

AEROPUB01470  
20/09/2019

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pp 01470-01484

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 20 SEPTEMBER, 2019

AT 2.25PM

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Chief Commissioner, I thank the Commission for reconvening at short notice and I apologise to those watching or observing that it's become necessary. Can I - - -

THE COMMISSIONER: Does the witness need to be re-sworn it - - -

10 MR ROBERTSON: It may be sensible for abundant caution. Probably not strictly speaking but for the abundance of caution, can I respectfully suggest that course.

THE COMMISSIONER: As we are reconvening, I think we will administer the affirmation again. The interpreter I don't think we need to re-do. Yes, just the witness.

THE COMMISSIONER: Did she say yes, she would? Thank you. Take a seat. Yes, Mr Robertson.

MR ROBERTSON: Can we have please page 48 of the Electoral Commission bundle on the screen. Ms Siu, you will recall that this morning I asked you some questions about the document that is on the screen, being  
10 the questions that you were asked by the Electoral Commission. Do you recall me asking you questions about that?---\*I recall.\*

And you told us that Jonathan gave you a copy of this document with handwritten answers on it, correct?---\*Yes.\*

And you told us that he gave you a copy of the document that's on the screen with his handwritten notes, correct?---\*Yes.\*

And you told us that you still had a copy of the document that looks like the  
20 one on the screen with Jonathan's handwritten notes, correct?---Correct.

And then the Commissioner have you a direction requiring you to produce that document. Do you remember that?---\*Yes.\*

And so you know you are required by law to provide that document to the Commission, correct?---Yes.

You recall that there was an adjournment this morning, we had a break this  
30 morning in the evidence?---Yeah.

Yes, you remember that?---Yes, I remember.

You went to the bathroom during that break, correct?---Yes.

You made a telephone call while you were in the bathroom, correct?---Yes.

Who did you call when you called someone from the bathroom during the morning tea break?---\*My brother-in-law.\*

40 What did you say to your brother-in-law?---\*I asked him to put away two folders, the two folders.\*

What folders?---\*Folders containing documents.\*

What documents do those folders contain?---\*There might be a letter.\*

A letter from whom?---\*Not a letter but maybe this document.\*

THE INTERPRETER: Witness pointing to the screen.

MR ROBERTSON: So in one or other of the folders you've referred to, you expect there to be a copy of the letter that's on the screen with the handwritten annotations from Jonathan, correct?---\*Yes.\*

Why did you tell your brother-in-law to put away the folders? Do you understand my question?---(Speaks Cantonese)

10 Why is it taking so long to answer it?---(No Audible Reply)

Why did you tell your brother-in-law to put away those folders?---\*Because I didn't want to, I want to help Jonathan.\*

You wanted to hide the document that the Commissioner directed you to produce, correct? Correct?---Yes.

20 You wanted to impede this investigation by preventing compliance with the Chief Commissioner's direction of the morning, do you agree? Do you agree?---\*Agree.\*

You wished to hide the very document that the Chief Commissioner asked you to produce to this Commission, is that right? Is that right?---\*Yes.\*

THE COMMISSIONER: Did you ask your brother-in-law to hide those folders?---\*I told him to take it out.\*

And hide them?---\*Yes. I was, I was wrong.\*

30 MR ROBERTSON: And that's because you had the intention when you made that call of defying the direction the Chief Commissioner gave you this morning, do you agree? Do you agree?---\*I don't want Jonathan Yee to have so many crimes or offences.\*

You decided to defy the direction the Chief Commissioner gave you this morning. Do you agree?---\*I don't know.\*

40 The reason you made the telephone call to your brother-in-law this morning was you wanted him to hide the document that the Chief Commissioner asked you to produce. Do you agree?---\*Yes.\*

And the reason that you did that was that didn't want this Commission to have that document. Do you agree?---\*I don't want to add offences to Jonathan.\*

You agree that by making the telephone call you were taking steps to ensure that the Commission did not obtain the document that you were directed to produce, do you agree?---\*Yes.\*

And by the time of the telephone call, you had decided to not comply with the direction the Chief Commissioner gave you this morning, correct?---\*I didn't think about that.\*

10 THE COMMISSIONER: Why would you want to help Jonathan Yee? I mean, he has lied to this Commission, has asked you to lie to this Commission. In other words, why would you want to help somebody who's been acting contrary to law?---\*I don't know, but I don't want to give him more offences.\*

What's your brother-in-law's name?---\*Harman.\*

What's his full name?---\*Harman Wong.\*

How do you spell Harman?---\*H-a-r-m-a-n.\*

MR ROBERTSON: How do you spell Wong?---\*W-o-n-g.\*  
20 Is he any relation to Ernest Wong?---\*Not related.\*

The telephone that you made the telephone call on this morning, do you still have that with you?---\*Yes. I have it with me.\*

That's with you in the witness box, correct?---\*Yes.\*

Chief Commissioner, I seek a requirement under section 35(2) of the Independent Commission Against Corruption Act requiring the forfeiting immediately, or the delivery immediately, of the witness's telephone.  
30 Plainly enough, there may well be material on that telephone which is of particular interest to this investigation.

THE COMMISSIONER: Yes. I direct the witness, Patricia Siu, to produce forthwith the mobile phone that she presently has in her possession. I make that direction pursuant to section 35(2). I consider that the direction is necessary and desirable in the public interest.

40 **COMMISSIONER'S DIRECTION: I DIRECT THE WITNESS, PATRICIA SIU, TO PRODUCE FORTHWITH THE MOBILE PHONE THAT SHE PRESENTLY HAS IN HER POSSESSION. I MAKE THAT DIRECTION PURSUANT TO SECTION 35(2). I CONSIDER THAT THE DIRECTION IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST.**

MR ROBERTSON: Ms Siu, please take out your telephone and give it to Mr Vickery. Ms Siu, does your telephone have a password in order to

access it? Don't say the password out aloud. I just want to know whether there is a password. If there is a password, please write it on the piece of paper that you've just been given. Ms Siu, do you have a – and again, don't say it out aloud – do you have an iTunes backup password?---\*No.\*

Do you back up the data on your telephone from time to time?---\*No.\*

10 Other than using your telephone for telephone calls, do you use any apps for the purposes of communication, such as WeChat?---\*Yes, WeChat.\*

Did you call your brother-in-law using an ordinary telephone call or did you use an application like WeChat or perhaps FaceTime?---\*I called on the mobile number.\*

In relation to WeChat, do you have a separate password for WeChat or can you access WeChat by simply putting in the main password for your telephone?---\*There was no password.\*

20 There's no separate password for WeChat, is that right?---\*No.\*

Other than WeChat, do you use any other applications for the purposes of communication? For example, FaceTime or some other application of a similar kind other than WeChat?---\*WhatsApp.\*

And is there a separate password for WhatsApp?---\*No.\*

THE COMMISSIONER: Have you used your mobile phone in the last week or two to communicate with Jonathan Yee?---\*No.\*

30 Have you used your phone to communicate with Ernest Wong?---\*No.\*

You said that you asked your brother to hide - - -

MR ROBERTSON: Brother-in-law.

THE COMMISSIONER: Brother-in-law, thank you. Two folders, is that right?---\*Yes.\*

40 Is one or both of them a pink folder?---\*Yes.\*

Both of them or one?---\*Looks like both, both of them are.\*

And what type of documents will be found on both of those folders, or each of those folders?---\*One of them has that summons document.\*

What about the other one?---\*Similar. I don't remember.\*

Do you keep your business documents in either of those folders or are the documents connected with this investigation or both?---\*There are other documents there too.\*

Would there be any documents on either of those two folders that relate to communications with your lawyers?---\*No.\*

10 Mr Hodges, I ask that question in order to ascertain whether there might be any privileged material. Based on that last answer, it doesn't sound likely, but nonetheless, we'll keep an eye out, just in case.

MR HODGES: I doubt whether there would be, Your Honour.

THE COMMISSIONER: Sorry, I can't hear.

MR HODGES: I doubt whether there would be any privilege - - -

20 THE COMMISSIONER: It's just for more abundant precaution, that's all that I asked.

MR HODGES: And there will be no privileged material on the phone as well.

THE COMMISSIONER: Yes, thank you.

30 MR ROBERTSON: Ms Siu, I just want you to be quite precise as to the exact words you told your brother-in-law when you called him in the bathroom during the morning tea break. Now, is it right that you were speaking to him in Cantonese?---Cantonese.

And can you give me, as best you can, the precise words you said to your brother-in-law in Cantonese? And please do it near the microphone so the microphone can pick you up.---\*Help me. Go to my desk and next to my desk there are two pink folders. Help me hide them.\*

Did you say anything else to your brother-in-law during that call?---\*That I will be back in about half an hour.\*

40 Did your brother-in-law say anything in response to you?---\*He agreed to do so.\*

Is that the only thing your brother-in-law said to you?---\*I can't recall now.\*

Well, it was only a couple of hours ago. I'm going to ask the question again, other than what you've just relayed, is there anything that you said to your brother-in-law or anything your brother-in-law said to you on the

telephone?---\*I couldn't, he only agreed to do so. I couldn't hear anything else from him.\*

So that's the only thing that he said to you, he said that he was willing to do what you had asked of him, if that right?---\*Yes.\*

Other than your lawyers and you brother-in-law, have you spoken to anyone else since I started asking you questions this morning?---\*I have a friend from, in Malaysia. He or she knew about this matter.\*

10

Have you communicated with that person today?---\*Not today.\*

I'm just focussing on today between me starting to ask you questions and now. You have spoken to in the witness box, you have spoken to your brother-in-law and you have probably spoken to your lawyer. Have you spoken to anyone else other than those people?---\*No.\*

Since I started asking you questions this morning, have you communicated with anyone by text message or other instant message?---\*No.\*

20

Is it right, then, that the only communications with your telephone since we started this morning at about 10 o'clock was the telephone call with your brother-in-law and you haven't made any contact with anyone else by telephone call, WeChat, any form of instant message, email, or in any other way using your telephone?---\*No.\*

THE COMMISSIONER: Did you speak to your brother on his mobile phone or on a landline?---\*Mobile.\*

30 He was speaking on his mobile to you? You were speaking to him, in other words, on his mobile, is that right?---\*Yes.\*

And when you spoke to him, where was he?---\*He should have been home.\*

At your home?---\*Yes.\*

But you don't know for sure?---\*I'm not sure.\*

40 Is there anyone else who lives on the premises of your home?---\*My sister.\*

MR ROBERTSON: So your brother-in-law and your sister live in the same house as you, is that right?---\*Yes.\*

Chief Commissioner, in my submission you should make a direction under section 22 of the Independent Commission Against Corruption Act requiring the witness to produce forthwith the two pink folders the subject of her evidence. In my respectful submission, that's an appropriate

procedural course in circumstances where you this morning made a direction under section 35(2) requiring production of documents at this public hearing, and where it's obvious from the evidence that's just emerged that the witness has sought to thwart that very order. So in my submission a section 22 requiring provision forthwith is the appropriate procedural course to deal with the pink folders the subject of some evidence this morning.

10 THE COMMISSIONER: Thank you. Before I do that, Mr Hodges, do you have anything either in terms of the evidence of the witness, do you want to ask her any questions, and secondly, do you have any opposition to the application to direct under 22 the production of the records?

MR HODGES: There's no opposition to the order under section 22, but I do have some questions, which I should ask.

THE COMMISSIONER: I'll just find out, have you any other questions for the moment?

20 MR ROBERTSON: I just want to verify one matter.

THE COMMISSIONER: Yes. Well, just perhaps I'll deal with it a step at a time. Thank you, Mr Hodges. A direction was made earlier today during the course of the witness's evidence – that's the evidence of Ms Siu, Patricia Siu – to produce the document in relation to which she's given evidence of Mr Jonathan Yee having made handwritten answers or comments. The document in question, a copy of the document as I understand it, that originated from the Electoral Commission, in which it sought information in the course of its investigation by way of a question-and-answer format. Since then the witness was recalled and in course of questioning admitted to having contacted her brother-in-law and requested him to hide two pink folders, one at least by which is said to contain material relevant to this investigation, namely the document that she was earlier directed to produce under section 30, part 2 of the Act. Application is now made for an order under section 22 of the Independent Commission Against Corruption Act, which provides for notices requiring production of records for the production, in this case, of the document in question forthwith. Pause there for a moment. Mr Robertson, is the production related to the single document or to the folders themselves with the contents of the folders?

40 MR ROBERTSON: Can I hand up a suggested form of order?

THE COMMISSIONER: Yes, thank you.

MR ROBERTSON: Which will both be in relation to the specific and the general. In other words, proposed paragraph 1 deals with the particular document the subject of evidence this morning and paragraph 2 is in relation to the two pink folders, the subject of evidence this afternoon. Can I

respectfully invite the Chief Commissioner to turn the singular folder into the plural folders, plural.

10 THE COMMISSIONER: Yes. I'll do that. I was about to raise that with you. Yes, thank you. Accordingly, I direct in accordance with the notice to attend and produce documents addressed to Patricia Siu, dated today, the documents set out in the schedule in paragraphs 1, paragraph 2 as amended so paragraph 2 now reads the pink folders, plural, referred to by you in your telephone conversation et cetera, as set out in that paragraph. Accordingly that notice has been signed and the order made.

**COMMISSIONER'S DIRECTION: PURSUANT TO SECTION 22 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, THE WITNESS, PATRICIA SIU, IS DIRECTED TO PRODUCE THE PINK FOLDERS, PLURAL, REFERRED TO BY THE WITNESS IN HER TELEPHONE CONVERSATION**

20 MR ROBERTSON: Ms Siu, that order the Chief Commissioner has just made will require you to give the two pink folders that you have talked to us about, and if it in a separate document or in a separate place, the questions with the handwritten answers from Jonathan Yee. Do you understand?  
---(No Audible Reply)

30 THE COMMISSIONER: You understand, Ms Siu, you are not permitted to remove or in any way interfere in the documents or in any way interfere with the two folders before handing them over to an officer of this Commission. You understand that? Do you understand?---(No Audible Reply)

If you any person at your direction interferes with either of those folders, you or that person will be liable to be prosecuted for a very serious offence under the Independent Commission Against Corruption Act. Do I make myself clear?---\*Understand.\*

MR ROBERTSON: The location of the pink folders is in your residence in Bexley, is that right?

40 MR HODGES: I object to that. How would she know?

THE COMMISSIONER: I think, Mr Hodges wants to draw your attention to something.

MR HODGES: I mean - - -

THE COMMISSIONER: Do you want to speak to Counsel Assisting about it?

MR HODGES: Yes.

MR ROBERTSON: When you called your brother-in-law this morning, you thought that the pink folders are at your house in Bexley, is that right?  
---\*Yes.\*

And your house is in [REDACTED] [REDACTED] in Bexley, is that right?---\*Yes.\*

10 And the order that the Chief Commissioner's just made will require you to give those documents to Mr Vickery, who's sitting here next to me down at the end of this table, do you understand?---\*Understand.\*

Are you happy to go with Mr Vickery to your house to give him the document? And you can bring your lawyer as well if he wants to come.  
---\*Can I only have my lawyer? Just my lawyer?\*

THE COMMISSIONER: Mr Hodges, are you going to travel with your client?

20

MR HODGES: Yes, I was. I can indicate this, Chief Commissioner. When we adjourned originally at lunchtime, the intention at that stage was I was going to drive - - -

THE COMMISSIONER: Sorry, could you use the microphone. I'm sorry I keep having to tell counsel. It's not your fault. It's the position of the - - -

30 MR HODGES: When we adjourned originally, the intention was I was going to drive right then and there with the witness to Bexley to pick up the document. Whether or not at the time – and we've heard the evidence that was given in relation to the phone call, which was made in the toilet – whether or not after that phone call was made the witness had changed her view and was going to give me the document - - -

THE COMMISSIONER: You want to put some questions to her, don't you?

MR HODGES: Yes, I do.

40 THE COMMISSIONER: I'll give you the opportunity to do that. Just tell me about the mechanics of the matter.

MR HODGES: I'm happy to go and I'm happy to go with Investigator Vickery.

THE COMMISSIONER: All right. Well, I think that would be - - -

MR HODGES: Preferable.

THE COMMISSIONER: - - - of great assistance for you to be there.

MR HODGES: Yes.

THE COMMISSIONER: Because I was about to ask the witness for her authorisation for Mr Vickery to enter the premises, but if you're there, that will secure the situation from the Commission's point of view.

10 MR HODGES: The issue I raised with counsel was if a phone call has been made and obviously has been made to the brother-in-law to remove or hide these folders, and if the brother-in-law is no longer there when we get to Bexley, it may create a logistical difficulty locating him, particularly if we can't contact him.

THE COMMISSIONER: That's true.

MR HODGES: So perhaps Mr Vickery should take the phone.

20 THE COMMISSIONER: I think I'll just ask your client a question or two on that just for clarification. I'll come back to you, Mr Hodges. Ms Siu, in the call to your brother-in-law, you told him to take the two folders and place them somewhere, did you not?---\*Yes.\*

And precisely where did you tell him to put the folders?---\*I do not know.\*

Did you not tell him to put them in a drawer?---\*I told him to put them away.\*

30 Yes. You told him where to put them, though, didn't you? I want you to think about that and give an honest answer.---(No Audible Reply)

Do you want to ask anything on that?

MR ROBERTSON: I didn't hear that last answer, I'm sorry.

THE COMMISSIONER: What was the last answer?---\*I told him to take it away. Take them, it away.\*

40 MR ROBERTSON: Take it away where?---\*No, don't know.\*

But were you telling him to hide it at your house or were you telling him to hide it at some other place?---\*I only told him to hide it or them.\*

I might ask that question again. Were you asking him to hide it at your house or to put in some other place?---\*Just to hide it in somewhere.\*

You didn't specify where it should be hidden. Is that right?---\*No, I haven't.\*

10 But you know that the notice that you are about to be given will require you to get those folders and get the document and give it to Mr Vickery, whether they are still at your house or whether they are somewhere else? Do you understand?---\*I understand.\*

THE COMMISSIONER: Back to you, Mr Hodges. Before you deal with the questions you want to ask, are you prepared to assist the Commission in identifying the brother-in-law is and where he's put the folders? I'm asking you, Mr Hodges. Are you prepared to assist Commission officers to located the present whereabouts of the brother-in-law and to identify the location of  
20 the files, the folders?

MR HODGES: Yes, I am. Yes, I am, Chief Commissioner.

THE COMMISSIONER: If you make your best endeavours then that may eliminate unnecessary running around as it were.

MR HODGES: I agree, yes.

THE COMMISSIONER: Thank you.  
30

MR ROBERTSON: Ms Siu, do you know what your brother-in-law's telephone number is? Don't read it out but do you know his telephone number off the top of your head?---\*I don't know the number. It's in my phone.\*

But it is in your telephone. Can you just pardon me a moment, Chief Commissioner. Thank you for that indulgence Chief Commissioner.

THE COMMISSIONER: Now, Mr Hodges, do you have any questions of  
40 the witness?

MR HODGES: Ms Siu, do you agree that when we broke for the adjournment for lunch at the end of your first lot of evidence that you and I were going to drive to Bexley to pick up the document, is that correct?  
---(No Audible Reply)

And I made it clear to you that you had to produce that document to me, did I?---Yes.

And we were going to drive to pick up that document to comply with the order, is that what your understanding was?---\*Yes.\*

I have nothing further, Chief Commissioner.

THE COMMISSIONER: Thank you, Mr Hodges.

10 MR HODGES: It was merely only placed on the position that she may well have had an intention at one point when she made the phone call. That intention may have changed when she spoke to me.

THE COMMISSIONER: Thank you, Mr Hodges. Anything else?

MR ROBERTSON: Nothing further for my part. The formal service of the notice will need to occur but Mr Vickery has the document that you signed, Chief Commissioner and we'll do that once we adjourn.

20 THE COMMISSIONER: Very good. Just two matters. The phone, no doubt, will be marked for identification in the usual way?

MR ROBERTSON: Yes, please.

THE COMMISSIONER: Do you want it marked as an MFI here?

MR ROBERTSON: I think that might be convenient to be done now if it pleases the Commission.

30 THE COMMISSIONER: We'll have Ms Siu's mobile phone marked for identification, MFI 14.

#### **#MFI-014 – MOBILE PHONE OF PATRICIA SIU**

THE COMMISSIONER: There's one other matter. The address of Ms Siu, or at least the suburb and street I think you put, is suppressed.

40 MR ROBERTSON: Yes. Subject to the 112 direction that you made on the first day of the hearing but it's convenient to confirm that.

THE COMMISSIONER: Yes. Well, I just put on the record that the reference by the witness to any residential identification material, in accordance with the direction I gave at the outset of this public inquiry, is not to be published or communicated other than by an officer of the Commission for statutory purposes. All right. Mr Hodges, anything else?

MR HODGES: No, thank you.

THE COMMISSIONER: Thank you. Then I'll adjourn. You may step down, Ms Siu.

**THE WITNESS EXCUSED**

**[3.12pm]**

10 **AT 3.12PM THE MATTER WAS ADJOURNED ACCORDINGLY**

**[3.12pm]**