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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

PUBLIC HEARING

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AT SYDNEY

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AT 2.15 PM

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THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: We understand that Mr Walsh has had another commitment at 2.00pm, but that he'll be here as soon as he can.

THE COMMISSIONER: Well, we'll continue on and he may wish to have access, well he'll have access to the transcript anyway.

MR STAEHLI: Indeed. Yes. I propose that we call Mr Paul.

10

THE COMMISSIONER: Mr Paul. Yes, Mr (not transcribable)

MR BOWEN: Commissioner, I understand my client will be seeking a declaration.

THE COMMISSIONER: Yes. Very well, Mr Bowen. Mr Paul, you have, you're a lawyer, but also you're instructing your lawyer, so I'm assuming you know perfectly well your obligations under the relevant legislation.

20 MR PAUL: Yes.

THE COMMISSIONER: And I also understand that you wish me to make a declaration giving you the benefit of having objected to questions so that you don't have to apply your mind to any particular question.

MR PAUL: Yes.

30 THE COMMISSIONER: So, I will make that declaration. The declaration I make is that all questions asked of this witness, all answers given by him and all requests made of him shall be deemed to be subject to this objection and hence there is no need for him to object to any particular question asked, answer given or request made. And this declaration will inure so long as you're giving evidence at this public inquiry. Do you understand that?

MR PAUL: Yes, Commissioner.

40 THE COMMISSIONER: Mr Paul, you have to take an oath to tell the truth. Do you want to take it on the bible or do you wish to affirm or is there some other form or way you wish to do it?

MR PAUL: On the bible, Commissioner.

THE COMMISSIONER: Yes, Staehli.

MR STAEHLI: What's your full name please, Mr Paul?---Anthony Donald Evans Paul.

10 All right. And you're currently a solicitor at the Supreme Court of New South Wales?---Yes.

And where do you practice at the moment?---In Wagga Wagga.

All right. With, with a firm?---Yes.

Which firm?---Creaghe Lisle.

20 And what's the nature of your relationship with the firm?---I'm an employee, I'm called a consultant.

Called a consultant?---Consultant, yes.

All right. But you are, you say, an employee. Is that right?---Yes.

All right. And is that the position in which you've been since say January of 2007?---Yes.

30 And when you say you're an employee, do you have an employment contract with the firm?---Not a written contract.

Right. Do you have an old contract?---Yes.

And so far as the way in which you are remunerated is concerned, what are the terms of that oral contract?---I'm paid a retainer plus half a, half percentage, half the profits over a, virtually three times my retainer.

THE COMMISSIONER: Sorry?---I'm, I'm paid - - -

40 - - - your retainer and then half the profits up to an amount - - -?---Yeah. So if it - - -

- - - more than three times your retainer is it?---So, if I earn, once I earn over \$300,000 a year for the firm, I then receive half of everything thereafter I earn.

Oh, I see, so it goes on?---Yes.

It's not, so the retainer's three hundred is it?---No, the retainer's about, around about the \$90,000 mark. And then once I earn for the firm \$300,000 in fees, I get half of every, well half of every dollar I earn thereafter.

So, it's not profit, it's half of what you - - -?---Of, of - - -

They don't take into account outgoings or, when they're calculating this amount, you get - - -?---It's, well it's fees, fees rendered.

10 Fees rendered?---Fees rendered.

So, there's a retainer plus half fees rendered, being half of what's been rendered?---Yes.

However much that - - -?---Well, actually it's on fees, sorry received, I should say not rendered.

Sorry, received. All right.---Yes.

20 And by fees you mean fees received as a result of your professional work. Is that what you mean?---Yes.

So the amount that it's being billed for your professional services excluding disbursements I assume?---Yes.

All right. And the retainer, is that paid on a, on a regular basis throughout each financial year?---It was, sorry, the retainer is, yes. Yes, on a fortnightly basis.

30 Yes. It was tax deducted and so forth. Is that right?---Yes.

40 And as to the share over and above the retainer that you've mentioned in the costs which might come in how is that accounted for each year?---It's just started now, they've decided to average it and average from what I'd brought in last year and, and then we'll work it out at the end of the year. But up until, prior to 1 July this year, it was on a basis that I would just ask the accountant to draw me a cheque whenever I needed funds to pay something. And then we were, we haven't done an accounting for, well, we have done it, we haven't finalised it, but we were at the end of each year, it was meant to be tallied up and I would pay money back or they'd repay extra money to me. And last year we've done a, a tally up for the three years and there was a sum of money that I owe them. We've done another tally up at the end of January, and that sum had reduced an amount. And there's been another figure, I think, I think it's on my desk, up until the end of July, and that's a figure that I actually owe the office. But we just haven't got around to sorting it out.

MR STAEHLI: All right. So it sounds as though the actual circumstances in which you might draw funds or receive funds having, they haven't been drawn from the funds of the office was a somewhat flexible one?---Yes.

Is that right?---Yes.

On the basis that I assume you and the partners trusted each other that, if there ever was an accounting, that there'd be an appropriate settlement to sort things out in accordance with the agreement. Is that the position?---

10 Yes, that's, that's it.

All right. Now, in the course of this particular matter with Mr Kelly, can you describe to us the circumstances in which he came to you to give you instructions in relation to the criminal matters which ended up in that trial in Wagga in February of 2008?---Well, I, I, I can't tell you exactly how he came to see me but he either came and saw me at the office or telephoned me and I think it was in relation to him having to present himself at the Wagga Police Station. Now, I'm just not sure if there was any prior telephone call, look there could well have been some phone calls before that, I, I can't remember how long the police, I just remember that at one stage he had to present himself to the police station. Now, I might have spoken to him well before that, I can't remember.

20

And are you able to recall that that was in or around early 2007?---It was, yeah.

Or possibly before that?---Well, I was just trying to think, it was either, it might have been December, I'm - - -

30 Well, can I tell you that they, that it appears that Mr Kelly together with his two co-defendants at that stage apparently appeared at Wagga Local Court on 31 January 2007?---Yes, well, I think it was December 2006 that he had to present himself to the police station, I think. It's, and he might have contacted me before that in November, I just, look I just can't give you exact dates then.

And on that date that I mentioned in, at the end of January 2007, it appears that you appeared for him and Messrs Trinder and McCauley at the local court?---Yes, I do.

40

Do you remember that?---I do.

So at that stage at least so far as the appearance was concerned you were appearing for all three men?---I, just on the first appearance on the basis that Mr Kelly had asked me to, to mention their matters. They might, Trinder and McCauley might well have spoken to me on the phone but I was more acting for Mr Kelly and the other two were, I was just assisting their calls on the day.

What, doing it as a favour, do you mean?---I sent them a bill but it was just getting the ball rolling before they then obtained separate representation.

Now, at that point, I gather it's the case that you'd not sent Mr Kelly any form of fee agreement. Is that right?---No, he's, he's never been sent a, an actual costs agreement. The only document he ever got was the, the estimate.

10 That estimate letter in January 2008?---Yes.

And so there's never been any costs disclosure to him in accordance with the Legal Profession Act?---No, there hasn't.

Why not?---It was just tardiness on my part. As I say, the costs estimate went out and I'd basically, most of my work is small court work. When I say small court work it's, it's matters that finish within the day. I might do a, a small hearing in the local court which might go over a couple of days but I really don't do a lot of this, well, I don't do a lot of trial work. In fact
20 I've only, I'm trying to recall that, I've, I believe, I think I've only done two, I know, certainly this is the second if not the third trial in my time as a lawyer.

How long have you been in practice?---25 plus years.

And so when you refer to doing smaller hearings do you mean ones in respect of which the fees which you render are comparatively small?---Yes.

Do you know what the cut-off point is in the Legal Profession Act about the
30 need to provide costs disclosure?---Yeah. I think it's, oh jeez, \$1,000.

Close?---\$750 is it? \$750, I think, yeah, no, it's \$750.

But is that something with which you concerned yourself at that, at this time, that is, in relation to Mr Kelly or indeed any other client?---No. I hadn't sent out a costs – I hadn't given him a – had, had not given him a disclosure. That practice has now changed.

What about any other clients in respect of whom the work which you were
40 to do was likely to exceed \$750. Did you give them costs disclosure?---No, I – I had given them a – I would give them a letter confirming what their fees were going to be but it didn't have the actual set warnings, the warnings on there about being able to dispute the costs and the like.

THE COMMISSIONER: Where do I find what the terms of a cost agreement must be?

MR STAEHLI: Section 309 of the Legal Profession Act, Commissioner.

THE COMMISSIONER: And that you say sets out if there's fees above \$750 there has to be that agreement entered – what - - -

10 MR STAEHLI: Well, the exceptions to the need to provide costs disclosures are in section 312 and they're numerous but include that one in respect of the amount. Disclosure is not required, it say, omitting irrelevant passages, if the total legal costs in the matter excluding disbursements are not likely to exceed \$750 exclusive of GST or the amount prescribed by the regulations, whichever is higher. And there are numerous other exceptions, one of which are relevant here it appears. One of them, might I just say in passing, might have been elliptically referred to by Mr Hart who said that in circumstances where the client was a, was a legal practice, that is, where a legal practitioner has a – enters into an arrangement with a legal practice as his client then he does not have to disclose fees to that legal practice in the same way that he might have to to a lay client for example. That's a, that's a matter to be explored further later.

20 THE COMMISSIONER: Yes.

MR STAEHLI: So just if I might, to ask you some more questions about your customary practice, you said you, you would provide clients with a statement or estimate of what the costs were going to be when you were acting for them. Is that what you were saying?---Yes.

30 So that I suppose that might be obvious in relation to a conveyancing matter or something like that, in particular. Is that right?---Yes, or a drink driving matter where I would just write to them and say that this is what the fee's going to be.

All right. And in a typical drink driving matter what would your fee have been?---Well, now it's 8, \$880.

And two years ago?---Probably \$660 two years ago.

40 And is that – was that a calculation based on some extrapolation of your hourly rate?---Not, not really. It's probably around about that type of figure where you're sort of saying with a drink driving matter it could take me two hours but with all of the – I'm not saying two hours in court, of course.

Yes?---But that – and that's where it still, it still look – that's the way I look upon it, as a two hourly matter.

All right. So sometimes it might be four hours, I suppose, one way or another?---Well, if we're talking about a drink driving matter, not really.

But the time spent on each matter might vary, no doubt?---Well, it certainly does. It depends on how long you're up at court for and the like.

All right. And when you've sent such letters to other clients in the way that you've described telling them about such costs, do you, if there is more work or less work involved any vary the amount which you've told the client?---Well, yeah, depending on what I've got to, what I've got to do and, I mean, it's a bit hard to answer that because every matter's different.

10 Well, in relation to a matter which you anticipated was going to take a day to resolve in a local court hearing of the kind that you mentioned, say in 2007, late 2007, what, and only a day, what would you have estimated to your client the costs would be?---I would try and do it on an hourly rate depending on how long I thought I was going to be in court for and how long it - - -

If it was to occupy a complete day in court, from 10 to 4 - - -?---Well, if a matter, yeah - - -

20 - - - how long would you have, in a typical matter, have said the client would be due for?---If I didn't have to see the client after 4 o'clock or see them before, let's say I'd taken instructions from them beforehand, then I would normally have billed them for doing the first part of it. If I was there for a full day it'd be no doubt a hearing, then I'd be, unless I was seeing them 8.30 in the morning, I'd be, I'd be saying from the time of court till the time it finished if I didn't think I had to see them beforehand. Quite often I'll charge them a preparation fee of, it might be an hour in the morning where I've got to prepare.

30 And if you were charging a person for, for a day in court including an hour's preparation in the morning, what, what was your fee during, in late 2007, if there was a standard fee?---Yeah, there, I mean, it really, quite often it depended, it depended upon what matter I was doing, I mean my fees if it was, if it was a mate I'd be, you know, dropping it down, if it was someone or it was complex, it'd be anywhere between, anywhere between two fifty and \$400.

Per hour?---Yeah.

40 And did you ever, prior to the engagement of Mr Hart in his trial in February 2008, instruct counsel in matters in which you were involved?---Yes, yeah.

In the District Court, for example?---Yeah, in, in sentence matters.

In sentence matters. And what, what did you charge by way of an hourly rate in circumstances where you were there instructing counsel?---I mean, I'd, I'd still be anywhere in that range depending on - - -

So as low as two hundred and fifty and as high as four hundred?---Yes.

With the possibility that there might be some changes to those rates if there was a mate involved?---Mmm.

Like charge him less?---I didn't, I just didn't have any exact set rate for, you know, for, other than something like a drink drive where, where I knew what I was going to be there for.

10 So during the course of 2007 to return to Mr Kelly's matter, during the course of the year you acted for him, I understand?---Yes.

As his criminal matter progressed from the first charge through to the District Court?---Yes.

During which time amongst other things he was committed for trial?---Yes.

And having billed him at or around the time of the first mention that I mentioned in January 2007?---Yes.

20 And having sent bills also to Messrs Trinder and McCauley at that time, did you bill him, that is Mr Kelly, at any stage after that between then and his trial in February 2008?---No, I don't think, no, I don't think I did.

Why not?---Well, I'm just, it's probably one of my failings, that I'm just not a, I'm not a good biller as far as matters are concerned. I just let the matter ride along and, and then all of a sudden the trial came up and I realised I had to get something organised about fees. That's just a case of being, I mean, I, the Commission's seen my diaries, I'm just flat out every day.

30 In relation to Mr Kelly's matter, did you keep a record of the work that you did for him during that year of 2007?---Only what's in the file and, and what's on, in my diary and, and later on I went up and had a look at the court records that I, but to be honest with you, I'm not, I'm not, unfortunately I don't do a lot of file notes. I probably should do a lot more.

So when you say you had reference to the file, are you suggesting that on the file which the firm kept in relation to Mr Kelly's matter, there was any record of attendances by you on him or whether in person or on the telephone?---There, on the file?

40

Yeah?---I think there's some reference to the occasional phone call or occasional attendance but there isn't a record of, of all the attendances on the file note.

And so at a much later stage when you came to be involved in the preparation of a tax invoice or bill which was apparently sent by Mr Kelly to the Attorney General's department, what original records did you rely on

in order to cause that bill to be prepared?---I basically went through the, went through the file and reconstructed the file.

But that, on the basis of what you've said, I suggest would not have given you all the information that was necessary in order to produce that invoice, would it?---I believe that what I reconstructed was, was correct bar a couple of errors which we've since found out.

10 All right, I'll come to those later, but what are the errors to which you refer?---I mean, there's, there's quite a lot of, lot of omissions from the bill and I, I think that was, it was tendered to the Commission on the last private hearing that there was additional matters that I hadn't included the bill. But in relation to the bill, the, there is a, a conference had very early at the start which says on my file half an hour and on the bill I'd put it an hour. It was raised previous to me that, about having a conference with Mr Hart on 17 February and I, to the best of my belief, I thought that we had a conference. I've checked and I couldn't do anything with, about it until this became a public matter, but I've since checked with the motel to see when he booked into his motel and he didn't book in till the Monday which
20 confuses me as to what happened on the Sunday.

What, Mr Hart didn't book in until Monday?---Until the Monday so the, the motel, hotel says but I, my memory was I thought he was here and I just can't put that one together.

And of course there's an item which appears in both your invoice and the bill which is in Mr Hart's name for that conference said to have occurred on 17 February 2008. Is that right?---Yes, yeah, yeah, yeah.

30 And I gather it's the case, is it not, that it was you who were responsible for the physical preparation, I don't mean in terms of typing it, but the information which ultimately appeared on each of Mr Hart's bills which, the last one of which found its way to the Attorney General's department?--- Yes, with his assistance, I mean, yeah.

With is assistance?---Yeah. He, unfortunately, he was very tardy in all his paperwork, well he didn't do any paperwork.

40 He's an even worse record keeper than you?---Yes, yes, my files are, yeah.

So in relation to that 17 February, what conference on, in 2008, the day before the trial, what is it that you were relying on in order to have put in a bill to Mr Kelly the fact that he owed you money for the conference on that day?---Well, I mean, I'm trying to recollect when I was trying to put it together, it was a good year and a half ago and I, we had initially arranged that Mr Kelly, there was going to be conference with Mr Kelly on the Sunday and I then, when I was doing the bill I, my memory now is that I just, I knew we'd, it was pointed out to me by Mr Kelly and that was - - -

(Unintelligible) conference?---That's right.

But you, despite that, left that fee in there, I gather, on the basis that you were saying that, what, that you believe that you and Mr Hart conferred in the absence of Mr Kelly, is that the position?---That's, yeah, that's what I thought.

10 That's what you thought but I gather that in all these circumstances you didn't have any note of any conference on the file, for example, a note as to - - -?---No, I didn't.

- - - the things that you might have discussed or that might have been required to be done or anything like that. Is that right?---I mean, I'd certainly had some discussions with him before that which hadn't been charged out, preparing the matter on the basis of the brief and - - -

With who?---With Mr Hart.

20 Right. But you've not charged for that?---No.

But you've charged for a conference which – well, in respect of which there's some doubt as to whether to not it occurred. Is that the position?---I just – look, I cannot recall, and I was questioned on this on the last occasion and I thought at that stage that just he, he was there on the Sunday but if he didn't book into – unless he stayed somewhere else on the Sunday night, I just can't, I just can't recall.

30 Well, I, I can tell you that the records available in respect of Mr Hart's movements show apparently that he was in Sydney on Sunday, the 17th and that he did not arrive in Wagga until some time on the morning at around half-past 9.00, I think, on the 18th of February, 2000?---Yeah. I mean, that, as I say, I, I was just relying upon my memory that – and I, I might have got it clouded on the basis we were meant to have the one with Kelly and that was cancelled and my, my memory of it was that he was still coming on the Sunday. I must admit he does that to me quite regularly where he'll say he's coming one time and won't turn up till – he'll leave at 4.00 or 5 o'clock in the morning but I just, I honestly just cannot remember what the situation was pertaining to that.

40

And of course the bill in respect of what you had charged in respect of that conference, as you would know, went forward with Mr Kelly's application to the Attorney General's Department seeking reimbursement?---Yes, it did.

And not only that, Mr Hart's charge for that conference went forward, his bill having been prepared in the way you've described and sent to Mr Kelly for that purpose. Is that right?---Yeah. And if Mr Hart wasn't here then certainly it's an, an error on my part.

And I don't know if you remember that in Mr Hart's bill for that conference which apparently didn't occur, he, he perhaps puts it a bit wrongly, there is contained on the invoice which bears his name a fee of \$3,000 for that conference?---Yes.

10 So are you prepared to accept that that's likely to be a charge which shouldn't have been rendered, at least so far as the particulars of that date are concerned?---Yeah, if that, yeah. If Mr, Mr Hart wasn't there on the day we certainly didn't have a conference other than, other than there might have been a telephone call but no, certainly not. It's an error on my part.

20 Then can we attempt to progress by me asking you to look at the costs estimate letter which has become Exhibit 17, it's a letter from your firm to Kelly dated the 9th of January, 2008. And this letter was not just some idle scribble, was it, it was meant to be a proper record of what would be charged to Mr Kelly if things proceeded in accordance with the matters referred to in the letter?---Yeah. It was a, it was a letter that in hindsight certainly doesn't cover all of the costs of the file and it was prepared realising this trial was coming up in February and I hadn't done anything about costs with Mr Kelly and, I mean, when you look at the first entry of \$1,100 it was a, a bit of guesswork and I, at that stage, should have done a full accounting of the file to that point. I didn't do so.

Well, why not?---Tardiness.

30 By tardiness I think means doing things late. Is that what you mean by tardiness?---Well, well, this certainly was a situation where I just had to get something out to Kelly to, to give him an idea of what his costs might be.

What – you have, to get something out for Kelly I'd suggest in a slightly different way, in order that the firm get in money for the substantial cost of the trial?---Yes.

So was – that was your principal purpose, was it not?---Yes, yes.

40 But in doing so was there any intention to mislead him about what the actual costs of the trial were going to be?---No, I, I wasn't intending to mislead. It was a case of just trying to give an estimate of what I thought the fees would be and of course when the bill was done there was a lot more work than was set out on this and the charges were, the charges were different.

So you would say that your estimate was complete rubbish, I gather?---I probably wouldn't use that word but it certainly wasn't, it wasn't of much assistance.

And that defeated it's entire purpose, didn't it, but for the fact that it resulted in Mr Kelly putting in the total amount specified on it to your firm's trust

account?---Well, yeah, it enabled some money to be put into the trust account, yes.

And that enabled, at least it would seem, there to be enough money there to pay what Mr Hart was apparently intending to charge at that time?---There, therein lies the other difficulty as to what discussions I had with Mr Hart about his fees.

10 And what discussions did you have?---Well, I'm not sure if I did have any discussions with him and unfortunately with Mr Hart and myself it wasn't -- we were friends, our families were friends and it wasn't really a barrister, solicitor relationship that I would have with another barrister. He would -- I would give him a lot of work whereby I'd just ring up and say, "Look can you come down and do this matter, I, I can't do it," and the fees would just vary from job to job and I, I don't know what discussions I had with him and I'm not, I'm not saying that because he'd increased his fees but I put his fee in there at five days at \$2,500 including travel and accommodation and I don't know whether or not I actually had a discussion with him as to what he, he was intending to charge at that stage on this matter.

20 Well, if it, if it happened that he would wish to charge \$3,500 or \$4,000 a day for the trial, your estimate to Mr Kelly was at the very least grossly unfair to him, wasn't it?---Yes.

And perhaps not necessarily in the worst case it was negligent of you to give him information like that which, as you have would have it I gather, turned out to be about 30 per cent of what the actual costs of the trial were going to be?---Of, of Mr Hart's bill, you mean?

30 Well, of Mr Hart's bill and the costs - - -?---Oh, sorry.

- - - the costs which you were to subsequently claim from Mr Kelly in the invoice which went to the Attorney General's Department?---Yeah. The -- I mean, the estimate, the estimate certainly didn't fit the work that was done at the end of the day and the hours spent.

And that's - you're to blame for that though, aren't you?---In providing this estimate?

40 Yeah?---Yes.

But I said this wasn't an idle scribble but in that regard would you look at this document please, which is - - -

THE COMMISSIONER: Where did that writing come from that's on the bottom of this, do you know?

MR STAEHLI: Do you know whose writing that it at the bottom of that?

---Yeah. No, that's my writing. I can't, I can't even tell you what it is.

THE COMMISSIONER: Well, it's 7,500 and then 6,000 added to it but you don't know what it's about?---No, I don't.

Well, Mr Staehli, you might tell me whether things have changed but ordinarily the barrister looked to the solicitor to be paid. Is that still the rule?

10 MR STAEHLI: Not necessarily. A barrister might have an agreement, a costs agreement, either with a legal practitioner or firm or with the client directly.

THE COMMISSIONER: But in the absence of that?

MR STAEHLI: He has to have an agreement, well, he doesn't have to an agreement, if he doesn't have an agreement, then various other things ensue in relation to his right to recover. So, the first rule is - - -

20 THE COMMISSIONER: It used to be that the barrister couldn't recover. Commit to the solicitor but couldn't recover.

MR STAEHLI: That's the purpose of an agreement, it's a contract between - - -

THE COMMISSIONER: But if there's no agreement what was the rule last year? If there was no agreement, could the barrister recover?

30 MR STAEHLI: Well, he could but there are impediments imposed by the, I suppose the legislation, just as if the solicitor doesn't have (not transcribable) the client.

THE COMMISSIONER: And against whom is the claim, is the claim made? The solicitor or the client in the absence of an agreement?

MR STAEHLI: Well, that depends with whom an oral agreement was made, if any. And that's the purpose of having an agreement, so that both the rate, the amount and so forth, as in any contract, might be identifiable prior to the dispute arising.

40

THE COMMISSIONER: Yes. Well at some stage you can give me the details of that, because I think it has some relevance to this inquiry.

MR STAEHLI: Well, and there's also the issue here, I've mentioned that Mr Hart had said that his agreement was with Mr Paul's firm. But the invoices are being prepared by Mr Paul's firm specify Mr Kelly as the debtor. And so the absence of subtleties of agency and contractual law one might think the agreement, if there had been one, on the basis of that

evidence, was between Mr Hart and Kelly directly. Otherwise he wouldn't have an entitlement to send the bills to Mr Kelly.

THE COMMISSIONER: No. That's what I was (not transcribable)

MR STAEHLI: Yes. That might be nice if he'd said that in the context of what happened here. But if I was to show you this other document, a handwritten document (not transcribable) which you'll find at Tab 5. And that, it would appear, is in your handwriting, Mr Paul. Is it not?---That's it.
10 yes.

THE COMMISSIONER: What's the date of this document?

MR STAEHLI: It doesn't have a date on it. But that's the kind of working sheet, isn't it, in relation to the cost estimate which was provided to Mr Kelly. Is it not?---Yes.

And - - -?---It appears I've written it out before - - -

20 - - - in a number of respects it's identical, and they include the amount referred to in the note shown to you as costs to date, eleven hundred dollars?---Yes.

Which appeared, described in a slightly different way, but to the same effect in the, in Exhibit 17, the letter?---Yes.

Preparation, five hours at \$260?---Yes.

30 Thirteen hundred dollars, that appears in a similar way in the letter. Five days hearing, fifteen sixty dollars. It would seem, that reference is - - -

THE COMMISSIONER: It seems to be all the same except for the GST isn't it?

MR STAEHLI: That's right. Well, no, I'm sorry, there's some slight differences in the disbursement figures.

THE COMMISSIONER: Oh, is there?

40 MR STAEHLI: But, a \$50 one and - - -

THE COMMISSIONER: Oh, yes, yes, \$50, well, \$49 actually.

MR STAEHLI: The, but for all those slight variations, the handwritten document shown to you is your working paper in effect for the preparation of that estimate letter isn't it?---Yes.

And so clearly you at least contemplated the various topics which are there listed and which have amounts attributed to them?---Yes.

And clearly it was in your contemplation, was it not, that what would be charged Mr Kelly in the context of your involvement in the running of the trial would be a daily rate of fifteen sixty dollars. Isn't that right?---When I did that I did, yes.

10 And you had participated in trials before hadn't you?---In saying that, as I said before I, I did a trial about twenty years ago and I, and I believe there might've been another one since, I couldn't recall any others other than this one.

THE COMMISSIONER: What you - - -?---I don't do Legal Aid, Commissioner and, and most of the trials in Wagga are all Legal Aid.

MR STAEHLI: So as least in relation to the preparation you'd specified an hourly rate of \$260. Is that right?---I had in this bill.

20 And when you later came to prepare your bill which was sent to Mr Kelly for him to send to the Attorney Generals Department, what was the hourly rate that you had used in relation to the preparation of that?---\$320.

\$320. And what accounted for the increase in the hourly rate between what you had estimated to Mr Kelly in January and what you billed him for in July?---I mean basically I, I just said, well, look my hourly rate is \$320 and I said, well that's what I'm entitled to charge. This was an estimate I gave him and, and I said, well look, I'm entitled to charge for all three twenty and - - -

30 And why hadn't you charged him in relation to the work which you say you did between January, 2007 and January, 2008 in reference to the costs to date figure, which is contained on that estimate?---I mean, I've, I've done this and knowing what I'd be like, I can't recall the actual day doing it, but this would've been done in a, you know, I didn't sit down for two hours and go through the file and that's what I should've done.

So, what you guessed at a figure?---Well, the eleven hundred dollars was a guesstimate.

40 THE COMMISSIONER: What's the exhibit of the, this letter that went to the Attorney number?

MR STAEHLI: 26.

THE COMMISSIONER: 26 is it?

MR STAEHLI: Is that the Attorney General bill?

THE COMMISSIONER: Yes.

MR STAEHLI: 26.

THE COMMISSIONER: Yes. That's what you're asking (not transcribable) questions about?

MR STAEHLI: Yes.

10

THE COMMISSIONER: Yes, yes. I'm sorry. I interrupted. What were you saying, Mr Paul?---I said, what I was, the eleven hundred dollars was just a guesstimate and clearly when, when anyone looks at the file and goes through it, I think from memory on that document was produced on the last occasion, I think the figure might've been \$3,700.

20

MR STAEHLI: Which figure do you mean?---I divided a, you know, the bill, I think about eleven hundred dollars, I think it might be \$7,000. Perhaps I shouldn't, I shouldn't guess. I just, I haven't got the thing in front of me.

MR STAEHLI: No. It's substantially more than that. The invoice itself, I think, Commissioner, was in a separate Exhibit, Exhibit 24.

THE COMMISSIONER: Yes. 24. That's what I was looking - - -

30

MR STAEHLI: (not transcribable) Mr Paul to look at the numerous pages, 41. If you look at this hardcopy of Exhibit 24, you can see the tax invoice of your firm dated 14 July, 2008?---Yes.

And on the third page you can see there that the costs which are attributed to your attendance at the trial are \$15,840. Can you see that?---Yes.

And for the conference with counsel on 17 February, \$960?---Yes.

And together those amounts add up to \$16,800?---Yes.

40

And if one takes the total which appears below that \$15,840 of \$28,000 odd and takes away \$16,800, one is left with around \$11,600 worth of costs for the period at least prior to the trial, although that includes some of, a degree of work in February and January as well. Do you see that?---Yes, I do.

And so there are possibly thousands of dollars worth of work which you say was done in 2007 principally and yet, you only recorded that \$1,100 in the estimate to Mr Kelly?---Yes, clearly I didn't go back to the file, I just, that was a guesstimate I did on the day.

Even without going to the file I'd suggest to you – you would have known that, if the bill, a later bill is accurate in any regard that there had been numerous attendances by you and numerous things done by you in relation to the proceedings during that previous twelve months. Is that correct?--- There had been, yes, I just, I, as I say, I didn't go the file and in fact, as I said before, even on this bill that I entered on the 14 of July, there are quite a few appearances in court, telephone discussions which I haven't charged for as well.

10 Well, your bill rendered, I'm sorry, your estimate in that exhibit 17, that letter of 9 January with that \$1,100 figure was in those circumstances just dishonest wasn't it?---Well, no it wasn't dishonest, it was a case of I just hadn't spent the time to go through the file and remember what I had done over the last year.

THE COMMISSIONER: But what I have difficulty understanding Mr Paul, is that you did estimate, about \$1,500 a day for your appearance in court and that gets accelerated to – what is it inflated to, I don't know what's the daily rate in the July letter?

20 MR STAEHLI: Well, it depends on the basis of the calculation which isn't exactly specified in the letter.

THE WITNESS: When I did the bill um, on the basis of costs incurred I then did it on an hourly basis of time spent on those - - -

THE COMMISSIONER: You still said there was five day.---Yeah, five days, initially it was five, I gave an estimate of five days at \$1,560 I think from memory.

30 A day?---A day. And then when I did the bill to Mr Kelly, I, when I looked, when I went back through it, I said, Look I'm entitled to charge for the hours that I'm dealing with this matter and I charge it out at \$320 per hour from 8.30 to 5 o'clock- - -

THE COMMISSIONER: Well, yeah.---Each day. And then of course there was the Monday, the Tuesday, the Wednesday where I just charge the one hour and I think, four hours, two hours and one hour for the days spent. Rather than, in that bill I had said that's the time I'd be over there. Of
40 course, then when I did the bill I put it in on an hourly basis on the time I spent on the matter. And as a result - - -
I can't understand it. Take for the first five days while the trial was going on Monday to Friday.---Yes.

You bumped that up from \$1,560 to how much a day?---I then, the \$1,560 was based on - - -

But what was the figure, the daily figure that you ultimately I'm not sure what it is in?---It's \$320 times - - -

\$320.---\$320 times 8.5.

And the other one was \$200 times 8.5 was it?---No, well I, the other one wasn't, I just said \$1,560 a day and when I did, as an estimate. When I did the bill I said, well, I'm entitled to charge on an hourly basis for the hours I spent on it each day.

10

At an increased rate?---Well, at that stage I was saying well that was what my hourly rate was was \$320 for that type of matter.

MR STAEHLI: But why didn't you say that in January?---Um, well on the basis, I different rates and that's I'd written that down as \$260 and I said well I'm entitled to charge what I normally charge at this stage for this type of matter which was, I said \$320 per hour.

20

THE COMMISSIONER: There was a discussion earlier Mr Paul, in which it was said, at least by Mr Hart I think, that there was a conversation with Mr Kelly in which it was said that his fee could contingently rise depending upon whether he was convicted or not?---Yeah, I - - -

Are you part of that or not?---No, not that I recall. I didn't have any fee, an increase fee for success or anything like that, I've never had that as part of my billing process.

30

Did you know that was what Mr Hart was doing or if he did do it?---Ah, well in this case his bill went from what I'd estimate to a fee of \$3,000 plus a loading, plus GST. It was dealt with at a different basis - - -

As far as you were aware, were you to understand that he had done that on the basis that it was a contingent payment, if in fact, if he was acquitted it went up to \$3,900 but if it didn't it stayed at \$2,500?---No I didn't, I don't remember - - -

40

You knew nothing about that?---No, I mean, the only conversation that I had with him was that he said to me, I'm a senior/junior and I would be entitled to charge \$3,000 per day.

When did he say that to you?---When the bill was around the time of preparing his bill which is - - -

You preparing his bill?---Well, on his instructions. He just didn't do his own typing or anything like that, it was a case of - - -

Well, when was that?---We didn't do anything at all - - -

Was that before or after you'd been successful on the application for costs?

---After.

After. So you are saying that he was unaware that you had put down, as far as you knew, that he was going to charge \$2,500 a day?---I can't recall any discussions, I mean, he's a person that he and I spoke, he would probably ring me or I'd ring him nearly every day and he'd just debrief and say what he done that day and – it's not a case of just speaking to him once every six months. I would basically speak to him once ever two days at least if not, every day.

10

Well, in that event, presumably he was made aware of the fact that he was, you said he would be charging \$2,500 a day?---I can't recall - - -

I'll stop asking questions now. You do realise the significance of the allegations and it is that - - -?---I do.

20

- - - you set out, what everyone thought was a proper fee which amounted to \$26,000 in January all that happened was a couple extra days for the trial and that became a figure of \$76,000 four months later. What's being suggested to you is that that was deliberately inflated because it was known or hoped that a greater part of that would be paid by the government.---No, no, Commissioner, the bill didn't truly reflect the work that was done.

I'm just pointing out what - - -?---Yes, I appreciate what you're saying.

MR STAEHLI: You say the estimate didn't truly reflect – as it turned out – the work that was to be done for the trial?---That's correct.

30

Is that right?---Yes.

And you appreciate, I assume, that that's the very reason why there should be costs disclosure and costs agreements between legal practitioners and their clients?---Mmm. Well, certainly I mean, I um, I couldn't have sued Mr Kelly or I could have if I'd gone to an assessment process but that's certainly the difficulty that arises by not having a costs agreement.

I'm not saying that you took that into account at the end of the day when most of the money which you said was owed to you was written off?---No.

40

Why did you write off most of that money which you said in the bill was owing to your firm?---Well, at the end of the day it was a matter that had just had gone on and on and on and I just, wound it up and just moved onto the next matter. But Kelly, I didn't believe that Kelly had any money at all, he didn't indicate at that, I open 70 new files every month and I just put it behind me and just moved one.

Well if you believe, if you're saying that the fact that he didn't have any money at all was a reason not to pursue him for the balance owing are you?-

--I just, the matter had just went on and on and on and on and I just wound it up and put it aside.

There was hardly anything happening at all at that stage was there other than that, you'd prepared a bill, he'd gone off and lodged it. What happened between that time and the time when the cheque came so far as you were concerned with Mr Kelly and this criminal matter?---With this particular matter?

10 Yes.---When I say before, I mean Jason would ring me, prior to preparing the bill on a very regular basis and then when I say that, I just moved on with the next matter.

Well, I suppose it would have been the case you'd suggest that you'd be entitled to have charged him for all those subsequent attendances when he would ring frequently. Is that right?---Prior, for the preparation of the bill?

No, after?---I wasn't, I wasn't really intending to charge him for that.

20 Why not?---I mean, I get phone calls many, many, many a day, I just, they never get charged for.

Well, you charged when you called the earlier ones, haven't you, that is those which go to 2007?---To, to the, yeah, for - - -

Then why had you, why had you made a difference, an exception between pre-invoice and post-invoices?---Well, I could have charged him but I just didn't, didn't choose to and I'd done a bill and left it at that.

30 Well, isn't that what happened at 9 January, you'd done a bill, well you hadn't done a bill but you'd assessed what was owing to you as at 9 January as \$1,100 being compassionate, ignorant, negligent or any of the above, that was what you had assessed as being owing to the firm and told him that was what was owing the firm, hadn't you?---That was an estimate of what, yeah I said, costs incurred and that estimate certainly wasn't, wasn't right at all.

40 And of course there's no mention in the letter of the proposition that when I bother to get around to this, I might charge you three times as much or in the case of what happened in 2007, ten or twelve times as much?---When I, when I was preparing the bill, it, I mean, as I understood it when I, because I hadn't had such a situation, the Costs in Criminal Proceedings Act said I can charge for costs incurred and I just went, went through the file and did a bill in accordance with what work had been done and clearly the estimate I'd given was way out of kilter.

Yes. I note Mr Walsh has returned, Commissioner. We do need to figure out the balance.

THE COMMISSIONER: Yes, could you, do you have any information about the Mr Hart?

MR WALSH: I do, to this extent, that I went to St Vincents just after the adjournment and personally spoke to him. The procedure was to be commenced at 2.00pm and what I did, I got, took possession of the book and I now make that available to Mr Staehli and (not transcribable) advise him.

10 THE COMMISSIONER: Well, did you get any idea from the people who were treating Mr Hart how long he was going to be in hospital?

MR WALSH: What I've been informed is that depending upon what is revealed during the process he's undergoing at the moment, he may undergo another - - -

THE COMMISSIONER: Another process.

MR WALSH: - - - another process.

20 THE COMMISSIONER: But even if he didn't, he probably wouldn't be fit to come back tomorrow I wouldn't - - -

MR WALSH: I wouldn't think so, Commissioner, but what I propose to do is to return to the hospital after we adjourn today and make some further direct inquiries and report again this afternoon and see if I can get some more documentary material if I can overnight. But I don't think he'll be here tomorrow.

30 THE COMMISSIONER: Well, Mr Staehli, assuming he's not available, Mr Hart, until at the earliest next week anyway, this is the last witness you were going to call in at this stage?

MR STAEHLI: Yes, tentatively.

THE COMMISSIONER: Yes, but then we'll have to know what will happen if it turns out that Mr Hart, for medical reasons, cannot be here next week, well I imagine this witness will be the last witness in this part of the proceedings.

40 MR STAEHLI: That's how it's planned on the basis that it's regarded as appropriate for Mr Hart to be asked questions both in relation to the segments, the evidence in respect of which is otherwise complete and also in respect of the third segment which, but for Mr O'Rourke, was hardly started.

THE COMMISSIONER: Yes.

MR STAEHLI: And it's thought best in the context of what the Commission's attempting to do that the third segment not proceed with the evidence of the other proposed witnesses (not transcribable)

10 THE COMMISSIONER: Yes, well, I can understand. Well, I suppose all I can do with the people who are here is to say that tomorrow morning we'll have an idea whether, it really is whether he'll be back at all next week, I think, I don't think anyone can sensibly suggest he'd be here tomorrow or even Monday, I wouldn't, I mean I don't know what they're going to do with him. It's been my experience you should never go to hospital unless you're a hundred per cent fit. Anyway - - -

MR STAEHLI: Obviously, there comes a point when we can't keep as we are presently doing witnesses that aren't - - -

THE COMMISSIONER: No, well, I was thinking of the convenience of people who are brought here believing - - -

20 MR STAEHLI: So what most likely would be sought to be done would be to find another block of days in the next few weeks in anticipation of Mr Hart recovering.

THE COMMISSIONER: Yes, and also in anticipation of my departure.

MR STAEHLI: Well, there's that to, yeah. So I think we'd be suggesting, assuming for the moment that Mr Hart doesn't become fit enough to attend next week which may be a false assumption, but even if he does we can't keep appropriately going.

30 THE COMMISSIONER: No, I don't think (not transcribable). Who is here who is waiting to be called?

MR STAEHLI: Here?

THE COMMISSIONER: Yes, now.

MR STAEHLI: No one, I don't think.

40 THE COMMISSIONER: Well, I see Mr Lewis lurking up the back of the room. Why are doing that, Mr Lewis?

MR LEWIS: I'm very interested, Commissioner, in the progress of these proceedings.

THE COMMISSIONER: So you're appearing for one person, aren't you?

MR LEWIS: Three people, maybe four.

THE COMMISSIONER: Three. Well, are those people here, I mean are they being - - -

MR STAEHLI: No. There are, there's no one presently required to be here other than Mr Paul.

McILWAIN: And your Honour, Commissioner, there's another, Todd Donohue, I have - - -

10 THE COMMISSIONER: Sorry?

McILWAIN: I act for Mr Todd Donohue in the settling (not transcribable) referring to, basically - - -

THE COMMISSIONER: Well, what do you suggest is the most convenient announcement to make? I think it is that tomorrow morning we'll decide whether this matter proceeds beyond this witness. I think that's all I can do and I'm sorry if it inconveniences people but there's not much I can do and what happened was not foreseen.

20

MR STAEHLI: And whether or not we know then Mr Hart's prospective availability which is to be unlikely the matter could conceivably, it's not necessary to list it to mention the matter but the Commission would liaise with Mr Walsh to find out if Mr Hart is discharged and on what basis and then there'd be a resolution with yourself, I imagine, about whether or not some further days could be set aside in, as it's obviously in everyone's interests for the matter to proceed to finality as quickly as possible.

THE COMMISSIONER: Oh, yes, I think so, yeah.

30

McILWAIN: Commissioner, can I just explain in regard to Mr Lewis' lurking, tomorrow I have another commitment longstanding and he will be seeking a priority to Mr Kelly, tomorrow if evidence is continued tomorrow.

THE COMMISSIONER: Yes, all right.

MR WALSH: Mr Commissioner, I've just raised this practical, I know it's getting late, but is it of any assistance that I go back to the hospital to make some further direct inquiries and come back before 4.00. Would that - - -

40

THE COMMISSIONER: Yes, that would be more helpful, I think. We might as well make some decisions then, I think, rather than tomorrow morning. Look, they might not know yet.

MR WALSH: They may not know but I think I can at least if I need to ask some questions tomorrow the transcript as it were, that it might be at least helpful to go back to the hospital, find out as much as I can and come back and report to you.

THE COMMISSIONER: Well, I don't know which is the more convenient actually but, for you to listen to the, I'll leave it to you.

MR STAEHLI: It makes no difference of the sort that we - - -

MR WALSH: All right. Okay. I'm just making the offer, that's all.

MR STAEHLI: But I don't think, if you can still do that by 4.00.

10

MR WALSH: All right. We'll do it.

THE COMMISSIONER: And let people know. All right. Yes. Yes, anyway, yes go on, Mr Staehli.

MR STAEHLI: You've referred to your relation with Mr Hart and I gather that it was - well, you've said it went beyond the relationship between solicitor and barrister and that your families were friends and so forth. Is that right?---Yes.

20 I suggest that it'd make it even more likely that you would not specify fees which were said to be an estimate of what he was to charge without having taken into account his views as to what an appropriate fee was?---As I say, it was - normally I would ring a barrister if I was instructing them and, and just find out what they are going to charge. With John it was - yeah, he was all over the place and, you know, I just took a - I can't recall if I spoke to him about these fees or took a guess as to what his fees would be around about what he was charging at that time.

30 THE COMMISSIONER: When did you first become aware that he wanted to charge \$3,900 a day?---After, after the hearing.

And before the application went for costs or was resolved for costs or after it was resolved that he could get his costs?---Look, I can't be, I, I can't recall when the exact conversation took place. I just remember words to the effect that, "I'm a senior junior and I, I should be able to charge 3,000 a day."

Yes. I'm wondering when it was said previous?---Yeah. Look, I'm not - - -

40 Presumably you had drawn his attention to the fact that you had, whether as an estimate or not, committed to \$2,500 a day, at least that's Mr Kelly must have thought?---Yeah. Look, I might not have. I might not have. I, I just can't recall the conversations I had.

MR STAEHLI: That is an incredibly unsatisfactory position for everyone to be in, you would appreciate, wouldn't you?---Look, I appreciate that. It's just - - -

Incredibly unsatisfactory from Mr Kelly's position who could reasonably have been, one might thing - have relied on the estimate which you gave him?---Yes, I can accept that.

It's incredibly unsatisfactory from Mr Hart's position since you had estimated to Mr Kelly that, that he was going to be charged a certain rate and as it turned out he was charged a rate which was greatly in excess of that. Is that correct?---That's what's happened.

10 And it's, in particular in fact, incredibly unsatisfactory to the Attorney General's Department albeit that they had a scale that they would meet that you would remit Mr Hart's alleged fees to them in the form that you did totally inconsistently with what had been estimated to Mr Kelly in the first place?---Well, I, I wouldn't say that's unsatisfactory. I mean it just, it's, it's a bill, that, that's what he, he said he was going to charge.

20 But there was never any suggestion I put to you that Mr Hart would have actually recovered the fees specified in the invoice sent to the Attorney General's Department through you from Mr Kelly, is there?---Could you just repeat that, say again.

Yes. There was never any prospect, was there, of Mr Hart recovering \$43,890 from Mr Kelly, which was the amount of his final invoice?---Well, that really at no stage – it really wasn't explored.

Well, that's just ludicrous, isn't it? It wasn't explored.

THE COMMISSIONER: Well, it may be ludicrous or not, but, you know.

30 MR STAEHLI: It might be a matter for submissions.

THE COMMISSIONER: Tell me this. When was the first time to your knowledge that either you or Hart said to Kelly, "Look, although you got an estimate of 26,000 your bill is going to be considerably greater than that? When was the first time that was mentioned?---I would have thought – when, when I did prepare the bill which the first bill was done - - -

40 In January?---No, sorry. That, that, that was the estimate but when I actually – I didn't do anything in the file from the time of the end of the trial to when I was being pressured to get a – put a bill together.

So this was after the costs were going to be paid by the government?---Yes.

So that's the first time anybody discussed with Mr Kelly that he was liable to pay a huge amount more than previously had been estimated?---I had, I hadn't sat down and looked at the file and it was only - - -

No, no. I'm just asking when was the first time you did that? You say it was after you got the favourable award from the court that the government had to pay costs?---Yes.

And then you raised it with him, did you?---I gave him, I gave him this, this bill.

That's the only of July, is that the one we're - - -?---Yes. I think it was asked, it was asked of me last time I was here that did - - -

10

What did he say when he got that bill?---He – well, he actually had an appointment to me when – on the day that he picked the bill up and I can't recall the conversation on that day.

You see, on the face of it he owed your firm an extra \$50,000. Did he say anything about that?---I – look, I, I heard what conversations he said he had had and I can't recall conversations that I had with him.

And you made – had no note of it?---No, I didn't.

20

Yes, all right.

MR STAEHLI: But at no stage was there an expectation in your mind that you would recover on behalf of yourself and Mr Hart \$76,000 from Mr Kelly, was there?---I hadn't considered that at the time. I didn't have a clue what the, the government was going to pay and I hadn't put my mind to it as to what I, what I would do with the balance of the bill.

30 But it was always the position, wasn't it, that, that whatever came from the government Mr Kelly was going to have – was going to get from what the government paid, the amount which he'd advanced to your firm firstly? ---That Kelly would get the \$26,000 back?

Yeah. Well, I, I just assumed that.

Why did you assume that?---Well, I just thought well, that's, that's money he'd paid over and he would just take that out.

40 Well, why would that be permitted in the context of him owing the firm another \$50,000?---As I say, I hadn't sat down and thought out and I didn't have to sort of make that decision until I saw what the government paid. I thought that - - -

Well, when you did see what the government paid, you knew that they were paying about \$45,000. Correct?---Yes.

And even if that had been provided in its entirety to your firm, Mr Kelly would have owed the firm and Mr Hart together, still, \$31,000-odd?---Yes.

So how did it come about that Mr Kelly got to keep the amount of money which he had previously paid to the firm?---Well, if I'd, if I'd sought to recover all that then that's right, it should have stayed with the firm. Well, he should have - - -

Why didn't it?--- - - - he should have paid that amount of money. Well, at the end of the day I just – some of it was paid over. I just said, “Well, that's it,” and treated it as the end of the matter.

10

What happened was that he got back what he paid and the three of you split up the rest of it?---Yeah. I, I didn't agree to the split up.

THE COMMISSIONER: Sorry, you didn't agree?---I didn't agree. I didn't agree to – I had had conversations saying that Mr Hart had indicated and, and Kelly indicated they were going to keep some money and I said, “I don't agree with that at all. It's,” well, I think I said, “our money,” which is myself and Mr Hart and I said that quite emphatically to both of them.

20 Well, why didn't you make sure Mr Kelly paid you the money he owed you? He had the money or at least part of it?---The, the 26,000?

Yes?---Yeah. Well, he - - -

I think you knew, didn't you, before you had the conversation, you knew that he kept some of this for himself that came back from the government?--
-at the end of the day I did, yes.

30 Some went to you, some went to Mr Hart and he kept some?---Yes. I, I did find out about that.

Well, why did you allow him to keep any because this was money that was owed to you?---Yeah. I mean, I didn't have any control over that. He indicated he was going to pay \$8,000 to Creaghe Lisle and he had the money. I mean, I tried to – I had an authority signed – well, I gave him an authority which I was going – for him to sign for the funds to come to us but he authority wasn't signed.

40 Yes. Are you saying you felt you couldn't enforce that obligation because there hadn't been an agreement between the two of you for him to pay that money?---Well, it's not – yeah, I mean, I didn't have control of the money. I know, I mean, I then could have turned around and (not transcribable) and sued him which I, which I didn't do.

No, I know that, but why didn't you?---As I say, I just moved onto the next matter.

MR STAEHLI: And the, are you saying that you protested are you, that the split up shouldn't happen in the way that it ultimately did?---There was, there was talk that Mr Kelly was going to keep some funds and I said it wasn't his to keep.

Who did you say that to?---To both of them.

At the same time?---No, no. No I, look I can't even recall when the conversations were had, but - - -

10

THE COMMISSIONER: Well, what did Mr Hart say to that, when you put that to him?---Look, I can't even recall what the answers were, but I remember on a couple of occasions that was said and it was certainly said to Mr Kelly and it was certainly said to Mr Hart.

And you can't recall what their response was?---Look, I can't.

MR STAEHLI: Though you'll remember, no doubt, what Mr Kelly said about such matters this morning?---I heard that.

20

And he attributed to you a conversation at the Swimming Club towards the end of the relevant period in which there had been a discussion in which you had coincided in the proposition that there be a split up of whatever was left. Isn't that right?---I think he said that I, I said that give me \$8,000 and I don't agree with that at all.

So you're saying that on your view at the time you believe that you and or Mr Hart were entitled to all of the surplus over and above what he had paid at the time of the trial?---In the couple of conversations that's certainly what I had conveyed.

30

To him, Mr Kelly?---I had certainly on one occasion - - -

And (not transcribable) Mr Hart?---Certainly on one occasion.

How is it that, what was Mr Hart's argument against that proposition? ---Look, I can't recall exactly what the situation was, but had agreed that Mr Kelly was going to keep some money and I didn't agree with that.

40

And are you saying at all times when this proposition was raised between either yourself and Mr Kelly or yourself and Mr Hart that you protested against the proposition?---I'm not saying, I'm not saying at all times, but I certainly did protest to, to both of them.

What once or more then once?---Oh, look I can't, I can't recall.

Was there a time at which you expressed your contempt with the proposition?---Look, I can't recall how it all transpired in the end.

Are you sure you're not saying these things just to try and explain how it could be that in the context of Mr Kelly being able to get back his \$26,000 that it's impossible otherwise to explain how that money was split up in the circumstances where he owed your firm another \$50,000?---No, no, I'm not. No.

10 This was just, what, it must've been deeply concerning to you, let alone the other members of the firm that you'd let \$50,000 go in circumstances where you said you and the firm were entitled to receive and or Mr Hart? That's what the effect of this was wasn't it?---At the end of the day, yeah, we could've pursued those, those monies from, from Kelly.

The reason why you let it go was that you accepted what Mr Kelly had been charged, what he paid to date with the little extra he got from the cost payment from the Attorney Generals was a fair thing?---No, no, I didn't think it was a fair thing.

20 Did you talk to anyone else about this? That is your partners, (not transcribable) partners, I should say?---Probably not. No, no.

Because - - -?---I sort of ran my own show there as such and - - -

Presumably you, you may have done, depending on what you're otherwise netting for the year (not transcribable) giving up \$25,000 or \$30,000 personally. Is that right?---Yep. That's right.

30 And this was dismissed with a couple of comments about your view as to the three way split was it?---Well, as it turned out it wasn't a three way split. It was a case, Mr Kelly keeping some of the money that he had received.

And you getting some and Mr Hart getting some. How is that not a, it's a split amongst three people is it not?---Well, it was a case of him giving a cheque to, to Creaghe Lisle and then he was intending to keep some money out of it.

Out of what?---Out of the money that he received.

40 And are you saying you protested to him that he should not do that?--- Certainly on occasion I expressed that view to him and certainly on occasion I expressed that view to John Hart. In the end it, as it turned out he kept some money and I just went with the flow with it.

All right. Well, I'd like to play you this telephone recording, Mr Paul.

THE COMMISSIONER: This is, what's the next Exhibit number?

MR STAEHLI: It occurred on the, the call occurred on 11 November, 2008 at 12.45pm, it's behind Tab 54.

THE COMMISSIONER: Between?

MR STAEHLI: Mr Hart, it is believed and Mr Paul. A lengthy call. Commissioner, I regrettably, I've, all of it is relevant to the (not transcribable) and I might - - -

10 THE COMMISSIONER: Well, deal with it the same way as you've dealt with the other one I suppose. It'll make it available to parties if they want to see the full call.

MR STAEHLI: Yes.

THE COMMISSIONER: Mr Bowen, for example. To see whether this actually, and Mr Walsh, see that it actually isn't taken out of context.

MR STAEHLI: Okay.

20 THE COMMISSIONER: So, what's the document?

MR STAEHLI: It's behind Tab 54 in the folder that you have.

THE COMMISSIONER: Okay.

TELEPHONE INTERCEPT PLAYED

[3.36pm]

30 **#EXHIBIT 40 – TELEPHONE INTERCEPT G00230_00_00 ON 11/11/2008 AT 12:45:10 (HART TO PAUL)**

THE COMMISSIONER: Yes, that was you and Mr Hart talking?---Yes.

40 MR STAEHLI: And do you say that in that call you argued against the proposition that the balance of the money should be split three ways?---I mean, it certainly reads that I said yes, yeah, yeah.

It does doesn't it? You were agreeing with the proposition weren't you?---I, there are other, there are certainly other conversations and Mr Kelly referred to it that I was against him getting any money.

But in this conversation you were for him getting the money weren't you? ---I've said yes, when I said, "Just take it and run." I don't know whether I was referring to just take the, you know, don't appeal the \$45,000.

Well, whatever the result in relation to \$45,000 was, you were agreeing that the balance over and above what Mr Kelly had previously paid would be divided up between the three of you, weren't you?---I mean, in that conversation there is one where Hart, you may have just grabbed five and run and I've just said, "Yeah, and run." Yeah, as I say, I still contend that I wasn't in agreement with him getting any money.

THE COMMISSIONER: Well, why didn't you tell Hart that?---Well, I wasn't, certainly wasn't forceful in that conversation.

10

Well, I ask the question again, why didn't you tell Hart that?---In this one, well, I can't explain that.

MR STAEHLI: You can't explain it because it's a lie.---No, that I said to Mr Hart that I didn't agree that he should get any money?

Yes.---No, I certainly said that to him.

20

And the reason why you didn't, you weren't troubled by is because on the sixth page of that transcript when you said, when Mr Hart said, "He's already paid 29 or 30 and hasn't he?" And you said, "Something like that but I mean that didn't cover the extras, yeah." And that was a reference to the fact that he might owe you a little bit more money in the context of the excess over your estimate, wasn't it?---No, the extras is all, is the bill.

The extra \$50,000 you mean?---I mean, well the extras could only be the extra money that was owed in the bill.

30

And then Mr Hart said, "No, that's right, well mate, I'm happy to just take the five and run, we'll get more work out of him et cetera et cetera." And you say, "Mmm, that's right, yeah, okay." That is your agreement to the proposition isn't it?---Well, I was just going with the flow, yeah.

Going with the flow meaning, you were prepared to agree with what the proposition was, that's what going with the flow is isn't it? We're going to swim together down the same stream.---Yeah, as I say, I certainly had the conversation with Mr Hart and also with Mr Kelly that I didn't believe that he should get, retain some money.

40

And I assume, perhaps wrongly, that you have no record of such a conversation independent of your recollection?---(NO AUDIBLE REPLY)

At some stage, though an invoice was prepared by your firm which I think was shown to Mr Kelly this morning - - -?---Yes.

- - - in the amount of \$8,521 I think it was. Do you remember that document?---Yes, I do.

It's Exhibit 34, Commissioner. Was that document ever sent to Mr Kelly?
---No, it was just prepared so that the money could be adjusted across.

By adjusted across you meant that could be accounted for in the ledgers of the firm. Is that what you mean?---Yes, yes.

10 Since such documentation is a pre-requisite is it not, for at least he money being moved from a trust account in favour of a client into the office account or otherwise to be disbursed for the benefit of the firm.---Well, I think this money didn't go, I think it went straight into the general account with that bill.

All right. Now in relation to such matters, that is, distribution from the accounts of the firm either in favour of the firm, in favour of third parties or in particular, in the case of Mr Hart, you are aware that part of what is that issue here is how much money Mr Hart was actually paid by your firm at your instigation?---Yes, yes.

20 Mr Hart has given some evidence about this as you know concerning the way in which he might receive monies or did receive monies which were owing to him during the course of or around the time of the trial.---Yes.

And he mentioned that he would on occasions get cheques payable to him from, one or other account of your firm.---Yes.

And sometimes cash them in Wagga.---Yes.

And apply the proceeds as he saw fit.---Yes.

30 You were aware, I assume, of that practice of his?---Yes.

On another occasion I think you probably recall there was a cheque made payable to him which was deposited directly into his wife's Commonwealth Bank Account.---Yes.

40 And then independent of amounts which were conveyed to him by you handing a cheque over to him and him doing what he saw fit to do with it there are, are there not, a number of other cheques which were drawn on accounts of your firm made payable to Mr Hart which, which cheques and proceeds of which cheques did not make their way to Mr Hart?---Yes.

How many such cheques are there?---Um, I believe four.

Four?---I believe.

And although I regret to say, I'll come back to these in more detail.---Yes.

What was it that happened in relation to those four cheques?---I received the proceeds of those.

THE COMMISSIONER: Sorry.---I received the proceeds of those.

MR STAEHLI: Now each of these were cheques which were made payable to Mr Hart. Is that right?---Yes.

And each of them were cheques which were marked not negotiable?---Yes.

10

And each of them were cheques were they in which you took them to places in Wagga and cashed them?---Yes.

And is it the case that in each of those cases you received the cash which came from the person or organisation which came from the person or organisation which had cashed those cheques?---Yes.

And so far as the money from each of them was concerned did you keep that?---Yes.

20

And so by this process, the total amount of money in respect of those particular cheques was as far as the firms records are concerned, that is in relation to the various accounts of money applicable to Mr Kelly's defence, the firms records showed that the total amount of those four cheques that we just discussed, had gone out of the firms accounts into, to Mr Hart, that's what the records show?---It does. It does, yep.

Whereas in fact that money had gone to you?---Yes.

30 Why did that happen?---It was a, something that shouldn't of happened that way. I received the proceeds of it and I, which becomes costs owing to the office and at the end of the day it has to be dealt with in the accounting of the money I owe to the firm.

Well, you're saying, are you saying, firstly that the position is the same in relation to each of those cheques? That is in terms of the explanation you've just given?---That the money should be for, for the costs of the office?

40 Yes.---Yes.

The same thing applied to each of them?---Yes.

And when you say should be applied to the costs of the office?---To the costs, the costs in the matter that are due to the office.

And if that's the case why is it that you did not just cause those monies to be attributed to the office costs or the costs of the office, which presumably

were due as a result of your work for Mr Kelly? Why did you not cause them to be attributed to the accounts of the office in what might be called the usual way?---Yes. I just, it was done in not the correct way for the office purposes at all.

Did you do it to cheat the partners of the firm?---The, it's something, it's something that I, I shouldn't of done at the time.

10 Did you do it to cheat those partners?---No. Well I, some of those monies I would've been due to myself and it was going to be dealt with, well, at the end of day, I thought I'd be able to, when I did the full accounting at the end, it would've all been sorted out and, and brought to account and it wasn't done. So it's since been disclosed to one of the partners.

But, so, are you saying that some of that money you were entitled to that is vis-à-vis your, the partners of the firm?---I, only on my cost sharing arrangement.

20 THE COMMISSIONER: I thought you said you were entitled to half of it? ---Yes.

THE COMMISSIONER: And the partnership was entitled to half?---Yes.

Or you mean the firm?

MR STAEHLI: I'm not sure if this is, and I don't mean to suggest this as an answer, but are you saying you were using this mechanism to get an advance on what might become due to you?---Well, yeah, in a way.

30 Well, I think, with due respect to you, Mr Paul, it requires a better explanation because what you were doing here was not simply taking this money but you were taking it in the form of a cheque which was made payable to Mr Hart. How did that come about?---Well, he was, he was aware that the, that I was cashing the cheque payable to him.

And keeping it?---Yes.

40 And when you say aware, you mean he was, he was aware that you'd caused the cheque to be drawn to him so that the records of the firm would show that he'd been paid money for acting on behalf of Mr Kelly?---I'm not sure what he, what he thought, but he was aware certainly, that a cheque had been drawn to him and that I was cashing it.

And keeping the money?---Yes.

And did you explain to him why you were doing that?---I can't recall what discussions we had about it but he was, he was aware that that had happened.

Well, one can only assume, perhaps incorrectly, that he would have been furious as to why his name was being used in such an exercise. Did he not express any curiosity about that?---Not, not – no. I mean, John's just, John Hart is John Hart. I mean he just doesn't really care too much about that time of thing but he was certainly fully aware of it and knew that it had happened.

10 Do you mean he didn't care if you were defrauding your firm?---Well, I can't say what, what he thought.

Because you appreciate that to do what you were doing at least had the potential, did it not of you defrauding the firm?---It had the potential.

How long had you been doing this?---Well, I mean, basically this matter was the, the – it just wasn't – it shouldn't have happened that way at all.

20 Well, accepting that, I assume perhaps wrongly it can hardly have been, is it – it's not coincidence is it, that simply because this matter has been examined that it's been revealed that you've been acquiring this money in this particular manner?---It's, it's not my, not my usual behaviour.

Had you done it before?---In one matter there was another matter that a cheque was drawn to John and I got the proceeds of that.

And was there ever any intention that Mr Hart would get any reward or benefit for you having used his name in this escapade?---No.

30 Did you need to – how was it that you came to tell him?---John, John was there when I, I had the cheques on the – in the first week.

Of the trial?---Yes.

THE COMMISSIONER: How much were the cheques, the four cheques? What did they total? Not that it matters, I suppose.

MR STAEHLI: Well (not transcribable) in detail which four cheques they are, Commissioner, but - - -?---I think, Commissioner, it's about 7,000.

40 THE COMMISSIONER: 7,000?---(not transcribable).

MR STAEHLI: It would seem perhaps that there's a cheque on the 18th of February, dated the 18th of February for \$1,500, a cheque on the 22nd of February \$1,430, the 7th of March for \$2,200 and the 14th of July which is also \$2,200.

THE COMMISSIONER: So it's not quite, not 7,000. Well, well, it's close to it. Yes, it is, yes.

MR STAEHLI: You told Mr Hart that this – that you were cheques in his – well, he'd seen, he'd seen you do that. Is that the position?---Yes.

And in doing that in relation to each of the cheques when you cashed them, did you – you cashed them at Wagga hotels, is that the position?---It might well have been the bank. And there was certainly one at a, at a hotel.

10 And at least one instance of those you've mentioned there was a cheque which was a trust account cheque. Is that right?---Yes, I concede that.

THE COMMISSIONER: Being held in trust for whom?

MR STAEHLI: For Mr Kelly.

THE COMMISSIONER: For Kelly, was it?

MR STAEHLI: Mmm. In any event, might I stop there and we'll come back (not transcribable).

20

THE COMMISSIONER: Yes, very well. 10 o'clock.

UNKNOWN PERSON: (not transcribable).

THE COMMISSIONER: Yes. I said it was Exhibit 40. You've got to clean your ears out, Muscles.

MR STAEHLI: And there's one document which was shown, the handwritten note of Mr, Mr Paul. That is in preparation for the estimates, the estimate letter.

30

THE COMMISSIONER: How much longer do you think it'll – sorry, you want to tender that, do you?

MR STAEHLI: Yes, please. That's behind Tab 5.

THE COMMISSIONER: Well, that'll become 41.

40

#EXHIBIT 41 – CREAGHE LISLE HAND WRITTEN COSTS ESTIMATE

MR STAEHLI: Thank you.

THE COMMISSIONER: There you are, Muscles. I'll be rising at lunch-time but we haven't finished I'll keep sitting through till about 2.00 or 2.15.

MR STAEHLI: That's – I doubt that it would take that long so far as I'm concerned.

THE COMMISSIONER: Yes. All right.

10 MR STAEHLI: And then, well, we assume, perhaps wrongly, depending on (not transcribable).

THE COMMISSIONER: Well, we'll wait to hear what Mr Walsh has to tell us, I suppose. He can tell – you can pass it on to Mr Staehli and he can pass it onto me. However, I should say this, I, I imagine, that if it is the fact that he will not be able to come to give evidence next week, I suppose Mr Kelly – Mr sorry, Hart will be the last witness that's be given in this part before adjourning the proceedings.

20 MR STAEHLI: Ultimately.

THE COMMISSIONER: Yes. But there are others that will have to – well, Mr Hart will have to give evidence on all three matters.

MR STAEHLI: That's right.

THE COMMISSIONER: And there's these people in segment three.

MR STAEHLI: So we'd need about three days.

30 THE COMMISSIONER: Yes, we would, yes.

MR STAEHLI: Which was otherwise intended to be next week some time but if - - -

THE COMMISSIONER: Yes, but if it can't be, well, we'll have to deal with it. Yes.

40 MR McILWAINE: In regard to Mr Kelly, Commissioner (not transcribable) he's temporarily excused from his summons to return upon proper notice (not transcribable).

THE COMMISSIONER: Yes. All right, I'll adjourn.

AT 4.01PM THE MATTER WAS ADJOURNED ACCORDINGLY[4.01]