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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 19 SEPTEMBER, 2019

AT 10.00AM

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

MR ROBERTSON: Chief Commissioner, I apologise to those behind me for the short delay. There was a minor technical difficulty this morning.

THE COMMISSIONER: So I understand.

MR ROBERTSON: You will be happy to know that it was a different technical difficulty to the one that we had a couple of days ago and it's possible that it may arise again, and if it does I'll intervene immediately but I hope that the matter that caused some delay this morning has been fixed.

10 In terms of the program, Mr Robertson will continue to give evidence this morning. I will then call Mr Johnnie Lin this afternoon, Ms Patricia Siu tomorrow, not before 10.30am, and Mr Shi and Ms Tam will need to be called next week. The Commission doesn't intend to sit on Monday of next week, as I understand it. There'll be a witness list made available for next week's program of evidence within the next couple of hours.

THE COMMISSIONER: Thank you, Mr Robertson. All right. Ready to proceed then, Mr Robertson. Thank you. We'll just have the oath again administered.

THE COMMISSIONER: Thank you, Mr Robertson.

MR McINERNEY: Chief Commissioner, if I could ask for a renewal of the section 38 declaration.

10 THE COMMISSIONER: Yes. A section 38 declaration was made yesterday in respect of the further evidence of Mr Robertson. That declaration continues to apply to today's hearing in relation to the evidence Mr Robertson gives and any documents or items he may be required to produce. Yes, now Mr Neil.

MR NEIL: Thank you, Chief Commissioner. Mr Robertson, Yesterday afternoon we had come to, I had come to ask you about the response that your client, ALP NSW, made to the Electoral Commission's notices and inquiries. You first became aware of that circumstance, you first became aware of the Electoral Commission's inquiries when Kaila Murnain  
20 forwarded its letters to you on 8 December, 2016, is that right?---Yes.

Holding Redlich's bill to the ALP of 22 December, 2016 records that on 9 December, 2016 you had a telephone conversation with Ms Murnain that described in the bill as, "Concerning donations." Might that conversation have had as its subject the Electoral Commission's inquiries?---I don't recall the conversation but I don't think so because other entries about the Electoral Commission inquiries referred to the Electoral Commission.

30 In any event, might you have had a conversation, if not on that day, with Ms Murnain and perhaps other officers of your client concerning the Electoral Commission's inquiries and the response that was to be made to them?

MR McINERNEY: Well, Chief Commissioner, I object. Ms Murnain's given evidence about this and there was no suggestion in her evidence that she'd had any discussion with Mr Robertson about this issue.

THE COMMISSIONER: If that be so, it doesn't stop the question. It may go, however, to the weight to be attached to any evidence in response.

40 MR NEIL: Might you have had a conversation, including a telephone conversation, with Ms Murnain and perhaps other officers of your client, concerning the Electoral Commission's inquiries and the response to be made to them?---I don't recall such a conversation.

Now, on 16 December, 2016, Ms Sibraa sent an email to you that contained, amongst other things, a draft response to the Electoral Commission. I wonder if we could have a look at that, please. It's in the cross-examination

bundle, tab 22, page 81. Take a moment to look at that email, and when you're ready, let me know, please.---Yes.

Do you remember receiving, reading and considering that email?---I don't remember it, but it's obvious from other documents that I did receive it and I did review the answers and the documents.

You'll note, looking at the email now, that Ms Sibraa referred specifically to the Chinese Friends of Labor dinner, do you see that?---Yes.

10

She expressly described the response that was forwarded with the email as being a draft response, do you see that?---Yes.

She explicitly reminded you in the second paragraph of the Electoral Commission's statement that it was investigating whether a number of donations made by individuals were made for and on behalf of other persons. Do you see that?---Yes.

Pretend donors, in other words, do you agree?---Yes.

20

And then do you see this sentence, the first sentence of the second paragraph? "Can you please have a look at them and let me know all your thoughts?"---Yes.

Now, the "them" to which she refers in that sentence is, of course, as you understood, all of the documents that were attached to the email, do you agree?---Yes.

30

And when Ms Sibraa said, "Let me know your thoughts," that can only be understood, do you agree, as a request for your legal advice about all of the documents attached to the email, do you accept that?---No.

You understood when you received this email that your client wanted your legal advice about all of those documents, do you agree?---No.

40

What sort of thoughts do you think Ms Sibraa was asking about if they were not your legal advice about the documents?---I don't think she was seeking legal advice. I think she just wanted us to have a look at the answers and the documents to see if they, to us, appeared to satisfy the Electoral Commission's request for information, and that's what we did, and that's what we customarily did in reviewing these type of things for NSW Labor generally and Ms Sibraa in particular, and this is not the only dealing I had had with Ms Sibraa in these type of matters.

THE COMMISSIONER: But had there been other dealings with Ms Sibraa involving pretend donors?---I beg your pardon?

Had there been any other dealings with Ms Sibraa about pretend donors? In other words, fraudulent schemes?---No. No, as far as I'm aware, this is the only pretend donor matter.

MR NEIL: Of course no doubt you understood at the time that Ms Sibraa did not want you to look at the documents as though you were a layperson, do you agree?---Could you repeat the question? I apologise. I am having difficulty hearing you.

10 No doubt, I'm sorry, I'm making a terrible hash of this microphone, I understand, Chief Commissioner.

THE COMMISSIONER: There's no criticism of you, and there are difficulties sometimes with the positioning of these microphones, which - - -

MR NEIL: (not transcribable) wave about of its own volition.

THE COMMISSIONER: I hope one day to be able to do something about this, but if you will just bear in mind, if you wouldn't mind.

20

MR NEIL: I will try to remember. I will try to remember. I'm not very good with this kind of thing. Let me put the question again. I'll withdraw that and start again. No doubt, no doubt you understood at the time that Ms Sibraa was not asking you to look at the documents as though you were a layperson, do you agree?---Yes.

She was asking you to look at them as the lawyer you were, do you agree? ---Yes.

30 For the purpose of providing legal advice. Do you accept that?---No.

But she wasn't asking you to check the spelling, was she?---No.

If not legal advice, then, what was it? What was it that you thought she was asking you to think about and, having thought about it, to communicate to her?---As I've already said, I think she was asking us to look at the answers, whether the questions appeared to answer, sorry, whether the answers appeared to answer the questions that were asked, of which there were five quite simple questions, and whether the documents appeared to be the ones  
40 being requested, whether there was a problem with the documents, such as they were highly confidential or contained privileged advice or, or some other issue, and that was our normal practice in revising documents and information being provided in response to the notices to produce. I also believed that Ms Sibraa is sufficiently experienced that if she had thought, if she had wanted legal advice, she would have asked for it. More importantly, I think if she had thought there was a problem, she wouldn't have just used the word "thoughts" she would have actually said, "I think there's a problem," and I think she would have said, "We should meet or at

least discuss it,” and she did none of these things, and that’s because I don’t think she thought there was a problem.

Have you practised that answer before today?---No, and it’s my belief and I reject that insinuation, Mr Neil. There is no basis for it. I have thought a great deal about this matter - - -

THE COMMISSIONER: Mr Robertson - - -

10 THE WITNESS: - - - and I just really reject you - - -

THE COMMISSIONER: Mr Robertson. Mr Robertson.

THE WITNESS: - - - that assertion. I apologise, Commissioner - - -

THE COMMISSIONER: When I intervene and call your name, would you please respond to me?---Apologise, Chief Commissioner.

20 And I don’t want speeches.---I apologise, Chief Commissioner.

Just control, please.---I apologise, Chief Commissioner.

MR NEIL: The proposition I am putting to you, and I’ll put it again, is that you understood that when Ms Sibraa sent these documents to you, the party’s lawyer, and asked for your thoughts she was plainly asking for your legal advice. Do you accept that?---No.

30 She wanted to know whether the draft responses complied with your client’s legal obligations. Do you agree?---Yes.

Now, you had looked at – I withdraw that. When you looked at the covering letter from the Electoral Commission, the letter with which its questions and notices were sent, you noted, did you not, that the Commission was undertaking an investigation into a number of donations. Do you agree?---Yes.

40 That was an investigation which, as the covering letter said, was undertaken by the commission upon its satisfaction on reasonable grounds that he electoral funding laws may have been contravened. Do you agree?---No, I don’t think it actually says that. I think it says – I don’t think the word suspect is used but I don’t know if there’s a material difference.

Would you like to look at the letter?---No.

In any event, you noticed, did you not, when you first looked at and considered the covering letter from the Electoral Commission that the investigation that it was undertaking was an investigation that it was undertaking on, as it said, reasonable grounds. Do you agree?---Yes.

And you also noticed, did you not, that the investigation concerned, as Ms Sibraa reminded you, whether a number of donations had been made for an on behalf of other people?---Yes.

Pretend donors. And you noticed that at the time?---Yes.

10 And with the documents that Ms Sibraa sent to you, there were documents that – or among the documents that Ms Sibraa sent to you, there were documents that told you that the amount of the donations that the Electoral Commission was investigating totalled \$100,000. Do you remember that? ---Yes. Well, I don't remember it but it's clear.

So it was certainly clear to you at the time the time that you set out to review the documents that Ms Sibraa sent to you that the commission had reasonable grounds to investigate whether there had been pretend donors of donations that amounts to \$100,000. Do you agree?---Yes.

20 And when you saw that in the Electoral Commission's covering letter, were you shocked?---No.

It seemed to you, did it, that this was just another spot of trouble for a client that couldn't seem to stay out of trouble. Do you agree?---No.

This was something that was to be dealt with by you in a matter-of-fact way, do you accept that?---Yes.

30 In a way that you judged might best keep your client out of trouble, do you agree?---No, in a manner that would best assist our client to comply with its obligations as set out in the notice from the Electoral Commission.

Why were you not shocked?---I don't know why I wasn't shocked, but I wasn't shocked.

Well, yesterday you told the Commission that if Ms Murnain had come to you and said that she'd received information about pretend donors in an amount of \$100,000, that would have been shocking to you.---Yes.

40 Do you remember saying that?---Yes, but until 22 August this year I had no knowledge that anybody in NSW Labor thought there was any problem with these donations in the sense of them being fraudulent. And when I found out on 22 August, I got the shock of my life and I remained shocked.

When you looked at this notice, the notices from the Electoral Commission, when you looked at the questions that it had asked and the draft responses that Ms Sibraa prepared, did you think that there was no need for your client to volunteer information that might get it and its officers into trouble if you judged that it wasn't strictly required to do so?---No. That's not my, sorry,

to be clear, that's not my view at all. I believe that the information that Ms Sibraa had collected and the answers she had drafted were accurate and I had no reason to doubt her, and I suspect she still thinks it's accurate, but I don't know. I haven't spoken to her about it.

10 MR MOSES: I object, Commissioner, to Ms Sibraa's name being deployed in this way, with all due respect, because she's not here. She's a former employee of the party. Her name's been thrown about a couple of times now so far this morning based on belief by the witness. I think out of  
10 fairness to Ms Sibraa one has to adopt a very careful approach in relation to this matter in terms of her name being used in this way, with all due respect. And certainly the witness should not be presuming to speak on her behalf.

20 THE COMMISSIONER: Mr Moses, nothing's been put or suggested against Ms Sibraa in terms of her integrity or honesty or indeed her competency. I think it depends on what matters concerning Ms Sibraa are raised. To date I don't think anything of the kind I've just mentioned has occurred. I mean, it's inevitable in public inquiries, indeed in judicial  
20 proceedings, that people who are not directly involved are mentioned in despatches, as it were, as an inevitable part of the process. Sometimes it can be potentially damaging, but that's the price of open justice and that's the price of an open inquiry.

MR MOSES: Yes, Chief Commissioner. I've got no issue with what you're saying, and in fact much of what you've just said probably ameliorates the concerns that I had as I was listening to the witness's evidence, and I'll resume my seat. Thank you.

30 THE COMMISSIONER: Well, Mr Moses, I think you're right at least to sound the alert.

MR MOSES: Thank you.

THE COMMISSIONER: And I am on the alert to ensure that Ms Sibraa, no injustice is done to her.

MR MOSES: Thank you, Chief Commissioner.

40 MR ROBERTSON: Can I also assist by indicating that I anticipate calling Ms Sibraa next week.

THE COMMISSIONER: All right. Yes, Mr Neil.

MR NEIL: You said a moment ago, Mr Robertson, that you thought when you looked at the draft document that Ms Sibraa sent to you that the answers were accurate. Is that the evidence you gave? Am I correct in remembering that?--I had no reason to doubt their accuracy.



And that's because, is it, that the problems that you have identified now in the questions and answers were, you say, not apparent to you at the time that you looked at the documents that Ms Sibraa sent to you and approved them?---Yes.

Is that right?---Yes.

10 I want to suggest to you now directly that those problems, the problems in the questions and answers that you identified yesterday, were immediately obvious to you when you looked at the documents that Ms Sibraa sent to you, reviewed them and approved them. Do you agree?---No.

Immediately obvious to you, applying your skill, experience and qualities as a lawyer. Do you accept that?---No.

It is blindingly obvious, is it not - - -?---No.

20 - - - that what the Electoral Commission was looking for by its question 1, was the identity of the person who had made the donation. Do you agree?  
---The question doesn't ask that, but I have already said that I accept that that was probably what the Electoral Commission was after. It might have been of assistance if they had actually asked that question rather than using the word "handed", and that's why I didn't pick it up but I, I have already said I accept the proposition you put now. I did not appreciate it at the time.

30 But the proposition I am putting to you now is that the idea you are now propounding, that the problems have only recently become apparent to you and were not immediately apparent to you when you reviewed and approved the draft response, is not correct. That's the proposition I am putting to you now.---Your proposition is not correct.

That no competent lawyer with your skill, experience and qualities could possibly have thought that the answer to question 1 was the information that the Electoral Commission was seeking. Do you agree?---I didn't appreciate  
- - -

You must have appreciated - - -?---No, I didn't.

40 I will put to you again. You must have appreciated that by question 1 the Electoral Commission was seeking to know the identity of the person or persons who had made the donation. Do you accept that?---No.

And you cannot, may I suggest to you, you cannot advance a single cogent or plausible reason why you failed to appreciate that at the time?---Well, I failed to appreciate it.

What you did see when you reviewed the material that had been sent to you by Ms Sibraa was that the question that had been asked by the Electoral

Commission did not, on a strictly literal construction, require information about the identity of the donor. Do you agree?---Sorry, could you repeat the question?

What you did see when you reviewed the material that had been sent to you by Ms Sibraa was that the question that had been asked by the Electoral Commission did not, on a strictly literal construction, require information of the kind for which I am suggesting it was really asking. Do you agree?  
---I'm sorry. I'm having trouble understanding your question.

10

All right. I am suggesting to you that the information that the Electoral Commission was really looking for, by question 1, was information about the identity of the donors and you accept that, don't you?---I accept it now. And by the way, I thought the identity of the donors was supplied as well.

When you looked at the question, question 1, you thought, did you not, that on a strictly literal construction, it did not require information, the provision of information about the identity of the donor. Do you agree?---At the time, yes. I did not appreciate that.

20

Well, one thing you must have appreciated when you looked at the draft responses prepared by Ms Sibraa is that whatever question 1 was asking about, Mr Cheah could not possibly have been the answer. Do you agree?  
---No.

Because you knew when you looked at the answer to question, when you looked at question 3 and the draft answer to that question, that Mr Cheah was an employee of the ALP. Do you agree?---Yes. So it was obvious that he was not the donor or donors.

30

And thus, may I suggest, not possibly the answer to question 1 that the Electoral Commission was seeking. That must have been obvious to you, surely?---I think I have answered this quite a number of times but, no, it wasn't obvious to me at the time, as I have repeatedly said.

Did you think at the time that your client would be better off with a literal construction to question 1?---No. I thought my client would be better off if it honestly answered the questions.

40

Even if the answers to the question covered up the information that the Electoral Commission really wanted?

MR McINERNEY: I object to that question in that form. I mean, it contains implicit in it certain assumptions which haven't been put to this witness.

THE COMMISSIONER: I'll allow the question.

THE WITNESS: No, I don't accept that at all.

MR NEIL: Even if by doing so the answers to the questions were false and misleading. Can I put that to you?---No, I don't accept that.

You knew that it was an offence to provide false or misleading information to the Electoral Commission in response to its questions. Do you agree?  
---Yes.

- 10 By approving the proposed response to the Electoral Commission you were advising your client to do something that if your advice was wrong might be unlawful. Do you accept that?---No.

MR McINERNEY: I object.

THE COMMISSIONER: Yes, I reject the question. Mr Robertson, the covering letter that came from the Electoral Commission did you read that?  
---I, look - - -

- 20 You know the one I - - -?---I don't remember, Chief Commissioner. I imagine I, I looked at it. I don't know that I would have read it thoroughly.

Well, the letter was important, wasn't it, because it gave an idea as to the basis upon which the Electoral Commission was proceeding?---Yes, but I think that was also clear from the notice itself or the notices themselves.

But the letter I'm seeking to emphasise contained information in it as to what they were investigating.---Yes.

- 30 And what beliefs they held on reasonable grounds or suspicions perhaps is the more accurate term.---Suspect I think was the word, yes.

Well, wouldn't that be important in trying to assess these answers to take on board with some care what the Electoral Commission investigation was about?---Yes.

Well, assuming for the moment that you read it wouldn't that be relevant in evaluating the appropriateness of the answer to question 1 that Ms Sibraa had drafted?---Yes.

40

Well, I'm just seeking to understand what's the explanation then for not having picked up on the error before, well, until perhaps recently, relatively recently?---Could you repeat that.

Yes. I'm just seeking to understand how you approached the task you were asked to do, namely to look at the answers and give a response. If the letter made plain what the nature of the investigation or the subject matter of the investigation was, wouldn't that have telegraphed to you or communicated

to you that the draft answer to question 1 was not appropriate?---Look, with hindsight, Commissioner, I think I should have realised that the, I don't really believe question 1 is particularly clear. I think I should have suggested to Ms Sibraa that she or I or both clarify with the Electoral Commission what they're actually seeking. She had regular dealings with the Electoral Commission on, on a whole range of matters on a regular basis.

10 But the Electoral Commission had made it fairly plain, hadn't it, in that letter what they were investigating and the basis for it?---Well, I guess I've got to say neither she nor I, with she drafting the answer, me reviewing the answer, picked that up and perhaps I should, I've already said that I think with hindsight I should have, Chief Commissioner.

MR NEIL: You talk about hindsight, Mr Robertson, but what mechanism of thought or reasoning have you applied to get to the result that you have now, to the position you have now arrived at, a recognition that the answer provided to question 1 has problems in it?---Well, as I said to you yesterday, I've discussed it with counsel in particular and I've thought further about it myself. I still maintain the question isn't clear but I accept that the Electoral Commission was seeking something different to what the answer provides. I also take the view, though, that the answer is clear as to what it says, which is it makes it very clear it's referring to an employee of NSW Labor. Now, the Electoral Commission could have sought clarification. I'm not suggesting the Electoral Commission is at fault, but it could have – this is one of many dealings between the Electoral Commission and NSW Labor on this matter over an extended period of time, a period of, you know, nine or 10 months.

30 Did you seize on the infelicities you saw in question 1 and take advantage of those to approve an answer which obscured the information that Ms Murnain had provided to you on 16 September, 2016?

MR McINERNEY: I object. It contains the use of the word "approve". The question contains the use of the word "approve". It hasn't been put to this witness that he approved the answers in any way.

THE COMMISSIONER: Yes, I think it's the form of the question. The substance of the question in essence doesn't pose any difficulties. I think it's the form of the question.

40 MR NEIL: Very well. You looked at the draft answers that Ms Sibraa had prepared and sent to you, correct?---Yes.

You reviewed them, correct?---Yes.

And you approved them, is that right?---I said they were okay.

Yes. And is that different than approving them?---Yes.

What's the difference?---I approved them. Well, I, I said that I didn't, I don't know that I approved them. I said that I didn't see a problem with them. The word I actually think I used was "okay".

10 And what I'm suggesting to you or asking – I withdraw that. What I'm asking you about is this. In saying that the answer to question 1 that Ms Sibraa had drafted and sent to you was "okay", were you seizing on what you saw were infelicities in the drafting of question 1?---Could you repeat that?

At the time were you seizing and taking advantage of difficulties in the drafting of question 1?---No.

Difficulties that on a literal construction meant that the question was not asking for the identity of the donor?---No.

20 And did you do so because you knew, as a result of your meeting with Ms Murnain on 16 December, 2016, of information which might have indicated that the donors were not the people identified in the documents that Ms Sibraa had sent to you?---I completely deny that.

30 Were you seizing on a literal construction of the question in order to obscure that information?---No, and I looked at the questions and the documents in totality. I didn't simply focus on question 1. Question 1 didn't strike me as being of great importance. I did understand the totality of what the Electoral Commission was seeking was the identity of the donors, and I understood that they were the names that were on the forms that were in the documents. Those names and addresses I understood to be the donors. So if I'd understood, forgetting question 1, in the totality of what the Electoral Commission was seeking, one of the things it was seeking was the identity of the donors, and my understanding is they were the people whose names and addresses were on the forms.

THE COMMISSIONER: Mr Robertson, do you remember what documents were sent by Ms Sibraa to you in her email or attached to the email?---As I said, I, I - - -

40 If you don't, just - - -?--- - - - I don't remember.

No, that's all right.---But what, what they are is I think there are bank deposit slips showing the banking of the two amounts of \$50,000. There are the donation forms and I think there are some other documents of a financial nature. I know what is there, sorry, I apologise, Chief Commissioner, there's also what are referred to as tax invoices but appear to be receipts issued by NSW Labor.

Right. I don't want to make it a memory test. Mr Robertson, do we have a clear view as to what the documents were that Ms Sibraa sent?

MR ROBERTSON: As sent to Mr Robertson or as sent to the Electoral Commission?

THE COMMISSIONER: No, as said to Mr Robertson.

10 MR ROBERTSON: Yes, we do. If you just pardon me, I'll find the reference.

MR MOSES: I think it's Exhibit 229, Commissioner.

THE COMMISSIONER: Is it?

MR MOSES: I think so but my friends could double-check that.

THE COMMISSIONER: All right. Thank you.

20 MR ROBERTSON: It's the start of Exhibit 229. I just need to check whether all the attachments are part of it.

THE COMMISSIONER: Sorry, Mr Neil, I'm just interrupting you but I just want to be clear as to my understanding of what Ms Sibraa had sent.

MR NEIL: Chief Commissioner, would you excuse me for a moment, and on that point I might just say something to Counsel Assisting, if I may?

30 THE COMMISSIONER: Yes. By all means.

MR MOSES: Commissioner, just while that's being done, just to let you know, Exhibit 229 is an email from Ms Sibraa to Mr Robertson but it attaches the documents, regrettably as I understand it, Exhibit 229 does not attach the actual documents that were attached to that email but they attach the documents which are referred to. It's in the Commission's materials, they just haven't formed part of Exhibit 229.

40 THE COMMISSIONER: But there were documents attached with the email?

MR MOSES: There were, Commissioner.

THE COMMISSIONER: It's just that they may not have found their way into evidence as yet?

MR MOSES: That is correct.

THE COMMISSIONER: All right, thank you.

MR MOSES: I'm happy to provide it to my learned friend in hard copy if it will help them to find it.

THE COMMISSIONER: Very well - - -

10 MR ROBERTSON: That might assist.

THE COMMISSIONER: Yes. Thank you, Mr Moses, if you wouldn't mind having those documents sent up.

MR MOSES: Yes, Commissioner.

MR ROBERTSON: And I'm told, and this may well be what Mr Moses just said, Exhibit 226.

20 THE COMMISSIONER: Right.

MR ROBERTSON: Chief Commissioner, could I perhaps have leave to ask a few questions which should then resolve this issue?

THE COMMISSIONER: Yes. You go ahead, Mr Robertson.

MR ROBERTSON: I'm sorry to intervene but this might be conveniently done this way. Mr Robertson, were you the subject of a requirement by this Commission to produce any statement that you had prepared in connection  
30 with the matters before this public inquiry?---Yes.

And did that requirement require you to produce any statement that you had prepared in the form that it had appeared immediately before I started to examine you in this public inquiry?---Yes.

And did you give instructions for that statement to be provided to this Commissioner?---Yes, I did.

40 Can we have that statement on the screen, please, and can we go to PDF page 8 of that statement.

THE WITNESS: Perhaps I could mention that the statement requires one minor correction.

MR ROBERTSON: Thank you. We'll deal with that in a moment once I get that up on the screen but thank you for drawing that to attention. Can I ask you to draw your attention, please, Mr Robertson, to paragraph 52 and 53 of the document that's on the screen.---Yes.

And in paragraph 53, do you refer to the email from Ms Sibraa that you were discussing with the Chief Commissioner a moment ago?---Yes.

And do we take that in this document that you have prepared that at page 79 and following you identified the email from Ms Sibraa and the attachments there too?---Yes.

10 Can we go please to page 79 of Exhibit ILR 1. While that's happening, Mr Robertson, is it easy for you to identify the correction or would you like me to get that back on the screen?---Yes. In the first line of the next paragraph, 54, I refer to Ms Sibraa commencing with NSW Labor on early 2016. The word "early" should be deleted. It should be just in 2016. I believe she commenced in the second half of 2016.

Thank you, Mr Robertson. That's in paragraph 54 on PDF page 9. Mr Robertson, do you now see on the screen the email that you were discussing with the Chief Commissioner?---Yes.

20

And if we can just flick through the pages of that email to see the attachments. You will there see the draft response.---Yes.

And if we pause there, onto the next page, please, operator. That was the deposit slip I think you gave reference to a moment ago.---Yes.

We'll flick again, a bank account statement. Now appears a draft response, I think on behalf of Country Labor with questions and answers in similar form.---Yes.

30

Keep flicking through, please, operator. Another deposit slip, another bank account statement and then I think you gave reference before to tax invoices and reservation forms.---That's right.

And so we see at page 92 on the screen at the moment that's an example of one of the reservation forms you're referring to in response to one of the Chief Commissioner's questions, is that right?---Yes.

40

And if we keep flicking through, please, operator.---And the tax invoice is the receipt.

So we see a series of reservation forms and a series of tax invoices?---Yes.

If we can keep flicking through, operator, until we get to page 121. Just keep flicking just so both you and the Chief Commissioner can see the attachments to the email and we can – just go to the next page just to ensure that's the end. Yes. And so page 124, here the reservation form for Mr Mo appears to be the last of the attachments to the email, as you provided



attached to your statement, I think. Does that seem right, Mr Robertson?  
---Yes. I think so.

Does that deal with the matter that was raised, Chief Commissioner?

THE COMMISSIONER: Yes. Thank you.

MR ROBERTSON: I apologise for the delay in being able to bring that  
forward.

10

THE COMMISSIONER: No, that's all right. All right. Yes, Mr Neil.

MR NEIL: If we can come back to the meeting on 16 September, 2016. So  
I put to you yesterday, "The meeting proceeded in the way that Ms Murnain  
related in the evidence that reminded you of yesterday?" I'm putting that to  
you again - - -

20

MR McINERNEY: I object, Chief Commissioner. There were pages and  
pages of transcript my learned friend took the witness to yesterday. If he's  
got a version he can just put it rather than asking the witness to recall the  
transcript he was taken through yesterday afternoon over a number of pages.

THE COMMISSIONER: All right. Go on. You proceed, Mr Neil.

30

MR NEIL: Thank you. You understand very well, don't you,  
Mr Robertson, that Ms Murnain has given an account of the meeting that  
she had with you on 16 September, 2016 in which she says that she related  
to you information that she had been given by Mr Wong in response to  
which you gave advice. You remember all that perfectly well, don't you?  
---Yes.

And you've looked many times at her accounts of that meeting, haven't you,  
for the purpose of preparing yourself to give evidence Do you agree?---No.  
In fact I, I was here when she gave her evidence. I, I haven't read the  
transcript.

You recall very well what she has said. Do you agree?---Most of it, yes.

40

Do you need to be reminded of any of it?---No.

The information that she says she related to you came unsubstantiated by  
any objective evidence.

MR McINERNEY: I object to that question.

THE COMMISSIONER: Yes. It's not clear what you're putting.

MR NEIL: I'll put it again. Let me put these propositions to you. She related to you the information that Mr Wong had given to her. I'm putting that proposition to you and I understand that you reject it.---I deny it.

Might it have seemed to you in response to information of that kind that there was no need for your client to take steps in relation to that information that might get it into trouble?

10

MR McINERNEY: I object. He's rejected that it occurred.

THE COMMISSIONER: You're putting this on the assumption that Ms Murnain's version is accepted or how are you putting it?

MR NEIL: Yes.

THE COMMISSIONER: All right. Well, just make it clear, then, what you're putting to the witness.

20

MR NEIL: I'm sorry if I have not made that clear. That is the position I'm putting.

THE COMMISSIONER: Well, just put it again.

MR NEIL: Accept for the moment that the version that Ms Murnain has given in her evidence here, the information that she says she related to you is accepted, all right. Hearing information of that kind related to you, might it have seemed to you that there was no need for your client, ALP NSW, to take steps in relation to that information that might get it into trouble?

30

MR McINERNEY: I object. There's at least three hypotheticals in that question. It can't assist this Commission at all.

THE COMMISSIONER: No, I'll allow the question.

THE WITNESS: It's all right, I remember the question. Absolutely not and I have completely the opposite view, that I think if Ms Murnain had conveyed that sort of information to me, that the matter should have been dealt with promptly involving the Electoral Commission, and if that had happened we wouldn't all be here.

40

MR NEIL: At the time you were aware, 16 September, 2016, that Labor interests were mired in controversy over its association with Chinese donors. Do you agree?---No, I don't agree.

That controversy involved particularly Mr Dastyari whose difficulties were all over the press at the time. Do you accept that?---I think you're exaggerating and I don't accept it.

You also knew as a result of the work that you'd done on the Lalich matter that there was at least the possibility that Labor might be involved in more controversies relating to its association with Chinese donors?---Yes.

10 Might it have seemed to you at the time that information of the kind that – I withdraw that. Might it have seemed to you at the time that there was no need to exacerbate Labor's difficulties in that regard?---No, absolutely not.

That there was no need to expose it to the risk of further political trouble and difficulty?---No, I completely reject that.

No need to expose itself to trouble with an important section of its donor base?---I reject that as well.

20 And no need legally or morally to take any steps that might lead to it incriminating itself or its officers?---Well, no, I totally reject that and the premise of the question is completely wrong.

Better to wait, wasn't it? Better to wait and do nothing with the information.---Starting with the premise that that is what your client told me, which I deny, I completely deny that there would have been any sense whatsoever in doing anything other than dealing with the matter promptly with the Electoral Commission. That would have been the best thing to do, and I actually think it may have been able to be fixed to a fair extent from the, at least from the viewpoint of NSW Labor.

30 To work cooperatively with the Electoral Commission, is that what you mean?---Well, report it to the Electoral Commission to explain what is known and what information the party had or Ms Murnain had or somebody had.

To volunteer - - -?---Say there was a problem with these donations.

To volunteer information?---Yes.

40 In exactly the same way that information was volunteered in the response that you okay'd?---Yes.

With the same degree of clarity and transparency as we see in the response that you okay'd?---With the same degree of clarity and certainty that I believe NSW Labor displayed in its dealings with the Electoral Commission, of which there were many.

What I'm suggesting to you is that at the time not only did Ms Murnain relate to you the information that she said she conveyed, but your view was that it was best to wait, do nothing with the information, see what came up. What do you say to that?---I deny that completely.

If any hard evidence emerged, it could be dealt with then.---I deny that.

10 Well, I'm suggesting to you that that's the effect of the advice you gave to her that evening.---I did not give that advice, and on her version I think there was hard evidence. There was an amount of money, there was a donor, there was a fake donor, there were other people.

On her version, you repeatedly asked her whether any objective evidence had been provided and she repeatedly said no.---I deny that.

And that's because, I want to suggest to you, whether there was any hard evidence, any objective evidence, was important to your evaluation of the information that she was communicating to you. Do you accept that?---No.

20 Important to your decision about whether in the exercise of your legal judgement there was any need or obligation for your client to come forward and volunteer this information to someone, including the Electoral Commission. What do you say to that?---I deny it.

It was best in your judgement, I want to suggest to you, at the time that there be no record of the information. What do you say?---I deny that.

30 You advised Ms Murnain not to make a record of the information, do you agree?---I deny that. I did not advise her to do any such thing.

You made no record yourself, do you agree?---There were no notes taken at the meeting.

Yesterday you agreed you could not account for that fact, do you remember?---I don't think I put it quite that way, but I agree there are no notes of the meeting.

A circumstance that is unique in your experience.---No, I didn't say that.

40 I'm putting that to you now.---I don't agree with that.

Certainly highly unusual.---No, not highly unusual.

I want to suggest this explanation to you. The explanation is that you followed your own advice and deliberately made no record.---No, that's not correct.

You couldn't resist charging for the meeting, is that right?---I beg your pardon?

You could not resist charging for the meeting.---I object to the word "resist". The meeting appears in our bill and it was charged for and I have never had, there was never any intention to conceal the meeting, Mr Neil.

10 Well, the proposition I'm putting to you is that there was such an intention, an intention to obscure the content of the meeting by the way in which you referred to it in the bill.---I deny that.

And to do so by including it in the compendious description Political Donation Issues. Do you accept that?---No.

The suggestion you made yesterday that those issues were the Lalich matter and something to do with Mr Dastyari is just an invention, do you agree? ---No.

20 Kaila Murnain did not speak with you about Mr Dastyari on 16 September, 2016, do you accept that?---No.

The political donation issues for which you charged were the Lalich matter and Kaila Murnain's meeting with you concerning information about political donations that she had been given by Ernest Wong. Do you agree?---I deny that.

30 Let me ask you about the complaint that was made to the inspector. Copy of that is at tab 36, pages 129 and 130. While we're waiting for that to come up, you are of course familiar with the complaint that I'm about to ask you about, do you agree?---Yes.

You were an author and a principal proponent of the idea that this complaint should be made, do you accept that?---I don't think I was the principal proponent but I was, I was a proponent.

Yes. "A principal proponent" is the proposition I put to you. And the answer to that?---I was a proponent.

40 In fact, may I suggest, it was your idea.---It was not solely my, it was not solely my idea at all.

Not solely your idea but it was your idea. You were a part of it, weren't you? You were a part of the idea.---This particular matter dates back some time. It dates back to - - -

But just a moment, Mr Robertson.---No, no. No. It's - - -

Let me just take you back to my question. The question I'm asking you is this. I asked you whether it was your idea and your answer was "It was not solely my idea." And I was simply wanting to know does that mean it was your idea?---Was not solely my idea.

You were certainly party to the idea, weren't you?---Yes, but the, this was done on instructions of our client. It wasn't something I just did. It was done on instructions, and instructions that date back a significant period of time.

10

Have a look at the sentence – read the fourth paragraph to yourself, please, on page 129, "Our clients have fully complied to the end," and let me know when you're ready to proceed.---Yes, and you'd be aware the Chief Commissioner has asked me about this paragraph previously.

How does that answer the question I asked you?---I don't think you've asked me a question yet.

20

What I'm asking you, read the paragraph and let me know when you're ready to proceed.---I'm ready to proceed.

Very well. Now, the sentence that refers to your clients having fully cooperated with the investigation of the Electoral Commission. You're the author of that sentence, are you?---Yes.

30

And can I suggest to you that when you wrote that sentence you knew that the statement that it conveys was at best misleading, because with your okay your client had provided answers to the Electoral Commission's questions that you must have known had problems.---No, I deny that.

If we could look at the next page. This is another paragraph that the Chief Commissioner has asked you about. It's the second paragraph on that page. Can you read that paragraph to yourself, please, and let me know when you're ready to proceed.---Yes.

You are the author of the suggestion that the search warrant might have been issued for extraneous or improper purposes, is that right?---The particular word there is "maladministration".

40

I'm looking at the first - - -?---Which is, which is a defined term and there's a typographical error in the second last line of that paragraph. The word "unreasonably" should be "unreasonable".

In the sentence, the paragraph to which I have directed your attention, in the first sentence you talk about, "Purposes other than the proper exercise of the ICAC's investigative powers." That is the part of the statement I am asking you about. You are the author of the statement that the search warrant

might have been issued for purposes other than the proper exercise of this Commission's powers. Do you agree?---Yes.

You are the author of the statement that the search warrant might amount to maladministration. Do you agree?---It was in the sense of being unreasonable.

10 You suggest that your clients were of that view but really this was your idea, wasn't it, your idea to say this? Do you agree?---If you're asking me if I drafted those words I did. The idea, the concept of an idea is more difficult. This is not solely my idea.

THE COMMISSIONER: Mr Robertson, the question wasn't whether you drafted it.---I beg your pardon, Chief Commissioner.

The question didn't seek to ascertain whether you drafted it or not.---Yes, I did draft it.

20 No, but you missed the point, I'm afraid. Well, put the question again.

MR NEIL: You are the author of the idea?---No, I am author of the sentence.

Your client did not in fact have the view that the search warrant might have been issued for purposes other than the proper exercise of the ICAC's investigative powers, did it?---Oh, no, I deny that.

And neither did you, do you agree?---I deny that.

30 You did not have that view because you did not have any grounds upon which to form or hold it. Do you agree?---No.

There were then no grounds known to you that might possibly have justified that statement. Do you accept that?---No.

40 And so too in relation to the suggestion of maladministration. Your client did not have the view that anything that this Commission had done in connection with the search warrant might amount to maladministration. Do you accept that?---No. They had the view that the, the issue of the warrant and its timing was unreasonable and that's within the concept of maladministration.

You did not have the view, did you?---Oh, I didn't have that view.

And well, what I want to suggest to you is you had no grounds, no basis to make that suggestion at the time that you made it. Do you accept that? ---No.

Your purpose in relation to this complaint was to hinder and obstruct the investigation. Do you accept that?---No and it couldn't have possibly had that effect.

Indicative of a view on your part, I want to suggest, that your client had no obligation to cooperate with investigative authorities looking into the possibility of past misconduct?---That is completely untrue.

10

Perfectly legitimate to take any point that seemed to you to be available to hinder and obstruct an investigation into conduct of that kind. Do you agree?---That is completely untrue and I advised NSW Labor in respect of this investigation by this Commission, and my advice was consistently that they'd have to fully comply, and to the best of my knowledge NSW Labor did and has, to the best of my knowledge, and that's exactly what they had to do. And I had a meeting with the party officers via telephone on 19 December, 2018, the day after this search warrant executed, and we discussed in detail – and I do have a file note of this – exactly what was to be done about complying with the search warrant, well, there was no need to comply with that, but with the notices and with other things, and it included retaining senior and junior counsel and the great body of work to be done. And I reject categorically any suggestion that I or my firm have advised NSW Labor to do anything other than fully cooperate with this Commission.

20

Have you finished?---These are serious matters, Mr Neil. You might think they're funny, I don't.

30 Have you finished?---I have finished.

That's the cross-examination.

THE COMMISSIONER: Yes, thank you. Yes, Mr Moses.

MR MOSES: Yes, thank you. Chief Commissioner. Sir, as the solicitor for the NSW Branch of the ALP and the Country Labor Party, you accept, don't you, that you owed these clients duties which are set out in the Australian Solicitors' Conduct Rules?---Yes.

40

A duty of competence and diligence?---Yes.

A duty to act in their best interests?---Yes.

A duty to avoid conflicts?---Yes.



You told the Chief Commissioner that you have been a long-term lawyer to the NSW Branch of the ALP, correct?---Well, my firm has and I've been actively involved in that.

10 Well, for how long have you been acting as the lawyer?---Well, "the lawyer" has a concept of exclusivity. We commenced doing some work in about 2008, which has increased in volume over time. To this day I'm not necessarily of the view that we are something called "the lawyer". I'm sure NSW Labor use other lawyers or I would expect they do.

I'm asking you, though, sir, you have been the lawyer for the ALP undertaking legal work for them for at least a decade, correct?---I don't have a (not transcribable) private practice, Mr Moses. My firm has been the lawyers. I am a partner who has done a great deal of that work but I am not the sole person, as I think you can understand.

20 Do you have a difficulty, though, accepting the fact that for a decade you have provided legal advice to the ALP?---No.

Thank you. And can I assume in your role as a lawyer advising the ALP that you familiarised yourself with the Rules of the ALP?---I've familiarised myself with those rules that have been relevant to work we have been asked to do. I, I am by no means an expert on all of the rules of the Australian Labor Party.

30 You're aware that the Australian Labor Party is an unincorporated association?---Yes, I am.

And you're aware, aren't you, that under the rules the general secretary's position is not defined?---Yes.

You're aware under the rules that the supreme decision-making body is the State Conference?---Yes.

40 You're aware that the party is managed and administered by the Administrative Committee in between meetings of the State Conference?---Yes.

You were aware that between meetings of the Administrative Committee, the party is managed and administered by the party officers, correct?---Yes.

And you understood, pursuant to those rules, that members of the ALP had an obligation to act honestly and with integrity in the best interests of the party, correct?---Yes, the rules provide that, I believe.

And you understood that Ms Murnain was not your client but that the New South Wales Branch of the ALP was your client, correct?---Yes, absolutely.

Now, in your role as the lawyer to the New South Wales Branch of the ALP, you familiarised yourself, did you not, with the Election Funding, Expenditure and Disclosures Act 1981?---Well, again it's a, it's a long and complicated, frequently amended piece of conflicting legislation, but, yes, I'm aware of I think the major provisions as they have been relevant to advice we've been required to give.

10

Prior to 2016, it was an Act on which you were required to provide advice to the ALP, correct?---From time to time, yes.

And in relation to that Act, you would say, would you not, that you had developed a form of expertise in relation to it?---Yes.

Now, Counsel Assisting has referred to a statement that was prepared prior to you being questioned by Counsel Assisting in this matter, which he took you to a short while ago, and if I could ask, Chief Commissioner, through you if a copy of that statement could be put on the screen.

20

THE COMMISSIONER: Yes, very well.

MR MOSES: This statement that was prepared by you, you've said, was made in connection with the public inquiry being conducted by the Commission, correct?---Yes.

And when you prepared this statement, did you have access to the documents that formed part of, as it were, telephone records and access records for the meeting of 16 September, 2016 that's been the subject of much evidence in this inquiry?---If you mean the records of this Commission, no, I did not.

30

No, I'm talking about your records, sir.---Oh, my records. Yes.

Yes. And this is the position, isn't it, just to be clear, you adhere to the content of this statement even today but for the minor correction that you've made in relation to a statement referring to when Ms Sibraa commenced, correct?---Yes.

40

So let's be clear about this, then. You've been questioned about an alleged conversation that you had with Ms Murnain on 16 September, 2016. Correct?---Yes.

The truth is that you have no recollection sitting here today of meeting or talking to Ms Murnain on 16 September, 2016. Correct?---Yes.

And the evidence that you've given in this inquiry is based on speculation as to what was likely discussed from the surrounding events and materials that you have examined since this allegation was first put to you by Counsel Assisting during a private hearing. Correct?---Yes.

And if you go to paragraph 51 of your statement, Exhibit 51, the belief that is set out there can we assume is one based on speculation because you cannot in fact recall having the meeting. Correct?---Correct.

- 10 And in relation to the content of paragraph 51 you will recall that in the context of what was put to Ms Murnain during the course of examination it was suggested to her that what was discussed in that meeting was the advice that you were working on concerning Mr Lalich. Do you recall being present when that was put to her?---Yes.

Do you recall that the advice that you had given to Ms Murnain in relation to the position of Senator Dastyari that that was not put to Ms Murnain during the course of her cross-examination?---I don't recall that.

- 20 Thank you. Now, can I take you to the next topic I want to ask you a question about which is the Electoral Commission notice to produce. Again, if we stick with the statement that is on the screen, paragraph 52. According to this statement you say the first time you became aware of the Electoral Commission investigation was on 8 December when the notice to produce was sent to you by Ms Murnain. Correct?---Yes.

And this is the first time you had heard about the Chinese Friends of Labor dinner on 12 March, 2015. Correct?---Yes.

- 30 In your statement, paragraph 55, can I ask that you got to that. Your evidence is that you don't recall reviewing these notices but that if you did it was a cursory review. Correct?---Yes.

So the evidence you have given to the Chief Commissioner in relation to this matter today, and indeed yesterday, is not based on any recollection you have when you read the statement because you can't in fact recall reviewing those notices. Correct?---Correct.

- 40 And so what you've been undertaking in terms of your evidence is again speculating in relation to what you would have done or may have done when the notices were drawn to you attention. Correct?---And based on the documentary records I do have.

Well, the documentary records are that you billed for it. Correct?---Yes.

And that you've sent an email back in response to having had this notice sent to you with the answers – I'll come to that in a minute – in which you

okayed it. Correct? That's part of the documents you've looked at?---Yes, and I asked another lawyer to look at it as well.

Thank you. You mean at the time?---Yes, at the time.

Thank you. Now, can the witness be shown the notices from the Electoral Commission which were emailed to him at 11.36am on 8 December. That's Exhibit 226. The email that is on the screen, that's the email which you received on 8 December that was first drawing to your attention the notices to produce, correct?---Yes.

And again, sitting here today, consistent with your statement, you don't recall receiving that email, correct?---Correct.

Can I then ask that the witness be shown Exhibit 149, volume 1, page 1. The Chief Commissioner's taken you in some detail to this notice, but I just want to put a proposition to you. Do you accept, sitting here now today, that as a competent and diligent lawyer, when you read the content of the second-last paragraph, or if you did read it, you would have advised the Labor Party that what was being examined were potential offences contained in division 5 of the Election Funding, Expenditure and Disclosures Act, including section 96H, offences relating to disclosures, and section 96H(b), offences relating to scheme to circumvent the donation or expenditure prohibitions, the first carrying with it a two-year gaol term as a maximum penalty and the second a 10-year gaol term? Do you think as a competent and diligent lawyer you would have advised the ALP of these matters?---No, and I think the ALP itself has people with sufficient ability to have understood that themselves by reading these notices.

I think you said yesterday, when being asked questions about this, that Ms Murnain knew what her obligations were in relation to the Election Funding, Expenditure and Disclosures Act, correct?---Yes, and I think so did a considerable number of other people in NSW Labor, including the assistant general secretaries and the governance director. In fact, the governance director had really been appointed for that purpose.

But, Mr Robertson, you understand as a lawyer you don't have the ability to contract out of your duty of competence and diligence, do you, sir?---No, but it's not my practice when, every time a client receives a notice to produce, to explain to them what will happen to them if they don't comply with it properly. It's just not what I do.

This is the first time, is it, that you're aware of, that the ALP was receiving a notice in which it was being investigated potentially in relation to an allegation concerning a scheme, correct?---Yes, I think so.

Yes. And don't you think it was a matter of moment, as a competent and diligent lawyer, that you should have told the client to ensure that it

conducted a thorough investigation into the facts surrounding the dinner before responding because there was a gaol term waiting at the end should there be a false representation or indeed a scheme?---Yes, but it's - - -

Do you accept the proposition, sir?---Yes.

10 And you failed to do that, didn't you?---Sorry, I, I may have given an incorrect answer. I don't believe it was my job to do more than to ensure that NSW Labor was going to properly comply with this notice. I don't believe it was my place to advise them to conduct an investigation, to use your words.

Do you have a difficulty accepting any blame at all in relation to the events that have led us to this place, sir? Do you have a reluctance to accept anything at all that suggests that you have done something wrong?---Yes.

20 I'll come back to that. You said yesterday that you accept, this was when the Chief Commissioner asked you, that had you read the questions carefully in the notice, it would have been apparent to you that there was a difficulty in relation to some of the answers, correct?---Particularly question 1, yes.

And I think you said questions 1 and 3. Can I ask that the witness be shown Exhibit 229. Can you scroll down, I think, to the attachment if it's there, in terms of the answers that were attached. Maybe they're in a different document. Can the witness be shown, it's Exhibit 229 but it's the full document and the attachments which I think haven't gone into evidence as part of that email.

30 MR ROBERTSON: Perhaps I can assist my learned friend this way, if we go to Mr Robertson's statement that reference was made to a moment ago.

MR MOSES: Page 83.

MR ROBERTSON: PDF, page 92, which is page 79, is the email.

MR MOSES: Thank you.

40 MR ROBERTSON: I might, if it doesn't inconvenience my friend, I might tender that statement now so that can be in evidence. So I tender the statement of Mr Ian Robertson, which was produced in response to a requirement made under section 35(2) of the Independent Commission Against Corruption Act, including a copy of the requirement under that subsection.

MR MOSES: Thank my friend for that. I think it's page 86 and 87 of that document.

THE COMMISSIONER: Thank you. The statement of Mr Ian Robertson will become Exhibit 270.

**#EXH-270 – SUMMONS UNDER S35(2) OF ICAC ACT TO IAN ROBERTSON AND UNDATED SIGNED STATEMENT BY IAN ROBERTSON PRODUCED IN RESPONSE TO THE SUMMONS**

10 MR ROBERTSON: Can I assist my friend this way. If we go to PDF page 92, which is paginated number 79, that will be the email to which he's taken the witness which is Exhibit 229.

MR MOSES: So what I'm after, for the officer of the Commission to help navigate through it, is actually the draft answers that were attached on our page. It commences at page 87 of the pagination that we have been given.

MR ROBERTSON: My pagination is PDF page 95, printed page 82.

20 MR MOSES: Thank my friend for that.

MR ROBERTSON: If we just go back five pages, please, operator.

MR MOSES: So if you go to, this was the document that was emailed on 16 December and I think when the Chief Commissioner asked you some questions about the answer or the problems, I think one of the ones that you identified was question 1, as you've said, correct?---Yes.

30 And you'll see that the answer to question 1 was that Mr Cheah had handed the donations to the ALP on 9 April, 2015. Do you see that?---Yes.

And you'll see that the answer to question 3 is that the person who handed the donations to the ALP was not issued with a formal receipt as he was an employee of the ALP and attended the dinner. Do you see that?---Yes.

40 And just to understand your evidence, had you looked at the questions carefully, you would have understood that those answers were wrong, that's your evidence, correct?---I think the answer to question 1 is, is not what the Electoral Commission was, was seeking, let me put it that way.

And had you looked at the question carefully, you would have advised the client about that?---No. I think I would have advised the client to, that it should be clarified with the Electoral Commission as to what they were actually asking for.

And question 3?---Probably the same thing, I suppose, given it refers to question 1.

But you understand, don't you, reading the answer to question 1, that what was being represented to the Electoral Commission was that Mr Cheah had handed the donations to the ALP on 9 April, 2015, correct?---Yes. Because, as I understood it, Mr Cheah had attended the dinner and took the donations from the dinner to the ALP. In other words, he was the, the messenger if you like, or the carrier. I appreciate now there's a problem with that and in particular there's a problem with the date.

10 Well, let's be clear about that in relation to that understanding. Who told you that?---Well, nobody told me that but it's, it's, I think it's evident from the answers that had been prepared by, within the party, presumably as a result of a conversation with Mr Cheah, who's an employee of the party. I don't see how it could have been prepared otherwise.

And then are we to assume that in relation to the answer to question 3, that when he handed the donations to the ALP he was not issued with a formal receipt because he was the employee?---Yeah, he was the carrier, not the donor.

20 Okay, thank you. And this is the fact, though, is it not? You became aware subsequently, did you not, that the answer to that question was false, correct?---I'd only really focused again on, on these questions and answers in preparation for this inquiry, and I, I, I don't agree with the word "false". I agree with the proposition that it is not providing the Electoral Commission what I think the Electoral Commission was asking for.

Well, I'm going to put something directly to you. Your firm represented Mr Cheah during an interview with the Electoral Commission on 22 June, 2017, correct, sir?---One of our lawyers accompanied him to that interview, yes.

30 Did you say "boys" or "lawyers"?---I beg your pardon.

You said "lawyers", didn't you? "Lawyers". One of your lawyers attended.---Of our lawyers, yes.

Thank you.---Accompanied him to - - -

Thank you.--- - - - that, yeah, to that interview as I, as far as I'm aware.

40 Well, you were the partner with carriage of the matter, correct?---Yes.

And Ms Butler attended that interview, correct?---Yes.

And on 22 June, 2017, Mr Cheah told the Electoral Commission investigator that it was Mr Huang who delivered the money to the ALP, not Mr Cheah. Are you aware of that?---I've had a look at Mr Cheah's evidence and he, I think he says a number of things in that interview, and I in fact recall looking at it quickly and being very confused by what he'd

said. He also refers, I believe, to Mr Wong – as in Ernest Wong – taking the money to, to the ALP.

When did you review the transcript of what he told the Electoral Commission?---I've never really, I've never really reviewed it in the, in the sense that a lawyer reviews a transcript because there was no need to do so.

10 No, no, listen. You just told the Chief Commissioner that you looked at it and you formed the view as to what he said on a number of things.---Yes.

Can you tell the Chief Commissioner when you looked at the transcript of the interview that Mr Cheah had on 22 June, 2017, in which Ms Butler sat him under your supervision?---I don't recall exactly, but we received, the transcript was received some time later.

When, do you know, in 2017?---No, I don't recall.

20 Well, I'm going to put to you something squarely. If you had read the transcript, you will see that Mr Cheah told the Electoral Commission that it was Mr Huang who delivered the money to Mr Clements, and you did nothing to correct the representation that had been made to the Electoral Commission. That is, through the answer to the notice. Do you agree with that?---Yes.

And you took no steps to advise the Australian Labor Party that it should correct its representation to the Electoral Commission when you became aware that Mr Cheah was asserting that Mr Huang had delivered the money to Mr Clements, did you?---No.

30 And a competent and diligent lawyer would have advised the ALP that there was a problem with the answer it had given under pain of imprisonment to the notice that was issued on 6 December, do you agree with that, sir?---I never put the two things together, frankly.

THE COMMISSIONER: But didn't this go to the very heart of the Electoral Commission's investigation?---I beg your pardon?

40 Did this not go to the very heart of the Electoral Commission's investigation?---I, I guess it does.

Just to be clear about it, I'm referring to the evidence given in the interview statement of Mr Cheah, that the person who delivered the money to Mr Clements was Mr Huang. That went right to the heart of the Electoral Commission investigation, did it not?---Yes, but I think he also refers to Mr Ernest Wong as well.

Yes, there may or may not be a spelling error in that regard but I'm not concentrating on that for the moment.---And also that, that the, I believe the



Electoral Commission says in its question to him that the Commission had been told, told that, that Mr Cheah took the money to the Labor Party.

But here we have a statement from Mr Cheah rightly or wrongly saying that Mr Huang in fact had delivered the money to Mr Clements who was then general secretary of the union that - - -

MR MOSES: Of the ALP, Your Honour, Commissioner.

10 THE COMMISSIONER: I'm sorry. Thank you. To the ALP that went to the very centre of the investigation.

MR McINERNEY: Chief Commissioner, can I object. It might be my misunderstanding. I thought when Mr Cheah came before this Commission to give evidence he was asked by Counsel Assisting with respect to that part of the transcript which is directed to the \$100,000 where it is transcribed on the transcript as Mr Wong and that's my recollection. I may be wrong about it. My learned friend Mr Moses has been putting it on the basis that it's  
20 Mr Huang but I thought the evidence was, I may be mistaken, that until Mr Cheah came before this Commission and clarified that matter if one were to read it, it appears to be a reference to Mr Wong not Huang.

THE COMMISSIONER: Mr McInerney, I think what we'll do is we'll take the morning tea adjournment and we can check this. My recollection is, but I'm not saying this is the case. It needs to be checked. There were two references in the interview, one to the name Huang and another reference to Wong.

30 MR McINERNEY: Correct.

THE COMMISSIONER: And I think the context may indicate either that it was, if that be right, Huang on one occasion, Wong on the other, or that there was an error in the spelling and it wasn't meant to be Wong but Huang.

MR McINERNEY: Certainly.

40 THE COMMISSIONER: But I think we can check it over the morning tea adjournment.

MR McINERNEY: I simply raise it so, as a matter of fairness that if there are, that he can be taken to the document.

THE COMMISSIONER: That's what I'm suggesting there be - - -

MR McINERNEY: Thank you, Chief Commissioner.

MR ROBERTSON: I don't think my learned friend Mr McInerney has it right but I'll draw the passages of the transcript to his attention during morning tea if that's convenient.

THE COMMISSIONER: Very well.

MR MOSES: It'll be a shock to Counsel Assisting to hear that I actually agree with him not my learned friend Mr McInerney but in relation to - - -

10 MR ROBERTSON: I agree with Mr Moses regularly.

MR MOSES: In relation – you always agree with me. In relation to this issue just to be clear, it's Exhibit 149, volume 1A. It's pages 22 to 23, questions 183 through to 195 which are the questions and answers that I was directing the witness's attention to and I will ask the Commission to put those on the screen after the adjournment.

20 THE COMMISSIONER: Thank you, Mr Moses, for that. Mr Robertson, we're going to take the morning tea adjournment. I'll ask you not to discuss your evidence at the moment until we have this clarified. That is, not discuss it with your lawyers or anyone else.---I won't be discussing my evidence, sir.

Fine. I'll adjourn.

#### **SHORT ADJOURNMENT**

**[11.43am]**

30 THE COMMISSIONER: Yes, Mr Moses.

MR MOSES: Chief Commissioner, just prior to the adjournment I was going to take the witness to the document which is the transcript of Mr Cheah's interview on 22 June, 2017, Exhibit 149, volume 1A, page 22 and 23, and I was going to ask, Chief Commissioner, through you, if the witness could read questions 183 and the answers, to 195.

THE COMMISSIONER: Yes.

40 MR MOSES: Thank you.

THE COMMISSIONER: Thank you. So again, confirming the questions, 183, is it?

MR MOSES: Yes, Chief Commissioner. Through to 195 on the following page.

THE COMMISSIONER: Yes, thank you. Yes.

MR MOSES: Thank you, Chief Commissioner. Sir, have you finished reading that?---Yes.

Yes, thank you. And could I then ask, Chief Commissioner, through you, if the monitor can then take the document back to the, that the officer take the document to page 12, question 79.

THE COMMISSIONER: Yes.

10

MR MOSES: If the witness could read the question 79 and the answer. ---With respect, I think you should start with question 76.

Thank you. Do you want to just focus on what I've asked you to do at the moment. You're in the witness box. Have you read question and answer 79, Mr Robertson, have you done that?---No, not yet. Yes.

20

I'm going to ask you this question again and see whether you have been able to refresh your memory during the adjournment. When do you recall reading this transcript for the first time, sir?---Sometime in 2017, after it was received by my firm, but I don't recall exactly when.

Do you accept – let me now ask this question to be clear. Do you have any recollection sitting here today of reading those questions and answer that I have drawn your attention to just now?---Not a specific recollection of those questions and answers, no.

30

Do you recall reading the transcript and coming away with the view that Mr Cheah was saying that either a Mr Wong or a Mr Huang delivered money to Mr Clements?---I don't recall that, no.

Do you accept that as a competent and diligent lawyer that had you read that you would have informed the Australian Labor Party that there was a problem in relation to the representation that it had made in its response to the 6 December notice. Do you accept that?---No.

You don't?---No.

40

Are you suggesting to the Chief Commissioner that this was not a matter that you needed to alert the Labor Party to?---I don't accept that it was my role or obligation to carefully review this transcript.

Mr Robertson, can I just put something to you just so that you know, because I want to be fair to you in terms of what I'll be telling the Chief Commissioner. Are you suggesting to the Chief Commissioner that you take no responsibility as the partner in charge of this matter to have properly reviewed the transcript of Mr Cheah's statement to the Electoral Commission on 22 June, 2017 to ascertain whether there was any evidence

or suggestion that there had been a scheme to avoid the electoral funding laws in this state? Are you suggesting that to the Chief Commissioner?---I, I don't believe I had that obligation or role.

You were the lawyer for the Labor Party. Correct?---Yes.

You were supervising the work undertaken by your lawyer on this file. Correct? Correct?---Yes.

10 And you're not blaming the lawyer who was undertaking the interview with Mr Cheah, are you, for anything to do with this?---No. If there's any problem the responsibility is mine.

Correct. So do you accept that with this factual information coming to light in this interview that a competent and diligent lawyer would have advised the ALP that there was a problem here in relation to the notice that you had okayed to be sent to it in response to the notice of 6 December, 2016?---No.

Do you accept that?---No.

20

Thank you. Now - - -

THE COMMISSIONER: Why not?---Because our, our role in this particular matter was to have a lawyer accompany Mr Cheah, who I've never met, to this interview. I don't believe we discussed his, or I certainly didn't and I don't think anybody discussed his evidence with him before he went to the Electoral Commission. I think a lawyer accompanied him and sat with him and left and, and I think that was the full extent of our involvement in this particular aspect.

30

But if it became apparent through the interview process that there was information which went to the centre of the investigation by the Electoral Commission, in particular as to the source of the funds in question, wouldn't that bear directly upon your responsibility to ensure that any work that had been done up till then at that time on a different basis was corrected? ---Perhaps but when I ultimately looked at this I did simply not recall the earlier questions and answers that had been given to the Commission, to the Electoral Commission on this issue.

40 I don't think your recollection – well, I think the question that Mr Moses is putting to you is that, at least now looking at it, it's put – as I would understand it – to you that your responsibility was, having been engaged for the purposes of the interview with the Electoral Commission concerning Mr Cheah, that if information came out which could impact upon the Labor Party, in particular adversely to it, that you would have a duty to, as it were, communicate to your client the problem that you perceived. That is to say now, on Mr Cheah's account, it was known who the donor was, namely Mr Huang.---I haven't ever held the view that if a lawyer from my firm

accompanies a witness to be interviewed by any sort of investigative body, including this one, that we have an obligation to then go through the evidence of that witness before that body and then perhaps alert the ultimate client to the evidence of the witness and that there may be a problem. In fact, I have a hunch that that may not be something that is proper to do.

10 But this was an unusual matter, as we've discussed before, the like of which you had not seen before in terms of a donation matter, that is to say it raised the question of, in effect, a dishonest or fraudulent scheme being investigated and the Electoral Commission had already formed its suspicion on reasonable grounds. That was different from a situation you had previously had to deal with, as I understand your evidence?---But this was a  
---

No, no. Just answer that question. Am I right?---Yes.

20 Yes. Well, then, given the serious nature of the matter – and as has been observed, the provisions of the Act certainly mark it out as a matter of seriousness – wouldn't you think it's within your scope, having been involved with the supply of information to the Electoral Commission, that that Labor Party, your client, be alerted to the fact that this interview with Cheah had raised some very significant factual matters? Namely, on Cheah's account, the donor was known and it was, on his account, Mr Huang. Wouldn't you have no alternative but to alert your client?---I'm not sure it would have been proper for me to do so had I gone through that process.

30 No, I'm just putting it to you, would you not have thought in those circumstances, you had no option but to alert your client, having been party yourself to drafting information which went onto the Electoral Commission which was now being, in effect, contradicted or added to in a very significant way, having regard to what Mr Cheah was telling the investigator?---If I had realised the discrepancy, which I didn't, I must be honest, I'm not sure what I would have done.

40 All I'm saying is, your prior involvement in the drafting of the responses to the Electoral Commission may well be seen to be circumstances that would make it mandatory for you, some months later when Mr Cheah was escorted by one of your staff, when you saw the transcript, to say this is highly relevant information that the client must know about, and indeed the Electoral Commission will rely upon this information.---But the Electoral Commission was already investigating it.

Yes. But they've now got a witness telling them what he claimed was the person who was responsible for the donation. Would you not, in those circumstances, feel bound to warn and advise your client as to what they should do now in light of what they previously told the Electoral Commission through the answers to the questions that had been formulated

in December 2016?---I'm not sure it would have been proper for me to do so but in any event, I didn't realise it.

Well, looking at it now, do you see the wisdom of, armed with the knowledge of what Cheah was saying to the Electoral Commission, that of course you'd have to let your client know?---I think I would have needed to contact the Electoral Commission and ask them if they were comfortable with that information being conveyed to NSW Labor. I don't think I could have just done it.

10

Well, it might be a step along the way but that would have to be a step - - -? ---Well, it's a very important step.

Yes, it is. Well, you'd have to take that into account, but one of your staff had been permitted to be present at that interview.---Yes but not for the purposes of representing NSW Labor, for the purpose of assisting the witness.

20

But there was no reason why the solicitor who attended at the interview was bound by some confidentiality vis-a-vis the employer of Cheah, was there? ---I'm not sure about that.

Even if there was, one appropriate course to follow would be to make contact with the Electoral Commission and say, look, I need to speak to my client having regard to the information that's now come out.---Yes, I agree with that. I think, I actually think that's the only thing that I could have done if I'd realised it.

30

Well, why didn't you do it?---Because I didn't realise the discrepancy in the two issues. Perhaps I should have, but I didn't. But I also found this evidence of Cheah's, this information he provided the Electoral Commission, to actually be confusing.

Yes, it may well be said to be confusing, but nonetheless, insofar as he made a statement identifying who he claims was the donor, and on his account that money found its way to the general secretary, that was startling information, wasn't it, if Cheah was to be believed, of course? ---I didn't appreciate it at the time.

40

But it's startling information, isn't it? If he's - - -?---Yes, but I've, I said I didn't review this statement in any particular detail at all because there was no reason for me to.

Yes, Mr Robertson.

MR ROBERTSON: Chief Commissioner, with your leave and with my learned friend's permission, might I refer to another document that may assist my learned friend on this line.

THE COMMISSIONER: Yes.

MR ROBERTSON: If that might be conveniently done now. But I'll only do it if my learned friend is prepared to give way, but I think it will assist the matter that he's asking about.

MR MOSES: Sure.

10

MR ROBERTSON: Can I have on the screen, please, an email exchange of 20 June, 2017. And, Mr Robertson, you've been discussing with Mr Moses the interview with Mr Cheah of 22 June, 2017, is that right?---I beg your pardon?

You've been discussing with Mr Moses the record of interview with Mr Cheah on 22 June, 2017.---Yes.

20

And you had a lawyer from your firm, Ms Butler, attend to accompany Mr Cheah, is that right?---Yes.

And so I take it that NSW Labor drew to your and Ms Butler's attention that Mr Cheah had been required to give an interview to the Electoral Commission?---Yes, I understand he'd been summonsed.

30

And if you have a look on the screen, if we go to the very bottom of this email chain, please, you'll see an email from Mr Smithers to Mr Cheah and to others which appears to be giving notice to Mr Cheah. If we can then just move up the chain a little bit, you'll see there that Ms Sibraa forwards that to you and to Ms Butler. Do you see that there?---Yes.

Now, do you recall receiving an email to that effect forwarding the notice that was given to Mr Cheah?---I don't recall it.

40

And if we then move a little bit further up, we'll go to your email. And do you see there you say to Ms Sibraa, "Thank you for this," and if you look at the last paragraph, "I think there would be merit in him being accompanied by a lawyer so that in particular we have a clear idea of the direction of the Commission's investigation." Do you see that there?---Yes.

So is it right to say that one of the reasons why you thought at that time Mr Cheah should be accompanied to the interview was to identify a clear idea of the direction of the Commission's investigation?---I don't recall that, but that's what the email says.

When you're referring to "we" in that final paragraph, I take it that "we" is a collective reference to you as the legal advisers but also to NSW Labor as the unincorporated entity, is that right?---Correct.

And if we just go up a little bit further in the email chain, you'll see Ms Sibraa says, "I agree that would be advisable." Do you see that there?  
---Yes.

I tender the email exchange that appears on the screen, being a series of emails between Mr Robertson and others of 20 June, 2017.

10 THE COMMISSIONER: Yes, the email chain so described will become Exhibit 271.

**#EXH-271 – EMAIL CHAIN BETWEEN IAN ROBERTSON, JULIE SIBRAA AND OTHERS ON 20 JUNE 2017 RE S110A(1)(D) NOTICE TO KENRICK CHEAH**

20 MR ROBERTSON: I may have some further questions, but I should give way back to Mr Moses.

MR MOSES: Thank you.

THE COMMISSIONER: Yes.

MR MOSES: Mr Robertson, I just want to be fair to you. You understand you're here to give evidence to assist the Commission, correct?---Yes.

30 And you're not attempting, are you, in this matter to deflect any problems or any incompetence by you by coming up with explanations in order to divert attention away from your own inadequate conduct in this matter, are you?  
---No.

What this email demonstrates, and if you focus on it please, is that you were actively promoting the idea that Mr Cheah should be accompanied by a lawyer from your office as part of the work you were doing for the Labor Party at the time so that you understood where the Commission was going. Correct?---Well, that's what - - -

40 That's correct, isn't it?---It's what it appears to say, Mr Moses.

But that's what you were doing at the time. Correct?---No.

So the words do not mean as they appear on this email. Correct?---The words are as they appear on the email, Mr Moses.

So when the interview occurred did you sit down with Ms Butler and ask her where were they going with this?---No, I didn't.



What the hell is going on down there?---No, I didn't.

But you read the transcript.---I looked at it sometime later but I didn't review it with any thoroughness.

Well, you told the Chief Commissioner it was a cursory review this morning.---Yes, that is correct.

10

So you have the Electoral Commission investigating offences where there is on one view a gaol term of up to 10 years and another two years and you're having a cursory review of a document in relation to a matter concerning one of the major political parties in this country. Is that right?---Yes.

20

Do you accept that you were not displaying the skills of a competent and diligent lawyer, I'll ask you this question, by reviewing that transcript closely and informing the Labor Party that there was a problem here in relation to what it had told the Electoral Commission in response to the notice?---No, I don't accept that.

30

Well, let's go to the next document. Electronic bundle 67 of the documents that were provided to the Commission in relation to the cross-examination of Mr Robertson. It's a letter of 12 September, 2017. Just while that's being done, you are aware, are you not, that in September 2017 a letter of comfort was sent to Mr Cheah by Keith Mason, AC, QC, the chair of the Electoral Commission, in effect providing him with immunity if he was willing to come forward to provide information in relation to this matter. You're aware of that, aren't you?---Yes.

40

When did you become aware of that letter being sent to Mr Cheah?---I'm not sure.

Well, as a competent and diligence lawyer, when that letter was seen by you did it dawn upon you gee, I'd better go back and look at the transcript of 22 June, 2017 to see what the hell happened in that interview that may give rise to the former President of the Court of Appeal deciding that immunity should be given to that witness to come forward with some evidence?---No, that didn't occur to me.

As a competent and diligent lawyer do you accept you should have done that?---No.

Can I ask you this question, Mr Robertson. Is the reason you didn't do that is because you knew on 16 September, 2016 that Mr Huang was the donor because of what Ms Murnain told you?---No, I deny that.

You see, because one of the matters that the Chief Commissioner has got to decide in this matter is whether you knew about this on 16 September, 2016 and did nothing about it, in effect you becoming part of the scheme, or whether you're just an incompetent lawyer. Which one is it? Which one is it?---I knew nothing, I, I knew nothing until 22 August this year to suggest that anybody other than the stated donors actually donated the money to NSW Labor and they have been the instructions to my firm consistently through this matter over a long period of time including through some pretty senior people.

10

But do you accept how bad this looks in terms of this issue, that you didn't do any of these things in terms of reviewing the transcript, closely looking at the notice, reviewing the answers, all of which a competent lawyer would have picked up these issues, and yet you did none of that and we have an allegation that you were told about this in September. You understand that looks bad, don't you?---I don't accept the premise of your question, Mr Moses.

20

You don't, okay. So you're not willing – so it's a winner take all in this one, is it? You're not willing to accept you're negligent, correct?---Correct.

And you're not willing to accept you were told, on 16 September, 2016, about the true source of the donation, correct?---I, I, it's not a question of acceptance, Mr Moses, I categorically deny that.

30

Thank you. So can we have on the screen the document that I have referred to earlier, the 12 September, 2017, electronic bundle, page 67. When do you recall first seeing this letter?---I, I don't. I, I know I have seen it but I don't recall when I first saw it.

Do you think you saw it in 2017?---Yes.

Look at the third last paragraph. "If you provide a truthful and frank statement in relation to a scheme as described above, the Commission promises not to use the information contained in that statement, as well as the information contained in the interview you have already given to the Commission, against you in any criminal proceedings." Do you see that? ---Yes.

40

And go to the second paragraph. That's the serious allegation containing the gaol term of up to 10 years. Do you see that?---Yes.

Do you accept this, that as a competent and diligent lawyer, when you saw this letter, you would have gone back to look at the interview given by Mr Cheah on 22 June to ascertain what the hell had gone on?---No, I don't accept that and also I don't believe that we advised Mr Cheah about this letter, and in fact I, I think I took the view that it would not have been proper to do so, he had to get his own advice.

So when did you form a view there was a conflict of interest between the ALP and Mr Cheah?---I think probably when I read this.

Well, again when you probably, because - - -?---Well, I don't really recall, Mr Moses.

10 Well, that's what you need to say, because what's the truth? Do you recall it now or you're just speculating like you've done about your recollection of the meeting on 16 September? Which one is it? Can you recall or you can't recall?

MR McINERNEY: Well, I object, that's - - -

MR MOSES: I'm entitled to ask that question, Chief Commissioner.

MR McINERNEY: Well, one question at a time, Mr Moses is entitled to ask.

20 THE COMMISSIONER: Yes. I think - - -

MR MOSES: Well, let's stick with the last question. Can you recall reading this letter of 12 September, 2017, at all prior to today?---I think I have a vague recollection of reading it, Mr Moses.

And when can you recall you read it for the first time?---Some time in, after it was written in 2017.

30 And how was it drawn to your attention?---I don't recall.

And can you recall, sitting here today, what you thought when you read it? ---To the best of my recollection, which isn't strong, I think, I, I believe that I formed the view that Mr Cheah would have to get his own representation about this matter.

THE COMMISSIONER: Did you give him advice to do so?---I don't recall that, Chief Commissioner, but I believe that's what happened. I don't believe my firm advised Mr Cheah about this at all.

40 Did you advise, well, do you know whether he received advice that he should get independent representation or advice?---I think so, Chief Commissioner.

Well, can that be verified one way or the other?---I think so but I'm not a hundred per cent sure.

Well, you might make enquiries to check that, if you would?---Yes, yes.

MR MOSES: Can I ask you this - - -

THE COMMISSIONER: This - - -

MR MOSES: Sorry, Chief Commissioner, I'm interrupting you. You go ahead.

THE COMMISSIONER: On any view of it, this is a significant letter, isn't it?---Oh, yes.

10

Written by the chairperson himself, the Honourable Keith Mason, Chairperson of the NSW Electoral Commission, offering immunity on the terms set out. Certainly it was significant to Mr Cheah's position?---Yes, I agree with that.

Significant to the Electoral Commission's position if he cooperated on that basis?---Yes. And I suppose consistent with the fact that the commission feels that there was information that he had that he hadn't yet provided.

20

Yes. But it was significant also from the viewpoint of your client, the ALP, this matter, isn't it?---Yes.

Well, it suggests that the chairperson of the NSW Electoral Commission has taken the view that this was a person who was or had been assessed as being potentially a worthwhile witness in relation to the investigation and/or any proceedings that might arise out of it.---Yes.

30

Well, did you make it known to the ALP, firstly, that this offer had been made to Mr Cheah?---Oh, I think I got the letter from the ALP. I think they sent it to me.

So you believed they would have known about the letter?---I, I don't see how I could have got the letter other than if the ALP sent it to me.

Yes.

40

MR MOSES: Yes, thank you, Chief Commissioner. So can I just go back to an issue that arose yesterday. Mr Huang's company became a client of your firm in 2018?---Correct.

That was an important coup for your firm?---Oh, I don't, I don't have that view.

No? Did you play any role in recruiting that company to your firm?---No, none.

None at all?---No.

And you've never met Mr Huang?---No, no.

I asked you about the concept of conflict of interest earlier. Do you agree that if your client, the ALP had to provide information that in fact Mr Huang was the donor and was part of a scheme to avoid the obligations under the electoral funding legislation in this state, there would be a conflict of interest in your firm acting for the ALP and the Yuhu Group of which Mr Huang was the principal, do you accept that?---No.

10 You don't?---No, I don't.

No. Okay. So - - -?---It would be a conflict if the matters were in any way related, but they're not at all.

Right. So you're seized with information from one client potentially that suggests that another client has committed a criminal offence, and that client has a duty to report the matter, but you don't see that creates a conflict in terms of you potentially having to withhold that information from the other client. Is that your evidence? I just want to understand it.---Could you  
20 repeat the question?

You have one client of the firm that has an obligation to reveal information to a regulator that, if revealed, would result in another client of your firm being the subject of a charge of which they could potentially face a gaol term of 10 years, and you don't see that that's a conflict, do you, in relation to your firm acting for both clients? That is, seized with that information in relation to one client and how that may impact upon another client. Is that correct?---It could be a conflict, but Mr, we don't, Holding Redlich has  
30 never acted for Mr Huang, and the Yuhu Group is actually legally something quite different to Mr Huang.

So you'd turned your mind to it?---It's a legal, it's a company.

Sorry, did you turn your mind to it or are you just now answering the question in the witness box? I just want to know your answer to that. ---Could you repeat that?

The answer you just gave to the Chief Commissioner, was that something that's a response to my question, or had you turned your mind to this  
40 earlier?---I haven't turned my mind to the conflict issue, but I've already given evidence that nobody in my firm has had – and I've checked this, I've had this checked – that nobody has had any contact with Mr Huang whatsoever, and that our instructions from the Yuhu Group have not come from him, they have come from other executives in that group.

THE COMMISSIONER: In relation to what sort of matters?---Property matters, Chief Commissioner. Property development type matters.

MR MOSES: Thank you. Now, the complaint to the inspector. Can I ask that the witness be shown pages 68 to 71 of the electronic bundle. It's an email of 18 April, 2019. While that's coming up on the screen, I want to put to you a direct proposition. It was your idea to send the complaint to the inspector about ICAC, wasn't it?---I've already said it was not solely my idea, but I didn't in any way suggest it shouldn't be done.

Well, you suggested it be done.---No, that's not correct.

- 10 Can the witness be shown the 18 April email? Are these your words, "As we have discussed, I think it's important the ALP NSW requests that the inspector of the ICAC, Bruce McClintock, SC, undertake an investigation in respect of the issue and execution by the ICAC of the search warrant in December last year and the resultant media publicity. I am attaching a draft letter to Mr McClintock for your approval." Do you see that?---Yes.

It was your idea to make the complaint, wasn't it?---I don't believe it was solely my idea, no.

- 20 I'm sorry, is this Alice in Wonderland? I mean, do the words mean what they mean to you, Mr Robertson?---There's a long background to this, Mr Moses, that way pre-dates April.

Do you accept that you're the one who came up with the idea to request the inspector undertake an investigation of the conduct of ICAC?---It was certainly partly my idea, Mr Moses.

- 30 Now, can I ask that the witness be shown the letter that was sent on 6 May, 2019, to the inspector. It's in evidence elsewhere, I think, Commissioner, but convenient at pages 72 to 74 of the electronic bundle. If you go to the next page of that. It's the last paragraph that you were asked questions about previously. That was your drafting, wasn't it?---Yes.

Those words came from you, correct?---Correct.

Sir?---I said correct.

- 40 Thank you. If you go to the first page, then. Now, in relation to this letter, you'll see in the fourth paragraph, "Our clients have fully complied with the investigation of the ICAC to date. The issues being investigated have also been investigated extensively by the NSW Electoral Commission," and just focus on these words, "and again our clients fully cooperated with that investigation and provided all relevant documents and information." Do you see that?---Yes.

That wasn't true, was it?---It was my belief at the time and it was my instructions.

But had you bothered to actually read carefully the notice of 6 December and the answers given, you would have not been able to send that letter, correct? At the time you'd come to send this letter, you had gone back and looked at the notice, you would not have been able to send that letter. Do you agree with that? Mr Robertson?---No, I don't agree with that.

10 Do you agree that had you gone back and read the transcript of Mr Cheah's interview with the Electoral Commission on 22 June, 2017, that you would not have been able to make that representation to the inspector?---Only if I had read the, only if I had reviewed the transcript, which I didn't do, and then compared it back to a question eight or nine months earlier on another document.

20 But if you're going to launch an attack on the Independent Commission Against Corruption via this correspondence whilst you are aware there's an ongoing investigation, you'd want to be careful to make sure you get your facts right, don't you? Don't you?---Yes but I'm a lawyer. We also act on instructions and they were my instructions. They were also at that time my belief and I reject the notation that this was intended to in any way be an attack on anybody. It was a confidential request for an, for an, for the inspector to investigate. It was not an attack on anybody.

Well, let's get back to the representation, "Our clients fully cooperated with that investigation and provided all relevant documents and information." Do you accept that had you carefully read the transcript of 22 June, 2017, of Mr Cheah's interview, you should not have sent this letter. Do you accept that?---No.

30 Do you accept that had you read the answers to the notice of 6 December, 2016 by reference to that transcript, you would not have sent this letter? Do you accept that?---No.

40 Do you accept that a competent and diligent lawyer would have checked to ascertain as to whether in fact it was true that the Labor Party had fully cooperated with the investigation of the Electoral Commission and provided all relevant documents and information before you sent a letter to the regulator overlooking this commission making a serious allegation? Do you accept that?---My instructions, which is what I act on, from NSW Labor were that they had fully cooperated and provided all relevant documents and information. And it has to be remembered, Mr Moses, that I am not aware of everything that NSW Labor did with either the Electoral Commission or this Commission in this matter. I'd only had a small part of involvement in terms of the totality of the thing. I could not have written that paragraph without instructions.

But you certainly had information in your possession that, had you properly read the documents, would have led you, as a competent and diligent lawyer, to come to the conclusion that there was a serious question about

whether information had been provided to the Electoral Commission that was false, correct?---No, I don't accept that. And if I'd had that view, I would have been raising it with NSW Labor as to why they hadn't fully cooperated and so on, because the clear understanding from the get-go was that it was exactly what they would do, and it was my understanding that that was what they had done, notwithstanding a mistaken answer to one question.

10 But, Mr Robertson, the truth is – and I can take you back to the statement that you carefully prepared with your counsel, your lawyers – you don't recall anything. You don't recall the meeting of 16 September, 2016, correct, with Ms Murnain, correct?---Correct.

You don't recall reading the notices that were sent to you on 8 December, 2016, correct?---I don't recall it, no.

No. You don't recall reading the transcript of Mr Cheah's interview of 22 June, 2017, other than saying you did a cursory review, correct?---Correct.

20 You don't recall anything. Correct?---I don't recall the matters you just put to me.

No. Now, in relation to your role as a lawyer, as you've accepted in the beginning of the questioning, you had a duty of competence and diligence, correct?---Correct.

And you say you discharged that duty to the ALP, correct?---To the best of my ability.

30 Do you accept that you failed?---No.

No. And is that because you were aware from 16 September, 2016 that in truth it was Mr Huang who had donated the money?---No, I completely deny that.

Thank you. Now, your role as a lawyer, you accept, don't you, is to provide advice to the client in its best interests, correct?---Yes.

40 And if the client is in a position where it has given a false answer to the Electoral Commission, then you should advise that client to correct that information when you become aware of circumstances that warrant it, correct?---Yes.

And you didn't do it here, did you?---No.

No. And you should have, correct?---No, I, I don't accept that.

But, sir, you were, you're a lawyer, aren't you?---Yes.



So your role is, when you see something, to raise it with the client. I mean, you're not Humphrey B. Bear, are you? You're a lawyer, correct?

MR McINERNEY: I object.

THE WITNESS: I think we've established - - -

10 MR MOSES: I withdraw the – well, we established you're a lawyer. But is it your obligation to raise it with the client when you see something?---It depends on the circumstances. But I've already said that I did not think to compare the answers in the Cheah transcript back to a document that was prepared in December 2016 to, to check whether there was a discrepancy. I just didn't do that. It didn't occur to me to do it, and I didn't do it.

I just want to ask you one final issue if I can. You received the draft report from the inspector noting that he intended to dismiss the complaint that had been made, and asking for any response or comment. Do you recall getting that on 17 June?---Yes.

20

Did you read that draft report?---Yes.

When you read it did you go running to the client to say, "Oh my God, I've kicked an own goal here. We'd better withdraw this bloody thing because it's going to blow up in our face"? Did you?---Not in the way you put it, Mr Moses, but I discussed it with the client definitely.

30 Who?---Initially with Kaila Murnain and then there was a meeting of the party officers where I addressed the matter in a telephone conference.

30

Did you advise them to withdraw the complaint?---No, and I don't believe it would have been possible to withdraw the complaint.

No. At the time of receiving the draft report did you go back and check the facts to make sure that you had not in any way gotten anything wrong in respect of this draft report?---The draft report from the inspector simply dismisses the complaint. That's all I looked at. And indicates that he would put it before the presiding officers of the parliament. That's all I looked at. I didn't believe there was any need to check anything else.

40

But did you read the draft report?---Yes.

And it was quite a comprehensive dismissal - - -?---Yes.

- - - of the complaint. Correct?---Yes, but no suggestion that the complaint was improper.

But you didn't go back to check whether your initial representation to the inspector was correct?---No, I didn't and nor does he, does that issue get raised.

Thank you. I have no further questions. Thank you, Chief Commissioner. Thank you, Mr Robertson.

10 MR ROBERTSON: Just before my learned friend finishes, if you wouldn't mind pardoning me from the bar table, I just want to raise something with Mr Moses.

THE COMMISSIONER: Yes, certainly. Yes.

MR ROBERTSON: It will only take about 10 seconds.

THE COMMISSIONER: Yes, certainly.

20 MR MOSES: No, I have no further questions. I thank my learned friend. Thank you.

MR ROBERTSON: I just have a few small matters by way of clarification and it's probably more sensibly done before Mr McNerney is called upon.

THE COMMISSIONER: Yes, certainly.

MR ROBERTSON: Mr Robertson, would it be right to say that, at least as a matter of practice, if you were to send one of your employees to accompany  
30 someone to an interview such as an interview with the Electoral Commission, you would expect that person to give you a debrief after the event?---No.

So you would simply send them there and you wouldn't expect to hear what has happened during the course of the interview. Is that right?---No, and I'm not sure it's proper to do that. I, I, I, all this is of concern to me. I, I don't believe that is proper if, if somebody has been, if a lawyer is accompanying a witness to a confidential examination for other people to start discussing that with them.

40

But we saw from the email exchange that I tendered during the course of Mr Moses's cross-examination that one of the reasons why you thought that someone should attend with Mr Cheah is so that we, and you confirmed that that was NSW Labor, could get an idea as to where the investigation was going. Correct?---The email says that.

And so surely you would have asked Ms Butler to give you some report as to the interview so as to get some idea as to where the investigation was going. Correct?---No, I don't believe I did that.

And so are you saying that there was no debrief of the kind that I've identified or you're simply saying you don't recall one way or the other?  
---No, I don't think there was because it's never been my practice when a  
10 lawyer from our firm has accompanied a witness to examinations anywhere really that, that I should debrief them at the end to find out what happened. I suppose if there was a major problem like, I don't know, the witness got into some major legal difficulty or something I might have heard about it.

Well, at least if Ms Butler had realised that there was a significant matter being raised during the investigation, in other words that Mr Huang Xiangmo may be the source of the money, that might be one reason why she might report that to you, do you agree?---I don't know, but I, I don't, she didn't, as far as I'm aware, and I don't wish to put, I would have stressed,  
20 though, that the responsibility for this matter is with me, not with anyone else.

THE COMMISSIONER: But the idea of having him represented by the legal representative was to get a clear idea of the direction the Electoral Commission investigation was taking. So why wouldn't, in the light of Mr Cheah's evidence, that provide for the clear idea of where the investigation was at or was going to go?---I just don't believe I did that, Chief Commissioner.

30 I think it's just been put to you that one of the purposes seen as desirable was to get a clear idea of the direction of the Electoral Commission's investigation through the interview.---Well, that's what the email says.

That's what it says.---I have no independent recollection of it, Chief Commissioner.

It would seem surprising that if information such as Counsel Assisting just referred to concerning Mr Huang emerged from the interview, that it was the very sort of information that would give a clear idea of where the  
40 investigation was going or likely to go, would you not agree?---Yes.

I'm acting under the impression that I guess Ms Butler is a very competent legal practitioner.---Yes.

She's a senior associate. Would you expect her to report to you on a matter such as Counsel Assisting just referred concerning Cheah's evidence?---Not necessarily, no, as I, for the reason I just outlined.

MR ROBERTSON: So I just want to be clear about your evidence on this issue. Is what you're saying you believe that there wasn't a debriefing of the kind that I have sought to summarise?---I don't believe I've ever debriefed, as you put it, a lawyer in our firm who's accompanied a witness to a confidential examination before an investigative body. I just don't believe I've ever done that, including on this occasion.

MR MOSES: Can I just ask that I just have a word with my learned friend. We've just sent a document to the Commission.

10

MR ROBERTSON: Pardon us, Mr Robertson. So to be clear, no usual practice of expecting a lawyer under your employ to report back to you after they may have accompanied a witness at an interview, correct?---Correct.

And based on, based on that, your belief is that there wasn't a meeting of that kind between you and Ms Butler, is that right?---Correct.

20

But the transcript of the interview with Mr Cheah was drawn to your attention within relatively short order of the interview taking place, is that right?---I don't know when we received the transcript. I, I don't know that it was in short order.

Can we just have the document on the screen to which I drew attention a moment ago. I might come back to that topic, Mr Robertson, while we get it organised. Chief Commissioner, I apply for the direction that was made under section 112 of the Independent Commission Against Corruption Act, in relation to the compulsory examination of Mr Robertson on 22 August, 2019, be lifted.

30

THE COMMISSIONER: The basis being?

MR ROBERTSON: The basis being that the public interest that required it to remain confidential before now has come to an end given that Mr Robertson's cross-examination has also come to an end. Further, what Mr Robertson may have said on short notice and without an opportunity to prepare is a matter that may be relevant to credit in particular in relation to the answers that have been given during the course of this public inquiry.

40

THE COMMISSIONER: Yes, all right. In respect of the compulsory examination conducted with Mr Robertson, 22 August, 2019, I made an order pursuant to section 112 in respect of his evidence and the transcript of it. I'm satisfied it is in the public interest that the section 112 order be lifted. I so order.

**VARIATION OF SUPPRESSION ORDER: COMMISSIONER'S  
DIRECTION PURSUANT TO SECTION 112 OF THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION ACT IS**

**LIFTED IN RESPECT OF THE EVIDENCE GIVEN BY MR IAN ROBERTSON IN THE COMPULSORY EXAMINATION OF 22 AUGUST, 2019**

MR ROBERTSON: Mr Robertson, you participated in a compulsory examination before this Commission on 22 August, 2019, correct?---Yes.

10 You were summonsed to appear at that compulsory examination on the day before, is that right?---Yes.

Between being given the summons and attending to give evidence, you weren't given any idea as to the topic areas that I was going to examine you on, on that day, is that right?---No, none.

And you recall that on that occasion I put to you a number of allegations as to what Ms Murnain said about the meeting of 16 September, 2016, correct?---Yes.

20 And you didn't know in advance of the compulsory examination that I was going to put those matters to you, is that right?---No, I did not.

At that point in time your firm was acting for NSW Labor and Country Labor in relation to this public inquiry, correct?---Yes, that's correct.

30 But that examination, that compulsory examination having occurred, you returned the instructions and no longer acted for NSW Labor in connection with the inquiry, is that right?---I immediately disqualified myself. Others within my firm – because I was not allowed to tell anyone what I had learned – others in my firm took the decision that if I was likely to be a witness, which seemed to be, I formed the view, would be likely, that both NSW Labor and our firm would be in an impossible position of Holding Redlich had continued to represent NSW Labor. So the firm ceased to do so the following day, on 23 August.

I tender the compulsory examination transcript of Mr Ian Robertson of 2 August, 2019.

40 THE COMMISSIONER: Yes. The transcript of the compulsory examination, 22 August, 2019, will be admitted and become Exhibit 272.

**#EXH-272 – TRANSCRIPT OF COMPULSORY EXAMINATION OF IAN ROBERTSON ON 22 AUGUST 2019**

MR ROBERTSON: That document, of course, will be subject to the more general directions that you made on the first day of the public inquiry concerning personal information and the like.

THE COMMISSIONER: Yes. There's to be no publication of personal information that may be contained in the transcript, 22 August, 2019, such as addresses, email addresses and the like.

10 MR ROBERTSON: Mr Robertson, a little bit earlier, there was a reference to a statement that you prepared in advance of this public inquiry. Do you recall that?---Yes.

And for the benefit of that transcript, that was Exhibit 270. Do you confirm that other than the minor change that you identified, namely the start date of Ms Sibraa, that statement is otherwise true and correct to the best of your knowledge and belief?---Yes.

20 And so that was a statement that was in the form that you signed it before you commenced to be examined in this public inquiry by me, is that right? ---Correct.

My learned friend Mr Neil asked you some questions regarding telephone records and the like, and can we have, please, on the screen a document I'll call the less redacted Exhibit 210, a call itemisation document. And in answer to Mr Neil you said, "There's a record of calls I made on, on my mobile phone that day. I believe they're in evidence somewhere." Is the document that you're referring to in answer to Mr Neil the document that is now on the screen?---Yes.

30 And there's some handwriting there in blue, what appears to be blue pen. Is that your handwriting?---Yes.

And so do we take it that you went through – I withdraw that. And so this is a document that you obtained yourself by reference to telephone records that you could obtain?---My firm obtained it from Telstra.

And you then reviewed the numbers on 16 September to identify where you recognised those numbers. Is that right?---Yes, correct.

40 And you then wrote the names of the individuals where you recognised the numbers. Is that right?---Yes.

Now, if you just have a look sequence number 109 and there's a reference there to HR partner. Can you just explain what you meant by HR partner? ---Holding Redlich partner.

So that's another partner of your firm. Is that right?---Correct.

And the other document, the call charge record document referred to that number as being a number associated with Justice Services Pty Ltd.---Yes.

And that's the service company of Holding Redlich I think you told us. ---Yes. All of, all of our phones are through that company, are paid for through that company.

10 I tender the document that appears on the screen namely, a call itemisation document. Can I respectfully suggest that it be marked Exhibit 210A because there's an Exhibit 210 that is the same document but it's redacted in a way that makes it impossible to read all of the handwritten text.

THE COMMISSIONER: 271A? Yes, very well. The call itemisation referable to Mr Robertson will be admitted and become Exhibit 271 - - -

MR ROBERTSON: 210A.

THE COMMISSIONER: 210A. Thank you.

20

**#EXH-210A – LESS REDACTED CALL ITEMISATION RECORD FOR 16 SEPTEMBER 2016 AT PAGE 157 OF THE ROBERTSON CROSS-EXAMINATION BUNDLE**

30 MR ROBERTSON: Mr Robertson, in answer to one of my learned friend Mr Neil's questions you explained that the Lalich matter arose from a specific media inquiry about breach of donation laws which is a serious matter. Do you remember giving an answer to that effect?---Yes.

And so I take it that you agree that a breach of donations laws is a serious matter?---Yes, particularly by a state MP.

But a suspicion about a scheme to evade electoral laws you must agree that that's a serious matter. Correct?---Oh, yes. Yes, of course.

Indeed it's a very serious matter.---Yes.

40 Now, one of your explanations as I understood it as to your focus on the Lalich matter on 16 September, 2016 was that it was a serious matter because it concerned a breach of donations laws. Is that right?---Yes, and it concerned the leader's office.

I was going to ask about that. So is it right that as you understand it that request for advice arose because there was a media inquiry with the leader's office which in turn found its way to NSW Labor which in turn found its way to you?---Yes.

So that's at least one of the explanations, isn't it, as to why Mr Chris Willis was copied in in a number of emails, in other words the source of the request for advice or at least the initial source was the leader's office. Correct?---Yes.

10 And so would you agree that the mere fact that Mr Wallace is copied on some of the emails concerning the Lalich matter doesn't confirm that it's a matter of importance or urgency, rather it simply confirms that the initial source of what became a request for advice was the leader's office. Do you agree with that?---No.

Well, as I understood it, one of the reasons you've identified – I withdraw that. As I understood your evidence, part of the reasons why you say the Lalich matter must have been urgent and important was that the leader's office was involved. Is that right?---Yes.

20 But it was more than that, wasn't it, because it wasn't merely that the leader's office was involved it was the subject matter of the inquiry. Correct?---Yes.

It was breach of donations laws which is a serious matter. Correct?---Yes.

What I want to suggest to you is that the mere fact that we see Mr Willis's email address on some of the emails concerning the Lalich matter - - -? ---Sorry, with respect, I think it's only on one.

30 I'll check that. I thought it was on more than one but at least - - -?---No, it was done only on one. I think it's only on the one of 17 September at 11.50am. I think that's the only occasion.

What I want to suggest to you is the mere fact that his email appears on one email or perhaps more than one email that doesn't tell us anything about the importance or the urgency of the matter. Do you agree with that?---No, because it's extremely unusual. In fact I think it's the only occasion that I, I or we sent an email to the chief of staff, to the Leader of the Opposition. It's very unusual and indicates to me importance and urgency.

40 You've been asked some questions about your firm working for the Yuhu Group, and I think your answer was that first happened towards the beginning of 2018, is that right?---Yes, in about February 2018.

And to your knowledge, did your firm take any steps to acquire Yuhu Group or any entity associated with it in advance of February of 2018?---Not to the best of my knowledge.

THE COMMISSIONER: If the firm had started acting for the Yuhu Group in February 2018, presumably there had been discussions prior to that time with the Yuhu Group vis-a-vis them becoming a client of the company, of



the firm, sorry.---As I recall it, one of our partners was introduced to one of their executives, who I believe is a Korean national, and that it started from there, is my understanding. I have not personally been involved with it.

Which partner was that?---A man called Farnsworth, Geoff Farnsworth.

And has he been involved in doing the transactional work for Yuhu Group?  
---No. Oh, I'm not, I apologise, Chief Commissioner. I'm not sure.

10 You may not be able to answer this question, but as at February 2018, was Mr Huang Xiangmo the chairman or chairperson of the Yuhu Group?---I don't know.

I see. So was it, from what you have been told, was it sheer coincidence that your firm ended up acting for Yuhu Group, and notwithstanding that Yuhu Group and/or Mr Huang had been at the centre of the Dastyari matter, in other words was there any connection there or was this just pure coincidence that the - - -?---There was no, there was no connection at all.

20 - - - person or company that was very much in the spotlight in 2016 was the Yuhu Group and in early 2018 Yuhu Group becomes a client of your firm? It seems a remarkable coincidence, but maybe it was just that. Do you have any idea?---There was no connection at all, Chief Commissioner.

It's just coincidence?---Yes.

MR ROBERTSON: Mr Robertson, can we go back to where we were before about the - - -

30 THE COMMISSIONER: I'm sorry to interrupt you.

MR ROBERTSON: I'm so sorry.

THE COMMISSIONER: I know you're trying to complete this so that Mr Robertson's able to get away for his afternoon appointment, but I think the clock's starting to beat us. What do you suggest?

MR ROBERTSON: Yes. I'm going to be very brief. I think I'll be less than 10 minutes.

40 THE COMMISSIONER: Yes. Mr Robertson, what time is your board meeting or whatever it is that you - - -?---3 o'clock.

3 o'clock. All right.

MR ROBERTSON: Could I have a further 10 minutes?

THE COMMISSIONER: Yes, of course.

MR ROBERTSON: Mr Robertson, can we go back to the interview with Mr Cheah. Ms Butler at least reported back to you in the sense of providing you with a copy of the transcript of that interview, correct?---Yes, except the transcript came in sometime later, and I've actually tried to find when it came in and I can't work that out.

10 Well, I can help you this way. Can we have, please, the email of 11 July, 2017 on the screen, please. And if we go towards the bottom of that page, we've got an email chain. You'll see, Mr Robertson, that Ms Butler appears to forward the transcript to both Ms Sibraa and to you on 11 July, 2017. Do you see that there?---Yes.

And is that consistent with your recollection of when you first received the transcript?---Yes, well, I don't have a recollection, but it would appear to have been on or about that day.

20 Does that assist in your recollection in any way as to whether or not there was any reporting back, other than simply copying you in to the email, that Ms Butler did to you in relation to Mr Cheah's interview?---I don't believe we ever discussed Mr Cheah's evidence at all.

Chief Commissioner, I tender the email on the screen, being an email from Ms Butler to Ms Sibraa, copied to Mr Robertson of 11 July, 2017.

THE COMMISSIONER: Yes. The email of 11 July, 2017 will become Exhibit 273.

30 **#EXH-273 – EMAIL FROM SARAH BUTLER TO JULIE SIBRAA  
AND COPIED IN TO IAN ROBERTSON ON 11 JULY 2017**

MR ROBERTSON: Just one final matter, Mr Robertson. The Lalich matter arose regarding breach of donations laws and that's a serious matter, correct?---Yes.

40 A suspicion about a scheme to evade electoral laws, that's a very serious matter, correct?---Yes.

You knew that the Electoral Commission had a suspicion as to that matter as at December of 2016, correct?---Yes.

And because the Lalich matter was a serious matter, you paid particular attention to that on 16 September, 2016, correct?---Yes.

You even went so far as to interrupt a senior associate who was on leave and asked her to prepare advice in relation to that matter?---It was more the urgency of the matter.

But it was not just urgent, it was important as well because it was important and serious if there's a question about breach of donation laws, correct?

10 ---Yes, and why we've given a lot of advice about breaches of donation laws over, over the years.

But what I'm trying to understand is that if the Lalich matter, which was about breach of donations laws, was serious and you've told us that you directed yourself carefully to those matters and you gave advice and did things of that sort, why would you only consider the response that was given to the Electoral Commission in December in a, to use your term, cursory way?---Because one was seeking specific advice about whether the law had been breached, the other was asking us to check a response to a notice to produce and, with respect, I think they're quite different.

20

But here you have two at least serious if not very serious matters, correct?

---Yes.

And what I'm just trying to understand is why in one it seems that you gave it close attention and produced advice and things of that sort, and yet in another you dealt with it in, to use your phrase, a pretty cursory way. Do you have an explanation for that?---Only because in the latter, the notice, we were not asked to provide advice, as such. We were simply asked to check documents and answers.

30

But you at least accept that if you had your time again, you wouldn't have dealt with the December communications in a cursory way, you would have dealt with them with much more care and attention, do you think?---I, I think I would have met with Ms Sibraa.

So the answer to my question is yes, I think.---Yes.

Thank you, Chief Commissioner.

40 THE COMMISSIONER: Mr McInerney, do you have - - -

MR McINERNEY: Yes, I don't have any re-examination, Chief Commissioner.

THE COMMISSIONER: Thank you.

MR MOSES: Chief Commissioner, I just have one question arising out of the 11 July email that my learned friend took the witness to.

THE COMMISSIONER: Yes, you go ahead, Mr Moses.

MR MOSES: You told us earlier that it may not have been appropriate to share the interview that Mr Cheah had with the Electoral Commission to the Labor Party. Do you recall giving evidence to that effect?---Yes.

That email that Counsel Assisting has just shown you of 11 July shows that the transcript is being sent to Ms Sibraa at the Labor Party, sir, correct? ---Yes, yes.

And you were copied in on that, correct?---Yes.

And do you agree that there was nothing raised by you that that is a document that should not have been given to the Labor Party, correct? ---With hindsight I think it may have been a mistake to send it to the Labor Party, but it was done.

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

THE COMMISSIONER: Thank you, Mr Robertson. There is always a possibility of you being recalled for some particular matter, so I can't discharge the summons, but you're free to go today.---Thank you, Chief Commissioner.

Thank you. I'll adjourn.

**THE WITNESS WITHDREW [1.24pm]**

**LUNCHEON ADJOURNMENT [1.24pm]**