

TILGAPUB00492
26/06/2012

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pp 00492-00507

PUBLIC
HEARING

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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 TUESDAY, 26 JUNE, 2012

AT 11.08AM

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

MR CHALMERS: Good morning, I just seek leave to appear leave to appear for Mr - - -

THE COMMISSIONER: Yes. You have leave.

MR CHALMERS: I seek that the objection, the 38 objection, Commissioner, continues.

THE COMMISSIONER: Yes.

10

MR CHALMERS: Thank you.

THE COMMISSIONER: Mr Diekman, would you return to the witness box. Yes. The section 38 still applies and so does the oath that Mr Diekman took to tell the truth.

THE SECTION 38 ORDER STILL APPLIES

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THE COMMISSIONER: Mr Strickland.

<CHARLES PETER DIEKMAN, on former oath

[11.09am]

MR STRICKLAND: Mr Commissioner, I'd like to tender a bundle of documents, Ms Lonergan provided a list of those documents - - -

30

THE COMMISSIONER: Yes.

MR STRICKLAND: - - - which have been labelled D53 to D61.

THE COMMISSIONER: Yes. Exhibits D53 to D61 will be the exhibits as described in the document handed up which I will mark MFI6.

MR STRICKLAND: I beg your pardon?

THE COMMISSIONER: I'll mark it MFI 6 for everybody's convenience.

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#MFI 6 – LISTING OF DOCUMENTS TENDERED IN DIEKMAN'S CE ON 26 JUNE 2012

#EXHIBITS D53 - CHEQUE 2096 DATED 14 FEBRUARY 2007 FOR SECURITY MERCHANTS IN THE AMOUNT OF \$9,000

#EXHIBIT D54 – SECURITY MERCHANTS DATED 4 JULY 2007

**#EXHIBIT D55 – DIEKMAN TRANSFER OF \$3,000 ON 6
SEPTEMBER 2007**

**#EXHIBIT D56 – DIEKMAN NAB STATEMENT INTERNET
TRANSFER \$18,000 ON 4 MARCH 2008**

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**#EXHIBIT D57 – DIEKMAN TRANSFER OF \$8,000 ON 5 MARCH
2008**

**#EXHIBIT D58 – DIEKMAN NAB WITHDRAWAL SLIP OF 7
MARCH 2008**

20 **#EXHIBIT D59 – CHEQUE BUTT NOS 3851 & 3852 DATED 10
FEBRUARY 2010 IN THE AMOUNT OF \$9,800**

**#EXHIBIT D60 – CHEQUE BUTT NOS 3960 DATED 28 JUNE 2010
FOR \$9,900**

**#EXHIBIT D61 - CHEQUE BUTT FOR HARVEY NORMAN NOS
3961 FOR \$9,800**

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MR STRICKLAND: Yes. That's the list?

THE COMMISSIONER: The list.

MR STRICKLAND: Yes, thank you.

THE COMMISSIONER: But the documents will be as denoted in the, in
the list.

40

MR STRICKLAND: Thank you.

THE COMMISSIONER: So the next, the next exhibit will be D62.

MR STRICKLAND: Commissioner, I'll need to read out for the sake of
everyone who's been given the documents which D number relates to - - -

THE COMMISSIONER: Well, why doesn't everybody get a copy of the list?

MR STRICKLAND: Because the list, everyone can't be given a copy of the list because the list contains more documents than D53 to D61, the list is for our purposes and it goes through all the documents we propose to tender today.

THE COMMISSIONER: I'm sorry, I'm lost.

10

MR STRICKLAND: We don't, we don't have a separate list of D53 to D61.

THE COMMISSIONER: I do.

MR STRICKLAND: You do?

THE COMMISSIONER: Yeah. In fact I have a list which has only got those documents.

20

MR STRICKLAND: Oh, well, I think you're the only one that does.

THE COMMISSIONER: Well, can I hand that back and we'll get copies made and everyone will get a copy.

MR STRICKLAND: Could I have a quick look just - I've got the same document. Okay. Yes, thank you. We don't have that.

THE COMMISSIONER: You've got to have influence here.

30

MR STRICKLAND: I want to show you - when there's an opportunity I want to show the witness D56, D57 and - D55, D56 and D57.

THE COMMISSIONER: Yes. But the parties - - -

MR STRICKLAND: I shall read out what those documents are.

THE COMMISSIONER: Well, the representatives - you'll, you'll go through each document - - -

40

MR STRICKLAND: Yes, yes.

THE COMMISSIONER: - - - as you question Mr Diekman so everybody will know what you - - -

MR STRICKLAND: Yes, they will.

THE COMMISSIONER: And they will get copies.

MR STRICKLAND: Yes.

THE COMMISSIONER: So there's no issue.

MR STRICKLAND: D55 is a transfer of \$3,000 from a bank record, \$3,000, NAB bank record, 56 is the NAB Gold MasterCard statement from 27 August '07 to 14/09/07 and 57 is Mr Diekman and Ms Newman's bank statement. So have you got those documents?---No.

10

No. Have you got anything in front of you?---No.

D55 is the single, it's got page 233 on the top and then D56 has page 253 on the top and D57 has 261 and 262. I'll just take you first to D56 and D57, they're the easiest to read?---Sorry?

D56 and D57, the two bank statements?---Yes.

Now, that shows that you've, that you've transferred - if you go to 57
20 you've transferred on 6 September, 2007 \$3,000 into your NAB credit
account and you've recorded for the internet transfer AMP DP, do you see
that?---Yes.

And that refers to - you've earmarked that cash for Daniel Paul in relation
to an AMP contractor or an AMP transaction. Is that correct?---I can't
recall that far ago.

THE COMMISSIONER: But that's what it says Mr Diekman. Are you
30 really going to continue with this policy of saying that you don't recall that
long ago when you can see exactly what you've done? It's got the day, the
letters DP next to it. What is the effect of that?---I can't recall.

Mr Diekman, I don't believe you. And I am warning you now that if you
continue with this you run the risk of being charged with contempt of the
Commission. And I know very well why you're doing this and you know
that I know why you're doing this. Isn't that right?---(No Audible Reply)

You're nervous about telling the truth here aren't you Mr Diekman?---I'm
40 just nervous about being here.

You're nervous about telling the truth. You're scared of somebody are
you?---That may be the case.

So you better be, I think what you should bear in mind is that the risks of
not telling the truth are that you could be prosecuted. Now if you persist
with this you'll be in serious trouble, Mr Diekman. Is it the case that you
are not telling the truth because you are scared of someone? You said it's
possible. That's true isn't it?---Yes.

MR STRICKLAND: So what are you not telling the truth about?---I just say I can't this and so it's hard to say what the truth is if I can't it.

No, but what are you not telling the truth about? You've agreed that you're not telling the truth because you're scared of someone? What are you not telling the truth about?---I spoke to you about that yesterday in the morning session so - - -

10 So, so what is the truth that you're not telling us?---Well I'm not prepared to discuss that because I told you that yesterday and - - -

I'm asking you a question.

THE COMMISSIONER: You didn't tell yesterday. You did not?---In the, in the - - -

No, you didn't.

20 MR STRICKLAND: What is the truth that you're not telling us?---I don't know the truth. I'm just saying I don't recall this.

No, I'm asking you generally. What is the truth that you are not disclosing to us because you have a fear of someone?---Well I'm not prepared to discuss that here.

THE COMMISSIONER: I think Mr - I'm sorry to do this to everyone, but I'm going to call for an adjournment and I'm going to hold a compulsory examination of Mr Diekman again with only his solicitor present. It won't
30 take more than 15 minutes. I apologise for wasting your time. But I'm going to do this and then we'll come back.

SHORT ADJOURNMENT

[11:18am]

THE COMMISSIONER: Mr Strickland, before you begin, I wish to apologise to everyone for keeping you waiting for so long. All I can say is
40 that there were matters that we had to deal with and they will in the end result in the shortening of this inquiry. Now, I'm sorry for the way in which you've been messed around this morning. Is Mr Diekman here? Mr Naylor, has Mr Chalmers gone out to fetch Mr Diekman?

MR NAYLOR: I've asked him to do that, Commissioner. Commissioner, I'm told he's not outside and he's not in the bathroom.

THE COMMISSIONER: All right. Well, what I'm going to do is - Mr Diekman will have to be recalled. Oh, he's there. So this is the

recommencement of the public inquiry and Mr Diekman is - you're still your oath and the section 38 order still applies.

<PETER CHARLES DIEKMAN, on former oath [12.36pm]

THE SECTION 38 ORDER STILL APPLIES

10

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Mr Diekman, I am going to ask you a question and I'm not going to name the person the question refers to or persons and I'm not going to - and I don't suggest in asking the question that this person or persons has anything to do with this, the subject matter of this inquiry. Do you understand?--Yes.

20 Is it the case that you have not told the truth in the last three days of you giving evidence because you have a fear of a person or persons?

MR NAYLOR: I object, Commissioner.

THE COMMISSIONER: We've been through this.

MR NAYLOR: I apologise, Commissioner, I wasn't here earlier.

30 THE COMMISSIONER: I know but I've made a ruling on this in the compulsory examination. Anyway, what do you want to say, Mr Naylor?

MR NAYLOR: My concern is, Commissioner, that the question invites an answer which may disclose information, the effect of which is to put the security of this witness at risk.

40 THE COMMISSIONER: I don't understand why. Nobody is named. It's been made clear that the persons are not part of, not connected with the inquiry and the subject matter of - the reason - well, that's enough. That being so, how can it possibly, how can anyone take offence? They could only be happy that Mr Diekman has given the evidence that he has. He's not going to be pressed further on his evidence, Mr Naylor.

MR NAYLOR: Perhaps that is where the centre of my concern is, Commissioner. I have a concern that the question invites an answer which indicates that this witness is in some fear and - - -

THE COMMISSIONER: Well, he is.

MR NAYLOR: - - - and I am concerned, may I say, about where that questioning may lead and the disclosure of information that indicates - - -

THE COMMISSIONER: I don't know what that means.

MR NAYLOR: - - - why that concern might be held.

THE COMMISSIONER: I beg your pardon?

10 MR NAYLOR: I'm concerned about questions which invite detail about the source of any concern that this witness may hold about fears - - -

THE COMMISSIONER: I will not allow any such questioning.

MR NAYLOR: Thank you, Commissioner.

THE COMMISSIONER: Now - - -

20 MR STRICKLAND: Do you want me to repeat the question?---Yes, please.

Is it the case you have not told the truth in the last three days of your evidence because you have a fear of someone or some persons?---That's correct.

I'm just going to ask you a few more questions about some documents in a couple of, a couple more areas.

30 THE COMMISSIONER: I think he was going to - are you going to tender the compulsory examination transcript?

MR STRICKLAND: I'll do that. I tender the compulsory examination - - -

THE COMMISSIONER: From yesterday.

MR STRICKLAND: Of Monday, 25 June with Mr Diekman.

THE COMMISSIONER: I'll tell you what we'll do, I can see Mr Naylor looking really worried there. We'll tender it after lunch.

40 MR STRICKLAND: Yes.

THE COMMISSIONER: Mr Naylor can have an opportunity of going through the transcript of yesterday and Mr Chalmers will tell Mr Naylor what was said in the compulsory examination that has just been concluded. And the tendering, your application to tender the documents will be made after lunch.

MR NAYLOR: I'm grateful Commissioner.

THE COMMISSIONER: And you can just proceed with whatever questions you want to ask Mr Diekman.

MR STRICKLAND: Could the witness just be given D56 and D57? And if you go to D56 on page 279, there is a reference to an internet transfer on 4 March, 2008. Do you see that?---Yes.

DBUWRKMB \$18,000?---Yes.

10

And that's, that's a debit to that, a debit on that account on that day?---Yes.

And then if you go to D57 at page 273, can you see that in relation to the account you've transferred the money into, that is account that ends 2674 - - -?---Yes.

- - - there's a credit to that account?---Yes.

20 Again with the initials DBUWRKMB. And the following day there are two withdrawals equalling \$18,000, one for \$8,000 and one for \$10,000?---Yes.

If you go to page 242 you can see, I'm sorry, on D58 if the witness could be given that. Can you see that you have withdrawn, there's a withdrawal of \$10,000 signed by you on 7 March, 2008?---Yes.

So you had a practice didn't you of transferring money from one account to another and then to remind yourself of what that money was for you put initials next to the internet transfer. Correct?---Yes.

30 And that's to remind you as to where the money should go. Correct?---Or what the money was for.

Or what the money for. Is that right?---Yeah, yes.

So DP refers to Daniel Paul. Is that right?---It could be, yes. Anyone else could it be?---Not that I'm aware of.

UW refers to UWS?---It could be.

40 Anything else you could think of?---Not that I can think of.

refers to ?---It could be.

Anything else, any other person you can think of?---No.

And MB stands for?---My boat. I don't know.

You're not sure of MB?---(No Audible Reply)

So why were you transferring and withdrawing \$18,000 for or parts of \$18,000 for Daniel Paul?---I can't recall.

Or for University of Western Sydney?---I can't recall.

Or for _____?---I can't recall.

10 Okay. Thank you. Could the witness – I've finished with those documents, thank you. Did you give any Chubb security cheques to Daniel Paul?---Not that I'm aware of.

By which I mean, and I've asked you I think in the first or second day about cheques made out for cash - - -?---Yes.

- - - but where the stub had Chubb Security?---Not that I can recall, but I wouldn't have written Chubb - - -

20 They're the cheques I'm asking you about. I'm asking you about cheques made out for cash - - -?---Yes.

- - - but where it's accounted for in the cheque butt as Chubb Security. Do you know what I'm talking about?---Yes.

And Chubb Security was a dummy supplier, I mean a real supplier but for dummy work which you used to conceal where the cash was going. Is that right?---I assume so.

30 Right. But you know so, don't you?---Well, I don't do, I'm not in the accounts department so- - -

Did you direct any of the, of those cheques, cash cheques for Chubb Security to be given to Daniel Paul?---Not that I recall, unless I owed him betting money at the time, but I don't know the dates you're talking about.

I'm just asking any, at any stage?---I, I may have, I've paid some gambling debts, so yeah.

40 Could the witness please be shown Exhibit R30, which is an email from Peter Roche to John Marinucci, it's Financial 115. I just want to ask you, the first email in time, 21 December, 2009 at 6.18pm, this is one that you were copied into where John says he drew two cash cheques last night and asks Peter, "Are you happy with the split below? If you want we can make number 3 out to EOS Security." And do you see on the next page, page 116, there are three cheques?---Yes.

Now, MCM Electronics Pty Limited is the second one for 8,152. That was a dummy supplier, wasn't it?---Um, it may have been, I'm not sure.

Do you know what those three transfers relate to?---No, I don't.

Do you know why Mr Marinucci said that he can make number 3 out to EOS Security?---No, I don't.

Did that suggest to you that in relation to Chubb Security, the third one, that that was a dummy, a dummy reference?---Oh, look, I don't recall it. It looks like it but yeah, not that I can recall

10

If you just look at the top email, "I've created three PO's- - -?---Yes.

- - -in the Waterhen job for these orders and left them on your desk."
---Yes.

Did you know that these three, there were three false purchase orders created?---I, I may have, but not that I can recall, I just- - -

20

Did you have any discussion with Mr Roche about the reason why he wanted three false purchase orders created?---Not that I can recall, no.

Did you ask him to do that?---Probably.

And for what reason?---Cash.

And what was the cash for?---I can't recall.

Could the witness be shown D, I beg your pardon, D59. Is that your, if you go to page 178 is that your signature on the cheque?---Yes.

30

I beg your pardon?---Yes.

And do you recall why you wanted \$9,800 cash on 10 February, 2000?
---No, I don't.

If I can just take you to D60 and also D61. I just want to ask you about the two, the cheques 3960 and 3961. Do you see your signatures on those two cheques?---Yes, I do, yeah.

40

And they are two cheques for Harvey Norman. Is that correct?---That's correct, yes.

Do you know where those cheques went to?---I believe it was paying back Daniel Paul for a gambling debt.

And where did you accrue the gambling debt?---In, in Las Vegas I assume.

And when you say you assume, do you know?---Well I don't know whether it was definitely this one.

Well look at the date 28 June, 2010?---Yes.

THE COMMISSIONER: Does that make it a Las Vegas gambling debt?
---Yes.

MR STRICKLAND: And how much was the gambling debt you accrued?
10 ---Oh we started playing pool one night and starting at \$1,000 a game or
\$2,000 a game and it got up to 80,000.

Right. And - - -

THE COMMISSIONER: This was in Las Vegas was it?---Oh in a town
between San Francisco and Las Vegas.

MR STRICKLAND: And did Daniel Paul ask you for the \$80,000 back?
---I don't think he asked me, put pressure on me but I felt, I felt as though
20 that I was indebted and, yes.

And so why did you - - -?---I tried to win some back and - - -

I beg your pardon?---I think I tried to win some – I think I won some back
and then we had a bit of a gambling history from there.

Well how much did you win back?---Oh, I can't recall. It was going up and
down.

30 So why did you give him money – why did you repay the gambling debt by
way of cheques to Harvey Norman?---He was obviously wanting to get
something from Harvey Norman and I could take it out of the company. I
think he might, they might be down as dividends to me. I'm not sure.

Did you use the device of giving him cheques for Harvey Norman to
conceal the fact that you were paying Mr Paul money?---Concealing it from
probably the company, yes.

40 And when you say from the company do you mean your partner, Mr
Roche?---Yes.

I'm just going to show you some documents, please. Do you recall that
Kings tendered for a contract for Woollahra Council in relation to The
Gap?---Yes, I do.

That was in two phases wasn't it?---Yes.

And I want to suggest the first phase the tender opened in July 2009. Does that ring a bell?---That's, well the exact date doesn't, but it was around that time, yes.

All right. And Daniel Paul was a consultant to Woollahra Council for that tender. Is that right?---That's correct.

And Kings won the tender?---That's correct.

10 I want to show you a document which is Gap 426 to 445. Now I'm not – I tender that document.

THE COMMISSIONER: What the bundle?

MR STRICKLAND: It's a, it's entitled Woollahra Council Committee Minute relating to The Gap Park CCTV project dated 24 August, 2009.

THE COMMISSIONER: And that's a bundle of documents is it?

20 MR STRICKLAND: No, it's not a bundle.

THE COMMISSIONER: It's not a bundle.

MR STRICKLAND: It's a single - - -

THE COMMISSIONER: One document.

MR STRICKLAND: It's one document which is 10 pages long.

30 THE COMMISSIONER: Well, if - the Exhibit marked D53.

MR STRICKLAND: Thank you.

THE COMMISSIONER: I think it's D53, now. Sorry, 63, I beg your pardon, D63 is the document dealing with Gap Park CCTV project marked item R1 dated 24 August, 2009. Sorry, it's 62, it's marked D62.

40 **#EXHIBIT D62 - WOOLLAHRA COUNCIL MEETING MINUTE
REGARDING GAP PARK CCTV PROJECT DATED 24 AUGUST
2009**

MR STRICKLAND: Thank you.

Now, if I could - could I just take you to page 434 of D62. Do you agree that the contract that you were awarded was in the order of \$478,000?
---Yes.

If I could take you to 432, there's a reference on the third line to the proposed directional board method of installing conduit proposed by Kings Security as the key difference from other tenders?---Yes.

Because this has the potential to minimise environmental impacts of the installation process?---Yes.

10 And you knew that when you tendered for that contract that you proposed what is, what is referred to as directional boring or directional drilling?
---Yes.

Correct?---Correct.

20 And very briefly what is that?---It is where a machine goes in at a level and in the The Gap's case down at, probably 200 metres down from the top of the hill and they were able to drill in and pop up right on it, within, within a metre of what, where we asked them to pop up so there was no environmental damage at all, it was zero the National Parks area.

And just to highlight the dates, if you could just go to page 428. It refers to the tender being advertised on 14 July and 15 July and then a pre-tender meeting on 21 July, 2009?---Yes.

Does that strike you as being accurate, the dates?---I, I assume so, yes.

30 Now, can I show you please an email, sorry, a string of emails from the - beginning with an email from Daniel Paul to yourself copied to others on 15 July, 2009. If I could just take you to the first page of that, an email from yourself to Daniel Paul copied to others which is 15 July, 2009 at 10.22pm. You've written, "Not sure what the go is with Dell and marshmallow tongs(?)," that's a reference to other emails "but I just heard we have won The Gap job for added vals, our solution offered special Pelco monitors that see dead people before they jump." And then Mr Paul writes to you, "Throw in a trampoline and I'll see what I can do." Do you see that?---(No Audible Reply)

THE COMMISSIONER: At the top.

40 MR STRICKLAND: The top part of the page. Are you following where I'm reading from or not?---Yes.

Okay. Now, bearing in mind what I have - the dates I have read you about the contract, the advertisement for the tender being 14 and 15 July, it appears on the, on the day it was advertised you've written to Mr Paul an email that night, is that right, in relation to The Gap contract?---I don't think, I must be missing a page.

Can I have a look at what you've got there? No, that's what I, that's what I'm asking you to look at?---Okay.

THE COMMISSIONER: So it's the, do you see, do you see the bottom of the first page, Mr Diekman?---Yes.

And which, that email starts off, "Not sure what the go is with Dell?"---Ah
hmm.

10 Do you see that?---Yeah.

And then- -?---Yes, yes.

- - -"I've just heard we've won The Gap job for our added vals." Do you see that?---Yes.

I think that's what, your attention was really drawn to that. Is that right, Mr- - -

20 MR STRICKLAND: That's correct.

THE WITNESS: Look, I think that's just all a run of jokes.

MR STRICKLAND: Right.

THE COMMISSIONER: Yeah?---Yeah.

MR STRICKLAND: But you communicate immediately to Daniel Paul about that job. Is that right?---(No Audible Reply)

30

About, about the tender you're about to bid for?---Well, yes, I suppose, yes.

Because you knew he was a consultant to that project. Correct?---Yes.

Right. And you discussed that tender with him, didn't you, before you were awarded the contract?---I don't know whether I discussed the actual tender part of it but I probably always, as I keep saying, I discussed technical solutions available.

40 And did you discuss directional drilling with him?---I don't believe so. I think he came into the office once and we probably had, we may have had the documents on there, all the information that we'd gathered, but I don't know whether he saw, I can't remember whether he saw it or not or I think we were still trying to get, right up to the last minute we were trying to get confirmation whether they could do it because a couple of the companies we had up there said that their machinery can't do it, so we couldn't, I don't think we could even confirm, oh, it was just an option out there that we were looking at.

You, this was a competitive bid, wasn't it, you were bidding with a number of other companies on this contract?---That's correct, yes, yes.

And there's no doubt is there that Mr Paul came to your office during the tender process in relation to looking at the drawings that Kings were doing for this tender?---I don't know whether he came for that but he was often in the office and those drawings may have been on the, on the table.

10 But what I want to suggest is he definitely came into the office and discussed with at least one of your employees about this particular contract which Kings was tendering for, that is The Gap contract?---Well, he may of, if you're saying one of our employees, he may of.

Yeah. And which one?---I don't know.

But when you say he may have, why do you say he may have?---Well, you're saying that he has and I'm just saying he may have, I'm not, I'm not denying it.

20

Yes, but is it, is it the case that he assisted one of your employees in relation to the drawings that were submitted as part of this tender?---Not that I'm, he may have looked at them, I don't know whether he assisted with them.

And you knew that for a fact, didn't you?---I didn't know, as I said, he was in our office a lot and the drawings were there, he may, he may have made comment but I can't recall anything that he made comment that would give us an advantage or tell us how to do it.

30 THE COMMISSIONER: Mr Strickland, is this a convenient time?

MR STRICKLAND: Yes, this is a convenient time.

THE COMMISSIONER: Adjourned till 2 o'clock.

LUNCHEON ADJOURNMENT

[1.04pm]