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TRANSCRIPT OF PROCEEDINGS

ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

CHAIRPERSON: MR W. SOFRONOFF KC

CANBERRA

FRIDAY, 12 MAY 2023 AT 9.53 AM (AEST)

MS E. LONGBOTTOM KC with MR J. JONES and MS E. LYNCH appeared as Counsel Assisting

MR M. TEDESCHI KC with MS B. ANNIWELL appeared on behalf of MR S. DRUMGOLD SC

MS C. WEBSTER SC appeared on behalf of Ms JEROME

MR D. EDWARDSON KC with MR A. MULLER appeared on behalf of MR S. WHYBROW

MS K. RICHARDSON SC with MR C. MITCHELL and MS W. HALL appeared on behalf of the Australian Federal Police

MR M. BLACK appeared on behalf of thirteen AFP members

MS V. EVANS appeared on behalf of MS H. YATES

MS S. CHRYSANTHOU SC appeared on behalf of MS L. WILKINSON

MR J. MACK appeared on behalf of MR M. GREIG

MR SMITH appeared for MS JOHNSON

<THE HEARING RESUMED AT 9.53 AM

THE CHAIRPERSON: Mr Tedeschi, did you want to raise something?

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MR TEDESCHI: I have two short applications to make.

THE CHAIRPERSON: Yes.

10 **MR TEDESCHI:** The first one concerns personal details about Mr Drumgold.

THE CHAIRPERSON: Yes.

15 **MR TEDESCHI:** And I was going to ask whether you would suppress publication - or actually turn off the cameras -

THE CHAIRPERSON: Yes. Well, let's -

20 **MR TEDESCHI:** - in relation to that.

THE CHAIRPERSON: - stop the feed, please.

MR TEDESCHI: And -

25 **THE CHAIRPERSON:** Just a moment, Mr Tedeschi.

MR TEDESCHI: Yes.

30 **THE CHAIRPERSON:** Mr Tedeschi, witnesses' legal representatives who might be on Zoom for the purpose of this hearing remain on Zoom for the purposes of this hearing, but I'm told that the public feed has ceased. So the only people listening who are not here are lawyers who would otherwise be here anyway. And you are going to raise a matter now that you wanted not broadcast; correct?

35 **MR TEDESCHI:** Yes. And -

THE CHAIRPERSON: All right. I will direct that none of the proceedings hereafter be published until I lift this direction.

40 **<NOT FOR PUBLICATION DIRECTION COMMENCED AT 9.55 AM**

<NOT FOR PUBLICATION DIRECTION LIFTED AND HEARING RESUMED AT 9.59 AM

45 **THE CHAIRPERSON:** I'm told we are back online. What's your application, Mr Tedeschi?

MR TEDESCHI: Chairman, I make this application now because it's an application that affects Ms Richardson's clients. So I thought that it was important that she knows where she stands -

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THE CHAIRPERSON: Yes.

5 **MR TEDESCHI:** - in relation to this. During the examination-in-chief by myself of Mr Drumgold yesterday, Chairman, you restricted the examination-in-chief in relation particularly to references to the SAPR committee's report and findings. And I direct you particularly to pages 348 and 354 of the transcript -

THE CHAIRPERSON: Yes.

10 **MR TEDESCHI:** - and I'm sure that you recall. Chairman, your Terms of Reference require you, if you find that a police officer has acted in breach of their duty in various ways, what the reasons and motives for their actions are.

THE CHAIRPERSON: Yes.

15 **MR TEDESCHI:** What we suggest - what we submit to you is this: that if it turned out that, in fact, the reason for these senior police officers acting in the way they did about the Lehrmann case -

20 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: - was because there was a practice uniformly in the ACT police force at that time, and had been for some considerable time before, a practice of undercharging, a practice of using the wrong test for charging.

25 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: And the factors that were mentioned by Mr Drumgold yesterday as why he thinks they dealt with the matter in the way they did.

30 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: If there was a practice in the police force generally in relation to sex cases - allegations of sexual assault, then we respectfully submit that that would be a reason and motive for their actions. So that we are certainly not suggesting that you should inquire into the matters that are being inquired into by the SAPR review committee. But what we would suggest is that the statistics that have emerged as a result of the work of that committee - statistics that have come through the DPP office, so that Mr Drumgold was aware of them - if they were to show that there was this general practice of undercharging in sex cases, that may well provide a reason for why the police acted in that way and also a belief on the part of Mr Drumgold as to why they were acting in that way. So relevant in two different ways. But in a sense, the reality of what the practice was is even more important than what Mr Drumgold's belief was. So what we want to suggest to you, Chairman, is that we should be allowed at some opportune time - not now - to elicit evidence of what the charging practices were generally as disclosed by those statistics that have been updated very recently as a result of the work of that committee.

THE CHAIRPERSON: Well, I will have to think about that and hear from Ms Richardson in due course. But at the moment, I'm not sure that there is the logical link that you say there is. Because if it's true that police officers generally in the ACT tend to undercharge, that's

interesting. But what's relevant is that these police officers were prepared to undercharge. And if you prove to me that they were prone - that these police officers in the way they behaved were wrongly - their attitude was wrong so that we would call that an instance of undercharging, you will have proved an instance of the larger picture. But to prove the larger picture does not prove that these officers were guilty of that kind of behaviour. Do you see what I mean? It's not similar fact evidence of these officers. Let me put that to you without - let's not debate it now, but that's my immediate reaction. And I may be wrong, but we can - rather than take time this morning, because everybody from Sydney seems to want to get back to Sydney for some reason. So we should let them and go about our business peacefully. So let's - what you are saying is - you are flagging this.

MR TEDESCHI: Yes.

THE CHAIRPERSON: You're going to want to raise it, and if that's so, you will want to call evidence from Mr Drumgold down the track when you examine him again -

MR TEDESCHI: Yes.

THE CHAIRPERSON: - to bring that out.

MR TEDESCHI: Yes.

THE CHAIRPERSON: Ms Richardson is on notice, and I will hear from both of you at a convenient time, either orally or in writing or both, and we can deal with it and I will make a ruling.

MR TEDESCHI: Thank you, Chairman.

THE CHAIRPERSON: Is that satisfactory?

MR TEDESCHI: Yes. Absolutely.

THE CHAIRPERSON: And I will think about it, consult with counsel assisting and I will be prepared when you raise it again to be more informed about the issue.

MR TEDESCHI: Thank you.

THE CHAIRPERSON: Thank you. Ms Richardson - I'm sorry. Did you want to consult?

MS RICHARDSON: Not at all.

THE CHAIRPERSON: No. We will deal with it later, and you can think about it.

MS RICHARDSON: That's convenient. We oppose the application, but it's convenient -

THE CHAIRPERSON: Of course you do.

MS RICHARDSON: - to deal with it at another time.

THE CHAIRPERSON: Yes. All right. So you are going to carry on for a while?

MS RICHARDSON: Yes.

THE CHAIRPERSON: And then Ms Chrysanthou is going to be interposed?

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MS RICHARDSON: Yes.

THE CHAIRPERSON: Is that right?

10 **MS RICHARDSON:** So -

THE CHAIRPERSON: You will let me know when.

MS RICHARDSON: She will be interposed relatively promptly -

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THE CHAIRPERSON: All right.

MS RICHARDSON: - to make sure that she's not inconvenienced -

20 **THE CHAIRPERSON:** Yes. Thank you.

MS RICHARDSON: - because of other commitments.

THE CHAIRPERSON: Yes.

25

MS RICHARDSON: Mr Drumgold, you gave evidence yesterday in response to questioning from your senior counsel that you had read all of the police witness statements and - perhaps if the transcript could be brought up.

30 **MR TEDESCHI:** I thought he said he read some of them but not all of them.

MR DRUMGOLD: That's right.

MS RICHARDSON: No, the evidence is:

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"My current view is that it was probably - having read all of the police statements, it was most likely a skills deficit."

Could transcript 342 -

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THE CHAIRPERSON: It doesn't matter what he read. He's going to be asked about it. So -

MS RICHARDSON: Just in fairness, if the transcript can be put on the screen so Mr Drumgold can see the evidence he gave. Page 342, line 42. If you could scroll down. Sorry, could we go to the bottom of the page just to check what page we are on. Sorry, 342. Okay. While that's happening, I will read it out and then we will have it put on the screen so you can see it. So your senior counsel said to you:

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"Mr Drumgold, you have told the inquiry what your suspicion was as at November 2022."

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And these were your suspicions about political interference; correct?

MR DRUMGOLD: That's right.

5 **MS RICHARDSON:** And you answered:

"Yes."

Question:

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"Since then, you have had the opportunity, you have told us, to read a lot of the statements that have been produced to the inquiry."

Answer:

15

"Yes."

Question:

20

"What is your current view about that?"

Answer - your answer:

25

"My current view is that probably - having read all of the police statements, it was most likely a skills deficit."

MR DRUMGOLD: Yes.

30

MS RICHARDSON: We will just have that brought up. Do you see that at line 42, your evidence that you read all of the police statements? Was that correct?

MR DRUMGOLD: No.

35

MS RICHARDSON: No.

MR DRUMGOLD: I mean, the logic is in putting those two together. I only have some of them, so I can't - I have read all of the some that I have. I can't read statements that I don't have. So in "all" - I'm not being tricky, but "all" has to be qualified by all of the statements that I have.

40

THE CHAIRPERSON: What you meant was that you read the material you had in your hands.

MR DRUMGOLD: That's right.

45

MS RICHARDSON: But do you agree you said that you had read all of them?

MR DRUMGOLD: I agree that that's what those words say, yes.

MS RICHARDSON: Okay. So in terms of the witness statements you read, did you read the statement of Commissioner Kershaw?

MR DRUMGOLD: I don't think so. I don't think I had that one. I -

5

MS RICHARDSON: Well, think about it. You made an allegation -

MR DRUMGOLD: Yes. I might have.

10 **MS RICHARDSON:** You made a serious allegation against Commissioner Kershaw. Did you read his witness statement?

MR DRUMGOLD: I might - I might have read his statement. If I have it, I will have read it.

15 **MS RICHARDSON:** Well, just be clear. Commissioner Kershaw is the Commissioner of the AFP.

MR DRUMGOLD: I'm aware of who he is.

20 **MS RICHARDSON:** You made a very serious allegation against him. Did you read his witness statement before giving evidence or not?

MR DRUMGOLD: I cannot recall. The problem is I think they only came out on Wednesday. I was in court Thursday and Friday last week.

25

MS RICHARDSON: Well, I'm - this is only last week.

MR DRUMGOLD: Yes.

30 **MS RICHARDSON:** You made a very serious allegation against Commissioner Kershaw. Did you read his witness statement before you started giving evidence on Monday?

MR DRUMGOLD: I - I didn't - so you are saying I made a serious allegation. I said I had a suspicion. I didn't say it was absolute.

35

MS RICHARDSON: I will come to the allegation you made. I'm just trying to work out, did you read the statement of Commissioner Kershaw before you started giving evidence on Monday?

40 **MR DRUMGOLD:** As I said, I can't recall. I cannot recall whether I have read his statement. I skim-read all of the ones that I have. If I have that, I will have read it.

MS RICHARDSON: Which statements did you have in your possession?

45 **MR DRUMGOLD:** I - I remember reading Moller, Boorman, Chew. I think when it came up, I didn't have Frizzell. Madders. And I think that's about it. I don't think I've got Gaughan. Again, I don't know.

MS RICHARDSON: Sorry, were you given Commissioner Kershaw's statement?

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THE CHAIRPERSON: When you say "you", undoubtedly you mean Mr Drumgold personally?

5 **MS RICHARDSON:** I mean you personally. Were you given access to a copy of Commissioner Kershaw's statement?

MR DRUMGOLD: Possibly. I can't recall just at the minute.

10 **MS RICHARDSON:** Isn't it likely you read it, given that he -

MR DRUMGOLD: If I - if I had it, I would have read it.

MS RICHARDSON: Mr Drumgold, it was last week.

15 **MR DRUMGOLD:** I'm - I'm aware of that.

MS RICHARDSON: Do your best with your recollection. Did you read the statement?

20 **MR DRUMGOLD:** I'm doing my best with my recollection. I'm not sure.

THE CHAIRPERSON: Mr Drumgold, did you read - whatever statements you read, did you read them on an electronic device or did you have hard copies?

25 **MR DRUMGOLD:** No, no. I read them on a computer.

THE CHAIRPERSON: Yes. Thanks.

30 **MS RICHARDSON:** Sorry, you read them on a computer? Isn't it the case that you had a concern about a conspiracy in relation to political interference involving Commissioner Kershaw? You would have been careful to read his witness statement before you gave evidence?

MR DRUMGOLD: Certainly if I had it, I would have read it.

35 **MS RICHARDSON:** Well, I'm asking a different question. Given you've said you had a - you have raised a conspiracy involving Commissioner Kershaw.

MR TEDESCHI: I object. He has said a suspicion -

40 **THE CHAIRPERSON:** No, that's right. He - I'm not sure that what you put was accurate, Ms Richardson.

45 **MS RICHARDSON:** Well, I will go to the exact evidence of what was put. I will just put it in a row. 258.43, you said:

"One of the questions I'm raising is, is there a connection between Federal interference with ACT Policing? That's the primary concern that I have."

50 **MR DRUMGOLD:** That's raising in my mind.

MS RICHARDSON: And then - just wait. I will list them. And then 259 at line 5, you say:

5 "Well, some of the questions in my mind hypothetically were, was this - was this at the time a government minister exerting pressure through the Federal Commissioner onto the ACT Policing to make a matter go away?"

10 Do you recall giving that evidence? And then you said at T262 that - at line 3, there were compounding matters and - that increased your concern that all these moving parts were interconnected. And then Ms Longbottom put to you:

"So did you think there was a conspiracy afoot?"

Answer:

15 "I had not formed a view solidly one way or the other, but I thought there was enough - enough incidents to make it possible, if not probable."

MS RICHARDSON: So - and then you said at 289, line 35, that you felt like there was a plan:

20 "I felt the plan may have been if they can convince me to give them the imprimatur not to charge, then a political matter would go away."

25 And so that reference to "a political matter going away", I suggest to you, resonated or tracked the allegation you have made at 259, was that the - it was the allegation - or the suspicion you raised, which you put as being not just possible but probable, was that a government minister was exerting pressure through my client, the Federal Commissioner, onto ACT Policing. So in terms of my learned friend's objection, in my submission, the effect of Mr Drumgold's evidence is that he raised an allegation on Wednesday that he raised a conspiracy that was not just possible but probable that a government minister was exerting pressure through the Federal Commissioner of the AFP onto the ACT Policing. In my submission, that's the effect of the evidence.

THE CHAIRPERSON: Yes, Mr Tedeschi.

35 **MR TEDESCHI:** Chairman, the response from Mr Drumgold was in answer to a question by you, which began:

40 "The basis for your suspicion that there was interference in the criminal proceedings..."

So he's talking about his suspicion of interference. So it's quite clearly not a positive allegation; it's the expression of -

45 **THE CHAIRPERSON:** Yes, I put it in those terms. But Mr Drumgold put it as a possibility, if not a probability. So I think it is fair to characterise what Mr Drumgold was doing was putting forward his view that there was a possibility or a probability that a politician put pressure on the Commissioner who put pressure on police to suppress a charge. That's the effect of what was said in evidence, as Ms Richardson read. To put the word "suspicion" before it doesn't change it. One suspects that something has happened and so the allegation is that this is possibly true and may be probably true. So that's what's being tested. And it's

cross-examination. So I'm minded to allow Ms Richardson to continue on that basis. And if Mr Drumgold - if his position is that he was not asserting the existence of a conspiracy, then he can say so and I will listen to him.

5 **MR TEDESCHI:** I'm content for that.

THE CHAIRPERSON: Because ultimately, Mr Tedeschi, it's what is finally said in this inquiry, that is, everything that's said. So I'm interested in what somebody says in answer to a question, but I do appreciate that what somebody says in answer to a question is said in a particular context of a line of questioning -

MR TEDESCHI: Yes.

15 **THE CHAIRPERSON:** - and that that - I have to be careful not to read everything in the transcript literally. I have to take into account the whole of the evidence.

MR TEDESCHI: Indeed. Thank you.

20 **THE CHAIRPERSON:** And I will to that.

MR TEDESCHI: Thank you.

THE CHAIRPERSON: Go ahead, Ms Richardson.

25 **MS RICHARDSON:** So you've - I know you may want to say something different about the possibility or probability of a conspiracy today, but in terms of what you said on Wednesday, you accept that that's the evidence you gave on Wednesday?

30 **MR DRUMGOLD:** I don't accept that that's what I meant.

MS RICHARDSON: Okay. But you have seen the transcript, I take it?

MR DRUMGOLD: I - I have seen words. You have pointed me to words.

35 **MS RICHARDSON:** Thank you.

MR DRUMGOLD: I don't accept that I was intending to convey what you are suggesting I was intending to convey.

40 **MS RICHARDSON:** Well, I want to suggest to you that where you as a person holding high office that makes an allegation that it's possible, if not probable, that there's a conspiracy afoot which involves a government minister exerting pressure through the Federal Commissioner onto the ACT Policing, that it was very clear what evidence you were giving. There is no ambiguity about that.

45 **MR DRUMGOLD:** Well, it is open to interpretation, and my answer is your interpretation is not consistent with the intention.

MS RICHARDSON: Are you aware there was very wide reporting of your allegations where it seemed to be very clear to people who heard your evidence the allegation you were making about a conspiracy? Are aware of that -

5 **MR TEDESCHI:** I object.

THE CHAIRPERSON: Yes. Ms Richardson, you can put to Mr Drumgold that there was wide reporting, and you can put to him the terms of the reporting, and no doubt there's a sequence of questions you will build upon that, but what you asked him was what people
10 thought reasonably.

MS RICHARDSON: I'm happy to -

THE CHAIRPERSON: And you might get there in the end, to that proposition, but I'm not
15 sure you are there yet.

MS RICHARDSON: Thank you. You are aware there was wide media reporting of the allegation you made?

20 **MR DRUMGOLD:** I am aware of that.

MS RICHARDSON: You are aware of that?

MR DRUMGOLD: Yes.
25

MS RICHARDSON: Do you accept that that is the gravest of allegations that you have made in respect of an unnamed federal minister?

MR DRUMGOLD: Yes.
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MS RICHARDSON: And it is the gravest of allegations you made against the Federal Commissioner of the police?

MR DRUMGOLD: Well, again, your characterisation of an allegation puts it too high.
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MS RICHARDSON: Well, I will use a different phrase.

MR TEDESCHI: I don't think he had finished his answer.

40 **MS RICHARDSON:** I withdraw the question. I will put it differently. You raised a conspiracy - possibility, if not probability, of a conspiracy against an unnamed federal minister. Do you accept that that is the gravest of allegations?

MR DRUMGOLD: I raised it in my mind there was a possibility that it was occurring.
45

MS RICHARDSON: Well, you accept you raise it as a probability?

MR DRUMGOLD: I had not intended to convey that I had reached a probability. I was - in my mind - I accept what the words say, but I am saying those are not the intention of - behind
50 the words.

MS RICHARDSON: Well -

5 **THE CHAIRPERSON:** Ms Richardson, it would help me if we had that passage of the transcript -

MS RICHARDSON: Certainly. Sorry, if we could - T262, please. You say up at line 3 - you say:

10 "All these moving parts were interconnected."

Question:

15 "So did you think there was a conspiracy afoot?"

Answer:

20 "I had not formed a view solidly one way or the other, but I thought that there was enough - enough incidents to make it possible, if not probable."

MR DRUMGOLD: Do you want me to interpret that?

25 **MS RICHARDSON:** So do you accept that your evidence was, "I'm not just raising this as a possibility - a hypothetical for this inquiry to look at. I, a person holding high office, am saying - in answer to a question from counsel assisting as to whether there was a conspiracy afoot, you put it that it was possible, if not probable. Do you accept that that was the clear words you used?"

30 **MR DRUMGOLD:** No - I accept that those are the words that I used. I don't accept that they are clear, and I don't accept that that was what I was saying. I'm saying that would be more accurate to my state of mind if the word "even" were inserted before "it".

MS RICHARDSON: Well, let's go on.

35 **MR DRUMGOLD:** I had not reached a state of mind - I had reached a state of mind that it was possible.

MS RICHARDSON: Well, let's go on. And then Ms Longbottom asked you at line 10:

40 "These are very series allegations you make in this letter. They are allegations made with the authority of your office. Do you think 'possible' is the right state of mind to make those allegations?"

Answer:

45 "Well, I mean, if you get stuck on adjectives, I felt there was enough evidence to justify an inquiry into it."

50 **MR DRUMGOLD:** Correct.

5 **MS RICHARDSON:** Question - so you - my learned friend Ms Longbottom specifically queried you on the adjective of "possible", not "probable." You - she queried your language there. You did not backtrack off the idea of probability or even possibility; you, in fact, bolstered your view by saying, "There's enough evidence to justify an inquiry into it." Do you agree with that?

10 **MR DRUMGOLD:** Several questions in there. The first one, no, I do not accept that I was advancing a probability. I don't accept that. That is not the - that is not the intention of the words that I used.

MS RICHARDSON: But you felt there was enough evidence to justify an inquiry into this allegation; is that correct?

15 **MR DRUMGOLD:** To see - that's correct.

MS RICHARDSON: So on Wednesday, you thought there was enough evidence to justify an evidence - an inquiry into this allegation; is that correct?

20 **MR DRUMGOLD:** That's right.

MS RICHARDSON: Now, it's -

THE CHAIRPERSON: Did you get an answer?

25 **MR DRUMGOLD:** That's right.

MS RICHARDSON: Yes. So it's the case, isn't it, that you - that the witness statements that you had, you read them prior to starting evidence on Monday?

30 **MR DRUMGOLD:** The witness statements I had, yes, I had.

MS RICHARDSON: So to the extent you reviewed witness statements, it was before you started giving evidence on Monday?

35 **MR DRUMGOLD:** Yes.

MS RICHARDSON: And is it the case with Commissioner Kershaw, you can't remember whether you read his statement or not?

40 **MR DRUMGOLD:** I cannot remember.

MS RICHARDSON: Isn't it the case that if you genuinely thought there was a conspiracy afoot -

45 **MR DRUMGOLD:** Possible.

MS RICHARDSON: A possibility that there was a conspiracy afoot involving Commissioner Kershaw, wouldn't you be minded to very carefully read his witness statement to see -

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MR DRUMGOLD: If I had it.

MS RICHARDSON: Just wait - to see whether there was any basis for that possibility in your mind? Wouldn't you be careful to make sure you read it?

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MR DRUMGOLD: If I had it.

MS RICHARDSON: Well, wouldn't you be careful to call for it?

10 **MR DRUMGOLD:** No, because I was working on the assumption that I was deliberately - there are many statements in here that I have not read, and I have been working on the assumption that I - as a witness, I am allowed access to some and not to others.

15 **MS RICHARDSON:** Well, you read - you thought it was perfectly proper, which it is, for you to read the statements of - excusing rank - Moller, Boorman, Madders and Chew; correct?

MR DRUMGOLD: Yes.

20 **MS RICHARDSON:** So it was perfectly proper for you to read those?

MR DRUMGOLD: Yes.

25 **MS RICHARDSON:** And they were all persons with whom you had direct interactions; correct?

MR DRUMGOLD: Correct.

30 **MS RICHARDSON:** You didn't have any interactions with Commissioner Kershaw in relation to this matter; correct?

MR DRUMGOLD: No.

35 **MS RICHARDSON:** And so there was nothing stopping you from reading his witness statement, like you did the others; correct?

MR DRUMGOLD: Well, I don't know that, because I don't know what's in it.

40 **MS RICHARDSON:** Isn't it the case, Mr Drumgold, that if you're going to make an allegation of such gravity against a person holding one of the highest offices in Australia, who has put on a witness statement in this matter, that you would read it to see whether there was any basis for making the allegation? Isn't that something you would do as a lawyer?

MR DRUMGOLD: Certainly if I had it, I would read it.

45

MS RICHARDSON: Well -

THE CHAIRPERSON: I think what Ms Richardson is putting to you is in the circumstances that she has set out, would you not be eager to call for that statement and look

at it just to see what the Commissioner says so that you can be further informed about the suspicion that you hold?

5 **MR DRUMGOLD:** My assumption was that I was deliberately being given particular statements because those are the statements that I was allowed to see. I assumed if I didn't have a statement, it was not my place to call for it.

10 **MS RICHARDSON:** Well, Mr Drumgold, you've been - you were given the witness statements of the people you had direct interactions with, which are of a more sensitive nature in the sense of they are giving a version of events directly interacting with you; correct? Correct?

MR DRUMGOLD: Yes, that's correct.

15 **MS RICHARDSON:** And you knew you had no interactions with Commissioner Kershaw, so there were no such sensitivities in relation to - just wait for my question. There were no such sensitivities in relation to his witness statement; correct?

20 **MR DRUMGOLD:** How do I know that if I don't have the statement?

MS RICHARDSON: I'm saying - just listen to my question. You knew, because you had had no interactions directly with Mr Kershaw - Commissioner Kershaw, that there were no such sensitivities that could arise in relation to his witness statement because you hadn't had any direct interactions with him; correct?

25 **MR DRUMGOLD:** No. That's not correct.

MS RICHARDSON: Well, did you - you are a senior counsel holding a very high office in the ACT?

30 **MR DRUMGOLD:** I am.

MS RICHARDSON: Why didn't you say to your lawyers, "I have a suspicion about a conspiracy involving Commissioner Kershaw. I need to read that witness statement to see if there's any basis for it before I make an allegation on oath"?

40 **MR DRUMGOLD:** Because I'm - I have already answered that question. Because I'm assuming that there is a reason why I'm not seeing certain statements. There are many statements in this case that I have -

THE CHAIRPERSON: Do you say you now remember that you did not read Commissioner Kershaw's -

45 **MR DRUMGOLD:** No, I don't know. Nothing jumps to mind. I may have read it. If I have it, I will have read it.

MS RICHARDSON: Is this something that in the adjournment you could check your records to see whether you were given access to Commissioner -

50 **MR DRUMGOLD:** I - I can.

MS RICHARDSON: Just wait for my question, please. Is it something that if you were given time at morning tea or shortly to check whether you had access to his statement, you could work that out?

5

MR DRUMGOLD: I can, yes.

MS RICHARDSON: I will come back to that. Do you accept that while you had made broad allegations in relation to political conduct in relation to this case, you have never made - raised an allegation in the specific terms you did on Wednesday, which was that it might involve a government minister exerting pressure through the Federal Commissioner onto ACT Policing? Do you accept -

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MR DRUMGOLD: I'm saying -

15

MS RICHARDSON: Just wait. Just accept - sorry, do you accept that you have never raised an allegation in those specific terms before Wednesday?

MR DRUMGOLD: I'm not making an allegation.

20

MS RICHARDSON: Pardon?

MR DRUMGOLD: I'm saying that, to my mind, there was a possibility.

25

MS RICHARDSON: No, listen to my question. Do you agree that at no point prior to Wednesday have you ever raised an allegation in the specific terms in this proceeding that there was a possibility, if not probability, of a conspiracy that a minister was exerting pressure onto the Federal Commissioner onto ACT Policing to make a matter go away? Do you agree that at no point prior to Wednesday of this week have you ever raised that allegation? Do you agree with that?

30

MR DRUMGOLD: I have not alleged that it's occurred.

THE CHAIRPERSON: No, you are having trouble with the word "allegation". Do you agree that you have never enunciated a suggestion or the fact that you hold a suspicion in the terms that Ms Richardson put to you?

35

MR DRUMGOLD: No, I have never raised it.

40

MS RICHARDSON: Prior to Wednesday of this week; correct?

MR DRUMGOLD: Well, I - I'm - well, that's a mischaracterisation. I'm saying what was on my mind back then.

45

MS RICHARDSON: I'm not asking you what was on your mind. I'm asking you, in the terms Mr Sofronoff put to you, Wednesday of this week was the first point at which you raised the possibility that there was a conspiracy that a minister had exerted pressure on the Federal Commissioner onto ACT Policing to make a matter go away. Do you agree that the first time you raised anything to that effect was Wednesday of this week?

50

MR DRUMGOLD: Again, you are mischaracterising the evidence. When I'm saying that, I'm saying what was on my mind as a possibility back when these things were occurring.

5 **THE CHAIRPERSON:** Yes, that's what's being put to you. But was it - is it true that Wednesday was the first time that you said you held a suspicion that it was possible that a senior minister was exerting pressure on the Commissioner of Police to suppress the prosecution?

10 **MR DRUMGOLD:** Yes. Yes, that's the first time I have articulated what was on my mind back then.

MS RICHARDSON: So the answer to my question was "yes"?

15 **MR DRUMGOLD:** Yes.

MS RICHARDSON: So you have raised - I'm going to call it an allegation, but it's got - we've talked about the terms of which you said - I'm going to call it an allegation just so we can speak in shorthand. You have -

20 **MR DRUMGOLD:** I'm - I'm uncomfortable with the word "allegation" -

MS RICHARDSON: Okay.

25 **MR DRUMGOLD:** - because I'm not making an allegation. I'm articulating that it's a possible -

MS RICHARDSON: Okay. So you raised -

30 **MR DRUMGOLD:** - scenario out of a number of scenarios.

MS RICHARDSON: Okay. The transcript will speak for itself. But as a shorthand form, we will call it a possible conspiracy.

35 **MR DRUMGOLD:** Okay.

MS RICHARDSON: Okay. So you raised a possible conspiracy for the first time on Wednesday. You agree with me that there is nothing in your continuous file note raising any type of concern or suspicion about the possible conspiracy, as we've just defined that concept. You don't need to read it. I've read it. There's nothing in your continuous file note about that; correct?

45 **MR DRUMGOLD:** So I think that's what - I'm thinking out loud in the dot point before 7 June. Considering the totality of my exchanges, police don't want to - don't want the matter to result in charges. Police want a constructive (indistinct) rather than the AFP.

MS RICHARDSON: Well, do you agree, with me looking at that file note, which is page 4, that there is no suggestion in there that there is a conspiracy or interference involving a federal government minister exerting pressure on the Federal Commissioner and then on to ACT Policing to make a matter go away?

50

MR DRUMGOLD: No. That's -

MS RICHARDSON: You agree there's nothing to that effect in your file note?

5 **MR DRUMGOLD:** That's correct.

MS RICHARDSON: So do you agree the answer to my question is "yes" -

MR DRUMGOLD: Yes.

10

MS RICHARDSON: - which is there is nothing in your continuous file note about this allegation; correct?

15

MR DRUMGOLD: Other than - then when you then raise the 27 June meeting on 27 June where there's a government minister and the - and the Federal Commissioner on the same day.

20

MS RICHARDSON: Well, do you agree with me there's nothing in there saying, "I have a suspicion that there - a federal minister is exerting pressure on the Federal Commissioner who in turn exert pressure on ACT Policing to make a matter go away"? There's nothing like that?

MR DRUMGOLD: Not in those direct terms, no.

25

MS RICHARDSON: Well, not in those terms at all; correct?

MR DRUMGOLD: Well, the collection of those things conveys my thinking process at the time.

30

MS RICHARDSON: We don't see any reference to a federal minister or the Federal Commissioner; correct?

MR DRUMGOLD: No, but I'm talking - no, I've just said that. Not in those direct terms, no.

35

MS RICHARDSON: Well, not in those terms at all, is it?

MR DRUMGOLD: Well, the collection of these, I'm talking about the suspicion in my mind.

40

MS RICHARDSON: Which you did not articulate in your -

MR DRUMGOLD: No, not - not in those - not in direct terms.

45

MS RICHARDSON: You accept you didn't articulate it -

MR DRUMGOLD: Yes. Correct.

50

MS RICHARDSON: Sorry, it will be easier for the transcript if you wait for my questions. So you have not articulated in your continuous file note any concerns involving a federal minister or -

MR DRUMGOLD: That's correct.

5 **MS RICHARDSON:** - the Federal Commissioner? Sorry, just wait for my question. It is difficult to transcribe. And you have accepted yesterday - this is at transcript 401 - that to the extent you had a concern about police conduct, you recorded it in this file note because that was the purpose of the document; correct?

10 **MR DRUMGOLD:** Yes.

MS RICHARDSON: So we don't see any concern recorded in this document about the Federal Commissioner being part of a conspiracy (indistinct)?

15 **MR DRUMGOLD:** No.

MS RICHARDSON: Do you agree that there was nothing in your letter of complaint to CPO Gaughan of 1 November 2022 raising this possible conspiracy?

20 **MR DRUMGOLD:** To my mind -

MS RICHARDSON: I'm talking in express terms.

MR DRUMGOLD: In express terms, no.

25 **MS RICHARDSON:** There's no reference to any allegation or suspicion of misconduct against either - against Commissioner Kershaw; correct?

MR DRUMGOLD: Not in express terms, no.

30 **MS RICHARDSON:** And it's not in implied terms, is it?

MR DRUMGOLD: Well, it was - no, I'm not - so it's the - it's why I'm - what I'm wanting to discover is this -

35 **MS RICHARDSON:** No, I'm not asking you for what's in your head.

MR DRUMGOLD: Okay.

MS RICHARDSON: I'm asking you about what's in the letter.

40 **MR DRUMGOLD:** All right. No, there's nothing express in the letter.

MS RICHARDSON: And there's nothing implied in the letter either, is there?

45 **MR TEDESCHI:** I object. That's incorrect.

MS RICHARDSON: Well -

MR TEDESCHI: Page 3, the last paragraph.

50

THE CHAIRPERSON: Why don't you deal with that, Ms Richardson?

MS RICHARDSON: I will. So if we could please bring up page 3 of the 1 November letter. The document number, DPP.005.001.1602. If we could go to page number 1604.

5

MR TEDESCHI: And also the first paragraph on page 5.

MS RICHARDSON: Thank you. So if you look at the bottom of page 3, you relate a concern in relation to trial process?

10

MR DRUMGOLD: Yes.

MS RICHARDSON: Take your time to read it, but what you are raising an allegation about is conduct of a particular senator -

15

MR DRUMGOLD: That's right.

MS RICHARDSON: - during the hearing; correct?

20

MR DRUMGOLD: Correct. That's correct.

MS RICHARDSON: There's no suggestion that any particular senator anywhere in this letter is placing or exerting pressure on Commissioner Kershaw; correct?

25

MR DRUMGOLD: Correct.

MS RICHARDSON: And your senior counsel has pointed out another reference. If we can go to page 5, please. The first full paragraph starts, "I'm of the view that at the conclusion of the trial" - because at this point, there had not been a decision to discontinue; correct? "There should be a public inquiry into both political and police conduct in this matter."

30

MR DRUMGOLD: Yes.

MS RICHARDSON: So do you agree with me that you have raised at a level of generality political conduct. At no point did you raise a possible conspiracy involving a federal minister exerting pressure on the Commissioner of Police; correct?

35

MR DRUMGOLD: I agree with that.

40

MS RICHARDSON: It's neither express nor implied; correct?

MR DRUMGOLD: Well, again, it's open to interpretation, but the political aspect would be implied in my mind.

45

MS RICHARDSON: Well -

MR DRUMGOLD: But if you don't consider it implied, I'm - I accept (indistinct).

MS RICHARDSON: Well, let's look at the language. You have alleged political conduct in this matter.

50

MR DRUMGOLD: Yes.

5 **MS RICHARDSON:** How is one to imply from that a possible conspiracy involving a federal minister exerting pressure on the Federal Commissioner of Police?

MR DRUMGOLD: I think that -

10 **MS RICHARDSON:** How does one get that contention out of those words?

MR DRUMGOLD: Because I think that would fall within the realm of political conduct.

MS RICHARDSON: Political conduct that you haven't described.

15 **MR DRUMGOLD:** That I haven't described.

MS RICHARDSON: And do you agree with me in your witness statement that you gave in response to a subpoena from inquiry - at no point in that witness statement do you raise an allegation that a federal minister exerted pressure - or you think there's a possible conspiracy or even a suspicion that a federal minister has placed pressure on the Commissioner for Police who in turn put pressure on policing to make a matter go away? Do you agree that that is not in your witness statement?

25 **MR DRUMGOLD:** I agree.

MS RICHARDSON: I want to suggest to you that the reason why this possible conspiracy was not in your continuous file note, was not in your complaint letter of 1 November of last year and was not in your witness statement is because there was no rational basis to conclude from the underlying facts you relied on that such a conspiracy was even a possibility. Just listen to my question. I'm putting to you -

MR DRUMGOLD: Sorry, I thought you had finished.

35 **MS RICHARDSON:** - that the reason why you didn't put it in any of those documents is because there was no rational basis to draw a conclusion of a possibility of a conspiracy on those bases. Do you agree with that?

40 **MR DRUMGOLD:** No, I don't. I agree that it was a possibility. I was not willing to commit to writing the nature of it, because I didn't know the nature of it. I was asking the question of whether there was a connection between the Federal Government and the Territory and ACT Policing. That's the question that I was asking.

MS RICHARDSON: So you say you weren't prepared to commit it to writing.

45 **MR DRUMGOLD:** In direct terms.

MS RICHARDSON: Well, you didn't commit it to writing at all; correct?

50 **MR DRUMGOLD:** Not in direct - no, that's correct. In - in the statement.

MS RICHARDSON: Do you think it's a fair approach in an inquiry where the final question of the subpoena to you, "Is there any other matter you want to raise with the inquiry" - so you agree you had the opportunity to raise whatever you thought was relevant?

5 **MR DRUMGOLD:** I do.

MS RICHARDSON: That instead of articulating your suspicion or concern about a possibility of conspiracy - I will start again. Wouldn't the fairer course, if you truly believed that there was a possibility of a conspiracy, that you would put it in writing so that there would be some fairness to the unnamed senator, fairness to Commissioner Kershaw and to the police that they would have understanding of what allegation you were, in fact, going to raise - or what suspicion you were going to raise. Do you agree that would have been a fairer course?

10
15 **MR DRUMGOLD:** It could have been in there, yes. And it would have enunciated it clearer, yes.

MS RICHARDSON: Well, it would have been the fairer course, wouldn't it?

20 **MR DRUMGOLD:** Yes.

MS RICHARDSON: And isn't the case that if it had have been somewhere in writing that it would have been readily apparent that people could address it and make it clear there was no basis to draw any type of inference about a conspiracy? Do you agree with that?

25 **MR DRUMGOLD:** Well, again, it - the subject matter is the letter. So -

MS RICHARDSON: No, just listen to my question.

30 **MR DRUMGOLD:** Yes, it's not in the statement. I'm inferring it from the letter, which is clearly attached to the statement.

MS RICHARDSON: Well, you've agreed with me that that letter does not either expressly or impliedly convey anything about a possibility of a conspiracy involving a minister and the Commissioner; correct?

35 **MR DRUMGOLD:** Not in that - no.

MS RICHARDSON: Not at all, does it?

40 **MR DRUMGOLD:** Well, as I've said, we are asking the same questions and the same answer. The envelope of potential political conduct encompasses that. You are talking about what specific mechanism is within that envelope. I'm saying the envelope - the spectre of some influence from - from federal politics to ACT Policing is potentially an - an operative factor. That's what I'm saying.

MS RICHARDSON: That's an allegation that you have now withdrawn?

45
50 **MR DRUMGOLD:** I - I - I do not agree with it. I - I - my position now, having read the other statements, is that it was, as I've said yesterday, most likely a skills deficit.

MS RICHARDSON: So you withdraw any suggestion that there was a possible conspiracy involving a minister, the Commissioner and ACT Policing; is that correct?

5 **MR DRUMGOLD:** I do.

MS RICHARDSON: And isn't it the case that you told your senior counsel that the basis upon which you were withdrawing that allegation was that you had read all of the police statements, which we read as all of the ones in your possession, and they allayed your
10 concerns?

MR DRUMGOLD: That's right.

MS RICHARDSON: Now, you read all the witness statements that you had on Monday?
15

MR DRUMGOLD: Yes.

MS RICHARDSON: So isn't it the case that to the extent you had any concerns about this conspiracy, your concerns were allayed prior to Monday, prior to commencing giving
20 evidence; correct?

MR DRUMGOLD: That's right.

MS RICHARDSON: So you didn't have any concerns about this possibility of a conspiracy when you commenced giving evidence on Monday; correct?
25

MR DRUMGOLD: And - and I didn't say that I had a concern on Monday. I gave evidence on Monday of my state of mind during the course and immediately following the trial.

MS RICHARDSON: Well, let's just break it down. Your evidence is that to the extent you had witness statements, you read them prior to giving evidence on Monday and your concerns about a possibility of a conspiracy were allayed?
30

MR DRUMGOLD: Correct.
35

MS RICHARDSON: So on and from Monday, you had no concerns about a possibility of a conspiracy involving a minister, Commissioner for Police or ACT Policing; correct?

MR DRUMGOLD: Correct.
40

MS RICHARDSON: Why, then, did you make an allegation on the third day of this hearing that - in response to a question from senior counsel assisting, was there a conspiracy afoot?

MR TEDESCHI: Page, please?
45

MS RICHARDSON: At page 262.

MR TEDESCHI: Can we have that up?

50 **MS RICHARDSON:** Do you see at line 7:

"I had not formed a view solidly one way or another, but I thought that there was enough incidents to make it possible, if not probable, there was a conspiracy."

5 Do you see that?

MR DRUMGOLD: I'm not saying "I am not"; I'm saying "I had not". I'm talking in the past tense.

10 **MS RICHARDSON:** So do you agree with me, at no point when you were giving evidence on Wednesday did you say, "Look, I had these concerns. I thought they would justify an inquiry, but I have since read all the witness statements I've got. I have no concerns whatsoever, and I do not make this allegation"? Do you agree at no point did you say that?

15 **MR DRUMGOLD:** I was responding to questions, Ms Richardson.

MS RICHARDSON: Well, I want to suggest to you that this topic was traversed multiple times in your evidence.

20 **MR DRUMGOLD:** I accept -

MR TEDESCHI: I object to the question. At no stage did counsel assisting can ask him what his present view was about the -

25 **THE CHAIRPERSON:** Yes, I know that's what Mr Drumgold is saying. But Ms Richardson, just as a preface to a question, said that the topic was raised multiple times, and I take it she's going to go to some places where it was raised in the hearing and in Mr Drumgold's statement to draw what she can out of it.

30 **MS RICHARDSON:** I will do that. Could we go to -

MR TEDESCHI: The topic that was raised was his view at the time -

THE CHAIRPERSON: Well, we will see. We will see.

35

MS RICHARDSON: I object to this in the presence of the witness.

THE CHAIRPERSON: No.

40 **MS RICHARDSON:** Could we go to -

THE CHAIRPERSON: Ms Richardson, you continue.

45 **MS RICHARDSON:** Thank you, Mr Commissioner. Can we go to T258, please. If we go to line 43, please. Do you see there at line 43:

"Yes, because I am concerned that one of the questions I am raising is, is there a connection between federal interference with ACT Policing? That's the primary concern that I have."

Do you agree with me that the way you were expressing your concern about federal interference was in the present tense; it's a primary concern that you have?

5 **MR TEDESCHI:** I object.

MS RICHARDSON: You - just wait for my question.

THE CHAIRPERSON: She hasn't finished her question.

10 **MR TEDESCHI:** Sorry.

MS RICHARDSON: Just look at the syntax of your language there.

THE CHAIRPERSON: Well, just a moment, then. If you're finished, what's the objection?

15 **MR TEDESCHI:** If you look at the context -

THE CHAIRPERSON: No, no.

20 **MS RICHARDSON:** No, I object to this type of objection.

THE CHAIRPERSON: No. What's wrong with the question?

25 **MR TEDESCHI:** Because in - it's a misleading question without putting the previous questions into context.

THE CHAIRPERSON: He sees it. He's a senior counsel. He's a barrister. He's got the transcript in front of him. You can hardly suggest that Mr Drumgold would be misled by Ms Richardson's question. I overrule the objection.

30 **MR TEDESCHI:** If the Chair pleases.

MS RICHARDSON: Would you like to take some time to look at the context in which you gave that answer?

35 **MR DRUMGOLD:** I've - I've read the context.

MS RICHARDSON: So I want to say to you, just as a matter of language, look at the syntax of the answer you gave at line 43. You were expressing in the present tense that a present concern you have - "one of the questions I am raising. It's a primary concern that I have." You were expressing your concern about federal interference with policing as a presently held concern that you held on Wednesday; correct?

45 **MR DRUMGOLD:** No.

MS RICHARDSON: Well, just - I'm not asking you what was in your head. Look at the - as a matter of grammar, you were expressing yourself in terms of a present tense concern. Do you agree with that?

50 **MR DRUMGOLD:** No.

MS RICHARDSON: You don't agree with that?

5 **MR DRUMGOLD:** Because the subject matter is the letter. This - what I'm saying is I'm raising in the letter. It - it's past tense.

THE CHAIRPERSON: I think Mr Drumgold is referring to the historic present. Do you know what I mean?

10 **MS RICHARDSON:** Well -

MR DRUMGOLD: We are talking -

15 **THE CHAIRPERSON:** When you say - when a writer says, "I walked to the door. I go in." The historic present.

MS RICHARDSON: Well, I -

20 **THE CHAIRPERSON:** No, I'm just thinking that's what he's saying. It might not be right. But that's for you -

MS RICHARDSON: What I'm suggesting - sorry, I'm just suggesting -

25 **THE CHAIRPERSON:** Take your time.

MS RICHARDSON: Thank you. That the way you were expressing yourself was to say - even if the first part of that sentence is "the question I'm raising" was a reference to your letter, you finished that answer saying, "That's the primary concern that I have." The clear import of what you were saying is that the primary concern that you have as at Wednesday was a connection between federal interference and ACT Policing. Do you agree that that's the natural import of what you said?

30 **MR DRUMGOLD:** No, I don't agree with that. I don't agree that any rational person - I'm being asked what's in my mind in - in - in the letter. And I'm saying this is what I have in my mind in the letter. We are talking about the time we wrote the letter. I don't think any rational person would conclude that to be the present state of mind. The subject matter we are talking about is the letter, and I'm being asked what is in my mind in the letter - when - in the words in the letter.

40 **MS RICHARDSON:** What I want to -

THE CHAIRPERSON: Mr Drumgold, the problem I'm having is that the letter raised - the letter asserted that somebody's political conduct warranted a public inquiry.

45 **MR DRUMGOLD:** Yes.

THE CHAIRPERSON: And at some point in the hearing, you raised your suspicion - or your belief that it's possible or even probable that political pressure was being brought to bear upon police to suppress the prosecution. And at certain points, undoubtedly, as you say, you were being asked to justify what you had said in the letter, and you referred to your state of

mind at the time you wrote it. But I'm having trouble reading anything that has been put to you so far from the transcript and at this hearing as involving any kind of a withdrawal of - or statement that you no longer believe that, that you were speaking about historical event that no longer holds good and no longer held good from Monday onwards. So whether there you were speaking at page 258 about your state of mind at the time you wrote the letter, that may or may not be so. But the trouble is that you had the opportunity. It seems - you had the opportunity to make good the position from 10 o'clock on Monday onwards, but nowhere in the transcript do you with you see that happening until your counsel re-examined you - or examined you yesterday.

MR DRUMGOLD: I agree with that.

MS RICHARDSON: Do you agree that the possible conspiracy that you referred to on Wednesday was a conspiracy going beyond mere corruption; it was actually a possible conspiracy involving the perversion of the course of justice?

MR DRUMGOLD: I hadn't turned my mind to that extent, no.

MS RICHARDSON: Well, Mr Drumgold, you are a senior counsel. You have made an allegation - sorry, you raised a possible conspiracy that a government minister was exerting pressure on the Federal Commissioner for Police and then in turn onto ACT Policing to make a matter go away. And you separately referred to - you felt like there was a plan to make a political matter to go away. Isn't it apparent that what such a possible conspiracy involves, if it were true, was a perversion of the course of justice?

MR DRUMGOLD: You - you keep asking the question in absolute terms. I had not concluded that there was a conspiracy. I concluded that there was a possibility that there was pressure being exerted on ACT Police. I had not concluded that it had occurred. I was looking at a number of possibilities, and I was querying in my mind those possibilities.

MS RICHARDSON: I will ask a different question. Let's look at this in abstract, not what you are alleging. If a government minister exerts pressure on a Commissioner for Police to in turn put pressure on his or her police force to make a matter go away - to make sure it doesn't come to court, that would be a perversion of the course of justice; correct?

MR DRUMGOLD: It could potentially, yes.

MS RICHARDSON: It's not potential, is it? That would be, if proven, a perversion of the course of justice; correct?

MR DRUMGOLD: Again, it depends on the circumstances. It could potentially.

THE CHAIRPERSON: How could it depend on the circumstances? In what circumstances could it not be an attempt to pervert the course of justice? Can you think of -

MR DRUMGOLD: Okay. We will say "yes" for the purpose of the question.

MS RICHARDSON: Well, it is obvious, isn't it? That would be a perversion of the course of justice?

MR DRUMGOLD: Yes.

MS RICHARDSON: And it's not just a perversion of the course of justice; it would be a perversion of the most grave kind -

5

MR DRUMGOLD: Yes.

MS RICHARDSON: - because it would be coming from a minister of the Crown?

10 **MR DRUMGOLD:** Correct.

MS RICHARDSON: And it would also be a perversion of the course of justice of the most grave kind, because not only would it be stemming from a minister of the Crown; it would be multi-faceted and involve a minister for the Crown, in turn the head of a police force and in turn investigating officers of the police force?

15

MR DRUMGOLD: Yes.

MS RICHARDSON: So it really could not be a graver allegation; correct?

20

MR DRUMGOLD: It's a grave allegation. But it's an allegation I'm not making. It's a possibility.

MS RICHARDSON: Well, I want to suggest to you that it was improper for you under oath on Wednesday to raise the evidence you did about a possibility of a conspiracy in circumstances where you say you actually had no concerns about it at that point. Do you accept that?

25

MR DRUMGOLD: No.

30

MS RICHARDSON: And I want to suggest to you that it was improper to - a person of your high office, to give that evidence on Wednesday in circumstances where you can't even be sure that you read the witness statement of Commissioner Kershaw about whom you were making the gravest of allegations. Do you accept that it was improper to do that?

35

MR DRUMGOLD: Well, I haven't accepted that I was making an allegation on Wednesday.

THE CHAIRPERSON: But, Mr Drumgold, granted you were not alleging that it was so. For the Director of Prosecutions to say, "I hold a suspicion that it's possible that a minister tried to get at the Commissioner to stop a prosecution," is a pretty serious thing to say.

40

MR DRUMGOLD: I held a suspicion, yes. I held - I held a state of mind that it was a possibility.

THE CHAIRPERSON: Yes. And you can think whatever you like. But to say, as the Director of Public Prosecutions, in public, that you believed - you hold the suspicion that that was a possibility and even possibly a probability, that's a pretty grave thing to assert in public, don't you think?

45

MR DRUMGOLD: Yes, I was not asserting it that high, Mr Sofronoff.

50

THE CHAIRPERSON: I'm just repeating what you said, that you hold the suspicion that there's a possibility, if not probability, that that was so.

5 **MR DRUMGOLD:** I held, yes.

THE CHAIRPERSON: Yes. Don't you think that to - to state publicly that you hold that suspicion is an extremely grave matter because people would, rightly, take very seriously what you say?

10

MR DRUMGOLD: Again, that was not the intention of what I was saying. I - to my mind, I was not saying that. When I was saying those things, to my mind, I was not saying, "Here I sit today, I hold a - I hold in my mind a possibility."

15 **MS RICHARDSON:** And I want to suggest to you -

THE CHAIRPERSON: Which here - you are not saying that here you sit today, you hold that in your mind. And you were speaking about the past and, in fact, you don't believe that that's so.

20

MR DRUMGOLD: No.

THE CHAIRPERSON: So where do we draw the last part, "But now I don't believe that that's so," from anything that you said in your evidence between Monday and the close of the hearing on Wednesday?

25

MR DRUMGOLD: I accept I didn't put an addendum on the end of that.

MS RICHARDSON: I want to suggest to you that if your evidence is to be accepted that you had read all the witness statements of police, you had prior to Monday and that your concerns about any conspiracy were allayed, that it was improper for you to give the evidence that you gave on Wednesday - just wait for my question - in the manner you did, without making clear at the same time that you were certainly not making that allegation now, that your allegation - your fears had been allayed and you did not make the allegation. I want to suggest to you it was improper for you to give that evidence without making clear your current position. Do you accept that?

30

35

MR DRUMGOLD: In - in the circumstances, no, I don't. In the circumstances, I was answering questions and being responsive to the question. I was not asked, "Do I hold that view?" And when I was asked that, that was - I - I informed my view.

40

THE CHAIRPERSON: You are saying that you strictly answered the question, and it was not for you to volunteer that you no longer believe it. Is that what you're saying?

45

MR DRUMGOLD: Well, I was - yes. I was saying I was being responsive to the question. The question I was asking was about a letter. If I had have said, "But hang on, now I" - to my mind, I would have been stopped and said, "No" - as Ms Richardson is saying, "No, listen to the question. You are being asked about the letter."

THE CHAIRPERSON: You were examined for three days by Ms Longbottom about the state of belief that prompted you to write the letter. And you say that because of the constraints of the questions, you weren't in a position ever to say that since writing the letter in November 2022 you had changed your mind?

5

MR DRUMGOLD: I accept I probably should have injected the addendum.

MS RICHARDSON: Well, it's not a case of "you probably should have".

10 **MR DRUMGOLD:** I should have injected the addendum.

MS RICHARDSON: Isn't it the case that you, under the privilege of this inquiry, made - gave evidence that called into question the ethics of the minister of the Crown and the Federal Commissioner for Police and all of the investigating officers of the ACT Police - under the privilege of giving evidence on oath, you gave that evidence and at no point made clear that you actually didn't currently believe it; that's correct, isn't it?

15

MR DRUMGOLD: I have accepted that I should have injected the addendum.

20 **MS RICHARDSON:** So because you didn't inject the addendum, the evidence that you gave was widely disseminated of a very grave - possibility of a conspiracy involving a minister of the Crown and the Federal Commissioner because you didn't put in an obvious addendum; is that correct?

25 **MR DRUMGOLD:** I wasn't aware it was widely reported. And it was not - it was -

MS RICHARDSON: Mr Drumgold, isn't it the case that where -

30 **MR TEDESCHI:** He was not allowed to finish his answer.

MS RICHARDSON: Sorry.

MR DRUMGOLD: And it was not even within my purview that what would be taken from that - I understand that you took that from that. It was not even within my purview in saying those things that it would be articulated or it would be received as a - as a belief I still have.

35

MS RICHARDSON: Well, Mr Drumgold, isn't it the case that where a Director of Public Prosecutions gives evidence on oath that makes reference to a possible, if not probable, conspiracy involving a minister of the Crown exerting pressure on the Commissioner, that that would be - it is obvious that that would be widely reported as a grave piece of evidence that had been given? Isn't it obvious that that is what would happen?

40

MR DRUMGOLD: Clearly not obvious to me -

45 **MS RICHARDSON:** Is that really your evidence -

MR DRUMGOLD: - or else - or else I wouldn't have done it.

MS RICHARDSON: Is it really your evidence that it's not obvious that for you to - just wait for my question - for you to raise a possible, if not probable, conspiracy involving a minister

50

of the Crown seeking to pervert the course of justice with the Commissioner for Police, that that would not be widely reported and extremely damaging to the reputations of the people who were the subject of that allegation? Isn't that obvious?

5 **MR DRUMGOLD:** It was not obvious that this passage would be taken in such a way.

MS RICHARDSON: Well, it's not just this passage. I've taken you to four passages; correct?

10 **MR DRUMGOLD:** Yes. I have accepted I should have injected an addendum during my evidence.

MS RICHARDSON: Well, it is not just an addendum, is it? It's a very clear clarification that you do not, in fact, make a grave allegation against a minister of the Crown or the Commissioner, that they have attempted to pervert the course of justice.

15 **MR DRUMGOLD:** And as I've said, I was to my mind not making a grave allegation.

MS RICHARDSON: Those are my questions on that topic.

20 **THE CHAIRPERSON:** So this is a point at which Ms Chrysanthou can be interposed?

MS RICHARDSON: It is.

25 **THE CHAIRPERSON:** Ms Chrysanthou, we would normally have a break about now.

MS CHRYSANTHOU: Yes.

THE CHAIRPERSON: Should we have a break about now?

30 **MS CHRYSANTHOU:** Yes. And then perhaps we can reorganise ourselves.

THE CHAIRPERSON: And you can reconstitute the bar table. Yes. All right. We will break for - until 25 past.

35 **<THE HEARING ADJOURNED AT 11.06 AM**

<THE HEARING RESUMED AT 11.28 AM

40 **THE CHAIRPERSON:** Yes, Ms Chrysanthou.

<EXAMINATION BY MS CHRYSANTHOU:

MS CHRYSANTHOU: Mr Drumgold, you know I act for Lisa Wilkinson?

45 **MR DRUMGOLD:** I do now.

MS CHRYSANTHOU: And I will just be asking you questions limited to your interactions with her and her lawyers.

50 **MR DRUMGOLD:** Okay.

MS CHRYSANTHOU: Now, you have been asked some questions this week about your role as the Director of Public Prosecutions. I want to ask you some questions now about your role as a barrister. You are a barrister?

5

MR DRUMGOLD: I am.

MS CHRYSANTHOU: And you have been senior counsel since 2019?

10 **MR DRUMGOLD:** That's correct.

MS CHRYSANTHOU: And in April 2021, you implemented a policy which incorporated the Bar Rules as applicable to ACT prosecutors?

15 **MR DRUMGOLD:** Yes, that's right.

MS CHRYSANTHOU: And you understand, at least since April 2021 as senior counsel, you hold a position of trust in the context of appearing in courts?

20 **MR DRUMGOLD:** Correct.

MS CHRYSANTHOU: And you understand that in a superior court such as the Supreme Court of the Australian Capital Territory, when you appear, a judge would place trust in you in relation to what you say from the bar table?

25

MR DRUMGOLD: Correct.

MS CHRYSANTHOU: And you understood that Chief Justice McCallum in the context of the trial the subject of this inquiry placed weight on what you submitted from the bar table?

30

MR DRUMGOLD: Correct.

MS CHRYSANTHOU: And it was your understanding, wasn't it, at about this time last year, that when you appeared in front of Chief Justice McCallum, she would expect you to correct her if she misstated any issue of fact or law in the course of the proceedings?

35

MR DRUMGOLD: Correct.

MS CHRYSANTHOU: Now, as both senior counsel and the Director of Public Prosecutions, you understood your duty of candour to the court?

40

MR DRUMGOLD: Absolutely.

MS CHRYSANTHOU: And in particular, you accept, don't you, that that duty arose when it came to unrepresented parties who might be named or identified in the course of those proceedings?

45

MR DRUMGOLD: Correct.

MS CHRYSANTHOU: My client, Lisa Wilkinson, was an unrepresented person at the hearings on 20 and 21 June 2022?

MR DRUMGOLD: Correct.

5

MS CHRYSANTHOU: Now, you understood on those occasions, which were about a year ago now, that to the extent you adduced any evidence or made any submissions about your communications with her, there was no contradictor?

10 **MR DRUMGOLD:** That's correct.

MS CHRYSANTHOU: Because Mr Whybrow and his solicitors were not party to those communications?

15 **MR DRUMGOLD:** Correct.

MS CHRYSANTHOU: Now, I want to suggest to you that it was up to you in all of those circumstances on those dates to be very careful to ensure that the contents of communications between yourself and my client were accurate.

20

MR DRUMGOLD: Correct.

MS CHRYSANTHOU: And were notified to the Chief Justice accurately.

25 **MR DRUMGOLD:** Correct.

MS CHRYSANTHOU: And you were in a little bit of an awkward position, weren't you, because you weren't on those days just an advocate; you were also effectively a witness?

30 **MR DRUMGOLD:** Potentially, yes.

MS CHRYSANTHOU: And you became a witness once that proofing note was tendered by Mr Whybrow?

35 **MR DRUMGOLD:** Potentially, yes.

MS CHRYSANTHOU: Now, you said as an aside on Monday that Ms Jerome was present - is that right - on those two appearances on 20 and 21 June?

40 **MR DRUMGOLD:** I believe so, yes.

MS CHRYSANTHOU: Now, you referred to the fact in answer to questions by counsel assisting on Monday that you considered Ms Jerome your equal in the conduct of that case?

45 **MR DRUMGOLD:** I considered what, sorry?

MS CHRYSANTHOU: Ms Jerome your equal in the conduct of the case?

MR DRUMGOLD: Yes.

50

MS CHRYSANTHOU: I want to suggest to you that as senior counsel, she wasn't your equal in the sense that you were ultimately the person who had carriage of the proceedings on behalf of the Crown?

5 **MR DRUMGOLD:** Absolutely I was.

MS CHRYSANTHOU: And not only were you the decision-maker, you were the person who needed to take ultimate responsibility for any submissions made on behalf of the Crown or evidence tendered?

10

MR DRUMGOLD: I agree with that.

MS CHRYSANTHOU: Now, in the context of this particular case, distinct from other criminal cases in the ACT, you understood, didn't you, that there was a likelihood, if not a probability, to the extent there's any difference between those words, that what was said in court would be widely published by the media?

15

MR DRUMGOLD: Yes. Not everything. A lot is said in court, but there was a chance that it would be reported in the media. That's right.

20

MS CHRYSANTHOU: And you obviously understood, as senior counsel, that when a journalist reports something that happens in court accurately and fairly, they can do so with impunity in the sense that a privilege attaches to that reporting?

25 **MR DRUMGOLD:** I'm abundantly aware of that.

MS CHRYSANTHOU: Now, you were involved in the prosecution of Mr Lehrmann months before he was charged, weren't you?

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: So the charges were laid, I think, in August, but your involvement commenced a few months before that?

35 **MR DRUMGOLD:** In March.

MS CHRYSANTHOU: And - of 2021?

MR DRUMGOLD: Correct.

40

MS CHRYSANTHOU: Yes. Now, having regard to the circumstances leading up to the police investigation, namely, an interview by Ms Higgins with my client -

MR DRUMGOLD: Yes.

45

MS CHRYSANTHOU: - and reporting in other media in relation to her allegations, you understood, didn't you, at all times from March 2021, that media coverage could have an impact on the proper conduct of the prosecution?

50 **MR DRUMGOLD:** Yes, I did.

MS CHRYSANTHOU: And it's right, isn't it, that - or I should ask: did your office keep an eye on the media coverage relating to the case?

5 **MR DRUMGOLD:** Not really. We were aware of media - I didn't specifically go out and seek media.

MS CHRYSANTHOU: So you weren't getting clippings in the office -

10 **MR DRUMGOLD:** No.

MS CHRYSANTHOU: - notifying you of what was being said about the case?

15 **MR DRUMGOLD:** No, we - I mean, we weren't - we - we don't have media monitors - or we didn't have media monitors then. It's something we now have. But, no, I was - and I was personally not monitoring media extensively.

MS CHRYSANTHOU: Was your office monitoring it?

20 **MR DRUMGOLD:** No, there's - we don't have a media department in the office. I get your point, but I - I was not personally monitoring what was being said on the media. I was being exposed to individual articles, but I was not looking broadly at all of the media and -

25 **THE CHAIRPERSON:** Well, were you reading The Australian and the Canberra Times, for example, every day?

MR DRUMGOLD: Not reading The Australian, no.

30 **THE CHAIRPERSON:** What about the Canberra Times?

MR DRUMGOLD: Sometimes.

35 **MS CHRYSANTHOU:** Well, having regard to what's happened, in hindsight, don't you think it was important, given the history and how the matter and the prosecution came about, that your office keep a close eye on what was being said about the case?

MR DRUMGOLD: In - when I'm in a trial, particularly a trial like this, I deliberately try to limit the amount of media that I - that I get exposed to. But I - I could have done that, yes.

40 **MS CHRYSANTHOU:** Well, there was a potential, wasn't there, at all times from the date of charge until the jury was ultimately discharged and your announcement on 2 December last year, that material in the media could have a significant adverse impact on the prosecution?

45 **MR DRUMGOLD:** It - it could. Well -

MS CHRYSANTHOU: And wouldn't it have been responsible and proper for you - sorry.

50 **MR DRUMGOLD:** Not - not necessarily. There's - there's a possibility. But again -

THE CHAIRPERSON: Do you mean that some publicity about the case may be damaging, but some publicity about the case may not be damaging?

5 **MR DRUMGOLD:** It could be. But also there's the fact that juries -

THE CHAIRPERSON: Do you agree with what I said?

MR DRUMGOLD: Should not be damaging, no, not to a jury. It should -

10 **THE CHAIRPERSON:** No, I'm asking you whether you agree that although there might be a lot of publicity about this case, there is publicity that might jeopardise the trial and there is publicity that might not jeopardise the trial.

15 **MR DRUMGOLD:** That's - yes, that's correct. Sorry, are we talking about before the jury is empanelled?

THE CHAIRPERSON: Yes.

20 **MS CHRYSANTHOU:** Yes.

MR DRUMGOLD: Yes. Okay. Yes.

MS CHRYSANTHOU: Yes, before the jury is empanelled.

25 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: I think on Monday you were referring to one aspect of the prosecution, and you referred to a media storm?

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And it frequently occurred, didn't it, in 2021 and 2022, that at times throughout different aspects of the prosecution, there was intense media scrutiny and coverage of what was happening in the case?

35 **MR DRUMGOLD:** There was at times, yes.

MS CHRYSANTHOU: And even separate to the actual proceedings, wasn't there ongoing media coverage of Brittany Higgins?

40 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: She was giving interviews?

45 **MR DRUMGOLD:** She had given some interviews, yes.

MS CHRYSANTHOU: The Prime Minister had referred to her in Parliament?

50 **MR DRUMGOLD:** Yes, I was aware of that.

MS CHRYSANTHOU: Her name was frequently in the press, wasn't it?

MR DRUMGOLD: Yes.

5 **MS CHRYSANTHOU:** And sometimes it was in the press directly in connection with the proceedings, and sometimes it was otherwise in the press because of other appearances or comments that she was making. Do you agree?

MR DRUMGOLD: That's correct.

10

MS CHRYSANTHOU: Now, in April 2022, the question of media interest in the case became an acute issue for you, didn't it, because the accused made an application to permanently stay the proceedings because of media coverage?

15 **MR DRUMGOLD:** There were two. Was this the first one?

MS CHRYSANTHOU: In April last year, Mr Campbell of senior counsel appeared.

MR DRUMGOLD: Yes. Yes. Yes, that was in relation to the Prime Minister's speech. Yes.

20

MS CHRYSANTHOU: And the judgment was Lehrmann (No 2), which is, for anyone interested, [2022] ACTSC 92.

MR DRUMGOLD: Yes.

25

MS CHRYSANTHOU: And I think that was also the application where, as an alternative remedy, injunctions were sought?

MR DRUMGOLD: That's correct.

30

MS CHRYSANTHOU: And you supported those injunctions?

MR DRUMGOLD: I did.

35 **MS CHRYSANTHOU:** And you said on Monday that Network Ten opposed those injunctions. Do you remember giving that evidence?

MR DRUMGOLD: A group of - a lawyer on behalf of a group of companies. And I - and I believe Network Ten was one of them.

40

MS CHRYSANTHOU: And, in fact, there were 11 media companies that were jointly represented that opposed the injunction?

MR DRUMGOLD: That's right.

45

MS CHRYSANTHOU: And her Honour did not make any injunctions?

MR DRUMGOLD: That's correct.

50 **MS CHRYSANTHOU:** Now - and obviously there was no stay order at that time?

MR DRUMGOLD: There was - and nor was there an injunction.

5 **MS CHRYSANTHOU:** Now, at about that time, once that application failed, the matter was listed for trial commencing 27 June?

MR DRUMGOLD: That sounds correct.

10 **MS CHRYSANTHOU:** There was a three-week delay - it was supposed to be at the beginning of June, and there was a three-week delay for some reason. Do you remember why?

MR DRUMGOLD: No, I don't remember why.

15 **MS CHRYSANTHOU:** Now, after the initial stay in April and the injunctions were unsuccessful - the application for injunctions were unsuccessful, you were acutely aware, weren't you, of the potential impact of any further media reporting on the jury trial - the upcoming jury trial?

20 **MR DRUMGOLD:** I was.

MS CHRYSANTHOU: Did your office follow the media from that point, from April?

25 **MR DRUMGOLD:** Again, not - not really, by virtue of time. I mean, when you say "follow the media", I'm assuming you mean read multiple media sources, read multiple newspapers and acquire an aggregate of what's being said. Simply no time to do all of that.

MS CHRYSANTHOU: So any media that you became aware of was incidental, if you saw it yourself or if someone brought it up with you?

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Now, Ms Wilkinson was announced as a Logie nominee in May 2022. When did you become aware of that?

35 **MR DRUMGOLD:** When she mentioned it during proofing, I think.

MS CHRYSANTHOU: Now, you understood - and I will just come back to the timing in a moment - that the nomination was for the February 2021 interview with Brittany Higgins?

40 **MR DRUMGOLD:** I didn't know when the interview was. I knew it was for an interview with Brittany Higgins.

45 **MS CHRYSANTHOU:** I want to suggest to you that it was reported in the media in May 2022 that she had received that nomination and The Project had received that nomination. Do you recall seeing that?

MR DRUMGOLD: No, I don't recall seeing that.

MS CHRYSANTHOU: Ms Brown met with you on 18 May 2022, and she raised the nomination with you, didn't she?

MR DRUMGOLD: Yes. Yes, she did. Yes.

5

MS CHRYSANTHOU: And I think you mentioned that in your evidence yesterday.

MR DRUMGOLD: Yes, that's - that's right.

10 **MS CHRYSANTHOU:** And she had some concerns about the timing of her evidence -

MR DRUMGOLD: That's right.

MS CHRYSANTHOU: - in connection with the award ceremony on 19 June?

15

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: Right. So I want to suggest to you -

20 **MR DRUMGOLD:** When was that, sorry?

MS CHRYSANTHOU: 18 May 2022.

MR DRUMGOLD: Right.

25

MS CHRYSANTHOU: That's according to her witness statement.

MR DRUMGOLD: Okay. I would accept that.

30 **MS CHRYSANTHOU:** Now, she advised you as early as 18 May that Ms Wilkinson had been nominated for her interview with Brittany Higgins?

MR DRUMGOLD: I - I would accept that, yes.

35 **MS CHRYSANTHOU:** And that the ceremony was scheduled on 19 June, which she was concerned was proximate to her evidence?

MR DRUMGOLD: Yes. Yes, I think that's right.

40 **MS CHRYSANTHOU:** Now, having found out that there was a Logies nomination to my client and The Project for the interview with Brittany Higgins, you must have realised, surely, that that would generate publicity in itself?

45 **MR DRUMGOLD:** It - it could do, yes. I imagine - I don't know how many people watch the Logies, but I - people would watch it, I think.

MS CHRYSANTHOU: And if my client and The Project won that Logie, there would, you must have understood, inevitably been publicity about that award being given?

50 **MR DRUMGOLD:** There could be, yes.

5 **MS CHRYSANTHOU:** And given that the award was for the interview with Brittany Higgins, surely it must have entered your mind that Brittany Higgins' name would be mentioned in connection with both the nomination of the award and, if they won, the awarding of it?

10 **MR DRUMGOLD:** Frankly, I would have thought that there would be lawyers within Channel Ten that would make sure that all of those things occurred. These are large organisations. I would - I - I would not think it's my role as DPP to regulate every media outlet. My assumption is that a large media organisation would have lawyers that regulate. And that's based on my experience where journalists have said, "Well, we are running it by our lawyers to - to clear it," etcetera. I would assume that there would be some - and particularly by virtue of the fact that all of them were represented, I would think that there would be internal legal advice on such issues.

15 **MS CHRYSANTHOU:** Is that your state of mind now or is that something you actually thought at the time?

20 **MR DRUMGOLD:** That's always been my state of mind.

MS CHRYSANTHOU: And just to be clear, Channel Ten were not running the award show; Channel Nine was.

25 **MR DRUMGOLD:** I - I don't know who is running it.

MS CHRYSANTHOU: And did you at that time have any thought that you should raise with the court the fact that the interview with the complainant had been nominated for a major television award?

30 **MR DRUMGOLD:** Again, my view - there is - as you say, there was a lot of media. My view is that media organisations regulate themselves through some legal prism.

35 **MS CHRYSANTHOU:** And from your perspective, you had no communication with any media organisation about this topic other than what I'm going to ask you about the conference with my client?

MR DRUMGOLD: Not - not that I - no. But, again, any time an issue came up in court, there was always a team of lawyers representing media outlets. So -

40 **MS CHRYSANTHOU:** But this issue did not come up?

MR DRUMGOLD: No.

45 **MS CHRYSANTHOU:** You did not raise it?

MR DRUMGOLD: No.

MS CHRYSANTHOU: And neither did the accused's lawyers?

50 **MR DRUMGOLD:** No.

MS CHRYSANTHOU: What I want to suggest to you is that whether my client gave a speech or not, you must have understood that there was likely to be publicity naming Brittany Higgins if my client and The Project won that award?

5

MR DRUMGOLD: Again, not necessarily. I mean, I - I don't know how the Logies work. I don't know what's going to be announced. I'm not being difficult, but I think you are - you are giving me a credit that I don't deserve. I don't -

10 **MS CHRYSANTHOU:** I'm not sure if it's a credit or a discredit, knowing or not knowing about the Logies. I won't make any comment about that. But what I'm suggesting to you is having found out that there was a television award and having regard to the evidence that you have now given that you didn't really know much about it, didn't you think you should take some steps or make some inquiries in your role as minister of justice in relation to this
15 prosecution to see if it could impact the upcoming - the very soon to be listed first day of the jury trial?

MR DRUMGOLD: Again, Ms Chrysanthou, that's - it's just completely unrealistic. I mean -

20 **THE CHAIRPERSON:** But Ms Brown had raised her concern about it, so it wasn't - you're right that as DPP you don't hold in your mind the possibility that some media outlet somewhere might say something prejudicial to a trial - a fair trial. This is a trial that's coming up that has been covered more intensely than anything since the Lindy Chamberlain case, I think. And Ms Brown had raised with you the risk that something would go wrong at that
25 hearing, as I understand what she had done. So Ms Chrysanthou is putting that question to you not as a general proposition about how you deal with all your cases, but in relation to this particular case.

MR DRUMGOLD: Ms Brown's concern did not relate to publicity. Ms Brown's concern
30 related to that she felt there were some mistruths spoken about her in an interview, and an interview - and an award given to something that spoke mistruths about her would impact her emotional state. It was the mere fact - it was that there were mistruths in an interview about her. She did not raise issues of publicity, etcetera.

35 **MS CHRYSANTHOU:** So your evidence is, whatever the reasons, at that point, it didn't enter your mind that this award ceremony could pose a risk to the jury trial?

MR DRUMGOLD: No.

40 **MS CHRYSANTHOU:** Now, 15 June, you attended a video conference with Ms Wilkinson. It was a Wednesday -

MR DRUMGOLD: I did.

45 **MS CHRYSANTHOU:** - I think we have established.

MR DRUMGOLD: I did.

MS CHRYSANTHOU: And present was Ms Smithies on the end of the video with
50 Ms Wilkinson?

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And on your end, Ms Jerome and Mr Greig; is that right?

5

MR DRUMGOLD: I would accept that, yes.

MS CHRYSANTHOU: Now, it went for about two hours, the meeting?

10

MR DRUMGOLD: I - I would accept that. I don't particularly recall, but yes.

MS CHRYSANTHOU: And you didn't take any notes during the meeting?

MR DRUMGOLD: No.

15

MS CHRYSANTHOU: Or immediately after the meeting?

MR DRUMGOLD: No.

20

MS CHRYSANTHOU: So you accept you had no contemporaneous notes created by you from that conference?

MR DRUMGOLD: No. That's right.

25

MS CHRYSANTHOU: Did you observe anyone else taking notes?

MR DRUMGOLD: I didn't observe, but normally instructors would take notes, yes.

MS CHRYSANTHOU: So Mr Greig?

30

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And did Ms Jerome take notes?

35

MR DRUMGOLD: I don't know.

MS CHRYSANTHOU: Now, the purpose of taking those notes, I think you explained on Monday, was for the preparation of a proofing note to be provided to the accused's lawyers?

40

MR DRUMGOLD: That's right.

MS CHRYSANTHOU: And that is a disclosure obligation to enable the defence to have information about things said by witnesses in case it goes to their credit; is that right?

45

MR DRUMGOLD: That - well - or additional evidence over and above their evidence - a number of reasons, yes.

MS CHRYSANTHOU: And it's an important disclosure document, isn't it?

50

MR DRUMGOLD: That's right.

MS CHRYSANTHOU: And in your experience - in your lengthy experience working in criminal law, it's right, isn't it, that lawyers practising in that area would understand a proofing note to be a contemporaneous note of the conference with the witness?

5

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And that is because accuracy of the note is important because it could be used at trial as relevant to the witness's credit, for example?

10

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: Now, at the end of the meeting - I will call it the proofing part of the meeting - I want to suggest to you that to the extent Ms Jerome was taking notes, she stopped taking notes. Did you observe that?

15

MR DRUMGOLD: No, I didn't observe that.

MS CHRYSANTHOU: Did you observe at all - and I'm going to call it the Logies part of the conversation - if Mr Greig was taking notes?

20

MR DRUMGOLD: No, I don't recall that.

MR DRUMGOLD: So far as you are aware - or you don't know one way or the other - no one from the office was taking contemporaneous notes of this part of the conference?

25

MR DRUMGOLD: No.

MS CHRYSANTHOU: Now - and the reason for that - and this is not being critical of anyone there - was that the Logies part of the conversation wasn't part of the proofing note?

30

MR DRUMGOLD: No.

MS CHRYSANTHOU: Because it wouldn't be relevant to Ms Wilkinson's evidence, if she gave evidence?

35

MR DRUMGOLD: That's - that's right.

MS CHRYSANTHOU: Now, I'm going to put to you precisely what my client says was said at that meeting. Is it easier for you to have it on the screen as I read it out or is it easier if I just read it out?

40

MR DRUMGOLD: I'm happy for you to read it out.

MS CHRYSANTHOU: So she said to you, "I want to speak to you about the upcoming Logie Awards next Sunday night, because my interview with Ms Higgins has been nominated for the Logie for outstanding journalism." Do you remember her saying that or something to that effect?

45

MR DRUMGOLD: Something to that effect.

50

MS CHRYSANTHOU: "I don't expect that we will win, but I have written a very carefully prepared speech I will read from just in case we do." Do you remember that?

5 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And she then said, "I want to make sure that I don't say anything in the speech that would any way obstruct or legally compromise the upcoming criminal trial. I have a copy of the speech with me."

10

MR DRUMGOLD: Some missing parts. I don't remember that last part being said.

MS CHRYSANTHOU: So can you tell us what you remember that's different?

15

MR DRUMGOLD: I don't remember any of that being said. But I remember some further elaboration on - there's something about, "Rival network runs the Logies, and I'm not - when I was with that network, I might have got one. But now I'm with another network, I didn't - I'm not" - something along those lines. I can't quite recall. But there was something about moving from one network to another and it making an improbability that she would win the Logie. That's right.

20

MS CHRYSANTHOU: And what I want to suggest is you said, "If you give a speech, you can't mention the trial."

25

MR DRUMGOLD: No, I was more - to my - no, I think - well, I might have said that. But I think I said, "Because any publicity could give rise to a stay." I mentioned a stay at some point.

MS CHRYSANTHOU: I want to suggest you you didn't say those additional words.

30

MR DRUMGOLD: The stay?

MS CHRYSANTHOU: Yes.

35

MR DRUMGOLD: Okay.

MS CHRYSANTHOU: And then my client -

MR TEDESCHI: Sorry, I didn't hear the answer.

40

THE CHAIRPERSON: You don't have an answer yet.

MR DRUMGOLD: I - I - I thought - okay. I don't accept that. I think - I'm - I'm confident that "stay" was mentioned - the word "stay" was mentioned.

45

MS CHRYSANTHOU: I want to suggest to you that all you said were words to the effect of, "If you give a speech, you can't mention the trial."

MR DRUMGOLD: No.

50

MS CHRYSANTHOU: And then Ms Wilkinson said, "Mr Drumgold, I can assure you that I'm very aware that I can't mention the trial. I wouldn't do that." Do you remember her saying that?

5 **MR DRUMGOLD:** No, I don't remember her saying that.

MS CHRYSANTHOU: "As a journalist and particularly on a matter as sensitive as this, I take my legal obligations very seriously." Do you remember her saying that?

10 **MR DRUMGOLD:** Not particularly, no.

MS CHRYSANTHOU: "And the speech I have prepared" -

THE CHAIRPERSON: Do you say she didn't say it?

15

MR DRUMGOLD: No, I don't say she didn't say it. I - I say I don't remember saying - I don't remember her saying that.

20 **MS CHRYSANTHOU:** Then she said, "The speech I prepared doesn't mention the trial, it doesn't mention the accused, it doesn't mention the charges and it doesn't even mention Parliament House where this alleged crime is said to have taken place."

MR DRUMGOLD: I don't remember hearing any of that, no.

25 **THE CHAIRPERSON:** But we need to get it clear whether you dispute that it was said or whether it just - that you don't remember it being said.

MR DRUMGOLD: Well, I - I - what I can say is those words would stick in my mind if they were said. And I didn't hear those words. They have not stuck in my mind.

30

MS CHRYSANTHOU: And I want to suggest to you she then said, "Let me read the speech to you so you can see if you think it would be in any way problematic." Do you remember her saying that?

35 **MR DRUMGOLD:** No.

MS CHRYSANTHOU: Do you dispute she said that?

40 **MR DRUMGOLD:** In those words - yes. I would - well, again, I would recall those words, and I don't recall those words.

45 **MS CHRYSANTHOU:** And then she said, "So it reads: 'The truth is, this honour belongs to Brittany. It belongs to a 26-year-old's woman unwavering courage. It belongs to a woman who said enough.'" And then at that point, you cut her off. Do you remember her reading that part of the speech?

MR DRUMGOLD: No, I don't remember hearing that - that much of the speech. Again, I'm not saying that she didn't say it, but I - I had switched off by this, I think.

MS CHRYSANTHOU: Well, I want to suggest to you that she did read that part of the speech and, in particular, the part of the speech where she was referring to Brittany Higgins.

MR DRUMGOLD: Again, I - I can't recall that much. I had switched off by that stage.

MS CHRYSANTHOU: And you said, "I don't want to hear any more. If I listen to the whole speech, I could be accused at a later date of endorsing it, which would cause problems."

MR DRUMGOLD: No.

MS CHRYSANTHOU: "I'm not a speech writer."

MR DRUMGOLD: No, I was much more succinct than that. I said, "I'm not a speech editor." I don't recall. I would not have said those words, I don't think.

MS CHRYSANTHOU: And that my client said, "Mr Drumgold, I'm not seeking your guidance as a speech writer. As the person who is running this case for the Crown, I'm seeking your knowledge to make sure that nothing I could say - nothing I say could in any way cause a problem with the upcoming trial."

MR DRUMGOLD: No, those words were not said to me.

MS CHRYSANTHOU: But you agree, don't you, that to the extent - you understood Ms Wilkinson was asking you to tell her if there was something wrong with the speech she intended to give. You understood that, didn't you?

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And -

MR DRUMGOLD: I think that was the reason for it.

MS CHRYSANTHOU: Yes. And you declined to offer any guidance on the speech?

MR DRUMGOLD: I - I said something - I gave an umbrella explanation, something to the effect of, "Any publicity could give" - to my recollection, I said something to the effect of, "Any publicity could give rise to a stay."

MS CHRYSANTHOU: But you didn't tell her, "Don't give the speech"?

MR DRUMGOLD: I didn't say, "Do not give the speech."

MS CHRYSANTHOU: And you didn't say, "Don't use those words that you just read out to me in your speech"?

MR DRUMGOLD: No, I didn't say that.

MS CHRYSANTHOU: And you understood, I want to suggest to you, casting your mind back to 15 June last year, that Ms Wilkinson was concerned to not say anything that would cause a problem for the criminal trial. That's why she was raising it with you?

MR DRUMGOLD: Yes. Potentially - yes.

5 **MS CHRYSANTHOU:** Well, you say "potentially". I mean, on Monday, you gave some evidence that you thought at the time that my client raised this issue effectively to brag.

MR DRUMGOLD: Well, that - that was the perception that I - that I had.

10 **MS CHRYSANTHOU:** Well, what was possibly said in the course of this exchange which led to you that conclusion?

MR DRUMGOLD: That there was a Logie nomination in it.

15 **MS CHRYSANTHOU:** Did you understand that she had been a senior reporter and had been in journalism for four decades?

MR DRUMGOLD: And was sitting with a lawyer.

20 **MS CHRYSANTHOU:** Okay. I'm not sure how that's relevant. I will come back to that.

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: But did you understand -

25 **MR DRUMGOLD:** I - I knew who she was. I knew what she - what she had done.

MS CHRYSANTHOU: She had been around a long time?

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Why, in your mind, did you think that she would possibly want to brag to you about a Logies nomination?

35 **MR DRUMGOLD:** I don't know.

MS CHRYSANTHOU: It makes no sense, does it, Mr Drumgold?

MR DRUMGOLD: No.

40 **MS CHRYSANTHOU:** And I want to suggest to you that your evidence about that on Monday, and to the extent you are reiterating today, it's just not correct.

MR DRUMGOLD: Well, it was my interpretation, but it - I'm accepting that it might not have - if you are saying it was not her intention, I accept it was not her intention.

45 **MS CHRYSANTHOU:** Well, I'm trying to understand what you thought, and what I'm suggesting to you is that you must have understood that Ms Wilkinson was raising the issue of the speech because of her concern to not impact the criminal trial by anything she said.

THE CHAIRPERSON: She couldn't have any other reason, could she, unless she was bragging?

5 **MR DRUMGOLD:** I - no, I thought she was seeking an imprimatur that I couldn't give.

MS CHRYSANTHOU: And she was seeking the imprimatur because she was concerned that she not say or do anything that would impact the trial. You understood that, didn't you?

10 **MR DRUMGOLD:** Yes, I - I would agree with that.

MS CHRYSANTHOU: Now, you have accepted you didn't warn her that she shouldn't give a speech.

15 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: I want to suggest to you that you didn't say anything to her that could be characterised as any sort of warning in relation to the speech that she proposed to give if she won.

20 **MR DRUMGOLD:** No, my - my - to my recollection, I gave a general publicity warning. I was concerned not to impose an injunction that a court had declined to impose. That was my concern.

25 **MS CHRYSANTHOU:** Now, having received that information in that conference that she had written a speech that she intended to give if she won the award, did it not occur to you that you should - now that you had more information about the Logies, that you should raise it with the court to see if any order should be made?

30 **MR DRUMGOLD:** Again, it didn't occur to me.

MS CHRYSANTHOU: Now -

35 **MR DRUMGOLD:** There was a - again, because there was the qualification that this was highly unlikely, remote. So what I would be effectively raising is there is this highly unlikely, remote chance that someone is going to win an award, and I've cautioned them that any publicity could give rise to a stay.

40 **MS CHRYSANTHOU:** Well, she didn't say it was highly unlikely or remote; all she said is, "I don't expect that we will win."

MR DRUMGOLD: With some other additional stuff that is missing from -

MS CHRYSANTHOU: About the network issues?

45 **MR DRUMGOLD:** Correct.

MS CHRYSANTHOU: Right. But the fact that she had written the speech meant that it wasn't highly unlikely or remote; there was obviously a chance it could occur. Didn't you infer that?

MR DRUMGOLD: No, what I took away from that there was virtually no chance that it would occur.

5 **MS CHRYSANTHOU:** Well, I want to suggest to you also she never said anything to you about being nominated for a Gold Logie.

MR DRUMGOLD: Yeah, I - I don't know. I mean, I thought there were only Gold Logies. But I'm - I'm hearing that there are other colours.

10 **MS CHRYSANTHOU:** Well, I want to - I'm going to come back to the fact that you put that in your note a few days later, and I'm suggesting to you she never said "Gold Logie".

MR DRUMGOLD: Right. That's the term that I hear on the television.

15 **MS CHRYSANTHOU:** Well, there is only one Gold Logie; all the rest are silver.

MR DRUMGOLD: Right. Okay.

20 **MS CHRYSANTHOU:** Did you know that?

MR DRUMGOLD: No, I did not know that.

MS CHRYSANTHOU: Right. And -

25 **THE CHAIRPERSON:** I guess the point is that of all people on earth, there is one person who would not make a mistake about what kind of Logie she might win, and that was Ms Wilkinson, who would have been under no misapprehension that she had not been nominated for a Gold Logie. So it's highly unlikely that your note was accurate to that extent.

30 **MR DRUMGOLD:** Yes. No, I - I accept that she - if she didn't say "Gold Logie", I thought that the award was called a Gold Logie.

35 **MS CHRYSANTHOU:** Now, yesterday you gave some evidence in response to some questions by my learned friend Mr Tedeschi, and you said to the effect that if you said the words "don't mention the trial", you understood or expected my client and Ms Smithies to understand that that meant, "Don't mention Brittany Higgins." Is that a fair summary of what you were trying to say yesterday?

40 **MR DRUMGOLD:** Yes. Yes.

MS CHRYSANTHOU: Now, I want to suggest to you that that can't possibly be correct having regard to the fact that Ms Higgins had - as you accepted earlier, had many, many appearances in the media above and beyond as the complainant in the trial.

45 **MR DRUMGOLD:** Yes.

50 **MS CHRYSANTHOU:** And that reflecting upon that evidence, you couldn't possibly have thought that it was rational or reasonable to expect Ms Wilkinson to understand by the words "don't mention the trial" that she shouldn't mention Brittany Higgins at all?

MR DRUMGOLD: Well, again, I - it would be impossible to mention the name Brittany Higgins at that stage without it carrying a clear import of a trial.

5 **THE CHAIRPERSON:** But lots of people used the words "Brittany Higgins" in the media up to the date of the trial without any repercussions. Indeed, some of those statements were tested in the Supreme Court and found not to breach any rule against using those words. So what's being put to you is that the notion that somebody - a lawyer would say, "But don't mention the words 'Brittany Higgins' because that might cause a stay," doesn't sound very likely because it wouldn't be true.

10 **MR DRUMGOLD:** Well, again, my rationale at that stage to mention Brittany Higgins is tantamount to mentioning what Brittany Higgins is famous for or known for. At that stage, was a trial.

15 **THE CHAIRPERSON:** But people undoubtedly wrote in the newspapers and on various other media outlets that there is a trial coming. They mention the trial, and they mention Brittany Higgins. Can't possibly on their own be something that one should be warned against.

20 **MR DRUMGOLD:** Yes. Well, as - in hindsight, I should have seen that. At that time, I didn't see that.

MS CHRYSANTHOU: And -

25 **THE CHAIRPERSON:** So to say, "Don't mention the trial. Don't mention Brittany Higgins," that's not a clear warning against saying the things that Ms Wilkinson ultimately said.

30 **MR DRUMGOLD:** No. I -

THE CHAIRPERSON: Would you agree.

MR DRUMGOLD: In hindsight, not - no.

35 **MS CHRYSANTHOU:** And she had, in fact, as I have suggested to you, read out the part of her speech where she specifically did mention Brittany Higgins, and you did not say, "Hang on, wait a second, you better not mention Brittany's name."

40 **MR DRUMGOLD:** I don't recall that.

MS CHRYSANTHOU: Now, the first time that you had the occasion to take any notes from that meeting was on 20 June, on the Monday after the Logies speech. Is that right?

45 **MR DRUMGOLD:** Yes. That's right.

MS CHRYSANTHOU: And the first version of the proofing note that you saw was from your instructing solicitor, Mr Greig, at 12.37 pm?

50 **MR DRUMGOLD:** That's right.

MS CHRYSANTHOU: And I will just pull that up. It is DPP.005.004.4501. So that's the email that you can see was sent -

MR DRUMGOLD: Yes.

5

MS CHRYSANTHOU: - to you and your junior at 12.37 pm on 20 June?

MR DRUMGOLD: Yes, I see that.

10 **MS CHRYSANTHOU:** Now, that - if you could please go to the attachment, which is the next page. Yes. Thank you. Three, sorry. It's three. Sorry about that. 4503. Now, it goes over two pages, that document. And this is the proofing note prepared by Mr Greig, I assume based on his notes. And you accept, don't you, it says nothing about the Logies conversation?

15 **MR DRUMGOLD:** No, it doesn't . That's right.

MS CHRYSANTHOU: And that document sent at 12.37 pm is, in fact, the proofing note for the conference with Ms Higgins - sorry, with Ms Wilkinson on 15 June?

20 **MR DRUMGOLD:** That's right.

MS CHRYSANTHOU: And that document - that version was a contemporaneous note?

MR DRUMGOLD: Yes.

25

MS CHRYSANTHOU: Now, at 12.46 pm, your junior, Ms Jerome, sent you an email -

MR DRUMGOLD: Yes.

30 **MS CHRYSANTHOU:** - where she raised the Logies issue, and that's DPP.005.004.4497.

MR DRUMGOLD: Yes.

35 **MS CHRYSANTHOU:** And Ms Jerome's recollection, as appears from that email, is that my client read out to you what she intended to say at the Logies if she won?

MR DRUMGOLD: Yes.

40 **MS CHRYSANTHOU:** Do you see it's not limited to just the first line or the first few words of the speech?

MR DRUMGOLD: No, I see that.

45 **MS CHRYSANTHOU:** And then she asked for advice, whether she could read it out. Do you see that?

MR DRUMGOLD: Yes.

50 **MS CHRYSANTHOU:** And you stated you couldn't give advice?

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And that her recollection is similar to yours, that any pre-trial publicity may increase the likelihood of the defence applying for a further stay?

5

MR DRUMGOLD: That's my recollection of what was said.

MS CHRYSANTHOU: Now, then, the first time, I want to suggest to you, that you attempt to make a note of what you recalled from that part of the meeting was at 12.52 pm.

10

MR DRUMGOLD: Okay.

MS CHRYSANTHOU: And that's DPP.005.009.8162.

15

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: That's the first time you have taken a note of that part of the meeting; that's right, isn't it?

20

MR DRUMGOLD: That's right.

MS CHRYSANTHOU: And I want to suggest to you that that's not a contemporaneous note.

MR DRUMGOLD: No, it's the following Monday.

25

MS CHRYSANTHOU: And you've said there that she read the first line. You accept that your recollection differed from your junior's recollection?

MR DRUMGOLD: Yes.

30

MS CHRYSANTHOU: And then there's - it's similar - the rest of it is similar.

MR DRUMGOLD: Right.

35

MS CHRYSANTHOU: Now, what then occurred, I want to suggest to you - and counsel assisting took you through this on Monday - and I should say, when you came to write that note, it was after you had already seen the Logies speech?

40

MR DRUMGOLD: I might have read it, I don't think - I can't remember whether I had actually seen it, but I was aware of a transcript of it.

MS CHRYSANTHOU: Yes, I think you said on Monday you might have looked it up and viewed it on television that morning.

45

MR DRUMGOLD: Yes, I - I don't know whether it was before that after that, but I - I did it during that day.

MS CHRYSANTHOU: So when the emails were being exchanged just after midday on the Monday, your office was aware, weren't they, that the Logies speech had been given?

50

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: That there was subsequent comments made by other media?

5 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And on social media?

MR DRUMGOLD: Yes.

10

MS CHRYSANTHOU: And that that could be a problem?

MR DRUMGOLD: That's right.

15 **MS CHRYSANTHOU:** So it was in that context that you - the three of you sought to recall what was said about that issue?

MR DRUMGOLD: That's - that's right.

20 **MS CHRYSANTHOU:** Now, you have cross-examined a lot of witnesses?

MR DRUMGOLD: Yes.

25 **MS CHRYSANTHOU:** You accept, don't you, that recollections that are not contemporaneous can alter having regard to the passage of time but also circumstances?

MR DRUMGOLD: Yes, they can.

30 **MS CHRYSANTHOU:** And surely at that point, your office would have felt some concern - or at least some - feel under some pressure that there was going to be an application because of what had occurred over the media?

MR DRUMGOLD: Yes. Yes.

35 **MS CHRYSANTHOU:** And is it fair to say that, at least subconsciously, you knew that you might have to defend your conduct in relation to that conversation with my client?

MR DRUMGOLD: I - that wasn't in my mind.

40 **MS CHRYSANTHOU:** But as a person who has cross-examined many witnesses, you accept, don't you, that the fact that the first time your recollection was put down in writing occurred days later and after you were aware that there was an issue would be relevant to the accuracy of that note?

45 **MR DRUMGOLD:** Again, I just - I didn't even turn my mind to it.

MS CHRYSANTHOU: But do you -

THE CHAIRPERSON: To what?

50

MR DRUMGOLD: To - to that fact. I mean, we - we - to my mind, we just said, "Well, we had better put something in here" - or at Skye's suggestion, "We better put something in here." And I did my best to recall and put that in there.

5 **MS CHRYSANTHOU:** Right. But what I'm putting to you is that as a senior counsel and a person who has been experienced in cross-examining people, you at that time understood the difference between a contemporaneous note and one that wasn't?

MR DRUMGOLD: Yes.

10

MS CHRYSANTHOU: You understood the difference between a note that was prepared at a person's leisure, having time to carefully consider issues, compared to a note that's prepared when a bunch of people are under a bit of pressure because something has just happened?

15 **MR DRUMGOLD:** I accept that.

MS CHRYSANTHOU: As you sit there, do you accept that describing your recollection in that email as a contemporaneous note would not be true?

20 **MR DRUMGOLD:** Yes, I accept that.

MS CHRYSANTHOU: Now, what then occurred - and I won't go through the -

25 **THE CHAIRPERSON:** Just before you go there. Mr Drumgold, you said that when - just before you sent this email on 20 June to your colleagues, you and Ms Jerome had spoken and thought you had better write down what had happened; is that correct?

MR DRUMGOLD: Yes.

30 **THE CHAIRPERSON:** And why did you think you had better write down what happened?

MR DRUMGOLD: It didn't even occur to me. I mean, it was - it was - seemed like a good suggestion to me.

35 **THE CHAIRPERSON:** But why was it a good suggestion? Why would it matter what was said about this?

MR DRUMGOLD: Yes. Because - I don't know - I don't know - I don't know the answer to that question. I didn't work through that rationale.

40

THE CHAIRPERSON: Well, one reason might be that it might be questioned whether, before Ms Wilkinson made her speech, she had raised the matter with you and that you had not warned her. That might be a reason why you might want to make a note of what had actually happened.

45

MR DRUMGOLD: I never thought that she would say that.

THE CHAIRPERSON: Sorry?

MR DRUMGOLD: I - it never occurred to me that she would accuse that I - accuse me of not saying anything.

5 **THE CHAIRPERSON:** So this was not a proofing note because, as Ms Chrysanthou has put to you, the proofing notes concern the evidence that Ms Wilkinson was expected to give. So what made it desirable to record that part of the conference on Monday morning?

10 **MR DRUMGOLD:** Yes, I - I didn't work through that rationale. It was - it seemed like a good suggestion.

THE CHAIRPERSON: I know. You said that. But then what was the rationale?

MR DRUMGOLD: I - I - I don't know.

15 **THE CHAIRPERSON:** Yes, Ms Chrysanthou.

MS CHRYSANTHOU: Well, the rationale was that you thought you had better cover yourself because you anticipated that that conversation was about to become an issue in the proceedings?

20 **MR DRUMGOLD:** That - that was not what was on my mind, no.

MS CHRYSANTHOU: Well, there's no other - as you sit there, any other rational explanation, is there?

25 **MR DRUMGOLD:** I don't know. I just adopted a recommendation.

MS CHRYSANTHOU: Now, what then occurred - I won't take you through them precisely; you were taken through them on Monday - is Mr Greig copied the substance of your email -

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: - that we are looking at now -

35 **MR DRUMGOLD:** Correct.

MS CHRYSANTHOU: - at 4.52 and pasted it into the proofing note?

40 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And then the DPP's office, at 1.09 pm, emailed the amended proofing note - I will call it - to the solicitors for the accused?

45 **MR DRUMGOLD:** That's right.

MS CHRYSANTHOU: Now, it was not pointed out in the emails to the solicitors for the accused that the last part of the document was not contemporaneous?

50 **MR DRUMGOLD:** It was not.

MS CHRYSANTHOU: And you understood that they would expect that document, as you accepted earlier today, to be contemporaneous as a proofing note?

MR DRUMGOLD: In hindsight, yes.

5

MS CHRYSANTHOU: Well, it was a failing on the part of the office of the DPP, wasn't it, to not point out to Mr Lehrmann's lawyers that part of that document was not contemporaneous?

10 **MR DRUMGOLD:** Yes, we should have done that.

MS CHRYSANTHOU: And it actually was an act of misleading Mr Lehrmann's lawyers, wasn't it?

15 **MR DRUMGOLD:** Well, I - I didn't view it as such as the time, no.

THE CHAIRPERSON: No, you are being asked whether it was.

MR DRUMGOLD: I think "misleading" is probably too - too strong a word.

20

THE CHAIRPERSON: What word would you use?

MR DRUMGOLD: Well, because again -

25 **THE CHAIRPERSON:** What word would you use?

MR DRUMGOLD: So the note - I'm not even sure the typed notes are the notes. Generally, there is handwritten notes and then they - I think the time lag might be there is handwritten notes and they are converted into typed notes, and other people read them and say, "No, I think this is what was said," or - or - or they adopt them. It was part of that process. So this was part of the evolution of the preparation of that note. That's what was on my mind at the time.

30

THE CHAIRPERSON: So how would you describe the effect on the defence team when they got this contemporaneous note, the last part of which was not contemporaneous?

35

MR DRUMGOLD: Again, in hindsight, they -

THE CHAIRPERSON: It was put to you that it was misleading, and you rejected that. So what adjective would you use?

40

MR DRUMGOLD: I'm saying I wasn't intending to mislead.

THE CHAIRPERSON: Yes.

45

MR DRUMGOLD: They may have -

THE CHAIRPERSON: I'm not asking -

MR DRUMGOLD: Yes. They may not have appreciated that they were recorded at two different times.

5 **MS CHRYSANTHOU:** Well, they can't possibly have appreciated that, could they?

MR DRUMGOLD: No. That's - I accept that.

MS CHRYSANTHOU: In fact, they would have assumed that they were all recorded at the same time?

10 **MR DRUMGOLD:** Possibly, yes.

MS CHRYSANTHOU: Well, that's likely, isn't it?

15 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Now, there was a reaction, wasn't there, to the service of that so-called proofing note, because at 1.51 pm Mr Whybrow emailed the court, and copied you in, seeking an urgent listing of the proceeding to stay the hearing?

20 **MR DRUMGOLD:** Correct.

MS CHRYSANTHOU: And on that same day - so this has all happened up until about 1 pm. Just after 4 pm the same day, you appeared before the Chief Justice?

25 **MR DRUMGOLD:** If that's - yes, I accept that.

MS CHRYSANTHOU: Well, the transcript, if it could be shown, is 005.005.3603. The date of the transcript is Monday, 20 June. Do you see that?

30 **MR DRUMGOLD:** Yes, I see that.

MS CHRYSANTHOU: Operator, if you could just scroll to the next page, please. The time is somewhere. We might have just missed it. I want to suggest to you the time was just after 4 pm.

35 **MR DRUMGOLD:** Okay.

MS CHRYSANTHOU: I think it was on the first page.

40 **THE CHAIRPERSON:** I think it might have been on the first page.

MS CHRYSANTHOU: Yes, it's on the first page. 4.04 pm. Do you see that?

45 **MR DRUMGOLD:** Yes, I see that.

MS CHRYSANTHOU: So this is only just over three hours after you've, at 12.52, sent that email first recording your recollection of what was said about the Logies?

50 **MR DRUMGOLD:** Yes, I accept that.

MS CHRYSANTHOU: Now, at page 6 of that transcript - and I should say, you can see obviously that you appeared and Mr Whybrow appeared?

5 **MR DRUMGOLD:** I see that.

MS CHRYSANTHOU: At page 6, Mr Whybrow sought to rely on that document that had been emailed to him at - to his solicitors at 1.09 pm?

10 **MR DRUMGOLD:** Yes. Yes.

MS CHRYSANTHOU: And you understood, as you sat there, that that was occurring?

MR DRUMGOLD: Yes.

15

MS CHRYSANTHOU: And you must have understood, as you sat there and heard Mr Whybrow seek to rely on that document, that Mr Whybrow was proceeding on the basis that it was a proofing note?

20 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And that, therefore, it was contemporaneous?

MR DRUMGOLD: Yes.

25

MS CHRYSANTHOU: And you understood, didn't you, as you sat there, and as recorded by this transcript, that Mr Whybrow was particularly interested in the last part of that document in relation to the Logies speech?

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Now, on Monday in answer to questions from counsel assisting, you said that you thought, in fact, that the conversation with Ms Wilkinson about the speech was irrelevant to the application?

35

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: Because -

40 **MR DRUMGOLD:** Because it was the result, not the cause.

MS CHRYSANTHOU: So why didn't you object to it?

MR DRUMGOLD: Again, it didn't occur to me. It was a fast-moving application. It was at short notice. It - it just didn't occur to me.

45

MS CHRYSANTHOU: Because as far as you were concerned, my client's state of mind was not the issue; it was the effect of what was said that was the issue -

50 **MR DRUMGOLD:** That's right. That's right.

MS CHRYSANTHOU: - and whether it gave rise to prejudice?

MR DRUMGOLD: That's right.

5

MS CHRYSANTHOU: Operator, could you please go to page 11 of the transcript, which is, I think, 3613. Now, you observed that her Honour was handed the proofing note and was looking at it?

10 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Because she says at line 17 - well, first of all, at line 4, you are addressing here.

15 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And you say - this is the beginning of your address in relation to this topic, because there was some other topic about disclosure. You said:

20 "The speech is really undesirable. I accept it is completely undesirable. The proofing notes probably can be open to interpretation."

Do you see you use that term there?

25 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Well, I want to suggest to you, by using that term "proofing notes", which is a term commonly used amongst criminal lawyers to mean a contemporaneous note of the conference with the witness, you are misleading the Chief Justice.

30

MR DRUMGOLD: Yes, not intentionally.

MS CHRYSANTHOU: But do you accept now that it was misleading?

35 **MR DRUMGOLD:** But it could have - it could have the effect of misleading her, yes.

MS CHRYSANTHOU: And you are also misleading Mr Whybrow?

40 **THE CHAIRPERSON:** How could it not have had the effect of causing her Honour to think that the note was a contemporaneous note of the conference? How could it not have had that effect having regard to the appearance of the document and the absence of anything that would suggest that part of it was made five days later?

45 **MR DRUMGOLD:** Yes. As I said in questions to Ms Longbottom, proofing notes are often an organic process that is - has a number of contributors and it arrives at an output - at a final document. I just assumed that this - I was - this proofing note was derived in the same way. So someone could make notes and it would be circulated, and someone could make a comment and say, "No, you have missed this bit." And I was dealing with what I thought was a proofing note produced in the organic way that proofing notes generally are.

50

MS CHRYSANTHOU: But you knew this one wasn't. You knew that the proofing note was what Mr Greig first sent you that day, and that what was given to her Honour was not the proofing note; it was the proofing note with - using a word you picked up earlier - an addendum. Do you agree with that?

5

MR DRUMGOLD: Yes, it was an addendum. Yes. I - but the - I was working on the assumption - to my mind, the addendum is accurate.

MS CHRYSANTHOU: It doesn't matter if you thought it was accurate, Mr Director. What mattered was that - one - a document was provided to the court, and it was misdescribed. Do you agree with that?

10

MR DRUMGOLD: I accept that.

MS CHRYSANTHOU: Two: my client was not there and was not represented?

15

MR DRUMGOLD: I accept that.

MS CHRYSANTHOU: Three: effectively, in relation to this issue, there was no contradictor?

20

MR DRUMGOLD: I accept that.

MS CHRYSANTHOU: And it was akin to an ex parte application to the extent any finding was going to be made about my client?

25

MR DRUMGOLD: I don't think a finding in relation to your client was part of the application.

MS CHRYSANTHOU: But that's what happened, though.

30

MR DRUMGOLD: It did happen.

MS CHRYSANTHOU: Now, her Honour then says - and her Honour is plainly holding the document and looking at it:

35

"And I would read those remarks as indicating that you were saying, 'Hang on a minute. I'm not your speech writer'."

40 And you said:

"Yes."

Do you see that?

45

MR DRUMGOLD: I do see that.

MS CHRYSANTHOU: And then her Honour says these words:

50 "That's a matter for the court, but be warned."

Do you see that?

MR DRUMGOLD: I - I don't know what that says.

5

MS CHRYSANTHOU: 22. So her Honour is looking at this document that she's being told is a proofing note, and she's telling - her Honour is telling you, because you are on your feet, her understanding of your document. Do you see that?

10 **MR DRUMGOLD:** I thought that that was her understanding of the words on the document -

MS CHRYSANTHOU: Yes.

15 **MR DRUMGOLD:** - not - not the contemporaneity of it.

MS CHRYSANTHOU: Yes.

MR DRUMGOLD: Yes.

20

MS CHRYSANTHOU: That's what I'm putting to you.

MR DRUMGOLD: Yes.

25 **MS CHRYSANTHOU:** And you knew, having heard her Honour say that, that her Honour's interpretation was not accurate?

MR DRUMGOLD: Again, I - I thought I had warned her. I thought what I said to her amounted to a warning.

30

MS CHRYSANTHOU: You said it earlier in answer to my questions, when I asked you about this, that there was no warning.

MR TEDESCHI: I object. That's not what he said.

35

MR DRUMGOLD: Any -

THE CHAIRPERSON: I think it was, but we can look at the transcript over lunch.

40 **MR TEDESCHI:** I think he said - I think his evidence was that there was no explicit warning about it.

MS CHRYSANTHOU: Well, we can check that.

45 **MR DRUMGOLD:** There was no direction. But, "Any publicity could give rise to a stay" -

MS CHRYSANTHOU: Now -

MR DRUMGOLD: - is - is a warning in my mind.

50

MS CHRYSANTHOU: You are an experienced advocate at this point?

MR DRUMGOLD: Yes.

5 **MS CHRYSANTHOU:** You had a judge sitting there, with respect to her Honour, getting a little bit worked up about the content of this document and what it meant?

MR DRUMGOLD: I don't know about "worked up". But, yes, she was reading it and commenting on it.

10

MS CHRYSANTHOU: And interpreting it?

MR DRUMGOLD: Yes.

15 **MS CHRYSANTHOU:** And I want to suggest to you interpreting it in a way that you must have known, as you sat there, was not accurate.

MR DRUMGOLD: No. That's - that's incorrect.

20 **MS CHRYSANTHOU:** Now -

MR DRUMGOLD: I - I had warned her.

MS CHRYSANTHOU: What about when her Honour goes on and says - you answer, instead of sort of picking up what her Honour says:

25

"I'm not interested in hearing your speech."

That's what you say. Do you see that?

30

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And then Mr Whybrow says:

35 "She was on notice."

And then her Honour says:

"The point was that she was on notice."

40

MR DRUMGOLD: Yes. And she was on notice.

MS CHRYSANTHOU: On notice of what?

45 **MR DRUMGOLD:** She was warned that any publicity could give rise to a stay.

MS CHRYSANTHOU: Well, that's not what these - her Honour and Mr Whybrow were saying.

50 **MR DRUMGOLD:** That's exactly what they are saying, because that's apropos of the note -

MS CHRYSANTHOU: And -

5 **MR DRUMGOLD:** - that the words in the note, which I maintain are accurate, were on - were placing her on notice. I don't see any inaccuracy in that.

MS CHRYSANTHOU: Now, over the page, at page 12, her Honour says:

10 "I agree. When I first read the speech, I thought, well, that's not too bad, because it really is rehearsing of things that Ms Wilkinson has said before and that strong female journalists have said before..."

Do you see that?

15 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU:

20 "...and the problem is the fallout."

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And then she goes on to refer to some other publicity by other media. Now, what I want to suggest to you is that when - and you say:

25 "Indeed."

30 When her Honour said that, did you not think it appropriate to inform her Honour that my client had, in fact, told you that she did intend to say those words about her opinions about Ms Higgins?

MR DRUMGOLD: I at no point at the conclusion of the proofing had thought that your client had the intent of saying those words.

35 **MS CHRYSANTHOU:** She read them to you.

THE CHAIRPERSON: Are you telling me that having read part of the speech to you, you did not believe that she had an intention to make that speech?

40 **MR DRUMGOLD:** No, because following that, I warned her. Then there was a conversation between her and her lawyer and - that was silent. When they came back on, I was confident that they had got the message that she couldn't make that speech. That was what my state of mind was.

45 **MS CHRYSANTHOU:** Were you reading their lips?

MR DRUMGOLD: No.

50 **MS CHRYSANTHOU:** Well then, how could you possibly rationally have held that confidence?

5 **MR DRUMGOLD:** Because, to my mind, someone being told, "Any publicity could give rise to a stay," particularly an experienced journalist, particularly an experienced journalist sitting next to a media lawyer, could not arrive at any other possible conclusion than, "You shouldn't make the speech."

10 **THE CHAIRPERSON:** Is that right? So I say to you, "I'm going to publish to the world tomorrow that Mr Lehrmann is as guilty as sin. What do you think? Should I say that?" And you say, "Any publicity might provoke a stay." And you think that's a warning to say (indistinct)?

MR DRUMGOLD: If I say to you, "Any publicity could give rise to a stay."

15 **THE CHAIRPERSON:** All right. I understand.

MS CHRYSANTHOU: I want to suggest to you that at that point on the Monday afternoon, you should have made very clear to her Honour the Chief Justice that you didn't give any express warning not to give the speech.

20 **MR DRUMGOLD:** It was not inferred that I told her not to make the speech.

MS CHRYSANTHOU: And that -

25 **MR DRUMGOLD:** It was not in the - in the proofing note that I said, "Don't make the speech."

MS CHRYSANTHOU: It was apparent to you that her Honour was relying on that document that had been handed up?

30 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And you should have told her Honour that the document, insofar as the speech was concerned, was not contemporaneous?

35 **MR DRUMGOLD:** The document was accurate.

THE CHAIRPERSON: The document was accurate?

40 **MR DRUMGOLD:** In my mind.

MS CHRYSANTHOU: But that's not what I've just asked you.

MR DRUMGOLD: Yes.

45 **MS CHRYSANTHOU:** What I'm suggesting to you is that as senior counsel making submissions to the Supreme Court of the ACT, knowing that the Chief Justice is relying on a document that you have produced, and to your observations she's placing some reliance, if not heavy reliance on it, on a significant application in a criminal prosecution, you should have at that point, if not before, said, "Your Honour, I should note that we only prepared this

three hours ago, and it's not a contemporaneous note, as one would expect of a proofing note.”

MR DRUMGOLD: In hindsight, yes -

5

THE CHAIRPERSON: And could I add to that, Mr Drumgold, "There is another version in existence, that of my junior, whose recollection is significantly different.”

MR DRUMGOLD: Yes. In hindsight, yes, I should have. I'm conceding I should have.

10

MS CHRYSANTHOU: Now, on 21 June, you appeared before the Chief Justice on the same application at about 9 am. Do you remember that, the next day?

MR DRUMGOLD: I did.

15

MS CHRYSANTHOU: And the transcript, if it could be please brought up, is 005.005.3620. And I want to suggest to you that putting aside what you thought her Honour understood about your exchanges with my client the previous afternoon, it became clear to you on the morning of 21 June that her Honour had formed quite an adverse view about my client's conduct in relation to the speech.

20

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And that that view was formed primarily because of the content of the document that her Honour thought was a proofing note.

25

MR DRUMGOLD: Because she had given a speech despite a warning.

MS CHRYSANTHOU: Yes. You knew that that's what the judge thought.

30

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And you knew, I want to suggest to you, that that was not a fair or accurate characterisation of the conversation that you would have with my client?

35

MR DRUMGOLD: No.

MS CHRYSANTHOU: And for example -

40

THE CHAIRPERSON: You mean -

MR TEDESCHI: The answer is ambiguous.

THE CHAIRPERSON: It's ambiguous, yes.

45

MR DRUMGOLD: Sorry. Could you say the question again?

MS CHRYSANTHOU: We are not sure if you meant to agree with my question or disagree.

50

MR DRUMGOLD: Can you repeat the question?

MS CHRYSANTHOU: You knew that her Honour's impression of what had occurred was not accurate or fair?

5 **MR DRUMGOLD:** No, I had - I did not know that.

MS CHRYSANTHOU: So for example - operator, if you please go to transcript page 14, which is 3633. And there's some discussion at the first half of the page about what the speech - the effect of the speech, the fact it was an endorsement and it was an award for
10 journalism. And then her Honour says at line 42 - well, you make a submission at line 35 about the fact that the award is given for journalistic skill - or you say there "or perceived journalistic skill". And her Honour says:

15 "Mightn't good journalism include being mindful of the impact of your reporting on criminal proceedings?"

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And you said:

20 "Yes."

MR DRUMGOLD: Yes.

25 **MS CHRYSANTHOU:** Shouldn't you have said then, "Well, yes, and Ms Wilkinson was mindful because she directly raised this issue with me to ensure that what she said did not impact these proceedings"?

30 **MR DRUMGOLD:** I am not the only source of information that Ms Wilkinson had. I knew that at the time. I'm simply a prosecutor prosecuting a matter. I'm not a lawyer advising - giving advice to a - a journalist who works for a network whose firm had opposed what they were - what you're suggesting I should have told them.

35 **THE CHAIRPERSON:** That's not an answer to the question. The question is this: her Honour was inclining to the view that Ms Wilkinson was unmindful of the effect of reporting on - her reporting might have on criminal proceedings. But as a matter of fact, her Honour ought not conclude that, because at least she had taken the trouble to raise the propriety of the speech with you. And so if her Honour were to conclude that having made the speech Ms Wilkinson was in the result not sufficiently mindful, her Honour at least be aware of the
40 full facts of the matter, namely, that before making that speech, she had sought your advice. It might have changed her Honour's view about the degree of criticism to which she later subjected Ms Wilkinson.

45 **MR DRUMGOLD:** She had before her that she had sought my advice and I had given her that advice. And, again, I maintain that that advice was abundantly clear that a speech should not be made.

THE CHAIRPERSON: Yes. And she didn't have Ms Jerome's note -

50 **MR DRUMGOLD:** No, she didn't.

5 **THE CHAIRPERSON:** - which has a different complexion. And I would suggest to you - I would like your view about it - a significant difference in that Ms Wilkinson had read what I will call the substance of her speech that might be prejudicial, or she had read the whole of it which contained that, and that you did not react by saying, "Do not make that speech. It would be unsavoury," for example.

MR DRUMGOLD: Yes.

10 **THE CHAIRPERSON:** Is that right? Do you think that before her Honour went on to consider what findings she should make about whether Ms Wilkinson was mindful, she ought to be aware that there's another version of recollection?

15 **MR DRUMGOLD:** Possibly. It - it just didn't occur to me at the time.

THE CHAIRPERSON: Possibly.

MS CHRYSANTHOU: When you say "possibly" -

20 **MR DRUMGOLD:** Yes. It didn't occur to me at the time, though.

MS CHRYSANTHOU: But you have told her Honour through that document that a certain conversation has occurred?

25 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: You know that your own junior had a different version?

30 **MR DRUMGOLD:** It was not at the forefront of my mind at this point.

MS CHRYSANTHOU: Do you accept that the manner in which you conducted yourself in court that day in relation to this conversation was unacceptable?

35 **MR DRUMGOLD:** No, I don't accept that. On - on both versions, there was sufficient warning to both of our minds that Ms Wilkinson had been told ample information - she had her question answered.

MS CHRYSANTHOU: Whose minds? Who is the other mind?

40 **MR DRUMGOLD:** Well, on either Ms Jerome's version or my version, there was ample information to - provided to Ms Wilkinson that she should not have made the speech.

45 **MS CHRYSANTHOU:** There's a big difference, isn't there, between hearing, for example, "Thank you, voters, for awarding me this award," and then you cut her off, compared to the substance of the speech about Ms Higgins and identifying her as a brave person who told a story bravely or words to that effect?

MR DRUMGOLD: I thought she understood that no speech could be made.

50 **MS CHRYSANTHOU:** That is - that - what you say now about that cannot be true.

MR DRUMGOLD: It is true.

5 **MS CHRYSANTHOU:** That you somehow telepathically thought that my client, based on some throwaway words from you about the potential publicity, having read out the substance of her speech to you, would leave that meeting understanding that she was not to give a speech.

10 **MR DRUMGOLD:** I think most people would - would take away from that that any publicity could give rise to a stay.

15 **MS CHRYSANTHOU:** When you say "any publicity", you have already been asked by Mr Sofronoff about that. And you accept that there is lots of publicity that couldn't give rise to a stay; correct?

MR DRUMGOLD: Any publicity about this matter could give rise to a stay.

20 **MS CHRYSANTHOU:** If you thought she shouldn't give a speech - are you saying that's what you thought, she shouldn't give a speech?

MR DRUMGOLD: Yes. Well, I'm saying I thought she shouldn't give a speech that gave publicity to this matter.

25 **MS CHRYSANTHOU:** Well, if you -

THE CHAIRPERSON: How was that going to be possible when the award was in relation to an interview about the matter?

30 **MR DRUMGOLD:** In the same way you could just say, "Thank you for the award. I can't comment on it. I can't comment on the matter because it's currently before the court."

MS CHRYSANTHOU: Why didn't you tell her that?

35 **MR DRUMGOLD:** Because she had a lawyer sitting next to her.

MS CHRYSANTHOU: Why didn't you say -

THE CHAIRPERSON: Why still can't you say that to her?

40 **MR DRUMGOLD:** Again, in hindsight, I should have. I - to my mind, the reasonable person would have clearly walked away from that meeting with that view.

45 **MS CHRYSANTHOU:** Mr Drumgold, your evidence about what my client should have understood from what you said in that meeting is irrational.

MR DRUMGOLD: Not to my mind. I don't think it is.

50 **MS CHRYSANTHOU:** And after the fact, you are trying to justify your failing in the fact that you've told us you thought she shouldn't give the speech. You should have said to her, "Don't give a speech."

MR DRUMGOLD: In retrospect, it was a failing. But at the time, I thought I had given her - I was confident that I had given her sufficient information.

5 **MS CHRYSANTHOU:** And you failed as DPP -

MR DRUMGOLD: In the context of what happened after - between it.

10 **MS CHRYSANTHOU:** You failed as DPP and as senior counsel by not correcting her Honour, for example, in relation to that statement at line 42 on page 14, where she was - her Honour was highly critical of my client.

MR DRUMGOLD: No, I don't accept that.

15 **MS CHRYSANTHOU:** And you knew, because of the high-profile nature of the matter, that - and also the high profile of my client, that as her Honour said things like that, and as you agreed, there would be tap, tap, tapping away by journalists reporting on it.

20 **MR DRUMGOLD:** Ms Chrysanthou, I have done nothing but from the start of this matter to tell people not to talk about the matter.

THE CHAIRPERSON: Mr Drumgold - no, I withdraw it. You go ahead, Ms Chrysanthou.

25 **MS CHRYSANTHOU:** Thank you. And then her Honour said:

"And remembering to insert the magic word 'alleged'."

And you say:

30 "Alleged."

And:

35 "Indeed."

Etcetera. You go on.

MR DRUMGOLD: Yes.

40 **MS CHRYSANTHOU:** Well, as you sat there, you had the speech in front of you. It became an exhibit. Where in the speech do you think my client should have inserted the word "alleged"? You were agreeing with her Honour?

45 **MR DRUMGOLD:** Yes. Well, she should have inserted "alleged" in - if you are going to - she's - her Honour is talking generally. If you are referring to an offence that's not proven, it should have the magic word "alleged" before it.

MS CHRYSANTHOU: The speech doesn't refer to the offence. So what are you talking about?

50

MR DRUMGOLD: Her Honour is making reference to the file note that I gave her.

MS CHRYSANTHOU: And where - what did you understand, as you sat there, her Honour was talking about where she is criticising my client for not using the word "alleged"?

5

MR DRUMGOLD: I - is she - is her Honour talking - I don't think her Honour is talking just about the Logies speech. I think her Honour is talking about the collection of publicity that gave rise to the stay, which included probably the more offensive part, which was a media - a radio interview. So it was the collective force that I think her Honour is talking about there.

10

MS CHRYSANTHOU: Now -

MR DRUMGOLD: In fact, it was the radio - I seem to recall it was the radio interview that said something more direct about her guilt. So -

15

MS CHRYSANTHOU: His guilt.

MR DRUMGOLD: About his guilt. So what her Honour is talking about there is the collective of that, and I think potential focus on the latter, not your client's speech. But your client's speech added to the weight of it.

20

MS CHRYSANTHOU: Now, just jumping ahead to page 17. Sorry, I mean page 19. Sorry about that, operator. 3638. You have already been asked about this. When her Honour asked you at line 33 about the conference note - or Mr Whybrow sought to tender it, and her Honour referred to it as a conference note, you were asked specifically:

25

"I take it that you don't take issue with the accuracy of the document?"

MR DRUMGOLD: To my mind, the document was accurate.

30

THE CHAIRPERSON: Mr Whybrow, as a witness, you could say, if you were a witness, "To my mind, the document was accurate." And then another witness would be called, Ms Jerome, for example, to say what her recollection was. And Ms Wilkinson would be called to say what her recollection was, and her Honour would decide what it is. But, here, her Honour was limited to your version -

35

MR DRUMGOLD: That's right.

THE CHAIRPERSON: - as one of three. So you're maintaining your genuine belief that the note was accurate, as you saw it, is the reason why Ms - one of the reasons why Ms Chrysanthou is asking you questions because - in terms of her Honour being misled, because her Honour was being placed in the position that that was actually what was said when, in fact, in order to determine what was said, her Honour would have needed the benefit of at least the versions given by three witnesses who claimed to have a recollection of it.

40
45

MR DRUMGOLD: The operative part was a warning that any publicity could give rise to a stay. And that - that was a constant between both parts.

MS CHRYSANTHOU: It just wasn't up to you, was it, knowing that there were different versions - and a potential version from my client that you hadn't sought out, had you, at this point?

5 **MR DRUMGOLD:** No.

MS CHRYSANTHOU: To answer that question "no"?

MR DRUMGOLD: No. I accept that. In - in hindsight, I mean, I accept that.

10

MS CHRYSANTHOU: Now, her Honour goes on on the next page, at page 20, 3639 - and you have already been asked about this, and you have accepted that what you said here in answer to her Honour's questions was not accurate as to who prepared the note and whether it was contemporaneous?

15

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And you said on Monday, in seeking to explain yourself, that the application was fast moving and on short notice. Do you remember saying that?

20

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And it's right, isn't it, that as an advocate, it is possible to make a mistake? All advocates make mistakes?

25

MR DRUMGOLD: Yes, it is.

MS CHRYSANTHOU: And do you accept that this was a mistake?

30

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: But do you also accept that as an advocate that you are obliged to correct mistakes?

35

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And you have never corrected that mistake, have you?

MR DRUMGOLD: I - I failed to correct that mistake.

40

MS CHRYSANTHOU: Now, you accept that that mistake - well, first of all, you accept that the reason - you understood the reason her Honour was asking you about this document and how it was created was because she intended to rely upon it?

45

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And that the mistake that you made misled her Honour?

MR DRUMGOLD: Again, not intentionally. It may have had the result of leading her to a less than accurate position.

50

MS CHRYSANTHOU: And it misled Mr Whybrow -

THE CHAIRPERSON: Well, it did have that effect, didn't it?

5

MR DRUMGOLD: It did have that effect.

MS CHRYSANTHOU: It misled Mr Whybrow?

10 **MR DRUMGOLD:** Again, not intentionally, but it may have had - it would have had the effect of leading him to a less than accurate position.

MS CHRYSANTHOU: And ultimately misled the public?

15 **MR DRUMGOLD:** Well, potentially, yes.

MS CHRYSANTHOU: Well, it did, didn't it?

20 **MR DRUMGOLD:** I mean, I just - I had not thought about it at that stage. I know you are putting this to me. I had not thought about it at that stage.

THE CHAIRPERSON: Well, why don't you think about it now?

MR DRUMGOLD: Yes, I'm agreeing.

25

MS CHRYSANTHOU: So the fast-moving application finished at about 10 am, and her Honour reserved and came back at 2 pm, four hours later, to deliver an ex tempore judgment?

MR DRUMGOLD: That's right.

30

MS CHRYSANTHOU: Now, you had four hours to reflect upon what had been said by you, what had been said by her Honour. It wasn't fast moving at that point. And it must have been clear to you by the end of all of the submissions that the Chief Justice was proceeding upon at least a misapprehension about the tone and content of the conversation about the Logies speech?

35

MR DRUMGOLD: Yes, the essence of which, as I've said before, was unified. And my view was that that was ample information for Ms Wilkinson to get the message.

40 **MS CHRYSANTHOU:** You keep saying "the essence". I want to suggest to you that that's just not right. There is a very big difference between having the whole or the substance of the speech read out and the opening remarks.

45 **MR DRUMGOLD:** Well, again, the interpretation that I took at the time was that there was ample information.

MS CHRYSANTHOU: And that that changes the essence or the flavour or the complexion completely?

50 **MR DRUMGOLD:** It can do, yes.

MS CHRYSANTHOU: And the fact that it can do meant that you knew that that possibility resulted in the court proceeding on a potential misunderstanding of what had occurred in that meeting?

5

MR DRUMGOLD: In hindsight, potentially, yes.

MS CHRYSANTHOU: Now, her Honour delivered judgment at about 2 pm. You did not take any steps, did you, to correct anything you had said in the course of the application before her Honour delivered judgment?

10

MR DRUMGOLD: No, I - I moved on to other tasks.

MS CHRYSANTHOU: And you came back and you listened to the judgment as it was delivered?

15

MR DRUMGOLD: Yes, I imagine I would have.

MS CHRYSANTHOU: You were sitting at the bar table at 2 pm?

20

MR DRUMGOLD: Yes, I imagine I would have.

MS CHRYSANTHOU: And that's - the judgment starts at the same document, operator, that we have up but at 3648. Now, at 2.02 pm, her Honour delivers the judgment. And in relation to this particular issue, her Honour makes comments at transcript 31, which is at 3650, at the bottom of the page. Do you see that?

25

MR DRUMGOLD: Yes.

MS CHRYSANTHOU:

30

"Ms Wilkinson received a Silver Logie for her interview. That was not entirely unexpected, nor did the award come at a time when she was unaware of the pending trial. Indeed, Mrs Wilkinson may be taken to be aware that she is to be called as a Crown witness."

35

Do you see that?

MR DRUMGOLD: Yes.

MS CHRYSANTHOU:

40

"That is the inference that can be drawn from the content of a file note in evidence before me."

Now, do you see - the inference that her Honour draws from your file note is that the award was not unexpected. Did you see that? Did you hear that at the time?

45

MR DRUMGOLD: Not really, but I accept that that's what she said.

MS CHRYSANTHOU: Yet you've told us you thought it was highly improbable or words to that effect?

5 **MR DRUMGOLD:** I did think it was highly improbable, because Ms Wilkinson said it was highly improbable.

MS CHRYSANTHOU: But that's not reflected in your file note.

10 **MR DRUMGOLD:** No, it's not.

MS CHRYSANTHOU: So your file note didn't capture the essence of what you understood had been said?

15 **MR DRUMGOLD:** No, I agree.

MS CHRYSANTHOU: And the inference can be drawn from the content of the file note -

MR TEDESCHI: Can we have the page number, please?

20 **THE CHAIRPERSON:** Yes. Can we have the page on the screen?

MS CHRYSANTHOU: 31. Yes. Sorry. I'm at the bottom of 31, line 46. Can you see that, Mr Drumgold?

25 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Which records that on 15 June, some days before the Logie Award, Ms Wilkinson participated in a conference between the DPP and those appearing, etcetera. And then it says -

30 **THE CHAIRPERSON:** That's over the page on 32, is it?

MS CHRYSANTHOU: Yes. Starting from line 5:

35 "A note of the meeting tendered by the accused without objection on the present application concludes as follows."

You heard her Honour read out that part of the judgment?

40 **MR DRUMGOLD:** Yes.

THE CHAIRPERSON: Just before you go on, Ms Chrysanthou. During argument on the second day, you - her Honour referred to the significance of credit as - what was going to be the central issue of the trial. Do you remember?

45 **MR DRUMGOLD:** Yes.

THE CHAIRPERSON: And that Ms Wilkinson's speech strongly implied that Ms Higgins was telling the truth when she made her complaint?

50

MR DRUMGOLD: Yes, that's correct.

THE CHAIRPERSON: And at page 11 of the transcript, on the second day, which is the document on the - part of the document on the screen, her Honour directed your attention to that aspect of Ms Wilkinson's speech where she was implicitly, if not expressly, asserting the truth of Ms Higgins' account. And she said:

"Isn't that what she said on Sunday night?"

10 That's Ms Wilkinson. And you said:

"That is the offending part."

15 And her Honour then expanded on the effect of what Ms Wilkinson was saying at line 25:

"Implicitly, she was saying, 'Not only do I believe her, but you should believe her'."

MR DRUMGOLD: Yes.

20 **THE CHAIRPERSON:** And then at page 13, at line 5, you - her Honour again referred to that part, and you said:

25 "But one needs to dissect what I referred to as the gratuitous opinion of Ms Wilkinson, and I think it can be broken down into a number of categories. Her first is, "I believe her," probably extended to, "You should all believe her."

And then you made the point that that was really the vice of the speech, the assertion of truth.

30 **MR DRUMGOLD:** Yes.

THE CHAIRPERSON: And then at - on the next page, her Honour asked:

"Didn't Ms Wilkinson make similar comments at the March4Justice?"

35 And you said:

"Yes, she had."

40 And then her Honour made - and she expressed them publicly again on 19 June - this is the Logies speech - with the endorsement of an award - a glittering award for good journalism. So do I - I took the tenor of what you're saying to her Honour - and in some cases, agreeing with what her Honour was putting to you - that it's pretty plain that this was not merely capable but was prejudicial to the prospect of running a fair trial.

45 **MR DRUMGOLD:** No, that's not the submission being made there. The submission being made there is the words were not something new, that the words had been spoken before, and that ameliorated the harm from the words. I was opposing the stay.

50 **THE CHAIRPERSON:** I see. And then -

MR DRUMGOLD: So I - I was saying -

THE CHAIRPERSON: It's been said before.

5 **MR DRUMGOLD:** - there is nothing new in this material. It's already on the public - already in the public domain, and that ameliorates the harm.

THE CHAIRPERSON: I see.

10 **MR DRUMGOLD:** That it's just the repeating of the same old stuff.

THE CHAIRPERSON: So it was harmful, in your opinion, but it had been said before; is that right?

15 **MR DRUMGOLD:** It was already out in the public domain, yes. Those words were already out in the public domain. That I'm making the point - the difference is a repeat of what's already been said -

THE CHAIRPERSON: Yes.

20

MR DRUMGOLD: - and that the reasonable person already knew the views.

THE CHAIRPERSON: Now, Mr Whybrow at page 27 at the top, just after line 5:

25 "She not only says something which is, in my submission, clearly a contempt of court; it's endorsed by the complainant."

Did you at any point make a submission to her Honour that it wasn't clearly a contempt of court?

30

MR DRUMGOLD: No. We - we just - I just read that as - as puff.

THE CHAIRPERSON: Sorry?

35 **MR DRUMGOLD:** I just read that as - as Whybrow puff.

THE CHAIRPERSON: It's what?

40 **MR DRUMGOLD:** As Whybrow puff. There was never a suggestion in my mind that it amounted to a contempt of court.

45 **THE CHAIRPERSON:** I see. All right. And there is just one other part I want to put to you, if I can just find it. I think it might have been on the preceding day, which I will find. I won't hold you up now, Ms Chrysanthou. But the part I was talking about was where you described what she had said as unsavoury. And then you went on to describe the radio presenters' other comments as even more unsavoury. Do you remember calling it unsavoury?

MR DRUMGOLD: I don't know. I - I might have done. I might have misused the word "unsavoury".

50

5 **THE CHAIRPERSON:** I just wondered why - if you regarded what she said as unsavoury, and if you regarded what she said as - you referred to it as her gratuitous opinion which implied the truth of the complaint, why rather than saying, "Any publicity is bad publicity," you didn't say to Ms Wilkinson, "That's unsavoury and it implies the truth of a complaint, and that's plainly something that would be a risk."

MR DRUMGOLD: I could have added to the warning, yes.

10 **THE CHAIRPERSON:** Do you think it was your duty to say that? I don't suggest it's your duty to chase up people who might be about to make dangerous statements, endangering a trial. But having had put to you what was going to be said, and the statement having in your mind those characteristics, would it not be part of your duty as the DPP, and even as a barrister, to protect the integrity of imminent court proceedings by telling a witness your opinion is that this would likely endanger the trial by provoking a successful stay application, which it did?

15 **MR DRUMGOLD:** Again, that's decontextualising it. To my mind, she had a lawyer - the lawyer wasn't there just as company. I was assuming that I was simply adding to what - to her getting legal advice. That was to my mind.

20 **THE CHAIRPERSON:** Yes, Ms Chrysanthou.

MS CHRYSANTHOU: The passage you were looking for, Mr Chairperson, is at 3635. It was on the second day, transcript 16 at the top of the page, where in the course of the submissions, Mr Drumgold, after referring to Ms Wilkinson's gratuitous opinion, said:

"It's all unsavoury, but the most unsavoury is the Jonesy & Amanda comment."

30 **THE CHAIRPERSON:** Thank you.

MR DRUMGOLD: Yes, that's right.

MS CHRYSANTHOU: I think that's what you were referring to.

35 **THE CHAIRPERSON:** Yes, it was.

THE CHAIRPERSON: Yes. Now, what I want to suggest to you is that having regard to all of your evidence, including what you've just said - and you repeated this - you understood Ms Wilkinson to have a lawyer and that she would get her own advice, etcetera, and you inferred some knowledge on the part of various persons. I want to suggest to you what you do agree with is that my client was never given a clear and appropriate warning to not give the speech.

45 **MR DRUMGOLD:** To my mind, the - the warning I gave was - was clear.

MS CHRYSANTHOU: And I want to suggest to you that -

MR TEDESCHI: Sorry.

50 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: Could Ms Chrysanthou just make clear that what she's suggesting is that her client was not given a clear warning by this witness.

5 **THE CHAIRPERSON:** Yes.

MS CHRYSANTHOU: Yes.

THE CHAIRPERSON: Yes.

10

MR TEDESCHI: She's not asking about whether she was warned by her own lawyer or not.

THE CHAIRPERSON: No, no, no. No, we are only talking about Mr Drumgold. Yes.

15 **MS CHRYSANTHOU:** Yes.

MR TEDESCHI: Yes.

THE CHAIRPERSON: That's how I understood it, Mr Tedeschi.

20

MS CHRYSANTHOU: And I want to suggest to you when you heard her Honour say those words in the judgment that afternoon on 21 June, at the conclusion of the judgment, you should have stood up and corrected that.

25 **MR DRUMGOLD:** So to finish my previous answer, I thought her only source of advice was not me.

MS CHRYSANTHOU: Yes.

30 **MR DRUMGOLD:** I was confident - 100 per cent confident that when the microphone went on mute that her lawyer was giving her advice.

MS CHRYSANTHOU: 100 per cent confident?

35 **MR DRUMGOLD:** That's why the lawyer was sitting there.

MS CHRYSANTHOU: That's quite a brash statement to make, Mr Drumgold. You are 100 per cent confident of a conversation that two people are having on mute and you can't hear it as to what they are saying?

40

MR DRUMGOLD: I'm drawing that from the fact that it went on mute, and that was to protect the legal professional privilege of what she was saying.

45 **MS CHRYSANTHOU:** Well, she might have been saying, "Lisa, this guy is a waste of time. Let's just finish this conference." I mean, how do you know what they were saying?

MR DRUMGOLD: So - but a lawyer's role is not to make gratuitous observation of a prosecutor. A lawyer's role is to give - is to give legal advice. She's sitting there with a lawyer, and it goes on mute. The only conclusion - the only rational conclusion I can draw

from that is that it's on mute to protect the legal professional privilege of what her lawyer is telling her.

5 **MS CHRYSANTHOU:** Mr Drumgold, the answer you just gave is illogical and irrational and contrary to human experience.

MR DRUMGOLD: In - in fact, it's what occurred. It's what was said.

10 **MS CHRYSANTHOU:** And, in fact, you as you sat there, allowing her Honour to proceed upon a document that was misdescribed by you in court, failed in your obligations as the DPP, as a barrister and as senior counsel.

MR DRUMGOLD: No, I reject that.

15 **MS CHRYSANTHOU:** Now, the fact that you have continued to not correct the misstatements you made to her Honour about that document is an ongoing failure on your part.

20 **MR DRUMGOLD:** I don't believe there are misstatements.

MS CHRYSANTHOU: Well, you have accepted there were misstatements. I don't want to go back to it now, Mr Drumgold. The document was not contemporaneous. The document was not just prepared by your instructing solicitor. You have accepted those were misstatements.

25 **MR DRUMGOLD:** I'm accepting they could have been clarified, yes.

MS CHRYSANTHOU: And you haven't clarified them?

30 **MR DRUMGOLD:** No - no, I have not.

MS CHRYSANTHOU: And that's a failing on your part as a barrister?

35 **MR DRUMGOLD:** Again, not to my mind.

MS CHRYSANTHOU: Now, I'm going to ask you some questions now just about the correspondence with Ms Saunders.

40 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: Have you had an opportunity to read Ms Saunders' statement and annexures?

45 **MR DRUMGOLD:** No, I haven't.

MS CHRYSANTHOU: Mr Chair, would it be appropriate to have the lunch adjournment and perhaps to ensure that he has a copy of that, which will fast-track this?

50 **THE CHAIRPERSON:** Yes. And -

MR TEDESCHI: Chairman -

THE CHAIRPERSON: Yes.

5 **MR TEDESCHI:** - I know that Mr Drumgold is keen to have Ms Chrysanthou's cross-examination completed if possible.

THE CHAIRPERSON: Yes.

10 **MR TEDESCHI:** Might I suggest that perhaps it be put up on the screen, the relevant parts that she wants to cross-examine about, and that we proceed?

THE CHAIRPERSON: Yes, we can do it that way. Yes.

15 **MS CHRYSANTHOU:** I'm happy to do that, if that's convenient to others and to the witness.

THE CHAIRPERSON: Yes. If Mr Drumgold is content to proceed in that way -

20 **MR DRUMGOLD:** Yes.

THE CHAIRPERSON: - we can keep going.

25 **MS CHRYSANTHOU:** After that judgment, do you accept that you saw at that time that Ms Wilkinson was destroyed by the media?

MR DRUMGOLD: No. I - I don't know.

30 **MS CHRYSANTHOU:** That - you don't know?

MR DRUMGOLD: Yes.

35 **MS CHRYSANTHOU:** That there were front pages on nearly every major newspaper the next day criticising Ms Wilkinson for failure to heed to your warning to not give the Logies speech?

MR DRUMGOLD: I - I have not read that.

40 **MS CHRYSANTHOU:** You didn't see that?

MR DRUMGOLD: No.

MS CHRYSANTHOU: Are you serious?

45 **MR DRUMGOLD:** Again, I don't monitor the media.

MS CHRYSANTHOU: You didn't walk past a newsagent and see big colour photos of my client -

50 **MR DRUMGOLD:** No.

MS CHRYSANTHOU: - saying "reckless journalism" and things to that effect?

MR DRUMGOLD: Well - no.

5

MS CHRYSANTHOU: Is that a truthful answer?

MR DRUMGOLD: In cases like this, I deliberately stay away from media.

10 **MS CHRYSANTHOU:** I want to suggest to you that she was severely criticised for giving a speech despite a clear warning from you not to do so.

MR DRUMGOLD: Okay. I -

15 **MS CHRYSANTHOU:** Well, you became aware of that at some point, didn't you?

MR DRUMGOLD: I don't know. I'm not sure.

20 **MS CHRYSANTHOU:** Well, didn't you give some evidence about this on Monday, that you knew that she was being criticised for that?

MR DRUMGOLD: I knew that there were criticisms. I didn't know that it related to my - an alleged absence of - to follow clear advice. There was - there was evidence suggestive that I directed her. I - there was media that I directed her, and that was inaccurate.

25

MS CHRYSANTHOU: Now - and you knew that that was inaccurate at the time you saw it?

MR DRUMGOLD: Yes.

30 **MS CHRYSANTHOU:** Now, my client -

MR DRUMGOLD: But it didn't - it didn't conform what was in the judgment itself - it didn't conform what was in the judgment.

35 **MS CHRYSANTHOU:** You say it was misreporting of the judgment?

MR DRUMGOLD: Yes.

40 **MS CHRYSANTHOU:** Now, you understood at that point that my client was still considered to be a potential Crown witness in the trial?

MR DRUMGOLD: Yes.

45 **MS CHRYSANTHOU:** And that as a result of an exchange and evidence between you and her Honour, there was significant and, in your mind, incorrect adverse media reporting of what had occurred in court?

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And are you saying you didn't see it as any part of your role the next time you are in court to raise that as an issue and to correct it?

5 **MR DRUMGOLD:** No. To correct the media - I mean, there was - there was nothing but misreporting of this matter and people associated with this matter. This was just one - I don't know that there was much accurate reporting. The question that I'm asking in my mind is, when do I - at what - who do I - what media do I correct about who?

10 **MS CHRYSANTHOU:** Well, Ms Wilkinson was a Crown witness?

MR DRUMGOLD: Yes.

15 **MS CHRYSANTHOU:** She was going to have to appear before a jury, and her credit was going to be tested?

MR DRUMGOLD: As was Ms Higgins.

MS CHRYSANTHOU: Yes. But Ms Wilkinson fell into that category?

20 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: In your mind, there was misreporting of her conduct in connection with the vacation of the hearing?

25 **MR DRUMGOLD:** As - well - and there is - there was misreporting about Ms Higgins also.

MS CHRYSANTHOU: Well, I'm not asking you about that.

30 **MR DRUMGOLD:** No.

MS CHRYSANTHOU: Please, please, so that we can finish, focus your attention.

MR DRUMGOLD: Yes. Okay. Yes.

35 **MS CHRYSANTHOU:** A Crown witness has been the subject of evidence and submissions in court resulting in a judgment which caused the vacation of the hearing date. You are aware that the judgment and the evidence is being misreported?

40 **MR DRUMGOLD:** I am.

MS CHRYSANTHOU: And are you saying it's not your problem; you don't have to correct that?

45 **MR DRUMGOLD:** How would you propose I do that, Ms Chrysanthou?

MS CHRYSANTHOU: Well - okay. I think you were given a proposal last year, Mr Drumgold, and I will take to you that. Do you remember receiving a call from Marlia Saunders in the afternoon of 22 June?

50 **MR DRUMGOLD:** I - possibly, yes.

MS CHRYSANTHOU: The day after the judgment? So the judgment was -

MR DRUMGOLD: I don't specifically recall, but I will accept it.

5

MS CHRYSANTHOU: The judgment was 2 pm on the Tuesday, 21st, and I'm asking you now about the Wednesday, the 22nd.

MR DRUMGOLD: Okay. I will - I will accept that I received a call. It doesn't jump to mind, but -

10

MS CHRYSANTHOU: Well, what Ms Saunders said to you, I want to suggest to you, was - assuming you did receive a call, did you take any notes of the call that you're aware of?

MR DRUMGOLD: No. No.

15

MS CHRYSANTHOU: She told you that she acted for - well, she represented Network Ten and Lisa Wilkinson. And she said to you, "I wanted to let you know I will be shortly sending a letter to the court on behalf of Network Ten and Ms Wilkinson and will copy the parties. Can you please formally tender the letter in court tomorrow?" Do you remember talking to her about that?

20

MR DRUMGOLD: Not really.

MS CHRYSANTHOU: And you said, "Yes, I will do that." Do you remember that?

25

MR DRUMGOLD: Yes. I don't remember, but I will accept that it happened.

MS CHRYSANTHOU: And you said, "I think the media has misreported the evidence that was tendered by the defence in the application yesterday. The media have reported that I told Ms Wilkinson not to give a speech. I didn't say that. All I said was that it wasn't my role to provide legal advice and it could give rise to an application for a stay. I feel I should correct reports that there was a positive direction not to give a speech. I feel Ms Wilkinson has been poorly treated. I will give some thought as to how I can deal with it tomorrow and might say something in open court." Do you remember that?

30

35

MR DRUMGOLD: No, I don't remember that.

MS CHRYSANTHOU: And shortly after that conversation -

40

THE CHAIRPERSON: Just before you go on.

MR DRUMGOLD: I remember the first part.

THE CHAIRPERSON: If you had - if Ms Saunders had put that to you, there wouldn't be any obstacle to rising in court when you were appearing in the matter to say, "And incidentally, there has been some very, very misguided reporting about the significance and circumstances in which Ms Wilkinson made her speech."

45

MR DRUMGOLD: To my mind, there would have been. I mean, there - that then would have been the story. Anything that I -

5 **THE CHAIRPERSON:** But that's the purpose, that it would have been a story to correct the misstatements. That's what we do as barristers, don't we? We get up and say, "Your Honour, my client has been maligned in the press because - yesterday's proceedings have been completely misreported. In fact, as your Honour is aware, this and this and this." We do that. You've done that, haven't you?

10 **MR DRUMGOLD:** Never. No.

MS CHRYSANTHOU: Well, you received an email at -

15 **THE CHAIRPERSON:** You're unaware that sometimes it might be your duty to do that, to protect the witness or to protect the client?

MR DRUMGOLD: In this case -

20 **THE CHAIRPERSON:** Are you or are you not aware that it's part of a barrister's duty sometimes to stand up in court - to protect the witness or the reputation or standing of a witness or of a client, to stand up in court and to alert the judge to misreporting that has maligned that reputation?

25 **MR DRUMGOLD:** I would interpret that as me making positive public statements affecting the credibility of a witness, which would be as - the same as me making negative public statements. My position is I generally don't make statements about witnesses.

30 **MS CHRYSANTHOU:** Doesn't it undermine the administration of justice if nearly every media company in the country is misreporting a court judgment about a case of high public interest?

MR DRUMGOLD: Yes.

35 **MS CHRYSANTHOU:** It's not about credit, is it?

MR DRUMGOLD: Everybody - every media outlet is misrepresenting this entire trial, all of the allegations. At what point do I stop correcting the public record -

40 **MS CHRYSANTHOU:** Well, what I have suggested to you -

MR DRUMGOLD: - including me?

MS CHRYSANTHOU: - is you agreed - you agreed to correct the public record?

45 **MR DRUMGOLD:** I don't remember doing that.

50 **MS CHRYSANTHOU:** Well, could we please have WIT.0092.0001.0001_0004. This is an email, when it comes up, that you were sent - or you were copied in to an email to the associate to the Chief Justice at 4.30 pm on 22 June. Can I suggest to you that you received this email shortly after you spoke to Ms Saunders. Do you see that?

MR DRUMGOLD: Possibly. I thought the email was attached to this. I thought the letter was attached to this.

5 **MS CHRYSANTHOU:** Yes, I'm coming to the attachment.

MR DRUMGOLD: Okay.

MS CHRYSANTHOU: You see there is an attachment?

10

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: But what I'm pointing to you is the email came to you at 4.30 pm and others in your office. Do you see that?

15

MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And the email from Ms Saunders notes who she acts for, attaches the letter and says:

20

"We understand that Mr Drumgold will tender the letter in court tomorrow morning."

Do you see that?

25 **MR DRUMGOLD:** Tender it for what? She's - her Honour has already got it, though.

MS CHRYSANTHOU: Well, I'm asking you if you read that email.

MR DRUMGOLD: I don't know.

30

MS CHRYSANTHOU: And in all probability -

THE CHAIRPERSON: Wait a minute. I can understand if you say, "I don't remember reading it," but surely you read it?

35

MR DRUMGOLD: I mean - I don't know. No, I don't remember reading it.

MS CHRYSANTHOU: You see there Ms Saunders says:

40 "We understand that Mr Drumgold will tender the letter in court tomorrow morning."

MR DRUMGOLD: I see that.

MS CHRYSANTHOU: Do you accept as a matter of probability she said that because you told her you would?

45

MR DRUMGOLD: Possibly, yes.

MS CHRYSANTHOU: Well, possibly? Only possibly? She's a solicitor.

50

MR DRUMGOLD: Yes. Yes. Okay. Yes. Yes.

5 **MS CHRYSANTHOU:** If you could please go to the next page, which is 0005. That's the attachment. And this is the letter from the head of Network Ten, owned by Paramount, 22 June 2022, addressed to the Chief Justice but also, you see, copied to you?

MR DRUMGOLD: Yes.

10 **MS CHRYSANTHOU:** And copied to the solicitor for the accused?

MR DRUMGOLD: Okay. Yes.

15 **MS CHRYSANTHOU:** And you see this letter says - it refers to the judgment. I think the formal reasons had been produced that day, even though the ex temp was the day before. And it says:

20 "I'm writing on behalf of Network Ten and Ms Wilkinson. We take our legal obligations very seriously, including those in respect of sub judice contempt. In particular, Ms Wilkinson takes her obligations as a prospective witness with the utmost seriousness."

Do you see that?

MR DRUMGOLD: Yes.

25 **MS CHRYSANTHOU:** And I want to suggest you saw that on 22 June.

MR DRUMGOLD: Yes.

30 **MS CHRYSANTHOU:** And -

MR DRUMGOLD: Well, not on 22 June, but I would have read that, yes.

MS CHRYSANTHOU: It says:

35 "We have not intended at any time to interfere with the trial of Mr Lehrmann. Neither Ms Wilkinson nor the Network Ten senior legal counsel present at the conference with the DPP on 15 June understood that they had been cautioned that Ms Wilkinson giving an acceptance speech at the Logie Awards could result in an application being made to the court to vacate the trial date. Had they understood that a specific warning had been given, Ms Wilkinson
40 would not have given the speech."

Do you see that?

45 **MR DRUMGOLD:** Yes.

MS CHRYSANTHOU: And I want to suggest you saw that on the 22nd.

MR DRUMGOLD: Yes. Okay. I - I don't remember reading it, but I - I must have seen it.

MS CHRYSANTHOU: So putting to one side what you thought Ms Smithies and Ms Wilkinson understood by your reference to publicity, you saw this letter, I want to suggest to you, and you understood that they didn't think that, that your interpretation of their thoughts and beliefs was incorrect.

5

MR DRUMGOLD: I don't know. Yes. Okay.

MS CHRYSANTHOU: Well, you never have ever raised any disagreement with the content of this letter, have you?

10

MR DRUMGOLD: I don't accept the truth of that statement.

MS CHRYSANTHOU: You have never -

15 **THE CHAIRPERSON:** You don't accept what?

MR DRUMGOLD: That - I don't accept that neither of them had understood that they had been cautioned that giving the speech at the Logies could result in an application being made for a stay.

20

MS CHRYSANTHOU: This moment - just then at 1.13 pm on 12 May, nearly a year after the letter is sent, is the first time you have ever expressed any disagreement with the content of this letter.

25 **MR DRUMGOLD:** I have already - I have expressed very clearly - I walked away from that meeting with her - with a very clear understanding that she had been sufficiently warned.

MS CHRYSANTHOU: I'm not asking about your evidence. I'm putting to you -

30 **MR DRUMGOLD:** That's what I'm saying. I'm saying -

MS CHRYSANTHOU: I'm putting to you that on 22 June, you got this letter and you have never expressed at any time any disagreement with its content until just then.

35 **MR DRUMGOLD:** To who?

THE CHAIRPERSON: To anyone.

MS CHRYSANTHOU: To anyone.

40

MR DRUMGOLD: No. Well, who would I express it to?

MS CHRYSANTHOU: Well, the next day, McCallum J called the matter and you were present. Do you remember that, 23 June?

45

MR DRUMGOLD: No, I don't, but -

MS CHRYSANTHOU: And her Honour said during the proceeding that she had received a letter from Network Ten. Do you remember that?

50

MR DRUMGOLD: Possibly. I will accept that - I will accept it happened.

MS CHRYSANTHOU: Okay. Well, take it one step at a time. Did you respond to this email where -

5

MR DRUMGOLD: No.

MS CHRYSANTHOU: - the judge was copied and so were you and the accused lawyers?

10 **MR DRUMGOLD:** Not to my knowledge, no.

MS CHRYSANTHOU: Right. So you didn't respond and say, "Well, hang on a second" -

MR DRUMGOLD: No, I didn't.

15

MS CHRYSANTHOU: - "this is wrong"?

MR DRUMGOLD: No, I didn't.

20 **MS CHRYSANTHOU:** And the reason you didn't was because you didn't think it was wrong.

MR DRUMGOLD: I - I clearly thought it was wrong.

25 **MS CHRYSANTHOU:** The Chief Justice referred to the fact in open court that she had received a letter?

MR DRUMGOLD: Yes.

30 **MS CHRYSANTHOU:** You did not tender the letter?

MR DRUMGOLD: But she already had the letter before.

THE CHAIRPERSON: Well - but -

35

MS CHRYSANTHOU: Well, there is a difference between a judge having a letter and it being tendered as an exhibit for inspection by the public. Isn't that right?

MR DRUMGOLD: Yes. Again, it just didn't occur to me.

40

MS CHRYSANTHOU: You are shaking your head. But you understand the difference, don't you?

MR DRUMGOLD: I do understand the difference.

45

MS CHRYSANTHOU: And you understood the difference -

THE CHAIRPERSON: Mr Drumgold, you say it didn't occur to you, but - could we see the preceding page of the email?

50

MR DRUMGOLD: Yes.

THE CHAIRPERSON: How could you say it didn't occur to you?

5 **MR DRUMGOLD:** It's just inattention. Just inattention. I mean, there's a lot of emails and I'm not paying them all the same attention.

MS CHRYSANTHOU: Well, were you paying attention in court when you were sitting there in front of the Chief Justice in the Supreme Court -

10

MR DRUMGOLD: I - I - I must have been.

MS CHRYSANTHOU: - and she referred to the letter?

15 **MR DRUMGOLD:** Okay. I must have been.

MS CHRYSANTHOU: And you didn't stand up and say, "Well, I understand your Honour has received a letter, but I should say I disagree with its content." You didn't say that?

20 **MR DRUMGOLD:** Yes, I - I agree I didn't engage to the extent I should have.

MS CHRYSANTHOU: Well, you didn't engage at all.

MR DRUMGOLD: Yes.

25

MS CHRYSANTHOU: And despite telling Ms Saunders, an officer of the court, that you will tender the letter, you didn't?

MR DRUMGOLD: I - I didn't think I needed to.

30

MS CHRYSANTHOU: It was the perfect opportunity - despite everything you have said this week about being a publicist for my client or defending the reputation of a TV personality, this was the opportunity, wasn't it, in court, to correct what was being said about my client, which was something you knew to not be true?

35

MR DRUMGOLD: I now accept that.

MS CHRYSANTHOU: You knew it at the time?

40 **MR DRUMGOLD:** Again, I - I didn't give this the attention that it should have - it should have deserved. But I was dealing with a million other things. This didn't receive the attention that it deserved.

MS CHRYSANTHOU: You weren't dealing with the trial in a few days because that had been pushed off. You had an opening in your diary, didn't you?

45

MR DRUMGOLD: And a whole lot of ramifications for a vacated trial.

MS CHRYSANTHOU: And one of those ramifications was the utter destruction of my client's reputation, which arose because of a file note tendered that you produced to the defence - your office produced at 1.09 pm on 20 June?

5 **MR DRUMGOLD:** And to my mind, that file note was accurate.

MS CHRYSANTHOU: Right. But all of this was caused by that file note. Do you agree with that? And it was a failing on your part to not correct it?

10 **MR TEDESCHI:** I object to that, that misstatements in media were caused by the file note.

THE CHAIRPERSON: Yes, that's what she's putting.

15 **MR DRUMGOLD:** But the - the - the file note at no point said that I directed Ms Wilkinson not to make a speech. The file note said accurately that I cautioned - that any publicity could give rise to a stay.

MS CHRYSANTHOU: You keep saying "accurately". Other people have put on statements saying that's not accurate.

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MR DRUMGOLD: They both referred to publicity and its ability to result in a stay.

MS CHRYSANTHOU: Ms Smithies and Ms Wilkinson do not accept your version, Mr Drumgold.

25

MR DRUMGOLD: Okay.

MS CHRYSANTHOU: So you think it's accurate; yes? But as you know, as an experienced lawyer, witnesses have different recollections of events.

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MR DRUMGOLD: With respect, I've received other letters where they have accepted that what was said was, "Any publicity could give rise to a stay."

MS CHRYSANTHOU: I want to -

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MR DRUMGOLD: From Ms Wilkinson's lawyers.

MS CHRYSANTHOU: Your failure to tender that letter, as you said you would, was a failure on your part as a barrister and as senior counsel.

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MR DRUMGOLD: I'm telling you that their denial is wrong.

MS CHRYSANTHOU: Your failure to tender the letter, as you told Ms Saunders you would, was a failure as a barrister not only in relation to courtesy to your fellow practitioner but also because you knew that events that occurred in court had set the hare running against my client in a way that was extremely damaging. You were in a position to fix it, and you didn't.

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MR DRUMGOLD: I don't believe I was in a position to fix it.

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MS CHRYSANTHOU: Is that a serious answer?

MR DRUMGOLD: Again, I don't - I - I simply couldn't change the flow of the media. I could not change the media. I couldn't make the media change their reporting.

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MS CHRYSANTHOU: Well, you know what you could have done? You could have said, "Your Honour, when I said on Tuesday that it was a contemporaneous note, that's wrong."

MR DRUMGOLD: I could have said that.

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MS CHRYSANTHOU: "And now that I see what Ms Smithies and Ms Wilkinson thought I had said, I should draw to your Honour's attention that there are obviously two different versions of this conversation. And I need to correct what I said about that note being a contemporaneous note by my solicitor."

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MR DRUMGOLD: I didn't accept -

MS CHRYSANTHOU: Couldn't you have done that?

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MR DRUMGOLD: I didn't accept the truth of the statement.

MS CHRYSANTHOU: Can you please answer my question?

MR DRUMGOLD: Yes, I could have. Yes, I could have.

25

THE CHAIRPERSON: You didn't accept the truth of the statement in the letter?

MR DRUMGOLD: No.

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THE CHAIRPERSON: But what you were being asked to do, and what according to Ms Saunders' email you agreed to do, was to tender the letter so that the different account of the meeting could be seen by the public.

MR DRUMGOLD: Frankly, I - I didn't even read that part.

35

MS CHRYSANTHOU: Which part?

THE CHAIRPERSON: You know, there's a lot of things you say you didn't read in the course of giving evidence, and you have referred to the reason - one of the reasons you give for not reading documents that in hindsight you say you should have read is you're on the run and you have other things to do.

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MR DRUMGOLD: Yes.

45

THE CHAIRPERSON: But it's the business of the DPP, isn't it, to do things frequently on the run? It's the business of barristers frequently to be doing things on run and having many, many things to do.

MR DRUMGOLD: I accept that.

50

THE CHAIRPERSON: Do you think -

MR DRUMGOLD: Yes, it was a failing.

5 **MS CHRYSANTHOU:** You did nothing to correct your misstatement about the record in June, July, August, September or October, did you?

MR DRUMGOLD: No.

10 **MS CHRYSANTHOU:** And the trial started on 4 October?

MR DRUMGOLD: It did.

MS CHRYSANTHOU: Jury deliberations started on 19 October?

15

MR DRUMGOLD: They did.

MS CHRYSANTHOU: On 24 October, Ms Saunders telephoned you - and you were asked about this conversation on Monday. This is a conversation where you agreed with some aspects of it and disagreed with others. Do you remember those questions from counsel assisting on Monday?

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MR DRUMGOLD: I do.

25 **MS CHRYSANTHOU:** You said you didn't have an independent recollection of the call. Can I take it you don't have any notes of the call?

MR DRUMGOLD: No, I don't have any notes of the call.

30 **MS CHRYSANTHOU:** You also said, though, that you wouldn't have had a detailed conversation during jury deliberations. Do you remember that evidence?

MR DRUMGOLD: Yes.

35 **MS CHRYSANTHOU:** I want to suggest to you that the conversation commenced at 11.22 am and went for 11 minutes. Do you remember that?

MR DRUMGOLD: No, but I will accept that it happened.

40 **MS CHRYSANTHOU:** And it was, in fact, a detailed call.

MR DRUMGOLD: Okay. I accept that.

MS CHRYSANTHOU: And have you had an opportunity, or you haven't, to read Ms Saunders' account in front of you of that conversation?

45

MR DRUMGOLD: No. No, I haven't. I - passages were read to me.

MS CHRYSANTHOU: I think the whole conversation was read to you by counsel assisting, so I won't rehearse that, other than to say, as you sit here, having not taken notes of that lengthy call, you can't be sure -

5 **MR DRUMGOLD:** No, I can't be.

MS CHRYSANTHOU: - what was said?

MR DRUMGOLD: I can't be sure what was said.

10

MS CHRYSANTHOU: Now, I want to suggest to you Ms Saunders tried to contact you again on 1 December by telephone. Do you remember receiving any missed calls or messages from her?

15 **MR DRUMGOLD:** No, I don't.

MS CHRYSANTHOU: And you received an email from her on 1 December, which counsel assisting has already taken you to, which was the email - I can show it to you again if you need it - about your public statement the next day and whether you could correct the record about contempt?

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MR DRUMGOLD: Yes.

MS CHRYSANTHOU: Do you remember that short email?

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MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And you didn't respond to that?

30 **MR DRUMGOLD:** No, I didn't.

MS CHRYSANTHOU: And you gave the press conference on 2 December, and you received another email on 6 December, which you have already been shown, and you were asked by Ms Saunders if she could speak to you. And you didn't respond to that one either?

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MR DRUMGOLD: No.

MS CHRYSANTHOU: Now, the one I just want to draw your attention to just briefly is, in fact, the email on 13 December, which is WIT.0092.0001.0001_0011. This was an email from Ms Saunders on 13 December at 9.20 am. Do you see that?

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MR TEDESCHI: That's not the email on the screen.

MS CHRYSANTHOU: Sorry. Well, the email - that's -

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MR TEDESCHI: Can we have it brought up, please?

MS CHRYSANTHOU: The email is the page before. So it's, sorry, 10. Sorry. Counsel assisting showed it to you. It's an email of 13 December at 9.20 am from Marlia Saunders to you, subject RM Lehrmann - Lisa Wilkinson, and it attaches a letter. It's not a very exciting

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email. That's why I didn't go to it, but if Mr Tedeschi would like to see it again, hopefully we can get it up. That's the letter. Just take it from me that you were sent an email. You were already shown this on Monday.

5 **MR DRUMGOLD:** Okay.

MS CHRYSANTHOU: Okay. So the attached letter - I just want to take you through it briefly. Because in your evidence on Monday, I want to suggest to you you focused on the contempt aspect. But I want to ask you about the other aspects. Now, Ms Saunders sets out the history of her communications with you where she in the first paragraph refers to the calls with you on 22 June, 24 October, and the emails on 2 and 6 December. Do you see that?
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MR DRUMGOLD: Okay. Yes.

15 **MS CHRYSANTHOU:** And then she said in the next paragraph:

"As you have acknowledged during our two phone calls referred to above, Ms Wilkinson was never warned by you during your meeting on 15 June or otherwise not to give a Logies speech. As also confirmed by Network Ten senior litigation counsel Tasha Smithies who was in the meeting, your only advice was that Ms Wilkinson could not mention the trial as that could give rise to a stay."
20

MR DRUMGOLD: That's right.

25 **MS CHRYSANTHOU:** Right. "Could not mention the trial"?

MR DRUMGOLD: Again, I mentioned "any publicity". So as I've said, it's pretty hard to mention Ms Higgins that close to her trial without mentioning the trial.

30 **MS CHRYSANTHOU:** And you've said that. And I put to you that that's not logical.

MR DRUMGOLD: I mean, I just don't know what a trial is.

MS CHRYSANTHOU: Now -
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MR DRUMGOLD: You - you are going to say I can talk about how brave she is, but I can't talk about how a jury will be empanelled and witnesses will be called.

MS CHRYSANTHOU: And then it explains why Ms Wilkinson raised the matter with you. And then it refers to the Chief Justice's findings in the judgment, which I have already taken you to. And Ms Saunders notes that:
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"This finding has gone on to be reported as fact by the media, that Ms Wilkinson was specifically warned by you not to give the speech, but that she went ahead and gave the speech anyway."
45

And then she records her recollection of your telephone call on 22 June, that you said you felt the need to correct reports that there was a positive direction by you not to give the speech. You did tell Ms Saunders that, didn't you, that you felt the need to correct it?
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MR DRUMGOLD: Not that I recall. But I accept that I might have said it at some point.

MS CHRYSANTHOU: And that was sincere, wasn't it? You did feel the need to correct it, because you knew that the court proceedings shouldn't be misreported in that way?

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MR DRUMGOLD: I - I still don't understand how I would go before the media and say there's a - there's a judgment, and it says X and Y, and the media have misreported that judgment and said W and X, and that's wrong.

10 **MS CHRYSANTHOU:** We are not talking about going before the media; this paragraph is talking about going before her Honour on 23 June and correcting it in court.

MR DRUMGOLD: This - this letter -

15 **MS CHRYSANTHOU:** The 22 June reference is back to what you said you would do on 23 June, and you didn't.

MR DRUMGOLD: I see.

20 **MS CHRYSANTHOU:** Now, after setting out the history, quite a serious accusation is made about you on the next page - if that could go over, please - that you as the Director of Public Prosecutions - or your office has mistreated her, a person who was a Crown witness. What I want to suggest to you is - and you have already accepted you didn't respond to this letter; yes?

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MR DRUMGOLD: Yes.

MS CHRYSANTHOU: And the reason you didn't respond, I want to suggest to you, is because you had nothing to say for yourself.

30

MR DRUMGOLD: No. I mean, I was being asked - I was being asked to do something that I didn't feel I could do.

MS CHRYSANTHOU: That's one aspect of the letter. I've taken you to other aspects. And what I'm suggesting to you is as the careful lawyer - DPP, senior counsel - having received a formal letter from a law firm making allegations against you and claiming that you agreed to do things that you then did not carry out, had you had any proper response to defend yourself, you would have put one in writing in response.

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40 **MR DRUMGOLD:** What would I have said?

MS CHRYSANTHOU: Well -

MR DRUMGOLD: I gave her a clear warning.

45

THE CHAIRPERSON: I'm sorry, I couldn't hear you.

MR DRUMGOLD: What would have I said? I gave her a clear warning. Maybe it's that she didn't want to heed the warning. Maybe that she still wanted to be able to deliver the speech notwithstanding the warning.

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5 **MS CHRYSANTHOU:** What would you have said, Mr Drumgold? Well, if your account is correct, you would have said, "Ms Saunders, I disagree with what you say about our conversations. That's not what I remember. I never promised you to correct anything in court or to tender anything. I disagree that I have treated your client unfairly for the following reasons." I mean, there is plenty of things you could have said if the evidence you have been giving about this issue was accurate. Do you agree?

10 **MR DRUMGOLD:** I didn't think it was my place to respond, so no.

15 **THE CHAIRPERSON:** Mr Drumgold, I suspect Ms Chrysanthou will submit at the end of this - towards the end of this inquiry that I should conclude that the reason why you didn't respond to that letter, which contained statements of fact which you now say were inaccurate, and which contained criticisms of your office which you now say are unjustified, and which record promises which according to the writer of the letter you made but then didn't fulfil, she will submit that the reason you didn't respond is that you could not respond because all of that was correct. Now, that's one inference. And it's an obvious one when somebody doesn't respond to a letter of that character. What is your reason, giving evidence now, for failing to respond to a letter of that kind from a solicitor?

20 **MR DRUMGOLD:** I didn't read that it called for a response.

THE CHAIRPERSON: Thank you.

25 **MS CHRYSANTHOU:** Mr Drumgold, it says at the end that:

"We would be happy to discuss the request with you if required. We look forward to hearing you from you at your earliest convenience."

30 You don't think that that calls for a response?

MR DRUMGOLD: In - in hindsight, yes. At the time, I didn't read that it called for a response.

35 **MS CHRYSANTHOU:** Ms Saunders had been politely requesting over a period of five months that you rectify the situation in relation to the misunderstanding of the evidence and submissions, if that's what it was, by the media of her conduct. You agree?

40 **MR DRUMGOLD:** I agree.

MS CHRYSANTHOU: And you did nothing to correct that in court or otherwise?

MR DRUMGOLD: I - I did not.

45 **MS CHRYSANTHOU:** And do you now accept that you should have?

MR DRUMGOLD: I should have in hindsight, yes.

50 **MS CHRYSANTHOU:** No further questions.

THE CHAIRPERSON: Thank you, Ms Chrysanthou. Now - yes. Did you want to say something, Mr Tedeschi?

5 **MR TEDESCHI:** Can I suggest - I notice it is 1.30.

THE CHAIRPERSON: No, no. Take your time.

MR TEDESCHI: Can I suggest we have a five-minute adjournment or something like that so that I can get some instructions and then perhaps convey them through counsel assisting -

10 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: - to you, Chairman, and -

15 **THE CHAIRPERSON:** Yes. Certainly.

MR TEDESCHI: Thank you.

THE CHAIRPERSON: So we will adjourn now, and I will come back when you tell somebody here that you are ready.

MR TEDESCHI: Thank you.

25 <**THE HEARING ADJOURNED AT 1.31 PM**

<**THE HEARING RESUMED AT 1.46 PM**

THE CHAIRPERSON: Mr Tedeschi, before you say whatever it is you wanted to say, I wonder whether we shouldn't adjourn now - adjourn Mr Drumgold's evidence now, because he's been undergoing examination and cross-examination for a long time, which isn't usual for - it's not usual, and there's a limit to how much intellectual energy one can bring to do justice to oneself. So I wonder if - what you think about adjourning now and we would resume on Monday, probably calling Mr Whybrow, and we would resume Mr Drumgold's evidence at a convenient point. We are not sitting Wednesday, Thursday and Friday, so we could recall Mr Drumgold either the following Monday or on a day subsequent to that. But in any event we could discuss what's convenient to the parties and their counsel's availability and for you and Mr Drumgold.

40 **MR TEDESCHI:** Yes. That's suitable, Chairman.

THE CHAIRPERSON: All right. Well then does anybody have anything they wish to say about that course?

MR EDWARDSON: Sorry, your Honour. I just didn't quite follow the timing. Mr Drumgold's evidence would resume after Mr Whybrow on Monday or Tuesday of next week?

THE CHAIRPERSON: It would resume - I don't know how long Mr Whybrow is going to take, but -

MR EDWARDSON: Hopefully not long.

THE CHAIRPERSON: Well, I don't know. But Mr Drumgold's evidence will then - we will ask Mr Tedeschi on Monday -

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MR EDWARDSON: Yes.

THE CHAIRPERSON: - what's to be done and then you will know. How is your availability?

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MR EDWARDSON: Not good. Certainly I'm available Monday and until lunchtime Tuesday.

THE CHAIRPERSON: Yes.

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MR EDWARDSON: But my junior, Mr Muller, will be available Tuesday afternoon.

THE CHAIRPERSON: What about the following week?

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MR EDWARDSON: I might be able to now work around -

THE CHAIRPERSON: All right. Well, you can discuss it with -

MR EDWARDSON: I will.

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THE CHAIRPERSON: - counsel assisting and work something out that suits you.

MR EDWARDSON: Thank you.

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THE CHAIRPERSON: So we won't do anything unless you are able to be here, if we can at all manage it, and I'm not sure we can.

MR EDWARDSON: Thank you.

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THE CHAIRPERSON: All right. Well then - yes, Mr Black.

MR BLACK: Yes. Mr Chair, there are two matters that I would just seek to be heard on. The first is just if there's to be a change in the timing, that - next week, as I understand it, as in, not next week, the week after - is currently scheduled -

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THE CHAIRPERSON: For police, yes.

MR BLACK: Yes.

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THE CHAIRPERSON: Just before you go on, nobody needs Mr Drumgold to remain in the witness box?

MR BLACK: No.

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THE CHAIRPERSON: No. You are free to go, Mr Drumgold.

<THE WITNESS STOOD DOWN

THE CHAIRPERSON: Yes. Go on, Mr Black.

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MR BLACK: So I did just want to immediately raise that if there is to be any changes to - as I understand it, Mr Moller is the first witness scheduled for that week. My clients that week are Mr Moller (indistinct) Mr Chew if he is to be called.

10 **THE CHAIRPERSON:** Yes.

MR BLACK: There will be some difficulty if their days -

THE CHAIRPERSON: If they are changed.

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MR BLACK: Yes.

THE CHAIRPERSON: Yes.

20 **MR BLACK:** Yes. So -

THE CHAIRPERSON: All of you will have to talk to each other about your respective diaries so that we can sort it out.

25 **MR BLACK:** Yes.

THE CHAIRPERSON: But it was always possible - I think this afternoon it's possible that Mr Drumgold's evidence would have gone into Monday anyway. So there would have been a consequential shifting. But we will work it all out, Mr Black, so don't be concerned about that.

30

MR BLACK: Yes. Thank you.

THE CHAIRPERSON: I understand that you have some concern about some statements of your clients that you want to deal with. Why don't you talk to Ms Longbottom about it, and we will be able to sort it out or not. But if not, we can deal with it on Monday. But we will maintain the status quo.

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MR BLACK: Yes, if that could be done. I was told there would be publication this afternoon, but if the status quo -

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THE CHAIRPERSON: Yes. No, we will maintain the status quo and then you can deal with it. And if there is a disagreement, I will resolve it on Monday.

45 **MR BLACK:** Yes. Thank you.

THE CHAIRPERSON: Does anybody else want to raise anything? Is that suitable for you? Because your cross-examination was interrupted.

50 **MS RICHARDSON:** That's convenient. No problem at all.

THE CHAIRPERSON: Thank you. Well then, we will adjourn till 9.45 on Monday.

<THE HEARING ADJOURNED AT 1.50 PM TO MONDAY, 15 MAY 2023 AT 9.45 AM

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