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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHARITY

Reference: Operation E10/0035

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 22 FEBRUARY 2011

AT 10.08AM

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

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Yes, Commissioner. Can we have Ms Michelle Lazarus recalled for the purpose of completing her examination?

THE COMMISSIONER: Right, Ms Lazarus. Won't you be seated and Ms Lazarus, you're still under your oath that you took yesterday and the section 38 order continues to apply to you.

10 MS LAZARUS: Yes.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

Ms Lazarus, yesterday afternoon you were telling us about the communications that you had with Dr Neiron - - -?---Yes.

10

- - - and I think you indicated that there were four meetings at which you met face to face and otherwise there were some telephone communications. Do you remember that?---Yes.

And at page 609 of the transcript from line 10 and Ms Lazarus can I indicate that's a reference for the Commissioner, you gave some evidence about Dr Neiron wanting everything back?---Yes.

20

That included all the work that you'd done which was still on the hard drive and the Medex laptop that you were using?---Yes.

And you suggested that you may have put the contract that we were discussing in there with the material that was returned. Do you recall that? ---Yes, yes.

And it's just up on the screen in front of you, madam, page 609 from line 10 and you'll see towards the end of the passage that commences with the number 10 in the left-hand corner you made reference to a threat with respect to lawyers getting involved. Do you see that?---Yes.

30

Now, should we understand that what you've told us there about Dr Neiron's request and threats being made concerning lawyers was made by Dr Neiron to you?---It was towards me because I was contracted by him so any work that I had belonged to him so far as he was concerned.

Perhaps you didn't understand my question. We understand I think what was said was directed towards you, my question however is to understand whether Dr Neiron conveyed this to you directly?---He didn't speak to me directly, no.

40

So what you tell us at 609 of the transcript from line 10 is something that you had heard from someone else concerning Dr Neiron's request. Is that so?---Yes.

And from whom did you hear what you there tell us was his request?---Oh, from my sister.

And that's Sandra?---That's right.

And was it Sandra that told you that lawyers were being threatened in relation to the subject of Dr Neiron's request?---That lawyers, that he was threatening to involve lawyers, yes.

10 All right. So you never spoke to Dr Neiron directly about any request that he made concerning the return of information, laptops or any threat concerning lawyers?---No, but I was aware that he was having correspondence with Sandra in regards to returning everything. That included my work.

All right. And you were aware of that because you saw the correspondence?---Some of, some of the correspondence.

And what did the correspondence say as best you recall?---As best as I can recall it was correspondence between Sandra and some other members of Medex and they basically were advising her to give things back.

20 THE COMMISSIONER: Do you have the names of the other members of Medex?---Um - - -

Was it Pleiksna?---Yes.

30 MR ALEXIS: Now in relation to what you've described in your evidence yesterday about documents being returned, the Medex laptop and as we've indicated you think your contract was returned. How should we understand that material to have actually been returned? Did you deliver it somewhere? Did you package it up and send it by post or courier somewhere? What, what happened?---I didn't do this myself. Any material I had in relation to my work, be it files or the actual laptop and the hard drive, external hard drive, I gave to Sandra who then passed it on to wherever it was going to go to.

And where is the wherever it was supposed to go to?---Back to Mr Neiron.

And how do you know that?

40 THE COMMISSIONER: Or back to Mr Pleiksna?---I'm not too sure whether it went to Mr Pleiksna or directly to Mr Neiron, I'm not sure about that.

MR ALEXIS: How was it returned, do you know? Did she deliver it or - - -?---I'm not, I'm not aware of how this was done.

Do you know where it was delivered to?---No.

All right. And was that the last time you saw your Medex laptop computer and the other material that you've referred to in your answer at 609 from line 10?---Yes.

Now, do you have anything with you in the witness box?---No.

Could we have Exhibit 1 shown to you please which is the examination bundle and I wish to take you to the document at page 92. Do you have page 92, Ms Lazarus?---Yes.

10

And in May of 2008 do you recall receiving either the original or a copy of this letter at page 92?---Yes, I do.

And can you tell me the circumstances in which you came to see either the original or a copy of the letter?---I was given this by Sandra to check and make any additions.

And in what form was the document when she provided it to you?---In hard copy.

20

All right. And was it presented as we see on page 92 on the letterhead of the cancer centre at the Royal Women's Hospital?---Yes.

And what did you do with it?---I made some additions and corrections.

And what happened then?---It went back to her.

And what then happened with the document, with your additions and corrections?---I don't know. That's all I saw of it.

30

So should we understand your role or your participation in the letter at page 92 of Exhibit 1 as reviewing it, suggesting some changes and some alterations providing that with those additions and alterations back to your sister and you never saw it again, is that so?---Yes. I believe that it was anticipated this would go out to potential sponsors but I never, I never ended up using it.

40 So you understood the purpose of you being asked by your sister to look at the document and suggest changes and alterations was because it might be used at some future point in relation to the work that was being done, is that so?---Yes.

But you tell us that in fact the letter was never used?---Not by myself, no.

All right. Now, did you ever see the letter in its original form signed by your sister Sandra as indicated on the copy at page 92?---I don't believe that it was signed when I saw this.

Did you in May of 2008 ever use this letter or any similar to whom it may concern type letter on the letterhead of the gynaecological cancer centre with any prospective sponsors for any prospective clinical trial at that hospital?---I didn't use the letterhead but I did have my own versions of introductory letters for potential sponsors that I would use and I would be referencing the hospital.

10 All right. And are examples of that introductory letter contained in the folder that I took you to yesterday afternoon which was marked as MFI 2?
---Not in that folder, no. Most of the, most of the work that is contained in that folder is related to Royal North Shore.

MR HOGAN: I think in fact there are introductory letters in that folder.

MR ALEXIS: Can the witness be shown MFI 2. Madam, if you go through the bundle and after documents which relate to a sponsorship program or a funding proposal and before we get to the A3 spreadsheet documents that I took you to very briefly yesterday we have a series of documents which
20 appear to be in a very similar form in terms of content that are just addressed to various people and entities, the first in the series being one addressed to Janine at Rick Damelian Motor Group. You see that?---Yes.

Do you have that, Commissioner?

THE COMMISSIONER: No. Where is it?

MR ALEXIS: Perhaps I could have access to the Commission's copy of the MFI and I'll turn it up. For the purpose of identifying the document I'll put
30 a green sticker in the top right-hand corner.

THE COMMISSIONER: Yes, thank you. Thank you, Mr Alexis.

MR ALEXIS: Now Ms Lazarus, in reference to the, To Whom It May Concern letter at page 92, you referred I think to a form letter that you prepared with respect to various prospective sponsors. Is that so?---Yes.

40 And do we see an illustration of that in MFI 2 as illustrated by the form letter addressed, Dear Janine, which refers in the third paragraph to Rick Damelian Motor Group?---It's a similar letter, so like I said before, I did use a similar sort of cover letter or introductory letter. And this is a draft of an email actually.

I see. And do we see over the page there's a letter or an email in identical terms save for the reference to the addressee and the reference to the particular corporation referred to in the third paragraph?---Yes.

And over the page in similar fashion, we have an identical letter or email, this time addressed to Chris and you see the reference to Pfizer, it's P-F-I-Z-E-R, in the third paragraph?---Yes.

And all of the letters in this series or emails in the series are the same aren't they, but addressed to a different person at various corporate - - -?---They are similar, yes.

10 Thank you. I'll come back to that. Now can I just understand a couple more things arising from yesterday's evidence. Do you remember telling us about the contract that you signed during your second meeting with Dr Neiron - - -?---Yes.

- - - involving your company, Wish Consulting on the one hand and Dr Neiron's company, Sydvat on the other?---Yes.

20 And you remember telling me at page 608 of the transcript line 40 and following that the contract provided for the payment of a monthly fee of \$9,000 plus GST for the performance of your duties?---Yes, that's right.

And if we come forward in the transcript to page 612, do you recall, I do apologise, let me withdraw that. Can I start at page 610 and do you see at the top of the page, thank you, just looking at the screen, you'll see that I asked you just above line 10 when you signed the contract and when it was to commence from. You said October, 2007. And then you see I asked you as to your understanding about contractual obligations to perform services, the \$9,000 plus GST, is that so? Your answer, yes. Do you see that?---Yes.

30 Now should we understand from your evidence yesterday that you commenced the work provided for in that contract and commenced billing for your services from October 2007?

MR HOGAN: I object to that question. It's two questions. There's commenced the work, she said, yes, commenced billing in October.

40 MR ALEXIS: Fine. Let me withdraw the question. I don't seek to derive anything in particular from that question. Ms Lazarus, is it the case that you commenced the work that you told us was the subject of the contract with Sydvat in October, 2007?---Yes, that's right.

And should we understand that from the time that you commenced performing that work you started billing for your services?---Can you repeat that question, please?

Mmm. From the time you commenced to do the work - - -?---Ah hmm.

- - - which you've told us was October 2007, did you start billing for your services?---I didn't start billing until apparently when Neiron told me that

the funds were going to be in, in the actual hospital trust. So I had to wait until then.

So when - - ?---So although I was carrying out work from October I didn't actually start billing until he said it was okay to basically start billing the hospital because he'd provided funds at that time.

Thank you. Now, can we just be clear, is that Dr Neiron speaking or is that - - ?---Yes.

10

- - - your sister Sandra speaking to you?---No, that's Dr Neiron speaking.

So he told you that although you were to start doing this work from October 2007 you weren't to submit an invoice by your company until some later point in time?---Yes.

And at what point in time did he tell you to render an invoice?---Around March.

20 That's March 2008?---Yes.

And should we understand then that you worked for the last three months of 2007 and for at least the first two months of 2008 without having rendered an invoice for your services?---I, I didn't render an invoice, no.

So what I've put to you is correct?---I beg your pardon?

30 What I've put to you is correct, you worked for five months and didn't render an invoice?---Well, I didn't work for the month of December or for the month of February '08.

So you worked for three months and yet didn't render an invoice?---Yes.

You've rendered the first invoice in March 2008, did you?---Well, it was rendered by my sister Sandra.

THE COMMISSIONER: Mr Alexis, perhaps you could just clarify then the evidence at 612, 30 to the end of the page.

40 MR ALEXIS: Ms Lazarus, could I ask you to look at your evidence yesterday afternoon at page 612?---Yes.

From line 20?---Ah hmm.

The Commissioner asked you when you started getting paid, do you see that?---Ah hmm.

And you responded by telling us that the first payment was in March 2008, do you see that?---Yes.

You were asked then, "When did you start work?" and you said, "October, 2007." Do you see that?---Yes.

10 And the question was then asked, "Was it paid \$9,000 regularly each month on the same date more or less," and your answer was, "I was charging every month." "You were charging him?---Yes." "Or were you charging Sydvat? ---Yes." "You sent them an invoice?---No, I wasn't generating these invoices." Now, just pausing there - - -?---Ah hmm.

- - - did you render an invoice to Dr Neiron or to Sydvat for October or November 2007?---Some of the invoices that were rendered on my behalf were to do with backlogging so I was actually making up for the work that I had done in October and November.

20 So we should understand from that answer that no invoice was rendered to Dr Neiron or Sydvat in the months of October or November, 2007?---I don't believe so.

And no invoices were rendered to any hospital for either of those two months of 2007?---Which, which months? October and November?

30 October and November, 2007?---Like I said, my sister was rendering these invoices on my behalf so I can't tell you the exact date that these were rendered. All I know is I was giving her the information and the work that I'd done for that particular month and she would be rendering these invoices for me.

All right. Now, when you tell us that your sister was generating the invoices - - -?---Ah hmm.

- - - what should we understand that to mean in terms of the creation or the production of each invoice that was rendered by Wish Consulting?---Well, I gave her a template of an invoice that I drew up myself and she I believe had that on her laptop and because she was doing hers I asked her to do mine too and she would be doing, doing them for me.

40 And when the invoice was prepared did you look at the invoice to check that it was satisfactory to you before it was sent on?---I didn't view the actual invoice itself but the amounts that I was receiving in my bank were correct to, as to what I was asking her to charge so I believe they were correct.

And in order to work out that the amounts that were coming into your bank account were correct how did you do that?---Well, I had a personal log that I was keeping.

A personal log of what?---Of what I was doing and in which month.

But did that log have something to do with the invoices that Sandra was generating on your behalf?---No, they were just something for myself to keep a record of.

10 So how were you able to reconcile monies being received into Wish Consulting's bank account against the invoices that had been rendered if you didn't have a record of those invoices?---I had, I had the amounts that I was charging and the months that I was charging those and I reconciled those with what was received into my bank account.

So is your evidence to the Commission that in relation to each of the invoices rendered to the Royal Hospital for Women and the Royal North Shore Hospital your sister Sandra prepared the invoice?---Yes.

And the invoice was sent to each of the hospitals by her?---Yes, that's right.

20 And that you didn't actually look at each invoice before, as you understood it, the invoice was being sent to each of those hospitals for payment?---Yes.

And do you tell the Commission that when monies were electronically deposited into the bank account of Wish Consulting you would look at the amount that had been received, is that so?---That's right.

And you would check that off against a log that you had created which recorded the amount that had been invoiced to the hospitals?---Yes.

30 That log of invoices that had been sent to the hospitals was not the invoices itself it was some independent document based on what you knew you had done - - -?---Yes.

- - - and what you knew your sister Sandra was charging for?---Yes.

Is that so?---That's right.

40 Now, can we look in the examination bundle Exhibit 1 at page 120. Now, can I ask you, Ms Lazarus, when was the first time that you saw an invoice from Wish Consulting to Royal Hospital for Women dated 17 March, 2008 claiming \$9,900 inclusive of GST?---I believe when I saw this, this bundle of evidence.

Can I just get one thing very clear with you?---Yes.

I'm not suggesting that you saw the document that's at page 120 with the handwriting on it?---Ah hmm.

My question - - -

MR HOGAN: (not transcribable).

MR ALEXIS: Can I just finish my question please. My question is directed to the form of invoice that we see illustrated by the copy of that invoice at page 120. Do you follow what I mean?---So is it the copy that you're referring to with the handwriting or is it the original without the writing?

10 No. Correct?---No. This is the first time or rather when I first saw this bundle.

All right.

THE COMMISSIONER: Yes, Mr Hogan.

MR HOGAN: Yes, if I can assist, Mr Commissioner. The date that Exhibit 1 the folder was provided to the client was 11 February which is the date that I became involved in the matter.

20 MR ALEXIS: That's helpful, thank you. So, Ms Lazarus, should we understand that the first time you saw the Wish Consulting tax invoice to the Royal Hospital for Women dated 17 March, 2008 a copy of which is at page 120 of Exhibit 1 was when via your counsel you had the opportunity to look through the documents comprising Exhibit 1?---Well, filled out with all the information, yes, but as a template without any information I'd seen it before. Like I said I developed the template.

30 Yes. But did you see, when was the first time you saw not just the template invoice but the invoice resulting from the use of that template that came to be dated 17 March and claimed \$9,900 from the Royal Hospital for Women?

THE COMMISSIONER: That's without the handwriting - - -?---Yes, that was when my counsel presented the, this bundle of evidence to me on 11 February.

40 Without the handwriting on it? You have never seen this particular invoice without handwriting on it?---Yes, that's right. I've never seen, I've seen this without any handwriting.

MR ALEXIS: Can I ask you to look at the invoice at page 121 and again if you could ignore the handwriting and the facsimile imprint details, when was the first time that you saw that form of invoice from Wish Consulting dated 4 April, 2008 addressed to the Royal Hospital for Women?---I can honestly say that all of these invoices, the first time I did view them without the handwriting or with, with the handwriting was when I first met with my counsel and he showed these to me. So I've never, what I'm trying to say is I've never seen these filled out, any of these.

And just turn back if you'd be good enough to page 110. And is the position, should we understand the same with respect to this further tax invoice from Wish Consulting to the Royal Hospital for Women dated 4 May, 2008?---Yes.

So is your position that in relation to the invoices from Wish Consulting for March, April and May, 2008, and they're the three I've just taken you through - - -?---Ah hmm.

10

- - - you didn't see either the original or a copy form of that invoice until last week?---Yes.

MR HOGAN: (not transcribable)

MR ALEXIS: I'm sorry, the week before last?---Yes. Now were you aware that your sister, Sandra was generating these invoices on behalf of your company and submitting them to each of the two hospitals for payment? ---Yes.

20

And is your position madam, that at no time during the 2008 and 2009 years did you ever see any of the invoices that she had prepared on behalf of your company that were submitted for payment to either of the hospitals?---No.

Did you ever ask to look at them?---No, I didn't.

Can I ask how you were able to determine what the amounts that were deposited into your company's bank account related to if you didn't have access to and look at the invoices that led to the payments being received?

30

---Sir, like I said, this log that I was keeping had information about the amounts I was charging and for what month. And I was tallying those up in regards to what I'd been charging and what amount had been deposited into my account.

But you know don't you that the area health services from whom payments were received often paid invoices in a lump sum, that is to say they paid a number of invoices by means of the deposit of a large sum of money?

---Yes.

40

We can go back to the bank statements if you like, but - - -?---No, no. (not transcribable)

- - - the one that readily comes to mind is the deposit that occurred I think in December of 2008 for \$49,500. Do you remember that?---Yes, I'm aware of that.

So having seen the receipt of that money on your bank statement can you explain to me how it was that you were able to work out what invoice from

your company that payment related to if you didn't have access to the invoices that had been submitted by your sister to the hospitals for payment?---Sir, I didn't need these invoices, I had the information on my log, which I tallied up from when I'd been paid last.

THE COMMISSIONER: So you just looked to see how much, what the balance was that - - -?---Yes.

- - - you believed was owed to you?---Yes.

10

MR ALEXIS: Ms Lazarus, isn't the truth of the position that Sandra Lazarus was generating these invoices and using your company Wish Consulting as the vehicle by which to generate the receipt of monies for marketing services that she was and is suggesting were provided to these hospitals?---No, sir, that's not true.

Yet you tell the Commissioner that at no time did you ever see any invoice that was generated before it was sent to the hospitals?---Yes, that's true.

20

And you never looked at any of the invoices when money started tumbling into your company's bank account?---I didn't look at the invoices, no.

Now, I want to come back to the first of the series of invoices to the Royal Hospital for Women at page 120, if you could turn back to that please. Now, can you assist me as to whether or not that invoice was generated or created by your sister Sandra on or about the date of it, namely 17 March, 2008?---I assume it would have been, sir.

30

Why do you make that assumption?---Because it has the date there and I can't really say that it was because I didn't generate it.

All right. Now, who was it at the Royal Hospital for Women that you understood had either agreed or at least indicated that invoices from Wish Consulting would be received and would be paid by the hospital?---Who to my understand?

Mmm?---As I understood it it would have been the head of departments or the principal investigators who were authorising these.

40

And how did you come by that understanding?---Well, I was told that, this information by Sandra.

All right. And did she identify any particular head of department or other person at the Royal Hospital for Women who had authorised the receipt of the invoices for payment?---I don't recall her saying who it was that was authorising these.

So should we understand your evidence, madam, to be that you commenced work in October 2007, the first invoice that was generated on behalf of your company was not generated until March 2008 and in relation - - -?---That's my assumption.

I'm sorry?---That's my assumption.

10 All right. Well, accepting that, and that you were not aware of who it was at the Royal Hospital for Women that had either agreed to or was accepting of such an invoice being received for payment?---Yes.

I gather you spent some hours attending to the work referred to in the contract with Sydvat that you told us about yesterday?---Ah hmm.

Is that so?---Yes.

20 \$9,000 a month would indicate would it not that there was being spent not just hours per month but literally days per month on this sort of work, is that so?---Well, sir, I would spend at least 25 hours, 26 hours a week on this.

All right. So we're looking at about 100 hours a month or thereabouts?
---Thereabouts.

And when you were doing this work in October and November 2007 as you told us - - -?---Ah hmm.

- - - you picked it up again in January because I think - - -?---Ah hmm.

30 - - - you said you didn't do any work in February 2008 - - -?---Mmm.

And when you finally, as you understood from your sister, learnt that an invoice was being generated in March 2008 weren't you concerned to understand - - -

MR HOGAN: I object to that question, Commissioner.

THE COMMISSIONER: You haven't heard it yet.

40 MR HOGAN: Well, learnt from her sister an invoice was generated in March.

THE COMMISSIONER: I beg your pardon?

MR HOGAN: The question already is erroneous in that's it not based on her evidence. She hasn't given evidence that she learnt from her sister that an invoice was generated in March, she said it's her assumption it may have been only from the date.

MR ALEXIS: Well, on the assumption of the date of creation can I, I'm going to come to the point I wish to make with you and it is this: weren't you concerned to understand clearly who it was at the hospital that had accepted or at least indicated that they would receive an invoice from your company for marketing services and have that invoice paid?---Was I concerned with this?

Yes?---Is that what you're saying?

10 THE COMMISSIONER: Did you not want to find out who it was who had agreed to it and who was responsible for it?---All I knew was that the principal investigators were authorising these or the head of departments, that's as far as my knowledge goes in regards to that.

You told me yesterday that you've never met or spoken with either Professor Hacker or Associate Professor Marsden didn't you?---Yes.

20 And you understood from your sister Sandra that she had had some dialogue with Professor Hacker and obtained entry to the hospital as a result of discussions with him?---I don't know about this but I do recall hearing their name every now and then in conversations that she would have with me so -
- -

All right. Well, despite those conversations which refer to Professor Hacker should we understand that at no time did your sister Sandra tell you that Professor Hacker was the one that was going to receive these invoices and have them paid?---I think she may have actually.

30 Tell me this. Did you ever believe that you had a contract with the Royal Hospital for Women to perform marketing services in 2007 or 2008?---I believe I did.

And should we understand that belief as relating to a different contract to the one you gave evidence about yesterday between your company Wish Consulting and Dr Neiron's company Sydvat?---I don't know about what sort of contract it was but I do understand it was some sort of agreement whereby the hospital put me on as a contractor.

40 THE COMMISSIONER: The question is whether that's a different contract to the one you entered into with Mr Neiron who was then representing Sydvat?---I didn't sign any contract with the hospital.

You were asked about - yes, Mr Alexis.

MR ALEXIS: Yes. We understand you didn't sign any contract with the hospital but we know from your evidence yesterday that you did sign a contract with Sydvat?---Yes.

And I asked you yesterday whether you have an understanding about whether that contract with Sydvat was subject to any contingency, remember that?---Ah hmm.

And you asked me to explain what I meant by a contingency and I said to you well, for example, was it subject to the hospital agreeing to conduct a clinical trial, page 609 of the transcript line 50, remember that?---Ah hmm.

10 And you said to me in answer to that question, "No, there weren't any specifications like that." Remember that?---See, there were specifications that outlined me working on the trials that were being conducted at those hospitals.

Specifications by whom?---Mr Neiron.

THE COMMISSIONER: In the Sydvat contract?---Yes.

20 The question that you now are being asked is, concerns the liability of the hospital to pay you and you were asked whether you believe that there was an agreement with the hospital to pay you?---I, I don't know about that, sir.

You mean you do not have that belief or you don't know whether you had that belief?---I believe there was some sort of contract but what sort of contract I don't know.

What, there was a contract with the hospital?---No, I believe there was a form of some sort that allowed me to work as a contractor and that's the extent of my knowledge about that.

30 MR ALEXIS: Did you ever understand in 2007 or 2008 that the Royal Hospital for Women was a client of your business conducted by Wish Consulting?---I beg your pardon?

Did you ever understand the hospital, the Royal Hospital for Women being a client of your consulting business conducted by Wish Consulting?---I believed it was.

40 And how did you understand that the Royal Hospital for Women had retained your company as a client?---Because I was told that the head of departments again and the principal investigators had approved this.

THE COMMISSIONER: Had approved what?---Me being a contractor for the hospital.

A contractor?---Yes.

Or simply - that you were a contractor for the hospital on what terms?---On terms of providing marketing consultancy, marketing work.

At what rate?---I wasn't aware of that, sir.

Well how did - - -?---Well all I know is that a copy of my contract with Sydvat was taken to these doctors or head of departments and I was told that this was sighted and this went along with another form of some sort, which, which allowed me to work as a contractor for the hospitals. And this was approved. And that's all I was told.

10 By?---By Sandra.

MR ALEXIS: In 2007 or 2008 did Wish Consulting have any other clients apart from the Royal Hospital for Women?---No.

Prior to 2008 had it had any other client apart from the Royal Hospital for Women?---No.

20 Did you have an understanding at the time I'm referring to that in order for your consultancy business to be retained by a client, a client would have to agree to the rates of charge for your consulting services?---Sir, I don't understand the intricacies of contracts.

THE COMMISSIONER: Can you just answer the question, either yes or no? Did you understand that for a client, for a, for a company or a person to agree that you do marketing work for it - - -?---Ah hmm.

- - - it should agree to pay you a rate?---No, I didn't understand that. I didn't know of that.

30 So how were you going to, what rate were you going to pay? How was it going to be determined?---I didn't know anything about that, sir.

But you've done work for other people before haven't you? Is this the first job you've ever had?---No. It's the first company that I've ever had.

Yes. When you've worked for other people - - -?---Yes.

40 - - - did agree the rate at which you were being paid?---In my contract it was outlined.

Would you ever do work for people without an agreement as to what rate you would be paid?---Not in my previous positions, no.

Well, are you suggesting that this happened in this, with the Royal Hospital for Women?---Without a pay rate?

Yes?---I believe it did, but I, I just thought as a company you didn't need that sort of thing.

You didn't need an agreement about a rate?---Yes.

Why?---I don't know. I don't, I honestly don't know how a company works and I don't have knowledge about if it's to be done.

But as a matter of common sense how is anyone to know what you were going to be paid without an agreement?---I thought that the contract with Sydvat was enough to show them my rate.

10

As long as they agreed to that?---Yes.

And, all right.

MR ALEXIS: And how do you say they, that is the hospital is it?---Yes.

Royal Women's Hospital, so we're clear, was aware of your rate based on the contract between Wish Consulting and Sydvat?---As far as I was concerned.

20

Thank you. But how did they become aware of that rate as best you understand it?---I believe Sandra took this contract and the head of department sighted it and that's how I believe they became aware of it.

THE COMMISSIONER: And, and agreed to it?---Yes.

That's what Sandra told you?---Yes.

30 And who was it at Royal Hospital for Women who according to Sandra agreed to you doing marketing services for the hospital and being paid the same rate as that under the Sydvat contract?---I believe it was Dr Neville Hacker.

Is that what your sister told you?---Yes.

MR ALEXIS: Now you hold an under-graduate degree in Marketing don't you?---And a Masters.

40 What's the Masters in?---Professional Communication.

And did that post-graduate degree have any particular major?---Ah, no particular major, no.

And I gather you're well qualified to undertake services in the marketing or communications or advertising areas?---Yes.

And I gather you well understand that in order to provide those services to a client there needs to be an arrangement with that client which identifies

what you will be doing for the client and how much that client would pay you?---No, sir. I'm not aware of that.

I see.

THE COMMISSIONER: You're not really serious, are you?---I, I am honestly serious.

10 You didn't know that before you do work for a client and be paid for it that you have to come to some arrangement with the client that you do the work and will be paid, and will be paid for it?---I thought that my contract with Sydvat going over the hospital was enough to establish my pay rate and - - -

I don't think that's an answer to the question but anyway.

MR ALEXIS: But Ms Lazarus, before you undertook any work that you understood related in any way to the Royal Hospital for Women did you take any step to have confirmed that the arrangements set out in the contract between Wish Consulting and Sydvat were accepting by the hospital?---I
20 didn't take any measure to check because I'd been told by my sister that this was all approved and it was fine.

All right. Now, can I show you, just moving to another area, the document at page 146 of Exhibit 1 which is before you. Now, firstly, could I ask you to look at the signature at the bottom of page 146 adjacent to the typed words "Applicant's signature?"---Yes.

And is that your signature?---Yes.

30 And did you sign the form and date the form as we see on the copy before you?---Yes.

And before you signed the form did you, did you complete the personal details that we see further up the form commencing about halfway down?
---No.

So did you not complete your first name and surname and the other details that we see set out there?---Yes.

40 MR HOGAN: Sorry?---Yes, no, I didn't.

MR ALEXIS: Yes, I was just going to clarify that. So your position is that apart from signing where we've indicated and dating on page 146 the writing otherwise under hand is not your writing, is that so?---That's right.

Now, do you recognise the writing under the heading "Personal details," and before the heading "Department head signoff," as that of your sister Sandra?
---Yes.

And similarly could you come over the page to page 148 and should we understand - - -

THE COMMISSIONER: 148 or 147?

MR ALEXIS: I'll come back to 147.

10 148, should we understand that the handwriting relating to your details, job title and the like is your sister Sandra's?---It appears to be so.

And if you look at the mobile telephone number on the line indicating phone number, in October 2008 was that your sister Sandra's mobile telephone number?---I think so.

THE COMMISSIONER: It's not yours?---No, it's not mine.

20 MR ALEXIS: Now when you signed the form as you've told us that you did on page 146 was the details on page 1 of the form and the details on page 3 of the form or page 148 of the bundle completed?---I don't believe that they were when I signed.

And what makes you express the belief that that material was not on the document when you signed it?---Because I believe it was, it was blank. I remember I was in a hurry and I quickly signed it and gave it to her to get it approved.

30 And should we understand that if that personal material had been written on the document when you signed it - - -?---Mmm.

- - - that it would have been obvious to you that your description of "medical researcher (PhD student)" would have been known to you as utterly false?---Well, it would have been not right.

And if you go over to page 148 had you seen what was written there again about you being a PhD student, medical researcher you would have known that that information was false?---Well, it would - - -

40 In October 2008?---Well, it would have been incorrect.

Well, why do you not accept that it was false in October 2008? I think you already told us that you weren't enrolled as a PhD student at any university at that time?---Yes.

THE COMMISSIONER: It's a blatant lie?---It's incorrect, sir, yes.

MR ALEXIS: So do we understand that if that information was on the form when you signed it you would've not signed it because it contained information, as you would have it, that was incorrect?---Yes.

Now, after you signed the document when was the first time that you saw this form with the personal information concerning you completed?---When was the first time I saw it completed? It was the first time I was presented with this document.

10 THE COMMISSIONER: When was that?

MR ALEXIS: What, in the examination bundle?---Yes.

The week before last?---Yes.

MR HOGAN: It was presented in the examination last year.

THE WITNESS: Oh yes.

20 THE COMMISSIONER: Perhaps - - -

MR ALEXIS: Well, counsel assisting knows that. It was also presented on 11 February so - - -

THE COMMISSIONER: Your interventions are often very helpful, Mr Hogan, but this is not a - - -

MR HOGAN: All right. (not transcribable) assistance - - -

30 THE COMMISSIONER: I understand that.

MR HOGAN: - - - (not transcribable) to my client.

THE COMMISSIONER: No, I understand that. I wasn't being sarcastic.

MR HOGAN: All right.

THE COMMISSIONER: I genuinely meant that.

40 MR HOGAN: Thank you, sir.

THE COMMISSIONER: But this intervention I may - I think it will be preferable to leave that because - and if the, if you're suggesting the question - that anything Mr Alexis said was misleading it's entirely open for you to stand and correct that.

MR HOGAN: Well, that was what I was making the submission that counsel's putting to my client that she first saw it when she got Exhibit 1 which is 11 February.

THE COMMISSIONER: I see. All right. And then I understand.

MR ALEXIS: Commissioner, I thought I asked Ms Lazarus when she first saw the document and she was answering by leafing through the folder which led me to put what I put but can I withdraw the question because it is
10 important to be utterly fair about this and can I just ask it in a very open-ended way. Ms Lazarus, please tell us when it was that you first saw the application for access to Network Services at page 146 to 149 of Exhibit 1 signed by you as you've indicated?---Signed by myself, when it was first that I - - -

Yes?---It was back in October '08.

But you told us that you signed it in blank?---Yes, it was blank when I - - -

20 When did you first see the document again your personal details having been completed?---Oh. That was in, like my counsel said in, in, during my first examination.

I see. All right. Thank you. Now, what was the purpose of you signing this document in October 2008 as you then understood it?---It was to gain an email address from the hospital.

Which hospital?---Royal North Shore.

30 And why did you understand in October 2008 that you needed email access at the Royal North Shore Hospital?---Sir, can I also make something clear yesterday that was misleading towards me. You said to me that have you met this doctor, that doctor and then you came to, to this doctor here Dr Gil Burton and you said, Did you see him in relation to any clinical research trials or any proposals or protocols? And I said no to that because you never asked me about this particular form because I actually did go and see him about this form.

40 The question I asked you, Ms Lazarus, is at page 606 of the transcript and we'll get it up so that we can see precisely what it was that was put and was answered?---Ah hmm.

And if you look at the transcript from line 8 and following you'll see that I raised with you personnel at the Royal North Shore Hospital at St Leonards, do you see that?---Yes.

And I asked you this question. "Have you ever met or spoken with Professor Ross Smith?" And you answered, "No." Was that true?--- Yes.

I then asked you, "Have you ever met or spoken with Dr Gilbert Burton?" It seems that there was a pause. The Commissioner then said to you, "Look, Ms Lazarus" and you answered, "No, the answer is no." You see that? ---Yes, sir, but above in the line, "Let me answer the question in relation to the subjects of clinical trials either to be conducted or having been conducted at the hospital" I said, "No." And I thought that's what you were, you were talking about.

10 But madam, that relates to the Royal Hospital for Women?---Yes.

Because you see that I asked you this question, have you ever spoken with any other medical practitioner at the Royal Hospital for Women? I then needed to add to the question because it was fairly wide, and I said, in relation to the subject of clinical trials either to be conducted or having been conducted at that hospital, and you answered, no?---But sir, I - - -

I then - - -?---I mistakenly connected it with what you asked me later on.

20 THE COMMISSIONER: Why did you do that? It's perfectly clear that one question has nothing to do with the other?---But sir, I was under a lot of duress yesterday and I, and I honestly joined those two things together.

You've made whatever point you want to make have you?---Yes.

MR ALEXIS: So are you telling me Ms Lazarus, that when you answered my question at 606 of the transcript from line 11, have you ever met or spoken with Dr Gilbert Burton and just passing over the - - -?---Yes.

30 - - - slight interruption from the Commissioner, your answer, no, the answer is no. Are you now telling me that that answer was incorrect?---Yes.

And should we understand that you now wish to tell the Commissioner that you have in fact met or spoken with Dr Gilbert Burton?---Yes, sir.

I see. Tell me the occasion or occasions when you either met or spoke with Dr Gilbert Burton?---Sir, I only met him once and it was very brief. And it was because I'd been advised by Mr Neiron to go and see him because at that time I believe the cervical cancer vaccine was coming out. And he
40 wanted to see how he can capitalise on that, the, the hype about cervical cancer. So I made an appointment to go see him with his receptionist and I saw him mid to late October. And I told him what I was doing with Medex and with the trials that were being conducted. And I told him the type of work that was being carried out by myself and for the most part he was very happy to hear it. And I actually asked him about the email address to be able to contact potential clients and he agreed to it.

Did anything else happen?---No.

So should we understand that the meeting with Professor Burton and the discussion that you've just adverted to with him - - -?---Ah hmm.

- - - occurred on 22 October, 2008?---No, on the 21st. I wasn't there on the 22nd.

So did your meeting with him and the discussion you've just adverted to - - -?---Yes.

10

- - - have anything to do with him signing the application for access to network services that we see on page 146?---No, sir. I went down to Sandra, where Sandra was, 'cause she was there that day as well and she got me the form which I signed and left with her to get filled out and approved.

So you don't suggest do you that you obtained Professor Burton's signature on this form when you met and spoke with him?---No, sir.

20

After raising the subject of wishing to obtain some email access at the hospital - - -?---Ah hmm.

- - - did Professor Burton tell you anything about how that might be obtained?---He just told me to go seek administration advice.

But tell me why was it that you needed an email address at Royal North Shore Hospital to communicate with potential sponsors for a clinical trial? ---Well I just thought it would be more official.

30

More official in what way?---Well previously I'd been using a company email and a generic email. But obviously my main source of contact with the companies was via mail because they need hard copies of proposals and background information. But because I was there and I was chatting to him I thought it would be a good idea.

40

What you thought that an email from you to a prospective sponsor that appeared to come from the Royal North Shore Hospital might be received with some credibility did you?---Yes. And it, and it also gets the hospitals name out there. That's, that's marketing in itself, the fact that their name is out there.

So can you tell me whether or not you actually obtained that email facility from the hospital?---Yes.

And can you tell me who it was that allowed that to happen or authorised that to happen?---I don't know who that was.

Well, how did you come to obtain email access at the Royal North Shore Hospital?---I filled out the form, I didn't fill out this form, I signed this form

and it was given to Dr Gil Burton to approve, some time later Sandra obtained my login and password for the email.

All right.

THE COMMISSIONER: Ms Lazarus, when you were asked, if you can just look at that particular page of the transcript which is page 606, you've been asked about that before, you have that do you?---I beg your pardon?

10 Page 606, sorry, it's 610 isn't it, yes. Mr Alexis, can you just reminder me please that, been questioning Ms Lazarus about the, the issue whether she met Professor Burton?

MR ALEXIS: Yes, it's page 606 at line 12.

THE COMMISSIONER: Yes, thank you.

Do you have that page in front of you?---Yes.

20 The, you were asked at line 8, "Have you ever met or spoken with Professor Smith," do you see that, Professor Ross Smith?---It's just a little bit above (not transcribable).

Yes, yes, do you see that?---Yes.

And you answered no?---Ah hmm.

And you had no difficulty in answering no to that, you answered no immediately, do you recall that?---But, sir - - -

30 Do you recall that?---Yes, I do.

Then you were asked, "Have you ever met or spoken with a Dr Gilbert Burton?"---Yes.

You then took a long time to answer?---Yes.

And that wasn't the first time that you had taken a long time to answer questions, certain questions, isn't that right?---Yes.

40 And that was because the questions were giving you a lot of difficulty, weren't they?---Sir, this question - - -

Should I, just answer my question please. The reason why yesterday certain questions that Mr Alexis asked you resulted in very long pauses without a reply to you was that the questions were causing you embarrassment and you were thinking of the best way to reply to them. Is that not right?---No, sir, it's not, not in, not in relation to this.

But in relation to the others?---The others were, that's right.

So this one was different to all the others?---Yes because - - -

Why was it different?---It was different, sir, because I didn't, because in the opening, in the opening of this, this whole trial or investigation when Mr Alexis read out his implication, not, what are they called, the things that I was involved in it was in relation to me apparently being a clinical
10 researcher, a clinical trial researcher and, and Dr Burton was saying that I'd gone over there as a clinical researcher and done this and that and I, I, I didn't want to associate myself with him in that way and that's why I took such a long time.

I'm not sure if I understand that, you better try again?---Sir, I didn't want to associate myself with him in relation to the clinical trials that were being carried out because I did none of that.

You read the transcript?---I read the transcript, the first - - -
20

Of Dr Burton's - - -?---No, not Dr Burton's, the one on the first day.

You have not read Dr Burton's, the transcript of Dr Burton's evidence?---I, I truly, truly haven't.

Do you know what he said about meeting with you?---Just from the first address that he said that apparently it was me who was giving him a proposal or something or something of that sort and I'd done none of that so I didn't want to associate myself with something like that. I want to, I want
30 to tell the truth.

So why, I still don't know why you were struggling with the reply when you were asked whether you'd met or ever spoken to Dr Burton?---Because I was thinking of the, the clinical trials and the protocols that I was supposedly to have given him in the hand.

So why didn't you simply explain that?---Because Mr Alexis just kept on going on.

40 Do you want to say something Mr Hogan?

MR HOGAN: Yes, sir. Only in relation to lines 3 and 4 of the question at the beginning of the page.

THE COMMISSIONER: What page?

MR HOGAN: That page. Counsel Assistants question, her provider at 304 and - - -

THE COMMISSIONER: This has nothing to do with the next question Mr Hogan. I've already put that.

MR HOGAN: Yes, yes, I know.

THE COMMISSIONER: That, the (not transcribable) at line 3 and 4 concerns the question at 1 and 2.

10 MR HOGAN: Yes, sir.

THE COMMISSIONER: But question 5 and 6 is an entirely separate topic.

MR HOGAN: Yes, I see that, sir, but the witness has (not transcribable)

THE COMMISSIONER: Well she can, Mr - - -

MR HOGAN: - - - earlier in her evidence today. Anyhow, I'm not, I apologise for interrupting.

20

THE COMMISSIONER: Please sit down Mr Hogan. I'm still trying to understand your answer, Ms Lazarus?---Yes.

You were saying that you had difficulty with the question whether you'd ever met or spoken with Dr Burton because?---Because I didn't want to get in trouble for something I never did because someone's confusing me with another person.

So you knew that Dr Burton was confusing you with Sandra?---Yes.

30

How did you know that?---Because she was the one who was approaching him about the protocol and the clinical trial. I only met him once.

Then why didn't you just say that?---Because I didn't get a chance to say it.

There was a long pause, so long that it compelled me to press you for a reply. Nobody was interrupting you?---Sir, I, I just thought I had to address the question that was being asked of me. I still don't know when I can elaborate on something or when I can interject and say, oh hold on, I remember this or I was doing that. I still don't know whether I'm allowed to do that.

40

Yes, Mr Alexis.

MR ALEXIS: It is perhaps clear from your evidence, but can I just confirm in relation to the contract that you told us you entered into with Sydvat in October, 2007 there was only ever the one contract wasn't there with Sydvat?---Yes.

In other words there was no further contract in relation to marketing services by the time your sister Sandra was speaking with Professor Ross Smith at the Royal North Shore Hospital and speaking with Dr Vaux or Professor Burton?---Not to my knowledge.

So if I could ask you to go to page 209 of Exhibit 1, which I think is the first of the series of Wish Consulting invoices to the Royal North Shore Hospital dated 29 September, 2008. Do you see that?---Yes.

10

Now I think we've been through this but we should understand that you never saw the form of invoices that were generated by Sandra to the Royal North Shore Hospital on behalf of your company. Is that so?---Yes.

And should we make the same assumption that you did earlier concerning the date of the invoice and the likely date of its creation?---Yes.

Now who was it at the Royal North Shore Hospital that you understood had either agreed to at least indicated that they would accept the invoices and have them paid?---I believe that it was either Dr Burton or one of the other doctors that you, that you mentioned - - -

20

Right?--- - - - Ross or - - -

And can you tell me please how you came by that understanding?---From my discussions with Sandra.

All right. So she told you did she that someone at the Royal North Shore Hospital had agreed to pay Wish Consulting \$9,000 a month for marketing services in relation to clinical trials?---Yes.

30

And you can't recall precisely who that was?---No.

Now, did you independently of what your sister told you take any step to obtain some confirmation from anyone at Royal North Shore Hospital that your company had been engaged to provide the hospital with marketing services in relation to a clinical trial?---No, sir, because she'd told me that it was all fine I, I assumed it was.

All right. Now, can I come finally to the documents contained within MFI 2 and perhaps if you can open the examination bundle as well to page 277. Now just starting with MFI 2, the first document seems to be a copy email to both yourself and your sister from Mr David Pleiksna. Do you see that? ---Yes.

40

Dated 21 November, 2009, do you see that?

THE COMMISSIONER: To what document are you referring?

MR ALEXIS: It's the very first page of MFI 2.

THE COMMISSIONER: Yes, the very first page?

MR ALEXIS: Yes. Now - - -

THE COMMISSIONER: The very first page?---Of the other one,
Commissioner.

10

Thank you, thank you?---You're welcome.

MR ALEXIS: Now, should we understand that the enclosure or the attachment to the email is immediately behind the copy email where we have the page headed "Inter Medical" and the description "corporate sponsorship programme for Medex test clinical trials calendar year 2010? ---Yes, I can see that.

20

So should we understand that this was a draft sponsorship programme that either you had prepared or at least assisted in the preparation of that he was sending back to you, is that so?---I believe that he did this one himself and he wanted my assistance with it.

I see, thank you?---Dr, sorry, David Pleiksna.

All right. And if we just turn over to the next page which appears to be a table of contents although it's headed "Document outline," do you see that? ---Yes.

30

And if you come down to what seems to be section 5 of the table you see the heading, "What clinical trials are completed to date and what are the findings?"---Yes.

Do you see page 12, do you see that?---Yes, I see that.

And may we understand that when he sent this to you in November 2009 you as a result of receiving it reviewed the document to determine its accuracy?---Sir, I looked at it but I never got around to reviewing or editing or otherwise altering this document in any way.

40

All right. But did its contents appear to you at least to be consistent with what you had understood historically had occurred to that point in time on the subject of clinical trials that your sister was involved in?---I can see Royal North Shore Hospital trial here.

Yes, if you look down the subparagraphs under the heading I've directed your attention to there's a reference you'll see to a trial in Milan?---Ah
hmm.

And then just jumping down a few lines a reference to Nepean Hospital, Strathfield Private Hospital after that Concord Hospital and then there's the two references we see to the Royal North Shore Hospital?---Yes.

And when you received this document I gather you appreciated that that section of the document set out the history of clinical trials that had been conducted some of which your sister had conducted herself, is that so?
---Some of these appear to be the ones that my sister had conducted or was
10 conducting. The other ones I had no knowledge of.

All right. So we can be clear then that the reference to Nepean Hospital and the following entries in 5.4 to 5.7 you well understood as being clinical trials that your sister had conducted previously, correct?---Conducted or was conducting and again this was, this was a draft so nothing was set in stone or accurate.

All right. Now, could I ask you to come through please to page 3. And
20 should we understand when you received this document that it was a document when in its final form to be executed by the Managing Director Mr Vern Pleiksna and the other persons referred to on page 3?---That was my understanding.

And that was then going to be used for distribution to prospective corporate sponsors in relation to future clinical trials, is that so?---That was my understanding.

Thank you. Now, would you mind just turning through please to page 14 of
30 this particular draft document, you'll see the numbers in the bottom right-hand corner. And do you see firstly, paragraph 5.6 on that page a reference to the Royal North Shore Hospital and a summary of the trial that was said to have been completed in early 2009?---Yes, I can see that.

Thank you. And would you just look at page 277 of Exhibit 1 while having page 14 of MFI 2 open. And if you could look particularly at this letter that appears to have been signed by Dr Gilbert Burton?---Yes.

Do you have that?---Yes.

40 Now, before you received this email from Mr Pleiksna in November 2009 had you seen this letter apparently signed by Dr Gilbert Burton dated 6 May, 2009?---No, I had not.

And when you came to look at this draft document did you see that the researcher's conclusions that you'll see in italicised script underneath the table headed Area of Disorder, have you located the italicised script?---In the researcher's conclusions?

Yes?---Yes.

Now, if you just look at Dr Burton's letter you'll locate as the third paragraph, the paragraph commencing, "The results of the Medex test were reviewed." Do you see that?---Ah hmm.

10 And just take a moment but I want to suggest to you that it appears that the researcher's conclusions in this document have been lifted from Dr Burton's letter. Just have a look at the two documents and tell me whether you accept that that is so?

THE COMMISSIONER: The wording is the same?---It appears to be so.

20 MR ALEXIS: So should we understand that in November 2009 when you were reviewing this draft document you understood that there had been a trial at the Royal North Shore Hospital and that the researcher's conclusions in relation to that trial were those as expressed on page 14 of this draft document?---Sir, all I can tell you about this particular document is that I can honestly say that I only just flicked through it, I didn't look at the, at the detailed, details that were within this document to make any conclusions or draw any conclusions or to say has this happened then or is this going to happen. To me this was just a draft and I honestly just flicked through it and didn't take note of anything that was in there.

But madam, as I understand it, you had been spending something in the order of about 100 hours a month on the provision of marketing services for both the Royal Hospital for Women and the Royal North Shore Hospital? ---Yes, that's right.

30 And surely in the course of spending so much time and dealing with so many prospective sponsors, you had some idea not only on the trials that had been conducted by how many patients had been tested using the device. Is that so?---Yes.

And also what the results of those tests were?---A basic grasp of the results.

40 So are you telling the Commissioner that by the time we received the email in November, 2009 you didn't, you didn't have a very clear understanding as to what pilot study had been conducted with respect to cervical cancer patients at the Royal North Shore Hospital?---I believe that there was a pilot study that was being conducted. That, that's the extent of my knowledge.

I see. So when you were communicating with prospective sponsors in the 2008 year - - -?---Yes.

- - - and the 2009 year when you were asked about any testing of the device concerning cervical cancer patients you were able to tell them that there was a pilot study at the Royal North Shore Hospital and that's all?---I didn't

specify whether they were pilot studies or whether they were actual full clinical trials. I just specified in there a general understanding that there were being trials conducted at the hospital.

And do you say to the Commissioner that despite spending all the time that you have claimed that you had doing marketing work from at least 6 May, 2009 you didn't see Dr Burton's letter that we've reproduced at page 277 of Exhibit 1?---No, I didn't.

10 And that was not a document that you ever used as part of any marketing work that you did on behalf of either hospital or in the promotion of future clinical trials?---No.

Don't you think that the results of the preliminary test by someone like Professor Burton might've been a useful tool when trying to promote some interest in corporate sponsors depositing funds to conduct future trials?--- Yes, it would have been sir, had I seen it but I hadn't so - - -

20 All right. Now can I just come to the next part of this document which in 5.7 refers to a trial summary, which refers to it also having been completed in 2009. Do you see that?---Yes.

And it refers to a blinded clinical trial with respect to symptomatic prostate cancer patients - - -?---Yes.

- - - tested with the Medex device. Do you see that?---Yes.

And do you see the reference to the trial involving 48 patients?---Yes.

30 Now could you please turn to page 289 of Exhibit 1. I do apologise, Ms Lazarus, I should start you at 288. Now at page 288 do you see the first of a two page letter to Inter Medical, which on the second page appears to have been signed by a Dr Vaux. Do you see that?---Yes.

Now before receiving the email from Mr Pleiksna in November, 2009 had you seen this letter under the hand of Dr Vaux relating to the prostate cancer clinical research trial?---No, I hadn't.

40 Now could you look at the researchers conclusions again at the foot of page 14 in MFI 2, which continues or further, I'm sorry which is the two lines in italic script at the foot of the page. Do you see that?---Yes.

And could you look at the concluding paragraph of Dr Vaux's letter and do you agree that those conclusions appear to have been lifted from that letter from Dr Vaux?---Yes. Yes.

Now can you tell me when you first learnt of the conduct of any clinical trial involving prostate cancer patients at the Royal North Shore Hospital?

---When I first learnt of it?

Mmm?---It's hard for me to pin point the exact date.

Approximately?---I can only be general in regards to that.

10 All right. Well, should we understand that at some point in the 2009 calendar year you learnt that some 200 patients had been tested with the device and there were results available to show the accuracy of the Medex device as a diagnostic tool to detect prostate cancer?---Yes.

Where did you come by that information?---Sandra gave me that information.

When?---Around the end of, mid 2009, end of, I'm not sure. I can't approximate what exact date it was.

But you tell us that you never saw Dr Vaux's letter?---No.

20 Either in June 2009 or at any other point in time before November 2009?
---Yes.

Wouldn't the results of that clinical trial involving a significant number of patients, 200, have been an important piece of information for you as the marketer to have when seeking to procure funds from the corporate world to sponsor future clinical trials?---Sir, this particular letter wasn't shown to me, but the results were. The results were shown to me.

30 So you did understand the results of the clinical trial involving - - -?---Yes.
- - - Dr Vaux's patients?---Yes.

And what did you understand that result to be?---A positive one for the Medex device.

But what, what does that mean?---How do you, what do you want me to say?

40 Well if you were speaking to me as a prospective sponsor and you were asking me to donate money - - -?---Yes.

- - - and you told me that there had been a very positive trial involving 200 patients and as a sponsor I said to you, what does that mean?---Mmm.

What does a positive result mean? What would you have said?---That it has high levels of accuracy, specificity.

And if I said to you, well what do you mean by a high level of accuracy?

---In that it can detect abnormalities.

What sort of abnormalities?---Such as impedances in the, the body that indicate that there is disease present.

In June, 2009 what would you have told a corporate sponsor as to the level of accuracy of this device in the detection of prostate cancer?---I would have taken the results, which I did, and showed them those.

10 And those results you say you had despite not having seen Dr Vaux's letter. Is that so?---I hadn't seen the, you asked me whether I'd seen the letter sir, and I said I hadn't. But I had seen the results because I was given the results in documentation that I'd been given by Sandra.

Well just coming back to this draft sponsorship programme document that I've been taking you through. I think I'm correct in suggesting to you that there doesn't seem to be anything in there with respect to the conduct of any clinical trial at the Royal Hospital for Women?---That's because, sir, this again is a draft and it's, it's honestly not my work to its complete extent.
20 And I don't know how I can tell you that the work was done when I don't have my documents because they were taken away. That's the frustrating aspect of all this.

THE COMMISSIONER: Who took them away?---I had to give them back to Mr Neiron. I was forced to give them back, so I don't know what else I can say, sir.

MR ALEXIS: Can I ask when it was that you gave all your material back to Dr Neiron?---It was during November, October, November, November
30 some time.

But no doubt all the detail would have been fresh in your mind by that stage because you'd been working so long and so hard on all this?---Well, yes.

So when you got this document did you ever respond to Mr Pleiksna and say you've missed out on the trial results at Royal Hospital for Women?
---No, I didn't actually, I didn't respond to him at all because at that point I had given up on everything that was happening with the trials and everything to do with Medex.
40

Yeah. You see, if you look at page - - -?---But the thing is, the thing is I still believe in the validity of the device and its potential in, in health so if I was still working for that company I would thoroughly enjoy it.

So if you look at page 15 you'll see under the heading "Medex test research proposal," that in numbered paragraph 2 it's indicated that research will be conducted and then there's a list of hospitals, the first of which we see is the

Royal Hospital for Women, do you see that?---To which page are you referring?

Page 15 of the document that I've just been taking you through contained within MFI 2?---Yes.

And just so we're clear, you see that the reference to the Royal Hospital for Women seems to be included in a section that deals with research that will be conducted, do you see that?---Yes.

10

So you would regard that as an obvious error, would you?---(NO AUDIBLE REPLY)

Because a trial had already been conducted at the Royal Hospital for Women?---Well, it was a pilot, it's not actual full trial.

All right. Well, you understood that a pilot had been conducted at the Royal Hospital for Women?---Yes.

20 THE COMMISSIONER: And that's all?---I beg your pardon?

And that is all?---Yes.

30 So that is, should we understand, similar to the pilot that is referred to on page 14 in paragraph 5.6 which relates to what Professor Burton's letter of 6 May, 2009 tells us?---I'm, I'm sorry, I'm sorry, can I just go back to Royal, to the question you asked previously where you said the research will be conducted in Australia, New Zealand and in rah, rah, rah, Royal Hospital for Women and Royal North Shore Hospital? I was aware that Royal North Shore Hospital had a pilot but at Royal Hospital for Women I believe that there was a, there was a full-blown trial, a comprehensive trial being conducted.

All right.

THE COMMISSIONER: And Royal North Shore?---Just a pilot to my knowledge.

40 MR ALEXIS: Now, Ms Lazarus, what was the result of the pilot study that you say was conducted at the Royal Hospital for Women?---I hadn't had results about that, just indications as to where Sandra was up to with the patients and how it was going.

All right. Well, you did understand I thought you told me a moment ago that a pilot study had been done at the Royal Hospital for Women?---No. I said that I was aware that a pilot had been conducted at Royal North Shore Hospital for Women (as said) and I believe it would have been conducted at Royal for Women as well.

And I asked you whether you were aware of the results of that pilot study at the Royal Hospital for Women, do you remember that question?---Yes.

And you answered my question by saying that you were not aware of those results?---No, I, I answered incorrectly.

All right. Well, tell me what the correct answer to that question is then?
---I was aware of the results which I can't remember at the moment because
10 it was three years ago.

When did you become aware of those results and, just so we're clear, the results from the pilot study at the Royal Hospital for Women?---Some time in 2008.

And what did you then do with those results as you then understood them in terms of the work that you were doing?---I used them in some of my pitch material.

20 And so we should see should we in relation to documents which record the steps taken in your pitch as you've described it some reference to the results of that pilot study at the Royal Hospital for Women, should we?---In my documentation that I have?

Mmm?---No, you won't see it because this is just an indication of some of the work that I was doing. This is not my, this is not my work in its entirety.

All right. Well, can I just come through to the spreadsheet that we touched on yesterday afternoon and I don't want to take you to all of them but
30 should we understand that if we look at the first page of the A3 size spreadsheets you have made a record of the particular company's name, the time at which some contact was made, the contact details of the person contacted and details concerning the address of the respective sponsor and some details concerning the background of that sponsor. Is that so?---Yes.

And is that the scheme of this document in relation to each of the prospective corporate sponsors that we see listed on each page?---Scheme as in how?

40 Well, the way the scheme of the, the, the preparation of the database which is printed out and forms part of this particular MFI?---May I have a chance to explain exactly - - -

Certainly?--- - - - what this is?

Ah hmm?---Okay. There are three documents here which form a part of the database that I was using, my final database which contained more than 200 contacts and, and these, this database had information such as, you

know, background information on the company, geographical scope of the company, background information, legal limitations, all those things comprised of, all those things indicated the information I needed to be able to market to them, that is, prospective sponsorship and, sorry, can I take a moment, Commissioner, I'm just feeling really - - -

10 THE COMMISSIONER: Yes?--- - - - overwhelmed with this and I'm feeling very frustrated because I don't have my documents to show you and all that I have here is rubbish that remained on a USB that I happened to have come across and the frustrating part is I can't show you everything that I did.

You've explained that, Ms Lazarus.

MR ALEXIS: Commissioner, can I indicate to Ms Lazarus through you that I don't propose being very long, I just want to understand a little more about the spreadsheet documents and then I propose to finish this examination. I'm not sure if that assists Ms Lazarus in terms of her request for a break.

20 THE COMMISSIONER: Do you want a break, do you want - - -?---No, sir, it's okay.

MR ALEXIS: All right. Thank you. Now, Ms Lazarus, you told us yesterday that these documents only form a small part - - -?---Yes.

- - - of what was contained on the laptop computer that was returned to Dr Neiron. Is that right?---Yes, that's correct.

30 But in relation to these A3 spreadsheets they record don't they information about the prospective sponsor and the dates that contact was made, is that so?---Yes, some of, some of the contact that was made.

And should we understand that this database was designed in part to provide you with an ongoing record of contact so that if for example you wanted to contact a particular sponsor you could go into your database to see what the last communication was, where the communications were up to so that you could effectively pick up from where you left off previously, is that so? ---Yes, that's right.

40 And the database was also intended to record, not every word of course, but certainly the content of prior communication so that you could understand by reference back to your database - - -?---But not all, but not all contact was noted down on the database.

Sure, but you certainly recorded the dialogue that you'd had so that you could go back to it and understand what communication you'd previously had with the particular prospect, is that so?---Some, yes.

So you're telling me that you didn't record all of the detail but only some?
---Yes.

Did you ever record in your database information that was conveyed to prospective sponsors about the results of clinical trials or pilot trials that had been conducted by your sister at any hospital up to the time of that communication with that prospect?---No, there was no need for me, this was for my own record, there was no need for me to include that information in there.

10

But if you were communicating with a prospective sponsor wouldn't it have been important to record what you had informed that sponsor about in relation to the results of pilot tests or other clinical research studies that had been undertaken to that point in time using the Medex device?---Sir, at that time I was aware of where the studies were up to and what I was giving to the clients in relation to information about those trials pilot, the pilot or full trial and I, I didn't feel the need to put that down here.

20

But you've told us that in June 2009 or at least by June 2009 you understood that there had been a full-blown study in relation to prostate cancer patients at the Royal North Shore Hospital, you've told us that haven't you?---I've told you that I assumed that it was around that time, yes.

And you've told us that you understood from your sister Sandra what the results of that test were haven't you?---Yes.

And you understood that it was a positive test?---Yes.

30

Well, did you convey that information to the prospects that you were speaking to after June of 2009?---Yes, I did convey that to them.

And no doubt you conveyed that to them because you wanted to excite some interest - - -?---Yes.

- - - and procure sponsorship funds for the future?---Yes, that's right.

40

Well, did you make any record in your database as to the information that you conveyed to the prospect at that time?---Not in my database but I was making note of this as I was going, sir.

Where did you make that note?---On my laptop.

But not in the database?---No.

I see. Why would you not make that note in a database that had been set up specifically for that purpose?---Because there was no need for me to do that, sir.

And why is that?---Because I had a separate document that outlined where the trials were up to and what I was doing with the sponsors.

But I thought you just said a moment ago that you took a note of what you conveyed to each prospective sponsor about results of the clinical trials after June 2009?---Yes, I did but not, I didn't record that on this particular database.

10 What, it was recorded on another database was it?---No, just on a document.

And that document was on your computer?---Yes.

And I suppose that's not reproduced anywhere in MFI 2?---No.

Commissioner, that's all I wish to examine Ms Lazarus on to this point in the inquiry and I'd ask that she be stood down and I can indicate that I wish to recall her towards the end of the inquiry.

20 THE COMMISSIONER: Yes.

MR HOGAN: Sir, in relation to MFI 2 the folder of material that counsel assisting is taking Ms Lazarus through I understand that's to be tendered, if it can be tendered now.

THE COMMISSIONER: Are you tendering MFI 2?

30 MR ALEXIS: Look, it should become an exhibit and it's not inconvenient for it to become an exhibit now. So may I tender MFI 2. And, Commissioner, with my learned friend Mr Hogan's permission could we uplift the original exhibit for the purpose of having every document in the folder paginated for ease of future reference?

THE COMMISSIONER: You have no objection do you?

MR HOGAN: No, sir.

THE COMMISSIONER: No. Exhibit 39 is the bundle of Ms Michelle Lazarus' documents.

40 **#EXHIBIT 39 - BUNDLE OF MS MICHELLE LAZARUS'
DOCUMENTS (PREVIOUSLY MFI 2)**

THE COMMISSIONER: Ms Lazarus, did you ever mark the transcript of your evidence yesterday?---No, sir.

And just some questions on another topic. When you met Professor Burton did you introduce yourself to him?---Yes, I did.

Did you say that you were Michelle Lazarus?---Yes.

Is that the first time he'd ever met you?---Myself, yes.

And what did you discuss?---The Medex device, how I was involved with the trials that were happening in New South Wales.

10

The trials carried out by Sandra?---Yes.

And you mentioned Sandra?---I mentioned I was her sister. I didn't mention that she was carrying out the trials.

Did he appear to know Sandra?---He didn't say anything of it.

So he could never have confused Sandra with you?---Well, I don't think so, so I don't know why he is.

20

How do you know he is?---Because I was told to come in and stand up and he pointed out whether I was Michelle or Sandra.

And when you were asked about whether you'd met Professor Burton yesterday the reason that you took so long in replying you say wasn't because you didn't want to get Sandra into trouble?---No, the reason why I took so long was because, it had nothing to do with Sandra because, sir, you'd already told me that I need to speak the truth and the consequences of providing false evidence. I didn't want to be mistaken as a person who was approaching him about clinical trials or proposals.

30

I did ask you before during the course of yesterday's examination whether the reason that you took so long was because you didn't want to get Sandra into trouble. I'm not saying I used those very words but that was the import of the questions, do you remember that? I'm not talking about this question?---No, no.

On that other question?---At the start about those bank statements and whatnot it wasn't that I didn't want to get - it was a mixture of embarrassment and, I don't know.

40

It had nothing to do with not wanting to dob Sandra in?---It's not about dobbing, sir, she's my sister and I have strong feelings towards her so - - -

So it was not about getting her into trouble, that wasn't the cause of your difficulty in answering the question?---It was a mixture of embarrassment and disappointment as well.

Disappointment about what?---About what was being done here.

What do you mean?---This whole process, sir, I'm, I'm not at all happy with it. I've never been in this environment and - - -

That then was one of the reasons for taking a long time to reply to Mr Alexis' question which had the potential of getting your sister into trouble?
---No, sir, no. Are you speaking about the first line of questioning or the - - -

10

(not transcribable) take the questioning about the bank statement?---Yes.

Yes what? What do you mean by yes, I'm sorry?---I mean yes as in the reason why I took so long was because I, again, I was embarrassed and shocked and - - -

Didn't want to get Sandra into trouble?---I didn't want people to think that she was a bad person because she's not.

20

I see. But that had nothing to do with the delay in answering the question about Professor Burton?---No, sir, that was a different thing.

I see. All right. Yes, thank you.

MR HOGAN: Sir, there are a number of documents which I provided to counsel assisting, for instance, email traffic between the Lazarus sisters. Since Ms Lazarus will be called later in the week I'd prefer any questioning - - -

30

THE COMMISSIONER: Yes, of course.

MR HOGAN: - - - (not transcribable) documents - - -

THE COMMISSIONER: No, it's taken for granted that both in relation to Sandra Lazarus and Ms Michelle Lazarus that counsel assisting will be asking more questions of both of them and when he's complete questioning, all counsel having an interest will be given a full opportunity to ask whatever questions they wish.

40

MR HOGAN: Yes, thank you, sir.

THE COMMISSIONER: Thank you, Ms Lazarus, you are excused for the time being but you will be recalled.

THE WITNESS WITHDREW

[11.59am]

MR ALEXIS: Thank you, Commissioner. Professor Walters has been here since 10.00am. I was proposing to call him next and I'll do that immediately unless there's any application for a short break. And unless there is I'll call him now, Commissioner.

THE COMMISSIONER: Yes.

MR ALEXIS: I call Professor William Walters.

10 THE COMMISSIONER: Please be seated, Professor Walters.

MS FURNESS: Commissioner, I appear for Professor Walters.

THE COMMISSIONER: And do you want a section 38 order?

MS FURNESS: No, Commissioner.

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

20

PROFESSOR WALTER: I would like to give it under oath.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Yes, Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name William Alan Wilcox Walters?---Yes.

10 And, pardon me, is your current position of employment that of Executive Clinical Director at the Royal Hospital for Women?---Yes.

You've held that position since 2006?---Yes.

Thank you. And in this matter is it the case that you have provided two statements of evidence to ICAC investigators, let me identify them by date, the first of 9 June, 2010 and the second on 24 November, 2010?---Yes.

20 Thank you. Could I provide you sir, with a copy of each of those statements, with a copy for you, Commissioner.

THE COMMISSIONER: Thank you.

MR ALEXIS: And professor, would you look at each of those two documents and confirm that they are the statements that you provided on the dates I have just indicated?---Yes.

Thank you. And is the content of those statements true and correct to the best of your ability?---Yes.

30 Thank you. I tender each of those statements, Commissioner.

THE COMMISSIONER: Yes. The statement by Professor Walters of 9 June, 2010 is Exhibit 40. And the statement by Professor Walters of 24 November, 2010 is Exhibit 41.

#EXHIBIT 40 - STATEMENT OF PROFESSOR WALTERS DATED 9 JUNE 2010

40

#EXHIBIT 41 - STATEMENT OF PROFESSOR WALTERS DATED 24 NOVEMBER 2010

MR ALEXIS: Now sir, should we understand that you hold the qualifications and experience set out in paragraph 4 of your first statement? ---Yes.

And in paragraphs 5 and 6 you deal with the subject of your academic appointments. Is that so?---That's correct.

And in paragraph 7 you tell us that you are the current chair of the Northern Hospital Network Human Research Ethics Committee?---I was at that time. But in fact, I handed over chairmanship yesterday.

10 I see. And we should understand that in relation to the events that we're concerned with in the 2007/2008 years concerning the Royal Hospital for Women, you were the chair of that committee?---Yes.

And that committee oversaw a number of hospitals that included the Royal Hospital for Women at Randwick?---That is correct.

Thank you. And with respect to procedure concerning the obtaining of ethical approval do you set that out for us in paragraph 11 of your first statement?---Yes.

20 Now turning just some detail concerning Ms Sandra Lazarus, should we understand in paragraph 13 and paragraph 14 of your statement that you came to learn that she had approached Professor Hacker at some point by early/mid 2008?---Yes.

30 And are you able to recall to mind when it was that the approach she made to Professor Hacker came to be known to you?---I think it was around April or May, that I might have understood that this person was approaching Professor Hacker. But it's common for these matters to be discussed at a departmental level, of which Professor Hacker was head of a department. So it may be that I heard about it a bit later than that.

All right. And how should we understand the relationship between your role as Executive Clinical Director of the hospital and Professor Hacker as the Director of the Gynaecological Cancer Centre at the hospital?---He reports to me in the line of communications within the hospital.

And that was the position in 2007 and 2008?---Yes.

40 Thank you. Now in paragraph 13 if I may just go to that, you make reference to speaking with Professor Hacker about a proposal to undertake a clinical trial as part of her PhD studies through the University of Sydney. Do you see that?---Yes.

And is that, should we understand something that Professor Hacker informed you of?---Yes, that is correct.

And in paragraph 14 there's also reference to you becoming aware that Ms Lazarus was being supervised as part of her studies through the University of Sydney by Professor Ross Smith, based at Royal North Shore?---Yes.

At the time of learning of this did you know Professor Ross Smith?---No, I did not.

And did you understand based on what Professor Hacker had said to you that the proposed arrangements with Ms Lazarus related to her studies as a PhD student of the University of Sydney?--- Yes.

10 Now can I ask you when learning of this from Professor Hacker, did you take any steps to verify the information that you were informed of concerning Ms Lazarus' status either as a university student or as a PhD student?---I in fact spoke to Professor Smith by telephone. And he informed me that that was the situation, that she was a PhD student and he was her supervisor.

So the step you took just to answer my question is to pick up the telephone and speak with Professor Smith at Royal North Shore?---Yes.

20 Now in paragraph 17 you refer to the role of Ms Madunic as the Deputy Director of Clinical Services. Do you see that?---Yes.

And I just want to come to the subject of the identification card which you deal with at the end of that paragraph. Do you see that?---Yes.

And you there tell us that a card was provided to Ms Lazarus after and I quote, "the usual vetting and police criminal checks had been completed." Do you see that?---Yes.

30 Could you tell us what in 2008 you understood to be the usual vetting and police criminal checks?---Yes. Those were the, the criminal check is the one that is standard in the public health service. And that check was performed and information was also available at that time that a similar check had been performed at St Vincent's Hospital where the (not transcribable) trial was proposed. So the Deputy Director of Clinical Services would have employed that, that investigation.

40 So apart from what's described as the criminal record check or the police criminal check, what, what should we understand is being involved as part of usual vetting, beyond that particular check?---Information about qualifications, occupation, those sort of details which are used for anybody who is seeking some sort of attachment within the hospital.

All right. And in terms of checking qualification, I gather that involves checking with the university to which the prospective employee or student says that they're enrolled at to determine that in fact they are a student. Is that what you mean?---Not, that's what I mean, but it would not necessarily mean that it would have to be a direct contact, it could be a document that is

provided by the, by the person, indicating their, their enrolment as a student.
So - - -

So is what you understood should have occurred before an identification card was provided to Ms Lazarus, that firstly some documentation should be at least sighted by someone with authority to confirm that in fact she was a student at the University of Sydney and enrolled as a PhD student?---Yes.

10 Now, do you know whether or not anyone actually asked for that and checked it?---Ah, I'm not- - -

In this particular case, I mean?---I'm not aware that, I'm aware that Vanessa Madunic would have done that.

Mmm. All right. Now, you refer to checks in relation to occupation. What did you mean by that?---In regard to a statement of, a document from the place of occupation or the place of enrolment in the case of a student.

20 I see. So you refer to the checking of qualifications and the checking of occupations, depending upon whether or not the prospect is a student or is seeking employment?---That's right.

I see. Now, we know that a check is also ordinarily made in relation to working with children, but apart from that and the criminal record check and the check you've referred to about qualifications or occupation, is there any other check that you include in the description, usual vetting?---Sometimes we obtain, we, we obtain references or referees' comments about a person for such an attachment to the hospital.

30 Mmm?---Whether that was obtained in this case or not, I'm not aware.

Now, just going back to your telephone conversation with Professor Smith at Royal North Shore, did he tell you that Ms Lazarus was seeking to be re-enrolled as a PhD student?---No. Well, I don't remember that, but that is possible. I mean, I discussed enrolment, I discussed whether she was a student of the university, I didn't specifically ask about the specific, specific details of that enrolment, whether she was on a list for enrolment or whether she was actually enrolled.

40 But if she was seeking enrolment or seeking re-enrolment, that at the time of her discussion with Professor Hacker, the content of which had been conveyed to you by him, as you've told us, it would have been fairly clear, wouldn't it, that she wasn't in fact a PhD student?---Yes, if she was not enrolled.

Correct?---Yes.

And did you ever have in mind in early 2008 that Ms Lazarus was anything other than an actual enrolled PhD student with the University of Sydney?
---No.

So just so I'm clear with that answer, you accept that that's what you understood her status to be?---I understood her status to be an enrolled student, yes.

10 All right. Now, in paragraph 21 of your statement, having dealt with the correspondence from the Scientific Review Committee dealing with the ethics application that had been made, you tell us that Ms Lazarus nor anyone ever replied to the committee's letter. Do you see that?---Yes. 21?

Yes, 21?---Yes.

And you're familiar with the letter, aren't you, from the Scientific Review Committee of 25 June, 2008?---Yes.

20 I can show it to you if you like, but I think we're clear on what that is. Now, as the chair of that committee, did you ever come to deal with any ethics application involving any clinical trial at the Royal Hospital for Women using the Medex device?---Yes, but not until it had been brought to my attention by the Research Support Office, because there is a subcommittee which deals with the scientific value of any project application and that Scientific Review Committee is not a committee that I sit on. That committee, having decided upon the merits scientifically, then refers it on to the full Human Research Ethics Committee which is the committee I chair. So it was only brought to my attention by the Research Support Office at some later date that this trial proposal had been made and
30 had been refused and that the, the suggestion was it be modified and the questions answered by that, by that researcher and then it would be reviewed again. However, at that time there was, to my knowledge, there was no reply to that request from the Scientific Review Committee.

All right. And by that request, you're referring to the letter of 25 June, 2008?---Yes, yes.

40 Now, sir, can I just explore this with you. If a supervising professor in relation to the proposed conduct of a clinical trial that was pending approval by the Ethics Committee, nonetheless proceeded to permit the conduct of either such a trial or a small pilot study involving say eight to ten patients, what would be the consequence in 2008 for the supervising professor having allowed the trial to continue in those circumstances?---Well, it, that would, that would be a disciplinary matter probably within the health service because the, it's quite clear to all the staff in the health service that trials must not commence until there has been ethical approval and that ethical approval must be given in accord with the national statement for the conduct of research, as provided by the federal government.

Mmm. And if the suggestion is made to you that approval was given notwithstanding the absence of ethical approval to conduct- -

THE COMMISSIONER: Approval to carrying out the tests.

MR ALEXIS: I'm sorry, Commissioner?

10 THE COMMISSIONER: That approval to carrying out the test was given.

MR ALEXIS: Yes.

MS FURNESS: Well, the pilot, to be more precise I think.

THE COMMISSIONER: Yes. So I think you just, do you mind starting your question again, Mr Alexis?

20 MR ALEXIS: Yes, yes. Commissioner, I'm not sure I need to ask the question with respect. Now, can I come to a different matter, professor.

THE COMMISSIONER: Sorry, may I just, you said it was a disciplinary matter should that occur. Is it regarded as a serious, if it is established that the investigating professor, the person in charge of the research, did allow research to be done or approved research being done without ethics approval, is that regarded as a serious matter or not?---Yes, I think it would be regarded as, as a serious matter.

30 And professor, if the particular research is research of a kind that does not involve any physical intervention as regards the patient and simply involves the application of an instrument to the patient's skin as this apparently the Medex instrument does require, would that, would that have any influence on the decision?---Well, it, it might have. I mean, I'd have to say, Commissioner, I've not had experience of any case where a professor or any supervisor has gone ahead with a project without the requisite ethical approval. If, I mean, I, I would say that it's a matter of principal rather than the degree of intervention that might be required.

40 I understand. And so I understand from your answer that it's really an unheard of notion that any, any senior professional, medical professional in the hospital service would authorise any kind of research without ethics approval?---Yes.

Yes, thank you.

MR ALEXIS: And, professor, if and I stress if, approval had been given for the conduct of a pilot study involving eight to ten patients using the Medex device at the Royal Hospital for Women without ethical approval having

been obtained that was not something that you were aware of, is that the position?---No, I was not aware of that.

Now, in paragraph 22 of your first statement, I just wish to clarify what you tell us in the first part of that paragraph, you see there you refer to Ms Lazarus and you refer to her as having stated that she had a consignment of the Medex devices which were to be paid for by a particular pharmaceutical or medical company known as Sydvat, do you see that?---Yes.

10 Now, are you intending to convey there that Ms Lazarus stated that to you or, or how should we understand what you mean, what you're saying in that paragraph I should say?---I think the, the letter was brought to my attention rather than Ms Lazarus personally drawing it to my attention.

Thank you?---So I saw a copy of the letter.

And just so we're clear could Professor Walters be shown Exhibit 1, please, opened at page 95. And is that a copy of the letter to which you are referring in paragraph 22?---Yes.

20

Who provided you with a copy of that letter?---I am not sure but it may have been Professor Hacker or it may have come via the office of Vanessa Madunic.

Now, can I press you on when it was that you received either the letter or a copy of the letter?---Um - - -

For the first time I mean?---It must have been, it must have been somewhere around June or July 2008.

30

Can I, can I just provide some context and then I'll come back to the particular. We should understand, should we, that by the latter part of the 2008 year you had become aware of some anomalies, just to put it neutrally, with respect to payments having been made for the conduct of screening tests involving the Medex device, is that so?---Yes.

And I think you wrote a letter at the end of the 2008 calendar year, just before Christmas, to Ms Lazarus in that regard?---Yes.

40 I'll come to the document in a moment but should we understand that you became aware of the content of the Sydvat letter at page 95 much earlier in the year and before the anomalies that I've referred to revealed themselves? ---Yes.

THE COMMISSIONER: Sorry, Mr Alexis, just as a matter of clarification, professor, when I read paragraph 22 of your statement it says, "Sandra Lazarus stated that she had a consignment of the Medex devices which were to be paid for by Sydvat," and you say that that comes from the letter which

is at page 95 but I don't see that anywhere in that letter?---I'm, I'm sorry but I'm getting a little bit mixed up here with, with the questions. The - - -

What I'm asking you about, well, if you look at the letter, if you read the letter at page 95 that, that concerns details of what's called an initial grant amount of \$75,000?---Yes.

And as I read the letter it's really, and it's clearly a grant amount to be, to finance the research on the, the Medex test for cervical cancer?---Yes.

10

But your statement is, is more detailed, it says, "Sandra Lazarus stated that she had a consignment of the Medex devices which were to be paid for by Sydvat," now, I'm not sure where that, where that comes from, that's what I'm asking you?---I think that may have come from the, the department in which she was to work, namely Professor Hacker again or it could have come from Vanessa Madunic's office but there was, information of that nature was given to me and the, that was to assure me that it would be covered by the funding provided in the letter.

20

Yes, but the, there can be funding for the actual services provided by the researcher and there can be funding as well for the hardware necessary, the equipment necessary to do it?---Yeah.

And as I read this paragraph it seems that somebody told you that Sandra Lazarus was actually having to pay herself for the equipment but she was getting the money for it from Sydvat. Is that what you are intending - - -? ---That's, that's what I was thinking was the situation.

I see.

30

MR ALEXIS: Now, after you saw this letter, professor, did you take any steps to understand where any deposit of funds by Sydvat as a sponsor would be received and how the receipt of those funds would be managed? ---The, the funds would either be received at the hospital or within the Area Health Service office of finance.

Now, as chair of the ethics committee no doubt at the time you appreciated that any application for ethics approval required some specific detail concerning how any trial or test would be funded, whether internally or externally or - - -?---Yes.

40

- - - or a combination of both, is that so?---Yes.

And so may we understand that in about May 2008 you well understood that before any testing of patients could proceed, obviously after ethics approval, one would need to make sure that there were funds in place to cover any costs that the hospital might incur in the course of that testing, is that so? ---Yes.

So what steps were taken to ensure after you saw this letter of 14 May, 2008 that those steps were in place?---The, the researchers supply that information to the research support office. I was not aware at the time that there was any funding available.

10 But did you subsequently come to understand whether funds had been provided by Sydvat or some other third party to the hospital?---I, I, I was under the understanding that if the project were to be approved ethically then the next step would be how was the project to be funded. So that is the order in which we customarily take it.

So does it follow then that unless and until a response to the 25 June, 2008 letter from the Scientific Review Committee had been received the subject of funding by an external sponsor and how funds would be so managed in relation to the conduct of the trial was something that wasn't really considered by you ever again?---No, that's correct.

20 All right. Now, the next document in the bundle, sir, is a document entitled Agreement for Clinical Trials. If would look at that please, it runs from page 96 to page 99 inclusive. And do you see on its face that it purports to be an agreement between the Royal Hospital for Women on the one hand and Medex Screen (Australasia) Pty Limited on the other?---Yes.

In May 2008 did you ever see either a copy of this document or the original of this document or anything that purported to relate to a clinical trial involving Medex Screen (Australasia) and the hospital?---No.

30 And after you got the letter from Sydvat did you yourself speak to anyone at that organisation either a Dr Neiron or anyone else?---No.

Did you speak, apart from the hospital staff, perhaps Ms Madunic but did you speak with anyone else about a subject of the hospital receiving funding for the conduct of any clinical trial?---No.

40 Now, if I could ask you to assume that an agreement like the one before you at pages 96 to 99 was to be signed on behalf of the Royal Hospital for Women but who in 2008 would've had authority to enter into such an agreement?---The, that would be the hospital and the health service. If the, if the project had been approved for funding, approved for ethical purposes and funding was to be arranged then that would come through the hospital administration.

All right. Well, assuming in favour of a clinical trial ethical approval and assume in that regard also the existence of an agreement with respect to the conduct of such a trial as illustrated by the document at 96 to 99 of Exhibit 1 who at the hospital would've had authority to enter into such an agreement

on behalf of the hospital?---The hospital administration and me personally, I would be responsible for that.

Well, apart from you as the Executive Clinical Director at the time was anyone else authorised by the Board to enter into such a contract as we see at page 96?---Not to my knowledge.

And I gather you were never approached or requested to sign any such agreement related to any such clinical trial in 2008?---No.

10

Did Professor Hacker ever talk to you about entering into any such agreement?---No.

Did he talk to you about putting your signature on any such agreement as we see on page 99?---No.

And I think as you tell us in paragraph 50 of your statement this clinical trial agreement is not a document that you had seen before it was shown to you by the ICAC investigators, is that so?---Which item?

20

Paragraph 50, I'm sorry, sir?

THE COMMISSIONER: Paragraph 50?

MR ALEXIS: 50.

THE COMMISSIONER: The statement?---No, that is correct.

And just so we're clear you see in paragraph 49 you were taken by Senior Investigator Kane to the agreement for clinical trials between the two, between the Medex company and the hospital, you see that?---Yes.

30

MS FURNESS: I note that the agreement - - -

MR ALEXIS: Now, the document produced as an attachment to your statement I think is the one that doesn't contain Professor Hacker's signature, is that so?---Um, - - -

You might just need to turn to a copy of that agreement attached to your statement.

40

THE COMMISSIONER: It speaks for itself.

MR ALEXIS: Perhaps does. But should we also understand that the copy of the agreement signed as appears on page 99 by Professor Hacker is also a document that you'd never seen before?---That is correct.

Thank you.

THE COMMISSIONER: When you say- I understand that you've never seen this very document before but have you ever seen a document like it?
---No, I haven't.

And you notice that it's, it has the heading Gynaecological Cancer Centre on the first page?---Yes.

10 Is this something that you've ever seen the cancer centre ever produce before?---No.

MR ALEXIS: Now, sir, can I ask you whether or not in the 2007 or 2008 year you had any direct communications at all with Ms Sandra Lazarus?---I don't think so.

I know you met with her and others in early 2009 and I'll come to that meeting but was that the first time that you'd actually met and spoken with her?---I think so, yes.

20 Now, in relation to the conduct of Marketing Services on behalf of the Royal Hospital for Women are you aware as to whether or not in 2007 and 2008 the hospital ever engaged any consultancy firm for marketing services?---No.

Are you aware of any such arrangements with any marketing consultancy company ever occurring before 2007 as far as you're aware?---No.

30 THE COMMISSIONER: Just the institution, your institution, Professor, does it ever get involved in the commercial marketing of instruments that have proved successful in research?---No, Commissioner, it's, that is something which the health service is very careful about because we mustn't, mustn't be involved in those procedures without going through the proper process which is done at area health service level. Even then it's, it's very, very rare that that would happen.

Yes, thank you.

40 MR ALEXIS: Professor, you're being shown Exhibit 7, which is the original requisition book for the Gynaecological Cancer Centre at the hospital. Do you see that?---Yes.

Now, if you could with that in hand go to your first statement at paragraph 22 and 23 and can I ask you whether in July 2008 Associate Professor Marsden had any delegated financial authority from the hospital to sign the requisition forms as a delegating officer?---No.

And what should we understand his level of financial delegation in relation to signing as authorising officer?---The delegating officer is one of four

people in the Royal Hospital for Women, either myself, the director of nursing, the director of clinical services or the deputy director of clinical services.

And in that answer are you referring to authorising officer or delegating officer?---Sorry, for delegating officer it's one of those three people, for authorising officer it is myself.

10 I see?---So every, every requisition form comes to me for authorisation.

Now, in relation to delegating officer's name, in July 2008 did Professor Hacker have a delegated financial authority to sign as a delegating officer on requisition forms?---No.

All right. Now, in paragraph 23 you refer to the role of the requesting officer as one that confirms that they have raised a requisition to pay for a good or service. Do you see that?---(NO AUDIBLE REPLY)

20 If you could just look at the bottom of page 9 of your statement, paragraph 23 and what I've just put to you is the second sentence. Do you see that? --- (NO AUDIBLE REPLY)

THE COMMISSIONER: Sorry, I'm lost here, Mr Alexis. Did you say it's paragraph 23 on Professor Walters' statement on, which is (not transcribable) page 7?

30 MR ALEXIS: Commissioner, I think I've confused myself by having the wrong statement open in front of me and I do apologise to you and to everyone who has obviously been misled by that. So could I withdraw that question and start again. Sir, I am looking at paragraph 23 of your statement?---Ah hmm.

And I just wish to explore your understanding that you tell us of there about Ms Lazarus stating to Professor Hacker that she required a requisition for Medex devices to be used during the trial so that she could prepare the work whilst waiting for ethics approval. Do you see that?---Yes.

40 And this I think also relates to what you've said in paragraph 22 which was the paragraph that the Commissioner asked you some questions about in the context of the letter from Sydvat?---Yes.

Now, what was the basis of the understanding in paragraph 23 that requisitions were required to procure the Medex devices whilst work was being undertaken and ethics approval was being sought?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Whilst work was being prepared.

MR ALEXIS: Yes, prepared, that's it?---Yes. Well, it, it was, that was my understanding that- - -

THE COMMISSIONER: From who?---From Professor Hacker, that, that these devices were, would be prepared for the use in the study if the clinical trial was approved ethically. And, and I'm not sure just where that information came to me in, in the course of the, of the events, Commissioner.

10 Are you not sure whether it's Professor Hacker or are you not sure when and how Professor Hacker led you to that understanding?---Yes, the latter, Commissioner.

But you're satisfied it comes from Professor Hacker?---Yes.

MR ALEXIS: Now, you see in the last sentence of paragraph 23 you refer to Ms Lazarus stating something, do you see that?---Yes. Again that would have been conveyed to me by Professor Hacker.

20 So should we understand that there were two pieces of information that were conveyed to you by Professor Hacker, the first was that a requisition needed to be raised in order to facilitate Medex devices being obtained so that Ms Lazarus could prepare work. Is that so?---Yes.

And secondly that the hospital's account would receive a deposit once the devices had been delivered?---Yes. The, the, the detailed financial arrangements would be worked out within the hospital's finance office.

30 THE COMMISSIONER: Professor, how did it come about that you and Professor Hacker discussed the issue of a requisition for the Medex devices? ---Well, this would have occurred after information received from the Area Health Service looking into the issue of the requisitions. So the- - -

Are you sure?---The timed sequence of these events is, is, is a little bit difficult at long distance to, to require when, to, to account for when items of information became available.

40 I still don't know how that would have happened. Are you saying that requisitions would have gone in?---Yes, they would have gone in, Commissioner.

And, and then somebody would have what, queried that?---Yes.

And, and how would you become aware of that?---Because I would have been made aware by the, by the Area Health Service personnel in finance.

Do you know the individual involved who would be doing this?---Yes. Ravi Ratnam.

So Mr Ratnam would have told you that the requisitions had come in?
---Yes.

And why would he tell you that?---Because he would have been concerned about the, the requisitions and the fact that, that they haven't been authorised and- - -

10 By whom?---By me. Because once they leave our hospital to go to area finance they have to be, normally to be authorised by me personally.

Yes. And then did you, did you then telephone Professor Hacker?---No. I think in discussing this subsequently because of the, the query raised, I might have got this information at that stage.

20 Professor Walters, it's really important to know what, whether you can remember accurately who gave you this information or whether you are making assumptions. It's really important. So please try and be as accurate as you can.---I am trying my best, Commissioner.

No, if you can't, I mean what we need to know is whether can be accurate or not. If you can't be that's perfectly in order, but we need to know with the level of the certainly with which you are giving this evidence?---I mean bearing in mind that there were many other things going on in the hospital at this time - - -

Yes?--- - - - and taking into account all my other duties, I would have to say that I cannot give that degree of certainly to the question.

30 Yes. My impression is, and please correct me if I'm wrong is that you are doing your best to reconstruct what must have happened from the probabilities?---Yes.

But you do not have an independent memory of this?---No, I don't.

40 So that when you, so when you say it's your understanding that Sandra Lazarus said to Professor Hacker that she required a requisition, I don't want to put words in your mouth, but I'm really trying to find out whether you have an independent recollection of Professor Hacker or Mr Ratnam or anybody else telling you this?---I do remember a conversation with, a telephone conversation with Ravi Ratnam about the requisitions.

Yes. And to what, and you have by that, I'm not asking you go through what you've already said because I do understand that. You said that he was concerned because you hadn't authorised them and he got in touch with you about that?---Yes.

It's the next step that I'm interested in. And that's the first sentence, the first line of paragraph 23, it is my understanding that Sandra Lazarus stated to Professor Hacker that she required a requisition for Medex devices to be used during the clinical trials. Now I mean, what I think the Commission needs to know whether you're saying that Professor Hacker told you this or that somebody else told you this or this is something that you assume or this is something where, which you can't remember clearly or whether you can remember clearly?---Yes, it may well have been the case that I received the information from Ravi Ratnam and then had a discussion with Professor
10 Hacker about - - -

Yes, I understand that. But do you remember that happening?---To be honest, I, I cannot say definitely. There were so many discussions going on about this - - -

Is this really an assumption that you're making?---So I would, no, I wouldn't have made a statement, Commissioner, like that unless somebody had told me that the Medex devices were, were to be delivered.

20 You know that, that she, that, it's not that so much professor that is an issue. It's whether Sandra Lazarus told Professor Hacker that she required a requisition?---I see. Well it may, that would have been, I think that would have come to me from Professor Hacker. But I cannot be absolutely sure of that.

I see.

MR ALEXIS: Professor, in paragraph 24, toward the end of that paragraph,
30 you deal there with the subject of you being the authorising officer. Is that, is that so?---Yes.

And then over the page, and this is what I should have directed to you earlier, paragraph 25 you deal with the position concerning Associate Professor Marsden and his lack of financial delegation to approve the requisitions. Is that right?---Yes.

THE COMMISSIONER: I'm sorry, I'm just a little bit confused about
40 what's happened here, Professor Hacker. You get a telephone call from Mr Ratnam. He raises the issue of authority for the requisitions?---Yes.

And then you may have spoken to Professor Hacker about that. Is that because, well how did it happen that you spoke to Professor Hacker about this issue? Is it because of what Mr Ratnam said to you?---Yes.

So then did you try and investigate this further?---That's right.

And then when you, when you arrived at the understanding that, that Ms Lazarus required a requisition for the Medex devices, what did you do? Or

what, what did that lead you to think?---Well I did not, I did not know whether there had been some, I realised there must have been some administrative issue that we were dealing with because I hadn't approved - -
-

Yes, that's right. So what happened then?---So I think, I think I then contacted the area health service again to seek an investigation of the matter.

Investigation as to what?---As to why unauthorised amounts of money were
10 coming out of the hospital's - - -

Is this after payment had been made in terms of the requisition?---Yes, but the requisitions haven't been authorised.

I understand that?---So that's what I would have wanted to be investigated.

Did that investigation then include, sorry, I'll withdraw that. If it was your
understand that Sandra Lazarus told Professor Hacker that she required a
requisition for the Medex devices to be used during the clinical trial, was it
20 your understanding that Professor Hacker authorised the requisition?---Yes.

And he had no authority to do that?---No.

Did you tell him that?---Well, I told him that later, after the, the, the requisitions had been received.

What did he say?---Well he said he didn't know how that happened. He
knew that the normal process is that the requisition book is to go to a
clerical officer in the Royal Hospital for Women. And then goes to a
30 delegated officer for signing off and then comes to me. And when these
requisitions were produced with only his name and John Marsden's on the
requisition form he said he, he didn't know if he did really sign those.

I see. I understand that now.

MR ALEXIS: And professor can you try and identify any point of time
during the 2008 year when this occurred, that is that the requisitions were
procured having been processed, the invoices having been paid, when did
you get these back and where did you have the conversation that you've just
40 told the Commissioner about with Professor Hacker?---It would have been
late in, in 2008.

THE COMMISSIONER: Professor Walters, I'm sorry to keep harping on this, but I'm still troubled by it?---Yes.

This is the aspect that's troubling me. If, there seems to me to be some potentially inconsistency between Professor Hacker receiving advice from Sandra Lazarus that she required a requisition for the Medex devices and

then Professor Hacker saying he doesn't understand how he came to sign the requisition. You understand what I'm saying?---Yes.

Can you cast any light on that?---I can't, Commissioner.

10 You see if you were the person who was dealing with this and speaking to Professor Hacker, I mean this would have caused you as much trouble as it's causing me if this is what happened. I can't imagine that you wouldn't have done something about it?---Yes, well I, I would have, I would have obviously taken some, some action to see that the requisitions were appropriately, appropriately produced. The, the issue about, there is, there is a need to, to consider that it may have been very well meaning of all those concerned to assist students with research and if it was necessary to obtain some instrumentation for that research, and advice was given for about when the funding would be available for that, then the, the requisitions would be, would be made.

20 Professor Walters, I'm sorry to keep harping on this but I'm still troubled by it?---Yes.

This is the aspect that's troubling me. You know, there seems to me to be some, potentially an inconsistency between Professor Hacker receiving advice from Sandra Lazarus that she required a requisition for the Medex devices and really Professor Hacker saying he doesn't understand how he came to sign the requisitions, you understand what I'm saying?---Yes.

Can you cast any light on that?---I can't, Commissioner.

30 But you see, if you were the person who is dealing with this and speaking to Professor Hacker I mean this would have caused you as much trouble as it's causing me if this is what happened. I can't imagine that you wouldn't have done something about it?---Yes, well, I, I would have, I would have obviously taken some, some action to see that the requisitions were appropriately, appropriately produced. The, the issue about, there is a need to, to consider that it may have been very well meaning of all those concerned to assist students with research and it was necessary to obtain some instrumentation for that search and advice was given for, about when the funding would be available for that then the, the requisitions would be, would be made.

40 Yes, I understand all of that. But if Professor Hacker knew that Sandra Lazarus was wanting a requisition for the Medex devices, then, well, what was his attitude to that?---Well, Commissioner, I, I, I would, I would think that often what happens with students is, and I'm only, this is a presumption- - -

I'm sorry, I really would like to know whether you asked Professor Hacker about this and whether he said anything to you about it. That is, once you

knew, that's once you had an understanding that Sandra Lazarus told him that she required a requisition for the Medex devices and once you knew that there was a strong suggestion that Professor Hacker had signed the, or had not signed the requisition, then there is, there is a vacuum there because - - -?---I think my understanding of it, Commissioner, is that, that Professor Hacker told me subsequently that Sandra Hacker had, Sandra Lazarus had required some instrumentation and he provided the requisition and it was under, yeah, and, and it was his view that that requisition would be dealt with in the usual way.

10

But I thought you said that Professor Hacker told you that he didn't think it was his signature on the requisitions?---Well, subsequently.

This is, you're now recounting a subsequent conversation with him and again there is an inconsistency there I'm afraid?---Yes. Well- - -

There is an inconsistency in your evidence, not in the sense that you're saying one thing happened which doesn't measure up to something else you said happened (not transcribable)

20

MS FURNESS: Commissioner?

THE COMMISSIONER: Yes, Ms Furness. Is it appropriate for you to interrupt?

MS FURNESS: Well, in my submission it is, Commissioner. The witness's evidence has never been as certain, Commissioner, as you just put to him. He said in relation to paragraph 23 of his statement that he could not be certain now whether it was Professor Hacker or Mr Ratnam who gave him the information, and secondly and importantly, when he may have had that conversation. His evidence has been that that conversation with whomever occurred after, most likely, it was brought to his attention by perhaps Mr Ratnam that indeed there were irregularities in relation to the requisitions.

30

THE COMMISSIONER: I understand all of that perfectly well. So what are you saying?

MS FURNESS: My objection, Commissioner, was that the statement or question that you just put to the witness put his evidence at a much more certain level that indeed the witness had himself.

40

THE COMMISSIONER: My understanding of Professor Walters' evidence, you have admitted subsequent replies that he gave to my question to the effect that he was told or that he understood from somebody, probably Professor Hacker, that Professor, that Ms Lazarus had sought a requisition for the Medex devices and that he, Professor Hacker, had authorised it and said that she could go on with it.

MR FURNESS: Well, that's certainly not my recollection at all of the evidence.

THE COMMISSIONER: Well, we'll have a look at the transcript, Ms Furness.

MR ALEXIS: Can I ever so briefly weigh into the debate and for the purpose of drawing attention to this there is a question in my submission as to the source of the understanding expressed by Professor Walters in paragraph 23.

THE COMMISSIONER: Well, that was originally his evidence but I thought that later on in his replies he said that it was Professor Hacker.

MR ALEXIS: Yes. And I don't pause to debate whether there was a reference to Professor Hacker as to a source. My learned friend's point is that it hasn't been expressed as a certainty, I don't wish to put a submission about that, the transcript will bare it out but may I draw attention please to the document that commences at page 252 of Exhibit 1 and I do so for the purpose of drawing attention to the notes of a fact-finding meeting as its described on 3 February, 2009. Could I suggest, Commissioner, over the luncheon adjournment that we revisit this topic after lunch.

THE COMMISSIONER: Yes.

MR ALEXIS: But after Professor Hacker, Professor Walters, I'm sorry, and perhaps others taking the opportunity to read the notes of the meeting which commence, as I say, at page 352. I think they go for about five or six pages.

THE COMMISSIONER: Yes.

MR ALEXIS: It may shed some light on the issue.

THE COMMISSIONER: Yes, thank you. We'll adjourn till 2.00pm.

LUNCHEON ADJOURNMENT

[1.05pm]