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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 1 OCTOBER 2009

AT 2.07 PM

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THE COMMISSIONER: Yes, Mr Paul, thank you.

<ANTHONY DONALD EVANS PAUL, on former oath [2.07pm]

THE COMMISSIONER: Yes.

MR TAYLOR: Commissioner, could I just make an application?

10 THE COMMISSIONER: Yes.

MR TAYLOR: I appear on behalf of Sergeant Turner. I have only three or four questions for Mr Paul. Sergeant's Turner's been excused. He's on a flight back to Wagga now.

THE COMMISSIONER: Do you want to ask those questions now?

MR TAYLOR: If I could.

20 THE COMMISSIONER: Yes. Do you have a problem with that?

MR TAYLOR: I've spoken to counsel assisting and (not transcribable).

THE COMMISSIONER: Yes. No, okay. Yes.

MR TAYLOR: Mr Paul, in relation to Exhibit 87, the telephone call between yourself and Mr Turner about the re-listing - - -?---Yes.

30 - - - is it standard operating procedure if you wish to re-list a matter you contact the prosecutor and ask him or her to have her papers available?
---Yes.

You'd then also ring the court and ask the court to place the papers before the presiding magistrate?---Yes, that what happens in Wagga.

40 And is it then a situation where you'll make an application to the magistrate about the re-listing?---Basically they just put the matters in the list. The court, the court staff will just write the matter in the list and then you'll just - it's in the list.

And it's up to the magistrate whether he or she deals with the matter?---Yes.

Ringling the prosecutor and having him have his or her papers, it's nothing more than an administrative task if the matter does proceed the papers are there?---Yes.

Thank you.

THE COMMISSIONER: Yes. Yes, Mr Staehli.

MR STAEHLI: Can you just excuse me for a moment? Sorry, there's just a copy of a document which wasn't shown to Mr Paul previously.

THE COMMISSIONER: Has it been tendered?

MR STAEHLI: No, it hasn't. Could you look at this hard copy of a document with the date 24th of June, 2008 on it, please, Mr Paul.

10

THE COMMISSIONER: 24th of when?

MR STAEHLI: June 2008. It's apparently a earlier version of the tax invoice that was ultimately supplied to Mr Kelly to go with his application to the Attorney General's Department.

THE COMMISSIONER: I will mark that – it'll be Exhibit 90, I think.

20

**#EXHIBIT 90 - CREAGHE LISLE TAX INVOICE DATED 24/06/2008
BEING EARLIER VERSION OF INVOICE SUPPLIED TO MR
KELLY**

MR STAEHLI: Do you recognise that Mr Paul?---Yes, I do.

Is my description accurate?---Yes.

30

On the last page there's some handwriting. Is it yours?---Yes.

And there it seems you're adding to, in your handwriting, the amount which was due to your firm for your attendance instructing Mr Hart at the trial on days – on the 25th of February and later. Is that right?---Yes.

Thank you. Yes. That's really just a formality in the sense of that - - -

THE COMMISSIONER: Yes. It's Exhibit 90.

40

MR STAEHLI: - - - document, Commissioner, unless you want to (not transcribable) that closely.

THE COMMISSIONER: Oh, I see, yes.

MR STAEHLI: And at that time do you remember that the reference to barrister's fees in that memorandum just tendered was to the first invoice which had been prepared by you in respect of Mr Hart's fees?---Yes.

Mr Hart's memoranda of fees, if I can call them that, including Exhibit 53 which was the first one and then Exhibit 25 was the second one dated the 14th of July, they're both on Mr Hart's letterhead and we understand how that occurred, but in each case they're addressed to Mr Kelly. Do you remember that?---Yes, I think they are, yeah I - - -

10 Did you regard the formalities involved, which may not have mattered, but did you regard Mr Kelly as being Mr Hart's client in the matter?---Oh, no, not really. I mean, I, I instructed Mr Hart and the bills - I mean, I suppose the bill should have been directed to Creaghe Lisle when you think about it but it was - - -

Was there a reason why you - I assume it was you who actually drafted those bills there?---Yes, I did.

Perhaps might Mr Paul please be shown Exhibit 53 which is the - - -

20 THE COMMISSIONER: Yes.

MR STAEHLI: - - - hard copy of Mr Hart's - - -

THE COMMISSIONER: Here we are.

MR STAEHLI: - - - first bill as drafted by Mr Paul apparently. Is that a document drafted by you?---Yes.

30 And the handwritten alteration of seven to nine days and \$21,000 to \$27,000 is your handwriting. Is that right?---Yes, it is.

And that's a bill directed, as it happens, to Mr Kelly?---Yes, it is.

Do you say that if you'd thought about it more closely it might have more properly been directed to you, do you?---In thinking about it in hindsight it probably should have been directed to Creaghe Lisle but it was (not transcribable)

40 All right. Was there any reason why it was directed to Mr Kelly?---No, no reason at all. I think it's just I probably didn't pay any attention to how it was - in dictating I probably said to my secretary just do a bill for Kelly for Mr Hart.

All right. And she's acted on her own initiative. Is that what you're suggesting?---Oh, she does a lot of that, yeah. I probably did - wasn't being direct. I can't recall but I wasn't being direct at the time.

All right. Do you, do you appreciate the significance of a barrister having a relationship so far as his fees are concerned with the solicitor as opposed to

with the client?---Yes. The barrister can then sue me rather than sue the client?---Yes.

THE COMMISSIONER: They can sue now, can they?

MR STAEHLI: Yes, if there a proper agreement.

THE COMMISSIONER: They weren't allowed to years ago.

10 MR STAEHLI: No and it's one of the purposes of costs agreements, Commissioner, apparently.

THE COMMISSIONER: Also we couldn't be sued because there was the quid pro quo.

MR STAEHLI: Yes. Those were the good old days.

THE COMMISSIONER: Yes.

20 MR STAEHLI: There was no costs agreement here so far as you're aware though, was there?---No.

Either between you and Mr Kelly?---No.

Between Mr Hart and Mr Kelly, as far as you're aware?---No.

And certainly not between Mr Hart and you or your firm?---No.

I have tendered your call.

30

So this morning there was played to Mr Hart a call which hadn't previously been played to you on the, which apparently took place, it is the call on 14 July 2008?---Yes, sir.

Were you in the hearing room when that call was played?---Yes, I was. Yes, I was.

40 And perhaps Mr Paul could be shown the hard copy of that exhibit, the number of which I've temporarily lost, I'm sorry, a call on 14 July 2008 at 1403.85, thank you.

And I think you've given some evidence in passing about the issue which I want to raise with you again, Mr Paul, which is on page 4 of the transcript of that call?---Yes.

In which you talk about Mr Kelly, it would seem, complaining that you had pumped up the bill. Do you see that on the top line of page 4?---Yes.

Do you accept that that's a reference by you to something that Mr Kelly said to you?---Yes.

And you go on to talk about that conference issue which, about which you've previously given evidence?---Yes.

When you said about three quarters of the way down, "I've added those extra few days in", do you know what that is a reference to?---Oh, I missed that, on page, oh, I see, down the, right down the bottom, but, yes.

10

There being two, can I attempt to help you?---Sorry, I just, I was reading the wrong, I'm just moving down the page now. Yes.

Between the time of the bill of 24 June and the final bill of 14 July, there'd been two substantial additions?---Yes.

One so far as your bill was concerned was the insertion of fees relating to the second week of the trial?---Yes.

20 In those handwritten notes we've just seen?---Yes.

The second was the addition of two extra days to Mr Hart's bill?---Yes.

Was it you who caused the, I appreciate it's your handwriting, was it at your, was it your doing that Mr Hart's bill was increased from seven to nine days?---Well, I mean I can't recall the exact circumstances but I was, there was a discussion had between myself and Mr Hart about those extra days because they were days that were, that he was in court.

30 And by those extra days, what do you mean?---Well, on the bill I think I had it adding up until the 22nd or I think it added up until the Friday where I didn't have in the Monday, the Tuesday and then his following, his other day which I think you earlier referred to as 3 March.

All right, well, perhaps he must have owed you for that - - ?---No, the Monday, Tuesday, Wednesday and then the, I think he refers to 3 March being his ninth day, so the additional week hadn't been included in.

40 Hadn't been?---In the initial bill. In the initial, in the initial bill - - -

Yes?-- - - -so the second bill, that included the Monday, Tuesday, Wednesday in my bill and the Monday, Tuesday, Wednesday and another day in Mr Hart's bill.

All right. Well, I'm sorry, could you look again at Exhibit 53 which you just saw which is the initial bill of Mr Hart, please.

THE COMMISSIONER: Just have a look at it again, has he got it?

MR STAEHLI: Have you still got that?---No, I haven't.

The bill of 24 June 2008 on Mr Hart's letterhead?---Yes.

See, in it's typed form, that had seven days at \$3,000 per day?---Yes.

And then you've altered that in handwriting so that it reads nine days at that rate making \$27,000 instead of \$21, 000. Do you see that?

10 ---Yes. Yes.

And is, when initially it had seven days?---Yes.

But your initial bill didn't. Your initial bill had five days. And you made those handwritten alterations I showed to you just five minutes ago or so?
---Yes.

All right. So when you finalised your bill you'd added to it the days for the, your attendance on the Monday, Tuesday and Wednesday of the second
20 week of the trial?---Yes.

And you'd added to Mr Hart's bill, not only, well those days were already in it, but you'd added two extra days to his bill being for something to do with the costs application. Is that the position?---Yes. The Wednesday, and then the following - - -

Wednesday and then the following Monday, that's the day when the costs application went on again. Is that right?---Yes.

30 And at that time did you have a belief that the costs of the costs application or the application for costs certificate were something you could claim for?
---I didn't have a clue whether or not you could claim for or not claim for. I, I, there was some discussions between myself and John Hart, because it wouldn't of been with anyone else, that he could claim for those extra two days.

Right. Well, did you know or do you remember that on the bill from the other firm, both in relation to Mr Weir's fees and in relation to the other firms professional costs, that they had not claimed for the costs application
40 itself?---Yes, sir. I saw that when it was referred to the other day, yes.

Yes. And did that have any impact on your view as to whether or not you could legitimately claim on behalf of or that you could legitimately bill and claim for that?---I didn't, there was some discussion about the costs application being able to be, the days in court being able to be claimed, but I just can't recall the conversation. As I say, I assume it was with Mr Hart. It couldn't of been with anyone else I wouldn't of thought.

All right. Then - - -

THE COMMISSIONER: Were they claimable?

MR STAEHLI: Well, it may remain a mystery in the sense of the, I'm not sure what the policy is, if I can put it that way. The Act itself talks about costs incurred in the trial.

THE COMMISSIONER: In the trial?

10

MR STAEHLI: Yes. And on (not transcribable) of it, one might conclude that the costs themselves and the application for the certificate itself is not so included.

THE COMMISSIONER: Yes, well, I mean it's probably right because if it would be unsuccessful it would be unlikely that a costs would be made against the - - -

MR STAEHLI: Against the client.

20

THE COMMISSIONER: All right. Anyway, yes.

MR STAEHLI: There's been some evidence given by Mr Hart about what he knew concerning your cashing of cheques in his name. And earlier when you gave evidence on the, last week, you, it was left a little vaguely, perhaps, with you saying that he was aware that you were cashing cheques made out in his name.---Yes.

30

Firstly at the time of the trial and secondly in relation to that one in respect of which there was a telephone call on 15 July, which was played to you. Do you remember that?---Yes, I remember that.

In which he asked how much it was in case there was a telephone call. Do you remember?---Yes, I remember that.

Did you ever tell him how much money you had obtained by cashing cheques in his name?---I, I don't recall any conversation. I just, I just don't recall.

40

Is it the case that the money which you obtained in that way you regarded as being money which was due to him?---No. It was, I mean, no it wasn't, at the end of the day, no it wasn't.

All right. As I understood your evidence, perhaps wrongly, it was money which you in effect regarded as being due to you somehow or other under the arrangement you had with the partners of the firm?---Due to the office and then I had, I had cashed the cheques, as I said, it was a matter that had to be sorted out in the long run.

But in any event, the, that money you put it in the vicinity of \$7,000 was not money, was it, that was owing to Mr Hart?---No.

And do you know how much money was actually paid to Mr Hart prior to any costs provided by the Attorney Generals in relation to him having appeared at the trial and or at the application for the costs certificate?
---Well, he was, he was paid out of the office, I think it's about \$16,000.

10 All right. So, so far as the trust ledger is concerned, but for the cheques which you have admitted cashing, being cheques in, made out in his name, all the other drawings from the office accounts of cheques made out in his name were applied, given to him for him to draw on. Is that right?---Yes.

All right. Thank you. Yes, well, they're the only further questions I have for Mr Paul.

THE COMMISSIONER: Does anyone want to ask Mr Hart, after that Mr Bowen, you'll get, yes, Mr McIlwaine.

20 MR McILWAIN: Mr Paul, in relation to the account that you finally provided to Mr Kelly that he forwarded to the Attorney General on 15 July, it's your position is it not that the amount that you set out in your account and in Mr Hart's account (not transcribable) due to your firm?---Yes.

And you've been asked a number of questions about when it was all over, why did you write off monies. Whilst you believe those monies were property due to your firm, you did have a number of difficulties in seeking to enforce that bill. Would you agree with that?---Only, I didn't think Kelly had any money.

30 THE COMMISSIONER: You mean this is the \$76,000 bill?

MR McILWAIN: Yes.---I didn't believe Kelly had any money.

Well, that's one difficulty. But another difficulty was you didn't have a costs agreement.---That's right.

40 And were you aware then that if he didn't have a costs agreement, you couldn't pursue the bill without obtaining a cost assessment beforehand?
---That's, that's certainly the issue.

Right.

THE COMMISSIONER: So, did you, were you aware of that?---Well, I really, I, I knew that was the case that I didn't have costs agreements. At some stage I assume I've had to really address the costs agreements since this matter.

But there was no particular agreement at the time.

MR McILWAINE: Yep. Around November, 2008, the end of November when the money arrived from the Attorney General, did you know by that stage that prior to taking the action against Mr Kelly for any outstanding monies, you would have to obtain a cost assessment because you had no cost agreement? Did you know that then?---I'm not, I'm not sure if I did, because I've had to go and read the documentation and ask people about it.

10 You have become aware then have you?---Yes, I have.

THE COMMISSIONER: So sir, are you telling me that that you were not aware that, sorry, you were aware at the time you put the bill into the Attorney General, you knew Kelly didn't have to pay it?---Oh, no, no. He would have to pay it, I mean - - -

20 But (not transcribable) that you didn't have a cost agreement you couldn't recover it?---No, well, what I've since, at that stage you were just sue them. But you've got to sue a person for the costs. You've then got to recover, they've got to have some assets to recover from. But I've since made some, you know, particular inquiries and realise you've got to do an assessment and then, and at the end of that assessment then you can proceed to recover, if the person's got any money.

MR McILWAINE: Let's just go back. You had this account, you've received some money from the Attorney Generals. You accepted \$8,000 and wrote the rest off. That's effectively your version.---That's effectively what's happened.

30 The situation was that you couldn't sue Mr Kelly for any balance outstanding unless or until you did certain things.---That's right.

The first of those things you would've had to have done, because you didn't have a costs agreement. Correct?---Yes.

The first of the things you would've had to have done was to obtain a cost assessment. Correct?---Yes.

40 Now, that would mean that you would have to produce to a cost assessor your file to establish your lawfully part of the costs?---Yes.

Now there were two problems with that weren't there? One problem was your record keeping was in such a state that you simply didn't have documentary proof of all the attendances that you say you actually undertook. That's correct isn't it?---I reconstructed the file and by way of that, going back looking at appointment books and, and then after this incident was raised I went back again of course and found that I still hadn't

charged him for about \$5,000 worth of work, which is appearances in court, telephone calls and attendances at my office.

But you would have had the practical difficulty would you have not that you would not have been able to satisfy a cost assessor with properly, proper contemporaneous records of the attendances that you undertook for Mr Kelly. That's true, isn't it?---Ah, I would have produced the file and gone through it step by step and it would have been up to the assessor if they accepted that, what I had reconstructed.

10

Have you ever taken part in a cost assessment?---No, I haven't.

And are you aware now that you would have had to pay the costs of the costs assessment because you didn't have a cost agreement?---Yes, I'm aware of that.

Do you remember when you became aware of that?---No, I don't really.

20 And that would be another hurdle to seeing Mr Kelly wouldn't it? Correct?--I'm not, I'm not even sure what they charge.

And another problem you had was that (not transcribable) being likely that if your file had been and trust ledger had been examined by a cost assessor your dealing with the trust account cheques and I'll go back one step, the cheques that you cashed that were addressed to Mr Hart, they were trust account cheques?---No, there'd be one, one trust account.

THE COMMISSIONER: One was.

30 MR McILWAINE: One was?---And the other s were general account.

The others were general account. There would have been a real possibility would there not have been that if your file had been examined by a costs assessor, this cashing of the cheque would have come to light?---Yeah, I didn't, I didn't even get to that stage, it was a case of I just - - -

THE COMMISSIONER: Mr McIlwaine, how does this bear on Mr Kelly's case?

40 MR McILWAINE: Mr Kelly's position is, Commissioner, that he had received the account, he's been challenged as to well, didn't you think that Mr Paul would chase him for that money? His evidence is, "Well, I expected at some stage he'd be in contact with me." This goes to an explanation as to why there was never any pressure from Mr Paul upon my client to pay any balance because of these obvious difficulties that Mr Paul had of enforcing.

THE COMMISSIONER: Well that's, anyway, go on.

MR McILWAINE And you've also in a telephone intercept today made, talking to Mr Hart, made reference to conversations you had with Mr Kelly when he raises for example the question of the Sunday conference which he said, "Well, I wasn't there"?---Yes.

10 It's true is it not that when Mr Kelly queried that, you asserted to Mr Kelly that your bill was a proper and legitimate bill and that all the work had been done by you. That's correct, isn't it?---Yeah. I just said it was, I forget what the words were but it was as per the file or as per, yeah, whatever it - -

At no time did you convey to Mr Kelly that there was anything improper or wrong in your bill. That's correct, isn't it?---Yeah.

Nothing further, Commissioner.

THE COMMISSIONER: Yes, Mr Madden.

20 MR MADDEN: Thank you, Commissioner. Mr Paul, the nature of your practice, you work in Wagga Wagga and it's a firm of how many solicitors?---Six, seven.

And what sort of work do you do?---Oh, I call it crime, conveyancing and wills.

As far as court work is concerned, what sort of court work do you do?---Ah, all crime.

30 Are we talking about pleas and offence matters?---Yes, yeah, yes, yes. Ordinarily all local, it's normally all Local Court and any District Court would only be sentencing matters or appeal matters.

So their matters without putting words into your mouth of relatively small compass in terms of the amount of work required or the amount of fees that your would normally be charging?---And the amount of time spent in court, yes, on each, on each matter.

40 Now, you were asked a question before as to the, your experience in trials. How many trials do you believe that you have been involved in your twenty five years of practice?---Well, I, I can remember, I can remember one, one bigger one many, many, many years ago and I, I wrack my brain, there might have been one other one, and then this is this one.

So limited experience would be a reasonable assessment?---Yeah, totally, I think I said before, I don't do legal aid work and most of the trials in Wagga appear to legally aid funded, legally aided fund.

And because of the fact that they are relatively small matters they're not matters that generally require you to enter into any sort of fee agreement or to provide disclosure if the amount you're charging in a matter is less than approximately \$700?---Well, I mean, now they're over the, now the fees, particularly of drink drive, are over the 750, then they do now, but the - - -

You do have a different practice now?---But the, yes.

10 Prior to the, to this particular trial concluding, the Kelly trial, you have no previous knowledge of the legislation that entitled an application to be made to the Attorney General for payment, the Costs in Criminal Cases Act?---
No, I got that out as a result of this case.

And what was your understanding of the entitlement in respect of making the claim for professional costs?---Well, as I should have said before that it says costs incurred in the case which I took to mean, I didn't mind, I hadn't issued a bill for Kelly, I took to mean that I could go back and bill the file on each item being costs incurred in that particular case.

20 And you didn't believe that you were precluded from properly costing what the file was worth because of the, the earlier disclosure that you'd given to the client?---That was only an estimate.

THE COMMISSIONER: Well, when you say it was an estimate, it wasn't an estimate as to how much you going to be paid each day, was it, it was an estimate as to how long the trial might go?---That was part of it, Commissioner, but as you recall there was an estimate of what the work in the lead up - - -

30 What's its, what's its number, do you know what its - - -

MR MADDEN: Exhibit 17?---It has various components in it.

So that document, Commissioner, does specifically say estimate. "We confirm we estimate the costs as follows." It's not a quotation, it's not a fixed quotation, it's an estimate.

THE COMMISSIONER: Estimate of barrister's fees five days at \$2,500, that was the estimate, yeah.

40 MR MADDEN: Now, the legislation talks it, you read the relevant section of - - -?---Yes.

- - - section 4 of the legislation before you prepared the bill?---Yes.

And that indicated that you, the maximum amount that could be claimed would be the amount that would reasonably have been incurred for costs by the applicant?---Yes.

And you believed at the time when you prepared that bill of costs for Mr Kelly that that was the amount or the amount that you were claiming was the amount that was reasonably incurred in relation to the applicant in those proceedings?---Yes, yes.

And you still hold that belief?---Yes, I do.

10 Now, there was a telephone intercept played to you and it was Exhibit 86 today and in that was a conversation between yourself and Mr Hart and in that telephone intercept you had a discussion with Mr Hart and you asked him, "Have we actually told him we're going to give him five"?---Yes.

Now, you obviously didn't have anything to give did you, you never had the money?---No, Mr Kelly had the money.

20 So is it a fair proposition that what you were intending to convey was that you would not be pursuing him for a considerable part of that bill beyond you getting or your firm receiving an amount of money, \$8,000?---When I got the \$8,000 that's, yeah, I didn't take the matter any further.

And you were very keen to achieve a voluntary payment from Mr Kelly because he had the money?---He had control of the money, yes.

And you were concerned that if you asked for more you mightn't get any? ---He certainly didn't have to pay me and I - - -

30 And have you ever been involved personally in suing a client for fees? ---Personally, I mean the office does occasionally sue, not very often.

Well, in relation to any matter where disclosure was properly given or where fees could be recovered through legal process?---I mean, the office has sued but I mean this one certainly had some problems in suing but it was of a case of I didn't believe he had any money and you spend a lot of money trying to recover and you don't get it back.

And I think you indicated you just wanted to move on and get whatever you could out of this case on a voluntary basis and move on?---That's it.

40 And your opinion as to the integrity of Detective Sergeant Turner at the police prosecutors branch at Wagga Wagga?---Yeah, I know Steve. He's just a good prosecutor and a very - his integrity is very good.

Thank you. No further questions.

THE COMMISSIONER: Yes, Mr Paul. You can step down, thank you very much.

THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: There's no more oral evidence, commissioner. Can I just mention something about – although these are matters that can be dealt with in the submissions, I suppose, but the effect of a failure to disclose the basis on which costs are to be calculated in accordance with the relevant provisions of the Legal Profession Act do not prevent recovery.

THE COMMISSIONER: If you haven't got an agreement you mean?

MR STAEHLI: If you haven't got an agreement it means that the client need not pay without an assessment, that is, you can always ask him and - -
-

THE COMMISSIONER: He doesn't have to pay but if he has – he would have to pay what was assessed as a reasonable sum?

MR STAEHLI: If he resists then you can't pursue him by legal proceedings without an assessment.

THE COMMISSIONER: Yes.

MR STAEHLI: And I think it's possible, although this matter can be dealt with in submissions as well, that my friend Mr Bowen hasn't put everything that's relevant in relation to section 4 of the Costs in Criminal Cases Act to this extent, the application, subsection (1) to the Attorney General for payment is a person – the relevant section is a person to whom a certificate has been granted may apply to the Director General for payment, omitting irrelevant words, of costs incurred in the proceedings to which the certificate relates and so far as what is reasonably incurred, that is only applicable to the amount that is the maximum that in the Attorney – in the opinion of the Director General of the Attorney General's Department would reasonably have been incurred for costs by the applicant in the proceedings reduced by any amounts the applicant has received in other ways which aren't relevant. So the application, the right to apply, is for costs actually incurred it would seem on the reading of that.

THE COMMISSIONER: What does incurred mean? That the liability has arisen or the payment has been made?

MR STAEHLI: It's not defined. I don't think incurred by the normal meaning of the word would necessarily mean paid.

THE COMMISSIONER: No, I don't think so.

MR STAEHLI: No.

MR MADDEN: Commissioner, the application lodged with the – the prescribed form of application that accompanies it actually addresses that so far as the attorney is concerned presumably it's a liability for payment rather than payment that's actually been incurred in the what might be a more usual sense of the - - -

10 THE COMMISSIONER: Well, leaving aside ignorance, you shouldn't ever put a bill in that hasn't been assessed if you haven't got a - - -

MR MADDEN: A fee agreement.

THE COMMISSIONER: An assessment, if there's no agreement, no assessment, it's not incurred if it's a debt that has to be paid.

MR MADDEN: Well, it doesn't talk about a legally enforceable debt, the costs are incurred.

20 THE COMMISSIONER: Anyway, anyway - - -

MR MADDEN: And I'd say that'd be the exception rather than the rule in practice, Commissioner, especially if you've got a practice where you're dealing with the same client on a regular basis which is something that precludes your obligation.

30 THE COMMISSIONER: I'm actually surprised they can get it by assessment. I would have thought the whole – the way you'd enforcement is make sure they couldn't get anything unless they entered into an agreement. That'd certainly liven the profession up to - - -

MR MADDEN: I think the average member of the profession, Commissioner, would consider there's far too much regulation of the way in which they conduct their practice anyway.

THE COMMISSIONER: But anyway, yes.

40 MR STAEHLI: There's a series of documents to tender, Commissioner, which we have here.

THE COMMISSIONER: Can they be described just globally or - - -

MR STAEHLI: Well, it's suggested as being appropriate that I read a description of them.

THE COMMISSIONER: And to the extent that they may affect people who could be affected people do they know the documents are going to be tendered?

MR STAEHLI: They don't add any further affected persons to those who've been identified if I can put it way.

THE COMMISSIONER: Yes.

10 MR STAEHLI: They're just mostly supplementary documents relating to issues which it's not been necessary to put directly to witnesses. I don't think there's anything in it that's contentious save for the fact that there are contained in the documents a number of statements of persons, two of whom have been named in the proceedings and one who hasn't, they being -
- -

THE COMMISSIONER: Well, in any events, I suppose an affected person would always have access to those files anyway.

20 MR STAEHLI: Oh, yes. I mean, this is done on the basis that if any of the applicable parties want access to the materials then it'll be freely available to them.

THE COMMISSIONER: Perhaps you could read onto the transcript what these documents are and I'll make that file Exhibit – what's the next one – 91 and you can just read onto the transcript what 91 contains.

#EXHIBIT 91 - FOLDERS (2) OF SUPPLEMENTARY DOCUMENTS

30 MR STAEHLI: I'll do it by reference to the Tab numbers if I may.

THE COMMISSIONER: Yes, yes.

40 MR STAEHLI: Tab 1, extract of Mr Hart's call charge records for his telephone indicating where he was on the – I'm sorry, that's already been tendered, excuse me, Exhibit 88, this morning. Tab 2, a bank voucher and related documents and documents related to the payment of \$8,000 by Mr Kelly to the Wagga firm Creaghe Lisle. A Commission summary titled Cheques drawn on the accounts of Creaghe Lisle to the 14th of July, 2008 for J Hart matched to A Paul account which is a summary, in effect, in tabular form of what various records reveal about payments which is generally speaking in accordance with the evidence that's been given and the documents which ground the tables would also be available if there's to be any dispute about it which we do not anticipate.

Fourthly, a summary titled Cheques for J Hart matched to Judith Hart account, workbook and income schedule and attachment by which the

cheques which were made payable to Mr Hart from the Creaghe Lisle account have been thought to be vouched back as far as they can to Mr Hart's red book as provided by Mr Walsh. 5, the bank statements of Judith Hart for the period 1st of February to the 29th of February, 2008. 6, statement of Tina Hall, she being the detective involved in the second investigation of Mr Kelly, which statement describes from her perspective the history of the various investigations to which reference has been made.

10 7th, a statement of Valentino Musico, he being an officer of the Crown Solicitor's office who was responsible for contemplating Mr Kelly's application for costs and making recommendations to the Attorney General's Department about the amount that should be paid and the basis on which it should be.

20 8. Mr Hart's accounts book, as provided by Mr Walsh in its entirety. 9th, I'm sorry, 9th has already been tendered. 10, the statement of Warren Peacock, he being the associate of Mr Hart, to whom reference has been made and his addresses were used in relation, used by Mr Hart on occasions falsely in respect of some of his clients. Next, Mr Hart's call charge records from his mobile telephone for 14 April, 2009, that being the date on which he was seeking to have Miss Smith's matter adjourned. And 12, there's a bundle of what I called, and which have their own internal lists, corruption prevention documentation, which includes various codes of conduct and procedural guidelines in relation to principally the Attorney Generals Department.

30 Then there is an addition, there's further documents. A summary of the locations of TAB deposits into Mr Hart's TAB account showing most significantly in the context of the evidence, of the \$7,000 cash. That there was \$7,000 cash deposited into Mr Hart's TAB account on 8 March, 2008 at the TAB agency at Wagga in Bayliss Street.

Next are the court documents in relation to Mr Benjamin Bleckman's matter, which I overlooked at the time of the relevant evidence being given.

Next is a list of the correspondence from the firm Creaghe Lisle, which was found in the possession of Mr Kelly at the time that the Commission executed various search warrants.

40 And lastly there is a record of interview between Commission investigators and Mr Col McDermid, who is the retired registrar of the Sutherland Local Court. That interview having taken place on 28 September, 2009.

THE COMMISSIONER: Okay.

MR STAEHLI: They're the relevant documents, thank you, Commissioner.

THE COMMISSIONER: All right. Well then, then can you have your submissions fourteen days from today's date?

MR STAEHLI: Yes.

THE COMMISSIONER: Very well. So I'll direct that the submissions from counsel assisting should be presented to the Commission, the next one is the 9th, the 16th is it? No later than 16 October and thereafter the submissions of people who will be notified of the counsel assisting's
10 submissions, have their submissions in by the 23rd.

Now there's a few things that perhaps people, I just should mention so people can apply their mind to it. Mr Staehli, there's one matter that I'd like you particularly address, you probably would anyway, but just to remind you, a question, if one accepts the evidence of Mr Kelly and his understanding of the arrangement with Mr Hart, there could no question, I don't think of corrupt conduct having been established, because there's conduct under Section 8, conduct that's directed to the performance by a
20 public servant of their proper function.

But if the fact is, as Mr Hart intends that his purpose was simply to get, fraudulently albeit, money out of Kelly, but he was never going to pass that on to a public servant. The question arises then whatever else he may have adverse findings may be made about it, it may be questionable whether a finding of corrupt conduct could be made.

MR STAEHLI: I appreciate the issue.

THE COMMISSIONER: Yes. All right. Could I, Mr Madden, could I ask
30 you this question, is it your case, I'm not asking you to argue it, is it your case if you, hypothetical circumstances, a barrister charges, I don't know, \$4,000 a day, and then gets an order for costs and then enters into an agreement with his client that he'll put it up to \$5,000 a day. That is relevantly a cost incurred for the purpose of making a claim against the Attorney General?

MR MADDEN: Well, I don't think that's particularly in line with the circumstances we're looking at in this case.

40 THE COMMISSIONER: I (not transcribable) say that. But what if they were?

MR MADDEN: I'd tend to suggest you probably couldn't.

THE COMMISSIONER: No, I don't think so. You'd hope not. Anyway -
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MR MADDEN: But in this case there hasn't been any, there wasn't any bill rendered until after the costs.

10 THE COMMISSIONER: Well, you can put that in, I'm not going to get into it. I will direct also that the submissions be subject to suppression orders until after, and I'll lift the suppression orders after the report. And I'll explain why I do that, and I've done that in the past, because in the distant past there was an assumption by sometimes the media, that the submission put in by counsel assisting was in truth, the final conclusion of the Commission. And that was not always so. So I've made a suppression order on that.

If somebody wants to lift the suppression order on any part of that, well they can apply to me.

MR MADDEN: Commissioner, is it implicit in your directions that at the time when counsel assisting provides his submissions to you, that they'll also be provided to us?

20 THE COMMISSIONER: Yes. They'll be provided to the necessary persons, yes, they will.

MR MADDEN: Because it's only a seven day period, it's a very short period of time.

THE COMMISSIONER: Yes, I know. You'll get, you should get them the same day, for people who are, should get them.

30 Yes, all right. I'll adjourn.

AT 2.57 THE MATTER WAS ADJOURNED ACCORDINGLY [2.57pm]