

TILGAPUB00508
26/06/2012

TILGA
pp 00508-00555

PUBLIC
HEARING

COPYRIGHT

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 2.10PM

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, this last string of emails, was it - it was tendered, was it?

MR STRICKLAND: I tender that.

10 THE COMMISSIONER: Yes. The string of emails, the top one being from Mr Paul to Mr Diekman of 15 July, 2009 is D63.

**#EXHIBIT D63 - EMAIL FROM MR PAUL TO MR DIEKMAN
DATED 15 JULY 2009 WITH SUBJECT LINE "????"**

MR STRICKLAND: I just want to show a - sorry, do you accept that Samantha Jarvey worked on the, on The Gap tender?---Yes.

20

And she, she worked as a draftsman?---Yes.

I show you an email, Gap 418, an email dated 11 August, 2009 from Peter Roche to which you were copied into. Do you recall - I just draw your attention to the fourth paragraph of that email where Mr Roche stated to Bob Reynolds who was responsible for the directional drilling part of the tender, you were going to subcontract it to him, is that right?---Yes, I believe so.

30 Just speak up a bit please?---I, I believe so, yes.

And Mr Roche told him that council, being Woollahra Council, was interested in learning more about our proposal using directional drilling and have invited us to interview this Thursday?---Yes.

Does that confirm your knowledge of, of - - -?---Yeah.

That's a truthful statement isn't it?---(No Audible Reply)

40 That you knew that council was interested about your proposal for using directional drilling?---Oh, I don't know, I'm not sure whether they were interested at that time or whether we were just, you know, I'm not - - -

Well, that's a statement made by your partner Mr Roche. Do you deny that it's true?---Well, his statements, well, it is what it is.

I tender that email.

THE COMMISSIONER: Yes. The email of 11 August, 2009 from Mr Roche to Mr Reynolds is marked D64 as an exhibit.

#EXHIBIT D64 - EMAIL FROM MR ROCHE TO MR REYNOLDS DATED 11 AUGUST 2009 RE GAP PARK CCTV PROJECT

10 MR STRICKLAND: I'll just speed it up. I'll just tender - I'll show you two more documents. One is an email from Peter Roche to Bob Reynolds to which you were copied in and another is a letter dated 25 August from Woollahra Municipal Council. I'll just show you both of those, they were Gap 425 and Gap 436. Do you recognise that as an email that you were copied into?---Yes.

I tender that email, 19 August email.

20 THE COMMISSIONER: The email from Peter Roche to Bob Reynolds of 19 August, 2009 is D65.

#EXHIBIT D65 - EMAIL FROM MR ROCHE TO MR REYNOLDS RE QUOTE DATED 19 AUGUST 2009

MR STRICKLAND: I'll show you a letter from Woollahra Council to you dated 25 August, 2009. Do you recall receiving that?---Yes.

30 Thank you. I tender that.

THE COMMISSIONER: The email of 25 August, 2009 from - sorry, it's not an email, it's a letter is it? Yes, the letter from Mr Ward of Open Space and Trees to Mr Diekman of 25 August, 2009 is D66.

#EXHIBIT D66 - LETTER FROM WOOLLAHRA COUNCIL TO KINGS SECURITY REGARDING GAP PARK CCTV PROJECT TENDER 09/12

40 MR STRICKLAND: Yes, thank you. I just want to show, if the witness could be shown Exhibit R32 which is an email from himself to Greg Poller headed Directors' Equity.

THE COMMISSIONER: I'm sorry, R?

MR STRICKLAND: R32.

THE COMMISSIONER: R32.

MR STRICKLAND: Now, I can take the first email in time from Greg Poller to both Mr Roche and you- -?---Mmm.

10 - - -he's written, "This should remain confidential. I don't believe personal CC have been addressed. The 2009 ones were meant to be left. I do want to know major expenditures that you took up personally like consultants et cetera, also insignificant moneys. I'll increase Charlie by 17,160 for 2009 car rental." What does the reference to CC mean?---I don't know, "I don't believe personal CC" – I'm not sure.

Do you see the subject is Directors' Equity?---Yes.

That refers to the directors' equity spreadsheet or the directors' equity account between the two directors set up by Mr Poller. Correct?---Yes, I assume so.

20 And where he's accounting for money that has been spent by you and Mr Roche personally- -?---Yes.

- - -sometimes for your personal benefit and sometimes for the business. Correct?---Yes, yes.

Can you speak up a bit, please?---Yes.

And you see there in his, that email he says, "I do want to know major expenditure that you took up personally like consultants et cetera?"---Yes.

30 And you knew when he wrote that email that he was referring to cash that you had paid consultants to, for the purposes of business, your business opportunities. Correct?---Well, I haven't put down consultants, he has.

Yes, I know that, and you have responded, haven't you?---(No Audible Reply)

You've responded to his email, haven't you?---(No Audible Reply)

40 Do you agree with that, just the one above it?---Yes.

And you've responded by saying, "I have paid 72K cash for AG, Gap et cetera out of personal funds"?---Yes.

You've never said to him, I have never spent any money on consultants, have you?---I haven't told him that, no.

No. And your reference to 72 cash to AG, Gap et cetera out of personal funds refers, some of that 72 cash relates to payments that you have made, cash payments you have made for consultants, doesn't it?---I can't recall.

What's the, what is your explanation in response to Mr Poller's email to paying 72K cash for AG, what does that, what does that relate to?
---My- - -

10 What does the, what does the letters AG relate to?---I would assume Art Gallery.

Can you think of any other letters that they could relate to?---No.

So given that he has asked you for major expenditures you took up personally like consultants, et cetera- - -?---Mmm, yeah.

- - -what cash payments did you make for the Art Gallery that fits in with that question?---I can't recall what, what it would have been.

20 Well, you've paid- - -?---It may have been to me, I don't know.

Well, that's not what you've said though, is it?---(No Audible Reply)

You said, you've said it may have been for me?---It may have been, yeah.

But that's not what you said?---No.

You said, "I paid 72K cash for Art Gallery"?---That's correct, yes.

30 And are you saying that that was a lie but you've disguised that lie in order to justify your payments?---Could have, yes.

And what about Gap, what, what payments did you make, personal payments you made for The Gap contract?---Oh, I do remember paying a few contractors to do some work?

Right?---Some civil, civil works, yeah.

40 But Mr Poller doesn't refer to contractors, does he, he refers to consultants et cetera?---Well, yeah, that's, you'd have to take that up with him.

Do you know how he formed the understanding that you had paid, you and Mr Roche had paid money, cash payments for consultants?---No.

Isn't it the case that the only way he could have known that was because you told him?---No, I didn't say consultants, I said I paid 72 cash.

You must have told them though at some stage?---I may have, but not that I can recall.

So you're saying you do remember paying cash payments for The Gap contract. Is that right?---No, I don't, oh sorry, yes, I do remember paying some cash.

10 For Gap. What cash did you pay in relation to The Gap contract?---I paid one of my good friends, Cameron McDonald, he did some work up there, civil works, he helped out there for a couple of weeks.

Cameron McDonald?---Yeah.

That's who you've referred to previously as Cam C. Is that right or not?---I could have.

Right. And how much cash did you pay Cameron McDonald in relation to The Gap project?---I can't recall who much.

20 Well - - -?---'Cause he was also - - -

THE COMMISSIONER: What did he do there?---He was also doing work at my house.

What sort of work?

MR STRICKLAND: For The Gap, what work did he do for The Gap?
---Civil work, like helped with the civil works.

30 What - - -

THE COMMISSIONER: What civil work?---Digging, cleaning up, making sure we had barriers around everywhere. Just a general hand.

MR STRICKLAND: And how much did you pay him?---I can't recall how much it would have been.

Did you receive a receipt?---No.

40 I beg your pardon?---No.
And you've got no idea whether it was 1,000 cash or \$50 cash or - - -?---Oh, it was about, it would have been more than 10.

More than \$10,000 cash?---Yeah. He was also doing work at my house.

Well forget the work on your house because that's not, you don't say that in your email do you? You say it's for Gap?---That's right, yeah.

So you're saying you paid what at least \$10,000 to Cameron McDonald - - -
?---Yeah.

- - - for work that he did?---Yes.

And did, did you bill out Woollahra Council for that work?---No. It was a
fixed sum.

So you paid for it out of your own pocket. Is that right?---Yeah.

10

Is that right?---Yes.

THE COMMISSIONER: Kings didn't pay you paid?---Yes.

Why is that?---Oh, he's a friend of mine.

But should Kings, why should you have to pay?---Well he doesn't, he lives
in the States and he comes over for a couple of months a year and - - -

20

That's not an explanation for Kings not paying him?---Well I'm asking for
the money back.

Yes, but why didn't Kings pay him from the start?---Well he doesn't have,
he doesn't have a tax file number or anything.

But you drew cash many times to pay contractors you say, why didn't you
draw cash to pay him from a Kings account?---I don't know.

You don't know?---No.

30

MR STRICKLAND: If you are prepared to be dishonest with your partner -
- -?---Yes.

- - - in terms of saying that you wanted money to be paid by Kings for your
personal, for personal reasons not business reasons - - -?---Yes.

- - - you've considered that that is what you did do from time to time.
Correct?---Yes, yes.

40

Then if you were dishonest in that way, then you wouldn't have any, you
wouldn't have any concerns about being dishonest and getting awarded
contracts dishonestly would you?---No, I don't agree with that.

You wouldn't?---No.

Do you draw the line at that do you? Do you draw the line at that?---Yes.

Well why is that? Why do you draw the line at that dishonesty but not at being dishonest towards your partner of many, many years standing?---Well he, he also takes money out and he spends a lot of money on the place that I don't often agree with.

So none of that cash referred to in your email went to actual consultants for Art Gallery or Gap. Is that what you're saying?---Not that I, not that I can recall, no.

10 None of it went to Dan Paul did it?---Not that I can recall.

If it had gone to Dan Paul would you, in relation to The Gap or Art Gallery contracts you'd have recalled wouldn't you?---I don't.

You don't recall?---No.

Does that mean it could have but you, but you may have forgotten?---I could have paid some gambling debts off and just put it down to those, those sites.

20

I see. If you go to Exhibit R33, please. And if you just go to page 133, you've sent an email to Greg Poller on 4 June at 8.37am. "As mentioned, I have paid out 72K in cash and also 10K allocated for dividends for projects, contractors et cetera." Do you see that?---Yes.

That's 72K refers back to the 72K mentioned in the previous email of 30 April, is that right?---I would assume so.

30 Well, when you say you assume so, it wouldn't - it's not likely there'd be about 72,000 is it?---Yes, yes.

And there you say, "Also 10,000 allocated to dividends for projects, contractors", what does that refer to, 10,000 allocated to dividends, projects, contractors, et cetera?---I'm not, don't know. Maybe there was, that was the money I was talking about for Cameron McDonald, I don't know.

Well, if that's so, if that is so then that doesn't account for the 72,000 - if that 10,000 is for Cameron McDonald - - -?---Yeah.

40 - - - then your previous answers about whether the cash for The Gap project went can't stand, can't stand, can it?---Well, I don't know which, which part of it would have gone there.

What, what, what does the phrase - why do you, why is money allocated to dividends for projects, what does that mean?---Dividends.

They're your words?---I think that's what he was doing, he was giving, paying me dividends.

Who was?---The company.

Okay. Dividends for what?---For me to spend, for my earnings.

Why, can you explain what earnings you are referring to there?---No.

You can't?---No.

10 So does that mean you don't know - you see, it says you paid \$10,000 allocated to dividends for projects?---Yes.

So what does that payment refer to?---I can't recall what it would have been.

If you go please to page 132, the top email. Well, I'll take you to the first email, 4 June, 2010. There's a reference to Greg writing to you and Peter talking about this equity account and distinguishing between money related to, for the business that you've, that you've paid out of your own personal
20 account for the business and money for your own personal use, do you agree with that? That's the thrust of that email?---Yes.

And if you go to the top email on 5 June, 2010 Peter's written to both of you saying, "I have no issue with the method Charlie is proposing to repay his funds that were used for projects," do you see that?---Yes.

So there's no doubt, is there, that when you were talking about how this equity fund should be allocated to each of your separate accounts a distinction is being made by all three of you as to money used for your
30 personal benefit and money used for Kings' business and particularly in this email for projects, correct?---Yes, yeah.

And that's the truth isn't it, that you had paid money out of your own personal accounts - - -?---Yes.

- - - for projects?---Or I could have kept it, I don't, I don't know, I don't remember it.

If you go to the next email, on 6 June at 10.26am, that's from Greg to Peter
40 and Charlie, he says, he talks about adjusting the figures in that table and then says, "I agree there should be no expenses off book but in some situations where you have helped Kings substantially in a financial way then there is a way to make sure things remain even." Do you see that?
---Yes.

And again he's referring to this distinction between
- - -?---Yes.

--moneys for your personal reason and, and money that you have spent where you have helped Kings substantially in a financial way. Correct?
---Yes.

And he's talking there isn't he about cash payments made to consultants?
---Not necessarily consultants.

Well, you say not necessarily, including consultants, doesn't it, isn't it?
---I can't recall what exactly it would have been for.

10

But that's the threat of all these emails that I've just taken you to - - ?
---Yeah.

--where Greg Poller is saying, yes, we will allow, that Kings will allow you to account, that is for you to get dividends or cash payments back from Kings for cash payments that you have made for consultants, for projects, where you've helped Kings substantially in a financial way. Correct?
---Correct, yeah.

20

And that's because you have told Mr Poller when he has written out the cheque for cash that those cash cheques were going to go to consultants. Correct?---I don't recall saying that, no.

Well, that's where you knew they were going, whether you told him or not. Correct?---Well, I don't recall that, no.

These were cash cheques going to consultants in return for them awarding you contracts or assisting you with getting contracts and the like. That's true, isn't it?---No, it's not.

30

What, it's totally false, what I've just suggested?---Yes.

Not even a tiny bit true?---No.

Not even a single payment related, goes to consultants?---I might have bought him lunch or something.

That's it?---Or paid my debt back to him, if that was, I'm not sure of the timing.

40

Okay. Could I show you a document being an email from Anthony Meijer to you and others on 4 May, 2007, SPC 149. Do you recognise that email?
---Yes.

I tender that.

THE COMMISSIONER: The email from A Meijer to Mr Diekman and others of 4 May, 2007, is D67.

**#EXHIBIT D67 - EMAIL FROM MR MEIJER TO MR DIEKMAN
AND OTHERS DATED 4 MAY 2007**

MR STRICKLAND: And in 2007 you went to the ISC conference with a number of people. Is that right?---Correct.

10 You sponsored a Mr Meijer, is that right?---Not that I'm aware of, no.

And Mr Meijer worked for Sydney Ports Corporation?---Correct.

And when you say not that you're aware of, are you saying Kings may have sponsored him or may have paid for his accommodation and travel or part of it but you don't know?---Not, not that I'm aware of and not, not that I could recall.

20 And why did you travel with Mr Meijer to the ISC conference?---I didn't travel with him.

Why did you, well, you, you were with him during the conference, weren't you?---I saw him on a couple of the days at the conference, yes.

This email that I've referred you to suggests, do you know what that's about?---Oh, it was a joke from an invoice we saw.

30 I beg your pardon?---There was an attachment to it, it was just a, it was just a receipt from, I think it was even a couple of years earlier, someone had spent a lot of money and- - -

I beg your pardon?---Someone had spent a lot of money, it was a receipt, it had nothing to do with the travel there or anything.

But it refers to a nightclub or some such that you went to that night with Mr Meijer?---No, no, it didn't, no.

Well, what does it- - -?---It- - -

40 What does it refer to?---It was a receipt that someone sent me- - -

Yes---?- - -and I forwarded it on because I thought it was humorous for the Vegas people.

The Vegas people, including Mr Meijer. Correct?---Yes.

Because you'd all, Mr Meijer would be in on the joke, wouldn't he?
---Yes.

That's why he sent it to you?---Yes.

And the joke refers to a night that you all attended together otherwise you wouldn't have got the joke. Correct?---I can't recall whether I, no, I don't know.

Well he wouldn't have got the joke otherwise would he?---Well he'd been to Vegas so he would have got the joke.

10

You socialised with him in Vegas. Is that right?---I went out with him a couple of nights that were industry nights.

Okay. I'll show you a letter, the first page of the letter on 1 August, 2007. It's SP, Sydney Ports 152. I just want to fix the date in your mind, do you recall this was a letter sent to you in relation to the tendering process that Kings was going for in relation to Sydney Ports?---Yes.

And that was a competitive tender wasn't it?---Yes.

20

To your knowledge?---Yes.

I tender that.

THE COMMISSIONER: Just the first page Mr Strickland?

MR STRICKLAND: Just the first page.

30 THE COMMISSIONER: The, D68 is a letter of 1 August, 2007, the first page thereof from Sydney Ports to Mr Diekman.

#EXHIBIT D68 - LETTER TO MR DIEKMAN RE SYDNEY PORTS CORPORATION – SECURITY ALARMS AND ACCESS CONTROL TENDER DATED 1 AUGUST 2007 (FIRST PAGE ONLY)

MR NAYLOR: Can we have the second page?

40 MR STRICKLAND: Yes, I can provide it in due course, yes. I simply tendered it for the purposes of fixing a date. But if my friends want the second page they can, they can have it.

If the witness could be shown email – before I do that, you knew Mark Ashworth. Correct?---Eschbank.

I beg your pardon? Mark Ashworth?---Oh, yes.

He worked for Austek Security?---Correct.

And the director or head of Austek Security was Jonathan Nguyen, N-g-u-y-e-n?---Correct. Yes.

And you knew that he, that Austek was one of the competitors for Kings in this tender process. Correct?---Yes.

10 If you could be shown an email from Mr Ashworth to Mr Diekman. Do you recognise that email?---Yes.

Sorry was that a yes?---Yes.

I tender that.

THE COMMISSIONER: D69 is the email dated 28 October, 2007 from Mr Ashworth to Mr Diekman.

20 **#EXHIBIT D69 - EMAIL FROM MR ASHWORTH TO MR DIEKMAN RE COSTINGS FOR GATES, BOLLARDS AT PORTS DATED 28 OCTOBER 2009**

MR STRICKLAND: Now if I could just show you Exhibit C69. Could the witness just be shown that document again. So is it the case that you made an offer to cost Austek their gates, bollards and civil works?---That's correct, yes.

30 Or did you offer to show them your entire quote?---Oh, I can't recall exactly what I gave them.

And why did you offer to cost the gates, bollards and civil work for a competitor?---Because they didn't want to do that component of the job.

Thank you. Can I just show you another email, please? On 29 October, 2007, Sydney Ports 167. Now you've seen this email before haven't you? ---Yes.

40 And I tender that.

THE COMMISSIONER: The email of 29 October, 2007 from Mr Diekman to Mr Ashworth is Exhibit D70.

#EXHIBIT D70 - EMAIL FROM MR DIEKMAN TO MR ASHWORTH IN RESPONSE TO EMAIL AT D69 DATED 29 OCTOBER 2007

MR STRICKLAND: Thank you. Now, that is a quote for the entire - that is a Kings quote for the entire Sydney Ports job, isn't it?---Yes, I assume so.

THE COMMISSIONER: Well, just look at it, you'll see right away, won't you?---Yes.

10 MR STRICKLAND: And why were you giving a competitor before contracts are awarded, indeed before the bid process had closed, why were you giving them your entire quotation for that job?---From memory he just said he wanted to pull out so he said he didn't want to tender but he wanted to put a price in because he was concerned that if he doesn't put his price in, a price in or a tender response in that he'd be left off the tender.

Who's he?---Jonathan Nguyen.

20 So he told you, did he, before you sent this email that he did not want to actually get the job but he wanted to put in a tender and for that reason he wanted your quote?---Well, at first he - look, from memory he just wanted prices on the gates and everything.

I'm just trying to clarify your previous answer?---Yeah.

Your previous answer, the effect of it or the substance of it was that he did not want to actually put in a tender but he was afraid if he didn't put in a tender that would compromise any future work or something like that? ---Yeah, that's what I believe, yes.

30 So in other words he wanted to put in a dummy quote, a dummy tender, is that right?---Well, he could, he may have still won it, he, he had, he had a relationship down there.

But that was your understanding from what - doesn't that follow from what you just said, he didn't want to actually get the job but he wanted to put in a quote?---Well - - -

40 Isn't that, isn't that what follows from what you said?---I think I can recall saying if he gets it he'll subcontract it to us.

But isn't that what you just told us, he didn't you just said and I'll repeat it, he did not want to get the job, is that right?---Okay, sorry, I take that back - I'm not sure whether he wanted to get the job or not.

When you say you take it back, that's what you've told us on two occasions?---Okay.

Was that the truth or not the truth?---Well, from my memory he wanted to put a tender in and it was probably the case that he didn't have the ability to do the job and - - -

Well, Mr Diekman, the truth is that you knew he was putting in a dummy bid, isn't that right?---Well, it may not be a dummy bid.

10 Well, you know what a dummy bid isn't it, you know what a dummy bid is don't you?---Well, if someone doesn't put the effort into getting the, getting it right, yes.

Yeah. Putting in a bid for a job you know you're not going to get or you don't want to get, correct?---Correct.

And you just told us that that's what Mr Nguyen said to you, he's going to put in a bid - - -?---Yes.

20 - - - which he doesn't want, that's what you said, isn't it?---Well, he didn't have the ability to do it.

Well, that's different from what you said before?---Okay, well, I meant to say he didn't have the ability to do it. He wanted to subcontract it to us and - - -

Well, why would he require your entire - did you offer to give him your entire quote or did he ask for it?---I, I can't recall, I can't remember what happened there.

30 And is it the case you gave in your entire quote because you expected that they would quote a little bit higher so that they wouldn't get the job?---Well, I assumed he'd have to go in higher if he wanted us to do the job if he won it otherwise he would have lost money.

So just - you rushed that. You assumed he would go in higher because? ---If he got the job - - -

Yes?--- - - - he'd have to go up higher than this if he wanted us to do the job.

40 Well, what's the point of him putting in a tender and getting a job if he then subcontracts it all to you?---Well, a lot of companies do that.

Do they?---Yes.

I see.

THE COMMISSIONER: Why?---Hey? Companies that are just project management companies and they subcontract the whole thing, they're really just an office and - - -

But you said - are you saying that there are many companies who put in dummy bids?---No, I didn't say that.

No, I'm just asking you is that what you meant?---No, that's not what I meant, no.

10

MR STRICKLAND: The purpose of you giving him your quote was that he would know, that is Mr Nguyen would know what your quote was so that he could then put in a higher quote, correct?---The purpose of me giving him my price that he could do what he wanted with it and if he won it he said he'd give us the job.

Well- - -?---We had never done a job with Ports before and he was, he was there, he was the incumbent there already doing work.

20

Mr Diekman, there was certainly no arrangement between the two of you that you would give him, that you would give him your quote and then that he would then underbid you to facilitate him getting the job. That wasn't the arrangement was it?---I would have hoped not, no.

Well, that, when you say hope not, that was not the discussion you had with him, was it?---No, it wasn't the discussion, no.

And then you wanted the job, didn't you?---Yes.

30

So by giving your quote to a competitor, if it was a true competitor, risked you, diminished your chances of getting the job if he was a true competitor because that would allow that competitor to underbid you. Correct?
---Correct.

But the reason it wasn't a risk for you to do that was because you'd already had discussions with Mr Nguyen that he didn't want to get the job. Correct?
---He said to me that he wasn't capable of doing the job.

40

And that's why there was no risk in you giving him the quote because you knew he wasn't going to get the job. Correct?---That's probably right, yes.

I tender two quotations, one from Kings and one from Austek, one for Austek is STC pages 170 to 183 and the one from Kings is 184 to 194.

THE COMMISSIONER: So I will mark as D71 the quote from Austek and it's a document headed Annexure to Conditions of Contract commencing at page 170 and D72 is a similar document but it is a quote from Kings and it runs from page 184 to 194 marked D72.

#EXHIBIT D71 - QUOTE PREPARED BY AUSTEK SECURITY SOLUTIONS

#EXHIBIT D72 - QUOTE PREPARED BY KINGS SECURITY GROUP

10

MR STRICKLAND: Thank you. And I wonder if the witness could just be shown each of those two documents. Have you got those?---Yes.

I just want you to, in relation to, just turn to page 177?---Yes.

Now, that is the schedule of prices for Austek. And then go to page 191 and that's the schedule of pricing for Kings?---Yes.

20 And you'll notice, do you agree, that in relation to the great majority of those different locations, there's 14 in all, Austek has quoted just a little bit higher than the Kings quote?---Yes.

And that was the plan, wasn't it?---Yes. Well- - -

Thank you. See, that is a, that arrangement you came to with Austek is, that's what you understand to be collusive tendering, isn't it?---No, 'cause I said, we would subcontract it to him.

30 No, but you were colluding together to facilitate you getting the job. Isn't that right?---Well, I assume there was a half a dozen other people on there.

Yeah, but you got the job, didn't you?---I, well, part of it, 'cause most of it didn't go ahead.

I see. Well, if the witness could be shown 27 August, 2007. Just before I show you that document, when you say it didn't go ahead, at the time you submitted the contract you didn't know it was not going to go ahead, did you?---That's correct.

40 Just before I show you that document, when you say it didn't go ahead, at the time you submitted the contract you didn't know it was not going to go ahead did you?---That's correct.

And indeed part of the job did go ahead didn't it?---Yes.

And you got paid for part of that job didn't you?---Yes.

How much did you get paid for part of that job?---I can't recall how much we got paid.

This was the letter that you received from Mr Meijer on 27 August, 2007 advising you that your, the contract that you had submitted, the one that I just showed you, had been accepted by Sydney Ports?---Yes.

I tender that document.

10 THE COMMISSIONER: I don't think it is, the letter doesn't say that Mr Strickland does it? It says - - -

MR STRICKLAND: Well it's advising the documentation has been assessed and found to be compliant.

THE COMMISSIONER: Yes.

MR STRICKLAND: I think that's true, yes.

20 THE COMMISSIONER: Sydney Ports is currently finalising.

MR STRICKLAND: Finalising, that's quite true, yes. Well let me just ask you, it's the case isn't it that after receiving this letter your – you were awarded the contract that you had tendered for. Is that correct?---Yes.

Thank you.

THE COMMISSIONER: Did you still want to tender - - -

30 MR STRICKLAND: I will, I still tender it because of the author of it.

THE COMMISSIONER: D73 is a letter from Anthony Meijer to Mr Diekman dated 27 August, 2007.

**#EXHIBIT D73 - LETTER FROM MR MEIJER TO MR DIEKMAN
DATED 27 AUGUST 2007**

40 MR STRICKLAND: Is it the case that after being awarded that particular contract you tendered for another contract in relation to Sydney Ports?---Not that I can recall. We may have.

I'll just show you this document which is a document from Sydney Ports Corporation, provision of access control and security systems upgrades, et cetera. So if you look at that document do you agree that is a - - -?---I think this is the same, this is the order for that – what you - - -

You think it's the same contract is it?---I believe so.

So the - - -?---Oh, yeah, I believe so.

So that contract was worth about \$473,000, sorry \$525,000. Is that correct?---473, yeah.

Just go to page 203?---Yes.

- 10 Tell me if you can assist us with this. It says the approval to award a contract to Kings for 525,000 allowing for a 10 per cent contingency?
---Yes.

So, but the actual tender price was 473,700?--- Yes.

Is that your understanding?---Yes.

Thank you. I tender that document.

- 20 THE COMMISSIONER: A document headed Provision of Access Control And Security Systems Upgrades number SBC2007/16 is Exhibit 274, sorry D74.

#EXHIBIT D74 - PROVISION OF ACCESS CONTROL AND SECURITY SYSTEMS UPGRADES – CONTRACT NO SPC 2007/16

- 30 MR STRICKLAND: Thank you. And just to be clear, that is the contract that you were awarded but you completed some of the security installation but not all of it. Is that correct?---Yeah, I think it was only a very small amount, I don't think we did any of the gates or the civil works.

Now, can I ask can the witness please be shown an email from Charlie Diekman to Jonathan Nguyen, SPC page 204. Do you recognise that email?
---Yes.

I tender that.

- 40 THE COMMISSIONER: An email from Mr Diekman to Mr Nguyen of 22 February, 2008, is Exhibit D75.

#EXHIBIT D75 - EMAIL FROM MR DIEKMAN TO MR NGUYEN WITH SUBJECT LINE "HELP" DATED 22 FEBRUARY 2008

MR STRICKLAND: So that's a request by you to Mr Nguyen, you needed a second quote of a job so you asked for his letterhead. Is that correct?
---Correct.

And then you would actually type the quote on his letterhead and send it back to him?---I believe so, yes.

THE COMMISSIONER: Send it back to who?

10 MR STRICKLAND: To Mr Nguyen. Correct?---Yes.

So that Mr Nguyen could submit a quote purporting to be a genuine quote from Austek- - -?---Yes.

- - -but in fact it was a dummy quote?---And it was probably at the request of the client.

Well, forget what it was at the request of, it was a dummy quote. Is that right?---(No Audible Reply)

20

It wasn't a genuine quote because he hadn't, it wasn't, you'd done it for him?---Well, it's a genuine quote from him, I mean if the client's asked me to get a second quote.

THE COMMISSIONER: This is not, this is a quote you compiled?---Well, I don't know, I can't see that, there's no other information there.

Well, that's, that's, well, you wrote, you, that's what you asked for, isn't it?
---Yes.

30

MR STRICKLAND: Which is the client that asked you for that?---I, I couldn't recall.

Well, how do you know it was the client that asked for it rather than on your initiative?---Well, 'cause I just know on a lot of occasions the client wants to use us and, and they're told that they need to get a second quote, can you help and get me one and that's- - -

40 THE COMMISSIONER: So you needed to provide a second quote that was higher than the quote you provided?---Correct.

MR STRICKLAND: Can I just ask this, if you don't recall who the client was- - -?---Yes.

- - -you can't say whether it was on your initiative to get the second quote or the client's, can you?---Well, it's always, from my recollection it's always the client that says they want it because they're not going to ring me and say I need to quotes.

Is that because you would never arrange for a dummy quote which would allow Kings to get the job, you wouldn't do that?---Well, it's the request of the client.

No, but I'm saying if it wasn't, you wouldn't do that off your own bat, of your own initiative?---What, sneak, no, I, as I said, if it was the request of the client, we pushed forward with it.

10 But assuming there was no request from the client, are you saying you wouldn't do that?---No.

So no you wouldn't or no you don't agree?---No, I wouldn't.

You would not do it?---No.

Why is that, because it's dishonest?---Yes.

And you wouldn't do something that's dishonest?---That's correct.

20

Except to your partner, Mr Roche?---(No Audible Reply)

Except to your partner, Mr Roche?---Yes.

Now, do you know a person called Geoffrey Powell?---Yes.

And who is he?---He's a builder or architect.

30

All right. What, a qualified architect?---I'm not sure.

Well, why did you say, when you say an architect, do you mean a, what do you mean by an architect?---I'm not sure.

Well, why did you say, when you say an architect, do you mean a, what do you mean by an architect?---Well, his company's called Interarch so - - -

Right?---Yeah.

40

But did he tell you he was an architect?---No.

Was that your understanding?---Yes.

And how did you get that understanding?---From- - -

How did you understand he was an architect?---Oh, just from the name, Interarch.

I see. But not because he had told you he was one?---No.

I want to show you an email of 9 November, 2009. And do you notice that that's an email you sent on 9 November at 3.23pm?---Yes.

And you attached to that email a quote?---Yes.

And that quote relates to the Concept 4000, is that right?---Yes.

10 In relation to which project was that?---2/55 Clarence Street.

All right. And that's, that's a government department, correct?---(No Audible Reply)

ADHC?--Yes.

Ageing and Disability, does that ring a bell?---Yes.

20 So you were asked to, you were asked by the department to submit a quote for a particular job, is that right?---Oh, I'm not - it looks like we were asked by Interarch on that occasion.

Okay. And so you were asked by - and why was - do you know why Interarch was asking for a quote?---No. They were probably quoting on the job.

I see. And they were going to subcontract to you, is that right?---On this, on this occasion I'm not a hundred per cent, sometimes if, if you're successful you get the order from a builder or an electrician.

30 But in any event you were asked by Interarch to give them a quote - - -? ---Yes.

- - - in relation to a job for the Ageing and Disability Department at 55 Clarence Street. Is that correct?---That's correct, yes.

And you did so?---Yes.

I'll show you another email. I'm sorry, I tender that email.

40 THE COMMISSIONER: Yes, the email of 9 November, 2009 with quote attached from Mr Diekman to Mr Powell is D76.

#EXHIBIT D76 - EMAIL FROM KINGS TO INTERARCH SENT ON 9 NOVEMBER 2009 WITH SUBJECT LINE "CALL ME TO DISCUSS" AND QUOTES ATTACHED

MR STRICKLAND: Thank you. Just before I ask you another one, if you just go, just go to page 49 if you would. Excuse me. And you see there there is a, an item for \$4,000?---Yes.

What does that refer to?---Mr Powell said he was going to do all the schematics and the as built's and he asked me to put, make, put \$4,000 onto the quote for him.

10 Why would he ask you to put that onto your quote?---He was going to do that work.

Yeah, but he's asking you for a quote for the work you do - - -?---Yes.

- - - why does he, why do you put on your quote the work he's going to do? ---You'd have to ask him that.

Well, I'm asking you?---I, I don't know.

20 THE COMMISSIONER: But you wouldn't do that without there being a reason?---Well, it does happen, you know.

What happens?---That we're asked to put a certain component into our quotation like - - -

Where did you get the \$4,000 from, Mr Powell?---Yeah, Mr Powell.

30 MR STRICKLAND: So if you're asked to do something you just do it, is that right?---Well, for instance, say the Art Gallery for instance, they said oh, we want to put this quote into our tender and it was for something that they'd gone out elsewhere and looked at.

Yes, but you said that Mr Powell is asking you for a quote - - -?---Yes.

- - - for work that he's going to subcontract Kings to do, that's what you just said before?---Oh, well, I meant he's turned around and said can you put \$4,000 on the job and I'll do all the as-built's on it.

40 Well, why doesn't he - did he explain why he didn't, couldn't quote that in his own quote given that you're simply a subcontractor?---Oh, I didn't ask him.

THE COMMISSIONER: Were you tendering as a subcontractor or a main contractor?---Subcontractor.

Subcontracted to Interarch?---Well, sometimes it was a builder or an architect.

Yes, but in this case?---In this case I assume it was Interarch, yes.

MR STRICKLAND: I'll show you another email. And you see that's an email from you to Mr Powell again, the same date?---Yes.

And some 18 or 20, 28 minutes later?---Yes.

Do you see that?---Yes.

And you attach another quote don't you?---Yes.

10

If you turn over the page to 51, this time you attach a quote from MJH Security Installations?---Yes.

And Michael Hingerty is the principal of that company isn't he?---Yes.

He's a friend of yours isn't he?---Yes.

So why do you half an hour later send a second quote on MJH Security Installations letterhead?---He asked for it.

20

Who's he?---Geoffrey Powell.

Why did he ask – and who created this document for MJH Security Installations?---I assume I would have.

So why did you, why did you create a second quote on MJH Security Installations letterhead?---Well he requested a second quote, so - - -

But this wasn't a genuine quote was it?---No.

30

Well did you ever ask him why he wanted a dummy quote?---No.

It just was something that was regularly done was it?---No not regularly no.

Well you'd done it before had you?---Well not regularly.

Had you done it before?---That Sydney Port one I provided our price, yes.

So apart from Sydney Port and this have you done it before?---Yes, on a number of occasions when people have asked for it.

40

On a number of occasions you provide dummy quotes. Is that right?---Well I wouldn't call it a dummy quote.

Well what would you call the MJH Security quote if not a dummy quote? You wouldn't call it a true quote would you?---Well it was information he asked for.

It's not just information is it? It's a quote?---Yes.

THE COMMISSIONER: Did you type this up, this quote for MJH Security Installations? Is that - - -?---I can't recall whether I - - -

Did Kings do this?---I can't recall whether I did or he did, I don't know.

Well who's he?---MJH.

10

MR STRICKLAND: He being Mr Hingerty you mean?---Yes.

Well that's - the details of Mr Hingerty and his phone, his fax and his mobile number and his email, they're genuine, they're correct aren't they? ---Yes.

So did you use his letterhead?---I may have, yes.

20

Right. And did you get his permission to use his letterhead?---Yes.

He did did he?---Yes.

Okay. And what did you say to him when you wanted to use his letterhead?---I just said a client wants a second price.

All right. And what did he say?---He said yeah, no problem.

30

So he gave you the letterhead and then you typed up the details. Is that right?---Well I can't recall whether I typed it up or he did, but it may have been - - -

Well I thought you said - when I asked you initially I said did you create this document or did you make this document and you said yes?---Okay, yeah.

Was that the truth?---Well I can't actually recall whether I did it or he did it. But it may have been me, I'm not denying it may have been me.

40

Well why did you say yes when I first asked you?---You're bombarding me with questions.

So I confused you did I with that, did I confuse you with that question? ---No.

Do you regarded it as an honest practice to send second quotes, dummy quotes?---Well if the client wants it for whatever they need it for well - - -

Is it an honest practice?---It's probably not, no.

Why do you say probably not? Is it or isn't it?---Well a clients rang up and said you know anyone that can get me a second price and I just - - -

THE COMMISSIONER: Well they get the second price to mislead somebody don't they?---Well I'm not misleading them.

No, I didn't ask that.

10 MR STRICKLAND: That's why they do it isn't it?---Yes.

And when you say you're not misleading them, you're facilitating, you facilitate them being – the client being mislead don't you?---Well in this case my client Interarch.

You facilitate the client, the ultimate client being mislead. Isn't that true? ---At his, at his request.

20 But you still facilitate it don't you?---Yes.

I tender that email.

THE COMMISSIONER: Yes, the email, the email of 9 November from Mr Diekman to Mr Powell with the MJH quotation attached commencing at page 50 and the email having the words, "alternate quote" is D77.

30 **#EXHIBIT D77 - EMAIL FROM MR DIEKMAN TO MR POWELL
ATTACHING ALTERNATE QUOTE DATED 9 NOVEMBER 2009**

MR STRICKLAND: Now, I wanted to ask you about a contract you did for the Area Health Service in relation to the Gosford car park, do you recall that?---Vaguely.

That was a contract that Kings tendered for with other bidders or other companies, is that right?---Yes.

40 Is that correct?---I don't think I handled that, that project.

Well, you knew about it, didn't you?---Yes.

And you know, don't you, that other bidders were bidding for that contract?---I would assume so.

Would you excuse me for a moment. Excuse me just for one moment, I'm sorry. And you know, don't you, that Eco Traffic, Eco Traffic Solutions also bid for that contract?---No, I didn't know.

Did you know that MJH Security, your friend Mr Hingerty, bid for that contract?---I can't recall whether - - -

You don't remember that?---As I said, I had very little to do with that project.

10

Well, do you recall that or not, whether Mr Hingerty also bid for that contract?---I remember there was some talk there with him but I don't remember much detail of - - -

You said some talk, you mean with you, between you and him?---No, I just remember hearing it around the office that he was pricing it.

Okay. And do you remember who the project manager at Area Health Service was for that?---For?

20

For that, for the Gosford car park tender?---The, the Area Health guy?

Yeah?---Robert Huskic, yeah.

Right. And I just want to show you an email, please, AHS volume 2, pages 28, 29, an email from 15 May, 2008. Now, in fact I think this is, this is for a different contract isn't it, this is for boom gates, is that right?---(No Audible Reply)

30 Gosford, you see it says subject "Gosford boom gates"?---Yes.

Is that for the Gosford car park or something else?---I can't recall.

You don't know?---No.

So looking at that doesn't assist you as to whether that's for the Gosford car park 2010 contract or not?---No, I remember something about it, I don't, I don't, I don't think it - - -

40 If you don't recall you can say you don't recall?---No.

Is that right, you don't recall if that's for the 2010 contract?---No, I don't.

If that could just be marked.

THE COMMISSIONER: Yes. The email from Mr Diekman to Mr Huskic of 15 May, 2008 is MFI 6.

**#MFI 6 - EMAIL FROM MR DIEKMAN TO MR HUSKIC RE
GOSFORD BOOMGATES DATED 15 MAY 2008**

MR STRICKLAND: Now, do you recall how much the Gosford car park contract was worth?---No idea.

10 If I said to you it was worth in vicinity of \$202,000, that was your quote, does that sound right?---It could be, I just, yeah.

You were awarded that contract weren't you?---I believe so.

Well, do you have any doubt?---Well, maybe parts of it, I don't, I don't know whether - - -

Do you recall - - -?---No.

20 - - - not being awarded that contract or not?---Well, I remember we were doing, doing some car park quotes or work up there.

But in relation to that particular - you submitted quotes for over a couple of hundred thousand for that job didn't you?---Well, I, I wasn't on that job.

Well, Kings did?---Yes.

Do you agree with that?---Yes.

30 And that I want to suggest was in about June 2010, does that sound right? ---It could have been, yes.

Okay. And is it the case that after that contract was awarded or at around mid 2010 Mr Huskic, you were advised of a list of gifts or you saw a list of, a list of gifts that Mr Huskic wanted Kings to provide him?---Not that I recall.

Are you sure about that?---Well - - -

40 You have no recollection of that?---No, I don't. Don't think he's, he's never sent me anything.

Yeah. But do you remember Mr McMicking coming up to you, Mr McMicking was involved in the Gosford Car Park contract, wasn't he? ---Yes.

And do you remember him coming up to you and speaking to you about a list of gifts that Mr Huskic wanted?---No, I can't recall that, no.

Are you sure about that?---Well, I didn't see any information on it.

Well, I'm asking you, are you sure that you didn't receive any information about Mr Huskic asking for some gifts for Kings?---What were the gifts?

Well, I'm asking you?---Well, I don't, I don't recall so- - -

A phone?---Well, I haven't given him a phone.

10 You don't remember any gifts. Did Kings give him any gifts?---Not that, not that I can, not that I'm aware of.

Did you order any, any goods from a store, a Video Security store or some store in relation to gifts for Mr Huskic?---Not, not that I can recall, no.

Did Kings for pay for any gifts for Mr Huskic?---Not, not that I can recall.

20 Do you remember, do you remember paying for Mr Huskic's travel and accommodation when he went to the ISC conference in 2010?---I don't believe we paid his airfare.

I beg your pardon?---I don't, I don't believe we paid his airfare.

You don't believe that?---No.

What about his accommodation?---Um, I don't know how, what happened with the accommodation um, yeah.

30 So Mr McMicking was your- - -?---He told- - -

- - -in fact travel agent for that trip, wasn't he?---Yes, yes.

And you told Mr McMicking to pay for or to arrange for the payment of Mr Huskic's accommodation when he was at Las Vegas and around Las Vegas. Isn't that right?---I would have said to him, 'cause he wanted to travel with us, I said, like, you know, book him rooms.

Yeah?---Yeah.

40 And pay for them?---I don't think I ever said and pay for them.

But you knew that Mr McMicking did pay for Mr Huskic's rooms, didn't you?---I wasn't sure.

THE COMMISSIONER: Well- - -?---See, a couple, that David gave me some cash at times.

MR STRICKLAND: I beg your pardon?---David gave me some cash at times.

Yeah?---Yeah.

What for?---When we were checking out because he just put one card on the table.

10 So are you saying you are not aware whether Kings paid for Mr Huskic's accommodation?---As I said, I'm, I'm not aware of it.

What about his travel, his air ticket?---No.

You didn't, you didn't book it yourself?---Apparently we um, David booked all the tickets, yes.

Including Mr Huskic's?---I believe so.

20 Right. And paid for it too?---(No Audible Reply)

When he booked it he paid for it?---I don't know. I thought, I thought Robert paid his own.

Did you ever talk to Mr McMicking about him giving evidence at this Commission some time ago?---Did I ever talk to who?

Did you ever talk to him?---To who?

30 Mr McMicking?---Well, I talked to - - -

About evidence he was going to give at this Commission?---I talk to him all the time.

No, that's not what I'm asking. Do you want me to repeat the question?
---Yes.

Did you talk to Mr McMicking about the evidence that he was going to give at the, at the Commission?---I may have.

40 Did you?---I can't recall.

This year?---I can't recall but I may have.

Well, that's something you wouldn't have forgotten, is it?---Well- - -

THE COMMISSIONER: You knew that he wasn't allowed to discuss anything with you, didn't you?---Well, he had to get information for the hearing, didn't he?

MR STRICKLAND: Did you talk to him about the evidence that he, you expected he might have to give?---I might have spoken about the situation we're in, yes.

Did you talk to him about the evidence he might be expected to give?---Not, not that I can recall, no.

10 Did you, did you discuss with Mr McMicking this year the fact that Kings had paid for Huskic's accommodation and travel at the ISC conference in 2010?---I may have asked him what happened with the accommodation.

And what did he say?---I- - -

When you say you may have asked him, did you or didn't you?---I think I did, yes

20 And what did, and what did you ask him?---I just said, "Who, who paid for Robert?" And he said, "Well, he paid his own airfare", and um, yeah, that was all I really asked.

Did you ever tell him to lie to this Commission about Mr Huskic's accommodation and travel expenses?---I didn't tell him to lie to the Commission, no.

Did you tell him to tell, did you tell him to tell a particular story to the Commission?---Not that I can recall.

30]
Well if you had do you think you think you would have recalled?---Well I can't recall it.

THE COMMISSIONER: Whatever you said to Mr Huskic wasn't because you were scared?---He's talking about Mr McMicking.

Sorry Mr McMicking?---No.

40 MR STRICKLAND: Did you ever arrange for any security services or any security installation for Mr Huskic's parents?---I can recall something about he wanted a door, but - - -

I beg your pardon? He wanted a door, yes, for - - -?---Or his parents wanted something for his house but I don't, that's all I can really recall.

Did Kings, did you arrange for that or did you ask someone at Kings to arrange for that to be done?---As I said I don't recall whether it happened or not.

And what about any motorbike accessories, do you remember paying for any motorbike accessories for Mr Huskic?---I remember him – when we were – he was wanting to get the bike, but the place didn't have his size helmet or something or jacket and - - -

Yes. And?---And we bought a jacket.

For him?---Yes.

10 Did he pay you back for it?---Well that was part of the boat.

I see. That was part of the boat payment was it?---Yeah. Yeah.

What about Mr Kuiper's, did you ever provide any security work for Mr Kuiper's house?---Not that I'm aware of.

You arranged for Mr Kuiper's football team to be sponsored didn't you?
---Not in – he asked me one year and I declined.

20 But late on you did in fact sponsor his football team didn't you?---After my time apparently. Apparently this year we did sponsor a football team, which after my time at Kings.

You had nothing to do with that?---No, nothing to do with it at all.

So do you know who did have anything to do with that? Who authorised that?---I assume it was Peter.

30 When you say you assume it have you ever discussed it with Peter?---No.

What about Mr Eschbank, have you ever arranged for any security installations, alarm systems or locks on his house?---I haven't personally, no.

But did you, did you know that Kings had done so?---I think David was providing or did something. I don't know whether he paid for it or not. I just, I knew that he wanted an alarm system in his house.

40 Okay. And – because Mr McMicking spoke to you about that didn't he?
---He may have.

Well you know he did didn't you? Not may have did?---Well okay he did, yes.

All right. And Kings paid for that didn't they?---I can't recall.

Well surely you know whether Kings paid for the alarm system and a lock to a government employee?---Well I don't recall it and it was David

McMicking's best friend since early childhood and if David's said he's wanted to put an alarm in this house, I wouldn't have put anything to it, I just have, oh well - - -

You say you wouldn't have put anything to it, this was a government employee wasn't he?---I don't know about it at the time.

Well at UWS, I've shown you, I have shown you previously the emails - - - ?---Yes.

10

- - - in relation to that contract you were bidding for haven't I?---Yes.

So are you saying you didn't think anything of - - -?---Well I don't know - - -

- - - providing an alarm system and lock for free to a government employee in relation to a contract Kings were bidding for?---I don't know whether we put the alarm in at the time of, well Mark was working at UWS.

20 Well it's something you'd want to know isn't it?---Well as I said, I don't know.

Otherwise it might be construed as a bribe mightn't it?---Well I didn't have anything much to do with that at all and - - -

You say you didn't have much to do with it, you were asked whether Kings would approve doing that. Correct?---Well I can't recall it but - - -

30 I thought you said you did?--- - - - if it was Dave's best mate that wanted an alarm system I probably would have said, yeah, go for your life.

THE COMMISSIONER: Did Mr McMicking ask you whether this could be done?---He probably did.

And what did you say?---I probably would have said yeah, well it's his best friend.

40 MR STRICKLAND: What about a TV for Eschbank, did Kings ever provide a TV to him?---Dave might have organised something.

I'm asking you did you know - - -?---I didn't know.

You didn't even know about a TV provided?---I may have but - - -

Well you did didn't you Mr Diekman?---As I said I may have. It's Dave's best friend, he deals with him.

Right. So Dave's best friend is a government employee, if he asks for something, he gets it?---I don't think he was a government, I don't think he was a government employee at the time.

Well, when did he stop being a - what did, when did he stop working for the UWS?---I don't, I don't know.

Well, that's pretty important isn't it - - -?---Well - - -

10 - - - to determine whether gifts were being provided to a government employee or gifts were being provided to someone who was no longer a government employee but you're saying you don't know?---Sorry, I can't recall the dates or anything.

You had a practice of providing gifts and benefits to government employees on whose contracts Kings was working or who were seeking work, correct? ---No.

20 Are you sure about that?---Well, we might take them to the football and lunches and dinners.

Well, we haven't - we're talking about security systems installed at their home or their relative's house, true?---Yes, and we may give them a special discount at cost price.

We're talking about scooters?---Yeah.

30 We're talking about gifts from security stores. Isn't it the case that your - that Kings' practice was to provide gifts to people who could facilitate getting them contracts?---No, it's not the case.

And also cash payments to government employees or consultants who assisted Kings in getting contracts?---That's not the case.

Mr Commissioner, they're all the questions I had. I intended to have Mr Diekman recalled toward the end of the hearing in August for - in relation to other aspects of this inquiry.

40 THE COMMISSIONER: Yes. Well, Mr Diekman, you will informed through your solicitors when you're required again to attend but you are free now to, to leave the witness box.

THE WITNESS WITHDREW

[3.27pm]

MR STRICKLAND: I call Mr Greg Poller.

THE COMMISSIONER: Mr McIlwaine.

MR McILWAINE: Yes, Commissioner. My client seeks a declaration.

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

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

THE COMMISSIONER: Mr Poller, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR POLLER: Affirm.

<GREGORY MARK POLLER, affirmed

[3.28pm]

MR STRICKLAND: Excuse me. I'm sorry, Mr Commissioner, I just need one document if you'll bear with me. Sorry, Mr Commissioner, I just need a bit of time to find a document.

THE COMMISSIONER: Do you need to adjourn, Mr Strickland?

10 MR STRICKLAND: I'm afraid I do, I'm sorry.

THE COMMISSIONER: We'll adjourn for five minutes.

SHORT ADJOURNMENT

[3.29pm]

MR STRICKLAND: Thank you. Now, what's your full name?---Gregory Mark Poller.

20

And your occupation?---Presently unemployed.

Did you work for Kings?---Yes.

And when did you start working for Kings?---July 2005.

And what, when you started working for Kings, what kind of work did you do?---I was employed as senior bookkeeper.

30 And did you graduate from that position to another position?---Yes, became finance manager in July 2006, thereabouts.

And when you were the finance manager in July 2006, who else was working in, did you have a finance department, is that what you'd call it?---Yes.

Who was in the finance department at that time?---Lauren Powell, accounts payable, and I think a Caroline, Caroline Lee was assisting.

40 And what about a Ms McClelland, did she work at some stage?---Yes, she, she actually took over from Caroline's position sometime after that.

And what was your job as the finance director?---As finance manager I- - -

Or sorry, the finance manager?---Yeah. I took care of the finance function and part of the administration side of the business and that includes accounts payable, accounts receivable, the banking and BAS and a few other things like that.

And were you ultimately responsible as the finance manager for keeping the company's accounts in order?---Yes.

Which includes their ledger?---Yes.

Remittance advices?---Yes.

Purchase orders?---Um- - -

10

Keeping them all in order so that they would be- - -?---To the best of my ability. There was a separate system.

Now, when you were the finance manager, I should just say you became finance manager and then you left sometime in 2010 for a period. Is that right?---That's correct.

And do you remember when that was?---I can't, June, I think 2010.

20 And who took over after that?---John Marinucci took over I think in August.

August 2010?---'10.

And did you continue to work a little bit from home?---A little bit.

And what kind of work did you do from home?---A few little projects Peter had me working on for a while.

30 Like what?---I think it was a, something to do with a factory, factory needed some paperwork organised for the property use and some, some IP, just having a look into some software to get it registered or something.

Did you come back to work for Kings?---Yes, I did.

And when was that?---Somewhere in 2010 I think.

And when you came back were you still, were you finance manager or did you assume another role?---No, I was the finance officer under John Marinucci.

40

And when did you, did you leave Kings at some point?---Yes.

When was that?---June 2011.

You say that you left Kings, I think the first time you left Kings was I think you said mid-2010. Is that right, or was it mid-2009?---Possibly, sorry, I- - -

You're not sure?---Not sure.

Okay. All right. I'd just like to show you an email, please, D14.

Now, that's an email from Peter Roche to yourself, from Peter Roche, from Charlie Diekman to Peter Roche, I beg your pardon, on 29 June at 8.14am. And then there's a reply to, reply from Peter to Charlie on the same date. Do you know if that email was ever forwarded on to you, can you recall?
---No, I can't recall.

10 Could the witness then please be given Exhibit D26.

That's an email from Peter to you, copy Charlie Diekman, "Greg, I need some cash or cash cheque today to pay a contractor that is working for us. Also Charlie requires some cash for consultants, et cetera. I'm clean out down here." Now you've seen this email before haven't you?---Yes.

And did you understand what that request was for?---Yes.

20 What was your understanding?---That they needed some cash to pay – I'm not too sure about the contractor part but for, for consultants, they needed to have some money to pay a gift to a consultant.

And why do you – why was it your understanding that the money was for a gift to a consultant?---It was – well - - -

Did you have a conversation with Charlie Diekman and Peter Roach about Kings providing gifts to consultants?---Yes, I did.

30 And was that – I take it that was before this email?---I would imagine so.

And where did the conversation take place?---It took place in the, in the, in, at Kings Security. It could have been the boardroom, I think.

And was that in a particular meeting that you had? Was that conversation held at a meeting you held?---Yes.

What kind of meeting?---A finance meeting.

40 And what's the purpose of finance meetings?---To go over the – where the company stands, its position and its cash.

By position you mean its financial position?---Financial position.

And what was said at that meeting about this subject?---At that meeting Charlie addressed Peter and myself and said something to the effect that for Kings to remain visible, we had to provide gifts to consultants and other key players.

All right. And did he name any names as to who the consultants were that Kings should provide gifts to?---No, he didn't.

And did he name any of the key players that Kings should provide gifts for?---No.

And did he specify what kind of gifts?---No.

And you said Mr Diekman said that?---Yes, he did.

10

And did Mr Roche say anything at that meeting about that?---No. Well he did, he mentioned that he didn't like that idea.

Right. Did he say why he didn't like that idea?---No.

And is there anything else at that meeting that was said on that subject?
---Not that I can recall.

20

THE COMMISSIONER: Well how did it end? I mean one said one thing and the other said he didn't like it, so was agreement reached?---No, not at that meeting.

It was left open?---It was left open.

MR STRICKLAND: Was there another meeting on the same subject?
---Some time later, yes there was.

And was that also at a finance meeting?---No, it wasn't a finance meeting.

30

What was that, what was that meeting?---I was requested to, to a meeting where they discussed with me a method of taking cash to provide gifts.

When you said they, who do you mean by they?---Peter, Peter Roche and Charlie was there.

So who, who said what?---(No Audible Reply)

40

Doing your best?---I think Peter called the meeting and said we need to be able to take some cash out of the business to, to be able to provide gifts and they requested or asked me how they could do that and for me to hide it.

THE COMMISSIONER: Sorry, to, to hide it?---Hide it.

In the books you mean?---In the books.

MR STRICKLAND: That was Peter, Peter Roche saying that?---Yes.

And when he said to be able - that Kings should take some cash out of the business to be able to give gifts did he, did he name the type of person to whom gifts should be provided?---I'm not too sure but in my mind I understood that to be consultants.

Did you, did you - was the second meeting close in time to the first meeting?---That I can't recall.

10 Was the second meeting before this email of 17 August, 2007?---That I can't recall.

And did Mr Diekman say anything at that second meeting?---Not that I remember.

Did you say anything about how you would be able to take cash out of the business for gifts and hide it?---Yes, I did.

20 What did you say?---I said they could use a, a company and make a purchase order or an invoice and then we could pay that invoice with a cash cheque.

And when you say use a company do you mean a real company that Kings did business with? Is that what you intended to convey?---Yes.

But, but a company that Kings did business with but in relation to this particular cash withdrawal they hadn't done any work for Kings but they would be used to hide the cash?---Yes.

30 THE COMMISSIONER: It would in essence be a false purchase order? ---Yes.

False to the extent that it would record money owing when no money was owing?---Correct.

MR STRICKLAND: And did either Peter Roche or Charlie Diekman say anything in response to that idea?---They, they wanted to go ahead with that.

40 They said that, did one or both of them say that?---Well, yes, 'cause I wouldn't have done it, I wouldn't have made one up if, if that wasn't the case, I didn't have that authority.

So when you say they wanted to go ahead with it they said or did something that indicated they approved that proposal?---Correct.

So when you received this email, D26, was it your understanding that this request was in the context of the first meeting or the second meeting or both?---Or both I would understand.

Now, from time to time did - I'm now asking you generally, did Peter Roche and Charlie Diekman ask for cash out of the company for their personal reasons, for Mr Diekman's boat or some other personal reason?
---(No Audible Reply)

Do you understand that question?---Yes. I imagine occasionally there would be requests.

10 Well, perhaps I'll go back a step. Who at Kings had the authority to sign cheques?---Myself.

Yeah?---Peter Roche and Charlie Diekman.

And if there was a - if someone wrote a cash cheque it had to be signed by two of those three people, is that right?---Correct.

And did they from time to time after this, these two meetings, did they from
20 time to time come, one or both of them come and ask you for cash cheques for consultants?---Ah - - -

Or for gifts?---Yes, for, yes.

What did they say to you when they wanted cash cheques for consultants or key players, what did they say to you?---They needed, they needed me to prepare a cheque and either they would just ask me to, you know, write a cheque out and then I'd have to chase down the paperwork or go through the, get them to produce purchase orders and invoices et cetera or- - -

30 THE COMMISSIONER: But if they, sorry, just carry on.

THE WITNESS: Or if it was before the event they would provide a purchase order or an invoice and then they would come down and get a cash cheque.

THE COMMISSIONER: What I wanted to ask you, Mr Poller, was this. The mere fact that they would ask for a cheque, would that be sufficient for you to understand that it was a cheque that was going to be for cash and was going to be concealed in the books in the way you've described or did they
40 say more than that?---They would have said more than that.

Like what?---They would need a cheque to pay someone or to pay, give a gift to a consultant.

Did they ever mention names of the recipients of these gifts?---They, yes, sometimes they did mention names.

MR STRICKLAND: And what names did they mention?---I don't have any recollection of names, they would have mentioned.

THE COMMISSIONER: Not one?---Not, well, not with any certainty.

MR STRICKLAND: Well, do you have any degree of confidence at all in any names they mentioned, if not certainty, something less than certainty? ---I remember Dan Paul's name being mentioned but it is a very vague memory.

10

Do you mean mentioned in that context you were just talking about?

---In that context that we were talking about.

Is there any other name you can remember in that context?---No, I don't.

May I ask, did Charlie Diekman ever ask for cash cheques for commission that he claimed was owing to him?---Charlie asked for commissions many times, I, I, I, but not necessarily as for, he never came to me to ask for a cheque as far as I can remember.

20

So the cash cheques that he wrote out as far as you were concerned were not for commissions to be payable to him. Is that correct?---That's correct.

And what about, did he ever ask you for cash cheques to be paid so he could repay any gambling debts?---No.

Did he ever mention to you that he had any gambling debts that he required to be, that he heeded money for?---No, he never mentioned that to me.

30

Could the witness please be shown Exhibit together D27, D27, thank you. Now, attached to D27 is a cheque and a cheque butt on pages 92 to 94 and 95 and 96. Just going to the cheques, do you see your signature on those cheques?---Yes, I do.

And if you just go to cheque, if I just ask about 03073 cheque for \$8,000 consultants' fees, are they, is that your writing?---It's my signature, it's my writing on the top and my writing is cash.

40

Are you looking at page 92?---Oh.

I was just asking about the cheque butt 3073?---The cheque butt.

Yeah?---That's my writing, all.

So why did you write the words "consultants fees" in relation to that \$8,000 cheque?---Because I would have been told they were consultant fees.

And who, who, do you know who told you that?---I don't, I don't recall but it would be Peter or Charlie.

Okay. Did you ever write - is it the case that the only way you would have recorded those words is because you were told as distinct from making something up?---I, I would have been told.

If I could just ask you to, just finally just for today, if the witness could just be shown D97.

10

THE COMMISSIONER: Are you going to page 93 at all, Mr Strickland?

MR STRICKLAND: I'm sorry.

THE COMMISSIONER: And 94.

MR STRICKLAND: Yes, I'll do that. If you could just have a look at, yes, thank you, 93 and 94.

20 MR LLOYD: We don't have 94.

MR STRICKLAND: I'm afraid I can't assist at this stage but I'll make sure

THE COMMISSIONER: That exhibit runs to 96.

MR STRICKLAND: D27 should be from pages 91 through to 96, that's right.

30 THE COMMISSIONER: I think we did have this problem with this exhibit before. Does anyone else have a problem with that exhibit?

MR LLOYD: They're probably not following it.

THE COMMISSIONER: You're being, you're being picked on, Mr Lloyd.

MR LLOYD: I'm being picked on. I've been pretty assiduous but - - -

THE COMMISSIONER: Well, we'll give it to you.

40

MR LLOYD: - - - ours ended at 93 and the (not transcribable) cheque.

THE COMMISSIONER: All right.

MR STRICKLAND: If you just go page 93, your signature on that's page, is that right?---Yes.

On that cheque I'm sorry. And at the back of the cheque you've written the word "Charlie"?---Right.

Is that your writing?---Yes, it is.

And why have you written the word "Charlie"?---The cheque would have been for Charlie.

10 And did you - was it your practice to actually give him the cheque?---Yes.

I mean, to your knowledge, did he cash the cheque?---I wouldn't be totally - I can't recall that in this case but I would imagine so.

THE COMMISSIONER: Did you write the words "please pay cash"?
---Yes.

And did you write the word "cash"?---Yes.

20 But you didn't write the word "eight thousand dollars"?---Yes, I did. Oh, the words, the words "eight thousand dollars", no.

No, you didn't write the word "eight thousand" but you wrote the numbers?---Yes.

"\$8,000"?---Yes.

30 So do you know who wrote the "eight thousand dollars"?---It, it looks like Janet's writing, she should have, she would have filled in - if we had quite a few cheques or something that day she would have - - -

And 94 is the same I take it, you wrote - - -?---Yes.

- - - "cash, please pay cash" - - -?---Yes.

- - - and the "\$2,000"?---Yes.

And signed it?---Yes.

40 Yes, thank you.

MR STRICKLAND: Just go to page 94. Is that your words on the back of the cheque?---Yes.

And the reference to "Connor", do you know who Connor is?---I can't recall. He could have been a contractor. I don't know.

The cheque, the cheque butt, if you just go back to page 92, it says “Gift for Connor”?---Yeah. I, I don’t know, he could have been a contractor, I’m not sure.

Are they your words?---Yes, they are.

And if you go to page 96. Are they your words on the back of the cheque?
---Ah - - -

10 Your words and numbers?---No, Vic, Vic is on the back of the cheque, Vic I wrote. That’s my writing.

THE COMMISSIONER: And you wrote on the front of the cheque in the same way as you wrote in front of the cheque on the others?---Correct.

MR STRICKLAND: Do you know what the payment of \$3,600 for Vic referred to?---No.

I note the time. I’m happy to go one more document or - - -
20

THE COMMISSIONER: I think we’ve lost so much today you may as well go to another document.

MR STRICKLAND: Yes. Let’s go D28. Now I just want to ask you about cheque 3186. If you just go to page 98. Are they your words, please pay cash on that cheque?---Maybe not. It’s my signature on the top and the bottom and I wrote the amount.

Okay. On the back of the cheque there’s Peter Roche’s number and some numbers and letters and a date. Do you know what that refers to?---It looks like something the bank would write on the back of the cheque which is the person who cashes I think normally or authorises it, but, and his driver’s license.
30

Now if you just go to the cheque butt, 3186 for \$9,075. Under the heading Payee it’s got Chubb Security?---Yes.

Now do you know whether that was a, a false, a false entry, that is it was not in fact a – the cheque was not due to go to Chubb Security?---That’s, that’s correct. This is a false entry.
40

And how do you know that?---Because Chubb, Chubb Electronic Security was the name used to create the cheques that were used for gifts for consultants.

All right. That was the arrangement that you had – was that the arrangement you’d come to between yourself and Mr Diekman and Mr Roche?---Yes.

And was it decided that at this point in time the entity who would be used for the false entry would be Chubb Security?---Yes.

And what reason – was that your idea or theirs or Mr Diekman’s or Mr Roche’s?---I think, I think Mr Roche came up with the name.

But you – Kings had dealings with Chubb Security legitimately didn’t they?---Correct.

10

And did you create – was there an invoice that accompanied this cheque? In other words with a false invoice or a false purchase order created?---There was, yeah. There would have had to have been a false purchase order created and then that would have had to be converted into a false invoice. Of course that – ‘cause it was on the system it didn’t necessarily need any hard pieces of paper.

And by the system you mean the simPRO system. Is that right?---The simPRO system.

20

It’s s-i-mPro System. Is that correct?---That’s correct.

And who created the false purchase order and the false invoice? Who entered the data into the simPRO system that created the false purchase order and invoice?---Peter - - -

Peter Roche?---Roche, Peter Roche.

30

And what, and what about false remittance advises, were they created as well?---Well- - -

Do you know?---Well, no, they, they, they don’t get created separately, they’re just part of a system item.

Now, these items would also have to have been entered onto the ledger, wouldn’t they, the company ledger?---These, every, we would, we would, we would export data from the simPRO system into the MYOB system which is the ledger and they would come across as an invoice.

40

And that happens automatically, does it, what you described? ---Automatically, yeah, to some degree.

Sorry, I just want to clarify this, the data that is exported, how is the data exported?---Well, we push a button and make sure it all goes across.

So the person reading the ledger item would not necessarily know it was false unless they had been privy to the discussions about Chubb Security being designated as a false, as a company- - -?---Correct

- - -with false information. Is that right?---Correct.

So in other words it all looked kosher?---Correct.

THE COMMISSIONER: And what about the, the expense, because they would be entered into the ledger as an expense, wouldn't they?---Correct.

10 So would, would that have to be debited against a particular contract or credited against a contract, particular contract?---In simPRO- - -

Yes---?- - -that would go, it would be linked to a particular contract.

But that would create a false balance in that contract, wouldn't it?
---It, possibly, but from my understanding that, that when, what happens is, is the simPRO system, once, once they have settled for a price, for a sale price, then, then the, what would happen is, the expenses start coming in against, against it and that way it would reduce the profit margin.

20 That's right, so that there would be a false profit shown at the end?---Yes.

And the company would then end up paying less tax?---Yes.

Okay.

MR STRICKLAND: That's all I have today, Mr Commissioner.

THE COMMISSIONER: Yes.

30 MR STRICKLAND: Could I just indicate before my learned friend says anything that Mr Poller, Mr Poller's evidence will conclude tomorrow and that he will not be recalled, so if any counsel wish to ask him questions it will need to be tomorrow.

THE COMMISSIONER: Mr McIlwaine?

40 MR McILWAINE: I just want to raise, in regard to D29, I think Counsel Assisting referred to the cheque butt as showing Chubb Security and the witness's response I think it was Chubb Electrical Security. I think it's partly obliterated.

THE COMMISSIONER: You mean D28?

MR McILWAINE: D28.

THE COMMISSIONER: D28.

MR STRICKLAND: It says Chubb what, sorry, Electrical?---Electronic I think it was.

Chubb Electronic. Thank you.

MR McILWAIN: I just wanted to clarify.

THE COMMISSIONER: Very well. We'll adjourn until 10.00am tomorrow.

10

**AT 4.08pm THE MATTER WAS ADJOURNED ACCORDINGLY
[4.08pm]**