

AEROPUB01294  
18/09/2019

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pp 01294-01330

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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 2.00PM

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

THE COMMISSIONER: Yes, Mr Neil.

MR NEIL: Thank you. Well, Mr Robertson, we've been through the documents that you and your firm have produced to the Commission relating to what I have been calling the Dastyari affair. You agree, do you not – I withdraw that. That being the matter about which you provided  
10 advice on 15 and 17 September, 2016. Do you agree that none of the documents pertaining to that matter provide any sensible basis on which to reason that it was the subject of the meeting that you now accept you had with Kaila Murnain on the evening of 16 September, 2016?---No, but it's possible she mentioned it or raised it.

Do you agree with the proposition I put to you?---I said, no, I don't. I said it's possible that she raised it.

I see. And just attending to the question that I asked you, what is it in any  
20 of the documents that we have looked at pertaining to the Dastyari affair or any of the documents pertaining to that affair that you or your firm have produced to this Commission, what is it that provides any sensible basis to reason that that might have happened?---I accept there's nothing in the documents but the documents aren't the only issue. I was well aware at that time that Senator Dastyari and Kaila Murnain were close, and anything of concern to him I think would have been of concern to her at that time.

So the possibility that you float now is one based, you say, not on anything  
30 that you have seen in the documents but on your knowledge of the relationship between Kaila Murnain and Mr Dastyari, is that correct?---Yes.

That is the first time that you have ever mentioned that circumstance as a basis for your reasoning as to what might have been the subject matter of the meeting on 16 September, 2016. Do you agree?---Yes.

And what explanation do you give for the circumstance that you have not mentioned that consideration before now?---I don't think I've been asked it until now.

40 But before now, do you not agree, that you have identified the documents that have been produced as the sole source and basis of your reasoning process as to what might have been the subject matter of the meeting on 16 September, 2016. Do you accept that?---I have already said that I don't recall what happened on that day. I have looked at the documents and other information beyond documents, such as other records, to see what was occurred on that day, but I always, I have also been asked on a number of occasions about the regularity of my dealings with Kaila Murnain and no one's asked me to this point, to the best of my recollection, what else I

really knew about her, and one of the things I knew about her was that she was close to Sam Dastyari at that time and he was in a lot of trouble. He had just resigned from the front bench. And in trying to surmise why she may have come to see me, and I'm not suggesting that would be the sole reason, but it is something she may well have mentioned. It would be sensible for her to have mentioned it if she came to see me.

And in suggesting that, you are doing nothing more than speculating, do you agree?---I do agree.

10

Mr Dastyari had resigned from the front bench on 7 September?---Yes.

What could have been urgent about his resignation on 7 September that occasioned a meeting after business hours on 16 September?---Nothing I can think of. All I was suggesting is that if she did come to see me, it may have been a matter she raised because it would be logical.

20

Well, now, what do you mean logical?---I think, just what I said, I think it's logical if she came to see me she may well have raised issues about Sam Dastyari and the trouble he was in. I think that would be a very logical thing she would have raised with me and perhaps expressed her concern for him.

But what do you mean by the word logical?---I don't know that I can answer it any better than I have, Mr Neil.

What content are you giving to the word logical? Is there a difficulty with that question?---Yes. I don't understand your question.

30

What definition do you give to the word logical?---It follows. It, it sensibly follows.

We've looked at the document that pertains to the unrepresented cheques issue. You agree, don't you, that nothing in that document provides any sensible basis to reason that that matter could have been the subject of the meeting on 16 September, 2016, do you agree?---Yes.

40

We've looked at documents that pertain to the residency issue in Fairfield. Do you agree that none of the documents pertaining to that issue provide any sensible basis you reason that it might have been the subject of the meeting on 16 September, 2016?---Yes.

Now, apart from your suggestion that it might have been logical for Kaila Murnain to come to see you on 16 September to talk about something pertaining to Mr Dastyari, apart from that is the Lalich affair, the matters concerning Mr Lalich, that are the subject of Sarah Butler's draft advice of 16 September and your advice of 17 September, are they the only real candidate on your theory?---Yes, I think so.

And is that what you say, that that is the only candidate?---It's the only candidate I can think of or I've been able to work out from looking at all the material we've discussed.

I wonder if you would just be good enough to look at, again for the moment at Exhibit 255, please, and particularly if we could look at the next page. Now, that's a document that you've looked at several times today, do you see?---Yes.

10

I'm going to refer to that as the draft advice. Do you understand?---Yes.

Now, I wonder if we could go to tab 41 of the cross-examination bundle, please, and if we could go to page 180, please, within that tab. Now, I want to ask you about evidence that appears between line 4 and line 18, please. If you could read that and let me know when you're ready to proceed.

MR ROBERTSON: I'll just record for the transcript that we're looking at page 787 of the public transcript as well.

20

MR NEIL: I'm sorry. Yes.

THE WITNESS: Yes.

MR NEIL: Very well. And will you accept from me or do you need to work backwards through the transcript that the legal advice that is referred to on the fourth line is what I am calling the draft advice?---I don't really understand why you're separating draft from the advice of the following day but, yes.

30

We can go back and look if you like, but can I assure you that the reason I'm doing so is because of the way in which the questions were being asked. The legal advice which is referred to on the fourth line is the draft advice. If you will assume that, then go down to - - -?---Yeah, but just, just on that.

Yes.---The fact that it's draft advice is an internal matter within my firm as to how advice is produced and ultimately sent to a client. It's, we don't, there would be no discussion with a client saying that a senior associate has prepared a draft which I am yet to form a view about and finalise. I mean to split it in this way is actually not accurate in terms of, of what I think this is all about.

40

Very well. Do we take from that that the circumstance that the advice was being prepared in draft by Ms Butler rather than you is not something that you would have discussed with Ms Murnain?---I think it's extremely unlikely that I would have discussed that with Ms Murnain.

Now drop down particularly to lines 15 to 16, "That's the very reason you attended for a meeting with Mr Robertson on the evening of 16 September, 2016, didn't you?" Do you see that question?---Yes.

That was a question being asked by your counsel. Do you agree?---Yes.

And the very reason that was being put to Ms Murnain in that question was the advice, the draft advice.---That's the question that's being put, yes.

10 And was that question put on your instructions?---Well, I've already said that I don't recall what happened that day.

So you have, but what's the answer to the question that - - -?---So the, the question Ms - - -

Just a moment, please. What is the answer to the question I asked you? Was that question put on your instructions?---Not specifically in that form, no.

20 Well, I wonder if the operator would be good enough to move forward to page 181 in the same tab, please. And would you be good enough to read lines 15 to 19 to yourself, please, and let me know when you're ready to proceed.---Yes.

Does what you there read reflect the case that you want to advance, is that your contention?---The likelihood of what we discussed in my office that evening, in my view, is the advice that have been requested about the Lalich problem, that is the proposition, that is the best I can do based on all the information I have available to me.

30 So you see that there's a difference, don't you, between the passage of page 181, which talks in terms of a likelihood as you did just a moment ago, and the passage that I showed to you a moment ago on page 180, which refers to that advice and its subject as being the very reason why the meeting occurred. Do you see there's a difference, a distinction?---Yes, I do.

Now, which of the two reflects the case that you want to make?---The likelihood. I can't do better than a likelihood.

40 Now, I wonder if I can take a moment just to remind you of the sequence of events that are shown in the documents that have been produced in the course of this inquiry, including by you and your firm. The starting point is the telephone conversation on the afternoon of 16 September that I asked you about this morning. In relation to that, can I put this proposition. You cannot point to anything in any of the documents, that you or your firm have found or produced, that indicates that you came to be involved in the Lalich affair any earlier than the telephone conversations with Sarah Butler and

Kaila Murnain on the afternoon of 16 September, 2016. Do you agree?  
---Yes. I said yes.

Yes. Sorry, you'll just need to go a little closer to the microphone. I'm afraid I can't hear you. All right. Now, if we could go to tab 8, please, in the cross-examination bundle, page 16. Now, the three entries in this document that relate to those telephone conversations are those at lines 1, 2 and 3. Do you accept that?---Yes.

10 Line 1 records that you had a telephone conversation with Ms Butler that lasted for about 19 minutes. Do you agree?---Yes.

At 4.45. Now, if we could go, please, to tab 5. Page 11. Tab 5, page 11. This is one of the documents that help you reason towards the conclusion that the Lalich affair was the subject of the telephone conversations that I'm asking you about on the afternoon of 16 September, is that right?---Yes.

20 And if one looks at the time here, it would appear, do you agree, that Ms Murnain's email arrived towards the end of your telephone conversation with Ms Butler but before you began to speak to her?

MR McINERNEY: I object. I object. I don't understand the question.

THE COMMISSIONER: Yes, I'm not sure. Is that accurate?

MR NEIL: All right. I just want to draw your attention to the fact that this email is timed 4.48pm. See that? Now if we could go back to tab 8, page 16. And then you'll see the item at line 2, which refers to a telephone conversation involving Ms Murnain. Do you see that?---Yes.

30 And that's a conversation that you think involved not just you and Ms Murnain but also Ms Butler, is that right?---Correct. Yes.

And that began at 4.49, almost 4.50, several minutes after Ms Murnain's email arrived.---No, I think the conversation with Sarah Butler starts at 4.45, and then I think Ms Murnain is added to the conversation at 4.49, immediately after she sent the email.

40 Yes, that's the point I wanted to make. Thank you. Now, the conversation insofar as it involved Ms Murnain lasted for about 14 minutes.---Yes.

Do you see? Then after that conversation concluded, you had another separate telephone conversation with Ms Butler, very short, minute and a half, line three.---Yes. Yes.

Pretty much straight after you finished the conference call.---Yes.

Can you remember the content of that conversation, the conversation at line 3?---No, I think we've been through this.

At line 3.---I don't recall anything of, of that.

Very well.---All I can do is look at the surrounding circumstances and documents.

10 Is it likely that it was in that third conversation that you discussed with Sarah Butler the preparation by her of the draft advice?---Yes.

Now, at that time she was, as you have said, on leave and in Noosa Heads, correct?---Correct.

Now just still with the call records, can you identify the Lynn O'Rourke who appears in the entry at line 5?---Yeah, she's an executive (not transcribable)

20 Very well.---Nothing to do with this.

And then lines 6 and 7, they're personal phone calls, aren't they, to members of your family?---Yes. Actually, I'm not sure what line 6 is. Oh, no, yes, I am, yes. That's exactly what that is, yes.

Yes. Then if we could go over to page 17, please. Lines 8 and 9 indicate that you received two communications from Kaila Murnain. Do you see that?---Yes.

30 Both of them at – two things are clear, I would ask you to accept. One is that Kaila Murnain initiated both communications, do you agree?---Yes.

And a second is that both of those communications were made before Sarah Butler sent her draft advice to you, do you agree?---Yes.

And therefore logically before you had seen that draft advice. Do you accept that?---Yes.

40 Now, if in either of those conversations Kaila Murnain had asked you how is the advice going, you would have said it's not yet ready. Do you agree?  
---I expect so.

And that you would no doubt accept would not have precipitated a meeting about 15 minutes later. Do you agree?---I don't know.

It's highly unlikely, isn't it, that in either of those two conversations Ms Murnain asked you the question how is the advice going. Do you accept that?---No, I don't, and look, all this is simply pure speculation.

And it is highly unlikely, isn't it, that Ms Murnain would have attended on you later that evening for the purpose of asking you the question how is that advice going?---Well, you're using a particular formulation of words. She may well have said do you have a view about this? Is this a problem? Not is the advice finished but do you have a view? Is there a problem? That sort of thing, and I may well have had a view without having completed advice. I may well have had a preliminary view without having completed advice at that point because frankly it was pretty obvious there was a problem. This man has taken a donation from a property developer and there's two issues. One is, is the entity a property developer in fact because it's actually a relatively technical definition and secondly, was it actually a donation or is it something for private purposes. Now, a fairly cursory look at this tells you there's a problem.

A fairly cursory look at what? What are you referring to?---The, undoubtedly the long conversation with Kaila Murnain early in the day presumably was outlining the facts of all this based I gather on a media inquiry to the leader's office and so it may well have been, and I do go back to the point I don't recall, but given we're engaged in speculation it may well have been that by then I had formed a view on a preliminary basis that this looked like a problem for a state member of the New South Wales Parliament.

If you had formed that preliminary view, is it likely that you would have communicated it to Sarah Butler for the purpose of the draft advice she was working on?---Yes, because we would have discussed not just the advice but the, I mean, the advice in terms of and its likely analysis and conclusion.

And is it unlikely that you would not have communicated that preliminary view to Ms Butler if in fact you had it so that she might take it into account for the purposes of preparing her draft advice?---I'm sure we would have discussed it. I don't think I would have said to her, you know, just have a go and let me know where you get to. I think we would have had a discussion about what it looked like at least on a preliminary basis.

You've looked at the draft advice many times for the purpose of preparing to give evidence in this inquiry, have you not?---Yes.

And you would agree, would you not, that it does not contain any hint of a suggestion that you thought there was a problem. Do you agree?---Oh, no, I don't agree with that.

I wonder if we could have a look at, please, Exhibit 255. Now, if we could just go for the moment to the next page, please. Focus on the words first of all under, go to the heading Mr Ngai's Status as a Property Developer. Do you have that?---Yes.

Now, go to the first paragraph. The words "as you know" - - -?---Yes.

- - - reflected, did you think, the fact that it was Ms Murnain who had introduced into your discussion earlier that afternoon the provisions of the Election Funding, Expenditure and Disclosures Act that are then set out in the draft advice?---Yes. Well, perhaps. I think we both knew what a property developer was.

10 Then drop down to the words in the last paragraph in that section, “We understand that the ALP NSW is conducting due diligence in relation to the status of ABC Tissue as a property developer and Mr Ngai is a close associate of any property developer including ABC Tissue, if relevant.” Do you have that?---Yes.

Now, the understanding there recorded accorded with your understanding as at 16 and 17 September, 2016?---I notice you haven’t taken me to the next page of the advice.

20 Is that an answer to my question?---Sorry, could you ask me the question again?

Look at the sentence, “We understand that the ALP NSW is conducting due diligence in relation to the status of ABC Tissue as a property developer and Mr Ngai is a close associate of any property developer including ABC Tissue, if relevant.” Do you see that sentence?---Yes, but sitting behind it seems, is as I understand the situation to have been, a media allegation that this fellow was a property developer. That’s how the whole thing started, as I understand it.

30 Yes, very well. Now, the question was can you see that sentence, and I take it you can.---Yes. I can see the sentence.

So the answer is yes, is it?---Yes.

All right. Now, the understanding that it recorded in that sentence, did that accord with your understanding as at 16 and 17 September, 2016?---Yes, that’s what the words meant, yes.

40 Not just Sarah Butler’s understanding, I’m putting to you, but yours. Do you accept that?---Yes.

It is likely, is it not, that as to that matter, you and Sarah Butler acquired your shared understanding at the same time and in the same way. Do you agree?---It’s likely, yes.

And so far as you can see from any of the documents that you or your firm have been able to find, the only occasion when you and Sarah Butler could have acquired that understanding was during the telephone conversations earlier that afternoon. Do you agree?---As far as I can see, yes.

That telephone conference, that was an occasion when you had a junior lawyer present when you were talking to Ms Murnain, wasn't it?---Yes.

And so does one see in this sentence Sarah Butler recording the substance of something that had been related to her several hours before in that telephone conference, is that what one there sees?---Look, there are a number of explanations but, fine, if you think that's what it means.

- 10 Now, look at the – now, drop down to the heading A Gift to an Individual in a Private Capacity is not a Gift. Look at the first sentence under that heading. Read that to yourself and let me know when you're ready to proceed.---Yes.

And in that sentence does one see something that you understood as at 16 and 17 September, 2016?---I assume so, yes.

- 20 By which I meant not just Sarah Butler, the author of the draft advice, but you?---Yes.

And once again, so far as you can see from any of the documents that have been found, the only occasion when you and Sarah Butler could have acquired the same understanding as to that matter, is during the telephone conference earlier that afternoon. Do you agree?---That's all I'm aware of from the documents that I have been able to locate, yes.

Next page, please. The first sentence at the top of the page, can you read that to yourself, please. Let me know when you are ready to proceed.---Yes.

- 30 Does that sentence reflect an understanding that you had as at 16 and 17 September, 2016?---Yes.

And once again, so far as you can see in any of the documents, the only occasion when both you and Sarah Butler could have acquired that understanding is during the telephone conference earlier that afternoon. Do you agree?---Yes.

- 40 Drop down to the fourth line on that page from the words, "As we understand it," to the end of the sentence. Read that to yourself and let me know when you're ready, please.---Yes.

Once again, do those words reflect your understanding as at 16 and 17 September, 2016?---Yes.

An understanding that you could have acquired, according to the documents that you've been able to find, only during the telephone conference earlier that afternoon, do you agree?---Yes.

Now, there are – and take a moment to take a look through, take the time you need to look through this document to answer this question. There are no other matters of fact recorded in this draft advice than those to which I have taken you, do you accept that?---Yes.

But insofar as the draft advice contains matters of fact, then so far as you can reason from any of the documents that you've been able to see, the source of those facts must have been the telephone conference earlier that afternoon, agreed?---Based on the information available, yes.

10

Now if we could go back to the first page, please. Now go to the last paragraph under the heading Mr Ngai's Status as a Property Developer. Read the whole of that paragraph to yourself. Let me know when you're ready, please.---Yes.

Now, it's clear that when Ms Butler wrote this draft advice, the result of the due diligence was not yet known, agreed?---Yes.

20

And all that could be said about it is that which is set out in the last sentence of that paragraph, do you agree?---Yes.

Now just drop down to the first sentence under the heading A Gift to an Individual in a Private Capacity is not a Gift. Read that sentence to yourself and let me know.---Yes.

And perhaps the next one as well.---Yes.

30

Now, do those two sentences reflect a view that you had formed before you saw the draft advice?---I think it's just a statement of the law.

Is there a problem identified in any of those two sentences?---No, the problem's on the next page.

So the answer to the question is no, is that right?---In those two sentences, yes.

40

Yes. Now over the next page. You're straining to tell me here where the problem is identified. Can you do so now?---The subheading, it says the payment for the trip was likely a political donation, and then it goes on to deal with the offences for doing so.

Now look at the last sentence under that section. Read that to yourself. ---Sorry, under which section?

Under the heading The Payment for the Trip was Likely a Political Donation.---Yes.

Now, that sentence, according to its plain meaning, indicates that Ms Butler, the author of this draft advice, as at 7.04pm on 16 September, 2016, did not know whether the payment for the trip was in excess of the relevant cap and was therefore made contrary to section 95A of the Act, do you agree?---I, I don't know, but I think the sentence is clear on its face as to what it's saying.

10 And what it is saying is that which I have put to you, which is that the author of that sentence did not know as a matter of fact whether the payment for the trip was in excess of the relevant cap. Do you agree?---It appears to say that, yes.

Yes. It does say that, doesn't it?---No, it says, "Accordingly, if the payment was in excess of the relevant cap." I don't know what we knew at that time, whether it was or it wasn't.

20 If one looks at that sentence, if one looks at any of the paragraphs in that section, it is plain, is it not, that the author of this document, Ms Butler, did not know one way or the other whether as a matter of fact the payment for the trip was in excess of the relevant cap. Do you agree?---I agree that's an interpretation of it, yes.

Do you agree that it is – what is the alternative interpretation of that sentence or the whole passage?---I think the sentence is clear on its face.

30 The proposition I want to put to you is that if one looks at these, at that sentence and the three paragraphs under the heading The Payment for the Trip was Likely a Political Donation, it is clear that the author of the document did not know whether as a matter of fact the payment for the trip exceeded the relevant cap, and therefore did not know whether it was a proscribed donation.---That's what it says here.

40 And I want to suggest - - -?---My, my understanding, though, is that all this was based on a media inquiry that did make specific claims, which is why, looking at it, it was so important, is that there was the claim the donor was a property developer, and it was alleged by the media that the amount was in excess of the cap, but I don't know that we actually knew that at that time, and as I say, I'm trying to work all this out from the available information. But this advice didn't emerge in a vacuum. It emerged, to the best of my knowledge, from a specific media inquiry about breach of the donations laws, which is a serious matter. It, it, I wasn't, we weren't asked to produce this in a matter of hours because somebody thought it was just a good idea. There was actually something sitting behind this, specific media allegations against this member of parliament, and that's why this matter was so urgent, and that's why I interrupted a senior associate on their holiday to help me with it. And I don't believe that the only information we had available to us would have been simply from the General Secretary of the ALP, who, frankly, I can't imagine could have had much knowledge of it herself,

because I don't, I can't imagine she would have been specifically involved in it. So there is more to this than simply a draft email advice, Mr Neil.

If there is more to it, it's not reflected in any documents that you've been able to find, do you agree?---Correct, yes, I do agree.

10 Does that not suggest to you that whatever else there might have been to it, by the time Sarah Butler came to sit down to write this draft advice, she did not know as a matter of fact whether the payment for the trip was in excess of the relevant cap, do you agree?---I do, but I remake the point I just made, that I believe there was other information around about this matter.

And you didn't know, you didn't know as a matter of fact whether the payment for the trip exceeded the relevant cap, do you agree?---I agree with that but I may well have been aware of an allegation that it did.

And you did not know, as a result, whether the payment for the trip did offend against section 95A, do you agree?---At that time, I agree, yes.

20 And if you had, if Sarah Butler had any relevant information as to that, you would have expected her to record it in the draft advice, would you not? ---Yes, and she will have had no information additional to what I had.

And if you had information of that kind, you would have recorded it in the draft advice, do you agree?---If it was only assertions by the media, it wouldn't have been in a draft advice.

Now, look at the heading Offences Relating to Caps and Penalty for Breach. Do you see that?---Yes.

30 Do you see that there's a discussion about the meaning of an application of section 95B?---Yes.

Look at the last sentence in the penultimate paragraph. It begins with the word "accordingly". Read it to yourself and let me know when you're ready, please.---Yes.

40 Very well. Now, that sentence would indicate to you, would it not, that the author of this advice, Ms Butler, did not know as at 7.04pm on 16 September anything about Mr Lalich's state of mind, do you agree?---I agree.

And neither did you.---No, I don't to this day.

So the upshot of this advice, if one looks at it, is that in relation to each of the topics that it deals – Mr Ngai's status as a property developer, a gift to an individual in a private capacity is not a gift, the payment for the trip was

likely a political donation, and offences – each of those topics, the draft advice does not come to any concluded view, do you agree?---Yes.

Now, if we could go back to tab 8, please, the call records, page 16. I'm sorry. Please if we could start at page 16, yes. Now, look, line 5, that relates to some professional work that you did on that day, is that correct, or is likely to do so?---I'm sorry, could you repeat the question.

10 Line 5 relates to some professional work that you did.---It refers to a client, yes.

Then apart from the, and you note the time of that, 5.39 that phone call. Apart from the meeting that you had with Kaila – I withdraw that. I'll start again. Apart from the two telephone calls from Kaila Murnain that appear at lines 8 and 9 on the next page and the meeting with Kaila Murnain later that evening the last record in any of the documents that you or your firm have been able to find of any work that you did on 16 September, 2016 is the entry at line 5 of this document. You agree?---I, I'm having trouble hearing you.

20

I'm sorry. So line 5 relates to some professional work that you did. Correct?---Well, it's a telephone conversation with a client. It could have been about anything.

Yes, very well, but after that time there are references in this document to two telephone calls from Kaila Murnain, lines 8 and 9.---Yes.

30 And we know too that you now accept that there was a meeting with Kaila Murnain later on the evening of 16 September. Agree?---Yes.

30

Now, apart from the two telephone conversations with Kaila Murnain and the meeting with her there is no other record of any other professional work that you did on 16 September, 2016 later than the telephone call at line 5. Do you accept that?---No.

What other record do you point to in that regard?---Well, this is only my mobile phone record. This is not the record of my telephone in the office.

40 Very well.---I don't do all of my work on a mobile phone. There may well be many other things.

There may well be but if - -?---You asked me to use my mobile phone records as a definitive explanation of something that may or may not have occurred. I can't do that. It's simply not accurate.

Very well. What I'm rather doing, Mr Robertson, is this. I'm looking at the documents that you and your firm have produced.---Well, no, we're not looking at a document my firm has produced.

Yes.---This is not a document that Holding Redlich produced.

I think - - -

MR ROBERTSON: Sorry to intervene but I think in fairness to the witness I should draw to my learned friend's attention and the witness's attention that one of the documents that I discussed this morning with Mr Robertson was an email of 8.05pm when he said that will do for tonight. I might just  
10 draw that to my learned friend's attention because that may be relevant to the question or at least the line of examination that he is now advancing. Obviously enough that doesn't appear on the telephone communications but it was an email the subject of some examination this morning.

MR NEIL: I'm obliged. If there was some other work that you did apart from work related to the two telephone conversations with Kaila Murnain at lines 8 and 9, the meeting with Kaila Murnain later that evening and the email to Ms Butler of 8.05pm, if there was any other work that you did after  
20 the telephone call that appears at line 5 then it is not reflected in any document that you've been able to find or that you have produced. Do you agree?---I assume - - -

MR McINERNEY: I object. I object, Chief Commissioner.

THE COMMISSIONER: Yes.

MR McINERNEY: That's not a fair question.

THE COMMISSIONER: Yes. Mr Neil, I think there is scope here for,  
30 well, put it this way, a misunderstanding, but I think it's unfair to be cross-examining on the limited basis of what's on the screen. I think you've got to be more precise.

MR NEIL: Very well, I understand, Commissioner.

THE COMMISSIONER: There would be other records that might need to be consulted. Unless you've already got those to hand, I'm inclined to think that - - -

MR NEIL: Perhaps I'll do it in another way, if I may. I wonder if I can ask  
40 again to go back to the preceding page, please. The entry at line 5, you have no recollection of the content of that telephone conversation. Do you agree?---No.

And all that you say about it is that the person which whom you had that conversation was one of your clients, is that right?---Correct.

And the conversations at line 6 and 7, they're both personal?---Yes.

And if one goes over to the next page, you have the two entries, or two telephone conversations with Ms Murnain at lines 8 and 9, do you agree?  
---Yes.

And then at lines 10 and 11, two more personal telephone calls?---Yes.

10 Then line 12, Ms Murnain's email, the email that – text message, I'm sorry. The text message that came immediately before you accessed the lift in your building. Do you agree?---Yes.

And then after that, there's a gap of about 31 minutes, do you see?---Yes.

After which there are, on this page, three more personal telephone calls. Do you agree?---Yes.

And then if we could look at the next page. You have presumably no recollection of the telephone calls at lines 16, 17 and 18?---No.

20 Except that the – do you recognise the number 1-2-3-4 to be a message bank number?---Yes.

It's a number you dial to access recorded messages, correct?---In those days, yes.

And the next two phone calls appear to be rather annoying telemarketing calls. Do you agree?---Yes. I don't know what they are.

30 And then there are two personal telephone calls at lines 21 to 22?---Yes.

And then the two telephone calls at line 23 and 24 – text messages, I'm sorry. Do you have any recollection of those?---No.

MR MOSES: I think he said no.

MR NEIL: Oh, I'm sorry, I didn't hear the answer. No is the answer, is it?  
---Sorry, no. I don't know.

40 But one knew that Mr Klenbort is an associate of one of your clients, Mr Hawke, correct?---That's correct, yes.

Now, going back to the preceding page, looking at the entry at line 13, it is likely, is it not, that you made the family or personal telephone call that is there recorded after your meeting with Ms Murnain concluded?---Yes.

Are you able to say – I withdraw that. You have seen records that you took a, that show that you rode in a taxi from your offices to Edgecliff, correct?  
---Yes.

Are you able to say whether the call that appears at line 13 was made by you in your office or in the taxi?---I don't know. Except that the Cabcharge record shows that I arrived home five minutes after that so I assume I must have been in the taxi.

And those records are, those in Exhibit 257, if we could have a look at that, please. And that record shows, does it not, that at 7.54 you were paying \$15 to a taxi in Edgecliff?---Correct.

10

I'm going back to the call records, tab 8, page 18. The entry at line 21 indicates that while apparently you were still in the cab, you telephoned Flavour of India, a local restaurant. Do you see that?---Yes.

And is it likely that in that telephone call you made arrangements for dinner?---Yes.

20

Then if one goes to tab 7, please. No, I'm sorry, Exhibit 258. Do you recognise that to be an email that you sent to Ms Butler at, apparently, 8.05?---Yes.

That being about 11 minutes after you paid off the taxi.---Yes.

The signature block indicates to you that you sent that email from either your iPhone or iPad, is that correct?---Yes.

30

And did I understand you correctly to say this morning that there's something about this email that indicates that by the time you sent it, 8.05, you had opened and looked at - - -?---I had opened a - - -?

You had opened and looked at Ms Butler's draft advice? Is that what you said?---No, I don't think I said that. I, I, I think I was obviously aware of the email. I, I don't know whether I had looked at the actual draft advice in any detail at that point. I just simply don't know. And I certainly didn't do anything with it until the following day.

40

Yes, you certainly didn't do anything with it at all until late on the following morning, is that right?---I don't know when I started, but I certainly sent it to the client at 10 to 12.00 the following day.

Very well. And that is, and what you sent is Exhibit 259. Perhaps the -- correct? If we could just have a quick look at that so that you can confirm that for me. That's what you said at 10 minutes to 12.00.---Yes.

There's no -- I withdraw that. Now if we could look at Exhibit 260, please, the comparison. And you recognise this to be the comparison document that you or someone in your firm has created, showing the differences between Ms Butler's draft advice that was sent to you at 7.04pm on 16 September

and the version that you sent on 17 September at 11.50am, agreed?---Yes, correct.

Now, still with that document. Now, no doubt you would agree that you made the alterations that are here reflected.---Yes, I did.

With a view to being careful, do you agree?---Yes.

10 Assiduous, do you agree?---I try to be.

Thorough?---Yes.

Considered?---We've been through this, yes, I do my best.

Yes. Meticulous?---I do my best.

Precise?---I try to be.

20 And accurate?---I try to be.

Take your time to look at this page and the next page if you wish, but do you agree that the advice that you sent on 17 September does not include or refer to any matter of fact that was not already referred to in Ms Butler's draft advice of the previous evening?---Apart from the issue about additional entities and other companies, yes, I agree with that.

30 Now, of course that's not a matter of fact, is it? That's something that you have added with a view to making the advice more accurate and complete. Do you agree?---No. I think that initially we were only aware – and again, I reiterate I have no independent recollection of this, but I, I think initially we were only aware of a company called ABC Tissues and somewhere in the course of 16 September it became clear that this man has other companies, and I don't know how that came to be but that's why that alteration is made and, and I don't agree with the proposition it is not a matter fact or that it is immaterial.

40 Now, insofar as this document contains or expresses any opinions or gives any advice, none of those opinions and none of that advice is any different than that which was set out in Ms Butler's draft advice of the previous evening. Do you agree?---Yes. I think that's correct.

Now, on the first line you have been very careful, do you agree, to alter Ms Butler's reference to a telephone conversation this afternoon to refer to telephone conversations in the plural yesterday afternoon and evening. Do you see that?---Yes.

And equally carefully, may I suggest to you, you did not refer to any meeting with Kaila Murnain?---Correct, it's not there.

And that is likely to be the product of the care, assiduity, thoroughness, consideration, meticulousness, precision and accuracy that you applied to your work on Ms Butler's draft advice. Do you agree?

MR McINERNEY: I object, Chief Commissioner. If all those words mean the same thing, then the question's not objectionable, but if they have a different meaning then it's rolled up about eight different questions.

10 THE COMMISSIONER: No, I'll allow it.

MR NEIL: I'll do it in this way. You were very careful to alter Ms Butler's reference to a telephone conversation this afternoon to a reference to telephone conversations yesterday afternoon and this evening, Do you agree?---Look, all I can agree to is that I have made a number of alterations to the draft to this. I assume all of them were made to ensure it was accurate. I don't know that, I mean, for the purposes of this, I can see why you're focussing on the conversations but it's no more an important point than the rest of it, in my view. It's, there's an attempt as best I could to  
20 make the advice as accurate as it can be because that's what we do, isn't it?

THE COMMISSIONER: Just listen to the point that - - -

MR NEIL: And yes, very well, and it is what you do, is it not?---Yes.

And in doing that you were very careful to ensure that your advice on 17 September, the advice that actually went to Kaila Murnain referred not just to a single telephone conversation on 16 September, but more than one conversation having occurred on that day in the afternoon and in the  
30 evening, do you agree?---Yes.

And you were equally careful, equally careful not to source that advice or relate it to any meeting that had occurred on 16 September, 2016, do you agree?---All I can agree with is that there's no reference to the meeting. I mean, you were suggesting I've been careful to avoid doing something. That's ridiculous.

What I'm suggesting is that what you have been careful to do was to be accurate in relating this advice to the dealings that you had had with Ms  
40 Murnain, and in being careful in that respect you carefully referred to more than one telephone conversation and equally carefully did not refer to a meeting. Do you agree?---It does not refer to a meeting. It refers to telephone conversations in the afternoon and evening. I agree with that. I don't agree with more than that. That's all it does.

Whatever else this letter is, it is not a letter that confirms any piece of information that had been provided to you in the meeting of 16 September, 2016, do you agree?---That's correct.

And whatever else it is, it does not confirm any advice that you gave on that occasion, do you agree?---Correct.

If the meeting on 16 September, 2016 had concerned the subject matter of this advice, then so far as one can see in the advice itself, it left absolutely no trace at all. Do you accept that?---Could you repeat the question?

10 If the meeting on 16 September had concerned the subject matter of this advice, then nothing that was done or said in that meeting left any trace in this advice. Do you agree?---Nothing in the meeting is referred to in this email.

Not only not referred to, but one can't take anything that appears in this version of the advice, the version that you worked on and sent on 17 September, you can't relate anything that appears in it to anything that might have been said or done in the meeting on 16 September, do you agree?---Yes.

20 Now, then maybe look, please, at Exhibit 261, please. Now, this document is one that you prepared at 1.25pm on the afternoon of 17 September, 2016, is that correct?---It's a brief email that was sent to my secretary at that time, yes.

And this, together with the – I withdraw that. Now, this refers to, do you say, conversations and a meeting – I withdraw that. It is likely, do you say, that this email referred to telephone conversations and a meeting concerning the Lalich affair?---It doesn't say that.

30 Is that what you say? It is likely that that's (not transcribable)?---I think it's likely, yes.

Yes. Now, what were the political donation issues, plural, that you refer to in this document?---Could you repeat the question?

Do you see that in the document - - -?---I'm sorry, I'm having a bit of trouble hearing you.

40 I'm sorry. Do you see that in the document you've referred to - - -

THE COMMISSIONER: Mr Neil, you're moving away from the microphone.

MR NEIL: Yes, I'm sorry. I'm misusing the microphone. I apologise. Do you see that in the document you've referred to something that you've described as "political donation issues"?---Yes.

Plural. Do you see that?---Yes.

What were those issues so far as you think it likely?---Well, we've spent much of today discussing them but Mr Lalich is a political donation issue and Sam Dastyari is more than one political donation issue.

So is this what you say, that when you talked in this document about political donation issues it is likely that you were talking about both the Lalich affair and something to do with Mr Dastyari?---Yes. That's likely.

10 And insofar as it is likely to have been something to do with Mr Dastyari, is it likely to have been the issue about whether he had contravened the party's rules?---Yes.

And - - ?---And that's a serious matter because those that may not have been great fans of Mr Dastyari I think were using that particular allegation as seeing whether it could be used to conclude his career.

20 Now, would you be good enough to look at Exhibit 262, please. Now, is this the next piece of work after you sent your advice of 11.50am on 17 September, is this the next piece of work that occurred in relation to the Lalich affair?---As far as I'm aware, yes.

And then Exhibit 263, please. And is this the next piece of work that took place after Exhibit 262 in relation to the Lalich affair?---Yes, I think so.

And then Exhibit 264, please. And is this the next piece of work that occurred after Exhibit 263 in relation to the Lalich affair?---Yes. It's actually a continuum of an email chain.

30 MR ROBERTSON: Can I just respectfully ask my learned friend to refer to it as the Lalich matter. Mr Lalich isn't represented here and is therefore not in a position to object to that phraseology and there seems to be some implication from it which in my submission shouldn't be permitted (not transcribable) - - -

MR NEIL: If there is an implication, I don't intend it. I'll refer to the Lalich matter from now on.

40 MR ROBERTSON: I'm grateful to my learned friend.

MR NEIL: So do you agree this as to the work that was performed in relation to the Lalich matter insofar as it's reflected in the documents that you and your firm have been able to find and produce. First of all, there had been lengthy discussions in the afternoon of 16 September, 2016, that involved you, Sarah Butler and Kaila Murnain, do you agree?---Yes.

It is, you think, you believe those discussions concerned the Lalich matter, do you agree?---Yes.

So far as the call records show, those discussions had concluded shortly after 5 o'clock in the afternoon, do you agree?---I don't know that because the only phone records you're referring to are my mobile phone records.

In any event, as a result of discussions that occurred during the afternoon of 16 September, 2016, it is likely that Sarah Butler was commissioned by you to prepare a draft advice for you later to send to Kaila Murnain concerning the Lalich matter, correct?

10

MR McINERNEY: Commissioner, I object. I think we've been over this about three times now.

THE COMMISSIONER: Sorry, I can't hear.

MR McINERNEY: We've been over this about three times now. It seems to be almost identical.

20 THE COMMISSIONER: We have. Just wait and see what one last attempt might produce. Yes, go on, Mr Neil.

MR NEIL: Correct? As a result of those discussions - - -?---Sorry, the answer, the answer is yes, Mr Neil.

Yes. Yes. She provided that draft advice to you at 7.04 in the evening, correct?---Yes, Mr Neil, she did, yes.

30 Now, you did not feel that she or you needed to do any more work on that advice until late the following morning, do you agree?---I don't know what I felt, Mr Neil, but the reality is that I don't believe anything further was done on it that evening or until the following day.

If there was anything urgent or important in relation to the Lalich matter, it wasn't urgent or important enough for Ms Butler to delay her dinner, do you agree?---Yes.

It wasn't urgent or important enough for you to ask her to look at it again later that evening, do you agree?---Yes.

40 It wasn't urgent or important enough to cause you to settle the advice any earlier than 11.50am the following day, do you agree?---Yes.

It wasn't urgent or important enough for anyone to get back to you or your firm in relation to the Lalich matter until 7.09pm on the following Monday, 19 September, do you agree?---Oh, I'm not sure about that. I was travelling. I don't know whether there was communication sooner than that. I, I, I just simply don't know. I wasn't there.

And it wasn't urgent or important enough to cause Sarah Butler to communicate with you about that matter any earlier than 10.36 the following morning, the morning of 20 September. Do you agree?

MR McINERNEY: I object, Chief Commissioner. I mean, we've got a – my learned friend's questions are assuming a continuum and that it's the same advice, and I don't think that's a fair assumption having regard when one looks at the two relevant documents. And different questions were asked with respect to the second advice.

10

THE COMMISSIONER: Yes. Mr Neil, I think Mr Robertson is overseas at the time. Insofar as what might have been weighing on Ms Butler's mind at the time, I think it's, I don't think it's this witness - - -

MR NEIL: I understand the point.

THE COMMISSIONER: - - - who can speculate as to what or why she may not have contacted him earlier.

20

MR NEIL: I understand the point and will withdraw the question. The documents that you have been able to find, that you and your firm have been able to find, do not show that anything of substance occurred in relation to the Lalich matter between 7.04pm on Friday, 16 September, and 11.50am on Saturday, 17 September. Agree?---Could you give me those dates again?

The documents that you and your firm have been able to find do not show that anything of substance occurred in relation to the Lalich matter between 7.04pm on Friday, 16 September and 11.50am on Saturday, 17 September, 2016.---The following day. Yes, no, that's correct.

30

THE COMMISSIONER: Mr Robertson, just on this Lalich matter, as I understand it, the nature of the exercise you were asked to assist in, and Ms Butler assist in, was whether or not the matter should be referred on the initiative of the ALP to the electoral office, not to finally determine by way of an opinion whether the man was guilty of an offence or not guilty, is that right?---That's my understanding, Chief Commissioner, yes.

Indeed, the matter did go forward - - -?---Yes, on the Monday.

40

- - - on a referral to the Electoral Commission without any attempt, for understandable reasons, to try and finally resolve as to whether he's likely to be ultimately found guilty or not.---That's correct as I understand it.

It been described, I think it was Ms Murnain who said she regarded this as a run-of-the-mill matter. By that I understand her to be saying that it was not uncommon for matters to arise in the ordinary course, whereby questions would be raised about donations and if the questions were raised, then subject to getting somebody to look at it, the matter then would or would not

go on referral to the Electoral Commission office. Did you understand that was the nature of the work that from time to time did arise?---Issues involving state MPs directly were rare. This is the only one that I am aware of where the leader's office was directly involved, and the way political parties work, to the best of my knowledge, when the office of the leader becomes involved under media scrutiny, the matter becomes much more important and is treated very seriously and I do believe that's what happened here. I, I simply don't accept the proposition that this is run-of-the-mill.

10

All right, thank you.

MR NEIL: Not so serious that you turn to settle and send the advice any earlier than 11.50am the following day?---Well, I didn't, no.

Now, the media reports that you say lay behind Ms Butler's draft advice, where would one find those in the records that are kept by you or Holding Redlich?---I don't believe that we have them but I do know, to the best of my knowledge, that all this started on the basis of media enquiries to the office of the leader of the opposition. That is my understanding.

20

Could we look please at tab 15 of the cross-examination bundle, page 51. Page just 51, earlier I think, please. Down, I'm told. I'm sorry, up, I think now. I'm not sure why we're -- there we go. Now, this, I want to suggest to you, and the following page are the only media reports that you or your, is the only media report that you or your firm had been able to produce that relates to the Lalich matter. Are you able to agree?---Yes, as far as I'm aware. It doesn't mean, though, that we didn't have something else. We may not have just retained it electronically. We may have had it some other way. We may have actually had the newspaper. We do, we get newspapers and we don't scan them in necessarily. We may have had the paper that this article refers to in hard, hard copy.

30

Now, in all of the documents that we have looked at, there is not one input and not one output that can be traced back to the meeting on 16 September, 2016. Do you agree, not one?---Yes.

And that is a powerful indication, is it not, that the meeting on 16 September, 2016, did not have as its subject the Lalich matter?---I don't agree with that.

40

It certainly indicates that none of the documents provide any basis to reason that the meeting on 16 September, 2016 concerned the Lalich matter. Do you accept that?---The documents don't refer to the meeting. No, I think we've agreed about that.

Yes. And they do not provide any sensible basis to reason that the Lalich matter was the subject of that meeting. Do you agree?---No, I don't agree with that.

I wonder if we could go, please, to tab 39. And when we have that, page 172, please. I'm just going to take a moment to remind you of the evidence that Ms Murnain gave about the meeting on 16 September, 2016. First on page 172, page 240 of the transcript of 28 August. Lines 27 to 34, if you could read that to yourself, please, and let me know when you're finished.  
10 ---Yes.

Then could we go, please, Mr Operator, to page 174. Line 40 to the end of the page, please. Read that to yourself and let me know when you're ready to proceed.---Yes.

Then, Mr Operator, page 176, page 244 of the transcript. First of all, lines 10 to 18, please. Let me know when you're ready.---Yes.

Lines 27 to 30.---Yes.  
20

And then lines 36 to 45.---Yes.

Then, Mr Operator, page 177, page 245 of the transcript.---I'm still having trouble hearing you.

Page 177 of the bundle, which is page 245 of the transcript. Then line 13, if you could read that, please, and then lines 17 to 21.---Yes.

Then, Mr Operator, could we go to tab 40, page 178, please. Lines 11 and  
30 12.---Yes.

And then the next page, please, page 179, page 738 of the transcript, the first three lines.---That's, sorry, I'm not sure I understand this transcript. This is your client being asked whether she made mention to me that we should return the money or talk to the Commission.

Yes. And she said that she that she did.---And her answer to that question is, "Yes."

40 Yes, correct. Now, in those passages I have sought to remind you of the evidence that Ms Murnain gave in the public inquiry about what was said and done during her meeting with you on 16 September, 2016. I want to begin here but asking you for your evaluation of the information that Ms Murnain says she communicated to you, your evaluation as the lawyer you are, of that information as the lawyer you are. Do you understand?

MR McINERNEY: I object.

THE COMMISSIONER: I'm not sure that I understand.

MR McINERNEY: No, I don't understand.

THE WITNESS: What do you mean by my evaluation?

MR NEIL: Well, let me see if I can – I'll put that to one side and see if I  
can come at it this way. Now, I understand that you do not accept that Ms  
Murnain communicated any of this information to you.---Oh, it's a great  
10 deal more than not accepting, Mr Neil. I deny this ever happened.

Now, I understand that - - -?---And if you want to know my evaluation, Mr  
Neil, I am shocked - - -

THE COMMISSIONER: No, just a moment, just a moment. That question  
has not been allowed. Just let's wait for the next question.

MR NEIL: So far as Ms Murnain relates the meeting, she told you that she  
had received information from a person, correct?  
20

MR McINERNEY: I object. I mean, it's indirect in the form of that  
question, it's ambiguous, it's misleading. The instructions of what Ms  
Murnain said, that can be put but not what Ms Murnain indirectly - - -

THE COMMISSIONER: Yes. I think, given that there is a clear issue  
about this conversation, I think it needs to be put on the basis that these are  
statements made by Ms Murnain in evidence and I am not sure that the line  
of questioning you are pursuing is permissible insofar as it's asking this  
witness to give some subjective interpretation as to the cogency of evidence  
30 or the likelihood that the evidence was as you're going to put. I mean, it's a  
difficult path, I think, that you're going down. I'm not quite sure what it is  
you want to put to this witness. I mean, he has said, he not only doesn't  
accept it, he denies this conversation occurred. So what do you want to put  
to him about the conversation, as she has stated it in evidence?

MR NEIL: I withdraw the question and let me approach and see if I can  
come at it a little more directly.

THE COMMISSIONER: Very well.  
40

MR NEIL: The subject of your meeting with Ms Murnain on 16 September  
was not the Lalich matter, do you accept that?---No, I don't accept that.

It could not have been the Lalich matter, do you agree?---I don't accept that.

The subject of the meeting was a conversation that she had had earlier that  
evening with Mr Wong, do you agree?---No.

Mr Wong was a person who you had never met and do not know, is that right?---I think I knew of him but I've never met him.

All you knew of him was a vague knowledge that he was a Labor member of the Legislative Council, do you agree?---No. I actually, my vague memory was that he was connected with fundraising. I don't think I realised he was a member of parliament.

10 The information that Ms Murnain communicated to you in the meeting on 16 September, 2015, was to the effect that she had said in the passages from her evidence that I have shown you, do you accept that?---Do I accept what, that she said it or that it happened?

Both.

MR McINERNEY: I object.

MR NEIL: Well, in that case, the information that Kaila Murnain communicated to you in that meeting was to the effect that she has set out  
20 and related in the passages from her evidence that I have shown to you, do you agree?---No, I deny that.

Your response to that information was to the effect that Kaila Murnain has said in the passages from her evidence that I have shown to you, do you agree?

MR McINERNEY: I object, Chief Commissioner. I mean, he was asked to read I think over a number of pages.

30 THE COMMISSIONER: Well, it's really I suppose a Browne v Dunn exercise that's being put. But it may be that Mr Neil says, well, because of the dispute on this issue, I'm putting these matters so that Mr Robertson is (not transcribable) understanding of what Ms Murnain's account is and giving him any opportunity he wishes to deal with it. From a procedural fairness point of view it may not be necessary. Indeed, I think the battle lines have been drawn on this issue plainly enough, and I don't know that a detailed Browne v Dunn exercise is even required. But perhaps I'll just inquiry of Mr Neil. Mr Neil, what's the basis for this line of questioning?  
40 Is it a Browne v Dunn approach?

MR NEIL: It is, in effect, yes. It is.

THE COMMISSIONER: Well, that rule is not - - -

MR NEIL: And perhaps I'm doing it from an unnecessary degree of caution.

THE COMMISSIONER: Well - - -

MR NEIL: And I was hoping to do it in a - - -

THE COMMISSIONER: There is a provision about the Browne v Dunn rule not being strictly applied here.

MR NEIL: I understand.

10 THE COMMISSIONER: But of course, there is the need sometimes to put to a witness a contrary view so that the witness has every opportunity of putting his or her response to dispute what's been put so that it can't be said that the witness wasn't fairly and squarely on notice as to what was going to be submitted at the end of the day. Look, I'll leave it to you. I'm not stopping you. If you want to put it on a Browne v Dunn basis, then you go ahead. It is an important aspect of the matter. But I just want to understand if that's the basis you're putting it.

MR NEIL: It is the basis upon which the most recent cross-examination has been conducted.

20

THE COMMISSIONER: All right. Well, I'm not stopping you from doing it.

MR NEIL: And it did rather seem to us that the consequences of the findings that you will be asked to make in relation to this conversation have such a degree of seriousness, both for Ms Murnain and Mr Robertson, that it was necessary and appropriate to take this step.

30 THE COMMISSIONER: Yes. As I said, I agree it's an important issue. I'm not stopping you from putting it on a Browne v Dunn basis.

MR NEIL: Your proposition, Mr Robertson, is this. That you would never have given advice of the kind that Ms Murnain says you gave because to do so would be to counsel a cover-up, is that right?---Yes, there's more to it than that, but, yes.

40 And more to it? Could you tell me what that is, please?---Well, it's unprofessional, it's unlawful, and it's plainly wrong in every possible respect of wrong. It's also extremely bad advice.

Now, if Ms Murnain does not suggest to you or did not suggest in her evidence, in the passages of which I have reminded you, that she told you anything about the source of the information that she says she related, other than by identifying Mr Wong, do you agree?---I don't know how to answer that question.

MR McINERNEY: Chief Commissioner, I object. It requires the witness to pass his mind over about 10 pages of transcript he was taken to, and then

to put that in context against the question, rather to directly put in a proposition to him.

THE COMMISSIONER: Yes, Mr Neil, that's not putting it on a Browne v Dunn basis. The witness has said he's denied the conversation has occurred, even though he can't recall what conversation in fact took place. You're asking him now to agree to propositions which, as I understand, it's plain that he has indicated he disputes. So what's the point of putting it in the form you put that last question? As I say, I'm not stopping you from putting it in a form that's appropriate for a Browne v Dunn basis. There's not much point, in other words, in putting a question to him and saying, "Do you agree with that?" I think we know what the answer to that would be, and it's unnecessary to put it on that basis. Indeed, I don't see it's appropriate to put it in that form.

MR NEIL: Chief Commissioner, I will withdraw that question and approach it in a different way. You say that it would have been unlawful to give the advice that Ms Murnain says you did. What do you have in mind when you say that?---Well, I said firstly that it's unprofessional. I don't know whether it would have been unlawful for me to say to advise her to do nothing about it, but I think her doing nothing about it would have been unlawful and I don't think, I don't think, I would never advise a client to advise in a, to behave in an unlawful manner.

What do you suggest you would have advised her to do if confronted with information of the kind that she says she gave you?---I would have told her that it needed to be dealt with promptly involving the Electoral Commission, and quite frankly I don't think she would have needed my advice to know that. Your client, Mr Neil, is a very seasoned and experienced political operator. Compliance with donation laws is a bread-and-butter activity for political parties in this state. You don't need legal advice to know what to do about fake donations.

Do you need legal advice about what to do about a rumour that is communicated to you about political donations?---I don't believe it was communicated as a rumour on your client's evidence. I believe it was communicated to me on her evidence as fact, and the moment she said things like \$100,000 cash, Mr Wong, a fake donor or donors, I would have said this is a very serious matter and it needs to be dealt with appropriately involving the Electoral Commission. And the Labor Party at that time was dealing with the Electoral Commission on a whole range of matters, so that wouldn't have surprised her.

And now I wonder if you could come back to the question I asked you.  
---Yes, please repeat it.

Do you need legal advice to know what to do with a rumour?---No. I suppose not.

With a piece of information communicated by a person of whom one knows, of whom you knew nothing?

MR McINERNEY: I object, Chief Commissioner. We're dealing now with

---

THE COMMISSIONER: Yes, I reject that question.

10 MR NEIL: Legal advice to know what to do with information the source of which is unidentified?

MR McINERNEY: I object. It's at a level of generality in light of a specific allegation made here that it cannot assist at all, with respect.

THE COMMISSIONER: Mr Neil, with respect, I don't think it's going to assist me in this inquiry.

MR NEIL: Very well.

20

THE COMMISSIONER: Questions of that kind. I think we should respectfully suggest you move on.

MR NEIL: It's certainly the case, is it not, Mr Robertson, that if on investigation information of the kind that Kaila Murnain says she communicated to you turned out to be correct, then serious offences would have been committed by the party and perhaps some of its officers, do you agree?

30 MR McINERNEY: I object. Again, it's a hypothetical, it's at a level of generality, and there's nothing to suggest that's in fact what occurred.

THE COMMISSIONER: Yes, I won't allow it, Mr Neil.

MR NEIL: I'm sorry, Your Honour. I'm having difficulty hearing.

THE COMMISSIONER: No, I won't allow it.

40 MR NEIL: I'm sorry, Your Honour. Thank you. Chief Commissioner, I'm sorry. I wonder if I could turn from that to another matter and ask the operator to go to tab 43, please. Page 220, please. And when we have that tab, tab 43, this is the transcript of Mr Robertson's evidence of 9 September, and page 220 please. Now, here Mr Robertson, you were being asked about the response that was made to the inquiries of the Electoral Commission. Would you be good enough to look at the evidence that appears at line 33 to 35, please. "I agree there are problems with a number of answers and there are probably even more problems if you closely analyse the documents."  
---Yes.

Now, tell me if you need to look at anything else in order to answer this question, but starting with the answers that were made to the Electoral Commission, what were the problems that you there refer to?---Well, on, on further analysis, although I am still of the view the question wasn't clear, but the answer to the first question asked by the Electoral Commission, I believe, was seeking the identity of the persons who in effect donated the money, who conveyed the money to the ALP, whereas the answer refers to an employee of the ALP who essentially acted as the carrier, I guess, the used of the word handed. Now, that's not correct. So the, the donor was clearly not an employee, or donor, or donors, was clearly not an employee of the ALP. So the question is incorrect with the benefit of further analysis.

The question or the answer, do you mean?---I beg your pardon, I'm sorry, I can't hear you.

The question or the answer is incorrect?---I, I don't think I can say that the question is incorrect, it's the question of the Electoral Commission. The answer is incorrect.

I see. Perhaps we could look at page 99, which is tab 27. Page 99, please. So tab 27, page 99, please. So one problem with the answer – I withdraw that. Now, you're familiar with this document, of course, are you not?  
---Yes.

And this is a copy of the first page of the answers that were provided to the Electoral Commission, do you agree?---Yes.

So one problem with an answer relates to the answer to question 1 and you say the problem is it's incorrect, is that right?---Yes. Well, I don't think it provides the Electoral Commission with the information it was seeking.

And would you prefer that formulation to the suggestion you earlier made that it was incorrect?---No, I'm happy with both formulations.

Very well. And in your answer, your evidence at page 867 of the transcript, of which I reminded you a little while ago, you referred to "More than one problem with more than one answer." What others are there?---If you focus on the date in question 1, 9 April, 2015, the question isn't asked by the Electoral Commission. The obvious question is, what happened to the money between the dinner in March and 9 April, 2015? Now, that was never asked and it hasn't been answered. But I think on a close analysis that, that is a very good question.

Are there any other problems in any other of the answers that you had in mind when you gave the evidence of which I've reminded you at page 867 of the transcript?---Well, I think I said there are also problems with the documents.

I'm just asking you about problems with the answers. Are there any others?---No, I think they're the major ones I had in mind.

And then, as you rightly observe, you referred in your evidence to problems if you closely analyse the documents. What problems did you have in mind in that regard?---Well, the, the donation forms, for want of a better word, have a number of issues within them.

10 What are they so far as you are concerned?---Well, there's quite a number, but, and of course hindsight's a wonderful thing, but for a start they're called a reservation form, most if not all of them I think. The \$5,000 appears to all be written in the same handwriting. I think some of them are undated. They refer to a campaign account on I think it's the Prospect campaign account. I've got no idea what that is. And finally I don't think the forms make it clear which political party is actually being donated to as between the Labor Party and Country Labor. There may be more but that's my memory of it.

20 THE COMMISSIONER: Were you provided with a - - -

MR NEIL: Would you - - -

THE COMMISSIONER: Just a moment, Mr Neil. Were you briefed with some of the primary documents?---I beg your pardon?

Were you briefed with the primary documents such as disclosure declarations and suchlike? In other words, what primary material did you have available?---All I had, Chief Commissioner, was what was sent. I think I, I must have known that this matter arose because of the Labor Party's own declaration to the Electoral Commission with its return of these donations, but I, I have never seen those returns I don't believe.

30

It would have been evident, wouldn't it, that the Electoral Commission were investigating a somewhat unusual but serious matter. Namely, not only had the Act been infringed but they had formed the view that there was evidence of an illegal scheme to outflank the whole of the legislation through fraud of some kind.---Well, I don't think they used the word fraud, but I accept your - - -

40

They didn't use the word fraud, but that's what they were intending by their covering letter to convey, was that not so?---Clearly they - - -

That there had been deception - - -?---Sorry.

- - - misleading and dishonest conduct involved at some level in the process.---Clearly the Electoral Commission had the view that the donors may not be the real donors. I must say I had the view that the party

wouldn't have accepted the money or declared it unless they had satisfied, unless Labor had satisfied itself of that matter.

I'm sorry, what I'm trying to convey is that this wasn't a stock-standard type of offence that the investigations by the Electoral Commission were directed to. It was rather something very different. That is, the covering letter explained this was a matter of considerable significance because the Electoral Commission had obviously investigated by the terms of the letter and formed the view that there had been a design, or perhaps even one could  
10 say a conspiracy, to outflank the election laws by deception or fraud of some kind. They didn't use that language but that's unmistakably what the nature of the issue they convey by their letter that they were investigating. And in that sense it was very different from, for example, the Lalich matter or suchlike matters.---Yes, I accept that.

Well, given the gravity of the matter, I suppose one can understand why the ALP wanted to get legal advice, given that this is what the Electoral Commission stated they were investigating, would you not agree?---I  
20 apologise. Could you repeat the question?

Yes. I'm saying given the gravity of the matter that the Electoral Commission said that they were investigating, you can well understand why the ALP wanted legal advice in such a matter?---Yes except that they didn't really ask for it. I know they asked me and my firm to check the documents that were being provided and the answers to the questions but there's nothing that suggests that those within the Labor Party that had actually done the work to prepare the answers and collect the document thought there was a problem. No one ever said we should meet about this or we should discuss this or anything like that. It was dealt with in a pretty  
30 cursory way and, you know, if I made a mistake, I dealt with it in a pretty cursory way too rather than really looking at it a lot more thoroughly than I now have the view should have been done.

Well, that's really what I was putting, without any criticism, but I'm just saying given the gravity of the matter, one could well understand why the ALP would want lawyers to come into it to provide, if not advice, legal services, in inverted commas, by way of checking the answers to the investigators questions.---Yes except, well, I, I, I can't add to what I've just  
40 said, Commissioner.

Well, I'm just wondering why, then, given the nature of the matter that was under investigation, rather than just checking the handiwork of, I think it was Ms Sibraa, the governance director, it wasn't a case where you said, "We have to dig deep in this matter. We need the primary material." You'd have to investigate it in order to be able to answer these questions? Why was that not the approach taken?---I assumed that she had already done that.

But she was not a lawyer, was she?---No, but I don't think you need to be a lawyer to answer these questions.

Well, if the Electoral Commission's alleging a scheme which was a scheme which contravened the Act in the way in which involved deception and dishonesty, you would need lawyers, wouldn't you, to be able to give advice on how to respond to the Electoral Commission to assist the Commission?

10 ---My view at the time was that the Electoral Commission had asked five pretty simple questions which appear to be, be incorrectly answered and they had asked for some documents which were being provided and to be frank, I didn't go a great deal further than that.

Well, that's what I'm seeking to understand, why it wouldn't have been apparent that this is not just a matter of just checking, ticking boxes and so on, but the nature of the allegation was such that why wasn't the client told, "Look, this is serious. This needs investigation. You need to assist the Electoral Commission to get to the bottom of this. Firstly, you've got to start getting all the primary records together so that lawyers or some other qualified person can go through it and find out what happened, interviews  
20 with ALP officers to get their version," and so on, rather than it being just treated as just checking some questions and answers that had been prepared by others? Why was it not treated in that fashion?---To a large extent, as lawyers, Commissioner, I guess we, we act on instructions and there have been plenty of matters where NSW Labor's asked us to do a great deal of very detailed work and the sort of things you're talking about, including involving the Electoral Commission, this is not one of them.

All right. Well, I see it's almost 4 o'clock. Mr Neil, how much longer will you be with - - -  
30

MR NEIL: Probably about half an hour to 40 minutes.

THE COMMISSIONER: Very well. Mr Moses, I know it's always difficult to estimate. How long do you think you might be if we continue tomorrow?

MR MOSES: 30 minutes to an hour, Commissioner. There are a few matters which the witness has raised this afternoon.

40 THE COMMISSIONER: Yes, very well. I'm not trying to pin you down to a specific time.

MR MOSES: About an hour, an hour maximum.

THE COMMISSIONER: I'll just see how the program at the moment can be adjusted. Now, Mr Robertson, how are you placed tomorrow or, if not tomorrow, Friday?---I'd like to come back tomorrow if I could, Commissioner.

Tomorrow, all right. Well, how does that affect your program, Mr Robertson?

10 MR ROBERTSON: It's a little difficult given that tomorrow morning I'd scheduled Mr Lin, who's already been rescheduled on a number of occasions. My proposal was going to be to continue with Mr Robertson at 2.00pm tomorrow, but I say that a little bit apprehensively because the estimates that you've just received add up to about an hour 45, and my learned friend Mr McInerney may well wish to re-examine as well. It may be – my suggestion is that we proceed at 2.00pm tomorrow in any event. It may well be that we'll need to sit a little later if that's convenient to the Commission or not too inconvenient to the Commission.

THE COMMISSIONER: All right. Mr McInerney, you've got a stake in this. How does that affect you?

20 MR McINERNEY: Chief Commissioner, 2 o'clock doesn't affect me but I'd be grateful in the interests of Mr Robertson – because it sounds like two hours wouldn't be sufficient – that if we could start earlier with him to try and get him finished tomorrow.

THE COMMISSIONER: Very well. Well, I think what we'll do is we'll have you come back at 2 o'clock tomorrow if that's not inconvenient to you. Does that have any inconvenience (not transcribable)?---I'll fit in with you, sir.

30 Well, on that basis, then, if you return for a 2 o'clock start, we may need to sit on a little bit to get your evidence in this segment, anyway, finished. We'll do that, then, Mr McInerney.

MR McINERNEY: The court pleases. Thank you, Chief Commissioner.

THE COMMISSIONER: Mr Neil, how – yes.

MR NEIL: I'm the source of the problem. I must accept its solution.

THE COMMISSIONER: No, that's all right.

40 MR NEIL: But I wonder if I could ask for this indulgence to ask two further questions before we adjourn this afternoon, because that might shorten tomorrow.

THE COMMISSIONER: Yes, very well.

MR NEIL: Mr Robertson, these problems that you found in the answers and the documents, when did they first become apparent to you?  
---Relatively recently.

What does that mean?---Really in preparing for this public inquiry.

And by what process of analysis did those problems first become apparent to you? And if you need to give a different answer in relation to the answers given to the Electoral Commission and the documents, please say so.---I discussed them with counsel.

10 By what process of analysis on your part did they become apparent to you?  
---Well, in the course of discussing them with counsel and re-looking at them, I had realised there were problems.

Does that mean that the process of analysis consisted essentially of reading them and thinking about them?---No. It involved reading them, thinking about them and discussing them and having views different to my own put to me.

Thank you.

20 THE COMMISSIONER: All right. Thank you, Mr Robertson. We'll resume with your evidence, then, tomorrow at 2.00 and otherwise the public hearing will resume at 10.00am tomorrow.

MR MOSES: Chief Commissioner, there's no possibility, is there - - -

THE COMMISSIONER: Yes, Mr Moses?

30 MR MOSES: - - - of this matter commencing with Mr Robertson at 10.00am tomorrow morning? I've just got other commitments, which I can deal with tomorrow morning, to push back to the afternoon. But I think in terms of the commitments that I've got, that if I were to be here at 2.00, it's going to create difficulty because I'll be backfilled in terms of going from one thing to another. But, I mean, it's really in the hands of the Commission in terms of how to deal with the matter. So if 2 o'clock is all there is, then that's all there is.

THE COMMISSIONER: Sorry, Mr Moses, I'm not quite getting the problem.

40 MR MOSES: I've got other commitments tomorrow.

THE COMMISSIONER: Tomorrow afternoon?

MR MOSES: Well, all day.

THE COMMISSIONER: I see.

MR MOSES: It would suit me best if this was finished in the morning rather than going from one matter that I've got to deal with in the morning and then coming back here in the afternoon. I'd rather get this finished before dealing with the other matter. But if this, if that's the best that can be done, then so be it.

THE COMMISSIONER: You're saying you'd prefer the morning rather than the afternoon?

10 MR MOSES: Correct.

THE WITNESS: If I could say, Commissioner.

THE COMMISSIONER: Yes.

THE WITNESS: That would be of enormous assistance to me if it could be tomorrow morning, rather than afternoon, if that were possible. I will have to cancel a chairmanship of a board meeting tomorrow afternoon.

20 THE COMMISSIONER: All right, we'll see. Now, Mr Robertson - - -

MR ROBERTSON: I have no personal difficulty with that. The only reason I proposed 2.00pm was that I've already rescheduled Mr Lin on two occasions. But given the difficulty both of counsel and the witness, in my respectful submission, 10.00am tomorrow is the more appropriate course and I'll - - -

THE COMMISSIONER: All right, well, we'll do that.

30 MR ROBERTSON: - - - repeat an apology that I've already given on the transcript and privately to Mr Lin.

THE COMMISSIONER: Yes, you'll just have to explain to Mr Lin, I think, the nature of the process here. All right, well, we'll resume with your evidence, Mr Robertson, at 10.00am tomorrow. We'll adjourn.

**THE WITNESS STOOD DOWN [4.05pm]**

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**AT 4.05PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.05pm]**