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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION MISTO

Reference: Operation E13/2009

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 16 FEBRUARY 2015

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 Killalea could come forward and resume his seat.

MR McGRATH: He doesn't appear to be here at the moment, Commissioner.

THE COMMISSIONER: Thank you, Mr Killalea, just take a seat.

Yes, Mr McGrath?

10

<CHRISTOPHER MYLES KILLALEA, on former oath [2.01pm]

MR McGRATH: Now, Mr Killalea, I just have the document numbered page 92 put back on the screen before you, and now I'd like to hand you a document. Now, you mentioned in one of your answers earlier if you had the benefit of an invoice that you had drafted – can I just ask you to turn your mind to the document I've handed you and could you answer this question. Did you create this document?---That appears to be the document that I created, sir, and- - -

20

So, so this, from – I take it from your earlier answers this is the document that you created as your first draft in relation to the request by Mr Roberts that you do so while he was present and you were drafting it on your computer?---This is the document I produced, sir, yes, and the ah, original entry would have been professional services, this has got, “product licensing maintenance support.”

30 So you just, there might have been several iterations then?---Mmm.

The first version is you had just put in professional services?---Yes.

He'd suggested it needed to refer to product licensing. Is that what happened?---Correct, correct.

You did that and then he asked for further changes to be made to it which resulted in the document which was at page 92, the services description then, that was then drafted- - -?---No, no, no, sorry, sir. I understand your questioning. The first draft, if you use that phrase, I'll use tax invoice, had, was this document.

40

When you say this document, it's the one that you, I've handed to you? ---Correct, sir, dated 30/11/2012.

Yes?---Ah, my, my system would have produced an automatic service description ah, “Professional services consultancy.” Um, on showing that to Mr Roberts he suggested I put in “Product licensing maintenance support.”

And so this is the document that I gave Mr Roberts. I, I've never seen this one prior to these proceedings.

So to be clear when he was physically present with you the document that you have been provided with by me now is the one that you gave to him to take away?---This, this is the document I produced, whether he's physically present or it was um, the day after or whatever or however it occurred, this is the document I produced.

10 And then the document at page 92 where it has a services description of licensing and maintenance of MAP Pro-Technology, did you type those words into that document?---No, sir, no.

So they weren't present in the document you handed to Mr Roberts?
---No.

And when was the first time that you saw the document at page 92 in that form?---Yes, I don't recall seeing it quite frankly, I don't think it's been presented previously. If it has been presented previously it would have been
20 December last year.

So as part of the Commission's inquiry into these matters?---Yes, and I'm afraid I've lost track of how many different invoices I've seen, sir.

Commissioner, I wish to tender the document which is dated 30 November, 2012, the tax invoice of Management and Professional Services.

30 THE COMMISSIONER: Yes. That, that's the one that's presently page 257?

MR McGRATH: No.

THE COMMISSIONER: No?

MR McGRATH: It comes from a – that's numbering from a different bundle, it's not part of the tender bundle at present.

40 THE COMMISSIONER: All right. So is it the document on the screen that you're referring to now or - - -

MR McGRATH: No.

THE COMMISSIONER: No.

MR McGRATH: The document that I physically handed to the witness, I wish to tender, it's not, it's not part of the - - -

THE COMMISSIONER: I understand that. All right. The invoice of 30 November, 2012 is Exhibit M3.

#EXHIBIT M3 – TAX INVOICE OF MAPS DATED 30 NOVEMBER 2012

10 MR McGRATH: Now turning to the page 92 invoice which will come up on the screen in front of you again, in that services description of licensing and maintenance of MAP Pro-Technology and the words that follow, is that work of a sort that Management and Professional Services Pty Limited does?---No, sir.

Has, is there any such thing as MAP Pro-Technology?---Not to my knowledge.

20 Now you knew at the time that you had your conversation with Mr Roberts where he asked you to create a tax invoice - - -?---Yes.

- - - that you hadn't done any work at all for Macquarie University didn't you?---Correct.

Did Mr Roberts say that he had done any work for Macquarie University? ---Correct, yes.

30 What did he say that he had done?---He ah, performed most of the work that he had committed to producing in that three-month period, most of the ah, collection of the requirements, documents ah, reports and ah logs and so forth that I would need to produce the processing improvement documentation.

And did you understand the amount of \$32,450 to represent a combination of the work that he said he had done and work that you had not yet done? ---Correct.

Did you anticipate that there would be a further invoice beyond the invoice he was instructing you to create?---No, sir.

40 So you believed that the totality of the work that was to be done for Macquarie University would amount to \$32,450?---On our discussion, yes.

Didn't you think it was very odd that you were being asked to create a tax invoice to be rendered for work that you knew had not been done? ---Correct.

Is it something that you have done in the past to invoice - - -?---No, not likely to do - - -

- - - invoice in advance?---No.

Have you ever done that other than this instance?---No.

Did you challenge Mr Roberts and say to him something to the effect of I'm not comfortable with creating an invoice for work that I haven't yet performed?---It was a lengthy discussion, yes.

10 Well, you tell me what he said – what you said to him when he asked you to create this invoice?---Word for word I can't recall, sir.

Well, no, the effect of what you said?---Basically the effect of what I said was it, it wasn't ah, it wasn't in line with anything I'd ever done before. If I didn't have the confidence as he implied that it was his project and it was his mandate I wouldn't have proceeded with it at all. But he gave me the assurance that it fell in his domain and he was the one totally responsible for this piece of work and would ensure that the material would be available for the completion of that estimated three month period. It was not at all
20 comfortable, there's no doubt about that, but Mr Roberts is a very persuasive gentleman especially when you have got no cause to believe otherwise, and with his position of authority, his confidence in being able to supply the material in the time frame and his confidence in me being able to produce the standard of the required expectation, at the end of the discussion it was logical for me to – no, it wasn't logical, it made sense to submit the invoice under his requirements.

You said to me earlier that one of the characteristics of Mr Roberts that you admired was that he was blunt - - -?---Yes.

30 - - - speaker just like you?---Yes.

Did you have any problem at all saying to him bluntly I'm not prepared to do this?---I should have said that but I didn't, sir. I know I should have said it but I did not.

But you knew that what you were doing in your business morality was wrong?---Yes.

40 But you went ahead and did it anyway?---Yes.

Did you understand that this invoice would be presented for payment by Macquarie University in the terms that you had submitted?---Yes, sir.

Did you give any thought at all the contacting someone at Macquarie University to try to verify what you had been told by Mr Roberts about the performance of the work?---No, sir.

Did you think it was unusual that on the verification of Mr Roberts you were submitting an invoice to Macquarie University that had his name on it?---My error in judgement throughout this whole sordid affair, sir, has been my trust in Mr Roberts.

But it was very unusual for that feature wasn't it?---Yes.

10 It had Mr Roberts' name on it?---Well, there's no doubt about it ah, he assured me that it was his domain, it was his area. He, he was managing that piece of work and that he would be in a situation to ensure that the material that I needed to produce my component was forthcoming.

Did it ever occur to you that the arrangement that you had reached with Mr Roberts about splitting 50/50 the proceeds of this invoice was something that Macquarie University should be told about?---No.

Why not?---It never occurred to me. I – as I said, I was blindly following ah, my friend's confidence, advice, directions.

20 And yet you knew that he was in the – I withdraw that. Do you understand him to be the person who would authorise payment on this invoice?---No, I, I um, hadn't submitted an invoice to Mr Roberts for quite some years, in fact, since 2005 when he was working for Unisys Corporation and um, even then I think it was the project director that approved the process so in – from a historic perspective, no. Even though it was addressed to him, it was addressed to him in the context that this was the piece of work that he was managing, he was responsible for.

30 Did it ever occur to you that Mr Roberts was making money secretly from Macquarie University from this invoice?---Not secretly. Um, I knew he was ah, making money from the work, yes, but ah, I had yet to receive information who the client was. At this stage I still didn't know who the client was. Um, I knew he was receiving – he would be receiving funds from Management and Professional Services for his component of the work performed but as to who the client was at the end of the engagement I was yet to receive that information.

40 In your view, at the time you created this invoice did you believe that you were doing something wrong?---Doing something that I wasn't comfortable with but as I stated before, I, I had blind faith in Mr Roberts, in his advice and directions.

THE COMMISSIONER: But why weren't you comfortable with it?
---Sorry, Commissioner?

Why weren't you comfortable with it?---Ah, I hadn't received the piece of work that Mr Roberts was working on, I hadn't received any of it. I'd requested some of it at least as to what he'd done to date. I have to admit,

not for confirmation that he was doing it, that unfortunately would have been a wonderful piece of hindsight, but what I was looking for was something that I could be working on in the interim of whilst there was delay. Yes, I was uncomfortable that I hadn't received work to date.

MR McGRATH: And you say you expressed your level of being uncomfortable to Mr Roberts, did you?---Yes.

10 You understood the position didn't you that this invoice, so far as you were concerned, would not issue without your cooperation?---Correct.

So you had the ability - - -?---Absolutely, sir, I understand.

- - - to stop this invoice going out, didn't you?---Yes, yes, I do understand, yes.

20 And if your level of concern was such that it proved to be correct you would understand, wouldn't you, that you had cooperated in doing something improper so far as the University was concerned, didn't you?---Correct.

And you recognised all of those things at the time the issue of the invoice occurred?---At the time of the issue of the invoice I was uncomfortable, there's no doubt about it. Had I considered the ramifications if this wasn't forthcoming I wouldn't have done it, but it never crossed my mind that this piece of work wasn't forthcoming. I had no cause to believe otherwise. However, you are correct, I did issue an invoice without having performed the work.

30 Hadn't Mr Roberts promised you work when he was at the University of Newcastle?---He'd always implied that there was opportunities for work.

Yes. Hadn't he promised you work when he was the University of Sydney? ---If there was work forthcoming, yes.

So it's not correct to say that you had no cause to believe that the work wouldn't be forthcoming in this instance?---No, I was hopeful that finally, yes, finally something's come to fruition.

40 But you had concrete examples of why work perhaps might not flow from your past experience in dealing with Mr Roberts, didn't you?---Um, I hadn't issued invoices on potential work previously, sir.

No, you hadn't?---No.

Because it hadn't been forthcoming?---No, the work never eventuated.

So it's not right to say that you had no cause to think the work wouldn't be forthcoming this time?---I'm afraid you're using words, sir ah, in the

previous occasions at Newcastle University and Sydney University there was no discussion about an activity with Mr Roberts, work that he was able to provide, a source of engagement, however here at Macquarie University there was an open discussion some four to six weeks earlier or, or perhaps not that period of time but prior to the issuing of this invoice, that there was work in hand and it was coming through.

Now, the invoice which is Exhibit M3, it's the paper copy that I gave to you
- - -?---Yes.

10

- - - that contains a services description of "Product licensing." Do you see that?---Mmm.

Was that something that Management and Professional Services offered as a service to clients?---I don't have a product, sir, and my, my service is my intellect, not a product. I don't have a product.

20

Is maintenance something that it offers as a service?---I do offer maintenance to clients when I've installed something, I often go back and perform a health check, a services check, but ah, not in this context.

And support?---Yes, I support clients in, in ah, previous engagements where I've implemented a piece of software, a product ah, documentation. For example, professional services PMO or, or procedures documentation, I'll support clients in learning how to use that or to enhance it where there's been areas located that could be improved or future additions added to it, but not in this context.

30

And the copy of the tax invoice that you gave to Mr Roberts was one which had a project title of "Licensing"?---Yes.

And a project code of "Product licence"?---Mmm.

How did you feel about the submission, what you believed to be the submission of an invoice to Macquarie University which was false - - -?
---Pretty - - -

- - - as to its services description?---Pretty shonky.

40

Well, shonky all round isn't it, Mr Killalea?---It - - -

At that time it was shonky all round and you recognised it didn't you?
---It did not make sense, you're absolutely correct.

No sense at all?---None at all.

You were billing for work that hadn't been done?---Correct.

You were billing for a product that you didn't even have?---Mr Roberts' concept there was this was something that was in his area of budget, it was somewhere where he had a budget surplus. These, these discussions were certainly had on the occasion of this invoice being issued and I have to admit, sir, that my level of faith and confidence and trust in Mr Roberts was such that at that time that any answer he gave to my query about title of a project, product or whatever other nonsense appears on this was, he could explain it quite comfortably.

- 10 But whatever explanation he had you still were uncomfortable about it weren't you?---Yes, I'm uncomfortable right now but I'm still answering your questions.

Did you get carried away by the fact that there was a pot of money that Mr Roberts said was available for you if you issued an invoice to him that he would arrange to be paid?---No, that discussion never occurred.

- 20 So you weren't carried away by the thought that perhaps you might get half of \$32,450 for work you hadn't even done?---No. Um, I, never, never ever did that occur to me.

Now I'd like to take you to page 249 which is in volume 2. Now this is a Macquarie University document addressed to Management and Professional Services. Now it appears to be a purchase order. Would you agree with the description of that, I think the - - -?---Yes.

- - - top corner has been cut off. Now you received a copy of this document by email?---Correct.

- 30 And you understood it to mean that Macquarie University had processed a Management and Professional Services invoice dated 7 December for payment, is that correct? Oh, no, I'm sorry, not, there was no date there? ---I can't see the date on it.

Per invoice MQ0011?---Mmm, yes.

And you understood didn't you that that was a process of the University in a step to pay the invoice to Management and Professional Services?---Yes, sir.

40

So at the date that it bore, which is 19 December, 2012, you were expecting to get paid \$32,450 from the University, is that your belief at the time you received this document?---Yes, sir.

What did you think when that arrived? Were you still uncomfortable about the fact that you were about to be paid for work you hadn't done?---I was a bit surprised it came so quickly after submission of the invoice, the invoice was only made out on the 20th, government - - -

Did you speak – sorry, finish your answer, I’m sorry?---A government agency, I didn’t expect it would be two weeks later.

Did you speak to anyone after you received this purchase order?---No, no, sir.

10 You didn’t speak to Mr Roberts?---Oh, I, I can’t recall that, I daresay I certainly – I had conversations with Mr Roberts but ongoing conversations whenever he was there but did I have a conversation with anybody in relation to receiving a purchase order for an invoice that I had previously submitted, no.

But you still remained uncomfortable about the fact that you were going to get paid on it?---Absolutely. Considering that the work hadn’t been forthcoming, yes.

20 Now, I’d now like to take you to page 101. That’s a bank statement from Westpac on the account addressed to you on your account trading as Management and Professional Services?---Correct. Correct.

And I would like to now take you, and the date range for that is 22 November, 2012 to 22 January, 2013, and if I could take you now to page 103. And you’ll see there on 21 December there’s a deposit from Macquarie University of \$32,450?---Yes, sir.

When that deposit arrived into your bank account were you aware that it had been received at the time of it?---No. No.

30 When did you become aware that \$32,450 had been deposited into the account?---Um, somewhere in between when it arrived and when I actually made the payments to Mr Roberts he advised me that the funds had arrived.

Did you check your - - -?---Sorry?

Did you check your bank account to ensure that the funds had in fact been received?---Um, I’ve got no recollection, sir. I um, could have but I have no recollection.

40 So did you take his say so that the money had arrived in your account did you?---I may have initially and I may have checked prior to the following request for payment but at that point in time I wouldn’t be looking for it and I would have verified it following the subsequent discussion when it came to him asking for payment.

Well, when did that happen, when did that discussion happen?---Somewhere between 21 December and 27 December when ah, I paid funds into a nominated account.

Give me the gist of that discussion please?---Yes. That discussion was a little bit of a surprise because up to this point in time this piece of work we were going to do was going to be a 50/50 piece of effort, 50 per cent approximately as Roberts stated ah, for his compilation of the data and material and 50 per cent for me producing the report. So if it's \$32,000 it would be about \$15,000. However, when it came to payment and Mr Roberts requested a full \$20,000 into two accounts which was a little bit, on top of the previous behaviour, unnerving.

10

Well, could you tell, tell the Commission exactly what you remember him saying to you - - ----Ah, to pay - - -

- - - in this conversation?--- - - - \$20,000 into his account for his component because it had been more demanding than he expected and he also wanted a fee for establishing the relationship.

Did he give you instructions as to exactly where the money was to go?
---Yes. I certainly didn't have prior knowledge.

20

What were those instructions?---On a piece of paper two bank accounts and the bank names – correction, certainly two BSB numbers and account numbers. I'm not too sure about, about the account names.

You can't recall whether he did or did not give you the account names. Is that, is that your position?---No, the account names, BSB and account numbers were all on the paper.

30

The account names definitely were there, were they?---Yes, absolutely. They were only abbreviations.

And what about the transfer amounts, did he say to you how much was to be transferred into these accounts?---Yes, 50/50. There were two accounts.

Yes. And did he say to you how he wanted that split up- - -?---Yes.

- - -in each account?---Yes, yes.

40

You've seen on the screen that there's an entry there for two transfers on 27 December - - -?---Yes.

- - - for \$5,000 each. Did you make that transfer - - -?---Correct.

- - -by Internet?---Electronic funds transfer, yes.

Yes. Why was it broken up into \$5,000 each?---Um, either I only have a \$5,000 limit, I'm paying outside my own funds transfer, or, and I think this is the case, Mr Roberts asked for it to be in two \$5,000 components.

So did he ask you to put it in two \$5,000 components on that particular day in- - -?---No, I completely mucked it up. I'm not good at this. So the instructions to me were to pay – he gave two account details, I was to pay \$10,000 into both accounts. I mistakenly paid on the one day two lots of \$5,000 into the one bank account and then on a subsequent date, the two payments of \$5,000 into the next bank account, whereas I was supposed to do one on one.

10 I see. Now, you've said in your evidence he gave you the account name for each account?---Yes.

So who did you understand the first set of transfers on 27 December, whose account did you understand that to be going into?---On both occasions, both accounts I assumed were Mr Roberts', yes, I assumed were Mr Roberts'.

Do you know now that to be different than what you assumed at the time?
---Correct, sir.

20 So is it the case that you did or did not know the identity of the person to whose account the transfers were made on 27 December?---In hindsight I did not have any idea.

THE COMMISSIONER: Mr Killalea, was this at a stage where Mr Roberts was representing to you that he'd in fact done the work?---Correct. Partially, Commissioner.

Partially?---Partially.

30 He hadn't finished it at that stage?---No, no.

But you still hadn't done any work?---No, I hadn't done any, there's no doubt about that, I hadn't commenced any.

MR McGRATH: Now, do you – you've mentioned earlier in your evidence that you know Mr RH ?---Yes.

Yes?---Yes.

40 And that you had a business connection to him in your days at Unisys?
---Correct.

Is Mr RH a friend of yours?---Yes.

Is he someone who's, who your relationship with him as gone beyond just the periods of time in which you've been working with him?---He's a good friend, an honourable friend and a gentleman that I don't ah, catch up with as much as I'd like to, but like a lot of adult male friendships, if I was to

meet him today it would be as if I had been communicating with him only yesterday.

And how often would you have spoken to him on average across the years since you first met him?---In the days of Unisys Corporation, extremely regularly because he was a key ah, expert in his field at Unisys Corporation, in 2006/2007 when he was performing technical work on my behalf I would have talked to him and communicated with him intermittently over the course of that six to eight month, maybe 12-month period, however since
10 the completion of that piece of work in 2007 I hadn't been in contact with Mr RH very regularly at all and I would probably say that that contact was as little as probably once every 12 months for one occasion or another or simply an excuse to catch up over a coffee.

When was the last time you spoke to Mr RH ?---The last time I spoke to Mr RH was on the evening of 17 December last year.

And why did you speak to him on that occasion?---Yes, because I had left these premises with a quest as to find out what were the purposes, what was
20 the purpose of three cash withdrawals after the deposit of funds from Newcastle University into my account. I could understand the first one, the \$7,000, I could visualise the second one, \$8,000 but the \$10,000 withdrawal some time later, admittedly 11, 12 months later, I knew was part payment to Mr RH for his work that he performed for me on the Unisys project. My query, why I rang Mr RH , and this conversation didn't last long um, why I rang Mr RH was to – my bank account said that it was a \$10,000 withdrawal and I was fairly confident I'd actually paid him \$12,000. So I rang Mr RH on the evening of 17 December last year to verify that it was \$12,000 because I was rather desperate to find out why I had a \$8,000
30 withdrawal from my bank account.

Did you say to him that you had been to the Commission that day to give evidence?---No, I would have said something like oh, I don't know actually but I certainly know I was emotional and I know I said something to him in the context that I had an anomaly in my bank account that I needed to verify.

When did you first become aware that Mr RH was the recipient of the transfers made from your account on 27 December - - -?---Today.
40

Today?---Today.

How did you become aware of that?---I was watching the TV screen out the front.

And if we turn over the page to page 104 you'll see there's two further highlighted amounts on 28 December and again transfers out of \$5,000, I take it your evidence is that those transfers were made by you?---Correct.

On the instructions of Mr Roberts?---Correct.

In accordance with the details he provided you on a piece of paper?
---Correct.

And this represents the second set of transfers that you had mixed up the previous day, is that right?---Correct.

- 10 Do you know who it was who received the transfers on 28 December for \$5,000 each out of your account?---Prior to today I assumed it was Mr Roberts, sir.

And when did you find out that it in fact had been received by Robcon Australia Pty Limited?---Today.

Now if your evidence is that the \$20,000 that was transferred out of your account on the instructions of Mr Roberts, that left \$12,450 in your bank account - - -?---Correct.

20

- - - from the Macquarie University payment, that's right isn't it?
---Correct.

What did you understand that amount to be for?---Um, ah, that was going to be after taxes, the component of work that I was going to produce, responsible for.

And work that you anticipated to be done when?---Sorry?

- 30 When did you anticipate at that time that you would be doing the work?
---I think that was December, late December, I, I assumed that this would all be finalised by the end of the quarter, March, end of March, I assumed that this would be forthcoming as stated.

Now it would be fair to say that you were shocked that Mr Roberts demanded payment of \$20,000 out of the \$32,450, is that correct?---It, it wasn't as we'd discussed previously when raising the invoice.

- 40 Would it be fair to say in a colloquial sense that you regarded yourself as being duded at this point, is that right?---No, no. If what Mr Roberts was saying was correct and if this was successful there'd be future opportunities to do ad hoc work at the Macquarie University I would have viewed – combined with the fact that at this point in time I thought he was legitimate with the amount of work that he was performing on behalf of Management and Professional Services I would have assumed that this was a fair call, a fair appraisal of the amount of work he was doing.

But he was welching on the deal that you thought you had that you would share it 50/50, wasn't he?---In your terminology, yes.

So you would have had much reduced trust in him at the point in time in which he changed the terms of that deal. That's right, isn't it?---Yeah, I was uncomfortable, there's no doubt about that. I was more uncomfortable with that than raising the invoice quite frankly.

10 So by the end of 2012 your level of trust in Mr Roberts was substantially diminished, wasn't it?---It was corroded, eroded.

Did it occur to you at that point in time that perhaps you should speak to someone at Macquarie University to find out what was going on in relation to this work?---No, no, no.

20 Why not?---I was talking to a director of the Informatics IT management system, a member of one of four senior managers in the senior leadership team. I could have gone to the Vice-Chancellor in hindsight but I couldn't see – or perhaps the director of the division, but at this point in time I had no cause other than to be a little miffed that what was stated wasn't coming to fruition and becoming a little, as time immediately progressed towards the end of that first quarter, a build of anxiety towards the realisation that this piece of work is still not forthcoming.

Did you regard yourself by the end of 2012 as having been involved in something that was dishonest so far as the University was concerned? ---Ah, on face value, paper, legal terms, yes, definitely. I'd raised an invoice against the University for work that I had not done.

30 But the person that you're speaking to about your level of discomfort is the very person whose trust had eroded so far as you were concerned, wasn't it? ---Yes, it was rather intriguing.

Well, beyond intriguing, you were on alert that you needed to do something about this, weren't you, Mr Killalea?---Yes. I was alert, on alert that if the piece of work didn't come in by the end of March I'd be in trouble, I'd have explanation to the University.

40 All it took was a single telephone call - - -?---Absolutely.

- - - to someone at Macquarie University - - -?---Yeah.

- - - and perhaps all this may have been revealed?---I know, I couldn't agree more. I, I could, I could not agree more with your comment, wholeheartedly.

Is it really the case that you didn't understand what was going on regarding an attempt to defraud the University by this invoice by the end of 2012?

---I'd certainly say that when I raised that invoice, sir, and when that invoice was paid, up until probably towards the end of the first quarter 2013, March, whilst I was uncomfortable with the whole arrangement I wasn't convinced that it wasn't going to, the piece of work wasn't going to eventuate and I was not concerned that even though there had been a delay between issuing the invoice and submission of the report, I was – and I'd raised this on numerous occasions with Roberts – I still wasn't in panic mode. I was concerned that it was getting a pretty fine line but I was still capable of producing that report when his piece of work came in. It wasn't until
10 sometime later that I realised what was truly happening.

Well, it had well and truly crossed the fine line, hadn't it - - -?---Oh, in hindsight, yes.

- - - by the end of 2012? No, not in hindsight?---I, I suppose - - -

The alarm bells would have been ringing loudly in your ears - - -?
---Absolutely.

20 - - - on 28 December, 2012 when you transferred out \$20,000, or the last part of \$20,000 to Mr Roberts, wouldn't they have been?---Not, not the act of transferring it. What concerned me was the fact that he'd requested \$20,000 for work that he was producing. When discussing it, it seemed considerably less than that and I was concerned to the fact that that's actually two-thirds of the funds, and then I've got taxes on top of it, so what concerned me was, at that point in time, sir, at the end of December, was an uncomfortable feeling that there was a little bit more involved in what had been presented, that the details were yet to be produced on what the job was for, the material that I was supposed to produce my report on, however at
30 that time Mr Roberts was able to explain everything extremely confidently that the work was forthcoming, that he could cover it off until the end of March, and that it would all be done, I'd submit my report and everything was fine.

Other than Mr Roberts' say so, he never produced a single - - -?---Not a strand.

- - - document to you to show you that he had done any work at all - - -?---
Correct.

40 - - - on this project?---Correct.

And - - -?---The topic of a major continuing conversation.

And he was going to leave you in a position where two-thirds of the invoice payment had been paid out to him?---Yes.

Leaving you with the tax bill on it?---Yes.

Correct?---Yes.

So you could well have ended up with almost nothing left in your account after you paid the tax on it?---I wouldn't say there was nothing left in my account, sir, but I would say that as far as this exercise in performing this piece of work was concerned, I certainly could have managed the allocation of the funds, the taxing a little better had I thought it through a little further. In other words, I should have deducted his – the GST component and the tax
10 out of his component. I did not. It never even occurred to me until later.

Now, do you know a company called iPath?---Correct. Ah, only through this situation.

Well, have you ever worked with them before?---No. No.

Do you know the people who own iPath?---No.

Do you know a gentleman called Emiel Temmerman?---I wouldn't know
20 him at all.

I'll have a document at page 113 put before you please. Who created the tax invoice at page 113 that's on the screen before you now?---Yes, sir, I did.

Why did you create it?---At Mr Roberts' request.

When did you create it?---Ah, on or around that date or early the following
30 month. I'm not too sure but around that date, yes.

Around 30 November, 2012?---Yes. Yes.

Who drafted the services description that's contained within it?
---Mr Roberts.

Can you recall the terms of the conversation that you had with Mr Roberts when he asked you to create the document?---Yes. He had a piece of work that he wished to invoice ah, a third party, iPath, and would I raise that invoice on my Microsoft Word template.
40

And what did you say in response?---Foolishly I just went along with it. I didn't argue the point, didn't discuss the point at all.

So you didn't ask him why do I have to create this?---No, I didn't, sir.

You didn't say that seems a bit unusual, I've, I've not done any work for iPath?---No, I – absolutely, no.

Did you ask him what the work related to?---No. Well, according to this consultancy services but no, I didn't have that discussion.

Have you ever heard of the project Scoping and Delivery of Storage Consolidation Across the NAS and SAN Infrastructure?---No, sir.

Did you or Management and Professional Services ever do any work of any sort for iPath Pty Limited?---No, sir.

10 Did you send this invoice to iPath?---I don't, I can't recall, I don't think so. Um, do I have an, no, I don't know, sir, I don't seem, I don't seem to have an email address on this document, I - - -

Well, there's an - to be fair there's an email address down the very bottom. I'm sorry, you're thinking of the iPath email, I'm sorry?---Yes. No, I'm trying to work out your question.

20 So you, you just don't have a memory at all of what happened to the invoice after you created it?---Oh, Mr Roberts was present whilst this invoice was being constructed as he was with the um, Macquarie University one. Um, whether, whether it was that specific date or not I, I've got little confidence now in a lot of these things, however, I can't recall how iPath would have been submitted with this invoice.

Did it seem to you to be improper to be creating an invoice addressed to a company that you'd never heard of in respect of services you had no idea about in the amount of \$10,450?---Yes, as raised with ICAC when I submitted this information, absolutely.

30 So at the time did you regard it as being improper, what you were doing in relation to the creation of this invoice?---At the time my, my primary concern was to help a friend out at this, at that time. Ah, yes, the, as odd as that may sound compared to a friendship to a legal criminal event ah, I should have been thinking more along the lines of that latter but at the time I was thinking of assisting a friend.

You were submitting an invoice to a company representing that you had done work for that company weren't you, it's on Management - - -?
---Correct.

40 - - - and Professional Services - - -?---Correct.

- - - Pty Limited letterhead?---Correct.

You understand that to be representing to iPath that work to the value of \$10,450 had been done by Management and Professional Services Pty Limited didn't you?---Correct, and Mr Roberts had explained to me that

they understood that this was coming, they understood the situation and that they, that this invoice was in accordance with the arrangement.

And at the time that you created it you recognised it to be a dishonest document didn't you?---Correct.

And you understood that you were being dishonest by creating it didn't you?---Correct.

10 Did you, did you voice those concerns that you had at the time to Mr Roberts at any time?---No, sir, I didn't.

Did you ever contact Mr Temmerman - - -?---No, sir.

- - - to verify anything that had been said to you by Mr Roberts?---No, no sir, I did not.

20 And you anticipated, didn't you, at the time you created this document that \$10,450 was going to be paid into your account in payment of the invoice didn't you?---Correct, and, correct, of which Mr Roberts had, had stated that it was to be paid on to him.

Did it ever occur to you that you might be getting yourself into something illegal when you created this document?---Not at that point in time. I was rather naïve but not thereafter.

30 You see, this document was created in accordance with your evidence around the same time as the document that was, as the tax invoice that you created that went to Macquarie University wasn't it?---Correct. If, if, correct, and I believe it was the same evening.

The same evening they were all created were they?---I believe.

So was this like the other one, an instance in which Mr Roberts was physically present with you whilst you created the invoice on the screen? ---Absolutely, I wouldn't know the wording or the contact detail. No, it was essential sir, if I hadn't performed the work and didn't know the gentleman I wouldn't know who to, I wouldn't – no, he was present.

40 So he was dictating to you the contents of the email whilst you were preparing it on the computer with him behind you. Was that case?---Either that or he entered it. I, I – quite frankly I can't recall but it's, it's my Microsoft Word invoice template and I do recall the, the evening or the event of that being generated. My doubt is whether it was specifically that date or is that date just the end of the month, was it, was it a week earlier or a fortnight later, sir, I can't recall.

So the invoice which is exhibit M3, the hard copy of which I gave to you a while ago - - -?---Yes.

- - - is dated 30 November, 2012?---Correct. Correct.

And you believe both of those documents were created at the same place, at the same time - - -?---Correct.

- - - in one evening?---Correct.

10

At your youse?---Correct.

And you just have no recollection of what then happened to this invoice as to whether you handed it to Mr Roberts or it was somehow otherwise communicated to iPath?---I know your intent, sir, but to be honest, if I don't - didn't have the contact details I can't understand how I could have emailed it to the gentleman. I certainly wouldn't have mailed it. No, I believe I handed it to Mr Roberts.

20

And was there anyone else present at the time that you were creating these invoices - - -?---No, sir.

- - - at your home?---No.

Is there anything at all that occurred on the evening of what appears to be 30 November, 2012 when the two invoices were created that you are hiding from this Commission?---No. No. Definitely not. That was enough for me.

30

Well, it wasn't enough for you was it, because you later got money from both Macquarie University and iPath in payment of the invoices?---I was dealing with the evening of the 30th as you were referring to.

Yeah. Now, if I get you to have a look at the document which is page, starts at page 139 and you'll recognise this to be a Westpac Bank statement addressed to you on the account name of yourself trading as Management and Professional Services?---Correct.

40

And it's for the period 22 January, 2013 to 22 March, 2013 and if you turn, turn to page 141 you'll see an entry there on 15 February, it's highlighted? ---Correct.

A deposit of \$10,450. Now, I just need to as you this, were you aware at about 15 February, 2013 that an amount of \$10,450 had been deposited into your account?---No.

When did you become aware that that money had been deposited into the account?---Mr Roberts had asked me if it was paid at some stage. There was quite a period of time between it was actually issued and when it was

paid and Mr Roberts had been asking me and whenever he'd inquire as to if it had been paid I would probably go and check but exactly when I became aware of it I don't know. It would have been towards the end of February looking at this date as an indication.

Did you – were you checking your bank account regularly through the course of January and February on Mr Roberts' instigation were you?---He was expecting these funds to be paid in, correct.

10 Did he tell you anything about what you were to do with the funds if they did arrive in your account?---Yes, he made that clear.

When did he make that clear?---At the time that the invoice was raised.

What did he say to you about that?---To pay it into his nominated account.

So you knew at the time of time in which the invoice was created that you were to transfer the whole of the amount to - - -?---I was transferring the whole of the amount.

20

- - - Mr Roberts?---Correct, sir.

But you've always got an eye on your tax position, haven't you- - -?
---At the end of financial- - -

- - - in relation to your, your invoices?---At the end of financial year, yep.

Well, what did you anticipate was going to be the position in relation to tax on \$10,450 when it was received in your account?---Yes, I'd um, I'd be paying tax, but um, when the funds came ultimately I'd be paying tax, but ah, when, when the funds came in I withheld in fact \$1,000 from that payment due to the um, tax on Mr Roberts', part tax on Mr Roberts' previous \$20,000. Mind you, at this point in time, February, I was of the impression that I would be receiving opportunities going forward, particularly from the end of March, for doing continual ad hoc work for the Macquarie University.

30

But keeping back \$1,000 only covers the GST component - - -?---Correct.

40 - - - on a \$10,450 invoice?---It, it wasn't the full amount, no.

So you hadn't covered anything off for income tax on that invoice if what you get is- - -?---No, at that stage I didn't know what my income was going to be.

So you were prepared, were you, to transfer, on instruction from Mr Roberts, everything bar just the GST component of the invoice. Is that correct?---Correct. The invoice for the Macquarie University's \$20,000, sir.

But also you didn't - - -?---Ah hmm.

You hadn't kept anything back - - -?---No, not- - -

- - - for income tax on this one?---I had kept \$1,000 but that was- - -

That was for, that - - -?--- - - -part payment of the Macquarie University \$20,000.

10

All right. Well, we'll just come to what happened next. At page 147, this is your - you'll see at the top of the page, if I could just go to the top?---Ah hmm.

This is your variable rate investment property loan?---Correct.

As opposed to what we had been looking at, which was your cash management account?---You have, yes.

20 Yes. So you'll see it's in your personal name?---Correct.

And it's for a period which goes from 25 January, 2013 to 1 May, 2013? ---Correct.

And if we turn over to page 148 there's an entry on 4 March that's been highlighted which is a withdrawal, an Internet banking withdrawal for \$9,450?---Correct.

30 Why did you make that transfer - - -?---Yes.

- - - on 4 March, 2013?---At Mr Roberts bequest, but I withdrew it from the wrong bang, I withdraw it from my variable rate interest rate because I don't think at that time I had sufficient funds in my bank account where the invoice had actually been paid into.

And did you know to whom that transfer was to be made?---Yeah, Mr Roberts.

40 Are you aware of the bank account into which it was paid?---I became aware today, sir.

And that was the first time that you became aware that in fact the money was transferred to Mr RH ?---Absolutely. I did know I'd paid it to the wrong account, if you recall previously Mr Roberts had given me two account details of which the \$20,000 was paid to, and when it came to payment of this he just, he, he stated to pay it into his bank account. I assumed they were his bank accounts and I just chose one and paid it to him. I later learnt, because Mr Roberts was asking where the funds were

and what I'd done with them, along the lines also he wasn't happy that I'd kept \$1,000 for tax purposes, that I'd paid it obviously into the wrong bank account.

I see. So after 4 March you had a conversation with Mr Roberts in which he asked you what's happened to the money that you were supposed to transfer to me, did he?---It wasn't immediate, it was a couple of days, perhaps even a week, yes, he was inquiring as to where his money was.

10 And what did you say to him?---I don't know whether it was a phone call, sir, or whether he was present. I told him I'd paid it as instructed into his bank account.

And what did he say to you?---I was an idiot, I'd paid it into the wrong bank account.

I see. And did he tell you anything more about what he was going to do about that?---The wrong bank account?

20 Well, did he say to you I want you to get the money back or you pay - - -?
---No, no.

- - - you need to pay me the money yourself and you'll have to sort out what happened to it?---No.

Did he say to you he was going to contact the person into whose bank account it went?---No, I was just left with the impression that I was an idiot and I'd paid into the wrong account. Obviously it was an account of his, perhaps even his wife at that time, I don't know, but I didn't know um, it
30 was just, I think he was looking in the wrong bank account for his funds.

I see. That's what you believed at the time?---Up until today, yes.

And you now know it was paid into the bank account of Mr RH don't you?---I now know, correct, as of today.

Now I'll call up document 155 for you to have a look at please. Now I'll get you as I have done before to have a general look at the tax invoices that appear on page 155 followed by 156 and 157. And when you've done that
40 can you indicate to me that you're ready for me to ask you some questions?
---Yes, yeah, yes.

Who created each of those documents?---Certainly not me and they appear to be again based on that template that was used for the iPath, in other words my Microsoft Word template document. In fact right down to the "not applicable" on purchase order number.

So just so I understand the position you hadn't previously seen the invoice dated 7 December, 2012 which was in these terms?---Correct.

You hadn't, you had not seen that?---Correct.

10 And when was the first time that you saw these invoices?---I, I don't know whether I haven, unless they've been presented in the course of this inquiry I don't think I have. Ah, I have had, I have had a discussion about the invoice number sequencing so maybe in the course of this inquiry in, in earlier sessions. I don't recall seeing this before.

What do you say to the suggestion that you created the invoices and that you submitted them to Macquarie University?---No, no.

Did Management and Professional Services ever do any work for Macquarie University as described in each of these invoices?---No, Management and Professional Services never done any work for Macquarie University.

20 Do you recall being contacted by someone at Macquarie University in relation to each of these invoices?---Yes, yes, on ah, 17 May, 2013.

And do you recall who contacted you?---Somebody from the financial department.

Well, if we turn over to page 158, if you could look at the email that appears there, is that the first time that you were contacted by anyone at Macquarie University about the existence of those three invoices?---Yes, and this is where I got the invoice numbering from, yes, correct.

30 Now - - -?---This is, this is the first time.

Now do you recall the telephone conversation that's referred to in the first paragraph there?---(No Audible Reply)

It says - - -?---Yes, it was ah - - -

- - - "Thank you for returning my call."?---Not word for word but I know it came as quite a surprise.

40 And can you recall what was said to you during the course of the conversation?---Yes, yes, sir, that the person calling me had three invoices or invoices that had been issued ah, this is in the course of the telephone conversation, on my, by my company and that there was, she was inquiring as to the ah, documentation that authorised these invoices.

And did she refer at all to having spoken to Mr Roberts about them during the telephone call?---Not to my knowledge during the telephone call, sir.

I'm sorry, I'm also assuming – do you, do you recall that it was Katie Whiting who actually spoke to you, the same person who wrote you the email?---The name, no, sir, but this is the person that, this is the person that sent me the email obviously but as to the conversation I, I – under the circumstances I can't recall the name.

It must have come as a complete shock to you - - -?---Yes.

10 - - - that there were three invoices that you say you had absolutely no knowledge of that were being referred to in a telephone call from someone at Macquarie University?---Absolutely.

20 And did you, did you express that shock to the person on the telephone?
---No. I – what I tried to do was to say that I wasn't aware of the invoices, that um, I hadn't issued the invoices. Um, I was – I think at the time I was between meetings as those occasions often occur and I needed to collect my thoughts on the whole discussion and as I was heading off to a meeting I requested in the course of the telephone conversation with this person that this person forward me an email clarifying what her requirements were.

Did you ask for copies of the invoices?---I don't recall. As I said, sir, I was a little ah, perplexed, a little concerned and considerably confused as to what this was all about.

So when an email arrived referring to your telephone call, you must have been surprise again, were you, to see that it in fact referred to a signed agreement between Management and Professional Services and Macquarie University?---It continues doesn't it. Yes, sir, I was rather surprised.

30 So what did you do having received this email?---Ah, I don't whether I contacted Roberts immediately. This was a Friday. He can be a difficult man to contact. Ah, I knew very well that he'd be in my residence on Monday and I'd be able to address the issue face to face.

Well, when did you first speak to Mr Roberts about the fact that you received this email from Katie Whiting at Macquarie University?---It would have been no later than that following Monday.

40 And can you recall what was said during the course of that discussion?
---Yes.

Can you please tell the Commission?---In essence, my concern or my alarm was um, to a considerable degree dismissed by Mr Roberts in the sense that he explained to me that um – he just simply said shit happens and ah, at which point I instructed him to – begged him to instigate whatever he needed to do, whatever had to be done to annihilate those invoices, to remove them, to cancel them, either issue a purchase, what is the word um, credit notes, whatever was required to instruct the university that they had

been raised in error because at that point in time I actually thought I'd, I'd produced the invoices on my system. It never occurred to me till later that those invoicing numbers weren't actually generated on my system. And why I say that, sir, is at some stage Mr Roberts had asked me if I was capable of producing an invoice code that was day, year stamped, in other words 12/03/31. In this case, Macquarie University 12/03/31. I tried. It's always a challenge. I tried but I wasn't able to date stamp my invoices and in the course of producing those invoices I assumed that this is what had been submitted by Roberts.

10

So at the time of your conversation with Mr Roberts on the Monday immediately after receipt of the email - - -?---Yes.

- - - you believed that you had created the invoices, did you?---Absolutely.

And did you believe that you had submitted them to Macquarie University as well?---No, I, no, they were sitting on my desk. They were maybe even in the garbage bin, maybe just on the, on the printer.

20

Well, how did you, what did you think about how those invoices could have come to be in the possession of Macquarie University?---I was between a devil and a hard place now because at this very point it all come to light that he's told the University that there's a service level agreement of which that didn't exist.

Well, we'll come to that in a moment?---Yep.

I don't, I'm, I'm – if you could just be responsive to my questions - - -?
---Yes.

30

- - - rather than your - - -?---Yeah.

- - - seeking to make sense of it all. At the time that you received the email of 17 May, 2013, did a signed agreement exist between Management and Professional Services and Macquarie University?---No.

In respect of any subject matter?---No.

40

THE COMMISSIONER: You knew that at the time?---(No Audible Reply)

You knew that at the time?---Yes, Commissioner, at that point on the, on 17 May when this telephone call occurred and the following email - - -

Ah hmm?--- - - - arrived, there was no service level agreement between Management and Professional Services and - - -

So presumably on the Monday night you said to Mr Roberts something to the effect that he had represented obviously to his own employer a falsehood?---Yeah. And - - -

You said that to him?---Yes.

Or something to that effect?---Yes, this is all part of the - - -

10 And his response was?---This is all part of the conversation, correct, Commissioner, and that there was no agreement and what was happening.

Right.

MR McGRATH: What was the thing that you said to Mr Roberts immediately prior to him saying, "Shit happens."?---What the effing hell were these invoices about, or something to that context.

And his response was merely, "Shit happens?"---Yes.

20 Was there any further discussion at all between you that evening about these invoices, about the agreement or any other topic to do with Macquarie University?---I think that finalised that discussion at that point in time, sir.

So at that point in time did you believe that Mr Roberts had in fact been the one who had submitted these invoices to Macquarie University?---Yes, sir, and I just reiterate, immediately following that comment there was my request that he clean the mess up, explain that they were invoices issued in error or whatever he had to do to cancel them.

30 But you had entered that conversation with the view that you might have in fact created the invoices?---Absolutely. I was wholeheartedly convinced that I'd produced them.

Did he say to you that he created the invoices?---No, sir.

Did he say to you he had submitted those invoices to Macquarie University? ---No.

40 Did he say to you that no agreement exists of the sort that referred to in that email?---That conversation I can't recall, certainly not high in my priority, my conversation, my highest priority was what those invoices were about and why were they submitted to the University.

Now, were those invoices withdrawn by you?---No. I requested Mr Roberts withdraw them and he subsequently advised me that he had, so I assumed that he had withdrawn those invoices pretty quickly because he told me the whole thing was a bit of an embarrassment and that it had been cleared up.

But you believed didn't you at the time that you were speaking to him on the Monday evening after 17 May that you had been party to some form of attempted fraud on the University?---Mmm, mmm.

That's, what's what you had in your mind?---Absolutely. I - - -

And you- - -?---Yes, yes, yes, you'd be right.

10 And you left it to Mr Roberts to be the person who was going to be putting that right?---I know.

Is that correct?---Yes.

And all it would have taken - - -?---I know.

- - - would have been a telephone - - -?---A phone call.

- - - conversation - - -?---With the person that contacted me.

20

- - - with the person who had rung you about the invoices - - -?---I know.

- - - for you to set it right yourself?---I know, yes.

You were hopelessly compromised at this point weren't you?---Terribly.

The rock and the hard place - - -?---Absolutely.

30 - - - in fact existed many months earlier didn't it?---That's correct and then it was all coming home.

Yes. It was all coming home?---Correct.

And you knew at that date, 20 May on your version of events, that you had been party to an attempt to defraud Macquarie University of nearly \$100,000?---The - sorry? No, for - - -

For those three invoices?---No, categorically.

40 You didn't, you didn't know the amount at that time but you just were aware of some invoices, is that right?---\$32,000 I'd submitted in December, sir.

Yes, I'm talking about these - - -?---Which, which these were copies of.

Yes, these three invoices?---Yes.

Were you aware that they amounted to nearly \$100,000 when you were speaking to Mr Roberts on the Monday evening?---I actually gave, I don't think there was ever a mention of a figure at that point in time.

So were you - - -?---It was just three or four invoices.

And you had no idea what they were for?---No.

Did you ask - - -?---I, I - - -

10

Did you ask anyone at Macquarie University - - -?---Oh, no.

- - - to provide you with copies of the invoices?---No.

Why not?---Well, I had a request to supply documentation supporting the invoices um, I assumed the invoices were the very invoices I'd produced on my system, they're not and shortly after the discussion with Roberts I, I was of the impression that embarrassing to him as the matter had been and he stated that, the issue had been resolved and - - -

20

THE COMMISSIONER: Mr Killalea, it was more than embarrassing wasn't it?---Absolutely.

I mean, it wasn't just embarrassing, he was, he was lying to his employer? ---Yes, yes, Commissioner, I'm just saying the way he expressed himself to me was, was one of embarrassment that I'd put him in this position and that ah - - -

30

That you had put him in that position?---By demanding that these invoices be withdrawn because Mr Roberts' intent, a matter I probably should have mentioned, Mr Roberts' intent was that we go 50/50 on the payment of those invoices.

MR McGRATH: Now, Mr Killalea, let's be absolutely clear about this evidence. At what point in time did you have a discussion with Mr Roberts about going 50/50 on these invoices?---When I confronted him in relation to the invoices being submitted.

40

So that makes it Monday, 20 May - - -?---Correct.

- - - you confronted him about the invoices. What did he say in response about an arrangement to go 50/50?---As I've said it was all rather emotional and the conversation was around, as I said, my concern about these invoices being submitted. At that point in time I thought they were mine um, I wanted them withdrawn and the exact order of events I can't recall um, and Mr Roberts had mentioned in the course of this conversation that we go 50/50.

Did he say how much you were going 50/50 for?---No, I was a little alarmed on the concept of going 50/50 on anything.

So did you, when he offered you to go 50/50 on these invoices did you say to him – what did you say to him?---Ah, it was, it was pretty much towards the end of our conversation. I, I would say that I would, that somewhere along there was the comment about cancelling the invoices and our conversation ended shortly thereafter.

10 You didn't think at this point in time that this was a matter that you needed to go and report to the police?---No, I didn't, I, I - - -

You didn't, you didn't think at this point in time that this was a matter that you needed to report to Macquarie University?---It was definitely a matter of it should have been reported um, I, I had blind – I'd gone from having faith and trust in somebody for a number of years to being confronted with a sequence of events towards the end of that friendship that was rapidly deteriorating in the area of trust. I think at this point in time my mindset was just dump him and get right away from the whole process.

20

So can I put this to you, on the evening of 20 May of 2013 you reached the end of your conversation with Mr Roberts and you had absolutely no trust in him whatsoever. Is that correct?---I trusted that he was going to be forthcoming and cancel the invoices and perform according to my request. I trusted that he was going to do that. Had he done that my only concern then was the fact that there was this piece of work that's sitting in the background all the time that hasn't been delivered and it was my concern that that piece of work which I had invoiced hadn't been forthcoming.

30 You had been paid - - -?---Yes.

- - - on that invoice - - -?---Yes.

- - - back in December - - -?---Yes.

- - - of 2012?---Yes, and I was getting - - -

We're now in the middle - - -?--- - - - rather anxious.

40 Almost, almost halfway through 2013 - - -?---Correct.

- - - and you hadn't seen a skerrick of work at all - - -?---No.

- - - to be done by you on this project had you?---Correct.

You hadn't seen the slightest indication that Mr Roberts had done any work on that project had you?---No.

And he was in effect inviting you to be part of some form of criminal enterprise that evening to split 50/50 - - -?---Correct.

- - - three invoices that you've never even seen - - -?---Correct.

- - - that had been issued on the letterhead of your company?---Correct.

And you were trusting him to clean - - -?---To clean his mess up.

10 - - - to clean it up?---Yep.

Is that, that the state?---Correct, sir.

And you weren't going to be party to anything more - - -?---I felt - - -

- - - with him as a friend at that point?---No. I, I had – he begged –he'd, he'd made a comment to the university that there was a service level agreement in existence. He asked me if I could produce that from documentation that he supplied that related to the initial invoice. He would
20 clean up these three or four invoices or whatever there was that had been submitted at ah – in relation to this email and I would produce the service level agreement that was to be backdated to the initial December invoice and that was going to clear up that matter.

Was this a topic of conversation on the evening of 20 May, 2013?---Yes.

The topic of an agreement that you were to draft?---Ah, probably – I don't know whether it was that evening because that evening didn't go very well. It was rather emotional and ended quite negatively. Perhaps it was a
30 following telephone call or maybe on the Thursday evening or maybe he'd come back earlier than Thursday, but when he arrived um, the next time – he didn't email me. There's been no email transmissions through any of this unfortunately, but he gave me three I believe soft copies of service level agreements that he wanted me to draft as the service level agreement that was in question.

And you place that as being around the Thursday evening immediately following the Monday evening's discussion?---If not earlier.

40 Did he sleep the night at your house on Monday, 20 May, 2013 after your emotional discussion?---I can't recall. Ah, I can't recall. There was many occasion where ah, he, he didn't stay after.

Did he stay with you on the evening of Thursday following a Monday?---I can't recall, sir.

But you believe that he gave you a soft copy of three agreements on that Thursday evening?---I believe they were soft copies. They may have been

hard copies. They'd, they'd have to be around that time because this was 17 May and the final document was submitted to - - -

Well, we'll come to that in a moment?---Okay.

I just want, I want you to- - -?---So it had to be pretty close.

I want you to – instead of trying to reconstruct things I want you to concentrate on what you were given - - -?---Yeah.

10

- - - and what you were asked to do in relation to the agreement?---Right.

So you've had your emotional discussion on the Monday?---Yes.

Do you believe that on the Thursday you were provided with soft copies of an agreement - - -?---I agree, sir, because I don't think he was aware of my knowledge on the Monday when he arrived ah, or - - -

20

Stop trying to – I'm asking your recollection. Stop trying to reconstruct what must have happened?---I'm not, I don't think he was aware of my previous knowledge when he arrived that Monday because he seemed quite startled that I was having this conversation with him.

Mr Killalea, I need you to concentrate on the events surrounding that agreement?---Yes.

I'm trying to find out from you - - -?---Yes.

30

- - - when it was that you say that Mr Roberts gave you soft copies of the agreement?---After receipt of this email from the University. I think that's what you're looking for.

On the Monday evening of your emotional discussion or sometime later? ---Honestly, sir, I can't recall. I know it was, it was immediately the following week, whether it was early in the week or the middle or the end of the week, I cannot comment, I cannot recall.

40

I'd like to take you to the document which is at page 256. Now, this is a document which is entitled a Product Licensing Maintenance and Support Services Agreement?---Yes.

Do you recognise that document?---Yes, I do, sir.

Who drafted that document?---I did.

When did you draft that document?---Immediately, around this time, immediately after that email from um, Macquarie University and receipt of the sample service level agreements from Mr Roberts.

Did you draft it on the same day as the Monday discussion?---I'm incapable of writing such a document, sir, in one day when I'm working full-time, no.

You'll see that it's got a date on it of 2 November, 2012, down the bottom?
---Correct.

10 And if you then go over to page 258, at the top it says, "This agreement is made and entered into and effective on 2 November, 2012." Did you draft those words?---Correct.

And then if we turn to page 263, this is the execution page. You'll see there that it's got a date in two, two places of 2 November, 2012, firstly above the signature of the Macquarie University representative and then again a date 2 November, 2012, is above the signature from Management and Professional Services. Do you see that?---Correct.

Did you type the date in in both instances there?---Yes, sir.

20 You'll see at the bottom right-hand side of the page there is your name, Christopher Killalea. Is that your signature immediately above there - - -?
---Correct.

- - -is the signature of authorised representative of Management and Professional Services Pty Limited?---Yes, sir.

When did you sign that document?---Probably Thursday night of 30 May.

30 And where were you when you signed that document?---If not my home, at a hotel over dinner, somewhere in Balmain.

To the left-hand side it says, "Signature of witness." And the name of the witness beside your signature is a person called Zainal Gunawan. Do you see that?---Correct.

Were you with Zainal Gunawan when you signed that document?---No, no, I - - -

40 Do you know a person named Zainal Gunawan?---I don't think so. Maybe. No, I don't think so.

Do you know of a café in Darling Street, Balmain called Kafiene spelt K-a-f-i-e-n-e?---Correct.

Have you been there before?---Yes, on various, numerous occasions.

Do you know a Mr Zainal Gunawan is a person who owns and works in that café?---No, but it make sense, it was a café, not a hotel.

Is it the case, doing the best that you can recollect, that this document was in fact signed before a witness known as Zainal Gunawan?---Sorry, state that - - -

Did you, did you sign that document before a Mr Zainal Gunawan?

10 THE COMMISSIONER: In other words was there, was there someone present representing himself to be Mr Gunawan when you signed the document - - -?---Yes, Commissioner.

- - - and when he witnessed the document?---Ah, I knew this document was signed um, with Mr Roberts or signed in, in the, in the short period prior to it being submitted so I assume the night before or some time immediately the day before. I had thought it was a hotel it had been signed at but apparently it's a coffee shop.

20 MR McGRATH: No, I'm asking your recollection, I'm just asking - - -? ---I can't remember at all, sir.

You can't remember where you were when you signed it, is that, that correct?---If that's your exact question, no.

You can't recall whether there was a person present known as Zainal Gunawan when you did sign it?---No.

Were you present, do you believe that to be the signature of Mr Roberts immediately above your signature?---Correct, to my knowledge, yes.

30 Was he present, sorry, were you present when he signed the document? ---I would have assumed, correct, yes, sir.

You assume it but you can't recall it, is that right?---No, correct.

You, what would you say to the suggestion that you were at Mr Roberts' office at Macquarie University when he signed it?---I've actually never met Mr Roberts at his office at Macquarie University so I would find that rather awkward.

40 Now you understood didn't you that this document was to be submitted to Macquarie University didn't you?---Correct.

And you understood that the purpose for it to be submitted was to represent to Macquarie University that there was an agreement in place between Macquarie University and Management and Professional Services at 2 November, 2012?---Correct.

You understood that it would represent to Macquarie University that the agreement was both made and signed on that date didn't you?---Correct.

And that was quite false wasn't it?---Correct.

So you knew didn't you that this was not an agreement of any sort into which Management and Professional Services had entered with Macquarie University?---No, sir.

10 That it was a complete falsehood?---Correct, as no work had been performed, correct.

Did you submit the document to Macquarie University?---Yes, yes, ah, the request was for it to be emailed but Mr Roberts assured me that the better thing to do was to deliver it in person, he would be present with the financial officer. However, I delivered it to the financial officer and Mr Roberts wasn't present um, but I did deliver it in person, yes.

20 Who did you deliver it to?---Ah, the person on that email.

Katie Whiting?---Whiting.

When did you do that?---On the Friday afternoon of 31 May, 2013.

And what was your purpose in having this document provided to Macquarie University?---To legitimise the piece of work that I'd invoiced the University for at the end of 2012, it was to cover our ad hoc work, it was – that's why it was Roberts' request that it be backdated to the – November 2012 but - - -

30 Well, there's – I'm sorry, I cut you off?---Correct.

There was nothing legitimate about this document was there?---No, we've stated that.

So when you say it was to legitimise an earlier invoice - - -?---(not transcribable) Correct.

40 It was a fraud, wasn't it?---Correct.

This document fraudulently represented that there had been services agreed to be provided by Management and Professional Services - - -?---Correct.

- - - to Macquarie University?---Correct.

It was part of a cover-up, wasn't it, so far as you were concerned?---Ah, yes, using that phrase, absolutely.

You knew at the time that you drafted this document, that there had been no services - - -?---Correct.

- - - provided to Macquarie University by your company at any time?
---Correct.

And you knew you had been paid \$32,450 for work that had never occurred?---Correct.

10 And you say that on the Monday night in which you had a conversation with Mr Roberts that you weren't prepared to get involved in any more of this and yet you - - -?---I know.

- - - drafted a document - - -?---I know.

- - - after that conversation - - -?---Correct.

- - - to provide part of the cover-up of what you knew to be a fraud, didn't you?---Correct.

20

When – I'll withdraw that. I'll take you to the documents that start at page 310. Now, you'll see, I want you to concentrate on the email that appears at the bottom half of this page. There's two of them. In fact we'll work backwards, so we'll go, we'll go forward to page 311 and you'll see at the top part of the page there's an email from Mr Roberts dated 7 March, 2013 addressed to your email address. Do you agree with me?---Correct.

When was that email created?---28 or 29 June, 2013.

30 Who created it?---Mr Roberts.

Were you with him when he created that document?---Yes, sir.

Where was it created?---At my home.

Were you sitting at your computer with Mr Roberts at the time it was created?---No, he actually created it on his computer and gave it to me on a memory stick to transfer to my computer. Ah, he was probably sitting in my study or in my lounge room.

40

But you were present at the time he was creating the email?---Correct.

Did he say to you what he was doing by creating this email?---He made it very clear that, yes.

What did he say?---That there was some issue that had been raised as to why this piece of work that was paid for in November the previous year, why that piece of work hadn't been forthcoming and this was ah, an email,

an attempt to create an email trail of recent communication describing why that work hadn't been forthcoming, as to explain the delay.

So you knew, didn't you, that this was a false email that was being created, didn't you?---Correct.

10 And if we turn over the back of the page to 310 you'll see that there's an email at the bottom of the page which is from your email address dated Friday, 8 March, 2013, addressed to Mr Roberts, which is in answer to the one that we have previously looked at on 7 March?---Correct.

When was the email of 8 March, 2013 created?---It would have been, sir, on that – these were all created, there's three invoices, invoice, these three - - -

Well, we'll go through them all. I just want you to concentrate on this one? ---On the 28 or 29 June, 2013.

Who created this email?---Mr Roberts.

20 He created it and transferred it onto your computer by memory stick again did he?---Correct.

You would agree with the description of this as being a fake email wouldn't you?---Absolutely.

Now, we'll go through now to page 319 and we'll go to the bottom of the page and there's an email there which is dated 10 July, 2013 and it's from your email account addressed to Mr Roberts?---Correct.

30 When was that email created?---Ah, 10 July, 2013.

And who drafted that email?---I wrote it except for one paragraph but yes, I wrote it.

Did Mr Roberts give you any suggestion – well, did you, did you draft it on anyone's instructions?---No, I didn't. I was rather um, angry and a little bit more than frightened and fed up. I drafted this. Mr Roberts was present and instructed that I add one clause, one paragraph.

40 Which is the paragraph that you added?---The "as anticipated I have basically carried out".

So that's the - - -?---Correct.

- - - the full paragraph at the bottom of the page?---Um, as presented on the screen the second-last paragraph.

Yes?---“As anticipated I have basically carried out the cost to date” was drafted by and entered by Mr Roberts.

And were you both present together when that email was drafted?---Correct.

And he dictated to you that paragraph to insert in the email?---Or entered it personally. I don't recall. But yes, he – it was his instructions to put that in.

But otherwise the content of that email was drafted by you?---Correct.

10

Without any instruction from him?---Correct. I refused to change anything. I'd had enough.

Now, if we now turn to page 321. There's an email at the bottom of the page which is dated 28 June, 2013. It's from your email account to Mr Roberts. When was that email created?---Yes, as stated 28 June.

20

And if we turn over the page to page – well, you'll see that that email says “please find following email trail of recent communications”. If we keep going over the page to page 323 there's an email dated 10 July, 2013 from Management and Professional Services to Mr Roberts about diagnostic data?---Ah hmm.

30

Who drafted that email?---I can't recall. Ah, as this has all unfolded some of these so called files Mr Roberts was responsible for had been presented to me only about this time. However, they were in a file format or in an encrypted form that I could not access. These were supposed to be the piece of work Mr Roberts had been producing for the December invoice of \$32,000.

So this is actually a real email that you wrote to him complaining about - - - ?---Correct.

I see. So he had in fact at this date in July forwarded you data - - -?---Yes.

- - - for you to analyse. Is that right?---Correct.

40

So did you believe at this point in time that you were actually doing the work that you had been engaged to do you thought - - -?---Absolutely happy as, correct.

So what you had previously thought was not going to be any work - - -? ---I always - - -

- - - had suddenly materialised into some work - - -?---Correct, sir.

- - - in the middle of July. Is that the case?---Early, early July. Sometime three months after it was supposedly (as said) deadline.

Well, if we now turn over to page 344.

THE COMMISSIONER: Mr Killalea, do I take it that, do I take it that you never saw the data because you couldn't open the size of the file?

---No, it was a - - -

Did you see the data?---No, Commissioner, not at all, and unfortunately as will come out, it was all a furphy.

10

Right. So this was just another representation by Mr Roberts - - -?

---Correct.

- - - that he'd done some work?---I couldn't even get into it.

But you couldn't get into it?---No, no.

And when you told him you couldn't get into it he didn't follow up with some - - -?---He, there's, there was - - -

20

- - - other method of communication?---There was some form of code that I was supposed to have entered, I just couldn't get the information out of this parcel of information, and it was this sequent, yes.

MR McGRATH: Now, if we have a look at the emails on 344, we'll got to the email down the bottom of the page. If you – in fact we might go to 346 and work forward. At 346 there's an email dated 23 October, 2012, from Mr Roberts to your email account. When was that email created?

30

---I, I, I can't comment. I would say, I would have said 23 October, sir, but I, I have no reason to believe otherwise.

Were you doing any work at all for Macquarie University - - -?---As previously stated - - -

- - - on, on a project on 23 October, 2012?---No, sir.

40

Well, then what does this email relate to?---I have no idea, unless in the timeline this was part of some discussion in relation to this piece of work Roberts was talking about, however at this point in time I'd actually forgotten about this email. At this point in time, sir, I only assume it was a precursor to him presenting the opportunity at Macquarie University.

Well, if we then turn forward, we'll go to 344, and that's an email dated 26 October from your email account to Mr Roberts. Can you recall when that email was created?---No, sir, that's not my writing, no.

You did not create that email?---No, that's, that's, that's not my – I don't use those type of words, that's not my writing.

Was this an email that was drafted by Mr Roberts and put on a memory stick and placed on your computer, either on 28 or 29 June?---I, I don't – no, I think those emails were in relation, in relation to ah, the reason the data was late in arriving. This I don't recall.

Well, I need to be clear about this. Either you don't recall it or you say I didn't draft it?---I didn't draft it.

10 But you don't know who did?---No, sir.

And if we go forward to page 344 and there's an email at the bottom of the page which is dated 28 February, 2013 from your email account to Mr Roberts, do you know when that email was created?---No, sir, no.

20 Did you draft it?---No, although the phrase "You clowns" was a, is a phrase I'd certainly use. But phrases like "I imagine EMC will be in the same boat", in February I didn't even know EMC were involved, it was only the end of June 2013 I ever heard the company EMC mentioned and that was only because it appeared in one of Mr Roberts' emails.

Well, you see, that email of 28 February has immediately above it an email from your email account to Mr Roberts dated 28 June, 2013, just go back down to the second half of the page, you'll see there's an email header immediately above that email, there's one dated 28 June, 2013 at 1.54pm from you, your email account to Mr Roberts and then underneath that is the email of 28 February?---Right, yes, I see that.

30 Is the email of 28 February and the email of 28 June emails that were created by Mr Roberts and provided to you on either 28 or 29 June?---On that presentation I'd say yes.

But you're reconstructing this, you don't have a memory of them?---No.

And your memory is that on 28 June Mr Roberts created three fake emails? ---Correct.

Is that right?---Correct.

40 The emails between you and he - - -?---Correct.

- - - to give the impression that work had occurred at an earlier point in time in relation to a project at Macquarie University being worked on by Management and Professional Services, is that right?---Correct.

And he created these in your presence?---Correct.

In your home?---In my home, yes.

And having created them he put them onto a memory stick and asked you to put them on your computer, is that correct?---That was my, that was what I thought had occurred, correct.

And what did you then do with them once they were on the memory stick and then on your computer?---I would have imagine he would have requested I email them to him.

10 Do you recall him asking you to email them to him?---No, but I assume – no.

Did you know at the time that this was happening that this was part of a concocted series of emails to give the false impression to Macquarie University that you had been doing work on a project for them?---Correct, as reported.

20 And I thought you had told me earlier that on 20 May, 2013 you had had enough of this whole episode involving Mr Roberts and Macquarie University - - -?---Yes, sir.

And yet after that date you had firstly drafted and physically submitted a fraudulent agreement that had been backdated to 2 November, 2012 - - -? ---Correct.

30 - - - and then you were now party to a series of concocted emails that you were content to be submitted to Macquarie University to give the impression of work having been done by your company for the university, that's correct isn't it?---No, no work had been done nor had any comment in that email stream stated to my knowledge that work had been done.

But you knew didn't you that these were concocted emails that were going to be presented to the University to give the false impression that work had been done?---Correct.

40 THE COMMISSIONER: Or to give the false impression that the scope of works in the, in the agreement was supported by the discussion in the email chain. In other words the email chain was a discussion about what needed to be done and it was to give the impression that all of this was going to, was, was ultimately what was incorporated into the agreement?---Yes, Commissioner, the – to my understanding the email trail was in support of the reason why the report had not been presented.

Right?---And it was around this time or immediately thereafter that Mr Roberts supplied for the first time material pertaining to his component of the original - - -

That was the data that you couldn't access?---Correct.

Right.

MR McGRATH: But that only happened after you were prepared to be party to a series of emails - - -?---Correct, sir.

- - - you knew to be false?---He had, he had as often, correct, assured me that this was forthcoming but that is correct.

10 Now, you repaid the amount of \$32,450 to Macquarie University in March of 2014 didn't you?---Correct.

Why did you do that?---Contrary to your opinion of the situation, sir, I realised that what had occurred was incorrect and it was my way after talking to my accountant to ah, reimburse the university for that fraudulent invoice.

Why did it take you until March, 2014 to make the repayment of that money – of those moneys to Macquarie University?---I haven't reported it to ICAC
20 until November. I was of the opinion that the proceeding process that was underway would only be compromised – no one told me this but I just assumed it would be compromised if I was to reimburse the university with the funds. I had had discussion with the gentleman that returned my computer in early January. He wasn't in a position to verify either way and I've discovered that the legal situation – profession don't move very fast and it took a considerable period of time for the gentleman that I'd contacted to make contact with the university in relation to this matter to actually submit the letter to the Macquarie University requesting that
30 Management and Professional Services refund the funds.

What is the date on which it became absolutely plain to you that no work would be done by you on a project for Macquarie University?---Ah, when I saw that Mr Roberts's position was vacant on the university website.

And when bouts was that?---Ah, around the time I was discussing this with my solicitor early to mid-January, 2014.

Commissioner, I have about another 10 to 15 minutes.

40 THE COMMISSIONER: Yes. Well, I think Mr Killalea might be subjected to some other questions I would have thought. Mr Alexis, do you have any questions for Mr Killalea?

MR ALEXIS: Commissioner, subject to some instructions that I'll take overnight I expect to be short.

THE COMMISSIONER: Right.

MR ALEXIS: In the order of 15 to 20 minutes.

THE COMMISSIONER: All right. Well, he'll have to come back in any event.

MR ALEXIS: Thank you.

10 THE COMMISSIONER: Mr Killalea, could I just advise you that given that you're in the middle of your evidence you're not permitted to speak to anyone about your evidence. You'll have to return tomorrow and we'll recommence at 10 o'clock?---I understand, Commissioner.

Thank you. I'll adjourn.

THE WITNESS STOOD DOWN [4.04pm]

20 **AT 4.40PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.04PM]**