

AEROPUB01243  
18/09/2019

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pp 01243-01293

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 18 SEPTEMBER, 2019

AT 10.00AM

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

THE COMMISSIONER: Mr Robertson.

MR ROBERTSON: Chief Commissioner, in terms of the program, I will shortly call Mr Ian Robertson for some further brief examination by me and then for cross-examination by persons who have leave to do so. Before then there's some housekeeping and other matters to deal with.

THE COMMISSIONER: Yes. Very well.

10 MR ROBERTSON: Otherwise this week, the program should proceed as announced subject to two qualifiers. First, I will call Mr Johnnie Lin tomorrow first before the other witness, who's been announced, and then on Friday, as I understand, the Commission will sit not before 10.30am as distinct from not before 10.00am.

THE COMMISSIONER: That's right.

MR ROBERTSON: In terms of housekeeping other matters, I'm informed by my learned friend, Mr Moses, that some matters have arisen in recent  
20 days which are of relevance to this investigation and this public inquiry. It might be convenient for you to call on Mr Moses to deal with those matters, Chief Commissioner.

THE COMMISSIONER: Thank you. Mr Moses.

MR MOSES: Yes, thank you, Chief Commissioner. As you noted at the commencement of this inquiry, one of the issues which is the subject of the investigation relates to the lawfulness or otherwise of two payments of \$50,000 which were deposited separately into bank accounts controlled by  
30 the NSW Branch of the ALP and the Country Labor Party, which totalled the sum of \$100,000. Those bank deposits were made on or about 9 April, 2015, and were represented to the Electoral Commission as having been funds raised from a dinner held on 12 March, 2015, which was organised by the Chinese Friends of Labor on behalf of the NSW Branch of the ALP.

Since February 2019, the sum of \$100,000 was transferred by the party into a fund controlled by Perpetual Trustees in order to await the outcome of this inquiry. However, in light of the evidence that has come out in the inquiry to date, it is apparent that the party cannot be satisfied on any view at all that  
40 the persons who it is alleged made the donations at the dinner on 12 March, 2015, which found its way into the bank account were the true donors, and in fact it appears that there is evidence that there may have been an offence or offences relating to a scheme to circumvent the donation or expenditure prohibitions or restrictions in the Election Funding, Expenditure and Disclosures Act. Accordingly, it was decided by the NSW Branch of the ALP and the Country Labor Party to send a letter on 13 September, 2019, to the NSW Electoral Commission setting out that it would forfeit the \$100,000 which is the subject of the inquiry, which has been held in the

Perpetual Trustees trust account, by payment to the Electoral Commission pursuant to section 96J of the Election Funding, Expenditure and Disclosures Act and submit amended disclosures to the Electoral Commission for the 2014-2015 year, removing the relevant donations and alleged donors relating to the \$100,000 that was received by both parties.

10 The Electoral Commission agreed to this proposal and arrangements were made for the payment of the funds held by perpetual trustees to be provided to the NSW Electoral Commission. On 17 September, the Electoral  
Commission confirmed that those funds had been received and accordingly,  
following confirmation of receipt of the funds, our client submitted the  
amended disclosures to the Electoral Commission with the relevant audit  
certificates for the 2014-2015 year.

20 This Commission has been sent the relevant documents concerning these developments, and I can inform you that there is no objection to the tender of the documents which were provided to this Commission by either the Electoral Commission or the New South Wales Branch of the ALP and the Country Labor Party. And I'm instructed just to note, Commissioner, that  
with the greatest respect to some of the individuals called before the inquiry,  
there have been a lot of, if I can call it, alternative facts and nonsense which  
has been put forward in this inquiry in order to hide the true source of the  
donations. The ALP accepts that this is a matter which should not have  
been allowed to get to this stage, starting from the point of the delivery of  
the cash, the false response to the Electoral Commission on the 19<sup>th</sup> of  
December, 2016, and the complaint which was made about ICAC's  
investigation, which should not have been made, and there will no doubt be  
ramifications in relation to those issues. But we just wish to inform you of  
that development in light of what has transpired in the Commission to date,  
and I have no objection to Counsel Assisting tendering the documents that  
were provided yesterday.

THE COMMISSIONER: Thank you, Mr Moses.

40 MR ROBERTSON: Can I deal with some formal tenders that arise out of what my learned friend Mr Moses has just said. First, I tender the letter dated 13 September, 2019 from Labor to the NSW Electoral Commission, which deals with the question of the forfeited \$100,000 that my learned friend Mr Moses just referred to.

THE COMMISSIONER: Yes, the letter 13 September, 2019 from the Labor Party NSW in respect of the forfeiture will be admitted. It will become Exhibit 250.

**#EXH-250 – LETTER DATED 13 SEPTEMBER 2019 FROM NSW  
LABOR TO NSW ELECTORAL COMMISSION REGARDING 2015  
CHINESE FRIENDS OF LABOR DONATIONS**

MR ROBERTSON: Next I tender the amended disclosure for Australian Labor Party (NSW Branch) dated 13 September, 2019, and the associated auditor's certificate.

THE COMMISSIONER: Yes, the amended disclosures of the ALP NSW Branch, together with the auditor's certificate, will together be one exhibit. It will become Exhibit 251.

10

**#EXH-251 – AMENDED DISCLOSURE FOR AUSTRALIAN LABOR PARTY (NSW BRANCH) DATED 13 SEPTEMBER, 2019, AND THE ASSOCIATED AUDITOR'S CERTIFICATE**

MR ROBERTSON: And for the assistance of those who are looking at that document, when that becomes publicly available on the Commission's website, page 7 is the particularly relevant document that notes omissions in relation to each of the individuals who were previously disclosed as being the donor of the \$50,000 recorded as received by NSW Labor. Next I tender an amended disclosure for Country Labor dated 13 September, 2019, and the associated auditor's certificate.

20

THE COMMISSIONER: Yes, the amended disclosure and auditor's certificate will be one exhibit. It will become Exhibit 252.

**#EXH-252 – AMENDED DISCLOSURE FOR COUNTRY LABOR DATED 13 SEPTEMBER, 2019, AND THE ASSOCIATED AUDITOR'S CERTIFICATE**

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MR ROBERTSON: And can I indicate that, consistent with what my learned friend Mr Moses said, I've seen communications from the Electoral Commission confirming receipt of the \$100,000. I don't propose to tender a separate document in relation to that matter, but that matter has been demonstrated by the material that the Commission has been provided by my learned friend's instructing solicitors.

40

THE COMMISSIONER: Yes, very well.

MR ROBERTSON: Can I then deal with two other tenders. Mr Ian Robertson's legal representatives have provided the Commission with a statutory declaration of a Mr Robert Pelikan, P-e-l-i-k-a-n, that's made on 16 September, 2019. I'll just have that brought up on the screen so I can draw attention to it. For those who may have interest in this document, we'll arrange a hard copy to be available to them. Mr Pelikan appears to be

an employee of the firm Holding Redlich involved in the Information Technology Services Department of that firm. The statutory declaration is directed to the question of whether any emails exist to the email address that appears in paragraph 10 of the statutory declaration, namely chris.willis@parliament.nsw.gov.au. And you'll recall, Chief Commissioner, that some evidence that Mr Ian Robertson gave in answer to questions that I asked was to the effect that it was unusual for communications to be copied to Mr Willis, who the evidence from Mr Robertson was that Mr Willis was an officer within the leader's office of Mr Foley, and this statutory declaration appears to be directed to the proposition that, save for the emails that have already been the subject of examination by me, a search of Mr Ian Robertson's records don't identify any further emails that have been sent to or received from that particular email address. With that summary in mind, I tender the statutory declaration of Robert Pelikan made on 16 September, 2019.

THE COMMISSIONER: Yes. The statutory declaration of Robert Martin Pelikan, 16 September, 2019, will be admitted and become Exhibit 253.

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**#EXH-253 – STATUTORY DECLARATION OF ROBERT PELIKAN MADE 16 SEPTEMBER 2019**

MR ROBERTSON: Can I indicate that, as matters presently stand, I don't intend to call Mr Pelikan to give evidence, but if any party considers that they're disadvantaged by that course, they should draw that to my attention. During my previous examination of Mr Robertson, on page 873 of the transcript, line 10, I asked him some questions regarding the report of the inspector of this Commission. That's a report entitled Report Concerning a Complaint by the Australian Labor Party (NSW Branch) and Country Labor about the conduct of the Independent Commission Against Corruption investigating political donations received by these parties. That report is also described as Special Report 20/01. I tender that report.

THE COMMISSIONER: The report of the Inspector to the Independent Commission Against Corruption, Mr Bruce McClintock, Senior Counsel, will be admitted. It will become Exhibit 254.

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**#EXH-254 – REPORT OF THE INSPECTOR OF THE ICAC DATED 17 JULY 2019 CONCERNING A COMPLAINT BY AUSTRALIAN LABOR PARTY (NSW BRANCH) AND COUNTRY LABOR ABOUT THE CONDUCT OF THE ICAC INVESTIGATING POLITICAL DONATIONS RECEIVED BY THESE PARTIES**

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Yes, thank you.

MR ROBERTSON: Those are the housekeeping and related matters for my part.

THE COMMISSIONER: Yes, very well.

MR ROBERTSON: I recall Ian Lyall Robertson.

10

THE COMMISSIONER: Yes. Mr Robertson, remind me, do you take an oath or an affirmation?

MR I. ROBERTSON: An oath, Commissioner.

THE COMMISSIONER: Thank you. Just take a seat.

MR McINERNEY: Chief Commissioner. I have an application to make on behalf of Mr Robertson.

THE COMMISSIONER: Yes, Mr McInerney.

10

MR McINERNEY: An application for a declaration under section 38 of the ICAC Act. The provisions of section 37 and 38 have previously been explained to Mr Robertson and he appears under a summons to attend an appear and he 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 are to be taken as having been given on such objection.

20

THE COMMISSIONER: Yes, thank you. Mr Robertson, you understand the provisions of section 38 and their operation?---I do, Commissioner.

And you understand that, of course, a witness is entitled to seek a declaration but must answer all questions truthfully?---Yes, Commissioner.

Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness, Mr Robertson, and all documents and things that may be produced by him during the course of his evidence at this public inquiry are to be 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.

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**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR ROBERTSON, AND ALL DOCUMENTS AND THINGS THAT MAY BE PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE 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.**

MR ROBERTSON: Mr Robertson, is it still your belief that if there was a meeting between you and Ms Murnain on 16 September, 2016, that meeting concerned what we might call the Lalich matter?---Yes.

But it's still the case, is it, that you don't have an independent recollection of that meeting, is that right?---That is correct.

10 But you've done your best to look at contemporaneous documents with a view of drawing an inference as to what the meeting must have been about if there was a meeting, is that right?---Yes, I have.

Can we go, please, to document 2 of the documents for this morning. Now, during the course of the 16 September, 2016, you made contact with your senior associate, Ms Butler, and asked her to prepare a draft advice concerning the Lalich matter, is that right?---That's correct.

At that point in time she was on leave?---Correct.

20 But you made contact with her and asked for her assistance in relation to that matter, is that right?---That is correct.

And she sent you, at about 7.04pm, the email that we can see on the screen, is that right?---Yes.

Now, do you recall whether you at least saw the existence of that email at or soon after 7.04pm?---I don't recall but I assume I would have.

30 So it would be your usual practice, wouldn't it, that your phone may well buzz to say that an email's received, and you would ordinarily promptly at least see who the email is from and in general terms what it might be about?---I don't have my phone buzz when I receive emails because it would do nothing else. But it is, it is my practice and was my practice then to look at emails as promptly and regularly as possible.

So do you accept that it's likely that at least within a few minutes of 7.04pm your notice would have been drawn to Ms Butler's email?---I think that's likely.

40 And then during your previous examination we talked about the "I'm at the top of the escalators" message that appears to have been sent to you at 7.18pm. Do you remember that discussion?---Yes.

In terms of the email on the screen, do you recall whether between receiving this email at about 7.04pm and the message "I'm at the top of the escalators" whether you reviewed the draft advice that was attached to Ms Butler's email?---No, I don't recall and I've really got no basis of knowing at all or even really speculating.

So within a short period of time you at least knew that Ms Butler had prepared a draft that you'd asked for regarding the Lalich matter, but you may or may not have looked at the detail of that draft, is that fair?---It's fair but it is really speculating. As I said, I don't recall and I know I had looked at this email within an hour of receiving it because I responded to Ms Butler about it. But I, in, as what happened in that hour, I don't recall and I've got no basis really of speculating.

10 I'll come back to the response in a moment, but before we get there, is it right that in preparation for your previous examination in the public inquiry you sought to obtain records of swipes with your security card at the MLC Building?---Yes.

And can we go, please, to document number 4. And while that's coming up, I tender the document that was previously on the screen, being an email from Ms Butler to Mr Robertson of 7.04pm, being the document at pages 8 to 10 of the bundle described as ILR-1.

20 THE COMMISSIONER: Yes, the email from Ms Butler to Mr Robertson on 16 September, 2016 – what was the time again?

MR ROBERTSON: 7.04pm.

THE COMMISSIONER: 7.04pm. It will be admitted and it will become Exhibit 255.

**#EXH-255 – REDACTED EMAIL FROM SARAH BUTLER TO IAN ROBERTSON ON 16 SEPTEMBER AT 7:04PM**

30

MR ROBERTSON: Mr Robertson, is the document that's now on the screen a redacted version of the records you obtained of your swipe card? ---Yes.

And I take it that level 65 is the main level of Holding Redlich in the MLC Building?---Yes.

40 And so is it the usual case that one scans in order to access the lift and, in particular, to access level 65?---After hours it is, yes.

And you'll see there's two entries there, one for 7.19pm and one for 6.42pm. Do you see that there?---Yes.

Does that refresh your memory in any way as to why you might have scanned at 6.42pm as well?---No.

So is it right to say that your best recollection was that you were mostly in the office during the course of 16 September, although this suggests that at least some time prior to 6.42 you were out of the office and then came back in, is that right?---Yes.

You also provided the Commission with some taxi records for your Cabcharge card, is that right?---Yes.

Now, you live in Edgecliff, is that right?---Correct.

10

Is that about a 15-minute or so drive from the office, depending on traffic? ---15 to 20 minutes I think.

And if we can go to the next document, please, document number 5. And while that happens I tender the redacted version of security records that was on the screen a moment ago, being page 11 of the bundle marked ILR 1.

20

THE COMMISSIONER: Yes, the redacted security records in relation to the time 7.19 and 6.42pm on 16 September, 2016 will be admitted and become Exhibit 256.

**#EXH-256 – REDACTED HOLDING REDLICH SECURITY RECORDS RELATING TO 16 SEPTEMBER 2016**

MR ROBERTSON: Mr Robertson, is the document on the screen the Cabcharge records that you obtained and provided to the Commission? ---Yes.

30

I tender the document that appears on the screen, being Cabcharge card records, redacted, including for 16 September, 2016.

THE COMMISSIONER: Redacted Cabcharge records, 16 September, 2016, will become Exhibit 257.

**#EXH-257 – REDACTED CABCHARGE RECORDS RELATING TO 16 SEPTEMBER 2016**

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MR ROBERTSON: Now, Mr Robertson, you have a car space either in or near the MLC Building, is that right?---Yes, I do.

Do you usually use that on a day-to-day basis?---Yes.

Why was it, then, that it appears that you took a taxi on that evening, do you recall?---Yes, because it's my practice that when I'm going to be away for a

period, I leave my car parked in that car space at the MLC Centre, and I was leaving the office ahead of a three-week overseas trip.

And that was a trip where you flew on the Sunday afternoon or evening, is that right?---That's correct.

Can we go to the next document, please, number 6. And that was a trip to Europe, is that right?---Correct.

10 Did you go anywhere else on that trip?---Only to France and the UK.

Now you referred a little while ago to the fact that you sent an email back to Ms Butler. Is the document that's on the screen the email that you're referring to?---Yes.

And so do we take it from this that at some time between 7.04pm, when you were provided with the draft, and 8.05pm, you viewed Ms Butler's email?  
---Yes.

20 And do we take it that not only did you see her email, you had a look at the draft advice that she'd prepared?---I assume I would have.

But at that point in time you hadn't settled the draft advice, is that right?  
---No.

You ultimately did that I think on the next day or at least by the next day, is that right?---Yes, I did that the next day, I believe.

30 I tender the email on the screen, 16 September, 2016, 8.05pm, between Mr Robertson and Ms Butler.

THE COMMISSIONER: Yes, the email from Mr Robertson to Ms Butler, 16 September, 2016, 8.05pm, will be admitted and become Exhibit 258.

**#EXH-258 – EMAIL FROM IAN ROBERTSON TO SARAH BUTLER  
ON 16 SEPTEMBER 2016 AT 8:05PM**

40 MR ROBERTSON: Can we now go to document 7, please. Mr Robertson, you just referred to settling the advice, and I think you said you believed that you did it on the next day. Is the final advice, as sent by you, the document that you can now see on the screen, being an email from you to Kaila, Chris Willis and others of 17 September, 2016 at 11.50am?---Yes.

Now, in preparation for your examination today, have you arranged, or someone in your firm, to prepare a comparison of the draft that Ms Butler

prepared and that has been marked as Exhibit 255 and the document that we see on the screen?---Yes.

We'll bring up that comparison in a moment. While I do that, I tender the document that appears on the screen, being an email from Mr Robertson to Kaila, 17 September, 2016, 11.50am.

10 THE COMMISSIONER: Yes, the email from Mr Robertson to Ms Butler, Saturday, 17 September, 2016, 11.50am, will be admitted and become Exhibit 259.

**#EXH-259 – EMAIL FROM IAN ROBERTSON TO KAILA MURNAIN ON 17 SEPTEMBER 2016 AT 11:50AM**

20 MR ROBERTSON: Can we have document 6A on the screen, please. Mr Robertson, is the document that you can now see on the screen a marked-up document that shows the differences between the draft advice, Exhibit 255, and the final advice that I've just tendered?---Yes, it's an electronic document to compare.

And this is something that was not in existence before it was prepared for the purpose of the examination today, is that right?---I think it was prepared a week or so ago but it's been, only been prepared relatively recently.

Prepared in connection with the public inquiry, is that right?---Yes, yes.

30 And so we take it from that, do we, that where we see blue text that's underlined, that's material that you added to the draft prepared by Ms Butler, is that right?---Yes.

And so one of the changes that you made and that you and I discussed during your previous examination is that instead of just referring to one conversation, you refer to conversations and you refer to conversations in the afternoon and the evening by telephone, is that right?---Yes.

40 But you don't refer, obviously enough, to any meeting on the previous day, is that right?---No.

Does that fact lead you to doubt what you've previously said, namely that it was your belief that if there was a meeting on 16 September, 2016, it was about the Lalich issue as distinct from some other issue?---No.

But isn't it the case that ordinarily, if you had had a meeting regarding an issue, you would have recorded that fact either in a file note or in some other form of writing?---It would depend what was discussed.

But if you discussed any issue concerning the Lalich issue, you would ordinarily expect there to be a file note or other record of that attendance, is that right?---Yes. Or to have confirmed it in writing.

And would you agree that other than a narrative on your fee note that identified a meeting concerning political donations, you've been able to identify no other record of a meeting on 16 September, 2016?

10 MR McINERNEY: I object. I object, Chief Commissioner. If I might just -- I think there's a premise in that question which - - -

THE COMMISSIONER: Again, if you could use the microphone as much as - - -

MR McINERNEY: There's a premise in that question which is incorrect. If I might just have a moment to draw my learned friend's attention to a document, he might want to reframe the question.

20 THE COMMISSIONER: Yes, very well.

MR ROBERTSON: I'll withdraw the question and I'll unpack it. It's the case, isn't it, that in preparation for your examinations in this public inquiry, you have searched the available documents with a view to identifying what the meeting on 16 September might have been about if there was such a meeting, is that right?---Yes.

And through those searches, you haven't identified any file note in relation to that meeting, is that right?---That is correct.

30 And is it also right that you haven't identified any written advice to NSW Labor or any other Labor entity that refers specifically to a meeting of 16 September, 2016, is that right?---That is correct.

You have identified an email from you to your assistant, asking her to put 10 units of time on the ALP general file in relation to telephone conversations and a meeting with K Murnain concerning political donations, correct?---Yes.

40 And you know that that narrative was picked up and ultimately found its way on the September 2016 bill, is that right?---the 30 September, '16 bill, yes.

I'm so sorry, the September 2016 bill, which was for work done in September of 2016, is that right?---That's correct.

But other than what I have just identified, there's no other written record at least that identified you as having attended the meeting if the meeting happened?---That's correct.

MR McINERNEY: Chief Commissioner, my learned friend has identified a document but he hasn't put a date or a time on it and we're left without that information. Now, that's an important matter for this Commission and it leaves, as it were, gives an appearance that it wasn't until some point in time later when the document speaks for itself as to when.

THE COMMISSIONER: All right. Can you assist on that?

10 MR ROBERTSON: Can you just pardon me for a moment. The document I referred to I'm going to tender in a moment but we'll get to that when we get to the timeline.

THE COMMISSIONER: Just before you come to that. Mr Robertson, Ms Butler sent you the draft advice at 7.04 that evening.---Yes.

Do you know when you first made contact with her about doing the draft advice? That afternoon or - - -?---It was earlier in the day, Chief Commissioner. I assume in the early afternoon.

20

Did you get to speak to her at some point during the day?---Yes, we had a long conversation and, from my earlier evidence, I think it was made clear that Kaila Murnain was also on that call for an extended period of time.

And it was after that that presumably Ms Butler attended to preparing the draft advice.---Yes. Yes.

30 And then the next thing it was, it came through to you at 7.04.---Yes. I expect we would have discussed it in terms of what she would do. But, yes, that's what happened.

If it be assumed that Ms Murnain attended at your office on the Friday night, I think you've indicated that would be a rare occurrence because (a) you didn't normally have many person-to-person interviews and (b) certainly not on a Friday evening.---Correct. A rare occurrence, Chief Commissioner.

40 I think you did say that if you had a face-to-face meeting with a client, it would be usually about a matter of some particular importance or urgency, but that it didn't happen very often. Was that the effect of your evidence? ---After hours of an evening, yes, Chief Commissioner.

But even outside, even in ordinary working hours, is it the position as I understand your evidence – but correct me if I'm wrong – that you would only ordinarily have face-to-face meetings or in-person meetings if it was urgent or a matter of importance?---I apologise, Chief Commissioner, could you repeat the question?

Yes. I think you said it wasn't frequent that you had face-to-face or in-person meetings.---With Kaila Murnain?

Well, clients generally. But what is the position? Did you say that it did frequently occur in ordinary business hours?---After-hours meetings with clients are rare, although they can happen with work, for example, that is being done very urgently. I, I think I've given evidence that meetings with Kaila Murnain were quite rare. I had very few of them.

10 If it be assumed that she did attend your office on the Friday night, 16 September, and if her purpose in attending related to the Lalich matter, presumably providing you with some information either on an urgent or important basis, you would have expected to pass on her information to Ms Butler, wouldn't you?---I would have passed it on to - - -?

Ms Butler.---Perhaps. If I could just add too, Commissioner, if you're looking at the available circumstances, which is all I have available to me, it would seem that the, that I think Kaila Murnain would have been put under pressure by the office of the Leader of the Opposition to know what the  
20 position was with Lalich because of media interest.

But you don't know whether she was under any particular pressure on the Friday, 16 September, do you?---Well, the - - -

That is, pressure from – no, just a minute. Is this the position? You do not know of any particular pressure the Leader of the Opposition was then putting on Ms Murnain that afternoon, 16 September, 2016? Or do you?  
---Well, as I've already said, I don't recall the events. But if I look at all of the information available to me, I believe that the matter involved the  
30 leader's office, the media was involved and it was urgent.

You've already given evidence about that, but there's nothing that you're aware of, other than what you've just stated, which indicated that pressure was being applied to Ms Murnain that evening to deal with the Lalich matter, is that right?---No, apart from what I've said, no.

Well, then if Ms Murnain did attend after hours on the Friday, the 16<sup>th</sup>, and went to your office and spoke to you, and if it did relate to the Lalich matter, presumably, or one would presume, it would have been an urgent or  
40 important matter concerning the Lalich case, correct?---I presume so.

Well, rationally it would seem so?---Yes.

Well, then you having been – I withdraw that. She having then, if she did, convey a matter of some importance to the Lalich matter to you, it would be logical then for you to pass that information on to Ms Butler as soon as possible, wouldn't it?---No, not necessarily.

Well, if it was a matter of some significance to the Lalich matter and you had already tasked Ms Butler with the task of preparing an advice on the Lalich matter, logically you would pass on any such information that Ms Murnain may have conveyed to you on that evening, especially if it was a matter of some significance, correct?

MR McINERNEY: I object, Chief Commissioner.

THE COMMISSIONER: What's the objection?

10

MR McINERNEY: Well, Chief Commissioner, the logic depends on the circumstances.

THE COMMISSIONER: Well, you can address me on that but there's nothing wrong with examining what would be the expected course in the factual framework we're working on at the moment.

20

MR McINERNEY: Well, Chief Commissioner, I'm happy to raise it without the witness being present, but the framework, in my respectful submission, there's an implicit assumption because your question is premised on what would be the usual position or the regular practice - - -

THE COMMISSIONER: Well, Mr McInerney, before you go on, would you mind waiting outside, Mr Robertson, and we'll deal with this.---You'd like me to leave the room?

30

If you wouldn't mind just waiting outside the hearing room. Mr McInerney has suggested it might be better if I discuss it in your absence or we discuss it in your absence.

MR NEIL: Chief Commissioner, may I interrupt to observe - - -

THE COMMISSIONER: Yes, Mr Neil.

MR NEIL: - - - that the proceedings are being broadcast outside and very well broadcast and I wonder if some steps might be taken in that regard.

40

MR ROBERTSON: I can assist my learned friend. The button that cuts that feed has just been pressed.

THE COMMISSIONER: All right. Yes, Mr McInerney.

MR McINERNEY: Yes, Chief Commissioner. Chief Commissioner, the evidence as I understand it is that Ms Butler was on leave in Noosa and I think from her earlier email - - -

THE COMMISSIONER: Well, she should have been on leave but she was taken out of - - -

MR McINERNEY: Quite, Chief Commissioner.

THE COMMISSIONER: She should have been on the beach, according to Counsel Assisting.

MR McINERNEY: Quite. And I think the email at 7.04 refers to dinner, going out to dinner or just shortly to go to dinner that evening. So I just raise that for your consideration, Chief Commissioner.

10

THE COMMISSIONER: That certainly hasn't escaped my attention that she did that in her email. But we're dealing with Mr Robertson's end of the transaction. If he had information and it was relevant or significant to the Lalich matter it would, you think, be sent on by some means, either by sending a text message to say, "I need to speak to you about something," or send it as a text message or as an email.

MR McINERNEY: Well, Chief Commissioner, I think - - -

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THE COMMISSIONER: In this modern day and age.

MR McINERNEY: Well, Chief Commissioner, it depends on whether the particular solicitor involved was to have any further dealings with respect to the advice.

THE COMMISSIONER: Well, that's the very point. If there was some further information, before she presses the send button on her computer and dispatches the draft advice, then it, you would think, be relevant for that to be sent as soon as possible by Mr Robertson.

30

MR McINERNEY: Chief Commissioner, the draft advice was sent before at 7.04. The meeting with Ms Murnain is 7.18/7.19, in that area and Ms - - -

THE COMMISSIONER: That's true enough. The time sequence is as you've stated but she has been tasked with the job of doing it and if there's more information for her to take on board, because it's of some significance to the Lalich matter, then one would expect it would have been sent on.

40

MR McINERNEY: Chief Commissioner, that depends on whether the task he'd been tasked with from, in terms of what she was required - - -

THE COMMISSIONER: Well, to do - - -

MR McINERNEY: - - - had already concluded.

THE COMMISSIONER: But we know that, what the task was that she was assigned. It was the Lalich matter.

MR McINERNEY: And she'd prepared that draft advice and sent it at 7.04pm.

THE COMMISSIONER: Yes.

MR McINERNEY: And she's then off to dinner and she's on leave in Noosa.

10 THE COMMISSIONER: That's right. But you would expect, would you not, that if she's contactable, whether or not she had sent the draft advice or not, that Mr Robertson would then say, "Just hang on a moment. There's some more information here. Would you have a look at it, see if it's relevant and, if so, work it into the advice, take it into account."

MR McINERNEY: Chief Commissioner, that depends entirely on whether Ms Butler was to have any further role in the settling of the advice.

THE COMMISSIONER: Well, why wouldn't she?

20 MR McINERNEY: Well, why would she, having regard to the point it had reached? And she's on leave in Noosa, out to dinner with her family.

THE COMMISSIONER: Yes, well, why was she even tasked in the first place, one might well ask, when she's on leave? But be that as it may, why wouldn't she be contacted again and say, "Look, I've got your draft advice but we're being now told X, Y and Z about the Lalich matter"?

30 MR McINERNEY: Chief Commissioner, I was just raising, the question contained a logic and I'm raising that that logic doesn't necessarily follow - -

THE COMMISSIONER: What doesn't necessarily - - -

MR McINERNEY: - - - and it depends on the framework of the circumstances.

40 THE COMMISSIONER: We'll hear all the facts and circumstances in due course. Ms Butler can be asked, "What would you have done had you been given the extra information?" She says, "Well, I would have looked at it to see if I needed to change my advice."

MR McINERNEY: But, Chief Commissioner, if she didn't, if she wasn't asked to look at it, that doesn't go anywhere because she - - -

THE COMMISSIONER: Why wouldn't she be asked to look at it? Now, there may be another reason. That will come out if there is another reason.

MR McINERNEY: Well, the question wasn't put to the witness in that way, Chief Commissioner.

THE COMMISSIONER: All right. All right.

MR McINERNEY: He wasn't offered the opportunity whether there was, whether she had any further role or not. I've taken it as far as I can, Chief Commissioner.

10 THE COMMISSIONER: Mr Robertson, do you want to be heard on this?

MR ROBERTSON: You should permit the question, in my respectful submission.

THE COMMISSIONER: Sorry?

MR ROBERTSON: You should permit the question, in my respectful submission, if there's matters that require clarification, and my learned friend Mr McInerney can ask them by way of re-examination.

20

THE COMMISSIONER: Yes, we'll have Mr Robertson back, if somebody could advise him he may return. Have we got a court officer here? Thank you.

MR ROBERTSON: I'll just note that the feed outside of the hearing room is now back on, I'm told.

30 THE COMMISSIONER: Mr Robertson, we'll just go back over a couple of the points in time that are of possible relevance. 7.04, I think the evidence is the draft advice was sent and received from Ms Butler to you.---Correct.

And I think at 7.18, as you'll recall Counsel Assisting reminding you, texts you to say, "I'm at the top of the escalator."---Yes.

So if she attended with you after 7.18, it would be shortly after that point in time, by which time you had already got the draft advice from Ms Butler. ---Yes.

40 If Ms Murnain attended upon you that evening, after 7.18 or close to 7.18, and it related to the Lalich matter - - -?---Yes.

- - - and if it was a matter of some significance, importance, or a matter that could be said to be urgent, and, as I say, it concerned the Lalich matter, you would have passed that on to Ms Butler, would you not, for her consideration?---No.

Why not?---Two reasons, Chief Commissioner. The first is the presumption of your question is that Ms Murnain would have attended upon me to

provide me with information. I think it's far more likely she would have attended upon me to ask me a question, and the question would have been, "Is this going to be a problem? Because the leader's office wants to know." The second aspect is that Ms Butler was on annual leave. It was a Friday evening. I was responsible for finalising the advice, not her, which I did the following day so there would have been no reason for me to disturb her.

10 If Ms Butler, sorry, Ms Murnain attended and it related to the Lalich matter firstly, you don't have any recollection at all as to whether or not she was providing information or asking a question?---No, but I, I have given you my view of what I think is more probable.

Yes, I know what your view is, but - - -?---I have said repeatedly I have no recollection, Chief Commissioner.

So therefore it may have been that she came if it related to the Lalich matter to pass on information to you about the Lalich matter?---I think I've answered that question, Chief Commissioner.

20 And the answer is yes?---I beg your pardon?

The answer is, yes, she may have attended?---Yes, she may and she may have attended - - -

And, and - - -?--- - - -to ask me a question as I've said, Chief Commissioner.

30 Would you just listen to me for a moment. We'll just take it a step at a time. If Ms Murnain attended upon you on the Friday evening and it did relate to the Lalich matter, it may have been that she was imparting information about the Lalich matter for you as possibly relevant to advising on the question you had been retained to answer. Is that right?---It may have.

On the other hand it might have been that she came to ask a question about that matter as you said?---Yes, and as I've said I think that's more likely.

40 And the third possibility is it could have been both, that she had information which she wanted to take the trouble of actually visiting you at your premises to convey and ask a question as well either about that information or about the matter generally. Correct?---Yes.

And if it was a matter of some significance or importance, by some means or other you would expect it to have been recorded, would you not, either by a communication between you and Ms Butler to determine whether or not it is relevant or not and, if so, how it might bear upon the issue of the Lalich matter, or at least a record you would retain so that the matter before it went to the Leader of the Opposition could be factored into the whole exercise. Is that right?---Yes. That assumes, though, that some important information was conveyed, which I don't accept.

But you do accept that a Friday night meeting had never to your recollection ever occurred before between you and Ms Murnain. Is that right?---Correct.

And generally speaking your recollection is meetings didn't take place after hours, particularly on a Friday night with clients or - - -?---Correct.

10 So if she attended on the Friday night, walked to your office, called you and did go and see you, it would be a reasonable inference, would it not, that she at least thought she had some significant information to impart to you or a significant question to ask you or both or either one of those?---Yes.

Well, then, why in those circumstances would there not be a record in the Lalich file, if you like, of this meeting or any information or any questions she asked of you?---Because if the question only was what, how was the advice going, what is it likely to say, I don't think I would have needed or I wouldn't have recorded it, and in any event I know I didn't record it.

20 But it wouldn't be likely that she would have taken all the trouble on a Friday night to come and ask that question, would it? That's not likely.---I, I don't agree with that, Chief Commissioner.

Why don't you agree with that, that on a Friday night she would go and ask a general question such as you just suggested?---Well, because as I've said it involved the leader's office and the media and it was sufficiently urgent to have had to be prepared very quickly and finalised the following morning on a Saturday. That also is unusual.

30 But the urgency in effect had been satisfied, hadn't it? Because the draft advice had already been prepared.---No, well, the draft advice was draft advice. I hadn't settled it and I, at that point, I suspect didn't know whether it was in a form ready to provide to a client or not.

But when you came to read it, there was nothing of substance that you saw that needed change, is that right?---Depending on what you mean by substance. There was no major change to it, no.

40 You know what I mean. Between something of an editorial change as distinct from a substantive change. I'm putting that you didn't make any substantive change to her draft advice, did you?---I would, it changes to refer to the alleged donor's companies and directorships and associated entities, which was not in the original draft. That is not actually an insignificant matter.

But the urgency had been satisfied, hadn't it?---No.

By virtue of the fact that the advice had been prepared and sent to you at least in draft.---I don't accept that.

Well, it required very little attention thereafter, isn't that right?---I don't believe the urgency, as you put it, was satisfied until the advice was provided to the client, and even when it was provided on the Saturday morning, it was still incomplete because further information was needed.

Yes, now, Mr Robertson?

10 MR ROBERTSON: Mr Robertson, if the purpose of the meeting was simply to ask, "Is this going to be a problem?" why couldn't that have been communicated by telephone?---I don't know.

I tender the comparison document that was on the screen a little while ago, being the comparison between what I've described as the final Lalich advice, Exhibit 259, and the draft that was prepared by Ms Butler.

20 THE COMMISSIONER: Comparison documents in respect of the final Lalich advice, Exhibit 259, and the draft advice will be admitted. It will become Exhibit 260.

**#EXH-260 – COMPARISON BETWEEN FINAL LALICH ADVICE AND DRAFT PREPARED BY SARAH BUTLER**

30 MR ROBERTSON: Can we go now, please, to page 19 of the bundle marked ILR 1. So just to get your bearings, Mr Robertson, I think what I've described as the final Lalich advice is sent at about 11.50am on Saturday, 17 September, 2016. Is that right?---Yes, I, I don't want to be pedantic, but it actually wasn't the final Lalich advice. There was work done for days afterwards on the Lalich matter.

And we'll come to that in a moment.---That was, it was advice that was not complete that was as best as could be done on the information we had.

We'll come to those further documents in a moment.---Yes.

40 My reference to final is to say that it was the version that went from Holding Redlich to the client.---Correct.

So you at least agree that although it might not be final in the sense that you've just explained, it was a settled version of the draft that Ms Butler prepared, do you agree?---Correct.

Now, after you sent that advice, you sent an email to your assistant to ask the time be recorded on the file, is that right?---Correct.

And is the email by which you did that the one that's on the screen, which is an email of 1.25pm on Saturday, 17 September, 2016?---Yes.

I tender the document on the screen beginning Mr Robertson to Ms Georgiou, on 17 September, 2016, 1.25pm.

THE COMMISSIONER: The email from Mr Robertson to Ms Georgiou, 17 September, 2016, becomes Exhibit 261.

10

**#EXH-261 – EMAIL FROM IAN ROBERTSON TO LIZ GEORGIU  
ON 17 SEPTEMBER 2016 AT 1:25PM**

MR ROBERTSON: Just pardon me for a moment, Chief Commissioner. Now, you then head on a plane I think on Sunday afternoon of 18 September, 2016, is that right?---Yes.

20 But as you said a moment ago, that wasn't your final involvement in what we've described as the Lalich matter, correct?---That is correct.

And can we have, please, the next document on the screen, being document 8. So if you just direct your attention towards the second half of the screen, there's an email from Ms Butler of 19 September, 2016. Do you see that there?---Yes.

And Ms Butler is drawing to your attention that Ms Sibraa, S-i-b-r-a-a, is asking for further advice about a particular paragraph of the EFED Act, is that right?---Yes.

30

And when you said to me a moment ago that what I had described as the final advice was not in fact final, one of the reasons for that is that you were asked, you and Ms Butler were asked to give some further advice concerning the paragraph of the EFED ACT that's referred to on the screen, is that right?---Yes.

And then if you look further up the screen, you respond whilst you're on holidays to say, amongst other things, that the time zones are a challenge, correct?---Yes.

40

And you engage in some communications with Ms Butler concerning that matter?---Yes.

I tender the document on the screen, being the email exchange between Mr Robertson and Ms Butler, pages 417 to 422 of the bundle marked HR 35, volume 1 of that bundle.

THE COMMISSIONER: Yes. The email of 19 September, 2016, from Mr Robertson to Ms Butler in relation to what's referred to as the section 85(4) exception will be admitted and it will become Exhibit 262.

**#EXH-262 – EMAIL FROM IAN ROBERTSON TO SARAH BUTLER  
ON 19 SEPTEMBER 2016 AT 8:09PM**

10 MR ROBERTSON: And can we go please to document number 9. Now, then Ms Butler prepares a draft advice in relation to that matter. Is that correct?---Yes.

At this point in time Ms Butler is back from leave, correct?---Yes.

But you are not on leave, correct?---Yes.

And she sends you a draft of that at 10.36am, Sydney time, 20 September, 2016, is that right?---That's correct.

20

And you then review it whilst you're on leave and you indicate that you are happy with the draft advice, correct?---Yes.

I tender that document on the screen, being the email at pages 417 to 422 of the bundle marked HR35, volume 1.

THE COMMISSIONER: Yes. The email of 20 September, 2016, between Mr Roberson and Ms Butler as described will be admitted and become Exhibit 263.

30

**#EXH-263 – EMAIL FROM IAN ROBERTSON TO SARAH BUTLER  
ON 20 SEPTEMBER 2016 AT 3:26PM**

THE WITNESS: If I may just point out, Counsel Assisting, if you'd permit me, that you will notice from that email that in addition to the involvement of the general secretary we've discussed, we've now got the involvement of the governance director and the assistant general secretary in this matter.

40

MR ROBERTSON: And in relation to that matter, being the Lalich matter, did you have any telephone communications with those other individuals or was it all by email?---I think it would have all been by email and I think it was via Sarah Butler rather than direct with me.

And that's not surprising, at least in the week that we're presently talking about, because you were on leave at that time, is that right?---Yes, indeed.

We now see on the screen an email of 20 September, 2016, 3.44pm. Can you see that, Mr Robertson? So, I think - - -?---Sorry, I think it's the same one.

I think we're looking at the same document. Can we go to the next email please, which is document number 10, at least on my markings. Sorry, Mr Robertson. So now we have the response to the email you and I last spoke of, 3.44pm, 20 September, 2016. "Thanks Ian, will do. I have left a message with him." Do you see that there?---Yes.

10

I tender the single page on the screen, being page 423 of the bundle marked HR 35, volume 1.

THE COMMISSIONER: The emails between Ms Butler and Mr Robertson, 20 September, 2016, as described, will become Exhibit 264.

**#EXH-264 – EMAIL FROM SARAH BUTLER TO IAN ROBERTSON  
ON 20 SEPTEMBER 2016 AT 3:44PM**

20

MR ROBERTSON: Go to document 11, please. So then later that day Ms Butler advises you that she has spoken to Pat and outlined her advice, correct? Outlined your advice, as in collectively your and Ms Butler's advice, correct?---Yes.

And is it right that at that point in time – namely when you get the email that you can see on the screen – that is when you first find out that Mr Lalich had been referred to the Electoral Commission, is that right?---Yes.

30

And you'll see there that Ms Butler says that "Pat said he would like us to hold off on sending the advice until he has spoken to Kaila and Julie." Do you see that there?---Yes.

Now, did you ultimately send the advice, do you recall? Or was it left in the form that you and I have already discussed?---I think it was left in the form that we have discussed.

40 And so when you said to me a little bit earlier that the advice that I described as the final advice was not final, you were referring to the further advice that Ms Butler prepared and that you were happy with, is that right? ---Yes.

And it appears from this email that the substance of the advice, or at least an outline of it, was communicated to the Labor Party, correct?---Correct.

But to your knowledge the text of the advice was not ultimately provided, is that right?---From these documents, that appears to be the case.

Well, you don't have a separate recollection - - -?---No.

- - - of having sent that advice or having arranged for Ms Butler to send that advice, is that right?---No, I don't. I only have what we've been looking at.

And to the best of your recollection, was that the end of your involvement in this Lalich matter? Or did you have some further involvement afterwards?  
---I think this was the end of it.

10

I tender the document on the screen, being an email from Ms Butler to Mr Robertson, also marked as page 429 of bundle HR 35, volume 1.

THE COMMISSIONER: Document 11, the email from Ms Butler to Mr Robertson, 20 September, 2016, will be admitted and become Exhibit 265.

**#EXH-265 – EMAIL FROM SARAH BUTLER TO IAN ROBERTSON  
ON 20 SEPTEMBER 2016 AT 5:39PM**

20

MR ROBERTSON: And then the final document in this bundle I just want you to confirm, Mr Robertson, is the email that sends your September bill to NSW Labor. I'm just going to get that on the screen. And do you agree that on 5 October, 2016 you send an email to NSW Labor that summarised the advice that was given in the September 2016 month and which attached a fee note in relation to that work?---Yes, that's correct.

30 And the email that you sent is the one that we can see on the screen, is that right?---That is correct.

I tender the email on the screen, being an email from Mr Robertson to Ms Murnain of 5 October, 2016, 7.13pm, including the attached fee note.

THE COMMISSIONER: Yes. The email as so described will become Exhibit 266.

**#EXH-266 – EMAIL FROM IAN ROBERTSON TO KAILA  
MURNAIN ON 5 OCTOBER 2016 AT 7:13PM ATTACHING FEE  
NOTE**

40

MR ROBERTSON: Just one further matter, Mr Robertson. What is Justice Services Pty Ltd?---That's the service company of Holding Redlich, which employs our staff and rents our premises and things like that.

And you're a director of that entity, I take it?---Yes.

Has that entity donated any money to the Australian Labor Party in any of its manifestations?---I don't know.

As the director you don't know whether it's donated?---I beg your pardon?

10 I'm sorry. You're a director of that company and you don't know whether it's made any donations?---It's my understanding that if Holding Redlich made donations, they're made by Holding Redlich. But it's possible that Justice Services has made political donations. I just simply don't know.

And is it likely that if Justice Services had made political donations, they would be more on the Labor side than the Liberal side in the same way as the Holding Redlich donations have been in that fashion?---I just don't know.

20 Chief Commissioner, I tender an Australian Securities and Investments Commission search of Justice Services Pty Ltd.

THE COMMISSIONER: That search will become Exhibit 267. Search results from ASIC on Justice Services Pty Ltd.

**#EXH-267 – AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION SEARCH RESULT FOR JUSTICE SERVICES PTY  
LTD**

30 MR ROBERTSON: That's the further examination, Chief Commissioner.

THE COMMISSIONER: Yes, thank you. Now, Mr Moses, you're making application to cross-examine.

MR MOSES: I am, Chief Commissioner, but as I understood - - -

THE COMMISSIONER: Have you discussed with Mr Neil?

40 MR MOSES: I now understand Mr Neil will proceed before I cross-examine (not transcribable) Chief Commissioner.

MR NEIL: If that's a convenient course. If that's convenient, yes.

THE COMMISSIONER: You're going first?

MR NEIL: If - - -

THE COMMISSIONER: Yes, I grant leave to cross-examine. I have regard to the material that's been sent outlining the areas for cross-examination of the witness. You may proceed.

MR NEIL: Chief Commissioner. Are you a good lawyer, Mr Robertson?  
---I like to think so, Mr Neil.

Skilful, skilful in the law?---Yes.

Experienced?---Yes.

Careful?---Yes.

10

Assiduous?---Yes.

Thorough?---Yes.

Considered?---I apologise. I didn't hear that.

Considered?---Yes.

Meticulous?---I hope so.

20

Precise?---I'm having some trouble hearing you.

Precise?---Sorry?

Precise?---I hope so.

Are you precise?---I hope so.

Accurate?---I try to be.

30

I wonder if we could call up page 310 of the transcript, please. 29 August, 3-1-0. This isn't in our cross-examination bundle I'm afraid. While we're waiting for that to happen, Mr Robertson, perhaps I could ask you these questions. You dealt in your practice with Mr Dastyari when he was the General Secretary of the NSW Labor Party. Is that correct?---Yes, I had dealings with Mr Dastyari.

40

And what we're going to see is a passage from his, two passages from his evidence. Page 310. Let me say again, what you're looking at now is the transcript of some evidence that Mr Dastyari gave on 29 August, 2019. Perhaps I'll just, I can read to you I think perhaps the passages I have in mind. Would you be good enough to assume for the moment that what I'm going to read to you are passages from the evidence that Mr Dastyari gave on 29 August, 2019. This appeared at lines 9 and 10 – here they are in front of you now – of the transcript at page 310. Lines 9 and 10. “The Australia Labor Party account was held with Holding Redlich and the lawyer you dealt with was Ian Robertson.” Now, is that statement, in your assessment, accurate so far as it applied to the period when Mr Dastyari was general

secretary?---I don't know who else the Labor Party used for legal advice and I wasn't the only person doing work for the Labor Party.

And what's the answer to the question I asked? Is it or is it not accurate?  
---It may be accurate.

10 And I ask the same question in relation to the period when Ms Murnain was general secretary. Is the statement that appears at lines 9 and 10 that I read aloud to you accurate so far as it might apply to that period?---Yes. With the same qualification. I, I, Holding Redlich does not have an exclusive arrangement with NSW Labor. NSW Labor may use who it likes for legal advice and I don't know who else they use.

20 If you drop down to line 31, you'll see a passage in which Mr Dastyari give evidence of his assessment of you. I'm going to draw your attention that passage and then I'm going to ask you whether it accords with your own assessment of your abilities, capacities and approach to the practice of the law as a solicitor acting for the Australian Labor Party NSW. This is the passage, it begins at line 31. "Ian got me through so much and Ian was normally, like, when you freaked out about something or were upset or you were concerned, the best thing to talk to is talk to Ian Robertson. Just because I'd been in that situation before, where I'd been uncomfortable or stood over or whatever with branch officials, I always, that is my recollection of what I would normally say in those circumstances." Now, that's what Mr Dastyari said of you, his experience and assessment of you. How does it accord with your assessment of yourself?---It doesn't and there are a number of things wrong with it. The first is it suggests that I or my firm have advised Mr Dastyari personally. To the best of my knowledge, we've only ever advised him in his capacity as the general secretary and there's a difference. It also suggests that there are occasions when he was personal trouble while he was general secretary and that is not my recollection either.

30 One thing you did in your dealings with Mr Dastyari was to give him advice in his capacity as general secretary, correct?---Yes.

40 It was to give him counsel, another was to give him counsel, again in his capacity as general secretary, do you agree?---No. I gave him advice, I don't believe I gave him counsel, and I think there's a difference.

And a third was to give him guidance, do you agree?---No, I gave him advice.

Now, you Holding Redlich in 1989, is that correct?---Yes.

You became a partner of that – I withdraw that. Before that time you had been the, or an in-house counsel at David Simon & Co Ltd, is that correct?  
---That is correct.

Indeed, at one time, you were the publisher of The Age, is that correct?  
---No. I was not the publisher of The Age but David Simon & Co Ltd was.

You became a partner of Holding Redlich in 1990, is that correct?---Yes.

You established Holding Redlich's Sydney office in 1994, is that right?  
---That is correct.

10 And from that time until about June of 2015, you were the Managing Partner of Holding Redlich's Sydney office, is that correct?---Yes.

In June 2015, you became Holding Redlich's National Managing Partner, is that right?---That is correct.

You had acted for the ALP NSW – I withdraw that. You began acting for the ALP NSW in about 2008, is that correct?---Yes.

20 You're a fellow of the Australian Institute of Company Directors, is that right?---That's correct. Yes.

And when did you become a fellow of that institute?---I don't accurately recall. I guess five or six years ago.

You have at one time been a board member of the Australian Broadcasting Authority, is that right?---Yes.

When was that?---That was I think 1997 until 2004.

30 You have in the course of your practice acted as the personal legal adviser to a former Prime Minister, Mr Hawke, is that correct?---Yes, two of them.

Yes. Who was the other?---Julia Gillard, but only in respect of a few matters relatively recently.

When did you begin acting for Mr Hawke?---In 1991.

How old were you in 2016?---I beg your pardon?

40 How old were you in 2016?---In 2016?

September 2016. How old were you?---60.

In the course of your practice with Holding Redlich, it had, to your knowledge, been involved in a number of inquiries conducted by this Commission, is that correct?---No, that's not correct.

Holding Redlich acted, did they not, in Operation Acacia, the investigation into the conduct of Mr Macdonald, Mr Maitland and others in 2013?---I have no knowledge of that.

Operation Spectre, 2014?---If we did, I was not involved.

10 Operation Scania in 2016?---Again, the same, the, the same answer, Mr Neil. To the best of my knowledge, I have accompanied one witness to a private examination before this Commission, which was actually not at the premises of the Commission, and apart from that this is, to the best of my knowledge, the first time I've had an involvement with a matter involving the Commission.

That earlier occasion that you could remember, when did that occur?---I think it was when Mr Dastyari was General Secretary of the Labor Party.

20 When I was asking you before about the work that you performed in the period when Mr Dastyari was the General Secretary of the Labor Party, you drew a distinction between "advice" and "counsel".---I did.

What is that distinction?---Yes.

What is that distinction?---Well, I think one is to provide legal advice on a legal position, and counsel is really advising somebody personally what they should do.

30 Did you consider it part of your task as a solicitor for the ALP New South Wales to give advice to that party about what it could do, what it could lawfully do?---Yes.

Was it a part of your responsibilities, any part of your responsibilities, to give it advice about what it should do?---Yes.

I wonder if we could call up, please, the article from Australian Lawyer. And while that's happening, could I just ask you this, please. About November of 2014, Holding Redlich took Mr Carl Hinze, into partnership, is that correct?---Yes.

40 Mr Hinze is a Chinese language, culture and law expert, is that correct? ---Yes.

He was appointed as a senior partner of the firm, is that right?---No, he was appointed as a, initially I think as a, as a non-equity partner, which is not a senior partner.

Very well. In any event, he was appointed as, well, given the title of Head of the China Practice, is that right?---Yes, that's correct.

Now, I wonder if we could just go to the second page of this article, please. And this is an article that was published upon Mr Hinze's appointment. And if you'd be good enough to look at the second-last full paragraph on this page, you'll see that Mr Hinze is, that the following statement is attributed to Mr Hinze, "The lawyer settled on Holding Redlich, a firm he says he was particularly attracted to because of its culture and its strong commitment to excel in areas where Australia-China collaborations are set to below, such as in investments in agribusiness, commercial property, retail, tourism and infrastructure." Do you see that?---Yes.

10

Now, was it the case that in November 2014 Holding Redlich had a commitment to the effect there described?---It predates 2014. It dates back approximately a decade from now when we decided that the establishment of a practice acting for inbound Chinese investors would be a sensible commercial and professional decision and that's what we set about doing.

20

That Holding Redlich had devoted a considerable amount of work to developing a practice in areas where Australia/China collaborations are set to grow such as in investments in agribusiness, commercial property, retail, tourism and infrastructure. Is that right?---Yes, that's correct although I think we still by the standards of many have a pretty small practice in that area.

You have yourself been actively involved in developing a practice in that area. Is that right?---Yes, that's correct.

As far back as September 2010 you visited China to meet with the leadership of a firm known as Yishi Shanghi. Is that correct?---Yes.

30

You were accompanied by the managing partner of Holding Redlich's Melbourne office. Is that correct?---Yes.

And Mr Josh Klenbort came with you too, is that right?---Yes, Klenbort, yes, that's correct.

I'm sorry, have I mispronounced his name?---Klenbort.

40

And Mr Klenbort was the representative, then the representative of Mr Hawke. Is that correct?---That's correct.

And the purpose of your visit was to discuss cooperation between the two law firms, Holding Redlich and Yishi Shanghi. Is that correct?---Yes.

In 2014 you travelled to China to attend a meeting of the Boao, B-o-a-o, Forum for Asia?---Yeah, the Boao Forum for Asia. That's correct.

And you were accompanied by somebody who, by the predecessor to Mr Hinze, a Mr Allan Yang. Is that right?---Mr Yang has never been an employee of Holding Redlich. He was a consultant.

He consulted in the position of director of Holding Redlich's China legal practice. Is that correct?---Yes, but he was not an employee.

Holding Redlich was at that time a platinum member of the forum. Is that correct?---That's correct.

10

And it remains so now?---No. We ceased that after three years I think.

In early June 2015 Holding Redlich associated itself with the Australia China Relations Institute.---Yes.

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

And shortly after that you became a member of the institute's advisory board. Is that right?---I think the initial membership was of something called the chairmans' council. The advisory board was formed later.

20

In August 2015 Holding Redlich received a delegation of 10 Chinese government officials. Correct?---I don't recall that but I have no reason to doubt its accuracy.

And do you recall whether you played a part in receiving that delegation? ---I don't recall but it's possible that I would have.

In 2016, in April, you and Mr Hinze travelled together to China, correct?---I can't recall that but it's likely that we did.

30

There you joined, may I suggest to you, a trade mission to Australia Week in China, 2016?---Oh yes, I remember that now. It was a large trade delegation from Australia and, and we were part of that in, in I think the agribusiness part of it.

I wonder if we could have a look next please at the tweet.

MR ROBERTSON: And while that's being brought up, I tender the article that my learned friend referred to from Australasian Lawyer on 17 November, 2014, by Sophie Schroder, S-c-h-r-o-d-e-r.

40

THE COMMISSIONER: What's the date again?

MR ROBERTSON: 17 November, 2014, if it please the Commission.

THE COMMISSIONER: Yes. The Australasian Lawyer article, 17 November, 2014, will be admitted and become Exhibit 268.

**#EXH-268 – ARTICLE BY SOPHIE SCHRODER IN THE AUSTRALASIAN LAWYER DATED 17 NOVEMBER 2014**

MR NEIL: Now, do you recognise this to be a tweet that you sent while you attended the Boao Forum in Asia in 2015?---No. I don't recognise that and I don't tweet, if that's what it is. So it's not from me.

10

Very well. Look at the statement that's attributed to you. Does that accurately reflect a view that you held in 2015 of Holding Redlich's job in developing a practice in areas involving Australia/China collaborations? ---Well, it's consistent with my view then and now if ensuring Chinese companies have satisfactory experiences in investing in Australia, yes.

THE COMMISSIONER: Mr Neil, would that be a convenient time to take the morning tea adjournment?

20 MR NEIL: It would, if it please.

MR ROBERTSON: Just before we do, can I formally tender the tweet that was on the screen of 30 July, 2015, from PWSC Australia and attributing a comment to Mr Ian Robertson of Holding Redlich?

THE COMMISSIONER: Yes. The tweet of 30 July, 2015, will be admitted and it will become Exhibit 269.

30 **#EXH-269 – HOLDING REDLICH TWEET DATED 30 JULY 2015**

THE COMMISSIONER: Yes. I'll adjourn,

**SHORT ADJOURNMENT**

**[11.31am]**

THE COMMISSIONER: Yes, Mr Neil.

40

MR NEIL: Thank you, Chief Commissioner. So, Mr Robertson, you would agree, would you not, that as at September 2016, your firm Holding Redlich, had spent more than a decade developing a practice in the area of Australia/China collaboration, correct?---Correct.

A task in which you had yourself been engaged since at least September, 2010, correct?---Yes.

The object of developing the practice in that area was to secure work and valuable work, in part, from Chinese businesses and businesspeople who were looking to invest or do business in Australia, correct?---Yes.

And, in part, it was in the hope of securing work from Chinese business in Australia, correct?---Yes.

10 Including from high-net-worth Chinese businesspeople in Australia, correct?---I'm not sure about that. I, I don't recall ever a focus on, on individuals. I think it's always been on businesses and corporations.

One of those businesses and corporations was the Yuhu Group, correct? ---No, not until the beginning of 2018.

So the beginning of 2018 was when you, the firm, Holding Redlich, succeeded in obtaining work from the Yuhu Group, is that correct?---That's correct.

20 I'm going to ask you some questions, if I may, about a different topic for the moment, the topic of your dealings with Kaila Murnain on 16 September, 2016. Now, one of those – I withdraw that. In part, your dealings with Ms Murnain on that day involved a telephone conversation or conversations during the afternoon, is that right?---Yes.

Now, in connection with this inquiry, you've seen some telephone records that show that on that afternoon, the afternoon of 16 September, 2016, you spoke with Sarah Butler and then you and Sarah Butler spoke with Kaila Murnain, is that right?---Yes.

30 It is and remains the case that you have no actual memory of what occasioned or brought about those conversations, is that right?---Yes.

That is, how you came to be speaking with Sarah Butler that afternoon, correct?---I have no actual recollection.

Or how the two of you, you and Sarah Butler, came to be speaking with Kaila Murnain, is that right?---Correct.

40 In fact, you have no actual memory of having any such conversation, is that correct?---That is correct.

You have no actual memory of the content of any such conversation, is that right?---That is correct.

But you have a belief or a best guess that the conversations concerned Mr Lalich, is that right?

MR McINERNEY: I object. I object. There's a difference, Commissioner, between a belief and a best guess. It's not a fair question.

MR NEIL: I wonder if I could - - -

THE COMMISSIONER: Well, you can bracket into two parts.

MR NEIL: I will, if it please. May we look – I think I should be using the tab numbers. Tab 44, please, of the cross-examination bundle, page 234.  
10 And if you'd be – we can look at other pages if you need, Mr Robertson, please let me know if you do – but will you assume from me that at lines - -  
-

THE COMMISSIONER: This is the transcript of 9 September.

MR NEIL: Yes.

THE COMMISSIONER: Mr Robertson's evidence.

20 MR NEIL: Yes. And if you'd be good enough to go to lines 6 to 9, please. Would you read those to yourself and let me know when you're ready to proceed.---Yes.

And will you assume from me – and of course if you need to I can ask that you be shown earlier pages – would you assume that the conversation that you're being asked about there and that you're addressing is the conversation that took place on the afternoon of, with Ms Murnain, that took place on the afternoon of 16 September, 2016? Do you see that?---Yes.

30 And you there say that you believe that your best guess is that the conversation must have been about Mr Lalich. If there's a difference between belief and best guess, which is the correct one?---With respect, it doesn't say that. Because it says, "And your best guess based on that is that the conversation must have been about Mr Lalich, is that right?" and I say that is my belief, and that is not the same as me saying it's my best guess. And it's not my best guess, Mr Neil, it is my belief, and I do understand the difference.

40 Good. Good. So belief rather than best guess, is that right?---That is correct.

Very well. And that belief – I withdraw that. When you talk there about a belief, what you're talking about is a process of reasoning, is that correct?  
---No, it's based on a belief formed by looking at all the available information about that day and surrounding event, including the entire week.

Well, it doesn't involve memory, not to any degree, do you accept that?  
---Yes.

I'm sorry, I didn't hear your answer.---Yes. I do accept that

And if it doesn't involve memory, what it involves is a process of reasoning or reconstruction based on the records to which you refer in the passage from your evidence of which I have reminded you, is that correct?---Yes.

10 It's based, in fact, it's a process of reasoning or reconstruction that's based entirely on what you've seen in such documents as you've been able to find pertaining to those conversations, do you agree?---Yes.

And those records include, at least, the following. Tab 8, please, page 16.

THE COMMISSIONER: You're referring to tab 8 of the cross-examination bundle?

MR NEIL: Oh, this is tab 8 of the cross-examination bundle, I'm sorry.  
20

THE COMMISSIONER: Mr Neil, it's tab 8, is it, of the cross-examination bundle?

MR NEIL: It is, if it please, Your Honour. Tab 8. And this is a copy of what is Exhibit 232. Chief Commissioner, I'm sorry. Now, in part, your process of reasoning or reconstruction as to the subject matter of the conversation or conversations on the afternoon of 16 September is based on this document, is that correct?---No because this is not a Holding Redlich document and I had not previously seen this.  
30

So one can put that to one side?---Yes.

Could we go to tab 15 of the cross, 5, I'm sorry, of the cross-examination bundle, page 11.

THE COMMISSIONER: Which page?

MR NEIL: Page 11, tab 5. Do you recognise this document?---Yes.

40 Is this a document that forms at least part of the basis of your belief as to the subject matter of the conversation or conversations with Ms Murnain on 16 September, 2016?---Yes.

I wonder if we could next go to tab 6 of the cross-examination bundle, please. Oh, I'm sorry, I withdraw that. Could we have a look at Exhibit 255, at a document that was tendered this morning. And this, Mr Robertson, I think you will recognise to be a document that you were shown this morning. There's a second page.---Yes.

If we could look at that, please. There we go. Now, is that a document that is at least in part a basis of your belief as to the subject matter of your conversation or conversations with Ms Murnain on 16 September, 2016?  
---Yes.

Are there any other documents on which that belief is based apart from the two that you have so far identified?---No, I don't think so apart from there are my own phone records but, no, I think that's all.

10

And when you say your own phone records, could you tell me, please, what you're referring to?---There's a record of calls I made on, on my mobile phone that day. I believe they're in evidence somewhere.

I wonder if we could have a look, please, at tab 18 of the cross-examination bundle, page 66. And could we just take a moment to look at that and then if the operator would be good enough to click through to the next page, please, page 67. Take a moment to look at that, Mr Robertson, and then let me know when you're ready to proceed.---Yes.

20

Are they the telephone records that you referred to a moment ago?---Yes.

So apart from the three documents that we've identified, Ms Murnain's email, tab 5 of the cross-examination bundle, Ms Butler's email and the draft advice attached to it, Exhibit 255, and these call records that you see in front of you now which are Exhibit 210 or at least a part thereof, is there anything else upon which you're belief as to the subject matter of the conversation or conversations with Ms Murnain on 16 September, 2016 is based?---Yes. Yes, there is. There's the advice that was given earlier in that week concerning Senator Dastyari as he then was and political donations and media coverage of that issue and there's the advice I gave Kaila Murnain in writing the following day, the Saturday concerning the Lalich issue and also the Dastyari issue, both of which were done the following day and that helps me form a belief as to what was going on in that period, not just on that afternoon.

30

Perhaps I could take those I think three documents in chronological order. First may we look at tab 4 of the cross-examination bundle, please. I think we might, I need a hard copy for this one. I'm sorry, I might – I withdraw that. I'll need to I think show the witness a hard copy of this document. In the cross-examination bundle there is a copy of Exhibit 236. It's redacted. What I want to do, if it please, is to show the witness a hard copy of the document, a redacted version of which is Exhibit 236. This is at page 10A of the cross-examination bundle behind tab 4. Now, take a moment to look at that and let me know when you're ready to proceed.---Yes.

40

Very well. Now, do you recognise that to be a copy of an email containing the advice relating to Mr Dastyari to which you first referred in the answer you gave a moment ago?---Yes, I do.

Put that to one side if it please. Now, the second document to which you referred was advice relating to Mr Lalich that you gave on 17 September, 2016. And that is Exhibit 259, tendered this morning. If that could be called up, Exhibit 259, please. Now, looking at that, is that the second document to which you referred a moment ago as bearing upon your belief  
10 as to the subject matter of your conversation or conversations with Ms Murnain on 16 September?---Yes.

And now next may we go back to the cross-examination bundle, please, tab 10, page 22. Tab 10, page 22. Now, that's a copy, a redacted copy. Does the redaction enable you to recognise that document or would you like to see a full copy?---No, it's, I recognise it.

And do you recognise it to be the third of the documents to which you've referred?---Yes.  
20

As informing your belief. Now, could you tell me, please, how does this document, your email of 17 September referring to – I withdraw that. I'll start again. This is the second piece of advice that you gave in relation to Mr Dastyari, is that correct?---Yes.

Now, how does this, the second piece of advice that you gave in relation to Mr Dastyari on 17 September, and the earlier advice that you provided in relation to him on 15 September, inform your belief that the subject matter of your telephone conversation or conversations with Ms Murnain on 16  
30 September related to Mr Lalich?---Well, because the email of the, of the Thursday is, is late on the day of the Thursday. I think it said 5.38pm. On the Saturday around lunchtime I give further advice. I think it's reasonable to assume that there may have been further discussions about the Dastyari matter during the course of Friday, the 16<sup>th</sup>, in order to explain that chain of events.

Perhaps another explanation might be that after you gave the advice on 15 September, you spoke to two of your Victorian colleagues, who passed on the matters to which you refer in your email of 17 September. Do you  
40 accept that?---Yes.

And you have no way of knowing one way or the other which of those two or indeed any other explanation there might be, do you agree?---Correct.

Now, turning from your telephone conversation or conversations with Ms Murnain during the afternoon of 16 September to your meeting with her that evening, may I ask this. In connection with this inquiry you have seen

documents by which you are now satisfied that you did in fact meet with her on that evening, do you agree?---Yes.

And those documents include the lift access records that you have found, correct?---Yes.

Anything else?---Well, the fact that it's, the fact that the meeting is recorded on our account suggests it must have happened.

10 Anything else?---There's the email to my secretary the following day asking for the time to be recorded.

Anything else?---I think that's all.

And of course, you say that you've got no actual memory of the fact of that meeting, of the meeting having occurred, correct?---Correct.

Would it be right to say that you now have a belief that it occurred?  
---Correct.

20

And you say too that you've got no actual memory of the content of that meeting, is that correct?---Correct.

You had – I withdraw that. During the period when Ms Murnain, or you dealt with Ms Murnain on her capacity as the general secretary of the ALP, you had regular and frequent dealings with her in that capacity, do you agree?---Yes.

30 You gave her legal advice on a wide range of issues, is that right?---Yes. She and others.

As to the incidence of meetings between you and her, you've said that they were rare, is that correct?---Yes.

It was rare for you to meet with Kaila Murnain for the purpose of her seeking or obtaining legal advice, correct?---I'm sorry, could you repeat the question?

40 It was rare for you to meet with Kaila Murnain for the purpose of her seeking or obtaining legal advice, is that correct?---Relatively rare, yes.

It was rare for you to meet with Kaila Murnain for any other purpose, is that right?---Yes, absolutely.

It was unusual for you to meet with any client on a Friday afternoon after business hours, is that right?---Very unusual.

You only did that, as you said in your evidence earlier and again today, you only did that if it was a matter of some urgency or importance, is that correct?---Yes.

You have no actual memory that you ever met with Kaila Murnain on a Friday afternoon after business hours, is that right?---Correct.

10 A meeting that you now accept took place on the evening of Friday, 16 September, 2016, was in that respect unique in your experience, is that right?---Yes.

When you met with a client for the purpose of providing information – I withdraw that. When you met with a client for the purpose of the provision of information or the giving of advice, your practice was that a file note would be taken to constitute a record of the meeting, is that right?---No. A file note would be taken or the information would be, or the advice to whatever, would be confirmed in writing or by email.

20 What do you mean when you say the information or advice would be confirmed in writing by an email, what does that actually mean?---It means that most verbal conversations I had with clients, where we'd received instructions or provide advice, are confirmed in writing and that's done by email and it's done promptly. That is my practice.

What does confirmed by email actually mean? What's the mechanism that you're describing by those words?---An email which confirms the discussion or information that was just had or provided.

30 An email that refers to the discussion or information, correct?---Yes.

And an email that, in terms, confirms the discussion, information or advice, correct?---Yes.

“We confirm that,” or something of that kind, correct?---Yes.

40 I wonder if we could have a look, please, at tab 43 of the cross-examination bundle. Tab 43. And at tab 43, could we go to page 211, please. This is a passage from the transcript of your evidence on 9 September, Mr Robertson, when it comes up. And would you be good enough to read to yourself lines 28 down to 44, please. That's from “Well, let's focus on in-person discussions,” all the way down to “Particularly the giving of any advice, I would.” When you've done that, please let me know.---Yes.

Is there any aspect of the evidence that is there set out that you would now wish to qualify or change?---No.

Now if you'd be good enough to look at line 46 to 47, the last two lines on that page. And then when you've done that, if we could click through to page 212, please. And could you read the next two lines.---Yes.

Now, is there any part of that evidence that you would wish to qualify or change?---No.

10 So it is the case, is it not, that when you met with a client for the purposes of the provision of information or the giving of advice, the practice was that a file note would be taken to constitute a record of the meeting, do you agree?---If a meeting was for that purpose, yes.

Yes. The file note might be taken by another solicitor if you were so accompanied, is that right?---Yes.

Or it would be taken by you if you were alone, is that correct?---Yes.

20 Now, you have not found any such record of your meeting with Kaila Murnain on 16 September, 2016, is that correct?---Yes, that's correct.

No file note or any other document that might be to that effect, do you agree?---Yes.

You've looked for it, you've looked for something like that, is that right? ---Yes, yes.

You've looked assiduously, do you agree?---Yes.

30 And it is the case, is it not, that you cannot point to anything that might account for the absence of such a file note or record?---No, apart from the fact there isn't one.

You do not point to any other meeting that you ever had with Kaila Murnain that is not reflected in a file note compiled according to your practice, do you agree?

40 MR McINERNEY: I object, Chief Commissioner. There's a premise in that question about other meetings with Ms Murnain which hasn't been established in the evidence.

MR NEIL: I withdraw that. I'll start again. Meetings with Ms Murnain were, I think you have said, rare?---Yes.

Rare meetings sometimes occurred, do you agree?---Yes. Very rarely. In fact I'd almost say probably never one-on-one. There was almost always someone else present from NSW Labor and somebody accompanying me.

Well, let's, for the purpose of my question, include meetings attended by you and Kaila Murnain and someone else from NSW Labor. Can you point to any such meeting that is not reflected in a file note or other such record compiled in accordance with your practice?

MR McINERNEY: I object. There's two different parts of that question. One doesn't get to the second part unless one first establishes when, if at all, there were meetings to give effect to the first part.

10 THE COMMISSIONER: I don't think so, Mr McInerney. I'll allow the question.

THE WITNESS: I'm sorry, could you repeat the question.

MR NEIL: I shall. Can you point to any other meeting involving you and Ms Murnain and perhaps other people from ALP NSW that is not reflected in a file note or other such record compiled in accordance with your practice apart from this meeting on 16 September, 2016?---There may well be but I don't know and I don't understand how I could possibly make that inquiry.

20

THE COMMISSIONER: Mr Robertson, in your experience the maintaining of a record or maintaining notes, file notes of instructions and the like, forms a very important part of a practice for a number of reasons. Is that not right?---Yes, although, Chief Commissioner, with the ubiquitous use of email things have changed a bit.

30 Sure. What do you see as the factors which make it important for a record of some kind to be maintained of communications with a client?---Well, to avoid doubt later as to what has occurred but of course as you would be aware, Chief Commissioner, the file note is taken for the benefit of the lawyer not the client and is the property of the lawyer.

Yes, indeed. The purpose behind taking a record or keeping a record, whether it be a file note or otherwise, is as you say to, firstly, ensure that they're, by confirming if it's an email that the communication is being effective, that is, each of you are understanding each other, as it were. ---Yes, and that's the advantage, Chief Commissioner, of confirming things in writing because it's not just then a one-sided note. It means that both parties proceed on the basis of what is being done not just one of them.

40

And the second purpose I think you already referred to is that it does operate as a safeguard for a lawyer to be able to say, well, these were my instructions.---Yes. Again the, it is much better to have these things in writing so the client understands the basis on which the lawyer is proceeding rather than to have a note which will only become relevant if in the future there is a dispute between the lawyer and the client and that's why I practice the way I do.

I think we're both in furious agreement there's a twofold purpose. One is the one you've just said.---I'm pleased to hear that.

The objective of effective communication being confirmed and the second is it does operate as a safeguard for lawyers in that they can say, well, I have a record of what the client told me and in the event of an issue being raised at some later time.---Yes, I agree, Chief Commissioner.

Yes, Mr Neil.

10

MR NEIL: Do you accept this proposition, Mr Robertson, that by reason of the absence of any file note or record of the meeting on 16 September, 2016 that meeting was highly unusual in your experience?---I've already said the meeting was unusual. The absence of any file note of it suggests that I didn't consider it to be particularly important. I think if I had considered it to be particularly important I, I guess I would have made a note of it or confirmed it in some other way.

20

Now, apart from looking to see whether any file note or other record might be found of that meeting, the meeting on 16 September, 2016, you have yourself searched or caused searches to be undertaken of any documents held by your firm or by you that might suggest the subject matter of the meeting with Kaila Murnain on 16 September, 2016. Is that right?---I'm not sure I know how to answer that question, Mr Neil, but as far as I'm aware there is no document in existence which explains the meeting other than what you've already taken me to.

30

Well, what I was asking about was not the result but the process. I wanted to know whether you had yourself searched or caused searches to be undertaken among documents held by you or your firm for the purpose of find anything that might suggest the subject of the meeting with Kaila Murnain on 16 September, 2016?---Yes. That's correct.

And that was a searching and exhaustive examination, is that right?---I, yes.

You or, to your knowledge, your firm have produced to this Commission every document that in your assessment might be capable of throwing light on the subject of the meeting, is that right?---Yes.

40

THE COMMISSIONER: Just to clarify one point, you said you may not keep a note of a matter if, for example, in the meeting we're talking about, you didn't consider it to be a matter of importance. That may be one reason why you did not maintain a note?---Yes, yes. It may have been a relatively quick and casual meeting, Chief Commissioner.

But if you put it in the context, so here it's suggested this wasn't a pre-arranged meeting but was, as it were, an impromptu meeting, suddenly out of the blue Ms Murnain makes contact with you, seeking to have a meeting

with you, seeking to talk to you. If a client in such circumstances did confer with you, and you may not think it's a matter of particular importance or significance, but that it's evident that the client thinks it's a matter of importance and hence the urgency and the out-of-hours conference, would you not make a note of the fact that this person has come to you and said something which is of evident importance in the mind of that person?---I would expect to have done that immediately after the meeting if that was the view I had. But it's difficult to talk about a practice, really, Chief Commissioner, because the number of occasions I think I've ever met with clients on professional matters after hours in this sort of manner, I can't think of another one.

Yes. I think that's my point. This is an unusual circumstance we're dealing with, or context, that is, after hours, impromptu. Ms Murnain rings you, wants to see you, wants to talk to you and apparently does do that. It's not your mind I'm concerned about, I'm focusing this question on her mind. If it is apparent that this person perceives that there's something she must talk to you about, or he must talk to you about urgently, and you having heard that person, you might think, well, I don't think it's really significant and in the scheme of things, would you nonetheless keep a record of it by reason of the circumstances in which this person has apparently got it in his or her mind that it is important?---I guess it depends, Chief Commissioner, but I suppose the key point here is that I didn't.

No, I appreciate that. I'm just wondering whether you, in your lengthy experience, over the years you would think that's a circumstance in which you think I'd better make a note of this because although this person thinks it's really important and I don't think it is, but nonetheless, this is a bit exceptional?---Perhaps, yes.

Yes, Mr Neil. I'm sorry I interrupted.

MR NEIL: Now, among the documents that you or, to your knowledge, your firm have produced as being capable of throwing light on the subject of the meeting of 16 September, 2016, are documents that relate to advice that was given in connection with Mr Dastyari, correct?---Yes.

There are other, sorry, there is another document that relates to the subject of un-presented cheques, correct?---Yes. That relates to Mr Dastyari also I think.

There's another group of documents - - -

THE COMMISSIONER: I think your advice on that matter was you didn't consider it to be a donation if the cheque was not banked. Is that correct? ---Yes, the cheque had not been presented and I think the advice was it was therefore not a donation and could be returned.

MR NEIL: A third subject matter of documents that have been produced in this regard relates to something described as a residency issue in Fairfield, is that right?---Yes, but that didn't arise until the following day, the Saturday, as far as I'm aware and believe.

And then a fourth subject matter with which documents that have been produced is concerned relates to Mr Lalich, is that right?---Yes.

10 Apart from those five subjects – the Dastyari affair, the unrepresented cheque matter, the residency issue in Fairfield and the Lalich affair – you have, either yourself or by your firm, not been able to find any other document that might throw light on the subject matter of the meeting of 16 September, 2016, correct?

MR McINERNEY: I object, Chief Commissioner. It assumes that there are other documents.

20 THE COMMISSIONER: Yes, well, any other documents, you're talking about?

MR NEIL: Yes. If there's any difficulty, I'll withdraw the question and I'll ask again.

THE COMMISSIONER: All right.

30 MR NEIL: What I've been seeking to do, Mr Robertson, is to identify the subject matters of the documents that you or your firm have produced as being documents that, in your assessment, are capable of throwing light on the subject matter of the meeting of 16 September. Do you understand?  
---Yes.

And among those documents there are documents that relate to five subjects. One, the Dastyari affair, agreed?---Yes.

Two, the matter of the unrepresented cheques.---Well, that's a continuation of Dastyari.

Three, the residency issue in Fairfield.---Yes.

40 And then Mr Lalich.---Yes.

And nothing else.---As far as I'm aware, there's nothing else in that immediate – that's one week. As far as I'm aware, that's it for that, for that week for Labor NSW.

Let's start with the Dastyari affair. You recall that Mr Dastyari resigned from his position on the front bench of the Federal Government on 7 September, 2016, correct?---Yes.

And he did so amid controversy about his association with Chinese donors in general, agreed?---Well, I think it was Mr Huang in particular, but I may be incorrect.

Mr Huang in particular. Now, on the same day, a different but related question came to your attention, is that right? 7 September, 2016.---I think that's the unpresented cheque issue.

10 Well, let me show you what I have in mind. It's behind tab 1 of the cross-examination bundle. And I wonder if we could click through pages 1, 2 and 3, please.

And then what you see there, perhaps if we go back to the first page, is that on 7 September, 2016, Ms Murnain forwarded to you an email, documents that included an email from a journalist, emails from a journalist raising questions about whether Mr Dastyari might have breached federal and New South Wales Labor Party rules. Do you see that?---Yes.

20 It's on that matter that I wish to focus for the moment. If we could then go to tab 3, please, of the cross-examination bundle. Page 5. And if we could go forward to page 5 using the page numbers at the very bottom right-hand corner, please. There are a number of numbers at the bottom, but if you go to the very bottom right-hand – there we go. And one page forward, please. Thank you. There we are. Now, here you see an email, do you not, that Mr Garcia, the Assistant General Secretary of ALP NSW, sent to you on 14 September, 2016, a week after Kaila Murnain's email of 7 September, attaching an article which we'll see if we click through, if the operator would be good enough to click through, relates to the subject matter of Ms  
30 Murnain's email of 7 September and the questions raised by the journalist on that day. Do you see that?---Yes.

Now, you haven't found anywhere among your firm's records anything that might show that anything happened in relation to the journalist's allegations of 7 September until the date of this email, 14 September, do you agree?---I think that's correct.

Now, someone on the part of ALP NSW asked for your advice in relation to the journalist's allegations, is that right?---Could you repeat the question?  
40

Someone on the part of ALP NSW asked for your advice in relation to this journalist's allegations, is that correct?---Whether the donations breached state and national laws, yes, they did.

Now, do you remember who asked for that advice?---No.

Or when - - -?---Well, well, it would have been either the general secretary or the assistant general secretary.

Or when the advice was first sought?---I assume it was sought on the 14<sup>th</sup>, when the article was forwarded to me, but it's possible it was sought earlier.

Now, once again, I've already asked you about this document and you've identified it, but I'm going to show you a full copy. You might already have this, your email of 15 September, 2016 with the subject, "Receipt of money by members of parliament."---Yes, I have that, yeah.

10 You already have that. All right. Now, that is a copy of the document whereby you gave advice on that question, is that right?---Yes, the advice is given to the general secretary.

Advice which effectively, so far as you were concerned, exonerated Mr Dastyari of the journalist's allegation, is that correct?---It confirms that in our view he didn't, the donations did not breach the rules.

20 And then if one goes back then to the document, to the email of 17 September, tab 10 of the cross-examination bundle. I wonder if, while that's coming up, I might ask that the court officer show you an unredacted copy of that document, please. Take a moment to look at that document and let me know when you're ready to proceed.

MR ROBERTSON: I'll just ask my learned friend to identify the page number from his secondary bundle.

MR NEIL: This, unfortunately, it isn't a document in our secondary bundle, I'm sorry. It escaped that exercise. This is an unredacted copy of the document which is at page 22 of the cross-examination bundle.

30 THE COMMISSIONER: That's the email of 17 September, is it?

MR NEIL: Correct.

THE WITNESS: Yes.

MR NEIL: Very well. Now, what one can see there is that you have referred to advice that came to you from two of your Victorian colleagues, correct?---Yes.

40 The effect of that advice was to confirm that advice that you had given on 15 September, 2016, correct?---Yes.

Do you recall when that advice came to you from your Victorian colleagues?---No, not exactly but it would have been on the, on the Friday or, or the Saturday. I suspect on the Friday.

There's no reference in this email, you will agree, to the meeting on 16 September, 2016, with Kaila Murnain?---Correct.

No reference anywhere in this email to anything that might have been said or done during that meeting, do you agree?---Yes.

There is nothing indicative of any urgency in this email, do you agree?  
---Yes.

10

The allegations that are dealt with were more than a week old, they'd been in the public domain for more than a week, do you agree?---Yes. Although I did send it on a Saturday, so there must have been view that it needed to be dealt with.

Perhaps because you were going away on the following day, the 18<sup>th</sup>?  
---Perhaps.

20

There is nothing, either in this email or in any other document held by you or Holding Redlich, that is indicative of any urgency requiring prompt action so far as the subject matter of this email is concerned?---There was nothing in the email, no.

Or in any other document held by you or Holding Redlich, do you agree?  
---I'm sorry, I'm not following you. Could you ask the question again?

30

You have not found any other document, held either by yourself or by Holding Redlich, that is indicative of any urgency - - -?---Any urgency on 17 September - - -

- - - in relation to - - -?-- - - or any urgency ever?

In relation to this matter as at 17 September, do you agree?---No. I mean, yes, I agree with you.

40

Very well. Turning that that matter of the unrepresented cheque, could we look at tab 2 of the cross-examination bundle, please, page 4. Now, this is the email that relates to a redacted version of the email that relates to that matter, do you agree?---Yes.

And is it your evidence that this matter also relates to Mr Dastyari?---To the best of my understanding, it does, yes, because it refers to the Top Education Group and I think that was one of the donors that was a problem for him.

Please let me know if you need to see an unredacted version of this email to answer any of these questions. What I wanted to suggest to you, by reference to the penultimate paragraph in the email, that the issue had its

origin in news media reports on the morning of Friday, 9 September, 2016.  
Do you agree?---I am not sure but I have no reason to doubt that.

And so far as this email, or any other document held by you or Holding Redlich, the matter of the un-presented cheques concluded with the giving of this advice on the afternoon of 9 September, 2016? Do you accept that?  
---Yes, I think so.

10 Turning from that issue to the so-called residency issue in Fairfield, I wonder if we might go first to tab 12 of the cross-examination bundle, please. So tab 12, page 25. Now, you're familiar with this email, are you not?---Yes.

And this is the email by which that issue first came to involve you. Is that correct?---Correct.

20 You know, do you not, because you've looked at it that Borsak v Cheung, the decision that Ms Murnain attached to her email, concerned issues relating to whether a candidate for election to a local council met certain residential qualifications for candidacy. Is that correct?---Yes.

Now, tab 13, please, of the cross-examination bundle, page 48. You're familiar with this email, are you not?---Yes.

30 Now, that email reminds you, does it not – I withdraw that. That email indicates that just as Ms Murnain had suggested in her email of 3.33 that Mr Garcia spoke to you on the afternoon of Saturday, 17 September and sought your advice about the matter which is described or question which is described in the first paragraph of the email. Correct?---Yes.

You gave some advice about that question. Is that right?---Yes.

You gave that advice not just to Mr Garcia but also to Ms Murnain. Is that right?---It's actually addressed to Ms Murnain.

I'm sorry, that's correct. And Ms Murnain acknowledged that, tab 14, later in the afternoon, tab 14 of the cross-examination bundle, page 49.---Yes.

40 We'll just have a look at that in a moment. There you see Ms Murnain's acknowledgement at the top of the, in the email at the top of the page. Correct?---Yes.

Now, later in the afternoon as Holding Redlich's records reveal Mr Garcia came forward with more information which was given to you. Tab 15, please. I'm sorry. Sorry, I'm not driving this very well. I'm told I should ask you – sorry, tab 15, if you could just scroll up a few pages, please, I'm told. Thank you. There we go. And just if you could go forward, please, to page 51A. Do you see at the bottom of page 51A there's some information,

something coming from Mr Lalich that relates to Dai Le? And then if you go to the email that's in the middle of the page, you'll see that that email was forwarded to you late in the afternoon of 17 September, and then you see at the top of that page an email from you to Ms Murnain and Mr Garcia, at 4.42pm that afternoon, in which you dealt with that or responded to that information. Do you see?---Yes.

10 And that all indicates, does it not, that Mr Garcia came for, after you gave your advice in the email sent at 4.28pm on 17 September, 2016, more information came forward. You looked at it, you dealt with it and responded to it later on the same day, saying that none of it was new or secret, correct?---Yes, and it all related to the residency issue in Fairfield.

And what I just wanted to clear up with you is that it did relate to that issue. This is quite distinct from the other matters involving Mr Lalich about which you have been giving evidence, correct?---Yes, that's correct.

20 As you understood it, Mr Lalich's spouse, Ms Del Bennett, was a candidate in the election for the Fairfield Council, and the question, the residency issue had its origin with her, correct?---I apologise, I just missed that. But this all dealt with a residency issue in, in Fairfield. That's what all this is about.

THE COMMISSIONER: Did the matter go any further beyond 4.42pm on 17 September? Or did it just die then?---I don't think so, Chief Commissioner, because the issue was about whether to apply to the Supreme Court for an injunction, and I think the moment passed.

30 All right, well, Mr Neil, if that's a convenient - - -

MR NEIL: And that is a very convenient time.

THE COMMISSIONER: All right. Well, we'll take the luncheon adjournment. We'll resume at 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.03pm]**