
TRANSCRIPT OF AFTERNOON PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY, 11 MARCH 2020

(20th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Michael Tovey QC
Ms Amber Harris

OPERATION SANDON INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

Every effort is made to ensure the accuracy of transcripts. Any inaccuracies will be corrected as soon as possible.

1 UPON RESUMING AT 2.01 PM:

2 <THOMAS JAMES KENESSEY, recalled.

3 COMMISSIONER: Yes, Mr Tovey.

4 <EXAMINED BY MR TOVEY, continued:

5 MR TOVEY: In the conversation that you had played to you just
6 before lunch, that's a conversation of 17 October 2018,
7 and you were discussing where the document, that is the
8 minister's letter, had been obtained from there's
9 reference to Adrian on a number of occasions. Who was
10 Adrian?---Adrian Salmon, is my recollection.

11 And who was he?---He worked at the department of planning or
12 DELWP, DEL something.

13 COMMISSIONER: Did it strike you as odd, Mr Kenessey, that
14 Mr Woodman was getting the minister's letter before it had
15 even arrived at the council?---Well, given it came from
16 senior bureaucracy to Megan you would have thought that
17 the council as a courtesy would have known before anyone
18 else.

19 Say that again, I'm sorry?---Sorry. It seemed odd in the sense
20 that a senior bureaucrat was giving Megan a document that
21 you'd thought council would have been called and then
22 emailed - you would expect council to know before.

23 Yes. So might we infer from that it gave you some insight into
24 the extent of Mr Woodman's reach?---I think that was
25 Ms Schutz's former State Government contacts more than
26 Mr Woodman.

27 I see. Thank you. Yes, Mr Tovey.

28 MR TOVEY: I tender that document, which was a conversation
29 between Mr Woodman and Mr Kenessey on 17 October 2018.

1 COMMISSIONER: 162.

2 #EXHIBIT 162 - Conversation between Mr Woodman and Mr Kenessey
3 on 17 October 2018.

4 MR TOVEY: I now want the witness to be taken to tab 30,
5 please. This is a conversation between Mr Kenessey and
6 John Woodman on 26 October of 2018.

7 (Audio recording played to the Commission.)

8 MR TOVEY: That's another conversation about the response of
9 The Age newspaper?---Yes.

10 At that stage - this is a couple of days before the
11 publication - you are still speculating about what it
12 might contain?---If the date is the 26th, and I thought it
13 looked like it was in the afternoon, that would be the day
14 of the printing of the article. Can I have that
15 confirmed?

16 I thought the article was published on the 28th. So at this
17 stage what you know - - -?---Okay.

18 The Age is still making enquiries - - -?---Okay, I'll take your
19 word that it was on the 28th.

20 When he spoke to you he indicated at first he'll start asking
21 questions about Madaffari and about Brompton Lodge. What
22 did you understand him to be concerned about
23 there?---I don't know. I knew that he had done work for
24 Madaffari because he joked that he got paid in boxes of
25 fruit, and obviously I knew that he had rezoned Brompton
26 Lodge.

27 And what had occurred in Brompton Lodge that made - that you
28 had discussed with him that might have attracted the
29 attention of The Age?---I don't know.

1 The context of that conversation would tend to indicate, would
2 it not, that you and he had had a previous conversation
3 about Brompton Lodge and about Madaffari which would have
4 led you to have some understanding of what he was
5 referring to there?---I've just told you my recollection
6 of what he told me about Madaffari and - - -
7 What did you know about Brompton Lodge?---That it was brought
8 into the logical inclusions. I think previously I gave in
9 evidence that it was supported by all bureaucracy, and
10 then just flowed on from rezoning there.
11 COMMISSIONER: So it was some land that was brought within the
12 urban growth boundary?---Correct.
13 Is that correct?---Correct.
14 And was it your understanding Mr Woodman made considerable
15 profit as a result of that success?---That's my
16 understanding.
17 MR TOVEY: Now, at that time there was also conversation, was
18 there, about The Age enquiries seeking to join the dots
19 about the connection between Leighton and SCWRAG?---Sorry,
20 could you repeat?
21 Yes. At this time when you were anticipating The Age
22 publishing an article one of the matters that you
23 discussed with Mr Woodman was the fact that The Age had
24 been in touch with Ray Walker?---I recall someone telling
25 me that Mr Walker had spoken to The Age for a couple of
26 hours. I can't recall if it was John or Megan.
27 And you were told that The Age was trying to draw a connection
28 between Leightons and the - - -?---Probably, yes. Yes.
29 Yes. And that that was something that you wanted to minimise

1 at the time if you could?---I can't recall my response.
2 The fact is that if there was a conversation about The Age
3 drawing - sorry, connecting the dots between Leightons and
4 Mr Walker and SCWRAG it must have been in the anticipation
5 that there was something being investigated which had
6 previously been - had not been aired and not been
7 disclosed?---I'm sorry, it was a very long question.
8 Look, you say that you were at the time aware that there was
9 discussion about The Age trying to draw together links
10 between Leightons and SCWRAG?---Yes.
11 And you wanted, if possible, to hose that down?---My gut feel
12 is that wouldn't be the case. I think I've got a
13 memory - you might have the recording - where I probably
14 would have given Mr Royce Millar a few colourful
15 expletives because I was pretty upset that I felt he was
16 undoing the merits of our rezoning. There might be
17 something about the residents group in that conversation.
18 COMMISSIONER: What counsel is putting to you is you wouldn't
19 be having a discussion with Mr Woodman in which you talk
20 about The Age trying to join the dots in terms of the
21 connection between Leightons and SCWRAG unless you thought
22 that attempts in the past had been made to conceal that
23 relationship?---I don't think I would have had any concern
24 if The Age had joined the dots between Leighton and the
25 community group, if that's your question, if I'm answering
26 it.
27 But according to your testimony repeatedly, Mr Kenessey, you
28 have been saying that it was entirely open and apparent -
29 - -?---Yes.

1 That Leightons was financing the community group?---That's my
2 recollection.

3 Is that correct?---That's my recollection.

4 MR TOVEY: And when you spoke to Mr Millar did he ask you
5 questions about links between yourself - sorry, between
6 Leightons and SCWRAG?---I wasn't allowed to speak to
7 Mr Millar.

8 I thought you said there was - - -?---He called me once on a
9 private number, left a voice message, called me from an
10 identified number, left a message and then sent a text
11 message from that same identified number. I didn't
12 respond to any of his attempts to contact me. I emailed
13 Leighton to inform them of that. They confirmed my
14 understanding that I'm not to speak to the media.

15 But I thought you mentioned before that you used
16 expletives?---In terms of if there's a recording of me
17 with Mr Woodman post the article. I was pretty fired up
18 from memory back then.

19 COMMISSIONER: Who was it at Leightons that directed you you
20 are not to speak to the media?---I can see in the email to
21 them that it was either George Sassine or Michael
22 McConnell, and I had a reference in that email that the
23 connection between Leighton has been mentioned by Ray in
24 public meetings and a panel.

25 MR TOVEY: Excuse me, Commissioner. I now want to take you to
26 31 October 2018.

27 COMMISSIONER: The conversation of 26 October is not an
28 exhibit, Mr Tovey?

29 MR TOVEY: No, it's not, Mr Commissioner.

1 COMMISSIONER: That will be exhibit 163.

2 #EXHIBIT 163 - (Version of exhibit 40) Conversation between
3 Mr Kenessey and John Woodman on 26 October 2018.

4 MR TOVEY: I now want to take you to 31 October, which is tabs
5 37 and 38, I think, and that is exhibit 40.

6 (Audio recording played to the Commission.)

7 MR TOVEY: Could I just have that halted for a minute?

8 COMMISSIONER: Yes.

9 WITNESS: Sorry, that was the 30th?

10 COMMISSIONER: 31st.

11 MR TOVEY: This is 31 October. Could I just have that scrolled
12 back up, please, to the top of the page. I think,
13 Commissioner, what has previously been tendered are tabs
14 37 and 38, which are excerpts from a conversation which is
15 at tab 36.

16 COMMISSIONER: 37 and 38 are phone calls between Mr Woodman and
17 Ms Schutz.

18 MR TOVEY: Yes. So they are extracts from a quite voluminous
19 conversation which is tab 36. Now, what I would seek to
20 do is have played the whole of that conversation because
21 it's impossible to go to the relevant points just on the
22 extracted material.

23 COMMISSIONER: I'm sorry, so you want exhibit 36 played?

24 MR TOVEY: Tab 36, and I would ask that become part of exhibit
25 40.

26 COMMISSIONER: Sorry, you have confused me now, Mr Tovey, you
27 are now talking about a tab and not an exhibit?

28 MR TOVEY: Sorry, exhibit 40 is tabs 37 and 38.

29 COMMISSIONER: I see.

1 MR TOVEY: Which are extracts from this larger conversation,
2 which is tab 36.

3 COMMISSIONER: Yes.

4 MR TOVEY: So I now ask that the whole of that conversation be
5 included within that exhibit.

6 COMMISSIONER: I'm sorry, you want the whole conversation
7 played?

8 MR TOVEY: Yes.

9 COMMISSIONER: Then we can amend exhibit - I don't think that's
10 actually appropriate, Mr Tovey. If we are going to
11 enlarge the exhibit, then we need to do it by way of a
12 separate exhibit number so it's clear what was previously
13 played and what's now being played.

14 MR TOVEY: Yes.

15 COMMISSIONER: In any event, can we now play that particular
16 conversation.

17 MR TOVEY: Yes, and might I tender this at the outset. This is
18 a conversation of 31 October of 2018.

19 COMMISSIONER: Yes.

20 MR TOVEY: Between Mr Kenessey and Mr Woodman.

21 COMMISSIONER: Yes.

22 MR TOVEY: Now, it's quite a lengthy one, but there's a lot of
23 material in it. It goes for an hour, I'm told.

24 COMMISSIONER: Yes.

25 MR TOVEY: I have never listened to the whole lot of it.

26 COMMISSIONER: But are you seeking to rely on - - -

27 MR TOVEY: I am seeking to rely on it.

28 COMMISSIONER: Large parts of it?

29 MR TOVEY: Yes.

1 COMMISSIONER: Very good.

2 (Audio recording played to the Commission.)

3 MR TOVEY: Could I sit during the playing of this conversation?

4 Is there any objection to me sitting down?

5 COMMISSIONER: No, certainly, Mr Tovey.

6 (Audio recording played to the Commission.)

7 COMMISSIONER: Mr Tovey, if it's a very long conversation and

8 the parties to the conversation move over a whole range of

9 different issues - - -

10 MR TOVEY: Yes.

11 COMMISSIONER: Might there be some benefit in you pausing from

12 time to time to ask the questions associated with that

13 discussion, unless there are other parts of the

14 conversation which also bear on it?

15 MR TOVEY: Look, I haven't - - -

16 COMMISSIONER: If that's not going to be helpful, just let me

17 know.

18 MR TOVEY: Yes. I have just been handed a note. Could we be

19 given a break for five minutes, Commissioner. I'm told it

20 may be possible just to play - to identify some parts of

21 this conversation and we can get away with playing it. It

22 would eliminate a large part of it.

23 COMMISSIONER: If that's going to reduce an hour to something

24 less, then it's worthwhile. We will adjourn. How long

25 would you require?

26 MR TOVEY: Ten minutes.

27 (Short adjournment.)

28 COMMISSIONER: Yes, Mr Tovey.

29 MR TOVEY: Thank you for the time, Mr Commissioner. Can I just

1 indicate that what happened previously when the exhibit
2 was tendered was that only extracts of this conversation
3 were played but they were played from the large tape, from
4 certain line to certain line. We will this time in the
5 transcript as we go to those lines which are actually part
6 of the exhibit identify the timeline so we can get back to
7 it more readily at some later stage.

8 COMMISSIONER: Yes, thank you.

9 MR TOVEY: Thank you. So we start, please, at line 661?---I'm
10 sorry, Mr Tovey, what was the date of this again?

11 COMMISSIONER: 31 October.

12 MR TOVEY: Sorry, not line 661. Line 395, which is
13 25.33 minutes into the tape?---Sorry, where?
14 Line 395.

15 (Audio recording played to the Commission.)

16 MR TOVEY: Could we stop there, please?---Can I interrupt for a
17 second, sorry? There was a reference to a Richard.

18 I think that would be Fitchett, not Richard.

19 Fitchett. Thank you. Could you please tell us what the time
20 stamp is where we have stopped?

21 OPERATOR: 28.46.

22 MR TOVEY: Thank you.

23 COMMISSIONER: So you stopped at line?

24 MR TOVEY: Line 438.

25 COMMISSIONER: Yes.

26 MR TOVEY: So this is shortly after The Age article, this
27 conversation takes place?---Yes.

28 And you refer there - you are talking to John Woodman about the
29 fact that Ray Walker has gone to the newsagent to buy an

1 Age to see what was in it?---Yes.

2 Only to find that they don't sell many Ages?---Yes.

3 Then you tell him that he's sent an email out - sorry, he tells
4 you that he's sent an email out to all of them that the
5 article he said they received \$15,000 from Leightons,
6 "which I don't know how everyone knew about the 15, but
7 anyway I just plucked". And then you say, "He told them
8 about it," and that - - -

9 COMMISSIONER: Mr Kenessey says, "I told him that." Isn't that
10 right?

11 MR TOVEY: No.

12 COMMISSIONER: I don't have the - - -?---I don't have it in
13 front of me either, sorry.

14 MR TOVEY: The transcript said, "He told me" - "he told them
15 about it". I didn't pick up the - - -

16 COMMISSIONER: Yes, thank you.

17 MR TOVEY: Are you with me at line 406?---I am. Would you like
18 me to read it, sorry?

19 Yes. Read 406 through to 411?---Give me a moment, please,
20 sorry. To 411? Yes.

21 Yes, all right. So he mentions a figure of 15, which Ray has
22 apparently alerted people to, and Woodman said he just
23 plucked that number, and you say, "It's there or
24 thereabouts"?---Obviously got that wrong.

25 Well, there's a huge difference, isn't there, between 15 and
26 70?---Yes.

27 You must have been conscious at the time that it was more than
28 15? Let me tell you something. There's another
29 conversation I will take you to where you are talking to

1 Mr Woodman about whether or not the auditors are going to
2 realise precisely how much was paid?---Okay.
3 Now, having given you fair warning, what I'm suggesting to you
4 there is that at that point in time you were trying to
5 contain the damage to \$15,000 if you could, if you could
6 get away with it?---At that point in time I suppose in my
7 mind I hadn't reconciled the quantum.
8 So are you saying that you really did think it might have been
9 15 at that time?---Maybe a bit more, yes.
10 Well, did you say to Mr Woodman, "Look, Mr Woodman, I'm going
11 to have to check on this. It might be a lot more than
12 that"?---Well - - -
13 You didn't, did you?---No, it was a private conversation.
14 Yes, because the whole aim of this was to hose down the damage
15 and keep the figure as low as possible?---But The Age
16 article didn't report a figure.
17 In any event, whether it did or it didn't, the figure you are
18 there talking about is the figure that Ray Walker has put
19 out and you are trying to justify 15 when in fact,
20 I'd suggest to you, you knew that it was hugely more than
21 that?---If I may, a conversation with John Woodman
22 there's - I didn't feel like I had to justify - it was an
23 event to justify anything. It was a conversation that
24 went for an hour.
25 When you were talking to him and he says to you, "Look, they
26 have plucked 15 out of the air" - - -?---I think he said
27 that.
28 And you say, "It's there or thereabouts." Isn't it painfully
29 obvious that at that stage you are hoping to get away with

1 it being out there that Leighton had contributed no more
2 than around \$15,000?---I don't agree with that.
3 Don't you? When you say, "It's there or thereabouts," you say
4 that that was your honest recollection at the time, do
5 you, even though it was 70?---I've got eight years worth
6 of emails. It took me from - go from September 2013 to
7 October 2014, it took me four weeks to go through my
8 emails. Like, I can't - you know, I wouldn't have
9 reconciled in how much we had contributed.
10 Reconciled. You wouldn't - - -?---As I have for here. Like,
11 it's a conversation that's gone over an hour, so, you
12 know, going on gut feels.
13 How much had you given initially as seed money?---I think we
14 paid for their website, perhaps, which was a few thousand
15 dollars.
16 Yes. Any more at that stage?---I would have to check my
17 reconciliation which I did last year.
18 Anyway, could I ask you the question - - -?---There were signs
19 at that time as well, probably.
20 What I'm suggesting to you is that when you said 15 - when it
21 was suggested to you that Walker had put up his hand for
22 15 and you said, "It's there or thereabouts" - -
23 -?---Sorry, what do you mean by Walker put up his hand for
24 15?
25 Walker had told - Walker's response was to tell people that
26 they had received 15. You were happy to get away with
27 that, weren't you?---No, no, because we were paying coffee
28 carts direct, the community day, signs. We didn't pay the
29 community group direct.

1 So when you did your 70,000 reconciliation that 70,000 wasn't
2 SCWRAG money? I mean, I don't understand what you are
3 saying?---We talked earlier about, "Did you sometimes pay
4 suppliers direct," and I said, "Yes, things like coffee
5 carts or ice cream vans." I couldn't put my finger on
6 what they were, but we discussed that earlier.
7 Yes, for things organised by SCWRAG, otherwise why would you
8 have included that in the 70,000?---Sorry, could you
9 rephrase that?
10 Why would you in calculating the 70,000 have included the cost
11 of signage, for instance, unless that was something which
12 was done at the instance of SCWRAG?---Are you saying why
13 did we include it if SCWRAG asked us to do it in my
14 reconciliation?
15 Yes?---Because - - -
16 I mean, you are now saying to me, "Look, some of the things
17 like signage weren't part of the equation"?---I'm saying
18 they were.
19 They were?---Yes.
20 All right. So if that's the case you knew that there was
21 hugely more than 15,000?---It wasn't front of mind to
22 recall - I didn't keep a running total of what we had
23 contributed to the community group.
24 Could we now go on, please, to - perhaps before I move on from
25 that, immediately after that conversation about the 15,000
26 at line 416 Woodman says to you - sorry, at 412 he says,
27 "Between you and me, we were meeting with the new mayor on
28 Friday," and then at 415 says, "To move forward that after
29 missing piece of the jigsaw that I now know we're not just

1 meeting with her to tell her." Who was the new
2 mayor?---If I recall, it was Amanda Stapledon.
3 "Chapter and verse about the intersection, just in case" - and
4 who did you say Richard was?---Fitchett. Peter Fitchett,
5 a senior officer at council.
6 "Fitchett or somebody tries to snow her. I mean, scant mention
7 will be made of Cranbourne West, even though she knows it
8 back to front. But our advice is going to be that at this
9 stage we're going to tell her that, like, you've been
10 thinking, that we just - nothing. We're waiting now for
11 the, um, what do you call it, um, the - we need - the
12 council do need to respond to that letter from the
13 minister." Now, was that a discussion about going to
14 Amanda Stapledon and getting her to understand how you
15 wanted her to respond to the minister's letter?---I think
16 so, yes.
17 And did you do that?---I don't believe so.
18 Then there was conversation about not asking Pauline to do
19 anything, other than to be aware that what the council
20 have asked her; is that right?---Could I read, if you
21 don't mind?
22 Yes?---Which numbers?
23 428?---What's the question again, sorry?
24 What that line indicates, does it not, is that it was proposed
25 simply to tell Pauline Richards to back off until she's
26 asked to do something by the council?---I would say that's
27 not an instruction but a - not ask Pauline to do anything,
28 so that's ...
29 Was it not the case that Pauline Richards had been enlisted to

1 do what she could to promote C219 with the
2 minister?---John had said that that was the case.
3 And what was there being proposed was that it was thought
4 politic at this stage for her to back off until the
5 council moved on the matter?---Sorry, could you ask that a
6 different way?
7 What was being suggested there was that at this stage it was
8 politic - it was advisable to have her wait till the
9 council passed a resolution before she moved again on
10 C219?---That's reasonable.
11 Well, that's true? That's what was being discussed?---Yes.
12 Thank you. Now I want to take you to - - -
13 COMMISSIONER: I take it you assumed at this point of time that
14 what Mr Woodman was saying to you about his arrangement
15 with Pauline was correct?---Again, Gary Rowe had told me
16 far earlier - I've got the emails.
17 I'm not asking you about Gary Rowe?---Sorry. Did I assume
18 that - - -
19 When Mr Woodman told you this - - -?---I'm sorry.
20 Did you accept at face value what he was saying about Pauline
21 or not?---No.
22 No? So you said nothing to him? In fact, you gave an
23 indication you agreed with his approach?---Again, it was
24 trying - it was an interesting time with - it was an
25 opportunity to try and remove him from the project. So we
26 were just setting up and being very agreeable with what he
27 was saying.
28 So this was part of the set-up, was it?---Yes.
29 MR TOVEY: I now want to take you to 42 minutes and 15 seconds

1 into that conversation, at line 661.

2 COMMISSIONER: I will mark exhibit 163A is lines 395 to 438.

3 #EXHIBIT 163A - Lines 395 to 438.

4 COMMISSIONER: What's the next passage, Mr Tovey?

5 MR TOVEY: Line 661.

6 COMMISSIONER: To?

7 MR TOVEY: To line 737.

8 COMMISSIONER: Thank you.

9 WITNESS: Sorry, is that 661?

10 MR TOVEY: That's 661, yes. So we'll start playing about
11 there.

12 (Audio recording played to the Commission.)

13 MR TOVEY: And that's stopped at line 737, and that's at time
14 stamp 46.22. Going back - look, the effect of this is
15 that you and Woodman are sitting back laughing together
16 about the lies that people are telling you you're going to
17 get away with?---I genuinely thought they were lies.

18 You and he there are laughing about the various lies that are
19 being prepared to be peddled to The Age?---Could you be
20 specific about which lie you are referring to?

21 I'm just talking to you about the general sense of that. You
22 and he are sitting back laughing about how on any number
23 of topics people are going to be misled as a result of
24 enquiries made looking further into The Age
25 allegations?---Well, I was pretty fired up and I thought
26 there were numerous factual errors within the articles.

27 And what factual errors were there about the relationship
28 between you and SCWRAG, between Leightons and
29 SCWRAG?---Well, the article said that we had funded

1 SCWRAG.

2 That's true?---I have said that.

3 Well, why would you be fired up about them telling the

4 truth?---I wasn't fired up about that issue.

5 Was there any other issue affecting Leighton other than the

6 fact that there had been \$15,000 or that there had been

7 funding coming from Leightons?---I think there was a

8 one-line reference to the independent panel supporting the

9 merits. I think there were some dates wrong. I didn't

10 believe that John had done anything illegal. I thought

11 that he had donated to political campaigns, but I wasn't

12 aware of any - I just - it came as a - - -

13 What's that got to do with Leightons? Why would

14 Leightons - why would you be talking with him about

15 joining him in suing The Age for defaming Leightons where

16 the only thing they have said about Leightons is

17 100 per cent true?---Which? I would like to read the

18 article before I agree with that and check my notes of

19 what I disagreed with at the time before I give you a

20 short answer to that question.

21 You told me that what they said is true in respect of

22 Leightons' contribution, which is the thrust of The Age

23 article. You've already given evidence previously that

24 part of your response was to get The Age to retract, and

25 indeed to sue for defamation?---That was John's response.

26 Yes. That's a response that you joined in with, wasn't it?

27 MS KEATING: Commissioner?

28 COMMISSIONER: Just a moment, Mr Tovey.

29 MS KEATING: I have an objection. The starting point for these

1 questions has been, from Mr Tovey, what were the factual
2 errors in the article. It's a broad question. It
3 requires reference to the article to answer it, and each
4 other question has flowed from it. So in my submission
5 it's fair to put the article to the witness, expecting the
6 witness to answer.

7 COMMISSIONER: Yes, certainly if you want the witness
8 to - I accept that.

9 MR TOVEY: I don't propose to do that again. We know what the
10 article says and the witness knows what it says. I just
11 want to take you now to some of the things that are said
12 there. Looking at line 668, all right?---When the audio
13 was played I missed - there was a couple of lines that
14 seemed to skip about Paul Chiappi's section. I'm not sure
15 if anyone else noticed that.

16 In any event, can we just start at 668?---Certainly.

17 COMMISSIONER: Just to be clear, so you are treading a really
18 difficult line here in this conversation, aren't you,
19 Mr Kenessey?---Yes.

20 Because you are dealing with Mr Woodman's acts, some of which
21 you say are true, some of which are not true, or you don't
22 believe are true on the basis of things Mr Rowe's told
23 you, and you are wanting to set him up. So it's going to
24 be very hard to work out what you really thought about
25 anything from this conversation, isn't it?---I think
26 that's fair. Yes.

27 And is that the purpose of your evidence, to make sure that
28 nobody can draw any inferences from anything that you have
29 said in these conversations? Is that the purpose of

1 saying, as you have now over two days at different times,
2 that you are trying to set Mr Woodman up?---In the latter
3 half of that year I was trying to set him up, yes.
4 But in this conversation?---Honestly, I was probably a bit
5 bewildered by what was happening at that time. Whether or
6 not it started days before or days after, it's at that
7 time.
8 You are not going to find the answer to my question by looking
9 at a line in the transcript?---Yes.
10 You either know as a fact that when you had this conversation
11 your objective was to set Mr Woodman up and therefore go
12 along with things that you mightn't otherwise have gone
13 along with - - -?---Yes, well, I think post - - -
14 Was that your objective?---Yes, post deferral the objective was
15 to remove him from the project.
16 Did that include this conversation?---It would have.
17 MR TOVEY: So at 668 John Woodman says, "I think the important
18 thing there is to share with him" - this is Ray Walker,
19 who you - - -
20 COMMISSIONER: What line is this, Mr Tovey?
21 MR TOVEY: 668.
22 COMMISSIONER: Thank you.
23 MR TOVEY: "The important thing there is to share with Ray
24 Walker that your people have gone through the accounts
25 with Sydney" - - -?---Sorry, did you say 668?
26 COMMISSIONER: 668.
27 MR TOVEY: Line 668?---I don't have a Ray Walker there.
28 COMMISSIONER: No, no, Mr Tovey is saying the "him" you are
29 referring to there is Ray Walker?---Sorry.

1 MR TOVEY: Just before then you talked about meeting up with
2 Ray Walker?---Okay.

3 "The important thing there is to share with him that your
4 people have gone through the accounts with Sydney." Was
5 that the truth?---My recollection is, yes, but I can't
6 remember what that number spat out. I could research my
7 file.

8 "That they cacked themselves when they read the article and,
9 you know, 15,000 is all that's been donated. Now, you and
10 I know that. I don't know how the other stuff got paid
11 but, like, that's all that," and you say, "I know. I'm
12 not sure how good" - Woodman says "yep" - "the auditors
13 were then." So you're saying, "I don't know how good the
14 auditors were." Woodman says, "But, yeah, 15 is all
15 that's on the books." Did that conversation take
16 place?---The conversation took place.

17 And in that conversation you and Woodman are discussing the
18 fact that the auditors can't find more than \$15,000, and
19 that's what you are going to run with?---Can I read this?

20 COMMISSIONER: I think you can move on, Mr Tovey.

21 MR TOVEY: Do you accept that?---Can you just repeat it again,
22 sorry?

23 What you were there discussing is that the auditors can only
24 find 15,000 and that's what you are going to run with and
25 tell Mr Walker to run with?---I don't think that's right
26 from what's in front of me.

27 Well, were you planning as a result of this conversation to
28 tell Mr Walker these things?---No, no.

29 So this was again just a totally false conversation where you

1 are looking for ammunition to get rid of Mr Woodman, was
2 it?---Yes.

3 And did you report on this conversation?---I report on pretty
4 much all my conversations.

5 Did you report on this conversation about the \$15,000?---I'd
6 have to check my file.

7 All right. So at that stage you are aware that the auditors
8 couldn't find more than 15?---As I said, I would rather
9 check my file than mislead you.

10 And then after that Mr Woodman had observed, "Mate, moving on,
11 with the minister this is going to be extremely
12 important." So what Woodman is there saying to you is,
13 "Look, the minister would be spooked if he" - "if moving
14 on he thought that there was more than \$15,000
15 involved"?---Which line, sorry, Mr Tovey?

16 Line 679. And you go, "Oh, yeah"?---If you look, a lot of my
17 responses are "oh, yeah", "yeah", "yep", just letting him
18 talk.

19 So you're leading him on so you can set him up?---Yes.

20 COMMISSIONER: Had the auditors looked at this issue?---My gut
21 feel is, yes, but I would prefer to check my file.

22 Would you have said to him, "I'm not sure how good the auditors
23 were then"?---Probably.

24 Would you have said that if the auditors hadn't looked at
25 it?---No. I don't think so.

26 So was it your belief at that time that the auditors had only
27 found \$15,000 allocated to SCWRAG?---I don't think so, as
28 a gut feel. But again I'd say I would prefer to check my
29 file.

1 Sorry, you don't think that was your belief at the time?---It's
2 an hour-long conversation - - -
3 No, I'm just dealing with this bit here where you seem to be
4 saying that the auditors have looked at the books and
5 there's only \$15,000 - - -?---I don't think I actually
6 said that.
7 Mr - - -?---"The auditors were then", I laugh. He says, "But,
8 yeah, 15 is all" - maybe I do because I say "yeah", sorry.
9 This is part of setting Mr Woodman up, is it?---Yes.
10 Or you? Do you not see yourself getting yourself into trouble
11 here?---No.
12 No; okay.
13 MR TOVEY: So then you get down to line 706, and there you
14 discuss the article again, "Because the innuendo, when you
15 read it, was that Schutz" - - -
16 COMMISSIONER: Hang on, just a moment.
17 MR TOVEY: "Because the innuendo, when you read it" - -
18 -?---Sorry, which line?
19 706?---Thank you.
20 "Because the innuendo, when you read it, that it was Schutz who
21 gave that advice; right?" Now, this is the advice that
22 Aziz waved around, is that right, as legal advice - -
23 -?---Yes, that he refused to disclose.
24 In the course of a council meeting?---That he refused to
25 disclose.
26 Yes. And the article was alleging that it was Schutz who gave
27 that advice?---That was the innuendo, yes.
28 And that was exactly right, wasn't it? Schutz had given that
29 advice; that's what Woodman and Schutz had told

1 you?---Well, I just asked him. He just confirmed it in
2 that conversation.

3 Go to the next line. Woodman says, "Well, that - that's
4 exactly right. That's who it was." All right? And then
5 you go on to talk about another advice done by Chiappi and
6 you go on to observe at 701 to the effect that, "Because
7 of the confusion over the advices, I mean, all of a sudden
8 it's not the smoking gun that it seems to be, but then,
9 you know, that's me wishful thinking." All right? That
10 was what was happening in that conversation between
11 you?---As I said before, the section about Chiappi was a
12 bit muffled and didn't match the words. But he did
13 mention Chiappi before he mentioned Schutz, is my
14 recollection of the audio you played.

15 But what was happening there was that The Age had correctly
16 alleged that Schutz had given the advice. You and Woodman
17 knew that. But you were happy that it had been confused
18 with the Chiappi advice and you went on to say, "Because
19 of that it's not the smoking gun that it seems to be, but
20 that's wishful thinking"; true?---That was what was said.

21 And what you were doing was celebrating the fact that you would
22 be able to put out a diversion, a smokescreen, indeed a
23 lie as to the source of the advice; and was that just a
24 trap for Mr Woodman? Was that just encouraging
25 him?---I was encouraging him, but it also - at days
26 Leighton didn't want anything to do with his action
27 against The Age. But I provided him with documents that
28 I believed showed the history of the C219 and where
29 I thought there were factual errors within the articles.

1 COMMISSIONER: That's why I say you were treading a very
2 difficult path here, Mr Kenessey?---Yes.
3 Because you were trying to set him up on the one hand, and yet
4 on the other in this example here you are proffering a
5 view that there's an answer to The Age's allegation here:
6 "If you just tell them that in fact you did have
7 independent legal advice"?---Yes.
8 So this wasn't part of your set-up. This was part of assisting
9 Mr Woodman, and hence Leightons?---Well, I believe we got
10 to where we were based on the merits, and I wanted to give
11 John that ammunition because at the time I didn't believe
12 what was written in The Age.
13 So this was to help him and you and Leightons?---Yes.
14 MR TOVEY: Then we get, I suggest to you, to one of the more
15 interesting misrepresentations that's being planned.
16 COMMISSIONER: Just to be clear. This is all part of exhibit
17 163, which we will note in parenthesis this is a version
18 of exhibit 40 and we are now tendering particular lines.
19 A was lines 395 to 438. B, 661 to 737.
20 #EXHIBIT 163B - Lines 661 to 737.
21 COMMISSIONER: And you are now going to some new lines, are
22 you, Mr Tovey?
23 MR TOVEY: No, this is all part of that second batch.
24 COMMISSIONER: Very good.
25 MR TOVEY: There are only two batches.
26 COMMISSIONER: Yes.
27 MR TOVEY: So at line 722 John Woodman says to you,
28 "I think - I think Pauline Richards sitting in front of
29 the new minister, if that point was raised or if you

1 wanted to go back to it, I mean, it's quite clear I'm
2 now - the inference that the article tried to make was
3 that you had paid Schutz or someone had paid Schutz." All
4 right, so - - -?---Sorry, do you mind if I read it?
5 Yes?---Which lines would you like me to read?
6 Lines 722 through to 725?---Thank you. Okay. Sorry, can
7 I just clarify, you just asked me for 721, we are talking
8 about the advice, the legal advice for the intersection,
9 just to be clear.
10 This is 722 to 725?---Yes.
11 Just read that?---I have read that. But it makes reference to
12 earlier stuff and I'm just clarifying that that's about
13 the legal advice provided to SCWRAG.
14 So first of all at 722 he talks about Pauline Richards sitting
15 in front of the new minister?---Yes.
16 And that's consistent with the role that you and he had
17 envisaged that she would perform, and that is advocate in
18 respect of C219?---That he had envisaged and I was aware
19 of.
20 "If that point was raised or if you wanted to go back to it
21 it's quite clear, um, now, the inference that the article
22 tried to make was that you had paid Schutz or somebody had
23 paid Schutz. Now I know even that," and you then
24 volunteer, "Well, Wolfdene had paid Schutz, it would
25 be"?---Well, that was my guess because there's no way
26 Leighton was going to pay Megan to do anything in relation
27 to H3.
28 But generally Schutz was being paid by you over this whole
29 period and been paid handsomely, wasn't she?---Yes.

1 There is nowhere there where you say, "Look, we're going to
2 indicate that we were in fact paying Schutz"?---I don't
3 understand your question.

4 MS KEATING: Commissioner, the witness has said - - -

5 COMMISSIONER: Just a moment. Isn't it correct that in
6 relation to H3 Ms Schutz's fees were not being borne by
7 Leightons?

8 MR TOVEY: Yes. So you say, do you, this was in respect of
9 H3?---Yes.

10 This conversation?---It seems to be that portion, yes.

11 And why do you say that?---Because Wolfdene would have been the
12 beneficiary of that financial benefit had Dacland
13 constructed the intersection first.

14 So at that point then you say this wasn't you suggesting that
15 Leightons would deny paying Schutz to be a consultant in
16 respect of C219?

17 COMMISSIONER: This is advice on the intersection, which goes
18 back to 718, Mr Tovey.

19 MR TOVEY: Yes. I accept that. And then you go on ultimately
20 to talk about, "Ray is totally" - this is 727. "Ray is
21 totally comfortable with the fact that every community
22 group in Victoria is funded somehow or other"; is that
23 right?---Yes.

24 And is that something that you and Woodman had discussed as the
25 way in which you would parry allegations that it was
26 inappropriate for SCWRAG to accept funding from
27 Leightons?---As I've said, we didn't think it was
28 inappropriate and we thought that everybody - well, anyone
29 who asked would know and most people knew.

1 When SCWRAG were writing letters to the minister did you take
2 it upon yourself to have Mr Walker explain in those
3 letters that in fact the people funding SCWRAG were the
4 proponents?---If you are referring to the letter in
5 October you'll find in my records that I didn't know the
6 existence of that letter until that letter was sent to the
7 minister and had to ask for a copy to be provided.

8 COMMISSIONER: Is the answer to the question "no"?---Sorry.

9 Well, I couldn't have because I didn't know it existed.

10 Is the answer to the question "no"?---Sorry, no. I'm sorry.

11 I'm sorry.

12 Did you know that he was writing any letters to the

13 minister?---At that time, no. Well, I don't think so.

14 What do you mean by "at that time"? At any time between the
15 time you reached agreement with Woodman and Schutz that
16 the organisation - the community group should be set up
17 and that you would fund the seeding costs and the website
18 and so on - at any time from thereafter whilst SCWRAG was
19 communicating with the minister did you at any time
20 suggest to SCWRAG that they should advise that Leightons
21 was funding them?---I don't think we got the opportunity.

22 I was - - -

23 Is that a serious answer? In the three and a half years that
24 you were funding SCWRAG - - -?---We probably didn't tell
25 them to include it in a letter, I don't think.

26 You had no opportunity to tell Mr - I see you preparing to
27 rise. Is there an objection?

28 MS KEATING: There will be, Commissioner.

29 COMMISSIONER: You say you had no opportunity to tell SCWRAG

1 that they should let the minister know that you were
2 funding them?---There was - - -

3 MS KEATING: Just before you answer, Commissioner, what I would
4 ask is that the witness be asked about what communication
5 he directly had with SCWRAG as a group or Ray Walker as a
6 group as the foundation for the next question that - - -

7 COMMISSIONER: If you feel that an injustice is done by
8 Mr Kenessey answering my question and saying "No, I didn't
9 take any opportunity to tell him," if you think that
10 that's somehow going to be qualified by eliciting that
11 further information, you may. But I don't see how that's
12 going to be an answer to the question whether he had the
13 opportunity, knowing what we know about the level of
14 communication between him and Woodman and Schutz and
15 Walker over the three-year period - - -

16 MS KEATING: That hasn't been before this witness as part of
17 this aspect of the Commission when, Commissioner, you talk
18 about the level of communication about SCWRAGers, between
19 this person - - -

20 COMMISSIONER: No, I'm not talking - I'm talking about the
21 opportunity. I'm asking - - -

22 MS KEATING: Perhaps I can leave it for re-examination.

23 COMMISSIONER: I'm asking the witness whether at any time in
24 that three-and-a-half year period of the relationship he
25 ever took the opportunity to say to SCWRAG, "You must let
26 the minister know that Leightons is paying for your
27 costs."

28 MS KEATING: Thank you, Commissioner.

29 COMMISSIONER: What's the answer to that question?---I don't

1 think we did.

2 MR TOVEY: I now want to take the witness to exhibit 61, which
3 is tab 85.

4 COMMISSIONER: How are you feeling, Mr Walker?---I wouldn't
5 mind a break if we are going to go for a lot longer.

6 Yes. Can I find out how much longer do you think you will be,
7 Mr Tovey?

8 MR TOVEY: This is the last call.

9 COMMISSIONER: So?

10 MR TOVEY: Another 20 minutes.

11 COMMISSIONER: Do you think you can see another 20 minutes
12 out?---Could I have a bathroom break, if that's not
13 inappropriate?

14 Yes. We will adjourn for five minutes.

15 (Short adjournment.)

16 COMMISSIONER: Yes, Mr Tovey.

17 MR TOVEY: Thank you, Mr Commissioner. Exhibit 61, tab 85.

18 COMMISSIONER: So this is 17 January 2019?

19 MR TOVEY: Yes, 17 January, between Mr Kenessey and Mr Woodman.

20 (Audio recording played to the Commission.)

21 MR TOVEY: Go to line 9. Woodman says, "Writing this
22 strategy," this is the strategy that those above you have
23 asked for, is that right, to justify his ongoing
24 fee?---Yes.

25 Are you saying at this stage, by 17 January, you are yourself
26 trying to get rid of him?---Yes.

27 And you are not working with him to devise strategy?---No.

28 And you are not working with him to try and respond in a way
29 that will cover his back and yours?---No.

1 So he says, "Writing this strategy, after reflecting on what
2 we'd talked about, I don't understand how you and I and
3 Michael are not going to finish up either in gaol or
4 somewhere some very unnice place if I start writing the
5 sort of email that I should be writing if I'm going to
6 tell the truth," and you respond by saying, "I understand
7 what you're saying and I'm with you." Now, was your
8 response a truthful response?---No.

9 You were lying to him then, and what was the purpose of you
10 lying to him?---I was very close to completing a written
11 strategy with appendices that's a standalone document to
12 recommend his removal and replacement with Julie Katz and
13 commence discussion with the State Government about a
14 value capture policy from Plan Melbourne, policy 2.3.4,
15 page 56, if you want to look it up, that I learnt about in
16 the panel immediately after C219 for Hobsons Bay
17 precinct - testing me - 21. It's in Blackshaws Road in
18 Altona North.

19 When you said at line 9 - sorry, when he said at line 9, "After
20 reflecting on what we'd talked about, I don't understand
21 how you and I and Michael are not going to finish up in
22 either gaol or somewhere very unnice", what was it that
23 you had talked about that might have resulted in you being
24 in gaol or somewhere like gaol?---I just wanted to move on
25 and get him to write the strategy so I could complete my
26 strategy and have - I just wanted him to - - -

27 Look, you're not stupid. You understood the question I asked
28 you was what was it that you talked about that was going
29 to get you put in jeopardy of gaol or something

1 unnice?---I don't know. Nothing.

2 You didn't say that to him?---No, I didn't.

3 So you had no idea what he was talking about?---Correct.

4 COMMISSIONER: When you came to give evidence were you already
5 aware of the substance of this conversation, that namely
6 that there was a conversation recorded between you and
7 Mr Woodman in January of 2019 in which you both
8 acknowledged that if the truth came out about what you had
9 done you would be liable to go to gaol?---Counsel had told
10 me about a recording of myself and Mr Woodman being
11 played; didn't give a date.

12 Sorry, is the answer to my question "yes" or "no"?---I think a
13 friend said it in passing to me.

14 Just a moment.

15 MS KEATING: Commissioner, I want to be very clear about this.

16 I have not had such a discussion with my client about that
17 conversation. He may be confused or fatigued, but I want
18 to be very clear about this matter.

19 COMMISSIONER: Just sit down. I'm not suggesting you have.

20 WITNESS: I had heard that before. I think it must have been a
21 friend or someone must have said it to me.

22 COMMISSIONER: I wasn't suggesting it was you. (To witness.)

23 So is the answer to my question " yes" or "no", you had
24 heard about it?---Yes.

25 So you knew you would have to come here and provide an
26 explanation for this conversation?---Well, a conversation.
27 In which you had acknowledged with Mr Woodman that your conduct
28 was such that you would likely go to gaol or to some other
29 unpleasant place?---To words to that effect, someone had

1 informed me of that. I asked not to be told, but people
2 just keep talking to me about it. I apologise,
3 Mr Commissioner.

4 Who's the person that told you about that
5 conversation?---I can't recall. A lot of my friends try
6 to talk to me about it. I have to ask them not to. It
7 might have been Peter Williams. I don't know.

8 How many of those persons, Mr Kenessey, have talked to you
9 about this conversation?---Just one.

10 And who was that?---It might have been Peter Williams.

11 And who's he?---He's who used to work with me.

12 He's an ex-Leightons?---Yes.

13 Is he still there?---No.

14 Yes, Mr Tovey.

15 MR TOVEY: Mr Woodman went on to say, "So after you" - you then
16 respond by saying, "I understand what you're saying. I'm
17 with you." If you had been truthful you would have said,
18 "I've got no idea what you're talking about. What is
19 it"?---Correct.

20 And why didn't you say that?---Because I was on the verge of
21 submitting my written strategy which I alluded to which
22 I think you would have a copy - - -

23 How did it help your written strategy to not take up Mr Woodman
24 about an assertion that you and he had done something
25 criminal together?---Because he would put his plan going
26 forward into paper which I could, from memory, append to
27 that document and show that it was - - -

28 That's got nothing to do with his plan going forward, has it?

29 You're talking about what's been happening in the

1 past?---But I need him to write his strategy in writing.
2 His strategy in writing has nothing to do with what you were
3 talking about there. If he was justifying what you had
4 done previously, that might have been a problem. Look,
5 you understand what I'm saying?---That's a statement,
6 sorry.

7 You don't agree with that statement?---Could you repeat it,
8 please? I'm tired. It's the end of the day again. I'm
9 sorry.

10 What I'm putting to you is that you couldn't have had that
11 conversation unless it was true?---He was - I don't agree
12 with that.

13 COMMISSIONER: And what you were doing, Mr Kenessey, was
14 anything but getting him to record a strategy in which all
15 this would be revealed. You were agreeing with him that
16 these were things that he could not record in a
17 strategy?---Yes.

18 MR TOVEY: And how was that going to suit your purpose?---So
19 I could - if I could just - one second. The idea of the
20 strategy was to not sack John, because we couldn't, but to
21 tell him that, "Look, it's time to maybe put you on the
22 bench," football terminology, and wanted to gently remove
23 him from the project so he didn't work against us but
24 could start with a fresh team with actual action items and
25 tasks to do to try and re-engage with the State
26 Government.

27 You go on at 15, line 15, and Woodman says, "One of the reasons
28 why we've worked right from day one for five years on a
29 fixed price is because some of the things that

1 were - though they're not illegal, certainly not in line
2 with CIMIC's or Leighton's policy I'm supposed to be
3 adhering to," and you agree with that and go on over the
4 page at line 21 to say, "I think you're probably right."
5 Is that right?---It's recorded. We all listened to what
6 I said.

7 Yes. When you said, "I think you're probably right," was that
8 a lie by you?---Which line, sorry?

9 Line 21 on page 2, referring back to lines 14 to 17 on page
10 1?---Look, the context of the conversation is I'm just
11 trying to agree with whatever he says so he just puts his
12 strategy on paper so that I can wait for the day he has a
13 meeting with Judith Graley, include that in my strategy
14 and then put that to the team to get rid of him.

15 Are you saying that you are acknowledging things he is saying
16 as being true and understood by you in circumstances when
17 that wasn't the case at all and in fact it was totally
18 opposed to the way you thought things had previously
19 unfolded?---Yes, if I understand your question correctly.

20 And this was part of some devious strategy to have him continue
21 on but not be a threat?---Not continue on, but take him
22 off the playing field because I couldn't get rid of him.
23 I couldn't sack him. I couldn't end his contract.

24 COMMISSIONER: When you said, "You're probably right" at the
25 end of that passage in response to Mr Woodman saying that
26 he had done a number of things which were contrary to
27 Leighton's policy that he shouldn't have done, you were
28 agreeing with him?---Probably.

29 Was that the truth? At that time you recognised that he had,

1 as the consultant to Leightons, done a number of things
2 that were contrary to Leighton's code of conduct which he
3 shouldn't have done?---I didn't know about them, no.
4 When you said, "You're probably right", do you mean to say you
5 didn't know what he was talking about - - -?---Yes.
6 When he said he had done a number of things that were contrary
7 to Leighton's policy?---Yes. I think - did you say did
8 I know - sorry, can you repeat the question?
9 You are saying when you agreed with him or said, "You're
10 probably right", you didn't actually know what things he
11 had done that he was saying were contrary to Leighton's
12 policy?---Yes, I think so; yes.
13 So you knew what - the purpose of this discussion was for him
14 to work out, "What am I going to say to your superiors,
15 Tom, to explain the strategy that I've followed to justify
16 the course that I'm following," you understood that's what
17 he was having the discussion about?---No, the discussion
18 was for him to articulate a plan going forward with action
19 items to be ticked off by Leighton.
20 No, if you go back to the beginning of the conversation, part
21 of what Mr Woodman felt he was obliged to do was to
22 explain the strategy that he had followed and - - -?---Are
23 you talking about line number 9?
24 Just go on beyond that. Just go on a little further, please.
25 Just go back to line 26. Do you see there Mr Woodman is
26 saying, "How can I write that in a policy document all the
27 things that I've done"?---I don't - where does it say "all
28 the things that I've done"?
29 He's just set out some of the things that he's done and he's

1 saying, "How can I tell your superiors that" - -

2 -?---Because he knows - - -

3 And you're agreeing with him, aren't you?---Yes.

4 MR TOVEY: I suggest to you that it's stunningly clear from
5 this document and from that conversation that what you and
6 Mr Woodman discussed inter alia was that his role was to
7 act contrary to CIMIC's internal policy but to keep you at
8 arm's length?---Don't agree with that.

9 He says to you at line 15, "Five years on a fixed price is
10 because some of the things that we're - though they're not
11 illegal, um, certainly don't line up with CIMIC's or
12 Leighton's internal policy that I'm supposed to be
13 adhering to. I'm just sort of sitting there." All right?
14 He said that to you?---Yes.

15 And you say he said nothing to you suggesting that he saw his
16 role as keeping you at arm's length from the dirty
17 stuff?---Sorry, can you just say that again just so I'm
18 clear?

19 Yes. You say that you were not aware at any point him talking
20 to you about keeping you at arm's length from the seedier
21 side of his activities?---Is that a question, sorry? It's
22 at that time of day again.

23 Did he ever say anything to you along those lines, that he
24 saw - - -?---In the past?

25 He saw his role as keeping you at arm's length?---He did in
26 that conversation.

27 Yes, and that was totally untrue, was it?---Yes.

28 You didn't see it that way at all?---No.

29 And it wasn't just at that point; later on you got back to that

1 particular topic, I suggest, and that was at - if we go to
2 page 3, at line 48 he says, "I mean that, you know, that's
3 the reason why we did what we did. That's the reason why
4 it was left up to me to be the steward as to what
5 happened. When I got paid I was, you know, totally up to
6 my" - "it was totally up to my - my conscience and
7 whatever, which is totally, you know, at arm's length."
8 Now, he is there - - -?---Sorry, which line did you read
9 from? I was just struggling to follow that.

10 That was 52?---From where?

11 Lines 48 to 52?---Do you mind?

12 No. Now that gets back, doesn't it, to what the Commissioner
13 was questioning you about yesterday, and that is that the
14 whole reason you had Woodman interposed between yourself
15 and councillors and politicians was because you wanted to
16 remain at sufficient arm's length not to be pinged for
17 breaching Leighton's or CIMIC's policy?---I don't agree
18 with that.

19 And that's in fact what he's saying to you and you are not
20 disagreeing with it, are you?---That's correct.

21 And in fact you are agreeing with it?---That's correct.

22 And you are agreeing with it because at that stage you saw it
23 as your strategy to lie to him to give him a false sense
24 of security?---Yes.

25 Can you think of any reason why he would say something to you
26 which you knew to be a total lie in circumstances where he
27 would expect you not to react with hostility towards him
28 in circumstances where he was worried about the renewal of
29 his contract?

1 COMMISSIONER: I think that's a bit - - -

2 MR TOVEY: All right. Can you think of any reason why he would
3 say that to you, expecting that you wouldn't take him to
4 task?---Well, as I have mentioned before, he told me on
5 numerous occasions that he would donate to politicians.

6 All right. If you go to line 24 - - -

7 COMMISSIONER: I'm sorry, he told you that on numerous
8 occasions?---That he donated to political parties.

9 And you understood why he was doing that?---Well, he had been
10 doing it for years.

11 It wasn't borne of an altruistic motive for the particular
12 party; it was to advance his planning interests, is that
13 what you understood?---I think he donated so that he could
14 build relationships with politicians.

15 For what purpose?---To have whatever he wanted message heard.

16 MR TOVEY: The thing is as a result of this conversation if any
17 of it was untrue you would have been in a position - if
18 what you - I will start again. If what you are saying is
19 untrue, was in fact untrue, this would have been the - - -

20 COMMISSIONER: I'm sorry, you will have to be more explicit
21 because he's saying that what he said was not true even
22 though he was saying it. So it's all a bit complex,
23 Mr Tovey. You will need to be a bit clearer.

24 MR TOVEY: You agree that Mr Woodman talks about acting in a
25 way which is criminal and contrary to Leighton's
26 policy?---He says that.

27 Yes. That was a clear breach of his contract, to act
28 criminally and in breach of his Leighton's contract?---If
29 he acted criminally and it was true and proven, then yes.

1 He just told you out of his own mouth. Was he ever written to
2 saying, "Look, you told our Mr Kenessey that you had acted
3 criminally and contrary to our policy and on that basis we
4 are going to no longer accept your services"?---We were
5 strong armed again in - - -
6 No, was he ever told that?---No.
7 Did you ever report that, that he had admitted acting
8 criminally?---No.
9 Because you knew that you and he were both involved in that
10 activity?---I don't agree with that.
11 You knew that he had councillors in his pocket in a process
12 that was totally and patently corrupt?---I don't agree
13 with that.
14 You knew that he was manipulating politicians by making
15 contributions to their accounts, some of it under the
16 table?---Don't agree with that.
17 COMMISSIONER: Or at least, Mr Tovey, gaining access to them.
18 MR TOVEY: Yes. You knew he was using politicians specifically
19 to gain political influence in respect of C219?---That's
20 the only way you can speak to politicians, the decision
21 makers. The system dictates it.
22 You knew that he was funding politicians simply to seek favour
23 in respect of C219?---As I said, to build relationships.
24 So you accept that - - -?---Well, not for C219. As I have said
25 in earlier evidence, he has projects in Point Cook,
26 Wyndham, all over the place. He's not myopic in his focus
27 on C219, and in many correspondence he has said, "I've got
28 all these other projects I could be focusing on and, you
29 know" - - -

1 But when he was telling you how much he was paying politicians
2 and referring to sums even in this conversation that was,
3 from your understanding, to assure you that he had had
4 cooperation of these people in respect of C219?---I don't
5 agree with that.

6 Line 24, he's again talking about things he had done that were
7 going to be difficult to explain on paper, "I mean, me
8 paying Judith Graley, you know, and other people to talk
9 to Tim Pallas." Was that something you had any knowledge
10 of?---I don't think so, no.

11 So here he is talking to you about matters which are going to
12 stop him making a full report and you say you had no
13 knowledge at all of him paying Judith Graley to talk to
14 Tim Pallas? He says, "How can I write that in a
15 policy" - "in a policy document?" He then goes to talk
16 about his "liaison with Pauline Richards and Susan Serey
17 to the tune of, you know, \$50,000 in November". He's
18 laying it out clearly to you what you already knew, and
19 that is that he was using money and donations to seek to
20 influence politicians, and you knew about it, didn't
21 you?---As I said, he told me he donated to political
22 parties. It's in the VEC website. It's declared. Anyone
23 can get on their phone now and have a look at it.

24 But he's telling you that all these - the context of this
25 conversation is he's telling you that all these things
26 that you knew about, that is paying Graley to get access
27 through Pallas, funding Richards/Serey to the tune of
28 \$50,000, these are things which were contrary to
29 Leighton's policy and for which you and he were going to

1 be in trouble if people found out; that's what the
2 conversation is about, as you understood at the
3 time?---That's what he was saying, yes.

4 And that's what you understood it to be?---Yes.

5 And you didn't contradict him?---No, I didn't.

6 Because it was true?---I don't agree with that.

7 There is no reason why he was standing there lying to your
8 face, I suggest, about matters that you and he both knew
9 the truth or lack of truth of?---Sorry, I'm getting tired.
10 I lost you at the start of that.

11 Can you explain why it is that he's talking about what you and
12 he both know and in fact that's contrary to what you know?
13 Why would he be saying that to you?---Sorry, that's a
14 two-part question and I'm getting tired. If I need to
15 come back in the morning I'm happy to.

16 COMMISSIONER: You have had ample time to prepare for this
17 particular conversation. You come here with a specific
18 explanation for all of the conversations you have had
19 which might be construed adversely to you, including this
20 one. We have almost finished, Mr Kenessey. Just bear
21 with Counsel Assisting for a few more moments?---Sorry, if
22 the question could be shorter I would appreciate that,
23 Mr Tovey.

24 MR TOVEY: It's a simple question. He's talking to you about
25 things that you and he achieved together in respect of
26 Judith Graley being paid to go to Tim Pallas, in respect
27 of money being paid to Pauline Richards and Susan Serey to
28 the tune of \$50,000 in November, and you say, "Yeah,
29 I know, I know." And did you know?

1 MS KEATING: Just before we get to that, the question started
2 with, "He is talking to you about things that you and he
3 achieved together." That's not actually reflected in the
4 content of the call.

5 COMMISSIONER: Yes. The two matters, though, that counsel has
6 put to you at line 24 and line 27 to which you appear to
7 say, "Yeah, I know, I know," were you being honest with
8 Mr Woodman at that point, that you knew about those
9 matters?---Partially because he had told me about the
10 Serey ones and I had been to her function.

11 Yes, but I just want to clarify?---Sorry.

12 You were saying, "Yes, I know, I know," because you did
13 know?---No, I don't agree with that.

14 But if he hadn't told you - if he hadn't told you about these
15 things then he would know you were lying to him because
16 you wouldn't know, would you?---I understand your logic.

17 Well, why would you be saying to him, "I know, I know," about
18 those two quite significant allegations if in fact you
19 didn't know?---Well, as I was trying to explain that
20 I knew that he had told me he was going to donate to
21 Pauline and to Susan.

22 Yes?---So that part I would go, "Yeah, I know, I know."

23 MR TOVEY: I want to take you just a little bit further down.

24 COMMISSIONER: Is there much more, Mr Tovey?

25 MR TOVEY: I don't really need to go past this next question,
26 I don't think, Mr Commissioner. Just looking at what's
27 there, perhaps there's one other thing I need to go to.

28 At line 34 Woodman says, "Well, as you and I know that as
29 soon as you start putting something in writing" and then

1 you butt in and say, "Well, no, you - for you and I, we
2 for years have avoided putting anything in writing, that
3 sort of crap, you know." What was it that you had avoided
4 putting in writing?---Sorry, I'm just trying to recall.
5 I don't think I told them, Leighton, that I had in my own
6 time handed out flyers for Serey, that sort of thing.
7 What you had avoided putting in writing, I'd suggest, was the
8 whole strategy which was keep yourselves at arm's length
9 from Woodman's dirty deeds?---Again, I disagree with that.
10 That's what you hadn't put in writing, wasn't it?---Again,
11 I disagree with that.
12 From his influence peddling with politicians and with
13 councillors?---That's a statement.
14 And if I could just take you finally to 225. You yourself
15 say - remember I asked you earlier today whether it was
16 part of the strategy to try get somebody to get at
17 "Dicky" - get to Mr Wynne? At 225 you say, 225, "Is there
18 any other way we could get to Dicky, do you reckon, like,
19 if we put in a fresh face, just some bloody - someone
20 other than Phil, you know, anyone's who's close to him we
21 could use?" Then at 234 Woodman suggests, "Yeah, I know
22 somebody, Pauline Richards." I ask you again was your
23 strategy to use whoever you could to get to
24 Mr Wynne?---I at that time had already, from my
25 recollection, wanted to introduce Julie Katz as our
26 planner to replace - to represent us to communicate with
27 State Government and I wanted to broach the idea with
28 John, see - while I didn't name her, to see if he could
29 nominate anyone other than who we were currently using.

1 Okay. So this was in fact part of a genuine query which didn't
2 mean you were going to have an ongoing partnership with
3 him achieving what he suggested but you were going to use
4 the suggestion yourself?---Yes. Potentially, yes. That
5 was a - yes.

6 What this was all about was you and he trying to cover up,
7 wasn't it?---I don't agree with that.

8 You and he were acknowledging that what you knew couldn't be
9 put on paper; it's clear as day, I suggest?---He was
10 acknowledging that.

11 And you were sitting there agreeing with everything he said,
12 were you not?---Yes, I was.

13 Thank you. No further questions.

14 COMMISSIONER: Yes. Ms Keating, do you wish to examine the
15 witness?

16 MS KEATING: Commissioner, I do and I will. But it won't be as
17 short as proceeding with it in my submission this
18 afternoon.

19 COMMISSIONER: Very good.

20 MS KEATING: I do have a difficulty in terms of tomorrow
21 morning. I had not anticipated that the witness would
22 take this long. I have a special fixture in front of
23 Judge Sexton at 10.30.

24 COMMISSIONER: Yes. It might be appropriate anyway to defer
25 his re-examination because I understand that those
26 instructing Counsel Assisting are wanting to obtain some
27 documents from your client. It might be better if that
28 issue were resolved in any event before you examine him.
29 So I will leave it to you to liaise with Counsel Assisting

1 as to an appropriate time when you might come and take
2 evidence from your client.

3 MS KEATING: Thank you, Commissioner.

4 COMMISSIONER: Very good. Adjourn until 10 am tomorrow
5 morning. Mr Kenessey, I won't release you from the
6 summons and you will have to come back on a date to be
7 agreed upon between your counsel and Counsel Assisting; do
8 you follow?---Understood.

9 <(THE WITNESS WITHDREW)

10 ADJOURNED UNTIL THURSDAY, 12 MARCH 2020 AT 10.00 AM

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