

CHARITYPUB00679  
22/02/2011

CHARITY  
pp 00679-00722

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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 2.25PM

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

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Commissioner, before I resume can I indicate two matters. Firstly, can it be noted that the transcript of Michelle Lazarus' evidence from yesterday afternoon after the luncheon adjournment was not posted on the website of ICAC until 7 minutes past 10.00 this morning.

THE COMMISSIONER: Right.

10

MR ALEXIS: The notation of that has been requested of me and I'm happy to have it noted by reason of suggestions that were made in cross-examination concerning opportunities to review the transcript of yesterday's evidence.

THE COMMISSIONER: Yes.

20

MR ALEXIS: I hope I've now done that. Thank you. The second matter I wish to raise concerns Professor Walters' evidence that was provided in response particularly to some questions from the Commissioner and the transcript of that in its unedited form has been provided to Ms Furness and also to my learned friends appearing for Ms Lazarus and both Jessica and Michelle Lazarus. What I propose doing, Commissioner, is to complete the examination of Professor Walters in relation to matters that don't directly bear on the evidence to which I've directed counsel's attention to and my understanding is that they will be matters that will be the subject of perhaps closer examination by others.

THE COMMISSIONER: Yes. Very well.

30

MR ALEXIS: Thank you, Commissioner.

MR ALEXIS: Now, Professor, can I ask you to go to the examination bundle please before you in the witness box to page 252. And sir, should we understand that from page 252 some notes that were made of the fact-finding interview that you tell us about in paragraph 35 of your first statement?---Yes.

10 I wish to come to some detail but should we understand that the meeting commenced at about 9 o'clock as the notes indicate at the top of the first page?---Yes.

And if you turn to the last page of the notes concluding on page 260 should we understand that the meeting concluded at about 10.15 that day?---Yes.

Now, the preparation of the notes are these notes that you took of the discussion or were they notes taken by someone else, what's the position?  
---They are notes taken by the person identified as the minute keeper Joanne  
20 East who is an Executive Assistant in the Royal Hospital for Women.

An Executive Assistant to you?---Yes.

And after the meeting can you tell us what happened in relation to the notes that were taken and how it is that we seen them in the typed form from page 252?---No, I'm not able to answer that.

All right. You did, however, come to examine the typed notes, is that so?  
---Yes.  
30

And if you look at page 260 it appears that you've signed the notes where indicated and written the date, do you see that?---Yes.

And is that your writing the date 9 April, 2009?---Yes.

And what should we understand about when it was that you reviewed the notes and signed the document at page 260?---It would've been soon after the meeting, within, I would've thought within a week or two of the actual  
40 meeting.

And is there some reason why you didn't come to sign and date the minutes or the notes I should more accurately say until the date that we see in April?---No, I'm not, I'm not sure why that, there was that delay. It may have been because the Internal Audit were dealing with this issue as well, I may have, may have wanted to look at the notes as well.

Now when you reviewed the notes as you say within that reasonably short timeframe of the meeting occurring, did you make any changes to the notes

or did you amend the notes or did you do anything to the content of the notes as they had been presented to you?---No, I did not alter it.

And was, and if the, well can I ask you to indicate whether the notes as you read them in the typed form reflected the meeting as you recorded at the time you came to review the notes?---Yes.

THE COMMISSIONER: When did you first read the notes?---Sorry?

10 When did you first read the notes?---I would have read them certainly at the time that I, that I signed.

Yes. So not before?---No.

So the reason that I ask you professor is that when you, if you look at page 260, next to the signature of Norelle Maffullo. Do you see that, page 260? ---Yes.

20 There is this note, NB notes have been reviewed and accepted soon after the interview ie around February/March 2009. Do you see that?---Yes.

Did you read the, I take it from your answer that you read them for the first time when you signed it, that you weren't part of this review?---I, I would definitely have read them at the time that I signed them.

Yes?---But I'm not so sure, Commissioner, whether I had had an opportunity to see them before.

All right.

30

MR ALEXIS: Now I want to come back to some detail of the notes, professor. But before I do can you turn back to page 250 of Exhibit 1?---2 - -

250. And do you see there, sir, a letter from Complete Health and Medicine Pty Limited to the Department of Fundraising at the Royal Hospital for Women which seems to have been date stamped as received on the date of the letter, namely 2 February, 2009?---Yes.

40 Now do you have a recollection as to whether you had seen and read this letter before the fact finding meeting on the 3<sup>rd</sup>?---Definitely not.

And why is it that you're so definite about that?---Because I, I have never seen this letter before.

Did you come to see the letter during the meeting on the 3<sup>rd</sup>?---No.

Are you able to say whether or not the letter came to your attention shortly after the meeting on the 3<sup>rd</sup>?---I'm not aware of, as I've said, I'm not aware of having seen this letter at any stage.

I see. Well did you become aware that on or about the date of the letter the hospital had received a cheque for \$80,000? And if you look at page 251 you'll see a copy of the bank cheque made payable to the Royal Hospital for Women?---No, I was not, not aware of that.

10 And when you say you weren't aware of that you weren't aware of that before the meeting on the 3<sup>rd</sup>?---No.

Did you subsequently become aware that the bank had received a bank cheque for \$80,000?---I, I'm, I'm not aware of anybody having told me that any money had been received.

I see. All right. And I then come to the notes and should we understand the notes as recording either the words or the substance spoken by each of the people who were involved in the meeting and each such person being  
20 identified by the initials of their name?---Yes.

So if for example if we see a reference to SL that's a reference to Ms Lazarus?---Yes.

If we saw a reference to WW that would be a reference to you?---Yes.

Now, could I ask you about a couple of aspects of the, of the notes. First of all, do you see on page 252 a reference under the heading "SL" about halfway down, "PhD student, Neville Hacker is my project supervisor, my  
30 project supervisor at Sydney University is Professor Donnell." Do you see that?---Yes.

And does that accord with your recollection that during this meeting Ms Lazarus told you that she was a PhD student?--- Yes.

And, and then at the bottom of that page there's a reference to you seeking some clarification when you were speaking to Professor Hacker did he refer you down here to administration office to complete paperwork down here and does that enable you to recall to mind that question being asked by you?  
40 ---Yes.

And then over the page do you see the response attributed to Ms Lazarus is to the effect, "That that never happened, she didn't know this office existed until I had to submit an ethics application to V Madunic," do you see that?  
---Yes.

And does that accurately record the response that was given to your question as best you can recall?---Well, this would be correct, yes.

Now, a couple of lines down the person NM and you'll need to assist me with the pronunciation of her surname?---Sorry, where is that?

If you go back to the first page at 252 - - -?---Yes.

- - - you'll see underneath your name as recorded as present the name of the human resources consultant?---Yes.

10 What was her surname?---Maffullo.

No, above her, I'm sorry?---Oh, Chumsri Natrsawang.

All right. Well, we should understand her as the NM reference should we? ---Yes.

Thank you. And just coming back then to page 253.

20 THE COMMISSIONER: NM is Ms Norelle Maffullo.

MR ALEXIS: Oh, sorry.

MS FURNESS: Commissioner, that's my reading of it too.

MR ALEXIS: I see, yes.

MS FURNESS: Maffullo.

30 MR ALEXIS: Thank you. Well, that probably makes it easier in one sense. So do you see coming back to 253 that Ms Maffullo asked the question, "What can you tell me about how your research was funded," do you see that?---Yes.

And could you just read to yourself please the passage attributed to SL commencing, "Funding is made available," and then look at the next question from Ms Maffullo, "What is the source of funding," and then read the further response that's recorded there and let me know when you've done so?---Yes.

40 And is the note consistent with your recollection that in response to the question about funding Ms Lazarus did not refer to Sydvat or Medex or Complete Health and Medicine Pty Limited as providing any funding? ---No.

Now, do you see after some questions and answers concerning her status at the university Ms Maffullo asks the further questions, "How do you get paid for your research work," do you see that?---Page?

Same page 253?---Yes.

And do you see the response attributed to Ms Lazarus concerning side jobs, “I sell medical devices and attachments so forth. It’s unrelated to the research, I do a lot of writing for television et cetera.” Do you see that?  
---Yes.

10 And does the note to your recollection accurately record the response to the question as to how she got paid for her research work?---Yes.

And then do you see that you asked a question as to whether there’s any finance supporting her enrolment as a PhD student, do you see that?---Yes.

And does the answer that’s referred to there to your recollection accurately record the response, that is, that there is no scholarship or sponsorship, do you see that?---Yes.

20 And then do you see Ms Maffullo at the foot of the page ask the question about her claims for payment made against the area health service by companies, individuals related to the research. And do you see the answer attributed to Ms Lazarus in these terms, “This screening device has tests, our test cost certain amount of money, it has attachments as well, basically purchasing those, we purchased all of them together.” Do you see that?---Yes.

And does the answer recorded there in your recollection accurately record the response to Ms Maffullo’s question concerning the claim for payment?  
---I think so, I can’t be absolutely sure.

30 All right. Can you tell me please whether you have a recollection of ever understanding from this meeting that Ms Lazarus was associated with or connected with either the company Wish Consulting or Medical and Clinical Informatics Consultants Pty Limited?---No.

And can I invite attention to some further material on page 254 of Exhibit 1 and do you see the third set of words attributed to Ms Lazarus commences with the words, “They are putting it all into one pool.” Do you see that?  
---Yes.

40 And then do you see in that passage it is referring to, “This one all was supposed to come at once which I thought it had, the first cheque from Complete Health was around April/May 2008 and was made out to Illawarra Health.” You see that?---Yes.

Now, does that accurately record as best you recall what was said on the subject of the source of funding?---Yes.

And at the point in time of this meeting when that answer was given had you heard of Complete Health at all and did you have any understanding about what Complete Health was?---No.

And then do you see the next question from Ms Maffullo, "Were all the funds for this project coming from one source ie Complete Health? How much agreed to fund?" Do you see that?---Yes.

10 And to your recollection was that the terms of the question or approximately the terms of the question that was asked concerning whether or not funding was from one source?---I think so.

Thank you. And you see the answer attributed to Ms Lazarus, "They agree to fund \$220,000." Do you see that?---Yes.

And can I ask you to just drop down a few questions and answers. Do you see Ms Maffullo asks the question, "When was it they offered to pay?" You see that?---Ah hmm.

20 And then do you see the answer attributed to Ms Lazarus, "Around April/May first cheque. They sent to Illawarra Health." You see that? ---Yes.

And then further down the page there's the question asked, "Some sort of consumables to run each test bought all in one go." And the answer, "Bought them in lots." Do you see that?---Yes.

30 Now again does that to your recollection accurately record what was asked and what was answered by Ms Lazarus on these subjects?---Yes.

And did you understand from what you were being told during this meeting that it was Complete Health that had provided some funding by way of the first cheque back in April or May, 2008?---That's what I thought, yes.

40 All right. Then I come over the page please and I'll get through this as quickly as I can with you, but do you see at the top of page 255, Ms Maffullo asks a question concerning the practice associated with the, with that. And do you see the answer, based on the sample side in the ethics for this research I will screen 200. And then it goes on to say, at meeting it was suggested to do preliminary trial as in-house. Didn't have to go through ethics committee. Do you see that?---Yes.

And does that accurately record the response that Ms Lazarus gave to the question about practice?---I think so.

Now as the chair of the ethics committee, no doubt you sat forward when you heard the suggestion made by her that it didn't have to go through the

ethics committee?---Yes. I mean I would have certainly advised her that that was not correct.

Now at this point where the subject of the practice was being discussed in the context of ethics approvals and ethics committees, do you have a recollection as to whether Ms Lazarus ever said that Professor Hacker had authorised her to proceed without approval?---No.

10 And when you say no to my question, you've got no recollection of that ever being suggested?---Yes.

Thank you. Now do you see the next question attributed to NM, selection of the companies you purchased from, any suppliers you are dealing with? ---Yes.

And do you see the answer to that, there are only two suppliers that can purchase from. This device is now not available on the open market. Used both companies. Do you see that?---Yes.

20 And does that recording reflect accurately as best you recall Ms Lazarus' response to the question concerning the selection of the companies?---Yes, as best as I can recall.

And did you understand that the two suppliers being referred to were the two companies who had rendered and had been paid the invoices that were the subject of your fact finding meeting?---No, I didn't understand that.

30 I see. What did you understand being referred to as both companies?---I, I understood that the, that, that the matter of which companies were involved was part of this investigation.

All right. Thank you. And then you see the next question concerning procedure and Ms Lazarus according to the notes refer to the order book and a reference to Neville Hacker and Don Marsden both signing?---Yes.

And then the question about how it was that she learnt about the procedures and there's then a reference to Helen McGilligan, Professor Hacker's secretary. Do you see that?---Yes.

40 And do the notes as best you recall accurately record what was said on that subject about the book, the signatures and the role of Professor Hacker's secretary?---Yes.

And do you see that it's recorded there that she, that is Ms Lazarus, explained how it was or how to process the orders and payments?---Yes.

And can you now, can I just drop down a few questions and answers and can you come to the question from Ms Maffullo concerning at which point had you organised the 220,000 in funding. So you see that?---Yes.

And can I just ask you to look at the response that's attributed to Ms Lazarus, do you see that it's said there that by way of response she said, by May/April to the best of my knowledge. I know money was in that cost centre, that is why I made purchases?---Yes.

10 Now does that answer as best you recall accurately record what her response was to the question about organising funding?---I think so.

Thank you. I just want to come over the page 256 please. About halfway down that page you'll see a question from Ms Maffullo, a short question in these terms, "Who else was aware, Neville Hacker." Do you see that? Just below, halfway down that page?---Yes.

20 And you see the answer attributed to Ms Lazarus, "Yes, in these terms, yes, he saw each invoice before I sent off to Sutherland and Helen (his secretary)." You see that?---Yes.

Now, does that to your recollection record accurately the response to the question as to who was aware?---Yes.

And just so we're clear the response that relates to both he, that is, Professor Hacker and Helen his secretary?---Yes.

30 And then turning to page 257 do you see the questions and answers at the top of the page concerning the subject to ethics approval and do you see attributed to Ms Lazarus the words, "For the pilot study I was told, yes." Do you see that?---Yes.

And then do you see in response to the question of who agreed the response attributed to Ms Lazarus is, "The Oncology Department, N Hacker, D Marsden et cetera." Do you see that?---Yes.

And does that accurately record as best your recollection allows you to say the questions and answers recorded on that subject?---Yes.

40 Page 258 towards the bottom of that page, just working up from the bottom perhaps is easiest. Do you see the third question attributed to Ms Maffullo in these terms, "Were they only source of funding people the letter is from?" Do you see that?---Yes.

And do you see above that question in Ms Lazarus' recorded answer there's reference to various universities including the University of Sydney and ANU and the University of New South Wales?---Yes.

Now, do you see the response to that question in the terms recorded there, answer, "No other (something starting with S) dot, dot, dot (missing name)." Do you see that?---Yes.

Are you able to help us by filling in the blank?---I can't, I can't be sure of that but presumably it may well have been the (not transcribable) company.

10 Yes. Well, that occurs to me as well because of the letter S, Professor. But just look at the next answer or the balance of the answer attributed to Ms Lazarus. Do you see it's recorded there, "They said would offer 47,000 around that figure. They were waiting for pilot study to be completed. Not subject to outcomes. Pilot study has not been completed." Do you see that? ---Yes.

Now, does that, as best your recollection allows you to, record accurately the response to the question about the source of funding?---Yes.

20 Can I then come over the page, and I'm near the end of the document, sir, you'll be pleased to know. Page 259 about, starting at about the top third of the page. Do you see Ms Maffullo refers to the first requisition and you'll see the requisition number 7-8-3-2-0-9?---Yes.

And the name of the vendor supplier Medical and Clinical Informatics, do you see that?---Yes.

And is it your recollection that Ms Maffullo took Ms Lazarus through a couple of the requisitions to ask some questions about what they related to? ---Yes.

30 And do you see the answer attributed to Ms Lazarus in the terms recorded there, "Only ones that have device." Do you see that?---Yes.

And does that accurately record the response to the question as to what it was that Medical and Clinical Informatics supplied?---Yes.

So you understood did you that they were the provider of the device, is that so?---That's what I took to be the case.

40 And then do you see the next question, "Who received the goods?" And the answer attributed to Ms Lazarus, "They are in Neville Hacker's office, all the ones ordered have a sign saying, Research equipment, do not touch." Do you see that?---Yes.

And does that accurately record the response that Ms Lazarus gave to the question about the receiver of the goods?---Yes.

And do you see the next requisition referred to, that is, one from Wish Consulting 7-8-3-2-1-0, do you see that?---Ah hmm.

And do you see the question, “How was that company established?”?---Yes.

And you see the answer from Ms Lazarus or what’s at least attributed to her in these terms, “Two things we need, each company is one thing.” You see that?---Yes.

10 And does that to your recollection accurately record the response that was given to the question concerning the requisition from Wish Consulting?---I have no recollection of that particular response.

Do you have a recollection though of the question that was asked to clarify what’s meant by, “Marketing materials.”?---Yes.

And do you see the response attributed to Ms Lazarus in these terms, “Do not know why they used the reference to marketing materials.”?---Yes.

20 “Goods related to patient information booklets and attachments, like information, patient sheets, provide booklets so on and so forth.”?---Do you see - - -?---Yes.

- - - the balance of the answer? And is that to your recollection an accurate record of the response that was given to the question that sought clarification of what was meant by marketing materials?---Yes.

And do you see the concluding remark attributed to Ms Lazarus, “Wish Consulting - one supplier that do that.” Do you see that?---Yes.

30 And so did you understand what it was after this meeting that Wish Consulting was doing in terms of the requisition and the invoice that had been submitted on behalf of that company?---No, I understood what had been said but the reason for my requesting that there be an investigation was that I knew that a number of companies were involved.

Yes. Yes, thank you, Professor Walters, that’s all I wish to ask you.

40 THE COMMISSIONER: Thank you, Mr Alexis. Ms Furness, do you wish, in the light of our discussion before lunch it has occurred to me that it might be in everyone’s interest if you questioned Professor Walters next but if you do not wish to do so you do not have to. If anyone has any objection they should let me know. First tell me what your attitude is.

MS FURNESS: I’m certainly happy to question Professor Walters now and I would seek your leave, Commissioner, to ask any additional questions after my other learned friends have completed their examination.

THE COMMISSIONER: Is there any objection to that course?

MR HOGAN: No, sir.

THE COMMISSIONER: Ms Soars?

MS SOARS: I have no objection provided my learned friend doesn't lead the witness.

THE COMMISSIONER: That's fair enough. Yes, Ms Furness?

10 MS FURNESS: Now, Professor Walters, in 2008 you knew a person by the name of Ravi Ratnam did you not?---Yes.

And you knew him to be the senior finance and business partner of the Northern Network?---Yes.

And that's part of the then South Eastern Sydney and Illawarra Area Health Service?---Yes.

20 Now, did you have contact either email or orally with Mr Ratnam in 2008 in relation to inquiries he was conducting concerning invoices from various companies associated with Ms Lazarus?---Yes.

Do you remember when that was?---It would've been I think around August/September 2008.

And if I suggested the date of 11 September, would that fit with your recollection, professor?---That would, that would fit, yes.

30 Do you recall on or about 23 September being informed by Mr Ratnam - - -

MS SOARS: I object.

MS FURNESS: It's not a matter that's of any controversy in relation to - - -

THE COMMISSIONER: Just wait until the end of the question, Ms Soars.

40 MS FURNESS: Do you recall on or about 23 September, 2008 being informed by Mr Ratnam that he had referred those invoices to internal affairs, the internal audit, I withdraw that, the internal audit section of the area for investigation?---Yes.

Now the fact finding interview or meeting as it's described that counsel assisting has taken you to, do you have that still in front of you, professor? ---Yes.

Now do you understand that to have been part of the internal audit investigation?---Yes.

And you're aware in that internal audit fact finding meeting was what?  
---To, to, to of course represent the hospitals interests and, and to try and seek a solution to the issues that had been raised in the findings of Ravi Ratnam.

Was that the first occasion on which you had participated in a discussion with Ms Sandra Lazarus?---Yes, as far as I know.

10 Now Professor you were asked a series of questions by counsel assisting and the Commissioner before lunch in relation to paragraph 23 of your statement. Do you still have that in front of you? That's your first statement, professor. It shouldn't be in the volume, it should be a separate document, professor. It's the larger statement.

THE COMMISSIONER: It's paragraph 23?---Yes.

MS FURNESS: Now I understand that the bar table and Commissioner, you have I think two pages of the transcript. Is that correct? Is that pages 20 675 and 676?

MR ALEXIS: Three.

MS FURNESS: Three. What's the first page?

THE COMMISSIONER: Excuse me, I have those pages and others, but I thought everybody had them.

MS FURNESS: I was only provided a copy with counsel assist, by counsel 30 assisting much earlier. I wasn't given a copy when the others were, so I'm not sure what everyone else has. Perhaps if I could just look on - - -

THE COMMISSIONER: I think the relevant pages are the last three pages, 675 to 677.

MS FURNESS: Professor, I want to take you first to some evidence you gave us recorded on page 674 of the transcript. And you were asked - - -

MS SOARS: Excuse me, Commissioner, I'll just indicate that Mr Hogan and I weren't given a copy of 674. 40

THE COMMISSIONER: Yes, anyway I'm sure it wasn't deliberate.

MR ALEXIS: No, no. It was in fact (not transcribable) the transcript that I have, Commissioner, only starts at 675 and goes to 677. And I think only Ms Furness has - - -

THE COMMISSIONER: What I'm going to do - - -

MR ALEXIS: - - - my copy. So perhaps if we could have - - -

THE COMMISSIONER: It's all right. I'll arrange for everyone to get a little bit more.

MS FURNESS: Commissioner, I'm happy to make mine available.

THE COMMISSIONER: Just a moment, Ms, copies will be made for all counsel from page 671 onwards.

10

MS FURNESS: Commissioner, you propose us to wait until the copies are available?

THE COMMISSIONER: Yes, I think so. Thank you. And I think, what I'll do is I'll adjourn for five minutes because I think it's desirable that you all read it.

MR ALEXIS: Commissioner, we can deal with the absent pages electronically on the screen if that's of assistance.

20

THE COMMISSIONER: I think everyone should read it. So we'll adjourn for five minutes. That's all. It won't take long.

**SHORT ADJOURNMENT**

**[3.05pm]**

THE COMMISSIONER: Ms Furness.

30 MS FURNESS: Thank you, Commissioner.

Professor, you have in front of you various pages of transcript from this morning's evidence, that's correct?---Yes.

Can I ask you to turn to page 674, you'll see that's at the bottom right-hand corner?---Yes.

And do you see there are line numbers down the left-hand side of the page, 10, 20, et cetera?

40

THE COMMISSIONER: 10, 20, 30, 40?---Yes.

MS FURNESS: Can I draw your attention to a question that was asked of you at about line 16 and after the words "I'll withdraw that. If it was your understanding," do you see that?---Um - - -

THE COMMISSIONER: The sentence, the section begins, "Did that investigation then include," just about, three lines above 20?---Oh, right, yes.

MS FURNESS: Can you locate that on the page, professor?---Yes.

Yes, thank you. And you were then asked two other questions, "And you had no authority to do that," and then "Did you tell him that," do you see those subsequent questions - - -?---Yes.

10

- - - and your answers?---Yes.

And then the next question is, "What did he say," and thereafter is transcribed your reply. Do you see that?---Yes, yes.

You've read that to yourself?---Yes.

And then counsel assisting asked you a question, "And I paraphrase to identify the point in time in 2008 when that occurred," do you see that? ---Yes.

20

And you answered, "It would have been late in 2008?"---Yes.

Now that answer, "It would have been late in 2008," was in respect of when you had the conversation with Professor Hacker that you set out in paragraph 23 of your statement. Is that right?---Yes.

And I take it that was after the question of the invoices had been referred to the internal audit section of the Area Health Service?---That is correct, I was first alerted to the problem with the invoices by Ravi Ratnam and then subsequently the, the investigation was carried out.

30

Can I then ask you to turn over to page 675 and at the foot of that page the Commissioner in the last two lines begins "I'm sorry," do you see that? ---Yes.

And can you read to yourself what the Commissioner put to you which is over the page at 676?---Yes.

40

And then do you see your answer begins, "I think my understanding of it, Commissioner," do you see that?---Yes.

"Is that, that Professor Hacker told me subsequently." Do you see that? ---Yes.

Can you tell the Commission, professor - - -

THE COMMISSIONER: Well, just finish reading the sentence, sorry, Ms Furness, just, have you finished reading the sentence?---Sorry, the - - -

MS FURNESS: Just read it to yourself, professor.

THE COMMISSIONER: Just read it to yourself - - -?---Yes.

- - - so that you are aware of your full reply?---Yes.

10 MS FURNESS: When you used the word “subsequently” what period of time were you referring to?---I’m referring to after the requisitions were investigated so after Ravi Ratnam drew, drew attention to the, to the concern about those requisitions.

And after it had been referred to internal audit?---Yes.

And you had a discussion with Professor Hacker at that time did you? ---Yes, I did.

20 And at that time what did he tell you?---He told me that he had sent off, as delegated officer has signed a requisition form.

Did he tell you when he had done that?---I think it was, not precisely, no, I can’t remember the precise time but it, it, it would have been obviously I think before the requisitions were produced.

THE COMMISSIONER: What were they for, these requisitions that Professor Hacker signed? Did he tell you?---He told me that they were to, to provide some equipment.

30 For the testing?---Yes.

Testing involving the Medex equipment?---Yes.

MS FURNESS: Did he tell you with the same certainty you have just told to the Commission, professor?---Well, I mean, they could have been, I suppose, for additional things connected with the research but I understood at the time that it was for the Medex device.

40 Did he tell you that he had signed the requisition with the same certainty that you have indicated he told you, professor?---Yes.

And what did, did he then say to you about the requisition?---He, he then said that apparently the requisitions had not been dealt with in the usual, with the usual hospital processing and that, that he couldn’t understand why they didn’t go through the normal process which was first of all internal within the hospital and then subsequently to Area Health Service Finance.

It appeared that they went direct to Area Health Service Finance without the internal hospital process.

And did he tell you of the - - -

MS SOARS: I object.

THE COMMISSIONER: Can we just hear the question, Ms Soars?

10 MS SOARS: Well, I don't know on what basis Ms Furness is putting that.

THE COMMISSIONER: How do you know what the question is?

MS SOARS: Well, did he tell you X, it's a leading question in my submission, Commissioner.

THE COMMISSIONER: All right. Ms Furness, bear that in mind.

MS FURNESS: I had, Commissioner, but I will continue to.

20

THE COMMISSIONER: Are you going to ask a leading question?

MS FURNESS: No, Commissioner.

THE COMMISSIONER: All right.

MS FURNESS: Did he tell you of the consequences he believed for not going through the usual processes as you indicated?---He said that he couldn't understand why they hadn't gone through the usual hospital process. And wondered if I, you know, had any explanation for it. I said I had no explanation for it.

30

What did you understand him to mean by not having gone through the usual processes?---There was a delegated officer and a, as explained on the form, a requesting officer, a delegating officer and an authorising officer to sign each requisition form. And these forms did not have all the signatures under those categories.

40 What did you understand from your discussion with Professor Hacker on this occasion as to where he had signed on the form?---I, I don't remember whether we had a discussion about just precisely where he had signed. But I understood that he had signed the forms because he would envisage that the normal process would be adopted and they would come to the assessment process in the hospital. And then that if there were any irregularities or questions about those forms they would be clarified at that point before being forwarded on to the area health service office for payment.

And did he express the view to you that there were any irregularities with the way in which the forms were signed?---Having seen them subsequently, after the, the copies, I visualised in the book, in the requisition book, I could see that they had not - - -

THE COMMISSIONER: No, no, that's not the question.

MS FURNESS: Did he indicate to you on the occasion of this discussion that he had seen irregularities in the way in which the forms were signed?  
10 ---If Professor Hacker did say?

Yes?---He didn't, he didn't mention that.

THE COMMISSIONER: Professor, again, I understand your evidence that you have just given in the last few moments in response to Ms Furness' question to be that Professor Hacker told you that he'd signed the requisition, that he'd signed a requisition form?---Yes.

Can you please look at page 674 of your, of the transcript and if you look at,  
20 can you start reading from the question at line 16, did that investigation include, do you see that, professor?---Yes.

Can you just read from there to line 32 and 33, please?---Yes.

Now do you see, as I understand it that extract of your evidence when you refer to what Professor Hacker said to you concerns a discussion that you have with him about the requisition forms?---Yes.

Was this the same discussion that you had with him to which you were  
30 referring when giving, when answering Ms Furness a few minutes ago? Did you only have one discussion, in other words did you only have one discussion with Professor Hacker about these requisition forms or more than one?---I recollect having more than one.

And, and so do you, you notice that you originally said that when you spoke to Professor Hacker he told you that he did not know when he did sign the requisition forms?---No, I think that was on, it's my, I apologise, Commissioner for, I might have got things out of sequence.

40 Yes?---But, but in these two conversations, in the first conversation he said he had signed the form, the requisition. In the second conversation he doubted whether he had signed it.

Yes, Ms Furness.

MS FURNESS: When you're referring to two conversations was the first conversation the conversation after the matter had been referred to internal audit?---Yes.

When was the second conversation?---The second conversation would have been when, it would have been several, probably several months after that.

Several months after the first conversation?---Yes.

And the passages the Commissioner has just taken you to on page 674, did they refer to the second conversation?---Yes.

10 And the first conversation contained the exchange that you refer to on page 676, lines about 5 to 10?---Yes.

Professor, you were asked questions earlier in relation to delegations and you indicated that Professor Hacker did not have the delegation to sign any of the five requisition forms as delegating officer. Do you recall giving that evidence?---Yes. What I meant to say was that he didn't have the authority to, to sign in any, what I meant was he didn't have the authority to sign on any of the other, not delegations, but the - - -

20 But it's the case, professor, that there was three signatures needed?---Yes.

Is that right? The requesting officer?---Yes.

The delegating officer?---Right.

And the authorising officer?---Yes.

You were the only person within the hospital who could sign as authorising officer. Is that correct?---I am, yes.

30 And in terms of delegating officer, a head of department could sign any requisition form an amount under \$10,000. Is that right?---Yes. Yes.

Thank you. Thank you, Commissioner, nothing further.

THE COMMISSIONER: Yes, thank you. Ms Soars.

40 MS SOARS: Could I just have one moment, please. Professor Walters, my name is Julie Soars and I'm the barrister for Sandra Lazarus. You've given some evidence in your first statement about being the chair, previously the chair up until I think you said yesterday - - -?---Yes.

- - - of, of the relevant Northern Hospital Network Human Research Ethics Committee and that's in paragraph 7 of your first statement?---Yes.

How often does that committee meet?---It meets monthly.

And is it, is there fixed point in the month, early, late?---It's, it's usually, it's usually, I think, no, in actual fact it's, it's variable.

It varies?---Mmm.

But it's approximately monthly?---Approximately monthly, yeah.

And I think you've said elsewhere that minutes are prepared or is it the case that minutes are prepared of those meetings?---Yes, they are.

10

And to whom are they circulated?---They're circulated to the researchers and to the members of the committee.

And for example, would Professor Hacker have received minutes in 2008? ---Yes, he would.

Of each meeting?---Yes.

20

And so by reading those minutes he would have been aware whether or not ethics approval had been given in relation to any clinical trials within his department involving Sandra Lazarus?---Yes.

And it's your evidence is it that there was no, there was no approval given at any of those meetings in 2008?---Yes.

Excuse me, Commissioner, if I could just get some instructions. No further questions, thank you, Commissioner.

30

THE COMMISSIONER: Mr Hogan?

MR HOGAN: Thank you, sir. Good afternoon, Professor, my name is Hogan and I represent Michelle Lazarus and Jessica Lazarus. If I take you to the transcript at page 675 and line 29 down to line 39 and if you read that question and your answer please?---Yes.

And you've been taken to the question at the bottom of the page from the Commissioner starting on sorry and over the page to your answer which goes up to line 9 which you read?---Yes.

40

Now, Ms Furness just asked you that portion there where you've set out what Professor Hacker told you I can just see that that the first conversation you had with Professor Hacker, is that right, about Sandra Lazarus required some instrumentation to provide the requisition and it was the witness's view that the requisition would be dealt with in the usual way. Is that fair enough?---Yes. I mean that would've occurred, however, only after I had notification from Ravi Ratnam.

All right. And you were looking at the five relevant requisition forms which are attached to your statement?---Yes.

And you'd perused those requisition forms when you attached them to your statement obviously?---Yep.

Was there any conversation between you and Professor Hacker in relation to two of those requisition forms with attached invoices appearing to relate to marketing services?---No.

10

THE COMMISSIONER: Can I, sorry to interrupt you, Mr Hogan, but I just want to ask a question related to that. Attached to your statement, Professor, are these invoices. Sorry, let me start again. If you look at page 676 of the transcript at the top of the page your evidence was that Professor Hacker had told you that Ms Lazarus required some instrumentation and provided the requisition. Now, and the instrumentation I think I've asked you previously and I just want to just check that I'm right. That means the actual device does it?---Yes, as far as I understood it in that discussion.

20 Yes. So as far as you understood it Professor Hacker was saying he signed a requisition for the device?---Yes.

Because the device had to be purchased by Ms Lazarus?---Yes.

Did you look at the invoices those are attached to your statement? Would you mind looking at them. It would be helpful if these are all numbered, I might say they're not and I apologise for that. But let's get to the first invoice. The first invoice in your statement is dated 14 May, 2008. They're difficult to find, Professor, are you able to find them. You find that?---Yes.

30

Did you read this, sorry. By the time of the conversation that you had with Professor Hacker referred to on page 676 of the transcript, that is, the first conversation had you looked at the invoices?---No, I had not, Commissioner, I had only looked at the requisitions.

When did you first look at the invoices, do you remember?---Yes, the first time I saw the invoices was after the concerns expressed by Ravi Ratnam. So September 2008.

40 Well, so these are the invoices. So the first invoice refers to screening equipment so that would be consistent with what Professor Hacker told you, is that right?---Yes.

And if you look at the second invoice which is dated 4 May that's for marketing, no mention of equipment. Did you notice that?---No, because we didn't see this, I didn't see this - - -

I understand that. But when you saw it, when you saw it for the first time after you'd spoken to Mr Ratnam did you observe that the invoices had nothing to do with equipment or this invoice had nothing to do with equipment?---Yes.

Did that strike you as unusual?---Yes.

Did you speak to Professor Hacker about that?---I did not because I, I was expecting all of this to be investigated by the area health service.

10

So to the extent that, I think there's, certainly at least one other invoice that doesn't relate to equipment and that is the one of 17 June, 2008 I take it you noticed the same thing about that and for the same reason you left it for the investigation to deal with?---Yes.

That's the investigation being conducted by Internal Audit?---Yes.

Mr Alexis, would you mind telling me where the requisition forms are please?

20

MR ALEXIS: Yes. I was just going to put onto the transcript that the first invoice dated 14 May, 2008 to which you referred in Professor Walters' statement is page 108 of Exhibit 1. The second invoice referred to for Wish Consulting dated 4 May, 2008 is page 110 of the Exhibit 1 and the requisitions relating to each of those two invoices can be found at pages 107 and 108, I withdraw that, I'm sorry. 109 respectively.

THE COMMISSIONER: Thank you. Professor, when did you first see these requisition forms?---I saw them after the alert from Ravi Ratnam.

30

And did you examine them then?---Um, - - -

Did you, you can find one at 107?---Yes. I, I, as I said, Commissioner, I, I examined the requisition forms, I did not examine the others because I had some thought that this was a proper, proper role for the area health service Internal Audit.

Did you notice that these forms or none of them relate to equipment?---No, I hadn't particularly noted that.

40

Is this the first time that you've appreciated that?---Yes.

Yes, Mr Hogan.

MR HOGAN: Yes, thank you, sir.

MR ALEXIS: Just before my learned friend resumes and while we have the benefit of a short interruption I can indicate that I've raised with Ms Soars

the absence of any questions in cross-examination of Professor Walters concerning the notes of the fact-finding meeting on 3 February, 2009. I raised that subject matter with her only because when I draw attention to those notes when I was examining Ms Lazarus I think last Monday she indicated that she hadn't had an opportunity to read the notes. Now, I raise it only because if there is to be a challenge to the accuracy of those notes that would bear on other witnesses that I may wish to call in the inquiry, in addition of course to Professor Walters. You'll see, Commissioner, that Ms Soars has excused herself temporarily and I understand that she's attending to the question of instructions on that subject matter.

10 THE COMMISSIONER: Yes. Professor, I just want you to look at 107 again because what I put to you may not have been entirely accurate. If you look at the description of, under, under the word "Description" in the requisition form there's a reference to 50 cervical cancer examination screening tests and underneath that it's got "goods received." Do you see that?---Yes.

20 So I suppose there's an ambiguity there?---Yes.

But your evidence is that that's really irrelevant because the first time you've seen, you've only examined this is today?---The, the, I have seen the requisitions - - -

Yes?--- - - - and, and I have not examined them in detail with the invoices but I, as I've said, I think that as I was confident that there was an internal audit investigation that these matters would be dealt with.

30 So, I understand. Yes, Mr Hogan.

MR HOGAN: Yes. Professor, can I take you to paragraph 23 of your statement which is on page 7 and the last sentence of that paragraph, "Sandra Lazarus stated," do you see that sentence?---Um - - -

"Sandra Lazarus stated that the hospital" - - -

THE COMMISSIONER: Are you talking about the last sentence, Mr Hogan?

40 MR HOGAN: Yes, of paragraph 23.

THE COMMISSIONER: Yes?---Yes.

MR HOGAN: And was the source of that sentence in your statement, was that from Professor Hacker?

THE COMMISSIONER: Is this on behalf of Michelle Lazarus?

MR HOGAN: Yes.

THE COMMISSIONER: Why is it relevant to her?

MR HOGAN: Because there are, two of the requisitions relate to marketing materials and the professor has given evidence about Professor Hacking saying at one stage that he had signed requisitions and I want to ask whether there is a link with the proviso about that?

10 THE COMMISSIONER: All right. It's pretty remote but anyway.

MR HOGAN: So did Professor Hacker tell you at any time that he signed the requisition forms in the belief that moneys, that there was a fund, that moneys were being deposited into a trust fund?---Yes.

Yes?---Yes, I think he did think that.

20 And can you give us an approximate period if you can when he, he said that to you?---It, it would have been again after the discussion with Ravi Ratnam.

And had the audit?---Yes.

And you understood that he was talking to you about the relevant five requisition forms that you were considering?---Yes.

Yes, thank you, Commissioner.

30 THE COMMISSIONER: Professor, did Professor Hacker say anything to you about signing requisition forms for marketing services?---No.

Mr Alexis, is there anything you wish to ask?

MR ALEXIS: Yes, there's one matter but I wonder whether Ms Soars is in a position to respond to the matter that I raised earlier concerning the notes of the meeting of 3 February, 2009 because - - -

40 THE COMMISSIONER: Ms Soars are you, you have actually had a long time to get some instructions on this, several days.

MS SOARS: Yes, Commissioner, I do have those instructions.

THE COMMISSIONER: All right. Then do you want to ask questions now?

MS SOARS: I want to ask one question please.

THE COMMISSIONER: Yes.

MS SOARS: Professor Walters, you were taken to the notes of the minutes of the meeting of 3 February, 2009 and I just want you to go to one page of those minutes?

THE COMMISSIONER: What page?

MS SOARS: I'm just identifying that, Commissioner. It's page 258 in Exhibit 1. Do you have that page, Professor Walters?---Yes.

10

Do you see towards the bottom of the page, about a quarter of the way up it starts "SL no other - - -?---Yes.

- - - (something)" I think you gave some evidence that missing name might have been Sydvat, that's correct isn't it?---It's - - -

And the next - - -?---Sorry, sorry, I didn't hear that last - - -

Are you - - -

20

THE COMMISSIONER: You spoke rather quickly.

MS SOARS: I apologise, Commissioner.

Are you at the point "SL:" and the words "No other - (something)" do you see where I'm speaking about?---Yes.

And I think you gave some evidence earlier that in relation to the S ..... missed name that you thought that that could have been Sydvat, that's correct, isn't it?---Yes.

30

And the next line down, "They said would offer 47,000 around that figure?" ---Yes.

You, you accept don't you that this is a brief note, not entirely comprehensive but a note of important points of the meeting. Is that correct?---Yes.

And do you accept that it's possible that in relation to 47,000 my client might have mentioned Strathfield Hospital?---It's possible.

40

That's the only matter I wish to put to the professor, Commissioner.

THE COMMISSIONER: Yes. Ms Furness you don't wish to, I take it, to ask any further questions?

MS FURNESS: No, thank you.

THE COMMISSIONER: No. Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

Professor Walters, you've given some evidence about the subject of financial delegations to Professor Hacker and Professor Marsden and Ms Furness helpfully asked you some questions about the financial limits concerning those delegations, do you remember that?---Yes.

10 And it was suggested to you, I think, that the delegating officer so-called in relation to the requisition forms had a financial delegation or a financial authority up to the sum of \$10,000, do you remember saying that?

MS FURNESS: I object, that wasn't my question. It was in relation to the head of the department had that delegation.

MR ALEXIS: Well, that wasn't clear to me, professor, so can you explain please what we should understand as to the \$10,000 figure that was referred to in your evidence and how that relates to the amount to which a delegating officer can authorise?---Well, it, it, it gives an indication to staff but it's  
20 nothing really more than that because - - -

THE COMMISSIONER: Sorry, it's nothing really more than an indication? ---Yes, because it, the delegation amount varies considerably whether it's goods and services, whether it's capital equipment, whether it's drugs, et cetera so there's a different delegation in each of these areas and the, the bottom line is that the process within the hospital must be observed.

MR ALEXIS: Is there a manual which sets out the detail concerning the  
30 extent of financial delegations of officers within the hospital?---Yes, there is a manual.

Thank you. Now, just in relation to the financial delegation concerning the \$10,000 and leaving aside just for present purposes the subject matter of the requisition in that respect, what's the situation where a practitioner receives requisitions which individually do not exceed \$10,000 but collectively, because there's a number of requisitions provided for signature at the same time, in total they exceed the \$10,000, what's the situation then?---Well, I, I don't think that, that the delegation would apply under those circumstances  
40 because they're different requisitions.

So if someone was presented with multiple invoices in support of a requisition authorising expenditure of \$9,900, there'd be nothing as a matter of policy delegation to prevent that practitioner from signing those multiple requisitions provided each related to a sum less than \$10,000. Is that the position?---Yes, although the, the, it's, it's possible, I suppose. But I mean with multiple requisitions, they would, they would come through the ordinary internal hospital process.

And ultimately come across your desk for signature?---Yes.

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

THE COMMISSIONER: Professor, you said it's only an indication to the staff. What did you mean by that?---Well - - -

10 You said that the \$10,000 limit was only an indication. I don't understand what you - - -?---I'm sorry. What I, what I meant to say was that in irrespective of what delegation is given, the invoices still have to come through the, the requisitions still have to come through the individual hospital process.

Yes. But (not transcribable) therefore?---So therefore whether it's 10,000 or 15,000, it, it would still be coming through to my office for sign off.

20 But aren't there supposed to be checks at particular stages of transactions so that there are, there is more than one barrier to pass before money is paid out?---Yes, Commissioner, that is correct.

So why is it only an indication which people can ignore, because I assume that that's what you mean?---No, I don't, sorry, I don't mean that. I mean that the, the process is so strict in allowing any request for items of equipment or whatever to go out of the hospital without going through that internal system.

30 I see, you mean, I see, well it's not, it's not really merely an indication, I mean, I take it from what you're now say that it's something that everybody should observe?---Yes.

But you're saying that even if they don't observe it there are other barriers which have to be passed, passed still?---Yes.

And I suppose this is not your normal field of business, professor, but have you ever heard of order splitting?---I have heard of it, Commissioner but as you say it's not really in my field of expertise.

40 Because I gather from your evidence and perhaps incorrectly, that you think there's nothing wrong in order splitting, so that one can circumvent the delegation lower down the line by simply indulging in order splitting?---No, I, I, sorry if I gave that impression I don't mean that. No.

Right. I didn't think you did, but I just wanted to be sure though that if there's been a deliberate splitting of requisitions and you gather that that has taken place, that will be a warning signal to you not to approve it?---Yes.

Is that the case?---Yes, that's correct.

Yes, thank you.

MR ALEXIS: Thank you, Commissioner. Could Professor Walters be excused from further attendance?

THE COMMISSIONER: Yes, professor, I'm sure you've had a long day, professor. Thank you for attending?---Thank you for your hospitality, Commissioner.

10

**THE WITNESS EXCUSED**

**[3.54pm]**

MR ALEXIS: Commissioner, may I indicate while Professor Walters is gathering his things and the witness box is being cleared that Dr Martin Back is here.

THE COMMISSIONER: Yes.

20

MR ALEXIS: I'm told his availability beyond today is questionable and - - -

THE COMMISSIONER: Yes.

MR ALEXIS: - - - notwithstanding the time, I seek to call him.

THE COMMISSIONER: Yes, certainly.

30 MR ALEXIS: I would postulate that his evidence should be relatively short although I indicate that with some hesitation. May I call, Commissioner - - -

THE COMMISSIONER: And just as the medical profession always helps lawyers, we will help the medical profession.

MR ALEXIS: Yes. One always needs to be conscious that one might need the help one day, so, could I Commissioner, call Dr Michael Back.

40 MR BUTLER: Commissioner, my name is Butler. I seek leave to appear (not transcribable) the next witness.

THE COMMISSIONER: Yes, Mr Butler.

MR BUTLER: And I'd seek an order under section 38.

THE COMMISSIONER: Yes. Dr Back, please take a seat. Pursuant to section 38 of the Independent Commission Against Corruption Act, I

declare that all answers given by Dr Back and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document or thing produced.

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

20 THE COMMISSIONER: Dr Back, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

DR BACK: Under oath.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Michael Frederick Back?---Yes.

10 And, pardon me, are you currently employed by the Northern Sydney Central Coast Area Health Service as the Area Director of Cancer Services based at the Royal North Shore Hospital at St Leonards?---There's some uncertainty because that institution was broken up on December 31. I'm currently employed by Northern Sydney Local Health Network and I'm Director of Cancer Services of Northern Sydney Local Health Network and the Central Coast.

All right. Thank you?---Local Health Network.

20 Thank you for that clarification. Can I relevantly seek to understand that at the time we're concerned with, namely late 2008 and early 2009, you were the Director of Radiation Oncology at the Royal North Shore Hospital? ---Yes.

Now in this matter is it the case that you have provided ICAC investigators with a written statement?---I have.

Thank you. Could I provide you with a copy, please. With a copy for you, Commissioner. And sir, would you kind look at the statement that's just been provided to you and is that the statement you provided on 9 June, 2010?---It is.

30 And is the statement of evidence true and correct as best your, as best as your ability allows you to say?---Yes.

Thank you. I tender the statement, Commissioner.

THE COMMISSIONER: Yes. The statement of Dr Back is Exhibit 42.

40 **#EXHIBIT 42 - STATEMENT OF DR MICHAEL BACK DATED 9 JUNE 2010**

MR ALEXIS: Thank you.

THE COMMISSIONER: And that is dated 9 June, 2010.

MR ALEXIS: Now by way of introduction, doctor, should we understand your role and responsibilities as Director of Radiation Oncology set out in paragraph 5 of your statement?---They are.

And your qualifications and relevant experience set out in paragraph 6?  
---They are.

Thank you. And we see do we that in addition to your medical qualifications you also hold an MBA from the University of South Australia?---Yes, that's right, March 2010.

10 I was just going to say, conferred after the events that we're concerned with here. Is that so?---Yes.

You also lecture in medicine at the University of Sydney. Is that so?  
---That's right.

And I think as you tell us in paragraph 7 that's predominantly to undergraduate students?---It is.

20 Thank you. Now can I deal immediately with the occasion when you met a young woman who you now understand to be Sandra Lazarus and do you tell us about that in paragraph 8?---Yes.

Now can you recall to mind how it was that Ms Lazarus introduced herself to you in terms of job description, title, things of that type?---Well she was introduced to me by one of the secretaries from the Medical Oncology Department. I was in the common area, common secretarial area in the Northern Sydney Cancer Centre and one of the medical oncology secretaries saw me and brought this lady over to me to introduce because the lady had some difficulty in getting a form signed.

30 All right. And did, rather than me asking you, can I ask you to recall to mind what was said to you in terms of the request that was being made of you?---There was a, a problem had arisen because the Director of Medical Oncology was absent and the person who I viewed as a laboratory technician was seeking to get approval for some requisitions regarding equipment that would be used for research.

All right. Now, the Director of Medical Oncology at the time was who?  
---Dr Nick Pavlakis.

40 And the events that we're concerned with relate to some documents you signed I think I think on or about 16 January, 2009, is that so?---That's correct.

And should we understand that at that time Dr Pavlakis was on leave after the Christmas period?---Yes, he was.

Now, can I ask you to look at some documents in Exhibit 1 and you'll be shown a folder comprising documents. If you could open the bundle please to page 226. Do you have 226?---I have that, yes.

Thank you. And could I just ask you to look at the invoice number for identification purposes in the middle of that page, you see it starts with the prefix 1-0-1?---1-0-1-0-8-0-9-0-8.

Thank you. And if you could open also to page 228 and you'll see that the voucher at 226 and the voucher at 228 appear to be the same with the exception of some handwriting across the top of 228 you see the words Alison McKenzie?---I do.

10

You see the facsimile imprint across the top of that page?---I do.

And if I could also draw attention to what is written in handwriting on 226 beneath the typed words "Pavlakis Nick", just working across the page? ---Yeah.

And if we compare that to 228 we see that the handwriting Michael Back is not reproduced on 228?---That's correct.

20

Otherwise we should understand that both of the vouchers are the same insofar as they relate to the same invoice?---The account has been scratched out in the number on 228.

Yes, and replaced with the number that we see in handwriting 4-2-0-7-9-5, is that so?---That's right.

Having identified those matters we should understand that this is one of the vouchers - - -

30

THE COMMISSIONER: Which one? Sorry, which voucher are you talking about?

MR ALEXIS: Yes. The voucher on 226 and 228 is the, is one of the vouchers that you signed and dated 16 January, 2009 together with the words "For N Pavlakis", is that right?---That's correct.

THE COMMISSIONER: I don't understand that, Mr Alexis, because they're in different documents.

40

MR ALEXIS: It's the same document, the first has been - - -

THE COMMISSIONER: So they've been changed later?

MR ALEXIS: Yes.

THE COMMISSIONER: Right.

MR ALEXIS: And, Dr Back, just to endeavour to make it clear to the Commissioner should we understand that the document at 228 insofar as it contains the words that you wrote on that page are the same as what we see when compared with 226?

THE COMMISSIONER: That's been explained. And, Dr Back, do you know whether the voucher, which of these two vouchers was in the form it was in when you signed this?---I cannot recall which one, I signed four requisitions on that day.

10

Right. I understand but there are differences between the two forms. You don't know in what condition it was in when you signed it, it could've been the one or the other?---I, I cannot make a comment whether it was annotated at that time, I do know that the words "Michael Back" under the words, "Pavlakis Nick" is M-I-C-H-E-A-L, it's an incorrect spelling of my name and I would not have written that. The only handwriting that I did on the documents was my signature and I guess the red flag that I put up for the people who were going to be approving this was M Back for N Pavlakis just to make sure that they were aware that it was not Nick Pavlakis who was signing this.

20

MR ALEXIS: And so what you're drawing the Commissioner's attention to is on page 226 towards the bottom of the page under the typed words next to authorisation officer "Pavlakis". And then in the next box his Christian name "Nick" we see that there is handwritten Micheal Back and you draw attention to the misspelling of your Christian name, is that so?---That's correct.

30

THE COMMISSIONER: You wouldn't have done it?---I would've hoped not. Actually in seriousness I did not write that.

MR ALEXIS: Okay. I just want to identify each of the invoices and then I want to come and ask you some questions about the circumstances that led to you signing these vouchers. The next one would you go to please is at page 232. And again, should we understand by reference to the invoice number 1-0-3 - 1-0-7-9-0-8 that the voucher 232 is the same as the voucher at 234, again with the alternation being noted with respect to the account number and the addition of the misspelt Micheal Back referred to adjacent to your signature on 232?---I haven't compared them directly with each other but I respect that there is similarities.

40

And this is the second of the four that you signed on this occasion which I'll come to some detail of?---I'm not sure if it's the second or whether it's - - -

It's one of the four?---It's one of the four.

All right. Now, can you turn through please to page 240. And if you look at page 240 and if you look at page 242 should we understand what you've

already said relates to this further voucher in relation to invoice 1-0-6-2-9-0-8-0-8? This is a further voucher of the four?---Yes.

Thank you. And then finally could I bring you through to 244. And could you also look at what appears at page 246 together with the additional handwriting that one sees on each of the two documents, is this the fourth of the four vouchers that were signed on this occasion?---I presume they are one of the four.

10 Thank you. Now, can I come to some circumstances which led you to sign the forms on this occasion. In paragraph 12 of your statement, and I am backtracking ever so slightly, you tell us that you were working in the Radiation Oncology Department when you were approached by one of the medical oncology secretaries that you refer to as either Kay or Lyn, do you see that?---I do.

And it was in company with one or other of those secretaries that Ms Lazarus approached you, is that so?---That's right.

20 And it was at that point that she was described to you in the way that you've indicated namely as a laboratory technician?

MS SOARS: I object. Doesn't say that in the paragraph. It talks about a belief.

MR ALEXIS: All right. Well, I thought we'd already established by reference to paragraph 8 but let me go back to paragraph 8, Doctor. Commissioner, I think my learned friend is right and I accept what has been indicated in the objection. Sir, in paragraph 8 you express a belief  
30 concerning the young female that you met to be a laboratory technician and you also refer to that in paragraph 12. Can you tell us please how you came to have that belief?---The lady was wearing a white coat or a white gown which was, would be an unusual circumstance in the clinical area of the well, the Sydney Cancer Centre. And she was, mentioned she was associated with research and she had a badge on which was a University of Sydney badge.

All right. Why would wearing a coat be unusual?---It's not commonly done in the clinical areas around the hospital.  
40

And just going back to the badge, can you provide us with some more detail of the badge?---Yeah, I said, I looked at the badge and I saw that it had a, what I believed to be a Sydney University logo on it. I presume she was from the Kolling area though admittedly I did not take full note of what the title was on her badge nor did I take full note of her name on the badge.

So when we come back to the expression of belief in your statement about her being a laboratory technician, what should we understand that belief to

be based on?---The belief that she was associated with research which was not directly associated with the clinical practice within the Northern Sydney Cancer Centre.

And perhaps an assumption which led to you describing her in your statement as a laboratory technician?---Yeah, and I said it was my belief that she, whom I believed to be a laboratory technician.

10 All right. Now, when she presented with the secretary and there was the discussion which led to the signing of the vouchers, did you notice something about her demeanour?---I asked her a number of questions regarding the research that was being undertaken. It was research that I was not familiar with and she was asking me to authorise on behalf of Nick Pavlakis a series of requisitions regarding that so I wished to get further information. She seemed to be quite agitated that the forms be signed because of the potential that it may be an imperative to continuation of the research.

20 And how was it apparent to you that she was agitated?---Just through her - - -

I know that's perhaps a question that suggests an obvious answer but can you tell us what it is that you saw and heard which led you to think that she was agitated?---I was, saw that she was insistent in having the form signed when I stated that I have no authority over this costs centre and they would be rejected she was still insistent that they be signed and it was - - -

30 And how was she insistent?---Just saying that it will, it will need to be signed for the research to be continued on and there will be a potential holdup in the research.

THE COMMISSIONER: Why would, why would she want Dr Pavlakis to sign it? What, what capacity does he fill?---It was passed on to me that he was the person who was the authorising officer for this requisition and that was passed onto me by both the secretary as well as the young female who presented the documentation to me.

40 MR ALEXIS: Now, in paragraph 17 of your statement you set out the effect of what you said to Ms Lazarus, do you see that in italic script, paragraph 17?---Yes.

At the top of page 6?---Yes.

So you conveyed to her that you had no authority to sign the forms that she was seeking your signature on, is that so?---That's correct.

Now, I know you've told us that she was agitated and a little persistent but why did you sign the forms knowing that you had no authority to sign them?

---Yeah, I guess that is where the error of judgment is. I did it in good faith because I presumed that the research would be delayed. It was a matter of getting the wheels in motion to get the authority. It would be quicker for the vouchers to be rejected and then Dr Pavlakis contacted directly when he returned back from leave rather than for the individual to go through the hospital system to try to chase signatures once again, especially given she was outside of the normal area that she was in.

10 Now, should we understand that your reference to a lack of authority related to a lack of authority in relation to the Medical Oncology Department which we understood is distinct from the Radiation Oncology Department?---It is distinct and I do not have any authority over the cost centres for the Medical Oncology Department.

What about the Radiation Oncology Department?---I do have authority over those cost centres.

20 And a moment ago you pointed out that the number had been seemingly altered on the voucher and perhaps we can look by way of illustration to the voucher at page 242 although there may be other vouchers that illustrate this but do you see that cost, not so much the cost centre but the account number has the typed numbers 5-0-6-7-0-0 crossed through with the handwritten amendment to 2-4-2-0-7-9-5?---I do see that.

Now, should we understand that that amendment and the new number relates in any way to the Radiation Oncology Department as distinct from the Medical Oncology Department?---It, it is not a number I'm familiar with, it's not one of my cost centres.

30 So when you were saying to Ms Lazarus that you have no authority to sign these that was based on the fact that you have no authority with respect to the Medical Oncology Department. Is that right?---Yes, that's right.

And that was the cost centre number for that department on each of the vouchers?---Yeah, I presumed that their cost centre number.

Did you know at the time?---No, I didn't know at the time.

40 Why did you assume that?---Because it was, she was asking for a signature relating to Medical Oncology not to Radiation Oncology.

And particularly Dr Pavlakis?---Yeah.

THE COMMISSIONER: You may have answered this before, doctor, but when you signed it the, the typed number on your account, was that deleted? ---I cannot recall whether it was deleted. It may have raised a red flag to me if there was a cross through and a change but honestly I can't recall whether that was reviewed by myself on 16 January, 2009.

MR ALEXIS: And sir, you tell us then in paragraph 18 that you had some further dialogue on the subject and do we see that in italic script set out in that paragraph?---Yes.

And we should understand that you said to her look, if it makes you happy I'll sign them but it'll be rejected or something to that effect?---I did say that.

10 THE COMMISSIONER: Did she tell you what her, what her, what research she was doing?---She explained it was regarding to a gynaecological oncology project and there was investigations being done, I presumed it'd be in a laboratory setting rather than direct patient contact.

And did she tell you what the voucher was for?---I thought it related, I believed after our discussion it was related to consumables in relation to the research.

20 What are consumables?---Bits of equipment which may need to be ordered for each individual test.

And why did you believe that?---Either it came through the discussions that I had with her or that it was my own interpretation of her situation.

You can't recall?---I can't recall.

MR ALEXIS: Well, if you look at page 227 which is the invoice attached to the first voucher, do you have 227?---Yes.

30 And before asking the next question I should just get this clear with you, when each voucher was presented for signature did they have invoices attached to them?---I believe they did, yes.

So when you said to the Commissioner a moment ago that you understood that the vouchers and the underlying invoices related to consumables did you get anything from the invoice at 227 to indicate that?---Other than it was just goods and services.

40 I see. And what about 232 and the invoice at 233? The same position there, goods and services?---The same position.

The invoice behind the voucher at 240 at page 241, similarly that refers to goods and services?---Yes.

And finally at, at the, the voucher at 244 with the invoice behind 245 again referring to goods and services?---Yes.

Can you recall to mind whether or not Ms Lazarus in response to your questions told you what the consumables were or what the goods were or what the services were?---No. Just that it related to a research project that was being undertaken.

Now I suppose when you looked at each of these four vouchers you were able to work out pretty quickly that you were being asked to sign off on about \$40,000 worth of expenditure?---That's correct.

10 And you refer in paragraph 19 of your statement to Ms Lazarus creating some urgency or at least that you had a belief that there was some urgency with the situation and do you see also in the last sentence of that paragraph you refer to there being an imperative?---That's right.

So what occurred which led you to believe that there was a situation of urgency that was being given by some imperative?---That there would be a cessation or a slowing down of the research programme.

20 THE COMMISSIONER: Did she, but how did you get that understanding?  
---I think that was mentioned to me from her that there was a need to have these signed otherwise the research could not proceed.

Did she explain why?---I presumed. And I'm not sure whether she outlined specifically, I can't recall the exact words from the actual discussion, but these, these requisitions needed to be processed so that further goods could be ordered.

30 Which were needed for the research project?---Which were needed for the research.

MR ALEXIS: Now can you explain to us please why it was that you wrote on each of the vouchers M Back for N Pavlakis?---Well I had no delegation over that cost centre so I wanted to place a red flag to the people who would be approving this or processing this, that it was not Nick Pavlakis who signed the requisitions. At the same time I took a photocopy of all the requisitions and placed a photocopy within the pigeon hole of Nick Pavlakis and gave the originals back to the laboratory technician.

40 THE COMMISSIONER: And did Dr Pavlakis have delegation?---I presume Dr Pavlakis had delegation because this lady was brought to me from the medical oncology secretary and I acted in good faith believing that the person who was requesting these requisitions was actually requesting it in a correct manner.

Now it's been suggested in this inquiry that after the conversation that you had with Ms Lazarus, and after you signed the vouchers, you went and made three photocopies of the vouchers and provided her with a copy, you put one photocopy of all of the vouchers in Dr Pavlakis' pigeon hole and I think you

retained the third copy. What do you say to that suggestion?---No, that's incorrect. I did take a photocopy, I took one photocopy of the pages and placed that photocopy in the pigeon hole for Nick.

10 All right. And Commissioner, that's at page 480 of the transcript, over to 481. And sir, it's also suggested that at some later point in time, you were approached again by Ms Lazarus and asked if she could have the photocopy that you had taken because they, that is the accounts department, cannot locate the non-order vouchers that had been signed. Your response was to say, oh, yes or something to that effect, I've still got that copy. And you went and obtained it for her?---That is incorrect. I only met her on one occasion and that was on 16 January, 2009.

All right. Now did you speak with Dr Pavlakis about what had occurred in relation to the signing of those voucher forms upon his return from leave? ---No, not on his return. And I'm not sure if I mentioned it in the following months, and whether he received it. I, but definitely nothing was mentioned to him immediately on his return.

20 But what about the copy that you'd obtained of what you'd signed?---I placed in his pigeon hole.

But did that stimulate any conversation on the subject of your signing of the form when he returned or, I don't mean immediately, but, you know, after he'd returned from leave and was back at, back in the department, was there any conversation with him to your recollection concerning your signing of the form or the forms and the fact that you'd copied the forms and put them in his pigeon hole?---No, I had no discussion with him afterwards and it did not stimulate any further discussion.

30 Okay. Yes, thank you very much, doctor, that's all I wish to ask.

THE COMMISSIONER: Yes, Ms Soars.

MS SOARS: You were taken to paragraph 19 of your statement, I apologise, can I introduce myself, my name is Julie Soars, I'm the barrister for Sandra Lazarus. You were asked some questions about paragraph 19 of your statement. Do you have that?---I do.

40 And you were asked to explain the imperative that you refer to in that paragraph?---Yes.

And you said, you were asked, did she explain why and you said, I presume, but I can't recall the exact words?---Mmm.

And then you went on to say the requisitions needed to be processed so further goods could be ordered for a research project. But it's your evidence isn't it, you can't recall exactly what was said?---I can't recall the exact

words that passed between us on that day. I do have a feeling however, of what transpired on that day and there was a sense of a matter of urgency that I've been left with.

But you can't now recall the exact words that were said or - - -?---No. (not transcribable) words.

10 Or even an approximation of the words, just that you were left with a feeling of urgency. Is that right?---Yeah, I, I can't quote the exact words from January, 2009, but I do have a strong feeling that there was a clinical imperative because the research may not proceed.

THE COMMISSIONER: Is that the gist of what was said or not?---That was the gist, to use the expression, of what was said.

20 MS SOARS: And if I can just take you to paragraph 17 and 18 of your statement. The words at the end of paragraph 17 and the words in paragraph 18 in italics. It's the case isn't it that you can't precisely recall what you said about so called authority that you may not have actually mentioned no signing rights?---Oh, no, I explicit said that I had no signing rights for that cost centre and that they would be rejected.

I just need to take some instructions. I have no further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Hogan.

30 MR HOGAN: Yes, thank you, Mr Commissioner. Doctor, my name is Hogan and I represent Michelle and Jessica Lazarus. Now all I want to ask you is that when you signed these non-order vouchers in the expectation that they wouldn't be approved in any case, you were doing your best to appease this, appease this researcher who was approaching you, did you have a look at the actual non-order vouchers of what the description of the items - - -? ---I looked at, to see whether it was a clinical research, a research project and that it had from my recollection any subject regarding gynaecological oncology.

40 All right. So I'm talking about details of expenditure at point 5 on these non-order vouchers. You see the first one - - -?---Yeah, no, I did not, I did not look specifically or study those exact words. It was not very descriptive.

Well what did you look at on the form to see what it was about?---Clinical research cervical cancer.

All right. And did you see that some of them related to clinical research marketing services? Perhaps it's the one which is - - -?---I, I didn't - - -

- - - (not transcribable) document - - -?---I did not differentiate between those two descriptions.

All right. So you didn't differentiate, I'm asking you when you signed that did you observe that those words were there? It was no problem to you?

---No, I didn't, I do not recollect that the word marketing was there.

And what about the attached invoice? Was it attached?---Yeah, it was attached.

10

In your statement there don't appear to be the attached invoices for Wish Consulting relating to marketing services, do you agree?---Yeah, well, the four invoices which were provided to me with my signature, sorry, that were associated with my signature.

THE COMMISSIONER: They're attached aren't they?---Yeah. (not transcribable) the clinical research there was four there.

I'm not sure what point you're making?

20

MR HOGAN: Two of the non-order vouchers relate to clinical research marketing, sir.

THE COMMISSIONER: But are you suggesting they're not attached to Dr Back's statement?

MR HOGAN: The invoices are not. The non-order vouchers there - in any case your evidence is that you didn't see the words marketing services from your recollection when you looked at the non-order vouchers?---That's correct.

30

THE COMMISSIONER: Ms Furness?

MS FURNESS: No, thank you, Commissioner.

THE COMMISSIONER: Mr Butler?

MR BUTLER: Thank you. Just briefly. Doctor, you've just given some evidence about taking a photocopy of the non-order vouchers, is that right?--That's correct.

40

And did you take photocopies also of the tax invoices?---I did.

And you've given evidence that you placed the copy of that photo, photocopy in the pigeon hole of Dr (not transcribable)?---That's correct.

And what was the reason for that?---I did that because of the uncertainty regarding me signing these requisitions and it was to, as a further check along the way to make sure that this was processed appropriately.

And you made your statement in relation to that which is now Exhibit 42 on 9 June, 2010, where did you make the statement?---At the offices of the Independent Commission Against Corruption.

10 Do you recall which officer assisted you in making that statement?  
---Inspector Kane.

And in relation to the fact that you were carrying out photocopying of those documents was that all raised at the time you made that statement?---I believe it was raised in one of my discussions with Inspector Kane.

But it's not included in your statement, is there any reason for that?---I'm not sure why it wasn't included.

20 THE COMMISSIONER: Presumably it wasn't provided as important (not transcribable)---And I guess our perceptions of the importance of this is different in June 2010 compared to when it is now.

MR BUTLER: Do you have a clear recollection of that occurring at that time?---Yes.

(not transcribable)?---Yes, yes, yeah, definitely.

Yes, thank you, Commissioner.

30 THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Yes, nothing further. Can Dr Back be excused from further attendance.

THE COMMISSIONER: Yes. Dr Back, thank you for attending, thank you for your evidence.

40 **THE WITNESS EXCUSED** **[4.33pm]**

MR BUTLER: Might I be excused?

THE COMMISSIONER: Yes, certainly.

MR ALEXIS: Commissioner, I'd seek that we now adjourn. We have further witnesses at 10.00am tomorrow.

THE COMMISSIONER: I'm just a bit concerned with the time, Mr Alexis. Should we start earlier?

MR ALEXIS: Commissioner, because I know or at least have a reasonable feel for what's coming tomorrow I think every minute before 10.00am tomorrow is going to be precious.

THE COMMISSIONER: We'll adjourn till 10.00am.

10 MR ALEXIS: Thank you, Commissioner.

**AT 4.33pm THE MATTER WAS ADJOURNED ACCORDINGLY  
[4.33pm]**