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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHARITY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 28 FEBRUARY 2011

AT 2.25PM

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

MR ALEXIS: I apologise for the complexity of that question, but do you follow?---I do follow, thank you.

Thank you. Now using that as a platform to come to your conversation with Ms Lazarus - - -?---Yep.

10 - - - and via Mr Ratnam's email it sounds like it occurred some time towards the end of September, 2008?---Yes, that's right.

As best as you can recall it, can you tell the Commissioner, please what you said and what she said during that telephone conversation?---Okay. So we identified that monies had come out of our general fund and as a result I undertook to try and contact Sandra to get that money back. I did attempt to call on a number of occasions and I do recall getting through to her on one occasion. And the discussion was that she was, she had, she had told me that she thought that the money had been deposited into the hospital
20 accounts and she told me that it was in the vicinity of about 200 to \$250,000. And she then stated to the best of my recollection, that if the money had not gotten in there or been deposited she would chase it up.

All right. Did she say during that conversation who it was that had made that deposit or sums totalling that figure, 250, 200 to 250,000?---I can't recall that specifically.

All right. Now after that conversation did you speak with her again about that subject?---I tried to contact her again because I had spoken to Ravi. I'd
30 also sent him a couple of emails requesting, requesting that he search for that money. And he couldn't find it. And I attempted to contact her on a couple of occasions to follow that up.

And was that successful, the further contact I mean?---No.

All right. Now back to paragraph 31 of your statement, please?---Yes.

And you'll need Exhibit 1 in the folder of documents as well. Now in paragraph 31, page 12 before the luncheon adjournment I drew attention to
40 the last sentence of that paragraph which refers to, pardon me, the hospital receiving a bank cheque and in your evidence I think you referred to a bank cheque for \$80,000?---That's right.

And I asked you about whether it came from, from Medex and I think you said you weren't so sure as to who it came from?---Yeah. That's right.

Now in Exhibit 1, page 250 and 251, could you go to that, please. Perhaps starting at 251 - - -?---Yes.

- - - you'll see that there's a copy of the bank cheque, at 251?---That's right.

And then at 250 is a letter in relation to the \$80,000. Do you see that?

---Yes, I do.

Now was that the bank cheque to which you were referring in your statement at paragraph 31?---Yes, it was.

10 And did you see this letter at page 250 at or about the time it was received, apparently according to the stamp, 2 February, 2009?---Yes.

And what happened to the bank cheque for 80,000?---What happened to it, we actually deposited that into the hospital general fund.

And in relation to the, pardon me, the letter of 2 February, do you recall ever speaking with Sandra Lazarus about the receipt of the 80,000, of the content of the letter or any other matter relating to receipt of those funds?

---I, I personally, no.

20

No. All right. Thank you, Ms Madunic. That's all I wish to ask you?

---Thank you.

THE COMMISSIONER: Ms Madunic, I just want to ask you about that paragraph 31. Now I think you said before lunch that the person you spoke to in the conversation referred to in paragraph 31 was Sandra Lazarus. Is that right?---In terms of this specific paragraph?

30 Yes?---I, I did speak to Sandra Lazarus. But in relation to this specific paragraph I did actually speak to someone that wasn't Sandra. But I can't recall who that was.

And was it somebody at a Medex company?---It was a company.

But was it a Medex company? Your statement says when I attempted to contact the company, Medex - - -?---Yes.

40 - - - I was able to speak with a person. I just wasn't sure whether you were still saying that or are you saying something different?---No, no, I'm still saying that, I did speak to someone. Now in the statement it does say Medex, I'm, when I did provide the statement that was in my mind. And I could, but I just don't know whether or not the company was actually called Medex, but it was to do with Medex.

And, and when did you, I think you said earlier you got, you had a number of documents with, in front of you and it had a number of company names and you phoned all of them, did you?---Yes. What we did after we actually found out that this had occurred, we'd actually Googled different

companies, we checked the, the requisitions so we got information from, so we got the Sydvat, we got information from, by Googling about Medex or companies related to that and basically all I did was try and ring up anybody to get the, the funds back to the, to the hospital.

And then the next sentence is, "As a result of this conversation Medex provided the hospital with a bank cheque?"---So in terms of, so following the conversation that I had with this - - -

10

With this, with this, a person who you can't remember?---Can't remember who it was but I know it was a female.

You spoke to a female?---It was a female that I spoke to.

Yes?---And then following that we, we actually, I know it's taken a long time from, it seems like it took a long time from say, September to February but there were a number of phone calls with Sandra Lazarus to get her to come and see Professor Walters so we arranged a meeting for her to come and see Professor Walters to, and this is where the cheque was, when the cheque was provided and - - -

20

Were you there?---No, I wasn't, I wasn't at that meeting.

You were told?---Yes.

But at the meeting, was the cheque produced at the meeting?---That's right.

And this letter which is at page 250, the letter of 2 February - - -?---Ah
hmm.

30

- - - 2009, the third, this letter, if you, if you look at the paragraph in the middle that says, "Due to a long list of errors?"---Yes.

Do you see that, it says, "A third cheque has been written for the amount of \$80,000 in the form of a bank cheque, cheque number 6-1-6-6-7-4," I don't know whether the cheque at page 251 is that cheque but it's certainly a cheque, it is, it is, I think it is 6-6-1-7-4 if you see the - - -?---Yes.

40

- - - the numbers at the bottom on the left-hand side it is?---Yes.

So it looks as if the cheque for \$80,000 that you received was provided under cover of this letter at page 250 and when you first saw the letter it must have been after the cheque was paid because you weren't present at the meeting when the cheque was handed over?---That's right, so I saw it after.

And did you understand then that the cheque had been delivered under cover of this letter?--- Yes.

But the letter's from Complete Health and Medicine Pty Limited, is that one of the companies you telephoned?---It may have been. Unfortunately I don't remember. As I say, there were a number of - - -

10 You see, in paragraph 31 of your statement you say as a result of this conversation Medex provided the hospital with a bank cheque but when one looks at the letter it's not Medex?---No, it's not Medex but based on what I knew of the companies I just called it Medex and I would still call it that because I don't have an in-depth understand of - - -

I understand?--- - - - who it was and - - -

You had in mind some company associated with the Medex device?---With Medex, that's right.

20 And, and you searched around amongst all your documents and Googled and got every document, every company that you had that would, or could find connected with Medex and telephoned them?---Pretty much, yes.

But you can't remember whether you telephoned Complete Health and Medicine or can you?---I can't remember.

30 Do you know whether you knew of them?---I can't remember. I can't remember who was in the listing. Yes, and I was actually just going to state that in, in terms of Medex and also the requisitions, and so if, if a requisition was made out to Complete Health I would have used that, if it was made out to Wish Consulting or anything that was related to this case, I would have used. And I can't, because it's two and a half or close to three years now, I can't actually recall completely.

Well, I think there are documents that are made out to Complete Health and Medicine and there are documents relating to Wish Consulting?---So I would have used whatever was there.

To phone the people?---Yes. So this company could have been one of those, because I did actually have, I did have access to the requisitions because we did see them and we saw the- - -

40 What, were you conducting some kind of investigation yourself?---No, I was, I was just trying to get the money back for- - -

Yes, but to do that you had to- - -?---Yes.

- - -work out what had happened?---Yes.

Yes. Ms Soars?

MS SOARS: Thank you, Commissioner. Ms Madunic, my name is Julie Soars and I'm a barrister for Sandra Lazarus. You gave some evidence, did you, that the cheque for \$80,000 was handed over at the meeting on 3 February, 2009?---Yes, that's what I believe.

That's your understanding, but you weren't present there?---No, that's right.

THE COMMISSIONER: She said that.

10 MS SOARS: Did someone tell you that?---(NO AUDIBLE REPLY)

Did someone tell you that the cheque was handed over on that date?
---Yes.

Who was that?---Professor Walters.

Thank you. And is it, you, you were asked some questions about paragraph 31 of your first statement?---Ah hmm.

20 You've got that in front of you I think?---Yes, I do.

And you gave evidence that you used whatever material was available to you, the requisitions and, and invoices- - -?---Yes, and invoices, yes.

- - -that were available to you at the time?---That's right.

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

30 But at the time you made that telephone call you didn't have this letter at page 250 of Exhibit 1, did you?---No.

No?---No. This was done sometime in September.

Yes, September. Thank you?---September/October, around.

I just want to take you to paragraph 10 of your second statement, which is Exhibit 72. Do you have that?---Yes, I do.

40 So it's this Campus Security and Fire Safety Services photo identification card?---Yes.

Is that what is colloquially known as a security pass or a photo ID card?
---Yes, or an access card.

An access card. But there's only one such card?---That's right.

And you get that by filling in this form?---That's right.

And you've given some evidence that you're one of the people who can sign the form?---That's right.

And also some department heads?---That's right.

Are you aware whether Professor Hacker is entitled to sign it?---I'm not aware. As I said, I don't have, I don't know the list, listing, but I know that I'm on the list.

10 And paragraph 10 of your statement?---Ah hmm.

Do you have a clear recollection that you actually processed the security pass or ID access pass for Sandra Lazarus?---Yes, I do.

So if I said to you that Helen McGilligan, Professor Hacker's secretary, has given evidences to this inquiry that she took Sandra Lazarus down to the security office and waited while her security pass card was processed and issued on the spot- - -?---Yes.

20 - - -and that's dealt with in the transcript at 491, line 5 through to 492 to 30, and her best recollection was that that was in November 2007, although she's not entirely sure?---Yes.

Is it possible that Sandra already had an ID pass that Helen McGilligan had helped her process?---She may have. It's, it's, November's actually later than when I signed the form, which was in April.

Yes, sorry, go back. Helen McGilligan said in November 2007- - -?
---Oh, 2007.

30 Yes. You're talking about 2008?---2008. Oh, sorry, I thought you meant November 2008. She could have had one that was processed by Helen. As I say, I don't know who's on the list of signatories for security.

Thank you. If I can take you to paragraph 14 of your first statement?
---Ah hmm.

40 And you've given evidence that you were, you say in this paragraph that you were shown a copy of the letter at page 95 of Exhibit 1 by Sandra Lazarus, but you've given some oral evidence that you think you in fact were given a copy of that letter. That's correct isn't it?---Yes.

And it refers to an initial grand amount of A\$75,000?---That's right.

And you weren't aware of what that amount was made up of or what was included in the budget for that amount were you?---No.

And you agree don't you that it's usual that the details for a clinical trial, the budget and so on are determined as between the researcher and the external sponsor or funder?---In some instances, yes.

As a general rule?---As a general rule it should be specified.

To whom?---To the person that they're working with or reporting to.

But ultimately - - -

10

THE COMMISSIONER: The person where, in the hospital or - - -?---
Between the company and the researcher, yep.

MS SOARS: But ultimately normally the researcher would negotiate with the outside funder to get the grant amount and to, in relation to how it's going to be broken down?---Distributed, that's right.

Is that correct?---Yep.

20

And you gave some evidence earlier of a conversation between you and Professor Hacker in relation to some money coming in for the clinical trials and you were asked by counsel assisting what you thought it was to be used for. And you answered, not saying that Professor Hacker told you this, but you answered, salaries and wages for clinical trials. Do you recall that?
---Yes.

30

And that's correct isn't it's usual that often monies coming in for clinical trials would be used for salaries and wages for the researchers taking part?
---There's, there could be a fee for the, for the researcher for undertaking that trial. The monies can be distributed in many ways, it can be for the actual product, it can be for, to support the researcher, as in salaries and wages.

THE COMMISSIONER: And could it be for expenses that the hospital incurs?---That's right. There's a range of things.

A range of expenses and - - -?---Yes.

40

MS SOARS: And you're aware aren't you that there's a practice that for example when doctors and other contractors to the hospital invoice for their services or their salary they receive it via a corporate entity. That's correct isn't it?---What do you mean by a corporate entity?

Well a company, a doctor would invoice through a company?---Yes.

And that's a common practice isn't it?---It's not necessarily common, but it can be done.

It can be done. So I'm putting to you there's nothing unusual about Sandra Lazarus invoicing through a company in respect of her salary and wages for research work carried out in relation to a clinical trial is there?---Through the general fund, there is.

I'm not talking about any fund, what I'm saying as a general matter - - -?
---As a general matter, she's able to, to do that. That's - - -

Through a corporate entity?---Yes.

10

THE COMMISSIONER: Well I don't understand that. If she's an employee she can't be employed as a company I take it?---That's right. So this is, I'm assuming this is outside - - -

It's, it's, the summation would be invoiced. I don't understand that. Like invoiced for what?

20

MS SOARS: Well I think just to clarify Ms Madunic, Ms Lazarus was never an employee of Royal Hospital for Women was she?---That's right. No.

And - - -?---But she was - - -

- - - any forms in relation to that were never processed or acted upon?
---That's right. So she's, she was then acting as a contractor, so to speak. I'm, this is what I'm assuming you've just - - -

That's, that's the scenario I'm suggesting to you.

30

THE COMMISSIONER: A contractor with whom?

MS SOARS: Well she's, Ms Madunic has given evidence that it's, she expects that any clinical trials that a researcher may receive a salary or wage - - -?---Through the, through - - -

THE COMMISSIONER: From the company.

MS SOARS: From the, from the external funder or sponsor.

40

THE COMMISSIONER: Yes.

MS SOARS: And I then asked her about the fact that other people within the hospital invoice through companies for their services - - -

THE COMMISSIONER: (not transcribable) other people within the hospital invoice for their services?

MS SOARS: Well I put a series of questions, do you want me to go through that again, Commissioner?

THE COMMISSIONER: Yes, well I don't actually understand, I don't, I don't understand the questions and I therefore, if I don't understand them I'm not sure what weight to put on Ms Madunic's questions - - -

MS SOARS: I see.

10 THE COMMISSIONER: - - - if she doesn't understand them.

MS SOARS: Well did you understand my questions, Ms Madunic?---I'm, I'm assuming that you're actually saying that Sandra was a contractor to a company. She was - - -

I'm just asking you about my questions. Did you have any difficulty answering the questions I recently asked you?---I, I had some difficulty with understanding them, but because I've asked a couple of questions I think I'm on the right track. But - - -

20

THE COMMISSIONER: Well, I don't understand them?

MS SOARS: Yes, I'll go through them again, Commissioner.

THE COMMISSIONER: And I think that you should please clarify them.

MS SOARS: Thank you. Ms Madunic, we talked about the fact that you answered in relation to a question from counsel assisting that salaries and wages for clinical trials are what you expected some of this money or all of it may have been used for that was coming from Sydvet that is referred to in the letter at page 95?---That's right.

30

That's correct, isn't it?---So some of it would (not transcribable)

Be for salaries and wages.

THE COMMISSIONER: Just stop there, did you expect that some of it was going to be used for salaries?---I, I assumed based on some of the questioning that we had this morning I did answer that I thought some of it was going to be for salaries and wages.

40

And what led to that understanding?---The fact that Sandra wanted to be, was pushing to be or wanted to be an employee.

That was when she came down to see you?---Yes, yes.

It was that, it was that, it was that whole scenario to which you testified which led to that understanding?---Yes.

So that when you heard that money was going to be put in for the, some outside sponsor was going to put in money for the testing - - -?---Yes.

- - - you assumed that part of it would be salaries?---Salaries, that's right.

Yes.

10 MS SOARS: And I asked you a question not in relation to Ms Lazarus but just generally, is, are, are you aware of doctors and other contractors to the hospital who might provide services invoicing through a company rather than in their own name for the services they provide?

THE COMMISSIONER: Do you mean medical services?

MS SOARS: Medical, well, I'll deal with medical services to first, just doctors.

20 THE COMMISSIONER: You don't, you don't mean supplying goods?

MS SOARS: No, I, well, I don't know exactly what the doctors do, Commissioner.

THE COMMISSIONER: Well, I'm, yeah, I'm trying to, that's why I, are you, I'm trying to find out whether the - - -

MS SOARS: I'm just - - -

30 THE COMMISSIONER: - - - the question is do doctors sometimes charge for their services through a company?---It wouldn't be unreasonable. They could - - -

No, do they?---I have not come across that.

Wouldn't it be unprofessional?---They would, they would submit a, there would be a contract with the organisation for those services to be - - -

40 MS FURNESS: Visiting medical officers might well do it as I understand it, Commissioner.

THE COMMISSIONER: What, they provide their services through a company?

MS FURNESS: It's not unusual for them to have a practice company as I understand it.

THE COMMISSIONER: So a company carries out an operation?

MS FURNESS: No, but the services provided by the visiting medical officer may fall within that category. Professor Hacker's giving evidence this afternoon, he might be able to enlighten.

THE COMMISSIONER: All right. I understand that a company can employ doctors and that if the doctors come to the hospital as employees of the company the hospital may pay the company?---They may but they usually pay the, the individual.

10 But if a doctor's not employed by a company and comes on his own to provide services - - -?---Then they pay the - - -

- - - then they pay the doctor?---That's right.

Yes, I understand that.

MS SOARS: And Ms Madunic I put to you and I'll put to you again there's nothing unusual about a researcher such as Sandra Lazarus invoicing for any goods that she provides or any services she provides in relation to clinical
20 trials through a company that she controls is there?---Yes, that's, that's right, there is - - -

Nothing unusual?---Nothing usual.

THE COMMISSIONER: There is what?---There is nothing unusual about it.

30 About a researcher, a researcher does medical research as a student for the company, provides goods from a company that she owns and charges the hospital - - -?---The hospital for it.

- - - for the, for goods that the company supplies for the medical research?
---So in terms of if she, well, that would be unusual because there wouldn't be very, there would be no one undertaking - - -

That's what I don't understand?--- - - - that but under this, when you assume that the research was being undertaken she was using a device that was supplied by a company and she purchased that - - -

40 How do you know she purchased it?---I don't, I'm just assuming that, I think I, did I, I'm just assuming it. But in terms of a researcher doing what you just described it would be rare to nil.

It would be rare to nil that the researcher would put in an invoice - - -?---An invoice that - - -

- - - for a company for goods that she used in her research?---That was hers.

That was hers?---That was her company, yes.

Why is it so rare, is something wrong with it?---Yes. Usually researchers are students who are undertaking research on behalf of, so aren't getting money for it, they're doing it on their own accord, along with a clinician, and Professor Hacker will be able to describe that a lot better than I can.

10 Well, I think that really you've been asked about your experience in regard to accounts being sent in by researchers?---Yes, which very rare, very rare to nil.

MS SOARS: In relation to services that may be provided by a clinical researcher, it would, you accept it would be usual that they could be invoiced through a company to the hospital?---I'm going to say that it's very rare and very very unlikely because these things, researchers don't necessarily do that. It's happened and that could be possible, that could be possible, but for it to actually occur, not in my experience.

20 Okay. So you accept though it has happened in the past. Is that what you're giving evidence about?---Yes, it happened with Sandra.

With Sandra. And on other occasions?---No.

But there's nothing inherently wrong with it, is there?---Inherently wrong?

THE COMMISSIONER: Is that an opinion?

30 MS SOARS: Yes?---An opinion? Not in a, no, but it being done, it's not done. It's, it's something that has never been done.

THE COMMISSIONER: I think that's a matter that the ethics committee should answer?---Mmm.

Or someone associated with it.

MS SOARS: Can I take you to paragraph 14 of your first statement, please, Ms Madunic?

40 THE COMMISSIONER: 40?

MS SOARS: 14.

THE COMMISSIONER: 14.

MS SOARS: I want to ask you about the last couple of sentences. If you could just read them to yourself?---Yes.

I'm putting to you you didn't actually have a discussion with my client, did you, in which you mentioned special purposes and trust fund?---So you're actually asking whether or not I had the conversation?

I'm saying you didn't have it. Do you agree with that?---No, I don't agree with that, sorry.

10 And I'm putting to you that you don't really have a good recollection of that conversation that presumably was one that occurred in amidst a number that you had on that day. Is that correct? Well, I'd better break that down?
---I do recall.

Let me break it, break it down?---Sorry, I just- - -

That conversation was one that happened amongst a number of conversations you presumably had on that day. Is that correct?---Yes.

MS FURNESS: Well, with Ms Lazarus or- - -

20 MS SOARS: Generally?---Generally it was one of the conversations I had during that day, yes.

Yes. And I'm putting to you that you don't have a great recollection of that conversation, do you?---I do have a recollection of the conversation, yes.

And is it, is it your evidence that you actually said the words, special purposes and trust fund?---Yes.

30 And would you have any idea whether Ms Lazarus would even know what you were talking about as a medical researcher?---She may, she may not. I'm not to know whether or not she understood what that meant, but they were, those words were used.

If I can take you to paragraph 16 of your first statement, just the first sentence, Ms Madunic, if you could read that to yourself?---Yes.

It's your evidence, is it, that the usual way for money to be requested from an SPNT is by way of requisition?---That's right.

40 And that's the same requisition that's used when moneys are requested to be paid from a general account at the hospital?---Yes, that's right.

And there's nothing different in relation to the requisition that's used relevantly apart from the cost centre or account number. Is that correct?
---That's right.

Excuse me, Commissioner. Thank you, Ms Madunic, thank you, Commissioner.

THE COMMISSIONER: Thank you. Ms Furness?

MS FURNESS: Thank you, Commissioner. Ms Madunic, in 2008 your position was Director of Corporate and Clinical Support?---2008 I was Deputy Director of Clinical Services?

Deputy Director of Clinical Services?---That's right.

10 In that role were you responsible for the provision of security in the hospital?---No, the provision, when you talk about provision of security, the security department is run under the Corporate Services Department which is part of the Northern Network, the Northern Hospital Network.

And no one who was responsible for providing security services reported to you or through you?---I had a connection with the, or I have a relationship with the Director of Corporate Services at Prince of Wales who oversees security.

20 When you say a relationship, what do you mean?---We, we're colleagues, we discuss things. There's also a service level agreement for security services which we devise, I revise and sign off on via Professor Walters. So Professor Walters sign off on it and I review the agreement before it's signed.

You gave evidence earlier today in relation to security and methods they have or don't have for checking?---Yes.

Do you remember that?---Yes, I do.

30 Is that evidence based upon what you understand from their practices from your discussions with the director who has line responsibility for them? ---So in terms of the security department I have some understanding of it and it would be the understanding that I had because of the relationship or the interaction I have with security, with the security department.

Well, was the answer to my question yes or- -?---Yes.

40 It's because of your relationship, in your language, with the person who has line responsibility for security?---Yes. And also with my relationship or interaction I have with the security department itself.

So your knowledge from how you deal with security in your normal job? ---Yes.

Now, in relation to vendor maintenance forms, in the position you held in 2008 did you have responsibility for those whose job was to check those forms and ultimately enter the information onto the system?---No, that's

actually a, an area, that was an area service and so it was the responsibility of those working within the area or the Material Resources Department.

In an answer to a question by counsel assisting in relation to checks done on vendor maintenance forms, you answered that you were unaware of any checks being done. Now, do you remember giving that evidence this morning?---Yes.

10 Was your evidence that you had no knowledge one way or the other or was your evidence that you knew that no such checks were done?---The first.

Thank you. And- - -

THE COMMISSIONER: So you have no knowledge of whether or not checks were done?---That's right.

No knowledge at all?---Of whether or not checks were done in this case?

20 No, generally?---Generally I do have knowledge. So if it's related to this case I can say that no, I don't have any knowledge of checks being undertaken, but I have been previously for other reasons asked about vendor forms.

And?---And what we do, because- - -

So in other instances, have checks been done?---Yes, in other instances, yes, so I'm relating it to this case.

30 MS FURNESS: So is it the case, Ms Madunic, because of inquiries you have made or inquiries others have made in relation to Ms Lazarus, you are giving evidence that there were no checks of the ABN number performed in relation to any of Ms Lazarus's (not transcribable)?---That's right, specific to this case.

Now, finally you were asked questions about requisitions being raised by a requisitioning officer who had an interest in the moneys being paid?---Yes.

Do you recall that?---Yes.

40 Is it the case that those employed by the hospital who have expended funds by way of training insurance or other matters that are ordinarily paid for by the hospital, that they would raise a requisition as requisitioning officer for the return of those funds?---Yes. For instance, if someone was to go on overseas travel or to attend a course and they've paid for that course, then they would complete the requisition book.

As requisition officer?---As requesting officer for that expenditure and then the various signatures below that would be completed by the respective department head and then by Professor Walters.

When you say below that, you mean the delegated officer and the - - -?
---And the authorising - - -

Just let me finish. The delegating officer and the authorising officer?
---That's right.

10

So in fact there'd be nothing unusual about a requesting officer being the person ultimately to whom the funds were to be provided?---That's right.

Thank you, Commissioner.

THE COMMISSIONER: Mr Alexis.

20

MR ALEXIS: Thank you, Commissioner. Ms Madunic, Ms Soars asked you a question about the identification card or the security card that we've come to hear so much about in this inquiry and the suggestion that Helen, that is to say Professor Hacker's secretary facilitated the issue of such a card late in the 2007 calendar year. Do you remember those questions and answers?---Yes.

And I think in the course of them you conceded that it could be that Helen taking Ms Lazarus down to the security office could have procured the issue of such an ID card or an access card in late 2007. Do you remember saying that?---Yes.

30

Can I just explore how it was that you were able to make that concession to readily, because as I think, or at least as I understood from your evidence that you gave in answer to some questions earlier, before a security or ID card could be issued, there had to be a criminal record check. Is that so?
---Yes.

And there had to be - - -?---That's my belief.

- - - a working with children check. Is that so?---Yes, that's my belief, yes, to my understanding.

40

And at the very least all those forms that we saw earlier had to be completed by the prospective employee, being either a paid employee or a voluntary honorary type employee?---Yes.

Now we know from the documents that we went through this morning that they weren't signed by Ms Lazarus until at least 10 April, 2008?---That's right.

And we know also from what you showed us in relation to the cheque that had been done with respect to St Vincent's Hospital that the status derived as a result of criminal record cheques and working with children checks in connection with St Vincent's Hospital didn't occur until 8 April, 2008?
---That's right.

And just for the transcript that's the document at page 25 of Exhibit 1?---Ah
hmm.

10 So can I just come back to understand why it was that you gave that concession so readily, despite the fact that my learned friend asked it, but how could it be that Helen would be able to procure an ID or access card in late 2007, months before it seems any of these documents have been completed let alone signed?---Yes. This is going to, I'm going to say, this is, I'm going to suggest that this is going to reflect poorly on the security department, but I will not, I don't, I could see that actually happening when
- - -

20 Why could you see in your minds eye that actually happening?---Someone's come down to the security department, they've asked for a pass to be issued. An employee of the organisation is standing with them. I don't see that the security department would actually question the reasoning behind it. I don't know, I, I can't actually say who completed the form, so if there was a signature on that form that they recognised, there is every possibility that they could have released or issued a security card.

So if we assume that Helen arrived at the security office with Ms Lazarus in hand - - -?---Yes.

30 - - - and on Helen's asking a security access card with photographic identification would be issued?---Could be issued, yes. That is a possibility.

What you see as a real possibility of that occurring - - -?---I do, unfortunately, yes.

- - - without all the paperwork that we've already been through in some detail having been completed?---Yes.

40 Yes, thank you Ms Madunic.

THE COMMISSIONER: Why do you say that? On what is that evidence based? I mean is that just your assessment of the - - -?---My, that's, that was my assessment of the situation.

Is that, is that because of personal experience you'd had of their behaviour or is it just a general view of their behaviour, particularly in relation to the issuing of security cards?---That would be an assessment based on their behaviour. So - - -

So I gather from that that your view is that they are pretty lax?---Yes, which I, unfortunately I need, yes.

You need - - -?---I, I - - -

Well, you're obliged to tell the truth?---I am, that's right, I need to tell the truth and that's - - -

10 I'm afraid there's no way out?---So I'm, I'm saying that our security department in this is lax.

MR ALEXIS: And so if one was to try and ascertain unequivocally the date upon which such an access security card with photograph identification was issued the best way to do that would be to go to the form created, I withdraw that, I'm sorry. Would go to the computer system which produced the, Exhibit 64 relating to the Jessica Lazarus to get the details as to when in fact that pass was issued for Ms Sandra Lazarus, is that so?---That's right.

20 Yes, thank you. That's all I have for Ms Madunic and, Commissioner, could she be excused from further attendance?

THE COMMISSIONER: I can see Ms Furness making movements.

MR ALEXIS: Oh, I see, I'm sorry.

MS FURNESS: My apologies.

THE COMMISSIONER: You want to some more questions.

30 MR ALEXIS: I withdraw my application in light of my learned friend being on her feet.

MS FURNESS: Thank you Commissioner.

THE COMMISSIONER: You want to have another ago, Ms Furness.

MS FURNESS: Well, I wouldn't quite put it like that, Commissioner.

40 Ms Madunic, I take it from your answers to the Commissioner that you are not able to point to a particular episode whereby the theoretical proposition put by counsel assisting as to the circumstances in which a card could be issued has occurred?---I, yes, I, that's basically my, my understanding of the security department and my impression of the security department.

You're offering the Commission an opinion as to your - - -?---Yes.

- - - understanding but you're not suggesting that there is an episode that meets the description?---No, that I, that I was, that I've been involved in.

Thank you, Ms Madunic. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Ms Madunic. Thank you for your evidence?---Thank you.

You're excused?---Thank you.

10

THE WITNESS EXCUSED

[3.07pm]

MS FURNESS: Commissioner, just before my learned friend calls the next witness, Commissioner, you asked some questions in relation to the principal hospital scientist pay rate.

THE COMMISSIONER: Yes.

20

MS FURNESS: Can I indicate from the website, that is the health website, that the fifth year would attract a pay of \$2,237.50 as at July 2008 and I'm told that's a fortnightly pay. It doesn't distinguish between grades, however. The letter referred to grade 2, this is just fifth year but there's a proviso which is that provided that the principal hospital scientist shall not progress beyond the salary prescribed for the fourth year unless they hold a post graduate degree in science at least equivalent to a PhD or has been admitted as a fellow.

30 THE COMMISSIONER: Thank you, Ms Furness, that's helpful.
Mr Alexis?

40 MR ALEXIS: Thank you. Commissioner, I wish to recall Professor Hacker but before I do that can I just indicate that we have been able to secure Associate Professor Marsden in Laos where he apparently is undertaking medical procedures over there. We've been able to secure him by telephone, 6.00am Laos time, 10.00 Sydney time on Wednesday morning this week. He's indicated that because he needs to leave his place of residence by 7.00am Laos time to achieve his or meet his commitments that day he can provide us with one hour. I've indicated to my learned friend Ms Soars that I will endeavour to examine Dr Marsden so as to allow her at least half an hour of that one hour and I understand that should be suitable so I'm raising it now just in case there's any difficulty with the Commission sitting on Wednesday morning for one hour to accommodate Dr Marsden.

THE COMMISSIONER: Well, I'm happy to sit on Wednesday morning.

MR ALEXIS: Thank you, Commissioner.

THE COMMISSIONER: Ms Furness, will you want to be, be wanting to or somebody representing your client, is there a likelihood that they will want to cross-examine?

MS FURNESS: I think it's unlikely and if it is - - -

THE COMMISSIONER: It's difficult to say I understand.

10 MS FURNESS: Yes, if it is I imagine it wouldn't be for a lengthy period of time. I've certainly read his statement and my recollection of his statement is that I wouldn't expect to be troubling him for any lengthy period.

MR ALEXIS: And, Commissioner, what we propose doing is because we have email communication with him, sending him by way of a PDF the relevant pages of Exhibit 1 that he'll be examined on, the ones that come readily to mind are the page containing his signature on the, on the ethics application form and also the five requisition forms and if there's any other documents that Ms Soars or Ms Furness wish to have him, have before him then I'd ask each of them to indicate that tomorrow morning so that those
20 arrangements can be made ready for Wednesday. Commissioner, having noted that, could I now recall Professor Hacker.

THE COMMISSIONER: Professor, you are still under the oath that you took the last time you gave evidence and the Section 38 order continues too?
---Thank you.

MR ALEXIS: Professor Hacker, I wish to take you to an occasion that occurred in about September or October of 2008 when you and Professor Walters had a conversation about the Sandra Lazarus matter. Do you follow the occasion I'm taking you to?---I do.

10 And I wish to ask you whether you recall having a conversation with Professor Walters at that time during which you told him that Sandra Lazarus had required some instrumentation or equipment and that you had provided a requisition to her in relation to that instrumentation or equipment, expecting that the requisition would be dealt with in the usual way. Now, if there's anything about that suggestion that's unclear I would ask you to tell me, but I wish you to comment if you would on that suggestion, that you had a conversation in the terms or to the effect of the terms that I've just put to you?---I have no recollection of saying anything about providing a requisition to Sandra Lazarus.

20 Can you tell me whether or not the subject matter of providing a requisition or requisitions in relation to Ms Lazarus was discussed with Professor Walters in, as I say, September or October 2008?---Not the specifics of requisitions, no.

30 THE COMMISSIONER: Were you told anything by Ms Lazarus as to whether the Medex instrumentation was being provided free of charge to the hospital or whether the hospital, or whether she would have to pay for the Medex devices of the hospital would have to pay for it – do you recall any discussion about that issue?---No, no discussion at all about that specific issue, no.

MR ALEXIS: This is with Professor Walters?

THE COMMISSIONER: No, no, with Ms Lazarus?---No, Ms Lazarus.

MR ALEXIS: All right.

40 THE COMMISSIONER: Before, before the conversation which you've been asked about. I'm asking you whether before this conversation that's said not by you to have occurred, but there is evidence given that that conversation did occur. I'm asking, my question, and I think you understood it correctly, is whether before this conversation is supposed to have taken place, did you have a discussion with Ms Lazarus about who was to bear the cost of any device. And you've answered no?---That's correct.

MR ALEXIS: Professor Hacker, do you recall receiving from Mr Ratnam, that's Ravi Ratnam an email on or about 3 October, 2008 dealing with the subject of some anomalies concerning monies paid out for clinical trials

relating to early detection of cervical cancer?---I have no recollection of that.

All right. Could I show you please the email which is attached to Mr Ratnam's statement in this inquiry and I think Mr Ratnam's statement is Exhibit 59. Could I direct your attention to the email that starts at the bottom of the first page and goes over to the top of the second page?---Yes, I have not seen that email prior to today.

10 You haven't seen it prior to today?---That's correct.

I see. All right. Well can I suggest to you that in the September/October period and perhaps it may have been later in the 2008 year you had two conversations, separate conversations I mean with Professor Walters in relation to the subject of whether or not you signed a least a requisition form in relation to the clinical trial or a clinical trial concerning Ms Lazarus. What do you say to that?---I don't believe I had any conversation with him in relation to signing requisitions.

20 And what I wish to suggest to you is that in the first conversation with Professor Walters I'm talking about, you indicated to him or you said to him that you had signed the requisition form. What do you say to that?---I, I don't believe I, I certainly have no recollection of saying that.

All right. And what I want to suggest is that in the second conversation you expressed or said to Professor Walters that you had some doubt as to whether or not you had signed the form, the requisition form I mean?---I don't recollect that conversation at all.

30 Commissioner, I've just put what's at 697 of the transcript from line 40. Yes, I'll have that email back, thank you. Well, Commissioner I'm not sure I can take that much further.

THE COMMISSIONER: Yes, Ms Soars.

MS SOARS: Could the witness be provided with Exhibit 2, his first statement, please, Commissioner. Could you turn to paragraph 49 of your first statement, please, Professor Hacker.

40 MS FURNESS: Was that 49?

MS SOARS: 49. Have you read that to yourself, Professor Hacker?---I have.

Professor Hacker, what Professor Walters says about his first conversation with you in relation to a requisition is entirely consistent with paragraph 49 of your first statement isn't it?

MS FURNESS: Well, I object. The witness has made two statements and in his second statement he specifically refers to paragraph 49 of his initial statement. And that's in paragraph 8 of his second statement.

THE COMMISSIONER: And what is the - - -

MS FURNESS: To be fair to the witness he should be referred to that as well.

10 THE COMMISSIONER: I'm sure Professor Hacker knows that. I don't think the question is misleading.

MS FURNESS: Well, the question may not be misleading, but to be fair for the witness to give a proper answer, given that there are two statements and they both refer to that paragraph, he should be referred to it.

THE COMMISSIONER: Yes, I understand. Professor, you've been referred to paragraph 49 in your first statement. You later made another statement, do you recall that?---I do, yes.

20

And in that statement you said that you now believe that you did not sign any of the requisition forms and gave a number of reasons for that. Do you recall that?---That, that's correct, yes.

All right. Now, now, I think Ms Soars do you mind putting your question again.

MS SOARS: I'll put it again, Commissioner. Professor Hacker, what Professor Walters says about his first conversation with you in relation to a requisition, that is that you said to him that you signed it, is entirely consistent with paragraph 49 of your first statement.

30

MR ALEXIS: Can I object to that question.

THE COMMISSIONER: Mmm.

MR ALEXIS: I'm not sure that it's strictly correct to say that that's what Professor Walters said. I appreciate that that question might be based on the last part of the transcript that I took Professor Hacker to - - -

40

THE COMMISSIONER: Well, you'll have to show me the transcript, there it is.

MR ALEXIS: - - - but some may say that Professor Walters had a lot to say on this subject and one would need to understand the totality of his evidence to be able to put a question to the effect Professor Walters said and I think it'd be more helpful to draw attention to that. I think my learned friend's last question is based on what's recorded at 697 of the transcript at 18 to 40.

THE COMMISSIONER: Yes. Ms Soars, I think you can put the question in a different way without referring to Professor Walters.

MR ALEXIS: The essential objection is that the clarity with which the question assumes in terms of Professor Walters' evidence - - -

THE COMMISSIONER: I understand.

10 MR ALEXIS: - - - is perhaps not the clarity that he would have the Commission believe is the clarity with which he gave that evidence and I think in fairness to Professor Hacker that should be made clear.

THE COMMISSIONER: Yes. You can ask the question, you can get to the point of the question, Ms Soars, without mentioning the evidence that some other witness gave.

MS SOARS: Would - - -

20 THE COMMISSIONER: But I mean, if you want to ask the question and then refer it to Professor Walters then proceed bearing in mind Mr Alexis' submissions.

MS SOARS: Well, I don't want to be selective, Commissioner, and I don't want to delay but - - -

THE COMMISSIONER: No, that's all right, look, Professor Hacker - - -

30 MS SOARS: - - - my understanding is that he did clarify his evidence towards the end of the examination.

THE COMMISSIONER: At one point in Professor Walters' evidence, this is what he said, in these two conversations that he was having, that he had with, with you, in the first conversation you told him that you'd signed the, signed a requisition form and he said that in a second conversation you told him that you had doubted whether you had signed the requisition form. Professor Walters gave more evidence about this and it is open to argument whether in the other evidence, whether the other evidence you gave was identical to the passage that I've just told you about so bearing in mind what
40 I've now said to you, I think the question that Ms Soars is asking you is, is whether you agree that paragraph 49 of your first statement is consistent with that part of Professors Walters' evidence that I've just told you about?
---Well, I, I refute the paragraph 49 and I don't believe that the issue of requisitions was ever mentioned in any conversation with Professor Walters. I don't believe that I ever suggested that I'd signed a requisition book or ever doubted it in a subsequent conversation. The issue of the requisition book to my recollection was never mentioned. Professor Walters wanted reassurance from me that there was external sources of funding for this

research and I gave him reassurance based on a letter that I had received from a Johel Neiron that \$75,000 of external funding was to be provided.

MS SOARS: And, Professor Hacker, given your belief that the \$75,000 was to be provided and I think in paragraph 49 you've given evidence that you believe the money had in fact been provided, towards the end of that paragraph?

10 THE COMMISSIONER: Well, I'm not sure. Are you now asking a separate question or- - -

MS SOARS: Yes.

THE COMMISSIONER: Ms Soars, yes?

MS SOARS: Professor Hacker, you see, don't you, that in paragraph 49 towards the end you give evidence that you believe that the money had been provided into the trust fund by Sydvvet. That's correct, isn't it?

20 THE COMMISSIONER: Well, is it, you're asking him whether it's correct that he said that or are you asking him whether it's correct that he believed that?

MS SOARS: I'll break it up. I'll just ask him first if he said that and then I'll- - -

THE COMMISSIONER: He did say it, Ms Soars. We can all read it.

30 MS SOARS: As, as you please, Commissioner. And is it, was that your belief at the time, as at 14 July, 2008, that the money had been received, Professor Hacker?---I, I assumed it had been received.

Yes. And so as at the date of these alleged requisitions which are referred to in paragraph 49 of your first statement, you had no reason not to sign them, did you, given that belief?---Except that the, I would not have signed for the, for what was on them, had they for example been for the Medex equipment, I would have had no reason not to sign them.

40 And, and just for completeness I'm putting to you again, Professor Hacker, that you did in fact sign the five requisitions that are referred to in paragraph 49 of your first statement?---Well, I refute that.

And just one question on another topic, Commissioner, if I could?

THE COMMISSIONER: Certainly.

MS SOARS: Professor Hacker, is it correct that you receive a copy of all minutes of meetings of the Northern Hospital Network Human Research

Ethics Committee and you did so during 2008?---I, I don't normally get minutes of that meeting, no.

Do you have a clear recollection of that or are you just not aware?---I, I, I, I don't receive minutes of that meeting.

THE COMMISSIONER: Do you attend that meeting?---No.

You're not part of that committee?---No, I'm not part of that committee, no.

10

MS SOARS: And, Professor Hacker, if I put to you that Professor Walters in his evidence between page 698 line 40 and 699, 20, has referred to the fact that you received HREC minutes when they were issued by that committee, do you disagree with what he's saying?---I did not receive any minutes. I do not receive minutes of that meeting.

Thank you, Commissioner.

MS FURNESS: Just one matter.

20

THE COMMISSIONER: I beg your pardon?

MS FURNESS: Just one matter, Commissioner. Professor Hacker, you were taken to an email from Mr Ratnam to you and others on 3 October, 2008. Do you remember that?---I do.

And your evidence was that you had no recollection of having received that email?---That's correct.

30

The email as I've indicated was dated 3 October, 2008, do you now recall whether there were any events on at that time or usually events on in October of a year that might have prevented you from having received it?---Well October is a, is a common month for conferences. I'm often overseas at that period of time. But I certainly would have, but I would normally have nevertheless received it because it would have been there for me, you know, via my secretary or I would have got it by email overseas. But I had never seen the figure of 250,000 mentioned in relation to this trial. I had only ever seen a figure of 75,000. So I certainly would have remembered that email had I seen it.

40

Thank you. Commissioner, nothing further.

THE COMMISSIONER: Can you just tell me professor, do you have a computer on your desk?---I do.

And who has access to your emails?---My secretary.

On her computer?---On her computer, yes.

It's linked to yours?---That's right. Yes.

And emails you receive is there any practice that determines who opens them, either you or her?---She opens emails that come on the hospital email address and notifies me of any that require my attention. And I open all my own university emails.

Now this email of 3 October, do you have it in front of you?---No.

- 10 Could the professor please be given the email. Are you able to determine whether this is, to what address this email was sent?---No, not, not from the email itself. It probably would have been sent on the hospital because these are all hospital people.

So hospital people send emails to you at your hospital?---Usually, yes.

Yes. And, and I take it the university people?---That's right.

- 20 You have two email addresses do you?---I do, yes. There's a standard university email address for anybody who's affiliated with the university. And there's a, which is a unsw.edu.au and then there's a standard hospital address.

And the emails that are addressed to you at the hospital address they will arrive at your, on your computer and on your secretary's computer?---That's correct. Yes.

- 30 And I'm not sure if I understand you correctly, do you open yourself the ones from the hospital or do you leave it to your secretary to open the ones from the hospital?---I intermittently open them. I don't, I don't look at all of them because many of them don't have anything really to do with me. And so she will delete those on a twice daily basis, for example. So, so I don't routinely open those. I open and view all university emails.

All right. Yes, thank you?---But I would certainly expect that something of this magnitude she would have pointed out to me, because it's specifically addressed to me. Many of them are just rosters for registrars on call or something like that which doesn't specifically concern me.

- 40 But is there any, I think Mr Ratnam, am I correct in saying that Mr Ratnam says that this email was sent to you?

MR ALEXIS: Yes, that's his evidence.

MS FURNESS: And there was no response to it, Commissioner.

THE COMMISSIONER: Pardon?

MS FURNESS: There was no response to it.

THE COMMISSIONER: And there was no response to it. Is there, can you proffer some explanation for how this could have occurred?---No. I mean I hadn't heard of this email I must say until today. It's a mystery to me how this could have occurred.

You haven't discussed this with your secretary?---No.

10 Is she still with you?---No.

Yes, thank you.

MR ALEXIS: Commissioner, I think we can excuse Professor Hacker.

THE COMMISSIONER: Yes. I'm sorry you had to be recalled, Professor Hacker. Thank you for attending.

20 MR ALEXIS: Thank you, sir. I might retrieve that email from the witness box before it disappears.

THE WITNESS EXCUSED

[3.35pm]

MR ALEXIS: Commissioner, I seek Professor Burton in the hearing room. And I seek to recall him.

30 THE COMMISSIONER: Professor Burton.

MS FURNESS: I appear again for Professor Burton, Commissioner.

THE COMMISSIONER: Professor Burton, you're still under the oath that you gave last time. Did you give an oath?---Yes.

10 And the section 38 order that was made in as in regards to (not transcribable) still apply to you.

MR ALEXIS: Thank you, Commissioner. Professor, I think we need to start with Exhibit 1 being before you in the witness box open at page 277. You'll recall from the last occasion the numbers in the top right hand corner.

THE COMMISSIONER: Sorry, Exhibit?

20 MR ALEXIS: Exhibit 1, page 277. And Professor Burton, I wish to come back to the subject that you were examined on on the last occasion you gave evidence before the inquiry, that is the subject of the meeting that occurred involving Mr Vern Pleiksna, his son, David Pleiksna and Ms Lazarus. And for the purpose of these questions, can I ask you to put to one side whether it was Michelle Lazarus or Sandra Lazarus. I'm going to be focusing more on the terms of the discussion that occurred at the meeting. Do you follow? ---Yes.

30 Now what I want to suggest to you is that during the meeting and Commissioner, I have page 940 of the transcript open before me, and I'm looking in particular at line 20 and following. So that's 940.

THE COMMISSIONER: 940?

MR ALEXIS: 940 and Professor Burton, that's a reference to a page of the transcript of some earlier evidence for the Commissioner.

THE COMMISSIONER: Yes, thank you.

40 MR ALEXIS: And what I want to suggest Professor Burton is that during the course of the meeting in your office, Mr Vern Pleiksna, that's the older of the two gentlemen that were there, was in your office with the letter, be it the original or a copy of the letter at page 277 in hand and there was actual reference to that letter during the course of the conversation with you. What do you say to that?---No. No, the letter I saw, there was no reference to the letter.

And what I want to suggest to you is that there was discussion about the content of the letter, in particular about half way through the letter

discussion about the results of the preliminary research trial which showed a least according to the letter that eight of 10 or 80 per cent of the patients were correctly diagnosed by the Medex screen, the MedexTest screening method. What do you say to that?---There was no discussion about that trial.

10 And Professor Burton, I want to suggest based on what appears at transcript 969, from line 12 and following, again sir, that's a reference for the Commissioner, but based on some evidence that was given at that point of the transcript, I want to suggest that you conveyed to Mr Pleiksna a familiarity with the results of the preliminary research trial referred to in the letter and that you in fact put forward the patient number during the course of the meeting and so we're clear about that, you put forward the prospect of enlarging a further trial from the initial 10 to a further trial involving about 200 patients. What do you say to that?---Sorry, there were two things there. Can you say the first thing again?

THE COMMISSIONER: I think it's better to split it up.

20 MR ALEXIS: Yes, I will, thank you.

The suggestion that I wish to make to you, sir, is that during the meeting you conveyed familiarity with the results as contained in the letter at 277 to Mr Pleiksna - - -

THE COMMISSIONER: The results of the pilot study?---That's not true.

30 MR ALEXIS: And I want to suggest to you that it was in the context of the eight of ten patients correct diagnosed by the Medex test screening method as is referred to in the letter that led you to speak about enlarging the pilot study or the preliminary research trial to a larger study involving some 200 patients, what do you say to that?---No, I'm saying that the, we did not talk about the trial and therefore we did not then go to talk about a bigger trial. Is that - - -

Well, that's, that the sequence I'm putting to you?---No, I did not talk the - - -

40 All right. So in relation to a separate reference to a larger study and I'm at 970 of the transcript line 10 and following, Dr Burton can I suggest that it was you who suggested to Mr Pleiksna that the trial should be expanded and I quote, "to a larger study involving 200 patients?"---Yeah, we talked about a larger trial. In, in my notes I talked about, I don't know if you remember, false positives, false negatives, all that which then comes to how you work out what power you need for a trial and you'd need, you know, you'd have to do the maths but it'd be, there'd be four parts of the trial, you'd need 800, 1,000 something like that, you know, 200 in each group, the maths, we

wouldn't have talked 200, we would have, 200 would have come up but it would have been 800, 1,000, something like that.

THE COMMISSIONER: 200 would have come up, what, as parts of a larger number?---Yes. Then you'd, it's complicated this, you'd need four parts to this trial and just thinking about the maths, if, if you had to think about it it'd be 1,000 or something.

10 MR ALEXIS: And could I suggest that on the subject of expansion to a larger study you recommended it and let me put this to you clearly, you recommended it based on the study that it occurred to make it valid for medical acceptance it would require a larger patient study and also symptomatic and asymptomatic patients that it would find a better result with a larger study group, something to that effect?---Based on the trial that, the trial that's written in this note here.

That, that's what I'm (not transcribable) to you?---Yeah, that's not true.

20 That the recommendation for a larger study in or about the terms of what I've just put sprang from the result of the earlier study?---No, that's not - - -

What do you say to that?---No, that's not true.

Yes, thank you, Dr Burton.

THE COMMISSIONER: Mr Burton, there's something I just wonder if you could explain to me, do you have that letter at page 277 in front of you?---I do, yes.

30 In the, I think it's the third paragraph where it says, "The results of the Medex test were reviewed" et cetera, do you see that?---Yes.

And then it says that, "These results showed that eight out of ten patients were correctly diagnosed by the Medex screening method, the sensitivity for the ten positively diagnosed patients was calculated to be 80 per cent."

What does that mean?---Sensitivity is you have the false positive rate.

40 What's that mean?---That means if you do a test and it picks up that you're correct, that's good but it might miss someone who's not positive, you know. So - - -

So false positive, but a false positive suggests that someone is diagnosed with cancer when that person doesn't have, is that right?---Yes, yeah, so you can't, that's why this statement's not very, well, false, because you wouldn't, you can't say what the sensitivity is from that trial. If that, if that, say that trial was true, you need to know people who don't have, who don't have a positive pap smear and people who do have a positive pap smear, so

you need two groups to do it but you can't say, you, sensitivity, you can't start with one like on a single arm, you need two arms.

Can you just explain to me the two arms?---Sorry. Say you had ten women, well, you'd have to have a lot but say there's ten, so we had ten women with a positive pap smear and then women with a negative pap smear and you then test them with your new device and say it picks up that eight out of ten are positive - - -

10 Eight out of?---Ten are positive in a group that have a positive pap smear - - -

Yes?--- - - - but say it picks up, you know, six in a group who have, who don't, who have got a negative pap smear, so you need two groups to work out the sensitivity, you know.

Yes?---And so it subtracts. Often so you think you've got eight out of ten but in fact you've got eight minus six makes it two out of ten - - -

20 I see?--- - - - in the sensitivity. So we've got, whoever's written this has got it all wrong, you know. So the word sensitivity is a very defined statistical word and it's the other half of specificity so (not transcribable)

30 So this (not transcribable) from rereading it it says, the letter says that ten positively diagnosed patients diagnosed with traditional, conventional screening methods were screened with the Medex test and you, you are saying that is an, that is an inadequate pilot study?---Yes, it's, if that's what, if the pilot's trying to show sensitivity rather than just say showing the device is not going to electrocute people or, you know, is it safe and all those things which you'd normally start with, it would be, you'd have to have groups, another group in it to give you, to word the, to use the word sensitivity properly statistically you'd need to know the two groups. If the test's over-sensitive it's, it's rubbish, you know, the test is, you can increase it and make it really good for the group who have got it but if it's, so you've got to have two groups, you know, so - - -

40 And previously I think you expressed a view as to the number of patients you would need for a proper pilot study?---Back a while ago, back in October 2008 - - -

Yes?--- - - - I expressed a view you'd need eight to ten to look at logistics and things like that.

You'd need eight to ten?---Just eight to ten to look at does it actually work and, you know, it's - - -

It won't electrocute people - - -?---Yeah.

- - - but to just examine whether or not there should be a larger study what would you need for a pilot study?---Well, you'd need four groups. You'd need a positive pap smear tested on Medex, a negative pap smear tested on Medex, a positive pap smear tested on pap smear on whatever and needle pap smear. So you need 40, you know, something like that, to even get close. The statisticians just wouldn't let it through but if you wanted some sort of sense of the sensitivity.

Yes. Ms Soars.

10

MS SOARS: I don't have anything.

MR ALEXIS: Professor, you've said in response to the question from the Commissioner that the statistician wouldn't let it through but what about you? In that paragraph to which your attention was drawn the sensitivity for the ten positively diagnosed patients is expressed to be 80 per cent but from what you're saying the expression of sensitivity as a percent in this letter seems to be nothing more than an expression as a percentage of the eight out of ten patients that were correctly diagnosed using the Medex test?---That's right. This statement is incorrect medically and statistically.

20

So you would say I gather from your evidence that the expression of sensitivity expressed as a percentage is not an expression of sensitivity at all?---No.

So if you saw a document like this expressed in those terms in May 2009 and asked to sign it, what would you have done?---I wouldn't have signed it, no. It's very bad statistics, research, whatever, yeah.

30 All right. Thank you.

THE COMMISSIONER: Ms Soars, do you need an adjournment to discuss this part of the evidence?

MS SOARS: No, Commissioner, I've got instructions and I have no questions.

THE COMMISSIONER: Yes. Yes, thank you, professor, thank you for attending again and I'm sorry you've had- -?---Thank you. No, that's fine. Thank you.

40

MR ALEXIS: Can I just have a, have a moment? Thank you, professor.

THE COMMISSIONER: You may, you may, you're excused from further attendance. You're very welcome to stay if you want.

MR ALEXIS: I'll think of something else to ask you.

THE WITNESS EXCUSED

[3.50pm]

MR ALEXIS: Well, Commissioner, I'm very sorry to say that it's 10 to 4.00 and I have no further witnesses this afternoon and- - -

THE COMMISSIONER: Yes. I'm, I just want to know what the position is with regard to the receptionist at the hospital.

10

MR ALEXIS: Yes, and I was going to deal with that immediately. Tomorrow morning we have arranged for two witnesses who worked within the accounts payable section of the respective area health services for each of the two hospitals we're concerned with. I anticipate that after those two witnesses give their evidence that I'll then be in a position to call the receptionists for- - -

THE COMMISSIONER: Both hospitals?

20 MR ALEXIS: Both hospitals.

THE COMMISSIONER: Very good.

MR ALEXIS: And to the extent that their statements haven't as yet been served they will be as soon as we, they will be served as soon as we adjourn.

THE COMMISSIONER: They've been signed?

30 MR ALEXIS: Yes, they have, but only recently. There's a few in draft, but the position I've taken, Commissioner, is that whether they've signed them or not I want them here for the purpose of having them examined tomorrow.

THE COMMISSIONER: I'll say they've been around for a long time. I really don't understand what the delay is.

MR ALEXIS: Yes. Well, there has been delay but I'm about to bring that to an end tomorrow. I expect that having worked through those witnesses tomorrow there will be some statements that have been served that I'll be tendering for whom I don't propose calling the witnesses.

40

THE COMMISSIONER: Yes.

MR ALEXIS: There's a handful of those statements. My learned friends know who they are. And then I expect that we may well be adjourning early tomorrow once we get through that for the purpose of taking Associate Professor Marsden's evidence by telephone Wednesday morning. And then I expect after the conclusion of that you will be asked, Commissioner, to adjourn the inquiry until the morning of 23 March.

THE COMMISSIONER: Yes, very good.

MR ALEXIS: And I expect that from that date the remaining witnesses will be Ms Sandra Lazarus, Ms Michelle Lazarus and Jessica Lazarus.

THE COMMISSIONER: We'll adjourn then.

MR ALEXIS: Thank you, Commissioner.

10 THE COMMISSIONER: Tomorrow morning at 10 o'clock.

**AT 3.53pm THE MATTER WAS ADJOURNED ACCORDINGLY
[3.53pm]**