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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION GERDA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 20 FEBRUARY, 2019

AT 2.15PM

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

MR COLEMAN: I've given Counsel Assisting two documents, Commissioner, and can I explain briefly just how they came to my attention immediately before I did that. When we saw the letter from SNP to Mr Smith dealing with the audit, I asked my instructing solicitor next to me to find documents which caused that letter to be generated or any response and we've immediately found those emails.

10

THE COMMISSIONER: They're quite interesting, aren't they?

MR COLEMAN: They are. Which is why I rose when I did. So that's the explanation for that. On the document, reviewed generally, that's now been completed. I've just been given, whilst you were coming on to the bench, by Mr Whittaker, the partner instructing me, a letter to the Commission's solicitor with a folder of material, a further USB which contains additional documents not produced, a letter explaining what's in – and a bundle of what we have sought to comply with the direction you made yesterday about if we find anything which we think - - -

20

THE COMMISSIONER: Yes. I raised that with Mr Whittaker yesterday.

MR COLEMAN: Yes. And Mr Whittaker told me that so we've have people going through the documents as best we can and we've got a folder of documents without fear or favour, if I can say that, which we think Counsel Assisting might be interested in.

30

THE COMMISSIONER: That's terrific. So I'm sure he's delighted, I can tell.

MR COLEMAN: He is. I haven't been - - -

MR ENGLISH: Another early night.

MR COLEMAN: I myself haven't been though them.

THE COMMISSIONER: That's okay.

40

MR COLEMAN: So can I produce to the Commission – and I should say, I think there are additional documents in this bundle which may be relevant to the topic, not as significantly as the ones that we've produced but I'm not sure where Counsel is going with it, so it's really a matter for him. Well, I produce a letter from my instructing solicitors to the solicitor for the Commission, together with the folder of documents. Inside that folder, there are two USBs, one which contains the additional documents to be produced, pursuant to the notice to produce and the second USB contains electronic copies of the documents in this folder. And as to the actual - - -

THE COMMISSIONER: How many thousands of pages are we talking this time?

MR COLEMAN: I beg your pardon?

THE COMMISSIONER: How many thousands of pages are we talking this time?

10 MR COLEMAN: Four.

THE COMMISSIONER: So we're up to 10?

MR COLEMAN: Yes. I am not at the moment able to give you the explanation you require.

THE COMMISSIONER: That's okay.

20 MR COLEMAN: That is coming and I've impressed upon those who are going to instruct me that that needs to be done.

THE COMMISSIONER: Yes, thank you.

MR COLEMAN: But I don't want to do it unless it's fulsome and accurate, Commissioner.

30 THE COMMISSIONER: Thank you. Well, we'll take that now. Thanks, Mr Coleman. Mr Smith, would come forward again, please? Mr Smith, the oath you took this morning or a little earlier, it was this morning. Continues to bind you. Do you understand that?---Yes, Commissioner.

Thank you.

MR ENGLISH: If Exhibit 71, page 286 can be brought on the screen. I was asking you questions before the luncheon adjournment about that paragraph. During the audit a single staff member from SIG was identified as having worked 15 days without a full day's break. Do you see that?---Yes.

40 Did you make any enquiries of SNP as to who that staff member was?---I don't think I did personally but I stand to be corrected but I can't recall asking an individual name or anything.

Pardon? Can you speak up, please?

THE COMMISSIONER: Mr Smith, just keep your voice up a little bit if you don't mind.---Sorry. I, I, I couldn't recall specifically doing that but, but I'll stand to be corrected if it's, I just can't recall.

MR ENGLISH: It says, "Corrective action to the future has been taken." Did you satisfy yourself as to what that corrective action was?---Sorry, is that, is that on this document?

It is, yes. It's the second sentence of that paragraph. "This has been brought to the attention of SIG and corrective to the future has been taken." Did you make any enquiry as to what that corrective action was with SIG? ---Sorry, can the pointer go on that? I'm just trying to find exactly where that is. It's small print.

So it's in the same paragraph I just asked you about, during the audit.---I can't recall if, if I did.

You don't recall making any enquiry into any of the matters raised in that paragraph, is that your evidence?---I don't recall. I'm not sure if I did or I didn't, I just don't recall.

Now, there's next a heading, "Mismatch between employee roster and sign-in/sign-out sheets." Do you see that?---Yes.

There's an explanation provided in the following paragraph as to why there was such a mismatch. Again, did you do anything yourself to satisfy yourself as to the accuracy of that response?---Well, it's kind of a correct response, in the sense that the, the - - -

Can you just answer the question, please. Did you do anything yourself to satisfy yourself about the accuracy of that response?---Yes.

What did you do?---There's a rough roster and as they've said, the rough roster doesn't necessarily reflect the time sheet because of all the changes that may come up in a week or two weeks, university needs, sick leave - - -

Can I, I just asked you did you do anything, I didn't ask you to tell me what the roster was.

MR MACKAY: Objection. He was asked what did he do and he was explaining what he was doing and he was interrupted by my learned friend.

MR ENGLISH: It certainly wasn't a direct answer to the question.

THE COMMISSIONER: Just ask the question again.

MR ENGLISH: If you did anything to satisfy yourself as between a mismatch between employee rosters and sign-in/sign-out sheets, what was it?---It was more about the actual rough roster, it doesn't necessary exactly reflect the time sheets because of the changes that occur each week at the university, the needs of staff.

So can I summarise your answer there by I read this paragraph and did nothing further?---No.

You don't agree with that?

10 THE COMMISSIONER: If you don't agree with it, tell us what you did.
---So I think the statement there, Commissioner, they talk about, there's a rough roster that comes, that comes out, which are the flat shifts in the contract we're only talking about, not the ad hoc, and in the contract those shifts are four teams across the roster, two on, two off, two days, two nights and, and some off. I think the argument there is that never reflected the time sheets all the time because they, they weren't overlaid. The reason they weren't overlaid is that you do get sick leave or university requirements that come up where we need a protest or there's an emergency, we need to pull people off the shift to do certain jobs so the names may not necessarily always correlate, that didn't really, you know, not to be a fraud at the time, it's, it's about names don't correlate with time sheets sometimes and that would be the case because of operational needs.

20

So is the answer to the question that you didn't do anything because you didn't perceive there was a need to do anything?---No, I think I was explained reasonably, that, that made sense, that's exactly why the rough, the rough roster, the monthly roster doesn't always meet the time sheets because of those reasons, for sure.

And for that reason, you decided there was no need for you to do anything?
---It seemed to explain and fit the picture of what actually was happening.

30 And for that reason, you decided there was no reason to do anything?
---Well, I'm not sure if I've questioned that going up the line but I'm not sure of my report without having seen it but it, it seemed a logical explanation.

Very well.---Thank you, sir.

40 MR ENGLISH: Page 287, please. You see under, "The auditors consider that SNP should renegotiate to TBA, which currency date has long expired." Do you see that, the heading?---Yes.

40

It says, "All new employees are employed under the terms," so I think the third sentence, "of the Security Industry Award, 2010." See that?---Yes.

Are you familiar with that Award?---No.

Were you familiar with it after reading this letter?---It's, I'm not their manager, I'm managing a team. It says SNP obligation to ensure their people are under an Award.

Did you familiarise yourself with that Award after you read this letter?
---No, I can't recall reading the Award.

There's just some emails that I wish to tender, Commissioner. Firstly in relation to, you spoke of Morgan Andrews leaving and that time frame, I just want to clarify that with you so we know exactly when Mr Andrews left and you took on his responsibilities.---Well, I, I didn't take on his responsibilities.

10

Well, I know that's your evidence but we'll just see what the emails say.

THE COMMISSIONER: Are you going to tender these as you go on?

MR ENGLISH: I am. I've just been handed a copy. This is an email from 20 July, 2016, from Greg Robinson to CIS, all staff. I've got a copy if it assists, Commissioner. Might that be tendered with an exhibit number?

20

THE COMMISSIONER: Yes. We'll mark that Exhibit 88.

**#EXH-88 – EMAIL FROM GREG ROBINSON TO CIS ALL STAFF
TITLED 'FAREWELL MORGAN ANDREWS' DATED 20 JULY
2016**

MR ENGLISH: So you can see, this is a message farewelling Mr Morgan Andrews?---Yes

30

And it says in the second last paragraph, "Please join me in bidding Morgan a fond farewell and wishing him and his family all the very best," et cetera. "Morgan's last day will be this Thursday, 21 July," which was effectively the next day after this email. Do you see that?---Yes, 21st, yes.

40

It says, "In the meantime management responsibilities for the Campus Security Unit will rest in the very capable hands of Dennis Smith." So are you saying you weren't responsible for Mr Andrews's responsibilities at that time, if not after 21 July, 2016?---No. It says in the interim, I was never given a document to sign and say that I was officially relieving. I was never paid - - -

What, you weren't given a position description of Mr Andrews?---No, I was not signed on to do long-term relieving. It was a very short-term arrangement. It says there, "In the interim."

THE COMMISSIONER: But did you do what he had done before he left?
---Well, it's impossible, Commissioner, to do two full-time jobs of that nature. This is a \$180,000 job were talking about. It's a very senior

management position. You couldn't cover that, those two job descriptions well. In all honestly, we were probably doing both mediocrally [sic] because it's all you could do, you do your best. You couldn't do two positions like this.

MR ENGLISH: I thought that was your evidence, that you'd subsumed his role into yours and you were performing both?---You couldn't perform two job descriptions like that in seven hours a day. It's impossible.

10 So are you saying it was expected of me that I would but I couldn't in the
circumstances because it was beyond anyone's capability?---And that's
what was explained to Mr Sullivan. There was awareness there will be
gaps, can't do two jobs, I'm going to take the role on as best I can but there
was no official documentation. I didn't sign anything to actually do the
relieving. I took it on with the goodness of my own heart to try and fill a
short-term gap which became about 14 or 15 months. And in fact in
January 2017 there's a response from myself to Mr, to Mr Robinson around
those facts. I was never given any relieving, I was never given any
documentation, I didn't sign any documentation to do it, I was trying to do
20 both out of the best of my ability but it was impossible to do both tasks.

Okay. There's another email, Commissioner, this time from firstly HR
Service Centre to Steve Sullivan on 6 April, 2016, followed by an email
from Steve Sullivan to Mr Smith on 26 July, 2016. I hand up a copy and
tender that and ask it be brought on the screen.

THE COMMISSIONER: And do you want that tendered as one exhibit?

MR ENGLISH: As a separate exhibit to I think 88, so this might be 89.
30

THE COMMISSIONER: Oh, yes, I understand that, but - - -

MR ENGLISH: As a separate exhibit, yes. Sorry, it's an email chain.

THE COMMISSIONER: Thank you.

MR ENGLISH: I should have been more specific, I'm sorry.

THE COMMISSIONER: That will be marked Exhibit 89.
40

**#EXH-89 – EMAIL CHAIN COMMENCING FROM STEVE
SULLIVAN TO DENNIS SMITH TITLED 'POSITION
DESCRIPTION – MANAGER, SECURITY' WITH ATTACHMENT
TITLED 'POSITION ACCOUNTABILITY STATEMENT' DATED 26
JULY 2016**

MR ENGLISH: So here's an email from Mr Sullivan to you on 26 July, 2016, providing a position description for Morgan Andrews.---Right.

Do you see that?---Yes.

I thought just a moment ago you said you were never provided with anything?---To my recollection I wasn't provided with the position description.

10 Well, if you just go to the next page, this is the position accountability statement for Mr Morgan Andrews' role. Correct?---It looks as though, yes.

And in the interim you were responsible for these duties, correct, according to the email which was Exhibit 88?---Oh, I dispute that I was. It said, "In the interim," and it would have been a very short time. I don't recall getting the documents. Obviously it was sent to me, but yeah.

20 So if Exhibit 88 can be brought back on the screen, please. Are you seriously saying that Mr Robinson's statement, "In the interim management responsibilities of the Campus Security Unit will rest in the very capable hands of Dennis Smith," doesn't mean you're responsible for the position description that Mr Morgan Andrews had prior to his departure from the university?---You couldn't do both of those jobs. One person cannot do both of those jobs.

THE COMMISSIONER: Well, that may be, but can you answer Counsel's question, please? Ask it again, Mr English.

30 MR ENGLISH: Are you seriously saying that you did not have management responsibilities at the Campus Security Unit in respect of the position description that Mr Morgan Andrews held up until 21 July, 2016? ---I didn't sign any documentation to say - - -

THE COMMISSIONER: That's not an answer to the question.---No. No. I was filling in, I would fill in the gaps, that was the, that was the understanding between myself and Mr Sullivan and so I was not taking on the full-time role.

40 MR ENGLISH: I think you denied a suggestion I put to you that you were acting in Mr Morgan Andrews' role earlier today. Do you recall that? ---Acting in the role?

Yes, you were acting in his role, in his position. I think you denied that? ---I would have, I didn't deny it, I would have certainly represented in that position in a number of committees or management meetings or operations, but so there's no denying I would have represented.

Well, have you said on a previous occasion to this Commission that you were acting as a manager from August 2016?---August 2016? Technically.

Well, have you said it or you haven't said it before this Commission, have you made that statement, do you recall, that you were acting as a manager since August 2016?---Well, I was doing two jobs. Whether it's acting as a manager, I wasn't officially - - -

10 I asked you whether you recall making the statement, not what you were doing.---I, I, I can't recall.

Now, something else you couldn't really recall well earlier today was whether you'd seen the KPMG report. Do you recall giving that evidence, that you might have seen a synopsis of it but you didn't recall seeing the document?---Yes, yes.

20 You certainly wouldn't have written an email to anyone saying you'd read it, would you?---If I had read it I would have, but I didn't recall seeing, saying, I didn't recall reading it this morning (not transcribable)

So on your logic, saying if I, if I – sorry, can you repeat your answer there? If I had have read it, what did you say?---If I had have read it and there was an email I would have read it, I just don't recall reading the document this morning. So I don't recall reading it. It's two and a half years old or something, but I didn't recall reading the whole document, as best I could remember.

30 THE COMMISSIONER: Do you recall doing anything else in relation to the document?---There was certainly, after the responses back from SNP there was, I certainly prepared a, I thought a one-page document back to Mr Sullivan and we had meetings about that document. That's what I do recall.

Did you have any involvement in the response that SNP sent?---Any involvement in the, in the response?

Yes.---Well, I sent the letter to SNP.

40 Did you have any involvement in their response?---I don't think so. I don't recall any involvement in the response.

Well, can you think of any reason why you would have had involvement in their response?---No, I don't, I don't think of, I can't think of any reason.

Thank you.

MR ENGLISH: It certainly would have fallen outside of your position description to assist SNP in responding to this audit, wouldn't it?---(No Audible Reply)

Do you agree?---On the surface, yes.

And you've gone to quite some lengths today to say that things that fall out of your position description you wouldn't ordinarily do. Correct?---Well, in certain circumstances there could be exceptions to the rule, but - - -

10 And you'd accept that it wouldn't be consistent with proper conduct for you to be settling a response by SNP in relation to this KPMG audit, would you?
---What do you mean by settling?

Well, it wouldn't be proper for you to discuss and settle SNP's response to this audit, would it?---(No Audible Reply)

You're shrugging your shoulders.---I'm just trying to, I'm just trying to comprehend the level of interaction or what it is I would have had to do with it.

20 Well, you wouldn't sit down with someone from SNP and provide input as to how they should respond to this KPMG audit, would you?---I'm not sure that I did, but I don't recall doing it.

Well, if you did it would be improper, wouldn't it?---It may be.

30 Yes. It might be a conflict of interest, mightn't it, because the report's about the services provided by a contractor, you're the client and you're assisting the contractor in providing a response. Correct?---I'm not sure I, I have, but if there's evidence to say I have I would like to see what, what part of it I assisted with to make a determination if it's, if it's right.

THE COMMISSIONER: Well, how could any part of it be proper? Here we have an independent audit report, you're tasked with I think what you've described as the back end, that is to get the contractor to respond to the matters of concern that KPMG have raised. In what circumstances could it be, could it be proper - - -?---Ah hmm.

40 - - - to then sit down with somebody from, a representative of the contractor and assist them to provide a response?---Well, I'm not sure, Commissioner. I don't know what the assistance is. I'm not sure.

Well, can you think of any form of assistance that would be proper?---No, I just can't think of any, I can't think of any at this stage.

No. Thank you.

MR ENGLISH: You've got no memory of reviewing the observations of the KPMG report and summarising them for the contractor's benefit?
---I don't recall doing it.

You said you weren't involved in the front end of this audit at all. Do you recall that?---Yes.

10 What did you mean by the front end?---Well, I noticed there were a lot of meetings and interviews. I don't remember being interviewed by KPMG, I don't remember any of the meetings at all. I don't have a recollection of, of that process and I think obviously with Mr Andrews there he's taken the lead on that, but the documents you showed before, I noticed my name wasn't on any of that, but I just, I just can't recall being involved heavily in that, in that review.

Were you involved at all in working with Mr McCreadie in ensuring that he provided information for the front end of the review?---Front end – I don't recall, I don't recall, I know I send the report to him or a report or the synopsis or whatever that was to him via the CEO to go to SNP, I certainly recall that.

20 What do you recall?---So you're talking about the, I was asked to send the documentation to SNP for a formal response.

THE COMMISSIONER: What documentation?---The letter that came back there that said SNP from Darlene or, that's why it was addressed to me because I sent the outwards correspondence, I'm fairly sure of that.

But what was the documentation that you sent to SNP?---It would have been the request, the highlighted areas. I don't know if it was the full document or a synopsis but the areas that were raised.

30 MR ENGLISH: Just going back to the front end, do you recall any complaints being raised by the auditor as to Mr McCreadie's response to queries they'd raised with him?---I do recall, I don't know if I read that or Mr Andrews talking some robust discussion around payroll, I think it was around payroll, I think that's all I remember, something around payroll, getting payrolls or something.

40 So you're aware that before the report was provided there was a complaint made as to Mr McCreadie's responses at least insofar as a request for payroll information was concerned?---Yes, that's what I remember, payroll request or something.

All right. Do you recall any issue being raised with respect to Mr McCreadie's provision of KPI reporting information for the purposes of this audit?---Handing them over or doing them or reviewing them or providing them, was it?

Well, I'm asking you, do you have any recollection of a query being raised or a complaint being raised in relation to Mr McCreadie's response to that

aspect?---I'm not sure if it was an individual complaint, I'm remember there was an email or something from Mr Sullivan which requested a number of documents be handed over or to be chased up but I don't remember all of the content.

And do you recall any concern being raised that Mr McCreadie may have restricted the persons to whom KPMG spoke and the documents provided by those persons to KPMG?---No, I'm not sure.

10 All right. Well, if Exhibit 36, page 5, can be brought on the screen, please. Just go to the bottom, Mr Sierra's email to start with.---Yes.

14 June, it's not addressed to you.---That's right.

It's Kevin Duffy and Tony Fisher and Steve Sullivan copied in. Do they all work for the university?---Yes.

20 Just go up a little bit, please, or increase the size. It says, "Morgan, I've received an email from KPMG who are conducting the audit as instructed. They are finding this very difficult without the information requested. The major issues are around payroll data, monthly KPI reporting and site visits." Do you see that?---Yes.

And then it goes on to talk about payroll data, and over the page there's a series of communications that are summarised coming from Mr McCreadie, the effect of which suggests there's been a delay in providing the payroll data from 27 April, 2016 to 10 June, 2016. Do you see that?---Yes.

30 And the KPI reports, it says, "The monthly KPI reports have also been pending for almost similar time frames. Last reply from Daryl on this was, 'I've Dennis Smith for them.'"---I've asked Dennis Smith for them, email replies, I've asked Dennis Smith, right, yes.

So KPI reports, who would prepare those? Would that be a university responsibility or an SNP responsibility?---A joint responsibility.

40 So you'd keep the copies of the KPI reports, would you?---I had my own notes on the KPI reports and SNP kept a typed copy in a folder which remained behind this.

Now these reports, are these just sort of essentially no more than management meetings, the minutes from management meetings?---No.

Well, what are the reports?---They were a formulated report with the, listing the actual work orders and some documentation and KPIs to achieve in each of the categories.

Look, we'll come back to this in due course just as to how those KPI reports were generated, but do you see then there's an issue under site visit.---Yes.

Halfway through it says, "Daryl sent KPMG a copy of the roster and contact details for all security in charge on 6 June and asked when KPMG will be visiting and what questions KPMG would be asking. Informing of the exact date/time of the site visit and the questions that are going to be asked defeats the purpose of this visit." Do you see that?---Yes.

- 10 If you go on, on a call with Daryl, 7 June, it continues. And then about halfway down again it talks about Daryl and Amyna agreeing on a restrictive measure. "Amyna controlled who KPMG spoke to, if any. (She left and radioed everyone in another room so KPMG had no idea what she said, how workers responded, or if she definitely sent the message out.) According to Amyna, Daryl instructed the team not to provide us with any documents." Do you see that?---Yes.

- 20 That's quite a serious allegation against Mr McCreadie, you'd accept, in relation to the conduct of this review by KPMG. Do you agree?---On the surface.

It suggests he's impeding the review, doesn't it?---I'm not sure he's impeding the review - - -

I'm not asking you whether you think that he did, but this is suggestive that someone at KPMG, in particular someone at KPMG held the view that he was taking steps to impede the review?---Well, it's someone's personal view, that's how I can see reading it.

- 30 And then Mr Sierra says, "KPMG have wasted a lot of time chasing information and having non-productive site visits. It would be appreciated if you could assist with communicating to SNP the importance of these reviews and to provide the information requested." Do you see that?---Yes.

So where did Mr Sierra sit in terms of Mr Andrews and yourself?---He, sorry, when was this, 2016, he would have been down in a further open office environment or on the other side of the building I'm not sure - - -

- 40 Sorry, when I said sit, I meant in a - - -?---I'm sorry.

No, I'm sorry, organisational chart perspective.---He's certainly not in ours, he'd be part of CIS but he'd be, if I said he was a business analyst, business manager, he'd be fairly senior - - -

Was he an equivalent line with Mr Andrews as a manager?---Probably.

Horizontal line across, okay. If we go back to page five, on 14 June Steve Sullivan forwards this onto you and says, let's discuss.---Yes.

Then you respond the next day, "The KPIs were completed weeks ago. I've spoken to Daryl, they will be forwarded today. He is chasing up SNP regarding the payroll run. They will supplying same just have not delivered to him. That should finish off the major outstanding requests." Do you see that?---Yes.

10 You don't respond, and I'm not asking, I'm not suggesting you should have, but there's no response from you in relation to the concern about the site visits?---Right, yeah.

Is that something you raised with Daryl Mr McCreadie about this concern involving the suggestion he may have impeded the site visits?---So the dates on these, I'm not relieving, I'm not the manager. It's still Morgan Andrews, is that right?

20 That's not what I asked. I've just asked if you had a discussion with Daryl. ---No I didn't have a discussion, no, not that I remember but I, it would have still been run by Mr Andrews or I suggest that in June.

And when you read this email from Ryan Sierra and the allegations that he recounted in so far as Mr McCreadie was concerned, did that raise any reason for care on your behalf in relation to Mr McCreadie's endeavours with KPMG in relation to this audit?---Well again, it's one person's view and opinion.

30 Well, did it concern you at all that these opinions or views were being raised?---Look I don't recall speaking to him about it, Mr Andrews may have but I didn't it.

That's a slightly different question. Did it raise any concern in your mind when you read this about what was being suggested against Mr McCreadie?---It would have seemed out of character. He's very helpful.

He's very helpful, did you say?---He's very helpful. I don't understand why, what the situation would have been there.

40 THE COMMISSIONER: When you just said it's somebody's opinion, one person's opinion, what do you mean? It seems to me that this - - -?---Well, KPMG formed the view, I guess, is what I was thinking Commissioner. So I was thinking through it, KPMG have formed this view he wasn't helpful without - - -

But they've set out some facts, haven't they? They say this is what happened.---Well, I guess he's had no chance to respond here. That's the only thing I'd be thinking through, sir.

Yes.

MR ENGLISH: Well, you'd at least, having read this, be well aware that KPMG held concerns, whether they were justified or not, about Mr McCreadie's participation in this review, correct?---Well, reading, reading that, they, they had some concerns. They formed a view.

So that's the front end of the review, correct?---Yes, though I didn't have anything to do with that except hearing about the payroll sort of (not transcribable) return, but - - -

10

Well, you actually confirmed that the KPIs were completed weeks ago and then you spoke to Daryl and had the payroll forwarded I think on 15 June, so you did perhaps do some work on the front end.---No, this is the back, well, this is the back end getting the report, isn't it, to, to sort of - - -

Well, it's, well, it's talking about what needs to go into the report.---KPMG, yeah, yeah.

20

So having read this and appreciating that KPMG were raising a concern in their mind about Mr McCreadie's performance in relation to this review, you certainly wouldn't have sat down with him to craft SNP's response to this audit report, would you?---I'm not, I'm not sure why I would have (not transcribable)

30

Well, you never would have put yourself in that position of risk, would you? You never would have said, if Daryl, for instance, asked, "Can you help me, please, Dennis? I need to prepare a response to this KPMG review. Can you just provide me with some input to some of the queries I have?" You wouldn't have agreed to that, would you?---It depends what the queries, queries were. It could have related to some business that the university had that he didn't have access to. I, I don't know without seeing, seeing, you know, a document.

40

I'm talking about his response. You would not have assisted Mr McCreadie in preparing a response on SNP's behalf to this review by KPMG, would you?---I'm not saying I wouldn't have assisted if, if there was some question of the university in the response. That's, that's what I'm saying. If there it is a qualification or something back to the university, I may have. I may have provided but I, I don't know.

We have another document brought on the screen. I'll try and give you a copy, Commissioner, of the email and then I'll tell you what the date is. It's an email chain that commences on 8 August in an email from Mr Smith and concludes on 11 August in an email from Mr McCreadie. If I can tender that, please, or hand up a copy that can be brought on the screen.

THE COMMISSIONER: Thank you. That'll be admitted into evidence and marked Exhibit 89.

MALE SPEAKER: 90, I think.

MR ENGLISH: 90.

THE COMMISSIONER: 90, sorry.

10 **#EXH-90 – EMAIL CHAIN COMMENCING FROM DENNIS SMITH
TO DARYL McCREADIE, NEIL FIELDS AND OTHER PARTIES
TITLED ‘UNIVERSITY OF SYDNEY – KPMG AUDIT OF SNP
CONTRACT’ DATED 8 AUGUST 2016**

MR ENGLISH: Can we go to the last page of this, please. This is your email on 8 August, and just go back if we can there, please. Your signature block there is as the operations manager. Is that your original role or was that - - -?---Yes, original, original role.

20 Go to the next page. You’re saying, “Dear Neil and Daryl, the University of Sydney recently engaged KPMG audit group to conduct a number of audits within the Campus Infrastructure Services department. To this end, one of the contracts reviewed was an internal audit of contract compliance between SNP and the university.” You’ve underlined “contract compliance”. Is there any reason you underlined that?---It may have made sense in the, in the context but I just – see how it says at the top, sorry, forwarded message? Is that, is that someone’s forwarded that to me? What, what is, what is the forwarded message bit from the top? What is that – above my, above my name there. What - - -

30 Yes, I don’t know. But if we go – you’ve seen the last page of this, so - - -

MR COLEMAN: You need to look at the page before to understand.

MR ENGLISH: If we just go to the - - -?---I just wasn’t sure what - - -

Sorry, there we go. If we, sorry, if we go back.---Oh, okay, sorry, right.

40 Sorry, we’ve skipped a page, I think. Can we go right back to the last page again there. So Dennis Smith and then we go to – yes, there, look, I can’t help you with that. We only received this over the luncheon adjournment. ---Okay.

MR COLEMAN: I can perhaps help if you want. It seems to me if you look at the page before the one you’re looking at, Mr Fields sends an email to Mr Roche. Says, “Hi, Tom. Dennis from the university wanted me to forward to you.” And then there’s the forwarded message.

MR ENGLISH: Yes, look, putting that to one side, Mr Smith, you can see if we just go back to your email.---Yes.

Where you're talking about the audit of KPMG in your email to Neil and Daryl, and I asked you about why you underlined contract compliance. You tell me you're not sure as you sit in the witness box today, is that right?
---Well, I think contract compliance, wasn't didn't something relate to overtime or something in that original documentation? I thought there was something around that.

10

All right. Well, look at the next paragraph. You say, "I have read the full report and extracted relevant sections for SNP senior management to review and implement immediate corrective action." Do you see that?---Yes, okay. Yes.

Clearly you read it at the time, didn't you?---What I'm saying there, I, I couldn't remember saying I've read the report.

20 And you extracted the relevant sections and you say, you've attached a PDF with those relevant findings.---Okay.

So you were well aware at the time of what the findings were, weren't you not?---Well, reading, reading this, though, I've sent, I knew I sent a document to SNP. So is this the document I sent? That's what I'm trying to work out.

Yes, this is the document you sent.---Okay.

30 I mean, how many times have you reviewed a KPMG report at Sydney University in relation to your division?---Just trying to think if there was another audit report where they came from (not transcribable) I thought another audit report but - - -

Well, once, maximum twice.---Ah hmm.

40 And, I mean, you came before the Commission earlier today saying you didn't, you didn't know if you'd read this report. Was that honest evidence?---Yeah, so this would have been one of about 20 files I got dumped on my desk the day Mr Andrews left, so it's an important document but I, I could go through the other, you know, 14 or 15 that were senior management work that I actually just got, you know, left with. So it was certainly one of them.

Well, then you put in a request that SNP senior managers "Review the findings/recommendations presented by the audit group and formally respond to the university in riding by COB Friday, 19 August."---Yeah.

“Response should indicate how these practices came to be in the first place and remedial actions to be undertaken to prevent any further reoccurrence.”
Do you see that?---Yes.

So that was your request as to the fulsomeness of the response you required. And if we go over to the next page, it’s an email from Mr Fields to Mr Roche, and this is after, subsequent in time to the email I just took you to. Says, “Hi, Tom. Dennis from the university wanted me to forward to you.”
Do you see that?---“Hi, Tom. Dennis wanted me to forward to you.” Right.

10

Did you pass on to anyone that you wanted this report to be provided specifically to Mr Roche?---I’m not recalling that I, I did. I don’t know, no. I can’t recall.

Well, you don’t request in your email that we just looked at on the previous page for the report to be sent to Tom Roche. You just say you request SNP senior managers review the findings/recommendations.---Yes. Yes.

20

Then if we go to the email of 8 August, 2016 at 14.06, Mr McCreadie writes to Neil and Tom, “There are some comments that the auditors have flagged as significant issues that I think they have overinflated. I’ll put some notes together for tomorrow after I have a bit of time to read through again. Dennis had a read of the report and said he had no major issues regarding what the auditors had highlighted.” Was that your view, that you had no major issues with what the auditors had highlighted in the KPMG report?
---No.

30

What, so you’re saying that you’ve been misrepresented here by Mr McCreadie?---We didn’t have any responses. There were issues raised so I don’t, I don’t know what, why he’s said that.

Well, there were significant issues raised, wouldn’t you agree?---Of course. Well, there were issues raised, yeah.

40

And they were significant, wouldn’t you agree? I mean, you said you had a concern as a manager to ensure everyone was lawfully employed and here’s a report saying there’s a significant risk that contractors and subcontractors aren’t lawfully employed, do you agree?---Well, that was maybe in one, but there were more areas, but that was certainly, certainly one we touched on.

So are you agreeing with me?---I don’t know why I’ve, I don’t know why, why he would have said that.

If we go to the next page. A response from a Ms Mately, “Daryl, Tammy will prepare formal response for the client from Sue.” And then Mr McCreadie says on 9 August at 12.50, “Hi Tammy. Before you do, can I please send you some notes. I’ve been working on some notes with Dennis Smith that I can send through in response to KPMG’s audit. Kind regards,

Daryl.”---No, sorry. I have no idea what he’s on about. No, I don't know what notes he's referring to. Again, there could have been a question or something on university business or university issues. I'm just not sure but it's not I would have been helping them write the response or, I've been working on some notes, I just, no.

10 THE COMMISSIONER: Well it seems to relate to the response in some way, doesn't it. because he's asking Tammy to just hold on until his notes, which he's been working on with you, are sent through.---It, it could have been something in relation to the university, Commissioner. I just don't know. I wouldn't have been helping them write their response. I just know what, what he's referring to.

MR ENGLISH: Well, if we go back to the penultimate page, you've handed on what the key observations, findings are and you've broken them down into three broad categories, significant issues of concern, minor issue. So then on 8 August - - -?---The next day, is it?

20 Yes. “So Dennis had a read of the report and said that he had no major issues with what the auditors had highlighted.” Now, surely you'd understand that to be the observations, findings that you - - -?---Yeah. It's not correct, sir. I don't know why it's in there.

- - - provided there. And then if we go to the next page, where it says, “Hi Tammy. Before you do, can I please send you some notes. I've been working on some notes with Dennis Smith that I can send through on response to KPMG's audits.” Now, surely that must be you working on notes as to the key observations, findings which you drew to SNP's attention.---No, I don't know. I don't know what the notes are but it wouldn't have been, it wouldn't have been around the response. It could have been asking some questions about something to do with the university, what we were doing, I'm just not, I'm just not sure.

30 THE COMMISSIONER: Can you just go back to the previous page. ---Yeah, I mean, he could have been qualifying something, I'm, I'm just not sure, Commissioner.

40 This question may have been asked, if it has, I apologise, but did you in fact tell Mr McCreadie that you had no major issues regarding what the auditors had highlighted?---I couldn't have, they were important.

MR ENGLISH: I just want to show you, Mr McCreadie [sic], the singular email that you sent through on 8 August at 10.06 with the attachment, just so you're aware. And I tender this is a separate exhibit, if I can, please, Commissioner. That is the email with the attachment. This is an email chain starting with Mr McCreadie's email on 8 August at 10.06, ending with Neil Fields' email on 8 August, 2016 at 12.20.55, if I can tender that, please.

THE COMMISSIONER: We'll mark that Exhibit 91.

#EXH-91 – EMAIL CHAIN COMMENCING FROM DENNIS SMITH TO DARYL McCREADIE AND NEIL FIELDS TITLED ‘UNIVERSITY OF SYDNEY – KPMG AUDIT OF SNP CONTRACT’ WITH ATTACHMENT TITLED ‘KEY OBSERVATIONS’ DATED 8 AUGUST 2016

10

MR ENGLISH: So this is the – it's a bit hard to read, can we get that, that's a bit better. So it's easier on the big screen, I don't know if that assists, Commissioner, but you can see your email from 8 August at 10.06 and then that's forwarded on by Mr Fields, that might answer your query about the forwarding message and then if we look at your attachments there, you can see what you've actually forwarded on. So you've cut out the observations from the report.---So I didn't sent the full report? Just to get that in my own head, I've just sent the observations, have I?

20

Yes. You've sent the observations but you've said you've read the full report.---I couldn't, I couldn't recall if that was all I, I was just getting that in my head, I just couldn't recall what I'd sent. I now know, sir.

Emir Balicevac gave you a pinball machine, did he not?---He didn't give me a pinball machine.

Well, a pinball machine that he purchased wound up at your house, correct?---Yes.

30

Tell the Commissioner how that happened, can you please?
---Commissioner, he was buying a pinball machine for his children through his community club, he told me his Serbian Club, the president of the Serbian Club was his words, and the machines only come in irregular intervals, so they might, they might get a batch of machines, five or six that, that go to the club. He was going to purchase one and said his kids were little, a little bit little and we basically had a discussion and said, I would be interested in, well, myself, I don't know if I would use it, something to those effect, something along those lines. He said we could come to some sort of arrangement around renting and in fact he didn't even care what the
40 machine was, as long as it was something, sort of, kids could, could actually play later when they're a bit, bit older and that was the, that was the start of the, the process that I could rent to for a year or maybe it was probably even longer and that he was buying it himself through his Serbian Club. That's what he'd indicated and then there was dialogue about what sort of machine it was. I actually selected the machine in the end, he didn't even really care. Something, as long as it was something around sort of a, a comic, a Marvel type thing and whether his kids could use it at a later date.

THE COMMISSIONER: Why did you select it?---He didn't, he didn't care what type. He asked me if I, I would selected it. He said, yeah, select, as long as, as long as it's something that his kid could, could sort of use.

But why was he involving you in selecting it?---Because it was, I'm getting, oh, it was coming to me, pretty much, in the first instance.

And you were going to rent it off him?---I did rent it off him.

10 Can I take it that you listened through the live stream to the evidence given by Mr Balicevac on what he said about the pinball machine?---I would have seen some evidence. I saw him talking about some things.

No, come back to my question.---Yeah, I'm just trying to think, Commissioner, about the pinball.

Did you listen to the evidence he gave about the pinball machine, yes or no?

MR MACKAY: Which day? Which day, Commissioner?
20

THE COMMISSIONER: I beg your pardon?

MR MACKAY: It was across two or three days from memory.

THE COMMISSIONER: I'm asking whether he listened to the evidence concerning the pinball machine.

THE WITNESS: I heard, I heard the pinball machine raised on a couple of occasions but I wouldn't, certainly wouldn't have watched all three days he was here.
30

THE COMMISSIONER: I'll ask the question again and I'd ask you to answer it. Did you or did you not listen to his evidence concerning the pinball machine?---Well, I would have heard some of the evidence, Commissioner, but - - -

What, you heard some of the evidence?---Yes.

And then you didn't hear other parts of it in relation to the pinball machine?
40 ---Well, I don't know if he, if he spoke about other parts but I - - -

What parts did you hear, did you hear him mention the Serbian Club?
---No, I didn't hear him mention the Serbian Club, because I know exactly where he bought it and his words, in fact I, I don't know if there would be messages but it's, he told me he was buying it through the president of the Serbian Club and that club has pinballs - - -

And while you were, you didn't hear him say that during the live streaming that you said a little earlier today that you had watched, but not very much of it?---Didn't hear that at all, Commissioner.

Weren't you concerned that your involvement with the pinball machine might be misinterpreted?---Now or are you saying after the execution of the warrants or – I'm just not sure what you're saying. It was a legitimate agreement so I don't know why.

10 Well, why did you tell him to take it back?---Why did, why did I? Because we had it for an agreement and he took it back, he was taking it back for his, for his kids after the agreement, or it was a bit longer than the agreement actually.

The substance of his evidence was to this effect.---Yes.

That you asked him to take it back after he'd been up on Moreton Island and that you said to him, in substance - - -?---Yes.

20 - - - that he should take it back, "Because it might be misinterpreted as being a gift."---No, I didn't hear that and it's not my evidence. I, I, at all.

Is that something you said to him?---I don't recall saying that to him.

Was it a concern that you had after the Commission executed its warrants on 18 April last year?---No, because I had a legitimate agreement with him.

30 Was it a concern that your involvement with the pinball machine might be misinterpreted at the time that the Commission executed its warrants at the university, that is on 18 April last year, was it a concern to you at that time? ---I don't, I don't know how to answer that, Commissioner, because I - - -

Well, answer it truthfully, if you don't mind.---I, I still had the machine, I would have still had the machine I think, so in the back of my mind I thought possibly but at the front end no, because there's been a legitimate agreement.

40 So at the back end and the front end. What are you saying? Was it or was it not a concern once this Commission had executed its search warrants that your possession of that machine might be misinterpreted?---Well, not really to me because it was a legitimate agreement, a rental agreement. I didn't have anything to hide.

Well, why did you send it back?---Because the agreement was over. I'd asked to buy it, he said no, he tried to collect it a few times, he couldn't once, and it was circumstances when he could get down there and collect it. So it was in fact probably two or three months before it should have gone, maybe even yeah, March or April.

The nature of your relationship with Mr Balicevac was explored with you
- - -?---Yes.

- - - when you gave evidence to the Commission on the last occasion.---Yes.

Why didn't you mention the pinball machine?---Well, for no other reason
than it was, I think we were talking about gifts, it wasn't certainly a gift,
Commissioner, I didn't, I didn't raise it because it was a legitimate rental.

10

I think you're married, aren't you.---Married, yes.

And your wife played this pinball machine?---Yes, yes.

And did you tell her that you had rented it?---I didn't tell her much, I don't
tell anyone about my business in my family, I never have in the police and
nor for this.

20

So is the answer to my question, no, you never mentioned to her that you
were renting this pinball machine from Mr Balicevac?---I can't remember if
I ever said I was renting the machine. I'm not sure. I'm not sure of what
(not transcribable) - - -

Well, just think a bit harder, otherwise we're going to have to summons her
in and get her evidence on this.---Yeah.

30

Can I suggest that you didn't tell her, you didn't, did you?---I'm just trying
to think. She certainly knew that he bought it from the president, because I
did mention president to her, Serbian Club, that conversation, that's where it
came from.

Right.---She knew I didn't buy the machine, I know that, and - - -

What did you tell her?---I have a, I have a machine for a while.

Well, you didn't buy it, it was given to you.---No, it was leased or rented.

40

Did you tell her that you had rented this machine off Mr Balicevac?---I just,
I'm just not sure of what I actually said about the machine at all to her. It's
my business, I don't tell her much of my business, she doesn't do any of the
banking, she doesn't do any of that involvement in anything, Commissioner,
that I do. That's just a legacy from the police. I don't involve her in my
business. I told her I didn't buy the machine.

You told her you didn't buy the machine?---Yes, yes. She asked did I buy
the machine.

And no doubt she as a normal human being would have turned round and said, well, how is it that you've got it?---No, no, she hasn't said that.

Did you tell her that you got it from Mr Balicevac?---Yes, through the president, through the club, that he bought it through the Serbian Club.

That he bought it through the Serbian Club.---Yes.

And that you then had possession of it.---Yes.

10

But you didn't tell her that you were leasing it off him.---Not from memory, Commissioner.

Well, can I suggest to you the reason you didn't do that was because it was a gift?---No, it wasn't a gift. It was an arrangement of payment. It was about, he said 12 months but it went on longer than 12 months 'cause he couldn't collect.

Mr English.

20

MR ENGLISH: Have you had anything to do with this president that Mr Balicevac knows?---No. I've heard him refer to the club, his community club, but I've never met them, never been to the club, I don't know.

You've only ever known Mr Balicevac speak about one president, he doesn't use that name to refer to multiple people?---Yeah, no, no, it's a specific, specific reference to, to that club.

30

And in your mind the only association you know between Mr Balicevac and the president is the Serbian Club?---Yes.

And you've done nothing to ever assist this president that Mr Balicevac knows?---Assist the president?

Yeah, you've done nothing to help him?---I don't know, I've never met him, but I don't know. I don't think so.

40

You certainly would never have said to Mr Balicevac that you yourself look after the president?---Me look after the president?

Yes.---No.

You've never done anything to assist him, so why would you be looking after him?---Yeah, I, I don't know what that means.

I'm just going to ask for another document to come up on the screen. It's not tendered yet but it can be tendered. It's an extraction report from Mr

Balicevac's phone. Might this please have an exhibit number, Commissioner.

THE COMMISSIONER: I'm sorry, yes, of course it can. That will be admitted into evidence and marked Exhibit 92.

#EXH-92 – EXTRACTION REPORT OF THE MOBILE PHONE OF EMIR BALICEVAC

10

MR ENGLISH: And I hand up a copy for you, Commissioner.

THE COMMISSIONER: Thank you.

MR ENGLISH: If you can just go to, please, page 10, you can see there's some entries, 2 January, 2018, Mr Balicevac - - -?---Sorry, twenty, oh, 2 January, yes.

20 Yes. Mr Balicevac says to you, "Boss, as I'm about to drive to uni, president asked me to reverse semi-trailer for him for about 300 to 400 metres as his driver was still on leave as a favour. If okay I do him this quick and head down to uni straight away?---Yes.

On your evidence you wouldn't know what Mr Balicevac's talking about there in relation to that reference to the president, would you?---Sorry, the date there, 2nd, well, there was only, well, I would have assumed it would have been the one, the same, the only president he talks of, but that's, I don't know.

30

So you just assumed that was the president of the club, the Serbian Club? ---That's, that's the only sort of president I've heard him mention, but it could have been, could be another one but that's the only one I know that he's spoken of.

And then if we go to the next - - -

THE COMMISSIONER: Can we just go back to that. Yes, thank you.

40 MR ENGLISH: If you go to page 11, Mr Balicevac says to you, the first entry, "Thank you for this morning."---Yes.

And then 12 seconds later says, "President said big thank you."---Okay.

And then you say back 15 seconds later, "No issue, we look after president, ha ha."---Yeah, yeah.

What are you talking about there?---That was just a comment that he looks after his president of his club, if that's the president he looks after, he looks after his president.

No. Why is, come on – on this conversation - - -

THE COMMISSIONER: Mr Smith, I remind you that you're on your oath. ---Yeah.

10 And I remind you again that it is a very serious criminal offence to tell lies to this Commission. Do you understand that?---Yes, Commissioner.

And do you say that the answer you just gave Counsel Assisting was truthful?---It says, "No issue, we look after president." It's, he's looking after the president of his, of his club by backing a car, a truck down or something for 300 metres.

20 And what were you intending to convey when in response to his text, "President said big thank you," what were you intending to convey by saying, "No issue, we look after president."---I, I think I've used the "we" colloquially there, but obviously looking after his, after his president of his club.

When you say you've used the word "we" colloquially, what do you mean? ---Well, you look after president, you know, I've said, we look after president, you look after, you know, no issues, you look after president.

30 What does that mean?---Well, of his club, it's, it's some sort of community club, there's a hierarchy there, he's looked after the boss, the boss of his club.

"President said big thank you." Obviously to you.---Well, obviously allowing him to drive whatever that truck was for 300 metres.

40 Oh, I see. For you being patient?---Yeah, yes, yes, me being, allowing him, he's on his way to work. I mean Emir has managed time, I mean forgetting what we know now, but he did have managed time, same as Mr McCreadie and, you know, he had a bit of managed time there, he's come in and that's what that sequence is, Commissioner.

So you interpreted that message from Mr Balicevac - - -?---Balicevac, yes.

Just a moment. To be that the president of the Serbian Club was thanking you because you had allowed Dennis, sorry, Mr Balicevac to reverse the truck.---Yeah, because he was going to be either a little bit late or something for, for work, for the uni, he was going to be a bit late for the uni.

And in response to that you say, "No issue, we look after president."
---Yeah.

And you're telling me that we should read that response as not we, but you.
---Yeah.

And is that truthful evidence?---Well, I haven't met him, Commissioner.

10 No. Is that truthful evidence, that you intended by that response to say, no issue, you look after president, ha."---Yeah, you look after your president.

You look after your president.---I've never, I'm not in the club, it's his club, yeah, look after your president.

Well, why did you use the word we?---I'm not sure, Commissioner.

20 You understood the word president to be a reference to Tommy, didn't you.
---No, no, Commissioner. President of the Serbian Club, he talked about him almost every day or second day at work. He says, "Oh, president, president." President is the community, sorry, the Serbian Club, he spoke about him often at work.

Mr Smith, you said to me a little earlier today that to the extent you watched the live stream - - -?---Yes.

- - - and I accept you say it wasn't very much, you made notes. Do you remember saying that?---Yes, made some notes, yes.

30 Where are they?---They were just A4 - - -

Where are they?---They're in the bin. They were just, just notes I made at the time, A4 notes.

In the bin. What bin?---I stayed at a motel, sorry, what day are we saying, I've been in a motel for two days but - - -

You've been in a motel for two days?---I live in Gerringong, I can't travel to Gerringong for here. I'm staying up here in a motel.

40 And the motel room has a television?---Yeah, I didn't turn it on.

I beg your pardon?---I haven't turned it on 'cause I've had, I haven't turned, I haven't turned the TV on in the motel room.

I'm sorry, did you bring a computer with you?---I've got a laptop, it's my laptop.

Did you bring it with you?---From here?

Did you bring your laptop from Gerringong to the hotel room?---Yes, I've got a laptop, yes.

Thank you. And you're sitting in a hotel room for two days.---No, no, no, I've been, I've only been there, I go back about 7 o'clock at night.

10 Right. And where do you spend the rest of your time?---I've been in meetings with legal and, sorry, yesterday, what was yesterday, I was just, yep, up here in the city yesterday. Can I say, I just, sir, Commissioner, I've known this president to be the president of this club for a long time and - - -

What's his name?---I don't know his name. That's exactly it. He's just referred to as the president, yeah. And that's the truth, president of, if he ever talks about president, president, in Emir's voice for interpretation, but it's always in relation to the, the Serbian Club.

20 MR ENGLISH: Your evidence before the Commissioner when I first asked you to explain the circumstances of the pinball machine was I think that Emir was buying a pinball machine and he was buying it through the president of the Serbian Club. Right?---100 per cent, that's what he told me where he was getting it and he was buying it.

And you went on to say he was buying it himself, again through - - -?---Yes. - - - the, through the Serbian Club. Okay. So your understanding was that Emir was paying for the machine?---Yes.

30 And he was getting a discount through the Serbian Club somehow. ---Because they bought in bulk for the community hall where they had a number of amusement machines and he said, "I'll be buying it through the Serbian Club because they get discounts."

So at all times Emir was paying for this machine and it wasn't to be the president of the club or the club that were contributing towards its cost. Correct?---Well, Emir said that he was paying.

40 And so the Serbian Club was merely facilitating the discount?---That was my understanding.

And you said that Emir didn't even care what machine, he left it up to you to buy, even though he was, it was for him.---We were sitting side by side at the, well, he's got a vacant desk and he's sitting there and we had some discussion around what type of machine.

Okay. And Emir told you at least on one occasion, did he, how much he was earning from SNP?---Oh, he may have. I'm not sure.

Well, did he tell you he was earning \$65,000 in around 2017?---Oh, he, he, he may have but I don't, I don't remember his salary figure, what he said.

Did he tell you he was looking at buying a pinball machine that would cost between 10 and \$14,000?---That was, I think it was about 12,000, the cost of the machine.

10 Did you ever wonder to yourself, how's Emir going to afford this?---No, because he would often talk about his mother-in-law who contributes every so often to their life here. He talked about the car, he, he said his mother-in-law bought a car, I remember him saying the mother-in-law bought a car, she buys this, she buys that. My understanding, it sounded as though she was very wealthy and her daughter was living so far away that's with a view I formed that she was supporting him regularly, every fortnight. I don't know the amounts but that's, that's my understanding.

20 There's a difference between supporting a family member and buying a \$12,000 pinball machine for them.---Well, she bought him a car, that's what he told me as well.

Well, one needs a car to get around, don't they?---I think it was, I think it was an upgrade. I mean, it sounded though, whatever the daughter was asking for, she got. So it wasn't a surprise he had, to me, an ability to buy something, because he was getting support.

30 Are you sure it wasn't a surprise that he had ability to buy things because you were aware that he was committing a fraud against the university?---Up until this warrant and hearing the, some of the hearings here in the evidence, that's the first time, he, he's never even told me except here, I saw in the witness box where he, he broke down. I have no knowledge and he would have been the last one I would have thought, to, to (not transcribable) - - -

THE COMMISSIONER: Were you watching the live stream, were you, I take it, when you saw him break down?---I, I did see that bit, Commissioner, yeah, I did say I've been watching bits and pieces, yes.

40 My recollection, and I stand to be corrected, that was when the pinball machine was being addressed, wasn't it?---No, I thought it was, I thought it was around, Commissioner, where he said - - -

MR ENGLISH: I think that was a question to me, Mr Smith.---Oh, sorry.

And I'll endeavour to answer it, Commissioner. Commissioner, can find that at transcript page 508 and it was in relation to, it wasn't in relation to the pinball machine, it was in relation to something else.

THE COMMISSIONER: Okay, thank you.

THE WITNESS: Sorry, that's the first time I've known of his involvement.

MR ENGLISH: Now, if Exhibit 2, page 214 can be brought on the screen, please. Volume 2, sorry, volume 2. So this is an email from Mr Balicevac to you. "Boss, choose from here. Got in contact."---Sorry, hang on.

Subject heading at the top.---Oh, choose here, got in contact, yes.

10 "Choose from here. Got in contact," 28 October, 2016. "See website below, Zax," do you see that?---Yes, yes.

"President said do not look price, only what you like." I just asked you a moment ago and you gave evidence to the effect that the president had no interest in what it cost because it was only Mr Balicevac who was paying for the machine.---That was my understanding, that Emir's paying.

20 So why do you understand he would say to you, "President said do not look price, only what you like"?---I, I don't know. We had the discussion around, between the two of us about what sort of a machine it was.

It's more consistent with the inference that president's Tommy, wouldn't you agree?---President's, no.

Tommy Sirour?---No. President is from the Serbian Club. Hundred per cent. I've never, as I said over the years, he referred to the club all the time and, and referred to the - - -

30 THE COMMISSIONER: Assume it was the president, this man whose name you don't know. Just, can we have that back on the screen. What understanding did you have in relation to the fact that the president did not want you to look, and I assume, worry about the price, just get what you like. What did you think he was saying, the president?---Yeah, I, again, I wouldn't, I don't know what it meant. I'm only, I'm not even inferring whether that's to him, Commissioner. I know, I know it's from Emir to me but whether it's the president to Emir in the first, I don't know, but my understanding was Emir was buying it from the president of the Serbian Club.

40 If you assume for the moment that the president is Tommy, it would suggest very much, would it not, that you were being provided with a gift from Tommy?---Commissioner, I'm looking you in the eye - - -

You don't have to do that just tell me the truth.---The president, the only president we've ever spoken about is the president of the Serbian Club and they have a hierarchy committee and the committee calls I'm president.

Thank you. Now will you come back to my question, please. If we assume for the moment that the president is a reference to Tommy, this email very

much suggests, does it not, that you were getting a gift of a pinball machine from Tommy. You didn't have to work about the price, you just pick what you want. That's what it would convey, do you agree?---No because I know who the president is, Commissioner.

10 I want you to assume for the moment that the president's Tommy. If that was the case, it would suggest very much that you were getting a free pinball machine of your choosing from Tommy, do you agree?---Well if that's the, if that's what you're saying, Commissioner, you could interpret it that but I'm saying it's - - -

You couldn't interpret it any other way, could you?---It's not Tommy.

Mr English.

MR ENGLISH: Well, you did choose a machine, didn't you, that was Spider-Man?---Yes.

20 Did you look at the price?---I, I probably did look at the, I probably did look at the price.

Well what you probably did, you've said 12,000, I mean - - -?---I thought it was around that, yes.

And then I think you said in your evidence that you asked to buy it off Emir.---Asked to buy it off Emir?

Yes.---Not in the first instance, later after he rented it to me, yeah.

30 So you must have known roughly what it cost?---Yeah. I thought it was originally around that price, around - - -

So did you offer Emir, you know, \$12,000 to buy the machine?---No, no. It was a year old. It was more than, yeah, it was a year older so, yes, no.

So what did you ask him for, 12,000 less your rental payments?---No I asked, I asked him what he would sell it for.

40 And what did he say?---I thought he said around, probably 8,000 or maybe a bit more. I, I thought that was a little bit, about 8,000 and a bit, 8,500 maybe, 8,000/9,000, I can't remember. But in that 8,000 range.

And, what, how much did you pay a week for the machine?---It was a loose arrangement of about \$50 a week. There was no binding contract.

What does a loose arrangement mean?---No binding contract, I mean, there was nothing entered into. It was \$50.

Well, before you called it a legitimately rental, now it's a loose arrangement.---Well, there's nothing contract, there's no contract signed or anything. It was just the arrangement of paying him \$50.

Well, you know that an agreement between two people involving money's a contract?---Well, there was no written contract is what I'm saying.

10 It was a loose arrangement, was it? So did you actually pay him the money each week?---Yeah. I meant loose, some weeks he mightn't be there or another week, I mightn't be there, on leave or something, but when, it was always a \$50 a week type scenario.

So, what, every Monday you walked into the office at the university and said here you go, Emir, here's the next 50 I owe you, is that what happened?---No, I didn't give him, no, it wouldn't have been that rigid. It would have been sometimes at the pool, sometimes in the office.

20 Well, the office – I withdraw that. You would have been concerned, would you not, of the appearance of handing over \$50 every week to Mr Balicevac in cash?---No. It, it wouldn't be something that, you're hiding it. I didn't, I didn't do it, probably people were there anyway. It's just an open office environment to at the pool at the café, we were at the café most of the times.

Did you keep a ledger or something to make sure that your payments were up to date?---No, no.

Did he ever come to you and say, oh, you're a bit late on payment for me, I think you owe me for two weeks?---No. Not that I remember, no.

30 There was no agreement, was there?---There was an agreement. There was an agreement. There's no written agreement but - - -

Was there an agreement after it happened, we'll tell everyone that, we'll tell everyone that I rented it off you for the last 12 months?---No.

You didn't discuss that with him?---No.

40 When did you tell him to come and pick it up from you?---It probably would have been, it was a year, so probably after, early into January or something, 2017. I think it was a bit around a year and, for whatever reason he didn't get there or he couldn't get there.

Why didn't you want it from that time onwards?---Well, I probably, I wasn't playing it as much as I thought I would have. My kids don't live at home, I thought, yeah, I didn't want to rent it anymore.

THE COMMISSIONER: Your kids didn't live at home at the time that you agreed to this loose arrangement?---My kids weren't - - -

You were getting it, weren't you, so that you and your wife could play it?
---Oh if visitors, if visitors came.

When do you say that you offered to purchase it from him?---I actually offered to purchase it from him I thought near the end of the rental and I thought I'd also asked again a bit later, I thought I asked twice actually.

10 That very much suggests, does it not, that you did maintain an interest, that is, you were interested in continuing to use this machine. I'm just curious as to why, if you decided you didn't want it anymore, you offered to purchase it from him?---Well, if the price was right, for \$8,000 it wasn't getting played, it wasn't getting played enough - - -

It wasn't getting played enough for \$8,000, is that your evidence?---Yeah, the price was too high at that stage.

20 MR ENGLISH: Your wife got the highest score, did she, repeatedly?---She probably would because she was the only one who sort of did play it, mostly.

She was very happy playing the machine, wasn't she?---Well, she was at home, so probably the only one playing it.

What did she say when you said the rental's over?---(No Audible Reply)

THE COMMISSIONER: She didn't know about it.

30 MR ENGLISH: I'm sorry, what did she say when you said, or did you tell you that you'd asked Mr Balicevac to take it back?---I basically said that the machine was going back.

And what did she say?---Okay.

She didn't say I'm enjoying playing it, I want to keep it down here a bit longer?---No, no, not at the time, no.

40 So what are the circumstances by which Mr Balicevac collected it?---He was going to collect it when he was down there camping, something happened, exactly, I don't know what, but it didn't go back and he came and collected it after a vacation, his car blew up or something going home. I remember, which is interesting, Commissioner, because he, he told me that he had to ring the president, the president of the club, they have a credit system, they pay some money into the credit system, and the fact that the president would then organise a tow truck, he broke down half way going up Mount Ousley at Wollongong, the president organised a tow truck for him. Those were his exact words of the Serbian Club.

THE COMMISSIONER: Oh I see.---Sorry, the Serbian Club.

That makes sense.---They pay credits into something and this person organises or something.

All right.

10 MR ENGLISH: What do you say about the suggestion that the pinball machine was a gift to you for helping SIG get more work through Campus Assist at the university?---There's two parts to that, I guess no, not the gift and secondly I'm not sure about SIG work through Campus Assist.

You tried to assist SIG to obtain more work at SNP's expense, would you agree?---Is there a time, is there a date?

No, just you discussed with Mr Balicevac the possibility of getting more work for Tommy at SNP's expense, correct?---I'm not sure I've said that or the context it was in.

20 You had many discussions with Daryl and with Emir about getting more work for Tommy, did you not?---It would have been discussions around possibly changes at the university and the ability to apply.

Apply for what type of work?---There were a number of changes over a number of years but it could have been additional ad hoc work or it could have been additional, it would have had to have been in the ad hoc area because that's what they were doing.

30 And so that was for SIG to apply for more work, was it?---They would have been able to apply like anybody else if it was - - -

No, you didn't discuss with Daryl the fact that SIG might be conflicted because it could be sued by SNP if it applied for this work and therefore another company was required?---I think that's very sort of legal talk, I don't know about that, the legalities of that.

40 You never discussed a company called Triton with Emir and Daryl, that it might have to be used to obtain work for Tommy's benefit from the university?---I vaguely have a recollection of Triton but I don't know the circumstances.

Well, the circumstances were that Daryl told you that SIG couldn't apply to get contracted work from the university because it could get sued by SNP. ---Well, that's a business decision for them, that's not for us. He's quite entitled to apply as would anyone be able to apply.

Sir, I just want to show you a conversation between Mr Balicevac and someone at SIG, if volume 2, page 278, can be brought on the screen. This

is just for your benefit an extraction report from Ms Li's phone. She's a SIG employee. I'm sure if you've been paying attention to the proceedings you'd know that, though. Did you see her evidence, Ms Li?---I can't specifically recall.

You can see page 279.---Did you say SNP or SIG?

SIG, sorry.---Sorry, thank you.

10 279, second last entry. This is Mr Balicevac to Ms Li, "Hope I can get us Campus Assist through you."---Oh, okay, I see.

Do you see that?---Yes.

Trying to work with Jo, Campus Assist manager?---Campus Assist, yes.

20 Page 280, this is Mr Balicevac again saying, "I'm talking to Daryl to make sure SNP not to find out, 11.03." "11.04 yes he is Lynn, just one important thing, SNP never find out." Mr Balicevac says, "This might be happening sometime in January or February, max." ---Yes.

Is that a matter you discussed with Mr Balicevac, that is, SIG obtaining Campus Assist, Campus Assist work?---I don't recall and I don't know how they could get Campus Assist work. Campus Assist are all university employees.

THE COMMISSIONER: I don't think that was the question.

30 MR ENGLISH: Did you ever discuss it with -- well, Campus Assist was eventually taken, or the work that Campus Assist did particularly in relation to locking and unlocking was taken away from them and put through the contractors, and put as ad hoc service requests primarily through SIG correct.---The open, the access buildings and close buildings is it?

Well, the Campus Assist work.---Yeah, okay, well, Campus Assist, you and me mean different things. I'm just trying to think through which, which part of that is. But those offices were building attendance and I think they went over to Campus Assist, so, okay, yes.

40 So did you discuss the possibility of that Campus Assist work going directly to SIG with Mr Balicevac?---I don't remember doing that.

Did you discuss with Mr Balicevac the possibility of any of the contract security services being provided to SIG?---Emir would talk in some context about work going to SIG it just wouldn't be happening I told him, Emir, it doesn't happen, it's got to be done through tender or contract award.

So you did have a discussion with him and you said if it was to happen, it would have to go through contract award or tendering.---Or tender or he'd be able to apply like everybody else.

If we go to page 281 and see Mr Balicevac at 314 says to Ms Li, "Lynn, I sent you an email and see if you guys can help me to put this machine and that way I'll return in two weeks. I understand you guys are tight at the moment paying for company fees et cetera, I hope I get this contract going." Do you see that?---I hope I get the, yeah, yeah.

10

And then, Lynn says, "Look, if Tommy doesn't help you, I'll help you with the money." Do you see that?---Sorry, where is that, down the bottom is it, oh yes.

3.15.27---Yes.

And over the page there's some smiley faces and then she says at 3.18, that's Ms Li, "I know it's important."---Yes.

20

Doesn't that suggest, consistent with what was put to you by the Commissioner, that Tommy's the president who's going to help out with this because it's important and it relates to the contract at the university? ---No, Tommy's not the president. I, I'm not, I'm not sort of privy to any of this conversation but it's, the president is the Serbian Club.

On the topic of gifts and benefits, have you received any gifts or benefits from anyone from SNP?---I talked about the gift, the gift card from Frank at Christmas 2017.

30

Can I just suggest to you in relation to that, that was a matter that you didn't disclose when you were previously giving evidence before the Commission.---Yes, I, I remember talking about the, the betting I think with Frank, but I didn't, I didn't get a chance to keep going.

THE COMMISSIONER: Sorry, you didn't get a chance to keep going? What do you mean by that?---I think I was asked about my, the relationship with, the exact words, Commissioner, I think was what was my relationship with Frank and I said he's a team leader there and he - - -

40

No, you were asked questions specifically about what gifts and benefits you may have received, and you didn't mention that, and my question to you is why didn't you mention it?---Well, it would have been an oversight because I would have, if I'd remembered it, I would have said it.

MR ENGLISH: Well, you actually went so far as to say that you'd been provided gift cards and on every occasion you'd handed them back.---Yes, but I think that as specific from Mr Sirour, wasn't it, of Tommy. It was a specific question about something that he handed me, about gift cards, and it

was said that we gave those, they were returned and I reported that to Mr Sullivan.

10 So in the context of saying that you returned Tommy's gift cards, are you saying you overlooked telling the Commission that, even though you were asked questions about your relationship with Lu, you failed to disclose that you kept a gift card which he gave you for Christmas?---Yeah, it would seem that I, well, not failed to disclose it. I didn't obviously remember it or thought at the time I was – I certainly did the betting, some betting with him, but I didn't remember the card.

You're a Dragons supporter?---Yes, unfortunately.

You like going to the games?---Sorry?

You like going to their games?---No.

You go to their games sometimes?---No. That's why I - - -

20 Never been, never been to a Dragons game, is that your evidence?---I, I've been to a Dragons game but not in a long time because they keep losing.

Well, have you ever taken tickets from SNP to go to Dragons games?---No.

Are you aware that other staff members at the university were receiving tickets from SNP to go to NRL games at Homebush Stadium?---Yes.

30 Who were you aware was doing that?---I, I think they were actually more Souths supporters but it was a neutral game, so I think Mr Ledford got tickets on occasion, Mr Bowman, and maybe Mr McGarry on, on one occasion. It wasn't a lot, just occasion.

And on any occasion have those people reported to you?---I guess Mr Bowman and maybe Mr McGarry in the (not transcribable) probably do. Not Mr Ledford.

And was that the time when you recall that they obtained tickets from SNP to go to those football matches?---It probably, it would have been, yes.

40 Well, that would mean you would need to record an ad hoc declaration for them in respect of those tickets, wouldn't it?---Technically, yes.

Well, technically it's an obligation under the university's conflicts of interest policy, isn't it?---Yes, but that was more about a reward for what they were doing. It was a small unit and they were doing a lot of work under strain. There was hardly, we didn't have any staff, we were short-staffed. And I think the guards were offered the tickets most of the times,

and on the rare occasion that they didn't take the tickets, that, that these few staff went to a football game.

THE COMMISSIONER: We're going to stop soon, Mr English. I just want to take up one matter with the witness. What motel or hotel are you staying at at the moment?---I'm staying at the Abcot Inn, Abcot.

How do you spell that?---A-B-B-O-T-T [sic], Abcot.

10 And where's that located at?---Sylvania, Sylvania.

MR ENGLISH: can we just check that now?---I think it's A-B-B-O - - -

I beg your pardon?---A-B-B-O, A-B-B-C-O-T-T, I think.

THE COMMISSIONER: And you're staying there tonight?---Yes. I think the, yes.

20 You haven't checked out?---No, no, no I'm expected to be here for a few days, Commissioner.

MR ENGLISH: There is such a place. Abcot in - - -

THE COMMISSIONER: Where's your laptop?---The laptop is, is, is in that room.

Is it?---Yes, Commissioner.

30 I direct pursuant to section 35(2) of the Independent Commission Against Corruption Act that the witness Dennis Smith produce to the Commission by 6.00pm this evening his laptop computer.

I DIRECT PURSUANT TO SECTION 35(2) OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE WITNESS DENNIS SMITH PRODUCE TO THE COMMISSION BY 6.00PM THIS EVENING HIS LAPTOP COMPUTER.

40 THE COMMISSIONER: Now, to save you the trouble of coming back, Mr Smith, I'm going to arrange for a Commission officer to go down there with you and they can just collect it. So that'll save you coming back in. Do you understand that?---Yes.

MR ENGLISH: Will there need to be a direction in relation to the passwords for that computer to be written down and not put on the record?

THE COMMISSIONER: Yes. In fact you can write the passwords down for me now.---I was getting the train out there, though, Commissioner. Is it, do I go with the person or - - -

Well, that might be convenient. We'll just see what we can do.

THE WITNESS: I've just, yeah, just got to pick up an umbrella and stuff from my legal counsel office - - -

10 THE COMMISSIONER: That's all right.

THE WITNESS: - - - or whatever it is, but oh, the pen's not working, sorry. Thank you. I'm sorry, I'm putting the password here to the laptop.

THE COMMISSIONER: We want to be able to access your computer.

THE WITNESS: Yeah.

20 THE COMMISSIONER: So you just give us the password that will allow us to do that.

THE WITNESS: Yes. That's a capital S. Do I need to, no. Oh, sorry, there.

THE COMMISSIONER: I'm going to adjourn now and I want you back here at 9.30 in the morning and I'll leave it – Ms White, will you, perhaps we could speak when we adjourn. If you can just wait around it may be that you can get a lift.

30 THE WITNESS: Yes. I have to work – yeah, okay.

THE COMMISSIONER: Save you catching the train.

MR DEAN: Commissioner, can I raise one matter?

THE COMMISSIONER: Certainly.

40 MR DEAN: I will be absent tomorrow because I have a pre-existing commitment in the ACT.

THE COMMISSIONER: Okay.

MR DEAN: I might possibly be here late in the afternoon. If this witness finishes, subject to reading the transcript I'd seek leave to make a decision about whether any cross-examination is required.

THE COMMISSIONER: Okay.

MR DEAN: Thank you, Commissioner.

THE COMMISSIONER: We're going to be a little bit longer though, aren't we?

MR ENGLISH: I can't say with confidence whether we'll finish tomorrow or not.

10 THE COMMISSIONER: All I can say is that if the witness is stood down then I'll consider any application you have to make, but it will have to be on pretty solid grounds.

MR DEAN: Yes, Commissioner, and certainly whatever's, that will depend what's on the transcript and what's said.

THE COMMISSIONER: Sure.

MR DEAN: There may be nothing.

20 THE COMMISSIONER: Sure.

MR DEAN: And that's certainly the position at the moment.

THE COMMISSIONER: Okay. Thank you. I'll adjourn.

THE WITNESS STOOD DOWN [3.59pm]

30 **AT 3.59PM THE MATTER WAS ADJOURNED ACCORDINGLY [3.59pm]**