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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 24 AUGUST 2011

AT 10.05 AM

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ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Fordham.

MR FORDHAM: Just before I call the first witness an issue arose yesterday in relation to whether or not Greythorn contravened the terms of their agreement in using agencies. Now, there was some correspondence between Commerce, the Department of Commerce and the, something called the Finance and Infrastructure Portfolio of the Department of Education and Training as it then was which deals with that issue. It's not  
10 conclusive of the fact, it simply suggests that those involved formed the view that Greythorn did not necessarily abide by their agreement. One of them's undated but there's an email on the back that suggests what the date should be.

ASSISTANT COMMISSIONER: Yes, well, do you wish to tender those letters, Mr Fordham?

MR FORDHAM: Yes.

20 ASSISTANT COMMISSIONER: Yes. Well, a letter from the Finance and Infrastructure Portfolio and from the New South Wales Department of Commerce and an attached email will be Exhibit 21.

**#EXHIBIT 21 - LETTERS FROM FINANCE AND  
INFRASTRUCTURE PORTFOLIO AND FROM THE NSW  
DEPARTMENT OF COMMERCE AND ATTACHED EMAIL**

30 MR FORDHAM: May it please the Commission. I call Mr Loquet.

ASSISTANT COMMISSIONER: Yes, is Mr Loquet here? Please come forward. Take a seat. Mr Loquet, you've been called here to give evidence and you are required to answer all of the questions asked of you. You can seek a declaration under section 38 of the Act, nothing you say can be used against you in future proceedings. Do you wish to seek a declaration in those terms?

40 MR LOQUET: Yes, please.

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 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.**

ASSISTANT COMMISSIONER: The effect of this order is that nothing said here today by the witness or produced by him can be used in any proceeding except for proceedings for breaches of the Independent Commission Against Corruption Act. Now, Mr Loquet, you're required to take an oath on the bible or make an affirmation. Do you have a preference?

20 MR LOQUET: Oath is fine, thank you.

ASSISTANT COMMISSIONER: Yes, thank you.

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---My name is Stephen Claude Loquet.

10 And what is your occupation?---My, my job is the Chief Information Officer for the Department of Education and Communities.

How long have you held that position?---I started in that role on 31 January, 2011.

Were you with the Department or its predecessor prior to that?---No.

20 And I understand that for the purposes of giving evidence today you have reviewed materials relating to changes that have been made or plan - or are planned to be made in relation to the system of contractor retention with the Department?---That is correct.

Now, just by way of background, it's the case, isn't it, that the Department have something a little over 100,000 employees?---That's correct.

And deals with not only primary and secondary schools but TAFE as well? ---That is correct.

30 And I assume with the new role for the Department has it taken on any other roles?---It also looks after Communities now which is another, probably another 3,000 staff.

Please correct me if I am wrong but it is my understanding that the Department is one of the largest users of IT services in the country?---It's the largest in the Southern Hemisphere.

As at 2008 the Department in its Information Technology Directorate placed a significant reliance on contractors, you're aware of that, aren't you?---Yes, I am.

40 And there was some evidence yesterday that at least in the areas in which Mr Kevin Johnston worked the reliance was something in the order of 80 per cent. Are you aware of that?---I'm not aware of the ratios, but I know there was a high reliance.

Can the witness be given the Corruption Prevention brief, please?---Thank you.

If you just put that one side for a moment. I'll just show you two documents or one document, two copies?---Thank you.

Is that a statement by you?---Yes, it is.

And what is the date on that statement?---13 May, 2011.

And does your signature appear the bottom of each page?---Yes, it does.

10 I tender that statement.

ASSISTANT COMMISSIONER: The statement of Mr Loquet dated 13 May, 2011 will be Exhibit 22.

**#EXHIBIT 22 - STATEMENT OF STEPHEN LOQUET DATED 13 MAY 2011**

20 MR FORDHAM: Now in that thin white volume I just handed you could you turn to page 77, please. Do you have that document?---Yes, I do.

Now that document suggests that the current ratio comprises 404 permanent staff as opposed to 247 contractors?---That's correct.

And is it your understanding that that ratio is accurate?---That ratio is decreasing at all times. But based on its date it'd be accurate, yes.

30 And there was some evidence given yesterday by Mr Kevin Johnston that suggested a number of things, the of which was that each of the project managers reporting directing to him as at 2008 in the four projects that he was managing were contract staff. Do you accept that from me for a moment?---That is possible, yes.

Has anything been done by the Department in order to lessen the reliance on contract staff at a managerial level?---Yes, it has.

40 What's been done?---We're currently in the process of reducing our contract staff. This is basically due to a Treasury pressure to reduce our budget. We've had to find savings within our budget. And we've done financial analysis to show per step that it is cheaper for us to put an ongoing public servant in place instead of employing a contractor. So our first role was to find financial savings, secondly it was also to put people in place within public, as a public servant in areas of responsibility.

Do you agree with the proposition, leaving financial issues aside, and in the area relating to corruption and the potential conflicts of interest for people

working for and on behalf of the Department it is advantageous to have permanent staff as opposed to contract staff?---Absolutely.

And do you agree with the proposition that the reason in part for that is that a contractor has effectively a duty to themselves and their company in order to make a living?---I agree.

10 And further that where it is that a person becomes a permanent member of a government department or one of its derivatives, they are subject to firstly a vetting process?---That's correct.

They're also subject to an initial and thorough induction?---Indeed.

As part of that induction permanent staff are directed specifically to things like potential conflicts of interest and existing pecuniary interests?  
---Absolutely.

20 And do you further agree that permanent staff undergo ongoing supervision and training in those areas?---I agree.

And that for the purposes of maintaining the integrity of the Department and its systems it is, where possible, advantageous to have permanent staff?  
---Agree.

Particularly where those permanent staff have the ability to raise, if I can put it that way, expenditure items?---Yes.

Approved expenditure?---Yes.

30 And direct the Department as to what resources it might need?---Yes.

Now, another issue that has arisen is the matching of the managerial skill sets to the people that are being managed. Do you understand that?---Yes, I do.

40 It is the evidence of Mr Kevin Johnston yesterday who appeared to be, might I say, a consummate and career public servant with some extensive managerial skills but that he frankly admitted he lacked, through no fault of his own, IT skill, an IT skill base sufficient to fully understand what it was that he was managing?---Yes.

Has anything been done by the Department in order to attempt to match managerial skill sets with the people that are being managed?---We are aware of this, this concern and we are currently going through a process of doing skills analysis for all staff and then from there finding out where gaps are and what are required for their role and then arranging training.

Is it the case that there is an audit being conducted of some sort into the various managerial positions and the skill sets that are required?---That's, yes, we're doing the skill, yes, that's correct.

A review was conducted as a direct result of what happened in this case with Mr Johnson, correct?---Yes.

10 Now, if you could go to page 67 of that volume. Have you seen that document before?---Yes, I have.

Now, the first page of that document which is numbered page 67 there is a direct reference to conflict of interest, do you see that? Left-hand side? ---I do. Yes, I do.

And you'll see that there is set out a recommendation which deals with personal relationships with an applicant for a position?---Yes.

20 It may seem trite but has anything been done in relation to potential conflicts of interest arising out of commercial relationships with applicants?---Due to the situation we've actually developed a manual, a Contract Administration Process manual, that has in place numerous documents and also a process of how we actually engage contractors. It looks at, actually covers a guideline for engagement, contract engagement processing including pecuniary interest, contract code of, of contract and ethics, process workflows and also dealing with, with conflicts of interests.

30 Now, immediately prior to court this morning you provided me with a green bundle of documents. Just leave that there for a moment, we're going to continue, that document is contained within the green bundle, is it not? ---That's correct.

Right. Well, I'll come back to that in a moment. I just want to go through these recommendations briefly. Is it the case that conflict of interest declarations are now A, directed to the attention of potential contractors? ---All contractors are required to complete a conflict of interest document before they start.

40 And is there a requirement emphasised to contractors about the updating of that conflict of interest declaration?---I'm not aware of the updating, I'm aware of the pecuniary interest document.

Well, in relation to pecuniary interest which on my reading of the documents was part of the same document in relation to conflict of interest, is it the case that not only are contractors obliged to declare at the commencement but are they directed to update that should the need arise? ---Yes, they are.

Now, can you just turn over to page 69 and recommendation 5. Do I understand that it was suggested that a cost benefit analysis of in-house recruitment of contractors rather than using external agencies such as Greythorn was considered?---Yes, it is.

And do I further understand that the possibility has been rejected due to cost constraints?---Sorry, could you please repeat that first question again, sorry?

Has that possibility been rejected?---Sorry, the question before that.

10

The in-house recruitment of contractors as opposed to relying on agencies such as Greythorn?---Can I understand what you believe the definition of the in-house recruitment contractors to be?

Well, it's your document - - -?---Yes, I know.

- - - perhaps you could tell me?---Okay.

20 Now, if you're not familiar with this document perhaps you should tell me and I'll just address on it in submissions and we'll go to something else?  
---Based on that statement I'd prefer it if you did.

Are you aware, and we won't use the document as such, I'll ask you some questions, are you aware of whether or not the Department has considered in-house recruitment of contractors, yes or no?---We are replacing current contractors with ongoing public servants.

30 Has there been any consideration of the recruitment process being conducted in-house as opposed to relying on agencies such as Greythorn?  
---Yes, there has.

And has that been adopted or not?---Yes, it has been adopted.

ASSISTANT COMMISSIONER: Sorry, what, what has been adopted? That you will try to move more to in-house or - - -?---Try to move more to increasing our public service numbers instead of actually providing, employing contractors.

40 Yes, I think that's a different issue.

MR FORDHAM: I'll deal with it. We're at cross-purposes and I'm sure it's my fault so I'll express myself more clearly. Where contractors are required, so it's necessary to have a contractor, the process has been up till now that an agency such as Greythorn is used to source those contractors. Now, what I want to know is whether the potential for the Department to source them from an in-house team has been considered. Do you know or not?---No, I don't know.



Thank you. And I'll come to them individually in a moment but as a result of what happened with Mr Johnson were a series of new documents created as part of a package to be used for the induction of contractors?---Yes, they were.

Are the pecuniary interest documents stored on some form of database?  
---Yes, they are.

10 Subsequent to the events involving Mr Johnson, has there been a new Code of Conduct developed and implemented at the Department?---There is a Code of Conduct. I'm not sure when it actually came into, into place, before I started I believe.

Are you aware of the, are you familiar with the contents of it?---Yes, I am.

Could you turn to page 110 for me. Do you recognise that as the first page of the Code of Conduct?---Yes, I do.

20 And if you go to page 115 in part that deals with the relationship of contractors and volunteers with the Department and the Code of Conduct, you see that?---Yes, I do.

And it's the case isn't it that as part of the induction process contractors are specifically directed to the conflict of interest provisions?---That's correct.

30 And compliance with that Code of Conduct is mandated?---It's mandated and a signature to say that they actually agree with the Code of Conduct is required through a document that we ask them to sign called a Contract Deed.

And if you go to page 147. Is that a conflict of interest fact sheet that's been specifically developed since the events in question or are you unable to say?---I am unable to, no.

Can you turn to page 150 for me? Is that the Deed you spoke about a moment ago?---That's is correct.

40 At page 153 there's a pecuniary interest and private interest disclosure document?---Correct.

And if you go to page 160, is that a document that is used when an alteration needs to be made to that pecuniary interest document?---That is correct.

Now from a managerial perspective what I'd like to ask you some questions about is how potential conflicts of interest are dealt with when they are raised with the Department. So assume for a moment that a contractor raises a potential conflict of interest involving perhaps the company through which they trade, who do they speak to?---They would speak to the manager

first. And then that would be, then that is advised to the, to my office. And then an action is decided from that point.

And when you say an action, is it the case that someone from your office, perhaps at your direction, perhaps not, goes and interviews that person?

---I'm not clear of the actual actions that occur.

10 Well you've used the term action, if it gets brought to your offices attention, what is it that's to be done with it?---They then would put that request in, there's a group within the Department, again I'm not quite sure what they're called, but we'd got and talk to them about a pecuniary interest issue and then discuss it from there.

Now of course a declaration such as these are only as effective as the honesty of the person who makes the declaration. Do you agree with that?

---That's correct.

Are the declarations accepted at face value?---Yes, they are.

20 Now can I go to the green document that you provided me with and perhaps we'll need some more copies because I suspect, do your lawyers have some copies of this document?---They do, yes. Four or five (not transcribable)

Oh, he's got them. Okay. Perhaps for present purposes I'll hand it up and we may tender it depending on what occurs. You've got your own copy, sir?---Yes, I do thank you.

Thank you?---Within the pack - - -

30 I'll just ask you some questions in a moment. If you just wait a moment?  
---Yes, of course.

The first document I've come to is the Information Directorate Contractor Administration Process?---That's correct.

Is that the document and process you referred to earlier in the evidence?  
---That's right.

40 And is it the case that, well who was it who commissioned this document?  
---It came out of an audit review for our audit directorate within the Department. And then we defined our contractor processes based on that audit.

And what is the purpose, or what was the purpose of formulating this document?---To, so all staff had a clear understanding of the process to employ contractors. And also defining their, people's responsibilities and the actual workflow.

Now, I'm hoping and praying that everybody has the same colours but the next document tab I have is a blue one?---That's correct.

And behind that is a document stamped sample only?---That's correct.

What is that?---So this is our task contractor documentation, so I say tracking of contractor documentation. So every, all contractors actually track the documents that they've completed and filled in, make sure we have everything for our records.

10

What happens if, when one tracks through this document for interest sake the statement of pecuniary and private interest document is not received? ---We follow that up and arrange to get a copy (not transcribable).

Is the retainer of the contractor able to be completed if the steps are not followed through?---It is expected to, they receive that document on their first day.

Now, perhaps I'll repeat that question. Are you able to process the retainer to completion if the documents are not received?---I'm not sure.

20

Now, the next tab has a pre-engagement, contractor engagement pre-approval form. There was a similar document in existence at the time of these events, was there not? And I'm looking at page 17 of the bundle.

ASSISTANT COMMISSIONER: Yes.

MR FORDHAM: Perhaps if the witness could be shown the Exhibit 1? ---Page 17?

30

Yes. The document at page 17 is a contractor selection pre-approval, this one appears to be a contractor engagement pre-approval, is this a new document that was developed as a result of these events?---This is a new document, that is correct.

And what is the object of this document?---It's actually to get authorisation to say you can go to market to source a contractor.

My understanding of the document at page 17 is that that document was, previously fulfilled that role so is it the case that this is a supposedly new and improved version of that?---That is correct.

40

And what, if any, safeguards are built into this particular document? And perhaps I'll put it this way. Is it the case that the project managers in question are still contractors or are they more probably than not going to be permanent staff?---Sorry, could you repeat that question again.

Do you see in the recommended section just down the bottom?---That's correct.

And the first one is a project manager?---Yes.

Are those persons now permanent staff or contractors?---It is possible it still could be a contractor at this stage but there is other roles in front which would not be a contractor – we've signed below that would not be a contractor.

10

You've said at this stage, is it currently the Department's intention to try and replace contracted project managers with permanent staff where possible?---Yes, where possible.

And to be fair to you it's the case, isn't it, that some roles simply cannot be filled with permanent staff due to the expertise involved?---That is correct.

20

Can you just explain to me briefly what the ITD position number covered by contractor, does that relate to a designated position that needs to be filled within the Department?---Sorry, I'm trying to - - -

Do you see on your document the ITD position number covered by contractor?---Sorry, you're looking at the first page?

Yes, I am. It's the second - - -?---(not transcribable)

Yeah?---All right.

30

Is that a, does that - - -?---If we're, if we cannot find a suitable public servant to fulfil the role we can put a contractor in place and that's where the public servant number would align to that.

Is it the case that the approach now is that where possible you search to see if there is an appropriately qualified Department employee - - -?---Correct.

- - - before going to market?---Correct.

The next tab has behind it a Contractor Assessment Form.

40

ASSISTANT COMMISSIONER: Mr Fordham, before we move off that could I just ask - - -

MR FORDHAM: Of course.

ASSISTANT COMMISSIONER: - - - something? In relation to this form are you aware of, generally of the evidence in this matter?---Generally.

And you'd be aware that one of the issues is the disparity between what the Department was paying contractors and what the people doing the work were actually receiving?---That's, yes, I am.

Yes. In relation to this form if somebody puts in an hourly rate that the contractor is going to cost, I presume that will be the project manager?  
---That's correct.

10 Now obviously if you have a project manager who's also got say a private company and might want to put the work through that company the temptation would be of course to, to put a high hourly rate?---Ah, yes.

Is there any, are there any safeguards in place or well, how do you ensure that the hourly rate nominated on these forms is, is, you know, competitive, commercial, what the Department should be paying for the work being done?---We, we compare it to other rates that are being paid. We also get surveys from these organisations that recommend and say what kind of rates or what kind of roles.

20 What organisations, sorry?---So resourcing organisations send out surveys on a regular basis.

So like Greythorn?---Greythorn and places like that so they actually make, they state what the market is actually paying at the time.

And what the, what the market is paying for a person at a certain level?  
---That's correct.

30 So when it comes to actually getting the people in if, for example, you were going through Greythorn - - -?---Yes.

- - - is it the case that you would rely on them to produce to you people who were at that level and deserved that rate of pay?---That's correct.

So in that regard you're entirely in their hands to a certain extent?---We're making a judgment based on the skill sets and their resume, their interview process to try and make sure that there is some alignment and that's what this, that - or the next paid processes is doing is actually we're interviewing.

40 Yes, all right. Thank you. Yes, Mr Fordham.

MR FORDHAM: It is the case, isn't it, that the - I'm not sure if they're still called the Department of Commerce but the arrangements that are in place that previously was contract 881 has fairly strict guidelines on the margins that the agencies can charge. Are you aware of that?---I'm not aware.

Is there anything on the form that the Commissioner has just taken you to that alerts or is designed to alert the Department to any significant

discrepancy between what the Department is paying the agency and what the contractor who actually performs the work receives in their hand?---No, there's no.

10 Are you aware that in this case one of the significant allegations is that whilst Greythorn was charging it's seven and a half per cent or so margin in accordance with its agreement with Commerce, that Ogawie was charging anything up to or profiting at anything up to \$50 an hour per contractor? Are you aware of that?---I've heard comments but I'm not, I don't have the facts.

20 And has the Department considered - and I'll withdraw that and put this question first, please accept from me that a number of witnesses, Mr Johnston included, said that if they'd been aware of that that would have been a concern to them and they would have done something about it. Has the Department considered doing anything to try and inform itself as to what the actual contractor was receiving in their hand?---We, we now follow the C100 contract which is provided to us by the Department of Finance and Services. They would have certain rules that would, I believe that are in place. I don't know what they are but I would assume they would have rules in place to say what the percentages would be.

Has anything been done - I'll withdraw that. Leaving aside what the rules are, has the Department considered doing anything to inform itself as to what the actual contractor is getting in their hand as opposed to what they're paying an agency?---I'm not aware.

Now the contractor assessment form is behind the next tab?---Yes.

30 I may well be wrong, but it doesn't appear to be any different from the old one, but I want to ask you something about the constitution of panels. Where a panel is convened for the assessment of a contractor are there any policies in place as to who must constitute that panel?---Yes. A, the convenor must be a public servant and the person, the people on the panel must have at least one public servant. And that person must have selection panel training to be on it.

40 And it's before your time, do you know what policy was at the time of 2008?---No, I don't.

In this case we know that in relation to the assessment panels, on each occasion they were made up of contract staff. Is that a situation that would be tolerated at present?---No.

Now the next document you've given me is the contractor engagement approval. And you will see, and you can take it from me this is not entirely different to the old one?---Ah hmm.

That in the fourth block, if I can call it that, you see a heading Rate Breakdown?---Yes.

And where it says contractors pay rate supplied by agency - - -?---Mmm.

- - - are you able to say, and please tell me if you can't, whether that refers to what it is that the agency is paying the contractor who actually does the work or some other figure?---That's what it looks like.

10 Behind the next tab and at the back, the very last page is a thing called a Contractor Renewal Checklist. It appears to have been created in June 2011. Is that a new document?---That's correct.

And what was the purpose of creating this document?---To ensure that all documentation is and processes followed.

Now again if it is that in filling out this checklist it becomes clear that a significant process has not been followed, are you able to action the renewal or does it stop until it's rectified?---It stops until it's rectified.

20

The next document we've already dealt with, that's the Contractor Personal Deed?---Correct.

And behind the next page, the next tab is a Contractor Statement of Pecuniary and Private Interest. Is that a different version of the document we saw a moment ago?---I think it might be the same. I didn't look at the - - -

30

I'm just having a, well for a start it's got colours on it?---Yeah.

But it looks very similar?---Apart from that, yes. And there's also, the last page is the updated - - -

And is that the document that's currently in use?---That's correct.

Now the final document you've provided me with this morning is an Information Technology Directorate Staff Induction Framework?---That's correct.

40 Now this document suggests it has been at least implemented as at June 2011?---Yes, this current version, yes.

Was there a version of this to your knowledge in use during 2008?---I am not aware.

What is the purpose of this particular document?---The main purpose of this is to make all staff aware of the Code of Conduct, processed for the information around the Department itself, the structure of the ITD and the

area they'll be working in, major projects, things they need to do on their first day.

Now, there's some evidence that various contractors may or may not have signed certain confidentiality deeds and the like at the time of their commencement with the Department and that evidence has been given in this inquiry. The flavour of that evidence was, and I'll put it, I'm not trying to be flippant, but people are simply saying, yeah, I might've signed it but we're not particularly directed to any parts of the contents. Now, do you agree with the proposition that if you're going to have documents pertaining to things like confidential information, conflict of interest it's important that not only are they given to people but they are directed to pass on them?  
10 ---That's correct. I agree.

Does that happen?---I believe so.

Is it supposed to happen now?---Yes.

The Department in its Information Technology Directorate, and correct me if I'm wrong, but I assume has significant stores of confidential information?---Yes.  
20

It would also have significant stores of private information relating to individual staff and students would it not?---That's correct.

And there has been some evidence in this inquiry that people who were not contracted directly to the Department and have not signed any form of confidentiality deed or document were given access to Department systems and documents, do you agree with the proposition that that is unacceptable?  
30 ---I do.

And what, if anything, has been done in order to remedy that situation?  
---I'm not sure.

Well, perhaps we'll deal with it this way. Is there any part of the induction process that now specifically deals with confidential information?---I believe so.

And is it the case that people have to sign a document dealing with confidential information on commencement?---I believe so.  
40

And are there directions given to staff and contractors about the release of confidential information that is confidential to the Department?---I believe some deed they sign.

Yes. I'll just be one moment. Please just answer this question yes or no and if you don't know tell me. Are you aware of whether or not the Department



took proceedings in relation to Mr Johnson and the alleged use of intellectual property?---Sorry, could you (not transcribable)

Are you aware of whether or not the Department took proceedings against Mr Johnson in relation to the use of intellectual property?---I know there was a court case but (not transcribable).

Yes. Thank you, nothing further. I think for completeness this document should be marked. I tender that document.

10

ASSISTANT COMMISSIONER: Yes. These documents relating to DET's revised procedures, contractor engagement and other matters will be Exhibit 23.

**#EXHIBIT 23 - BUNDLE OF DOCUMENTS PRODUCED BY MR LOQUET BEING REVISED POLICIES AND PROCEDURES OF THE DEPARTMENT OF EDUCATION & COMMUNITIES**

20

ASSISTANT COMMISSIONER: Yes, Mr Purdy.

MR PURDY: Commissioner, a number of documents have been put before this witness that are in the corruption prevention folder and he has also been asked questions about the document marked as Exhibit 23 I think. In one sense the exercise in my submission is a little bit artificial in terms of asking the witness's personal knowledge of the matters in those documents. There are aspects of this witness's evidence that I would wish to tidy up but in my submission asking further questions orally of this witness is not the

30

appropriate course.

ASSISTANT COMMISSIONER: No, look, I agree. The Department is welcome and, in fact, encouraged to put its view on what's being done in certain areas in its submissions, perfectly entitled to do so and that would probably be more helpful in, you know, in the long run.

MR PURDY: I, I just wish it to be noted that the Department's perspective on this exercise is that it is an incomplete and in some senses unsatisfactory examination of the measures that have been taken. The proper course is, is to, is to, is by way of submissions to highlight the, the documentation, the aspects of the document which point to the measures which have been taken.

40

ASSISTANT COMMISSIONER: Well, I understood that this gentleman was put forward as somebody who could speak to these measures and produce these documents himself, did he not?

MR FORDHAM: I was about to address on that point. The Department would be well aware that the Commission, as in any Commission, is only as good as the information they choose to provide us and the timeliness with which they give it to us. Now, if my friend is of the view that asking questions - this is an inquiry, we're not strictly bound by the rules of evidence. If he'd like to put something in writing I would encourage the Commission to accept that.

10 ASSISTANT COMMISSIONER: Yes. Well, I mean certainly, at the end of the day all we want to know is what the Department has done to address some of the issues that have arisen in this matter and obviously you'd be well aware from the evidence what some of the perceived problems are and we welcome any submissions from the Department on those issues.

MR PURDY: Yes, Commissioner. I meant no, no criticism of the Commission staff or Counsel Assisting by that. I, I'm merely suggesting that the appropriate course in relation to this witness's evidence is, is, should be addressed by way of submissions rather than to put further questions.

20

ASSISTANT COMMISSIONER: Yes. Well, I take it you don't have any questions for the witness?

MR PURDY: On that basis, no, I don't wish to - - -

ASSISTANT COMMISSIONER: Thank you, Mr Purdy. Does anybody else wish to ask this witness any questions? If not, thank you for your attendance, Mr Loquet, you are excused?---Thank you.

30

**THE WITNESS EXCUSED**

**[10.52am]**

MR FORDHAM: Would the Commissioner consider taking the morning tea adjournment now because I'm going to call Mr Johnson immediately after morning tea and it might be more convenient if we go through in one burst until lunchtime and then after that.

40 ASSISTANT COMMISSIONER: All right. Well, we'll adjourn until 11.15. Thank you.

SHORT ADJOURNMENT

[10.52am]

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Fordham.

MR FORDHAM: I call Mr Johnson.

ASSISTANT COMMISSIONER: Yes, Mr Johnson. You've been called to give evidence. You are required to answer all the questions asked of you. Do you wish to seek a declaration under section 38 of our Act?

MR JOHNSON: I do.

10 ASSISTANT COMMISSIONER: And you understand the effect of that is that nothing you say can be used against you in future criminal, civil or disciplinary proceedings unless it's found you've breached the Act by for example providing false or misleading evidence. Do you understand the effect of that?

MR JOHNSON: (NO AUDIBLE REPLY)

20 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 accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30 **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 ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40 ASSISTANT COMMISSIONER: Mr Johnson, you're required to take an oath or make an affirmation.

MR JOHNSON: Affirmation, thank you.

ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: What is your full name?---David Johnson.

And your current occupation?---IT consultant.

10 As at 2008 you were an IT consultant, weren't you?---Correct.

And you traded through a company known as Ogawie?---Correct.

Prior to that you had traded through Sunbright Systems?---Correct.

In late 2007 you obtained a contract to perform work as an IT consultant at what was then the Department of Education and Training?---Correct.

20 And whilst you were working at the Department of Education and Training you traded through and were paid by Ogawie, correct?---Correct.

You were a shareholder and director of that company?---Correct.

And effectively it was a vehicle that you incorporated for the purposes of IT consultancy?---That's correct.

30 Now, when you commenced at the Department of Education and Training you were provided with an Agreement of Confidentiality Pecuniary Interest Disclosure document weren't you?---Correct.

Have a look at page 16 of that bundle in front of you. Do you have that there?---Yes, I do.

Turn three pages over to page 16, that is your signature, isn't it?---Yes, it is.

40 If you go back to the first page you can see that the document specifically deals with confidential information in the first paragraph and I'll paraphrase it but please correct me if you feel that I am not being fair, the DET's legitimate interest in maintaining secrecy?---That is correct.

On the second page there is a paragraph 4 that has been ruled out. Do you know who did that?---I don't recall but that would most likely be myself.

Further down that page at paragraph 11 there is reference to conflicts of interest. Do you see that?---I do.

I take it that if you took the trouble to rule out a paragraph of this document you read it before you signed it?---Not necessarily, well, that's a reasonable assumption. From recollection this document wasn't actually submitted.

I didn't ask you whether it was submitted. I asked you whether or not you read it?---Mostly likely.

You read it in sufficient detail to decide that you wanted to rule out paragraph 4, correct?---Correct.

10

And isn't it the case, as you just suggested, that it was not in fact submitted? ---I don't recall but that's most likely the case.

In order to perform work at the Department of Education and Training you entered into an agreement with Greythorn?---Correct.

And for the purposes of that agreement you dealt with a Ms Battwraden? ---Amongst others.

20

It is the case, isn't it, that for the purpose of dealing with Greythorn you were provided with a document headed "Terms and Condition of Business for Contractor Assignments"?---(NO AUDIBLE REPLY)

I'm just going to get a document up on the screen for you, it won't take a moment I hope. Go to the next page for me. Now, I am just showing you the second page of the Corporate Contractor Schedule document, that's your signature isn't it?---Yes, it is.

30

And if you go to the next page for me, do you see that document?---Yes.

Now if we could just scroll down to the bottom, that is also your signature, isn't it?---Yes, it is.

The items that have been ruled out in paragraphs 1, 3 and 25 were ruled out at your request?---That's correct.

40

It's the case isn't it that you wanted amendments to paragraph 7 which deals with whether or not you would devote the whole of your working time to the Department and conflict of interest?---Correct.

That was not agreed to?---That's correct.

You also wanted amendments to paragraph 11 dealing with effectively subcontracting?---I don't recall it.

Do you accept from me that Ms Battwraden gave evidence that you sought to have amendments made to that paragraph? But if necessary I can take

you to the emails. Do you accept that there was negotiation in relation to paragraph 11?---Yes, I do. I mean there certainly was negotiations.

And paragraph 18 in relation to intellectual property. Do you accept that?  
---Yes.

Now you signed the document in this form because you were told by Ms Battwraden that amendments to those paragraphs were not going to be made?---I don't recall the conversation, I mean it was obviously some years ago, but, yes, I have no reason to dispute that.

And when you commenced at the Department of Education you knew didn't you that as a result of signing this document you were to devote your energies to working for the Department. Correct?---No, that's not correct.

You understood that you had specifically asked for amendments as to whether or not you would be spending all of your normal working hours working for the Department and they'd been rejected. That's right isn't it?  
---No, it's not right. I, I detailed discussions with, with Greythorn and I explained my situation in terms of starting a business. And I made it perfectly clear that you know, what I was doing, what my intentions were. But the end result was that I was only too happy to agree to the 40 hour requirement because I could accommodate that within my working schedule.

So is it your evidence that outside the 40 hours you were intending to do other work for remuneration?---That's correct.

But you agree with the proposition don't you that in so far as those 40 hours were concerned and specifically in relation to paragraph 7, what's termed normal working hours, you had agreed to devote the entirety of your efforts to the Department of Education and Training?---Correct.

Further you had asked and were told that effectively subcontracting was not to be allowed under paragraph 11?---No again, I'd had detailed conversations with Manny Minati at Greythorn. He was aware that I had recently started the business and it was explained to me that I could engage other contractors.

You understood didn't you, as a result of your negotiations with Ms Battwraden that in so far as the work that was to be performed at the Department of Education and Training, it was to be your work and you weren't to subcontract?---Myself personally, yes.

You also had asked for and had rejected amendments in relation to intellectual property. Correct?---That's correct.

And you understood didn't you that the fruits of your labour, the intellectual property that came from what it was you did in pursuance of your contract with the Department of Education and Training was their and or Greythorn's property not yours?

MS BOURKE: I object, Commissioner.

ASSISTANT COMMISSIONER: On what basis?

10 MS BOURKE: I object to the, any questions relating to the intellectual  
property on two basis. They are outside the purview of the summons, which  
my client has appeared to answer and the summons for this hearing on 22  
August, paragraphs 1,2 and 3 and also your Honour has only, sorry,  
Commissioner, it's only been vaguely alluded to, but a civil action was  
commenced against my client in the Supreme Court, which was settled  
before the action actually started properly on confidential terms between the  
Department and my client. Now if this is to be revisited and if my learned  
friend seeks to continue with an investigation into the question of  
20 intellectual property, it is outside my area of expertise and I will seek an  
opinion as to the effect of the confidentiality agreement that was entered  
into between my client and the Department. But perhaps your Honour, my  
first point is my more important point, that it is not with the area that my  
client has been summonsed to give evidence.

ASSISTANT COMMISSIONER: Ms Bourke, the summons outlines the  
general scope and purpose of this matter but this is an investigation, it  
sometimes is necessary to go in directions which have not necessarily been  
outlined in some detail and there is good authority that Commissions like  
30 this are entitled to follow lines of inquiry. I don't think the confidential  
settlement has any affect upon this inquiry examining the matter. I mean,  
your client certainly hasn't been asked anything about any confidential  
settlement. He's simply being asked at this stage whether he agrees that the  
agreement he signed had certain effects in respect of intellectual property.  
Now, leaving aside the issue of any legal interpretation I think Counsel  
Assisting is certainly entitled to ask him what he understood the effect of  
this agreement was and that's all he's being asked at this stage as I  
understand it. Thank you, Ms Bourke. Yes.

40 MR FORDHAM: Would you like me to repeat the question, sir?---Please.

You understood that in signing the document in the form that it is in with  
clause 18 unamended that intellectual property that was the fruit of your  
labours was the property of the Department of Education and/or  
Greythorn?---Correct.

Thank you. Now, you were the project manager for the SMART project?  
---Correct.

You reported directly to Mr Kevin Johnston?---Correct.

He was your effective line supervisor?---That's correct.

On commencement at the Department of Education and Training one of the first things you did was analyse what resources you thought were needed in order to make the project function. Do you agree with that?---I don't recall exactly but it's a reasonable assumption.

10 Well, let's go to page 17 of the bundle. You understood when you commenced at the Department that Mr Johnston relied on you for your technical expertise, didn't you?---Not entirely, no.

Well, you say not entirely, do you accept to some extent that Mr Johnston relied on you for your technical expertise?---To some extent, yes.

Well, what were you doing there if not providing technical expertise to the Department?---I said to some extent. My submission at the time was also that Kevin Johnston was equally qualified.

20

It was clear wasn't it that one of the things you did on arrival in conjunction with Mr Henry Lo was discuss what personnel might be needed in order to make this project work?---That's correct.

And as a result of that you determined that you would need the, at least, the position titles set out in page 17, the tech lead, the two business analysts and two application developers?---Correct.

30 That was your analyse of what was required at least in part?---The initial analysis, yes.

And as a result of that you sought approval for the Department to retain those people?---That's correct.

Now, the first person that was identified and retained, if I can use that term, was Sunil Kempegowda, correct?---I don't recall, I don't think I - - -

40 Certainly in March 2008 Sunil Kempegowda came to work at the Department?---I don't recall the details but if that's, if that's the date then, yes.

And he was working in your team?---That's correct.

And you undertook the contractor assessment, didn't you?---I was part of the process, I acted as convenor in the recruitment process.

You took part in the contractor assessment for Sunil Kempegowda, didn't you?---That's right.



Now, if you go to page 29 for me, that's your signature on the top line, isn't it?---Yes, it is.

And in signing that document you were representing to the Department that you had conducted a contractor assessment from which Sunil Kempegowda was selected?---That's right.

10 And isn't it the case that in signing that document you were also representing to the Department that you had undertaken the assessment strategy marked on page 19 where the words "yes" have been filled in?  
---Sorry, could you - - -

Go to page 19. In signing this document you were representing that the assessment strategy set out at the bottom of page 19 where the words "yes" appeared had been undertaken and completed, correct?---Correct.

20 Now, Richard Yee you knew from - I withdraw that, you had met in a coffee shop in St Leonards in the company of his employer and Mr Lo, that's right, isn't it?---I don't recall the details but, yes, I had met Richard.

And you did not interview him at the Department of Education and Training, did you?---I don't recall the details. It was common practice to meet at various locations, one of which was the coffee shop across the road.

I'll put the question again. You didn't interview him at the premises of the Department of Education and Training, did you?---No.

30 And you didn't check any referees for Mr Yee, did you?---The reference, this, that does not relate to the individuals that's listed.

Perhaps you'd just like to answer the question I've put to you?---(not transcribable)

MS BOURKE: Well, I object, your Honour. The document in itself has two interpretations. One is that the person signing it has checked, done the interview, referee, skill test for each person or for the person selected. Perhaps that question should be put first before the next question is put.

40 MR FORDHAM: I am entitled to put the question in that form.

ASSISTANT COMMISSIONER: Yes, I think it's perfectly proper to put it. Your client is perfectly capable of suggesting if he thinks otherwise.

MR FORDHAM: You did not check referees for Richard Yee, did you?  
---That's correct. The assessment strategy that's shown on the bottom of the form relates specifically to the candidate that is being put forward, recommended.

Now, you didn't perform a skills test in relation to Mr Richard Yee, did you?---No.

And you didn't interview Mr Sambrane at all?---I don't recall.

Mr Sambrane says that he wasn't interviewed by you for a position?  
---That's possible.

10 So including his name on that form would be incorrect, wouldn't it?---Yes.

And putting his name there as someone who was an applicant would simply be a lie, wouldn't it?---Well, it was common practice to cut and paste from various documents and it was common practice as well to try and have at least three or four candidates on the, on the document.

I'll deal with that in a moment but I'd just like you to answer my question. Including his name on there would be a lie, would it not?---That's one interpretation.

20

Now do you say that it was common practice to formulate these documents by cutting and pasting from other documents to make a representation that was not necessarily true? Is that what you tell the Commissioner?---What I'm saying is that the, provided the, provided that the number of candidates have actually been interviewed, then it didn't really, no, no great importance was attached to it.

Perhaps I'll break the question up. Do you say it was common practice to cut and paste from documents to represent that you had interviewed people  
30 for a particular position? Is that what you say?---Yes.

ASSISTANT COMMISSIONER: But you have not interviewed them?  
---Well not, not (not transcribable) Sometimes if you'd actually interviewed them, Richard Gee from memory had actually had discussions - - -

Yes, but we're talking about Mr Sambrane. You've admitted he wasn't interviewed?---I don't recall, but I'm reasonably - - -

40 Yes. So it was false to put on this form that he was interviewed?---Yes, I accept that.

Yes. And as I understand it your explanation for that is that it was common practice to falsely put in the names of people who hadn't been interviewed?  
---Well it wasn't regarded as significant, that is. There was a lot of, for most of (not transcribable) projects it was very common for names to be put forward and you know, they would typically be put on the form just to try and, you know, keep those individuals.

You're trying to make it look like you've interviewed people you hadn't interviewed?---Well not necessarily, but also to try and keep those individuals available for the contract, because - - -

That's ridiculous Mr Johnson, look honestly. The purpose is to make it seem you've interviewed people you haven't so it looks like you've gone through a process when you haven't gone through the process. That's what this is about isn't it? It makes it look like you did a big interview process sand you interviewed all these people and you didn't interview them?---  
10 Well that's one interpretation. I mean there's only one individual on there that wasn't interviewed. Three came, three came - - -

Well Mr Yee was spoken to at a coffee shop?---Well it's an interview. I mean as I mentioned earlier, you know, it was common practice to have meetings at various places, one of which was the coffee shop across, directly across from the office.

Yes, Mr Fordham.

20 MR FORDHAM: So do you tell the Commissioner that if you only told one lie that's better than two?---No.

What you're really saying is that it was your practice to fill these forms in a way that was inaccurate to show that a process had been followed to ensure that someone was retained. That's right isn't it?---No, that's not right at all.

Now the Department was charged the sum of \$95 for the privilege of having Mr Kempegowda work at their premises. That's right isn't it? You can have a look at page 82 if you need to, but I'm assuming that since you were  
30 involved in this you would be aware of the rates that were being charged. You can go to page 23 if you like. Do you see that?---I do.

And Greythorn was paying Ogawie the sum of \$82.90 for each hour that Mr Kempegowda worked. Isn't that right?---Correct.

Mr Kempegowda was receiving, after negotiating with you \$50 per hour plus GST. That's right isn't it?---Correct.

40 And so isn't it the case that in relation to each hour that Mr Sunil Kempegowda was working you through Ogawie was profiting to the extent of \$32 per hour?---Correct.

At not stage did you tell Mr Kevin Johnston, your immediate supervisor that Mr Kempegowda was to be employed through Ogawie did you?---No.

At not stage did you tell Mr Johnston that you were putting forward someone for selection to work at the Department of Education and Training

that you, through your company sought to profit to the extent of \$32 an hour. That's right isn't it?---That's correct.

Do you agree with the proposition that putting forward someone for a job from which you intend to profit almost two thirds as much as they're making and not telling the people who are eventually paying the principal sum is a severe and obvious conflict of interest?---Well I based my decision on discussions I'd had with Greythorn and Manny Minati.

10 Now look I'm sure it's my fault that I'm not asking the question clearly, so I'll put it again. Do you agree with the proposition that putting someone forward, interviewing them and not telling the Department of Education that you intend to profit from their employment is a conflict of interest?---Yes.

And you also agree don't you that you should have disclosed that to Mr Kevin Johnston?---Perhaps.

Perhaps. You should have shouldn't you?---Well based on my discussions with Greythorn who I had contracts with - - -

20

Did I ask you a single question about your discussion with Greythorn or did I ask you whether or not in your view you should have disclosed that conflict of interest to Mr Johnston?---Possibly.

Now Mr Bhuiyan's contractor assessment form appears at page 37. And your signature appears at page 39. Correct?---Yes.

That's your signature at page 39?---Correct.

30 And you've signed that document as convenor haven't you?---Yes.

And you agree with the proposition don't you that in signing that document you are representing to the Department that the appropriate steps have been taken in order to assess Mr Bhuiyan and the other persons named for the position of business analyst for the SMART project?---That's correct.

Now Mr Bhuiyan gave some evidence and there is a document which is annexure 1 to his statement if you'd like me to take you to it, but he signed an agreement with Ogawie on 5 March, 2008. Do you accept that?---I don't recall the details, but I - - -

40

He certainly signed an agreement with Ogawie didn't he?---He could well have done, yes.

Well he ended up working in a manner that meant that Ogawie profited from each hour that he worked didn't he?---Yes.

And he had an agreement with you that was signed on the 5<sup>th</sup> of the 3<sup>rd</sup>, 2008. Would you like to see it?---I take your word for it.

Now a contract was signed on the 6<sup>th</sup> of the 3<sup>rd</sup> and Mr Bhuiyan was signed up to Freelance, if you look at page 33 of the bundle that's in front of you, he signed the document at page 35 on 17 March, but the document was forwarded to him and is dated 7 March, 2008. You arranged for Mr Bhuiyan to be paid via Freelance, who are effectively a payroll company. That's right?---I don't recall the actual details, but certainly Freelance was  
10 somebody that I'd used previously and I made, made that known to the various contractors. But ultimately it was their decision as to how they managed their payment.

Now isn't it the case that arrangements had been made by you for Freelance to deal with Mr Bhuiyan as early as 7 March, having been signed up by you to Ogawie on the 5<sup>th</sup> or 6<sup>th</sup>?---Sorry, could you repeat that?

Arrangements were made for Freelance to be the payroll if you like for Mr Bhuiyan some time around 7 March prior to a commencement date of 10  
20 March?---That's correct. The, the Freelance arrangement was simply just a, an umbrella company.

When Mr Bhuiyan arrived at the Department of Education and Training offices to commence work he was presented to Mr Henry Lo as a foregone conclusion, wasn't he?---I don't recall.

You asked Mr Lo to sign the document that he eventually signed which is the Contractor Assessment between pages 37 and 39, correct?---Well, I don't recall but it's possible.  
30

Mr Lo tells us that you asked him to sign the document and Mr Bhuiyan was there and ready to start work. You don't disagree with that, do you?---Well, I don't recall the details but if that's, I have no reason to - - -

No reason to not accept what Mr Lo says about it?---Correct.

Thank you. He'd already been signed up to Ogawie, Freelance had put arrangements or started to put arrangements in place to pay him but the Contractor Assessment Form selecting him isn't signed until 10 March,  
40 that's right, isn't it?---That's correct, that's right.

Now, we know that Mr Lo did in fact interview him on the day and formed the view that he should be selected and he commenced work. You were here for that evidence, weren't you?---Yes.

Now, on the Contractor Selection Form at paragraph, at page 40 you recommended the employment of Mr Bhuiyan and you recommended it to Mr Johnston, Johnston, correct?---That's correct. I mean, at that, at that

time there was a number of forms that formed the recruitment process. Prior to the Contractor Selection Form being completed there would have been discussions with Kevin Johnston and providing the opportunity for anyone in the Department, any permanent member of staff to actually be involved and to interview the candidate.

But the short answer to my question is yes, isn't it, you recommended Mr Bhuiyan's employment to Mr Johnston in signing that form?---That's, that's correct.

10

Now, when you did that you didn't disclose to Mr Kevin Johnston that Ogawie was to profit from each hour of work that Mr Bhuiyan was to perform at the DET, did you?---No.

And isn't it the case that Ogawie was receiving \$78.40 an hour for each, and you can look at page 41 if you need to, for each hour that Mr Bhuiyan worked?---That's correct.

20

And that Mr Bhuiyan was receiving the sum of \$35 an hour plus GST, you can look at page 36 if you need to?---That's correct.

And at no stage did you disclose to anyone at the Department of Education and Training that Ogawie was to profit in excess of \$35 an hour for each hour that Mr Bhuiyan worked?---Correct.

You interviewed Mr Rezwan some time in mid to late March 2008 for a position at the DET, didn't you?---I don't recall the dates but yes, I would have interviewed.

30

And you interviewed him alone?---I don't recall.

You don't recall?---No.

Well, Mr Rezwan tells us that you interviewed him alone, you have no - I withdraw that, you have no recollection either way?---It's three years ago, no.

40

If you go to page 53 for a moment. That is the second page of a schedule to a service agreement from Freelance Global Limited. It's dated 27 March on page 52 for a commencement date of 7 April and you signed that form on behalf of Ogawie at page 53?---That's correct.

And you will see the unit price to be received by Mr Rezwan was \$35 an hour plus GST, can you see that?---Correct.

ASSISTANT COMMISSIONER: Mr Johnson, what do you say Ogawie was doing for the Department for that extra \$43 an hour?---Well, as it, as it

was explained to me by Greythorn, and the idea was their idea and they provided their full support to allow me to generate more revenue but - - -

Well, yes. Look, I know you wanted to generate more revenue but the question is what was Ogawie doing for the Department of Education for that \$43 an hour?---Well, typically the resources may not have the entire skill set that was required so I was, Ogawie was carrying that risk, you know, we still had, all of the work that we carried out was done to a, to a, you know, above satisfactory standard.

10

You were already being paid by the Department of Education to manage these people weren't you?---That's correct.

So that's not it?---Well, it is. I mean, in terms of the, the - - -

But you were already being paid for that. I'm asking you what this additional \$43 was for?---Well, it's, it's profit but I mean, you know, it's, it's to cover the additional risk.

20

It's profit really for nothing, isn't it? Profit just for being there?---Well, not, not, not entirely. I mean there is a, there is a large element of risk. I mean, I was responsible for actually, for the work that the individuals completed and if need be I had to complete that myself.

You were responsible as project manager in DET for which you were being paid?---Correct.

30

That's how you were responsible for people?---Correct but I would also have to do the technical work if that was required. If, if the work that was carried out by any of the contractors that I put forward was substandard then I was required to, to, to make that up.

Well, as project manager that was part of your job, wasn't it?---No, it was not, no. The responsibility of the project manager is to, is to deliver the solution. I was doing work in addition to that.

And to hire people with the suitable skills to carry out the task which you purported to you?---Correct.

40

If you chose to hire people more cheaply who didn't have the skills that was so you could profit. That wasn't for the benefit of the Department, was it? ---For the, certainly it's for my benefit but the Department never suffered as a, as a consequence.

Yes, Mr Fordham.

MR FORDHAM: Now, but look, skip to the end here, each and every one of those five contractors suffered to the extent of somewhere between 30

and \$50 an hour that they weren't being paid because you were profiting, correct?---Certainly I profited, I wouldn't, I wouldn't say that they were suffering. That was - - -

Well, isn't it the case that had they not gone through you and gone straight through Greythorn they would have been getting something in the vicinity of seven and a half per cent less than the Department was paying Greythorn because that's what you were getting?---That's, that's not correct at all. They wouldn't, they wouldn't have got the position.

10

Do you say that they only got the position because you managed the process by which they obtained the position?---No, what I'm saying is that the candidates that I put forward typically didn't have particularly strong English language skills and a variety of other things which had a tendency to make things difficult for them to go through the normal process.

You can't have it both ways. Were they qualified for not?---In my, in my opinion they were, yes.

20

Yeah. So if they were qualified they were able to earn the sorts of fees the Department was prepared to pay less what Greythorn took without your handling fee. That's right, isn't it?---No, it's not. Clearly they weren't otherwise they wouldn't have used my, my service.

Well, you recruited them didn't you?---That's correct.

They didn't come to you asking to be recruited to the DET, you sourced them?---Correct.

30

In relation to each person that you sourced you put on a considerable margin far in excess of what someone like Greythorn an approved supplier could charge, that's right, isn't it?---That's correct, yes.

Now, excuse me for a moment. Now, just on that subject Mr Rezwan was paid via Freelance by Ogawie the sum of \$35 an hour, correct?---Correct.

And Ogawie was receiving \$78.30?---Correct.

40

For each hour worked. And I take it that that fact and the fact that Ogawie was profiting to that extent was not disclosed to Mr Kevin Johnston at any stage?---Correct.

Nor to anyone else at the Department?---Not to my knowledge, no.

Now, the Contractor Assessment Form appears at page 49. The start date for Mr Rezwan was 4 April, does that accord with your recollection?---No, I don't, I have no recollection of that start date at all.



7 April, I apologise for that, that appears at 52. Mr Rezwan tells us that he was interviewed in mid to late March and you have no reason to question that do you?---Sorry, the previous date that you referred to where - - -

7 April occurs – was listed in a schedule at page 52 for the commencement date of the contract. If you need further confirmation if you go to page 54 the contact staff is 7 April on the package somewhere?---This schedule with Freelance dated 7 April?

10 Ah hmm?---From my recollection that's, that's not relating to any specific individual.

Well - - -?---That's, that, from, from my memory.

The Contractor Agreement Schedule 1 that names Abu Rezwan at page 60 of the bundle has the start date of 7 April as well?---Yes.

20 Now, as I put to you a moment ago Mr Rezwan tells us that he was interviewed by you in mid to late March 2008. You have no reason to disagree with that do you?---No.

Are you able to explain why if he was interviewed in mid to late March the documents are all signed up in late March and where the commencement was 7 April the Contractor Assessment form purports to have been signed by you and Mr Lo on the 10<sup>th</sup> of the 3<sup>rd</sup>, 2008?---Looking at that it appears that the candidate was interviewed, I obviously don't recall the details, but I would imagine that the candidate was interviewed well in advance of the start date which wasn't uncommon at all.

30 Well, there's another explanation isn't there, and that's because what you've done consistent with what you told the Commissioner earlier in this cross-examination was that you've put together a document cutting and pasting from other documents and you have used the signature page from Mr Bhuiyan's contractor assessment and made it look like it relates to Mr Rezwan, that's an explanation isn't it?---Not an explanation that I agree with, no.

Well, that's what happened isn't it?---No.

40 Mr Lo tells us that that's not his signature at all. He didn't – I apologise for that – it is his signature but he did not sign in relation to Mr Rezwan?---All I can say to that is that the recruitment process required original documentation. The process could not have started until the Department had been in receipt of all original documentation.

You see, what you're really saying is that in order to get these people on the payroll at the Department of Education and Training so that your company could profit was that you had to make sure you had the right bits of paper to

submit, that's right isn't it?---Correct, I followed the standard operating procedure as it was explained to me.

Can you please just have a look at page 49. Ignore the word "copy", someone from the Department's put that on after the event so just look at page 49. That is identical to what appears at page 37 which relates to Mr Mohammad Bhuiyan, correct? Please tell me if I'm wrong?---That's correct.

- 10 If you go to the next pages which are 38 and 50 the only difference is that the word "Abu Rezwan" and the signifier M for male has been added in him?---That's correct.

Did you add that?---That's my handwriting, yes.

- 20 And the final piece of this puzzle is that if you look at pages 51 and 39 they're identical. You put this form together out of Mr Bhuiyan's Contractor Assessment form, you used the last page for the signatures, you've added Rezwan in handwriting for the purpose of having Mr Rezwan put on the payroll, correct?---Well, I'll just add to that, I mean, it - - -

No, answer my question?---Well, the process, again, and if the document was already there and the individual had been recruited at around about the same time there's nothing – I didn't see anything wrong with adding that individual on that document.

So you saw nothing wrong with purporting that Mr Lo had interviewed someone he didn't, is that right?---I can't recall the interview process.

- 30 You saw nothing wrong with adding Mr Rezwan's name to an existing form to represent that it was part of an appropriate process for the Department of Education and Training, is that right?---As I said the form would've had to have gone through – would've been scrutinised internally by the Department, had it been an original document it would had've gone through the appropriate process.

Quite right, because you didn't have a document that looked the part, you weren't getting him on the payroll and you weren't going to profit, that's right, isn't it?---Well, it's not quite like that.

- 40 What is it like?---Well, the documentation needed to be an original document, the process needed to be followed as it was explained to me and that was done and every opportunity was provided to the permanent members of staff within the Department, Kevin Johnston specifically, to, to talk to the individual contractors as they were brought on and the paperwork was accepted.

So is it your evidence that because the Department didn't pick up the lies and misrepresentations that you were proffering that it's simply not your problem? Is that what you tell this Commission?---No, that's not what I'm saying at all, no.

Well isn't it the case that Henry Lo didn't sign this document and you've put this document forward to suggest that he did?---Well I don't recall which, which document I put forward. I mean it has copy written on it.

10 Yes, don't worry about the word copy. Henry Lo didn't sign it, you put this document forward to suggest he'd been part of an interview process and he was not part of it. That's right isn't it?---Sorry, who wasn't part of it?

Mr Henry Lo?---Well I don't recall.

You specifically instructed your counsel to put to Mr Lo the other day that he was sacked in January or February of 2009 didn't you?---That's correct.

20 That is simply not true is it?---That's, sorry, it is true.

Mr Lo resigned?---That's not, that's not the case at all.

And you instructed your counsel to do that in order to try and undermine Mr Lo's credibility. Correct?---Not at all. Not at all. I have the greatest respect for Henry.

30 Because you knew didn't you that the document that had a signature that purported to be an original, being part of Mr Abu Rezwan's contractor assessment was going to be an issue in this inquiry?---In the grand scheme of things I think that's the least of my concern. That's, that's not the reason at all. The fact of the matter is Henry was let go and indeed I had detailed discussions with the IT director within ITD about Henry and about the technical direction of the project.

Well (not transcribable)?---Henry sent the email that he referred to subsequent to being let go.

40 This contract was renewed two weeks prior to him resigning. That's right isn't it?---His contract was renewed - - -

Thank you?--- - - -and as I, as I explained, I've got the greatest deal of respect for his technical ability, but shortly after Henry renewed his contract there was a number of disagreements regarding the technical direction of which Henry wasn't fully aware. I'd had detailed discussions with the IT director within DET and the decision was taken that we had no choice but to let Henry go. Henry sent the email - - -

You don't have a single document supporting that statement do you?---I - - -

No, thank you?---No.

Now let's move on to Mr Huang. Mr Huang, his contractor assessment appears at page 69. Would you turn that up for me. Go to the last page and again you've signed as convenor have you not?---Yes.

10 In signing that document you represented to the Department and in particular to Mr Kevin Johnston, Geoff Mooney and Luke Cannon had been interviewed for this position?---Sorry, they're names are on the document, yes.

Well you signed it and you've got them listed as a written applicant?---Well as I've already explained it was copied, I commonly put all the names on the document.

20 Was it your practice to put other names on the document of people who are seemingly unqualified for the position to make it look like you'd interviewed the right number of people?---No. I don't recall if that's possible.

Well Luke Cannon is a HR consultant. He has no qualifications that would allow him to undertake a role as assistant analyst. Were you aware of that? ---I am now, yes.

I suppose if you'd known that at the time you mightn't have put him on this form would you?---As I said this is only one of a number of forms that went, required for part of the recruitment process.

30 And you didn't interview Mr Cannon for a job did you?---I don't recall but most likely not, no.

No. And not if he's a HR consultant for an assistant analyst job. It would be unlikely wouldn't it?---(NO AUDIBLE REPLY)

You have to answer that question?---Yes.

Similarly you didn't interview Mr Mooney?---I don't recall.

40 Excuse me for one moment. I need to check an answer. Now Mr Kempegowda says that the signature at page 71 is not his. Did you put that there?---No.

It's certainly your signature above it?---That's correct.

And you've already agreed with the proposition that the form contains inaccuracies that you were aware of?---Correct.

And can I suggest to you that did sign that NG or NK Sunil in order to make this form look as it should for the purposes of ensuring that Mr Huang was put on the Department payroll?---No.

Ogawie received \$82.90 for each hour of work that Mr, I'll withdraw that. Yes, sorry, I will put that, received \$82.90 for each of work that Mr Huang performed. That's at page 72 if you need it. And there are two figures floating around, but I'll go with the higher one. Ogawie paid via Freelance Mr Huang the sum of \$25 an hour. That's right isn't it?---I don't recall the details, but yes, I - - -

And was profiting in excess of \$50 an hour for every hour that he worked? ---Correct.

And at no stage was it disclosed to anyone at the Department of Education that you had sourced, interviewed and recommended a person from whose labour your company was going to profit to the extent of 50 odd dollars an hour?---Correct.

20 ASSISTANT COMMISSIONER: Mr Johnson, can I just ask you, in relation to Mr Cannon, the comments on page 70 about him being a good candidate, enthusiastic, happy to work in Bankstown, as you've conceded you didn't interview him, I presume you just made all that up?---Well that's, that's right. I mean the comments that are in those boxes, I mean again, it was common practice just to cut and paste the names and put them into the, into the box.

What comments about other people?---Well I guess it was generic, you know, a standard, I meant that's - - -

30 Luke wasn't available for four weeks?---You do a find all and replace, so you're just changing the name on the document.

Well you just made it up basically?---I said that, yes.

Well it wasn't just a cut and paste, I presume there wasn't another document that said Luke wasn't available for four weeks?---Sorry?

40 It wasn't a cut and paste from another document that said Luke wasn't available - - -?---No, well it's quite possible on that document it was just a find all and replace, whatever the name was there and it's just been replaced.

So what it was someone else who wasn't available for four weeks?---Quite possibly, yes, on the original document.

Well, wherever you got it from it's all a fiction as far as Luke Cannon's concerned isn't it?---Correct.

Yes, Mr Fordham.

MR FORDHAM: Let's be clear about it. When you say it was common practice what you tell the Commissioner is that it was your common practice?---That's, that's one view, yes.

10 Well, no, it's not one view, it's a question and I'd like you to answer it. It was your common practice - - -?---Certainly, it was my practice, yes.

And let's be clear about it, it was your common practice to falsify documents to enable them to be processed by the Department of Education so that your company Ogawie could profit, that's right isn't it?---Correct.

Mr Zhang was another contractor sourced by you wasn't he?---Don't recall the name but - - -

Michael Zhang?---Yes.

20 You must remember him, he worked at your office at Help Street for in excess of four months didn't he?---He may have done.

Well, he may have done, you didn't have a staff of 50 did you?---No.

No, you had three or four people working at Help Street at various times, that's right isn't it?---There was a variety of people working at Help Street.

30 Michael Zhang and Dexiong, also known as David Huang, worked at Help Street didn't they?---Occasionally, yes.

Well, I'll come back to that in a moment, but you put forward Mr Zhang as an application developer and suggested that he had some requisite training and experience that made him ideal for that job didn't you?---I would've done, yes.

Now, it's his evidence that he really wasn't of that calibre and was somewhat of a junior programmer, do you accept that?---Yes.

40 And it's the case, isn't it, that you exaggerated his abilities in order to get him through the process to get the position as the application developer? ---That's correct, the same could be said for all of the contractors.

So from that last answer do I take it that in relation to each and every contractor from whom your company profited you exaggerated their capabilities in order to ensure that they were hired, is that what you tell this Commission?---Not entirely.

Well, - - -?---But as I mentioned, I mean, I was carrying an element of risk, I was responsible for the actual work, the technical level that was being delivered in relation to the project.

Well, I think we've had that debate but I might come back to it in a moment. The short point is that in relation, you now tell this Commission that in relation to each and every one of these contractors you exaggerated their abilities in order to get them onto the payroll so that you could profit, that's right, isn't it?---I wouldn't put it quite like that, no.

10

Now, Mr Dallas Clark did not commence working at the Help Street offices for and on behalf of Ogawie until January of 2009 did he?---No, I don't recall the dates.

It was certainly January – I withdraw that. It was certainly towards the end of your involvement with the Department?---Possibly.

Mr Clark was never put on the payroll of the Department of Education and Training, he was someone you retained separately wasn't he?---Correct.

20

And where his name appears at page 83 as being interviewed for the position that Mr Zhang eventually obtained that is simply not correct is it? ---Correct.

And it's the case isn't it that this form was again constructed by you including false information in order to ensure that Mr Zhang ended up as a contractor at the Department of Education?---Correct.

30

And that includes the signature purportedly of Mr Kempegowda at page 85? Yes or no?---Sorry.

That includes the placing of the signature that purports to be Mr Kempegowda's at page 85?---No, that's not the case at all.

ASSISTANT COMMISSIONER: Do you say that he signed that or do you say you don't know who signed it?---Well, I don't recall but I'm, I wouldn't have signed the document, I wouldn't have needed to sign the document.

40

All right. But you're not saying you saw him sign it?---I don't recall, I mean, it's three years ago.

All right.

MR FORDHAM: Now, from September 2008 through until January 2009 you signed payroll timesheets in relation to Mr Zhang and Mr Huang at the end of each week didn't you?---Correct, it wasn't always each week but, yes.

All right. In doing so you represented to the Department that those two people had performed the 40 hours a week that they were contracted for working for the Department?---Correct.

When you did that that was a lie wasn't it?---Well, the work was still being done as I mentioned previously. If, if, the requirement to do the particular tasks fell on my shoulders because I was carrying the risk, so the work was still being completed.

10 Well, let's be clear about it. When you signed that sheet you were representing to the Department that those two people had worked the 40 hours that were on the sheet for and on behalf of the Department for the Department's benefit, that's right, isn't it?---Correct.

And when you did that it was a lie?---Not, not, well - - -

It was a little lie was it?---Yes, strictly speaking.

It wasn't true was it?---(NO AUDIBLE REPLY)

20

You do need to answer?---No.

They were working at the Help Street offices of Ogawie at the direction of Mr Ambrose on project Oscar which was also sometimes referred to as AID, that's right, isn't it?---Well, we were frequently working in Help Street, yes.

Well, they were performing work in relation to a project that you intended to sell back to the Department and to other educational authorities?---That's not the case at all, no.

30

Project Oscar was not something you were contracted to do for and on behalf of the Department was it?---Correct.

It was a private venture that you instigated?---Correct.

And you worked – Mr Ambrose worked, as I understand it, on the promise of some future profit should the item be successful and be sold, that's right?---Not entirely.

40 Well, it's at least partially true?---Correct.

And isn't the case that these two gentlemen Huang and Zhang worked at his direction in relation to project Oscar, that's right, isn't it?---Correct, for some of the time, yes.

And in doing so they were not performing tasks for and on behalf of the Department of Education and Training, they were doing it in the hope of eventual profit for Ogawie?---Not entirely but - - -



Isn't it the case that because you were signing their timesheets every week the Department was paying for the privilege of having these two gentlemen work on a product that they might eventually buy?---That's not the case at all, it was never a product that could be sold.

It was a proof of concept that you hoped to eventually turn into something you could make some money from though wasn't it?---Not entirely, no. (not transcribable).

10

What was the object of doing it, was it some utilitarian purpose for the good of education?---No, the entire purpose was to, the objective was to sell professional services.

Right. And these two gentlemen were performing tasks to that end at the expense of the Department, that's right, isn't it?---Partially, yes.

Now you came into contact with Mr Ambrose via an online forum relating to open software or programmes if I can call them that, one of which was Dokeos?---That's not correct.

20

You came into contact with Mr Ambrose and he assisted you with the installation of Dokeos, didn't he?---That's correct. The, the, sorry, the, I don't recall exactly how but it was through PHP Forum which is a general purpose encrypting language, nothing to do with Dokeos.

All right. But in any event it's, it's my technical inability that's making the question difficult and I apologise but you came into contact with Mr Ambrose and he assisted you with some tasks which - - -?---That's correct.

30

- - - which were then required. Now, go to page 105 for me. If you look to the second page that's a memo signed by you?---That's correct.

Catalina IT was the vehicle through which Mr Ambrose traded?---That's correct.

It was similar to Ogawie?---Yes.

And the object of this memo, if I could summarise it, was to summarise the fact that the AID Project needed to be looked at, do you agree with that? ---That's a reasonable assumption, yes.

40

And it did need looking at, didn't it?---Yes.

In the first paragraph in the document you drafted you represented that Catalina IT was under ITS contract 2036, Software Development Services, didn't you?---No, that's not what paragraph's saying.

Well - - -?---That, the code, to the best of my recollection that code is simply referring to if, if the, if the vendor or the service supplier is not a preferred supplier or not on the approved list there is a mechanism to actually do that and that to the best of my recollection is just simply a code indicating that Catalina has been put onto that list.

10 You knew, didn't you, that the Department was not in a position to contract with people except in certain circumstances unless they were already party to agreements?---That's correct.

And then you put that in the form that you've put it in that paragraph you did so in order to represent to the Department that Catalina was a contracted approved supplier, that's right, isn't it?---No, that's entirely wrong.

In any event you suggested that the sum of \$62,450 should be expended for the purpose of the review?---That's correct.

20 And you recommended that to Mr Wasson from EMSAD?---That's correct.

Mr Kevin Johnston was in fact your supervisor, wasn't he?---Correct.

And AID was a project over which he had supervision?---I don't recall, possibly.

You deliberately chose not to give this to Mr Kevin Johnston, didn't you? ---No, that's not the case at all.

30 And you did that in order to avoid scrutiny?---That's entirely wrong.

At page 109 there's an email from you to Mr Ambrose, do you have that? ---Yes.

Now, in that email you request that Mr Ambrose forward to you a quote and a covering letter dated earlier in the week in relation to the \$62,450, that's right, isn't it?---Correct.

40 And, of course, the memo in which you had recommended the \$62,000-odd was proffered by you and signed on the same day, 11 July, 2008?---Correct.

And it was necessary in order for all the paperwork to fit together that you had a quote and cover letter from Catalina predating the memo you'd sent asking for expenditure of the money, that's right, isn't it?---Correct.

And you suggested to Mr Ambrose the amount that was to be put in the quote?---Correct.

And in fact if you turn to the next page, on 14 July - - -?---Sorry, which?

110, sorry. You in fact in the email you'll see halfway down the page at 11.21 set out the form of words that is required for the quote?---Certainly I sent the email but - - -

Well, you set out the form of words that you thought was required in order to make the quote acceptable for the purposes of the Department?---That's right. I mean simply indicating the terms of reference.

- 10 Check it if you like but the Catalina IT quote at page 104 is word for word, isn't it?---There's nothing, there's nothing unusual with that.

Did I ask you that question? It's word for word, isn't it?---Sorry, 114?

No, 104?---Yes.

And so in this instance you have suggested to the Department that a review was necessary, that's right?---That's not the case at all, no.

- 20 Well, you in a memo suggest that a review is necessary, don't you?---Sorry, this page 110?

No, page 105?---That memo is the end product of a number of weeks of detailed negotiation with a variety of members of the Department, specifically the PCG, the Project Control Group, which contained a quorum of six senior executives within the public service, all of which were across the need to do the detailed evaluation.

- 30 All right. Now, perhaps if you could turn your attention to the question I asked you. In the memo you suggest that the review is necessary, don't you?---I do, yes.

And in order to achieve the outcome you suggest that the sum of \$62,450 is required?---Correct.

You then told Mr Ambrose what it was that would be required in terms of a cover letter and a quote?---Correct.

- 40 And you told him the amount that he would need to quote being the figure you had already asked for?---Correct.

The arrangement was that you were to receive 50 per cent of that 62,000 odd dollars on completion of the task by Mr Ambrose wasn't it?---Correct.

You didn't disclose the fact that you sought to profit from the recommendation of the expenditure of government money to anyone did you?---Correct.

And you would agree with me wouldn't you that that is a clear and obvious conflict of interest?---Well as I recall the, the Department had a significant problem and it didn't have any way of addressing that problem. I presented a solution which was delivered and accepted.

You delivered a solution from which you secretly derived half of the sum asked for?---Correct.

And you didn't disclose that did you?---Correct.

10

And you agree with me that that is a clear and obvious conflict of interest? ---I didn't at the time, but if you - - -

Now if you go to page 115. You forwarded to Mr Ambrose an outline of the report that was to be presented?---I don't recall but it's quite possible, yes.

Well it says I've attached a very rough report outlined?---Okay.

20

Now again I can take you to it if you want?---No, it's - - -

There is a document that has a whole series of headings which are identical to the eventual report? You don't suggest that's - - -?---No reason to dispute that, no.

And you then told Mr Ambrose roughly what was required in that report? ---Correct.

30

In terms of length, the use of the document you've sent and then the eventual report appears from page 117 onwards. Do you see that?---Yes.

Now page 135 is the conclusion which sets out that the AID project should be terminated and a new process commenced?---That's what it says.

And that's what happened?---Sorry, what happened?

The AID project was terminated at that point wasn't it?---At that point the AID project wasn't operating.

40

Now if you go to page 139 there is an invoice from Catalina IT dated the 26<sup>th</sup> of the 9<sup>th</sup>, 2008. You confirmed in the annotation to that that work had been done satisfactorily in relation to what was purportedly contained in the invoice below?---That's correct.

As project manager, one of your roles was to see that work had been appropriately done in relation to the SMART project?---Sorry, the SMART project or the AID project?

Well it says re SMART I-T-D-0-1-8-4?---Yes.

You weren't however authorised to sign off on whether or not invoices should in fact be paid were you?---The contractors had no authority to make any decisions, purchase decisions.

10 You had not authority to use the words it's okay to pay the invoice did you?---That's not the case at all. The standard operating procedure as it was explained to me by Kevin Johnston was that on receipt of an invoice it's (not transcribable) approval, and all that was required was for the project manager to put some words to the effect of it's okay to pay, which is confirming delivery of the actual product or in this case the report. That's all I was indicating at this stage. Within, within the department there's a clear separation of duties between the person who sends out the purchase order and the person that's authorised to actually make the payment. An independent contractor has no authority to make any of those decisions.

20 That authority was with Kevin Johnston wasn't it?---A permanent member of staff, it could be Kevin Johnston or somebody else within the Department.

And at no stage did you present this invoice to Mr Johnston did you?  
---There was nothing unusual about that.

Did I ask you that question?---It's on the network it would've been - - -

Did I ask you that question?---No.

30 Thank you. Now, perhaps answer the one I asked you. At no stage did you present this invoice to Mr Johnston did you?---Not directly but it was certainly on the network and available for his review which was common practice throughout the Department.

And you didn't present this invoice relating to expenditure in one of the areas that he supervised, correct?---Sorry, could you repeat the question?

You didn't present this invoice, you agree with that, to Mr Johnston?---Yes, that's correct.

40 This was an area that he was responsible for wasn't it?---Correct.

Now, in saying it was okay to pay what you were authorising was a payment to yourself via Ogawie of a little over \$35,000 wasn't it?---Correct, but this - - -

No, don't, just wait for a moment and I'll ask you the next question. You're authorising payment to Catalina, correct?---I'm confirming that we've received the work as it was requested.

The same day, if you go to page 141, you for and on behalf of Ogawie invoiced Greg Ambrose and Catalina for the sum of \$35,695?---Correct.

And when you were saying it was okay to pay what you were really saying was it's okay to pay me \$35,000 that I haven't disclosed to anyone that I'll be receiving, that's right, isn't it?---I wouldn't put it quite like that.

10 Well, it's true, isn't it?---No. The annotation that's shown on that document is basically indicating that I received the report as it was requested in the purchase order.

You knew that by saying the work had been done appropriately that would trigger the payment of the Department to Catalina which would trigger a payment of half the sum to you, didn't you?---Correct, I knew I was going to benefit from it, yes.

20 And you knew you were going to benefit in the manner that had not been disclosed to anyone?---Correct.

In circumstances where you have approved expenditure to pay yourself half, that's right?---Broadly speaking.

Now, the user interface for the SMART project was the subject of some action in the latter part of 2008. I've used that term deliberately. Work was done in relation to it?---Correct.

30 In relation to work that was to be done in relation to the user interface you sent Mr Greg Ambrose an email of 24 October 2008 that appears at 144. Do you see that?---Yes.

Now, that refers to the UI work that needs to be done, correct?---Yes.

You suggest to Mr Ambrose that you need to bill through Catalina because Ogawie isn't part of the DET billing systems, don't you?---Correct.

40 You already had because of the memos that you'd sent and the report that had been produced, established Catalina, whether officially or otherwise, as an entity that had been paid by the DET hadn't you?---It certainly was official, it could not have been paid if it was not official.

Well, in any event they were previous recipients of, of funds from the DET? ---Correct.

Now, you offered Catalina and Mr Ambrose the sum of \$2,000 to do no more than raise an invoice?---Correct.

The invoice - I'll withdraw that. The U, the UI work was subcontracted by you to Mr Appleby, wasn't it?---Part of it was, yes.

And for his part in designing the screen designs and producing part of the UI the sum of \$2,450 I think was what he received, wasn't it?---I, I believe so.

From Ogawie?---Correct.

- 10 A purchase order was raised, please have a look at page 146, there's an email, sorry, it's a fax by the looks of it, it might be an email, which has annexed to it a purchase order for \$52,450 and on 9 December, 2008, please turn to page 148, you asked Mr Ambrose to raise an invoice for \$52,450 plus GST, correct?---Correct.

And he did that?---(NO AUDIBLE REPLY)

Didn't he?---Yes.

- 20 If you go to page 154 you again annotated that invoice to confirm that work had been done?---Correct, to signify that work had been received, yes.

Satisfactorily?---Correct.

And it was okay to pay?---That was part of the standard operating procedure, those words were words that was suggested that it be used on all invoices as a matter of course.

- 30 So that, do you say that was a mantra that was required to ensure payment?  
---As I explained, all I'm signifying by noting that invoice is that they've actually received the work relating to the purchase order.

You were representing to somebody that work had been done and it was okay to pay \$57,000-odd?---Correct.

Yeah. And what you really mean by that is it's okay to pay \$57,000 less two to Catalina and two and a half to Mr Appleby so \$50,000-odd to you?  
---Correct, but there is additional work that was delivered as part of that.

- 40 Well, what's been provided to the Commission, can you pull those up, appears on the screen in front of you now and it was for that that you represented it was okay to pay \$57,000, 50,000-odd of which was going directly to Ogawie, that's right, isn't it?---Correct, but that is only part of the UI design.

And of course nowhere in any of the documents produced to the Commission is there a brief of any sort that was forwarded by you or

anybody at the Department to Catalina in relation to either of the two invoices I've taken you to is there?---Sorry, could you repeat that?

10 You didn't ever produce a brief of, a brief to the vendor for what they were supposed to do did you?---That, I don't recall exactly, but certainly the standard process was to complete the memorandum which, in which both of these instances that would have occurred. And then to use that as the basis to provide terms of reference. Now whether that was a fallen document and, because of the size of, the size and lack of complexity in these particular  
10 engagements it would have been, you know, I would suspect either a telephone conversation or an email that would have communicated what the terms of reference were.

20 All that Catalina has been able to produce in relation to the first invoice was an email with a draft headings from you and that's the extent of the documentation that's been found as well as the emails I've taken you to? ---That's not unusual. I mean the whole engagement was, the objective of the engagement was to do the detailed analysis, to come in and ask questions and to understand what the particular problem was and document that.

Now for the expenditure of 62 odd thousand dollars, you would expect would you not some form of formal documentation setting out the task that was required and the objectives?---Not entirely, no.

30 And isn't it the case that in relation to the second invoice Ogawie has profited to the sum of \$50,000 having paid \$2,000 effectively to a post box and two and a half thousand dollars to someone who drew and designed what is on that screen?---Not entirely, no. Certainly Ogawie profited, but as I said there was additional work in relation to the UI design.

And it profited to the sum of \$50,000?---It certainly profited, I mean, I was work, as I said it was additional work that was delivered.

And at no stage did you disclose to anyone at the department in relation to either of those invoices that Ogawie was to profit?---Correct.

40 Just have a look at page 163 for me, which is an email down the bottom dated 1 August, at 12.03. What you say in that email is that you've effectively identified an unused budget of over \$700,000 into a product that hasn't been delivered. That's right isn't it?---Sorry, could you repeat the question?

What you've identified is an unused budget of \$700,000 for a product that hasn't been delivered?---No, that's not the case, no.

In any event what you've done in that email is disclose to Mr Ambrose, who is not a contractor for the Department of Education and has not signed a



confidentiality agreement, confidential information for and on behalf of the department haven't you?---No, I don't regard that as confidential information at all. It's public knowledge.

You've certainly disclosed Department information to Mr Ambrose haven't you?---Publicly available Department information, yes.

10 Now project Oscar was to design to be a proof of concept in relation to what AID had failed to deliver wasn't it?---Broadly speaking.

It was a proof of concept that you intended to market to the Department of Education and Training?---It was, it was a concept that we discussed with members of the Department, yes.

And it was a concept that you intended to market to the Department of Education and Training wasn't it?---When you say market?

Sell it to them?---No, that's not the case at all.

20 Well, at page 179 you emailed Greg Ambrose talking about working together and making him the Technical Director. You were going to all that effort with a view to turning a profit out of what was project Oscar?---Certainly the intention was to make a profit, yes, but not in the terms that you've outlined, no.

Perhaps it's my clumsy expression but let's just get down to basics. Dollars were involved?---In the development there is certainly no payment, I mean, it was a collaborative process.

30 And you were doing it with a view to try to make some money at some point?---Correct.

And two of the other potential people who might be interested in a project such as project Oscar was NAPLAN and the Victorian Government?  
---That's not correct at all, no.

Well, in pursuance of project Oscar you had sourced two resources, and when I say resources I mean people, hadn't you?---They were available in the same way the other members of the project team were available.

40 Do you say that all the members of the SMART project team were available to be diverted to project Oscar?---No, that's not what I said.

Well, have a look at page 181 for me. 181. About two-thirds of the way down – sorry, halfway, 16 September, 8.50 on the fourth line from the bottom where you refer to two resources on the ground looking at Dokeos, that's Mr Huang and Mr Zhang, isn't it?---I don't recall.

Well, Mr Huang and Mr Zhang from September onwards were working at Help Street weren't they?---They could've been, yes.

Could've been? It was your office?---I wasn't there all the time, no.

And at page 182 that's an email from Mr Ambrose informing you of what process and progress David and Michael, being Mr Huang and Mr Zhang were up to in relation to project Oscar for and on behalf of Ogawie?  
---Correct.

10

And at the bottom of the page you'll see that you then direct Mr Ambrose to make sure that he's directing Michael and David, being Mr Huang and Mr Zhang so they're focussed on what's required. Now, in doing so you were directing Mr Ambrose to keep those two people focussed on the job for project Oscar and therefore Ogawie, correct?---Correct.

20

Not performing services for which they were contracted for and on behalf of the Department of Education and Training?---As I already explained I was carrying the risk and it was my responsibility also to do the work that they'd been tasked to do as well as part of it.

And a really useful way to offset a potential risk is to get someone else to pay for the labour isn't it?---Sorry?

If you're running a risk a great way to offset it is to get the Department of Education and Training to pay for your labour isn't it?---It's one interpretation.

30

And that's what you did, didn't you?---I wouldn't put it like that, no.

Well, you might not put it like that but let's get down to facts, that's exactly what you did, didn't you?---(NO AUDIBLE REPLY)

Do you agree or disagree?---I benefited from the engagement, yes.

You benefited from the engagement because the Department was paying two of its contractors to work on a private project for your company, that's right?---Partially, yes.

40

So if I could just take you back a step. You've told the Commissioner that it was your practice to falsify documentation in order to ensure that applicants ended up on the Department payroll earlier today didn't you?---Yes.

You've also told the Commissioner that in order to ensure employment by the Department in some instances you exaggerated the abilities and technical qualifications of those contractors?---It's more accepting the fact that the individuals concerned didn't necessarily have the best language skills rather than exaggerating.

You agreed with me before that you in fact exaggerated their abilities, not just their language skills. Do you wish to change your evidence?---No, in certain - - -

Thank you. Now, in relation to each of those contractors your company, Ogawie, profited from between 30 and \$50 an hour?---Correct.

And therefore you profited?---Correct.

10

At no stage did you disclose the fact that you were profiting from their engagement to the Department of Education and Training, did you?  
---Correct.

At no stage did you disclose to anybody that you were recruiting, assessing and recommending contractors for whom you were going to profit, did you?  
---Other than to Greythorn, no.

20

At no stage did you disclose to anyone at the Department of Education that you were participating in assessment, recruiting contractors and recommending the Department to retain them in circumstances where you were going to profit?---Correct.

And when you say other than to Greythorn, Ms Battwraden doesn't agree with the proposition that you put anything like a scheme like this to her and you didn't, did you?---Not to Ms Battwraden, no.

30

And Mr Minati denies that you put anything similar to a scheme like this - actually, I withdraw that, it wasn't put to Mr Minati in the end.

MS BOURKE: Sorry, your Honour, well, I don't have a transcript with me but my memory is that it was put to Mr Minati that in fact it was his idea that this method of my client earning more money.

ASSISTANT COMMISSIONER: That's right and Mr Minati denied it.

MR FORDHAM: I'll put it anyway, we might be a cross-purposes.

40

MS BOURKE: Your Honour, my learned friend re-examined on that point.

MR FORDHAM: I wasn't sure and I wanted to make sure before I put it but it doesn't matter in any event. Mr Minati did not suggest this or any similar scheme to you, did he?---That's incorrect. Mr Minati did suggest this scheme to me and he gave me his full support and my - - -

You don't suggest Mr Minati had anything to do with the Catalina scam do you?---Not at all, no.

No. That was your own invention, wasn't it?---Invention's not the word I'd use but, yes.

And isn't it the case that in relation to Catalina you set about the documentary train that enabled payments to be made to Catalina?---I completed the standard operating procedure.

And you did that to ensure that Catalina was paid?---Correct.

10 And at no stage did you disclose to anybody that in one instance you were receiving half of that money?---That's correct.

And a second instance 50,000-odd out of 57?---Correct.

And finally - you've just agreed with a moment ago that insofar as Project Oscar was concerned what you did was attempt to deliver a proof of concept of something that AID had failed to deliver?---No, that's not what I, that's not the case, that's not what - - -

20 And that in order to do that and to offset your risk you utilised Department resources in the form of two contractors to do work privately for and on behalf of Ogawie, that's true, isn't it?---Partly true.

I have nothing further, thank you.

ASSISTANT COMMISSIONER: Thank you. We'll adjourn at this time till 10 past 2.00.

30 **LUNCHEON ADJOURNMENT**

**[1.09pm]**