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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 21 SEPTEMBER 2009

AT 2.10 PM

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THE COMMISSIONER: Mr Kelly?

MR STAEHLI: It may not be necessary for him to return although he is just here, depending on what further - - -

THE COMMISSIONER: Oh, we'll just wait and see if they're here, yes.

MR McILWAINE: Sorry, Commissioner.

10 THE COMMISSIONER: No, no, no. First of all, I want to know whether anyone wants to cross-examine or ask questions of Mr Kelly. What I'm proposing to do, although I'll hear submissions to the contrary, I understand the next two witnesses to be called will be Mr Trinder and Mr Nankivell. Is that correct? And I thought I would wait until they had given their evidence and then I'd see whether anyone want to cross-examine any of them.

MR McILWAINE: I'm happy with that.

20 THE COMMISSIONER: Would you – I'm sorry to get you up here, if you'd step down?---That's okay.

Thank you.

**THE WITNESS WITHDREW**

**[2.09pm]**

THE COMMISSIONER: Yes, Mr Staehli.

30 MR STAEHLI: Yes, thank you. Mr Trinder, please, might he be called.

THE COMMISSIONER: Yes.

Take a seat, Mr Trinder. You are legally represented here so I'm assuming you've had explained to you your obligations and entitlements under the Act.

MR TRINDER: Yes.

40 THE COMMISSIONER: I will go through them very quickly. If there's something I say you do not understand please let me know and I'll try and make my meaning clearer. You are obliged by law to answer all questions asked of you truthfully and honestly and failure to do that can render you liable to a serious criminal penalty. Do you understand that?

MR TRINDER: Yes.

THE COMMISSIONER: You may object to answering questions on some ground or other but if you do object you still have to answer the question. Parliament has given you the right to object so that if you do object the questions and answers can't be used against you in any civil, criminal or disciplinary proceedings except if you are charged with the offence, of an offence under this Act, in particular the offence of not telling the truth, then the questions and answers would be used against you. Do you understand that?

10

MR TRINDER: Yes.

THE COMMISSIONER: You have to take an oath to tell the truth. Do you want to take an oath on the bible or other holy book or some other way?

MR TRINDER: The bible's fine.

THE COMMISSIONER: Would you give him the bible. Would you stand up. Thank you, Mr Trinder.

20

THE COMMISSIONER: Take a seat.

Yes. Is there any - who - Mr Cook, I think is appearing.

MR COOK: It is indeed, yes.

10 THE COMMISSIONER: Yes.

MR COOK: Obviously, Mr Commissioner, the witness will be objecting to any questions that would seem to incriminate him.

THE COMMISSIONER: I will give him more than that.

20 Mr Trinder, pursuant to – well, I think it’s an application made on your behalf, I propose to make a declaration that all questions asked of you, all answers given by you and all requests made of you shall be deemed to be subject to your objection so that you do not have to apply your mind to object to any particular question on any particular ground. Do you understand that?---Yes.

Because you will be deemed to have objected and so the immunity that I mentioned earlier will inure in your favour as a result of that but I again remind you, if you were charged with the offence of not telling the truth to this Commission, well the evidence would be used against you in subsequent proceedings whether you have objected or not. Do you understand?---Yes.

30 Yes, Mr Staehli.

MR STAEHLI: Mr Trinder, what’s your full name, please?---Christopher Patrick Trinder.

Right. And were you in the hearing room this morning when Mr Kelly was giving his evidence?---Yes, I was.

40 So were you able to hear from where you were seated the various recordings of telephone calls which were played to him?---Yes, I was.

Right. On occasions, and I might turn to each of them in a moment by reference to the date and time of them but when Mr Kelly said in his evidence that the various calls included calls to which you were a party, do you accept that you were a party to those calls?---Yes.

All right. Thank you. Now, I want to ask you first about that part of Mr Kelly’s evidence where he told the Commission about an approach

which he said was made to him by Mr Hart and then what he did about that so far as it is relevant to you. All right. Are you able to recall when or if Mr Kelly approached you about the possibility that you might contribute some money to an issue affecting a police investigation?---I don't remember the date but I remember receiving a phone call which came up on my phone as unknown caller. I answered the phone. It was Jason Kelly on the other end and he just said that on my way out of court John Hart, the barrister, got told by Tina Hall, "You'd better save some money. We're -- tell your client to save some money because we're coming after you." And then, yeah,  
10 Jason put it to me that if I paid \$5,000 it would all go away.

Right. And at the time were you aware that you were the subject of a police investigation?---No.

Did you know that Mr Kelly was the subject of a police investigation independent of the trial which he had faced?---No.

Did you know anything about an investigation based on the word of a complainant who's name you know?---I heard, I've heard that she had put  
20 her complaint in but I just thought it had -- they found nothing so it disappeared like. I hadn't heard from anyone so - - -

THE COMMISSIONER: What was the complaint? Was the complaint against you that you heard?---Yeah. And Mr Kelly as well.

MR STAEHLI: I'm sorry?---And Mr Kelly as well.

All right. And, all right, from whom had you heard that?---I think I can recall Mr Kelly told me that he'd heard that they were investigating, that  
30 we'd never been liked interviewed at that stage.

All right. Now the, your evidence is a little bit cryptic because we haven't mentioned the name of the name of complainant, but just to make certain of this, we're talking about a complainant who you and Mr Kelly, amongst others knew. Is that right?---Yeah.

Who was - - -

MR COOK: Sorry to interrupt. I wonder if just for convenience sake that  
40 complainant might be given a pseudonym, because there are a number of, two different complainants. And I'm finding it a little bit confusing.

THE COMMISSIONER: Well, this is, the complainant you're talking about is the one that's referred to that has been blanked out in those tapes is it?

MR STAEHLI: Yes. But we know that, but the, our friends don't.

THE COMMISSIONER: All right. You can give a pseudonym if you like.

MR STAEHLI: Yes. Well, she could just be called Miss X, I suppose.

THE COMMISSIONER: Yes, yes, yes.

MR STAEHLI: All right. Now, can I say that in future then, we might call the complainant who is the subject of the pending investigation Miss X and the complainant who was the complainant in the trial of Mr Kelly, Miss Y.

10

THE COMMISSIONER: Yes. All right. So you understand I don't want you to name the person who's made the complaint, but that person will be referred to as Miss X.

MR STAEHLI: So, you say you'd been told by Mr Kelly of a complainant by Miss X?---Yes.

And do you remember when it was that you were told by him of the fact of her complaint?---Oh, I mean it was a good year or more before like his trial.

20

All right. And you said you couldn't recall the date of this call in which you were notified about the desirability of contributing \$5,000, but are you able to say whether or not it was before or after Mr Kelly's trial?---It was after the trial.

All right. Are you able to recall how long after the trial it was?---No. All I remember, like I said to you, was John Hart was walking out (not transcribable) said to me, "You better get some money, because we're coming after your client." And it was only like a day or so after it, I mean, it wasn't (not transcribable)

30

All right. Well, when you say that obviously you weren't in Wagga at the time of the trial?---No, I was on just, I'd just moved to the Gold Coast, so - -  
-

And had you been able to follow what was happening in relation to Mr Kelly's trial from the Gold Coast?---I remember receiving a phone call saying he got found not guilty.

40

Right. From him?---No. From someone else.

Right. And are you able to remember the time between that call and the call which you did receive from Mr Kelly about which you've told us?---I can't, it was only like a day or two after it, but I can't recall.

All right. So, you can conclude, like I gather from what you've said, that a call from Mr Kelly was within that time period, a day or two after the time that you were told about his acquittal?---Yes.

All right. And what was your reaction to the proposition which was put to you by Mr Kelly?---I think I was pretty anxious. I'd just moved to the Gold Coast and I recently got divorced from my wife and she wanted to move up to the Gold Coast to be closer to her family and wanted to take my son away, so I wanted to move up there, so I just, I was just starting a new life. I just didn't need it.

10 Right.---I didn't want to fly back to Wagga for, I just didn't need the, need it in my life and it just seemed like an easy option, because I didn't, I don't know, I guess, what I was thinking was, I mean I'm, I only went to year 10. These guys are barristers and sound like they, you know, do this stuff kind of thing all the time. It was just, they were much smarter than me, so - - -

Right. So, that, you say what weighed on your decision to actually contribute?---Well, I guess I was being led. I guess I was relying on them to, you know, they're the guys with the brains, you know. I was relying on them to, kind of, lead me I guess.

20 All right. When you say them, of course I gather that you only spoke to Mr Kelly?---Yes.

Are you including him in that use of the term them, when you say that?  
---No, not really, because he was just like a middle man, I guess.

Right.---He was just a puppet for me.

All right. So, he told you what the proposition was?---Yep.

30 Can you give us any more information about what the actual proposition was?---I need to get five grand within the next week and it was going to get paid to someone in the department that was going to get, eventually get the bit of paper across their desk and he would just sign off on it.

And by that means, stop it you mean?---Yeah.

40 And when you say piece of paper across the desk, are you telling us that they were words or similar to the words which Mr Kelly said to you?---Oh, yeah, like, well probably similar just to my words I'm using.

All right. But it got down to the level of - - ?---there was going to be a bit of paper across the desk.

A bit of paper across the desk which someone would write off or cause to - -  
-?---Yeah(not transcribable) oh, just so no evidence found or whatever, whatever they do over there.

So it can be, are you saying that it was something different to stopping the police doing what they were doing as you understood it?---I, I didn't really understand when I, I guess I got ring up to be interviewed, I, I thought it would have been stopped earlier. I wasn't expecting to get interviewed at all.

THE COMMISSIONER: Earlier than what?---Can you repeat the question.

10 But you said you thought it would be stopped earlier and I said earlier than what?---Well, I was thinking like straightaway. All I was trying to say was I didn't think I would hear from anyone.

MR STAEHLI: That is after you paid the money?---Yeah.

Yeah, because we haven't got to that but that's what you'd had done in fact, is that right, paid the money?---Paid the money.

In accordance with what had been requested of you by Mr Kelly?---Yeah.

20 But at the time you've told us that you, because of your new life and other matters you wanted to stop the possibility of it going anywhere. Is that right?--- (not transcribable) starting a new life, I didn't, I guess I was, yeah, I was probably just anxious and all I could think of was I didn't need this in my life.

Right. And had you had, sorry?---I, I really, didn't really have much time, time to think about it, they were requesting the money straightaway. I had to try and find money. I, I guess I was very stressed about it and - - -

30 All right. Well, let's just deal with the money - - -?--- (not transcribable) right from wrong really. I just was under a lot of pressure and I'd just started a new job, I'd just moved, I just, I guess I, yeah, I - - -

All right. Well, in effect I gather you're now offering excuses or apologies for what you did. Is that what you're doing?---Oh, I guess, I, I know it was the wrong thing to do.

All right. Did you know that at the time?---Probably not. I'd just gone through a divorce and I just, I guess I just didn't want any more trouble.

40 All right. So I assume because you've had the money that you had an expectation that the proposition that had been put to you would stop either the investigation or something flowing from the investigation.

MR WALSH: Commissioner, could I just raise a concern at this stage?

THE COMMISSIONER: Yes.

MR WALSH: I don't want to be critical of counsel assisting but one of the problems that's arisen is that firstly, the witness has been led and secondly, we don't have the text of what conversation took place between this witness and Mr Kelly and I think that, with respect, that it's a little unfair to a lot of other persons who are interested in the inquiry that the evidence has been listed this way. I mean the witness is referring to a number of people. By them, I don't know if he's referring to Kelly or Mr Hart, et cetera. So if I could just put my friend on notice that I just don't know what the terms of the conversation are with Mr Kelly and so - - -

10

THE COMMISSIONER: No. I think Mr Staehli has appointed this and I think that perhaps you could get more detail. Look, I just, before you get pulled over, I just want to say this. You've told me that Kelly told you you had to pay \$5,000, give him \$5,000 for things to go away?---Yeah.

What was going to happen to that \$5,000 were you told by Kelly?---He was going to give it to John Hart and, and then I presumed it was just going to go to the person involved. I didn't, at that stage I, there was no conversation about a person in the DPP until like later in the conversation.

20

So at the time you paid the \$5,000, just tell me if this is right?---Yeah.

You believe that money was going to Hart - - -?---Yeah.

- - - to use it for the purpose of ensuring that the prosecution against you didn't continue, is that, or the investigation really - - -?---That's correct.

- - - wouldn't continue?---That's correct.

30 And that's what it was that you said you thought then was wrong or you thought now was wrong and I think you were asked whether you thought it was wrong then?---I, back then I guess I, I wasn't thinking and I wasn't in a straight frame of mind to really sit down and think about it.

MR STAEHLI: But you're saying that you now know it's wrong. Is that what you're saying?---Yeah. If it was over, done all over again, I would not have given the money.

40 Right. And why is that?---Just, it just needed to take its natural course, I mean it's, I guess it's all there for a reason.

THE COMMISSIONER: What's all there for a reason?---Like, the system. I mean, I, I knew all along I wasn't guilty or anything and I should have just, I should have just backed myself that I was going to be found, there was nothing there and I just, back then I just didn't back my instincts. I went for the easier option.

But are you telling me you didn't think at that stage it was wrong?---In the frame of mind I was in, I, no, I didn't. Back then I probably, in the back of my mindset, I probably did.

You probably did, I think, don't you?---But, well I do, but I mean my actions speak that, yeah.

Yeah. All right.

10 MR STAEHLI: Presumably, you'd paid the money in the expectation that it would have the effect that you'd been told it would have?---Yeah.

And earlier in answer to my questions you did say that you believed that the money would be paid to someone in the department who would eventually get the piece of paper across their desk. Do you remember saying that?---Yeah.

20 In saying that to me as you did earlier, were you intending to convey that that was something which had been said to you by Mr Kelly in this conversation?---I can't recall if it was said in the first conversation but I know in previous, like conversations after that, the DPP was mentioned.

All right. And then answering the Commissioner's questions recently asked of you, you mentioned Mr Hart's name. Was his name mentioned in the context of what was said to you by Mr Kelly during that first conversation?---It was because I said to him, "Whose phone are you on", because it came up as unknown, and he said, "John Hart".

30 I see. All right. What if anything was said about Mr Hart's part in the proposition that was being put to by Mr Kelly in that first call?---Can you repeat that question.

Yes. What if anything was said about Mr Hart's part in the proposition that was being put to you by Mr Kelly in that first call?---That, that's where the money, how do you get the money to him.

40 THE COMMISSIONER: So that was said in the phone call, was it, that the money had to be given to Hart?---I, I, I asked, "Who are you giving the money to", and he said he had to get it, give it to him within a week or something so I had to get the money.

Give it to who?---John Hart, sorry about. I had to get the money within that week because I wasn't sure, I can't recall whether he was coming down or he was, but I knew it sort of had a time limit that I had to get the money to him by.

Mr Hart wasn't your barrister was he?---No.

Did he ever become your barrister to your knowledge?---No.

Was anything said to you about how much anyone else might contribute?---  
He mentioned Jeff was going to pay five thousand.

All right. Did he say anything about whether or not he, Mr Kelly, would  
contribute?---Well, he told me like everyone was five thousand.

10 Right. And did he say anything about, I appreciate you've heard his  
evidence this morning, but did he say anything to you about how the  
\$15,000 thus contributed might be divided?---No. I just presumed the  
whole money was going to that person.

THE COMMISSIONER: That person being who?---The guy where the  
paperwork was going across the desk.

MR STAEHLI: All right. And then how did you, you've told us you did  
pay that money?---Yeah.

20 How did you obtain it?---I think I had a little bit of savings and I had to go  
and get a credit card and then I had to wait for my pay to go in and, and then  
I transferred everything into one account and transferred it over.

All right. And when you say you transferred it over, what did you  
physically do?---(not transcribable) I went into the Commonwealth Bank  
with Jason Kelly's number and transferred it into his account.

30 All right. And by transferred you mean, what did you actually withdraw it  
and bank it again or did you do electronically or - - -?---I just gave the teller  
the, his account number and said, "Can I take \$5,000 out of that account and  
put it into that account."

All right. So you didn't actually get the money in your hand in cash?---I  
had to firstly go to where I had the credit card and withdraw all the money  
from that.

Right.---And then I had to deposit it into my account.

40 Right.---And then - - -

And where is your account, with which bank?---The Commonwealth Bank.

All right. And so the \$5,000 in total was in your account at one stage?  
---Yep.

And you did a transaction with a teller in which you gave her the details of  
Mr Kelly's account?---Yes.

How had you obtained them?---Mr Kelly texted me the account number.

I see. All right. And after you'd done that, what was the next thing that you heard? Can you remember, about that matter?---I think it was when Tina Hall rang me up for, to do the interview.

Right. Do you remember how long that was after you had paid the money?  
---No.

10 What did you do, if anything, when you received that request from Detective Hall?---I texted Mr Kelly.

Right. And do you remember what it was that you said to him in that text message?---I think it was something on the lines of, give me back my money. Something along those lines.

All right.---Give me my money or - - -

20 Did you regard yourself as being entitled to get your money back?---I thought so.

All right. Why?---Because the money hadn't done what they said it was going to do.

All right. And did you speak to Kelly about those matters?---Yes, I did.

30 Do you remember what you said?---I just said that Tina Hall was coming up to interview me. I just said, "What's going on"? And then he just said, "I'll find out."

Right. And did he get back to you?---Yes, he did.

And do you remember what, if anything, he told you about what was going on?---He just said that this is the course it needs, it has to take and they'll do their investigation and then when they're finished investigation, that's when the money will kick in.

All right.

40 THE COMMISSIONER: What did you say, what was he saying to you? After the police had finished their investigation?---After like we were interviewed and all that, and the investigation was finished, the money would kick in.

And by kicking you mean be used to pay somebody to stop it going any further?---Yeah.

MR STAEHLI: Can I ask you to listen to this call which you might've heard this morning.

THE COMMISSIONER: What's the - - -

MR STAEHLI: It's already Exhibit 4, Commissioner.

THE COMMISSIONER: 4. All right.

10 MR STAEHLI: 21 April, at 2.41pm. I'm sorry, in fact Commissioner, although I've asked for it to played, it might be appropriate in the circumstances, since Mr Trinder heard it, for him just to be shown the transcript. Could that be scrolled up as best as is possible for Mr - - -

THE COMMISSIONER: Now, do you remember earlier this transcript was up on the board and also the sound was there?---Yeah.

20 You're being now shown the transcript and you'll be asked questions about that. If you want to hear what he said as well as reading what is said, just let me know won't you?---Yeah. All right.

MR STAEHLI: So, perhaps that could just be scrolled past. Can you do your best to read that. Oh, you've got a copy, a hardcopy there have you? Good, thank you. Just read that to yourself if you would. In particular I want to ask you about the second page.

Have you read that?---Yeah.

30 Would you look at the second page and see that about five lines down there's a passage in which Mr Kelly says, "Well, I spoke to that other bloke", and it goes on from there. Do you see that?---Yeah.

Did you have belief as to who Mr Kelly was talking about when he said that other bloke?---John Hart was the only guy we were, he was dealing with.

All right. And from there until just over half way down the page there's further conversation about apparently the same topic. Can you see that?---Yeah.

40 Before I showed you this transcript you mentioned the effect of the conversation with Mr Kelly after you had texted him. Do you remember?---Yeah.

Are you able to say whether or not this call was a call in which you discussed those things with Mr Kelly after you heard of the fact that Tina Hall wanted to interview you?---Yeah.

You believe it is?---That was a conversation I had with like, the first conversation I had after I found out I was going to be interviewed.

All right. Thank you.

Then another call which was played to Mr Kelly, this one which became Exhibit 6, Commissioner, on 21 April, the same day at 17.28. And I think you've received the transcript of that in your hand have you?---Yeah.

10 And could you read that to yourself, please, while it's shown on the screen, please, Mr Trinder. Have you read that, from about halfway down the, I'm sorry, could I look at it on the screen from the top, please? Thank you. I think it's on the second page of what you have there. Could we scroll down that, please. Yes, about halfway down the second page, I think it is, after you say to Mr Kelly, "Did you talk to your barrister today." Do you see that?---Yes.

And what, what follows there?---Yeah.

20 And there's a mention of, "See if it gets to the DPP and that's the bloke that hits it on the head." Do you see that?---Yeah.

Prior to, well, firstly, do you remember hearing this call played this morning?---Yeah.

Prior to the mention apparently in this call of the DPP, had, to your recollection, Mr Kelly mentioned that the DPP might be involved in the arrangement?---Not until this conversation, I wasn't sure what, who the department was that helped with that kind of stuff.

30 Right. At the time of this call, did you have, through experience or otherwise, any knowledge about the system, about how matters are investigated and who made decisions on them?---Ah, I had a little bit of knowledge, not, not too much.

Right. And how did you acquire that knowledge?---Um, prior court cases before.

40 Right. What, in which you were involved?---Yeah.

Right. And so when the DPP was mentioned, did you understand that, that that office could conceivably have some role in what might happen to you?---Ah, yes.

Right. At this time, on the 21 April when you had this conversation, it's the case, isn't it, that you knew that, what the arrangement was was wrong?---Is it the case that, can you repeat that for me?

Yes. At the time of this conversation, when it took place, April 2008, by the time of this conversation, you knew that what the arrangement was that you had made with Mr Kelly was wrong, didn't you?---Oh, yeah, I did, because I tried to get out of it.

Right. Tried to get out of?---Well, I, I said I wanted my money.

Right.

10 THE COMMISSIONER: But you wanted your money back because you thought it wasn't going to work, wasn't it, not that because you thought it was - - -?---Oh, bit of both really. I, I thought it's not going to work, my safest alternative and best alternative is just let the system deal with it.

Mmm.

MR STAEHLI: But did you have any doubt in your own mind, Mr Trinder, that if the plan went through that you were a party to, it would result in a, in a public servant being bribed?---Yes, I - - -

20

That was the whole point of it, wasn't it?---Yeah, it was, yeah. So I guess in my thinking it, how it just seemed like they do it all the time, it just, it seemed like the done thing (not transcribable)

And, I mean, did you have any basis for thinking it was the done thing, other than that as you understood it there were lawyers involved in this transaction?---Like, how casual they were about it and how easy it just took place, like. Like, I've got a mate, give me five grand and bang, it goes away.

30

All right. So the, the apparent ease with which the transaction was constructed and carried through suggested to you that it was easy.---It just seemed like it was the done thing 'cause - - -

All right. And did it, did its apparent easiness make it less difficult for you to accept it in the first place?---It probably just seemed too good to be true and just too easy so - - -

40 But just to backtrack a little, when you were contacted by Detective Hall, you regarded that as a breach of what agreement you believed you had entered into - - -?---Yeah.

- - - with whoever it was who had been at the other end of the transaction?  
---Yes. But I knew that, well, in my mind, you've got those shows like Underbelly and things like that, you've got it in your head that, you know, if I try and get my money back, what's going to happen to me, so you may as well just run its course and shut your mouth and don't get yourself killed. I mean, I really didn't know what kind of people I was dealing with. I mean,

you know, if you've got a guy up high in the DPP, who does he know? So all I was worried about was getting knocked off, so just let it run its natural course.

All right. So are you saying that was the reason why you didn't insist on the return of your \$5,000?---Pretty much.

10 Then - - -?---These, these people are smarter than me and, you know, know a lot and you wouldn't know who they are, who they deal with. They could be dealing with, I guess they deal with criminals all the time so, you know.

Well, that would be a good reason for not giving them money in the first place, wouldn't it?---I didn't think of it at that stage. It was only after I had a good think about it and as months went on and then you just sort of, you know, you get something in your head.

20 Mmm. Then Exhibit 8 was I think the next call played to Mr Kelly in which you were apparently a party. Would you look at the transcript of the except which was played, please. 29 April at 15.57. You're looking at the hard copy of that. Is that right?---Yes.

Have you read that?---Yeah.

And do you remember hearing this called played this morning?---Yeah.

And do you accept that it was a call between you and Mr Kelly?---Yep.

30 And on a portion which was shown on the screen, which I think is on the first page of the document you have, there's a reference to you saying to Kelly, "Um, so um, but you know, she was saying that they've got to send it to the DPP and then he's got to decide." Do you see that?---Yeah.

Kelly says, yeah. You say, "So that's where I'm hoping it will all kick in". ---Yeah.

Who are you referring to when you say, "She was saying?"---Ah, Tina Hall.

40 Right. And what was it that she'd said to you?---I just asked how long it was going to take and how, what happened.

Right. And are you saying that it was Detective Hall who said to you that it had to go to the DPP?---Yeah.

Did it follow from what she said that you developed some degree of certainty about the fact that the police weren't the recipients of the money which had been sent by you to Kelly?---Yeah.

And at the end of that - - -?---Did you mean the DPP is the police, they're - -  
-

I'm sorry?---Can you rephrase – the DPP is the police?

Well - - -?---Well, it just - - -

Well, what did you think? It's not the matter of what I was putting to you?

---No. Well, I was thinking like police as in detectives and - - -

10

Yes?---Okay.

So Hall said it had to go to the DPP?---Yeah.

You've told us that?---Yeah.

Apparently meaning or perhaps – well, I withdraw that. In any event, the following page, at the end of the transcript that you have, apparently you asked Kelly whether or not he'd heard from his barrister?---Yes.

20

And he told you about the next stage was where the insurance kicked in?

---Yeah.

In one sense it would seem consistently with what Hall had told you?

---Yeah.

That is, to the extent that - - -?---Oh, not that - - -

- - - she was sending it, it had to go to the DPP?---Yes.

30

So after this conversation, what was your state of mind about whether or not the agreement that had been made and the money that had been sent might still operate as it had been intended to?---I sort of – there probably wasn't a lot of trust there. I didn't – and like I said, what could I have done? Who – I guess, I didn't know who to go to and just – I just let it run it's natural course.

Well, did you, did you want to get more information about what was going on despite the fact that you didn't want to seek to get your money back?---I, I guess I asked when I had phone calls with Jason - sorry, questions about it.

40

Right. Why?---Just I guess I just wanted to know like where – if it was over or what was going on.

Then the following, I think it's the following day, it is the following day, there was a further call played which became exhibit 10, Commissioner.

THE COMMISSIONER: Yes.

MR STAEHLI: And six, tab 21?---Right.

THE COMMISSIONER: Yes.

MR STAEHLI: The 20<sup>th</sup> of April at 16.53. Would you read the hard copy, please. Have you read that?---Yeah.

10 And do you see there's some information apparently given to you by Mr Kelly about a conversation he'd had with someone else?---Yeah.

Did you accept what Mr Kelly was telling you?---Yes.

Did you believe that someone at the DPP was going to stop it by that stage? ---I still had my doubts.

20 Right. And from time to time after that did you continue to talk to Mr Kelly about what was happening?---Not really that much, probably just on the odd occasion but I sort of - I mean, I think it went on for a year or more from after my interview with the police.

All right. You were interviewed by Detective Hall?---Yes.

On the Gold Coast somewhere?---Yeah.

And did you give her an account of what you said had taken place in relation to the complainant's allegations?---I have her a full interview.

30 Right. So – in which she asked you questions about the allegations and you told her your version?---Yeah.

All right. And then she went away?---Yes.

And did you hear back from her in the time following that?---I heard back from her. I can't recall. It was probably three to six months ago, calling saying there was no charges going to be laid.

Right. That is within this year you mean, 2009?---Yes.

40 Right. And when you heard about that, did you talk to Mr Kelly?---Yes.

Did you discuss with him whether or not the result about which you'd heard had come about because of the money that had been paid?---I think we both just presumed. We didn't – there was no real big conversation about it.

Right?---I think it might have been just a statement like the insurance must have worked or – but - - -

So at the end of the day, did you believe that the payment had – the payment you'd made to Kelly had had an effect on the matter not proceeding?---  
Yeah, yep.

Right. Were you told that by Kelly?---I can't recall that, whether we spoke, whether he said anything like the money worked or I think we both just said oh, the insurance must have worked or something along those lines.

10 All right. And then that was the end of the matter so far as you were concerned, at the least to the extent that you might have been at risk of being prosecuted because of what the complainant had said?---Yeah.

Yes. They're the only questions I have of Mr Trinder, thank you.

THE COMMISSIONER: You can step down for the moment, thank you, Mr Trinder. You're not excused because you may be asked questions.

**THE WITNESS STOOD DOWN**

**[2.57pm]**

20

THE COMMISSIONER: Call the next witness, Mr Nankivell, is it?

MR STAEHLI: Mr Nankivell, yes.

THE COMMISSIONER: Is Mr Nankivell here? Mr Oats, you appear, yes, that's right, you appear for Mr Nankivell.

30 MR OATS: I apprehend my client will seek the declaration, if you please, Commissioner.

THE COMMISSIONER: Yes.

Mr Nankivell, take a seat. You are legally represented and I'm assuming therefore that you have had explained to you your entitlement and obligations but I'll go through them very quickly.

MR NANKIVELL: Yes.

40

THE COMMISSIONER: First and foremost you must answer all questions and answer the questions truthfully. Do you understand that?

MR NANKIVELL: Yes.

THE COMMISSIONER: Failure to do that can lead you to being prosecuted for a serious criminal offence carrying a gaol term of up to five years.

MR NANKIVELL: Yes.

THE COMMISSIONER: You may object to answering questions on the grounds that the answers may expose you to some (not transcribable) and bearing in mind your legal representative wants me to give a declaration, I'll give the declaration so there's no need for me to explain what it's all about.

MR NANKIVELL: Yeah.

10

THE COMMISSIONER: I declare that all questions and – questions of this witness, answers given by him, requests made of him shall be deemed to be subject to his objection and hence there's no need for him to object to any particular question asked, request made or answer given. Do you understand that?

MR NANKIVELL: Yes.

20

THE COMMISSIONER: Yes. But do you understand that that objection which is deemed to have been given to you, it will give you the protection about the use that information can be made in other proceedings, if any, that are taken, it would not spare you the information being given if you were charged with the offence of not telling the truth to this Commission. Do you understand that?---Yes.

THE COMMISSIONER: You have to take an oath to tell the truth. Do you want to take it on a bible or a holy book or some other way?

MR NANKIVELL: Yeah, that's fine.

30

THE COMMISSIONER: Mmm?

MR NANKIVELL: Yes, that's fine.

THE COMMISSIONER: What's fine?

MR NANKIVELL: The bible.

40

THE COMMISSIONER: All right. Could you stand up.

THE COMMISSIONER: Yes, thank you. Yes.

MR STAEHLI: What's your full name, please, Mr Nankivell?---Jeffrey Warwick Nankivell.

10 Did you become aware at some stage that you were, with others, the object of allegations made by a complainant to police, the complainant being the person called Ms X in this hearing?---Yes.

Do you remember when it was that you became aware of those allegations for the first time?---Initially Jason Kelly told me of the allegations not long after they were made.

THE COMMISSIONER: Well, when was that?---Oh, look, I don't know, your Honour, Commissioner, I don't know.

20 MR STAEHLI: But it was, you were aware of the time when Jason Kelly was prosecuted and went to trial?---Yes, I am.

And the time when you first became aware of the allegations pre-dates that episode by a significant period. Is that right?---A significant period, I would think one or two years, maybe two years.

30 Prior to, well let me put it another way, do you, the time has been mentioned today and I think you've been hearing room all today. Is that right?---I have been, yes.

The time of Mr Kelly's trial with Mr McCauley was late February 2008? ---Yes.

Were you aware at the time that it was proceeding, that it was proceeding? ---Yes.

40 There was some publicity about it in Wagga, I think?---It was on the paper every day.

Yes. And you, independently of what was in the paper, knew about the fact did you not, that Mr Kelly was there facing that trial - - -?---I did.

- - - as a result of being a relatively new neighbour of him at the time? ---That's correct.

All right. Then as at the time of the trial, late February but before he spoke to you after the trial was over, what was your belief about where the

investigation which involved you was heading?---I didn't believe there was one.

Didn't believe there was an investigation?---No, no, it had been somewhere around, from my, from my recollection, somewhere around two years since the complaint had been made. I'm not quite sure on those dates, certainly more than a year and I had not heard anything and I'm not aware that any, that either Chris or Jason had heard anything during that time to make me think that that investigation was ongoing.

10

All right. So are you saying that all you knew of it was the fact that Kelly had told you about the allegation at some earlier time?---That's correct.

I see. Then after Mr Kelly was acquitted at his trial in February 2008 did you hear about the investigation again?---Yes, either on the day he was, sorry what was the word?

20

Acquitted?---Acquitted. On the day he was acquitted or it may have been the day before, I'm not quite sure as to which day it was, it may have even been the day after but it was in that period at the end of this trial.

Right. And what was it that you heard and from whom?---I think it was from Jason but I'm not a hundred per cent sure and I heard that police were going to investigate the incident that we'd been involved in from previous relating to Ms X.

30

Right. And when you say you're not a hundred per cent sure that it was Jason, is there a range of possibilities other than him?---I can't think of anyone else that it could have come from but I'm just not a hundred per cent sure so it's likely that it came from Jason but I'm not a hundred per cent sure.

And do you say your uncertainty is caused by what problems with your memory or something else?---I don't know, not problems with my memory, I just, I just don't know, I just don't know.

So but are you saying that you remember that someone told you?---Yeah, I definitely remember being told, yes.

40

And what were the circumstances of you being told?---Well, I don't know whether I was told in the pub or whether Jason told me later on at home.

And by saying Jason told me later on at home are you saying that if anyone told you at home it was Jason or you're uncertain of that as well?  
---Definitely, if anyone told me at home it was Jason. If it took place somewhere else, it could have been someone else but I don't know.

And when you say the pub do you mean a particular pub?---Yes, I do. It would have been the Bridge Hotel.

In Wagga?---In Wagga.

And that was, was that a pub you regularly attended?---Yes.

Is it the only pub that you attended at that time?---On most occasions, ninety nine per cent of the times I would have gone to the Bridge Hotel, yes.

10

Whoever it was who told you something about the investigation, what was it that they told you?---Just that, that police were again to investigate that allegation.

And when that person told you that, you say you immediately or did you immediately know what it was they were talking about?---Yes.

Did they mention Ms X by her real name?---No.

20

And did the conversation have any other components other than what you've just said?---Not at that time, not that I'm aware of, no.

Was there some later time in which something was said to you about the investigation?---Yes, there was, yeah. Either one or two days later, Mr Kelly came to me and said what he has actually said to you today.

I see. All right. So there was some initial event and then not long after in the, with the gap you've described, there was an approach to you by Mr Kelly?---Yes, that's correct.

30

And by saying what, by mentioning what he said here today, you're referring to his evidence this morning?---Yes. He said to me that he'd been approached by his barrister and that he needed \$15,000 to make the complaint go away and could I help him out by contributing \$5,000 basically was what I was asked.

And by saying, adding the rider basically, are you suggesting that the words you've used were not exact?---They're close.

40

They're close, all right?---I don't know exactly, yeah, sorry it's quite some time ago, that's as close as I can get it.

All right. And did he mention the name of the barrister?---I don't know.

At that time, as at that time did you know who his barrister had been in the trial which had just taken place?---I probably would have because it would probably have been in the paper.

All right. And what did you say in response to what it was that Mr Kelly said on that occasion, if anything?---When I was first told about this, I went to about four or five solicitors to try and get some legal advice, this is before I spoke to Jason Kelly about, in this conversation.

You mean - - -?---So after the first one.

10 After the first one?---After the first, after I first hear that this conversation had, that this investigation was going to start again, I went to my solicitor who unfortunately had cancer and I was unable to see him. His partner was  
20 unable to see me and, I don't know, he sent me to see someone else and they sent me to see someone else and they sent me to see someone else. At 5 o'clock on that evening I saw a solicitor by the name Debbie Flynn, Debbie Flynn, Debbie Flynn, from Flynn Lawyers, it may have been after 5 o'clock. She only saw me because she thought that I was in a distressed state and I went in there and spoke to her and she told me to not to worry. I thought I was going to get arrested that night, basically. She told me not to worry, to go home and to go back and get some more legal advice later on. Then Jason came to me that request saying that he would get the \$15,000  
20 and give it to his barrister and his barrister would make some calls, oh what do you call it, like lobbying type thing and hopefully it wouldn't go to court.

All right. And you've used, you've used the phrase, his barrister would make some lobbying type thing. I think they were your words?---Yeah. Sorry, I've got, I've lost, the word has gone that I, that I I'm trying to think of.

The word describing the thing that his barrister might do, do you mean?  
---Yeah.

30 Right.---It'll come back to me.

All right. And was there, as you understood it, any implication about whether or not what was to be done by the barrister was illegal?---No. I thought we were just paying the barrister.

You thought you were just paying the barrister?---Yeah.

40 All right. To do whatever it was he would do to make it go away?---Yeah. Basically to, to make the representations, which is the word I was trying to think of, sorry, right, to make the representations on behalf of Jason. And, yeah, that's what I thought was going to happen.

Right.

THE COMMISSIONER: So, I gather from what you're saying that you thought that the proposition was that your share of the money was to be used for legal fees?---It was, yes.

MR STAEHLI: But did you regard Mr Hart as your lawyer?---No. He was Jason's lawyer, barrister.

THE COMMISSIONER: But somehow you refer, enter into this arrangement via Mr Kelly with him, as you understood it. Is that what you're saying?---No. My, my arrangement was only with Mr Kelly. And it was to make representations on behalf of Mr Kelly, not on behalf of myself.

10 MR STAEHLI: On behalf of Mr Kelly. I see. So, I'm sorry, you're saying that he was, well you tell us what he actually said to you about to whom this arrangement was relevant?---Well, I thought that by helping Mr Kelly that I wouldn't be implicated and that my business would not be put in a position where I was related to Jason. Which is what I didn't want to happen.

Because of the bad publicity you'd received do you mean or what?---Yes. Yes.

20 So - - -?---So he approached me and I said straight away that it wouldn't be good for my business and so I was prepared to help him.

All right. Help him but not necessarily help yourself?---Well, I thought it would help myself down the track because if Jason wasn't to go to court, then I wouldn't be going to court either.

Well, what, why would you have assumed that?---I was part of the allegation and I didn't know at that stage what the allegation was. All I could understand was that if the police were pursuing it it must've been a lot more, a lot worse than what had actually happened.

30 Right. And as it happens you, in regard to the events which the complainant described, putting to one side whether or not her version was true or not, you knew that it involved you and Mr Kelly for two people, two people involved in it. Is that right?---I knew it involved myself and Mr Kelly and Mr Trinder.

40 Right. All right. And was anything said to you about Mr Kelly about whether or not Mr Trinder might be involved in the arrangement that he's made, that he was attempting to make with you?---Yes. He, he, Mr Kelly said that he didn't have the money and that's why he was approaching the two of us.

Right. And you used the word representations before.---Yes.

Are you saying that that was a word which was used by Mr Kelly in what he said to you when he made this proposition to you?---No.

No?---No. That's just what I thought was going to happen. His barrister was going to make representations on behalf of Mr Kelly.

Right. Well, can you do your best, and I know it's difficult, this far and time away from what was said, to tell us what it was that Mr Kelly exactly proposed to you?---Was that I pay \$5,000, which was one third of a \$15,000 fee to be paid to his barrister to have the case, the two words that had been used by Mr Trinder, I'm sorry. I can't think of - - -

10 By Mr Trinder did you say?---Yes. He used them as well.

Go away?---Go away, that's right. Yep.

All right. And are you saying that it was your assumption that making it go away would involve the barrister making representations?---That's right. Mr Kelly had during the previous, not long after he first told me about the allegation, he also told me that he had an enormous amount of evidence that would support him, including that the conversation, the emailed conversations which you referred to this morning.

20

With the complainant you mean?---Yes, with the complainant, yes.

Right. All right. So at the end of that conversation with Mr Kelly, I gather you say you had the understanding that you've just told us about?---Yes.

And did you tell him that you would contribute?---I assume I did. I don't know whether I actually said that at that day, but at some stage he rang me up and said, "I need the money." And I said, "Yes, I've got it for you."

30 And do you know how long had passed between the time of the conversation and the time that you rang him?---No.

More than a week?---I would've thought it was about three weeks, but I'm not a hundred per cent sure. It may have been longer.

And did you obtain money to pay him?---Yes.

How much?---\$5,000.

40 And did you pay him?---Yes.

How much?---\$5,000.

In what form?---Cash.

And where did you give it to him?---I thought I gave it to him outside the shed, which is on (not transcribable) Avenue, which is part of my property.

(not transcribable) Avenue?---He said, he said I gave it to him at his house, which is a further fifty yards up (not transcribable) Avenue, so one of those two. I, I don't know which one. I thought it was outside my shed. It was 9 o'clock in the morning I gave it to him or about that time. But other than that, I don't know what day, but that's all I can tell you.

And did you regard the payment as being money which you were giving to him without any expectation of getting it back?---Yes.

10 So it was in effect a gift?---In effect, yes. In effect it was, but - - -

THE COMMISSIONER: Not a loan?---No. No, I never asked for it back and I never wanted it back.

So no condition of it, where it would have to be repaid?---No, no condition where it would have to be repaid, no.

20 When's the first time you've heard that it was suggested that there was a condition it was going to be repaid if the investigation, to use the word of Mr Trinder, did not go away?---Today.

Today's the first time is it?---Today.

And did you have any expectations at the time that you paid the money over that there would be no further investigation?---No.

Well, did you think the investigation would continue then?---Did I think it would continue?

30 Yes.---I thought it would certainly continue for a while, yes. I didn't think, I don't think you can stop an investigation straight away. I would think, I would've thought, and I did think that he would have to make representations.

Right. And in the following weeks or months were you interviewed by police?---I was.

And did you talk to Mr Kelly about having been interviewed by police?  
---No.

40

Was there any reason for that?---Ah, Detective Tina Hall asked me not to talk to anyone about it, other than the solicitor I'd already had representing me.

Right. And who was that at that stage?---It was Anthony Paul.

Anthony Paul, at the time that you were interviewed by police, do you mean?---Yes.

And how had you come to be represented by him?---I had approached him and asked him to represent me.

Right. And did you do that because of a request that was made by anyone else?---No.

Right. Well, did you know that he was Mr Kelly's solicitor?---I knew that he was Mr Kelly's solicitor in the first hearing.

10

The trial.---In the trial where Mr Kelly was acquitted.

Yes.---And when I approached him he said he wasn't acting for Mr Kelly at that stage and so therefore he could act for me.

Right. You mean in relation to the allegations made by Miss X?---Yes.

Right. Right. And did Mr Paul remain your solicitor in relation to those allegations - - -?---Yes.

20

- - - until apparently they were finally discontinued?---Yes. I didn't realise they were discontinued again until I got here today.

I see. Right. And subsequent to handing, having handed over the money to Mr Kelly, did you ever talk to him about what was happening in relation to anything that his lawyers were doing - - -?---No.

- - - or the possibility of representations?---No, never.

30 Never?---Never.

What, between then and now?---Between then and now, never.

THE COMMISSIONER: Were you friendly at this stage with Mr Kelly? You must have been, surely, or not?---At the start, yes.

In April last year.---In April last year?

40 Mmm.---I would say that if he walked past me in the street I would acknowledge his presence and that would be it.

Mmm. And you haven't had any discussions with him about this matter or - - -?---I've had no discussion with him whatsoever about this matter since I paid him the money.

I just want to get this clear about when he asked you for the money, just tell me again precisely what he said to you.---He said he wanted, he had to get \$15,000 to pay to his barrister to make the matter go away.

The matter being?---The investigation into the allegations involving Miss X, Miss X.

And yes, you, Kelly (not transcribable.)---Oh, sorry, yes. Yeah, sorry, yes, yes.

(not transcribable)---Yes.

10 So you just gave him \$5,000, a person that you would pass in the street and probably say hello to.---When the allegations were first made I would say he was an, like at the time I gave him the money, obviously I knew that we were involved in this allegation together and he, from what I can remember, it was put to me that if he was able to, to have the investigation stopped, or that's the way I felt about it, that if he was able to have the investigation stopped - - -

It would stop for you. - - - then it would be stopped for me as well.

20 Mmm. All right.

MR STAEHLI: Would you excuse me for a moment, Commissioner.

THE COMMISSIONER: Did you ever speak to Mr Trinder about this at all?---No, I didn't. I knew Mr Trinder was in Queensland but I didn't have a phone contact number or anything to get in touch with him.

30 So you never spoke to him.---I've never spoken to him. After I paid the money, I've never spoken to either of them, other than to say, hello Jason, when I've walked past him in the street.

And are you telling me it's not until today that you knew that the investigation involving you had stopped?---That's correct.

Your solicitor didn't tell you that?---No. I don't know whether he was aware. He sent, he sent me a letter saying that he thought the investigation stopped and so, and we needed not to be, to worry about it, but I don't know that it actually, didn't actually say that it had been stopped, or I didn't take it to mean that.

40

Yes, Mr Staehli.

MR STAEHLI: Earlier this year, not so long ago, you were interviewed by investigators from the ICAC. Is that right?---That's correct.

At the time that you were interviewed, did you have the same views about the approach to you made by Mr Kelly back in around February 2008 that you have expressed today before the Commission?---Yeah.

That is - - -?---Yes.

- - - you believed at the time of that interview with the ICAC investigators that you had done nothing wrong. Is that right?---That's right. I believed that I hadn't done anything wrong, yes.

10 Right. Was there anything that happened in the course of that interview to encourage you to think that you had done something wrong?---I don't know. It felt like it by the time I'd finished the interview I had, but I don't know what to put that down to.

I see. No, because you, you commenced that interview with them voluntarily. Is that right?---Yes.

Although they had offered you the opportunity to stop the interview - - -?---Yes.

20 - - - if you wanted to. Is that right?---That's right.

And then there proceeded some discussion between you and the investigators - - -?---Yes.

- - - in particular Mr Bentley who's here on my right.---Yes.

Is that right?---That's correct, yeah.

And another man.---Another man, yes. I'm not sure who that was, but yes.

30 And there was eventually some discussion about the investigation into Miss X. Is that right?---(NO AUDIBLE REPLY)

Not by that name, but in relation to the investigation made by - - -?---Yeah.

- - - of the allegations?---There was some, yeah, I, yeah, I can't remember exactly, but yes.

40 Right. And to your remember that Mr Bentley told you about some information which suggested that Mr Kelly and Mr Trinder had paid money to Mr Hart?---Yeah. I, I don't remember that exactly but, but yeah, O.K.

All right. Well, perhaps rather than doing this (not transcribable) can I show you, I'll show you the - - -?---Yep.

Can I show the part of it? (not transcribable) All right. Yes. Thank you. Apparently we can display this electronically so everyone gets to see it, Commissioner.

THE COMMISSIONER: I think what we're about to see now is said to be an accurate transcription of what was said at this interview. You tell me if it's not. If you say it's not, please tell me if that's your case.---All right. Yeah, that's fine. Yeah.

MR STAEHLI: Now, we're not displaying the, the passages earlier than the ones which are going to be shown on the screen, because there is mention of Miss X's name, although we can show that to Mr, Mr- - -?---That's fine.

10 - - - Nankivell if there's any issue about that, Commissioner. So unfortunately the pages aren't numbered but - - -

THE COMMISSIONER: They never are here, I don't know why.

MR STAEHLI: Can you find it? Yes.

Can I just show you the two pages in hard copy because that will make it a little bit easier for you to read, Mr Nankivell, if you would?---Oh, I can read it here, it's fine.

20 Can you?---Yeah. It's actually better on here for me.

Oh, is it?---Yeah. That's all right. I said that.

All right. And then after you have given the responses that you gave on that page, Mr Bentley provided you with a caution which is at the bottom of that page. If that could just be shown as it is now, the bottom of the page now being shown on the screen. Do you see that?---Just one moment. Yeah.

30 And shortly after that you decided that you would take advantage of what had been offered to you and not answer any more questions?---Yes.

Do you remember that?---That's right, yeah.

All right. Now, while, of course, that was your right, at least in the circumstances of the interview, did you – had you come to any belief about – or did you have any belief about whether or not what you had done, making the payment that you had made, was wrong.

40 MR OATS: I object.

THE COMMISSIONER: I will allow it.

MR OATS: Mr Commissioner, I'm sorry to interrupt my friend, I'm just concerned my - - -

THE COMMISSIONER: I'll allow it, Mr Oats. Yes.

MR OATS: Well, Commissioner, may I be heard on that? May I be heard?

THE COMMISSIONER: Yes.

MR OATS: Yes. Commissioner, it concerns me that in some way, perhaps unintentionally, senior counsel's question to this man seems to infer that there's now a reverse onus that he must explain why he wishes to avail himself of his common law right. I appreciate the rules that apply to this Commission - - -

10

THE COMMISSIONER: Oh, I'll allow that question. The whole of this legislation is directed to this issue. What he says here today, for the declaration I've made in his favour, can't be used in evidence against him. He can be asked questions as to why he wanted to exercise his constitutional rights if he wants to. He couldn't be asked in any other jurisdiction that I know of but he can be asked here.

MR OATS: The next thing, Commissioner, is what weight could you possibly give - - -

20

THE COMMISSIONER: Well, that may be another matter but I'll allow the questions.

MR OATS: Yes, Commissioner.

THE COMMISSIONER: Yes.

MR STAEHLI: Do you remember the question?---No, sorry, I don't.

30

Could I put it this way: did you have any belief at the time that you wished the interview to stop that what you had done was wrong in relation to the arrangements made with Mr Kelly?---Yes. You were there. That's why or, sorry - - -

The Commission was there?---The Commission was there so obviously the Commission's not going to be there if, if, what I hadn't, if what I'd done hadn't in some way be, be able to perceive to be wrong.

40

Perceive to be wrong. All right. And did you, independent of the interview, attempt to or did you tell the investigators about what you believed the arrangement to have been with Mr Kelly?---I think I, I think I did but I don't remember.

By that, I mean did you tell the investigators that you believed the arrangement was to help pay for legal expenses?---Sorry, I don't know what I - I don't know what I actually told the investigators.

THE COMMISSIONER: Well, do you want to have a look at it?---

Well - - -

Do you want to have a look at it, what you told the investigators?---Yeah.

MR STAEHLI: It's not – there's no relevant passage in the recorded interview, part of which has been displayed, Commissioner.

THE COMMISSIONER: All right.

10 MR STAEHLI: But we can deal with that by tendering the document at a appropriate stage.

THE COMMISSIONER: What I want to know is on a number of questions you were asked and well before you were given a warning or that you took advantage of the warning, a number of questions were asked of you which were responded by you with just a hmm. What did you mean by that? What were you intending to purvey?---I wasn't intending to purvey anything. I was just listening to the, to the gentlemen. I wasn't – I didn't think they were actually questions.

20 Yes?---Can we go back to that transcript? I thought that just more or less a statement, wasn't it?

Sorry?---I thought it was more or less they were making a statement to me and I - - -

That's how you took it?---Yeah. And then when they actually asked me the question, "Did you pay him the money," I said, "Yes," straight away, without any hesitation.

30 Yes.

MR STAEHLI: Well, perhaps that could be brought up again.

THE COMMISSIONER: It was the first bit that came up.

MR STAEHLI: And a bit further down?---Yeah.

40 THE COMMISSIONER: (not transcribable)?---Yeah.

MR STAEHLI: So you agreed by saying, "Yeah, I was," that you were approached by Jason Kelly - - -?---That's right, yeah.

- - - to pay money to John Hart to have the matter dismissed?---Yes.

And when asked, perhaps by way of clarification, you were approached by Jason Kelly, you said, "Hmm." Do you see that?---Yeah.

Did you mean yes when you said “Hmm?”---Yes. Okay. Yeah. “What do you say about that?” I said, “Yes. Yes. I was approached by Jason Kelly to pay the money.”

Right. So when you said, “Hmm,” as recorded H-M-M on that transcript after the question, the short question, “You were approached by Jason Kelly,” you meant yes, did you?---Yes.

10 And when the next short question was asked, “Okay. To pay money?” and you said, “Hmm” in answer to that, you meant yes there. Is that right? ---Yes. I thought it was already part of the one question. I didn’t realise that you were recording my thoughts, my – you know, I didn’t realise that they were all separate questions. I just answered the question when you asked me did I pay money to Jason Kelly, my answer to that was yes.

Yes. Well, I don’t think I have any further questions in the circumstances, thank you.

20 THE COMMISSIONER: Now, firstly could I ask this question, who wants to ask any of these last three witnesses questions?

MR WALSH: Commissioner, what I’d ask is this, that obviously I haven’t had the benefit of the access to the transcript, we could only get access tonight, could I defer that decision - - -

THE COMMISSIONER: Oh, I’ll wait and see. Does anyone else want to ask questions?

30 MR NAYLOR: Commissioner, I may have a number of questions for the first witness, Mr Kelly, .... I’m not yet aware as to whether my client will be called because there’s conjecture about that. I’d prefer to know the outcome of that decision first before - - -

THE COMMISSIONER: Mr – you’re for?

MR NAYLOR: Mr Lazzar.

THE COMMISSIONER: Yes.

40 MR NAYLOR: So I’d like to reserve my right, as it were, in respect of cross-examination of Mr Kelly.

THE COMMISSIONER: Well, I – yes, I suppose Lazzar is probably – is he going to called, do you know? Have you said?

MR STAEHLI: Well, it’s become less likely than it was at the start of the day since his role is what might be called a corroborative one.

THE COMMISSIONER: Yes. I suppose it's a reasonable request.

MR STAEHLI: Yes.

THE COMMISSIONER: He doesn't know what – he's appearing for Lazzar.

MR STAEHLI: With - - -

10 THE COMMISSIONER: Well, first of all, is there anybody else who wants to ask questions/

MR McILWAIN: Commissioner, there's a matter I wish to take instructions on with my client, very short and - - -

THE COMMISSIONER: You're for Mr - - -

MR McILWAIN: Mr Kelly.

20 THE COMMISSIONER: Kelly.

MR McILWAIN: (NOT TRANSCRIBABLE)

THE COMMISSIONER: Yes. You might have to, you ought to take some instructions because my recollection is Mr Kelly's evidence doesn't entirely coincide with Mr Nankivell's.

30 MR McILWAIN: And again I'm – that I guess is there is probably some truth in that but I'm in the same difficulty with my friend as I'd like to prepare the transcript and of course (not transcribable) Commissioner, my client will be coming back into the box.

THE COMMISSIONER: Yes, that's right. They'll all probably be coming back one way or another. Well, I'm not sure about that.

MR McILWAIN: But certainly I need to take instructions and first as to whether or not to ask questions and on some of those matters.

THE COMMISSIONER: Yes.

40

MR BOWEN: Mr Commissioner, as far as Mr Nankivell is concerned, my client would like to have the benefit of reviewing his file which he can have provided to him from Wagga Wagga overnight. I'd like to preserve a right to ask some questions to him perhaps tomorrow if that's possible.

THE COMMISSIONER: Mr - - -

MR BOWEN: Mr Paul.

THE COMMISSIONER: Mr Bowen?

MR BOWEN: Yes.

THE COMMISSIONER: Sorry, sir, what do you want to do?

MR BOWEN: I would like to standover until tomorrow the ability to ask Mr Nankivell some questions, cross examine him tomorrow morning.

10

THE COMMISSIONER: Well, I'll wait and see what happens with you at, well I think I might just, it's now quarter to 4. I think I might adjourn till 10 o'clock tomorrow morning.

MR STAEHLI: Yes. Whether or not, I don't think any one of those who have recently said anything about wishing to cross-examine has referred to a desire to cross-examine Mr Trinder.

MR WALSH: I can't see any evidence, questions of Mr Trinder.

20

THE COMMISSIONER: Well I'll come to that, I mean I was really referring to Mr Kelly when I first thought of this, well first of all, but does, who wants to ask questions of Mr Trinder?

MR WALSH: I would certainly, it's likely now (not transcribable).

THE COMMISSIONER: Yes. Anyone else?

MR WALSH: Yes, I would be asking questions of Mr Trinder.

30

THE COMMISSIONER: All right. Who wants to ask, that's two, who wants to ask questions of Mr Nankivell (not transcribable) you know?

MR WALSH: Just let me get some instructions about - - -

MR McILWAINE: I (not transcribable) some instruction here that - - -

MR WALSH: Potentially yes, Mr Commissioner.

40

THE COMMISSIONER: Yes, all right, we'll ask the questions tomorrow and I'll adjourn till 10 o'clock tomorrow morning.

**THE WITNESS WITHDREW**

**[3.42PM]**

AT 3.42PM THE MATTER WAS ADJOURNED ACCORDINGLY

**[3.42PM]**