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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

PUBLIC HEARING

OPERATION SEGOMO

Reference: Operation E08/1139

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 25 SEPTEMBER 2009

AT 10.20 AM

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THE COMMISSIONER: Yes. The Commission is continuing the inquiry into those matters the nature and scope of which were announced last Monday.

Yes, Mr Walsh.

MR WALSH: Yes, Commissioner. The situation is that I've seen Mr Hart on two occasions at St Vincent's Hospital and again this morning. He underwent the procedure yesterday afternoon.

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THE COMMISSIONER: Yes.

MR WALSH: I understand that the heart surgeon was a Doctor Sammel, spelt S-A-M-M-E-L, who has found apparently a forty to fifty per cent blockage of one of his arteries.

THE COMMISSIONER: Yes.

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MR WALSH: Mr Hart has indicated to me, confirmed by a registrar this morning, that he does not require surgery at this stage and that it is anticipated that his condition will be treated by medication.

THE COMMISSIONER: So, have you been given an idea as to when he is able to resume giving his evidence?

MR WALSH: He's certainly not fit today.

THE COMMISSIONER: No.

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MR WALSH: I raised with the registrar whose surname is spelt B-A-U-M-E-R-A-L that very issue and he deferred to the opinion of Doctor Sammel - -

THE COMMISSIONER: Who you haven't spoken to.

MR WALSH: I haven't spoken to yet. But what I propose again to do, subject to courtesy to this Commission, is to either return to St Vincent's or make a telephone inquiry to Doctor Sammel and seek some sort of document in writing and also to speak to him .....

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THE COMMISSIONER: All right. I mean this will not be continuing on Monday.

MR WALSH: Yes.

THE COMMISSIONER: So if he were on available next week, it'll be good, but of course, maybe he's not. But I'd like to know that because other witnesses will - - -

MR WALSH: Well, he may be available next week. But I just don't know. And I don't want to take the responsibility of saying - - -

THE COMMISSIONER: No, no, no. Of course, not.

MR WALSH: I've been giving him certain advice that it's best to get it over and done with and he comes back and then we're faced with the same situation.

10

THE COMMISSIONER: Yes.

MR WALSH: There are consequences because Mr Staehli and you, Commissioner need to know the sequence of witnesses and so forth. So I'm trying to - - -

THE COMMISSIONER: Yes. Well, still, I mean we'll just have to work around Mr Hart's health as verified by appropriate people. Anyway, so we'll just go on. And if you find that out today (not transcribable)

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MR WALSH: I will report back to you.

THE COMMISSIONER: As soon as you know, in effect, nobody will be, no evidence will be taken on Monday.

MR WALSH: Okay. Thank you.

THE COMMISSIONER: (not transcribable) Yes, all right, Mr STAEHLI. Yes.

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MR STAEHLI: I might have Mr Paul return to the witness box.

THE COMMISSIONER: Mr Paul, would you come back into the witness box, please. Mr Paul, you understand you are still under your former oath?--Yes.

MR WALSH: Commissioner, could I just raise one other matter before Mr Staehli - - -

THE COMMISSIONER: Yes.

10 MR WALSH: Commissioner, you might recall that there was some evidence in relation to a book, if I could refer to that and I - - -

THE COMMISSIONER: Is that the book you gave - - -

MR WALSH: I gave. And I'd just like to confirm, I think for the record, that yesterday in accordance with what the agreement by Mr Hart during the course of his evidence, it was delivered to the Commission. So, I just wanted to place that on the record.

20 THE COMMISSIONER: Yes. I think it's already on the record.

MR WALSH: Oh, is it. All right. Thank you.

THE COMMISSIONER: (not transcribable) the record.

MR WALSH: All right. I apologise.

30 THE COMMISSIONER: Yes. Oh, could I just ask you a question before you, you spoke yesterday of a scale of fees that was appropriate for the work that you charged for. Well, what was that scale?---Scale of fees?

THE COMMISSIONER: I thought you did. I may have misunderstood you. Why, for example did you charge for whatever you did charge on the July bill, it was greater than the, and I thought you made reference to some scale that you didn't - - -?---No, I think Commissioner, what I said was, that was what I charging at that time. I don't think I said anything about a scale, because I haven't, there's no scale of fees.

40 Well, so you're telling me that what you charged in whenever it was, July, was what you ordinarily charged?---Depending on the type of matter.

Yes. Ordinarily charged. So what changed from, why wasn't that charged in January?---Well, I was just doing an estimate and that was what I'd estimated at that time and when I - - -

(not transcribable) you estimate what was your normal charge?---Well, because, I mean, it just, it varied from matter to matter. And I, when I did the bill on 14 July, well, I did it earlier, on 24 June and then, as a draft, and then the actual bill was 14 July, I'd had a look at the cost in criminal cases

act and it says I can charge the costs incurred and that's, that's my hourly rate and that's what, that's what I'm going to charge.

THE COMMISSIONER: (not transcribable) explanation. Well, Mr Staehli, you might just help me with this. I appreciate now people have to enter into agreements, fees agreements and if they don't do that they'll have consequences for whether they can claim the amount or not. But is the, notwithstanding the entering into a cost agreement, is there still some control the authorities have over the amount charged by - - -

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MR STAEHLI: The authorities?

THE COMMISSIONER: Yes.

MR STAEHLI: Well, whether it's the Supreme Court or whether it's the - - -

THE COMMISSIONER: I'm not interested for the moment in the Attorney Generals, that's his own business. But is there one?

20

MR STAEHLI: Not relevant to criminal matters.

THE COMMISSIONER: So if I signed a document in a criminal matter that I'd paid \$100,000 for a daily trial, that would become - - -

MR STAEHLI: Well, there's, it's possible for overcharging to be - - -

THE COMMISSIONER: Yes. Well how do you (not transcribable)

30

MR STAEHLI: - - - professional misconduct. It's, it's not a finite calculation. So it might vary from my friend (not transcribable)

THE COMMISSIONER: Is there (not transcribable) scale that people can have access to? Mr Walsh - - -

MR WALSH: If I could possibly assist, Commissioner. The essential test is what is regarded as being fair and reasonable.

THE COMMISSIONER: Yes.

40

MR WALSH: For instance, if a legal practitioner was charging \$1,000 per hour to a consumer or a client, that may be regarded as being unfair and unreasonable as it were. So, that's the test that's applied by, for instance, costs assessors in this state. And generally, I could indicate that depending upon the location of the legal practice, the extent and nature of the experience of the legal practitioner, some are accredited criminal specialists, et cetera. At the moment for instance, an hourly rate of around \$350 to \$450 may be regarded as something being fair and reasonable for an

experienced criminal lawyer. Now, you might be mindful that in relation to senior counsel, hourly rates are generally at about \$550 an hour, depending on seniority et cetera and experience.

THE COMMISSIONER: So the, even if a person has an agreement that's still subject to the charges being fair and reasonable?

10 MR WALSH: Absolutely. So, merely because the client enters into an agreement to pay a particular hourly rate or for instance the basis in some instances you may see a team of lawyers representing a particular consumer or client. And that may be regarded when you look at what the methodology of charging to be not fair and reasonable, because the effective hourly rate and the Chief Justice has commented about this only last year in a speech, six minute units et cetera, can lead to an hourly rate of something over \$1,000 per hour. Because you've got a team of clerks and lawyers, et cetera involved. But if it's an hourly rate, it's got to be regarded as fair and reasonable. At this time, in my experience around \$350 to \$400 may be something that's regarded - - -

20 THE COMMISSIONER: Anyway, but I just wanted clarify that was the qualifications.

MR WALSH: Yes.

THE COMMISSIONER: So they call them consumers now, people - - -

MR WALSH: Well, there's all sorts of labels that are put on people today but clients I always regard - - -

30 THE COMMISSIONER: Yeah, I think so.

MR STAEHLI: Of course, such conclusions about fairness and reasonableness only apply in circumstances where the client complains usually.

THE COMMISSIONER: Oh, yes, yeah, yeah.

MR STAEHLI: And so far as criminal matters are concerned there's no provision for taxation.

40 THE COMMISSIONER: So far as what?

MR STAEHLI: So far as criminal matters are concerned - - -

THE COMMISSIONER: There's no provision for taxation.

MR STAEHLI: No, not on a party party basis because, well, sorry I should say I suppose in the Local Court in particular costs can be awarded in by the

magistrate in certain circumstances as between the parties in the criminal prosecution but in the District Court they can't except in circumstances such as this but for very exceptional circumstances.

THE COMMISSIONER: All right. Okay.

MR STAEHLI: That, and that's on the basis that traditionally the Crown is not paid costs in criminal matters.

10 THE COMMISSIONER: No, that's right.

MR STAEHLI: But the unfairness of that was thought to be partly remediated by the Act under which this application by Mr Kelly was made in these particular circumstances.

THE COMMISSIONER: Were you aware the Attorney General had a scale of fees that offices applied when an application was successful for costs?---No. I'd never made an application for costs.

20 That doesn't mean you weren't aware of - - -?---No, I wasn't aware.

But you weren't aware?---No, not at all.

Okay, yes.

MR STAEHLI: So in this case, do you say the first time you found out about that was when there was a response made by the Attorney General's department to Mr Kelly's application?---Yes.

30 And that led I think to a conversation which has been played in which you and Mr Hart talked in robust terms about the value of each other's services?--Yes.

I wanted to show you, following on from yesterday afternoon's evidence, the various documents relating to the cheques which were made payable to Mr Hart which issued from your firm from the time of the trial onwards?---Yes.

Would you look firstly, could you do this?

40

THE COMMISSIONER: These are these cheques you were talking about last night.

MR STAEHLI: Yes, but in addition to the cheques there's one other document in the, out of the firm's documentation, tab 13 is the first. And in each case these, Commissioner, there's a document such as this relating to each cheque. Mr Paul, would you briefly tell us what that document is?---That's a cheque requisition.

THE COMMISSIONER: Cheque requisition. That'll be 42.

**#EXHIBIT 42 – CREAGHE LISLE CHEQUE REQUISITION FOR  
CHEQUE 032672**

10

MR STAEHLI: Signed by you?---Yes.

And before I ask you some more questions about it, perhaps I might assist the process I hope by showing you the cheque which is, was issued apparently in response to that document which is that cheque dated 18 February 2008 in the sum of \$1,500, 0-3-2-6-7-2, it's, is it's cheque number. Do you agree - - -

20

THE COMMISSIONER: 42, 43, yeah.

**#EXHIBIT 43 – CREAGHE LISLE COMMONWEALTH BANK  
CHEQUE 032672 DATED 18/02/2008 IN THE SUM OF \$1,500**

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MR STAEHLI: Do you agree having regard to the cheque requisition that that is the cheque which issued in response to that requisition?---Yes.

Is any of the writing on that cheque yours?---Yes.

Did you write the words, "Cash", alongside Mr Hart's name?---All the writing on that cheque save and except the signature of the accountant and the writing up the top right-hand side is my, my writing.

So the word, "Cash", in capitals and initials alongside it is yours?---Yes.

40

And below the sum in writing there's a set of initials and the words, "Please pay cash", and they're yours as well. Is that right?---Yes.

Anita Kemp was the office accountant for Creaghe Lisle, is that right?---Yes.

And having regard to the fact that you've written, "Please pay cash," are you able to say what, what was done with that cheque?---It, it was cashed, I'm not sure where, but I think it might have been the Commonwealth Bank and I retained the proceeds.

And why did you do that at particular time?---I can't recall any conversations as far as -- John Hart normally asks for a cheque on the first day to, to start paying for his, his expenses and he didn't receive a cheque on the first day, he got a cheque on the second day but that, that was retained by me and, as I said before, it would have to be sorted out in, in the long run.

Sorted out between you and the firm, do you mean?---Yes.

10

But why did you do it, why did you use these funds to do that on that day? Was it because you were short of money or what?---It would, it could well have been that.

Well, is there, is there any other - - -?---No, it would - - -

- - - option?---Yeah. I, I did that rather than probably do the other system where I just get, I needed to draw, to draw me a cheque and I used it for my own purposes, so I used that money for my own purposes.

20

So presumably if you were owed money by the firm is it the case that you could have legitimately, so far as the practice was concerned, have asked Miss Kemp just to write you a cheque - - -?---I could have.

- - - out of the office account?---I could have.

You could have. But the only reason for not doing that must have been, must it not, to have, to have concealed from the firm the fact that you were taking this money at this time?---Well, at the end of the day it would have to be sorted out anyway because I'd have to do the accounting for all the fees.

30

Well, the question - - -

THE COMMISSIONER: That wasn't the question you were asked. Just listen to the questions you're asked.

MR STAEHLI: The only reason for doing it in this way was to conceal from the firm the fact that you were taking this money at this time?---Well, it, it was something that I shouldn't have done, that's correct.

40

THE COMMISSIONER: Well, does that mean the answer to that question is?---Yes, sir.

MR STAEHLI: And I gather it's the case, correct me if I'm wrong, that you did not tell Mr Hart about the fact that you'd cashed this cheque which was one which had issued from the cheque in, in his name?---No, no. He, he was aware of me cashing the cheques - - -

Was he?--- - - that, that had been drawn. I mean - - -

THE COMMISSIONER: Sorry, it was yes - aware or not aware?

MR STAEHLI: Was aware.

THE COMMISSIONER: Was aware.

10 MR STAEHLI: Why, because you told him or because he saw it happen or what?---Oh, he, whether he - I'm not sure if he came where I cashed it but he was - in discussions I had with him about this job he was aware that I had certainly - and he'd received some cheques and I'd received some cheques.

THE COMMISSIONER: Yes. Well, what did you tell him about this one? ---Commissioner, I couldn't recall the conversation.

20 No, but did you tell him that you were - you put in a requisition in for a cheque to be made out to him and you got the cheque and you were cashing it? You said he knew that?---He - - -

Or at least he knew there was a cheque made out to him that you cashed? ---Yes.

Wasn't there a discussion as to why you did this?---Commissioner, I can't recall what discussions I had with him. I just - I mean, it's a year and a half ago and - - -

30 And why did you tell him that? What was - - -?---Well, I was sort of with him all, all day, every day and even at - some, you know, at night-time we were together - or certainly all of that week and the next week.

Still, why does that mean you told him?---I just - in the - I just know that he was aware that I - he, he had some cheques and I had some cheques that he had cashed.

I just don't follow the logic of this. You may be right, it may be me but you say he had some cheques?---On the, the Tuesday there were some cheques drawn to Mr, Mr Hart.

40 On the firm?---Yes.

Yes?---And all I'm saying, the two of us had a, as I say, we were sort of a personal relationship, mates, we were - it wasn't - quite often when I'm instructing a barrister I'll just see them and - during court, conferences before hand, conferences after. John and I were sort of, you know, fairly - - -

Yes, I know but I just don't follow it. Did you basically say, "Oh, look, by the way, I've got a cheque here that's made out to you but I've cashed it and kept the money?"---Look, I can't tell you exactly what the discussions were but he, he certainly was aware that I, I'd drawn that cheque on the day and cashed it.

Yes.

10 MR STAEHLI: Because you've accepted that you did, you went through this process in order, that is using Mr Hart's cheque, in order to conceal the fact that you'd obtained money at that time from the firm. Is that right?  
---From the accounts department, yes.

And in, in telling Mr Hart that or making him aware of it, you were involving him in that concealment, weren't you?---He was, yeah - well, he was aware of it, yes.

20 And in fact since it was made out to him, by him not complaining to the firm he was complicit in it, wasn't he?---Well, he probably didn't even - knowing his sort of attitude to life he probably didn't give it much thought. Well, I can't - - -

MR WALSH: Commissioner, I mean, I'm a bit late in objecting but really what - whether this man can come to a view about what's the state of mind it might - it's pretty difficult.

THE COMMISSIONER: Yes, it is. I agree. I'm not going to disallow the question.

30 I think he's entitled to ask whether in his opinion Hart knew that you, you were cashing a cheque that was made out to him and that did you have an opinion as to whether Hart was aware of the propriety or impropriety of that. Did you have an opinion about that? You've told me that you shouldn't have done it. Did you think - - -?---No, I won't - I mean, I probably have - I haven't asked him that question. I shouldn't have done it. That's certainly right.

Yes?---But I don't know what Hart's attitude to it was.

40 All right.

MR STAEHLI: Well, the truth is though, Mr Paul, is that you know that Mr Hart did know completely what you were doing in these circumstances, didn't he? That was your belief?---Yes.

All right. And I want to assist you in the fact of that recollection at least in relation to something that happened later by playing you a telephone recording some months later in - which occurred on the 15<sup>th</sup> of July, 2008,

commissioner, which is behind Tab 45, and although this is a conversation which because of its timing relates to other matters, it deals with an issue, a related issue but a different cheque which I'll come to shortly and it's an excerpt which will be played.

THE COMMISSIONER: Behind 45, is it?

MR STAEHLI: Yes.

10 THE COMMISSIONER: Yes.

**TELEPHONE INTERCEPT PLAYED**

**[10.38am]**

MR STAEHLI: And that's where the excerpt ends. I'm sorry, did you give that an exhibit number?

20 THE COMMISSIONER: It'll be 44.

**#EXHIBIT 44 – TELEPHONE INTERCEPT G000226\_00\_00 ON  
15/07/2008 AT 12:24:44 EXTRACT (HART TO PAUL)**

MR STAEHLI: Thank you.

30 And just before I ask you questions about that call, Mr Hart, I'll show you what is apparently the cheque in question referred to in that call which is behind Tab 44, Commissioner, and the requisition, requisition dated 14/7.]

THE COMMISSIONER: Has that been tendered yet?

MR STAEHLI: No.

40 THE COMMISSIONER: Well, that'll become 45.

**#EXHIBIT 45 – CREAGHE LISLE REQUISITION FOR CHEQUE  
016470 AND CHEQUE DATED 14/07/2008 IN THE SUM OF \$2,200**

MR STAEHLI: 44.

THE COMMISSIONER: It's behind 44. It becomes 45.

MR STAEHLI: Sorry, no it's, yes, behind tab 44. Can we just scroll up a little. And could you see, firstly looking at that requisition, could we just go back down again, please, sorry, back to the requisition, thank you, the requisitions in the sum of, for a cheque in the sum of \$2,200?---Yes.

In favour of Mr Hart?---Yes.

10 And what are the words, "Then adjust", under his name written there mean?---It was written out as a general cheque (not transcribable) and then, and then to adjust it across out of the trust account.

So the cheque which follows dated 14 July 2008, cheque 0-1-6-4-7-0, was, that's, is that your signature on it?---Yes.

That happens to be a cheque drawn on the firm's trust account?---Yes.

20 And then the back of the cheque, it's upside down on the screen, but tell me if you can't read it?---No, I've seen it.

You've seen it before?---Yes.

Says, "Please", in handwriting which is yours, is that right?---Yes.

It says, "Please pay William Farrer Hotel, Creaghe Lisle per:", and then there are some, a scrawl of a signature and that's your signature, is that right?---Yes, yes.

30 And under that's written the words John Hart per, and then there's a scrawl which can arguably be read as J Hart?---Yes.

Did you write those words as well?---Yes.

And in effect were you signing the back of the cheque as J Hart?---Well, I could open it up myself as a signatory on the account and then I'd added to it J Hart.

40 THE COMMISSIONER: Well, you signed yourself as J Hart, is that right?--I, I have then, yes, yeah, oh yes, I have.

You have. Well, those three documents, that's the requisition, the cheque, well I suppose there's really two because it's one document, the cheque, will be exhibit 45. This is written on the back of the cheque I take it, is it?

MR STAEHLI: That's right, yes. So the requisition and the cheque have the same number?

THE COMMISSIONER: Yes.

MR STAEHLI: And that's the cheque in respect of which the conversation occurred and that telephone call the following day, is that right?---Yes.

And in that call I think it's fair to say that you and Mr Hart jest to each other about what it is that you've done in cashing that cheque. Correct?---The conversation appears that way, yes.

10 Yes. And the conversation also appears to suggest, tell me if it, the suggestion is accurate, that Mr Hart is familiar with that practice of yours?--  
-On, on, on the basis that I have done it before, yes.

And that you've told him about it before?---Back, back, yeah, in this matter, yeah.

So that he appears, although you don't describe exactly what you've done arguably, to completely understand that you've taken this cheque and cashed it at a hotel?---Yes.

20 And he says at the bottom of page 1 of that transcript when ascertaining the amount, you having told him that the cheque's cashed, he says, "All right, mate, no worries. In case there's a phone call, how much is it?" And you say, "A22." And he, a few lines further down on page 2 says, "That's no problem. It doesn't worry me, just if you let me know, so in case you know something happens and I get a phone call", what did you understand him to mean by that?---Probably the accountant from the office.

30 So in case she rang him to check whether or not he'd received the monies, is that what you mean?---I'm only guessing but - - -

All right. Well, you didn't ask him what he meant, did you?---No.

So you, the two of you are agreeing, him by saying it and you by not responding in a querying way to it that in case there's some query raised by the accountant at your firm, you understood him to be saying he'd be able to confirm that he got the money. Is that the position?---It could be construed that way.

40 Well, that's how you understood it, isn't it? You were telling him so that the both of you would be protected from some, any form of query or investigation by the accountant. Isn't that the position?---Yeah, I was, I was telling him what was going on, yes.

And for that reason, otherwise there'd be no need to tell him, would there?--  
-No, I, I, I agree with that.

So was it the case that you acquired that money in that way using that trust account cheque for the reason that you say in the call which was you were broke at the moment?---Yes.

Then in the instances of the two cheques which we've discussed, that was money which you took and which you used for your own benefit?---Yes.

That is, none of it was given to Mr Hart?---No.

- 10 Then can we return to the February period please and move to the second cheque which was issued I think it is, it's behind tab 14, and would you look at the cheque requisition which appears to be dated 19 February and can you see the requisition shown on the screen is in the sum of \$2,000?---Yes.

And the instruction says, "Cash (J Hart) cheque (he will cash it)"?---Yes.

Did that mean that it was an instruction for the cheque to be made out to cash?---Yes.

- 20 But it would seem that the cheque which issued in response to this requisition is the one which is shown on the screen now, 0-3-2-6-7-9, which was in fact made out to Mr Hart in that sum, \$2,000. Do you see that?---Yes, yes I do.

And if you look at the back of it, now shown on the screen, you'll see the words in handwriting, "Please pay William Farrer Hotel", it seems to say, with a signature which appears to be John Hart?---Yes.

- 30 Is that John Hart's signature?---Yes, it is, well, sorry, it's not my signature, I know, I'm sure that's his.

Were you with him when you cashed that cheque?---I, look, I just can't recall, I, I probably would have been if, no, look I honestly can't say I was with him or not.

All right. My question assumes perhaps wrongly that it was him, Mr Hart, who cashed the cheque and not you. Did you have any involvement in cashing that cheque?---I can't, I just cannot recall.

- 40 So, what, is it a possibility that the two of you were in the hotel and he might have written on the back of it and you might have cashed it?---Look, I just can't answer that, I just don't know, I mean I wouldn't, after the court case I quite often worked on or he, he would leave and I might go up and have dinner with him or something like that afterwards, I just, I can't answer that.

All right. But are you saying that you didn't get the proceeds, any of the proceeds of this cheque or are you unable to say that as well?---Yeah, I'm

not sure whether there were, there were four cheques I received the proceeds of.

Yes. Well, I'll show you others, so perhaps you might be able to - - -?---  
The answer to that is I, I, I, I don't think that's one of them.

THE COMMISSIONER: That'll be 46, that is the requisition and the cheque.

10 MR STAEHLI: Thank you.

**#EXHIBIT 46 – CREAGHE LISLE REQUISITION AND CHEQUE  
NO. 032679 DATED 19/02/2008 IN THE SUM OF \$2,000**

20 WITNESS: In fact, I'm sure that Mr Hart received the proceeds of that.

MR STAEHLI: You are sure?---I'm surely sure.

Then the next cheque is the, also dated 19 , sorry the next cheque requisition is also dated 19 February, behind tab 15. And the requisition seeks to a cheque in the sum of \$4,400 apparently to pay J Hart. Do you see that?---  
Yes.

30 And there's a further instruction about putting the cheque into a particular Commonwealth, it seems, a particular Commonwealth Bank account. Is that right?---Yes.

And did you know, is what is contained on that requisition, other than the matter number, in your handwriting?---Yes.

And did you know whose bank account that was?---I would assume it's Judy Hart's, but I don't know the (not transcribable) Well John Hart's or Judy Hart's, I'm not sure who.

40 THE COMMISSIONER: Sorry, I didn't hear that.---Sorry, in the past he asked me to get the accountant to put money into his wife's account and that could well be it. I don't know.

MR STAEHLI: From where did you get the number?---Well, I can't answer that. If it's, well it would've been given to me by John Hart.

All right. Commissioner, it is the account - - -

THE COMMISSIONER: That'll be 47.

**#EXHIBIT 47 – CREAGHE LISLE CHEQUE REQUISITION AND  
CHEQUE NO. 016020 DATED 19/02/2008 IN THE SUM OF \$4,400**

10 MR STAEHLI: Yes. It is the account number of Mrs J A Hart at the  
Commonwealth Bank, Engadine. And the cheque apparently issued in  
response to that request, would you look at that, please, on the screen, being  
cheque 0-1-6-0-2-0 in the sum of \$4,400 payable to J Hart. Which was  
apparently deposited into Mrs Hart's account in accordance with your  
instructions. Was the deposit something which was done by the office?---I  
can't answer that either.

All right.---It could well have been done by the office. I can't answer that.

20 All right. Then would you look at the next requisition which is undated but  
relates to a cheque which I'll also show you, being behind Tab 17.

THE COMMISSIONER: That'll be then becoming 48.

**#EXHIBIT 48 – CREAGHE LISLE CHEQUE REQUISITION AND  
CHEQUE NO. 032698 DATED 22/02/2008 IN THE SUM OF \$2,200;  
CHEQUE NO. 016035 DATED 22/202/2008 IN THE SUM OF \$4,400**

30

THE COMMISSIONER: I notice that the requisition was \$4,400 and the  
cheque was for \$2,200. Is that right?

MR STAEHLI: Yes, it appears that it is.

THE COMMISSIONER: Anyway, that was the requisition and you were  
about to be shown a cheque that was issued pursuant to that. And that'll be  
48.

40

MR STAEHLI: Is it?

THE COMMISSIONER: Well, if it is pursuant to that, I'm not sure.

MR STAEHLI: Yes, well that is, rather than showing that - - -

THE COMMISSIONER: (not transcribable) the one that's been already  
handed?

MR STAEHLI: No.

THE COMMISSIONER: Is the cheque behind this one is showing as cash.

MR STAEHLI: Yes. Can I show instead of that particular cheque which is behind that Tab, Commissioner, show another cheque which is behind Tab 19.

10 THE COMMISSIONER: Oh, so that is the cheque that you say was issued pursuant to that requisition.

MR STAEHLI: It seems so, Commissioner.

THE COMMISSIONER: All right.

MR STAEHLI: It's consistent with the requisition at any event.

THE COMMISSIONER: Well, this is the question. Yes, anyway - - -

20

MR STAEHLI: And do you see that in relation to that cheque now show 0-1-6-0-3-5 on 22 February, 2008 for \$4,400, that was a cheque made payable to Mr Hart?---Yes.

And on the back of the cheque there is written similarly to a previous cheque, Please pay William Fowler Hotel, with a signature which could be read as John Hart. Is that right?---Yes.

Is any of that writing yours?---No.

30

From that writing would you conclude that the cheque was cashed by Mr Hart at the William Fowler Hotel?---I'd assume that, yes.

Then (not transcribable) cheque - - -

THE COMMISSIONER: 48, that requisition make it 49. Is that right 49? No, I think it's, oh, I put it in as part of 48. The requisition and the cheque (not transcribable)

40 MR STAEHLI: You linked it up with the other requisition.

THE COMMISSIONER: Yes. So that's 48.

MR STAEHLI: And then can I return to the cheques or the cheque which is behind Tab 17, behind that requisition.

THE COMMISSIONER: But it's not attached though, that's been misfiled hasn't it?

MR STAEHLI: You would think so.

THE COMMISSIONER: Yes.

MR STAEHLI: That being cheque number 0-3-2-6-9-0.

THE COMMISSIONER: Yes.

10 MR STAEHLI: Behind Tab 17. And if one looks at the writing on that cheque, Mr Paul, is the signature, the signatory on the cheque is that your signature?---Yes.

And is the word cash alongside Mr Hart's name yours?---Yes.

And is, are the words, please pay cash and the signature yours as well?  
---Yes.

20 And from those details are you able to say whether or not it was you who cashed that cheque and received those proceeds?---I did.

All right. In the same way in effect and on the same basis as you've previously told us. Is that right?---Yes.

Are you able to say just by looking at it where it was that you cashed it?  
--- It could well be the Commonwealth Bank.

30 And then there's a further cheque around this time on the same day, 22 February, 2008, in the sum of \$1, 430, behind Tab 18, 0-3-2-6-9-9 in the sum of \$1,430. Can you see that cheque on the screen?---Yes.

Was it signed by you?---Yes, it is.

And were the words, cash and please pay cash written by you?---Yes. They're mine.

And does your signature appear in two places on the left hand side of the cheque as well?---Yes.

40 All right.

THE COMMISSIONER: Those two cheques, they haven't been tendered yet have they?

MR STAEHLI: No.

THE COMMISSIONER: Well, those two cheques, I'll put them together. Is there a third one there?

MR STAEHLI: No.

THE COMMISSIONER: Well, those two cheques will become 49.

**#EXHIBIT 49 – CREAGHE LISLE CHEQUE 032699 DATED  
22/02/2008 IN THE SUM OF \$1,430**

10

MR STAEHLI: And in respect of that one which on the screen, did you cash that and receive the proceeds?---Yes.

And then a further cheque on 27 of February, 2008 in respect of which we don't have a requisition. It's behind Tab 20, being a cheque in the, cheque number 0-1-6-0-4-2 payable to Mr Hart in the sum of \$4,400. Do you see that?---Yes, I do.

20

Is that your signature on the cheque?---Yes, it is.

And then on the back of the cheque are the words again, please pay William Fowler Hotel and the signature which can be read as John Hart. Can you see that?---Yes, I can.

Is it safe to conclude from that endorsement on the back that Mr Hart cashed that cheque at the William Fowler Hotel?---Yes.

30 And in circumstances such as that, did you receive any of the proceeds of cheques which he cashed at the William Fowler Hotel?---No.

No. All right. Then, a little later there's another cheque requisition behind Tab 23 dated 7/2, although it appears as though that should be 7 March, for other reasons, seeking a cheque in the sum of \$2,200 in favour of Mr Hart? ---Yes.

That's your signature on that requisition shown to you. Is that right?---(NO AUDIBLE REPLY)

40

THE COMMISSIONER: That'll be 50.

**#EXHIBIT 50 – CREAGHE LISLE CHEQUE NO. 016042 DATED  
27/02/2008 IN THE SUM OF \$4,400; CREAGHE LISLE CHEQUE  
REQUISITION AND CHEQUE NO. 032777 DATED 7/02/2008 IN  
THE SUM OF \$2,200**

MR STAEHLI: And behind it is a cheque made payable to, initially to John Hart in the sum of \$2,200. Do you see that?---Yes.

Dated the 7<sup>th</sup> of March, 2009.

THE COMMISSIONER: It's the one behind 24, is it?

10

MR STAEHLI: No, no, it's behind 23, behind the requisition.

THE COMMISSIONER: I can't find 23 in my (not transcribable).

MR STAEHLI: Isn't there?

THE COMMISSIONER: Is that the one dated 7<sup>th</sup> of March - - -

MR STAEHLI: Yes.

20

THE COMMISSIONER: - - - number 0-3-2-7-7-7?

MR STAEHLI: Yes.

THE COMMISSIONER: In mine it's at 24 but anyway, the cheque and the cheque, they'll be both exhibit 50.

MR STAEHLI: And one can see, Commissioner, that in this case some of the requisitions are cut off but the cheque number's written at the top of the requisition.

30

But the cheque itself now on the screen, Mr Paul, you were the signatory. Is that right?---Yes, I was.

And is that your writing with the word, being the word "cash" with the initials alongside it, alongside Mr Hart's crossed-out name?---Yes.

And is that your writing, "Please pay cash Creaghe Lisle per" which is at the bottom left-hand side of the cheque - - -?---Yes.

40

- - - with your signature?---I, I received the benefit of that cheque.

You received the benefit of that cheque?---(NO AUDIBLE REPLY)

All right. And do you know where you cashed that cheque?---I, I don't but I'm only looking at the stamp up the top there, it might be the Commonwealth Bank.

All right. So you've, you've now been shown all of the cheques which were issued in favour of Mr Hart from the Creaghe Lisle accounts - - -?---Yes.

- - - at least relevant to Mr Kelly's matter?---Yes.

10 All right. And it would seem from the evidence you've just given, and this was put in a summary form to you yesterday, if I can just repeat it so that we understand where we're going, that you would agree that you received the benefit of four of those cheques shown to you?---Yes, it was 7,000 and something dollars.

Being respectively for \$1,500, for \$2,200, for \$1,430 and for \$2,200, that is, in that group in February. I think that's right.

THE COMMISSIONER: Yes, he said that. He said it was around about approximately \$7,000.

20 MR STAEHLI: But then in addition to those amounts you received the proceeds of the cheque in July 2008 which we were talking about. Is that right?---Yes. Yeah, I certainly did, yeah.

So what – apart from what it was that you were doing in relation to acquiring these proceeds yourself, it must have made somewhat challenging the question of how much the firm had actually paid Mr Hart. Do you agree with that, so far as the firm's records were concerned in any event?---As far as the firm's records, yes.

30 So did you keep track of these cheques which were made payable to him but which were cashed by you?---I – not in any, any form.

Did you keep track of the amount of the cheques which were cashed by you that we've been talking about?---I didn't, no, I didn't keep a track of it. It was, it was a memory based thing.

40 A memory based thing. And did that mean that as at, say, July 2008 when you were constructing the bill or making out the bill or the invoice which was to be used by Mr Kelly, did you – did the fact that you'd taken this money have any relevance to what ended up on that bill?---No. Well, when I, when I did the bill I, as I say, I changed the daily rate to an hourly rate and, and then charged the rest of the bill as per the file.

Well, that's in relation to your fees. What about Mr Hart's fees?---At that stage he indicated he was going to charge the \$3,000 plus his loading plus GST.

All right. But let's assume for the moment, wrongly as it turned out, that the Attorney General's Department had paid the whole bill which had been submitted including Mr Hart's fees, which I think amounted at that stage to

something over \$43,000, how would you and he have accounted for, as between the two of you, for what it was that he'd already been paid?---How was I going to, I, I probably hadn't like – I didn't address my mind to it that I can recall.

10 Because if you'd gone to the firm's records, at least so far as the ledger was concerned of the office and the trust account relevant to Mr Kelly, there would have been, it would have been extremely difficult for you to identify which of the cheques were made payable to him which you had received and which he had. Isn't that right?---Clearly, if the records were wrong.

And to confirm that can I just show you a photocopy of the account ledger.

It might be easier ultimately to look at this in a hard copy form, Commissioner, although it's very small. Might that be shown to Mr Paul. It can be seen.

20 THE COMMISSIONER: Well, this is an account ledger, Mr Kelly and this document and this document is dated the 6<sup>th</sup> of May, 2009 but it refers to 2007 and 2008. I'll mark that 51.

#### **#EXHIBIT 51 – CREAGHE LISLE ACCOUNT LEDGER**

30 MR STAEHLI: Thank you. It seems to be the complete history of the firm's ledger for Mr Kelly.

THE COMMISSIONER: Yes, yes.

MR STAEHLI: So if you just look at the period on the left-hand column, there's the dates there from the 18<sup>th</sup> of February through to the 7<sup>th</sup> of March? ---Yes.

40 And can you see there that there are listed a series of what are apparently payments so far as the ledger is concerned made to Mr Hart described by reference to his name or his initial and his name and the relevant sums which appear there?---Yes.

And the, the additional one on the 14<sup>th</sup> of July about which you had the telephone call is there a little lower down?---Yes.

Do you see that? Now, it's impossible, isn't it, looking at that to determine which of those cheques were the ones which you had cashed and kept the proceeds?---Yes.

And I'd suggest to you it would have been impossible for you ever to have worked out just by reference to your memory how much of that money you'd kept for yourself?---It would have been difficult, like I would have to spend some time at it.

10 The other thing I wanted to ask you about was why it was that multiple cheques were issued on, on the same day so that, for example, on the 19<sup>th</sup> of February there was a cheque for \$2,000, which I've shown you, made payable to Mr Hart as well as a cheque apparently in the sum of \$4,400 made payable to Mr Hart. Can you answer that for me?---They were cheques that he, he, he - that he had asked for on that day.

All right. What in those amounts do you mean?---Yes.

And similarly on 22 February, there are two cheques in his name made, one in the sum of \$4,400 and one in the sum of \$2,200. Do you see that?---Yes, I do.

20 And then as well there's a cheque in the sum of \$1,430?---Yes.

So, on that day three different cheques issued in his name from the account. Do you understand or can you tell us why it was that that happened?---Only that there was, if, if I've written a cheque out, he's requested it. If a cheque's gone to him, then he's requested it.

All right. So the cheque, we know it seems from what's written on the cheques that on 22 February the cheque for \$4,400 went to Mr Hart. All right?---Yes.

30 We know from what you've said that as it turns out, the cheque on that day for \$2,200 went to you.---Yes, that's right.

And further we know that the cheque for \$1,430 went to Mr Hart.---Yes.

40 All right. So, clearly apart from anything else that was happening, apart from the use of his name, when you, in this instance caused a cheque to issue in the sum of \$2,200, you were intending it to reflect what might have been thought to be Mr Hart's daily fee for the trial, \$2,200?---I'm not sure whether that was the thought, but the cheque was written out for that.

Well there can't be any other explanation can there?---Well, it seems like a plausible explanation, but I can't, I can't say that was the thought on the day.

I suggest to you it's the only plausible explanation. Otherwise you could've written a cheque for \$220 or \$22,000, but it happens to coincide with the rate which is reflected in the two previous payments made to him according

to that ledger. Do you agree?---That's right. They appear in the same, in similar type amounts. Yeah.

And it was the case wasn't it that at the time of the trial that he was being paid, as these amounts reflect, \$2,200 a day in respect of his appearance for, in court?---Yes. At that stage that appears from that, what he was taking was \$2,200 a day.

10 And of course you had the, well during the trial and by the end of the trial, so far as deposits were concerned, Mr Kelly had made deposits totalling \$26,371. Is that right?---Yes.

And those figures are reflected there as well in a column third from the right, if you want to look at them. But, of course he's deposit of that amount reflected what had been in your estimate letter in January?---Yes.

And you said you were drawing cheques to Mr Hart because he had requested them?---Yes.

20 And presumably he was requesting cheques which reflected the amount which he was charging for his appearance on each day of the trial. Correct? ---Look I'm not trying to be evasive on that point, but I don't recall the discussions we had as to what he was going to charge.

But if he was charging \$4,000 a day, he would've requested a cheque for \$4,000 each day or for \$8,000 each day, would he not? As you understood the way he would work?---If he was, yeah, if he'd sort of said at that time he was charging \$3,000 or \$4,000, he would, well he would be asking for that sum each day, but, yeah.

30 But he didn't?---No.

As these amounts record unless independent of what was written out in the form of cheques to him, there was a conversation between the two of you in which, for example, you might've said, oh, well, I've only asked Kelly for the equivalent of twenty two hundred per day, we'll put anything else to one side. Are you saying you had a conversation like that with him?---No. Look, I, I can't recall having - - -

40 All right.---And in fact, I mean the twenty two hundred - - -

So, with the benefit of this document and anything else that you might have available to you by way of recollection, the documents, the cheques and the ledger are consistent only aren't they, with the proposition that Mr Hart was at the time of the trial, charging twenty two hundred dollars per day?--- Looking at those figures, you would, you would assume that.

Do you want to suggest any alternative theory?---As I say, I don't recall the discussions as to what his exact rate per day was. I mean, it doesn't, the twenty two hundred there doesn't even fit in with my estimate.

Well, it does if one takes into account \$300 worth of travel allowance and so forth (not transcribable)?---If you added that to it, if you (not transcribable) that.

10 And there are other cheques here which reflect payments to you in respect of expenses aren't there?---He's just taken a, yes, a blank cheque.

So by saying you don't have any recollection of any conversation are you intending to leave open the possibility that there may have been some conversation about an increased rate, which wasn't reflected in the amounts which were paid to him during the trial?---When, sorry, can you repeat that?

Yes. I've made suggestions to you about what the twenty two hundred per day apparently paid to him is consistent with.---Yes.

20 And you responded to that initially by saying, I can't recall whether I had a conversation with him about these matters, before you concurred with the possibility that the theory put to you was correct. Do you understand?  
---Mmm. Yes.

You said, I can't recall what the conversations were with Mr Hart about this.---Yes.

30 By saying that, are you leaving open the possibility that there may have been a conversation with Mr Hart in which you did have a discussion with him and he said, I'm going to charge him much more than that twenty two hundred per day, but I'll just take that amount for the moment or something like that?---No, I can't recall that discussion. I can't say - - -

Do you say, are you able to say there was no such discussion?---No, I can't say that.

40 But I suggest to you that if he had told you he was going to claim a higher figure, \$3,000, \$3,500, whatever, that if it, if you had agreed with it, you arguably being the person who had the right to agree, you would've paid such amounts as you could out of the trust account to him in accordance with that rate?---I, I, I don't, I don't recall any conversation at that stage that he was going to charge three or four thousand dollars.

All right. So the only evidence that's available at the moment at least, subject to what Mr Hart might wish to say, is that he was charging \$2,200 a day and you were paying it to him?---That would be inferred from that.

So, in terms of the total received by Mr Hart during the period of the trial, that is excluding the cheques which you say you received the proceeds of, he received of the cheques shown to you \$2,000 on 19 February, \$4,400 on 19 February, paid into his wife's account, \$4,400 on 22 February, cashed at the William Farrer Hotel and \$4,400 on 27 February, cashed at the William Farrer Hotel. Those amounts representing six days at \$2,200 plus an extra payment of \$2,000. Right. So, at the end of the trial period including 7 March, Mr Hart had received, it would seem, some \$15,200 actually out of the firms account. Do you understand?---Yes, I understand what you're saying.

But in addition to that were the other amounts according to the firms account which were made payable to him, but which you had received. Do you understand that?---Yes, I do. I just - - -

Do you want to look at the figures to confirm for yourself what I've said there?---No, no, I accept, I accept your additions, but I'm just thinking about one of the amounts of \$2,200 that I thought that he'd got, that I didn't get. But I'm just not sure about that.

On which day?---22 February but I just, look, I'm, I'm prepared to accept that I received that but I'm just not sure about that.

22 February?---Yes.

Do you want to look at the cheque again, will that help you in that regard?--  
-Perhaps, if over morning tea, if I can have a look at my records.

Your records?---Only because I've just - - -

We could do that now if it suits you, Commissioner?

THE COMMISSIONER: Yeah. Do you want to do that?---Yes. I'm happy to go through it all and even come back to that point if - - -

Well, I suppose I'll take an adjournment at half, well, I think we'll do it. How long will it take?---Oh, perhaps if we get on with other questions. I'll come back to that point and we can deal with that after morning tea.

All right. Yes.

MR STAEHLI: Then assuming for the moment, perhaps wrongly, what I've said to you about the payments made to Mr Hart, are you able to say what, if anything, was owing to him after the trial had finished in addition to what you had actually paid him, that is independent of what you'd taken for yourself?---I hadn't sat down and done any figures with him. At that stage, he was, as he does in a lot of his matters, he just tends to deal directly with the client.

He deals directly with the client?---Oh, he just does that in a lot of the matters that I hand to him, he, he ends up dealing with the client. I mean, no doubt at some stage I'm part of some of the discussions but - - -

10 Well, but are you saying that, let me put it another way, I was asking you about so far as the firm's position was in relation to Mr Hart because the firm's records as we know show to, do not reflect reality in relation to those payments. So how was it going to be possible for there to be a  
10 reconciliation between what the firm's records showed and what was owing to Mr Hart and subsequently paid to him?---I, only if I sorted it all out at the end of it.

And how was it possible for you to do that?---On the basis of, of disclosing that I'd received a, a sum of money and in my accounting of the office.

What, disclosing to the firm, you mean?---Yes.

20 What, in putting that amount of money back in to Mr Kelly's record?---  
20 Well, it, it would just be done in the adjustment that I've got to do in relation to my income and, and the percentage of profits I receive.

But what about in relation to any payments which might be due to Mr Hart, that wouldn't be reconciled in that way. You're just talking about a reconciliation as to your profit share, aren't you?---Yes.

30 So presumably if that was ever to happen the account ledger for Mr Kelly would remain just as it always was and the adjustment you're talking about would happen between you and the partners. Is that right?---Yes, probably.  
30

Believing this record to show as it presently does that there were a number of payments made to Mr Hart which were not paid to him?---Yes.

40 The other thing which the ledger shows, while you have it there in front of you, is that the amount of money which was attributed during the whole of the period that Mr Kelly was a client in this matter of the firm to the professional costs of you or the firm as opposed to Mr Hart, was only after, I'm sorry, this is turning into an impossibly long question, Commissioner. Can I do it a different way? If you look at the ledger, Mr Paul, you'll see  
40 that the first payment of professional costs out of monies provided by Mr Kelly and or others was made on 24 April 2008 in the sum of \$572. Can you see that?---Yes.

And that was following a tax invoice which has previously been referred to which you'd sent him in respect of that appearance for him at the end of January 2007?---Yes.

Then, that's the column on the ledger in which the application of costs, monies received to the professional costs of the firm can be seen wherever it occurs. Do you agree with that?---Yes.

And the next entry is in respect of a sum which totals \$3,500, being made up of disbursements?---Yes.

And GST in respect of those disbursements. Correct?---Yes.

10 And not including any professional costs?---No.

And the same applies to the next entry, totalling \$5,830 - - -?---Yes.

- - - which is the sum of \$5,300 and \$530. Is that right?---Yes.

And the same applies to the \$200 which is the next entry in that column for disbursements billed. Is that right?---Yes.

20 So that up to the 28<sup>th</sup> of November 2008, between that time and the earlier time at the top of the page, the 24<sup>th</sup> of April, 2007, there had been no professional costs taken from moneys given to the firm by Mr Kelly for the purpose of paying, in effect, the firm for your services?---No.

Correct?---That's correct.

And then the only payment that was ever made in that regard happened after Mr Kelly had, had lodged his \$8,000 with the firm?---Yes.

30 Whereupon you added that together with the \$521 balance out on the right-hand side which was all that was left of the money he'd deposited with the firm?---Yes.

And attributed, less the GST and a few other minor allowances, all of that money to professional costs?---Yes.

That being \$7,555.45 plus the GST. Is that right?---Yes.

40 Now, the effect of that is that, ignoring the \$572 which relates to an earlier period of time, that you received all up from Mr Kelly, ignoring for the moment the moneys which you took for yourself out of those cheques payable to Mr Hart, the firm received that figure towards the bottom of the page, about \$7,500 in professional costs. Is that right?---Yes.

Now, of course, coincides at least approximately with the very amount which you had assessed, had estimated in your letter to Mr Kelly for the costs of the trial in January, 2008, doesn't it?---I'll accept your word for that. I'm just - - -

Well, let me show it to you. I don't want to - want you rashly accept my assertions.

THE COMMISSIONER: What's that Exhibit number?

MR STAEHLI: It's Exhibit 17.

THE COMMISSIONER: Yes.

10 MR STAEHLI: And on Exhibit 17, the costs of attending on trial estimated to be five days are \$7,800?---Oh, yes, sorry. You're talking about just that.

Yes, sorry. I was just talking about that figure alone?---Yes.

So, as luck would have it, your estimate of what it would cost Mr Kelly for the trial in terms of professional costs turned out to be a bit pessimistic in the sense that ultimately he paid less than was on your estimate for his professional costs?---Well, when you add up the amounts that were there, yeah.

20

And it was because of the relatively approximately nature of the amount which was available at the end of the day to what had been estimated that you were content to tolerate the receipt of that \$8,000 in settlement of everything that Mr Kelly owed you, wasn't it?---No, no. I mean, no one in my office goes back and relates the two together. No, it was - - -

Don't they?---When I say no one - other than myself?

Yes?---Yeah, I mean no one, no one checks the file, my file.

30

Well, what I'm suggesting to you is not that you necessarily sat down but when you received the \$8,000 from Mr Kelly you knew that coincided with an earlier view of yours as to what your work for him was really worth?---No. When I received the \$8,000 from Kelly I was just happy to get rid of the matter and just put it, put it aside and just move on. I'd had a fairly traumatic couple of months involving my son and I was under a fair bit of pressure there and Mr Kelly was always a fairly demanding client and I was just happy to put the file away.

40 All right. I'm sorry. You mentioned a traumatic couple of months in another respect?---Just - that was in relation to my personal life, just with my son, that was all.

So - what are you saying? That that was a component in just wanting to clear the decks with Mr Kelly, are you?---No. My son's thing wasn't the reason for clearing the deck. It was just a case of close the file, move on and, as I say, I'm always flat-chat in all respects.

Yes. Is that a convenient time if you were going to take an adjournment?

THE COMMISSIONER: Yes, it is, yes.

MR STAEHLI: And have you got whatever it is that you need to look at, Mr Paul?---Yes.

SHORT ADJOURNMENT

[11.32am]

10 1158jj

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

Yes, Mr Staehli.

MR STAEHLI: Mr Paul, did you have an opportunity to look at records to clarify anything that you'd said?---I did, this morning. Just in relation to on 22 February there was a cheque for \$1,430 which I received the proceeds of, but the cheque for two thousand two hundred, I don't believe I received the  
20 proceeds of.

All right, well - - -?---It could well have been cashed by me but I didn't - - -

THE COMMISSIONER: But what happened to those proceeds?---I, I, I don't believe I received the proceeds which means that John Hart would have received them.

So you would have got the money and given it to Hart?---If, if I cashed that cheque because I think it was cashed at the Commonwealth Bank for  
30 memory.

Yeah, all right.

MR STAEHLI: Can we just look at that one just to clarify, make certain we're talking about the same one. Excuse me, Commissioner. Yes, it's exhibit 49 behind tab 17 in the sum of \$2,200. Is that the one that you're referring to?---Yes, I am.

THE COMMISSIONER: Well, you cashed it didn't you?---I think I, it  
40 looks like it was probably cashed at the same time as the \$1,430 cheque or fourteen eighty is it, fourteen thirty.

MR STAEHLI: Fourteen thirty, yes, which is exhibit, well part of exhibit 49 which is by and large in the same form with the same endorsements and so forth, also signed by you. Now, what, you can remember that Mr Hart got the one with the slightly unusual figure. Is that what, is that how - - -?---No, no, I believe I got the fourteen hundred and thirty.

You got the fourteen thirty, all right?---And I, I don't believe I received the two, two.

All right. And just as a matter of interest, how, what are you relying on in terms of your recollection?---I, well, I had, I went back and had a look at some bank records just recently and had a look and there was, there was no entry there of the two, that amount of money.

10 THE COMMISSIONER: What, from your bank records?---Yes.

MR STAEHLI: But the fourteen thirty is there, you mean?---There was a figure of I think \$1,200 put into my bank on that day.

I see, all right. So with the aid of that record and your recollection that is your belief that, that you didn't get the proceeds of that cheque in the sum of \$2,200?---To the best of my recollection, yes.

20 And I think in one sense, consistently with what you said before that if one, if we remove that cheque from the list of cheques which I think you acceded in answer to my questions you did receive the proceeds of, then the balance is still four cheques which totals somewhat over \$7,000?---Yes.

Then did, independent of the payments to Mr Hart which are, which were made by way of the cheques you've been shown today, do you have any knowledge about whether or not Mr Hart was paid money directly by Mr Kelly?---The, the payment at the end into his - - -

30 Ignoring the payment at the end?---Oh, okay.

Put that to one side, that is the payment of \$5,000 in instalments in December?---Are you saying whether or not Mr Kelly paid him any, any more money. Well, I certainly didn't have any knowledge of that, the first allegation, the monies involved with the first allegation.

40 All right, well, that's what I'm referring to. So you were here when Mr Kelly said that he, that he had paid, I put it another way, you were here when there was evidence about records which suggested that \$7,000 had paid into Mr Hart's TAB account?---Yes.

And Mr Kelly said that he'd paid Mr Hart more than that but that he had paid in the end, I think his evidence was, \$7,000 into Mr Hart's TAB account?---I don't have any recollection of any, any of those amounts.

Mr Hart suggested I think although he might not have said everything he wanted, wished to say about that before his evidence stopped, that that money was money which was owing to him from Mr Kelly for Mr Hart's conduct of the trial?---Yes, I, I, look, I - - -

THE COMMISSIONER: You have no knowledge of that?---No, no recollection of any knowledge about that.

MR STAEHLI: And by saying you have no recollection is that saying that, are you saying that you did not know that Mr Kelly had paid money directly to Mr Hart?---Not, I, when I heard that the other day that, just, I couldn't, didn't bring anything up in my memory at all.

10 All right. I assume it would be inconsistent with the relationship you say you had with Mr Hart that he would get money from Mr Kelly for the conduct of the trial and not tell you about it?---In, in the, in the past he's, I found out that because he starts dealing direct with the client, he gets more of a personal relationship with the client. He's sort of a, I supposed you'd call him a likeable rogue. But he, he'll go and have a beer with him and I won't be there and in other matters I've found out that he's actually been paid, he'll say, look I'll just organise the costs and he organises it.

20 But that's, that's different to this circumstance isn't it, where you're methodically drawing cheques in his name to pay him his daily rate in relation to the trial, at least during the course of the trial?---Well, he just asked me for, for cheques and, yeah, I'd draw them and - - -

Yes. But you've previously said in discussion about the question of how much he was to be paid, and perhaps he has said something similar that there was a loose relationship in terms of the amount of money that would be due to him for the trial. Is that right?---Yes.

30 And the impression I thought it was intended to be conveyed by you was that there was a pot of money in this case, constituted by what Mr Kelly had advanced and that, as to how much might be due to you and how much might be due to Mr Hart. On Mr Hart's view of it, would in effect be a matter of mutual trust between you as to what was a fair thing. Is that, can we put it that vaguely?---Yeah. Probably, that's the word I was going to use. It's, it was a bit like that.

40 But are you saying, do you want to say anything other than your relationship with Mr Hart in terms of how much he was due to be paid was one which was based on anything other than trust?---There was nothing in writing.

Nothing in writing. All right. Yes. But in terms of the trust that did operate that you, it would be inconsistent with such trusts, I'd suggest, that he would get money from the client for the conduct of the trial and not tell you about it?---For the trial, I expect he would probably tell me about it.

Because otherwise you'd be paying him, he'd be getting money from the client and that would be taking money which would otherwise be left for you and the firm wouldn't it?---Well - - -

He'd be getting, might be getting double payment?---Effectively, yeah.

All right. So, from all those circumstances or propositions, can we conclude that it is the fact that he did not tell you anything about getting money from Mr Kelly at around the time of the trial up to and including 7 March?---I, I can't recall him telling me that at all.

10 Do you deny that he did tell you?---Look, I, I can't recall any conversation about him getting extra money from Kelly.

THE COMMISSIONER: But if it had happened, wouldn't you expect that you would've remembered it?---Well, I would've. I would've thought I would've remembered. I mean it's a fair while ago and I mean, you know, yeah, you know, I'm, I'm on the phone a fair bit of the day and you just, you can't, I don't have an infallible memory.

20 MR STAEHLI: And having regard to what you had paid him during the trial, if he had received extra money from Mr Kelly after the trial, on your understanding of what he was to be paid, he would've, there would be no outstanding monies due to him would there?---Just, just say that again, sorry.

Yes. Having regard to the rate that you were paying him during the trial and the amounts which you did pay him during or shortly after the trial, that is Mr Hart, if he had got extra money from Mr Kelly, depending on what the amount was, it's likely that he would not have been owed anything further for his conduct of the trial and the costs application. Isn't that right?---No. Well, it really depends on what rate he was going to charge for the trial.

30 All right. And was there time at which that was finally crystallised?  
---Only in the discussion when he said I'm going to charge three plus GST plus, plus expenses.

And when do you say that was?---When the bill was being drawn up for the  
- - -

40 THE COMMISSIONER: What, for the attorney to be put into the Attorney?---To give to Kelly.

THE COMMISSIONER: This is in July?---In June.

MR STAEHLI: So, not until then?---Well, I, I can't recall what other discussions were had between February and July. And I just know certainly when the bill was being drawn up there was a discussion. There was a telephone phone call referred to there, I think he said he was charging four or something.

Yes, in conversation with Mr Kelly?---Yes.

He said he was going to charge four grand a day and there'd be a quid in it for everyone at the end?---Yes, I heard that.

Now, did you have a discussion with him on similar lines?---Look, I – about four grand a day?

10 Yes?---Look, I can't recall, other than there was certainly – there had to be a discussion, like the same thing, I can't recall the conversation about charging three a day plus expenses 'cause that's how the bill was drawn up.

As at the 27<sup>th</sup> of February 2008 there was a particular bill which was prepared by your firm?---Yes.

THE COMMISSIONER: What exhibit number's that one?

20 MR STAEHLI: Well, I'm sorry. Not a bill, there was a bill which prepared on in Mr Hart's name which is behind Exhibit 21.

THE COMMISSIONER: Yes.

MR STAEHLI: Behind Tab 21, it is Exhibit 21, I'm sorry, Commissioner. And that bill dated the 27<sup>th</sup> of February, did you cause that to be prepared? ---Yes, it appears so.

And it was prepared in the office of your firm, was it?---Yes.

30 Which had Mr Hart's letterhead available for such purposes?---Yes.

Did you assume that the details at the bottom of the letter were correct?  
---Did I assume then, I - - -

40 That is, example in relation to his ABN number and so forth?---Oh, okay. Well, I – my secretary does quite a lot of typing for him where he just rings in for getting this – his own separate matters he will ring in, unbeknown to me, and just say, "Look, can you do this letter, can you do that letter," because he doesn't have access to a typist. So my secretary would have all those details on a, on – she's got the letterhead on our computer.

All right. What – and that's done as a favour to him, is it?---Yes.

Was it you who caused this invoice to be prepared?---I can't recall. I only assuming from going back to the file that our accountant wanted an invoice to put on the paperwork for cheques drawn to John Hart.

THE COMMISSIONER: So these sums total the sum that actually went to him including – and the amounts that went to you?---Including an amount that went – the amounts that went to me, just the 23830, yeah, well that probably – I haven't got a calculator in front of me - - -

No (not transcribable)?---It should be, it should be, it should be approximately, approximately what was paid to – now, whether or not the accountant's asked my secretary to draw up an invoice or she's asked me and I put that invoice together, I can't recall.

10

MR STAEHLI: It's somewhere near the figure, Commissioner, but not exactly so but, in any event.

Did you have any understanding about the need for the accounts of the firm to have documentation which supported payments out of moneys which had originally been held in trust?---That would normally be the case.

All right. And do you believe that this invoice was prepared for that purpose?---As I said, I don't what - the accountant either asked me or asked the secretary to, to prepare an invoice so that there was some record as to those amounts going out.

20

All right. And so the effect of this, so far as one can interpret what's on it, is that it, it – the invoice apparently acts on the basis inconsistently with the true position that the moneys shown in the ledger which had been paid to John Hart had all been paid to John Hart?---That's correct.

The firm paid, did it not, for all of Mr Hart's accommodation while he was in Wagga in respect of this matter?---Yes.

30

So that in so far as he received a loading, that is, an amount due to him because he was away from home in a country town, the money which he received was in effect for his meals and whatever else he might choose to spend it on on any daily basis. Is that the position?---Yes.

The firm - - -?---There was a cheque drawn to the Lawson Motor Inn.

Yes?---It might have even included another day that he was in Wagga, I think. I made some inquiries last week and I think they indicated that there was another day in there, the 5<sup>th</sup> or 6<sup>th</sup> of March.

40

All right. So a day in which the firm had in effect accidentally paid for him, do you mean?---Yeah. I don't know what that day relates to. It was only just in the – they told me the dates.

All right. When the time came for you to act as Mr Kelly wished you to and produce some invoices which would support his application for costs from the Attorney General's Department, did you seek to get some information

from Mr McCauley's firm about what they had done?---Sheekey Williams, yes.

From Sheekey Williams?---Yes.

And would you look at this material behind Tab 31, please, their letter of the 21<sup>st</sup> of May, 2008.

THE COMMISSIONER: That hasn't been tendered yet, has it?

10

MR STAEHLI: No, it hasn't.

THE COMMISSIONER: That will become Exhibit 52.

**#EXHIBIT 52 – SHEEKEY WILLIAMS TAX INVOICE ISSUED TO  
McCAULEY ENCLOSING BILL OF COSTS AND  
CORRESPONDENCE DATED 21/05/2008; JOHN WEIR TAX  
INVOICE DATED 27/02/2008**

20

MR STAEHLI: And can you see the letter which heads the materials which were apparently sent to you on - - -?---Yes, I received those materials.

All right. And behind the letter, amongst other things, is a lengthy invoice? ---Yes.

30 And other information?---Yes.

Other evidence of disbursements and the like?---Yes.

And the invoice refers to the barrister's fee under disbursements, and it refers to the barrister's fee – John Weir account enclosed?---Yes.

\$19,115. Do you see that?---Yes, I can.

And was a copy of Mr Weir's memorandum of fees enclosed?---Yes.

40

Would you look at the next document behind Tab 32, please.

THE COMMISSIONER: That'll be part of 52. Yes.

MR STAEHLI: And is what's shown on the screen apparently Mr Weir's memo of fees, a document which you also received from Sheekey Williams?---Yes.

And at that stage, that is at the time of receipt of this material apparently on about the 21<sup>st</sup> of May, 2008, had you received any bill from Mr Hart?---No.

Had you prepared any invoice or bill of your own in respect of the fees you were going to charge Mr Kelly?---My own bill?

Yes?---No.

10 And why was it that you wanted to see the Sheekey Williams bill?---I'd never had an award for costs. I didn't know how I was to make the claim and hadn't previously made a claim on the Attorney General's Department and I just spoken to Zac, Mr Kelly was putting a bit of pressure on to get the bill out and I, I wasn't sure where I even started with it as to how they wanted it set out so I – he said, “Look, I'll send you a copy, the copy across of the bill I did.”

20 And did you use apart from things format and structure and so forth, did you use any of the references to dates and work and the like to assist you in preparing your own invoice?---I thought I used the file. I, I'm not sure about that but I thought, my memory is that I used my file to draw his bill up. I mean, I might have cross-referenced his to make sure something was in court or something one day – I just (not transcribable) the answer to that is I just don't know but I thought I used my file.

All right. In relation to the drawing up of Mr, I gather it was the case, was it not, that in preparing what would be sent in respect of Mr Hart's fees that he never sent you any memorandum of fees. Correct?---No, he didn't.

30 And that so far as there are memoranda of fees in existence dealing with his fees for the trial of Mr Kelly that such documents were prepared in your office?---Yes.

And were prepared in your office by what means?---By what means, I'm not sure what, what you're talking about?

I don't mean who typed them, I mean how was it that the figures which ended up on those memoranda were created?---I looked at that file, the bill of John Weir's - - -

40 Yes.----?- - -there must have been some discussion with John Hart saying that, that's what your entitled to charge for these, these other matters which I wasn't aware of but I can't recall that discussion, that would have, I'm sure gone through – well it had to go through John Hart.

It would have to have?---Well, I would have thought so. I mean, I wouldn't have just put down because they were similar entries of, of Mr Weir's that he, the fact that he was entitled to charge for those matters because I haven't done a bill for John Hart like that, well I haven't done a cost application.

All right. So, is this the position, that you looked at Mr Weir's bill and saw the things that he had listed. Is that what you're saying?---Yes.

And having seen those things, your recollection is that you spoke to Mr Hart about the things which were on Mr Weir's bill?---I certainly had discussions with Mr Hart about his, the content of his bill because there was a discussion about not charging for enough days and I altered that bill that I prepared and put, I think it says nine on it or something and - - -

10

All right. Well, can I show you the document rather than talking in the abstract. This being the first draft of Mr Hart's bill it would seem on 24 June 2008 behind tab 37.

THE COMMISSIONER: This hasn't been (not transcribable)

MR STAEHLI: No.

THE COMMISSIONER: Which we'll give 53, the draft bill.

20

**#EXHIBIT 53 – FIRST DRAFT BILL OF JOHN HART DATED  
24/06/2008 IN SUM OF \$27,290**

MR STAEHLI: It's not called a draft.

30 THE COMMISSIONER: Well it's not.

MR STAEHLI: It's not the final bill. Is that the document you're referring to in which the number of days were altered?---Yes.

And you've seen that in Mr Weir's bill that he'd only charged for seven days?---Yes.

40 And are you saying, what was it that acted on your mind in order to put on this document of Mr Hart's letterhead that there were nine days involved?  
---I what happened to my best recollection was that when 24 June and 14 July - - -

When the final bill was issued?---Yes.

Yes.---There was a discussion at some stage after I did the first bill where I was told that the time spent in doing the costs application could be included in this bill.

Could be?---Yeah but the nine days doesn't equate with the number of days that I've certainly charged for in my bill, I've only got that I was in court for the eight days and to this day I don't know why it's got nine days on it whether or not I haven't been able to check to see whether Mr Hart attended any of the, he certainly didn't attend the day the award was handed down. I'm only assuming that there's no reason for me to put nine days there unless I was told by Mr Hart.

10 All right. Commissioner I should, it may be relevant to this correct something which I said at the time, at an earlier time when I was relating the chronology of what happened with the trial because I did, I transposed two days, and I just say what the correct position is. The verdict was handed on Tuesday 26 February. On 27 February previously I said the costs application took place on that day, but in fact it didn't. It was stood over until 3 March.

THE COMMISSIONER: That being the following Monday.

20 MR STAEHLI: The following Monday. And then the costs application was run on the following Monday in the late afternoon and it was then, that his Honour Judge Norrish reserved. Previously I suggested that the application happened on 27 a Wednesday.

THE COMMISSIONER: You say it happened on 3 March.

MR STAEHLI: It happened on 3 March.

THE COMMISSIONER: Yes.

30 MR STAEHLI: But in any event, when you came to prepare your bill, you didn't charge for anything after 27 February. That's right isn't it?--- Monday 26 sorry?

Monday's 25, Tuesday the acquittal- - -?---Yes.

- - - Wednesday the matter stood over to 3 March.---Because one hour on the Wednesday and I haven't charge anything for the - - -

40 Costs application. Is that right, as you understand it? Do you want to look at the bill to refresh your memory?---No, no, no, I, yeah.

So when you say to this day you don't know how the seven became nine well- - -?---Well, that might explain it but the ninth day is on 3 March.

Well, I don't - - -

THE COMMISSIONER: Well, that would have been the eighth day wouldn't it?

THE WITNESS: Well, yeah, I've just been trying to recollect because the matter was released with me and I didn't realise that this matter was back, my records didn't show and I haven't gone back and had a look at District Court files to see the costs application was done on 5, sorry 5 March.

MR STAEHLI: 3 March.---3 March. I obviously, the cost application must have been done on the Wednesday.

10 So there are nine days on which the matter was before the court on 8 - - -

THE COMMISSIONER: You said on the last day Mr Hart wasn't there.

MR STAEHLI: No, no, no. That was acting on a, I think a confusion created by me suggesting the order of events - - -

THE COMMISSIONER: Was Hart there to argue the application for costs?---I don't recall that I did it, he must have.

20 Where was the judgement delivered, in Sydney or?---It was - - -

Anyone appear there?---No, it was - - -

It on the 8 though?---It was sent to us in the mail by fax or by DX or somehow.

On any view of the matter it was only eight days.

30 MR STAEHLI: Not any view, with respect Commissioner because on 27 being the Wednesday of the second week, the matter was listed and stood over so - - -

THE COMMISSIONER: I see.

40 MR STAEHLI: So it was before the court on the eighth day and resolved on the, in the afternoon of the ninth day on some views of it. Whether or not that leads to entitlement to charge for a whole of a day might be debateable. But in any event, was it you who made the alteration to nine days?---Yes. That's in my handwriting there and so I no doubt given that to my secretary to amend.

All right. At this stage, it was your view though wasn't it that there was a lack of entitlement to charge for the costs application itself?---I, well my memory is that I, initially it wasn't charged for and I then was, I believe I was told by someone, which I would assume was John Hart that you could charge for the costs application.

All right. Well, if you look at this letter of, dated 24 June behind tab 34 - - -

THE COMMISSIONER: That will be 53, 54 sorry.

**#EXHIBIT 54 – DRAFT LETTER CREAGHE LISLE TO KELLY  
DATED 24/06/2008**

10

MR STAEHLI: Do you recognise that as being a letter you wrote to Mr Kelly?---Yes.

And in the second paragraph you express, I gather, what your view was at the time of that letter which was, that you could not claim in the application for costs the cost of the application itself. Is that right?---Right.

20 Are you saying that your view changed about that subsequently?---I just, there was some conversation and I can only assume it must've been with John Hart about effectively the claims of cost (not transcribable)

Well, did you take it up with Sheekey Williams?---Look, I can't recall. Certainly within my memory I didn't.

30 Because you would've noted, I suppose that, as we've already mentioned, that Mr Weir's bill didn't include, Exhibit 52, didn't include his applying on Mr McCauley's behalf for costs. It's got appearances, seven trial days at \$2,000 a day and that seems to be the summary of the trial.---Yeah. And it goes through til Tuesday, yes.

Yes, that's right. And, but in the case of Sheekey Williams, whether or not you looked at it, it might be another matter. Their costs for attending the trial itself appear to be formulated on the first day, this is in Exhibit 52 and say somewhat inaccurately but, in relation to the dates, WW, that is Wagga Wagga, District Court trial ( seven days).

THE COMMISSIONER: Is that on (not transcribable) from - - -

40 MR STAEHLI: From Sheekey Williams.

THE COMMISSIONER: Yes. Just for their attendances?

MR STAEHLI: Yes, that's right. So both, in both, in the case of both the counsel and the solicitor for Mr McCauley, there was no charge in the copy of the bill that was sent to you for their attendance on the application for the cost certificate.---Yes.

Notwithstanding that you, are you saying amended Mr Hart's bill between the time of 24 June and 14 July to add extra days in the way you've described?---Yes.

But you didn't add extra days for your own costs?---No.

10 Did you go to the costs application that was made which Mr Hart appeared?---I can't recall if I did or not. I mean, I'm at court nearly every day of the week. And it might be a situation where I didn't, I put my head in there for a while. But I certainly never charged for it.

No, that's right. In any event the, the bill which was ultimately prepared was one which has become Exhibit 24, which ended up being - - -

THE COMMISSIONER: Exhibit 26, I think.

MR STAEHLI: Exhibit 24, the bill itself.

20 THE COMMISSIONER: Oh, the bill itself. Yes. Righto. Yes.

MR STAEHLI: And - - -

THE COMMISSIONER: Went to Kelly.

30 MR STAEHLI: That's right. And incorporated in it is, perhaps you should see it, Exhibit 24, please, behind Tab 41, the last page. And there we can see with some exceptions of what happened before 22 February so far as what's shown on the screen. The amount which was in that final invoice for your attendance at the District Court trial on its seven days - - -?---Yes.

- - - being a total of \$15,840.---Yes.

You say that's a calculation of billing out \$320 at eight and a half hours a day for the five days?---The first, the first five days, yes.

Plus the same hourly rate for those extra seven hours. Is that right?---Yes.

40 And are you saying that you were involved in the trial for eight and a half hours each day?---Look, to the best of my recollection, I mean I had, there was, in looking at my diary, I came back and saw someone at lunch time. I had some appointments late in the day which I might've seen them and then gone back and done something more on the trial. I worked out that between 8.30 and sort of 5 o'clock, which was the eight and a half hours, there might've been other times outside of that. I'm always at the office by sort of 7.15 in the morning, 7.30. And - - -

And so what, are you saying, you say on balance on average doing the best you can that you spent eight and a half hours a day on each of those days of five days of the trial?---I suppose it averaged out.

And as to Mr Hart's bill as attached to your bill, that had become nine days at \$3,000 per day. This is exhibit 25 behind tab 42?---Yes.

Charged at \$3,000 per day with a country loading at \$550 per day?---Yes.

- 10 Now, the, how did the country loading at that rate come to be in his bills?---  
Yeah, I, I remember having a discussion with him about the, in preparing a  
bill which he, he can charge a, well, can he charge a country loading, you  
know, to look at his expenses he would have to, to list it somehow and my  
memory certainly in civil matters was that there was a country loading and I  
hadn't had to involve myself in anything with country loadings for years  
and years since I had done a civil matter and there was a discussion had with  
him as to whether or not there was a, a set scale for criminal matters which  
had a country loading. And I, I think I did some research and I think he  
came back to me after he'd done some research but I've only got vague  
20 memories of that and that's where the five fifty a day came from, from some  
part of that research. I didn't think I found it but I, I just remember there  
were some discussions about that.

Now, the loading itself, I imagine you know perhaps you don't, that in  
circumstances where it would be paid, then Mr Hart wouldn't be entitled to  
have the firm pay his hotel bills. Would you accept that?---I can't say that I  
know that by way of law but I, I accept that that, that's what your country  
loading's for is to pay for those.

- 30 Whereas we know that in fact Mr Hart's bills had been paid by the firm?---  
Yes.

And did you take that into account in putting those things on his bill?---  
Well, he was, no I hadn't, as far as that was concerned, I hadn't put that  
component in there and I mean it was included in the, in the country  
loading.

- 40 The other matters which ended up on that bill and indeed the preceding copy  
of the bill, the draft we'll call it, the format of what was on the bill was  
taken from Mr Weir's bill which you'd seen, exhibit 52, wasn't it?---Yes,  
yes.

So that for example the reading brief and advising, Mr Weir had put three  
hours but you put four hours. Is that right?---Yes.

He, ignoring he obviously having different circumstances for the  
conference, you put that conference on 17 February 2008 as the, in the way  
that you've previously described - - -?---Yes.

- - - apparently your, you say what your belief was about the fact that such a conference occurred?---Yes.

To the extent that it didn't occur, you would accept that that figure is in error?---It's in error, yes.

The preparation for a section 293 submission, that was taken from Mr Weir's bills, wasn't it?---Yes.

10

The preparation for closing address, four hours, that was taken from Mr Weir's bill as well wasn't it?

THE COMMISSIONER: What was the two ninety three submission?

MR STAEHLI: It's the provision under the Criminal Procedure Act by which there is a prohibition on cross-examination of a complainant in a sexual assault matter about her previous sexual history and a submission presumably being to permit such cross-examination in the circumstances the section does.

20

Are you saying that you were told by Mr Hart that he had done such preparation or that you just copied it from Mr Weir's bill?---Oh, there, there was some discussion about the bill, I haven't got the exact wording but he, he, I mean, the two of us had certainly done some, some work, we'll I'd certainly looked it up and I assumed he had but I, I'd, I can't recall the exact conversations about it.

30

But it must be the case mustn't it that having regard to the fact that it's exactly the same on Mr Weir's bill that you'd just copied that across into Mr Hart's bill, don't you agree?---On the basis that he would be entitled to charge for those, for those things.

If he'd done them?---Yes, well, I can't recall, can't recall the conversations about that.

40

And by those means that bill had been prepared in your office in the way that the previous bills had been that is by you what telling a secretary that this is what should be on Mr Hart's letterhead?---Yes, I mean, I would assume submit that from him.

You assume. Do you know one way or the other whether or not there was any?---Well, I, I mean I would have some, some discussions with him.

In the way that you've already described?---And I certainly, and I certainly did because we talked about the country loading, we talked about the, the nine, the nine days where I'd only, the initial bill only had them, seven days on it.

You say you did talk to Mr Hart about that?---Oh well, I, I believe I did, I just can't, I can't recall, just unfortunately I, there's probably too many conversations with him where he didn't, if I only had one a month, I'd probably be able to remember them.

In any event you sent that bill, those bills, that is your invoice and Mr Hart's bill off to Mr Kelly for him to send to the Attorney General's department?---Yes.

10

And then you've told us some things about the contact which you had with him from time to time between then and when the money was paid?---Yes.

But when the money was paid do you say that you ever said to him anything about what he was, what his liability was to the firm?---To Mr Kelly?

Yes?---I, look, I can't recall what conversations I had with him about it, his future liability to the firm.

20 Well, at some stage did you tell him that there was no future liability?---I can't recall what conversations happened after the \$8,000 which was received. I did the receipt, I did that record bill and I, I can't recall, I mean, Kelly then had some, he was suing for defamation at that stage, maybe before that but I can't recall what telephone calls I had with him or any discussions with him in the street.

30 Well, you see the difficulty that some observers might have with that proposition is that you'd carefully on your version of it prepared that invoice dated 14 July which attributed a substantial liability, unsatisfied liability to him in relation to the work done by you?---Yes.

Correct?---Yes.

And how or what that liability was I suppose might depend in part on how much Mr Hart had been paid and other things but so far as the final tally of the bill was concerned, there was a proximate difference between what he had advanced and what was sought of some \$50,000?---Including John Hart's bill.

40 Including John Hart's bill and no one would know really except for you and Mr Hart how much Mr Hart was entitled to as at 14 July until you and he decided between yourselves how much he was entitled to, that was the position, wasn't it?---Yes.

So in effect, keeping in mind that part of what might have been due to the firm was in fact due to Mr Hart perhaps, there was about \$50,000 outstanding at the time of the preparation of the bill?---Yes.

And ultimately as we know that amount outstanding was settled firstly by a payment by Mr Kelly of \$8,000 to your firm?---Yes.

And arguably by, in addition to that, by his payment of \$5,000 to Mr Hart?--  
-Yes.

10 By which means the liability of \$50,000 it seems was for practical purposes settled by his payment of \$13,000?---Yes, except that I'd received another, the other seven thousand odd dollars which was in part legal fees due to  
prolong.

But that was never going to be accounted for in any way at all was it in relation to the firm's records?---Well, for the purposes of what you're saying as far the accountant, the \$50,000 had been the difference, that \$7,000 is technically 43,000 which hasn't been sought to be recovered or recovered.

20 So are you saying you took into account in your decision to resolve the account the fact that you obtained that money that we've discussed out of the cheques payable to Mr Hart?---Well, at the time that the eight thousand was paid, as I say I just accepted that and, and moved on.

But if, for example, there is an audit of Mr Kelly's ledger, whether internal or external, there would never be any proper indication of the fact that you'd received that money out of those cheques payable to Mr Hart, would there be?---Only if I said so.

30 Only if you said so and you were never going to do that, were you?---I hadn't, I hadn't really, as I say, I just closed the file, moved on and it's an issue I should have addressed at that time.

And I asked you something about this before and I think you mentioned one other instance, that is I asked you about it yesterday, it's not the case is it that this case, that is Mr Kelly's case, was the only case in which you did obtain such monies in that way by diverting cheques payable to third parties, is it?---I, I can recall there was another, another incident which I - - -

40 Just one?---That's, but yeah, I'm not sure about that, but there's certainly one incident I know of.

What, is there uncertainty as to whether or not there's more than one?---No, whether, I, I can recall the one incident.

In respect of another client?---Yes.

Which client?---The matter of, the think it might be the matter of Montgomery.

What sort of a matter was it?---That was as a prosecution.

Of Montgomery?---Yes.

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

And so you cashed cheques that were made out to the barrister in that way?--I cashed, I cashed eight cheques for John Hart.

10 Why did you do that?---I just – it was something I shouldn't have done, Mr Commissioner.

Another example of what you – all right, well, don't let's – yes, as Mr Paul says, we should move on.

MR STAEHLI: And the bills which were prepared on the 14<sup>th</sup> of July, do you know of any reason why they're not attributed as a debt to Mr Kelly in the ledger applicable to him of Creaghe Lisle?---Why it wasn't put up?

20 Yes?---Well, I sent the bill out and it says in the, in the Costs in Criminal Proceedings Act the Attorney General will decide what costs they pay and it was just given to Kelly to send away and that's basically where it got us.

THE COMMISSIONER: Look, Mr – I don't want to keep on going about this, Mr Paul, but look – surely you realise that as a lawyer the purpose of the legislation that allowed people to get costs in criminal proceedings was designed to ensure that people who'd paid costs would get a fair sum of that back. It wasn't for the purpose of allowing lawyers to work out how much they could squeeze out of the Attorney General, was it?---No, but I  
30 construed the – the Act says that you can submit a bill of costs incurred and I prepared this bill from day one of the costs which - -

I know that - - -?---Yes.

- - - that's what you say, yes?---And I've gone through it item by item.

MR STAEHLI: But in any event at the end of the day, as we know, whatever amount was actually outstanding you did close off Mr Kelly's account in relation to this matter with that final payment that he made?---I  
40 didn't pursue it any further.

THE COMMISSIONER: Do you draw a distinction between that and closing it off?---Well, there's nothing to close off. Well, I suppose the closing of the file is putting it to - - -

Yet you could have kept on chasing him for more money that you thought he owed you?---Yes, I didn't pursue it at all.

Why didn't you do that?---I just – I believed he didn't have any money at all.

You knew he did?---I was – well, no, I didn't. I didn't realise that what I saw on the screen yesterday or the day before, he had told me he had no money, he borrowed all the money and he had - - -

10 What about when he got the cheque from the Attorney General's Department?---I thought he borrowed the money and he was just paying it back.

I'm sorry. I must have misunderstood but I thought that you knew that he got \$45,000 out of that - - -?---Yes, I did, yes.

- - - in a cheque?---Yes.

So he had that amount of money?---Yes.

20 Well, why didn't you claim what you claimed was owing to him? He had the money?---I, I – the \$27,000 that he put into our office, or \$26,900-odd that he put into our office, I thought he borrowed the money and paid it back.

So, he still had money left over, didn't he?---Well, he gave \$8,000 to myself and distributed the balance. He kept, well, as it turns out now he kept \$5,000?

30 And you say you never knew about that?---No, no, no, I mean I could have pursued him for that, as I said in one of the conversations.

Yes. Why didn't you pursue him for that?---As I said in one of the conversations with Mr Hart I, I – we should have got the whole \$45,000.

Well, why didn't you?---I didn't pursue him for that. I just put the \$8,000 in and moved on and, I mean, you might say it's a bad way to practice but I tend to - - -

40 Well, I do find it strange frankly so you might as well know what my thinking is - - -?---Yes.

But you claimed that you were legitimately owed this money, he got it and you didn't pursue it?---Yeah. I mean, costs wise in the office, you know, we all regularly write costs off.

So you might but on this occasion the money was there, at least \$5,000 of it?---Yes, yeah.

All right. Well, look, how much longer do you think you'll be, Mr Staehli?

MR STAEHLI: There's a few more questions but I gather from Mr Walsh that he wants to reserve his right to cross-examine Mr Paul. Is that right?

MR WALSH: Yes.

THE COMMISSIONER: I can understand that.

MR WALSH: Commissioner - - -

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THE COMMISSIONER: Any more news about Mr Hart?

MR WALSH: Yes. Mrs Hart came down during the morning tea adjournment. The cardiologist has still not arrived but I sent her back. She's on her way and I asked her to come back at quarter to 1.00, I don't see her here but she may be outside. If I could just leave for a minute - - -

THE COMMISSIONER: Yes, yes, please.

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MR WALSH: - - - just to ask them what the situation is.

THE COMMISSIONER: See if she's there before I adjourn, yes.

MR WALSH: I just want to ascertain some time today whether it's possible he might be able to give evidence next week.

THE COMMISSIONER: If there is a period next week. Yes. Well, it will depend on the doctors, I guess.

30

MR WALSH: Well, that's right.

MR STAEHLI: But, as you know, Commissioner, it's proposed that we'll proceed next week.

MR WALSH: Oh, sure.

THE COMMISSIONER: We're going to proceed anyway next week. Mr Hart's illness may have - divert the Commission from proceeding the way it intended to proceed but on balance we'll just have to keep on going, I think.

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MR WALSH: I appreciate that.

THE COMMISSIONER: She's not there.

MR WALSH: No worries. We'll have the luncheon adjournment - - -

MR STAEHLI: Yes. There are some other issues that I wish to examine Mr Paul about and it would seem that there's at least a prospect that assuming, perhaps wrongly, that Mr Hart gives some evidence about these issues that Mr Paul would be required after that.

THE COMMISSIONER: Yes.

MR STAEHLI: So he has to return is our position on this. As to when that is - - -

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THE COMMISSIONER: Well, what I think I might do is just adjourn this till Tuesday morning.

MR STAEHLI: Yes. It would not necessarily be necessary for Mr Paul to be here at that time.

20

THE COMMISSIONER: I was just wondering about whether he should come back then. If it's the fact that Mr Hart cannot give evidence next week, I think that he needn't come back (not transcribable). If that's the fact he needn't come back but I won't know until I get that information from Mr Walsh. But it does sound to me unlikely that he will be giving evidence next week.

MR WALSH: I think so, Commissioner.

THE COMMISSIONER: I'll just have to organise other dates, that's all.

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MR STAEHLI: Yes. But then the question of the timing of Mr Walsh's cross-examination of Mr Paul is also moot regrettably in those circumstances since – well, I'm not sure, I suppose he'd be able to obtain instructions from Mr Hart even given Mr Hart's lack of fitness, if that's the case, to attend to be examined himself.

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THE COMMISSIONER: Yes. Also there may be, because of this, some difficulty in me finishing this matter while I'm still the Commissioner because that expires on the 13<sup>th</sup> of November. However, I've made inquiries about this and I am told that that does not preclude me from continuing, albeit as an Assistant Commissioner, because the limitation does not apply to that for at least more than five years and that wouldn't be that. So I have spoken to the person who is the new Commissioner and said that subject to his view about the matter, it probably would be appropriate for me to continue this matter on and he agreed with that. So, I'm just warning people, if we don't finish by then, that's what might have to happen. I'll try and finish by then, but as you know, finishing doesn't finish as soon as the, all the evidence finishes. Everyone seems to think that, a lot of people think it does, but that's when the hard work starts. All right. I'm just warning you about that. I mean, who knows. The Governor may take one look at me and say, "You're not getting another two weeks," who knows.

MR BOWEN: Commissioner, can I just clarify with Mr Paul, is he only going to be required to be here to face further questioning or is he required to be here whilst the balance of the inquiry is continuing?

10 THE COMMISSIONER: No. As far as I am concerned, Mr Paul could be here if he's required to be questioned and he can be here – and he doesn't have to be here at any other time provided that doesn't disrupt the proceedings so that when he is required to be asked questions he will be here and you can do that by arrangement with the Commission.

MR BOWEN: Yes, yes, yes.

THE COMMISSIONER: If he elects to stay away when evidence is given, that's fine by me but I don't want to hear a statement later on that something happened that he should have listened to but didn't but it's his decision really and all this is recorded anyway so you'd know what was being said. Yes, Mr - - -

20 MR McILWAINE: Commissioner, I will have some very short questioning of Mr Paul which I can do today or at a later stage, whatever's convenient.

THE COMMISSIONER: You can do it later on, I think.

MR STAEHLI: So in relation to Mr Paul next week, then what would - - -

THE COMMISSIONER: He will not be required unless, I suppose, Mr Hart is going to give some evidence next week.

30 MR STAEHLI: Well, it's possible that we could still deal with Mr Paul, although I'm not suggesting it would be on Tuesday. But if Mr Walsh obtains the relevant instructions that he needs to cross-examine then we could bring Mr Paul back say on Thursday to deal shortly with any continued examination and with his cross-examination whether or not Mr Hart is actually present.

THE COMMISSIONER: Do you live in Wagga, Mr - - -?---Yes, I do, Commissioner.

40 Yes, all right. I'll just leave it like that for the present and he won't be required on Tuesday.

MR STAEHLI: No.

THE COMMISSIONER: Well, unless, of course, you hear that in the next 20 minutes that Mr Hart is going to give evidence.

MR STAEHLI: But even if he is, it's not necessary for the two to be here at the same time.

THE COMMISSIONER: You have no problem about letting Mr Hart continue his evidence and then picking up Mr Paul.

MR STAEHLI: No.

10 THE COMMISSIONER: So you'll tell Mr Bowen when it is and give him reasonable notice as to when Mr Paul is required to be back. Are you happy with that arrangement?

MR BOWEN: That's fine, sir, that's fine.

THE COMMISSIONER: All right.

**THE WITNESS WITHDREW [1.01pm]**

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THE COMMISSIONER: Well, I'll adjourn.

AT 1.01PM THE MATTER WAS ADJOURNED ACCORDINGLY  
UNTIL TUESDAY, 29 SEPTEMBER 2009 [1.01pm]