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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

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THE COMMISSIONER: Yes. The Commission is continuing the public inquiry into the matter the nature and scope which I have already announced. Yes.

MR McILWAINE: Commissioner, can I just pass a message on behalf of Mr Walsh who has had to take a judgement in another place and expected to be here shortly.

THE COMMISSIONER: All right.

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MR McILWAINE: Thank you.

THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: Yes. I propose we commence with Mr Wheaton, please.

THE COMMISSIONER: Mr Wheaton.

20

MR LEWIS: Commissioner, I think you gave me authorisation to represent Mr Wheaton.

THE COMMISSIONER: Yes, you do. And you'll obviously want the declaration.

MR LEWIS: Yes. Thank you.

30

THE COMMISSIONER: Yes. Take a seat, Mr Wheaton. Mr Wheaton, you are legally represented and I'm assuming you have had explained to your obligations and entitlements under the legislation and in particular it's been explained to you that you must answer truthfully all questions asked of you and your failure to do that renders you liable to a significant criminal penalty, including gaol. You understand that? Yes. You can object to answering questions and I'm sure that's been explained to you as to the immunity that you get by that objecting, but that's, let me tell you this, if you are charged with the offence of not telling the truth to this Commission, the evidence that you give here would be used in that prosecution whether or not you've objected. Do you understand that?

40

MR WHEATON: Yes.

THE COMMISSIONER: You have to take an oath to tell the truth. Do you want to take an oath on the bible or do you wish to affirm or how do you wish to do it?

MR WHEATON: On the bible.

THE COMMISSIONER: Give him the bible.

THE COMMISSIONER: Take a seat. Conformant with an application made on your behalf I declare that all questions asked of you, all answers given by you, all requests made of your shall be deemed to be subject to your objection and hence there is no need for you object to any particular question, answer or request. Do you understand that?---Yep.

10 You also understand and I shall repeat that notwithstanding that objection being deemed to be given, if you are charged with the offence of not telling the truth, the questions and answers will be used against you. Do you understand that?---Yes.

THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: Mr Wheaton, what's your full name, please?---Bradley Richard Wheaton.

20 Right.

Would you mind coming forward. Thank you. So that the microphone picks up your voice. Last year were you charged by police with the offence of driving a motor vehicle while there was present in your breath or blood the middle range prescribed concentration of alcohol?---Yes.

And in addition to that and arising out of the same incident were you also charged with a traffic offence, apparently to do with you having proceeded through a red light?---Yes.

30

Did you engage Mr John Hart to appear for you when those matters came before the court?---Yes.

How did you come to engage him in particular?---His name was given to me by two (not transcribable)

THE COMMISSIONER: Would you keep your voice up.---Sorry. His name, his name was given to me by two friends.

40 MR STAEHLI: By two friends did you say?---Yeah. When I got his name from one, I asked others and he was recommended to me.

All right. Could you (not transcribable) forward, it's very hard to hear.

THE COMMISSIONER: Just keep your voice up. That microphone records but it doesn't amplify.---Okay. I will.

MR STAEHLI: Then yesterday there were played some telephone interception, recordings of telephone interceptions in the hearing room while Mr Hart was giving evidence. Were you here then?---Yes, I was.

All right. And in some of those calls that were played did you hear conversations between yourself and Mr Hart?---Yep, I did.

10 Right. In the first of them, which became Exhibit 56, there was a discussion between the two of you. I don't think it's presently necessary to show it to you, but, in which you told him that you lived in Bondi but you had an address in Tamworth. Do you remember hearing that call?---Yes.

Yes. And at some stage do you remember discussing with Mr Hart as a second call, or as discussed in the same call, in fact, sorry, I'll withdraw that. In the second call there was discussed, do you remember the need for the matter to, so far as Mr Hart was concerned by taken away from the Downing Centre to some other court?---Yes.

20 And did you have any views of your own about this procedure that Mr Hart was suggesting, that is the prospect of transferring your matter from the Downing Centre to some other court?---I thought it was possible.

Did you, did he explain to you that in order for a matter to be transferred it might be necessary for there to be some address other than either your Tamworth address or your Sydney address to be given to the court?---No, not, not as you put it. I, I understood the concept of, of needing to be having an affiliation with a place for, for the court hearing to be so I know, my understanding was it work or where you might be staying at the time was an appropriate reason.

30 All right. But later there was a call which was played and became exhibit 58 in which Mr Hart told you that you were, that is he suggested to you, the implication being that he had created the address, he said in this call, exhibit 58, leaving out a word or two, "You're actually living at Oakdale, okay?" And then later, "In case anyone pulls you over, you're living at Oakdale, all right?" Do you remember the call that was played yesterday in which those things were said?---Yeah, I remember that.

40 And do you agree that in that call he was suggesting to you that if anyone relevant to the charge asks you or indeed if the police officer who might stop you asks you, you were to say that you were living at Oakdale?---I remember him saying that.

Yes. And you said in response to it as exhibit 58, page 2, shows, "Yeah, okay, do you want me to find an address or have you already got?" And he said, "I've got one", and then he told you about Stevens Street or Stevens Lane. Do you remember that?---I, I do and I thought that it would be relating to an address where I would be either working that day out there or,

or that there was some reason why I was out at Camden as my work requires that I travel around the State a lot as I've previously said.

But whether or not you might be at Camden on some occasion or other, he was offering you a particular address, wasn't he?---Well, he's the barrister, I thought he knows what, what's required to do that.

10 THE COMMISSIONER: No, I think what's been put to you and you've just, your response is that he suggested that you use the address at Oakdale and he suggested that to your knowledge because he wanted to be able to maintain that view to get the matter transferred to Camden and that you agreed with him, that you'd go along with it. Is that true or false?---It's, I, I didn't see the, the overwhelming significance of him telling me an address. I've not used that address ever, I've never, I didn't pass onto my references to use that address so - - -

20 No, no, but the question you're asked is you knew he was going to do this, you knew you weren't living at that address and you knew that it was being done so that that could be used to transfer the matter to Camden. Is that true or false?---Most of that's true but the, the first - - -

What's not true?---The first three assertions. The machinations of how he's handling my case, to have the case heard at certain places, I, I left to him. I didn't take a great interest in that, so to, to say that I knew exactly why he's telling me I live at Stevens Street to go as far as to use it to have the case transferred, I wouldn't say that's true.

30 MR STAEHLI: Yeah. All right. So are you saying it was unimportant to you?---I, I, I didn't take due care and notice of that.

By due care, do you mean you didn't take the notice you should have taken?---In retrospect.

All right. And he did in that same call at page 3 tell you, although it wasn't apparently acted on, that the references should in effect show Oakdale as well. This is about three quarters of the way down there, "Yep, mate, it's, so all I want, remember all the references are that you're working, residing out at Oakdale, working out there." Do you see that?---I do.

40 And when he said that did you appreciate that he was asking you to put false information in your references?---I, I, I didn't act on that. I, I may not have taken particular notice of, of that. I've, I recall often, you know - - -

THE COMMISSIONER: Well, did you use those – did you say, yes, okay? ---I did.

What did you mean by okay?---Well, I, I never intended on having Oakdale as a, as a residence of mine so I've just said yes to him.

THE COMMISSIONER: No. Nobody ever said Oakdale's going to be a residence of yours. It was a made up residence of yours, an artificial residence. Well, I think I'll just let it – talk about the tapes speaking for themselves, I mean - - -

MR STAEHLI: Yes, there is that.

THE COMMISSIONER: Yes.

10

MR STAEHLI: And then when the matter came before the Camden Local Court and on an earlier occasion at the Downing Centre Local Court, Mr Hart on both those occasions told the court that you lived at either Stevens Lane or Stevens Street at Oakdale. Now, those materials were put in evidence yesterday and became Exhibit 59, that being the Commission's transcript. Were you at the Downing Centre on the 17th of October, 2008 when the matter was transferred to Camden?---No, I was not.

20

All right. But you were at Camden on the 25th of November, obviously, when the matter was finally dealt with?---Yes.

Is that right?---Yes, that's correct.

30

And did you hear Mr Hart say, as he apparently did, to the magistrate there, he now resides at 7 Stevens Street, Oakdale?---That, I, I don't remember that exactly but I, I do recall him saying, I remember him saying Oakdale and, and that was along with a, a statement which contained several fallacies and, and at that time I tapped him on the shoulder. I said, "John, can I speak? I think I could a good point or make, make a, make a worthwhile presentation to the magistrate," and he said, "No. Don't say anything. Just sit there."

All right. What was it you wanted to tell the magistrate?---Well, just to convey to the magistrate the, the, the accurate details of, of the, of the, of the incident and, and to why I was, you know, to give an impression of my good character.

40

All right. You said that there were several other fallacies put by Mr Hart. Is that right?---Yeah. They were relating mainly about the nature of my work, inaccuracies which, which weren't hugely significant to, to the, to the hearing but I nevertheless wanted to have it accurate on the public record.

All right. Well, I'm not sure if there's a hard copy readily available of this document?---Of the transcript? Of the court transcript?

Yes. I just want you to read through this document, part of which is shown on the screen but there's a lot of what Mr Hart said on the 25th of November. Would you read through those two pages which are largely consumed by

what Mr Hart said, being the fourth and fifth pages of those documents and just identify for us, if you would, the things which you say were inaccurate apart from the address?---What I'm earning is incorrect.

Right. What were you earning?---In, well, it shows consultancy fees, it's not 65,000. I don't actually earn a salary.

THE COMMISSIONER: Sorry?---I don't earn a salary. I charge consultancy fees.

10

Well, he didn't say you were. He said you were earning 65,000.

Look, Mr Staehli, what I'm interested in is not whether or not Mr Hart misunderstood instructions he'd been given about matters but the matters that were put forward that both parties, or at least Mr Hart knew were untrue.

20

MR STAEHLI: Well, right, but so, we need to identify them first, there's a lot of them here and hope that - - -?---Perhaps to best encapsulate that there are a number of misunderstandings about what I do that were not exactly correct. On top of that I would've liked to have given my own character reference to, to point out some of the things that I do in the community.

THE COMMISSIONER: Well, are you tell me you wanted to get up and say I don't live at Rockdale or Oakdale?---I would've explained that I live in Tamworth and I travel around for work and my work takes me to Sydney and overseas and - - -

30

And that you did not live at, it was not true that you were living at Oakdale, you say you wanted to say?---I would not have addressed that. I - - -

No, I don't think you would have would you, Mr Wheaton?---No. I would've had, I wouldn't of addressed that point. I wanted to give a positive character reference and - - -

So, what you're telling me is that there were aspects of matters put before the court that you thought didn't fully accommodate your circumstances as your work and the like?---That's correct.

40

But what I'm interested in is those aspects of it that you knew were untrue and you agreed that they should be put before the court because it suited your advantage to have them there, like your address at Rockdale, Oakdale?---Well, Mr Hart had, had told me that, you know, not to say anything. Mr Hard had said, this is, this is what I'm saying for you and I didn't get to make a statement in the end because he had said not to say anything.

All right. Yes, all right.

MR STAEHLI: Well, should I stop there in relation to ..(not transcribable)..

THE COMMISSIONER: I think so. All right.

MR STAEHLI: After the hearing did you discuss with Mr Hart whether or not he'd put things which were incorrect?---I did make the comment to him that there were a number of things that were incorrect.

10 Right.

THE COMMISSIONER: Did that include your address?---I didn't mention that specifically.

No.

MR STAEHLI: How much did you pay Mr Hart for representing you in this matter?---I wasn't a hundred per cent sure, and I paid him cash, and I think it was \$2,000. I'm, yeah, I think it was \$2,000 paid in two
20 instalments. One when I first met him and one after the hearing.

All right. Did he ever give you a written document in which he disclosed his fees and the basis on which he would charge them?---No, he didn't.

Did he ever give you a written document in which he, in which was described the limitations on what a barrister can do when he appears directly for a client, like you, without a solicitor?---No, he did not.

All right. Did you ever get anything in writing from him?---No.
30

Did you ever get a bill from him?---No.

All right. And at the end of the day, perhaps despite the transfer, you were convicted and fined \$1,000. Is that right?---That's right.

And there was a disqualification period which by the time that it was heard, I think had about a month to run, which totalled six months. Is that right?
---Correct.

40 All right. Yes, I have no further questions.

THE COMMISSIONER: Would anyone like to ask questions?

MR LEWIS: Yes, thank you, Commissioner. Now Mr Wheaton, can you just assist with the chronology of how events transpired in you retaining Mr Hart, from the first event that you contacted him?---So, I've contacted Mr Hart by phone. Advised him of the court date. The phone call has been tendered as evidence. At that point, I was going away overseas and I think

we spoke again on the, on the, I think it was the 22nd or 23rd. At that point I've advised him that the court date was 30 July. This then proved to be incorrect. And then in subsequent conversations I'd said to Mr Hart that it's, it's either the 30th or the 29th, we were unsure, I was unsure. And that he'd look after that. Now, there was a misunderstanding between the two of us as to what the date of that hearing was.

10 Okay. Now, I'll just stop you there. I think that the hearing was correctly listed for 30 July?---My understanding was that it was the 30th, but it was actually the 29th.

Okay. So on the 29th, nobody attended the court?---That's correct.

And you subsequently learnt that the matter had proceeded in your absence? ---That's right.

And then you took some steps to have the conviction annulled?---That's correct.

20 And as you understand it, after that Mr Hart attended at the Downing Centre Local Court?---That's correct.

All right. And would that have been on 7 October?---I understand that to be correct, but I didn't know that that was taking place.

And then again on 17 October?---Once again, I understand that to be correct, but I didn't know it was taking place.

30 Prior to those events you'd had two telephone conversations with him, which have been tendered here as exhibits?---Correct.

And I think that, would it be a fair assessment to say that he was the one who initiated the idea that the matter should leave the Downing Centre Local Court?---I, I was aware that, that cases are often moved, but it was John's idea.

It was John's idea - - -?---Correct.

40 - - - that it leave?---Correct.

Before he suggested it, had you had any idea that it would be to your advantage for that to happen?---Only other than avoiding an extremely over zealous magistrate.

Okay.

THE COMMISSIONER: That would've been in your interest wouldn't it? ---That would be in my interest.

MR LEWIS: So it was Mr Hart's idea that the matter be taken to another court. And I think in these conversations that you had on the telephone, that concept was discussed. He asked you where you lived, what your addresses were?---That's correct.

Tamworth was one possibility. Is that right?---That's correct.

And then subsequently he suggested Camden?---That's correct.

10

Now, would it be fair to say that you're not a lawyer?---That's a hundred per cent correct.

You haven't had a lot of experience with the criminal justice system?
---That's correct.

Are you aware of what is necessary for a matter to be transferred from one local court to another?---No, I'm not.

20

You were relying on the advice that was being given to you by your legal adviser?---That's right.

And did you think at that time that there was anything untoward about what he was telling you?---No.

All right. Now moving on in time, you spoke to him again on 20 October, 2008?---Correct.

30

We've heard that conversation here. That's the conversation in which he told you that you were now living at Oakdale?---Correct.

Now, prior to that hadn't you discussed with him your work history?---I had and I'd explained the nature of my work and how it takes me around the country New South Wales and around the south coast and the outskirts of Sydney and south west of Sydney, the Camden area being one of those areas.

All right. So you had worked in that area?---Correct.

40

You'd told Mr Hart that?---Yes, I had.

Can you just tell this Commission what the nature of your work was in that area?---Going to, as I've said previously, going to that area to look at poultry and pork producers and, and talk to them about business associated with the company, of which I'm a director.

That was to sell them the by-product of your soy bean process?---That's correct.

As feed for their stock?---That's correct.

You told Mr Hart about that?---Yep, in detail.

And was that in some area close to the Camden Court?---Yes.

All right. It had nothing to do with 5 Stevens Lane?---No.

10 No. All right. So on the 20th you were told that you had an address. Did you understand from that conversation that Mr Hart had already given that address to a court?---No.

You accepted what he said?---Yes, I did.

And then you went to court on 25 November.---Yes.

But he gave a similar address again to the court?---That's correct.

20 Did it seem significant to you that he was using that address?---No, not particularly.

Was it in your mind that you had some sufficient connection with that area through the work that you'd done in any event?---That's correct.

All right. Is there anything else you want to say about this?

30 THE COMMISSIONER: Please, every time that question's asked, there's usually a long speech. Well, perhaps he does, if he want to ..(not transcribable).. the magistrate, if he wants to, anything else you want to add?---No. I just want to add that I have never engaged in corrupt conduct here or overseas.

Yes. All right.

MR LEWIS: Yes. Thank you.

40 THE COMMISSIONER: Does anyone else want to ask any questions? All right. You may step down. You're excused from further appearing.

THE WITNESS WITHDREW

[10.40am]

THE COMMISSIONER: Yes, Mr Staehli. I mean, the culpability for this great, this – well, string of witnesses is where it has been freely acknowledged, obviously, namely Mr Hart. The question as to the

culpability of people who were caught up in it have not by and large been demonstrated to be hardened criminals who know the system. They're people who have been caught up in an offence and, you know, I'm not sure – I mean, I'll need a bit of persuading, I have to say, to say that some person is culpable because the day, you know, the morning of the hearing he knows the barrister's going to tell some lies to the court and he doesn't leap up, sack the barrister. I mean, you've got to take a bit of common sense with this as to how people should react to this and I think the Wheaton case is another good example. He probably - - -

10

MR STAEHLI: This one.

THE COMMISSIONER: Yes. Well, you've got to live there to get the thing and – anyway, I just foreshadow that if you could address it in submissions.

MR STAEHLI: Yes, thanks. It's hardly as serious as - - -

20

THE COMMISSIONER: No. But it's not, I have to say, not nearly as serious as where the culpability has been acknowledged because the more that happens the more people in this community believe that the whole criminal justice system is probably perverted.

MR STAEHLI: Yes.

THE COMMISSIONER: That's the real problem, by people who are really a part of the system and should know better.

30

MR STAEHLI: Yes. Well, the other regrettable issue that's raised by most of the evidence, albeit that some of the witnesses have questioned it more than others, is that where there's no question raised or no dissent from what Mr Hart proposed, for example in Mr Wheaton's telephone call when the false address is suggested, as you pointed out to him, he said, yeah, okay. He didn't say, I don't want you to use a false address for me.

THE COMMISSIONER: No, no, no.

40

MR STAEHLI: And if that's to be answered by the barrister knows best it's a highly - - -

THE COMMISSIONER: It's the culpability I'm concerned with, the extent of the culpability that's what I – well, I perhaps shouldn't say it, but I think Mr Wheaton knew that Hart was giving him a wrong address and that he was accepting that because it would advance him. But the moral culpability about that is the matter that concerns me more than anything else.

MR STAEHLI: Well, on the face of it it would seem to be far less that that of Mr Hart who is well aware of his responsibilities - - -

THE COMMISSIONER: Yes.

MR STAEHLI: - - - save for his alcoholism.

THE COMMISSIONER: Yes. All right.

MR STAEHLI: Just to complete Mr Wheaton's segment, might I tender the
- I do tender the court papers in his case.

10

THE COMMISSIONER: Yes. That'll be Exhibit 78.

**#EXHIBIT 78 - LOCAL COURT DOCUMENTS RELATING TO
BRADLEY WHEATON**

THE COMMISSIONER: I don't know whether I said it, did I, that Mr
Wheaton's excused from - - -

20

MR STAEHLI: Yes, you did, Commissioner.

THE COMMISSIONER: Yes. I'll mark that Exhibit 78.

MR STAEHLI: So it's Mr Chris Donohue I'd call next.

THE COMMISSIONER: Is Mr Chris Donohue here?

MR TAYLOR: Commissioner, my name is Taylor. I'm a solicitor. I seek
your authorisation to appear on behalf of Mr Donohue.

30

THE COMMISSIONER: Yes, that's granted. And do you wish a
declaration to be made?

MR TAYLOR: Yes, we'll be seeking declaration 638 and he'll take an oath
on the bible.

THE COMMISSIONER: All right. Thank you. Mr Taylor, I take it you
have explained what this inquiry is all about and the allegations - - -

40

MR TAYLOR: Yes. Mr Donohue (not transcribable) went through.

THE COMMISSIONER: Yes, all right.

Well, Mr Taylor, you are legally represented and I'm assuming therefore
that you have had explained to you your entitlements and obligations. I
wish to emphasise to you the importance that the legislation attaches to

people telling the truth and failure to tell the truth can result in a serious criminal offence. You understand that?

MR DONOHUE: Yes, I do.

THE COMMISSIONER: You have had explained to you that you may object and in any event I am proposing to make a declaration that deems you to have objected to everything that takes place in this hearing room involving you. Do you understand – as a witness. Do you understand that?

10

MR DONOHUE: Yes, I do.

THE COMMISSIONER: And I will make that declaration. I'm told you want to take an oath on the bible.

MR DONOHUE: Yes.

THE COMMISSIONER: Would you give him the bible.

THE COMMISSIONER: Yes. Now, I will declare, pursuant to section 38, that all questions asked of you, answers given by you and requests made of you shall be deemed to be subject to your objection. So you don't have to object to any particular question, request or answer and that will inure, that declaration, for as long as you're giving evidence at this public inquiry. But just please remember again that objection or not objection, you have
10 objected, if what you're charged with is not telling the truth all the questions and answers will be used against you?---Yes.

Yes, all right. Yes, Mr Staehli.

MR STAEHLI: What is your full name, please?---Christopher George Donohue.

Last year, that is in 2008, was your son, Todd, charged with a number of offences by police arising apparently out of a fight which occurred at
20 Ulladulla in June of that year?---That's correct, yes.

And did you become aware of those charges some time after they'd been laid against your son?---Yes, I did, yes.

And did you take some steps in order to obtain some legal representation for him?---I did, yes.

And who did you contact in that regard?---I contacted John Hart.

30 And why did you contact him?---I had used him once before many years ago in another matter and, not a legal matter, a matter that had to do with rent and John wrote a letter for me and I was pretty happy with the outcome.

Right. And were you aware that he acted as a lawyer in the sorts of matter with which your son had been charged?---Yes, I did.

And did you make contact with Mr Hart?---Yes, I did.

40 Did you, when you first made contact with him, did you do it by phone or in person?---No, I phoned him.

And do you remember how long it was after your son had been charged that you contacted Mr Hart?---No, I don't remember, actually remember how long it was.

All right. At some stage did Mr Hart convey to you the proposition that if you paid money to him in addition to fees that he might be able to do something in relation to your son's charges?---I think he said something

like, I didn't remember this the first time I was here but I do remember it now because my, because I was looking for cheque butts to find out how we'd paid Mr Hart and she said, "Remember John asked for \$6,000 at the start and how angry you were?" And I said, and then I remembered that conversation but I didn't remember that the first time I was here, my wife actually prompted me because we were looking for the, the cheque butts with, with John Hart's name in them and to try and find the actual cheque butts. At the moment, I'm, I've just moved out and I've got my stuff in storage so I had to sort of search through storage and never actually found anything. My wife just came out with a statement and I said, "Well, yeah, I do remember that", that he had actually said, wanted \$6,000. I think I said I can't afford that or something like that.

All right. Well, can I assist you by playing to you a recording of a telephone interception which occurred some months after your son had been, the charges against your son had first been laid.

THE COMMISSIONER: When was that?

20 MR STAEHLI: The call was on 10 November 2008 at 4.28pm.

THE COMMISSIONER: This hasn't been played before yet has it?

MR STAEHLI: It hasn't, no.

THE COMMISSIONER: Well, I mark it 79, yes, 79.

30 **#EXHIBIT 79 - TELEPHONE INTERCEPT G00230_00_00 ON
10/11/2008 AT 16:28:49 (DONOHUE TO HART)**

MR STAEHLI: And can you read the transcript there on the screen in front of you, Mr Donohue?---Yes, I can.

TELEPHONE INTERCEPT PLAYED [10.49am]

40 MR STAEHLI: Did you recognise your voice on that call, Mr Donohue?---Yes, I recognised everything. I didn't know I'd actually said all that but I do, I do recognise it now.

All right. So what, you're saying before you'd heard that call, you'd forgotten the detail of it?---Yes, I had.

Is that right. Just a matter of interest, when you referred to saying, when you referred to having spent about 25,000 coming in here, what was that

about?---I had to start up a new business and I'd spent, spent \$25,000 of my money to set it up.

10 Right. And you heard there Mr Hart say firstly, "I think I can fix it." And then he said, "My mate's just been appointed the prosecutor there so we'll, I think we can do something but he might need some show money on Thursday." And you asked him "What, what sort of", it would seem you meant to say money if you didn't, "are we looking at", and he said, "Only five or six, fuck all." You said, "Five or 6,000", and he said, "Yeah." Did you hear that bit as it was played earlier?---Yes, yes.

The conversation went on to explain as if it wasn't obvious that Mr Hart was telling you that the money or some of it would go to some associate of us who'd be able to do something about the charge. Was that your understanding of the call?---No, my understanding of that was that he had a mate who was a prosecutor there and I had to pay Mr Hart five or \$6,000 to get the, to get the case sorted out.

20 Right. And by sorted out what do you mean?---Well, obviously I wanted to know conditions for my son but I wasn't paying bribery money to, to do that, I was paying Mr Hart to represent me and that's what the five or 6,000 was for. I thought that he, he was asking for five or 6,000, I had no idea what he was talking about and he says, "Show money", I, I read that bit just then and I, I really don't, don't know what it meant.

You didn't ask him what it meant, did you?---No, I didn't.

30 And he repeated it, he said, this is at the bottom of the third page, "I want one for doing it and I'll need five show money and what we organise my mate, bloke, then make representations to have the matter withdrawn." There, you understood him to mean didn't you that he was going to seek \$1,000 for himself and \$5,000 was going to go to his mate?---Yes, I think that's what I understood, yes.

So the \$5,000 going to his mate, you understood didn't you was to be \$5,000 that was to be paid to some third party, his mate?---Yes, well, that's, that's what he was saying. He's said things like this to me before, see I've
- - -

40 Had he?---Yeah. I just think he was trying to get more money out of me. I mean, I, I felt like I was being overcharged for what he was, what he was doing there anyway, the \$6,000 for one representation.

Yes, well, perhaps you're right there but are you accepting that you understood him to mean that he was telling you that money was to go to some third party to assist in having the prosecution withdrawn?---Yes, I do.

And you didn't challenge him on that issue, you agreed to try and find the money then, didn't you?---Yes, but I could never find that, I never ever did find the money. I never had the money to start with.

Did you agree with him having the belief which you've just explained that is did you agree to pay it believing that he would pay some money to a third party to assist in the prosecution?---I think I just said yes because I wanted representation for my son. I, could you just repeat that question, I'm sorry.

10 Yes. I think you've accepted that in that call you agreed to pay him the money which he sought from you, agreed to pay him?---Yes.

That you did pay him?---I never paid him the money but I agreed to pay him.

Yes. And when you agreed you did so in the circumstances where you believed that he was telling you that some of that money, 5,000 of it, would go to some third party to cause the prosecution to go away in effect?--- Yeah, but I never ever believed that money, that was the case.

20 So why didn't you say to him, "You're joking, aren't you", or "You can't do that, you just want the money for yourself, don't you mate"?---No, well, I needed representation, it had got to the last, I mean this is November I was pretty desperate for someone to come and do the case and John had served me well before.

Yes?---I, I don't have a great understanding of the law, I mean I've, as I said, I've only ever had John represent me once before and I just, I knew of John through friends in town and they recommended him to me. I knew he 30 was a bit of scally wag, that's about all I knew, a bit of a drinker.

Right. And you're not suggesting though are you that your ignorance of the law prevented you from knowing that what he was suggesting in this call was wrong?---No, I'm not, no, no, but I never, never ever thought that that would happen and it never happened.

Then how much money did you pay him initially?---I paid him \$1,000 the first representation and I've paid him \$1,000 at a later date.

40 And is that the total of it?---Yes.

Did you become aware that the matter, that is the charges, were moved from Milton to Wagga?---Yes, I did.

How did you find that out?---I don't really remember, I may have got it from Todd or I may have got it from John, I'm not sure.

Did you know why it was that the matter was being moved to Wagga?---No, I didn't. I thought these things get moved because, well, I, I thought it was probably because John was, had another case in Wagga on that day and he could hear Todd's case on that day as well.

And no doubt you became aware that the matter wasn't actually heard in Wagga but was transferred back to Sydney?---Yes, I did.

To Sutherland Local Court?---Yes.

10

How did you find out about that?---I'm not really sure on that either. I think it might have been from Todd or from John. John may have rang and said it was going to Sutherland.

Did you know - - -?---I don't remember the date, I don't remember the date it was supposed to be heard in Wagga but I just – I know it was heard in February in Sutherland.

20

Yes. Did you know that in order to have the matter moved around, that is from Milton to Wagga in the first place, that a fictitious address for your son was used by Mr Hart?---I don't think I knew. I don't recall whether I knew that after the fact or, or I knew it on the day. I'm not sure. I'm, I don't know if I've heard that from you guys or I've actually heard it from John Hart. I'm not sure.

All right. Mr Hart, were you – did you go to Milton Local Court on the date that the matter was transferred from Milton to Wagga?---No, I never.

30

On the 11th of December, 2008?---No, I never.

Do you know if your son was there on that day?---No, I don't think he was.

I gather you didn't go to Wagga on the date it came before the Wagga Court on the 12th of January, 2009?---I didn't, no.

40

And, Commissioner, I must just note or tell you that in asking questions of Mr Hart I suggested that he'd appeared at the Wagga Local Court on the 12th of January 2009 whereas in fact Mr Paul appeared for Mr Todd Donohue and had the matter transferred back to Sydney. It was a mistake, I apologise.

Then did you go to Sutherland Local Court when the matter came before the court there and it was finalised?---No. I was away at the time.

Did you hear afterwards that Mr Hart had said some untrue things to the court about your son's circumstances?---I didn't hear anything afterwards only, only what Todd had told me that he'd got a 12-month good behaviour

bond and he rang me. My wife's father was ill in Victoria and we were down there at the time.

You mentioned that you'd paid Mr Hart money. How much was the total that you paid him?---\$2,000.

10 Right. And did you ever have a discussion with him after that telephone call which has been played to you in which he repeated the proposition that a sum of money, a greater sum of money than what you were paying him might be used to make the matter not proceed?---I think he said once to me, when I gave him \$1,000 I think he said something like, "I need 1,000," and so I gave him \$1,000 and he said, "This is not all for me," or something like that.

Right?---But he was going to the club that night so, he was on the way to the club that very minute so I thought, well, if it's not all for you what are you -- why do you want it before you're going to the club for. He was going with a few fishermen friends of mine so they were definitely on for a big drink.

20 Was that at Ulladulla?---Yes.

Right. And when you said before that you regarded Mr Hart as being a bit of a scallywag apart from being a drinker, what did you mean by that?--- He's just a knock around sort of a bloke that I've seen in the club with, with good friends of mine that are big drinkers and punters and those, those sort of guys that are bits of scallywags around town and they're, they're all good friends of John's and, and I've -- I know I've been caught up with these guys a couple of times and if you get into a bit of a drink with them it's a, it ends up being a big night so.

30 When you searched for your cheque butts in the way you've described, is it the case that you didn't find them, is that you told us before?---No, I can't.. I can't even find the filing drawer it's in. The filing drawer is in storage. We've got tenants in our house at the moment waiting for them to move out and we've had to put our stuff into storage before we move back into our house.

40 And in looking for cheque butts are you saying that the money which you paid Mr Hart was obtained by you from a bank having cashed a cheque? ---Yes, yes. I gave him -- my wife will never get out cash, she always writes -- she wrote out a cash cheque and she would have written John Hart's name in the stump of the cheque-book for sure. She's very, very diligent on that side of things.

Did you ever get anything in writing from Mr Hart which described the basis on which he was charging fees?---Never.

Did you ever get any other document in which he disclosed to you the limitations on a barrister who appears directly for clients without a solicitor?
---Never, no.

Did you get anything in writing from him ever?---No.

Did you describe to Mr Hart on – well, I withdraw that. Did you ever see him in person to talk about this matter?---Yes, probably.

10 When you say probably, do you mean you might have done but (not transcribable)?---While he was, not a lot, I never went specifically to his office or to meet him. It was only when he was – had come into town to represent Todd that I spoke about the case with him. That's the only other time. And he was in town to speak about the case, to represent Todd, that would have been probably the only time other than phone conversations.

Other than the money which you paid Mr Hart, did you ever give him any other form of benefit for his role in appearing for your son?---He stayed at the, stayed one night in the cabin at the park that I was in.

20 A caravan park?---Yes. He stayed in a cabin.

Right. And when you say one night, was that on an occasion when he was due to appear for your son?---Representing Todd, yeah. Well, he had to appear the next day so he stayed that night.

All right?---He came in that day, stayed that night, I think, and then left the next day.

30 All right. And what was the value of his accommodation for that night?
---About \$100.

All right. And other than that, have you provided Mr Hart with any other benefit other than the cash that you mentioned?---No, never.

I have no further questions.

40 MR WALSH: Just briefly, Mr Donohue, you said that in effect you didn't believe when Mr Hart referred to the sum of \$5,000 that he was going to in effect pay that to someone?---No. I thought it was going to be for John.

You thought it was going to him. Is that right?---Yes, I did.

Prior to that discussion, had you over some time been with him, and presumably others, when he had been drinking large amounts of alcohol?
---Yes. I've, I've observed him drinking alcohol, large amounts of alcohol, yes.

When you say large amounts of alcohol, over what period of time were you present when he was, he and others were consuming alcohol? Was it a matter of hours or - - -?---Yeah, it would have been at the bowling club one night, probably four or five hours. I left. I left and they, they stayed so - - -

They kept going?---Yeah.

10 Over the period that you were there and for part of the, I assume, the four or five hours, can you estimate how many drinks he had, drinks he - - -?---No, I would be able to, not accurately, no.

Was he drinking schooners of beer?---Yes, he was.

From your contact with him, would you regard him as being someone who, for instance, had a real problem with alcohol?---Oh, I couldn't say that. I've only seen him a couple of times and - - -

20 When you say a couple of times, in the context of alcohol?---In that context, yeah.

Well affected by alcohol?---Yes, yes, a couple of times, yes.

Mr Donohue, over the years you've probably heard the phrase that people who are big noters trying to make themselves out to be something they're not. Have you heard that phrase?--- Yes, I have.

It's a common Australian phrase?---Yes.

30 What was it, what was the feature if I could put, identify it that way, that led you to the view that he was trying to get money for himself, was it the way he spoke to you, was it - - -?---Oh, there's a, there's a couple of things. I know a lot of people around town that know John fairly well and know he's a bit of a gambler and likes a punt.

So you knew, first of all, that he was a punter?---Yes.

40 And he liked to drink?---The first time I ever met John was the day after, after Melbourne Cup day and he wasn't well and hadn't had a good day on the punt so - - -

Getting back to that phrase about big noter, did you regard him as a big noter, someone who would build himself up?---Yes, I think so, I think so. I don't know how, how you can explain it - - -

Thank you, Mr Donohue.

THE COMMISSIONER: Wouldn't this, you have the, as I understand it, you had the conversation, you thought he was asking \$6,000 for himself

even though he was expressing that as wanting 1,000 for himself and 5,000 for a third party?---Yes.

Well, you never paid him that money?---No, I didn't.

10 So you must have had another discussion about that did you?---It actually never, the 6,000 never actually ever came up again. He, he asked me if, I said to my wife, I said, "I'm not paying him \$6,000." I said, "I don't think he's worth \$6,000." So when he came back and first represented Todd, he came around and asked for \$1,000 and that's what we gave him.

Yeah. And then he, what, did he come around and ask for another \$1,000? ---No, he didn't come around, he rang his brother in law and he came around and picked up a cheque for \$1,000.

It was a cheque you gave him?---Yes.

For the second thousand?---Both times was a cheque, yes, cash cheque.

20 I thought you'd cashed the cheque and gave it to him?---No, no, no.

You didn't, you gave him the cheque?---No, I gave him, I passed him the cheques, yeah.

Okay, yeah all right. Thank you, you may step down, Mr Donohue.

MR TAYLOR: Commissioner, can I just - - -

30 THE COMMISSIONER: Yes, sorry, Mr Taylor.

MR TAYLOR: Mr Donohue, the other matter you've made reference to that Mr Hart acted for you, that was a civil matter?---Civil matter, yes.

A rent dispute with your landlord?---Yes.

Was that some years earlier?---Pardon?

40 Was that some years earlier?---Yes. I tried to work it out a couple of days ago when it was, I think it was back in about 2004.

And in relation to the matter involving your son, is it the first time you've been involved directly in relation to a criminal matter?---Oh, yes, yes.

And I think you've made a claim that as far as this approach that Mr Hart has made reference to the show money - - -?---Yes.

- - - did you ever believe that you were paying money to be paid to a third party?---Never, no.

And when, you've agreed I think, it was a question from Mr Walsh, that you've applied a term big, a big noter to Mr Hart?---Yes.

When did you form that opinion?---Probably felt like he was being over, I was being, over represented himself a little bit.

Yeah, but when did you form that opinion of Mr Hart?---Oh, probably socially more than - - -

10 I'll ask it again, when did you first come to the conclusion that Mr Hart was a big noter?---Oh, probably when he asked me for \$6,000 instead of asking for probably a normal fee.

You hadn't come to that conclusion prior to that?---Oh, I probably had, I probably thought he was a bit of a scally way and a bit of a, a bit on himself a bit sometimes.

20 You'd known him socially for some time prior to representing your son, Todd?---Yes, yeah, not a lot, I'd just been in the same vicinity as he had and had a, had a drink with John before.

You knew of him?---Yes.

You weren't a close friend or anything of that nature?---Yeah.

Yes, thank you, Commissioner.

30 THE COMMISSIONER: Yes, you may step down and you're excused from further attendance, Mr Donohue.

THE WITNESS EXCUSED

[11.14am]

THE COMMISSIONER: Yes, Mr Staehli.

40 MR STAEHLI: Mr Todd Donohue.

THE COMMISSIONER: Yes, Mr Donohue, Todd Donohue. You're representing him, Mr McIlwaine?

McILWAIN: Yes.

THE COMMISSIONER: And does he seek a declaration?

McILWAIN: Seeks a declaration.

THE COMMISSIONER: Yes, I'll do that. Come forward, Mr Donohue. Take a seat. Mr Donohue, you're represented and I'm assuming therefore that you know your obligations under this legislation, but I'll just remind you again, it's a serious offence not to truthfully answer all questions asked of you and it could result in a gaol term. You understand that?

MR DONOHUE: Yes.

10 THE COMMISSIONER: I'm sure you've had explained to you that even
though you may object, but if you object you've still got to answer the
questions and in any event I won't go through that so you'll get the
immunity that the section offers you which you've been told about because I
will deem you to have objected to every question that's asked. Do you
understand that?

MR DONOHUE: Yes.

20 THE COMMISSIONER: Do you want to take an oath, you have to take an
oath to tell the truth, do you want to do it on the bible or - - -

MR DONOHUE: Yeah, the bible.

THE COMMISSIONER: Doing the bible.

THE COMMISSIONER: Yes, thank you. Pursuant to section 38 of the legislation I declare that all answers given by this witness, all questions asked of him and all requests made of him shall be deemed to be subject to his objection and hence there is no need for him to object to any particular question, answer or request. This lasts so long as you're giving evidence to this public inquiry but again I remind you that the fact that you have
10 objected to all these questions in advance protects you but it would not protect you if you were charged with the offence of not telling the truth. Understand that?---Yes.

Yes, Mr Staehli.

MR STAEHLI: What's your full name please?---Todd Donohue.

You've heard your father give evidence here this morning?---Yes.

20 And so far as it relates to things which happened to you, do you accept that what your father said was correct?---Yes.

You were charged by police last year with some offences arising out of a fight at Ulladulla. Is that right?---Yes.

And Mr Hart ended up appearing for you?---Yes.

30 And eventually did you yourself in addition to what your father may have paid, pay Mr Hart money for a period for you?---Not in person I didn't pay Mr Hart anything but I've sent some money down from Canberra because I was living in Canberra at that time to my parents which was all I've had which wasn't much at all.

THE COMMISSIONER: You mean you gave the money to your parents?--
-Yes.

40 MR STAEHLI: Do you remember how much you gave to your parents?---I couldn't tell you exactly, around like 500, 1,000, I'm not sure. I wasn't that, I wasn't making much money.

And when you say you sent it to your, to your parents how did you do that?
---Well, I'd come down on the weekends so I'd just bring it down and - - -

And do what with it, give it to one of your parents?---Yeah, just give it to my mum.

Give it to your mother, all right. Commissioner, I'd like to refer to some previous evidence of Mr Donohue's, if I may.

THE COMMISSIONER: Well, this evidence was given at a, well, what page and when?

MR STAEHLI: On 18 August 2009 and page 179.

THE COMMISSIONER: Just that page?---At the moment, yes.

10 Yes. Well, I'll lift the suppression order on the compulsory examination of Mr Todd Donohue on 18 August this year, page 179. Yes, all right.

MR STAEHLI: Mr Donohue, when you were here a month or so ago in August you were asked questions about how much you'd paid Mr Hart?---Yeah.

Can I just read to you the questions and answers that were given on that occasion?---Yeah, yep.

20 Question, "Now, who paid for your legal fees?", answer, "I paid some or what I could and, and my father paid some."?---Yeah.

Question, "How much did you pay?", answer, "Probably I ended up paying about \$3,000."?---I don't know, I had no idea how much I paid, like I was giving my parents money for everything, like I was buying a car.

THE COMMISSIONER: But at the present time you're asked do you remember giving that evidence?---Yes, I do.

30 MR STAEHLI: And I'll just read on a little. "How much did your father pay?", answer, "A lot more, probably about six or seven, I don't know."?---Yeah, I have no idea.

You had no idea?---I, I have no idea how much they paid.

All right. But you did have an idea about how much you'd paid, didn't you?---Not exactly because I had a lot of bills I had to pay to my parents so I was just giving them money for everything as you do.

40 Why didn't you say that when you were asked on the last occasion how much you had paid?---I'm not sure.

THE COMMISSIONER: Why did you say it?---Because that's about how much I gave my parents, and that's - - -

Did you believe on the last occasion that you had paid \$3,000 to your parents?---Yeah, but - yeah, I paid about \$3,000 to my parents but not - I wasn't sure what it was for.

So what have you done since the last occasion and now to make – that you only - - -?---I talked to my dad about it.

- - - gave him 500 and 1,000?---I talked to my dad about and he said no, you didn't pay that much for that and that's all.

You also mentioned \$7,000 that your father, I think, six or seven, was it, that your father - - -?---Yes.

10 Why did you say that?---I had no idea what was going on. Like, I was just sort of living in Canberra so I'd only – every now and then dad would come down and say I've got to pay him 6,000 or I've got to pay him 1,000, I've got to pay him all this money.

Did you father tell you he was paying \$6,000?---He told me that he was paying a lot of money but I don't think he said specifically \$6,000, no.

What did he say?---I can't recall. I just remember him saying I've got to pay all this money for you. You better - - -

20

MR STAEHLI: Well, Commissioner, that's a matter for me in one sense but so far as you are concerned is there a point in pursuing that matter further in the circumstance of this?

THE COMMISSIONER: No, I don't think so unless you feel that you need to for reasons that - - -

MR STAEHLI: No.

30 THE COMMISSIONER: - - - have escaped me.

MR STAEHLI: Yes, all right.

In those answers you gave on the last occasion, are you saying, in effect, that you said the first thing that came into your head then, are you?---Yes, pretty much, yes.

Are you being more careful today?---Yes, definitely.

40 You appreciate the significance of giving truthful answers?---Yes.

THE COMMISSIONER: But you were told then, weren't you, on the last occasion - - -?---Yes.

- - - that you should give truthful answers and the consequence of not giving truthful answers?---Yeah, I was. I was saying the truth I just was a bit unsure as I saying it, I was saying I didn't really know how much I was paying and that's what I said that day as well.

MR STAEHLI: Yeah, because what followed on the same page, a little further down, was a question which summarised what you were saying and gave you the chance to say something different because you were asked this question, "So you're saying that you were charged a total of some \$9,000 in legal fees in relation to this one court matter," and you said, "Yes, around about that I think"---Yeah. Well, I think I wasn't exactly sure how much I paid or how much my dad paid so I had no idea.

10 There's a bit of a difference, I think you would accept, between \$9,000 and the two or \$3,000 which you're telling us today?---Yes. I believe there is too but, as I said, I had no idea and I was just saying what I actually thought and as I thought I'd have to answer the questions so I was doing what I thought I had to do.

Did you know or were you there at Milton Local Court when your matters were transferred from Milton to Wagga?---No, I wasn't there.

20 And were you at Wagga in January 2009 when your matter was transferred from Wagga to Sydney?---No, I wasn't there.

You were there, though, when your matter was finally resolved at Sutherland Local Court. Is that right?---Yeah.

And on that day Mr – do you remember Mr Hart saying various things on your behalf?---Yeah.

Commissioner, this is not yet in evidence.

30 THE COMMISSIONER: Exhibit 80, is it?

MR STAEHLI: No. I don't think - -

THE COMMISSIONER: You mean the record of the court? I don't think that's been tendered yet, has it?

40 MR STAEHLI: No, that's right. It hasn't. Might the records or the transcript of the three court appearances 11 December 2008, 12 January 2009 and 12 February 2009 be admitted, please. Well, there's another one which has Milton on it. I'm sorry, Commissioner, the copy that's been put forward only has part of the Milton transcript but it has the complete transcript for Wagga on the 12th of January and Sutherland on the 12th of February.

THE COMMISSIONER: That'll be Exhibit 80.

**#EXHIBIT 80 - TRANSCRIPT AND LOCAL COURT DOCUMENTS
RELATING TO TODD DONOHUE**

MR STAEHLI: Mr Donohue, would you read, please, from halfway down page 3 under the heading Sutherland Local Court, to the end of the document to yourself, please.

10 THE COMMISSIONER: I don't think he needs to read what the magistrate said?---Yeah.

MR STAEHLI: No.

Firstly, I just want to ask you something about where you were working. In December last year where were you working?---I was working in Canberra.

20 On the 11th of December, when the matter was still in Milton, Mr Hart appeared before the court, you weren't there I think you've said, and told the magistrate that you'd been transferred to Wagga to work on a major work that would go for three months. Was that true in any way?---No.

He told the court that you lived at Flat 6, 20 Travers Street, Wagga as at that date, the 11th of December. Was that true?---No.

Where were you living in December?---I was living in Canberra in various locations around Queanbeyan and Canberra, just staying in motels and caravan parks.

30 Working as a bricklayer?---Yes.
And then in January, a month or so later another lawyer told Wagga Local Court that you were or had been working in Wagga for a company called Fugen, F-U-G-E-N Holdings. Did you, have you ever worked in Wagga? ---No.

Have you ever worked for a company called Fugen Holdings?---No.

40 And then in the portion I asked you to read, apparently what was said to the court on 12 February, 2009 at Sutherland, at the bottom of page 3, you see there that Mr Hart started telling the magistrate things which were apparently about you?---Yes.

And he said amongst other things, you came to Sydney and got a job as a brickies labourer with a company called Fugen Industries. Was that true? ---No.

He said you had worked at Wagga. Was that true?---No.

He said you were now at Caringbah, this is in February, on a big site. Was that true?---No. I wasn't in Caringbah.

Where were you?---In Canberra. The company I was working for was based in Caringbah, but we were working in Canberra.

Right. He said, on the top of the next page, that you were enrolled in TAFE at GyMEA to become a brickie. Was that true?---No.

10 Had you ever been to TAFE?---Yes, for, not for bricklaying, but. For, I was a, I did my first year in boiler making in about 2008, I think or 2007.

All right.---And completed that.

And a bit further down that paragraph at the top of page 4, he repeated that you were working at a, on a big job at Wagga. Was that true?---No.

20 He said you were staying at the caravan park, it's possibly true that at the time you were living in a caravan park somewhere. Is that right?---Yes.

And that you were clearing \$1,000 a week. Was that true?---Yes.

When Mr Hart was saying those things to the court, did you hear what he was saying?---Yes.

Did you appreciate that he was telling the court some things which were untrue?---Yes.

30 Did you have any understanding as to why he was doing that?---No. I just thought that's what happened or that's what they did.

All right. What, said whatever they liked with a view to get a lighter penalty?---Well, I had no idea. This was my first appearance in court and I had no idea what was going on, really.

40 All right. Had you talked to Mr Hart about these things on that day?---He sat me down in an interview room and just told me what he was going to say. And I just thought, that's what I thought happened and that's what I thought he, that's what I thought was going to happen.

All right. Did he tell you that he was going to tell the court these things which were, as it turned out, untrue?---Yes.

All right. And did you ask him why he was going to do that?---Yes, I did.

And what did he say?---He said I'll just sort it out.

I'm sorry?

THE COMMISSIONER: He said what?---To sort it out. He said he'll sort it out.

That he would sort what out?---The case. Have it sorted out.

I don't understand that.

10 MR STAEHLI: Well, what did you think that he meant by that?---I had no idea, to tell you the truth.

All right. Was it something like, leave it to me?---Yes, pretty much.

Do you know what ultimately you were prosecuted for on this day?---I got an affray charge, I mean a twelve month good behaviour bond. And that's all I thought I had.

20 All right. Well, that was the result. Do you know which of the charges were ultimately proceeded with against you?---An affray charge.

Just the affray charge?---Yes.

All right. Previously there'd been some assault charges as well. Do you remember?---Yes.

Do you know what happened to them?---No, I don't.

All right. Did you believe that they'd somehow been resolved as well?
---Yes.

30 All right. After the hearing did you talk to Mr Hart about what he'd done?
---No.

In the sense of did you question him at all about why it was that he'd told the court things which were untrue?---No.

40 And as at that stage, had you paid him or paid your parents all the money which you were intending to pay for Mr Hart's fees?---Yes. Well, when we went outside he said, "How are we going to work out payments?" And I said, "My dad will work it out."

All right.--- And then I left.

You didn't give him any money on that occasion?---I didn't give him any money on that occasion.

Did you give him money personally on any other occasion?---No.

Did he ever give you a document in which he explained the way in which his fees were calculated or would be - - -?---No.

Did he ever give you any documents at all?---No.

Yes, I don't have any other questions.

THE COMMISSIONER: Does anyone want, did you want to, yes, Mr McIlwaine.

10

MR MCILWAINE: Mr Donohue, you've been made aware that at the Wagga Local Court, a solicitor by the name of Mr Anthony Paul appeared on your behalf?---Yes.

You were made aware of that recently. Correct?---Yes.

Have you ever met that person or spoken to him?---No, never.

20

In regard to your contact with Mr Hart, you met him at the court at Sutherland?---Yes.

On the day that you were sentenced?---Yes.

Is that the first time you'd met him?---Yes.

All right. Had you spoken to him prior to that date?---Not that I can recall. I remember trying to call him and getting his message bank and then that's about it, I'm pretty sure.

30

All right. So to the best of your recollection, whilst you've attempted to contact him by telephone, you hadn't spoken to him?---Yes.

And so the first time, to the best of your recollection, you've spoken with him is when he appeared for you at Sutherland Court?---Yes.

And you arrive at Sutherland Court and he wasn't there. Is that correct? ---Yeah. He might've been there, I couldn't find him.

40

All right. And, but eventually you tracked him down and he spoke to you for a short time in an interview room. Correct?---Yes.

And did he then take you and direct you to sit in a hearing, in a courtroom? ---No. I just had to sit out the front of the courtroom.

I see. Did he go somewhere else?---Yeah.

And then some later time in the afternoon did he come back?---Yeah.

And then you were taken into the courtroom and you were dealt with. Is that correct?---Yeah.

No further questions.

THE COMMISSIONER: Yes, Mr Donohue, you may step down. You're excused from attendance.

10 <THE WITNESS EXCUSED [11.38]

THE COMMISSIONER: Yes, I'll take a short adjournment.

MR STAEHLI: Could I just tender for document if that's not inconvenient?

THE COMMISSIONER: Yes.

20 MR STAEHLI: Just for the ..(not transcribable)..there's a record that court papers in respect of Mr Donohue's matter which - - -

THE COMMISSIONER: I'll mark that Exhibit 80, I think.

MR STAEHLI: Yes. Included is the last three pages. I think I might just remove those, which are a transcript prepared by the Commission but are part of the court record. Might I just tender those?

30 THE COMMISSIONER: Yes. That document ..(not transcribable).will now Exhibit 80.

#EXHIBIT 80 – TRANSCRIPT AND LOCAL COURT DOCUMENTS RELATING TO TODD DONOHUE

MR STAEHLI: Thank you.

40 THE COMMISSIONER: The other one will be handed back. All right. Thank you. Adjourned.

SHORT ADJOURNMENT [11.38]

THE COMMISSIONER: Yes.

MR STAEHLI: Yes, Commissioner, it's proposed that Mr Hart could be recalled.

THE COMMISSIONER: Yes, Mr Hart, could you come back please. Mr Hart you're still under oath. Do you understand?

THE WITNESS: Yes, sir.

<JOHN HART, on former oath

[12.10pm]

THE COMMISSIONER: Yes.

MR STAEHLI: Yes, I'll ask sotto voce for you to confirm Commissioner that the declaration still holds good.

10 THE COMMISSIONER: Yes, I think when I gave it I said it (not transcribable) so long as he's giving evidence at this public inquiry.

MR STAEHLI: Yes. Mr Hart, I want to ask you some questions about certain things that have happened since you gave evidence - - - ?---Yes, sir.

- - - yesterday. In particular, in reference to some calls which have been played but I'll start with the calls which were played earlier in the proceedings when Mr Kelly was giving his evidence I think on the first day. The first of them became Exhibit 3, I mentioned this during the course of your evidence yesterday but it wasn't played to you and I think,
20 Commissioner, it should be.

THE COMMISSIONER: All right.

MR STAEHLI: As I say, it became Exhibit 3. It's a call of 18 April, 2008 at 17:42 which you, listen to it please, Mr Hart.

TELEPHONE INTERCEPT PLAYED

[12.14pm]

30

MR STAEHLI: Mr Hart, did you recognise your voice on that call?---Yes, I did.

And do you accept that it's a call between you and Jason Kelly?---Yes, I do.

And in it, on the first page of the transcript you said, in the matter of Detective Hall's investigation was raised you said to Mr Kelly, "My bloke said he wouldn't do anything about that." You see that there?---Yes, I do.

40 And I did ask you some questions, as I said, in passing about this yesterday, it's at transcript 390 and 391 but, I didn't ask you precisely about what you meant by the reference to, "My bloke." What did you mean?---It's an expression I use regularly, I'd spoken to a prosecutor who I originally thought was Mr Pincott but it must have been Mr Corr, I accept that and the actual words I recall somebody telling me was, and I think it must have been Mr Corr, "We're not going to, wouldn't touch with a ten foot barge pole," words to that effect in that they weren't going to run it.

So I gather you're saying that you did have such a conversation with Mr Corr, are you?---Well, it was with somebody and I accept it was Mr Corr but originally I thought it was Mr Pincott. Certainly I spoke to somebody at the Crown at Wagga.

When?---Around about the time of the trial. I can't recall exactly when it was.

10 And in what circumstances?---I believe I rang them.

You rang them?---I believe I rang the prosecutors. I could have spoken to them. I can't recall but I certainly had a conversation in relation to this other matter that was coming up with one of the prosecutors.

And by this other matter you mean this other investigation of Mr Kelly and involving Mr Trinder?---Yeah. Well, the name Nankivell sticks with me. It was with Mr Trinder as well.

20 All right. What – are you saying that you specifically rang the DPP office, did you?---That's my recollection, the best recollection I have.

With the object of speaking to who?---It would have been to a Crown.

To ask them about this other matter?---To ask them – whether it was a telephone call or whether it was in person I can't recall but I, I did speak to somebody about an outstanding matter which I'd been made aware of and was it going to go anywhere, what are you going to do with it and they weren't going to proceed or someone said something along those lines. I
30 really can't - - -

THE COMMISSIONER: “He just sent me a text,” that's what Kelly told you he got from – but I thought you were telling me yesterday – sorry. This remark was made in the context of Kelly telling you that this matter hadn't gone away or he believed it hadn't gone away because Tina Hall was asking more questions?---I, I assume - - -

I thought you were telling me yesterday that when you made those remarks to people about paying money to get results this was just a way of collecting
40 more money for yourself?---Well, I can only – I can't particularly recall the conversation to be honest, Commissioner, but any time I've said that it's about trying to get money from the - - -

THE COMMISSIONER: Yes.

MR STAEHLI: Well, do you see how in this call you've linked my bloke, that is in the sense of the timing of what you said is the proposition that it'll be straight back which you told us yesterday meant was a reference to the

money which Mr Kelly had paid you in anticipation of the matter going away?---Well, if I'd said that it was nothing to do with a Crown Prosecutor at all. I accept I've said that. I can't recall the conversation but I accept I've said that.

10 All right. Well, there's two separate things here. One is whether or not you intended Mr Kelly to believe that you had not only spoken to a Crown Prosecutor or someone in the prosecution process but that you had – that money had been provided to that person which was refundable in certain circumstances. That's what you're intending to convey here, isn't it?---I don't know what I was intending to say, sir, to be honest, it's - - -

Well, look, even with the benefit of hindsight, Mr Hart you - - -?---It may well be.

You accept, don't you, that that's, that's what the apparent intent of that conversation was?---It appears that way and I have to accept that.

20 All right. And you were doing that consistently with the proposition, as you partly conceded yesterday, that Mr Kelly had paid you money on the basis that you'd told him that the matter would go away?---It was very, very easy for me, sir, to say that's true but I cannot remember it but it is a proper inference that one can draw from reading it and I accept that but I honestly cannot recall saying that to Jason Kelly.

30 And repeatedly, in this conversation, as you would have heard then, you referred to the refundable nature of that money. Correct?---I do, sir, and it's a proper inference that one can draw. I note the time, sir, I would have been under the influence there. I'm not using it again, please, as an excuse but that would be a reason I would say it. I cannot remember that conversation. I just can't. I accept that that's a proper inference, sir, that one can draw.

Well, can I just ask you more about this telephone call that you said you made. You see, prior to that call, that is the call you say you made to the Prosecutors around the time of the trial, what, if anything, did you know about any view which the DPP office in any of its forms had concerning that further investigation?---I don't know.

40 Let me put it another way. That's a bit convoluted, I suppose. At the time that you made this telephone call you say you made did you know that the DPP had considered that further investigation in any way?---I have a recollection, sir, that someone told me that along the line. I can't remember who or when but around about that time. It was always my understanding that there was another one in the wings that a complaint had been and it was – the name Nankivell sticks in my mind.

Well - - -?---I thought it was Nankivich but Nankivell.

Had you ever met Mr Nankivell?---Never.

Mr Kelly was in a position to tell you that there was another investigation or another complaint at least. Do you say he did?---He certainly told me at some stage.

10 All right. But are you saying that someone else, that is some person who worked for the government, told you something about it?---They may have, sir. It was all – it was a really high pressure situation in that it was, like a lot of things in the media every day, on the news, in the newspapers, everyone was talking about it. Every person I spoke to in town was talking about it because it was a - it was relatively unusual, a group's trial that is, a group sex situation with three co-workers all at the local council from memory, council, all of middle to higher echelon and everybody I spoke to had an opinion on it, whether it was right, whether it was wrong or whatever and I knew that there was an outstanding – from memory, there might have been a couple of outstanding matters or there was a mention of another couple of instances that Mr Kelly was involved in. Certainly, this one with Nankivell and it was, it was just in general conversation, sir. Everyone was talking
20 about it. The police, the media, the DPP people. It wasn't a secret I didn't think. You see, I had it in my mind that – and I don't know why, someone must have told me, that the DPP had the brief on it or it was – it had been considered or was being considered, something along those lines.

You see, the evidence suggests, if not actually reveals, that – as the other calls that have been played in this hearing show, that Detective Hall was still interviewing people and, for example, that she was yet to interview Mr Trinder at the time of this call and so forth so - - -?---I wasn't aware of that, sir.

30 It appears that there had never been any sending of any brief to the DPP at all?---That may be the case, sir. That was my understanding.

Are you saying that the person to whom you spoke, be it Mr Corr or Mr Pincott, if it was either, was able to express a view that was an official one? Is that how you took it?---No, I wouldn't have thought it was an official one.

40 You thought it was just a bit of information that you could use to manipulate Mr Kelly. Is that what you thought?---I don't think I thought it that way, sir. I may have. I, I, I can honestly say, sitting here today, I can't remember all these contexts. I just can't but I accept I said those things, sir, and it's a proper inference that one can draw but I can't remember them and I know he paid me money into my TAB account.

Then there's a further call, it became Exhibit 7, Commissioner, which is behind Tab 6.15, a call on the 27th of April at 17.34.

THE COMMISSIONER: That hasn't been tendered yet I take it?

MR STAEHLI: Yes, it has. Yes, it's Exhibit

THE COMMISSIONER: What exhibit number?

MR STAEHLI: Exhibit 7.

Would you listen to this in the same way please?---Yes, sir.

10

Just an extract of the call will be played.

TELEPHONE INTERCEPT PLAYED

[12.30pm]

MR STAEHLI: Did you recognise your voice on that call, Mr Hart?---Yes, sir.

20 And that you're talking to Mr Kelly?---Yes, sir.

The reference to AP is to Mr Paul, is that right?---Yes, sir.

And the reference to Booz, B-O-O-Z, is to him as well, is that right?---Yes, sir.

That being a nickname of his?---Yes, it is.

30 And in this call you did nominate Mr Corr as being your bloke. Is that right?---Yes, sir.

And you said it's, and this is in reference it would seem to the further investigation of Mr Kelly that, "It's got to go through him. He said he won't pursue it." Is that, was that true, that is - - -?---I, I had no idea.

40 You had some idea?---You had the DPP that, when I, that was played on a day when I reckon I realised I must have spoken to Mr Corr either on the phone or at the courthouse when the trial was on, that's the only time I spoke to him.

Either on the phone or at the courthouse?---When the trial was on. I never spoke to Mr Corr again after that.

At all?---In relation to this matter, I don't believe I did.

All right. But you told Mr Kelly that it, being it would seem the file on the investigation, had to go through Mr Corr. Are you saying - - -?---I've said that.

You've said that?---Said that.

Are you saying you'd, as you sit here now, you don't know whether or not that was something that Mr Corr told you or that you might, that you just made it up, saying these things to Mr Kelly?---Oh, I would have just said that to Mr Kelly just to shut him up, I suppose.

10 THE COMMISSIONER: You mean made it up?---Yeah, I would have thought so, sir. I, I never spoke to Mr Corr again after, about this matter, after the trial. It might have been a day after the finish of the trial but certainly roundabout that time and I only spoke to him from memory twice. As I say, initially I thought it was Mr Pincott but when that was played on day one, it must have been Mr Corr.

20 MR STAEHLI: And your reference to, "We've organised it", which follows just in the passage after that reference to Mr Corr, later on it's talked about as insurance as a reference to the payment made by you to Mr Kelly which he says was as a result of the proposition that you'd made that the matter would be, could be made to go away. That's what you're talking about here, isn't it?---I, I don't, I said to Mr Kelly on a number of occasions that your insurance policies, the, the letter or the card, whatever it was that this lady sent to you, and I believe that's what I meant there. That, that's the insurance police that he had and I said to him when I, when he first spoke to me about it and he showed me whatever it was, it appears to be a card indicating his sexual prowess, "That's your insurance police, mate. Don't", and I, and I think he said he'd give it to them, I'm sure he'd said he'd already given that to Detective Hall. He said, "That's your insurance policy, mate. Don't lose it." I think I suggested he put it in the safe at the solicitors
30 at some stage.

What about the reference to, "We've organised it", which follows?---That, that would mean just something I've said to Mr Kelly, sir. I, I can't remember this conversation. Can you tell me what time of the day it was, sir, please?

40 Well, it's 5.30pm at a time which you'd be presumably in the pub under the web?---I would have been, sir, and I apologise for that, I'm very sorry. I can't remember that conversation but I, I would have said that as just something to say to him. It didn't mean anything at all about any money going to Mr Corr or Mr Pincott or any one at the DPP. That never happened.

No, well, accepting that for the moment, what you were intending to convey to Mr Kelly by this was that money had gone to Mr Corr even though it had not. Isn't that right?---Well, it may have, sir. That's a proper inference but I can't remember it, I just can't remember, sir. I know I did speak to him but I just can't remember it.

