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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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AT SYDNEY

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AT 10.20 AM

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THE COMMISSIONER: Yes. The Commission is continuing it's public inquiry. The scope and purpose of which the allegations have already been announced. Yes. So, in relation to Mr Hart's, well I've received from, I suppose I am the person to whom it may concern, a medical certificate which says that he's, he is to remain in St Vincent's hospital for some tests in effect.

MR STAEHLI: And as well there's a letter from Mr Walsh, who's obviously here in person to speak to, but mark the letter and the - - -

THE COMMISSIONER: Yes.

MR STAEHLI: - - - medical certificate being provided. Perhaps, I don't know if you wish to make that an Exhibit, Commissioner.

THE COMMISSIONER: Yes. Very well. Well, I don't know when you'll find out any more information about your client, Mr - - -

MR WALSH: Well (not transcribable) first, sorry about that. Could I hand up the original document that I received this morning?

THE COMMISSIONER: From the hospital.

MR WALSH: I went to the hospital.

THE COMMISSIONER: Is that one?

MR WALSH: That's a copy but could I hand up the original? I'm happy to.

THE COMMISSIONER: And I'll make the two originals, I'll just mark them the next Exhibit number.

**#EXHIBIT 13 – MEDICAL CERTIFICATE AND FACSIMILE
REGARDING JOHN HART**

MR WALSH: Could I just put some brief notes on the record if could, Commissioner, about - - -

THE COMMISSIONER: Yes.

MR WALSH: - - - how these matters arose. Yesterday afternoon, based upon advice I gave to Mr Hart, he went to St Vincent's hospital and was examined in the casualty section.

THE COMMISSIONER: Yes.

MR WALSH: And then I was contacted later in the afternoon by his wife. She told me that he'd been admitted and that he'd received medication, but he was required to undertake intensive or intrusive testing today. So I've been up to see him and I got that certificate. I apologise it wasn't addressed to you in more appropriate terms.

THE COMMISSIONER: Oh, no, no.

MR WALSH: But that's the best I could do. And I understand that either today or tomorrow he's to undertake tests and it's unlikely in the foreseeable future, that's the best I know at this stage, that he will be unable to give evidence. Now, what I propose to do subject to your view, is to monitor the situation actively, to go up to the hospital, to liaise with learned senior counsel assisting the Commission and to report as I can, as it goes about his condition and get evidence, appropriate evidence on a constant basis if I, if I can do that, Commissioner.

THE COMMISSIONER: Yes.

MR WALSH: That's about the best I can do in the circumstances.

THE COMMISSIONER: Well I thought when I saw that certificate this morning that something like this would happen. What I propose to do though, is to just to continue to take certain evidence in this matter.

MR WALSH: Of course.

THE COMMISSIONER: Your client will be given every opportunity to properly respond to that and it'll be all on the record anyway.

MR WALSH: Yes.

THE COMMISSIONER: And then we'll wait and see. But for obvious reasons you would not know, I mean I suppose it's possible that, that he would not be able to appear for some time.

MR WALSH: What'll I have to do today is to at some time go and interview or speak to the resident medical officer and also the cardiologist who's identified, ascertain what precisely are the tests to be undertaken and to get an appropriate report in detail about those matters, come back, report to you and counsel assisting perhaps.

THE COMMISSIONER: No. The report I got – I mean, I have had what were called medical reports put before me which somebody says, "X turned

up and said they had a headache. I don't think they're fit for work." That's the sort of medical one that I was not going to be prepared to accept.

MR WALSH: Yes, Commissioner.

THE COMMISSIONER: But the sort of medical certificate I've got here, signed by an authority from St Vincent's and the like make it fairly clear that he – I couldn't have him here today but I suppose eventually it would be good if he can get this out of the way as quick as possible.

MR WALSH: As I said yesterday, that was the advice that I'd given him and that's the approach that we – or he endeavoured to undertake but you saw what happened.

THE COMMISSIONER: All right. Yes, Mr - - -

MR STAEHLI: Could I just mention the possibility that as a result of Mr Hart's illness, although the future course of it, of course, is unknown, that his absence may give those of us who are presenting the evidence before you, Commissioner, cause to reflect on how much further the evidence should proceed in terms of what's been planned for this week.

THE COMMISSIONER: Yes, I can see, yes.

MR STAEHLI: Yes. But in any event, we propose to proceed today at the very least.

THE COMMISSIONER: Yes.

MR STAEHLI: And so in one sense, might I just briefly address you about what's to happen, in an ideal world there would have been the opportunity to ask Mr Hart precise questions about the possibility that he had spoken to particular, two particular Crown Prosecutors who at the relevant time were in that role at Wagga, they being Mr Gary Corr, C-O-R-R, and Mr Max Pincott, P-I-N-C-O-T-T. But in Mr Hart's absence, obviously, I can't ask him those questions but because both those gentleman have put their normal duties to one side to come here today I propose that I call both them and ask them as best I can in the circumstances the questions that would have been asked in other circumstances.

THE COMMISSIONER: Yes.

MR STAEHLI: And so I might start that process, if I may, by calling Mr Corr.

THE COMMISSIONER: Yes. Mr Corr here? Mr Corr. Take a seat, Mr Corr. You weren't here on Monday - - -

MR CORR: No.

THE COMMISSIONER: - - - when I announced the scope and purpose of this inquiry and the allegations that were the subject of this inquiry but the relevant one from your point of view would be an allegation that Hart had represented – Mr Hart may have represented to a client that in return for payment being made to public officials employed in the administration of justice those public officials would act favourably in the interests of that client.

MR CORR: Yes, I understand that, Commissioner.

THE COMMISSIONER: But I think you have been interviewed by members of the Commission staff in any event so - - -

MR CORR: Yes, I have.

THE COMMISSIONER: - - - I am assuming you are fully cognisant of the nature of the allegation that's being investigated. I don't know that – are you familiar with the terms of the Independent Commission Against Corruption legislation?

MR CORR: I'm not, your Honour, but I'm willing to proceed. I'll accept what you're doing is correct.

THE COMMISSIONER: Yes. Whether you're willing or not you are proceeding but could I just remind you that you've got – you must tell the truth. I would hardly expect to have to tell an officer of the court that but it's a serious criminal offence not to.

MR CORR: Yes, I understand.

THE COMMISSIONER: You can object to answering questions but whether you object or not you still have to answer the questions. Parliament gives you the right to object so that if you have objected the question and the answers could never be used against you in any criminal, civil or disciplinary proceedings except proceedings, if any, that were taken for you not telling the truth to this Commission. In that event, the questions and answers would be used against you. Do you understand that?

MR CORR: I understand that, Commissioner.

THE COMMISSIONER: There is a provision in the legislation that I frequently have recourse to which allows me to make a declaration deeming any witness to have objected to everything so they don't have to apply their mind to that question and therefore consider whether they should be taking the objection to protect themselves for further proceedings. Do you want me to make that declaration?

MR CORR: No, I do not, Commissioner.

THE COMMISSIONER: All right. You have to take an oath to tell the truth. Do you want to take it on the bible or holy book?

MR CORR: An affirmation.

THE COMMISSIONER: Would you stand up.

THE COMMISSIONER: Yes, take a seat. Thank you, Mr Corr.

Yes, Mr - - -

MR STAEHLI: What's your full name, Mr Corr?---Gary Charles Corr, Gary G-A-R-Y and Corr C-O-R-R.

And you are a Crown Prosecutor in the state of New South Wales. Is that right?---I am.

For how long have you been such a prosecutor?---I became an Acting Crown Prosecutor on the 7th of October, 2002 and I was appointed as a permanent Crown Prosecutor on the 1st of September, 2005.

All right. And prior to your appointment as an acting Crown Prosecutor, is it the case that you were a barrister in private practice?---Yes, that is correct.

All right. Whereabouts?---I was practising in both New South Wales and also in the Australian Capital Territory prior to my appointment as an acting Crown Prosecutor. My chambers were based in Canberra but I did practice in New South Wales, mainly in the criminal area.

Right. And as at February 2008, as I understand it, you were a Crown Prosecutor stationed, if that's the right word, in Wagga Wagga?---Yes, that's right. I'd been in Wagga Wagga since about September or August of 2005.

Right. But I gather it's the case that despite being stationed in Wagga you would not necessarily only prosecute matters in Wagga?---No. The – Wagga, Wagga Wagga is the base also for the Griffith District Court and the Albury District Court. Also Crown Prosecutors based in country areas go to other circuits, for example, I frequently go to Bathurst or to Queanbeyan or further afield such as Broken Hill or as is required.

Right. Thank you.

All right. Thank you. In February of 2008, the Commissioner's heard there was a trial involving two men, Jason Kelly and Mr McCauley for, although the detail of this has not been explored, some charges which I'll call sexual assault matters?---Yes, I'm familiar with that trial.

Did you prosecute it yourself?---No, I did not, Mrs Maxwell who is the trial advocate situated at Wagga Wagga was the prosecutor on that occasion.

All right. Would you briefly explain the difference between that Crown Prosecutor and a trial advocate please?---Crown Prosecutors are appointed under the Crown Prosecutors Act and conduct the what are considered more serious trials. It's an appointment by the governor in counsel. A trial advocate is technically a solicitor but is a senior solicitor with many years' experience and the trial advocate position is quite often seen as being a stepping stone to being appointed as a Crown Prosecutor.

One of the subtle differences I suppose also being that the, the trial advocates are employed by the Office of the Director of Public Prosecutions. Is that right?---Yes, that's correct and they are required or they have a solicitor's practising certificate rather than a barrister's practising certificate.

Whereas the prosecutors such as yourself are not actually employed by the ODPP but are appointed in the way you've mentioned?---We have a, a very close working relationship. In Wagga Wagga we're actually physically located in the Office of the Director of Public Prosecutions.

Yes. All right. Thank you. Now, in this matter as you may have heard me mention before you started giving evidence, your name has, was raised in some telephone calls in particular between Jason Kelly who was one of the accused at that trial in February 2008 and Mr Hart who was his counsel during that trial. And I think the best way to proceed is to show you if I might the transcript of the two calls, the first is exhibit 7, Commissioner, being a call on the 27 April 2008 at 1734.

THE COMMISSIONER: And what?

MR STAEHLI: At 1734?---Thank you.

So you've been shown a hard copy?---Yes, I have.

Just before I do that, perhaps to put things in their proper order, you've told us that Ms Maxwell was the person who prosecuted in that trial. Correct?---Correct.

Prior to the trial commencing which happened to be on 18 February 2008, did you yourself have any involvement in that matter, that is the prosecution of Mrs Kelly and McCauley prior to it coming to trial?---Yes, I, I believe that I did in fact screen the prosecution after it had been I think through the committal process as is standard and determine which charges were to proceed and I believe that there were some matters which I determined should not proceed. I believe also that I also looked at some other material which had arisen, particularly in relation to Mr Kelly.

All right. When you say other material, can you describe the nature of it generally?---Yes, I think there were allegations about further potential

charges to be laid against Mr Kelly in relation to another complainant and that was material which was received from the police and I believe I looked at that to see whether or not there were in fact criminal evidence of criminal conduct on the part of Mr Kelly.

All right. Can I show you this letter apparently signed by you dated 13 May 2007 to Mr John, yes, I gather we can bring this up, I'm sorry about having the transcript required to be shown, addressed to Mr John Kontista at the DPP, Wagga. The letter's been brought up on the screen. Perhaps I might show you - - -

THE COMMISSIONER: These don't have any names in it, do they?

MR STAEHLI: Not in the form being shown, no that's right. Could I show Mr Corr the hard copy just so that he can read it more readily.

THE COMMISSIONER: Well, do you want this up on the screen, I mean - - -

MR STAEHLI: I don't think there's, well it's a matter for you, Commissioner, I don't think there's any problem with it in the context of what's already been said about the matter. But I think that might - - -

THE COMMISSIONER: And this was in relation to which, X or Y?

MR STAEHLI: All right. I'll come to that in a moment if I may. Can we take that down. You're presently still looking at the hard copy, Mr Corr?--- Yes, I have it in front of me.

Can you tell the Commissioner, tell the Commission whether or not that relates to the trial matter which is, that is the general subject matter of the letter, does that relate to the trial matter which was prosecuted by Ms Maxwell in February of 2008?---No, it does not.

Does it relate to questions concerning the progress of the prosecution if I can put it that way?---Yes. Just in relation to what was said previously, there is reference to tendency material in there, it's whether the material relating to the second complainant could be used as tendency in the trial of Mr Kelly for the first matter. To that extent, there is that connection, however the majority of it does relate to the prosecution of the second matter.

All right. So that's a bit confusing in the context to the way we've done it.

THE COMMISSIONER: (not transcribable) is it?

MR STAEHLI: Yeah. So can I just - - -?---So under the Evidence Act 1995 it's tendency and coincidence now rather than similar fact.

THE COMMISSIONER: (not transcribable)?---Yes, a number of us started with similar facts, your Honour.

MR STAEHLI: So can I just ask you some leading questions to establish the context of the letter. The letter was written by you to Mr Kontista in relation to his seeking some advice on behalf of the DPP from you about the, the conduct of what was later to become that trial, is that right, in February 2008?---Yes, there is some material, first tendency, yes.

And that is the trial of Miss Y, Commissioner, as previously identified. Then secondly, there's a reference on the second page to this issue of tendency evidence?---Yes, that's correct.

And in that paragraph you express some views about what has been conveyed to you in the form of a statement by a woman who is being called Miss X in these proceedings?---Yes.

That being a person whose name has been obscured in the document you're looking at. Is that right?---Yes, that's correct.

And the general thrust of your advice is that that the material could not be used in relation to tendency evidence in the trial which was later to take place. Is that right?---That's correct.

And secondly you've expressed a view about the, on what you had seen, about the likely weakness of any case directed to prosecuting people for the allegations made by that witness, Miss X, whose evidence was being proposed to be used as tendency evidence in the trial.---That's is correct.

All right. Thank you. So as of May, 2007, at least, you had some knowledge of the investigation which had taken place by police in relation to the allegations made by that witness referred to in the paragraph on the second page?---That is correct.

THE COMMISSIONER: That letter will be Exhibit 14.

**#EXHIBIT 14 – LETTER TO JOHN KONTISTA FROM GARY
CORR DATED 13/05/2007**

MR STAEHLI: Thank you. And then you mentioned a screening process in relation to what happened between committal and trial in relation to that trial which later occurred in February, 2008?---That is correct. Yes.

Would you tell the Commission what the screening process involved?---It's a process once matters have been committed from the local court, they are referred usually to a Crown Prosecutor, though on some occasions a Trial Advocate may do the screening to determine what charges should proceed. Because as you would probably be aware, Mr Commissioner, that it's quite often for matters to be committed which are on further investigation are seen to have little prospect of success or alternatively that there are good and proper forensic reasons why particular charges should proceed rather than others. The end result of it is it the signing of an affidavit, sorry, an indictment by the Crown Prosecutor or the Trial Advocate, which will be presented to the court and frequently, however, that his amended before it eventually gets to trial. But that is intended to be the charges upon which the accused will face trial.

All right. And do you know whether or not in this case, you were the person who signed the indictment?---I believe that I was. I haven't gone back to check any files, but I believe that I was in this particular case.

All right. And so in that process, obviously, you would had cause to analyse in some ways the case which subsequently went to trial. Is that right?---Yes, that's correct.

All right.---We do so in light of the DPP guidelines as to whether or not prosecution should proceed and whether there are reasonable prospects for conviction.

All right. And do you know whether or not in that process you had cause to consider again the issue dealt with in that letter about Miss X and her complaint which may or may not have constituted tendency evidence?---I don't have any independent or any specific recollection of having done so. But it would've been within the matrix of what I was considering at the time.

All right. In the course of either of those two processes, one the process which led to the authorship of that letter shown to you and secondly, during the screening process, did you speak to Mr Hart or any other person outside the office of the DPP and excluding for the moment any Wagga police officer about your views as to the prospects of the progress of the trial, firstly?---No.

All right. And secondly as to the views which you apparently held, as expressed in that letter, as to the potential for a prosecution based on the complaints of Miss X?---No.

All right. Now, do those negative answers hold good up to and including the time that the trial started in February, 2008?---They would, yes.

All right. And in, might I just add to the sum of knowledge which you've been given this morning, the fact that Mr Kelly, when it came to trial and indeed for the whole of the period, I think it was from the time that the police first charged him, was represented by a solicitor named, Mr Anthony Paul?---Yes, I know Mr Paul.

And at the trial was represented by a barrister, who's the subject of, part of the subject of this inquiry, John Hart?---Yes, I know Mr Hart.

All right. What was your, what knowledge did you have of Mr Hart in the period, say in 2007 leading up to the trial in 2008?---Well, at that time I'd known Mr Hart for a number of years, probably at least ten years and maybe longer. But I'd met him around the courts as one tends to do when I was in private practice and he was practicing as well. In 2001, he and I were counsel for co-accused in a trial, in the Australian Capital Territory before Justice Crispin, it's now a reported case. But that was a matter which went for a week and at the end of which we had sufficiently convinced his Honour that there was no case to answer and he entered a directed verdict. However there was an appeal because of the nature of the entering of a directed verdict in the Australian Capital Territory. And his Honour had failed to empanel a jury before entering the verdict himself, which they're entitled to do in the Australian Capital Territory. So he was ordered by the Court of Appeal in the ACT to go back, empanel a jury and then enter the verdict of not guilty. With that, I was outed by the time that the appeal had gone on because I had been appointed to Crown Prosecutor at that stage.

Right.---Mr Hart and myself had run, the legal argument had gone over I think some four days, and I knew him then. Following that time I'd met him a number of times around the various courts and I had, I'm not certain whether I'd run any trials against him, but certainly there have been matters in which he'd been involved and that I've also been involved with. Around about the time of the, this particular trial, I think we were also engaged in discussions in relation to another matter, I believe involving a person who was a recidivist child sex offender and so we'd been involved in quite a lot of discussions about those matters.

Right.---At the time of the trial I was over at the court on a number of occasions because of both that matter that I mentioned and also when the sittings was on, I believe I was involved in other matters at the sitting, so I met Mr Hart around the corridors of the court during that trial.

All right.---Are you able to say whether or not during the course of meeting him, during the trial, and we're talking about February, 2008. Is that right? ---Yes.

That, are you able to say whether or not you may have discussed with him the potential for there to be a prosecution other than the trial which was then proceeding of his client, Mr Kelly, in relation to the allegations made by that

other person, Miss X?---I have no specific recollection of it. But it is almost certain that during my meetings with Mr Hart at the court, we would've mentioned the trial which was going on and it's quite possible that the potential future charges may have been mentioned.

Right. In what context?---Well, that it's quite possible that Mr Hart may have said, look, you know, or I could've said that, you know, there are other matters going on if someone's saying, well, what's the likelihood, and it's quite possible I could've said something along the lines of, look, it's going to be largely dependent on what happens here. Discussions between counsel about matters which are going on frequently go to the strength of cases and it's quite possible, I said, look I think that's possibly a weaker case than this one, so it's going to be dependent on what happens here. Or something along those lines. But as I said, I have no specific recollection of any conversation at that trial.

All right. So as I understand it, the effect of what you're saying is it is, it is possible that you had such a conversation of the nature you've described with Mr Hart during that trial in February 2008?---Yes, that's correct.

All right. And do you have any recollection at all of whether or not he discussed that particular matter with you in any way, that is, can you say you did have a discussion with him about the matter, ignoring the content of it?---I can't -- I have no specific recollection of that.

All right. And therefore would you accept it's legitimate to conclude that there is a possibility that you did have such a conversation?---Yes, that's correct.

All right. Thank you. Now, in, in that context, perhaps I might now show you the transcript again which was referred to being part of exhibit 7?
---Yes. I have the hard copy here still.

And the passage - the relevant passage - the most relevant passage is that which is half-way down the first page in which Mr Hart says these words, amongst others, "Now I'm telling you my bloke Gary Corr, who's the, the, it's got to go through him, he said he won't pursue it I'm telling you?"
---Mmm.

You see that?---Yes, I see that.

And that's what Mr Hart told his client Mr Kelly on the telephone on the 27th of April which was two months or so after the trial ended?---Yes.

Now, firstly, is there any -- is there a possibility that you spoke to Mr Hart about that subject matter we've just discussed between the end of the trial in which client was acquitted and this date, some two months later?---I have no memory whatsoever of any conversation with Mr Hart about this matter

after the trial and I would suspect that there was no such conversation. I certainly cannot recall any and I, I would have had no reason whatsoever to discuss the matter with Mr Hart.

All right. Is it a possibility that you told Mr Hart that the – firstly, that any prosecution which might be examined of Mr Kelly on the basis of the allegations of Miss X had to go through you?---I think it's, it's a possibility but it's not necessarily the case that that would, would occur. Between Mr Pincott, myself and Mrs Maxwell it would have been one of us who would determine it but it would not necessarily have been myself, particularly given that Mrs Maxwell had conducted the trial it was more likely going to be her who would make the determination though it's – there are limitations, however, to the delegations from the director as to who can make certain determinations as to whether or not trials proceed so it may have had to go to a Crown Prosecutor and it was - given my prior involvement it was more likely to be myself than Mr Pincott.

All right. So that's, that's the actual position in relation to the way in which the matter might proceed if it was to proceed but what about the question as to whether or not you may have said something along those lines or at all to Mr Hart?---There's a, a possibility of it. I couldn't go any higher than that.

All right. So you wouldn't exclude it as a possibility?---No, certainly not.

Did you ever become aware of there being a consideration by the DPP office or by you or Mr Pincott of a brief of evidence relating to those allegations made by Miss X whose statement you'd seen before?---I can't say. I don't know whether there was or not. I don't have any memory of it at this stage.

Are you able to say whether or not you ever saw it?---No, I can't say. I, I don't remember if I did see one or not.

All right. Thank you. Then, for completeness, I'll ask you to look at a further exhibit, which is exhibit 9. If the transcript for that could be shown to Mr Corr, please?---Thank you.

I'm sorry, the 30th of April at 9.22, tab 18. Could we scroll down, please. And you can see on reading that short page - - -?---Yes.

- - - Mr Corr, that your name is mentioned again apparently by Mr Hart in the last passage which records him speaking which says, and I quote, "And ah, we will be pursuing upon ah, if, if they're prepared, if they're going to run it and Gary Corr told me they won't?"---Mmm.

"He's the Crown, if they want to run it we will again, we will be again seeking costs as we did on the last occasion." You see that?---Yes, I see that.

It is a possibility that at some stage that you told Mr Hart that there would not be a prosecution of Mr Kelly on the basis of what Miss X had said?---I do not consider that I – I do not believe I ever gave any definitive statement to Mr Hart that there would not be a prosecution.

All right. Presumably, let's assume for the moment, that there had not been a brief delivered to the DPP in relation to the allegations of - - -?---Yeah.

- - - Miss X and that the statement which you saw may possibly have been the only document which was ever up to the time of this call at least made available to the DPP to be considered only in the context of tendency evidence?---Yes, that's quite possible.

Well, let's assume that was the case?---Yes.

If, if it was, presumably there was a potential for other evidence which might, might have been - - -?---Mmm.

- - - might have been supportive of what Miss X had said which might impact on the issue of the conclusion which you had tentatively drawn in May of 2007?---Yes, certainly it's quite clear that that is the case.

All right. So in the absence of such a brief having been presented it would, it would seem, be even more unlikely that you would say to Mr Hart and you've already suggested that it won't go on?---That's correct.

Since you wouldn't have been in a proper position to say it?---No, that's correct.

All right. That leaves open the feint possibility that you might have said so improperly but in the sense that you might have misled him in that way. Is that a possibility?---Well, it's always a possibility but I think it's, it's unlikely that I would have said anything along the lines that a particular proceeding was not going to go ahead.

All right. Well, then wrapped up with the propositions made by Mr Hart to his client or former client in those two telephone calls, is a further proposition that money was paid by his client, Mr Kelly, to Mr Hart on Mr Kelly's understanding, he says, that some of that money was to be conveyed to a public official who might then influence the subsequent prosecution and I paraphrased the allegation?---Yes.

Do you understand?---I understand the allegation.

Did you ever receive any money from Mr Hart or anyone else in relation to the – in relation to a proposition that you might, as a result of receipt of that

money, do something which you would not otherwise have done in relation to the prosecution, any prosecution based on the allegations of Miss X?
---No.

All right. And just to broaden the scope of that question, have you ever received money from any person given to you with the object, as you understood it, of influencing you in relation to decisions which were to be made by you as the Prosecutor?---No. I have never received any money from anyone in that circumstance or even been offered any money by anybody in such circumstances.

Thank you. Yes, they are the only questions I have, Mr Corr.

THE COMMISSIONER: Yes. Does anyone want to ask Mr Corr any questions? Do you want to ask questions?

MR WALSH: I would like to.

THE COMMISSIONER: Anybody else? Yes, very well, Mr Walsh.

MR WALSH: Thank you. Mr Corr, could I just start by going to the issue of the structure of the DPP as it were if I could use that term, I appreciate it's an extension, Mr Corr - - -?---Yes, certainly.

- - - but pointing at the DPP's office and you as a Crown Prosecutor, but in relation to the prosecution as it were in Wagga Wagga, would you regard yourself as being one of the most senior of the Crown Prosecutors in that district at that time?---Well, there are two Crown Prosecutors there, Mr Pincott was in fact appointed before I was, so he is in fact more senior than myself but there are only the two of us there so we are the only two Crown Prosecutors there, so - - -

So apart from you and Mr Pincott there's also this, the person you've identified as the trial advocate?---That's correct.

And so far as the extent of her authority is concerned, does she have less authority as it were in relation to the framing of indictments and things of that nature to a Crown Prosecutor?---There are delegations from the Director of Public Prosecutions and Crown Prosecutors have different levels of delegation to the trial advocates. However, a trial advocate can most certainly sign an indictment and certainly I think even in certain circumstances other solicitors can sign an indictment. The practice however is different in that usually at Wagga Wagga at least the indictments are usually signed by Crown Prosecutors.

You were asked questions in relation to the screening process. Now as I understand it, the trial advocate had the carriage of the trial involving complainant Y. Is that correct?---Yes, that's correct.

That was involving Mr Kelly and Mr McCauley as accused?---Yes. Yes, that's correct.

I understand that there was another witness and Mr Pinder I think it was, Trinder, got it, who also was an eye witness, an alleged eye witness who gave evidence with the, on behalf on the accused. Do you remember that name?---Yes, I do remember the name.

Right. Okay. Now, can you comment as to whether it would be the normal procedure for the trial advocate in respect of the trial involving complainant Y to, as it were, be involved in the screening process in respect of say the trial involving another complainant such as X?---Yes, it would be appropriate that it's, obviously just for logistical reasons rather than another person having to discover all the material, someone who is already familiar with a significant part of it. It's better for them to be involved later on.

Were you aware of any difficulties in respect of the prosecution, if I could just use that general element for the trial involving, the allegations involving complainant Y, so far as the OIC was concerned the police officer or the police informant in respect of a suggestion that the police officer was rather keen as it were to press allegations against Mr Kelly. Do you understand the nature of the question?---No, I, could you be more specific.

Well, I come at it around this way. You were referred to exhibit 14?---Yes.

And I don't have the exhibit before me but I, in the brief time when I had a look at it, there was an issue about disclosure was there not in relation to the OIC?---That's correct.

All right. Can you explain what that was about?---When a brief of evidence is presented both to the DPP and to, eventually to the defence, the police officer is supposed to sign a disclosure certificate stating that all relevant material was contained therein. That, that I think was something which arose from previous inquiries into the police and so on. But in this case I believe I was somewhat perturbed by the fact that there was material which she considered was relevant in the prosecution in relation to Ms Y but which had not been provided to the, to the DPP with the brief in relation to Ms Y and that relates to the complaint by Ms X which he later considered to be useful as tendency evidence.

Were you aware of any material in relation to the prosecution of, of complainant X that related to SMS communications and cards from complainant X that raised squarely the issue of consent?---Yes, I was.

Am I correct in my understanding that as at the time that you received the letter referred to or the submission in respect of I think it's exhibit 14, had you formed any view in relation to the likelihood of there being a

prosecution in relation to complainant X?---Well, I think contained within exhibit 14 is my view that there would not be reasonable grounds for proceeding with a prosecution in relation to that matter.

And part of the reason that you came or expressed that view was that there was a body of evidence to suggest that the sexual activity albeit group sexual activity was consensual?---Yes, or that, that, that it was more along the lines of a after the event remorse by the complainant or view that it was something which she considered to be exploited, et cetera, rather than there being as you say a consent on that particular occasion.

Okay. Could you just help me with the date, I didn't record the date of exhibit 14?---12 May.

THE COMMISSIONER: It's 13 May, which year?---13th, 2007.

MR WALSH: Now, can I move on to another topic in relation to your general professional relationship with Mr Hart. It seems that you've known him since around say 2000, 2001. Is that correct?---I think that prior to that.

All right. Okay. You mentioned that you were involved in the case with his Honour Justice Cripson?---No, Crispon.

As he was in the Supreme Court, the ACT. So far as your experience with Mr Hart in respect of those proceedings, I mean was it your observation that he went about his duties as a barrister and a competent one?---Yes.

And since that time as it were, I appreciate you haven't had necessarily a lot of experience in reserving him as a, as a trial advocate or counsel. I think you said you've seen him around the traps as it were. Is it your understanding that he's regarded as a reasonably competent member of the Bar, do you have any views about that?---Yes. There are certain trials which he is appropriate, he knows enough law to get by, you know, knowledge of the law is not an absolute essential for the practice of the barrister but on some occasions it's helpful.

Well, we'll debate that another day I think?---But yes.

Do you want to stress that evidence, go on?---There a certain trials where he would be appropriate, a trial involving, you know, the presentation to the jury, he's appropriate for presenting particular cases.

Now, so far as your relationship with Mr Hart was concerned, in a professional context, it was such that would you be prepared to take him into your confidence, to talk to him about matters that may relate to, and I don't mean any criticism at all, Mr Corr, but to talk to him in confidence about particular matters that might be before the court involving him?---Certainly. It's my practice to always discuss with other counsel matters

which are, particularly that I'm involved with and as I said about particular sittings, there was a serious matter involving a recidivous child's sex offender we were trying to deal with. And certainly it has always been my practice to have discussions with opposing counsel before trials. Quite often what appear to be difficulties in either the presentation of the trial or whether the person was going to plead guilty or not, quite frequently resolved by discussions between counsel. I don't believe that I'm unique in this. I believe it's the usual practice by those operating at the bar.

I don't suggest anything to the contrary, but your view, as expressed in Exhibit 14, in practical effect as far as you were professionally concerned, the prosecution or any notion of prosecution in the matter involving complainant X was deemed to failure?---That's correct.

You knew that Mr Hart was involved in relation to complainant Y?---Yes.

And I think that it is a possibility that you may have had some discussion about the prospects in respect of the prosecution involving X?---Certainly.

Yes. And I'm not suggesting in any way that that would be in any way improper, but it's the sort of thing you have in regard to the nature of your relationship with Mr Hart. Your extensive experience as a Crown Prosecutor and he as a defence counsel, it's the very sort of thing that you might say to him, look, I don't think there's a possibility of that going ahead, John?---That, that's quite likely.

And you would regard such a comment to Mr Hart, in those circumstances based upon your experience and his experience and your respective involvement has in any way been improper?---No.

Now just in conclusion, were you aware that Kelly and Trinder were subsequently interviewed in respect of the X matter, the complainant X matter?---No, I wasn't.

In view of the opinion that you had expressed in Exhibit 14, are you able to comment as to how that would come about? If a senior prosecutor expresses a particular view, you'd understand that it would go to the OIC. Is that right, the police officer concerned?---I assume that it would've been conveyed to the police officer.

Is it the reality that in a practical circumstance a police officer is not bound by your view?---That's correct.

So if he or she is so minded, they can go off and do whatever they want so far as investigations are concerned?---I assume that there would be police protocols and there'd be, you know, the Commissioner of Police would've made certain directions as to how police are to proceed. But within those, I believe there is considerable discretion allowed to police officers.

So it wouldn't be unusual in your experience, notwithstanding your view in Exhibit 14, for the OIC to go off and continue an investigation?---I can't comment on that. I don't know what the police do and I don't make any inquiries as to how they operate.

Well, Mr Corr, you have a, I understand, extensive experience in relation to the prosecution of sexual assault offences.---Yes.

In the past have you ever experienced a situation where you've expressed a view that the matter is doomed to failure, as it were, and notwithstanding your opinion conveyed to OIC, the police officer in charge of the investigation, the police go off and still investigate the matter?---Well, I can't say, because I don't know what they do.

You don't know what they do?---No. Once it, I, I have no supervisory role whatsoever over the police. I don't know what they do once they receive advice as to prospects of success or otherwise.

Thank you, Mr Corr.

THE COMMISSIONER: But, I suppose commonsense would indicate wouldn't it, that if the DPP expressed an opinion on the evidence before it, as to the outcome, possible outcome of a trial, what could be wrong with an investigator thinking, well, I better get better evidence?---That, there's no difficulty at all. I thought that would be a, quite a reasonable thing for the police to do.

Tell me, what's the, a person's charged and then the evidence is put for a committal. And at that stage it goes to the DPP, is it (not transcribable) an indictment?---No. The material, if it's not an, potentially indictable matter it goes to the DPP office who actually run the committal.

Yes. Oh, I see.---Frequently the material is received by the solicitors in the Office of the Director of Public Prosecutions think it is quite a serious matter, then they will in fact have a pre-committal screening, go to a Crown Prosecutor to see whether or not the matter should proceed, particularly if there are technical or legal issues, or there are likely to be major evidentiary issues or it's particularly complicated for one reason or another. But frequently the matters do arrive from the police and do go through committal without there having been a pre-committal screening by a Crown Prosecutor. But certainly after the, the committal, it still has to be screened either by a Crown Prosecutor or usually a Trial Advocate. Theoretically it can be by a more senior solicitor, but usually by a Crown Prosecutor to determine which matters proceed on indictment. But frequently, say for example a person may be facing some forty odd charges and the Crown might decide, look, that it's better to run it as six particular charges with the remainder of the charges being relationship evidence or that they can be

dealt with on a Form 1 to be taken into account after the matter is determined in relation to the first six, for example, which are considered to be stronger cases. So there, there can be a number of considerations taken into account as to whether or not to proceed at that stage.

But I suppose it wouldn't be uncommon, wouldn't it, after a committal proceeding for people who represent somebody to make a submission to the DPP, the matter should not go any further?---Yes. That, that is fairly frequent.

Yes. And I suppose when that happens, am I right, that would be all in the form of a written application?---Yes. That, that's the correct procedure. Frequently you do get an oral communication, but it's then followed up by a letter. When that's done, the Crown Prosecutor will in fact have to prepare a report for the Director of Public Prosecutions to, it's still referred to as a No, as a No Bill application. And the Crown Prosecutor will prepare a report to the Director.

So you're reduced to writing one way or another then. The application if made and a determination is made?---Yes.

Was there any application of that nature for the complainant X?---I don't believe so.

MR STAEHLI: Might I just interpose, X's matter I'm not sure if - - -?---Sorry, well, Y's matter.

MR STAEHLI: X's matter didn't get to that point. Does your Honour mean Y?---Sorry, Y, in Y?

THE COMMISSIONER: No, no. Well I was meaning X?---Oh, sorry.

(not transcribable)---Well, I don't think X ever got to that, got to committal.

THE COMMISSIONER: (not transcribable) that point.---Sorry.

Well, can I ask this question, is there, do you ever get, do you ever get a submission before it has even come to you from lawyers thinking it's going to come to you, but they want it stopped?---I haven't seen one.

I suppose normally they, I suppose the Crown would say, well, we'll wait and see what the evidence is?---Yes. Yes.

And then you make your application then?---Similar to appeal courts, why bother us, you know.

Yes. Yes. And in respect of Y in this case, was there any submission made that the matter should not proceed?---I don't think so. I think there may have been some discussions between the solicitors and so on, saying, you

know, it's a weak case and so on. But I don't remember there being any No Bill application between committal and trial. But of course - - -

(not transcribable) until there was that application you wouldn't - - -?
---Well, even, once the matter is committed it's still a requisite for the Crown Prosecutor or whoever is settling the indictment to look at the charges and see whether or not there are reasonable prospect for conviction. So it still has to be considered, but obviously when the No Bill application is put in by the defence, frequently it contains material which is not in the prosecution brief and suggesting other evidence which can be taken into account. But certainly there still does have to be that consideration.

Yes. All right. Thank you.---Thank you.

Does anyone else want to ask any questions? You may step down.---Thank you.

You are excused from further attendance, Mr Corr.---Thank you. I'll return Exhibit 9.

<THE WITNESS EXCUSED

[11.19am]

THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: We might now call Mr Pincott.

THE COMMISSIONER: How does he spell his name, P-I?

MR STAEHLI: P-I-N-C-O-T-T.

THE COMMISSIONER: Yes. Mr Pincott, take a seat. I take it you're familiar with your obligations and entitlements under this legislation?

MR PINCOTT: I am, Mr Commissioner.

THE COMMISSIONER: And, as I say, you can object to any questions if you believe that the – you ought to object on the grounds of protecting yourself in the future which the objection gives you that right to do. I can make a declaration to the effect that you object to everything if you want me to. Do you want me to?

MR PINCOTT: No.

THE COMMISSIONER: Well, then you have to take an oath to tell the truth.

MR PINCOTT: I'll take an oath, thank you, Mr Commissioner.

THE COMMISSIONER: On the bible.

MR PINCOTT: On the bible.

THE COMMISSIONER: Would you give him the bible.

THE COMMISSIONER: Yes, take a seat.

Yes. Yes, Mr Staehli.

MR STAEHLI: What's your full name, please?---My full name is Maxim, M-A-X-I-M, Graham, G-R-A-H-A-M, Pincott, P-I-N-C-O-T-T.

And are you, like Mr Corr, a Crown Prosecutor in New South Wales appointed under statute?---Yes, I am.

For how long have you held that position?---I was appointed as an Acting Crown Prosecutor in April of 2002 and that acting appointment was confirmed, I became a Crown Prosecutor in September of 2002.

All right. And as at February 2008 were you stationed in that capacity at Wagga?---Yes.

For how long had you been there?---In Wagga I had been there since 2000, December 2000.

I see. And did you remain in Wagga, in that role, for the whole of 2008 at least?---Yes, I did.

All right. Did you ever have any involvement in the prosecution, I think you're aware generally of the subject matter of the hearing, but in the prosecution of Messrs Kelly and McCauley which proceeding in the Wagga District Court in February of 2008?---No, not, not that I'm aware of.

All right. And by my question I intended to include the possibility that you had before the trial advised or considered the materials which were available in the office of the DPP as, as the – in the lead-up to the trial?---I may well have but I, I don't recall it and I don't think so.

All right. Just in order to tease out, if I might, your lack of recollection, when the trial was proceeding in February of 2008 you would, I gather, obviously have been aware of it?---I was aware of it.

It was a trial which received, as I understand it, considerable publicity in Wagga?---It did.

And not only for that reason but I presume it was at the time a topic of conversation from time to time about how it was proceeding during the course of the trial in the office and so forth?---There was a lot of that conversation, yes.

All right. And in the course of the trial most likely, I would suggest, that would have given you cause to consider whether or not you'd ever had anything to do with it?---I don't recall whether I turned my mind to that during that period, Mr Staehli.

All right. But in any event, so far as you're aware, you did have nothing to do with it?---As far as I'm aware I had nothing to do with that, that case.

All right. Then that deals with the position up until the time of trial firstly? ---Yes.

That's the trial of Miss Y who was the complainant in that trial as it took place as she's referred to in these proceedings?---Yes.

Do you understand?---I'm, I'm aware of her, yes.

And independent, although in one sense in parallel with the allegations made by Miss Y, there were allegations which had been made by Miss X, another woman whose complaints related to some of the men who had been involved in the allegations of Miss Y but the, the two sets of men did not completely align if you understand what I'm saying?---Yes.

So the position was, if you'd accept this from me, that Miss X, the other complainant, had made allegations against Mr Kelly, who was one of the accused in the trial and had - - -?---No – sorry.

- - - and had made allegations against Mr Trinder who at one stage was a co-defendant of Mr Kelly's in the trial but did not go to trial?---I'm aware of the name Trinder.

Yes?---I don't know – as I sit here at the moment I don't, I don't recall being aware at the time of Miss X or that – anything to do with that.

All right?---Can, can I just explain that as a Crown Prosecutor in Wagga I get very little – very few matters in Wagga. A lot of my work was done in Griffith and in other regional centres. So it may well be, and I haven't checked the records, that I may have been travelling at that particular time and you understand, Mr Staehli, I wouldn't involve myself in cases – I had enough trouble with my own cases to involve myself in other cases that I wasn't prosecuting.

All right. So the question, the purpose of you being here, is to examine whether or not you ever had contact with Mr John, the barrister, concerning the question as to whether or not there'd be any prosecution based on the allegations of Miss X of his client at that trial, Mr Kelly. Do you understand?---I do, yes.

All right. Did you ever have any conversation with Mr Hart on that topic?

---I don't recall any conversations with Mr Hart on that topic.

All right. Is it your practice in the course of your performance of your duties as a Crown Prosecutor, to discuss with fellow practitioners such as Mr Hart, the likelihood of a matter proceeding to a prosecution prior to any charges having been laid?---No.

If it was the position with Miss X, up to April of 2008, that's two months after the trial, Miss X being the other complainant, that up till that time there had been no charges laid against her, if you'd accept that from me, is there any possibility, do you believe, that you would have had a conversation with Mr Hart about the prospects of there being a prosecution of Miss X – sorry, based on the allegations of Miss X?---It's a possibility but I don't recall such a conversation.

All right. So in effect you have no recollection of having considered the allegations made by Miss X in the course of your duties. Is that right?
---Sorry, can you ask me that again, Mr Staehli?

Yes. In effect, you have no recollection of having considered the allegations made by Miss X in the, in the context of your duties as a prosecutor?---I have no recollection of it. My understanding is I had nothing to do with that case of Miss X.

Yes?---I don't know Miss X is (not transcribable).

If I might ask a leading question in this form, your lack of recollection, I gather, is based on the possibility that the file might have come across – a file might have come across your desk which might have contained those allegations at some stage?---No. The possibility that it didn't come across my desk. That's what my answer's – my lack of recollection is based upon that, that I, I, I think I would have remembered – I remembered when the trial was running and I think I would remember today anything to do with that trial.

Yes?---And as far as I recall I had nothing to do with the trial or that subsequent matter about Miss X that you talk about.

All right. Thank you. During 2007 and 2008 up till, say, April of 2008, did you have contact with Mr Hart?---In 2007, 2008?

Yes?---That's possible. I – during my time at Wagga I didn't have a lot of contact with Mr Hart for the very reason that Mr Hart generally did matters in the Wagga area. We would have done a handful – we would have been in a handful of matters together involving – one matter I remember in Albury, a trial that he came into later. There was a couple of matters in Griffith which he finally didn't appear in.

Is this in the period that I've referred you to?---Possibly, possibly. I'm not sure. It was over the period of 2002, so 2007 and 2008, I'm not sure. I didn't have a lot of contact with him. It's quite possible I had no contact with him. It's possible I did.

Did you have any contact with him at or around the time of the trial in February 2008, do you remember?---I would have seen him around but in – what do you mean by contact as such?

Conversations in which the matter in which he was involved might have been discussed?---No, no conversations about that matter.

All right. You can exclude that completely, can you?---I can.

All right. And I gather based on your previous evidence that you would exclude the possibility that you might have talked about the prospects of a prosecution based on Ms X's allegations as well?---Yes, I can, I can exclude that.

Thank you. Commissioner, I would like to put something specific to Mr Pincott which was mentioned by Mr Hart in another environment on a previous occasion. Might I do that? Mr Hart has said on an occasion other than this week this about you.

THE COMMISSIONER: Well, wait a minute, where does that, does that come from?

MR STAEHLI: A previous hearing.

THE COMMISSIONER: Well, we'll need to look at this suppression order on it.

MR STAEHLI: In that, to that extent that I wish to refer to - - -

THE COMMISSIONER: What, what, what?

MR STAEHLI: It's his evidence on 1 June 2009 in a private session.

THE COMMISSIONER: All right. So the whole of that lifted?

MR STAEHLI: Well, that may not be necessary, might it just be lifted in respect of page 119 for now?

THE COMMISSIONER: Well, what I'll do is I will lift that page 119 and then direct you to show and modify the balance so Mr Walsh can see it to see whether or not he thinks that more of it should go in to make sense of what is there.

MR WALSH: Can we do that at morning tea?

MR STAEHLI: All right.

MR WALSH: Could we visit this issue possibly over morning tea?

THE COMMISSIONER: Yes, yes. So I'm going to lift the suppression order on this bit. If you say, well, you need to see the whole lot of it in order to make that bit understandable, well I'll give consideration to any submission you make me.

MR WALSH: Thank you.

THE COMMISSIONER: Yes.

MR STAEHLI: In fact, just to be difficult, might I ask for the order to be lifted in respect of page 118 as well?

THE COMMISSIONER: You may.

MR STAEHLI: Thank you. So might I read to you, Mr Pincott, a portion of Mr Hart's previous evidence. And he said this at the bottom of page 118 on 1 June 2009. "I spoke to as I believe to be Max Pincott", it's misspelt, your surname, but unquestionably he's referring to you, "about other matters and the Kelly trial was mentioned and I asked the Crown there's another matter coming up, what's going on with that, and I, I'm ninety nine per cent positive it was Max but it could have been Gary but I don't think so. And Max Pincott said to me, 'We're not going to bat on with it', and I interposed that's a reference to the Ms X matter, 'We wouldn't get past first base', which I agreed with him".

All right. And then further on on page 119, in response to another question he elaborates a little. "Within the week", he says, "I spoke to a Crown Prosecutor who told me that they weren't going to bat on with it. It was a conversation between two counsel who were, were friends about another matter which was coming up who I can't recall another matter I had in the list, it might have been a trial at Griffith, Mr Pincott does Griffith, and it was mentioned in conversation about the previous trial with the group sex thing and I said, 'There's another matter coming up', and he said words to the effect of, 'I'm not going to bat on with it', is a part of the word apparently, 'I'm not going to bat - it's not going to go ahead', words to that effect, words to that effect."

And Mr Hart then said and I told Kelly who was his client, "We're not going to bat on with it." All right.

THE COMMISSIONER: When was that conversation meant to have taken place?

MR STAEHLI: It says, it's a little imprecise but clearly it was after the trial and as best it might be understood it said within the week.

THE COMMISSIONER: A week of the trial.

MR STAEHLI: Yes.

THE COMMISSIONER: The first question you asked, did you have a conversation with him a week after the trial, along those lines at all?---I don't recall it, Mr Commissioner.

Well, have you ever had a conversation with him along those lines?---Not that I recall, Mr Commissioner.

And what do you mean when you say not that you recall?---I don't recall ever speaking to him about that matter.

Would you have had any reason to speak to him about that matter?---I don't think I would have, Mr Commissioner, because I wasn't involved in the case. I just don't today have a recollection of having that conversation with him but I don't see why I would be because I, as far as I was aware, I had nothing to do with either of the cases so - - -

MR STAEHLI: Assuming for the moment that the matter of Ms X's allegations was not actually in the DPP office at the time, if you would accept that as an assumption from me, would that add to the likelihood or the unlikelihood of such a conversation having occurred?---Well, it means I'm discussing a case with Mr Hart that hasn't, where the person hasn't been charged, is that what you're suggesting?

That's right, yeah?---No, I wouldn't have that conversation with him and I, and I, no, I wouldn't have had that conversation with Mr Hart.

All right. So you're, I gather you're excluding that on the basis that in those circumstances of there being no charges that you wouldn't have seen it in the office as a formal advising request or something like that?---No, not even close, Mr Staehli, we wouldn't have got to that process, so I, I couldn't comment on it.

Is it possible that you might have a conversation such as that with a man such as Mr Hart about your general belief as to the existence of allegations by a complainant?---Could you rephrase that, I didn't quite understand it.

Well, let's assume that the position was in relation to Ms X's allegations that in the DPP office there was somewhere a statement which had been considered in the context of the trial on Ms Y's allegations. Do you understand?---Yes.

So that it's possible, indeed it is the case, that a number of DPP officers including, if I might put him in that description, Mr Corr, were aware of the existence of Ms X's allegations. Do you understand?---Yes.

And in that climate it's at least theoretically possible I suppose that you might have become aware even though you don't recall it now of the existence of Ms X's allegations?---I may, may have become, yes, I'm not aware of it now, but you're quite right, I may have become.

And it's theoretically possible that you might have formed a view about the likelihood of a prosecution based on Ms X's allegations?---Oh, I guess, theoretically.

All right. But assuming those possibilities is it, does that add to or subtract to the likelihood of you having had such a conversation with Mr Hart of the kind that he refers to in that evidence that I've read to you?---See, I don't know all the circumstances, all of the conversation that you're suggesting all of the knowledge that I may have had but it, you see Mr Corr was involved and Ms Maxwell was involved in the trial so it's highly unlikely that I would make a comment about something I know nothing about and that's in the hands of other prosecutors. I wouldn't do that. And I certainly wouldn't be having a conversation about a little bit of knowledge that I had, now, obviously if I had such knowledge. That's the only way I can answer that, Mr Staehli.

Yes. They're the only matters I wish to put to Mr Pincott, thank you.

THE COMMISSIONER: Do you want to ask any questions about this witness?

MR WALSH: Could I have the opportunity to maybe have a brief discussion with my friend, counsel assisting, at the morning tea adjournment about that?

THE COMMISSIONER: All right. We'll take a short adjournment now.

MR WALSH: It won't be very long if I do that.

WITNESS WITHDREW [11.38]

SHORT ADJOURNMENT [11.38]

THE COMMISSIONER: Yes.

MR STAEHLI: Yes. Can I have Mr Pincott return, please. Might I just ask him one or two questions?

THE COMMISSIONER: Yes.

MR STAEHLI: Mr Pincott, two questions I didn't ask you before the adjournment. Have you ever received money directly or indirectly from Mr Hart, paid to you with the object of causing you to do something other than your duty as a Crown Prosecutor?---No, Mr Staehli, I haven't.

Have you ever received money from anyone for that purpose?---No, Mr Staehli, I haven't.

Thank you.

THE COMMISSIONER: Yes, Mr Walsh.

MR WALSH: Mr Pincott, I just want to take you to one discrete area and that relates to whether you've ever experienced a situation in your dealings with Mr Hart where he for instance may have confused you with another person and in particular any other member of the Crown Prosecutors services?---Mr Walsh, there was one specific incident that I recall. It involved a, I think it was a sentence matter of a man who'd been charged or had pleaded guilty to, I think it was armed with intent. It was at Wagga, as I recall it. I was, I went over to do the sentence matter. I came into the sentence matter later and Mr Hart was in it. He came up to me while I was with my solicitor. He, I informed him of my intention to make a submission ultimately that his client should get a custodial sentence. He then said to me, but hang on, we've discussed this before, and that wasn't your view before. I was a bit perplexed by that and I said, no, we haven't discussed this before because I've only just come into the matter. And after some convincing he realised that the person he'd been speaking to had been Mr Corr, not myself. And I ultimately went out of the matter and he and Mr Corr completed it.

Nothing further (not transcribable)

THE COMMISSIONER: Yes. Well you may step down. You may be excused then, thank you very much.---Thank you, Mr Commissioner.

<THE WITNESS EXCUSED

[12.13pm]

THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: I'm not sure if you formally did that with Mr Corr, but would you excuse him if you didn't?

THE COMMISSIONER: I have excused Mr Corr.

MR STAEHLI: Have you?

THE COMMISSIONER: Yes. Thank you.

MR STAEHLI: Commissioner, it had previously been intended that neatness would prevail and that Mr Hart and, well, Mr Hart in particular, that his evidence would be completed in relation to this segment involving the possibility of money being paid to particular public officials in relation to this, these complaints made by Miss X to the police. But in the circumstances, another course will be taken.

THE COMMISSIONER: Yes.

MR STAEHLI: And what's proposed is that we will now go on to the segment involving the costs refund application that was made to the Attorney's General Department.

THE COMMISSIONER: Yes. Before I do, that part of the transcript of Mr Hart's compulsory examination will be Exhibit 15.

**#EXHIBIT 15 – JOHN HART COMPULSORY EXAMINATION
TRANSCRIPT PAGES 118PT AND 119PT**

MR STAEHLI: Thank you. That being pages 118 and 119 of - - -

THE COMMISSIONER: 118 and 119.

MR STAEHLI: - - - of 1 June.

THE COMMISSIONER: And Mr Walsh, you had the, I gave you the opportunity to have a look at the whole of the - - -

MR WALSH: (not transcribable) Commissioner.

THE COMMISSIONER: Well, the suppression order will remain on the balance unless there's some application later on. Yes. And I think it has to

be said, Mr (not transcribable) that you have access to that, but you must not disclose that to anyone.

MR WALSH: I understand.

MR STAEHLI: Now, just another housekeeping matter, Commissioner, it should've been done some time ago. Might I tender an interview to which reference was made in the evidence previously being an interview between Commission Investigator, Mr Bentley and Jeffrey Nankivell on 11 August, 2009. Which is a - - -

THE COMMISSIONER: August?

MR STAEHLI: 11 August, 2009.

THE COMMISSIONER: (not transcribable) I'll make that Exhibit 16.

**#EXHIBIT 16 – RECORD OF INTERVIEW OF JEFFREY
NANKIVELL DATED 11/08/2009**

MR STAEHLI: Thank you. And there's just a minor transcript error, Commissioner. I just, it should be done in the (not transcribable), but might I refer to as, I don't think it's contentious. On page 17 of Mr Kelly's evidence on the first day of the public inquiry, at line 33, the transcript reads in referring to something that Mr Hart said, it's recorded as saying, when the fog hits on somebody's desk, it won't go any further. (not transcribable) might have some peripheral accuracy, (not transcribable) when the file hits on somebody's desk.

THE COMMISSIONER: Yes. Thank you.

MR STAEHLI: And so it's now proposed that Mr Kelly be recalled so that he might be asked questions about the costs issue.

THE COMMISSIONER: Mr Kelly, would you come back. Mr Kelly, you're still under oath. Do you understand that?---Yes, Commissioner.

Do you also understand that the directions and the observations I made still continue. And the declaration I've made concerning you have been deemed to have been objecting to questions continues in force. Do you understand?
---Yes.

<JASON MICHAEL KELLY, on former oath

[12.18pm]

THE COMMISSIONER: Yes.

MR STAEHLI: Mr Kelly, just so that it's noted on the transcript would you tell us your full name again, please?---Jason Michael Kelly.

Thank you. Do you remember when it was that you were, that you first came before a court in relation to those charges which were ultimately resolved with your acquittal in the trial?---No.

All right. And can I, if I suggested to you that you first appeared in the Wagga Wagga Local Court on charges on the 31 January, 2007, would that - -?---Yeah, that'd be about right.

That's sounds about right?---Yep.

All right. Thank you. Between that time and when, and say January of 2008, that is in that year in which various things happened in relation to those charges, including the fact that you were committed for trial, did you ever receive from Mr Paul any document in which the basis on which he would charge for his legal services were specified?---Yes.

What document did you receive?---I got a letter.

Right.---A letter (not transcribable)

Do you remember when that was?---No. I don't have access to any of my files so I couldn't check.

All right. Well, do you remember what the content of the letter was in the general sense?---Basically saying that there was, there was, the trial was coming up and I had to pay an amount of money that's specified on the basis that the trial would take a certain amount of time. And that money had to be paid before the trial commenced.

Right. Well, can I ask you to look at this, this letter, please which is dated the 9th of January, 2008 that's behind tab 4.

THE COMMISSIONER: It'll be exhibit 17.

**#EXHIBIT 17 – COSTS ESTIMATE LETTER FROM CREAGHE
LISLE TO JASON KELLY DATED 9/01/2008**

MR STAEHLI: Thank you.

Can you read that to yourself please and then we'll scroll to the bottom of the document?---Yes, I recall that.

Is that the letter to which you previously referred this morning?---Yes.

Before that, you see the letter's dated January 2008 which is some – close to a year after you'd been charged, before that had you received any document in which Mr Paul had related the basis on which he was going to charge?---I had received another bill but this was the only document I had in relation to the charge for the trial.

All right?---I'd received a bill for the appearance - - -

THE COMMISSIONER: Whose handwriting is that on there?

MR STAEHLI: I can't answer that, Commissioner?---It's not mine.

THE COMMISSIONER: Is it yours?---No.

MR STAEHLI: Do you remember how much the previous bill was for?
---No, I don't recall.

All right. Well, can I show you another document in that regard, being this document, dated the 1st of February 2007, that is about 11 months before the letter behind tab 2. It's a four paragraph letter and then if you could quickly read that for us, Mr Kelly?---Yes, I recall this.

And there's a, a tax invoice attached to it, behind it. Just creep down a little further?---Yes.

Right.

THE COMMISSIONER: Exhibit 18.

**#EXHIBIT 18 – LETTER FROM CREAGHE LISLE TO JASON
KELLY DATED 8/01/2008 ATTACHING TAX INVOICE**

MR STAEHLI: As you would have noted, that letter is directed to you and it encloses that bill in the sum of \$352. You'd remember whether or not

that was the bill that you received from Mr Paul?---I certainly – there may have been others but I certainly recall getting that one.

All right. Thank you. Do you remember whether or not you paid it?---I think I did. I, I assume I did.

All right. At around the same time it appears that Mr Paul issued two other invoices to Mr McCauley and the third one is addressed to Mr Tinder, T-I-N-D-E-R, which I imagine is a misspelling of Mr Trinder's name, each of which was in the amount of \$110. Did you have any knowledge of the fact that separate bills were sent – that were made out in their names?---Yes. Anthony, Mr Paul had represented the three of us at that point.

Right. But did you know anything about the bills which were issued in their names in the sense that did you get the money in order to pay Mr Paul for them as well as for your own fees?---No.

No. All right. And do you have any recollection as to whether or not between the time of that bill - - -

THE COMMISSIONER: That'll be exhibit 19 then, will it?

MR STAEHLI: Yes, thank you.

#EXHIBIT 19 – CREAGHE LISLE TAX INVOICES FOR TRINDER AND McCAULEY DATED 1 FEBRUARY

MR STAEHLI: Do you have any recollection as to whether or not between the time of that bill, February 2007, and the letter which you've previously seen talking about the estimate for the trial, you had paid anything else to Mr Paul for him having represented you or done things on your behalf during that period?---I don't recall.

All right. Then that letter, if we could – it's perhaps unnecessary to bring it up, could you do that in the meantime while I ask Mr Kelly some questions about it. Could you bring that up, exhibit 17, that letter of 9 January 2008. The letter, as I think you remembered yourself required you to pay the amount referred to on – in the letter prior to the trial commencing?---Yes.

At any stage before the trial started did you discuss with Mr Paul the significance of the reference in the letter to the costs being an estimate? ---Oh, yeah. It was basically the estimate being just that, that we – that was on the basis that we didn't know how long the trial was going to go.

Right. And so, as I think you mentioned in passing previously in your evidence the other day, you accepted that if the trial went longer you'd owe, you'd owe more money. Is that the position?---Well, as I said, I expected the whole thing was an estimate so, yeah, that certainly went longer and didn't know what the other disbursements and, and any other filing fees or any of those sorts of things were going to be.

All right. So, so that it was in your contemplation at the time that the trial started that the estimate in this letter was just that and that, that what you might owe could well be more on a number of bases?---I, I didn't turn my head to that in great detail but I knew of it, I was aware of that, certainly.

THE COMMISSIONER: Well, was one of the things you thought might be raised was the daily fee of the barrister?---I never really took much notice of that sort of stuff. I just saw the amounts and I've got to pay it otherwise I don't get representation. The state of mind I was in when I was just about to face a criminal trial of this severity, the last thing I was going to do was get down to the level of detail about how much photocopying was going to be or how much a daily rate was or what the accommodation rate was. I didn't turn my head to those things. I had more important fish to fry.

MR STAEHLI: All right. Did you, other than for this letter, receive any document in which Mr Paul laid out the basis on which he was going to charge you?---No, not that I recall.

Thank you. Then did you pay that amount specified in, in the letter?---I think from memory I paid most of it and then it might have been the balance of it that – around the time trial started or a couple of days into it. I, I was sort of scraping around trying to come up with the money but, yes, I certainly paid it.

THE COMMISSIONER: So it had been paid before the trial finished?
---Yes.

MR STAEHLI: And there are some other records which I might just mention if I may, Commissioner. We might deal with this by way of a schedule in due course rather than - by teasing out the evidence that it seems that on the 15th of February, which was the Friday before the trial, Mr Kelly paid \$16,371 and that during the first week of the trial, on each of the 20th and the 21st of the February, Mr Kelly paid \$5,000 on each of those days, making the total of \$26,371.

Does what I've mentioned coincide with the recollection you have?---Yes. It sounds about, it sounds about right. I – because I didn't have access to the whole amount of money up front. As I said, I'd sold my car, that's where I had – I got the first amount of money and then I'd applied for a bank loan and that's where I got the second part of the payment from.

All right. Do you remember at some stage after the trial that an issue arose as to whether or not you'd had a conference with Mr Paul and Mr Hart in person on the Sunday before the trial?---Yes, I, I recall this from the private hearing, yes.

Right. And as you sit here today, can you say anything about whether or not you did have such a conference with Mr Hart and Mr Paul on that Sunday, the 17th of February before the trial?---My recollection of what I've already told the Commission is that when I raised that after seeing it on a bill with Mr Paul, that's when Anthony said to me, "No, it's all right. We, we told you about that. We were going to get you in but we had you on standby on the phone but John Hart and I still met and still went through with it. That's why we're still charging you for it." And I accepted that.

All right. But so far as you are concerned, you did not attend any such conference. Is that right?---I didn't personally, no.

No.

THE COMMISSIONER: What date was that?

MR STAEHLI: 17 February. Then the trial proceeded of course and it's been said by Mr Hart that during the course of the trial there were conversations with you about the fact that more fees would be due as a result of the fact that the trial appeared to be likely to extend beyond the five days estimated by Mr Paul---Yes.

Is that correct?---Yes.

Are you able to recall what, or how many such conversations there were with either him or Mr Hart during the course of the trial?---Oh, there would have been a couple.

And what was the affect of those conversations?---Basically was that I had to come up with more money and Anthony and John both said, "We know you've got no access to funds at the moment," I said, "I can't even borrow off my family because they've got none." And that's when they said they were prepared to keep running the trial and let me fix it up at some time in the future.

Right.---I said, "My co-accused had to borrow money off some family friends," but they didn't put me in any such position.

Right. Was there any ever discussion with you – that is between you and either of the two men Messrs Paul and Hart as to how much money you would owe?---No, because at the time when we had that discussions we didn't know how much longer the trial was going to take.

Right.

THE COMMISSIONER: For example, did you have a discussion about what rate people would charge?---No.

What daily rate I mean? You didn't have that discussion?---Not that I recall.

MR STAEHLI: I gather from what you've said that such matters were not at the top of the list of your priorities at the time?---That's correct.

Did you have any expectation by the time of the trial finished that what you would be charged or what you would owe in relation to the trial would not only include an amount for the days that the trial was more than five days but that you would owe much more money in relation to the amount that had been estimated for the cost of running each day of the trial?---I never considered it.

Had you ever had a discussion about such matters with either, with Mr Paul?---I may have.

Had you ever had such a discussion with Mr Hart?---I may have.

Right. Is it possible that either of them said to you at any stage, if, for example, if the trial is successful and you're acquitted you'll owe us much more money in respect of what we've done for you?---Perhaps, I don't recall.

As we all know, after the trial there was the opportunity to make an application to the judge for him to grant a certificate which would enable you to apply to the Attorney General's Department for a refund of costs. ---Yes.

When did you first become aware of that, do you remember?---Aware of the opportunity or - - -

Yes, the right to do that?---Um, I don't recall when but I know it was certainly discussed at the end of the trial when the verdict came.

All right. And whether or not you recall it, it's apparently the case that such an application was made both by you and Mr McCauley or by your representatives on the day following the acquittal.---That's correct.

Do you remember that?---Yes.

Did you go to that?---No.

THE COMMISSIONER: So what day was that made, that's on the Wednesday was it?

MR STAEHLI: That's the Wednesday which is 27 February 2008.

THE WITNESS: It's my understanding that it was heard on about three or four different days and some of it was in Sydney as well as some was in Wagga. So it stretched out for a period of time, the hearing of the application.

THE COMMISSIONER: Were you at any of them?---No.

MR STAEHLI: Can I tell you what the record discloses in relation to that?

THE COMMISSIONER: Yes.

MR STAEHLI: That there was an application made - - -

THE COMMISSIONER: On the Wednesday.

MR STAEHLI: - - -on the Wednesday in the late afternoon before Judge Norrish. That he stood over the application apparently for judgement to the 3 March.

THE COMMISSIONER: It was argued on the 27?

MR STAEHLI: Yes. Stood over until Monday 3 March, and then he did not deliver his judgement on 3 March but reserved it's generally, until he listed it on 24 April 2008 when he handed down his judgement awarding the relevant certificates.

THE COMMISSIONER: So what happened on 3rd?

MR STAEHLI: Not much.

THE COMMISSIONER: It was just in for mention was it?

MR STAEHLI: Yes, that was the affect of it.

THE COMMISSIONER: Yes.

MR STAEHLI: You became aware of the award of the certificate.---Yes.

I imagine you were pleased by that result?---Yes.

Did you know what the affect of it was?---I knew that I could apply to the Attorney General's office to have my costs, that I had to, that I'd incurred repaid to me and that they had discretion as to whether to do that or not. I

knew it wasn't an award of costs, that I didn't get all my money back, I knew that they basically had the discretion whether to do it or not.

Right. By that time, that is, when the judge handed down his decision and you became aware of it, had you paid any more money to Mr Paul for the trial?---Not that I recall.

Right. Had you received a bill from him?---Not that I recall.

Had he told you how much more money you owed?---Not that I recall.

All right. Can I ask you- -?---He knew I didn't have any money so I guess I figure he hadn't chased me at that time.

All right. You say you figured that, had you said to him, Can we wait until the cost application comes in or we see how much we get. Did you have a discussion like that with him?---I don't recall.

All right. Can I ask you to listen to this recording of a telephone call please.

THE COMMISSIONER: What's the date?

MR STAEHLI: Which was made apparently on 24 April 2008 at 14.46. Annexure 26.

THE COMMISSIONER: Exhibit 19 I think, 20.

**#EXHIBIT 20 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00424 ON 24/04/2008 AT 14:46:55 (KELLY TO WRIGHT)**

MR STAEHLI: That transcript will hopefully be shown on the screen in front of you Mr Kelly. 14.46. This is apparently a call between you and Karen Wright it would seem.

TELEPHONE INTERCEPT PLAYED [12.38PM]

MR STAEHLI: So do you accept that that's apparently a recording of a telephone call between yourself and Miss Wright?---Yes.

About half way down on the first page as shown on the transcript you say to her, it would seem, I think John Hart's got to issue the invoices and add another ten to it and I might get half of that. Do you see that?---Yes.

What did you mean by that?---I just knew that there was more bills to be coming to me.

More bills coming to you in respect of money which you owed Mr Paul or Mr Hart do you mean?---Both.

Both. And how, in those circumstances, would you get half o that ten, which was referred to in that transcript?---Well, when I applied, when John Hart had issued the invoice, add another ten to it, which is my recollection I thought I had to owe him at least ten and then when I get the costs back, that gets included into the amount of money I get back.

Well, how would you get half of that, do you get half of it back do you mean?---Well, as I said before, I've, I've sent about twenty six to twenty seven grand back but I knew that, whilst I thought it was, would be perfect if I get everything back, I knew that they played ratios and all that sort of stuff and I'd get a percentage. So when I say I'd get half back, I figured that, at the time I figured that that meant I'll be getting money back from the Attorney General's as part of a request order.

All right. And in relation to that part of it which, which was related to John Hart's extra invoices, you're saying there are you that those extra invoices might be \$10,000 more, is that what you're saying there?---Yeah, I, I didn't know how much it was going to be.

All right. And when you say I might get half of that, you meant you might get half of that back from the Attorney General's application. Is that what you mean?---Yes.

I see. Thank you. Now, there is a document which is dated earlier than that which I should have referred you to and I'll just take you back to it, which is a tax invoice dated 27 February 2008 being an extra twenty one. And can you see that this is apparently on John Hart's letterhead, dated that date I've mentioned, and that it's in the amount of \$23,830?---Yes.

And I mentioned the date which is, you can't quite see at the moment, but it's 27 February 2008 being the date on which the costs application was made in the District Court after the end of your trial. Did you ever get that tax invoice, do you know?---I don't recall seeing, I know I may have, I don't recall it.

All right. Now the previous - - -

THE COMMISSIONER: That'll be exhibit 21.

**#EXHIBIT 21 – JOHN HART TAX INVOICE TO KELLY DATED
27/04/2008 IN THE SUM OF \$23,830**

MR STAEHLI: Thank you. Whether you did or not, I gather your recollection remains that you did not pay any extra monies after the end of the trial in addition to what you'd paid before during the trial?---That's correct.

All right. Thank you. Then three days after that previous call there's a further call on 27 April 2008 behind tab 27 apparently between yourself and Mr Hart. Could you please listen to this and read the transcript again?---Ah hmm.

I should say, Commissioner, this has already been tendered I think only in part, a different part in exhibit 7.

THE COMMISSIONER: What the what, part 7, yeah.

MR STAEHLI: Exhibit 7, but it seems to be convenient to make it a separate exhibit.

THE COMMISSIONER: I will, I'll make it 22.

**#EXHIBIT 22 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00544 ON 27/04/2008 AT 17:34:59 – EXTRACT 1 (KELLY
TO HART)**

TELEPHONE INTERCEPT PLAYED

[12.43PM]

MR STAEHLI: Now, Mr Kelly, you recognise the voices as being those of you and Mr Hart on that call?---Yes.

I've asked you about some parts of this call before but I want to ask you about what's on the second page which is shown on the screen now. About three lines down from what's shown on the top of the screen, Mr Hart says, "I've organised with AP, I'll have to catch up with him. What we're going, what we're going to do is I'm billing you four a day." Did you understand by that that he meant that he was going to bill you \$4,000 a day for the trial?---Yes.

You responded, "Yep", to that. And then he said, "All preparation fee and whatever and mate there'll be a quid for everyone at the end of the day", and you asked him to repeat that and he did. Do you see that?---Yes.

What did you understand that he was saying when he said he was going to bill you four a day?---I knew that he was re-doing the bill.

What bill?---The bill that he, for the trial, for him representing me.

What did you believe the effect of that would be?---That it, that my bill would go up.

And that you would owe him that money?---Yeah, theoretically.

Theoretically?---Yes.

What about practically?---I didn't know for sure but I was certainly hopeful that I wouldn't have to pay anything extra.

So are you saying you were, you knew that the costs that were payable by the Attorney General's department were discretionary, did you, at this stage?---I don't recall at what stage I determined, when I discovered that I'd done a lot of research around that time on the website and read everything on the, I could about it, so I don't know timelines.

All right. So you don't know whether or not at that stage you knew that it was a possibility that you might not get anything from the Attorney General's?---No, I, I just don't recall the actual time.

All right. Were you prepared to accept do you say the proposition that Mr Hart could bill you and that you would owe him \$4,000 a day for the trial in circumstances where you'd not been told about that before this?---Beg your pardon, I didn't follow that, sorry.

Yes. Do you say that you were prepared to accept from Mr Hart that you would owe him \$4,000 a day for what he had done for you during the trial?---This was Mr Hart ringing me and telling me that, that he was recalculating his bill as I knew he would be doing.

Yes. Well, previously isn't it the case that you knew he would recalculate his bill in order to accommodate the increased length of the trial?---And anything else that he saw fit to do. As I said right from the outset this was, the whole thing was an estimate, I didn't know what the actuals were going to be.

All right. So you say do you that you didn't have any problem with him billing you an extra \$4,000 a day and that you would owe him that amount of money?---He could bill me whatever he wanted, getting, getting that he'd

get paid anything would be a complete different story, he knew I had nothing.

THE COMMISSIONER: But if you got the money from the Attorney General you did have the money if you were billed \$4,000 a day, wouldn't you?---Well, I knew I wouldn't, I wouldn't get everything that I'd, that I'd been paid, sorry that I had paid or had been billed from the Attorney General's.

So at the time you saw, had this conversation, you knew that you could put a bill in but it might not be paid?---Yes.

MR STAEHLI: And what did you think about the amount of money that you'd owe Mr Hart in those circumstances?---I didn't know, didn't know what it would be.

THE COMMISSIONER: Did you not think it was strange that you get a quote for \$2,500 per day that got elevated to \$4,000 per day?---I, Mr Hart had told me after we won the costs that he was going to be doing that. I knew that.

I know. But if you got a plumber in and he charged you \$100 to come and do something and then weeks later said, "I now want to make that 1,000," what would you do then?---Well, I think (not transcribable). If you took your car to a mechanic and he said it was going to cost you 500 and then when you went to pick the car up he said, "No, it was more complex. It's actually going to be nine," did you have much of a choice.

That's what you're saying, was it, that you were told when you were paying \$2,500 a day this could be elevated by almost twice as much?---That was my understanding of it being an estimate in the first place. As I said, Commissioner, at the time, trust me, I really wasn't putting that much thought into the bill. All I was worried about was getting through the trial.

I think what you're being asked is whether you thought you'd get a bit more out of it after the Attorney General paid money?---Yes, indeed.

So if you were going to get that money out of it, why did you think Mr Hart was entitled to make that claim?---No, it wasn't that I – well, because I would still have the outstanding liability there that would have to satisfy that.

So you're saying you'd end up with an outstanding liability to Hart but you wouldn't pay him?---Well, I didn't know at that point.

Well, what was your frame of mind at that point? What was your - - -?---I don't really remember but that may well have been the case.

MR STAEHLI: Was it ever your frame of mind that you would pay \$4,000 a day for what he'd done during the trial?---I don't recall. I don't, I don't know.

Well, do you owe him that money still?---As far – well, well, I thought I did. It wasn't until your opening address on Monday that I heard you say that the account's been closed with both Mr Hart and Mr Paul. I wasn't aware of that.

All right. So are you saying that until Monday you thought you might still owe Mr Hart some amount of money in relation to what he did for you during the trial?---Absolutely.

THE COMMISSIONER: But that you weren't going to pay him?---With what? I, I hadn't been chased for it. They hadn't asked me for it at that time. I wasn't going to go and ringing, ringing on his doorbell and say, "Have you got any more bills for me?"

MR STAEHLI: I think perhaps Mr Walsh might ask him to issue one for you if that's your position.

MR WALSH: Well, I object.

MR STAEHLI: In any event, as to what's contained on these pages of the transcript, Mr Hart referred to organising some fee agreements?---Yes.

And seeking to get you to sign some?---Yes.

Did you ever sign any fee agreements?---I don't recall. I don't know.

Were any presented to you, you see your signature on them?---I don't, I, I don't know.

THE COMMISSIONER: What do you mean you don't know? You don't remember?---I don't remember.

MR STAEHLI: Did you ever know anything about the obligations of solicitors to give you a complete fee disclosure and to explain to you the basis on which fees might be charged?---No.

Did you ever have a written fee agreement with Mr Paul?---No. I was only ever provided with an estimate.

Being that - - ?---I knew that – I'd been involved and I had – with similar cases and stuff I knew that, that, that the amounts you've got to pay vary depending upon the outcome so I, I didn't know whether this was any different.

All right. Thank you. You'd paid that amount of money, that is, before and during the trial, the \$26,000-odd. You remember?---Yes.

As a result of this conversation, if not before, you knew that there was some potential liability, at least to Mr Hart, in relation to him charging you \$4,000 a day?---And to Mr Paul, yes.

And to Mr Paul. You had a similar conversation with him, did you?---Well, I – it was, yes, during the trial, once again because I knew the trial was being extended I was going to owe Mr Paul money.

All right. But what about as to Mr Paul's right?---I don't know if we ever discussed that. I don't recall.

All right. So by the time of this conversation, the 27th of April, which was just after the costs certificate award by the, by the judge, had you had a conversation with Mr Paul about the fact that he might be charging you something like twice what he had estimated in relation to his daily fee?---I think I, yeah, I, I, I remember a conversation. I don't recall whether it was in person or on the phone, where I sort of expressed some concern. But I said knew that they had to put their bills up and that the original was only an estimate. But I said I didn't want this to be seen as an opportunity for them to try and make money off me.

Right.---The fact that we had the costs awarded.

So, at around this time as the, and over the next couple of months, as you know, Mr Paul caused some bills to be prepared, which were to be forwarded by you as they were ultimately to the Attorney Generals Department?---That's correct.

Now, in the time between the award of the certificate and when you ultimately did lodge that application with the Attorney Generals Department, did you believe that you would be liable for whatever it was that Mr Hart and Mr Paul, between them, decided that they should bill you for?---I knew that there was a lot, technically I, well, I hoped that I wouldn't be pushed too much. Look, I knew the costs, the original costs that they inflated those. I knew that the bills were being put up. And, and I had no, no concern about that whatsoever. They told me that's what they, that's the general practice. If that's what they do, that's what they do, I knew that. I knew that I had an outstanding liability. I knew that I was going to get some money back and whatever else that came back over what we paid, would be split. And hopefully I saw that would satisfy what I, what was owing. But as far as I was aware, I was, I still had a liability there.

THE COMMISSIONER: So just so I get it correct. Your understanding, that's what I'm asking you now, not the law, just what your understanding, your understanding is you believe that it was, as it were, par for the course

to inflate the bill, get the money from the Attorney General and then split the bill between the lawyers and the client?---Yes.

Is that what you were going to do?---Yes.

MR STAEHLI: So lets just see if we can analyse that by way of an example, in your case. You'd paid \$26,000?---Yes.

If the bill that was submitted to the Attorney Generals Department was \$80,000, which it was close to, ultimately. You submitted that knowing that it was inflated, using your word?---Yes. Increased, yep, inflated.

By inflated or increased, what do you actually mean?---Recalculated.

Recalculated, made larger?---Yes.

Made larger then the basis on which the original estimate was given to you, as far as your understanding is concerned?---Well, made larger then the original estimate, yes.

Yes. Because in addition to the estimate, as everyone seems to agree, you knew that you owed both Messrs Hart and Paul extra money because the trial had longer?---Yes.

Right. If they charged you for the increased length of the trial on the same rate that was in the estimate of the letter, you would have owed them only a certain specified amount of money more. Do you agree?---Yes.

So lets, I won't use exact figures, which aren't at my fingertips, but let's say that the original bill was \$26,000 for a five day trial and some other things involved in it. And so if the trial went for another three days, that's about \$5,000 a day extra, using my figures?---Yep.

You were therefore have owed them an extra \$15,000, say. Is that how you understood it at the time?---No, not necessarily.

All right. I, as I said, I'd never calculated it that way that it was being a daily rate or anything like that. I just knew that the trial went longer, the original was an estimate. They were going to review the estimate add the extra days and give me a bill. I never did the calculations thinking what my bill should be.

All right. But at the end of the day you expected that after the amount of money, whatever it was that was paid by Attorney Generals that the amount in excess of what you'd paid for the trial would be split three ways?---Yes.

Although you would still owe Messrs Hart and Paul some extra sums. Is that what you're saying?---Yes.

And why was it that, in your understanding, that you would be entitled to a split of the extra when you owed, on your understanding, Messrs Hart and Paul much more money?---Because that was the amount that, that I was liable for and that, like the money that we were getting back was my contribution of what I had paid or was due to pay.

Well, let's say that the true costs that you were, that you owed them, as you understood it, assuming there was such a figure, was \$50,000. And that you received \$70,000 back from the Attorney General's Department.---Ah hmm.

Did that mean, in your understanding, when you talked to people about there being a quid for everybody at the end of the day, that the \$20,000 in excess of what you truly owed them would be split three ways, between you, Mr Hart and Mr Paul?---No. What it meant was that extra \$20,000 would be split and used to, to satisfy a part of the debt that was outstanding and that I was technically still liable for the rest.

All right. But - - -

THE COMMISSIONER: On this basis you've already got the first fifty, it's what you do with the remaining seventy that you were asked about.

MR STAEHLI: Remaining twenty.

THE COMMISSIONER: Remaining twenty, I mean.---Sorry, I don't, I don't - - -

Well, I mean, the question you were asked is a hypothetical one, but the question you were asked is, you put it in for seventy, at which you thought fifty was the genuine estimate of costs. And you got - - -?---No, no, if I could stop you there, Commissioner. With respect - - -

- - - you put eighty and you got seventy back.---The, the, if the bill came in at seventy that was what I expected as the genuine rate of costs. It was never an imaginary figure.

THE COMMISSIONER: So it would all go then would it? You wouldn't keep any of it if that's right?---In effect, yes, that's correct. Because the, whatever was left after what I already paid would be using to, well, I would be using to satisfy the debts that was still there. And I would still have an outstanding liability.

MR STAEHLI: But why in those circumstances of you having, your outstanding liability was either to Mr Paul or to Mr Paul and Mr Hart. Correct?---Yes.

Why in those circumstances would you be entitled to a split of the excess which was received from the Attorneys Generals Department?---Well, at that time it was just a split of the money that I'd received and then it was from then on that I still had the outstanding liability. It was just for the (not transcribable) I received the money, it was just what I did with it at the time.

All right. So what are you saying, that you would get your split of whatever that figure was, which you'd get to mind until a further bill was sent to you. Is that what you're saying?---Yeah.

THE COMMISSIONER: And then when you got that bill, I think you were telling me you weren't going to pay it?---No, I'd be liable for it, whether, whether I had the capacity to pay it at the time would be a different story.

MR STAEHLI: Yes.

THE COMMISSIONER: This might be a convenient time, thank you.

LUNCHEON ADJOURNMENT

[1.02pm]