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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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AT SYDNEY

ON WEDNESDAY 23 SEPTEMBER 2009

AT 2.08 PM

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THE COMMISSIONER: Yes.

MR STAEHLI: We're missing some representatives.

THE COMMISSIONER: Well, could they come - - -

MR STAEHLI: They're back.

MR WALSH: Sorry.

10

THE COMMISSIONER: That's all right. Yes. Mr Walsh, I will need I do not think a medical certificate from your client if he's remaining in hospital and I'll rely on you to provide that information to me. If however he's discharged from the hospital, I would need a medical certificate to say why he couldn't resume giving his evidence here.

MR WALSH: I'm conscious of that.

THE COMMISSIONER: Yes. Yes, Mr Staehli.

20

MR STAEHLI: And just if I might just follow up on that, Commissioner, respectfully. We also need to know as soon as, well it might be (not transcribable) in what you said, as soon as Mr Hart is released from hospital, since, you know, and as my friend knows that there's a, there's a programme of hearings which are part dependant on him being available. If he became available in the near future, which is at least a possibility, we want to take advantage of that availability.

THE COMMISSIONER: Yes, well I think Mr Walsh understands that.

30

MR WALSH: I'm very much aware of that. And I give my indications that I will communicate with learned assisting the - - -

THE COMMISSIONER: Yes, all right. Yes.

MR STAEHLI: I guess that me is it?

MR WALSH: That's you. Yes.

<JASON MICHAEL KELLY, on former oath

[2.09pm]

MR STAEHLI: Mr Kelly, do you remember being told something about Mr Paul, your solicitor, attempting to get the invoices which had been apparently prepared or issued, prepared by Mr McCauley's solicitors firm and issued to him?---I beg your pardon?

10 Do you remember having, being aware that Mr Paul attempted to get the invoices which had been issued by Mr McCauley's firm to Mr McCauley for his costs of the trial which were to be sent to the Attorney Generals Department?---Not really, no.

All right. So that Mr Paul could make sure that the application which was going to be made by you on the basis of a bill prepared by him wouldn't be seen to be out of kilter with the application being made by Mr McCauley. Do you remember anything about that?---Well, they may have. I don't recall.

20 All right. Do you know whether or not you were entitled to claim for in your application made for the Attorney Generals Department, the costs which you owed for actually making the application for the cost certificate from the District Court Judge?---Sorry?

SHORT ADJOURNMENT – TECHNICAL PROBLEM

[2.11pm]

THE COMMISSIONER: Yes.

30

MR STAEHLI: Thank you, Mr Kelly. I was asking you about the application for costs and in particular I want to ask you about this area. You knew that you were liable for the, you'd pay for the costs of the trial in part?---Yes.

40

That is as at the time that you were considering lodging your application with the Attorney General's department. You knew you'd pay that \$26,000 odd to the solicitor's firm for the trial. You said you knew you were liable for some additional funds because the trial went longer than expected?---Ah
hmm.

THE COMMISSIONER: Yes or no?---Yes, sorry.

MR STAEHLI: And you expected to be able to make a claim for that additional length of the trial from the Attorney General's department. Correct?---Yes.

And then after the additional length of the trial there was the costs, the application for the costs certificate?---That's correct. Mr Hart was representing me at that as well.

Yes. And did you believe that you were entitled to make a claim from the Attorney General's department for the costs of running that application to get the costs certificate?---I just the made the claim at the bill when it came to the end.

10 All right. So you didn't know one way or the other about whether or not you were entitled to do that?---Oh, I don't, I don't remember. I don't know whether I, I, sorry, I just don't understand.

Well, you don't understand what?---No, I, sorry, I understand the question, I, I don't recall ever considering whether I was supposed to be claiming for them representing me because I was making a claim for them representing me.

20 All right. Well, because if you, if one looks at the bill which I'll show you later which was finally submitted to the Attorney General's department, all right - - -?---Yes.

- - - you'll find that in the bill for Mr Paul's services, the solicitor's bill, there's no reference to the days of the costs application, the one or two, perhaps three days involved in the costs application. Do you understand this?---I don't think Mr, I don't think Mr Paul was representing me as part of that, I think that was Mr Hart that did that.

30 Mr Hart alone?---I, I, I don't know. As I said, I wasn't at the court, I don't know.

What?---That that would be my explanation if there's no bill from Mr Paul for it was that he didn't do it.

All right. Well, excuse me for a moment.

40 There's a letter apparently written or at least drafted by Mr Paul dated the 14th of July 2008 which is behind tab 40. Would you have a look at that, please, written to you. And this is dated the same day as the final bill which was apparently sent to you so that you could send it on to the Attorney General's Department. All right. Do you remember whether or not you saw that letter?---I guess I did. I, I don't recall. I don't know. I don't recall. I may have.

THE COMMISSIONER: That'll be exhibit 23.

**#EXHIBIT 23 – LETTER FROM CREAGHE LISLE TO KELLY
DATED 14/07/2008**

MR STAEHLI: Thank you, Commissioner?---Was there a copy of that letter in, in my personal files?

I can't answer that question for you at the moment but we'll see about that.

10

THE COMMISSIONER: What are you saying? You don't recognise that letter?---Oh no. I, I was saying I may have. I don't recall. If it was in my personal files then, yes, I did receive it. If it wasn't then I'm not so sure.

Yes.

MR STAEHLI: Do you remember whether or not you received, apart from the final invoice which you sent to the Attorney-General's Department, that is which was a multi-page bill for Mr Paul's services and another letter or invoice for Mr Hart's bill, other than that final – those final bills which you sent on, prior to that had you received other versions of those bills from Mr Paul?---I don't recall any.

20

All right. When you received those bills, and perhaps I should show you them now, please, tax invoice dated the 14th of July 2008 which is behind tab 41. We're handing you a hard copy of that bill, Mr, Mr Kelly.

THE COMMISSIONER: This is on tab 41, is it?

MR STAEHLI: Yes, Commissioner.

30

THE COMMISSIONER: Then I'll mark it exhibit 24.

**#EXHIBIT 24 – CREAGHE LISLE TAX INVOICE DATED
17/04/2008**

40

MR STAEHLI: Do you recognise that, Mr Kelly?---Yes. I believe it to be – is this just two copies of the same thing? Yeah.

You've got two copies, have you, all right. But, but the three page document dated the 14th of July, 2008 addressed to you from, it would seem, Creaghe Lisle, Mr Paul's for - - ?---I think there's a page missing, as well.

Do you?---I think there was another one. Well, it refers you to the (not transcribable) fees as per attached memorandum.

All right. Well, I'll show you that as well now on the, on the screen, which is tab 42. And do you see shown on the screen a, a bill in the amount referred to in Mr Paul's document \$43,890 - - -?---Yes.

- - - barrister's fees. I'll just show you a hard copy of that too, if I might, just so you can - - -?---It's okay. I can - - -

10

Well, just so you can refer from one to the other if I ask you about it.

THE COMMISSIONER: That'll be Exhibit 25.

#EXHIBIT 25 – HART TAX INVOICE DATED 14/07/2008 IN THE SUM OF \$43,890

20

MR STAEHLI: Thank you. And between those two documents, I've just shown you, Exhibits 24 and 25 are you content that they are the documents which, perhaps amongst others were sent by you to the Attorney Generals Department for your costs claim?---I believe so, yes.

All right. Thank you. When you received those documents, well, whether then or before then, did you talk to Mr Paul about the size of the bill?---I questioned one of the entries on there, I think from memory.

30

Do you remember which one that was?---For the conference on 17 February, 2008. Conference with counsel three hours.

All right.---I rang Anthony and, and asked him about that because I couldn't recall any, any conferences.

All right. I asked you about that earlier this morning. Do you remember? Yes.

40

All right. Other than that, did you complain to him about or ask him what the reason was for the bill being the size that it was?---I don't recall. See, I knew that, I was expecting the bill to be high.

Right. Did you ever say anything to him about how much he had charged, for example, in relation to the time that he spent at the trial?---I don't recall.

All right. Did you, for example, ever say to him at around this time that he had pumped the bill up?---I doesn't sound like a phrase I would use. I may have, but I don't recall ever saying, using that phrase.

All right. Did you regard the bill as being more then you expected it to be? ---I didn't have any expectations of what it would be. I, as I said, I knew it was going to come in and it was going to be revised and it would be high. But I had no idea what that would be.

10 All right. And are you saying that in relation to things you've said earlier today, that whatever was recovered from the Attorney Generals Department, which might have been expected to have been less then what was claimed, that you would still owe Mr Paul and or Mr Hart for what remained unpaid in relation to these two bills?---I certainly thought that was a possibility. I was obviously very hopeful that they wouldn't, not to chase me for any more money, but, yes.

All right. As it turned out after you received a payment from the Attorney
20 Generals Department, the amount of which we'll come to deal with shortly, they, did they chase you for any more money?---No.

That is, having received the amount from the Attorney Generals, you took from it, or were able to receive from it the amount of money which you'd paid at and during your trial?---Yes.

Being slightly over \$26,000?---Yes.

And the balance, the difference between that and what was paid by the
30 Attorney Generals Department was divided up between you, Mr Hart and Mr Paul. Is that right?---Yes.

All right. So, I'll come to that in a moment. At around this time, apparently, Mr Paul made a further payment to Mr Hart. That is around 14 July, 2008.---I have no knowledge of that. I have no knowledge or discussions with Mr Paul at any stage about payments he was making to Mr Hart.

All right. Does that include, in relation to the payments which were made to
40 Mr Hart during the trial or at around the time of the trial?---I've got no idea how much was paid to Mr Hart. None whatsoever, at any stage.

Did you ever see Mr Paul handing over cheques or cash to Mr Hart?---No.

Then as I mentioned, it seems those bills you've just looked at were sent by you to the Attorney Generals Department on 18 July, 2008 with some covering documents. Excuse me for a moment. They being behind Tab 47.

THE COMMISSIONER: That'll be Exhibit 26. That's his application to the Attorney Generals Department.

#EXHIBIT 26 – JASON KELLY'S APPLICATION TO ATTORNEY GENERAL'S DEPARTMENT DATED 15/07/2008

10

MR STAEHLI: It seems so. Is that, can you see that and recognise that document?---Yes.

Fitting that description, Mr Kelly?---Yes.

Thank you. And in it it referred to a number of things including the certificate of issued by Judge Norris?---Yes.

A statutory declaration by yourself?---Yes.

20

A letter in the form of a letter I previously showed you, perhaps, rather than showing you on the computer, I'll show you a bundle of documents, headed by that first letter to the Attorney Generals Department just shown to you, Exhibit 26. Do you see that?---Yes.

And behind it there is the judge's certificate firstly.---Yes.

Secondly your statutory declaration date 15 July, 2008.---Yep.

30

Next a letter apparently signed by Mr Paul to you dated 14 July, 2008.---Ah
hmm.

Now I showed you a kind of draft of that before, but is it safe to conclude from the fact that it's attached to the letter sent by you to the Attorney Generals Department, that you must've seen that letter before?---Yes.

Thank you. Was it you who actually sent the letter and the attachments?
---Yes.

40

THE COMMISSIONER: Who drafted the letter? Did you draft the letter dated 15 July?---Yes, I did.

You did.

MR STAEHLI: Did you talk to Mr Paul about what should go in it?---No.
Not that I recall.

All right. And did you read that letter which I showed you written to you by Mr Paul dated 14 July at the time? Do you remember?---I assume I would've, yes.

10 All right. Can you read it again to yourself and explain to me if you can what you understand by the sentence which starts with the words, as a result of this costs application?---Basically saying that, because we're going for the costs application, I didn't have to come up with the funds at the time the trial finished. And that once I received payment from the Attorney Generals Department I would satisfy the amounts outstanding to them.

All right. And to that, might be added the proviso on the basis of the evidence you've given that it may be that you wouldn't have to ever settle that outstanding account, you hoped?---No. That was my own personal view, but I certainly wouldn't put that in the letter.

No, no, no.---I don't understand the question, sorry.

20 All right. Well, you've answered it by the way you've said it. At the time you had that understanding even though you didn't put it in the letter. Is that right?---No, I knew there was money outstanding. I knew there was other money that would have to be paid because of the additional time.

Except that you hoped that it would not have to be paid didn't you?---No. You've, you've taken a separate part of what I've said, I was talking about anything other than that, with, with the money that was returned from the Attorney Generals, if it was more than what I'd already paid. I knew I still owed them money.

30 All right. Well, let's look at what you owed Mr Hart. All right. You'd paid him an amount of money?---I had no idea how much I'd paid him.

All right. Let me put it another way. You'd paid Mr Paul an amount of money for the trial. Correct?---Yes.

It was your understanding, wasn't it, that some of that money had been used to pay Mr Hart?---Yes.

40 Was it your belief that the amount of money you had paid was all you owed Mr Hart and Mr Paul for the first five days of the trial?---No.

All right. You believed you owed them more?---Yes. Well, I, I believe I was liable to have owed them more given that at, at the start it was always an estimate of expenses. It was never a final account.

Right. And just in that regard, although we haven't explored it at great length, did you regard it as appropriate that – well, let me put it this way. The estimate which was given to you was – did you understand that to be

something to which you had to agree?---Absolutely, otherwise I wouldn't get any legal representation.

Right?---At the time I had to agree and I had to make the payment.

All right. Then between the time of that estimate in January 2008 and the trial there wasn't any further estimate, was there?---No.

10 Then after the trial, or during the trial or after it, there wasn't any further particular estimate, that is, an estimate giving particulars of how much you owed, was there?---I wasn't given any dollar - any monetary amount but there was certainly discussions to that effect.

Discussions to the effect that you would owe more?---Yes.

But no discussions as to the amount which you would owe more?---No. Not that I recall.

20 And as I understand your evidence, there was never any agreement after the first one, that is in relation to the first estimate, about how much more you would owe?---No.

You left it to Mr Paul and perhaps to Mr Hart to bill you what they wanted to in effect?---Yeah. I, I don't know many barristers or solicitors that let their clients set the bills so, yes.

30 Well, there is actually a provision for there to be an agreement as to costs. Do you understand? That is, perhaps in the way that you had agreed with the estimate given to you in January 2008?---Sorry, I don't follow.

All right. In January 2008 you've, you've said that you agreed with the estimate and in effect agreed to pay it?---I accepted the estimate.

Yes?---Yes.

By acceptance do you mean you agreed that you would owe that money to Mr Paul?---Yes, of course, I made the payment, yes.

40 All right. And you, you had agreed on an amount which you paid?---Yes. Well, I wouldn't necessarily I - we agreed on an amount. I was told an amount and I paid it. If, if by agreeing to pay the - to pay a bill then that's an agreement, well okay.

All right. Well, let's, let's accept that that's - we're talking about the same thing. All right. When I say agreement I mean you paid it?---Well, by agreement I thought you meant we had a discussion and we both said that's what it'd be.

All right. Well, I don't necessarily mean that. Okay. You, you appreciated from the letter that what was being suggested to you in the letter was that in order for them to appear at the trial or to act for you at the trial you had to pay that amount of money?---Yes.

You wanted them to act for you so you paid the amount of money?---Yes.

All right. Then after the trial, during and after the trial there was a proposition put to you that you would owe them more money?---Yes.

10

For the increased length and perhaps because of a factor related to the result of the trial?---No, nothing to do with the result of the trial.

Just the length of the trial?---Well, I didn't – any variable, I didn't know. I, I was, I, I was completely being directed by them. If they said they - that they would review the bill then the bill gets reviewed. I, I didn't know – as far as I was aware there was never any like an amount extra would be paid if I was not convicted or anything like that if that's, if that's what you mean. I certainly - - -

20

THE COMMISSIONER: Well, I think he might be. Are you saying that to your knowledge there was no discussion that the amount of money that you would ultimately have to pay would be contingent on the outcome of the trial?---Never.

Never?---Never.

And is your evidence the same in respect of the application for costs?---I don't understand the question there, Commissioner.

30

Well, if you won you'd get a certain – you'd have to pay a certain amount of costs for making the application for costs and if you lost you didn't?---No, never.

None at all. You're sure about that?---A hundred per cent positive.

MR STAEHLI: Now, I'd, I asked you earlier about whether or not you had made any complaint to Mr Paul about the size of the bill. Do you remember?---Yes.

40

And you said so far as you could recall, in effect, you had not?---No, I'd, I'd said I'd said I made reference to that one charge - - -

Yes?--- - - - and I think I'd referred earlier that a conversation I had with Anthony where I said that, that me getting costs shouldn't be seen as an opportunity for them to make it – to try and make money out – off it. I've already said that to the Commission this week.

All right. Well, that, that might have been in reference to another topic but when did you have that conversation with him?---I don't recall when.

All right. Commissioner, I'd like to refer to some previous evidence given by Mr Kelly on the 28th of May, 2009.

THE COMMISSIONER: Well, how much of the suppression order has to be lifted?

10 MR STAEHLI: There are three pages, Commissioner, 26 to 28 on the 28th May.

THE COMMISSIONER: I'll lift the suppression order of those three pages, 26 and 28 and Mr McIlwaine, similarly, you could have a look at this whole to see if there's more that you say has to be included to make sense of what is being – otherwise that'll be the only suppression of the order I'll make – so at the present time it is, the suppression order is lifted as far as you're concerned on that.

20 MR McILWAINE: If I could indicate, Commissioner, upon the completion of my client's evidence today I'll be seeking access to the entirety of his private hearing but perhaps we can deal with that - - -

THE COMMISSIONER: Well, we can deal with that later, yes. But in any event, you will be shown is for the purpose of (not transcribable). Yes.

MR STAEHLI: Yes. The most convenient way perhaps might be for Mr Kelly to be shown these pages.

30 THE COMMISSIONER: What are the pages now?

MR STAEHLI: Pages 26, 27 and 28 of the 28th of May.

There's some highlighting on them, Mr Kelly, which will - - -

THE COMMISSIONER: I mark them exhibit 27.

40 **#EXHIBIT 27 – COMPULSORY EXAMINATION TRANSCRIPT OF
JASON KELLY PAGES 26T – 29T DATED 28/05/2009**

MR STAEHLI: Thank you.

Which will serve to bring to your attention the relevant passage.

THE COMMISSIONER: Perhaps those pages can –do they go up? Yes, ask the question.

MR STAEHLI: Can I give Mr Kelly a chance to read them first, please?--- Yes.

10 I think the portion which appears at the top of page 28 might be what you were referring to just a moment ago when you said you'd told - said something to Mr Paul about not wanting there to be an opportunity to make a killing out of it?---That's correct.

All right. But on the preceding page, at about line 9, you were asked a question about your reaction to receiving a bill from Mr Paul under cover of a particular letter on the 24th of June. Do you see that question there?---Yes.

20 Now, I haven't shown that to you but I'd ask you to accept that that, a bill that time was not the final bill but it was a bill which was prepared which had, which on the face of it dealt with Mr Paul's fees and with Mr Hart's fees and through all of their work but was for a somewhat lesser amount than the final amount, all right. Do you understand what I'm saying, it was a kind of draft of the final bill if you like?---Okay.

All right. So that was what was being referred to in that question and your answer there was apparently in relation to what you said to Mr Paul having received such a bill. All right?---Yes.

30 And do you agree that what is said there is an accurate record of the effect of what you told Mr Paul when you received one of these increased bills?--- Yeah, in effect. That and the, the, certainly the section you follow on the next page, yeah, that, that would be pretty much my recollection.

So between the two of them and I'll just read your answer here which is on page 27, having received the bill, you say, "I hit the roof. I rang him up and said why the difference, why has it gone up so much? I compared it with the original estimate that I received." So are you saying that you did ring him up and with some vehemence perhaps question him about why the bill was so much?---Yes.

40 So if that's the case can it still be the case that you were leaving it completely to Mr Paul to charge what he thought was appropriate in the context of the additional monies which you were to owe him and Mr Hart?-- -Yes, it follows the rest of the, the over the page, that he explained to me that originally I, I had an estimate and this was based on actuals.

THE COMMISSIONER: Well, did you ask him what the actuals had, what the actuals were directed to that raised, for example, the daily rate of the barrister? What was the actual that turned up that wasn't present, did you

ask him, when the first estimate was made?---No, he just, he said, the first one was the estimate, this one's the actual.

Well, did you ask him what it was that, what the two, look, he's charged almost twice as much. Did you ask him why that was so, why his estimate was so far out?---No, well, I don't, I don't recall.

10 What was it, what it was extra that he did that justified going right back for the whole seven days to charge three thousand nine hundred? Did you ask him any questions about that?---No.

You said you hit the roof, what happened when you hit the roof, you just came down again?---Well, he gave me an explanation, he said, "Look this is, that I gave you an estimate, this is the actuals, the bills have been recalculated." I was powerless. What, what could I have done? I couldn't say no, "That's not acceptable, here's the bill I'm prepared to pay."

Yeah.

20 MR STAEHLI: In any event, although it was possible for you to say those things, you didn't gather from what you say accept that it would have had any effect?---I didn't believe it was possible to say those things, so I certainly didn't say them.

All right. Whereas in effect the true the position may well have been so far as the legal issue is concerned that there would have needed to have been an agreement about such matters before you were obliged to pay it. Did you appreciate that?---No.

30 No, all right. So you're saying that although you expressed your discomfort with the increased bill that you thought that the end result was out of your hands?---Pretty much. As I said, I knew the bills were going to be going up so yes.

40 And at the bottom of page 8, of 28 I'm sorry which you have there, you were asked some questions about Mr Paul's rates towards the bottom of page 28 and you said something there at line 41 similar to what you've just said perhaps, but you said this, "The discussions we had were on the lines of frankly I didn't really care what the bill came in at, the trial was over, I paid the bill up to that point, I knew I was going to have to pay more as long as I wasn't out of pocket, I didn't, I really didn't care. So whilst I said to them I don't want this to be an opportunity for you guys to go off and make a quid out of it, I meant I wasn't going to empty my pocket for and be ripped off." You see that?---Yes.

So are you, were you saying there that that was something which you said to Mr Paul in discussing the bills with him?---Yes.

And when you say in that passage, "As long as I wasn't out of pocket", what did you mean in the context of the possibility for example that the Attorney General's department might not pay the whole bill?---Well, as long as the Attorney General paid back to me at least what was owing to, to those, to Mr Paul and Mr Hart, and I wasn't going to be required to go borrowing more money from family or friends or anything then I really didn't care what they did with their bill.

Yes, but what if that didn't happen?---Then I was going to be stuffed.

10

All right, so in the context of the bill being seventy six odd thousand dollars?---No.

When you say, "As long as I wasn't out of pocket", in this passage, did you mean by saying that that as long as \$76,000 was recovered?---No, as long as whatever was recovered was enough to satisfy Mr Paul and Mr Hart. As I said, I knew they put their rates up and if they were happy to receive a portion of what they'd put in for the second bill and as long as they were happy I wouldn't, I didn't really mind.

20

So are you saying are you that you discussed that issue with Mr Paul, that is - - -?---I may have.

So as to get him to understand, did you intend that whatever came back from Attorney General's would be, however it was divided up, that one way or another that would be the end of the, of the debt which you might otherwise owe?---Oh, I knew that I would still be liable for it. I may have said something that I didn't want to have to pay any more at the end of it, but at the end of the day, that was out of my hands.

30

All right. But by saying, "As long as I wasn't out of pocket", in that passage, can we conclude that you meant the first proposition, that is you regarded the position as being that you would not pay them more than was received from the Attorney General's department after it had been divided up?---No, I was hopeful that they wouldn't chase me for any more but I knew that I would, I may still have to pay something. Excuse me, can I, may I talk to my solicitor for a moment?

40 THE COMMISSIONER: What about?---The gentleman whose at the back of the room over here.

What about, what do you want to talk to him about?---Mr, the gentleman over here, I had this problem during the private hearing and I've, and I've made a complaint to my solicitor and I find that he's still looking at me and smoking a lot and I find it very distracting.

Whose looking at you and smoking a lot?---No, the gentleman with the red tie.

Who?

MR McILWAIN: He's referring to an investigator I think.

MR STAEHLI: They're referring to Mr Buccort.

10 THE COMMISSIONER: Mr Buccort. Is that what you're complaining about?---Yes, I had the same problem during the private hearing and I discussed it with my solicitor.

I haven't noticed but I haven't been looking so I'll ensure it doesn't happen again if it has ever happened?---Thank you.

Yes.

20 MR STAEHLI: All right. So I was asking you about whether or not the proposition that you did not wish to be out of pocket was something which you discussed with Mr Paul?---I may have, I don't recall.

All right. Were those pages given an exhibit number?

THE COMMISSIONER: Yes, they are, exhibit 27.

MR STAEHLI: Thank you.

THE COMMISSIONER: And you can show that to, the rest of it to Mr McIlwaine.

30 MR STAEHLI: Yes, so we're just looking at this fourth page.

THE COMMISSIONER: Unless you blank out the fourth page it'll be in. Do you want to blank it out?

MR STAEHLI: No. Page 29?

THE COMMISSIONER: Yeah.

40 MR STAEHLI: Page 29, perhaps page 29 could that be shown to Mr Kelly who's not seen it today.---Thank you.

Would you read that to yourself Mr Kelly.

THE COMMISSIONER: The last part.

THE WITNESS: Thank you.

MR STAEHLI: Is there anything that you want to change about what you told the Commission on that page?---Oh, it's just probably an error there, it says, I'll just find it again. There's at line 14, it says, "I wasn't going to dupe back into my pocket," it should be dip.

It should be dip, yes, all right.---Dupe has a completely different connotation.

10 It does. Having to dip back in my pocket.---No, having to dip, yeah. Not having a dupe.

THE COMMISSIONER: You're saying that should have been to dip.---Yeah.

I think that's probably right.

MR STAEHLI: But you've read the rest of that page.---Yeah, that's fine, I have no problems with that.

20 So the proposition was, and this is about half way down that page, to summarise perhaps, that you, as you as it says there, knew that the bills and the charges had been inflated but didn't know whether that was correct or incorrect?---Yes.

But you didn't know any better because that's what your respected lawyers had told you.---Yes.

And that you weren't in a position to say whether or not it was reasonable.---Yes.

30 And that it was of little consequence to you that they were inflating their bills for the purposes of getting their fees paid by the Attorney General's Department.---That's correct.

Did it cross your mind that there might be some dishonesty involved in that being done?---Oh perhaps, but as I said, I knew they were inflating their bills – as to whether they were inflating them more – more than what they should have when they went back and recalculated, I really didn't worry too much about that problem.

40 So would it be fair to say that you thought that it was up to them to see what they could get away with in that respect.---No, it was like they provided me with a bill. If they said that that's the bill and that's what the accurate amount is and that's what owing, then as far as I was concerned that's the accurate amount was and that's what was owing.

All right. A bill is a bill is a bill, I suppose one could say. All right. At some stage after you'd lodged the bill do you remember seeing Mr Hart and Mr Paul at the swimming club?---Yes.

At Wagga?---Yes.

Do you remember having a conversation with one or other or both of them about what might happen to whatever it was that the Attorney General might see fit to pay?---I don't recall.

10

THE COMMISSIONER: What was the date of this?

MR STAEHLI: 7 August 2008. Although I didn't ask Mr Kelly the date, perhaps the way to deal with this I suppose is to play a telephone intercept if I might Commissioner which is called on 7 August at 8.54pm.

THE COMMISSIONER: Between?

20

MR STAEHLI: Which is behind the tab 50 and Mr Kelly, this is an excerpt of a call apparently between you and another man.

THE COMMISSIONER: It will be exhibit 28.

**#EXHIBIT 28 – TELEPHONE INTERCEPT G00229_00_00 ON
07/08/2008 AT 20:54:44 EXTRACT OF CALL (KELLY TO LAZZAR)**

30

TELEPHONE INTERCEPT PLAYED [3.06PM]

MR STAEHLI: All right. That's the end of the excerpt, there is material before and after that. Mr Kelly, did you recognise your own voice on that telephone call?---Yes.

Did you recognise the voice of the other person?---Yes.

40

As being who?---Glen Lazzar.

All right. And the account that you gave him of what had happened at the swimming club apparently on that night, was that true?---I imagine so.

All right. Can I just take you to a portion where you were apparently referring to the conversation had there which is towards the end of the first page I would imagine. That's at the bottom of the first page and the top of the next page. So there, you talking about your barrister and your solicitor

having been swimming club and then you say to Mr Lazzar, apparently in reference to one of those gentleman, he goes, "It's all taken care of Jason." Is that what you're doing telling Mr Lazzar what one of your lawyers had said or the effect of what he had said?---Yes.

Are you able to recall which of Mr Paul or Mr Hart it was you were referring to and what you said to Mr Lazzar then?---Mr Hart.

10 And you go on to talk about splitting the rest three ways and that's a topic we've already covered in part but you tell Mr Lazzar that they added 44 grand to the bill.---Yes.

And by 44 grand to the bill, which bill were you referring to?---My original estimate.

All right. That being \$26,000?---Yes.

And adding 44 grand to that brings it to about 70.---Yes.

20 All right. And you said they done that because, are you saying to Mr Lazzar that that had been done, as you understood it, because you'd obtained the right to try and recover costs?---I think yep, I think it was just a lot of bravado on behalf of Mr Hart at the time and I was just so caught up with being able to get my money back and not being financially crippled as I had been for so long that I kept up with that when I was talking to Glen.

30 All right. And, the splitting it three ways which what you referred to towards the end of the excerpt and we've already dealt with, like you say, about the split, but you say there, I'll make at least 5-10?---That was just bravado on my behalf.

Was it?

THE COMMISSIONER: Well the first question is, you said it. Is that right?---Yes, I said it.

40 But you didn't mean it?---I didn't have a clue. At that stage we didn't even know how much money if anything we were going to get back from the Attorney Generals. This was before they made a determination about us getting anything back, from my recollection. So there was no monetary amount to discuss.

All right. As it turned out, however, that was the range of money into which the amount which you received after the refund of your initial payments to Mr Paul. That was left over for you after the division of three ways?---I don't recall. I don't know how much was left over.

All right. Well, we'll come to that in a moment. In any event you engaged with Mr Hart in the same way as apparently you had earlier in talking about the fact that there'd be a quid in it for all of you?---Yes.

But you continued to reject, as I understand it, the proposition that there being a quid in it for you, meant that you would retain permanently money out of what was paid by the Attorney Generals Department over and above the refund of your \$26,000?---With the view that I would still technically be liable for other payments.

10

Technically?---Well, if they, if they enforce those payments, yes.

All right. But you didn't really have an expectation did you that they would, during the course of the time at least while you were waiting for the Attorney Generals to decide on the payment, you didn't have an expectation did you that they would seek to recover any more money from you?---At that time, no.

Well, you've said, is it the position that you - - -

20

THE COMMISSIONER: So you're saying you might've had an expectation after you got the money?---Well, they had, what was the point of them coming after me if they knew I had nothing until I received my original money that I paid out.

But you just told Mr Staehli that you didn't have that expectation at that time, namely the time we're talking about.---Yes.

30

You put the application in before you got the money, you didn't have that, are you saying you got that expectation that you might have to pay the money after you got the money?---No. I had the expectation all along. I thought the question was whether there was an expectation that I'd be chased for the money at that time or before I got the money back from the Attorney General.

Well, just listen to the questions then.---Well, I'm pretty sure that was the question that was asked.

MR STAEHLI: Well, I think there's room for a misunderstand. Yes.

40

THE COMMISSIONER: All right.

MR STAEHLI: At the time that you were talking in August, having put in the application. Right?---Yes.

And here talking about a three way split of what would be paid by Attorney Generals Department, taking out the money which you've already paid to

Mr Paul. Right. So the hope was that you'd get your \$26,000 back.
Right?---Yep.

That there'd be more money then that, which would be paid by Attorney
Generals. Right?---Well, that was the, yeah, okay.

That was the hope?---Well, that was the discussion we had that night.

I see. All right. And that however much more there was then \$26,000
10 would be split three ways.---Yes.

Right. And that whatever your split was, splitting three ways implies,
perhaps wrongly, that there'd be an even split. Was that your understanding
of it at the time that you had this discussion?---It was never going to be an
even split.

Wasn't it?---Well, I didn't know. I wasn't the one who was determining
that.

20 All right. Well, didn't you say when Mr Hart said, oh, we'll split it three
ways", does that mean I get \$5 and you get \$5,000?---No, not at all.
Because I didn't know how much money we were going to get from the
Attorney Generals. I didn't know if there would even be any money left
over. And given that I had to pay Mr Paul, sorry, Mr Hart and Mr Paul for
another couple of days, then I was in no position to say that if there's \$3,000
left over, we get \$1,000 each, because I still owed them for, for (not
transcribable) me.

30 THE COMMISSIONER: Then (not transcribable) say, there'd be no split.
You wouldn't get yours if - - -?---Absolutely. If there was no money. If
there was no money - - -

Well, why did you talk about a split three ways?---It was a hypothetical. It
was if there wasn't anything left over. I didn't know whether there would
be or not.

40 MR STAEHLI: But you were given to understand that this conversation
that's referred to in that call that if there was money left over, that is over
and above the \$26,000, which you would get, that that would be divided
equally. Is that right?---No.

But that if there was enough to, well, at that time did you know how much
you owed Mr Hart?---No. Oh, sorry, yes, I had received the bill.

All right. You received a bill for some forty three odd dollars?---Yes.

But you didn't know how much of that had been paid or not?---No. I had no
idea how much had been paid.

All right. And you'd also received the bill which together with Mr Hart's made up a total of seventy six odd thousand dollars.---Yes.

Which was what you'd sent?---Yes.

Of that you paid \$26,000 at around the time of the trial, to round off the figure?---Yes.

10 And therefore according to the bills, you owed \$50,000?---Yes.

Extra?---Yes.

And you say here that at the time of these conversations with Messrs Hart and Paul that there was a (not transcribable) discussion about - - -

THE COMMISSIONER: Sorry, I think defence had - - -

20 MR MCILWAINE: Mr Hart and Mr Paul and I think at this time the witness is being directed to a conversation with Mr Hart.

MR STAEHLI: Yes. But was Mr Paul a party to the conversation at the Swimming Club?---I don't recall. I don't, I don't think he was. He may have been. I don't know.

THE COMMISSIONER: Was he present?---He was there on the night, but as were fifty other people.

30 MR STAEHLI: All right. So when you're referring to the conversation with he, that's the conversation you had with Mr Hart and whether or not Mr Paul was there, you do not know. Is that right?---That's correct.

All right. All right. Then eventually you became aware did you of the, how much it was that the Attorney Generals Department would allow? ---Yes.

And do you remember that the amount which was allowed was somewhat over \$45,000?---I don't recall the amount.

40 All right. Can I show you a letter which is behind Tab 51, to you dated 22 October, 2008?---Yep.

And do you see there, that's apparently a letter to you from the Director General, it seems of the Attorney Generals Department and telling you about the amount that had been allowed?---Yes.

And eventually did you receive a cheque in that amount?---Yes.

THE COMMISSIONER: Where's that letter, you say?

MR STAEHLI: Behind Tab 51, the last page of that Tab, Commissioner.

THE COMMISSIONER: At the conclusion? Oh, I see the last, yes, the last, yes, very well. I'll mark that 30, sorry, Exhibit 29.

10 **#EXHIBIT 29 – LETTER TO JASON KELLY FROM ATTORNEY
GENERAL'S DEPARTMENT APPROVING CLAIM FOR COSTS**

MR STAEHLI: And then following that I want to play to you a recording of a telephone call on 11 November, 2008 at 10.08am, tab 53 between yourself, it seems and Karen Wright. Only an excerpt will be played of something which appears in the middle of the call. All right.

20 THE COMMISSIONER: Is it, what Tab's that?

MR STAEHLI: 53, Commissioner.

THE COMMISSIONER: Well, that will be Exhibit 30.

30 **#EXHIBIT 30 – TELEPHONE INTERCEPT G00231_00_00 ON
12/11/2008 AT 10:08:48 EXTRACT 1 (KELLY TO WRIGHT)**

TELEPHONE INTERCEPT PLAYED [3.20pm]

MR STAEHLI: All right. Did you recognise your own voice on that call?
---Yes.

40 And that of - - -?---Karen Wright.

- - - Karen Wright?---Yes.

And you were telling her things about a conversation you said you had with Mr Hart?---Yes.

Had you had such a conversation with Mr Hart?---Yes, I think so.

Well, throughout this period, in relation to these matters at least, you – and I don't mean anything by that, you – when you told Miss Wright things about what was going on you were truthful to her about it, weren't you?---Yes.

And it appears that it reflects that you, in the discussion with Mr Hart you had agreed or that he had suggested that, of the excess that had been allowed over and above what you had previously paid, that it would be split three ways. Is that right?---Yes.

10 That is, split three ways equally. Is that right?---Yes.

All right. And I gather from what you've previously said that that might have been something different, you would say, to what had previously been discussed?---Yes. This was a discussion that happened after I was told how much money I was going to get back. All the discussions before that were, were all based on hypotheticals.

20 Right?---And I didn't know how much more I had to pay them for the extra time they spent representing me.

Right?---And so was it your understanding following the conversation with Mr Hart that you would – that he would receive an extra \$5,000 - - -?---Yes.

- - - which would acquit everything that you owed him at that time?---Well, I'd, I'd hope so, yes.

You'd hoped so?---Yeah.

30 Hoped?---But I don't recall him ever saying, "And that'll be it. I'll never chase you for any more."

Right, right. But you understand what he had said, I gather, from what you say to Miss Wright as meaning that that was the effect of it?---Well, that was certainly my intent - my hope.

40 All right. Otherwise, if you still owed him money, or Mr Paul money, for that reason there'd be no reason why you would get a third share of the excess, is there?---No, because they'd, they'd share left over with what I'd have to apply to any bills they gave me.

Well, that's right. So they might as well take it in the first place?---I guess. I don't know. I didn't, I didn't discuss with him the reasoning behind his logic.

THE COMMISSIONER: What did you mean by the words and I walk away with five grand profit?---Up to that point, from, from that – well, from, from that transaction basically, saying that - - -

What do you think could have happened after that that would have turned your profit into less than five grand?---Well, I would have got a – I would have got a bill for the, for the rest of the money that was outstanding to pay for Mr Hart and Mr Paul.

MR STAEHLI: That's not what was said between you and Mr Hart though?
---I beg your pardon?

10 That is not what was said between you and Mr Hart though, is it? That there was no suggestion, as I understand it, from what you've said, that in the background there was some implication that they could send you a bill for between them for forty or fifty-odd thousand dollars to meet the different between what the Attorney General's had paid?---It's certainly, it's certainly not something that I raised with them because I didn't really – I was hoping they wouldn't turn their mind to that.

All right?---But it was always certainly in the back of my mind that, that it could happen on any day.

20 So the proposition that the amount that you owed them, which was tens of thousands of dollars, if the bills were what your liability was - - -?---Yes.

30 - - - and what Mr Hart was suggesting in the conversation referred to in this call, there was a massive financial difference so far as you were concerned between the two?---Yes. I knew that they inflated their bills and if they were happy to leave the account at what, whatever they got back from the Attorney General's then I certainly wasn't going to be provoking them into sending me a bill. As long as, as I said, I wasn't going to be chased into the future for money I didn't have, it was of little consequence to me what they were doing.

All right. But you knew that from the start, didn't you, that, that the bill was inflated, as you've previously agreed?---Yes.

And that there was a good prospect that what would come back from the Attorney General's Department, you hoped, would repay you what you'd paid them during the trial. Correct?---Yes.

40 And that what was left after that would pay what they wanted you to pay and that there'd be some left over for you. That was always the position that you'd hoped for, wasn't it?---Well, and that bearing in mind that I knew that I, I could at any, at any time be forced to apply that against the other amounts that were outstanding. The money they got back was just paying what was, what was owing, what was owed.

All right. But as it turned out, the expectation that had been discussed in terms of splitting it three ways was carried into effect when there was

actually money available?—Yes, but not in the, not the amounts that, that we had discussed.

Not in the amounts discussed in here do you mean?---In that phone call.

All right. Well, we'll come to the break up and it's not too long, I hope. So the day after there was this message left for you, apparently by Mr Hart, 12th of November, 2008 at 14.26 behind tab 55. Would you listen to it and look at the transcript please.

10

THE COMMISSIONER: Yes.

TELEPHONE INTERCEPT PLAYED

[3.27pm]

MR STAEHLI: Do you remember getting that message from Mr Hart?--- Vaguely.

20 THE COMMISSIONER: That'll be exhibit 31.

**#EXHIBIT 31 – TELEPHONE INTERCEPT G00231_00_00 ON
12/11/2008 AT 14:26:08 (HART TO KELLY VOICEMAIL)**

30 MR STAEHLI: And the message he refers to dropping a letter in, apparently to AP, Mr Paul - - -?---Yes.

To see if there's anything we can do, the message says, to try to rip some, a bit more out of it?---Yep.

40 Do you know what Mr Hart is referring to there?---Yes. We were talking about going back to the Attorney General's Department and ask to have the amount that they were paying us reviewed because I'd – it just didn't seem reasonable to me that, for instance, they allow 50 cents for photocopying yet at the courthouse the Attorney General's charge is \$2.00. How is that a reasonable of, of expenses once I had costs certificate awarded.

And is that something that you discussed with Mr Hart?---Yeah.

That is - - -?---About whether I write back to them and, and ask – see if there's any way to have it reviewed.

Right?---I would ask for copies for the formulas that they apply and to see whether they, the daily rates that they applied for a barrister I was going to

ask them for a list of barristers that charge that amount because it was less than a third of what any barrister that I've ever seen prices.

Well, that's not quite right, is it, since the estimate that had been given to you of barristers that have started a trial is \$2,200 a day?---I'm talking about the actual, not the estimate.

10 The actual, all right. And the actual that you'd seen was \$3,500 a day or more?---Well, that was at least what Michael's McCauley's barrister was charging him and I looked at, I did some research and sort of stuff and I read that barristers charge sort of \$5,000 a day yet the Attorney General's Department see fit to pay \$1,500 or \$1,600 if you cost award. It didn't seem very fair to me if the intent of that legislation and the cost of the recovery, the costs in Criminal Cases Act was to actually give people back their money if they've been hard done by and ripped off by the system, I didn't feel as though they were really doing that adequately.

20 All right.---And I still have a major problem with that but I know that my hand are tied, there's nothing I can do about it.

Right. And so you're saying that you discussed, that you assumed that you'd been told about Mr Hart's fees and their fairness was the truth, I gather?---Well, I knew they'd been inflated, but as I said, as I've always said it was never for me to say what was a reasonable amount and what wasn't. If they told me that's what the actual's were, yes I knew it had been inflated, but I wasn't to know any better.

30 All right. What did you believe that Mr Weir who appeared for McCauley had been paid?---I think from memory, I think he was being paid around \$5,000, \$5,500 a day or something I think Michael said to me.

I think in the records, might I just say this Commission obtained by Mr Paul from Mr McCauley's solicitors, Mr Weir's bill was for \$2,000 a day.---I've never seen that.

40 All right. You say you understood his bill was a lot more?---Yes, because that was the discussion Michael and I'd had, we thought that John Weir's daily rate was higher than the estimate I'd received from Mr Hart even though Mr Hart was the one that was doing the travelling. That's why it was in my mind he was \$5,000 a day.

I see, all right. Then, did you write such a letter to the Attorney General's? ---No.

And that left the \$45,000 or so paid by Attorney General's Department to be divided up in various ways?---Yes.

You were owed a little over \$26,000 apparently, on the basis of what you had paid before and during the trial some time earlier.---Yes.

That left around about \$19,000 or so that was left. Do you remember that?
---Yeah, okay.

And do you remember how that amount of money was broken up?---Not off-hand.

10 All right.---I made some payment to Craig Isle because Mr Corr was quite adamant that it had to be paid into the, his firm's trust account. It certainly wasn't money going into his pocket but Mr Hart asked for me to make a payment into his TAB account.

All right. And do you remember how much you paid into his TAB account?---I think it was \$5,000.

20 Well, just to refresh your memory about this, I'll play one further call please, Commissioner, 21 November 2008 at 11.41 am behind Tab 62.

THE COMMISSIONER: Behind tab?

MR STAEHLI: 62.

THE COMMISSIONER: Yes, that will be exhibit 32.

30 **#EXHIBIT 32 – TELEPHONE INTERCEPT G00231_00_00 ON
21/11/2008 AT 11:41:31 EXTRACT (KELLY)**

MR STAEHLI: This, it seems, Mr Kelly is you talking to some members of your family and the whole of the call won't be played, although we do get the cricket score.

40 TELEPHONE INTERCEPT PLAYED [3.34PM]

MR STAEHLI: All right. So, is that, do you recognise your own voice on that call?---Yes.

Talking to a member of your family.---My mother, yes.

All right. And what you told her there accurate so far as the division of the balance of those proceeds was concerned?---Yes, I believe so.

All right. And then later you paid some money to Mr Hart, you mentioned, into to his TAB account. Is that right?---Yes.

Did he give you the account number and the code in order to enable you to do that?---I, he'd previously provided that to me.

All right. Do you remember the payments that you made into that account were made in three different instalments?---I don't recall.

10

Excuse me a moment, Commissioner. Perhaps in that regard then I'll just play or ask to be played one further call on 29 November 2008 behind Tab 66 the time 4.40pm. If you'd listen to this and follow it again please, Mr Kelly.

THE COMMISSIONER: Between Mr Kelly and Mr Hart, make it Exhibit 33.

20

**#EXHIBIT 33 – TELEPHONE INTERCEPT G00231_00_00 ON
29/11/2008 AT 16:40:51 (HART TO KELLY)**

TELEPHONE INTERCEPT PLAYED

[3.37PM]

30

MR STAEHLI: Did you recognise your own voice on, and Mr Hart's on that recording?---Yes.

And is it the case that having heard that you now recall the way in which you deposited the money into his TAB account?---Yes. I, I thought I'd still have the details but clearly he provided them again.

And were there limitations at the time about how much you could withdraw from your particular bank account on any given day?---Yes, I believe so.

40

So that in order to pay the \$5,000 you have to in effect pay it in instalments?---That's correct.

Thank you?---It was a good ham in case you're wondering.

I'm sorry?---Oh, and, and it was a good ham in case you're wondering.

All right. You did get one?---Yeah.

And having made those payments to him and a payment to Mr Hart, do you remember how much was left to you, was it consistent with what you'd told your mother?---Yeah, I, I don't recall but - - -

About five thousand say?---Perhaps, yeah.

All right. And since that time had you, have you ever been asked by Mr Hart or Mr Paul to pay any other costs relating to them acting for you at your trial in February 2008?---No.

10

Do I gather from something you said earlier that you'd never, you've never been told that there is no further monies owing?---That's correct.

In the meantime has Mr Paul continued to act for you in other matters?---Yes.

And had you paid him in respect of those?---Yes.

20

And as he, he's never raised the issue about whether or not more money should be raised, is that right?---No.

Should be paid, I'm sorry?---No.

THE COMMISSIONER: By no you mean it's not been raised?---That's correct.

30

MR STAEHLI: So of the \$45,000 of course you retained consistent with what had been discussed previously I gather the \$26,000 or so which was the amount that you'd previously paid to Mr Paul at the time of the trial. Is that right?---Yes.

And that was money which was then available for you to apply to whatever purpose you thought appropriate?---Yes.

Yes, they're the questions I have for Mr Kelly on this topic.

THE COMMISSIONER: Who wants to ask Mr Kelly some questions, anyone here? Do you, Mr Walsh?

40

MR WALSH: Commissioner, yes I do, Commissioner. Mr Kelly, in relation to Mr Paul, prior to engaging him in this trial, had you eve been represented by him before that?---Yes, I, yes, I'd used Mr Paul before.

All right. And you'd know, had you retained him, that is that you'd instructed him in matters in the past before the criminal trial in February?---He'd given us, yes, I'd had some legal advice on other issues.

MR STAEHLI: But as well, I'm sorry, just because there's a risk of confusion I think Mr Paul had represented him in the process of that, of the brief from the time he was charged.

MR WALSH: Sure, sure, all right, sorry about that. Just to clarify, had you ever retained anything in relation to matters other than criminal proceedings?---Yes.

10 In respect of those proceedings had Mr Paul ever provided you with a document such as a cost agreement?---No.

Subsequent to the criminal trial in February you retained Mr Paul in other matters as well?---Yes.

On those occasions have you ever received a cost agreement from him?---No, not that I recall.

20 Do you have any understanding, Mr Kelly, as to the obligations of a legal practitioner so far as disclosure in such a document as a cost agreement?---No.

You're not aware as to whether a legal practitioner has an obligation to explain for instance to someone like you certain provisions of the Legal Profession Act including your rights as a client?---No.

Not at all? When you received the estimate from Mr Paul is it the case that you weren't familiar at that time with your rights as a consumer as it were with a legal practitioner?---Absolutely.

30 You didn't know for instance whether you could dispute the bill?---No.

Or review the bill?---As I said, my, all of my energy and all of my attention went to the trial that I was about to face and all the other stuff just didn't even get a get a Guernsey.

40 All right. Okay. Now, so far as Mr Hart is concerned and the issue of this disclosure as under the Act, was it your understanding that basically any disclosure as it were was coming via Mr Paul and not directly from Mr Hart as to the estimate fees?---Yes because Mr, the, the estimate I had from Mr Paul incorporated Mr Hart's fees.

I just want to clarify that it wasn't a situation where you had an expectation that Mr Hart as a barrister was going to provide you with a separate estimate to that of Mr Paul?---Not at all.

Okay. Now, is the situation that you drew in your mind a distinction between the liability of you to Mr Paul and Mr Hart for legal fees and

whether they would enforce that amount of money that was owed by you to them, is that the situation?---Yes.

Were you ever aware of any policy on the part of the Attorney General's department that notwithstanding whatever amount was claimed that a fixed rate would be allowed in the circumstances of a criminal trial?---It wasn't until after I received the advice from the Attorney General's where it broke up what, what they actually allow for those thing that formed that view.

10 And was it the case that there was an hourly rate of \$220 per hour allowed in relation to Mr Paul, is that right?---I believe so.

And also \$1,650 per day in relation to Mr Hart?---Yes, I think so.

As a client, would you understand concepts such as the distinction between what's known as solicitor client bills and party party bills? Have you ever heard of those terms?---Never heard of it.

20 Now, you were taken to a document. Commissioner, it's the claim under costs in criminal cases but I just don't have the exhibit but someone might be able to assist me with the exhibit number. Remember you sent a letter off to Mr Glanfield, the director general of the department?---Yes.

In that document there's an annexed bill of costs from Mr Paul dated the 14th of - - -

THE COMMISSIONER: Is that 59, is it?

30 MR WALSH: 29, your Honour, thank you, dated 14 July 2008. Do you see that document?

MR STAEHLI: 26, I think it is, sorry.

MR WALSH: 26, I'm sorry, yes, all right, it's exhibit 26. Now, in relation to the items that you see there on those three pages, they commence at 30 November 2006 through to 27 February 2008. Did you peruse those, that is did you read through those items?---Yes, had a look at them.

40 Do you dispute that that work was in fact undertaken for you?---No.

Now, if you go over to the annexed memorandum of fees from Mr Hart and I'm just asking you to consider the nature of the work undertaken. You don't dispute that the work that's particularised there was in fact undertaken by Mr Hart?---Certainly not.

But you accept that there is a significant difference between the amounts claimed in his bill or memorandum of fees and that referred to in the original listing?---Yes.

Now, when you received this document from Mr Hart and the itemised bill, did you consider that, for instance in relation to Mr Hart, that he had charged excessive fees to you by way of the claim to the Attorney General's department?---No.

You used the term that he inflated his bill?---Ah hmm.

10 Did you regard at that time that what he had done as being improper or wrong?---No.

Why?---Because two points, firstly, I didn't, I didn't see it, see it as Mr Hart giving me a bill, in fact I saw it as Mr Hart giving Mr Paul a bill and that I was making payments to Mr Paul. I never made a single payment through, like directly to Mr Hart during the trial. And the other is because they said that they had to go back and do, and provide actuals. So I didn't see that it was inappropriate at all and reasonable for him to do that.

20 Right. So are you saying that based upon the fact that the original situation was an estimate, that this document in fact particularised what you regarded as being a fair and reasonable charge for the work that he did?---Yes, indeed.

Notwithstanding that there was a significant difference between the original estimate and this (not transcribable) fees?---Yes, indeed.

The fact is that you took in account, I want to just deal with that, was it only that the trial had been extended by two days?---No.

30 Did it have anything to do with any other work or preparation or anything of that nature?---I didn't know what was being reviewed. As far as I could see the estimate just said this is what we think it's going to be. I didn't, as far as I knew Mr Hart was doing considerable work at each night during the trial.

Yes.---He was getting transcripts. I figured all that stuff would have to go back and be incorporated into the actuals that I was provided with.

40 All right. But you as the client, as far as your state of mind was concerned, you regarded that the memorandum of fees of Mr Hart was fair and legal?---Indeed.

Right. And you didn't think he was doing anything improper in your mind?---No.

Right. Now the situation is that you've been asked a number of questions about the division of the monies that were ultimately recovered from the Attorney Generals Department. Right?---Yes.

Do you know what was the amount approximately that was recovered from the Department in relation to the component to Mr Hart? Do you have any idea?---No idea at all.

You know that ultimately, I think \$45,000 was the figure that was allowed?
---Ah hmm.

All right. Exhibit 29 breaks up the amounts, \$17,006 for Mr Paul and seventy seven point three hours in attendance at \$220 an hour. Right?

10 ---Yes.

Tab 51. The disbursement were allowed of \$616 and counsel's fees of \$27, 930 allowed at \$880 for four hours of reading brief, \$1,650 for all day conference on 17 February, \$660 for three hours preparation, I think \$880 for four hours preparation (not transcribable) \$21, 450 for five days preparation and eight days, eight trial days, \$2,160 for eight days accommodation and food. You said in your evidence that you were concerned that the approach in relation to the allowance of the fees claimed by solicitor and counsel were not fair because, as I understand it there was a significant difference between the two components. Is that right?---Yes, indeed.

20

In other words you as the client, and correct me if I'm wrong, saw it a distinction between the amount that was claimed and the Attorney General only allowing something that was considerably less?---Yes.

For instance the hourly rate, the daily rate and things of that nature?---Yes.

30 Why were you concerned about that distinction or that difference? (not transcribable) because there's a difference (not transcribable)?---Because, because I, as far, because in my mind I still had a liability for the full \$77,000 worth of the total bill, even though I'd only paid \$26,000. Yet, the Attorney General wasn't going to give me anywhere near what I was liable to pay and it was my understanding that the whole point of the costs in criminal cases legislation was to people who have been put through situations like mine to give them some assistance to recoup the money that they've spent. And I see that I had a \$50,000 liability and the Attorney Generals Department was giving peanuts.

40 In your mind, did you at that time, when I say at that time when you made the application under the Costs in Criminal Cases Act, did you believe that, that you may have faced the situation that Mr Paul and Mr Hart would have enforced the debt?---Indeed, absolutely.

You'd no doubt about that?---Yeah.

Ultimately you received back what you'd paid?---Ah hmm.

And another \$5,000?---Yes.

Why did you receive the additional \$5,000 on top of the component of what you'd paid?---That was the, the split-up that was – that Mr Hart determined and Mr Paul.

10 What was your understanding as to why that was arrived at and in particular whether that extinguished the debt that you owed Mr Paul and Mr Hart?---It certainly didn't extinguish the debt. I, I was very hopeful that they wouldn't enforce it but there was never, there was a never a discussion that okay, that's it. The slate's clean.

20 But wasn't the reality when Mr Hart was discussing with you the payment of the moneys into his TAB account and also providing you with a Christmas ham, wasn't the reality that you'd come to the view that look, you'd resolved the situation that there'd be no further liability or no risk of any enforcement of this debt?---I was, I was confident. I was certainly hopeful. I was very hopeful. I was reasonably confident that they wouldn't but in the back of my mind I, I knew that they still had the opportunity to do it if they, if they saw fit.

But that you mean that you believed that they were entitled to write off what amount they chose?---Yes.

And you've heard that term that people can write off debts?---Yes.

30 But at that stage basically you were very confident that the debt had been written off?---I wasn't confident. I was hopeful. I didn't – I just didn't know. I never raised it. They never raised it. I just left it.

You've had no further discussions, for instance, with Mr Paul about your liability?---No.

Not at all?---None.

Even though you've instructed him in other matters?---Yes.

Okay. Nothing further, Commissioner?

40 THE COMMISSIONER: Does anyone else want to ask any questions?

MR STAEHLI: Can I just ask – I'm sorry.

MR BOWEN: Yes, Mr Commissioner, if I can just ask the - - -

THE COMMISSIONER: Well, how long are you going to be?

MR BOWEN: I've only got a couple of questions.

THE COMMISSIONER: All right.

MR BOWEN: Mr Kelly, at the time when you lodged the claim with the Attorney General's Department (not transcribable) you also completed a statutory declaration?---Yes.

And where did you get that statutory declaration from?---From memory I think it was off the website.

10 And you understand the nature of a statutory declaration?---Yes.

It's a sworn statement being made by you under oath?---Yes.

I think it's on page 3 of exhibit 26?---Yes, I've got that.

Can I draw your attention to paragraph (c). It says, "I am personally liable for the costs to which this certificate relates"?---Yes.

20 That was your, your honest view at that particular point of time?
---Absolutely.

And that, that indicated your understanding that you were personally liable for the entirety of that account?---Yes.

Now, when the, when the funds eventually were processed by the Attorney General's Department, that cheque went to you?---Yes.

It was a cheque made payable to you?---Yes.

30 And there was nothing in the documentation that you lodged with the Attorney General's Department to indicate that you paid all of those amounts owing?---Certainly not. I, I made reference to the fact that there was a considerable sum still remaining unpaid.

That was in your covering letter?---In my covering letter, yes.

And it was you who provided a cheque for \$8,000 to Creaghe Lisle?---Yes.

40 And what, did you just send it to or drop it into the office?---I dropped it into the office.

Did you have a conversation with Mr Paul at the time or did you just leave it?---No, I just left it in an envelope.

You indicated that you'd had some work done by Mr Paul prior to this – the major incident, being the trial?---Yes.

Can you recall what sort of work that was?---It was the lead up work to the, to the trial and there was also some stuff to do with my employment contract from memory but I'm not sure, not sure of the timeframe.

So that would have been a relatively small matter to do with your employment contract?---Yes.

Can you recall what sort of costs may have been incurred by you in relation to that?---Not at all.

10

Would it have been less than \$1,000?---Yeah.

Work done by you – work done by Creaghe Lisle since this – the trial that concluded in February 2008, can you indicate what sort of work that - - -? ---That was appearing at the Local Court.

20

What, a one-day matter or a short matter?---A very short matter. My, my girlfriend's ex-husband started beating her up and I told him to watch his back if he went near her again and I got charged with intimidation. He got let off. The justice system's perfect, isn't it?

Can you indicate or can you recall what that may have cost you in terms of legal costs?---It was several hundred dollars. I don't recall the exact amount.

Nothing further, Mr Commissioner.

30

THE COMMISSIONER: Mr McIlwaine, did you want to ask some questions because I think you can do it tomorrow morning if you're going to?

MR McILWAINE: I don't expect to have any questions. Perhaps I'll take instructions overnight. I think, if I don't have any questions, I think Mr Staehli might have a few more.

MR STAEHLI: I might have one or two but does Mr (not transcribable).

40

MR McILWAINE: I think my client will want to return tomorrow while Mr Paul gives his evidence.

MR STAEHLI: All right.

THE COMMISSIONER: Okay. We'll adjourn till tomorrow morning.

AT 4.01 THE MATTER WAS ADJOURNED ACCORDINGLY [4.01pm]