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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 2 AUGUST, 2012

AT 10.24AM

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: Mr Strickland.

MR STRICKLAND: Yes, I apologise for the delay.

THE COMMISSIONER: Yes. Before you start I wish to announce formally the following additions to the scope of inquiry. These are
10 additional matters which the Commission will be investigating. These are
in addition to the scope that I announced in opening. That scope, the details
of the scope I announced at the opening will be found I think on page 1 of
the transcript. These are the additions to the scope of the inquiry.

Firstly, the Commission will investigate allegations that Daniel Paul, while
engaged as security consultant by the Art Gallery of New South Wales,
received corrupt benefits from officers of Q Technology Group Limited in
exchange for exercising his public official functions in favour of Q
Technology Group Limited by improperly influencing Kings Security
20 Group Pty Limited to purchase goods from Q Technology Group for use in
the security upgrade works undertaken for the Art Gallery of New South
Wales in 2009.

Two, the Commission will investigate allegations that Daniel Paul failed to
disclose to the Art Gallery of New South Wales, the University of Western
Sydney, Woollahra City Council, Taronga Zoo and Sydney Ports
Corporation his financial dealings and financial and personal relationships
with Kings Security and Mr Charles Diekman. I just want to make sure that
all those who have an interest are represented here this morning. Mr Lloyd,
30 you're here.

MR LLOYD: I'm here.

THE COMMISSIONER: Yes, thank you. The parties, Mr Naylor, you're
here.

MR NAYLOR: Yes.

THE COMMISSIONER: Yes. The, is anyone here representing Q
40 Technology Group Limited?

MR BUCK: Mr Buck, I sought leave to appear on Monday, Commissioner.

THE COMMISSIONER: Yes, very well, thank you. I think that, that
covers those who have a material interest in this additional scope. Yes,
Mr Strickland.

MR STRICKLAND: Mr Paul, yesterday you gave evidence about what it was that you were surprised about on 27 February meeting and you said that what was surprising, what surprised you was Mr Diekman saying to that the Endura 2 software, and I'm quoting your words from 1118, "was now available," "it's actually now available." What did you understand Mr Diekman meant when he said that Endura version 2 was actually now available?---When you, when a company releases software or any products typically they promote it before they release it, not unlike Microsoft or Apple or any of the other products that are out there and so Pelco were no different. They were spouting about the, about the Endura 2 product before it was released.

But my question is what did you, when - is this correct, that when Mr Diekman said the Endura 2 version software was "actually now available" that meant that from that date on you could actually purchase the Endura 2 software?---You'd need to ask Mr Diekman what he meant by that statement.

I'm asking - - -?---My understanding of that statement - - -

Yes, yes?--- - - - is that it was available.

Meaning you could purchase it?---Obviously.

Right. And I, and did you ask him that?---In a, in a, in a question we did, yes.

Yeah. And - - -?---In a written question we, we asked what version of software we were going to receive, yes.

THE COMMISSIONER: Well, when did you ask, is that at the time - well, at what time did you ask that?---In one of the, one of the - - -

Before that meeting or after that meeting?---I couldn't tell you, I don't know the dates, I don't have it in front of me.

Well, you would know whether you wrote the letter to inquire about it - - -? ---Oh, I don't write letters no, sorry, it was, it was Mr, it was Mr Morris that, that wrote to the, to the tenderers, it wasn't me. We convened a meeting or we were, we were, I was part of a tender panel that convened a meeting and formulated questions and Anne Tregeagle wrote those questions up, Tony Morris sent those questions out and one of those questions was confirming the version of software.

MR STRICKLAND: So as at 27 February, 2009 you learnt for the first time that as from that date Endura 2 could be immediately purchased. That's what you just said?---No. That was when, that was when Charlie said it's now available.

Yes?---But their original proposal stated Endura 2.

I understand that. And you knew that didn't you?---Yeah, yeah. Yeah.

But what I'm trying to get at is what – when you read the original proposal your understanding was that they were going to – that's the software they wanted to purchase but it wasn't yet available. Correct?---It was imminent.

10 Just answer the question?---I did.

I think it's – it means, the answer to the question is yes isn't it? Do you need me to repeat the question?---You can, yes, you can repeat the question, please.

The question is when you read the Kings bid for Endura version 2 your understanding was that the software was not then available for immediate purchase?---It depends on what you mean by immediate purchase. The project would roll on from an installation perspective for several months
20 before we needed the actual product to be set up. So it's not about, it's not we go out today say yes we want it and tomorrow it's installed. It takes months for these people to, to integrate a solution, to install a solution. So the issue was to verify whether, whether the software was in fact available. And that's exactly what we did after that meeting.

And what did you understand by the word available to mean?---As in available to the integrator to be able to install, is it operational.

30 So in other words before the 27 February meeting with Kings you did not know that the product was available. Is that right?---I knew it was imminent, imminently available.

THE COMMISSIONER: Just answer the question?---I did just answer the question.

MR STRICKLAND: You didn't, you didn't, sir.

THE COMMISSIONER: You said it was imminent. You were asked whether it was available. Was it available or not?---I don't know, I hadn't
40 checked with, with, with Pelco at that point.

You're being asked what you thought?---Sorry.

You are being asked what you thought, you thought?---Sorry, I don't understand the question.

Did you, on 27 February, before the meeting of 27 February did you think that Pelco Endura 2 was available to be purchased and delivered immediately?---It didn't need to be delivered immediately.

No, just answer yes or no?---It's not a point of yes or no.

It is?---It's not.

Do you mind?---It's not.

10

I ask the questions?---I understand that.

So just tell me whether you thought that it could be purchased and delivered immediately before – at any point before the meeting of 27 February?---I wasn't sure. I would need to go and check with Pelco at that point.

No, no, I'm asking you what your state of mind was?---That's, I just told you what it was.

20

You weren't sure?---I wasn't sure whether, whether the software was available.

All right?---That's why - - -

That's fine?--- - - - when Charlie came in, that's why when Charlie came in and said it's now available that was why we were surprised, beauty, great, let's go check that out.

Thank you?---No problem.

30

Mr Strickland.

MR STRICKLAND: Thank you. The issue of whether Endura 2 had actually been released and was actually available was a matter of great interest to you in relation to this tender wasn't it?---Great interest to the Art Gallery, yes.

And therefore of great interest to you?---Of course.

40

Well then the simple answer to the first question would have been yes? ---But I need to clarify it because you need to put it into perspective.

No, no, Mr Paul, Mr Paul, I am happy to continue to ask you the questions for days?---Sure.

Your job is to listen to the question and only answer the question. Your very experienced counsel can clarify anything he wants to clarify. Your job is to answer my questions and the Commissioner's questions and only

answer the questions, not add in anything you want to say. Otherwise we will be here for days?---Well we may be here for days Mr Strickland.

No, no comments thank you. Listen to the questions, answer the questions. Now could the witness please be shown Exhibit 74. Now on 18 February Mr Yallouris, this is on page 537, Mr Yallouris writes to Mr Paul - - -

THE COMMISSIONER: Thompson.

10 MR STRICKLAND: I beg your pardon, I'm sorry. Mr Paul Thompson setting out the number of options and before he does that he said, "Sorry about the nature of the quote pretty ordinary presentation. Anyway talk to you in the morning. Every", I think that should have been, "Very exciting stuff with Endura 2, they must go this way", and then the options are set out. And then if you go to page 538 you'll see at the bottom of the page, "Please note all mega pixel options are based on version 2 Endura due in April. All prices in USD and subject to change, quote 'valid for 30 days'" And then that's in response - I beg your pardon. Mr Thompson on 16 February has written to Mr Yallouris saying, "Don't forget me to send me the quotes for
20 options 1 and 2 and 3 once you have good news. Spent a couple of hours with Dan today, he likes the idea of option 2 very much." Is it - was it your understanding as at the 16 February 2009 that you were considering the Endura - the option 2 which is referred to at page 538?---I don't know what option 2 in 538 was. I don't recall that conversation.

Okay. Suffice to say - - -

THE COMMISSIONER: Sorry. You don't, you don't understand option 5
- option 2, sorry. You don't recall option 2 on 538?---I don't recall the
30 conversation that - - -

No, no. That's not what you - - -?---Paul Thompson is referring to.

I'm just asking, if you look at option 2 on 538?---I can see that, yes.

And did you like the idea of that option?---I don't know I hadn't seen that.

I beg your pardon?---I had not seen that option. I don't know what
40 conversation Paul Thompson was referring to - - -

When, when have you not seen that option?---Where, where would I have seen that option?---Well by the 18 February 2009 had you seen that option or not?---Not that I'm aware of, no.

And you hadn't been told - - -?---I don't recall the - - -

Had you been told about it or not?---Not that I recall, no.

Thank you.---I don't recall the conversation that Paul Thompson is referring to.

I haven't asked you about that?---But I'm answering that.

Thank you. Thank you, Mr Strickland.

10 MR STRICKLAND: So to your knowledge 16, 18 February there was discussion and Q Video and Yallouris and by discussion I mean verbal discussion and emails relating to the, the Endura 2 software.

THE COMMISSIONER: Sorry, Mr Strickland, I didn't hear the first part of your question.

MR STRICKLAND: Sorry. I'll start again.

20 You were aware weren't you that before this first interview on 27 February that is a week, 10 days before there was communications with - between Pelco and Q Video involved in the Endura 2 software?---I don't know.

Well I'm asking you whether you did?---I just I don't know.

'Cause you were in constant telephone communication with Mr Yallouris and Pelco and Q Video staff weren't you?---Constant. What do you mean by constant?

30 THE COMMISSIONER: Well you saw the records of the telephone conversations yesterday. That's what's meant by constant. Well bring those back up I don't, yeah, I don't recall the detail of those.

MR STRICKLAND: Well I, I will show you those in a moment?---Sure.

But what I'm asking is did, it's the case isn't it that you were on the phone and communicated in writing to Q Video staff and to - and to Mr Yallouris and Pelco before the first interview on 27 February?---Sorry, can you repeat that question?

40 You, you spoke to Yallouris, Thompson before the 27 February meeting? ---Hundreds of times in relation to all sorts of issues, not necessarily in relation to the Art Gallery.

So of those hundreds of times a number of them relate to the Art Gallery because that was an imminent tender that you were involved in, wasn't it? ---From what period are you talking about?

Okay, from the time of the, from the time the tender closed - I withdraw that. From, from any time from the time the tender was opened, which is

early February, until the time it closed?---I may have had conversations with them but I don't recall the detail of those conversations.

But I'm not asking about the detail, I'm simply asking you had conversations with them about the Art Gallery didn't you?---I may have.

I thought you said you had hundreds of them?---No, hundreds in, in, you're saying that the lead up - I have no idea what the dates were so I wouldn't have had hundreds between the time that the tender was released and the
10 time the tender was closed and - - -

THE COMMISSIONER: Mr Paul said that he had hundreds of conversations but he didn't say they were about the Art Gallery.

MR STRICKLAND: I understand that, Mr Commissioner.

Well, but the fact is this, you were, it was of great interest to you to know when Endura 2 was going to be released, you've agreed to that?---Sure.

20 And the way you find that out is by speaking to Mr Yallouris and Pelco?
---And I said to you yesterday that I - - -

THE COMMISSIONER: Just answer yes or no?---But I need to explain - - -

No, you don't need to explain?---I do.

I'm sorry, you need to answer the question?---If you don't allow me to explain - - -

30 Mr - - -?--- - - - then you only get a one way, one tainted view of, of, of the, of the information, it's not right.

Mr Lloyd will ask you whatever is necessary. I've given him leave to speak to you about the evidence. He will have the opportunity to clarify anything you wish to have clarified when it comes to Mr Lloyd's turn to ask questions so that is how it works. You don't have to argue your case yourself. You have a very experienced and competent barrister retained to do that for you. Yes, Mr Strickland.

40 MR STRICKLAND: Well, my question was simply that the way you, the way would learn as to how, sorry, when Endura 2 would be released would be to speak to Mr Yallouris?---Typically, yes.

And also the Q Video employees because they were dealing with Pelco?
---Or Hills, Hills were a reseller of the same product.

And all I'm saying, asking you is you did, doing your job diligently you did speak to Mr Yallouris regularly to, to get an update about the Endura 2 product?---And other, and other issues.

I'm not suggesting you didn't talk about other issues but my question was confined to that topic. What's the answer to that question?---Say the question again, please.

10 And you did speak to Mr Yallouris about when Endura 2 was going to be released onto the market, didn't you?---At some stage, yes.

Before the 27 February meeting?---I don't recall.

THE COMMISSIONER: Well, it would have to be before because on the 27th you were told it was going to be released according to your evidence? ---By Charlie, yes.

MR STRICKLAND: Could the witness please be shown Exhibit 1, tab 47?
---Thank you.

20

Have you got that document?---I do.

Just go to page 555, you will see that that is a quote from Q Video Systems to Kings "enclosing the Pelco Endura option for the Art Gallery of New South Wales tender, the following proposal is based upon the Pelco Endura version 2" And then refers to the added benefits of the solution. And then if you go to page 556 and following you will see that there are "includes descriptions, detailed descriptions of the software and the components".
30 And then at 559 and following there is an equipment schedule with prices attached. And then if you go to the bottom of 556 you'll see that the supply price quoted is \$785, 535 plus GST. Now what I want to suggest to you is that that quote which was sent on 19 February, 2009 that since – after that quote you had a number of discussions with Mr Diekman and Mr Yallouris relating to the Endura 2 solution?---I don't recall.

And – but you were well aware that Mr Diekman from Kings had been provided a quote by Q Video Systems for the Pelco Endura version 2 system?---What's the question?

40 Well listen to it, you were well aware weren't you that Kings had been provided a quote in relation to the Endura 2 sysetm?---When Charlie presented in that meeting obviously he would have received a quote from them. So I presume he received a quote from them, yes.

But I'm suggesting you have had discussions with Mr Diekman and Mr Yallouris about the fact that a quote had been given to Mr Diekman before the meeting?---I don't recall the discussions that I had prior to that.

THE COMMISSIONER: But it's highly likely you would have had discussions isn't it Mr Paul before the meeting because that's about eight days before the meeting and it's an issue about which you were all very interested and concerned?---I may have had discussions with, with Paul Thompson and Terry Yallouris about various different products and release dates and all that sort of stuff, but I don't recall ever having a conversation with Charlie about it. I don't have, I don't recall the detail of any conversations that I had with Paul about it or with Terry about it. Just that I certainly would have been inquiring as to the, as to the release date, yes.

10

And, well I think that's, that's – I'm actually only asking you now about the probabilities. I understand your evidence is you don't remember, but this is an issue about which you were, which was very important to the Art Gallery and yourself. I think you've accepted that. And isn't, you must have communicated that to Kings?---Why?

20

Well because they quoted on it and the availability of the item was something which they were obviously concerned about?---It doesn't mean I conveyed that to Kings. It could have been Thompson or, or Yallouris that conveyed that to Kings. I don't know.

I'm not suggesting that you conveyed it to Kings. I'm suggesting that you discussed it with Kings?---No, not that I recall. But I'm suggesting that it's highly probable that you did?---Not that I recall.

30

I'm not asking you whether you recall, I'm asking you whether you agree that this is something of such importance to you , to Q Videos and to Charlie Diekman that it is highly likely that in the eight day period between 19 February and 27 February you discussed it with one or both of them? ---With one or both of who? Terry Yallouris or Paul Thompson?

Yes. Charlie Diekman or somebody from Q Videos or somebody from Pelco?---Most likely Pelco and most likely Q Video. But unlikely that it would be Charlie, Charlie Diekman.

Yes?---Because he's a tenderer.

40

I understand that. So it is highly – you're saying it is most likely, to use a phrase that you've used, that you would have discussed the, the fact that Endura 2 had become available with Mr Thompson or Mr Theissen at some time between 19 February and say 26 February?---No, not that it had become available because the first time that I was lead to believe it was available was when Charlie presented it. Prior to that it was, it was always imminent, it's coming, it's coming, it's coming. And we were always speaking to Terry saying when is it, you need to prove it to us.

When you said it was most likely that you would have had discussions with Mr Thompson and Mr Theissen, to what discussions were you referring?

---About product, about supply, about, about availability.

But I, I was asking you specifically about Endura 2 when you replied it was most likely that you were having discussions with Thompson and Theissen, you were referring to discussions about Endura 2. Now I'm asking - - -?--- No, I wasn't referring to that, yeah.

- - - you what do you think that those discussions could possibly have been about Endura 2?---No, no - - -

10

What aspect of Endura 2 could they have been about? Those discussions which you said were very likely to have happened?---My misunderstanding of what you said. I didn't realise you were saying that I had this conversation with them about the, the, the Endura 2 version, no. It didn't, didn't necessarily mean that I was talking to them about that, I may have been talking to them about components of the system, camera supplies et cetera - - -

20

All right. Well we'll look at the, the transcript, what the transcript says. Yes, Mr Strickland.

MR STRICKLAND: I'd like to tender some phone records. First I tender a bundle of phone records to Mr Paul, Mr Diekman, Mr Yallouris, Mr Thompson and Mr Theissen on 4 February 2009 to 23 February 2009. It might be safe just to suppress all the mobile phone numbers and addresses contained in that document.

30

THE COMMISSIONER: Yes. Well I'll just - the phone records of - phone records during the period from 4 February 2009 to 23 February 2009 of telephones used by Mr Paul and Mr Diekman to various recipients of those telephone calls is exhibit 76.

#EXHIBIT 76 - PHONE RECORDS DURING 4 FEBRUARY 2009 TO 23 FEBRUARY 2009 OF TELEPHONES USED BY MR PAUL AND MR DIEKMAN TO VARIOUS RECIPIENTS

40

MR STRICKLAND: So if you - if the witness could be shown that exhibit.

THE WITNESS: I've got it, thank you.

MR STRICKLAND: Thank you. And if you just go to 19 February, the page which is 19 February, you'll see at the bottom of the page that there's an attempt to - an attempt by you to call Mr Yallouris on 21 February and if you go over the page there's a call by you on 21 February at 1.45 that's to Mr Yallouris and then on 23 February you have a call that goes for, goes for 512 seconds with Mr Yallouris, that's 23 February, 18.24. Then on 24 February there's a call from you to Mr Yallouris, 9.08. On 24 February

there's a call from you to Mr Yallouris for 351 seconds and then on the - again on 24 February there are a number of - there are three short calls followed by a length - a fairly lengthy call on the - it's 4.38, it's all on 24 February. If you go over the page, on 26 February there's another lengthy, there's a lengthy call at 12.10pm, this is the day before the interview with Mr Yallouris And then if you go over the page there's, there are a number of attempts or very short attempts to call Mr Yallouris, this is on 26 February. Now, your dealings with Mr Yallouris during those dates related only to his role in the Art Gallery tender?---Not at all. Not at all.

10

Well, that was what was imminent, wasn't it?---Not at, that, that was one project that I was on.

Listen to the question? What was the last question I just asked you?---That it was imminent.

Yeah, but the Art Gallery tender was imminent because there was a meeting which you know about on 27 February, '09?---So was the Westfield national tender.

20

I see. And when, when, what date was relevant for that tender?---Between, between early, early February, 2 February and end of, end of March so it was right in the middle of that entire period.

THE COMMISSIONER: Your memory of that's quite good?---Yeah, 'cause you asked me to look it up last night and I found some information for you.

30

MR STRICKLAND: But what I want to say is it is inescapable during at least some of those calls that you spoke to Mr Yallouris about the availability of Endura 2. Do you agree with that?---Not necessarily, no, I don't, I don't recall the detail of the conversations but there were many different projects running at the same time so you can pin all of those calls or any, any one of those calls or any content to any one of those calls to the Art Gallery, it's not true.

40

Well, what I'm suggesting to you is given your own, given your own evidence about how important it was for you to this very prestigious client you had, the Art Gallery, to know when Endura 2 was being released is obvious that you would have in one of these conversations asked Mr Yallouris that simple question?---I asked him that a lot and he promised me a lot of things about when it was going to be released. The first time I found out that it was actually released and available was when Charlie presented it.

And yet, and yet the day before that interview you had a fairly lengthy conversation with Mr Yallouris and he hadn't told you - - -?---No.

- - - it was about to be imminently released?---Not necessarily no, I don't recall the detail of the conversation and had I known I would have probably told Tony Morris straightaway.

When you say not necessarily you mean he may have told you and it, and it slipped your mind?---No, no, no, no, it wouldn't have slipped my mind, I would have told Tony Morris as I said. I don't recall what the content of the conversation was or which project it was about.

10 THE COMMISSIONER: And isn't it likely that you would have spoken to Mr Diekman about this when you had your various discussions with him in that area?---No, because the tender was still open and they still, and they were still in the middle of a, of being called for interviews and the like.

MR STRICKLAND: What exhibit number was that please?

THE COMMISSIONER: 76.

MR STRICKLAND: Thank you. I'd like to show you some, I'd like to
20 tender, Commissioner, a further chart of phone records of phone, of mobile phone calls made by Mr Paul and Mr Diekman between 27 February, 2009, that's the date of the first interview, and 3 March, 2009 which is the date of the second interview. Have you got, have you got that document?---Yes, I believe I do.

Just go to the second page on the, the second last entry on the second page you had a, the morning after the interview with Kings you had an interview, sorry, you spoke on the phone to Mr Yallouris for 347 seconds?
---Yes.

30 And I take it you would have asked him some questions about the availability of Pelco or Endura 2 during that call wouldn't you?---Yes, most likely. As a result of that we were asked to investigate it. And there's an email to that effect somewhere.

Okay. Now did you ever – before 27 February - - -

THE COMMISSIONER: Are you tendering that?

40 MR STRICKLAND: I'm sorry, I beg your pardon, I tender that.

THE COMMISSIONER: The record of phone calls of phones used by Mr Paul and Mr Diekman on 27 February to 3 March, 2009 is Exhibit 77.

**#EXHIBIT 77 - PHONE RECORDS DURING 27 FEBRUARY 2009
TO 3 MARCH 2009 OF TELEPHONES USED BY MR DIEKMAN**

AND MR PAUL TO PERSONS AND ORGANISATIONS OF INTEREST

MR STRICKLAND: Did you ever tell anyone at Kings before the first interview on 27 February about what the Art Gallery budget was for the security upgrade?---Not that I recall, no.

10 THE COMMISSIONER: Is that something you would have told them?
---No, it's unlikely I would have told them.

Is that because it's confidential?---It's not because it's confidential it's because it's not something you typically go around talking about.

You meant that's not confidential? Did you really mean that?---Yeah.

You could go and broadcast to the world what the Art Gallery budget was?
---As I said, I explained yesterday many, many - - -

20 Just answer the question, please?---I am answering the question.

Well just say, the answer is yes or no. Did you think that you could broadcast to the world what the Art Gallery budget was before the tender had been opened or closed?---I wouldn't have done it, but I don't believe it was confidential, no.

Well why wouldn't you have done it?---Because it's not something you typically do.

30 Why?---Because there's no, there's no benefit to anybody in broadcasting that.

Oh, there's plenty of benefit isn't there?---Why?

Well wouldn't prospective tenderers like to know what the budget was so they wouldn't go over the budget when they tendered?---It doesn't matter whether they're, whether they know what the budget is or not, they are still tendering, it's still a competitive situation.

40 No, you're not answering my question?---Yes, I am.

Do you agree that it would have been to the advantage of tenderers to know what the budget was so that they could ensure that they wouldn't go over the budget when they tendered?---No.

Is that a serious answer?---Of course it's a serious answer.

Yes, Mr Strickland.

MR STRICKLAND: See Mr Paul, if the budget was say 1.8 million and say Kings put in a bid for 2.7 million and other tenderers put in a lower bid that would undoubtedly affect the chances of Kings being awarded the tender wouldn't it?---Well yes you would assume so subject to the weightings.

Well the weightings are, the weightings in this case hovered between 40 to 50 per cent didn't they?---On price?

10 Yes?---Yes.

So what the Commissioner – your answer to the Commissioner's question must be wrong mustn't it?---Ask the question again.

Well if Kings knew what the budget was then that would materially assist them in being able to quote a price which would give them a higher mark on the rating exercise?---If they knew what the budget was - - -

20 Do you agree with that or not?---No.

You don't?---If they, if they knew what the budget was why did they put in a price of 2.7 million if you think that the budget, the budget was 1.8 and they knew it? Why wouldn't they have done that in the first place?

THE COMMISSIONER: You're just arguing, don't argue the point, just answer the question?---I'm not arguing the point I'm trying to give some clarity to it.

30 No, I'm afraid you're arguing the point.

MR STRICKLAND: Do you want to answer my question or you choose not to?---I thought I just did.

Well you didn't, sir?---Sorry, ask the question again.

40 My question was don't you agree that if Kings knew what the budget was that would materially assist them in quoting a price close to the budget estimate and that would give, that would assist their rating in relation to price?---My apologies, I don't understand the way you phrased that question.

Well if there was a budget of say 1.8 million and Kings put in a price of 2.7 million and other tenderers put in a lower price than that would mean that Kings would get a lower mark or rating for the price component as compared to the other tenderers who had put in a lower quote closer to the budget. Do you agree with that?---Yeah, yeah, I agree with that, yes.

And therefore it follows, if you agree with that, that if Kings knew what the budget was that would - that could affect their decision to quote at a lower price thereby increasing their mark or rating on the price component?---That could affect their, their, their price, yes.

And therefore it follows that information they had about what the budget was would assist them. It follows from your previous two answers, sir. Do you agree?---At what stage? Yes. Yes, I agree with that but, but at what stage?

10

Well before they put in their offer?---Well they put in an offer of 2.7, why were they ever accepted at that point?

You're not answering the question?---I am answering the question.

Now you knew and I'm happy to show you the documents if you wish to be reminded, but you knew - do you recall that the alternative price that Kings put in for their first bid was \$2.69 million?---No. I'd like to see the documents, please.

20

Yes, of course. Could the witness please be shown exhibit 2. Tab 4, I beg your - I'm sorry, tab 4. It's the - Mr Commissioner, it is the Art Gallery tenderer response by Kings, it begins at the page - on the top is 592.

THE COMMISSIONER: Yes.

MR STRICKLAND: Can I just ask you to turn page 597. Now you see that they put in a complying bid for the Lenel, Lenel Verint that's 2.73 million and then they put in an alternative bid Lenel Pelco of 2.69 million?--
-Yes, I do.

30

And then you've given evidence that at the meeting on 27 February they put in a bid or they put in a proposal relating to this alternative solution Lenel Pelco for \$2 million?---They verbally announced it and, and threw an envelope on the table, yes.

Yeah. Now you knew from your and you said in your evidence that the revised bid was because the manufacturer that is Pelco had done some, to use, to use your words magic with the price?---Magical deal, that's right.

40

But you knew from your experience didn't you that the Pelco component of that bid would be around seven, \$800,000, correct?---Off the top of my head, no, I don't have a clue what that amount was.

But you would have - well, for a start you knew the Pelco component was - did not involve the entire price. In other words the entire price did not involve Pelco products did it?---Sure.

Right. And you knew from your own, your own lengthy experience that the, that the - you had a, you had a rough idea of what the Pelco component of that price would be, a half, a third, 40 per cent?---Without going back to the paperwork, no, I don't - I, I couldn't tell you off the top of my head what the percentages were.

No, what I'm - - -?---But I mean, Charlie or Peter in their, in their statements stated that they went in 10 per cent over, over cost.

10 Just, can you, you're, you're, what I want you to do is listen to the question and answer the question?---I'm just giving you some clarity, that's all.

I don't need clarity?---I think you do.

THE COMMISSIONER: You're just giving an argument?---No, I'm not.

Every time you're asked a question you answer, not every time, but many times when you are asked, when you answer a question you always add on something - - -?---That's relevant.

20

- - - to - excuse me, may I just finish?---Sorry.

You always add on something which you think supports the answer you've given. Now, that's what we don't want you to do. You are not allowed to do that?---But that's not fair.

You've got a barrister whose job it is to clarify matters that you wished to be clarified. What you've got to do now is just answer the question. Don't argue it. Yes, Mr Strickland.

30

MR STRICKLAND: What I want to suggest to you is you knew from your own experience that Pelco could not, could not drop a price of its component by some 600 to \$700,000?---I have no idea what the deal they cut with Charlie or, or Q Video was, no.

Yes, but using your commonsense you knew as at 27 February that there was an alternative bid of 2.67 million, \$670,000 had been reduced from that bid to \$2 million and the explanation given to you at the meeting was because Pelco could do some magic with the price?---Well, that wasn't the explanation given by them, that was, that's my words that they'd done some magical deal, right, that's not, that's not - - -

40

Well, that's what you - but your evidence was - - -?---That's not the words that Charlie said, Charlie didn't come in and say oh, they've done some magical deal. I'm, I'm sitting there with a, with a price in front of the Tender Evaluation Panel of \$2 million verbally and a price previously of \$2.69 million and to, to, to reduce it by that much is, is, is a big, big thing to

do so whether it was a deal done by Pelco or helped out by Pelco, Kings have obviously come up with that deal.

10 You see, what you said is how they, how they presented their tender, was that they were saying, that's Kings, they were saying it's actually now available, that they had done, this is what they were telling you at the meeting, that they had done some sort of deal with the manufacturer, not the wholesaler, where the manufacturer had done some magic with them to reduce the price, that's what they had told you at the meeting?---That's my, that's my words from memory, you asked me from memory yesterday to go through it and I'm, I'm trying to articulate that, obviously added in the words magical, I mean it's, you know, pedantics on, on detail of, of that word, I don't recall the content of the, of the conversation in, in specific words do I?

But what I'm suggesting - - -?---It's five, four years ago or whenever it was.

20 - - - to you is that you knew that if Pelco, if Pelco had reduced, if the reduction of \$690,000 was as a result of a deal between Kings and Pelco that that would mean Pelco would be offering a product to Kings for almost nothing?---No, I don't know what their deal was.

No, but what I'm saying is you knew in a general sense that that could not possibly be an explanation for the reduction in the bid of some \$700,000? ---No, not at all because they could have bundled it with, with brackets or something from Q Video or cameras or whatever so I don't know how they came to that price, you'd have to ask them.

30 THE COMMISSIONER: But Mr, Mr Paul, you must have known more or less how much the cost of the Pelco products was on the tender and what general amount Pelco products amounted to as part of the cost of the tender? ---There's a budget there but I - - -

Just answer yes or no?---No, not at the, not off the top of my head, no.

While you were sitting at the meeting you didn't know that?---No, I don't sit there and analyse the, the break up of a tender - - -

40 Your job is - - -?--- - - - sitting in a meeting.

Your job before the meeting was to go through and analyse the break up of the tender wasn't it?---Absolutely.

So after you had done that, before the meeting you must have had a very good idea of how, of what the overall cost of the Pelco products was?---Not at all. I go through every single one of those tender submissions and you've seen no doubt in the, in the paperwork that you've got the extensive spreadsheets that go into every single one of the, the analysis of, of all their

pricing. How am I meant to remember that and know that Charlie or Kings or whoever were going to present a price of \$2 million and then, and then its meant to spring to mind oh, that doesn't that make sense because Pelco, pricing couldn't possibly be that reduced.

You are wasting a great deal of time by arguing the case?---I'm trying to explain the situation to you.

Yes, Mr Strickland?---It's ridiculous.

10

MR STRICKLAND: Did anyone at Kings say at the 27 February meeting or any meeting thereafter that their original alternative price was based on Endura version 1 not version 2?---I don't recall that at all, no.

Well did you read anything to that effect?---No because their tender states version 2.

I'm just asking whether you read something to that effect?---No, I just said that, no.

20

Okay. If such a statement had been made verbally or in writing that the alternative price was based on version 1 and not version 2 you would have known that to have been a falsity wouldn't you?---If, if it had, if it had of dawned on me that that's what they said yes, absolutely.

All right. And if you had heard such a falsity you would undoubtedly, if you had been acting in the interests of your client have informed them of that falsity?---I always act in there interests of my clients, Mr Stickland.

30 THE COMMISSIONER: No, just answer the question?---I did answer the question.

You didn't?---I always act in the interests of my clients, thank you.

The question was Mr Paul, if you had known that such a statement had been made and you knew would then have been false you would in the interests of your client told your client that it was false?---Yes, if it had - - -

40 Thank you?--- - - - if it dawned on me. That's what I just said, if it dawned on me, if they've said it in a, in a spray of words it might not have dawned on me that they've just said version 1.

Didn't you just say that you would not have known if they'd have said that the tender was based on version 1 that they were telling a lie?---Yes.

You wouldn't have known that?---Yes, I would have known that.

All right. Thank you.

MR STRICKLAND: So when you spoke to Mr Yallouris after the 27 February meeting, I assume that you discussed with him this magic deal or this fantastic deal that he had offered Mr Diekman. Is that right?---No.

Why not?---It's not my business to discuss that. It's my business to discuss and find out whether version 2 was actually released and functional. One of the key things we asked for from Terry was evidence that it would work. And so Tony Morris and I went down to, to Pelco to see that.

10

THE COMMISSIONER: All right. We might just stop. Yes, Mr Strickland.

MR STRICKLAND: You knew didn't you that Kings had only ever received one written quote for the Endura 2 solution?---No.

And - - -?---Only through evidence of this, of this hearing in the last weeks. I'd never heard that before.

20

And isn't it the case that when you spoke to Mr Yallouris on the morning after the meeting with Kings you would have wanted to know, in the interests of your client, whether what Mr Diekman was telling you about this fantastic that he offered them was in fact the truth?---Yeah, of course.

So I take it then that you did ask him about that deal?---No. I asked him about the version and the release.

THE COMMISSIONER: You never having discussed with anybody before then?---Discussed what sorry?

30

The new version?---Of course, I've discussed it with Terry numerous times for the last prior six months when is it being released.

MR STRICKLAND: And did he confirm to you on that morning after the Endure 2 had been released?---He did and he asked us to come down and -- we asked him whether we could come down and have a look at it.

And did he tell you exactly when it had been released, because you just had a phone call with him only less than two days before?---Right.

40

So did you tell him, look you know, when has it just been released?---No. I said to him is it released and he said yes. Can we have a look at it? Yes.

And did you ask him when had it been released?---I don't recall asking him that.

Because that's the first time he ever told you, according to your evidence, that he had - that Endura 2 had actually been just released?---On - as I said to you previously - - -

Just answer the question?---I am telling you.

10 No. Is it the first, is that the first time that he'd ever told you that it'd just been released on that telephone call the morning after the 27 February meeting?---The first time I knew it was released was when Charlie put it on the table - - -

THE COMMISSIONER: No, no. You're not asked that. I didn't ask when was that the first time that Mr Yallouris told you that it had been released? ---Yes, he was, he was - - -

Thank you.---He was telling us for six months lead up, it's, it's about to be released.

20 MR STRICKLAND: And so having told you that for the first time did you then tell him well, when was it released?---No, I said when can we come down and have a look at it.

But you attended the ISC conference in late March early April - - -?
---Correct.

- - - 2009 and wasn't it on that - during that conference that Endura 2 was actually released onto the market?---It was its official launch in America, yes.

30 So my, my question was wasn't it on that date that it was announced that it was - the version was actually released onto the market?---For the US market, yes.

So your evidence is that it was released in the Australian market before it was released in the US market?---I beg your pardon?

40 Is your evidence that Endura 2 was released into the Australian market before it was released into the American market?---You'd need to check with Terry on that, I don't know.

And according to, if what you say is correct it was released into the Australian market some time in the end of February '09 but was not released into the American market until five weeks later. Is that - - -?---Because they, they have an official release date.

THE COMMISSIONER: Is that your answer, yes or is your answer no?
---You'd need to check with Terry.

MR STRICKLAND: I'm asking about your understanding?---My understanding was that when Terry showed Tony and I on the morning of the 5 that it was, that it was an operational system that it was available. I don't know whether it was released, officially released, unofficially released but it was to be available for the Art Gallery.

See, Mr Paul, you are tying yourself in knots I suggest?---Not, not at all.

10 I haven't finished the question. You are tying yourself in knots by giving evidence that you were surprised by what Kings told you at the 27 February meeting about Pelco actually being - the Endura 2 actually being released on the market? Do you agree with that?---No.

That evidence is a fabrication isn't it?---No, it's not.

In fact you knew what Mr Diekman was going to put on the table on 27 February didn't you?---Not at all.

20 And you famed being surprised?---Not at all.

Can the witness please be shown exhibit 17 tab 8?---Thanks.

And do you recognise that document as a summary of the preliminary assessment?---Which number sorry, F8 did you say?

30 That's right. Tab 8 which has page 12 on the top right hand corner. And can you see there that there's a - it says price 50 per cent and then the various tenderers are listed with their price. Do you see that?---Sorry, I'm looking at the wrong document. What - - -

Exhibit 17?---Exhibit - - -

It should be tab 8?---8, sorry, my apologies. Thank you, thanks. Yes, I can see that.

So, it's page - it should have - I think it's just a single page.

THE COMMISSIONER: Twelve.

40 MR STRICKLAND: Page 12. So you've got a list of the tendering companies on the left-hand column, correct?---Yes.

And the price which at that stage was 50 per cent of the total rating or mark?---Yes.

And a ranking based upon price, desirability and overall. Correct?---That's correct, yes.

And at this stage ACG ranked number 1 overall and Kings ranked number 2?---(No Audible Reply)

If you look at the second - - -?---Yes, that's correct.

- - - last column on the right. Now, at some stage after the first interview the price weighting changed from 50 per cent to 40 per cent?---Yes.

Was that on your recommendation?---No.

10

Do you remember on - was that on the Tender Evaluation Committee's collection decision?---Can I give you an explanation?

Yes?---Okay. What happened was we assessed it on this basis and when Kings came in the next day or whatever day it was and threw that \$2 million offer on the table, as I said yesterday, Anne Tregagle pulled up the, pulled up the meeting and said that the way that we could get those two companies to revise their prices, in other words to somehow accept a, a revised price was to, what was her wording, to have them as equal - - -

20

THE COMMISSIONER: Joint preferred tenderers I think you said yesterday?---Thank you, joint, joint, joint, joint preferred tenderers and the meaning, and her, her view was if the scores fell within four per cent of each other that, that that would be allowable and so she sent an email out, and, and the, the handwriting on the scoring there is, is Anne's. She presented all of that, gave that to me and said effectively write it up that way.

30

MR STRICKLAND: But my question was whose decision was it or whose recommendation was it that the price weighting should be refused from 50 per cent to 40 per cent?---I have no idea.

Could the witness please be shown Exhibit 2, tab 8 which is the 6 March Tender Evaluation Report. Did I say tab 8?

THE COMMISSIONER: Yes.

MR STRICKLAND: Thank you.

40

THE WITNESS: Excuse me, your Honour, could I go to the bathroom?

THE COMMISSIONER: Yes. We'll adjourn for 10 minutes.

SHORT ADJOURNMENT

[11.28am]

MR STRICKLAND: I just want to go back to 23 February, 2009 which is when the tender for the Art Gallery closed. And the tender opening, the

evidence is before this hearing was some time between 2.30 to 3.30pm in the afternoon. I want to suggest that you had a lengthy telephone call with Mr Diekman within an hour of the tender box being opened?---Yes.

And why did you, why did you do that? Why did you call him?---Probably to discuss, probably to discuss the Art Gallery, but I wouldn't have mentioned pricing or positions or anything.

10 But why was it necessary for you so shortly after the tender, the tenders were opened to speak to Mr Diekman?---I often did, I used to rib him a lot, as in joke with him, sort of play with his mind a bit. Not give him information and he knew that I had it, so it used to get up his nose, it was just a joke.

It was part of a banter between you and he was it?---A banter, yes.

Right. And you liked to show that because I think as you said in one of the emails, I'm the consultant, you had information that he wanted to get. Is that right?---Just stir him up, that's all.
20

No is that right?---I'd stir him up, yes.

But you stirred him up by hinting at the information that you had that he wished he had?---I wouldn't hint at the information, I just, he knew I had the information. He obviously knew I had the information, but you know, I wouldn't, I wouldn't let on.

I see. And you're sure are you that you didn't disclose the price of the other bids in that conversation?---Absolutely.
30

I tender a mobile phone analysis just limited to 23 February, 2009.

THE COMMISSIONER: That of Mr Paul, is it?

MR STRICKLAND: That's correct.

THE COMMISSIONER: Yes. The analysis of phone records of phones used by Mr Paul and Mr Diekman on 23 February 2009 is exhibit 78.

40

#EXHIBIT 78 - TELEPHONE RECORDS FOR MR PAUL AND MR DIEKMAN TO OTHERS ON 23 FEBRUARY 2009

MR STRICKLAND: So the call I'm referring to is at 3.39pm which went for 9 minutes and 40 seconds but you also had a telephone call before that for only 17 seconds with Mr Grubisic for ACG. That was also about the Art Gallery wasn't it?---I don't recall what the content was.

The phone records indicate that you called the principal of two tenderers immediately after the tender opening?---Right.

But not any of the others?---Both, both friends of mine, yes, yeah.

Did you tell the - any member of the Tender Evaluation Committee that you were intending to call two of the principals in the tenderers?---No, because I didn't disclose any information.

10

So what was the - was the - do I understand the purpose of the call in relation to the Mr Diekman was simply a kind of ribbing exercise?---Yeah.

Which went for some 9 minutes and 40 seconds?---Yeah.

I'll just show you, show you an email - I'm sorry, an email string between yourself and Paul Thompson. To shorten things I will tender a string of emails between Mr Thompson and Mr Paul the last one dated 10 March 2009.---Thank you.

20

THE COMMISSIONER: A string of emails the last one being Paul Thompson to Mr Paul on 10 March 2009 is exhibit 79.

**#EXHIBIT 79 - STRING OF EMAILS WITH FIRST PAGE
CONTAINING AN EMAIL FROM MR THOMPSON TO MR PAUL
RE NSW AG SUPPORT PACKAGE SENT ON THE 10 MARCH 2009
(ICAC REF: 184-186)**

30

MR STRICKLAND: I'll just take you please, to page 185?---Yes.

Third - the email at the bottom of that page from Paul Thompson to yourself on 25 February '09. There's a paragraph I want to draw your attention to, it's the second last paragraph, "In relation to rebates on products purchased for the project we have been in discussions with manufacturers of the products we represent and confirm that Q Video Systems will be able to offer rebates on some or possibly all products being proposed. These rebates are anticipated to be between one and five per cent depending upon the brand and how much Q Video System product has been proposed by the integrator. I hope this meets with your approval." Do you remember receiving any payments, rebate payments for the Art Gallery?---Rebates aren't for me the rebates are for the client.

40

What's, what's the answer of the question?---No, I don't receive any rebate payments.

I said my question was do you remember receiving any rebates for the Art Gallery?---No.

Do you accept that you had discussions with Q Video Systems about the payment of rebates?---And many other companies, yes.

10 Look, Mr Paul, I did not ask you about any other companies. Do you understand that? I'm just asking about discussions with Q Video Systems about rebates for the Art Gallery so just confine your answer to the question because otherwise you're wasting everyone's time. The question was do you accept that you had discussions with Q Video Systems about the payment of rebates for the Art Gallery?---Yes.

And in this email Mr Thompson states that he anticipates that - I'm sorry, he confirms that Q Video will be able to offer rebates and anticipates the range of prices, that they wanted five per cent?---Yes.

20 So what is your explanation then for why no rebates were paid to the Art Gallery?---That information's passed on to the Art Gallery - - -

Yes?--- - - - and typically it's not my responsibility to chase the rebate payment unless the client says to me can you, can we sit down and confer with, with the supplier and work out how much the rebates are due and then they would have written a cheque to the Art Gallery so it's not, it's not my position to do that, it's my position to negotiation it if that's what the Art Gallery wants me to do and they did.

30 So you passed this information on to the Art Gallery is that right?---Oh, yeah.

Who did you pass it on to?---I would have, I'm pretty sure I passed it, I definitely would have passed it on to Tony, Tony Morris and I'm pretty certain it would have gone to Anne Tregeagle.

Okay. And do you say that no one asked you to chase it up?---Not, not to my recollection, no.

40 The rebates given the value of this, of these products, were quite significant weren't they?---Well, I don't know how much they, how much Q Video ended up selling so I don't, I don't, I don't recall.

Well, acting in the best interests of your client as you say you do wasn't it in your client's interest to chase up the rebate issue?---It's up to my client, yes, and they also got three per cent, three year warranties on the products as well.

But I'm not asking you about the three year warranty?---No, I'm just letting, letting you know.

But I don't want you to just to let me know as you've been told repeatedly, answer the question. Acting in the best interests of your client your practice would be, wouldn't it, to follow up the issue of the rebate and to, and to whether they were going to be paid and when and how much?---If they asked me to, yes.

If who asked you to?---If the client asks me to.

10 And you're saying the client did not ask you to?---I don't recall whether the client asked me to, if the client had, had asked me I would have done so.

Did you ever get paid money which was by Q Video Systems which was earmarked for, for, as rebates?---No.

Could the witness please be shown Exhibit 2, tab 13?---Thank you.

20 So these are two cheques, two cheque butts and two cheques, I'm talking about cheque 3605 and 3606 and the evidence of Mr Diekman is that these cheques were given, these two cash cheques totalling \$20,000 were given to you. Do you recall him giving that evidence?---If they're, if they're the same cheques, yes.

And we're talking about May, early May 2009. So do you recall getting \$20,000 from Mr Diekman in cash cheques from Mr Diekman in May 2009?

---Vaguely.

30 THE COMMISSIONER: And are these Kings cheques?

MR STRICKLAND: Kings cheques, that's right. And why was it that he gave you two cheques totalling \$20,000 in early May 2009?---If my memory, if the dates are correct then this was for, it may have been for Maurice's birthday, for, for South Africa and Switzerland.

No, they're two earlier cheques, they're the February 2009 cheques. I'll just take you to that?---Right.

40 That's in -- just go to tab 11?---Right.

I've already asked you about these in the last day or two. The evidence you have given about these cheques, which appear - - -?---Right.

They're the two cheques, that's at tab, I'm sorry, 11 and 12, I beg your pardon. If you look at that, I'm sorry, which are page 121 and 122?---Yes.

The evidence you gave on the last occasion was those cheques were given to

you and then you later paid the majority of that for Maurice Ciot and his partner?---That's right, yes.

So these two are different?---So if, if again, because my memory is not right on the dates and stuff, but there was two cheques given to me when we got back from, from Vegas - - -

That's correct?--- - - - for, for betting.

10 You were, you'd returned from – the Las Vegas trip was in March, early April 2009?---Right.

These cheques are in May 2009?---Sure. Yep.

So you're saying these two cheques were given to you for betting?---For betting, for – he was, we were on the tables and he was taking chips from the table that I was on or from my, from my pile of chips.

Right?---Yes.

20

And forgive me for asking basic questions about chips, but the chips are each – one chip is worth a certain amount of money. Is that right?---Yes, they are, they're gambling chips, casino gambling chips.

So what's one, what was one chip worth?---I don't recall, I don't recall the different values but we were drunk, we were gambling and the next morning he said to me I think owe you 20 grand 'cause he took a whole bunch off me. Every time - - -

30 When you say - - -?--- - - - I was winning and he was losing and every time he, he lost his chips he'd grab a handful from me.

He seems to be a particularly unlucky gambler, Mr Diekman?---A good guy to bet against.

(not transcribable) about the chips, is one chip worth \$1 or \$10 or \$100?---It depends on what table you're on and what you, what you were gambling. I don't recall the specific details. I was, I was intoxicated.

40 THE COMMISSIONER: What's the maximum amount on a chip?---I think you can get 500 or \$1,000 chips.

Did you have chips of that amount?---I would have had, yes.

MR STRICKLAND: And the, I've been advised this by those who know better, but apparently different coloured chips have different values. Is that right?---That's correct, yeah.

And do you remember what your colour chips were?---No, I wouldn't have a clue.

So how many chips did Mr Diekman take?---I wouldn't have a clue.

So you had no idea how much money in terms of chips he took from you that night. Is that right?---I don't recall the specifics, no.

10 So the answer to that question is no, you know?---No, I don't recall the detail.

THE COMMISSIONER: Well it's not a matter of not recalling, if you, if you didn't know what chips he took you couldn't have known the amount of what he took?---The precise amount, no.

Or even an approximate amount?---Well there was a lot that he took.

20 Well apart from knowing that he took a lot of chips you had no idea what the amount was?---No. I don't know how much I started with. I think I started with \$30,000 so I don't know how much I ended up with. Certainly not \$30,000.

MR STRICKLAND: So in short your evidence is you don't know how much money in the form of chips he took, but the following morning he came to you and said I owe you \$20,000?---Yes.

30 I see. And was there anyone witnessed him taking, to your knowledge, him taking \$20,000 worth of chips?---I know Dave Micking was around the table at the time and he's the only guy I recall at the, at the same table with us.

THE COMMISSIONER: And this was in Las Vegas was it?---Yes, it was.

MR STRICKLAND: And when you were given these two cheques of \$10,000 each did you ever ask Mr Diekman why are you giving me two cheques?---No.

40 Did it seem to you to be a little bit odd that he owed you \$20,000 and he couldn't write out a single cheque for \$20,000?---Charlie did strange things.

My question was did it seem to you to be a little odd that he gave you two cheques when he could equally - easily have given you one?---No, he might have, he might have asked me at the time to bank them on separate days or put them down on separate days so that it was - it would help in their cash flow or something, I don't recall the detail.

Well when you, when you say he might have did he, did he ask you that?---Oh, I vaguely recall something of that nature but I don't, I don't recall the

detail and I don't recall when the, when, when these were paid so I don't know, no, I don't know the specifics of it.

And what did you do with these two cheques?---Put them on Amex.

Well did you disclose to anyone in the Art Gallery that you'd been paid another \$20,000 in - by Kings Security, that is in addition to the \$20,000 you'd been paid in February '09?---The, the money in February '09 wasn't for me - - -

10

THE COMMISSIONER: Is that yes or no?---It was for Morris's trip.

Just say yes or no?---No, I didn't see a reason to, it was, it was - it had no bearing on the - - -

20

MR STRICKLAND: Well, you see, you see, Mr Paul, the owner of a company being Mr Diekman who's been awarded a \$2 million contract has given you \$40,000 in cheques during the tender process and then after his company's awarded the contract which you recommended they be awarded and you - you're saying seriously you did not think it was relevant to disclose that fact to the Art Gallery?---No, 'cause it was gambling, it was Morris's birthday, they were completely irrelevant.

I want to suggest that that evidence that you've given is a fabrication? ---You can suggest that, you're wrong.

See you have given evidence repeatedly at this hearing trumpeting the fact that you put your client's interests first - - -?---Always.

30

- - - but you - I suggest you have deliberately concealed from them the fact that you had been paid \$40,000 in cash - - -?---Not at all.

- - - in cheques by Kings?---Not at all. One was a pay back of, of bets and the other one was, was for Morris's birthday.

40

THE COMMISSIONER: I have difficulty in understanding why you were paid in Kings cheques and not paid by Mr Diekman with his own cheque?---Well that's entirely up to Mr Diekman. I, I don't care how he pays me, if he pays me it's - - -

He's not paying you it's a Kings cheque, Kings are paying you not Mr Diekman?---That's Mr Diekman's prerogative it's his company.

But doesn't that create some sort of warning in your mind that this is very odd that Kings are paying you for Diekman's gambling debts - - -?---No, 'cause I looked at it as - - -

- - - in cash?---if he was pulling it out of his company like he did with money for his pool in his house and everything else.

You knew that he wasn't the only person who owned the company didn't you?---I beg your pardon?

You knew that he was not the only shareholder in the company?---I assumed Peter knew.

10 Why did you assume Peter knew?---Well, Charlie and Peter are partners it's up to them to discuss their own financial affairs not up to me.

Yes.

MR STRICKLAND: You have spoken about the payment of these two cheques and indeed the four cheques with Mr Diekman since this investigation, since you became aware of this investigation haven't you?---I don't recall, I don't recall when I've discussed these with, with Mr Diekman.

20

Well, don't you recall having a discussion with him at Garden Island about these cheques?---No, no, no, no. The discussion at Garden Island was not in relation to the cheques.

What was it in relation to?---It was in relation to a project. He was involved in a project down there.

Well, do you recall that he has given evidence that you had a discussion about these cheques at Garden Island?---I don't recall that.

30

Excuse me for a moment. So do you say you've never spoken to Mr Diekman about these cheques since this investigation?---Not that I recall.

If I can get back to, sorry, before the break I was asking you about Exhibit - - -?---R7.

- - - R7, thank you. I see, I beg your pardon, I'm sorry, thank you, just bear with me I'm sorry, it's actually R - sorry. Yes, it's R8, thank you?

40

---Thank you.

So - - -

THE COMMISSIONER: Sorry, is Kings represented here?

MR STRICKLAND: I don't believe so, Commissioner. There's been individual - - -

MR MAHER: No, it's not.

THE COMMISSIONER: I'm sorry?

MR MAHER: No, Commissioner, the two directors (not transcribable)

THE COMMISSIONER: All right, thank you.

10 MR STRICKLAND: If you go to page 156 of this tab, do you see your signature there? This is tab 8?---Yes, I do.

And do you agree you're, you're the author of this report?---I'm the author of the report, yes.

And when, when you provided the report did you include the annexures in it, from pages 157 on?---From memory I believe I did, yes.

20 Are you sure about that or you're not sure?---No, I've got all the, yeah, I believe I did but I, I'm not sure, no. I normally do include all the annexures.

If you just go to your, page 155, it is headed "Recommendation preliminary". I want to suggest to you that nowhere on that page or indeed anywhere on the seven page report do you actually state that ACG presented a tender bid that was \$55,000 cheaper than the Kings tender bid?---That was \$55,000? This, you know this is the second report, right?

Yes?---Yeah, there is a preliminary, there's an earlier report of February.

30 But this, this is the final report?---This is the final report.

Yes?---Yes. No, it shows it in the, in the, in the summary totals that would have been attached to this.

I accept it's in the summary total - - -?---Right.

40 - - - at 157 but in the body of the report there is no statement to the effect that is either saying ACG's price was cheaper or in the report itself setting out what Kings' price was or ACG's price was, do you accept that?---I don't know, I haven't read this report but on the assumption that you've read it and you've read it thoroughly yes, I'll accept that.

And was that a deliberate omission on your part?---Not at all.

Don't you think that was an important fact to include in the body of the report?---No, all of the tables are attached so it shows extensive breakdown of, of, of the pricing et cetera.

But you're saying you weren't sure whether the tables were attached?---
When I report a like this I either attach them as a, as appendices to the report
or they are pasted into the report to become the complete report.

If you go to page 155, paragraph 12 you've stated there that ACG offered
another price structure based on the revised offer and a mix of the
alternative offers with the revised price of between 1.9 and \$2 million
subject to what might be accepted and based on a potential redesign post-
placement of the order?---That's right. They did in the meeting.

10

But the actual price that ACG tendered and it's clear from their own tender
documents was \$1.945 million?---Right.

So why wouldn't you have included that statement in paragraph 12?---I
don't know.

20

Well one reason I suggest is because that clouds or conceals the issue that
they in fact presented a price \$55,000 cheaper than Kings?---It doesn't
conceal anything because the tables are there and it clearly shows – in fact
clearly shows on the very next page, on 157 that ACG were ranked 1 in
price, 1 in – 2 in desirable and 2 overall.

Yes, but - - -?---So 1 in price highlights, and it's highlighted with yellow
showing the, showing that they were ranked number 1.

So do you deny slanting this report even subtly to try and favour Kings?---I
absolutely deny that.

30

What do you mean when you – I'll withdraw that. And then do you agree
that this report does not state that ACG put in a Pelco bid or a bid for
Endura 2?---I don't know, I haven't read this report.

Well accepting that would you regard that – if that is so would you regard
that as a significant omission?---No, because in the, the final meeting which
was the result, resulted in this report ACG came in and said they didn't want
to put Pelco in they wanted to put Andover in from memory.

40

But they did put, they did put a bid for Pelco Endura 2 didn't they?---Yes, I
believe they did, yes.

So isn't that – wouldn't that be important to include in the report?---I don't
know. I don't, I don't recall the detail of it, so it was a collective group
discussion by the panel, by the tender evaluation panel that resulted in the
content of this report.

Well I'm not – I'm asking – the report itself as you've accepted was written
by you?---Yeah.

So - - -?---Drafted up by me and run out, it was run out to all of the tender panel to, to review.

Yes but you are the expert engaged to - - -?---Technical expert, yes.

So why wouldn't you as the technical expert have included a critical factor in the report that ACG put in a bid for Pelco Endura 2?---Because in the final interview they said they didn't want to put that in.

10 But you've accepted that they did. By the time you've written this report they had put in that, that bid?---No, no, no, the final interview they said they didn't want to present that forward, they didn't want to move forward with the Pelco solution. They wanted to move forward with an Andover solution. And that's where the, where the discussion of 1.9 to or 1.95 to 2 mil or whatever that variable was, that's where that, that came in because of the discussion.

20 So your, so your evidence as I understand it is you, you decided not to include ACG submitting an Endura 2, Pelco Endura 2 solution because notwithstanding their written document that they submitted, they had told you in the final interview that they were not going to pursue if they were awarded the contract the Endura 2 solution?---No, I didn't deliberately omit anything. If it's left out then it was certainly not a deliberate omission, that's for sure.

THE COMMISSIONER: And that's the reason for leaving it out?---I beg your pardon?

30 That was the reason for leaving it out?---That's the only reason that can come to mind that it wasn't, it certainly wasn't deliberate on my behalf to leave it out. And if you go back to the original report of February, then this was built on that. So all I did once - I did the original report in February and then, and then added to it and gave that to the tender committee to, to review.

MR STRICKLAND: I'll just go back to this issue of price - - -?---Yeah.

40 - - - at paragraph 12. I want to suggest that you well knew that the final price that ACG submitted was as reflected in the table \$1.945 million and that your statement at paragraph 12 that their revised price of between 1.9 and \$2 million et cetera was a misleading statement. Do you agree?---Not at all.

Okay?---They said that in the meeting.

Thank you.---You should check Anne Tregeagle's notes.

If you then go to tab 9 you can - in exhibit 2 - - -?---Thank you.

I'm just giving you this for the purpose of the date. Kings were awarded the contract by letter dated 6 March 2009. Did you see that?---Yes.

And after the - Kings were awarded the contract you received a telephone call from Mr Grubisic didn't you?---I don't recall when I received the phone call from Grubisic.

10 Well, sir, surely you recall receiving a furious call from Mr Grubisic about the fact that Kings was awarded the tender rather than ACG?---Yeah, I don't know when that was though. It was one, one evening, yes.

Well, it couldn't have been before the contract was awarded could it?---No.

So it was after?---At some point.

20 Yeah. And what did he say to you?---Oh, he was just angry. I mean Tony's, Tony goes off like that you know, um, he just - he was angry that he, that he didn't - wasn't awarded the project.

He said to you, you favoured your mate didn't he?---I don't recall what he said.

You don't recall him making that serious allegation or accusation do you? ---I don't recall the detail of the conversation, no.

Well, don't you recall the substance?---No, he was angry.

30 I know he was angry but he was angry - - -?---He was also drunk.

He was angry because he, he said to you, you favoured your mate?---I don't recall the detail of the conversation. It was three or four years ago.

Well, that's something you wouldn't forget is it?---That I received a phone call?

40 That you received a phone call from a friend of yours - - -?---Who was - - -
- - - in relation to a \$2 million contract who accused you of favouring a mate?---I don't recall the detail of it, no. And Tony's a mate as well.

Is that what you did, Mr Paul - - -?---Not at all.

- - - favour a mate being Mr Diekman?---I was one of four people on a tenderer assessment panel, Mr Strickland, I didn't favour anybody over anybody else.

And the evidence from all of those people have been and will be that they relied extensively on your expertise and technical knowledge in relation to every aspect of the tender process including the recommendation as to who was awarded the contract?---Absolutely rubbish. I was technical expert I grant that but Anne Tregeagle was the tender chair and she was the one that was, was across the tender requirements in relation to waiting to the evaluation. Ann Flanagan said herself that every single one of us bought a part to the, to the panel to have our own individuals, they're not lemmings they don't follow me.

10

Did you ever tell Ms Tregeagle or Ms Flanagan that you were mates with Mr Diekman and Mr Grubisic?---Or anyone else from SECOM or any of the other companies, no.

I'm just asking you about those two people?---I answered no.

And that was a deliberate omission on your part wasn't it?---Not at all.

20 See you knew, Mr Paul, that if you disclosed to the Art Gallery the true nature of your relationship with Mr Diekman you would never have been retained as the consultant?---Not true.

Or your consultancy would have been terminated?---Not at all. It had no bearing and has no bearing on anything that I do for my clients.

30 Well, you heard the evidence of your client, Ms Flanagan, at this hearing, you were here weren't you?---By evidence you've given, by evidence that, that the Commission has allowed her to see, not true evidence, not a, not a balanced view.

She was asked what she felt about the fact that you didn't disclose certain information?---Without knowing the other side of the story, yes.

THE COMMISSIONER: Mr Strickland, I'll think we'll leave this.

MR STRICKLAND: Could the witness please be shown Exhibit 2, R28?
---Thank you.

40 Now, this email chain begins at page 216, sorry, probably the relevant one begins at page 215 and goes over to 216. Mr Roche, and I'm not suggesting you received this email, refers to, we've committing to 100 housings coming from the People's Republic of China, it refers to customised brackets. You recall that don't you?---I recall, I recall this email, yes.

And the Art Gallery had ordered some housings, is that right in relation to cameras?---Can I give you the detail on this?

Yes?---Yes. We expected the contractor, whoever they were, in this case Kings, to work with the Art Gallery to come up with ways to discreetly hose the, house the, the cameras and in this particular email it's referring to a conversation between, between Tony Theissen and, and I believe Peter Roche there saying that, that they hadn't allowed in their, in their dealings between each other hadn't allowed for customised housings and the very last bit was Terry, Terry Yallouris basically saying this isn't in the spirit of it, he expected because it was, it was a Pelco system that he would get Pelco housings throughout. As far as I was concerned it didn't matter to me, I
10 wanted the housings or, on behalf of the client, the housings that best suited the Art Gallery and they were customised and that was going to cost somebody a bunch of money that hadn't, that they say hadn't been allowed for and that from, that email from me is a joke saying put it up as high as you like, spread it out any which way you like, bad luck people, do what you need to do, you need to do it without any extra variation on that.

So in essence you're saying that your email about increasing "the problem to \$50,000" was a joke, is that right?---Oh, it's, it's, it's a jab at them saying you could increase it, increase it to a \$150,000 for all I care, I'm saying here
20 a \$50,000.

THE COMMISSIONER: I don't understand that email and I don't understand what's funny about it?---Oh - - -

I can tell you what it looks like to me, it looks to me as if you're saying the \$20,000 problem could be increased, increased to \$50,000, in other words the amount to be paid should not be \$20,000 and paid by the Art Gallery, it should not be \$20,000, it should be \$50,000 and then spread around between
30 all the interested parties, get the Art Gallery to pay \$50,000 and the problem would vanish?---And the Art Gallery didn't pay any extra. The facts are - -
-

Do you mind, Mr - - -?---Sorry.

- - - Paul, is that not what this email means?---No.

On the ordinary meaning of the English language?---You need to understand it in context.

40 Well, you've told us, you've explained the context?---And that's the truth.

The context was that \$20,000 was being, payment for \$20,000 was being sought for housings and Tony, and who didn't want to pay the \$20,000? That was - - -?---Charlie, Kings.

Kings, Kings didn't want to pay the \$20,000. And they were saying someone else was going to have to pay the \$20,000. That's the position wasn't it?---And we never paid, the Art Gallery never paid.

That was the position wasn't it?---No, no.

Just excuse me. I'm just asking for a yes or no answer. I'm not asking for an argument or comment. Now I'll start again. \$20,000 had to be found for housings. Is that right?---No.

Can you just go to the email at page 216, please?---Yes.

10 There's an email from Tony Theissen "as per the conversations between Paul and Charlie, the housings are over and above the agreed supply price". Do you see that?---I can see that.

That means there is an extra amount owing for housings doesn't it?---Not to me, not to the Art Gallery, no. It's an argument between a supplier and an integrator in relation to what they have allowed for.

I'm giving you – I was attempting to give you the opportunity to explain what seems to me to be the ordinary meaning of the English language here.
20 But I can see that I can't give you the opportunity because you really do not answer the questions in an appropriate way. So I'll leave it. Mr Strickland.

MR STRICKLAND: Sorry, sorry. If you go to tab 21, please. And I'm sorry and also tab 22. I'm just referring to cheques 3692 and then over the page 3693 and 3994. Three cheques payable to cash for the Art Gallery \$10,000 each, \$30,000. Do you recall receiving any, \$30,000 or 10 or \$20,000 in cash by way of a cash cheque in August 2009 or thereafter?
---My apologies, but you've shown me so many different lots of 10,000's and whatever cheques, I, I am so lost in the dates, I can't recall any of that.
30 I don't know.

Well I'll just, I'll remind you the Maurice Ciot, what you described as the Maurice Ciot cheques are February 2009. Then you go to the ISC conference, you say you, Mr Diekman told you that he owed you \$20,000 from taking your chips and that that was paid to you in May 2009, the two \$10,000 cheques we just talked about 20 minutes ago. So this is some three months after that - - -?---Right.

- - - whilst the Art Gallery is still, is still being commissioned, the security
40 installation is still being commissioned. That's the date context, the chronological context. And what I'm asking you is in some time in August or shortly after August 2009 did you receive any other cash cheques from Kings in the amount of 10 or 20 or \$30,000?---I don't recall.
By that you mean you might have because you may have had further gambling debts with Mr Diekman?---As I explained a minute ago, you've, you've put a whole lot of different cheques in front of me, you've rattled off a whole lot of different dates in relation to different events that took place and I'm trying to explain them to the best of my recollection for those dates.

And I now sit here and I don't know which cheque was for which purpose. I honestly don't know.

See in preparation for giving evidence to this hearing have you ever tried to work out the total amount of cash Mr – or cash, by cash I mean cash or cash cheque or gifts that Mr Diekman or Kings gave you and when they were given to you?---They are not gifts, in relation to the betting and stuff I'm trying to put it together and on the dates that you've given me information, but no, I've not sat there and gone, and tried to reconcile it with any, any
10 great detail, no.

I want to ask you about work you done for Q Videos. You gave evidence of yesterday of work you had done for Q Videos which you say involved talking to Mr Theissen about preparing, preparing for tenders. Do you recall that?---No, Mr, Mr Thompson.

Thompson, I beg your pardon, Mr Thompson?---Yes.

That's correct. And you say that that involved some training, is that right?
20 ---If you could call it training, yeah.

Okay.---Training was your word so I'm trying to work out what the training was, it was probably in relation to that.

Over how many hours or days did that work involve?---I couldn't tell you off the top of my head, I, I visited their offices a lot and sat down with him and, and, and went with Paul through the process of it, um, on a fair, fair bit of detail.

30 Okay. And so the work you did for Q Videos was really discussions with you had with Paul Thompson and, and working with Paul Thompson. Is that correct?---On, on that occasion, yes.

At his offices in Sydney?---It was, yes.

Okay. So, and when you say you visited their office you're talking about visiting their office in, in Sydney?---Yes.

40 And - - ?---And meeting with him in other places and stuff.

What other, what other places?---Oh, in - for coffee and stuff.

In Sydney?---Yes.

And did you charge for meeting, for meeting for coffee in Sydney?---I - it was a collective, it was a collective. When, when I was providing him the, the briefing on, on how (not transcribable) et cetera that was over several

different meetings and several different times and I never really accounted for every minute that was, was attributed to that.

I tender a chain of emails ending with - from Paul Thompson to Rick Stokes dated 4 September 2009.

THE COMMISSIONER: The string of emails ending with the email from Paul Thompson to Rick Stokes on 4 September 2009 is exhibit 80.

10

#EXHIBIT 80 - STRING OF EMAILS ENDING WITH FIRST PAGE CONTAINING EMAIL FROM MR THOMPSON TO MR TAYLOR AND OTHERS RE INVOICE SENT ON 4 SEPTEMBER 2009 AT 1:13PM

MR STRICKLAND: So if we just go to page 198. You recognise that as the invoice that SCI - - -?---Sorry, I don't have 198.

20 THE COMMISSIONER: 197 is the last page.

MR STRICKLAND: I'm sorry my bundle has 198, so I wonder if 198 could be also handed up and I wonder if that could be attached.

THE COMMISSIONER: That will be attached to exhibit 80.

THE WITNESS: Thank you.

30 MR STRICKLAND: So is that a copy of the invoice that you rendered to Q Video Systems?---The first one, yes.

Right. And the description in the invoice of consultancy services that's the, that's what you have been referring to, is that right?---That's what I put it down to, yes.

Well, my question is when you say that's what you put it down to, what do you mean by that answer?---Yeah, it was a, it was a tender assessment presentation if you like that I did for Paul so I wrote it down as consultancy services.

40

THE COMMISSIONER: It was one tender, one presentation?---No, no, as I said before, it went on various different meetings.

Well, how many?---I couldn't tell you, maybe half a dozen.

Six, how long?---I don't know.

How long was each? An hour?---No, a few, a couple of hours, a few hours.

A couple of hours, a few hours. What's that mean?---Well, it depends on, when we were, when we'd meet we didn't just discuss that, we'd meet at, meet on other issues as well, ie, product et cetera.

And sometimes over a coffee and an éclair in a café?---Yeah.

And you'd discuss other issues too, did you?---Yes.

10 Did you charge for that?---No. Not for, not for - - -

So how many hours did you spend providing consultancy services?---Maybe 30 hours, 20 hours, I'm not sure.

And how much do you charge per hour?---I don't charge per hour.

You just have a lump sum fee?---I typically do projects on a lump sum fee, yes.

20 So did you agree a price with Q Video?---Yes, I did.

With whom?---With Paul.

Thompson?---Yes.

What was the price?---\$25,000.

Pretty good money for 20, 30 hours' work?---Is it?

30 Well, don't you think it is?---It depends, it depends on the, well, on the project and the, and the client, sometimes.

Yes, Mr Strickland.

MR STRICKLAND: Do you have any record of, written record of the work you've done which constitutes the consultancy services?---What, what, sorry, re-ask that question, do I have any record of what?

40 Do you have any written record of the work you have done that comprises the \$25,000 worth of consultancy services?---No, I walked him through a tender assessment process.

I see, and that walking through a tender assessment process took you what, up to 30 hours?---Well, maybe more, yeah, because I was trying to give him in detail what we do, yes.

And my question is do you have a written record of the provision of those services?---No.

Do you have a written record of the hours that you spent delivering those services?---No.

Do you have a written record of the agreement as to the price?---If there's an email, I'm not sure.

10 I'm asking whether you have or whether there is a written record of the agreement as to the price?---I don't recall, I, I don't know, I haven't, I haven't looked at my emails for that. There may be an email in the system, I'm not sure.

Did you create any document in relation to those consultancy services where you took him through the evaluation process?---No, I used previous ones that were along the line.

So the answer is you did not?---Create new, no.

20 And you have no written record of whether you spent five hours or 10 hours or 20 hours performing those or delivering those services, is that correct? ---I'd have to go back to my diary, no. Not, not, not off the top, not, not handy, no, I don't.

So you would have recorded that in your diary, is that right?---I would have thought so.

30 Are you able to produce any entries in your diary that relate to the provision of those services?---I don't know, I haven't looked in my diary and going back to 2009 I highly, I would think it's highly unlikely.

But I take it from your evidence that the only person you delivered, you gave that consultancy service to is Mr Paul Thompson, is that correct? ---That's correct.

The diary you're referring to, is that a, a hard copy, is it a physical diary or is it a computer diary?---I don't recall whether I was on a hard copy diary back then or a computer diary.

40 I just want to show you a record of the, of some SMS's that were sent and received from your phone. I tender that document.

THE COMMISSIONER: A record of SMS's sent and received on Mr Paul's phone is Exhibit 81.

#EXHIBIT 81 - SMS SENT AND RECEIVED BY DANIEL PAUL ON 2/09/2009

MR STRICKLAND: Now you knew Mr Stokes was a – what did you understand his position at Q Video Systems was?---I'm not sure, I think he's the managing director. I'm not sure of his precise position.

Okay. So the first text message on 2 September, '09, it's before, I'm sorry, was "Hey, Ricko, I trust you're well. Did you manage to sort that issue I called you about on Saturday?" And then he replies, "Paul said he spoke to you on Monday. We are still waiting to be paid by all parties." Now that
10 relates to you were chasing up this tax invoice isn't it?---I don't know whether it's this invoice or a different one.

Okay.

THE COMMISSIONER: A different invoice where you've charged Q Videos?---Yes.

For consultancy fees?---Yes.

20 MR STRICKLAND: I'll just continue on. He then sends a text, "He didn't tell me that. I organised to get you paid for the first part before delivery. I wish he had told me. I will call him. That was never disclosed." Now - - -

THE COMMISSIONER: No, discussed.

MR STRICKLAND: I'm sorry, discussed, thank you. And then there's a text from Brad Ballesty. Do you know who he is?---Yeah, he's the current, I don't know actually – he's a salesman there I think. He might have been a
30 manager there at some stage.

I want to suggest that that, at that particular time which is 2 September, '09 Mr Thompson was in the position that Mr Ballesty now is. Would you agree with that?---I'm not sure what position Brad holds right now.

Well what I want to suggest to you is that although the name attributed by phone is Ballesty, the person that actually texted you as contained in the message is Paul Thompson. Because the message is "Thomo, call me please. I just got a message from Rick and I'm annoyed." And if you look
40 at the context of the previous texts - - -?---Yeah.

- - - it indicates that Rick Stokes, Rick Stokes had said to you, "Paul said, that's Paul Thompson, he spoke to you on Monday. We're still waiting to be paid." And then as a result of the previous text Paul Thompson using the phone that Brad Ballesty used when these records were made texted you and says, "Thomo, call me please. I've just got a message from Rick and I'm annoyed." Does that sound right to you?---I can, I can read that. I don't know the context of that. It may be in relation to a totally different invoice.

But what I'm – excuse me for one moment.

THE COMMISSIONER: It's two minutes later than the previous email, message.

MR STRICKLAND: Sorry, I'm sorry, Mr Commissioner, what I – that's a message you actually sent to, not received. In other words if you look at the column under the folder sent - - -

10 THE COMMISSIONER: From.

MR STRICKLAND: - - - that's a message you sent and you sent it to Thomo, "Thomo call me. I just got a message from Rick and I'm annoyed"?---Right.

I'm sorry, I'm sorry about that?---Right.

That may have confused you?---So what's Brad Ballesty's name doing there?

20

Because what I'm suggesting to you is he didn't, the records indicate he didn't start at Q Video until September 10 when the records were obtained from the phone company that had that same number registered under Brad Balley?---Oh, I see, right.

But at the time Thompson was using it?---Right.

I mean it just seems to make sense from (a) the records when Bellesty started and the actual content of the text which is Thomo. In other words
30 you're sending a text to, to Paul Thompson saying, "Thomo, call me please. I just got a message from Rick and I'm annoyed." And then he, Thomo, Paul Thompson texted you back saying, "Totally understandable. Will call after breakfast"?---Right.

And then there's a couple of other attempts at that same message. And then Rick Stokes then sends you a text a couple of hours later at 10.11am saying, "Okay, by the way, I was also never told that we were in the loop for the Art Gallery as there is not a lot, it should be not, there was not a lot in this for us. So I'm surprised also. I have not seen an invoice yet either. I hear it is
40 quite big so it will need to be split into smaller amounts to avoid scrutiny." Do you see that?---Yeah, I can see that.

What did you understand he meant when he said, "I was also never told we were in the loop for the Art Gallery"?---I don't know 'cause that's not what the context of the invoice was for.

Okay. Well, doesn't that suggest that there was a link between the invoice and Q Video being in the loop for the Art Gallery?---No, as I said there was

other, other projects that I'd done for Q Video and I don't know that this relates to specifically that invoice or any others.

Well, except that. So he then says, "I have not seen an invoice yet either. I here it is quite big so it will need - it should be two be split into smaller amounts to avoid scrutiny." What was your understanding as to why there needed to be scrutiny, it needed to be avoided?---Well given that he's the managing director of the company I, I have no idea, I don't know what scrutiny - - -

10

THE COMMISSIONER: Did you, did you SMS him and say can you explain what you meant?---No. Otherwise I'm sure you'd have that SMS but no, no, I haven't.

Why not?---Well, it doesn't mean anything to me. So if, if Thomo asked me to break up an invoice then that's what I did.

Right. So you had no idea what he meant when he said that he wanted it split up into smaller amounts to avoid scrutiny. Is that your evidence?

20

---Yes.

And, and I take it that you had no idea what he meant when he connected the invoice with Q Videos being "in the loop for the Art Gallery"?---He may have connected it with the Art Gallery but that's not the context of the invoice.

THE COMMISSIONER: But isn't he saying I've not seen an invoice, that is the invoice from you, and I hear it's quite big, meaning it's quite high, so it'll need to be split into smaller amounts to avoid scrutiny?---What Thomo explains it to Rick as is, is entirely up to - between them.

30

No. This is a - this is a message from Rick Stokes to you?---Yeah. But I didn't mention the Art Gallery.

So what invoice was he talking about?---Well, I'm not sure he, he doesn't that state which invoice he's talking about.

But he's talking about the Art Gallery?---No, there was no invoice for the Art Gallery.

40

MR STRICKLAND: You see following that, that text, if I could take you to the, the exhibit 80 I've just been referring to. Have you got, have you still got that?---Thank you.

The first email from Thompson to (not transcribable) this is two days after that text exchange was apologies for this one, "Please disregard the invoice for 25, what Dan should have done is to provide us with four separate invoices which are now attached." Well that's that email clearly links the

text message from Mr Stokes on 2 September with a \$25,000 invoice which is at page 198 doesn't it?---It appears to.

Well, was there any other \$25,000 invoice that you've entered at that time? ---I don't recall, I don't recall what - how much the values were. There was, there was a couple of invoices that were sent to Q Video over the period, over various different period.

10 Well, well, well, was there another invoice in September 2009 for \$25,000? ---I couldn't tell you off the top of my head.

If there was such another invoice for \$25,000 in September 2009 what would that have related to, what work would that have related to?---There's two other projects that I've done with Q Video. One was acting as a go-between, between Q Video and Orion in relation to the development of a software package so that Orion could sell that or potentially sell that through Q Video as a, as a non propriety product.

20 And when was that work done?---I couldn't tell you off the top of my head.

And when you say you were a go-between what actual work or service did you perform?---I facilitated meetings and took minutes et cetera.

So you, you charged for facilitating meetings, is that right?---Yes.

And what did you charge for that?---I don't know off the top of my head, I don't have that invoice in front of me?

30 THE COMMISSIONER: Who was your client (not transcribable)?---It was both, both Orion and, and Paul Thompson or Q Video. I think it was Q Video at the time.

And when did you do that work?---I don't recall the dates.

Can you find it out?---You've got that.

Can you find it out?---Yeah, sure, of course I can.

40 MR STRICKLAND: And you said two, what was the other project?---The other one was I did a presentation on the back of a shootout, a product shootout and presented that detail to, to Q Video also.

And how much, how much was that worth?---I don't know off the top of my head.

And when did you do that?---I'd need to go back to the invoices and have a look.

And can you do that?---Sure.

Commissioner, I tender four tax invoices from SCI also dated 19 June, 2009.

THE COMMISSIONER: Exhibit 82 is constituted by four tax invoices from SCI to Q Video of 19 June, 2009.

10 **#EXHIBIT 82 - FOUR INVOICES TO Q VIDEO SYSTEMS DATED
19 JUNE 2009**

MR STRICKLAND: Do you recognise those four invoices that you rendered to SCI, to Q Video Systems?---Yes, I do.

And that was done, that's the same date as the tax invoice on, which I've shown you previously, do you still have that by the way?---Ah no, but it doesn't matter, that's correct, yes.

20

THE COMMISSIONER: Exhibit 80, Exhibit 80.

MR STRICKLAND: Exhibit 80. So do you accept that these four tax invoices represented the breakdown that you'd been instructed to do by Mr Stokes?---Yes, correct.

And if you look at - - -?---But, but I wasn't instructed to break them down by Mr Stokes, I was instructed to break them down by Mr Thompson.

30 Okay. And if you look the description of, of each of them it's got provision of consultancy services, training for tender submissions Perth - - -?---Yes.

- - - February 2009?---Yeah.

And then it's 199 and 202 is the same thing, Queensland March 2009 and then Victoria April 2009 and then Sydney May 2009?---Yes.

40 Now, you never provided, you never did training for tender submissions in Perth in February - - -?---No, that's the, that's the breakdown that I gave to Paul.

That's not my question. Would you like me to repeat it?---No.

Well, answer the question please?---No, I didn't provide those services in Perth.

So why did you write that false description in your tax invoice?---So that Paul could, so that Paul could have four different invoices as he asked me for.

THE COMMISSIONER: And why did he want four different invoices? ---Well, apparently due to Rick Stokes' instruction to break them down.

To avoid scrutiny?---Well, according to, according to Rick Stokes.

10 Can you think of a reason why scrutiny should be avoided?---No.

But you were happy to go along with that?---Of course.

MR STRICKLAND: And were you instructed to create false descriptions of the work you did?---No.

So that was on your own bat?---I just, I, I wrote them up, sent them to Paul and said are they okay?

20 So that was on your own bat then?---Yeah.

And why - if you had done as you say you have delivered legitimate consultancy services, even if you were asked to split them up, why would you possibly provide a false description of what you had done?---It's only, the only false bid is the, is the date of delivery and the location, all the rest of it's true.

Well, why would - - -?---Well, so that they could break it up.

30 Why - but they didn't ask you, according to your evidence, to break it up and provide a false description, you did that off your own bat?---Sure.

So why would you give a false description of when you delivered the services and where you had delivered the services when all you had done was deliver, on your evidence, legitimate services?---Yeah.

Why?---Because Paul asked me to break it up.

40 No, he didn't, I'm not asking you that question. I'm asking you why did you on your own bat, off your own bat, make a false invoice about where you had performed the consultancy serviced and when?---Because he asked me to break it up, that was, that seemed a logical, the logical way to break it up to me.

THE COMMISSIONER: Well he didn't ask you to put in a false description?---I don't recall whether he did or not.

You think he might have asked you to put in a false description?---No, it's my recollection that he didn't, to my recollection he didn't, but I thought that that was a logical way to break it up for him.

What it was logical to put in a false description?---It doesn't matter. The location doesn't matter.

No, no my question is, my question is it was logical to put in a false description was it?---He asked me to break it up.

10

No, no, my question is was it a logical description to give a false description?---Sorry?

Was it logical to give a false description?---To differentiate the invoices, yes.

So you differentiate the invoices by giving a false description. That's logical is it?---It's the same description, it's just a different location.

20

But it's the question really that I'm interest in is, is to understand your answer that it was logical, logical to put in a false description?---Logical to break up the invoice.

No, no, you said - - -?---And differentiate by a different, different location, that's all.

Yes, Mr Strickland.

30

MR STRICKLAND: It wasn't an honest thing to do was it to provide a false description of the work you had rendered?---It's not a false description of the work that was rendered it's a false description of the location.

And the time?---And the date, yes.

That's not an honest thing to do is it?---Well the honest thing to do was submit the first invoice, but they didn't want that. They wanted it broken down, so I broke it down for them, no problem.

40

Can you answer my question?---Ask the question again, please?

It's not an honest thing to do is it, to render tax invoices that contain false descriptions of the date and the place where services are rendered is it? ---Well assisted them, so it's not dishonest. They knew what they were, they knew what they were getting, well Paul did.

And when you, now having regard to these invoices, that's the one at Exhibit 80 and the one at Exhibit 82, it's quite clear isn't it that the invoice that Mr Stokes was talking about in his text about, "I didn't know we were

in the loop for the Art Gallery”, the invoice he’s referring to in that text is the \$25,000 invoice at Exhibit 80 isn’t it?---No, I don’t know that.

Well in can’t be anything else can it because you’ve – because you have in relation to Exhibit 80, the \$25,000 invoice done what you have been instructed to do, which is split that up into four separate invoices?---No, his text message doesn’t mention invoice numbers, it doesn’t mention amounts, so how do I know that that’s what it’s about and it wasn’t in relation to the Art Gallery anyway, it was in relation to these services.

10

So what I want to suggest to you is that these – you never performed \$25,000 worth of consultancy services for Mr Thompson did you?---And again you can suggest that but you’re wrong.

And in fact this was money that you, this was an invoice that related to favours you had given Q Video Systems in relation to the Art Gallery tender, wasn’t it?---Absolutely incorrect, there was no guarantees for, for Q Video that they would get any work.

20

And that’s the explanation for Mr Stokes’ text message linking the invoice with Q Videos being in the loop for the Art Gallery isn’t it?---The Art Gallery’s got nothing to do with this invoice.

I tender two tax invoices dated 3 December, 2007 at pages 102 and - - -

THE COMMISSIONER: Those are new documents, Mr Strickland?

MR STRICKLAND: That’s correct, yes.

30

THE COMMISSIONER: Two tax invoices from SCI dated 3 December, 2007 is Exhibit 83.

#EXHIBIT 83 - TWO INVOICES TO Q VIDEO SYSTEMS DATED 3 DECEMBER 2007

MR STRICKLAND: Is that a convenient time?

40

THE COMMISSIONER: Yes, I’m just making a note of that. Yes. The Commission will adjourn till 2.00pm.

LUNCHEON ADJOURNMENT

[1.00pm]