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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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THE COMMISSIONER: The Commission is continuing its public investigation into the matter the scope and purpose of which has already been announced as the nature of the allegations being investigated. Mr Walsh, what's the news?

MR WALSH: Yes, there's two issues that I want to raise, commissioner. Firstly, I'd ascertained that the book that was referred to recently in evidence in respect of Mr Hart.

10 THE COMMISSIONER: Yes.

MR WALSH: I've made some inquiries about that and Mrs Hart, I spoke to last night and early this morning. She went to the hospital early this morning. She has possession of the book at the hospital so I've disclosed this to Mr Staehli and those who advise him in that sense and at a time that's convenient - - -

THE COMMISSIONER: She'll bring it in to the Commission?

20 MR WALSH: No. I thought that I would go up there with someone from the Commission and get the book and bring it back. And also at the same time - - -

THE COMMISSIONER: Well, no, you don't have to have anyone with the Commission. I mean, we can take your word for it that - - -

MR WALSH: Well, I'm happy to go up.

30 THE COMMISSIONER: Yes.

MR WALSH: The second thing is that I understand that he's undergoing a procedure this morning and may well be undergoing it now called an angioplasty, a procedure whereby they ascertain whether there's any blockage in the vessels of his heart.

THE COMMISSIONER: Yes.

40 MR WALSH: If there is I understand that the cardiologist proposes either to deal with that issue by way of a stent or the insertion of a stent or to undergo a bypass operation immediately.

THE COMMISSIONER: Oh, well.

MR WALSH: Well, I don't know if that's the case but what I thought I would do at a convenient time is to go up to the hospital and make some direct inquiries and when I come back to bring the book and to report to you and Mr Staehli about what I understand the situation is, Commissioner.

THE COMMISSIONER: Well, the time to probably to organise this is probably between – I'm, I'm having to rise at half-past 12 and come back at 2.00 so I'll have an hour and a half - - -

MR WALSH: Well, that'd be convenient.

THE COMMISSIONER: - - - it may be the time when you can do it because you probably will want to be here when some of the witnesses are being called.

10

MR WALSH: I would be. That'd be convenient, Commissioner.

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

MR STAEHLI: Yes. So it's proposed that we complete the evidence Mr Kelly.

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

MR STAEHLI: I believe everyone else had finished. I'm not sure if that's right. I don't - - -

THE COMMISSIONER: Yes. I wasn't sure that Mr McIlwaine wanted - - -

MR WALSH: Yes. Just one matter, Commissioner.

10

Mr Kelly, you were paid – I want to take you to the subject of the division up of the moneys that were received from the Attorney General's Department. Now, you gave evidence yesterday about some conversations with Mr Hart at the Wagga Swimming Club?---Yes.

It's true, is it, that you also had a conversation with Mr Paul at the Wagga Swimming Club on the topic of the break up of this money. Is that correct? ---Yes.

20 Now, and did that conversation take place after you'd received the cheque? ---Yes.

But perhaps I'll then - - -

THE COMMISSIONER: And the cheque being the cheque from the Attorney - - -

MR WALSH: The cheque from the Attorney General's Department. Now, you drew a cheque ultimately for \$8,000 to Mr Paul's firm, Creaghe Lisle. 30 Correct?---Yes.

And delivered it. What – could you tell the court what it was that caused you to draw the cheque in that amount for Mr - - -?---That was the amount he told me that I would have to pay to his firm.

When you said he, do you mean by that - - -?---Mr Paul.

Mr Paul. And where did that conversation take place?---That took place at the Swimming Club.

40

And that conversation took place after you received the cheque and, and you recall you had a conversation with Mr Hart that was played to you yesterday where you asked him for some details of his TAB account?---Yes.

And did it occur before that conversation?---Yes, to the best of my recollection, yes.

And it occurred, I think, on a Wednesday night at the Wagga Swimming Club?---Thursday.

Thursday, I'm sorry. Apart from the conversation you had with Mr Paul about \$8,000 to go to him, was there discussion with Mr Paul about the amount that was to go to Mr Hart?---Yes, at the same time.

10 Can you just tell the Commission what that discussion was, to the best of your recollection, the whole of that discussion?---Basically Anthony told me basically what to do with the money that I'd received and how much I had to pay to him and how much to Mr Hart.

Well, he told you you had to pay him \$8,000, did he?---Yeah. There was a bit of discussion around that, yes.

But the figure of \$8,000, where did that come from?---That came from Mr Paul.

20 Okay. And the \$5,000 that ultimately went to Mr Hart, where did that figure come from in that – in that same conversation?---The same, the same conversation.

THE COMMISSIONER: Who, with Paul or Hart or both?---This was with Mr Paul.

So Paul said - - -?---This was, this was a different night than I had the conversation with Mr Hart at Swimming Club.

30 Sorry, this was - - -?---This was a different night than the previous conversations I've discussed with Mr Hart.

It was after the one – the discussion with Hart?---Yes.

MR WALSH: So you'd already had a discussion with Mr Hart about him receiving some moneys, that's previous?---That was before I received the cheque.

40 Before you received the cheque. But in this conversation, which took place after the cheque, Mr Paul told you that \$8,000 was to go to him?---To his firm, yes.

To his firm I should say. And in fact there was some discussion that it was to be paid to his firm and not to him personally?---That's correct. I asked Mr Paul how I give him the money and he said, "No, it doesn't come to me. It belongs to the firm."

And there was – was there discussion with Mr Paul about what was to be paid to Mr Hart - - -?---Yes.

- - - and how it was to be paid. What did he tell you?---He just said, "Pay \$5,000 to Harty.

Okay. And was there discussion about any moneys being retained by you?
---And whatever's left over I keep.

10 Is that what he actually said or can you recall the words he actually said about that exactly?---I don't, well, that was the impression I had. I don't recall him ever saying, "You keep the rest." It was just the matter of \$8,000 to him and \$5,000 to Mr Hart.

So you certainly recall about that, talking about those two questions, \$8,000 to him and \$5,000 to Mr Hart?---Yes.

Do you recall him making any reference to an amount being retained by you or you're just not (not transcribable)?---I, I don't recall.

All right. Thank you, Commissioner.

20

THE COMMISSIONER: Just so I understand this, I get a little lost in all this. By the time you got the cheque for \$46,000 or whatever it was, about that, if the proper bill was for \$76,000, well you still owed \$20,000. Would that be right?---Yes.

30 So, why, what was the circumstances leading up to Paul, for example, saying he was going to reduce his fee, I'm not talking about the second time around now, I mean you established one when you paid \$26,000. Then later on when you put a bill in to the Attorney General, his fee went up as did Hart's. That was right wasn't it?---Yes.

So at the end of the day when you got the \$46,000, you would've not been, you, on one view, you wouldn't of been entitled to keep anything - - -?
---That's correct.

- - - that was less then \$76,000. Right?

MR MCILWAINE: Commissioner, the witness is not a lawyer and your Honour has, Commissioner has put a proposition to him which - - -

40

THE COMMISSIONER: Well, I'm just asking his belief.

MR MCILWAINE: His belief. (not transcribable)

THE COMMISSIONER: Yes. Well I mean, he's telling me Mr McIlwaine, that (not transcribable) for \$76,000 which was for expenditure occurred on his behalf in the preparation of the case. So if he got that money back, that \$76,000 presumably went to those people who he owed money to. Well,

anyway, that's what his belief was. That was your belief, yes or no?---So, (not transcribable) go back to the original proposition.

10 If the amended bill was a correct assessment of the fees incurred or for which you were liable in the preparation and discharge of your case, if that was correct, you owed \$76,000 for which you'd already paid \$26,000.---I, I, as I said, Mr Commissioner, I was aware that the bills had gone up and I think that in my mind it was always a matter of the difference we were talking about was the amount over what I'd already paid. And as long as I didn't be asked to pay any more, I really didn't turn my mind too much to it.

Whether you did or didn't at that stage there was \$76,000 so that a claim was made that was for your legal fees for the trial. That was correct wasn't it? That was the bill?---Yes.

So on the face of it wasn't it your belief that you would owe that money to either the firm or to, and or to Mr Hart?---Yes.

20 So when you got \$46,000 instead of the \$70,000 (not transcribable), still you would've had nothing left over and you would still have been owing them money, another \$20,000 if they kept the whole lot?---They only asked for \$13,000. They didn't ask for \$30,000.

30 Well, did you say to them, well what are you talking about here? First of all you tell me it's \$26,000 to do this case, then you tell me it's \$76,000 to do it and now you're telling me it's \$46,000?---No, I didn't, because I knew that, as I said, I knew that the prices had been inflated and as long as I wasn't asked for any more money out of my own pocket, I really didn't care. It was of very little consequence to me at that time, Mr Commissioner.

All right.

MR BOWEN: Excuse me, Commissioner, if could just ask further questions (not transcribable) questioning.

THE COMMISSIONER: Yes.

40 MR BOWEN: Mr Kelly, are you absolutely sure you had this conversation with Mr Paul?---Yes.

At the Swimming Club?---Yes.

And when you go down to the Swimming Club you have a few drinks don't you?---Yes.

Quite a few drinks? I think on one occasion you indicated in one of the conversations that were intercepted that you'd had five beers?---Yes.

Would that be a normal consumption of alcohol for you or do you have more than that?---That, it depends. That was over a three or four hour period. But sometimes I was there later, sometimes I've had more drinks, sometimes I've had less drinks.

I suggest perhaps that you had the money and you determined how much was going to be paid to Mr Paul?---No.

10 And as you had the money, you had the ability to determine how much was to be paid to either Mr Paul or to Mr Hart. Correct?---No.

Well, no one else could take the money out of your account other than you?

THE COMMISSIONER: He could have been sued for it.

MR BOWEN: Apart from being sued for it, Mr Commissioner?---Yes. In effect, yes.

20 But in terms of a voluntary payment being made, you were the one that would be determining what payment would be made?---If, if that had happened, yes, I guess.

THE COMMISSIONER: But you're saying that didn't happen, is that right?---That's exactly right, that didn't happen.

MR BOWEN: Well, I suggest perhaps that you're mistaken in your recollection as to that conversation with Mr Paul?---No, I'm not.

30 And is it possible that it may have been a discussion that you had with Mr Hart as to the break up of this sum in excess of the amount which you've originally paid?---No.

Are you absolutely certain of that?---Yes.

The \$8,000 you, you wrote a cheque out?---I didn't have a cheque then, I think I had a bank cheque for him.

40 And you gave evidence yesterday that you simply delivered it to the offices of Creaghe Lisle?---Yes.

THE COMMISSIONER: When you say a bank cheque, it was a real bank cheque was it, that is the equivalent of cash but in the form of a cheque?---That's my memory, yes.

All right. Well, sometimes people use the word bank cheque as just meaning a cheque but you mean a bank cheque?---Yeah, I didn't, I didn't have a chequing account.

Okay.

MR BOWEN: Nothing further.

THE COMMISSIONER: Yes, Mr Staehli, is there any question you want to ask of - - -

MR STAEHLI: Yes. Thank you. Mr Kelly, did you get an invoice, a bill or an invoice from Mr Paul in relation to that \$8,000?---I don't recall.

10

THE COMMISSIONER: Or a receipt?---I, I don't recall. I didn't get anything at the time. I don't recall ever being sent anything after it.

MR STAEHLI: Can I show you a document please, it's just behind tab 65, dated 28 November 2008.

THE COMMISSIONER: Which tab is it? You're showing it up are you?

20

MR STAEHLI: Yes. You can see that's apparently a tax invoice addressed to you dated 28 November in the sum of \$8,521. Do you see that?---Yeah.

Do you remember having received such a document from Mr Paul?---I don't recall seeing that. I may have but I don't recall. Was there, was there a copy of that in my file?

Well, we'll check on that but as to what you've just said in evidence about the arrangements with Mr Paul that you made at the swimming club was the payment that you made by way of the cheque you've described made simply in response to that conversation?---Yes.

30

As opposed to waiting for a bill, looking at it and then using that to go and - - -?---That's correct, yes.

- - - achieve, retrieve the monies. Is that right?---Yes.

All right.

THE COMMISSIONER: When did they get, what was the date of the cheque, of the Attorney General's cheque?

40

MR STAEHLI: 7 November 2008 but I'm going to show Mr Kelly now some pages from his bank account.

THE COMMISSIONER: Anyway, so far as that job is concerned, you say you have no recollection?---Oh, I don't recall, I may have.

MR STAEHLI: I should tender that, Commissioner.

THE COMMISSIONER: Yes, it'll exhibit 34.

**#EXHIBIT 34 – TAX INVOICE FROM CREAGHE LISLE IN THE
SUM OF \$8,521 DATED 28/11/2008**

10 MR STAEHLI: And so Mr Kelly, I just wanted to show you some pages
from a bank account statement of yours which is behind tab 59,
Commissioner, of the, we've got a hard copy for you. If you have the tab,
the witness might be shown that. Thank you.

THE COMMISSIONER: Yeah.

MR STAEHLI: You'll see, although the pages which I've handed you don't
identify it as your account, I imagine you could look at that and see that it is
apparently pages from your bank statement. Do you recognise it?

20 THE COMMISSIONER: Now, I thought you said you didn't have a bank
account?

MR STAEHLI: No, no, he didn't have a cheque facility.

THE COMMISSIONER: A cheque account. Yes.

MR STAEHLI: Assuming that is your bank account, Mr Kelly, can you see
the deposit of the Attorney General's cheque on 18 November there?---Yes.

30 THE COMMISSIONER: Sorry, whereabouts is this?

MR STAEHLI: 18 November. It's page 3 of, it's at the back of that tab 59.

THE COMMISSIONER: Got page 3.

MR STAEHLI: Further on I think, Commissioner. I think you're in the
wrong tab there, Commissioner. 59.

40 THE COMMISSIONER: No, I haven't got it here.

MR STAEHLI: Yes, I see you're not looking at the right Tab I don't think,
Commissioner. Here's a hardcopy.

THE COMMISSIONER: Sorry, whereabouts is this?

MR STAEHLI: 59.

THE COMMISSIONER: Oh, 59.

THE COMMISSIONER: Yes. Now start again. The 18 - - -

MR STAEHLI: 18 November, \$45,552 deposit.

THE COMMISSIONER: Yes.

10 MR STAEHLI: And just as a matter of interest at that stage you had a balance in that account as shown there of slightly over \$25,000. Is that right?---Yes.

And at that time did you owe money to anyone?---I don't recall. I think I may have still owed money in my credit cards and I'm not sure whether I'd paid off my car loan at that time.

20 Right. And just for a matter of interest, in relation to the monies which you had provided to Mr Paul's firm in payment for the trial at the time of the trial?---Yes.

Had you borrowed any of that money from other people?---From the bank.

From the bank?---And sold my car.

Right. Thank you. So that money came in and then some of it was obviously it was withdrawn from time to time over the, well, part of it was withdrawn over the ensuing three weeks or so?---Yes.

30 Amongst the withdrawals is an amount which is just over \$8,000 on 21 November, at the bottom of that page. Can you see that?---Yes.

Are you able to say whether or not that was the withdrawal which included the, what was to be paid to Mr Paul's firm?---I believe that's what it was.

All right. And then over the page, there's a \$30,000 withdrawal?---Yes.

Did you put that in a term deposit?---I believe I did, yes.

40 And then further down on 1 December, and 6, sorry, on 1 December and 3 December are the three withdrawals there which total \$5,100 out of which came the money which you paid in instalments into Mr Hart's TAB account?---I believe that to be correct. Yes.

THE COMMISSIONER: The three of them?

MR STAEHLI: The three of them.

THE COMMISSIONER: Fifteen hundred, two thousand and sixteen hundred.

MR STAEHLI: Well, other evidence shows that the third one was fifteen hundred dollars as well, so I imagine \$100 you kept for yourself?---Yes.

THE COMMISSIONER: All right.

10 MR STAEHLI: Yes, thank you. So, to the, just in relation to the balance that you had available to you before that Attorney General's cheque was paid to you, at least theoretically, well not theoretically, actually you had money in your account which, if you had been required to pay some more fees to Mr Paul's firm you actually had that money at that time?---Yeah. I'm not sure how long I had that money, but I think from memory that was the, some of the money I got from my separation of property from my divorce. But, yes.

20 But at any event you had some resources. Whether or not you had other debts, if you'd received a bill from Mr Paul before the Attorney General's cheque, you would've had some money available to pay it, whether or not you chose to do so?---Yes.

All right. Thank you.

THE COMMISSIONER: Well, I'll mark that one Exhibit 35.

30 **#EXHIBIT 35 – COMMONWEALTH BANK STATEMENT OF JASON KELLY SHOWING DEPOSIT ON 18 NOVEMBER**

THE COMMISSIONER: Yes.

MR STAEHLI: They're the only other questions - - -

MR MCILWAINE: Commissioner, just one matter.

40 THE COMMISSIONER: Yes.

MR MCILWAINE: Just (not transcribable) evidence of payment to, of monies to Mr Paul's firm. We don't have, it hasn't been, I think, put in evidence what date that occurred. Just before my client leaves the witness box I'd just like to, if I could be advised of that in case there's any (not transcribable)

THE COMMISSIONER: Well, I suppose we can give you that. Do you have that date? What is the date that Paul put it, it was made out I think to put in the trust account wasn't it? You said in your opening.

MR STAEHLI: (not transcribable)

THE COMMISSIONER: I'm not sure why it was put in a trust, anyway, I suppose (not transcribable). I imagine - - -

10 MR STAEHLI: I'll probably be here for a little while yet, so perhaps we can do it later.

THE COMMISSIONER: Well, you might as well do it now.

MR STAEHLI: (not transcribable) I'm sorry, I can't tell you instantly what the ledger - - -

THE COMMISSIONER: I don't know why this is so important to you.

20 MR MCILWAINE: It can wait, Commissioner.

THE COMMISSIONER: Yes.

MR MCILWAINE: (not transcribable) cross examination.

THE COMMISSIONER: And also I don't understand why this would've gone into a trust account. But I suppose this will all become - - -

MR STAEHLI: (not transcribable)

30

THE COMMISSIONER: There were fees that had been incurred, in trust for whom, for themselves? It can't be. However, when I was at the Bar, you never had to do ethics or trust accounts. I think, I never knew whether that was because barristers didn't need to do it or because they were so incorrigibly corrupt that there was no point in trying to persuade them otherwise.

MR MCILWAINE: I have no further questions of my client.

40 THE COMMISSIONER: Anyway, well don't worry, I suppose there'll be an application is there, for Mr, is there going to be an application for Mr Kelly to leave the Commission? He's to stay?

MR STAEHLI: Well, there is, Commissioner.

MR MCILWAINE: He wishes to leave this afternoon. He'll remain for the evidence of Mr Paul. I think he wants to leave this afternoon.

THE COMMISSIONER: Yes. Well, I'll grant that, but he'll have to come back if he's required. (not transcribable) what's going to happen when Mr Hart gives evidence. Mr Paul's giving evidence. It'll obviously bear on, and particularly this issue for example.

MR MCILWAINE: I understand he's going to remain today while Mr Paul gives evidence.

THE COMMISSIONER: But he can go on the understanding that he, on notification to you, will return on the next flight back from, is it Wagga, he lives in Wagga?

MR MCILWAINE: No, he lives interstate now.

10 THE COMMISSIONER: Lives in?

MR MCILWAINE: Interstate.

THE COMMISSIONER: Interstate, in Queensland is it or - - -?---I live in Melbourne, Mr Commissioner.

Sorry?---I live in Melbourne.

20 Oh, Melbourne. Well, so you can get a flight back from Melbourne if, if you're required to come back.

MR MCILWAINE: Yes, I understand (not transcribable)

THE COMMISSIONER: Yes, all right. Yes. Well, you may step down now. Thank you very much.

<THE WITNESS WITHDREW

[10.37am]

30

THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: Yes. I think the, the ledger apparently shows, although I don't have the original record that the monies were as far as the ledger is concerned attributed to Mr Kelly's account at Mr Paul's firm on 28 November, \$8,000.

THE COMMISSIONER: And did it go to the trust account?

40 MR STAEHLI: I can't answer that question, I'm sorry. I think not.

THE COMMISSIONER: Oh, I see. Anyway, all right. Well, now who do you want to call next?

MR STAEHLI: Well, now it's proposed to change course slightly to suit the availability of Mr O'Rourke, Mr Neil O'Rourke.

THE COMMISSIONER: Oh, this is the third segment you're talking about.

MR STAEHLI: This is in the different segment. Yes. And I think, we (not transcribable) Mr Walsh for this, and I regret the inconvenience which made the occasion (not transcribable)

THE COMMISSIONER: What's his name, his first name?

MR STAEHLI: Neil.

10 THE COMMISSIONER: Yes, Mr O'Rourke.

MR STAEHLI: And after that we'll return to Mr Paul.

MR MADDEN: Commissioner, you previously granted the authority to appear for Mr O'Rourke.

THE COMMISSIONER: Yes, I did, I think.

20 MR MADDEN: You did, Commissioner. And I've explained to him the situation with the declaration that you will be asking, your Honour, to make.

THE COMMISSIONER: Yes. Take a seat, Mr O'Rourke. Mr O'Rourke, you are legally represented and I've given your legal representation leave to appear on your behalf here. And I'm assuming that you have had explained to you your entitlements and obligations under the legislation. Of significance so far as your concern is that the legislation requires that you must answer and answer truthfully all questions asked of you and the failure to do so can render you liable to a very serious criminal penalty, involving prison. Do you understand that?

30

MR O'ROURKE: (NO AUDIBLE REPLY)

THE COMMISSIONER: You may object to answering questions, but whether you do or don't the, you've got to answer the questions. Parliament has given you the right to object, so that the questions and answers could not be used against you in any other proceedings other than the proceedings here today except if you were charged with the offence of not telling the truth, whether you objected or not, the evidence you give here today would be used in criminal proceedings. Do you understand that?

40

MR O'ROURKE: (NO AUDIBLE REPLY)

THE COMMISSIONER: An application has been made on your behalf that instead of requiring you to object to every particular or any particular question asked, I can declare that you're deemed to have objected to everything and I propose to do that. So pursuant to section 38 of the Act I declare that all questions asked of this witness, all answers given by him, all requests made of him shall be deemed to be subject to his objection and

hence there's no need for him to apply his mind to object to any particular question, answer or request and this declaration will last as long as you are giving evidence in this public inquiry. Now, were you here on day 1?

Well, have you explained to him the – what was said at the opening of this? You see, he's entitled to know the nature and scope of the investigation and the nature of the allegation?

10 MR MADDEN: I read to him the segment that relates to him. He understands that.

THE COMMISSIONER: All right. Now, you have to take an oath to tell the truth. Do you wish to take it on a bible or do you wish to affirm or how do you wish to do it, Mr O'Neill?

MR O'NEILL: I'll take it on a bible, sir.

20 THE COMMISSIONER: Give him the bible, please. If you have trouble standing up you needn't stand up. Put your hand on the bible though.

THE COMMISSIONER: Yes, take a seat, Mr O'Rourke.

Yes.

10 MR STAEHLI: What's your full name, please, Mr O'Rourke?---Neil Francis O'Rourke.

And are you the father of Evan O'Rourke?---Yes, sir.

I want to ask you some questions about things that happened after your son was charged with some criminal offences last year. Do you understand?
---Yes, sir.

20 Do you remember that in, in June 2008 he was charged with an assault offence and with another offence alleging that he'd failed to quit some licensed premises following an incident at a nightclub?---Yes, sir.

And did he, did he tell you at some stage that he'd been charged with those offences?---Yes, sir.

Did you do something about trying to get some legal representation for him?
---Yes, sir.

Did you, with a view to that, speak to a lawyer?---I went to Mr Hart.

30 THE COMMISSIONER: So you went to Mr Hart?---Yes, sir.

What – because you knew Mr Hart, did you?---Yes, sir.

MR STAEHLI: How did you know him? Well, let me, let me put it another way. For how long had you known him?---At least 20-something years.

Because you've lived in the same area or for other reasons?---Actually, I first met Mr Hart when he worked for one of my clients.

40 THE COMMISSIONER: Sorry?---He first worked for one of my clients. I met him first but he was a barrister in the area and I - - -

You'd known him for 20 years?---Yes. I'd, I'd see him at the local hotel from time to time.

Anyway, all right. So you spoke to him about it, your son's charge, did you?---Yes, sir. He'd acted on a case a few years earlier for me young lady so I, I was aware, aware of how to contact him and I contacted him.

All right.

Yes, yes.

MR STAEHLI: Was the young lady a woman who had been a girlfriend of your son Evan?---Yes, sir.

Is that right?---Yes.

10

And Mr Hart had acted for her on some earlier occasion. Is that right?
---Yes.

And when you say you went to see Mr Hart about your son's matters, whereabouts did you go to see him?---I would have seen him at the local hotel in Sutherland.

All right. Which hotel was that?---Called Boyles Hotel.

20 THE COMMISSIONER: Called, yes?---Boyle, B-O-Y-L-E-S.

MR STAEHLI: And did you go to see him after making an arrangement to see him at Boyles?---Sorry. Could you repeat that.

Yes. Did you go to see him at the hotel - - -?---Yes.

- - - having made an arrangement to see him there or just expecting him to be there?---No, no, no. I think I made an arrangement.

30 All right. When you saw him did you ask him to appear for your son?
---Yes, sir.

Did you discuss with him at that stage how much he would charge to appear for your son?---No, sir.

Did you at any stage discuss with him how much he would charge to appear for your son?---No, sir.

40 Was that something which was of significance to you, that matter about how much he might charge?---No.

THE COMMISSIONER: Were you intending to pay the bill or was your son going to pay the bill?---I probably would pay the bill. I had no idea at the beginning how much it would end up being.

MR STAEHLI: All right. Well, perhaps I can deal with this in this way. Well, perhaps not. After you'd seen him at this, at the hotel on the first

occasion to ask him about your son's representation, did he agree that he would represent your son?---Yes. Yes, he did.

And was your son present during this conversation?---No, I don't believe so.

All right. And did you explain what the – the nature of the case to Mr Hart?
---Yes.

10 And did you tell him about when it was next in court?---Yeah. He, he would have been aware of the date.

Did you give him any papers?---No. Yeah. I, I gave him some papers.

About your son's charges, were they?---Yeah, yeah, the, the, the sheet, the sheet that my son brought home.

THE COMMISSIONER: So where was he meant to appear? Where was he meant to appear?---At Sutherland.

20 At Sutherland. Did you tell Mr Hart that?---Yeah.

Yes.

MR STAEHLI: Did you ever discuss with Mr Hart whether or not you should give him money for something which was other than his legal costs for appearing on behalf of your son?

THE COMMISSIONER: Well, what he thought was a legal - - -?---There was a discussion.

30

Well, what was the discussion?---Some months after the original event Mr Hart told me that he, he would ask somebody if he could, as I understand it, approach the police in respect to the original charge. He wanted \$1,000 to go on with the case but I queried him on, on what, what he was intending to do and he said something like, change of a few words would, could have an impact on, you know, the outcome. And I said, well, "What about the arresting officer?" He said, "Oh, he'd have to be involved." And as a result, even though I – and it was – as I understood it was very if and I, I went and paid him the \$1,000 on account of his fees. I guess, I didn't know
40 if any was going to be directed anywhere or not. As I said, I, I felt it was a fanciful type of idea he had but what in my mind was that if, if, you know, if the police were to reconsider the words they'd put down well, fair enough, so I didn't expect that they had. In fact, it never happened. Nothing changed. Nothing changed but I, I did, I did pay him \$1,000 around about that time he made that suggestion to me.

Well, was that \$1,000 for him appearing for your son in court or was it \$1,000 - - -?---Yeah, that, that, I hadn't paid him much at the time. I'd only

paid him a little bit of money and I was due to pay him some money so I was quite prepared to pay him that sort of money because you know that would sort of set things in motion down the track. I really was suggesting to him on behalf of my son or my advice was as a father that this matter should be defended. I was never convinced that that case was a proper charge, you know. That was, that was always my belief.

10 MR STAEHLI: This conversation you said was some months after the initial approach?---I, I, I tried to remember when but I cannot recall, I must say I was very ill at the time, recovering from a very serious life, life threatening disease. My, even my attendances at the hotel because I, I never had, I never drank, was something where I, I would have considerable difficulty going in there from home because I was not working. I was not working, I was home in bed most of the time.

THE COMMISSIONER: When you had this conversation?---Yes, sir.

When the \$1,000 was mentioned?---Yes, sir.

20 And you said in the context of some words being changed?---Yes.

What were the words, what was all that about?---I, I, just wanted my, I don't understand because there, there was only a few words. I couldn't, to me I couldn't understand why, that this thing could happen but I, I wasn't to know any better.

Was he, well, wasn't this meant to be a chat that you're understanding a change of words on the charge sheet or - - -?---Yeah, the, the - - -

30 The chat, was it the - - -?---The charge sheet, yeah, I think so.

It would have changed, it would affect the charge. Was that your understanding or not?---Yeah, that, that, that certain words that must have been said of behaviour would not necessarily you know be there any more or needed or something. That was, that was unfortunate it was told from the, and I, I didn't, I didn't believe that this would happen. I'm sorry, but I had a commitment to pay the \$1,000 in my mind anyway and, and, and that, I went ahead and did that.

40 MR STAEHLI: Did you pay Mr Hart other money later on?---Yes, I paid him maybe a couple of threes or four hundreds at a time. I would get some money and I'd have it in my wallet so if I saw him at the hotel I would say there's another three hundred or something like that because at that stage it had got to be a defendant matter and I knew that you know eventually that was going to be more, more involved. I, I, so I paid him that, I paid him five hundred around about the day that at the court attendance the plea was changed to not to guilty from not guilty.

THE COMMISSIONER: You mean the plea was changed, your son pleaded guilty, did he?---Yes, on an, on an occasion at, at Mr Hart's suggestion due to the extent of the evidence at the time.

10 By that time how much had you pay Mr Hart in all?---When I paid him that five hundred, I would have paid him then about two thousand or so because I think I paid him about two lots of maybe three hundred or something after that because he did say Evan had to pay from now on and of course I'd paid some on him and, and he never asked for any more because I didn't really think I should pay him any more.

20 MR STAEHLI: Did Evan pay anything?---No, Evan never paid anything. I, because Evan never met him or, or had the opportunity to pay him. I, I paid because it was, that's the way it was and the, and I paid him five hundred on that day. Now, on that day, that was the day where I did say to you at an earlier conference he would seek the assistance of somebody to give him the best result if that, if, not, well, whilst he would plead guilty, he, he would be, have a good chance of being picked up in a good light and he'd see to what he could. Now, I gave him \$500. I don't know if the, the indication seems that again you know he may have had to pay somebody to get that, to get that consideration but I don't, I believe that was only a story again. But I paid the five hundred because as I said I, the case had gone at that stage, just there, I was, I felt duty bound to pay that five hundred.

THE COMMISSIONER: All right. Yes, what's the next question?

MR STAEHLI: Did you say that you had that conversation with him about seeking assistance from someone - - -?---Yes, sir.

30 - - - to give him the best result on the day that you paid him the \$500. Is that what you're saying?---Yes, sir.

And that was the day when you were at court. Is that right?---Yes, sir.

On the day that your son changed his plea from not guilty to guilty?---Yes, sir. Yes, sir.

40 All right. But previously you've told us about a conversation on the same topic, that is which you said occurred some months later. Are we talking about the single same conversation and the two things you've told us about or two different conversations?---No, sir. There were two different occasions of two different actions that he proposed that one never resulted and I do not know the answer to the other one what resulted from that.

And the \$1,000 that you said you paid him on account of his fees in the first place, do you remember telling us that just a moment ago, that you'd paid him \$1,000 first?---Yes, I paid him \$1,000 probably a few months after due when that conversation took place and then I may, I think I paid him another

instalment later on for just you know as he turned up situation and then I paid him that \$500 I remember on that February occasion or the date that the plea was taken which was maybe January, I don't recall the dates, I kept no records mentally or otherwise and dates or anything like that.

So when you told us that by the time you'd paid him \$500, up to that time you'd paid him about \$2,000 or so?---Yeah, a bit over that.

Did that include the \$1,000 that you've mentioned?---Yes, sir. Yes, sir.

10

So, and then you said, although it was a little unclear that you'd paid two lots of \$300 as well?---Yeah, I think so, they were that ones.

Was that in addition to the two thousand or included in it?---No, that's afterwards so I believed that the whole amount could have been between twenty five and \$2,800, it wouldn't be more than that and it wouldn't have been less than twenty five but if it was one or the other. I, unfortunately, it was many months ago and I just lost track of the number and you know.

20

All right. And it was the first conversation which led to the payment of \$1,000?---Yes, sir.

Was that in person, that is were you with him, Boyles or somewhere else?---Yes, he approached me in that hotel.

What I want to do is to play to you a telephone conversation?---Yes, sir.

Which occurred on 6 August, so that's 6 August 2008 which is about two months or so.

30

Perhaps six weeks or so after your son had been charged. All right?---I think so.

A telephone conversation on 6 August at 3.26pm, Commissioner, behind Tab 2. Mr O'Rourke, a transcript will come up on the screen. Are you able to read that? Do you need glasses?---Yeah, I brought some glasses to understand this, I can't - - -

40

MR STAEHLI: Can you read that on the screen, it's just on the screen in front of you? Are you able to read that?---Just give me time. Yeah.

THE COMMISSIONER: It'll be played and you can just follow it. Do you understand Mr O'Rourke?---Yes, sir.

Mr O'Rourke?---Yes, sir.

It will be played and you can follow it.---Yes, sir.

Yes.

MR STAEHLI: Would you like to follow it on a piece of paper? Do you think that'll be easier?---No, mate. No.

You can read it up there?---I'm - - -

TELEPHONE INTERCEPT PLAYED

[11.01am]

10

THE COMMISSIONER: Well, Mr O'Rourke, that was a conversation between you and Mr Hart?---Yes, sir.

To your knowledge does that accurately reflect the conversation you had with him?---Yes. That was the conversation I had. A phone call I'd forgotten all about before I went and met him in the put.

Yes.---And that's when he approached me and told me what - - -

20

Yes, I know that. But what I'm really asking you is, is that call you've just heard - - -?---Yes, that's the (not transcribable) call I remember.

- - - you accept that that conversation took place in those terms?---Yes.

(not transcribable) yes or no?---Yes.

Yes. All right.

30 MR STAEHLI: And on the first page of that Mr O'Rourke it says after he, he, Mr Hart, has mentioned show money, you say, what, for him?---Yes.

Apparently meaning some other person. Right. Do you understand?---Yes. I understand, but I explain that he said to me he would approach somebody to have the charge sheet, have some words - - -

MR STAEHLI: Changed.---Yeah - - -

40 THE COMMISSIONER: Well, I think what's being asked is, and that's the him that's referred to in that conversation is it? The person who he's going to approach to have that done. Yes?---Yeah, yeah. Somebody would be approached. As I said, I clearly - - -

I know that. But I just asked - - -?---Yes, sir.

THE COMMISSIONER: And you say your son pleaded guilty finally? ---Yes, sir.

To the charges as originally laid?---Yes, sir.

And where was that. Was that at – what - - -?---Sutherland Court.

Sutherland Court?---Yes, sir.

And what happened to him? What was the result?---He got a section 10 with a two-year good behaviour bond.

10 Is that the old 556A?

MR LEWIS: Yes, your Honour.

THE COMMISSIONER: All right.

MR STAEHLI: The money, the \$1,000 that you paid Mr Hart with - - -?
---Yes, sir.

20 - - - where did you get that from?---Well, I recollected this recently. I couldn't go up the bank because it's too far for me to walk and I couldn't get enough from the ATM. I knew my wife was somewhere in the area and I rung her and asked her if she could go and get some money and I went up the road to the bank and picked it – on the corner I met her and I got the money.

THE COMMISSIONER: In cash from her?---Yes, sir, because she was able to draw that amount out whereas I wasn't able to draw that amount out.

30 From a joint account or your - - -?---No, it was her personal account.

Personal account.

MR STAEHLI: With, with which bank?---She has banks, a St George bank account.

All right?---And it would have been a day or so after that conversation.

40 From time to time did you speak to Mr Hart between the first conversation that I've asked you about - - -

THE COMMISSIONER: Are you all right, Mr O'Rourke?---Yes, sir. I'm okay. I'm okay. I, I, I have a lung thing but I'm okay. I'm sorry, sir.

Yes, yes?---Yes, sir.

MR STAEHLI: From time to time did you talk to Mr Hart on the telephone about your son's matter?---I may have. Possibly a few times because it

seemed to go on for ever and ever this case and every time there was something coming up I had to ring him and tell him to turn up or whatever.

All right. Well, can I play you this telephone call?---Yes.

I'll just ask you to listen to it on the same basis as before?---Yes.

Which is apparently a call between you and Mr Hart on the 1st of September, 2008.

10

THE COMMISSIONER: Well, the earlier one will be exhibit 36.

**#EXHIBIT 36 – TELEPHONE INTERCEPT G00226_00_00 ON
6/08/2009 AT 15:26:19 (O’ROURKE TO HART)**

20 THE COMMISSIONER: This will be exhibit 37.

**#EXHIBIT 37 – TELEPHONE INTERCEPT G00226_00_00 ON
1/09/2009 AT 13:37:13 (O’ROURKE TO HART)**

THE COMMISSIONER: What's the date?

30

MR STAEHLI: 1st of September at 1.37pm.

THE COMMISSIONER: Yes.

TELEPHONE INTERCEPT PLAYED

[11.13am]

40 MR STAEHLI: As it happens, Mr Hart didn't turn up the following day and Mr O'Rourke was convicted in his absence but that was later set aside, Commissioner.

THE COMMISSIONER: Who's Col?---His name is Col McDermid. He is the Registrar at the Local Court (not transcribable).

At Sutherland?---Yes, sir. I happen to know him as Col because he - - -

No, I just wanted to know who it was?---Yeah.

So he was the Registrar at the court at Sutherland you understood. Is that right?---Yes, sir.

All right. You say what happened in fact he didn't turn up the next day and - all right, anyway.

10 MR STAEHLI: But in any event – but Mr McDermid, you knew him, did you?---I knew him from many, many years because he used to come and have a drink at the pub maybe once a week and I'd see him from – I might see him two weeks in a row and not for another year but I knew, he had got many, many years there so I knew him to say hello to.

And did you drink, did you drink with him from time to time?---I might have sat at his table sometimes.

All right. And did he drink with Mr Hart as well?---I saw – I'd see Mr Hart drink at that table sometimes.

20 All right. In that call, you asked Mr Hart this, from the second page of the transcript. “Okay. Now listen,” you say to him, “the last thing is did you have any luck - - -?”---Yeah.

- - - because I had a beer with Col?” And Mr Hart says, “Mate, mate, I only got back from overseas last week. I just haven't had a chance to talk to anybody.” Did you hear that in that call?---Just give me one minute please, sir.

30 It's on the screen there?---I had a beer with Col.

Yes, but, “Did you have any luck because I had a beer with Col.” Do you see that?---I don't understand what I mean.

And Mr, Mr Hart says, “I just haven't had a chance to talk to anyone.”

THE COMMISSIONER: Can you read that?---Yeah, I read that.

Why are you shaking your head?---I don't see any connection.

40 Well, are you saying that conversation didn't take place?---I'm sure that's an accurate conversation.

All right. So what's the question?

MR STAEHLI: Yes. Do you know what you were referring to when you said to him, “Did you have any luck?” When you said that to Mr Hart there, “Did you have any luck?”---Well, I'm assuming that, that, that situation that

I previously spoke to nothing happened and I was asking, you know, had anything happened.

All right. And you got, you got a response which was, "I just haven't had a chance to talk to anybody," from Mr Hart. Do you see that?---Yeah, that's right.

And did you accept what he'd said there?---Well, he just told me that and – he just told me that. He'd been overseas or something, yeah.

10

All right. Well, on the following day there was another call between the two of you. The 2nd of September at 2.25pm at 3B. Would you listen to this call in the same way, please.

TELEPHONE INTERCEPT PLAYED

[11.18]

20 **#EXHIBIT 38 – TELEPHONE INTERCEPT G00226_00_00 ON
02/09/2008 AT 14:25:17 (O'ROURKE TO HART)**

MR STAEHLI: After Mr Evan O'Rourke had been convicted in his absence, Mr Hart did turn up later and had the conviction set aside and it was stood over to the, the then Thursday which was the 4 September. Do you recognise your voice and Mr Hart's on that call- - -?---Yes, sir.

- - - Mr O'Rourke?---Yes, sir.

30

And did you note that in it there was some conversation between the two of you about changing the facts a bit? Did you hear that as we went through it?---Well, again, that was me asking you know, what went on with that original, where he was going with it.

All right. So it was a discussion so far as the changing the facts was mentioned along the same lines as the earlier conversations you've told us about. Is that right?---(NO AUDIBLE REPLY)

40 Second page. It's up the top as well.---Yeah, okay.

See, at the top of the second page there, Mr Hart says, "No, I can do a plea but I'm not trying to, well as I said, we've done all that work to change the facts a bit." Do you see that?---Changing the facts a bit. Mmm.

All right.---What answer do you want me, sorry?

I want you just, as I gather you're accepting that this is along the same lines--
--?---Yes.

--as the previous conversation that you had with him. Is that right?---Yes,
sir, yeah.

10 Do you remember having a discussion with Mr Hart about what, what, what
might be said in respect of your son about how he came to commit the
offence, for example, in relation to what he was drinking?---He was
drinking. I may have had a conversation with him in respect of that case but
I don't follow your question particularly.

All right. Well --?---Could you repeat it or --

I can play the recording which might be more appropriate, Commissioner.

THE COMMISSIONER: Yes.

20 MR STAEHLI: Would you listen to this further telephone call, please --?---
----Yes.

-- Mr O'Rourke, and follow it, if you can, which occurred on the 8th of
October, 2008 at --?---Yeah.

-- 1.11pm.

THE COMMISSIONER: This will be exhibit 39.

30

**#EXHIBIT 39 – TELEPHONE INTERCEPT G00230_00_00 ON
8/10/2008 AT 13:11:47 (HART TO O'ROURKE)**

TELEPHONE INTERCEPT PLAYED [11.24am]

THE COMMISSIONER: Well, I might take a short adjournment.

40

SHORT ADJOURNMENT [11.32am]

THE COMMISSIONER: Mr O'Rourke, you're still under oath, you
understand. Yes, yes.

MR STAEHLI: Mr O'Rourke, in that call that was played just before the adjournment, you remember there was, that you heard, did you recognise the voices of yourself and Mr Hart?---Yes, sir.

In it there was some talk about a proposition that your son might say that his drink had been spiked at the time of these offences. Did you remember that? Did you hear that when it was played? Is that right?---Yes, sir.

10 Had your son ever told you that he thought his drink was spiked at the time of those offences?---Yes, he, he did believe that it was a very good chance that had happened and there was later evidence that proved, well it was never brought up and it was, it was brought up in the hearing that he'd consumed alcohol out of a soft drink bottle erroneously.

All right. That was a bottle that a friend had brought into the night club or whatever the establishment was?---Yes, sir. Yes, sir.

Is that right?---Yes, sir.

20 All right. Then in that call there was also mention of a, apparently of a, well of a person called Kerry?---Yes, sir.

Do you remember that?---No, I don't remember that conversation, as you know I was very ill.

All right, well, let me just read to you. Now, Mr Hart said to you in that conversation, "Yeah, now Kerry's up there tomorrow", and you said, "Yeah." And then he said, it's not in the transcript but one could hear it say, him saying, "Cole's daughter", I think he says, "So whoever the best
30 magistrate is I'll get him, all right?". Then there's a further mention of Kerry. Did you know who he meant when he mentioned Kerry?---At the time I, I never took any notice of that, comments made by him.

Do you now know who Kerry is?---The only Kerry I know is, is my niece.

Does she have any connection with Sutherland Court?---Well, she used to work there. I don't know when or, even though she's my niece I have nothing to do with her.

40 Was she working there last year?---I don't know.

Do you know whether or not Mr Hart knew her?---He was working with Kerry, yes, she'd been there a very long time.

At the court, do you mean?---Yes, sir.

Do you know whether or not he had any contact with her outside the precincts of Sutherland Local Court?---No, I don't know.

Were you there on the day that your son's hearing was finally resolved and the penalty imposed?---Yes, sir.

And up to that time how much money had you paid Mr Hart?---I paid him about, oh, I paid him after the case, perhaps a little over two thousand as I previously stated.

10 And did you ever discuss with him after the time, well, other than the conversations about which you've already given evidence - - -?---Yes.

- - - whether or not he had got the assistance of someone to change the few words, whether in the facts or anywhere else that you'd earlier discussed, did you talk to him about whether or not he had successfully achieved that?--We, after the case?

Yes?---Well, he indicated to me that he had, he had been able to have him put up as a cleanskin successfully, to use his words cleanskin.

20 Did you know what he meant by that?---That, that any previous, on his record, if any, was not disclosed to the court.

Before, was that a conversation, when did you have that conversation?---He may have come to the, he may have told me that when I gave him, you know, another \$300 or \$400 later on, whenever, I don't know when.

On a different day do you mean?---Yes.

30 Do you remember how long after the day of the final hearing that was?---No.

Other than that reference to cleanskin, did he say anything else at any time about whether or not he had successfully caused some words to be changed or got the assistance of someone?---Sorry, please repeat that, I, yes.

40 Other than this conversation which referred to the cleanskin aspect that you've just told us about, other than that, did he ever say anything to you about whether or not he had got the assistance of someone to change a few words or to amend anything or do anything to help your son?---Well, he told me after the event that he'd achieved a good result, he'd been able to have his record such that he was able to achieve his section 10.

All right. Well, I suppose it's possible that in saying that he might simply have intended you to accept that he'd been, done his job well?---Yeah.

What I'm asking you about, in case you didn't understand was whether or not he told you anything about whether or not he'd had the assistance of someone else in the way that apparently the initial conversations had been

understood by you? That is did he tell you that at around the time of the final hearing or after it that he mentioned whether or not he'd had such assistance?---No. At the hearing when the plea was changed he indicated to me that he would request some assistance to have, make sure he, you know, he was put up as (not transcribable) the word. And after that he indicated to me at a later date that such a thing had happened, I suppose.

10 All right. Did you know whether or not your son did have some previous conviction?---No, I didn't. Because there was a reference to a, a fine which he paid many years ago in respect of a scuffle or something. I asked Mr Hart if that was on his record because it was an indication to me by my son that he was told at the time that if he paid that fine, he would, it wouldn't be anything that would be, you know, a future thing or conviction or whatever. That, that's what he told me and I asked Mr Hart what his previous was and he never ever told me. And that's why I had indications that, I gathered that any assistance may have been given but I, I don't know that because I'm not privy to that. I can't, I can only speculate. I can't, I'm confused about if that happened or not.

20 I've got no further questions.

THE COMMISSIONER: Doesn't he want to ask - - -

MR WALSH: Just a few.

THE COMMISSIONER: Yes, Mr Walsh.

MR WALSH: Mr O'Rourke - - -?---Yes, sir.

30 I'm the lawyer who acts for Mr Hart.---Yes, sir.

I just want to ask you a few questions.---Yes, sir.

In relation to that last series of questions and answers, is it the situation that you had any actual knowledge of whether your son had any criminal convictions before he was ultimately dealt with at the court or not?---Well, sir, I never was told what his previous was and I never ever, myself (not transcribable) any written statement on it at all.

40 THE COMMISSIONER: You were just asked whether you had any knowledge of it, well, you said the answer to that is no, you did not.---No, I didn't have knowledge of what it was.

MR WALSH: Were you at the Sutherland Local Court when the matter was finally dealt with?---Yes, sir.

All right. Did you hear the submissions and observe the proceedings (not transcribable)?---Yes. What I can recall of it.

All right. Sitting here today, you do have problems recalling that day. Is that right? The details?---I, I believe I can recall most of the detail.

All right. Well, you've given evidence that you had a conversation with Mr Hart to (not transcribable) that some of the facts might be changed. Is that right?---The facts in relation to any previous conviction, if any. That, that were the facts.

Well, I just want to clarify - - -?---Not, not other facts, as I understand.

10

You listened to the various telephone conversations today.---Yes, sir.

Would you agree with me that nowhere in those conversations was the issue of changing facts in relation to your sons previous criminal history specifically raised at all either by you or by Mr Hart?---No, they weren't in those conversations, no.

20

No. So was your concern in respect of your son that he may be not guilty of the offences or was it that you were concerned that he may ultimately face being left with a conviction?---Well, both, sir. I, I, I suggested to my son via Mr Hart that we change the plea only just because I honestly believe that he wasn't guilty of those. And we had evidence that was reasonable to prove that that was the case.

Right.---But I was concerned that a conviction is not in his interest.

Your son, by occupation, is he an accountant?---Yes, sir.

30

Right. You said, I think in your evidence earlier in response to a question by Mr Staehli, that he couldn't afford to pay legal fees. Is that right? Couldn't he afford to pay Mr Hart. Is that right?---Well, he could afford, he could afford to pay, but (not transcribable) people are always short of money.

But your son was an accountant and he was short of money. Is that right? ---Well, he hasn't been an accountant a really long time. He's not highly paid.

40

How old is he?---25.

25. Okay. Now, when you paid the \$1,000 to Mr Hart, was it your understanding that you were paying it to him on account of fees?---No, sir. It was on account of fees because I knew I owed him that thousand but it took place at the same time that he had suggested that somebody could, you know, as I previously said, you know, do things so I can't answer that.

THE COMMISSIONER: What are you implying by that, that at the same time as he said he could do things that it was improper or wrong. Is that

what you're intending to convey?---At the time that he had the conversation with me to say that he would approach him (not transcribable) that was around about the time I'd paid the fees.

Did you interpret that as being something that he was entitled to do or it was something he shouldn't have done? I mean, I think that's your interpretation of what he means but you've been asked about it so what's the answer?---I, I wasn't, I wasn't sure if it was improper or not. Yeah, I think it was improper.

10

All right.

MR WALSH: Did you understand that he would speak to someone or make some of representations about aspects of the facts?---Yes, sir.

Righto. What were the aspects of the facts that you understood were of concern? Was it the extent of his alcohol affectation or was it involved in some violent incident? What, what was it about, these facts that were --you were discussing with Mr Hart that - - -

20

MR MADDEN: Your Honour, could I object to that because I, I don't, we all know what the facts mean but I don't know if a witness does.

THE COMMISSIONER: Well, I think he does but, however - - -

MR MADDEN: Well, he - - -

THE COMMISSIONER: Well, I'll just -- you know what you're being asked. Now, when you said there was a discussion about changing facts, do you understand?---Yeah.

30

What facts were going to be changed? Did you discuss - - -?---No, no, no. He didn't elaborate on what facts. To use his words, the only thing I understood on listening to that was a few words difference in it could make an impact or, or fact.

What did you -- I mean, I appreciate your interpretation won't carry the (not transcribable) but what was your interpretation of that, that he was going to remove some facts that made the conduct less culpable or - - -?---Yeah, I - - -

40

(not transcribable)?---You know, well, well, well they had the fact sheet at the time and I assumed that on consultation they'd say, well, okay, you know, we'll, maybe we were too heavy on that, we we - - -

What, you mean increased his culpability you think beyond what should have been increased. Anyway, I don't think I'll pursue this. I mean (not transcribable) it was raised but (not transcribable)?---There was, there was a

matter of a spit which was argued against as really occurring and he may have meant – as I say, he never deliberated on, on, on one word or one phraseology or anything like that. It was never that complicated, you know. It was just general.

MR WALSH: But you were – I just want to – you were concerned about an aspect of the facts in relation to your son allegedly - - -?---Yes.

- - - spitting at someone?---Yes.

10

So that's what you yourself were concerned about. Is that right?---Yes, sir. That, that was the crisis of the – that was the actual whole - - -

It was never the issue of the facts. Right. That was what you were worried about, that coming out. Is that what you're saying?---Well, the fact that the spit was the assault.

20

Right?---And if you, if you want, if you want to bear with me, the police indicated from what I can understand that there was spit in the person's eye considerably later than one would expect and I, and I disputed that. I'm not saying the facts were wrong I'm just saying that I, I personally felt there was some disputation.

But your understanding was there was a dispute, especially just on your part - - -?---Yes.

- - - not your son's (not transcribable) your state of mind that he didn't spit. There's a dispute about that?---Well, in my mind, yes.

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Yes. And you spoke to Mr Hart, as it were, about that aspect of the case. That's right?---Well, yes, on the case, of course, that was the critical aspect of that.

Did he indicate to you that he may make some representations or speak to someone in relation to that disputed area of the facts?---Yes. Well, well, that's right and that's why we - - -

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Did you think there was anything wrong in him or you talking about that issue or him saying well, look, I'll talk to someone about it and see what I can do? Did you think that that was wrong?---No, I didn't. I didn't. That, that was, in my opinion, the sensible thing to do.

Right. When ultimately the matter came before the court and you said you were in court, do you recall whether in fact there was any mention of your son's previous criminal history, if any?---There was no mention of his previous criminal history.

All right. Thank you. Nothing further, Commissioner.

THE COMMISSIONER: Does anyone else want to ask Mr – you may step down thank you, Mr O'Rourke. Thank you for coming and you are excused from further attendance. Thank you?---Thank you, sir.

THE WITNESS WITHDREW

[12.18pm]

10 THE COMMISSIONER: Yes. Well, I think I'll – I have to go at 12.25. I'll adjourn now till 2 o'clock.

LUNCHEON ADJOURNMENT

[12.18pm]