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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

PUBLIC HEARING

OPERATION SEGOMO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 22 SEPTEMBER 2009

AT 2.06 PM

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THE COMMISSIONER: Yes, you're still under oath, you understand, Mr Hart?---Yes, sir.

Yes.

MR STAEHLI: Mr Cook has just asked me about Mr Trinder, the possibility of him being excused.

THE COMMISSIONER: Yes, well, I think he can be excused, do you?

10

MR STAEHLI: Yes.

THE COMMISSIONER: Yes. He's excused from further attendance.

MR STAEHLI: Thank you, Mr Commissioner. Just Mr Hart, can I, can we return to the issue of the conversations, if any, had between you and Mr Kelly on the day of his acquittal in February?---Yes, sir.

10 You've mentioned a conversation with Detective Hall that happened after the jury verdict. Is that right?---Yes.

And whereabouts did that conversation take place do you say?---If you'd been to Wagga Court, the courthouse - - -

THE COMMISSIONER: You have to keep your voice up?---In the Wagga District Courthouse there's a side exit and the, it goes to a, a walkway, an internal walkway and if you turn left, the Crown's room's further up, if you turn right, you can get out onto the street.

20 MR STAEHLI: Right, so - - -?---It was in that, in that hallway.

Walkway?---Well, hallway, walkway.

All right. And were you at the time on your way somewhere or were you just exchanging reminiscences with Detective Hall?---Oh, I can't recall. I'd, I, the trial had finished. I'd walked out of the court. I - - -

All right. So were you still in your robes?---Yes.

30 And did you approach Detective Hall or did she approach you?---I can't recall that, sir.

And you've told us some things about that conversation but are you intending to convey the impression that she spoke to you specifically to tell you about her intent in relation to Mr Kelly or was there, was it just in the middle of idol chat about what had taken place?---Oh, I, I believe it was from the best of my recollection, it was just in a conversation.

40 What, a conversation about the trial that had happened or what?---Oh, it may well have been, sir.

But when you say it may well have been, are you saying that you don't know one way or the other?---I had a number of conversations with, with Detective Hall during the trial and, and after and it may have been something about a conversation, well about the trial, the verdict and about, I certainly conveyed during the trial and perhaps after how unfair, in my opinion as a defence counsel, the system was and I'd spoken to Detective Hall off and on about that.

The system was, did you say?---The justice system.

10 The justice system?---Ah, and I can recall, I, I'm, I don't know whether I spoke to the Crown Prosecutor or Detective Hall, something along the lines of something to do with the costs application, I, it's in my memory somewhere but it was certainly a conversation whether I had that with Hall or not, I can't recall, but I left the courtroom and, and there were, I know Detective Hall was there, the Crown could have been there, I can't recall but I know during the conversation, shortly after the trial in that hallway, I spoke to Hall.

THE COMMISSIONER: Yes, I know. What did you speak to her about, you're being asked?---Well, sir, I, I can't recall the specifics. It would have been about the not guilty verdict, I would have said something about that.

Did you discuss anything with her concerning other charges?---Other charges had been mentioned, I cannot recall by - - -

20 On this occasion, this conversation I'm talking about?---I can't recall exactly what was said.

Well, did she express a view to you that she was really trying to make it her best endeavour to ensure that Kelly got convicted of an offence, yes or no?--
-Yes, sir.

She said that, did she?---She didn't say those words. I can't - - -

30 Well, the effect of it was there though?--- The effect of was I'll give in if it's the last thing I do, something like that.

All right. Now the question I just asked is did you go up and take that up with Kelly?---Well, when I went over to the hotel which is only across the road I certainly at some stage said to, to Mr Kelly that she's not going to let you alone, she's going to get you or words to that effect.

Yeah, all right. Yeah.

40 MR STAEHLI: And did you say anything else to him then about what avenues might be available in relation to that?---I don't follow the question, sir.

THE COMMISSIONER: You what, don't - - -?---I don't follow, what was the question, sir, I - - -

Well, you heard what Mr Kelly said you said, didn't you?---I, I never said that you pay me any money and I'll make it all go away, that's the words he said. I never said that.

So what did you talk about?---Oh, we spoke about - - -

No, about this apropos of what Paul had told you which you said you passed on to Kelly?---I certainly said that he would, that she was going to get him by hook or by crook or words to that, whatever I said, something along those lines and, and oh, we spoke about lots of things, sir but I certainly told him that, what Detective Hall had said, paraphrased to me.

10 Did he know that?---I told him that.

Did you say that you could or would do anything to help him about this matter?---I certainly, whether I said it then or I certainly said it at some stage prior or during it when he raised it that I would be happy to defend him if he was charged and I certainly said to him on a number of occasions that, and that's how we were the criminal system, that if either you only have to have an allegation and you get charged and in particular you, you would get a, you would be charged if there's an allegation.

20 So are you saying that you told him that you would only, that your happiness to defend him would be only if in the circumstances he was charged?---Oh, that was in the conversation at some stage, sir, yes. This took up some time, the family were there and we were talking about - - -

But the conversation you're talking about is the one that happened at the hotel after his acquittal?---Well, we spoke about many things, it was, this took some time.

30 Yes, yes, but on that date?---I'd spoken to him about this matter prior to that.

No, you were being asked about the conversation - - -?---On this day - - -

Mr Hart, you must surely understand the question that's asked of you. You were asked about the conversation you had with Kelly after he'd been acquitted at the hotel, when you were at the hotel. That's what you've been asked about. Not what happened afterwards or before?---We had numerous conversations in the - - -

40 Well, you did but do you say you had numerous conversations on that afternoon?---If we – in relation to the matter of the trial the – that may or may not come up, yes, I did discuss it with him.

What trial, what are you talking about?---That – the matter involving Mr Nankiviss or Nankivell.

Yes. So you discussed that with him after he'd been acquitted. Is that right? You discussed that with Kelly after there'd been an acquittal?---I, I believe I did at some stage.

Right. Yes.

MR STAEHLI: And did you discuss with him anything about payments that might need to be made to you in order for you to defend him if he was charged?---I don't think it was said in a specific way.

10

Or was it said at all?---I don't believe so. It may have been. I can't recall.

Well, you, you can recall though you say, can you, that you didn't make any proposition to him of a kind which suggested that you would be able to pay people to cause the matter to go away?---I never said that.

You can remember that you didn't say that, can you?---Absolutely. I never said that.

20 Right. And why is your memory clear about that but not about other matters?---Well, I just didn't say it, sir.

Do you know, do you know, having had some time to reflect since I was asking you questions this morning, how much money you had been paid by the date of the acquittal for your representation of Mr Kelly?

THE COMMISSIONER: No idea?---No. It would have – 15 or 16 maybe thousand dollars. I can't recall.

30 MR STAEHLI: Did you have an arrangement with Mr Paul whereby he could cash cheques drawn on his firm's accounts in your favour, that is, cash them at hotels in Wagga, for example?---If he did it wouldn't concern me.

THE COMMISSIONER: Well, you were asked whether you had any discussions about it?---I may have. I can't recall if I did or not.

These are cheques made out to whom?

40 MR STAEHLI: To you, Mr Hunt?---Well, if I did I, I can't recall if I did or not have a conversation with Mr Paul about that. I may have. I may not. I can't recall.

It's not a common thing, is it?---Well, I wouldn't say it was very common. We were very good friends.

Well, by common I mean is it a practice that you permitted with other solicitors who instructed you that they could draw cheques on their firms'

accounts and cash them and keep the money?---I, I can't remember if I had a conversation and I don't know if that happened or not. It was suggested to me on the previous occasion I was here it did but I have no knowledge of it, that I can remember.

No knowledge that you can remember?---Well, I can't recall if I had a conversation with Mr Paul about that. I just can't.

10 So it's a possibility, is it, that you've had such conversations with him at around this time in relation to him cashing cheques made payable to you?
---It may have.

Do you remember whether or not later in the year 2008 you had conversations with him about cashing cheques made payable to you in which - - -?---I may have, sir.

You may have?---I may have had that conversation with him.

20 All right. Can you describe - - -?---Excuse me.

- - - as best you can in what circumstances it would be appropriate for him to cash cheques made payable to you?---Not off the top of my head, sir.

Because you've told us that you would cash cheques made payable to you when you needed it, living expenses and the like. Is that right?---That's correct.

30 And presumably from time to time, not necessarily in relation to this money, you might cash cheques and put the cash into your TAB account. Is that right?---Yes, sir.

And so looking at the circumstances where you were entitled to the proceeds presumably of such cheques, it's difficult isn't it to think of circumstances in which Mr Paul might cashing such cheques, isn't it, in the context of Mr Kelly's trial when you were there in Wagga?---I can't comment on that, sir, but I don't know if it happened. If it did, I can't remember it.

40 You're saying you didn't know about it?---I didn't say that, sir. I can't remember if it happened or not.

So as you sit here now, you can't remember whether or not you knew about it happening at the time. Is that what you're saying?---No, I can't remember.

All right. Are you saying that you did not have an arrangement with him, by which he could do such a thing?---As I say, sir, if he, if he did it wouldn't of concerned me. I've known him - - -

THE COMMISSIONER: No. But you're asked whether, are you saying you did or did not have any arrangement with him that he could cash cheques that were made out to you?---I honestly cannot remember if I did or didn't.

MR STAEHLI: You're not serious are you?---Yes, I am, sir.

10 So I, do you have a problem with your memory at the moment?---I had a turn this morning, sir, and I, I collapsed up in Macquarie, in Elizabeth Street. So I'm not travelling real well today, to be honest.

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

MR STAEHLI: He had a turn.---I had a turn this morning and I, I must have lost conscious. Whether it was, I had some chest pain or whether was, I fainted, I don't know. But I looked up and there was a bus very close to me, sir. It was just this morning.

20 THE COMMISSIONER: Well, are you telling me you're not feeling well enough to answer questions?---Well, it would be nice to have it all over and done with, but I haven't been well all day, sir.

You what?---I haven't felt well all day, sir.

Well, are you telling me you'd rather not answer questions now?---I'd prefer not, sir, at the moment. Only I don't feel well.

30 You can step down if you want to.---Thank you, your Honour.

WITNESS WITHDREW

[2.22pm]

THE COMMISSIONER: Mr Walsh, he will have to answer these questions sooner or later so he might as well know that. But if he wants an extension beyond today, he'll have to have a medical certificate.

40 MR WALSH: Well, I do think as a matter of courtesy, this issue was raised with me early this morning. I didn't disclose it to your our learned counsel assisting because I took the approach that the witness has to go through this process sooner or later.

THE COMMISSIONER: Well, he'll have to, yes.

MR WALSH: And I just took the view that he'll soldier on, but, no. I apologise that I didn't raise it and - - -

Well, if he wants his extension after today, he'd have to be supported by, and it'll be a medical certificate I have to say, not that I don't think he, I'd rather he didn't give evidence, it'll have to be a certificate to the effect that he is unable to do justice to himself in answering questions.

MR WALSH: I appreciate that.

THE COMMISSIONER: Yes. all

10 MR STAEHLI: Well, Mr - - -

THE COMMISSIONER: Do you want me to take a short adjournment?

MR STAEHLI: Yes. Can we do that?

THE COMMISSIONER: Yes.

20 AT 2.23pm THE MATTER WAS ADJOURNED ACCORDINGLY [2.23pm]