

IRC05/2586 LOB CRS

INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

CAMBRIDGE C

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TUESDAY 6 SEPTEMBER 2005

IRC05/2586 - SHANE DOWLING AND CARDCALL PTY LIMITED

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

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

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COMMISSIONER: I think we're up to the respondent's
evidentiary case, are we not?

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BORS: We are. I believe on the last occasion Mr Dowling
closed just before we finished. In the interim there were
some orders made by the Commission. Those have been
complied with and I have some documents, evidencing
25 compliance. Would the Commission care to take them or is
that sufficient from the Bar table?

25

COMMISSIONER: If you tell me they've been complied with,
that's sufficient for me.

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BORS: Very well. In that case I call Russell Shields.

APPLICANT: One thing there, Commissioner, I don't know if
now is the time, there is a bit more evidence I'd like to
submit, it's an email I sent to Sally Garner and she
replied to. She refers to it in her file notes and it
differs on a couple of points in relation to that.

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COMMISSIONER: I'm sorry, Mr Dowling, were you speaking?

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APPLICANT: Yes, your Worship. I'd like to submit this as
evidence.

COMMISSIONER: How?

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APPLICANT: Well, Gabrielle Badman in her evidence had
Sally Garner's file notes. Now in those file notes she
refers to this email and it differs from those file notes.

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COMMISSIONER: I can't take evidence by you standing up at
the Bar table and saying, "I want to submit this as
evidence". As I understood it, you'd closed your
evidentiary case on the last occasion.

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APPLICANT: I'll do it another way, Commissioner.

COMMISSIONER: All right, well do it another way, very
good. So, Mr Bors?

BORS: Sorry, I call Russell Shields. There should be a statement in the Commission's file from Mr Shields. It's dated 25 July of this year.

5 <RUSSELL SHIELDS(11.07AM)
SWORN AND EXAMINED

BORS: Q. Sir, your name is Russell Shields?
A. Yes.

10 Q. And your address is 4 Frisk Place, Palm Beach,
Queensland?
A. Yes, that's correct.

15 Q. And you are the general manager for Cardcall Pty
Limited, the respondent?
A. Yes.

20 Q. And you've made a statement in relation to these
proceedings dated 25 July 2005?
A. Yes.

25 Q. Do you have a copy of that in front of you?
A. Yes.

Q. You've read that?
A. Yes.

30 Q. Is there anything in that statement that you would
like to change or that is incorrect?
A. No.

35 EXHIBIT #4 STATEMENT OF RUSSELL SHIELDS DATED 25/07/05
TENDERED, ADMITTED WITHOUT OBJECTION

<CROSS-EXAMINATION

40 APPLICANT: Q. Going through your statement, if you go
down to number 3, in December 2004 we had a meeting up at
the Gold Coast, myself, you, Richard Iso who was head of
point of sale at that time or distribution and in that
meeting we discussed the flags, we discussed toxic fumes.
Richard Iso said he had to go outside for half an hour,
45 they made him sick when they first showed up, is that
correct?
A. That's probably what he said, yes.

50 Q. He had to go outside for half an hour it made him
sick. I complained about the flags. I made a comment,
something along the lines of that in 20 or 30 years this
will be another asbestos case, James Hardie case. Do you
remember me making that comment?
A. No, I don't actually.

55 Q. Well I did. So he complained back in December 2004
that he had to go outside for half an hour, they made him
sick. What did you do, what was the - did you do
anything? Did you follow procedure to investigate it or-?

A. I don't think it was made. Richard didn't bring that to anyone's attention at that time.

5 Q. Well he made that comment in that meeting you just said that before?

A. He said it in the meeting--

Q. That we had with him, yes?

10 A. Yes, and when did the flags turn up? The flags didn't just turn up at that meeting.

Q. No, they showed up a couple of months before, a month or so before?

15 A. Sure, that's right.

Q. Well he could have been making other comments, I don't know, I wasn't up there, but he made that comment then, you didn't investigate, you didn't say anything, you didn't do anything? I was complaining about the flags too, you remember that?

20 A. Yes, you did, you mentioned it at the same time that he said something about it, yes.

Q. No, not that he said, I complained too. He also mentioned, Richard Iso mentioned that another rep had stopped ordering the flags because they stunk her car out. She wasn't going to carry them any more, she was getting them sent direct to retailers.

25 A. No, I don't recall that - there's no name mentioned so I don't know who you're referring to. But I don't recall him saying anything about another rep and being female.

Q. But he did say he had to go outside for half an hour, they made him sick, but you didn't take any action, none whatsoever.

35 A. Because it was never raised to me when the flags arrived at the premises, which as you said was probably a couple of months prior.

40 Q. So unless you raise it when they arrive it doesn't matter if you complaint or not, is that what you're saying?

A. No.

45 Q. He made the complaint, he made the complaint?

A. No, he didn't make a complaint. He was probably conferring with you saying that the flags smelt.

50 Q. Well they made him sick. As a manager I would be a bit concerned and I would take action.

A. Yeah, would if he had have brought it to someone's attention which I don't believe he did.

55 Q. He brought it to your attention at that meeting, you just admitted that?

A. Hang on, he wasn't sick on that day that we had a meeting. The flags turned up two months prior.

Q. Now you're the general manager of the company, do you know your legal obligations under the Workplace Health and Safety?

5 A. At that time probably not, because I wasn't general manager at that stage.

Q. But you were manager, you were national sales manager?

A. National sales manager, that's right.

10 Q. And has Sally Garner ever done any training with you to inform you of your obligations?

A. No.

Q. She never has?

15 A. No.

Q. She hasn't done any training with anyone to your knowledge?

20 A. I don't know, I couldn't comment on anyone else.

Q. But she never trained you up, so you are not aware of your obligations as a manager if someone makes a complaint to you you need to pass them on to her or--

25 A. That would be something that, yes, you probably would pass on if someone made a complaint that answered to you, yes.

Q. Again in your statement you said I should keep them in a separate container to isolate the smell. Did you have any advice from anyone to take that action or was that just a general opinion of yourself?

30 A. It's just a general opinion that, being an ex-rep and knowing how reps carry point of sale around. Most of the time you're carrying them in a container, point of sale.

35 Q. Now in your evidence we had a conversation on April 4, here it says, "I have received more flags from head office. They have stunk out my car, especially when I left them in the sun". And then you go on to say, "I recommend that you purchase a sealed plastic container with a locked lid to carry the flags, this will trap the smells. The company will reimburse you for this. Lots of Cardcall reps use containers to carry the flags", et cetera.

40 A. Yes.

Q. Indeed in that conversation, well I can't remember exactly, a day after, you also said, "Don't worry, it'll be winter soon, they won't get hot". Do you recall saying that?

50 A. No.

Q. You did.

55 A. All right.

Q. We both know it. It goes on down here, "Shane sent an email on April 13", that's the email I sent to Steve Picton about 30 odd staff. "Shane sent an email with a

letter attached to many employees of the company. However, neither myself nor Steve Picton was sent this email". Now I didn't send you the email, why would I, because I was complaining about you. But Steve Picton got the email.

5

A. No, I don't believe he did, no.

Q. He didn't get the email. You're contradicting the evidence he gave.

10

A. I don't think on that date he did.

Q. Well he did because he admitted it. Now the reason you put that in there, you submitted your statements, Steve Picton was never meant to be here, he wanted you to cover him. He wanted you to sit there and lie and say, "I never got to receive the email". From this I subpoenaed him after the statements had been submitted, he was careful to only tell a couple of lies in that stand. So that's why you've said he never received it. He admits having a meeting with you?

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BORS: There's just, I have to raise this and it's in fairness to this witness, I don't want to object unduly but my note of Mr Picton's evidence was that he had seen that email, not that I received it on that day. If it's going to be couched as what Mr Picton said and questions are going to be put to Mr Shields in that regard, in fairness with him not being here I don't think it should be done this way.

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COMMISSIONER: I don't recall what the evidence of Picton was about that.

BORS: As I recall, Mr Picton said he had seen that email, but there was no evidence about him getting it on that day.

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COMMISSIONER: You're worried about a statement which is essentially correct being used as the basis to then pursue a further line of questioning.

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BORS: That's it.

COMMISSIONER: Yes, well I think you've clarified that.

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APPLICANT: Commissioner, what Mr Picton said, well I don't want to pre-warn the witness so, but I have a good recollection of what he said and he admitted getting that email that morning.

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COMMISSIONER: Well I don't know, I'm not sure what it means in the scheme of things--

BORS: How much turns on it.

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COMMISSIONER: --in all of this in any event. In due course I'll get the transcript, which is better than everyone's memory.

APPLICANT: Q. Now you had a meeting with Steve Picton that morning to go through that email and Mr Picton said to you, and he wasn't happy, "Can't you control your staff". Do you remember him saying that?

5 A. I don't think he said exactly the same words.

Q. Well he didn't deny it.

A. Well I just said, I don't, can't recall him saying exactly those some words.

10

Q. "Can't you control your staff". Here's an email that is complaining about you and your lack of action and Mr Picton hands it back to you to deal with, says, "Can't you control your staff". Now as a manager wouldn't you say to Mr Picton, "Look, it's a complaint about me, make sure due process is followed and make sure there isn't any accusations made about being biased, this should be handed to someone else to deal with"?

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A. It's not for me to make that judgment.

20

Q. But he handed it to you deliberately, said, "Can't you control your staff" because he didn't care about the health and safety danger, he wanted you to give me a rap over the knuckles and try and intimidate me to leave the company, that was his strategy. Okay, we've got a guy complaining, we aren't going to spend 40, 50,000 or whatever it was going to cost to solve the problem, let's just get rid of him. That's what he would have put to you?

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A. No, nothing like that, Shane.

30

Q. Well you rang me up that day at midday and you told me to leave the company, you want to do this, that and the other to - what action did you take in relation to the flags then, you had this, this was written on an email sent to 30 odd staff. What action did you take in relation to the flags?

35

A. Nothing from my point of view. It had already gone on to probably to Sally at that stage to follow it through.

40

Q. How do you know it had gone on to her?

A. I don't know, I'm just saying, I assume it was.

Q. You just assumed?

45

A. Yep.

Q. Quick phone call, a minute, two minutes to walk to her office, an email?

A. Obviously I was pretty disappointed with you at the time for, after I'd asked several times for you to put it in writing to myself--

50

Q. Well I did.

A. --your concerns about the flags. No, you didn't.

55

Q. I did put it in writing to Mr Picton. Now we had a telephone conference on April 8 and in that you were quite adamant that you weren't going to do anything, so why

would I put it in writing to you?

A. I was quite adamant that I wouldn't do anything?

5 Q. You said that out of everyone there I was the only one who couldn't deal with the issue. There were a lot of other people complaining, did you hear the other complaints on their telephone conference?

10 A. So what are you talking about now, telephone conference with the other reps?

Q. April 8th, yes. There were other people complaining.

A. Not that I was aware of.

15 Q. Well you must have been not listening too well, there was a substantial amount of complaints. You talk about a conversation we have here on April 13. You go, "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?" "People have got to know about the health risks of the flags, they are giving me headaches". You go on to say, "But you can't just go out and send out messages like this. It's not in the right way of doing things. You need to let Cardcall handle this properly". What did you do? You said you needed to let Cardcall handle this properly. What did you do?

20 A. Obviously the internal that we're going to be dealing with. Obviously health and safety and getting test reports on the flags, etc.

30 Q. So, no, what did you do, what was the process you followed, you went and seen Sally Garner?

A. No, the information was already passed on to her.

Q. No, it wasn't.

35 A. Well she would have got this email.

Q. How do you know she got the email?

A. Because just about every one in the company had got it.

40

Q. No, 30 odd people did?

A. No, there was more than 30.

Q. No, there was about 30 odd.

45 A. Well, I got it passed on from someone else, so internally people were passing it on to other people.

Q. Well wouldn't you have made a quick phone call to her, did she say she never knew until May 4th, May 5th when I rang her.

50 A. Well I don't know about that.

Q. So you've got no obligations there whatsoever as general manager. No, it doesn't worry, oh, she would have got it, it's cool. She'll be right.

55 A. I don't recall what day that she was actually notified.

Q. I notified her, she said she never knew until I notified her in May. So you've gotten that and you've said, she'll be right, we've had a conversation. In that conversation on April 13th these are some of the things that were said. You asked me what was on my agenda, you said I should go work for another company. I said I wanted the problems fixed, you threatened to come to Sydney to monitor my performance, that if you did not carry the flags there would be a negative - when I have a performance review, do you remember saying that? I have to carry the flags otherwise it's going to be a negative--

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10

A. Not on that comment, no.

Q. Denied that a rep on a telephone conference said that some reps were scared of losing their jobs.

15

A. No, don't recall that one.

Q. That the flags were not new and they had been there for 18 months?

20

A. No, several months they'd been there for.

Q. No, you said 18 months.

A. No, no, no.

Q. That you'd had a meeting with Steven Picton and that he was not happy that I had sent the email to a lot of staff and that I had breached company email policy. Remember saying that?

25

A. Yes.

Q. And I asked you in that conversation to put it in writing, breaching email policy. Did you put it in writing?

30

A. No, because you asked for it?

Q. Yes.

A. No.

35

Q. Why not?

40

A. Because we had a conversation about it.

Q. But if I asked for something in writing aren't I entitled to have it in writing?

45

A. Well, whether I do or not it's up to me. You can still have verbal warnings.

Q. But if I ask for something in writing I'm entitled to it?

50

A. Well, you obviously didn't pursue it much longer if you hadn't received it. You couldn't have been too concerned.

Q. Well I did pursue it in an email and we'll get to that in a minute. Russell also said that - "can't you control your staff"?

55

A. Russell said that?

Q. Yes, you said that. You told me that in a

conversation you had with Steve, he said, "Can't you control your staff?"

A. Yes, that was correct.

5 Q. Yes. What did he mean by that? You know, this is a complaint about workplace health and safety, it's also a complaint about your lack of action and Steve Picton is sitting there saying, "Can't you control your staff, go deal with it" and you've done nothing. Why not?

10 A. No, no, no. Obviously you already set the wheels in motion for something to be done about it by emailing all the staff. After a couple of times I'd asked you to send anything, put it in writing because you were the only employee that had brought it up about flags being smelly to some degree.

Q. You asked me to do it once and irrespective of - so, putting it in writing to the CEO was not good enough?

20 A. No, if you had have put it in writing to me I would have presented it to the CEO and said, "We have an official complaint by one of the staff". We have over 300 staff and we had no--

25 Q. Well sending an email to Steve Picton and 30 odd staff, I think it's an official complaint, is it not?

A. Well--

Q. So you just didn't like the manner I complained so you did nothing?

30 A. No, it goes back to December. I said back in December you could have put it in a letter to me--

Q. No, you didn't.

35 A. Yes, I did.

Q. No, you didn't, you're lying now.

A. Yes, I did.

40 Q. You said you couldn't even remember me complaining before?

A. No, on that day, yes.

Q. No, you, no, no.

45 A. In the point of sale room?

Q. No.

A. No what? We said at the start, yes, I do remember you saying that, yes, and you--

50 Q. You never said put it in writing.

A. Pardon?

Q. I put it to you you never said put it in writing there?

55 A. Yes, that was the first time and then there was the second time.

Q. Now my solicitor's letter, I sent, my lawyer sent a

letter roughly 20 April, you replied on 28 April. Steve Picton gave you the letter to deal with, which surprised me even again. On the 28th you replied to it. Have you got a copy of that reply there?

5 A. Yes, I do.

Q. Now in that it says - it's a reply on behalf of Mr Picton, "We wish to confirm that Mr Shane Dowling will be notified this afternoon that he will not have to carry the Cardcall flag that exhibits any fumes". Now admitting it exhibited fumes, do you know what was in the fumes?

10 A. No.

Q. Fumes are coming from it, I'm complaining, you're saying I don't have to carry the flags anymore, but you didn't know what was in the fumes. Did you think you had a responsibility to find out what was in the fumes?

15 A. No.

Q. Fumes is a word that is used for a toxic vapour coming from something, are they not?

20 A. That could be one explanation.

Q. And were we instructed to return the stock back to our Sydney office, you left a voicemail message on my mobile saying, "Take them back to the Sydney office and ask for Steve Picton". Is that not right?

25 A. To drop them off at the Sydney office, that's right.

Q. And ask for Steven Picton?

30 A. Yes.

Q. What the hell is the CEO doing collecting flags?

35 A. No, just, at that stage he was probably the only one in the Sydney office that was aware that you were going to be returning the stock. So he would have been there, so you just let him know that you were dropping it off.

Q. The truth be known, he wanted those flags back off me so I had no evidence they were dangerous and you wanted to cover them up and you were fully aware of that?

40 A. No, that's not true.

Q. He was sitting here saying it was a big company, 350 staff, he delegates, he hasn't got time to do this, that and the other, but he's got time to collect flags?

45 A. If he's in the Sydney office and as you're probably aware the Sydney office only has about six or seven employees.

50 Q. It has more than that, I'm sure of that?

A. No, not in Sydney office. The Gold Coast head office does.

55 Q. So part of his job as CEO is to collect flags?

A. He would have been in the office on that particular day so you could have dropped them off and let him know that you had dropped them off.

Q. How come you didn't give the other reps the same opportunity you gave me not to carry the flags anymore?

5 A. This was probably because it had come directly from your solicitor or whoever raised the letter for you, so we're dealing with your issue at hand at that stage, probably before the flags had been thoroughly tested and before any action was taken with the rest of the group.

10 Q. Now it says, "Whilst we have taken this action to avoid any discomfort to your client", you're admitting there was discomfort there?

A. Sorry?

15 Q. It says here in paragraph 3, "Whilst we have taken this action to avoid any discomfort to your client", you're admitting there was discomfort there?

A. Not necessarily.

20 Q. What's that mean then?

A. To avoid any discomfort, in case there might have been.

25 Q. So you investigated it then, you knew there was discomfort there, you would have investigated, wouldn't you?

A. No.

30 Q. You would tell Sally Garner, look, we've got a problem here?

A. No.

35 Q. No, you wouldn't have bothered with it, no, of course not. "We do not accept any health risk has been caused by these items". Now, how did you come to that conclusion, who came to that conclusion and what was the process you followed?

A. It would have been a decision that was made probably from the CEO at that stage.

40 Q. Steve Picton?

A. Yes.

45 Q. Steve Picton made that decision, did he? And how did Mr Picton come to that conclusion?

A. I don't know.

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

50 WITNESS: I can't answer that.

55 APPLICANT: Commissioner, he's the general manager he was the one who wrote this letter on behalf of Mr Picton, he would have had to liaise with Mr Picton. He's just said Mr Picton came to that decision. He should know how he come to that decision. Or if he doesn't, he can answer he doesn't know.

COMMISSIONER: I don't think any witness can put

themselves inside the mind of another person.

5 APPLICANT: No, and if he doesn't know he can answer no. But if Mr Picton did tell him, look, this is the decision I made and this is how I come to it.

10 COMMISSIONER: You see, what Mr Picton might say to might not be necessarily what's actually going on inside Mr Picton's mind.

APPLICANT: Yes, that's fair enough.

15 COMMISSIONER: He can give evidence about what's in his mind, but not in someone else's.

APPLICANT: Q. So Mr Picton came to that conclusion. To your knowledge did he have any evidence that the flags were safe?

20 A. I don't know.

Q. Well, none has been produced, so I can only assume that he just decided off the top of his head. Isn't it true that Mr Picton would have been aware of problems with the flags back in December and he directed you not to do anything about them?

25 A. No. There was no issues prior to December about the flags.

30 Q. Well that's what you're saying, but I--

A. That's right.

Q. --actually complained earlier on before that and you said to wrap the flags up in a number of different manners.

35 A. Prior to December?

Q. Yes.

A. When?

40 Q. November, December, we had discussions in relation to the flags. You said to wrap them up, I wrapped them up, tried a few different ways.

A. Don't recall that.

45 Q. Well there were complaints made, but there seems to be a pattern here. You know, you can deny some of the complaints but even when the complaints are rock solid in emails, letter from my lawyer, you still took no action. It was company policy to take no action, was it not? It was Steve Picton, Steve Picton said they were safe in that letter, you're saying. It was company policy coming down from Mr Picton, take no action on the flags, we don't want to spend money. Potentially we might have to get rid of the flags, that might cost us 20, 30, 40, \$50,000, we might have to do other things which might cost us more money to make sure the proper procedures are followed in relation to the flags, so we said, "Take no action". Is that not right?

A. No, it's not right.

Q. Well, you got a letter from my lawyer, Mr Picton got an email sent around to 30 odd other staff, you got a letter from my lawyer, you're saying they're safe, you had no evidence whatsoever they were safe, that's because you knew they were dangerous. Anyone who comes in contact with the flags can smell the fumes coming off them, they know they're dangerous. You get a letter from a lawyer and you take no action. Did you pass that on to Sally Garner, the letter from my lawyer?

A. I don't know, was it addressed to me, I don't believe so.

Q. You're the one who replied to it, so it was ultimately passed on to you to deal with?

A. I replied, yes.

Q. And you passed on a letter from my lawyer to--

A. No, I didn't get the letter.

Q. Well, you obviously had a copy to reply to?

A. I saw the letter, yes.

Q. But you didn't pass on a copy to Sally Garner?

A. No, it went back to the person you addressed it to.

Q. No, no, no, a copy from my lawyer to you. You never gave a copy of that to Sally Garner. Mr Picton sat in the stand and he said he gave you the letter from my lawyer for you to deal with?

A. That's right. And I replied and I gave it back to Mr Picton.

Q. And you never thought to go to Mr Garner and say, look, this is a workplace health and safety problem. This guy's taken it very serious, he's got his lawyer to send a letter. You should deal with this, you should investigate?

A. What, that you said that to me?

Q. No, you didn't do that, you didn't take all that--

A. No, there was already actions, I believed, were in place.

45

Q. What actions?

A. Well, Steve was handling that situation.

Q. So, Steve - he said he gave it to you and he expected you to deal with it. That's what he said in the witness stand.

A. I don't know what he said.

Q. So here we are, a general manager and a CEO having a conversation with a letter from my lawyer and you point the finger at each other? You're fingering each other, "You've got the responsibility", "No, you've got the responsibility". This looks like a company in chaos. The

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5 general manager and the CEO can't even get workplace health and safety issues properly delegated and dealt with. To your knowledge, if an employee makes a complaint, a serious complaint and the management don't act on it and don't hand it over, are you breaking the law, to your knowledge?

A. I don't know.

10 Q. You don't know.

A. You went over my head and decided to take it straight to Steve then he was in control of the situation at that stage. Once you sent that email to the 30 odd staff and Steve saw a copy of that, so then he started to take control of the issue.

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Q. It says over on page 5, number 20. I spoke to you on 9 May, I said, "Why haven't you told me that Sally Garner was an OH&S representative?" Then it goes down to say, "You've already spoken to Sally and sent her an email". Now I did that on May 5th, May 6th. Before that you never mentioned to me whatsoever that the company had an OH&S officer and I should be directing my complaints to her. Never once.

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A. But you never went through the right channels as far as I was concerned, like I said, put it in writing to me then it would have been dealt with at a higher level and worked back down, you decided to go past that.

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Q. Just before you said you could give me a verbal warning, so I unless I put a complaint in writing, a verbal complaint is not good enough to you?

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A. But you made it a couple of times, that's when I said, okay, if you're serious about it, put it in writing to me, because you were the only employee in the whole company that had made these remarks, 300 odd staff.

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Q. Thirty.

COMMISSIONER: How many?

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WITNESS: 300 staff the company has.

APPLICANT: Q. Now before when I asked you about me breaching email policy you said giving a verbal warning is good enough. I've asked you for a hard copy, you said you don't have to hand me one. Now if I make a complaint - you're saying the total opposite in relation to OH&S policy. You're saying my verbal complaints aren't good enough. Unless I put it in writing we don't act. That's what you're saying?

45

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A. What I'm saying is you're the only employee out of 300 staff that raised the issue of a smell coming from the flags.

55

Q. Well you're just contradicting yourself then again because you admitted Richard Iso said it back in December?

A. He mentioned it in a brief meeting that when they first arrived at the premises - and obviously he accepted

a couple of thousand flags. A couple of thousand flags would smell no matter what they're made out of. So when he opens the packet of a couple of thousand flags of course they would have smelt in the room that he was in.

5

Q. So is it company policy if only one person complains, which you've admitted there was actually more, unless they put it in writing you take no action. That's company policy, is it?

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A. No. If someone made a complaint to me like you did and I asked you to put it in writing, then I would wait till I got that in writing before I would go the next step, especially if it was only coming from one employee.

15

Q. Well that one employee sent it around to Steve Picton and 30 odd staff, a week later got their lawyer to send a letter, still you didn't go to Sally Garner. It was in writing then, why didn't you go to Sally Garner then?

20

A. She was already involved.

Q. Well she denies that.

A. I believed, because you'd gone over my head, it had gone to Steve Picton, he was in control of the situation at that stage.

25

Q. So you had no control. But Mr Picton was saying he's handing back my email, he's given it to you to deal with, my letter from my lawyer, he's given it to you to deal with. Now you're sticking the finger at Mr Picton, neither of you will take responsibility. Neither of you. He says he delegates. He delegated to you.

30

A. He only delegated me to reply, to respond to that letter.

35

Q. And also the email, you rang me up in relation to the email on April 13th?

A. About emailing all staff?

Q. Mm.

40

A. That's right.

Q. And no action was ever taken by you whatsoever and I put it to you because that was Steve Picton's policy. I sent that email to 30 odd staff and he told you to ring me up and get rid of me?

45

A. No. He wouldn't have said that, and he didn't say that.

Q. Well he did - well, I don't know he did, but given your actions you certainly did. You rang me up and you said you had a conversation with Mr Picton that morning in relation to the email, the email that in your evidence you say Mr Picton never got, but he admits, and in that conversation that he said, "Can't you control your staff?"

50

55

A. Yes.

Q. What was the problem - I've complained about an occupational health and safety issue and you ring me up to

say I've breached email policy. What's doing?

5 A. Well you believed it was a health and safety issue down the track, but if we had have gone through the proper steps we could have got to the bottom of it earlier on in the piece.

Q. So breaching email policy is a lot more serious than the company knowingly and negligently breaching workplace health and safety laws?

10 A. No, but I have every right to phone you and say that that is breaching company policy to send emails around the company like that.

Q. Well I asked for it in writing and I also asked for you to send me a copy in an email that I sent to you, did I not?

15 A. I don't recall.

20 Q. I asked for it in writing and I asked you specifically to send me a copy of the company's email policy which I had never seen. That's in one of the emails in here--

A. It doesn't mean it doesn't exist.

25 Q. It's even in your evidence here. Now, if you go to annexe B of your evidence, you have a look at annexe A, "Shane, you will have to supply a doctor's certificate for last Friday's sick day you took off otherwise by law we will be deducting this from your pay". That's annexe A, if you go to annexe B my reply, "Russell, in a telephone conversation we had last Wednesday you said that I should go and work for another company because of the email that I sent to Steve Picton and other members of the company". You also threatened to do certain things in an obvious attempt to drive me out of the company, threatening my pay is blatantly an avenue you were trying to take to make my employment at Cardcall more difficult. I had two sick days off before", rah, rah, rah. Now you never refuted that because it's true, isn't it? You rang me up on that Wednesday, April 13th and you threatened me, told me to go work for another company. You never refuted that email. If you go to the next page you reply to that email, annexe C of your evidence. "Shane, there is legislation that your employer may request for you to provide a doctor's certificate". So you reply to the sick pay issue but you just totally ignore the truth, ignore the rest of that email that I sent you and you threatened me, told me to go to work for another company and the reason you ignore it because it's true?

35 40 45 50 A. No. The reason I would have ignored it 'cause it wasn't true.

Q. So you just ignored it?

55 A. I would have responded - no, because it's not what I said. I said, "If you're not happy working for our company maybe you should go and look for other employment".

Q. So I sent an email, "Russell, it's true, we both know

it". I sent that email to you, you don't refute it, all you do is reply and say, "Shane, we still need a doctor's certificate". You knew it was true and there's the evidence. How come you ended up paying that sick day?

5 A. I don't know, you'd have to ask the payroll officer.

Q. Who is that?

A. Pardon?

10 Q. Who is that?

A. Gabrielle Badman.

Q. Now if you go to annexe D, the reason you did pay is because I had Monday, 28 February off sick so the precedent was set. You had paid me, there was no request for a doctor's certificate. I've sent you this email and I've pointed that out to you, next day or two you've paid me the sick pay that I was due. Why didn't you ask for a doctor's certificate on 28 February, Monday, 28 February?

15 20 A. I don't recall if you had that day off or not.

Q. Well, we're sending emails back and forth, arguing about that sick pay. Eventually I sent one, I say "Look, I had the 28th of February off, Monday", you ended up paying me the sick pay. There was no more response after that from you. Also it goes down here, in a telephone conversation we had last Wednesday you told me that Steve Picton directed you to give me a formal warning for breaching the company's email policy. This was in relation to the email that I sent to Steve Picton and other staff about toxic flags. "I still have not received the warning in writing which I requested you to send me. I take it it means that I have not been given a formal warning and have not breached the company's email policy. By the way, I've never seen the company's email policy, can you send me a copy". You just ignored that. Here I am, I'm asking for something in writing which I'm entitled to have, I believe anyhow, but you say I'm not entitled to have it, a written warning. As far as I'm concerned and what I've written there, because you didn't put it in writing as far as I was concerned there was no warning.

25 30 35 40 A. That's your choice. A verbal warning is still a warning. It's still a legal warning.

Q. Well the truth be known you rang me up, you threatened me, intimidated me, you said that we're giving you a warning in relation to email policy, but the reason you didn't put in writing because it would have looked like a joke. Here I am making a complaint about workplace health and safety, you've given me a formal warning in relation to email policy and have done absolutely nothing whatsoever in relation to my complaint about the flags. That was Cardcall policy directed by Steve Picton, wasn't it, not to do anything about the flags?

45 50 55 A. No.

Q. If you go to exhibit F, "I've had the flags" - this refers to a compensation we supposedly had - well we did

have, not supposedly, we did have, because we did have a conversation that day. "I've had the flags officially tested now and confirm extremely dangerous and hazardous, "I hope you have a good lawyer", I didn't say that. "You have until 5pm next Monday", yes, I said that. I swore at you plenty, I admit that. Now here's a line if you go down and I think it's line 5 from the bottom, "I will continue to take it effing further until you pay me out". Did I say that, did I?

5

10 A. Yes, you did.

Q. Do you know what perjury is, you understand perjury?
A. Yes.

15 Q. And how much did I ask for?
A. You didn't ask for any moment.

Q. Well why didn't you ask me how much I wanted?
A. Why is that up to me?

20 Q. What if I wanted \$2.85? What if I just wanted my holiday pay? Why didn't you ask me how much I wanted, because I didn't say it, did I?
A. Of course you did.

25 Q. Well if I had have said it the logical thing to do is say, "Shane, you're obviously not happy in the company, we're prepared to give you your holiday pay and you can go".
30 A. No. Obviously I wanted to get off the conversation as quick as possible because of the way you were carrying on.

Q. It lasted about four and a half minutes, you gave me Steve Picton's mobile number.
35 A. Approximately a two minute call. I had someone in the room with me at the same time as I've put on the top of that.

40 Q. It was four and a half minutes, actually. I've got it in my phone bill if you want to have a look. It lasted four and a half minutes.
A. All right.

45 Q. Four minutes or four minutes thirty, my phone bill goes up in 30 second increments. And you believe that was extortion, was it, I was attempting to extort money from the company?
A. Did I say that?

50 Q. No, you didn't say it, but it shows up on my warning letter. So what happened after this, after this up till May 12th which is when I got my warning letter off Gabrielle Badman. What action did you take after this telephone conversation?
55 A. It was on a Friday the 12th, was it?

Q. Friday, 6 May. Now up till 12 May is when I got my warning letter, so you had the Saturday, Sunday, Monday,

Tuesday, Wednesday and Thursday. What action did you take?

A. Action on what?

5 Q. On this telephone conversation, you never took any action whatsoever?

A. No, just documented it.

10 Q. Did you meet with Steve Picton the next Monday, Tuesday, Wednesday, Thursday?

A. I don't recall.

Q. You didn't meet with him to discuss this at all?

15 A. I would have had a conversation with him over the phone, yes.

Q. And what was entailed in that conversation?

A. I don't recall.

20 Q. Did you meet Ms Badman in relation to it?

A. Probably some stage after that, I wouldn't know, I can't recall the dates.

25 Q. And well of course you, look, this is a major issue, Ms Badman and her letters accused me of extortion. She obviously got the evidence from somewhere. You obviously met with her at some stage and said, "This is what's happened", etcetera, etcetera. She's the one dealing with it internally, Mr Picton said that, she was the one

30 delegated to deal with it internally. You obviously met with her at some stage to run through the issues, or you haven't?

35 A. I probably did, but you would have said the same things to Mr Picton as well so he probably would have told Gabrielle--

Q. What same things?

A. Similar things about--

40 Q. Well how do you know that, you met with Mr Picton to discuss it?

A. No, no, I'm just reading your notes actually.

45 Q. Well in my notes it doesn't say that I said the same thing in relation to you to Mr Picton. But you never discussed it with Mr Picton at all?

A. Yes, I said I would have, yes.

Q. And, well what was part of those discussions?

50 A. I would have just told him that you'd made the call and exactly those words that I had in my statement.

Q. And who made the decision to delegate to Ms Badman to deal with?

55 A. I don't recall.

Q. It wasn't you or was it you?

A. No.

Q. It was Mr Picton, he decided to delegate it to Ms Badman?

A. I'd say so.

5 Q. Now, have you since notified the staff of the health and safety danger of the flags?

A. Yes, there has been.

Q. What have you done?

10 A. Well, it hasn't come from me, it's come from the health and safety officer.

Q. Sally Garner?

15 A. That would be right.

Q. Well you've got 9, 10 reps that report to you on a day to day basis, what's been done to them?

A. They've been notified.

20 Q. To do what?

A. To stop - the flags have to be sealed up and returned.

Q. All the flags have to be sealed and returned?

25 A. Yes.

Q. Did you advise them to wear rubber gloves when doing this?

A. Yes, it has been notified.

30 Q. How come I was sacked?

A. I beg your pardon?

Q. How come I was sacked?

35 A. Why do you think?

Q. No, I put the question to you, I ask the questions here, that's how it works?

A. Well, yes, well you know why you were sacked.

40 Q. I'd like you to tell me?

A. (no audible response)

Q. You have to look through your notes?

45 A. Yes, is that all right?

Q. Well, you're the general manager, I reported to you on a day to day basis, it should be on the top of your head, you're here at a unfair dismissal hearing, you don't know?

50 BORS: I think before this goes any further. The question needs to be asked, was he responsible for Mr Dowling being sacked and then the question can be asked, well why did that occur.

55 APPLICANT: Look, it's up to me to ask the questions, you're putting questions in my mouth now.

BORS: Because the actual termination letter was not sent

by him.

APPLICANT: Commissioner, that statement by him is
deliberately an attempt to coach the witness.

5

COMMISSIONER: I think the witness is capable of answering
that question.

BORS: Very well.

10

APPLICANT: Q. You don't remember why I was sacked?
A. Not the exact terminology, no.

Q. Well just--

15

A. Because it didn't come from me.

Q. --the basic terminology. I report to you on a day to
day basis, you had nothing to do with my sacking, is that
what you're saying?

20

A. Well, virtually from that last phone conversation when
you were swearing and carrying on, that was probably about
the last time that we actually spoke.

Q. Well actually it wasn't. You rang me up and told me I
was sacked on Monday, 16 May?

25

A. Except for that one other call, yes. That's what I
was told--

Q. So, I don't understand?

30

A. I was told to give you a call to tell you.

Q. Who told you that?

A. That would have come from Gabrielle.

35

Q. She gives you directions, does she, she's payroll
manager?

A. She was notified by the solicitors.

Q. So the lawyers determine who works for the company and
who doesn't. Is that correct?

40

A. No, you obviously breached part of your contract, so
you were terminated.

Q. Out of all of it there's never any one warning letter.
Let's put Thursday, 12 May aside, I never received one
warning letter whatsoever, why is that?

45

BORS: I have to object to that, because that is quite
contrary to the evidence which is already on, to
Mr Dowling's own evidence as to warning letters.

50

APPLICANT: Well there are no warning letters, I asked for
a warning letter. Let me rephrase the question then.

55

Q. Except for a verbal warning on email I never received
any warning letters?

BORS: I still press the objection, because that is

contrary to the words out of his own mouth.

APPLICANT: What warnings?

5 BORS: I cross-examined him on two warning letters, one from the company and one from the company's solicitors.

APPLICANT: They happened on May the 12th.

10 BORS: If that's the position that's being put then it needs to be a bit more specific.

APPLICANT: Well I was specific, I said except for that what other warnings was I given.

15 COMMISSIONER: Mr Dowling, I suppose that the rights of cross-examination are fairly broad, but they're not broad enough to encompass what might be perceived to be a misrepresentation of the factual position. Now I think
20 it's clear that there was warning. I think in your own evidence you said that you were expecting to be sacked.

APPLICANT: Commissioner, that was when he was - which he's denied--

25 COMMISSIONER: Would you allow me to finish?

APPLICANT: Yes.

30 COMMISSIONER: I didn't really apprehend that this was a case that was going to rely upon an alleged proposition that the conduct that is complained of, the sending of the emails, on I think it was the Sunday night, was something that the employee, yourself, would have been entitled to
35 believe was the conduct that wouldn't have possibly lead directly to dismissal. Now correct me if I'm wrong, but it seems to me that the case hasn't been advanced on the proposition that, well, what I did in sending out all those emails was something that no-one had told me I
40 shouldn't do.

APPLICANT: Commissioner, before May 12 there was never any written warning. There was a verbal warning in relation to breaching email policy. I asked for it in
45 writing, my email says that. I never received it. And in my email I say, "Given that I have not received it in writing I take it therefore that I have never received a warning in the first place".

50 COMMISSIONER: Mr Dowling, I think in your own evidence you suggested that you were expecting to be dismissed. I'm not sure how you could possibly then contemplate a proposition that well, I wasn't warned that my action might lead to dismissal. I was expecting it. It just
55 seems to me to be a completely, a directly opposite proposition.

APPLICANT: Well I was threatened over the phone that I

5 was sacked, threatened over the phone to go work for another company, etcetera, etcetera, but he never gave me any warnings in writing whatsoever. And he denies saying that. The question I'm asking is, why was there never any warnings in writing. On May 12 they give me a warning in writing, why was there never any warnings before that in writing in relation to--

10 COMMISSIONER: Mr Dowling, what's the point of that?

APPLICANT: Well the point is due process, Commissioner.

15 COMMISSIONER: But that's what I'm saying. It seems to me that the notion of there being a procedural problem is displaced by the fact that your evidence is conscious, the action you were taking you thought was going to lead to your dismissal.

20 APPLICANT: I knew I was going to get the sack, but I also knew I had an obligation to warn people, which I do have a legal obligation. But we'll move away from that, Commissioner, to save time, get back to the original question why was I sacked.

25 Q. You rang me up to sack me and, what are you trying to say, you didn't know why you were sacking me, you just, the lawyer rang and said I need to ring this guy and sack him?

30 A. I think you had had a pre-warning from the solicitor or from Gabrielle Badman.

35 Q. Yes, Gabrielle Badman says she wants me to show up to Cardcall, answer the charges of extortion with my solicitor if I wish. Have a look at that letter from Gabrielle Badman, do you think that that's fair and reasonable? Do you think that's a warning letter or a threatening letter?

A. Which letter are you referring to?

40 Q. Gabrielle Badman, the warning letter, you've got it in front of you now?

A. The warning letter or this is the termination letter?

45 BORS: I'm trying not to unduly waylay things, but I need to make the objection that there is a time and a place for submissions and it's not now. And questions like, "is that a warning letter or a threatening letter", I can't see how they assist and on any view a warning letter is, by it's very nature, a threatening letter because it
50 threatens a consequence if certain action is taken.

55 APPLICANT: Commissioner, I have never heard of a warning letter whatsoever say "show up to answer the charges of extortion with your solicitor if you wish". There's only three places that I know where you show up to answer the charges of extortion. One is a court house, two may be a police station and the third is Cardcall. They're the only three. That's an amazing claim to make,

Commissioner, that's not a warning letter. If they had evidence of extortion they ring the police straight away.

5 BORS: Again, as I said before, I think there's a time and place for submissions and I think it'd speed things up if it wasn't done now and then again later, as I think it will be.

10 COMMISSIONER: What other questions do you have, Mr Dowling?

15 APPLICANT: Well, I asked him if he thought it was a fair and reasonable warning letter. He's the person I deal with on a day to day basis at the company.

20 COMMISSIONER: Let's get an answer to that. I think that the witness has probably found, if I'm correct here, we're looking at annexure H to the statement of Badman, it's a letter of 12 May and it's signed by, or it's written by Badman, I assume, is that the document you're referring to?

25 APPLICANT: Q. You don't have a copy?
A. No, I don't have that copy.

BORS: I've got a copy here if it assists, might I approach?

30 COMMISSIONER: I think the question is, does the witness believe this is a fair and reasonable warning document or something to that effect.

35 WITNESS: Even though it's not from me, you still want me to read through it and make a comment?

40 COMMISSIONER: Well I think, it's not for me to ask the questions, I'm just trying to get things moving along. Perhaps we'll take a short morning break while the witness reads the letter. Five minutes.

RECORDING EQUIPMENT SWITCHED OFF AT COMMISSIONER'S REQUEST

45 APPLICANT: Q. Yes, back to the last question, why was I - we'll head off from there - why was I sacked? I don't think you answered that question?
A. No, you asked about the--

50 Q. Okay then. Did you feel it was a fair and reasonable warning letter?
A. Yes.

55 Q. It doesn't give me the opportunity to put my views across, does it? Was there an opportunity to saying, "Shane, we want to meet to address your issues"?
A. Yeah, it does.

Q. Where does it say there?
A. "We require you to attend our offices in the near

future with your solicitor if you wish to answer this charge".

Q. Of extortion?

5 A. Well, you can refute it of course. If you had have come in and discussed it.

Q. Well, I was never going to show up to answer some charge of extortion to a company. Tell me, where does a person go to answer the charges of extortion, to your knowledge?

10 A. (no audible response)

Q. Where does a person go to answer the charges of extortion?

15 A. Well, you gave three examples before, so-

Q. Yes. Well you tell me, I'm asking you the question?

20 A. Court.

Q. Anywhere else?

A. Court.

Q. Police station?

25 A. Maybe, but it would go to court--

Q. Yes, maybe the police station for initial inquiries, maybe. That's why I said the police station before. Anywhere else?

30 A. No.

Q. No. Yes, there's one more place, have a look at the warning letter. Where else does a person go to answer the charges of extortion?

35 A. Well, as I said, you could have gone and refuted it.

Q. No, no, no, I've asked - the question is--

A. It's your choice.

40 Q. --one other place, where do you go to answer the charges of extortion?

A. No.

Q. That letter was pure intimidation, that's what it was designed for, pure intimidation. The words "extortion", "charges" they show up there. If you have a look at my termination letter they totally disappear. My termination letter mentions me sending the emails. It also mentions me swearing at staff. But the term extortion or blackmail or whatever totally disappears. It was a non-issue. It showed up for a minute, disappeared then because it was total lies and fabrication. It was there purely to intimidate. Before that date had you or anyone else ever warned me that I'd be sacked if I sent any more emails?

55 A. Before that date?

Q. Yes, May 12th.

A. Well, I'd given you a verbal warning not to--

Q. Send emails.
A. That's right.

5 Q. Did you say I'd be sacked?
A. No, just a verbal warning not to do it.

Q. And you told me to go work for other companies if I want to.

10 A. If you want to.

Q. Yes, you said, "Why don't you get lost and go work for other companies"?

A. No, I didn't say that.

15 Q. But you did advise me to work for other companies if I want to?

A. If you wanted to. If you weren't happy working for Cardcall and you wanted to work, go and look for a position elsewhere, that's right.

20 Q. Yes, it was a bit stronger than that, but we won't debate that issue. Substantially stronger. Now given that you've taken the action you have in relation to the flags, do you think I was sacked unfairly. I'll retract that question. You hadn't answered that other one I asked before. Why was I sacked?

25 A. Well, obviously because of your misconduct in what you did.

30 Q. Doing what?

A. Sending, blowing things sky high and passing on your views to other customers.

35 Q. And I shouldn't have passed on my views to other customers that the flags were dangerous?

A. Not after the letter you got with that saying that the company's decision, it's not for you to disregard or undermine it.

40 Q. How did the company come to that decision?

A. Well they were obviously going to take it further.

Q. How were they obviously going to take it further?

45 A. Well obviously--

Q. It says, "We are not going to take action for the moment".

A. That's right, at the moment, yes.

50 Q. So what were they going to do?

A. Don't know, whatever the people that were looking after it at that stage were going to do. I'm sure it would have been Mr Picton, as you said.

55 Q. Well I spoke to Sally Garner on the morning of the 12th and in her file notes she admits she said, "Shane, I've completed my investigation, the flags are fine, I can't comment". So the company was going to do nothing,

Sally Garner had told me that morning, namely, the investigation is complete. The truth be known, she had stopped her investigation, had she not, which you would be fully aware of?

5 A. No, no.

Q. She had stopped her investigation?

10 A. I wouldn't, I weren't across anything, I don't know how far they were taking it, where it was going and obviously didn't know that she had made that claim or that's what you claim that she said to you.

Q. Well just have a look here, so you had nothing to do with this letter whatsoever, so you know nothing about it?

15 A. This, which letter?

Q. The warning letter.

20 A. The warning letter, no, that's right. I would have briefed it after they said that they were sending it to you, because obviously I made the claim that you had swore at me.

Q. Who told you they were sending it?

25 A. Gabrielle.

Q. So given that you've taken action on the flags, do you think I've been sacked unfairly?

A. Say that again?

30 Q. Given that you've now taken action on the flags, do you think I've been sacked unfairly?

A. No. No.

Q. Why not?

35 A. Because you were warned things not to do--

Q. But youse have since done it?

A. Pardon?

40 Q. Youse have since taken action on the flags?

A. Well that's--

45 Q. And warned people? Oh, so because the company told me not to, even though I knew there was a health and safety danger, I was rightly sacked two and a half months ago, three months ago?

50 A. I don't know, because they're taken out of, maybe because the steps that they're taken out of circulation now, I don't know if that means that they've actually admitted that there's a problem.

Q. Do you think the flags are dangerous?

A. No, I don't, personally.

55 Q. You don't?

A. Personally, no.

Q. Well you got advice that the company got and it says

to advise staff to enforce a no-smoking policy in cars, to wear gloves when they're handling them, etcetera, etcetera.

A. Personally I would say that's extreme caution.

5

Q. Are you an expert on toxic chemicals?

A. No, I just said personally I would say that's extreme caution.

10

Q. Well that's what he says to do and he's the expert. Now it says in Jonathan Hassatt's letter to my lawyer in relation to my termination, it says "In that letter", referring to the warning letter, "we pointed out that your client has been warned in writing that if he makes any further comment to retailers/employees regarding health risks posed by the flags his employment would be summarily terminated". So it says there if I advised the retailers and employees regarding the health risks posed by the flags I'd be sacked. That's why I was sacked, because I notified people of the health risks. Mr Hassatt openly admits it there.

15

20

A. What are you referring to?

25

Q. I'll just show you. This is Mr Hassatt's letter to my lawyer.

BORS: Which is that just so that I'm following.

30

APPLICANT: Q3 in my evidence.

BORS: Again, I think this needs to be done properly and the first question is, has this witness seen that letter.

35

APPLICANT: Q. Well that's Mr Hassatt saying there exactly I was sacked for warning them of the health dangers. The company knew about the health dangers and they sacked me because I warned people. That's what he's saying there. He's a lawyer, he knows words, and I'm sure they do study on words and the meaning of them and the importance of them and he's a lawyer. He didn't miss a beat there. I've been sacked because I warned the people. Now the company was directed to take action because of the evidence that the company had in May, that's why they directed the - yet the company sat on that evidence and did nothing, absolutely nothing. Don't you think the company should have taken action back in May?

40

45

A. As I said, the action was taken from my hands well before that time.

50

Q. The question is, don't you believe, you're the general manager of this division, don't you believe the company should have taken action back in May when they had the evidence?

55

A. What evidence? Your evidence or our own independent evidence?

Q. A combination of both. Are you saying the Commission took the wrong action in directing the company to take

action, is that what you're saying?

A. No, of course not.

5 Q. You don't believe they're dangerous. Have you seen all the evidence?

A. No, I haven't.

10 Q. No, but you still don't believe they're dangerous?

A. Personally from my point of view, no.

10

Q. Given that you're general manager and there's a substantial amount of evidence there, don't you think you should know and you should have - to come to that conclusion you could have easily viewed the evidence yourself?

15

A. There's probably still evidence being collected now.

20 Q. You've been directed to get further evidence to see whether the fumes in cars are dangerous, etcetera, but there's substantial evidence there to say they're dangerous and they should be handled in a certain manner. Don't you believe the company should have taken action back in May since they had the evidence then?

20

A. No, I think they're handling it at the right speed.

25

30 Q. Well they've stopped, the reason they've stopped - I put it to you because Steven Picton said there was a company policy we do not take action on the flags because we do not want to go to the expense of it. Isn't that right?

30

A. No.

35 Q. Time and time again in this evidence, complaint, complaint, complaint, complaint, you got the evidence, rock solid evidence, none of youse act, youse are all saying the flags are safe, you're saying they're safe, Steven Picton is saying they're safe, Sally Garner, Gabrielle Badman, you're saying they're safe - you've got no evidence that they're safe, you're saying they're safe. 40 You have rock solid evidence in May, still no action until you were forced to by the Court. Where's the problem there? Why was there no action taken by the company, this is your division, you're general manager, why was there no action taken?

35

40

45

A. At what stage?

Q. At any stage. Well, since May?

A. The action was taking place, obviously they were getting readings and getting the flags checked.

50

Q. No, that last reading was May 17th, they had all the evidence that was needed?

A. Whose was May 17th?

55

Q. That was Willie Gore, William Gore's evidence.

A. Right.

Q. See, you've come in here, you don't know anything, the

CEO doesn't know anything, he's saying you had responsibility, you're saying he had responsibility. Sally Garner the OH&S officer didn't know because she wasn't informed. This is your division, you're general manager and no-one seems to have a clue what's going on, what's happening.

5

A. As I said, it was taken out of my hands at a certain stage and dealt with--

10

Q. And that was December last year that Steve Picton took it out of your hands and he said, "No action on the flags whatsoever, is that right?"

A. No, of course not.

15

Q. April I sent the email around to him to 30 odd staff, he tells you "Can't you control your staff", you ring me up and threaten me, threaten my sick pay, you threaten my commission. You sent me an email directing me to fill in a new daily report. How come that wasn't sent to other reps?

20

A. Yes, there's other reps that use that same form.

Q. No, there wasn't.

A. Yes, there is.

25

Q. Maybe now, but there certainly wasn't then?

A. It was at that stage.

Q. Who?

30

A. Other reps that work for the company.

Q. Name them?

A. Why? What's that going to prove?

35

Q. I'm asking, I ask the questions, that's how it works.

A. Yes, but what is it going to prove.

Q. I ask the questions, that's how it works. What reps?

40

A. Matthew Harris that's one.

Q. Who else?

A. At this point he'd be the only one.

45

Q. Matthew Harris - well actually I don't know who he is, Matthew Harris, Matt up the coast. Matthew Harris.

A. You know the reason we bought that form in though?

Q. I ask the questions here, that's how it works.

50

A. Yeah.

Q. If I'm in the witness stand then I get asked questions. Now at that stage I was the only one requested to fill in that form, a new daily report, wasn't I?

55

A. No, I just said there was another employee using the same form.

Q. I put it to you that no other reps at that stage were requested to fill in that form and I asked you why other

reps haven't been requested to fill in the form and--

A. What did I say?

5 Q. You said something like toward - you don't know that.
You said by the contract I can do that anyhow.

A. M'mm.

10 Q. But it was just straight out bastardisation, you were
just trying to make things difficult for me. I never
filled in that new form but, did I, and you never gave me
any warning in writing?

A. No.

15 Q. I'll just go back over that, I think I might have
already asked that question. Before May 12th I was never
given a formal warning that I'd be sacked or any warning
from you or anyone else to your knowledge that I'd be
sacked if I continued to send emails, is that right?

20 A. No, you were given a verbal warning not to do it
again.

Q. That I'd breached email policy?

A. Yes.

25 Q. Never given a warning that I'd be sacked, except my
interpretation or my recollection of our conversation
on April 13th when you told me to go get lost and work for
other companies. No warning whatsoever. That's pretty
30 well it there, Commissioner, but I would like him
retained, perhaps there's further questioning afterwards.
They're contradicting their own evidence left, right and
centre. We've still got Gabrielle Badman to go.

35 COMMISSIONER: Mr Dowling have you finished the
cross-examination of this witness?

APPLICANT: Yes.

<RE-EXAMINATION

40

BORS: Q. Mr Shields, just a moment ago you were
answering some questions in relation to a new reporting
form that you'd asked Mr Dowling to fill out, you remember
those questions. And you said that there had been, that
45 there was a reason for bringing in that new report form
and you didn't get a chance to elaborate on what that
reason was. What was the reason for bringing in that new
reporting form?

50 A. I was concerned one day, I'd rang Shane on his mobile
phone and he was still at home at 9 o'clock in the morning
which - and his contract states that he should be working
from 8.30, his first job at 8.30 in the morning.

55 Q. And was that the reason that Mr Dowling was asked to
fill in the form?

A. Yes, it had an extra column for a date, sorry, for a
time that he visited certain clients.

5 Q. You were asked a question as to why an opportunity was not given to other sales representatives to stop carrying these particular flags, why it was only given to Mr Dowling and I believe the answer that you gave was that no other reps were complaining. Can I ask you this, were other sales representatives required by Cardcall to carry these flags as part of their promotional material?

A. Yes.

10 Q. And how many sales representatives are we talking about?

A. At that stage, 'cause we've had a few changes, about a dozen or so sales representatives directly employed by the company and there's another 40 approximate sales agents.

15

Q. So around about 52 or so?

A. Approximately.

20 Q. And had you received complaints from any of those representatives other than Mr Dowling about these flags?

A. No.

25 Q. You said in your evidence that you did not view these flags as any particular danger or risk. Have you seen these flags?

A. Yes.

Q. Come into contact with them?

A. Yes.

30

Q. Did they smell strange or particular to you?

A. Yeah, yeah, they give off a bit of an odour.

35 Q. And what's that odour, how can it be described?

A. Chemical type odour.

Q. Were they slimy to the touch?

A. No, not that I recall.

40 Q. And are these flags currently in circulation amongst sales representatives or sales agents?

A. Yes, they would be.

45 Q. Does the company continue to purchase these flags?

A. No.

Q. Do you know when the company ceased purchasing these flags?

50 A. I believe it was just the one, a one-off order that come in probably late 2004.

Q. And as a one-off order would you know how many flags were in that order?

A. I'm not sure off the top of my head.

55

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

<WITNESS RETIRED AND EXCUSED

BORS: I call Gabrielle Badman.

5 COMMISSIONER: Mr Dowling, you just left the Courtroom for a while, why did you do that?

APPLICANT: I had to go to the toilet, Commissioner.

10 <GABRIELLE BADMAN(12.46PM)
AFFIRMED AND EXAMINED

BORS: Q. Is your full name Ms Gabrielle Badman?

15 A. That's right.

Q. And your business address, I take it, is unit 4, number 1 Sendry Drive, Varsity Lakes in Queensland?

A. That's my residential address.

20 Q. That's your residential address?

A. Yes.

Q. And you are employed as the employee relations manager for Cardcall?

25 A. Yes, I am.

Q. The respondent in these proceedings?

A. Yes, I am.

30 Q. You've made a statement and that statement is dated 22 July of this year in relation to these proceedings?

A. Yes.

Q. Do you have a copy of that statement?

35 A. Yes, I do.

Q. Is there anything in that statement that you disagree with or that you would like to correct?

40 A. There is. There's point 8 that's actually got an incorrect date.

Q. Paragraph 8?

A. Paragraph 8.

45 Q. And you say the date there is incorrect?

A. Yes.

Q. What date should it be, to your knowledge?

50 A. Some time in May, I don't actually know the date off the top of my head sorry.

Q. I believe it was some time in May?

A. Yes.

55 Q. It refers to an annexure, and that's annexure B, and annexure B is dated 13 May.

A. Yes.

Q. Sorry, there's an email dated 16 May attaching a letter from some doctors, that's dated 13 May?

A. Yes.

5 Q. Those are the dates that you're referring to?

A. Yes.

BORS: I tender that statement subject to that change.

10 COMMISSIONER: So in paragraph 8 should 16 April be 16 May?

BORS: Yes.

15 EXHIBIT #5 STATEMENT OF GABRIELLE BADMAN DATED 22/07/05 TENDERED, ADMITTED WITHOUT OBJECTION

<CROSS-EXAMINATION

20 APPLICANT: Q. You don't have a copy of your own statement there?

A. In my bag, yes.

Q. I can give you a copy.

25 A. Okay. Thanks.

Q. If you go to your statement, number I in your statement, annexure I. Now I'll just get you there because I'll start questioning in relation to that in a minute. But what's your job title within the company?

30 A. The Employee Relations Manager.

Q. What about payroll manager?

35 A. I also do payroll, but my title in the company is Employee Relations Manager.

Q. Are all staff aware of that, are they?

A. It's actually on our internet, yes.

40 Q. How long has it been on the internet?

A. Since our internet's been in operation.

Q. It says Employee Relations Manager, does it?

45 A. That's right.

Q. Well we've got - this is a company list. I'll give you a copy.

BORS: Could I have a look at that, please.

50 APPLICANT: Q. Plus there are a few attachment emails. On here it says, it's got name, last name, Gabby Badman, payroll/analyst, finance division.

55 A. Yes, that was a previous role that I had done before I took on the Employee Relations.

Q. How long have you been Employee Relations Manager?

A. It would be about 15 or so months.

Q. About April, March/April last year?

A. That would be right.

5 Q. Now I've got some emails here. Do you want a copy, Commissioner? This is an email sent from Russell Shields to corporate sales executives on 21 April. It says, "Gabby, Payroll", it's got your number there, it just says "Gabby", it doesn't say Gabrielle Badman, but that's your phone number, 07 558 45333.

10 A. Yes, it is.

15 Q. The next one, if you go over the next page, this is talking in relation to our new payroll service. That's 21 April. I've also got, if you've go over the next page, that's where we did have a telephone conversation. I rang up and I said, "I haven't got my user name and password, that's the first time we ever spoke, is that not right?"

A. That possibly would be the first time, yes.

20 Q. And that was 21 April. So you're still handling payroll, you're still doing payroll?

A. Yes, I do, yes.

25 Q. Now I just wanted to get over to annexure I. I will tender that seeing as my learned friend said to, if at all possible, Commissioner, if I tender that.

BORS: I have no objection to it if he seeks to tender it.

30 APPLICANT: Q. This evidence that, it's an assertion I put forward and I put forward to you, Ms Badman, you're actually not Employee Relations Manager, you never have been, you're actually the payroll manager for the company and you were set up specifically to sign off my warning letter on 12 May, is that not right?

35 A. That's not correct.

40 Q. Mr Picton who signed off on my employee contract refused to sign off on my warning letter. Russell Shields, who I reported to on a day to day basis, who refused to sign off on my warning letter and they had no-one else to sign off on my warning letter, they came to you to sign off on my warning letter. Because on the day I received my warning letter, the following day I spoke to you on the phone and we both spoke and it lasted a 5, 45 10 minute conversation or so and in that conversation, you know, it was very clear that you knew very little about the situation. I said that to you, I apologised for bringing up a lot of the issues. You said you would read all the notes over the weekend, is that not right?

50 A. I remember saying I'd read the notes over the weekend, and yes, I didn't know a lot about the occupational health and safety problem.

55 Q. So you didn't know much about the situation at all the day after I spoke to you on the phone. And the day after you sent me the warning letter on May 12th, the next day we spoke on the phone, 5, 10 minute conversation. And you

were quite clear that you knew very little about the situation. We spoke about the warning letter and I said, look, I shouldn't be bringing these issues up with you because you know very little about the situation, isn't that correct?

5

A. I knew about the situation. To go into finer detail I did need to actually study the notes with you.

Q. And how did you manage to send me a warning letter knowing very little about the situation?

10

A. I was kept informed at all times.

Q. Who by?

A. Russell Shields and Steve Picton, Sally Garner was involved at that stage too.

15

Q. In your statement you say that's true and correct, do you, you've read through it, you've checked it, the solicitors would have checked it?

20

A. Except for paragraph 8.

Q. It says here, if you go to number 21, it says, if you go back down to the third line it said, "Shane had left messages for me to call him on 13 May 2005, however we did not speak to each other on the telephone or otherwise that day". Just before you were saying we did talk on that day?

25

A. No, on the 16th.

Q. No, it says on 13 May. "Shane had left a message for me to call him on 13 May 2005, however we did not speak to other on the phone or otherwise that day"?

30

A. On the 13th?

Q. On the 13th?

35

A. This was after your warning, is that right?

Q. Yes. My warning was on the 12th. 13th, "We did not speak to each other that day"?

40

A. We spoke on the 12th, from my recollection it was the 12th.

Q. We did not speak to each other on the 13th. We did have a conversation that day. I received the warning letter on the 12th, I rang you the next day to discuss it?

45

A. It was the same day?

Q. No, the 13th, Friday the 13th. It says there specifically we didn't have a conversation that day. In that conversation you also said to me, I put it to you that Jonathan Hassatt said to me on the phone the day before that the company had a letter that refuted, said the flags were safe, and you said, yes, it's my understanding we do. On the 13th, Friday the 13th. In that conversation when I rang you up to discuss the warning letter. Even though you say here we didn't have the conversation on Friday the 13th?

50

55

A. We had a conversation, Shane. I'm saying it's not the

13th. We did have a conversation, yes.

Q. Yes, on the 13th, was it not?

5 A. I recall it was the 12th, the same day the warning letter was--

Q. How can you be so sure, it's two, three months ago, that it wasn't the day after?

10 A. From my file notes that I have recorded, that's why I'm saying the 12th.

Q. And they'd be pretty accurate, would they?

A. Well I kept them, you know, day, each day.

15 Q. So you're certain we didn't have a telephone conversation on the 13th of May, 5, 10 minute conversation?

20 A. From my file notes I am saying that I recorded it from the 12th.

Q. What I'd like you to do is have a look at this, have a look at the phone bill. You can have a look but you can't keep it. That's my phone bill, we had a seven and a half minute conversation that day on Friday the 13th. I'd like to tender that as evidence. We had a seven and a half minute conversation that day, seven minutes or seven minutes thirty. As I stated before my phone bill goes up in 30 second increments so it could have been seven minutes and one second to seven minutes 30. Now we had a seven and a half minute conversation that day. You say your file notes say we didn't have a conversation - we definitely did. That's your direct line there which you confirmed to me before. So we had a seven and a half minute conversation that day, you knew very little about the situation I put it to you. You stated that you had to read over the weekend to bring yourself up to speed with what was happening, isn't that right?

35 A. What I read over the weekend was information that I wasn't actually sent directly from you. I was passed that on via other sources, such as Steve Picton and Russell Shields. That's what I was reading.

Q. What were you passed on from them?

45 A. Well, emails that you had sent to them directly.

Q. Here you are, you were sending information based on the evidence that you were sending information off to Jonathan Hassatt on the 11th and 12th, he should have had all the information.

50 A. Yes, that's, that's when he--

Q. You sent me a warning letter on the 12th and you didn't have all the information. You knew very little about it. On Monday the 15th, on the 16th when I was sacked, after I was sacked and I was sent the letter from you I also rang you and you called me a liar, did you not?

55 A. No, I didn't.

Q. And I said, "Why are you calling me a liar?" And you said, "Because I didn't say that we had a report that said the flags were safe. What I said was, it's my understanding we do have a report that the flags are safe, but don't take my word on it". Isn't that what you said to me?

A. It's similar to that, yes.

Q. Yes, and you called me a liar because I said--

A. No, I didn't say you were a liar at all, Shane.

Q. Yes, well you did. Did you know managers have a legal obligation to investigate a health and safety complaint?

A. Yes, I do.

15

Q. You do know that? Do you believe my complaint was fully investigated?

A. No, I don't.

Q. No. The company acted in an incompetent way, would that be a fair statement?

A. Yes.

20

Q. Given that Steve Picton, Russell Shields, yourself all knew about the complaint, it was never handed over by all three of you to Mrs Garner, would it be fair to say that all three of you broke the law, knowingly?

25

BORS: I don't know if she can answer that.

30

COMMISSIONER: I certainly don't want the witness to incriminate herself in any event.

BORS: Yes, I don't know if she can answer that question on any basis.

35

COMMISSIONER: I'm not sure of the value of asking such a question in any event.

APPLICANT: Commissioner, my opening statement, what this is all about, they knew they were breaking the law, they were deliberately doing it, they conspired to do it. I knew about the health and safety danger, I notified people, that's why I was sacked. I should be given a fair and reasonable to opportunity to prove that, one. Two, there are certain laws out there that everyone should be aware of. If you pick up a chair and hit someone with it you get charged with assault with a weapon. You can't sit there in front of the judge and say, look, I didn't know a chair was a weapon. There are certain laws they should be fully aware of as managers. Mr Picton--

45

50

COMMISSIONER: Mr Dowling, this is not an occupational health and safety prosecution.

55

APPLICANT: No, it's not, Commissioner.

COMMISSIONER: This is an unfair dismissal claim and I can

understand the linkage here between the occupational health and safety issue and the dismissal. But this proceeding is not going to determine the occupational health and safety issue.

5

APPLICANT: No, and I'm not trying to do that.

COMMISSIONER: Well, if you're asking this woman about questions of whether her actions might have constituted some illegality, it seems to me not to be the correct forum for that. That might be something that if it really needs to be pursued will be pursued elsewhere.

10

One might ask the rhetorical question, well, if the company is to be held somehow or another liable for its inaction, there's a considerable period, Mr Dowling, where you consciously decided you weren't going to deal with the flags yourself and permitted other people to continue on with it.

15

20

APPLICANT: Yes, that's--

COMMISSIONER: So you would, I would have thought, similarly been guilty of the same inaction.

25

APPLICANT: Well when you're at a company--

30

35

COMMISSIONER: But I'm not going to get involved in all of that because, as I say, this isn't an occupational health and safety prosecution. This is a case to deal with unfair dismissal and it's important that one tries to distinguish between the matters that are directly relevant to the finding as to whether or not the dismissal was harsh, unreasonable or unjust as opposed to whether these flags do represent an occupational health and safety risk and as to the conduct of people in respect of that apparent risk. Things can be separated.

40

45

50

55

APPLICANT: Yes, they certainly can.

COMMISSIONER: So perhaps after we've had our lunch break, which we're about to take now, and after I've dealt with the other matter that I have to deal with at 2 o'clock, we might just try to concentrate on the evidence that relates to the primary determination that's required here. The Commission is not going to determine firstly whether or not these flags represent a health and safety risk, someone else is going to do that. The Commission is going to determine whether or not this witness or others in the company didn't discharge their responsibilities properly in respect of onuses regarding occupational health and safety. The Commission in this matter isn't going to resolve those questions at all. There's one question that has to be resolved, was there an unfair dismissal here or was there not. So let's try to focus on that when we resume. And I'll say regrettably I'm going to have to allow at least a half an hour for the 2 o'clock matter, so we're not going to be able to resume the proceedings in

his matter before 2.30. So the matter will adjourn until not before 2.30.

5 BORS: Commissioner, there is one issue that I'd seek to raise just now before we break and that is that there is one other witness for the respondent which is Mr Hassatt this afternoon. I just wanted to indicate that with it in mind the comments that had been made on the last occasion to the effect that you were booked out for the remainder of this year, we might flag it now that I would not have an issue if the respondent's submissions in this matter were to be done by way of writing, just so that we didn't have to come back.

10
15 COMMISSIONER: Well we'll see how much progress we can make. The other matter which involves an industrial dispute involving the women's refuge at Tamworth has some urgency attached to it and it may well be that we don't get a lot of time this afternoon or we might have more time than I'm anticipating, I just don't know. We'll resume proceedings at not before 2.30.

RECORDING EQUIPMENT SWITCHED OFF AT COMMISSIONER'S REQUEST

25 APPLICANT: Q. Ms Badman, the company has taken action on the flags in the past week or so, are you aware of that?
A. I've actually been on annual leave this week.

30 Q. Have you?
A. Yes.

Q. This week?
A. The week just gone.

35 Q. You were back yesterday?
A. No, I've been back - I actually go back tomorrow to work.

40 Q. You weren't aware the company took action on the flags?
A. No, I was not aware.

45 Q. They didn't tell you?
A. No.

Q. What action has been taken. I think Russell Shields said they've recalled all the flags and the staff have been advised to wear gloves when handling the flags.
A. Right.

50 Q. That was all based on evidence that was in the company's possession back in May, middle of May.
A. Right.

55 Q. They have taken action in relation to the health and safety of the flags, action they could have taken themselves back in May. Given that I was sacked for warning people about the health and safety dangers of the

flags, do you think I was sacked unfairly?

5 A. I don't believe that you were sacked for warning anyone about the flags. You were warned - the company asked you not to do something, you went ahead and did it. That's why you were sacked.

Q. But given the fact that the company has since done it--

10 A. No, you were asked not to do something, you went ahead and did it, that's why you were fired.

Q. So even though if you know there's a health and safety danger there the company's saying you're safe, which they were blatantly lying about given that action has taken place since--

15 A. I'm not aware of the action, I'm sorry. I haven't been at work since--

Q. But action has taken place I can tell you, no-one's denying it.

20 A. I haven't been at work.

Q. So how did you come to get involved in all this anyhow, you were called in by Mr Picton or what happened?

25 A. Russell Shields advised me initially of conversations that you had had with him in regards to the flags. That's when my notes, like, file notes were started from there. But how did you come to call Mr Hassatt to get him involved?

30 A. We obviously don't take terminations of employment lightly. We obviously wanted to get some advice, that's why we contacted Jonathan Hassatt.

Q. You made that decision too, did you?

35 A. I suggested it and put it forward to Steve and he said if that's what you think you need to do.

Q. And you had dealt with Mr Hassatt before, had you?

40 A. The company had, yes.

Q. But you hadn't personally?

A. Not personally, no.

Q. So you rang him?

45 A. Yes, I did.

Q. And what happened then?

50 A. We discussed the situation. He asked for some of the emails that were going backwards and forwards. He was provided that information. Then he spoke to Steve Picton. He then continued to speak with me. So we were getting advice on what the next, like, the next step to take. And then we stayed in contact through the process.

55 Q. And you sent him a copy of my lawyer's letter to the company?

A. Yes.

Q. And the reply?

A. Yes.

Q. When did you send them to him?

5 A. I can't actually recall the dates, I don't have that with me.

Q. But before you sent me the warning letter?

A. Yes.

10

Q. Yes, he was in receipt of them. Of course you would because you know, once you call in a lawyer you would obviously send them, the first thing you would give them was a copy of my lawyer's letter, wouldn't you?

15

A. What do you mean the first thing I'd give them?

Q. Well if I sent legal correspondence, you call your lawyer, the first thing you hand over is the legal correspondence.

20

A. Possibly that was the first thing that we sent to Jonathan.

Q. Yes, my lawyer's letter, yes.

25

A. I can't recall the first thing that was actually emailed off, but there was not just one email, like, emails were forwarded all in one go.

Q. I sent Sally Garner a lab report. I spoke to her on the Thursday morning, Thursday the 12th, she said the flags are fine, etcetera, etcetera. She'd finished her report. I sent her a copy of my lab report and the material safety data sheets we spoke about. You knew the difference between the two, because we spoke?

30

A. Yes.

35

Q. And you sent them on to Jonathan Hassatt too?

A. Yes.

Q. Because it just mentioned it in the warning letter--

40

A. That's right, so--

Q. --we have receipt of your lab report and all that. Now I just want to go through Jonathan Hassatt's statements because he puts a lot of - he says, you said this, you said that, so let's have a look at it. Have you got a copy?

45

A. No.

Q. I'll give you a copy. In Jonathan Hassatt's statement he says that on 11 May you told him the flags are not a health risk. How did you come to that conclusion?

50

A. For our own email from - sorry, I'm not sure of his name off the top of my head, but it was a guy from Queensland commerce.

55

Q. And what Sally Garner's sent you that email and she told you that email says they're safe because you'd be looking to her to determine whether?

A. That's right, I have no idea about occupational health and safety.

Q. Sally Garner told you that?

5 A. Well she forwarded the email to Steve Picton, myself and Russell Shields.

Q. And she told you they were safe?

10 A. She didn't, she forwarded us the email.

Q. And you decided yourselves, based on that email they're safe?

15 A. Well, I presumed that we made - well, Sally has sent an email saying, "Here is an email that was received from" - I'm sorry, I'm not sure of his name - but from Queensland Commerce and pretty much left it at that.

Q. So you like came to the conclusion yourselves that they were safe based on that email?

20 A. No, obviously we're not - I'm not in a situation to actually assess the flags in any way, so I read the advice and from what I read it was my understanding that they weren't as toxic as first said.

25 Q. How did you come to that conclusion? Nowhere in there can I see where it says they're safe.

30 COMMISSIONER: I'm sorry, nowhere in where, what am I looking at? Are we looking at the same thing when you say "nowhere in there"?

35 APPLICANT: That's what I'm trying to find for her, Commissioner. I'm getting ahead of myself, going a bit too quick.

BORS: Are we talking about the Commerce Queensland--

APPLICANT: Yeah, Commerce Queensland--

40 BORS: That's annexure G to Ms Badman's statement.

45 APPLICANT: Q. There's nowhere in there I can see where it says they're safe. And in fact, the only thing it does is question the lab report which I sent to you Thursday morning which was passed on to you by Ms Garner and he questions--

A. Sorry, what was that?

50 Q. The only thing he questions in there is the level, the reading, you never had the lab report. You sent that on the Wednesday afternoon. On the Thursday morning I sent Sally Garner a lab report after she said they were safe. So all you had to do was send him the lab report and you could have questioned it then which you probably wouldn't have, you would have rung the guy and said, yes, okay, that's fine.

Q. So he says to take action, if they are 1530 milligrams

start wearing gloves, etcetera, enforce no smoking policy in cars, how did youse come to the conclusion they were safe?

5 A. Well obviously I didn't come to the conclusion, I'm not qualified to assess.

Q. Who did?

10 A. Well I wasn't involved in the discussion that was had whether the flags were toxic or non toxic. That's obviously something that the occupational health and safety officer does.

15 Q. She said there's no way in the world you could come to the conclusion they were safe based on that email because it's just his opinion based on emails.

A. Okay.

20 Q. But in the warning letter that you've signed off on you say the flags are fine. "We've noted your reports, we do not intend on taking any action at this point".

A. That's right, because of the advice we felt that we had got from the companies.

25 Q. Sally Garner said there was no way in the world, I mean you couldn't say that the flags were - he's basing his opinion based on emails. He questions the lab report, he doesn't have a copy of the lab report. The reality was Steve Picton - that was the company policy, wasn't it? Steve Picton said, "Don't do anything about the flags, get rid of him".

30 A. Not as far as I'm concerned.

Q. Well you're sitting there saying--

35 A. There is no way that - in no uncertain words has he said that to me.

40 Q. I had Russell Shields in here before. On April 28th -my lawyer sent a letter on April 20th. On April 28th Russell Shields replies to my lawyer's letter. My lawyer is questioning what's happening in relation to the flags. There they say they do not believe the flags are a health and safety danger. They're safe. Russell Shields fingered Steven Picton as coming to that conclusion. He still didn't have evidence then, he had nothing. That was company policy, was it not to say--

45 A. As far as I'm concerned, no, it's not.

Q. --to say the flags are safe?

50 A. As far as I'm concerned I was not told to say the flags were safe when they weren't safe.

55 Q. Well that's what you're saying here, this is what Jonathan Hassatt says that you quoted him - he says, Gabrielle Badman told me the flags are not a health risk. You're sitting there saying they're not a health risk, you had no evidence. You actually had evidence in your hand, you had a lab report, you had the guy saying if they are 1530 milligrams take action.

A. Yeah, and both were sent to Jonathan Hassatt.

Q. Now Mr Hassatt also says here "she was saying" in a conversation you had with him you say, "he has sent emails to our staff and customers saying we are putting their health in jeopardy", is that correct?

A. This is a conversation I had with Jonathan Hassatt?

Q. Yeah, that's what Mr Hassatt's saying in his statement?

A. Yeah, okay. I did call Jonathan and discuss that you were sending emails to notify our customers of health risks.

Q. No, it says here, I've already sent emails, "He has sent emails to our staff"?

A. Okay, well, that would be the case, but I hadn't at that stage forwarded them to Jonathan Hassatt. I called him first, then forwarded them.

Q. But the reality is I had never sent any emails to customers whatsoever.

A. No, but you were threatening to send emails.

Q. No, but that's not what it says here. It says I've already sent them.

A. Okay. Well, I didn't write the statement.

Q. You also told Mr Hassatt, based on his statement, "We have told him to stop, he defies us. He is planning another mail out. We have told him that if he does it again we will terminate his employment. Who said that and when? Who told me they were going to sack me and when?"

A. I'm sorry, where are you reading?

Q. Sorry about that, I don't want to come across as rude. If you go to number 2 on the first page.

A. Okay. You had actually advised staff - I don't know about customers - but you had advised our staff--

Q. And I'm not denying that, but you--

A. This is not my statement.

Q. No, but is he correct or not, that's what I'm asking you?

A. He's very correct in saying that you have emailed our staff advising them of health risks, that their health is in jeopardy.

Q. The reason I was sacked was not for notifying staff, on April 13th I notified staff. I never received a warning letter. I was sacked because I notified the customers. You could threaten and intimidate me and other staff, but you couldn't threaten and intimidate the customer, isn't that right, that's why I was sacked, that's why you brought in Mr Hassatt to do--

A. No, you were--

Q. The hired gun to threaten and intimidate me. I was about to notify the customers. We couldn't have that. The staff, that's fine, we can threaten and intimidate Mr Dowling, but we can't have him notifying the customers because we can't threaten and intimidate them. That's the facts, ain't it? See you blur the issue in your correspondence. You say, "staff and customers". I had never notified customers until the day before I got sacked or the day, that night, Sunday night, never notified any customers. But back to that original question, it says, "We have told him to stop, he defies us, he is planning another mail out. We have told that if he does it again we will terminate his employment". Who told me that and when? Who told me they were going to terminate my employment?

A. Russell Shields.

Q. No, he didn't, he denied it. He says he never told me that. What I know for a fact is that on April 13th he rang me up and threatened me and he made it very clear I was going to get the bullet, but he sat in that stand and said, no, never told you you were going to be terminated. This is what you've told him. Did Russell Shields tell you that he had--

A. That's where I make my file notes, from what managers advise me.

Q. So Mr Shields was committing perjury, was he, when he sat in the stand and said--

A. Look, I can't answer for Russell Shields, I'm not Russell Shields. I'm saying that Russell Shields - all managers that made any correspondence with yourself, we all made file notes.

Q. Russell Shields pretty well wiped his hands of the whole situation. He said, look, Gabrielle Badman was pretty well running the show. Steve Picton put you in charge, you were running the show.

A. Okay.

Q. So to your knowledge then no-one ever told me I'd be sacked?

A. No, to my knowledge Russell Shields did tell you that you'd be--

Q. No, well Russell Shields denied--

A. To my knowledge, you're asking me to my knowledge, yes.

Q. Russell Shields is totally denying that. You also say, "We suggested we don't get on", who did I say that to, "We don't get on"?

A. To Russell Shields.

Q. No. I never asked Russell Shields in fairness, but, no, I never said that. Mind you, it's a pretty stupid thing to put there, isn't it, I don't think you have to be a rocket scientist to work out we don't get on. I think

we were having problems, I think that was a fair assumption, wasn't it? We obviously had issues.

A. I don't know actually about any personality clash other than the fact that it says that you didn't--

5

Q. No, the company and me weren't getting on in relation to the flags and that, obviously--

A. Obviously, you know, in - I don't agree that the company and yourself weren't getting on. Speaking for
10 Russell I believe that there might have been an individual personality clash, but not company and Shane Dowling.

Q. Now, basically he is threatening us with a campaign of
15 nasty letters to our retail customers unless we give him a pay out. Who did I say this to and when?

A. This was a discussion - my understanding is that you had a discussion about a payout with Steve Picton, not me, not Russell.

Q. Steve Picton, yeah, I spoke to Steve Picton about that
20 and he said something along those lines, just roughly. I put it to him - how much did I ask for off Steve Picton, 100,000 or 200,000, do you remember how much it was?

25 BORS: I object.

APPLICANT: Sorry, you object?

BORS: She doesn't know what a conversation between him
30 and Mr Picton.

APPLICANT: I was asking her of her recollection of the
35 conversation, not of the conversation between me and Steve Picton. That was the original question, who told you this and how did you-

BORS: Then I'm not following the questions, I don't know how the witness can.

40 APPLICANT: You are better informed but.

BORS: The question as I heard it was, how much did I ask Steve Picton for?

45 APPLICANT: Q. How much did Steve Picton tell you I asked for?

A. He didn't give me a figure.

Q. So I asked Mr Picton for a payout, did I? What about
50 Russell Shields, did he mention anything to you about that in the conversations you had with him?

A. Not from memory, no.

Q. No, he didn't mention it at all, no. Mr Picton said I
55 asked for a payout. Do you remember that specifically? You know, you were putting extortion in my warning letter, you would have to be pretty certain of it, can you elaborate on what Mr Picton told you?

A. Not off the top of my head, no, because it has been quite some months now.

5 Q. You've put an extortion, extortion is a massive word. I remember everything verbatim what Mr Picton had or hadn't told me. You tell me you can't remember.

A. I wasn't there for the conversation.

10 Q. You weren't there for the conversation you had with Mr Picton, how does that work?

A. No, I was there with the discussion I've had with Mr Picton, but not the discussion that you and Mr Picton had.

15 Q. That was in the Court room I was talking about. Yeah, okay--

A. I wasn't there either.

20 Q. So what did Mr Picton say that I said or--

A. I'm sorry, I've lost what you're--

Q. Well, what did Mr Picton tell you, I asked for a payout and what?

25 A. When was this?

Q. When Mr Picton spoke to you about it after the event?

A. After the phone call?

30 Q. Yeah.

A. He said that it was a short conversation, very heated discussion where you used some not so nice language and that the main thing that he got from the conversation was that you asked for a payout.

35 Q. I asked for a payout. And how did he interpret that?

A. I don't know.

Q. Well he said in the Court room how he interpreted it. He told us, I thought he might have told you?

40 A. (no audible response)

Q. And Mr Shields, you have no recollection of him telling you that?

45 A. That he offered you a payout or you asked him for a payout?

Q. Mm.

A. No.

50 Q. Now when did you have that conversation with Mr Picton, before you sent my warning letter, obviously Russell Shields you would have met with him, you would have met with Picton?

55 A. At the time it was, you know, it was obviously quite an intense time because there was constant communication going on and at the same time Steve Picton called Jonathan Hassatt directly and spoke to him about it.

5 Q. But also you said you were involved, you said this happened on the Friday afternoon, Friday the 6th, off the top of my head, it was definitely Friday, but I think it was 6th or 5th. The warning letter was sent out on the Thursday, the following Thursday. You said before you met with Jonathan Hassatt, he made a big issue of me asking for money. He interpreted that as extortion. He also made a big issue of me swearing at him. He would have mentioned those things to you if you're running the show?
10 A. And I've just said to you that exact thing.

15 Q. And you would have spoken to him about that before you sent me a warning letter for sure, wouldn't you?
A. Of course.

20 Q. So how did you come to the conclusion of extortion? The warning letter has got your name on it, you obviously have got rock solid evidence?
A. Yes, well I need to trust what Steve Picton is telling me, he's my chief executive officer. I believe what he is telling me.

25 Q. Yes, and he told you I was trying to commit extortion?
A. Yes.

30 Q. And you would have been speaking to Mr Hassatt about it, he would have mentioned it, that's why he said to put it in the warning letter. You would have - see the problem I've got that, number one it's a lie, it's a total lie, number two, Mr Picton's accusation that he actually said verbatim, "I told him it was going to cost him plenty", I didn't ask for a payout. He said I said to him that it was going to cost him plenty. He interpreted that as me wrongfully trying to extort money from the company.
35 He also made a big issue of me swearing at him. Now those accusations don't show up in your statement, Mr Shields' statement, Jonathan Hassatt's statement. The barrister here didn't even take a statement or affidavit off Mr Picton, and it doesn't show up in the dismissal letter.
40 You make mention of me swearing in the dismissal letter. You make mention of me sending out the email, but no mention of extortion, it just disappears. It doesn't exist. If you went through all this evidence here, it just doesn't exist Mr Picton's accusation of me trying to
45 extort money, and it doesn't exist because it's a lie.

COMMISSIONER: Mr Dowling, were you going to ask the witness a question?

50 APPLICANT: I'm asking, she's well--

COMMISSIONER: I think that really the difficulty that frequently occurs with self represented parties is that the opportunity of cross-examining witnesses shouldn't be
55 mistakenly converted into an opportunity to start stating one's case.

APPLICANT: Yes, I'm definitely aware of that. That

particular issue got right under my skin and I obviously got side-tracked and didn't put it in a question, Commissioner. I'll try and direct a question instead of making that statement.

5

Q. The question is, why doesn't it exist in anyone's evidence, why doesn't it exist in your evidence?

A. It doesn't exist - what do you, sorry?

10

Q. Me trying to extort money out of the company, the conversation you had with Mr Picton?

A. I thought it was self-explanatory in the warning letter.

15

Q. But it should be in your statement, I had a conversation with Mr Picton.

BORS: Look, I object. How can a conversation that he had with Mr Picton be in her statement.

20

APPLICANT: No, no, her conversation with Mr Picton. She met with Mr Picton, "Mr Picton told me this".

WITNESS: But it was summarised in the warning letter.

25

APPLICANT: Q. Let's go to the warning letter, and the warning letter was sent on 12 May, have you got a copy there?

30

BORS: It's annexure H to her statement.

APPLICANT: Q. Now it doesn't explain it. If you have a look at the warning letter the thing that gets me is that you specifically mention me swearing at Russell Shields, which I openly admit to. Mr Picton in the Court made a specific, he really pushed me swearing at him. You said you had a meeting before you sent the warning letter that I was swearing at him, that's what he's told you, no mention of it because it didn't happen, isn't that correct?

40

A. It's possibly in Steve Picton's file notes.

Q. What do you mean his file notes, he never--

A. But they're not mine.

45

Q. He never put in a statement. I had to subpoena him, he wouldn't show up, he was running scared. He never put it in a statement. How come that doesn't exist anywhere? You specifically mention me swearing at Russell Shields, why didn't you mention me swearing at Steven Picton? Because it didn't happen, did it? You've put your statements in, I've subpoenaed it, it's too late to get his lies in there. He's come into court, he wants to tell a few lies to try and blur the situation. Is that not right, you're the one running it?

55

A. I don't know, is it? Like I'm, I don't have Steve Picton's file notes. I did not have Steve Picton's submission.

Q. He never put in a submission, he was too scared to?
A. I've got nothing to go from, Shane. I've got nothing.

5 Q. But see Steve Picton sat there in the stand and he
fingered you for everything, he said Gabrielle Badman, he
kept on saying, he was continually saying that you're
running the show, you're running the show, you're running
the show and you're saying you don't know. That's a
10 massive piece of evidence. When I asked him why he hadn't
put in a statement or affidavit he pointed over to the
barrister and basically accused him of being incompetent
and negligent by not having a statement in there, he said
it's up to them to run the show.

15 BORS: I object to that because that was just not said.

APPLICANT: Commissioner, it was said. I said, "How come
you never put in a statement or affidavit?" And he said,
20 "It's up to them to run the defence".

BORS: Well he might have said that, but it's a bit
different.

25 COMMISSIONER: You see sometimes, Mr Dowling, it might be
that your spin on this isn't correct. Let's just take
that little example. The fact that Mr Picton said, "Well,
I didn't put in a statement, our legal people didn't
believe it was necessary" is somehow or other translated
30 into the suggestion that the barrister is incompetent.
Now that's just amazing, frankly, and it's completely
unhelpful. It doesn't help your case, it doesn't help the
Commission get to the bottom of anything. It's just a
wild extrapolation. Which, if anything, does you great
discredit.

35 APPLICANT: Well I wasn't trying to, but when I asked
Mr Picton that question he pointed over here and said,
"Well, they decided not to have a statement". They're
making--

40 COMMISSIONER: But Mr Dowling don't get side-tracked
again. Can you see how sometimes you can jump four or
five hurdles and reach an erroneous conclusion based on a
whole series of assumptions for which there's no
45 foundation.

APPLICANT: I can appreciate that, that's fair enough, I
put words into Steve Picton's, he just pointed to him and
said, "They decided not to". But they've made a claim of
50 extortion, they haven't backed it up anywhere, there's no
evidence anywhere--

COMMISSIONER: Well we're getting on to another one of
your dissertations. I don't want another dissertation. I
55 would like you to just ask the witness the questions you
have of this witness.

APPLICANT: Q. Now Mr Hassatt also says in his statement,

5 this is his words when he said to me, and I'll find the spot for you, he says about the conversation I had, what he says is "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". Who rang me to discuss the situation and when?

A. Can you show me where you're talking about?

10 Q. Yes, I'll just find it in his - where is it, it's here somewhere.

BORS: It's page 4 of Mr Hassatt's statement, half way down the page.

15 APPLICANT: Q. Under "I said", that's Mr Hassatt.

A. So this is the discussion that you had with Jonathan Hassatt?

20 Q. Yes, but it's obviously that you were the one who's given him the information, swearing at--

A. Jonathan didn't just speak to me, Shane, he spoke to obviously Russell Shields.

25 Q. Now in your statement you say Russell Shields phoned me after Russell Shields told you that I complained to him about the flags, is that correct?

A. That's right. This is--

30 Q. Well that's a conversation that never took place, is it?

A. What do you mean?

35 Q. I rung Russell Shields, I complained about the flags, now you're saying that you and Russell Shields rang me.

A. Yes, we did. I wasn't speaking a word.

40 Q. He never rung me, I rung him on each occasion. But you sat there in the background and never said a word.

A. That's right.

45 Q. What for?

A. To ensure that Russell was following our company procedures.

50 Q. Is that right? Well the problem I've got with that, if you have a look at your statement and Russell Shields' statement, in Russell Shield's statement he says I have rung him. Then in your statement it says that you spoke to Russell and youse rung me back.

A. M'mm.

55 Q. But if you have a look at the wording of it, the conversation when I rung him, and conversation you rang me, it's almost verbatim, it's almost exactly the same. So basically we parrot ourselves--

A. Okay, there was a telephone conversation that was had.

Q. If you have a look at the evidence, your evidence and

his, we're like parrots, we just repeat ourselves. Why is that?

BORS: Where are we looking?

5

APPLICANT: In the actual statement.

WITNESS: On which day?

10

COMMISSIONER: Which one?

APPLICANT: Q. Gabrielle Badman's. It says here page 2, number 4, "The next occasion that this was raised to my knowledge was on April 4th, Russell Shields said to me, I've received a phone call from Shane Dowling about the point of sale flags. Russell and I made a telephone call to Shane that day to discuss the matter". Now if you have a look what's said there and then if you grab Russell Shields' evidence or statement, if you grab Russell Shields' statement - and I'll give you a copy in a second - "The next time this was raised was when I received a phone call from Shane Dowling". So one is me ringing Russell, the other is you and Russell ringing me back, you sitting in the background not saying boo, and it looks like we're parrots because we've said exactly the same thing. Now Russell never rang me back. Well why are they near on exactly the same thing verbatim?

15

20

25

A. I didn't write Russell's statement, I wrote mine, and from my file notes this is the information that I recall.

30

Q. No, it didn't happen, Russell never rang me in relation to it. I rang him, we had that conversation pretty much like he says, but why would he ring me back to repeat what he just said with you in the background?

35

A. Well, maybe we just rang you.

Q. No, I rang him and it said in his statement that that's what happened. Now you threatened me with defamation charges too of Mr Picton for being negligent. That was in the warning letter, I think, or one of the warning letters. Have you ever followed through on that?

40

A. Which page am I looking at?

Q. Well, it's in the warning letter, let's grab it.

45

A. G, H?

Q. Is that in the warning letter?

BORS: It's in Mr Hassatt's letter.

50

APPLICANT: Q. It's in Mr Hassatt's letter. Have you got a copy of that, Mr Hassatt's warning letter - he actually told me that over the phone.

55

BORS: It's not in the warning letter, it's in a letter post termination.

APPLICANT: Post termination, after I was sacked.

Q. Have you got a copy of that.

A. Is it K? Yes.

BORS: It's annexure Q3 to your statement.

5

APPLICANT: Q. Yes, here you go, yes, Q3, there you go. You accused me of - can I grab that other one?

A. This is mine, is that yours?

10 Q. Now you accuse me of defamation, has that ever been followed through with?

A. I accused you?

15 Q. Well you reserve the right for defamation charges to be laid. Has that ever been followed through with?

A. Not from me, no.

Q. You didn't accuse me of defamation? Do you think I'd defame you?

20 A. Me, I didn't accuse you--

Q. No, I said you haven't accused me or you have? Have you accused me of defamation or you haven't? It's got there "we reserve our right for defamation charges"?

25 A. Is this in regards to the flags that you--

Q. Well, defamation for all the correspondence I've been sending obviously?

30 A. I personally haven't laid any defamation charges, no.

Q. So that defamation part in there, you had nothing to do with? That's got nothing to do with you, you don't understand what it's about or-?

35 A. It will be something to do with the business and something that Steve Picton is in control of. I work for the company.

Q. What about extortion charges, have you gone to the police in relation to extortion?

40 A. Me personally, no, I haven't.

Q. It's got your name on the warning letter. You take 100 per cent responsibility, Ms Badman?

45 A. No, I take responsibility for acting on behalf of the company, yes, I do.

Q. You put your name to something, you take responsibility.

50 A. But I have written a letter on Cardcall company letterhead so I therefore act on behalf of the company.

Q. No, no, no, you personally. If someone accused you of extortion and you knew it to be total and utter lies, would you sue them for defamation?

55 A. I don't know.

Q. You don't know. But you take no responsibility for it. See, what parts of the letter do you take

responsibility for?

A. Acting on behalf of the company.

5 Q. Who wrote the letter, Jonathan Hassatt wrote the whole letter, didn't he?

A. This is the warning letter?

Q. Yes.

10 A. We drafted it, Jonathan Hassatt went through our draft and suggested--

Q. So who drafted it, who put extortion in there?

A. I couldn't tell you.

15 Q. You mean you don't want to tell me?

A. No, no, I couldn't tell you. If I could tell you, Shane, I would tell you.

20 Q. See, to me extortion, you may as well have accused me of rape or something like that.

BORS: Object, that's not even a question.

25 WITNESS: That's ridiculous.

APPLICANT: Q. You don't think that's fair and reasonable?

A. I think that's unreasonable for you to say that.

30 Q. Why, you accuse someone of extortion, you take action, you back it up, you don't just accuse someone of extortion and then it just disappears, do you not? If you're going to accuse someone of extortion you back it up, you go to the police. It was blatant lies, wasn't it, to intimidate me. You don't accuse anyone of extortion and then just frivolously say we don't know who said it, do you not, you back it up. You didn't back it up because it was lies and that's why Mr Hassatt is taking the heat on my warning letter. No-one in the company will take responsibility, is that not right?

40 A. Jonathan - we, the company--

Q. You, it's got your name on there, Ms Badman, you take responsibility.

45 A. That's right, the company.

Q. I am asking you what evidence do you have of extortion?

50 A. Um--

Q. It never happened, did it?

A. According to Steve Picton it did.

55 Q. Well Steve Picton's evidence doesn't show up anywhere else. It's in no-one else's statement, he didn't put it in his statement, it doesn't show up in the termination letter, why is it not in the termination letter? Why isn't it in the termination letter, the swearing and that

is?

A. The termination of employment was because you were asked not to do something and you did it.

5 Q. But it mentions swearing and the way I spoke to other staff in there, why doesn't it mention the extortion part? That's why Mr Hassatt is here.

A. Because you didn't do it a second time.

10 Q. Mr Hassatt wrote my warning letter, Mr Hassatt put extortion in there, is that not true, that's why he's here as a witness, no-one will take the heat on that letter, is that not correct?

A. I don't know, Shane.

15 Q. You've got your name on there but you won't take responsibility for it?

A. I will take responsibility for the letter, because I act on behalf of Cardcall the company.

20

Q. Well back up the extortion part?

A. I am via the fact that I believe in what Steve Picton has said.

25 Q. If you put your name to something, Ms Badman, you have to take responsibility for it?

A. Yes, agreed.

Q. And you're not taking any responsibility.

30 A. I am, I've just said, I'm acting on behalf of the company, Shane.

Q. You need to have the evidence. If I was going to write extortion on something I would want to have the rock solid evidence myself, because I'm taking responsibility, it's got my name on there.

35

A. If I could have been there for the conversation I possibly would have, but I wasn't.

40 Q. So you've got no evidence whatsoever then?

A. I believe in what Steve Picton says.

Q. Well, Steve Picton on April 28th said the flags were safe and he had no evidence. Mr Picton said it was left up to Russell Shields. Russell Shields fingered Mr Picton, they're fingering each other. Which one is lying? You know them both, which one would you say is lying?

45

A. I can't answer that, I'm sorry.

50

Q. How come it's left up to Mr Hassatt to: 1. ring me up and put me on notice; 2. to write my warning letter; and 3. to direct my termination?

55 BORS: I object to that. There's no evidence of any of those things. There's no basis for that question.

COMMISSIONER: I think that any composite question that

involves a series of components is going to create difficulty for any witness.

5 APPLICANT: One at a time then, Commissioner?

COMMISSIONER: I think it's always a good proposition.

10 APPLICANT: Q. Mr Hassatt told Mr Shields to ring me to sack me, that's what Mr Shields said. How does Mr Hassatt--

A. Sorry, can you say that again, sorry, Mr Hassatt?

15 Q. I was sacked on 16 May, the reason I was sacked and the reason Russell Shields rung me to terminate my employment because he received a phone call from Mr Hassatt to terminate me. How does a solicitor--

BORS: I don't think that was his evidence.

20 COMMISSIONER: I'm not quite sure that that's the evidence.

25 APPLICANT: Q. Well he said, I said, "Why are you ringing me to sack me?" And he said, "Mr Hassatt directed me to".

30 COMMISSIONER: No, I think he said there'd been a discussion involving Badman and Hassatt and maybe even Picton, but I can't quite remember whether he was included, and then it was decided that he was going to be the one that would make the phone call. I wouldn't think that there's any evidence to suggest that the decision to dismiss was Hassatt's.

35 APPLICANT: Q. It says there on number 9 on Mr Hassatt's statement after I sent the email, "I therefore advised Cardcall to terminate Mr Dowling's employment by telephone and by letter".

A. At what point, sorry, was that?

40 Q. Mr Hassatt's - I'll show you.

COMMISSIONER: You were talking about Mr Hassatt telling--

45 APPLICANT: Maybe I misheard, but I distinctly remember Mr Shields saying I got a phone call from Mr Hassatt to sack--

50 COMMISSIONER: No, you see, but you've got to put it in the context. You can't just say, suddenly Hassatt's decided to dismiss this person. There is a phone call. There's an email first of all from Badman saying, well, look what this guy's done over the weekend.

55 APPLICANT: But they've taken direction from the solicitor or--

COMMISSIONER: No, it doesn't work like that, and in any event it's probably legal professional privilege to be

discussing what it is that's said between Hassatt and these people anyway, but that's another matter.

5 BORS: I'm not going to raise an objection on that ground because I think it's just going to make things even more
10 murky than they are and at this point I'm not going to raise an objection to the line of questioning, but if it could be done in a way that has a basis, is a question and allows the witness to answer, and I don't think any of those are present in that question.

15 APPLICANT: Q. See on Russell Shields' evidence on page 6, number 22 he says, "On 16 May after a discussion with Gabrielle Badman, I telephoned Shane to terminate his employment". It just says after discussions with you. So by the looks of that, that, you know, in the verbal
20 evidence my recollection is that he took a call from Mr Hassatt. Why would you get Mr Hassatt to ring me up to put me on notice? Why wouldn't the general manager, CEO, or yourself, why would you get him to ring me up on Thursday 12 May to put me on notice, you get a lawyer?
A. Because when we got a letter from your lawyer and--

25 Q. That was in April.
A. Well, at the time it was a discussion that Steve Picton, myself and Jonathan Hassatt had had and it was something that probably just happened that Jonathan did it, we didn't--

30 Q. The reason you get a lawyer is for intimidation, pure intimidation, is it not?
A. No, just to act on our behalf.

35 Q. Well why couldn't you ring me, as the evidence has come out, no-one else has ever told me my position would be terminated if I continued. At least you or Russell Shields, who I reported to on a day to day basis, or Mr Picton could have rung me, but you've got a lawyer to ring me. Why did you get the lawyer to ring - to
40 intimidate. He rings me, accuses me of extortion, says I'm going to get charged with--
A. Intimidation was never our intention, Shane.

45 Q. Just by the fact that you're using a lawyer is intimidation, is it not, why wouldn't you ring me, why wouldn't--
A. Why--

50 BORS: I've got to make the point again, it's not a question, it's this, it's--

APPLICANT: It is a question, I'm asking her--

55 BORS: It's a statement and then a "isn't it" put on the end of it and I don't think that is the purpose of the opportunity given to cross-examine this witness. Those kind of submissions can be made, as I said before, at a later date and they'll either be accepted or they won't.

Whether or not this witness accepts those statements is neither here nor there.

5 APPLICANT: Well, it's not really a statement, it's a specific purpose. They would have discussed it. The decision would have come down, we needed to intimidate this guy, Mr Hassatt's the best person to intimidate him. In fact, I'm sure of it, you know, Mr Hassatt has just been the hired gun that's brought in--

10 COMMISSIONER: We're getting into another one of those dissertations.

15 APPLICANT: Sorry. Yes. I think it's a fair and reasonable question for me to put to her.

COMMISSIONER: What's that?

20 APPLICANT: That they got Mr Hassatt to ring me to intimidate me.

COMMISSIONER: Well, isn't the answer going to be obvious, they're going to say no.

25 APPLICANT: I'll leave it at that, Commissioner, and move on.

30 Q. So he didn't ring me and intimidate me, he rang me up to have a friendly conversation, but he did threaten defamation charges, did he not?

BORS: I don't know how she can answer that.

35 APPLICANT: Well it's in his statement, she's the one running it on behalf of the company, she'd be aware of what everyone's saying, would she not?

BORS: I think the simple answer to that is no.

40 APPLICANT: You've got these different people from the company and no-one knows nothing, no-one knows what anyone else is doing. Unbelievable. That's just about it there, Commissioner. Yeah, I'll let that ride, Commissioner, that's all.

45 COMMISSIONER: I beg your pardon?

APPLICANT: That's all, Commissioner.

50 <NO RE-EXAMINATION

<WITNESS RETIRED AND EXCUSED

55 BORS: I call Mr Hassatt.

<JONATHAN HASSATT(3.37PM)
SWORN AND EXAMINED

BORS: Q. So your full name is Jonathan Hassatt?

A. Yes.

5 Q. And your business address is level 7, number 235
Macquarie Street, Sydney?

A. Correct.

10 Q. You are a solicitor?

A. I am.

10 Q. You're the solicitor for Cardcall?

A. I am.

15 Q. The respondent in these proceedings. You've made a
statement in connection with these proceedings dated
25 July?

A. I have.

20 Q. Do you have a copy of that statement with you?

A. I do.

25 Q. Is there anything in that statement that you wish to
change or correct?

A. No.

EXHIBIT #6 STATEMENT OF JONATHAN HASSATT DATED 25/07/05
TENDERED, ADMITTED WITHOUT OBJECTION

30 <CROSS-EXAMINATION

30 APPLICANT: Q. Mr Hassatt, at the conciliation meeting I
put Ms Reid on notice that I was considering subpoenaing
you as a witness. Did she let you know that, did she?

35 A. I believe so, yes.

35 Q. Why are you a witness today, Mr Hassatt?

A. I'm giving evidence primarily about the phone call
that I had with you.

40 Q. I think it would be fair to say the real reason you
were giving witness and probably the major reason is to
take the heat on the warning letter that was sent to me
that no-one else in the company will take the heat for?

45 A. No. As I said in my statement--

45 Q. You by and large drafted your statement?

A. My statement, yes, I did, yes.

50 Q. But the reason I called you was because, as I said in
my statement, I've known for a long time that when
employees are about to be fired they're entitled to know
fairly and squarely that if they do something what's going
to happen to them, that's the law. I've known that for
years. Now you were about to embark upon this campaign
55 and I was ringing you up to tell you that if you did it
you would be fired and that's really the thrust of my
evidence.

Q. Now that's mentioned in number 4 of your evidence, page 2.

A. Yes.

5 Q. "I've practised law since 1990, 15 years" straight from uni to law or-?

A. No, I in fact finished university in 1980, but I was a merchant banker for quite some years.

10 Q. Pursuant to a decision of Wilcox CJ and Nicholson v Heaven and Earth Galleries, can you explain to me what that means?

15 A. That's a decision by Chief Justice Wilcox, then of the Industrial Relations Court, in that particular case and he talked about, you know, Australians being given a fair go and that kind of thing and he was really saying that when employees lose their job they shouldn't be ambushed, they should understand clearly, it should be communicated to them in unmistakable language what's going to happen to them if they do certain things. So knowing that, and of course that's a theme that's been repeated many times since those words were sort of first cast really, so it was incumbent upon me as I saw it to ring you up to tell you what I said in paragraph 5 that if you contacted the customers or employees your job was going to be lost.

20 Q. We'll get back to number 4. Where's the actual quote here, I don't understand it, that an employee is entitled to be, that's not a quote, you're just generalising.

25 A. I'm generalising, yes.

30 Q. Is Wilcox still a Commissioner or-?

A. No, he's actually a Federal court judge. At that time he was--

35 Q. That an employee is entitled to be put squarely on notice that his or her job is at risk and in what circumstances employment would be terminated. I'd like you to have a look at this. This is what Mr Wilcox actually says, he says it a bit differently.

40 A. Well, I didn't look the case up I must say, but I think I've got the general-

45 APPLICANT: Would you like a copy, Commissioner, or-?

COMMISSIONER: Do you want me to see it?

50 APPLICANT: Q. See, what he actually says there, "to be satisfied it would have to be necessary for the respondent to determine what aspects of Mr Nicholson's contact or performance were such as to justify possible dismissal and put these matters squarely to them under circumstances where he had a fair opportunity to defend himself". Do you think I had a fair opportunity to defend myself: 1. when you're ringing me up as a lawyer; 2. you sent a warning letter saying show up and answer the charges of extortion. Do you think that's what Mr Wilcox was getting at under circumstances where he had a fair opportunity to

defend himself?

A. Precisely correct.

5 Q. Because I had a lawyer, you said I could have a lawyer for him, that was fair.

10 A. No, just let me answer your question. See when I called you up you didn't have to do what you did. You had a choice. I didn't know whether you were going to go on with it or whether by me saying what I said was going to pull you up. I, in fact, thought probably it would pull you up because I told you in no uncertain terms that you should contact the authorities if you had a complaint--

15 Q. And I get charged with extortion, that's right.

A. No, no, I didn't say extortion. I said to you, "If you bag the company to its clients you might be liable in defamation". I said that to you because that's true.

20 Q. No, you said you would charge me with defamation.

25 A. No, no, no, I didn't say, I don't know what you're going to say, it depends what you say. But if you're going to ring up the company's customers and bag the company to those customers you might be liable in defamation. So I said that to you. I also raised the issue with you that the company had suggested to me that what you were really doing with this thing was trying to create a situation where you and the company don't get on and how about a payout. Now--

30 Q. Now who told me I asked for a payout?

35 A. Well, I was told by Gabrielle Badman, as I've said in my affidavit, that they were initial instructions. The company was suspicious that you were doing this just to make a dispute out of not much with a view to suggesting that if they didn't pay you out you'd sue them in unfair dismissal. That was something that I was told.

40 Q. You sound like a poet. Who actually said I was asking for a payout?

A. Gabrielle Badman.

45 Q. She told you that. And what evidence did she say she had in relation to that?

50 A. Well she didn't say, she just said, as I've said in my affidavit, he has suggested that "we don't get on", they were direct words she used to me, or direct words that she was quoting that you said to her, "How about a payout?" And she said to me, basically he is threatening us with a campaign of nasty letters unless we give him a payout. Now that's what I'm being told. So I'm proceeding on that basis and I'm telling you not to do it. Now you didn't have to do it. If you had not done what you did the following Sunday you would have still had a job. You chose to do it. So getting back to your question about 55 Justice Wilcox, he's talking about a fair opportunity to defend, you had a fair opportunity not to do what you did.

Q. No, no, no, I had a fair opportunity to defend. You

threaten me with extortion in the letter which you wrote an hour after the conversation we had, but then you put blackmail in your letter to my lawyer--

A. Yes, I did.

5

Q. --and extortion - the company had extortion in their letter which you by and large drafted, but you didn't say extortion or blackmail on the phone an hour earlier?

A. I did say that to you.

10

Q. Extortion?

A. I said to you, you can't - something like, I think I've got it here or perhaps I haven't, but something like apropos of what I've just said about the company suspecting that you were making a dispute with a view to getting money out of them, I said to you something like, "You can't just manufacture a dispute with a view to extorting money out of the company". Certainly I said something like that to you, yes.

20

Q. So you used the word "extortion", "defamation", "sacking"--

A. Yes, that's right.

25

Q. --in the entire conversation. If you have a look at the top part of this page here where I've got it circled on the page I gave you, it says there, "section 170DC carries into Australian labour law a fundamental component and a concept known to lawyers as natural justice or more recently procedural fairness".

30

A. Yes.

Q. "The relevant principle is that a person should not exercise legal power over another to that person's disadvantage for a reason personal to him or her without first affording the affected person an opportunity to present their case". Now when a company gets a lawyer to ring an employee they're exercising legal power, are they not?

35

A. Yes, they are.

40

Q. And Mr Wilcox says you shouldn't do that?

A. No, that's not what he says at all.

45

Q. "A person should not exercise legal power over another"?

A. But he's using those words in the context of sacking someone. You weren't being sacked when I rang you up.

50

Q. You rang up and threatened me with the sack, did you not?

A. To put you on notice.

Q. No, to threaten me with the sack?

55

A. Well, I don't know about threatening, you're mincing words, but to tell you what would happen if you did what you did.

Q. The company was using legal power to ring me up and intimidate me. Mr Wilcox says you should not do that.

A. Well that's your paraphrasing, which I don't agree with.

5

Q. Well, it's Mr Wilcox' paraphrasing not mine.

A. Well he's talking about something completely different there.

10

Q. No, he's not--

BORS: I don't think it's going to assist us if we have a debate between witness and cross-examiner as to what Wilcox J meant in the choice of word "A person should not exercise legal power over another".

15

APPLICANT: Legal power is pretty simple, Commissioner. You know, if a company gets a lawyer to ring someone up--

20

COMMISSIONER: I don't want to debate the point.

APPLICANT: Q. See, to me you've misquoted him. Do you think you've misquoted Mr Wilcox?

A. I don't.

25

Q. But you left out the part in your statement under circumstances where he had a fair opportunity to defend himself. Where was I given the fair opportunity to defend myself?

30

A. Well you didn't have to do what you did.

Q. No, I said where was I given the fair opportunity to defend myself?

A. That is your opportunity, not to do what you were told not to do.

35

Q. No, no, no, where was the opportunity to defend myself, defend myself, that's plain English?

A. Yes, but you see what Wilcox J is talking about is a case where the dismissal has already happened that he's talking about here.

40

Q. No, no, no. I've asked you a question, where was the fair and reasonable opportunity to defend myself, where was it, Mr Hassatt? Tell me where it was. Where was the fair and reasonable opportunity. To show up to Cardcall and answer the charges of extortion with my lawyer, is that where it was?

45

A. Well, you didn't have to do what you did.

50

Q. No, no, no, I'm asking you where was the fair opportunity to defend myself?

BORS: That's the fourth time the question has been asked.

55

APPLICANT: He keeps on ducking and weaving the questions.

BORS: It's been answered--

APPLICANT: It has not been answered.

5 BORS: --in the same terms each time. Mr Hassatt said, "You did not have to do what you did". And he said the purpose of his call was to put Mr Dowling on notice that if he did do what he--

10 COMMISSIONER: Yes, I understand all of that. Or are you just objecting to the fact that--

BORS: I'm just objecting to the fact that the question has now been asked for the fourth time.

15 APPLICANT: And for the fourth time he refuses to answer.

COMMISSIONER: Well, Mr Dowling, the question is being answered.

20 APPLICANT: Yes, well I suppose it is, Commissioner, and I'll have to accept that.

25 COMMISSIONER: I suppose you could keep asking it until you think maybe you got the answer you wanted, but it's probably very unlikely.

APPLICANT: No, I appreciate that, Commissioner, and I'll move on. I appreciate that. I have to accept the answer I'm given.

30 Q. Now in your statement you say, "It seemed to me that this email supported the contention that there was no health risk in the flags". Now I'll give you a copy of that if you haven't got a copy. This email Queensland Commerce and Sally Garner. Have you got a copy of that or
35 would you like one?

A. Is that the industrial chemist's?

Q. Whose statement is that?

40 A. I've only got Gabrielle Badman's here.

Q. Yeah, Gabrielle Badman, that's the one, I'll hand you mine.

45 A. Is that on a page number you can give me, is it page 20, annexure G?

Q. That sounds right, by memory.

BORS: Annexure G to Gabrielle Badman's statement.

50 WITNESS: Yes, I've got that.

APPLICANT: Q. Now how do you, you do understand what perjury is, don't you, Mr Hassatt?

55 A. Thank you, I do.

Q. That's good. Now how do you come to the conclusion that it says they're safe? Where's it say they're safe?

A. "It seemed to me that this email supported the

contention there was no health risk in the flags". That's what I said in my evidence. Now looking at paragraph 1 it begins by saying, "Go Talk should instruct all sales executives transporting these flags to ensure they are transported in airtight containers". Now if an industrial chemist is saying transport them in airtight containers, giving them a methodology by which the flags can be transported and it seems to me that if they're a health risk the chemist wouldn't be saying something like that. Then he goes on to say a whole lot of things and he talks--

Q. So you dispute the chemist?

A. No, no, I agree with the--

BORS: Give him an opportunity to answer.

WITNESS: I'm interpreting what I thought the chemist was saying. So I got the impression from paragraph 1 that they were okay to transport as long as they were in airtight containers and I think a little further on, maybe over the page, there's something about they become slimy, something about the word slimy. I can't find it exactly, it rings a bell, maybe it's not there. Here it is, "If on the other hand, the flags are slimy then an appropriate action might be to cease to distribute these flags". I don't know that the flags were slimy and it seemed to me that what the man is saying here, in toto, is that there's no real health risk in the flags. That's the interpretation I've drawn from this communication.

APPLICANT: Q. Jesus. Are you embarrassed sitting there saying that?

A. No, moreover--

Q. Unbelievable.

A. --I would add that I'd also seen your materials, your redocs reports which I didn't think carried with it what you said it did. It was a generalised sort of document - wherever that is, I don't necessary have it - but I--

Q. So you dispute that redocs report, do you?

A. No, but I just don't draw the same conclusions from it that you do.

Q. You can't read English?

A. Well, that's your view. I mean this talks about being swallowed and inhaled and stuff. I just don't think this - and didn't think at the time, so I had two pieces of paper, I had your redocs--

Q. And you had my lab report too?

A. I might have.

Q. Well you did.

A. Well I didn't think - this is the armtrade? Yes, I had that. I didn't draw the conclusions from this material that you'd put up that you were suggesting.

Q. I had a lab report. Now--

A. I think I saw the armtrade and the redocs.

5 Q. See, Ross Hanson in this email he disputes the level
of toxicity, he says they quite possibly aren't
1530 milligrams. He disputes it but he never has the lab
report. He sends you this email on the Wednesday, on the
10 Thursday when you have this email you also get my lab
report that confirms that it's 1530 milligrams. You have
both--

A. I didn't have your lab report. What lab report?
Where's your lab report?

15 Q. See Ms Badman there admits sending it to you, the lab
report and in my warning letter that afternoon on Thursday
the 12th you mention, "We're aware of your reports, your
lab reports".

A. Well, show me your lab report and I might remember it.
20 I didn't think it - if I saw it - contained what you said
either.

Q. Did you ring up to check?

A. No, I didn't check it out, I can take the company's
25 word for it. The company's saying things and I'm
accepting what they say.

Q. Who in the company was saying they're safe?

A. Well, Gabrielle Badman. She said to me, as I said in
30 my statement, "We don't think they're toxic" or words to
that effect.

BORS: What are you showing him?

35 APPLICANT: My lab report. Do you want to know the
number?

BORS: The Packaging Inks report?

40 APPLICANT: Yes.

BORS: Okay.

WITNESS: Yes, I did have this, you're right.

45 APPLICANT: Q. Yes, you did have it. So you had an
expert--

COMMISSIONER: Where do I find that?

50 BORS: It's annexure I to his statement.

APPLICANT: Is it my statement?

55 BORS: Yes, your statement. Annexure I, Commissioner.

APPLICANT: That's my lab report, Commissioner.

Q. Now you had the lab report, you had an expert,

Mr Hanson, you decided you know more than Mr Hanson, you decided the flags were safe.

A. No, I didn't. I decided that this lab report doesn't make out what you're suggesting it makes out.

5

Q. Well it says they're 1530 milligrams per square mil.

A. Well you've got ideas about what that means. Does that mean the flags are dangerous? Where's it say that means the flags are dangerous?

10

Q. Mm?

A. Where's it say--

15

Q. No, you had the lab report with you, that advice you had from Mr Hanson and you've got rock solid evidence to act. If you are competent you would act. You've got rock solid evidence. You don't need anything else. Mr Hanson never had the lab report, that's why he questioned my lab report. The next day you had the lab report, Sally Garner refused to send the lab report to him.

20

A. Well I know nothing about that. What I have seen I don't think makes out what you're suggesting and didn't think so at the time. That's all I can tell you.

25

Q. Hey?

A. That's my answer.

30

Q. Now you know the solicitors laws, you know solicitors rules, number 31 and 34 you breached both, you're fully aware of that, are you not?

BORS: Well I object to that. The question is, "You've breached solicitors rules 31 and 32, do you agree with that?"

35

APPLICANT: 34.

40

BORS: Sorry, "31 and 34, do you agree with that?" It can't be put in those terms, and certainly not in this forum.

APPLICANT: He's a lawyer, Commissioner, he can handle himself well and truly.

45

BORS: If we get to a position where that might be a question that can be put it's a couple of questions down the line. In any event, I don't quite see how it relates to any of the issues before the Commission today.

50

APPLICANT: Well it does, Commissioner, he shouldn't have rung me when he did ring me. Solicitors rule 31 states specifically, "A solicitor should not ring a client directly when they know that that person has a solicitor representing them". Now Mr Hassatt will be dealing with the legal commission in relation to this, but it is relevant to here.

55

COMMISSIONER: How is it?

5 APPLICANT: Well, it is blatant perjury by Mr Hassatt. In his statement he says specifically that he rings me and he does not find out until later that I had a solicitor representing me. Ms Badman admitted that she had sent him my lawyer's letter on the 11th. He rang me on the 12th. He knew I had a lawyer, Commissioner. He knew, he's blatantly lying in his statement.

10 COMMISSIONER: I think there's some capacity for you to pursue this, but I think you've got to pursue it a little more methodically and carefully.

15 APPLICANT: It's been a long day, Commissioner, I'm pretty tired.

COMMISSIONER: We had a late start, as I recall it, at your convenience.

20 APPLICANT: No, not at my convenience, at theirs, Commissioner.

BORS: No, it was at our convenience, we had interstate witnesses.

25 COMMISSIONER: At the parties' convenience.

APPLICANT: I've done everything I can to expediate(sic)-

30 Q. Ms Badman said she sent you a lawyer's letter and the reply on 11 May. So you were aware that I had a lawyer on 11 May?

A. I was not.

35 Q. Well Ms Badman said she sent it to you?

A. Well, I didn't have, I was unaware of your lawyer until you told me about your lawyer and then I said to you, "Do you want me to talk to your lawyer?" You might recall and you said, "What are you trying to do, run up legal bills?" This was the sort of hostility you gave to me when I suggested I talk to your lawyer. And then I was the one that said to you, "If you've got a lawyer, I shouldn't be talking to you, I should be talking to your lawyer". So you've hoisted that in and now you've turned it around in the way that you have. But the fact was I said to you, "If you want me to talk to your lawyer I will" and you said, "No, I'm going to handle this", so I kept going with you. But I did say at the end of my conversation, "You should listen to your solicitor" and for that reason, if for none other, I wrote to your solicitor to tell him - I prefer to deal with the solicitor frankly than the client - for reasons that are probably obvious to you - I told him what I told you in my letter to him. I certainly didn't know that Russell Shields had had correspondence, I never saw that letter.

55

Q. I asked Ms Badman, I specifically asked her that question were you - sorry, I'm making a statement again. Now it took you 24 and a half minutes to let me know that

my job is in jeopardy?

A. I think it was about that because we went round and round the subject quite a few times.

5 Q. Because you were trying to threaten and intimidate me, weren't you, your own admission, you used the words "extortion", "defamation", "sacking"?

10 A. Well I used the words I used in the manner that I've described, I used the word "defamation" in connection with you bagging the company to its customers. I used the word "extortion" in relation to the prospect, and I don't say you did it, but had you not done what you did on the Sunday I foreshadowed to your lawyer that there was going to be a meeting at which it was going to be raised as to whether you had manufactured this dispute with a view to getting the company to pay you money under the guise of a, you know, we don't get on/unfair dismissal, and there was going to be a meeting about that and that aspect was going to be explored. Well that's what I said to your lawyer and that's what I proposed. That's what the company proposed.

25 Q. The warning letter that the company sent me says, "We want you to show up to answer the charges of extortion", that's basically what it says.

A. Well if you show me the letter.

30 Q. We perceive this to be extortion, we want you to show up to answer the charges with your lawyer if you wish. That's what it said to me?

A. Well if you show me the letter, I'm not sure that it does say that.

35 BORS: Annexure H to Gabrielle Badman's statement.

40 WITNESS: Yes, now this was an email which Gabrielle Badman put some parts of it together and sent it to me and I made some amendments and sent it back to her, including the words "prohibited", that was one of my entries and I put it in capitals so as she would get the message.

45 APPLICANT: Q. And "extortion"?

A. Now let's have a look where extortion is, I don't see that straight off. What paragraph are we talking about?

Q. It'd be down the bottom there somewhere.

50 COMMISSIONER: It's in the second last paragraph, and I don't think you would have contributed to this because it's a strange use of words "wrongfully extort", so that contemplates a legitimate extortion.

WITNESS: Quite right, that was her efforts.

55 APPLICANT: No, Commissioner, I'm pretty sure he wrote it a hundred percent.

WITNESS: No, I did not. She said--

COMMISSIONER: I don't think a lawyer that was looking at that carefully would ever write that, Mr Dowling.

5 APPLICANT: Commissioner, in my termination letter he says I was sacked for warning the customers in the retails of health dangers.

10 Q. Did you not? That's my termination letter, that's why I was sacked for warning people of the health dangers. You think that's a good reason to sack a person, Mr Hassatt?

A. Well that's your gloss on it.

15 Q. It's not my gloss, that's verbatim in your termination letter?

A. That's what I--

Q. That's what you wrote to my lawyer.

20 A. Where's that letter? I don't have a copy of that in front of me.

COMMISSIONER: I think it also is O at Badman--

25 WITNESS: O, did you say. That's her letter, I think. I think I also wrote to his solicitor.

30 APPLICANT: Q. I think they might have left it out of theirs but I'll give you a copy. No, I think it was deliberately left out. That's your letter. It says, "In the letter we pointed out to your client had been warned in writing" these are your words "that if he makes any further comment to the retailers or employees regarding health risks posed by the flags", not supposedly posed or wrongly or incorrectly posed by the flags or anything like that. It says "health risks posed by the flags, his employment will be summarily terminated".

35 A. Precisely correct.

40 Q. And you didn't want the retailers to know the health risks posed by the flags, did you not, and that's why I was sacked?

A. Incorrect. Totally incorrect.

45 Q. That's what it says there, you didn't want them to know so you sacked me.

50 A. Mr Dowling, what I think you have not absorbed even at this late date, is that this is about you doing what the company told you not to do. You could have gone to the authorities with your complaint. I urged you to do it. In our 24 minute conversation I must have said it to you several times, "If you've got a problem go to the proper authorities. They've got investigators, they chase down these kind of things. They form conclusions based on scientific evidence" and I recommended that you pursue that route on numerous occasions. But I don't know why you were reluctant to do that. I don't know why, but anyway you decided not to. So then I told you "The company don't agree with you about the flags and if you go

on with this your employment will be summarily terminated". I said that to you over and over. Now you chose to do what the company prohibited, which I put in capitals for you, you chose to do that. Whether the
5 company is right or wrong ultimately to my mind doesn't matter. The point is they've given you a direction, you're an employee, master/servant relationship, they've given you a direction--

10 Q. Master/servant relationship, is it?

A. That's what it is in all--

Q. Yes. Yes.

15 A. Well, if you've got a problem with that then have a look at the case law. But employment is master/servant, they tell you what to do. If you want to go against, if you want to defy them, which is what you did, you will suffer summary termination. Now this is what I told you over and over. I wrote it to your lawyer, I wrote it
20 there. I say you knew what was going to happen to you but what you wanted to do was have your say and that's brought down these consequences.

25 Q. And I couldn't have my say, that's exactly right. You didn't want me to have my say, did you?

30 A. Well we didn't agree. There's a way of doing things and the right way to do things was, as I told you over and over, go to the authorities. The wrong way to do things was to leap to conclusions based on what I consider to be your own flimsy evidence and run out and make a lot of accusations about Mr Picton deliberately endangering the health of employees etcetera, etcetera.

35 Q. Well that's been proven to be true, has it not?

A. Well I don't think it has.

Q. Well action has been taken by the company, action they should have taken back in May.

40 A. Well, I have no knowledge--

Q. Action you advised the company not to take, is that not right?

A. I advised them to do nothing about the--

45 Q. Flags, yes.

A. It's up to them what they do about the flags, they have their chemists and reports and--

50 Q. But you're a lawyer, you would have advised them, this is an occupational health and safety problem, you need to have it fully investigated. Did you advise them of that?

A. Yes, I did.

Q. And what did you say about them not doing it?

55 A. Well I don't know that they didn't do it, I thought they did do it.

Q. Then they sat on the evidence.

A. Well I don't know, you put something, I don't know--

Q. Sat on the evidence since May.

A. Beg your pardon?

5

Q. The evidence that's been used to direct them to take action was back there in May.

A. Well that's what you think.

10 BORS: Which evidence, which evidence are we talking about?

APPLICANT: The evidence the Commission has used to issue interim orders. That evidence was all there in May.

15

BORS: Which evidence? I think in fairness to Mr Hassatt if Mr Dowling is saying that he should have done something based on certain evidence he has to identify what the evidence was.

20

APPLICANT: The letter that Mr Hassatt here is sitting there saying that says the flags are safe. My lab report, the company's lab report which was done by William Gore. William Gore's lab report, which you would have been fully aware of, I'm sure. On the day I was sacked you directed the company, you said, look, we should go get a lab report just to cover our rear ends, did you not?

25

A. No.

30 Q. Flags were sent on the day I was sacked to get a lab report done.

A. This is a letter written the 19th, so as I understand it they were initially dealing with this fellow who sent me the email, the inspector--

35

Q. No, that's not, this is a different person.

A. It's a different person, but as I understand it, that particular company doesn't do reports or get involved in litigation or whatever their practices are. I mean Ross Hanson this guy who sent this, he's given his opinion but if he doesn't want to be involved in the Court case no-one can force him to, we can subpoena him I suppose, but the fact was that I don't think he wanted to be involved in these proceedings--

45

Q. No, no, no, well he didn't know because I rang and I spoke to the guy who assisted him, that's his name on there, you never took the lab reports back to him because you did not want to get the directions to take action on the flags, is that not right?

50

A. Sorry?

Q. You didn't take the lab reports back to him - they asked you to go get a lab report done, which you did on the day I got sacked, but you never took the lab reports back to him - your lab report or my lab report.

55

A. I can't understand your question. Are you saying I should have done this sort of stuff?

Q. Well you should have given the company advice, you're a lawyer, you've been brought in to advise on all of these - my termination.

5 A. Not so. Look, I'm given a number of documents which, as I've said, I don't think add up to what you're suggesting. The company's documents seem to be coming from the other direction. Firstly there was Mr Hanson and then they've got this fellow, Mr Gore, who I understand has given evidence in these proceedings. I don't know
10 what evidence he's given.

Q. He backed me up by and large, I believe.

15 A. Well good, that's good luck to you. But I don't know what he said in this Commission, but he's given this report which, as I understand it, suggests that there's no danger in the flags.

Q. Unbelievable how you can sit there and say that.

20 A. Well let's have a look at it, I'll give you some--

Q. But you're an expert, why didn't you ring him and ask him if you're going to - why didn't you just jump on the phone, it's got his phone number on that email. You could have just jumped straight on the phone and ask him. But
25 you decided to make the decision yourself, did you not?

A. Well I think he's saying in here, if you read his report that the concentrations required to be dangerous are not present in the flags. Isn't that what he's saying?
30

Q. Well what's he saying?

35 A. Well in his diagram - I mean this is just my reading of it, it's probably completely irrelevant - but page 2 it seems to me he's talking about concentrations of chemicals in the flags--

40 Q. No, no, no, you're talking about the wrong page, the wrong thing. The email that you purport that says the flags are safe from Queensland Commerce or Commerce Queensland?

A. This one here? That's what I had at the time I called you, of course I didn't have that then.

45 Q. And you had my lab report but?

A. Yeah, I had your lab report.

50 Q. Ms Badman said. You had something that said if they're 1530 milligrams take immediate action. You had a lab report that said they had 1530 milligrams. Based on the fact you had no other evidence, you should have taken action, should you have not?

A. Well, no.

55 Q. Because you just do what you want?

A. No, why is he--

Q. Employee/master relationship, is that why?

A. I think your question is - I don't even understand

your question.

5 Q. Just amazing. Now you signed off on my warning letter, you by and large drafted it, based on your statement, the warning letter I was sent on 12 May. It's got extortion on there. Extortion, "show up to answer the charge of extortion". You're a lawyer, where do you show up to answer the charges of extortion, Mr Hassatt, where do you show up to do that?

10 A. Are we talking about the 12th, we're talking about Ms Badman's letter are we, that we had a look at a moment ago. Is that what you're talking about?

15 Q. You'd be fairly conversant with this letter, Mr Hassatt?

A. This is the one that the Commissioner referred to about wrongfully extort money?

20 Q. Yes.

A. Yes. They were not my words, no, they were Ms Badman's words.

Q. But you signed off on it?

25 A. I didn't sign off on it. You can see it says, "Yours"--

Q. No, you signed off on it, you said you approved it, did you not?

30 A. I inserted a few bits and pieces.

Q. But you sent it back to them saying it was fine?

A. That's right.

Q. So you approved it?

35 A. Well I let them say things in their own words, basically. I left alone as an attempt to--

Q. Well I put it to you you actually wrote it, Mrs Badman--

40

BORS: Can he let Mr Hassatt answer the question otherwise there's no point.

45 WITNESS: I did not write it, I wrote some of it. If you'd like me to tell you which parts I wrote from my memory I can look through it.

50 Q. No, I don't want you to do that. I just want you to say how - as a solicitor you know the power of words, you do training at university in relation to the power of words, do you not? You've used the word "extortion", "charges", "with your solicitor" the same paragraph, is it not?

55 A. Well I think a lay person has probably pretty accurately described what you were doing actually in that paragraph. She has reached the conclusion that you are making trouble with customers while simultaneously asking for a severance payment as an attempt to wrongfully extort

money from the company.

Q. Where's the evidence for that, there is no evidence?

A. She--

5

Q. The evidence of two people committing perjury, that's it.

A. She has reached that conclusion - well, I'll answer your questions one at a time. She has reached that conclusion that that's what you're doing, without any help from me.

10

Q. No, no, no, Mr Hassatt, what I'm asking is you've used the words "extortion", "charges" and "show up with a solicitor", that was written to intimidate, was it not? You've signed off on it, you're a solicitor, you know the power of words. You've written that to intimidate me. You've used extortion, by your own admission, in a telephone conversation we had an hour before, you used "defamation", "extortion", "charges"?

15

20

A. Yes. Well, Mr Dowling you--

Q. "Termination". You've put in that letter "show up and", put it in a letter and all that--

25

A. If you do things such as defame a company to its customers you're answerable in law for the consequences of your actions. Simple.

Q. Well given the fact that you've taken no action, your acknowledge of the law is pretty ordinary, wouldn't you say?

30

A. Actually not. I have asked the company about the comments you've made and they tell me that even though they were defamatory, nobody has taken any notice of them. So it's all just a storm in a teacup.

35

Q. They can be proven in five seconds and you know that, don't you?

A. Well, I'm just telling you what my instructions are as to why--

40

Q. Mr Picton, the company, the managers I mean not the company, Mr Picton, Russell Shields, you're a lawyer, they've all acted in a negligent manner by not investigating my complaints, have they not?

45

A. No.

Q. They haven't?

A. No.

50

Q. I complained December last year, Russell Shields admitted that Richard Iso complained the flags made him sick for half an hour, he had to go outside, didn't investigate. I sent an email to Mr Picton and 30 odd staff, didn't investigate. Are they not negligent?

55

A. No.

Q. My lawyer sent a letter on 28 April, Russell Shields

replied saying the flags are safe. He said Mr Picton told him the flags were safe, you don't know how he come to that conclusion, but he told them they were safe, Mr Picton and Russell Shields were both being negligent, were they not?

5

A. No.

Q. Why not, they didn't investigate?

A. They had reached the conclusion--

10

Q. How did they reach the conclusion?

A. Well, it seems they're talking to some sort of chemists.

15

Q. No, no, that's in May, this is April, this is December last year. December last year I complained to Russell--

A. I can't tell you how they've reached their conclusions. I don't know how they've reached their conclusions, but they've reached their conclusions.

20

Q. Well there's no evidence here to back it up when they were saying it?

A. They don't have to prove their conclusions.

25

Q. They don't have to prove them?

A. That's right--

Q. They have no legal obligation to investigate if people make a complaint, do they?

30

A. They may take a view about a lot of issues. They've obviously taken the view in this case that you, the complainant, are making trouble while looking to get some money from the company. That's obviously the view they've taken.

35

Q. And that's backed up with what?

A. Well--

Q. With what, give us evidence?

40

A. Well Gabrielle Badman said it in the letter to you on 12 May you keep coming back to.

Q. She says Russell - she actually quotes, well not quotes, but she's specific in me swearing at Russell Shields, she quotes Russell Shields' name, but when it comes to extortion she does not quote anyone. She doesn't say Mr Picton or Russell Shields, just no-one. The truth be known you wrote that letter, you were bragging probably to Mr Picton how you could threaten and intimidate me, were you not?

50

A. No.

Q. You stuck it in there, that's why you've shown up today, you've got to take the heat on that letter. You're trying to finger Ms Badman now, are you not?

55

A. I'm trying to what?

Q. Finger her.

BORS: What does that mean?

WITNESS: Yes, I don't follow.

5 APPLICANT: Q. Point the finger at, I've said it many a times today. If you finger someone you point the finger at them.

A. I can't respond to the question.

10 Q. No, don't worry about. So you take no responsibility for anything. How come they came to you to determine my termination? Why would they come to you?

A. I'm the company solicitor.

15 Q. How long have you been the company solicitor?

A. Some years.

Q. How many years?

A. About three.

20

Q. That's different to the answer Mr Picton gave.

A. I don't know what he said, but from my memory the first case I did for them was maybe, it was a Federal court case involving Green Communications which I think was 2002, late 2002, early 2002, something of that order.

25

Q. Green Communications 2002, what was that about?

A. That was a--

30 BORS: I object. I can't see how it's relevant.

APPLICANT: Well where I work and what I make isn't irrelevant--

35 BORS: And if we're going to be going down this line on every answer then we're going to be here another two days.

40 APPLICANT: The reason I ask some of these questions, Commissioner, is because I asked Russell Shields, he said other people had to fill in this new daily report, he said a lot of them do. And I said, "Well, okay, who?" And he said, "A lot". He said, "Well, why do I have to answer that question, why is that important?" And then when he finally spits out the answer he names one other rep, because they're blatantly lying.

45

50 COMMISSIONER: Well, Mr Dowling, I'm prepared to give a bit of latitude if I think that this is an endeavour to test something. But really other court cases involving litigation in the Federal court with the company many years ago and the length of time that Mr Hassatt's been the company solicitor, I just don't see the relevance of any of that.

55 APPLICANT: Well, there probably isn't any, but I think it's highly likely Mr Hassatt's probably never done any work for the company. He's been called in as a specialist to deal with this situation to threaten and intimidate me.

No-one else would take on the role.

COMMISSIONER: Well, we're getting into submissions again. I suppose you'd need to find some evidence for that.

5

APPLICANT: And that's why I was asking the question, Commissioner.

COMMISSIONER: I suppose-

10

WITNESS: Well if you'd like to check the Federal court registry in the case of Green Communications and Karabasis which involved the Telecorp Group I think you'll find it bears either a 2002 or a 2003 date and it was before, amongst other justices, Justice Lindgren, before whom I appeared at least two years ago and I've done a lot of matters for Cardcall since then, not just that one and not just industrial, all sorts of contract matters. The general run of general practice type matters. I must have billed them for at least 15 different matters. The concept that I was brought in specifically to deal with or terrorise you is completely--

15

20

APPLICANT: Q. To terrorise me, yes, exactly right?

25

A. --is completely ridiculous.

Q. See, I had Ms Garner in here, she's the company's Occupational Health and Safety Officer. She's the one who determines on behalf of the company whether something is safe or not safe and she said that email from Queensland Commerce there's no way in the world that you could determine the flags were safe based on that, because that is just based on emails. His opinion is based on my email. There's no way in the world you could come to that conclusion, that's what Ms Garner - she's got the authority for the company to determine whether something's safe or not, why didn't you ring her and get her opinion? It's not for you to make that opinion, is it, it's for her to make the opinion?

30

35

A. Well, if you read my statement I received my instructions from Gabrielle Badman and she said that you've got the idea that the flags are a health risk and then she says, but the flags are not a health risk. Now they are my instructions.

40

45

Q. No, no, no, so your instructions say they're safe and your instructions are to come here commit perjury and say that email says they're safe. So you're taking instructions, your instruction was to say that the email says they're safe, that's what you just said.

50

A. No, I was talking about paragraph 2 of my statement, a phone call from Gabrielle Badman in which she says, opening lines--

55

Q. But that's not what the question is?

A. --"Shane Dowling has got the idea that some flags we are using are a health risk. The flags are not a health risk".

- Q. That's not what the question was about. The question, you've come to the conclusion that they're safe based on that email, that's what it says in your statement. It seems to pertain to the same. You could have easily rung Sally Garner and said, "Sally, you're the person who determines whether something is safe or not on behalf of the company, are the flags safe?" You never did that?
- 5 A. No, I didn't.
- 10 Q. And she would have told you, "Well, you can't come to that conclusion"--
- A. That's your speculation. I don't know what she--
- 15 Q. Well, she said it in the stand, she said it in the stand, the witness stand. She said, "How can you possibly come to that conclusion because his advice is based on emails".
- A. It's my usual practice to take instructions from one member of the company and I don't usually go behind any of my clients to other members of the company to say is what I'm being told correct, usually.
- 20 Q. Well you should, you should have gone straight to the Occupational Health and Safety Officer?
- 25 A. Thank you for your suggestion. Yes, well thank you for your suggestion but I don't see the need to, in general terms, go to other members of the same company to--
- 30 Q. Gabrielle Badman said you were dealing with a number of people there?
- A. Well--
- 35 Q. She said you were dealing with a number of people, that's what she said. So now you're saying you only dealt with one, Gabrielle Badman. Gabrielle Badman said you were talking to everyone.
- A. No, I dealt with her on this issue, primarily.
- 40 Q. No, she said in relation to this issue you were dealing with a lot of people.
- A. Well, I don't recall any conversations--
- 45 Q. Is Ms Badman lying, is she?
- A. I don't know what she said. I don't recall speaking to Sally Garner about this issue.
- 50 Q. The company has taken action on the flags now, do you still say the flags are safe?
- A. Yes.
- Q. They are, are they?
- A. As far as I'm aware they are.
- 55 Q. And how did you come to that conclusion?
- A. I haven't looked at this since the events of May when I had your material which I didn't think, as I've said, made out the case you thought it did and I had the

5 industrial chemist's email which seemed to me to suggest they were safe. And since then the only thing I've seen is this William Gore's statement, which I had a brief look at because I'm not running this case, I'm a witness in this case and it doesn't seem to make out what you're suggesting either, so-

10 Q. You're the witness, you're not running the case. Your evidence was late being submitted. I rung your office, I spoke to Linda Reid there. I said, "Ms Reid, you haven't submitted your evidence", something to that effect, she said, "Hold on a minute", next thing I know you're on the phone. Why were you on the phone, you're a witness, you're not running the case, why were you on the phone, 15 you shouldn't have been even speaking to me as a witness, should you not?

A. Well I only spoke to you that once that was back in May.

20 Q. No, this is June, July?

A. After the statements--

Q. Your statements were late.

25 A. That's right, you did ring--

Q. I asked Ms Reid--

A. That's right, I did speak to you, yes, I said, "Well, sometimes you're a day or two late", something like that, was that what it was about?

30 Q. Then you said, "I'm actually a witness". Why would Ms Reid even put me through to you?

A. Well I'm the principal of the firm, I'd assume you wanted to speak to me.

35 Q. But you're a witness, you're a witness, you shouldn't even be talking to me.

A. Well I'm not running the case, am I?

40 Q. I should have been put through to the person who was running the case. You are running that case, of course you are. Who is running the case, tell me their name?

A. Mr Bors and Ms Reid.

45 Q. Mr Bors, Ms Reid's not a registered lawyer in New South Wales, I know that.

A. She works in my firm and you don't even have to be to be in this industrial game.

50 Q. Ms Reid takes directions off you, does she not?

A. Yes, she does.

COMMISSIONER: What's the purpose of all of this, Mr Dowling?

55 APPLICANT: What's that?

COMMISSIONER: What's the purpose of all this, how's this

going to help me decide whether you were unfairly dismissed or not?

5 APPLICANT: I don't know, I'm getting tired, Commissioner, that's the only excuse I've got.

10 COMMISSIONER: I just don't know how it can possibly help me to decide whether you've been unfairly dismissed or not.

APPLICANT: One last point I want to get to, Commissioner, is--

15 COMMISSIONER: Please don't start another statement.

APPLICANT: No, no. Well I'll ask him the questions and bring it out that way.

20 COMMISSIONER: This is the time when you ask witnesses questions.

APPLICANT: Q. Ms Reid showed up at the conciliation meeting on June 10th. There was no notice to appear. Why was that?

25 A. No notice to appear?

Q. Yeah, that's what solicitors are meant to file if they're going to represent the company.

30 A. Notice of appearance?

Q. Yeah, notice of appearance, yes.

A. I don't know when the notice of appearance was filed in this. I assume it was filed at some early stage.

35 Q. I put it to you that I spoke to WorkCover on June 8th, Wednesday, June 10th is when the conciliation meeting was - I spoke to an inspector there, they were finally getting around to actually doing something in relation to my complaint. She said she was going to start ringing
40 on June 9th or June 10th. They made the phone calls, you got wind of it and you rushed Ms Reid in--

BORS: What is this about?

45 COMMISSIONER: I don't know what this is about.

APPLICANT: Well the purpose is they were going to settle on June 10th, Commissioner, they were going to settle then.

50 WITNESS: You must be joking, we're not going to settle.

APPLICANT: They were going to settle on June 10th, they got wind of WorkCover investigating, they've rushed Ms Reid in there, that's why there was no notice to
55 appear.

WITNESS: Why have we rushed Ms Reid in?

COMMISSIONER: What's this got to do with your unfair dismissal? Anything at all?

5 APPLICANT: The only reason we're here today, Commissioner, is because they found out WorkCover were investigating, there was a big façade, charade to put to WorkCover, hey, we really believed these flags were safe, that's why they're fighting it.

10 WITNESS: You're entirely incorrect. I told you in our phone call which I've put in my statement, that if you're threatening Cardcall with unfair dismissal proceedings I have to tell you I think you'll fail. I said that to you in that first conversation--

15 APPLICANT: Q. No, you didn't. What you actually said to me, and I'll put it to you, you actually said to me, "I guess we'll see each other in the industrial relations court?"

20 A. No, not so.

Q. That's exactly what you said to me.

25 A. I told you, forgive me for saying so, Commissioner, I told you if you brought a wrongful dismissal action you'd fail. We were never going to settle with you, there was going to be no settlement. Never at any stage did I contemplate settling with you about this matter.

30 Q. Just one last question, I'll let you get going then. Given that you're sitting there purporting that Queensland Commerce email says they're safe, how do you do that, how do you sit there and sit there and just commit blatant perjury in my eyes?

35 BORS: I object.

APPLICANT: Well it's blatant perjury, Commissioner, it's just blatant. For him to sit there and say that it's--

40 BORS: It's not a question that's going to affect his argument.

45 APPLICANT: His evidence is totally discredited by him trying to sit there and say that. That's a total disgraceful--

COMMISSIONER: Have you got any questions for the witness?

50 APPLICANT: I did, I put a question to him, but he objected.

55 COMMISSIONER: Well, see a question to a witness to say, "You're lying, aren't you?" "You're committing perjury". I would have thought that the response and the answer is going to be fairly obvious. I mean I'm allowing a considerable amount of latitude because you're representing yourself, Mr Dowling, but this approach really strikes me as being almost self-defeating.

Now I don't want to inhibit you running your case and I want you to make sure that you've been given an opportunity to ask the witness any questions that you have.

5

APPLICANT: I was just putting that on the table. I want it on the table and I suppose I've asked a question like that to bring it to your attention because for a person to sit there and do that, that's just totally disgraceful. He's a solicitor, he knows better. He ought to be totally ashamed of himself. At our mention we had on August 4 I complained about him being a witness. It wasn't because he was a witness, I didn't elaborate on it. He's sitting there in his statement committing blatant perjury, he's a disgrace.

10

15

COMMISSIONER: Mr Dowling, do you have any questions? Would you like to try--

20

APPLICANT: No, no, no more questions, thank you.

COMMISSIONER: You have no more questions?

25

APPLICANT: No.

<NO RE-EXAMINATION

<WITNESS RETIRED AND EXCUSED

30

BORS: That completes the evidence for the respondent. I note the time. I have suggested earlier that we might wrap up the balance by way of written submissions and I did suggest that to Mr Dowling. He said that he would have a think about what he thought in that regard over lunch. I haven't heard back from him. I'm happy either way, Commissioner.

35

COMMISSIONER: Mr Dowling, what's your preference?

40

APPLICANT: I suppose it really comes down to a date, Commissioner, if we can get a fair and reasonable date I'm happy to go forward on that. If the date was quite substantial well I'll probably go back to a written statement.

45

COMMISSIONER: How long will we need for oral submissions do you think, half a day would be ample?

50

APPLICANT: No, not half a day. Well, I don't know, I've never done one, so, you'd probably be better inclined.

BORS: Well, I don't imagine that I would take any longer than 20 to 30 minutes.

55

APPLICANT: I think I'd take probably an hour at maximum and maybe half an hour, I don't know.

COMMISSIONER: Let's see if I can find a suitable time to

just tidy this up. Friday 4 November, would that be convenient?

5 BORS: I'm not available on Friday 4 November.

APPLICANT: If we do it in a written manner, Commissioner, what sort of timeframe is put on it then. Is it much different to Friday 4 November, how does it exactly work?

10 COMMISSIONER: Well 4 November is out because Mr Bors isn't available.

15 BORS: I would be available in the afternoon. I do have an entry here, but I think that it's only a short matter in the morning.

COMMISSIONER: I don't think I have anything before then at all. Could we try that, the afternoon of the 4th?

20 BORS: If it could be a 2 o'clock listing, then--

COMMISSIONER: We'll make it 2.15.

25 BORS: Thank you, Commissioner.

APPLICANT: If we go down the path of written statements, does that expediate the matter, Commissioner?

30 COMMISSIONER: Well I don't think it'd get it much faster than 4 November because usually you would allow for a period of three or four weeks for each side to get their written submissions in. You would want some time, perhaps a couple of weeks after the date by which the other side put their submissions in, because your submissions in
35 reply are the last thing that the Commission receives.

APPLICANT: So I get a couple of weeks after their submission. How long do you want for your submission?

40 BORS: If it were written submissions you would put in yours first and then I would respond to them afterwards and then you would respond--

45 APPLICANT: Same as the other thing, yeah.

BORS: But it'd be about the same time.

50 COMMISSIONER: But it always follows that pattern, Mr Dowling.

APPLICANT: So if we come on the 4th it's just as fast--

55 COMMISSIONER: It's the same pattern, but it's all condensed to the one day. You say what you want to say, then Mr Bors says what he wants to say and then you get the right of reply, so to speak.

APPLICANT: If we come in at 2.15, that stills go to 4.30.

That gives us two hours and 15 minutes, that should be sufficient.

5 COMMISSIONER: Yes, if we start on the Friday afternoon.
Friday afternoon is usually good for submissions because
it means that people want to get away. They usually don't
keep talking on for too long. If I can make submissions
on a Friday afternoon I usually will. We'll list the
10 matter for submissions at 2.15 on 4 November.

On that basis the proceedings now stand adjourned and the
matter is part-heard.

15 ADJOURNED PART HEARD TO FRIDAY 4 NOVEMBER 2005 AT 2.15PM

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