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THE HONOURABLE DAVID IPP AO QC

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 15 FEBRUARY 2011

AT 1.50PM

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

MR ALEXIS: Commissioner, before my learned friend resumes his cross-examination, can I bring to the Commission's attention that the original requisition book is still presently before Professor Hacker. I omitted to tender it at the time that I was dealing with it and I should do so before the examination of Professor Hacker continues.

THE COMMISSIONER: Yes, very well. The original requisition book is Exhibit 7.

10

#EXHIBIT 7 - REQUISITION BOOK

MR STITT: Your Honour, could I just have a look at that book before I resume, Mr Commissioner.

THE COMMISSIONER: Yes. Are you ready to start?

MR STITT: I am, thank you.

20

THE COMMISSIONER: Professor Hacker.

< PROFESSOR NEVILLE FREDERICK HACKER, on former oath
[1.51pm]

MR STITT: Professor, as the director of this centre and I'm not diminishing, you will understand, but may we take it that you were extremely busy?---Correct.

- 10 And you had as your statement makes clear a number of functions to perform from actual patient handling through to lecturing, tutoring and the whole gambit?---That's true.

I take it that that was a very demanding and still is a very demanding position?---That's true.

Both in terms of your time and in terms of your intellectual output?---That's true.

- 20 And would it be fair to say that administration is a burden in that context?
---Yes, that, that would be fair to say.

And you are, I withdraw that. A lot of these administrative functions which you apparently have to perform really take the form of routine sort of matters, do they not?---That's correct.

And routine matters, a lot of which I take it you rely upon other staff and other persons in accounts and, and the like to perform what you would regard as routine matters?---That's correct.

- 30 And again I'm not diminishing it but may we take it that that sort of administrative activity is not something that you would give a great deal of thought to?---(NO AUDIBLE REPLY)

And I'm not, as I say, I'm not diminishing - - -?---Yes, no, no, that, that, that's - - -

- - - but that's the reality isn't it?---Yeah, that would be a fair statement.

- 40 And you're often under time pressure and, and pressures to get things done?
---That's correct.

Now, the sort of administrative activity for example of signing off on a requisition is a matter which you would regard as absolutely routine, would you not?---That's correct.

And indeed in terms of importance to you a way down the bottom of the scale?---It's, it's a routine thing, yes.

But I'm, in terms of importance or priority it's, it's a way down in terms of the other functions that you have to perform, is it not?---That's correct.

And I'm not being critical, please understand, and I'm not being critical but in that setting or in that context you would not in truth devote a lot of time or attention to performing what you would regard as minor administrative functions, would you?---Well, signing requisitions is, I would scan and see what the requisition was for and then sign it because I don't have the ability to authorise the payment of the money. My signature purely indicates that 10 this is a, you know, required by my department.

Yeah, but it's just an administrative requirement that you don't really put a great deal of intellectual power behind the process?---That's true.

Now one of the things that you said in your evidence was that you didn't know of the company Medical and Clinical Informatics Consultants Pty Limited, being one of the requisitions that you signed. And you also said that you didn't know of Wish Consulting Pty Limited, another company whose requisition you signed. But isn't it a fact that you wouldn't be 20 expected to know anything about those companies before you signed a requisition form? Isn't that so?---No. But had I seen those on the requisition form I would have inquired about them.

But you, I suggest, signed and signed requisition forms in respect of companies that I suggest you would have known nothing about. Isn't that so?---Can you give me an example?

Well, yes. Is it permission for me to approach?

30 THE COMMISSIONER: Yes, certainly. If you speak, Mr Stitt, if you wouldn't mind trying to speak into the microphone.

MR STITT: Yes, I'll try not to overbear professor. Professor, just looking at this book which is now Exhibit 7, the requisition book. When one looks through this book your signature appears quite frequently does it not? And, please - - -?---Yes, it does.

- - - we're looking at a requisition number 7-8-3-2-0-1, your signature - - -?---That's correct.

40 Description, Professor N Hacker and a date?---Right.

And a telephone with an extension number which I take it is your extension is your extension number?---That's, that's right.

And it's in respect of some company called Design and Print Services something or other. Now - - -?---Prince of Wales.

Prince of Wales. But the truth is you would know nothing about Design and Print Services when you signed that requisition would you?---No. But I know that we were - - -

Well, no, can we just take it a step at a time.

MS FURNESS: Well, the, if the witness can finish the answer, Commissioner.

10 MR STITT: No.

THE COMMISSIONER: All right. Well - - -

MR STITT: I'll just put the question again. The question is that when you signed that requisition form at the time you signed it you would know nothing about Design and Print services would you, as a company?

THE COMMISSIONER: What do you mean as a company?

20 MR STITT: Well, you would nothing about that as a supplier?---That's correct.

So the fact that you know nothing about the company is not of itself a disentitling reason to sign is it?---But it's - - -

I know what you want to say, but if you could just attend to my question. I'll come to it a bit at a time.

30 MS FURNESS: Commissioner, the witness really should be allowed to answer - - -

THE COMMISSIONER: He will, he's, he's answered the question. He wants to add something. I'm sure Mr Stitt will give him the opportunity to add to it. To explain, Mr Stitt, please don't leave this particular requisition without giving - - -

40 MR STITT: No, I won't your Honour. But I do want to take it a step at a time because I know what you want to say, but, and I'm sorry to be repetitive, but you have agreed with me that the fact that you know nothing about that entity as a supplier is not a disentitling reason for you not to sign is it?---No.

And the fact that you know nothing about it means that there is some other part of this document which in your mind justifies affixing your signature. Is that correct?---That's correct.

And it's that which you want to tell me about is it not?---That's correct.

Now you please tell me what it is---Well, the description of the article that's been ordered is something that I knew. It's a brochure for advertising our psycho social services and I was well aware that that brochure was being printed.

Now, looking at, and please take your time, looking at each of these pages in the requisition form, starting with 2001, would you agree that that is your signature?---Yes.

10 Looking at 2003, would you agree that that's your signature?---Yes.

Two thousand- - -

THE COMMISSIONER: Please, Mr Stitt, I'm not sure whether this is important or relevant, but when one comes to read the transcript one will have no idea what you're referring to.

MR STITT: Your Honour is correct. Looking at the document from the requisition book which has requisition numbers 7-8-3-2-0-1, it's your
20 signature?---Correct.

Looking at 7-8-3-2-0-3, it's your signature?---Correct.

7-8-3-2-0-4, it's your signature?---Correct.

And it's quite a distinctive signature, isn't it?---Yes, it's legible.

It's legible. And that's your writing there, is it not, where it says, I'm looking at two thousand, 7-8-3-2-0-5, is that- - -?---No, that's not my
30 writing, no.

Not your writing. So is it not uncommon for you to sign, because that is your signature, isn't it?---Yes.

Is this the position, that it's not uncommon for you to sign one of these documents and let somebody else fill in the detail, such as- - -?---My secretary would normally fill in the details and give it to me to sign.

40 So you, yes, I see. But do you recognise the writing on 7-8-3-2-0-5 as to where it says, "Professor NF Hacker", whose writing is that?---I suspect it's my research nurse, but I'm not sure.

Right. Well, now, turning to, I'm sorry. 7-8-3-2-0-9, again, it's your signature, is it not?---Yes.

It's identical with every previous signature that we've looked at in this book?---Well, it goes up a hill, which the others don't.

But it's, it's undoubtedly your signature, isn't it?---It looks like my signature.

Well, is there anything about that signature which would indicate to you that it's not your signature?---On face value, no, but um- - -

Well, I'm just asking you about the signature itself?---It looks like my signature.

- 10 And, and may I suggest to you that there's nothing about that signature which is in any relevant way different from the previous ones we've been looking at in this book?---It's very similar.

Well, may I suggest to you that it's the same?---It looks the same.

It looks the same. Now, that is, 7-8-3-2-0-9 is in respect of some company called Medical and Clinical Informatics Consultants Pty Limited and where it has in the box in the bottom right-hand corner, "Delegating officer's name, Neville Hacker", is that your writing?---It, it could be my writing.

- 20 Well, is there anything about it which indicates to you that it's not your writing?---No, but it's, it's very easy to copy that writing. It's simple legible writing.

Well, maybe, maybe, maybe. But the question is, is there anything about that writing which indicates to you that it's not your writing?---If I saw that I would, I would accept it as being my writing.

- 30 Well, I'm asking you to look at it, please, and indicate whether there's anything about that which, which indicates to you that it's not your writing?---No, not specifically.

That's all in respect of 7-8-3-2-0-9. Could I ask you to look, please, at 7-8-3-2-1-0, which is for some company called Wish Consulting Pty Limited. Looking at your signature, is there anything about that signature which indicates to you that it's not your writing?---It looks very similar. The C looks a bit funny but um- - -

- 40 But it's, may I suggest, identical with the previous signatures in this book that we've been looking at. Isn't that so?---Well, it's not identical. Look at the C there.

But it's- - -?---Look at the C there.

MS FURNESS: Perhaps if you could speak up, Professor, I'm having trouble hearing you?---I'm saying that the C doesn't look like my signature, it's a very small little C, whereas this one is quite a big obvious C.

MR STITT: And is, is the writing in the box under the delegating officer's name your writing where it says Neville Hacker, Director, Oncology? Is that your writing?---It could be.

Well, is there anything about that writing that indicates to you that it's not your writing?---It's a very good replica.

Well, that's not my, it's not an answer to my question. Is there anything about that writing that indicates to you that it's not your writing?---Nothing specifically.
10

Nothing specifically. Looking at those requisition forms, is it not probable that you signed them in circumstances where somebody asked you to sign them and under pressure of time and work you signed because you didn't regard them as being in any way unusual? Isn't that probable?---That, that, that was what I believed in um, 2010.

But isn't it still probable, knowing that your job description hasn't changed between 2010 and now, isn't it probable that you simply signed something that was put in front of you?---(NO AUDIBLE REPLY)
20

THE COMMISSIONER: Without reading it?

MR STITT: Well, without, without comprehending it. Isn't that probable? ---I, I would not have signed for 50 screen tests but it's possible that the 50 wasn't on there at the time.

THE COMMISSIONER: Well, is it possible that you signed it without reading it?---It's very unlikely. I don't recall Sandra Lazarus ever giving me this to sign. My secretary does give me these requisitions to sign, that would be more likely, that ah, that my secretary gave it to me to sign, but um- --
30

I'm sorry, I'll put it a different way. Is it possible that you gave it simply a cursory glance without thinking about it because you were particularly busy and simply signed it, believing it was just a routine document?---That's possible.

MR STITT: And, Professor, I'm sorry, your Honour.
40

THE COMMISSIONER: No.

MR STITT: And, Professor, following on from His Honour's question, if in fact the person who put it down in front of you was your secretary, that would be another reason for you to accept it without a great deal of consideration. Isn't that so?---That is so, except that the book was missing at the time.

But whether or not the book was missing, you have said at least in one version of your statement that you didn't know that the book was missing. So that wouldn't have been the reason not to sign, would it?---No, I don't think I said I didn't know the book was missing in any statement.

Well, I don't want to go back over, paragraph 12 you, but the fact of the matter is, is it not, that sitting here today you are unable to swear on your oath that that is not your signature on those requisition forms. Isn't that so? ---That's true.

10

Now, Professor, the application to the Ethics Committee, I'm looking for it.

Could I please, your Honour, have access to Exhibits 5 and 6, I'm sorry, Mr Commissioner.

THE COMMISSIONER: Time passes, Mr Stitt.

MR STITT: Not for me, your Honour, your Honour never changes. Thank you. And, again, your Honour, with leave can I approach?

20

THE COMMISSIONER: Yes.

MR STITT: Professor, I am showing you Exhibit 5 which is the vendor maintenance form in respect of some company called Wish Consulting Pty Limited - - -?---Ah hmm.

- - - and I direct your attention to the bottom right-hand corner where there is a signature in ink?---Ah hmm.

30 Do you see that?---I do.

And do you agree that that is your signature?---It appears to be my signature.

Is there anything about that signature which indicates to you that it's not your signature?---There's a significant gap between the F and H or the N but the spacing doesn't look quite right but then if you compare it with these for example but it looks very similar, I agree with that.

40 And would you look at this Exhibit 6 which is in respect of a company called Medical and Clinical Informatics et cetera, looking at the right-hand bottom box, do you agree that that's your signature in ink?---No, the E and the R, they don't look exactly like my signature but it, it looks very similar to, it's more like an E in there.

Well, so you're under no misapprehension I'm putting to you that that is your signature and it's clearly your signature as, as is the second one on

Exhibit 5. Do you swear on your oath that they're not your signature?---I can't swear on my oath that they're not my signatures, no.

THE COMMISSIONER: Mr Stitt, sorry, it would be certainly helpful to the Commission, you're under no obligation to do this but if you could put to Professor Hacker how on your case these documents came to him for signature and why.

10 MR STITT: Your Honour, I, I do propose to do that in respect of some of them because I have some instructions about that.

THE COMMISSIONER: (not transcribable) but, I mean, as I said, you're under no obligation to do that and I'm just flagging that and you don't have to do it now.

MR STITT: No, well, can I just, I'm not as familiar as my learned junior with this case, your Honour. I will come back to it, your Honour.

Professor - -

20 THE COMMISSIONER: You see, Mr Stitt, when questioned by Mr Alexis Professor Hacker said that he, he'd never seen documents like this before, there was no reason for him to get them and that, that really was part of the basis for his evidence that it wasn't his signature. I mean, his signature, his evidence as to his signature really rests on, on two prongs. One is it looks like my signature and you've certainly questioned him effectively on that if I may say so, the other thing is these are not documents that I would in the ordinary course ever see or sign and there are other reasons why I wouldn't get it. I'm not saying that that relates to all documents but that's a general, a 30 general proposition.

MR STITT: Well, yes, your Honour, I, I accept that but I thought that I had specifically put to him in relation to the requisitions with the , with the book

- - -

THE COMMISSIONER: Yes.

MR STITT: - - - documents that he did sign.

40 THE COMMISSIONER: That's true. I'm not, I'm talking about these very documents.

MR STITT: Well, all right, well - - -

THE COMMISSIONER: These documents because I, I just don't understand why they came to him at the moment. I'm not talking about the requisitions.

MR STITT: Well, again, your Honour, again I think I have to get instructions.

THE COMMISSIONER: Yes.

MR ALEXIS: Can I just indicate for assistance to my learned friend that that very subject matter is dealt with at page 75 and following of yesterday's transcript.

- 10 THE COMMISSIONER: Thank you. Yes, Mr Stitt, and as I said to you right at the start you're under no obligation to do this but I thought that I should mention to you - - -

MR STITT: No, I want to do whatever was going to be of assistance to your Honour's inquiry.

THE COMMISSIONER: It would be helpful to know as it would be helpful to know what Professor Hacker says about it. If there was a, is there is some explanation for it.

- 20 MR STITT: Well, what I showed him, your Honour, was the original of the vendor maintenance contracts.

THE COMMISSIONER: Yes, quite so.

MR STITT: All right. Perhaps I can - - -

THE COMMISSIONER: Well, come back to that.

- 30 MR STITT: Now, I'll just explore a couple of questions. Professor, in relation to obtaining payment or extracting funds out of whatever source it is necessary for there to be appropriate documentary trail, is it not, so far as the hospital is concerned and your department is concerned?---That's correct.

And were you familiar with the appropriate documentary trail?---The, the appropriate trail is to sign a requisition book, send it down to the administration, the authorising officer is then signed by one of the administrators, William Walters, Vanessa Madunic or George Beerham. I think if it's over \$10,000 it has to be signed by William Walters who's the chief clinical executive of the hospital, lesser amounts can be signed by the deputy director and the director of corporate affairs and then it's paid if there's money in the account to pay it. My usual experience with this, particularly around that time, is that these requisitions were knocked back and not infrequently. We would have, for example, try to get a Dictaphone, we'd put in a submission for a Dictaphone, it would be rejected because the hospital did not have enough money to pay for it. We'd put in requisitions for stationery, envelopes, they'd be cut in half. When I put in a requisition

for four boxes of envelopes we would end up with two boxes. It was very strictly scrutinised. Money was not freely available from the hospital.

But as a part of that documentary trail it was necessary for there to be vendor maintenance contracts were they not, was, was it not?---I was not aware of that. I was never involved in signing any vendor maintenance forms, nor was I aware such a form ever existed and the only reason I now know what it is is following the conversation with Vanessa Madunic about two weeks ago.

10

Well, might I again please have access to 5 and 6, Exhibits 5 and 6. I'm sorry, no.

Do you have an evidentiary bundle in front of you, Professor?---I have this ah - - -

20

Would you turn please to page 104 and if I can return Exhibits 5 and 6 and would you turn to page 104 and 105. They are, as you can see, copies of the documents that I've just been putting to you, copies of Exhibits 5 and 5, can you see that?---I do.

Let me suggest to you this sequence events that that document which is Exhibits 5 and 6 was signed by you in your office. Does that accord with your recollection?---I don't recall ever seeing the form before.

And that it was faxed from your office to the accounts department. Does that accord with your recollection?---It does not accord with that, no.

30

Well, would you be so kind as to look at the bottom of the document - - -

THE COMMISSIONER: I think you have to look at the originals, because the originals don't have the fax details on it.

MR STITT: Your Honour I think that, my instructions are that those originals were seized by the investigators from my client.

THE COMMISSIONER: I see.

40

MR STITT: And that these were the documents in 104 and 105 that were in the possession of the hospital.

THE COMMISSIONER: I see.

MR STITT: So would you look please at the bottom of 104. You'll have to turn it upside down, but can you see that it's got a date, 11/7/2008, 16.16 is the time and then there is a fax number?---Not on here.

In document 104?

THE COMMISSIONER: At the very bottom, professor.

MR STITT: Document 104.

THE COMMISSIONER: If you turn it upside down you'll see it. It should be there?---Oh, on this one here?

MR STITT: 104?---Not on these, but - - -

10

No, 104 and 105? Can you see it on the bottom there?---Yep.

There's a time, a date and a time and then there's a fax number. Do you agree that that's your office fax number?---That is my office fax number, yes.

And then there's the fax description of Gynae Cancer Royal Hospital for Women and then a page?---Yep.

20 Do you agree that that indicates without equivocation that it was faxed from your office?---I agree with that.

And look please at 105.

THE COMMISSIONER: No, just explain to me what you mean by your office?---The fax, the fax machine is in the office. Not in my personal office, but in the secretarial space.

Outside your office?---Outside my personal office.

30

And who, who occupies, do you have secretary?---I have two secretaries, yes.

And who, at the time who were they, that is July, 2008?---Well Helen McGilligan was my personal secretary. I don't recall, because we've had a series of secretaries in the other job.

I see. Yes, thank you.

40 MR STITT: But looking at that document and if you need to also look at again Exhibits 5 and 6, I want to suggest to you this sequence of events that you were presented with these three documents for signature in your office on 11 July and that in fact, you signed them in your office on 11 July and that thereafter, and I'm not suggesting it was you, but that someone from your office then faxed those two documents to the accounts department from the fax machine in your office.

MR ALEXIS: Before Professor Hacker answers that question, Commission, could my learned friend make it clear whether he's suggesting that it was only those two documents that were presented for signature. And I raise that in particular in light of what appears in yesterday's transcript at page 75 line 42 and following.

THE COMMISSIONER: And I also think there, Mr Stitt, if you don't mind, fully explain what Professor, what you say Professor Hacker was authorising by his signature.

10

MR STITT: I'm sorry your Honour, I just missed that.

THE COMMISSIONER: Could you make it plain what you say Professor Hacker was authorising by his signature, because when I read it, I just don't see what he was authorising.

20

MR STITT: Well my learned junior tells me, your Honour, that at page 74 of the transcript, my client said, and it's at line 15, now you understand that the purpose of the vendor maintenance forms, and these are the ones we're concerned with, they're dispatched to Santoshi was to facilitate the payment of invoices. And that was put and she agree with that, so that it seems to be, your Honour, a part of the documentary trail.

THE COMMISSIONER: No, I understand that. But I'm, all right. I'll wait until you get further. Perhaps if you could just put your question - - -

MR STITT: Professor, I don't know whether you recall the question, but I'll put it back if I may to you?---(not transcribable)

30

I was suggesting to you that the sequence of events in respect of the signature of these documents was that they were presented to you in your office on 11 July, 2008. That you signed them in your office on that date and that they thereafter were faxed from your office on 11 July to the accounts department.

THE COMMISSIONER: Mr Alexis, what is the question that you, does that conform with how you, with your point?

40

MR ALEXIS: Well, the point I asked to be clarified is whether or not the suggestion is that it is only the two forms at page 104 and 105 that form part of the material that was placed before Professor Hacker for signature or whether the other document referred to at the foot of page 75 of the transcript formed part of that material. And the need for clarification is appropriate having regard to the evidence that was given on that subject yesterday.

THE COMMISSIONER: Do you follow that Mr Stitt?

MR STITT: Well, I think I do, your Honour. But it's my understanding that the evidence is, and this is what I'm putting to the witness, that the only documents which were faxed from his office on that day were these two documents.

THE COMMISSIONER: That's correct.

MR STITT: And that's all I was seeking to put to him and, and - - -

10 THE COMMISSIONER: Well put that - - -

MR STITT: - - - I was putting to him in the sequence, your Honour. I'm sorry to put it to you again, professor. Can I suggest to you that looking at Exhibits 5 and 6 which are the original documents together with pages 104 and 105 that this is the sequence of events, that on 11 July, 2008 those two documents, the originals were presented to you in your office for signature and that you signed them on that date. That thereafter the copies, which are at 104 and 105 were faxed to the accounts department of the hospital from your fax machine on the 11th, at 16.16. Do you agree with that sequence?

20 ---No, I don't.

What part of it don't you agree with?---That they were ever presented to me and I signed them. I've never heard of Wish Consulting and I've never heard of Medical and Clinical Informatics and I've never heard of a vendor maintenance form.

30 THE COMMISSIONER: Professor Hacker, Ms Lazarus gave this evidence about these forms. She said she brought the forms to you, she showed them to you. You looked at the contract outlining Michelle Lazarus' tasks that she submitted with Wish Consulting. You took a moment to look at the contract. She told you that's the one I'll be invoicing through. You had no questions about it and you signed it?---That is a blatant lie. I've never heard of Michelle Lazarus. I still hadn't heard of Michelle Lazarus until I came to this ICAC meeting.

MR STITT: You gave some evidence about the - - -

THE COMMISSIONER: May I have the originals back I'm finished, the witness withdrew.

40

MR STITT: You gave some evidence about the application to the Human Resources Ethics Committee and you were asked to look at the document at page 26 of the bundle.

THE COMMISSIONER: Do you want my copy?

MR STITT: I'm sorry, Mr Commissioner, could I call for the original of this document?

THE COMMISSIONER: Which document is that?

MR STITT: It's number 26 in the bundle. It's a letter to the Royal Hospital for Women dated 10 April, 2008.

THE COMMISSIONER: There seems to be a conference going on about that. What page of the bundle is it Mr Stitt?

- 10 MR STITT: It's page 26 your Honour, it starts at 26 it goes through for a number of pages beyond that but at the moment I'm just calling for the letter of the 10 April, the original and I'm instructed that we did give her notice, your Honour.

- MR ALEXIS: Commissioner, I'm not in a position to respond helpfully to the call my understanding is that the Commission Investigators do not have the original, we do have a statement of evidence from the officer of the Scientific Research Committee that was the person that produced this document to the Commission but in light of the call, more refined inquiries 20 are going to be made and we'll try and locate, if at all, the original if we can as soon as we can.

THE COMMISSIONER: Mr Alexis, that is, that the Commission does not have the original, is that what you're saying?

MR ALEXIS: That's what I'm instructed Commissioner. Commissioner, can I add if there is any qualification of what I've just put to you, that will be brought forward and indicated as soon as possible.

- 30 THE COMMISSIONER: Yes.

MS FURNESS: Commissioner, I'm happy to have the relevant officer make inquiries as to whether or not that document is still in our possession.

THE COMMISSIONER: That would be appreciated.

MS FURNESS: Certainly.

THE COMMISSIONER: Mr Stitt.

- 40 MR STITT: I realise that it may be difficult for you because you haven't got the original document in front of you Professor, but looking at the signature on the document page 26, that is your signature, is it not?---I don't believe it is.

You do from time to time sign yourself Neville F Hacker, do you not?---No, I sign myself Neville Hacker which is what that is there.

I'm sorry, that's my fault but, well looking at that document and that signature there's nothing about that signature which indicates to you that you did not sign it, is there?---The age, I never make a curve like that, I always go the sweep up, that's not my H.

Would you look at page 58, do you have that?---I do.

And that I suggest to you is your signature?---That looks like my signature.

- 10 And I suggest to you that there is nothing about that signature that indicates that it's not your signature, is there?---No, but it's against Associate Professor Neville Hacker, I would not have signed that.

I'm not asking you about that, I'm asking about the actual form of the signature?---The actual form of the signature looks like my signature.

And there's nothing about it which would indicate that it's not your signature, is there?---No.

- 20 Would you please look at page 70, do you have that Professor?---I do.

Would you look at the signature at the bottom of the document, that is your signature is it not?---It doesn't look a terribly good copy of my signature I don't believe.

Is there anything about that signature which indicates to you that it's not your signature?---The K-E-R, the H, not the H but the A, does not look like my signature. Again, it's got Associate Professor Neville Hacker.

- 30 Never mind about that, I'm asking you about the signature?---Well, I'm putting the whole thing in context.

Now, but I'm asking about the signature?---Well, I don't believe that's my signature for the reasons I've stated.

But there's nothing about the writing which indicates that it's not your signature?---Well, there I, I've explained to you what there is about the writing.

- 40 Well, would you be so kind as to look at the signature on the front of your statement dated 3 June 2010, do you agree that is' virtually identical with that signature?

THE COMMISSIONER: Which one?

MR STITT: The front page of 10 June.

THE COMMISSIONER: I beg your pardon.

MR STITT: Statement of the - - -

THE COMMISSIONER: No.

MR STITT: - - -3 June.

THE COMMISSIONER: It's identical with what signature?

10 MR STITT: On the front page of that statement - - -

THE COMMISSIONER: Mr Stitt, I'm asking you - - -

MR STITT: And page 70 your Honour, Exhibit 2.

THE COMMISSIONER: Page 70.

MR STITT: The signature on page 70 of the bundle is identical with the signature on the front page of the statement on 3 June.

20

THE COMMISSIONER: It actually isn't, it's not. I mean, I don't know if it's material but it isn't. The N, the N and the F on page 70 connect and the N and F, the statement do not connect. I'm no expert but I mean that's quite an obvious difference.

MS FURNESS: Your Honour, I have the original of Professor Hacker's statement if that would assist the witness or indeed Commissioner yourself.

30

THE COMMISSIONER: I don't know what we're doing here. We're playing experts Mr Stitt.

MR STITT: Well, your Honour, it wouldn't have escaped your Honour's attention that that's not the matter that Professor referred to.

THE COMMISSIONER: This one, the original does seem to connect.

MR ALEXIS: And Commissioner, can I indicate whilst we're engaging in handwriting analysis that we put up on the screen the comparative documents to which our learned friend has referred.

40

THE COMMISSIONER: Yes.

MR STITT: The bottom of the two is from page 70 of the Ethics Application, the top is page 1 of the statement of Exhibit 2.

MS FURNESS: Isn't it the other way round? It's the other way round, I think, Commissioner.

MR ALEXIS: The other way round.

MS FURNESS: I think the bottom is the statement and it clearly doesn't connect, with respect.

THE COMMISSIONER: Yeah, I know.

MR STITT: Commissioner, Ms Furness is correct.

10 MR ALEXIS: I'm not sure that it matters.

THE COMMISSIONER: But look, I mean, it doesn't, where are we going?

MR STITT: Well, Your Honour, I think it's pretty clear where we're going but- - -

THE COMMISSIONER: Yes.

20 MR ALEXIS: There's a, there's a question before the witness that hasn't been answered, namely the two signatures are identical. I think that's- - -

THE COMMISSIONER: Well, I raised the issue, you put, you said the two signatures are identical, aren't they and while I looked at them it was obvious that they were not. That's all. I mean, they may be materially identical in some respects, I don't know.

MR STITT: Well, Your Honour, I don't know whether there's going to be handwriting experts or not in this- - -

30 THE COMMISSIONER: I mean, they may be materially identical in some respects, I don't know.

MR STITT: Well, Your Honour, I don't know whether there's going to be handwriting experts or not in this- - -

THE COMMISSIONER: No, as far as I know, no.

MR STITT: - - -in this case.

40 THE COMMISSIONER: Not from the- - -

MR STITT: Well, can I just put it this way. Professor, I am suggesting to you that that is your signature and I am suggesting to you that you are unable, I withdraw that. Do you on your oath deny that that is your signature on page 70 of the book?--I would deny that.

On your oath?---On my oath.

And what about the signature on page 58, 58. Would you look at that, please. Do you deny on your oath that that's your signature?---I deny on my oath that that's my signature. I did not ever see any requisitions- - -

No, I'm asking you about the signature?---No, well, it's not my signature.

And do you deny on your oath that the signature of the letter of 10 April is not your signature?---Which letter is that?

10 Page 26?---Yes, I deny that's my signature.

THE COMMISSIONER: Professor Hacker, I just wanted to ask you about some of the, you've mentioned the sweep of the H?---Yeah, the upward sweep.

The upward sweep. Is that at the commencement of the H?---Yes.

And you're saying that it's not, it's not on this particular signature which is on page 28. Is that, is that so?---26.

20 26?---That's correct.

MR STITT: Do you assert that you had no knowledge of the Ethics Application which was made under your name on 10 April, 2008?---I had no knowledge of it. I told Sandra Lazarus that she had to submit an Ethics Application. I told her that if she needed help with the application she should talk to my research nurse, Ellen Barlow, and I did not see anything again about ethics until the letter came from the Ethics Committee.

30 So is this your evidence, that the letter from the Ethics Committee which is at page 101 came as a complete surprise to you? Is that what you're saying, that you knew nothing about it?---Well, I, I, I assumed that she had put in a, a, you know, an application but I had not seen it.

But you would know that it would have to be signed by you as a principal. Is that so?---Well, someone would have to sign it, but I'm not always in the department and this is a fairly minor matter, a pilot study, and my deputy director, Associate Professor Marsden would normally sign things in my absence.

40 But the letter is addressed to you. I take it you read it?---I did read it.

Well, you must have understood when you read it that the application went in your name. Did you understand that?---As the principal investigator, yes.

Did you understand that?---I understood that I would have been listed as the principal investigator.

Indeed in the third paragraph the letter says, "Your application." Did you read that?---I did.

Well, did you understand that that was referring to your application? ---I understood that it would refer to the fact that I was listed as the principal investigator.

10 And when you received that you say that you took it up with Ms Lazarus. Yeah?---I did.

And you took it up on the basis that you accepted that you were the principal named in that document?---That's correct.

20 So that you, is this your evidence, without seeing the actual application form you accepted that it was in your name and that it went forward under your aegis and that it was being reviewed as your application?---Well, that's correct, because that was what I had discussed with Sandra Lazarus, that she could carry out this research in my department and ah, when it's a student involved in the research it's usual to put the head of the department as the principal investigator.

But you've told us that you read this letter of 25 June, did you read the paragraph numbered 3 on the second page?---Yes. Well, that's standard that you have- - -

No, did you read it?---I did.

30 And did you understand that that's what was being put forward in this application?---I'm not sure what, what you mean by that.

Well, did you understand that it was being put forward in the application, which was referred to as your application, that there was to be a pilot study of ten patients and a study sample of 200 patients?---The larger study was to take place if the pilot study gave promising results. The initial study was always to be a pilot study of ten patients. This was a device that could have had significant potential so I wasn't dismissing this as a potentially useful tool for screening for cervical cancer, but I wanted evidence on the basis of a pilot study that this was going to prove to be useful and that it was worthwhile to look at further patients.

40 As I understand your evidence, the fact that it was regarded by you as only a pilot study meant that in your assessment of the, of the project, it wasn't very high in your priority?---I had had no experience with the device and in fact there was no published experience.

But the question, I'm sorry, that's not the answer. I did ask you a specific question and I'll put it to you again. Is it accurate that because this was only

to involve a pilot study of ten patients you regarded it as of less importance in the work of your department?---Well, it wasn't important unless the pilot study proved to be successful.

Well, several times today in your evidence you've, you've said, "Well, it was only a ten-patient pilot study", or words to that effect. Did you mean to convey by that that you didn't regard it as particularly important?---At that point in time it was not particularly important.

10 And the fact that you didn't regard it as having importance in your department and, and your research program, that would be another reason, would it not, for you not particularly to be interested in the detail of the administrative steps?---The administrative, the, the obtaining of um, informed consent and ethical approval was clearly important, regardless of whether it was a pilot study or a larger study, so no, I don't, I don't accept that I didn't feel it was important in terms of going through the formalities, the legalities of the study. In terms of the scientific merit of the study, that was a different thing. I, I had to be convinced on the basis of a pilot study that it was worth pursuing this any further.

20 But I think as you've already said in your evidence you regarded it as something being done by a student, isn't that the way you regarded it?
---Well, it was being done by a student.

And that's the way you regarded it?---And she was doing a PhD so this was her research, it wasn't anything initiated by me, it wasn't anything that I was fundamentally interested in although I would have been very interested had it proved to be successful in the pilot study.

30 It wasn't something that you were fundamentally interested in and it wasn't something that you were prepared to take a great deal of time over, isn't that an accurate assessment?---I don't think that's an accurate assessment, no.

Well, you've told us that you didn't, it wasn't something that you were greatly interested in, that's the truth, isn't it?---No, that's, that's putting words in my mouth. I would have been very interested - - -

40 Well, you've just said that you were not interested, fundamentally interested?---I would have been, had, had the pilot study been successful I would have been interested but this was a new device, there was no information on it in relation to cervical cancer and so it was, if the pilot was unsuccessful that would have been the end of it as far as I was concerned.

But at the stage you were considering it it was not the end of the pilot programme, indeed it wasn't even the start of the pilot programme. Isn't that so?

MS FURNESS: Commissioner, I object on the basis that I'm not sure from my learned friend's question as to what period of time he's referring to.

MR STITT: Well, I'm not asking the questions of, I'm asking the questions of the professor, he doesn't seem to have any difficulty with the question.

THE COMMISSIONER: Just ask the question again, Mr Stitt.

10 MR STITT: The fact that it was a pilot study which hadn't commenced made it even less interesting to you at that time, did it not?---Well, I'm not sure what you mean by that. I mean - - -

Well, so you do understand, you, you said to his, to Mr Commissioner that you were not fundamentally interested in this programme at that stage. Was that evidence correct?---I would have been interested had the pilot study proven to be successful.

20 THE COMMISSIONER: Well, the question is if it hadn't, it hadn't been proved successful so at that particular stage, that is prior to it proving successful you were not fundamentally interested in it? In it, in, in it from a scientific point of view I think is fair to put to you?---I, I would - - -

You thought it had, perhaps had potential but you had other things to do because it hadn't proved itself?---That's correct and this was not a study that I had initiated. It was a study that someone outside the department had initiated. I was very happy to facilitate the research but it wasn't my department or research and so as long as she went through the necessary steps, got the ethical approval then I was happy to provide patients so that she could study this device.

30 30 The question of your interest I think, the, the questions concerning your interests have been directed I think to the, have you understood them to be directed at, your scientific interest or interest from a research point of view in the project?---That's correct, your Honour.

Yes, you've understood it in that way, the questions I mean?---Well, yes, I was interested in the potential of this device - - -

40 Yes?---- but I, I felt it was, you know, very raw, there was no scientific publications in relation to it but I was at the time the medical director of a company called Polartechnics which was, had a product called Truscreen which also looked at the electrical differences in electrical potential between the living cells and normal cells on the cervix. That device required that you actually place a probe on the cervix and pass a small electrical current and measured the reflected voltages that came back and it got analysed in the computer, very similar to this device. So because of my involvement with Polartechnics I felt that this would be an interested device if it proved to be useful and it was non-invasive. In other words, it could be done by

simply placing electronics on the skin, you didn't have to do a, an internal invasive examination and place a probe on the cervix so I was interested to facilitate the research within my department.

MR STITT: The administrative tasks necessary to facilitate that research I think you've told us you regarded as low in priority when compared with the other more important tasks that you had to do, and you've told us that? ---That, that's correct.

- 10 Is it not therefore likely that when these documents were put in front of you in whatever form they were, that you were particularly interested in them and that you were simply signing off as a routine procedure, isn't that really what happened?

MS FURNESS: Commissioner, I object. The question is put on the basis of when the documents were put before him. Professor Hacker has said the documents were not put before him.

- 20 THE COMMISSIONER: The question's a bit general, Mr Stitt, because I think, as I understand Professor Hacker's evidence he has accepted that a number of the documents that have been put before him were simply matters of routine and in fact he said that in relation I think to at least one and maybe more there's a possibility that his signature, that the signature that you were challenging was indeed his signature but there are so many documents that we've got, putting to, I know that you're anxious to get it over with but the fact is that putting to him these questions in a general way makes it difficult to answer because some documents are more important than others.
- 30 MR STITT: Mr Commissioner, you're, you're correct and I had, no I won't say it.

- THE COMMISSIONER: Professor Hacker, my, my, please correct me if I'm wrong but my impression is that many of the documents that passed over your desk in connected with this project would have been regarded by you as simply matters of routine warranting a cursory look because they would be matters that really would be dealt with by yourself and it just needed your final imprimatur. Is that wrong?---Well, I don't remember very many documents passing over my desk. I have no recollection, for example, of any of that ethical approval.

I understand that, I'm not, I'm not putting that question to you. I'm not referring to any particular documents and I'm not trying, intending to suggest that any, any particular document was seen by you or signed by you. I am simply asking whether it's correct that as a, in a general way a number of the documents that you were required to deal with which related to purely administrative tasks often regarding payment for accounts which you thought would be looked at by others were not matters to which you devoted

a great deal of time and attention because of the very nature the task and the fact that it was just generally your final signature being required after others had looked at it or would look at it. Is that, is that, is that fair or not fair? Please tell me if it's not fair?---I'd need to look at the specific documents - -

-
Yes, all right?---- - - because I really don't accept that in, in general.

That's fair enough. I tried Mr Stitt.

10

MR STITT: We both did, your Honour.

THE COMMISSIONER: That's just, when I, by saying that, professor, I just mean to accelerate the process but what you said is absolutely right. I don't think it can properly be accelerated because every document has to be looked at independently?---And as I said before, must of this, must of what I, how I looked at it, the light in which I looked at it this year was different from the way I was looking at it last year because of the new information that I received from Vanessa Madunic.

20

MR STITT: Professor would you be so kind as to turn to page 83 of the bundle and again, your Honour, can I call for the original of that document.

MR ALEXIS: Commissioner, I can produce the original, it's readily available to me at the bar table but we will endeavour to obtain the original document with which - - -

THE COMMISSIONER: How long do you think it would take about?

30

MR ALEXIS: Probably no longer than a minute or so.

THE COMMISSIONER: Do you want to wait Mr Stitt, do you want adjourn for five minutes or do you want - - -

MR STITT: No, I don't want to waste time your Honour - - -

THE COMMISSIONER: It will be looked for while you proceed.

40

MR STITT: Yes, I'm happy for that. I'll perhaps come at it another way. You said in your evidence this morning that you did not – the effect of which was that you did not understand the need for Ms Lazarus to be employed and you used the word, you thought there would be appointment. Do you remember giving that evidence this morning?---That's correct.

What form of appointment did you have in mind when you gave that evidence to the Commissioner?---Well, something like an honorary scientific officer.

But you did know that she was to be employed by the hospital, did you not?---I, no I did not and that that was not the understanding at all. She was not to be employed by the hospital, that was made very clear to her.

Well, would you go to your first statement and look please at paragraph starting at 8 but going through to paragraph 9 where you there set out your understanding of the position in relation to students wishing to undertake clinical trials. Would you read that to yourself please. Have you read that Professor?---Number 9, that is an incorrect statement temporary
10 employment, it should be temporary appointment.

Well, is this the position, that this is another part of your first statement that you signed which is now simply not correct.---The wording - - -

Is that so?---The word employment should be appointment.

But the paragraph actually sets out quite coherently apparently your understanding, does it not? You say, any person employed by the hospital can apply to the Northern Hospital Network Ethics Committee to conduct
20 clinical research and then you go on and draw a distinction. You say, students wishing to undertake clinical trials as part of their current studies may apply to the hospital for temporary employment while the clinical trials are undertaken. That's quite clear as to what you were saying there, isn't it?---Yes, um - - -

Well, is it your evidence that that statement is in fact not correct?---It's not correct.

Well how does it come about that you made this statement, was it your
30 belief at the time that you made that statement that students may apply for temporary employment. Was that your belief?---One may apply for temporary appointment was what I believe.

What brought about the change in your belief when you say now that that statement's not correct?---The, my understanding was that it was always made very clear to Sandra Lazarus that no funds from the hospital would be paid to her.

Professor, I'm trying to be precise with my questions and I'd be grateful if you could answer with similar precision, what was it that brought about the change in your belief about that statement where you say is not correct?
40 ---Well, the wording's not correct. Whether you call employment when she receives a salary from the hospital out of a trust fund into which money is deposited by an external agency, is I guess a semantic argument.

THE COMMISSIONER: It's a legal argument.---It's a legal argument yes. But my understanding of her situation was that she would be receiving a

salary but it wouldn't be coming out of the hospitals basic fund, it would be coming from a trust fund into which money was deposited by Medex.

I understand that. Is that a standard procedure or is that a unique procedure?---It's not an unusual situation.

Do you sometimes get students doing clinical research who do get paid by the hospital?---No.

- 10 Never?---No, they would be paid on a grant, a research grant and this in essence was - - -

Grant by the hospital.---No, a grant by some external agency such as the Cancer Council.

- Are you saying that the hospital never pays a wage to a student doing clinical research for that research?---That would be right unless it was in the hospital's interest, unless they wanted the research done then we may employ a student to do it. But something like this where this for a PhD, so
20 it's in the student's interest, it's not in the hospital's interest, the hospital would never pay money in that situation.

MR STITT: Would you let – I'm sorry, your Honour.

THE COMMISSIONER: No, finish that.

MR ALEXIS: Can I just indicate Commissioner, that in response to the call, the original of the letter at page 83 of Exhibit 1 has been produced.

- 30 MR STITT: Would you look at this document that I show you, it's the original of the document of page 83 just produced, first of all, would you look at the signature, it's in ink. Do you agree that that is your signature? ---No, I do not.

And I'm suggesting to you that there is nothing about that signature which indicates that it's not your signature?

- 40 THE COMMISSIONER: I'd think it would be helpful to look at your signatures through a magnifying glass.---I don't even need a magnifying glass for this Commissioner. If you look at the H, this H is created by down stroke and then a little wriggle up. I never sign in that fashion, my H is always an up stroke and then a down. This is a down stroke and then an up. I never sign in that manner.

MR STITT: Can I have the letter back please. Your Honour, first of all, perhaps that could be tendered as an exhibit.

THE COMMISSIONER: The original of the letter of 17 April 2008 is Exhibit 8.

#EXHIBIT 8 – ORIGINAL LETTER FROM PROFESSOR NEVILLE HACKER TO THE ROYAL HOSPITAL FOR WOMEN DATED 17 APRIL 2008

10 MR STITT: Does your Honour need to look at - - -

THE COMMISSIONER: No, thank you.

MR STITT: Did you have a conversation about the source of the money which was being paid to Ms Lazarus in May 2008?---With whom?

Well, was it ever your belief that Ms Lazarus was being paid from a grant through the university?---No, never.

20 20 Did you ever tell anybody that Sandra was being paid from a grant through the university?---No (not transcribable)

Well, I suggest to you that you spoke to somebody on 7 May, 2008, and you told them that Sandra was being paid from a grant through the university. Do you deny that?---I deny that.

30 Your Honour needs to look at the exhibit. I'm sorry, the Commissioner needs to look at the exhibit?---There was never any suggestion that Sandra Lazarus was being paid by the university. The money was always coming from Medex.

But was that a belief that you had at some time in 2008?---Not at any time.

Did you ever tell anybody that?---Did not ever tell anybody that.

THE COMMISSIONER: Are you going to ask Professor Hacker about the note on the document?

40 MR STITT: Yes, I, yes, I will. Would you show it to the professor? Professor, you've said that you've got no recollection of talking to anybody in May 2008. I show you the note on the top of the exhibit and read it to yourself. Does that refresh your recollection?---No, no. I did not ever talk about a university grant in relation to Sandra Lazarus. There was never any suggestion that any university was going to pay her any money, Sydney University or New South Wales University.

And perhaps we might have the initials identified at some stage, Your Honour.

THE COMMISSIONER: Well, do you know whose initials they are, Professor?---No, I don't.

Well, Ms Furness, perhaps you will be able to find that out.

MR STITT: Look again, please, Professor, at page 83. The first paragraph of that letter conforms with your understanding as sworn to originally in your statement of 10, 3 June, paragraph 9, does it not?---(NO AUDIBLE
10 REPLY)

THE COMMISSIONER: Partly.

MR STITT: The first part of the first paragraph of the letter- - -

THE COMMISSIONER: The first part of the first paragraph. There's nothing in the statement about the period, Mr Stitt.

MR STITT: Well, that's, that's true. I'll rephrase the question with more
20 precision. The first part of the opening paragraph refers to the employment of Ms Lazarus and that, the fact that she was or was to be employed is consistent with what you swore in your statement at paragraph 9, namely that such students would be able to apply for temporary employment. Isn't that so?---I went to Vanessa Madunic- - -

No, please.

THE COMMISSIONER: Just answer the question. I mean, it does, it's, the first part of the letter duplicates in effect, I'll put it the other way. Your
30 statement duplicates in effect what's in the letter because your statement refers to a person being employed and the letter refers to employing. I mean, that's all that's being put, Professor Hacker. That speaks for itself, they use the same, the two documents use the same terminology.

MR STITT: Okay. So there's nothing about the first paragraph of that letter which would have caused you any concern or prevented you from signing it if it was put in front of you.---Well, if that was, no, that's not true. I have no ability to confirm anybody's employment. That's the administration and the Human Resources department that do that.
40

But if the letter was put down in front of you, there is nothing in that which would have leapt out at you as being wrong. Isn't that so?---I would not have signed that letter.

No, please. There's nothing which, in that opening paragraph which you would have regarded as incorrect, is there?---Well, except the fact that I have no ability to confirm her employment but she should write to me to say that.

THE COMMISSIONER: Did you agree, did you discuss with Ms Lazarus the period of her engagement with the, with the hospital?---No, I did not. My understanding was that once we got ethical approval ah, we would commence the pilot study.

Did you discuss with her her payment rate, her payment rate?---No, I did not.

10 Did you discuss with her, her, her title?---No, I did not.

Is there a title at the hospital such as principal hospital scientist?---There probably is. I mean, that's a human resources thing and they have different grades, different levels and they get different amounts of pay for each level. So I suspect there probably is such an appointment.

MR STITT: And such a grade?---And such a grade.

Thank you.

20 THE COMMISSIONER: Mr Stitt, I just want to draw your attention to the time.

MR STITT: I'm actually seeking instructions as to whether there's anything more I need to put. Thank you, Professor.---Thank you.

I'm sorry, Your Honour, did you want him?

30 THE COMMISSIONER: Thank you, thank you, Mr Stitt. Mr Hogan? If you would just explain to Professor Hacker who you represent, Mr Hogan.

MR HOGAN: Yes, I'll do that, sir. Professor, my name is Paul Hogan. I'm counsel representing Michelle Lazarus and Jessica Lazarus. So I'll ask you some questions without duplicating anything that you've just been asked about. If you could turn in the bundle to page 101 of Exhibit 1, the folder of documents, and that's the- - -

40 THE COMMISSIONER: Sorry, Mr Hogan. Mr Stitt. Sorry, I just want to ask Mr, say something to Mr Stitt. I don't apply the rule in Browne and Dunn but there are some points on which Professor Hacker has given evidence in which he hasn't been questioned which are quite material and- - -

MR STITT: Well, in that circumstance, Your Honour, he should, if there's to be a challenge, be a challenge.

THE COMMISSIONER: I mean, I'm not sure if he's been challenged, that's the point. I mean, can I give you just one example?

MR STITT: Yes, that's helpful.

THE COMMISSIONER: The existence of the file with all the details of her work, which he under questioning from Mr Alexis says he's never seen. And the graphs which she said he looked at, all the documentation which she said he looked at, all the evidence which she said she provided to Professor Hacker of the tests that she had carried out, of the very many tests, he said he'd never seen. He's not been challenged on that at all, for 10 example. Now, I mean, that's a Browne and, as I said, I don't apply Browne, I'm not going to apply Browne and Dunn for obvious reasons, but I- - -

MR ALEXIS: (not transcribable) though, that's- - -

THE COMMISSIONER: I do expect, let me put it this way and I think that this is an important, something that I think is important. There are at least two bases on which allegations are made against your client. One which you have certainly dealt with concerns the making up of documents and 20 forgery of signatures. The other is not doing the work for which she claimed and put through invoices. None of that has been raised in your questioning.

MR STITT: That's correct.

THE COMMISSIONER: Well, as long as, I mean - - -

MR STITT: No, no, I need to get more specific instructions, your Honour, I, I, I take (not transcribable) the point.

30 THE COMMISSIONER: And I mean, that's, that, although it's not a Browne v Dunn point, it's a very obvious point that requires dealing with. I mean, if it's being, if it's, if it's continued, continues to be asserted that, that Professor Hacker saw the results and discussed them and did all the things with them that Ms Lazarus says that he did. He hasn't been asked one question about it.

MR STITT: Well, that's my fault, your Honour. That's - - -

40 THE COMMISSIONER: No, I'm not, I'm not, this is not, I'm raising it because I, I am concerned that there will be no miscarriage here and no misunderstanding if we'd rather put it that way. I think that, well, I withdraw what I said, no misunderstanding.

MR STITT: No, no, and I take, I understand what your Honour is putting to me and can we deal with it on the basis that this proceeds and then perhaps by then I can get more specific instructions.

THE COMMISSIONER: Well, what are we going to do about Nurse Barlow? And I don't, I mean I understand it, I raised it so, but I need to know, it's 20 past 3.00. Do we still, and I'm prepared to sit 'til 5.00. Are we keeping Nurse Barlow on tenterhooks or are we going to say you're going to come tomorrow? I, I don't want to waste her time.

MS FURNESS: She's certainly in court at present and ordinarily would be back at the hospital doing what clinical nurses do.

10 THE COMMISSIONER: Well, I need to know from Mr Stitt how long he'll be and I don't know whether he's in a position to actually question at this stage but that's nobody's, I mean, that is a, that is a matter of the way in which the representation's been conducted.

MR STITT: Your Honour, it needs to be dealt with, you need to be assisted and I, I just can't say how long I will take because I just haven't got specific instructions on that but I will in a very short time and - - -

THE COMMISSIONER: All right.

20 MR ALEXIS: Could I suggest, Commissioner, that we adjourn for five minutes in the first instance - - -

THE COMMISSIONER: Yes.

MR ALEXIS: - - - for the purpose of my learned friend seeking instructions, getting a handle on likely timing so that he can indicate to me what that is and I can then report back and, particularly in light of your indication that you're prepared to sit 'til 5 o'clock it would be desirable 30 clearly enough to complete Professor Hacker today.

THE COMMISSIONER: Yes.

MR ALEXIS: Thank you, Commissioner.

THE COMMISSIONER: We'll adjourn for five minutes.

SHORT ADJOURNMENT

[3.23pm]

40

MR STITT: Your Honour, I can deal with this I believe in a relatively short time and without doing any injustice to my client.

THE COMMISSIONER: Very well.

MR STITT: Thank you. First of all I want to ask you some questions about the system which you had in your office and was a part of your department

in relation to record-keeping of patients. Do you and did you have an office or area where patients' records were stored?---That's correct.

And was part of those records kept in white folders with a clasp like this folder I'm showing you?---No.

What sort of white folders were they?---They're simply paper back and they're cardboard, they're not plastic like that, they don't have clasps that grip them.

10

Well, I suggest that Ms Lazarus kept her papers in, in two white folders that were stored in the filing area to which I've just referred. Are you in a position to deny or agree with that proposition?---I didn't ever see any evidence of any records that Sandra Lazarus kept.

Right. But did you ever look for them?---No, I had no reason to look for them.

Absolutely no reason at all?---Absolutely no reason at all.

20

So therefore you would be in no position to make any statement confidently or affirmatively that such documents did not exist. Isn't that the position? ---That's probably the position.

30

Now, I want to show you a document, and I don't suggest for a moment that it's anything to do with your clinic or any of your patients, but I just want you to look at this document. And it's been produced by my learned friend, Mr Alexis. Have you seen a graph in that form before?---The only time I've seen a graph in that form was in the original documents that she supplied to me from the company, so - - -

So with, I'm sorry?---Yep. So in that Medex textbook for general practitioners, such a graph exists. It's not in colour. It's the first time I've ever seen it in colour, but it is in black and white in here.

But in terms of its structure it's a document that you recognise as being a form of printout or graph as a result of apparently a Medex test?---It's very similar to what's in this document that she provided with me but I have never seen a coloured document.

40

THE COMMISSIONER: That she provided with you when she first spoke to you about it?---When I first saw her in late 2007 I asked her for evidence of the validity of this procedure. She supplied me with some documentation from the company and two scientific articles. That's the only time I have seen such a printout.

MR STITT: I'm only asking about the graph or the printout at the moment. Might the coloured be marked for identification and I'm happy for it to be

confidential. I don't want to reveal anybody's medical details. It's just a graph, Your Honour.

THE COMMISSIONER: Well, is it a, yes. The Medex test, Medex test of 11 March, 2008, will be marked for identification 1. No, I withdraw that. I think what we'll do is we'll make it an exhibit and there will be a confidentiality order in relation to the, the five lines under the heading, Medex Test. And so this, Exhibit 9 will be the Medex test graph of 11 March, 2008, subject to that confidentiality order.

10

#EXHIBIT 9 - MEDEX TEST GRAPH OF 11 MARCH 2008 & CONSENT FORM FROM STRATHFIELD PRIVATE HOSPITAL (ADDRESS & PATIENT NAME BOUND BY CONFIDENTIALITY ORDER)

MR STITT: As you please. As a part of your practice did you make and keep notes in the form of your own clinical notes recording your clinical observations of your patients?---I wrote letters to referring doctors. I wrote an initial history and physical examination when I saw the patient for the first time and subsequent visits I wrote letters back to their referring doctors indicating their progress. And they were kept in these files which are kept behind my secretary's desk.

And were they dictated to you, dictated by you originally and then subsequently typed?---That's correct.

So it would be accurate to describe your clinical notes which you prepared following an examination or consultation as typed notes which were then put in the patient's file?---That's correct.

So that would be one of the pieces of information or document which would be contained as a part of your patient's file?---That's correct.

And would you expect that that document would be recorded, would be filed in, in the room which you've identified as the filing room as part of your office?---That's correct.

40 So if one wanted to look for patient notes or, or patients' files, that would be the source of information?---That's correct.

Can I show you the front part of the exhibit that His Honour just marked.

THE COMMISSIONER: 9.

MR STITT: 9. Could you have a look at that, please. And again I don't suggest for a moment that it is your hospital or your patient. But just look at

the form of the document. Would you turn it to the front, please? You'll see that it's a consent form?---Yep.

And you can see that it relates to quite separate hospital and quite separate patients, but have you seen a document in that form before?---No.

I suggest that the consent form which was used by Ms Lazarus took the form of that document. I take it you're in no position to contradict that? ---That's correct.

10

Might that also be marked again with the confidentiality provision?

THE COMMISSIONER: Well- - -

MR STITT: Or it can be a part of the same exhibit.

THE COMMISSIONER: Yes. Exhibit 9.

MR STITT: If Your Honour pleases. Is there- - -

20

THE COMMISSIONER: Sorry, sorry, Mr Stitt.

MR STITT: No, I'm sorry.

30

THE COMMISSIONER: Exhibit 9 will then also incorporate the consent form from Strathfield Private Hospital with the name of the patient and address subject to a confidentiality order. Did anybody ask you, Professor Hacker, to nominate any of your patients for any test screening Medex tests?---No. When I was informed by Sandra Lazarus that she had received final approval from the Ethics Committee to undertake the pilot study, I asked my research nurse, Ellen Barlow, who also does my clinic with me, to identify suitable patients.

40

For the pilot study?---For, for the pilot study. Now, there, there are not a lot of these patients coming through. These are patients with cervical cancer, early cervical cancer. We see a lot of ovarian cancer, endometrial cancer, but not a lot of patients with early cervical cancer because of the national Pap screen, Pap smear screening program. The incidence of cervical cancer in Australia has decreased by about 50 per cent in the last say fifteen years and there was once we might have seen 80 or 100 patients with cervical cancer a year, now we would see 40 to 50. And early cervical cancer would only be half of that. So there are not very many patients coming through with early cervical cancer. So the other source of- - -

Did you explain to Nurse Barlow what, what the criteria were for the identification of the patient?---Yes. She understood that this was early cervical cancer or pre-cancer, people with abnormal Pap smears and, and in that regard she asked the other nurse, Emma Knowland, to also identify

patients because there is a pre-invasive clinic which is separate from my invasive cancer clinic where patients with abnormal Pap smears are referred for colposcopy, colposcopic examination. So there are two potential sources of patients for this study.

And amounting to about how many in total?---Well, in terms of the early cervical cancers it depends on over what period but I would say about 20 patients per year.

- 10 Overall?---Overall, yes. There would be many more patients with abnormal Pap smears. Probably in the - - -

Would they constitute a reservoir from which the tests could be drawn?
---That's correct.

- MR STITT: Just on that aspect from his Honour's question, the patient subject to this study in fact did not have to be precancerous, did they? It was a question of whether or not they had an abnormality which may presage the onset of cancer?---Or the cases of cancer of the cervix but I
20 made it clear to Sandra Lazarus that there was no point applying this test to someone with advanced cervical cancer.

But it wasn't a question of a person with advanced cervical cancer, it was a question of a person who may at the other end of the scale have cancer, it was simply an investigative procedure, was it not?---In, in women with abnormal Pap smears.

So the only criteria was whether or not a Pap smear was abnormal, isn't that accurate?---That's correct.

- 30 So it didn't have to be someone with pre-cancer?

THE COMMISSIONER: I think the professor has said that, Mr Stitt.

MR STITT: Well, thank you, your Honour. Did you have at - - -

- THE COMMISSIONER: He said there was a large reservoir from Pap smears but only 20 from pre-cancer (not transcribable)?---Someone with advanced cancer would be bleeding so there's no point doing a screening test on someone who has symptoms. This is a test for asymptomatic women.
40

MR STITT: Thank you. Did you have a place called a nurse's station as a part of your department?---No.

Was there a nurse's station where patients were brought into the hospital and dealt with. There was a waiting room where, where patients waited

while they were waiting for the doctors and there was a desk there at which secretarial staff sat, not nurses.

But in that area were there patients waiting to be treated or tested or whatever it was that had a patient file?---No. Patient files were all kept in the offices with the doctors and the patients would sit in the waiting room alone.

- 10 And each day were there many patients in the waiting room?---It would depend but there may be up to ten or 12, they may be one or two, it would depend on how many clinics were running simultaneously.

If Ms Lazarus said that she got her patients from the waiting room would you understand what area of the hospital that was?---I would.

- 20 And she said that those, if she says that those patients were identified to her by the nurses and the staff at the waiting room, would you understand what staff she was referring to?---No, because there would be no staff in the waiting room who would have the ability to do that. The only staff in the waiting room were secretarial staff.

But would there be no form or document to identify the patient and the reason that the patient was sitting in the waiting room?---No, there would not. Just the name of the patient.

- 30 If Ms Lazarus conducted tests the form of the result, the form that the result would take would be the computer printout like the one that you've just been looking at earlier, that was your understanding of it, was it not?---That was my understanding, yes.

And if in fact the computer printout was put in a file with the consent form and any of your clinical notes that you had dictated, then that would be an appropriate way to deal with the testing of, of the patients, would it not?---It would.

And if that was done and those records were kept then it would be data available to be considered both by Ms Lazarus and by you or anybody else? ---That, that's correct. I didn't ever see a single test.

- 40 Well, I know you say that but if in fact those, there were files and they were kept in the area that I've identified, that would be an appropriate place to keep them, would it not?---It would.

Ms Lazarus, Ms Lazarus says that she got this material, including the test results, put it in a folder and at some point did discuss it with you, do you --

THE COMMISSIONER: Sorry, did?

MR STITT: Did discuss it with you. Did you, do you deny that?---That's a blatant lie.

Did you have no conversation with her at any time during the period that she was there about her work or the result of her work?---I did not see her once we tried to initiate the study.

10 So you're saying that you knew that this pilot programme was supposed to be going forward but you never had any conversation with her about it. Is that your evidence?---That's, that's correct.

THE COMMISSIONER: But you're saying you didn't even see her?---I didn't see her.

20 MR STITT: Did you make any inquiries about a programme which was nominally under your control and supervision as to what was happening with it?---I inquired of Ellen Barlow on several occasions what was happening with the study and she told me that she found it very difficult to contact Sandra Lazarus.

Well, you said that on one, in one version of your statement that there were four or five patients that you aware of that she had seen and then in the second version of your statement you said it was only one patient. What is the position? What the true position?---Well, I'm not aware of any patients so you would have to ask Ellen Barlow and Emma Knowland but I am not personally aware of a single patient that was tested.

30 Well, is this, is this the position: that when, if you said that you were aware of patients then that's not true. Is that so?---I am, I am not aware of a single patient but - - -

THE COMMISSIONER: Where did you get the information from that's in your statement that there were four or five and then one? Where, where does that come from?

MS FURNESS: Well, Commissioner, it's clear on the face of the statement.

THE COMMISSIONER: Is it?

40 MS FURNESS: Yes, paragraph 40 of the first statement states that the professor's source of information.

MR STITT: Well, we can still ask questions about it surely? I'm not prohibited? His Honour can ask questions.

THE COMMISSIONER: Yes, all right. That answers my question but it's open to you to ask whatever questions you wish, Mr Stitt.

MR STITT: You see, in your first statement in paragraph 38 you said that you weren't sure if any clinical trial work was ever commenced, et cetera. At the time you swore that statement was that your belief?---Well, I, I couldn't be sure. I had not personally seen any evidence of any work but I couldn't swear that she hadn't seen one, two, three, four patients because I hadn't spoken at the time with Ellen Barlow and Emma Knowland but I did know there were great difficulties getting Sandra Lazarus to come to the hospital and test patients. I understand that she did come to one or two

10 clinics so whether she tested some patients during that time I don't know. I certainly saw no evidence of it, I didn't ever see any graphs, printouts, had discussion with her about the results so I know that the pilot study was never completed. Whether there were any patients I don't know. At the, at that point I hadn't discussed it in any detail with either nurse. I have subsequently learnt from Ellen Barlow that maybe there was a patient that was tested by she also I believe did not see the testing taking place.

Well, where did you get the information from in paragraph 13 of your second statement where you say, "I'm not aware of Sandra Lazarus having contact with more than one patient." Where did you get that information?--- Well, that was as I said there, following subsequent discussions with Ellen Barlow.

But the discussions that you had with Ms Barlow in your first statement said that it was four or five, paragraph 40. Did Ms Barlow change her mind?

MR ALEXIS: Well, I object to that question. Paragraph 40 makes claim that Professor Hacker was informed by both Ms Barlow and Ms or Mrs Knowland so - - -

30 MR STITT: Well, I draw your attention to paragraph 13 where he identifies Ms Barlow. I'm asking him about Ms Barlow?---In which um- - -

Well, can I ask you this. What was it that caused you to change your mind to change four to five patients down to one when you said it was a discussion with Ms Barlow. What was it that Ms Barlow said?---(NO AUDIBLE REPLY)

40 MS FURNESS: Commissioner, the evidence in paragraph 40 is, "Not more than four or five", not four or five patients.

THE COMMISSIONER: Thank you?---There were very few patients. My, my evidence is that there were very few patients. To put an exact number on it I can't do, but I personally observed no evidence that she tested a single patient.

Professor Hacker, the point is that in your first statement you said that from the information you had been given from Ellen Barlow and Emma

Knowland, Sandra Lazarus would not have examined more than four to five patients whilst at the Royal Hospital for Women before she became too difficult to locate. Later in your statement you've said that you're not aware of Sandra Lazarus having contact with more than one patient. And the question you're being asked is, what made you change your evidence? ---Further discussion with Ellen Barlow who could not recollect more than maybe one patient. She wasn't even sure, as I understand it, that she had actually tested one patient. But we wouldn't deny that could have happened.

10

MR STITT: But if patients were identified from the waiting room, they wouldn't necessarily be referred by Ms Barlow or Ms Knowland, would they?---No patient could be identified from the waiting room. The most patients in the waiting room would not have had cervical cancer and there was no way that Sandra Lazarus could have asked them what their diagnosis was. That would have been completely out of order. So patients had to be identified by the nurses and Sandra Lazarus notified of these cases. So absolutely no patients were identified by Sandra Lazarus herself in the waiting room or anywhere else.

20

Well, what makes you say that? What information do you have to make you say that?---She was never seen in the waiting room. She was never there. But that also, I mean, it would be completely unethical for her to go up and say, what, what is your diagnosis, can I, I'm doing some tests, what, what diagnosis do you have? That would be completely unethical and inappropriate. And my staff would have notified me had that been the case.

Well, I'm sorry, but I thought you made the point that none of your staff were at that nurses' station, that it was all secretarial staff?---That's correct.

30

The secretarial staff would have notified me that there was this strange person that they had not seen before going around asking patients to identify their diagnosis.

But you don't know that that happened, do you, you're just guessing. You don't know that that happened?---I can guarantee that didn't happen.

That what didn't happen?---That Sandra Lazarus did not identify patients in the waiting room.

40

MR ALEXIS: Commissioner, earlier in response to the call by my learned friend for the original of the ethics application letter, the copy of which is at page 26 of Exhibit 1, I wish to qualify what I said earlier by reason of my receipt only a moment ago of the original document. I produce that document in answer to the call.

THE COMMISSIONER: Yep.

MR STITT: Oh dear oh dear. I think that should be tendered. Your Honour needs to look at this.

THE COMMISSIONER: Do you wish to ask questions about it, Mr Stitt?

MR STITT: No, Your Honour, I don't. I suggest however that it be tendered.

10 THE COMMISSIONER: Well, I'm quite happy that it be an exhibit. Original, the original of the letter of 10 April, 2008, from the Gynaecological Cancer Centre to the Royal Hospital for Women Human Research Ethics Committee is Exhibit 10.

#EXHIBIT 10 - ORIGINAL LETTER FROM GYNAECOLOGICAL CANCER CENTRE TO ROYAL HOSPITAL FOR WOMEN DATED 10 APRIL 2008

20 THE COMMISSIONER: And I think that was, Professor Hacker should just have a look at it. Have you ever seen that, this is the original of a letter you've been asked about, Professor Hacker. This has got some handwriting on it. I have two questions for you. Firstly, have you ever, looking at the, at the original letter, does that refresh your memory at all, are you able to say whether you've seen it before, and the second question is, are you able to identify any of the writing on it?---I've never seen the letter before. I again deny that that is my signature and I, the writing I don't recognise.

Thank you.

30 Mr Stitt, have you completed your questioning?

MR STITT: Yes, I have, thank you.

THE COMMISSIONER: Yes. Thank you. Mr Hogan?

40 MR HOGAN: Professor, just going to the requisitions, the five requisition forms from page 107 onwards, and two of those, being 109 and the attached invoice, you attached that requisition form and that invoice to your statement which you signed in June 2010. Correct?---(NO AUDIBLE REPLY)

That's where you produced them?---Right. Well, ICAC produced them.

THE COMMISSIONER: Perhaps you'd better look at your statement to see these documents.

MR HOGAN: If I could just take you to paragraph, page 14 and 15 of your statement of 3 June. And at page 14, paragraph 47 - - -

THE COMMISSIONER: These, are these documents attached, Mr Hogan?

MR HOGAN: Yes.

THE COMMISSIONER: They are, I think - - -

10 MR HOGAN: They're attached, produced - - -

THE COMMISSIONER: Are you going to ask questions about them?

MR HOGAN: Just mainly in relation to the marketing ones?

THE COMMISSIONER: Well, can we, can you just refer, are you going to ask Professor Hacker about the ones attached to his statement?

MR HOGAN: Yes.

20

THE COMMISSIONER: Can you perhaps just go to those.

MR HOGAN: Do you see at paragraph 47 you produce five requisition forms and attached to your statement you have each of those requisition forms with a invoice, a tax invoice behind each requisition?

THE COMMISSIONER: Do you find them there, professor?---Yes, I mean, these, these were presented to me by the ICAC - - -

30 MR HOGAN: I'm just asking if you can turn to your statement of 3 June - - ?---Ah hmm, yeah.

- - - you'll see that they are indeed annexures, they're photocopied at the - - ?---Yeah, yeah.

- - - rear of your statement?---Yeah.

And they appear to be what are the same requisition forms and invoices as at pages 107 and following in Exhibit 1, the folder in front of you?---Right.

40

And we can take it that you examined those requisition forms and the invoices before you attached them to your statement, yes?---I, I did at the initial statement that's, that's true.

And you observed that in particular the ones which are, have attached a tax invoice for Wish Consulting Pty Limited you saw that they related to clinical trial marketing, did you not?---(NO AUDIBLE REPLY)

At the time you say - - -?---When I read it carefully that's true but I now don't believe that I, that I ever saw these forms or signed them.

And my question is that when you produced them and attached them to your statement of 3 June, 2010 - - -?---Ah hmm.

- - - you looked at all five requisition documents and looked at the invoices that were attached to them as at June last year?---Well, I probably didn't look at the invoices. I did look at the, the requisitions.

10

Well, you noticed did you not that there was a reference to marketing material in the requisition which is at page 109 and it's attached to your statement, did you not?---No, I, I, I don't recall ever knowing anything or hearing anything about marketing.

So you didn't notice the marketing material. Did you notice that there was \$8,800 to be paid for marketing material on one of them and another one for \$9,900 for marketing material, so \$18,700 for those two requisitions?---Had I seen that I would not have signed the documents.

20

All right. But you appreciate that at paragraph 49 of your statement, your first statement, Exhibit 2, you do not state there something to the effect of the signatures appear to be my signatures on the requisition, something along the lines of what you are - - -

THE COMMISSIONER: Well, he's been questioned by Mr Stitt about that.

MR HOGAN: Yes. You, you, you make, have a positive recollection where you state, "I can recall not only signing the documents it is my" - - -

30

THE COMMISSIONER: I will not allow repetitive questions.

MR HOGAN: All right. My question is how is it that you had, could have a positive recollection in June last year which has now evaporated?---Well, I think I covered that before too but we can go over it again if you - - -

THE COMMISSIONER: I won't, you have covered it and it has been dealt with ad nauseam, Mr Hogan. I am not allowing that question.

40 MR HOGAN: Yes, sir.

THE COMMISSIONER: You said that you were going to not repeat Mr Stitt's questions, please don't.

MR HOGAN: Yes.

In relation to marketing, you say now there could not be any marketing of the pilot strategy or pilot programme that you envisage was going to occur?

---No, I would not have allowed that had I known about it.

And you say that you did not when you attached those two invoices that relate to marketing material, you didn't even notice that that's what that was about?---I, I don't believe now that I ever saw them.

In your first statement at paragraph 56, page 17, do you have that, professor?---Yeah.

- 10 You state, "I would have never signed the requisition or approved any moneys to be paid to," and then the second entity is "Wish Consulting if I knew the moneys were coming for Royal Hospital for Women," haven't you averted your mind to the fact that there that you were signing a requisition to Wish Consulting which is set out on the invoice attached to that, those two requisitions for marketing materials?---No, that was pointed out to me I guess by the ICAC people but I would never have signed it had I seen that there was marketing payment there.

- 20 All right. The document which was page 95 in Exhibit 1, that's the letter if you could just turn that up from Johel Neiron of Sydvat dated 14 May, and you, your evidence is that you received that letter and you digested the contents of it around the time, May 2008?---That's correct.

Do you, did it occur to you that \$75,000 is far in excess of the funding that would be required for a pilot programme of ten patients?---Well, I guess it depends on what, how much you have to pay for the equipment.

- 30 Well, is that, is that a significant sum for a pilot programme where ten patients is all that's required?---Well, it, it, it does seem like a lot of money but if a company was prepared to pay it I wasn't going to argue with it.

All right. And isn't that the reason or the explanation that funding you thought had come from Sydvat or Medex, that that's the reason why you recall that you had signed all five requisitions for about \$68,000 in July 2008?---That is the reason why it was plausible to me at the time that I might have signed them because I was under the impression until very recently that \$75,000 had been placed in a trust fund for the use of Sandra Lazarus.

- 40 All right?---I subsequently became disavowed of that fact by Vanessa Madunic and then looked at all of those things more critically and realised that I could not have possibly signed those.

And that all occurred a week ago when you've done a reversal?---Maybe two weeks ago that I spoke to her. I didn't actually go to speak to her about the case. I went to speak to her about something unrelated and the issue came up and, and that's when she pointed out to me that she was never appointed at the hospital and I said but what about the trust fund and she

told me no trust fund had ever been set up and I said why not. And she said because money was never deposited in the hospital but no, I, I did not know that.

And then you were asked about whether it was your initiative to do a second statement where you're contradicting these details and you were asked today at page 152 of the transcript line 40 that question by the Commissioner, "The second statement am I right or am I wrong in understanding this second statement was made at your or on your initiative, 10 in other words you asked to correct your first statement," and you answered, "No, I didn't ask to correct my first statement, no," and then you were asked, "Well, how did it come about that you made a statement, in your second statement that you dealt again with what you have said in paragraph 63 of your first statement. The issue was raised I believe," and you said, "By ICAC and the by the lawyers for the hospital." Did someone point out to you the implications of you signing requisitions, those five requisitions for about \$68,000 if you had done it?---I was as I said in evidence I think called by Ms Bowden and told that I could have legal representation, private legal representation if I wanted. I spoke to my own 20 solicitor. It was never clear to me - - -

THE COMMISSIONER: Do we have to go through this again?

MR HOGAN: Yes, yes, sir. The last topic, you've given evidence that you've never met a Jessica Lazarus - - -?---That's correct.

- - - in 2008. Could it be just with the passage of time you've forgotten meeting her?---No, I didn't meet her. I didn't hear her name ever mentioned.

30 THE COMMISSIONER: Is that 2008 or ever?---Ever. And still have not.

MR HOGAN: All right. Well I want to suggest to you that you were introduced to Jessica Lazarus in April 2008 by her sister and - - -

THE COMMISSIONER: Whose sister?

MR HOGAN: By, by her sister, Sandra Lazarus. You dispute that?---I certainly have no recollection of that.

40 Can I show you this pass, which has a photograph? Does that assist you with whether you met that girl, a girl about 20 who you, you assisted, and I suggest with your secretary, Helen McGilligan in obtaining that security pass in April 2008?---I have no recollection of that.

Right. Do you concede the possibility that you may have been, and I tender that pass.

THE COMMISSIONER: No, I'm not going to take it.

MR HOGAN: All right.

THE COMMISSIONER: What's the point of it?

MR HOGAN: Yes, sir. (not transcribable) marked.

THE COMMISSIONER: What for?

10

MR HOGAN: Well it will become relevant later that there was a security pass issued by the hospital for Jessica Lazarus.

THE COMMISSIONER: Well you can prove it if - - -

MR HOGAN: Later, yes. I want to suggest to you that you had - - -?---(not transcribable)

20

I'm sorry? Yes. You had a conversation with Jessica about her studies that she was studying at the University of New South Wales, a Bachelor of Medical Science. You don't recall such?---I don't recall such a conversation.

And, and I suggest that you had a second meeting with her later where she was at, doing some testing of patients and you had a conversation with her in about May, 2008?---Testing patients where?

Yes?---Where, where testing? At the hospital, our hospital?

30

Yes, that's right?---Definitely, definitely not.

All right. And at April 2008 your secretary was Helen McGilligan?
---That's correct.

Yes, thank you, sir.

THE COMMISSIONER: Mr Hogan, I draw to your attention that you have asked no questions about the existence of any contract - - -

40

MR HOGAN: Oh, yes.

THE COMMISSIONER: - - - between the, between the hospital and - - -

MR HOGAN: The agreement.

THE COMMISSIONER: - - - and Wish Consulting for the provision of marketing services. You've asked no questions directed to the question of

whether Professor Hacker is aware of any marketing services or whether any marketing services could possibly benefit the hospital.

MR HOGAN: Yes, I'll do that, sir.

THE COMMISSIONER: So I'm not inviting you to, but I'm just telling you that if you don't ask questions on these obvious issues, you're at risk.

10 MR HOGAN: Yes, I thought the Professor had already dealt with the marketing.

THE COMMISSIONER: He may have.

MR HOGAN: All right. I'll put those questions - - -

THE COMMISSIONER: (not transcribable)

MS FURNESS: Commissioner, just before my friend continues, I note the time and Ms Barlow is still in court. Could she be excused for the day?

20 THE COMMISSIONER: Yes, certainly.

MS FURNESS: Thank you.

THE COMMISSIONER: My apologies to Ms Barlow. I'm sorry you had to stay here for (not transcribable).

MR HOGAN: Yes, I'll deal with those two matters then. The latter one - - -

30 THE COMMISSIONER: I better just check, are we starting at half past 9.00 tomorrow.

MR ALEXIS: If that's convenient.

THE COMMISSIONER: Yes. Is Ms Barlow coming at half past 9.00?

MS FURNESS: She can come at half past 9.00 tomorrow.

THE COMMISSIONER: I beg your pardon?

40 MS FURNESS: She can come at half past 9.00 tomorrow. I understood there are witnesses who were perhaps on before, but she can start, she'll be here at 9.30.

MR HOGAN: Your evidence, professor, is that for the pilot programme which you envisage will proceed there was no need for any marketing to be done?---That's correct.

By anyone?---By anyone.

And I've taken you to where you've attached those invoices for about \$18,000 worth of marketing to your statement which you've observed related to Wish Consulting. Yes?---That's correct, yes.

And, and you say that you did not approve those requisitions where you signed them relating to those amounts?---I would never have approved anything related to marketing.

10

And you say that you never sighted any agreement or contract which it's been asserted was presented to you by Sandra Lazarus between Sydvat or Sydvet Pty Limited signed by Johel Neiron and also signed by Michelle Lazarus.

THE COMMISSIONER: No, that's not the point. Anyway, you can ask that question. You haven't, have you ever seen a (not transcribable)?---No, no.

20

Have you ever seen, have you ever seen a contract which obliged the university, the hospital to pay for marketing services?---Not at all, no, never.

No one ever discussed with you any contractual obligations on the part of the hospital - - -?---It was never ever mentioned that, it's an inane suggestion.

30

Why is it inane?---Because there's nothing to market. I mean this was a pilot study. This may not be worth anything, so what would you market. We're trying to find out whether it's of any value. If we had 200 patients and this was better than the pap smear, we might have marketed it. There's nothing to market here.

MR HOGAN: Well how is it that you suggest that when you attached invoices with substantial amounts and in the requisition book which you've been shown today the five amounts totalling about \$68,000, (not transcribable) amounts of a couple of hundred dollars, some of them, how do you suggest that you overlooked the fact that two of them related exactly to that, to marketing?---But I didn't ever sight them and I didn't ever sign the documents.

40

No, I'm talking about in your statement which you - - -?---That was my original statement which I admit that I probably glossed over the details. I simply saw my signature and a familiar document and said, yes, I probably signed it. That was with the knowledge that there was a trust fund set up from which money was to be extracted. Having now the understanding, the knowledge that there was never a trust fund set up, I would never have signed that had I known that at the time.

And that's the reason now isn't it for your ex post facto rationalisation as to that you now would like that you didn't sign those documents rather than that you positively recall signing them?---No. I, I'm going into them in more detail, I don't believe that I signed them for the reasons I've documented.

All right. The last on that topic, did you read paragraph 1 of your statement of 3 June, 2001, the same paragraph which is the jurat of each statement that the statement made by you accurately sets out your evidence which - - -?

10 ---Sorry, sorry, which - - -

This statement made by me accurately sets out the evidence which I would be prepared if necessary to give in court as a witness. Did you read that paragraph?---I did.

All right. And you say now that you glossed over the two requisitions and invoices which refer specifically to marketing in relation to this, this very matter that was being investigated by ICAC?

20 MS FURNESS: That wasn't his evidence, your Honour.

MR HOGAN: I thought just then, sir, you said that those forms when you did your first statement the requisition forms attaching the invoices referring to marking material you glossed over it, i.e. you didn't appreciate those details?---I didn't appreciate those details when I agreed that I had signed those forms.

And stated that you recalled signing them?---And stated that I recalled signing them, yes.

30

And finally in relation to any agreement, you say you've never seen any agreement or contract between a Michelle Lazarus and Sydvat or Sydvet Pty Limited with the signature of the CEO being Mr Neiron?---I have never seen such a document.

Although the letter for 14 May, 2008 you certainly knew of the existence of Sydvat with a chief executive commissioning officer being Neiron?---I did. It was the basis of that letter that led me to believe that this money was coming in and that all of this research was fair and above board.

40

Right. And then the two vendor maintenance forms which you've given a lot of evidence about, your first position was that they appeared to have your signature on them and your position now is that you, they don't.

MS FURNESS: Your Honour, these matters have been canvassed well and truly.

THE COMMISSIONER: Certainly they have.

MR HOGAN: Yes. I want to suggest to you that you were given both of those forms to sign with a contract between Michelle - - -

THE COMMISSIONER: This is on behalf of Michelle - - -

MR HOGAN: Michelle Lazarus, that you were given to sight a contract between Michelle Lazarus and Sydvat?---Absolutely untrue.

- 10 When you made your statement on 3 June last year you certainly knew of the existence of Wish Consulting, didn't you?---I mean, ICAC made me aware of it but I was not aware of it until they made me aware of it.

Well, it's a bit different from ICAC Senior Investigator Kane merely telling you of the existence of such an entity. You've stated, "I never would have signed requisitions or approved moneys to be paid to Wish Consulting if I knew the money was coming from the Royal Hospital for Women," because you thought the money had come from Sydvat to the Royal Hospital and that was the only matter which seemed to concern you, wasn't it?---Well,
20 that was the relevant issue.

THE COMMISSIONER: Mr Hogan, I'm giving you one more minute.

MR HOGAN: Yes. You didn't raise in your statement 2010 anywhere that you had never heard of Wish Consulting Pty Limited did you, as at the date of that statement?

THE COMMISSIONER: That speaks for itself. You don't have to answer that question. It's already in his statement.

- 30 MR HOGAN: Yes, thank you.

THE COMMISSIONER: Mr Hogan, the case, the allegations against Michelle Hogan are that she - - -

MR HOGAN: Michelle Lazarus.

- 40 THE COMMISSIONER: Michelle, I beg your pardon, I'm sorry, it's just a bit late. Michelle Lazarus is that one of the allegations is that she sent in - - -

MR HOGAN: Yes.

THE COMMISSIONER: - - - an invoice to the hospital stating that the hospital owed money for marketing services.

MR HOGAN: Yes, she - - -

THE COMMISSIONER: (not transcribable) answer to that allegation that there was a contract between Sydvat and Michelle Lazarus because the, the invoice was not sent to Sydvat, it was sent to the hospital.

MR HOGAN: Yes, all, all of the invoice were sent by Sandra Lazarus, not Michelle Lazarus with her knowledge to the hospital and - - -

10 THE COMMISSIONER: Yes, there is, there is no suggesting so far that I've heard that the hospital had any contractual obligation to pay for marketing services. It hasn't been put and anyway - - -

MR HOGAN: Yes, well - - -

THE COMMISSIONER: - - - just so that you understand it - - -

MR HOGAN: Yes.

20 THE COMMISSIONER: - - - I did actually try and make that clear to you earlier but it seems to have gone past but I mean, the answer to that allegation cannot be that there was a contract with Sydvat because the invoice sent to the hospital represented that the hospital owed money for marketing services to Wish.

MR HOGAN: Yes.

THE COMMISSIONER: They could only owe marketing services if there was a contract.

MR HOGAN: Yes.

30 THE COMMISSIONER: I see you understand that.

MR HOGAN: Yes.

THE COMMISSIONER: I don't want you to be under any misunderstanding.

MR HOGAN: No, I understand that.

40 THE COMMISSIONER: Yes, very good, thank you.

MR HOGAN: Your position is that you're unaware of any agreement or contract, you never sighted that, correct?---Correct.

You say there was a pilot programme which required no marketing anyhow? ---That's correct.

You sighted a document from the review committee purporting to require to an application lodged by you as principal investigator?---That is correct.

That document which you've given evidence about refers to not only the pilot programme but 200 patients, a trial?---No, I, I made it, the document did but I made it very clear to Sandra Lazarus that she should correct it in the light that this a pilot study. We're not, we're not talking about other patients.

- 10 And how do you suggest that the review committee could be looking at an ethics application where it's your project where it doesn't have your signature on it, the ethics application?---As I said, I'm, I'm not always in the department and my deputy would sign on my behalf.

All right. You've already - - -

THE COMMISSIONER: I'll stop you now, Mr Hogan. I said you'd have one minute, you've really gone on for a lot more.

- 20 MR HOGAN: Sir, that goes around to what you've asked me to question.

THE COMMISSIONER: It goes around in a circle actually.

MR HOGAN: Yes, sir.

I want to suggest to you that the hospital, because you thought funds had been paid in by Sydvat to the hospital, that was your view?---That was my understanding.

- 30 Yes. And that I want to suggest that you had no problem with the hospital paying for marketing to Wish Consulting Pty Limited for marketing as long as Sydvat had paid the hospital?---I would have had a bit problem with that. I would not have approved that under any circumstances, marketing of a pilot study.

Even though that is the proviso which you put in your first statement is that you would have signed such a requisition as long as money came from Sydvat to the hospital (not transcribable)?---No, I, I, I would not have signed had I known it was for marketing.

40

And - - -

MR HOGAN: All right. Mr Hogan, that's enough thank you. Ms Furness.

MS FURNESS: Thank you, Commissioner.

Professor Hacker, you gave evidence earlier today as to the criteria to be applied to women to participate in the trial by way of the pilot study. Do you remember?---That's correct, that's correct, yes.

And the evidence you gave was that they, the criteria would include those patients with early cervical cancer?---Correct.

And those patients with abnormal Pap smears?---That's correct.

- 10 Were there any other criteria that needed to be satisfied?---No, these were basically I mean a screening, this is a screening test so the patients to have to be without symptoms. It's no good picking up a patient who's had six months of post coital bleeding. They've got cervical cancer until proven otherwise. But these are women who have got normal regular cycles or they're post menopausal, no bleeding and they go along for a test. Some of those people will have pre-cancer, some of them will have early cervical cancer so they were the criteria.

- 20 In relation to the early cervical cancer, you indicated that you would generally see about 20 patients a year that fit that criteria?---The department, not me personally. I'd probably see ten or 12. The other members of the department would probably see a similar number.

Are you able to now recall whether in the period January to July, 2008 the number of patients with early cervical cancer that the, that the department saw?---You mean over a six month period or - - -

- 30 Over that particular six month period and if you can't answer that, professor, over a general six month period?---Well, I can't answer that specific six months, that would be available on our database but in, in general terms I would say 20 to 25 patients at the outside would be seen with cervical cancer, about half of whom would have early cervical cancer.

And by early cervical cancer you're distinguishing that from the abnormal Pap smears are you?---That's right, that's pre-cancer, yes.

So about ten patients with early cervical cancer over a six month period?---I would think that would probably be, be about right.

- 40 And how many with abnormal Pap smears?---Abnormal Pap smears, there would be many more. There'd be probably five a week such patients but they, they were patients going to the colposcopy clinic conducted by Dr Michael Campion.

Ah hmm?---They weren't patients seen by Associate Professor Marsden or myself.

How many of those patients with that diagnosis would be seen in a general six-month period by yourself and Associate Professor Marsden?---Well, we, we would not see patients with an abnormal Pap smear, they would be referred to the Colposcopy Clinic.

So over a six-month period, you and Associate Professor Marsden would generally see about ten women with early cervical cancer?---Ten, fifteen, something like that.

10 Thank you. Thank you, Professor. Nothing further.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Professor, just a handful of topics to seek some final clarification if I may. Earlier this afternoon Mr Stitt showed you the document that seems to have emanated from the Strathfield Breast Clinic. The Commissioner marked that document, including the colour graph, Exhibit 9. Do you recall the document that was shown?---I do.

20 And when it was shown to you, you referred to you having seen the graphical depiction contained within Exhibit 9 in an original form in a textbook. Do you recall that?---Not in a textbook, in some information that Sandra Lazarus provided for me when I first met her from Medex Screen Australia Pty Limited.

Thank you. And I just wanted to identify the document if I could, which you were able to produce as part of your second statement, Exhibit 3. Is the publication you were referring to that entitled Medex Text Textbook for General Practitioners?---That's correct.

30 And perhaps we can, yes, thank you. We see that on the screen that's in front of you. Is that right?---That's correct.

Thank you. And just turning to the particular part of that publication, I think from pages 8 and following, particularly pages 12 and 13, is that, are they the form of graphs that you had originally seen when initially speaking with Ms Lazarus about the proposal for a clinical trial of the device? ---That's correct.

40 And I think in your answer you refer to seeing them in a black and white form. And is that what we see referred to in the textbook that you've attached to your statement?---That, that's correct.

And so when you were presented in the witness box this afternoon with Exhibit 9, that's the first time that you've seen a colour depiction of a type of graph relating to the performance of a Medex test. Is that right?---Yes, that's correct. The other device, the other paper is this, this one, the

scientific ground for the Medex test instrument, which I also attached to my second statement.

And that's the next document attached, is it?---Yes.

Thank you. And that shows, does it- - -?---That's got- - -

- - -in black and white similar graphical depictions of the results of a Medex test?---That's right.

10

Thank you. Now, just looking, do you have Exhibit 9 with you, has that been provided? Thank you. Just looking at the colour graphical depiction, can you tell us whether or not at any time prior to the end of the 2008 calendar year, you had received any training or instruction in relation to the interpretation of such a graphical depiction that we see in Exhibit 9?---No, I had not.

20

And just so that we're clear, I mean by that any training or instruction from anyone representing themselves as being from the Medex corporation and its various associated or related companies?---No, I had not.

Mmm. And if I could ask you to assume that you had been provided with such a colour graphical depiction resultant from the use of this device on a patient, would the depiction have meant anything to you in terms of determining whether or not the test using the Medex device was a useful screening tool?---It would not at the time, no.

30

And is there any particular reason for that, again on the assumption that such a diagram was shown to you?---Because it's, it's not a device I have any knowledge of.

All right. Thank you. That exhibit can be returned?---Could I maybe add the reason this wasn't part of my first statement, these other documents here, is that I was called down to William Walters office to, and asked what I knew about Sandra Lazarus and, and what initial screening I'd done. And I took this scientific evidence down and gave it to him. And, so I couldn't find it the file when I - - -

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THE COMMISSIONER: Look, I really don't think it's important?---Okay.
MR ALEXIS: Now Professor Hacker, my learned friend Mr Stitt asked you some questions about the practice associated with the completion of the requisition forms in the requisition book that you were asked about and it was suggested to you that your secretary would normally fill out the requisition form and provide it to you for your signature. Do you remember that?---That's correct.

Do you ever, let me withdraw that and put the question this way. Can you recall (not transcribable) any occasion when a requisition form out of the requisition book for the centre was provided to you for signature in blank, that is to say without the details of the vendor or supplier being filled in without any details concerning what the particular requisition was for and without any of the usual accounting detail that we see on the form?---I, I can't specifically recall that situation.

Yes, thank you, professor. That's all I wish to ask.

10

THE COMMISSIONER: Mr Stitt?

MR STITT: Your Honour, could I stretch indulgence and ask just one - - -

THE COMMISSIONER: Yes.

MR STITT: Professor, you said that the pool of potential patients involved those women with an abnormal pap smear and you said that that was quite a large cohort. Do you remember giving that evidence?---That's correct.

20

Were women with abnormal pap smears referred to Dr Champion?---Dr Campion, Dr Michael Campion.

Were they referred to Dr Campion?---That's correct.

And if they were referred to Dr Campion would you be described on the referral documentation as the referring doctor?---No.

30

Would your name appear on that, that, I don't know what the right word is, referral or forwarding - - -?---No, no. No, they would come directly from the gynaecologists or general practitioners.

But they would be, is that, is this position that they would be seen by Dr Campion in his clinic and you, as you say, would have no role to play in, in that body of patients?---Unless they prove to have invasive cancer, in which case he would refer them on to, to me or Professor Marsden and we would undertake the necessary treatment. If they prove just to have pre-invasive disease, pre-cancer, then he would undertake the necessary treatment.

40

And would those patients in that category be sitting in the same waiting room that you've been talking about?---They would.

Well can you in fact receive referrals with patients with abnormal pap smears?---Not, not unless they have invasive cancer.

But if, if somebody refers a patient with an abnormal pap smear is it not your practice to refer them on to Dr Campion?---No. It's my practice not to

receive such patients unless they have a diagnosis of invasive cancer on the basis of a biopsy done by the local doctor.

Thank you, professor.

THE COMMISSIONER: Mr Stitt, I'd be grateful, I don't understand that, the question, the purpose of the questions that you've asked. I'm not sure what lies behind it. Is there some sort of suggestion, I really just don't understand it. Do you mind enlightening me?

10

MR STITT: Well your Honour, it's my understanding that the source of a lot of the patients which were in fact treated by Ms Lazarus was this waiting room area. That's where the pool of patients was taken from and what I was seeking to do was to identify that that pool could include patients which were referred to Dr Campion or patients which came under the aegis of Professor Hacker or Dr Marsden. So that in other words there was a wider pool than just the ones that may have fallen under the aegis of Barlow and, Sister Barlow and Sister Knowland.

20

THE COMMISSIONER: Yes, thank you. Ms Furness, do you, you asked questions about the pool. In the light of what has now been said, do you want to clarify that at all?

MS FURNESS: No, Commissioner. Thank you.

THE COMMISSIONER: Mr Alexis?

MR ALEXIS: No, Commissioner. And Commissioner, I seek to have Professor Hacker excused from further attendance.

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THE COMMISSIONER: Yes. Thank you, Professor Hacker.

MR STITT: No objection.

THE WITNESS EXCUSED

[4.51pm]

THE COMMISSIONER: The Commission will now - - -

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MR ALEXIS: 9.30 tomorrow?

THE COMMISSIONER: Yes, 9.30 tomorrow.

AT 4.51 THE MATTER WAS ADJOURNED ACCORDINGLY

[4.51pm]