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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION BARCOO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 22 AUGUST 2011

AT 10.05AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

ASSISTANT COMMISSIONER: Thank you. Please be seated. This is a public inquiry being conducted by the Independent Commission Against Corruption to investigate allegations of corrupt conduct in respect of David Johnson. Mr Michael Fordham has been appointed as counsel assisting the Commission and will in his opening address outline the nature of the allegations and the general scope and purpose of this inquiry.

And I will now ask Mr Fordham to make his opening address.

10 MR FORDHAM: Commissioner, this is a public inquiry into the conduct of David Johnson, who between November 2007 and April 2009 was engaged on a contractual basis as a project manager providing services to the Information Technology Directorate of the Department of Education and Training. It will be alleged that Mr Johnson was an opportunist who exploited the DET's reliance on information and technology consultants for a financial gain.

The purpose of this inquiry is to investigate whether Mr Johnson engaged in corrupt conduct for the purposes of section 8 of the Independent  
20 Commission Against Corruption Act. The evidence will suggest that Mr Johnson took advantage of the autonomy that went with his position as a project manager to engage in three forms of corrupt conduct. They can be categorised as follows, causing or influencing the appointment of contractors who are employed by or associated with a company, Ogawie, of which Mr Johnson was a director and shareholder and for which he traded in order to obtain financial benefit from those appointments. Causing or influencing officers of the DET to retain Catalina IT in order to benefit financially from work undertaken by Catalina. And diverting DET  
30 resources and contracted personnel for the purpose of producing a product to be marketed to DET and similar educational institutions.

If I might give the Commissioner some background. The DET has considerable IT requirements which include the provision of assessment tools for use in schools and for the collating and distribution of data, results and resources. The ITD was responsible for the provision of information technology services to the Department. That role included the development and application of the School Measurement and Assessment Reading Toolkit which was known as SMART. The development of its successor  
40 SMART2 and the Assessment Item Database which was known as AID. SMART was a program that analysed the results of school children from state-wide proficiency and Basic Skills Tests. SMART2 was a revision directed to converting that resource into an internet-based program.

AID was intended to be an online program from which teachers could select questions and tests for use in schools. The ITD and the Department relied heavily on IT contractors in order to fulfil its role. Contractors were sourced through preferred suppliers such as Greythorn Pty Ltd, which will be known as Greythorn, who were engaged by the then Department of

Commerce under a Deed of Agreement with the State Contracts Control Board. Those preferred suppliers would source appropriate candidates on receipt of an official order issued by the DET. The orders would stipulate rates of supply based on agreed hourly rates. The rates included the cost and margin of the preferred supplier. Between 27 November 2007 and April 2009 David Johnson was a Project Manager for the SMART2 project. In performing that role Mr Johnson was entrusted with a degree of autonomy in relation to the need for selection and deployment of staffing resources.

10

The Contractors. In January 2008 and July 2008 pre-approval was given by the DET to recruit contractors for the SMART2 project. Mr Kempegowda, Mr Bhuiyan and Mr Rezwani were employed in March 2008. Mr Zhang and Mr Huang were employed in September 2008. Each of those contractors was recruited, interviewed and assessed by Mr Johnson, the effect of the assessment by Mr Johnson was to recommend employment. Each of those contractors was an employee or otherwise associated with Ogawie. Ogawie obtained a financial benefit from each hour of work performed by those contractors. Mr Johnson did not disclose to DET that he was a Director and shareholder of Ogawie, he recruited each of the contractors to work for Ogawie, he stood to gain a financial benefit from each hour of work performed by the contractors and Ogawie was paying each of the five contractors significantly less than the rate ultimately charged to the DET.

20

Mr Henry Lo was a contractor engaged by the DET. Mr Lo and Mr Johnson ostensibly interviewed a number of people from which Mr Kempegowda was selected for recommendation as a Project Application Developer. Of the four people noted on the Contractor Assessment Sheet Mr Lo only interviewed Mr Kempegowda and a Mr Zhang. Mr Lo assumed that the other two candidates had been pre-interviewed by Mr Johnson, those candidates, Mr Yee and Mr Sambrani have no recollection of ever attending or participating in an interview for a DET position.

30

Mr Lo was asked to interview and sign the Contractor Selection Form for Mr Bhuiyan on the day that Mr Bhuiyan presented for work to the DET premises at St Leonards. The Contractor Assessment Form for Mr Rezwani suggests that Mr Lo interviewed, endorsed and selected Mr Rezwani. Mr Lo did not interview Mr Rezwani. Mr Rezwani will give evidence that he was interviewed by Mr Johnson alone. A crude examination of the Contractor Assessment document for Mr Rezwani suggests that it is a compilation using Mr Lo's signature from the earlier documentation relating to Mr Bhuiyan.

40

Mr Kempegowda is listed as being present and is purported to have signed documentation as part of a contractor assessment for Mr Dexiong David Huang and Mr Jun Michael Zhang. Mr Huang and Mr Zhang say that they were interviewed by Mr Johnson alone. Mr Luke Cannon is listed on the Contractor Assessment Form relating to Mr Huang. Mr Cannon is a human resources consultant who was then working as a resourcer or recruiter for

Talent International. Mr Cannon has no IT-related tertiary qualifications, could not have fulfilled the role as a systems analyst and has never applied for or been interviewed for a DET position. Mr Kempegowda does not recognise his signature on the Contractor Assessment Forms for Mr Huang and Mr Zhang.

Mr Johnson through Ogawie stood to gain and benefit to the extent of approximately \$50 per hour for each of the five employees. The DET has estimated the benefit to Ogawie to be in the vicinity of \$350,000.

10 Independent verification by ICAC investigators suggests that the benefits obtained up until February 2009 in relation to the contractors was in the vicinity of \$293,000.

Catalina IT. The AID Project had fallen behind and was over budget by July 2008. Mr Johnson prepared a briefing note on July 2008 recommending \$62,450 in expenditure and a purchase order was raised for a review by Catalina for the AID Project. In an email of the same day Mr Johnson informed Mr Ambrose of Catalina that, italics, “The real challenge is to build ongoing revenue for this engagement either with or without DET support.” In an email of 14 July, 2008 Mr Johnson informed Mr Ambrose of the form of words needed for a quote and suggested the quote be directed to his attention.

Mr Kempegowda participated in the review. It seems that Mr Johnson contributed to some extent to the review. The review recommended that the AID Project should be terminated and a redevelopment process commenced. On 26 September, 2008 Catalina invoiced the DET marked to the attention of David Johnson in the sum of \$68,695. The invoice was annotated by Mr Johnson with the words “I can confirm that this work has been done satisfactorily and that it is okay to pay the invoice.” The same day Ogawie invoiced Catalina for \$35,695. Mr Johnson drafted a further memo on 13 October, 2008 seeking approval to purchase a user interface redesign for the SMART Project from Catalina. The memo refers to Catalina as a previous DET supplier and impliedly represents that Catalina was an approved supplier. It was not. On 24 October, 2008 Mr Johnson emailed Mr Ambrose asking Catalina to invoice the DET in relation the SMART Project where he stated that there was no requirement for Catalina to do anything.

40 Catalina was to receive \$2,000 for receipting a purchase order and being credited with the money. A purchase order was raised on the month of October 2008.

On 9 December, 2008 Mr Johnson emailed Mr Ambrose requesting an invoice for the user interface redesign in the sum of \$52,450 plus GST. That invoice was submitted. The invoice has the annotation from Mr Johnson, I can confirm that this work has been done satisfactorily and that it is okay to pay the invoice. Ogawie then invoiced Catalina on 15 December,

2008 in the sum of \$55,495, leaving the promised balance of \$2,000. The net benefit derived by Ogawie from Catalina's transactions appears to be in the vicinity of \$82,900.

Work on the actual user interface appears to have been done by a David Appleby, web designer. For his services he was paid \$2,450 plus GST by Ogawie.

10 Mr Johnson's involvement appears to have been limited to making suggestions, but he does not appear to have produced any of the relevant redesign. The evidence of Ms Bennett of the DET, who conducted a review of the SMART project suggests that little if any tangible benefit was derived from Catalina's purported involvement.

20 Project Oscar. In August 2008, Mr Johnson approached Mr Ambrose and discussed the possibility of writing their own application to better provide what AID had sought to do. The project was given the title Oscar. The object was to develop a proof concept for Ogawie to sell to the DET and other potential users such as the Victorian Department of Education and NAPLAN.

Mr Ambrose contributed to the project on the promise of later reward. The work was undertaken at an office set up by Ogawie at Help Street, Chatswood. In September, 2008, Mr Johnson told Mr Ambrose that he was interviewing two programmers to work on Oscar.

30 Mr David Huang and Jun Zhang were subsequently introduced to Mr Ambrose by Mr Johnson as having been recruited as junior programmers. Mr Huang and Mr Zhang performed the bulk of the line by line computer coding for Oscar at the offices of Ogawie under the direction of Mr Ambrose until late January 2009, when Mr Ambrose walked away from the project.

Whilst performing that work at Help Street, Chatswood for Ogawie, Mr Huang and Mr Zhang were asked by Mr Johnson to fill in timesheets that were signed off by Mr Johnson, presented to the DET and paid. Mr Strandquist of the DET relied on and accepted representations by Mr Johnson that work had been appropriately performed.

40 Mr Zhang was recommended as part of the contractor assessment project, having been interviewed by Mr Johnson, who represented to the DET, that Mr Zhang was a superior and a more senior programmer than Zhang's CV, Mr Zhang's own assessment and the assessment of Mr Ambrose would have warranted.

In summary, the evidence will show that Mr Johnson influenced the engagement by the DET of contractors employed or retained by a company associated with him with the object of deriving substantial profit. It will

also show that Mr Johnson organised for Catalina to be retained and then invoice amounts to the DET from which Ogawie derived substantial profit and diverted resources and personnel engaged by the DET to contribute work for the purposes of selling a project back to the DET and other, and users.

10 Mr Johnson was, or at the very least, should have been aware of the significant conflict of interest. Mr Johnson made no declaration to the DET about his alleged conflict of interest or his involvement with Ogawie. Mr Johnson exploited the system of contractor retention in order to profit from a series of undisclosed conflicts of interest. A net benefit derived by Ogawie appears to have been in the vicinity of \$376,834. Mr Johnson submitted and may have altered and/or falsified documentation from which Ogawie derived substantial profit.

20 If I can now turn to corruption prevention. The systems under which expenditure was approved and the retainer of contractors by the DET was exploited by Mr Johnson are to be examined. The DET Code of Conduct that was in force at the time acknowledged the inherent conflict in using contractors who have a duty to themselves and their own companies. The safeguard by which preferred suppliers such as Greythorn sourced appropriate candidates was circumvented by Mr Johnson who then put up the candidates to Greythorn for processing.

30 The system was such that once Mr Johnson could influence those immediately superior to him to action the recommendations for employment or retainer the deception would flow up the line to the point of retainer and financial benefit to Ogawie and Mr Johnson. The management and supervision of contract staff is of significant public interest. Of particular interest are the number of contractors that public servants were required to manage, the procedures for the recruitment and management of contract staff and the procedures for the approval of expenditure. The fact that the management layer above Mr Johnson supervised 50 to 50 people as part of the SMART2 project team split between offices at Bankstown and St Leonards as well as the necessity for the DET to rely on contractors such as Mr Johnson in relation to the acquisition and deployment of resources provided an opportunity for Mr Johnson to perpetrate his deceptions.

40 The evidence suggests this DET operative was left to supervise a large number of people at two sites performing tasks that he did not fully understand. The then lack of a register of contractor conflicts is of importance although this would rely on the integrity and honesty of those disclosing. The fact that contractors were not inducted in relation to the contents of the DET Code and that there is a lack of a mechanism to enforce an ongoing duty to report and declare conflicts of interest is similarly weighted although subject to the same qualifications pertaining to the integrity and honesty of those participating.

There will be evidence that the DET is attempting to address these issues and claims to have already commenced reducing the ratio of contractors to permanent staff. The system relating to the hone of short term contracted staff that allowed an opportunist to introduce selected people and/or entities for the purposes of deriving significant financial benefit is and needs to be reviewed. Part and parcel of that review is the need for greater enforcement of those provisions that were in place and in particular a review of the role in supervision of the preferred recruitment suppliers. Reliance on out sought contractors in this case created an inherent conflict of interest and was managed in a way that was open to and wasn't exploited by unscrupulous individual.

This inquiry aims to examine whether there has been any corrupt conduct of Mr Johnson, how the system allowed any such conduct to go undetected and what the DET and other public authorities has done and can do to minimise the risk. That is my opening.

ASSISTANT COMMISSIONER: Thank you, Mr Fordham. We will have a short adjournment and I will then take appearances. Thank you.

SHORT ADJOURNMENT [10.30am]

ASSISTANT COMMISSIONER: Thank you. Please be seated. I'll now take applications for leave to appear for witnesses if there are any at this time?

MS BOURKE: Good morning, Commissioner. Ms Bourke, solicitor, I seek leave to appear for David Johnson.

ASSISTANT COMMISSIONER: Yes, Ms Bourke, you're given that leave.

MS BOURKE: Thank you.

MS McGLINCHEY: Commissioner, my name is Karen McGlinchey. I seek leave to appear for Mr Henry Lo.

ASSISTANT COMMISSIONER: Yes, Ms McGlinchey, you're given leave to appear for Mr Lo.

MS HUGHES: Commissioner, my name is Lynne Hughes. I seek leave to appear for Sarah Brattwraden.

ASSISTANT COMMISSIONER: Yes, Ms Hughes, you're given that leave.

MR PURDY: Commissioner, my name is Purdy. I seek leave to appear for the Department of Education and Communities, formerly known as the Department of Education and Training.

ASSISTANT COMMISSIONER: Yes, Mr Purdy, you're given leave to appear.

MR LEWIS: Good morning, my name is Lewis. I seek your leave to appear for Greg Ambrose and David Appleby.

10

ASSISTANT COMMISSIONER: Greg Ambrose and, yes, Mr Lewis, you're given leave to appear for those witnesses. If there are no other applications, you may call your first witness.

MR FORDHAM: Just before I do that and with the Commission's leave I'd like to tender a bundle of exhibits so that we can concentrate the documents to which you'll have to refer.

ASSISTANT COMMISSIONER: Yes.

20

MR FORDHAM: I tender a bundle of exhibits.

ASSISTANT COMMISSIONER: Now, this bundle of exhibits, has it been provided to any other parties at this time?

MR FORDHAM: Yes.

ASSISTANT COMMISSIONER: It has.

30 MR FORDHAM: I believe it's gone to Mr Johnson's representative and to the Department of Education.

ASSISTANT COMMISSIONER: Thank you. All right. Well, this bundle of documents relevant to this public inquiry will be marked Exhibit 1.

**#EXHIBIT 1 - : FOLDER OF BUNDLE OF DOCUMENTS**

40 MR FORDHAM: I call Henry Lo.

ASSISTANT COMMISSIONER: You are Henry Lo?

MR LO: Yes (not transcribable).

ASSISTANT COMMISSIONER: Yes, now, yes, Ms McGlinchey.

MS McGLINCHEY: Commissioner, we'll be seeking a declaration and Mr Lo will take an affirmation.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Lo, now you're required to answer all of the questions that will be put to you here today and you're required to tell the truth in respect of it. Your counsel has indicated you're seeking a section 38 direction. The effect of that is that nothing you say here can be used against you in any future proceedings. Do you understand the effect of the order?

10

MR LO: Yes.

ASSISTANT COMMISSIONER: And the only exception to that is if it's found you've breached the Act by providing false information for example, in which case the evidence could be used.

MR LO: Okay.

MR FORDHAM: But as long as you tell the truth and comply with the Act  
20 nothing you say here can be used in any other form. Do you understand that?

MR LO: Yes, I do.

ASSISTANT COMMISSIONER: Pursuant to section 38 of the Independent  
Commission Against Corruption Act, I declare that all answers given by this  
witness 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 there is no need for the witness to make  
30 objection in respect of any particular answer given or document or thing  
produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT  
ALL ANSWERS GIVEN BY THIS WITNESS 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  
40 OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO  
MAKE OBJECTION IN RESPECT OF ANY PARTICULAR  
ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

ASSISTANT COMMISSIONER: Could the witness be affirmed, please.

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---My name is Henry Lo.

What is your current occupation?---I'm retired.

10 As at 2008 what were you doing?---I was IT application developer.

Did you say an application developer?---Yes, I do.

And I'll do this in short form with the Commissioner's leave, but did you attend the Hong Kong Polytechnic University?---Yes, I do.

And what qualifications do you have?---I have a high diploma in computer studies.

20 When did you first meet Mr Johnson?---Is back in 2006, 2007, I working for Mr Johnson at Leightons, contractor.

And were you performing IT services for Leightons?---Yes, as an application developer.

In late 2007 were you contacted by Mr Johnson?---Yes. Late 2007 Mr Johnson call me and ask me if I would like to work with him at the Department of Education, DET.

30 Did you attend some sort of interview with Mr Johnson?---Not a formal one.

Did you have a meeting with him?---Yes, we met at a coffee shop, downstairs.

Downstairs from what?---From DET office.

And during that meeting was anyone else present?---No.

40 Did you come to work as a contractor for the Department of Education and Training as it then was?---Yes.

In what position?---I was hired as a data analyst and senior application developer.

Was it relation to a particular project?---Yes, is with the SMART project.

And just if you could explain briefly to the Commissioner what the SMART project was?---Okay. The SMART project is a legacy system used by the

DET for about ten years. It was a PC based proprietary system. And the project which the SMART team is going to perform is to redevelop that project using DET standard Java and (not transcribable) platform to make a web enabled application.

10 And when you say a web enabled application what advantage does that have?---Which means you've removed the invitation of people can only use on the scanner, on PC and eventually hopefully all the parents and the teacher can assess (not transcribable) through the internet to assess the (not transcribable).

There's references to SMART and SMART2?---Yeah.

Was SMART2 the web part of that - - -?---Yes.

Thank you. Now to whom did you report when you were working at - - -?  
---Mr Johnson.

20 And was he described as the project manager?---Yes. He was the project manager of the SMART project.

Early in 2008 did you and Mr Johnson sit down and discuss what if any other contractors you would require for the purposes of performing the task for SMART2?---Yes, we do. But is always, because the project (not transcribable) develop on the Java (not transcribable) as well as (not transcribable) platform so those are the area we need the, the people.

What is a tech lead?---Tech person is a technical leader.

30 And was one of those required for this project?---Yes.

Was a business analyst?--- This was basically just to analyse the business requirement in the documentation so that the developer (not transcribable) can base on business requirement to work the system.

And were two of those required for this project?---I don't think so.

Were two of those eventually employed for this project?---I believe so.

40 What's an Application Developer?---Application Developer is someone who do a bit of everything. In my case from the very top level design up to the coding level.

Were two of those required for this project?---Can you repeat the question please.

Were two Application Developers required for the SMART2 project?  
---Yes.

In early 2008 did you have a meeting in a coffee shop with someone called Richard Yee?---Yes.

And who else was there?---David Johnson, I think, I can't remember but I think there's another associate of Mr Yee.

10 And what was the purpose of that meeting?---Mr Yee and (not transcribable) like, how can I describe, like a, what is being done by their company and what service they can provide it.

And was there a discussion about services they could possibly provide to Mr Johnson or to the DET or both?---Both.

Thank you. Can you tell me briefly what EMSAD was?---EMSAD is a (not transcribable) within the DET. I think it's represent the Education Measurement and Central Assessment Unit.

20 Thank you. Who was responsible for organising the recruitment of contractors on the SMART2 project?---Mr Johnson.

And did you participate in interviews for applicants for the SMART2 project?---Yes.

Do you know a man called Sunil Kempeguarda or Kempegowda?---Yes.

Did you participate in this interview?---Yes.

30 Commissioner, if you could go to T19. For the purpose of assessing or interviewing Mr Kempegowda did you interview a George Jenning?---Yes.

Did you interview a Mr Sambrane?---No.

Did you interview a Mr Richard Yee?---No.

Were you – can the witness be shown the tender bundle.

40 MS BOURKE: Excuse me, Commissioner. Counsel, I have numbers on my pages not a number that you've just quoted so if you could quote a page number I would be able to find the document.

MR FORDHAM: 19.

MS BOURKE: Thank you.

MR FORDHAM: Top corner.

MS BOURKE: Thank you.

MR FORDHAM: So for the benefit of those with bundles the numbers are paginated in the top right-hand corner.

MS McGLINCHEY: Commissioner, I don't have a bundle.

MS BOURKE: Yes, could I also have a bundle to refer to.

10 ASSISTANT COMMISSIONER: The document is on the screen, I don't know if it is intended to provide bundles to everybody.

MS McGLINCHEY: All right.

MR FORDHAM: Thank you. Do you have that document?---Yes, I do.

Could you turn over two pages to page 21?---Yes, I do.

Is that your signature on the second line?---Yes.

20 And did you sign that document despite not having interviewed Mr Sambrane and Mr Yee?---Yes.

Why?---Because the form doesn't provide any provision for me to say which candidate I interview or not interview and I been working for a couple of other government agency that sometimes you have a panel of applicant and you have a panel of interviewer. Not every person who conduct in the panel interview everyone in the, in the panel of the applicant.

30 Did you assume that somebody else had interviewed those two applicants?--  
-No, the Department just assume that David Johnson pre-screen the candidate and only involve me when he need me to, to judge their qualification.

Thank you. Could you turn forward to page 37?---I got another notice there on the page 19. I think the agency of Sunil Kempegowda, at the time I don't think these are from Greythorn.

40 Yes. All right. Now, if you could just limit yourself to answering the questions that I ask you that would be very helpful. So could you please turn forward to page 37?---Okay. Yes.

If you go to page 38 is there a recommended applicant by the name of Mohammed, I think it's Bhuiyan?---Yes.

Did you interview Mr Bhuiyan?---Not before he started working for DET.

Right. But on a particular day did you interview him?---Yes, on 10 March. When he start with DET I interview him.

When did you first meet Mr Bhuiyan?---On the same morning 10 March.

When did you first see this document?---On 10 March, the same day.

10 And how did you come to sign that document?---I didn't want to sign the document initially but David asked me to sign it (not transcribable) because it was an open office he would just point to the partition adjacent to where I'm sitting and say, "He's already starting there." So he just asked me to sign it.

Did you have a conversation with Mr Johnson about him asking you to sign that document?---I did.

What did he say to you?---He asked me to sign it but I'm not too happy about doing that so I, I say that I want, I insist to see his CV and interview Mohammed before I decide whether to sign it or not.

20 Did you interview him?---I interview after Mr Johnson give me a copy of the CV or Mohammed and then I interview Mohammed.

And as a result of that interview did you decide whether or not you would endorse him?---I believe I was put in that difficult situation. If I have a choice I probably not, but at the moment depends (not transcribable) position, one is because he's already report to the duty, I believe his contract has been signed and second is he (not transcribable) I know that he got a IT qualification, I feel he got a, (not transcribable) got a working attitude.

30 Hold you there for one moment?---Yes.

Did he have much experience as a business analyst?---No.

Did he have a good attitude?---Yes.

And as a result of the attitude and the IT qualification did you decide to sign the document?---I also believe if didn't perform then he can always give him a few days notice to, to ask him to go.

40 Now, if you could go to page 38?---Yes.

Did you interview any of the other people listed on that day - - ?---Not on that day but before I believe I have interview Katherine Wall and Michael Craft.

For this position or some other position?---For the Business Analyst position.

Now, if you go to the last page, page 39. Is that your signature?--- Yes.

And do you remember signing that piece of paper?---Yes.

Now, could you turn to page 49 for me please. Do you have that?---Yes.

And is that a contract or assessment form with the word “copy” stamped on it?---Yes.

10 If you turn to the next page does it refer to Mohammed Bhuiyan and then in pencil the word “Abu Rezwan”?---Yes, I can read it.

Just go to the third page for me. Did you sign that document in relation to Mr Rezwan?---No, positive.

Why is it that two business analysts were hired for this particular project?---I have no idea.

20 In your view was it a requirement for this project?---I don't think so, not for a project of that complexity.

Do you know someone called - I'll withdraw that and go back a step. Do you know a man known as Michael Zhang?---No, but now I know.

Yes. At the time when you were working on contract for the DET did you know a Michael Zhang?---No, I don't.

At any stage where you aware as to whether or not he was working as part of the SMART 2 Project whilst you were there?---No.

30 Do you know a man called Michael Huang?---No.

And any stage while you were working on contract to the DET were you aware of him being part of the SMART 2 Project?---I didn't.

Annexure D to your statement is an email which I'll show you, just leave that for a moment, it's not there?---Yeah.

There it is?---I see it.

40 Yeah?---Yeah.

Are you able to read that from where you're sitting? Can you see that on your screen?---Yes, I can.

Now, do you see the people listed as recipients of that email?---Yes.

As at November 2008 - - -?---Yes.

- - - who was it that supposedly constituted the SMART 2 team?---Ah, yes, Johnny Lui, Henry Lo, that's me, Armando Abeleda, Sunil Kempegowda, Mohammed Bhuiyan and Abu Rezwana and also obviously David Johnson.

Thank you. What was the AID Project?---I don't know much about the AID Project. I believe it is called the Assessment Item Database.

Well, that was my next question. Did you do any work in relation to that project?---No.

10

To your knowledge was that a separate and distinct project to the SMART 2 Project?---I'm not even thinking it belonged to the SMART Project. It was a project which failed to deliver and get, got shelved by DET.

Sorry, did you say it failed to deliver - - -?---Yes.

- - - and was - - -?---Shelved.

20

And to your knowledge were any of the SMART 2 people who worked with you authorised to work in relation to the AID Project?---I'm not aware of that.

Now, as a result of your position with the SMART 2 Project were you kept informed as to what tasks were given to people working on the project? ---Oh, can you repeat the question please?

30

Yes. Because you were working on the SMART 2 Project were you kept informed as to what the other people were doing on the project?---Oh, I don't know how to - - -

All right. I'll withdraw the question and ask another one?---Yeah.

Were you copied in on all the, on, sorry, on the emails in relation to the SMART 2 Project?---Can you repeat that again.

Were you copied in on the emails in relation to the SMART 2 Project? ---Were I copy?

40

Copied in?---In.

Did you receive emails in relation to the SMART 2 Project?---Yes.

And were you aware of the documentation that went with the running the SMART 2 Project?---Yes.

And who was doing what jobs?---It's not being described in the email, we just, we just do it very informal, we just got the job and then depends on what type of job and who is doing that.

At any stage did you see any email or memo directing either Michael Zhang or David Huang to do any task for the SMART 2 Project?---Never heard about them.

Are you able to tell me what the user interface was?---Yes. Basically user interface is (not transcribable) in the system which enabled the end user to interact with the computer systems.

10 For those of us who aren't as technically savvy as you are, does that refer to things like the menu, the screen design?---Yes, put it this way, user interface actually including the, the functional grouping, in layman's term it is the menu or dropdown menu you can see in most of the web page and the log entry on the screen, the message send from the system to the user and also the report, report function.

Yeah?---So it's basically it's everything, not just the screen design.

20 So it includes the look and feel but also goes behind that to how it actually works?---Yeah, how the whole thing's interact together.

And initially was that user interface being developed by the SMART 2 team?---Yes, we do some sort of what we call the progressive prototyping, since, since I believe it's February or March the team first start with the existing old SMART system and then we have a further discussion with our project sponsor from EMSAD and then we develop our own prototype, on that basis we have a workshop with the user from Bankstown and then during the workshop we invite them to give us some sort of a feedback, we talk to them with the feedback and then we propose or suggested or  
30 changed, whatever, that into the system we are or the prototype we have presented and on the subsequent workshop, apart from presenting the new prototype we develop we also show them the modification we change as per their previous review.

All right. Now was Johnny Lui, L-U-I, involved in that user interface?  
---Yes, he is our Java expert.

40 And was it the case that you were developing that until some point when it was outsourced?---Oh, I don't know about outsourced but by the end of August most of the prototype has been completed and the user were happy with that.

And do you know whether or not the project was taken to something called the Data Warehouse Project Team?---Yes, that's the data side. Basically the SMART System on the (not transcribable) it consists of two component, one is the database side which is run on the Oracle database. The application side is on the Java. Initially we have developed on the data model and database which are controlled by the SMART team. By the end of 2008

David Johnson and Armando Abeleda, they decided the, the model and database using by the SMART Project should be done by another group within the DET which is the Data Warehouse Project Team.

All right. And in your view did the changes to the user interface affect somehow, either slowing it down or speeding it up - - -?---Yes.

10 - - - the delivery of the SMART 2 Project?---Yes, initially we have a plan to deliver the system, the SMART 2 system to cater for the NAPLAN 2009 around the middle of 2009 but after the changing of the direction I don't believe we can deliver that.

All right. Would you just have a look at this document for me. Is that a statement prepared by you dated 21 April, 2011?---Yes.

And does your signature appear at the base of each page?---Yes.

I tender that.

20 ASSISTANT COMMISSIONER: Yes, the statement of Mr Henry Lo dated 21 April, 2011 will be Exhibit 2.

**#EXHIBIT 2 - STATEMENT OF MR HENRY LO DATED 21 APRIL 2011**

MR FORDHAM: Thank you. I have nothing further for this witness.

30 ASSISTANT COMMISSIONER: Thank you. Does anyone seek to cross examine this witness?

MS BOURKE: Commissioner?

ASSISTANT COMMISSIONER: Yes, Ms Bourke.

MS BOURKE: Mr Lo, once Mr Bhuiyan was taken to the project - - -? ---Yes.

40 - - - he proved to be competent to carry out the duties for which he was employed?---Yes. But both Mr Bhuiyan and Mr Rezwan are being mentoring and coaching by the other three senior member of the team.

Yes. If you had any complaints about his competency you have reported them to someone on the project or from the Department?---No. They both are good. Both Mr Bhuiyan and Rezwan, they are good.

They were good. Now you were asked if you saw any emails sent to either Mr Zhang or Mr Huang?---No.

You would not have expected to receive copies of every email sent to contractors within that project would you?---I'm not expecting.

Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Purdy.

10

MR PURDY: Mr Lo, I'm representing the Department of Education. Now you understand that you were engaged as a contractor in that Department rather than an employee?---Yes.

Do you understand the difference between a contractor and an employee? ---Yes, I understand.

20

And you understand that it's largely a matter of administrative convenience when the Department engages people to work on the project as an employee on the one hand or as a contractor on the other?---I don't understand the question.

I'm sorry, I'll try and rephrase that. You understand that whether the Department uses contractors or employees, it is a matter fully determined by administrative factors?---Yes.

Now you've said in your statement that you were employed for the position by Mr Johnson?---Yes.

30

And that you were not, you were not, I'm sorry, you were interviewed for the position by Mr Johnson?---I am?

You were interviewed for the position on the SMART project by Mr Johnson?---Yes.

And you've said that you weren't interviewed by any member, any employee of the Department?---No.

40

All right. Do you recall signing any paperwork or documents when you commenced at the Department?---I do. I think I did sign one document about the IP or the confidentiality paper.

When you say IP you mean intellectual property?---I do.

And would that have been an agreement as to confidentiality and pecuniary interest disclosure form perhaps?---Yes. So basically every (not transcribable) because I've been working with a number of other

government agency, every government agency requests you sign off the, the right, the, of the (not transcribable).

And the reason for that you understand is - - -?---Yes.

- - - for the intellectual property in the work (not transcribable) belongs not to you personally?---Yes.

Not to Mr Johnson, but to the Department itself?---Yes.

10

Now did you undergo any form of induction by a Department employee after you had been engaged by Mr Johnson?---No.

You didn't. If you had undergone an induction and I'm sorry, I take it you understand what I mean by induction?---Yes, I do.

If you had undergone an induction with a Departmental employee you would have had a contact within the Department (not transcribable)

20

MR FORDHAM: I object to this. The witness has just given evidence that it didn't occur. Heading down a hypothetical as to what may or may not have occurred had it done so, it doesn't really assist.

ASSISTANT COMMISSIONER: Yes, Mr Purdy, what are you getting at here?

30

MR PURDY: In my submission, Commissioner, in terms of the, the Commission's advisory function, what people who are engaged as contractors over this period might have done if measures that have since been introduced were in place, may be of assistance to the Commission.

ASSISTANT COMMISSIONER: I don't really think getting it through this witness is the way to go in terms of the fact that he says he didn't have such interaction.

MR PURDY: Yes, Commissioner. I have nothing further.

40

ASSISTANT COMMISSIONER: Thank you. Yes, Ms McGlinchey, do you want to ask any - - -

MS McGLINCHEY: No, Commissioner, I don't want to ask any questions.

ASSISTANT COMMISSIONER: Thank you.

MR FORDHAM: Nothing further. Can the witness be excused?

ASSISTANT COMMISSIONER: Yes. Mr Lo you are now excused?  
---Thankyou.

**THE WITNESS EXCUSED**

**[11:15]**

MR FORDHAM: I call Sunil Kempegowda.

ASSISTANT COMMISSIONER: Yes. You're Mr Kempegowda?

10 MR KEMPEGOWDA: Yes.

ASSISTANT COMMISSIONER: Now Mr Kempegowda, you're not represented. You don't have a legal representative. Yes. Please take a seat. Now you've been called her to give evidence and you must answer all off the questions that are asked of you. You are entitled to seek a declaration under section 38 of our Act, the affect of which would be that nothing you say here could be used against you in future proceedings. Do you understand the affect of that?

20 MR KEMPEGOWDA: Yeah.

ASSISTANT COMMISSIONER: Do you wish to seek an order in those terms?

MR KEMPEGOWDA: Sorry, you can repeat the question?

ASSISTANT COMMISSIONER: You are required to answer all of the questions you are asked in this or you can't refuse to answer for example on the grounds that a certain answer might tend to incriminate you. But in  
30 these proceedings you can seek an order that none of the evidence you give here could be used against you in any future criminal or civil or disciplinary proceedings. Do you wish to seek an order in those terms - - -

MR KEMPEGOWDA: Yeah, I - - -

ASSISTANT COMMISSIONER: - - - that none of the evidence here could be used against you?

40 MR KEMPEGOWDA: Yeah, yeah.

ASSISTANT COMMISSIONER: All right. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness 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 there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS 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 THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

10

ASSISTANT COMMISSIONER: Now the affect of that order is that none of your evidence can be used unless it's found that you've provided false information or otherwise breached the Act. So as long as you tell the truth nothing you say here can be used against you in future proceedings. Now you're required to promise to tell the truth by taking an oath on the Bible or making an affirmation. Do you wish to take an oath on the Bible or make an affirmation?

20 MR KEMPEGOWDA: I can take the Bible.

ASSISTANT COMMISSIONER: Yes, could the witness be sworn, please.

ASSISTANT COMMISSIONER: Yes, please be seated. Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---Sunil Kempegowda.

10 You've brought a document with you, what is that?---Oh, it's nothing, it's just my statements.

I'm going to show you another copy of that statement. It's also volume 2, tab 10 if that helps. Is that a copy of a statement, 19 May, 2011 signed by you at the foot of each page?---Yes.

I tender that.

20 ASSISTANT COMMISSIONER: Yes, the statement of Mr Kempegowda dated 19 May, 2011 will be Exhibit 3.

**#EXHIBIT 3 – STATEMENT OF MR KEMPEGOWDA DATED 19 MAY 2011**

MR FORDHAM: And documents in relation to this evidence largely commence at page 18 of the bundle. Sir, what is your occupation?---I'm IT consultant.

30 And for how long have you been performing IT consultant work?---For 12 years.

And do you have any qualifications in relation to IT?---Yeah, I got a Masters in IT.

From where?---From Singapore, from NTU, NTU, is Nanyan Technology University, Nanyan Technology University, Singapore.

40 During 2008 were you performing consultant, consulting work at the offices of the Department of Education and Training?---Yeah, I was working as a consultant for the Department of Education and Training.

Who did you first speak to in relation to working at the Department?---Oh, I (not transcribable) jobs and Talent told me there was an interview so I went for the interview.

Who phoned you?---Ah, Talent International.

And where was the interview?---It was in Herbert Street, in the DET office.

In the DET office?---Yeah.

Who conducted the interview?---Ah, David Johnson.

Was anybody else present?---The first interview he was the only one who conducted the interview. Later - - -

10 I beg your pardon?---The first interview was conducted by, only by him.

Yes?---And the second interview by Henry Lo.

By?---Henry Lo.

Henry Lo. All right. Can I ask you to keep your voice up a little bit?---Oh, sorry, yeah.

20 During the course of your interview with Mr Johnson was there a discussion about how much you might be paid?---Yeah (not transcribable) dollars an hour.

Was there a, any discussion about how it is you would be employed?---Oh (not transcribable) Talent, he told that he's not able to take me through Talent, he told he's got a different, able to get a different company.

At any stage was the name Ogawie mentioned to you?---Oh, after the interview with, with Henry he told I'd be employed to Ogawie.

30 And was anything said about who or what Ogawie was?---Nothing, nothing was told about it.

In any event did you agree to that proposal?---Yeah, I thought it makes no difference whether it was Talent or Ogawie (not transcribable) as long as I am employed there.

40 Do you know of a company called Freelance?---Yeah, when I went to sign the contract so that would like be, it's like a payment company which is going to make the payment to me.

Could you please turn to page 18 of the tender bundle that hopefully is still there?---Yeah, yeah.

Is that your signature?---Page 18, right?

Page 18 of the tender bundle, has that been, it's about to be given to you? ---Yeah, it's my signature.

And do you see there's a contract rate on the top right-hand side of \$50 per hour?---Yeah.

Is that in fact how much you eventually received or was it less than that?  
---This is about what I received, yeah. I mean, this was like the gross so I received minus the tax and all the other charges.

And were there charges as well as tax taken out?---Yes, yeah.

10 At some stage did you become aware of a company called Greythorn?  
---Yeah, I became aware, aware of it after one week.

How did you become aware of Greythorn?---When I signed my overtime sheet it was on the paper.

And was each timesheet you signed at the time you were at the Department, did it bear the agency name Greythorn?---Yeah.

20 If I could just go to annexure B to the statement. Do you have annexure B there, to your statement, it's the timesheets? Do you have your statement there?---I cannot find it.

The other document that you brought with you, thank you. Yeah, I see it, I've got it.

And is that a timesheet signed by you, in fact there's several of them?  
---Yeah, yeah.

30 And is the agency name Greythorn at the top?---Yes, yeah.

And when is the first time you saw that name?---When I made my first timesheet.

All right. Now, which project were you working on?---Oh, SMART.

And who was the project manager?---Dave Johnson.

And what was Henry Lo's role?---Oh, he was the team lead.

40 And who did you take instructions from?---Day to day activity from, from Henry and weekly we had a meeting.

With?---The, the team meeting and David Johnson was there.

At some time in September/October 2008 were you made aware of a project called AID?---Yeah.

And do you know what that was?---Yeah, it was a project which they were, it was something (not transcribable) it was something Item Database or something, I don't really recall the exact project name. They told me assess the project to see what is the project level, whether it can be reactivated or they asked me my suggestion.

Right. Now, I just want to break up that last answer if I could?---Yeah.

You were asked to assess the project?---Yeah.

10

What did you do to assess it?---I went to the record, I had a look at the record, then I saw the record was not so perfect, the architecture is not good, so I told if they want to proceed further they must re-architect the record.

They must re what, sorry?---Re-architect the record, they must, the host site must be re-architected.

20

And that was the first part of the answer you gave. After being asked to assess it, what else were you asked to do?---They, they told me to give a report.

And did you do that?---Yeah, I gave a report stating that the project is supposed to, in case it's supposed to be reactivated the first thing is the existing record must be shelved and they must come up with a new solution that was, come up with a re-architect of the solution.

Following September 2008 did you ever attend some offices in Help Street at Chatswood?---Yeah, I went there for two times.

30

Whose offices were they?---Ah, it was David's office, Ogawie's office.

And was it, was there a name or anything similar on the door?---I don't recall.

When you say they were at David's or Ogawie's offices, how did you know that?---David gave me the address to go to the office.

40

And when you went there did you meet anyone?---Ah, I met David Ambrose.

And what, was Mr Ambrose introduced to you as doing something in particular?---I don't recall he was, because I met him first in September in the DET. There was a, there was a meeting for AID review so he was another participant there, so I met him the first time there in September, September, yeah.

Aside from Mr Ambrose did you meet anybody else there?---I met another two guys.

Two guys, we'll stop there, we'll deal with them one at a time?---Yeah.

Do you know the names of either of them?---I cannot recall but I met two guys.

Are you able to describe their appearance for me?---Ah, they're Asians.

Did you say Asians?---Yeah, Asians, yeah.

10

And do you know what if anything they were doing there?---I was informed they were working on some SMART Projects, some SMART-related project.

And had you ever seen either of those two gentlemen at DET offices in St Leonards?---Yeah, they are coming to submit their timesheets.

20

When?---Sometimes I seen them, seen them on Friday. After seeing them in the office then I notice them, they are coming to the office, I seen them before I realise.

And aside from seeing them on Friday afternoons submitting timesheets did you ever see them at the DET offices?---Oh, I don't recall, I don't, I've not seen them much. Sometimes I seen at the DET office.

Now in February or March of 2009 did you again go to an office in Help Street, Chatswood?---Yeah.

30

And why did you go there?---Yeah, I was asked to (not transcribable) asked to give a prototype for, prototype explanation for the team.

When you say the team, who do you mean?---The same guys whom I met, Ambrose, I don't recall Ambrose, the other two guys.

Is that the two gentlemen you described to me - - -?---Yes, yeah.

- - - before as being of Asian appearance?---Yeah, yeah.

40

Now, could you go to, is there the bundle that's in a white - - -?---Yeah.

Could you go to page 83 for me. Is that a Contractor Assessment Form? ---Yeah.

If you go to the second line down you'll see your name there?---Yeah.

And on the next page there's a recommendation to employ somebody called Jun Zhang?---Yeah.

And if you go to the next page on page 85 did you sign that piece of paper?  
---No. I don't sign this, the first time I saw it Michael showed me the document and only came up as a document.

Now, if you could go back a page. Did you interview a Mr Zhang for a position at the Department of Education and Training?---No.

What about a Ms or Mr Aung, A-U-N-G?---No.

10 Or a Mr or Ms Clark?---No.

Could you go to page 69 for me. Do you have that?---Yes.

Thank you. Is that also a Contractor Assessment Form?---Yes.

And if you turn to the next page, page 70, does that suggest that a Mr Huang has been recommended for a position?---I not know anything on this either, this is the first time, second time I've seen this document.

20 Just stop there for a minute. I need to go through this step by step?---Okay. All right.

The next page does it say that a Mr Huang has been recommended for a position?---(NO AUDIBLE REPLY)

You've nodded, you need to actually say something, it's being recorded?  
---Sorry. Has it got a page number, 71 is it?

30 Page 70?---Yes.

See down the bottom, Recommended Applicant's name David Huang?  
---Yes.

And go to the last page for me?---Yes.

Did you sign that piece of paper?---No.

Did you ever interview a David Huang for a position at the DET?---No.

40 Did you interview a Mr Geoff Mooney for a position at the DET?---No.

Did you ever interview a Mr Luke Cannon for a position at the DET?---No.

Just be one moment. I have nothing further, thank you.

ASSISTANT COMMISSIONER: Yes. Yes, Ms Bourke.

MS BOURKE: In the statement that you made dated 19 May, could you just have a look at that?---Yes.

In paragraph 7 you said that David Johnson brought back a man who you know to be Henry Lo?---Yes.

Where did that meeting between yourself and Henry Lo take place?--In DET office in St Leonards.

10 At where?---DET office in St Leonards.

St Leonards. Right. And did you speak with Mr Lo?---Yes, I was interviewed by him (not transcribable), yes.

You were interviewed by him?---Yes.

And did he ask you about your qualifications?---Yes.

20 Did you have a CV?---Yes, I had a CV.

And can you recall did you present the CV to him?---I don't recall about that.

Do you know if the CV was present during your discussions with Mr Lo? ---I can't recall that.

30 Did he ask you about your qualifications?---Yes, he asked me about qualification, he asked about my, he asked me some technical questions what I was doing.

And he was the person who had to see whether you had the technical competence to take part in the project, that was your understanding of his role?---Yes.

Now, you were asked questions about the payslips which you filled in and handed in. Is it correct that you always honestly filled in those payslips? ---Yes.

40 And any work that you said you had done you had in fact done?---Yes, correct.

Now, you were asked questions about two men who you refer to as Asians - - - ---Yes.

- - - who you saw in the office in Chatswood?---Yes.

Is it correct that there were people working on either the SMART or AID project who worked in the Bankstown office as well as the St Leonards office?---Sorry, repeat (not transcribable).

It is possible that those two men worked on the project not in the St Leonards office but in the Bankstown office?---(not transcribable) few times, I'm not sure but, maybe, I'm not sure, (not transcribable).

Yes, thank you.

10

ASSISTANT COMMISSIONER: Ms Bourke, in respect of this witness and the previous witness there's been evidence led about forms relating to your client and these witnesses have given evidence about certain things that they didn't take part in a panel or they didn't sign the form, they've not been cross-examined about that, that's a matter for you, but I would like to say although we're not bound by the rules of evidence I would certainly expect any factual conflict to be put to witnesses if you have instructions along those lines.

20

MS BOURKE: Commissioner, my problem is that I was only given these statements immediately after the opening by Counsel Assisting.

ASSISTANT COMMISSIONER: Yes.

MS BOURKE: And they were not included in any of the bundle of documents served on me last week so I have not been able to get instructions. If after each witness, if I'm given instructions I would actually really like to do but I don't want to cross-examine without instructions.

30

ASSISTANT COMMISSIONER: Is your client here today?

MS BOURKE: Yes.

ASSISTANT COMMISSIONER: Yes. All right. Look, this might be a convenient time to take the morning tea break and you may seek instructions because I think it is important to know whether certain matters are accepted or not accepted. So I think we'll adjourn for 15 minutes at this time. Thank you.

40

SHORT ADJOURNMENT

[11.36am]

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes.

MS BOURKE: Yes, Commissioner, I just seek leave to have my client come and sit next to me.

ASSISTANT COMMISSIONER: Yes, that's fine.

MS BOURKE: Thank you.

ASSISTANT COMMISSIONER: Yes, Ms Bourke.

MS BOURKE: I would seek to ask one question, Commissioner.

ASSISTANT COMMISSIONER: Yes.

10

MS BOURKE: Mr Kempegowda, you were asked a question about a document which was page 69, the Contractor Assessment Form, and on the third page of that document were you asked whether you had ever signed that?---Yeah.

And your answer was that you hadn't?---No, I don't think.

That is your signature isn't it?---That's not mine.

20 That's not your signature?---No.

How do you sign your name?---There's (not transcribable) not mine. My (not transcribable) is different.

Do you use the name Sunil as the name on your signature?---Yeah, I use it.

Well I suggest to you that you did sign that document?---No, I did not sign.

Okay.

30

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Purdy.

MR PURDY: Mr Kempegowda, I'm representing the Department of Education and you're aware that when you were working on the SMART2 project you were working as a contractor to the Department. And you understand the difference do you between a contractor and a permanent employee?---Yeah. (not transcribable) once about the incident we are given all the induction programme in 2009. So before that there's no difference of, I know the contractor and a permanent employee, but the difference (not

40

I'm sorry, can you repeat that, I understand?---Yeah. I was given induction only after 2009.

You were given - - -?---Induction in 2009.

But at the time you were engaged by Mr Johnson you were engaged as a contractor?---Yeah.

And do you recall signing any Department of Education paperwork or documents at the time you were engaged?---Except the timesheet I not sign anything else.

I'm sorry?---Except the timesheet.

You didn't, you didn't say any, any documents?---Yeah.

10 I suggest you may have signed a document known as an Agreement of Confidentiality Pecuniary Interest Disclosure?---That was in 2009.

It was only in 2009?---Yeah.

But you understood when Mr Johnson engaged you did you not, that you were working as a member of the Department staff on the project?---Yeah. As a contractor, working for the project as a consultant.

20 And you understood that the information you learnt about the Department and its workings and the work that you produced in that role was not, was the Department's property?---Yes, yeah.

And it was not free and you were not free to use it for your own benefit? ---Yeah.

And you understood that at all times that you were working for the Department?---(NO AUDIBLE REPLY)

Yes, thank you. I have no further questions.

30 ASSISTANT COMMISSIONER: Thank you Mr Purdy. Yes, if there are no other questions for this witness - - -

MR FORDHAM: I just have one.

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Could you please turn to page 18 again of the bundle, the white folder?---18 is it?

40 18, 1-8. It's a document headed Freelance Package Summary?---Yep.

If you go down there's a space for a signature?---Yeah.

Whose signature appears there?---That's mine.

And is that your usual signature?---Yeah.

Thank you. Nothing further.

ASSISTANT COMMISSIONER: Yes, thank you. Yes, well this witness can be excused. Thank you for attending, you are now excused.

**THE WITNESS EXCUSED**

**[12:12pm]**

MR FORDHAM: Commissioner, there will be an application that Mr Lo be recalled. He's still in the court so that certain questions can be put to him.  
10 It would be convenient to do it now.

ASSISTANT COMMISSIONER: Yes, I think it would be convenient. Mr Lo, sorry, could you come forward again. Yes, Mr Lo, you've been excused, but it's now desired to ask you some further questions by counsel for Mr Johnson. Do you understand that?

MR LO: Yeah.

ASSISTANT COMMISSIONER: Now you're still on your former oath,  
20 although I really think as you've been excused we might have to, to be safe, we might swear you again.

MR LO: Okay. No problem.

ASSISTANT COMMISSIONER: Yes. Were you affirmed or - - -

MR LO: Affirmation.

ASSISTANT COMMISSIONER: Could the witness just be affirmed again.  
30

<HENRY LO, affirmed

[12:13pm]

ASSISTANT COMMISSIONER: And I declare that the section 38 declaration previously made applies to the evidence you're going to give now. Please take a seat.

**SECTION 38 DECLARATION PREVIOUSLY MADE APPLIES**

10

ASSISTANT COMMISSIONER: Yes, Ms Bourke.

MS BOURKE: Yeah, I just need to ask counsel something. Mr Lo, you were asked questions about a document number 37 in the bundle of documents which was a contractor assessment - - -?---Oh, can I have a copy, please. And page?

20

37 and it's also up on the screen?---Yep, I got it.

Now that is your signature on that document isn't it? You've agreed with that? Page 3 of that document?---You mean page 39? Yes, that's my signature.

Yes, page 39. And that is your signature?---Yeah, possibly.

And you signed that document?---Yes.

30

Yes. Now, the document at page 51 which has got "copy" on the top that is your signature on that document isn't it?---That's my signature but I didn't sign it.

And it is dated the same date as the other document?---Yes.

Right. See, I suggest to you that you did sign an original, not this document that says "copy", but an original of that document which is shown from page 49 to page 51?---Okay. If you put document side by side I believe any untrained eyes will see that that's ..... photocopy.

40

So I'm just asking you the question?---Yes.

I suggest to you that you signed the original of this document that has "copy" written on it?---No, I'm positive I never signed, I'm positive I never signed the document for Abu Rezwan, I never interview him and I never review his CV and I'm positive of that.

You left the project with the Department - - -?---I resigned.

- - - because you were sacked by my client?---No, I'm not sacked, I resign. ICAC got one copy of my resignation letter, my solicitor got a copy of my resignation letter.

Well, I suggest to you that you were sacked by Mr Johnson?---No, I'm not sacked, I resigned.

10 When you started to work on the project you were interviewed by people from the Department, is that correct?---Can you repeat the question please.

Who interviewed you when you started to work on the project?---Mr Johnson.

And you were interviewed by people from the Department?---No.

I suggest to you that you were interviewed by employees of the Department of Education?---(not transcribable) and bring everything to court.

20 I'm suggesting to you that you were interviewed by employees of the Department?---I'm positive I did not be interviewed by anyone apart from Mr Johnson.

And your contract with the Department was through the preferred supplier Greythorn?---Yes.

And you had dealt with Greythorn previously to working on this contract? ---Yes.

30 No further questions, your Honour.

ASSISTANT COMMISSIONER: Thank you, Ms Bourke. Yes, Mr Lo, you're now excused, thank you.

MS McGLINCHEY: Commissioner.

ASSISTANT COMMISSIONER: Sorry, Ms McGlinchey, yes.

40 MS McGLINCHEY: Mr Lo, it has been suggested to you that you were sacked from the project by Mr Johnson, is that the case?---That's a lie.

Can you tell the Commission the circumstances of how you left the project?---I think Mr Johnson in conjunction with the (not transcribable) who stall the project in September 2009. The original plan of SMART2 project is to deliver the system, phase 1, to cater for the NAPLAN 2009. And by end of August the project was well on track, not, that's not only my opinion, that's the opinion of everyone in the team and that's also the opinion of the user. We have an email from the users (not transcribable) thanking the team for the good progress of the project. But since, yes, 2009

the project had stalled and then by the end of 2000 (as said) I (not transcribable). Since September 2008 the project was stalled by Mr Johnson and Mr Abeleda and by the end of 2008 Mr Johnson and Mr Abeleda decided to outsource the database of SMART project to (not transcribable) project of the DET. And by January I, I know that there's definitely no chance for the project to be deliver (not transcribable) 2009 and also in February Mohammed Bhuiyan was sent with a notice and also during the period I, I note that the project plan from Mr Armando Abeleda has a new position for the Java technical lead for the business analyst, the business analyst and also for the Java developer. To me, that's my opinion, that Mr Abeleda is trying to replace our proven team, our experienced team, but some of the other new people and being a professional for 40 years when I see that my presence in the project got no chance to deliver the project (not transcribable) that's why they pay me good money and my contract was renewed just two weeks before I resign and everything is well documented. ICAC got a letter. ICAC got the email, my solicitor got it and also the DET also, also got it. I copy the, my resignation letter and also to our, for the sponsor as well as Mr Wayne Strandquist who is, who was the DET project manager.

10  
20

So, Mr Lo, is it correct that in summary of what you've just said you, you were not sacked, you resigned?---I resigned on principle.

And that two weeks before you resigned Mr Johnson had offered you a six-month's extension of your contract?---Yeah, yeah, I signed the contract.

And is it - would be correct to say that you left the project because you believed that there was now at the time no chance that the project could be delivered as promised?---Absolutely no chance.

30

So you - - -?---In my opinion.

And at the time you didn't understand that, why that was the case?---I did not understand that was the case but in May I saw the article in Sydney Morning Herald.

Mr Lo, I might just finish you there?---Okay.

40 It probably takes the matter in a direction that the Commission can ask you if they want to?---Okay.

Can I show you a letter dated 13 February, 2009. I'm sorry, I don't have copies, I wasn't, I didn't think that this would be an issue?---Yes, that's my resignation letter.

All right. And could you tell me what you did with that letter?---Actually in that letter I also thank, thank David for offering my extension for another

six months and I told him that from my opinion the project was stall since September 2008.

Mr Lo, I might just get the letter to speak for itself and I might ask the Commission if - to read the letter and perhaps the Commission might be interested in tendering the letter.

ASSISTANT COMMISSIONER: Can I just see it, please? How was this letter sent, Mr Lo?---By email.

10

By email to Mr Johnson directly?---I sent to Mr Johnson and I copied to the project sponsor, Mr Robert Corday of the EMSAD and I also copy a letter to Mr Wayne Strandquist, I think it's S-T-R-A-N-Q-U - - -

So you would expect a copy of this letter to be in DET records?---Yes, I'm positive. I never lie.

20

All right. Well, look, I will let the letter be tendered as an exhibit at this time and perhaps we can make some inquiries with the Department to confirm whatever records they might have in respect of it. So this letter from Mr Lo to Mr Johnson dated 13 February, 2009 will be Exhibit 4.

**#EXHIBIT 4 – LETTER FROM MR LO TO MR JOHNSTON DATED 13 FEBRUARY 2009**

ASSISTANT COMMISSIONER: Yes, now if there's no other questions for this witness?

30

MS McGLINCHEY: I don't have any questions.

ASSISTANT COMMISSIONER: Yes, you, you may now be excused, Mr Lo, thank you?---Thank you.

**THE WITNESS EXCUSED**

**[12.24PM]**

40

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: I call Mr Bhuiyan.

ASSISTANT COMMISSIONER: You are Mr Bhuiyan? Yes. Could you come forward, please. Now, Mr Bhuiyan's not, you're not legally represented?

MR BHUIYAN: No.

ASSISTANT COMMISSIONER: You don't have a lawyer?

MR BHUIYAN: Yes, no.

ASSISTANT COMMISSIONER: Just have a seat for a moment,  
Mr Bhuiyan. You've been called here to give evidence. You are required  
to answer all of the questions asked of you. You may seek a declaration  
under our Act, the effect of which would be that none of the evidence you  
give could be used against you in future proceedings. Do you understand  
10 the effect of that?

MR BHUIYAN: Yeah, that's fine.

ASSISTANT COMMISSIONER: And do you wish to seek an order in  
those terms?

MR BHUIYAN: Yeah, sorry - - -

ASSISTANT COMMISSIONER: Do you wish to seek an order that  
20 nothing you say here can be used in any future criminal, civil or disciplinary  
proceedings in respect of you?

MR BHUIYAN: Yeah, I (not transcribable) understand what you're saying  
but I think it should be fine, yeah.

ASSISTANT COMMISSIONER: It sounds good.

MR BHUIYAN: I mean, I mean what I'm trying to say that is that that  
orders I am, those term I don't really understand to be honest but what I'm  
30 trying to say is it should be fine, yeah, if you use that.

ASSISTANT COMMISSIONER: All right. Well, I don't know that I can  
explain.

MR LEWIS: Could I assist?

ASSISTANT COMMISSIONER: Yes, Mr Lewis.

MR LEWIS: Could I assist on the matter (not transcribable) the witness.  
40

ASSISTANT COMMISSIONER: Yes, all right.

MR LEWIS: It won't take long.

ASSISTANT COMMISSIONER: Sure. Yes, now do you wish to seek the  
order having spoken to Mr Lewis?

MR BHUIYAN: Yes, yeah.

ASSISTANT COMMISSIONER: All right. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness 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 there is no need for the witness 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 THIS WITNESS 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 THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

20

ASSISTANT COMMISSIONER: So nothing you say here can be used against you in any future proceedings, however, it could be used if you're found to have breached the Act, for example by giving false information. So if you just listen carefully to the questions and answer truthfully then nothing you say can be used against you. Now, you're required to promise to tell the truth by taking an oath or making an affirmation. Do you have a preference?

30 MR BHUIYAN: Yes.

ASSISTANT COMMISSIONER: Do you, do you want to take an affirmation or make an oath on the bible?

MR BHUIYAN: Affirmation, yeah.

ASSISTANT COMMISSIONER: Affirmation.

<MOHAMMED MOHLUDIAN BHUIYAN, affirmed [12.28pm]

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---Mohammed Mohludian Bhuiyan.

10 And your occupation?---IT consultant.

And for how long have you been an IT consultant?---10 years now.

Do you hold tertiary qualifications in IT?---Yes.

What are they?---I have got a Bachelor of IT.

Where from?---From Australia, Central Coast (not transcribable) University and currently in UTS as a research student, in search of Masters.

20

I'm just going to show you a document. Is that a copy of a statement prepared by you on 11 November, 2010?---Prepared by me, yes.

And signed by you at the foot of each page?---That's right, yes.

I tender that.

ASSISTANT COMMISSIONER: Yes, the statement of Mohammed Bhuiyan dated 11 November, 2010 will be Exhibit 5.

30

**#EXHIBIT 5 – STATEMENT OF MOHAMMED BHUIYAN DATED 11 NOVEMBER 2010**

MR FORDHAM: Thank you. At the beginning of 2008 did you see an advertisement on an online job site if I could call it that called Seek?---Yes.

40 And did you reply to that advertisement?---Sorry?

Did you reply to it?---The ad in Seek?

Yes?---Yes.

At some stage shortly after that were you telephoned by somebody?---I'm not quite sure.

At some stage did you speak with a Mr Johnson?--- Yes.

And when he spoke to you did he describe himself as having any particular position?---Yeah, he described, yes.

What did he say he was?---I didn't actually call him, he call me. That's what I'm trying to say.

Yes?---He call me and he was asking for, I mean because I apply for the job.

10 What was the job that you were applied for?---Business analyst.

For who?---For so far I remember (not transcribable) I don't exactly remember which company was it. But I receive a call from Johnson.

And when you spoke to him did he describe himself as having any particular position?---Yes.

20 What did he say he was?---The business analyst role. And I ask him (not transcribable) either he is from agent or from the company and he describe him, he is from agent.

At some point did you meet with Mr Johnson?---Yes in DET office (not transcribable)

When in relation to the phone call?---Two days after he gave me a date over the phone.

30 And where did you meet with him?---I remember the day it was on Friday, but I can't exactly tell you the date.

Where?---In St Leonards, DET office.

St Leonards?---Yeah.

All right. When you met with Mr Johnson was anybody else present initially?---No.

No?---No.

40 And at that interview did you bring a CV or any other type of document?  
---Yes. I have got all the documents but he didn't ask for that. I brought that with me, but he got a copy of my CV because I (not transcribable) that people.

Now on that day you meet with any other person in relation to a potential job at the Department?---No.

Was anything said to you at the conclusion of the interview about what would happen if you were to get the job?---No.

Was anything said to you about how you would be paid or through whom you would be paid?---On the first day, no.

Now you've just made a reference to the first day, was there another time when you went to DET offices?---Yes, that's right.

10 And do you know roughly when that was compared to the first time?---The next probably week, yeah.

And are you able to put a date on that or not?---No, not really to put a date, no. I don't know the date exactly.

In between the two visits did you receive a phone call from Mr Johnson - - - ?---No.

20 - - - about the job?---Before I met second time, yes. He ask me to go there again.

And what was said in relation – during that conversation by Mr Johnson? ---He was saying as if, he was explaining (not transcribable) payment and stuff like how much he was going to pay, I was trying to make (not transcribable). He was only telling all the rates and stuff.

Was there any discussion about whether you actually had the job?---No.

30 Can you turn to page 33 of the bundle for me? The numbers are in the top right hand corner?---Yes.

Now is that a letter addressed to you from somebody called Freelance? ---Yes.

And is it dated 7 March, 2008?---Yeah.

And if you go through a few pages to page 35, have you signed that document?---Yes.

40 But did you sign that document on 17 March, 2008?---Yes.

On the second occasion that you went to the Department of Education offices at St Leonards, did you meet with anyone?---No.

When is it that you started work at the Department?---It was 10 March.

2008?---2008, yeah.

On that day did you meet with Mr Johnson?---No.

Did you meet with anybody else?---Yeah, Henry.

When you say Henry, who do you mean?---Henry Lo. So he's working on the SMART project.

10 And did you have an interview with Mr Lo?---Not really a formal interview, because I signed the contract before that, before I join. So there was no formal interview, but he explain me that's what I need to do and what, how is the payment and he introduce me to other, other team members like Johnny, Johnny Lui.

Was there a discussion about what experience you'd had with Mr Lo?  
---Yeah, there was.

I'll just be one moment. Now can I just ask you if you wanted to go to your statement for a moment, that I handed you a moment ago, the stapled document?---Yep.

20

Do you have that there?---Yep.

Right. Now and you'll need to go to annexures 1 and 2. If you go to page 13 of your statement and then the first annexure?---Ah hmm.

Do you see a document headed Ogawie letter of appointment?---Yes.

And is that dated 5 March, 2008?---Yeah.

30 And did you receive that document shortly after 5 March?---That's right, yeah, that day.

Now if you go to the next page, annexure 2, you spoke a moment ago about a contractor agreement?---Yes.

Is that the document you were referring to?---That's right.

And was that signed by you on 6 March, 2008?---That's right, yes.

40 And do I understand your evidence correctly that you had signed this contractor agreement, agreeing to certain rates, charges and duties prior to your first, prior to your first meeting Mr Henry Lo on 10 March, 2008?  
---That's right, yeah.

Now up until the signing of your contractor agreement, was anything mentioned to you about a company called Greythorn?---No.

Could you just turn through to annexure 5?---On the back page?

Yes?---17 or - - -

Sorry, in your document that I've just given you - - -?---Yeah.

- - - which is your statement there's an annexure 5. If you flick through it you'll see some timesheets?---Yes.

Do you have that?---Yep.

10

Now is that a timesheet signed by you?---That's right.

And does it relate to your first week of work at the Department?---Exactly, yeah.

How many hours work does it record?---So far I remember it was 32 hours.

Just answer my question, how many hours does your timesheet record?  
---40.

20

How many hours did you actually work that week?---32.

Why is it that when you filled in your form you put 40 hours rather than 32?---Because it was my first, first week. I already explain with Johnson, 'cause I didn't work one day and I went to hospital next day I join because I had some problem. And he say if (not transcribable) week and he put 40 hours. I say why? He say this is the requirements because that's your first week and I didn't know anything. That was my first week, actually. And he forced me to make it 40 hours and he knows that. And all the team members also knows that I was sick.

30

Okay. I'll just stop you there for a moment?---Yep.

Do I understand that you worked 32 hours that week?---Yes.

When you came to receive the pay in your bank account was it for 32 or 40 hours?---32.

And who was it that actually paid you into your bank account?---Freelance.

40

Just have a look at that document I have given you, do you see the word Greythorn after the word agency on the top, the second top line? You see your name, then the word agency then the word Greythorn?---Yeah. That's true, yeah.

When was the first time you became aware of the existence of Greythorn?  
---When I first print out the timesheet.

Okay. I'll just be a moment. Can I just take you back to page 36 of the bundle for a moment. It's the white folder?---Yes.

Do you have that? And is that a package summary relating to your work at the Department of Education and Training?---Yes.

And is it signed by you?---That's right.

On 17 March?---Yes.

10

And is the contract wage that you understood you were receiving \$35 an hour plus GST?---Yes.

Can you go forward to page 46 please. 45 first?---Yes.

45 is that a document headed Greythorn Pty Limited, Terms and Conditions for Business for Contracting Contractor Assignments?---I'm not aware of this.

20

It's all right. I've asked you to describe the document if you wouldn't mind. Is that what it says?---(NO AUDIBLE REPLY)

You see on the first page there's a signature for David Johnson and somebody else for Ogawie?---Yes.

Go to the next page. Page 46?---Yes.

Did you sign that piece of paper?---No. Sorry, on this one?

30

Yes?---No.

Please look carefully?---Yes. Look like my signature but I never hear of this to be honest.

Now, just stop there. I need to get this very carefully?---Yes.

There's a purported signature there with your name dated 17 March, 2008. Did you sign that piece of paper, yes or no?---Yes.

40

All right.

ASSISTANT COMMISSIONER: Did you write the printed name as well Mohammed - - -?---Yes.

Is that your hand printing?---Yes, that's right. But one thing, can I say?

MR FORDHAM: Yes?---I'm not sure whether this document I signed or not but this is my signature and my handwriting.

Right. I suppose I'll put it to you this way. Do you recognise that two page document?---Yes, but I don't recognise that first page. Greythorn, I never signed this document.

Now, at page 46, I just want to be clear about it?---Yes. This one?

Yes. Now, just so we're clear, did you sign that piece of paper, yes or no?  
---Yes.

10

Thank you. That's all I've got.

ASSISTANT COMMISSIONER: Sorry, so are you saying you remember signing this bit of paper or that that's your signature and therefore you must've signed it?---I remember I signed that.

You remember?---Number 46, yes.

20

All right. And what did you understand you were signing?---I was saying like it is an agreement between the Ogawie and myself. There is a terms and conditions.

You think this is an agreement between you and Ogawie?---Ogawie, that's what explained.

All right. Well, it's headed Greythorn Pty Limited?---But it's never mention about the Greythorn, I never - - -

30

(not transcribable) second page?---Yes, in the 46, yes.

All right. So you're saying you've never seen the first page?---No.

But you think you signed the second page?---Yes.

MR FORDHAM: And just so we can tidy that evidence up, when is it that you say you first became aware of the existence of Greythorn?---When I actually submit the timesheet.

40

And that's the timesheet that I showed you a moment ago?---Yes, that's right.

ASSISTANT COMMISSIONER: And what was your understanding about why Greythorn was on the timesheet?---I asked David straightaway, he said that you have to actually provide the timesheet to Greythorn, once they pass and then you will receive the payment. I say, Why is that? And I was trying to get some information from the other team members, like Johnny and Henry, he say, Yes, we receive that payment from Greythorn. So I thought yes, it should be probably through the Greythorn, but I asked David

again, he said, Don't ask anyone else, or don't, just get some information or just, just be quiet to getting this because this is a confidential information you cannot ask anyone else. I, I had a big chat with Johnson regarding this when I come across with the Greythorn regarding that and he called me in the room and I, I tried to say that, Look, I'm not really clear about it, that's what I'm doing. He tried to convince me, said, Look, this is the agreement, this is the way, if you want to work in this team you have to fill out the form or timesheet of the Greythorn, you have to put the name Greythorn in the agency and you have to leave it to me rather than give, give the hardcopy to me rather than giving to Kevin Johnston. A lot of people actually they submit to Kevin Johnston directly, but we used to, our team members used to give it to David Johnson.

All right. So apart from what you've told us about what he said he never gave you any other reason why this had to be in the name of Greythorn? ---That's right, he never gave me the reason. He said, This is the way.

MR FORDHAM: I have nothing further.

20 ASSISTANT COMMISSIONER: Thank you. Yes. Does anyone wish to cross-examine this witness?

MS BOURKE: Yes.

ASSISTANT COMMISSIONER: Yes, Ms Bourke.

MS BOURKE: Mr Bhuiyan, you found at about the job through the online site seek.com.au?---That's right.

30 And on that site the company who was advertising was Ogawie Pty Limited wasn't it?---I'm not sure, I do not remember, yes. I can't say that's exactly who actually, he did say, yes, it was not, there was no name, I remember, yes, there was a private company. He just mentioned them there on the seek site, it was a private advertiser.

Because I suggest to you that the advertisement showed that the employee was Ogawie Pty Limited?---I never, ever of this.

40 When you first met Mr Johnson he said to you that he was a project manager didn't he?---Yes.

I suggest to you that he did not say, I am an agent?---On the phone he said, yes, when I met with him he said project manager.

See, I suggest to you that at all times he told you he was the project manager?---No.

When he first met you he explained that you would be employed by a company called Ogawie?---No.

And that they would put you up as an – that they would contract you as an employee with DET, the Department of Education and Training?---No.

He explained to you about how the umbrella employment company Freelance worked?---Yes.

10 And you knew that you needed another company to be used to pay, for example, your tax, your super and all the various deductions that had to come out of your pay?---Yes.

You understood that didn't you?---Yes.

When you first met Mr Johnson he had your CV because you had sent it to him online?---Yes.

20 When you were discussing the employment most of your negotiations with him were about the rate of pay?---Not most of that. I had (not transcribable) about that. I had a chat about that but not most of the time. Initially we had, yes, ask him that's how much is the payment rate and he told me that I was trying to negotiate that.

Now you've said in your statement that on 6 March was the first that you knew that you were to be employed by Ogawie?---Yes, because that day I came to know that Ogawie is giving me the contract.

30 See I suggest that right from the start of your dealings with Mr Johnson you knew that you would be employed through Ogawie?---No.

You gave some evidence about your work while your timesheet showed Greythorn that's a very small part of the timesheet where it's got Greythorn isn't it?---Yes.

Mr Johnson explained to you that the Department paid Greythorn, Greythorn paid him and he would pay you through Freelance?---No.

40 I suggest that the he explained that to you very carefully?---No.

The timesheet that you filled in had to be handed to Mr Johnson because he was the project manager. Isn't that correct?---Not sure. Other team members they used to submit to Kevin Johnston directly.

Kevin Johnston was an employee of the Department?---Yes.

Isn't it your understanding that Mr Johnson, David Johnson had to sign it first because he was the project manager?---Yes.

That's why you handed it to him?---Yes.

You gave evidence about the fact that you deliberately falsified your timesheet by filling in a day when you weren't there, when you were sick?  
---No. Someone force me, David actually force me to do that and I receive my payment of 32 hours, so I haven't done that deliberately because I know that I was sick. I was in hospital.

10 So if you look at paragraph 14 of your statement that you've made, isn't it the situation that it was Mr Johnson who changed the timesheet to reflect that there was one day when you weren't at work?---Yes.

He changed it so that it was truthful?---He changed, yes, David changed that.

I suggest to you that, sorry, you gave your evidence that he forced you to say 40 hours?---Yes, he changed that. Actually, I didn't change that, I didn't, I didn't put 40 hours in the beginning. And I showed to him, I print  
20 it out and I bring to him and he say no, you put 40 hours. I say why? So he forced me to change that to make it 40 hours.

I suggest that you have completely fabricated that conversation?---Sorry?

You've made up that conversation?---No. Exactly no. There is no reason to actually, can I say something, please?

ASSISTANT COMMISSIONER: That's fine?---Okay.

30 MS BOURKE: Now you've said in your statement that you were spoken to by Mike Smith who worked for Freelance and he explained to that Freelance would be processing, they'd be basically payroll management?  
---Yes.

I suggest to you that you had already had that explained to you by Mr Johnson?---Yeah, when I came to sign the contract, yes, he explained.

When the skills that you have brought to the project were no longer required  
- - -?---Ah hmm.

40 - - - your contract was terminated by Mr Johnson?---Yes.

Isn't that correct?---Yes.

When was that?---It was on February 2009.

Yes, no further questions.

ASSISTANT COMMISSIONER: Thank you Ms Bourke. Is there any other application? Yes, Mr Purdy.

MR PURDY: Thank you, Commissioner. Mr Bhuiyan, I am representing the Department of Education. I'd just like to ask you firstly a question about the timesheet. Could you just turn up the timesheet in your copy of (not transcribable), annexure 2. It's page, it's actually annexure 5, it's page 27 up the top?---Yep.

10 Now if you look down at the bottom of that document in the middle of the page you'll see the words, "I certify performance service"?---Yes.

Project Manager, David Johnson?---Yes.

You gave evidence that some of your colleagues submitted timesheets directly to Kevin Johnston?---I'm not, what I'm trying to say is yes, they used to, yes.

20 And Kevin Johnston was a permanent employee of the department?---Yes.

And he was the Manager, Information Systems?---Yes.

And David Johnson reported to him. That's the position isn't it?---Yes.

Yes. Now are you saying that your colleagues obtained David Johnson's signature and then took the timesheet to, directly to Kevin Johnston?---Yes.

30 So you're not suggesting that they bypassed David Johnson and gave it directly to Kevin Johnston?---No.

Yes, thank you. Now, if you could turn to the annexure before that which is a document, it's annexure number 4, it's entitled "Agreement of Confidentiality Pecuniary Interest Disclosure"?---What page number, sorry?

It's the, it's annexure number 4 and it's on page 23 at the top right-hand corner?---Yes.

40 Now, in paragraph 11 of your statement you say, "My signature appears at the bottom of this document," so that is your signature on the, on the third page of the document there?---Yes.

You say that it is dated 10 March, 2008 and you don't believe that that was the date it was actually signed?---This was actually signed on that day, yes.

It was signed on that day?---Yeah.

So to the, so what you're saying is that David Johnson's signature on the right-hand side of your own signature, are you saying that that signature was

not made on the date 10 March, 2008 as it appears to say?---It was made on 10 March, 2008.

So you're saying that both you and David Johnson signed this document on 10 March, 2008?---Yes.

Now, you, do you understand what the document means?---I was explained and he didn't give me a chance to look at it but he explained that.

10 And what did he explain to you that it meant?---I mean, it is, it is regarding the information that we can disclose and we cannot actually explain to other people or something like that.

And you understood that the, the information that you obtained in, in your work with, on the SMART Project with the Department was information that was not, you were not free to use for your own benefit?---Exactly, yes.

And that it was essentially the property of the Department?---Yes.

20 Yes, thank you. No further questions.

ASSISTANT COMMISSIONER: Thank you. Yes. If there are no other questions this witness can be excused, may he?

MR FORDHAM: Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Bhuiyan, thank you for your attendance. You are now excused.

30

**THE WITNESS EXCUSED**

**[12.58PM]**

MR FORDHAM: And well, I note the time.

ASSISTANT COMMISSIONER: Yes, we'll adjourn at this time until 2.00pm, thank you.

40

**LUNCHEON ADJOURNMENT**

**[12.58pm]**