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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 9 SEPTEMBER, 2019

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Chief Commissioner, can I first deal with some matters of housekeeping. First the program for this week. In a moment I'll call Mr Ian Robertson for examination and I'll recall him for cross-examination on a later date to be announced, that's most likely to occur during the course of next week, but when I'm in a position to confirm that I will identify that. The program for witnesses this week is available on the public website, that indicates the tentative program in relation to those matters. I presently
10 anticipate that Friday will be a short day and I presently anticipate that today will be a short day as well. In the event that those matters change I'll advise interested persons as soon as possible. Next can I tidy up some tenders arising from Friday of last week. At page 825 of the transcript, line 45, my learned friend Mr Moses referred to the officers' report to the
Administrative Committee of NSW Labor dated 6 April, 2018. I tender a redacted version of that report with only the item referred to by Mr Moses being visible on that version of the document.

THE COMMISSIONER: Yes. The report as so described, 6 April, 2018
20 will become, it will be admitted and it will be Exhibit 216.

**#EXH-216 – REDACTED NSW LABOR OFFICER'S REPORT –
ADMINISTRATIVE COMMITTEE MEETING DATED 6 APRIL
2018**

MR ROBERTSON: Next my learned friend Mr Neil at page 832 of the
30 transcript, line 22, referred to certain text messages between Ms Murnain and her husband. I tender those text messages as a bundle.

THE COMMISSIONER: The text messages between Ms Murnain and her partner will become Exhibit 217.

**#EXH-217 – iMESSAGES ON MURNAIN'S MOBILE PHONE
BETWEEN MURNAIN AND HOLLYWOOD ON 16 SEPTEMBER
2016**

40 MR ROBERTSON: And just for the assistance of anyone looking at the exhibit that I've just tendered, there's a degree of repetition in the individual pages. The reason for that is the way in which that was prepared by Mr Neil's team was to ensure that the individual times of each entry have been identified. So when one looks at that bundle, one will see repetition in terms of the text, but that's the reason why that has occurred. Next, on Friday my learned friend Mr McInerney showed a number of documents to Ms Murnain during the course of a cross-examination which have not been

tendered yet. With two exceptions I intend to take Mr Robertson to the same documents and will tender them during the course of that examination and I'll tender redacted versions of those document to deal with the concerns that my learned friend Mr Moses raised on Friday. There's two exceptions to that approach and can I deal with those tenders now. Mr McInerney at page 797, line 38 of the transcript referred to a Daily Telegraph news article of 20 September, 2016, which was at pages 56 and 57 of his cross-examination bundle. I tender that article.

- 10 THE COMMISSIONER: The article 20 September, 2016, pages 56 to 57 of the cross-examination bundle will become Exhibit 218.

#EXH-218 – DAILY TELEGRAPH NEWS ARTICLE TITLED ‘NICK LALICH: NSW LABOR MP REFERRED TO ELECTORAL COMMISSION OVER TRIP TO CHINA’ DATED 20 SEPTEMBER 2016

- 20 MR ROBERTSON: And starting at about page 770 of the transcript, line 38, my learned friend Mr McInerney referred to a series of instant messages from Ms Murnain. In a redacted form I tender the document that my learned friend cross-examined on, including the one image that he cross-examined on as well.

THE COMMISSIONER: The text messages from Ms Murnain referred to at line 38 at page transcript 770 will become Exhibit 219.

- 30 **#EXH-219 – EXTRACT OF INSTANT MESSAGES ON MURNAIN’S MOBILE PHONE ON 16 SEPTEMBER 2016**

MR ROBERTSON: May it please the Commission. Those are the housekeeping matters from my perspective.

THE COMMISSIONER: Yes, very well.

MR ROBERTSON: I call Ian Lyall Robertson.

40

THE COMMISSIONER: Do you take an oath or an affirmation, Mr Robertson?

MR I. ROBERTSON: An oath, Commissioner.

MR McINERNEY: Chief Commissioner, I have an application to make on behalf of Mr Ian Robertson. Chief Commissioner, the provisions of sections 37 and 38 of the Independent Commission Against Corruption Act have been explained to Mr Robertson. Mr Robertson, being a person who's been summoned to attend and appear before the Commission at this public inquiry, objects to the answering of any question and the production of any document or other thing in this public inquiry on such grounds under section 37(2) of the ICAC Act as may be available to him, and Mr Robertson asks for a declaration under section 38 of the ICAC Act that all answers given by him and all documents or other things produced by him in this public inquiry be taken as having been given on such objection.

THE COMMISSIONER: Yes, Mr McInerney. And, Mr Robertson, you understand, of course, that a declaration under section 38 has the effect provided for under the Act, and you are, of course, notwithstanding, required to answer all questions truthfully?---(No Audible Reply)

20 Would you respond, just so it's recorded?---Yes, Chief Commissioner.

And produce any document or item that you may be required to produce during the course of this hearing.---Yes.

Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness, Mr Robertson, all documents or things that may or are produced by him during the course of his evidence at this public inquiry are to regarded as having been given or produced on objection. Accordingly, there is no need for Mr Robertson to make objection in respect of any particular answer given or document or thing produced.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR ROBERTSON, ALL DOCUMENTS OR THINGS THAT MAY OR ARE PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY, THERE IS NO NEED FOR MR ROBERTSON TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Robertson, you're the National Managing Partner of Holding Redlich Lawyers, correct?---Yes, I am.

You've been a partner of that firm since 1990?---Yes, I have.

You established the Holding Redlich Sydney office in 1994, correct?---Yes, I did.

10 And you became a managing partner of the firm in 2015, correct?---Yes.

As a partner of Holding Redlich, you've been an adviser of the Australian Labor Party in its various manifestations for many years, correct?---Yes, since approximately 2008.

And that's included acting from time to time for Country Labor, correct?---Yes.

20 You've been a personal legal adviser to Bob Hawke after he retired from parliament in 1992, correct?---Yes.

And you were the company secretary of Robert J.L. Hawke and Associates Pty Ltd, during two periods in the early '90s, correct?---I don't recall that.

That may have been the case, but you don't recall that, sitting there now, is that right?---That's correct.

But you certainly did give advice to Mr Bob Hawke for an extended period, correct?---For the 28 years until his death.

30 As a personal adviser to him, correct?---Well, personal legal adviser.

Your firm has been a major donor to the Australian Labor Party in recent years and decades, correct?---No. No, we're minor donors.

Well, would you agree that since about 2000, your firm has donated about half a million dollars to the Australian Labor Party?---I don't think that's correct.

40 THE COMMISSIONER: How do you define minor donors?---Oh, I, I beg your pardon, Chief Commissioner?

How do you define minor donors?---I've looked at the, the amount we donated last financial year, and it was a total of \$18,000 in New South Wales, split between the Labor and Liberal, 12,000 to Labor and about 6,000 to the Coalition.

All right. Now you might answer my question.---I beg your pardon, sir?

You might answer my question.---I apologise, sir.

I'll put it again. How do you define minor donors? The expression you used a moment ago.---I, I, I would have thought, I think in the context of a law firm donating less than \$20,000 a year is a, is a minor donor.

All right. Thank you.

10 MR ROBERTSON: Could you at least accept that since 2000 your firm has made hundreds of thousands of dollars in donations to the Australian Labor Party?---That's a 19-year period. Yes, that's possible.

And would you agree that in that period the donations have been predominantly on the Labor side of politics, as distinct from the Liberal side?---Yes, I would agree with that.

You've also personally made donations to the Australian Labor Party. Correct?---Very few.

20 THE COMMISSIONER: Well, is the answer yes?---Yes, but not many.

MR ROBERTSON: But it's at least fair to say, isn't it, that your firm has been supporters of the Australian Labor Party over the years in addition to being its legal advisers. Is that fair?---Yes.

30 When you do work for the Australian Labor Party in any of its manifestations, do you charge that at your standard rates or at discount rates?---I apply, we apply a discount of 10 per cent to our, our, what I think we call a rack hourly rate, which is really our highest hourly rate.

From time to time do you put further discounts on those rates for the Australian Labor Party?---I have on occasions if I have thought that the total of any account is higher than I think it should be for the work done, which is what I do for all clients, not just that one.

Do you ever do any pro bono or free work for the Australian Labor Party? ---I don't recall.

40 Does that mean you may have from time to time and you don't recall sitting there now?---I don't recall doing any.

Is it the case, though, that at least from time to time you've done work for the Australian Labor Party, perhaps items of work but haven't sent a bill? ---I don't, I and my firm don't necessarily charge for everything we do, every phone call, every email et cetera, so that's possible, yes.

When that occurs – sorry, I withdraw that. Has that ever happened in relation to NSW Labor, as distinct from the Australian Labor Party in its federal manifestation?---I don't recall.

It may have happened but you don't recall sitting there now?---I just don't recall.

10 Can we just have a look at an example. If we go to ILR 1 at page 67, and, Mr Robertson, just coming up on your screen is an email, just bear with us for a moment, page 67 of ILR 1, please. An email from Mr Robertson of 5 October, 2016. Do you see there, Mr Robertson, an email from you of 5 October, 2016?---Yes.

If you just have a look at the penultimate paragraph, it starts by saying, "We are applying a discount of 10 per cent to our usual hourly rates." Do you see that there?---Yes.

20 Is that a reference to the 10 per cent discount off the rack rate you referred to a moment ago?---Yes.

But on this particular occasion you applied a further discount of 10 per cent. Do you see that there?---Yes.

And that was for the purposes of bringing that bill underneath \$20,000 before GST. Do you see that there?---Yes.

Now, this was a fee note in relation to NSW Labor. Is that right?---Yes.

30 And so you put the two sets of discounts, the 20 per cent discount to bring it under \$20,000 before GST. Do you see that there?---Yes.

When you do a discount of that kind, is it your practice of disclosing that discount as gift to the party?---No.

40 And why is that?---Because the reason for the discount was based on my view of what a reasonable account for the amount of work done was for that month. I thought the overall bill actually was too high for the work we'd done and I adjusted it downwards. I did not consider it to be a gift to our client.

And so do you say that the approach that you took to this particular bill is consistent with the approach that you take to other clients, in other words, assessing the overall reason to bill and if appropriate just discounting it so as to make it a reasonable total amount?---Yes. It's completely consistent.

As well as being a partner at Holding Redlich, you're also a member of the advisory board of the Australia-China Relations Institute at the University of Technology, Sydney, correct?---Yes.

You've been a member of that board since 2016, correct?---Yes, I think so.

Well you've at least been a member of that board since it was established, is that right?---Yes.

Henry Ngai, N-g-a-i, was also on the advisory board when you joined, correct?---I can't recall it.

10 Can we have please on the screen the About ACRI document, so I can assist you with this, Mr Robertson. Just while it's being brought up, do you recall who it was that gave the principal seed funding to enable that institute, the Australia-China Relations Institute to be established?---I have seen media reports that indicate it was Mr Huang.

Well, you were a member of the advisory board since its establishment, correct?---Yes but I haven't been to very many meetings.

20 But you must have known, in accepting the position on the advisory board, who the principal funder was when that board was established, correct?
---No. I did not know that.

THE COMMISSIONER: Well, the funding, referred to as seed funding for that institute, soon after it was established in 2014, it was no secret, was it? No secret amongst the members of the advisory board, in fact it wasn't a secret at all even from the public perspective. Isn't that right?---My recollection, Chief Commissioner, is that I didn't become the – the Australia-China Relations Institute, as I recall it, was established in 2014. I didn't become involved until 2015 and I don't think the advisory board was
30 established until sometime at least a year later. So I don't believe, Commissioner, that the advisory board would have known of the initial funding of the institute some two years or three years earlier.

In any event, you said you heard of the fact that the seed funding came, at least in part, from Mr Huang?---Yes.

40 When was that that you heard that or read that through the media?---It's been the subject of considerable publicity, Chief Commissioner, but I can't recall when I first became aware of that. I, I don't think I was aware of it when my first, my firm first joined the institute in 2015.

Was there any other association between the institute and Mr Huang, other than his name, personally, that is through any corporate vehicle that he was associated with?---I don't have a detailed knowledge of the institute at all but I'm not aware of anything else.

You're not aware whether any corporate vehicle associated with Mr Huang was also associated with the ACRI?---I don't know. I'm not aware of that, Chief Commissioner.

MR ROBERTSON: So just to be clear, your firm's first involvement in the ACRI was in 2015, is that right?---That is correct.

10 And your firm became a member of that institute about that time, is that right?---We became a member of something called a chairman's council, which was established to enable corporate and professional firm participation. You undoubtedly have a, a list of those members. It's a significant group of, of companies and firms.

And as part of that exercise, the firm made financial contributions to the ACRI, is that right?---We had paid a fee of \$10,000 per annum to belong to the chairman's council.

20 Is that the extent of the contributions that your firm has made to the ACRI? ---To the best of my recollection, yes.

Why was it that your firm decided to involve itself in the ACRI?---Because for about the past decade we have put effort into establishing a practice acting for Chinese corporations and businesses, particularly in inbound investment into Australia and the membership of ACRI's chairman's council seemed to be consistent with doing that.

30 Has that practice included providing any services to any entities forming part of the Yuhu Group or any other entities associated with Mr Huang Xiangmo?---I have checked this, I don't know it of my own knowledge, but I believe that since early 2018 my firm has performed some legal services for the Yuhu Group but that no one in my firm has any, has had any dealing at all with Mr Huang.

So are you saying at least according to records that's the earliest link that you can find with either the Yuhu Group or any other entity associated with Mr Huang Xiangmo?---Yes, approximately February 2018.

40 THE COMMISSIONER: Had you heard of the Yuhu Group before 2008? ---Before 2018, yes.

Sorry, '18, '18?---Yes, because of Mr Dastyari's issues with Mr Huang.

And what did you understand that company was involved in?---I understand, well, I don't know that I originally understood but I understand now it's involved in the property industry, including as a developer.

MR ROBERTSON: When did that matter first come to your attention? ---The first recollection I have of becoming aware of Mr Huang was in the

course of providing advice about Mr Dastyari and donations to him from Mr Huang or the Yuhu Group or both.

So let's go to that, then. Can we go please to what I'll call the 35(2) bundle at page 2. So you're aware that then Senator Dastyari resigned from the front bench towards the start of September 2016. Correct?---Yes.

And if you just have a look on the screen, do you see there an email from Mr Garcia to you of 14 September, 2016?---Yes.

10

At that time Mr Garcia was one of the assistant general secretaries of NSW Labor. Correct?---Yes, and he still is.

Is that the first time – sorry, I withdraw that. You'll see there that there's a link to an article saying, "Sam Dastyari make have broken Federal and NSW Labor Party rules on donations." Do you see that there?---Yes.

20

Now, was that the first – sorry, I withdraw that. And do we take it that you understood that email to be a request by Mr Garcia to provide some assistance in connection with the matter the subject of the article that he was sending you?---Yes.

Is that the first time you were asked for any advice in connection with Senator Dastyari and the subject matter of that article, namely whether there was a breach of Federal or NSW Labor Party rules?---I don't recall, but my belief is that I provided advice on another issue related to Mr Dastyari and donations in the previous week.

30

So the first time you would have had any dealings with that matter of Senator Dastyari would be sometime in September. Is that right?---To the best of my recollection, yes.

It may have been 14 September or it may have been a week or perhaps two prior to that point?---Yes. My belief is that it was about 7 September, 2016.

And if we just turn the page on this document, do you recognise this article, an article of 7 September, 2016 raising the question of whether Senator Dastyari had broken any relevant rules?---Yes, I do.

40

And you know that one of the issues that was being discussed is whether Senator Dastyari had broken any rules by accepting payments from the Yuhu Group. Correct?---Yes.

And there was another entity discussed as well referred to as Top Education. Correct?---Yes.

Now, do we take it that at that point in time when considering this issue, the issue the subject of this article, at least by that point in time it came to your

notice, that Mr Huang Xiangmo was associated with a property development company?---I don't recall the property development issue at that time. It was not relevant to Mr Dastyari because he's a federal politician, he's not at the state level. I, my understanding was simply that Mr Huang was a very high net worth Chinese businessman. I don't think I particularly focussed on what his business was.

10 So at least at the time you were asked for advice in relation to this issue, you were aware of the existence of the Yuhu Group, correct?---Yes.

And at that point in time, were you aware that Mr Huang Xiangmo was associated with the Yuhu Group?---Yes.

And is it your evidence that you don't now recall whether you knew the line of work that the Yuhu Group was in, at least in Australia, at that point in time?---Yes.

20 But it was at least a matter of some notoriety, wasn't it, at that point in time, what line of business Yuhu Group and Mr Huang Xiangmo was in, correct? ---I don't recall it being a matter of notoriety in terms of his line of business.

Can we go, please, to the media articles bundle that was prepared by Mr Robertson's counsel for the purpose of cross-examining Ms Murnain, and can we go, please, to page 10 of that bundle? Do you see there, Mr Robertson, an article entitled, Dim Sam Won't Stop Wong Show?---Yes.

And do you see that's an article on 9 September, 2016?---Yes.

30 And if you just have a look at the third paragraph, do you see there that, well, in the second paragraph, Mr Xiangmo Huang is referred to, and the third paragraph, he's described as a property developer, do you see that there?---Yes.

40 Now does that article refresh your memory that at least as at September, 2016, it was a matter of some notoriety or at least a matter of public knowledge that Mr Xiangmo Huang was either a property developer or associated with property development?---My understanding of Mr Huang's notoriety, to the best of my recollection, was about the amount of money he had, and what he was using it for, not so much how he'd made the money.

But what I want to suggest to you is that at least as at September, 2016, it was well known that Xiangmo Huang was either a property developer or in the property development industry.---Perhaps, but it wasn't well-known by me.

THE COMMISSIONER: Well, whether it was well known or not, was it known to you by this date? We're talking about the 9 September article in the Herald.---Yes.

All right.

MR ROBERTSON: So to be clear about your answer to the Chief Commissioner's question, it was known to you as at the time of this article that Mr Xiangmo Huang was a property developer or associated with a property development company, is that right?---No, I apologise if I gave an incorrect answer. What, what I meant is, it's obvious from this article, which I don't recall seeing before, that that information is there. It's just I
10 don't recall knowing that at that time.

THE COMMISSIONER: But it was out in the public by this stage, wasn't it? The date here, you recall, just think about it, 9 September, it had been recorded in the media that he was a property developer associated with Yuhu Group. Isn't that the case?---Yes.

All right, well, I just want to make sure that we understand each other. We're trying to ascertain the fact as at the date of the article, 9 September.
---Yes, I, I apologise if I haven't been clear.

20

No, that's all right.---I, I accept that it was in the media. It's just I don't recall it personally.

Well, that doesn't mean you wouldn't have read The Australian, for example, or the Sydney papers, especially if it did focus in on matters concerning the Labor Party, Dastyari and, et cetera, at this time.---I don't read every article connected with NSW Labor, I'm - - -

Mr Robertson, please. The matter concerning Dastyari was all over the
30 press, wasn't it, in September, 2016?---Yes, it was.

It was a major issue.---Yes.

And it was a major, major issue, A, because he was a senator at the time.
---Yes.

And B, that he had been in some way associating with a very wealthy Chinese person, and there's a question about whether there was some issues of foreign influence involved, correct?---Yes, I agree with that, Chief
40 Commissioner.

And you would have been reading the press at that time, would you not?---I would have read some of the press, Chief Commissioner, not necessarily all of it.

Well, I'm not suggesting you would have read all of them. I'm talking about the main media outlets in Sydney such as The Sydney Morning

Herald and The Australian and Financial Review, those sort of media outlets.---Yes.

So if Mr, Senator then, Dastyari on one hand, Mr Huang on the other hand, was a subject of this blaze of publicity at the time as to whether he had acted improperly, he Dastyari, you would have been reading the press articles at that time, wouldn't you?---Some of them, sir.

10 And it was frequently mentioned, wasn't it, at that time in media articles that there was question marks about the propriety of Dastyari's dealing with a wealthy Chinese businessman who was a property developer.---There were, there were questions about the propriety of Mr, or Senator Dastyari as he then was, dealing with Mr Huang as a wealthy Chinese businessman. I don't believe the particular focus was about property development.

20 Well, you can see whether it's a focus, it was a feature that was referred to, surely. You tell me if you want to deny this, but it was a matter that was frequently mentioned in the press, that this was a wealthy property developer associated with the Yuhu Group, in fact that was his company. Isn't that right?---Yes.

All right. Mr Robertson, you move on.

MR ROBERTSON: So even if you didn't know who Mr Huang Xiangmo was before September of 2016, you must have at least engaged in some enquiries as to what the Yuhu Group did when you were asked to give advice concerning Senator Dastyari, correct?---I don't believe that what the Yuhu Group did was relevant to Mr Dastyari's problem.

30 Can we go back to section 35(2) bundle and then page 2. And while that happens, I'll tender the document on the screen, being the media article at pages 10 to 14 of the media articles bundle prepared on behalf of Mr Robertson for the purposes of cross-examination. So, Chief Commissioner, you might want to mark the tender that I just did, namely pages 10 through to 14 of the media article bundle prepared my Mr Ian Robertson's counsel.

THE COMMISSIONER: Yes. Page 10 to 14 of the media bundle will be admitted and become Exhibit 220.

40

#EXH-220 – THE AUSTRALIAN NEWS ARTICLE TITLED ‘DIM SAM WON’T STOP WONG SHOW’ DATED 9 SEPTEMBER 2016

MR ROBERTSON: So if we turn to the next page, please, page 3, and if we turn one further page as well. Do you see there, Mr Robertson, the third paragraph it says, “Fairfax Media reveal in March 2015 that the Yuhu

Group had paid a legal bill for Senator Dastyari in late 2014, worth about \$5,000.” Do you see that there?---Yes.

And do you see that the words, “Fairfax Media revealed in March 2015,” are underlined?---Yes.

And you know that to mean that that’s a reference to a link which one can click to find a previous article, correct?---Yes.

10 And so you would have looked at the article the subject of the link that starts with “Fairfax Media revealed in March 2015,” correct?---I don’t recall.

Well, as part of assessing the matter that you were asked for advice on, you would have researched the matter carefully, wouldn’t you?---I was asked to advise on whether the acceptance of these donations, and in the context of the advice it would not have mattered who they were from, were a breach of New South Wales Labor rule and the national rule of the ALP concerning members of parliament accepting donations regardless of from whom.

20 So is it your evidence that it was not relevant for you to know the details of who the Yuhu Group were in giving the advice that you were asked to give, is that right?---That’s correct and I also didn’t know who the Top Education Institute was either.

Can we go, please, to the article the subject of that link, which I will call The Sydney Morning Herald 2015 article, because I just want to try and refresh your memory on this, Mr Robertson. So it’s your evidence that you may have looked at the background but you just don’t recall sitting there now, is that fair?---No, my, my evidence is that I don’t recall looking at it at all and I don’t really, I don’t believe it would have been relevant to what I had been asked to do as a matter of urgency, of course.

30

So is it the case then that although a specific article was forwarded to you presumably for comment and advice, you didn’t seek to investigate the background of that article. Is that right?---I wasn’t asked to comment or advise on the article, I was asked to advise on whether there had been a breach of the rules of the Labor Party.

THE COMMISSIONER: And would it have been relevant to know where the money came from into Dastyari’s pocket?---Not in the context of this advice.

40

You can’t be serious.---Well, the allegation, Commissioner, was that he had accepted donations in breach of party rules. The identity of the donor in my opinion was not the key to that, it was whether he had complied with the rules about the donations.

But it was a key to the publicity about the issue, wasn't it, that he was being paid expenses or receiving money in some form - - -?---Well, I think he - - -
- - - from a - - -?---Sorry, sir.

That's all right. From a Chinese businessman.---Yes. I think the emphasis was a great deal more on the nationality or origins of the donors as opposed to what their business activities were, it was all about China.

10 All right. We'll come to that. But it was relevant to know, for example, whether the, it was relevant to know something about the identity of the donor, surely, at this time?---I don't believe I needed to know more about the identity of the donor than I was told, which was the name of the companies and the amounts.

Whether you needed to or not, it was all over the press, wasn't it, that the person he had been dealing with was said to be a Chinese businessman. Correct?---Yes.

20 And money had come from a Chinese businessman, namely Mr Huang. ---Correct.

Right. And that it was relevant to know who was Mr Huang, was he for example somebody associated with drug trafficking or was he a respectable businessman, was he associated with, and if so, what was his business. That was all relevant, wasn't it, to knowing the identity of the person who gave him the money?---Well, I can only reiterate, Chief Commissioner, that my knowledge at that time to the best of my recollection was that I understood
30 him to be a very high net worth Chinese businessman and I didn't know a great deal more about him than that.

I think I'll come back to the premise of the last few questions, and that is, it was an important issue to know who Senator Dastyari had been dealing with in receiving money from that person, wasn't it?---I don't think it was important for the purpose of the advice I'd been asked to give about the Labor Party rules.

40 So you're seriously saying it wouldn't have mattered whether he was a drug dealer or whether he was not?---I think it would have mattered if he was a drug dealer or another criminal, but I don't believe I had any reason to suspect that that could have been the case.

But wasn't there discussion about whether this person had some form of influence and was buying influence, political influence?---There has been a great deal of media speculation about that. I don't recall whether there was media speculation about that at this time, but I expect there was.

Indeed, I was going to say you may not recall it but you wouldn't dispute that it was writ large in the media at the time of the Dastyari incident or matter?---No, I would not dispute that, Chief Commissioner.

No. Right.

MR ROBERTSON: You at least accept, don't you, that in giving advice in connection with the Senator Dastyari issue, it was relevant to know the nationality of the donor. Is that right?---Yes.

10

And is that a matter that you investigated or was it a matter that you already knew as at the time that Mr Garcia asked you for advice?---I didn't know his nationality.

So how did you then find out that the Yuhu Group was associated with a Chinese businessman, as distinct from, for example, an Australian businessman?---From media reports.

20

So you at least engaged in some consideration of the media at the time in order to work out at least the nationality of those associated with the Yuhu Group. Correct?---No, I think I was focussed on the nationality of Mr Huang and I guess one would get a fairly good indication of that by looking at his name.

But I think you said to us a moment ago that one of the things you did to confirm that matter was by reference to media reports. Did I get that right? ---Could you repeat the question?

30

In answer to one of my earlier questions, I think you said that one of the ways in which you identified Mr Huang as a Chinese businessman, as distinct from an Australian businessman, was from media reports, correct? ---Yes.

And so you at least engaged in some assessment of media reports to identify at least the nationality of Mr Huang, correct?---I don't recall engaging in an analysis of media reports at all. That's not my usual practice in providing legal advice.

40

Well, you at least looked at media reports, didn't you?---I was aware of media reports at the time. I don't believe I gave them any particular attention, apart from the ones that would have, that were referred to me directly by NSW Labor.

I want to suggest to you that you must have known at least at the time that you were asked for advice in relation to the Senator Dastyari issue that Mr Huang Xiangmo was a Chinese businessperson associated with the property development industry, do you agree with that?---Yes.

I tender The Sydney Morning Herald article of 2015 that was on the screen a moment ago.

THE COMMISSIONER: Herald article, 20 March, 2015, becomes Exhibit 221.

10 **#EXH-221 – SYDNEY MORNING HERALD NEWS ARTICLE
TITLED ‘CHINESE DONOR THE YUHU GROUP STEPS IN TO
HELP SAM DASTYARI’ DATED 27 MARCH 2015**

MR ROBERTSON: Can we go back, please, to the About ACRI document that we went to a little while ago, and then we got distracted? Do you see there on the screen, Mr Robertson, a document entitled About ACRI?---Yes.

Is the text of this document something that you’ve seen before?---I don’t recall seeing it before.

20 But it’s at least consistent with your recollection that the ACRI was established in 2014, correct?---Yes.

And I think you said a moment ago you couldn’t recall whether Mr Henry Ngai – I may be pronouncing that wrong, N-g-a-i – the Managing Director of ABC Tissue products, was on the advisory board when you joined, is that right?---I don’t recall.

30 Can I try and help you this way, if we turn to the next page, do you see there a few dot points, about three-tenths of the way down the page, do you see your name there?---Yes.

And in fact, I’ll come back to a separate document, this is the current About document, I’ll come back to a separate document in relation to that matter. But before I do that, can I just draw your attention towards the end of this page, do you see there, it says a \$1.8 million donation in December, 2013, from Founder and Chairman of the Yuhu Group, Mr Xiangmo Huang, enabled UTS to establish the ACRI, do you see that there?---Yes.

40 And so it was no secret, was it, that when the ACRI was established in 2014, Mr Xiangmo Huang provided the principal funding, in other word, the \$1.8 million donation referred to there, correct?---No, but I had, neither my firm nor I had any involvement at all with ACRI at that time, or for a significant time later.

Well, didn’t you tell us before that in 2015, your firm became part of the Chairman’s Council for ACRI?---That’s correct.

So at least at that point in time you must have known, mustn't you, that Mr Xiangmo Huang provided the principal funding for the ACRI, correct?---I expect I must have.

And do you accept that at that point in time, so in 2015, you knew what the Yuhu Group was, namely a property development company?---I guess I must have.

10 Can we go, please, to the 2016-2017 ACRI annual report? And can we go, please, to numbered page 4 of that document, PDF page 6? Two further pages, please. And do you see there, Mr Robertson, your name directly under Mr Ngai's name?---Yes.

And does that help refresh your memory that Mr Ngai was on the advisory board as at the date of this report, which is the 2016-2017 annual report?---I have no memory of Mr Ngai being on the advisory board or not, and to the best of my knowledge, I've never met him.

20 The advisory board sits about three or four times a year. Is that right? ---Yes, but as I have already said, I haven't been to many meetings.

Roughly speaking how many meetings have you been to since you joined the advisory board in 2016?---Two or three.

And you're saying you don't have any recollection of Mr Ngai being at any of the meetings at which you attended?---No, I don't. In fact I'm quite surprised to see his name there.

30 If we go please to numbered page 8 of the same document, the same document, the 2016/2017 Annual Report, PDF page 10, numbered page 8. 2016/2017 ACRI Annual Report, page 8, and just zoom out, please. If we can move another four pages along, please, so two pages back. If you just have a look about seven-tenths of the way down the page you see a heading that says Corporate Contributions, a total of \$535,000. Do you see that there, Mr Robertson?---Yes.

And you see your firm's name as part of the list of - - -?---Yes.

40 - - - persons providing what's there described as, "33 per cent of ACRI's funding in 2016."---Yes.

And so that's consistent with what you said before, is it, that namely that your firm has made corporate contributions to the ACRI?---Yes, of \$10,000 per annum.

And so \$10,000 per annum since it became involved in the ACRI. Is that right?---Correct.

So your firm's contribution to the \$535,000 is \$10,000. Is that right?---Yes, a very small part I realise.

Now, as at 2016 you knew that property developers and close associates of property developers were prohibited donors as a matter of state electoral law. Correct?---Yes.

10 And you've now accepted that in 2016 you knew that Mr Huang Xiangmo was associated with a property development company. Correct?---Yes.

And so as at that time you know that Mr Huang Xiangmo was a prohibited donor for the purposes of state electoral law. Correct?---Yes.

I'm going to ask you some more questions about the legal services that your firm and you have provided to the Australian Labor Party, with a particular focus on the Australian Labor Party NSW Branch, which I'm going to call NSW Labor. Is it right to say that at least as at 2016, Holding Redlich had a general retainer to provide advice on issues that might arise for NSW Labor from time to time, is that right?---There has never been a formal
20 appointment or agreement of any nature. We have simply been asked to provide legal services on a case-by-case basis and we have provided them.

Is it right to say that in the computer systems of Holding Redlich there's a general file for NSW Labor called General Commercial and Legal Advice? ---Yes.

And that's the file to which particular advice that arises from time to time is organised and time entries are recorded. Is that right?---Yes.

30 And so I take it that if there is some significant matter, like court proceedings or some other substantial matter, you may establish a separate specific file for that advice or appearance. Is that right?---Sometimes.

But at least as a residual category you might be asked for advice on a particular question that might arise and the time associated with that would be recorded on the general file I've just identified. Is that right?---Yes.

40 Do you happen to recall off the top of your head what the file number is for that file?---As a matter of fact I do.

And what's that?---1-4-6-6-0-0-5.

Now, the fact that you remember that off the top of your head, does that mean that that's a file that has been regularly used by you in recent times? ---And since 2014.

So since 2014 that's a file that would be regularly used for advice that would be required from time to time or that would be asked for from time to time from NSW Labor. Correct?---Could you repeat the question, please?

That general commercial and legal advice file, 1-4-6-6-0-0-0-5, was the general file that you would use to record time on issues that would arise from time to time within NSW Labor, correct?---Me and other partners and lawyers doing work on that file, yes.

- 10 Is it right to say that you, within Holding Redlich, are the principal partner responsible for doing work for NSW Labor?---Yes but other partners also do work for NSW Labor from time to time, depending on the type of work.

Some firms have a concept of a relationship partner for particular clients. Does that role or title apply in Holding Redlich and, if it does, are you the relationship partner for NSW Labor?---We don't have that formal title for many clients and there is no such appointment for NSW Labor, but I would probably be considered informally to have that role.

- 20 And so is it right to say that usually speaking, from a partner perspective, it's you providing the advice but from time to time other partners will be involved, is that right?---That is correct.

And presumably you supervise other lawyers in the provision of advice and other services for NSW Labor, correct?---Yes, I do.

One of those persons is Sarah Butler, who's a senior associate within your firm, is that right?---Yes, that is correct.

- 30 And she's worked quite closely with you on NSW Labor matters at least for the last few years, is that right?---Yes.

But under your ultimate supervision, correct?---Absolutely.

Is it right to say that, at least as a matter of form, the instructions to Holding Redlich from NSW Labor come from its general secretary?---Yes, yes. They come from the general secretary or by direct delegation from the general secretary.

- 40 And so from time to time more junior officers than the general secretary might ask for advice but that's subject to the ultimate superintendence of the general secretary, is that fair?---Yes. And the word junior isn't really correct. The only three people to the best of my recollection that instruct us on any type of regular basis are the general secretary, the assistant general secretary and the governance director.

And who's the current governance director?---His name is Glenn Bacic, B-a-c-i-c.

And the previous governance director was a Julie Sibraa, is that right?

---Julie Sibraa, yes.

S-i-b-r-a-a I think?---Yes.

I take it that you've worked closely with Ms Kaila Murnain during her tenure as general secretary?---We have had regular and frequent dealings.

10 You've given legal advice to her on a wide range of issues?---Yes.

You've been in regular contact with her as a professional legal adviser giving legal advice to NSW Labor, correct?---Yes.

In terms of how that advice is generally requested and rendered, is that generally done by telephone, by email, in person or in some other way?

---The NSW Labor, like other clients these days, wants all legal advice in writing. That is usually by email, sometimes by formal letter of advice, but rarely. The instructions may be received by telephone or email.

20

You know that Ms Murrain became general secretary towards the start of 2016, correct?---Yes.

I think she acted in that role from January of 2016 and was formally elected in February of 2016, correct?---I can't recall the precise date.

So it was around about that time?---Yes.

30 Since that period of time how often would it be that you would meet Ms Murrain in person?---I have had very few meetings in person with Ms Murnain.

On how many occasions, can you recall, did Ms Murnain attend your offices for the purposes of meeting you and either seeking or obtaining legal advice?---Very few.

More than one?---I expect so but I can't recall.

40 How often would you meet with Ms Murnain during her tenure as general secretary on a Friday evening?---I don't believe I've ever met with Mr, Ms Murnain on a Friday evening.

Well, what about a Friday afternoon after 5.00pm, is that the same answer?---No, it's not something I recall.

It would be unusual, wouldn't it, that – absent some matter of urgency or importance – that you would meet a client on a Friday afternoon or evening after business hours, would you agree with that?---Yes.

Usually you would only do that if it was a matter of some urgency or importance that required dealing with a matter promptly, correct?---Yes.

Is it correct to say that in terms of instruction – and we spoke about instructions before – you would ordinarily obtain instructions directly from the officers that you’ve identified? You wouldn’t obtain instructions from, for example, elected members, is that right?---Yes, we’ve, I, I and my firm have very few dealings with elected members.

10

And there may be issues that arise in relation to elected members, but on those occasions party officers would draw those matters to your attention, is that fair?---Yes.

And we saw an example of that in relation to Senator Dastyari on the screen a moment ago, correct?---Yes.

In terms of your practice in terms of recording legal advice, you referred a moment ago to recording legal advice by email.---Correct.

20

And is it fair to say that would be the usual form in which you would communicate legal advice to NSW Labor?---Yes.

From time to time you might provide a formal letter of advice, but by the sounds of it that was relatively unusual, at least for NSW Labor, correct? ---Yes.

30

Do I take it that you would sometimes also provide legal advice by way of telephone, correct?---No. The point I, I made a moment ago is, is NSW Labor didn’t want advice verbally. It wanted advice in writing so it had the advice as a, as a matter of a record.

But surely on at least some occasions, perhaps matters of urgency, you would give some advice by telephone, correct?---If that happened, I would ensure that the advice was confirmed in writing as soon as possible.

Is that an invariable practice of yours?---Yes.

40

So every time you gave any advice to NSW Labor that was by telephone, it would be followed by an email confirming that advice, is that your evidence?---Yes. And, and if I might add, that was the requirement of NSW Labor as well, that they had a written record of the advice they received.

And when you say that that’s a requirement, imposed by who within NSW Labor?---By the people we dealt with. If, if there was a conversation it would almost always conclude by saying could we please, could you please confirm that by email.

So you're saying there wasn't a general instruction that required that practice to be adopted, but that it was at least common, if not invariable, for the person on the other end of the telephone to say, "Can you please confirm the advice that you've just given in writing"? Is that the effect of what you've said?---Yes, that was the practice over a very long period.

10 Was that also the practice in relation to meetings in person?---Not necessarily, because meetings in person would be the exception where advice may have been given in a meeting and may not always be confirmed in writing.

So just to be clear about that, there was an invariable practice that when you entered advice by telephone to NSW Labor, that would be confirmed in writing, correct?---Yes.

And in writing that would usually be by email but perhaps by letter from time to time, correct?---Yes.

20 But the same invariable practice didn't apply in relation to meetings that happened in person, is that right?---Not necessarily, and meetings were relatively, meetings in person were relatively rare and it would depend, I guess, what the meeting wanted. Usually a meeting would result in, in further work, and, which would obviously then be in writing.

But to be clear, the invariable practice you identified concerning telephone calls doesn't necessarily apply to meetings in person, is that right?
---Correct.

30 Now, in terms of oral communications, by which I include telephone communications and in-person communications, is it your practice to either keep a file note of what happens during the course of a telephone call or in-person meeting or to ensure that someone else – perhaps an employed solicitor – to undertake that exercise?---Not always. If, if a discussion, particularly by phone, is the obtaining of instructions, and, the practice is to essentially confirm those instructions promptly in writing, it is often the case that no file note is kept.

40 THE COMMISSIONER: But if it was something other than instructions, if it was a meeting concerning a legal matter, would there be some file note kept of the fact that there was a meeting, and the essence of what the meeting was about?---Usually yes, Chief Commissioner, and particularly if advice was given.

Yes, thank you.

MR ROBERTSON: So I just want to be quite clear about that. Are you saying that when advice is rendered orally by way of telephone or in-person communication, there'll always be a record in the sense that either it will be

recorded in a file note or it'll be recorded in something like an email going to the client to confirm that advice, is that fair?---Yes, with, with an enormous emphasis on email, rather than written file notes.

But again was that an invariable practice of you in work for NSW Labor, or is it possible that there's been occasions in which that practice has slipped through the net?---I believe it's an invariable practice, but I can't give evidence that there's never been an exception.

10 At least where you have a junior solicitor in, present with you during an in-person meeting, you would expect that person to prepare a file note, wouldn't you?---Yes, I would.

And you would expect them to do that whether or not the subject matter of the advice was to be confirmed in writing later, correct?---Most likely.

In fact, at least as a matter of general practice, you wouldn't, you would ordinarily expect a file note to be kept, whether by you or by someone else, in relation to any oral communication, whether it be in-person or by
20 telephone, correct?---I apologise, could you repeat the question?

You would expect, wouldn't you, that for any oral communication, there would be a file note or other record kept of any telephone call or in-person meeting with a client, correct?---Provided you mean by "other record" an email confirmation of our instructions and probably advice, yes. If you only mean a handwritten note of the discussion, the answer is no.

Well, let's focus on in-person discussions. At least in in-person discussions, you would expect a file note to be kept of all in-person discussions, at least
30 those that involve either request for legal advice or the provision of legal advice, correct?---Yes, as a matter of practice, I would.

And you would expect, if there was a junior solicitor with you during the course of that meeting, you would expect them to prepare it, correct?---Yes.

And if such a junior person wasn't there, you would ordinarily keep such a record yourself, correct?---Yes. Although perhaps I could add, I don't these days have many meetings or phone calls with clients where there is not another lawyer present.
40

But in the event that you did have such a meeting, and in the event that it was only you present with the client and not a junior solicitor, you would keep a record, a file note, of that occasion, correct?---If it involved particularly the giving of any advice, I would.

If it was a social visit, for example, you might not, but if it involved any professional conduct - - -?---Yes.

- - - such as a request for legal advice, information being provided to you or you providing legal advice, you would keep a file note, correct?---Yes.

When was it that you first became aware that the NSW Electoral Commission was investigating whether donations had been made for or on behalf of other persons in connection the Chinese Friends of Labor dinner on 12 March, 2015?---Well, I have no recollection, but my belief is that it was on 8 December, 2016, when I received a copy of the notices to produce that had been issued to NSW Labor.

10

So is it right to say that you have no recollection of any knowledge of that matter, in other words, the NSW Electoral Commission's investigation, before the notice to produce of December, 2016, came to your notice? ---That is correct.

Are you quite sure about that, or are you - - -?---Yes, I am.

Can we go, please, to ILR 1 at page 68, so we can look at that tangibly? So was the reason you said 8 December, 2016 that you've looked back over your emails and you've seen a forwarding of a notice to produce from Ms Murnain to you and Ms Butler of 8 December, 2016?---Yes.

20

And the particular email to which you've just referred is the email that we can now see on the screen. Correct?---Correct.

And if we can turn, please, two pages along in that document, I take it that soon after you received this email you had a look at the attachments to the email. Is that right?---Yes.

30 And if you have a look on the screen do you see there a letter from Electoral Commission NSW?---Yes, sorry, yes.

And if you have a look at the second paragraph do you see that the Electoral Commission identifies in broad terms the matter that it is investigating, namely the Chinese community dinner, Chinese Friends of Labor of 12 March, 2015. Do you see that there?---Yes.

40 So do you accept then that as at the date that this came to your attention, which seems to be 8 December, 2016, you knew of the subject matter of what the NSW Electoral Commission was investigating?---Yes.

Can we then please go to page 150 of the same bundle. In fact we'll start on page 147. Do you see there, Mr Robertson, a document entitled Prebill Information?---(No Audible Reply)

Top left-hand corner?---Sorry, yes.

Just so we understand the mechanics of this, is it the case that before you issue invoices in your firm, one of the steps in that exercise is to issue a document described as a prebill?---Yes, the prebill comes off our electronic records and forms the basis of the bill that is rendered to the client.

And so to just understand those steps, as one does work for a particular client one ensures that the time spent and a narrative in relation to that time forms part, is entered into the electronic system. Correct?---Yes.

- 10 And I take it that some employees and partners may enter that data directly into the computer system?---Yes.

Others might, for example, keep a hard copy time sheet and ask their assistant to enter it into the electronic system. Correct?---Yes.

And from time to time, perhaps when one is outside the office, one might send an email to their assistant to say, I've done this amount of work, please put it on this file and this is the narrative. Correct?---Correct.

- 20 And so ultimately there's a database that identified for each file the work that's been done by each partner or employee and the time for each particular task. Correct?---Yes.

And the purpose of the prebill I take it is to identify for a particular period, perhaps a month, the work that's been done on a particular file and who did that work. Correct?---Yes.

- 30 And as part of the prebill exercise someone will review the document and work out whether particular items should be, for example, written off, transferred to another file because they're on the wrong file, or fixing other issues before a formal bill is issued. Is that right?---Yes.

And is it right to say that at least for NSW Labor, the first step in that exercise would usually be performed by Mr Butler. Correct?---Usually, and my secretary.

And so between those two individuals they would check the prebill and correct any obvious errors for example?---Yes.

- 40 And they may make recommendations to you as to what to do in relation to the prebill for example writing off time?---Yes.

But the ultimate decision-maker in respect of that matter is you as the responsible partner. Correct?---Yes, it is.

And it may be the case that beyond a particular figure, matter such as writing off may need to go elsewhere, for example to an executive

committee?---It would only go to our Executive Committee if the write-off amount was very large.

But ordinarily the decisions in terms of what is ultimately billed would be yours, at least for matters where you're the responsible partner, correct?

---Yes, that's correct.

And just looking at the front page here, can you see on the right-hand side there's some handwritten, near the fee summary, can you see that there?

10 ---Yes.

For example 2-4-3-0?---Yes.

And the signature that we near the \$5,184, is that your signature?---Yes.

And so is this an example of you having a look at the base amounts and the two bill amounts and deciding not to bill the full amount based on those base amounts or to bill amounts but rather billing some lower figure?

---Correct.

20

If we can then turn, please, to page 150, and remembering you told us that you received the notice reviews on 8 December, 2016, which is the date of the email we looked at a moment ago. You see at the top of the page, "Telephone discussion with Ms K Murnain concerning donations," do you see that there?---Yes.

Now, I take it that your firm bills in six minute units?---Yes.

30 And so do we take it from that that you had a telephone discussion with Ms Murnain that took somewhere between 24 minutes and 30 minutes, correct?
---I assume so.

Well, you would have been responsible for billing for that telephone discussion of 0.5 hours, correct?---Yes.

You don't have a practice of inflating your timesheets and saying that something took half an hour even if it took 10 minutes, correct?---No.

40 And so we can take from the first entry, can't we, that you had a telephone discussion with Ms Murnain concerning donations that took somewhere between 24 minutes and 30 minutes, correct?---Yes.

Now, at that point in time, the only donations issue that you would have been discussing with Ms Murnain is that relating to the notice to produce that we have seen, correct?---I don't know that.

Well, thinking back to December of 2016, were there any other donations issues that you can recall were in play in relation to NSW Labor?---I don't recall but donation issues were very regular.

In advance of your examination today, you prepared a bundle of documents that you thought might be of assistance to the Commission in this examination, correct?---Yes.

10 And the redactions that you see towards the bottom of the page are redactions prepared within your team rather than by the Commission, correct?---Correct.

Did you do those redactions or did someone else within the team do those redactions?---Someone else did those.

Did you give directions as to what should and shouldn't be redacted?
---Could you repeat the question?

20 Did you give directions as to what should be or should not be redacted on page 150 that we see on the screen?---No.

Someone else within your team did that, is that right?---Correct.

30 Can we go please to the, what I'll call, the Robertson cross-examination bundle. I'm going to take you to the same document, Mr Robertson, but in a form that was prepared for cross-examination of Ms Murnain by your legal team and which isn't redacted in the way that we've just seen on the screen, and I'm going to try and assist you in refreshing your memory as to what was going towards the start of December. Can we go to page 154 of the Robertson cross-examination bundle. Mr Robertson, I've now just put the same page up on the screen but in an unredacted form from the cross-examination bundle that your legal team prepared. And you can see at the top of this screen the same entry, "Telephone discussion with Ms K. Murnain concerning donations." Do you see that there?---Yes.

And if we just turn back one page. And can you have a look towards the bottom, and I'll just ask you to note the preceding time entries, 3rd of December, 2nd of December and 1st of December, for example.---Yes.

40 And if we could turn back to page 154. Having looked at that, what I want to suggest to you is that the discussion that you had with Ms Murnain must have been about the notice to produce provided by the Electoral Commission because around that time you weren't being asked about other issues concerning the donations. Do you agree with that?---No, I don't agree with that.

Well, doing the best you can, what was the subject matter of the 24 to 30 minute telephone discussion that you had with Ms Murnain the day after the

notice to produce from the Electoral Commission was provided to you?---I don't know. I have no recollection.

THE COMMISSIONER: Do you remember the fact of having had discussions with Ms Murnain at some stage in December 2016 about the Electoral Commission's notice to produce?---Not about, not about the notice that's the subject of this Commission. There were other issues with the Electoral Commission at that time.

10 I'm focusing, really, on the notice to produce served by the Electoral Commission on the ALP NSW Branch in December 2016. Do you remember having any telephone discussions with her about that notice?
---No, I don't.

MR ROBERTSON: Does it follow from the practice that we discussed before that if you did have a telephone conversation with her in relation to that matter, there would be some record of it, either by way of a file note or by way of an email confirming what occurred during the telephone call?
---Yes, and there doesn't appear to be.

20 So do we take it from that that you've searched to see whether there's any record referring to the telephone discussion of 9 December, 2016 and have found that there is no such at least direct record?---Not specifically about that day, but I've had a look generally at what records we have.

But to be clear about that, have you looked specifically to see whether there's any records that confirm what the subject matter of the telephone discussion of 24 to 30 minutes that's recorded as having occurred on 9 December, 2016?---Yes, and there doesn't appear to be anything.

30 THE COMMISSIONER: Have you been able to ascertain if there's an explanation for there not being any such recorded note or email?---No, Chief Commissioner.

MR ROBERTSON: But it would be inconsistent with the practice that you've identified before, wouldn't it, to not have some form of formal record, either a file note or perhaps an email of confirmation of advice in relation to that telephone discussion?---Yes.

40 Can we go, please, back to ILR 1 and go, please, to page 79 of that bundle. Mr Robertson, I've now put on the screen an email from Ms Sibraa to you of 16 December, 2016. Do you see that there?---Yes.

That's an email that you recognise, correct?---Yes.

And you've refreshed your memory of it in preparation for your examination today, correct?---Yes.

Now, do you have a recollection now of having received that email on or about 16 December, 2016?---My belief is I received it that day. I don't have a recollection of it.

But do you at least have a recollection of having read what's there described as the draft response and attached documents that are provided by Ms Sibraa?---Well, I don't have a recollection of it, but it's clear that I did.

10 Now, can we go, please, to page 150 of the same bundle, which is back to the prebill that you and I were discussing before. And if you have a look there, Mr Robertson, at 16 December, 2016, do you see an omnibus entry totalling to 1.5 hours?---Yes.

And do you see that the first of those narratives or the first part of the narrative is a letter from NSW Electoral Commission, do you see that there? ---Yes.

20 And so that's a reference, is it, to the letter and notice to produce provided by the Electoral Commission dated 6 December that you got on 8 December?---I believe so.

And so do we take it from that that sometime on the evening of 16 December, 2016, you considered the letter from the NSW Electoral Commission?---No, I considered it sometime between the late afternoon of 16 December and the early morning of 19 December.

30 I see, so although it said 16 December, it's quite possible that the work that you in fact did was on the 16th, 17th, or perhaps 18th of December?---Well, I don't think it could have been on the 16th, because I don't believe that, on, on my belief, I don't think the email from Ms Sibraa arrived until after 5.00pm.

And to assist you, the date of the email that I took you a moment ago was 5.19pm.---Yes, that, so I doubt that I did any work on it that day. So it will have been done over the weekend on the 17th or 18th.

40 So are you drawing attention here to an error in the prebill, or at least the data that is produced in the prebill, namely that the work that you did was probably not on 16 December, it was perhaps on the 17th?---Or the 18th.

Or perhaps on the 18th.---Yes, and I think it's actually been recorded on the 19th. I think it's actually recorded as the 19th.

Do you see towards the end of that omnibus list, it's another telephone discussion with Ms Murnain?---Yes.

And do you recall what that discussion was about?---I don't recall it, but my belief is that she was having issues with a Labor senator, Senator Cameron.

And my belief, based on our records, is that I gave her quite a deal of advice about that, and did quite a bit of work about it beyond the telephone, the telephone discussion that's referred to there.

And you referred to your belief. Do we take it from that that you have some file note or other record that identifies the purpose of the telephone discussion that we can see there recorded for 16 December?---Yeah, there are a number of emails, including a draft letter that I drafted for her to send to him.

10

Just emails, or a file note as well?---No, there's not a file note.

There's not a file note in relation to that call?---No, I don't believe so.

And if you then have a look to the next item, do we see, do you see there the 19 December, 2016, "Review of Chinese Friends of Labor document to be produced to NSW Electoral Commission," do you see that there?---Yes.

20

So do we take it from that that on 19 December, 2016, you spent somewhere between 24 minutes or more in reviewing the document that Ms Sibraa sent to you on the evening or the afternoon of 16 December, 2016?---As I have said, my belief is that I in fact did the work at some time over the weekend.

But the work we're talking about is included both within the narrative of a letter from the NSW Electoral Commission, which is on 16 December on this prebill, and 19 December, 2016, is that right?---Yes.

30

So does it follow from that that you spent more than half an hour on that exercise? Because we can see that part of the 1.5 hours that on this is 16 December, 2016, plus another half an hour that on the prebill is 19 December, 2016.---As I've said, I don't have a recollection of these matters, but my belief is that the work I referred to about Senator Cameron would have taken pretty much all of that hour and a half, frankly, if not longer, and I think the only time I spent reviewing the documents will have been the half an hour that's referred to on 19 December.

So you spent at least 24 minutes on the document, is that right?---Yes.

40

Perhaps a bit more.---Possibly.

If we can go then, please, to page 189 of the same bundle. I'm so sorry, page 128 is what I meant. 128 of ILR 1. And then, Mr Robertson, if you just have a look towards the bottom of that page, can you see an email from you to Ms Butler of 8.13am? Just at the very bottom, about eight-tenths of the way down the page.---Yes.

And if we just turn to the next page, have a look at the second paragraph. "The attached looks okay to me." Do you see that there?---Yes.

So this is you telling your senior associate, Ms Butler, at 8.13am on 19 December that you've looked at the proposed response to the Electoral Commission, and it looks okay to you, and you're happy for it to be sent further if Ms Butler is happy with it as well. Is that right?---That is correct.

And you're sending this email after you've spent at least 24 minutes in reviewing the document, correct?---Yes.

10 And do I take it from something you said before that you might not have actually done it on the morning of 19 December? You may well have done it during the course of a weekend, is that right?---I think it's unlikely I did it on the morning of 19 December.

So it's most likely that although the prebill at least showed the 19th, you may have done it on the 17th, perhaps the 18th, is that right?---Correct.

Now, can we go to the document itself. So ultimately you didn't suggest any amendments to the draft that was prepared by Ms Sibraa, correct?---No.
20

And you've already accepted that at the time that you received the notice to produce, you knew of the matter that the Electoral Commission was investigating, correct?---It was self-evident from the notice to produce.

It was self-evident from the notice to produce and also from the cover letter that identified the particular matter being considered, correct?---Yes, that's correct.

Can we go, please, to Exhibit 149, which I think is the first exhibit I
30 tendered in this public inquiry, volume 1, page 5. Page 5 of volume 1, Exhibit 149. See there, Mr Robertson, a letter of 19 December, 2016, signed by Ms Murnain?---Yes.

And this was one of the things that looked okay to you, according to your email to Ms Butler, correct?---Yes, it's a brief covering letter.

And if we then turn the page, we then see the questions and answers that were provided by NSW Labor and which looked okay to you, correct?
---Correct.
40

Now, if you focus, please, on question 1 to start with. It says, "Please provide the names of the persons who handed the donations to the ALP on 9 April, 2015." Do you see that there?---Yes.

Now, you must have known when you were reviewing the response in draft that what the Electoral Commission was looking to find out was that who, external from the ALP, brought the donations into the ALP. Do you agree with that?---I think I should have realised that and with the benefit of

hindsight and frankly I have looked closely at these answers and these documents more recently, I agree with you that I think that is what was the information that was being sought and therefore the response is incorrect and I regret not having picked that up or looked at, or analysing these answers or those documents in greater detail.

10 THE COMMISSIONER: Well, when you read question 1, would you agree it could have no other meaning than that suggested by Counsel Assisting in his question to you?---With hindsight, Chief Commissioner, I agree with you. I think the word “handed” may have confused people but I agree with you, Chief Commissioner.

All right. Are we going to take a short break at some stage. Is this a convenient time or do you want to finish this segment first?

MR ROBERTSON: I might just finish this segment if it pleases the Commission.

20 THE COMMISSIONER: Yes.

MR ROBERTSON: So you at least accept, don't you, with the benefit of hindsight, that the responses couldn't be described as NSW Labor giving full cooperation with the Electoral Commission's investigation, correct? ---No, I think that's unfair. I believe that the person that prepared these answers, who is Julie Sibraa, the governance director, would have done her best after making appropriate enquiries within the Labor Party office. Now, I don't know that to be the case but I, I believe it to be the case and I don't believe that she would have been setting out to do anything other than provide accurate information to the Electoral Commission.

30 But a moment's pause for thought by a lawyer of your experience must have drawn to your attention that these are not responsive answers to the questions that the Electoral Commission was asking, correct?---I agree there are problems with a number of answers and there are probably even more problems if you closely analyse the documents.

40 THE COMMISSIONER: Do you agree problems because they were not responding to the questions properly?---Yes, Chief Commissioner, but I have no reason to believe that that was in any way deliberate or wilful on the part of the person that prepared the draft answers.

No, but it was surely within your role to ensure that on their face the answers, for example, demonstrably were responding to the question and were not evading, intentionally or otherwise, the point of the question? ---Chief Commissioner, it was my belief at the time that the answers answered the questions but I, as I have said, on closer analysis, I accept the proposition that particularly the answer to question 1 is wrong and it's also

inconsistent with some other answers. And if you are saying to me should I have picked that up, with hindsight, I believe I should.

10 But when you say, "On further analysis," it doesn't require further analysis, does it? If you look at that question, that one line question, it's plain on its face what it's asking and doesn't require anybody to do any analysis other to answer it, would you not agree?---I interpreted the question at the time, I think, because I have no recollection, that it meant who took the donations from the dinner to the party head office and the answer of an employee,
10 which is referred to in the answer to question 3, made some sense to me. I, I now accept that that interpretation is not correct.

MR ROBERTSON: When you say it was referring to someone who brought it in from the dinner, are you saying that you were told, in connection with preparing this response or at least signing off on this response, that it was Mr Cheah who brought the money from the dinner?
---The only information I was provided is in the document that is on the screen. I didn't know who Mr Cheah was but the answer to whom Mr Cheah was is in the response to question 3, that is an employee of Labor
20 Party who attended the dinner. I didn't know who he was.

I want to suggest to you that a moment's thought, having been told by the draft response to question 3 that Mr Cheah was an employee, would have led you as a person of considerable experience as a lawyer to conclude that the answer to question 1 was not responsive to the question the Electoral Commission was asking. Do you agree with that?---I think I've already answered that question.

30 Does that mean you don't agree with that?---I disagree with a moment's thought, I think it requires more thought and analysis than that.

But you didn't simply wave through this document, you accepted that you spent at least 24 minutes on it. Correct?---Yes, but it includes reading the notices to produce, it includes looking at the questions and answers and it includes looking at the other documents that were with it, not just this document.

40 I suggest to you that if you'd spent 24 minutes on it and you'd read this draft you inevitably would have had to have come to the conclusion that you now seem to have come to, namely that there were, to use your phrase, problems with the answers. Do you agree with that?---Yes, but I didn't.

In terms of the problems with the answers, I think you've agreed there's a problem with the answer to question 1. You'd also agree, wouldn't you, that there was a problem with the answer to question number 4. Would you agree with that?---(No Audible Reply)

It at least required some further explication or explanation?---I don't wish to resile from what I've said, that there are problems with these answers, but if you read it as saying that the question was going to who took the money from the dinner to the party headquarters, and that was an employee of the party, that that person supplied a breakdown of the names and addresses of the individuals whose donations made up the donations because they're actually the names and addresses that are on the forms that are attached to the answers.

10 THE COMMISSIONER: Could I ask you this, though. When we were looking at these responses you had been informed by the letter from the Electoral Commission as to what it was investigating.---Yes.

And that signalled plain enough, did it not, by its terms that what the commission was investigating was a matter for which they expressed they had reasonable grounds for suspecting that there had been a contravention of the Electoral Funding Act?---Yes.

20 And that it had something to do with alleged donors not being legitimate or true donors?---Yes.

So that understanding what these questions were directed to, it was a question as to in effect if those matters did prove to be the case, based on the reasonable suspicion, then the money had to have come from sources other than the named donors. Correct?---That was the suspicion of the commission, yes.

30 So the covering letter from the Electoral Commission made you aware when you were checking these questions and answers that that's what the commission was looking at, whether there was evidence of the money coming from somebody other than donors.---Yes.

Who were named donors at least. Right?---Yes.

40 So it's not just looking at it and a question of what money was being brought from the dinner, the commission was interested in finding out where did the money come from, from outside, as it were, outsiders unnamed. Is that right?---I think the commission was asking who are the, who were the actual donors and I think if question 1 said that, it might have got a different response, but I don't think it's been correctly interpreted, including by me.

MR ROBERTSON: When you say who were the actual donors, what did you understand to be the answer to that question as at the time that you said that these responses looked okay to you?---My belief is that certainly the governance director had the view that the names on the forms were the donors, that those people had donated the money. That is my understanding – sorry, that is my belief as to her view of the matter. If I – perhaps I could

add. I think if she had thought there was a major problem with this, she would not have just sent me an email which said, "Thoughts?" She would have I think said, "I am concerned about this. We should meet and discuss it."

10 In relation to Mr Cheah, I just want to make sure I am clear about this, and you may have answered it, you understood, did you, at the time that this response went in, that Mr Cheah was the person who brought the money from the dinner into the Sussex Street office, is that right?---I don't know that I really understood anything other than what was written on that piece of paper we were just looking at. I, I had not heard of Mr Cheah. I wondered who he was but the answer to who he was is in the answer to question 3, that he is the employee who attended the dinner. And that sort of made sense.

20 Is it right to say there wasn't a separate source of information, it wasn't like Ms Sibraa separately said to you that, "Well, Mr Cheah was the person who brought the money in," is that right?---No. Not to the best of my knowledge or, or belief.

Now, having said to Ms Butler that the response looks okay to you, did you then have any further involvement in the response?---No.

30 I'll just ask you about one thing, then. Can we go please to the cross-examination bundle that was prepared by your team, page 154. I just want to ask you about an entry that is redacted on the bundle that was prepared for today's purposes but not redacted from the bundle that was prepared for cross-examination of Ms Murnain which you'll see are the entries for 20 December, '16. Do you see that there, Mr Robertson?---Yes, yes.

40 So if the last thing – I withdraw that. If your last involvement was in relation to the responses to the notice to produce on 19 December, 2016, can you just explain what the one hour entry for, "Letter to NSW Electoral Commission," on 20 December, 2016, was?---Yes. It's my belief, and from of course, reviewing our file, that that letter deals with a completely different matter. It deals with issues the Electoral Commission was investigation, which was an extensive body of work in 2016 and '17 on the relationship between NSW Labor and Country Labor. That had nothing to do with the Chinese dinner.

Now, is there any file note or other document which would confirm the matter that you've just identified?---There are a great, there are emails and, and letter. I don't believe there are file notes, including the letter to the Commission, I drafted a letter to the Commission for consideration by I think probably Kaila Murnain as well as Julie Sibraa.

And are you saying you have a specific recollection of dealing with that other matter on 12 December, 2016, or are you saying you've drawn an

inference about that by reviewing the files in preparation for this examination?---No, I have no recollection. It is, my belief is based on reviewing the file. And sorry, did you say 12 December? I, I'm referring to 20 December.

I was referring to 20 December. If I said the 12th, that's my mistake.---Sure, sure.

Is that a convenient time, Chief Commissioner?

10

THE COMMISSIONER: Yes. We'll take a 15 minutes adjournment.

SHORT ADJOURNMENT

[11.48am]

THE COMMISSIONER: Mr Robertson.

MR ROBERTSON: Mr Robertson, up until the week before the public inquiry before this Commission commenced, Holding Redlich were the legal advisers retained to assist NSW Labor in connection with this Commission's investigation. Correct?---Correct.

20

And so does it follow from that that your firm was retained at the time that a search warrant was executed at the Sussex Street premises on 18 December, 2018?---Yes.

30

On 6 May, 2019 you made a complaint to the inspector of this Commission on behalf of NSW Labor and Country Labor in relation to the execution of that search warrant. Correct?---Correct.

Can we have up on the screen the letter of 6 May, 2019. And while that happens, just to confirm that while Holding Redlich have been the lawyers in connection with this investigation, do I take it that you have been the responsible partner for that matter generally? Is that right?---Could you repeat the question?

40

You said to us, you said to me this morning that for some matters concerning NSW Labor, other partners would be involved as the supervising partner for particular matters. Correct?---Yes.

But that's not the case for the matter of the investigation being conducted by this Commission, is it?---I have had assistance from another partner as well, but I take the view that I'm the partner responsible.

And you've had some assistance with employees as well, including in particular Ms Butler. Is that right?---Yes, and others.

If you just have a look on the screen, is this a letter that you prepared and sent to the inspector of this Commission?---Yes.

Did you draft the text of this letter?---Yes.

And can I ask you to focus on the fourth paragraph, around about halfway down the screen, there's a paragraph starting, "Our clients have." Do you see that there?---Yes.

10 Just read that to yourself and then I'll ask you a question about that paragraph.---Yes.

Now, you'd have to agree, wouldn't you, that at least with the benefit of hindsight, it couldn't be said, couldn't properly be said that NSW Labor and Country Labor fully cooperated with the Electoral Commission's investigation, because in response to the notice to produce that you and I discussed of December of 2016, those entities provided responses that you described as wrong. Do you agree with that?---It was my belief at the time of preparing a draft of this letter that NSW Labor and Country Labor had
20 fully cooperated with the investigation and provided all relevant documents and information.

Is that still your belief?---The only variation to that belief, well, there's a bigger one of course, but the only variation to that belief is the matters we just discussed about the answers to the questions and the problems with the documents.

If you then have a look at the final paragraph that's on this page. Do you see there that you say, "Our clients are concerned about extensive media coverage et cetera, and in particular the source from which the leak emanated." Do you see that there?---Yes.
30

At the time that you wrote that you had no evidence that any leak had emanated from ICAC offices, did you?---No, and I still don't.

If we then turn the page, please. Do you see there in the penultimate paragraph you state, "In particular our clients are of the view that the search warrant may have been issued for purposes other than the proper exercise of ICAC's investigative powers and may amount to maladministration." Do
40 you see that there?---Yes.

And you now know that the inspector found that there was no basis for that assertion, correct?---Yes.

And he was correct to find that, wasn't he, because at least at the time that you wrote this letter, there was no basis for suggesting that the search warrant was issued for purposes other than the proper exercise of ICAC's investigative powers, correct?---The concern of NSW Labor about - - -

THE COMMISSIONER: Oh, just answer the question, if you wouldn't mind. Do you want to repeat it?---Sorry, would you repeat the question?

MR ROBERTSON: The investigator was correct to find that there was no basis for the assertion that the search warrant may have been issued for purposes other than the proper exercise of ICAC's investigative powers, and may amount to maladministration, because there was no basis for that assertion at the time that you wrote this letter, correct?---I have no reason to
10 doubt the accuracy of the inspector's finding.

So does that mean you accept that at the time that you wrote and signed this letter, at least at the time you wrote this letter, there was no basis for an assertion that the search warrant had been issued other than in the proper exercise of ICAC's investigative powers, do you accept that?---It, it's my belief that the documents that ICAC obtained as a result of that warrant could have been obtained other ways and in fact were.

THE COMMISSIONER: But that of itself wouldn't support an allegation,
20 would it, of impropriety or maladministration. It might be a waste of paper in your mind, but it certainly wouldn't be an abuse of the power of this Commission, would it?---The letter that I sent I think refers to the view of our clients.

Yes, what's your clients' view got to do with an issue like that? If you want to attack a search warrant, you know the way to do it, don't you?---Yes.

Well, the reason why I raise it is as to whether, when it says, "It's our
30 clients' view," that seems to import that your clients have some legal capacity to be able to analyse it to make the allegation in the second-last paragraph of that letter, doesn't it? "Our clients' view" suggests that they themselves have made a judgment call that you've adopted and put into this letter.---It doesn't make the assertion that it was issued for purposes, it said, "may have been", and that was the purpose of asking the inspector to look at the matter.

Yes, see, you would understand, would you not, that the search warrant, in order for it to be a valid search warrant, would have to comply with the
40 legislation that authorises search warrants.---Yes.

You know the Search Warrants Act of 1985, don't you?---Not intimately, sir, no.

Well, if you were going to suggest that a search warrant may not have been properly or regularly granted, that is to say that there was some impropriety underpinning the application, you'd need to consider it in terms of the Search Warrants Act to make a call of that, that it may be an abuse of power, correct?---Yes.

Did you consider the provisions under section 11 of the Act, which specifies the requirements for an application for a search warrant? Did you consider that?---Under the Search Warrants Act?

That's correct.---No. No, sir.

You know, don't you, that search warrants are not granted just for the asking, but that it's got to satisfy certain tests?---Yes.

10

And in particular the provisions require that an application for a warrant in person must not issue unless the information given by the applicant is verified. You know that, don't you?---No, sir, I don't know that, but I have no reason to doubt what you have just said.

And you would have assumed that an authorised officer of this Commission would have made such an application under that Act, wouldn't you?---Yes, I assumed that, and as I recall it, at the time of the warrant, we endeavoured to obtain information from, I think, the local court as to the basis of the warrant being issued, but it was suppressed, and unable to be found.

20

And if you wanted to make an application in respect of a search warrant suggested to have been issued in some circumstances that might amount to maladministration, the proper, usual, conventional process employed is that you initiate proceedings in the Supreme Court of New South Wales for a declaration of invalidity, don't you?---Yes.

But you did not choose that course, that's plain, but you rather chose the course of making a complaint to the inspector, which is an avenue always open to anyone who wishes to query the exercise of any power of this Commission?---Yes. I, I believe there were discussions about legal proceedings concerning the notices to produce that were issued at the same time. I think by the time NSW Labor and I became aware of the search warrant was frankly at the time it was being executed.

30

Well, you know that notice is normally not given to an occupier of a premises that a search warrant is going to be executed, right?---Yes, I'm aware of that, Commissioner.

40 And that's for obvious reasons.---Yes. Would you permit me to add something to that, Commissioner, please?

Yes, go ahead.---The, the wider context of this, sir, is that NSW Labor is a political party. Three months after this warrant was executed it was to contest the NSW state election and the media publicity associated with the execution of this warrant was major and very damaging, and that really is what overlays this, not the actual subject of this investigation.

But a political expediency couldn't justify making a challenge to the issue of the search warrant on the basis of some form of maladministration, would it?---No. The issue, Chief Commissioner, was whether the Commission could have obtained the same documents another way, and it in fact did and it in fact obtained a great deal more.

But you knew the Commission is vested with coercive powers to obtain any information that's relevant to its investigation, whether it be by way of notice or summons or search warrant, correct?---Yes, I understand that.

10

And it's a matter of the Commission to evaluate whether or not, for good reason, it might choose one or other of those powers?---Yes, I accept that, Commissioner.

Is this the position, that you were not in possession of any information, and are still not in possession of any information, which would throw any doubt upon the legality of propriety of the issue of the search warrant on the ALP NSW Branch?---That is correct.

20

Is that right?---My understanding – that overseas correct but my understanding of why the position of inspector exists is so that of someone in the position of our client has these concerns, there is a, a way it can be investigated independently and confidentially.

But to raise an issue of impropriety in the issue of a search warrant is a very great matter, isn't it?---Yes, sir.

And you wouldn't raise such a grave allegation or assertion unless you had cogent material, correct?---With hindsight, yes, sir.

30

And you did not and nor did your client, correct?---Not as far as I'm aware, no.

Well, why would your client then, because you say it's your client's view, seek to go down this path? Was it seeking in some way to divert, hinder getting to the truth in this matter?---No, not at all.

40

Well, why did it do it? Was it just political expediency?---No. It was the deep concern about the media spectacle that was created by the execution of the search warrant so proximate to a state election. There was also concern, Chief Commissioner, that the breadth of the notice which the Commission issues was sufficient to obtain for the Commission all of the information which NSW Labor had in preparation for the forthcoming state and federal elections, and NSW Labor was deeply concerned about that, Chief Commissioner, whether rightly or wrongly but they were deeply concerned.

Well, you know wrong now, don't you? Because the inspector, on the bases you've just mentioned, completely dismissed any such matters?---Yes, I

accept, I accept that, Chief Commissioner, and I have no doubt at all to accept that the inspector is correct but I don't accept, with the deepest respect, Chief Commissioner, that it was improper, it is improper for anyone to ask the inspector of the ICAC to have a look at a matter of deep concern to that person.

But you would agree, a concern based on cogent evidence sufficient to raise a grave allegation of impropriety in the issue of a search warrant?---I'll accept your position, sir.

10

Well, do you accept it as the proper approach of a legal practitioner advising a client?---Yes, sir.

MR ROBERTSON: Does it follow from what you've just said to the Chief Commissioner that with the benefit of hindsight you wouldn't have sent a letter in the terms that we see on the screen?---Yes.

You sent that letter. Would you agree that that suggests that you may have lacked some element of objectivity that is to be expected of a legal practitioner of your seniority and standing?---No, I don't accept that.

20

THE COMMISSIONER: But, Mr Robertson, you'd have to accept, would you not, at all material times in this matter you have not only been wearing your hat, if I can use that term, as legal adviser, you have always been political supporter as well?---No, that's not correct, sir, no.

Are you a political supporter of the ALP?---What do you mean by political supporter?

Well, prepared to financially support it?---Only to a very limited degree.

30

But you are a supporter in that sense, aren't you?---Well, I'm - - -

When I say "you" I'm, in fairness to you, talking about your firm of which you are a partner.---Speaking personally, Chief Commissioner, I am not a member of the Labor Party and never have been. My firm is not a member of Labor Lawyers, we make donations to both sides of politics but I've already answered a question which said we donate more to the Labor Party than the Coalition.

40

And why is that?---Because we choose to.

And why do you choose to?---Well, we're a partnership, it's not solely my decision. I guess we historically have.

Why does the partnership support the greater contribution by way of donations then to the other main party?---Well, a great many professional firms, sir - - -

No, don't worry about other firms, you said it was a matter for your partnership in effect, your partners and yourself. I'm just trying to get to the bottom of why your partners and/or including yourself are supporters. Is it because you happen to, for example, agree with the Labor ideology or something along those lines or some other reason?---I don't, look, we're a, we're a law firm, Chief Commissioner.

10 Indeed.---The Australian Labor Party is a very insignificant client in terms of fees billed. I don't believe the donations we make to it or to any other party necessarily indicate any particular ideological position. I would describe my own ideology of being at the centre.

Mr Robertson, these questions are only being asked in relation to the matter Counsel Assisting has put to you in his last question, that is whether in relation to your work so far as advising the ALP, NSW Branch at least, may not be dispassionate independent legal advice because of your other interest, if you like, or if not support of the Labor Party. I take it you reject that from what you've previously said?---I do reject it, Chief Commissioner, I reject it
20 completely. My role and my firm's role is solely that of legal advisors to the Australian Labor Party and if I may add, I further believe that one of the reasons that NSW Labor likes to use us as their legal advisors is because we are not otherwise involved in the party's activities and therefore our legal advice is independent of other matters that may be going on in the party.

Very well.

MR ROBERTSON: I'm about to move to another topic, and that topic will take more than half an hour. In my submission the sensible course would be
30 to adjourn for lunch now, perhaps a shorter lunch, because if I do half an hour as it were, there's a risk that Mr Robertson's evidence won't be of the assistance it could be if it's dealt with in a single segment.

THE COMMISSIONER: So what is being suggested then is we adjourn today effectively?

MR ROBERTSON: Adjourn for lunch until say 1.30.

THE COMMISSIONER: Until 1.30. Yes. Very well.
40

MR ROBERTSON: And then I suspect to be about another hour with Mr Robertson.

THE COMMISSIONER: Very well. Well, Mr Robertson, we'll do that. We're going to adjourn now and we'll resume at 1.30. I'll adjourn.

LUNCHEON ADJOURNMENT

[12.30pm]