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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

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OPERATION VESTA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 26 JULY 2011

AT 2.05PM

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

MR NEWLINDS: Mr Kazal, I wonder if we can look at page 268 please which I'll have to show you a copy of. Got a hardcopy for you, Mr Kazal. I think we can bring it up on the screen and my learned friends can have some. What we have here is the response from the booking person at the hotel in Abu Dhabi to you of 23 May, 2007. This one at 9.52pm Australian time and it's responding, I think you'll agree, to the email we looked at just  
10 before lunch which you had sent at 12.43pm. The time stamps on the emails may be confusing and may be explained by time differences but do you agree with me that the document at 268 appears to be the response, a response to your email of 23 May which is number 267?---Yes.

Do you agree that that's a response?---Yes.

Just before we move on have you got anything with you in the witness box other than the document I just showed you?---I have my notebook and pen.

20 You've got a notebook and a pen?---Yes.

Is there anything written in your notebook?---No. Would you like to check?

Sorry?---Would you like to check?

No, thank you. Now, when your trip occurred and you went to Dubai were invoices for your own accommodation and Mr Kelly's accommodation issued to the company AWT as you had requested in your email of 23  
30 May?---I don't recall, no.

And it is a fact of course that you did not settle Mr Kelly's account did you?---No, I didn't.

Now, if we can just move to the question of the air ticket. It's the position isn't it that as at the middle of 2007 you were holding a voucher, if you like, that allowed you two business class tickets on one of the airlines that flies to The United Arab Emirates?---Etihad.

40 Etihad?---Yes.

Had you won that in a competition or been given it or something like that? ---I was at a lunch and it was a business card draw.

Okay. So you'd won it. And isn't this the fact, you made attempts to do two things in relation to those tickets, firstly, you sought to extend the period with when which they could be used because the, what you had won was the use of the tickets within a particular time period, correct?---I recall that.

And the time period was going to run out before the foreshadowed trip to Dubai, correct?---Yes.

And you asked the people at Etihad or perhaps the people who'd issued the prize whether that time frame could be extended. Correct?---Yes.

And the other thing you had asked was whether they could be upgraded to first class tickets?---Yes.

10

Whether by you paying some extra money or whether they would just do that?---Yes.

And eventually after some to-ing and fro-ing the answer came back to both questions, no?---Yeah.

And while you were trying to organise that, you said something to Mr Kelly along these lines, that you would organise a ticket for him on Etihad Airline using these tickets that you'd won, using a ticket that you had won. You told him that, didn't you?---Not quite.

20

What do you say you said to him on that topic?---I recall winning the tickets.

Yeah?---It was well before any trip came into fruition. When the trip was discussed to take place, I recall I was trying to see if I could use those tickets and get, get the flight over with them and- - -

For yourself?---For myself and I've asked if Andrew would consider reimbursing me for one of the tickets.

30

Why did you ask Andrew that, out of all the people who were going on the trip?---'Cause I knew all the others were going to probably fly together. I can't quite recall.

Isn't it because at that time you had agreed that you would organise and fund Mr Kelly's trip to Dubai?---No, I haven't.

Because you didn't offer Mr David the use of one of your tickets, did you? ---No, because he had a different plane.

40

And what was his plan?

THE COMMISSIONER: Different plane.

MR NEWLINDS: Oh, I'm sorry. He had a different plane?---Yeah.

Is that because he was going on a different airline?---Yeah.

Right. And is one of the reasons that you, or is it perhaps the reason you and Mr Kelly ended up on the same plane is that you had originally hoped to be able to use your free tickets on the Etihad plane?---That was the intention, yeah.

And by the time you realised you couldn't do that, there was no room on the other plane?---Yeah.

10 Did you know the others were all going first class on the other plane?  
---I can't recall, no.

You would have liked to go first class, we know that, because you tried to get the tickets upgraded?---Yeah.

And you say do you that you said to Mr Kelly, if I organise this ticket for you I'll sell it to you?---Yeah, he can reimburse me some money for, for the ticket.

20 The whole of the, the, well, I withdraw that. How would you work out what price to sell him the ticket?---Whatever value of a business class ticket would have been on that airline.

Okay. So there's nothing in it for Mr Kelly at all. He's going to pay you exactly the same money as he could pay Etihad?---Yep, that was- - -

Well, was that really the deal or was the deal that he would reimburse you something?---Look, it's some time, I can't quite recall, but the whole reason was that for me to get some money back for that ticket.

30 Now, after the trip you were told by Mr Kelly how much his expenses were on the trip, weren't you?---No.

And you were told that by him in Australian dollars, weren't you?---No.

You were shown a copy of his credit card statement for the relevant period, weren't you?---No.

40 Why are you so sure of your answers to these questions?---Because it never happened.

But it's possible, isn't it, Mr Kazal, with the number of years that have gone past that he might have told you how much it all cost and you might have forgotten that. Isn't that possible?---I can't recall ever discussing it.

But is it possible that you did have such a discussion and you don't now remember it?---I can't ever recall having such a discussion.

All right. Can we have a look at document number 271 please which is in volume 2 of my volumes. Have you got page 272 and if you go back one you'll see 271 which is a statement of a credit card, do you see that?---Yes.

Now for privacy reasons the account number in the top right-hand corner has been blanked out but what I'm suggesting to you is that some time after the return to Australia by you and Mr Kelly, Mr Kelly showed you the original or a copy of this document that did not have the account number blanked out. Do you understand that?---Is that, you mean your question?

10

I'm asking you whether you agree or disagree that that happened?---No, it did not happen.

And the reason he did that was because you needed to know how much in Australian dollars Mr Kelly's expenses had been whilst you've been in Dubai so that you could reimburse him in Australian dollars as was the arrangement between the two of you?---There was no arrangement and he did not show me this.

20

And at some point in time you either gave Mr Kelly some cash or alternatively you arranged for someone to go to Mr, to go to the bank and deposit a sufficient amount into Mr Kelly's credit card so as to clear it. That's what happened, wasn't it?---No, it did not.

And the person you asked to do that was your wife, wasn't it?---No, I did not.

30

You, you know sitting here today that your wife has a recollection of going to a bank and paying some money into a credit card account about which she had no other knowledge, you know that, don't you?---Yes, I do.

You also know that she says that she did that at the request of Mr David, don't you?---Yes, and I'm very upset about it.

And the reason you know all that is of course after you were examined in private last week is you went straight home and discussed your evidence with your wife, correct?---Not quite, no.

40

Well, just tell me how it is that you know what your wife's position is on this topic?---After I left the Commission I spoke to my lawyer, John Korn, straight after we left and I had a curiosity why there was so much question asked of me about a payment which I did not know anything about. I went - -

All right?---Yeah.

Don't tell us anything else Mr Korn told you, I'm more interested in the discussion you had with your wife that night or afternoon?---Well, I went

home that night and I just, through bed talk, I was still pretty concerned about the amount of questions I was asked and I mentioned that I needed to speak to John about this because it was, they repeated a question to me so many time I didn't know anything about and she, you know, made a, made a comment to me that she has some recollection about going to a bank once Rodric David came to the office to see me and I was not there and he said he had been running late for another meeting and if she could take some stuff to deposit for him because he could not, you know, he didn't have the time, you know.

10

And she remembers it was cash, doesn't she?---She remembers it was an envelope, yes, and she went, she went to the bank and deposited it and she remembers a name Kelly was on it.

And, and an account number was written on the envelope?---Yes, that's what she told me.

Now, isn't this what really happened, you got some cash from somewhere sufficient to pay out what you understood, what you knew was Mr Kelly's credit card, you wrote, you put it in an envelope, wrote Mr Kelly's name and account number on it and asked your wife to go to his bank and deposit that money into that account?---No, that's not what happened.

20

Because really Mr Kelly was on that first trip there at your behest, wasn't he?---No, he was not.

30

Because unlike Mr David at the time of the first trip who was interested in property, building properties in the United Arab Emirates, you were more interested in setting up a business which would involve managing properties?---No, that's not quite right.

All right. Well, I'll break that down into a series of propositions, I'll do it again. It is right that Mr David's focus at the time before and during the first trip was on a business that would involve actually building buildings? ---No.

40

And it is right that your focus in contrast to Mr David's was in setting up a business that would involve managing properties?---No, that's not quite right.

Okay. Tell me what I've got wrong?---I was there to help Mr David and to do UAE markets. My - - -

THE COMMISSIONER: Markets for what?---For property, that was his business. He was - - -

His business was property wasn't it?---Yes.

Managing property?---Managing, selling, building, the lot.

Managing?---I believe so, that's part of his, part of his business. If you - - -

MR NEWLINDS: He used to build building didn't he?---And manage and sell them.

And he had people who would sell often off the plan units in buildings that he built, correct?---Yes.

10

And no doubt those same people would sometimes rent out units in those buildings before they were sold off?---Yes.

But Mr David had no business such as taking on large scale buildings and managing them for the owner did he at the time?---No.

He did not, you're agreeing with me?---Neither, neither, neither have I.

Did I ask you if you did?---No.

20

And neither did you?---No.

And that's why you were keen for Mr Kelly to come along because he was a person that you knew had real experience in managing properties?---No, that's not right.

And Mr Kelly on that first trip was really there at your invitation wasn't he to help you - - -?---No, he wasn't at my invitation.

30

And that's why you had an arrangement with him that you would reimburse him for his costs?---I had no arrangements with Mr Kelly.

And of course Mr Kelly as you knew it was very interested in obtaining a job in the United Arab Emirates at the time wasn't he?---I knew he was looking for work, yes.

And in particular was interested in the United Arab Emirates?---Yes.

40

He'd asked you had he not to organise for his CV to be distributed in that country or those countries through your brother, remember that?---Yes.

And you knew that Mr Kelly would be grateful to you for assisting him in going to the United Arab Emirates where there was, as you understood it, a real prospect that he might get a job through whatever Mr David ended up doing there, isn't that right?---This was not the case, no.

You knew he would be grateful to you for the opportunity didn't you?---I did not provide him any opportunity.

And you certainly knew he'd be very grateful for you reimbursing him so that it became an all expenses paid trip for him to the United Arab Emirates?---I did not reimburse him, I did not provide him that opportunity.

All right. Now, Mr Kazal, during the second half of 2007 you were having some issues with the Commonwealth Child Support Agency weren't you?  
---Yes.

10 You were behind with your child support payments weren't you?---There was a dispute, yes.

You were behind with your child support payments weren't you?---Yes.

And you were pretending to the Child Support Agency, were you not, that you had lost your job working for the Kazal companies, correct?---I was not pretending, no.

20 Do you say you had lost your job with the Kazal companies at the time?  
---There was a period, yes.

But you lost your job?---Not quite but things were not - - -

Well, about this, there was a time when Karl Kazal wrote a letter to you that any person reading would think amounted to you being dismissed, remember that?---(NO AUDIBLE REPLY)

Do you remember that?---I can't quite recall but possibly.

30 Well, let me try and jog your memory. And the reason he wrote that letter was so that you could show it to the Child Support Agency so that you could firstly make out to them that in fact you didn't have any income and that was why you weren't paying the money that you were required to pay to support your children, correct?---I can't recall that letter.

Well, are you prepared to deny what I just put to you?---Not deny it, but just my memory can't, can't recall that letter. I know there was (not transcribable) and I had some issues but I can't recall.

40 And the Child Support Agency was very suspicious because they thought, and no doubt your ex-wife was telling them, that for all intents and purposes you appeared to be a successful businessman running around doing things for the Kazals at The Rocks and that was causing problems. Am I right?---  
(NO AUDIBLE REPLY)

Are you prepared to deny it?---I haven't denied it or haven't said yes.

Are you just not commenting because it's embarrassing?---No. Can you just repeat that question for me again, please.

The Child Support Agency was saying in effect that they didn't believe you when you were saying you'd lost your job, weren't they?---I don't recall having a dispute about me losing my job, it was about the assessment, the dispute was.

10 All right. Well, but isn't this the case. They assessed you on the basis that you had a job even though you were saying to them that you didn't have a job?---No. They assessed me at a, at a, at a different scale, it wasn't about a job, it was about the rate of pay that they assessed me at.

Oh, I see. So they didn't believe that you were receiving the low amount of money you were saying you were receiving?---I was not receiving a low amount of money, it was what I was receiving.

20 Now, this is important. The child protection agency, using their powers as a commonwealth agency, had organised for you not to be able to leave the country pending resolution of the dispute. Correct?---Yeah, there was a DPO, I recall, yeah.

Departure Prohibition Order?---Yeah.

And that was in place in the second half of 2007, wasn't it?---Yeah.

30 And that of course caused you angst because you were concerned that because of that Departure Prohibition Order you wouldn't be able to go to Dubai and have the opportunity that was available to you at least in relation to the second trip, the one that happened in January. Is that right?---Of course I was trying to improve my situation to be able to help look after my kids and of course it was a problem for me, yeah.

And you spoke to Mr David and asked him whether he was prepared to sign some letters on his letterhead so that you could show them to the Child Support Agency. Correct?---Yeah, I just wanted him to confirm the arrangements that were in place.

40 Ah hmm. And if we can look at page, well, I don't know how we're going to do it. I wonder if 2198 can be brought up. I'm sorry, 2199. What number is that? 2199. Now, I'm not sure if these are in people's folders. They're not. So, and I'm not even sure if they're in the Commissioner's folder, so can I hand one up for the Commissioner. Overnight I'll make sure your folder's in order, Commissioner. Another one for the witness, or one for the witness?---Thank you.

Okay. Can you look at 2199 first. I might have handed out the wrong one. Hopefully I've handed out the right one.

THE COMMISSIONER: They're both there, Mr Newlinds.

MR NEWLINDS: Thank you. Yep. 2199 should be a letter from, on Mr David's letterhead, Davids Group letterhead, signed by Mr David bearing the date Monday 12 November, 2007. Do you see that?---Yeah.

Now, that letter does not tell the whole truth, does it?---Not quite, yeah.

10 Because was there ever a meeting scheduled in Dubai between 7 and 20 December, 2007 that you wished to go to?---Yes, I did have a meeting in Dubai.

Mmm?---And this was at the request of Mr David to initiate back the discussions with Seba and hence the January trip was put back on the agenda. It was around this time.

Now, if you just go back one page to 2198?---Yeah.

20 Just have a look at what Nadine Burch, who I think was Mr David's secretary, oh, sorry, just have a look at Nadine Burch, who I think was your assistant or at least someone who worked at AWT at the time?---Yeah.

You know her don't you?---Yes.

What was her position at the time?---She was a consultant and a sort of secretary.

30 And was she your secretary?---Not mine, she was helping around the office.

But she was available to help you?---Yes.

And do you see what she says about the letter we've just looked at - - -?  
---Yes.

- - - when she sends it to Rodric as a draft?---Yes.

40 "I'm attaching a file that contains a draft letter that Charif would appreciate you sending to him on your letter head, a partial work of fiction that will greatly assist Charif." Do you see that?---Yes.

Now, let's just go through that bit by bit. Firstly, you did draft a letter that was signed by Mr David on 12 November, 2007 didn't you?---That's correct.

And you had requested him to sign it when it was provided to you?---Yes.

And do you agree that it's a partial work of fiction?---To a point, yeah.

Okay. Which part of it is fiction and which part of it is fact?---Most of it are fact it's just the people that I had to meet with I didn't want to have included in the letter because around that time I was having problem as you have indicated earlier with the CSA and my ex and her husband were getting information through the CSA and they were causing me problems with people I had worked with so I did not want to put on paper who it was I was dealing with, especially in that part of the world because it would cause me great embarrassment.

10

Which part of the letter is fiction?---The content are a bit of fiction but the meeting, there was a meeting at Dubai that I had to go to.

Can we go through it line by line?---Sure.

Had Mr David just confirmed with Jason that you and he were able to attend client meetings to discuss the proposed MRA and to find the various responsibilities of the parties as at 12 November, 2007?---Maybe in that instance will have been referring to Seba but not to Jason.

20

THE COMMISSIONER: Who is Jason?---There was no Jason, just, I did not want to - - -

MR NEWLINDS: There was a man called Jason who worked for the Kazal organisation but - - -?---Sorry?

There was a man called Jason who worked for the Kazal companies but may we take it it's not him, yes?---No.

30

All right. So the insertion of Jason's name is not true?---Yes.

Look at the next paragraph, a meeting agenda et cetera?---Yes.

Was Mr David asking you to block out the dates?---Of course.

And once you had confirmed the availability of the American contingency was he going to advise you of exact travel dates?---I knew the travel dates.

40

What was, if anything, the American contingency, sounds like a (not transcribable)?---This was just, this was just, as I've explained to you, the letter - - -

It's made up, there was no American contingency?---I had, I had discussed with Rodric - - -

THE COMMISSIONER: Is that a fiction, Mr Kazal?---Yes, Commissioner, I've established that and I've explained the reasons why.

MR NEWLINDS: He then goes on to say, sorry, the letter then goes on to say that, "As per our previous agreed arrangement we will organise and prepay your air travel and ground transportation as well as the Dubai hotel accommodation during the period overseas."?---That's correct.

Now, that previous agreed arrangement was also recorded in a letter wasn't it?---Yes.

10 And you had drafted that letter for Mr David as well hadn't you?---Yes.

And that letter was also a work of fiction wasn't it?---Can I see that letter you're referring to please?

We'll come to it, but we are referring to a previous agreed arrangement that is in writing contained in the letter and you were the draftsman of that letter, that's true isn't it?---It was an agreed arrangement, yes.

20 And that agreed arrangement I'm suggesting to you was concocted between you and Mr David so as to defraud the Child Protection Agency so that they would lift the departure prohibition order, isn't that right?---No, that's not right.

I think it's the Child Support Agency?---Yeah, that's not right and there was no any intention to defraud.

And can we then look please or bring up a document which has page 2196 on it which is one of - and also has 2197, do we have copies of that?

30 THE COMMISSIONER: While that's being brought up, Mr Kazal, can you tell me Julie is?---There was, the names were put in there so no one would know who I was dealing with, Mr Commissioner.

So Julie is a fiction?---Yeah.

MR NEWLINDS: If we can have 2196 up, I'm not sure if we've got copies of this?---Yeah.

40 But 2196 is a very short document and if it's not in the Commissioner's folder I've got, I do have a copy for him.

MR BEECH-JONES: (not transcribable)

MR NEWLINDS: Why not, I'm confused so just let me - - -

MR BEECH-JONES: Can I perhaps assist you where it is in the book?

MR NEWLINDS: Mr Beech-Jones is standing up to assist us, yes, please.

MR BEECH-JONES: Do you have 521 and 522.

MR NEWLINDS: 521 and then - - -

MR BEECH-JONES: 17 October 2007.

MR NEWLINDS: Yeah.

MR BEECH-JONES: Yeah.

10

MR NEWLINDS: Isn't the 17 October letter the one you asked me about?

MR BEECH-JONES: Yes.

MR NEWLINDS: Okay. Thank you.

MR BEECH-JONES: It's 521 and 522.

20

MR NEWLINDS: Thank you. Let's work with the numbers that are actually - - -

THE COMMISSIONER: Do you say it's at pages 521 and 522, yes, thank you.

MR NEWLINDS: Everything's falling into place. The document at 521 is a email from yourself and it's address to Peter Alward who I am assuming is an employee or assistant of Mr David, is that right?---No.

30

Who is Mr Alward?---Peter Alward was a fellow chamber executive and he had a property, sort of real estate type of business.

All right. Well, maybe I'm proceeding under a misunderstanding of things. If you have a look at 522?---Yeah.

40

That's a letter on Mr David's letterhead of 17 October, 2007 that I think has been referred to earlier today. The first question I should ask you is this: is the draft, is the draft that you sent in your email of 17 October to Mr Peter Alward asking him to put something on his letterhead, a draft of the letter that we saw on Mr David's letterhead at 2197.

THE COMMISSIONER: 522, at 522.

MR NEWLINDS: I'm sorry, 522?---I can't recall the, the draft or, or the letter to Mr Alward but I can certainly confirm the letter to Rodric David, yes.

And what we see at the top of 521 is Mr David writes to you - - -

THE COMMISSIONER: Sorry, I'm not sure if I understand that replied. You confirmed, what do you mean, what are you confirming?---I'm confirming that that draft letter is a draft I sent to Rodric David.

So the letter at 522 is a letter the draft of which you had previously sent to Mr David?---As our terms of agreement, yes.

Thank you?---To put on his letterhead.

10 No, I understand that.

MR NEWLINDS: And the letter at 522 was what comes back?---Yeah.

And so you would have - and, and do you recall whether Mr David made any changes or alterations to that letter from its draft to its final form?---I can't recall.

20 You know he didn't, don't you?---As I said I can't recall but this was to formalise our arrangement.

The true arrangement you had with Mr David as at October 2007 was that you hoped to obtain some ownership whether by shareholding or otherwise in whatever the business was that might be set up in the United Arab Emirates, is that right?---By that time there was nothing formalised but - - -

I know there was nothing formalised but that's what you really wanted wasn't it?---Of course.

30 And you had had the discussions with Mr David along those lines, hadn't you?---That was one of the options, yeah, about being remunerated.

And you didn't want the Child Support Agency to know anything about that, did you?---Because there was nothing.

Please. You didn't want the Child Support Agency to know anything about the prospect that you might have ownership in the future in a profitable business overseas?---Not quite, no.

40 You didn't want them to know that, did you?---Not quite because there was nothing, Mr Questioner.

However there was a prospect of something in the future?---It's, it's up in the air, there was nothing.

And you didn't want the Child Support Agency to know about that prospect, did you?---I was informing them, I was working with Mr David to try to advance myself. I wasn't hiding anything.

This letter was carefully crafted by you for the purpose of persuading the Child Support Agency to lift the Departure Prohibition Order?---Of course, yes.

And it doesn't represent the whole position or understanding between yourself and Mr David at the time, does it?---It does represent that I'm working with Mr David to try to further myself, and that's exactly what was going on.

10 And it doesn't represent that both you, that you and Mr David had discussed the real prospect of you actually having a stake as an owner in the business when it got up and running. Correct?---Discussion is discussion, there was nothing happening. How could I tell them about a discussion?

And the other person you did tell about those discussions during, at least during the trip to Dubai in the middle of the year, was Mr Kelly. Correct? ---What discussions are you referring?

20 You told Mr Kelly that what you hoped to happen was that you would end up having an ownership stake in the business with Mr David, didn't you? ---No, I did not discuss that with Mr Kelly.

But that was your state of mind at the time, that is what you wanted, wasn't it?---Again the May trip was an exploratory trip. There was no- - -

THE COMMISSIONER: That's what you wanted, Mr Kazal. Is that, is that not right?---Mr Commissioner, we went there- - -

30 Just answer the question, please. That's what you hoped for?---Yes, I wanted to help and advance myself.

Yes, quite.

MR NEWLINDS: And you told Mr Kelly that?---No, I did not.

Because you were quite friendly with Mr Kelly at the time, weren't you? ---I did not tell Mr Kelly that, no.

40 But you were quite friendly with him, weren't you?---I was, but I did not tell him that.

And you trusted him, didn't you?---Can't, I wouldn't say I trusted him but I had through dealings with Mr Kelly, professional.

And you were quite excited about the prospects presented to yourself by virtue of the involvement with Mr David, weren't you?---Of course. I was actually at the time impressed by Mr David and I saw this as an opportunity maybe to do something for myself away from my family to try to, you

know, move myself forward to help my, my, my kids and myself and as would any normal person try to do.

And you and Mr Kelly chatted about that?---No, we did not.

At the time of the first trip you were well aware that the Kazals were having difficulty persuading SHFA to the Kazals' point of view in relation to 91 George Street, which was that there would be agreed to a change in use so that it could be a chocolate shop?---Can I just, Mr Commissioner- - -

10

THE COMMISSIONER: Just answer the question, please, Mr Kazal?  
---We, my family acquired a business that had- - -

Will you answer the question, please?---Can you please repeat the question?

MR KORN: Surely he must be allowed to answer it in his own way.

THE COMMISSIONER: He was not answering the question, Mr Korn.

20 MR KORN: He hasn't finished so how would you know?

THE COMMISSIONER: I heard what he was saying and it appeared to me that he was not answering the question. That is my ruling?---We had a usage for food and that was the use of the place anyway.

MR NEWLINDS: Would you please answer the question. If you want it again, say so?---Please repeat the question.

30 As at the time of the first trip to Dubai, the Kazal organisation, if I can call it that, was having difficulty persuading SHFA in relation to 91 George Street to agree to a change in use and a rent abatement. That's right, isn't it?  
---I recall there were, there were some, some, some issues, yeah, I do.

Kazals had asked because you didn't want it to be a seafood restaurant any more, for it to be changed to a chocolate shop?---Not, not in, not in April, not, not in April. We actually, there's something I'd like to correct here.

40 Well, I don't know where you got April from. We're talking about the time of the first trip which was- -?---Well, I, I recall us asking SHFA to consent to a change of use from seafood to Thai initially because by that first trip there was even no mention of a chocolate concept, it didn't come into effect till about July.

That's your recollection is it?---That's, yeah.

And there was at the time of the first trip an application by SHFA for rent relief in relation to those premises. Correct?---I believe so, yeah.

Because the Kazals position being the premises were empty, they couldn't make money as a seafood outlet and therefore it was only fair that rent be - - -?---It was failed, it was failed concept the seafood concept SHFA had put in place and we came to the rescue, we took the risk, we wanted to improve it and we wanted to make sure something of quality happens in that building as it did.

10 You were frustrated because you were having trouble persuading SHFA that what you were proposing was the sensible way forward, correct?---As I've explained there was no chocolate request by the first trip, it was about a Thai concept which was, I believe to the best of my recollection it was agreed by SHFA for us to have a Thai use in that place.

You knew at the time of the first trip that Mr Kelly was involved at SHFA at some level with whatever decisions had to be made by SHFA in relation to 91 George Street, correct?---I did not discuss anything with Mr Kelly with respect to 91 George Street. My dealings and the paper trail will clearly confirm it was not with Mr Kelly.

20 No, the question was you knew that Mr Kelly was involved in some way, shape or form at SHFA - - -?---Yes, he works, he works at SHFA, yes.

It was more than him working at SHFA, he was the Director in charge of the Tenants and Asset Management part of SHFA?---Okay, yes.

You knew that at the time didn't you?---Yes.

30 And you knew that he would be influential within SHFA as to whether what the Kazals wish to happen in relation to 91 George Street would be allowed or not?---My request were directed to the CEO not to Mr Kelly and they were done through the General Manager Debra Dawson.

Would you please answer my question?---I cannot accept what you're putting to me, Mr Questioner.

All I'm putting to you, and I'm not the Commissioner - - -?---Mr Questioner.

40 THE COMMISSIONER: Mr Newlinds?---Okay. Mr Newlinds.

MR NEWLINDS: All I'm asking you to consider is this. You knew that Mr Kelly's opinion as to what should happen to 91 George Street would carry weight within SHFA?---As would a director, yeah.

So you agree with me?---Yes.

And it suited you at the time to ingratiate yourself and the Kazals generally with Mr Kelly didn't it?---That wasn't the case at all.

And you knew at the time of the first trip that Mr Kelly would be grateful to you for, in part, arranging for him to have that opportunity, correct?---I did not arrange for Mr Kelly.

In part you did didn't you?---No, I did not, Rodric David did.

Who first invited Mr Kelly on the trip?---Rodric David.

10 When Mr Kelly had his first meeting with Mr David you were there weren't you?---Yes.

And you had invited Mr Kelly to that meeting hadn't you?---No.

And did you explain to Mr Kelly what you were doing there when Mr David was outlining his vision for the United Arab Emirates?---(NO AUDIBLE REPLY)

20 What did you say?---As it's been explained that I was there to help Mr David and in turn the UAE markets, I had, I had a level of knowledge about the culture, protocol, the language and I had the privilege of being able to somehow trade on my brother's (not transcribable) reputation in the UAE to try and advance Mr David's interest.

Can we go to page 227 please. And if you look over to 228 you can see that this letter which is on AWT letterhead whilst not signed has been written to be signed against your name as General Manager, do you see that?---Yes.

30 And Mr Kelly drafted that letter, didn't he?---I don't know who drafted that letter.

Did you draft it?---No.

And around this time Mr Kelly had had allocated by the IT people an email address being andrewkelly@awt. Remember that?---Yeah.

Now, were you the person at AWT that authorised Mr Kelly to have such an address?---Yep.

40 Right. And why did you do that?---At the behest of Rodric David I arranged for Rodric, for Clint and for Andrew to have addresses at AWT because that was the company that was being used to open the door initially for Parkview with both Chesterton and with Seba.

Wasn't what was really going on at the time was that AWT was being used in Australia as the company that was dealing with Chesterton's with a view to asking Chesterton's whether an arrangement could be entered into to use Chesterton's name and brand in the UAE, that's what was going on in

Australia. Is that right?---It wasn't AWT Australia, it was AWT Dubai that was making the request.

Well, an AWT company- - -?---Yeah.

- - -was having the dialogue with Chesterton's?---At the request of Mr David and Clint Willoughby.

10 And not at your request?---Not- - -  
Even though- - -?---Yeah.

- - -neither Mr David nor Mr Willoughby were a director or officer of AWT, you say all that happened just because Mr David and Mr Willoughby asked. Is that right?---That's correct.

But in fact the truth is it happened because you agreed and directed those within AWT to do it. Correct?---Yes.

20 Right. And the reason AWT was having the dealings in Australia with Chesterton's was because AWT was a, was a known entity within Australia?---No. It was because AWT was a known entity in UAE and the pitch was to Chesterton to show that there was a background and experience in, in place or existence of a company that, asking them to have the franchise in UAE. It wasn't about AWT- - -

THE COMMISSIONER: I don't understand that?---Sorry.

30 Can you just repeat that, please?---Sure. The, the intention was to show Chesterton there was substance to AWT existence in Dubai so they would consider offering, offering them a franchise.

A franchise where?---For UAE.

MR NEWLINDS: But the Chesterton's you were dealing with were the Chesterton's in Sydney?---That's correct.

40 And I think at a later stage you dealt with some international Chesterton firms?---I can't recall.

All right. And wasn't this what was going on, you had agreed that Mr Kelly could be made to look like he was involved with AWT in those dealings. Correct?---That was the letter that came to me, yes.

THE COMMISSIONER: That was the letter that came to you?---Yes, a drafted letter with Mr Kelly information on it came for me to send on to Chesterton and I've agreed to it, yes.

MR NEWLINDS: But let's just, that, that was the reason he was given an AWT email address- -?---Yeah.

- - -wasn't it?---Yeah.

And was he issued with AWT business cards?---I can't recall.

Well, if you have a look at the document at page 220, if you just look at the third paragraph there, it was you, wasn't it, who had requested that AWT  
10 email addresses be set up for both Charif, yourself and Karl?---Sorry?

I withdraw that. That's about Parkview. Now, I'm just trying to find the Chesterton letter that you've seamlessly led us into. If we go to page 201, can we have 201 up please, Ron? That's it?---Yep.

That's the letter you were referring to a few moments ago?---That's correct.

And you were prepared to allow Mr Kelly to be held out as having something to do with AWT to Chesterton's as at 12 April, 2007, weren't  
20 you?---This was a poor judgement on my behalf.

I'm sorry, I didn't catch that?---This was a poor error of judgement on my behalf. I acknowledge this was not right.

All right. Well, I don't think you'll get any dispute from anyone here about that, but can you just attend to the question I asked you?---Sure.

You agreed and indeed signed the letter which held out Mr Kelly as having a real involvement with AWT as at 12 April, 2007, and that letter was sent  
30 to Chesterton's in Sydney. Correct?---Yes, I've agreed for the letter to be sent. It wasn't my signature. It was, as I've explained previously, it was done in my office but I've agreed for this letter as it came into my office to be forwarded to Chesterton and again it was at the request of Rodric David and with the assistance of Clint Willoughby.

Is it your position that whatever Mr David asked you to do you would do without question, is it?---This was my downfall, Mr Newlinds, that I had trusted him enough and I believed in him and I put myself out in a situation  
40 where now I have to sit here, ridicule my whole family and myself because of Mr David's actions.

You were quite prepared to tell Chesterton's that Andrew Kelly was involved with AWT?---Yeah.

When you got to the United Arab Emirates you were quite prepared for the people you were dealing with there to be told that both you and Mr Kelly were involved with Parkview?---That's correct.

And once again may we take it the reason you did that was an error of judgement caused by you just doing what Mr David told you?---Yes, and I regret it deeply.

Ah hmm. And what is it about it that you regret, other than it's brought you here? Do you see anything wrong with it?---Yes, I should never have agreed for my name to appear somewhere where it was not right and I should never have agreed to have people names in, in a company affiliated with my family. I made a very poor error of judgement and it's, it's caused my family a whole heap of embarrassment, not just here but abroad, because of Rodric David actions, he's, he's misled everybody and he's- - -

Mr Kazal, if you, if you think you're answering the question, keep going, but I should point out to you, this is not an opportunity for you to say whatever you like about Mr David?---I accept that.

Do you understand that?---I accept that, but I am, you would appreciate how I feel being in this seat.

20 Now all of what you just makes sense only if one accepts the starting point which is what is contained in this letter is a lie. Correct?---Yeah.

That's the error of judgement that you're talking about?---Yes.

What about this. Isn't it the real position that in fact as far as you were concerned Mr Kelly very much was a part of what you were doing and hoped to do in the UAE? That's right, isn't it?---No, it was not part of what I was doing.

30 And you had a real and clear understanding that if the business got up and running in the UAE that not only would you have an ongoing role which would produce money for you, Mr Kelly would have an ongoing role which would produce money for him and the job he so wanted overseas, correct?--  
-I was there working for myself. I was not there working for Mr Kelly. I was - - -

Was that even an attempt to answer the question you were asked or have you now just decided that instead of answering questions you'll say whatever it is that you, that you think will assist you?---No, Mr Newlinds.

40

All right. Well, can I ask the question again?---Yeah.

You as early as April 2007 but certainly by the time of the trip to Dubai had a clear understanding that if the business venture that if the business venture that was being looked into on that trip got up and running you would have an ongoing role in that business which would produce for you money?  
---Yeah.

That's right, isn't it?---Yes.

And equally, probably in April but at the latest by the time of the first trip, you had a clear understanding that if that same business got up and running it would produce for Mr Kelly as job which would give him money and the job he was looking for the United Arab Emirates, that's right, isn't it?---I can't accept it, Mr Newlinds. I, I can only talk on my behalf here, I cannot talk on Mr Kelly's behalf.

- 10 Do you know whether there was a budget prepared by, amongst other people, Mr Kelly whilst the group of you were in the United Arab Emirates?  
---There was lots of emails going backward and forth but - - -

Listen, this would be much quicker if you'd just listen to the questions and answer them, all right?---Yeah.

It really would because I'll just ask the question again. Do you remember that there was a budget prepared while the group of you were over there in the United Arab Emirates?---Yeah, I recall.

20

And can we bring up please page 273?---Is it the same folder?

That should be volume 2 of yours, I can't help Mr Beech Jones, it could be volume 27 of his?---What number was it?

It's volume 1 of Mr Beech-Jones and volume 2 of yours, page 273. Have you got 273?---Yeah.

30

And just to orientate you, if you could just have a look at 274 just so you can see what's attached to 273?---Yeah.

And that is at 274 the budget we've just been talking about, isn't it?---Yeah.

And we can see on 30 May, which is actually while you're still in the United Arab Emirates that Mr Willoughby has emailed that budget to you?  
---Yeah.

Now do you remember receiving that budget via email?---Yeah.

40

And do you remember it being part of discussions which occurred as it was being prepared?---I wasn't part of discussions but it was emailed for me to have a look at because they were intending to my recollection to sending this on to Seba as a budget and they just wanted my view on it, that's - - -

And you knew that it had also been provided to Mr David and all the others who were involved for their similar input?---Yeah.

You understood that?---Yeah.

And did you look at it?---Yeah.

And did you see anything wrong with it?---What are you leading to, sorry?

Don't worry about what I'm leading to just answer the question. When you looked at it did it appear to accord with your understanding of what was going on and the expenses that would be necessarily paid by this business?  
---There was a budget prepared, yeah.

10

And when you looked at it - - -?---Ah hmm.

- - - did it seem to align with your understanding of the money that would have to be outlaid for this business to run?---Yeah.

All right. And when you look at 274 it tells us two things at least?---Ah  
hmm.

It tells us that it was envisaged that you would have an ongoing role which  
20 would result in money to you of A\$350,000 per year?---Yeah.

Do you see that, that's the first time?---Yeah.

No doubt you checked that when you looked at the budget?---Yeah.

And if you go down two lines you can see that similarly both Andrew Kelly and Clint Willoughby were also envisaged to be involved with the business and receiving money in the same amount, \$350,000 each?---Yeah.

30 Right, now you shrug your shoulders?---I said yeah.

Okay. Now, can I then ask you to focus on a question I was asking a few moments ago. As at the time you looked at this budget which, may we take it, was either in the United Arab Emirates or very shortly after you got back, is that fair?---It seems to be that it was sent to me whilst we were in the UAE.

But as at the time you went through it and checked it to see that if you had  
40 anything you wanted to say in relation to it - - -?---Ah hmm.

- - - that would either be in Dubai or shortly after you got back, wouldn't it?  
---Yeah.

As at that point in time you well understood that if this company got up and running, that it would produce money for you hopefully in the order of \$350,000 and it would also produce money for Mr Kelly in the same order. That's right, isn't it?---Yeah.

And at that point in time you understood that it was the plan, not just of you and not just of Mr Kelly, but of all involved that both you and Mr Kelly would each have an ongoing involvement in the business, correct?---Yeah.

Whether it be as consultants or otherwise you hoped that in (not transcribable) you and Mr Kelly would actually be at the very least working together in the same business?---Yeah.

10 And whilst you were in Dubai and between that first trip and the second trip you and Mr Kelly had a common goal to assist Mr David in getting that business up and running and successful, correct?---Yeah.

And you worked together towards that common goal, correct?---Yeah.

And if you did a good job in working towards that goal that would be to the benefit of Mr Kelly, correct?---If I did a good job it would be to my benefit.

20 And it would also be to the benefit of Mr Kelly?---If he was to be employed by Rodric David, yes.

But your understanding was he probably would be employed by Rodric David?---Yes, yes.

So you accept that if you did a good job in working towards assisting Mr David in getting the business up and running, that would be to the benefit of Mr Kelly?---And everyone involved, yes.

30 And you knew that Mr Kelly would be grateful to you for doing that, didn't to?---Why would he be grateful for me?

Because he wanted a job in the United Arab Emirates working in property management and no doubt \$350,000 per annum was pretty good money? ---If that's what - - -

(not transcribable)---If that's what Rodric David offered him and that's what he was going for, yes. I was there doing my bit to help me.

40 But you understood that in doing your bit to help you you would, you were also helping everyone that was involved?---Yes, yes.

And which included Mr Kelly?---Yes.

How friendly were you with Mr David during this period? Did you consider, I appreciate that it's different now but at the time did you consider him a friend?---Actually I treated him far more than a friend.

Does that mean you trusted him, with the benefit of hindsight, too much. Is that what you say?---Absolutely.

Now your brother Karl Kazal, I want to ask you about his involvement in the hoped for business throughout 2007, do you understand that?---Ah  
hmm.

Did Mr Karl Kazal have any involvement in this business during that period?---No, he didn't.

10 Did you have any discussions with him during - about what you were proposing to do or trying to do in that period, that is, from about April 2007 to the end of 2007?---Yeah.

Did you tell him in general terms what you hoped to achieve?---Yes, because I was trying to use his contacts.

Well, you were really trying to use Tony's contacts, weren't you?---Yeah, but - - -

20 Because Tony was the Kazal brother who lived over there?---That's correct, that's correct.

And was well-known and I understand very well respected?---Yes.

Let's just focus on Karl. Did you invite him to be a part of what you were trying to do?---We asked him but he wasn't interested.

30 THE COMMISSIONER: What did you say? We asked him?---I mean Rodric and I asked him but Rodric was always about trying to get Karl to be involved but - and he didn't want to have anything to do with it.

MR NEWLINDS: Karl's name finds its way onto the Parkview profile as well doesn't it?---Yes.

Now, did Karl give permission for that?---No.

Did Karl have an AWT email?---Of course he would have.

40 But was that organised by you for the same purpose as you organised Mr Kelly's?---No, he would've had a normal AWT email anyway.

Well, you asked Nadine Burch to ask Rodric David to set up Parkview email accounts for yourself and your brother Karl didn't you?---Yes.

And the document at 220 tells us that. I don't think you need to look at that document again, you know the one I'm referring to?---Yes.

Did you ask Karl's permission to do that?---No.

Did Karl ever tell you why it was he wasn't keen on this proposed business?---Karl always wanted to focus on what he's doing here, he didn't believe in going outside his scope or what he was looking after which is hospitality, he didn't want to be involved in anything else.

Did you tell Karl Kazal about Andrew Kelly's involvement with Mr David and yourself in 2007 at the time?---After we came back, yes.

THE COMMISSIONER: From the first trip?---Yes.

10

MR NEWLINDS: What did you tell your brother?---I explained to him that Andrew was there at the behest of Rodric David and he didn't think it was a good idea.

Well, what did he say?---He wasn't happy about it, he said, I said, "It wasn't me it was Rodric David."

So Karl assumed that you had invited Mr Kelly?---No.

20

Well, - - -?---No, did assume.

- - - what did you say?---I said I was there with Mr David and Andrew Kelly was there as well and Karl questioned why would that have happened. I said I didn't have anything to do with it, it was at Mr David's behest, he's the one that brought him on board.

Did Karl seem uncomfortable with the idea that you and Mr Kelly had gone on a trip together?---Yes.

30

He did?---Yes.

Did he say why?---He was, no, he didn't, he wasn't, Karl wasn't happy about me going there at all just to start with. I was doing this on my own accord.

But there's a superadded factor about what he wasn't happy about, he also wasn't happy with the fact that you and Mr Kelly were involved together was he?---We were not involved together.

40

But he wasn't happy that Kelly had gone on the trip, is that fair?---Possibly, yes.

And did he say why?---No.

Did he point out to you that he didn't think that was appropriate in light of Mr Kelly's position at SHFA?---I just knew he wasn't happy about it, we didn't go into a lot of detail to the best of my recollection.

Did you ever discuss with Mr Kelly whether he had told his employer at SHFA that he had come on the trip?---No, I didn't.

Did you ever wonder whether he had told his employer about this trip?  
---I was there on - - -

Is the answer no?---No, it didn't come to my mind, no.

10 Did you have an understanding that what you and the group were doing or trying to do should be kept confidential?---How can you keep something like this confidential, there was emails, there was - - -

The way this works is I ask you questions?---Okay. Fair enough. Fair enough. I accept that.

Was it your opinion that what you were trying to do with Mr David and the others overseas ought to be kept confidential?---No.

20 You say that quite confidently, am I right?---I was, it was, it was out there, it wasn't, there was nothing confidential about it.

It wasn't really out there because some of the documents that have been created didn't really tell the full or true story, that's right isn't it?---Yes.

So some people had a vague idea that something was going on but they certainly wouldn't have worked out from the documents what in fact was going on would they?

30 MR KORN: I object to that.

MR NEWLINDS: That's fair enough, I'll withdraw the question. Was it your opinion that it would be impossible to keep this sort of thing confidential for too long?---As I said it was out there, I didn't think it was confidential or had to be kept confidential.

Yes, no further questions, Mr Commissioner.

40 THE COMMISSIONER: Right. I think that I would like just to have a five minute adjournment to just make sure of a couple of matters, Mr Newlinds. The Commission will adjourn for five minutes.

**SHORT ADJOURNMENT**

**[3.15pm]**

THE COMMISSIONER: Mr Newlinds?

MR NEWLINDS: I regret to tell you, Mr Kazal, I haven't quite finished?

---No problem.

Just taking you back to the budget that we looked at a few moments ago, I just want to ask you this. Do you recall that you had an understanding at the time, that is of the first trip, that in order to do business in the United Arab Emirates there would have to be a joint venture with some local company or person?---Yeah.

10 And when that budget was prepared, did you understand it was the outgoings of the prospective business operating as a joint venture or not?

---To the best of my recollection it would have been presented as a, as a budget to, for Seba that that's what it would have cost to operate a business or as a - -

And presumably at one, at some stage someone was going to plug in some income- - -?---Yeah.

20 - - -and hopefully the income would be more than the expenses and that would show it was a viable- - -?---No, I think it would have been a working capital that would have been required to set up a JV then whatever business that might come.

Now, the person or company from the United Arab Emirates that would be the joint venturer, did you, did you envisage that they would be little more than a silent partner or did you think they would have input into the running of the business?---If they were, if they were to invest I would assume that they would be a majority 'cause they would have had to be a majority, like.

30 And they would be treated as such?---Of course.

Right. Now, we haven't asked, I haven't asked you many questions about the second trip to Dubai as at, which happened in January 2008?---Yep.

Can we do it at pretty high level though? Is this fair, by that stage Mr Kelly's role had firmed up to the extent that there was no doubt from the time that trip was arranged that he was always going to have his expenses covered by Mr David or Mr David's company?---Just repeat that question for me.

40 You always understood- - -?---Ah hmm.

- - -in relation to the second trip- - -?---Ah hmm.

- - - that Mr Kelly was going to be reimbursed for his expenses by Mr David?---That was the case, yeah.

Now, you say that's no different than your understanding in relation to the first trip?---That was my understanding, yeah.

And when, when, by the time of the second trip, the nature of the business that was being contemplated had changed or got more into focus, hadn't it?  
---The players got changed, yeah.

Sorry?---The players got changed.

10 The players got changed. But also no longer was there contemplated that there would be a business that would build buildings, it was now entirely focussed on a business that would manage properties?---I, I think we would have still had a level of input into building if there was opportunities. That's what Mr David's expertise was always.

All right. But the focus was more on property management by the time of the second trip wasn't it?---To an extent, yes.

And because of that Mr Kelly's role had become more important in the group, that's right isn't it?---Yes.

20 Do you remember how Karl Kazal's name got on one of the versions of the Parkview profile, was it you that instructed that to happen?---I didn't instruct it to happen.

And as far as you know Karl himself didn't instruct it to happen?---Rodric wanted it to be there to give Parkview what you call - - -

30 Credibility?---For credibility, brand, as you would always call them, brands. And he asked, and I would've, you know, forwarded those details on for them to be included. And as I said this was a very poor error of judgement on my account.

So did you provide Karl Kazal's biographical details for the purpose of inclusion in that document?---Yes.

And do you say you did that without the permission of Karl?---Yes.

And do you say you did it without the knowledge of Karl?---Yes.

40 THE COMMISSIONER: He didn't want it to be there?---No.

MR NEWLINDS: Did you ever ask him? I think we covered that, the answer was yes and he said no?---Yes.

THE COMMISSIONER: Sorry, you asked him?---After I brought him there I said I did that, he was not happy when his name was in there.

But you only asked him after you put it in?---Yes.

Why didn't you ask him before?---In hindsight, Commissioner, would've been a different story.

MR NEWLINDS: But when did you tell him that his name was in the document?---I think after the trip.

After the first trip?---Yeah.

10 Did you show him the document?---Can't recall that but I told him that we included him in there.

And what did he say?---He said he wasn't happy.

Did he tell you to uninclude him?---I can't recall but I know he wasn't, he didn't want to be a part of this.

Did he say, Take my name off any documents?---As I said I can't recall.

20 Did he ask you for Mr David's telephone number so he could ring him up and have a chat to him?---No.

Do you know if Mr Karl Kazal had Mr David's telephone number at the time?---Maybe. I mean, they had met a few times.

Has there been some agreement reached between you, Karl and Tony wherein it's been agreed that you will take full responsibility for what has occurred in relation to the failed business venture?---In what way, sorry?

30 Has it been agreed that you will take responsibility for what has happened in relation to the dealings with Mr David?---Tony and I, yes.

And is it because of that agreement that you are deliberately skewing your evidence so as to distance your brother Karl from any involvement in all this?---I'm not skewing my evidence and I'm not trying to distance him, no, just telling you how it was.

40 And I don't want you to tell me why but it's right isn't it that you consider Mr David to be responsible for the articles that have appeared in the newspapers and indeed this inquiry don't you?---We all know the reasons why.

The answer to my question is you consider him responsible don't you?  
---Absolutely.

Now, can I just ask you this. Do you remember giving any instructions to any IT person to delete from your email records any reference to your dealings with Mr David and Mr Kelly, in particular Mr Kelly, do you remember doing that?---Not, sorry, what was the question again?

To delete from your email system any references to any dealings with Mr Kelly at SHFA?

THE COMMISSIONER: That is the computer, delete from the computer?

MR NEWLINDS: From his computer.

THE WITNESS: No, not to delete from the computer, no.

10

MR NEWLINDS: Did you give any instructions along those lines?  
---Maybe to delete an email address, yeah, but not to delete information from the computer, no.

What email address did you want deleted?---I can't recall. I know there was a request to delete an email address that was on the system but I can't recall.

20

And why did you want to delete an email address?---Because it was, when I asked to set up those email addresses they were forwarded somewhere and I've asked, because this was no longer required, I've asked for it to be deleted.

Thank you. Now, Commissioner, there are two topics that I probably haven't covered but rather than just play it out 'til stumps may I ask your permission to not ask any further questions today and perhaps come back to some short matters with Mr Kazal tomorrow?

THE COMMISSIONER: Yes.

30

MR NEWLINDS: They are stand alone topics I think it's fair to say and so there ought be no reason why - - -

THE COMMISSIONER: What are you suggesting? That we adjourn or just that someone should start?

MR NEWLINDS: No, my submission was going to be there, there ought be no reason why others couldn't start.

40

THE COMMISSIONER: Yes.

MR NEWLINDS: If they stray into a topic which I think I haven't covered I, I'll let them know.

THE COMMISSIONER: Yes, very well. Mr Beech-Jones? Mr Korn, in accordance with the practice - - -

MR KORN: Yes, I understand, yes. I'll accept, I expected that.

MR BEECH-JONES: Mr Kazal, just a couple of questions.

THE COMMISSIONER: Can you just explain who you are.

MR BEECH-JONES: Sorry, my name is Beech-Jones and I am appearing for Mr Kelly?---Sure.

10 When you checked out of the hotel in the United Arab Emirates in May '07 did you pay with your credit card?---I can't recall.

All right. Can you, can you tell me this: did you at that time, without giving us the limit or the number of the card, did you have a credit card?---I would have, yeah.

And again, without prying into the details, did it have a substantial limit as it were?---Not at that time, no.

20 Well, was it, was it more than, more than, was it around 10,000?---Yeah, I suppose.

The other matter - by the way, did you check out at the same time as Mr Kelly, the same day?---Oh, yeah, possibly.

All right. And did you check in at around the same time?---Possibly.

THE COMMISSIONER: I'm not sure if you're saying that you're uncertain as to the question - - -?---No, no, it's, it's - - -

30 - - - or whether you're answering yes?---Yes, yes, Commissioner.

To both questions?---Yes.

Can I just ask you then briefly about 2008. Were you aware that in around March 2008 Mr David's company, one of Mr David's companies entered in to a contract of employment with Mr Kelly?---I was aware, yeah, that Mr David employed Mr Kelly, yeah.

40 Now did you personally have any equity interest in Mr David's company? ---No.

Any of Mr David's companies?---No, never.

Were you aware that in July 2008 the first - one of Mr David's companies entered into the memorandum of understanding with the Dubai company Four N Property LLC?---Yeah.

And as part of that there were various obligations set out in that MOU?

---Yeah.

Did you see it at the time?---It was, yeah.

All right. And they, that ostensibly set out various obligations on either party about a joint venture involving this workers, this, this, managing this property that involving housing for workers, is that right?---Yeah.

10 And then I think you are aware that in early '09 that was replaced by a more formal agreement setting up a joint venture vehicle within the UAE, 51 per cent owned by Four N Property LLC, 49 per cent by a Cayman Islands company, is that right?---Yeah.

And of that Cayman Islands company ultimately you owned half and Mr David owned half via companies in the Cayman Islands, is that right?  
---That's correct.

20 THE COMMISSIONER: When you say you do you mean Mr Charif Kazal alone?

MR BEECH-JONES: Or was it - - -?---There was me and my brother Tony.

Can I call it the Kazal interest?---KTC.

KTC?---Kazal Tony Charif.

30 And the, the company structures and so forth that led in support of that side of the deal were put in place at the end of 2008, is that right?---About September.

And just going back to July when Mr David's company entered into the MOU, did you have any agreement in written form or otherwise to take any particular equity interests in the, in any joint venture that he - - -?---There was no written agreement, no.

Right. And had you given him any written or unwritten indemnity for any expenses that he would incur?---No.

40 So as it were, all, at that time all the risk lay with Mr David?---That was (not transcribable)

And all the upside lay with Mr David?---Yes.

And any, any ultimate involvement, sorry, any acceptance of risk or taking of upside profit from you or any, or your family was still to be as it were documented in the second half of 2008?---Just repeat that question, sorry, again?

Any arrangements whereby you would assume obligations or earn profits  
- - -?---Ah hmm.

- - -were still to be agreed upon in the second half of 2008?---Just, just again  
that, just- - -

I'm not making it clear?---Yeah.

10 As at the middle of 2008 you had no agreement, written or- - -?---Yes.

- - -written or unwritten with Mr David or any of his companies to take any  
part of an interest in the joint venture MOU that he had agreed upon for  
Four N Property LLC?---No, there was no (not transcribable)

Thank you.

THE COMMISSIONER: Yes, Ms Hogan-Doran?

20 MS HOGAN-DORAN: I may have to ask the assistance of Counsel in  
respect to those last few questions as I couldn't hear them while I was  
coughing so I apologise.

THE COMMISSIONER: Perhaps if you don't finish by 4.00 you'll be able  
to read the transcript?

MS HOGAN-DORAN: With that caveat, what I would propose to do is- - -

THE COMMISSIONER: So you don't want to start?

30 MS HOGAN-DORAN: No, I can start but what I will do is leave the topics  
(not transcribable)

THE COMMISSIONER: Just a moment, Ms Hogan-Doran. Ms Williams,  
do you have any questions?

MS WILLIAMS: No, Commissioner.

40 THE COMMISSIONER: No. Well, I'm afraid, Ms Hogan-Doran, you  
have no choice.

MR NEWLINDS: I would say this, Commissioner. We're ahead of the  
notional scheduled.

THE COMMISSIONER: No, we'll go to 4.00.

MS HOGAN-DORAN: Commissioner, I'm also proposing not to cover  
ground that Mr Newlinds has covered because there is a, there's a fair  
amount which he has put to the witness already, so I don't propose to.

THE COMMISSIONER: Yeah. I'm sure everybody will be very grateful.

MS HOGAN-DORAN: Yes. For that reason, other than the issues that Mr Beech-Jones has addressed I think I could be quite short. Mr Kazal, my name is Hogan-Doran. I appear for Mr David. You were taken to a number of letters that were written in the period of about April and May 2007. Do you remember that?---Yeah.

10 And the three letters you were taken to, and I'll just mention them globally, but if you think you need to see those letters please tell me and I can have Mr Hillier who will bring them up on the screen. The first was a letter of 12 April, 2007, which was at page 201, the second was a letter of 27 April, 2007, which is at page 213, and the third letter was 11 May, 2007 at page 227. Do you remember all those letters?---Yeah.

And those are all letters that are, I think I can be corrected, but those were all letters that are under your name?---Under, yeah.

20 Yeah. And what I want to suggest to you or put to you is that those letters were not letters that you wrote or that you sent at the direction of Mr David, as you gave the impression in your earlier evidence?---That's not right.

And that they were not letters that were sent solely at his behest?  
---Absolutely they were.

And that they were letters which reflected an intention on your and AWT's behalf to further AWT's interests?---That was not the case.

30 In respect of the letter at 522, which was a letter after the trip to the UAE of 17 October, 2007, do you remember that letter?---Yeah.

And that letter is a letter on Davids Group letterhead. Do you remember that one?---That's right.

I suggest to you that the, in the period up to and during the period in which you went to the UAE in May 2007, you did not have a consultancy arrangement with Mr David of the kind described at page 522?---I disagree with that.

40

THE COMMISSIONER: If you're, if you're suggesting it was some other kind I think it would be helpful if that were put?

MS HOGAN-DORAN: Exclude that. And that in the period leading up to the trip and during the trip in May 2007 you did not have a consultancy arrangement with Mr David?---I disagree with that.

You were asked some questions by Counsel Assisting Mr Newlinds that you had agreed with your brother Karl, Tony and yourself that you will take the responsibility for the dealings with Mr David, remember that question?  
---(NO AUDIBLE REPLY)

Do you remember that question?---(NO AUDIBLE REPLY)

I'm just trying to draw your attention back to a separate area.

10 THE COMMISSIONER: Just ask the question again.

MS HOGAN-DORAN: Sorry. And in answering that, you were asked a question in which Mr Newlinds said, "Is it the case that you have agreed with your brothers to take responsibility for the dealings with Mr David?" And you answered that Tony and yourself had agreed to take that responsibility.

MR KORN: Your Honour - - -

20 THE COMMISSIONER: Yes, Mr - - -

MR KORN: Commissioner, the only objection I would make is that I don't believe it was put by Mr Newlinds "with your brothers", it was put that have you decided to take the responsibility.

MS HOGAN-DORAN: I accept that and I accept that it would also be potentially misleading given that there aren't just there brothers as members of the family so I'll put that again. Is the position is it that you accept is it, Mr Kazal, that you and your brother Tony have agreed to take responsibility  
30 for the dealings with Mr David to the exclusion of your brother Karl, is that your evidence?---Yes.

Could I have you look at page 918 - - -

THE COMMISSIONER: Can you say what date was this agreement please? When did this occur? When did you come to this arrangement?  
---Sorry?

40 You've said that it was agreed between you and Tony Kazal and Karl Kazal as I understand it - - -

MR KORN: No.

THE COMMISSIONER: No?

MR KORN: No. I don't want to say anymore because I think there's an ambiguity here, I'm not going to say anymore.

THE COMMISSIONER: I'm sorry, Ms Hogan-Doran, I may have messed up your cross-examination but I really am not quite sure of not the question but the answer so if you don't mind putting it again and this time fix the time.

MS HOGAN-DORAN: In respect of, I was leading to that, Commissioner. Page 918, well, I understand there's going to be a dispute potentially in respect to it, this is a document about which Mr Korn has raised an issue previously.

10

MR KORN: 908, that's not been (not transcribable).

MS HOGAN-DORAN: 918.

MR KORN: 918, then I do.

THE COMMISSIONER: Yes. This won't be a dispute.

MR NEWLINDS: Because there's been a ruling.

20

THE COMMISSIONER: There's been a ruling.

MS HOGAN-DORAN: I'm reminded, thank you.

THE COMMISSIONER: And the ruling where I, I have been waiting for this opportunity, Mr Korn. What the ruling didn't get, the ruling did not defraud you your entitlement as a discretionary ruling of which you were the beneficiary.

30

MR KORN: And I express my gratitude.

THE COMMISSIONER: Well, I haven't noticed that before, Mr Korn. Let's start again, Ms Hogan-Doran.

MS HOGAN-DORAN: In respect of - - -

THE COMMISSIONER: Do you want the document up on the screen?

MS HOGAN-DORAN: Not at this moment.

40

THE COMMISSIONER: No.

MS HOGAN-DORAN: In respect of your evidence a moment ago concerning an agreement between Tony and yourself to take responsibility to the exclusion of Karl is it the case that that - - -

THE COMMISSIONER: In the dealings with Mr David?

MS HOGAN-DORAN: In respect of the dealings with Mr David, yes. Is that agreement one you reached in or about March 2010?---(NO AUDIBLE REPLY)

You can't answer that, is that the problem?---I can't, I can't, I can't - - -

THE COMMISSIONER: Do you understand the question?---Just, I understand where counsel is going with this.

10 No, you don't worry about where it's going?---Sorry.

Don't worry about where she's going?---That's all right.

I'm afraid that's not something that you can detect at the moment?---I appreciate that, Commissioner. I just want to know - - -

Do you understand the question?---No. If you wouldn't mind, just repeat that question.

20 MS HOGAN DORAN: All right. I- - -

THE COMMISSIONER: Well, can I just try?---Yeah.

You have said that you and your brother, Tony, agreed that the two of you would take responsibility for dealings with Mr David?---That's correct.

In other words, you and Tony and not Karl?---That's correct.

30 Now, Ms Hogan-Doran has put to you that this agreement was arrived at in about March 2010?---No.

What do you say about that?---No, well before that. It was when the companies were formed to enter into a joint venture together.

40 MS HOGAN-DORAN: Isn't the impression you were trying to give that you had agreed with your brother to take responsibility for the dealings with Mr David, you meant to refer to the dealings with Mr David globally, including the cessation of the business in the UAE which occurred much later and that is indeed in about early 2010?---The responsibilities were clearly formed via companies that were, it's very clear, it's all black and white, it's me, Tony and Rodric. It's very clear.

I want to suggest to you a different thing now. Mr Newlinds began his questioning, which was to ask to the effect that it's just you that has agreed to take the responsibilities of the dealings with Mr David. Do you remember he began in that way and you disagreed with him?---Initially, yeah.

THE COMMISSIONER: Sorry, initially what?---Initially I was dealing with Rodric. Tony was in Dubai at that time.

MS HOGAN-DORAN: Perhaps I can try the shortcut and if that doesn't work I may have to commence again in the morning. At page 918, let the witness be shown it?---I've got it in front of me.

You've got it.

10 THE COMMISSIONER: 918?

MS HOGAN-DORAN: Under paragraph 1 is the position that you reach  
- - -

THE COMMISSIONER: Can you wait a moment please, Ms Hogan-Doran? I just want to get it myself. Now, and before you ask any questions I need to find out whether this is one of the documents that's covered by legal professional privilege. Well, there, there will be an order that the email which is at page 918 of the documents from Robinson Legal to Mr  
20 Kelly dated 24 September, 2010, shall be subject to a suppression order to the extent that it shall not be published outside this hearing.

**THE EMAIL WHICH IS AT PAGE 918 OF THE DOCUMENTS  
FROM ROBINSON LEGAL TO MR KELLY DATED 24  
SEPTEMBER, 2010, SHALL BE SUBJECT TO A SUPPRESSION  
ORDER TO THE EXTENT THAT IT SHALL NOT BE PUBLISHED  
OUTSIDE THIS HEARING**

30

THE COMMISSIONER: Right. Now, Ms Hogan-Doran?

MS HOGAN-DORAN: Mr Kazal, is the position, is it the position that in about March 2010 you reached an agreement with the three Australian employees of IPC LLC- -?---IPS.

Sorry, IPS, thank you, IPS LLC, and you were the one who reached that agreement on behalf of the Kazals and Four N LLC? Do you remember that?---I reached agreement on behalf of the Kazals, yes, and Four N LLC,  
40 yes.

Right. And in that sense you reached that agreement because you are the one who was taking responsibility for completing the dealings with Mr David?---What dealings are you referring to?

THE COMMISSIONER: The phrase completing the dealings - - -

MS HOGAN-DORAN: Yes, yes.

THE COMMISSIONER: - - - is open-ended.

MS HOGAN-DORAN: The joint venture between the Davids Group, well, I should - - -?---Well, it was not a Davids Group venture - - -

10 Yes, I know, I was going to say - - -?---It was KTC and RAAL formed Emergent Capital and Emergent Capital aren't a subsidiary of companies, they were IPS, they were Global Renewables, the Eastern Creek waste business.

THE COMMISSIONER: All right. I don't you - I'm sorry to interrupt, Mr Kazal, but I don't think that that is an answer to the question that Ms Hogan-Doran's asked.

20 MS HOGAN-DORAN: It's not an answer and I'm going to have to return to it tomorrow because I need to confirm something. Could I ask you one last questions, Mr Kazal. You were asked some questions by Mr Beech-Jones and he asked you to confirm the circumstances surrounding your checking out of the hotel in Abu Dhabi in 2007. You remember those questions?---Yeah.

And he asked you to agree and you did agree that you checked out in May 2007. Do you remember that evidence?---Yeah.

The position is, isn't it, that you checked out in June, that is on 1 June, 2007?---At the end of this day I can't recall the date.

30 All right. You agree that Mr Kelly was with you when you checked out? ---Yeah.

But Mr David wasn't, was he?---I can't recall.

You wouldn't have any reason to dispute that he left the day before?---I can't recall when he left.

40 And in respect of - you were also asked some questions, which I didn't hear all of them, in respect of - concerning the period of 2008 and the negotiations concerning the memorandum of understanding with Four N LLC, do you recall those questions?---Yeah.

And you, you gave an answer in which you agreed you didn't have a written agreement?---Yeah.

Right. But the position is that you did have an agreement or understanding between you and, and Rodric David's interests in respect of your joint venture arrangements for pursuing businesses, business in the UAE, that's the case, isn't it?---That's right.

I don't have any other questions.

THE COMMISSIONER: I beg your pardon?

MS HOGAN-DORAN: I don't have any other questions.

THE COMMISSIONER: So you won't be asking any more questions tomorrow morning?

10

MS HOGAN-DORAN: No.

THE COMMISSIONER: No. Right. The Commission will adjourn until 10.00am.

**AT 3.56 PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[3.56pm]**