumstances where you hadn't in recent times asked him to do that?  
---Correct.

So you'd known Mr Camilleri for a long period of time?---I, like I said, when I started in, in the Railway - - -

Yeah?--- - - - as it used to be called, the State Railway Authority, I, I met him but I didn't have an interactions with him so I knew of him.

20 Yeah?---It was more around the um, the year 2007 when I changed roles and, well, that one particular role I was looking after projects to improve reliability - - -

Yeah?--- - - - of our equipment and there was issues around the reliability of the rolling stock where I was then positioned by the organisation to assist - - -

Yeah?--- - - - ah, Mr Camilleri ah, to improve reliability of the rolling stock so then I went and worked with and for Joe - - -

30 Yeah?--- - - - for ah, a couple of years.

Right. And during that period of time or indeed before then did you socialise with Mr Camilleri?---No, never.

Did you socialise with other people at work from time to time?---I do.

Were you someone who might have a drink with people after work on occasions?---I do.

40 Was Mr Camilleri someone who did that?---Never.

Right?---Oh, oh, from what I understood or I've seen, I've never seen him socialise.

Right. Had he said anything to you at any stage about why he didn't socialise with people?---I did ah, it was more in light that when I was acting in the role I was trying to organise a Christmas party for the management

team and I was trying to convince him to, to join in and um, he did share with me that he never wanted to socialise because at one point in time you may have to performance manage one of the managers and therefore he couldn't really associate the socialising having to performance manage someone so he had to really make sure that there was a clear separation between the two therefore he wouldn't socialise in any capacity.

Right. And did that surprise you?---Um, I've known Joe since 2007.

10 Yeah?---I um, I knew him as a person of integrity um, and also to do the right thing by the organisation and I, and I sort of understood it, you know.

So am I correct in saying he was displaying to you an understanding that he didn't want to be perceived to be potentially drinking with a manager - - -?  
---Someone.

- - - who at some stage he might have to deal with in terms of their performance in those sorts of matters?---That is how I understood it, correct.

20 That the perception that that was not something that looked terribly good?  
---That is correct.

Now I think, sir, you, you were approached by Mr Camilleri initially on 26 June, 2012 to borrow some money?---Yes.

What was your position at that stage?---I was acting in his role.

Yeah and what was his position?---He was working on the reform team - - -

30 Right?--- - - - as um, the head of the maintenance reform team and um, therefore I um, he was fulfilling that function as well as on day to day sometimes I would call him to get advice on particular contracts and what have you so that would have been the relationship that we were having at the time.

So you were the head of, essentially the acting head of the maintenance section?---Of the contract maintenance section, correct.

40 He was moved into the head of the reform section?---Correct.

But you would talk to him on occasions?---Indeed.

Or frequently about issues that would arise within your section?---Indeed.

Right. How was it that he came to see you on 26 June, 2012?---I was in the office and he came in and um, he was, the term is distressed or not himself - - -

Yeah?--- - - - and he said could he talk to me and he walked in and closed the door and then, he then explained that he had a situation at home and um, it was in relation to his daughter and um, his daughter had been involved in a identity fraud or someone had borrowed her, her details or stolen her detail and um, in that respect there were purchases made within Australia and outside of Australia using her details, purchases or financial transactions were entered into and as such um, there were um, issues with a bank because the bank had basically started um, a legal process against her and um, there were moneys owed to the bank in terms of the, called the bank fees or the fees that were associated with that financial, those financial transactions and that had to be paid and um, the way he put it out to me is that was going to be settled soon but they needed money to actually pay the bank. So in a nutshell that's what it, what it was about.

What was the sense of urgency about it?---There were payments that had to be, to be done on the day by close of business on the day.

So he was saying he came to you on 26 June, he was saying the payment had to be made?---To be done that, on that day.

Right. And so what actually happened?---So um, initially you know, so he explained the situation with his daughter um, and um, I said you know I've got children I can understand and then I said what do you need and then he, the money that he mentioned was \$10,000, I balked at that figure I said I do not have that sort of money and then he said what else can you offer and I said that I needed to talk to my wife and then he said oh talk to your wife and come back to me as soon as you can. So um, and I'm trying to summarise it I remember a bit more interaction going on.

No, that's all right. Did you then talk to your wife?---Oh yes, then he left, I rang my wife and as you can understand my wife wasn't really agreeable to the transaction and then I explained that it was a situation that he had an issue with his daughter, he's trying help his daughter out and I've known Joe for many years, a man of integrity and a question that Catherine asked me my wife was would you get the money back I said I firmly believe that I will get the money back and therefore she said listen I'll leave it up to you, I don't want to agree but I'll leave it up to you. So then - - -

Did he come back or did you go to him?---I called him um, 'cause I did say I was going to contact him, I called and said my wife had agreed and he went and he said okay, great how much and I agreed with my wife that it was going to be \$5000.

Right. And, and what happened in terms of giving him the money?---So um, he wanted the money urgently so we agree that we go and meet outside and we'll go to my local bank is just across the road the St George Bank and I'll go there and withdraw the money and then give it to him.

Do you think that it was unusual that you couldn't just give him a cheque that he could take down to the legal advisors?---The urgency about it I would understand that clearing a bank cheque or a cheque would take time so therefore at the time no, I thought yeah, cash is king therefore if get him cash, that's what he was after, it would clear quickly he will then be able to process whatever payment he had to make on the day.

And did he go down to the bank with you?---Yes, he came and I withdrew the money and gave him the money.

10

Okay. Then over the following few days or so did he tell you that the transaction had been finalised and you were going to get your money back or what happened?---Um, in actually in the transaction there was another interaction that I made, I got him to sign a piece of, a document because I wanted to know, to make sure that he was legit and we spoke about payment and 'cause he told me that he was going to get the money quickly, I really wasn't fazed about whether it's going to be this week or next week or the week after, so to me will be within a month or so, so I wasn't too worried about so we signed a document and I signed it and I kept a copy and gave him a copy.

20

Did he come to you shortly thereafter asking for more money?---He, um, he came and asked me where he could get money because I didn't give him \$10,000 I only gave him five.

So this is on the same day?---On that same day. So he said you know where could I get money and you know I, I said definitely not from me and I, I made a mention of, um, two colleagues of his who I'd known, I'd been working with quite closely, um, I said did you ask Chris Rowe or Greg Graham and he said yeah, I need to chase that up. So that was it, that was the only interaction that I had then with him after that day.

30

Did he come back some time later and ask for more money?---He did, he came, the second interaction that I had with him he came back in July um, to ask, he came again asking for I think five or 10,000 it was always one of those two figures and I said I didn't have that money he said what have you got um, because it was the same issue the bank needed the money urgently to pay for the fees et cetera and I said listen I don't have that money he said what can you, what do you have and um, at this time um, it ran through my head I said you know it looks like this thing needs to be settled very quickly, is a man who need to help his daughter, I took on my own, to make the call that I could give him another \$2000.

40

And you did that?---I did that. So again I went to the bank and came down with me to the bank and I gave him the \$2000 cash.

Were you getting the same story or was there - - -?---Yes. The first and second interaction was pretty much the same story.

Excuse me, sir.

At some stage were you getting a bit concerned about the veracity or the truthfulness of the story?---By the time the third interaction occurred I, I was now concerned.

Okay. The third interaction. What was that?---Yes, that would have been in September.

10

Okay. What happened then?---He came up, again he was agitated, looking for money, sorry, agitated and he came and asked me whether I could advance him some more funds.

Yes?---And I was getting, well, not getting worried but, you know, here is a man that I've known full of integrity and I asked him whether he'd sort of ask his daughter about where all this money was coming from, whether he could provide some evidence to that effect, and he produced the piece of paper that he showed me and um, I didn't read the document, the full  
20 document.

You didn't?---I did not.

Yeah?---But I do remember that parts of that, I saw snippets of it around a figure, and I saw there was a letterhead from a bank to it um- - -

Is that an ANZ Bank letterhead?---It was an ANZ letterhead, yes.

Can I show you this document. Do you recognise that as being a copy of  
30 the document he showed you in September?---Correct.

Do you remember what day it was in September just by chance?---It was the day that I did a transaction, so- - -

Right?--- - -I, I cannot remember it.

That's all right?---But if I go back to my records- - -

Yeah?---So that was - I'll say that was a letter because I've been asked by  
40 investigator what was in the letter.

Yeah?---And, and I said I can clearly remember there was a six-figure sum or something to that effect, a lot of, a lot of digits, and um, that was a letter that I was showed.

Right. And essentially it's saying that \$98,000 must be paid to the ANZ Bank- - -?---Yeah.

--to cover fees in relation to an amount of \$975,000 that they were holding?---Yes.

“No funds will be released from the advice of the ASIO unless outstanding fees have been paid.” Do you see that?---Yes.

You weren't happy about the letter, were you?---No, because the quality of it, as you can see this particular one, it seems to be a copy of a copy of a copy, especially if you look at the fold, it's been folded in four- - -

10

Yep?--- - -and then copied after it's been folded. So I was starting having doubts. Now, when I saw that I was starting to doubt a few things um, but just a doubt started to enter in my head.

Did you, did you, were you able to read it closely enough, were you given an opportunity to read it closely enough to work out what the English was? ---No. I mean here's a man that I trusted and I'd respected for quite a while and I didn't want him to get the impression that I didn't trust him at all, and when I saw there was a Camilleri on the letterhead, the ANZ letterhead and then dollars, for me that was sufficient proof at the time- - -

20

Yes?--- - -to see that it was something legit.

Yeah. I tender that document, Commissioner.

THE COMMISSIONER: Yes. That document is Exhibit 24.

30 **#EXHIBIT 24 - LETTER ON ANZ LETTERHEAD ADDRESSED TO JESSICA CAMILLERI DATED 23 JULY 2012**

MR POLIN: It's page 318.

THE COMMISSIONER: Thank you.

MR POLIN: Now, I think you've told us that at this point in time Mr Camilleri had moved across to the, to head up the reform process?

---Yes, he moved since December 2011.

40

Yes. And we've heard RailCorp was undergoing a fairly significant reform, being split up into- - -?---Correct.

--two separate sections?---Correct.

And that essentially that meant in terms of the restructure of staff that there were potentially people that were offered voluntary redundancies?---Yes.



People may have been offered new positions, promotions, all sorts of movements within the ranks?---Not so much promotions at the time but- - -

Right?---That was to come after.

In terms of the voluntary redundancies I take it there were some people who wanted to get them because they may have received a large payment?

---I mean it was a voluntary.

10 Yes?---A voluntary separation program, so there was a callout to the organisation and it was to a certain level, it wasn't open to the coalface.

Yes?---It was targeted to the people on contracts who wanted to apply for VSP.

And I take it there were people who on occasions particularly wanted to obtain the voluntary redundancy because they got the payment and they left the organisation?---That is correct.

20 That is what they wanted to do?---Yes.

Could I just show you this email?---Sure.

It's a series of emails?---Thank you. Ah, yeah.

Starting from the bottom you see the first email, it's dated the 4<sup>th</sup>, sorry, 8 August - - -?---Yes.

- - - 2012. Sorry, before I forget, I didn't ask you, in September 2012 you advanced a further sum of money to him did you?---In September, yes I did.

30

How much was that?---\$2,000.

Right. So was the total you had advanced him \$9,000?---That is correct.

Now going back to this email, it's page 1847?---Yes.

The first one's an email from you to Mr Camilleri?---Correct.

40 Indicating that Mr Cassar had indicated to you that he wanted to put his hand up for a VSP?---Certainly, yes.

You said, you requested that he send you an email and that you were going to go and contact Kelly Bond to see if he could be added to the list?---That is correct.

And so I take it that was just confirming what you were going to do?  
---Correct.

You then got an email back from Mr Camilleri, that's at the top of the page?  
---Yes, I can see that.

Essentially taking that matter out of your hands?---To deal with.

And saying essentially don't worry, give it to me, I'll talk to Kelly instead of you talking to her?---Correct.

10 I tender that document.

THE COMMISSIONER: Yes, page 1847, Exhibit 25.

**#EXHIBIT 25 - EMAIL FROM PIERRE ROCHECOUSTE TO JOE CAMILLERI "RE: CONFIDENTIAL" DATED 8 AUGUST 2012**

MR POLIN: Now, sir, have you been here over the last few days hearing  
20 some of the evidence being given - - -?---I did attend yesterday - - -

- - - in the matter?--- - - - and this morning.

And you've heard some questions being asked about the problems that these sorts of loans can result in?---I do indeed now.

Just asking you some of those questions - - -?---Certainly.

- - - you'd accept wouldn't you that certainly now that the money you lent to  
30 Mr Camilleri at the time is a benefit to Mr Camilleri?---Yes, I, I do now.

Yeah. And I take it that a fair bit of pressure was put upon you specifically at the time to do it?---It was personal pressure.

Yeah?---Um, definitely.

Yeah?---But nothing to do with my work at all.

And, and I take it that you've heard about the RailCorp Code of Conduct  
40 dealing with conflicts of interests - - -?---I do.

- - - and the like?---I do.

And you'd accept the fact of making this sort of loan creates the conflict of interest?---I do now.

And it's something that is not necessarily a problem but should be documented in case something happens later on?---I fully appreciate that now.

Yeah. And it's all one of perceptions?---Indeed.

Right. Because indeed if I can just show you this document, this is pages 1848 through to 1851?---Yeah.

10 Now these are, there are two emails and then there's a formal document - - - ?---Sure.

- - - attached to each of them, one's dated, the first one's dated 2 October, 2012 and - - -?---Oh, yes.

- - - the fourth one I think's dated 16 November, 2012?---Correct.

And both those documents are documents whereby you are approved - - - ?  
---To act.

20

- - - to act in higher duties?---Indeed.

And does that mean you get additional pay with the higher duties?---Indeed, you get um, what it's called is a um, a 2.5 per cent increment on your pay.

Right. And you can see from both those forms - - -?---Certainly.

- - - it's Mr Camilleri who's approved the higher duties?---Yes. Ah, can I just make a point though?

30

Yeah?---In both cases um, he had interaction with our director - - -

Yeah?--- - - - ah, as to the selection of myself - - -

Yeah?--- - - - and the duration of - - -

Right?--- - - - so um, 'cause the first time that I was acting in a role in December 2011 um, it was for a period of three months - - -

40 Yeah?--- - - - and then, 'cause we thought ah, the project that he was going on was going to be for a short term and then it was extended for another three months, another three months, et cetera.

And so you're saying even though Mr Camilleri is the person who on the document appears to have signed and approved it?---Yes.

It was approved by was that Mr Mason?---No, no, Mr - my understanding, ah, my, he was never told that by Mr Campbell my understanding from Mr

Camilleri was that he had an interaction with Mr Campbell and it was okay for me to then act for that period whatever that period was.

But you would understand wouldn't you that looking at those documents - - -?---Certainly.

- - - that you had lent money to Mr Camilleri which gave him a benefit - - - ?---Yes.

10 - - - and then within a matter of months he is signing documents approving in essence a benefit being given to you?---You would, yes, you would get that perception.

Right. And you understand now do you that's precisely what by the Code of Conduct suggests that if a benefit is ever given in this way it should be recorded - - -?---Indeed.

20 - - - so that subsequent when people are approved for hire duties that can be looked at and determine that there's nothing inappropriate?---I fully appreciate that, yes.

You don't have any problems understanding that?---None whatsoever.

Now it's not something you obviously thought of back at the time that you made the loans?---No.

30 Why was that? Is that - - -?---Um, first of all if you look at the numbers that I would have obtained or benefited myself in terms of the acting and the amount of money that I loaned Mr Camilleri I would be then in a negative if that makes sense, um, so that was in order to address this evidence here. In relation to the first request when he walked into my office um, it appealed more to me as a father and also to someone in distress over his daughter, so that's where my first reasoning went around helping Mr Camilleri with \$5000. So that was a trigger for me, the context of the trigger for me.

Right. RailCorp have been a body that's been under the spotlight in terms of - - -?---Absolutely.

40 - - - in terms of corruption and those sorts of things over the last few years? ---Absolutely

And there's obviously been processes put into place to make everything - - - ?---Correct.

- - - more transparent. Is it the case – you've obviously seen the Code of Conduct?---I have.

I take it in particular in more recent times you've seen it?---I have.

And when you read it it's not difficult to understand is it?---Um, when, when I read it at the time and also went to the training course um, the scenarios that was provided to us wasn't clear enough to take me over that line in terms of personal loan, it was very much from a thought perspective about falsification of paperwork, invoices, timesheets and et cetera and in relation to supplies from a corruption perspective, accepting benefits from suppliers.

10 Right. So it was all focused in on people at the time setting out and in fact doing the wrong thing?---Correct.

Because I don't think it's suggested that it was ever the wrong thing for you to lend money to Mr Camilleri was it?---I mean from my perspective at the time, no.

Yeah. The point is that there was the Code of Conduct - - -?---Certainly.

20 - - - and the question of what you should have done in terms of the Code of Conduct in relation to that loan?---Correct.

And is it the case that in terms of your training it never looked at those sorts of things?---No. I mean my training and also my understanding. So there's a training element you get given and also my understanding of it it never basically crossed to say alarm I should report that.

Right. And again is that because they seem to be focusing on clearly fraudulent behaviour as opposed - - -?---Or corrupt.

30 - - - to the, the things that in fact might come up on a regular basis?---As a loan um, between one employee and another, correct.

I tender those pages 1840 to 1851.

THE COMMISSIONER: Page 1848 to 1851 be Exhibit 26.

40 **#EXHIBIT 26 - EMAIL FROM ROBERT MICHELS TO GREG GIBSON RE "HIGHER DUTIES- DESIRE ROCHECOUSTE E/N 901964 DATED 3 OCTOBER 2012**

MR POLIN: Are you familiar with the WCCL process? Is that the right expression for it?---It is. In terms of white collar labour.

Yeah. And essentially it's in place and it's used for the engagement of most white collar labour within RailCorp or it was as the time?---Correct.

And is it, is it fair to say that you would have a business manager such as yourself who would - - -?---Yes.

- - - be in need of white collar labour. Would you then go and get approval or the funding for it approved first?---Certainly. Sir, the process would be I will usually wouldn't have it directly at myself it would be one of my business units who would have that need and then the manager will then discuss it with me and then we'll then instigate to, we'll put the business certification together and we'll then go for a process um - - -

10

And you get the funding approved for it?---Oh, usually that was the first step, to make sure that you've got the opex or the capex, indeed.

Okay. And then is it the position that it's referred to WCCL?---Yes.

And WCCL then has large lists or panels of RailCorp's preferred suppliers. Is that correct?---Or panels, correct, yes.

20

Yes. And is it then the case that WCCL would identify from their lists - - -?---Correct.

- - -a certain number of companies?---Certainly, yes.

They would be then asked to tender for the, or put in Expressions of Interest - - -?---Certainly.

- - -however it's described, for that particular contract?---That would be the normal, the normal process, correct.

30

And there has been some evidence that on occasions there might be a requirement for a particularly unusual type of work?---Correct.

And that the business manager might suggest to WCCL- - -?---Correct.

- - -that the people on the panel are not qualified and they may need to look at someone else?---Indeed.

40

But other than that, is it the case in terms of the proper operation of the process, the business manager doesn't put or ask to have people put on the, the list of tenderers?---Um, I just would like to give you an example, if I may, because I've been employing contractors in the past.

Yeah. What I want you to exclude from it of course is the unusual ones? ---Oh, okay, sorry.

I'm taking out where there's an unusual need for something particular or that where the manager goes back and says for this, this and this reason I want someone considered. I want you to, to tell me whether it would be the

usual process simply for the business manager to go to WCCL, having been provided with a list of tenderers, to say please include XYZ Pty Limited on the list, full stop?---Um, in my, in my capacity I've actually never seen a list of panels, okay, and I've never been in that position. So I would have never recommended, seen a list and go no, I don't like A1 or B1 or whatever.

Yeah?---And um, but I would put maybe a business justification if I felt that in the past where WCCL did procure white collar labour- - -

10 Yeah?--- - - -and I wasn't happy with the quality- - -

Yeah?--- - - -so I said since we've engaged a company before and we were quite happy with that service, to include them in that list when they go out to market.

Yeah, but that would be where you go back to them and say this is a job that was similar to the last one we had?---Yes.

20 We engaged this company on the last occasion?---Correct.

They'd be ideal to do it again?---Correct.

Could we use them or could we put them on?---Correct.

That's where a reason's been given?---Correct.

It would be unusual to ask for someone without giving any reasons?---Oh, absolutely.

30 Are you familiar with, do you get to see as part of your position the actual WCCL panels that they extract the- - -?---No, not, not in my position. I mean I'm going through a couple of those processes right now, so- - -

Could I just show you this document?---Sure.

It's headed the WCCL Agency Supplier Panel?---Thank you.

40 Do you recognise that document, have you seen it before? If you haven't, don't worry?---Um, I would have seen the briefing document, yes.

Yeah?---But not the panels.

That document seems to include the panels?---Oh, my apologies. When I was referring panels I felt the list of companies.

Yeah?---Okay.

It does have them there, does it not?---Um - - -

If you just have a flick through. Do you want me to - -?---If you can point me to a particular slide number, that would be great.

Sorry, hand it back for one second and I'll find that. I think starting at that page is it?---Thank you.

Is that the panel of the business services or is that something else?---Um, I mean it's a list of icons, I mean, I'm sorry, I couldn't relate when you see the list of suppliers. I'm may have seen it in a presentation, that's why I couldn't remember.

10

Right. So you're not sure whether that's actually the formal WCCL list?---Yeah, it's more as a presentation pack.

Right?---But I do recall some of the companies on it when we went to market. Sorry.

No further questions.

THE COMMISSIONER: Mr Chee.

20

MR CHEE: Yes, Commissioner, thank you.

I have two very brief questions, both referring to Exhibit number 23. In Exhibit number 23 you state that he further explained that he had settled on the sale of his house and was in possession of some funds?---Correct.

30

Could you explain what that means, was it, did he say that that this was his money or his wife's money or someone else's money that came from the house?---No, he didn't tell me if he was his or, I mean, I assume it was his money, you sell your house so I sold my house ah, can I just um, for your sake um, say that there was an interaction that occurred in January between my wife and him um, I'd called him um, earlier in January and I wasn't at home, my wife picked up the phone and he spoke to my wife and my wife told him in no uncertain terms the impact it had on us and he said at the time that he was in the process of ah, selling his house and he would have some funds and he would then be able to be a position to repay us.

40

Right. The further question is knowing, the second line down, knowing my family issues he wanted to make sure that I got some money back. Without going to too much detail could you just let us know what that, what that refers to?

THE COMMISSIONER: Well, I don't know the relevance of that but I understand the witness to have already said that his wife told Mr Camilleri in no uncertain terms that the loan had had an impact on them and I think that's as far as we need to go.

MR CHEE: Right.



MR POLIN: And I think the witness doesn't want to specifically - - -

THE COMMISSIONER: No, that's - - -

MR CHEE: Okay. I withdraw that question.

THE COMMISSIONER: All right.

10 MR CHEE: Thank you?---Thank you.

THE COMMISSIONER: Mr Silver.

MR SILVER: Could I just have one second to get instructions?

THE COMMISSIONER: Yes, certainly.

MR SILVER: I have no, I have no questions, thank you.

20 THE COMMISSIONER: Thank you. No one else? All right. Thank you, Mr Rochecouste, you may step down?---Thank you.

**THE WITNESS EXCUSED**

**[3.37pm]**

MR POLIN: I call Theo Vavayis.

30 THE COMMISSIONER: Mr Vavayis, just take a seat. Mr Silver, have you had a conversation with Mr Vavayis?

MR SILVER: I have.

THE COMMISSIONER: Yes. Mr Vavayis, do you understand that if I make an order under section 38 of the Act the order will protect you from the use of your answers in any criminal proceedings that might be brought against you but it does not protect you against the use of your answers if you were to give false evidence. You understand that?

40 MR VAVAYIS: Yes.

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

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

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

MR VAVAYIS: Sworn.

Thank you. Could he be sworn?

THE COMMISSIONER: Yes, Mr Polin.

MR POLIN: Is your full name, is it actually, it is Yep, Y-e-p Theo Vavayis?---Theo.

10 Sorry, that's a, is it just Theo Vavayis?---It's Theodore but Theo, yeah.

Theodore Vavayis?---Yeah.

Now, Mr Vavayis, are you still working with one of the limbs of RailCorp at the moment?---Sydney Trains.

Sydney Trains. Back in 2012 you were working with RailCorp?---Yes.

20 And was your position then as a logistics manager?---Um, no I then, I was the Logistics Manager and I got promoted to a Manager Business Operations - - -

Yeah?--- - - - and um, I did some reform for the previous GM, created Business Operations and I was managing that business unit.

Right. So in 2012 what was your actual position?---Manager Business Operations.

30 Right. And at that time had you been with RailCorp for about 29 years? ---Yes, sir.

Now, sir, when did you first come to meet or know Mr Camilleri?---Um, I knew of him in terms of he was with the rolling stock area I was always in the infrastructure side, um, I think when we created asset operations they emerged, um, the new director that came in created a leadership program and there was a um, leadership team, there was a pilot and Joe and the director were in that along with others, some managers and I was nominated to attend so I was part of that team. As in I never reported to him directly in any way prior to that or had any business dealings it was just part of the leadership challenge that we had interaction.

40

Did you either interact socially?---No.

Would you have regarded him at any stage as a friend?---No.

Back in 2012 are aware that he was heading up the reform process at RailCorp?---Yes.

I take it was pretty common knowledge to everyone working there?---Yes.

Was it common knowledge generally as well to the contractors who you were dealing with in the maintenance section that he'd been moved from Head of Maintenance to Head of Reform?---Yeah, I couldn't really comment, I didn't have, I wasn't across them the contractors or whatever but communication went out.

10 Now do you recall when it was that Mr Camilleri approached you to borrow some money?---Um, as part of the leadership development um, the general manager previously and the, and the one before that had given me an opportunity and it was a real honour and privilege to act in the role as general manager, um, the lady was going on leave for three weeks and um, it was a great honour to do the job, it was a great team, great, you know group of people so it was a real challenge. Um, I think I might have been in the second week I can't remember the exact day and um, I was out in the field it might have been a safety presentation or whatever but I, 'cause I was doing dual roles so as part of the development I was doing the manager business ops and the GM role so you know like I was really challenging myself, so I was out in the field got a frantic phone call um, I think it was at 20 Chullora so you know took the call frantic, where are you this and that as in message, so I used a landline rang and I go yeah, I'm at Chullora, I thought what's wrong what's going on and um, where are you, you know what are you doing this and that, I'm in a bind um, I don't think he went into the detail but he said um, he said um, I need, I need to pay some lawyer, well I think he said lawyers or something, I need some money, maybe he didn't even go into eh lawyers, I need some money and I need it urgently and I think he mentioned um, four or 5000 or this or that and um, he did say to his thing he said look don't feel pressured because I am, 'cause at the time he was Acting Director and I was Acting GM so I was reporting to him - - -

30 To him?---Yeah. And um, I said no, no way I haven't got that money and I don't know what possessed me and I said look um, I've only got \$2000 I've got saved for bills I had cash 2000 and um, yeah, yeah, that'll do, bring it in, when can you get here, come here now I'm waiting and so you know I raced from Chullora and I got it and went to Pitt Street, went up to level 27 where my office was and um, the EA goes oh Joe's looking for you so I go I'm here anyway, he must have raced up on 27, um, he gets there, he puts the money in the pocket and got some detail about um, identity theft, the daughter, someone befriended her, the Feds were involved, um, real estate, 40 international, I don't know there was, it was a story.

It was a garbled story?---Not really I mean I'm just trying to remember exactly what I think, it sounded um, you know when you hear a Current Affair scams and things and all the rest of it, you know like it sounded like I don't know plausible. To me it was just you know the man was frantic, he was desperate, I was um, I had enormous respect, he was Mr Probity, he had his things with him, he was longstanding, you know he was our, he was the GM, he was the Maintenance Director or whatever he was, the reform guy,

um, so yeah, I wasn't just going to say no to him um, and yeah, but I didn't, I can't remember if I got him to sign anything like an I owe you or anything like that I don't think so.

That's all right. So you said the story sounded like the kind of thing you saw on A Current Affair?---Yeah.

They're the dodgy stories you see on A Current Affair?---No, as in, in hindsight looking back, you know, like- - -

10

That's what it looked like?---That's what it looked like. But it sounded plausible in terms of, you know, when you hear identity theft?

Yeah?---And the people got thing and this, that's what I meant to say, that he was a victim of that.

And it sounded, sounds like the way you've described it that you were being greatly rushed and not giving a, not given a chance to, to actually consider what the story was?---Absolutely.

20

Would that be fair?---Absolutely.

You said that he said something like, I'm your general manager, or whatever- - -?---"I'm the line manager."

Yeah, "Don't feel pressured."?---"Don't feel pressured," or whatever. But that made me feel it even more because I didn't want to let anyone down, I was in, you know, in, in the echelons for the three-week period acting um, I just thought, you know, like, maybe this is normal behaviour. But anyway um - - -

30

The fact of who he was and the fact that he said, "Don't feel pressured," in fact made you feel pressured?---Joe um, when we did the leadership challenge you did LSIs and they gauged your personality, as in feedback, so - - -

What's an LSI?---Um, um, Logistics, Lifestyle Inventory Analysis. So, so they, you get peers, people under you, on top of you, at the same level and they give feedback on you. So you know, there's a blue, constructive, humanistic, affinitive, self-actualised, you could be passive, defensive, so you're- - -

40

THE COMMISSIONER: This is, this is the Three Sixty feedback?---Yeah, yeah, that's it, perfect.

Yeah?---So Joe was a red, he was all red, so, so in other words he's, he's a head-kicker, so you don't, you know, you've got to be careful with the

head-kickers. He was the attack dog in the maintenance area, he was the reform guy, so you know, it was not a good move to get him offside.

MR POLIN: Okay. Yeah. And you said as well, he's Mr Probity as well? ---Absolutely. He had a team of two and, oh, we had a lot to do with him in my area in terms of making sure that, you know, we were above reproach and, you know, very strong on probity and so yeah, I wouldn't question, it was, you know, like he had a good reputation, longstanding, he had won industry awards on the newsletter.

10

Right. But what about when you had dealt with him, was this all just things you've been told, he was Mr Probity, he'd won awards, he'd done all this, had you ever- -?---Yeah, I didn't have um, the interactions that we had were um, he was on a steering committee when we were doing some review of some of our businesses and again he was like, you know, very aggressive and very strong in his opinion and, and analysis of ah, you know, like, Booz reports and things like that, so he was very strong in what direction to take the business.

20

Right. But in terms of testing his probity and his integrity- -?---Oh, yeah, I didn't have any personal thing, it was just that um, um, I think in one of the VMCs, Visual Management Cells, that's the only time that I'd probably, that was once a week that the GMs would go up and they'd have a VMC with the Director and whilst I was relieving the GM I'd go up and, you know, give how we were performing for the week and there was, you know, if there was an issue you could raise a probity issue or whatever so- - -

And is it, is it the case that, that the first occasion in your 29 years at RailCorp you had to in a practical sense test his integrity, he let you down?

30

---Absolutely.

Did he also – sorry. You'd lent him the money, did he also tell you that he wanted you not to tell anyone?---Yeah, um, as he was, before he was leaving he was sort of saying um, you know, the big man to man thing and be a man, and if there's anything, come and see me, and that sort of thing, which, you know, it was intimidating and it was like a standover saying, don't say anything, if there's anything, come and see me directly. So I thought, in one way I thought, gee, he respects me enough to sort of come and ask me, and the other I'm thinking, you know, like, I don't want to say anything, like, disclose it or anything like that because I'll destroy him, and I thought it was just me, I didn't know there was other people involved or anything like that, I hadn't been warned, I didn't know anything.

40

So he was saying to you essentially if – don't tell anyone about this loan but if anything comes out, make sure you come to me first- -?---Yeah.

- - -and tell me and we'll sort it out?---Yeah.

You regarded that obviously as highly unusual?---Not really, I think what he was saying, you know if I, if you get desperate for your money come and see me and I, and I forgot to mention he said, "You'll either get it by the end of the week or worse case scenario you'll get it by Christmas," so - - -

10 Right?--- - - - which I thought was strange um, so I was hanging to get it by the end of the week, it didn't happen and I thought I'd give him the benefit of the doubt, you know, like he send the end of December and he, he did keep his word, he repaid me before that and sent an email thanking me for, on behalf of himself and his daughter for my cooperation and support.

And at some stage did you report this to someone?---Yeah, I did.

When was that?---Um, I can't tell you the date um - - -

20 Was it soon after you lent the money?---No, I'd lent the money and I didn't ah, think like there was anything untoward or, I just thought he had a cash flow problem but he hit me up a second time so that's when I was, you know, like very upset and distressed and um, disgusted.

Was that, was that after he'd paid back the money?---Oh, he hadn't paid back the money.

That he hit you up the second time?---Yeah, yeah.

And so when was that in - - -?---It was after July - - -

Yeah?--- - - - and before maybe October.

30 Right?---It was in between there somewhere.

40 And how much did he ask for at that stage?---Um, what was it, um, we, we walked, well, I think it might have been a reform meeting or something or we were in the lift well and um, he's, "I've got to see you," I thought, oh, god, hopefully it's good news. Anyway um, we go into the, to the meeting room, he pulls me out and he goes some sob story, he goes, "I know I owe you the two grand, you'll get it but um, I need 15." You know, that's, you know, like I just gave him a, the death look and ah, and hissed in disgust and um, no way, and, and words to that effect and I got up and we sort of ended the conversation and walked away.

Right?---And I, but he was clear that I expected my money.

Right. And is it at that point in time you went and reported it to Tanya Johnson?---Um, yeah, I think I built the courage up thereafter um, and it was only because again um, you know, he's a serving senior person, there's no, there's nothing um, mentioned or, you know, it's just me, I haven't got, I haven't got any evidence, it's my word against a senior manager so, you

know, like you can't cry wolf, you've, you've got to have something and I thought I'll give him the benefit of the doubt, he said at least December, he's been for 37, 38 years, this that, respected, he's not going anywhere so I thought no, you know, like I'll give him the benefit but when Tanya said to me, 'cause she could see I was devastated, it's a lot of money for me the 2,000.

Yeah?---"Joe hasn't asked you for money?" It was like a, a weight lifted - -

10

Yeah?--- - - - and oh, you know, it just came out.

So is it, is it the, the case that in terms of the first loan of \$2,000 - - -?  
---Two, yeah.

20

- - - um, you felt in terms of your understanding of the Codes of Conduct and what creates conflicts that it's something you should report but because you thought he was the, Mr Probity, the high flyer in the organisation and you were well beneath him that there was pressure on you not to report it, would that be a fair summary of the situation?---Absolutely. I mean I had the zero, zero, zero tolerance in safety and in probity and compliance and I couldn't stand up and be a leader and have double standards - - -

Yeah?--- - - - so yeah, if it doesn't feel right it's not right but this came out.

So the only thing, the only thing that stopped you initially, you understood it was something you had to report, was it the pressure of who the actual person was?---Absolutely, But - - -

30

And then when, when he approached you the second time was it Tanya Johnson who then came and saw you soon after and asked you whether - - -?  
---No, I was in the, in the office and um, her door was open and I've sort of gone in, she could see I was distressed and we started talking and it sort of came up and I gave her the information but I, whilst maybe subconsciously I knew it was wrong I didn't technically, I didn't think that we had breached anything because - - -

40

Yeah?--- - - - I wasn't being advantaged in any way, shape or form, I didn't think \$2,000 to him was anything - - -

Yeah?--- - - - in terms of, you know, like - - -

Yeah?--- - - - so - - -

But notwithstanding that you said that as soon as someone said to you have you lent him money there was immediately a weight off your shoulder - - -?  
---Absolutely.



- - - because I take it that's because there was something you wanted to report - - -?---Absolutely.

- - - but you were feeling pressure put upon you not to report it?---Yeah.

Would that be fair?---Yeah.

And I take it the concerns you had was that even just between you and Mr Camilleri then it created if nothing else an awkward working relationship?  
10 ---Yeah, stayed professional and we didn't have an interaction - - -

Yeah?--- - - - but yeah, it was, I mean, you know, if I'd, if I'd seen him in the thing I'd try and avoid him.

Yeah?---Absolutely.

But in terms of your positions if you had to deal with him in terms for example he being your supervisor and make decisions in relation to your - - -?  
20 ---He wasn't but if, if he - - -

No, I know wasn't --- - - - if he was, yeah, it would be awkward absolutely.

It would have been awkward?---Absolutely.

Could I just show you this document, it's Exhibit 8. You're familiar aren't you with Mr Mark Ross-Smith?---Yes.

He was working at RailCorp during the L3C tender process?---Yes.

30 And I think at some stage if you go, go to the back page first 'cause they're emails - - -?---Yeah, yeah.

- - - that work backwards. There was a position potentially coming up in a project manager inventory management role?---Yeah.

Do you remember that?---Yeah.

And you can see that first page it's 1764?---Yeah.

40 It's an email from Mr Ross-Smith to Mr Camilleri expressing an interest in that particular role?---Yeah.

And then if you go to the next page backwards to the second largest page?---Yeah.

You can see there that that it appears to be I think maybe forwarding on the email or the CV to you and Karen Anderson?---Yeah, yeah.

And the email simply says, "Please find attached CV of the person I am bringing on board to work with you on the inventory management initiative. Tanya has been advised and is okay with my proposal"?---Yeah.

I take it that's an email to you?---Yeah.

10 You're accepting that as Mr Camilleri's made a decision to bring Mr Ross-Smith on in the role in the inventory management initiative and then there's some emails about well we'll get him to come in and we'll sort things out over the next couple of weeks?---Yeah.

That's, that's not the way these things are supposed to work with the - - -? ---No, he wasn't, um, this guy was engaged I think under the L3C and he had time left, I think he was a secondment so we could use his services, we didn't go out and engage him he was already been engaged by the company so we were able to utilise his services to progress the project management of the inventory initiative.

20 He was at the same time his contract in terms of what he'd been doing earlier was being extended as well?---Yeah, I don't know.

Was that right?---I don't know what his contract was, I didn't, we didn't engage in, we were just given a body, a project manager to help us.

But I understand that. It appears that Mr Camilleri is essentially saying to you here's Mr Ross-Smith on board to work with you?---Yeah.

30 But generally when you got that sort of, that labour to do the - - -?---Project manager.

- - - project manager's inventory management role it would come through WCCCL wouldn't it?---Yeah, yeah.

And indeed can you see, go back to the last page Mr Ross-Smith's email you can see the last paragraph, "He indeed was anticipating there that there would be a procurement process that would need to be go through, to, to have been gone through first.

40 MR SILVER: I object to that question. Sorry, I object to that question. It's got multiple areas.

THE COMMISSIONER: I understand that.

MR SILVER: And the basis of the question must to be made clear if the usual process for secondment or is the usual process for original acquirement?

MR POLIN: I'll withdraw it. If you look at the email the last page you'll see that he's attaching his CV in support of an application for a particular role?---Yeah.

Do you see that?---Yeah.

He then goes onto say that he understands that there may be a procurement process to go through to be considered suitable for that position?---Yeah.

10 So Mr Ross-Smith seems to understand there's a procurement process to go through to get the position yet what happened was Mr Camilleri just appointed him to the position. Does that what it appears like from the emails?---No, I, I interpreted that he had still time to go on his existing contact, we could use him as the logistics person, when we finally did get approval from WCCL to go out for a project manager then he would um, put his hat in the ring with his company to be able to bid for the work.  
No further questions.

THE COMMISSIONER: Mr Chee, do you have any questions - - -

20

MR CHEE: No, I don't,

THE COMMISSIONER: No?

MR CHEE: No, I don't, Commissioner.

MR CHEE: Mr Silver?

MR SILVER: Yes.

30

Mr Vavayis, just to clarify, I think it might be clear but just for my own good, when Mr Camilleri first came to see you to lend, to borrow the money and said not to tell anyone, if something happens we'll speak man to man, you said that related to the money issues. What did you understand might arouse that you'd have to speak to him man to man?

---As in if I, if I wanted my money back earlier.

Is that the - - -?---So he said, "Either give me a - I'll give it to you by the end of the week or by the, by December and if there's any problem, come and see me man to man."

40

I see. And when you felt, at the first time that he approached you and you felt this pressure, you were asked some questions about whether you understood that at that time to require disclosure in terms of a conflict of interest. Is that what went through your mind at that stage, if there had to be formal disclosure in terms of the Code of Conduct?---No, I thought naïvely that it was a personal private matter and, you know, I was helping a desperate person.

I see. And when he hit, I think hit on you again, the expression, does that mean he asked you for money again?---Yes.

And you said no, and that increased the pressure on you and you tried to avoid him et cetera?---Yes.

When you, when Tanya Johnson spoke to you and you said a weight fell off your shoulders, was that because of the fact that you could now talk to someone about it and get some support?---Yes.

10

Or for any other reason?---No, that I could actually talk about it and um, yeah, get some support.

Thank you.

THE COMMISSIONER: Thank you.

MR SILVER: Thank you.

20 THE COMMISSIONER: Nothing arising, Mr Polin, I take it?

MR POLIN: No.

THE COMMISSIONER: Thank you, Mr Vavayis.

THE WITNESS: Thank you.

THE COMMISSIONER: You can step down, you're excused.

30

**THE WITNESS EXCUSED**

**[4.02pm]**

THE COMMISSIONER: Yes. The inquiry won't be sitting on Friday 21 or Monday 24, so we'll be adjourning until Tuesday. Did you want to tender some documents, Mr Polin?

MR POLIN: I was just going to tender, I think it's with agreement, that just those pages referred to of the contract- - -

40

THE COMMISSIONER: Ah, yes.

MR POLIN: - - -with the Statement of Business Ethics.

THE COMMISSIONER: Exhibit 27.

THE COMMISSIONER: And that's a document- - -

MR SILVER: Is it, is it possible – Commissioner, I apologise for interrupting. Is it possible to keep those untendered and confidential until the next appearance? We're just getting some instructions about whether anything has to be protected.

THE COMMISSIONER: This document?

MR SILVER: Not the, not the Statement of Business Ethics, the document coming from the contract.

10

THE COMMISSIONER: All right. Well, I think- - -

MR POLIN: I'm happy to withdraw it all if, if they- - -

THE COMMISSIONER: Well, well, there, we'll mark the Statement of Business Ethics Exhibit 27 at this stage but I'll return those pages of the contract and you can let me know what your position is later next week, Mr Silver.

20 MR SILVER: Thank you, Commissioner.

THE COMMISSIONER: So that's MFI 3 is Exhibit 27.

**#EXHIBIT 27 - STATEMENT OF BUSINESS ETHICS OF RAIL  
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30 THE COMMISSIONER: Is there anything else, Mr Polin?

MR POLIN: No, Commissioner.

THE COMMISSIONER: Right. All right. I'll adjourn to 10.00am on the 25<sup>th</sup>. Thank you.

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**AT 4.04pm THE MATTER WAS ADJOURNED ACCORDINGLY  
[4.04pm]**