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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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AT SYDNEY

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THE COMMISSIONER: Yes. The Commission is continuing its public inquiry into the matters referred to yesterday. What I propose to do now is to allow people to cross-examine witnesses who were called yesterday. The first witness was Mr Kelly, if you would return, Mr Kelly, please.

THE COMMISSIONER: Mr Kelly, would you please remember you're still under oath?---Yes.

And the directions I gave you yesterday still continue to apply. Do you understand that?---Yes.

10

So who wants to cross - - -

MR McILWAINE: If I could just make the – and the declaration about objection continues as well.

THE COMMISSIONER: Yes, that continues too, yes.

MR STAEHLI: Might I just ask one or two more questions of Mr Kelly arising out of what happened yesterday?

20

THE COMMISSIONER: Yes.

MR STAEHLI: Mr Kelly, were you present in the hearing room yesterday afternoon when Mr Nankivell gave his evidence?---Yes, I was.

And you will have heard then what he said about the approach which you made to him in respect – following the conversation you had with Mr Hart and the proposition about payment of \$15,000?---Yes.

30

Did, having heard what Mr Nankivell said, and I can repeat it if necessary, do you – let me put it another way. Did you say anything to him, that is Mr Nankivell, at the time that you were talking to him about this matter seeking to get some money from him about the proposition as you understood it that there were to be payments to others, that is, to outsiders? ---Yes.

You did do that?---Yes.

40

THE COMMISSIONER: What did you say to him?---I told him that Mr Hart was going to be paying the money to somebody at the DPP.

MR STAEHLI: Whereas you heard Mr Nankivell say that his understanding was that the money was to be paid for legal expenses it seemed for Mr Hart?---Yes, I heard that from - - -

I gather from what you've said that you don't accept that Mr Nankivell's recollection was accurate?---No, I do not.

Right. Thank you.

THE COMMISSIONER: Now, does that finish the matter you wanted - - -

MR STAEHLI: Yes.

THE COMMISSIONER: Who wants to ask questions? Yes, you do. I'll just see the order, yes, yes.

10 MR SIVA: Commissioner, I need to reserve my position in relation to cross-examination. My client is not physically in Sydney.

THE COMMISSIONER: Sorry?

MR SIVA: My client's not physically in Sydney and I haven't had the opportunity to have any physical conference with him about what was said yesterday.

THE COMMISSIONER: Was the phones out of order?

20

MR SIVA: No. I have spoken to him on the phone. The other thing is I don't know whether he's actually going to be called at the inquiry.

THE COMMISSIONER: Well, I don't know why - why are you telling me this?

MR SIVA: Just to reserve my position in relation to cross-examination.

30 THE COMMISSIONER: Well, when you say you reserve your position, you mean you may be applying later on to cross-examine this witness. Well, we'll deal with that application when it's made but bearing in mind he is here now and you are here now so that will be taken into account if you wish to have any further cross-examination later on. Yes. Now, I just want to get you in order. Mr - - -

MR WALSH: Walsh.

THE COMMISSIONER: - - - McIlwaine, first of all, you can go last, of course if you want to ask questions. Yes, Mr Walsh, you're for Mr - - -

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MR WALSH: Mr Hart.

THE COMMISSIONER: - - - Hart. I think you can go first. Yes.

MR WALSH: Thank you, Commissioner.

Mr Kelly, yesterday during the course of your evidence you said at varying times that your memory was if you were like in a coma. Do you remember

saying that?---No. I actually referred to the fact that I was actually in a coma.

I see. So could you just explain what you meant by being in a coma or feeling like being in a coma?---What I said that my memory wasn't 100 per cent accurate on all details - - -

10 Yes?--- - - - and because I had had a head, a head injury but – yeah, that's all I was saying. That I, I just, I wasn't, I wasn't great on remembering dates and those sorts of things. My memory's pretty good as far as details go but getting down into the minute specifics of things I struggle with some things like remembering what I did on a day two years when I don't have access to my records and stuff. Like, I wouldn't be able to tell you what day I went to the bank if I didn't have my bank statement was what I meant.

You mention that you had a head injury. Are you saying that you were in some accident or you actually suffered - - -?---Yes. I was, I was hit by a car.

20 All right. Okay. And were you admitted to hospital as a result of that accident?---I spent a month, a month or two in hospital.

All right. And as a result of that accident and that injury, did you suffer an injury to your brain?---Yes.

Okay. And you've attended upon a psychologist and a psychiatrist and - - -? ---Yeah. I, I spent some time in the brain rehabilitation clinic after I was released from hospital.

30 All right.

THE COMMISSIONER: Well, when was that? When did that happen? ---Two years ago yesterday.

Yes.

MR WALSH: And you were actually in the brain rehabilitation unit?---Yes.

40 Where was that at?---In Albury.

Albury. Now, could I just move on to your relationship with Mr Trinder. How long have you known Mr Trinder for?---Since we were kids.

All right. So you're life-long mates?---Yeah.

All right. And you both grew up in the Wagga district?---From Cootamundra, yes.

All right. Both went to high school together?---No. He went to the Catholic school, I went to the, to the primary school.

Yes. But you're drinking mates, is that right? You go to the pub together, have a drink, things like that?---Yes.

Now, yesterday there was evidence in relation to complainants who were identified as X and Y. Is that correct?---Yes.

10 Right. Now, in relation to the trial in which Mr Hart represented you, that was in relation to complainant Y. Is that correct?---Yes.

All right. In respect of that trial, which was conducted at the Wagga Wagga District Court, there was a co-accused called McCauley?---Yes.

Right. Was Mr Trinder a witness in that case?---Yes.

I see. To your knowledge, were you aware whether Mr Trinder had in fact been involved in another prosecution that's not involving you in relation to  
20 another complainant who I'll refer to say as Z?---No.

You're not aware of any other matter in which Mr Trinder was an accused or a defendant - - -?---Not, not - - -

- - - at Wagga Wagga involving another complainant that's not been referred to?---No.

Okay. All right. Now, in relation to Mr Trinder, he wasn't represented in the course of your trial because he was a witness. Is that correct?---Yes.

30 All right. Do you know whether he had provided a statement to the office of the DPP in any way in relation to the prosecution of you and McCauley? ---Chris was facing, Chris had been through another court process in relation to that case - - -

Yes?--- - - - that, that was thrown out. Well, the judge discontinued it. I don't know whether he provided any statements or gave evidence. I assume he did.

40 All right. Well, just to clarify that, when I referred to another complainant is it the case that in fact Trinder, Mr Trinder was originally a defendant with you and McCauley in the matter involving complainant X, Y, sorry?---Yes.

Right. O.K.---But I don't know who Z is.

No, I'm not, I'm just clarifying that it was the complainant that you and McCauley were involved in the trial at Wagga. Is that correct?---Yes.

THE COMMISSIONER: Mr Walsh, what you're saying that Trinder was charged too was he?

MR WALSH: He was. I'm just clarifying that, Commissioner. I obviously to extent have been mistaken that it may have been another complainant, but I've now ascertained that it was in fact the same complainant. Is that right?  
---That's correct.

10 Okay. All right. Now, and Mr Trinder was discharged at the committal hearing. Is that right?---No, he wasn't.

No?

THE COMMISSIONER: Did he stand trial with you?---No. He wasn't indicted. He, the charges he faced were downgraded. I don't know the terminology, Mr Commissioner. Um, he faced lesser charges at the local court and it was discontinued at that time. I think the judge threw it out. I don't think it even got - - -

20 Was it relating generally to the circumstances that, into the charge that you faced?---Yes. Yes.

MR WALSH: Do you know who his lawyer was in respect of those charges? First of all his solicitor, did he have a solicitor?---From memory I think it was that, I'm sorry, Austin McLeay, I think, from Wagga Wagga.

Now how did you come to be involved with Mr Hart? That is how did you come to instruct - - -?---Mr Paul, my solicitor engaged Mr Hart on my behalf.

30

All right. So prior to the criminal proceedings involving the trial at Wagga Wagga, you'd not previously been involved with him in any way? You hadn't (not transcribable) a case with him at all?---I'd never in a case. I'd met him once socially at Wagga Swimming Club. But, no, but never legally.

All right. And the situation was that Mr Paul instructed him. Is that right?  
---Yes.

40 Okay. Now, do I take it that you had a good professional relationship with Mr Paul?---What, what do you mean by that? What's your definition of a good relationship?

Well, what I'm, what I'm asking you is this, that so far as you were concerned in the course of the trial and leading up to it, you regarded him as a good criminal lawyer, as a (not transcribable) advocate?---Yes, very much so.

Someone who you could trust?---Very much so.

And he was the one who recommended Mr Hart. Is that right?---That's correct.

And did you understand that Mr Hart had previous experience as counsel in criminal trials and serious matters of that nature?---Yes. Yes.

10 All right. Now, leading up to the trial did you have occasions to meet Mr Hart?---Yes.

Professionally, did you meet him - - -?---Yes, I met him.

- - - in preparing (not transcribable) and having conferences?---At Mr Paul's office, yes.

Right. And did you have any difficulties in your relationship with him? How did you get on with him?---Got on fine. No problems at all.

20 And in the course of the particular trial did you come to the view that he was someone who represented you appropriately during the course of the trial?---I think he did an outstanding job.

He did an outstanding job?---Absolutely.

Right. Now, I want to ask you some questions which may relate to, Commissioner, another aspect of this matter. But I would like to raise some questions about that.

30 THE COMMISSIONER: Well, you start asking the questions and I'll - - -

MR WALSH: Thanks, Commissioner.

THE COMMISSIONER: - - - say whether you can do it.

MR WALSH: All right. So far as your relationship, professional relationship with Mr Hart was concerned, did you ever receive any cost disclosure or cost agreement from him at any time?---Not a cost agreement, no.

40 All right. A cost disclosure document?---I got a, I don't know what a cost disclosure document is. I got a cost estimate at the start of my trial, yes.

Right. Okay.

THE COMMISSIONER: What was that? You got an estimate when?---I got an estimate before the trial commenced from Mr Paul, which included scheduled fees from Mr Hart. It was an estimate of expenses based on the

fact they thought the trial would take five days and had, it was subject to review.

And was that estimate in writing?---Yes.

MR WALSH: So in relation to Mr Paul (not transcribable) by this, did you, you got a disclosure from him, which annexed document purporting to be from Mr Hart. Is that right?---Yes.

10 Okay. Did you also get another document, being a cost agreement from Mr Paul?---No.

All right. So you got a disclosure document, what you understand to be an estimate?---Yes, that's correct.

Now if I just ask this, that in relation to the estimate, did you understand that the situation was that the estimate was based at that time upon variables such as the estimated length of the trial?---Oh, amongst, absolutely. I figured that it, I knew that it was based on the length of the trial and as I  
20 said, I knew it was subject to review because it was still had to be determined, all the actual expenses and disbursements and other travelling expenses and those sorts of things.

MR WALSH: Well, that's what I'm seeking to clarify, Mr Kelly, whether in your mind, I'm asking you of your state of mind in regard to the documents you received, discussions with Mr Paul. You didn't regard the situation at that time as getting a fixed quotation for provision of legal services?---No, certainly not. Certainly not.

30 It was something that was a little bit ill-defined, depending upon variable such as the length of trial?---Very much so. And I knew it was subject to review and it would be, depending on how long the trial took and a whole range of other factors. That's correct.

Okay. Prior to the commencement of the trial, did you have any discussions either with Mr Paul firstly or Mr Hart about the costs, the fees?---Oh, just that I said that it was, I forget the actual terminology, but I said that it was ridiculous that I was being forced to pay so much when I'd done nothing  
40 wrong. That's the only sort of reference I made to that, was about the fact that I should never have been dragged into that process and was having to spend so much money.

Well, on that topic, it's apparent from your evidence and that, and don't agree with this if you dispute it, that you perceived yourself as someone who had been selected out, as it were, by the investigating police. Is that right?---Most definitely.

A target?---Yes.

Your relationship with Detective Hall, I gather there's no love lost between you and her. Is that right?---Certainly not.

You regarded her as someone who was acting quite maliciously towards you?---Very much so.

Right.---And up to the point where I believe that the whole case against me was bordering on vexatious.

10

You use that term vexatious, but you mean in effect, where a police officer was out to get you?---Most definitely. Malicious prosecution.

You, yourself were involved not only with the complainant X in the allegations involving her, involving as you say, consensual sex with other men as well. Is that right, that have been present at the same time and involved and Y. Is that right?---Yes.

20

So in both cases they were cases in which you were involved in joint consensual sexual activity with those complainants. Is that the correct situation?---That's correct. Yes.

30

Right. And you had heard, as you indicated I think, that Detective Hall was interviewing or contacting other women seeking to encourage them to make a complaint against you?---That's correct. Miss X rang me and told me that Detective Hall had told her that, had encouraged her to make a complaint and had contacted her and told her that, that she was interviewing other women and those sorts of things. I contacted Detective Hall and she said, "Well, no, I didn't, didn't tell her that." And I said, "Well how would she know?" And Detective Hall said, "I don't know how she knows that." And when I was interviewed, Detective Hall had the name of another woman that I'd slept with sitting on a piece of paper on the table in front of me but never made reference to it. I think, I formed the impression that she was trying to tell me quick explicitly that she, that she knew what I'd done and she was actively making a case against me. And that other person came and told me that Detective Hall had contacted her and said, "We can't stop him doing these sorts of things unless people like you make a complaint. Do you want to get charges laid against him?"

40

THE COMMISSIONER: Mr Kelly, just answer the questions if you wouldn't mind.---I thought I was, Commissioner.

Well, you went well beyond answering the questions, but however - - -?---  
Well, the question was - - -

No, no, no. Just answer the question.---Okay.

MR WALSH: Mr Kelly in relation to this topic in respect of your perception of ill-will towards you, was it not the case that in relation to the particular complainant, I think it's X, that's the one that you're saying Mr Hart spoke to you about, that you had a body of evidence that pointed to consensual sexual activity between yourself and her. Is that right?

---Absolutely. I had a number of emails and cards that she'd sent me.

10 All right. And I think that you did mention during the course of your evidence yesterday, and correct me again, is that there was something inferentially to do with your sexual prowess in respect of a card. Is that right?---That's correct.

Right. And that in your mind clearly indicated that the activities that you were involved with, sexual activity, was entirely consensual?---Most definitely.

20 Right. Now, you knew, did you not, well before the trial involving the complainant Y that there was an investigation, I'll withdraw that, there was a complaint about you to Detective Hall?---Yes.

And were you worried about that?---Of course I was worried about it. I knew that I'd done nothing wrong and I figured that I had enough evidence to be able to show that I'd done nothing wrong. But, of course I was worried about it, yes.

Is it something that is, that there was an investigation that you conveyed to Mr Hart and Mr Paul, you told them about it?---Yes.

30 Right. Did you speak to Mr Hart about the body of evidence that you had including the communications, the messages, text messages and the card?---I think so, yes.

Yeah. What was his response to that body of evidence? What did he tell you about that?---He actually, he asked me where I meet them, he said, "Where do I meet girls like this?" And then said that, to keep hold of all that, it was good to have.

It was good insurance, wasn't it?---Very much so.

40 Ultimately, was that material made available to Detective Hall?---Yes.

At what stage was that material made available for the first time by you? ---After I found out that, that, so after Tina Hall contacted me and said she wanted to interview me formally, I prepared a statement and then put all that evidence together and provided the whole lot to the police.

THE COMMISSIONER: But you asked when.

MR WALSH: I asked - - -

THE COMMISSIONER: When.

MR WALSH: When did you do this? When did you give it to her?---When I was interviewed. It was - - -

THE COMMISSIONER: Yes, but when, the date?---I don't know the date. It was after my trial but I don't know the date.

10

How long after your trial?---Couple of months.

MR WALSH: So in effect, I suggest to you that you took up the advice that Mr Hart gave to you to make sure you keep this body of evidence available to produce at the right time?---Yes, I did.

And it was very effective when it was produced to the investigator because it raised squarely that you had consensual relations with the complainant?---Yes.

20

Now, the situation was that you knew that the monies that you'd paid to Mr Paul were not likely to be adequate to cover for the trial. Is that right?---Very much so.

And that during the course of the trial - - -

THE COMMISSIONER: You're talking about the money now that was paid before the trial?

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MR WALSH: Before Commissioner, yes. Thank you, Commissioner. So the situation is that you knew that that money wouldn't be adequate to cover all the fees. Is that right?---Yes. In fact, Mr Hart and Mr Paul were both very good to me during the trial, my co-accused was forced to borrow some money off some family friends to pay to, for the continuation of his legal representation during the trial but Mr Hart and Mr Paul allowed me to finish the trial.

40

Thank you. And the situation was that Mr Hart raised with you, well look, you know, we're going to have to get a top up, aren't we, you know, he raised that with you?---Yes, yes indeed.

Yeah. And in respect of those, that discussion or discussions, do you know how much if any he asked or was there any discussion about the quantum of the amount that had to be topped up or additional fees?---No, because we didn't know, I didn't know how much longer the trial was going to go. This conversation took place on perhaps the Thursday or Friday during the week and we knew that the trial was going to go into a second week so we didn't

know how long it was going to be so he wasn't in a position to tell me how much extra it was going to be.

All right. Well, I'll approach it this way. Towards the end of the first week, it was apparent that the trial before his Honour Judge Norrish and the jury was not going to complete in that week?---Yes, that's correct.

So Monday to Friday, that was about five days, all right?---Yes, thank you.

10 So your counsel and solicitor had discussions with you about the need to give you a notice that you might have to pay additional fees. Is that right?--  
-Yes.

Right. Was it your understanding that Mr Hart initially had been paid an amount of about \$2,500 a day inclusive of a country allowance or a country city. Do you understand that?---Yes.

Is that right in relation to the amount as well, that twenty five hundred?---  
Oh, I, I don't recall that. ICAC have all of my documentation, all my  
20 paperwork but I'll take your word for it.

THE COMMISSIONER: Sorry, what was that question again, Mr Walsh?

MR WALSH: I'll ask it again. Was it your understanding that in effect there was a daily rate that Mr Hart was charging by way of the first estimate, around \$2,500 inclusive of an allowance that - - -

THE COMMISSIONER: Loading.

30 MR WALSH: Loading?---I don't recall the quantum but yes.

THE COMMISSIONER: But was that, was that on this estimate that you had been given in writing?---From memory, I think it was, yes.

MR WALSH: And was there any suggestion or discussion either by Mr Paul or by Mr Hart that there would be an additional \$1,000 a day as it were to be paid to Mr Hart?---Not that I, I don't recall that.

All right. The trial went for an additional two days to the Tuesday when the  
40 verdict of not guilty was reached. Is that right?---Yes.

Okay. On the Monday or the Tuesday was there any further discussions with you or Mr Hart or Mr Paul about any additional fees to be paid to Mr Hart?---It was just that, that there would be money payable but I don't recall any, any discussions about how much or anything because as I said, once again, at that point I didn't know how long it was going to go.

THE COMMISSIONER: I think you were asked though by the time it finished, the next week, the end of the week?---Well, I'm questioning of the week was on the Monday or the Tuesday.

Yeah. So on the Monday or the Tuesday, was there a discussion?---During the morning - - -

No. Well, if the trial was still going on the Monday, was it?---Yes.

10 Well, on the Tuesday, was it still going?---Yes.

The Wednesday?---It concluded on the Tuesday.

Well on the Tuesday and when it concluded, was there any discussion, I think you're being asked, about whether or not any more money was likely to be owing in respect of your representation on that trial?---Yes. I, I, I thought I'd answered that.

20 For what?---I didn't know what the amount was, I just knew that there was more money payable. I don't recall dollar figures ever being discussed. It was just that, it was said that more money was owing because the trial had gone longer and that I would get a bill for it.

MR WALSH: You see, I asked you some questions earlier about your memory of things and I don't mean to be critical, Mr Kelly, but is it the case that in combination of the inflexion of time and the problems you've had with your head injury that these, that your memory of these things is cloudier and that it's difficult for you to recall exactly what was said if any, at any particular time?---I don't recall the actual words of every  
30 conversation but I remembered most, pretty much everything that had happened. You're asking me whether there, ever there was a dollar figure discussed. I don't recall a dollar figure being discussed. That's got nothing to do with my memory problems. I just don't think there was any discussion about how much money was payable and whether there was another thousand a day or what it was.

40 Well, I'm suggesting to you that Mr Hart raised with you the need for you to come up with additional funds of about \$1,000 extra a day because the trial had gone over to the following week and there was an allowance for preparation and things of this nature. Do you remember those matters being discussed with you?---I remember the discussion indeed but I, I don't recall there ever being a dollar figure assigned to it.

THE COMMISSIONER: So I suggest from what I understand what you're putting, Mr Walsh, are you saying that there was a statement made to him that in respect of the daily figure, that would then go up from two and a half thousand to three and half thousand because the trial took longer than the five days previously anticipated.

MR WALSH: Commissioner, what I understand the position to be, it's best I raise in cross-examination, is this, that what occurred was that there was a rather ill defined method of disclosure in this particular case. In a perfect world, it should be written disclosure, certainly on the part of the solicitor and all the Ts crossed and is dotted. One of the issues that arose was the length of the trial. Normally, they thought it was going to be four or five days, it went seven days. And I'm taking this witness to discussions that he had with the solicitor and Mr Hart about topping up or being liable - - -

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THE COMMISSIONER: Yes, because it went too long.

MR WALSH: - - - but it was a question of disclosure because it went too long and then there's another component which I'll come to in relation to the application for costs, so that's where I'm coming.

THE WITNESS: And I'm, and I'm agreeing with you, I'm saying yes, we had that - - -

20 THE COMMISSIONER: You are or are not, but I'm just having a discussion at the present time with Mr Walsh, so yeah.

MR WALSH: Mr Kelly, could I just explain this, with respect. The Commissioner was seeking to ask me something and when the Commissioner is asking myself something, if you can just wait until that discussion is finished and then I'll resume asking you questions. Is that all right?---Sure. My apologies, Commissioner.

30 MR WALSH: Thank you, Commissioner.

THE COMMISSIONER: That's all right.

MR WALSH: The trial finished on the Tuesday and I suggest that you would have been rather euphoric or happy that the verdict came back as it did?---Yes.

Your position was very much vindicated?---Yes.

40 Right. So over you go the pub to have a drink, a celebratory drink. Is that right?---Yes.

Was your mum and dad with you?---Yes.

And was there anybody else with you?---Couple of friends.

Who were they?---Glenn Lazzar was there, a guy by the name of Colin Taggart and then a few, a few other friends joined us. Michael was there, obviously, my co-accused and his sister and his mother.

Okay. So there's quite a number of people present. Is that right?---Yes.

And John Hart?---Yes.

Right. Okay. And were you all at a common table having a drink and talking about - - ?---Yes.

10 The conversation that you related yesterday between you and Mr Hart, where were all these other people when you were talking to Mr Hart?--- They were sort of, everyone was arriving at the same time. This, this conversation took place as we, basically as we arrived the pub and people were still taking their seats and sort of starting to form up the tables.

Well, you didn't say that yesterday, did you?---Nobody asked.

I see. Whereabouts did it take place, this conversation with Mr Hart?---An outdoor seating area.

20 Right. You see, when you left the court complex do you recall seeing Mr Hart speaking to the detective, that's Detective Hall?---I, I, as soon as the verdict and we were just, we were, I don't know, discharged or whatever the word is - - -

Discharged, yes.---? - - Yeah, I went straight to the back of the courtroom with, where my family, where my mum and dad were. I didn't see where Mr Hart went.

30 Right?---He came up to me as we were leaving the courtroom. That's when he said, "Let's go and have a beer."

Right. And I suggest to you that one of the things that you were concerned with was Detective Hall, weren't you?

MR McILWAINE?: It's a question of when?

THE COMMISSIONER: Sorry - - -

40 MR WALSH: When you went to the hotel you were concerned about her still, weren't you?---No, not at all.

Well, see, I suggest to you that your relationship with Detective Hall was, and I'm taking you to your state of mind, was really bordering on the obsessional, wasn't it?---No.

You hated her?---No.

Well, you - - -?---I, I said, I, I didn't form those feelings for her until after I found out that well, after Mr Hart had said to me that she's coming after you and she's not going to stop until she gets something on you. I had no cause to even consider Tina Hall at that stage because as far as I was aware, someone had made a complaint. I had enough evidence to get me off if, if it ever went anywhere. I had nothing to worry about. It wasn't until Mr Hart came and told me that she wasn't going to stop until she got something on me that I, that I formed that view about her.

10 Was she, was she the informant in the trial that you've just been involved in?---Yes.

And as far as you were concerned you were absolutely innocent in that trial?  
---Yes.

Unfairly charged?---Yes.

Unfairly prosecuted?---Yes.

20 And she was the architect of it all, wasn't she?---Yes.

And you knew at that stage that behind it all was this earlier complaint about the other complainant?---Yes.

30 You're seriously suggesting you weren't worried about her?---Well, I – as I said before, I said I was worried about it, of course, but I wasn't overly concerned because I knew that I'd done nothing wrong and, as I said, I had all those emails and everything from the – from that other person. In my mind there was nothing, there was nothing for me to be seriously concerned about because I wasn't aware that it was – I was going to be facing charges. I hadn't been asked or been interviewed about it or anything like that and it wasn't until Mr Hart told me that, that, that she said that she's coming after me that I formed those, that major concern.

So it was all Mr Hart's doing. Him raising that matter caused you to have all your concern at that time. Is that right?---Absolutely.

I see. Now, at that stage you were absolutely flat broke, weren't you?  
---Yes.

40 Right. You were indebted, I don't put it in the financial context, but you were indebted to Mr Hart in the sense that he'd ably represented you at the trial?---Yes.

Right. And you well knew that you were responsible to come up with extra fees to pay Mr Paul and to pay Mr Hart?---Yes.

And do I take it at that stage the only source upon which you could come up with any moneys would be to ask friends for it.

THE COMMISSIONER: Sorry, I didn't catch that.

MR WALSH: To ask friends for it, to borrow it?---At what point in time are you talking, sorry?

After Mr Hart raised this issue in the pub?---Yes.

10

Where were, where were you going to get the money to pay the fees to Mr Hart and Mr Paul?

MR McILWAINE: Well, Commissioner, I object to that question because - - -

THE COMMISSIONER: Look, I'm inclined - - -

20

MR McILWAINE: - - - it's linked to a question about fees and the conversation (not transcribable).

MR WALSH: I'll rephrase it.

THE COMMISSIONER: Yes, yes, yes (not transcribable) yes.

MR WALSH: I think that's fair.

30

What I want - what I'm suggesting to you is this - I'll break it up. You knew that you were going to have to pay moneys to Mr Paul and in effect Mr Hart in addition to what you'd already paid?---Yes.

THE COMMISSIONER: For the trial that was conducted?

MR WALSH: For the trial that had been conducted?---Yes.

40

Now, where were you going to get the moneys to pay them?---I hadn't really put too much thought into it at that time. There was some money that was owed to me by my girlfriend at the time and until I received a bill or I was actually asked to make that payment I hadn't really put too much thought into it.

And I'll come back to the question, the second part of the question. At that time your financial position was not good?---No.

You made that clear yesterday?---Yes.

You were flat broke?---Yes.

Right.

THE COMMISSIONER: Sorry, just so I follow this, Mr Kelly. I think you're telling me that you didn't apply your mind to that on the Tuesday because you hadn't got the bill, you didn't know - - -?---That's correct.

10 - - - how much it was. When did you get the bill where you – did you get a bill in which you were told how much extra it was going to be?---The, the only time, the only other bill I ever got was after the costs certificate was awarded. That's when I received the bill, at no stage before that. That's why I didn't put my mind to where I was going to pay the bill because I hadn't been issued with one.

MR WALSH: Yes. All right. Okay. So the situation was you say you didn't apply your mind to having to pay Mr Paul any more moneys or Mr Hart because that would come when a bill was ultimately sent to you? ---Yes.

20 All right. Okay. Now, what you say is in effect that Mr Hart made representations to you that he could make the case go away if you paid him \$15,000?---Yes.

Are they the exact words he used?---I don't recall the exact words but, but that's the effect of what the conversation was, yes.

Right. Do you recall if you and him were talking about Detective Hall being determined to, as it were, prosecute you and the others and in particular you?---Yes.

30 He mentioned that, didn't he?---Yes.

Yes. And at that stage you became very concerned?---Yes, indeed.

You'd agree. Right. And the agreement that you say that you entered into was basically I'll pay \$15,000 to this barrister so he can make everything just go away. Is that, is that your understanding of how - - -?---Yes.

It was?---Yes.

40 Right. So the conversation that you had with him was not in the presence of any other person?---No.

Your mum and dad weren't there?---No.

None of the friends you've talked about?---No.

No one else within earshot?---No, because he, he deliberately called me away from everybody else to have this conversation.

Did he?---Yes.

You didn't tell us about that yesterday, did you?---You didn't ask, nobody asked. All I said was we had a conversation, me and him, at the pub. Nobody said how did you come to be standing next to him.

10 Yes. And anyway, what then happened was that you what, spoke to Mr Trinder or was it your girlfriend Karen, your former friend Karen?---At what time? About what?

After Mr Hart spoke to you - - -?---Yes.

- - - who did you approach next? Was it Trinder or was it your girlfriend? ---Neither of those.

You didn't speak to them at all about it?---No.

20 I see. Okay. Well, what did you do about organising the money?---Well, I didn't speak to them there and then at that time.

THE COMMISSIONER: No, but just listen to the question. You were asked when did you speak – well, I was about to ask this, when did you speak - - -

MR McILWAINE: Well, could I say, the question was who did you speak to next, Commissioner.

30 THE COMMISSIONER: Yes, I know, I know.

But what you're being asked now is when you started to discuss – did you discuss with anybody how you were going to raise the money to pay Hart? ---Yes, I did.

All right. That's what you're being asked.

MR WALSH: Look, a day or two later according to you you spoke to Mr Trinder?---Yes.

40 Right. But it wasn't in person, it was on the phone, wasn't it?---That's correct.

Right. And what did you tell Mr Trinder?---Basically what, exactly what Mr Hart had said to me, that, that Tina Hall was coming after me and we could make it go away if we, if we made a payment to the DPP.

THE COMMISSIONER: That's what you said to Trinder, is it?---Yes.

MR WALSH: And you definitely said to Trinder it would go if we make a payment to the DPP?---Oh, I, I said we make the payment to John Hart and he, that he had a contact at the DPP. I had spoken to both Lazzar and Karen Wright before that. I just wanted to put that into the timeline.

10 THE COMMISSIONER: Well, I just want to get this clear, Mr Kelly, what you're saying took place at this conversation. Are you telling me the conversation you had with Trinder was that Hart told you that he could make it go away by giving money to someone from the DPP or that he could make it go away because he had contacts with the people in the DPP?---It was to make a payment to somebody at the DPP.

You're sure about that, are you?---Yes. Because that, because that, because at the time when Mr Hart put that proposition to me it was that the first \$10,000 went to the person at the DPP and he'd get and he would have the other 5,000 for arranging it.

20 Yes, I appreciate that. I'm just concentrating on what you told Trinder on the telephone?---Yes and I told Trinder the exact same thing.

MR WALSH: You see, can I just take you to a question you were asked by Mr Staehli yesterday and I'm not talking about the conversation with Mr Trinder here. At 15 of the transcript at 40, Commissioner, if I take the witness to a page I'll identify it, page 15 of the transcript, line 40?---Thank you.

30 You see at line 40, "And was there any discussion then about how the matter might be made to go away?---Yeah. I asked him. I said, What do you mean you can make it go away? And he said, Well, I can make a payment to some people. He goes, I can make a payment and make it go away." Do you see any reference to the DPP there?---No.

When Mr Hart, according to you he had this conversation with you at the pub, do you say he specifically referred to the DPP or not?  
---At that time, no.

40 Thank you. So when you spoke to Mr Trinder, you're not seriously suggesting that he, Mr Hart, had told you that he was going to make a payment to the DPP are you?---Yes, indeed. I'd spoken to Mr Hart the next day as well, before I called Trinder.

You spoke to him the next day, where?---I can't recall whether, where it was, but that's, but that's the whole conversation we had about, that he didn't think I could come up with the \$15,000. And he agreed to accept the lesser payment of twelve. And that's where the, I think the reference to the DPP came.

I see. So after the conversation at the hotel, there was another conversation the very next day with Mr Hart at Wagga Wagga?---Yes. I think it was by telephone.

Well, wasn't there an application before the court on that day?---Yes.

Relating to an application for costs under the Costs and Criminal Cases Act?  
---That's correct.

10 All right. Were you at the court on that day?---No.

Righto. So you spoke to him you say on the phone?---Yes.

Do you know when it was? Was it in the morning or - - -?---No, I don't recall.

20 Righto. And you say there was a conversation about what, reducing the amount?---Because I told him I couldn't come up with \$5,000, because everything I had and all the avenues I had to get any money, I'd already used to fund the trial to that point. Because as I said, I'd borrowed money from the bank and I'd sold my car.

Right. Are you sure that the next day you had this conversation about the reduction of the amount from \$5,000 to \$2,000 with Mr Hart?---Well, I think, as I said, as I said yesterday with my phone call to Trinder, it was in the couple of days after the verdict. I don't remember whether it was the exact next day.

30 But look, Mr Kelly, I just asked you a simple question and you volunteered that it was the next day. Then I clarified, I'll take you to it, and we're shifting away from the next day?---Well, I think it was the next day. You think it was the next day?---That's what I said. I've already said that.

Are you sure it occurred at all?---Yes, it did.

At this stage, have you spoken to Trinder about it, the next day? By the next day, have you spoken to Trinder on the phone about what Hart had told you?---I think it was the next day or the day after that.

40 Now, it's the day after?---No, the evidence I gave yesterday, was that if it wasn't the day after the verdict, it was no more than a couple of days.

And what about your girlfriend, the \$2,000, from Karen White?

THE COMMISSIONER: But what was the question?---What, what about it?

MR WALSH: The question is, when did you speak to her for the first time about getting \$2,000 from her?---I don't recall the date I spoke to her. As I said, I'd spoken to Lazar and Karen after Hart put that proposition to me and, and then it was within a couple of days after that that I told Karen I needed to come up with some money. And she said that she'd, she'd transfer \$2,000 back to me, because it was money that I'd previously lent her.

10 Right. So, the situation is that you've spoken to Trinder about the \$5,000. You say you mention about the DPP to him?---I think so, yes.

You think so. Because you think that you may have spoken to Hart the next day or the day after that?---I don't, I don't recall what day it was, but, yes.

All right. Now I asked you some questions earlier about your solicitor, Mr Paul and you told me, you told the Commissioner that he was a very competent, experienced lawyer?---Yes.

20 The conversation that you had with Mr Hart in the pub, and the next day or the day after, you would've raised this with Mr Paul wouldn't you?---No. Mr Hart said to me, "Don't mention this to AP", specifically.

THE COMMISSIONER: I beg your pardon?---He told me, "Don't say anything to AP about it". AP being Mr Paul.

Did you give any evidence yesterday about what Mr Hart said to you, don't tell AP?---Nobody asked me anything about it.

30 MR MCILWAINE: (not transcribable)

THE COMMISSIONER: Well, no, no. No, it's all right. Mr Walsh - - -

MR WALSH: Yes, your Honour.

THE COMMISSIONER: - - - it's pretty clear what he said yesterday or didn't say. What you are saying is that he should've volunteered this information in the absence of being asked.

40 MR MCILWAINE: Well, I have a further.

MR WALSH: All right. I'll go about it another way.

MR MCILWAINE: Can I just - - -

MR WALSH: All right. Go on.

MR MCILWAINE: Mr Walsh doesn't have the advantage of my client's private evidence. And he's putting to, back on to the witness, he's never raised that matter.

THE COMMISSIONER: Well, I thought that (not transcribable) do not want to discuss this matter that you're about to discuss Mr - - -

MR MCILWAINE: All right.

10 THE COMMISSIONER: No, I won't just go on.

MR WALSH: Is it your evidence that you didn't think to raise with Mr Paul what Mr Hart had said to you?---Yes. He told me not to.

THE COMMISSIONER: Mr McIlwaine, I'll hear a submission from you if you want to make one, but what was said at a private hearing should be now be made public. Anyway, you can think about that.

MR MCILWAINE: It's just that - - -

20

THE COMMISSIONER: You can think about that in the meantime. Yes, but go on.

MR WALSH: Well, Commissioner, if can just indicate this (not transcribable) position I'm in, I don't know what's said.

THE COMMISSIONER: Well, you don't have to.

MR WALSH: I don't have to.

30

THE COMMISSIONER: That's why I'm allowing you to go on.

MR WALSH: Anyway, so the situation is that you've spoken to Trinder, you've spoken to Miss Wright and you're going to get \$5,000 from Mr Trinder and \$2,000 from Miss Wright. Is that right?---And \$5,000 from Mr Nankivell.

Well, in relation to Mr Nankivell, when was the first time you spoke to him? ---Once again, it was a day or two after the trial.

40

Right. Your relationship with Mr Nankivell, was it of the same nature as it was with Mr Trinder? Were you lifeline long buddies?---No. No. I'd moved into the street probably six, twelve months earlier and got to know him basically by living in the street fifty meters from him. We'd been to the pub a couple of times and I'd sat with him at a trivia night, but that's about it.

All right. So he was just a mere acquaintance?---Yes.

Yet he was also someone who'd been accused by complainant X?---That's correct.

All right. Now, did you speak to him at his home or (not transcribable) telephone, that's Nankivell?---I rang him and I needed, I rang him and said I need to talk to you. And then he came down and we stood at the front of my house.

10 Right. And what did you tell him?---That basically once again, that Mr Hart said that the police were coming after me and that we could make it go away by making a payment.

Right. A payment to who?---I don't recall whether I said DPP at that time. I just said make a payment to someone.

All right. You heard his evidence yesterday that he indicated there was a term, I think it was representations that Mr Hart, as he understood from your conversation with him, that (not transcribable) representation (not  
20 transcribable)?--- I never used that word.

You never used that word?---No.

Right. You've heard the term from Mr Nankivell yesterday and from me today, representations, that is making representations for someone?---Yes.

Right. Was it your understanding at any time in your discussions with Mr Hart as to whether Mr Hart had indicated to you that he would make in effect some representation to a Crown Prosecutor or the Office of the DPP?  
30 ---No. It was never representation, it was, it was (not transcribable) to me that it was a straight out payment so when the brief evidence hit his desk, the DPP, it wouldn't go any further, it wouldn't proceed.

THE COMMISSIONER: But is that what you say you told Nankivell?  
---No. That wasn't the question.

I thought it was actually.

MR WALSH: Did you Nankivell that?---I don't recall whether I told him in  
40 those specifics. But I recall saying to him that, that Hart was going to make the payment to somebody so it wouldn't proceed.

So in effect what you're saying is that the barrister, Mr Hart had suggested to you and can disagree, that well, I'll pay money to a public official, the DPP, a solicitor or, did he mention a Crown Prosecutor or someone?---Yes.

And make it go away?---Yes.

So, you're saying he said he'd go and bribe someone?---He didn't use the word bribe, but, yes, in effect.

That's what you understood. That's not beating around the bush, that's the situation?---Yes.

So you rock up to your friend, Nankivell, you say to him, look I want you to give \$5,000 to my barrister so he can go and bribe someone at the Crown. Did you tell him that?---Pretty much, yes.

10

I see. And he just, what, pulled out \$5,000?---No. He, he said, "Oh, there's no way I'm going to go through the shit you boys have been through." He made reference to his business and said, "I'm not going to do that." He said, "I'll probably need a couple of days or a week to come up with it."

And in a couple of days he gave you the money?---That's correct.

Right. So there were two lots of or three lots of \$5,000. Am I right?---No.

20 Well, originally it was \$15,000?---Yes.

Right. And then Mr Hart's reduced it down to, his component to \$2,000? Yes.

So it was \$12,000?---Yes.

Right. Now yesterday you were asked some specific questions by senior counsel assisting in relation to the deposit of the monies into Mr Hart's TAB account. Do you remember that?---Yes.

30

Right. And the situation as I understood it was that there were two deposits of \$10,000, two deposits of \$5,000, making \$10,000, that you believe went into the TAB account. Is that right?---I, I wasn't too sure about those details yesterday, because as I made reference, I had made a cash payment on one occasion and two payments directly into Mr Hart's TAB account. And I couldn't recall yesterday the order of which came first and, and the amounts that went in.

40 Well, you were told that in effect that there was a deposit on the 8 March of \$7,000?---Yes.

Right. Having learnt of that, that didn't add up to \$10,000 or \$12,000 did it?---No. As I said, I made a, I'd also made a cash payment and when I, and yesterday, I realised that the cash payment I'd made was the first \$5,000 that either came from Nankivell or Trinder, I don't recall. And then the second \$5,000 was about the same, sorry, the second \$5,000 was put with my \$2,000, withdrawn from the bank and that's what I deposited into the account. And that would explain the \$7,000 into the TAB account. And if I

checked the dates from my bank withdrawal and the deposit from the TAB, I'm pretty sure they'll match up.

Well, let's see if I can clarify this. Mr Trinder gave you \$5,000 being monies transferred from his Commonwealth bank account?---Yes.

That went into your bank account?---That's correct.

So there's a \$5,000 perk there?---Yes.

10

Incidentally on that issue, you said your limit was \$1,000 withdrawal?---Yes. I thought it was and then, then, that's when I said - - -

Please, just, I'm asking a question?---All right. Okay.

Your evidence was that you had a limit of \$1,000 withdrawal a day as I understand it?---Yes.

Is that right?---I thought so, yes.

20

You saw yesterday on the screen that there was a \$5,000 withdrawal. Did you see that?---Yes.

Was that in cash?---Yes. I withdrew the cash and took it to the, and took it and made the deposit into the TAB account.

30

Well, how was it if you had a thousand dollar limit on your withdrawal you could withdraw five thousand in cash?---The \$5,000 was done at a branch not through an ATM. When I was talking about the limit, I was talking about the amount of money I could withdraw from an ATM machine.

Anyway, so there's \$5,000 there. The two thousand in dollars you borrowed from Ms Wright was also put in?---She, she repaid to me, I didn't borrow it from her.

That's seven thousand?---Yes.

And that's the amount of money that's transferred to Mr Hart's TAB account?---Yes.

40

Now, you say you gave him \$2,000 in cash?---No, I said I'd made a payment. I, I couldn't recall, I thought it was two but it, it would, probably would have been the five thousand of Nankivell's that I made the cash payment to him because I had the five thousand cash.

Sir, yesterday, you said you gave him an envelope with \$2,000 cash to Mr Hart?---Yes, I, I was confused about the amount.

I'm just asking you did you say that yesterday in evidence?---Yes, I think I did.

Right. You're now saying it's wrong?---Yes.

10 So what, you thought about it over night and it was \$5,000 in the envelope?--Yes, because I was trying to, I was doing the, I was laying there last night thinking about the, when I made the payments, trying to put them in order so I could assist you today but unfortunately I couldn't put them in order but I do recall the payments and I recall the second payment to the TAB account but I think that came later in relation to the additional money that I paid Mr Hart and it had nothing to do with the money being paid up front as the, as the bribe, as it seems.

You see, are you sure you didn't take the money yourself for Mr Trinder?---Absolutely positive.

20 You weren't trying to get money off your mates like Mr Trinder and your girlfriend, Ms Wright, were you?---Certainly not.

Well, you were in a hopeless financial position, weren't you?---Yes, I was.

So your explanation now is that there was a \$5,000 in envelope given to Mr Hart?---Yes.

Where did you give that to him?---It was the coffee shop up near the Courthouse.

30 And what date was it on?---I don't recall the date.

So was it in March 2008 or April or - - -?---I don't know, I don't recall.

Got no idea?---No, I don't recall. It was probably a couple of weeks at most, maybe a week before I made the second deposit in, sorry the, the second payment by virtue of the deposit into the TAB account because that second seven thousand dollar payment was basically full satisfaction of the \$12,000 that, that I was paying him.

40 THE COMMISSIONER: So you're saying that this five thousand was paid before that?---I think so, yes.

MR WALSH: Do you recall yesterday, this is at 27, the transcript at line 10, Mr Staley asked you a question about the sum of \$3,706. Remember that?---Whereabouts, sorry?

Line, if you go to page 27, line 10, do you see that there's the balance before that deposit was 1-7-0-6 and it was made 3-7-0-6 by the addition of the two thousand. Right?---Yes.

Right. Now, is it your recollection that after the credit was \$3,706 that you then, what, took another \$2,000 out?---Yes, the \$2,000 that's made reference there was the two thousand that Karen Wright had transferred into my account.

10 And was that part of the \$7,000 that was transferred to the TAB account or was it part of the cash money you paid to Mr Hart?---I don't recall. I, I think it was the money that, I think that was added to the other money and, and paid into the TAB account.

Look, Mr Kelly, you wouldn't have a clue, would you?---Beg your pardon?

You wouldn't have a clue about these monies, which goes in or goes out, do you?---I don't, I don't recall the dates and which one went where but I remember making the payments. What was the date of the payment into the TAB account and how does it match up the withdrawal from a bank account? That'll, that'll probably help.

20 No further questions.

THE COMMISSIONER: Who else wants, yes.

MR COOK: Now, Mr Kelly, you told us that you've had a long relationship with Mr Trinder. Is that correct?---Yes.

Were you school friends?---As I said, we went to different schools but we had mutual friends and we knew each other that way.

30 And you've also told us that Mr Trinder was a witness in relation to the trial that you were engaged in - - -?---Yes.

- - - that Mr Hart represented you. Is that correct?---That's correct.

Now, on that occasion Mr Trinder came down and gave evidence on your behalf. Is that correct?---Yes.

And he was down for a couple of days. Is that correct?---Yes.

40 Because at that time he'd moved to the Gold Coast. Is that right?---Yes.

Now, prior to this trial starting, had you discussed this trial with Mr Trinder?---Yes.

And you told us that at this particular time you were suffering severe depression and also you were having suicidal thoughts. Is that correct?---Yes.

Did you tell that to Mr Trinder?---Yes. Chris and I had, he was, he was sort of in between Wagga and Albury at the time but when he was in Wagga, he was living at my house.

Now, in relation to this depression and suicidal tendencies that you were experiencing prior to your trial, did that predate the damage to your brain that you got in accident?---Yes.

10 Now, in relation to the damage to your brain, has that been assessed in relation to any damage that's occurred on a permanent basis to your recall of memory?---Yes, as, as, as part of the time I spent at the rehabilitation clinic, there was a lot of time with counsellors and therapists and those sorts of things. I had some follow up appointments with some doctors after it and I've seen a counsellor since.

Are you receiving any treatment in relation to that particular injury now?---Ah, not at the moment.

20 No. Do you take medication in relation to that injury?---No.

Have you been assessed and told of any particular percentage of your brain's been impaired by the accident?---No.

30 THE COMMISSIONER: Sorry, no, you mean you have not been told or you have been told there is no impairment? No one's ever saw fit to do any assessment like that because I was functioning so well and they've actually released me out of the brain rehabilitation clinic three weeks early because I was having, I was keen to get back to work and, and I was so mentally alert, so they never saw it fit to do any assessments to see if my brain is impaired to any permanent level.

MR COOK: Well, the situation is that prior to your trial you'd just got divorced. Is that correct?---Yes.

And at the same time you knew that Mr Trinder had just been through a divorce?---Yes.

40 And you were also aware that he'd moved to the Gold Coast so he could be with his son. Is that correct?---Yes.

You were also aware that Mr Trinder's father died when he was 11. Is that correct?---Yes.

And that part of his motivation for going to the Gold Coast was he could have a place proximate to his son?---That's correct. His ex wife and son had moved.

Now, apart from the time he gave evidence to at the trial, were you with him during the period of trial outside the court?---Yes.

And you've told us that during the period of the trial that you, you received a lot of abuse and problems from the local people in Wagga. Is that correct?---Yes.

10 THE COMMISSIONER: I don't remember that. It must have passed me over. It just happened did it, is that it?---Yes. I referred yesterday to verbal abuse and threats of physical violence.

MR COOK: And he observed that?---Yes. He was at my house once when some people walked past and yelled abuse at me.

Okay. Now, in relation to Mr Trinder, he still has family living in that area, does he?---Yes, he does.

20 Now, are you aware of Mr Trinder's financial situation as a consequence of the divorce?---Yes.

Were you aware that he was pretty - - -?---He was broke.

He was broke. And he was obviously coming to the trial because arrangements were being made by the authorities for him to be there?---I think from memory he was subpoenaed, yes.

30 Now, in relation to this \$5,000 that you secured from him, as far as the evidence goes it appears that Mr Trinder at no stage spoke to Hart, did he - - -?---No.

- - - that you are aware of?---Not that I'm aware of, no.

And so all the information he has concerning where this payment was going, was information that you gave him. Is that correct?---Yes.

THE COMMISSIONER: Well, as far as you know?---Yes.

Okay. Yes.

40 MR COOK: Now, you told us also in your evidence that there was a lot of emails and other information that you had concerning this allegation that you've told the court that Mr Hart would have go away. Is that correct?---Yes.

Was Mr Trinder aware of that information?---Yes.

Had he seen that information?---I think so, yes.

I've nothing further, Commissioner.

THE COMMISSIONER: Who else wanted to ask a question?

MR NAYLOR: Just a couple of questions, Commissioner.

THE COMMISSIONER: Yes. You're for Mr Lazzar, are you, Mr Naylor?

10 MR NAYLOR: Yes, yes, thank you.

THE COMMISSIONER: Yes.

MR NAYLOR: Mr Kelly - - -

THE COMMISSIONER: Yes. What you might do is move to a microphone, if you wouldn't mind, Mr Naylor. Yes.

20 MR NAYLOR: Thank you, Commissioner.

Mr Kelly, you gave some evidence both yesterday and this morning that you had a conversation with Mr Lazzar following the conversation that you had with Mr Hart at the hotel after the trial. I think that's right, is it not?---Yes. Glenn was staying - - -

THE COMMISSIONER: The idea of you coming forward was to use the microphone not to turn your back onto it?---That's correct. Glenn, Glenn was staying at my house - - -

30 Could you do that? Could you just make sure you - - -

MR NAYLOR: Yes, thank you.

Yesterday your evidence was that simply the conversation occurred later or after the conversation with Mr Hart at the hotel?---Yes.

Do you know when precisely?---It was that night.

40 That night. All right. And Ms Wright, who was your then girlfriend, was present at the time?---No.

Were you drinking at the time?---We had, as I said, after the verdict we'd had a beer and then we went back to my house and I got changed and we were walking down to the pub.

Okay. Who's we?---Glenn and I.

Well, did you continue to drink after the drinking that you'd started at the hotel that afternoon?---We had a couple of beers and then had dinner.

All right. And what about when you returned to your home, were you drinking then?---I don't think I went back to my house. I think I went to Karen's house.

10 So this conversation that you had with Mr Lazzar occurred at whose house?  
---That was as we were walking from my house into, into the main street that afternoon.

About what time?---It would have been around 4 o'clock.

20 And do you remember precisely what was said to Mr Lazzar about the conversation that you'd had with Mr Hart?---Oh, I, I just said, "You're not going to believe what, what's happened." I said, "The barrister pulled me aside and said the police are coming after me and that Tina Hall's going to, she's lined up another complaint and that if I made a payment to him that he could make it all go away."

All right. Was there anything else said by you to Mr Lazzar about that conversation with Mr Hart?---Not that I recall.

THE COMMISSIONER: Well, just so I – did you mention anything about the DPP or Crown lawyers or anything?---Not that I recall.

Just that if you made the payment to Hart he could make it go away?---Yes.

30 MR NAYLOR: Yes. No further questions, thank you, Commissioner.

THE COMMISSIONER: Yes. Is there anyone else who wants – Mr Oats, did you want - - -

MR OATS: No, thank you, Commissioner.

THE COMMISSIONER: Now, Mr McIlwaine, did you want to ask him - - -

40 MR McILWAINE: Just one short matter, your Honour.

Mr Kelly, you heard evidence yesterday from Mr Nankivell that – I think to the effect that he confirmed that he'd had a conversation at your house or his house about – or you asked him to assist in contributing some moneys. You remember that?---Yes.

You recall that he told the Commissioner that he had a recollection of a conversation prior to that where he became aware that the investigation into

the allegations by X had been recommenced. Do you remember that?---  
Yes.

And he suggested, although he wasn't certain, that that conversation was  
with you?---Yes.

And what do you say about that?---It wasn't with me. I didn't have that  
conversation with Jeff.

10 So you say that the only conversation – sorry. I appreciate there was a  
conversation some years before when the allegation first rose?---Yes.

But from the time of the commencement of your trial, for example, which  
was the 18<sup>th</sup> of February, until the conversation where you've told him about  
the approach by Mr Hart and made the request for some financial assistance,  
you'd had no conversations with him about X's allegations. Is that correct?  
No. None whatsoever.

20 And there, there was suggestion that the conversation would have taken  
place either at your house or at the Bridge Hotel and his evidence was in the  
days shortly before your acquittal?---Yes.

Is it the case that you do occasionally go to the Bridge Hotel - - -?---Yes.

- - - on a Wednesday night but during the course of your trial, which  
commenced on the 18<sup>th</sup> of February, you did not go to the Bridge Hotel?  
---No. One of my bail conditions was that I wasn't allowed to go to any  
licensed premises so I didn't go to any restaurants, bottle shops and I  
certainly didn't go to any hotels.

30 And you certainly didn't go to the Bridge Hotel?---Definitely not.

Any time after the 18<sup>th</sup> of the February, 2008?---Certainly not.

THE COMMISSIONER: Did you want to ask any questions, Mr Staehli,  
before he - - -

MR STAEHLI: Oh, look, yes, I think there's a couple of matters which  
need an attempt to clarification if I might, Commissioner.

40 Firstly, have you got the whole of the transcript of your evidence there  
before you?---I have a – yep, yes, I think so.

You were asked by or it was suggested to you by Mr Walsh - - -

THE COMMISSIONER: Page. What page of the transcript are you  
referring to?

MR STAEHLI: Well, I'll be referring to page 15 of yesterday.

THE COMMISSIONER: Yes.

MR STAEHLI: That – well, today you told Mr Walsh in answer to a question from him that Mr Hart had called you away at the time that he had this conversation with you about the proposition after - - -?---Yes.

- - - when you were at the hotel. Do you remember?---Yes.

10

Would you – if you look at the transcript, page 15, line 8 of yesterday, can, can you see there that you did - - -?---I did make reference to him pulling me aside, yes.

THE COMMISSIONER: It says, “Mr Hart pulled me aside and told me about a conversation”.

MR STAEHLI: Yes, yes.

20 THE COMMISSIONER: Thank you.

MR STAEHLI: Now, additionally you said in answer to questions from Mr Walsh that Mr Hart specifically asked you not to tell Mr Paul?---Yes.

And he used the term AP, A obviously being Mr Paul's initials. Do you remember what Mr Hart actually said?---He said oh, “Just don't mention this to AP.”

All right.

30

THE COMMISSIONER: Did you ask him why you shouldn't?---No.

MR STAEHLI: So as far as you're aware, did Mr Paul, as you understand it or believe it to be, ever become aware that this proposition had been put to you by Mr Hart?---No.

40

Thank you. Then can we return to this issue of the payment of money. You gave some evidence yesterday and Mr Walsh put some of it to you and then you gave some other evidence after I pointed some things out to you from the TAB account and also your own account, can I just ask you and you've qualified your evidence about all those matters, I think, by saying, as if it wasn't obvious, perhaps that your memory is indistinct about the detail of those payments?---That's correct. I don't recall the, the dates or the amounts but I recall making the payments, that's correct.

All right. Well, two pages from your account were shown to you yesterday  
- - -

THE COMMISSIONER: Have they become an exhibit?

MR STAEHLI: Well, exhibit 1 – I'm not sure whether exhibit 1 acquired the second page. It was certainly the first page that I tendered.

THE COMMISSIONER: It was certainly the first page.

10 MR STAEHLI: Show me the first page. Might we add to it the second page which was shown to Mr Kelly in his evidence. Might we put in, in case anything further arises, the, the five page statement which has a blank page stapled on the back of it. Might I substitute that for exhibit 1?

THE COMMISSIONER: Yes. Well, that can be substituted for exhibit 1.

MR STAEHLI: Yes, okay. And we've got copies of that to distribute.

THE COMMISSIONER: Yes.

20 MR STAEHLI: And could a copy be made available to Mr Kelly, please.

THE COMMISSIONER: Yes.

You're asked now, Mr Kelly, to look at your Commonwealth Bank account. ---Yes. What's the question?

30 MR STAEHLI: A further piece of information which was in a document not yet tendered, Commissioner, contains what I also told you yesterday, Mr Kelly, about what was in Mr Hart's TAB account or so far as the records disclosed about deposits, the relevant time or times into that TAB account. Do you remember?---Yes.

And can I just remind you what I told you yesterday, which was that there was a \$7,000 deposit into Mr Hart's TAB account on 8 March, 2008. All right?---Yep.

So the sequence so far as the documents are concerned, shows these things, I'll include what I've just mentioned, that there was a cash deposit into that bank account of yours on 29 February, 2008?---Ah hmm.

40 THE COMMISSIONER: \$5,000, yes.

MR STAEHLI: \$5,000. But there was a withdrawal of the same amount, that is in the same amount on 4 March. Do you see that?---Yes.

On 6 March, there's a deposit, I'm leaving out other minor transactions, on 6 March, there was another deposit, apparently a transfer from Karen Wright, of \$2,000. Do you see that?---Yes.

Which remained in the account. On 8 March, as I've mentioned to you, we've got, which isn't on your statement, there was a deposit of \$7,000 into Mr Hart's account, TAB account.---Ah hmm.

And then on 10 March, there's those two transactions of withdrawals of \$1,000 each, which perhaps is, takes care of the \$2,000 deposited by Miss Wright into your account.---Yes.

10 All right. So so far as there were any withdrawals from this account, \$5,000 was withdrawn on 4 March and \$2,000 in total was withdrawn on 10 March.---Yes.

Right. So that leaves the question which you may or may not be able to answer about, assuming for the moment, perhaps wrongly, that the deposit of \$7,000 into Mr Hart's TAB account was actually made by you?---Yes.

20 Which if any of the amounts shown on your statement, are you able to say was contributed to that \$7,000 if any?---Certainly the \$5,000. I don't recall whether I withdrew (not transcribable) location, I don't recall what money I had in my hands at the time.

All right. Now we know that in addition to these amounts, if the evidence of both you and Mr Nankivell is to be accepted, that in addition to what's in your account, you had Mr Nankivell's \$5,000 in cash?---That's correct.

What we don't know is the precise date on which you obtained it from him. ---That's correct.

30 So, with that information, are you able to say with any certainty how it was that the \$7,000 deposit into Mr Hart's TAB account was made up?---I don't recall exactly what the composition was of where I got the money from.

All right. If, did you have any sources of money other than what Mr Nankivell gave you and what was, what is shown in this account which was available to you at this time to make a deposit into Mr Hart's account or accounts?---I don't recall. I don't recall any other, I might've had some money at home. I don't, I don't know. I can't recall.

40 All right. Yes, thank you. They're the only - - -

MR MCILWAINE: Commissioner, there's one matter I would like clarified.

THE COMMISSIONER: Yes, yes. All right.

MR MCILWAINE: Mr Kelly, you said in your evidence and answer to Mr Walsh that in regard to making, giving evidence yesterday of two, two

payments of \$5,000 to Mr Hart's account. You gave us an explanation as to why you might confused about that. Is that correct?---Yes.

Now, was it the case, ultimately later on in regard to the other matters the Commission's investigating, you received some monies from the Attorney General's department. Correct?---Yes.

And at that point in time did you make a payment also into Mr Hart's TAB account directly?---Yes, I did.

10

And do you recall what that amount was?---From memory, I think it was \$5,000.

All right. So apart from these deposits into Mr Hart's account that counsel assisting's been asking you to date, there was also one, somewhat later in time, directly into his account by you from the proceeds of the Attorney Generals payment?---Yes.

THE COMMISSIONER: How much later?---Oh, it was months.

20

Months later?---Yes.

MR MCILWAINE: There'll be other evidence about that.

THE COMMISSIONER: Yes, I appreciate that. Yes, well, yes, you may step down, thank you, Mr Kelly.

**THE WITNESS WITHDREW**

**[11.25am]**

30

THE COMMISSIONER: Mr Trinder, well, perhaps, I might take the adjournment at the present time. You needn't bother coming to the witness box at the moment, Mr Trinder. But when I resume you will.

**SHORT ADJOURNMENT**

**[11.25am]**

40 THE COMMISSIONER: Mr Trinder, take a seat Mr Trinder. Mr Trinder, you're still under oath. Do you understand that?---I do.

And you'll be asked some questions by members here, but first of all, did you want to ask any questions Mr Staehli before.

MR STAEHLI: No thank you.

10 THE COMMISSIONER: Yes. Who wants to ask?

MR STAEHLI: I have no questions Commissioner.

THE COMMISSIONER: Just you Mr Cook, okay.

MR COOK: Mr Trinder, I want you to cast your mind back to the events from prior to you moving to the Gold Coast. Now we heard earlier in the day that there was in fact a court case involving yourself which was dealt with at the Magistrates Court. Is that court?---Yes.

20

And there was an allegation against you from a Miss – is that Miss X or Miss Y?---Miss Y.

That was the same person who made an allegation against Mr Kelly. Is that correct?---And Mr McCauley.

THE COMMISSIONER: Well, we're calling them X and Y.

THE WITNESS: I was just confused which one was X and Y.

30

MR COOK: Just Y.---Just Y.

I'll just clarify that Commissioner. Okay. Now as a consequence of that case I believe you were represented. Is that correct?---I was.

Can you tell the Commission who represented you?---An Austin McCrae.

THE COMMISSIONER: Who?---Austin McCrae.

40 MR COOK: Austin McCrae. When did that occur prior to the trial with Mr Kelly?---I think it was about six or eight months before.

Now as a consequence of that trial you had to pay legal costs.---I did. How much was that, can you recall?---I think it was \$5,200 or it was around the \$5,000.

Now you moved to the Gold Coast in February of 2008. Is that correct? ---Yes.

Now did you have to move your furniture and everything else up there?---I did, I had to take out a loan to because my wife wanted to move, my ex-wife wanted to move up there around February and I didn't want to be away from my son so I went and applied for a loan so I could move some furniture up there and I hired a truck with her just so she could get all her furniture up there because she couldn't afford it, so.

10 Now you've taken a loan, where did you get that from, the bank?---I did, the Commonwealth Bank.

And can you recall how much that loan was?---I think it was between \$6,000 and \$7,000.

THE COMMISSIONER: Sorry. How much?---\$6,000 or \$7,000 I can't recall.

MR COOK: Plus the interest you paid on that, I think.---Yes.

20 Now did you have any work on the Gold Coast when you arrived?---When I drove the truck up I had two interviews so I was, I had the money from the loan to sort of try and survive for, I think it was probably going to be about a month. I drove the truck up there, secured a job with a company up there which I was going to start the following Monday which was the date of the trial. So I had to put it off till the following week.

Now in relation to Mr Kelly's trial you came down to give evidence. Is that correct?---I did.

30 And my understanding is that you were there for a period of some two days. Is that right?---I was, I was there, it was either the Tuesday/Wednesday or Wednesday/Thursday, I can't recall.

Did you associate with Mr Kelly outside of the court?---I did.

And did you observe how the locals were dealing with Mr Kelly at that time?---Yes, there were some that were abusive at him and um, just yeah, just hope he gets what's coming to him, yeah, not very nice things.

40 Now was this particular trial, the talk of Wagga at the time?---It was, yeah, it was pretty well in the papers for the whole time of the trial, front page or second page.

Right. Now you gave your evidence and then you went back to the Gold Coast. Is that correct?---That's correct.

Now at some point after that, Mr Kelly contacted you again. Is that correct?---That is correct.

And has all your communication with Mr Kelly since that time been via the telephone?---It has been.

Now, he told you that if you gave him the sum of \$5,000 they would make this investigation go away. Is that correct?---That is correct.

10 What was your financial situation like at that time?---Um, I still probably had about \$3,000 left from the move um, I was about to, I was about, I'd just been two days into the job I'd just started. I was hoping that \$3,000 was going to get me into a unit. I was living with my mate at the time. Yeah, I was going to use the money I had for accommodation.

Okay. Now in relation to the payment of that money – as I recall your evidence of yesterday, you said that you had to withdraw some money from a credit card. Is that correct?---That is correct.

And that was to make up the sum of \$5,000 was it?---It was.

20 And you sent that money to Mr Kelly via his bank account?---I transferred it, yes.

Now, you had no direct contact with Mr Hart at all, did you?---No.

Or the person referred to as “AP” - - ?---No.

- - -Anthony Paul. Is that right?---No.

30 So all your understanding of this so called arrangement to pay someone in the DPP was via Mr Kelly. Is that correct?---That is correct.

Did you have any independent way of checking on that?(No audible reply)

THE COMMISSIONER: Checking on what?

MR COOK: On whether the information was true?---No.

You didn't make any inquiries with Mr Hart?---No.

40 Or of Mr Paul?---No.

You didn't contact anybody at the DPP?---No.

Now I want you to go to your state of mind at the time you hand over this \$5,000 to Mr Kelly. Can you tell the Commission what your state of mind was at that stage?---Well, I'd pretty well, was probably panicky, probably a rush of fear was over me. I went, sort of, came into Wagga for his trial, I

sort of came in, I didn't go down the um, sort of, I just went to the trial and walked back to where I was staying.

And why was that?---I just didn't want to be seen as like associated that, I was part of it um, because my family is local in Wagga and Cootamundra and I didn't want them to know I was there and was associated with that.

So you made no contact with your own family during that two days you were in Wagga for the trial?---No, they thought I was on the Gold Coast.

10

Okay. Now, what would you have said to Mr Kelly, if he had said to you, Look, I'm, financially strapped, I've got to pay all these legal bills can you lend me or give me \$5,000?---I wouldn't be able to do it, I don't, I don't lend money to people.

So, but you did give him \$5,000?---But that was for my, back then, because I panicked and I was just trying to not let my family go through what his family went through and I didn't want my, I lost my dad when I was 11, I didn't want my son to be without his father I just panicked.

20

I have nothing further.

THE COMMISSIONER: Yes, very well. Any one else have any questions? Well, you may step down thank you, Mr Trinder. Mr Nankivell.

MR COOK: Can Mr Trinder be excused from his summons.

THE COMMISSIONER: Just wait, I suppose so, just wait for the minute. Mr Nankivell, you're still under oath. Do you understand?---Yes.

30

Does anyone want to ask- - -

MR WALSH: Yes.

THE COMMISSIONER: Yes, Mr Walsh, he wants to ask you questions. Mr Walsh is representing Mr Hart.

MR WALSH: Mr Hart. Mr Nankivell, you gave evidence yesterday in respect of a conversation that you had with Mr Kelly in relation to obtaining some money from you. Do you recall that?---I do.

10 Just in respect of your relationship with Mr Kelly, you heard his evidence earlier today.---Yes.

Right. You hadn't known Mr Kelly that long. Is that right, I'd say as at February, 2008?---Twelve months or thereabouts.

With that by- - ?---Whenever he moved into the street, I'm not quite sure how long that was, yes.

20 Was he basically just an acquaintance or was he bordering on a friendship or a mate?---Oh, I'd describe him as an acquaintance. If we ran into each other at the pub, we would have a beer. We'd occasionally met down there for a trivia game. That was pretty much it. I'd been to his house on probably may be two occasions for a beer.

All right. Now at late February 2008, you were, you were aware that the investigation or the complaint in relation to complainant X had been on foot, as it were, for about a year or two. Is that right?---That's correct.

30 All right. But you didn't have any actual knowledge that police were actively involved in the investigation. Is that the situation?---Not until some time during Jason's trial, I didn't believe, I didn't realise there was any investigation going on at all.

40 What was it that caused you to believe that the investigation was on-going during his trial?---Someone told me that the investigation was on-going. I said yesterday, I did not know who it was and um, I later agreed it was probably Jason Kelly who told me. I'm still not a hundred per cent sure it was Jason Kelly who told me. But I was told, and I went to my, I went to four, I went to four or five solicitors on that particular afternoon to try and get some legal advice - - -

What I want to clarify, have you finished that answer?---Yes, okay.

What I wanted to clarify, Mr Nankivell is this, when you had the conversation with the person, whether it was Mr Kelly or some other person, do you have any recollection whether the first week of the trial involving Mr Kelly had finished or not?---No, I do not have a recollection as to that. My feeling is that it took place within the last two days or may be three days of the trial.

The verdict apparently was on the following Tuesday- - -?---Yeah, it may have been on the Friday, it may have been on the money or it may have been on the Tuesday, sorry, but I really do not recall which day that was.

10 In respect of the information that you received either from Mr Kelly or the other source, I just want to clarify this. What information did you come across, was it that the police were- - -?---The police were actively renewing or actively investigating the incident that myself, Chris Trinder and Jason Kelly had been involved with with Miss X.

Now the next thing that happened that I understand was that there was a conversation between you and Mr Kelly about a sum of money. Is that correct?---That's correct.

And that was at your home?---I believe it was at my home. It may have been at Jason's home. But I believe it was outside at my house.

20 Shortly after the conclusion of his trial?---I believe that's when it happened.  
All right.---I'm sorry, I'm still not a hundred per cent sure on the times.

No, I'm not criticising you about the times.---Yeah, I realise you're not, but I - - -

(not transcribable) the exact times, but could it have been a day or so?---It could've been a day.

30 Okay. Is it your recollection that the amount of money that he referred to was \$15,000?---Definitely.

All right. It wasn't \$12,000?---No, it was definitely \$15,000. It was to be split three times between myself, Jason and Chris.

And was it your understanding that you were contributing that money to help Mr Kelly in respect of making the case go away, as it were?---That was my understanding.

40 Right. You used the term yesterday that you came to the view that it was to make representations?---Yes.

Now I think you made it clear that that wasn't the term that Mr Kelly used. ---That's correct.

Right. Why did you come to that view or conclusion that it was to make representations? What was it about the conversation or the detail?---Jason had all the information stored in his Blackberry, which related to all those emails and from my understanding, there were hundreds of them. And he

would be able to give those to Mr Hart, who would then pass them on to the appropriate people, speed up the investigation and make it go away.

Did you believe when he spoke to you, that is Mr Kelly, that the contribution of the sum of \$5,000 in those circumstances was anything wrong about that? Did you - - -?---No. I didn't think there was anything wrong. I actually thought I was paying to help with his legal expenses to assist with him paying John Hart.

10 You thought you were doing the right thing?---Yes.

MR MCILWAINE: Commissioner, I have some questions.

THE COMMISSIONER: Okay.

MR MCILWAINE: Mr Nankivell, you gave evidence, your evidence is that prior to the conversation with Mr Kelly where he asked you for some financial contribution - - -?---Yes.

20 - - - you had previously been made aware that the allegations of Miss X had been brought back to life. Correct?---Correct.

Now, the situation is, and you're uncertain about the source of that information. Correct?---Correct.

And the situation is this was a very serious allegation about you. Correct?---Yes.

30 The allegation of sexual assault?---The allegation was sexual assault, yes.

Serious consequences. Correct?---I imagine so.

You were distressed about it. That's correct?---I was. And that's why I approached five solicitors on that afternoon.

And in fact I think you said in your evidence the last solicitor you saw, Miss Flynn only saw you because you were so apparently distressed.---That's correct.

40 And this is after you first received the information that the allegation had recommenced?---Yes. Yes.

Yet, you tell the Commission, you can't tell the Commission who it was who gave you that information with any certainty?---No, I can't with any certainty.

Is that the truth?---Yes. that's the truth.

Do you know any police officers in Wagga?---I know heaps of police officers in Wagga.

Did you during the course of Mr Kelly's trial have any conversations with police officers about this matter?---No.

Are you sure about that?---Ninety nine, ninety nine per cent sure, yeah.

10 All right.---I don't recall having any conversations with any police officer.  
No, but you're ninety nine per cent sure that you didn't have a conversation with a police officer. Is there some possibility you had a conversation with a police officer about this matter during the course of Mr Kelly's trial?---I don't think so.

Again, you're leaving the possibility open aren't you?---I am. But I don't think that that occurred.

20 THE COMMISSIONER: Anyone, yes, very well, you may step down.  
Thank you very much, Mr Nankivell. I don't think there's any reason for Mr Nankivell to stay, do you think - - -

MR STAEHLI: No. I just ask that he be excused if you please, Commissioner.

THE COMMISSIONER: Yes. Mr Nankivell, you are excused from further attendance. Thank you.

30 **THE WITNESS EXCUSED** **[12.14pm]**

THE COMMISSIONER: I think that may have apply. I'll just think about this over lunch to Trinder, but I just want to think about that.

All right. Yes.

MR STAEHLI: It's proposed that Mr Hart (not transcribable) now.

40 THE COMMISSIONER: Mr Hart.

MR WALSH: I'll be seeking a declaration.

THE COMMISSIONER: Yes. Mr Hart you are legally presented here and I will just go through quickly the obligations and entitlements you get under the, have and get under the legislation. Do you understand?

MR HART: Yes, sir.

THE COMMISSIONER: You must answer all questions asked of you and answer the questions truthfully and failure to do so can render you liable as you may, I expect you have already been told, to a gaol term. Do you understand that?

MR HART: Yes, sir.

10 THE COMMISSIONER: You may refuse to answer questions on the ground on some ground or other or object to them, so you may not refuse, you may object. But whether you object or not, you still have to answer the questions. The purpose of you being allowed to object is that the questions and answers cannot be used against in civil, criminal or disciplinary proceedings. Do you understand that?

MR HART: Yes, sir.

20 THE COMMISSIONER: There is an exception to that however, if you are charged with the offence of not telling the truth to this Commission, then the question and answers would be given in evidence in any criminal trial or disciplinary trial whether or not you've objected. Do you understand that?

MR HART: Yes.

THE COMMISSIONER: You have to take an oath to tell the truth. Do you want to take an oath on the bible or do you wish to affirm?

MR HART: On the bible.

THE COMMISSIONER: On the bible. Would you stand up.

THE COMMISSIONER: Yes. On your behalf, Mr Hart, an application has been made and pursuant to that application I declare that all questions asked of you, all answers given by you, all requests made of you shall be deemed to be subject to your objection and hence there is no need for you to object to anything question, answer or request. Do you understand that?

10 ---Yes, sir.

And just to make it clear, that declaration will continue so long as you are giving evidence at this public inquiry. Do you understand that?---Yes. Thank you, sir.

Yes, yes, Mr Staehli.

MR STAEHLI: What's your full name, please, Mr Hart?---John Peter Hart.

20 You've been present in the hearing room over the last day and a half or so have you?---Yes, sir.

And in the course of that you heard some information given by me from this position about what's contained in your TAB account?---Yes, sir.

Did you, when I mentioned that information did you remember that there was in fact a deposit of \$7,000 into your TAB account on or about, well, I'll say in March of 2008?---No, I thought it was \$5,000.

30 THE COMMISSIONER: Sorry, I can't hear you.---I thought it was \$5,000, but I accept it must've been \$7,000.

MR STAEHLI: All right. Well if you - - -?---I remember there was a deposit in there.

Was that, do you know, well, let me put it this way, did you make that deposit?---No, I don't believe I did.

Perhaps the document itself - - -

40

THE COMMISSIONER: Perhaps he should be shown it, yes.

MR STAEHLI: Yes.

THE COMMISSIONER: This hasn't been tendered yet has it?

MR STAEHLI: It hasn't been tendered yet, no. Sorry, perhaps I can formally tender this record, Commissioner.

THE COMMISSIONER: Yes. Well, all right.

**#EXHIBIT 12 – JOHN HART TAB ACCOUNT STATEMENT**

10 MR STAEHLI: So on that screen in front of you, can you read that, Mr Hart?---Yes.

You're being shown the record in a TAB account for 8 March, 2008. And I suppose you may not necessarily be familiar with this style of document, did you ever receive statements from the TAB about transactions on your account on a regular basis?---No.

20 All right. Can I explain to you then just so you appreciate the nature of the record that at the second line of the entries under the headings shows that on 8 March, at 12.44 hours and 10 seconds there was a DEP, being a deposit under the heading TXN for transaction, and there's a description in the middle of the page about, it just give more information about it and then towards the right hand side it shows that there's a \$7,000 credit. Do you see that?---Yes, sir.

And then you accept with the, with the benefit of the document and with my assertion that it does show that there was a \$7,000 cash deposit you're your TAB account on that day?---I accept that.

30 All right. Now, are you, did you mean by your previous evidence a moment ago to say that you knew something about that deposit?---I knew Mr Kelly had paid me money.

Now, are you, did you mean by your previous evidence a moment ago to say that you knew something about that deposit?---I knew Mr Kelly had paid me money.

THE COMMISSIONER: Sorry, you knew?---That Mr Kelly paid money to me.

40 Is this the one you, did you think this was the five thousand, did you?--- Yeah, I, I thought it was five. That's what's in my memory bank, it's five thousand, but I accept it's \$7,000, sir.

Right.

MR STAEHLI: And what were the circumstances by which he came to deposit money in any amount into your TAB account?---Ah, during the trial that I conducted for him - - -

10 THE COMMISSIONER: Sorry, you'll have to keep your voice up.---Sorry, sir. During the trial that I conducted for him at Wagga Wagga, it was evident that the trial was going longer than was expected initially and I had a couple of conversations with him to the effect that he'd have to (not transcribable) some more and ah, he agreed that he'd pay me some more. If, if he, he had been convicted I was prepared to wipe it off.

Sorry, you - - -?---If he had been convicted I would have, I was prepared to write it off.

Write what off?---Any extra monies that he owed me.

20 And what was the extra money he owed you?---I discussed with him that ah, he would, as it was going on further ah, he would pay, have to pay me an extra couple of days and, and I had it in my mind it was five thousand, but I accept that Mr Kelly paid me seven thousand. And when ah, the co-accused, when the not guilty verdicts were, came in ah, the co-accused counsel asked for a matter to be put over for a costs application and after getting instructions we joined that and I said to Mr Kelly, you know, how are we going to pay for that? And I agreed with him that if I, if we were successful with costs, the extra couple of days, he would pay me another \$5,000. And eventually when he got his monies from the Attorney General's Department he did - - -

30 Sorry?---When he got his monies from the Attorney General's Department he did pay me another five thousand into my TAB.

So I just want to see what you (not transcribable) You say he paid you, what, five or \$7,000 for the extra two days?---No, no, no. Sorry, sir, I thought the question from counsel was in relation to any monies that Mr Kelly had paid me.

40 No, I think he was talking about, I was anyway thinking about this seven thousand.---I'm sorry. Well, he paid me two lots of monies into my TAB account, sir. The first was \$7,000.

Yeah.---And I had it in my mind it was five. I don't know why I thought that, I just did. And that was for monies he owed me for doing, for work, extra work I had done during the trial.

That's all right. 'Cause you've told me that that was on the basis that - - -? ---That's right, sir.

- - - had he been convicted you wouldn't pursue it - - -?---Yes, sir.

- - - but as he was acquitted, you did.---Yes, sir.

Yeah.---And he paid me a further five thousand after he got his money, his cheques from the Attorney General's Department months later.

10 Yeah, months later.---Yes, sir. And that was for the extra days in court pursuing the costs application. And I agreed with him that if we didn't get the costs, well, he didn't have to pay me, and if he got the costs he'd pay me another five.

When did you say that he had to pay an additional five thousand, you think, but maybe seven, because the trial went longer than was previously anticipated?---That was during the first week of the trial.

Before the trial finished?---Yes, sir. It was evident on probably late Tuesday/early Wednesday that it wasn't going to finish that week, I didn't think.

20 Hmm. What date did the trial finish?---I can't recall, sir. My recollection is it started on the Monday and finished the following Tuesday. That's my recollection.

So what, the 18<sup>th</sup>, was it?

MR STAEHLI: Monday was the 18<sup>th</sup>. The following Tuesday was the 26<sup>th</sup>.

THE COMMISSIONER: The 26<sup>th</sup>.

30 MR STAEHLI: Mmm. And you say you had this conversation with him during the first week, in which you suggested what, the likelihood that it would go longer, is that what you're saying?---Yes, sir.

And that if it did, subject to him not being convicted, that he'd owe you more money?---Yes, sir.

40 And did you tell him how much he would owe you?---I had it in my memory bank, and it's a while ago, I assumed that it was five thousand. I don't know why I thought it was five thousand 'cause he's obviously paid me seven.

Well, five thousand might be a figure that would coincide with something like the fees which you'd charging him during the trial, wouldn't it, per day?---Oh, it would, sir. It would, sir.

Because what were you charging him during the trial?---I actually was receiving cheques from Mr Paul and I actually didn't know how much I was

going to be, for me it depended on how long the trial went, how much was in it for me. I didn't know.

What was your daily rate?---Well, it depended on what sort of matter it was, sir. It could have been anything from two to four thousand dollars if there was - - -

10 THE COMMISSIONER: (not transcribable) What was your daily rate for this case?---It would depend how long it lasted for, sir. With respect, I didn't know how much Mr Kelly had, if I can use the vernacular, in the can that he'd paid in trust. I had no idea. And it was a standard practice that if it was \$2,000 a day, that was fine, there would be, if there was any left over I'd get some more.

MR STAEHLI: Standard practice with who?---Well, with Mr Paul it was an elastic arrangement. I didn't know how much was there. Clearly if it, if, if it went for two weeks I was going to lose out, but it was always going to be a minimum of two thousand a day plus GST and expenses.

20 THE COMMISSIONER: I've been told there was a cost estimate prepared here, not a cost agreement, but a cost estimate I've been told. Were you aware of that?---I don't believe I was, sir.

Do you say you had no idea how much you were being paid per day while the trial was going on?---I was getting \$2,000 a day plus GST and accommodation but there was, I had an expectation that if for instance it finished in three days I, there would be some more money for me. There were some cancellation fees et cetera. I didn't know how much was, was in the trust account, no idea.

30 Well, just what was your arrangement then, was your arrangement with him or with Paul?---I had an arrangement with Anthony Paul but on, I certainly spoke to Mr Kelly.

Well, what was your arrangement with him?---With Mr Kelly?

Mmm.---He said to me that he would pay me more money if it went longer, one, and two, if he was acquitted.

40 If he went what?---If he was acquitted.

He'd pay you more money - - -?---Yes, sir.

- - - than if he were convicted? Well, what monies were you talking about? ---Oh, I can recall having a conversation with him saying that, you know, it's a very complex trial, and he agreed with that, and, you know, it was worth more money. I, I can't recall if I actually ever specifically said it was an extra thousand a day, I can't remember that, but there was certainly an

agreement that he would pay me more money if it went longer than the week and longer than, and ah, he was acquitted. That was obviously if he was acquitted.

MR STAEHLI: This wasn't a very complex trial, though, was it?---Well - -

-

10 It was the evidence of one complainant and the question was consent. Wasn't that what the trial was about?---Oh, it was, it was a deal of legal argument in relation to prior sexual history which I thought made it quite complex.

Do you know what section of the Criminal Procedure Act was invoked in that regard?---I thought it was 170 or 180. I can't remember, sir, but it's there.

Because you charged him for that, didn't you, later?---I'm sorry, sir?

20 You charged him for making an application to the trial judge in relation to the previous sexual history of the complainant.---I, I thought that was all involved in the trial, sir.

Did you?---I believe so, sir.

All right. So the position is this, is it, that you, before you came to appear for him at the trial, had no, had made no disclosure of your fees to him in writing. Is that right?---That's true.

30 And you knew, didn't you, at that stage, that that was a requirement, a professional requirement of you as a barrister?---That's not true, sir.

Isn't it?

THE COMMISSIONER: Would you mind keeping your voice up?---I don't believe that's the case, sir.

MR STAEHLI: And why is it not the case?---My understanding is if I'm briefed through a, a solicitor - - -

40 Yeah?--- - - - that I don't have to give a disclosure to the client.

Well, did you make the disclosure to the solicitor?---I would have, we would have discussed it, sir, about it, it was how much obviously I, I didn't know. It wasn't as if I was appearing for landed gentry with, with plenty of money. I didn't know how much Mr Kelly - - -

THE COMMISSIONER: No. That would suggest, wouldn't it, that it had been - you'd have approached the matter of how much he had to pay you

per day with some precision. You weren't, as you say, appearing for the landed gentry that presumably had unlimited funds?---Well, that's true, sir.

So didn't you discuss with him in some detail just what you were going to charge him?---I, I had a number of matters going on at the time, sir. I may have. I just can't recall. I may have discussed it with Mr Paul and I just can't recall the specifics of it.

10 MR STAEHLI: So you're saying you didn't know how much Mr Paul had managed to get in trust from Mr Kelly. Is that right?---That's true, sir.

It might have been 5,000, it might have been 100,000?---It could have been.

And are you saying that you were going to charge something within the limits of what Mr Paul had in trust having decided on your fee at some stage after the trial had ended? Is that what you're saying?---I, I don't think I turned my mind to it at the time.

20 You're not serious, are you?---I am serious about it.

What – so you're just down there acting for Mr Kelly trusting that Mr Paul would do the right thing by you. Is that your position?---Well, he'd never done the wrong thing by me before so - - -

Well, answer my question if you would rather than putting yours. Is that why you were there?---I'm sorry, sir.

30 Is that the basis on which you were there?---Oh, I knew there was money, there was money in the trust account and I would be paid whatever it could be.

Whatever it could be.

THE COMMISSIONER: Well, didn't you raise with, with Paul how much you were getting per day?---It would have been a minimum of \$2,000 a day.

40 You would have told him that?---Oh, well, I don't know if I actually did but I'd done a lot of work for the firm. I can't, I honestly can't recall if there was a specific conversation about the exact amount of fees. I just can't recall that in relation to this matter.

MR STAEHLI: But he was paying you, you said on a basis, on the basis of \$2,000 per day plus extras, GST and - - -?---Yes, sir.

- - - a loading during the course of the trial?---Yes, sir.

How much had he paid you by the time the trial had finished?---I can't recall.

How had he paid you?---He paid me by cheque.

By cheque?---Yes, sir.

What, in every case?---I believe so.

What did you do with the cheques?---I cashed them at a hotel and then put various moneys in the account.

10

Which account?---Into a Commonwealth Bank account.

Your wife's Commonwealth Bank account?---Yes, sir.

THE COMMISSIONER: These were cheques made out to you, were they?  
---Yes, sir.

By Kelly?---No, no, no, by Mr Paul.

20 By Paul?---Yes, sir.

MR STAEHLI: Drawn on the firm's various accounts?---Yes, sir.

And you'd negotiated them for cash in hotels at Wagga. Is that right?  
---Yes, sir.

Was that your practice?---Sometimes.

30 Sometimes. Right. Did you ever deposit them into, into any bank account directly?---I may have, sir, I can't recall.

And was there a reason why you cashed the cheques and are you saying that in some instances deposited the whole proceeds into, into your wife's bank account?---Well, the wife's bank account was where all the, all the business money went into.

Yes. So why didn't you just deposit the cheques into that business account?  
---Well, I would have needed money to live on in Wagga.

40 What, you had no access to other money?---Probably not at the time.

So are you saying that you deposited a cheque or cheques into your wife's bank account at that time?---I may have I said. I can't recall if I did or didn't.

Right. Did you not have an account of your own into which you could deposit money?---There's a joint account which we, which the business, which we write cheques out of but I don't, I very rarely use that.

Right. And you say it's a joint account, is it in joint names?---Yes, sir.

That is, is it titled in joint names?---Yes, sir.

And do you keep records, did you keep records at the time about how much you had been paid by Mr Paul in respect of any matter?---I would have.

10 You would have. What records did you keep?---Well, a, a book for taxation account, taxation - - -

THE COMMISSIONER: I'm sorry, what?---A reference for taxation.

MR STAEHLI: What sort of a reference for taxation?---Well, my wife would keep the records of what I earned and she would pay money into a taxation account for the ATO on the computer.

20 On the computer. All right. So are you saying that the records were kept by your wife?---Yes, sir.

On a computer at home?---Not on the computer. It was in a – my recollection it was in a book.

In a book.

THE COMMISSIONER: In a what?---In a book, sir.

A book.

30 MR STAEHLI: And does that book still exist?---Would do.

I beg your pardon?---I believe it would do.

You believe it would. Do you know one way or the other?---I understand it does, sir, yes.

Is that yes?---I, well, it was – I saw it a couple of days ago.

40 I see. All right. And were you looking at it a couple of days ago in order to refresh your memory about these events?---No, not at all.

Is it a system in which all your payments received in the course of your professional practice were recorded during the financial year ending 30<sup>th</sup> of June, 2008?---With the exception of money that went into my TAB account.

Well, why was that an exception?---Well, if it was – if it went into a TAB account - - -

Yeah?--- - - as income I would declare it at the end of the year as income but not as, as cash rather than money that went into the account.

So are you saying that the book only recorded money that went into the account?---Oh, it sometimes – well, I can't actually recall what it, what it completely says. It's, it's in relation to money in and money out in relation to the business.

Your business?---Yes, sir.

10

All right. And so that means, does it, that you would have to tell your wife if she was the person responsible for these accounts what you were entitled to in respect of any particular engagement. Is that right?---I – or I'd tell my accountant.

You'd tell your accountant?---Yes, sir.

20

What, tell your accountant that, for example, in relation to this Kelly trial, that you'd been in a trial for seven days and you were owed 14 or 20 or \$40,000? Would you tell your accountant that?---I would tell my accountant if I – there was anything that didn't go into the business account if I earned during the year.

Right. And when would you tell your accountant that?---When I put my taxation in.

I beg your pardon?---When I would put my taxation in.

30

In relation to this year ending 30<sup>th</sup> of June, 2008 your, your accountant did prepare a draft 2008 tax return for you on the basis of information you had given him, didn't he?---Yes, sir.

And on the, the information which you originally gave him, did that include all the income which you had received for the 2008 year?---I can't recall if it was all or not.

THE COMMISSIONER: Sorry, I can't recall - - -?---I can't recall if it was all or not, sir.

40

MR STAEHLI: Well, you'd know, wouldn't you, whether or not you'd given your accountant all the relevant information in respect of such a year? ---I'm not necessarily sure about that.

Why not?---Well, if I had an estimate of what I had which it did not go into the account it would be – may well be an estimate and if I made further inquiries it may have been less or could have been more.

You're not suggesting, are you, that a tax return is meant to be an estimate of your income, are you?---No, sir.

Well, you tell us the process that you went through in respect of the 2008 year in providing information to your accountant about your earnings as a barrister?---Well, the books went to him.

Yes. With anything else in relation to information about income at the time of - - -?---I think I - - -

10

- - - providing the books?---I think I told my accountant I thought, I thought I'd earned about \$16,000 which did not go into the account and I revised that to 25,000.

THE COMMISSIONER: Sorry, would you say that all again?---I revised that to \$25,000.

You thought 16,000 - - -?---16.

20

- - - hadn't gone in. You mean after the accountant had prepared your return, is that when you found that you thought there was 16,000, later 25,000 that hadn't gone in? Is that what you're saying or not?---I gave him an estimate that I thought it was about \$16,000.

That was your total earnings for - - -?---No, they, they, I had, that had not gone, been deposited into my account.

30

Well, when did you give him that, after he prepared the return or in the course of him preparing it or what?---Oh, well, I have a bookkeeper who gave Mr, my accountant, Mr Leonard, all the, all the income and the GST and, and, and all the deductions and petrol and all that sort of paraphernalia and I, I don't know if I rang Mr Leonard or, or spoke to him personally and said I think it was about \$16,000 that I had - - -

Later revised to twenty five thousand?---Yes, I did, sir.

Look, I don't understand this but, however, I suppose it will become clear.

40

MR STAEHLI: Both of those revisions happened after you became aware that you were the subject of an investigation by this Commission. Isn't that right?---I don't think the first one did.

You don't think the first one?---I don't think so.

What about the second one?---It may well have.

It may well have, all right, was there something that happened here which caused you to go and reflect on the amount of extra money which you

needed to tell your accountant about?---I wanted to be doubly sure that everything that I had, that had gone into my TAB account which was income was declared.

You wanted to be sure after you'd been here to the Commission, did you?---  
Oh, I don't think I'd been to the Commission I don't think, sir.

Well, you're saying in relation to the figure that you told him previously that that was an estimate of money paid into your TAB account during that  
10 year?---Yes, sir.

And by estimate you mean you just thought of a figure and told him that. Is that what you mean by estimate?---I thought that was it, it would have been fifteen or \$16,000.

In it would have been, by that do you mean that you did not check any records?---No, I didn't.

But when you subsequently revised the figure to something like \$25,000,  
20 you did then check the records. Is that what you're saying?---I ordered a record.

You ordered records?---Yes, sir.

So the first time it had been a guess?---Yes, sir.

And the second time you got records from the TAB which enabled you to calculate the amount directly. Is that right?---Yes, sir.

30 And do you say do you that all of the deposits which were made in that TAB account were income?---I believe so.

You believe so?---Yes, sir.

Have you looked at those amounts to examine whether or not they were?---  
I, I rang the TAB and asked them for a list of all the deposits and they said it was twenty five thousand odd dollars, twenty five thousand a few dollars and I accepted that.

40 Because the figure's \$24,700 just - - -?---Roundabout and I accepted that.

And is it the case that you knew that all of the deposits which had been made into that TAB account were monies which had been derived by you in the course of your practice as a barrister?---I wasn't actually certain of that but to make absolutely positive, I just declared it all. It may not have been but I just declared it all.

THE COMMISSIONER: Where else did it come from?---Well, I could have put some money in there for instance, sir.

Where would you have got that money from otherwise than from your practice?---Oh, if I had a bet on the football with one of the boys and put a couple of hundred dollars into it a bet.

10 MR STAEHLI: But you see, I assume, perhaps wrongly, that as a barrister you were paying income tax on a PAYG basis. Is that right, that is quarterly?---No, I, I pay, I think it's the end of the year, I think.

Only at the end of the year?---No. I thought of everything that I bank, we transfer straight to the taxation department.

Well, that's not right, is it?---Isn't it - - -

Isn't the position that you have an accountant to which you pay thirty per cent of your income?---Yeah, well until it goes to the ATO, yes.

20 Isn't that an account which is, you have as a result of a condition placed on your practicing certificate by the Bar Association?---Yes, sir.

All right. So the amount of money itself which, how often is that money paid?---Whenever I bank money, my wife transfers it over.

Your wife transfers it over into that account?---Yes, sir.

30 And so is this the position that some of that, the money which you earn is banked into that account which your wife administers in the way you've described?---Yes, sir.

Other money you keep out for your own use for living expenses and the like. Is that what you say?---Some of it I assume, yes.

Some of it you assume, all right, don't you know what you do with that money?---Well, if you withdraw money out of the bank obviously you spend it for living on.

40 Yes, we're talking about money that hasn't gone into the bank, the money which you keep for yourself, that's money that hasn't gone into the bank, correct?---That's correct.

Like some of the money, you said you received in Wagga during the course of the trial that Mr Kelly was facing. Is that right?---Yes, sir.

You say, I gather, that you kept some of that money out for yourself. Is that right?---Yes, sir.

And spent it?---Oh yes, sir.

And in respect of that money not banked into the account and not banked in, not deposited into the TAB account, how do you keep a record of that cash which you obtained from your income and which isn't deposited into a bank account and is spent on the cost of living, if at all?---Well, if it was in my TAB account, it would be income, the vast, vast, vast majority of it and I declared it at the end of the year.

- 10 Yes, but we're talking about money like the money you say you kept out of the payments made to you by Mr Paul in Wagga, right?---Pardon me, sir, I'm sorry, I'm not, I misunderstood that.

So that money wasn't deposited into the bank account administered by your wife, correct?---No, certainly not all of it.

No. You've told us that some of it was kept out for yourself to spend on living expenses. Correct?---Yes, sir.

- 20 It wasn't deposited into your TAB account either, was it?---No, that wasn't, no.

So such money which wasn't deposited into either of those accounts is cash which you have available to you out of the course of your business as a barrister. Correct?---Yes, sir.

And how did you account for that in terms of your tax return - - -?---I don't do that.

- 30 - - - to give all the information to your accountant?---I don't believe now nor then that it was income that was declarable. It was for living expenses which I don't believe is a tax liability.

THE COMMISSIONER: I mean, you'd have to declare income you earned, wouldn't you?---I didn't believe that living, away from home expenses was an income.

- 40 MR STAEHLI: So are you saying that you only used such money when you were in a country town?---Well, living away from home expenses was in a country town yes, sir.

So are you saying that when you were paid cash by a client for a matter at Sutherland Local Court, for example, that that was money which would be either deposited into the bank account or deposited into the TAB account?---Or it would be written in as, written in for taxation purposes.

How?---Well, if my wife wrote it in a book, I suppose.

You suppose?---Yes, sir.

And how would she get that information?---Well, I would tell her.

You would tell her?---Yes, sir.

Did you tell her in every instance in that financial year?---Sometimes I would not.

10 And what would happen in relation to that money that you would not tell her about?---Well - - -

Would that remain undeclared to the Taxation Commission?---It may have.

All right, whereas you would know that you are required to tell the Taxation Commissioner about all of your income?---Yes, sir.

20 So you would file tax returns, would you, in the course of your profession as a barrister in which you had kept monies, mostly in cash, which income received by you is not declared to the Taxation?---I can't recall - - -

Are you agreeing with that position?---I'm sorry?

Are you agreeing, do you agree with that proposition?---Not necessarily, sir. I, if, I don't, I believe that I declared everything I think.

Are you agreeing do you agree with that proposition?---Not necessarily, sir. I, if - I, I don't - I believe that I declared everything I think.

30 THE COMMISSIONER: Sorry?---If I didn't it was an oversight but I, I believe I declared everything I earned.

MR STAEHLI: Well, let's look, I'm sorry to dwell on this issue, Commissioner.

Let's look at the moneys paid to you at Wagga in February of 2008, during the trial?---Yes.

40 Do you know how much money in the way of cheques was provided to you by Mr Paul during the course of the trial?---Off the top of my head, no.

But do you - - -

THE COMMISSIONER: Sorry?---Off the top of my head, sir, no.

MR STAEHLI: Do you say this would be written up in the book that your wife keeps?---I believe so.

Have you looked to check?---No.

Would you be prepared to provide that book to the Commission?---Yes, sir.

Thank you. And are you able to say how much money of the, of the proceeds of those cheques provided to you by Mr Paul, whatever the amount was, was retained by you in the form of cash when you were in Wagga Wagga?---What I didn't put into the bank, yes, sir.

10 How much was that?---I can't recall that, sir.

Some thousands of dollars?---I wouldn't – I don't know if it would be thousands.

Well, you tell me, estimate?---I don't know. Maybe two or \$300 a day.

THE COMMISSIONER: How much?---Maybe two or 300 a day but I'm only guessing that, sir.

20 MR STAEHLI: Right. Now, your hotel bill was being paid for by the firm. Is that right? The firm of solicitors?---I can't recall if that or, or I was, I'm not sure.

What, you don't know one way or the other?---Sometimes the firm pays, sometimes I pay.

And so your recollection is that you kept something like two or \$300 per day for each of the days that you were in Wagga Wagga. Is that right?---I believe so.

30 You believe so. And what did you spend that money on?---General living.

General living. Meals?---I suppose so.

Drinks?---Yes, sir.

Possibly on the cost of hotel accommodation?---Possibly.

Is there anything else to spend it on?---I might have had a bet.

40 You might have had a bet?---Yes, sir.

And do you regard having a bet as being living expenses of the kind which you don't need to account to the Taxation Commissioner about?---I don't believe so.

You don't believe you do need to account for income which you've received which you use to spend on betting on horses?---Well, I – with

respect, sir, you can – I could have eaten at a five-star restaurant or McDonald's.

Just answer my question, please. Are you saying that you don't believe that money which you received as a barrister which you used to bet on the horses is money which you need to declare to the Taxation Commissioner? ---Sir, I, I didn't believe that living away from home expenses, whatever they may be, were a tax – were a taxable, were to be declared as taxation.

10 All right?---I didn't believe that.

And we assume that in circumstances where you're applying two or \$300 to your cost of living in that – the way you've described that you would not claim the expenses of the hotel accommodation on your tax return?---I may have, I may not. I can't recall, sir.

No. What, you don't know one way or the other?---I can't remember if I paid for them for if I didn't. I just can't remember if I claimed that or not.

20 All right. And do you know generally what the position was in relation to your hotel expenses for that year, that is, did you have a practice about whether or not you would claim them or not?---I may have, sir, I honestly can't recall.

Now, you did make a proposal to Mr Kelly on the day of his acquittal in the terms that he has described, didn't you?---No, I didn't.

THE COMMISSIONER: Well, I think you better put it more directly than that.

30

MR STAEHLI: I will.

THE COMMISSIONER: Yes.

MR STAEHLI: Thank you, Commissioner. You did say to Mr Kelly words to this effect, in relation to the pending police investigation of him, "I can make a payment to some people and I can make a payment and make it go away."---I never said that.

40 THE COMMISSIONER: So, no?---No.

MR STAEHLI: You did tell him that the payment would be in the sum of \$15,000?---No.

THE COMMISSIONER: So there was no conversation about, well, first can I ask you this, did you discuss with him after the verdict had come in in his favour on that same day that, that he was facing, he might be facing more charges about an event earlier? Did you have that discussion with

him? You've heard him give evidence about that, Kelly, I mean?---I certainly told him that Detective Tina Hall had told me words to the effect that, to the best of my recollection, it was something along the lines of, "I'll get him if it's the last thing I do."

Yes.---Something along those lines. I had already been made aware of there was another matter in the wings. And - - -

MR STAEHLI: By who?---By Mr Kelly.

10

Right.---(not transcribable) it's now Mr Nankivell, I thought it was Nankivesille, I think, Nankivesille, Nankivell, was involved. Mr Kelly had shown me some sort of a document or card, something along those lines which suggested consent in relation to that matter. I can recall saying to Mr Kelly, "Lets get this trial out of the road and then we'll worry about that one."

20

THE COMMISSIONER: But I'm asking you the conversation you had after you'd got that trial out of the way?---I told him what Detective Hall had said to me.

Yes. Are you telling me that there was never any mention of any money passing to you in respect of that matter that's been referred to earlier? ---Never.

30

Never. So (not transcribable) of mentioning \$15,000, no amount of money. Is that what you're saying?---No. No. The only amount of money I ever discussed with Mr Kelly were two matters. He owed me money for the, he agreed that he would pay me money from the trial. And he - - -

More money from the trial, yes.---And he agreed that he would pay me monies if, for the extra days preparing and running the costs application and if we were successful, he would pay me more monies.

THE COMMISSIONER: I don't understand what you claim your arrangement was. You were saying that if the trial resulted in an acquittal - -?---Yes, sir.

40

- - - you'd charge him an amount of money. But if it resulted in a conviction you wouldn't. Is that what you're saying?---Well, I, I didn't - - -

So in respect of the amount of money that was contingent on the outcome of the trial, how much?---I had a recollection it was \$5,000.

And that was on the outcome of the trial. And then there's another money you say about the cost application?---Yes, sir. Yes, sir.

Well, what do you say about that? Was that also contingent on being successful in that application?---Yes, sir. Yes, it was.

So how much were you going to be paid for making that application? And how were you going to get contingently upon it being, the application being successful?---\$5,000.

Another \$5,000?---Yes, sir.

10 MR STAEHLI: So in the circumstances of both the trial being successful and the costs application, in terms of obtaining a certificate being successful, at the end of the day you say do you, that Kelly owed you \$10,000?---That was what was in my memory bank, sir.

Well, is it the position or not?---It was certainly the second amount was \$5,000. I cannot distinctly recall the amount of money that Mr Kelly agreed to pay me in relation to the first trial. I just can't, whether it was \$1,000 a day extra, I don't know. I can't remember. I had it in my mind and I haven't checked prior to, well, when it was yesterday, I hadn't, I wasn't  
20 aware that \$7,000 had been paid into the account. And as it was, I can only assume it was \$1,000 a day.

THE COMMISSIONER: Can I just ask you, you have known for some time haven't you that the question has arisen as to how much you were charging Kelly for this trial?---Yes, sir.

And how much you were charging him for making applications and what sort of result that, is this the best you can do from your recollection as to what you were paid?---Yes, sir.

30 All right. Well, I'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.00pm]