

IRC05/2586 GM CRS

INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

CAMBRIDGE C

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THURSDAY 18 AUGUST 2005

**IRC05/2586 - SHANE FRANCIS DOWLING AND CARDCALL PTY
LIMITED**

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Application by Shane Francis Dowling re unfair dismissal pursuant to section 84 of the Industrial Relations Act 1996

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Applicant appeared unrepresented
Mr T Bors, counsel, for Cardcall Pty Limited

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COMMISSIONER: The matter's listed today for hearing.
Are you ready to proceed?

APPLICANT: Yeah.

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BORS: We are ready to proceed, Commissioner. There was one small matter which I raised earlier this morning, there is one witness who's a stranger to the proceedings in the sense that he's not employed by the respondent. He is an independent expert, if you will. He appears today to give evidence but he is from interstate. If it's not an inconvenience to the Court or to Mr Dowling, I have two questions to ask him in-chief and then I understand Mr Dowling wants to cross-examine him, if he could go on first, it might be a sensible way to go about it.

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COMMISSIONER: Is there any objection to that?

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APPLICANT: There's no objection, Commissioner. It's a bit strange because his statement relates to a report he did the day after I was sacked, I was sacked on the 16th, his report's on the 17th, I don't see what they're trying to prove but let's go ahead anyhow, I'm happy to question him.

45

COMMISSIONER: There's no objection to this, so we take this witness first?

BORS: Out of order if we could.

50

COMMISSIONER: Is there a witness statement?

BORS: There is. It was filed on 28 July. His name is Mr Gore, William Gore.

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COMMISSIONER: William Gore, yes. So, just for the convenience of having his evidence dealt with first so that he can return--

BORS: He's free to go.

COMMISSIONER: --to wherever, yes, and that's not objected to, well, I don't see any reason why we shouldn't do that.

5

BORS: If it suits the Commission in that regard to hear perhaps openings first and then to interpose him.

COMMISSIONER: That's a matter for the parties also.

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BORS: That might be the easiest way to go about things and at least that way we all know where we're headed in terms of what we're going to do today. Are you fine with that?

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APPLICANT: We'll have our arguments first and then cross-examine Mr Gore?

BORS: That's right.

20

APPLICANT: Yeah.

COMMISSIONER: Are you comfortable with that arrangement, Mr Dowling?

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APPLICANT: Yes, Commissioner.

COMMISSIONER: Do you wish to commence?

30

APPLICANT: I'm not too sure what an opening is, where we're heading, Commissioner, in relation to my argument, I've never done an opening before.

COMMISSIONER: You don't wish to open?

35

APPLICANT: Well, I can open, he can go first then I'll go so I can see what it's about.

I have got some general sort of key issues that I'm going to be driving today.

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COMMISSIONER: It's not for me to tell you how you should present your case. If you don't want to make an opening you don't have to.

45

APPLICANT: I will make a brief opening.

The reason for the sacking, the company was acting in a criminally negligent manner by trying to hide their health and safety and dangers of the flags and I stepped over the line when I notified retailers, Commissioner.

50

There never a warning letter, Commissioner, I'll argue today. There was a threatening letter a couple of days before I got sacked which said they wanted me to show up and answer the charges of extortion, other than that there never was a warning letter.

55

The only time that happened too was a few days before I notified the retailers which I gave them warning to notify them themselves but they refused to do that.

5 They had Mr Hassatt ring me up to try and threaten and
intimidate me. It didn't work which was consistent with
their previous policy and strategy. The intimidation and
bullying included, Constable Shields telling me to leave
10 the company, making my job more difficult, trying to
withhold sick pay, trying to withhold commission, they
ended up paying both, Commissioner, because they knew they
didn't have any grounds to withhold them but they
threatened to withhold them.

15 Threatening and intimidating call from their lawyer.
Accusations of extortion and blackmail against me,
defamation charges, then finally sacked.

Now these all will be proven today, Commissioner.

20 The summarily dismissal part is a total joke. At our
conciliation meeting Mrs Reid there referred to the
warning letter that Jonathan Hassatt sent to my solicitor.
They never got that until the day before the conciliation
25 meeting, Commissioner, because I didn't need to. That was
sent on 13 May. On 12 May the company sent me one. Now I
rang my solicitor the next day he said, I got one and he
briefly read it, it sounded fairly similar to the one, so
I didn't bother getting it.

30 Now the warning letter they sent me which was dictated by
Jonathan Hassatt, who's a solicitor, which in my evidence,
which has been submitted - I'll just find it, I think it's
number M1, M1, Commissioner. Now the reason Mrs Reid
35 didn't submit that letter from Hassatt Dickson to my
solicitor because she was well aware that this warning
letter was sent to me from the company because Jonathan
Hassatt dictated it and it's in their evidence. Jonathan
Hassatt says, I, by and largely drafted it.

40 If you go down the bottom there, Commissioner, it says;

45 "We have noted your concerns about the flags, we
have noted the reports you have provided,
however the company has taken a decision that
for the moment at least, these flags are not to
be taken out of circulation".

50 Down the bottom there it says;

"Finally we view your recent conduct in making
accusations that you have, emailing employees,
making trouble with customers",

55 Well making trouble with customers, they got no evidence
of that, it never happened, Commissioner, at that date and
it never happened afterwards, I just notified them of the
health and safety dangers. "We require you to" - it goes

on to say, "As an attempt to wrongfully to extort money from the company". They wanted me to show up to a meeting to answer charges with my lawyer, if they wish, to answer charges of extortion.

5

Now charges and extortion are very powerful words, very powerful and now for a layman to put them in there you might be able to excuse them to some degree. Jonathan Hassatt put that in there, he's a lawyer, he well and truly knows the power of those words, Commissioner. He wanted me to show up to a meeting - and at the top they say they're doing nothing about the flags, he wanted me to show up to a meeting and answer charges of extortion which they've never filed to my knowledge - and they wouldn't - they wouldn't have the balls to do that because making a false complaint to the police is a criminal charge in itself. He wanted me to show up to this meeting under the proviso of answering charges of extortion - and the conversation we had the day before with Mr Hassatt was a combination of both warning letters, Commissioner. It started off very intimidating, very threatening then at the end he realised he couldn't threaten and intimate me, he wanted me to show up to this meeting, well and truly knowing they're not going to anything about the flags, what for? Under the threat of extortion charges he was going to say to me or Mr Picton was going to say to me, look here's five, 10 grand, piss off otherwise we'll have you charged with extortion, that's what they were going to say. They weren't there to review the flags or the issues about the flags.

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To summarily dismiss someone, and I thank Mr Hassatt, you need to be giving someone a fair and reasonable chance in fair and reasonable conditions to put their case forward. They didn't want to hear my case in relation to the flags, Commissioner.

35

If you have a look at M1, that's the warning letter, that's why Ms Reid come in here and she didn't have a copy of her own company's lawyer letter to my lawyer because she knew if she got a copy of that you could compare it to the true warning letter which was the one the company sent me. Where wants me to show up there to charge of extortion. Mr Hassatt dictated that letter, she was well and truly aware that letter was in existence.

40

45

They say they've got a report that refutes my report, there is no report that refutes my report, it's not in there, Commissioner. There's someone's opinion based on email, that's not a report. Mr Hassatt has got to sit there and try and argue it is, he's going to look like a total joke. That's why, once again, Ms Reid did not produce it, she knew they didn't have a report. If she had have handed that in there you would've sat there laughing for half an hour, Commissioner.

50

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That's the key document there, their warning letter, M1, Commissioner. That's their so-called warning letter.

Other than that there are no other warnings whatsoever except a reprimand from Russell Shields for breaching email policy. Breaching email policy, he sent me a warning. He didn't send me a warning, he rang me up - he says in his statement - to reprimand me for breaching email policy. What he actually did was ring me up to tell me to leave the company and how he was going to make my job more difficult, which he followed through with as documented with the threatening of withholding sick pay, which they paid and threatening withholding commission, which they ended up paying. He was threatening to withhold both but he knew he didn't have any legal ground to stand on to withhold them, so he paid them both.

That's pretty well it, Commissioner.

COMMISSIONER: Thank you. Mr Bors?

BORS: Commissioner, Mr Dowling was employed by the respondent for nine months from September of 2004 until May of this year. He was employed as a customer service representative, if you will, and his responsibilities in that regard were to distribute promotional material for the respondent. The respondent is in the business of telecommunications.

These circumstances arise out of the provision to Mr Dowling in December of last year of certain flags which were these promotional materials. Mr Dowling complained of some fumes coming off the flags. He complained that those fumes were toxic. He was under no obligation to carry these flags, they were promotional materials that he could either order or choose not to order, he subsequently chose not to order them.

In April of this year, he ordered another set of flags and the flags that he had previously chosen not to order arrived by mistake. After that there starts, what I can only classify as a campaign of disinformation by Mr Dowling which starts off with Mr Dowling being asked to put his concerns in writing to the company's senior management. Mr Dowling doesn't do this, instead he writes an email, which my submission will be, is fraught with inaccuracy and sends that to 30 of the company's staff.

The company then takes the initiative of having Mr Dowling's concerns looked at but Mr Dowling refuses to abide or report the matter to the proper authorities, instead he does a second mail out again, he will probably submit, on the basis of raising awareness within the company as to this imminent danger. We would submit that it was done with more malicious purpose in mind.

In any event, Mr Dowling is warned verbally on 13 April by his general manager. He is then warned verbally again on 12 May and is sent one letter, which he's been referring to, to his solicitors and another letter to him personally, instructing him three things; firstly, that he

is not to send out any further emails to company employees. Second, that he is not to communicate with the company's customers in regards to this issue of toxic flags. Third, that if he does so he will be summarily dismissed. Fourth, that he is invited to take his grievance to the proper authorities for investigation.

In what can only be a deliberate disregard of those warnings, Mr Dowling then sends an email, again which misrepresents what is in the documents in his position and the true state of affairs and he sends that email to 1500 of the respondent's customers.

Mr Dowling then is summarily dismissed and in what I would submit is another example of the malicious intent that Mr Dowling had in waging this campaign, he sends a further email, again to about 1500 of the respondent's customers.

In the circumstances, my submission would be, that this is the kind of conduct which comes within the classification that Ross VP was talking about in *Rose v Telstra*, this is conduct which is indicative of rejection of the employment contract and in determining whether the termination in this case was harsh, unreasonable or unjust, there can't be any doubt that Mr Dowling knew exactly what the consequences would be if he acted in a certain way and he acted in that way nonetheless.

At the end the submission is that in doing so, Mr Dowling really can't be heard to say that he was acting in the spirit of bringing these issues to light for any noble purpose because he didn't go about it that way. What he did do is threaten the company senior management that if they did not reach a settlement with him he would go and inform retailers of what he perceived to be a huge health risk. The company refused to be blackmailed and that was the way in which it was interpreted and said to him quite clearly, take your grievances to the proper authorities, we will not settle with you on them but if you communicate with customers or staff about this issue again you'll be summarily dismissed. With that in mind, Mr Dowling acted in the way that he did and that action, we would submit, is basis for summary dismissal as has occurred in this case and it was not harsh, unreasonable or unjust.

COMMISSIONER: Thank you.

APPLICANT: A lot of inaccuracies there, Commissioner, but we don't debate them now.

COMMISSIONER: Mr Bors, are you going to call this witness?

BORS: If I could I'll call William Gore.

WITNESS INTERPOSED

<WILLIAM GORE(10.30AM)
AFFIRMED AND EXAMINED

5 BORS: Q. Your name's William Gore?
A. Yes.

10 Q. Do you live at 39 Kessells Road, Coopers Plains in
Queensland?
A. No, that's where I work.

15 Q. That's where you work, and you are a chemical analyst?
A. Yes.

15 Q. You're currently employed with Queensland Health
Scientific Services?
A. Yes.

20 Q. You made a statement in connection with these
proceedings on 15 July this year?
A. Yes.

I tender that statement.

25 COMMISSIONER: Q. Does the witness have a copy of it?
A. I do.

30 BORS: Q. There's nothing in there that you wish to
change or alter?
A. No.

COMMISSIONER: The document's tendered. Any objection to
the tender?

35 APPLICANT: I do think it's a bit odd his statement and
report's done the day after I've--

COMMISSIONER: Is there any objection to the tender?

40 APPLICANT: No, I'll let it run.

COMMISSIONER: No?

APPLICANT: No.

45 EXHIBIT #1 STATEMENT OF WILLIAM GORE DATED 15/07/05
TENDERED, ADMITTED WITHOUT OBJECTION

50 BORS: Q. Mr Gore, annexed to your statement in annexure
B is a lab report. Was that prepared by you?
A. Yes.

55 Q. On the second page of that lab report, page headed,
result of analysis.
A. Yes.

Q. You have three tables there, one which sets out the
concentration of two chemicals in flags that you've
tested.

A. That's right.

Q. One which sets out the concentration of those chemicals in the air.

5 A. Yes.

Q. Then one table which sets out the exposure limits published by the Australian National Occupational Health and Safety Commission.

10 A. That's right.

Q. Would you be able to elaborate exactly what those exposure limits are and how they relate to the concentration in the air - which is in the second of those tables as we go down the page and relates directly to the flags?

15

A. The occupational guidelines are concentrations that are generally accepted for a time weighted average, TWA levels, for an eight hour working day exposure, five days a week, you asked further, the relationship, the concentration we found in the test that we did were less than the levels in the guidelines.

20

Q. Would it be correct to say that the Australian National Occupational Health and Safety Commission prescribes an exposure limit of 100 milligrams of cyclohexanone per cubic metre of air?

25

A. That's right.

Q. Your finding was that there was 4 milligrams of cyclohexanone per cubic metre of air in respect of the flags that you tested?

30

A. Yes.

Q. It would similarly be correct to say that the exposure limit prescribed in respect of isopropyl alcohol is 28 milligrams per cubic metre of air?

35

A. Yes.

Q. As a result of your test you found that there was 1.5 milligrams of isopropyl alcohol in respect of these flags per cubic metre of air.

40

A. That's correct.

Q. Would you be able to explain to us what MSDS is?

45

A. An MSDS is a material safety data sheet, it is a sheet that is supposed to be supplied with all chemicals sold as a guide to how the chemical or chemical mixtures should be handled safely.

50

Q. Does an MSDS refer to a particular concentration of the chemical in question?

A. The MSDS relates to the product as sold, so it could be a mixture of chemicals or it could be a chemical and then it also includes reference to other guidelines that may be used such as these occupational health and safety guidelines.

55

Q. Having examined the flags in question in these proceedings, is it your opinion that these flags pose any health risk?

5 OBJECTION.

APPLICANT: Objection, Commissioner, if he was going to put that, he should've put it in his report whether they're safe or not. That's for me to ask if I want to, Commissioner.

There's nothing in his statement saying whether they're safe or not.

15 COMMISSIONER: What's the basis of your objection?

APPLICANT: Commissioner, it should've been in his statement. If he's going to ascertain that they're safe, he should've put that in his statement.

20 COMMISSIONER: Why?

APPLICANT: So I could at least know what he was going to say, Commissioner, at least - let's go ahead with it anyhow, I'm going to cross-examine it anyhow.

Aren't they supposed to stay in line with their statement, Commissioner?

30 BORS: I don't think I'm significantly deviating from it.

APPLICANT: Okay, go ahead.

35 WITNESS: Anyway, I'm not an expert toxicologist, I don't have expertise to say whether it's safe or not, I'm afraid.

BORS: That puts an end to that then. That's the evidence-in-chief.

40 COMMISSIONER: Cross-examination, Mr Dowling?

<CROSS-EXAMINATION

45 APPLICANT: Q. If the company wanted to know whether they're safe or not, they should've taken your report to an expert?

50 COMMISSIONER: Mr Dowling, I think it might be appropriate if you stand when you ask the witness questions, I'm going to have some difficulty knowing when you're finished or whatever. I think we'll observe some certain protocols just for the sake of efficiency.

55 APPLICANT: Q. If the company wanted to know whether they're safe or not, they should've taken your report back to Queensland Commerce or Commerce Queensland and got them to do a report whether it was safe or not?

A. Yes, that's one way of doing it. I'm not saying that there's any specific--

5 Q. Do you know if they took it back to Commerce Queensland?

A. No, I don't know.

Q. That's probably what they should've done?

10 A. I'm not sure that Commerce Queensland would be the appropriate place to go for safety--

Q. Commerce Queensland gave me the original information.

A. I don't know about that.

15 Q. I understand - to my knowledge - they advised them to take it to you to get it tested.

A. Okay.

20 Q. They advised them to get it tested but whether, like, take it you. Now the guy at Commerce Queensland is a guy called Ross Hanson, do you know him?

A. No.

25 Q. He's a so-called expert. Based on an email here I've seen he probably is an expert, he sounds like he knows what he's talking about. He says here if the flags do have 1530 micrograms, your report says they've got 12,000 milligrams per square metre, do they not?

A. Of those two chemicals, yes.

30 Q. Yes, 12,000 milligrams. Not of those two chemicals together or total, toxic--

A. Yes, I'm sorry, yes, you're quite right.

35 Q. Those two have 6800. My report said they had 1530 milligrams, so there's a big discrepancy there isn't there?

A. There is.

40 Q. Ross Hanson says, if the flags have 1530 milligrams then appropriate action might be to cease distribution of the flags forthwith and advise - this is attachment to G to Gabrielle Bradman, Commissioner - it says, if it has 1530 milligrams per square metre then appropriate action
45 might be to cease distribution of flags forthwith and advise sales executives of your clients to handle these only with rubber gloves. Do you dispute that, are you saying Ross Hanson is wrong in his advice there?

50 A. I, no, I don't know about the safety of whether they should be handled with gloves or not.

55 Q. Given my report says there's 1530 and he's saying, hold the horses baby, stop distributing them, make sure they're wearing gloves, the retailers and the staff at 1530, given that yours says 12,000, that's eight times greater, so 1530 - based on that Ross Hanson is saying, they're extremely dangerous, he's the expert, he's the one you're advising they should take it to, to get a report.

BORS: In fairness to this witness, if Mr Dowling's going to refer to other material perhaps he could give a copy of it to--

5 APPLICANT: That's coming out of Gabrielle Bradman. I've got a copy of all my material here, Commissioner. I haven't brought a copy of Gabrielle Bradman's, they should have a copy there.

10 BORS: I can give a copy to Mr Gore to have a look at for the purpose of perhaps speeding this up, if he can have a look at what he's actually being referred to.

15 APPLICANT: It's Gabrielle Bradman's evidence, I thought they'd have a copy for the witness stand, Commissioner.

COMMISSIONER: I beg your pardon?

20 APPLICANT: It's Gabrielle Bradman's evidence I'm referring to. I assumed they'd have a copy for the witness stand, I brought a copy of all my evidence for the witness stand.

25 BORS: Can I approach?

COMMISSIONER: Yes.

APPLICANT: Sorry about that.

30 Q. If you go to the second page, if you flip over the page?

A. Yes.

35 Q. Up the top here it says, he actually disputes my report, he says, he disputes the levels;

40 "I question the figure in the sales executive's email to all staff of 1530 milligrams per square metre. 1.5 grams of solvent per square metre of flag. I would expect the flags to be extremely slimy with that level of solvent. 1530 micrograms is probably more believable. If on the other hand the data are correct and the flags are slimy with the
45 solvent, then appropriate action might be to cease distribution of these flags forthwith and advise the sales executives and your clients to only handle these with rubber gloves".

50 Based on your report 12,000, they should've just dumped the whole lot, got rid of them?

A. I'm sorry, you're asking about safety issues, I'm not an expert in that, I'm not a toxicologist.

55 Q. No, given that my report says 1530 milligrams and he's saying take this action, yours says 12,000 some eight times greater, you'd definitely want to be taking this action would you not?

A. I concur with your logic but it's not within my area of expertise.

5 Q. No, that's fine. You've got 4 milligrams per cubic metre, how did you come to that? Based on the report that I've seen here, you've gotten the flags in a satchel.

A. Yes.

10 Q. Then you've opened it.

A. Yes.

15 Q. You've tested how much is coming out of the satchel?

A. We tested the air in the breathing zone of the person handling the flags.

15

20 Q. Given the complaint, predominately about having these flags in confined areas, like a car and a small unit, did they ask you to test it in a car, where the car gets left in the sun for four or five hours, gets 50 degree hot, did they ask you to test it in that manner?

A. I discussed that with Sally but she said that we would test it as if we were outside a shop putting the flags up and hanging them on a pole.

25

Q. That was their main concern how they send it to a retailer and how the retailer puts it on the pole?

A. I was under the impression that the representative who is distributing the flags was actually putting them on the poles and putting them up outside the - but I'm not sure.

30

Q. If they asked you to test them in car where the car gets hot for an hour or two, three, four, five hours, could you have done that?

A. Yes, we could have done that but they didn't ask us to.

35

40 Q. No, of course not. Just logic tells you, if those flags were left in the boot of a car, two, three, four, five hours, those figures would've quite possibly been a lot higher?

A. A lot higher.

45 Q. Yes, a lot higher but they didn't want you to test it that way, did they. They wanted you to test it a different way because I know when I got the flags, mine were in the boot of my car - they weren't coming in some little satchel I opened. The results would've been a lot higher if they had have tested - and you discussed it with Sally but she didn't want you to do it that way?

50

A. That's right.

55 Q. They didn't want to know what the results were that way. Obviously if they don't want you to test it that way they don't want to know what the results are of that manner.

BORS: Can you give the witness a chance to answer the question, Mr Dowling.

APPLICANT: Yes, I'm sorry. Getting a bit carried away.

WITNESS: I'm not aware of what their reasoning was.

5 APPLICANT: Q. No, that's fair enough. What else have we
got here. Based on your expert opinion, Mr Hanson says
there should be a no smoking policy in vehicles, what do
you think? Do you think that's a good idea if you're
10 carrying 10 or 20 of these flags in your car?

A. It's not-

Q. You're not the expert, yes.

A. I'm not an expert, sorry.

15 Q. No, that's fine, I'm sorry about that. If you were
going to sack someone on the health and safety of the
danger of these flags, would you get it tested before you
sacked them?

20 BORS: I don't know if he can answer that either.

APPLICANT: No, but it was a good question.

WITNESS: It's not for me to make--

25

APPLICANT: Q. I know you've got to go and you've been
very helpful actually, I appreciate it. You've done my
cause a world of good. The bottom line is they were never
tested in the car, they were never tested what the air
30 concentration of these fumes are in the car. You spoke to
Sally Garner about it, she did not want you to test it
that way. Did you tell her when you spoke about it, did
you tell you that the level would be a lot higher?

35 A. No, I didn't. I didn't have the flags, I didn't know
the nature of the problem until after we'd discussed how
they were going to be tested.

Q. On what day did she ring you?

40 A. I can't remember. We had several conversations, a lot
of emails went backwards and forwards.

Q. Do you know when she first contacted you, have you got
any of those emails there, a rough date?

45 A. I probably have.

Q. Just roughly when they first contacted you, would be
great.

A. 16 May or thereabouts.

50 Q. That's a Monday, yes. Is that the first day she
contacted you? You tested on the next day on the 17th?

A. Is that right, no, it was probably before that. This
was a response from me to-

55 Q. Do you know roughly, was it a week before or few days
before?

A. I can't recall but I imagine the week before.

Q. It's probably only a few days because that's a Monday,

it's probably what, Thursday or Friday maybe she - based on my information - because that's when they got the report or--

A. 13 May, I have some communication here.

5

Q. 13 May, that's the Friday, yes. Leave that at that. Now the discrepancy in the flag, yours says 12,000 milligrams per square metre, mine says 1530, that's a discrepancy of, what's that, 10,470 milligrams per square metre?

10

A. Yes.

Q. My flags were sent to me by Toll, I left them in the boot of my car on a Sunday for eight hours, that's 10,500 milligrams per square metre of 20 flags in my car. Is this dangerous?

15

A. I'd have to try and work out whether it approaches the guidelines. I mean I-

20

Q. The guy who did my report, okay, sorry.

A. I can't do it off the top of my head, I'm sorry.

Q. The guy who did my report from Packaging Inks Australia, have you ever heard of them?

25

A. No, I haven't.

Q. They actually do a lot of testing for Cleanaway. Basically he said at 1530 milligrams per square metre, if you've got four or five of them on the boot of your car it's really dangerous. Now yours is - forget the 1530, there's 10,500 milligrams missing. I put it you that--

30

COMMISSIONER: You're confusing me now.

35

APPLICANT: Sorry, Commissioner. My report says at 1530 milligrams per square metre, Commissioner, that's dangerous. His says there's 12,000 milligrams. Where's the missing 10,500, Commissioner. They're in my car, Commissioner.

40

BORS: Just one point and it's in relation to the question that he asked of the witness that Mr Dowling says that his report says that 1530 milligrams is dangerous. His report doesn't say that and it's unfair to this witness to couch the question in those terms.

45

APPLICANT: It says we normally expect a level below 100 milligrams.

50

BORS: It doesn't say that it's dangerous.

APPLICANT: It's up to the company otherwise, wouldn't you think.

55

Q. Based on the 12,000 milligrams per square metre, should people be wearing gloves?

A. I'm not sure. I mean I handled it without gloves, put it that way.

Q. Did you wash your hands straight afterwards?

A. I would've washed them intermittently during the day.

5 Q. Would you wipe your eyes with them once you've been touching these flags?

A. No.

Q. No, you wouldn't would you.

10 That's one of the old ones, Commissioner, that's one of the old flags before, we got the old cheapoes. I wouldn't do that with those flags, Commissioner. Basically that's pretty well it.

15 Q. Just one last question I suppose. If you're concerned about the health and safety of staff who are carrying them in the boot of a car, you'd get it tested in that manner wouldn't you?

20 OBJECTION.

BORS: I don't think he can answer that question either.

25 APPLICANT: No, if you were concerned - he does all the testing, Commissioner.

BORS: I think this witness has given evidence that he's not an expert in respect of health and safety or any of those matters.

30 APPLICANT: He's an expert in testing, Commissioner.

BORS: He can't give any kind of evidence as to how these things should be handled.

35 APPLICANT: Let him answer it and we'll decide.

BORS: I'm objecting to your question.

40 COMMISSIONER: On what basis are you objecting?

BORS: I object on the basis that he's asking this witness what would be his recommendation in respect of safe handling.

45 APPLICANT: No, no.

50 COMMISSIONER: The witness is quite capable of answering only within his area of expertise. He's demonstrated that on two occasions already.

BORS: Sure, well I take the point then.

55 APPLICANT: Q. When you did the flags and they opened the satchel, you were trying to work out whether it's dangerous when people open the satchel and put the flags up. If you were concerned about the health and safety of sales reps carrying them around in the boot of their cars,

what the toxic levels are and the fumes in the car, that's how you would test it wouldn't you?

A. Absolutely.

5 Q. Absolutely. To not test it in that way means you couldn't care less about the health and safety of the staff?

A. No, no, I'm sorry I can only do what the client asks me to do.

10

Q. Yes. I'm not having a go at you, mate.

That's pretty well it, Commissioner.

15 COMMISSIONER: Is there any re-examination?

BORS: No, I've got nothing else.

<NO RE-EXAMINATION

20

COMMISSIONER: I just want to clarify this.

25 Q. In your report you've mentioned what the National Occupational Health and Safety Commission standards are -its exposure limits for the in air.

A. Yes.

30 Q. Are there similar figures for the actual figures in a substance, as such?

A. No, I don't think so, not that I'm aware of. There are toxicity data for ingestion if it's consumed. There are toxicity data relating to absorption through the skin if you're in contact with the chemicals directly.

35 Q. I'm just having some difficulty working out this comparison that's been mentioned during the evidence here. A figure of 1530 was mentioned.

A. Yes.

40 Q. Have you been provided with that laboratory report document which shows that there?

A. I have it, yes

45 Q. See the analysis that's set out there, solvent found and the various amounts that have totalled up to 1530?

A. Yes.

50 Q. There is a significant difference. Just take for instance, well any one of the two chemicals that you have identified.

A. Yes.

55 Q. In your flag you are looking for the first one, what's it called? Cyclohexanone?

A. Yes.

Q. 2800.

A. Yes.

Q. Here it's 193. Now am I comparing apples with apples?

A. Pretty much, yes. I'm not really sure why there is such a large difference.

5 APPLICANT: I can explain that, Commissioner.

COMMISSIONER: Sorry, you're not in the witness box.

APPLICANT: Sorry.

10

COMMISSIONER: Q. It's a valid comparison and there's a big difference.

A. It's a valid comparison and there's a big difference, that's correct.

15

Q. The flags that you examined are showing far greater levels of that chemical than the ones that were in this other laboratory report from Packaging Inks Australia.

A. Correct.

20

Q. Isoporone, is that how it's pronounced?

A. Isoporone.

Q. Isoporone. 704 there against your finding of 4000.

25

A. The analytical techniques are slightly different and it may be that there are different temperatures at which the solvents were - incubation temperature of 180 degrees 60 minutes. Whereas I was doing it at 280 degrees, so you would expect some difference but you wouldn't normally expect that great a difference.

30

APPLICANT: I'd like to ask one more question too, Commissioner, after you finished.

35

COMMISSIONER: Q. On the second page of that it's interesting, it says - and this is Packaging Inks Australia report, "The results of the analysis shows unusually high total retainment solvent level".

A. That's right.

40

Q. "Normally expect a result below 100 mg".

A. Can I elucidate a little bit based on how I understand that?

45

Q. Yes.

A. From what I could make out, the flags had a very high thalate content. Now thalate is a plasteriser used to soften various plastics and it's very absorbent and I think the solvents were thoroughly saturated in this very absorbent material.

50

Q. That might be the cause of this high level.

A. Yes, exactly, that's what I'm saying.

55

Q. I'm just trying to--

A. Most solvents will evaporate fairly quickly but because of the high thalate nature they're not escaping.

Q. If you just continue on looking where we were there, this is identified as being rather high. Then there's exposure limits, see those mentioned there?

A. Yes.

5

Q. See the figures that are mentioned, this is apparently taken from a material safety data sheet, 28 milligrams.

A. That is the same figure as the one I was using in my report. The other is slightly different.

10

Q. I was going to ask why there is that - that seems to correspond with your figure, doesn't it?

A. The 28 does.

15

Q. Yes, for isoporone.

A. Isoporone.

Q. The other one - this figure's twice what you say. Why is that?

20

A. I assume because they're coming from different sources. Most material safety data sheet information comes from the United States. I thought it more appropriate to use the Australian standard.

25

Q. Although your results show high concentrations in the actual flag, the levels that you're identifying in the air, in the test that you did, are getting well under those figures?

A. We were outside and there was, you know considerable dilution.

30

Q. One would think then though that, although you're getting very high levels in the flag, the situation that you're testing it in, in terms of the levels that might be anticipated for inhalation wouldn't give rise to concern?

35

A. That was my interpretation of the data I obtained.

Thank you for that.

40

Anything arising from my questions - would you remove that from the Bar table, please.

APPLICANT: I was going to ask questions.

45

BORS: Nothing arising.

<FURTHER CROSS-EXAMINATION

APPLICANT: I have three more questions, Commissioner.

50

Q. I just want to clarify that my report says 1530 milligrams per square metre, yours says 12,000. I take it the flags that were sent to you were sent directly from the company via courier?

55

A. Yes, I believe so.

Q. One thing that quite possibly - I'm sure of it actually - could explain the differences is my flags were

sent to me by Toll, they were left in my boot of my car for eight hours on a hot Sunday, so a lot of the toxic residue could've evaporated and highly likely did evaporate in my car and that's why my results are lower.
5 Do you think that could explain it? It might've been out in the sun, in the sun, in the car, a lot of the residues evaporated in my car therefore there's going to be less on there when I take it to get tested.

10 A. As I was explaining to the Commissioner, I suspect not. I think the material is very absorbent and I don't think that quite accounts for the difference.

Q. Not in all the difference but maybe 1000 milligrams per square metre, 2000--

15 A. Some certainly.

Q. You're not an expert, you just said before you can't say whether it's dangerous or not, we need to go to an expert. The reason for the high levels of residue on the
20 flags, the person at Packaging Inks, how he explained it to me was, when these flags are made, they're dipped in solvent, they're meant to be hung out to dry, once they're dry they put a paper film between each one so they can breathe, that's how they're normally done, that's how the
25 original flags were sent to me. These ones - can I bring, show him, Commissioner? These ones, he said they wouldn't have been allowed to dry, cheap factory in China, they wouldn't have been allowed to dry and they've had plastic put in between them so the chemical residue was sitting
30 there, that's how he explained it. Do you think that's feasible, why there is so much residue on them?

A. I'm not aware of manufacturing practices for the use of these plastics, I'm sorry.

35 Q. Just one last question, we got into the levels of residue in the air, 4 milligrams, like you said that was done in the outside environment?

A. That's right.

40 Q. Where the major complaint is in a confined area, a car?

A. I wasn't made aware of that.

45 Q. That's the major complaint. In a confined like in a car and a unit. The levels, like you said before, would've been a lot higher in a car?

A. Yes.

50 Q. You discussed it with Sally Garner, she didn't ask you to test it in that manner? No worries, then.

That's all, Commissioner.

55 COMMISSIONER: Thank you for giving your evidence. You're released and discharged.

<WITNESS RETIRED AND EXCUSED

COMMISSIONER: Mr Dowling, I think we revert back to your evidence.

5 APPLICANT: My evidence? Yes, Commissioner.

COMMISSIONER: Do you propose to take the stand and attest to the statement that you've made in this matter, do you, Mr Dowling?

10 APPLICANT: Is that standard practice, yes, okay, yes, for sure.

<SHANE FRANCIS DOWLING(11.05AM)
AFFIRMED AND EXAMINED

15 COMMISSIONER: Q. There is a customary protocol where the Commission provides very limited assistance to unrepresented parties in terms of evidentiary material. For the record can you please state your full name and address?

20 A. Shane Francis Dowling. Unit 21, 71 Rowntree Street, Balmain.

25 Q. You are the applicant in these proceedings, is that correct?

A. Yes, Commissioner.

Q. Have you made a statement in relation to these proceedings?

30 A. Yes, Commissioner.

Q. Do you have a copy of that with you there?

A. Yes, Commissioner.

35 Q. A document which was filed in the office of the Industrial Registrar on 1 July 2005?

A. Yes, Commissioner.

40 Q. The document contains some 35 numbered paragraphs and has various attachments.

A. Yes, Commissioner.

45 Q. It appears to have been signed by you on 30 June 2005. You identify that document, do you say upon your affirmation that the contents of that document are true and correct to the best of your belief and knowledge?

A. Yes, Commissioner, a few typo errors I notice, but-

50 Q. Are there any alterations that you want to make before you give that particular answer?

55 A. Just one thing but it's fairly trivial. It says here, I just quote Jonathan Hassatt as saying, the company will have me charged, it should say Jonathan Hassatt said the company will have you charged with extortion. It's paragraph, it's number 30 about six lines down, seven lines down, because I'm quoting him directly, it says the company will have me charged, it should say the company will have you charged.

Q. Me should be changed to you?

A. Yes.

5 Q. Any other alterations you seek to make to the document?

A. Not that I can recall, Commissioner, it's true and correct.

10 Q. You say it's true and correct to the best of your belief and knowledge?

A. Yes.

15 Q. Do you seek to have the document admitted as evidence in these proceedings?

A. Yes, Commissioner.

COMMISSIONER: The document is tendered. Is there any objection to the tender?

20 BORS: No objection.

EXHIBIT #2 STATEMENT OF THE APPLICANT DATED 30/06/05
TENDERED, ADMITTED WITHOUT OBJECTION

25 COMMISSIONER: That is the extent to which the Commission assists unrepresented parties. I now invite Mr Bors, if you wish to cross-examine the witness.

30 <CROSS-EXAMINATION

BORS: Q. You first started to work for Cardcall in September of 2004, is that right?

A. Yes.

35 Q. You were a sales executive?

A. Yes, ..(not transcribable)..

40 Q. In that regard can you describe what you would do on a daily basis?

A. Basically go see retailers, hand out point of sale and also sell Optus start up packs, SIM cards.

45 Q. When you say point of sale, that refers to promotional material?

A. Yes, ..(not transcribable)..

50 Q. Flags, such as the ones that we're speaking about, are part of those promotional materials?

A. Yes.

55 Q. Can you describe to us what they would do with these flags?

A. What do you mean they?

Q. The retailers?

A. The retailers, put them outside their shops.

Q. Hang them outside in the open air?

A. Hang them, yes.

Q. Your first contact with the flags that you describe as toxic, was in about October or November of 2004.

5 A. Yes.

Q. After you had left them in your car in the sun for several hours, you went back to the car and you say that it stunk of what you call toxic fumes and you made up your mind at that point, I'd suggest, that the fumes were toxic.

10 A. Well, anyone who comes across them it's not too hard to tell.

15 Q. You made up your mind at that point in time that you considered that these flags were toxic?

A. Not toxic but dangerous, yes.

Q. So in December of 2004 you called Russell Shields, who is the general manager of Cardcall.

20

A. Yes, a couple of times, yes.

Q. You refer to one complaint and that's in paragraph 8 of your statement, you say you complained to Russell Shields and he said, wrap them up when you store them in the car.

25

A. Yes.

Q. You say that you tried that but it was no better, the car still stank and so you decided to no longer carry these flags.

30

A. Not at that point, no.

Q. When did you make that decision?

35

A. We had a meeting - if you go to paragraph 10 it's fairly explanatory there. Had a meeting with Russell Shields, the point of sale manager, Mr Iso, he was point of sale manager at the time, he no longer works for the company, I complained about it then, you know, unsafe. Richard Iso said when they first arrived these new flags, he had to go outside because they made him sick. Russell Shields was just sitting there saying and doing nothing. Richard Iso also said, look another rep had complained about them stinking out a car and she's refusing to carry anymore. She's just getting them sent direct to the retailers.

40

45

Q. Richard Iso is not giving evidence today, is he?

50

A. No, because I can't track him down, he no longer works for the company and I'm sure Cardcall don't want him as a witness.

Q. In any event - sorry, were you finished?

55

A. No, because Russell Shields was saying and doing nothing and especially with Richard Iso complaining - who had been with the company a long time - I was only new at the company, I stood there and I thought, Jesus Christ I can't drive the issue if someone else isn't - if that's

their solution just not to carry them and get them sent direct to the retailers, well I just ain't going to carry them.

5 Q. You made the decision in about December of 2004 that you weren't going to order any more of these flags.

A. That was a personal decision, I never told Russell about.

10 Q. You made that decision and you didn't order any more of these flags?

A. No.

15 Q. Because you weren't obliged in any way, shape or form to carry these particular flags.

A. No, we were obliged.

20 Q. Sir, you agreed with me a minute ago that you made the decision not to carry these particular flags any further.

A. Yes.

Q. That was a decision that you were entitled to make.

A. No, it wasn't.

25 Q. Did anyone pressure you to buy further flags between--

A. Not buy.

Q. To order further flags between December 2004 and April 2005?

30 A. No, because they didn't know I wasn't ordering them.

35 Q. In April 2005 you were delivered, you say mistakenly, more of these flags and you left these flags in your car for eight hours and left your car in the sun for about eight hours on a Sunday and when you returned to your car you say that it had toxic fumes in it. Now at this stage you hadn't taken the flags to be analysed by anyone?

A. No.

40 Q. You had no idea of what the chemical contents of the flags were?

A. If they're giving you headaches I think you got a fair idea.

45 Q. You had no idea of what the chemical contents of the flags were in April of 2005?

A. No, I didn't.

Q. Yet you decided that they were toxic.

50 A. Yes, for sure. So I went to have them tested and I was proven right.

Q. On 4 April you phoned Russell Shields again to complain about the flags?

55 A. Yeah.

Q. He said to you that you should store them in a sealed container.

A. Yes, he did.

Q. Much like the one that you've got here today.

5 A. Yes, and he also said, don't worry it'll be winter soon so it won't get hot.

Q. Did you go and buy a sealable container after Russell Shields suggested that to you?

10 A. No, I didn't.

Q. You didn't. Why didn't you do that?

15 A. Because I'd had a gut full. I tried different ways of handling them back in December and I thought, you know I'm not going to be a guinea pig anymore, I'm not going to test it. If you have a look at the report supplied by Mr Hanson, he says there's all different types of plastic containers, you got to make sure you get the right one and so I wasn't going to be a guinea pig trying one container after another. I didn't need to do that, by workplace
20 health and safety laws, I don't have to.

Q. Sir, you said that these flags, the smell of these flags after you'd left them in your car for eight hours in the sun--

25 A. Yes.

Q. --bothered you?

A. Yes.

30 Q. Mr Shields suggested that you should buy a plastic container with a sealable lid to store them in but you decided not to do that.

35 A. Because I was going to refuse to carry them, I never carried them after that, why should I. I need a plastic box if I'm going to carry them in the car, I wasn't going to have them in the car.

40 Q. In the same conversation that Mr Shields suggested that you buy a sealed container, he also suggested to you that you raise this issue at the teleconference with the other sales reps, did he not?

A. Yes, it was something like that.

45 Q. He suggested to you that whatever grievances you had in relation to these flags you should raise it at the teleconference that was scheduled that Friday which was 8 April this year. You agree with that?

50 A. Yes, he said to put it in writing, my complaint early on. I can't recall him saying, raising it at the teleconference but we had a discussion and that was a general consensus that I would raise it at the teleconference and find out what the others are doing.

55 Q. In your statement at paragraph 14, you say there in the second to last line, "I said to him, what are the other reps doing in relation to the flags, he said that he did not know and that I should bring it up at Friday's teleconference".

A. Yes, exactly right.

Q. He suggested that you should raise it with the other reps.

5 A. I wrote that there and that's probably right, yes, I'm sure it's right, I've got a million pieces of evidence running through my head.

10 Q. Just focusing on this one, you suggest, as I understand it today, that Cardcall was trying to cover up the issue of these flags and your grievances about them.

A. I don't suggest it, I know it for a fact.

15 Q. If you know for a fact that Cardcall was covering this up, how do you reconcile that with the fact that Mr Shields asked you to raise this issue at the teleconference with the other sales representatives?

20 A. The reason being because we had the conference and I complained, others complained and then towards the end of it he referred to someone who had been sacked previously. He once again said, "Shane, you know others complained", and he said towards the end of it, "Shane, out of the 53 odd reps, you're the only one who can't deal with the issue", and I said, I lost my temper and I said, "That's because they're stupid", and one of the other reps chimed in and said, "We're not stupid, we're afraid of losing our jobs". So if you were a manager and you got intimidation over staff you can say, yes, raise it at the conference, it doesn't matter I'll just squash it anyhow which he did, 25 30 he just squashed it, he intimidated the staff.

35 Q. We'll get to that in a second, sir, but my question to you was that you suggested that Cardcall tried to cover this situation up and I asked you and I'll ask you again, wouldn't you have to concede that inviting you to raise the grievance at a teleconference with the other sales reps, it's probably not a good way of covering things up.

40 A. It is if you're in a powerful position, it doesn't really matter too much. He squashed the whole problem then and there everyone heard, everyone knew, don't complain about them otherwise you're going to get the bullet.

45 Q. Wasn't it the case that out of the 59 reps you were the only one who complained?

50 A. No, there was others on that telephone conference on April 8 complaining and the son of the bitch at the end of it said, "You're the only one who can't deal with it", what the hell, others were complaining about headaches, about retailers complaining, go through it, have a look, you haven't got any of those reps here today because they won't commit perjury as witnesses.

55 Q. You haven't summonsed the evidence of any of these people.

A. No, I've got limited funds and I needed to get Picton and Garner here, and I got limited funds, I can't subpoena everyone, they could easily get one or two of the reps

here and they didn't want them here because they'd have too many people committing perjury and not everyone would do that.

5 Q. On 6 April, when you called to complain about these flags to Mr Shields, he asked you at that point in time--
A. Was it 6 April, was it?

10 Q. On 6 April, you refer to it at paragraph 15 of your statement, he directs you to put your complaint in writing. Now at this point in time were you mad about this situation?

A. No, at the telephone conference - where is it, here.

15 Q. This is before the telephone conference.

A. Yes, he said put it writing.

Q. Were you alarmed about this situation?

20 A. Yes, I was.

Q. You phoned him twice in the past two days to complain about it.

A. Yes, I was pissed off.

25 Q. He asked you to put your complaint in writing to the company.

A. I said, well I'll wait until the telephone conference and see what the other reps are doing.

30 Q. Why would you wait until the telephone conference to do that given that you were pissed off about, as you say?

35 A. I just wanted to see what they are doing about the situation. It's like anything, he said to me you're the only one complaining out of 59 reps, that's intimidation in itself, he's trying to isolate me, "Shane, you're the only one with the problem, why is that", that's isolation, that's intimidation. So I said, yes, I'll just pull back a bit and I'll just wait and see what the other reps do before I send in a letter. For a manager to say that in
40 itself is intimidation, "You're the only one complaining, what the hell is going on here".

45 Q. Before that occurred which was on the Friday, you say, he'd asked you to put your complaint in writing. Now this is before he could've made any suggestion that you were the only one--

A. Was that on the Monday, was it?

50 Q. That was on the Wednesday.

A. On Wednesday, yes.

Q. Now this is before the teleconference and he says, put your complaint in writing. He's done nothing to intimidate you at that point, has he?

55 A. Well, if you read here it says, he said they could not do that and that out of 59 reps I'm the only one complaining, that's paragraph 15 you're talking about.

Q. Do you find that intimidating?

A. Yes, I do, I do, that's a threat. I don't find it intimidating I get pissed off, that's a threat to me. That's saying 58 people are right, you're wrong fool, that's isolation. 58 people are right you're an idiot, you're the only one complaining.

Q. You had a legitimate grievance you considered?

A. Yes.

Q. You haven't been afraid to bring it before this Commission to see that it be attended to?

A. I've had no choice, I've got to say.

Q. At the point where you did have a choice why didn't you put your complaint in writing?

A. Because I'm feeling my way, I work at the company and I don't want to cause waves, no one at a company wants to cause waves but the waves started after they put me right on notice that I was going to be sacked and they refused to do anything about the flags.

Q. When did you decide that you would take the flags to be tested by Packaging Inks?

A. After we had that telephone conference on April 8 and that's where people were complaining, people were complaining about headaches, people were complaining about it stinking out the wine cellar and once again Russell Shields said, "Out of 59 reps you're the only one complaining", so I thought bugger this I'll go and get them tested.

Q. Why didn't you put your complaint in writing and get the company to get them tested?

A. Once again he totally ignored everyone else's complaints, he isolated me again, he made it very clear he was looking to do nothing, why would I frigging put something in writing to it.

Q. Where does he say that he's not going to do anything, it's not in your evidence?

A. If you had been at the telephone conference - it's not too hard to read into it. People are complaining and he said you're the only - at the end of it he goes, "Shane, you're the only one who has an issue with it".

Q. So, this is based on your reading into it, it's not based on something that he actually said.

A. He didn't say at the end of it, "Shane, put it in writing", again.

Q. He did not say that if you were to put it in writing the company would do nothing about it, he didn't say that did he?

A. He didn't say if you put it in writing we'll look into it. He had made a decision. If you're in a telephone conference and he's made a decision and at the end of it, it's a dead story and that's the one he had made at the

end of that telephone conference, it's a dead story, Shane, don't bother me with it.

5 Q. At the end of that telephone conference it was still open to you to write a letter outlining your complaint?

10 A. At the end of the telephone conference when a lot of other had complained and he squashed them all and one of the reps has said, "The reason we aren't complaining is because we're scared of losing our jobs", and then after that he said, "Shane, out of the 59 reps you're the only one who's got an issue with it", I think the issue's dead and buried then and there. You know, what was I going to do put it in writing and inflame him again.

15 Q. In any event on 12 April you took the flags to Packaging Inks and you went and saw Steven Graves there but he didn't test the flags, did he?

A. No, he didn't.

20 Q. He didn't make a specific report on the flags?

A. No.

Q. He didn't do any kind of chemical analysis on the flags.

25 A. No.

Q. He gave them a bit of a sniff and he said, "I can tell you what's in these", and he said to you, "the main chemical is cyclohexanone and there's a small amount of isoporone", and we know that in that regard he was wrong.

30 A. He was right. Both reports say that, both reports, my lab report and your report.

35 Q. Sir, have you got the Packaging Inks report which is annexure I to his statement?

A. Yeah, you want me to grab it?

Q. I'll hand it up. You got that there.

40 A. Yes.

Q. If we look at his first page, he says that he finds 193 milligrams per square metre of cyclohexanone and 704 milligrams per square metre of isoporone. So when he told you on 12 April that the main chemical was cyclohexanone and there was a small amount of isoporone, he was wrong?

45 A. Yes, he got it back to front. Both of those combined represent over 50 per cent of total retained solvent.

50 Q. The answer, sir, I think is that he was wrong when he told you those things on that day, his own report confirms that.

A. If you want to get specific but I think he was right, they were the two main chemicals, he's right.

55

Q. He got the proportions wrong.

A. Yes, well he hadn't tested them but for him to be able to sniff the flags and tell you then, fairly accurately

tell you, especially when they represent over 50 per cent, I think, he's spot on.

5 Q. Then he gives you the material safety data sheets in respect of cyclohexanone and in respect of isoporone and you've annexed those to your statement, which is annexures 1, 2, 3 and 4. Now did he give you the complete MSDS for both of those chemicals or did he only give you the extracts that you've--

10 A. No, one's got everything, I've got everything and the other one's got, I think it's missing one page.

Q. Which is the one that you've got everything for?

15 A. I can't remember.

Q. Is there any reason why you haven't included the whole of the material safety data sheets?

20 A. It's getting too long winded then, there's too much to it, you know you can't send around 10 pages or whatever. The key ones are the ones what you need to know, you know the dangers and the health and safety of them and how to handle them.

25 Q. Sir, there's five pages of the material safety data sheet in respect of cyclohexanone and you've included two of those pages. You thought this was a significant safety issue, why didn't you put the full information in?

30 A. Because if I put a little of - the company's got a legal obligation to investigate the complaint from a work occupational health and safety. I don't have to hand them everything, they should've gone and got them tested themselves. He said to me, he said, "Shane, save yourself \$250, I know what's in them". Once I produced those material safety data sheets and said bang, that's what's in them, the company's got a legal - and once I even made a first complaint they got a legal obligation to go get them tested and so I don't need to give them a full report. Are you trying to say they need a full report before they'll get off their bums and do something.

40 Q. Having gone and got this information yourself, didn't you think it would help your own cause if you gave all of the information that you had?

45 A. Why do I need to give five pages, two pages should be enough for them to get off their sorry arses and say this is an employee, he's going to get them tested, we got to do something. I don't need to give them everything, they should've jumped when I made the first complaint. He said, "Save yourself \$250", I thought bugger it, I will save myself \$250, I'll just send this to them and they should get off their sorry arse and they go and spend the \$250, why should I have to spend 250 bucks.

55 Q. Sir, do you know what a material safety data sheet is?

A. Yes, I do, I do now.

Q. Did you know at the time?

A. No, I didn't but I should've done.

Q. Did you know how to read a material safety data sheet?
A. I can read plain English.

5 Q. Did you know how to read a material safety data sheet?
A. In what context?

Q. Did you know what PPM refers to in the context of a material safety data sheet?
10 A. No, I guess, parts per million, or whatever. All I had to look at is-

Q. On page 3 of the Redox Chemicals MSDS in respect of--
15 A. Hold on, I'm looking for it, do you know which number it is?

Q. --cyclohexanone which is page 2, annexure 2 of your statement.
A. Is it DC or whatever?

20 Q. It's 2 with a circle around it.
A. Yes, at the front. Yes, page 2.

Q. You see there that you have included this particular page and it says under the heading, precautions for use
25 3.1 exposure standards, Worksafe recommends the following exposure limits, TWA equals 25 PPM (200 milligrams per metre cubed). Did you appreciate that the WorkCover Authority of Australia said that it is safe to work around this particular chemical within these exposure limits?
30 A. No, not a clue.

Q. You didn't appreciate that?
A. No.

35 Q. You didn't understand fully the import of the MSDS?
A. No, didn't need to, I sent it to the company, I sent various parts to the company, I told them what chemicals are in it, they should know, not me.

40 Q. You didn't understand precisely what this MSDS was saying?
A. No, I understood most of it, ..(not transcribable).. conjunctivitis, corneal burns, ulcerations and loss of
45 sight. I knew and understood that and I knew and understood I didn't want to wipe my hands on the things and wipe my eyes. As your own expert said, he wouldn't be wiping his own eyes either.

Q. Would you agree with me if I suggest to you that given
50 your own lack of understanding of what's in a MSDS and what it all means, it's probably ill-advised to start labelling things as toxic based simply on what's in a MSDS?

55 A. If you got car fumes in your car or you got petrol fumes in your car, I label it toxic like that, you don't need to be an expert. It's like one of the other reps said on our April 8 meeting, they said, you don't have to be an expert you can easily work out they're toxic and

dangerous, you can easily work out they're dangerous.

5 Q. It doesn't matter to you whether or not things actually are toxic or dangerous, it's just whether or not you think they are.

10 A. What do you mean? I went to get it tested, I was going to spend my 250 but he said, don't worry about it, I thought bugger it, I'll save my money. Get the company to do it but they didn't do it.

15 Q. The fact was, sir, that you hadn't had these things tested?

20 A. What do you mean? It's like car fumes in your car you know they're dangerous, you can smell them, it's like having petrol fumes in your car, you get a whiff of petrol fumes you know it's dangerous, you know it's not good for you. Here, there's the flag there, you stick your head in the box and take a big whiff.

25 Q. Sir, you had no specific report on the flags, you hadn't had the flags tested.

30 A. I had an expert, he said, look this is what's in them and he gave me the ..(not transcribable).. I thought, shit.

35 Q. You had a generic document that you didn't know how to read and on that basis--

40 A. I did know how to read it, I just explained that to you, ..(not transcribable).. to the eyes may cause, you know, direct skin contact may cause irritation and dermatitis, I suffer from a bit of dermatitis, inhale ventilation, if you inhale the thing the respiratory system, prolonged exposure vapours may cause Nectosis, which is death.

45 Q. Is it your position, sir, that if there's an MSDS which says that these things are hazardous to health they are therefore toxic and dangerous?

50 A. If there's an MSDS that says that these things on them, of course they're toxic and dangerous.

55 Q. Toxic and dangerous?

A. Yes.

60 Q. To the extent that they are found in the workplace then the employer's obligation to remove them from the workplace.

65 A. Depends on the levels obviously, but they have an obligation to supply the material safety data sheet which the company never did. Legal obligation to make that available to you. They breached workplace health and safety laws.

70 Q. Sir, I'm going to show you a document.

75 May I approach?

COMMISSIONER: Yes

BORS: Q. If you'd just not remove that little flag that I've put there. Will you take it from me that that is an MSDS?

A. The material safety data sheet, yes.

5

Q. Will you read out the health hazards of the chemical that that MSDS refers to?

A. Causes irritation, redness and pain.

10

Q. If you do that a bit more slowly.

A. Toxic, swallowed, toxic, large doses may produce palpitation, excitement, insomnia, dizziness, headache and vomiting, eye, causes irritation, redness and pain, skin, causes irritation of the skin, symptoms include redness, itching and pain, rah, rah, rah.

15

Q. Does that sound pretty toxic to you?

A. Headache, vomiting, I wouldn't particularly like to be using it.

20

Q. That's - you wouldn't particularly--

A. Ventilation may irritate ..(not transcribable).. membranes and respiratory tract, high concentrations ..(not transcribable).. ingestion. It's something we should have a material safety data sheet on obviously.

25

Q. Would you consider that particular chemical to be more dangerous or less dangerous than cyclohexanone that you are writing about?

30

A. That's the Redox one?

Q. It's from Redox, that's right?

A. It says here if it's swallowed induce vomiting immediately. Well, it really doesn't matter whether I think they're more dangerous or not.

35

Q. If that was the material safety data sheet that you'd got in respect to the chemicals on the flags, would you have conducted yourself in the same way in these circumstances?

40

A. Yes, I would.

Q. You would?

A. Yes.

45

Q. You'd feel totally justified in doing that?

A. Yes.

50

Q. Do you want to take off the flag, which is on there, you see what's that the chemical?

A. Caffeine and water.

55

Q. That's caffeine. Now you'll agree with me that caffeine can have all of those affects according to the MSDS.

A. Headache and vomiting, never had it from caffeine.

Q. You've never had that from caffeine?

A. No.

5 Q. The MSDS says that's it's possible. So on your basis
caffeine is an acute health risk that you need to write to
everyone about?

10 A. No, I think the key is, I'm talking to an expert at
Packaging Inks Australia and he gives me these and he
says, this is what happens to your eye, this is what
happens to your skin and this is what happens when you
inhale.

Q. That's from--

15 A. That's the thing, if I had have said, okay what's in
caffeine and he gave me the advice, it's a totally
different story.

Q. Sir, you agreed with me a moment ago that the affects
described in that MSDS from Redox Chemicals--

20 A. Look, when has coffee ever given a headache and
vomiting, causes irritation, redness and pain. You got
Redox up the top trying to say yes, this is Redox, it's
not Redox at all, they're trying to sucker punch me but
when has coffee ever caused a headache, vomiting,
25 insomnia, well, insomnia it probably does.

Q. You're saying that in respect of cyclohexanone--

30 A. Inhalation of dust may irritate the mucus membranes
and respiratory tract, high concentrations may produce a
fixed paralleling ingestion.

Q. Sir, in respect of cyclohexanone, the MSDS that you
had from Redox Chemicals, you say, is correct and in
respect to caffeine that MSDS from Redox Chemicals is
incorrect, is that your position?

35 A. Well, I've never had a headache or vomiting. If you
were getting a headache from caffeine - I've never had a
headache or vomiting from caffeine.

40 BORS: I tender that document that I've just shown to him.

WITNESS: You're trying to ..(not transcribable)..

45 COMMISSIONER: I think I'll have to take it. There can't
be any objection, presumably. Would you like to just read
it and hand it up.

EXHIBIT #3 MATERIAL SAFETY DATA SHEET FOR CAFFEINE
TENDERED, ADMITTED WITHOUT OBJECTION

50 BORS: Q. The day after you went to Packaging Inks, you
then decided for the first time to put your complaint in
writing, correct?

A. Yes.

55 Q. You did that by way of an email that is annexed to
your statement marked AA1. Do you have that in front of
you?

A. Yes. AA1, no just A1, yes.

Q. It's headed up 13/04/2005, attention Steve Picton.

A. Yes.

Q. You sent that to 30 other Cardcall staff.

5 A. Yes, and Mr Picton.

Q. Why did you send it to 30 other Cardcall staff?

A. Because something didn't smell right, why would the general manager be trying to sweep it under the carpet.

10 It was either two things going down.

Q. Sir, this is the first time that you had brought this matter to the attention of Mr Picton, who's Cardcall's chief executive officer. He didn't yet have an opportunity to sweep anything under the carpet because you hadn't brought to his attention yet, isn't that correct?

15

A. I brought it to Russell Shields' attention and he was failing to act whatsoever, so there's two things that were happening, either Russell Shields had a dodgy deal with the supplier or he was being directed by Steve Picton to sweep it under the carpet. So I sent it to Steve Picton plus 30 other staff in case Steve Picton was the one trying to sweep it under the carpet and at least others would know.

25

Q. Didn't you think it might be prudent to first raise it with Steve Picton on the off chance that perhaps Russell Shields hadn't raised it with him?

A. I felt it was fairly urgent, the other staff have the right to know and if I was wrong, Mr Steve Picton, if he was going to operate in a - he might've been pissed off in me notifying the other staff but he would've acted, he never did act, so I made the right call, he was the one trying to sweep it under the carpet.

35

Q. What you do is you write an email addressed to Mr Picton, the chief executive officer and about 30 other staff and you say as follows, "I wish to inform you of a very dangerous situation at Cardcall. The company has toxic and dangerous flags on its premises and is distributing these flags to both staff and retailers". Now at that stage you had no basis to assert that the flags were toxic and dangerous.

40

A. Well, I'd had headaches. Richard Iso back in December said he had to go outside on April 8 when we had the meeting, other reps were complaining. I'd been to see the expert, he told me this is what's in them, he gave me the material safety data sheets on them-

45

Q. He hadn't tested the flags, had he?

A. No. Because that's up to the company to spend the 250 to get them tested which they never did.

50

Q. You then say, "The documentation that I have on the chemical fumes that are coming from the flags states that there can be severe health risks", but you didn't have any documentation on the chemical fumes that were coming from the flags, did you?

55

A. Well, I had an expert's opinion and he turned out to be right.

5 Q. Sir, you had no documentation on the chemical fumes that were coming from the flags?

A. I did, I had an expert's opinion and his opinion was right.

10 Q. Sir, that expert had not conducted any tests on the flags.

A. Well, he did a smell test.

Q. He smelled the tests and given you--

15 A. He's an expert and he deals with the Packaging Inks on a day to day basis and he was spot on.

Q. He'd given you generic information about chemicals in a 100 per cent concentration, that's what an MSDS is to your understanding. So you actually had no documentation on the chemical fumes coming from the flags?

20 A. I argue I did, you can sit back and say I didn't, I say I did.

Q. You then say - you extract the potential health hazards from the MSDS in respect of eye, skin and chronic effects. Then you say, "This is in breach of workplace health and safety laws and probably quite a few other laws".

25 A. Which it is.
30

Q. How is that in breach of workplace health and safety laws when, as you know in the Redox Chemicals MSDS that you're referring, to Worksafe prescribes exposure limits, that chemical can be in the workplace. You had no suggestion that the chemicals in the flags were above those exposure limits because you haven't had the flags tested, isn't that true?

35 A. Yes, I had to have them tested, I got headaches from them in my car, that tested them pretty accurately.
40

Q. Ever got headaches before in your life?

A. Yes.

Q. When you didn't have these flags around?

45 A. No, I rarely get headaches.

Q. You've had headaches before?

A. Yes.

50 Q. You'd accept that headaches can be caused by a multitude of things, not necessarily just these flags?

A. Yes, but when I was there in December and Richard Iso said, you know - you got the same people making the same complaints about the same things, he had to go outside, it made him sick, for half an hour.
55

Q. You had no basis to say that Cardcall had breached workplace health and safety laws.

A. If you stick your head in a petrol drum and you can smell the fumes and you get a headache, I think you know where it came from.

5 Q. Then you go on to say--

A. I had plenty of basis, you know. Like I said before if you've got car fumes in your car or petrol fumes, you know where they're coming from, if you get a headache you know where you've gotten it from.

10

Q. It doesn't establish the flags are toxic or dangerous, does it?

A. Well, it does if you got the material safety data sheets there.

15

Q. We established a moment ago that coffee can give you headaches but coffee's not dangerous.

A. I've never had a headache from coffee in my life.

20

Q. Coffee's not dangerous, is it, sir?

A. Not to me, no.

Q. You'll accept that just because something might give you a headache doesn't mean it's dangerous?

25

A. Well, I've never had a headache from coffee.

Q. Would you accept that, that something that gives you a headache might not necessarily be dangerous?

30

A. No, I think anything that gives you a headache is not obviously a good thing for you because it's swelling your brain or doing something.

Q. Anything that gives you a headache is dangerous, is that your position, sir?

35

A. Well, I'm not saying that but it's not a good thing for you.

Q. That is what you say in your email. You say the company has toxic and dangerous flags on its premises. You don't say these flags are not a good thing for you. So you took the extreme position in your email, didn't you, sir?

40

A. Well, I don't think I took the extreme but I think when you're dealing with health and safety you're better erring on the side of caution than you are on the side of - the other side which is the company's profitability and that's all the company focused on was their profitability, that's why they never did anything. You should be erring on the side of caution and put the health and safety of staff first, not your company's profitability and that's all the company was worried about, their profitability and that's why they never did anything. You're sitting here grilling me over this, hey, they did nothing, they did nothing once I sent this around, no warning, no nothing.

45

50

55

Q. You then go on, sir, to say in the second to last paragraph over the page of this email. "Why did Cardcall not investigate this issue when concerns were first raised

last year". Now I take it there that you're referring to the fact that you had complained to Russell Shields in December of 2004.

5 A. Yes. Well, I complained to him before that, he said, wrap it up and I left. There were actually phone calls before that but if I had have - my statement would've been 1000 pages long if I had to put everything in there, so I tried to focus on the key issues.

10 Q. The fact was that between December of 2004 and April of 2005, you hadn't made any further complaints about the flags because you didn't have them?

A. Yes, exactly right.

15 Q. Then you go on to ask, "Why is it continually being swept under the carpet", but this was the first time that you put this complaint in writing as you were asked to do.

20 A. I'd put - it'd been continually swept under the carpet, I complained to him, you know two, three, four times in the few days leading up to it, we had that telephone conference, I complained last year, I complained to him six or seven times or eight times up till that point. If you complained six, seven, eight times, it's been swept under carpet, ain't it? Every time you
25 complain you get a backhand or nothing said.

Q. Sir, in your statement you refer to two calls to Russell Shields in early April. Some discussion in December--

30 A. Two calls in April, the telephone conference--

Q. The telephone conference and some discussions in December.

35 A. That's four and I spoke to him at least two other times before that in December when he said, just wrap them up.

40 Q. The two telephone calls to Russell Shields and the teleconference have happened in the week proceeding this letter, this email.

A. Two calls and the telephone conference, yes.

45 Q. Less than a week prior to this email. Now what reaction did you expect the company to take - in the absence of any written complaint from you - in under a week?

50 A. In under a week? Well, I expected them to take none, I was told they were going to take none, Russell Shields told me that on the telephone conference basically.

Q. What reaction would you have expected them to undertake in under week with no written complaint?

55 A. Without my written complaint? Well, now I'm better educated on occupational health and safety law because I've read up on that, and now I know - they've got Sally Garner as occupational health and safety officer - they should've notified her immediately. They should also have an occupational health and safety committee, I understand.

A committee should've been involved.

Q. Would you accept, sir, that the email that you've written here is not entirely factually accurate.

5 A. Well, I'm not an expert but from a layman's viewpoint, a person's who's concerned with health and safety, I'd say, yes, pretty solid.

10 Q. Sir, I'm not an expert either but I think we established that when you characterised these flags as toxic and dangerous, that was an extreme characterisation?

A. Well, yes, you can argue that and-

15 Q. It's not a middle of the road characterisation, it's quite inflammatory, wouldn't you say?

A. I don't say it's inflammatory, I'd say it's the facts and they need to be out there. Now you might argue that they are extreme, I'll just grant you that point just to save debating on it.

20

Q. You'll concede that you took an extreme position in respect of these flags?

A. I don't consider it extreme myself just to save us arguing about it, yes, you can have that one.

25

Q. Sir, it's your evidence. Is it extreme or not?

A. No, I don't believe so.

30 Q. You think you were justified in sending this email to 30 staff including - in addition to--

35 A. When your general manager's giving you a backhander on numerous occasions, you know in that December meeting he gave Richard Iso a back, or didn't give him a backhander but he just ignored him and I sat there and I thought, well shit, if this guy's been here at the company a few years, the general manager's just ignoring him - well, he wasn't general manager at that stage he was actually national sales manager for corporate.

40 Q. You're now going over his head to his superior.

A. Yes.

45 Q. Why didn't you just go to his superior, why was there the requirement to let 30 other people in on it?

50 A. It was like I said something just wasn't adding up. Russell Shields had no incentive, I could see to sweep it under the carpet. Unless he had personally done a dodgy deal with the supplier or two, he has been directed by Steven Picton to sweep it under the carpet. So I notified 30 staff in case that was the case that Steven Picton was the one directing it to be swept under the carpet.

55 Q. Just in case--

A. At least it would've been out there.

Q. Just in case.

A. I felt that if I was wrong Mr Picton might have been a bit annoyed but he wouldn't have a major issue with me

notifying the other staff anyhow.

Q. On 13 April and this is the day that you sent this email that we've just been speaking about, Mr Shields
5 called you and he said to you--

A. After I sent the email, yes.

Q. After you'd sent the email and he said to you, "You
10 can't send email like this, it's inappropriate and against policy", you remember him saying that?

A. Yes, and I asked him if I was going to get a formal warning, he said, "Yes", I said, "Can I have that in writing?" He said, "Yes", never got it.

Q. He also said to you, "You've got to let Cardcall
15 handle this properly?"

A. Bullshit he said that. He started threatening me, he
20 said, "What's your agenda", he said, "What's your agenda, Shane, what do you want?" I think he was trying to offer me a bribe to piss off. Then he went on to say, "If you don't want to work for the company", initially he said, "Shane, I've had a meeting with Steve Picton this morning in relation to that, he's not happy. Steve Picton said to me, 'Can't you control your staff, can't you control your
25 staff, we can't have this'", he said, "Shane, if you don't want to work for the company, go work for another company", and when he said, what's your agenda, I said, "Russell, I want the problem with the flags fixed", he started rambling on too, "You don't want to work for the
30 company, go work for another company. Shane, I can come down to Sydney and I make your job a lot more difficult".

Q. If we can just take things step by step. Mr Shields
35 calls you and what I suggest is that he said to you, "Shane, you can't send emails like this, it's inappropriate and against Cardcall policy to abuse email addresses in this way, why are you doing this?" And that you said, "People have got to know about the health risks of these flags, they are giving me headaches". Is that
40 about right?

A. Where you got that in your evidence?

Q. Don't worry about that. Is that about right?

A. Do you want to repeat it I wasn't even listening that
45 much.

Q. He said to you, "Shane, you can't send emails like
50 this, it is inappropriate and against Cardcall policy to abuse email addresses in this way, why are you doing this?" Do you agree he said that to you?

A. I recall him saying, what's your agenda.

Q. Right. But other than that you agree that he said to
55 you not the, you can't send emails like that?

A. Yes. Words to that effect, something like that.

Q. Words to that effect. You said, "People have got to
know about the health risks of these flags, they are

giving me headaches". You said something like that?

A. Yes, quite possibly.

5 Q. Then he said, "But you just can't go out and send messages like this, it's not the right way to do things, you need to let Cardcall handle this properly".

A. That's bullshit, he never said that.

10 Q. You say he didn't say that?

A. The problem that you've got there-

Q. That's okay, it's all right. If you say he didn't say it he didn't say it, as far as you're concerned.

15 A. He didn't say it.

Q. That was on 13 April. That was a Wednesday?

20 A. Yes. You've left a whole lot of the conversation out, it was a 10 minute odd conversation, you forgot the threat, he told me to go to another job and all that.

25 Q. That's in your statement. Then you took a day off on 15 April and then on 20 April your solicitors sent a letter to Mr Picton advising him of what you considered to be health risks in association with these flags and thereafter on 28 April your solicitors were advised that you were to return all of the flags to Cardcall head office.

A. What date was that, that was a-?

30 Q. On 28 April.

A. Was that a Thursday or Friday?

Q. You have the advantage--

35 A. Look, I'll admit, I do, it was the 28th. On the Thursday afternoon I was rung by Russell Shields saying to drop the cards off to head office--

Q. Drop the flags off to head office.

40 A. Yes, and he said ask for Steve, which I assumed he meant Steve Picton, he wanted to collect the flags personally, probably to offer me a bribe I assume and I said, "Russell, I'm taking directions off my lawyers, haven't you got a copy of our letter?" And he said, "Yes, I'm writing up a reply now". And I said, "Well, I'll wait for that".

45 Q. In any event, do you agree with me you were invited to return the flags to Cardcall head office?

50 A. Yes, they were going to try and sweep it under the carpet.

Q. You didn't return the flags to Cardcall head office?

A. No.

55 Q. Why not?

A. Because once they got the flags - they were bullying me that's why and I was going to hand over the one thing that could save my sorry arse, I wasn't going to hand that

over. They were threatening and intimidating me, telling me to piss off to go work for another company because I was making a legitimate complaint. If I hand those flags over - what the hell is the CEO doing collecting flags, he said, "Drop it off and ask for Steve".

Q. You considered that these flags were dangerous, they were toxic, they gave you headaches, you didn't want them in your car, you didn't want them in your house. Why do you want to hang on to them?

A. They were stored downstairs - because like I said, I just said why, because I was under the pump, they were threatening me and my job and they're the one things that could save my sorry arse, go get them tested and find out the truth.

Q. You wanted a bit of leverage, is that the right way to put it?

A. Protection.

Q. In the meantime, Russell Shields had asked you to provide a doctor's certificate in respect of your absence.

A. One of the dates are wrong on their stuff there too, you got the dates wrong with the some of the stuff.

Q. Russell Shields had asked you to provide a doctor's certificate in respect of your absence on the Friday?

A. Yes.

Q. You took that to be bastardisation, I think is the word you've used.

A. My employment contract doesn't say that and I had Monday 28 February off and they never asked for a doctor's certificate or nothing.

Q. Just a minute, sir.

A. Now they sent me a number of emails demanding I supply a doctor's certificate, on the final email I sent it back to them and said, "Russell, I had Monday the 28th off, you didn't ask for a doctor's certificate then"--

COMMISSIONER: Q. Mr Dowling, you might not realise this but from time to time you raise your voice quite loudly and that does create some difficulty with the recording.

A. Sorry.

Q. Particularly if you move back and then you get right by the microphone when you raise your voice. Could you try to just temper the volume at which you speak.

A. Yes, Commissioner.

Q. We'll continue with, hopefully a more consistent volume after we take a short morning break, have some caffeine.

On that basis we'll adjourned briefly.

SHORT ADJOURNMENT

COMMISSIONER: Thank you, Mr Bors.

BORS: Q. Mr Dowling, just before we took a short break, I was asking you some questions about Russell Shields asking you to provide a doctor's certificate in respect of the day that you took sick, and you, I believe said, that that wasn't in your contract.

A. No, it's not.

Q. Your contract is annexed to your statement, I believe it's annexure T. If you turn to that, just a second, and if you'll go to the page that you've marked T-2, headed annexure A, terms and conditions of employment, and you'll see that fifth box down entitled, "sick leave", and the second sentence along says, "Payment of sick leave for two or more consecutive days on or before a public holiday or before or after a weekend is contingent on the provision of a medical certificate". Now you'd agree with me, would you not that as per your contract Mr Shields was entitled to ask you to provide a doctor's certificate given that you'd taken a sick day on a day before a weekend?

A. No. It says clearly there, payment or sick leave for two or more consecutive days, payment of sick leave for two days. Now I only had one day off sick. So payment for two days and I had already had two sick days and one was February 28, the Monday, they never asked for a doctor's certificate. It's quite amazing they're asking for a doctor's certificate after I've sent that email around to everyone.

Q. Leaving alone what they might have done or not done before, would you agree that what's described there are three separate scenarios, sick leave in respect of two or more consecutive days, scenario one, sick leave in respect of on or before a public holiday, scenario two and sick leave before or after a weekend, scenario three.

A. No, there's one scenario there and they're setting a scenario at the beginning when they say, payment for two or more consecutive days. They're saying payment for two days, for two days on or before a public holiday, payment for two days on or before or after a weekend and it's payment for two days before or after a weekend, payment for two days before or after a public holiday. I'd already had Monday 28 February off and they never asked for a doctor's certificate.

Q. Sir, how can two or more consecutive days occur on or before a public holiday, how can two consecutive days occur on a public holiday?

A. Let's say the public holiday's a Wednesday if you have the Monday, Tuesday off.

Q. That's not on a public holiday, is it?

A. No, two or more days. Okay, on or before a public holiday. So if you're having - on or before a public holiday, I don't know, I read the first part, two or more consecutive days.

Q. You read the first part and based on your reading only of the first part you took the position that the company wasn't entitled to--

5 A. No, I took the position because I had two days off previously, there's never any doctor's certificate asked for. I had Monday February 28 off, they never asked for a doctor's certificate and I argued with them this point and they ended up paying me the sick leave. Why didn't they
10 ask for a doctor's certificate Monday 28 February because everything was sweet, I wasn't complaining, all of a sudden when I sent that email around they're asking for a doctor's certificate and they paid it to me, I pointed it out, I said, "Russell, there's a precedent set", I
15 had February, Monday 28 off, so my interpretation I assume was correct.

Q. Your interpretation was that because they hadn't asked for a doctor's certificate before, they weren't allowed to ask for one now?

20 A. Well, when I had one day off and they never asked for one before and I sent that email around and Russell rang me up threatening me to make my job more difficult, it was fairly obvious they were only asking for one because they were trying to make it hard for me.

25 Q. You talk about Russell threatening to make your job more difficult, are you there referring to the fact that he'd asked you to fill a new reporting system?

30 A. Yes, he did.

Q. He did, and is that what you're referring to when you're saying that he's making your job more difficult?

35 A. Harassment, he promised to harass me. He threatened, go piss off, work for another company and all that, this was part of it. "Shane, give us a doctor's certificate".

Q. Just in respect of this reporting--

A. Here we go onto another issue.

40 Q. Pardon me?

A. We're going onto another issue, yes.

45 Q. Just in respect to this reporting issue which is what we were speaking about before, your understanding was that Russell was putting this extra burden on you to make your life more difficult?

A. What's that for?

50 Q. Was that what your understanding of the new reporting scheme?

A. You're talking about the new daily report?

Q. He asked you to fill out--

55 A. New daily reports.

Q. --new daily reports.

A. Yes, exactly right.

Q. You refused to do that because you said, "You're doing this to make my life more difficult".

A. Well, he hadn't asked any other reps to do it. Well, I at least know two other reps, I rang them.

5

Q. Let's just forget about other reps for a minute, let's just focus on how you reacted to this. You said, "This is just being done to make my life more difficult".

A. No, I said, yes, I said that to him and I also put it in an email, did other reps have to do it. I got that email on a Thursday night or Wednesday night and I rang that to other reps the next morning and they never had a new report.

15 Q. If you have a look again at your contract, which is annexure T, on the first page you'll see there that the second to last paragraph, it's headed, electronic sales commission, this is one the first page of your contract, annexure T.

20 A. What's the page number?

Q. It just says T on the top.

A. T, yes, T, yes.

25 Q. It has a Cardcall logo, 13 September. You'll see there that in the second to last paragraph it says, electronic sales commissions and then it says in the second paragraph, "it will be based on both the number and quality of corporate sites supported as well as varying reporting procedures that are currently in place or could be added at any time". So would you accept that the reporting procedure could be added at any time?

30

A. Yes, it could be.

35 Q. Mr Shields was well within his entitlement to ask you to fill out a different reporting form than one you had been prior to--

A. No, not when I'm the only one has to do the report, it's blatantly obvious he's making it more hard for me, he's trying to bastardise me.

40

Q. You don't know what was in each other employee's contract, do you?

A. Well, I rang the other two reps and they had no new report to fill in and I put the question to him and he says, "Shane, you don't know that", I said, "Russell, do other reps have to fill in the new report", he says, "Shane, that doesn't matter and you don't know whether they do or don't", and I did know because I'd rung two.

50

Q. After you had these skirmishes with Russell about the reporting procedure and this issue of provision of the medical certificate for your sick day. You then went to Packaging Inks and asked for a report?

55 A. It wasn't relevant to that, it was relevant--

Q. I'm just placing it in time. After these things occurred you went to Packaging Inks and got the report?

A. I can't recall.

Q. If it assists--

5 A. That skirmish went on for quite a while in relation to the report.

10 Q. It did. If it assists, if you have a look at paragraph 21 of your statement. You start there talking about the demand for a doctor's certificate, that's on April 19, and then you have some email correspondence and then you're asked to drop off the flags, which you didn't do and that all happens in the latter part of April. On 2 May you're then told that Russell will withhold your commission if you don't fill in the new report and then on 6 May you get the report from Packaging Inks.

15 A. Yes. What happened there was I got the reply from their lawyer, I mean I got a reply from Russell on the 28th, whenever it was, of April.

20 Q. He says he doesn't share your views about the danger of the flags?

A. It's dribble, that reply. So I decided to go get it tested.

25 Q. You went and got it tested?
A. Yes.

30 Q. Do you have that report in front of you?
A. The lab report?

Q. The Packaging Inks' report, your report?
A. Here we go, yes.

35 Q. That report says that there's a total of 1530 milligrams per square metre of solvents in respect of the sample flags that were provided and of that 704 milligrams is isoporone and 193 milligrams is cyclohexanone.
40 A. Yes.

45 Q. Then it says, as you quoted this morning, "The results of the analysis show that there is a unusually high total retained solvent level of 1530 milligrams per square metre"--
A. Yes.

50 Q. --"we would normally expect a result below 100 milligrams".
A. Yes.

55 Q. It doesn't say anywhere in that report that these flags are toxic or that they emit toxic fumes, does it?
A. Well--

Q. It's a yes, no answer, sir. It doesn't say that the flags are toxic or that they emit toxic fumes.
A. It doesn't say in that report but that's what I was

told by the guy Steven Graves who did the report.

Q. It doesn't say that in the report, does it?

A. No.

5

Q. It doesn't say anywhere in the report the flags are dangerous or that fumes that they emit are potentially dangerous.

10

A. You get the report, you get the material safety data sheets which come with the two main chemicals, and the two main chemicals that say yes, they're dangerous, potentially dangerous.

15

Q. That report doesn't say the flags or the fumes that they emit are dangerous, does it, sir?

A. No, the report doesn't but Steve Graves told me it was. He did the report.

20

Q. You don't have him coming to give evidence today, do you, sir?

A. Well, I got limited money, you could've easily subpoenaed him, would've cost you \$50, I've spent \$1300 getting two of your people down here.

25

Q. It doesn't say--

A. You didn't want him here that's why you haven't subpoenaed.

30

Q. It doesn't say in this report anywhere that these flags or fumes that they emit pose a health risk?

A. No, it doesn't.

35

Q. Yet a day that you get that report you ring up Russell Shields and you say to him, "I have a report on the flags, they're extremely toxic".

A. Yes, Steve Graves told me so.

40

Q. The report doesn't say that, does it?

A. Well, it does if you take his advice based on that report.

45

Q. This report makes no mention of the flags being toxic. Do you agree with me in that regard?

A. He says they're extremely high, we'd normally expect a result of 100 milligrams, at normal level. What's that say there?

50

Q. Sir, all it says is that there's an unusually higher total retain solvent level. You ring up Russell Shields and say, "I have a report and the flags are extremely toxic", and that wasn't true, was it, sir?

55

A. It was extremely frigging toxic. They're normally 100 milligrams - I said to Steve Graves, I said, would you carry these around in the boot of your car, I said, how dangerous is that and he said, "It'd be extremely dangerous".

Q. Let's just forget about what Steve Graves said because

he's not here, let's just focus on what the report says. This report does not say anything about flags being toxic, dangerous or posing a health risk.

A. You can argue that, I argue differently but you--

5

Q. There's no argument, sir. The words in this report do not include the words, toxic, dangerous or a health risk.

A. No, okay.

10

Q. You ring up Russell Shields and say, "I've got a report and it says the flags are extremely toxic".

A. What I probably should have said is I got a report and based on the advice of Steve Graves, they're extremely dangerous, now I obviously didn't say that.

15

Q. You didn't say that. You then said to him, "I'm giving you until the close of business on Monday to contact my lawyer and come to a settlement with the flags", this is all in paragraph 26 of your statement.

20

Now what did you mean by settlement?

A. I meant in relation to the flags - and they're both well aware that, both him and Steven Picton.

25

Q. What did you say, what did you say, what were the words that you used?

A. Pretty well those words - that effect. They were both aware I was not asking for a payout.

30

Q. Why do you say that they're not aware of that?

A. Because they knew what I was pushing, what I wanted all along, I wanted the flags ..(not transcribable)..

35

Q. How did you think that a meeting with your lawyers was going to achieve that?

A. Well, the problem you got - what saved my sorry arse here today is my letter from my lawyer to Cardcall and Russell Shields' reply on the 28th, because they can deny they got emails, they can deny we had conversations, it's a lot harder to deny a letter from a lawyer and they didn't deny that, they replied to it, and if you go through all the stuff, you know Russell Shields - well, he isn't denying it but he's deleted that meeting we had in December with either Richard Iso. In the statements here Russell Shields is saying that Steven Picton never got that email I sent around on April 13, they can deny and lie about all those things but it's a lot harder to lie about correspondence with a lawyer and that's what saved my sorry arse and everything here, Commissioner, they can lie about everything else. My lawyer sent a letter, they responded to it, that's concrete, no one's disputing that and that's why I said ring my lawyer because I could've gone in there, said let's do something about it, they could have lied, bullshit and done everything then lied and bullshitted later down the track.

55

Q. Sir, what were the specifics of the settlement that you had in mind that you were inviting Russell Shields to discuss with your lawyer?

A. To fix the problem with the flags.

Q. How was that going to done in your--

5 A. They could've destroyed them, they could've sent them to be cleaned - which I advised Russell Shields to do earlier - they could've sent them to be professionally cleaned, they could've done a whole heap of things.

10 Q. Did you say to Mr Shields during that conversation, "I've had the flags officially tested now and they confirm they are extremely dangerous and hazardous. I hope you have a good lawyer as I am now in control of this game". Did you say that?

15 A. I didn't say you have a good lawyer.

Q. Did you say you're now in control of the game?

A. No.

20 Q. You didn't say that. "You have until 5pm next Monday", that would be 10 May, "to offer a settlement to my solicitor". Did you say that?

A. Yes, words to that effect, yes.

Q. To offer of settlement to your solicitor?

25 A. No, not offer, to come to a settlement.

Q. Mr Shields then asked you, I suggest, to email or fax the report to you and he would look into it?

30 A. No, he said can I have a copy.

Q. He asked for a copy?

A. Yes.

Q. Did he say he'd look into it?

35 A. No, I can't recall that. He did ask for a copy, I'll admit that.

Q. Did you then say, "No, Russell, I'm fucking in control now, I've just fucking told you what is to happen".

40 A. Quite possibly. It was quite an abusive conversation, not abusive but a lot of swearing, yes.

Q. A lot of swearing from you, you were angry?

45 A. I was pretty pissed, yes, because up until that stage they were threatening, intimidating me.

Q. Then Russell Shields said to you, "Calm down, stop swearing, send me and Steven Picton the information you've got".

50 A. No, he didn't say that at all. He did ask for a copy to be sent to him, he said send a copy to me and Steve Picton I'd like to hear all the bullshit.

Q. Then you said to Russell--

55 A. They had ages to investigate, they'd done nothing, they had months when the first complaint was made.

Q. Then you said to Russell, "No, I'm fucking telling you

now what is to happen". Did you say that?

A. Look, I gave it to him, yes, so, it was on for young and old, well it was on for young and old from my behalf.

5 Q. Then you said to him, "I'll continue to take it fucking further until you pay me out".

10 A. No, that is bullshit. They could've solved the problem ages ago when I sent the letter to the lawyer, they had 10 opportunities to solve the problem, they never did and he's trying to say it to death after I've sent an email around April 13 that's been extremely critical of him and his lack of action, he's trying to say, Shane asked for a payout, bullshit I did.

15 Q. He gave you at that point Steve Picton's mobile telephone number?

A. The conversation went for about four and a half minutes and he did give it to me, yes, I'm sorry.

20 Q. He gave to you Steve Picton's mobile number and said, "Tell Steve exactly what you've just told me".

25 A. Yes, no, he said to talk to Steve in the same tone as you're talking to me. He shit himself because I was giving it to him and he couldn't handle it so he gave me Steve Picton's mobile number.

30 Q. Mr Picton is the chief executive officer at Telecorp. Telecorp is the parent company of Cardcall. So you knew that you were speaking to the biggest fish in the pond when you were calling Mr Picton and you said to Mr Picton, "I'm giving you until the close of business on Monday to call my lawyer and come to a settlement with the flags or I'll take further action". Mr Picton said, "I do not succumb to threats, if you want to tell me what you're going to do I might consider it".

35 A. Yes, words to that effect, yes.

Q. This is in your statement.

40 A. Yes.

Q. You said, "You have an obligation to protect the health and safety of the employees". He says, "Don't tell me how to do my job". He says, "It's only business, that's all". Do you know what he was referring to there?

45 A. What's that?

Q. What did you think he was referring to there?

50 A. It was definitely my opinion, it's just business and he couldn't give a shit about the health and safety for the staff.

55 Q. What I suggest, sir, is that you called up Mr Picton and said to him, "You may not be aware of the details but you need to do something about these toxic flags, if you don't fix this by Monday, I'm going to take you to the fucking cleaners". Did you say that?

A. No.

Q. You didn't say that?

A. No. If he didn't put a statement in, he had an opportunity to put the statement in and he never did.

5 Q. Did you then say, "Russell Shields has been trying to force me out of the company about this".

A. Yes.

Q. You said that to him?

10 A. I said he's threatened my sick pay, holiday pay.

Q. Did he say, "I find that unlikely, I've never had any complaints about Russell in the past"?

15 A. No, he could've said that but what he said, "I have full confidence in Russell Shields". He said, "I have full confidence in Russell Shields", he sounded like a politician with a minister who's run off the rails and a premier saying, I have full confidence in that guy. He was lining up Russell Shields to take the hit.

20

Q. Then you said, "You're wrong, I've had advice and this is fucking going to cost you a lot".

A. No, I did not say that.

25 Q. You didn't say that? He hung up on you, that was the upshot of the conversation.

30 A. He didn't hang up on me. The conversation went for X amount of minutes and it ended up going on - at the end of it he goes, "So I assume you won't be here Monday", and I said, "Well, I'll be here Monday, I'll be here Tuesday, I'll be here Wednesday, Thursday and Friday". He was hoping I'd piss off.

35 Q. At that point in time you, I take it, sir, it is your duty to alert people as to the danger that you thought was--

40 A. Look, I gave the company the opportunity to do what they should do, what should be done. I shouldn't have to send out an email to all the staff and all the retailers, that's what the company should've done not me and so I gave him the opportunity to do that. I said, look these flags are dangerous et cetera, et cetera, he had the opportunity, they had many opportunities to send emails out and advise people, advise people of the health and safety dangers.

45

Q. You considered that you were being stonewalled by the company?

50 A. I didn't consider it, I knew it.

Q. Why didn't you complain to the proper authorities?

55 A. I'll tell you why I didn't complain, I went around to get the flags tested, it was on a Tuesday originally - what's the date there? When I originally went to get them tested but I never got them tested because he said, don't worry about it. That was the 8th, we had the telephone conference on the 8th. The following Monday I rang WorkCover, there was no response, I rang around and found

out a place to get them tested which was Packaging Inks. I got a hold of Cleanaway and they said, this is the place that does ours. I rang WorkCover - I went to get them tested, he said, don't worry about it, this is what's in them. After I left there I actually got a phone call from WorkCover and I spoke to the lady, I said, what happens and she said, we send them a letter to comply, if they don't comply we can send them another letter and it sounded pretty weak to me and knowing what was happening and I'm not based up in Queensland I can't see if they're complying or not. I thought about it and I thought, well they ain't going to do anything.

15 Q. Mr Picton's located in Sydney.

A. Huh?

Q. Mr Picton's located in Sydney?

20 A. No, the flags are based up there though, so they could do anything they want. They could say they're complying and they're not complying and I was under the pump by then anyhow, so.

Q. You considered that the matter was better handled by you than by the Government authorities?

25 A. No, I thought it was better handled by my lawyer.

Q. On 10 May, you then sent another email.

30 A. 10 May, yes, that seems about right, I think it was the 9th, was it, 9th or 10th?

Q. You wrote it on the 9th and sent it on the 10th.

A. Yes, that sounds probably about right.

35 Q. That email is annexure K to your statement. Do you recall how many people you sent this email to?

A. The staff, roughly 100-odd.

Q. 100 of Cardcall staff?

40 A. Yes, roughly. A fair few bounced back at me saying that people aren't working for the company, well, they bounced back they didn't say that people aren't working there.

Q. Where did you get those email addresses from?

45 A. A list I had, I got somewhere. I had a list. I think it was when I originally started I got emailed a list from a lady, another rep. It's not all the staff, a lot of staff aren't on there, there's meant to be - because at one stage there was 300 employees, they went through a culling, I think it was cut back to, you know X amount but not all the staff are on there I'm sure.

Q. The subject line of that email reads, "Toxic Cardcall flags please forward to other staff"?

55 A. Yes.

Q. You've got there in the body of the email, "To all staff", you say, "This email is to notify you that I have

at my own expense had the Cardcall flags tested to quantify how much and what toxic fumes are coming from the Cardcall flags. I can tell you for sure that the flags are extremely dangerous". Now we've already established that your report doesn't say anything of the sort. Packaging Incs' report does not say that the flags are extremely dangerous, does it?

5
10 A. It does. The actual report doesn't but if you give the report to an expert - who I spoke to the expert when I got the report - they do say that's dangerous. If you get an expert to interpret that report, yes, it'll come up saying they're dangerous and that's what I did.

15 Q. You then go on to say a few paragraphs later, "Both Steve Picton and Russell Shields have failed to act on this and their lack of action is endangering the health and safety of employees".

A. Yeah.

20 Q. Now you didn't know what, if any action, either of those two men had taken?

A. No, I didn't, I knew they were taking no action.

25 Q. You didn't know one way or the other?

A. Well, I did know, they were doing nothing.

Q. You did not know whether or not they had submitted the flags for testing.

30 A. That's on the 10th - well, in Russell Shields' reply to my lawyer on 28 April, he says the flags are safe, he says the flags are safe on 28 April. So if he's saying the flags are safe on 28 April, they obviously haven't done anything.

35 Q. Either that or they have done something and that something has satisfied them that the flags are safe, that's equally possible isn't it?

40 A. He should've notified us. I think the logical thing to do if that's the person making the complaint is to notify them, they never notified me or nothing, so I assume they were doing nothing.

45 Q. You assumed they were doing nothing. You then launched a fairly personalised attack against Mr Picton, against Mr Shields and in respect of Sally Garner and you finish off that email by saying, "Steve Picton owes it to staff to answer all questions raised above and to do it immediately".

50 A. Yes, he does. He's the CEO. He has ultimate responsibility to ensure a healthy workplace.

Q. On Thursday 12 May you received a phone call from Jonathan Hassatt's office which you didn't answer, you then rang back--

55 A. Well, I missed the call.

Q. You missed the call.

A. I rang back within a minute.

Q. You were put through to Mr Hassatt--

A. Linda Reed put me through.

5 Q. You say in your statement that the call started off in
a very intimidating manner with Jonathan Hassatt making
several threats. Now what I suggest he said to you was,
"My name is Jonathan Hassatt, I'm a solicitor from Hassatt
10 Dickson Solicitors, we act for Cardcall. I'm instructed
that you've decided the flags you've been discussing with
Steve Picton are a health risk and that you're telling
everyone that they are a health risk and Cardcall don't
think they're a health risk". Did he say anything like
that?

15 A. Yes, words - but that's not how it started off, he
started off dribbling about some BHP scenario where
employees knew about a health risk and they advised other
employees but BHP sacked them, got to the Industrial
Relations Court, found they had no rights to notify other
20 employees of the health - and can I say word for word,
what exact, he was pretty, a lot of four letter words
there, Commissioner. Am I allowed to say exactly what was
said or tone it down or-?

25 Q. Let's just stick to what you've got here.

A. It was basically what I ended up saying I said, "Look,
I don't give a fuck about BHP". He rang up and he had the
big deep voice, "This is Jonathan Hassatt, I'm ringing
30 from Cardcall and I'm ringing under instructions on behalf
of Steve Picton", sounded real tough and mean or trying to
anyhow.

35 Q. Did he say to you these words, "Cardcall have
prohibited you from sending any more emails about the
flags to either their customers or their employees. The
purpose of my call is to tell you that if you do send
anymore emails your employment will be terminated. You
can't just defy your employer and do the opposite, do you
understand that?" Do you recall him saying those words to
you?

40 A. Look, he did say something like that somewhere along
the line, it was a twenty four and a half minute
conversation.

45 Q. I suggest that you then said to him, "I'll do what I
have to do to let people know about this health hazard. I
have to do it because Cardcall won't".

A. I don't recall saying I have to do it. I said words
to that effect somewhere along the line, it was a 24 and a
50 half minute conversation like I said.

55 Q. Then he says, "The trouble is Cardcall don't agree
with you. If you think the flags are a health risk"--

A. Can I grab a copy of that, I've got it in my thing
there. I'll just grab a copy of Russell's - red, red for
Jonathan Hassatt.

Q. I'm reading from page 3 of his statement. He then
says to you, "If you think the flags are a health risk,

you can take that to the proper authorities"--

A. Yes, he said that--

5 Q. --"tell them all about it, you can have your say put
up your evidence".

A. Put up my evidence to them, yes.

10 Q. Did he say that to you?

A. Yes.

10 Q. Then he said--

A. Words to that effect, yes.

15 Q. --"but you just can't take matters into your own hands
and go out bagging the company to its customers, we've
told you not to do it, if you do it you'll be fired". Did
he say that to you?

20 A. No, I don't think he did say that at all and I'm sure
he didn't say it. They've told you not to do it, well
they never told me not to do it, when did they tell me not
to do it, I've got ..(not transcribable).. email policy
that's all.

25 Q. You agreed with me before that Mr Shields said to you
on 13 April, "You can't send email like this, it's
inappropriate and against policy"?

A. Yes, that's about email policy it's not about the
context of what I've written.

30 Q. Mr Hassatt here is saying, "Don't go and send out
emails like this, you can't do it".

A. Yeah.

35 Q. So you have been told about this before?

A. No, I haven't been told about it before. There's no
warning letter, no nothing.

40 Q. I suggest--

45 A. He rang me up to abuse me about email policy then he
threatened with intimidation, it was all threats and
intimidation and it went on for nine and a half minutes
from Russell Shields - and I could be wrong about one or
two words - but when you got your general manager ringing
you up and threatening you and intimidating you, you tend
to focus on - piss off the main thing, piss off and work
for another company, we don't want you here. So word for
word I could easily be - my memory, for a nine and a
50 half minute conversation, I can't remember every word
exactly the context of it, but you know the overall flow
of the conversation which is 24 and a half minutes I spoke
to Mr Hassatt.

55 Q. We're just focusing on what you did say to Mr Hassatt.
Suggested, and I'm reading from page 4 now, Mr Hassatt's
statement, that you said to him, "I know they want to get
rid of me and if they do they will face the consequences
in court. I will do whatever I have to do, Cardcall isn't
doing anything that I have asked them to do and they are

ignoring this health risk". Did you say that?

A. Well, let's focus on the first sentence, that's total crap. They will face the consequences at court - probably about three or four minutes into the conversation

5 Mr Hassatt said to me, well yes, I'll be seeing you in the Industrial Relations Court.

Q. Did you say these words?

10 A. No, I never said they will face the consequences in court. Somewhere along the line he said to me, "I guess I will be seeing you in the Industrial Relations Court".

Q. Did he say this to you, what he says he said in the next paragraph along, he said to you, "If you're threatening Cardcall with unfair dismissal proceedings, I have to tell you that I think you will fail, you should get some legal advice"?

15 A. I think you'll fail, what dribble.

20 Q. Did he say that to you?

A. He never said that. If you were threatening, I never threatened him, he said to me, "I guess I'll be seeing you in the Industrial Relations Court".

25 Q. Did he say to you--

A. Now if you want to know, in my mind all the time was that I did have the protection of the Industrial Relations Court, that was always in my mind but I never said that, he said that to me, he said, "I guess I'll be seeing in you in the Industrial Relations Court".

30 Q. He says that he also said to you, "I can tell you now if you disobey your employer in these kind of circumstances you can be fired quite legally. If you bag the company to its customers you can also be sued for defamation".

35 A. He threatened me with defamation, yes.

40 Q. "You can't just start making threats like this and demanding payouts and swearing at people from Cardcall when they call you to discuss the situation. I'm told you've used four letter language to people at Cardcall". Did he say all that?

45 A. He said, "I'm told you used four letter words to Sally Garner". I used four letter words to Russell Shields but I never used four letter words to Sally Garner, so he's wrong there. "You can't just start making threats like this and demanding payouts and swearing at people". No, what he said is, "Shane, you're demanding payouts, doing this, we view that as extortion and we can have you charged with extortion".

50 Q. You understood at the end of your--

55 A. So he's mentioned the word extortion and charges and threats of defamation.

Q. You've understood at the end of your conversation with Mr Hassatt that the company was prohibiting you from

sending further emails to its staff or to its customers, you understand that?

A. Yeah.

5 Q. Did you understand that if you did send any further emails that they would terminate your employment?

A. That's what they were saying but not summarily terminate. Number one, I didn't even know what summary termination was, number two, he never mentioned it.

10

Q. You understood--

A. He could've done, it would've went in one ear and out the other.

15 Q. He could've mentioned summary termination?

A. Yes, I'm pretty sure he didn't though.

20 Q. In any event you understood that if you disobeyed the company's directive which was not to send any further emails that your employment would be terminated?

A. Yes, not summary termination. I always suspected if they sacked me I was going to get four weeks pay.

25 Q. You understood that it was open to you to take your grievances to the proper authorities but that in terms of writing further emails that was not the way to go about it?

30 A. I actually notified them, I sent all my emails and all my evidence on Thursday 12, the morning actually, the morning. I think that was after I spoke to Sally Garner and Sally Garner said, "The flags are fine", and I said, "How'd you come to that conclusion?" She said, "I've been directed not to comment".

35 Q. That same day, 12 May, you were sent a letter from Cardcall - and that's annexure M1 to your statement - and that reads, "We refer to your recent correspondence"--

A. Hold on, hold on.

40 Q. Have you got that there? Your statement annexure M-1.

A. Too much here. M1 is it?

Q. Sorry, N1 I think, no, it's M1, it is M1.

45 A. Too much garbage here. M1, yes.

50 Q. That reads, "We refer to your recent correspondence to Mr Picton. We have noted your concerns about the flags and we have noted the reports you have provided, however the company is taking the decision that for the moment at least these flags are not to be taken out of circulation. That is the company's decision and it is not for you to disregard or undermine it by either, one, sending further emails to company employees, two, communicating with the company's customers. If you wish to take your concerns to

55 the appropriate authorities go ahead but you are prohibited from doing either of the above. If you do what you say you are going to do and blow the matter sky high by passing on your views - which the company disagrees

with - to the company's employees and customers your employment will be terminated. We further advise you that the use of four letter words will not be tolerated. You've already sworn at Russell Shields on numerous occasions and your contract specifies this as a ground for termination. This is your final warning in this regard. Finally, we view your recent conduct in making the accusations you have, emailing employees, making trouble with customers while simultaneously asking for a severance payment as an attempt to wrongly extort money from the company. We require you to attend our offices in the near future with your solicitor if you wish to answer this charge. We put you on notice that if we reach the conclusion that this is what you have done, your employment will be terminated".

5
10
15

A. Yes, it doesn't say summarily terminated there.

Q. You read this email?

20

A. Yes.

Q. You understood it?

A. Yes.

25

Q. You understood that you were not to send any further emails to employees or to communicate with the company's customers in relation to this flag issue. You understood that if you did that your employment would be terminated.

A. Yes.

30

Q. The next day a letter was sent to your solicitors, that's at annexure N of your statement and that's a letter from Hassatt Dickson and it says, "We act for Cardcall Pty Limited. We refer to your letter to our client dated 20 April 2005 and to our client's reply to you dated 28 April 2005 per Russell Shields. Our client's do not agree that the flags represent a health risk. If you wish to take the matter further you're, of course, at liberty to take the matter to the appropriate authorities as you foreshadowed in your letter. The difficulty is that rather than pursuing the proper channels you set out in your letter your client has seen fit to take matters into his own hands and has embarked on a campaign of warning or all/many of our clients, employees and customers on his version of events. He has threatened to 'blow the matter sky high' with these people. In doing so he's accused Mr Picton of negligence, of endangering the health and safety of employees. This is all quite inappropriate. Your client has been warned in writing that if he makes any further comment along these lines his employment will be summarily terminated".

35
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45
50

A. No, summarily - see he's got summarily there, my warning letter says nothing about summarily terminated.

Q. This was sent to your solicitors.

55

A. Yes.

Q. Your solicitors passed it on to you?

A. No, they didn't because I had a warning letter on the

12th, the following day I got hold of my lawyer, Friday
afternoon, he briefly read it through the phone, it
sounded pretty much like mine. The one thing that did
stick out was, we should meet sooner rather than later and
5 that's why I got a copy on 9 June, the day before or
8 June, a day or two before my conciliation meeting just
to have a look at it but no, I never got a copy, why would
I get a copy if the company's already sent me a warning
letter and Mr Hassatt said to me on that Thursday
10 conversation, I'll get the company to send you a letter
and I'll send you our letter. Why would I bother getting
a copy of that and I didn't.

Q. Did your lawyer read this to you over the phone, I
15 think you said before?

A. He skimmed through it, he already knew, I said, look
I've already got the warning letter, he briefly skimmed
through it and I said, yes, it sounds pretty much like
mine. So I never got a copy, why would I.
20

Q. Knowing that this letter had been sent to your
solicitors and having received a letter from Cardcall
having been told by Mr Hassatt that you were not to write
any further emails, that if you did your employment would
25 be terminated. Nevertheless on 15 May you wrote another
email. Now that email is annexed to your statement and
that is annexure P and P1 of your statement, and you
stayed up until all hours of the morning on Sunday night
sending this out to 1500 retailers and these are the
30 customers of Cardcall?

A. Yes.

Q. You say there, you head it, without prejudice.

A. Yes, I was advised to do that but I shouldn't have
35 worried about that.

Q. It says, subject health hazard warning and then you go
to run down into your story and then in the fifth
paragraph down you say there, sorry in the fourth
40 paragraph down you say, "These flags have chemical residue
on them, it is dangerous and I have attached the material
safety data sheets for the two main chemicals in the
residue, it will better help you avoid any harm". Then
you say, "The test results reveal that the flags have
45 1530 milligrams per square inch of chemical residue on
them". Now that's not true is it?

A. No, they do have 1530 milligrams of chemical residue
on them, that's a fact, that's what it says.

50 Q. Per square metre?

A. Yes.

Q. You classify this that you--

55 COMMISSIONER: There's something here about an inch
becoming a mile.

BORS: That's exactly right.

WITNESS: Look, 1500 per metre square.

BORS: Q. It's not in the--

A. Per square metre, it should say, yes.

5

Q. Per square metre not per square inch.

A. Yes, that's a typo error, yes.

10

Q. That was wrong and that typo error you repeat again when you say, "The report describes the findings as unusually high, these should be below 100 milligrams per square inch".

A. Look, if they both had have been changed to metre it would've been all right, so it's wrong, yes.

15

Q. This email is wrong, what you say in this is wrong?

A. Yes.

20

Q. This goes out to 1500 of Cardcall's customers?

A. Yes.

25

Q. Yet you knew when you were sending this email, I suggest, that this was exactly what you had been told not to do?

A. Yes.

30

Q. At 1.13am on Monday 16 May - or I believe on the copy of your email that you have annexed - at some time after 2 o'clock in the morning, you couldn't have had any doubt that you were probably going to get sacked when you went to work on the Monday morning.

A. Look, the sacking was on the agenda since April 13 when I sent that email. Well, probably on April 8 when we had that teleconference when it got fairly fiery and it was definitely on the agenda when I sent that email around on April 13 and Russell Shields rang me and told me to piss off and leave the company. It was on the company's agenda.

40

Q. Having sent this email you couldn't have had any doubt that what you were doing was in direct contravention of what you'd been told to do?

A. I knew that for a fact but whether they were going to sack me - I was a bit iffy there, they hadn't sacked me previously, they had plenty of opportunities if what I was saying was wrong. The reason they hadn't sacked me because they knew what I was saying was right. I was a pretty good chance I was going to get sacked but not 100 per cent certain. They knew they had no legal grounds to sack me.

50

55

Q. Sir, it said in your warning letter, "If you do what you're saying you're going to do by passing on your views to the company's employees and customers your employment will be terminated". It doesn't say it might be terminated.

A. It also says in that letter, we want you to show up and answer charges of extortion. See if you combine those

two letters - and Mr Hassatt's the same author of both letters - that's how the conversation went on the phone the day before and that's what was more predominant than the letters themselves, because the conversation was the main thing. It was the combination of him threatening me and intimidating me and then towards the end saying, maybe we should meet, you know and come to a settlement.

Q. Did you type in all of those email addresses by hand?
A. No, cut and paste.

Q. Cut and paste, 1500 retailers email addresses. How long did that take you?

A. I sent out about normally 50 to 101 email because there was too many, I sent about 16 or 17 emails.

Q. How long did it take you?

A. It took me a fair while.

Q. A few hours?

A. It could've been, it could've been an hour, it could've been two hours.

Q. Pretty big endeavour?

A. Yes.

Q. Didn't you think it might've been a bit more sensible at this point to raise your concerns with the Government authorities and that way not jeopardise your employment?

A. I had on the 12th, the 12th I did raise it with them, I sent them an email that morning some time.

Q. Why didn't you wait for them to respond?

A. Because I already had the tests on the flags, I knew they were dangerous. If you go to occupational health and safety law - and I didn't know that at the time but I knew basic logic, if you know something's dangerous you have an obligation to warn people. If you go to occupational health and safety law, it's number 20 there and I got a copy and I'll pull it out in a minute, employees have an obligation to ensure, they have a legal responsibility to, their own work environment and if they're distributing something to make sure their health and safety - if I know something's dangerous and I don't warn people and let them know and ensure its health and safety, I'm legally liable. Now I didn't know that at the time but basic logic told me that.

Q. Monday morning, you go to work, you're terminated, your employment's terminated.

A. 3 o'clock that afternoon, yes.

Q. You then go to the doctor?

A. Yes. I want to clarify that, some of the dates in Russell's - they've got the wrong date.

Q. That's correct. You're 100 per cent correct. You then go to the doctor that afternoon?

A. No, I went on the Friday, I went there Friday the 13th.

Q. The Friday you go.

5 A. I had the day off sick.

Q. You send your doctor's referral back to Cardcall on the Monday and it says that, "Notwithstanding the fact"--

10 A. No, that was after I was terminated, I'm pretty sure.

Q. It was after you were terminated and it says, "Notwithstanding the fact that you're a smoker, you wanted to go and see whether or not any irritation was being caused to your throat as result of the flags"?

15 A. No, that's what it says at all. I had a sore throat and at one stage I had a coke and I never had that feeling before and if you read it properly--

Q. I've got it here, sir, and--

20 A. What number is it?

Q. It is annexure B to Ms Bradman's statement and we'll get to her a bit later on today but it's from--

25 A. I'll just grab it.

Q. --from Dr Roberts--

A. Yes, I've got the copy here and where is it on mine?

Q. I don't think it's in yours, sir.

30 A. No, that's because it was after I was sacked and I thought well - well, this is that.

Q. It says here, "Thank you for seeing Shane regarding"--

35 A. Number B is it?

Q. B in Ms Bradman's statement, second page. It says there, "Thank you for seeing Shane regarding chronically sore throat for about two months. He is a smoker but he's found out that some of the products that he's been distributing for work have been dipped in a solvent which may also irritate the throat. Not seeking any workers' compensation claim or taking legal action, he understands that his condition may simply be related to his smoking. He simply wishes to have his throat examined to check for any signs of chronic irritation". Were there any signs of chronic irritation?

45 A. I never had it tested.

Q. It stopped being of any concern to you, did it?

50 A. No, it didn't. I had it set down for an appointment which was just before the conciliation meeting, I decided to defer it, then I had it set down for July and I forgot about it.

55 Q. It was no longer--

A. No, I haven't - no, I plan on going but I just haven't done it because there's no point in me making an appointment and not showing up.

Q. It hasn't been of burning importance to you so that you would've gotten it done between May and August of this year?

A. It is an issue to me but--

5

Q. It's not high on the list of priorities?

A. Well, it is a priority but the problem you got is, if you book an appointment with the specialist you're booking a month out and if you book a month out and it clashes with something else you got to book another month out and if you forget, which I did forget in July, I don't see the point and I plan on making an appointment soon. Why make another appointment and not show up because then you're just pissing the doctor off, the specialist off.

10

15

Q. On 18 May--

A. But as it says there I'm not claiming this from - I think there is a chance - it's like I spoke to a lawyer and I spoke to the doctor, at the end of the day you're never going to be able to prove if it was from the flags or not. I'm a smoker and that's reality, I'm smoker so I just have to live with that.

20

25

Q. On 18 May and this is after your employment's been terminated.

A. I notice on that, I asked for a copy of their report, they failed to produce it and given that I've asked for it in a medical manner, Commissioner, which I think that's quite disgraceful.

30

Q. On 18 May, and this is after your employment's been terminated, you wrote another email to Cardcall retailers?

A. Yes, and also wrote one to the staff. You want a copy of the one to the staff, Mr Commissioner?

35

Q. You didn't and it's annexed to Ms Bradman's annexure P.

A. P.

40

Q. You didn't put this email in your statement.

A. Because it was after I was sacked.

Q. It was directly relevant to these issues that we're talking about now, wasn't it?

45

A. It doesn't relate so much to why I was sacked, I was gone from the company and I came to the viewpoint everything up until the date I was sacked is relevant because for me to argue things that happened after that date doesn't really relate to my sacking and that's what we're here for to determine why I'm sacked.

50

Q. How many people did you send this email of 18 May to?

A. 1500 retailers and I also sent one to staff, Commissioner. Can I submit this or submit it later?

55

Q. In that email you say there, you attach Mr Hassatt's correspondence, it says, "Any further comment to retailers and employees regarding a health risk posed by the flags,

your employment would be terminated", so you understood that was the case?

A. Yes. The key there is any further comment--

5 Q. Just wait one second, sir.

A. Okay.

Q. By 18 May, you had certainly then had a copy of Mr Hassatt's letter, didn't you?

10 A. Yes, I got it the day before - no, the day before the conciliation meeting, a day or two before the conciliation meeting on June 10.

Q. Sir, how can you attach--

15 A. That's the termination letter I'm referring to.

Q. --from the company's lawyer to your lawyer?

A. What's that?

20 Q. In the attachment which is correspondence from the company's--

A. No, that's the termination letter, that's the termination letter. Any further comment to retailers and employees regarding health risks posed by the flag my employment would be terminated. Have a look in these warning letters.

30 Q. Sir, I apologise my copy doesn't have the attachment but what you say in the body of this email is, "In the attachment which is correspondence from the company's lawyer to my lawyer, it clearly states that if I make any further comments to retailers, employees regarding health risks posed by the flag, my employment would be terminated.

35 A. He sets that out in the termination letter.

Q. You were here referring to--

A. The correspondence is the letter terminating my employment to my lawyer. You want to have a look at that letter in that he says that.

45 Q. I'll take your word for it, sir. You then say, "I'm not looking for any sympathy about my termination. Steve Picton has been trying to intimidate me for the last month and I knew the sacking was coming.

A. Yes, I'm not going to write out and cry about people.

Q. You knew the sacking was coming, I suggest to you, sir.

50 A. Yes, for intimidation and harassment.

Q. You'd been told that if you send any further emails you'll be sacked.

A. Yes, three or four days beforehand, yes.

55

Q. So you sent further emails and that's why you knew the sacking was coming.

A. I knew it was coming from once I sent that email

around and Russell Shields rang me up and told me to piss off and leave the company.

5 Q. You've gone and got another job since your employment with Cardcall was terminated?

A. Yes, I got a couple of jobs, a couple of casual jobs.

Q. When did you get those jobs?

10 A. One I already had, I was working weekends and that and another one I picked up about three, two, three - well, the two weeks after I left Cardcall I pretty well didn't work because on the Monday I got a bullet, I actually picked up a cold. It started the next day, so the next
15 two weeks I didn't work very much at all. One job I already had which was already a part-time job, casual and another one I picked up two, three, four weeks after I left Cardcall.

20 Q. What's that second job that you're talking about, what do you do?

A. Well, I got two casual jobs.

Q. What do you do?

25 A. Telephone sales.

Q. How many days a week do you work?

A. They're casual. One is Monday to Saturday, the other one just - the hours I put in.

30 Q. One of them is Monday to Saturday?

A. Yes. I can still have time off if I wanted to, they're casual, I'm not locked in. I've got to do, tend to do a minimum of 20 hours.

35 Q. Who do you work for?

A. A company called Cardcall.

Q. Not anymore, sir.

40 A. Custom Call.

Q. Custom Call.

A. Actually work for Manpower, a recruitment company. It's one of those scenarios where you work for Custom Call but you're paid by Manpower.

45 Q. This Manpower Placement puts you in two places?
A. No, just one.

50 Q. Manpower puts you at Custom Call and you said you had another job?

A. Yes.

Q. What's that?

55 A. CCA.

Q. What's CCA?

A. Contact Centres Australia.

Q. You work directly for them or is that through recruitment as well?

A. No, direct, that's a casual too.

5 Q. How much would you earn doing those jobs gross per week?

A. Gross, 300, on average, what I've averaged since I've left? It fluctuates depending on the hours. Like this week I'll be hard pressed to earn three or 400 bucks because I've had a fair bit of time off. Seven, 800 bucks let's say.

Q. Would be the average?

A. It's probably what I - since I left Cardcall, yes, it's average because if you take the two weeks I had off sick with a cold, they're both telephone based sales roles, so if the voice is bad you're bugged and like I said on Monday the 16th when I got sacked it was actually a rainy day in town, got a cold, so.

20 Q. Took you about two weeks before you found this second job after you were sacked from Cardcall?

A. I already had the CCA one.

25 Q. Had the CCA one and--

A. That was a casual job, weekends and that.

Q. Custom Call took you about two weeks post termination.

A. Two to three weeks, yes, somewhere around there, it might've been four weeks max I think.

BORS: That's all I've got.

35 COMMISSIONER: Yes, thank you. Thank you for giving your evidence. You're released and discharged.

<WITNESS RETIRED AND EXCUSED

40 COMMISSIONER: We'll now take a lunch break and we'll resume again at 2.15.

LUNCHEON ADJOURNMENT

45 COMMISSIONER: Mr Dowling, further evidence that you propose to produce?

APPLICANT: In relation to Ms Garner.

50 COMMISSIONER: I beg your pardon?

APPLICANT: In relation to Ms Garner, while she's in the stand possibly, Commissioner?

55 BORS: Mr Dowling's summonsed Ms Garner to give evidence. She's here for that purpose.

COMMISSIONER: You call Ms Garner do you?

APPLICANT: Yes, Commissioner.

COMMISSIONER: Is there a witness statement from this witness?

5

APPLICANT: No, I subpoenaed her, Commissioner.

<SALLY ROCHELLE GARNER(2.22PM)
SWORN AND EXAMINED

10

COMMISSIONER: Mr Dowling, your witness.

APPLICANT: Q. You're Ms Garner, we've never actually met, spoken on the phone a few times. I'd just like to start off by thanking you for the report, the toxic report you got. I was surprised that you never put in a statement or an affidavit given that there was a number of emails in Gabrielle Bradman's statement which came from you and also all your file notes, all your file notes are in here and I'd like to go through it. Now when was the first time we had a conversation, to your knowledge?

15

20

A. Can't remember exactly but-

Q. It was on a Friday, was it, Friday the 6th?

25

A. Maybe.

Q. It's in your file notes, yes?

A. Yes.

30

Q. We'd never spoken before that?

A. No.

35

Q. I didn't know you, you didn't know me. I actually came about you because I spoke to someone on the rep line and they said we have OH&S officer. Do you believe you should have been involved in this earlier on?

A. Um-

40

Q. Complaints were made in April or December last year, the company admits they were made in early April?

A. If a complaint's made to a manager, the manager then brings it to me or if there's other means of getting it to the OH&S officer.

45

Q. Do you have a committee in the company?

A. Yes, we do.

Q. Who makes up the committee?

50

A. There's a number of team leaders and other senior staff within the company who was actually voted upon.

Q. Any managers, like, Russell Shields, Steven Picton?

A. No, no.

55

Q. Do you meet with him in relation to OH&S policy?

A. Yes, I've just completed our audit.

Q. How often do you meet with them?

A. With Steve, maybe quarterly.

Q. What about Russell?

A. No.

5

Q. You just don't meet with him?

A. No.

10 Q. If they were aware of complaints they should've brought them to you?

A. Yes.

Q. Did they bring them to you?

A. No.

15

Q. They didn't? Why should they have brought them to you because that's OH&S law is it, they have a legal obligation to bring those complaints to you?

20 A. If they receive a complaint they would pass it on to me, yes.

Q. They have a legal obligation to do that?

25 BORS: I don't think she can give evidence about what a legal obligation--

APPLICANT: She's an OH&S officer, I assume she's pretty trained--

30 BORS: She's not a lawyer.

APPLICANT: I assume she's trained and educated on that policy. Well, I'll bring out a policy - you do have an obligation to investigate. Is it the company's policy that any managers who receive complaints bring that on to you?

35 A. If anybody receives a complaint brings it on to me.

40 Q. If they never brought the complaints onto you, they were breaching internal company policy at least if not OH&S policy. So they were just being fairly frivolous about them, yes, for not telling you?

A. No, I wouldn't really say that.

45 Q. Based on your knowledge of this do you think you should've had the flags tested a lot earlier?

50 A. I received advice regarding the flags when the complaint was brought to my attention. The people that I spoke to were OH&S people in Brisbane. They didn't seem concerned by what I discussed with them.

55 Q. They didn't seem concerned? They sent you an email saying, enforcing a no smoking policy in cars, making sure all the staff in the cars have an airtight container and not just any airtight container, they were very specific. Saying they wind down the windows, they shall have ventilated, don't turn the air conditioning on?

A. They weren't concerned that the fumes were harmful to

anyone, they didn't say that at all, they didn't tell us to stop distribution of the flags, they said that we could continue to distribute them.

5 Q. No, I never said that, they said to enforce a no smoking policy, did they not?

A. I don't recall that to be honest.

10 Q. In the email in your and Gabrielle Bradman's evidence - where is it. It was an email you got saying no smoking policy and all this. Where is it? Marked G, Gabrielle Bradman. Have you got Gabrielle Bradman's - have you got a copy?

15 COMMISSIONER: If you want to take the witness to something you should have a copy of the document that you want the witness to look at.

20 APPLICANT: I thought it was up to them to supply it because I--

COMMISSIONER: Your witness, Mr Dowling.

25 APPLICANT: I'll hand over a copy.

BORS: I've got a copy if it assists. May I approach?

COMMISSIONER: Yes, thank you.

30 APPLICANT: Q. Do you read that, it says no smoking policy, advising staff to - can you see that there?

A. I can't find the no smoking just yet.

35 Q. It's about the second paragraph down. It doesn't say no smoking there, policy?

A. I haven't got to that part, no, can't see it. Okay, yes. It says it would be appropriate for the ..(not transcribable).. operations to enforce a no smoking--

40 Q. No smoking policy, it says to make sure that - good ventilation is essential when handling the flags, ..(not transcribable).. operations may need to explore a range of airtight containers, maybe get a few done and see how appropriate they are, including size, shape and material, this material could be wood, metal or high density plastic, high density plastic, they're less likely to emit vapours. It says no smoking policy. Did you take that advice on board and did you follow it through with that advice?

50 A. Yes, I did follow through with that advice.

Q. I was never advised of it.

A. I followed through with the advice.

55 Q. You enforced a no smoking policy with reps?

A. No, I did not.

Q. Why not?

A. Because I discussed it with my executive management, I then had the flags tested--

Q. Who's the executive manager?

5 A. Executive management, CEO, DM's.

Q. Steve Picton and Russell Shields, yes?

A. Yes.

10 Q. He didn't take the advice, you were given advice to do that?

BORS: More as a general point than anything else, if Mr Dowling can wait until Ms Garner answers the question that he asked her and not put words into her mouth.

15

APPLICANT: I'm sorry about, it's just a habit.

Q. You ignored the advice you were given--

20 A. I didn't ignore it, no.

Q. --under consultation?

A. No, I didn't ignore it, no.

25 Q. You didn't enforce a no smoking policy?

A. Because I discussed it with my management and then we had the flags tested.

Q. You didn't ignore it, management ignored it, Steve Picton and Russell Shields?

30

A. No, no. We then decided these guys haven't tested the flags, so we then had them tested. I mean they're going by hearsay, they're going by MSDS, that's why we had the flags tested so we could get factual--

35

Q. After you got them tested. That email doesn't say they're safe or unsafe?

A. I wouldn't think so, no, because they've done no testing, they didn't see the--

40

Q. Yes, they based it on emails.

A. Yes, that's correct.

Q. In Jonathan Hassatt's statement he says the reports say they're safe.

45

A. The report that we got back from the scientist said that they were safe, they're well below the Australian standard.

50 Q. Yes, we'll get to that. For Jonathan Hassatt to say they're safe, it's crazy is it? It doesn't say they're safe does it or won't say?

A. I can't speak for Jon I'm afraid.

55 Q. In it he says, he does question that whether they're 1530 milligrams per square metre. He says it's more like 1530 micrograms but after you supplied your tests we know the 1530 would be probably accurate but yours says 12,000.

A. He also says here that he would expect the flags to be slimy and as we know they're not, they're not slimy at all.

5 Q. You made a decision because they're slimy or not slimy?

A. He's making an assumption, he hasn't seen the product. We have the product, we know they're not slimy which is why we sent them for testing.

10

Q. You can't say they were safe or unsafe in that email?

A. Myself and my executive team decided, no, we couldn't that is why we had them tested.

15

Q. Jonathan Hassatt says he could?

A. I'm not Jonathan Hassatt.

Q. I sent you an email with the lab reports.

A. Yes, which I discussed and--

20

Q. On Thursday, that Thursday, that was a Thursday morning.

A. I can't remember the day, sorry.

25

Q. Yes, that was a Thursday morning. We'll get to your file notes. What have we got here? On Thursday the 12th I sent you the lab reports and the two material safety data sheets, did I not?

A. (no audible response)

30

Q. In your hand you have a lab report from Packaging Inks Australia which says they're 1530 milligrams per square metre. Did you ring them up to verify it or-?

A. No, I didn't.

35

Q. You didn't. In the other you have advice from an expert who says, "If they are 1530", he disputes it but he questions it but then he goes on to say, "If they are 1530 milligrams per square metre then the appropriate action might be to cease distribution of the flags forthwith and advise your sales executives and your clients only to handle these with rubber gloves". Did you do that?

40

A. No, because again the product wasn't slimy so we had it tested ourselves.

45

Q. You had a report from Packaging Inks Australia - and as I've stated earlier in one of the emails--

A. Which he doubts, he doubts the validity of that in his email here.

50

Q. Your report actually says they're 12,000 a few days later, you get a report done after I've been sacked and it says it's 12,000 milligrams per square metre. I was proven correct then. Based on that he says at 1530, based on the fact they're 12,000 you should've definitely advised sales executives and the clients to handle with gloves and cease distribution, based on that should you

55

not?

A. I wasn't advised that after our testing, so no.

Q. Where did you get that advice from?

5 A. From where we had the flags tested.

Q. He says he's not an expert, he can't give you that advice?

10 A. He tested the flags and I had a discussion with him and that was the outcome.

Q. He says he's not an expert, he can't give you - he says you have to go get a report, get an expert to give you that advice. You should take it back to Ross Hanson and get him to give you the advice, that's what the expert said in the witness stand, I mean the guy who did the testing. Did you do that?

15 A. I wasn't aware that I had to go back to anyone, I thought that, he's a scientist, he's tested flags, what he says is the way to go. He didn't advise me to go back to anyone else.

Q. How come you only got them tested out in the open air where it's blowing and it's windy and the guy who did the testing, Mr Gore, I shouldn't say the guy, William Gore, he said in that environment the readings are going to be a lot lower because it's windy out there, et cetera.

25 A. When I rang Mr Gore about testing the flags, he asked how they were packaged, how they were sent, we replicated that when we sent them to him for testing, so that when he opened them he would receive them as a sales rep would receive them. He also asked how they were handled and I said, well they have to be put together, so he said, okay we'll test on that. That's what he did, he mimicked putting together a flag and tested the air.

30 Q. Did he mimic the complaint to my email, he said you had a discussion with him, having it tested in the boot of the car, leaving the car out in the sun for three or four hours, he said you had a discussion with him - and that's all my complaint is about, having these flags in a confined area. Why didn't you follow through and ask him to get it tested like that, he said he could if you wanted to.

35 A. We discussed that with him, I also discussed that with management and he said that in regards to that there's so many different cars, sales reps already carry some, sales reps already carry them in their boots, some have stationwagons, some have tiny little hatchbacks. He said it wouldn't be conclusive if we were to test just one vehicle.

40 Q. It wouldn't be conclusive but it'd give you a lot better idea than testing them out in the wind because he told me, he said in the stand, he said the readings would be a lot higher, a lot higher, that's quoting verbatim. You should be working on the worst case scenario, should you not? Not the best case scenario of having them tested out in

the wind?

A. I wouldn't say that would be the best case scenario.

5 Q. It wasn't the best case scenario. If you've got a big jug of, say, petrol and you test the fumes coming off it out in the wind then if you stick it a car for three or four hours or an hour or two hours in 20, 30 degree heat, the fumes within the car are going to be a lot higher, are they not?

10 A. Maybe but if something smells, I personally would take it outside to put it together, I wouldn't sit in a closed room.

15 Q. I put it to you the reason you didn't get it tested in that manner was because you got directions of Steve Picton not to do that because you didn't want to know the worst case scenario, you didn't want to know the scenario of staff who were carrying them in the boot of their car. Did you take directions off Steve Picton on how to get them tested?

20 A. No, I didn't.

Q. You didn't take any directions off him?

25 A. No.

Q. I find it crazy, I find it unimaginable. If I had someone complaining about the flags being in the boot of their car and toxic fumes spreading in a confined area I'd get it tested that way, logic says that. You don't think that's logical?

30 A. No, because everyone's boot is different and the way everyone handles the flags is different and after discussions with an number of OH&S people that was the conclusion we came to.

35 Q. You still don't know whether they're safe in cars or not?

A. I guess so.

40 Q. You don't know?

A. No, I don't know.

45 Q. That's the complaint I put forward. I put it forward actually December last year but we won't go there too far, Commissioner, because I haven't got the guy who was there when we had the conversation but on the admission of them in April - what are we in now, April to August, you still don't know whether they're safe in cars or not in a confined area. I put it to you, you don't know because the company doesn't care?

50 A. I wouldn't say that. We worked on this for weeks and weeks, as soon as the complaint came through, I spoke to numerous people.

55 Q. No, look I'm not questioning you and what you did but that was my complaint, that's what you should've got tested in that manner. I drive a Commodore, you could've said, okay Shane, what sort of car do you drive, let's get

it tested in a Commodore. You've never gotten them tested in that manner. If you did get it tested and it was dangerous you'd probably have to have all the cars tested, big expense. If it was dangerous in that scenario you'd probably have to get all the cars tested, all the reps expenses, maybe spend 1000 or 2000 bucks each in changing out the air conditioning and all that sort of thing, if it was dangerous and that, sorry, that's probably what you'd have to follow through with, is it?

5
10

A. I don't know, I haven't been down that path.

Q. I'd like to get back to - now, Russell Shields never brought the complaint to you. Under company policy he should have, he never did, is that what you're saying?

15

A. I can't speak for Russell but I wasn't aware until you rang me.

Q. Yes, he never brought the problem to you.

20

A. I don't know what Russell did prior to me finding out though.

Q. No, but he didn't bring the problem to you?

A. He personally didn't, no.

25

Q. Company policy, he should have. That's what you said before, company policy, any managers bring the problem to you, is that right?

A. Any member of staff, so if you had spoken to any member of staff, they could've sent it to the OH&S email inbox--

30

Q. I didn't even know there was one

A. Every staff member in the building is aware of that.

35

Q. I'm not in the building, my office is in Balmain.

A. If you ring the rep line and make a complaint, the person on the rep line could have emailed the OH&S inbox.

40

Q. I rang them on 6 May and they did tell me about you, they did the right thing, I followed through. Why do you believe I was sacked?

A. I have no idea.

45

BORS: I don't think that has any relevance.

APPLICANT: Q. Do you think the company has a policy to investigate my complaints before they sacked me?

A. Your complaints were investigated.

50

Q. Huh?

A. Your complaint for the flags was investigated.

55

Q. On 12 May, Thursday morning, 9.31 we had a conversation. I rang you, "I told him that I had done my investigation and everything looked okay but I could not comment". I put it to you - what actually happened was you did say that sentence or roughly that sentence, "I told him I'd done my", actually what you said was the

flags were safe and I said, "How did you come to that conclusion?" You said, "I've been directed, I can't comment". Is that correct?

5 A. I don't believe I would've said I've been directed to not comment on that.

10 Q. "I've been instructed not to comment". Well, it says here, "He then asked me if I was getting pressure put on me from senior management why couldn't I talk. I told him I was under no pressure and just not able to discuss this with him". Why--

A. Because I hadn't concluded my investigation.

15 Q. It says - you haven't concluded, it says here you had, "I had done my investigation", that's what it says there in your file notes, "I've done my investigation, I can't comment", now you're saying you haven't concluded, of course you haven't concluded because you got them tested the day after I was sacked.

20 A. I wasn't aware when you were sacked. I don't work for Cardcall I work for Go Talk.

Q. It's the sister company ..(not transcribable)..

25 A. It doesn't mean I know everybody in Cardcall and what Cardcall does, I don't know that. I didn't know you - as we discovered at the start of this hearing.

30 Q. Yes, that's cool. But it says, "I've done my investigation, everything looked okay but I could not comment". Why couldn't you comment?

A. Because I was still in discussion, obviously I was still in discussion with--

35 Q. No, but it says here, "I'd done my investigation", you said you completed the investigation but I can't comment. It's your file notes, they're not my notes.

40 A. Yes, I understand they're my file notes but me not commenting has nothing to do with someone bullying me because no one has ever bullied me.

Q. I don't recall saying that but I possibly could've?

A. Well, you did, you did say, look, they're bullying me, you need to get legal advice--

45 Q. I said that, yeah, I remember saying that, for sure--

BORS: Again, can she just be given an opportunity to answer the questions.

50 APPLICANT: Yes, okay, Commissioner, apologise again. Personal habit. Bad one.

55 WITNESS: Yes, you told me I was being bullied I should get legal advice. You also said to me that you were complaining because you had nothing to lose, so you thought you'd just do it.

APPLICANT: Q. No, I never said that.

A. It is, you said the other guys have families but you have nothing to lose so you decided to follow--

5 Q. I said something along those lines, others got family, I'm in a better position, I'm a single man, no children all that, at least I can fight this. I don't have to fear for losing my job as much as the others.

A. Yes.

10 Q. Yes, we said something along those lines. I just don't get it, you're contradicting yourself. It says here in your file notes, "I told him that I'd done my investigation and everything looked okay but I could not comment".

15 A. Yes, I've completed my investigation but it didn't mean I'd completed my conversation with executive management or we'd decided then what the next step forward for us was, it just meant I'd completed my investigation, I've had the flags tested, I'd had feedback from--

20

Q. You hadn't had them tested, this was on May 12, you hadn't got them tested until May 17. So you admit telling me that you'd completed your investigation in your file notes and everything looked okay on 12 May?

25 A. If they're there then I must have, I'm sorry, I don't have a copy of it, and it was a while ago.

Q. That's totally incorrect, totally incorrect, is it not?

30 A. Again I don't have the notes, I don't know.

Q. I'll give you a copy, just quickly, if you want a quick read. Once again, I apologise.

35 BORS: It's at annexure I to the statement you've got.

APPLICANT: Q. It's number I if you want to have a look, so I can read it to you.

A. Sorry?

40

Q. Number I in there. If you go into the second page is number I.

A. Yes, it doesn't say I completed it, I said I'd done my investigation.

45

Q. Yes, you done it.

A. Doesn't mean I completed it.

Q. Done, complete, what's the difference?

50 A. No, I've done it but I haven't completed it.

Q. No, it doesn't say that there it says, "I've done my investigation everything looks okay".

55 A. Yes, exactly, I've done it and it looked okay, it doesn't mean that I have followed through with executive management, we decided on what we were going to do. It just means that I've done it, I've had discussions and-

Q. Shouldn't you have told me that? Based on the -
shouldn't you have told me that?

5 A. I just said to you I couldn't comment and not
commenting means that I hadn't finished it, I couldn't
give you anything--

Q. What you actually said to me and I put it to you, you
said, "I've been directed I can't comment, I've been
instructed I can't comment".

10 A. No, I deny that, no. I hadn't been directed by
anyone.

Q. Why wouldn't you comment, why wouldn't you comment?

15 A. Because I hadn't completed it, why would I comment.

Q. It says here you had completed it--

A. It says that I've done it--

20 Q. If you hadn't completed it why didn't you say, look
Shane, I'm getting the flags tested, I'm in the process of
getting the flags tested. Why couldn't you say that?

A. I did tell you I was getting the flags tested.

Q. It doesn't say in your file notes?

25 A. Because as you pointed out I had the flags tested
five days later, so from this I'd done it, I then spoke to
executive management, it doesn't say I've completed it,
I've done it, I then spoke to them--

30 Q. You didn't tell me you getting the flags tested, you
never told me that?

35 A. When did I do this email, the 12th or something? Yes,
12 May, we had them tested on the 17th, which means
there's a big gap between these file notes and when I
actually had the flags tested and I had spoken to you
since then and I have said, yes, I'm getting them tested.

Q. When have you spoken to me since this?

40 A. I don't know, I can't give you an exact date, can I?

Q. That was on the Thursday, the Friday I had off sick
and the Monday I was terminated, it would've had to have
been the Friday or the Monday. Which day was it?

45 A. I don't know, I don't know when you were terminated, I
don't know.

Q. I was terminated on the Monday, you never told me you
were getting them tested whatsoever and if--

50 A. I believe I did.

Q. Huh?

A. I believe I did tell you they were getting tested.

Q. You said the report's done?

55 A. I didn't say the report's done, I said I have done my
investigation.

Q. Let's get back to - hold off a minute, what have we

got here. You didn't take the advice of Ross Hanson, basically ignored it.

A. I didn't ignore it, I didn't think it was conclusive.

5 Q. Shouldn't you have erred on the side of caution, the health and safety of staff?

A. Don't you think--

Q. Shouldn't you--

10 A. No, excuse me. If you're telling me that I've ignored it I wouldn't have done anything with it but I did do something with it, I did take it to my management, I did discuss it and then I had the flags tested, so to me that doesn't mean I've ignored it.

15

Q. It says no smoking policy--

A. I haven't ignored it, I had the flags tested.

20 Q. Wouldn't the appropriate action to have been taken given that you had this advice, you had my lab report on the flags, to stop distribution until you got it tested, to enforce the no smoking policy until you got it tested?

25 A. No, because then I had other conversations with an OH&S person whether it was, I can't remember, Commerce Queensland or AI Group or I don't know.

Q. It wasn't Commerce Queensland because I rang them and spoke to them. You got that advice.

30 A. AI Group then.

Q. I put it to you that you got that advice off them and I spoke to a guy who you originally had contact. His name, do you remember? It's in here somewhere. You originally sent the emails to. Do you remember his name, you spoke to him?

35

A. Ross or Rick, I don't know-

Q. Yes, Ross.

40 A. It was AI Group.

Q. No, it wasn't Ross, Ross was the expert. There's someone else here that you originally had correspondence with.

45 A. Rick maybe.

Q. Huh?

A. Rick, is there a Rick?

50 Q. Yes, Rick Nelson. I spoke to him and he said, look we advised them to get it tested and it just dropped off after that, just dropped off after that.

55 A. It didn't drop off. They gave me Willy's number, actually it wasn't even Willy I was supposed to speak to it was somebody else but the person I was supposed to speak to at the Queensland Scientific Health Services wasn't available, so Willy took the call and it was with him I discussed it.

Q. Based on the expert who did the testing--

A. We didn't go back to these guys--

5 Q. --he said you should've - he's not an expert, he can't
tell you what advice. You should take it back to someone
or take it to someone to get a report up done saying what
you should do. Have you done that?

A. He didn't tell me that.

10 Q. He said it in the stand?

A. I don't recall him actually telling me that, I don't.

Q. He said it in the stand. I don't know if he said he
told you that but he said that's what should be done.

15 A. Well, I wasn't told that.

Q. He said four or five times, six times, he's not an
expert he can't give you advice on what to do.

20 A. He didn't tell me that, did he? He had the flags
tested, I had flags tested by him, he gave me a report,
they were well below the Australian standard.

25 Q. Below the Australian standard if they're out in the
open air. We don't know if they're below the Australian
standard if they're in their car, they gave me headaches,
they stunk out my car - just about the advice I had from
Australian Packaging Inks, be well over the safe standard,
well over the 100 milligrams per square metre, if you had
30 a number of them in the boot in your car but you don't
know, the company's never found out. Has the company
breached occupational health and safety laws by not
knowing, by not--

35 BORS: I don't think she can answer that.

APPLICANT: Q. Do you think they have?

A. I don't believe we have, no.

40 Q. The company has an obligation, does it not? If
someone makes a complaint the company has an obligation to
know?

A. Yes, it does.

45 Q. Youse don't know?

A. Because I had discussions with Willy, I sent the flags
for testing, Willy saw your report, I sent him the email
correspondence from you and he saw the report from you as
well and from that we discussed the best way to test the
50 flags which is the way we ended up testing them and we
went from there and we believe that they were fine.

Q. You don't know if they're safe in cars?

55 A. We didn't have that tested, no, but the flags
themselves-

Q. You have an obligation to know, do you not if they're
safe in cars or not?

A. We have an obligation to know whether the flags are

safe themselves and putting together the flags and having them in our stock rooms and everything like that, the flags are fine.

5 Q. On April 28 I sent a letter from my lawyer on the
19th, well the lawyer sent it, 19 April. On the 28th
Russell Shields replied back to me. I'll give you a copy
of that. 28 April, Russell Shields says - his reply to my
10 lawyer, "We do not accept any health risks being caused by
these items". How would he have known that? How would he
have known that on 28 April? That's about two weeks
before you actually had them tested?

15 COMMISSIONER: There's been an objection at how--

BORS: I don't think she can know, how can she know that.

20 COMMISSIONER: How does this witness know what was in the
mind of another person?

25 APPLICANT: Well, they have an OH&S committee, was it put
to the - I'll change that question, Commissioner.

30 Q. Was that put to OH&S committee to come to that
conclusion?

A. No, I dealt with it all myself as the OH&S office.

35 Q. On 28 April?

A. 28 April-?

40 Q. You never knew about the problems about the flags or
my complaints until May, was that right, until I
complained to you?

A. Whenever the first phone call from you was.

45 Q. May 6, I thin, it is, off the top of my head. So, it
was never put to the OH&S committee to come to that
conclusion, OH&S committee are the ones who should have
come to that conclusion, is that not right?

50 A. The OH&S officer, which is myself, should come to that
conclusion.

55 Q. Or the committee, but you never did because you never
knew about Russell Shields--

A. Again that's Russell, that's not me.

60 Q. Yeah, Russell Shields never put that issue to you, he
never asked you to tell him whether they were safe or not?

A. We've established that a long time ago.

65 Q. What else does he say here, well, we'll leave that for
Russell, so basically to your knowledge you do not know
how Russell came to that conclusion but if it had have
followed company policy you're the one who should have
come to that conclusion or not, whether they're safe or
not?

A. Yes, I would have been involved in it, yes.

Q. Wonder how he did it, save that for Russell later. Turn out to be a ripper of an answer, I've come to that conclusion.

5 COMMISSIONER: Mr Dowling, I'm a little concerned at your approach to this. There are certain protocols and a certain level of decorum that has to be observed. I'm not
10 sure whether the purpose of the way that you're dealing with the questioning of these witnesses is more for your benefit than mine and that would be very regrettable if that was the case.

15 I ask you to ensure that you observe some standards of courtesy in respect of the way in which you ask witnesses questions, allow them to answer and that the offering of additional comments in the process should not occur.

20 APPLICANT: I take that board, Commissioner, and you're correct but I suppose the only excuse I have is that this is a very personal issue and you tend to get fired right up and your manners seem to go out the window a little bit, but I take that on board and I'll try my hardest to abide by that.

25 COMMISSIONER: I can assure you, Mr Dowling, I've dealt with plenty of cases where individual self-represented applicants get an opportunity to ask their former employer's representatives, often in many instances they're the person that was responsible for their
30 dismissal, questions from the Bar table. If for some reason I develop a view that the standards that should apply aren't being followed I will stop that process. I have no hesitation in doing that.

35 This Commission will not be used as a forum for personal venting of spleen.

40 APPLICANT: No, and it shouldn't be, Commissioner, I totally agree. Totally agree.

45 Q. Now, another party here, the one who's looking after you brought up before is that I sent an email out on the 16th after I was terminated in relation to an appointment I had with the specialist, on 16 May, in Ms Bradman's evidence - I sent an email attached, have you got number B in Ms Bradman's, now, they've gotten the dates wrong, I think is in Russell Shields' or Ms Bradman's dates from
50 but it was one of the two, the dates are wrong, on Friday the 13th I went to a doctor, got a specialist appointment, sent an email around on the 16th, which went to Steven Picton, Russell Shields, you and Gabi Bradman, I was asking for a copy of a report you had on the flags because I have - and I haven't followed through with it as of yet
55 but I will do - a bad throat. Now, I'm a smoker, I get bad throats, sore throat from time to time, it was fairly bad at that stage, and I was going to go and see a specialist, which I will do. Now they brought it up the fact that I haven't gone and seen a specialist, I asked

you for your report on the flags, mine says it's
1530 milligrams per square metre, yours says there's
12,000, given that yours is a lot higher it's obviously
more dangerous, logic says that, does it not, than I
5 thought, logic says it does. I asked you for your report
on the flags so I could give that to the specialist.
Youse never sent me the report on the flags, why not?
A. I don't know.

10 Q. I sent it to you, you're one of the people, did you
think you had an obligation to send it to me given that I
was going to see a specialist?

A. Well, they were on the way to be tested, they weren't
tested until the 17th.

15

Q. You got the report the next day, did you not?

A. The--

Q. Neither you, Mr Picton or--

20

A. The 19th I received it.

Q. You, Mr Picton, Russell Shields, no one had any
concern for my health and safety, given the fact that you
know I haven't been, shouldn't you have rung me and said,
25 look, Shane, these flags are a lot more dangerous than you
think, make sure you get yourself along to the doctor?

A. We didn't believe it would be dangerous when we got
the report.

30 Q. And you still don't, you still don't know if they're
dangerous in the car or not?

A. We don't believe they're dangerous, no.

35 Q. Don't believe. You have a legal obligation to know,
don't you?

A. We had them tested, as I said previously, we've had
them tested and our advice was that the flags were okay
and they advised that we didn't have to stop distribution.

40 Q. But if you go back to Mr Hanson's advice, he says that
they're 1530 milligrams pull them out of distribution and
tell the customers--

A. Mr Hanson also said they were slimy and they're not,
so-

45

Q. But the report you got says they're 1200 milligrams,
whether they're slimy or not's irrelevant, and I put it to
you--

50 A. Well, it is relevant because that means that what
Mr Hanson has said isn't correct.

Q. Whether they're slimy or not isn't really relevant,
it's the level of toxicity in the flags that's relevant.

55 BORS: Just on that point, I'm only making this point to
save some time, what he says in his email is, it says, "If
on the other hand the data are correct and the flags are
slimy with these solvents then an appropriate action might

5 be to cease distribution of these flags forthwith and advise your sales executives and your clients to only handle these with rubber gloves". I think Ms Garner's been fairly vociferous in saying they weren't slimy and that's her reason.

APPLICANT: I hardly think that's an objection.

10 BORS: I'm just saying this because this is the third time that this has been raised and it's based on a misreading of what's in his email.

15 COMMISSIONER: I do think thought that the question which I think is underpinning this is a legitimate one.

20 BORS: Sure, but not if it's approached in this way, which is to say that he said this and therefore you should have acted in such a way, when it clearly is not the case that he said--

25 COMMISSIONER: Regrettably the way the questions are being framed is they're a sort of an attack rather than a careful measured exploration of the actual detail. The witness obviously reacts to it and says, well, don't accuse me of not doing what I think is right. But in reality here there is a genuine question ..(not transcribable).. ask it after Mr Dowling's--

30 BORS: I have no problem with that, it's just the way that this is being put assumes a precondition that's not there, I think is the best way I can put it.

COMMISSIONER: Anyway, let's move on.

35 APPLICANT: Q. Basically the whole argument for not acting is because they weren't slimy?

A. No, we acted, we had the flags tested.

40 Q. I mean not advising people the health and safety measures that they should take in handling these flags is because they weren't slimy?

A. Because Mr Hanson hadn't seen the product and felt the product, he was basing what he advised there in an assumption, so, we then had them tested.

45 Q. He says in his thing, if it's 1530 milligrams this is what you should do, I advise you this is the action you should take, and the report came back 12,000 milligrams which is some eight times higher, so, logically my brain I'd say, yes, we have to take all the action that he's advised given that it's eight times higher. He says if it's 1530 milligrams this is what you should do, here it comes back 12,000, eight times higher, you definitely should be doing it, should you not?

50 A. We seeked other advice, I'm sorry, I didn't go backwards.

55 Q. There's no other advice in your evidence.

A. The report.

Q. That's the report saying there's 12,000 milligrams in
- like he said in the witness stand, he's not skilled or
5 an expert, he cannot advise you.

A. Well, he didn't tell me that.

Q. You had the opportunity to put it in his statement,
this is advice I gave you, this is what I - he didn't do
10 that, he doesn't have the skill or the training to be able
to do that, he says, well, to that effect.

A. Okay.

Q. You're going on verbal advice, big company, to cover
15 yourself you should have gotten a written report, should
you not?

A. We did get the report of the flags back.

Q. A written report by someone like Mr Hanson saying,
20 okay, there's the lab report, this is what I advise you to
do.

A. I wasn't aware that the scientist couldn't advise us
on that. He was advising us on the quantities that were
25 in the flags, they came back that there wasn't a high
quantity, so-

Q. In the witness stand there he said he couldn't advise
you on that.

A. Well, that's obviously his recollection, we had
30 telephone conversations, numerous, sometimes I rang him he
was too busy and he'd call me back, I don't know what else
to tell you.

Q. I won't hold you up too much longer. So it's your
35 viewpoint the flags are safe in cars?

A. My viewpoint is the flags are safe, so, if that means
in cars, then, yes.

Q. You had the opportunity to test that out with the
40 expert but you didn't take that option?

A. No, we didn't because I'd discussed it with him and
we decided, and executive management and Willy decided
that we would just do it this way.

Q. So it was executive management had the ultimate say?

A. No, I wouldn't say the ultimate say. It was my
45 decision as well.

Q. Your decision as well. Certainly not the strategy
50 that I would have taken. I think under occupational,
health and law, I really got to wonder whether you sort of
met your obligations there. An employee, an employee has
obligations under the occupational, health and safety law
too, is that not correct?

A. That is correct.

Q. That's correct, you know that. Occupational, Health
and Safety Act 2000, number 40, number 20, duties of

employees, an employee must while at work take reasonable care for the health and safety of people who are at the employee's place of work or who may be affected by the employee's acts or omissions at work. So an employee has
5 got an obligation to let other people know about health and safety dangers, do they not?
A. Yes.

10 BORS: Could I just object to this on the basis that I think Mr Dowling is reading from the New South Wales Act, Ms Garner is from Queensland and the Queensland Act applies to her. I don't know if there's significant differences between the two, but I just make that point on
15 the basis that if there is some difference in fairness she should know what is the Act that she's being asked questions in regard to and what her obligations are under that piece of legislation.

20 COMMISSIONER: I think it's not contested that the New South Wales legislation it would be relevant to these circumstances of the applicant's employment engaged in New South Wales.

25 BORS: I understand that, but, as I understood the way that Mr Dowling was approaching the topic it was that Ms Garner's the occupational, health and safety manager, she should know that this is the law, now, she may well know that but there is--

30 COMMISSIONER: We don't want to trap her with something if there is a difference between New South Wales and Queensland.

35 APPLICANT: That's fair enough, Commissioner.

Q. In Queensland - that's the New South Wales one, in Queensland you have a similar law, employees, I don't know the Queensland one. I'd assume you'd know, do you know, do employees have the same obligations up there?
40 A. Employees do have the obligation to follow the health and safety policy that's within the company.

Q. Your place of work and people who may be affected by an employee's acts or omissions at work, employee must
45 while at work co-operate with his or her employer, rah, rah, rah, basically you've got an obligation to - like, if I'm distributing flags I've got an obligation if I know they're dangerous, if I knew they were dangerous to let the people know, I've got an obligation to--
50 A. Not to let the people know, you're to let us know, which is our policy. It also states, we have hazard identification forms hanging up in the office and also on the intranet.

55 Q. But I'm not in the office and--
A. But if you phoned the rep line and raised your concern, again these people, you could have asked for a hazard identification form, I mean you seem familiar with

the--

Q. I could have asked me general manager and me general manager could have told me that too, couldn't he?

5 A. That's right, but I'm not your general manager.

Q. Exactly right, he could have told me that if he wanted to.

10 A. I guess so, I don't know.

Q. He could have passed on my complaints to you if he wanted to?

A. I guess so, yes.

15 Q. He didn't do that?

A. No.

Q. Did Steve Picton ever pass on my complaints to you?

20 A. I had a conversation with Steve after I spoke with you.

Q. After you spoke with me?

A. Yes.

25 Q. Before that he never passed on my complaints to you, my lawyer sent him a letter directly, did he pass on a copy of that letter to you?

A. After discussions, yes.

30 Q. After May 6th?

A. Yes, after I first spoke to you.

35 Q. So after May 6 he passed on a copy. That letter was sent on April 19/20, an employee sending a letter from their lawyer in relation to the company breaching OH&S laws or the proposition that they're breaching OH&S law, do you think he should have passed on that letter to you straightaway?

40 A. Yes, I would assume so.

Q. But he didn't?

A. No.

45 Q. No, he didn't, did he. Wonder why.

A. I don't know.

Q. In that first conversation I said to you, they're trying to cover it up, did I not?

50 A. I can't recall that, to be honest.

Q. They're trying to cover up, they won't listen to me, remember me saying that to you?

A. (no audible response)

55 Q. They're probably not going to listen to you?

A. I do remember you saying that they're not going to listen to me, and I told you that I was the OH&S officer and--

Q. And they have to listen to you?

A. --they have and they will and they do listen to me, they always have, it's never been a problem.

5 Q. That's pretty well it, I think. It sounds like you covered everything. Just one last thing, now, it says in Mr Hanson's advice, I'll just go back to it, do you
10 dispute that my report says it's 1530 milligrams, do you take that as being accurate, now that you've done a report and it says there's 12,000, will you take that to be accurate?

A. No, because it varies from ours, doesn't it.

15 Q. The reason it varies from yours is - you sent the flags directly from the company to there?

A. Yes.

Q. You work in an air conditioned office--

20 A. Which you would think would make it worse.

Q. No, because when it gets hot, they've got plastic between them, the residue's sitting there.

25 A. Yes, but we also have a stock room in our basement which is just a cage and our basement isn't air conditioned, and that's where our stock's kept.

30 Q. That's where Richard Iso, back in December, he complained about getting sick. My flags come to me by Toll, they were in my car for eight hours out in the sun, I put it to the expert there before that could explain the discrepancies, mine were out in the sun, I put it to him that 10,500 milligrams per square metre difference. I put it to him, as to the 10,500 milligrams, he said that's probably not correct, I said well, possibly thousands of
35 milligrams per square metre, on my count, he said yeah, that's quite possible. That's where the discrepancy comes from. But if you had the advice of Mr Hanson, where he says, okay, 1530 milligrams per square metre, if you had a lab report which you believed to be true and correct,
40 which I do, if you had both of them, he says to advise staff and retailers - stop distribution immediately and advise staff and retailers to handle with gloves. Now if you had his advice and my report and you believed his advice to be spot on, and my report to be spot on, you
45 would have taken his advice and you'd advise the retailers and the staff, would you not?

A. If we believed them to be spot on, yes, but he was making an assumption when he hadn't seen the flags.

50 Q. When I see both those, and I stick up my hand, I say, I did the right thing, I sent emails with it, I took Mr Hanson's advice, I did it.

A. Ross hadn't seen the flags, Mr Hanson hadn't seen the flags, he was making an assumption.

55

Q. But you had the lab report too.

A. Yes, we then had them tested ourselves.

- 5 Q. Personally I would have erred on the side of caution, on the side of the health and safety, okay, that's what he's saying, here's the lab report, I would have said, okay, for the interim, for the short term we'll stop distribution and we'll advise the staff to wear gloves until further notice, until we can get them tested.
A. I asked them over the phone and they told me that they didn't think I should have to stop distribution.
- 10 Q. Ross Hanson said you should.
A. If that was the case.
- 15 Q. If it was--
A. If that was the case he would advise us.
- 20 Q. But you got a lab report saying that?
A. We didn't know that was the case though, we then had the flags tested--
- 25 Q. No, you had a lab report.
A. He also stated in there, again, that they were slimy and if that was that much solvent - for me it wasn't conclusive so we had the flags tested ourselves.
- 30 Q. It wasn't conclusive, to me it was. Now, based on my obligations under health and safety law if you know it's a danger I have an obligation to let people know, I've got a lab report, I never had Mr Hanson's advice, but if I had have had it it would have reinforced me, what I needed to do even more. Based on that you don't think I did the right thing?
A. Mr Hanson advised us to get the flags tested, that's what we did.
- 35 Q. You got that advice on the Wednesday, it wasn't until the Thursday I sent you my lab report, did you send him my lab report straightaway?
A. Yes, I did.
- 40 Q. There's nothing in there saying that?
A. I did send him your lab report.
- 45 Q. Did you get further advice off him?
A. He advised us to get the flags tested, which is what we did.
- 50 Q. Based on his advice in his email, if you've got a lab report there saying 1530 milligrams and you got his advice you take action, do you not?
A. His advice is saying, that's after he's seen your lab report.
- 55 Q. No, it's before because--
A. Well, how can he state the cubic measurements from your report in my advice?
- Q. You just said the emails that I sent previously with the figures on, that's where he got those numbers from. I

had the conversation with that guy we spoke to before and he says, we advised to get a report and we never heard anything more from them. You sure you - you sent him an email?

5 A. Yes, I did.

Q. On the Thursday when I sent you a lab report, you didn't send it to him, did you?

10 A. I sent it to Willy.

Q. Willy, Willy's not mentioned.

A. Mr Gore.

Q. You sent it to Willy?

15 A. Yes.

Q. He can't you advice - on his testimony he can't give you--

20 A. As I mentioned before I wasn't aware that he couldn't give me advice.

Q. I'm not an expert either but it wouldn't take me long to work out that you get a lab report off someone that you go to someone else to get the advice on what to do, Mr Gore told me that. Mr Hanson, I'm sure he would have said, go get them tested and bring them back to me, the tests?

25 A. No, he didn't actually.

30 Q. He didn't?

A. No.

Q. Mr Gore's saying you should have done that.

35 A. Mr Gore didn't tell me that.

Q. That's pretty well it, Commissioner.

<NO CROSS-EXAMINATION

40 COMMISSIONER: Q. Ms Garner, has there been any company communication to the sales reps about the flags and all of this issue?

A. No.

45 <WITNESS RETIRED AND EXCUSED

COMMISSIONER: Mr Dowling, do you have any further evidence that you want to adduce?

50 APPLICANT: Yes, Commissioner, I've also subpoenaed Mr Picton, the CEO, that's the proper process, I bring in my witnesses and then they bring in their witnesses?

COMMISSIONER: Yes.

55

APPLICANT: Mr Picton.

COMMISSIONER: Mr Picton is also - does he have a witness

statement?

BORS: No.

5 COMMISSIONER: He's like Ms Garner?

BORS: That's right.

10 APPLICANT: I subpoenaed him, Commissioner.

BORS: He is on his way in, I'd imagine.

COMMISSIONER: Thank you.

15 <STEVEN FRANK PICTON(3.18PM)
SWORN AND EXAMINED

20 APPLICANT: Q. Mr Picton, we've just had Sally Garner in here--

COMMISSIONER: Mr Dowling, it's appropriate that you start by getting the witness's full name and address for the record.

25 APPLICANT: Q. Can I grab your full name and address there, Mr Picton?

COMMISSIONER: Business address is acceptable.

30 WITNESS: Mr Steven Frank Picton, business address is, level 24 the AAP Centre, 259 George Street Sydney 2000.

35 APPLICANT: Q. Mr Picton, we just had Sally Garner in here, the OH&S officer, she gave certain evidence. Can you please go through the chain of events as you see it?
A. I guess you're going to have to be a bit more specific, I guess.

40 Q. You got a letter from my lawyer on 20 April which you passed on to Russell Shields, I sent an email to him and about 30 staff on April 13, Russell Shields statement he says you never got that email. April 13, complaining about Russell Shields, complaining about the - you never got that email?

45 A. To be honest, I can't recollect, there was a lot of things going on in the company at the time and--

Q. Do you recollect, yes, sorry.

50 A. I actually don't recollect, that doesn't mean to say I didn't received it. I can confirm however, that through the matter for Gabi Bradman and Russell were handling it for me. I thought that obviously you were referring to various clients back and forth.

55 Q. Back and forth. When you got that letter from my lawyer, did you hand on a copy to Sally Garner?

A. Not that I can recollect.

Q. That'd be the first thing you'd probably do? I'm accusing the company of breaching the OH&S law, when you got my email on 13 April you would have handed that straight on to her?

5 A. It's quite possible, as I said Gabi Bradman and Russell were acting on my behalf, I would assume, yes, you could be right, they would have passed it on to Sally.

Q. But she never got a copy or anything?

10 A. Okay, well, I didn't send it then.

Q. Did Mr Shields or Ms Garner at any stage say they had dealt with Sally Garner in relation to this issue?

15 A. I can't recollect on this specific issue.

Q. Sounds like it wasn't too big an issue to you?

20 A. It was one of those things as a CEO of a company, with you know, 350 employees, there was a lot of things going on, as you know you had a direct line manager in Russell Shields and Gabi is our HR representative, and under those circumstances she was handling it at that point.

Q. Sally Garner, I mean what's Gabi Bradman in the company, she's a payroll clerk, isn't it?

25 A. No, no, she's actually effectively our HR manager, so anything to do with employment matters, whether it be contracts or any matters, for sure she does run the payroll.

30 Q. She runs payroll, does she?

A. But she's far more than payroll clerk in fact we outsource the payroll so she basically just runs it.

35 Q. She does now, but before it wasn't outsourced. It was outsourced what, in April or something?

A. Okay, but one of her tasks is to run payroll, for sure, but her primary duty is anything from training to HR matters.

40 Q. Does it say that on her employment contract or business card?

A. I wouldn't want to comment, you'd have to ask her what's on her business card.

45 Q. If she's an employee relations manager, how was everyone made aware of that?

50 A. She's the one who issues the company ..(not transcribable).. procedures, she's the one who - every manager within the whole organisation goes to when they've got any employee queries, she's the one that does staff retention bonuses, she's the one who does ..(not transcribable).. bonuses, she's the one that handles superannuation, she's the one that handles any employment matters with relation to retention of staff, she's the one who gets involved in any union matters, she is known to all members of staff as being the person they would go to for any matter either on an individual basis or as a manager for advice on HR.

55

Q. Basically you're saying Sally Garner, Russell Shields dealt with it all and you had very little to do with it and very little knowledge of the situation. Is that fair enough?

5 A. If you're prepared to ask me specific questions I will answer them in terms of what I recollect, it is fair to say that Russell and Gabi would come to me on specific times if they had specific queries.

10 Q. What's your dealings with Mr Hassatt, have you dealt with him before or-?

A. Yes, I mean Jonathan Hassatt has been, I guess used by Telecorp for probably three or four years.

15 Q. Who directed him to get involved, did you direct him?

20 A. Again I can't be specific but I suspect it wasn't, I suspect it was Gabi that - that would have forwarded your legal letter to Jonathan but again you can obviously ask Jonathan tomorrow or whenever it is, exactly who contacted him.

25 Q. I sent you an email on 10 May saying, "I've notified all the staff and I'll give you until Thursday afternoon, 5 o'clock, 12 May to notify the retailers or I will". What did you do with that email?

30 A. I would have had a discussion at the time, again, I can't be specific it was quite some time ago, with - I'm sure with Gabi and Russell for that matter and decided that - I presume at that time to consult with Jonathan about what I best course of action was.

Q. Mr Hassatt?

A. Jonathan Hassatt.

35 Q. Mr Hassatt?

A. Yeah.

40 Q. What was the advice he gave you, look, I'll ring up and put him squarely on notice, is that the advice he gave you?

A. Again I'd rather you ask Mr Hassatt than myself, because it was some time ago, so, I'm sure he'll be quite explicit about the advice he gave us.

45 Q. I can ask Mr Hassatt that later, I'm asking you at the moment.

A. Well, I don't want to mislead the Commissioner or the Court in terms of something which I don't fully recollect.

50 Q. You don't recollect?

A. No.

55 Q. So you weren't involved with Mr Hassatt in what he did or didn't do very much at all, is that what you're trying to say?

A. I'm actually saying that the matter would have been handled on a day to day basis by Gabi, far moreso than Russell, as is often the case if we have any matters which

need to be dealt with.

5 Q. On the Friday, the Friday - on that Friday, Friday
6 May, your counsel here on your behalf put it to me when
I was in the witness stand, you're going to say I was
asking for a payout, this is going to cost you plenty, can
you please advise what-?

10 A. I was coming in on a plane, I landed, had a message
which I presume you left whilst I was in the air, asking
me to ring you back. I rang you back. Bear in mind that
as far as, again, I can recollect, that's the first time
you and I would have talked since you were originally
15 recruited, at which time you - whether it be appropriate
or not - I felt you were quite intimidating in terms of
your use of the eff word and the B word, you suggested I
needed to get across this flag matter, I needed to fix it
by Monday or you were going to effing take us to the
20 cleaners. I then said, well, unless I know the facts,
Shane, I'm very busy, I'm doing lots of sort of different
things, why don't you tell me what the problem is. I
don't have to effing tell you, I've already written to
you. And I said, fundamentally I'm not across the
details, why don't you write to me and put it in writing.
Then you went on about Russell Shields--

25 Q. I already had--

30 A. You then suggested that Mr Shields, as in Russell
Shields, was trying to get you out of the company and
everybody knows that he had it in for you and he was
trying to concoct some performance or whatever it was to
get you out of the company, I said, I find that very hard
to believe. In the five years I've known Russell that
would be totally out of character and I don't believe it.
35 And you said, you better get this effing fixed by Monday
or it's going to cost you lots of money. I'm not trying
to claim that was verbatim, Commissioner, that was broadly
what I interpreted. I then said to you, that I don't need
to be treated this way, in terms of being spoken to in the
40 sort of colourful language you were using, and I put the
phone down. And within you know, that is broadly what my
understanding of our conversation was. **Our one and
only conversation.**

45 Q. Huh? Our one and only, yes, exactly right. Given
that I got a lawyer to send you a letter and I sent an
email to 30-odd staff, plus you, do you think a quick
phone call from you or your PA would have been
appropriate?

50 A. But why, Shane, you direct report to Russell Shields
who's general manager of sales, I've got somebody in our
HR department actually managing the thing - as you
comment, you got Sally Garner into it, health and safety
because of the issue, what exactly would I be ringing you
for?

55 Q. Because my April 13 letter was complaining about
Russell Shields and his lack of action and then when my
lawyer sends you a letter seven or so days later, you

passed it on to Russell Shields to send back to me.

A. In terms of lack of action, what sort of action were you--

5 Q. What do you mean, this April 13 email, you're saying you didn't even read it. You did get it, but, didn't you?

A. I'm not actually sure I read it, I am not actually
10 sure I received it, so - I don't think in a situation, Shane, where an employee has a problem in terms of performance or actions or whatever it's that unusual for a general manager or a CEO to pass it back to that manager to handle and to manage it. Clearly under that situation the fact that Gabi is across it, she's ensuring that due
15 process is followed from the company's perspective, so I don't see anything illogical in that action, and to me that's taking the matter seriously.

Q. In my evidence, that's AA1, the email I sent you.

A. How does this work, there's no AA.
20

Q. If you just keep on going past--

BORS: That's your statement, Mr Dowling.

25 APPLICANT: It is, actually. Sorry about that.

Q. If you have a look at that and just go over to the next page, Russell Shields has known about this problem since end of last year and has done nothing, I've
30 complained to him at least seven or eight times, I had a meeting with Russell and Richard Iso at the ..(not transcribable).. office on December 24, at the meeting I complained the flags, so did Richard, if you go on, it made Richard sick, at the meeting I came to the conclusion
35 the flags were too dangerous. Left my car in the sun, a whole heap of complaints, basically complaining about Russell too, his lack of action. Yet seven days later when I get my lawyer to send you a letter, it was given back to Russell so he could reply to it.

A. ..(not transcribable).. the detail of that and I have
40 every confidence in Mr Shields' ability as a sales manager. As I said earlier, this isn't something which is a frequent or even an issue we've ever had with Russell before, so, I would have to say it's totally out of
45 character and I guess if you've got a problem with that it reflects the fact that maybe I had more confidence in Mr Shields than you do. I'm patently - sorry, if I may continue - patently the fact, as I just said, I have Gabi
50 involved is making sure that as a manager and a representative of the company he's acting appropriately and ensuring things are taken seriously.

Q. I put it to you Gabi wasn't involved, she wasn't
55 involved until about May probably 11 or 12, 12 May she sent me and email with a warning letter, before that, no correspondence between me and her, except for back in April when the new payroll system came in, she sent me my password and that, no involvement with her at all.

A. How would you know what was actually going on within the company at that stage?

5 Q. Well, don't you think she should have approached me and said, look, I'm looking after this.

10 A. No, I think it would be a bit - human resources within a company is there to advise management about best practice and ensure that we actually look after our staff in the appropriate manner, not necessarily that HR would take a lead role.

15 Q. Well, she took a lead role at the end where she sent me the warning letter, where she directed Mr Hassatt to send a letter to my lawyer, she was a lead role, she was directing the lawyers around, she was doing everything.

20 A. I guess you're talking about two different stages, at this stage if I interpret it correctly, this email it's actually an issue between you and your line manager, and I wouldn't expect a HR person to take a lead in that scenario.

25 Q. I put the proposition to you, you knew the flags were dangerous back in December last year and you directed Russell Shields to do nothing about it because the costs involved of either withdrawing them or getting them cleaned or notifying the staff of potential health effects that it may or may not have had with them would have been too costly, you gave him the direction back some time last year to do nothing and you continue with that

30 direction and that's why you failed to actually act on them.

35 A. Well, obviously I refute that. I also refute your statement that these flags are dangerous, I don't think as far as I'm aware, unless things have happened in this room since I've been outside, that would lead us to accept that these flags are in any way dangerous. In terms of the various accusations you made about me directing a whole series of people that clearly is not the case, that's not to say that the flags haven't got some commercial value

40 but quite honestly if you really think that I knew or even believed these flags were dangerous and therefore continue to ship them both risking staff within ..(not transcribable).. sales staff and potentially our customers, you're totally wrong and I guess you'll have

45 your opportunity to ask Russell in terms of whether in fact I did direct him to ignore these apparently dangerous flags.

50 Q. On April 28 Russell sent my lawyer a reply to the letter, to the lawyer's letter I sent to you, and he says, "We believe the flags are safe". I asked him in a later conversation how did he come to that conclusion, and he said that's just the viewpoint management come to, were you involved in coming to that conclusion?

55 A. I presume I would have been party to some discussions, but again I can't relate to specific cases or specific conversations.

5 Q. April 28, you had no reports, you had no nothing on the flags, no advice, April 28 you've said, the flags are safe, Russell Shields has replied to my letter saying the flags are safe. You're the CEO I'm sure you take ultimate responsibility or you don't, or-?
A. Of course I do.

10 Q. Do you take ..(not transcribable).. responsibility for OH&S law?
A. I take responsibility for anything that happens within Telecorp, I take it very seriously, by the same token I have to rely on managers who I both respect and--

15 Q. Of course you do--
A. --have ultimate confidence in that they can handle matters in their own way. But yes, you're absolutely right, if you're suggesting in any way I'm not prepared to take responsibility for anything that happens at Telecorp you're wrong. If however you're asking me whether I back
20 people, like, Gabi's judgment or Mr Shields' judgment then of course I do, until I've got some case where I think otherwise I'll continue to do so.

25 Q. Given the fact that you're here today and you've got a barrister an that, I'm sure you - now at least you'd be fairly well briefed on the whole scenario or you're not?
A. I'm here as your witness, I believe, for you to ask me questions, and that's what I'm here today to do.

30 Q. I had to subpoena you.
A. Well--

35 Q. You didn't want to be here toady, did you?
A. I had no problem being here, if you've think I've got something to add, I do question though, obviously the level of involvement I've obviously whether I'm going to add much for the Commissioner, but of course, I'm more than happy to be here if you think it's of any value.

40 Q. Sally Garner, what she told me is that when I sent the letter from my lawyer to you, you should have passed on a copy to her. She said you didn't, she said you should have passed a copy to her, you didn't.
45 A. That's fair enough, I mean I can't comment what Sally said. I think the other thing one's got to recognise in this sort of thing, that these are new areas for us, if somebody says a certain process is right or wrong, it's not something which we necessarily have, so, Sally's obviously allowed her view in terms of OH&S, in terms of
50 timeliness of passing information, to be honest I'm not going to comment because at the end of the day we did what we thought was right at the time.

55 Q. So you see in my mind in that position, got a letter from a lawyer, company's breaching OH&S policy, Sally, come to me office now. Bang, here's a copy of that, Sally, deal with it. She's our OH&S officer, the complaint was about OH&S, breaching OH&S policy, you might

even call Russell Shields in, but you'd definitely call Sally Garner in, Sally, deal with it, report directly back to me, keep me briefed, keep me informed. This is a letter from a lawyer from one of your staff, your staff member's felt that things had gotten to a situation where he needed to get his lawyer to send a letter to you, not to Russell Shields, not to anyone else in the company, to you. It's an OH&S issue, you bring in the OH&S officer, now you had an email I sent you on the 13th which is fairly critical of Russell Shields and his lack of action, April 13, very critical of him, yet you've given it back to him, and said, Russell, deal with it, Shane's criticised you for not acting on it, but anyhow, have another go. When he's replied on April 28 he says they're safe. I put it to you it's company policy to say the flags were safe whether you knew it or not, and you didn't know it on April 28. Would that be correct?

A. I really cannot comment on the level of knowledge we would have had, I can't actually put those dates together. But in terms of how or whether you think it's appropriate that I should have called Sally in, as I said, my way of operating was I should lead to basically pass it down the line and let your line manager handle it.

Q. Did she report to you directly with OH&S law?

A. Certainly in terms of audit and at the time of - when we were setting up OH&S for sure, but on a daily basis, no.

Q. Are you going to reprimand Russell Shields for saying they're safe on 28 April when he had no evidence that they are?

A. I don't know, I will certainly be prepared to ask him on what basis or what evidence he would have said they were unsafe, I'm sure it would have been on the basis that he honestly believed that to be the case.

Q. I'm not an expert but I know by law you'd have an obligation to prove whether they're safe, on April 28, from all the evidence I can see there was no proof that they were safe, they had-

A. Did you have any evidence either?

Q. Huh?

A. Did you have any evidence either?

Q. I did, but see you're putting the obligation back on me, Mr Picton. You as a company have an obligation on OH&S law, if I'm making a complaint to prove if they're safe or not. So, I notice you've done that a few times, youse all put the obligation back on me, you prove they're dangerous then we might consider taking action.

A. No, I wasn't doing that at all, I'm talking about on that particular date.

Q. I'm questioning you here--

A. I would say we have taken it forward and we had two pieces of advice, and I believe you had an expert sitting

in this chair earlier on today who actually provided us a written report to suggest that they were safe, so, we did take it seriously--

5 Q. No, he didn't suggest they were safe at all, he actually said in there, he cannot say whether they're safe or not or what action should be taken, he sat there in front of the whole Commission and said, no, I can't say that, I don't have the expertise to say that, whether
10 they're safe or not. So, to me--

A. Well, I thought that we'd paid him to actually do the research and I glean his report said that they were safe, I obviously wasn't here today, so I can't comment.

15 Q. No, well, he didn't say they were safe, he said, I kept on asking him questions, are they safe, are they safe, and he said, look, I can't tell you. It's not my job, I don't have the expertise--

A. Did he say they were dangerous?

20

Q. Huh?

A. Did he say they were dangerous or toxic, because that's what you're reporting that they're both dangerous and toxic and I--?

25

Q. But you have an obligation to know don't you, as a company?

A. I said, we went to him, and he--

30

Q. He doesn't know?

A. Sorry, he has told us, I believe that those flags are safe and that they're not toxic and they're not harmful.

35 Q. He would have put that in his report if he had have believed that, but he's telling us he doesn't have the authority to do that, and you're sitting here arguing that he does. He's the man. It's him, he would have put that in a statement if he knew they were safe or not. Sally Garner is sitting back saying, youse do not know if
40 they're safe or not in the cars, she doesn't believe they are but youse do not know.

A. Okay, in terms of specific atmospheres or specific locations, are you talking about?

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Q. What do you mean specific locations, that's all my complaint's been about, having them in the boot of my car, also I've got a small unit and I didn't bother putting that in there, but, he said he could have tested in a car if youse had have asked him. After this is finished are
50 youse, do you think it would be a good idea to go back to him and ask him to test them in a car?

50

A. From my understanding and recollection, when it was raised in terms of how far we should go with testing, and again I have to obviously say I wasn't directly involved
55 in these discussions, my understanding of what was said was that it was impossible to actually test every different scenario in terms of an atmosphere, in fact atmospheric tests were worthless in the sense that every

55

car is different, heats are different, because at one point we were actually talking about having him drive down to our storeroom in ..(not transcribable).. to actually do a test, it was suggested that that would be a waste of time on the basis that - as I said, every atmosphere is different and the test he was doing was as far as one could reasonably go as a scientist.

Q. Exactly right, every atmosphere is different. Outside or in a confined area, in a car--

A. But even if it was your car today, your car could be different tomorrow, room temperature, sun, whatever, you can't--

Q. So basically youse can never prove whether it's safe or not so-

A. No, his view was that these were not toxic.

Q. That wasn't his view at all, he was in the witness stand earlier on, that's not his view.

A. I wasn't here, I can't--

Q. Youse continually put words in his mouth, Sally Garner tried the same thing, when he was in the witness stand he never said that whatsoever, I put it to you the reason youse were referring back to him is because you have nothing else.

A. That is--

Q. You have nothing else?

A. Earlier on you accused us in a roundabout way of not taking the matter seriously and not actually getting any expert advice, because clearly we would readily accept that we're not chemist, we would know one end of a flag from another in terms of the various accusations you're making, my understanding that he has a - as far as I am aware - somebody who is able to comment on these matters, is reasonably satisfied that these flags are not toxic.

Q. He's not, he said in here before--

A. But I wasn't in the room, so if he's now saying that they were toxic and dangerous then obviously I can't comment.

Q. So you weren't part of the direct discussions in relation to these flags within the company?

A. I was not involved in any direct discussions.

Q. Sally Garner contradicts you.

A. With him, she says I actually talked to him or her?

Q. She had meetings with you.

A. I had discussion with her and Gabi, sure, and that's where I'm just repeating the recollection that suggested that it was little point in bringing him down to actually look at our storeroom on the Gold Coast, because every atmosphere is different and therefore it was of little point. No, I'm not claiming I didn't have any discussions

internally but I thought you were suggesting I'd had direct discussions.

5 Q. Based on what Mr Gore said, and he's an expert, he says, youse don't have advice on what to do or not to do, because he can't give it, if you're referring to him that means you've got no advice on what to do or not to do. That means you haven't fulfilled your obligations from an occupational, health and safety viewpoint, have you not,
10 you've got no advice whatsoever.

BORS: I didn't quite follow that. I don't know how the witness can be expected to.

15 WITNESS: Commissioner, I accept I'm not an expert so I can't really-

20 APPLICANT: Commissioner, we had Mr Gore in here before, he said he couldn't advise them what to do or not to do, both him and Sally Garner keep on referring back to him what he told them they could or couldn't do, or should or shouldn't do. He was saying he can't tell them that and he hasn't told them, there's no written report.

25 WITNESS: Isn't the matter here that--

30 BORS: I think that - I may be incorrect, but my understanding of what Mr Gore was saying is that he was not an expert in matter of occupational, health and safety standards, that he could not advise on what was to be done in respect of the handling of these flags, his advice simply was, these are the chemicals, and this is the concentration.

35 APPLICANT: He couldn't say whether they're dangerous or not.

40 BORS: I think he did say that, he said exactly what the exposure standards were, and he said these were below the exposure standards. All he said was that he wasn't an expert as to OH&S and he couldn't give advice as to how these chemicals were to be handled or treated.

45 APPLICANT: So his report needs to be taken to someone else to get that advice, maybe back to Mr Hanson who says if 1530 milligrams per square metre, take action immediately.

50 BORS: If anything I think this is a point for submission rather than something to be put to the witness, especially given that he didn't hear Mr Gore's evidence this morning.

55 APPLICANT: The problem is, Mr Picton's CEO, he needs to have factual evidence that they're safe, if he's following through, he takes ultimate responsibility--

COMMISSIONER: Mr Dowling, this is a claim for unfair dismissal, it's not a section 15 OH&S prosecution.

5 APPLICANT: It's not, Commissioner, but they sacked me on the basis of me notifying people that these flags were dangerous and they believe they're not dangerous, they have no evidence whatsoever to say they're not dangerous. They don't know and they've never cared.

10 Mr Gore earlier on said he could have tested them in the cars if they asked him to, they did have discussions, they didn't follow through.

COMMISSIONER: Mr Dowling, do you want to utilise the time that you have available to you with this witness to ask him some questions rather than making statements?

15 APPLICANT: Yes, Commissioner.

Q. I said I was going to take you to the cleaners, did I?
A. Words to that effect.

20 Q. How did you interpret that?
A. I interpreted that you were fundamentally trying to extract some money from the company unless I was to ..(not transcribable).. and do something within a certain timeline, which was Monday.

25 Q. How much did I ask you for?
A. You didn't ask for any specific amount.

30 Q. No, of course not. In Mr Russell Shields statement he says at the end of it, I asked him for a payout. Now, in none of the other evidence is there anything to corroborate that.
A. What Russell said?

35 Q. Yeah, in none of this other evidence, your side, none of this other evidence, nothing to corroborate that. You're here saying now that I was asking for money, that's just a massive piece of evidence, how come you never put it in a statement or an affidavit to back up what he said?
40 Because as a top shelf lawyer and barrister here, I'm sure you're a quality barrister, he would have said, okay, Russell, you're saying that, Mr Picton says that, we better have his evidence in there too so it corroborates it. Why did they leave it out, massive piece of evidence, that's not minor. Your lawyer goes on to accuse me of
45 extortion and blackmail, how come you never put it in a statement or an affidavit? Were you going to leave Mr Shields out there just hanging out to dry?

50 A. I'm not going to comment on the strategy of our lawyers, all I can say to you, Commissioner, is that was absolutely what was said to me by you and that there is only one way to interpret it, which is the way I did, your statement, and that was that we had to pay you money--

55 Q. Is that what I said, you interpreted it that way, are you?
A. Well, sorry, but when somebody says, I'm going to take you to the effing cleaners unless you get this flag thing

5 fixed by Monday, well, fair enough I'll leave the
Commissioner and others to decide whether that's a fair
interpretation of what you said, you didn't say \$2
million, \$50,000 for sure, but I'm not sure that there was
much--

Q. Well--

10 A. --particularly since you repeated the same statement
further on in the conversation. And at that point I
suggested that - obviously that wasn't something which--

Q. We both know that never happened but let's not debate
the point.

15 A. Sorry, we don't both know, you're claiming it wasn't
said, and--

Q. That's a massive piece of evidence--

20 A. --I have sworn on an oath and I am prepared to swear
absolutely that those are largely the words used to me,
and I am not used to being spoken to in terms of the
colourful language which the way you are, it took me
totally by surprise and - are you suggesting that you
didn't have that language with you?

25 Q. I only had that language, you directed Russell Shields
to threaten and intimidate me--

A. Sorry?

Q. --get me out of the company.

30 A. Sir, I said that or you said that?

Q. I know it.

A. Sorry--

35 Q. Russell Shields rang me on the Thursday--

40 A. You were just saying, I think, that I said it. I
didn't say it, you said it to me, and I said I find that
hard to believe on the basis I've had no such complaints,
he is a good man and a good manager and I just do not
believe that he is either intimidatory or threatening, in
fact the sort of language you used to me was something
which would never in a million years come out of the mouth
of Russell Shields, and hopefully you would agree that
none of that language comes out of my mouth either.

45 Q. No, none of that language came out of your mouth.
On April 13 Russell rang me after I'd sent that email and
he said, I've had a meeting with Steven Picton and
Mr Picton basically wasn't happy and he said to me,
50 Russell Shields, can't you control your staff. Do you
deny that took place, that meeting with you and Russell
Shields?

55 A. I don't deny it, and I read it on the file here that
that's what you're claiming, and I can - although again I
can't 100 per cent recollect specifically those words, I
have no problem with those being quoted against me. I
believe Russell had suggested that you put your complaint
in writing to him as an employee would to one's

line manager or whatever, and that would have been the response to the fact you actually sent it to 30 or so of your closest friends.

5 Q. That's not true, well, I didn't even know 'em but--
A. That was my point, I'm actually being - but anyway, the whole point was that - in that context, I have no problem with that statement.

10 Q. So you said to Russell Shields, can't you control your staff, after I've sent an email complaining about occupational, health and safety law and about Russell Shields' performance?

15 A. That would have been in the context of, was it really necessary for this person to send it to 30 or so members of staff as opposed to doing the controlled manner of sending it to one person, whether it be me, whether it be Gabi as the HR person and in that context I have no problem with that statement, although as I say, I'm not
20 100 per cent telling you I said it, I'm just saying I have no problem if that's been reported that I said it.

Q. Do you want to go, can you grab mine, is that mine
25 there you've already got? Go towards the back of it, number R and S, R and S at the back, sort of last four or five pages, go right back to the back and start coming in from out.

30 BORS: Can I, I think I know where this is going and I don't think it's going to be of any assistance.

APPLICANT: Commissioner, this is on the website for everyone to see.

35 BORS: It's on a union website and I don't see--

APPLICANT: It's on two websites.

40 BORS: --I don't see how it's of any relevance to the matter before the Commission today.

45 COMMISSIONER: When I saw it last night I anticipated that it might have been the subject of objection when we got to the point of the admission of the applicant's statement, and it wasn't, so it represents evidence before the Commission, it wasn't objected to.

So, I don't know--

50 BORS: I'm not objecting to the tender of this, and I'd say that for whatever weight can be attached to it is minimal, but if Mr Picton is now going to be asked questions in relation to these, that I do object to.

55 COMMISSIONER: Why then is the material before me?

If the material's before the Commission it wasn't objected to, it was there, surely--

BORS: I take--

COMMISSIONER: Surely it's capable of some forensic analysis.

5

BORS: Questions can be asked of it in that regard but the submission that I've made is it can't really assist.

COMMISSIONER: That's a matter for submissions, it's not a reason to stop the questioning.

10

BORS: Very well.

APPLICANT: Q. I put it forward that I believe I was threatened or tried to be bullied, I'm a big boy, I don't get intimidated too easily but an attempt was there to be bullied and intimidated and I was threatened, and obviously representing myself I did me homework and I put in the company's name on the website and Google and Yahoo and I come up with two articles, one says, mum takes on bullies, which is this, another one's CPSU, which is a union, one of the union's out there, Community and Public Sector Union, Cardcall couriered a letter to Ms Atasoy's home last Thursday, terminating your employment after she'd left work feeling unwell, after a meeting with management, Cardcall claims Ms Atasoy abandoned her employment however they failed to make any attempt to contact her on the Thursday, which is a legal requirement. As Ally is a union member they took action, it says here, and this comes up about number 4 or 5 you put it in in Google, bullying, intimidation of Cardcall staff by management must stop. You deserve respect and dignity at work, don't put up with anything less. Bullying and intimidation by Cardcall staff, by management must stop. Now, Mr Hassatt rang me up and threatened me with defamation were some of the things I, some of the emails, did you direct Mr Hassatt to ring up the union and threaten them with defamation?

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A. Of course not.

Q. When it says bullying and intimidation by Cardcall staff, by management must stop, they're talking about you, Mr Picton.

45

A. This is the CPSU's view on this particular matter, yes, I mean it doesn't mean to say we necessarily agree, it's a free country.

50

Q. If you don't agree with it, see if - I'd assume the company would have the rights to sue them for defamation if they're saying that Cardcall management are bullying and intimidating staff?

A. I'm not a lawyer, I cannot comment on whether we have grounds for suing.

55

Q. Mr - yes.

A. I'm just saying I haven't got - and the context in terms of - obviously this is the same person and the same matter, although I notice they've got the name differently

in both--

Q. Yes, they have actually, yes.

5 A. Commissioner, in terms of going into any of the detail behind this particular matter I presume it's not relevant to this case, is it?

Commissioner, the relevance is--

10 WITNESS: No, sorry, I wasn't, I was just - I was going to say I think this is quite a different matter but to do that I would need to go into some of the details surrounding this.

15 APPLICANT: Q. The overall matter isn't - the key issue here is Mr Hassatt threatened me with defamation on your behalf, do you know that, are you aware of that?

A. I believe--

20 Q. Did you ask him to--

A. I believe Mr Hassatt took a view that some of the actions you'd taken could be construed in that way, for sure.

25 Q. Mr Hassatt took the view, you didn't take the view or--?

A. Well, he's the lawyer. I mean at the end of the day--

Q. But you direct him. He's your--

30 A. I don't know, if Mr Hassatt actually believes that to be the case, then obviously he's my advisor and he's the one that comes to that view, I'm not going to come to that view myself.

35 Q. But you would say to him whether you want him to threaten me with defamation or not, you wouldn't have just let him run off the rails and do whatever he wanted, you'd--

40 A. Mr Hassatt is not going to run off the rails in terms of intimidating or accusing you, I'm sure he would have framed it in the proper legal form. In terms of this I would also say to you that the level of staff retention within Cardcall and Telecorp is incredibly high and this whole matter here is a point in time when the CPSU - we actually have quite good relationships now, we're on a very aggressive sales campaign to get members--

Q. You've spoken to them, have you? Sorry, sorry.

50 A. Sorry, I beg your pardon?

Q. Nothing, I'll - next question--

A. Sorry, what did you say?

Q. I'll go to next question then I'll--

55 A. Is that what you just said?

Q. I said I've spoken to the lady on here, Maggie May, and I spoke to her about that issue.

A. That's fine, and the relevance to this is?

Q. The relevance is that you settled out of court, didn't you?

5 A. We had a hearing and we may have taken the view, but, again, this is mid 2003, whenever it was--

Q. That's the key point I wanted to ask you, have you taken defamation action against them, you haven't, to your knowledge?

10 A. We--

Q. But you threatened me with defamation, why wouldn't you get Mr Hassatt to ring them up and threaten them with defamation?

15 A. I'm not going to take a view on whether the words they've got there - I have to also say that I wasn't, I can't say I'd actually looked on their website and actually seen this particular article but I guess it all has to be taken into the context, does it not.

Q. Well, there's another one here, ..(not transcribable).. S, that's the workers.labour.net.au website, mum takes on bullies, a bullying employer sacked a Gold Coast mum by courier message after she refused to sign a non-union individual agreement.

25 A. This is has got to be another union website, is it?

Q. It's, workers.labour.net, I don't think it is a union actually, I think it's just a-

30 A. Workers.labour--

Q. If you have a look down the bottom, wait a minute, I'll tell you.

35 A. Sounds like it's a--

Q. Sounds like some sort of--

A. Labour, labour.net.au.

40 Q. Once again, I found it fairly easily, have you - obviously - I assume you haven't, you've probably never seen this by the sound of it.

45 A. Why would I search the web for something which is a closed matter and is like, two years ago. Why would I be searching the web looking for--

Q. You've got bullying employer, they're probably saying that and that's not true, you'd take defamation charges, you'd sue them for defamation?

50 A. I am not going to make that comment, I can assure you that if you search the web on various key words regarding Cardcall or Telecorp you'll find lots and lots of positive PR in there as well, I'm not sure there is a search you can do flag to me anything that's negative. Why would I possibly have gone to this particular website and picked this particular--

55 Q. You don't have to go to a particular website, you just

go onto Google and type in Cardcall or Telecorp and you'll come up with this.

A. How many pages down would I need to go to get to this?

5 Q. Well, the first one, only about four or five, on the first page, actually, about four or five down on Google. This one might be the second or third page, I can't recall. You're a major shareholder in the company, are you not?

10 A. I am.

Q. It's your company, probably have a lot of pride in the company.

15 A. I have a huge amount of pride in it.

Q. These people are bagging it, I know I'd - you got Mr Hassatt to threaten me with defamation.

A. You're purporting that, I'm not saying that I asked him to threaten you.

20

Q. Well, Mr Hassatt did threaten me with--

A. Did he?

Q. It said in his statement there.

25 A. That he threatened you?

Q. Yeah.

A. Okay.

30 Q. It's in his statement, we'll argue about the threat later but he says here, that I could be charged with extortion.

A. Okay.

35 Q. Not extortion, sorry, we'll forget that one for a minute.

A. Not extortion either?

40 Q. He did say that one, but defamation. Now, he put that in his statement, I'm just curious why these major frigging - sorry - major stories which are calling youse bullies, termination--

A. Why do you call them major stories, on workers.labour.net.au I mean--

45

Q. Well, CPSU is a union which you deal with and it comes up number 5 on the search from Google. About number 4 or 5. I just find it odd that you haven't taken legal action against them. You could get--

50 A. We're not the sort of company that either gets into these situations that often or in fact is that litigious, so, it isn't the sort of thing that one would normally look for reasons to sue people for issues which are certainly not relevant to the company today. The fact I wasn't even aware it was there should tell you that it's not relevant to our day to day operations, so why am I going to go backwards, why am I going to look for negatives in this world, there's enough around anyway.

55

Q. You're looking to float on the stockmarket, I read in a story a couple of weeks ago, are you not, looking to float on the stockmarket potentially, that's an option?

5 A. It's always an option - I think if you read the article that you - if you actually read the words as opposed to the headline, which is unfortunately the journalist ..(not transcribable).. you'll find the words I used--

10 COMMISSIONER: There's no objection taken, but how could this possibly be relevant to the determination that I have to make in this matter?

15 APPLICANT: We're probably getting off the track, it's more supporting evidence that they've bullied and intimidated people before, Commissioner.

20 COMMISSIONER: Whether the company is going to list publicly or not, what relevance can there possibly be in that?

25 APPLICANT: If you're going to list you don't want bad publicity out there, Commissioner, and false and untrue publicity where it's saying you're a bullying management. You don't want that out there, you'd send your lawyers straight around and say, look, get that off the internet, we don't want that. Potential investors might put our name on the internet and bring up those stories and see we're bullies and we bully staff, that's what it's about, Commissioner. If you're going to list on the stockmarket you want your record clean out there, you don't want any bad press and you could easily - if that's untrue you could easily refute it, you could easily squash it by ringing up that union and say, look, you get that off the internet now otherwise we'll sue you for defamation.

35 COMMISSIONER: Perhaps you didn't hear my question, how could it possibly relate to whether or not your dismissal was harsh, unjust or unreasonable?

40 APPLICANT: Well, it doesn't, Commissioner, but it supports my accusation of them bullying me and threats and intimidation. They've done it before, they'll do it again. There is about a lady who wouldn't - who joined a union, someone offered her an AWA minus health and safety--

45 COMMISSIONER: It's your time, Mr Dowling.

50 APPLICANT: Sorry, Commissioner, I suppose you're right, and I'll move onto something, I know you're right, I'll move onto something else.

55 Q. Mr Hassatt, rang me to put me squarely on notice given that I'd had no written warnings, no verbal warnings, only verbal warning they put in their evidence is Mr Shields ringing me up and questioning me or reprimanding me in relation to abusing email policy. That was the only

warning I got until Mr Hassatt rang me up to put me squarely on notice.

A. Notice of what?

5 Q. Notice of termination. To terminate me. How come there's no warning letters or no nothing in the interim, doesn't the company have a policy of sending out warning letters or, you know, if I've done something wrong you should send me a warning letter, I'd notified staff
10 on April 13, I sent it to 30-odd people, you had a meeting with Mr Shields, which you don't dispute, that you said, can't you control your staff, how come there's no warning letters then?

15 A. I guess in terms of the process you follow, my understanding of the law is that there is no single process, it depends what action and what you actually undertake. I mean there's obviously grounds where you come in drunk or you punch somebody out versus somebody who does something minor, it can be a verbal warning, it
20 can be all sorts of different ways, so, again in terms of the process we follow, then as our HR person then Gabi would advise management the process to take. I'm not sure that - again you're going to have to the opportunity to speak to Mr Hassatt to identify exactly what he actually
25 did say to you.

Q. Once again you sort of weren't involved in the day to day - today you're saying basically, so you can't, is that what you're basically saying?

30 A. Well, I wasn't party to a discussion that you had with Mr Hassatt, so, that's all I'm saying, but anything that I was to comment on that would just be hearsay.

Q. Do you think it's appropriate for your lawyer to ring me up to put me on notice when you got yourself or Russell Shields or Gabrielle Bradman, supposedly, who could have rung me up. Why would you get your lawyer to ring me up, why weren't one of them, you or one of the other two ring me up?

40 A. So you're saying that Mr Hassatt put you on notice that you were about to be fired?

Q. Yeah, he did.

45 A. I presume that he was the best person to communicate that on the basis of it being a point in time when we needed to be somewhat more serious in the matter.

Q. It comes across a lot more stronger by having a lawyer ring you up, having the lawyer ring up?

50 A. I guess the thread I'm trying to say here, Commissioner, is that we have advisors who advise, we have people who know these things as opposed to relying on the people - even like myself who aren't involved in the detail and the law and the various regulations and I again
55 would say that Mr Hassatt is a very qualified person to have comments on that, far more than myself.

Q. I put it to you the reason you get a lawyer to ring

up, when there was no warning from Gabrielle Bradman in writing or Russell Shields in writing or even verbally, they say there was one verbal one on the 13th, but we'll get to that later, there was no nothing, all of a sudden you got the big lawyer ringing me up, the big Sydney lawyer, top shelf, knows his stuff, he's ringing me up putting me squarely on notice, uses the words, sacking, he uses the words defamation, I put it to you that he also used the words extortion and charges, but he denies that, but let's say what he admits to, squarely on notice to be sacked, squarely on notice for defamation charges potentially, do you think that's appropriate, that's fair and reasonable?

A. As I said before, Mr Dowling, I wasn't party to the discussion you had with him, but I would submit that if anybody's going to have a discussion with him, he is eminently qualified to have that conversation probably far more than myself. It's all very well suggesting that Russell should have rang you up or whatever else, but things had got to a stage, I guess, where to be fair to you and to us and it was good to have somebody who actually knew what they were talking about in terms of when we sack. But I can't comment on language he may have used or things you thought he may have said, I mean, again I've known Mr Hassatt for quite a number of years and I, again, I have confidence that he would have been very professional in those discussions he was having with you.

Q. So, you never had any discussions with Mr Hassatt in relation to whether he would ring me or not?

A. I actually can't recollect how it would have been that Mr Hassatt was engaged. As I said I work with Mr Hassatt in a whole series of matters, my suggestion to you would be that it would either have been a quick call to Jonathan but more than likely it would have been Gabi that would have got him involved, but I'm not going to - I'll tell you when I'm absolutely sure and that isn't something I'm too sure of.

Q. I put it to you the reason you get a lawyer to ring up to put a staff member squarely on notice is because it's a lot more threatening, a lot more intimidating, it carries a lot more power?

A. Or it could be that he is able to articulate the situation more clearly than anybody else, I mean there's lots of ways you can say that. Because at one stage you're suggesting that we don't take matters seriously, now we're taking things too seriously by getting a lawyer involved.

Q. It's not too seriously, it's a strategy to intimidate, threaten, do you agree that to get a lawyer to ring a staff member up is a lot more powerful, a lot more intimidating for the employee to get a phone call from the company's lawyer, a lot more threatening, do you agree with that? You don't think it is, Jonathan, how are you buddy, you're the lawyer for the company, that's great, you don't think--

5 A. Well, you seem to be talking for me now, Mr Dowling, I mean all I would say is that it's a bit like ..(not transcribable).. nothing to worry about if a lawyer rang me, I would actually treat it as an opportunity to fire some questions back, ..(not transcribable).. It obviously depends on how that conversation was carried out, since again I wasn't party to it, I can't comment. But I do have confidence that Mr Hassatt would have acted professionally and would have explained to you the way he saw it in terms of the current situation.

10 Q. It was a pretty simple message you had put to me, look, Shane, you do this, you'll be terminated, what Gabrielle Bradman or Russell Shields couldn't put that message to me?

15 A. From what your recollection, he says far more than that, so--

20 Q. Well, he did.
A. I don't know, I wasn't, I'm not denying it, I wasn't party to the conversation how can I possibly comment. I don't have a problem with Mr Hassatt getting involved and explaining his views on matters, if he was inappropriate in the way he spoke to you, that's a different matter, I just don't believe that to be the case.

25 Q. That's pretty well it there, Mr Picton.

A. Okay.

30 COMMISSIONER: Mr Bors?

BORS: No, I don't have any questions.

35 <NO CROSS-EXAMINATION

<WITNESS RETIRED AND EXCUSED

40 COMMISSIONER: Do you have any further evidence that you want to put before the Commission?

45 APPLICANT: No, Commissioner.

COMMISSIONER: That concludes the evidentiary case for the applicant.

45 APPLICANT: Well, my witnesses anyhow, yeah.

COMMISSIONER: Do you have any other evidence?

50 APPLICANT: Not evidence so much, no, Commissioner.

COMMISSIONER: That concludes the evidentiary case of the applicant.

55 APPLICANT: Yeah, that's my evidence.

COMMISSIONER: Given the time of day, Mr Bors, do we want to start the respondent's evidence, is there a - we had in

a funny way, because we had of course the interposing of Mr Gore. Is there another short witness that we could deal with in 10 or 15 minutes?

5 BORS: I don't think there is, my witnesses I'll be able to deal with each of them in a couple of minutes, but the problems I see is that they'll then be under
10 cross-examination by Mr Dowling, and that will have to be interrupted, and given that they work together it might not be the best way forward if they remain under
cross-examination until such point as we come together again to dispose of the balance of the matter.

15 COMMISSIONER: We're really going to have to go over to another day, because it's 10 past 4.00 now and I wouldn't want--

BORS: I have another three witnesses.

20 COMMISSIONER: Three witnesses.

APPLICANT: Three.

25 BORS: You've requested everyone for cross-examination.

COMMISSIONER: Perhaps then we can't do much more with the matter today and we'll just have to try and find another suitable date, might be the best way to deal with it.

30 BORS: I have available dates here, of course subject to the Commission's available dates and Mr Dowling's. If we might be able to do that now.

35 COMMISSIONER: Tuesday 6 September available?

BORS: Yes, it is for me, Commissioner.

APPLICANT: 6 September.

40 COMMISSIONER: That's very lucky because that's the only day I've got available for the rest of the year.

The resumption of the hearing is fixed for 10am.

45 BORS: There is one matter, if I could seek the Commission's indulgence in regard to, and that is that two of the witnesses who will be here on the next occasion are coming from interstate, is it possible that we resume at
50 11 o'clock rather than 10.00 because as I understand it, it makes their life a whole lot easier to get on planes, come down here and make the trip from the airport into the city.

55 COMMISSIONER: As long as we're going to conclude on that day, I don't want us to be unfinished on the 6th.

BORS: I can't see any way that it would go any further than the 6th.

APPLICANT: I have a problem in that, I think we've had three people in this - well, four I suppose, including myself, we'd hopefully be able to squeeze it in, yes, that's fine.

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COMMISSIONER: Then it's agreed we'll start at 11.00 to facilitate interstate travel.

11am on 6 September the matter will resume.

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ADJOURNED PART HEARD TO 6 SEPTEMBER 2005 AT 11AM

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