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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 TUESDAY 17 FEBRUARY 2015

AT 10.05AM

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

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

THE COMMISSIONER: Yes. Yes, Mr McGrath.

**<CHRISTOPHER MYLES KILLALEA, on former oath [10.06am]**

MR McGRATH: Just before I start with any other questions I wanted to ask you this, Mr Killalea, is there any aspect of the evidence that you gave yesterday that you wished to correct in any way?---Yes, there is a vagueness that I stated around not knowing the value of the three submitted invoices. At the time and previously I've said that I thought they were copies of my original invoice that I had created in formulating a date sequence. Contradicting myself I, I did know the value of those invoices because they were the, as I said I believed they were copies of the ones I had created.

So at the time that you had your conversation with Mr Roberts about those invoices - - -?---Yes, sir.

- - - and on your evidence he gave you an offer to split the value of those invoices 50/50 you knew the financial offer that he was making to you at that time, is that correct?---If I had considered it, yes, but I rejected it outright.

Just answer my question?---Yes.

You knew that the invoices totalled - - -?---Correct.

- - - nearly \$100,000 - - -?---Correct.

30 - - - at the point in time in which he gave you an offer to split that amount 50/50?---Yes, I would have known.

When did you last see Mr Roberts?---Um, July, July 18, 2013.

When did you last have any communication with Mr Roberts?---At that point in time, July 18, 2013.

So you had a conversation with him which you were both present?  
---Correct, it was at my residence.

40 Could you please tell the Commission the gist of that conversation?---Yes. I informed Mr Roberts, being it either a Monday or a Thursday, that I no longer wished to continue the friendship, that the trust that I had in him had evaporated. I was in considerable trouble because of the lack of the forthcoming material and I want him out of my life never to cross my path again.

And did he give a response to your statement?---Yes, yes.

What did he say?---He said I didn't have to act like that, I didn't have to be like that perhaps.

And was there anything further that was said in that discussion?---Not that I recall, sir, no.

Did he then leave your home?---Yes.

10 Has Mr Roberts attempted to contact you, so far as you're aware, since that time?---Um, as far as I'm aware, no, sir, but I have totally refused to answer unidentified telephone calls.

Now, you said yesterday in answer to a question that I asked that relationships are built on trust. Do you recall making that statement yesterday?---Correct, yes.

20 And you said it in relation to the issue I raised with you about the loan that you had made to Mr Roberts to acquire the Unisys equipment?---Correct.

You said in your answer there that if Unisys had failed to repay the loan in 2005 you would have just written Mr Roberts off?---Correct.

Do you recall that?---Correct.

Because you would have ceased to have had any trust in him. Is that correct?---Correct. I would have understood or seen what was happening.

30 Now, why did you not write Mr Roberts off in November of 2012 when you realised that he was acting improperly by getting you to prepare invoices for Macquarie University and iPath for work that you knew had not been done? ---Because I was under the belief that the work was forthcoming, that it was in the process of being forthcoming. It eventually arrived but far too late.

But that wasn't the case in relation to the iPath invoice, was it?---No. The iPath invoice was a, a, an exceptional bad judgement on my behalf. There's no reason to explain otherwise.

40 Why did you not write Mr Roberts off when you received \$32,450 into your bank account from Macquarie University on 21 December, 2006?---Because as I said, sir, I was under the impression the work was forthcoming.

Why did you not write Mr Roberts off when he demanded that you pay him \$20,000 from the proceeds that had been received from Macquarie University into your account?---I admit I was surprised that it was two-thirds but again, sir, he'd explained to me that the majority of the work effort was actually for work he was producing.

Why did you not write Mr Roberts off when you received \$10,450 into your account on 15 February, 2013, from iPath?---As I said, sir, no explanation for iPath at all.

10 Why did you not write Mr Roberts off when you found out on 17 May, 2013, that there were further invoices that had been issued under the name of Management and Professional Services to Macquarie University?---I very well wished to but as Mr Roberts explained to me, sir, I had already issued an invoice for \$32,000 for work dating back to December the previous year and that I knew I'd invoiced the University for, for work that at that point in time had not been forthcoming and I knew that if I walked out on him or kicked him out right then and there, ah, I'd have to, I'd have a great deal of explaining to do, considerably less than I have now, but still a great deal of explaining to do.

20 And why did you not write Mr Roberts off when he told you on 20 May, 2013 that he was willing to split 50/50 with you an amount of nearly \$100,000 which you knew to be on a set of fraudulent invoices that had been submitted to Macquarie University?---That's exactly the same reason, sir.

Why did you not write off Mr Roberts when you created a fake and backdated agreement which you personally handed to Katie Whiting of Macquarie University?---Again, sir- - -

Sorry, on Mr Roberts' instructions?---Again, sir, that was to protect – and I use that word knowingly – my exposure on the December 2012 invoice.

30 Why did you not write off Mr Roberts when you were party to the creation of a set of concocted emails on 28 June, 2013 which you knew would be submitted to Macquarie University to give a false impression that work had been conducted by Management and Professional Services for them?--- Again, sir, Mr Roberts assured me that the work was just a matter of days away and my doing this it covered the time interval between when he could get the outstanding material to me and for me to deliver it.

40 You would agree with me, wouldn't you, that with respect to all of those events that I've just catalogued for you, you could have brought all of them to an end yourself at any point in time couldn't you?---Correct.

And you knew in respect of all of those events that what you were doing was grossly improper didn't you?---Correct.

THE COMMISSIONER: Mr Killalea, can I just ask you were you in any financial difficulty at the time of these events that have been outlined to you by Counsel Assisting?---No, Commissioner. I, I – when I was working I had a substantial income stream. Ah, I'd been able to secure considerable

equity in my property and, and I continue to live on that financial stream since I last completed full-time work.

So you weren't at risk financially at all?---No. No, Commissioner.

So in effect what you're telling us is that because of your involvement in these grossly improper transactions you felt that you were over a barrel so to speak and that you had to go forward rather than go back. Is that, is that a fair summary?---Very apt - - -

10

All right?--- - - - appraisal, Commissioner. Very apt.

MR McGRATH: Yesterday I took you to a series of statements that you had prepared. They were a draft statement which was dated 22 November, 2013, then there was a statement signed and dated by you on 23 October, 2014 and then there was a further statement which is signed by you and dated 30 January, 2015. Do you recall each of those documents?---Yes, sir.

20

Those were documents that you created yourself weren't they?---Correct.

They were ones that you provided to this Commission to explain events relevant to the Commissions inquiry. Is that correct?---The two, the two signed ones.

And you didn't prepare those documents in co-operation with any of the staff at the Commission, they were documents that you alone created. Is that correct?---Correct, sir. The two signed ones are the ones submitted, October and November.

30

Now, I'd just like to take you to a further set of documents at page 392. Now, this document is a document that's been provided to the Commission by Telstra in response to an inquiry that the Commission has made regarding the ownership of certain telephone numbers. Now, if you look at the very top line there you will see in the middle of the top line a telephone number [REDACTED] Do you see that?---Correct.

Do you recognise that telephone number?---No, sir.

40

No. If you go down to the middle of the page you will see that there's - just further down. If we can scroll the document just a little bit further down. In the middle of the page there you'll see again the service number is stated to be [REDACTED] and there is a connection date there of 28 October, 2013 and you'll see there that there is a service name associated with that connection of Management and Professional Services with a service address of [REDACTED]. Do you see that?---Yes, sir.

And you'll see the billing name is Management and Professional Services with the same billing address?---Yes.

Did you authorise the telephone number [REDACTED] to be placed in the name of Management and Professional Services at any time?---No, sir.

Now if we turn over now to page 394, oh no, before I leave that, sorry, do you recognise the address on that, the service address and billing address?  
---Correct, yes, sir.

Whose address is that?---Mr Roberts' address.

10

Now if we turn to page 394, on the top line there the telephone number is 0-[REDACTED]. Do you recognise that telephone number?---No, sir, no.

And if we go down into the middle of the page again you'll see for that service number on a connection date of 28 October, 2013 the service name is Management and Professional Services Pty Limited with a service address. Did you authorise that telephone number to be put into the service name of Management and Professional Services Pty Limited?---No, sir.

20

Now if we turn over to page 397, this time the telephone number is [REDACTED] do you recognise that telephone number?---No, sir.

And if we go down to the middle of the page there there's a connection date for that number of 28 October, 2013 and the service name is Management and Professional Services Pty Limited with a service address and billing name and address as shown. Did you authorise for that telephone number to be placed in the name of Management and Professional Services Pty Limited at any time?---No, sir.

30

And then if we could turn over to page 398 there's a telephone number on the top line [REDACTED] and you'll see there for a connection date of 28 October, 2013, the service name is Management and Professional Services Pty Limited with a billing name and address, do you recognise that telephone number?---No, sir.

Did you authorise for that telephone number to be placed into the name of Management and Professional Services Pty Limited?---No, sir.

40

And now if we could turn to page 399 and the service number, telephone number there this time is [REDACTED] Do you recognise that telephone number?---No, sir.

And you'll see there that it has a connection date of 28 October, 2013, the service name being Management and Professional Services Pty Limited. Did you authorise that telephone number to be placed in the name of Management and Professional Services Pty Limited?---No, sir.

And just at this stage, Commissioner, could I ask that all of the details be the subject of a suppression order.

THE COMMISSIONER: Yes, those details in pages 392 to 399 insofar as they contain identifying information are suppressed from publication under section 112 of the Act.

10 **SUPPRESSION ORDER FOR DEETAILS IN PAGES 392 TO 399  
INSOFAR AS THEY CONTAIN IDENTIFYING INFORMATION  
ARE SUPPRESSED FROM PUBLICATION UNDER SECTION 112  
OF THE ACT.**

MR McGRATH: Did you – when was the first time that you became aware that all of those telephone numbers were in the name of Management and Professional Services Pty Limited?---At the very conclusion of the second compulsory examination on 17 December last year.

20 Have you ever had a telephone, have you ever had any form of communication with Mr Roberts about the placing of those numbers into the name of Management and Professional Services Pty Limited?---No, sir.

Is there anything else that you wish to tell the Commission in relation to your involvement in the events about which you've been questioned?  
---Since departing with Mr Roberts on 18 July, 2013 other than yesterday was the first time I'd seen him or heard of him. I haven't had a, any communication from the gentleman at all in the interim.

30 Nothing further, Commissioner.

THE COMMISSIONER: Thank you, Mr McGrath. Mr Alexis, do you wish to go first?

MR ALEXIS: Yes, it's probably appropriate that I go before Mr Roberts' counsel - - -

THE COMMISSIONER: Yes.

40 MR ALEXIS: - - - if the Commission pleases.

MR ALEXIS: Mr Killalea, Alexis is my name and I appear for Macquarie University as you probably heard. Should we understand that your very first communication with anyone from Macquarie University, apart of course from Mr Roberts himself, was with Ms Katie Whiting on or about 17 May, 2013?---Precisely on 17 May, 2017, 2013, yes, sir.

And, all right. So up to this point in time you - - -

THE COMMISSIONER: Sorry to interrupt, Mr Alexis, I'm sorry – could you just turn the microphone just so that we can be assured of picking your voice up on the transcription service. Thank you.

MR ALEXIS: Yes, that's important, thank you, Commissioner.

By this stage, Mr Killalea, you had participated with Mr Roberts in the creation of the false invoices in December 2012?---Correct.

10 And so we're clear, you understood by false invoices that I was referring to not only the invoice to Macquarie University but also the invoice to iPath?  
---Correct, sir.

And I think as you told us yesterday, they were created to the best of your recollection at about the same time - - -?---Correct.

- - - perhaps even on the same evening?---Perhaps, sir, yes.

20 And the reason I think you explained to us yesterday was that you were operating under some blind trust or blind faith in Mr Roberts. Is that so?  
---Ah, yes, sir.

But at the time these documents were being falsely created should we understand that every instinct in your body was telling you that what you were doing was wrong?---Extremely wrong, sir.

30 So could you explain to us please how blind faith in Mr Roberts causes you to do something that you instinct tells you is wrong?---And never done before.

Well, that may be so, but could you attend to my question?---Ah - - -

How is it that blind faith in Mr Roberts causes you to do something that your instinct was telling you was wrong?---Unfortunately this time, at this point in time, sir, I had no knowledge to, no evidence, no inkling to the contrary that what Mr Roberts was explaining to me as work forthcoming was anything to be but work forthcoming. I had no inkling at this point in time of what has previously occurred as to what I know now.

40 But, Mr Killalea, you told us yesterday with some candour that the iPath invoice was to your knowledge at the time it was created utterly false because you had no knowledge of any prospect of any work with iPath. Correct?---No, sir, I had nothing to do with iPath at all. It was - - -

Yeah. So you must have understood at the time the iPath invoice was created that you were participating in a fraud?---Mr Roberts explained to me, sir, that the reciprocant (as said) of the iPath invoice was aware of the invoice being raised and understood what it was for, because I had – from



my perspective I had neither any idea what it was, what work had been performed or who the company was.

But could you explain to us, please, so that we understand, why in December 2012 you were prepared to assist Mr Roberts - - -?---Mmm.

- - - in the falsification of these invoices?---Stupid loyalty.

10 Well, you told us that it wasn't because you wanted money?---No.

So how does loyalty in Mr Roberts explain your participation in a fraud?  
---My willingness to assist Mr Roberts.

But why?---Good question, so other than my willingness to assist him.

But why were you willing to assist him?---There was no other reason than  
ah - - -

20 Was he blackmailing you?---No, sir, no.

Well, did he have something on you - - -?---No.

- - - which caused you to feel you had no choice?---No, sir. I did it out of  
blind friendship.

When you spoke with Ms Whiting on 17 May, 2013 you also knew, didn't  
you, that the company that you controlled had received moneys in relation  
to those false invoices?---The 30 – the December, 2012 invoices, yes, sir.

30 Well, by May of 2013 you've received money from Macquarie University  
and you've received money from iPath hadn't you?---Yes, sir.

And you knew that that was money to which your company wasn't entitled  
didn't you?---Correct, sir.

And - - -?---The work hadn't been forthcoming.

40 And you dealt with that money by paying portions of it to Mr Roberts into  
bank accounts at his direction. Correct?---Correct.

And you knew, didn't you, that Mr Roberts was using your company's bank  
account as a conduit by which he was to receive money from Macquarie  
University that you knew at that time he was being employed by?---Put that  
way, yes, sir.

And you also knew by the time you came to speak with Ms Whiting in May  
of 2013 that you had retained out of those receipts about \$13,500?---  
Correct.

And just so that we're clear, 12,450 from the receipt from Macquarie University, the remaining 20 having been transmitted at Mr Roberts's direction. That's so isn't it?---Correct.

And the remaining \$1,000 with respect to the iPath invoice?---Correct.

And you'd spent that money hadn't you?---At that point in time I would assume so, sir.

10

Well, it's obvious from your bank accounts that once the money came in it was spent on your ordinary living expenses. That's so, isn't it?---Ah, running the business, business operational expenses, yes, sir, as I submitted to the tax return.

So when you were speaking with Ms Whiting on 17 May, 2013 you knew that you had received money to which your company was not entitled and spent it. Correct?---Correct, sir.

20

Now, when you returned her call, you well understood, didn't you, that she worked for the university and was somehow involved in the administration of the payment of accounts?---Yes, sir.

And you knew that because when she left the message for you, she told you who she was?---Correct.

And so you knew when you returned that call that she was likely to ask you some questions about invoices that had been generated either by you or on behalf of your business?---Correct.

30

And you knew that she was wanting to speak to you to check the claims that were being made for payment in those invoices?---No, sir. I assumed she was asking about the 32,000 December invoice 0-0-1-1. I didn't know that she was going to be asking me about um, those three submitted invoices.

In any event, leave aside which particular invoices her voicemail message actually referred to, you knew that as part of her job she was checking the genuineness of the services referred to either in an invoice or in the invoices. Correct?---Correct.

40

When you returned her call, you could have disclosed to her, couldn't you, that the services referred to in the invoice or in the invoices had not been performed by your business?---The invoice that I'd submitted in December, yes, I could have, sir.

And similarly with the other invoices you - - -?---I was to learn about that during the course of the conversation.

Anyway, I think you agree with my proposition you could have - - -?  
---Absolutely.

- - - disclosed that to her and of course - - -?---Absolutely. Correct, sir.

And I think you told us yesterday you chose not to do that?---Correct.

And instead you asked her to send you an email to set out what it was that she wanted information about. Is that so?---Correct, sir. I was - - -

10

And we see that email at exhibit M1, volume 1, page 158. If that could be shown to Mr Killalea please. Do you remember the email from yesterday?  
---Correct, sir.

Now when you rang her back did you tell her that that you were ringing her from Management and Professional Services in relation to her inquiry?---I believe so, sir. I, I believe I received a voice message from Ms Whiting on 17 May, I responded soon thereafter I believe and that's when we had our conversation and I requested an email explaining what was the gist of the request.

20

And you'll see the time of the email, 4.24pm. Should we understand as best as your recollection allows you to tell us, that the telephone call that you made back to her occurred shortly before you then received this email?---I would assume, I, I was off to a meeting so I would assume it was a 4 o'clock meeting or an hour, on the hour meeting, I assume that it was 4 o'clock, only 20 minutes earlier.

30

And you never said to her did you that you were not aware of the invoices to which she was referring?---I was unaware of the invoices, sir.

That may be so but you never said to her that you were unaware of the invoices to which she was referring did you?---I actually said to her I was unaware what invoices had been issued. I, I was unaware.

You never said to her that you had not issued the invoices to which she was referring did you?---No, no, I didn't, I didn't mention these - - -

40

But had you said that that would have likely disclosed something that was a little odd, namely the person who was responding to her inquiry, whose business had issued invoices, not knowing that the invoices had been issued?---I did, that was my conversation, I was startled at - I was explaining to Ms Whiting that I was unaware the invoices had been issued or in fact were outstanding.

Well, if you just look at the email that followed this telephone conversation there doesn't appear to be any reference there to you being startled or you not being able to - - -?---No, I, I agree.

- - - say anything about the issue of those invoices is there?---No, sir.

And do you agree with this proposition, that had you raised a question about whether you'd issued the invoices that may well have disclosed that the invoices were not genuine?---I had a perfect opportunity to do just that at that time, sir, and I didn't.

You didn't do so did you?---No.

10

Now just have a look at this email. You'll see in the second paragraph that there's reference to something that was discussed, you see the opening words - - -?---Correct.

- - - namely the need for further information regarding the licences being purchased?---Correct.

And when you had this conversation with Ms Whiting you knew perfectly well that the licences to which she was referring didn't exist, correct?

20

---Correct, sir, that - - -

And you knew when you spoke with her about the signed agreement between your company and the University that that like the licences was completely false, it didn't exist?---Ah, I didn't mention any - to my knowledge, sir, I, I didn't raise the issue of this um, service level agreement with Ms Whiting.

I see. So the reference to - - -?---To my knowledge.

30

- - - the service agreement came to you when you received the email?  
---Correct.

So your knowledge of the falsity of that reference - - -?---Yes.

- - - was apparent at about 4.30 on the afternoon of 17 May?---With that paragraph in the invoice.

40

And it would have been obvious to you, wouldn't it, that in relation to the apparent existence of the signed agreement that Mr Roberts had conveyed to the University a complete lie?---Yes, sir, that was at the forefront of my mind and at the forefront of my discussion with Mr Roberts the next time I saw him.

Now of course this is obvious I suppose but you could have responded to the email and said the agreement doesn't exist, the licences being purchased don't exist, the invoices are a fraud, I'm terribly sorry?---Yes, I, I should have.

Instead you participated, as learned Counsel Assisting took you through yesterday, in a cover-up in terms of the preparation of the service contract and the email trail to cover the track?---Correct.

Now, in relation to the service contract which I think you said to us yesterday you prepared, is that right?---Correct, from some samples.

10 So when we look at the service contract, and we can go to its terms if you wish me to, your involvement in that is not only your signing it on behalf of Management and Professional Services, but the preparation of the actual text and in particular the schedules to the service contract. Is that so?  
---As instructed, yes, sir.

20 So you well understood at the time that was being prepared with the intent of it being backdated to before the earlier December invoice, that the agreement would provide for monthly fees during the 12-month duration of the contract of about \$30,000 a month?---No. What that was, no, sir, that was \$30,000 for the initial invoice and it was for ad hoc work going forward, it, that was the intent, that was my purpose.

Well, Mr Killalea - - -?---I, I'm - - -

- - - in light of that answer could you please look at Exhibit M1, volume 2. I'm going to take you to page 264, but just to assist you the relevant agreement starts at page 256. Do you see that is the service agreement to which we're referring?---Correct, sir.

30 So if you look at page 264, and you can accept from me that schedule 2 is referred to in the service agreement which scopes the works, the services to be provided – do you follow that?---Yes, sir.

And then if we turn then to 265 we see schedule 3 is the fee schedule. Do you have that?---Yes, sir.

And in the opening paragraph you'll see the provision for the monthly fee of \$29,500 ex GST?---Yes, sir, this was taken from - - -

40 Before, could I just ask the question, please. So when you tell the Commissioner that you prepared this document we should understand that to include the writing of schedule 3 in relation to the payment of monthly fees?---Yes, sir, yes.

So at the time this document was created and backdated you well understood that upon receipt the University was likely to see that it had an obligation to pay your business nearly \$30,000 a month. Is that right?---Yes, sir, on, yes.

So when you prepared this false service contract you were motivated, may I suggest to you, by the opportunity to earn monthly fees going forward of about \$30,000 a month?---No, sir, that wasn't the content, context of the document at all. These – sir, may you go back to the previous page?

10 Certainly. That's page 264?---Yes. This is my component here, sir, clause (b) covered services, the um, so I was responsible for clause (b). Mr Roberts had supplied the clause (a), the services in compliance with what he was able to justify through his position, that was his recommendation, and it was Mr Robert, sir, that came to the – I wanted an hourly rate, I thought I had an hourly rate in it.

Mr Killalea, just come back to page 258, please. And do you see clause 2 headed "Term of Agreement?"---Correct.

And in subparagraph (a) a reference to the initial term of 12 months?---Yes. Yes, sir.

20 And in fairness, unless earlier terminated in accordance with clause 10. Do you see that?---Yes. Yes, sir.

So absent any termination under that clause, when looking at schedule 3 back on page 265 the reader would be forgiven, wouldn't they, for thinking that the university had an obligation to pay you for 12 months subject to termination early nearly \$30,000 a month. Correct?---It appears to be the nature of the supplied document, yes, sir.

30 And it's obvious, isn't it, that when you participated in the creation of this document to, as you tell us, cover your tracks, you were intending to earn from the university a monthly fee for the duration of that contract. Correct?---Ah, sir, my intent was, as you say, to cover my tracks for the initial invoice issued in December. That's what I was putting together this for. The document – the three documents were given to me as a sample. This is the - - -

40 Mr Killalea, if that's true, why didn't the contract simply say that the university is engaging Management and Professional Services for a particular piece of work for a fixed fee of \$29,500 plus GST?---That was the intent initially, sir, and somewhere in there, there is a reference to not just services but an hour rate in accordance with that.

But you told the Commissioner not more than about half an hour ago that the intent behind the false service agreement was to, and I think I'm quoting accurately, "to protect my exposure in relation to the December invoice"? ---Correct, sir.

Do you remember giving that evidence earlier today?---Correct, yes. This is, this is exactly what I'm saying.

Well, if that evidence is true, why doesn't the punitive service contract said to protect your exposure in relation to that invoice impose an obligation on the university for a one month fee of 29,500 plus GST only?---It wouldn't have been one month, sir. It was originally a delivery of a service.

Mr Killalea, you know what I'm putting to you don't you?---Correct. Absolutely.

10 Why didn't the contract simply seek to legitimise that which had been invoiced in December, 2012 if that was the real intent of the false service contract?---It should have. It was my intent. I had it in the document. These – this was ah, the document – a sample document as supplied. It was read and audited by Mr Roberts. Um, this is the outcome of that and it, as I say, had reference to what we're referring to as MAPS Pro-Technology licensing which - - -

20 You appreciate, don't you, that the clear inference arising from the preparation of the false service contract in May of 2013 is that you and Mr Roberts wanted to milk the university for \$30,000 a month for the duration of the 12 month contract. You see that as an inference don't you?---I see that.

Well, why shouldn't the Commission draw that inference and make a finding to that effect against you in this matter?---Because I'm saying, for what it's worth, sir, that this was backdated and created to address the initial invoice on the December, 2012.

30 Now, Mr Killalea, the other thing you did was engage yourself in the preparation of false emails to provide the impression that there had been true appropriate and prior communication between you and Mr Roberts concerning the punitive contract. Is that so?---Correct, sir. The work effort.

40 Now, can we just get clear, just in case arising from yesterday it's unclear, what is meant by concocted. You know, don't you, that there are at least four or five emails, I can take you to them if you like, but they start from about 28 June, 2013 which give the appearance on their face that they were transmitted between you and Mr Roberts on an earlier date and time when in fact they had not been so transmitted on that occasion?---Correct, sir. I'm fully aware.

And so when we speak about concocted emails we're speaking about the creation of an email communication not only in terms of what was said in that communication but importantly that it was transmitted at an earlier point in time when in fact to your knowledge it had not been, is that so?---Correct, sir.

Thank you. And you understood didn't you that Mr Roberts would be using the false email trail to provide that to his superiors at the University, to represent that as some evidence of actual honest commercial conduct under this contract between you and Mr Roberts, is that so?---For the reason for the delay, correct, sir.

10 And of course you well understood, didn't you, that unless those at the University went to the trouble of actually checking Mr Roberts' inbox or his sent box on the server at mq.edu.au the University would simply assume that these concocted emails had been sent and received on the date and time indicated on the face of the email, is that so?---Yes, sir.

And you knew that the idea that someone might go to the trouble of actually looking at the inbox and sent box email traffic in Mr Roberts' email at the University was likely to be very low?---I wouldn't know, sir.

20 But surely you considered the utility of these false emails didn't you otherwise you wouldn't have engaged yourself in the process of having them prepared?---Correct.

Let me just be clear with you, if you thought that the false email trail would easily be tested to determine whether or not they were an accurate reflection of real communication or not presumably you wouldn't have bothered engaging in the process because it would have been easily exposed, correct? ---I didn't consider that viewpoint, sir, I was stalling for time for the work to be delivered.

30 But can I suggest to you that your judgment at the time was that those testing and checking this at the University were unlikely unless there was something obvious to actually go into the server and check - - -?---I have no idea, sir.

- - - Mr Roberts' email traffic to see whether or not that which was being forwarded to his superior was true or false?---I have no idea, sir.

40 Now there's one aspect of the emails that I just want to go to particularly which was touched on yesterday and it may be that you and Counsel Assisting I say with great respect were at cross-purposes. Do you recall that you were taken to some emails yesterday which sought to transmit by way of attachment some diagnostic data?---Yes, sir.

And just so we're clear if we could go to Exhibit M1 volume 2 at page 324. And just to remind you of some evidence yesterday if you look at 323 you'll see this was the email that learned Counsel Assisting took you to yesterday? ---Yes, sir.

Which follows the earlier email at page 324 by about half an hour or so which raises the question of the file size?---Yes.



And you'll see of course that this is your email to Mr Roberts?---Yes, correct.

Not the other way round. Do you see that?---(No Audible Reply)

Do you see that?---Correct, yes, sir.

10 So if we go back to 324, what we see is your attempt at just after 5 o'clock on 10 July, to send what you describe as "diagnostic data" to Mr Roberts. Do you see that?---Yes, sir.

Yeah. Now, yesterday your evidence on this may have proceeded on the assumption that it was in fact Mr Roberts trying to send this to you. Do you recall that?---In previous emails I believe that was the case. Yesterday I do not know.

Well, just look - - -?---But this is as stated.

20 Thank you. You'll see the email on 324 has the attachment which appears to be reproduced in the exhibit from pages 325 to 343 inclusive. Do you see that?---Sorry, I missed your intent, sir.

Just have a look at halfway down page 324 – you'll see there's the symbol with the words, "instructions data collect 501-all.doc." Do you see that? ---Yes, sir, I believe these were instructions for how to access the data.

30 All right. Well, if you then look at 325 you'll see there's a document headed, "Table of Contents" and a table of figures?---Right.

And I'll just get you to leaf through the following pages, 326 and following, through to page 343. If you could just look at each of those pages and let me know when you've done so?---I don't think I've got access to that capability.

THE COMMISSIONER: Do you have a hard copy in front of you, Mr Killalea, no?---No.

40 MR ALEXIS: Oh, thank you. We have a hard copy which can be provided to the witness, thanks. So, Mr Killalea, you're being shown pages 325 to 343 inclusive of Exhibit M1, volume 2. Do you have that?---Correct.

And take your time to look through it. When you've done so I'm going to ask you whether or not that is the hard copy of the electronic version that was attached to your email at page 342 – I'm sorry, thank you, 324?---Yes.

And it's obvious from the footer on each of the hard copy pages I've provided to you, 325 and following, that this was a document that was either produced by or at least created by EMC Corporation. Do you see that?  
---Yes, correct. So I think I got this initially from EMC - - -

Yeah?--- - - - but I couldn't open it initially.

10 All right. And what you were seeking to do by your email at page 324 on 10 July, 2013, was to send Mr Roberts the information that you had received from EMC Corporation?---Correct, sir.

Is that so?---Correct, sir.

And you did that because you knew that Mr Roberts in turn would provide that to his superior - - -?---Um - - -

20 - - - at the University to show some quote, work product, end quote, consistent with the performance of a genuine contract between your business - - -?---No, actually - - -

Let me finish – and the University. Is that so?---No, sir.

30 Well, explain to us why you were sending this EMC Corporation material to Mr Roberts on 10 July?---Because, sir, on 2 July following those fraudulent emails, in those email headers or descriptions there was mention of an EMC staff member who I knew from Computer Associates days. After those emails were sent I contacted that gentleman on 2 July to inquire as to where this information was and what was happening, because at this point in time I didn't have anything at all from Mr Roberts, and with those emails that Mr Roberts had put together and supplied to me to forward to him, I saw reference to an EMC staff member who would know what was happening. It was the first time I had contact with somebody other than Mr Roberts in relation to this material.

40 But yesterday the Commissioner asked you at transcript 103 line 40 and following, that's just a reference for the Commissioner, Mr Killalea, "Whether it was at this time or immediately thereafter that Mr Roberts supplied for the first time material pertaining to his component of the original," the question then continues, "that was the data that you couldn't access?" Answer, "Correct." Do you recall giving that evidence?---Yes, sir, I did.

And the material or the data to which you had in mind when you were answering that question or those questions was the data or the material at page 325 and following, is that so?---From EMC?

Yes?---Yes, sir. It was – as I say in contacting the gentleman from EMC on 2 July it became blatantly apparent that Mr Roberts wasn't at all involved with collecting the data, it appeared that EMC was.

But it was quite wrong to tell the Commissioner that you obtained this from Mr Roberts?---I, I, I, I do agree, sir under the ah, moment, it was supposed to have come from Mr Roberts but it came from EMC.

10 And the reason you gave it to Mr Roberts or at least purported to under this email of 10 July - - -?---Yes.

- - - was so that he was able to provide this material to his superior in explanation of the contract?---I think – no, sir, no. My intent was either this email or, or – no, I believe it was this email that I'd given up and I just thought, literally threw it all back to him.

Now - - -

20 THE COMMISSIONER: Mr – sorry, sorry, Mr Alexis.

MR ALEXIS: Yes (not transcribable)

THE COMMISSIONER: Mr Killalea, can I just clarify something with you, I'm not particularly computer literate but the document that you sent through from EMC, I read that as a document that provides instructions on - - -?---Yes.

30 - - - how to access data?---That's, that's – it's at the bottom of the page an instruction document on how to access data and I couldn't - prior to this I didn't have access to the data and I don't know whether this actually worked, in the end I gave up.

But when you say prior to this you didn't have access to the data, what data are you referring to?---There was, there was a large voluminous file, Commissioner, that wouldn't pass through the University's email system, it resided on some server that I need a logon script to get into. This logon script didn't work for numerous times, in fact I never recalled being able to log on. When I - - -

40 Was this a, sorry to interrupt, was this a logon script that was supplied to you by Mr Roberts - - -?---Correct.

- - - or by someone else?---Correct, Commissioner, it was supplied by Mr Roberts I believe, I believe and it was in one of these emails. Um, it was subsequently I believe supplied by EMC at my request. EMC were very forthcoming and it became apparent – EMC supplied the instructions of how to read the material.

And, and the original logon script that Mr Roberts supplied, was that to enable you to access this data that he said was integral to the work that you were to perform?---Correct, correct, Commissioner.

I see. Sorry, Mr Alexis?---No, thank you.

MR ALEXIS: Thank you, Commissioner.

10 So, Mr Killalea, should we understand that at by at least 10 July, 2013 you were still in company with Mr Roberts seeking to cover tracks and false justify the invoice and the moneys that had been previously paid and received?---Ah, no, sir, by this stage I was rather relieved to have the material that was outstanding although EMC informed me that it was only half the material that was needed but I was also frustrated by the fact that I had difficulty accessing that material on its stored location, nor did the material appear to be anywhere near what I was looking for.

20 I see. So is your evidence to the Commission that on or about 10 July you were pleased that you might actually have the opportunity to do some work for the university?---Yes, sir.

30 So what changed between 10 July and 18 July?---The material did not make sense, just did not make sense. None of it made sense and in talking to EMC probably on 7 July or around that time, perhaps the 10<sup>th</sup>, it became apparent that this whole piece of work that I was doing – or, correction, this whole piece of work that I thought I was doing, that I'd in fact been requested to submit an invoice for in 2012, December, wasn't in fact a piece of work being performed by me or Mr Roberts. It appeared to be a piece of work being performed, in Mr Roberts's component, internally within the university and from my perspective it appeared to be being performed by EMC and it was through my discussions with EMC Consultant that I came to that conclusion which terminated the whole relationship.

All right. I'm going to come back to that in a moment. But can I just return very briefly to the service contract. You said in your evidence yesterday, transcript page 97, that you personally delivered that contract to the university on 31 May, 2013. Do you recall that?---Correct.

40 Can you tell me please whether or not you've made any record at the time which enables you now to be able to identify that as the date of delivery to the university?---No. I knew it was end of month. It was, it was – I'm able to be sure of that date, sir, because (a) I delivered the document, (b) it was a hectic two weeks from when the document was requested, and um, as I stated ah, I – apparently I could have emailed it but Mr Roberts wanted me to deliver it in person. I know that was the date.

And presumably your personal attendance in delivering the contract was part of this ruse of providing some legitimacy to the existence of a genuine contractual arrangement. Is that so?--- It would appear so, sir.

Now, when you went to the university you sought out and met Ms Whiting?---Correct.

And you handed her the contract?---Correct.

10 And can I suggest to you that your recollection is wrong in terms of the date, that it in fact occurred on 7 July, 2013?---Oh, I thought it was Friday, 31 May. My apology.

Well, I should draw to your attention in fairness that the university's record indicates that the date of delivery to Ms Whiting was on 7 July, 2013. Having drawn that to your attention does that cause you to reconsider your evidence about the date of delivery?---I, I thought it was um, May, 31, sir.

Well, is there anything you can – let me just - - -?---Yes.

20

- - - pause there for a moment because Counsel Assisting is looking at me. Mr Killalea, could you look at a document which is in exhibit M1, volume 2, page 270 and you'll see that the document refers to a university employee and is described as a witness statement. Do you see that?---Yes, sir.

And you'll see the next heading, the detail of which I'll come back to, but if you just turn to the next page you'll see that Ms Bowden on 11 November, 2013 has signed a statement in respect of which the subject of the delivery of the service agreement is referred to in the last paragraph. Do you see that?---Yes, sir.

30

And you see the date to which she refers is the date to which I made reference a few moments ago?---Yes, sir, I do see.

So my question is this. Do you have any basis upon which to contest the proposition that in fact you attended the University and delivered the service agreement in July rather than in late May 2013?---Unfortunately, no, sir, I have no evidence other than my recollection that that was the date, a Friday.

40 And in light of this I gather you accept that your recollection may be faulty on that particular matter?---I would dispute the matter.

You, sorry?---I would dispute the matter.

You would dispute?---Yes.

Why?---I was categorically sure, and I have been for some time, that I took that in person to the University on Friday, 31 May.

Well, let me tell you - - -?---I'm not arguing, I'm, I'm just simply stating.

All right. Well, let me turn to another matter which I think is one of the final matters, Commissioner.

You told us this morning that 18 July, 2013 was a watershed moment insofar as your relationship with Mr Roberts is concerned?---Correct, sir.

10 That was the occasion upon which the relationship was terminated by you and according to your evidence you've never uttered a word to him since? ---Correct, sir.

You recall giving evidence yesterday morning in relation to your self-manager superannuation fund?---Correct, sir, yes.

And should we understand that your company, Management and Professional Services, is the corporate trustee of that superannuation fund? ---Mr Roberts was the trustee.

20

Was he the sole trustee?---Correct, sir. A - - -

Sorry?---Sorry, sir, it was a single partnership and as far as I understood, Mr Roberts was the sole trustee.

What connection if any existed between the corporate entity, Management and Professional Services Pty Limited, and your self-managed superannuation fund?---Ah, sorry for my ignorance, sir, but could you state that again?

30

Was there any connection between your company, Management and Professional Services Pty Limited, and your self-managed superannuation fund?---I'm quite out of my depth but I believe that my superannuation fund would have been ah, as I was the director, the single director of Management and Professional Services, sir, I daresay there's a connection there, but it was in my name. I don't recall the name Management and Professional Services being on the documentation but it wouldn't be the first time I'm wrong.

40 So did your company perform any trustee role in relation to that super fund or - - -?---No, Mr Roberts was the trustee.

I see. When was he appointed?---End of 2008 I believe.

Right. Well, at page 50 line 19 yesterday you told us it was probably in late 2008. Who was the trustee before him?---My brother.

And - - -?---It was a dual partnership, two director company.

Right. So your brother retired as the trustee and Mr Roberts was appointed in lieu as the sole trustee going forward?---Correct. So it went from a two director partnership when I changed the company name, no, that was – I went from a two director partnership to a single director partnership and in compliance with the rules if I was to be a single director I needed ah, to appoint a trustee.

10 Right. Was Mr Roberts a beneficiary of your self-managed superannuation fund?---No, no my – no, um, my superannuation fund was covered by my Will I believe.

You told us yesterday that you took steps to cause Mr Roberts to resign as a director, I'll withdraw that, I'm sorry, as the trustee of your superannuation fund in late 2013, do you remember that evidence?---No, I don't recall saying anything about having Mr Roberts withdraw from being the trustee. In 2013 discussing the matter, end of 2013, December, discussing the matter with my accountant, I went to the bank and had Mr Roberts removed from trustee.

20

Well, what's the bank got to do with Mr Roberts being a trustee of your self-managed superannuation fund?---Ah, true. He, he was – as trustee he had access to the bank account, that was my accountant's concern.

Well, Mr Killalea, can we try and get some clarity around this. Did he resign as trustee or did you have him removed as trustee?---Sir, I, I – it never occurred to me in this context. Um, I would assume I had instructed my accountant to have him removed. Is, is, is that the phrase you used?

30 Well, Mr Killalea, you've told us that you had no contact with Mr - - -?  
---I know.

- - - Roberts at all after 18 July, 2013, you told us yesterday that he ceased to hold the position as trustee in about December 2013, that's transcript page 50 line 25, I wish to know how it was achieved that his position as trustee came to an end at the end of 2013?---Ah, I have to admit, sir, I totally overlooked that concept, that point and I would assume that it was through – it's obviously been performed so I would have assumed it was through my accountant, at my accountant's instructions.

40

Well, did he voluntarily resign as the trustee or did you have him removed?  
---I previously said, sir, I believe I, my accountant had him removed.

Well - - -?---There was no communication between me and Mr Roberts, there may have been between him and my accountant actually but - - -

So can you explain to us why about four months or so passed by after this watershed moment in July before he ceased to be trustee of your super fund

in December?---Yes, sir. That was the first occasion I had to meet with my accountant and it was my accountant that made these matters clear to me. I overlooked the continuation of the fact that Mr Roberts was a trustee to my super account.

10 But once you terminated your relationship with Mr Roberts on 18 July surely it was obvious to you that this man was in control of the assets of your superannuation fund?---Yes, he was, he had the potential to be but it was only in discussion with my accountant that it appeared to be otherwise.

And you explained the four month delay in having him removed or facilitating his resignation as being slowness on the part of your accountant, is that what you tell us?---No, no, not in the slightest.

20 Well, why did it take four months to get rid of - - -?---Because it was four months before I visited my accountant, at my accountant's instructions he would have been terminated or removed ah, but at that point in time – the reason, the whole reason I was having the discussion with my accountant was not at all about my superannuation scheme, it was the fact that I needed to instigate a, I needed to understand the process for reimbursing your establishment, that was, that was the context of my discussion with my accountant.

I see. What, it didn't occur to you until you saw your accountant that you should remove this man - - -?---I've stated that, sir, yes.

- - - someone that you've terminated the relationship with back on 18 July who happened to be in control of the assets of your super fund?---Correct.

30 You came to see this Commission and confess your position on 19 November, 2013 didn't you?---I thought it was 18 November.

I won't quibble over a day, Mr Killalea?---Neither would I.

40 Can you please tell us what prompted your confession to this Commission on 18 or 19 November, 2013 having regard to, as you would have it, the termination of your relation with Mr Roberts about four months before?---In fact it was, as my – as a party pointed out to me, it was exactly four months. Yes, sir, um, I bid my farewells to Mr Roberts on 18 July um, not at all comfortable with the way the whole affair had gone, and I'm not referring to the legal side of it as your concern would be, I'm referring to the termination of a 13-year-old friendship. It took me a considerable time to come to grasp with all that had passed and what it meant in relation to that friendship. As again, not from a legal aspect, sir. I'm just talking about the friendship. I buried myself in a university course and set a timeline that by the completion of that semester I would have made a decision as to whether – which party I was going to take the matter to, be it your – being ICAC, the police or the university. I sat my final exam on Monday, 11 November. It



itself was a learning experience after 30 years of not doing so. I discovered that with diabetes I had no control over my stress level and at that point in time I decided this whole nonsense was coming to a head and that I would go to ICAC. It was the following Monday I went to ICAC.

Mr Killalea, can I put an alternative perspective on things because I'm going to suggest to you that that explanation is false. Do you follow?---You may.

10 You knew, didn't you, that Mr Roberts was to become a subject of a misconduct investigation to be carried out by Macquarie University shortly after July of 2013 didn't you?---No, sir.

You knew that by early September, 2013 Mr Roberts had been suspended with pay pending the outcome of that investigation?---I know that you will not believe me but the answer, sir, is without having communication with Mr Roberts or anybody I had not the slightest idea. I learnt this yesterday morning in the opening.

20 Well, the question before you - - -?---The answer is no.

The question before you really is whether or not you're being truthful when you tell the Commission you had no communication with Mr Roberts. Do you follow?---The answer to that, sir, is I have made it very clear, since 18 July I had no communications with Mr Roberts.

30 And I'm suggesting to you that you well understood that he was involved in a misconduct investigation being conducted by the university and that the committee conducting that investigation was to convene on 25 November, 2013?---Not being privy to this information, sir, I have to state categorically I didn't have a clue.

And if you accept the time of that for the purpose of my question - - -?---I see your point.

40 - - - acknowledging your answer to it, it seems that your attendance at the Commission to confess your position occurred about a week before the misconduct investigation committee of the university convened to deal with the investigation of allegations being made against Mr Roberts?---If you say so, sir.

Well, you see the coincidence don't you?---You're telling me, yes.

What I want to suggest to you is that what motivated you to disclose or make disclosures to the Commission on about 18 or 19 November was the fact that you knew that all would come out through the university's own internal procedures?---No, sir. In fact, I thought the question would be why I hadn't gone to the Commission previously.

You knew didn't you that Mr Roberts' employment at the University was terminated after the conclusion of that investigation on 13 December, 2013?---I learnt yesterday.

10 And I want to suggest to you that it was that fact that caused you to retain Mr Stephen Jay, the accountant to which you were referring a little while ago?---Correct. Mr Jay was the, was the gentleman that my accountant recommended that I discuss ah, when I met my accountant end of December, my accountant recommended Mr Jay as being a party that could assist me to refund your institution.

But the reason why you saw your accountant and obtained the referral to Mr Jay – I'll come to him in a moment – was because you knew about the result of the investigation that the University had conducted which had led to Mr Roberts being terminated on 13 December?---Sir, I would definitely assume that there would be some form of investigation but - - -

Well - - -?--- - - - I wasn't aware of it.

20 Right. And I want to suggest to you that you had knowledge of those matters and that you appreciated that it was only a matter of time before the University would be coming after you for the return of its money?---I had definitely ah, in my opinion, definitely that I was not going to go through the rest of my life looking over my shoulder for when such an occasion did occur.

30 But that was the reason why you sought the assistance of Mr Jay, wasn't it? ---The assistance requested from Mr Jay, sir, was to instigate contact with your organisation to refund your outstanding moneys.

But you had some quite close discussion with Mr Jay to try and work out how this amount of money could be returned to Macquarie University without your participation in a fraud being disclosed. Correct?---I don't think I'd have a conversation like that with an accountant. Um, it would be obvious that a fraud had occurred, the whole point was to try and – my intent was to rectify in my mind, not from a legal perspective, but in my mind that I had made amends at my first availability to your institution.

40 So is your evidence to this Commission, Mr Killalea, that you would have had no difficulty whatsoever in late 2013 or early 2014 in having Mr Jay convey to Macquarie University that it had paid out money to your organisation under a fraudulent invoice?---The exact wording of that communication I believe, sir, was "works that didn't proceed."

Did you speak with Mr Jay about how he would communicate and the terms upon which he would communicate with the University in an endeavour to provide the money back?---Yes. I asked Mr Jay to draft a letter to your

institution and to provide that letter to me before he forwarded it to your institution and to supply to your institution as a registered letter.

And did he do so?---We had a disagreement, either he didn't forward it to me to review prior to sending it and I know he didn't send it as a registered letter. I was quite annoyed.

Why were you annoyed?---I had no confidence that the letter was actually received.

10

I see. But what about the content of the communication, did you review a draft of what was to be sent to Macquarie University about this matter?  
---It was my intent to ah, I, I don't think I did. In fact I wanted to but I think Mr Jay forwarded me the final document that he'd sent. I'm not 100 per cent certain, sir.

But once he'd done that presumably the only issue for you was whether or not it had been sent by registered post?---Yes, I was quite concerned, I was – and Mr Jay and I departed our ways over that issue.

20

Right. Well, just so we're clear, you were happy with the content of his written communication with the University?---When, when I saw it, yes.

You were just concerned about whether or not the University would actually receive it. Is that so?---Correct.

30

All right. Just have a look at Exhibit M1, volume 1 page 177. You'll see this is a copy of Mr Jay's letter to the University. So, Mr Killalea, this is the letter that was sent on behalf of your company by Mr Jay, the content of which you were happy with when you received a copy, is that so?---I actually thought it stated for the provisioning of services.

Well - - -?---Not supplied.

In any event - - -?---Or work that didn't eventuate but yes, this is Mr Jay's letterhead.

40

Well, just look at the opening paragraph. It was completely untrue wasn't it to say to the University in February 2014 that your company was holding a credit in favour of Macquarie University in the sum there referred to?  
---Sorry, sir, what do you mean by that?

Well, can you answer my question? It was completely false to say that you were, your company was holding a credit in favour of the University in the sum of \$32,450?---I, I assume this is just legal talk, I – my intent was to refund the \$32,450, sir.

But this letter was intended by you to indicate to the University that there had been some accounting error don't you think?

10 THE COMMISSIONER: Or that in the company accounts there was an outstanding amount of \$32,450 which in effect had been marked to the credit of the University and not, and not actually utilised by the company as its own funds, I think that's the impression that it gives, doesn't it, Mr Killalea?---I, I ah – because of the legal aspect of it, Commissioner, I'm not too sure how it works but the – I can only comment on the intent and the intent was to advise the University that I had funds for work that did not proceed and wished to try to find out how to return it.

MR ALEXIS: But Mr Killalea, whether that's so or not your intention wish you wish us to focus on was to use Mr Jay to let the University think that this was an accounting error and was not a fraud that you were participating in which had caused the University to pay good money to your business for no reason?---Ah - - -

20 Is that so?---I understand now what, what your point is, sir. No, my whole intent was not that clever or deviant, my intent was to notify your institution that I had funds that were received for work that did not proceed.

Well, why doesn't the letter say that?---Actually, I just stated earlier I thought the letter did actually say for work that did not proceed. I, I'm sure that there was a communication between Mr Jay and your organisation.

30 But if you look at the second paragraph and in particular the last sentence of the letter it refers in terms to the provision of product licensing, maintenance and support and the absence of any further instructions, do you see that?

THE COMMISSIONER: I think Mr Alexis in fairness it says "invoice was in regards to the provision of".

MR ALEXIS: Yes, thank you, Commissioner. I accept that.

40 THE WITNESS: Sir, I have to admit that this is not what I, I have in my records, this is obviously an earlier communication between Mr Jay and the University, he would have been following my instructions to make contact um, my email inbox as you state would have any form of communication between Mr Jay and I as to whether this document was forwarded to me for proofing prior to submission. I do have a document that does have the mentioning of the works that did not proceed or something to that extent.

MR ALEXIS: Mr Killalea, the true position is that you with Mr Jay's assistance were trying to repay the university the moneys that had been received without disclosing that you had participated in a fraud. Is that so or not?---No, that was not my intent. My intent was to refund your organisation, sir, for funds that had been received that I had invoiced for and

had not proceeded with the work. That was the intent. That was – up to this very discussion that’s what – I thought I’d done the right thing.

Can you explain to us why the letter said on your instructions, the content of which you were happy with after it was sent, doesn’t say that?---(No Audible Reply)

10 THE COMMISSIONER: Well, Mr Alexis, I’m not sure that the last sentence of the second paragraph isn’t capable of being construed in that way although somewhat imprecisely. But I suppose the point is, Mr Killalea, and this is to be blunt, the letter doesn’t say I was unfortunately involved in an attempted fraud on your university and I’m refunding the money that came to me in the course of that activity. It doesn’t say that does it?---No, Commissioner.

Right?---No, it doesn’t.

20 MR ALEXIS: I’ll leave it there. Thank you, Commissioner. Thank you, Mr Killalea. Thank you, Commissioner.

THE COMMISSIONER: Mr Cheshire, do you have any questions of Mr Killalea?

MR CHESHIRE: No, thank you, Commissioner.

THE COMMISSIONER: No. Mr Leighton-Daly, do you know how long you’ll be?

30 MR LEIGHTON-DALY: Commissioner, I anticipate half an hour.

THE COMMISSIONER: I’m just wondering, Mr Killalea, do you want a break or are you happy to keep going?---Commissioner, if you people are prepared to put in an extra thirty minutes I would be greatly relieved to get this over with.

Get it over and done with. All right. Go ahead, Mr Leighton-Daly.

40 MR LEIGHTON-DALY: Thank you, Commissioner. Sir, Leighton-Daly is my name. I act for Mr Brett Roberts. You understand?---I understand, sir.

Sir, if I might just first ask you about two Westpac Bank accounts which have both been touched upon in the course of this hearing. Firstly, Westpac Bank account BSB number [REDACTED] account number [REDACTED] Do you remember that bank account?---Correct.

All right. Now, that bank account is actually in your name. Is that right? ---Correct.

And it's trading as Management and Professional Services Pty Limited?  
---Correct.

Notwithstanding there's a separate corporate entity, an historical search is contained within the brief, the account ending in [REDACTED] is actually in your personal name?---Correct. Trading - - -

You're the - - -?---Trading as.

10 Yes. And you're the signatory to that account?---Correct.

The sole signatory?---As the single director and the only person involved, correct.

When you say the single director, it's not a company account is it, it's your personal account trading as Management and Professional Services?---I would have thought that was one and the same but your point is correct.

20 All right. Well, whether or not they're one and the same, you're the sole signatory. Is that so?---Correct.

Now, the other Westpac account is the position the same, you're the sole signatory to that account also?---What was the other Westpac account?

The other Westpac account which you gave evidence in relation to yesterday?---Sorry.

The other Westpac personal account?---Oh, sorry. That's my home - - -

30 Yes?--- - - - equity account. Correct.

Yes, yes. Now, that's your personal account?---Correct.

And it's in - and - I'm sorry, I'll withdraw that. You're the sole signatory?---Correct.

40 Thank you. I'll come back to the business structure in a moment if I may but, sir, do you suffer from any, and I don't mean any disrespect, but do you suffer from any medical conditions which may affect your memory?---Um, to be serious ah, sometimes diabetes definitely can affect my stamina, my memory. Correct, as such.

Sir, yesterday and again this morning in response to question from the learned Counsel Assisting and my learned friend, Mr Alexis, you gave evidence that you participated in a number of frauds. That's right, isn't it?  
---Correct.

Now, they relate to broadly speaking a, at least Macquarie services agreement. That's right, isn't it?---Correct.

A number of fabricated false emails. Is that right?---Correct.

And an iPath invoice. Is that right?---Correct.

You were, you were far more complicit than that though weren't you in relation to the false invoicing?---Correct.

10

And having just agreed with the proposition that you were far more complicit, can you tell the Commission to what extent you were involved other than in relation to the service agreement, the emails and the iPath invoice?---In, in relation to?

I'll take you to some matters specifically, but if I understand the effect of the evidence you just gave it is that you conceded that you were more complicit than in relation to those three discreet matters.

20 MR McGRATH: Well, I'm - - -

THE WITNESS: Sorry, I'm - - -

MR McGRATH: I object, Commissioner.

THE WITNESS: I'm confused there with - - -

MR McGRATH: Just hold on. I object to a general question saying that you're far more complicit.

30

THE COMMISSIONER: Mmm, mmm.

MR McGRATH: I think it needs to come down to absolutely explicit.

THE COMMISSIONER: In what way, yes, yes.

MR McGRATH: To be, for fairness to the witness.

40 THE COMMISSIONER: You might have to break it up, Mr Leighton-Daly, and then just put it to him in a serial fashion.

MR LEIGHTON-DALY: Yes, Your Honour, sorry, Commissioner.

Sir, if I might go back to the deposit in your bank account in the amount of \$27,500. Do you remember that?---Correct.

On 21 December, 2006. Do you remember that?---Correct.

Commissioner, might I just call up page 46 of the brief.

THE COMMISSIONER: Yes.

MR LEIGHTON-DALY: So just in fairness to you I've asked the Commissioner to call up this deposit in the amount of \$27,500. Now, you gave evidence yesterday, the effect of which I understood was that you were effectively duped in relation to three invoices. Is that so?---Which, which three invoices, sir?

10

Three invoices dated 22 September, 2006 - - -?---Ah, you're referring to the three invoices adding up to this figure from the University of Newcastle?

Yes, that's exactly what I'm referring to?---I was totally unaware of them, sir.

Totally unaware of them. All right. And this deposit in your bank account you say took you by surprise?---Considerably.

20

But you didn't do anything in relation to the receipt of the funds, indeed they were dissipated, weren't they?---Sorry, sir, some of these words you're using are a little bit beyond me. Dissipated, you're referring to - - -

I'm sorry. The funds, the - I'll withdraw that. The \$27,750 that was deposited in your Westpac account on 21 December, 2007 was utilised by you for personal and/or business expenses. Is that right?---Business expenses, correct.

30

Right?---Bearing in mind that the way my structure was that my salary was what was left after my costs.

Perhaps I can come back to your structure in a moment, sir. Commissioner, might I just call up pages 41 through 43 of the brief?

THE COMMISSIONER: Yes.

40

MR LEIGHTON-DALY: Sir, if we could just start with 41, being an invoice to University of Newcastle in the amount of \$8,325 plus GST, and if I might just ask the Commission to scroll down on that document to the bank details. Now, there's no issue that that's the account that the money was paid into, is it?---Correct, that's my bank account.

Now, if I was to the effect of your evidence yesterday was that you were effectively duped in relation to these invoices and you knew nothing about them. Is that right?---If I used the word duped it was a little to colloquial but um, I was unaware of these invoices, sir, and - - -

Duped into \$27,500?---I miss some of your concepts.



THE COMMISSIONER: Mr Leighton-Daly, I think the problem is duped. In what way do you say he was duped? I mean, at the moment all we know is that he says that there's, that he had no knowledge of the amount that was deposited into his account so either duped in relation to the amount or some other transaction.

MR LEIGHTON-DALY: Yes, your Honour, perhaps I'll withdraw that question and rephrase it as follows. Mr Killalea, one inference in relation to these three invoices at page 41, 42 and 43 of the brief is that you prepared them when you sent them, that's right isn't it?---That I prepared them and sent them?

Yes?---I categorically deny that and I've stated previously that to be the case.

And it's fortuitous is it that it lists the account to which you are the sole signatory?---Somewhat adverse to my cause.

20 Sir, if I just might go back to your business structure now. Sorry, I don't understand the structure insofar as it incorporates the self-managed superannuation fund. Is it the case that the self-managed superannuation fund relates to Management and Professional Services Pty Limited or is it a separate entity?---I, I have to admit, sir, that this has come up previously today and I am not in a situation, I am not ah, clear on this matter myself. My, I do recall my superannuation fund is in my name. As to what aspect my company Management and Professional Services play or has with that superannuation fund I, I can't recall. I do know that once I went to a single director company I was advised to appoint a trustee to that superannuation fund. I am rather ignorant in the details of the law on how this is established but I was quite comfortable that it was in compliance.

Perhaps I can this. Management and Professional Services Pty Limited was not the trustee of your self-managed super fund was it?---Ah, as I said earlier I – not having looked at the documentation for many years ah, I don't, I can't – under the circumstances I'm not comfortable answering yes, no or otherwise.

40 Either way Management and Professional Services' bank account was not accessible by Mr Brett Roberts was it?---The super fund, no.

No, no, sorry, Management and Professional Services' bank account which was in your name trading as Management and Professional Services?  
---Account [REDACTED]

Yes?---Mr Roberts was not a signature on it.

That's right. You had control of all deposits into that account, didn't you?

---As a deposit would be transmitted electronically, correct.

THE COMMISSIONER: Sorry, I just need to understand that. Are you suggesting that anybody depositing into that account would have to do so with Mr Killalea's knowledge or - - -

MR LEIGHTON-DALY: No, I'm sorry, Commissioner.

THE COMMISSIONER: No.

10

MR LEIGHTON-DALY: No. I was - - -

THE COMMISSIONER: I mean anyone can make an electronic funds transfer into the account if they have the relevant BSB and account number.

MR LEIGHTON-DALY: That's, that's so, Commissioner, yes, no, I was suggesting to Mr Killalea that he had control of monies once deposited - - -

THE COMMISSIONER: Oh, right, thank you.

20

MR LEIGHTON-DALY: - - - as sole signatory.

THE COMMISSIONER: Right.

THE WITNESS: That's what I thought you said, yes, correct.

MR LEIGHTON-DALY: Now Management and Professional Services Pty Limited, the entity, had you as its sole director and secretary, is that right?

30

---Ah, director, yes, secretary if, if, if that's what occurred when I went to a single director, in that case yes, whatever is required by the law was instigated, if that's the case. Again I have no expertise in this matter, I consult other parties and follow their advice.

Mr Roberts was not a director of Management and Professional Services, was he?---No.

He was not on the ASIC register, was he?---Active register?

40

Sorry, ASIC, Australian Securities and Investments Commission. He wasn't on the - - -?---No.

- - - ASIC register?---Company names register, if that's what you're referring to?

Yes?---No.

And he wasn't acting as a director to your knowledge in any shadow or de facto sense either, was he?---I shouldn't have thought so, not at all.

To the extent that Mr Roberts did any work for Management and Professional Services, in what capacity would you say it was?---What was?

Any work Mr Roberts did for Management and Professional Services?---As a contractor, I engaged him when he was at Unisys Corporation ah, I think that was specifically technical subject matter expert or documentation.

10 So when it came to the day-to-day control and management of Management and Professional Services Pty Limited, that was your role. Is that right?  
---As single director I would assume so, yes.

Commissioner, might I just call up page 14 of the brief, please.

THE COMMISSIONER: Yes.

MR LEIGHTON-DALY: Sir, you've been asked some questions and given evidence in relation to a number of statements that were prepared for this Commission. Do you remember that?---Correct.  
20

And one of them was in draft form. Do you remember that?---Correct.

Two of them were signed by you, is that right?---Submitted, correct.

The second of which is dated, signed and dated, I'm sorry, Friday, 30 January, 2015?---Correct.

30 Sir, page 14 of the brief which has been called up in front of you is the first page of that second signed statement. Do you understand that?---Correct.

If I just might take you to the paragraph which is the third one from the bottom of the first page, commencing, "On 22 December, 2006," do you see that?---Correct.

Now, there's a suggestion there that \$7,000 was paid to Mr Roberts in cash?  
---Correct.

Is that the effect of what you're saying in that paragraph?---Correct.

40 That never occurred, did it?---Sorry?

That, that never occurred, did it?---Well, I think there would be a few parties in this room that would dispute that. The answer is, it did occur.

Mr Roberts was only ever paid via electronic funds transfer, wasn't he?  
---When?

Ever?---No.

Sir, you gave some evidence yesterday to the effect that Mr Roberts had access to your computer password. Do you remember that?---Correct.

I'm just going to suggest to you he never had access to your computer password?---Over the course of residing at my property, sir, for some time, I suggest probably the better part of four to five years intermittently, everything was discussed at some point in time, be it over a meal at a hotel or just general conversation. Topics of conversation ranged over all matters.  
10 Mr Roberts didn't have a computer in my presence, he had a toy iPad which has no Excel or Word capability, it's just an access to email and Internet.  
His - - -

Sir, I suggest to you Mr Roberts only ever had your Wi-Fi password. Do you agree with that or not?---He would have had my Wi-Fi password, absolutely.

He had your Wi-Fi password, he never had your computer password?---  
20 Unfortunately I was foolish enough to have one computer password all that time and very cleverly unfortunately I had everything in a folder on my computer titled "passwords".

THE COMMISSIONER: Do you mean the password for your Wi-Fi account and your computer were one and the same?---No. No, Commissioner. I foolishly had all my passwords to everything in a folder on my computer and the folder's name was passwords.

But that was not protected, the - - -?---Only log on password I had on my  
30 computer was - - -

All right. So Mr Roberts could log on to the computer and access that folder. Is that what you're saying?---Correct.

All right?---In fact, anybody could that knew the password.

MR LEIGHTON-DALY: Anyone could log on to the folder or log in to the folder?---Anyone could access my computer, sir, if they had the password.

40 If they had the password?---It's a Windows operating system.

So if he had the password he could access the computer, if he didn't he couldn't have. Is that what you're saying?---Ah, correct. On that point, I think you're referring to was the folder itself password protected or the files in it. Just to clarify that. The folder was not password protected nor the files in it. I, I stated that because some files can be password protected.

But the computer itself was password protected?---Correct. The same one unfortunately for several years.

Sir, I've asked you some questions about \$27,500 which was deposited into your bank account. There was another amount which has been subject of questioning, \$32,450. Do you know the amount of money I'm referring to? ---Deposited into my account specifically?

Yes. Yes, in your Westpac account ending [REDACTED] the Macquarie University invoice?---Macquarie University funds in 2007.

10 Now, the difference between the 32,450 and the \$27, 500 deposits is that the 32,450 was repaid. That's right isn't it?---Correct.

And the 27,500 was never repaid?---Correct.

It was used by you?---It wasn't ah – correct. You, you can absolutely make that assumption, yes. It was also not repaid because I wasn't aware of it.

Other than when you spent it?---Sorry?

20 Other than when you spent it?---Other than when I attended this Commission prior to Christmas, 17 December.

Sir, from a taxation perspective, how do account from receipts deposited into your Westpac account ending [REDACTED] ---Sorry?

From a taxation perspective - - -?---Yes.

- - - how do you account for receipts deposited into your Westpac account ending [REDACTED] ---How do I account for my deposits?

30 Yes?---Um, ah, probably not as um, dedicated as I should have but when I look at, as I have done in – since the December ah, investigation ah, I cross reference my payments into my account with my taxation spreadsheet and about the only thing that has conformity is that my deposits for ah, consultancy services less those funds that were paid for business expenses incurred in performing those consultancy services actually adds up to \$2,000 less than I notified the Taxation Department that I earned for that financial year. I am - - -

40 Sir, sir, how did you receipt for payments out, for example electronic funds transfers to Mr Roberts, how were they accounted for?---Again, sir, we have an issue here with understanding. There were, the two, three, four electronic funds transfers to Mr Roberts and I do apologise, I was unfairly critical a moment ago, the electronic funds transfers to Mr Roberts were made in relation to the receipt of the University of Newcastle. No, my apology, Macquarie University invoice, I'm getting a little bit confused.

Commissioner, might I just call up page 15 of the brief?

THE COMMISSIONER: Yes.

MR LEIGHTON-DALY: Sir, I'm just calling up page 15 which is the second page of your signed statement dated 30 January, 2015. Third paragraph from the bottom there are some indented entries there. On the right are two entries, 28 December, 2012 in the amount of \$5,000 to RCA Pty Ltd, you see those?---Yes, sir.

10 How did you account for those for tax purposes?---Ah, these were – this entire sum of \$32,450 received, sir, from invoice MQ001 was disclosed as income for that particular financial year in my tax return as would be justifiably so.

So, so, so that \$10,000 is included in your assessable income, is that what you're saying?---That – okay. To – correct, the, to answer your question, sir, I unfortunately only gave the answer as to my accountability of receiving the funds. For spending the funds my ah, policy throughout all my years of operation since, since 1992, sir, is my salary constituted what was left over from the business operational expenses.

20 Sir, if I can just stop you there and go back a step?---Yes.

Back a step to Management and Professional Services Pty Limited which presumably has been lodging income tax return has it?---Correct, correct.

And has it been recording, lodging BAS statements?---Correct.

30 Quarterly or annually?---Ah, I think there were, BAS um, yes, BAS is quarterly, GST is annually.

All right. Well, let's focus on the quarterly statements - - -?---Yes.

- - - for Management and Professional Services Pty Limited?---Yes.

How was that company accounting for those entries on page 15 of the document which has been called up in front of you?---Ah, it, it would have been viewed as an expense of mine and therefore - - -

40 As expense?---As an income.

Yeah. Sir, correct me if I'm wrong but yesterday I recall the effect of your evidence being that you didn't receive any invoices from Robcon Pty Limited or Mr Brett Roberts, is that right?---Correct.

Now again correct me if I'm wrong but in those circumstances you are not entitled to an input tax credit, is that right?---Ah, um, input tax credit. Okay.

You should have withheld 10 per cent of the GST, is that right?---Correct. Yes, and it would have been paid in due course to the Taxation Department.

So how is that \$5,000 there, is that pre-GST, post-GST, what does that represent?---\$5,000. \$5,000 represents the cash fund that I transferred electronically to Mr Roberts as we've established. The GST would have been paid on the income earned on the payment of the services rendered.

10 Sir, when you lodge your BAS you account for your GST don't you?  
---No.

No?---GST is a GST form at the end of the financial year.

All right. So you're reporting for GST annually, not quarterly?---Sorry?

You're reporting your GST to the Australian Tax Office annually as opposed to quarterly?---Um, I hope I'm not doing the wrong thing here, but yes, I believe that was my intent, GST annually, BAS quarterly.  
20

And income annually?---Correct. Both corporate and individual.

Sir, who was your accountant in December 2012?---Ah, a gentleman by the name of John Giacca.

Sorry?---Yes.

Sorry, could you just spell his surname? I missed that?---A gentleman by the name of John Giacca.  
30

Spell his surname for me, please?---I'm not good.

It's all right?---It'll be in the files.

But presumably he'll have records of how these transactions were all accounted for, will he?---As I do in my own copy of my taxation documentation as received from the Taxation Department.

40 Sir, my learned friend Mr Alexis asked you some questions in relation to this already, so I'll be brief on this last point. You became aware that Mr Roberts was subject to disciplinary action with Macquarie University, didn't you?---Correct.

And- -?---You would like to ask when? Yesterday.

All right. And I'm suggesting to you that you became aware that Mr Roberts was subject to a Macquarie University disciplinary investigation before you reported the matter to this Commission?---I would assume that

there would be some matters discussed internally at Macquarie University, however I was unaware of committees, chairs, decisions, reports or any such matters.

10 Your attendance at the Commission and the complaint was just an attempt to save your own neck, wasn't it?---Of all the things I've done wrong leading up to today's occurrences, the two things I thought that I did right, one of which was reporting this matter to the Commission and the other refunding the University of its \$32,000 seems to be a dubious act. I thought reporting it to the Commission Against Corruption or the police or the University was the thing to do.

Commissioner, might I just call up page 1 of the brief, please.

THE COMMISSIONER: Yes.

MR LEIGHTON-DALY: Sir, do you see that document in front of you?  
---Correct.

20 That as I understand it is a summary of your complaint to this Commission. Do you understand that?---I believe so. I haven't seen it before but - - -

You haven't seen it. Could you just read it to yourself, please?---It's in essence a – the beginning of my statement.

All right. That's the information you gave to the Independent Commission Against Corruption when you initially complained, is it?---It would be so, correct.

30 And you're not in that complaint purging any of the frauds you've committed, have you?---Sorry?

You're not in that document purging any of the frauds you say you've now committed, are you?---Purging?

Yes?---What do you mean by purging?

40 Well, you're not disclosing any of the three frauds which you've given evidence of over the last two days in that complaint, are you?---I think this Commission may agree there's more than three. Can you please state which three you're referring to?

All right. Well, I said there are at least three. The first is the Macquarie services agreement?---Correct.

The second are the false emails, and the third is the iPath invoice?---Correct. I would have thought there were more like eight.



Well, there might be a lot more than eight, but none of them are in this document which has been called up, page 1 of the brief, are they?---Ah, I haven't had a chance to sit down and read it thoroughly, I do prefer to read slowly, as I write, however when I went to the Commission on that day I went to the Commission primarily with copies of the electronic funds transfers that had occurred and my concern of what I'd been a party to. This is the duty officer or, or consulting agent's summary of that discussion. I haven't read it before, I can assume that it's a correct and clear summary or capulation (as said) of what I'd stated over the course of those two hours, or  
10 subsequent material that I supplied upon her request.

Thank you, Commissioner.

THE COMMISSIONER: Anything arising, Mr McGrath?

MR McGRATH: No, Commissioner.

THE COMMISSIONER: All right. Mr Killalea, that completes your evidence at the public inquiry. You may step down and you're free to go if  
20 you wish?---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[12.11pm]**

THE COMMISSIONER: Who is the next witness, Mr McGrath?

MR McGRATH: A Mr Zainal Gunawan.

30 THE COMMISSIONER: Is he present? Yes, Mr Gunawan, could you just come forward please. Mr Gunawan, could you just take a seat there if you don't mind. Can I ask you, Mr Gunawan, you don't have anyone here representing you today?

MR GUNAWAN: No.

THE COMMISSIONER: No. That's all right. There are just a couple of things that I need to explain to you. Please tell me if there is anything that I say that you don't understand or that you want me to clarify. You are  
40 obliged to answer the questions that you're asked truthfully. You must answer those questions truthfully even though your answers might implicate you in the commission of an offence or it might implicate you in some aspect of future civil proceedings and because you have to answer those questions under those conditions, you would otherwise be able to say to each and every question that's asked I object on the basis that the answer might incriminate you and in that way, by taking that objection, the answers couldn't be used against you in any future proceedings. That's a rather inconvenient and laborious procedure so I can make an order under the Act

which effectively operates as a blanket objection to all of your evidence and therefore it operates as a blanket protection so that the answers you give to the questions can't be used against you in any other proceedings. Do you understand that?

MR GUNAWAN: Yes, Your Honour.

10 THE COMMISSIONER: The only exception however, it's important that you appreciate this, the only exception to that is that if you give false or misleading evidence to the Commission, the answers can be used to prosecute you for an offence under the ICAC Act? Do you understand that?

MR GUNAWAN: Yes.

THE COMMISSIONER: Right. So do you want to take the protection of a section 38 order or are you content to give your evidence without the protection of that order?

20 MR GUNAWAN: I can give without any protection order.

THE COMMISSIONER: All right. And you appreciate that?

MR GUNAWAN: Yes.

THE COMMISSIONER: Right. Thank you. Do you wish to be sworn or affirmed? So the difference is, if you are sworn you take an oath on the Bible to tell the truth, if you're affirmed you promise to tell the truth, but they both, they both have the same effect. What would you prefer to do?

30 MR GUNAWAN: I haven't done this before so I - - -

THE COMMISSIONER: No. That's all right.

MR GUNAWAN: Whatever um, you know, you think is the best way to finish this.

THE COMMISSIONER: All right. Well, perhaps if you take an affirmation.

THE COMMISSIONER: Just take a seat. Yes, Mr McGrath.

MR McGRATH: Could you please state your full name?---Zainal Arifan Gunawan.

10 And just to spell that, the Zainal is Z-a-i-n-a-l?---Yeah, correct.

And the Arifan is A-r-i-f-a-n?---Correct.

And the Gunawan is G-u-n-a-w-a-n?---Correct.

What's your occupation?---Ah, a café owner.

Where is the café that you own?---In Balmain.

20 Whereabouts in Balmain is it?---260 Darling Street.

And does it have a name?---Kafeine, K-a-f-e-i-n-e.

And how long have you had that café?---More than five years.

And during the course of that time have you ever acted as a witness to any legal documents so far as you're aware?---I can't remember any.

30 I'm going to have a document called up on the computer screen in front of you so if you just watch that computer screen a document will come up. It's the document at page 256 and I'll just ask you have you ever seen that document before?---I haven't seen this before.

And now if we'll turn to page 263 do you see the name Zainal Gunawan occurs twice on that page, do you see that?---Yeah, I see that.

You'll see a signature that's above that, it says "Signature of witness" directly above. Is that your signature?---No, it's not.

40 And you have been present today in the Commission when a gentleman known as Mr Christopher Killalea has been giving evidence in the same seat as you've been sitting?---Mmm.

Have you ever seen that gentleman before?---I've seen him before in my café as a customer. I just realised when I arrived today that this gentleman, I know him as Chris when he used to come like a few years ago but I didn't know that he is Christopher Killalea.

I see. Have you ever been asked by Mr Killalea to sign your name on any documents?---No.

There's nothing further, Commissioner.

THE COMMISSIONER: Yes. Does anyone have any other questions of Mr Gunawan?

MR CHESHIRE: No.

10

UNIDENTIFIED SPEAKER: No.

THE COMMISSIONER: Thank you, Mr Gunawan. That's all that was involved?---Yeah.

I'm grateful to you for coming in at short notice. You may step down and you're excused. You can go?---Thank you.

20 **THE WITNESS EXCUSED**

**[12.17pm]**

MR McGRATH: The next person I wish to have called is Mr RH  
RH

THE COMMISSIONER: Mr RH do you have anyone appearing for you today?

MR RH No, I don't.

30

THE COMMISSIONER: No. Were you here when I gave an explanation to Mr Gunawan about the effect of a section 38 order?

MR RH I wasn't in the room but I did hear from outside.

40

THE COMMISSIONER: Well, for more abundant caution I'll explain it to you because it's important that you appreciate your obligation to answer questions truthfully. You have to answer the questions truthfully even if the answers might incriminate you in some criminal offence or in some civil proceedings at some future time. No one's suggesting that that's necessarily the case but I'm telling you that that's the effect as it were of the compulsion to give truthful evidence. You would be able to take the protection of the section 38 order which operates in this way, it means that the answers to the questions that you're asked can't be used against you in future proceedings and the only exception to that is that if it should be found that you've given false or misleading evidence to the Commission your answers could nonetheless be used against you if we were to prosecute you under an offence of lying to the Commission. Do you understand that?

MR RH Yes, ma'am.

THE COMMISSIONER: Do you want to take the protection of a section 38 order?

MR RH No, ma'am.

THE COMMISSIONER: You don't need that?

10 MR RH No.

THE COMMISSIONER: And you're content to proceed in that way. Do you wish to be sworn or affirmed, Mr RH

MR RH Affirmed, please.

THE COMMISSIONER: Thank you, just take a seat.

Yes, Mr McGrath.

MR McGRATH: Could you please state your full name?--- RH .

10 And the RH I understand that there have been two possible spellings. Is the formal spelling RH ---That's the correct spelling, yes.

That's the correct spelling. And sometimes it's spelt in another form. What's that other form?--- RH RH

And you respond to either of the spellings in documentation. Is that correct?---Yeah, just at home they refer to me as RH just a language difference.

20 I see?---And at work people used to refer to me as RH RH but recently I thought it was more confusing than it did any good so I reverted back to the name as per my identification when I arrived in this country.

I see?---That's RH

When did you arrive in Australia?---Ah, 1988.

And where did you come from?---Afghanistan.

30 How old were you when you came from Afghanistan?---Ah, 10 years of age.

Now, you're 37 years old now?---Correct, sir.

What's your occupation?---Ah, currently I'm a business owner, I operate my own business.

And what's that business called?---Ah, Global Wide Trade Pty Limited.

40 And you own that company yourself?---That's correct, sir.

And you run that company yourself as well?---Ah, I've got employees as well.

Yes, but you're the person who manages it - - ?---Correct, yes, the company is mine.

- - - alone. Is that correct?---Yeah.

And how long have you had that business?---Ah, since December 2008.

Now, what is the core business that Global Wide Trade does?---Sure. So I've got a IT background as I'm sure you're aware of um, just on the side I started importing some stuff from China, mainly bedding is where I started from, and ah, just started selling them on eBay and the business just grew from there even while I was working and it got to a time where I just left because the business was turning round very good money.

10

And is it only bedding that you are involved in the trading of?---No, bedding, homewares, in the past we've done um, various product um, but predominantly bedding.

And does it trade through a physical retail outlet or is it a business that operates on the Internet?---Ah, up until a couple of weeks ago we had an outlet but we just, you know, 98 per cent of all our transactions were online so we closed that outlet and I've since leased that premises, I own the premises.

20

Now, when you arrived in Australia at 10 years old you then attended school in Australia?---Correct.

And what's the highest level of school that you achieved?---Higher School Certificate um - - -

And after the Higher School Certificate did you then go on to study anything else by way of an academic qualification?---Yes, sir. Um, I did um, what they classify as my CCIE um, it's stages and it's relating to network engineering.

30

I see. What does the CCIE stand for?---Cisco Certified Internetworking Expert.

I see. Do you have any other professional qualifications?---I'm currently enrolled studying my MBA within Macquarie University.

I see. And when did you start that MBA?---Ah, two terms ago.

40 Now, your - - -?---This is my second term, sorry.

I see. After you left school, I'd just like you to give us a quick summary of your employment history, please?---Sure.

So when you left school you started work. Is that right?---Ah, it's such a long time ago, couldn't really remember. For a while after I left school I actually went to University of Newcastle, I was doing construction management, but I just wasn't into study back then and I decided to leave

and get various roles within ANZ as a teller ah, and then after that I got a job within American Express as administrative clerical kind of a role and at that point my brother was in IT and he recommended that perhaps that's something I should get into.

And at what – did you get into the IT industry?---Yes, sir. So after American Express I worked for Salmat IT Services ah, at St Leonards as a, in IT field.

10 When was that, when did you take the job in IT?---It must've been when I was like 18, 19 years old.

I see. And did you stay in the IT industry for a period of time?---Yes. For a long period of time, yes.

And what were the roles that you took across the time that you were in the IT industry?---Ah, I started out as an operator and then moved into various roles from system administration ah, to analyst roles to networking engineering roles to network architect roles - - -

20

And was that with - - -?--- - - - and finally into solution architect.

Was that with any particular company?---Predominantly within Unisys.

I see. When did you join Unisys?---Um, when I was about 20, 21, somewhere around that age.

And had you been at a company called Austrapay prior to that point?---Sorry, apologies. I for some reason think of Austrapay as Unisys.

30

I see?---But that was Austrapay.

There was a period - - -?---My apologies. Yeah.

A period time of time in which you were working for Austrapay. How long was that for?---Right up until Unisys bought them over.

I see. So a couple of years?---Yeah, a number of years.

40 Yes. And when Unisys – can you remember Unisys bought them?---I can remember but I couldn't tell you the date.

I see?---I'm not very good with dates.

I see. Now, when did you cease working with Unisys?---Um, probably about five years ago. Um, I was at that stage working for another division of Unisys called Unisys Payment Services Limited, UPSL, and we did a lot of work for banks and I was the lead architect across Asia Pacific working



with various financial institutions. After the GFC hit, predominantly UPSL came to an end.

I see. So you were made redundant were you?---That's correct.

10 And what did you do after you were made redundant at Unisys?---By this stage my business was doing really well um, but I still didn't want to be selling stuff online. I just – I felt like I needed to apply myself more so I went and worked for Telstra for a year ah, as an architect and I worked on the CBA project there but it was a contract role and I really didn't enjoy it and at that stage I decided to take my business seriously um, and just came on board full-time.

Now, during the course of your work in the IT industry, did you meet a gentleman called Brett Roberts?---Yes, absolutely.

20 When did you first meet him?---I first met him when I joined Austrapay ah, and I think – I kind of remember him – he must have joined at the same time or just thereafter. He – I was the operator and he was the operations manager and we used to actually sit right in front of each other.

I see. So you were working directly for him?---Ah, I can't remember if there was team leader in between. Perhaps ah, he was my team leader's manager.

I see. So he would be superior to your team leader. Is that correct?---That's correct, yes.

30 But you had, you had day-to-day contact with him because he was in physical proximity to you?---Absolutely.

Yes. And how long did you work with him effectively being your boss? ---For years.

Would it be about five years?---At least.

I see?---From what I can recall.

40 Now, you considered him to be a mentor to you didn't you?---Brett Roberts was perhaps the best manager I've ever had um, and probably the best manager I will ever have.

I see. And why do you reach that conclusion in relation to Mr Roberts, what are the reasons that you have for arriving at that conclusion?---He looked after me like a father would look after his son. Um, my father was never involved in my upbringing too much although he's a really nice gentleman um, just a different era. There's a massive age gap between me and my dad and as a 19-year-old kid who went to school in Parramatta you could say I

lacked somewhat of self-confidence and Brett really took me under his wing and developed me as a person. And um, predominantly under his management I, I moved up pretty swiftly ah, within the division. And I worked hard. It wasn't like I thought it was unjustified to be promoted but he believed in me and I also worked hard and I was able to move up pretty quickly.

10 And were those promotions all instigated by Mr Roberts?---In – not all of them but while I was working under him certainly, yes. Ah, I was able – certainly able to manoeuvre. I always wanted to move into network architecture ah, space and he certainly helped me to manoeuvre. So he pulled me out of the operator role into system admin role and then from there into sort of an analyst role and then from there went into network engineering role.

20 Now after you ceased to work directly under him and ceased to have the promotions instigated by him did he remain a mentor to you?---Ah, no, not at a close, close contact but we, we, we certainly remained in touch ah, because I, I very much respected what he had done for me and Brett's also quite an intelligent man as well and I respected that and he had very good contacts and I would call him from time to time asking for advice. So we stayed in contact as friends but I wouldn't say he was my mentor. Ah, at that stage I had developed some confidence of my own and um, just went my own way basically.

And when you left Unisys was Mr Roberts still working there?---Ah, no, he, he got made redundant before um, I moved to UPSL.

30 I see. And what position were you holding at Unisys when he left?---Ah, I believe it was network, like network architect, network services, team leader, something like that, I can't remember exactly but it was in, when I was in the network architecture space.

40 And aside from being a mentor to you what other professional qualities did you consider that Mr Roberts had to your observation?---Incredible communicator um, capable person, very capable. I also considered him a, a nice person um, somebody I connected with and I think when, when somebody gives you a lot of attention and looks after you certainly respect that side ah, in a person.

Did you go out for drinks and meals with him outside of working hours? ---Ah, was this when we were working or afterwards?

Yes, while you were working together?---Ah, yes, on an ad hoc basis.

And when you ceased working together those occasions came to an end did they?---No, we, we would meet but very rarely, like I'm talking like once or twice over the years we didn't see each other.

And where was his home when you were working with him at Unisys?  
---Somewhere far, I remember he used to stay at Christopher Killalea's house.

I see?---Um, but I think around Newcastle (not transcribable).

Right. And so he was commuting to Sydney so far as you were aware from the Newcastle area?---That's correct, sir.

10

And did you ever meet his wife and children?---On one occasion um, when I used to live at Thornleigh. I'd invited various work colleagues and their partners and I have met um, his wife and I believe on another occasion I've met his, one of his sons as well.

Now once Mr Roberts left Unisys were you aware of the places that he was working?---Yeah, because we'd, we'd, we'd stay in touch via email, again it was very ad hoc and quite rarely.

20

When was the last time you had any contact with him?---Ah, I sent him an email ah, to say that we should catch up for a drink, it's been a while, that was my last contact but of course I didn't get a response and I found out why soon after, because I myself was summoned to appear in a private inquiry.

30

So when was the last time that you actually spoke to him?---Ah, the last time I'd spoken to him was - I'm just trying to think um, if the, the funds he'd requested to borrow was relating to that or whether I actually used him as a reference to apply for Macquarie University. I can't remember which one came - - -

It was some, it was some time ago?---Yes, yes, certainly.

And has Mr Roberts attempted to contact you at all in the period since you last had contact with him?---No, sir.

And do you know Christopher Killalea?---Yes, I do.

40

And you know him from the days while you were at Unisys?---Correct.

And he was at Computer Associates and he was working on projects in which you were involved at Unisys?---That's correct.

And also at Austrapay, that's correct as well isn't it?---Correct, yes.

Are you friends with Mr Killalea?---I think Christopher Killalea's account of our friendship is very accurate um, again we didn't catch up too often but

certainly he's a likeable guy and ah, we struck up sort of acquaintance while he was dealing with Unisys and Austrapay.

And when was the last time you had contact with Mr Killalea?---  
Christopher Killalea called me actually not too long ago, after the private inquiry um, and at a high level discussed the scenario and he said he'd be interested to have a coffee with me and I said to him in a polite manner that probably wasn't a good idea for reasons, he knows why. So I'd actually said I couldn't meet up.

10

Did he tell you he had been to this Commission to be examined by them?  
---Ah, not directly but we, we both knew that we'd both appeared because I myself was asked about Christopher Killalea in the private inquiry so we spoke in a roundabout way if you like.

Did you tell him that you'd been to the Commission to give, to be examined?---No, sir, because at that stage I was asked not to say anything, sir.

20

I see. Can you tell us about the relationship between Mr Killalea and Mr Roberts, were you aware that they were friends beyond just their working contact at Austrapay and Unisys?---Yes, I was, sir.

And you were aware obviously of the arrangements that Mr Roberts had to stay at Mr Killalea's home when he was in Sydney. Is that correct?---That's correct, yes.

30 And are you aware of a company called Management and Professional Services Pty Limited?---I was asked this same question at the private inquiry. You know, it was mentioned so many various times in the last um, yesterday and today ah, to my recollection it does sound familiar but I don't know of it, like last time I was asked I was like, no, I've never heard of it, but, but because it was repeated something in my mind led me to believe that I must have heard of it before.

Did you, did you – or do you believe that you knew of any connection between Mr Killalea and that company?---I, I knew he had his own company- -?

40

I see?--- - - - but like somebody, if I saw it on TV or something I wouldn't have said, oh, that's Chris's company. Um, but I knew he operated under something Professional something Services, but I couldn't tell you exactly what it was.

Have you ever done any work for Mr Killalea?---Ah, I've worked with him, I've never done any work for him as such.

Have you ever been paid any money by Mr Killalea?---No, sir.

Never at any stage?---No.

What would you say to the suggestion that you've been paid an amount of \$2,000 in cash in February of 2007 - - -?---Mmm.

10 - - - for work that you did for Mr Killalea?---Back then I was employed within Unisys so we worked on a project together called the BARA project and I had no reason to work for Mr Killalea, I was working for Unisys at the time and I was the architect on that particular project.

And so you would refute any suggestion that you were paid \$2,000 in cash in February of 2007 - - -?---Yes, sir.

- - - by Mr Killalea? What would you say to the suggestion that you were paid \$10,000 in cash on 14 November, 2007 by Mr Killalea?---Not correct at all.

20 Now, you had some financial dealing with Mr Roberts personally, haven't you?---Ah, only when he rang me and asked me for a loan.

We'll come to these. When abouts was the date that he rang you and asked you for a loan?---To be honest I could not remember the exact date.

If I was to suggest to you that it was in December of 2012, does that bring anything to your memory?---Ah, I cannot remember the exact date.

Okay?---But you'd be able to tell by my statements.

30 Yes?---Yeah.

I'll take you to the statement shortly. Could you please tell the Commission the effect of what was said during the conversation with Mr Roberts when he telephoned you and asked you for a loan?---Ah, basically he, again I cannot remember exactly what he said but he basically told me that he needed to borrow some money. Ah, he didn't use – I can't even remember if he used the word broke or not but he just said, I need, I need to borrow some money, essentially, something along those lines.

40 Did he tell you that he needed the money urgently?---Yes.

Did he tell you how long he needed the money before he would be able to repay you?---Yes. He said a week or two, something like that.

And what was your response to him?---My response to him was ah, it's never ended well when I've lent people money and this is perhaps the worst scenario. But um, I said to him that all of the people that I've lent the

money to either – were either not friends or they either did not pay it back and that I wasn't comfortable in paying him.

So did you tell him that you weren't prepared to make that loan?---That's correct.

10 What did he say to you in response to that?---He was just persuasive that it was going to be short-term only and that he needed it and I um, I actually factored in everything that he had done for me and ah, for me it was just like even though I honestly did not want to do it, I was totally uncomfortable with it, I just remembered everything that he had done for me and felt obliged in a certain way to help him out.

Did, did he sound desperate to you on the telephone asking you for the money after you first said that you weren't prepared to do that?---He certainly didn't plead but there was some sense of desperation that I, I felt.

20 Did you express to him that the only reason why you were prepared to lend him that money was because of what he had done for you in the past?---No, I didn't actually explain that to him in detail. That was more trying to convince myself that I should do it. Um, but I did say to him that I didn't feel comfortable just paying in cash and that I would do it either through PayPal or through credit card so that I was protected. And I said to him no offence but, you know, I've just been burnt before.

30 Well, what was the protection that you thought that PayPal or credit card would give you over cash?---PayPal um, protects the, the person who sends the money essentially and um, just like with all online transactions if you choose to dispute that then they hold that money and a dispute is erased essentially. So it basically protects the instigator of the funds.

Well, how would you be able to dispute something that you had readily agreed to provide a loan for?---Yeah, because I didn't think about it in that context but I just thought that perhaps that was the only way I could potentially protect myself. If, for example, I sent him the money and um, for whatever reason he didn't pay it back, I could actually raise a dispute through PayPal and what they do is they would hold the money from the recipient's account.

40 But he needed the money from what you understood quite urgently. Is that correct?---That's correct.

He was going to get the funds that you would provide - - -?---Yes.

- - - by way of PayPal or the credit card. Is that correct?---That's correct, yeah, and he told me he didn't have a PayPal email address, because all PayPal accounts are linked via email, and that um, perhaps consider credit card or something be discussed. So I thought about it and eventually I just

transferred the money and told him I did it through my credit card. I didn't. I did it through my personal savings account.

I see. You had doubts though that as to whether or not he would repay you based on your previous experience of dealing with friends. Is that right?

---Oh, yes, sir.

Yeah?---I, I ah, it's never ended well.

10 And you also had doubts because of your concerns as to his own financial ability to repay you. Is that right?---Yeah. I mean, I hadn't seen him at that stage for a long, long period of time and I had no idea what his financial standing was like.

So it was quite unusual, out of the blue that this request was even made of you by Mr Roberts. Is that correct?---Very unusual. I mean, in all the time that I'd known Mr Roberts he'd never asked me for money.

20 Can you recall how long it was before Mr Roberts repaid you the loan?  
---Again, the details would be in the account.

All right. Well - - ?---I can't remember but he, he – basically it happened days after what he had promised.

I see. Well, I'll call up the bank records now and I'll have them put before you. The first page is page 95. It will come up on the screen in front of you?---Yeah.

30 Now, this is a copy of an ANZ Bank statement on an account in your name.  
Do you see that?---Yes, I do.

And it's for the period 14 September, 2012 to 14 December, 2012?---Yes.

Now, if we turn over to the next page, page 96, you'll see a highlighted transaction there. It's 5 December and it's an ANZ Internet transfer and there's the words in the notation "Brett Robert" for \$10,000?---Ah hmm.

40 Is that the transfer that you made to Mr Roberts for the loan that he requested?---Must be, yep.

And had he asked you for \$10,000 to be transferred to him, to him by way of a loan?---That's correct.

He hadn't asked for anything more than that?---No, sir.

Now, we'll then turn over to page 109, and this is an ANZ bank statement for an account in your name. Do you see that?---Yes.

And the date range there is 14 December, 2012 to 15 March, 2013 and you'll see the highlighted entry there on 27 December?---Yes.

Now, this is a transfer of two amounts of \$5,000 into your account?---Yes, sir.

10 Okay. Were you aware of those two amounts into your account at about the time that the transaction occurred?---Yeah, because his payment was a couple of days late and I actually called him and said the payment hasn't come through and he said, "It'll come through shortly." And I think that was, must have been the weekend or something like that, and then on that particular day when I checked the funds were in there.

And did he say to you from whom the transfer would be made into your account?---No.

20 When you checked in your account did you see on the notation that each of the transfers had the words, "From MAPS" written on them?---To be honest, that's the first time I've noticed it.

I see. Well, how did you know that these two amounts were from Mr Roberts at the time that you, you received the transfers into your account? ---Because he told me he would be paying me back to that's, that's why I knew it was from him, but I didn't, I mean MAPS to me could mean anything, I didn't make anything of it.

30 Well, I'll ask the question again. How did you know that two amounts of \$5,000 that had come into your account were repayment from Mr Roberts? ---He said that the transfer was made and it would show up in your account shortly.

Did he say that they would be in two amounts of \$5,000?---No, sir.

Did he tell you it would be coming in from another company and not him? ---No, sir.

40 Then how did you assume on your account that this was the repayment of the loan?---Well, if nobody else owes me money and the gentleman tells me the money's coming into your account ah, within the next couple of days or the next business day from what I can vaguely recall he said, then I would assume that that's where it was from.

Now, just to make it plain, you had no amounts owing to you at all from an entity that might be called MAPS, did you?---No, absolutely not.

And your evidence is that you hadn't, you don't think you heard of an entity called MAPS at that time?---I must have heard of it 'cause I've, I've known



Chris, but I just wouldn't be able to tell you that that was the company that, that he owed.

I see. Now, I'd like to now ask you some questions in relation to a different transaction. Before I move off the last one, did you have any further conversation with Mr Roberts after those amounts were received into your account?---Um, I must of but it must have been relating to um, Macquarie Uni or some other topic, but not necessarily to funds.

10 So did you, do you recall ringing him up to say, I've got the funds, thanks very much, or anything like that?---I think I might have sent him a message.

I see?---Yeah, I believe at the time I might have sent him a message saying the funds were received.

Do you recall another occasion on which Mr Roberts contacted you about a receipt of funds into, into your account?---Yes, sir.

20 When abouts did that occur?---I've actually printed the emails, again I can't remember the date, but I do remember I was overseas and I couldn't even remember this transaction. Last time I was here for the private hearing um, to me I just, I didn't even remember it until the gentleman sitting next to you um, kept asking the question, can you try to think back, and then of course I was like, yes, of course. Then it all came back.

30 I see?---And since that time I've actually found the email that I actually received from him. So what happened was I was overseas, I was in the US and I had a couple of missed calls from him and ah, I sent him an email saying I had a couple of missed calls here. He'd, he'd actually sent me an email as well um, and eventually I called him back and he said something along the lines, I don't know, again I can't remember the exact conversation, something along the lines of um, some funds, some funds were deposited into your account by accident, can you please ah, have a look. He, he had actually mentioned 10,000, I remember that. He, he, he said \$10,000 was accidentally deposited into your account, can you have a check and, and look for me, it's something like, along those lines and I'll email you if it's in there. Then he emailed me the details of the bank account he wanted it in. I've got that email.

40 I see. So I'll return you to page 1084, it will come up on the screen before you. If we go to the bottom of that page there's an email from Mr Roberts to you in which he said he'd called a couple of times and it's gone straight to voicemail and he wants you to give him a call, that's the email that you received from him?---Correct.

And then if we go to the email above that and the first one's dated 6 March, so is this, and you respond to him saying you're overseas?---Yes.

And you'll continue trying to contact him?---Correct.

You then did in fact speak to him from overseas on the telephone?  
---Correct.

In which you had the conversation that you have just mentioned in which he said there had been a transfer in error into your account of \$10,000, is that right?---Correct.

10 Then if we turn over the page to 1085 you'll see down the bottom of the page an email from Mr Roberts also of 6 March to you where some account details are set out, do you see that?---Yes, sir.

That's the account details for where he wanted you to transfer the funds, is that right?---That's correct, yes.

And then you on 7 March sent him an email in which you gave him a copy of the confirmation of what you had transferred?---That's correct, sir.

20 Now the amount that you transferred was actually \$9,450?---That's correct, yes.

Right. Now had you gone to your bank account immediately after your conversation with Mr Roberts whilst you were overseas to see that there had in fact been a receipt in your account of an amount of which he had spoken?  
---Yes, of course, yeah, I checked and I saw that \$9,450 was deposited and 10,000 so – and that's why I state that in my email.

30 So if we turn to page 150, if we go down to the highlighted entries there, sorry, I should go up there and just get you to confirm that this is your account, an ANZ statement 14 December, 2012 to 15 March, 2013?--- Yes, sir.

We'll go to the highlighted entries, there was a transfer in on 4 March, it says "from loan repayment \$9,450", that was the entry that you saw in your account after you'd spoken to Mr Roberts on the telephone, is that right?  
---That's correct, yeah.

40 And those are the only details that you could see online from where - overseas when you looked at your bank account it said "From loan repayment, can you recall that?---Again, I didn't – to be honest I was all going off trust, yeah, so I didn't – in hindsight probably I should have just contacted my bank and said deal with it, you know, in case it's, there's anything sinister behind it but because it was Brett Roberts I – I mean I'm, to be totally honest with you this is the first time I'm looking at it and I've noticed "from loan repayments".

You had no idea of who the amount had come from?---No idea.

Mr Roberts hadn't said that to you on the telephone?---No.

So based on what he told you and his request you then made a transfer on the 7 March of \$9,450 into the account that Mr Roberts asked you to do. Is that right?---That's correct.

10 And other than the email that you sent on 7 March showing the transfer receipt, do you have any further conversation with Mr Roberts about having made that transfer?---No, not about this particular transfer, in fact I'd forgotten all about it.

I see. And you've never had a conversation with him and said to him, "What was this all about?"---No, not (not transcribable)

20 Now you've spoken obviously very highly of Mr Roberts and you've also indicated two transactions that you have had with him in which you've referred to the trust that you had in him. Is there anything that you are aware of which has caused you prior to the events that are now subject to this Commission which would cause you to believe that his is not a person that you should have trusted?---No, sir, otherwise I wouldn't have lent him the money and then um, totally forgot about a transaction that he deposited which in hindsight doesn't seem right. I mean it can happen, don't get me wrong, I've myself transferred funds incorrectly to other people but just the, in hindsight again, the events that occurred he asked me for money and then some odd amount which gets transferred which when you said it was \$10,000, in hindsight it doesn't sound right. But at the time, no, I didn't think anything of it.

30 Has he, ever since those transactions, asked you to loan him any more money?---No sir.

And was the only further contact that you had with him after the date of this transaction in March the communication you had with him about him providing you for a reference for you to enrol at Macquarie University for your Masters of Business Administration?---Yes, yes I and I remember I was looking for an operations manager and I actually called him up and asked him what he thought so I remember having that conversation with him as well.

40 I see. And since that time, there's been nothing further between the two of you by way of communications that you can recall?---That I can recall, no.

I have nothing further, Commissioner.

THE COMMISSIONER: Any questions for Mr RH from anyone? No?

MR CHESHIRE: Sorry Commissioner, can I just have a moment.

THE COMMISSIONER: Yes.

MR CHESHIRE: Sorry Commissioner. No, sorry Commissioner, thank you no questions.

THE COMMISSIONER: All right. Thank you Mr RH you may step down. You are free to go. I'll take the luncheon adjournment Mr McGrath I think and we will resume at 2 o'clock.

10

THE WITNESS : Sorry Commissioner, just before you go.

THE COMMISSIONER: Yes.

20

THE WITNESS: I did send an email to Jeffrey Lawrence requesting suppression on my name if possible in the media um, obviously this is a serious crime and I actually did a search on my name, my company has a public profile I'm the President of Toastmasters. We've literally helped hundreds of people in my time, my company's involved with some charities and just when I search my name, ICAC Investigation. I thought I'd take this opportunity to request if it would be possible if that could be considered.

THE COMMISSIONER: Do you have a view on it Mr McGrath?

MR McGRATH: I don't have a view on it.

30

THE COMMISSIONER: Well, normally Mr RH and I know this I small comfort to people who appear before The Commission as witnesses, I mean normally we would only suppress identifying information if we thought that there was some security issue or some need to protect the person you would have become aware of the fact that we have made it clear that we don't have any reason to think you've engaged in any wrong doing. However, I appreciate that that may not be the perception of others in the business community in view of the fact that you do have connections with charitable organisations it is perhaps a reasonable request. In those circumstances I'll suppress publication of your name. As far as media reporting goes, let me assure you that everyone in the media room can hear this if they are in a position of having to report these proceedings they can simply refer to you by the initials RH, does that satisfy you?

40

THE WITNESS: Very much so. I very much appreciate your consideration.

THE COMMISSIONER: I'll make that order than that your name should be suppressed from publication.

THE WITNESS: Thank you so much, I really appreciate that.

MR McGRATH: And that would also have to cover material which is in the exhibits which have been made available.

THE COMMISSIONER: Yes, but those would be covered in any event by reference to the suppression of publication of banking details but in so far as any other exhibits identify Mr<sup>RH</sup> his name should be suppressed from publication and the initials RH should be substituted.

10 **THE SUPPRESSION OF PUBLICATION OF BANKING DETAILS  
BUT IN SO FAR AS ANY OTHER EXHIBITS IDENTIFY MR  
RH HIS NAME SHOULD BE SUPPRESSED FROM  
PUBLICATION AND THE INITIALS RH SHOULD BE  
SUBSTITUTED**

THE COMMISSIONER: All right thank you. I'll take the luncheon adjournment.

20

**THE WITNESS EXCUSED [1.01PM]**

**LUNCHEON ADJOURNMENT [1.01PM]**