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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 25 JULY, 2018

AT 2.00PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

<TOUFIC THOMAS SAADELDINE ZREIKA, on former oath
[2.02pm]

MR BUCHANAN: If we could recall Mr Zreika, please.

THE COMMISSIONER: Yes.

MR BUCHANAN: Mr Zreika, you know what Talal El Badar looks like
10 from the evidence that you've given us earlier today.---Yes, yeah.

Have you seen him in your office in relation to the Santley Crescent
matter?---No.

And have you seen Alae Osman in your office in relation to the Santley
Crescent matter?---No.

And how come you have seen Talal El Badar to enable you to give a
description of him?---We travel in the same sort of circles. It's a small
20 community and we bump into each other.

Has it ever been in relation to legal business for him or for Mr Hawatt?
---Yes, a long time ago though. For, for, for Talal El Badar. I think he
approached us to buy a, buy a property but I don't think that went through.

On his behalf?---On his own behalf, yeah.

Could you turn, please, to – sorry, could we supply the witness, please, with
Exhibit 194 and if we could turn to page 3 of this document. Sir, this is a
30 schedule of text messages extracted from Michael Hawatt's mobile phone,
and it shows the party with whom Mr Hawatt's phone is communicating - -
-?---Ah hmm. Yeah.

- - - in the third column from the left, the date and time in the next column
as you go to the right, and then towards the end the content of any text
message. You understand?---Sure, yeah.

So if you could have a look, please, at page 3, item 16 in the far left-hand
column is a text message to you from Mr Hawatt's phone on 21 December,
40 2015 at 4.24pm, and it read, "Hi, Tom. Do you have the balance amount to
settle on the Gold Coast unit? Can you send me your trust account detail to
send this balance to settle? Michael Hawatt."---Yeah.

Do you see that?---Yes, yes.

Now, 21 December, you will recall, is the date recorded in your trust
account statement for Mr Hawatt for the receipt of \$250,000.---Yeah.

You recall that?---Yes, I do.

And your response, item 17 on page 3 of Exhibit 194 was, “No.” And then you said at 4.25pm, “Already given to boys.” Then you sent another text message at 4.25pm, “They apparently did banking today.”---Yeah.

10 Mr Hawatt then replied to you two minutes later, “I will follow up with Gold Coast lawyer. I need your account for me to send balance.” And you then responded at 4.27, “The funds were put into my account by boys.”
---Mmm.

Item 22, you repeated, “My account.” Item 23, Mr Hawatt said, “Yes.” Item 24, 4.27pm, you said, “Is,” and then you provided a BSB and an account number and the name of Westpac Bank.---Yep.

And item 25 at 4.28pm, you said, “Sterling Legal Trust Account.” Item 26 at 4.30pm, Mr Hawatt said, “Thanks.”---Ah hmm.

20 Can I just ask you about those text message. Were they concerning the funds that were shown as having been put into your account on 21 December, at least those funds, if not also the \$50,000 funds that were received into the account on 18 November, 2015?---I believe they were for the latter, latter portion, the 250,00, yeah.

Did you have an understanding at the time that you were communicating with Mr Hawatt by text message on 21 December, what the sale price was of the unit he was purchasing in Queensland?---Nothing. I didn't know anything about that.

30 You can see that – I'm sorry. Have you got access to volume 8, page 204 which is a copy of the statement of account? If you could look at that, you can see that on 22 December, 2015 it records that you, or someone caused to be paid to Ramsden Lawyers funds required for Queensland purchase, \$300,000?---Yeah.

Again however we just need to understand that although that transaction occurred on 22 December, 2015, you made an entry on 25 December, 2015. Is that right?---Yes.

40 You made that entry on 25 December?---The physical, yeah, the physical
- - -

Is that right?--- - - - typing, yeah.

Thank you. So when did you find out that the sale price for the Queensland purchase by Mr Hawatt was \$300,000?---I didn't. All I was instructed was to transfer an amount by a solicitor up in Queensland called Ramsdens.

Excuse me a moment.---Ramsden Lawyers. Yep. This is it. An email on – sorry.

Can I ask you to go to page 144 of volume 8. This is a Queensland contract for sale of residential land and residential units and houses. Do you see that?---Yes, yes.

10 If you go to page 145, you can see it's dated 3 December, 2015, that the purchaser is Michael Hawatt and Martha Robson, that it's in respect of a property known as Azzura Greens, Hope Island?---Yes.

And if you go down it is a freehold sale and that the purchase price is \$300,000?---Yes.

Can you go to page 448, please. Is that your signature that appears in the middle of that page?---Yes.

20 You witnessed Michael Hawatt's signature, did you, which is to the right of your signature?---No. I witnessed both of them.

But you did witness Michael Hawatt's signature?---Yes.

You saw him write that?---Yes.

And you saw Martha Robson write her signature as well?---Yes.

30 You didn't see what the nature of the document was that was being signed? ---No. I, I simply, I was simply called on to, to witness his, his signature and that's basically when I told him, "Look, I, I can't do this job. I'm not registered in Queensland."

So, you did understand that there was a contract for sale to which Michael Hawatt was party as part purchaser?---Yes.

And that it was for a Queensland property?---Yes.

And you understood that from early December onwards at least?---Yep, yep.

40 Correct? Excuse me a moment. Thank you. Now, can we just go back to those text messages in Exhibit 194 that I took you to. All of them on 21 December, 2015, which is the date in which the \$250,000 was received in to your trust account for Michael Hawatt?---Yes.

When you said, this is item 18 at the bottom of page 3, "Already given to boys," what did you mean?---The details of the account.

Well, could you expand upon that please? Do you mean you gave details on an account to boys? You're looking at me as if you're thunderstruck.---No. I'm, I'm - - -

What's the problem?---No. I, I gave them details. So, whether it was me or the office, the, the other side would have known what our trust account details were if they were banking a payment towards the trust account.

10 THE COMMISSIONER: Sorry, the other side?---So, the purchaser, sorry.

MR BUCHANAN: So on - - -?---So, if we're directing someone to pay our, pay money in to the trust, we'd provide them with, with details.

THE COMMISSIONER: And when you refer to the purchaser, that's the purchaser of 31 Santley Crescent?---Yep. Maybe it's gone to, as a text message to, to, to Talal.

20 MR BUCHANAN: Well, can I just point out that what we're looking at is a record of communications between you and Mr Hawatt, not you and Mr El Badar. So, you were asked, this is item 16 at 4.24pm on 21 December, 2015, "Do you have the balance amount to settle on the Gold Coast unit?" and he says he wants the trust account details to send this balance to settle. So, he's telling you on 21 December, at 4.24 that he wants to use your trust account balance to settle on his purchase of a Gold Coast unit. You knew that at the time?---Yeah, because that was money supposedly on, on account of the purchase, yeah. So, when money's released on, on account of a purchase - - -

30 Well, no, no, no. If you could just – I do understand that you're trying to assist us but if you could just listen to my questions and if you can answer them. When was it before 4.24pm on 21 December, 2015 that you first understood that moneys in your trust account were going to be used to settle on Mr Hawatt's purchase of a Gold Coast unit?---I believe, and I can't, I can't confirm it from my pre-bill, I'm not charging enough on this, that it came out of a meeting that I, I had with Michael and the lady when she came in to sign the withdrawal. So it'd be the same day as the withdrawal of caveat.

40 Now, I'm asking this question advisedly. You're not just making this up as you go in the witness box are you?---No.

You do have a recollection, do you, of this subject arising when Michael and the lady came in to sign a document in relation to the taking a caveat off the title to 31 Santley Crescent?---Yeah. I recall that Martha and Michael were in my Bankstown office to discuss the withdrawal of caveat. Whether he raised it at that point or a time after that I just can't recall.

I thought you said it was at that time. What is your evidence? Are you saying that the intention to use funds in your trust account to settle on a purchase of a Gold Coast unit in which Mr Hawatt would be a purchaser first came to your knowledge when Mr Hawatt and Ms Robson came to your office to sign documents in relation to the lifting of a caveat on Santley Crescent or are you saying it was some other time?---I can't recall. The money was put into the trust account for the purposes of completing on the first deal so in relation to Alae, the Alae purchase. It had nothing to do with Queensland. Queensland came in after.

10

So if I can show you a document, please. If you could look at volume 8, page 127.---127. Yeah.

Is this a document that ever came to your attention, a deed of agreement between Michael Hawatt and Martha Robson in relation to the lifting of a caveat?---Yes. He showed me a copy of it. I took a copy of it and then left it on my file. That's it.

20 If you'll just excuse me a moment.---And he basically said oh, I've got this all done. Here's a copy for you. Because I prodded him about why, why there was a caveat on, on the title.

And if I could take you, please, to volume 8, page 143.---143. Yeah.

That's a withdrawal of caveat form?---That's it.

Apparently signed by Martha Robson?---Yes, that's - - -

30 Witnessed by you?---Yes.

Dated 27 November, 2015?---Yes.

Was that signed in your office?---Yes. In Bankstown.

And was Mr Hawatt there at the time?---Yes.

40 This is a different date I'll just point out to you from the date of the agreement between Ms Robson and Mr Hawatt.---Okay. I stand corrected. Sorry.

No, no, no, I'm not trying to get you to change your evidence, I'm just drawing to your attention that it's a different date.---Okay. Thank you.

That date is 9 November, 2015, that's at page, it starts at page 127, but the date is on page 129.---Ah hmm.

So a couple of weeks apart.---Yeah.

Did they both come on both occasions or was there only one occasion?
---I didn't sign them up on the, on the first agreement.

Rightio.---Yeah. I only signed her up in his presence in the Bankstown office on, on the date of this signature, which I suspect is 27 November, '15.

Well, and you're looking at page 143 of volume 8, are you?---Yes, yes.

10 Thank you. Now, so on that occasion are you saying to us that there was some conversation about funds in your trust account or that were going to go into your trust account or that were already in your trust account would be used for the purchase by Mr Hawatt or Mr Hawatt and Ms Robson of a Queensland unit?---Yeah. All, at, at, whether it was at this point or not I cannot confirm, okay.

Right. Okay.---But there was a conversation about a purchase in Queensland and it was at that point I said, "I cannot, I'm sorry, I can't act on this," and that was it.

20

Well, that's likely to have - - -?---Um, and he said, "Well" - - -

I'm sorry?--- - - - "You know, let's use the money that's paid to us on the sale, on, on the Queensland property." I said, "Yeah."

Sorry, you say that Mr Hawatt said, "Let's use the money"?---Yeah. I mean he knew that money was coming towards the sale of the Santley property and he was going to use that, those funds to purchase the Queensland property.

30

Excuse me a moment. And so you knew that long before the money was transferred from the trust account to the Queensland lawyers?---Yeah.

And you knew long before the transfer occurred that the money would be transferred?---Yeah, long is what, two weeks.

Right.---Is two weeks long, is it?

Okay. I take your point.---Yeah.

40

You're saying about two weeks before?---Roughly, I mean, if you work back from the dates, yeah, they're roughly - - -

Which date are you talking about?---The 27th say for example, to the date of the actual message, which was 21 December, so it's really - - -

THE COMMISSIONER: Three to four weeks.---Three weeks, three.

MR BUCHANAN: Can I just be clear about this though. I thought you were in some doubt as to whether you had been told that on the occasion of Ms Robson signing the withdrawal of the caveat and you thought it might have been instead when you had witnessed the signatures of Ms Robson and Mr Hawatt on the contract for sale of the Queensland unit?---It was on the same day as this.

THE COMMISSIONER: I'm sorry, what are you pointing at?---I'm sorry, the, the, the withdrawal of caveat.

10

MR BUCHANAN: Excuse me a moment. You could be right. I'm just checking. It doesn't appear so. I ask you to have a look at page 143, that's the date of the withdrawal of the caveat, that's 27 November, 2015. Correct?---Ah hmm.

You must have been with Ms Robson when she did that because you witnessed her signature?---Yes, of course, yeah.

You'd accept that?---Yes.

20

Then if you go to the Queensland contract, that's the next document - - -? ---Ah hmm.

- - - and the date on that, page 145 of volume 8, is 3 December, 2015. Correct? And again on page 148 you witnessed their signatures. So it's a different occasion.---Yeah, but no.

You say it's the same occasion, do you?---I only met Martha once in my office, and it had to - - -

30

How can you explain then the fact that you witnessed her signature in two different legal documents bearing two different dates?---No, that's the exchange date. You can, you can sign a contract pre-exchange.

So the date on which it is signed, this document is signed is not apparent. Is that right?---No, that's right.

And - - -?---I'm purely down as a witness on this one and it was done, and it could have been done - because this, this is dated by, by an agent.

40

How do you know that?---It's not very clear. Sorry, I, I, I thought I, I met her only once.

Well, you might be right, Mr Zreika, we're just trying to work out what was actually the case, that's all. So, we're trying to work out - I withdraw that. ---Yeah, I mean the contracts, we, we can sign in readiness for an exchange contracts and they just sit there.

And you say that the date of 3 December of 2015, which is at the top of the second page of the contract, which is in volume 8 at page 145, is not necessarily the date of the signing of the contract?---No, it's not the same. You can, you can have a - - -

If you could just explain to us, what would you understand that date to be in that case?---That's the date of the two contracts becoming binding on both parties, which is the date of the exchange of those papers.

10 Thank you. Right. And so it is entirely possible then that your memory is correct and that it was only one occasion in which you saw Ms Robson but that you witnessed her signature on two different documents?---Yes.

On that one occasion?---Yes.

Is that right?---That's right, yes, yes.

Thank you. Now, can we go back please to the SMS messages in Exhibit 20 195, page 3, and looking at item 16 to 18, the bottom of that page, you said, "Already given to boys," meaning, don't you, that you had given to people described as boys either – you had given to the people you described as boys as your trust account detail.---Yep.

Is that right?---Yes.

Now, who did you mean by, "Boys," in that text message?---My understanding is Gunay gave them the, the trust, trust details on a, on a, on a slip. We've got a printed colour, a colour printed trust detail slip and I, I understand from her that she had given them the, the document on the day 30 they came in.

And you got that understanding from your conveyancer?---Yeah.

And when did you get that understanding from your conveyancer? At the time you sent your text message at 4.25 on 21 December, 2015 or prior to that time?---No, no. Prior to that time when they came in with the, with the \$50,000.

40 With the \$50,000?---Yeah. When they first came in with the signed front page and, and the, and the \$50,000.

When you spoke to your conveyancer, she said to you what about having supplied the account details to - - -?---My recollection is, the guys came in, sorry, guys came in, boys came in, whatever you call them, and that's the reference, "The boys," is you know, whether it was Talal or Alae or whoever was, was with him and then we, we gave them the, the, the trust details slip. So, this information has already been relayed to, to them, "Why

are you asking me for this again?" That's the, that's the point of that response on, on, on text.

And can I ask you, what would have been the reason for your conveyancer to have given that slip with your trust account details on it to those men? ---My understanding was, the contract price was 550 and the deposit that was paid was 50,000. So, there was a shortfall of 5000 for the initial deposit.

10 I'm sorry, you understood the contract price to be what?---550. Isn't it 550?

When you say, "550"- - -?---Yeah, \$550,000.

Not \$500,000?---Was it 550?

You see you wrote, don't you remember, in your - - -?---Oh, yes.

- - - 14 November, 2015 instructions on that email - - -?---Yeah. I take that back. Sorry.

20

Yes, you wrote half a million?---It's half a million, yeah.

So why was there a, why would it have been desirable or necessary for a trust account details slip to have been provided to these people by your conveyancer on the occasion of them bringing in the contract signed and the cheque?---There was more money coming in.

30

Well, you just told us a moment ago it was going to be \$5,000 and you've decided it wasn't going to be 5,000.---Yeah, it wasn't, yeah. I stood to be corrected.

What's the more money that you're now talking about?---There was more money coming in to assist the - - -

When did you first know that?---I think it was at the end of November.

And how did you find that out?---No, no. Sorry, no, no. No, it couldn't have been end of November.

40 Let's just take a step back.---Mmm.

I do need that information from you but just take a step back in the hope that this helps. Did you think when your conveyancer told you, you know, they brought in the contract, they brought in the cheque and I gave them a trust account details slip, did you think to yourself why did you do that?---No. It's probably best that you speak to her. I don't know.

But you're the person who had the conversation with her.---Yeah.

So your understanding of what happened is what we're trying to - - -?
---They could have asked her.

- - - ascertain at the moment.---No, no, they could have asked her, we're going to bring more money. I don't know so - - -

THE COMMISSIONER: You're talking about when at least Mr Osman arrived at your office with that - - -?---Yes.

10

- - - contract with his signature on the front and you said a cheque for \$50,000.---Yeah.

So - - -?---That was the initial, yeah.

And that's what you're talking about isn't it?---Yeah, yeah, yeah.

And at that stage it was anticipated it was just going to be a normal conveyance wasn't it?---Yeah, yeah.

20

So why - - -?---But then shortly after it changed to an option framework where there was more money coming in and that's when we were told that there was 300 coming.

Yes, but that wasn't - - -?---Sorry, 250 to make up the difference, yeah.

But you're looking at a discussion you claim – sorry, I withdraw that. Your evidence that Mr Osman came and handed to your conveyer that contract with his signature on it and a cheque for 50,000, right?---Yeah.

30

And your evidence is that the conveyer then said to you I handed him our trust account details?---On, on that last point I think I'm guessing, okay. Like - - -

All right. Okay.---Yeah, because I don't know if it was after that point or, but my understanding was that they'd already received the details for it.

Of the trust account?---Yeah. That's the bottom line.

40

MR BUCHANAN: And as at the time you said to Mr Hawatt on 21 December, 2015 at 4.25pm that that had already been given to the boys, what was your understanding as to when it had been given to the boys? ---Before this point.

Before what?---Before the date of these messages.

Yes, that stands to reason.---Yeah. I don't know.

But are you able to be - - -?---I can't - - -

- - - any more precise than that?---No, I can't pinpoint it.

Why did you think it had already been given to the boys?---Because I understood that there was more money coming in.

10 So as at 21 December, 2015 you understood that more money was coming in?---Yeah. I, yeah, because the, the, as I said, the deal was changing so it changed from the initial contract for the sale of land to the option arrangement.

Had it changed to that by 21 December, 2015?---Yes, I believe so.

What is the source of your belief that it had changed from a straight sale to an option agreement by 21 December, 2015?---My computer system registered the fact that on 22 December we started, Gunay started writing this document.

20 And what are you looking at, just so I understand?---The, the - - -

You're looking at Exhibit 204, yes. And what are you looking at on Exhibit 204 to give you that idea?---The put and call option. 22 December.

I can't see December there at all.

30 THE COMMISSIONER: So before a put and call option document was created - - -?---Yeah, we had instructions to, to prepare it. I mean there's always a lead-up to, to these documents.

MR BUCHANAN: And so you had instructions, did you, from Michael Hawatt by 21 December, given the conversation you were having about the trust account balance being used to settle on the Gold Coast unit?---Yes.

That it wasn't to be a straight-out sale, it was to be an option agreement between Mr Hawatt and Mr Osman?---Yes.

40 That option agreement – I withdraw that. And are you sure that the entry for the beginning I think you said of the work done to create a put and call option on 22 December, 2015, was in respect of an option agreement between Hawatt and Osman rather than Hawatt and Niphitsa Pty Limited? ---That's right, yeah. That's the first one we created and it's, there's only, there's only one record of, of an option.

And so - - -?---Which, which we amended.

And so at that stage was it the case that you had instructions from Michael Hawatt that the transaction with Alae Osman was to be an option agreement

for which Alae Osman would pay \$300,000 to Michael Hawatt by way of option fee?---Yes.

Now, can you just be careful. Is that the case, you had those instructions from Michael Hawatt that it was to be an option agreement for which there was to be paid to him a fee by Alae Osman of \$300,000?---There's a document, so I'm not sure where you have it - - -

10 Which one are you looking for, sir?---That's the, the first draft, put and call option. It says, "Michael Hawatt, Alae Osman."

Are you looking at Exhibit 105? I'm actually not sure the witness has Exhibit 105.

THE COMMISSIONER: I think he's grabbed a document from his file. ---Yeah, it's from my - - -

20 MR BUCHANAN: There's also a copy anyway at volume 8, page 120. ---This document was created on the 22nd.

And what enables you to say that?---The screenshot.

Exhibit 204, yes. Anything else?---Can I have a look at your 120? Is it, is it in this bundle?

Exhibit 120?---Page 120, volume 8.

Certainly.---Yes.

30 Volume 8, it should be in your volume 8 that's in front of you there.---Yeah. Yeah. Yes, that's it, it's this document, it's, it's missing, missing the draft contract. So pages 120 to 126 is the option.

Or the draft option?---Yes. And it clearly says that and you can see my hand, hand amendments.

In the front?---?---The 300, the - - -

40 THE COMMISSIONER: Sorry, where are your hand amendments?---Yeah, so volume 8, 120, page 120.

MR BUCHANAN: And there's a scoring through the front page.---That's right.

That's by you, is it?---Yep.

Right.---And then you can see my handwriting again on page 4 of 7, which is your 123.

Yes. You've crossed out or put a stroke through paragraph F of clause 2?
---As well as 2 (b), "Being."

I see, thank you. The word "Being".---Yep. And then as well - - -

In paragraph B of clause 2?---Yep.

And as well some other part?---Yep. 3 (e).

10

I'm sorry?---3 (e), page 124.

Thank you. You've crossed out the question marks.---Yeah. So, that's the,
as I refer to as the virgin option. That was created on the 22nd.

Now, do you have a record of the instructions that you were given to
prepare that document?---22nd. Yes. 21st, it could only be this one because,
"Telephone from Michael Hawatt, 21 December."

20 You're looking at Exhibit 203?---Yep.

Entry against the date, 21 December, 2015, "Telephone from Michael
Hawatt"?---Yes.

But there's no record of the instructions?---No, there's no record. It was, it
was purely on, on the telephone. A lot of this, as I said before, a lot of the
conveyancing's done on, on telephone, on, on, via the telephone, sorry.

30 And is that your answer to my question why would there be no record of the
instructions?---Because it was basic.

But it is a significant change of instructions from the instructions that you
recorded on 14 November, 2015, wasn't it?---Why is it significant, sorry?

40 You don't see it as significant?---No. Because if, if there was, if there's a
property there for, for 500,000 and that's probably one of the cheapest you
can purchase in Sydney, even at this point, if it was 500 with a substantial
amount paid, yep, I didn't, I didn't see that as significant. I mean, you had
one, one fellow who wanted this property, wanted to delay the settlement,
he, he didn't want to – and usually people like this delay settlement so they -
- -

Are you speculating now or making something up?---No.

All right. Did Michael Hawatt say to you, "I want to delay the settlement. I
want to convert the transaction in to a purchase by option"? Is that what he
said?---No. He said they want that.

They? Who's they?---So, the purchasers, they want to change, they don't want a standard contract, a standard transaction, sale of transaction, they want it done by, by option.

Who did you understand him to be referring to as, "They"?---The purchaser. I mean. I don't know who. It was just the, the purchaser.

Well, you thought it was an Alae Osman, didn't you?---Yeah.

10 Is that right?---At the end of that conversation.

Yes. A single person. Are you saying that you had a conversation on 21 December with Michael Hawatt in which he indicated there were multiple purchasers?---No. He's always, no, no, no. I - - -

THE COMMISSIONER: You've switched to using the plural. You were talking about "purchasers" and "they".---Sorry. The only purchaser that I knew of at that point was Mr Alae who came through with his licence. We just adopted the details off his licence.

20

MR BUCHANAN: Right. So going back to the instructions you received on 21 December, by phone?---By telephone.

With Mr Hawatt, did he indicate that there were multiple purchasers in that conversation?---No.

Right. Now, was there anything in the put and call option that you've described, and I can understand why, as a virginal document to indicate what the purchase price was to be or would have been?---It was 500.

30

How do you know that?---Because it was on the same basis as the initial instructions.

Do you say that it was in the same conversation that Mr Hawatt indicated to you that the option fee was to be \$300,000?---No. The 10 per cent – sorry, the deposit was 50,000 - - -

40 No, no, no. Please just bear with me if you wouldn't mind. You got instructions from Mr Hawatt that the transaction with Alae Osman in relation to 31 Santley Crescent, Kingswood was to change from a straight sale to a purchase by option. Correct?---Yes.

And you tell us that the sale price for the contract never changed, it remained 100 – sorry, did not change, it remained \$500,000?---That's right.

And in that same conversation on 21 December - - -?---December.

- - - 2015 there was a discussion about what the option fee should be. Is that right?---No.

Where did - - -?---No.

Who prepared this document, who prepared the put and call option - - -?
---My conveyancer on the basis of the information I gave her.

10 And did you give her the information that the sum of \$300,000 was to be inserted as the price of the option?---No. Can I explain how it was?

Well, my next question is, where would your conveyancer have got the idea from that the option price was \$300,000?---Yeah. The option fee was 300, option fee is a representation of what a willing purchaser is prepared to put down, okay.

20 That might be the case but I'm asking you a different question. I'm asking you about events, things that actually happened.---And I can explain it to you.

And I'm asking you did you get instructions from Mr Hawatt that the option price was to be \$300,000? You said no. Is that right?---Sorry, you're using the wrong terms. An, it's an option fee.

Okay. Start again.---Yeah.

Option fee. Thank you.---It's not the option price.

30 Thank you. Thank you.---The option price is 500,000.

I would have thought the contract price was but - - -?---No, the option.

- - - I'm only a barrister.---Yeah, that's right.

Can I ask you this, where did the figure of \$300,000 that appears in the - - - virginal option agreement come from?---It's the difference between 50,000 that was already in our, in our trust account and an additional 250,000.

40 You're talking about a calculation. I'm asking you about - - -?---How did it - - -

- - - how did the conveyancer come to enter the keystrokes which resulted in the figures \$300,000 being inserted in here, was there a conversation she had with you - - -?---Yes.

- - - in which you told her that?---Yes.

Right. You told her that the option price was to be \$300,000?---Yes.

Correct?---Yes.

Where did you get the idea from - - -?---Michael Hawatt.

- - - that the option price was to be \$300,000?---Michael Hawatt. Before Christmas he rang me up and he said, "Listen, I'm going to be in trouble. There's, there's, the property in Queensland, okay, these guys are delaying it" - - -

10

Stop, stop, stop, stop.---Yeah.

Is this the same conversation that you've referred to the entry in your pre-bill, Exhibit 203, against the date 21 December, 2015, telephone from Michael Hawatt?---Yes.

It is?---Because I turned to - - -

20

No, no, no. Please. Did you get instructions from Michael Hawatt in that phone call that the option price was to be \$300,000?---As far as I can recollect, yes.

Well, are you saying that it's possible that he didn't give you those instructions?---No, because I, I don't just make up figures.

So the question would be, if he didn't give you those instructions, why did you put \$300,000 or cause the figure of \$300,000 to be put in as the option fee?---No, no, he gave it to me, he - - -

30

He definitely did?---He definitely gave me the 300.

And did you say, that sounds like a lot - - -?---No.

- - - given that the price to buy the land is 500,000?---No, Commissioner, that's not right. I um - - -

Okay, you didn't say that.---Yeah, yeah.

40

Now I'm asking you, why didn't you say that?---Because it's standard practice.

What is standard practice, to charge an option fee that is three-fifths, six-tenths, 60 per cent of the contract price?---Yes.

Are you telling us that?---Yes.

That is standard practice in what industry in Sydney? You're smiling. ---The, the, the property, no, look, the property and conveyancing - - -

I am naïve, look, I grant you that, but if you can explain to us, please, because you do come from the industry - - -?---Yes.

- - - what is the sector or industry in which 60 per cent is the standard for an option fee, an option price in relation to the purchase of land?---It's whatever the parties agree to and it's generally an agreement between the parties - - -

- 10 So you're not saying that it is standard, you're saying it's whatever the parties agree to?---No, no, no. It's standard that the, they, the purchaser pays more than a 10 per cent deposit. See, contracts specify that you have to pay 10 per cent. Some options start at 1 per cent, some options go up to a dollar, a dollar figure. It's all, it's all by agreement. These are instruments to give the purchaser time to get whatever, what they need to get done, for example a DA, or, or, or financing. Now, in this case this fella's turned around to Michael and said, I'm not going to be ready by February when you need your money, because we've calculated before that time through
20 Siri, you can ask Siri what, what, what date you, what's 42 days from today's date and it gives you the exact date, so we calculated it's going to be in February. So he was planning on receiving his money in February, the purchaser's come back to him, purchaser has come back to him and said, I can't complete at this time so there's no point entering a contract, give me an option so that I can delay the settlement until midway through the year, and Michael's jumped up and down, no, I'm going to, I'm going to pull the plug on this sale, they've negotiated a price, listen, I'll help you out with 300,000 to get you out of trouble. That's my understanding of what Michael told me. And that happens all the time.

- 30 Did you ever feel that the option agreement in respect of which you say you got instructions from Mr Hawatt was being used as a device to cloak a different transaction?---No, no.

What about when Niphitsa got their option agreement from Michael Hawatt.
---Yeah.

When the sale price was \$1.5 million and the option fee was \$30,000?
---Again it's by agreement. So this fell through - - -

- 40 If you just excuse me a moment.---Yeah.

I'll just put on the record, that's volume 8, pages 209 to 211, 213 and, no, 212 and 213.

THE WITNESS: Commissioner.

MR BUCHANAN: I interrupted you.---Yeah.

I apologise, sir. Yes?---With the Niphitsa sale, that went up from 500 to I believe - - -

Tripled.---Triple, yeah.

Mmm.---Yeah.

And yet the option fee - - -?---Mmm.

10 - - - went down to \$30,000.---As I said, it's by agreement. If one party agrees to pay that as an option fee, who am I to stand in their way?

Okay. And you didn't know I take it that Alae Osman had agreed to pay an option pay of 300,000, you just simply assumed he must have because otherwise you wouldn't be getting those instructions from Mr Hawatt.---No.

Is that right?---No. Michael said, "The option fee is going to be 300,000 now, inclusive of the 50,000 that is already in your trust."

20 Did he indicate that there had been agreement that that option fee would be paid?---He said, "The purchaser's agreed to pay an option fee of 300,000."

Now, let's just pause there.---Okay.

You're not making this up - - -?---No.

- - - as you go?---No, no, no, no, no. Look - - -

30 You remember a telephone call, do you, on 21 December, 2015, in which Michael Hawatt said that the purchaser has agreed to pay an option fee of \$300,000?---Absolutely. I don't make up figures and put them in my contracts. I turned around to Gunay, okay, my conveyancer, and I said to her, "Can you input 300,000 and, and the dates for the option?" It's a simple document. Complex in character but it's a simple document to complete.

40 I don't think the Commission questions the simplicity of the legal document. What I am questioning is the genuineness of the transaction that it represents.---I, I don't question every single transaction that a client comes in and puts to me, okay?

But it was a very big change, wasn't it, from a \$50,000 deposit to a \$300,000 option fee, so far as, as you understood it, the purchaser was concerned?---But it's not unusual.

It's not unusual for a deposit of - - -?---More than 10 per cent to be paid towards a price, yes, and an option fee.

Thank you. Now, what happened to that option agreement?---It failed. Nothing happened.

And did you ever ask, did you ever say to Mr Hawatt, "Well, we've prepared this option as you've asked us to do. Do you want it executed?" or anything like that?---Yeah. They said, "Wait. We're waiting for, for the purchaser to come through. He hasn't authorised it at the exchange, I can't exchange it.

10 What's there to exchange, just if you could explain that to us?---They've, they've got to sign the, the, the signatory clauses in the option and that hasn't been done. So, they came in initially for the, the straight contract. I can show you, Commissioner. It's - - -

THE COMMISSIONER: It's at page 7.---Page 7 of 7, yeah. He's got to sign just one page.

Yes. And Mr Hawatt's got to sign that.---That's right.

20 And Mr Osman's got to sign that.---That's right, yes.

Nobody ever signed it?---No one signed it, yeah.

MR BUCHANAN: Yes. But you were asked to prepare an option agreement and was that the extent of your instructions? You were never asked to ensure it was executed or make arrangements for it to be executed or for the transaction to actually be carried out?---Michael did say, "We need, we need to get this signed up," and I go, I mean my response was word for word, "I can't do anything without the purchaser signing."

30 And when did he say, "We need to get this signed up?---21st.

THE COMMISSIONER: In that telephone call?---Yeah, 21 December.

So you were discussing this with him, getting instructions, discussing things like this during that telephone call?---Yeah. Because that was the last time I spoke to him.

40 Right. So, it must have been a long telephone call?---Yeah but six minutes is a long time, it's a long time for, for a conveyancing matter.

Well, it's zero to six minutes that you've charged for it, isn't it?---Yeah. It's six minutes.

MR BUCHANAN: So, can I take you back, then, please, to the SMSs in Exhibit 194 on 21 December, 2015.---Sorry, which exhibit?

It looks like an extraction report.---Oh, the, the mobiles?

Yes. The, the text messages and it's up on the screen now, if that's of any assistance.---Yep.

And we were looking at items 16, 17 and 18 on page 3 and if we go over the page to page 4 of that exhibit, item 19, you said to Mr Hawatt at 4.25pm on 21 December, 2015, they apparently did banking today. Do you see that?
---Ah hmm.

10 Now can I pause there. Was the telephone conversation in which you received the instructions to prepare the option agreement before or after these SMSs?---No, these were later from memory. These were late in the afternoon.

Yes. Well, it says 4.25pm.---Sorry. My eyes are failing.

That's all right.---Yeah, sorry, 4.25. Yeah, they were late.

20 And by that are you implying that you recall that the telephone conversation in which you received the instructions to prepare an option agreement, that the nature of the transaction had changed to one of purchase by option, was earlier in the day?---Earlier, yeah.

You can recall that?---Yes.

So you knew at the time of these text messages that it was no longer a straight-out sale but rather Mr Osman apparently purchasing an option agreement?---Yeah, because of the time factor.

30 And that's something that you knew about because Mr Hawatt had told you all of that?---Yes, yes.

When was the last time you spoke to Mr Hawatt?---Before my Christmas break. I think it was the 21st. I was keen to get out of there.

I apologise. What I meant is – I'll start again.---Yeah.

Sitting there as you do today - - -?---Yes, yes.

40 - - - 25 July, 2018, when was the last time you spoke with Mr Hawatt?
---Generally?

At all.---At all. Probably, I can give you the exact date. Can I?

If you are able to do so.---Yeah. 26 June.

Of this year?---Yeah.

And what was that in relation to?---Not work.

What was it in relation to?---In relation to Liberal Party business.

Was there any discussion about the subject matter of your evidence?---
Never.

Or the subject matter of these transactions that we've been talking about
today?---Nothing. Nothing.

10

Have you had any discussion with Mr Hawatt in 2016/2017/2018 about the
subject matter of your evidence?---Absolutely not.

So turning back to Exhibit 194, page 4, item 20. This is a text from
Mr Hawatt to you at 4.27pm on 21 December, "I will follow up with Gold
Coast lawyer. I need your account for me to send balance." And then you
say at the same time, 4.27pm, "The funds were put into my account by
boys." And you reiterated, "My account?" Mr Hawatt said, "Yes." And
then you said, and then you gave the account details for Sterling Legal trust
account. Is that right?---Yeah, yeah, yeah.

20

Now, when you said to Mr Hawatt, this is item 21 on page 4 of the exhibit,
"The funds were put into my account by boys", what was it you had in
mind?---I understood that, that they already had the account details and they
were going to transfer it over.

Transfer what over?---The 250.

And where did you get the idea from that they were going to transfer over
the 250?---I assumed.

30

You assumed it?---Yeah.

Why did you assume it?---Because they had to make the difference before
we closed for, for Christmas and I believe the 21st was the last day of
business.

And the difference of what for what?---The 50 to the 300.

40

And where did you get the idea from that \$300,000 was required?---Michael
told me.

What did he tell you it was required for?---The option fee.

And so did you understand that the money was going to be paid for the
option fee before the option agreement was executed?---Yes. An option fee
is like a deposit. Similar.

It might be but who's to know unless there is a signed agreement?---Yes.

What was there to protect the interests of either the boys or Alae Osman or whoever the purchaser was or the person purchasing the option agreement?
---That's not my problem. He's not my, I'm acting for Hawatt. I'm not acting for Osman. I, I received money from a willing purchaser who is just about to sign a contract. He's signed the front page of a contract in readiness to exchange that. So I mean I'm waiting for his solicitor details, I'm waiting for him to approve the, the option. If he's saying put the money in trust - - -

10

Who was saying, "Put the money in trust"?---Michael Hawatt. You're going to receive money from, from – when I say, "The boys," I mean Talal and Alae, even though Alae was the, the purchaser. So they're the two boys I'm referring to. And I - - -

But there's another part, it sounds as if you were about to tell us another part of the conversation with Mr Hawatt that I assume you were going to say occurred on 21st of - - -?---You can prod me if you like.

20

Well, a moment ago you said that \$300,000 was going to come?---No, the difference, the 300. So, the option fee's going to be paid, that will be paid his 300,000. So, the difference - - -

What did Mr Hawatt say to you in 21 December, 2015 about the option fee?---It's a straight-out 300,000 option fee.

Yes, and that's why you put it into the option agreement?---That's right.

30

Where did you get the idea from that it was going to be paid within, excuse me, a moment, a matter of hours?---He did because he needed the money on his Queensland purchase. "It's coming, it's coming. We've got it, we've got to settle on, on Queensland."

It sounds as if there's a merging of two different things. One is an option agreement for which the price is 300,000 and the other is money that Mr Hawatt needed which happened to be \$300,000 to purchase a property in Queensland.---That's right. You've, you've got to go back to the email from his solicitor in Queensland. His solicitor put us on notice that their settlement is due on 23 December. That email was sent to me on 9
40 December. So, everybody was running around trying to finalise this, this settlement on his side.

40

The question is, why does it necessarily mean that the person who's going to purchase an option agreement is going to provide \$300,000 to the owner of the land, 31 Santley Crescent, before the option agreement has even been executed?---Look, you could have it either as an option fee, okay? If you

look at my records, it could either be an option fee or it could be his own funds.

Whose own funds?---Michael Hawatt. I could, when I've got an open trust account, so I accepted deposits from anybody, any one of my clients, any one of their, their, their related parties. So, if \$250,000 came and I noted it in my trust account that it came from him, I didn't say it came from, from Alae. In my trust statement, I actually said it's from Michael Hawatt.

10 Did you enter that personally yourself?---Yes. I personally - - -

You made those keystrokes yourself?---I, I do all trust account myself.

But you made those keystrokes that resulted in, "Mr M. Hawatt," appearing after the words, "Received from:" which appear after the date, "21/12/15" yourself?---Absolutely, absolutely. So the 200 - - -

20 Does it leap automatically into that data?---No, it doesn't. Michael Hawatt could have put \$250,000 in my trust account. It came from him, it's for his benefit and we, we used it.

Excuse me a moment. Could you just pause for a moment, please, Mr Zreika?---Yeah, sure.

Excuse me a moment. If I can just have a moment.

THE COMMISSIONER: Yes, certainly.

30 MR BUCHANAN: I'm just trying to find some evidence. I apologise for the delay, Commissioner, and Mr Zreika.---That's okay.

I won't be a moment. Commissioner, can I make an application to vary a section 112 order made on 4 April, 2017.

THE COMMISSIONER: Excuse me for a minute. Sorry.

MR BUCHANAN: And I wonder if we could keep volume 8, page 204 up on the screen, please.

40 THE COMMISSIONER: Yes.

MR BUCHANAN: The application is in respect of transcript commencing at page 853 at line 41, sorry, no, line 28 and concludes at page 854 at line 9.

THE COMMISSIONER: Right. I vary the non-publication order made on 4 April, 2017 in respect of evidence given by Mr Zreika to exclude the evidence recorded at transcript page 853, commencing at line 28 and concluding at page 854, line 9.

VARIATION OF SUPPRESSION ORDER: I VARY THE NON-PUBLICATION ORDER MADE ON 4 APRIL, 2017 IN RESPECT OF EVIDENCE GIVEN BY MR ZREIKA TO EXCLUDE THE EVIDENCE RECORDED AT TRANSCRIPT PAGE 853, COMMENCING AT LINE 28 AND CONCLUDING AT PAGE 854, LINE 9.

10

MR BUCHANAN: Mr Zreika, you gave evidence before the Commission on 4 April, 2017. A transcript was made of your evidence. I'm going to read out to you part of the transcript of that evidence.---Yeah.

And it is in respect of part of volume 8, page 204 which shows that trust account statement for the Sterling Legal trust account for Michael Hawatt. ---Yeah.

20 In particular the entry against the date 21/12/2015 250,000. Do you see that?---Yeah, yeah.

Question. "Okay. So how did the \$250,000 end up in your trust account?"

Answer. "Either, it was either a cheque given to us at the front desk."

Question. "Ah hmm." Answer. "Which would have been collected by one of the, one of the girls." Question. "Yeah." Answer. "I'm not there all the time and if, if I was there I would have collected it okay." Question.

"Okay. So you said it was either a cheque at the front desk. Was there another way it could have come through?" Answer. "Electronic, yes."

30 Question. "Or electronically?" Answer. "Yeah." Question. "Right. And you've described this as being money received from Mr M. Hawatt but is it your evidence that it was actually part of the option fee paid by the other party?" Answer. "Yes. Sorry, I should explain. Question. "Yeah"

Answer. "LEAP for some reason has a default where any money that comes in automatically says it come from the client and that's why it keeps saying from Michael Hawatt." Question. "Okay." Answer. "Sorry." Question.

40 "What about the first payment?" Answer. "The first one I, I made an effort to change that because - - -". Question. "Okay. Why did you do that on that occasion?" Answer. "I was trying to, trying to because, and you'll notice I actually entered the data on the 20th so I was actually two, two days late."---Mmm.

Did you hear me read that transcript to you?---Yes.

You gave different evidence about the way in which the data Mr M. Hawatt which appears after received from which appears against the date 21 December, 2015 occurs there when you gave evidence on 4 April, 2017 didn't you?---Yeah. What was the date of it?

Which is the truth?---What was the date?

THE COMMISSIONER: Sorry, what date?---What was the date that I gave that evidence?

MR BUCHANAN: Why does that matter?---It's for my own understanding.

Well, all I want you to do is understand my question.---Mmm.

10 Tell me if you don't understand my questions. The evidence you gave on 4 April, 2017 on the subject of how that data Mr M. Hawatt came to be entered against the date 21/12/2015 was different from the evidence you've given today, wasn't it?---In LEAP it has a - - -

No, no, that's not the question I'm asking you. I'm not asking you for an explanation yet. First of all, do you acknowledge that the evidence you gave on that subject was different - - -?---Yes, it was.

- - - on 4 April, 2017?---Yes, absolutely. Yeah.

20

Now, my next question is, why did you give different evidence today from the evidence that you gave on that subject to the Commission on 4 April, 2017?---LEAP has gone through a complete overhaul and they've got all these updates now. Now, that's why I'm asking what, what was the date so that I can work out if it was after March, 2016 because March, 2016 was when we, we last did the upgrade.

I've told you now twice that you gave the evidence on 4 April, 2017. ---Okay. That was, that's after it, yeah. Sorry.

30

Now, my question is, why is your evidence different today on that subject from the evidence you gave on 4 April, 2017?---Commissioner, I can't explain it. Honest.

Is one of those two versions true or is neither of those versions true?---LEAP - - -

Is one of those two versions true or is neither of those two versions true? ---Okay. Repeat the versions, please.

40

Mr Zreika, was the data, "Mr M Hawatt," that appears after the words, "Received from," which appears against the date 21 December, 2015 in your trust account statement for Mr Hawatt - - -?---Mmm.

- - - data which you entered yourself with your own keystrokes or was it entered by default by the software, LEAP?---Okay. Well, as at this date it would have been automatically pre-formatted, so I stand corrected on that, but that's not - - -

So the evidence you gave on the subject today is incorrect, is it?---Just the point on, on the auto formatting, okay.

Why was the evidence you gave today on that subject incorrect?---I, I've assumed it was after the upgrade because um, they're, they're constantly working on, on the program to make it better. But that's not to say that the money didn't come from Michael Hawatt, whether it was by default or not.

10 Why did you enter as the reason for the entry, for the receipt of the funds, "Funds required on purchase of Queensland asset?"---It would have been an assumption that he was going to pay for or his people were paying for it so that he can complete it.

Who is he and who is, what is it?---So Michael Hawatt, because it was the 21st, Commissioner.

20 THE COMMISSIONER: Mmm.---On 21 December everybody was leaving for Christmas. He was stuck in a mind where he'd have to fund the settlement by the 23rd.

Mmm.---Essentially he'd have to have that money in the next day, so if, my assumption is that if Alae didn't come up with the money, the purchaser, then he would have to fund it.

You said, "He or his people."---So Talal.

Who are his people?---Talal. His relative, yeah.

30 MR BUCHANAN: The question though is why did you enter the words, "Funds required on purchase of Queensland asset?"---Because I, there was no such option in place at that point so in order to characterise what the money was used for, it was required for the Queensland purchase.

So there's - - -?---How can I put a - - -

- - - absolutely nothing entered there - - -?---Yeah.

40 - - - which indicates that as you understood it, the funds did not come from Mr Hawatt, but came from an intending purchaser of a different property. ---Yes. But - - -

Why didn't you enter something in there - - -?---Because I couldn't. There's, there's no, there's no option in place.

THE COMMISSIONER: Let Mr Buchanan ask the question.---Oh, sorry, I thought he'd finished, sorry.

MR BUCHANAN: Why did you – you entered the words, “Funds required on purchase of Queensland asset?”---Yeah.

That wasn't a menu option on LEAP, was it?---No, no, no.

You entered that data yourself?---That's right.

10 You could have entered the data, funds paid for option on Santley Crescent. ---But there was no option. Madam Commissioner, there's no, there's nothing there that's exchanged as an option. I could only write it as funds required for purchase. If he's got a dispute with Alae then they can have a, have a dispute after it. They, they can work it out amongst themselves.

20 So nothing was done by you to protect the interests of the person making the deposit into your trust account or to identify the fact that it came from someone other than Mr Hawatt?---No. I mean I'm not the bank, the money, the money came straight to a financial institution, it's not my job to – I'm just there to characterise what, what the situation is on my records, not on, on the bank's records.

20 But there's nothing, no, there's no entry there consistent with the conversation you say you'd had the very same day - - -?---Mmm.

- - - that indicate that the \$250,000 was a contribution towards the purchase of Mr Hawatt's property at 31 Santley Crescent.---With respect, I don't think I've done anything wrong by characterising it as funds required on his purchase, on his Queensland asset.

30 Well, the very next - - -?---I couldn't put option fee because there was no such option there.

The very next item would tell the reader - - -?---Mmm.

- - - that that's where the funds had gone. It didn't need that reason to be there for the reader to see, oh, well, I can see where that 300,000 has gone. ---Mmm.

40 So, you didn't think it was appropriate if you had been told the same day as the funds entered the account that they were to go towards an option fee that there be some indication that they are funds towards option fee yet to be executed, say?---No. There's no reason for that, there's no option. There wasn't even a, a, a, a, an agreed set of terms, Commissioner.

THE COMMISSIONER: Doesn't the mean that when Mr Buchanan asked you a little while ago that all this supposed option agreement was really to cloak a different transaction, your answer should have been yes?---No because I don't know. I, I, I don't know. It could, could have been a loan.

MR BUCHANAN: But you characterised it as a different transaction.---No, no. It could have been a loan. He could have got an incoming mortgage there to give him the funds.

No, no, no. No, no. Please, please. You in your trust account characterised it as a different transaction, didn't you? You characterised it as - - -?---No, because - - -

10 - - - funds that were going towards Mr Hawatt's purchase of a property in Queensland.---Sorry.

And so the question is, if that is the case and it seems the bleeding obvious that that is the case, that's how you characterised it, then what that leads to is question of what was really going on with this supposed option agreement? Was it a genuine option agreement? Is your evidence that Mr Hawatt told you there would be an option agreement true? These are the questions that arise. Do you see the position we're in?---I, I, look, I, I can understand - - -

20 Trying to understand this?---I understand your position, okay, but it happens many, many a time when people come up with the funds from family, they come up with friends. Whether I've identified or, or characterised those funds as for the objective, I don't think I've done anything, any wrong. There's no option there, you see.

Leave aside whether it's right or wrong. What we're trying to understand is if you believed that the funds were to go towards the purchase of an option, why didn't you say so?---It's not up to me what I believed.

30 No, no, no, no. It is with the greatest of respect. If you believe on your instructions that you're receiving funds into your trust account for a particular purpose, namely a legal transaction, the purchase of an option agreement, then why wouldn't you have indicated that after the word, "Reason," in respect of that deposit of funds?---Maybe I should have put an option, a, a, a, the, the word, "Option," in brackets but I didn't do that.

40 Well, what it suggests is it wasn't really in your mind, because you're the one who made the entry, it wasn't really for an option agreement, it was to help Mr Hawatt buy this property in Queensland because that's the words you've used. Don't you see?---So be it.

Well, you're the one who had in your brain feeding into your fingers when you wrote, "Funds required on purchase of Queensland asset." Why did you do that if you believed you had instructions that the funds were being used to purchase an option agreement on a different property altogether? ---Noted.

Can you give us an explanation?---No. I'm following my, my client's instructions.

Well, what it seems to do is to throw doubt on your answer as to whether or not you didn't actually believe that the option agreement was cloaking another transaction, namely the transfer of \$250,000 to become \$300,000 by the people who were making the transfer to Mr Hawatt so he could buy a property in Queensland.---I don't, I don't know what the facts are behind this issue. I don't even know what this inquiry's about, this Commission's about.
10 All I know is I received money in my trust account and I acted on my client's instructions that's it. Pure and simple. I don't even know why Michael's in trouble.

Can I ask you this, you indicated this morning that you did the wrong thing when you transferred the funds to Queensland without the consent of the owner of the funds.---If he gave them.

Who are you talking about when you say, "He"?---Yeah. You're totally right. If, if I didn't have the consent of a, a purchaser, then it throws doubt
20 on, on me as to why but I was following instructions from my client. It could have come from Michael. Can I ask, can I ask a question? Have we traced where that money came from in to my account?

Well, we're coming to that.---Okay.

But can we go back to the contract for the sale of land, Exhibit 105. That's part of Exhibit 105. It's at page 9 of it. Have you got the contract there?
---105?

30 Exhibit 105. I apologise. It looks like this. It's a put and call option and it's got at page 9 attached to it contract for sale of land. It's the one with the signature of Mr Osman on it.---Oh, yes, yes, yes, yes.

So if you go to page 9, you see that's the contract for sale of land.---
Ah hmm.

And if you go over the page to page 13 of the exhibit, clause 2.1 says, "The purchaser must pay the deposit to the deposit holder as stakeholder." Do you see that?---Yes.
40

You were the deposit holder in respect of the \$50,000 paid into your account on 18 November, 2015. Is that right?---That's right.

So you were holding it as a stakeholder. Is that right?---Yeah.

And if we go to clause 16.10 on page 16 of the exhibit it reads, "On completion the deposit belongs to the vendor", which plainly means that before completion it doesn't belong to the vendor.---Yeah.

Right. So this would tend to indicate wouldn't it that you weren't entitled to pass the \$50,000 to Michael Hawatt without the consent of the purchaser or their completion of the contract.---This was not live.

THE COMMISSIONER: This was not what?---It wasn't a live contract. It wasn't exchanged. There was no, there was no terms dictating that relationship.

10 MR BUCHANAN: What were the circumstances in which you received in your trust account \$50,000 on 18 November, 2015?---On account of a deposit.

Thank you.---Yeah.

And if you received them on account of a deposit how could you possibly be entitled to transfer them to the vendor without the consent of the purchaser if there had been no completion?---There's no contract.

20 THE COMMISSIONER: But you've received them. This is how you record it in your trust account. You received them from Mr Osman for deposit funds and you've given evidence that you came in and on your desk was that contract signed by Mr Osman with a cheque for \$50,000.---No, there wasn't a contract, Commissioner. It was just a page.

No, with that contract - - -?---No, no, it was just a page. Just this page sitting on my desk. This one. Just that.

30 MR BUCHANAN: That's not my recollection of your evidence.---This, this was all that was sitting on my, on my desk.

One sheet of paper?---One sheet, this one thing, and you can see, you guys put it together. This is not the way it was presented. This exhibit is not the way it was so your solicitor has put this, has formulated this, okay, because
- - -

Mr Zreika?--- - - - I've already struck it out.

40 Mr Zreika, it's your evidence that we're referring to. You said "the contract". You didn't say the front page of the contract. You said the contract and the cheque were on your desk.---I, I said the front page, okay, because you asked me, front page. It was just this. This was, Commissioner, this was not a final form document for it to be signed.

You're changing your evidence, Mr Zreika.---No, I'm not. I'm saying - - -

The evidence you gave this morning - - -?---I've maintained - - -

- - - on the subject.---I've maintained that this option was not a final form and - - -

That's not what we're talking about. We're talking about your evidence that – excuse me. I have to withdraw my accusation because we do have a digital transcript of your evidence. I asked you, “The cheque was”, it says here, “in your desk” but I must have said “on your desk”. You said, “Ah, um”. “With the contract?” Answer. “Yeah, with a signed front page.” Page 3187, thank you. I apologise.---Accepted.

10

Nevertheless can I ask you, thinking of that, why did you think the money, the \$15,000 had been received if they weren't deposit funds?---If they weren't deposit funds?

Yes.---They could be incoming mortgagee funds. They could have been borrowed from (not transcribable)

Why did you assign as the reason for the receipt of them that they were deposit funds?---Because that was my understanding at the time.

20

Well, if you understood that they were deposit funds at the time, what entitled you to transfer those funds to the vendor without consulting the purchaser?---I can't change the characterisation once it's in, so even no matter what I thought, I can't change it.

When did you receive a communication from Alae Osman that indicated that \$50,000 was not deposit funds but something else?---I didn't because – no, I've already acknowledged that I didn't receive anything from him.

30

And so you weren't entitled to pass that money to Mr Hawatt, were you?---It depends on where the money came from. Maybe the 50, possibly the 50, but on the 250,000 I still don't know where the money came from. So what course of action has Alae on that money if it came from Michael Hawatt?

We're talking about the \$50,000 that you described as deposit funds. You're acknowledging you weren't entitled to pass them to Mr Hawatt?---Without authorisation, yes.

40

Without authorisation from Alae Osman?---Yeah. If it, if it originated from Alae.

You would say in that case the person who transferred them to me, to my account.---No, whoever paid, whoever paid them.

Is that what you're indicating?

THE COMMISSIONER: But you said it was a cheque.

THE WITNESS: Whoever paid them, yeah.

MR BUCHANAN: Yes, yes. Excuse me a moment. Now, I have another application, Commissioner, for a variation of a section 112 order. It's in respect of testimony given by the witness to the Commission on 4 April, 2017. And the application is in respect of the testimony recorded in the transcript at page 862, starting at line 33, and concluding on page 864 at line 31, the end of line 31.

10 THE COMMISSIONER: 31?

MR BUCHANAN: Yes.

THE COMMISSIONER: Just excuse me for a minute. All right. The non-publication order made in respect of Mr Zreika's evidence on 1 April, 2017 is varied to allow publication of the evidence recorded on the transcript commencing at page 862, line 33, and finishing at page 864, line 31.

20 **VARIATION OF SUPPRESSION ORDER: THE NON-PUBLICATION ORDER MADE IN RESPECT OF MR ZREIKA'S EVIDENCE ON 1 APRIL, 2017 IS VARIED TO ALLOW PUBLICATION OF THE EVIDENCE RECORDED ON THE TRANSCRIPT COMMENCING AT PAGE 862, LINE 33, AND FINISHING AT PAGE 864, LINE 31.**

MR BUCHANAN: You've given evidence today, please tell me if I'm wrong, that you, in respect of this \$50,000, first saw it in the form of a
30 cheque together with a front page of the contract on your desk. Correct?
---(No Audible Reply)

Is that correct?---Yes. That's my recollection after three years.

So you're anticipating that I'm going to be taking you to different evidence that you've given on that subject?---Possibly.

And what do you think that different evidence might be?---I'm not sure.

40 If you could listen to me read the portion of the transcript, the subject of the variation direction this afternoon. Question, "Specifically I'd like to understand whether there were any particular individuals that 'the boys' refers to and if so, who those individuals were." Answer, "Okay. I think Alae, yeah, Alae came in the first time with the 50,000, came in with a cheque that was all folded up and he was there with, I believe from memory now, I think it was Talal." Question, "Okay." "And so that's why I just assumed that, you know, they were organising Alae." I think I might have misspoken there, I'll go back. Question, "Okay." Answer, "And so that's

why I just assumed that, you know, they were organising Alae.” “What, sorry, Alae?” Question, “Alae Osman?” Answer, “Yeah, to purchase the property.” Question, “Right. And were you there when Mr Osman came in with his folded-up cheque?” Answer, “No, not, yeah, yeah, I was there. Sorry, repeat the question, sorry?” Question, “You said Mr Osman came in with a cheque that was all folded up.” Answer, “Yeah.” Question, “Were you actually there when Mr Osman came in?” Answer, “Yeah, he gave it to me, yeah.” Question, “So these are things that you saw happen?” Answer, “Yeah, I saw.” Question, “Mr Osman came in with a folded-up cheque?”
10 Answer, “Yeah, 50,000.” Question, “And the cheque was for \$50,000?” Answer, “Mmm, yeah.” Question, “Yes. And Talal El Badar was with him?” Answer, “I believe so, yeah.” Question, “Was there anyone else with him?” Answer, “No.” Question, “And what did they say to you, if anything?” Answer, “This is the cheque for Santley Crescent for the deposit.” Answer, sorry, question, “Who said that?” Answer, “Alae.” Question, “Alae Osman said to you, ‘This is the cheque for the deposit for Santley Crescent?’” Answer, “Yeah, he pulled it out, I think he pulled it out of his wallet or something and said, ‘Look, this is the cheque for the, for the Hawatt property, Santley.’” Question, “Okay.” Answer, “Okay. Again,
20 I’m just sitting here trying to recollect something.” Question, “Yeah.” Answer, “That happened.” Question, “We understand that.” Answer, “Yeah.” Question, “Yeah. If you don’t remember something you can tell us that you don’t remember it. We’re just trying to test whether what you do remember about this.” Answer, “Okay.” Question, “And did Mr Osman say anything else to you about the money?” Answer, “No, no.” Question, “All right. And did Talal El Badar say anything to you on that occasion?” Answer, “No, no, just, how are you, and how’s things.” Question. “Right. And did you form the view that Talal had any interest in the transaction at that point?” Answer, “No. I think I formed the view that he was assisting
30 Alae just to find the office.” Question, “Right.” “And come in and give us, because that’s the conveyancing office at Bankstown and I was there.” Question, “So they came to your office in Bankstown?” Answer, “In Bankstown, yeah.” Question, “Right. And coming back to the word, ‘boys,’ you think it refers to Alae Osman, is that right?” Answer, “Mmm, yeah.” Question, “Does it refer to anybody else?” Answer, “No.” Question, “Right. Well, ‘boys’ is plural.” Answer, “It is plural.” Question, “Yeah.” Answer, “On the basis that my first contact, first and only contact was with Alae when he was with Talal, my assumption was they were, you know, together.” Question, “Right. That Talal was, when you say together,
40 what do you mean by together?” Answer, “Well, he came into the office so this is - - -” Question, “Mr Osman came into the office?” Answer, “No, no. Yes. Alae and - - -” Question, “Yeah?” Answer, “El Badar.” Question, “Okay.” Answer, “And he came into the office, this is Mr Alae, so here’s 50,000. Alae said here’s a 50,000 cheque for the Santley property and that’s where I came up with boys.” “Okay, so does ‘boys’ refer to anybody else in these text messages?” Answer, “No, not that I can recollect, I’m sorry.” Question, “Okay. Could it refer to anybody else?” Answer, “No.” Question, “All right. And when you wrote the text message on 21

December, 2015, item 22, do you know who 'already given to boys' referred to?" Answer, "I think someone sent me a message asking me for, I'm sure you've got the message there. They asked me for my BSB and account number and I just replied." Did you hear me read that transcript to you, Mr Zreika?---Yes.

It's a different account in relation to the \$50,000 from the account you've given us today, isn't it?---Yes.

10 Is one or other of the accounts you've given us today true?---Today's account would be the right account. I never saw the bloke. I've never seen him.

THE COMMISSIONER: So today's account you say is correct?---Yeah, I can't - - -

MR BUCHANAN: So the evidence you gave on 4 April, 2017 numerous times – that you were given the cheque by Alae Osman in the presence of Talal El Badar when they came to your office at Bankstown – was
20 incorrect?---Yeah, I never, I never met the bloke.

It was incorrect?---Yeah.

It must have been untrue to your knowledge, mustn't it, that evidence?
---No.

Why wasn't it untrue to your knowledge?---I'm making assumptions.

THE COMMISSIONER: Well, you're not saying you're making
30 assumptions.---Yeah.

In the transcript that Mr Buchanan read to you, it's even put to you at one stage that, you know, if you don't remember something you tell us that you don't remember it, we're just trying to test what you can remember about this, and you say okay. At no point in this extract do you say, look, I'm assuming or anything like that. You're really stating as a fact and, really, in a way quite in a fashion that would suggest that you do remember something, you know, where you say Alae came in the first time with \$50,000, came in with a cheque that was all folded up. That suggests a
40 memory of somebody arriving, and instead of having a nice cheque that it was folded up and presented to you. As I said, that would suggest a memory of that occurring, not an assumption. And also the usual thing that's put to a witness in these circumstances is your evidence nearer the date of when something occurred is usually better than your memory later on, and this was April last year.---My, my issue right now is I don't recall meeting this, this fellow.

Mr Osman.---Like, I can't physically remember. I remember Talal, okay? But that could have been from other meetings that I've had with him socially. And as to the folded cheque - - -

MR BUCHANAN: What?

THE COMMISSIONER: You acknowledge it's a detail which would suggest a memory?---Yeah. Yeah, yeah, of course, yeah. I can't explain it.

10 MR BUCHANAN: But the evidence you've given today is that you did see a cheque because it was on your desk together with the front page of the contract, the front page having been signed by, as we now know, Alae Osman.---Yes. Yeah. I can't remember if it was folded or not, though, at this point, so - - -

Your evidence today, though, is that you did see a cheque.---Yeah, and a front page.

20 And a front page. And the cheque was for \$50,000 and that was the money that went into your trust account on 18 November, 2017, is that right? ---Yeah, yeah.

Have you still got volume 8? Page 27, if you could go to it, please. Excuse me. And you've got in front of you a full copy of a page from – I'm sorry, I do apologise. You've got a redacted copy of a statement of account of a company called Murad, M-u-r-a-d, Pty Ltd, ATF Osman Family Trust. Do you see that there?---Yes, yes.

30 And you see there's an entry for 18 November, do you see that there?---(No Audible Reply)

And it indicates again, and you see \$50,000 under debits?---Yep.

And on the same line as the \$50,000 appear the words, "ANZ internet banking funds transfer," and then it gives a number to Sterling Legal Trust. Do you see that?---Yep. No doubts, yep.

40 And if I can now show you another document. If you could have a look at this, please. And you'll recall that the account number for that statement of account held in the name of Murad Pty Ltd ended in the numerals 8-0-3-9. The document I'm showing you now is a bank trace, it's a trace of the deposit into your trust account, and do you see on the column on the right hand side, against the word, "Trace details," an account number that ends in the numerals 8-0-3-9?---Yes, yes.

And can you see that the amount, looking over on the left hand side now, is \$50,000?---Yes.

And that it's a deposit, it's described as a deposit?---I accept that, yep, yep, yep.

And can you see that, therefore, the \$50,000 was electronically transferred in to your trust account?---Ah hmm.

There was no cheque, was there?---According to this, no.

10 Well, why did you say there was a cheque when you can see that there wasn't one?---Commissioner, I didn't say cheque. In the first, first testimony I did say folded and that was on the basis of an assumption. Today I said that there was receipt with a front page and that's why the, the, that's why the entry, next day's entry, the, the day's entry.

20 THE COMMISSIONER: My recollection, and I don't have the transcript from this morning or your evidence before lunch, but my recollection was that you did say that your conveyancer dealt with Mr Osman, that when you came back, on your desk was a cheque and the front page and that then - - - ?---No. I'm sorry, sorry, Commissioner.

20 You say you didn't say a cheque?---No.

MR BUCHANAN: It's recorded in the transcript, page 3187, that on a number of occasions you said cheque.---Yeah.

30 THE COMMISSIONER: Yes. That was my recollection.---But then I corrected it towards the end and, and it will come up, I corrected, I said there was a receipt and that was the reason why we did it the, the, the second, second day because when, when you do transfer like this, I'm assuming, okay, I'm qualifying that, they would come in and they would say, "Oh, I, I've made a, a transfer. Here's, here's the," and that was sitting on my, a payment receipt.

MR BUCHANAN: Commissioner, I should tender the bank trace for the \$50,000 deposit dated 18 November, 2015.

THE COMMISSIONER: The Westpac bank trace for the transfer of the \$50,000 to Sterling Legal Trust Account will be Exhibit 206.

40

#EXH-206 – WESTPAC BANK TRACE FOR THE \$50,000 DEPOSIT TO STERLING LEGAL TRUST ACCOUNT DATED 18 NOVEMBER 2015

MR BUCHANAN: That is the evidence of the witness, that is my examination of the witness. I apologise.

THE COMMISSIONER: Ms Bulut?

MS BULUT: No questions, Commissioner.

THE COMMISSIONER: Mr Neil?

10

MR NEIL: I have no questions, thank you, Commissioner.

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

MS BERGLUND: No questions. Thank you.

THE COMMISSIONER: Mr Drewett:

20

MR DREWETT: Commissioner, I do have just one or two questions. Sir, so you understand who I am, I am counsel instructed by or on behalf of Mr Hawatt. Do you understand that?---Yes.

I'm going to suggest to you, I suggest to you that a lot of your answers just in general terms putting the suggestion to you, you have given answers based on various – I'll withdraw that. You've assumed certain things based on a poor recall of events prior to giving your answers here. That was probably a clumsily worded question but do you understand what I'm saying?---Yes.

30

THE COMMISSIONER: Did you say a poor recall?

MR DREWETT: Based on a poor - - -

THE COMMISSIONER: Thank you.

MR DREWETT: Poor recollection of events and you've assumed certain things - - -?---Yes.

40

- - - in terms of giving your answers and I want to take you to what I would say would be a specific example of that and it is in relation to the evidence you gave in relation to the person Talal El Badar. Do you recall you were asked questions in relation to him and what you knew of him and when you had met him. Can you recall being asked various questions by Counsel Assisting in relation to him?---Yes.

And I think you said that you had never acted for him as a lawyer. Can you recall saying that?---No, no, I corrected that towards, towards the end of the question.

So you say you have acted for him. Is that right?---Yes.

I think you said you bumped into him in a lift at some stage when he was seeing his accountant you believed who was in your office. Is that right?
---Yeah, and then I corrected it and I said no, I have acted on, on a, on a proposed purchase.
10

You said that he worked for my client, Mr Hawatt, didn't you in your evidence. Do you recall saying that?---Yes.

That was an assumption wasn't it?---Yes, it was.

You've never been told by Talal El Badar that he works or has ever worked for Michael Hawatt have you?---No.

20 And you've never been told by my client, Michael Hawatt, that Talal El Badar has ever worked for him?---No, that's correct. I assumed.

What was that assumption based on?---The phone calls that would come from, from his office so - - -

THE COMMISSIONER: Sorry, whose office?---From Michael Hawatt's office where, so when Talal called me, I believe he called me on one or two occasions from, from Ozsecure so I assumed he works for him.

30 MR DREWETT: If I was to suggest to you that Talal El Badar has never worked for Michael Hawatt what would you say to that suggestion?---I would stand corrected.

THE COMMISSIONER: Sorry, when you said a couple of times he had rung your office, was that about 31 Santley Crescent or other matters?---No, no, different.

40 MR DREWETT: You were asked at some stage by Counsel Assisting a question, and if I phrase it incorrectly I apologise, but it was in the effect of Michael Hawatt and Talal El Badar were actively marketing or selling the property of Santley Crescent. Do you recall being asked that question?
---Yes, I do.

And your answer as I wrote it down, and there was a pause when that question was asked of you and you said, "Good question. At the risk of guessing Talal or his brother were builders. They couldn't do it and they moved it on to Alae." I might have got that slightly wrong but that's as I wrote it down. Do you agree that was similar to the answer you've given?

---Yeah, that's right.

Which you prefaced your answer to that question with the words “at the risk of guessing”. Do you recall that?---Yes, I do.

Do I take it therefore that the words that followed that or the words that followed those words “at the risk of guessing” were in fact a guess by you. Is that right?---In relation to the fact that they were building.

10 Well, I think you said, at the risk of guessing, Talal or his brother were builders, they couldn't do it, and they moved it on to Alae. Was that part then a guess? They couldn't do it and they moved it on to Alae. Was that the guess part?---I assume, yeah, yeah.

So that was an assumption as well or a guess?---Yeah, that's, yes, yeah.

I'm going to suggest to you, sir, that your former client, Mr Hawatt, my client, never gave you instructions to draft an option agreement in relation to Santley Crescent. What would you say to that?---That's fabricated.
20

I think you've said that you have no written instructions in relation to that, is that right?---Yeah, that's right.

I'm going to suggest to you that he instructed you to draft a contract of sale for that property. You agree with that?---No, I don't agree. I don't willy-nilly create documents for the sake of creating documents. We, we charge for every single item that we, we produce.

30 THE COMMISSIONER: But he did instruct you back in November to draft a contract for sale.---He told, for, for the, yes, that's right, and then the option in late December.

And then Mr Drewett's just put to you that there were no instructions about the option and you dispute that.---I dispute that.

MR DREWETT: You had a conveyancer working for you at the time who still works for you.---Yeah.

40 Can you give us her name again, please?---Gunay Bedirhan. Gunay.

And what's her last name?---Bedirhan.

When did she go on holiday, just out of interest?---Two weeks ago.

As I understood your evidence in relation to – and I stand to be corrected – why there's no file note or anything in relation to any instructions given to you by Mr Hawatt in relation to the drafting of this option agreement was because it was a straightforward type of arrangement or something of that

nature, is that right? Is that the explanation that you give or have I misunderstood your evidence?---Can you repeat the question, sorry? You're, you're breaking up. It's, it's not very clear.

10 All right. The reason why there's no signed instructions or file notes or written instructions in relation to the drafting of this option agreement, as I understood your evidence, was because you considered it to be a very straightforward type of issue. Was that as I understood your evidence? Have I understood it correctly or was there some other reason?---No, no, no, no, no, no. There was specific and express instructions to prepare an option, okay, because the fellow couldn't complete. I don't create dates. I have no interest to create dates or figures.

Why is there nothing in writing?---It's just poor practice.

You say that those instructions were given by way of a telephone call, is that right?---Yes.

20 To you or to this conveyancer of yours?---No, no. I spoke to him about the option myself.

Well, sir, as a solicitor, why didn't you write those instructions down?---I didn't, I, I dictated it straight to my conveyancer straight off the phone.

And I think you said that it was a matter that was too complicated for your conveyancer because she couldn't do options or something of that nature. Did I understand that part of your evidence?---Yeah, independently. I, I'll, I'll have to supervise her. But drafting documents, anyone can do that.

30 THE COMMISSIONER: I think, to be fair, I thought the witness gave evidence that he took over when – and I've forgotten the other company's name, the company in 2016.---Hall.

Yes.---Hall and Company.

MR DREWETT: Please the Commissioner. I'll withdraw that. You say you dictated something off your phone, is that right?---Yeah. So as he was talking I was relaying what I wanted done on the option to Gunay.

40 So this Gunay was in the same room as you when this telephone call took place, is that right?---Yes. Yes.

And if she was here, she'd be able to say that she heard that conversation, is that right?---Ah hmm. Yes.

I'll just put it to you. Sorry, I think you've answered this question but I'll put it in fairness to you again. I'm going to suggest to you that those instructions were not given by Mr Hawatt and that you, to draft an option

and that you have either made up that evidence or you have misunderstood your instructions in that regard. What would you say to that?---I definitely didn't create instructions. If I misunderstood his, his instructions, that's, that's another story but I, I was instructed to prepare an option.

Well, let's talk about that other story. Do you accept the possibility that you might have misunderstood your instructions in relation to the drafting of an option agreement?---Yes, I am human.

10 Yes, thank you. I have no further – sorry, I'm sorry, Commissioner. In the, in the contract for the sale, in your standard contract for a sale of property. Let's talk about your standard contracts that you have for sale of property. Is there a clause that allows a purchaser's fees that they've paid towards that to be given and released to a vendor?---Yes.

Is that a standard clause in a contract?---Yes.

So, there's a clause in your standard contract that allows for the release of a deposit to a vendor, is that right?---That's right.

20

In terms of the contract that you drafted in relation to the sale of the property Santley Crescent, was there such a clause as you've agreed in your standard clause in that contract?---Yes. Special condition 39.

Yes, thank you. Commissioner, I have no further questions.

THE COMMISSIONER: Thank you. Mr Pararajasingham?

MR PARARAJASINGHAM: No questions from me, Commissioner.

30

THE COMMISSIONER: Mr Neil, did I jump over you?

MR NEIL: No, no, no. You did refer to me and I said, "No questions," thank you.

THE COMMISSIONER: I'm sorry. Sorry, Mr Pararajasingham, no?

MR PARARAJASINGHAM: No.

40 THE COMMISSIONER: Mr Stewart?

MR STEWART: No questions, Commissioner.

THE COMMISSIONER: I've dealt with everybody. Mr Buchanan?

MR BUCHANAN: Briefly, Commissioner. There was no clause in the contract, I want to suggest to you, that allowed the deposit to be passed to

the vendor before completion unless with the consent of the purchaser, correct?---Which version? Which version of the contract?

Well, you said you drafted – in answer to Mr Drewett questions, you said that you had drafted a contract with a clause that allowed for the funds to be transferred to the vendor, is that right?---repeat the question, sorry?

Well, I'm sorry. What did you say to Mr Drewett? What did he ask you and what did you say?---He asked me if I can release a deposit.

10

No, no. He asked you whether there was a clause in the contract you drafted.---Yes. There is a clause

Yes. So, can I take you to volume 8, page 60, please. Is this the clause that you had in mind when you said 39?---Yes.

20

Thank you. Headed, “Release of deposit. The purchaser authorises the vendor to use all or part of the deposit as a deposit on a purchase by the vendor of a property or as duty on the contract for the sale of land for that property. The purchaser also the stakeholder to release all or part of the deposit for those purposes and must give on request to the stakeholder a written authority to release all or part of the deposit.---Ah hmm.

Is that the clause you had in mind?---Yes.

The funds that you were, I'll use the word releasing, to Mr Hawatt were not for a deposit, were they, they were for the sale price - - -?---Yes.

30

- - - of another property, correct?---Yeah.

And you weren't releasing them for the payment of duty - - -?---Duty, no.

- - - on that contract either, were you?---No.

No. And you didn't seek from the stakeholder an indication as to whether he wanted a written authority or had acquired a written authority to release all or part of that deposit. Is that fair to say?---Yes, I'm the stakeholder, yeah.

40

THE COMMISSIONER: So you're the stakeholder?

MR BUCHANAN: Yes, correct.

THE WITNESS: Yeah.

THE COMMISSIONER: And you didn't - - -

MR BUCHANAN: You didn't approach Alae Osman - - -?---No.

- - - to seek authority. Correct?---Yeah.

Thank you. Can I ask you this. Thinking again of that transfer of \$250,000 into your account on 21 December, sorry, your trust account on 21 December, 2015, you understood it was on account of, it was to allow for Mr Hawatt to purchase this property. Is that right?---Yes.

10 In Queensland. Could you understand why it was that the payment went through your trust account at all in that case, why, why wouldn't the person who put the funds in your account simply pass them directly to Mr Hawatt? ---I don't know. I don't know. Honest.

THE COMMISSIONER: Or to the trust account of the solicitors in Queensland - - -?---Oh, Ramsden.

- - - acting for Mr Hawatt?---Yeah, I mean my understanding is Ramsden didn't have a trust account, so, but that was obviously wrong by the time I got the money, so - - -

20

MR BUCHANAN: Yes, because you got a receipt for it, didn't you? ---Yeah.

A trust account receipt.---Yeah.

Yes. That's the additional questions I have, Commissioner. Thank you. And Mr Zreika can be excused.

30 THE COMMISSIONER: Right. Thank you, Mr Zreika. You are excused. ---Thank you.

THE WITNESS EXCUSED

[4.12pm]

40 MR BUCHANAN: Commissioner, the next witness is Mr Stavis, however I don't call him at this stage because there has been notice given to us of intention to make an application under section 112 in respect, for a direction under section 112 in respect of the evidence to be given by Mr Stavis, and the parties have exchanged written submissions and we have I think provided your office with a copy of the sets of written submissions, Commissioner.

THE COMMISSIONER: Can I just confirm. Mr Pararajasingham, you submitted an outline of written submissions yesterday?

MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: And attached to that was a copy of Macdonald v The Queen and Maitland v The Queen as report in volume – it's New South Wales Law Reports, I can't - - -

MR PARARAJASINGHAM: Yes, 93.

THE COMMISSIONER: Thank you. 93 at page 736.

10 MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: All right. And then I received a copy of Counsel Assisting's submissions.

MR BUCHANAN: Ms Mitchelmore and I have provided submissions on the application today.

20 THE COMMISSIONER: Mr Buchanan, I'll inquire through you. The submissions, do I require to mark those for identification in any way?

MR BUCHANAN: Not in my submission.

THE COMMISSIONER: All right. All right, then. I'll indicate that I received both sets of written submissions and I have read them. Mr Pararajasingham, is there anything else you wish to add?

MR PARARAJASINGHAM: Commissioner, I might just very briefly just, if I may, perhaps take the Commissioner through the argument.

30 THE COMMISSIONER: Yes. Now, before you start, yes, that would be good.

MR PARARAJASINGHAM: That might be better. Commissioner, firstly, before I do that there is a further case that is referred to in the written submissions that I sent to my learned friend yesterday evening. It's the case of Lee v The Queen (253 COR 455). For completeness, can I provide a copy of that to you.

40 THE COMMISSIONER: Yes.

MR PARARAJASINGHAM: Commissioner, I'll move through this as expeditiously as I can, noting that you have considered the written submissions. What prompts the application is, in part, comments made by the Chief Justice in the case of Macdonald v The Queen, which is set out in the submissions. In particular, Commissioner, if we rely on what is set out at paragraphs 107 of that judgement, Commissioner, you'd appreciate this was a case in which the issue for determination was whether, put simply, the accusatorial principle was abrogated by the operation of the Independent

Commission Against Corruption Act. And at paragraph 107, the Chief Justice who wrote the judgement, and with whom Justices R.A. Hulme and Bellew agreed, held that “In the result the ICAC Act by necessary intendment abrogates the accusatorial principle, at least in the circumstance of public examinations occurring before the examinee is charged, and substitutes for it the statutory protections contained in section 18 and section 112 if a non-publication order is made, the fact that the protection in section 112 is based on the public interest demonstrates that the Commission, if asked to make an order under that section, would be required to balance the undoubted importance of the accusatorial principle with other factors, including the need to expose corruption.”

It’s my submission that that or those comments inform the exercise of the application that I seek from you, Commissioner, which requires sub-part 112(1)(B) of the Independent Commission Against Corruption Act, that the Commission is not to give a direction – that is, a direction under section 112(1) – unless satisfied that the direction is necessary or desirable in the public interest. So it certainly appears that an application made at this point, prior to the outset of someone about to be compelled to give evidence, calls upon a balancing exercise of those public interests. The submission I make, Commissioner, is that in this case the accusatorial process is preserved in subsection 112. It is an important public interest principle. As referred to in the written submissions, that principle has been referred to in the case of Lee and otherwise. And I won’t take you, Commissioner, to those but it’s understood that learned Counsel Assisting accepts the content of that principle.

THE COMMISSIONER: And when you say it’s preserved, that is it’s still a factor that I can take into consideration in determining whether it’s necessary or desirable in the public interest?

MR PARARAJASINGHAM: Yes. That that’s, with respect, that that is what I’m saying and I’m relying on what the Chief Justice said on that issue. As set out in the submissions it is accepted that that is but one public interest and a countervailing factor is perhaps what I’ve termed in the submissions as the public interest in exposing practices at in this case Canterbury Council, but ultimately the submission is that standing back and considering these public interests the Commission would form the view that a non-publication order is called for because, firstly, the fact of the accusatorial process and, secondly, on the facts of this inquiry the call for the exposure of the practices at Canterbury Council. Bearing in mind what this witness may say about that is somewhat attenuated because, firstly, for these reasons I am not seeking an order that his evidence be given in private so therefore that satisfies some measure of public exposure. It is understood that Mr Stavis will be in the witness box for some days. Nor does the order that I’m asking you to make, Commissioner, in any way affect what are the principal functions of this Commission, which are effectively investigatory.

So those, which are also public interests, those remain untouched by the order that I'm asking you to make.

Further, turning briefly to the facts of this inquiry, this is set out at subpoints 2 and 3 of the written submissions, there is a large body of evidence before you, Commissioner, that has been tendered and indeed is in the public domain of various exchanges between Mr Stavis and others – be it emails, letters, reports and so forth – and that body of evidence can I suggest sheds light on the practices of Canterbury Council and the circumstances surrounding the development approval process for the properties subject of this inquiry. The point I make is simply that in circumstances where such material is already out there the public interest in the testimony from Mr Stavis on those matters is somewhat attenuated. The way to think about it perhaps is counterfactual. If the Commission didn't have any of that material and the bulk of that evidence was going to come from Mr Stavis's oral testimony, one can see that in those circumstances the public interest would perhaps tend towards not making the non-publication order because he would be the significant or even sole source of that evidence. The point I simply make is that in circumstances where there is a great deal of evidence of that nature already in the public domain in the balancing exercise the public interest in that respect I would submit is perhaps somewhat attenuated and - - -

THE COMMISSIONER: But the public won't have the benefit of Mr Stavis's explanation. Yes, how do you deal with that?

MR PARARAJASINGHAM: And I understand that that is the effect of what is put against us by Counsel Assisting. All I can really say about that is many of these documents in my submission speak for themselves and inferences can be drawn from the face of these documents. True it is that one would anticipate Mr Stavis would give some context to those exchanges, but in terms of the point that I wish to make – which is the question whether by granting this order how is this going to affect the public interest of effectively not, the transcript not being available – my point is simply that, well, there is material on these points already in the public domain and that's perhaps as far as I can take that point.

The other matter I raise is that in perhaps the hierarchy of allegations made thus far in this inquiry it does appear that there would be a greater public interest in exposing the conduct of elected officials by way of council laws and the like and that may be distinguished from the current circumstance where we are essentially dealing with a member of staff. What is suggested in my learned friend's written submissions as to the opportunity for Mr Stavis to effectively be a witness to the allegations levelled against councillors is a point well-made and I accept that, but standing back at this point and considering whether you would make this order, really we foremost rely on the preservation of the accusatorial process which in this case would really, would have the effect of preventing dissemination of Mr

Stavis's compelled transcript of examination to any prosecuting authority and it would guard against direct or derivative use of his compelled testimony. It is a mechanism by which you, Commissioner, can preserve what is with respect an important public interest principle, which is the accusatorial process, whilst in my submission taking into account what might be a slightly lesser call for other public interest considerations.

Commissioner, before I sit down there's just two matters that I'll raise. Firstly can I just address what might in your mind be a practical concern. One could perhaps foresee complications with such an order being made, for example we all have to prepare submissions at some point and one would expect that we'd refer to the evidence. You, Commissioner, under section I think 74 of the ICAC Act are required to prepare a report I think to Parliament. The short answer to what, to those potential complications is this. It might be the case that this order can be revisited or modified in terms down the track or downstream, as we have seen in this inquiry that such, the section 112 orders can be varied, and those kinds of complications that I've raised can be addressed and in my submission ought not stand in the way of the current application. So that's just a practical concern I raise.

Can I just briefly address just a couple of matters raised in learned Counsel Assisting's submissions. Just referring to what's set out at paragraph 10 of the Counsel Assisting submissions, the observation is made that since Macdonald there have been amendments to the ICAC Act which may have a bearing on the extent to which section 112 preserves the accusatorial process and reference is made to section 112(1B)(b), and I simply, and that reads, "A direction under this section," being section 112, "does not apply to the disclosure of information, documents or other things by a law enforcement officer to the Director of Public Prosecutions in accordance with the duty of disclosure under section 15A of the Director of Public Prosecutions Act." My response to that is, Commissioner, simply that that provision turns on how one construes section 15A and as the Chief Justice referred to in Macdonald at paragraph 105, that's at paragraph 105 of Macdonald, "I do not think that section 15A of the DPP Act assists in determining whether or not the ICAC Act by necessary intentment abrogates the accusatorial principle," and then a little further on, "The provision of such material would generally speaking be carried out with regard to the accusatorial system of criminal justice." So that ought also not stand in the way of the order I'm asking you to make, and certainly in my respectful submission does not in any way dilute the comments made by the Chief Justice to the effect that section 112 provides a sort of mechanism by which you, Commissioner, can preserve the accusatorial process. Just one moment, Commissioner. Unless there was anything in particular, Commissioner, you wanted to hear from me, that was all I proposed to say.

THE COMMISSIONER: Thank you. Mr Buchanan?

MR BUCHANAN: Commissioner, only to provide assistance obviously but also so that those who are following the proceedings understand the position that we are advancing in our written submissions. Firstly, of course, Commissioner, you're aware that the power to give a direction under section 112 is that you are not to give a direction unless satisfied that the direction is necessary or desirable in the public interest. So, accordingly, effectively, it is for the applicant to satisfy you that it is necessary or describable in the public interest for the direction to be given. Secondly, there is no argument with our learned friends that the effect in particular of that part of the judgement in *Macdonald v Maitland* is to mean that the accusatorial principle is a relevant consideration where advanced or relied upon by an applicant for a section 112 order, and I hope we didn't overstate in paragraph 10 the significance of the amendment that has been made since the decision in *Macdonald v Maitland* by inserting subsection 1B(E), that is to say it may have a bearing. That's what we said in our written submissions. But, Commissioner, we draw it to your attention simply so that it isn't overlooked that that is a change to the law that has been made. It's a change to section 112 that's been made.

20 THE COMMISSIONER: And my understanding is that, and if you don't agree with this please say this Mr Pararajasingham, it was an amendment that was brought in after the Court of Criminal Appeal judgement?

MR BUCHANAN: Yes, oh yes. Very much so and one could be pardoned for drawing the inference that it was made because of that passage in the Chief Justice's judgement. But at the end of the day, Commissioner, we make the submission that you should take in to account the accusatorial principle in responding to this application because the applicant relies upon it on the strength of the decision in *Macdonald v Maitland*, but our principal submission as you will have seen in our written submissions is that having regard to the principle objects of the ICAC Act set out in section 2(A) and relevantly including the exposure of corruption involving or affecting public authorities and public officials and educating public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community, you would not be satisfied in the circumstances of this case that it is desirable or necessary to, in the public interest, to give a direction.

40 That is the burden of our submissions. You have our submission in paragraphs 11 and following as to some subsidiary matters, the argument that there is a large body of evidence that's been tendered in the proceedings and published cuts both ways, we submit, inasmuch as it, in our submission, means that there is less of a reason why a direction should be given and all the more reason why the record should include a public explication by key witnesses. Obviously Mr Stavis is a key witness. The submission that Mr Stavis is not as significant a witness to the events the subject of the inquiry as people, quote, "further up the chain" is not, in our submission, a submission to which much weight should be given. There is a considerable

body of evidence indicating that Mr Stavis was central to the events the subject of the investigation. I think it would be fair to say, in the case of almost every property the subject of the investigation, Mr Stavis played an important role in the events which occurred, the subject of the investigation, and there is then, of course, the recruitment of Mr Stavis which is itself – as I outlined in my opening address – an important matter in the Commission’s investigation.

10 For those reasons we submit that you wouldn't be satisfied that it's in the public interest or that it's desirable or necessary in the public interest for a direction to be given. If anything, the contrary, but that's not – you don't have to find that. You only have to find, Commissioner, that you're not satisfied that it is necessary or desirable. My attention is drawn to the fact that, in fact, the application or rather the submissions in support of the application are not that it is necessary in the public interest, but rather that it is desirable in the public interest. That's paragraph 2 of Mr Pararajasingham's submissions. And so it would seem that you're not being asked to make a direction on a basis that you would be satisfied that it's necessary in the public interest, only that it's desirable in the public interest
20 for the reasons that the applicant gives.

THE COMMISSIONER: Can you remind me, Mr Pararajasingham has indicated in his submissions he will seek on behalf of Mr Stavis a direction under section 38.

MR BUCHANAN: Yes.

THE COMMISSIONER: The immunity that's given under if an order is made, is it just a use immunity?
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MR BUCHANAN: Yes. Not derivative.

THE COMMISSIONER: Not derivative.

MR BUCHANAN: And plainly the provisions that allow for the ICAC to seek the advice of the DPP as to whether there is admissible evidence of the commission of an offence indicates that derivative use is contemplated by the legislation.

40 THE COMMISSIONER: Thank you. Anything in reply?

MR PARARAJASINGHAM: The only thing, just to confirm. It is the case that the way I advanced the submissions is on the basis that it is desirable in the public interest. I read necessary or desirable as disjunctive and have deliberately framed my submissions on the latter.

THE COMMISSIONER: Look, what I'm going to do is I'll reserve my decision and hand it down tomorrow morning at 9.30 before Mr Stavis is

called. So unless there's any other issue anybody wants to raise, we're adjourned until tomorrow morning at 9.30.

AT 4.39PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.39pm]